



REPUBLIC OF KENYA



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**Issah v Republic (Criminal Appeal E036 of 2023)
[2025] KEHC 8005 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 8005 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL APPEAL E036 OF 2023**

JN NJAGI, J

MAY 28, 2025

BETWEEN

HERO SAID ISSAH APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the original conviction and sentence by B. Kabanga, SRM,
in Hola SPM's Court Criminal Case No. E105 of 2022 delivered on 12/9/2022)*

JUDGMENT

1. The Appellant herein was charged with the offence of stealing Stock contrary to Section 278 of the [Penal Code](#). The particulars of the offence were that on the 10th day of July, 2022 at Miranga area in Tana River within Tana River County jointly with another person (not before this court) stole three calves valued at Kshs. 30,000/, the property of Ismael Ahmed Barel.
2. The appellant admitted the charge and was convicted on his own plea of guilty. He was sentenced to serve 7 years imprisonment. He was aggrieved by the conviction and filed the instant appeal.
3. The grounds of appeal are that:
 1. That the Learned Trial Magistrate erred in law and fact in failing to appreciate that the appellant was subjected to an equivocal plea contrary to the law; and
 2. That the Learned Trial magistrate erred in law and fact in failing to consider that the alleged offences occurred in the same transaction hence concurrent.
4. The appeal was canvassed by way of written submissions of the Appellant and those of the Prosecution Counsel, Ms. Mkongo. The Appellant submitted that the trial court violated his right to fair trial under



Article 50(2) (p) of *the Constitution* by failure to give him the least severe punishment prescribed for the offence committed.

5. The prosecution on the other hand submitted that the charge was read out to the appellant in Kiswahili, a language that he understood. That he pleaded guilty to the charge and also was given audience to mitigate.
6. It was submitted that the charge was very clear since it stated the date the offence happened, the victim of the offence and the particulars of the offence. That the charges were not ambiguous and thus no prejudice was occasioned to the appellant.
7. Counsel relied on the case of HCCRA No. 53 of 2019 Seth Hamar Gliza v REP where the court held that the plea of guilty was properly entered since the charges had been read in a language the appellant understood and after the facts were read out to him he accepted the same and even in mitigation he conceded his guilt and accepted responsibility.
8. On whether the sentence meted was excessive and harsh, counsel submitted that the sentence was fair in the circumstances of the case. She relied on the case of Benard Kimani Gacheru v Republic [2002] eKLR where the court held as follows;

‘...sentence is a matter that rests in the discretion of the trial court, similarly sentence must depend on the facts of each case. On appeal, the appellant court will not easily interfere with sentence unless the sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factors, or took into account, some wrong material, or acted on a wrong principle. Even if the appellate court feels that the sentence is heavy and that the Appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless anyone of the matters already stated is shown to exist.’
9. The respondent submitted that the plea was unequivocal. They urged the court to dismiss the appeal.

Analysis and determination

10. This being the first appellate court in the matter, the court has a duty to analyze and evaluate the evidence which was adduced before the trial court and come up with its own independent finding and in the process of doing so bear in mind that the trial court had the advantage of seeing and hearing the witnesses testify and give due credit for that, see Okeno v Republic [1972] E.A. 32.
11. I have considered the grounds of appeal, the record of the trial court and the submissions of the appellant and those of the prosecution counsel. The issues which arise for determination are:-
 1. Whether the plea was equivocal and
 2. Whether the sentence meted out to the appellant was proper.
12. The procedure in plea taking in the subordinate courts is laid down under Section 207 (1), (2) and (3) of the *Criminal Procedure Code*. The Section provides as follows: -

“ 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.

(3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided.”

13. The manner of taking pleas was explained in the case of *Adan v Republic* [1973] EA 445 where the Court of Appeal laid down the steps which should be followed in taking pleas as follows:

1. 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;
2. the accused’s own words should be recorded and if they are an admission, a plea of guilty should be recorded;
3. 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;
4. 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;
5. 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.”

14. The court before entering a plea of guilty must therefore be satisfied that the accused wishes to admit the charge without any qualifications on every element of the offence charged and only when so satisfied can the court record a plea of guilty. Upon admitting the charge, the court is required to call upon the prosecutor to state the facts upon which the charge is based. The detailed facts must be given and not just the particulars outlined on the charge sheet. In case there are any exhibits which form evidence in support of the charge, they must be produced when the facts are being read out in court.

15. The Court of Appeal in *Kariuki v Republic, Kisumu Criminal Appeal No.22/1984*, [1984] KLR 809 held that the accused person’s plea must be specific and not merely a general assertion of guilt. That the accused should be asked if he admits the facts and his answer should be recorded.

16. In this case the appellant appeared in court for plea on 22nd August 2022 when the charge was read over to him in Kiswahili language, a language that he understood, wherein he made a reply that:

“Ni kweli”

A plea of guilty was then entered.

17. The prosecution then sought for the matter to be adjourned for them to avail the facts. When the facts were read to the appellant on the 29th August 2022, he responded that:

“those facts are correct”.

A conviction was then entered.

18. The prosecutor sought for adjournment to enable him obtain a record of previous convictions against the appellant. The smatter was mentioned on 12th September 2022 when it was reported that the



- appellant had two previous convictions of stealing, one of which was stealing of stock. The appellant was then given an opportunity to mitigate and he pleaded for mercy. He admitted that he had previously been convicted. He was then sentenced.
19. It is clear to me that the plea was taken as per the guidelines set out in the case of *Adan v Republic* (supra). The appellant understood the charge as it was read to him in a language that he understood, a fact that he has not disputed. The appellant in mitigation pleaded for mercy signifying that he understood the charge against him was that of stealing stock. Thus, it is my finding the plea taken on the appellant was unequivocal. The appellant did not attempt to how the plea was equivocal as stated in his grounds of appeal. The conviction is thereby upheld.
 20. The appellant was charged under section 278 of the *Penal Code* which section provides: -

“If the thing stolen is any of the following things that is to say, a horse, 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.”
 21. The Appellant was sentenced to serve 7 years imprisonment out of the maximum 14 years provided for the offence.
 22. The case of *Wanjema v Republic* [1971] EA 493 dealt with principles upon which a first appellate Court may act on in dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial court if it is satisfied that in arriving at the sentence the trial court did not take into account a relevant fact or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and as long as the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.
 23. The appellant was only convicted of one count of stealing. He did not appeal against sentence in his grounds of appeal though he made submissions on the same. Since there was no appeal on sentence, there is no basis for this court to interfere with the sentence imposed on the appellant.
 24. The upshot is that I find no merit in the appeal and the same is dismissed.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 28TH MAY 2025.

J.N. NJAGI

JUDGE

In the presence of;

Mr. Oluoch for Respondent

Appellant - present in person at G.K. Prison Malindi

Court Assistant - Ndonge

