REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

(Coram: Odunga, J)

CRIMINAL CASE NO. 9 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

JOHN MUTHANGA KASYULA.....1ST ACCUSED/APPLICANT

JOSHUA MUTUA KASYULA.....2ND ACCUSED/APPLICANT

MUNYASIA MWANZIA.....3RD ACCUSED/APPLICANT

PETER SALIM KISANDU.....4TH ACCUSED/APPLICANT

RULING

1. The accused hereinabove were charged with the offence of Murder contrary to section 203 as read with section 204 of the ***Penal Code*** (Cap 63) Laws of Kenya for which pleas of not guilty was entered. The particulars of the charge were that on the 28th November, 2018 at Kavisuni Village, Imba Location within Kitui County, they jointly with others not before Court murdered **Charles Munyithia**.

2. When the Applicants sought to be released on bond pending their trial, the said application was opposed by the Prosecution. The reasons why the same was opposed was that before the death of the deceased, the deceased and the 1st Applicant was engaged in a long running land dispute which culminated into Mwingi Criminal Case No. 514 of 2015 in which the deceased was the accused person. It was during the pendency of the said case and while the matter was partly heard that the deceased herein was allegedly murdered. As a result, the said criminal case was marked as abated. It is alleged that the deceased was murdered in order to stop him from laying claim to the disputed parcel of land.

3. It is contended by one of the witnesses who allegedly witnessed the murder that following the incident, he was trailed by some people who according to him were sent by the 1st applicant to clear him in order to prevent him from giving his testimony.

4. In the submissions filed on behalf of the prosecution on 14th July, 2020, it was disclosed that the investigating officer is in the process of admitting the vulnerable witnesses some of whom had even refused to be released on bond till after their testimony in this case. It was therefore contended that releasing the applicants on bond would likely to interfere with the said witnesses.

5. In a rejoinder the 1st Applicant swore an affidavit in which he disclosed that the person who wrote the letter purporting to be the Chief was not his Chief and that in the said letter the person referred to as him was not himself. He also disclosed that what was reported by the said eye witness was that the deceased was killed by a mob. He also noted that the deceased's wife and his actual area Chief had not sworn any affidavit opposing his release on bond. He clarified that in the said criminal case, he was in fact the complainant and the said case was not a land dispute case and he had no land dispute with the deceased.

6. When the matter was first placed before me on 30th June, 2020, all the accused persons pleaded not guilty and their learned counsel, **Mr Langalanga** who was holding brief for **Mr Nzili** for the accused applied that the accused be admitted to bond pending trial. On his part Mr Mamba informed he Court that he had just been served with the application and he needed three days to respond. Accordingly, this court indulged the State in that regard and stood the matter to 15th July, 2020. On 15th July, 2020 **Mr Ngetich** who held brief for **Mr Mamba** informed the Court that he had limited instructions. Since the only issue was the security of the vulnerable witnesses, the court stood over the matter to 22nd July, 2020 in order for the prosecution to update the court as to whether the said vulnerable witnesses had been placed under Witness Protection. However once again on 22nd July, 2020 Mr Mamba for the Prosecution did not attend and once again **Mr Ngetich**

informed the Court that he had no instructions. He in fact informed the Court that he had called the in Charge of prosecutions, Kitui the day before and notified him of the numerous Kitui Cases pending before this Court on the said date and sent him a copy of the cause list. The said in Charge informed him that he would take up the matter. On the morning of 22nd July, 2020 **Mr Ngetich** once again called **Mr Mamba** who informed him that he had other matters in Kitui and sought another date. Later, he was informed that **Mr Mamba** was on his way and he had just taken he courtesy of being placed on record. By that time, it was past 11am.

7. Mr Langalanga on his part sought for a ruling date lamenting that the delay in determining the issue of release on bail was adversely prejudicing the applicants. Accordingly, the matter was scheduled for delivery of the ruling.

Determination

8. I have considered the application, the affidavits both in support thereof and in opposition thereto as well as the submissions filed.

9. Article 49(1)(h) of the Constitution provides that:-

> **An accused person has the right …**
>
> **(h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.**

10. The Constitution however has not identified what qualifies under the term "compelling reasons." The ordinary meaning according to ***Thesaurus English Dictionary*** of the word "compelling" is forceful, convincing, persuasive, undeniable and gripping. From this plain meaning it is apparent that the court would consider any fact or circumstances brought to its attention by the prosecution which would convince the court that the release of the accused would not augur well for the administration of justice or for the trial at hand. The court would therefore in my view consider the circumstances of each case using commonly known criteria, primary of which is whether or not the accused will attend trial.

11. It is true that the right to bail is not absolute and where there are compelling reasons the said right may be restricted. Nevertheless, since the Constitution expressly confers the said right, it is upon the prosecution to show that there exist compelling reasons to deny an accused person bail. What the compelling reasons are, however, depend on the circumstances of each case and these circumstances are to be considered cumulatively and not in isolation. The mere fact therefore that the offence with which an accused is charged carries a serious sentence is however not necessarily a reason for denial of bail. That ground only becomes a factor if it may be an incentive to the accused to abscond appearing for trial. Therefore, the real question that the court must keep in mind is whether or not the accused will be able to attend the trial. The imposition of terms of the bail if necessary must similarly be for the purposes of ensuring the attendance of the accused at the trial and ought not to be based solely on the sentence that the accused stands to serve if convicted. It is therefore my view that the discretion to grant bail and set the conditions rests with the court. In exercising its discretion, the court must seek to strike a balance between protecting the liberty of the individual and safeguarding the proper administration of justice. As the fundamental consideration is the interests of justice, the court will lean in favour of liberty and grant bail where possible, provided the interests of justice will not be prejudiced by this. Put differently, bail should not be refused unless there are sufficient grounds for believing that the accused will fail to observe the conditions of her release. In **S vs. Nyaruviro & Another (HB 262-17, HCB 122-17, XREF CRB 1454A-B-17) [2017] ZWBHC 262 (31 August 2017)**, the Court held that:

> **"The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established where there is a likelihood that the accused, if he or she were released on bail, will (i) endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule; or (ii) not stand his or her trial or appear to receive sentence; or (iii) attempt to influence or intimidate witnesses or to conceal or destroy evidence; or (iv) undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system… the ties of the accused to the place of trial; the existence and location of assets held by the accused; the accused's means of travel and his or her possession of or access to travel documents; the nature and gravity of the offence or the nature and gravity of the likely penalty therefore; the strength of the case for the prosecution and the corresponding incentive of the accused to flee; the efficacy of the amount or nature of the bail and enforceability of any bail conditions; any other factor which in the opinion of the court should be taken into account…In considering any question… the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely (i) the period for which the accused has already been in custody since his or her arrest; (ii) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail; (iii) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay; (iv) any impediment in the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused; (v) the state of health of the accused; (vi) any other factor which in the opinion of the court should be taken into account… In assessing the risk of abscondment, the established approach is for the court to assess this risk by first assessing the likely degree of temptation to abscond which may face the accused. To do this, one must consider the gravity of the charge because quite clearly, the more serious the charge, the more severe the sentence is likely to be. In *S* v *Nichas* 1977 (1) SA 257 (C) it was observed that if there is a likelihood of heavy sentences being imposed the accused will be tempted to abscond. Similar sentiments were stated in *S* v *Hudson* 1980 (4) SA 145 (D) 146 in the following terms;**
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> > **"The expectation of a substantial sentence of imprisonment would undoubtedly provide an incentive to the accused to abscond and leave the country."**
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> **In other words, the possibility of a severe sentence enhances any possible inducement to the accused to flee. See also *Aitken* v**

***AG* 1992 (2) ZLR 249 and *Norman Mapfumo* vs. *The State* HH 63/2008… The other relevant factor to be considered is the relative strength of the state's case against the accused on the merits of the charge and therefore the probability of a conviction. It stands to reason that the more likely a conviction, the greater will be the temptation not to stand trial. Despite being the fulcrum of the application, this factor must be considered together with other factors in the case."**

12. Gravity of the offence as a consideration was appreciated however by **Mbogholi Msagha, J** in **Criminal Application No. 319 of 2002 Priscilla Jemutai Kolonge vs. Republic** (unreported) at page 3, wherein he held as follows:

"However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive."

13. The Nigerian Supreme Court **(Justice Ibrahim Tanko Muhammad J.S.C.)** set out some essential criteria on the issue of whether to grant bail in **Alhaji Mujahid Dukubo – Asari vs. Federal Republic of Nigeria S.C. 20A/2006** as follows:

"…When it comes to the issue of whether to grant or refuse bail pending trial of an accused by the trial court, the law has set out some criteria which the trial court shall consider in the exercise of its judicial discretion to arrive at a decision. These criteria have been well articulated in several decisions of this court. Such criteria include among others, the following:-

(i) The nature of the charges;

(ii) The strength of the evidence which supports the charge;

(iii) The gravity of the punishment in the event of conviction;

(iv) The previous criminal record of the accused if any;

(v) The probability that the accused may not surrender himself for trial;

(vi) The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;

(vii) The likelihood of further charges being brought against the accused;

(viii) The probability of guilty;

(ix) Detention for the protection of the accused;

(x) The necessity to procure medical or social report pending final disposal of the case.

14. However, in **Republic vs. Danson Mgunya & Another [2010] eKLR,** the Court while appreciating the need in this Country to have a policy on bail/bond was of the view that the above criteria reflects the true legal position but opined that:

"…criteria (ii) above (the strength of the evidence which supports the charge) ought not apply in Kenya except where perhaps the application for bail is being made or renewed after the court has placed the accused on his defence. This is inconsistent with the principle that an accused is presumed innocent. Such criteria should be applied with great caution and only in exceptional circumstances like where there is a statement that show that the accused was caught-red handed or where there is a lawfully admitted confession. Criteria (viii) above (the probability of guilt) appears to be in reference to where an accused has been placed on his defence."

15. That case was decided before the policy on bail-bond was formulated. It is now clear that in interpreting the right to bail, section 123A of the ***Criminal Procedure Code*** gives the parameters for the grant of the right to bail as follows:

(1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

(a) the nature or seriousness of the offence;

(b) the character, antecedents, associations and community ties of the accused person;

(c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;

(d) the strength of the evidence of his having committed the offence;

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—

(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;

(b) should be kept in custody for his own protection.

16. In **Kelly Kases Bunjika vs. Republic [2017] eKLR**, **Muriithi, J** was of the view that:

"The second limb of paragraph (b) of sub-section (1) of section 123A must be read separately and disjunctively from the first part so that the Court considers whether the accused 'if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody'…Of course, the accused is standing trial for all the alleged offences of robbery with violence, escape from lawful custody and assault, and he is entitled to the presumption of innocence. It is no derogation of his right to that presumption of innocence that he is refused bail; it is merely the exercise of the Court's mandate to grant bail as constitutionally empowered. It only means that the Court finds a compelling reason within the meaning of the Constitution to refuse bail in the particular case."

17. The considerations in determining whether or not to grant bail are set out in Kenya Judiciary's ***Bail and Bond Policy Guidelines, March 2015*** at p. 25 which sets out judicial policy on bail as follows:

The following procedures should apply to the bail hearing:

(a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:

a. That the accused person is likely to fail to attend court proceedings; or

b. That the accused person is likely to commit, or abet the commission of, a serious offence; or

c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or

d. That the accused person is likely to endanger the safety of victims, individuals or the public; or

e. That the accused person is likely to interfere with witnesses or evidence; or

f. That the accused person is likely to endanger national security; or

g. That it is in the public interest to detain the accused person in custody.

18. I associate myself with the view expressed by **Muriithi, J** in **Kelly Kases Bunjika vs. Republic** (supra) that:

"It is clear that the primary consideration for bail is whether the accused will attend his trial for the charges facing him, and it must, therefore, be a compelling reason if it is demonstrated that "*the accused person is likely to fail to attend court proceedings*". The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond. The accused claims to have a good defence to the charge of escape from custody. The nature of such defence and evidence is not disclosed. The accused merely asserts his "constitutional right to be granted Bond/Bail on reasonable and favourable terms."

19. From the constitutional point of view, however, an accused person has the right to be released on bond or bail, on reasonable conditions pending a charge or trial. Therefore, the accused does not have to apply for release on bond since a person on whom rights have been bestowed under the Constitution is not obliged to ask for the same. I therefore associate myself with the decision of the Malawian High Court where **Katsala, J** in the case of **Clive Macholewe vs. Republic 171 of 2004 (2004) MWHC 53,** stated:

"In my judgement the practice should rather be to require the state to prove to the satisfaction of the court that in the circumstances of the case, the interest of justice requires that the accused be deprived of his right to release from detention. The burden should be on the state and not on the accused. He who alleges must prove. This is what we have always upheld in our courts. If the state wants the accused to be detained pending his trial then it is up to the state to prove when the court should make such an order."

20. This right can only be limited where it is shown that there exist compelling reasons not to be released. Those compelling reasons include the ones set out hereinabove. It is however my view that the burden to prove the existence of the said compelling reasons falls squarely on the prosecution. That was the position in **Republic vs. William Mwangi Wa Mwangi [2014] eKLR** where **Muriithi, J** held that:

"It is now settled that in the event that the state is opposed to the grant of bail to an accused person it has the onus of demonstrating that compelling reasons exist to justify denial of the Constitutional right to bail…It is trite that the cardinal principle which the court should consider in deciding whether to grant bail is whether the accused will turn up for his trial and whether there are substantial grounds to believe that he is likely to abscond if released on bail."

21. In **Foundation for Human Rights Initiatives vs. Attorney General [2008] 1 EA 120** it was held by the Constitutional Court of Uganda that:

"The context of article 23(6)(a) confers discretion upon the court whether to grant bail or not to grant bail. Bail is not automatic. Clearly the court has discretion to grant bail and impose reasonable conditions without contravening the Constitution. While the seriousness of the offence and the possible penalty which would be meted out are considerations to be taken into account in deciding whether or not to grant bail, applicants must be presumed innocent until proved guilty or until that person has pleaded guilty. The court has to be satisfied that the applicant should not be deprived of his/her freedom unreasonably and bail should not be refused merely as a punishment as this would conflict with the presumption of innocence. The court must consider and give the full benefit of his/her constitutional rights and freedoms by exercising its discretion judicially…]. It is not doubted or disputed that bail is an important judicial instrument to ensure individual liberty. However, the court has to address its mind to the objective of bail. However, the court has to address its mind to the objective of bail and it is equally an important judicial instrument to ensure the accused person's appearance to answer the charge or charges against him or her. The objective and effect of bail are well settled and the main reason for granting bail to an accused person is to ensure that he appears to stand trial without the necessity of being detained in custody in the meantime. Under article 28(3) of the Constitution, an accused person charged with a criminal offence is presumed innocent until proved guilty or pleads guilty. If an accused person is remanded in custody but subsequently acquitted may have suffered gross injustice. Be that as it may, bail is not automatic and its effect is merely to release the accused from physical custody while he remains under the jurisdiction of the law and is bound to appear at the appointed place and time to answer the charge or charges against him."

22. As regards the same issue, **Ochieng, J** in **Republic vs. Ahmed Mohammed Omar & 6 Others [2010] eKLR** expressed himself as hereunder:

"Meanwhile, before the High Court of Kenya, at Nakuru, my Learned Brother Emukule J., has also had occasion to grapple with an application for bail pending trial. He did so in Republic vs Dorine Aoko Mbogo & Another, Criminal Case No. 36 of 2010; His Lordship expressed the view that;

'Murder, (like) treason, robbery with violence or attempted robbery with violence are offences which are not only punishable by death, but are by reason of their gravity, (taking away another person's life, disloyalty to the state of one's nationality, or grievous assault or injury to another person or his property), are offences which are by their reprehensiveness, not condoned by society in general. It would thus hurt not merely society's sense of fairness and justice, and more so, the kith and kin of the victim, to see a perpetrator of murder, treason or violent robbery (committed or attempted) walk the street on bond or bail pending his trial. A charge of murder, treason, robbery with violence (committed or attempted) would thus be a compelling reason for not granting an accused person bond or bail.'

Notwithstanding those remarks, the learned judge went ahead to grant bail in that case. I therefore believe that the judge did not, and could not have meant that once an accused person is charged with an offence punishable by death, that is reason enough to deny him bond or bail pending trial."

23. Therefore, it behoves the Prosecution Counsel when the file is placed on his or her desk for plea taking to seek adequate instructions from the investigating officer on the basis of which an opinion may be informed as to whether or not to oppose the release of an accused on bail, pending trial, which is a constitutional right. In other words, the prosecution should not wait till the accused applies for release on bond, an application which is unnecessary in my view, and then seek time to obtain instructions. To for example ask the court to obtain pre-bail report before determining whether to release an accused on bail amounts in my view to shifting the onus of proving existence of compelling reasons to the court. It is the duty of the prosecution to lay a basis upon which such a report, a report which I must say is occasionally useful in informing the court whether or not to release an accused on bail, is necessary and ought to be secured. To simply make a bland statement that the report ought to be secured in my respectful view, will not do. The Court, as an impartial arbiter between the parties before it has no business entering into the arena and seeking information the basis of which a finding or otherwise of the existence of compelling reasons may be made. That is neither the letter nor the spirit of the current Constitution.

24. In this case, the reasons advanced for seeking to deny the release of the applicants on bond is that they are likely to interfere with the witnesses.

25. Lesiit, J in the case of **Republic –vs- Richard David Alden [2016] eKLR, Lessit, J**. while admitting the accused to bail in that case, cited other cases on the issue on the interference of witnesses and stated amongst other things as follows:

"All that the law requires is that there is interference in the sense of influencing or compromising or inducing or terrifying or doing such other acts to a witness with the aim that the witness will not give evidence, or will give particular evidence or in a particular manner……"

26. In my view, if the allegation of interference emanates from the extended family rather than the accused, nothing stops action being taken against the said persons. It would however be unfair to deny the accused bail simply on allegations that his relatives have threatened the witnesses since the incarceration of the accused in such circumstances does not necessarily amount to cessation of such threats. In addition, the fact that an accused person is facing a charge of murder does not bar further charges being preferred against him his being in custody

notwithstanding since obstructing a cause of justice itself is a criminal offence. It is the duty of the State to ensure that all persons enjoy their fundamental rights and this applies to both the victims and the accused persons. As for the allegation of interference by the accused himself, I associate myself with the opinion expressed in **Rep vs. Dwight Sagaray & Others High Court Criminal Case No. 61 of 2012** that:

> **"For the prosecution to succeed in persuading the court on this criteria (of interference), it must place material before the court which demonstrate actual or perceived interference. It must also show the Court for example the existence of a threat or threats to witness; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and the witnesses among others…, at least some facts must be placed before the court otherwise it is asking the court to speculate."**

27. Therefore, the Court in making a determination must consider whether such safeguards, if invoked, are unlikely to have any impact of the safety of the witnesses including barring the accused from stepping in the jurisdiction where the witnesses are as was held in **Republic vs. Zacharia Okoth Obado & 2 Others [2018] eKLR**. In that case the Learned Trial Judge found that:

> **"On the whole question of the likelihood of interference with the case witnesses and intimidation this cannot be taken lightly. The Accused persons have been supplied with the witness statements and have the names and contacts of those who have adversely mentioned them in connection with the case. The manner in which the deceased met her death is in the public domain and the evidence has also been provided. I find that given the circumstances of this case the likelihood of the adversely mentioned Accused persons contacting the witnesses can inflict genuine fear and anxiety to them. I think that the mere release of the Accused is sufficient to inflict anxiety and fear leading to intimidation of potential witnesses."**

28. Notwithstanding that finding the Learned Trial Judge proceeded to grant the 1st Accused bail on the following terms:

> **1. The 1st Accused may be released upon deposit into court of cash bail in the sum of Kshs. 5 million.**
>
> **2. In addition the 1st Accused will provide two sureties of Kshs. 5 million each.**
>
> **3. The 1st Accused must deposit all his travel documents including his Kenyan, East African and Diplomatic passports which he holds.**
>
> **4. The court will be at liberty to cancel this bail and bond and to remand the 1st Accused in custody if any of the following conditions, which I hereby set as part of the terms upon which he is released, are breached:**
>
> > **i. He shall not cause an adjournment in this case.**
> >
> > **ii. He shall report once a month to the Deputy Registrar of this court.**
> >
> > **iii. He shall not go anywhere within 20 kilometers of Homabay County boundary on all sides of that County.**
> >
> > **iv. He shall not contact or intimidate, whether directly or by proxy any of the witnesses in this case as per the Witness Statements and other documents supplied by the State to the defence.**
> >
> > **v. He shall not intimidate the parents, siblings or other close relations of the deceased.**
> >
> > **vi. He shall refrain from mentioning or discussing the deceased and or this case in gatherings or political meetings.**

29. What comes out from the said decision is that there are in place constitutional and legislative mechanisms in place to protect witnesses who are shown to be under real threat if an accused person is released.

30. While my view is that once an accused is arraigned before the trial court, whether or not an application for release on bail is made, it is the duty of the trial court to deal with the issue, where compelling reasons are given nothing bars the court from denying the release of the accused on bail for a definite period. In other words, the trial court may find from the material placed before it that at that stage it would not be just to release the accused on bail and that the application may be renewed at a later stage when the circumstances have changed, for example where vulnerable witnesses have testified. Either way, the court is obliged to make a ruling on the application. In other words, the Court ought to make a specific finding as to whether or not it is satisfied that compelling reasons exist that militate against the admission of the accused to bail at any particular stage of the proceedings.

31. In this case, the Prosecution intimated that it was in the process of placing the vulnerable witnesses under witness protection program. As a result, the prosecution was given time to undertake the same. However, instead of updating the court on the progress, the State Counsel made no further appearance in the matter despite spirited attempts by his colleague, **Mr Ngetich**, to get in touch with him. As a result, there is no basis upon which this Court can find that as at the time of the delivery of this ruling there were existing compelling reasons to warrant denial of admitting the accused persons to bond.

32. In the premises, I hereby admit each of the Applicants to bond of Kshs 1,000,000.00 with 1 surety of similar amounts to be approved by the Deputy Registrar of Kitui High Court. I further direct the Applicants not interfere with the prosecution witnesses or the manner in which the prosecution's case is being conducted either directly or indirectly. They are directed to appear in court at least once every month or as directed by the Court. In the event of violation of any of these terms, their bonds shall be liable to cancellation and the will attend to the

hearing of the rest of their case while in custody.

33. The Applicants or any other party are at liberty to make an appropriate application if the circumstances change.

34. This Ruling is delivered online through Skype video link due to the circumstances occasioned by the prevailing restrictions resulting from Corona Virus Disease 19 (COVID 19) pandemic.

Read, signed and delivered in open Court at Machakos this 30th day of July, 2020.

G.V. ODUNGA

JUDGE

Delivered in the presence of:

Mr Langalanga for Mr Nzili for the accused

Mr Ngetich for Mr Mamba for the State

CA Geoffrey