

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO. E017 OF 2025

ARON KOECH APPELLANT

VERSUS

REPUBLIC

.....RESPONDENT

(From the Conviction and Sentence in Criminal Case Number E602 of 2025 by Hon. Kimtai B.M in the Senior Principal Magistrate's Court at Sotik)

J U D G M E N T

1. The Appellant was charged for the offence of unnatural offence contrary to **section 162(b) of the Penal Code.**

The particulars of the offence were that on 8th July 2025 at

Tegat Village, Konoin Sub-County within Bomet County, he had carnal knowledge of a sheep.

2. The Appellant was convicted on his own plea of guilty and was sentenced to serve 14 Years Imprisonment.
3. Being dissatisfied with the conviction and sentence, the Appellant appealed against his conviction and sentence.
4. This being the first appellate court, I have a duty to re-evaluate the evidence on record.

The Appellant's submissions.

5. Through his written submissions dated 11th March 2026, the Appellant submitted that the trial court did not warn him of the seriousness of the offence or the consequences of pleading guilty as required by the law. He relied on **Elijah Njihia Wakianda vs Republic (2016) eKLR et.al.** That he

did not freely and voluntarily plead guilty hence making the plea defective.

6. It was the Appellant's submission that he entered the guilty plea while intoxicated and under the false assurance that the matter would be withdrawn. That a guilty plea entered when intoxicated or under confusion was not valid. He relied on **Paul Matungu vs Republic (2016) eKLR**. It was the Appellant's further submission that even when an Accused plead guilty, the prosecution was still required to outline the facts which disclosed the offence. Reliance was placed on **Atito vs Republic (1975) 1 EA 278**.

7. The Appellant submitted that he was a first offender and drunk at the time of the commission of the offence. That he was remorseful. The Appellant further submitted that the complainant had forgiven him.

8. It was the Appellant's submission that the sentence was not proportionate and was harsh.

The Respondent's submissions

9. Through their written submissions dated 17th December 2025, the Respondent submitted that trial court did not err when convicting the Appellant. That they read the facts that established the offence and the Appellant was given an opportunity to dispute or explain the facts. The Respondent further submitted that the plea was unequivocal.

10. It was the Respondent's submission that the present Appeal rose from a guilty plea and the same was governed by **section 348 of the Criminal Procedure Code**. That the Appellant was only allowed to question the extent or legality of the sentence.

11. The Respondent submitted that they acknowledged that the complainant had forgiven the Appellant and they urged this court to review the sentence to promote harmony, reconciliation and peaceful co-existence.

12. Before I begin my analysis, I observe that the Appellant was convicted on their own plea of guilty. **Section 348 of the Criminal Procedure Code** provides: -

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

13. It has however been held that the above section of the law was not an absolute bar to appeals. The Court of Appeal in **Wandete David Munyoki v Republic [2015] KECA 421 (KLR)** held: -

“It has long been settled that Section 348 of the Criminal Procedure Code which provides that no appeal is allowed in a conviction arising from a plea of guilty, except to the extent and legality of the sentence, is not an absolute bar to challenging such a conviction on any other ground. Indeed, in Ndede v R [1991] KLR 567, this Court held that the court is not bound to accept the accused person’s admission of the truth of the charge and conviction as there may be an unusual circumstance such as injury to the accused person or the accused person may be confused or there has been inordinate delay in bringing him to court from the date of arrest. The list of circumstances and examples that may lead the first appellate court to consider the appeal on merit even when the conviction was on the accused person’s own plea of guilty, are not closed.”

14. Similarly, in **John Muendo Musau v Republic [2013] KECA 266 (KLR)**, the Court of Appeal held: -

“There is a long line of authority to the effect that the bar to an appeal against a conviction based on a guilty plea is not absolute.....”

15. From the above authorities, this court is permitted to consider the grounds of Appeal raised by the Appellant despite the provisions of **section 348 of the Criminal Procedure Code**. It is only after such consideration and analysis that this court can determine whether the Appellant's conviction was safe or not.

16. I have gone through and given due consideration to the trial court's proceedings, the Petition of Appeal dated 18th July 2025, the Appellant's written submissions dated 11th March

2026 and the Respondent's written submissions dated 17th December 2025. The two issues that arise for my determination are: -

- i) Whether the plea was unequivocal
- ii) Whether the sentence was harsh and excessive.

i) **Whether the plea was unequivocal.**

17.I have noted that the Appellant was unrepresented during the trial and that one of his grounds of Appeal was that the plea he entered was equivocal. To ensure that the Appellant was accorded a fair trial in accordance to **Article 50 of the Constitution of Kenya**, I shall relook the plea process in the trial court.

18.The process of plea taking is provided under Section **207(1) and (2) of the Criminal Procedure Code** which states: -

(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement;

(2) If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.

19. In the case of **Omollo vs Republic (Criminal Appeal E031 of 2023) [2024] KEHC 2664 (KLR) (14 March 2024) (Judgment)**, Mrima J. held: -

“The process of plea taking is one that must be guarded jealously with strict adherence to procedure lest an accused person loses their liberty summarily.

In Criminal Appeal 365 of 2011, John Muendo Musau -vs- Republic [2013] eKLR, the Court of Appeal, in reference to the decision in Adan -vs- Republic discussed the process of plea taking as follows;

On this argument, we wish to state that we have outlined the procedure followed before the trial court at the time of taking the plea. The legal

principles to be applied in plea taking in all criminal cases were well enunciated in the locus classicus case of Adan vs Republic [1973] EA 445 where the Court held: -

(i)The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.

(ii)The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.

(iii)The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.

(iv)If the Accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered.

(v)If there is no change of plea a conviction should be recorded and a statement of facts

relevant to sentence together with the accused's reply should be recorded."

20. In **Wakianda v Republic [2016] KECA 181 (KLR)** the Court of Appeal stated that: -

"... We also think that the elements of the offence are not complete if the sentence, especially if it is a severe and mandatory sentence, is not brought to the attention of the accused person. One surely ought to know the consequences of his virtual waiver of his trial rights that the Constitution guarantees him. That did not occur here and yet the appellant was unrepresented calling upon the trial court to be particularly solicitous of his welfare....."

....The officer presiding is not to be a mere umpire aloofly observing the proceedings. He is

the protector, guarantor and educator of the process ensuring that an unrepresented accused person is not lost at sea in the maze of the often-intimidating judicial process.”

21. Similarly, I am persuaded by Ngugi J. (as she then was) in **Simon Gitau Kinene v Republic [2016] KEHC 1569 (KLR)**, where she stated: -

“Finally, courts have always held that extra caution needs to be taken in the case of undefended defendants who plead guilty. I have previously held that where an Accused Person is unrepresented, the duty of the Court to ensure the plea of guilty is unequivocal is heightened. In Paulo Malimi Mbusi v R Kiambu Crim. App. No. 8 of 2016 (unreported) this is what I said and I find it relevant here:

“In those cases (where there is an unrepresented Accused charged with a serious offence), care should always be taken to see that the Accused understands the elements of the offence, especially if the evidence suggests that he has a defence.to put it plainly, then, one may add that where an unrepresented Accused Person pleads guilty to a serious charge which is likely to attract custodial sentence, the obligation of the court to ensure that the Accused Person understands the consequences of such a plea is heightened. Here, the court took no extra effort to ensure this. In these circumstances, given the seriousness of the charge the Court was about to convict and sentence the Accused Person for, it behooved the Court to warn the Accused Person of the consequences of a guilty plea.”

22. I have gone through the trial court proceedings and I have noted that the Appellant took plea on 10th July 2025 when the substance of the charge was read and explained to him in a language he understood and he replied “it is true”, a response which was recorded by the trial court and a plea of guilty entered.
23. The facts were read out to him and the Appellant stated that the facts were true. He was consequently convicted on his own plea of guilty. I have also noted that the trial court cautioned the Appellant of the consequences of pleading guilty and the severity of the sentence on three occasions. The Appellant took plea three times after the cautions and pleaded guilty.
24. Having gone through the trial record, I have noted that the trial court adopted the proper procedure in recording the plea. The Appellant understood the charges and the facts

and admitted them. He had every opportunity to inform the court that the particulars of the charge or facts were not true but he did not. There was no doubt in my mind that the Appellant understood the charge he faced and the severity of the sentence it carried.

25. It is salient to note that a guilty plea can be overturned at the mitigation stage if the Accused at mitigation submits and contradicts what he had pleaded guilty to or admitted to. In the event of such an occurrence, the trial court should change the plea to a not guilty plea. The Court of Appeal in the case of **John Muendo Musau v Republic [2013] KECA 266 (KLR)** observed: -

“We want to add here that if the accused wishes to change his plea or in mitigation says anything that negates any of the ingredients of the offence he has already admitted and been convicted for, the court must enter a plea of not

guilty. That is to say that, an accused person can change his plea at any time before sentence.”

26. I have considered the Appellant’s mitigation in the trial court. His submissions did not negate any facts of the case.

27. Flowing from the above, it is my finding that the Appellant’s plea was unambiguous and unequivocal and the Appellant was properly convicted.

ii) Whether the sentence was harsh and excessive

28. The Appellant was charged and convicted of the offence of unnatural offence contrary to **section 162 (b) of the Penal Code** which provides that: -

Any person who has carnal knowledge of an animal is guilty of a felony and is liable to imprisonment for fourteen years.

29. The Appellant was sentenced to 14 Years Imprisonment as prescribed by the law. I am inclined to exercise mercy to reduce the term given in view of the fact that the Appellant pleaded guilty and showed remorse.

30. I have considered the circumstances of the case and I have further noted the complainant's (Nelson Kirui) sworn Affidavit dated 6th March 2026 in which he stated that he had forgiven the Appellant and asked this Court to review his sentence.

31. In the end, I set aside the **14 Year Prison Term** and substitute it with a sentence of **5 Years Imprisonment**. The Sentence to run from the date of Plea Taking on **10th July, 2025**.

Judgement delivered, dated and signed this 12th day of May, 2026

.....
HON. JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of;

Siele/Susan - Court Assistants

Mr. Magoma for the State

Appellant - present

ORIGINAL