



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION- MILIMANI COURT**

**CRIMINAL APPEAL NO.39 OF 2020**

**GEOFFREY MUTEMI MANZI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal arising from the original conviction and sentence in*

*Criminal Case No. 117 of 2018 at Principal Magistrates Court*

*at JKIA by Hon. C. M. Njagi – RM on 29<sup>th</sup> January 2020)*

**JUDGMENT**

1. **Geoffrey Mutemi Manzi**, the Appellant, was charged with three counts:

**Count 1:** Trafficking in persons contrary to **Section 3(1)(d)** as read with **Section 3(5)** of the Counter-Trafficking in Persons **Act No.8 of 2010**. Particulars being that between 22<sup>nd</sup> day September,2018 at California area within Nairobi County jointly with others not before court harboured or received four (4) Tanzanian aliens namely, **Sabuni Subira Hassan, Hafsa Jumanne Salum, Shafisha Said and Zainabu Ali**, by means of deception for purposes of exploiting the said four(4) Tanzanians.

**Count 2:** Trafficking in Persons contrary to **Section 3(1)(d)** as read with **Section 3(5)** of the Counter -Trafficking in persons **Act No.8 of 2010**. Particular being that on the 25<sup>th</sup> day of September,2018, at Tassia area within Nairobi County, jointly with others not before court harboured or received two(2) Ugandan aliens namely, **Akaliza Sharon**, and **Nansamba Sumia** by means of deception for purposes of exploiting the said two Ugandan aliens.

**Count 3:** Facilitating and Aiding to exit out of Kenya contrary to Section 7 of the Counter Trafficking in Persons **Act No. 8 of 2010**. Particulars being that on the 25<sup>th</sup> day of September, 2018 at about 2000hours at Jomo Kenyatta International Airport area, he facilitated and aided four(4) Tanzanian aliens namely, **Sabuni Subira Hassan, Hafsa Jumanne Salum, Shafisha Said, and Zainabu Ali**, to exit Kenya from Nairobi through Jomo Kenyatta International Airport (JKIA) by using a motor vehicle Registration No. KCH 318V Toyota Townace for purposes of promoting trafficking of the said Tanzanian aliens.

2. The case as presented by the prosecution was that **PW5 Hafsa Jummane Salum**, a Tanzanian National and holder of a Passport Number AB[...] allegedly worked for one Aisha, a Tanzanian lady who was married in the Sultanate of Oman who sent her to get three other prospective employees. While in Tanzania she identified the three, **PW2 Shafiga Mangosongo** holder of Passport Number AB[...], **PW3 Subira Hasani Sabuni** holder of Passport Number TAE[...], and **PW4 Zainabu Ali** holder of Passport Number TAE[...]. Aisha allegedly got them visas and tickets that would enable them travel to Oman. On the 22<sup>nd</sup> September, 2018 or thereabout they travelled from Tanzania to Nairobi, Kenya, where the driver of the motor vehicle that they used took them to a Nairobi contact, at a guest house in California area. Visas from the Sultanate of Oman were printed by PW5 and the lady at the guesthouse.

3. On the 25<sup>th</sup> September, 2018, they took a taxi identified by the lady at the guesthouse which charged them Ksh.2500/-. The taxi driver dropped them off at a Shell Petrol Station alleging that he had another client. They were made to board another taxi that was being driven by the Appellant but they did not pay more money. He took them to the Jomo Kenyatta Airport (JKIA) and showed them Terminal 1B and as they gained entry, they were arrested.

4. In the meantime, **PW6 NO.78918 Corporal Stephen Kosgei, PW7 NO. 83730 Corporal Mary Aimba, PW8 NO. 84259 Corporal Ouma Moses Otieno**, all of the Transnational Organized Crime Unit, acting on intelligence information received regarding an individual who was harbouring human trafficking victims tracked motor vehicle Registration Number KCH 318V and located it as it headed towards JKIA. Upon arrival at Terminal B the occupants disembarked, led by the Appellant to the Terminal only to be intercepted. In the course of investigations, the Appellant led the police to his house in Tassia where they found **PW1 Akaliza Sharon**, a Ugandan that he had promised to get a job and another, also a Ugandan who were rescued.

5. Further investigations conducted included retrieval of call data, Mpesa transactions of the mobile subscription of the Appellant. Exhibits including mobile phones were submitted for purposes of forensic examination. They retrieved videos, audio downloads and photographs for purposes of connecting the Appellant with the offence in issue. An Mpesa transaction for Account No. 254727xxxxxx registered in the name of the Appellant had received some money from another suspect at large, Asha Iddi holder of Account No. [...] on the 24<sup>th</sup> September, 2018, hence the case.

6. When put on his defence the Appellant testified that he engaged in taxi as well as clearing and forwarding business. He alluded to having been called by Timothy Nzioka Mwanzia who had clients to take to the airport. They met at a petrol station and he carried four passengers to the airport and as he showed them Terminal 1B he was called by people who sought to know whence he got the people from. He explained that he was asked by a fellow taxi operator to take them to the airport but they arrested him and subsequently assaulted him. He denied having been engaged in human trafficking.

7. The trial court considered evidence adduced and found the Appellant guilty of the three counts. It convicted and sentenced him on each count to pay a fine of Ten Million (Ksh.10,000,000/-) and in default to serve five (5) years imprisonment. It was further ordered that part of the fine amounting to Ksh. Fifteen million be deposited in the National Assistance Trust Fund for victims of trafficking in persons established under section 22 of the Act. Ksh. Twenty-two thousand, five hundred (22,500) found in possession of the Appellant at the time of his arrest was forfeited to the State so as to be credited to the same account. The Appellant's motor-vehicle was ordered forfeited to the State for disposal as proceeds of crime in accordance to section 17 of the Act and to be deposited in the Fund.

8. Aggrieved, the Appellant appeals on grounds that: Failure to appreciate that the Appellant did not coerce, deceive or facilitate entry of the alleged victims of human trafficking into Kenya was a misdirection on the part of the learned magistrate; evidence adduced by PW2, PW3, PW4 and PW5 indicated that the Appellant had no prior knowledge of their presence in Kenya and only came into contact with them after their taxi driver handed them to him midway their way to the airport, therefore, he could not have aided their exit from Kenya; evidence adduced absolved the Appellant from the charges; attaching the weight of forensic evidence presented and holding that photographs of PW2-PW5 was proof of prior knowledge of the stated witnesses was a misdirection as the photos were sent to the phone while he was in police custody; evidence tendered by the defence that the Appellant's phone fell in a ditch at the time of arrest, explaining the opportunity the police had to plant evidence on his phone was ignored; linking the Appellant to one Asha to facilitate trafficking on an assumption that money sent by Asha was facilitation was erroneous following the admission that PW2- PW4 were travelling to Oman to work on invitation of PW5; and that the conviction was based on the Magistrate's bias towards suspects of human trafficking.

9. The appeal was canvassed through oral submissions. Learned counsel for the Appellant, Mr. Mwalimu condensed the grounds of appeal into three thus:

***(1) Whether the element of a charge of trafficking in person, namely, deceit and exploitation was established.***

***(2) Whether the prosecution established the relationship between Asha and Victims; and,***

***(3) Whether the prosecution proved the case beyond doubt.***

10. He urged that evidence adduced by PW1 established that she was not coerced or lured into the country as her brother facilitated her travel into Kenya after contacting the Appellant who was known to him previously to accommodate her as she searched for a job. That PW2- PW4 admitted having been facilitated to travel to Oman by PW5 who worked in Oman and was taking them following invitation by her boss who was to secure them jobs. That PW5 facilitated in applying for visas and air tickets, hence no evidence that he was aiding or deceiving them.

11. He queried whether there was a possibility of the photos having been taken and sent to his phone at the time of his arrest since it was admitted that he was arrested at about 5.00pm while the forensic evidence showed that the photos were sent to the phone at about 6.00pm. He faulted the trial court for ignoring his defence that the phone fell into the ditch at the time of his arrest. That Asha who sent money to his phone was not in Oman, therefore, the prosecution did not adduce evidence to link him with the offence.

12. He cited the case of ***Mohammed Asif - Vs- Republic (2017) eklr*** where it was held that:

***“The offence of trafficking in persons captures the entire trafficking continuum, and engagement in just one of these trafficking “stages” is sufficient. Therefore different persons or groups of people may be responsible for different aspects of the trafficking crime. The offence is thus formulated in such a way as to capture the different actors along the trafficking continuum, including those who do not directly exploit the victim’s labour or services, so long as they knew their action was for the purpose of exploiting or facilitating the exploitation of a person.”***

And argued that as discussed, elements of the offence of counter trafficking were not established. Further, Counsel submitted that he came across a scholarly Article by the learned Magistrate Published by the Pontifical Academy, Rome, which draws a conclusion that victims of human trafficking find it difficult to testify against the alleged traffickers, and no matter what the victim says, it should not be taken into account. Therefore, the conviction was based on bias.

13. On sentence, it was urged that it was harsh considering that the Appellant suffers from chronic diseases, and the decision of Muruatetu.

14. Learned Counsel for the State, Mr. Mutuma, submitted that conviction and sentence were proper and sound in law. That PW1, a student at Kampala, was called on 24<sup>th</sup> September, 2018 by Kansime Ronald who sought to know if she wanted to come to Kenya and was given the appellant's number. She traveled to Nairobi through Busia and was harboured in the appellant's house. Thereafter, she was arrested on 25<sup>th</sup> September, 2018.

15. That PW2 – PW5 were taken to a certain point by a taxi prior to being taken by the appellant who dropped them off at the Airport. That the appellant was a tenant of the house where the victims were arrested. That the police on receiving intelligence information regarding the Appellant being a trafficker and was harboring victims of trafficking at Tassia Estate, PW6, PW7, PW8 and PW9 proceeded to Tassia at 5.00pm to lay ambush. They saw and followed Motor- Vehicle Registration Number KCH 318V that was driven from Tassia to JKIA terminal, that the police intercepted and arrested 4 Tanzanian women. The police interrogated the Appellant and went to his house at Tassia where they found two (2) Ugandan women. These women said that they were lured to the house by the appellant on understanding that they would find work.

16. That the Tanzanian women could not exit Kenya since there was a ministerial circular where exits to Arabian countries via JKIA were not allowed.

17. He urged the court to consider the cybercrime report adduced in evidence and generally the electronic evidence on the case. That Ksh. 33,000/= received by the Appellant from Asha Iddi sent to a sim card registered in his name were part of the network establishing trafficking. That WhatsApp messages and images of the four Tanzanian ladies was sufficient evidence that he was engaged in trafficking, and he used his motor vehicle to facilitate their removal from the country.

18. In a rejoinder thereto, it was urged for the Appellant that the court convicted him on suspicion, without interrogating whether the prosecution placed the appellant at the center of the trafficking curtail that they were interrogating. That the appellant was a taxi driver, who was a victim of circumstances.

19. This is a first appellate court and my duty as such was well set out in the case ***Okeno Vs. Republic [1972] E.A 32*** as follows:-

***“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya Vs. Republic [1957] E.A. 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. Rulwala Vs. Republic [1957] E.A. 570). It is not the function 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.”***

20. The Appellant was alleged to have engaged in human Trafficking which is an offence as provided by the Counter-Trafficking in persons Act (Act), and in particular he was stated to have flouted **Section 3(1)(d)(5)** of the Act that provides thus:

***(1) A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of—***

***(d) Deception; for which the penalty is provided in sub-section (5) that reads as follows: A person who traffics another person, for the purpose of exploitation, commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.***

21. This means that for human trafficking to occur, the offender must commit at least one of the acts envisaged for the offence against another individual, by using some means. I will first deal with Count 2, which is in respect of PW1. It is alleged that the Appellant harboured or received two (2) Ugandan aliens by means of deception for purposes of exploitation. PW1 testified to have come to the country on an understanding that she would get some employment. That she was given the Appellant's contact by her brother Ronald Kansime. She established the fact of being a foreigner and an adult who was in possession of an identity card Number [...]. Having travelled on 24<sup>th</sup> September, 2018 and arrested on the 25<sup>th</sup> September, 2018, was evidence of having been received by the Appellant. In his defence the Appellant was silent on the case of PW1, on cross-examination he denied knowing her.

22. Although the Appellant denied having lived at Tassia, the Prosecution adduced in evidence a tenancy agreement establishing occupation of the house PW1 identified as belonging to him. The second person stated to be **Nansaba Sumia**, did not testify, but, at the time of being arrested or rescued as found by the trial court PW1 had not secured any employment.

23. For the offence to be proved, the purpose of harbouring PW1 had to be proved. The duty of proving it lay with the prosecution. In the case of ***Woolmington –Vs- DPP (1935) AC 462***, Lord Sankey stated thus:

***“Throughout the web of the English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution***

***to prove the prisoner's guilt subject to..... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner.....the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law... and no attempt to whittle it down can be entertained."***

24. According to PW1, upon arrival at the Appellant's house, she was hosted, had lunch and supper and retired to sleep. She did not allude to any conduct that would have been interpreted as exploitation. The prosecution relied basically on evidence adduced by PW1. If the demeanor of the witness had been noted by the trial Magistrate, it would have expressed psychological signs that would have assisted in proving the offence. This having been what transpired, the case was not proved to the required standard.

25. On **Count 1**, PW2, PW3 and PW4 were recruited by PW5 to go and work in the Sultanate of Oman. Upon arrival in Nairobi they were linked to an undisclosed guest house within the California area, Nairobi where they stayed overnight. They did not allude to having met expenses for their stay which meant that it was facilitated by another or others including the mysterious lady at the guesthouse. Their transport to the airport was by taxi but the individual who carried them did not reach the destination, he handed them over to the Appellant who transported them to the airport.

26. On their part, acting on intelligence information received the police followed the Appellant as he transported PW2-PW5 to the Airport and intercepted them. The definition of trafficking includes transporting or transfer of the victim for purposes of exploitation. In that case the actus reus would be established. The Appellant argues that he did not play the role of trafficking PW2-PW5 to the airport, but, was hired as a taxi driver. He adduced in evidence a business card for BEMM Importers & Exporters alleging that he does taxi business as well as clearing and forwarding.

27. No evidence was adduced by PW2-PW5 suggesting that they had contact with the Appellant prior to reaching the Petrol Station where they were received by the Appellant and they used his motor-vehicle to the Airport as a means of transport. Evidence of perceived victims (PW2-PW5) having not been of much help, the Investigators now zeroed on internet traces and /or forensic evidence.

28. **PW9 No. 90597 PC Peter Mbatha Mutinda**, a Cybercrime Forensic Expert retrieved messages from cellphones owned and/or found in possession of the Appellant. He pointed out text messages that established communication between the Appellant and other parties regarding some girls and travel.

29. It is in evidence that on the 20<sup>th</sup> September, 2018 at 7:54:58(GMT) there was an incoming text message from Number +254 753 xxx xxx querying as to whether the person could book the girls tickets and on which airline? On 23<sup>rd</sup> September, 2018, an outgoing text to Number +254 722 xxx xxx at 21:50:50(GMT) informed the recipient to look for him as immigration personnel had declined to allow them to pass hence he was advising that the person(s) go via Tz. On the 24<sup>th</sup> September, 2018, at 20:42:42(GMT) the Appellant received some Ksh.33,000/- from Asha Iddi holder of Number 254722xxxxxx. On the **25<sup>th</sup> September 2018**, at 03:03:53(GMT) an incoming text message from Number +254 753 xxx xxx queried whether the recipient was still in Eastleigh and who would pick up the girl?

30. The argument advanced by the prosecution was that the sum of money received by the Appellant from Asha Iddi was sent in respect of the four (4) victim's travel. It was however not clear the role Asha Iddi played in the entire transaction. The person mentioned as having been responsible for securing jobs in the Sultanate of Oman was stated to be Aisha. It was not crystal clear if she was the same person as the Asha Iddi who sent the Appellant money and was at large.

31. Evidence linking PW2-PW5 to the Appellant is deduced from images that were found on the Appellant's Cellphone internal storage. The Investigation Officer identified images 24-27 as for Hafsa, Zainabu, Safisha and Subira. Images of tickets and Visas for the witnesses (PW2-PW5) were sent to the Appellant on the 24<sup>th</sup> September, 2018, between 11:23:27 and 20:32(GMT). Images of PW2-PW5 and passports were sent at 15: 19:36; 17:36:24 and 18:02:27 (GMT) respectively.

32. The Appellant did not dispute the evidence that the cellphones recovered belonged to him or that they were recovered from him. His explanation was that at the time of his arrest his cellphone fell in a ditch and therefore evidence retrieved from it must have been planted therein. PW2 -PW5 did not allude to the Appellant's cellphone having dropped as alleged. The communication having occurred between 23<sup>rd</sup> September, 2018 and 25<sup>th</sup> September, 2018 from 15:19:36; 17:36:24 and 18:02:27 respectively, and the arrest having been at or about 20:02 hours, after the photographic images were on the cellphone, forensic evidence tendered disapproves the Appellant's averment that images were planted on his cellphone and the evidence places him in the chain of transactions.

33. As to the third element of the act having been committed for the purpose of exploitation, PW2-PW4 who were recruited by PW5, an accomplice of the traffickers and were destined for the Sultanate of Oman did not understand their rights. There is no indication whatsoever if they had any work permits, and they had not entered into any employment contract, this, therefore leaves the possibility of abuse and establishes an element of deception. Therefore, they were victims subject to the vulnerability of abuse. The Appellant herein posed as a taxi driver knowing very well he had information on the victims, this concealment of the information proved that he was aware of the illegality that was being committed, hence proof of his state of mind. (Mens rea)

34. The victims herein, aliens, entered this country unlawfully. They were however protected from being charged and made witnesses to safeguard their rights. Section 14 of the Act which provides for victim immunity from prosecution stipulates as follows:

***Notwithstanding the provisions of any other law, a victim of trafficking in persons shall not be criminally liable for any offence related to being in Kenya illegally or for any criminal act that was a direct result of being trafficked.***

In the case of **R.v Connors (2013) EWCA Crim. 324; R v R; and R v L (2013) QB 279**, the fact of victim immunity was emphasized by the court which observed that:

*“ ...Every vulnerable victim of exploitation will be protected by the criminal law, there*

*Is no victim, so vulnerable to exploitation, he somehow becomes invisible or unknown to or somehow beyond the protection law....”*

35. **Section 2** of the Act which defines exploitation provides as follows:

**“Exploitation” includes but is not limited to—( **Emphasis mine**).**

**(a) Keeping a person in a state of slavery;**

**(b) Subjecting a person to practices similar to slavery;**

**(c) Involuntary servitude;**

**(d) Forcible or fraudulent use of any human being for removal of organs or body parts;**

**(e) Forcible or fraudulent use of any human being to take part in armed conflict;**

**(f) Forced labour;**

**(g) Child labour;**

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**(h) Sexual exploitation;**

**(i) Child marriage;**

**(j) Forced marriage.**

36. The offence of trafficking does not require actual exploitation to take place, what was required was a manifestation of an intention to exploit the victims which was established by illegalities aforementioned. This was sufficient to prove that fact and it was established that the Appellant committed more than one of the constituent acts of human trafficking. It has been argued that the victims consented to the act of being recruited to go and work in the Sultanate of Oman. I have afore found that victims herein were vulnerable individuals who needed to work to earn a living; means having been established, their consent to what transpired was irrelevant.

37. On **Count 3**, the Appellant was indicted for facilitating and aiding the victims to exit Kenya through Jomo Kenyatta International Airport (JKIA) for purposes of trafficking. **Section 7** of the Act provides thus:

*“ A person who facilitates, aids or abets the exit or entry of persons from or to the country at international and local airports, territorial boundaries and seaports for the purpose of promoting trafficking in persons commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for a term of not less than thirty years without the option of a fine.”*

38. The Appellant herein was in communication with the individuals who recruited the victims and the ones who were to receive them in the Sultanate of Oman. He received the victims at a designated Petrol Station and supported them hence making it easier by transporting them to JKIA using his motor vehicle Registration Number KCH 318V. This was facilitating their exit out of the country, an act that was thwarted by their arrest.

39. The Appellant also complains that the learned trial Magistrate was biased. The fact that the trial magistrate may have authored an article on human trafficking per se is not a ground to contest her impartiality. In the case of *Gladys Boss Shollei v Judicial Service Commission & another [2018] eKLR*, the Supreme Court of Kenya stated that:

*“ [53] It must always be remembered that there is a presumption of impartiality of a Judge. In the case of The President of the Republic of South Africa & 2 others v South African Rugby Football Union & 3 others, (CCT16/98) [1999] the South African Constitutional Court held that there was a presumption of impartiality of judges by virtue of their training. Therefore, they would be able to disabuse themselves of any irrelevant personal beliefs or predispositions when hearing and determining matters...”*

40. The Appellant faults the court for imposing a harsh sentence. He relied on the case of *Francis Karioko Muruatetu & Another vs. Republic* [2017] eKLR where the Supreme Court stated as follows:

*“[58] To our minds, any law or procedure which when executed culminates in termination of life, ought to be just, fair and reasonable. As a result, due process is made possible by a procedure which allows the Court to assess the appropriateness of the death penalty in relation to the circumstances of the offender and the offence. We are of the view that the mandatory nature of this penalty runs counter to constitutional guarantees enshrining respect for the rule of law.*

*[59] We now lay to rest the quagmire that has plagued the courts with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors, in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the Penal Code, unfair thereby conflicting with Articles 25 (c), 28, 48 and 50 (1) and (2)(q) of the Constitution.”*

In *Jared Koita Injiri vs. Republic* [2019] eKLR, the Court of Appeal applied the same principles and delivered itself thus:

*“Section 204 of the Penal Code deprives the Court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the Courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in an appropriate case. Where a Court listens to mitigating circumstances but has, nevertheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to the accused persons under the Article 25 of the Constitution; an absolute right.”*

From the foregoing, the reasoning above is not applicable in the instant case as the Appellant was not sentenced to death or life imprisonment and he was granted an opportunity to mitigate.

41. Principles of interfering with sentence were enunciated by the Court of Appeal in the case of *Bernard Kimani Gacheru vs. Republic* [2002] eKLR as follows:

*“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”*

42. The sentence for the offence of trafficking in humans is stipulated in **Section 3(5)** of the Act that provides thus:

*A person who traffics another person, for the purpose of exploitation, commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.*

43. For Count 3 I have afore captured the penal provision of the law.

44. The trial Court opted to impose a fine instead of incarcerating the Appellant without an option of fine. Although there is a minimum prescribed sentence of thirty million, the learned Magistrate used discretion and imposed a fine of ten million on each count. In sentencing, the court considers the gravity of the offence. The trial court considered mitigating factors, a pre-sentence report and the seriousness of the offence.

45. The upshot of the above is that the appeal succeeds partially, in that the appeal on Count 2 is allowed. The conviction is quashed and sentence meted out is set aside. On Counts 1 and 3, I affirm the conviction, sentences and further orders by the trial court, save that I set aside the order directing payment of part of the fine in an aggregate sum of Ksh.15,000,000/- to be deposited to the National Assistance Trust Fund for victims of Trafficking in persons under Section 22 of the Act, in event of the fine being paid and substitute it with Ksh. 10,000,000/-

46. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE, 2021.**

**L. N. MUTENDE**

**JUDGE**