



**Ali v Republic (Criminal Appeal E015 of 2023)
[2024] KEHC 3444 (KLR) (15 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL APPEAL E015 OF 2023
JN ONYIEGO, J
MARCH 15, 2024**

BETWEEN

AHMED SALAT ALI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the conviction and sentence of Hon. J. Omwange (SRM) delivered on 13th June 2023 in Criminal case number E187 of 2023 Garissa CM's court)

JUDGMENT

1. The appellant was arraigned before Garissa CM's court on 4th April 2023 charged with two counts. Count one, he was charged with stealing of Motorcycle contrary to Section 278A of the [Penal Code](#). The particulars were that on 03.04.2023 at Equity Bank area Garissa Township in Garissa Sub-County within Garissa County, he stole one motor cycle registration number KMGD 610Q make TVS 150 Blue in colour worth Kes. 254,904 the property of one Omar Ali Bariyane.
2. Count two, he was charged with giving false information to a person employed in the public service contrary to section 129 (a) of the [Penal Code](#). The particulars of the offence were that on 04.11.2023 at around 2110hrs at Garissa Police Station in Garissa Township within Garissa County, he told No. 236376 PC Abdullahi Musa a person employed in the public service as police officer that on 04.04.2023 at around 1900hrs 6 armed men had robbed him his motor cycle registration number KMGD 610Q make TVS 150 Blue in colour worth Kes. 254,904 information he knew to be false.
3. The appellant pleaded guilty to the 1st count and as a result was convicted on his own plea of guilty and sentenced to two (2) years imprisonment. On 11.05.2023, he pleaded guilty to the second count consequences whereof he was sentenced to a fine of Kes 10,000 in default serve 12 months imprisonment.



4. The appellant having been aggrieved by the sentence of the court lodged a petition of appeal filed on 28.08.2023 urging this court to reduce the said sentence on grounds that; the same was severe given the circumstances of the case; the court erred by not giving him the option of a fine; he has since reformed and that the court did not consider his defence.
5. Parties filed written submissions in which the appellant urged that in the obtaining circumstances, the trial court meted out a sentence that was not commensurate with the offence. He pleaded that he was remorseful as he had since learnt his lesson hence urged the court to reduce the said sentence.
6. The respondent represented by Mr. Kihara submitted that the plea taking process was proper and in tandem with the law. That in order for the appellant to attack an unequivocal plea under section 348 of *Criminal Procedure Code*, he ought to demonstrate that the sentence was illegal or that the procedure followed to enter a plea of guilty was faulty. Reliance was placed in the case of *Ndede v Republic* [1991] KLR 567 to buttress the fact that the appellant did not demonstrate any ground to warrant the Honourable Court to interfere with an unequivocal plea.
7. On sentence, it was contended that the sentence invoked by the trial court was not only legal but also appropriate bearing in mind the circumstances of the case. In the end, Mr. Kihara urged this court to dismiss the appeal herein as the same was bereft of any merit.
8. Having considered and analyzed the grounds of appeal herein together with parties' submissions, the only issue that germinates for determination is whether the appellant has made a case for this court to interfere with the plea of guilty entered and sentence imposed by the trial court.
9. Although the appellant did not directly attack the manner in which the plea of guilty was entered, he has raised the issue that his defence was not considered thus challenging his conviction. The manner of recording of a plea is provided for in section 207(1) and (2) CAP 75 of the *Criminal Procedure Code* which provides as hereunder:
 - “(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.”
10. The above procedure was reproduced in the case of *Adan vs. Republic* [1973] EA 445 where the court re-emphasized the procedure to be followed when recording a plea of guilty as hereunder-
 - “(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 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.”

11. It is trite that Section 348 of the Criminal Procedure Code CAP 75 bars appeals from subordinate courts where an accused is convicted upon his own 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.”

12. 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.”

13. In this case, the accused person pleaded guilty to each charge as was read by the prosecution. Having gone through the record, it is my view that the same was free from any imperfection or ambiguity. It is no wonder that the appellant did not submit on the legality of the plea of guilty. Accordingly, that ground is not available.

14. The appellant seems to lay emphasis on the alleged excessive sentence. The section under which the appellant was charged is that of stealing of motor vehicles and the same stipulates under section 278A as follows:

“If the thing stolen is a motor vehicle within the meaning of the Traffic Act, the offender is liable to imprisonment for seven years”.

15. In regards to the second count in reference to giving false information to a person employed in the public service, the same stipulates as follows:

Section 129 (a) states that:

“Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, the person employed in the public service –

- (a) to do or omit anything which the person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; is guilty of a misdemeanour and is liable to imprisonment for three years”.



16. It is trite law that sentencing is at the discretion of the court and that an appellate court can only interfere with it if it is excessive; the trial court applied wrong legal principles or considered irrelevant factors. See *Republic v Islam Yabya* (20210e KLR). I do not find any reason to warrant interference with the sentence imposed. In fact, the court was lenient in the circumstances. Accordingly, the appeal is dismissed as it has no merit. The sentence imposed to run consecutively.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF MARCH 2024

J.N.ONYIEGO

JUDGE

