



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION MILIMANI

ANTI-CORRUPTION CRIMINAL APPEAL NO. 12 OF 2018

JOSHUA AMOKOL.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

1. The appellant herein Joshua Amokol was arraigned before Nairobi Anti-corruption Chief Magistrate's court on 15th May 2016 facing five counts relating to corruption. Count one he was charged with receiving a bribe contrary to Section 6 (1) (a) as read with Section 18 as read with Section 27 of the Bribery Act No. 47/2016. Particulars are that, on 13th June 2014, at General Stores within Nairobi City County, being a public officer, to wit, the Nairobi City County enforcement officer of the rank of Corporal requested for a financial advantage of Kshs.3,000/= from Pasiliano Okou Olunga as a benefit so as to release a motor cycle registration No. KMCW 462H, which he had impounded from the said Pasiliano Okou Olunga and detained at General Stores along Haile Selassie Avenue for an alleged offence of making a wrong turn, a matter to which the said public body is concerned.

2. Count two, he was also charged with receiving a bribe contrary to Section 6 (1) (a) as read with Section 18 as read with Section 27 of the Bribery Act No. 47 of 2016. Particulars are that on 16th June 2014, at Nairobi General Stores within Nairobi City Count, being a public officer to wit, the Nairobi City County Enforcement officer of the rank of a Corporal requested for a financial advantage of Kshs.3,000/= from Pasiliano Okou Olunga as a benefit so as to release a motor cycle registration KMCW 462H, which he had impounded from the said Pasiliano Okou Olunga and detained at General Stores along Haile Selassie Avenue for an alleged offence of making a wrong turn, a matter to which the said public body is concerned.

3. Regarding count three, he was charged with receiving a bribe contrary to Section 6 (1) (a) as read with Section 18 as read with Section 27 of the Bribery Act No. 47 of 2016. Particulars are that on 16th June 2014, at Nairobi General Stores within Nairobi City Count, being a public officer to wit, the Nairobi City County Enforcement officer of the rank of a Corporal requested for a financial advantage of Kshs.3,000/= from Pasiliano Okou Olunga as a benefit so as to release a motor cycle registration KMCW 462H, which he had impounded from the said Pasiliano Okou Olunga and detained at General Stores along Haile Selassie Avenue for an alleged offence of making a wrong turn, a matter to which the said public body is concerned.

4. Count four, he was charged with obstruction contrary to Section 66 (1) (a) as read with Section 66 (2) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. Particulars are that on 16th day of June 2014, at Nairobi City County, General Stores within Nairobi City County, without justification or lawful excuse, obstructed Ethics and Anti-Corruption Commission investigators namely Samuel M. Njiru, Michael Eka and Caleb Okoth, from arresting him by inviting his colleagues to rescue him from lawful custody, while the said investigators were effecting lawful arrest.

5. With respect to count five, he was charged with concealing of evidence contrary to Section 66 (1) (a) as read with Section 66 (2) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. Particulars provides that, on 16th day of June 2014, at Nairobi City County General Stores within Nairobi City County being a public officer, to wit, the Nairobi City County Enforcement Officer of the rank of Corporal, concealed three (3) pieces of Kenya currency of denomination of 1000 which he had reasonable ground to believe would be used as evidence in an investigation of corrupt conduct against him.

6. After entering a plea of not guilty, the trial commenced with the prosecution calling 10 witnesses. On his defence, the appellant gave sworn testimony. Upon evaluating the evidence by both the prosecution and the defence, the Hon. Magistrate found the appellant guilty of all counts and sentenced him to a fine of Kshs.150,000/= in default serve 1year imprisonment for each count. That Count II and III to run concurrently and the others to run consecutively.

7. Aggrieved by the said conviction and sentence, the appellant filed a petition of appeal dated 11th April 2019 citing 7 grounds of appeal as follows:

- (1) The learned trial magistrate erred in law and fact in convicting the appellant relying on circumstantial and uncorroborated evidence.**
- (2) The learned magistrate erred in relying on evidence of prosecution witnesses.**
- (3) The learned magistrate erred in law and in fact in relying on the extraneous matters as the basis of convicting the accused.**
- (4) The learned trial magistrate erred in law and in fact in failing to consider the appellant's submissions before entering and delivering his judgment.**
- (5) The learned magistrate erred in law and in fact in not finding that the sentence meted out was grounded on an irregular conviction and hence lacked merit and or legal foundation.**
- (6) The learned magistrate erred in law and in fact in failing to find that there had been gross inconsistency of witness's testimonies and which inconsistency ought to have been examined in favour of the accused.**
- (7) The learned magistrate erred in law and in fact in convicting the accused on biased testimony which manifestly lacked any independent witness to an unfair trial.**

8. On 24th April 2019, the appellant filed a chamber summons seeking to be released on bail pending hearing of the appeal. However, on 29th May 2019, parties by consent agreed to compromise the application in favour of the hearing of the substantive appeal which was then canvassed on 12th June 2019.

9. Being the first appellate court, this court is duty bound to re-evaluate, re-consider and reanalyse a fresh the evidence tendered before the trial court so as to arrive at an independent conclusion or finding bearing in mind that the trial court had the advantage of seeing, listening to the witnesses' testimony and assessing their demeanour.

10. Brief facts of this case are that, on 13th June 2014, Pasiliano Okou Olunga a boda boda rider within Nairobi CBD was operating motor cycle Registration No. KMW 462H. On that day, he picked a passenger from country bus area to catch up with a shuttle destined for Eldoret. He took railway roundabout and then Haile Selassie avenue up to Mfangano Street.

11. As he stopped, three people who were dressed in civilian arrived and ordered him to get off the bike. The three claimed that he had joined Mfangano Street through a wrong direction. Those people whom he later came to learn were employees from Nairobi City County, pushed the motor cycle to New General Stores. Two of the officers left and the one who remained told him to give him Kshs.3,000/= to secure the release of his motor cycle. PW1 requested for time to go and look for the money. From there he proceeded to the EACC offices and made a complaint. Since it was late, he was advised to go back on Monday the 16th June 2014.

12. On 16th June 2014, he went back to the EACC's office and got introduced to an officer by the name of Mr. Mukundi who introduced him to another officer one Mr. Okoth. He was given Kshs.3000/= shillings in one thousand denomination which he was to use when recording his conversation with the officer who wanted a bribe. He signed an inventory of the photocopy of the money S/No. DC 74323442, DF 1845855 and DA 14089666 (MFI.22).

13. The money was then treated and put in a khaki envelope. In company of the EACC officers, he proceeded to the Nairobi City County city stores. Unfortunately, the officer who had given his name as Joshua was not there. As he was leaving, he bumped unto the officer. Unable to switch on the recording device, he told Joshua that he had gotten two thousand only. Joshua insisted on getting Kshs.3,000/=. He requested Joshua (appellant) to allow him go look for the extra one thousand which he agreed but with a caution not get him treated money.

14. The appellant then went back to where Mukundi (PW10), Okoth (PW6) and pw4 the officers from the EACC were waiting for him. The officers told him to go back and give the money. As PW1 went back, he met with the appellant near St. Clavers Primary School. The appellant told him to wait as he allegedly went for the key to the store. Before parting, he passed over the money to the appellant. As he was leaving, he was arrested by Mukundi and Okoth. As he was handcuffed, he resisted as he fought back thus causing commotion.

15. Attracting the attention of his colleagues city council askaris, they joined and tried to rescue him. The arresting officers were however overpowered by county askaris who escaped with the money and handcuffs. He was however not able to switch on the recording device. On cross examination he alleged that he could not switch on the gadget as the appellant appeared suddenly.

16. PW2 Duncan Odayo Oyugi Assistant Director Human Resource in charge of City Council department Nairobi confirmed that the appellant was their employee. He confirmed that when the appellant escaped arrest while receiving a bribe, he absconded duty. That he was given a show cause letter and finally dismissed from employment on 20th March 2015.

17. The officer produced as exhibits a letter of appointment for the appellant (PEXh.4), promotion letter (PEXh.5) advisory committee minutes (PEXh.6) dismissal letter (PEXh.7) and appeal against dismissal letter (PEXh.8). On cross examination, PW2 confirmed that the appellant had escaped from the EACC officers during arrest.

18. Pw3 Patrick Mbijiwe an investigator with the EACC was called by his supervisor who directed him to go for reinforcement at the scene where PW4, PW6 and PW10 who had accompanied PW1 to trap the appellant with treated money had been attacked. He and one Mbugua rushed to the scene and found PW4, PW6 and PW10 who confirmed that they had arrested one Joshua (appellant) but he was rescued by his colleagues. That PW4, PW6 and PW10 identified and arrested a man known as Denis as one of those people who rescued the appellant who disappeared with the treated money and handcuffs.

19. The following day, he and other senior officers held a meeting with Nairobi City government officials who agreed for an identification parade to be conducted. Later, the County Senior officers left one by one informing the officers that nobody was ready for identification parade.

20. PW4 Michael Ekai Maine said that he, in company of Macharia Mbuti (PW6) and PW10 accompanied PW1 to trap and arrest the appellant on the 16th June 2016. He stated that, it was one Njagi who treated the money and gave to PW10 who later passed over the same to PW1. That when they arrived the city centre, they inducted PW1 on how to use the device and instructed him to go and record his conversation with the appellant. That after a while, PW1 went back with a recorder loaded with a conversation between him and the suspect.

21. PW4 alleged that having confirmed that a demand had been made, they gave PW1 the Kshs.3,000/= treated notes to take to the appellant as they strategically followed him. When PW1 handed over the money to the appellant, they bounced on him. However, the appellant managed to escape after shouting for help from his colleagues who assisted him escape with handcuffs and the treated money. He assisted in arresting one Denis one of the askaris who had rescued the appellant.

22. PW5 Reuben Njagi who treated the money and prepared an inventory merely produced the inventory and a photocopy of the treated money.

23. PW6 Caleb Oscar accompanied PW1, PW4 and PW10 to the scene. He corroborated the evidence of PW1 and PW4. He however stated that PW1 confirmed to them that he had not managed to switch on the voice recording gadget at any one point. He also stated that when PW1 handed over the treated money to the appellant, the appellant fought back as his colleague askaris joined and he managed to escape with the money and handcuffs. That in the course of the struggle his shirt (PEX.10) got torn. He further corroborated the evidence of PW3 that the officers at City County refused to participate in an identification parade.

24. PW7 Benard Nyachiri a senior officer working with the Nairobi County Inspectorate department confirmed that on 16th June 2016 he had allocated the appellant inspectorate duties at the lower part of the city. That he later got information that the officer had fought plain clothes police officers. He rushed to the scene and confirmed what had happened. He took the report to his director who ordered him to avail the appellant in his office the following day. The following day, the appellant did not report for duty and his phone was switched off. After 14 days non-attendance to do work, he wrote a letter indicating that the appellant had absconded duty.

25. PW8 the owner of motor cycle registration No. KMCW 462H stated that he leased his motor cycle to PW1. That on 13th June 2016 PW1 called indicating that the motor cycle had been impounded by city askaris who wanted a bribe of Kshs.3,000/=. On 16th June 2016 he went for his motor cycle. He was told that he had caused trouble to their colleague. He kept going for his motor cycle for 3 months within which period he paid Kshs.14,000/= as fine. He produced his log book (MFI.12) (Exh.12) as proof of ownership.

26. PW9 – Francis Wambua an employee of the EACC was deployed on 16th June 2014 to go and rescue his colleagues who had been attacked while in operation. He rushed to the scene but found the attacker (appellant) had escaped. He participated in the arrest of one Denis Ongati one of the people who assisted the appellant escape thereby obstructing the officers from executing their duties.

27. PW10 Samuel Mukundi Njiru the investigating officer corroborated the evidence of his colleagues PW4 and PW6. He also confirmed that PW1 had not managed to record any conversation and that the appellant was rescued by both the city askaris and members of the public who responded to the appellant's screams that he had been attacked by thieves.

28. The officer told the court that he managed to arrest one Dennis one of the people who assisted the appellant escape and that every effort to get assistance from the city county senior officials to conduct an identification parade to pick on the askaris who attacked him then was fruitless as they refused to participate. On cross examination he confirmed that the audio recorder did not record anything as it was not switched on and that PW4 had lied in indicating that PW1 had recorded some conversation.

29. In his defence, the appellant gave sworn testimony denying the charges. He stated that on 16th June 2016 he was on duty when five men accosted him without identifying themselves. That he screamed for help and members of the public responded. That when he was rescued by members of the public he went home as he was suffering from pain out of the injuries he sustained. The following day, he called his boss (PW7) indicating his inability to go to work. He allegedly went to hospital and was given two days off duty (DEX.3).

30. That he later proceeded to Kenyatta Hospital where he was given 6 more days sick off. He produced treatment card (DEX.4a) and receipt for X-ray (DEX.4 (b)). He was shocked to be interdicted while on sick off. He denied impounding motor cycle registration No. KMCW 462H. He denied demanding for a bribe of Kshs.3,000/=. He blamed PW7 for his woes claiming that he was the one who set him up. The trial court found that there was sufficient circumstantial and well corroborated evidence to convict.

Hearing of the Appeal

31. During the hearing, Mr. Njugi for the appellant relied on the written submissions filed on 6th June 2019 while the state relied on the submissions filed on 12th June 2019.

Appellant's Submissions

32. It was Mr. Njugi's submission that the trial magistrate improperly convicted the appellant based on circumstantial evidence, uncorroborated statements and inadmissible evidence. Counsel submitted that there was no proof of any demand for a bribe of Kshs.3,000/= on 13th June 2014 and that the only evidence adduced by PW1 was not corroborated and the magistrate did not warn himself on the dangers of relying on the evidence of a single witness.

33. Regarding the first two counts, Mr. Njugi submitted that there was no proof of requesting for a bribe on 16th June 2016 as the recording device failed. He contended that the testimony of PW4 was that the demand of a bribe was recorded on 16th June 2016. That he contradicted the evidence of PW6 and PW10 who were with him. He further questioned why PW1 did not record the conversation for the second time.

34. Regarding obstruction, counsel submitted that it was the investigating officer's failure not to have identified themselves leading to members of the public attacking them as the force they applied in arresting the appellant was excessive.

35. Mr. Njugi further submitted that prosecution did not call any independent witness to corroborate their testimony.

36. Counsel submitted that the trial magistrate failed to take into account the appellant's submissions more particularly a decision in the case of **Peninah Kimuyu vs R (2014) eKLR** where the court held that for prosecution to succeed in proving an offence of bribery, they must establish that the person who receives a bribe did so corruptly and that he must have solicited or demanded.

37. Learned counsel made further reference to the decision in several decisions inter alia **Peter Mbugua Kabui vs R (2016) eKLR, Kenneth Mwangi Mahugu vs R (2017) eKLR, Mnazi Nyai vs R, James Ochieng Oloo Ogogo vs R (2018) and R vs CLK (2017) eKLR.**

Submissions by the respondent

38. M/s Sigei relied on her submissions dated 12th June 2019. She submitted that the prosecution evidence was well corroborated and consistent. She urged the court to find that it was not necessary to call independent witness as there was adequate evidence and the absence of such evidence cannot lead to an inference that had it been adduced it would have adversely affected the prosecution case. To support this proposition, counsel referred the court to the decision in the case of **R vs George Anyang (2016) eKLR**. Touching on sentence, Miss Sigei submitted that Count II, III, IV and V should run concurrently and thereafter count I to run consecutively.

Analysis and Determination

39. I have considered the evidence before the trial court, grounds of appeal and submissions by both counsel. The appellant cited 7 grounds but collapsed them into 4.

(a) That the trial magistrate convicted based on circumstantial evidence, uncorroborated statements and hearsay evidence.

40. The appellant was charged with three counts of receiving a bribe contrary to Section 6(1) (a) as read with Section 18 as read with Section 27 of the Bribery Act No. 47/2016. He was also charged with obstruction and concealing evidence. Section 6 (1) of the Bribery Act provides that:

“A person commits the offence of receiving a bribe if –

(a) the person requests, agrees to receive or receives a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly whether by that person receiving a bribe or by another person.

Section 7 provides that- a function or activity shall be construed to be a relevant function or activity if;(a) it includes any function of a public nature. Section 18 is a penalty section for offences committed under Section 5, 6 and 13 which provides an imprisonment term not exceeding 10 years or to a fine not exceeding 5 million. In addition, a mandatory sentence of five times the amount of the benefit or loss or if both, five times the benefit and loss suffered.

Regarding obstruction, Section 66 of ACECA states that-

(1) no person shall -

(a) without justification or lawful excuse, obstruct or hinder, or assault, or threaten, a person acting under this Act.

(b) deceive or knowingly mislead the commission or a person acting under this Act.

(c) destroy, alter, conceal or remove documents, records or evidence that person believes, or has grounds to believe, may be relevant to an investigation or proceedings under this Act; or

(d) make false accusations to the commission or a person acting under this Act.

Sub-Section 2 goes further to provide a penalty of Kshs.500,000 in default serve imprisonment term not exceeding 5yrs or both.

42. It was the complainant's case that, on 13th June 2016, he was accosted by the appellant an officer working with the inspectorate

department of the county government of Nairobi. It is not controverted that the appellant was on duty performing a public duty being an employee of the county government. This was confirmed by the appellant himself and his boss PW7.

43. It therefore follows that the demand for a bribe was intended to dissuade the appellant from properly performing his public duty hence an act of inducement to improperly perform his office duties i.e. not to arrest and charge the complainant for a traffic offence.

44. Did the appellant demand for a bribe on 13th June 2016? According to the complainant, he was accosted by the appellant and his two colleagues who then impounded his motor cycle claiming that he had wrongly entered Mfangano street hence a traffic offence. After he was taken to their general stores, he was left with PW3 who told him (PW1) to pay Kshs.3,000/= before they could release the motor cycle. That since he did not have the money, he decided to report to the EACC office who told him to report on Monday the 16th June 2016.

45. On the 16th June 2016, he was given an audio recorder to record the conversation between him and the appellant requesting for the bribe.

46. Up to this point, the demand of a bribe on 13th June 2016 was made before the complainant reported to the EACC. Nobody else was present when the appellant made the demand. When he reported to the EACC, the officers awaited to verify whether that demand was there hence the necessity for a recording device. In other words, they could not take the information of the complainant on its face value without corroborative evidence. If the report of the complainant was sufficient without further verification, the officers would have moved straight to arrest the appellant.

47. Corroboration is a key ingredient in criminal proceedings. Where the court relies on the evidence of a single witness, the court must warn itself of the dangers of such conviction.

48. In the case of Chila vs R (1967) EA 722 at Page 123 Paragraph C the court had this to say:

“The judge should warn himself of the danger of acting on uncorroborated testimony of the complainant, but having done so, he may convict in the absence of corroboration if he is satisfied that her evidence is truthful. If no such warning is given then the conviction will normally be set aside unless the court is satisfied that there has been no failure of justice”.

49. I am in agreement with the submission of Mr. Njugi that count one was not sufficiently corroborated and in the absence of any warning of the dangers of convicting on the evidence of a single witness, count one cannot stand. Accordingly, the conviction against the appellant in respect of count I is quashed and the sentence thereof set aside.

50. Regarding count two and three, they all arose on 16th June 2016. This is the day the complainant was given a recording device to go and record the conversation with the appellant. He confirmed that when he bumped on the appellant, he had not switched on the recording device. That when the appellant asked if he had gotten the money, he told him that he had gotten only Kshs.2000/= to which the appellant told him to go and get the balance.

51. That he went back to PW4, PW6 and PW10 who had accompanied him ready to arrest the appellant. He was given the treated money which he took to the appellant who received the same but was immediately arrested by PW4, PW6 and PW10. As he resisted arrest while screaming for help on grounds that thieves had attacked him, his colleague askaris viciously responded and rescued him. The appellant got an opportunity and disappeared with the treated money plus the handcuffs.

52. This evidence is clearly corroborated by the evidence of PW4, PW6 and PW10 who attempted to arrest the appellant. They produced an inventory of the treated money together with the photocopy. Although PW1 did not record any conversation with the appellant, PW4 claimed that there was recording done during the time money was handed. PW4's evidence was disowned by PW1, PW6 and PW10. Mr. Njugi capitalised in this contradiction and inconsistency to have the charges dismissed.

53. The fact that there was contradiction in evidence by one witness, that cannot defeat the rest of the witnesses' evidence which is well corroborated and consistent to the extent that there was no recording done. In the case of Twehangane Alfred vs Uganda Cr. Appeal No. 139/2001 (2003) UGCA the court held that not every contradiction warrants rejection of evidence. Similar position was held in Erick Onyango Ondeng' vs R (2014) where the court held that:

“The hearing before the trial court invariably entails consideration of often contradictory, inconsistent and hotly contested facts. The primary duty of the trial court is to carefully analyse that contradictory evidence and determine which version of the evidence, on the basis of judicial reason it prefers”.

54. In any litigation or trial, there are bound to be contradictions or inconsistencies by witnesses who are human beings and therefore prone to forget or mistaken some evidence. Unless such contradiction is glaring as to occasion a miscarriage of justice, a court should give it least consideration in favour of the interest of substantive justice.

55. From the chain of events culminating to the giving of money to the appellant, and the eventual resistance to the arrest and then disappearance with handcuffs and the treated money, I am convinced that, PW1 had made a report regarding demand of a bribe to forbear him from prosecution and to secure release of his motor cycle which finally was released to the owner (PW7) after paying Kshs.14,000/=.

56. I do not see any reason why PW4, PW6 and PW10 would organise and prepare treated money to go and arrest the appellant without any apparent reason. They did not know him before. After PW1 went to the appellant with a suggestion that he had only two thousand, he was sent back to go and look for more. Finally, he went back to PW4, PW6 and PW10 who gave him Kshs.3,000/=. What was the money for if there was no such demand? From the testimony of these three witnesses, I am convinced that there was a demand for Kshs.3,000/= by the

appellant and the same was intended to be a benefit for him to release the impounded motor cycle without preferring a traffic offence against the complainant.

57. It was not a coincidence that only the appellant was targeted. There was a reason. He cannot allege a grudge with PW1 or PW4, PW6 and PW10 because he did not know them before. I am in agreement that considering the prevailing circumstances, and the unbroken chain of events leading to the arrest of the appellant, the only logical and inescapable conclusion is that the appellant had made a bribery request and he was indeed given Kshs.3,000/=.

58. Regarding obstruction, it is admitted that the appellant did resist arrest because he was arrested by people who were not in uniform and that did they identify themselves. PW1, PW4, PW6 and PW10 said they identified themselves as officials from the EACC. However, the appellant shouted 'wezi wezi' thereby attracting sympathy from his colleagues and members of the public.

59. I do not believe the appellant' story that the officers did not identify themselves. The appellant knew that he was being arrested by officers that is why he resisted. Instead of even going to his office to report the attack by the so called "thieves" he opted to abscond duty until he was fired. That is not the ordinary normal conduct of an innocent person who has been attacked in the course of performing his lawful duties. He should have even reported to the police and his seniors. Even when he was summoned by his seniors (PW7) to report to the office, the appellant could not heed to that request.

60. It is no wonder that even his seniors refused to avail other county askaris for identification parade to be conducted. I am convinced beyond reasonable doubt that the trial court correctly convicted on the evidence on record. The conviction in respect of Count 2, 3 and 4 is therefore upheld.

61. Concerning count 5 on concealing evidence, PW4, PW6 and PW10 confirmed that they saw PW1 hand over the treated money. The appellant having resisted and escaped with handcuffs and the alleged treated money, the same could not be traced nor recovered. If the appellant was sincere and innocent as he pretends to have been, he had no business resisting lawful arrest. He should have even surrendered the handcuffs at his office. Obviously, he knew that the exhibit could be used against him. He therefore deliberately concealed or destroyed the same. Again, I am satisfied that circumstantially and based on the well corroborated evidence of PW4, PW5, PW6 and 10, the appellant did destroy the evidence. I have looked at the authorities attached by the appellant. I do not find much help from them in so far as corroboration and the burden of proof by the prosecution is concerned.

62. Concerning the allegation that the independent witness was not call, there is no law governing the specific number of witnesses to be called in a criminal trial. In the case of **Benjamin Mbugua Gitau vs R (2001) eKLR** the court had this to say:

“This court has stated severally that there is no particular number of witnesses who are required for proof of any fact unless the law so requires. See Section 143 of the evidence Act Cap 80 Laws of Kenya. In the circumstances therefore we find that no prejudice was caused to the appellant or to the prosecution by failure to call the two boys”.

63. It is inconceivable that the officers would have gone picking members of the public who had attacked them as witnesses. The officers were not accomplices to the crime hence their evidence is that of independent witnesses. I do not find any merit on this argument.

64. Accordingly, it is my conviction that the appellant was properly convicted on Counts II, III, IV and V.

65. As regards sentence, the same is ordinally an issue of discretion of the trial court. M/s Sigei stated that Counts II, III, IV and V should run concurrently as they arose out of the same transaction. I do agree with M/s Sigei that the sentences in the said counts should run concurrently.

66. Accordingly, the sentence imposed in respect of Count II – V shall run concurrently from the date of sentence. For avoidance of doubt, the conviction in respect of count one is quashed and the sentence there of set aside. The Deputy Registrar to prepare an amended committal warrant to reflect the correct sentence in respect of counts two to five which shall remain at a fine of Kshs.150,000 in default to serve one-year imprisonment for each count. Sentences to run concurrently.

Right of appeal 14 days.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY OF AUGUST 2019

J.N. ONYIEGO

JUDGE