



**Maritim & 2 others v Republic (Criminal Appeal E014 of 2023)
[2024] KEHC 15373 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL APPEAL E014 OF 2023
RL KORIR, J
NOVEMBER 28, 2024**

BETWEEN

SAMUEL KIPRONO MARITIM 1ST APPELLANT

JOYCE MARITIM 2ND APPELLANT

GEOFFREY MARITIM 3RD APPELLANT

AND

REPUBLIC RESPONDENT

*(From the Conviction and Sentence in Criminal Case Number 498 of 2020
by Hon. Kiniale L in the Senior Principal Magistrate’s Court at Bomet)*

JUDGMENT

1. The Appellants were charged for the offence of damage to property contrary to section 339(1) of the Penal Code. The particulars of the offence were that on diverse dates between 1st January 2020 and 24th May 2020 at Ndaraweta Location within Kabusare Sub-Location of Bomet County, jointly with others not before court, willful and unlawfully destroyed by way of cutting down trees valued at Kshs 100,235/= the property of Franklin Langat and Janeth Yegon.
2. The Appellants were also charged with the second count of fraudulently procuring the registration of a document related to land contrary to section 157(1) of the *Land Act*, No. 6 of 2012. The particulars of the offence were that on diverse dates between 4th November 2016 and 16th November 2016 at Bomet Land Registry within Bomet Central Sub-County within Bomet County, jointly with others not before court fraudulently procured the registration of a document related to land namely title deed numbers Kericho/Ndaraweta/3311, Kericho/Ndaraweta/3309 and Kericho/Ndaraweta/3310.
3. The 3rd Accused faced the third count of intermeddling with the deceased property contrary to section 45(1) as read with section 45(2) (9) of the *Law of Succession Act*. The particulars of the offence were



- that on diverse dates between 9th February 2009 and 17th March 2009 at Ndaraweta Location within Kabusare Sub-Location of Bomet County, jointly with others not before court, intermeddled with the deceased's property of Kipsoi Arap Ngasura namely Kericho/Ndaraweta/598 by selling without following the due process of succession.
4. The 3rd Accused also faced the fourth count of obtaining by false pretences contrary to section 313 of the Penal Code. The particulars of the offence were that on diverse dates between 9th February 2009 and 17th March 2009 at Ndaraweta Location within Kabusare Sub-Location of Bomet County, with intent to defraud, obtained from Franklin Langat the sum of Kshs 169,780/= by falsely pretending that he could sell him a parcel of land.
 5. At the conclusion of the trial, the Appellants were each convicted on the first count of malicious damage to property. Additionally, the 3rd Accused was convicted on the third count of intermeddling with the deceased property and the 4th count of obtaining by false pretences. The Appellants were each sentenced to serve 2 years' probation.
 6. Being dissatisfied with the Judgement delivered on 15th March 2023, the Appellants appealed and relied on the following grounds:-
 - i. That the learned trial Magistrate erred in law and fact by finding that the Appellants were guilty of the offences they were charged with when no evidence was adduced by the Prosecution to prove the same.
 - ii. That the trial Magistrate erred in law and fact by failing to consider the evidence and defence of the Appellants alongside their submissions.
 - iii. That the trial Magistrate erred in law and fact by convicting the Appellants contrary to the evidence on record.
 - iv. That the trial Magistrate erred in law and fact by finding that a prima facie case had been established by the Prosecution and placing the Appellants on their defence.
 - v. That the trial Magistrate erred in law and in fact by convicting the Appellants herein when neither the basic ingredients of mens rea and actus reus had been proven.
 - vi. That the trial Magistrate erred in law by basing her Judgement on inconsistent, incredible and contradictory evidence by the Prosecution's witnesses.
 - vii. That the Judgement and conviction of the learned trial Magistrate was against the weight of the evidence.
 - viii. That the learned trial Magistrate completely misunderstood the case that was before her, misconceived the issues and as a result, came to a wrong decision that was unlawful, biased and untenable in law.
 7. This being the first appellate court, I have a duty to re-evaluate the evidence on record and come to my own independent conclusion. See *Odhambo vs Republic Cr. App No. 280 of 2004 (2005) 1 KLR.*

The Prosecution/Respondent's case

8. It was the Prosecution's case that the three Appellants unlawfully cut down trees valued at Kshs 100,235/= the property of Franklin Langat (PW6) and Janeth Yegon (PW4).
9. It was the Prosecution's case that Franklin Langat (PW6) had bought parcels of land from Geoffrey Maritim (3rd Appellant), Joyce Maritim (2nd Appellant) and Wilson Maritim. Franklin (PW6) stated



that after buying the parcels of land, he planted gravellia and eucalyptus trees. That he lived on the parcel of land from 2009 to 2020 when the 3 Appellants invaded his land and among others, cut down his trees.

10. The Prosecution stated that the 3 Appellants also cut down trees belonging to Janeth Yegon (PW4). The Prosecution further stated that Samuel Sigonik (PW2) was an eye witness to the destruction of PW4's trees.
11. It was the Prosecution's case that the damage was assessed by Gilbert Korir (PW8) who found that Janeth (PW4) trees were valued at Kshs 25,227/= and Franklin's trees were valued at Kshs 68,330/= which made it a cumulative damage of Kshs 93,557/=.
12. The Prosecution stated that the 3 Appellants had procured title deeds for themselves without following the due process of succession. That the subject land belonged to their deceased father, Kipsoi Arap Ngasura. They further stated that the Appellants intermeddled with the deceased's estate when they sold off portions of the land to Franklin (PW6) and to PW4's husband (Nicholas Yegon).

The Appellants'/Accused's case

13. The Appellants denied committing the offence and stated that the subject land belonged to their deceased father. That they took out succession proceedings and each beneficiary got a share of the land. They further stated that Franklin (PW6) was an invader on their land and that he had unsuccessfully sued them in a civil suit.
14. The Appellants all denied the allegations of forging title deeds.
15. On 6th September 2023, parties took directions to canvass the Appeal by way of written submissions.

The Appellants' written submissions.

16. Through their submissions dated 28th November 2023, the Appellants submitted that the Prosecution did not establish the ingredients for the offence of malicious damage to property. That the Prosecution failed to prove ownership of the subject land and the trees. They relied on *Dominic Mutisya Kasini vs Republic (2019) eKLR* and *Joshua Thurania vs Republic (2014) eKLR*.
17. It was the Appellants' submission that the Prosecution failed to prove that it was the Appellants who caused the destruction by cutting down the trees. That the only eye witness's (PW2) testimony was uncorroborated and lacked detail like the date of the commission of the offence. They relied on *Kennedy Mugambi & 3 others vs Republic (2020) eKLR*. It was their further submission that the Prosecution failed to prove their case to the required standard.
18. The Appellants submitted that the trial court disregarded their defences. That instead of ensuring that the Prosecution proved their case, the trial court made the Appellants prove their innocence and this shifted the burden of proof from the Prosecution to the Appellants. They relied on *Stephen Gitwa Kimani vs Republic (2017) eKLR* and *Elizabeth Waithiengi Gatimu vs Republic (2015) eKLR*.
19. It was the Appellants' submission that the lower court case was an abuse of the court process. That it followed an unsuccessful civil suit by Franklin (PW6) being Bomet Principal Magistrate's Court Civil Suit Number 90 of 2017 – *Franklin Langat vs Geoffrey K. Maritim and Joyce Maritim*. It was their further submission that PW6 was a sore loser who unnecessarily vexed them by being a complainant in the trial court. They relied on *Republic vs Julius Njoroge Kamau (2019) eKLR*.



20. The Prosecution/Respondent failed to file their submissions despite being granted a final time extension to file their submissions on 25th July 2024. This court did not therefore benefit from their submissions in considering this Appeal.
21. I have gone through and given due consideration to the trial court's proceedings, the Record of Appeal dated 11th September 2023 and the Appellants' written submissions dated 28th November 2023. The following issues arise for my determination:-
- i. Whether the Prosecution proved its case beyond reasonable doubt.
 - ii. Whether the prosecution in the trial court was an abuse of the court process.
 - iii. Whether the Appellants' defences placed doubt on the Prosecution's case.
 - iv. Whether the sentences preferred against the Appellants were harsh and severe.

Whether the Prosecution proved its case beyond reasonable doubt

22. Regarding the charge of malicious damage to property, section 339(1) of the Penal Code provides:-

Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and is liable, if no other punishment is provided, to imprisonment for five years.

23. Odunga J. (as he then was) in *Timothy Mutuku Kitonyi vs Republic* (2021) eKLR held:-

“I agree with Ngenye Macharia, J's finding in *Wilson Gathungu Chuchu vs. Republic* [2018] eKLR that under the above definition, the elements of the offence may be dissected as proof of ownership of the property; proof that the property was destroyed or damaged; proof that the destruction or damage was occasioned by the accused; and proof that the destruction was wilful and unlawful.”

24. Additionally, in *Simon Kiama Ndiagui vs. Republic* (2017) eKLR, Ngaah J. held:-

“In order to convict the court must be satisfied that, first, some property was destroyed; second, that a person destroyed the property; third that the destruction was willful and therefore there must be proof of intent; and fourth, the court must also be satisfied that the destruction was unlawful.....

.....suggestion in this provision that ownership of the destroyed property must be established for liability to attach. My take on this issue is that ownership of the property is a relevant but not the defining factor; it may be taken into account amongst other evidence that tends to establish that the offence was committed. It follows that failure to prove ownership is not fatal to the prosecution case and to this extent I agree with the learned counsel for the state.”

25. Similarly, in *Republic vs. Jacob Mutuma & another* (2018) eKLR, Majanja J. (as he then was) held:-

“In my view, it is not difficult to see why the offence is not necessarily tied down to ownership of particular property. It is to prevent wanton destruction of property that may lead to lawlessness and people taking the law into their own hands.”



26. For the present case and under the charge of malicious damage to property, this court was to determine whether there was actual destruction or cutting down of PW4 and PW6's trees and whether it was the Appellants who caused it.
27. To give a background to this case, it was alleged by Janeth Yegon (PW4) and Franklin Langat (PW6) that the Appellants sold them part of the land (Kericho/Ndaraweta/598). That after they had purchased the said land, they occupied it and developed it by planting trees and other crops and PW6 put up a house. That after sometime, it was alleged that the Appellants came and chased PW4 and PW6 from the land and cut down their trees. After the matter was reported to the police and investigations concluded, it was established by the investigating officer that Kericho/Ndaraweta/598 was registered in the name of the Appellant's deceased father and had not undergone succession at the point of the alleged sales.
28. On the charge of malicious damage to property, Janeth Yegon (PW4) stated on diverse dates between 1st January 2020 to 24th May 2020, the Appellants came to her land and cut her trees valued at Kshs 25,211/=. When she was cross examined, she stated that she did not see who cut down the trees.
29. Franklin Langat (PW6) stated that the Appellants invaded his land and cut down his eucalyptus and gravellia trees and told him there was nothing he could do. That he took photographs and after reporting the incident to the police, they came and took more photographs. When he was cross examined, his testimony remained uncontroverted.
30. Samwel Sigonik (PW2) who was the Appellants' neighbour stated that he witnessed the Appellants cutting down the trees and bananas. That the incident took place in broad daylight. His testimony remained uncontroverted upon cross examination. Robert Kipngeno Korir (PW9) testified that he was the Appellants' neighbour and that he saw Franklin's (PW6) trees being cut. That however, he did not see PW4's trees being cut. PW9's testimony remained uncontroverted upon cross examination.
31. No. 230945 CIP Boniface Mulee (PW10) who was the investigating officer stated that after he received complaints from PW4 and PW6, he went to the scene with the Environment Officer (PW8) and found that trees had been cut. That in addition to the destruction of trees, there were also cut avocado and banana stems. PW10 stated that PW6 had taken some photographs before he arrived and he forwarded to him and he produced the same as P.Exh 7 a-m. That photograph 7a showed the 1st Appellant cutting down trees. PW10 further produced a certificate of photographic print as P.Exh 7n.
32. PW10 further produced the photographs he personally took at the scene as P.Exh 10 a-h. He further produced a certificate of photographic print as P.Exh 10i. Section 78(1) of the *Evidence Act* provides:-
- In criminal proceedings a certificate in the form in the First Schedule to this Act, given under the hand of an officer appointed by order of the Director of Public Prosecutions for the purpose, who shall have prepared a photographic print or a photographic enlargement from exposed film or an electronic and digital medium submitted to him, shall be admissible, together with any photographic prints, photographic enlargements and any other annex referred to therein, and shall be evidence of all facts stated therein.
33. I have considered the exhibits above and their accompanying certificates and it is my finding that the photographs marked as P.Exh 7 a-n and P.Exh 10 a-h are admissible. The photographs showed trees that have been cut down and a destroyed dwelling house. The investigating officer (PW10) stated that the person in photograph 7a who was standing in the middle of cut trees was the 1st Appellant. The 1st Appellant through his counsel did not challenge this evidence in cross examination. The evidentiary burden shifted to the 1st Appellant to disprove his identity on the photograph but he



did not discharge it. Further, photograph 7c showed the 1st Appellant physically cutting a tree. This evidence corroborated the eye witnesses (PW2 and PW9) testimonies that the Appellants cut down the complainant's trees.

34. Further to the above, Gilbert Korir (PW8) who was an Environment Officer stated that he visited the scene and found trees that had been cut. That he conducted an assessment of the damage and stated that he found on Janeth's (PW4) parcel, the total damage of trees cut as Kshs 25,227/=. That on Franklin's (PW6) parcel, the total damage of trees was Kshs 68,330/=. He produced an assessment report as P.Exh 9. I have looked at the assessment report and it corroborated PW8's testimony.
35. Having analysed the above, it is my finding that there was evidence of malicious destruction of trees. The same was shown through the pictures (P.Exh 7 a-n and P.Exh 10 a-h) and the testimonies of the complainant (PW4 and PW6), their neighbours (PW2 and PW9), the Environment Officer (PW8) and the Investigating Officer (PW10). The Appellants' testimonies which majorly focused on the issue of succession and title deeds did not controvert the Prosecution's evidence above.
36. Flowing from the above, it is my finding that the Prosecution proved their case on the charge of malicious damage to property against the Appellants.
37. The trial court dismissed the second count of fraudulently procuring the registration of a document related to land. The trial court held that no documents (Titles of Green Cards) had been produced before it and consequently the allegation of fraud could not be proved. This court shall not dwell on this charge in this Appeal for the reason that the issue of ownership of the subject land in this case can only be determined in the Environmental and Land Court as this court has no jurisdiction to determine the same. Section 13 of the *Environment and Land Court Act* provides:-
 - (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.....
38. Regarding the third count of intermeddling with the deceased property, even though the charge was premised on the *Law of Succession Act*, courts have held that intermeddling with a deceased's estate was a criminal offence. I associate myself with Musyoka J. in *Veronica Njoki Wakagoto (Deceased) (2013) eKLR*, where he held:-

“The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without



authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

39. Similarly in *Benson Mutuma Muriungi vs. C.E.O. Kenya Police Sacco & Another* (2016) eKLR, Gikonyo J. observed:-

“.....I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under Section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

40. In the present case, Janeth (PW4) and Franklin (PW10) stated that the Appellants sold them parts of Kericho/Ndaraweta/598 in the year 2009. The Investigating Officer (PW10) produced Sale Agreements between PW4, PW6 and the Appellants. He produced them as P.Exh 1-6. This charge was specific to the 3rd Appellant and I have confirmed that in P.Exh 3, the 3rd Appellant sold 0.482 acres of Kericho/Ndaraweta/598 to Franklin (PW6) on 13th February 2009 and in P.Exh 2, the 3rd Appellant sold 0.1 acres of Kericho/Ndaraweta/598 to Franklin (PW6) on 9th February 2009.
41. Samuel Kimutai Maritim (PW1) who was the 3rd Appellant’s brother stated that his siblings sold the subject land after their father had died. That it was their mother who allowed them to sell off some portions and that Samwel (1st Appellant) was the administrator. PW1 further stated that he was a witness to the Sale Agreements. This testimony was corroborated by Samwel Sigonik (PW2), Benard Mutai (PW3) and Samwel Cheruiyot Sigei (PW5) and the Investigating Officer (PW10).
42. The 1st Appellant stated that they did succession on their father’s land (Kericho/Ndaraweta/598) and further produced a Certificate of Confirmation of Grant dated 10th July 2017 as D.Exh.2. When the 1st Appellant was cross examined, he stated that upon their father’s death, he had not subdivided the land and he settled on his piece of land before they filed succession. The 3rd Appellant stated in his testimony that the family did succession proceedings and each beneficiary got a share of the land.
43. Having looked at the Certificate of Confirmation of Grant (D.Exh 2) and considered the testimonies of the Prosecution’s witnesses and the Appellants, it was clear to me that succession proceedings were taken out after parts of the deceased’s estate had been sold. The law allows one to distribute an estate once succession proceedings are complete and a Certificate of Confirmation of Grant issued. In the present case, the sale and purchase of the deceased’s land was done in the year 2009 while the Certificate of Confirmation of Grant was issued on 10th July 2017 which meant that the transactions took place before the deceased’s family took out succession proceedings and this was in violation of the provisions of section 45(1) of the *Law of Succession Act* which provides:-

Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

44. Based on the analysis above, I am satisfied that the Prosecution proved the charge of intermeddling with a deceased’s property against the 3rd Appellant. What was surprising to this court was the Prosecution’s failure to equally charge the 1st Appellant as the evidence clearly pointed to his culpability in intermeddling with the deceased’s estate. It was also surprising that the complainants who were purchasers of the deceased’s property and therefore intermeddlers were not also taken to task to exonerate themselves.



45. On the fourth count of obtaining by false pretences against the 3rd Appellant, the referenced Sale Agreements being P.Exh 2 and P.Exh 3 indicate that the 3rd Appellant received the 1st instalments of Kshs 30,000/= and Kshs 120,000/= respectively from Franklin (PW6) for the purchase of 0.1 acres and 0.482 acres of the deceased's estate. As stated earlier, the 3rd Appellant was culpable of intermeddling with the deceased's estate and he had no power or authority to deal with the deceased's estate up and until the court issued a Certificate of Confirmation of Grant. The 3rd Appellant was not in a position to sell and pass a good title to PW6.
46. The above analysis satisfied the ingredients of the offence as captured in section 313 of the Penal Code which provided:-
- Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour and is liable to imprisonment for three years.
47. In totality, it is my finding that the Prosecution proved its case beyond reasonable doubt against the Appellants as elaborated above. I affirm the conviction.

Whether the prosecution in the trial court was an abuse of the court process.

48. The Appellants submitted that the criminal trial was an abuse of the court process as it followed an unsuccessful civil suit instituted by the complainant (Franklin Langat) against them (Appellants). That the complainant used the criminal trial to vex them.
49. I have gone through the Petition of Appeal dated 19th April 2023 and I have noted that the Appellants did not raise the issue of the abuse of the court process as one of the grounds of their Appeal. This issue was only found in their submissions. The place of submissions was stated by the Court of Appeal in Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another (2014) eKLR where it held:-
- “Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented.” (Emphasis mine)
50. Similarly in *Osiri vs Onda Mechanical (EA) Limited & 2 others (Appeal E184 of 2022) [2024] KEELRC 1802 (KLR) (5 July 2024) (Ruling)*, Abuodha J. held:-

“From the above observations, it is clear that submissions have a part to play in any proceedings before the Court but they do not and cannot take the place of pleadings and evidence by the parties. They are a party's parting shot in any issue before the Court and constitute his voice on the opinion he holds on the issue. This does not mean that the opinion is final or a command to the court to ensure that it follows them or considers them. It is good practice and indeed useful for the Court to consider submissions filed in a matter. They may shape or influence or even make it easier for the judge to understand or perceive the evidence for or against a case before such a judge.....”



51. Flowing from the above, it is my finding that the Appellants did not raise the issue of the abuse of the court process as one of their grounds of their Appeal. Without such a ground of appeal the submissions were of no value as there was no intuition to this court to interrogate the trial court proceedings for any abuse of the court process. It is therefore my further finding that this court is unable to find that the Prosecution of the Appellants in the trial court was an abuse of the court process.

Whether the Appellants’ defences placed doubt on the Prosecution’s case.

52. The 1st Appellant, Samuel Maritim (DW1) denied committing the offence of malicious damage to property. He stated that the subject land belonged to their father, Kipsoi Arap Ngasura and they did succession on the said land and the same was confirmed by a Grant dated 10th July 2017. DW1 denied that he sold land to Frankline (PW6) and that they still stayed on the land without any issues. DW1 further stated that he did not forge any title deed and no evidence was adduced to back up that claim.
53. The 2nd Appellant, Joyce Maritim (DW2) denied committing the offence of malicious damage to property. That she did not sell any land to Janeth (PW4) or Franklin (PW6) and there was no agreement showing the same. DW2 stated that she did not forge any title deed.
54. The 3rd Appellant, Geoffrey Maritim (DW3) denied committing the offences of malicious damage to property, intermeddling with the deceased’s property and obtaining by false pretences. That the family did a succession cause and each of the 5 beneficiaries got a share. DW3 stated that he did not forge any title deed and that it was Franklin (PW6) who invaded the deceased’s land.
55. I have gone through and given due consideration to the Appellant’s defences. Other than denying the offences and as stated earlier, the Appellants defences did not address the issue of cutting down the complainant’s trees, intermeddling with the deceased’s estate and obtaining by false pretences. The 1st Appellant’s defence focused on the succession of the subject land (Kericho/Ndaraweta/598). The 2nd Appellant denied selling land to Janeth (PW4) and Franklin (PW6). The 3rd Appellant stated that they did succession on the subject land and further denied forging any title deed. In sum, the Appellants’ defences focused majorly on the dispute of ownership of the parcels of land that they had illegally sold off to PW4 and PW6.
56. In the circumstances thereof, it is my finding that the Appellants’ defences are weak and did not create any doubt on the Prosecution’s case which I have already found proven.

Whether the sentences preferred against the Appellants were harsh and severe.

57. Having convicted the Appellants, the trial court sentenced each of the Appellants to 2 years’ probation on condition that they adopt a reconciliatory and compensation approach to foster restorative justice.
58. It is therefore important to set out the circumstances under which an appellate court interferes with sentence. The Court of Appeal in Shadrack Kipkoech Kogo vs R. Eldoret Criminal Appeal No.253 of 2003 stated thus:-

“ sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered”



59. For the offence of malicious damage to property, section 339(1) of the Penal Code provided:-

Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and is liable, if no other punishment is provided, to imprisonment for five years.

60. For the offence of intermeddling with the deceased's estate, section 45(2) of the Law of Succession provided:-

- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

61. For the offence of obtaining by false pretence, section 313 of the Penal Code provided:-

Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour and is liable to imprisonment for three years.

62. Having considered the circumstances of the case, I am convinced that the trial court did not err when it sentenced the Appellants to 2 years' probation. For avoidance of doubt, the 1st Appellant was sentenced to 2 years' probation for the 1st count of malicious damage to property, the 2nd Appellant was sentenced to 2 years' probation for the 1st count of malicious damage to property and the 3rd Appellant was sentenced to 2 years' probation for the 1st count of malicious damage to property, the 3rd count of intermeddling with the deceased's estate and the 4th count of obtaining by false pretences. These sentences, in my view, were lenient and fair.

63. In the final analysis, I uphold the convictions and the sentences meted by the trial court. The Appeal dated 19th April 2023 has no merit and is dismissed.

Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 28TH DAY OF NOVEMBER, 2024.

R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr. Mugumya for the Appellants, Mr. Njeru for the State and Siele (Court Assistant).

