



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MARAGA, GATEMBU & MURGOR, J.J.A)

CRIMINAL APPEAL NO. 12 OF 2015

BETWEEN

PETER IMINYI WANJALA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from a Judgment of the High Court of Kenya at Bungoma, (F. Muchemi, J.) dated 17th June, 2009

in

HCCR.A. 105 OF 2007)

JUDGMENT OF THE COURT

1. The appellant, Peter Iminyi Wanjala, was arrested on 1st November 2007. On 5th November 2007 he was arraigned before the Senior Resident Magistrate's court at Webuye and charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code.
2. The particulars of the offence were that on 31st October 2007 at Sites and Services, Webuye Township in the then Bungoma District of the then Western Province, jointly with others not before the court robbed Salim Mayor of Kshs. 500.00, two mobile phones, national identity card, voters card, bank card and a wallet all valued at Kshs. 8,100.00 and immediately before or immediately after the time of such robbery used actual violence to the said Salim Mayor.
3. The appellant pleaded guilty to the charge, was convicted and sentenced to death.
4. His first appeal to the High Court on grounds that he was convicted on the basis of a defective charge; that the offence was not proved; that the death sentence meted out by trial court was harsh; and that the consequences of the case had not been explained to him was dismissed in a judgment delivered on 17th June 2009.
5. In this second appeal, the appellant complains that the lower courts failed to note that he was tortured in the cell and was confused when the charge was read to him and that he was not given enough time by

the trial court to think about the consequences of the charge.

6. Learned counsel Mr. Angu Kitigin who appeared before us on behalf of the appellant submitted that the plea was equivocal; that the trial court failed to note that the appellant had been in custody for five days after his arrest before his plea was taken; that the appellant was assaulted by the police while in custody and the trial court ought, in those circumstances, to have probed the circumstances under which the appellant was pleading guilty. Referring us to the decision of this Court in **Kariuki v Republic [1984] KLR 809** as well as **Baya v Republic [1984] KLR 657** regarding the manner in which a plea of guilty should be taken, counsel argued that the appellant was not warned of the consequences of entering a plea of guilt. With that, counsel urged us to allow the appeal.

7. Opposing the appeal, learned prosecution counsel Ms. R. N. Karanja submitted that the plea by the appellant was unequivocal; that the appellant was indeed warned of the consequences of his plea and was urged by the court not rush to admit the offence despite which the appellant pleaded guilty; that even after the facts were read to him, the appellant maintained his guilty plea. Ms. Karanja sought to distinguish the authorities cited by counsel for the appellant arguing that in those cases, the plea was equivocal unlike the present case where the plea was unequivocal. On the complaint that the appellant was in custody for 5 days prior to his arraignment in court, counsel submitted that under the then applicable law, the prosecution had up to 14 days within which to charge the appellant.

8. We have considered the appeal and the submissions by learned counsel. The question for determination in this appeal is whether the trial court followed the procedure of taking a plea of guilty.

9. Section 207 of the Criminal Procedure Code provides for the procedure of taking a plea of guilty. That relevant provision is in these terms:

207. (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.

10. The decisions in **Kariuki v Republic** (supra) and **Baya v Republic** (supra) that were cited by learned counsel for the appellant amplify on those provisions and follow in the path of the often cited case of **Adan v Republic [1973] E.A. 443[1]** where the Court stated:

“...When a person is charged, the charge and particulars should be read out to him so far as possible in his own language which he can speak and understand.

The Magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all these essential elements, the Magistrate should record what the accused has said as nearly as possible in his own words, and then formally enter a plea of guilty. The Magistrate should next ask the Prosecutor to state the facts of the alleged offence and when the statement is complete, should give the accused an opportunity to dispute or explain the facts or adopt any relevant facts... if the accused does not deny the alleged facts in any material respect, the Magistrate should record a conviction and proceed to hear any further facts relevant to the sentence. The statement of facts and accused's reply must of course be recorded.

The statement of facts serves two purposes, it enables the Magistrate to satisfy himself that

the plea of guilty was really unequivocal and that the accused has no defence and it gives the Magistrate basic material on which to assess sentence...”

11. See also the recent decisions by this Court in Henry O. Edwin v R [2015] eKLR; and Joseph Marangu Njau v R [2015] eKLR.

12. The procedure of taking a plea of guilty as captured in a long line of authorities, therefore, is that:

“(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.”

13. In the present case the record shows that when the appellant was arraigned before the magistrates court, the charge was read to him; it was explained in Kiswahili after which he replied: “it is true.” The court then warned the appellant that the offence with which he was charged carries a mandatory death sentence and that he should not rush to admit the charge. The charge was again read and explained to him in Kiswahili after which he stated:

“It is true. That is what happened. I violently robbed the complainant.”

Thereafter, the prosecution read out the facts of the case to him after which the appellant said:

“All the facts as read are true and correct.”

14. Quite clearly, the magistrate followed the established procedure. Indeed the magistrate went beyond the established procedure to satisfy himself that the appellant appreciated the gravity and consequence of his plea. The appellant did not at any time during that process complain that he had been tortured or threatened by the police. There is no evidence that he exhibited any signs of confusion as he later asserted during his first appeal. We are therefore in agreement with the High Court when it stated in its judgment that:

“It is clear from the court record that the magistrate took due diligence to ensure the accused person understood the charge and the implications of pleading guilty which resulted in the conviction. It is our considered opinion that the accused understood the charge since the court used the language he said he understood. The plea was unequivocal and the principles laid down were complied with.”

16. The result is that we are satisfied that the appellant’s plea was unequivocal. This appeal has therefore no merit and is accordingly dismissed.

Orders accordingly.

Dated and delivered at Eldoret this 28th day of October, 2016

D. K. MARAGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

I certify that this is a true
copy of the original.

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DEPUTY REGSITRAR
