Susan v Republic (Criminal Appeal E041 of 2021)
[2024] KEHC 12239 (KLR) (26 September 2024) (Judgment)

Neutral citation: [2024] KEHC 12239 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIVASHA

CRIMINAL APPEAL E041 OF 2021

GL NZIOKA, J

SEPTEMBER 26, 2024

BETWEEN

ALLISON KAMAU SUSAN ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the decision of Hon. K. Bidali, Chief Magistrate (CM) delivered on 26th October, 2021, vide Chief Magistrate Court Criminal Case No. S/O No. 94 of 2018)

JUDGMENT

1. Alison Kamau Susan (herein "the appellant") was arraigned before the Chief Magistrate's Court charged vide Criminal Case S/O No. 94 of 2018 ,with the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*, No. 3 of 2006 (herein "the Act").

2. The particulars of the charge states that, on the 21st day of October 2018 in Naivasha sub-County within Nakuru County, he unlawfully and intentionally caused his genital organ namely penis to penetrate the genital organ namely vagina of KWM a girl child aged 14 years old.

3. The appellant was also charged in the alternative count with the offence of indecent act with a child contrary to section 11(1) of the Act.

4. The particulars of the alternative charge are that he unlawfully and intentionally caused his genital organ namely penis to come into contact with the genital organ namely vagina of KWM a girl child aged 14 years old.

5. He pleaded not guilty to both charges and the case proceeded to full hearing. The prosecution called a total of seven (7) witnesses, while the defence case was supported by the appellant's evidence alone.

6. The prosecution case in brief is that, on the 21st October 2018, (PW1) KWM a child aged 14 years (herein the "complainant") went to look for donkeys at Mithuri area but did not find them. That as

she was returning home, the appellant confronted her and ordered her not to run away and warned her that if she tried to run away he would kill her.

7. That he pushed the complainant to the ground, tied her hands with a black rope and then covered her mouth with a piece of cloth. That, he unzipped her blue jeans, defiled her and once he was done he left her at the scene and went away.

8. That the complainant left for home but did not immediately tell her mother that she had been defiled. However, at about 11.00pm she gathered the courage and informed her mother of the defilement.

9. JWK (PW2), the complainant's mother testified that, when her daughter (PW1) KWM informed that she had been defiled, she informed her husband JMG (PW3). That the complainant was taken to hospital and a report of the incident made to the police station.

10. Apparently, the complainant informed her parents that, the suspect was wearing a marvin and a black leather jacket and based on that information her father JMG (PW2), her nephew EKM (PW5) set out to look for the suspect.

11. That the complainant's father and nephew received information that the suspect wears a mask and attacks women in the nearby bush, that they later received information from one Sossion, that the suspect was spotted spotted in the bush.

12. That upon arrival in the bush the appellant herein was arrested and a woven mask (Pexh 1), knife (Pexh 6), black bag (Pexh 7), a screw driver (Pexh. 8) and screw driver head (Pexh 10) were recovered. Further that the complainant identified the appellant and he was arrested by members of the public.

13. That as he was subjected to mob justice Corporal Nelson In-charge of Kabati Administration Camp who received the report of appellant's arrest instructed No. 208812xxxx APC James Mwanzia (PW6) to rescue him. The appellant was taken to the Camp and later transferred to Naivasha Police Station where he was charged after the investigation.

14. At the close of the prosecution case, the appellant was placed on his defence. He told the court that, on 21st October 2018, he went to church at 7.00am and returned home at 2.00 pm. That he stayed in the house until 3.00pm and was in possession of his phone through out.

15. That he was arrested on 4th November 2018, an open field within the vicinity of the victim's parents residence by members of the public who included the complainant's father JMG (PW3), her brother EK (PW5), and a boda boda rider. That he did not know why he was arrested.

16. That when he was arrested he had a laptop bag containing a hard disc, screw driver, hacksaw and a pen knife. Further he was wearing a dark green leather jacket which he bought from a supermarket within Naivasha town and which is commonly available. That 3 to 4 people have similar jackets in the streets.

17. He testified that he was taken to the Administration Camp at Kabati where the complainant identified him by his name Alison. That the complainant picked him from the crowd and stated that no identification parade was conducted.

18. He further stated that he did not know the complainant but knew the parents as they grew up together. Finally that he was a pastor with Kenya Assemblies of God at Gilgil Langalanga

19. At the conclusion of the case, the court delivered a judgment dated 26th October 2021, found the appellant guilty on the main count, and sentenced him to serve twenty (20) years imprisonment.

20. However, the appellant is aggrieved by both conviction and sentence and appeals against it on the grounds as verbatim stated below: -

a. The trial Magistrate erred both in law and fact in failing appreciate that the prosecution had failed to establish their case to the required standards i.e. beyond reasonable doubt.

b. That the trial Magistrate erred both in law and fact in failing to acknowledge and appreciate the glaring contradictions on the prosecution's case which definitely created unreasonable doubts in the prosecution's case which made it unreliable.

c. That the trial court erred in law and fact in concluding that penetration was done by the appellant.

d. That the trial court erred in law and fact in concluding that the appellant was correctly identified.

e. That the trial court erred in law and fact when it dismissed the appellant defence of which raised an alibi.

f. That the trial court erred both in law and fact when he convicted the appellant on contradicting testimonies.

g. That the trial court failed to appreciate the failure by the prosecution to call a witness who had recorded statement.

h. That the sentence imposed on the appellant is manifestly harsh and excessive in the circumstances being a first offender.

21. However, the appeal was opposed by the respondent based on the grounds of opposition dated 30th October 2022 verbatim reproduced here below: -

a. That the age of the complainant was sufficiently proved to be 14 years as provided for under Section 8(3) of the *sexual offences act*. And birth certificate produced as an exhibit.

b. That the penetration was proved under section 8(3) of the *Sexual Offences Act* through the evidence of PW1, PW4 who examined the complainant and produced P3 form and PRC form.

c. That the trial court considered the appellant defence and subsequently dismissed it.

d. That in the judgment the trial court noted that the complainant evidence was cogent and the court noted that she was a truthful witness whose evidence was unshakeable despite the defence adduced by the appellant.

e. That the trial court found that the prosecution case was proved beyond reasonable doubt and subsequently convicted him in line with section 215 of the Criminal Procedure Code.

f. That the sentence imposed by the trial court was proper and in line with the *Sexual Offences Act*. Further, that the court considered mitigation and circumstances of the offence and used discretion in sentencing the appellant to twenty (20) years imprisonment.

g. That I pray that the Honourable court be pleased to dismiss the appeal and uphold both the conviction and the sentence.

22. The appeal was disposed of vide filing of submission. The appellant filed submissions dated 2nd March, 2023 while the respondent filed submissions dated 30th October, 2022.

23. The appellant submitted that, penetration was not established beyond reasonable doubt. That despite the complainant testifying that he put his penis in her vagina, she did not explain what that entails neither did she explain whether the appellant's genital organ penetrated her genital organ.

24. That, the complainant was examined within seven (7) hours of the incident, however there were no traces of spermatozoa, nor were there any physical injuries noted on her outer genitalia. Further, the post rape care form indicated that the clinical findings did not tally with the laboratory findings meaning there was no rape.

25. The appellant relied on the case of; PKW vs Republic [2012] eKLR where the Court of Appeal held that the trial and appellant court had failed to direct their minds to the fact that the doctor did not find any injuries on the child's genitalia and that she behaved normally after the defilement, and instead placed a high premium on the finding that the child's hymen had been broken.

26. The appellant further cited the case of; *Jackson Kariuki Kamau vs Republic Criminal Appeal No. 184 of 2017* where the court found that there was no penetration as the medical examination did not find evidence of penetration despite the complainant being examined one (1) day after the incident. That the court further stated that, the complainant failed to explain what happened and that the court would not presume the term sexual intercourse meant there was penetration.

27. The appellant further submitted, the complainant's P3 form indicated that during the medical examination the complainant wore the same clothes she was wearing when she was defiled and noted the clothes were clean. That a person who had been tied and pushed to the ground would have dirty clothes with stains.

28. He faulted the trial court for failing to make a definitive finding on whether the complainant actually recognized him by his voice. He argued that for proper voice identification, he should have been well known the complainant and the trial court should have asked him to utter some words during trial but the complainant did not know him neither was he asked to utter any words during trial.

29. He cited the case of Karani vs Republic [1985] KLR 290 and Mbelle vs Republic (1984) KLR 624 where the Court of Appeal stated that recognition by voice nearly always amounts to identification by recognition but care has to be taken to ensure the complainant was familiar with the suspect'svoice and recognized it, and that the conditions were safe for identification.

30. The appellant further quoted the case of Safari Yaya Baya vs Republic [2017] eKLR where the Court of Appeal held that the complaint failed to state the exact words used by the appellant which would have enabled the complainant to recognize the appellant's voice.

31. That further the trial Magistrate erred in holding that an identification parade was not necessary as the evidence of visual identification was not supported by prior description to the police. Furthermore, despite the complainant testifying that she was able to identify the appellant due to his long rough nails and a unique walking style, he was never directed to display his hands or walk in the trial court. Thus his identification amounted to dock identification which is worthless and there was need for corroboration from either direct or circumstantial evidence.

32. He relied on the case of; Peter Kimaru Maina vs Republic CA No. 111 of 2003 where the Court of Appeal stated that dock identification alone should not be accepted unless the witness had given the description of the assailant in advance and identified the suspect in a properly conducted parade.

33. Lastly, the appellant submitted that the trial court did not considered his alibi defence despite (PW7) PC Lopatet the investigating officer stating in cross-examination that she did not investigate it.

34. That section 309 of the Criminal Procedure Code (Cap 75) Laws of Kenya allows the prosecution to adduce evidence to rebut any new matter introduced in by an accused in his defence. However, the prosecution did not apply to the trial court to obtain evidence to rebut his alibi including calling the pastor of the church he attended.

35. That in the case of; Kiarie vs Republic [1984] KLR the Court of Appeal held that an accused person who raises an alibi in answer to a charge does not have any burden in proving the same, and it is sufficient if such alibi introduced into the mind of the court doubt that is not unreasonable.

36. Further, that in the case of; Victor Mwendwa Mulinge vs Republic [2014] eKLR the Court of Appeal stated that where an appellant raise a defence of alibi for the first time during the trial the prosecution ought to apply to adduce further evidence in accordance with section 309 of the Criminal Procedure Code.

37. He argued that, his alibi defence cast reasonable doubt on the uncorroborated prosecution's case and the trial court ought to have given him the benefit of the doubt. He quoted on the case of; *Eric Otieno Meda vs Republic Criminal Appeal No. 55 of 2015* where the Court of Appeal stated that the two courts below erred in consideration and evaluation of the corroborative alibi defence and allowed the appeal.

38. However, the respondent in response submitted that the prosecution proved the the elements of the offence being; identification, penetration and the age of the victim beyond reasonable doubt. That, the complainant was able to identify the appellant who was wearing the same clothes he had during the incident when he was arrested by members of the public and taken to the police station.

39. That, evidence of penetration was adduced by the complainant who explained to the trial court how the appellant got hold of her, removed her clothes, inserted his penis into her vagina and defiled her. That her evidence was corroborated by the evidence of PW4 Jane Wambui Njoroge who produced the medical evidence that she was defiled.

40. Further, the age of the complainant was proved through the production of her birth certificate which indicated she was 14 years old. Furthermore, the trial court had an opportunity to hear the complainant and found her to be a child.

41. The respondent further submitted that, the evidence of the complainant was unshaken despite intimidation from the defence. That, the trial court took note of the provisions of section 124 of the *Evidence Act* (Cap 80) Laws of Kenya and was satisfied that the complainant was telling the truth thus the conviction was proper.

42. The respondent relied on the case of; Erick Onyango Ondeng vs Republic (2014) eKLR where the Court of Appeal noted that section 124 of the *Evidence Act* was amended to allow the trial court to convict the accused on the evidence of the victim of sexual offence where it was satisfied she was telling the truth.

43. Finally, the respondent submitted that, the trial court had a chance to hear all the witnesses and confirmed that the items the public took to the police station belonged to the appellant, and that the prosecution witnesses were cogent and corroborated each other. That in the circumstance the trial court did not error in convicting the appellant and therefore the appeal should be dismissed.

44. In considering the appeal, I note the role of 1st appellant court is as held by the Court of Appeal in the case of; Okeno vs. Republic (1972) EA 32, is to re-evaluate the evidence adduced in the trial court afresh and arrive at its own conclusion, noting that this court did not benefit of the demeanour of the witnesses.

45. In the instant matter, the offence of defilement which the appellant is convicted of is defined under section 8 (1) of the Act as follows: -

> " A person who commits an act which causes penetration with a child is guilty of an offence termed defilement."

46. Pursuant to the afore provision for the prosecution to prove its case beyond reasonable, it has to prove the well settled ingredients of the offence as stated in the cases of; Bassita Hussein vs. Uganda Crimial Appeal No. 35 of 1995, where the Supreme Court of Uganda stated that, in order to constitute the offence of defilement the following must be proved: (i) the facts of the sexual intercourse (ii) the age of the victim being under 18 years (iii) participation by the accused in the alleged sexual intercourse.

47. In evaluating the evidence herein in relation to the element of age, I note that the appellant submitted that the element of age is not challenged and the respondent in its submissions stated that the age of the complainant was proved through the production of a birth certificate.

48. Further the trial court in in dealing with the issue of age stated that;

> " from the evidence adduced the following are uncontested; that PW1 was aged 14 years at the time of the incident".

49. However, upon considering the evidence adduced and perusal of the documents produced as exhibits, I note that none of the prosecution witnesses; the complainant (PW1) her mother (PW2) JWK and (PW3) JMG testified to the age of the complainant.

50. Further, the prosecution produced thirteen (13) exhibits but there is no single document, that was produced either in the form of a birth certificate, birth notification, baptismal card or other document to prove the age of the complainant.

51. In that regard it is noteworthy that in the case of; Kaingu Elias Kasono vs Republic, Criminal Appeal No. 54 of 2010 the Court of Appeal held as follows:-

> " Age of the victim of the sexual assault under the *Sexual Offences Act* is a critical component. It forms part of the charge which must be proved in the same way as penetration in cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed upon conviction will be dependent on the age of the victim"

52. Further in; Hadson Ali Mwachongo vs. Republic (2016) eKLR; the Court of Appeal stated that: -

> " The importance of proving the age of a victim of defilement under the *Sexual Offences Act* by cogent evidence cannot be gainsaid. It is not in doubt that the age of the victim is an essential ingredient of the offence of defilement and forms an important part of the charge because the prescribed sentence is dependent on the age of victim. In *Alfayo Gombe Okello vs. Republic Cr. App. No. 203 of 2009* (Kisumu). This Court stated as follows; "In its wisdom Parliament chose to categorize the gravity of that offence on the basis of the age of the victim, and consequently the age of the victim is a necessary ingredient of the offence which ought to be proved beyond reasonable doubt. That must be so because dire consequences flow from proof of the offence under section 8(1)."

53. Based on the afore said, it is evident and finding of this court that the age of the complainant was not proved. It is immaterial that the appellant did not contest it. It is the duty of this court to re-evaluate the evidence afresh and arrive at its own conclusion.

54. The next issue to consider is whether the element of penetration was proved. The term penetration the term is defined under section 2 of the Act as "the partial or complete insertion of the genital organs of a person into the genital organs of another person."

55. In the instant matter, PW4 Jane Wambui Njoroge testified that when the complainant was examined she was found to have remnants of hymen with no active bleeding. That she had whitish discharge and no spermatozoa was detected. That the doctor who examined her formed the opinion that, the afore features were consistent with sexual assault.

56. The trial court relied on the evidence of this witness PW4 Jane Wambui Njoroge and stated that; "the Clinic Officer confirmed the next day that she was engaged in sexual activity though there was no active bleeding" and then the trial court held that the issue of penetration was not in dispute.

57. In evaluating the evidence herein on penetration I note that it was the complainant's evidence that she was defiled. Further PW2 JWK, the complainant's mother testified that when they visited the scene, they found it disturbed and in cross examination by the defence counsel she stated that: -

> " I went to the scene of the incident that same night. The soil and vegetation was disturbed. There was a rape there. My daughter was tied on a tree. There were rope marks on her hands"

58. Further (PW3) JM, the complainant's father stated in cross-examination that

> " We went to the scene of the incident the same day around 6.30pm with neighbours. I found a rope (blackish) about 2m. The vegetation was disturbed. There was bush and tree".

59. Furthermore, PW4 gave evidence and produced the P3 and PRC forms as an expert witness. She clearly stated that both P3 form and PRC form indicated findings of "remnants of hymen". She explained that the absence of bleeding was due to the fact that the complainant may have been involved in a previous sexual activity. The witness further stated these findings were consistent with sexual assault. It suffices to note that her evidence was not challenged through cross-examination or alternative medical opinion.

60. However, PW4 was not the maker of the P3 and PRC forms. A look at the trial court's record shows that there is no where in the proceedings that the trial court asked the appellant whether he would concede to PW4 producing the subject documents.

61. In the case of Soki v Republic [2004] eKLR the Court of Appeal stated that: -

> " Before we allow this appeal, as we must do, we need to comment on the manner PW3 (Exh 1) was produced and the way it was dealt with by the trial court and the superior court. Section 77(1) allows any document purporting to be a report under hand of a government analyst, medical practitioner or any ballistics expert, document examiner or geologist upon any person, matter or thing submitted to him for examination or analysis to be used in evidence. The same could be produced by a police officer as was done in this case provided the accused does not object. It is however necessary that in a case such as this where an accused person is not represented by a counsel, that the accused be made aware of the consequences of the P3 or such other documents being produced by the police in the absence of the maker of such a document. The Court should explain to the accused his right to insist on seeking to cross-

examine the maker if he so wishes. In this case, the appellant, should have been made aware that he could seek to cross examine the maker of P3 if he so wished...."(emphasis added)

62. Similarly, the Court of Appeal in the case of; *Juma Kalio v Republic (Criminal Appeal 71 of 2000)* [2001] KECA 88 (KLR) (25 January 2001) (Judgment) held that:

> " The report on P3 form subject matter of the complaint is such document which under section 77 of the Act may be produced in evidence, in an appropriate case by a person other than the maker of the same. This Court has however held in earlier decisions see in particular Boniface Karere Nderi v Republic Criminal Appeal No. 39 of 1990, and Njoroge Ndungu v Republic Criminal Appeal No. 31 of 2000 (unreported):-
>
> > "That the trial court is obliged after admitting the report in evidence to inform the accused particularly where he is unrepresented of his right to require the maker of the report be called to be cross -examined on its contents.".

63. In the instant matter, the PRC form states that, "the clinical findings are not supported by the lab tests." In that case, it is only the maker thereof who could have explained. Further, the P3 form indicates there was "remnants of hymen" which may have required explanation of the maker and what that meant.

64. Indeed, the courts have held that where the maker is not called such evidence is of lower probative value, as held by the Court of Appeal in *Okumu v Republic (Criminal Appeal 178 of 2018)* [2023] KECA 353 (KLR) (31 March 2023) (Judgment): -

> " In our view, section 77 cannot be read in isolation because it is more concerned with the authenticity of a document as opposed to the procedure of its production in court. The section in itself gives the court leeway to presume that documents are genuine and admit the same without requiring the appearance of the maker. But what is the probative value of such evidence in court? In our view, a document produced in the absence of its maker is of a lower probative value as compared to one which is produced by the author. The reason is simple, where the maker of the document attends the trial, the document and its contents and conclusions will be subjected to cross-examination hence testing the veracity thereof."

65. Based on the afore I hold and it is the finding of this court that the element of penetration was not proved to the required standard, as the medical evidence that was intended to corroborate the complainant's evidence was not properly adduced and/or admitted. Consequently, conviction on the main count cannot upheld.

66. However, as regards the alternative count, section 2 of the Act defines an indecent act as: -

> an unlawful intentional act which causes—
>
> (a) any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration;
>
> (b) exposure or display of any pornographic material to any person against his or her will;

67. The last and crucial question is whether the appellant committed the offence in the alternative count. The complainant testified that she could identify the appellant by the voice and clothes he wore on the material date, as he was arrested wearing the same clothes on the date of arrest.

68. In the judgment of the trial court, it was held that, the complainant positively identified the assailant in that the incident took place at 4.00pm when "the quality of natural light was good enough". The court further stated that the incident took substantial amount of time, as the appellant tied the complainant on the tree first before committing the offence

69. That further still, though the appellant had a marvin, which he used to cover his face, he did not have it all through. Therefore he was identified vide facial features, voice, walking style and clothes he wore.

70. The trial court also relied on the provisions of section 124 of *Evidence Act*, the Court of appeal case of J.W.A -vs- R (2014) eKLR and noted that it had a chance to exam the demeanour of PW1 and that: -

> "She was brave despite the ordeal she had gone through". That upon recall for cross-examination "her evidence was never shaken, even under intense cross-examination she was a truthful witness. She was specifically certain of the accused's clothes, voice and feature. I have no reason to doubt her testimony"

71. Finally, the trial court analysed the discrepancies in evidence on the colour of jacket the appellant was allegedly wearing and the recovery of rope and held both to be immaterial and then convicted the appellant

72. In evaluating the evidence on identification of the appellant, I find that PW1 stated that the appellant was wearing a marvin and and black leather jacket and identified them in court as (Pexh 1) and (Pexh 2) respectively and that they were the clothes he was wearing when he was arrested.

73. PW2, testified that, PW1 told her the rapist had a black leather jacket and brown trouser. PW3 testified that when the appellant was arrested he was dressed in a black jacket and black hat. PW5 testified that they had information rapist wore a blue woven mask and when the appellant was arrested, it was recovered as he was found sitting on it.

74. Based on the evidence afore it is clear, the appellant was arrested wearing inter alia, a Marvin or woollen mask a and "black leather jacket". It suffices to note that, the colour of the jacket was contested. However, although this court does not have the benefit of seeing the physical jacket. the trial court addressed the issue in its judgment.

75. If the jacket is the one he wore on the date of arrest the appellant was wearing on the date of arrest is the same that he wore on the material date of the alleged defilement, then he cannot escape involvement in the crime.

76. On the issue of identification parade, as much as it was necessary I agree with the findings of the trial court that as the witnesses had already seen the appellant at the time of arrest, the conduct of same would have been superfluous.

77. On the issue of alibi, I note that it was introduced the defence stage. The prosecution could not rebut it at that stage. In the case of Kiarie v R (1984) KLR the Court of Appeal laid down the following principle in relation to alibi and stated:

> "An alibi raises a specific defence and an accused person who puts an alibi as an answer to a charge does not in law thereby assume any burden of proving that answer and its sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable. The Judge

had erred in accepting the trial Magistrate's finding on the alibi because the finding was not supported by any reasons."

78. In the South African case of; Ricky Ganda vs. The State, [2012] ZAFSHC 59, the Free State High Court, Bloemfontein held:

> " The acceptance of the evidence on behalf of the state cannot by itself be sufficient basis for rejecting the alibi evidence. Something more is required. The evidence must be considered in its totality. In order to convict there must be no reasonable doubt that the evidence implicating him is true…the correct approach is to consider the alibi in light of the totality of the evidence in the case and the courts impression of the witnesses…it is acceptable in totality in evaluating the evidence to consider the inherent probabilities…The proper approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and having done so, to decide whether the balance weigh so heavily in favour of the state as to exclude any reasonable doubt about the accused's guilt."

79. But even if the court were to consider the alibi defence, it cannot hold. The appellant admits, he was arrested in an open field, and therefore corroborates the prosecution case. As much as he alleges that, he was a pastor, he does not explain what he was doing in the field with the items recovered from him which could be used to intimidate victims of crime. The rope recovered from the scene was just one such item.

80. All in all I find that, the alibi defence is not tenable. The victim's description of the clothes the appellant was wearing prior to his arrest and subsequent arrest in the same and the fact that, the incident took place in broad day light, coupled with the manner and circumstances under which the appellant was arrested, in the bush with otherwise crude weapons, seated on a marvin or mask does not exonerate him from commission of the offence herein.

81. The upshot of the afore is that, the conviction herein on defilement is set aside and substituted with conviction on the alternative count of committing an indecent act with a child. Similarly, the sentence of twenty (20) years is set aside and substitute it with a sentence of ten (10) years imprisonment, which will run from the date of the appellant's arraignment in the trial court being; 6th November, 2018.

82. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 26TH DAY OF SEPTEMBER, 2024

GRACE L. NZIOKA

JUDGE

In the presence of:

The appellant present virtually

Mr. Bogongo for the appellant

Ms. Mugoi for the respondent

Mr. Komen: Court Assistant