



**Pkemoi v Republic (Criminal Appeal E010 of 2024)  
[2025] KEHC 11337 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11337 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
CRIMINAL APPEAL E010 OF 2024  
RPV WENDOH, J  
JULY 31, 2025**

**BETWEEN**

**SILAS PKEMOI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Silas Pkemoi the appellant was charged with two offences namely, Burglary contrary to section 304 (2) and; Stealing contrary to section 279(b) of the [Penal Code](#).
2. The particulars of the charge are that on diverse dates between 21/2/2024 and 22<sup>nd</sup> February, 2024 at Nakuyen Centre, in West Pokot County, broke and entered the dwelling house of Chepserum Loriono with intent to steal therein and did steal from therein two hens valued at Kshs.1100/=
3. In the second count, he was charged with creating disturbance contrary to section 95(1) (b) of the [Penal Code](#).
4. It was alleged that between 21<sup>st</sup> and 22<sup>nd</sup>/2/2024 at Nakuyen Centre Kapulio location, created a disturbance in a manner likely to cause a breach of the peace by hitting the door of Chepserum Loriono using a piece of wood while threatening to beat the said Chepserum.
5. On 26/2/2024, when the appellant was arraigned in court for plea, he admitted the offences was convicted on his own plea, and sentenced to seven (7) years imprisonment on count 1 and six (6) months on the second count. The prison sentences were ordered to run concurrently.
6. The appellant is dissatisfied with both the conviction and sentence and has preferred this appeal based on the following grounds: -
  1. That he did not understand the charge because he was unwell and confused.



2. That the translation was misleading.
7. He therefore prays that the conviction be quashed and he be sent back for a retrial. The appellant filed submissions in support of the appeal in which he generally repeats the ground that he was not in his right mind when he appeared in court for plea.
8. The prosecution Counsel Mr. Suter opposed the appeal and submitted that the appellant has not demonstrated that the plea was not proper in that the lower court did not comply with the law; that he has not disputed the facts and availed no evidence that he was unwell; that the appeal is an afterthought and the court should confirm the conviction and sentence.
9. I have considered the grounds of appeal, submissions of both parties and the proceedings before the trial court.
10. Section 348 of the *Criminal Procedure Code* bars any appeal where an accused pleaded guilty, except on the legality and severity of the sentence. Section 348 provides as follows: -

348. No appeal on plea of guilty, nor in petty cases. “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.”
11. The court has a duty to examine the record to determine whether the plea was unequivocal. In *Bulunye Ole Kortol -V- Republic* (2018) eKLR, the court held

“Although section 348 of the *Criminal Procedure Code* bars an appeal in the case of a conviction following a guilty plea, the only way to address whether the sentence was legal is to address whether the plea recorded in the lower court was equivocal which would make the conviction unlawful and thus implicate the legality of the sentence”
12. In *Wandete David Munyok -V- Republic* (2015) e KLR, the Court of Appeal stated as follows in regard to plea of guilty;

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 absolute bar to challenging such a conviction on any other ground.”
13. In *Ndede -V- Republic* (1991) KLR 567, the 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 circumstances 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 and when the conviction was on the accused persons own plea of guilty are not closed.”
14. In *Alexander Lukoye Malika -V- Republic* (2015) e KLR, the Court of Appeal identified situations where 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 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 Appellant 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.”

15. The appellant faced two charges as set out in the beginning of this judgment. In the case of Adan - V- Republic (1973) EA 445, the court set out a model of what courts should take into account when recording a plea of guilty. The court said: -

When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a 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 those 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 to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. 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 sentence. The statement of facts and the accused's reply must, off course, be recorded.

16. In this case, the court record shows that on 26/2/2024, the court recorded the quorum as: -

26/2/2024

Coram – B.O Ondego – SPM

State Counsel – Mr. Mokaya

Court Assistant - Emily

Accused present

17. Court- The substance of the charge(s) and every element thereof has been stated by the court to the accused person in the language he/she understands, who being asked whether he/she admits or denies the truth of the charges(s) replies:-

Count 1 –

Accused – It is true

Count 2:-

Accused - It is true

18. Prosecutor – The facts are that on 21/2/2024 the complainant who is the accused’s mother was asleep in her house when accused entered by breaking the door while shouting and damaged food for her. Accused then threatened the mother and his father that he would beat them up. Accused then took chicken worth Kshs.600/=

19. After that accused came back and took another chicken killed it and roasted it and ate it up.

20. The complainant reported to the police and accused was arrested and charged. This is the style he sued to beat them.



Accused - The facts are true

Court- Guilty on plea and convicted

Hon. B.o. Ondego.spm

First, I note, that nowhere did the court record the language of the court and which language the appellant preferred to use. Article 50(2) provides

Every accused person has the right to a fair trial, which includes the right;

(m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial.”

21. In this case, this court has no idea whether the court used Kiswahili or English and whether the appellant understood any of them or he required to use another language. Though the appellant seems to have taken part in the proceedings and admitted the offences, the record does not give much detail to convince this court that he understood the proceedings. I find that the trial court violated the Appellant’s right to interpretation in a language he understood.
22. Secondly, I note that it is clear from the facts that the charges arise from the same transaction and it was unfair to charge the Appellant with two charges arising out of the same transaction. In my view, the charges were ambiguous and therefore defective. The conviction was not properly founded must therefore be quashed and sentence set aside.

#### **Should the court order a retrial?**

23. In Samuel Wahini Ngugi -V- Republic (2012) e KLR, the court stated the law as regards what the court should consider on whether or not to order a retrial is now well settled.
24. In the case of Ahmed Sumar -V- Republic (1964) EALR 483

In general, a retrial will be ordered when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficient evidence or for the purposes of enabling the prosecution to fill up gaps in its evidence at the first trial, even while a conviction is initiated by a mistake of the trial court for when the prosecution is not to blame, it does not necessarily follow that a retrial should be ordered”.

25. The appellant was sentenced on 8/3/2024 and has therefore served one year out of the seven (7) years. The offence is a serious one and it is only proper that it proceeds to full trial where both parties can be heard and if an offence was indeed committed, the culprit should face the full force of the law. From the record, it seems the potentially admissible evidence is likely to result in a conviction.
26. For the above reasons, I hereby order a retrial. The appellant is hereby released to Kacheliba Police Station forthwith for fresh charges to be preferred for the plea to be taken before the Principal Magistrate on 4/8/2025. Being a retrial, it should be given priority.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAPENGURIA THIS 31<sup>ST</sup> DAY OF JULY, 2025**

**HON. R. WENDOHO**

**JUDGE**

Judgment delivered in open court in presence of; -



Prosecution Counsel – Mr. Majale

Appellant – present in person

Juma/Hellen- Court Assistants

