



Case Number:	Criminal Appeals 556 & 557 of 1982
Date Delivered:	04 Mar 1983
Case Class:	Criminal
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	John Henry Sydney Todd
Citation:	Peter Kiamba Mbungo v Republic [1983] eKLR
Advocates:	MB Mbai for Respondent
Case Summary:	<p style="text-align: center;">Peter Kiamba Mbungo v Republic</p> <p style="text-align: center;">High Court, at Nairobi March 4, 1983</p> <p style="text-align: center;">Todd J</p> <p style="text-align: center;">Criminal Appeals Nos 556 & 557 of 1982</p> <p><i>Plea - charge - substitution of charge - prosecution's version of the facts not supporting charge - court's finding not supporting charge - facts disclosing accused only accessory after the fact to offence charged - whether court may substitute charge - charge of accessory after the fact to offence of theft of goods in transit.</i></p> <p><i>Sentencing - housebreaking - whether offence carrying mandatory corporal punishment - proper sentence - substitution of sentence.</i></p> <p>The appellants were charged and convicted on their own plea of guilty to the charge of burglary and stealing from a dwelling house contrary to sections 304(2) and 279(b) of the Penal Code (cap 63). The appellants appealed against the convictions on the grounds that the pleas were unequivocal.</p>

Held:

1. A court should, before convicting on a plea of guilty, ensure that it is unequivocal by not only, explaining every constituent of the charge to the accused but requiring him to admit or deny each and every such constituent (*Hando s/o Akunaay v R* (1951) 18 EACA 307 & *R v Yonasani Egalu & Others* (1942) 9 EACA 65).

2. The actual words used by the accused in pleading guilty to a charge should be recorded verbatim and translated into English. This is important so as to satisfy the Court of Appeal that he fully understood the charge and what he was pleading to (*R v Yekoyasi Okedi s/o Akagye* (1944) 11 EACA 110).

3. For an accused person to state "it is true" after the substance of the charge is explained to him would not amount to an unequivocal plea of guilty where the facts disclose an offence different from the one charged.

4. A charge of housebreaking does not carry a mandatory sentence of corporal punishment, the sentence is therefore substituted for a sentence of three years each to run concurrently.

Appeal dismissed.

Cases

1. *Hando s/o Akunaay v R* (1951) 18 EACA 307

2. *R v Yonasani Egalu & Others* (1942) 9 EACA 65

3. *R v Yekoyasi Okedi s/o Akagye* (1944) 11 EACA 110

Statutes

_____ (___ 63) _____ 279(), 304(2)

Advocates

MB Mbai for Respondent

Court Division:

Criminal

History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal dismissed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CRIMINAL APPEALS NOS. 556 & 557 OF 1982

PETER KIAMBA MBUNGOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Peter Kiamba Mbungo, has appealed against sentence in two cases in which he pleaded guilty and so the two criminal appeal cases being No 556/82 and No 557/82 are consolidated.

It is observed in criminal appeal number 556/82 that the appellant was charged with burglary and stealing from dwelling house contrary to sections 304(2) and 279(b) of the Penal Code (cap 63) to which he said, when the substance of the charge and every element of it was read and explained to him and which he understood was:

“It is true”

Had the matter remained here I would have had some doubts as to whether or not the appellant’s plea could really be called an unequivocal plea of guilty to the charge. See: *Hando s/o Akunaay v R* (1951) 18 EACA 308 in which it was said:

“Before convicting on any such plea of guilty it is highly desirable not only that every constituent of the charge should be explained to the accused, but that he should be required to admit or deny every such constituent”

and by *R v Yonasani Egalu & others* (1942) 9 EACA 65.

Most of what he says should be recorded in a form which will satisfy an appeal court that he fully understood the charge and pleaded guilty to every element of it unequivocally and in *R v Yekoyasi Okedi s/o Akagye* (1944) 11 EACA 110 it was said:

“The actual words used by an accused in pleading guilty to a charge should be recorded verbatim but of course translated into English.”

In this case however the prosecution stated the facts to the court with which the appellant agreed but though the prosecutor said that on May 5, 1982 at 8.00 pm the complainant locked her house and went to sleep in her mother’s house he did not say when the complainant returned to her house on the following morning which, of course, could have been halfpast six o’clock in the morning, I must I think, which I hereby do substitute a conviction for housebreaking in place of burglary and I think the sentence imposed must also be altered, because if for nothing else, a charge of housebreaking does not carry a mandatory sentence of corporal punishment. I therefore substitute for the sentence imposed by the

learned magistrate in respect of the charge in this case a sentence of three (3) years' imprisonment on each limb of the charge to run concurrently and the appellant will suffer six strokes of corporal punishment on the charge concerning theft from a dwelling house, that the failure to treat PW 1 as a possible accomplice has not occasioned a failure of justice and that it would be wrong to interfere with this case.

The appellant was imprisoned for one year where the maximum in respect of this offence is two years. In other cases with which I have dealt arising out of the disturbances on August 1, 1982 the sentences which have been passed and confirmed on appeal have been the maximum. In those circumstances and in view of the type and value of the property which was found being conveyed by the appellant it cannot be said that the sentence passed by the learned district magistrate was excessive although he was not entitled to impose strokes and that matter has already been dealt with on revision at the application of the district magistrate himself.

Accordingly for the reasons I have given above, this appeal against conviction and sentence will be dismissed.

Dated and Delivered at Nairobi this 4th Day of March, 1983

J.H.S. TODD

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JUDGE



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