



REPUBLIC OF KENYA



**Mucira v Republic (Criminal Appeal 63 of 2021)
[2023] KECA 322 (KLR) (17 March 2023) (Judgment)**

Neutral citation: [2023] KECA 322 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPEAL 63 OF 2021
AK MURGOR, S OLE KANTAI & PM GACHOKA, JJA
MARCH 17, 2023**

BETWEEN

ELIUD MIANO MUCIRA APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal from the Judgment of the High Court of Kenya at Nairobi
(Achode, J.) dated 30th July, 2014 in HC. CR.A. No. 284 of 2011)*

JUDGMENT

1. When the appellant, Eliud Miano Mucira, was presented before the Chief Magistrate, Kiambu, on October 17, 2011 a charge of defilement of a child contrary to section 8(1) (2) of the [Sexual Offences Act](#) was read to him in Kiswahili language. It was stated in particulars of the charge that on October 8, 2011 at a place stated in the charge sheet he intentionally and unlawfully committed an act which caused penetration of his genital organ namely, of his penis into the genital organ namely vagina of a girl “NNA” aged 7 years. The alternative count has no relevance here. He pleaded guilty. The matter was again mentioned on that day but the Court prosecutor then asked for time to get facts of the case and the P3 form and the matter was adjourned to October 19, 2011 for further hearing. The matter was mentioned on that day but the Court prosecutor still needed more time to get the said information and the matter was adjourned to October 21, 2011. The charge was read out again to the appellant and he admitted to the charges preferred against him. Facts of the case were read out and explained to him in Kiswahili and he confirmed. that the facts were correct. He was duly convicted upon his own admission, the court prosecutor had no previous records of the appellant and when asked for mitigation the appellant had nothing to say. He was sentenced to life imprisonment. He appealed to the High Court, Nairobi and the document filed in support of that appeal is headed “mitigation” where the appellant admitted that he had pleaded guilty to the charge; that he thought that the offence was “finable”; that his life was affected by being in jail, that the sentence should be reduced as it was harsh



and excessive; that he should be sentenced to a non-custodial sentence; he was remorseful, ashamed and would never repeat such an act and that time in prison had taught him that crime doesn't pay "... and the same will remain etched in my mind as long as I am of sound mind ...". That appeal was heard by Achode, J. (as she then was) who found no merit in it and dismissed it in a Judgment delivered on July 30, 2014.

2. The appellant is now before us in this second appeal predicated on the homegrown "Amended Supplementary Grounds of Appeal and brief Submissions" where the appellant faults the learned Judge of the High Court for failing to find that all the elements of the offence of defilement and the penalty were not fully explained to him; that the Judge erred by failing to find that the trial court had not warned him of the penalty to follow after a plea of guilty, and, finally, that his fair trial rights under article 50 of the Constitution were violated and he should have a retrial.
3. In the said written submissions which we have perused and considered the appellant cites the case of Alexander Lukoye Malika v Republic [2015] eKLR where this court held that a plea that does not accord with the law should not be allowed to stand. He cites other cases on the duty of a first appellate court and faults the High Court for not carrying out its duty as required in law.
4. In written submissions the respondent in opposing the appeal refers to section 348 Criminal Procedure Code which forbids allowing an appeal where an accused person has pleaded guilty.
5. When the appeal came up for hearing before us on February 7, 2023 the appellant appeared in person from Kamiti Prison while learned counsel Mr. George Muriithi appeared for the office of Director of Public Prosecutions. In a highlight of written submissions, the appellant told us that he has reformed while in prison, he has undertaken many courses and is 72 years old, ailing and we should help him.
6. In opposing the appeal, it was Mr. Muriithi's case that the appellant had defiled a 7 year old child; he had admitted the charge which was read to him in a language which he understood and that the High Court had found that the proper procedure had been followed in convicting the appellant upon his own plea of guilty.
7. We have considered the record of appeal, submissions made and the law.
8. As we have shown the charge facing the appellant was read to him and he pleaded guilty to the same. The matter was adjourned twice and when the charge was again read to him about 4 days later he pleaded guilty and admitted that the facts that were read to him were correct. This led to his conviction.
9. Section 348 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."
10. It was held by this court in the oft-cited case of Adan v Republic [1973] EA 443 on how a plea of guilty should be taken:
 - (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."

11. In this appeal the appellant pleaded guilty and when detailed facts of the case were read to him later he admitted the same and was convicted on his own plea of guilty. There is no question that he understood the charge and the facts supporting the case and the sentence awarded was the prescribed one for the offence he faced. There is no merit in this appeal which we hereby dismiss.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF MARCH, 2023.

A.K. MURGOR

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

M. GACHOKA, CIArb, FCIArb

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

