



REPUBLIC OF KENYA



KENYA LAW
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**Wangila v Republic (Criminal Appeal E082 of 2023)
[2025] KEHC 1637 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1637 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E082 OF 2023
AC MRIMA, J
FEBRUARY 28, 2025**

BETWEEN

DENNIS MUKHWANA WANGILA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising out of the conviction and sentence of Hon. S. N Makila (PM) in Kitale Chief Magistrate's Court Criminal Case No. E3838 of 2023 delivered on 30th November 2023)

JUDGMENT

Background:

1. Dennis Mukhwana Wangila, the Appellant herein, was charged with the offence house breaking contrary to section 304(1)(b) and Stealing contrary to section 279(b) of the [Penal Code](#). The particulars of the offence were that on 12th November 2023 at Konin area in Kiminini subcounty within trans Nzoia County, broke and entered the building used as dwelling house of Florence Nabangala Barasa and stole 100Kgs of dry shelled maize valued at Kshs. 4,100/- the property of the said Florence Nabangala Barasa.
2. The Appellant initially pleaded not guilty to the charge. However, in the subsequent Court appearances, he changed his plea to a guilty one. A conviction based on the Appellant's own guilty plea was then entered. In mitigation, he stated that he had married a new wife and he did not have food and as result decided to take the maize. Upon considering the Probation Report, the trial Court noted that the Appellant was a violent man and a repeat offender. The Court granted a custodial sentence of 5 years imprisonment.



The Appeal:

3. The Appellant was dissatisfied with the conviction and sentence. Through undated Amended Petition of Appeal, he urged this Court to quash the conviction and set-aside sentence on the following grounds: -
 - i. That I pleaded guilty of the offence.
 - ii. That I guilty by the influence of police officers who tortured me hence accepting the liability of the offence.
 - iii. That your lordship, the sentenced amended (sic) is so harsh considering the fact that I am a first offender.
 - iv. That I am remorseful for what transpired and I regret for the offence I committed.

The submissions:

4. In his written submissions, the Appellant argued that at the time of his arrest he was caned and tortured by the police officers to admit that he stole the sack of maize. He stated that when he appeared before the trial Court, he was not given a chance to state his predicaments. He also submitted that the arresting officer deceived him that accepting responsibility would mean well and that he would be released freely and unconditionally. The Appellant further stated that since his imprisonment, he joined the Church, had learned forgiveness and that he had given his life to Jesus. He submitted that he asked and received forgiveness from the complainant.
5. In conclusion, the Appellant urged the Court to set aside his 5-year sentence since the complainant is her biological mother and she had forgiven him. He prayed that the appeal be allowed.

The Respondent's case:

6. The Respondent challenged the appeal through written submissions dated 13th May 2024. It was its case that under section 348 of the [Criminal Procedure Code](#) (CPC) no appeal is allowed where the accused person pleaded guilty except as to the legality of the sentence. Referring to R -vs- Scott (2005) NSWCCA 152, the State submitted that sentencing is an important aspect of administration of justice and is a discretionary exercise of a Judicial Officer which this Court must be careful not to interfere with.
7. The Respondent submitted that sentencing is governed by Judiciary Sentencing Policy Guidelines 2016 and as such it is a discretion that is not whimsically exercised by Judicial Officers. It was its case that the trial Court properly considered the probation report and meted out a sentence that is sound and ought not be interfered with by this Court. It prayed that the appeal be dismissed.

Analysis:

8. Form the foregoing, two issues for determination arise. They are: -
 - i. Whether the plea taking process was done within the confines of the law;
 - ii. Depending on (i) above, whether the sentence was proper.
9. This being a first appeal, the duty of this Court is to re-consider and to re-evaluate the evidence adduced before the trial Court with a view to arriving at its own independent conclusions and findings (See Okono v Republic [1972] EA 74). While doing so, this Court is required to take cognizance of the fact



that it neither saw nor heard the witnesses as they testified before the trial. As was observed in the case of *Ajode v. Republic* [2004] KLR 81, an appellate Court must make due allowance to that end.

10. A discussion on the issues now follow.

i. Whether the plea-taking process was done within the confines of the law:

11. Plea-taking process is at the heart of a fair trial. Where an accused does not comprehend or is coerced into pleading in a certain way, miscarriage of justice ensues from that time onwards. 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: -

(5) 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."

12. With the foregoing, the focus now are the proceedings before the trial Court. The Appellant was arraigned in Court on 14th November 2023 where upon the charges being read out, he pleaded not guilty. On 20th November 2023, the Appellant requested the Court that he be reminded of the charges to which he replied that it was true. Accordingly, the Court entered a plea of guilty.

13. The Respondent then enumerated the circumstances of the offence. The Prosecutor in presenting the facts of the case stated that on 12th November 2023, the complainant left her home at 10 am. Upon returning, she found the house had been broken into and her maize was missing. She established that the appellant, who was her son, had broken into her house and sold the sack of maize at the nearby market. The Respondent produced pictures of the maize as exhibits. The Appellant was subsequently convicted on his own guilty plea.

14. In *Ndede v Republic* [1991] KLR 567, it was held that the bar to an appeal against a conviction on a guilty plea is not absolute. That, there are circumstances where Court departs from the finding of the trial Court's conviction based on guilty plea. The Learned Judges observed as follows: -

...This Court held that the Court is not be bound to accept the accused persons admission of truth of the charge of conviction as there may be an unusual circumstance such as injury to the accused, or the accused is confused or there has been inordinate delay in bringing the accused person to court from the date of arrest. In the appeal before us, we reiterate our satisfaction that the plea of guilty was unequivocal....



15. The offence was committed on 12th November 2023. Two days later, on 14th November 2023, the Appellant was arraigned in Court for plea taking. From the trial Court's record, the substance of the charge was read out to the Appellant in a language he understood to which he pleaded not guilty. Six days later, the Appellant asked the Court to be reminded of the charges. They were read out in Swahili and replied that it was true. It is then that a guilty plea was entered. There is evidence, a period of 6 days, that the Appellant was accorded adequate time to prepare and make a decision on way forward. As regards the claim that he was caned, influenced and tortured into pleading guilty, there is nothing in the proceedings that speak to that fact.
16. Courts do speak through the record. From the proceedings it is evident that the Court took all reasonable and legal steps to ensure that the Appellant understood the charges.
17. It is, therefore, this Court's finding that the Appellant's own plea of guilty was unequivocal and cannot be faulted.

ii. Whether the sentence was proper:

18. Section 304 of the Penal code creates the offence of housebreaking and burglary in the following terms:
-
 - (1) Any person who-
 - (a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or;
 - (b) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent or vessel, breaks out thereof, is guilty of the felony termed housebreaking and is liable to imprisonment for seven years.
 - (2) If the offence is committed in the night, it is termed burglary, and the offender is liable to imprisonment for ten years.
19. The Appellant was also charged under Section 279(b) of the [Penal Code](#) which provides as follows: -
279. Stealing from the person; stealing goods in transit.
If the theft is committed under any of the circumstances following, that is to say-
 - (a)
 - (b) if the thing is stolen in a dwelling-house, and its value exceeds one hundred shillings, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;
the offender is liable to imprisonment for fourteen years.
20. The sentence of 5 years handed down to the Appellant was lawful and very reasonable. I have interrogated the record and find that the Court properly handled the aspect of sentencing. The appeal on it cannot stand and is hereby disallowed. However, since the Appellant was found culpable of both offences; that is housebreaking and burglary, he ought to have been sentenced on each offence. Thereafter, the Court was to ascertain how the sentences were to run, that is whether concurrently or consecutively. As this aspect was not pursued by any of the parties, this Court rests it at that.
21. The upshot is that the appeal is entirely unmerited.



Disposition:

22. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
23. In the end the following final orders hereby issue: -
- a. The appeal is hereby dismissed.
 - b. For avoidance of doubt, trial Court's conviction and sentence are hereby upheld.
24. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2025.

A. C. MRIMA

JUDGE

Judgment delivered virtually in the presence of:

Dennis Mukhwana Wangila, the Appellant.

Mr. Mugun, Learned Prosecutor instructed by the Director of Public Prosecutions for the Respondent/State.

Chemosop/Duke – Court Assistants.

