Jemaiyo v Republic (Criminal Appeal E011 of 2024)
[2025] KEHC 2450 (KLR) (7 February 2025) (Judgment)

Neutral citation: [2025] KEHC 2450 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ITEN

CRIMINAL APPEAL E011 OF 2024

JRA WANANDA, J

FEBRUARY 7, 2025

BETWEEN

NANCY JELIMO JEMAIYO ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

JUDGMENT

1. This Appeal arises from the conviction and sentence of the Appellant in Iten Senior Principal Magistrates Court Criminal Case No. E016 of 2024. Mr. Barmao Advocate, appears for the Appellant.

2. When I began perusing the file, I realized that the same Appellant has also filed a second subsequent Appeal, which is identical and similar to this instant Appeal. The subsequent Appeal is Iten High Court Criminal Appeal No. E014 of 2024 and was filed through Messrs Bulbul-Koitui & Co. Advocates. For this reason, the decision herein shall obviously impact on the said subsequent Appeal.

3. There were two Counts before the Court. In Count I, one John Kimutai Limo was charged with the offence of incest contrary to Section 20(1) of the *Sexual Offences Act*, No. 3 of 2006. The particulars were that on 21/03/2024 at Marakwet West sub-county within Elgeyo Marakwet County, he intentionally touched the vagina of one B. J. with his penis and who was to his knowledge his daughter.

4. In Count II, the said John Kimutia Limo (hereinafter referred to as the "co-accused") and the Appellant were charged, jointly, with the offence of conspiracy to defeat justice and interference with witnesses contrary to Section 117(a) of the *Penal Code*. The particulars were that on the same 21/03/2024 at the same place above, they jointly conspired to mislead the Investigating Officer to defeat the course of justice by giving false information

5. The Appellant and the co-accused took plea on 3/04/2024, denied the charges and respective plea of not guilty entered. They were then granted bond. The matter then came up in Court on 15/04/2024 for approval of surety, and on 24/04/2024 for hearing.

6. On 24/04/2024, the Appellant informed the Court that she wished to change her plea. The Charge was then read over once more and explained to her. In her response, she pleaded guilty. The facts of the offence were then read out and when asked whether she confirmed or denied the correctness thereof, she responded that the "facts are correct". Pursuant thereto, she was convicted of her own plea of guilty on the charge under Count II which was the only one she was facing. The Prosecution then informed the Court that the Appellant was a 1st offender. In mitigation, the Appellant remarked that "I am sorry". In the circumstances, the trial Magistrate read out the sentence whereof he remarked that the Appellant was not remorseful and sentenced her to serve 5 years imprisonment.

7. Aggrieved with the decision, the Appellant instituted this Appeal vide the Petition filed on 26/06/2024. He raised the following 9 grounds, quoted verbatim;

    i. That she pleaded guilty without knowing the consequences and magnitude the offence carried.

    ii. That she was not aware of the Court procedures and this led her to plead guilty without considering the offence she had been charged with.

    iii. That she was influenced by the police officers to change her plea of guilty without knowing that it was a trap of fixing her in the case and a way of making her work easier by not producing witnesses in the Court proceedings.

    iv. That there was controversial (sic!) of the law by convicting Court by failing to read over the dire consequences of the preferred charge in a language that she could understand better as envisaged under Article 50(2) of the current 2010 Constitution of Kenya to meet the required standards of a fair trial, thus unconstitutional sentence and conviction.

    v. That the sentence of five (5) years was very harsh, excessive and disproportionate in the circumstances of this case and amounts to an error in principle.

    vi. That the learned trial Court erred in law and fact by failing to properly consider and accord sufficient weight to the relevant mitigating factors in favour of the Appellant.

    vii. That the learned trial Court erred in law and fact by failing to apply the principle of proportionality in sentencing policies.

    viii. That the harsh sentence imposed constitutes a miscarriage of justice as it is tantamount to condemning the Appellant to imprisonment for life without possibility of reform and reintegration.

    ix. Such further grounds as may be advanced with leave of this Honourable Court.

Hearing of the Appeal

8. It was then agreed and directed that the Appeal would be canvassed by way of written Submissions. Pursuant thereto, the Respondent, through Prosecution Counsel Ms. Calvin Kirui, filed its Submissions dated 17/09/2024, although wrongly titled the said subsequent Appeal, Iten High Court Criminal Appeal No. E014 of 2024. I also did not find any Submissions from the Appellant until I perused the file for the said subsequent Appeal where I then stumbled on the Submissions filed therein by the Appellant, dated 30/10/2024. Since the grounds of the two Appeals are similar, I will treat

the Appellant's said Submissions wrongly filed in the subsequent Appeal, Iten High Court Criminal Appeal No. E014 of 2024, as meant for this instant file.

Appellant's Submissions

9. In his Submissions, Mr. Barmao, Counsel for the Appellant submitted that although in a plea of guilty witnesses are not required, the facts must however still disclose an offence under the law. He recounted the charge as drafted and the facts read out to the Appellant after pleading guilty and submitted that the role that the co-accused played in the conspiracy is not stated. He cited the case of Obedi Kilonzo Kevevo v Republic [2015]. He then submitted that Section 117(a) of the *Penal Code* under which the Appellant was charged is committed when a person accuses another falsely of any crime or does anything to obstruct, pervert or defeat the course of justice. Regarding Section 117(b), he submitted that it specifically deals with the obstruction of justice by preventing witnesses from appearing or testifying in Court. According to him, from the manner in which the charge is framed, two separate offences were charged in Count I, namely, conspiracy to defeat justice, and interference with witnesses, which are separate offences under Section 117(a) and Section 117(b), respectively.

10. Regarding sentence, Counsel submitted that the Appellant is a first-time offender and that in her mitigation, she stated that she was sorry. According to him, that ought to be taken into consideration. He cited the case of Wanjema v R (1971) KLR 493, 494. In conclusion, he submitted that the Appellant is remorseful and rehabilitation and probation ought to be considered.

Respondents' Submissions

11. On his part, Prosecution Counsel, Mr. Kirui, submitted that the Appellant was convicted on his own plea of guilty, and that as such Section 348 of the *Criminal Procedure Code* bars such appeals except on the extent and legality of sentence. He cited the case of Olel v Republic [1989] KLR 444. He appreciated that the bar only operates where the plea is equivocal and that it does not therefore bar the Court from inquiring as to whether the facts constituted any offence. He also cited the case of Alexander Lukoye Malika vs. Republic [2015] eKLR, and the case of Ombena vs. Republic [1981] eKLR (in which the leading case of Adan v Republic [1973] EA 445 was followed). Counsel contended that from the trial Court's proceedings, the charges were read to the Appellant and interpreted into Kiswahili. He then recited the sequence or chronology of the proceedings as per the record, from the time of taking of plea up to sentencing and submitted that there is no iota of doubt that the plea was taken in accordance with the guidelines set out in Adan vs Republic (supra). According to him, there is no substance in the assertion by the Appellant that she was influenced by police officers as the Appellant was not in custody on the day she made her Application to change plea. Counsel also trashed the Appellant's contention that the trial Court did not warn her of the dire consequences of the charge as it carried a maximum of 5 years imprisonment. He cited the case of Hussein v Republic (Criminal Appeal E002 of 2023) [2023] 2789 (KLR).

12. In respect to the sentence, Counsel submitted that it is a discretion of the trial Court. He cited the case of Shadrack Kipkoech Kogo v R, Eldoret Criminal Appeal No. 253 of 2003, and the case of Bernard Kimani Gacheru v Republic [2002] eKLR. He then submitted that the charge carries a punishment of up to 5 years imprisonment which was the sentence imposed and that the Court noted that the Appellant was not remorseful. He also cited the Sentencing Policy Guidelines, 2023.

Determination

13. As a first appellate Court, I am obligated to revisit and re-evaluate the matter afresh, assess the same and make my own conclusions (see Okeno vs Republic (1972) E.A 32).

14. The issue that arises for determination in this Appeal is "whether the trial Court properly convicted the Appellant on his own plea of guilty, and whether the sentence imposed was proper"

15. Regarding appeals arising from own plea of guilty, Section 348 of the *Criminal Procedure Code*, provides as follows:

> " No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence."

16. In regard to the above provision, the Court in the case of Olel v Republic (1989) KLR 444 stated as follows:

> " Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the *Criminal Procedure Code* (Cap 75) does not merely limit the right of appeal in such cases but bars it completely."

17. It is therefore the position of the law that in the case of a conviction by a subordinate Court upon a plea of guilty, an Appeal can only be entertained "as to the extent and legality of the sentence".

18. The other situation where the High Court may entertain an Appeal pursuant to a conviction based on a plea of guilty, is where the plea taking process was itself flawed. This was reiterated by the Court of Appeal in the case of Alexander Lukoye Malika v Republic [2015] eKLR, where the following was stated:

> " A court may only interfere with a situation where an accused person has pleaded guilty to a charge where the plea is imperfect, ambiguous or unfurnished such that the trial court erred in treating it as a plea of guilty. Another situation is where an accused person pleaded guilty as a result of a mistake or misapprehension of the facts. An appellate court may also interfere where the charge laid against an accused person to which he has pleaded guilty disclosed no offence known in law. Also where upon admitted facts, the appellant could not in law have been convicted of the offence charged."

19. Regarding the plea of guilty, I note that, in his submissions, Counsel for the Appellant argued only one ground, namely, that the charge as framed was defective, in that it alluded to two separate offences under one Count.

20. As earlier enumerated above, some of the grounds of Appeal alleged but which have not been argued in the Appellant's submissions include the ground that the Appellant pleaded guilty because she "was not aware of the court procedures", that "she was influenced by the police officers to change her plea", and that the trial Court failed to "read over the dire consequences of the proffered charge in a language that she could understand".

21. In the sister file, namely, Iten High Court Criminal Appeal No. E014 of 2024, the relevant grounds raised in respect to the plea of guilty, and which were not argued in the Submissions included the allegation that the plea "was not unequivocal", and that the Appellant "did not understand the charge".

22. The procedure of taking a plea is set out in Section 207 of the *Criminal Procedure Code* and the manner of the plea taking process was set out in the leading case of Adan v Republic (1973) EA 445 at 446 in the following terms:

> " When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, off course, be recorded."

23. In this instant case, I note that the proceedings were conducted in the Kiswahili language which the Appellant has not alleged that he did not understand and which is the language in which he is recorded to have responded to the questions put to him. As also stated, the Appellant took plea on 3/04/2024, denied the charge and plea of not guilty entered. Subsequently, on 24/04/2024, she informed the Court that she wished to change her plea. The Charge was then read over to her once more, and explained to her. In her response, she pleaded guilty. The facts of the offence were then read out and when asked whether the same, as read out, were correct or not, she responded that the "facts are correct". It was then she was convicted of her own plea of guilty. In mitigation, she remarked that "I am sorry". Thereafter, the trial Magistrate stated that the Appellant was not remorseful and then read out the sentence.

24. From the above chronology and/or sequence of events, it is beyond peradventure that the Appellant made a reasoned and conscious decision to change her plea from "not guilty, to guilty". She did not at all place any material before the Court in respect to her allegation that she was influenced by police officers to change the plea. The record does not also show that at any point, the Appellant raised this issue with the trial Magistrate. Even assuming that she was so "influenced", the final decision still remained exclusively hers. This ground is therefore clearly an afterthought and fails.

25. Regarding the allegation that the trial Magistrate did not warn or inform the Appellant of the potential sentence that she faced as a consequence of the plea of guilty, I am alive to the guidelines reiterated by the Court of Appeal in the case of Elijah Njihia Wakianda versus Republic [2016] eKLR, as follows:

> " ..... We also think that the elements of the offence are not complete if the sentence, especially if it is a severe and mandatory sentence, is not brought to the attention of the accused person. One surely ought to know the consequences of his virtual waiver of his trial rights that *the Constitution* guarantees him. That did not occur here and yet the appellant was unrepresented calling upon the trial court to be particularly solicitous of his welfare. The officer presiding is not to be a mere umpire aloofly observing the proceedings. He is the protector, guarantor and educator of the process ensuring that an unrepresented accused person is not lost at sea in the maze of the often- intimidating judicial process..."

26. In this instant case however, even assuming that the allegation that the Appellant was not so warned of the consequences of pleading guilty, still I do not find any prejudice occasioned. The charge was not for a capital offence, and the maximum sentence was 5 years imprisonment. The sentence may not therefore be categorized as "severe" and the charge did not also attract a mandatory sentence

27. I now address the submission by Mr. Barmao, Counsel for the Appellant, that the facts read out did not disclose an offence under the law, that the role that the co-accused played in the conspiracy is not stated and that the manner in which the charge is framed amounted to two separate offences being charged under one Count, namely, conspiracy to defeat justice, and interference with witnesses, which are separate offences under Section 117(a) and Section 117(b), respectively.

28. Indeed, it was held in the case of Sigilani vs Republic, (2004) 2 KLR, 480 that:

> " The principle of the law governing charge sheets is that an accused should be charged with an offence known in law. The offence should be disclosed and stated in a clear and unambiguous manner so that the accused may be able to plead to specific charge that he can understand. It will also enable the accused to prepare his defence."

29. In addition, Section 134 of the *Criminal Procedure Code* provides as follows:

> " Every charge or information shall contain and shall be sufficient if it contains a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."

30. Further, the Court of Appeal in the case of Obedi Kilonzo Kevevo v Republic [2015] stated that:

> " The facts as read to the accused must disclose the offence. A plea is considered unequivocal if the charge is read to an accused person and he pleads guilty, thereafter, the facts are narrated to the accused person and he/she is once more asked to respond to the facts. It is important that both the statement of offence as contained in the charge sheet as well the facts as narrated by the prosecution must each disclose an offence. Otherwise, the plea is not unequivocal."

31. Similarly, in Adan v Republic (supra), it was held that:

> " .... The statement of facts serves two purposes; it enables the magistrate to satisfy himself that the plea of guilty was really unequivocal and that the accused has no defence and it gives the magistrate the basic material on which to assess sentence. It not infrequently happens that an accused, after hearing the statement of facts, disputes some particular fact or alleges some additional fact, showing that he did not really understand the position when he pleaded guilty; it is for this reason that it is essential for the statement of facts to precede the conviction..."

32. In this case, the facts read out were as follows:

> " 21. 3.2024 at Yemit sub-location the accused person with her son interfered with ongoing investigations concerning an incest case against Accused 1. The accused person gave wrong information by giving false information that the accused person had been injured with a stick on her privates. They threatened witnesses including the complainant."

33. Applying the test set out in the authorities referred to above, upon keenly perusing the charge sheet, and particularly Count II for which the Appellant was convicted, I find that although not perfectly framed, the facts read out substantially aligned with the particulars appearing in the charge sheet. A reading of the facts reveals that a case of defilement or incest was alleged to have taken place within the Appellant's family setting and that in a plot to cover-up the matter, the mother and son duo connived to give misleading information to the authorities. At least, this is discernible from the facts read out. It is not therefore correct to claim that the role played by the co-accused in the conspiracy is not disclosed.

34. In respect to the submission that that the manner in which the charge is framed amounted to two separate offences being charged under one Count, namely, conspiracy to defeat justice, and interference with witnesses, I note that Section 117(a) and Section 117(b), respectively, provide as follows:

> " 117. Conspiracy to defeat justice and interference with witnesses
>
> Any person who –
>
> a. conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert or defeat the course of justice; or
>
> b. in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so; or
>
> c. obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal, is guilty of an offence and is liable to imprisonment for five years."

35. The Appellant was only charged under sub-section (a) above and the allegation was that, with the co-accused, "they jointly conspired to mislead the investigating officer to defeat the course of justice". In the circumstances, all that the facts needed to disclose under sub-section (a) was simply that there was conspiracy "with any other person ..... to do anything to obstruct, prevent, pervert or defeat the course of justice".

36. In my view, the facts as read out, to an acceptable extent, sufficiently disclosed the act of conspiracy. I find nothing wrong with the facts. I am satisfied that the facts disclosed the offence in a substantially clear and unambiguous manner. There is no allegation that the Appellant was unable to plead because of the way that the charge sheet or facts were drafted or framed. In the circumstances, the Appellant cannot be said to have been prejudiced. The mere fact that the language of the charge sheet may have unnecessarily also included elements of the offence under sub-section (c), namely, "interference with witnesses" of which the Appellant was not charged with, in my view, did not in any way render the facts read out as not disclosing the offence.

37. Even assuming that there was some defect or omission in the plea taking process, the same is still curable under Section 382 of the *Criminal Procedure Code* which provides as follows:

> "Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or

irregularity has occasioned a failure of justice. Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings."

38. Similarly, the Court of Appeal in Fappyton Mutuku Ngui v Republic [2014] eKLR stated the following:

> " 30. We now turn to the issue of the defective charge sheet. The appellant argues that he was charged contrary to 'section 8(1) (2)' of the *Sexual Offences Act* when in fact there is no such section. We note that the appellant did not raise this issue in his first appeal. Despite this, the High Court addressed it in its judgement in light of any prejudice or miscarriage of justice that the appellant may have faced as a result. The High Court relied on Section 382 of the *Criminal Procedure Code* which provides that:
>
> 31. The first appellate court was of the opinion that this defect was curable under section 382 cited above; the appellant had participated fully in his trial because he knew the charge that was facing him, and the trial process was fair. There was no prejudice that faced the appellant. We concur with the High Court and learned counsel for the respondent that the appellant was well aware of the charges he was facing, he had sufficient notice of the charges facing him and that he participated vigorously in the trial process. Furthermore, the charge sheet outlines the essential ingredients and particulars of the offence. We therefore find no merit in this ground of appeal and dismiss it."

39. Further, in Senator Johnstone Muthama v Director of Public Prosecutions & 2 others; Japhet Muriira Muroko (Interested Party) [2020] eKLR, a three Judge High Court bench held as follows:

> " 46. The law contemplates that there may be occasions when there may be an error, omission or irregularity in a charge sheet. In addition, there may be errors, omissions or irregularities that may defeat a charge. However, whether such an error, omission or irregularity is incurable will depend on whether it occasions a miscarriage of justice. This is the foundation of Section 382 of the *Criminal Procedure Code* [21] ....."

40. In light of the foregoing, I am not persuaded that the facts as framed or read out resulted into any error, omission or irregularity that may be said to have occasioned a failure of justice. This ground therefore also fails. In the circumstances and in the absence of any demonstration of how the process of plea-taking was flawed, I find that the same was unequivocal and fully complied with the requirements of Section 207 of the *Criminal Procedure Code*.

41. Regarding sentence, the applicable principles in considering sentence on appeal were restated by the Court of Appeal in Bernard Kimani Gacheru v Republic [2002] eKLR, in the following terms:

> "It is now settled law, following several authorities by this court and the high court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the 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 the wrong material, or acted on the 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 stated is shown to exist".

42. As aforesaid, the maximum sentence provided for the offence which the Appellant was charged with is 5 years imprisonment. In view thereof, it is clear that the sentence of 5 years imprisonment imposed was well within the law. The Appellant was also given the opportunity to mitigate, which she did by apologizing. The trial Magistrate then stated that he had considered the mitigation and remarked that the Appellant was not remorseful. It is then that he meted out the sentence.

43. Nevertheless, I take judicial notice of other factors that should ordinarily be also taken into account when determining an appropriate sentence. In doing so, I cite Majanja J, quoting the case of Francis Karioko Muruatetu & Another v Republic [2017] eKLR) in the case of Michael Kathewa Laichena & another v Republic [2018] eKLR, where stated as follows:

> " The Sentencing Policy Guidelines, 2016 ("the Guidelines") published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances. ....."

44. The Court in the Muruatetu Case also guided that, in re-sentencing, the following mitigating factors would be applicable; (a) age of the offender; (b) being a first offender; (c) whether the offender pleaded guilty; (d) character and record of the offender; (e) commission of the offence in response to gender-based violence; (f) remorsefulness of the offender; (g) the possibility of reform and social re-adaptation of the offender; and (h) any other factor that the Court considers relevant.

45. Similarly, in the case of Daniel Kipkosgei Letting Vs. Republic [2021] eKLR, the Court of Appeal pronounced itself as follows;

> " With regard to the above, we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. In this regard we think that the complaint that the sentence imposed was harsh and excessive is valid though it was the only sentence available then. We are therefore inclined to interfere with it. We therefore set aside the sentence of life imprisonment imposed on the appellant. Having considered the mitigation proffered by the appellant on record the sentence that commends to us is 25 years imprisonment."

46. In this case, an offence of defilement of an underage girl, and/or incest, was said to have occurred within the Appellant's family setting. Instead of being the first to report the matter to the authorities for action, she is said to have conspired to cover-up the same by deliberately giving false information to the investigating Officer, as the offender was supposedly a family member. The Appellant's actions were therefore irresponsible and inexcusable.

47. However, in view of the guidelines set out in the various authorities cited above, considering the Appellant's mitigation before the trial Court, and taking into account other relevant factors, I find that the sentence of 5 years imprisonment was excessive in the circumstances and should be reduced. I say so because the Appellant was said to be a 1st offender. He also pleaded guilty and thus saved the Court

precious judicial time. Further, in light of the record indicating that in mitigation, the Appellant stated that "I am sorry", the basis of the trial Magistrate's remarks that the Appellant was not remorseful is also not clear.

48. It is a primary principle of law that the sentence to be imposed ought to be commensurate and proportionate to the offence committed. I also trust that the Appellant has now had ample opportunity to reflect on her actions and make amends.

49. The trial Magistrate also did not give an explanation why he found it fit to sentence the Appellant to the maximum penalty of 5 years. In respect thereto, the Court of Appeal, in the case of Charo Ngumbao Gugudu vs. R [2011] eKLR, stated as follows:

> "From the foregoing, it is clear that maximum sentence under that section was life imprisonment with or without corporal punishment. It has long been a principle of sentencing that a maximum sentence should only be meted out to the worst offender under the particular section that the offender is charged ....."

Final Order

50. In the circumstances, I make the following Orders:

    i. The Appeal against conviction fails.

    ii. However, the sentence of 5 years imprisonment imposed by the trial Court against the Appellant is set aside, and substituted with a sentence of 18 months imprisonment to be computed from the date of arrest, indicated in the charge sheet to be March 28, 2024.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 7TH DAY OF FEBRUARY 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Appellant present virtually from Eldoret Main Prison

Mr. Okaka h/b for Ms. Mwangi for the State

C/A: Brian Kimathi