



**Republic v Rotich & 4 others (Anti-Corruption and Economic Crimes Appeal 1 of 2018)
[2022] KEHC 11673 (KLR) (Anti-Corruption and Economic Crimes) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 11673 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES APPEAL 1 OF 2018**

EN MAINA, J

JUNE 30, 2022

BETWEEN

REPUBLIC APPELLANT

AND

REGINA CHEPKEMBOI ROTICH 1ST RESPONDENT

JIMMY MUTUKU KIAMBA 2ND RESPONDENT

STEPHEN OGAGA OSIRO 3RD RESPONDENT

LILIAN WANJIRU NDEGWA 4TH RESPONDENT

NANCY WAITHERA KIRURI 5TH RESPONDENT

(Being an Appeal from the judgment of the Chief Magistrate's Court at Nairobi (Hon. K. Bidali) delivered on 11th January, 2018 in Milimani Anti-Corruption Case No. 7 of 2015)

JUDGMENT

Introduction

1. The Appellant is the Republic through the Director of Public Prosecutions and the 1st to 5th Respondents are former employees of the County Government of Nairobi who at the material time were holding the positions of a Senior Secretary in the Finance Department, (and more especially secretary to the 2nd Respondent) Chief Officer Finance, Head of County Treasury, County Secretary and Head of County Budget and Expenditure respectively. They were charged in Nairobi Anti-Corruption Case No. 7 of 2015 with ten counts of corruption related offences, exclusive of the alternative charges, contrary to the provisions of the *Anti-Corruption and Economic Crimes Act*, 2003. The offences are alleged to have been committed between 1st November 2013 and 3rd December 2014.



2. The gravamen of the case is that the Nairobi City County allegedly lost approximately Kshs. 17,902,728 public funds through the joint enterprise of the Respondents in alleged irregular procurement at the Nairobi City County. The Respondents are alleged to have used direct procurement method in place of open tender or request for quotation methods as required under the *Public Procurement and Disposal of Assets Act* 2005 (repealed) which was the applicable procurement law at the material time. A total of Kshs. 17,902,728 was paid to the 1st Respondent from the Nairobi County Government Imprest Account 011xxxxxxxxxxx held at Cooperative Bank City Hall Branch whose signatories were the 2nd, 3rd and 4th Respondents. The Respondents were subsequently charged with various counts of corruption related offences in Acc No. 7 of 2015.
3. After hearing the evidence of the prosecution's witnesses, the trial court delivered a ruling dated 5th September 2017 and made a finding that the prosecution had not established a prima facie case against all the accused persons in respect to Count 1; against the 1st Respondent on count 2 and against the 3rd and 4th Respondents on Count 10 and acquitted them under Section 210 in respect to those counts and placed the accused persons/respondents on their defense in respect of Counts 3,4,5,6,7,8 and 9.
4. At the culmination of the trial, the court delivered its Judgment on 11 January, 2018 and acquitted all the accused persons under Section 215 of the *Criminal Procedure Code*.
5. The Director of Public Prosecutions being aggrieved by the Judgment of the court preferred the appeal herein on the grounds stated in the Petition of Appeal dated 25th January 2018.
6. The 5th Respondent was struck out from the Appeal by a court's ruling dated 27th June 2019 (Hon. Ong'udi J.) and is therefore no longer a party to the appeal.

Grounds of Appeal

7. The Appellant contends against the Judgement of the trial court on the following 9 grounds:
 - “1) That the learned trial magistrate erred in law and in fact by acquitting the respondents under Section 210 and 215 of the *Criminal Procedure Code* while the prosecution had proved its case beyond any reasonable doubt.
 2. That the learned trial magistrate erred in law and in fact by acquitting the respondents in holding that the window blinds, the subject of Count IV were duly supplied.
 3. That the learned trial magistrate erred in law and in fact in acquitting the 1st respondent on counts III and IV against the overwhelming evidence including that of the respondent's own evidence that she received the false quotation forms from PW 8 and the document examiner's report.
 4. That the learned trial magistrate erred in law and in fact by holding that there was a systems failure at Nairobi County with regard to the procurement process without any evidence in support, and by disregarding the evidence of PW 1 and PW 3. Indeed, if there was any systemic failure it was caused by 2nd to 5th respondents who had the responsibility to uphold the proper working of that system.
 5. That the learned trial magistrate erred in law and in fact in acquitting the respondents by wholly relying on the evidence by the defense and entirely disregarding the evidence adduced by the prosecution.



6. That the learned trial magistrate erred in law and in fact in acquitting the respondents against clear evidence that any procurement of amounts higher than Kshs 30,000 had to be processed by the procurement department.
7. That the learned trial magistrate erred in law and in fact by holding that all the vouchers had the requisite respondent's approval and thereby acquitting the respondents.
8. That the learned trial magistrate erred in law and in fact by finding that there was selective prosecution and thereby acquitting the respondents without analyzing the evidence as against each respondent and the roles they played leading to the commission of the offences charged.
9. That the learned trial magistrate erred in law in failing to consider the weight of the evidence against the respondents."

8. The Appeal is supported by the Appellant's written submissions dated 9th October 2020 and filed on 29th March 2022.

The Charges

9. The Respondents were charged with the following offences:

- "1) Count 1 - Conspiracy to commit an offence of economic crime contrary to section 47 (A) (3) as read with Section 48(1) of the *Anti-Corruption and Economic Crimes Act*.

The 1st to 5th Respondents, between 1st November 2013 and 3rd December 2014 at the City Hall in Nairobi City Council of the Republic of Kenya being persons employed in the public service, jointly in the public service, jointly with others not before the court, conspired together to commit an offence of economic crime namely, fraudulent acquisition of public property, being funds in the sum of Kenya Shillings 17,902,728 withdrawn from the Imprest Account No. 011xxxxxxxxxxx of the Nairobi County Government held at the City Hall Branch of the Cooperative Bank of Kenya.

2. Count 2 - Fraudulent acquisition of public property contrary to Section 45(1) (a) as read with Section 48(1) of the *Anticorruption and Economic Crimes Act* 2003

The 1st Respondent between the 11th day January 2014 and 3rd December 2014, at the City Hall Annex within the Nairobi City County of the Republic of Kenya, fraudulently acquired public property to wit Kenya Shillings 17,902,728 withdrawn from the Imprest Account No. 011xxxxxxxxxxx of the Nairobi County Government held at the City Hall Branch of the Cooperative Bank of Kenya.



3. Count 3 - Uttering a false document contrary to Section 353 as read with Section 349 of the *Penal Code* Cap 63

The 1st Respondent on the 21st day of January 2014 at the City Hall within Nairobi City County of the Republic of Kenya, knowingly and fraudulently uttered a false document to Elizabeth Wanjiru Ndiritu, to wit a letter dated 17th January 2014, purporting it to be a quotation in the sum of Kshs. 112,500 prepared, signed and submitted by Teresia W Wanyoike on behalf of Countylike Enterprises Limited in support of payment voucher number 4832 dated 18th February 2014 for the fitting of vertical blinds in the office of the County Treasurer.

4. Count 4- abuse of office contrary to Section 46 as read with 48(1) of the *Anticorruption and Economic Crimes Act* 2003;

The 2nd and 3rd Respondents on the 20th day of February 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service, to wit, the Chief Finance Officer and the Head of County Treasury, respectively jointly used their said offices to improperly confer a benefit of Kshs. 112,500 on Regina Chepkemoi by signing Cheque number 002xxx in her favour purporting it to be for the purchase of window blinds for the office of the Chief Finance Officer of the Nairobi City County.

Alternative Charge - fraudulently making payment from public revenue for goods not supplied 48(1) of the *Anticorruption and Economic Crimes Act* 2003

The 2nd and 3rd Respondents on the 20th day of February 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service, to wit, the Chief Finance Officer and the Head of County Treasury, respectively of the Nairobi City County, persons whose functions concerned the management of public revenue, jointly fraudulently made payment from public revenue of Kshs. 112,500 to Regina Chepkemoi Rotich by signing Cheque number 002xxx in her favour for the purchase of window blinds for the office of the Chief Finance Officer of the Nairobi City County, which goods were not supplied.

5. Count 5 - Uttering a false document contrary to Section 353 as read with Section 349 of the *Penal Code* cap 63

The 1st Respondent on the 14th March 2014 at the City Hall within Nairobi City County of the Republic of Kenya, knowingly and fraudulently uttered to Elizabeth Wanjiru Ndiritu, a false document, namely, a letter dated 5th March 2014 purporting it to be quotation in the sum of Kshs. 650,000 prepared, signed and submitted by Charles Irungu on behalf of Geocleen Enterprises in support of the Imprest Warrant No. 1940820 dated 14th March



2014 for servicing and repair of computers in the Department of Finance.

6. Count 6– abuse of office contrary to Section 46 as read with 48(1) of the *Anticorruption and Economic Crimes Act 2003*;

The 2nd and 4th Respondents on the 20th day of March 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance Officer and the County Secretary, respectively, of the Nairobi City County jointly used their said offices to improperly confer a benefit of Kshs. 650,000 on Regina Chepkemai Rotich by signing Cheque number 002xxx in her favour, purporting it to be for procurement of services for the repair and servicing of computers and printers in the department of Finance of Nairobi City County Government.

Alternative Charge fraudulently making payment from public revenue for goods not supplied 48(1) of the *Anticorruption and Economic Crimes Act 2003*; alternative charge

The 2nd and 4th Respondents on the 20th day of March 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance Officer and the County Secretary, respectively, of the Nairobi City County Government and persons whose functions concerned the management of public revenue, jointly fraudulently made payment from public revenue of Kshs. 650,000 to Regina Chepkemai Rotich by signing cheque number 002xxx in her favour for the repair and servicing of computers and printers in the department of Finance of Nairobi City County Government which services were not rendered.

7. Count 7– abuse of office contrary to Section 46 as read with 48(1) of the *Anticorruption and Economic Crimes Act 2003*;

The 2nd and 4th Respondents on the 12th day of August 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance Officer and the County Secretary, respectively, of the Nairobi City County jointly used their said offices to improperly confer a benefit of Kshs. 690,000 on Regina Chepkemai by signing Cheque number 004xxx in her favour, for the procurement of services for the repair and servicing of computers and printers in the department of Finance of Nairobi City County Government.

Alternative Charge fraudulently making payment from public revenue for goods not supplied 48(1) of the *Anticorruption and Economic Crimes Act 2003*

The 2nd and 4th Respondents on the 12th day of August 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance



Officer and the County Secretary, respectively, of the Nairobi City County Government jointly fraudulently made payment from public revenue of Kshs. 690,000 to Regina Chepkemai Rotich by signing cheque number 004260 in her favour for the repair and servicing of computers and printers in the department of Finance of Nairobi City County Government which services were not rendered.

8. Count 8– abuse of office contrary to Section 46 as read with 48(1) of the *Anticorruption and Economic Crimes Act 2003*;

The 2nd and 4th Respondents on the 25th day of August 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance Officer and the County Secretary, respectively, of the Nairobi City County jointly used their said offices to improperly confer a benefit of Kshs. 750,000 on Regina Chepkemai by instructing the Manager of the Cooperative Bank of Kenya, City Hall Branch, to pay the proceeds of Cheque number 00xxx to the said Regina Chepkemai purporting it to be for the Purchase of toners and computer accessories for the Department of Finance of Nairobi City County Government.

Alternative Charge - fraudulently making payment from public revenue for goods not supplied 48(1) of the *Anticorruption and Economic Crimes Act 2003*

The 2nd and 4th Respondents on the 25th day of August 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance Officer and the County Secretary, respectively, of the Nairobi City County Government jointly fraudulently made payment from public revenue of Kshs. 750,000 to Regina Chepkemai Rotich by signing cheque number 004xxx in her favour for the Purchase of toners and computer accessories for the Department of Finance of Nairobi City County Government which goods were not supplied.

9. Count 9– abuse of office contrary to Section 46 as read with 48(1) of the *Anticorruption and Economic Crimes Act 2003*;

The 2nd and 4th Respondents on the 30th day of October 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance Officer and the County Secretary, respectively, of the Nairobi City County used their said offices to improperly confer a benefit of Kshs. 700,000 on Regina Chepkemai by instructing the Manager of the Cooperative Bank of Kenya, City Hall Branch, to pay the proceeds of Cheque number 004925 to the said Regina Chepkemai purporting it to be for the purchase of stationery for the Department of Finance of Nairobi City County Government.



Alternative Charge fraudulently making payment from public revenue for goods not supplied 48(1) of the *Anticorruption and Economic Crimes Act 2003*

The 2nd and 4th Respondents on the 30th day of October 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance Officer and the County Secretary, respectively, of the Nairobi City County Government jointly fraudulently made payment from public revenue of Kshs. 700,000 to Regina Chepkemai Rotich by signing cheque number 004xxx in her favour for the purchase of stationery for the Department of Finance of Nairobi City County Government which goods were not supplied.

10. Count 10 – abuse of office contrary to Section 46 as read with 48(1) of the *Anticorruption and Economic Crimes Act 2003*;

The 2nd and 4th Respondents on the 30th day of October 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance Officer and the County Secretary, respectively, of the Nairobi City County used their said offices to improperly confer a benefit of Kshs. 750,000 on Ephantus Mwangi by instructing the Manager of the Cooperative Bank of Kenya, City Hall Branch, to pay the proceeds of Cheque number 004926 to the said Regina Chepkemai Rotich purporting it to be for the purchase of stationery for the Department of Finance of Nairobi City County Government.

Alternative Charge fraudulently making payment from public revenue for goods not supplied 48(1) of the *Anticorruption and Economic Crimes Act 2003*

The 2nd and 4th Respondents on the 12th day of February 2014 at the City Hall within Nairobi City County of the Republic of Kenya being persons employed in the public service as the Chief Finance Officer and the County Secretary, respectively, of the Nairobi City County Government jointly fraudulently made payment from public revenue of Kshs. 750,000 to Regina Chepkemai Rotich by signing cheque number 004xxx in her favour for the purchase of stationery for the Department of Finance of Nairobi City County Government which goods were not supplied.”

Submissions by the Appellant

10. The Appellant addresses the appeal against the 1st to 4th Respondents in seriatim. The Appellant begins by reiterating the evidence of the prosecution witnesses adduced during trial in respect of the payment vouchers and cheques and submits that the payments were irregular as they were not preceded by a tendering process as required by the *Public Procurement and Disposal of Assets Act, 2005* (repealed) for procurement for goods or services exceeding Kshs. 30,000.
11. The Appellant submits that majority of the payment vouchers were raised by the 1st Appellant, Regina Chepkemai in her name which was not within her mandate and without authority as these were to be raised by the accountant of the procuring section or department. That PW3’s and PW13’s



- testimonies confirmed that payment vouchers were to be filled by departmental accountant for Finance and Economic Planning. That all the money paid to the 1st Appellant was deposited in her bank account P Exh 53 or given to PW7 a messenger, who testified that he surrendered the cash to the 1st Appellant.
12. That the cheques for payment to suppliers were drawn in the name of the 1st Appellant, which was irregular, P Exh 11 and PExh 53(a). That the 1st Appellant drew payment vouchers long after the cheques had been paid and these cheques were not dispatched through the cheques dispatch office as required.
 13. With respect to the 2nd Respondent, the Appellant submits that he was a key officer in Treasury as the Chief Officer Finance as the head of department sanctioned payments upon an application. He authorized illegal payments by signing vouchers and cheques.
 14. On the 3rd Respondent, the Appellant submits that he similarly authorized irregular payments by signing the impugned cheques.
 15. On the 4th Respondent, the Appellant submits that as the County Secretary and head of public service, she was an accounting officer and had a legal duty to ensure prudent use of resources and a high level of due diligence in regard to how public resources are used. That she authorized payments without supporting documents and signed cheques before the payment vouchers were drawn. They submit the onus was upon her to ensure that all correct procedures were followed before signing the cheques, regardless of whether the co-signees of the cheques having signed them.
 16. On the 5th Respondent, the Appellant submits that she signed P Exh 16 and P Exh 35. That she authorized double payments for overtime by signing payment vouchers produced as PExh 29-40. That her defense that she signed during her ordinary course of duties does not hold water. Instead, the Appellants joint actions of omission in due diligence and signing the vouchers and cheques constituted conduct that infers common intention. That the Auditor General's report D4 MFI confirmed that the systems at Nairobi County were not were working and that the Respondents were part of the problem as they deliberately ensured that the systems did not work. That the respondents as public officers were bound by Section 27(3) of *Public Procurement and Disposal of Assets* 2005 (repealed) and enjoined to ensure compliance with procurement laws.
 17. The Director of Public Prosecutions submits that the learned Magistrate erred in acquitting the Respondents against clear evidence that they had breached the law on procurement for amounts higher than Kshs. 30,000. That the Respondent failed to subject the goods through the procurement process; That the payment vouchers were not prepared by the accountants in charge of the sections and their movements not recorded in the registers as required by the Government Financial Regulations and Procedures. Further that there was no urgency as purported by the Respondents hence the violation of the law was not justified. That they failed to undertake proper tendering despite the amounts exceeding Kshs. 30,000 limits. They refer to payment vouchers PExh 16 for Kshs. 112,500 signed by 2nd and 5th Appellant, PExh 35 for Kshs. 166,436 in the name of 1st Appellant and signed by 5th Appellant for overtime payment for November to 2013 to March 2014 without supporting documents as only one month's payment was due under the Master Payroll PExh 36.
 18. The subsequent payments are P Exh 37 cheque for Kshs 166,436 signed by 2nd and 3rd respondents, payment voucher for Kshs. 236,262 paid to 1st Appellant for overtime for the same period November 2013 to March 2014 hence double payment. Imprest Warrant to 1st respondent for Kshs 650,000 PExh 22 and another Kshs 650,000 PExh 23 signed by 2nd and 4th respondents. Payment voucher for Kshs. 650,000 to Geoclean Enterprises PExh 25 who denied dealing with computer services and testified that



he did not receive the funds and his signatures in the accompanying documents were forged. PExh 41 payment voucher for Kshs 472,000 with no supporting documents, Cheque for Kshs, 472, 000 in the name of 1st Appellant. The document examiner's opinion was that this cheque was made by 2nd and 4th Respondent. They also refer to a cheque for Kshs. 750,000 PExh 5 that was paid before the payment voucher was processed. Other irregular payments include cheques for Kshs. 700,000 P Exh 7, Kshs. 750,000 PExh 10, Kshs. 750,000 PExh 11 and Kshs. 690,000 PExh 1.

19. They submit that the learned magistrate erred in law by failing to consider the weight and overwhelming evidence against the Respondents. That the elements of the offences were established, the evidence was credible cogent and sufficiently strong to make out a case against the Respondents. They urge the court to reverse or set aside the orders acquitting the Respondents made on 5th September 2017 and 11th January 2018 and the Respondents be convicted for the offences stated on the charge sheet.

Response by the 1st Respondent

20. The 1st, 2nd, 3rd and 4th Respondents oppose the Applications through their written submissions dated 28th March 2022, 18th March 2022, 7th March 2022 and undated submissions respectively.
21. The 1st Respondent submits that this appeal relates only to the Judgment delivered on 11th January 2018 and not the ruling on case to answer, where they were acquitted of the charges in Count 1 and 2. They limit their submissions to Counts 3 and 4 only, which counts relate to uttering false documents.
22. They submit that the prosecution failed to establish the four key elements of the charge. They aver that the elements are: the document was false, in the sense that it was forged; the accused knew it was forged; the utterer intended to defraud and that the accused uttered the document to the person indicated in the particulars of the offence.
23. They submit that PW13 testified that she did not know to whom she handed over the alleged forged quotations; that on the contrary, the 1st respondent testified that she handed over the quotations to the 2nd Respondent who was to seek approval from the County Secretary. That she was handed the quotations by PW8 when they had already been written and her role was only to pick the lowest quotations. That in any event, the procurement for curtain fittings, computer repair services were duly undertaken, services delivered and the payment done. That it was normal practice for her to collect money from the bank and pay suppliers in cash.
24. On the intention to defraud, they submit that Kshs. 112,500 was paid to the supplier PW8. That although he denied receiving Kshs. 650,000, there was proof that he was paid by way of RTGS. That the payment vouchers had no irregularities and therefore valid. That there was no fraud and mens rea as she did not benefit from the payments. They cited the authorities in *Joseph Simiyu Mwando v Republic* [2016] eKLR and *Caroline Wanjiku Ngugi v Republic* [2015] eKLR and urge the court to dismiss the appeal.

Response by the 2nd Respondent

25. The 2nd Respondent similarly opposes the appeal on the grounds argued in their written submissions.
26. The 2nd Respondent was acquitted on Count 1 and put on his defense in respect of Count 4 and alternative charge to Count 4, Counts 6 and alternative charge to Count 6, Count 7 and alternative charge to Count 7, Count 8 and alternative charge to Count 8, Count 9 and alternative charge to Count 9.



27. The 2nd Respondent submits that in respect to Count 4 and the alternative charge, the 2nd Respondent duly undertook his mandate as Chief Officer in charge of Finance. That the amount in question Kshs 112,500 was utilized for its intended purpose that is the purchase of curtain blinds as testified by PW1, PW3 and PW8.
28. On Count 6 and the alternative charge, they submit that PW1 and PW 13 testified that the Imprest Warrant 1940820 Exh 22 was used to incur expenditure in the sum of Kshs. 650,000. That despite PW8's denial of submitting any quotations or receiving the payment, there exists a possibility that he rendered the services. That PW8's signature was not sought by the document examiner to compare with the specimen signature so as to conclusively ascertain that the quotation was forged. That the 2nd Respondent was not involved in raising quotations hence he cannot be faulted for undertaking his responsibility in signing the voucher and cheque based on an alleged forged cheque.
29. On Count 7 and the alternative Charge, the 2nd Respondent submits that it was not unusual to have a cheque signed before a payment voucher is signed.
30. With respect to Count 8, they submit similarly that payment without an authority memo was usual since the voucher itself is an authority. That PW 11 confirmed that the subject cheque number 004377 was in respect of the intended procurement.
31. On Count 9, the 2nd Respondent submits that the system at Nairobi County Government was not efficient hence he had to find a way to work around the system and deliver results and as such should not be victimized.
32. On Count 10 and the alternative charge, it is his position that the evidence led by the prosecution in respect of these counts was speculative, selective, inconsistent and lacks any legal basis. That PW17 wrongly attributed the sum of Kshs. 750,000 to the 1st Appellant yet the cheque bore the name Ephantus Mwangi as the beneficiary. They add that the trial court properly and adequately evaluated and analyzed the evidence by the prosecution and defense and arrived at his own independent conclusion. That the prosecution failed to prove their case beyond reasonable doubt. That the testimonies of the prosecution witnesses contrast sharply erstwhile in respect of procurement at the Nairobi County Government. That even though normal tender process was not undertaken, there was proof that payments were authorized by some of the prosecution witnesses. They cite *George Odhiambo v republic* [2020] eKLR in support.
33. Ultimately, the 2nd Respondent submits that selective prosecution as done by the DPP is an act of bias, unconstitutional, and an abuse of court process. They cited *George Joshua Okungu & another v Chief Magistrates Court Anti-Corruption Court and another* [2014] eKLR and urge the court to dismiss the appeal.

Response by the 3rd Respondent

34. The 3rd Respondent submits that the trial court arrived at a proper finding with respect to the charges against the 3rd Respondent in Counts 1 and Count 4 and the alternative charge to Count 4.
35. The 3rd Respondent submits that the trial court properly acquitted him on the basis of the evidence pf PW3, PW8, PW13 and PW17. That the curtain blinds were supplied and the amount Kshs. 112,500 paid to PW8, PW13 routinely made payments exceeding Kshs. 100,000 and this was normal practice. They submit that the Appellant did not file a complete record of appeal and annexed a copy of their submissions filed in the trial court dated 20th July 2017 which they adopted.



Response by the 4th Respondent

36. The 4th Respondent opposes the appeal and avers that the prosecution failed to prove its case against the 4th Respondent in respect of the Counts 6,7,8, and 9 hence the acquittal. That the prosecution led evidence to suggest that this case is about procurement procedures under the Public Procurement and Disposal of Assets Act 2005 when the Respondent was not charged under the Public Procurement and Disposal of Assets Act but the Anti-Corruption and Economic Crimes Act, they reproduced Sections 45 and 46 of the Anti-Corruption and Economic Crimes Act on protection of public property and abuse of office and submit that the indictment of conferment of benefit is different in the two statutes Public Procurement and Disposal of Assets Act and Anti-Corruption and Economic Crimes Act; that it is a strict liability offence in the Public Procurement and Disposal of Assets Act but in Anti-Corruption and Economic Crimes Act, the elements of the charge are not proven where there is proof that the goods and services were received in the quality and quantity prescribed. They recounted the testimonies of the witnesses and submit that the prosecution's case theory is based on non-delivery of goods.
37. They submit that the learned Magistrate correctly found that the failure to render services or not rendering services adequately is a key ingredient in the offence under Section 45(2)(a) (ii) of Anti-Corruption and Economic Crimes Act. That the court found that the accused persons had adduced evidence in their defense to demonstrate that the services in Count 6,7,8, and 9 were rendered in three ways: authorization of the transactions by the prosecution witness; through the audit reports which showed that this was a normal occurrence; and through ETC receipts produced in evidence as confirmation of the supply of goods because this proved expenditure was incurred.
38. The 4th Respondent submits further that with respect to overtime allowances, the Appellant failed to call evidence that overtime payment was not paid to workers. That the 4th Respondent signed the cheque as coordinator of the Nairobi County Government and on behalf of CECM Finance and Planning one Mr. Mwanago under his authority. Finally, that it was not the duty of County Secretary to confirm whether the services had been properly procured so long as there was no notice or suspicion of fraud and there was a valid authorization from line officers who have initiated the process and the purpose of the payment is consistent with the mandate of Nairobi County Government. She urges the court to dismiss the appeal against the 4th Respondent.

Issues for Determination

39. The issues arising for determination are twofold:
1. Whether the trial court erred in acquitting the Respondents of Counts 1, 2 and 10 under Section 210 of the Criminal Procedure Code; and
 2. Whether the appeal is merited

Analysis and Determination

40. It is noted that in determining this appeal, this court being a first appellate court is alive to the principles laid down in the case of *Okeno vs. Republic* (1972) EA 32 where the Court of Appeal for Eastern Africa held that the court is enjoined to scrutinize the evidence, make its own findings and draw conclusions:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be subjected to a fresh and exhaustive examination (*Pandya V R* 1975) EA 336 and to the appellate Court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions (*Shantilal M. Ruwala V. R* [1957] EA 570. It is not



the junction of a first appellate Court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see (*Peters V Sunday Post* 1978) EA 424.”

Issue 1: Whether the Trial Court erred in Acquitting the Respondents of Counts 1, 2 and 10 under Section 210 of the Criminal Procedure Code

41. It is trite that the right of appeal against interlocutory decisions is available to a party to the proceedings and the exercise of this right may be deferred to a later date when the final decision has been delivered. Accordingly, this court does have the jurisdiction to hear and determine appeals on interlocutory decisions provided that the appeal is filed procedurally and within the dictates of Section 348 A of the [Criminal Procedure Code](#). Indeed, the Supreme Court in [Joseph Lendrix Waswa v Republic](#) [2020] eKLR held in this respect:

“94. Flowing from the above, we are of the view that the right of appeal against interlocutory decisions is available to a party in a criminal trial but should be deferred, and await the final determination by the trial Court. A person seeking to appeal against an interlocutory decision must file their intended Notice of Appeal within 14 days of the trial Court's judgment. However, exceptional circumstances may exist where an appeal on an interlocutory decision may be sparingly allowed. These include:

- a. Where the decision concerns the admissibility of evidence, which, if ruled inadmissible, would eliminate or substantially weaken the prosecution case;
- b. When the decision is of sufficient importance to the trial to justify it being determined on an interlocutory appeal;
- c. Where the decision entails the recusal of the trial Court to hear the cause.”

42. In its Petition of Appeal and written submissions, the Appellant invited this court to consider the appeal including the acquittal of the Respondents under Section 210 of the [Criminal Procedure Code](#) in Counts 1, 2 and 10 and this court is therefore enjoined to consider the same. While I am alive to the ruling of Ong'undi J dated 27th June, 2019 in which she struck out the 5th Respondents from the Appeal for reason that the appeal was filed out of time without the necessary steps being taken I also note the she too was cognizant of the fact that the appeal of the appellants under Section 210 of the [Criminal Procedure Code](#) was still going to be heard. The 1st to 4th Respondents were not parties to the application made by the 5th Appellant and they are not therefore parties to the order that she obtained. I have also not heard them say anything in regard to counts 1, 2 and 10.

43. In considering the acquittal of the Respondents of the Charges in Count 1, 2 and 10 under Section 210 of the Criminal Procedure Code, the court takes cognizance of the test for a prima facie case as was established in *Bhatt v Republic* [1957] EA 332:

“It may not be easy to define what is meant by a prima facie case, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”



Count 1

44. The charge in Count 1 is conspiracy to commit an offence of economic crime contrary to Section 47(A) (3) as read with Section 48(1) of the *Anti-Corruption and Economic Crimes Act*. In *Rebecca Mwikali Nabutola & 2 others v Republic* [2016] eKLR, the High Court relied on the meaning of the term conspiracy to defraud as defined in The *Black's Law Dictionary* 9th Edition at page 351, which is:
- “An agreement by two or more persons to commit an unlawful act coupled with an intent to achieve the agreement’s motive, and (in most states), action or conduct that furthers the agreement; a combination for an unlawful purpose.”
45. The evidence before the trial court shows that a total sum of Kshs. 17,902,728 of public funds were paid to the 1st Respondent, the Secretary to the 2nd Respondent. The cheques to suppliers were written in the name of the 1st Respondent and indeed PExh 47 shows that the moneys were paid to the 1st Respondent and deposited into her bank account PExh 53. Additionally, one Ephantus Nganga PW7, a messenger testified that he cashed some cheques and surrendered the cash to the 1st Respondent. It was proved beyond reasonable doubt that those cheques were signed by the 2nd, 3rd and 4th respondents.
46. From a review of the witness testimonies and evidence produced, it is apparent that the 2nd, 3rd and 4th appellants signed cheques in the name of the 1st Respondent for “payment” for goods and services without following the laid down procurement procedures under the Public Procurement and Disposal of Assets 2005.
47. All employees of public entities, without any exception, are bound by this law under Section 27 (3) of the *Public Procurement and Disposal of Assets* 2005 which states:-
- “27. (1) A public entity shall ensure that this Act, the regulations and any directions of the Authority are complied with respect to each of its procurements.
- (2) The accounting officer of a public entity shall be primarily responsible for ensuring that the public entity fulfils its obligations under subsection (1).
- (3) Each employee of a public entity and each member of a board or committee of the public entity shall ensure, within the areas of responsibility of the employee or member, that this Act, the regulations and any directions of the Authority are complied with.
- (4) Contractors, suppliers and consultants shall comply with all the provisions of this Act and the regulations.
- (5) The accounting officer may use the procurement unit and tender committee of another procuring entity which shall carry out the procurement in accordance with this Act and the regulations.
- (6) The Authority shall have power to transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent in the event of delay or in such other instances as may be prescribed.”
48. The Defence argued that there was an urgent need for the goods and services hence their resorting to direct procurement. Indeed, if there was an urgency to the procurement, Section 74 of the *Public*



Procurement and Disposal of Assets 2005 provided the manner in which direct procurement was to be conducted. The section stated:

- “74. (1) A procuring entity may use direct procurement as allowed under subsection (2) or (3) as long as the purpose is not to avoid competition.
- (2) A procuring entity may use direct procurement if the following are satisfied —
- a. there is only one person who can supply the goods, works or services being procured; and
 - b. there is no reasonable alternative or substitute for the goods, works or services.
- (3) A procuring entity may use direct procurement if the following are satisfied —
- a. there is an urgent need for the goods, works or services being procured;
 - b. because of the urgency the other available methods of procurement are impractical; and
 - c. the circumstances that gave rise to the urgency were not foreseeable and were not the result of dilatory conduct on the part of the procuring entity.”

49. Further, Regulation 6 (2) of the Public Procurement and Disposal of Assets (County Governments) Regulations 2013 provides that all procurement was to be handled by different officers in accordance with the Threshold Matrix of the First Schedule of the Public Procurement and Disposal of Assets Regulations 2006. In this case as attested by PW1, the Respondents did not requisition for the goods and services from the procurement department and neither was the department in any stage of the procurement contrary to the law.
50. The said First Schedule provides in mandatory terms that all procurement for goods or services exceeding Kshs. 30,000 classified as low value procurement under Section 90 Public Procurement and Disposal of Assets 2005, must be subjected to the tendering process. A further limitation is that procurement for a value exceeding Kshs. 500,000 must be done through open tendering as per the provisions of Section 74 Public Procurement and Disposal of Assets 2005 reproduced above.
51. Accordingly, the procurement of the goods and services were irregular for having been done under direct procurement and without the involvement of the procurement department and tender committee despite exceeding the Kshs. 30,000 limits. Just to highlight a few amongst the many cheques produced by the prosecution, some of the irregular procurement processes included:
1. Fitting of vertical blinds in the office of county treasurer for Kshs 112,500. Cheque No. 002389 PExh 17 signed by 2nd and 3rd Respondents in favour of 1st Respondent
 2. Procurement of services for the repair and servicing of computers and printers in the department of Finance of Nairobi City County Government Kshs 650,000 cheque No. 002697 P Exh 23 signed by 2nd and 4th Respondents in favour of 1st Respondent
 3. Procurement of services for the repair and servicing of computers and printers in the department of Finance of Nairobi City County Government Kshs 690,000 cheque No. 004260 PExh 2 signed by 2nd and 4th Respondents in favour of 1st Respondent



4. Purchase of toners for the department of Finance of Nairobi City County Government Kshs 750,000 cheque No. 004377 PExh 11 signed by 2nd and 4th Respondents in favour of 1st Respondent
 5. Purchase of toners for the department of Finance of Nairobi City County Government Kshs 750,000 cheque No. 004379 PExh 5 signed by 2nd and 4th Respondents in favour of Ephantus Mwangi -PW7
 6. Purchase of stationery for the department of Finance of Nairobi City County Government Kshs 700,000 cheque No. 004925 PExh 8 signed by 2nd and 4th Respondents in favour of 1st Respondent
 7. Purchase of stationery for the department of Finance of Nairobi City County Government Kshs 750,000 cheque No. 004926 PExh 14 signed by 2nd and 4th Respondents in favour of Ephantus Mwangi
52. PW17 testified that while some of the cheques were missing from the records, they were able to retrieve the counterfoils for the cheque books PExh 74 and bank statements PExh 53, 53 (a) and 53 (b) which revealed that the 1st Respondent was the recipient of the funds accumulating to Kenya Shillings 17,902,728.
 53. It is my finding that the prosecution adduced sufficient evidence to show that there was a probable conspiracy to commit an economic crime by the Respondents, jointly. There was sufficient evidence, both direct and circumstantial, leading to a conclusion, unless rebutted, that the appellants had conspired in concert and with a common intention to commit an economic crime through the irregular procurement.
 54. Exhibits PExh 1 to PExh 47 including cheques, quotations and payment vouchers and bank statements of the County Government and that of the 1st Respondent show that the Respondents worked together in a collective scheme to acquire Kshs. 17,902,728 (PExh 47 list of cheques) from the Nairobi County, which sum indeed was credited to the 1st Respondent's account PExh 53 from the County Imprest Account No. 011xxxxxxxxxxx Cooperative Bank, City Hall Branch. PW17 indeed confirmed that the specific cheque numbers used in the withdrawal of the Kshs. 17,902,728 in Count 1 are: 2084,2389,3089,3180,3429,4174,4518,5229,2081,2209,2657, 3721,3917,4260,4517,4925,1911,2329,2697,3179,3734,3918,4377,4704,4926,2154,2418,2635,3309,3490,4173,4379 and 4703. These payments were illegal and in breach of procurement procedures and the law.
 55. Further, the testimonies of PW1, PW3, PW4 and PW 7 confirmed that the cheques were not recorded in the register as required under the internal procedures and the authorizations for payment were irregular as they were drawn long before the payment vouchers were drawn. It was also proven that the services in respect of the payment were not rendered and goods not delivered.
 56. I have read through the testimonies of the prosecution witnesses at the trial court particularly PW1, PW8 and PW17 and they set out in detail how each of the respondents was involved in the process that led to the loss of funds in Count 1. Much of it is documentary evidence. Each of the respondents had a distinct but mutually dependent role in the process hence the charge of conspiracy. This included possible breaches of procurement laws including signing cheques without supporting documents and paying the same to 1st Respondent's bank account hence leading to a loss of Kshs. 17,902,728 public funds belonging to Nairobi City County Government. Should the defense fail to provide a plausible rebuttal, their actions would amount to an offence under Section 47 (A) (3) of the *Anti-Corruption and Economic Crimes Act*.



57. In that light, the learned Magistrate erred in law in acquitting the Respondents under Section 210 as the prosecution had established a prima facie case against them in respect of Count 1 to warrant their being placed on their defense.

Count 2

58. Count 2 was a charge against the 1st Respondent for fraudulent acquisition of public property contrary to Section 45(1)(a) as read with Section 48(1) of the *Anticorruption and Economic Crimes Act* 2003.
59. It is not disputed that the 1st Respondent received in her bank account a total sum of Kshs. 17,902,728 from the Imprest Account No. 011xxxxxxxxxxx of the Nairobi County Government held at the City Hall Branch of the Cooperative Bank. These funds were deposited in her bank account PExh 53. Further, PW 7 Ephantus Mwangi, a cleaner at the Nairobi County offices testified that he would be sent by the 1st Respondent to withdraw money on her behalf, which moneys he handed to the 1st Respondent, amounting to Kshs. 4,180,109.
60. The fact that the 1st Respondent drew payment vouchers to justify the cheques, an action that is outside her mandate as she was not an accounting officer proves her culpability. The 1st Respondent also received payments on behalf of suppliers. The amount of Kshs. 17,902,728 paid to the 1st Respondent's bank account has been linked to the Kshs. 17,902,728 public funds that was irregularly paid out by the 2nd, 3rd and 4th Respondents to the 1st Respondent on various dates. There is no explanation why the cheques of the Nairobi City County were paid to the 1st Respondent, a member of staff who could not by law do business with the County Government. The 1st Respondent ought to have been put on her defence to explain how she acquired the said public funds.
61. In my view, the totality of the evidence shows that the prosecution did establish a prima facie case against the 1st Respondent in Count 2 and the court erred in acquitting her under Section 210 of the *CPC*.

Count 10

62. Count 10 is a charge against the 2nd and 4th Respondents for abuse of office contrary to Section 46 as read with 48(1) of the *Anti-Corruption and Economic Crimes Act* 2003.
63. The ingredients of the offence of abuse of office, which under section 2 of the *Anti-Corruption and Economic Crimes Act* constitutes corruption have been set out in *Philomena Mbeti Mwilu v DPP & Others* [2018] eKLR; that a public officer uses a public office to improperly confer on himself or on another person a gift, loan, fee, favour, advantage etc. which he or that other person was not otherwise entitled to.
64. In this case PW 7 Ephantus Mwangi testified that he did receive the cheque No 004926 for Kshs. 750,000 PExh 14 with the instruction letter to the bank PExh 15 signed by the 2nd and 4th Respondents with instructions to withdraw the money and give to the 1st Respondent, which he did. The alleged purchase of stationery for which the money was paid turned out to be a smokescreen as no stationery was delivered to the County according to PW17's testimony.
65. It was erroneous therefore for the court to dismiss this charge under Section 210 as there exist substantial evidence that the 2nd and 4th Respondents, during their tenure as public officers irregularly issued a benefit in the nature of a cheque for Kshs. 750,000 to Ephantus Mwangi PW8, a cleaner at the same public entity without following due procurement processes.



66. In my view, the totality of the evidence shows that the prosecution did establish a prima facie case against the 2nd and 4th Respondents of abuse of office in Count 10 and the court erred in acquitting them under Section 210 of the Criminal Procedure Code.

Issue 2: Whether the Appeal is Merited

67. Having dealt with Counts 1,2 and 10 above, I now turn to Counts 2,3,4,5,6,7,8 and 9 and the respective alternative charges.

Count 3

68. Count 3 against the 1st Respondent is on the offence of uttering a false document contrary to Section 353 as read with Section 349 of the [Penal Code](#) Cap 63. This law provides:

“ 353. Uttering false documents

Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question

349. General punishment for forgery Any person who forges any document or electronic record is guilty of an offence which, unless otherwise stated, is a felony and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.”

69. The document in issue is a quotation from Countylike Enterprises dated 17th January 2014 PExh 19 submitted by the 1st Respondent to the accountant Elizabeth Wanjiru PW13, in regard to a payment voucher for payment for Kshs. 112,500 for processing of payment for purchase of window blinds. The Director of Countylike PW6 Teresiah Wanjiku Wanyoike denied ever submitting any such document to the County and testified that the quotation had captured some of her personal details but her signature had been forged.
70. The document examiner Stephen Yego PW16 testimony was that PExh 19 was forged; the signature did not match that of PW6. Instead, the signature on the letter matched that of the person who signed the voucher submitted for payment, the 1st Respondent.

Count 5

71. This charge is against the 1st Respondent for the offence of Uttering a false document contrary to Section 353 as read with Section 349 of the [Penal Code](#) cap 63
72. The law states:

“ 353. Uttering false documents

Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question.”

73. The evidence shows that the 1st Respondent presented to the accountant PW13 Elizabeth Wanjiru Ndiritu, the impugned document, a quotation dated 5th March 2014 in support of the Imprest



Warrant No. 194xxx dated 14th March 2014. The 1st Appellant did not explain how they came to be in possession of those documents. The answer is that she forged and uttered them to Elizabeth Wanjiru

74. PW8 whose details were being used in this clandestine transaction denied bidding for the tender for servicing and repair of computers in the Department of Finance. She also denied receiving funds in respect of the tender. It is clear as day that PW8's details had been forged in order to be used to obtain the County funds.

Count 6, 7, 8 and 9

75. The main charge is similar in Counts 6, 7, 8 and 9 against the 2nd and 4th Respondents is abuse of office contrary to Section 46 as read with 48(1) of the [Anti-Corruption and Economic Crimes Act 2003](#).
76. The ingredients of the charge are as stated in the preceding paragraphs; that a public officer uses a public office to improperly confer on himself or on another person.
77. It is not in dispute that the 2nd and 4th Respondents are public officers and that they signed the cheques during their tenure as Chief Officer Finance and County Secretary respectively, being public offices held at the Nairobi City County Government.
78. The cheques in Counts 6,7,8 and 9 cheque numbers 002xxx for Kshs. 650,000, 004260 for Kshs. 690,000, 004377 for Kshs. 750,000, 004925 for Kshs. 700,000 respectively were issued to the 1st Respondent, a secretary to the 2nd Respondent who was neither a supplier of contractor to the County Government. No justification was given for the issuance of the cheques and subsequent encashment by the 1st Respondent, save that the 1st Respondent stated in her defence that she received payment on behalf of suppliers. The suppliers were not specified and no evidence was tendered to show whether the funds in her bank account were eventually disbursed to the said suppliers.
79. Additionally, the procurement procedures of open tendering were blatantly breached despite their mandatory application. The value of the goods and services in the procurement exceeded the statutory limit of Kshs. 30,000 and should have undergone the statutory procurement processes under Section 74 of the [Public Procurement and Disposal of Assets 2005](#). PW17 further testified that these goods and services were never delivered.
80. The Defense's reliance on the protection of public officers in the discharge of official functions under Article 236 of the [Constitution](#) is misguided. Article 236 does not afford immunity to public officers who commit criminal acts. It applies only where the officer has performed their duties in accordance with the Constitution and the law. The [Public Procurement and Disposal of Assets Act 2005](#) was still in force at the time and public procurement was subject to the provisions of that [Act](#). From where I sit ignorance of the law is not a defence. In any event, the decision to charge the Respondents does not amount to victimization, discrimination or removal from office without due process. I have not heard any of them complain that due process was not followed. The trial was conducted in a fair manner and all.
81. The 2nd and 4th Respondents acted in blatant violation of the law governing public procurement hence committing the offences charged in Count 6, 7, 8 and 9 and they ought not to have been acquitted. It is my finding therefore that the learned Magistrate erred in acquitting the 2nd and 4th Respondents on Counts 6,7,8 and 9 when the prosecution had produced overwhelming evidence proving the guilt of the 2nd and 4th Respondents in each of the respective counts.



Count 4

82. The 2nd and 3rd Respondents are charged with a similar count of abuse of office contrary to Section 46 as read with 48(1) of the [Anti-Corruption and Economic Crimes Act 2003](#)
83. This count is in respect of a Cheque number 002389 signed by the 2nd and 3rd Respondents for Kshs. 112,500 in favour of the 1st Respondent for a purported procurement for the purchase of window blinds for the office of the Chief Finance Officer of the Nairobi City County.
84. As espoused above, the 1st Respondent as a member of staff of the County Government of Nairobi and a public officer is proscribed from taking part in the procurement proceedings or execution of a contract resulting from a procurement with the County under Section 43 of the [Public Procurement and Disposal of Assets](#) for reasons of conflict of interest. The law states:
43. (1) An employee or agent of the procuring entity or a member of a board or committee of the procuring entity who has a conflict of interest with respect to a procurement —
- (a) shall not take part in the procurement proceedings; and (b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract.”
85. The 1st Respondent’s participation in the procurement of curtain blinds is sufficient to sustain a conviction. It is immaterial as argued by Counsel for the defence that the curtain blinds were supplied. I also do not buy the defence of the Respondents that there were no procurement processes in place at the County Government at the time. The [Public Procurement and Disposal of Assets Act, 2005](#) was in place at the time and its provisions applied to them as officers of the County Government. Besides, the 2nd and 3rd Respondents did not explain in what capacity the 1st Respondent was paid the Kshs. 112,500. In my view, this payment is an outright “benefit to another person” within the meaning of Section 46 of the [Anti-Corruption and Economic Crimes Act](#) and subsequently amounts to an offence under this law.
86. In the upshot, I find that the acquittal of the 1st to 4th Respondents on Counts 1, 2 and 10 under Section 210 of the [Criminal Procedure Code](#) was erroneous and I accordingly exercise this court’s power under Section 354 (3) of the [Criminal Procedure Code](#) and remit the file back to the lower court for it to place the 1st to 4th Respondents on their defence in those counts.
87. The appeal also succeeds in regard to Counts 2, 3, 4, 5, 6, 7, 8 and 9 and accordingly the order of the trial court acquitting the 1st, 2nd, 3rd and 4th respondents in respect of the same be and is hereby reversed and substituted with an order of conviction on all the counts. This court shall exercise its powers under Section 348A of the [Criminal Procedure Code](#) to sentence the Respondents in regard to the aforesaid counts as shown below.

Count 1st Respondent
2:
Count 1st Respondent
3:
Count 2nd Respondent:
4:
: 3rd Respondent

Count 1st Respondent
5:
Count 2nd Respondent
6:



4th Respondent

Count 2nd Respondent

7: 4th Respondent

Count 2nd Respondent

8: 4th Respondent

Count 2nd Respondent

9: 4th Respondent

88. Accordingly, Counsel for the Respondents be and are hereby directed to attend with them on 12th July 2022 for purposes of mitigation and sentencing.

89. There shall be a right of Appeal to the court of Appeal as a matter of right.

SIGNED, DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE, 2022.

E N MAINA

JUDGE

