



REPUBLIC OF KENYA



**Osman & another v Republic (Criminal Appeal E033 of 2024)
[2025] KEHC 4659 (KLR) (9 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL APPEAL E033 OF 2024**

JN ONYIEGO, J

APRIL 9, 2025

BETWEEN

BISHARA OSMAN 1ST APPELLANT

ABDI ADAN HAJI 2ND APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from the original conviction and sentence in Wajir PMCRC
No. E002 of 2024 delivered on 26.08.2024 by Hon. Baraka X.F. (R.M).)*

JUDGMENT

1. The appellants were jointly charged with the offence of destroying crops contrary to Section 324 (a) of the *Penal Code*. Particulars were that on 14.12.2023 at Khumbi location within Wajir South in Wajir County they damaged cultivated crops of Amina Hillow valued at Kes. 1,414,500.00.
2. Count II: Stealing contrary to section 268(1) as read with section 275 of the *Penal Code*. Particulars were that on 14.12.2023 at Khumbi location within Wajir South in Wajir County they stole a generator valued at Kes. 60,000.00, the property of Amina Hilow.
3. The first appellant also faced an alternative charge of handling stolen property contrary to section 322(1) of the *Penal Code*. Particulars being that, on 17.12.2023 at Alimau area otherwise than in the course of stealing she dishonestly retained a generator having reason to believe it to be stolen goods.
4. They pleaded not guilty to both counts and full trial commenced with the prosecution calling seven witnesses in support of their case.
5. Vide its judgement dated 05.08.2024, the appellants were convicted and consequently sentenced to serve a custodial sentence of 5 years in relation to count I and 1year imprisonment each in respect



- of count II. The sentences were to run concurrently. In lieu of serving the said sentences, they were ordered to compensate the complainant to the tune of kshs 1,414,500/=.
6. Having been dissatisfied by the said Judgement and sentence, the appellants filed a petition of appeal dated 03.09.2024 setting out 4 grounds as follows;
 - i. That the learned principal magistrate erred in law and fact in reaching the conclusion that the appellants were guilty as charged in spite of the fact that testimonies of the witnesses were inconsistent.
 - ii. That the learned principal magistrate erred in law and in fact in failing to appreciate that the prosecution's evidence was marred with material contradictions.
 - iii. That the learned principal magistrate erred in law and in fact in failing to appreciate and consider the appellants' Alibi defence.
 - iv. That the learned principal magistrate erred in law and in fact in failing to appreciate that the ownership of the generator and the assessed damages to the crops were not proved to the required standard.
 - v. That the learned principal magistrate erred in law and in fact in reaching a decision which was against the weight of the evidence before court.
 - vi. That the learned principle magistrate erred in law and in fact in giving out harsh and excessive sentence to the appellants.
 7. The court gave directions for the parties to file submissions. Mr. Bosire learned counsel for the appellants, filed his submissions urging that the charge sheet was defective thus offending Section 134 of the CPC. It was counsel's contention that the charge did not reveal and particularize an offence known in law. In that regard, counsel referred to the case of *Sigilai v Republic (2004)2KLR480* and *Mokera v Republic criminal appeal number E012 of 2023) KEHC 22910(KLR)*.
 8. Mr. Bosire contended that the charge sheet did not mention the specific crops that were destroyed nor was a schedule of the items destroyed attached to the charge sheet. Counsel contended that none of the destroyed crops was mentioned nor produced in court as an exhibit.
 9. Mr. Bosire contended that prosecution relied on the evidence of accomplices whose evidence was not corroborated by independent witnesses. In that regard, the court was referred to the holding in the case of *Karanja v Republic (2021) eKLR*. Learned counsel further submitted that pw1's evidence was mere hearsay evidence as she did not witness anybody destroy the crops. To buttress, that position, counsel referred to the case of *Kinyathi v R (1984) eKLR* where the court held that hearsay evidence is not admissible in-law.
 10. It was submitted that critical witnesses like Roble in whose house the stolen generator was allegedly found and Bashir the watchman to Pw1 were not called as witnesses hence the invitation for the court to draw an adverse inference against the prosecution case. To that extent counsel invited the court to the holding in the case of *Bukenya and others vs Uganda (1972) EACA*.
 11. On the question of production of electronic evidence, counsel opined that a certificate under Section 106 B of the *evidence Act* was not prepared nor produced. Mr. Bosire urged that the price of the stolen generator was not ascertained as two versions were given as Kes 25,000/= and Kes 60,000/=. Equally, it was contended that the price the alleged destroyed crops was improperly assessed as a water tank, water and water pipes do not amount to crops.



12. On sentence, counsel contended that it was excessive. The court was urged to apply the principles set out in the case of Ahmed Abolfathi Mohamed & v Republic (2018) eKLR.
13. The respondents relied on their submissions dated 25-11-2024 thus contending that the charge sheet was not defective as it disclosed the nature of the offence committed. That the appellant was able to follow proceedings throughout the trial. That the same was clear and unambiguous. That misquoting the section of the offence as 324 instead of 334 of the penal code was a typographical error which is not fatal to the prosecution case.
14. Regarding ownership of the land on which the destroyed crops were grown, counsel opined that nobody claimed ownership over the same. That even if land was in dispute, the appellants had no right to destroyed property. Counsel submitted that failure to prove the destroyed crops through photographs was not fatal. In that regard the court was referred to the case of Director of Public Prosecution vs Margaret Shipai (2019) eKLR.
15. Learned counsel contended that there was sufficient proof that destruction was willful and unlawful. On the question of alibi defence, it was submitted that the same did not dislodge the otherwise strong prosecution evidence. On sentence, counsel submitted that the same was legal and appropriate.
16. This being a first appeal, the court should re-evaluate the evidence afresh and come to its own conclusions and findings. However, in doing so the court must warn itself that it did not have the advantage of seeing nor hearing the witnesses testify in order to gauge their demeanor. See Okeno vs Republic [1972] EA 32
17. PW1, Amina Hillow Salat testified that on 15.12.2023, she received a call from one Bishar her shamba watchman who informed her that four men and a woman had invaded her shamba and destroyed her crops. That following that report, she visited the said shamba and to her surprise, her crops among them; pawpaw plants, sweet potatoes, onions, bit roots, water melon, tomatoes and sukuma wiki were cut down and completely destroyed. She stated that besides her crops, her water tank was destroyed and a generator worth kes 25,000/= stolen.
18. According to her, the invasion took place the previous night and therefore she did not know the perpetrators. She went further to state that it was one Ayub who told her that it was Bishara the 1st appellant herein who took him together with Feizal, Abdimajid and Simon to the said shamba where they destroyed the crops and property in question. She further told the court that the said Ayub confessed that he and the other perpetrators took away the generator to Bishar's house from where it was recovered.
19. Consequently, she reported the matter to Lehele police station and later to the Agriculture department for assessment of the damage occasioned on the crops. According to her, there was no pending dispute in respect of the affected shamba. She claimed to have bought the same from Kassim via a sale agreement dated 15.02.2023. On cross examination, she stated that apart from the sale agreement, she had nothing else to prove ownership.
20. PW2, Simon Mwika Nyaga, a carpenter and a wiring expert stated that on 14.12.2023, he was in town when he received a call from Ayub and Najib informing him that there was a lady who needed some work done. That they went to the shop where they met a lady, the 1st appellant herein selling miraa near Ngamia mosque. That the 1st appellant told him to wait until 10.00 p.m. That she called a taxi that was to take them to the venue where the work was to be done.
21. It was his testimony that in the said taxi, he was with the 1st appellant, Ayub, Majid and the driver. That they drove to a village where they picked a KPR (Kenya police reservist) who was armed. The 1st



- appellant then proceeded to her house in Shikuku village where she picked a torch and a panga and then they set off to a place known as Qube where the taxi owner refused to move further due to the bad road forcing them to alight and walked for close to 15 to 20 minutes.
22. That upon arriving a certain plot with crops interalia pilipili hoho and pawpaws, the 2nd appellant (the KPR man) opened some gate. Inside there, they were meant to destroy a mabati house while the 1st appellant followed till they reached some land which had some crops. He proceeded to join the other hired persons in destroying the crops and thereafter, both the KPR man and the 1st appellant carried away a generator which was consequently given to Najib.
 23. He confirmed that the generator produced before the court was the same one that he previously saw at the farm. He further confirmed that the KPR man who joined them along the way was the 2nd respondent. On cross examination, he stated that he had gone to the said farm as he thought that he would only assess the magnitude of the work and thereafter embark in doing the work on the following day.
 24. PW3, Ibrahim Abdi Majid, a turn boy stated that on the night in question, the 1st appellant called and informed him that there was work involving fencing a farm that needed to be done and therefore, he was instructed to call as many people as possible. That he managed to called Ayub and Simon. He stated that the 1st appellant offered them miraa and money as payment. She proceeded to instruct them to wait till 10.00p.m., when she called for a taxi. That they travelled back to the 1st appellant's house in Bura where they picked two pangas and a torch and then left for a KPR guy then manning Safaricom mast (2nd appellant). From there, they went to the farm where they were instructed to destroy the crops and thereafter carried away the generator. It was his evidence that he did not participate in the destruction of the crops and the properties in the said farm. On cross examination, he stated that he did not see anybody carrying the crops.
 25. PW4, Faizal Hussain Ali, a taxi driver testified that on the night in question, the 1st appellant asked him to pick her from her hotel and then drop her at her house at Bulla Hothan. That they also passed by the Safaricom mast where they picked the 2nd appellant. The appellants together with three other men boarded his car towards Qumbi where he dropped them about 4 miles away from the destination. At that point, the 1st appellant took his number and told him to leave as she would call him later.
 26. He further stated that, at 11. p.m., the 1st appellant called and instructed him to go pick her. Upon arriving, he picked the group together with a generator and took them to Wajir while Bishara and him proceeded to Township at Wajir as the other men alighted at Got Rama. On cross examination, he reiterated that on the said night, he ferried the appellants together with the three men.
 27. PW5, Ayub Hussein testified that on the fateful night, Najib approached him and told him of a fencing job which required four men. That he took him to the 1st appellant where she sells her miraa. They also picked another man by the name Simon. That while on their way to the said work place, they also picked the 2nd appellant and proceeded to some farm. While there, they destroyed the crops and consequently took a generator from the said farm and loaded it to the vehicle. According to him, the 1st appellant and Feizal took the generator as the 1st appellant paid him Kes. 500.00 while others were paid in kind by being given miraa.
 28. PW6, Abas Ali Nur Abdirahman stated that he is an agriculture officer at Habswein in Wajir. That he assessed the crops damaged and thereafter came up with the value of damage occasioned on the crops in the said farm. According to him, the value of the destroyed crops was estimated at Kes. 1,414,500.00.



29. PW7, Laurens Wachira, the investigating officer testified that upon the matter being reported by PW1, together with other officers, they visited the said farm and consequently arrested the appellants. He stated how the 1st appellant reached out to some of the prosecution witnesses with a lure of giving them a job at the farm but upon reaching the said farm, they were directed to destroy crops and the properties that were situated thereon.
30. He further stated that in his investigations, he learnt that the 1st appellant upon taking the generator from the farm, he took it to Mr. Roble, her former husband. That the said generator was recovered from the said Mr. Roble. It was his evidence that the 1st appellant was responsible for issuing orders for destruction of the crops and properties at the farm while the 2nd appellant offered her security.
31. DW1 gave sworn testimony and further called six witness in her defence. She denied committing the offence. She claimed that the destroyed crops belonged to her farm. In the same breadth, she also alleged that her generator, water tank and a bed that were used by her farmhand were all stolen. On cross examination, she stated that the theft at her farm happened on 05.09.2023 and in as much as she also lost a generator, the one before the court wasn't hers. She denied knowing the prosecution witnesses who had implicated her to be the mastermind of the offence herein.
32. DW2, Siad Dakat in support of the 1st appellant's case testified that he was not aware of the alleged destruction of the crops in the said farm. That he was in the habit of buying miraa from the 1st appellant and that at times, they could stay upto 12a.m with her before going home.
33. DW3, Khalif Hussein, a neighbour to the 1st appellant in his sworn statement recalled that she was with the 1st appellant on 15.12.2023 as from 5.00 p.m. when the farm was allegedly destroyed. That they stayed till 12.00 a.m. when she left for home.
34. DW4, Ahmed Sugal affirmed that he also owns a shop near the 1st appellant's shop but he was not aware of the farm in which crops were allegedly destroyed. It was his evidence that the 1st appellant was in the habit of reporting to her workplace very early in the morning and thereafter leave late in the night. Additionally, he claimed to have been with her the whole day on 14.12.2023.
35. DW5, Hussein Abdi in his sworn testimony recalled that he worked at the 1st appellant's farm as he not only fenced it but also knew it well. It was his testimony that on a date he could not remember, the said farm was broken into and a generator, solar, wheelbarrow and his phone stolen in the process. According to him, the 1st appellant was not capable of committing the offence as she was a busy woman. On cross examination, he stated that the 1st appellant's farm was invaded and some property stolen sometime in the month of September 2023.
36. DW6, Abdullahi Mohamed in his sworn evidence stated that he was aware that at a time he could not remember, the 1st appellant's farm was destroyed. That she reported the matter but the same was dismissed.
37. DW7, the 2nd appellant herein called two witnesses in support of his case. In his sworn evidence, he stated that he was a KPR officer and was assigned guarding duties of the Safaricom Booster. According to him, he reported to work at 6.00 p.m. as his shift ends at 12.00. a.m. That upon completing his duty, he left for home and therefore, it was not possible for him to have been at the alleged farm. He additionally stated that at all times, the mast is always monitored and calls from Nairobi made in regard to its status.
38. DW8, Quresha Ali Noor, wife to the 2nd appellant testified that the allegations against her husband were far from the truth. That the husband was charged with the responsibility of guarding the safaricom



mast and therefore, it was not possible for him to be at the said farm as he was expected to be at his place of work.

39. DW9, Adan Ismail stated that he was also charged with the responsibility of taking care of the safaricom mast. That while the 2nd appellant reports at 6.00 p.m. and leaves at 12.00 a.m., he relieves him of the said duty as at 12.00 a.m., and leave at 6.00 a.m. That on the night in question, he left work at 12.00 a.m.

40. I have considered the record of appeal herein, grounds of appeal and submissions by both parties. In respect to count I, the appellant was charged with the offence of destroying crops under C/Section 324 of the penal code instead of Section 334. The appellants raised the issue of being charged under a wrong provision not consistent with the evidence tendered. Prosecution submitted that it was a typing error curable under Article 159 of *the constitution* as a procedural technicality. Under Section 382, such a technicality is not fatal hence curable as it does not affect the substance of the charge. Section 382 does provide as follows;

“Finding or sentence when reversible by reason of error or omission in charge or other proceedings-

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”.

41. I do agree with the sentiments of the prosecution counsel that by merely quoting a wrong section is not fatal hence that ground fails. The particulars of the offence and the evidence do not make reference to Section 324 which deals with the offence of marking and possession of public stores which offence has nothing to do with charges before court.

42. The next issue raised was that the charge sheet ought to have itemized the crops destroyed and a schedule attached. Failure to attach a schedule of the type of crops destroyed does not affect the substance of the charge.

43. The charge before court is therefore under Section 334 of the penal code which provides that;

“Any person who willfully and unlawfully sets fire to, cuts down, destroys or seriously or permanently injures:

- a) a crop of cultivated produce, whether standing, picked or cut; or
- b) a crop of hay or grass under cultivation, whether the natural or indigenous product of soil or not, and whether standing or cut; or
- c) any standing trees, saplings or shrubs, whether indigenous or not, under cultivation,

is guilty of a felony and is liable to imprisonment for fourteen years.

44. The prosecution must therefore prove that the appellants willfully and unlawfully destroyed property.



45. The key element of the offence under section 334 of the *Penal Code* is that the act complained of, i.e., cutting down of the crops, must be willful and unlawful. The word willful when used as an element of an offence involves conscious wrong or evil purpose on the part of the actor regardless of whether the act is wrong or right. But when it is coupled with the term unlawful, it means the act was not authorized by law and therefore illegal. Applying this test; did the Respondents willfully and unlawfully cut down the crops herein?
46. As already indicated above, the elements of the offence may be dissected as;
- i. proof of ownership of the property.
 - ii. proof that the property was destroyed or damaged.
 - iii. proof that the destruction or damage was occasioned by the accused.
 - iv. proof that the destruction was willful and unlawful.
47. It was the onus of the prosecution to discharge the burden of demonstrating that the appellants willfully and unlawfully damaged the identified properties. See *Republic v Nancy Namulunda Namusasi & 2 others* (2021) eKLR where proof of the elements were emphasized.
48. Pw1, was told by watchman Bashir and one Ayub that her crops had been destroyed by some people hired by the appellants. She did not know who destroyed the same. P2-PW3 who alleged that they were hired by the appellants admitted being taken to some shamba at night where some things were being cut and uprooted. That they later saw the appellants carry a generator which they assisted in carrying up to where they had left their taxi.
49. However, pw5 one Ayub confirmed that he together with pw1-pw4 were hired by the appellants to go to some shamba to do some work. That on arrival they were instructed to destroy some crops which they did and thereafter carried a generator away. Pw4 the taxi driver confirmed being hired to ferry some people to a place known as Qumbi. That on the way, he stopped as the road was impassable hence the people he had carried alighted on the way as he waited for them. Apart from pw2, p3 and pw5 who took part in the alleged destruction, the taxi driver pw4 did not participate.
50. The question is whether any crops were destroyed on the material day? On whose land were the crops planted? From the evidence, it emerged that there was a dispute over land ownership. The appellants produced ownership documents from the county government while the complainant identified a sale agreement showing that she had bought the land in question. However, it is not for this court to determine ownership disputes.
51. What is important is the ownership of the destroyed crops whether planted on the disputed land or not. The accused denied destroying any of the crops belonging to the complainant. Why would pw2-pw6 claim that it was the first appellant who hired them at night to go and perform some task which turned out to be destruction of crops. Although pw2-3 and pw5 were accomplices, their testimonies were corroborated by pw6 the agricultural officer who visited the scene to write a report as well as pw4 the taxi driver who ferried the hired people that night.
52. Why were the four hired at night? What were they going to do at night and which duty were they instructed to do in darkness? I have no reason to doubt the testimony of pw2-pw5 that on the material day they were hired by pw1 who in conjunction with the 2nd appellant ordered them to execute a task of destroying crops which they did. The investigating officer visited the scene and saw the destroyed crops. Although he did not take and produce photos, he confirmed that crops were destroyed as verified by



the agricultural officer pw6. Mr. Bosire argued that no crops nor photographs were produced in court. In the case of Director of public prosecutions vs Margaret Shipai(supra) Justice Ougo had this to say;

“ There was sufficient evidence from the prosecution witnesses to show that the respondent hired a tractor to plough the farm which had crops which had been planted by Pw1 and seen by the agricultural officer who visited the farm 4 days later. The fact that the crop was not produced in court does not in any way in my view show that there was no damage to Pw1’s crop...).

53. Guided by the above case law, production of photographs is just a component of evidence the absence of which amidst other convincing and satisfactory evidence cannot on its own exonerate an accused person. The appellants are not claiming the crops as theirs. And if they are, they had no business destroying what was rightfully theirs. It is apparent that crops were destroyed and that they were planted by pw1 on a disputed land. The offence was committed at night by people hired to destroy the same. I have no doubt that it was the appellants who in a concerted effort orchestrated the unlawful and willful the destruction.
54. In as much as the appellants urged that the defence on alibi was ignored by the trial court, the evidence by the prosecution clearly dislodged the appellants’ alibi in that, they were placed at the scene of crime. The hired team had no reason to frame up the appellants. I have no doubt that some crops belonging to the complainant were destroyed at the instance of the appellants. I do not find any merit in the alibi defence of the appellants as it does not dislodge the prosecution’s case. Taking into account all relevant circumstances pertaining to this case, the alibi defence herein raised is not tenable. The same was an after-thought crafted to defeat the issue at hand.
55. Having held as above, it is my finding that the appellants were responsible for the destruction. As regards failure for the agricultural officer not executing a certificate under Section 106B of the Evidence Act, the same does not amount to electronic evidence.
56. As regards theft of a generator, pw2-pw5 all confirmed a generator was carried by the appellants from a house in the shamba. Pw6 taxi driver confirmed that he carried a generator delivered to him by the 1st appellant. The appellants are not claiming the same generator. The fact that Roble in whose it was recovered did not testify, is not fatal as there is sufficient evidence to connect the accused with the theft.
57. As concerns the value of the destroyed crops, the agricultural officer went beyond his mandate by valuing water tanks, loss of water and pipes plus the generator. All these items do not constitute crops. It was therefore erroneous to value crops together with non-crops. To that extent, the issue of crop valuation was distorted.
58. Accordingly, the prosecution proved beyond reasonable doubt that the appellants willfully and unlawfully destroyed crops belonging to the complainant. Thus, I find them guilty as charged.
59. The appellants were also charged with stealing contrary to section 268(1) of the Penal Code which provides that:

268. (1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property.
60. Section 275 of the Penal Code prescribes the punishment for the offence of stealing if the charge is proved beyond reasonable doubt. It provides as follows: Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the



theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.

61. The fact that the complainant's generator was stolen was not in doubt. The question as already determined was whether the appellants played a role in stealing it.
62. The prosecution witnesses narrated how after destroying crops and tank, the appellants carried away the generator to the taxi. The said generator according to the investigating officer upon carrying out investigations was traced at Mr. Roble's home. It is not lost to this court that the said Mr. Roble was a former husband to the 1st appellant. That upon being asked how the generator came to be in his possession, he stated that the 1st appellant took it there and she still used to visit the house of Mr. Roble.
63. Section 4 of the [Penal Code](#) describes possession to mean:
 - “possession” — (a) “be in possession of” or “have in possession” includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person;
 - (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;
64. As such, the appellants did not shake the evidence of the prosecution as the said evidence pictured a systematic and orchestrated theft by the 1st appellant with her accomplice, the 2nd appellant. Therefore, I affirm the finding of the trial court.
65. As regards the sentence imposed, the same was said to be harsh. I am alive to the fact that the issue of sentence is at the discretion of the trial court unless it is shown that it was arrived at after considering irrelevant issues or factors or applying wrong legal principles or it is excessive. See *Ahmed Abolfathi Mohamed vs Republic*(supra).
66. In this case, the court sentenced the appellants to 5 years imprisonment in count 1 and 1 year imprisonment in respect of count two or pay a compensation of over 1,414,500. To start with the value of the crops was distorted by mixing up crops and non-crops. Further, in criminal cases, compensation orders should not be so punitive as to substitute civil proceedings.
67. The amount ordered for compensation was so substantial that should have been the subject of civil proceedings. For instance, it was not clear how the value of the generator changed from 25000/- to 60,000/=. How can it be compensated yet it was recovered? The agricultural officer exceeded his mandate in valuing what he was not supposed to value. For those reasons, I am inclined to set aside the compensation amount and the same should be dealt with as a civil matter.
68. As to sentence, I have noted that the generator was recovered. On mitigation, the 1st appellant pleaded for mercy saying she was a single mother with 9 children who depend on her. She was so remorseful and first offender. She has served about two months sentence from the time she was sentenced till her release on bail pending appeal. I also take note of the fact that there was a land dispute of the land and that the 1st appellant had also had her crops destroyed previously. It appears like a revenge mission. Five years in my view was too excessive.
69. As regards the second appellant, he was remorseful and a first offender. He pleaded that he was diabetic and hypertensive. As an officer, he must have lost his job hence suffered. He has served two months'



imprisonment from the time he was sentenced up to his release on bail pending appeal. I am persuaded to substitute the sentence of 5 years in respect to count 1 to a fine of kes 150,000/= in default serve two years imprisonment. For count two, I will sentence them to a fine of kes 10,000 in default serve six months' imprisonment in place of one year. Sentences to run concurrently from the date of sentence. Bond is hereby cancelled.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 9TH DAY OF APRIL 2025

J. N. ONYIEGO

JUDGE

