



**Ikoka v Republic (Criminal Appeal 87 of 2019)
[2025] KECA 614 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KECA 614 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 87 OF 2019
HM OKWENGU, HA OMONDI & JM NGUGI, JJA
MARCH 28, 2025**

BETWEEN

NICK AMITA IKOKA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of the High Court of Kenya at
Kakamega (Musyoka, J.) dated 31st January, 2019 in HCCRC No. 51 of 2017)*

JUDGMENT

1. The appellant, Nick Amita Ikoka, was the accused person in the trial before the Chief Magistrate's Court at Kakamega in Criminal Case No. 696 of 2017. He was charged with the offence of causing grievous harm contrary to section 234 of the *Penal Code*. The particulars of the offence were that on the 20th day of December, 2016, at Kambiri village, Nakale Sub-Location in Kakamega East District within Kakamega County, the appellant caused grievous harm to Anastasia Likhaya.
2. When he was first arraigned in court on 8th March, 2017, the appellant pleaded not guilty to the charge and a plea of not guilty was entered. However, during a routine mention of the case on 23rd March, 2017, about a month before the hearing was set to begin, he informed the court that he would like to change his plea. The court then scheduled the case for the change of plea on 27th March, 2017. However, that did not happen then. Eventually, on 12th April, 2017, the charge was again read and explained to the appellant and he pleaded guilty to the charge. A plea of guilty was entered but a reading of the facts was deferred to 26th April, 2017.
3. On 26th April, 2017, the prosecution informed the court that the police file had not been brought to court and asked for another date. Finally, on 22nd May, 2017, the facts of the case were read to the appellant and he stated that they were correct.



4. The facts of the case, as read out to the appellant, were as follows.

“On 20.12.2016 at Kambiri village, Kakamega County, the complainant Anastacia Likhaya was at her home when she received a visitor who informed her that she had seen someone peep in the house window. The complainant informed her that she had seen the accused person but did not recognize him. After the visitor left, the accused person came from peeping through the window. The complainant recognized him and when he realized he had been spotted, he left only to return shortly armed with a panga; entered the complainant’s house and started to cut her. She sustained injuries on the hands, thorax and upper limbs. She was taken to hospital by her daughter. She was treated at Mukumu Hospital for several days. When she left hospital, she reported the case at the police station. Since the accused person was known to her, he was traced and charged as present. P3 form dated 7.3.2017 as exhibit. Marked PEXH.1.”

5. The trial court convicted the appellant on his own plea of guilty and he was given a chance to mitigate whereby he stated that it was true that he broke the law and prayed for a light sentence.

6. Upon considering the offence, the circumstances thereof, the injuries sustained by the complainant, the appellant’s mitigation, and the fact that the appellant was a first offender, the learned trial magistrate sentenced the appellant thus:

“Mitigation noted. However, the charge is netted out as provided for in statute. My hands are thus tied. Besides, I have taken note of the injuries sustained by the victim as indicated from the P3 form produced and filed with court. From the injuries sustained, a deterrent sentence is called for. Accordingly, the accused person is sentenced in jail for life as provided by law.”

7. The appellant was aggrieved by the decision of the lower court and filed an appeal against the conviction and sentence before the High Court at Kakamega *via Criminal Appeal No. 51 of 2017*.

8. The High Court (W. Musyoka, J.) dismissed the appeal and upheld the conviction and sentence in a judgment dated 31st January, 2019.

9. The appellant was again dissatisfied with the decision of the High Court and has lodged the present appeal. Acting pro se, he raised

four (4) grounds in his self-crafted Memorandum of Appeal, which are that:

- a. The two courts erred in law in convicting the appellant by relying on equivocal plea of guilty.
- b. The two courts erred in law in convicting the appellant on his own plea of guilty without making a finding that the appellant was not legally represented by an advocate.
- c. The two courts erred in law in not making a finding that the appellant was confused and delayed in custody for eight days without explanation.
- d. The two courts erred in law in meting out a manifestly harsh sentence of life that is unconstitutional.

10. Consequently, he has prayed that the appeal be allowed and he be set free. Alternatively, he prayed for a favourable order that the court will deem just and fit.



11. The appeal was argued by way of written submissions by both parties. During the virtual hearing, the appellant appeared in person, whereas learned counsel, Ms. Busienei appeared for the respondent. Both parties relied on their submissions.
12. The appellant attacks his conviction on three grounds. First, he argues that the ingredients of the charge were not explained to enable him either admit or deny every element of the charge unequivocally. He relies on *Charo v Republic* [1983] KLR 308; *Republic v Yosani Egalo & 9 Others* EACA 65; *Adan v Republic* [1973] EA 45; and *Ngigi v Republic* [1987] KLR 98. Second, he faults his conviction on the ground that he did not have legal representation. In this regard, he relies on *Simon Githu Kinene v Republic* [2016] eKLR. Third, the appellant says that he was confused and was also arraigned in court eight (8) days after his arrest; a constitutional violation which was not explained by the prosecution. For this proposition, he relied on the case of *Republic v Amos Karunga Karatu* [2008] eKLR.
13. The appellant also attacks the life sentence imposed as harsh, cruel, inhumane, degrading and as one that defeated the purpose of rehabilitation, reformation and social transformation. He argues that the sentence was contrary to Article 24(1)(e) and 29(f) of *the Constitution*.
14. Lastly, the appellant submitted that the mandatory nature of his sentence is unconstitutional as it contravenes the bill of rights in *the Constitution* and Article 14(1) and 26 of the International Covenant on Civil and Political Rights. In this regard, he cited the case of *Oporodi Peter Omuganga v Republic* [2023] eKLR, wherein this Court quashed the mandatory life sentence that was imposed on the appellant for the offence of robbery with violence. He also cited *Baragoi Roitiken v Republic*, Petition Application No. E014 of 2021, wherein the court set aside the applicant's life sentence and substituted it with a term sentence of twenty-five (25) years.
15. Ms. Busienei opposed the appeal and submitted that the appellant was convicted on his own plea of guilty and therefore, this Court is barred from entertaining his appeal except to the extent and legality of his sentence. In this regard, she cited *Olel v Republic* [1989] KLR 444 wherein it was held that section 348 of the *Criminal Procedure Code* completely bars the right of appeal in cases where the plea was unequivocal.
16. She also cited *Alexander Lukoye Malika v Republic* [2015] eKLR, wherein this Court identified situations in which a conviction based on a plea of guilty can be interfered with. They were as follows: where the plea is imperfect, ambiguous or unfinished such that the trial court erred in treating it as a plea of guilty; where an accused person pleaded guilty as a result of a mistake or misapprehension of facts; where the charge laid against an accused person to which he has pleaded guilty disclosed no offence known to law; and where upon admitted facts the appellant could not in law have been convicted of the offence charged.
17. Counsel submitted that the manner of recording a plea, which is provided for under section 207(1) and (2) of the *Criminal Procedure Code* was adhered to. She referred to *Ombena v Republic* [1981] eKLR, and *Adan v Republic* [1973] EA 445, which laid down the manner in which pleas of guilty should be recorded and the steps that should be followed; and argued that the procedure laid down therein was complied with.
18. On the issue of legal representation, counsel submitted that section 2 of Gazette Notice No. 370: Practice Directions Relating to Pauper Briefs Scheme and Pro-bono Services, states that pro-bono services shall be offered in capital cases and cases of minors in conflict with the law at the Magistrates Court. Therefore, since the appellant did not commit a capital offence and he was not a minor, he was not eligible for state-provided legal representation.



19. She also argued that the appellant did not demonstrate that he did not understand the issues; the case was complex; and he was unable to defend himself, as was held in the case of *Chacha v Republic*, Criminal Appeal E027 of 2022.
20. Lastly, counsel conceded the appeal on sentence and took cognizance of the declaration that indeterminate life imprisonment is unconstitutional. In this regard, she cited *Frank Turo v Republic*, Kisumu Criminal Appeal No. 157 of 2017, wherein this Court declared that indeterminate life sentence equals to thirty (30) years imprisonment. As such, she urged this Court to set aside the life sentence imposed and substitute it with a term sentence of thirty (30) years, as the injuries sustained by the sixty-five (65) year old complainant, being a deep cut wound on the forehead; injury to the eye with a deep cut wound; deep cut wound to her mouth and left upper lip; and fracture of the left limb, were life threatening.
21. This is a second appeal. Our jurisdiction is limited by dint of Section 361(1)(a) of the *Criminal Procedure Code* to deal with matters of law only and not to delve into matters of fact which have been dealt with by the trial court and re-evaluated by the first appellate court. For purposes of this section, severity of sentence is defined as a matter of fact. See *Samuel Warui Karimi v Republic* [2016] eKLR.
22. In the present case, the appellant was convicted on his own plea of guilty. He now attacks the guilty plea on the grounds that it was not unequivocal. However, the record clearly shows that after he was first arraigned in court and he entered a plea of not guilty. Later, he independently informed the court at least two times that he wished to change his plea. The relevant part of the record reads as follows:

“ 8.3.2017

.....

Accused called present in person

Charge read over and explained to accused in Kiswahili the language he understands and he replies:

Accused – ‘si kweli’ – it is not true

Court – Plea of not guilty entered. Accused can be released on a bond of ksh. 150,000/ = with one surety of same amount. Hearing on 27.4.2017. Mention on 22.0.2017 before court 4.

..... 23.3.2017

Before E. Malesi, SRM

.....

Accused – I would like to change plea

Court – The accused to be produced on 27.3.2017 before the trial court. The investigation file to be availed.

..... 10.4.2017

Before B.S. Khapoya, SRM Accused – I wish to change plea

Court – mention on 12.4.2017 for change of plea 12.4.2017

Before B.S. Khapoya, SRM

Court – mention shortly for change of plea



Court – Charge read over and explained to the accused in Kiswahili a language he understands to which he responds as follows in Kiswahili

Accused – it is true

Court – plea of guilty entered Kibet – We request to defer facts Court – facts on 26.4.2017

..... 22.5.2017

Before B.S. Khapoya, SRM Accused present

Court – Prosecution for facts Omondi – Prosecution – facts (Facts are read)

Accused – The facts are correct

Court – Accused person convicted on his own plea of guilty.”

23. From a perusal of this record, we find that the lower court recorded the appellant’s plea substantially in the manner recommended in *Adan v Republic (supra)*, thus:

- “(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 the facts relevant to sentence together with the accused’s reply should be recorded.”

24. From the above, there is nothing to show that the appellant was confused or did not fully understand the charge. It is clear that the appellant decided to change his plea on his own volition and we are satisfied that his plea of guilty was unequivocal.

25. The unequivocality of the guilty plea is not vitiated in any way by the fact that the appellant did not have legal representation. There is no requirement that an accused to be represented by a lawyer before a guilty plea can be entered. The legal requirement respects the right to state-appointed legal representation for accused persons in certain situations. This is primarily governed by Article 50(2) (h) of *the Constitution*, which stipulates that an accused has the right “to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result.” This provision does not automatically grant state-funded legal representation for all offences but is contingent upon the potential for substantial injustice and neither does it provide that in all instances that a person pleads guilty he must have legal representation. See, for example, *David Njoroje Macharia v Republic* [2011] eKLR.

26. The position presently obtaining in Kenya is that an accused person is only entitled to legal representation provided by the State where he can demonstrate, in the unique circumstances of his case, that he cannot afford an advocate, and that he would suffer substantial injustice if he is not represented by counsel in his case. The potential penalty upon conviction is one of the factors that the



court considers in determining if substantial injustice would be occasioned if a State-appointed counsel is not provided at trial. The other factors include the accused person's own circumstances such as his ability to understand the nature of the case he is facing. As we have observed above, there is nothing on the record that demonstrates that the appellant had any difficulties in understanding the charges he was facing. Indeed, he initiated the guilty plea process on his own volition.

27. The guilty plea is, similarly, unaffected by any delay in arraigning the appellant to court. As numerous cases have explained, the remedy in an unconstitutional delay in presentment for plea is not an automatic acquittal; it is to sue the state for the particular violation of the accused person's constitutional rights.
28. In sum, we are satisfied that the guilty plea in this case was unequivocal; and the conviction is, therefore, safe. We, therefore, dismiss the appeal against conviction.
29. We will now turn to sentence. The appellant pleaded guilty to the charge of causing grievous harm to the complainant. It is true, as the counsel for the respondent has pointed out, there were serious aggravating circumstances. The victim was elderly at 65 years. The injuries were also serious: a deep cut wound on the forehead; an injury on the left eye; a deep cut wound on the mouth and left upper lip; and fracture of the left limb. This was a gender-based offence of a violent nature. However, we are of the view that the two courts below did not appropriately take into consideration the extenuating circumstances in the case. These included the fact that the appellant pleaded guilty to the charge hence saving the court judicial time and the victim the risk of further trauma through testifying; the appellant was also a first offender; and he expressed remorse.
30. In our respectful view, these extenuating circumstances removed the case from the category of cases deserving the maximum sentence which was imposed. We, thus, agree with the appellant that the sentence imposed was excessive in the circumstances. We consequently set it aside.
31. Taking all the aggravating and extenuating factors into consideration, we are of the view that a sentence of twenty (20) years imprisonment is appropriate. Additionally, by dint of section 333(2) of the *Criminal Procedure Code*, the sentence shall be computed to run from 8th March, 2017, when the appellant was arraigned in court as he has remained in custody since then. To this extent only do we allow the appeal against sentence.
32. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF MARCH, 2025.

HANNAH OKWENGU

JUDGE OF APPEAL

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H. A. OMONDI

JUDGE OF APPEAL

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JOEL NGUGI

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

