



REPUBLIC OF KENYA



**Wilson & 2 others v Republic (Criminal Appeal E006 of 2024 & E001 of 2025 (Consolidated))
[2025] KEHC 7854 (KLR) (Anti-Corruption and Economic Crimes) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7854 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CRIMINAL APPEAL E006 OF 2024 & E001 OF 2025 (CONSOLIDATED)**

BM MUSYOKI, J

JUNE 5, 2025

BETWEEN

FRANCIS BUNDI WILSON 1ST APPELLANT

KYALO MUNYAO NTHIWA 2ND APPELLANT

TIRUS NDAMBUKI MUSYOKA 3RD APPELLANT

AND

THE REPUBLIC RESPONDENT

*(Being appeals from judgment, conviction and sentence in Milimani Chief Magistrate's
Anti-Corruption case number E018 of 2021 (I.N. Barasa PM) dated 15th August 2024)*

JUDGMENT

1. In the lower court, the appellants faced the following four counts;

Count 1- Receiving a bribe contrary to Section 6 (1) (a) as read with Section 18(1) of the *Bribery Act* no. 47 of 2016 whose particulars were that on 5th day of March 2019, Tirus Ndambuki Musyoka and Kyalo Munyao Nthiwa at Joska Police Post within Machakos County, being persons employed by a public body to wit, Ministry of Interior and Coordination of National Government as Lukenya Location Chief and Inspector of Police Joska Police Post jointly requested for a bribe of Kshs. 50,000/= from Peter Muhia Njenga with intent that, in consequence, they would release his 8 head of cattle detained at KBC police station.

Count 2- Receiving a bribe contrary to Section 6 (1) (a) as read with Section 18(1) of the *Bribery Act* no. 47 of 2016 the particulars thereof being that on 7th March 2019 at Joska shopping centre within Machakos County, Tirus Ndambuki Musyoka, Francis



Bundi Wilson and Kyalo Munyao Nthiwa being persons employed by a public body to wit, Ministry of Interior and Coordination of National Government as Chief Lukenya Location, Officer Commanding KBC Police Station and Inspector of Police Joska Police Post respectively, jointly requested for a bribe of Kshs. 50,000/= from Peter Muhia Njenga with intent that, in consequence, they would release his 8 head of cattle held at KBC Police Station.

Count 3- Receiving a bribe contrary to Section 6 (1) (a) as read with Section 18 (1) of the *Bribery Act* no. 47 of 2016 whose particulars were that on 8th day of March 2019 at Joska shopping centre within Machakos County, Tirus Ndambuki Musyoka, being a person employed by a public body to wit, Ministry of Interior and Coordination of National Government as Chief Lukenya Location received a bribe of Kshs 40,000/= from Peter Muhia Njenga with intent that, in consequence, he would release his 8 head of cattle held at KBC Police Station.

Count 4- Abuse of office contrary to Section 46 as read with Section 48 (1) of the *Anti-Corruption and Economic Crimes Act* no. 3 of 2003. The particulars in this count were that on 8th day of March 2019 at Joska shopping centre within Machakos County, Tirus Ndambuki Musyoka, being a person employed by a public body to wit, Ministry of Interior and Coordination of National Government as Chief Lukenya Location, used his office to improperly confer a bribe of Kshs. 40,000/= upon himself, which comprised of money obtained and received from Peter Muhia Njenga so as to release his 8 head of cattle held at KBC Police Station.

2. The appellants pleaded not guilty and the prosecution called a total of twelve witnesses in its efforts to prove the four counts. The trial court convicted all the appellants and sentenced them as follows;
 - i. The 2nd and 3rd appellants, Kshs 50,000.00 each in default to serve one year in jail on count 1.
 - ii. All the appellants, Kshs 50,000.00 each in default to serve one year in jail on count 2.
 - iii. The 3rd appellant Kshs 50,000.00 in default to serve one year in jail on count 3.
 - iv. The 3rd appellant Kshs 50,000.00 in default to serve one year in jail on count 4.
3. The appellants were aggrieved by the conviction and sentence and preferred appeals herein. The 1st and 2nd appellant filed appeal number E006 of 2024 while the 3rd appellant filed a separate appeal vide criminal appeal number E018 in the criminal division of the High Court. On 21-01-2025, Honourable Justice K. Kimondo transferred appeal number E018 of 2024 to this court upon which it was registered as appeal number E001 of 2025. When the parties appeared before me on 8-04-2025, I ordered that the two appeals be consolidated for purpose of hearing with the arrangements of the appellants as it appears in the title to this judgment and with proceedings being taken in file number E006 of 2024.
4. The Act mentioned in the charge sheet as *Bribery Act* does not actually exist. What we have is *Anti-Bribery Act*. But that does not go into the root of the case and I take it as a small issue of misdescription of the Act. I have looked at the two petitions of appeal and gather therefrom that the issues for determination are whether there was enough evidence to warrant conviction of the appellants and whether the sentences were harsh, excessive or severe. The grounds of appeal border on allegations that the prosecution's case was unreliable, uncorroborated and contradictory.
5. This being a first appeal, this court is obligated to re-evaluate the evidence produced before the trial court and come to its own independent conclusion but having in mind the fact that I did not take the evidence of the witnesses and did not have the advantage of observing their demeanour. The Court



of Appeal in Joseph Kipkemoi Ngetich v Republic (2018) KECA 120 (KLR) cited with approval the holding in Okeno v R (1972) EA 32 thus;

‘In the case of Okeno v. R [1972] EA 32, at page 36, the predecessor to this Court stated:

“ An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya v. R [1957] E A 336) and to the appellate courts own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions - Shantilal M. Ruwala v. R [1957] EA 570. It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower courts’ findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses - See Peters v. Sunday Post [1958] EA 424”.

6. As stated above, the prosecution called 12 witnesses. PW1 was the complainant. He told the court that on 25-02-2019, one Teresiah Nduku in whose custody he had kept his cows for fattening telephoned and informed him that two of his workers had been arrested by the area Chief. He sent his friend Francis Mwangi to Joska police station where he found a Police Inspector known as Munyao who referred him to KBC police station. This was on 5-03-2019.
7. Francis was told to go with the owner of the cows and the complainant went later to Joska police station and found Inspector Munyao who called the area Chief known as Ndambuki and when the Chief came, he told him that the cows could not be easily released to him because the case was known by his bosses including the OCS KBC police station. He told them to bring Kshs 50,000.00 for the animals to be released and threatened that they would be donated to a children’s home. They went to EACC and met one Ronald Ochieng and reported. They were given a mobile like audio visual recording device which he signed for. He identified the device in court.
8. On 7-03-2019, they left EACC for Joska accompanied by Ronald Ochieng and another EACC officer known as Ngeno and on the way, Francis telephoned Inspector Munyao who confirmed that he was waiting for them. On arrival, Munyao telephoned the Chief who came. He also called OCS KBC police station who said he was at a garage. They went to Green Resort Club where the witness told them he had only found 10,000.00. The OCS told them that they were jokers and they got angry. He told them that he would go and look for the balance and went back to EACC where the recording was played.
9. The next day, they returned to EACC where they were given an envelope with Kshs 40,000.00. He confirmed the amount and he was warned not to touch the money. He identified the envelope in court and the Kshs 40,000.00. He stated that the money in court was punctured but what he was given was not punctured. He was given a photocopy of the money which he and one Ali Abdi signed. They then went to Joska with eight EACC officers. Francis and him were in different vehicles. They went and met Inspector Munyao at the same hotel they were before where the Chief joined them.
10. They sat at an excluded spot with the Chief and the OCS while the EACC sat at different points. He told the OCS and the Chief the much he had and gave the money to the Chief. The Chief took the money, counted and pocketed it and was arrested at that point. Francis pointed out the pocket where the Chief had put the money and it was retrieved and counted and recorded the serial numbers. The OCS was also searched and a wallet recovered. They then returned to EACC where statements were recorded and he was called back on 14-03-2019 and signed some documents and an inventory



and listened to the conversation which he confirmed. He identified the inventory and transcript of the recording which was in kikuyu and swahili languages.

11. The video recording was then played in court. The court observed that the clip was inaudible as the volume was very low even when turned to the maximum and adjourned for twenty minutes. When the court resumed, the clip had some points of low audibility which required a level of straining to hear. The prosecution then introduced a second transcript and the second audio clip. The second one was good in clarity and audibility. The witness confirmed that what was played was what he recorded. He stated further that the second transcript which was identified as MFI10 was the conversation between OCS Bundi, Chief Ndambuki and Inspector Munyao. He identified Chief Ndambuki as the 3rd appellant, OCS Bundi as the 1st appellant and Inspector Munyao as the 2nd appellant.
12. In cross-examination, PW1 said that his neighbour Teresiah informed him that his workers had been arrested for cultivating bhang. He had kept the cows for one year while Teresiah kept goats. He confirmed that he had a case in Machakos related to livestock theft. He added that Inspector Munyao and the Chief asked for documents to confirm ownership of the cows but he did not have any and that he did not know the appellants before the incident. He stated that it was the Chief who told him to give money. He also stated that the wazee referred to in the transcript meant the Chief and Inspector Munyao. He also stated that nobody had asked for 10,000/= and that he was given 40,000/= on a brown envelop. He stated that he was not asked for a bribe on 5-03-2019. He gave 40,000/= on 8-03-2018 and that he did not give money on 6-03-2019 and 7-03-2019.
13. He said that he met the 1st appellant on 6-03-2019. He knew the 2nd appellant earlier on 27-02-2019 and that he didn't not know the appellants' tribe and that he spoke with Mwangi in kikuyu language. He insisted that he was shown how to use the gadget for recording by EACC officers and it was played when he returned it. He stated that he was present when transcription was done on 22-03-2019. He also stated that he did not give the 1st appellant any money neither did he give the 2nd appellant any money. He also said that at no time did the 1st appellant ask for Kshs 50,000.00. He admitted that he was trapping the appellants and added that he did not see the money he was given by one Zilpah being treated. He also said that the OCS was entertaining himself with his friends and that he did not take the money to the OCS because he was not dealing with him. He added that the 2nd appellant was not present when the money was given. It is recorded that the complainant refused to answer whether he had falsely implicated the 2nd appellant.
14. Zilpah Awour was the second witness. She was an investigator working with EACC. She recalled that on 7-03-2019, she was in the office when one Ronald Ochieng another investigator introduced to her two complainants, Francis and Peter and she proceeded to induct them on use of a gadget for purposes of obtaining evidence upon which they left. She identified the gadget as MFI1. The complainants returned the following day and Mr. Ochieng requested her to treat Kshs 40,000.00 in denominations of 1,000.00. She made a photocopy of the currency and Peter Muhia and her signed and then she made an inventory containing serial numbers of the currency notes. She also signed an envelope. She identified the inventory as MFI6. She added that she treated the notes with APQ chemical which is obtained from Government Chemist. The two complainants left for the operation. She did not know what happened thereafter. She produced MFI5 and MFI6 as exhibits 5 and 6 respectively.
15. When she was cross-examined, she stated that her role was to assist in preparation of the evidence and stated further that she did not have any qualifications in handling gadgets and the only training she got was in the office. She could not tell whether the complainants remained with the gadget until the next day but insisted that she gave the treated money to Peter. She also admitted that there was no evidence that Francis participated in the induction as he had not signed anywhere. The gadget did not have a



- manufacturer's name and she did not know the manufacturer. She stated that on 7-03-2019, they did not proceed for operations.
16. Bith Wanyenje Juma Mursi testified as the third witness. He was an investigator with EACC and a gazetted photographs officer. She recalled that on 14-03-2019, she was on duty around Joska in Nairobi when Ronald Ochieng requested him to take photographs of eight heads of cattle which were within KBC police station compound. He took video clips and photographs which he later transferred to his computer in office and printed the photographs. He prepared a certificate under section 106B of the Evidence Act and prepared a report which he produced as exhibit 11. He also produced the photographs as exhibits 11a and 11b, the certificate as exhibit 11c and an inventory he had signed as exhibit 11d. the witness was not cross examined.
 17. PW4 was one Elizabeth Warukira Karitu who told the court that he was at the time of the offence the Assistant Commissioner of Athi River Sub-County and the supervisor of Tirus Ndambuki Musyoka the 3rd appellant. She stated that she was called by one of the village elders and informed that the 3rd appellant had been arrested together with the 1st appellant. She was called to record a statement with EACC and identified the 3rd appellant in video clips she was shown. She prepared a certificate that she had identified him and produced the certificate dated 3-04-2019 as exhibit 12. In answering one question in cross-examination, she stated that she did not witness the offence.
 18. John Ngeno was called as the fifth witness and told the court that she was an investigator with EACC and that on 8-03-2018 his senior Rodger Akaki informed him that he received a report from a member of the public that some police officers and an Assistant Chief had demanded Kshs 50,000.00 in order to release cows that were held at KBC police station. Akaki instructed him to provide a back-up to the arresting team upon which the organized a team comprised of Ronald Ochieng, Vincent Samba, Eric Mabeta, Kipyegon, Koskei, Philip Messa, Ali Abdi, Zilpah Awuor and driver Samuel Ekelasi and they proceeded to Joska area and sent the complainant and Francis Mwangi with Kshs 40,000.00.
 19. The complainant met the Assistant Chief and a message was sent to Ronald Ochieng that the Assistant Chief had received the money. They immediately proceeded inside a hotel called Resort and Francis Mwangi pointed out Tirus Ndambuki to them and they arrested him. He recovered the amount which he still held in his hands and handed it to Ronald Ochieng.
 20. When he was cross-examined, the witness stated that the money he recovered was treated with APQ and he could not recall the clothes the 3rd appellant wore or whether he had a jacket. He added that he did not witness the 3rd appellant receive the money and that he went in first with Ronald Ochieng and found the 3rd appellant walking to the car park and arrested him within the building of the hotel. He added that he was the one who recovered the money from the front right pocket of the 3rd appellant's trouser with his bare hands in presence of the complainants who saw what happened.
 21. In further cross-examination, the witness retracted his earlier testimony after being shown his statement he had recorded with the investigator which was produced as defence exhibit 3. He changed and said that the 3rd appellant removed the money from his pocket and he (the witness) received it from his hands wearing gloves. He added that he was aware that the money was treated. The 3rd appellant was swabbed thereafter. The witness denied putting the money in the pocket of the 3rd appellant to trap him.
 22. PW6 was Francis Mwangi Ndungu a businessman living in Kiambu. He told the court that on 25-02-2019, he was with Peter Muhia at Burma market when Peter told him that his two herdsmen had been arrested at Joska and his cows seized and detained at the police station. On request of Peter, he



- went to Kangundo law courts and found that the herdsmen had been charged with cultivating cannabis and granted cash bail of Kshs 100,000.00.
23. He raised the issue of the cows and was referred to KBC police station where he went and found the Deputy OCS a Mr. Maina who told him to follow up at Joska police post with the one Inspector Kyalo Munyao. At the station, the Inspector told him that the herdsmen had been arrested by the area Assistant Chief one Tirus Ndambuki who would explain the circumstances of the arrest and he instructed him to go back with the owner of the cows. Him and Muhia went back to Joska police post on 5-03-2019 where they found Inspector Munyao who called the Assistant Chief and they discussed how the animals could be released. This discussion went into money and Mr. Ndambuki asked for Kshs 50,000.00 while the owner said that he could pay Kshs 10,000.00 upon which Mr. Ndambuki threatened to have the cows donated to a children's home.
 24. On 6-03-2019, they went to EACC where Muhia recorded a statement after they met Mr. Ochieng. A lady showed them how to use a recording gadget and they left to return the following day on 7-03-2019 when Muhia was given the recording gadget. They went to Joska with EACC officers where they met Mr. Munyao. The EACC officers stayed out of reach monitoring what was going on and Mr. Munyao instructed them to go to Green Resort Hotel to wait for is Boss the OCS Mr. Bundi and the Assistant Chief. When they arrived, Mr. Munyao introduced them to the OCS and explained the issues. The OCS asked 'wamekuja wamejipanga namna gani?' and Muhia said he had Kshs 10,000.00 then the OCS said to him 'hiyo ni mchezo uko nayo?'. The OCS then said it was not clear whether the animals were stolen or not. Muhia then said he would need time to prepare himself. They made recording and gave the gadget to the EACC officers.
 25. He added that they were asked to go the next day on 8-03-2019 which they did and he and Mr. Muhia were given a recording gadget. Mr. Muhia was given Kshs 40,000.00 and shown how to handle it upon which they proceed to Joska police post accompanied by eight EACC officers and on the way, he called Mr. Munyao and told him that they were prepared as agreed. Mr. Ndambuki then called him and said they should meet at the resort they had met earlier instead of the police post. After a short while Mr. Ndambuki and Mr. Bundi came but Mr. Bundi did not sit with them. They told Mr. Ndambuki that they had brought Kshs 40,000.00 and he accepted the money then left their table and went to the table where the OCS had sat upon which they signaled one of the officers who went and arrested Mr. Bundi and recovered his gun and mobile phone. They also recovered money form Mr. Ndambuki's pocket. They went back to EACC on 12-03-2019 and the recordings they had made were played and they confirmed the contents. The witness identified the appellants in court.
 26. Upon cross-examination, he said that he did not know that the complainant faced a case of stock theft and denied that his motor vehicle KCU 829F had transported stolen items. He confirmed that he was Muhia's driver in 2018 and 2019 but he was not paid for it as they just used to work together. He stated that the 2nd and 3rd appellants never asked him for money and he never gave them any and he could not tell why they were charged. The money was handled by Mr. Muhia in an envelope. He stated that it was not PW5 who recovered the money but another officer known as Ochieng. The money was recovered at the parking area from the right pocket. He also denied that he was being used to cover up a case of stolen animals which scheme failed.
 27. In further cross-examination by Mr. Ario for the 3rd appellant, the witness denied that he was scared of Muhia and that he had not paid for maintenance of the animals. He added that he was given a gadget in the second time but he could not confirm that MF11 is the gadget he was given. They were three at the table when the money was given to Ndambuki. He added that he sent a text to EACC officers that they were through and the officers drew near. He also confirmed that the OCS was seated in a different point in the hotel. He stated that the gadget only captured up to the point of handing over the money.



28. The seventh witness was one Alex Kinyanjui a digital business analyst with EACC based at the forensic laboratory. After giving his qualifications, he told the court that he received two exhibits from Ronald Ochieng through an exhibit memo dated 11-03-2019. The memo was forwarding two exhibits that were a Samsung mobile IMEI No. 35620409673xxxxx recovered from Francis Bundi Wilson and Huawei Mobile IMEI No. 86978502937xxxx recovered from Tirus Ndambuki Munyao. He also received a list of mobile phone numbers xxxxxx0624 (for Kyalo Munyao Nthiwa), xxxxxx9000 (for Peter Muhia Njenga), xxxxxx0659 (for Francis Mwangi Ndungu), xxxxxx5147 (for Samuel Mukuusi), xxxxxx5829 (for Samuel Mukuusi) and xxxxxx2264 (for Elizabeth). He produced a report dated 11-03-2019 showing calls and short messages between the Samsung mobile and Huawei mobile phones for between 6-03-2019 and 8-03-2021 as exhibit 15 and the exhibit memo as exhibit 14.
29. In cross-examination, he stated that the Huawei phone did not communicate with Peter Muhia Njenga. He added he could not tell the nature of calls as they only got the call logs. There was no interpretation of the information in the messages. He could not tell the registration details of the sim cards as the investigations officer did not give him the ownership details. He did not read through the messages and from what he could see, there was no message relating to money. Among the calls to Francis Mwangi Ndungu, there were three missed calls at different times.
30. The next witness was James Wachira an investigator with EACC who told the court that on 22-03-2019, his colleague Ronald Ochieng requested him to prepare a transcript where one of the languages used was kikuyu language which he understood. He was given a compact disc with two conversations recorded on 7-03-2022 and 8-03-2022. He invited the complainant and played the conversation with him. He translated the kikuyu parts into Swahili. The complainant also confirmed the transcription as a true reflection of the recorded conversation and signed a certificate to that effect. He also proceeded to prepare a certificate under Section 106B of the *Evidence Act*. He identified MFI8 which was a transcription of conversation between Tirus Ndambuki Musyoka, Kyalo Munyao, Muhia Njenga and Mwangi dated 23-03-2019. He also identified MFI9 which was which was the translated version of MFI8. He also identified and produced MFI10 which was a transcription of conversation between Muhia, Mwangi, Munyao, Ndambuki and Bundi.
31. In cross-examination, he told the court that he extracted the information from compact disc to his computer and he did not know the voices in the recording. The recording had an unidentified voice did not say anything that would have needed him to talk to them. He added that he had been asked to translate because the investigating office did not understand the language. He could not tell whether the content in the CD was tampered with as he was not given the original to compare with. He admitted that what was in the CD was secondary recording. He added that the only person who identified the voices was Mr. Muhia and Mwangi which was sufficient but they were not there to say who was the speaker in the conversation.
32. PW9 was Dennis Owino Onyango an analyst with the Government Chemist. He stated that he received a total of eight exhibits from EACC investigators and upon swabbing and analysing the same, he prepared a report dated 3-05-2019. He produced the exhibit memo as exhibit 18 and his report as exhibit 20.
33. When he was cross-examined, he stated that the Government Chemist is the only custodian of APQ chemical in Kenya. He stated further that, his role was to test whether presence of APQ chemical was positive in the currency and the exhibits submitted to him. He stated that he tested all the notes and the envelope but he could not recall whether the envelope was sealed and that two samples which related to Francis Bundi had negative results meaning that he did not have contact with the chemical. He stated further that the exhibits were sealed but it was not proper sealing because it was not the



- recommended wax sealing. He admitted that it was true that the swabs and control sample could lead to contamination if not properly sealed.
34. Samuel Mukusi was called as PW10 who recalled that on 21-03-2019 at which time he was the Sub-County police commander of Athi River, he was called by Ronald Ochieng working with EACC with a request to go to their offices and when he arrived, he had a discussion with Mr. Ochieng who asked him to listen to an audio clip. He listened and he was able to identify the voice of his former OCS Mr. Bundi and Inspector Munyao who was then in charge of Joska police post. He was also able to identify the voice of Tirus Ndambuki, the Chief of Lukenya then he was requested to record a statement.
 35. The witness was invited again on 25-07-2019 by the same officer where they discussed about animals that had been seized in connection with the matter and confirmed that he was aware of the eight animals and of the suspects who had been arrested for being in possession of cannabis and arraigned in court. He added that he had worked together with OCS Bundi and Inspector Munyao for eight months. He also knew Mr. Tirus Ndambuki as they had held meetings in relation to theft of livestock which was a problem in the area.
 36. He told the court in cross-examination that he was stationed at KBC police station and that he had seen the animals but didn't know what was the issue around them then. He stated that no complaint had come to his offices about the animals which had been there for about a week after the arrest of the appellants. He added that he did not see any money being given out. He also admitted that he could not authenticate the voices because someone can imitate a voice. He also stated that when he went to identify the voices, he was already aware of the issue and the case. He was however not able to identify the setting for the video clips which added to his doubt whether the voices were an imitation.
 37. Eric Mabete Machusit who testified as PW11 told the court that he was an EACC investigator. He said that he was approached by Ronald Ochieng on 8-03-2019 to join a team that had assembled for an operation. He joined Vincent Sambe, Philip Meja, Kipyegon Kosgey, Ali Abdi, John Ngeno and Zilpah Jalang'o. Zilpah was assigned the role of treating the operation money while the rest were to accompany the complainants to the field for the assignment.
 38. They left office at 12 noon and arrived at Joska at 3 pm. While at Joska, the complainants entered Green Resort Club accompanied by John Ng'iru and Vincent Sambe. Ronald Ochieng, Philip Meja and Kosgey entered into an adjacent restaurant facing the entrance of Green Resort. Him and Abdi Ali remained outside the restaurant. He added that at 4.10 pm, he received an sms from Francis Mwangi informing him that one of the suspects had arrived. After some time, he received a call from Francis Mwangi that one of the suspects had received the money and he informed Mr. Ali and they proceeded to the restaurant where they met the two complainants at the entrance. Francis Mwangi showed him the suspect he had given money. They went and introduced themselves to them and told them that they were under arrest for requesting and receiving a bribe. They cooperated and Ronald Ochieng asked the one who had received the money to produce it and he did so from the right front pocket of his trousers.
 39. The witness added that John Ng'iru wore clean gloves and received the money and a mobile from the suspect. He also searched the other suspect and recovered a ceska pistol loaded with 11 rounds of live ammunition and a mobile phone. He also wore gloves and together with Kipyegon Kosgey and the other officers verified the serial numbers of the recovered Kshs 40,000.00 in Kshs 1,0000 denominations and all matched.
 40. The witness swabbed the hands of the suspects from whom the money was recovered in the name of Tirus Ndambuki and stored the swabs in an envelope he labeled A and B. Ronald also did a swab of the hands of the other suspects. At the office, they prepared an inventory of what was recovered. The suspects were then booked at EACC police station and he informed Mr. Ochieng to call the 3rd



suspect known as Kyalo Munyao based in Joska police station who had been adversely mentioned by the suspects they had arrested.

41. He was placed on cross-examination where he told the court that he did not exchange contacts with the complainants when he met them but he got the contact of Francis Mwangi at the scene. He added that the 2nd appellant did not come to the scene and he had no personal knowledge of a request for money by the suspects other than what he was told. He stated further that the area chief called Francis Mwangi although the call log showed that the calls between the two were missed calls. He stated that Ronald and his team which sat in the adjacent hotel could not see inside of green resort club but the two hotels had a common entrance. He admitted that some numbers in the inventory were overwritten. He denied that their intention was to trap the suspects. He also stated that they did not find money from the OCS and he did not see Ndambuki receiving the money.
42. The last witness, the investigating officer was one Ronald Ochieng Obonyo who works with EACC. He told the court that he interviewed the complainant on 6-03-20218 who was accompanied by his friend Francis Mwangi. The witness narrated what the witnesses told him which is the same as has been reproduced above. After he record the complainant's statement, they went to Joska together on 6-03-2029 but before they left, the complainant was instructed on how to operate recording gadget by Zilpah.
43. While at Joska, Peter and Francis went inside the police station and recorded the conversation and returned the gadget upon which they prepared an inventory. Back at the office, they prepared another inventory and added the recording gadget to the complainant together with Kshs 40,000.00 operation money. They then set off for Joska and while on the way, Peter and Francis were in communication with the Tirus Ndambuki and Kyalo Munyao. At Joska, Tirus Ndambuki came and entered the resort and met Peter Muhia and Francis Mwangi and after some minutes Peter Muhia sent them a text that Mr. Tirus Ndambuki had received the money.
44. The witness added that the officers could see what was happening and that Mr. Ndambuki walked into the room towards Mr. Francis Bundi and while they were standing at the parking yard, they arrested the two and Tirus accepted receiving the money and removed it from his pocket and the same was received by Mr. John Ng'iru. They also recovered a phone and a cesta pistol from Francis Bundi.
45. He went on to identify the exhibits which had been identified by the other witnesses and added that he was the one who prepared the memo to the Government Chemist to ascertain if Ndambuki came into contact with the money recovered from him. He added that the report from the Government Chemist showed that the hands of Ndambuki came into contact with APQ chemical directly.
46. The witness also stated that forensic report showed that Kyalo Munyao communicated eight times with Tirus Ndambuki on 7-03-2019. There was also one communication between Kyalo Munyao and Tirus Ndambuki on 6-03-2019 and on 8-03-2019 Tirus Ndmabuki communicated with Kyalo Munyao four times. There was also communication between Francis Mwangi and Tirus Ndambuki five times on 8-03-2019. Francis Bundi and Kyalo Munyao communicated 8 times on 7-03-2019 while Francis Bundi communicated with Kyalo Munyao once on 8-03-2019.
47. As he produced the transcripts, he stated that the recorded conversation of 7-03-2018 was between Francis Mwangi, Peter Muhia Njenga, Kyalo Munyao and Tirus Ndmabuki at Joska police station while the second conversation was between Tirus Ndambuki, Francis Bundi, Kyalo Munyao, Peter Muhia Njenga and Francis Mwangi at Joska shopping center at Green Resort club on 7-03-2019. The witness stated further that there was another conversation he referred to a reply on 8-03-2019 between Peter Muhia Njenga, Francis Mwangi and Tirus Ndambuki.



48. The witness stated further that all the conversations were in kikuyu, Swahili, kikamba and english. He made further reference to the transcript and explained that Tirus Ndambuki and Kyalo Munyao demanded a bribe from Peter Muhia who was with Francis Mwangi on 7-03-2019 at Joska police post and again that on 7-03-2019 at the restaurant they emphasized on the demand while they were together with Francis Bundi, Tirus Ndambuki, Kyalo Munyao, Peter Muhia and Francis Mwangi. He produced letters of employment and pays slips from the appellants' employers.
49. In cross-examination, he stated that the report made to them was that Kyalo Munyao and the Chief Joska detained cows until they were given Kshs 50,000.00 and there was no report for Ksh 40,000.00. He also stated that the transcript does not indicate a demand for Kshs 50,000.00. He also admitted that the serial number of exhibit 1 was not indicated in the inventory. He added that Muhia was inducted on the use of the gadget on 6-03-2019 while Francis was inducted the next day. He also did not know the manufacturer of the gadget and he had no Kenya Bureau of Standards certificate or certificate of service. He went on to deny that they put the money in Ndambuki's pockets and that they touched his pockets with APQ chemical. He also stated that he did not produce registration details of the mobile numbers he got from Safaricom. He also stated that there was nothing wrong with the appellants communicating to each other and it was not unusual. He added that Bundi did not ask for Kshs 40,000.00 and he did not receive any money.
50. The trial court found that the appellants had a case to answer upon which all of them opted to give sworn statements. The 3rd appellant was the first to go. He told the court that he was the Chief of Lukenya location having been employed in 2007. He stated that on 22-02-2019, he was in his office in Ngalali when a lady called Teresiah Ngugi came in and told him that Peter Muhia had leased her land and he was keeping cows therein and had three workers and she wanted him removed as she suspected the cows were stolen. He went to the land with nyumba kumi and village elders and found the boys in charge asleep. They introduced themselves and confirmed that there was bhang and cows in the land. They uprooted the bhang and informed police officers at Joska police station then they arrested the workers and took them to the said police station.
51. The 3rd appellant called and informed the lessee of the arrest and left the cows behind with two boys of nyumba kumi. The owner did not come and at 5 pm together with the police officers and nyumba kumi youth, they took the cows to KBC police station. Peter Muhia came on 5-03-2019 claiming the cows. While at the station, the cows were being taken care of by a boy on local arrangements in terms of tethering and watering.
52. On 5-03-2019, he was informed by Inspector Munyao of Joska police station that the owner of the cows had shown up and he went to meet him and interrogated him. According to the 3rd appellant, Peter could not identify or prove ownership of the cows and he gave him contacts of two people who could confirm that he had bought the cows at Dagoretti. The appellant called the two persons who denied any knowledge of or connection with the cows.
53. The 3rd appellant added that during interrogation he was with Munyao and Bundi was not in the discussion. He alleged that he told Njenga to go and bring documents in proof of ownership of the cows but he did not come and he did not talk to him until 8-03-2019. He added that he was not expecting him on 8-03-2019. On the said date, he had gone to Joska and saw Bundi at a shop and went to greet him. Someone came and told Bundi to go and remove his vehicle where he had parked so that he could park his lorry. He then saw Mr. Njenda and Francis and greeted them and left to the OCS and he told him that he had seen Njenga then they were ambushed.
54. He denied ever discussing bribery with Njenga and Francis on 7-03-2019 at the resort and added that the two had not confirmed ownership but they were insisting that they needed the cows. He denied



giving conditions for releasing the cows and added that it was Njenga who said he will come with mbuzi ya wazee but they said they were not interested and even the OCS told them not to pay for the soda they took at the resort.

55. On 8-03-2019, he went to the supermarket and met Bundi with three men and he did not go to where they were seated. He denied receiving the money and claimed that he touched it when he was asked to confirm the serial numbers. He claimed that he did not know the consequence of holding the money and he was not expecting any money. He stated that he did not use his office improperly but he followed the law that provides for procedures about reported stolen cows and insisted that he acted as per the Chiefs Act. He produced a charge sheet showing that the complainant had been charged with stock theft in Athi River through Kangundo law courts criminal case number 223 of 2019.
56. In cross-examination, he could not say the names of the nyumba kumi elders. He added that he handed over the cows to the police station and that his office does not investigate when he hands over the cows to the police station. He admitted that he met Mr. Munyao on 7-03-2019 at green resort together with Peter and Francis Mwangi but they never met again. He denied that when he met the OCS at the resort, he was looking for him. He admitted that on the date of arrest, he was wearing the trouser which had been produced in court as prosecution exhibit. He alleged that he was forced to sign some documents at the EACC offices and added that the cows were taken to court and that it did not make sense to charge the complainant and also charge him.
57. The first appellant stated on oath that he was the OCS KBC police station. He denied asking anyone for money. He recollected that the complainant had stated that he did not give him money or ask him for money. He added that he came back from official duty elsewhere on 6-03-2019 and found cows in his station and he complained because they had destroyed the flowers. He added that he told the DCI that the cows should be handed over to court which the DCI did. He never talked to any person about money.
58. When he was cross-examined, he stated that he was trapped but he could not tell by who. He had never met the complainants and he saw them for the first time on 7-03-2021. He stated further that he knew no officer from EACC and he held no grudge against any. He also stated that he didn't see the 2nd appellant on the date of arrest but admitted seeing the 3rd appellant. He said that he was not coerced to sign any documents. He confirmed that they were arrested at the parking. He stated that the Chief did not have anything in his hand and he was not expecting any money. He also stated that he saw the money for the first time in court.
59. The 2nd appellant also testified on oath and told the court that at the time he was arrested, he was in charge of Joska police post. He stated that he was called by Ochieng from EACC on 2-05-2021 who informed him of communication he had made. He also recalled that the complainant had said that he did not demand for a bribe. He denied receiving or demanding bribe as he was not even in Joska.
60. He added that when the cows were arrested, he sent three officers who went to confirm that bhang had been uprooted. The cows were taken to KBC police station by nyumba kumi elders on 25-02-2019 and handed over to the DCI. He confirmed that Bundi was not around. He stated that he later heard that the cows were taken to Kangundo law courts with a case of theft. He stated that he was arrested on 2-08-2022 which was over two years after the incidence.
61. On cross-examination, he stated that he met Francis Mwangi who had come with Peter Muhia on 25-02-2019 and he called the 3rd appellant to talk to him. He stated further that the complainants had come to claim the animals without movement permits. He denied meeting the complainants on



- 5-03-2019. He did not have their numbers but one of them called him in 7-03-2019 but he did not speak with him. He added that on 8-03-2019 someone called him and asked where he was.
62. From the totality of the evidence reproduced above, it is common ground that as rightly observed by the trial court in its judgment, the center of all the actions leading to the arraignment of the appellants was presence of cows linked or claimed to have been owned by PW1 at KBC police station. It is also common ground that the complainant was in efforts to reclaim the cows which had been arrested by the 3rd appellant.
 63. The first count involved the 2nd and 3rd appellants. The evidence tendered in respect of this count is purely oral. It was claimed that PW1 visited the station on 5-03-2019 accompanied by PW6 upon which the 2nd appellant called the 3rd appellant to come and discuss the issue with the owner of the cow. It is alleged that PW1 and PW2 stated that when the 3rd appellant came to the station, he told PW1 to bring Kshs 50,000.000 for the animals to be released. It is at this point that PW1 and PW6 decided to go to EACC where they were given recording gadgets.
 64. PW1 is on record while being cross-examined by Mr. Ario for the 3rd appellant saying that on 5-03-2019, he was not asked for a bribe. Further in his evidence in chief, PW6 stated that on 5-03-2019, the discussion went into money and Mr. Ndambuki asked for Kshs 50,000.00. These are two contradictory testimonies from the two key witnesses. According to the charge sheet, the bribe was demanded from PW1 yet the same witness denied that he was asked for bribe on 5-03-2019.
 65. The fact that PW6's evidence contradicted the evidence of PW1 should cast doubt in the mind of the trial court whether there was indeed demand for money on 5-03-2019. In convicting the 2nd and 3rd appellants on count 1, the Honourable Magistrate stated that, it was the request for Kshs 50,000.00 that led the PW1 and PW6 to go to EACC. She did not say anything about the variance of the testimonies of the two witnesses yet the only evidence available was oral and in my view the word of PW6 on one hand against that of PW1 and the 2nd and 3rd appellants on the other hand.
 66. Although she was not clear in her judgment about the reasons for her believing that there was demand for Kshs 50,000.00 on 5-03-2019, it appears from her analysis that her decision was guided by the events that followed and which were in relation to count two, three and four and the fact that the witnesses went to the EACC. In my view, this was a wrong approach to take as each count was a stand-alone charge and the prosecution had the duty to prove each beyond any reasonable doubt. It is therefore my considered finding that the first count was not proved beyond reasonable doubt.
 67. The second count faced all the three appellants. This count was highly depended on the recorded conversation of 7th March 2019. The appellants have raised the issue with the gadget not having been certified by the Kenya Bureau of Standards and alleged that its suitability was in doubt. Although the Honourable Magistrate mentioned the issue as raised by the appellants, she was not clear on her decision about it. That notwithstanding I do not see this to be a valid point for challenging the conviction and sentence. The appellants did not raise issue during the testimony of the witnesses who produced the gadget and the transcript extracted from the recording. The proceedings show that when the prosecution sought to play the clips, the appellants indicated that they had no objection. Even when the witness sought to produce the gadget and the transcripts, the appellants did not raise any objection. The appellants have not seriously challenged the outcome of the recording or the transcripts and I find that there was no prejudice caused upon the appellant or the their defence by the lack of the certificates referred to.
 68. I have gone through the transcriptions of the recording especially the translated versions. There was no dispute or issue raised with the correctness of the transcripts or the translations so this court takes it



that the same were true reflection of the conversations between the persons named in the transcripts. I also do not see any issue or problem with the recognition and identification of the voices of the persons named in the transcripts. The prosecution was in my view able to prove that the meetings took place as stated by the parties. What this court should be concerned with is whether the conversations disclose the commission of offence stated in the count.

69. The prosecution produced exhibit 15 which was a report showing that the 1st appellant conducted the 2nd appellant on the 7-03-2023 and 8-03-2019. The same report shows that the 3rd appellant communicated with the 2nd appellant on 7-03-2019 and 8-03-2019. However, the details of what they spoke about were not given. The appellants were government officers working in critical offices related to security matters which in my view would call for frequent consultations day in day out. PW10 a former sub county police commander who identified the voices of the appellants told the court that they would hold meetings with the 3rd appellant frequently due to rampant theft of cows or livestock in the area. The appellants in my view were expected to communicate as they did and unless there was another corroborative evidence, the communication alone cannot form a basis for conviction.
70. The translated transcription for the conversation between PW1, PW2, and the appellants on 7-03-2019 at Joska shopping centre around 1300 hours was produced as exhibit 10a. This exhibit is the same as exhibit 10 in contents. The conversation starts and goes for some time around the cows and introduction. Then it transits to growing of bhang which seems to be the concern of the 1st appellant and being denied by PW1. There is no mention of money or bribe. The discussion shows that the 1st appellant was meeting PW1 and PW6 for the first time and when it gets to page six where the prosecution claimed to be the relevant part in support of the charge, the conversation goes as follows;

u/v : kwa mguu baridi na wewe warm krest...

bundi : Ulikuwa ukaambiwa nini sasa.

Muhia : eee?

Bundi : wakati ulikuwa uliaambiwa nini?

Muhia : mambo ya vijana ama?

Bundi : eeee ofisi.

Muhia : wazee, waliniambia niende nitafute mbuzi, niende

Nitafute hamsini.

Bundi : nani aliwaambia?

Muhia : wenye tulikuwa tumekaa kikakao, venye tuko hakuna mtu watatu.

Bundi : eee?

Muhia : tulikuwa hivi hivi tu.

Bundi : kwa hivo mimi siko?

Muhia : eee?

Bundi : mlikuwa hivi mimi sikuweko.

Muhia : eee, sasa tulikuwa hivo.

Bundi : halafu?

Muhia : sasa ndiyo nimekuja



Bundi : mmm...

Muhia : na sijapata mazuri.

Bundi : mmm.

Muhia : lakini nimekuja na ngiri kumi.

Bundi : you are a joke?

Muhia : eeee?

Bundi : wewe ni joker?

Muhia : kwa nini?

Bundi : mmm... ng'ombe ikiwa imeharibu hivo na unasema ati umekuja na ngiri kumi?...

Mwangi : najua si ati hiyo ni warning?...

71. I have no doubt in my mind that there is no request for a bribe of Kshs 50,000.00. The mention of Kshs 10,000.00 does not translate to a request as the same is actually mentioned by the complainant. The conversation starts with a discussion about some boys then the complainant says that the elders told him to go and look for a goat or 50,000. The Honourable Magistrate in her judgment connected the 1st appellant to the alleged demand by stating that he was following up on earlier demand. With respect, I doubt that the Honourable Magistrate read and contextualised the conversation because had she done so, she would have noticed that the same was in relation to the cases facing the complainant's workers or whoever was being accused of growing bhang. The 1st appellant does not in my view make any demand for a bribe and actually appears not to have known what the earlier discussion was about. It is not safe to interpret the 1st appellant's statement that the complainant was joking to mean that the 1st appellant wanted a bribe for Kshs 50,000.00 or any other amount for that matter. The only connection the 1st appellant had in this was by asking whether he was included which to me means that he was not part of the alleged previous demands or arrangements.
72. The other part the prosecution highlighted as proof of the request for the bribe is page 9 where the following conversation ensues;
- Bundi: Chief hakuna kitu hapa tunafanya.
- Ndambuki: ata mimi naona hakuna kitu hakuna tunaelewesha hapa
- Muhia: eeeh
- Ndambuki: jamaa tukiongea juzi tukijaribu afanue vile alipata hizo ng'ombe.
73. The above was preceded by a question by Bundi asking where the goats were taken then Mwangi says 'aaa anasema' then he is interjected by Ndambuki who says 'si hiyo swali uliniuliza juzi na nikakujibu'. In all sincerity, there is nothing in this conversation that can be interpreted to mean a request for a bribe unless I do not understand Kiswahili language.
74. In addition to the above, PW1 is recorded to have said under oath that the 1st appellant did not ask him for a bribe on 7-03-2019. For one to insist that the 1st appellant demanded a bribe in reliance to the said transcription, it would mean two things. Either the complainant was telling lies or the recording or transcription was not properly or correctly done. This in my view, creates reasonable doubt as to whether the 1st appellant really demanded bribe as charged.



75. In the conversation of 7-03-2019, the 2nd appellant appears only once at page 2 of exhibit 10 where he interjects conversation between the 1st and 3rd appellants and says in one line ‘nilikuwa namwambia imechukuliwa na...silence’. This is followed by chairs moving and the 1st appellant asking ‘wewe unaitwa nani’ obviously addressing the complainant who introduces himself as ‘Muhia’.
76. The 2nd appellant appears in exhibit 9 and 8. Exhibit 9 is translation of exhibit 8 which was in kikuyu language to kiswahili. It is a conversation between PW1, the 3rd appellant, the 2nd appellant, PW6 and an unknown person. Part of the conversation where the 2nd appellant is said to have requested for bribe is on pages 3 and 4 of the said exhibit where he holds discussion with PW1 and says ‘nataka munielze vile mmejipanga... kwa sababu nataka tumalizane na hii maneno....sasa niambie nataka tuanze safari... naenda tuonanane na mkubwa huko...chief tumeongea tutakutana huko KBC....saa hii ni ng’ombe.....na tufunge hiyo chapter.....may be ata zikuwa huko hazikuli.....kukula zinakula’.
77. In the above conversation, neither the complainant nor the 2nd appellant mentions money anywhere. At page 4 through to page 5, the 2nd appellant urges the complainant to tell him how they had organised themselves then the complainant tells him that it is the way he had stated before then adds ‘ile elfu kumi’ and 2nd appellant answers him ‘hebu kuwa serious kidogo’. All the other conversations highlighted by the prosecution are negotiations about plans of how the cows could be released and it is clear to me that the 2nd appellant did not mention any condition for release of the cows but he was relying on some information or discussion between the complainant and a third party. I say so because at page 6, the 2nd appellant tells the complainant that ‘sasa enda uone Chief ndio huyo’.
78. After the 2nd appellant asks the complainant to go and see the chief, the two discuss for a short period about the process of getting the cows back including possibility of a court process then the complainant asks whether Munyao has 2,000.00 and the 2nd appellant tells him to add something. Here it confuses me whether the complainant was asking for two thousand from the 2nd appellant or he was saying that he will add two thousand.
79. It is not for the court to fill in gaps or make assumptions of what the parties were saying in the conversations. For the court to convict an accused person in reliance to such communication, it must be made clear to it what the subject matter was and what was requested or demanded. If the complainant was in a mission to trap the 2nd appellant as he admitted in his testimony, then he failed to do it properly.
80. In my view, the conversation cannot be interpreted as request for a bribe of Kshs 50,000.00 as indicated in the charge sheet. The only mention of figures is at page 10 where the complainant states that it is hard to get 50 which is preceded by a question from the 3rd appellant who had stated that ‘si juzi tuliongea na tukamaliza’. Assuming that the 50 referred to is the Kshs 50,000.00 in the charge sheet, it would mean that the same came from the 3rd appellant and not the 2nd appellant which gives more credence to the previous conversation where the 2nd appellant seemed not to be aware of what may have been the arrangements between the complainant and the undisclosed person. The court must give the benefit of these gaps to the 2nd appellant.
81. Despite the heading in exhibit 9 stating that the 3rd appellant was in the said conversation, the contents do not show his participation. It is mainly a conversation between the complainant and the 2nd appellant with few interjections from PW6. Similarly in exhibit 10, the 3rd appellant does not say much and makes no reference to any request for bribe. In view of this, I must take it that the exhibits are not reliable or conclusive enough to sustain a conviction of the 3rd appellant in count 2.
82. In the proceedings, the complainant is recorded to have admitted that he was trapping the appellants. He may not have been clear on which of the appellants he was trapping but it must be taken that he



was either trapping all or some or one of the appellants. In my analysis, any conversations about the money must have been between PW1, PW6 and the 3rd appellant although it is not clear how much it was and what were the conditions for the same. The 1st and 2nd appellants having not been in the alleged conversations were clearly trapped in the process. In view of this, I find that the second count was not proved beyond any reasonable doubt against all the appellants.

83. On count three which involves the 3rd appellant only, this court is of the view that the 3rd appellant was properly convicted. I have already held that the flow of the conversations shows that the 3rd appellant had a discussion with PW1 and PW6 on the release of the cows. He was clearly the middle person between the complainant and the 1st and 2nd appellant but the terms were not clear. It may not be clear what request or demand the 3rd appellant was making in order to have the cows released but the events of 8-03-2019 as narrated by the prosecution witnesses shows that, the 3rd appellant positioned himself to receive a benefit from the complainant. Exhibit 9a shows that the complainant, PW6 and the 3rd appellant met in exclusion of the 1st and 2nd appellant. He is recorded as saying that the money whose amount is not disclosed will be shared by many people.
84. It was the 3rd appellant who caused the arrest of the cows. When the complainant and PW6 went to the police post, the 2nd appellant referred the case to the 3rd appellant. What the complainant and the 3rd appellant discussed or agreed about the release of the cows may not be clear but it is indisputable that the 3rd appellant was at the center of the process of releasing the cows and it would appear that the police officers could not even release the cows without the intervention or involvement of the 3rd appellant.
85. When the EACC officers and the complainant set for the operation on 8-03-2019, it was the 3rd appellant who was called and who sat with the complainant and PW6 in one table away from the 1st appellant and in absence of the 2nd appellant. He is the one who received the treated money and pocketed it. Whether the request of Kshs 50,000.00 or other sum had been made or not, the fact remains that the 3rd appellant received Kshs 40,000.00 towards the release of the cows he had arrested. There is evidence that he touched the money and the fact that he had put it in his pockets proves that his intention was to keep it to himself or to distribute to his accomplices if any.
86. The 3rd appellant argued that there were contradictions on how he was arrested and whether the money was recovered from his pockets or hands. There may have been dispute as to whether the treated money was removed from his pockets or hands but I do not find that to be material discrepancy enough to vitiate the offence. In *Kimathi v Republic (2024) KEHC 6582 (KLR)*, Honourable Justice L.W. Gitari held that;

‘I opine that the evidence of PW1, PW2, PW3 and PW4, PW5 and PW6 was consistent. However, the evidence of PW6, PW7 and PW8 surrounding the circumstances of the arrest of the Appellant and recovery of the money may give the accused the benefit of doubt that he was not in the room when the money was recovered. Not every contradiction or discrepancy in the evidence of witnesses goes to the root of the prosecution case.

However, I agree with the holding of the trial court when it stated that as much as there may have been some contradictions in the prosecution’s case, the same did not vitiate the its case.’

87. The same goes for count 4. The work of a chief is not to engage in such business as the 3rd appellant did. He stated that he was acting pursuant to provisions of the Chiefs Act but he did not tell the court which provisions allowed or empowered a chief to negotiate release of animals or any other property which is in the custody of the police. Even if he the law allowed him to do so, the appellant used the



office improperly by asking for a benefit or negotiating one for the police if at all. Section 46 of the *Anti-Corruption and Economic Crimes Act* Chapter 65 of the Laws of Kenya provides that;

‘A person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence.’

88. The 3rd appellant engaged himself in the process in his capacity as the chief of the area. All through, he was active in his official capacity and he confirmed this in his own statement that he was acting in accordance with the Chiefs Act. It is therefore my finding that the appeal on this count has no merit.

89. The 3rd appellant has claimed that the sentence meted on him was severe or harsh. I do not think so. The sentence was within the boundaries provided by the law and within the discretion of the trial Magistrate and in my view. Section 47(1)(a) of the Antic Corruption and Economic Crimes Act provides that;

‘A person convicted of an offence under this Part shall be liable to—(a) a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both.’

90. The 3rd appellant was fined Kshs 50,000.00 in each of the two counts or in default to serve one year in jail. This sentence compared to the provision of the above Section is reasonable and cannot be termed as harsh.

91. Based on the above analysis, I make the following orders;

1. Conviction and sentence of the 2nd appellant (Kyalo Munyao Nthiwa) and the 3rd appellant (Tirus Ndambuki Musyoka) in respect of the first count in the Chief Magistrate’s Court at Milimani anti-corruption case number E018 of 2021 are hereby set aside.
2. Conviction and sentence of the 1st appellant (Francis Bundi Wilson), 2nd appellant (Kyalo Munyao Nthiwa) and the 3rd appellant (Tirus Ndambuki Musyoka) in respect of the second count in the Chief Magistrate’s Court at Milimani anti-corruption case number E018 of 2021 are hereby set aside.
3. Conviction and sentence of the 3rd appellant (Tirus Ndambuki Musyoka) in respect of the third count in the Chief Magistrate’s Court at Milimani anti-corruption case number E018 of 2021 are hereby upheld and the appeal thereof dismissed.
4. Conviction and sentence of the 3rd appellant (Tirus Ndambuki Musyoka) in respect of the fourth count in the Chief Magistrate’s Court at Milimani anti-corruption case number E018 of 2021 are hereby upheld and the appeal thereof dismissed.
5. Any fine imposed and paid by the appellants in respect of counts 1 and 2 as stated above shall be refunded to the appellants.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JUNE 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Miss Kemunto holding brief for Mr. Mongéri for the 1st and 2nd appellants, Mr Ario for the 3rd appellant and Mr. Mong’are for the respondent.

