



REPUBLIC OF KENYA



**Nyandolo v Republic (Criminal Appeal E015 of 2024)  
[2025] KEHC 6955 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6955 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL APPEAL E015 OF 2024**

**TW OUYA, J**

**MAY 29, 2025**

**BETWEEN**

**EDWIN OTONDI NYANDOLO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal arising out of the conviction and sentence of Hon. S. Atambo,  
(Senior Principal Magistrate) in Thika Chief Magistrate's Court  
Criminal Case No. E696 of 2022 delivered on 7th March, 2024)*

**JUDGMENT**

**Background**

1. The appeal herein arises from Thika Chief Magistrates Court where the Appellant, Edwin Otondi Nyandolo, was charged with eight counts of stealing stock contrary to Section 278 of the [Penal Code](#).
2. The particulars of the offence were as follows:

**Count I**

On the 4<sup>th</sup> day of March 2022 at Ndarasha area, Thika Location, Juja Sub County within Kiambu County, with others not before court stole three cows and fifteen goats all valued at Ksh. 210,000.00, the property of Henry Ndirangu Gathecha.

**Count II**

On the 4<sup>th</sup> day of March 2022 at Ndarasha area, Thika Location, Juja Sub County within Kiambu County, with others not before court stole three cows valued at Ksh. 150,000.00, the property of Ruth Kinya Mungai.



#### Count III

On the 4<sup>th</sup> day of March 2022 at Ndarasha area, Thika Location, Juja Sub County within Kiambu County, with others not before court stole one cow valued at Ksh. 60,000.00, the property of Martha Njoki Chege.

#### Count IV

On the 4<sup>th</sup> day of March 2022 at Ndarasha area, Thika Location, Juja Sub County within Kiambu County, with others not before court stole one cow valued at Ksh. 45,000.00, the property of Elizabeth Wangui Kuria.

#### Count V

On the 4<sup>th</sup> day of March 2022 at Ndarasha area, Thika Location, Juja Sub County within Kiambu County, with others not before court stole eleven cows valued at Ksh. 440,000.00, the property of John Gakome Wanyoike

#### Count VI

On the 4<sup>th</sup> day of March 2022 at Ndarasha area, Thika Location, Juja Sub County within Kiambu County, with others not before court stole two cows valued at Ksh. 70,000.00, the property of Kelvin Mwangi.

#### Count VII

On the 4<sup>th</sup> day of March 2022 at Ndarasha area, Thika Location, Juja Sub County within Kiambu County, with others not before court stole two cows valued at Ksh. 50,000.00, the property of John Kinyanjui Waichari.

#### Count VIII

On the 4<sup>th</sup> day of March 2022 at Ndarasha area, Thika Location, Juja Sub County within Kiambu County, with others not before court stole six cows and six goats valued at Ksh. 210,000.00, the property of Simon Karugia Muigai.

3. At the beginning of the trial, the appellant pleaded not guilty to all the charges, however, he opted to change his plea after six prosecution witnesses had testified. Accordingly, the appellant was convicted on his own plea of guilt and sentenced to imprisonment as follows:

#### Count 1

A fine of Ksh. 210,000.00 in default three years imprisonment

#### Count 2

A fine of Ksh. 150,000 in default 2 ½ years imprisonment

#### Count 3

A fine of Kshs. 60,000.00 in default nine months imprisonment



Count 4

A fine of Ksh 45,000 in default 6 months imprisonment.

Count 5

A fine of Ksh. 440,000.00 in default 5 years imprisonment.

Count 6

A fine of 70,000.00 in default 1 year imprisonment.

Count 7

A fine of Ksh. 50,000.00 in default 8 months imprisonment.

Count 8

A fine of Ksh. 210,000.00 in default 3 years imprisonment.

4. The trial court ordered the sentences to run consecutively.

### **The Appeal**

5. Being dissatisfied with both the conviction and the sentence, the appellant filed the instant appeal on the following grounds:

- a. That the Appellant's plea of guilty was not made voluntarily or with full understanding of the implications, contrary to the requirements established in *Adan v Republic* [1973];
- b. That the learned Magistrate erred in law and in fact by failing to note that the offences were committed on the same day, at the same time, and in the same place and thus would warrant a different approach to sentencing;
- c. That the imposition of consecutive sentences was excessive and unjustified, as there were no aggravating factors to warrant such an approach;
- d. That the trial court did not adequately consider mitigating factors, such as the Appellant's lack of prior convictions and potential for rehabilitation;
- e. That the cumulative effect of the sentences imposed is disproportionate to the nature of the offences committed, thus violating the principle of proportionality in sentencing.

6. The appeal was disposed by way of written submissions where the Appellant discussed the grounds of appeal in depth. The Respondent opposed the appeal by filing written submissions arguing that the conviction was safe as the plea was unequivocal. Also, the sentence meted against the appellant was legal and appropriate. The Respondent urged that the appeal be dismissed.



## Analysis

7. Section 348 of the [Criminal Procedure Code](#) bars appeals from subordinate courts where an accused was convicted upon a plea of guilty except on the extent and legality of sentence by providing that:

“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 and legality of the sentence.”

8. In the case of [Olel v Republic](#) [1989] KLR 444, it was held that:

“Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the [Criminal Procedure Code](#) (cap 75) does not merely limit the right of appeal in such cases but bars it completely.”

9. Therefore, it follows that the appellant is, by virtue of this section, and authority, barred from challenging the conviction and his only recourse was to challenge the extent or legality of the sentence imposed on him by the trial court.

10. That bar, in my view only operates where the plea is unequivocal. Accordingly, that bar does not prevent the Court from inquiring as to whether a prima facie plea of guilty was unequivocal or not. Similarly, it does not bar the court from making an inquiry as to whether the facts constituted any offence. In [Alexander Lukoye Malika v Republic](#) [2015] eKLR the Court of Appeal identified the situations in which a conviction based on a plea of guilty can be interfered with as follows:

“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.”

11. The manner of recording of a plea is provided for in section 207(1) and (2) of the [Criminal Procedure Code](#) provides as hereunder:

- (1) 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.



12. It is therefore clear that the charge, the particulars and the facts must be read to the accused in his language or in a language he understands. In *KN v Republic* [2016] eKLR, it was held that:

“The procedure for taking plea follows a well-beaten path. The leading case, *Adan v R* (1973) EA 445 emphasises that an accused person must not only understand the language used at his trial but also appreciate all the essential ingredients of the offence charged before his plea can be taken to be unequivocal. This need for taking the greatest care where the accused admits the offence was explained many years before the decision in Adan (supra) in *Hando S/o Akunaay v Rex* (1951) 18 EACA 307 as follows;

‘...before convicting on any such plea, it is highly desirable not only that every constituent of the charge should be explained to the accused, but that he should be required to admit or deny every such constituent.’

...

In outlining the facts, the prosecution’s role is to present the evidence that could have been proven if the case had gone to trial. Therefore, for the court to accept a plea of guilty, the facts alleged by the prosecution must be accepted by the accused as accurate and they must, in turn be sufficient in law to constitute and disclose the offence charged, the proof of which must be beyond any reasonable doubt. It is therefore incumbent upon the prosecution, in proof of the charge, to present the exhibits that they would have relied on at the trial.”

13. The Court of Appeal in *Elijah Njibia Wakianda v Republic* [2016] eKLR held that:

“Criminal proceedings have serious implications on the life and liberty of persons accused depending on the offence charged. The accused person essentially gets the opportunity, if he chooses to, to confront and challenge his accusers. He also gets to make submissions and to persuade the court that he is not guilty of the matters alleged. He is also at liberty to testify on his behalf and call evidence on the matters alleged against him. He, of course, has no burden of any kind, the same resting on the prosecution to prove the charge against him beyond reasonable doubt. Given all the safeguards available to an accused person through the process of trial, the entry of a plea of guilty presents a rare absolute capitulation; a throwing in of the towel and a giving of a walkover to the prosecution and often at great cost. A conviction comes with its consequences of varying gravity. Thus, it is that the courts, at any rate appellate courts, would not accept a plea of guilty unless satisfied that the same has been entered consciously, freely and in clear and unambiguous terms.”

14. Noting that the charges facing the appellant were serious, the Court of Appeal in *Elijah Njibia Wakianda v Republic* (supra) the Court expressed itself as hereunder:

“...We also think that the elements of the offence are not complete if the sentence, especially if it is a severe and mandatory sentence, is not brought to the attention of the accused person. One surely ought to know the consequences of his virtual waiver of his trial rights that the Constitution guarantees him.”

15. W. Korir, J expressed himself in *Abdallah Mohammed v Republic* [2018] eKLR as hereunder:

“In my view, extra caution includes the question as to whether or not the facts as read out are true and whether the accused person would wish to make any comment. In fact, an accused



person should be asked what he means by saying that the charge read to him is true. His explanation should then be captured on the record so as to form part of his plea.”

16. The importance of the need for the court to be cautious when accepting a plea of guilty from an undefended accused person was stressed by Joel Ngugi, J in *Simon Gitau Kinene v Republic* [2016] eKLR when he stated that:

“ 19. Finally, courts have always held that extra caution needs to be taken in the case of undefended defendants who plead guilty. I have previously held that where an Accused Person is unrepresented, the duty of the Court to ensure the plea of guilty is unequivocal is heightened.”

17. Applying the principles stated in the above cited cases to the instant case, I find that it will be necessary to examine the trial court’s proceedings in respect to the plea taking process with a view to establishing if the guilty plea was unequivocal. A perusal of the said proceedings reveals that when the matter first came up before the trial magistrate on 7<sup>th</sup> March 2022 for plea taking, the Appellant pleaded not guilty to the charges after which he was granted bond and the matter proceeded for hearing with six witnesses testifying.

18. When the matter came for mention on 1st December 2023, the appellant expressed desire to change his plea. Consequently, the matter was set for mention for change of plea on 6<sup>th</sup> December 2023.

19. The record shows that on 7<sup>th</sup> February 2024 the matter was listed for mention where the charge was read over and explained to the Appellant in Swahili, a language which he understands, to which he responded guilty to all counts. Thereafter the prosecutor read out the facts and the accused responded that the facts as read out were correct. Accordingly, the trial court entered a plea of guilty and the accused convicted on own plea of guilty.

20. Having regard to the above narration of the proceedings that were undertaken by the trial court during the plea taking process, I am satisfied that all the elements of the charge were read out and explained to the Appellant who initially pleaded not guilty to the charge but subsequently opted to change his plea to guilty after which the charge was once again read out to him on more than one occasion. I note that not only did the Appellant plead guilty to the charge twice, but that he also confirmed the facts of the case as correct.

21. I am satisfied that the Appellant understood the nature of the charge that he was facing and that his guilty plea was unequivocal. For the above reasons, this court upholds the Appellant’s conviction by the trial.

### **The Sentence**

22. Section 278 of the *Penal Code* provides that:

“ If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, whether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.”

23. In the instant case, the Appellant was sentenced to cumulative period of sixteen (16) years five (5 ) months. It is trite that sentencing falls at the discretion of the trial court and that an appellate court may not interfere with the sentence passed by the trial court unless the trial court has acted on wrong principles or overlooked some material factor. (See *Ogolla s/o Owuor v R* ((1954) EACA 270).



24. Having regard to the principles expressed in the above cited cases, I note that the trial court considered the Appellant's mitigation and the Probation Officer's Pre-Sentence Report before arriving at the sentence meted against the appellant. The said Pre-Sentence report revealed that though the Appellant was a first offender, he did not demonstrate any remorse or regret for the incident. I find that the sentence passed by the trial court was not only legal but also appropriate. I am not persuaded that this court should interfere with the said sentence.

25. The next issue that arises is whether the sentences should run consecutively or concurrently. For the issue of consecutive and concurrent, the same is provided for under section 14 of the [Criminal Procedure Code](#) as follows:

- “(1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.
- (2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.
- (3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences-
- (a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or
- (b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.
- (4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.”

26. The [Sentencing Guidelines](#) provide as follows: -

- “A concurrent sentence will normally be appropriate where the offences arise out of the same incident or facts. E.g., poaching of several animals that vary in the degree of protection they are afforded under the law; a burglary 'spree' of several properties committed in one night; fraud and associated forgeries, or a dangerous driving incident where multiple victims are injured as a result of one offence of dangerous driving e.g., driving into a bus stop.
2. A consecutive sentence will normally be appropriate where the offences arise out of unrelated facts or incidents e.g., attempting to obstruct the course of justice in relation to an unrelated offence; where the defendant is convicted of dealing in drugs and also possession of a firearm upon arrest – the firearm offence is not an intrinsic part of the drugs matter and requires separate



recognition, or where the accused commits a theft on one occasion and an assault on a different victim on another occasion.

2. A consecutive sentence may also be appropriate where the offences are of the same or similar kind but where the court is of the view that a concurrent sentence will not sufficiently reflect the overall criminality [Emphasis Mine] e.g., assault of a police officer whilst trying to evade arrest for the original offence; assault of the same victim committed in the context of domestic violence or where there are sexual offences against the same victim.”

27. In this case, the offence though allegedly committed on the same day involved eight different complainants who were totally unrelated to each other. Moreover, considering the value of the stock lost, serving concurrent sentences would amount to a slap in the wrist as it would not sufficiently reflect the overall criminality, especially considering that the maximum sentence for stealing stock is fourteen years imprisonment. The record shows that the Appellant took advantage of his position of trust as a herdsman to unfairly take advantage of the eight complainants who had entrusted him with the duty of taking care of their stock.
28. Sentences also run consecutively for imprisonment in lieu of fines. In the guidelines indicate as follows: 3.28 In the case of imprisonment in default of payment of a fine, the sentence cannot run concurrently with a previous sentence.

**The sentence must as such run consecutively.**

29. The upshot of this I find no merit in the appeal. Conviction is upheld. The appeal for Sentence is dismissed. The appellant should serve the sentence consecutively as ordered by the trial court.

Order accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY ON 29<sup>TH</sup> MAY, 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Appellant.....Edwin Otondi Nyandundo

For Respondent.....Ms Torosi

Court Assistant.....Doreen

