



**Said v Republic (Miscellaneous Criminal Application E133 of 2023)  
[2024] KEHC 2958 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2958 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS CRIMINAL APPLICATION E133 OF 2023**

**M THANDE, J  
MARCH 20, 2024**

**BETWEEN**

**HUSSEIN ALI SAID ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By an Application filed on 12.12.23, the Applicant seeks the following orders:
  1. That this hon court be pleased to issue an order against the director of criminal investigations and director of public prosecution that at the time I was arrested they falsified and the state has lied to court in their statement or charge of my citizenship.
  2. That this hon court be pleased to issue an order against the registration of persons based on madige within Tana River county do release forthwith arycial integration document as enumerated in the inventory list dated 02/01/2021 do shows when the applicant applied for a national identity card.
  3. An order that the department of registration of persons do relase forthwith to the applicant his national identity card (ID) as required by the law.
  4. An order that the applicant is a Kenyan citizen and be forthwith released from prison.
2. It is the Applicant's case that he is a Kenya citizen and at the material time a 17 year old Muslim student at Nuur Madrassa. He was staying with his parents who are Kenyan citizens. During his arrest and conviction, his family was unable after the exercise of due diligence to prove that he is a Kenyan citizen. He urged the Court to review the sentence imposed upon him and find that he is a Kenyan citizen and release him from prison.



3. The Respondent opposed the Application vide a replying affidavit sworn on 7.3.24 by Joseph Mwangi, prosecution counsel. It was averred that the Applicant pleaded guilty after which the prosecution read the facts and produced exhibits and the Applicant informed the Court the facts were indeed true. The Applicant's plea was unequivocal and the sentence determined as a matter of fact by the trial court. The Applicant has not appealed against the sentence. Further that the Court does not have jurisdiction to issue the orders sought as the Applicant has not filed a petition but an application. He urged the Court to dismiss the Application.
4. The lower court record shows that the Applicant was charged with the offence of obtaining registration by false pretences contrary to Section 320 of the Penal Code. On 17.10.23, the substance of the charge and every element thereof was stated by the court to the Applicant, and he pleaded guilty by stating "*Ni ukweli*". A plea of guilty was thus entered. The following day, the facts of the offence were read to the Applicant. The facts as stated are that the Applicant was on 15.10.23 arrested at Sabaki Bridge while travelling as a passenger in a public service motor vehicle that was headed to Garsen. He was found with a national identity card no. 2506734587. Upon investigations, it was established that the Applicant was in fact a registered refugee at Kakuma and that his real name is Hussein Abdikadir Amadi. He had surrendered his alien card to the Refugee Authority and was repatriated to Somalia on his request. He later found his way back to Kenya, changed his name and claimed that he was born in Kenya. He applied for a national identity card. When this statement of facts was read to the Applicant, he again admitted the truth of the same and stated "*Ni ukweli*."
5. Section 207 of the Criminal Procedure Code stipulates the procedure for taking plea. Subsections (1) and (2) provide as follows:
  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.
6. The law requires that the court states the substance of the charge to an accused person. He is then asked whether he accepts or denies the truth thereof. If he accepts the truth of the charge without a plea agreement, as the Applicant did in the instant case, his admission is to be recorded as nearly as possible in the words used by him. Thereafter the court shall convict the accused and pass sentence, unless there is sufficient cause to the contrary.
7. In the case of Ombena v Republic [1981] eKLR where the appellant contended that his plea of guilty is not an unequivocal. The Court of Appeal after considering the matter had this to say:

In Adan v Republic [1973] EA 445, the Court of Appeal laid down in the simplest and plainest terms the manner in which pleas of guilty should be recorded and the steps which should be followed. It is appropriate to set out the holding in full —

“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 the facts relevant to sentence together with the accused's reply should be recorded."
8. Flowing from the foregoing, it can be seen that to record a guilty charge, first, the court is required to explain the charge and its essential elements to the accused in a language he understands. Second, the accused's own words shall be recorded and a plea of guilty is recorded. Third, the prosecution shall then immediately state the facts whereupon the accused is given an opportunity to dispute or explain the facts or to add any relevant facts. Fourth, where the accused maintains his plea, the court shall record a conviction and a statement of the facts relevant to sentence together with the accused's reply.
9. A careful reading of the record shows that the trial court did follow the procedure laid out in Section 207 and further as set out in the Adan case (*supra*). The record further shows that unlike in the Adan case, the facts were set out to the Applicant. After this was done, the Applicant again admitted and stated, "*ni ukweli*". This is a clear indication that the Applicant was given an opportunity to dispute the facts.
10. In the Adan case (*supra*), the Court of Appeal went on to state:
- In this case it is not certain that the prosecutor stated the facts, or that the appellants were given an opportunity to dispute or explain the facts or to add any relevant facts. The bald record that the prosecutor said "Facts are as per charge sheets", and that the charge was read over and explained a second time, is not in our view sufficient to enable us to be satisfied that the pleas were unequivocal. In the Adan case the court said, at p 447:
- "The statement of facts serves two purposes: it enables the magistrate to satisfy himself that the plea of guilty was really unequivocal and that the accused has no defence and it gives the magistrate the basic material on which to assess sentence. It not infrequently happens that an accused, after hearing the statement of facts, disputes some particular fact or alleges some additional fact, showing that he did not really understand the position when he pleaded guilty: it is for this reason that it is essential for the statement of facts to precede the conviction."
11. Where an accused person pleads guilty, the statement of facts is set out to him. First, to enable the court satisfy itself that the plea is unequivocal and that the accused has no defence. Second, this informs the assessment of sentence imposed on such accused person.
12. In the instant case, after pleading guilty, the statement of facts was set out to the Applicant. This afforded him an opportunity to opportunity to dispute or explain the facts or add any relevant facts.



In spite of this, the Applicant did not state that the facts were not true. The issues the Applicant now raises that he was 17 years old, is a Kenya citizen and that his parents were Kenyan citizens, ought to have been laid before the trial court. Had he done so, the plea of guilty would not have been entered and the matter would have proceeded to full hearing. Having admitted the truth of the charge and statement of facts, I do find that the conviction was justified.

13. On sentence, Section 320 of the *Penal Code* provides as follows:

Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence is guilty of a misdemeanour and is liable to imprisonment for one year.

14. The maximum sentence that may be imposed on a person convicted of the offence of obtaining registration by false pretence as the Applicant was, is imprisonment for 1 year. Contrary to the assertion of the Appellant, the offence does not carry a mandatory minimum sentence. The trial court exercised its discretion and sentenced the Appellant to 9 months' in prison.

15. It is well settled that an appellate court must exercise restraint in interfering with judicial discretion. In the case of *Mbogo v Shab* [1968] EA 93, the Court of Appeal considered an invitation to interfere with the exercise of judicial discretion and stated:

A Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice.”

16. Having considered the matter herein and the lower court record, I find that the Application is unmerited and the same is hereby dismissed.

**SIGNED DATED AND DELIVERED IN MALINDI THIS 20<sup>TH</sup> DAY OF MARCH 2024**

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**M. THANDE**

**JUDGE**

