



REPUBLIC OF KENYA



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**Wanyonyi & another v Republic (Criminal Appeal E052 of 2022)
[2025] KEHC 8777 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E052 OF 2022**

AC MRIMA, J

JUNE 20, 2025

BETWEEN

KEVIN WAFULA WANYONYI ALIAS KEVIN WANYONYI 1ST APPELLANT

AMOS WAFULA WANJALA 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising out of the conviction and sentence of Hon. J.K. Ng'arng'ar (CM) in Kitale Chief Magistrate's Court Criminal Case No. E1324 of 2020 delivered on 29th August 2022)

JUDGMENT

Background:

1. Kevin Wafula Wanyonyi alias Kevin Wanyonyi and Amos Wafula Wanjala, the 1st and 2nd Appellants herein, were charged with the offence of robbery with violence contrary to section 296(2) of the [Penal Code](#). The particulars of the offence were that 'On the 15th day of June 2020 at Barbtton in Kiminini sub-county within Trans-Nzoia county jointly with others not before Court being armed with dangerous weapons namely rungus and swords robbed Wycliffe Mukhwana Mulongo of his mobile phone make ITel – it2090 valued at Kshs. 2,000/- and Kshs. 15,500 which was in his M-Pesa account all valued at Kshs. 17,500/- and immediately after time of such robbery murdered the said Wycliffe Mukhwana Mulongo.
2. The Appellants pleaded not guilty. In support of the prosecution's case, a total of 7 witnesses testified. Zippy Mwenje testified as PW1. Robert Wangila Mulongo testified as PW2. Dr. Alex Wanyonyi Barasa, a senior medical officer at Mt. Elgon hospital testified as PW3. Sophie Nelima was PW4, John Njenga Kimani was PW5, Evans Kioko was PW6 and No. 78491, PC Zadoc Wafula, the Investigating Officer, testified as PW7.



3. Upon close of the prosecution's case, it was found that a prima-facie case had been established against the Appellants. Accordingly, they were placed on their respective defences.
4. The Appellants gave sworn testimonies and did not call any witnesses.
5. Upon considering the merits of the case, the trial Court found that the prosecution had proved its case beyond reasonable doubt. It convicted the Appellants for the offence of Robbery with violence and sentenced each one of them to 50 years imprisonment.

The Appeal:

6. The Appellants were aggrieved by the decision. Through an undated Amended Petition of Appeal, the 1st Appellant sought to quash his conviction and sentence on the following grounds: -
 1. That the learned magistrate erred in failing to realize that the prosecution failed to prove that I was identified by witnesses and further they did not give descriptions of I the appellant to the police and did not conduct an identification parade to validate the alleged identification.
 2. That the learned trial magistrate erred in failing to hold that the prosecution failed to prove the alleged M-Pesa transactions, communications and the exhibits produced under section 77 of the *Evidence Act* and further Safaricom Liaison Manager and officer from National Registration Bureau were not called to prove the same under section 146 and 150 of the *Criminal Procedure Code*.
 3. That the learned trial magistrate erred in failing to consider the credible defence put forth by the appellant.
7. On his part, the 2nd Appellant asserted the following grounds of appeal: -
 1. That the learned trial magistrate failed to note that the mode of identification was totally unfavourable in nature.
 2. That the learned trial magistrate failed to note that the Police/Prosecution failed to conduct identification parade as per the law (sic) requirements.
 3. That the learned trial magistrate failed to note that the maker of the expert evidence produced was not present.
 4. That the learned trial magistrate failed to note that the crucial key or important witness was not summoned herein.
 5. That the learned trial magistrate erred in both law and facts by failing to note that the Police held the appellant for 7 days contrary to Article 49(f)(i) of *the Constitution* of Kenya 2010.
 6. That the learned trial magistrate failed to mete out a proportionate sentence hence harsh and excessive in nature.
8. The Appellants filed written submissions in support of their appeals. In his written submissions, the 1st Appellant argued that he was not identified beyond reasonable doubt and referred to the contradictory evidence of PW1 when she claimed to have seen the Appellants and later denied seeing or knowing who had killed her grandfather. It was his case, therefore, that the identification was doubtful and insufficient to support a conviction. The 1st Appellant denied being in locus quo and withdrawing any money at the material time. In reference to the evidence of PW4 and PW5, it was his evidence that he



was not identified since the witnesses had not given to the police their description prior to the arrest. The decision in R -vs- Eria Sebwato 1960 EA 174 was relied upon where it was observed: -

.... Where the evidence alleged to implicate an accused is entirely of identification that evidence must be watertight to justify a conviction.

9. To discount their identification in Court, the 1st Appellant cited the Court of Appeal decision in Criminal Appeal No. 21 of 2001, Francis Nyaga -vs- Republic where it was observed that dock identification is generally worthless and a Court should not place much reliance on it unless it is preceded by a properly conducted identification parade where the witness is asked to give the description of the suspect and the police arranges a fair identification parade.
10. On the ground that the prosecution failed to prove that he withdrew money from M-Pesa shops, the 1st Appellant submitted that no communication was established linking him to the 2nd Appellant and to the use of the deceased's sim card. He asserted further that the alleged transactions between him, the 2nd Appellant and the deceased were not proved. He claimed that the M-Pesa evidence was not properly produced since PW7 had no record or communication data to depict history of all subscribers who also paired with the deceased's phone number. It was his position that PW7 could have prepared a certificate in respect of the computer print outs in accordance with section 65(8) of the *Evidence Act*. The 1st Appellant reiterated that the Safaricom Liaisons Officer and National Bureau officer ought to have been called to tender evidence and validate the claim of withdrawal of money and communication as well as Identification numbers. It was his case that the failure to call them denied him the opportunity to examine them.
11. In his submissions, the 2nd Appellant claimed that their identification was not conclusive since the evidence of PW1 was to the effect that they were already asleep and there was no light when the attack happened. It was his evidence that the witness admitted that she did not know who killed her grandfather. It argued that there was no positive, reliable description of the assailants since there was evidence that the attacker wore a mask. The decision in the case of Ezekiel Angwenye Amolo -vs- Republic, Crim. Appeal 124/99 was relied upon where it was observed: -

.... In the event a witness said that he could identify the accused if he saw him again, the Court be interested in knowing the features by which the witness was able to identify the assailant.
12. The 2nd Appellant submitted that the failure to conduct an identification parade was contrary to police standing orders and as such their identification in the dock was not free from error. As regards the failure by the prosecution to avail the maker of documents relating to M-Pesa transactions, the production by the Investigating Officer, it was claimed, violated section 35(a), (1)(iii)(b), 2(a) of the *Evidence Act*. It was further the 2nd Appellant's case that the failure to call Peninna (the deceased's wife) a crucial witness who was present during the crime led to miscarriage of justice. In the end the 2nd Appellant decried violation of his rights to be availed in Court within 24 hours of arrest.
13. On sentencing it was his case that the 50-year imprisonment was disproportionate and contrary to the principles of sentencing and the Judiciary Sentencing policy guidelines.

The Respondent's case:

14. The prosecution challenged the appeal through written submissions dated 22nd May 2023. It cited the decision in Criminal Appeal No. 116 of 1995, Johanna Ndungu -vs- Republic which outlined the ingredients of the offence of robbery with violence and submitted all the requisite elements



were established. It was its case that the fact that the robbery involved dangerous weapons was not controverted. Reference was made to the evidence of PW1 who testified that the assailants took the stick of her grandfather and struck and strangled him were proved. Regarding the ingredient of stealing, the Respondent made reference to the evidence of PW4 and PW5 who pointed out that two people withdrew money and the ID number was that of the deceased. It also was its case that PW7 indicated that the M-Pesa transactions produced as exhibits proved beyond reasonable doubt that the element of stealing was established.

15. On the limb of identification, the Respondent submitted that PW5's evidence that the people who entered his M-Pesa Shop and the ones who were in the dock were the same people was enough since they entered therein at 6pm and he was able to recognize them, a fact which was not rebutted. The Respondent was emphatic that the trial magistrate did not err in its conviction and sentence. While relying on the case of *Twegehane Alfred -vs- Uganda*, Criminal Appeal No. 139 of 2001, 2003 UGCA, it submitted that the inconsistencies were minor and trivial which this Court ought to ignore unless it forms the opinion that they point to deliberate untruthfulness or affect the main substance of the prosecution's case.
16. On the claim of a faulty identification of the appellants, the Respondent submitted that the evidence of PW5 as the persons who used the deceased's ID was sufficient since it happened in broad day light, a fact which was not controverted. This Court was referred to the case of *Roria -vs- Republic* 1967 EA where it was observed that the circumstances were tenable to enable the complainant identify and recognize the appellants. Further to the foregoing, it was the Respondent's case that the Appellants were linked to the crime by circumstantial evidence. It asserted that there was no explanation of how they came into possession of the deceased's Identification Card and why they were withdrawing money two days after the deceased's death.
17. The Respondent submitted that according to section 143 of the *Evidence Act*, it need not call any particular number of witnesses, in absence of the law to the contrary shall be required to prove any fact. It was its position that the calling of Beatrice and Hellen was not demonstrated that it would have added value to its case as they were not at the scene.
18. In conclusion, it was its case that the trial court considered the Appellants' defence and properly disregarded it for lack of merit. It urged this court to uphold the conviction and affirm the sentence.

Analysis:

19. This being a first appeal, it is the duty of this Court to re-consider and to re-evaluate the evidence adduced before the trial Court with a view to arriving at its own independent findings and conclusions (See *Okono vs. Republic* [1972] EA 74). This Court is, however, required to take cognizance of the fact that it neither saw nor heard the witnesses as they testified before the trial Court. It ought, therefore, to make due allowance in that regard (See: *Ajode v. Republic* [2004] KLR 81).
20. A consideration as to whether the offence of robbery with violence was committed now follow.
21. For the prosecution to sustain a conviction for the offence of robbery with violence, the dictates of Section 295 and 296(2) of the *Penal Code* ought to be established. It provides as follows;
 295. Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to it being stolen or retained, is guilty of the felony termed robbery.



- 296(2). If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately after the time of robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.
22. In Criminal Appeal No. 116 of 2005 (UR), Johana Ndungu v Republic, the Court of Appeal listed the ingredients of the offence or robbery with violence as follows;
- i. If the offender is armed with any dangerous weapon or instrument; or
 - ii. If he is in the company of one or more other person or persons, or;
 - iii. If at or immediately after the time of the robbery, he wounds, beats, strikes or uses violence to any person.
23. In Oluoch -vs- Republic {1985} KLR 549 the Court observed that proof of any one of the above ingredients is enough to sustain a conviction under Section 296 (2) of the Penal Code. Having settled the law, this Court will now review the evidence within the foregoing parameters.
24. PW1, a child of 6 years, was first taken through voir dire. The trial Court was satisfied that she spoke intelligently and was able to testify under oath. She spoke to the fact that the assailants were armed with dangerous weapons. She was the only primary witness. She stated that three people entered their house in the evening when they had already slept. They used sticks to beat her grandmother and used the very stick to strangle her grandfather. Further, it was her evidence that the assailants stepped on him, tied him and closed his mouth.
25. The evidence of PW4 corroborated the use of a weapon. When he conducted post-mortem, it was his findings that the deceased's fingers were dented and that there were bruises on the neck. He also observed that the deceased had an upper airway obstruction with fractured cricoid cartilage. He concluded that the cause of death was asphyxia secondary to strangulation. The post-mortem report was produced as PExh1. This Court is, therefore, satisfied that the offenders were armed, were more than one and that they exerted violence on their victim which led to his death.
26. The next important hurdle is the question whether the Respondent discharged the legal burden that the offenders stole from their victim. PW4, an M-Pesa Attendant, testified that three customers came to her shop. Two remained outside while one entered her shop. He presented his identity card and she recorded the details. She then gave the customer Kshs. 5,000/-. PW 5, another M-Pesa attendant testified that on 17th June 2020, at about of 6pm he attended the accused herein where he withdrew Kshs. 7,000/-. He testified that he recorded his Identification card number being XXXXXXXX before handing over the money. PW6 was yet another M-Pesa agent. He recounted that on 17th June 2020, at about 7pm, he was about to close when two customers requested to withdraw Kshs. 3,300/-. To that end, they presented him with the Identification Card No. XXXXXXXX.
27. Having interrogated the M-Pesa entries produced as PExh. 3, there is no doubt that the first one indicates that a transaction of 17th June 2020 was by a customer whose Identification Card Number was XXXXXXXX. He withdrew Kshs.7,000/- and the transaction code was OFH611WVV8. The next one was conducted on 17th June 2020 by a customer whose Identification Card Number was XXXXXXXX. The transaction amount was Kshs. 5,000/- and the code was OFH21JAT9E. Lastly there was the M-Pesa transaction of customer whose Identification Card Number was XXXXXXXX for Kshs. 3,300/=. It was conducted on 17th June 2020. The foregoing M-Pesa transactions tally with the testimonies of PW4, PW5 and PW6 who were M-Pesa agents who attended to a customer with a similar Identification Card No. XXXXXXXX.



28. The evidence of PW7 had it that the deceased's phone was found with the 2nd accused. It was his testimony that the M-Pesa transaction of 18th June 2020 indicated that the number was for the deceased. When the 2nd accused cross-examined PW7, it further came out the he was the one who was found with the deceased's phone, sent money to his number from the said phone and that he is the one who made withdrawals. The accused persons did not challenge the fact that they were found with deceased's phone and neither did they controvert that it was them who withdrew money using the deceased person's Identification card.
29. Without any other explanation as to how the accused persons came into possession of the deceased's phone and transacted using his Identity Card, and bearing in mind the fact that the deceased was attacked a few days prior, the deduction of this Court can only be that they stole from the deceased. The ingredient of stealing was, therefore, proved to the required standard.
30. Next is the critical aspect regarding identification of the accused persons. The prosecution's quest to identify the perpetrators of the crime started from the evidence of PW1, a young child of 6 years. She testified that three men entered the house. Whereas she claimed that she saw their faces, a shadow of doubt is cast on exactness of the people she saw since she stated that there was no light. Her identification was also weakened during cross-examination by the 2nd accused. PW1 gave contradictory positions to the effect that she had seen the accused during the day but later stated that she had not seen them during the day. Her identification was therefore not conclusive.
31. However, the evidence of PW4, PW5 and PW6 as appreciated alongside the evidence of PW7 on the persons who transacted using the deceased's Identification Card provide useful insights as to the identity of the persons who committed the crime. PW4 testified that three customers came to her shop. Two were outside and one entered. It was her evidence despite not having interacted or known the customer that she physically saw and was able to identify that it was the 1st accused person. PW5's evidence clarified further the identity of the clients he attended to on 17th June 2020. He testified that the accused persons entered her shop on 17th June 2020 and requested to withdraw Kshs. 10,000/- but he only had 7,000/-. Upon requesting for their identity card and recording the details thereon, he handed them Kshs. 7,000/-. Despite not knowing the two accused persons prior to their interaction, he stated that the persons in the dock were the same people who he had transacted with. On cross-examination, it was his testimony that he served them about curfew time. He was about to close, at about 6PM when the accused persons herein entered. He was categorical that they had no masks on and the 2nd accused's face was clear.
32. PW6's evidence further elucidated the identity of the accused persons. At about 7pm, he attended to two customers who stepped into his shop. When PW7 commenced the investigations, he stated that he would identify them. When he was in the dock, he stated that the two accused persons in the dock were the very persons he served on the 17th June 2020. It was his evidence that they are the ones who had the phone and produced the identity card of the deceased.
33. With the foregoing evidence, this Court now turns to the principles on identification of perpetrators of crime.
34. The Black's Law Dictionary 2nd Edition, defines the term 'identification' as follows: -

Proof of identity; the proving that a person, subject, or article before the court is the very same that he or it is alleged, charged, or reputed to be; as where a witness recognizes the prisoner at the bar as the same person whom he saw committing the crime; or where handwriting, stolen goods, counterfeit coin, etc., are recognized as the same which once



passed under the observation of the person identifying them –‘identitas vera colligitur ex multitudine signorum.

35. To ascertain whether the evidence on identification of the accused persons was free from error, the Court of Appeal in Criminal Appeal 20 of 1989, *Wamunga -vs- Republic* [1989] KLR 424 at 426 had this to say: -

... Where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction.”

36. The Court of Appeal of Nigeria in *David Ojeabuo -vs- Federal Republic of Nigeria* {2014} LPELR-22555(CA), discussed the concept of contradictions in evidence. It observed: -

...contradiction means lack of agreement between two related facts. Evidence contradicts another piece of evidence when it says the opposite of what the other piece of evidence has stated and not where there are mere discrepancies in details between them. Two pieces of evidence contradict one another when they are inconsistent on material facts while a discrepancy occurs where a piece of evidence stops short of, or contains a little more than what the other piece of evidence says or contains.

37. Borrowing from the foregoing, even without the testimony of PW1, it is no doubt clear that there was perfect symphony in evidence of PW4, PW5 and PW6 as to the identity of the two accused persons. Their account of how they attended to the accused persons was graphic and more importantly, their evidence mutually corroborated each other.

38. As was warned by the Court of Appeal in Criminal Appeal 20 of 1989, *Wamunga -vs- Republic* case [supra], this Court has exercised extreme caution in the assessment of the evidence on the identification so as not to occasion miscarriage of justice. In the case, it was observed;

... Evidence of visual identification in criminal cases can bring about miscarriages of justice and it is of vital importance that such evidence is examined carefully to minimize this danger. Whenever the case against a defendant depends wholly or to a great extent on the correctness of one or more identifications of the accused which he alleges to be mistaken, the Court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of the identification. The way to approach evidence of visual identification was succinctly stated by Lord Widgery C.J, in the well-known case of *R v Turnbull* [1976] 3 All E.R. 549 at page 552 where he said:

“Recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.”

39. Going by the evidence presented, there was no contradiction, whatsoever, as to the identity of the customers, the accused persons herein, were served by PW4, PW5 and PW66 in the evening of 17th June 2020. The said transactions happened during day light, between 6PM and 7PM. The witnesses, even though they did not have prior contact with the accused, saw and interacted with their customers. When they (accused persons) were presented in Court, they all were in consonance that they were the very persons they served that evening of 17th June 2020.

40. The Court of Appeal in *Wamunga -vs- Republic* case [supra] discussed the foregoing subject as hereunder: -



... This need for caution was also reiterated by the Court of Appeal for Eastern Africa in the case of Abdallah Bin Wendo v R 20 EACA 166 at page 168 thus:

“Subject to certain well-known exceptions it is trite law that a fact may be proved by the testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification especially when it is known that the conditions favouring correct identification were difficult. In such circumstances what is needed is other evidence, whether it be circumstantial or direct pointing to guilt, from which a Judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the possibility of error.”

41. It is noteworthy that even if the evidence of identification was only of one M-Pesa agents (either PW4, PW5 or PW6), it would still be safe for this Court to make the finding that the accused persons were positively identified, all this court needed to do was ensure the identification was free from error. In this case identification was by more than one witness. The incidence of error, in view of absence of contradictions and any rebuttal by the accused persons, was eliminated. The accused persons’ dock identification would have been worthless and unsafe if there were no other corroborating factors.

42. The foregoing was spoken to by the Court of Appeal in Criminal Appeals Nos. 117, 131 & 133; of 2000 (Consolidated), Samuel Mwaura Muiruri & 2 others -vs- Republic [2002] eKLR when it referred to its earlier decision in Gabriel Njoroge -vs- Republic (1982-88) 1KAR 1134. The Learned Judges observed thus: -

.... In Gabriel Njoroge -vs- Republic (1982-88) 1KAR 1134, this Court held that dock identification of a suspect is generally worthless unless other evidence is adduced to corroborate it. And in Amolo v Republic (1991) 2 KAR 254 this Court explained the rationale for the Court’s reluctance to accept a dock identification without other evidence. The Court there said that:

.... The reason for the Court’s reluctance to accept a dock identification is part of the wider concept, or principle of law that it is not permissible for a party to suggest answers to his own witness, or, as it is sometimes put, to lead his witness....

43. However, the learned Court of Appeal Judges rationalized dock identification in the following terms: -

.... But the holding in Gabriel Njoroge case (supra) appears to us to be too broadly couched. We do not think it can be said that all dock identification is worthless. If that were to be the case then decisions like Abdulla bin Wendo v Rep (1953) 20 EACA 166, Roria v Republic [1967] EA 583, and Charles Maitanyi v Republic (1986) 2 KAR 76, among others, which over the years have been accepted as correctly stating the law concerning the testimony of a single witness on identification will have no place in our jurisprudence. In those cases courts have emphasized the need to test with the greatest care such evidence to exclude the possibility of mistaken identification before such evidence is accepted and acted upon to found a conviction. We do not think that evidence will be rejected merely because it is dock identification evidence. The court might base a conviction on such evidence if satisfied that on the facts and circumstances of the case the evidence must be true and if prior thereto the court duly warns itself of the possible danger of mistaken identification. (emphasis added).

44. Cumulatively, therefore, the corroborative evidence that the accused persons used the deceased’s phone and Identification card to do the M-Pesa withdrawals viewed against the uncontroverted evidence that



they were found with very Identification card and the deceased's mobile phone and in view of fact that they were seen physically in day light by PW4, PW5 and PW6 satisfy this Court that the accused persons were indeed linked to the crime, identification parade notwithstanding.

45. This Court now turns to the claim on failure by the prosecution to call expert witnesses. Expert evidence is provided for in Section 48 of the Evidence Act, Cap 80 as follows:

48. Opinions of experts

(1) When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity, or genuineness of handwriting or fingerprint or other impressions.

(2) Such persons are called experts.

46. The Court of Appeal in *Mutonyi versus Republic* (1982) KLR 203 at page 210 elaborated on expert evidence as follows: -

Expert evidence is evidence given by a person skilled and experienced in some professional or special sphere of knowledge of the conclusions he has reached on the basis of his knowledge, from facts reported to him or discovered by him by tests, measurements and the like.

Section 48 of the Evidence Act (Cap 80) provides that where, inter alia, the court has to form an opinion upon a point "of science, art, or as to identity or genuineness of handwriting or finger or other impressions", opinions on that point are admissible if made by persons "specialist skilled" in such matters.

In *Cross on Evidence* 5th edition at page 446, the following passage from the judgement of President Cooper in *Davie versus Edinburgh magistrates* (1933) SC 34,40, as scenting the functions of expert witnesses:

"Their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgement by the application of these criteria to the facts put in evidence."

So, an expert witness who hopes to carry weight in a court of law, must, before giving his expert opinion:

1. Establish by evidence that he is specially skilled in his science or art.
2. Instruct the court in the criteria of his science or art, so that the court may itself test the accuracy of his opinion and also form its own independent opinion by applying these criteria to the facts proved.
3. Give evidence of the facts on which may be facts ascertained by him or facts reported to him by another witness.

47. Based on the foregoing, it was not necessary to call witnesses let alone from *Safaricom Limited* and the National Registration Bureau to give their respective testimonies on the M-Pesa transactions and the identity of the accused persons. This Court is of the assessment that their evidence was not expert. Their documentary evidence only spoke to a fact. It was not speaking to or shedding light to an opinion. Adducing such evidence needed no expertise and as such the evidence by the Investigating Officer sufficed.



48. Finally, the 2nd Appellant claimed that the sentence meted out was not proportionate. The Court of Appeal in *Bernard Kimani Gacheru v Republic* [2002] eKLR discussed sentencing as follows;

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

49. Taking cue from the foregoing and having in mind the circumstances of the case, this Court does not find any fault with trial Court's discretion in handing down a 50-year sentence.

Disposition:

50. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi to Kitale, I used to handle matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and subsequently elected into the Judicial Service Commission thereby mostly being away from the station. Apologies galore.

51. In the end, this Court concludes that the appellants' respective appeals have no merit and are accordingly dismissed. Their conviction by the trial Court was based on acceptable and sufficient evidence. For avoidance of doubt the conviction and sentence of the trial Court are hereby upheld.

52. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JUNE, 2025.

A. C. MRIMA

JUDGE

Judgment delivered virtually in the presence of:

Kevin Wafula Wanyonyi alias Kevin Wanyonyi and Amos Wafula Wanjala, the Appellants in person.

Mr. Mugun, Learned Prosecutor instructed by the Director of Public Prosecutions for the Respondent/State.

Duke/Chemosop – Court Assistants.

