



**Emojong v Republic (Criminal Revision 42 of 2023)  
[2024] KEHC 6156 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6156 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 42 OF 2023  
DR KAVEDZA, J  
MAY 27, 2024**

**BETWEEN**

**JIMMY CHEREN EMOJONG ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The appellant was charged and pleaded guilty for the offence of defilement contrary to section 8(1) as read with 8(3) of the Sexual Offences Act, No. 3 of 2006. After mitigation, he was sentenced to serve 20 years imprisonment.
2. He filed the present application dated 8<sup>th</sup> September 2023 seeking the setting aside of the sentence imposed. The grounds raised are that during plea taking, he was semi-illiterate and not presented by an advocate. He was also not informed the consequences of his guilty plea before being sentenced. He urged the court to order a retrial.
3. Central to the application is the question of plea taking and whether the guilty plea was unequivocal. Article 50 (2)(b) of the Constitution states that: -

“(2) Every accused person has the right to a fair trial, which includes the right- (b) to be informed of the charge, with sufficient detail to answer it.”

4. Section 207 of the Criminal Procedure Code states as follows:

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- (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 plea agreement;



- (2) If the accused person admits the truth of the charge otherwise than by 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.”

5. Courts have had occasion to elaborate on the procedure and the manner in which a guilty plea ought to be recorded by the trial court. In the case of *Adan v R* (1973) EA 445 and in the Court of Appeal case of *Kariuki v R* (1954) KLR 809 the rendition of the Court was as follows:-

- (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 take the facts and the accused should be given an opportunity to change or explain the facts or to add to any relevant facts.
- (iv) If the accused does not agree to the facts or raises any question of his guilt in his reply it must be recorded and change of plea entered.
- (v) If there is no change of plea, a conviction should be recorded as well as a statement of facts relevant to sentence and the accused reply.

6. Further in the case of *Kariuki v R (supra)* the Court went on and stated that:-

“The narration and interpretation of the facts of the alleged offence before the entry of a conviction and asking the appellant if he agreed with the fact is evidence of the precaution which the trial magistrate adopted to ensure that the appellant fully understood the charge before pleading.”

7. The accused was presented in court on February 6, 2023. The record of the lower court indicates that the language used was Kiswahili. The appellant replied to the charge and to the particulars of the charge in Kiswahili language. He admitted to the charge. He mitigated to the court in the same language. I am thus convinced that the proceedings were conducted in Kiswahili language that the applicant understood the language

8. Thereafter the particulars of the charge he was facing were explained to him with the ingredients thereof. The applicant was however unrepresented. Court have in some instances taken the position that in situations where the consequences of guilt plea are dire it is imperative to caution the accused and record the response before entering a plea of guilt which in my view is good or sound practice. In *Elijah Njibia Wakianda v Republic* [2016] eKLR. The court of Appeal made the following observations: -

“.....We also think that the elements of the offence are not complete if the sentence, especially if it is a severe and mandatory sentence, is not brought to the attention of the accused person. One surely ought to know the consequences of his virtual waiver of his trial



rights that the Constitution guarantees him. That did not occur here and yet the appellant was unrepresented calling upon the trial court to be particularly solicitous of his welfare. The officer presiding is not to be a mere umpire aloofly observing the proceedings. He is the protector, guarantor and educator of the process ensuring that an unrepresented accused person is not lost at sea in the maze of the often- intimidating judicial process...”

9. Flowing from the above case, it was pertinent that the accused be made to understand the gravity of the charges facing him. The court record did not indicate whether the accused was warned of the seriousness of the charge. In addition, he was not warned of the consequences of his plea and the likely sentence he was going to face pursuant to the plea. Indeed, the applicant’s plea in mitigation that “I love the girl and I’m willing to take care of the pregnancy, I’m sorry” that clearly shows that he was wholly unaware that he ran the risk of being sentenced to serve 20 years imprisonment.
10. What should I do in the circumstances? The applicant trial was clearly unsatisfactory was a mistrial. The offence is alleged to have been committed in 2022 and I believe witnesses for the Republic can still be traced. In the circumstances, I allow the application, quash the conviction and set aside the sentence imposed
11. I order that the file be placed before the Chief Magistrate Court for directions on June 25, 2024 for purposes of directions on taking fresh plea. The prisons are directed to handover the applicant to Lang’ata Police Station two days before the said date.

Orders accordingly.

**RULING DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF MAY 2024**

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**D. KAVEDZA**  
**JUDGE**

