



**Mwangi v Republic (Criminal Appeal 5 of 2018)
[2024] KECA 924 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KECA 924 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL 5 OF 2018
S OLE KANTAI, FA OCHIENG & WK KORIR, JJA
JULY 26, 2024**

BETWEEN

CHARLES KARANJA MWANGI APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from the judgment of the High Court of Kenya at Nyahururu
(R.P.V. Wendoh, J.) dated 24th October 2017 in HC.CRA. No. 67 of 2017)*

JUDGMENT

1. Before the magistrate's court the appellant, Charles Karanja Mwangi, was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#). The particulars of the offence being that on 7th April 2014 within Nyandarua County, the appellant defiled DMW, a child aged 9 years. The appellant was convicted on his plea of guilty and was subsequently sentenced to life imprisonment.
2. Dissatisfied with the judgment of the trial court, the appellant preferred an appeal to the High Court against both conviction and sentence but the appeal was dismissed. He is now before us on a second appeal challenging both conviction and sentence on the grounds that the plea of guilty was unequivocal and the sentence was passed in its mandatory nature.
3. When the appeal came up for virtual hearing on 9th April 2018, the appellant who appeared in person had filed his written submissions which he sought to fully rely on. For the respondent, learned counsel Mr. Omutelema also sought to rely on his written submissions as filed before the Court.
4. The appellant commenced his submissions on the issue of sentence and argued that the sentence was illegal as it was passed in its mandatory nature. The appellant extensively referred to Joshua Gichuhi [Mwangi v. Republic, Nyeri CRA No. 84 of 2015](#) and Julius Kitsao [Manyeso v. Republic, CRA No. 12](#)



of 2021, and submitted that the trial court erred in not exercising its discretion to impose a sentence commensurate with the circumstances of the offence.

5. Turning to his appeal against his conviction, the appellant argued that the trial court erred in failing to comply with the procedure and principles of entering a plea of guilty. The appellant relied on the decisions in *Njuki v. Republic* [1990] KLR 334 and *Joseph Bosire Ogao v. Republic* [2010] eKLR in support of his argument that the plea was unequivocal as the language of the plea was not clear and the caution given to him inadequate. The appellant finally argued that the exhibits produced by the prosecution did not establish the elements of the offence charged. He therefore urged that we allow the appeal.
6. In opposing the appeal, Mr. Omutelema relied on the submissions dated 2nd April 2024 and asserted that the law, procedure and principles of plea taking as found in section 207 of the Criminal Procedure Code and *Adan v. Republic* [1973] EA 445 were adhered to by the trial court. Submitting on the issue of sentence, counsel argued that the circumstances of this case calls for a severe prison term, which he urged us to impose.
7. Upon review of the record of appeal and the submissions by both parties, the appeal before us raises two issues, namely, whether the plea was equivocal and whether grounds have been established for our interference with the appellant's sentence.
8. Before we address the identified issues, we reiterate that section 348 of the Criminal Procedure Code bars appeals from accused persons convicted on own plea of guilty except on the extent and legality of sentence. That statement of the law was expressed in *Alexander Likoye Malika v. Republic* [2015] eKLR thus:

“May we, by way of commentary only remind that there is ordinarily no appeal against conviction resulting from a plea of guilty – See Section 348 of the Criminal Procedure Code which only permits an appeal regarding legality of sentence. A court may only interfere with a situation where an accused person has pleaded guilty to a charge where the plea is imperfect, ambiguous, or unfinished such that the trial court erred in treating it as a plea of guilty. Another situation is where an accused person pleaded guilty as a result of mistake or misapprehension of the facts. An appellate court may also interfere where the charge laid against an accused person to which he has pleaded guilty disclosed no offence known to law. Also where upon admitted facts the appellant could not in law have been convicted of the offence charged.”

9. In this appeal, the appellant contends that the plea was unequivocal. In his amended grounds of appeal, the appellant alleged ambiguity in the language in which the plea was taken and that he was not warned of the dangers of pleading guilty. In his initial memorandum of appeal, he also alluded to being misled by prison officers to plead guilty.
10. We have carefully considered the record of the trial court and it is our finding that all the principles and procedural edicts of section 207 of the Criminal Procedure Code were adhered to. The said section provides as follows:
 - “(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.”

[Emphasis ours]

11. The procedure for taking plea was also elucidated in the case of *Ombena v. Republic* [1981] eKLR, which cited with approval the procedure established by the Court in *Adan v. Republic* [1973] EA 445, and which procedure the first appellate Court correctly appreciated. Upon review of the proceedings, we uphold the findings of the first appellate court that the plea herein was unequivocal and that there was no evidence whatsoever of enticement or coercion by prison officers as alleged. Additionally, the record clearly shows that the appellant was warned on more than one occasion of the severity of the sentence. In any event, any perceived lack of clarity by the trial court in warning the appellant was not detrimental to the appellant’s trial rights. Even though the record does not show the exact words used by the court to warn the appellant, we do not doubt that the court indeed referred to the severity of the sentence and that is what was of relevance.
12. In relation to the issue of the language used in the trial, we note that the trial was conducted in English and translated to the appellant in Kiswahili. On the date of pleading guilty, the appellant pleaded in Kiswahili and the court recorded the plea in Kiswahili. We therefore do not find merit in the appellant’s complaint that the language of taking plea was unclear. Consequently, the appeal against conviction is without merit and is dismissed.
13. Turning to the issue of sentence, the appellant’s contention was that the sentence of life imprisonment was handed down without the court exercising its discretion to consider his mitigation. The appellant had raised the same issue before the first appellate court and he was answered thus:

“Lastly, the appellant claimed that he was not allowed to mitigate. The record speaks for itself. He was allowed to mitigate when he asked for pardon and that he wanted to continue with his education. There was no evidence that he was in school. That ground is baseless.”
14. The appellant’s claim that his mitigation was not considered is therefore unfounded. In any event, the sentence passed was and remains lawful.
15. In short, the appellant’s appeal has no merit and is dismissed in its entirety.

DATED AND DELIVERED AT NAKURU THIS 26TH DAY OF JULY 2024.

S. ole KANTAI

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL



I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

