



**Muchenga v Republic (Criminal Appeal E001 of 2024)
[2025] KEHC 7377 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7377 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E001 OF 2024
JK NG'ARNG'AR, J
MAY 28, 2025**

BETWEEN

BAKARI KABINO MUCHENGA APPELLANT

AND

REPUBLIC RESPONDENT

*(From the conviction and sentence in Traffic Case Number 237 of 2023
by Hon. Mutuku F. in the Principal Magistrate's Court in Wanguru)*

JUDGMENT

1. The Appellant was charged with various counts. In Count I, he was charged with the offence of failing to maintain motor vehicle parts and equipment contrary to section 55 (1) as read with section 58 (1) of the *Traffic Act*. The particulars of the offence were that on 22nd December 2023 at around 1200hours along Mwea-Embu Road at Kimbimbi area in Kirinyaga County, being a driver of motor vehicle registration number KCC 216B make Mercedes Benz Trailer did drive the said motor vehicle on the road while fitted with five worn out tyres.
2. In Count II, he was charged with the offence of driving a motor vehicle on a public road without an inspection sticker contrary to section 17 (A) as read with section 29 (1) of the *Traffic Act*. The particulars of the offence were that on 22nd December 2023 at around 1200hours along Mwea-Embu Road at Kimbimbi area in Kirinyaga County, being a driver of motor vehicle registration number KCC 216B make Mercedes Benz Trailer did drive the said motor vehicle on a public road without an inspection sticker.
3. In Count III, he was charged with the offence of driving an unroadworthy motor vehicle contrary to section 55 (1) as read with section 58 (1) of the *Traffic Act*. The particulars of the offence were that on 22nd December 2023 at around 1200hours along Mwea-Embu Road at Kimbimbi area in Kirinyaga



- County, being a driver of motor vehicle registration number KCC 216B make Mercedes Benz Trailer was found driving the said motor vehicle while being unroadworthy.
4. In Count IV, he was charged with the offence of failing to maintain motor vehicle parts and equipment contrary to section 55 (1) as read with section 58 (1) of the *Traffic Act*. The particulars of the offence were that on 22nd December 2023 at around 1200hours along Mwea-Embu Road at Kimbimbi area in Kirinyaga County, being a driver of motor vehicle registration number KCC 216B make Mercedes Benz Trailer Number 2E6798 did drive the said motor vehicle on the road while fitted with thirteen worn out tyres.
 5. In Count V, he was charged with the offence of driving a motor vehicle on a public road without an inspection sticker contrary to section 17 (A) as read with section 29 (1) of the *Traffic Act*. The particulars of the offence were that on 22nd December 2023 at around 1200hours along Mwea-Embu Road at Kimbimbi area in Kirinyaga County, being a driver of motor vehicle registration number KCC 216B make Mercedes Benz Trailer Number 2E6798 did drive the said motor vehicle on a public road without an inspection sticker.
 6. In Count IV, he was charged with the offence of driving an unroadworthy motor vehicle contrary to section 55 (1) as read with section 58 (1) of the *Traffic Act*. The particulars of the offence were that on 22nd December 2023 at around 1200hours along Mwea-Embu Road at Kimbimbi area in Kirinyaga County, being a driver of motor vehicle registration number KCC 216B make Mercedes Benz Trailer Number 2E6798 did drive the said motor vehicle while unroadworthy
 7. The Appellant pleaded guilty on all six (6) counts and was convicted on his own plea of guilt. He was consequently sentenced to: -
 - i. Count I - Kshs 150,000/= in default to serve 1 year imprisonment.
 - ii. Count II – Kshs 10,000/= in default to serve 2 months imprisonment.
 - iii. Count III - Kshs 60,000/= in default to serve 1 year imprisonment.
 - iv. Count IV - Kshs 300,000/= in default to serve 1 year imprisonment.
 - v. Count V - Kshs 10,000/= in default to serve 2 months imprisonment.
 - vi. Count VI - Kshs 60,000/= in default to serve 1 year imprisonment.
 8. The trial court ordered that the above sentences run consecutively.
 9. Being aggrieved by the conviction and sentences issued by the trial court, the Appellant appealed his conviction and sentence through a Memorandum of Appeal dated 3rd January 2024.
 10. This being the first appellate court, I have a duty to re-evaluate the evidence on record afresh and come to my own conclusions. This was set out by the Court of Appeal in *Kiilu & Another vs. Republic* (2005)1 KLR 174.
 11. I now proceed to consider the case before the trial court and the respective parties' written submissions in the present Appeal.
 12. As I have noted earlier, the Appellant was convicted on his own plea of guilt. The trial court noted that it had the opportunity to see the subject motor vehicle and found that its tyres were completely worn out. The trial court also noted that one tyre had burst.



Appellant's submissions

13. Through his written submissions dated 3rd January 2025, the Appellant submitted that the charge sheet was defective as it contained a duplication of charges. That counts I and IV, counts II and V and counts III and VI were duplicated. He relied on section 214(1) of the [Criminal Procedure Code](#) and Benard Ombuna vs Republic (2019) eKLR. He further submitted that the rule against double jeopardy prevented a person from being tried twice for a similar offence.
14. It was the Appellant's submission that the sentences were harsh. That the trial court ought to have awarded a concurrent sentence as opposed to a consecutive sentence. He relied on Peter Mbugua Kabui vs Republic (2016) eKLR, George Mwangi Chege & 2 others vs Republic (2004) eKLR, Nganga vs Republic (1981) KLR 530 and Ondiek vs Republic (1981) KLR 430. It was the Appellant's further submission that this court should be lenient on him as he was a first-time offender.

The Respondent's submissions

15. Through its written submissions dated 17th March 2025, the Respondent submitted that the Appellant was charged with six counts of traffic offences and was taken through his rights under Article 50 of [the Constitution](#) of Kenya. That the trial court was properly guided by the law on sentences and utilized its discretion properly.
16. I have gone through and considered the trial court's proceedings, the Memorandum of Appeal dated 3rd January 2024, the Appellant's written submissions dated 3rd January 2025 and the Respondent's written submissions dated 17th March 2025. The following issues arise for my determination: -
 - i. Whether the Charge Sheet was defective for reason of duplicity of charges.
 - ii. Whether the Plea taken by the Appellant was unequivocal.
 - iii. Whether the sentences preferred against the Appellant were harsh.
17. Before I begin my analysis, it is important to state that the Appellant was convicted on his own plea of guilty. Section 348 of the [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.
18. It has however been held that the above section of the law was not an absolute bar to appeals such as the present one. The Court of Appeal in *Wandete David Munyoki v Republic* [2015] KECA 421 (KLR) held: -

“It has long been settled that Section 348 of the [Criminal Procedure Code](#) which provides that no appeal is allowed in a conviction arising from a plea of guilty, except to the extent and legality of the sentence, is not an absolute bar to challenging such a conviction on any other ground. Indeed, in *Ndede v R* [1991] KLR 567, this Court held that the court is not bound to accept the accused person's admission of the truth of the charge and conviction as there may be an unusual circumstance such as injury to the accused person or the accused person may be confused or there has been inordinate delay in bringing him to court from the date of arrest. The list of circumstances and examples that may lead the first appellate court to consider the appeal on merit even when the conviction was on the accused person's own plea of guilty, are not closed.”



19. Similarly in *John Muendo Musau v Republic* [2013] KECA 266 (KLR), the Court of Appeal held: -
- “There is a long line of authority to the effect that the bar to an appeal against a conviction based on a guilty plea is not absolute.....”
20. From the above authorities, this court is permitted to consider the grounds of Appeal raised by the Appellant despite the provisions of section 348 of the *Criminal Procedure Code*. It is only after such consideration and analysis that this court can determine whether the Appellant’s convictions was safe or not.

Whether the Charge Sheet was defective for reason of duplicity of charges.

21. It was a ground of the Appeal that the trial court convicted the Appellant on duplex charges. A duplex charge was defined in *Ankush Manoj Shah v Republic* [2016] KEHC 8448 (KLR), where the court held: -
- “.....A charge is said to be duplex when it contains more than one offence in a single count. It is simplified in the definition given in *Arbould Criminal Pleading, Evidence and Practice*, 2010 at pg 9 in the following words:
- “the indictment must be double; that is to say, no one count of indictment should charge the defendant with having committed two or more separate offences...”
- The question on whether a count breaches the general rule against duplicity is a question relating to the form of the count not the underlying evidence... thus if the particulars set out in the count allege only one offence, the fact that the evidence at trial may reveal more than one offence does not make the count bad for duplicity”.
22. Similarly, *Nyamweya J. (as she was then) in Hassan Jillo Bwanamaka & another v Republic* [2018] KEHC 2065 (KLR), held: -
- “.....the rule against duplicity provides that the prosecution must not allege the commission of two or more offences in a single charge in a charge-sheet. Such a charge is sometimes said to be 'duplex' or 'duplicitous'. The rule stems from two important principles: firstly, as a matter of fairness, a person charged with a criminal offence is entitled to know the crime that they are alleged to have committed, so they can either prepare and/ or present the appropriate defence.
- Secondly, the court hearing the charge must also know what is alleged so that it can determine the relevant evidence, consider any possible defences and determine the appropriate punishment in the event of a conviction.”
23. Flowing from the above, if one count revealed more than one offence, it would make it a duplex charge and that would render the Charge Sheet defective. The law on Charge Sheets is contained in Section 134 of the *Criminal Procedure Code* which provides as follows: -
- Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.



24. In the present case, the Appellant was charged with six counts of traffic offences. I have looked at the six counts and I have noted that every count contained one offence. The offences were separate and distinct bearing in mind the motor vehicle was a trailer which includes the towing vehicle and the trailer itself. The offences related to the towing vehicle and the trailer.
25. It is my finding therefore that there was no duplicity of charges in the Charge Sheet. Accordingly, this ground of the Appeal is dismissed.

Whether the Plea taken by the Appellant was unequivocal

26. I have noted that the Appellant was unrepresented during plea taking and that one of his grounds of Appeal was that the plea he entered was equivocal. To ensure that the Appellant was accorded a fair trial in accordance to Article 50 of *the Constitution* of Kenya, I shall relook the plea process in the trial court.
27. The process of plea taking is provided under Section 207(1) and (2) of the *Criminal Procedure Code* which states: -
- (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.

28. The Court of Appeal in *John Muendo Musau v Republic* [2013] KECA 266 (KLR) held: -

“.....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.”

We want to add here that if the accused wishes to change his plea or in mitigation says anything that negates any of the ingredients of the offence he has already admitted and been convicted for, the court must enter a plea of not guilty. That is to say that, an accused



person can change his plea at any time before sentence. The procedure as laid out in *Adan vs Republic* (supra) is also provided for under section 207 of the *Criminal Procedure Code*.”

29. I have gone through the trial court proceedings and I have noted that the Appellant took plea on 27th December 2023 when the substance of the charges was read and explained to him in a language he understood and he replied “kweli” to all charges, responses which were recorded by the trial court and a plea of guilty entered. The facts were read out to him and the Appellant stated that the facts were correct. He was consequently convicted on his own plea of guilty.
30. Having gone through the trial record, I have noted that the trial court adopted the proper procedure in recording the plea. The Appellant understood the charges and the facts and admitted them. He had every opportunity to inform the court that the particulars of the charge or facts were not true but he did not.
31. It is salient to note that a guilty plea can be overturned at the mitigation stage if the Accused at mitigation submits and contradicts what he had pleaded guilty to or admitted to. In the event of such an occurrence, the trial court should change the plea to a not guilty plea. I have considered the Appellant’s mitigation in the trial court. His submissions did not negate any facts of the case.
32. Flowing from the above, it is my finding that the Appellant’s plea was unambiguous and unequivocal and the Appellant was properly convicted on all six counts.

Whether the sentences preferred against the Appellant were harsh

33. In *Nelson Ambani Mbakaya v Republic* [2016] KECA 528 (KLR), the Court of Appeal stated that: -

“Sentencing of an accused person after conviction involves the exercise of discretion by the trial court. That discretion must of course be exercised judiciously rather than capriciously, depending on the circumstances of each case. As what is challenged in this appeal is essentially the exercise of discretion by the trial court, this Court is normally slow to interfere with that exercise of discretion unless it is demonstrated that the trial court acted on the wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive.....”
34. On Count I, the Appellant was sentenced to pay a fine of Kshs 150,000/= or in default to serve 1 year imprisonment. The law provides for a fine not exceeding four hundred thousand (Kshs 400,000/=) or to imprisonment for a term not exceeding two years or to both. It is my finding that this was a just and fair sentence.
35. On Count II, the Appellant was sentence to pay a fine of Kshs 10,000/= or in default to serve 2 months imprisonment. The law provides for a fine not exceeding ten thousand shillings (Kshs 10,000/=) or to imprisonment for a term not exceeding three months. It is my finding that this was a just and fair sentence.
36. On Count III, the Appellant was sentenced to pay a fine of Kshs 60,000/= or in default to serve 1 year imprisonment. The law provides for a fine not exceeding four hundred thousand (Kshs 400,000/=) or to imprisonment for a term not exceeding two years or to both. It is my finding that this was a just and fair sentence.
37. On Count IV, the Appellant was sentenced to pay a fine of Kshs 300,000/= or in default to serve 1 year imprisonment. The law provides for a fine not exceeding four hundred thousand (Kshs 400,000/



=) or to imprisonment for a term not exceeding two years or to both. It is my finding that this was a just and fair sentence.

38. On Count V, the Appellant was sentence to pay a fine of Kshs 10,000/= or in default to serve 2 months imprisonment. The law provides for a fine not exceeding ten thousand shillings (Kshs 10,000/=) or to imprisonment for a term not exceeding three months. It is my finding that this was a just and fair sentence.

39. On Count IV, the Appellant was sentenced to pay a fine of Kshs 60,000/= or in default to serve 1 year imprisonment. The law provides for a fine not exceeding four hundred thousand (Kshs 400,000/=) or to imprisonment for a term not exceeding two years or to both. It is my finding that this was a just and fair sentence.

40. Flowing from the above, it is my finding that the court did not err when it awarded the above sentences and further ordered them to run consecutively. There was no reason for this court to interfere with the sentences.

41. In the end, the Appeal has no merit and is dismissed.

JUDGEMENT DATED AND SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF MAY, 2025.

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J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of the Appellant and Mamba for the Respondent. Siele/Mark (Court Assistants).

