



**Odhiambo & 7 others v Director of Public Prosecutions (Petition E221 of 2024)  
[2025] KEHC 9614 (KLR) (Constitutional and Human Rights) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9614 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
PETITION E221 OF 2024  
LN MUGAMBI, J  
JULY 3, 2025**

**BETWEEN**

**ALOISE ONYANGO ODHIAMBO ..... 1<sup>ST</sup> PETITIONER  
ERICK MUNYERA ISABWA ALIAS CHAIRMAN ..... 2<sup>ND</sup> PETITIONER  
RAPAHEL KIMANJ GACHIIE ALIAS KIM BUTCHER ..... 3<sup>RD</sup> PETITIONER  
MUSTAFA KIMANI ANYONL ALIAS MUSTA ..... 4<sup>TH</sup> PETITIONER  
STEPHEN ASHITIVA LIPOPO ALIAS CLHOKRE ..... 5<sup>TH</sup> PETITIONER  
JANE WANJIKU KAMAU ALIAS SHIRO ..... 6<sup>TH</sup> PETITIONER  
MARGARET NERI WACIURI ..... 7<sup>TH</sup> PETITIONER  
SOLOMON WAMBUGU GICHAMBA ..... 8<sup>TH</sup> PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**JUDGMENT**

1. The Petition dated 26<sup>th</sup> April 2024 is supported by the 1<sup>st</sup> Petitioner's affidavit of even date.
2. The Petition assails the Respondent's decision in charging the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Petitioners in two separate criminal cases that are before different courts yet emanate from the same transaction in which same witnesses are being called to testify hence according to the Petitions, this is subjecting them to double jeopardy and is in violation of their right to a fair trial.
3. Accordingly, the Petitioners seek the following relief against the Respondent:



- a. That the Court compel the respondent herein to drop one charge against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Petitioners herein in respect of the double jeopardy.
- b. That the Court drop charges in High Court Criminal Case No. 029 of 2015, since the witnesses who have already testified in Chief Magistrate's Court in Criminal Case No. 479 of 2015 in the first instance also testified in the High Court Criminal Case no. 029 of 2015 with the same exhibits and the same police file with the same investigation officers.
- c. An order to compel the Respondent to drop High Court Criminal Case No. 029 of 2015.
- d. An order be issued to the Respondent to drop the evidence of IO investigation officer and all the evidence adduced in respect of Criminal Case No. 029 of 2015 at the High Court be null and void.

### **Petitioners' Case**

4. The 1<sup>st</sup> Petitioner avers that the 2<sup>nd</sup> to 8<sup>th</sup> Petitioners were on 23<sup>rd</sup> March, 2015 charged with two offences, being robbery with violence and murder wherein they took their plea at the Chief Magistrates Court and in the High Court.
5. The Petitioners aver that these offenses originated from the same transaction and thus they should have been charged in one criminal as one case, not two separate cases. The 1<sup>st</sup> Petitioner further points out that the witnesses and investigating officers in both cases are the same. According to them this amounts to double jeopardy.
6. Consequently, the Petitioners posit that the Respondent ought to drop one case or consolidate Criminal Case No.479 of 2015 before the Chief Magistrates Court with Milimani High Court Criminal Case No. 029 of 2015. The Petitioners further argue that continuing the cases separately threatens a violation of their right to a fair trial.

### **Respondent's Case**

7. In reaction to the Petition, the Respondent filed its Grounds of Opposition dated 13<sup>th</sup> September 2024 on the grounds that:
  - i. The Application lacks merit, is misconceived and unsubstantiated.
  - ii. Section 24 of the *National Police Service Act* mandates the police to investigate any complaint brought to their attention in order to determine whether a criminal offence has been committed.
  - iii. It is in the public interest that complaints made to the police are investigated and the perpetrators of crimes are charged and prosecuted.
  - iv. The application is an abuse of the court process as the applicants have not adduced reasonable evidence to show that the criminal investigations against them was mounted for an ulterior purpose and not demonstrated how any of the Respondents have acted without or in excess of powers conferred upon them by law.
  - v. The applicants must demonstrate that substantial injustice would otherwise result if the criminal proceedings proceed in the lower court and the High Court. The cases are determined on merit.



- vi. The Director of Public Prosecutions considered the recommendations forwarded by the DCI and in exercise of his Constitutional mandate conferred by Article 157 of *the Constitution* made a decision to charge and the suspects were arraigned in both the lower court and the High court based on sufficiency of evidence and the public interest underlying prosecution of cases.
  - vii. In arriving at the said decision, the Director of Public Prosecutions did not abrogate, breach, infringe or violate any provision of *the Constitution* or any human and fundamental rights or any other written law or regulations made there under.
  - viii. The Petitioners have not demonstrated a prima facie arguable case on breach of any Constitutional provision or fundamental and human rights or any other provision of the law that would warrant grant of Conservatory orders at interlocutory stage.
  - ix. There are sufficient constitutional safeguards available to the Petitioners during the process of the impending trial in the subordinate and High Court.
  - x. The Petition is without merit and should be dismissed with cost to the Respondents.
8. Additionally, the Respondent through the Directorate of Criminal Investigations officer, Sgt. Moses Otiu filed its Replying Affidavit sworn on 13<sup>th</sup> September 2024. He states that he is the investigation officer in both suits.
  9. He depones that during their investigations it was established that the suspects who had committed the murder, the Petitioners herein, had also committed robberies.
  10. He depones that contrary to the Petitioners averments the two crimes did not arise out of the same transaction thus the assertion of double jeopardy is untenable.
  11. The investigation unearthed that the offence of robbery took place first in different places and involved different victims. Particularly, the first robbery took place along Kangemi area along Waiyaki way where the victim was Michael Ngatia and other at Wanginge in Kikuyu where the complainants were Gladys Waithera and Irene Wamboi Muthoni. These crimes were reported at Kabete and Tigon Police Stations.
  12. In regard to offence of murder, this took place along Kenyatta Avenue Uhuru Highway roundabout. On the fateful day, at around 2:51am Hon. Muchai had stopped to buy a newspaper. Unfortunately, the Petitioners attacked and fatally shot him together with his two bodyguards and his driver. He notes that the stolen vehicle of Gladys Waithera was the one used to commit this murder thus making her and Irene Wamboi key witnesses.
  13. He rebuts the Petitioners' assertion that all the witnesses are the same. He points out the common witnesses as the two complainants and the officers that were involved in the cases which were the same.
  14. It is further asserted that the allegations of violation of rights such as discrimination has no basis as the same is not supported by any evidence. He adds that the Respondent in making a decision to charge was guided by *the Constitution* under Article 157(1) and (11) of *the Constitution*. Considering this, it is argued that the Respondent in discharging its mandate cannot be said to have violated the Petitioner's rights as no malice has been established.
  15. To this end, he argues that the Petition has been filed in bad faith and an attempt to subvert the criminal proceedings yet the matters raised herein can be aptly determined by the trial court.



## **Petitioners' Submissions**

16. The Petitioners through the 1<sup>st</sup> Petitioner filed submissions dated 8<sup>th</sup> November 2024 in response to the Respondent's assertions.
17. The 1<sup>st</sup> Petitioner argued that the Respondent had failed to appreciate the essence of their case being, whether the Respondent abused the Court process by charging the 2<sup>nd</sup> to 8<sup>th</sup> Petitioners in two different courts and whether the action violates their rights under Section 135 of the *Criminal Procedure Code*.
18. The 1<sup>st</sup> Petitioner argued that the principle of double jeopardy as outlined under Section 138 and 142 of the *Criminal Procedure Code* operates to bar the State from using loopholes in the criminal justice system such as charging multiple criminal offences that arise out of one transaction. As such the 1<sup>st</sup> Petitioner urged the Court to consider the same evidence and same transaction test in determining this matter.
19. In his view, he argued that the same evidence test prevents the state from retiring a case by relying on the evidence it used in the first prosecution. That is no one should be charged for an offence in respect of an omission or act for which the accused was already charged with. It was stressed that this affirms the principle of finality and gives effect to the doctrine of res judicata.
20. In light of this, Counsel submitted that the 2<sup>nd</sup> to 8<sup>th</sup> Petitioners ought to be protected against this double jeopardy as envisaged under Article 50 of *the Constitution*.

## **Respondent's Submissions**

21. The Respondent through its Counsel Kerongo Maatwa filed submissions dated 11<sup>th</sup> November 2024.
22. Reiterating the Petitioners' case, Counsel maintained that as was deponed in the Respondent's Replying Affidavit the two criminal suits are distinct as emanated from two different scenarios involving distinct complainants and the State. In addition, the commission of the crimes took place at different times, places and suits have different witnesses save for the linking witnesses and the officers involved. Considering this, Counsel submitted that the principle of double jeopardy does not arise in the circumstances of this case.
23. Moreover, following the investigation of the matter the police file was forwarded to the Respondent to review and make the decision to charge. In addition, the Petitioners before being charged were interrogated and their respective statements recorded under inquiry, thus, their side of the story was taken into account before the decision to prefer charges against them was made.
24. Counsel emphasized that the decision to charge was guided by the dictates of Article 157 of *the Constitution* as read with the *Office of the Director of Public Prosecutions Act* (ODDP Act). It was noted equally that the Respondent is not under the control of any authority in exercise of this power.
25. Counsel submitted also that the Petitioners had not alleged that the Respondent had abused the legal process in preferring the charges or that the charges are contrary to public interest. Similarly, Counsel stated that there was no allegation that the Respondent had acted illegally, irrationally or improperly in making the decision to have the Petitioners charged.
26. In sum, Counsel submitted that in this matter due process was followed before the charges were preferred against the Petitioners. As such, Counsel submitted that the Petition is incompetent and misconceived and fails to meet the principles set out in *Anarita Karimi vs Republic (No.1)* (1979 1 KLR 154 and *Mumo Matemu -Versus- Trusted Society of Human Rights Alliance* (2013) eKLR.



27. Reliance was further placed in Republic v Public Procurement Administrative Review Board & another Ex parte Intertek Testing Services (EA) Pty Limited & Authentix Inc; Accounting Officer, Energy and Petroleum Regulatory Authority & another [2022] KEHC 1135 (KLR) where it was held that:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

### **Analysis and Determination**

28. It is my considered opinion that the issues that arise for determination are as follows:
- i. Whether charging the Petitioners in the lower court and the High Court for offences that arose in the circumstances alluded to in the Petition offends the doctrine of double jeopardy thereby violating the right to a fair trial of the Petitioners.
  - ii. Whether the Petitioners are entitled to the relief sought.

### **Whether charging the Petitioners in the lower Court and in the High Court for offences that arose in the circumstances alluded to in the Petition offends the doctrine of double jeopardy thereby violating the right to a fair trial of the Petitioners**

29. Double jeopardy is the principle against being punished twice for the same crime or offence. Article 50 (2) (o) of *the Constitution* encapsulates this principle as follows:

“50 (2) Every accused person has a right to a fair trial which includes:

- (o) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted.”

30. The *Criminal Procedure Code* has expounded this principle further in Sections 138 to 142 of the *Criminal Procedure Code*, Cap 75 Laws of Kenya. These sections provide thus:

Previous Conviction Or Acquittal

Section 138. Persons convicted or acquitted not to be tried again for same offence



A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of that offence shall, while the conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence.

Section 139. Person may be tried again for separate offence

A person convicted or acquitted of an offence may afterwards be tried for another offence with which he might have been charged on the former trial under Section 135(1).

Section 140. Consequences supervening or not known at time of former trial

A person convicted or acquitted of an act causing consequences which together with that act constitute a different offence from that for which he was convicted or acquitted may be afterwards tried for the last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was acquitted or convicted.

Section 141. Where original court was not competent to try subsequent charge

A person convicted or acquitted of an offence constituted by any acts may, notwithstanding the conviction or acquittal, be subsequently charged with and tried for another offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Section 142. Mode of proof of previous conviction

1. In any trial or other proceeding under this Code, a previous conviction may be proved, in addition to any other mode provided by any law for the time being in force—
  - a. by an extract certified, under the hand of the officer having the custody of the records of the court in which the conviction was had, to be a copy of the sentence or order; or
  - b. by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered, together with, in either case, evidence as to the identity of the accused person with the person so convicted.
- (2) A certificate in the form prescribed by the Cabinet Secretary given under the hand of an officer appointed by the Cabinet Secretary in that behalf, who has compared the finger prints of an accused person with the finger prints of a person previously convicted, shall be prima facie evidence of all facts therein set out if it is produced by the person who took the finger prints of the accused.
- (3) A previous conviction in a place outside Kenya may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order, and the finger prints, or photographs of the finger prints, of the person so convicted, together with evidence that the finger prints of the person so convicted are those of the accused person.



(4) A certificate under this section shall be prima facie evidence of all facts stated therein without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

31. A strict application of the principle of double jeopardy cannot be invoked in the circumstances of this case since double jeopardy can only arise where there has been complete trial on merits by a competent court and a verdict of acquittal or conviction has been entered for the same offence or substantially similar offence based on the same facts. That is not the case here.
32. In the instant case, the Petitioners contention is that the offences which they face arise from the single transaction hence prosecuting these offences in two separate trials both at the lower court and in the High Court for the offences of robbery with violence and murder respectively is extremely prejudicial and risks subjecting them to double jeopardy thus violating their rights to a fair trial.
33. The Respondent denied through the replying affidavit of Sergeant Moses Otiu's sworn on 13<sup>th</sup> September 2024 that the offence of murder and the robberies arose out of the same transaction indicating that the investigation disclosed that the offences of robbery with violence took place at different places and time and also involved different victims. That the first robbery took place at Kangemi area along Waiyaki way where the victim was Michael Ngatia and other was at Wanginge in Kikuyu where the complainants were Gladys Waithera and Irene Wamboi Muthoni. The crimes were reported at Kabete and Tigon Police Stations respectively.
34. In respect to the offence of murder, the deponent swore that it occurred along Kenyatta Avenue Uhuru Highway roundabout. at around 2:51am where the victim Hon. Muchai attacked and fatally shot him together with his two bodyguards and his driver. According the Sergeant Michael Otiu, the investigation further revealed that the stolen vehicle of Gladys Waithera was the one used during the murder hence both her and Irene Wamboi are key prosecution witnesses in the murder case.
35. As already underscored, for a plea of autrefois acquit or convict to be successfully raised, the trial of the previous offence must have been completed and a decision of either a conviction or acquittal made on the same offence or substantially similar offence.
36. In this Petition, I do not understand the Petitioners to say that they have been charged and convicted or acquitted before to any of the offences either at the High Court or in the lower court, contend is that due to contemporaneous trials at the lower Court and the High Court, there an imminent danger of being subjected to double jeopardy from the respective verdicts of both courts.
37. Article 22 (1) of *the Constitution*, provides that 'Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Right has been denied, violated or infringed or threatened.' If a threat is demonstrably shown to be real and not imaginary, it is actionable from the point of view of constitutional violation such that an aggrieved person does not have to wait for violation to occur before seeking Court's intervention.
38. That said, it is necessary to examine if there exists a demonstrable risk of double jeopardy being breached in respect of the Petitioners in view of the two trials.
39. The Petitioners urged this Court to consider the principles of 'same evidence test' and the 'same transaction test.' The petitioners argued that the Prosecution was relying on the same witnesses in the murder trial as well as in the lower court in respect of the robbery charges.
40. I think the same evidence test is not the same as same witnesses test, it is not the sameness of the people called to testify that is material in that determination, rather the same evidence test is applied to what



is being proved and the question is whether what is being proved similar. If the offences being proved are different, then double jeopardy does not arise. The elements of an offence of robbery with violence are distinct from those of murder and so is the evidence that tends to prove these elements.

41. Consequently, even assuming by way of illustration that the Petitioners were tried and acquitted for the offence of murder by the High Court, a plea of double jeopardy in respect of the robbery with violence cannot be raised before the the Chief Magistrate since the two offences are distinct.
42. I am emboldened by English case of *Conneley Vs DPP 1964 2 All ER 401* accused's conviction murder was quashed but that did not preclude the subsequent charge of Robbery with Aggravation which had had in fact been committed at the same time with the first charge. The accused raised the plea of 'autrefois acquit'. The House of Lords rejected the plea of 'autrefois acquit' holding that the accused is not protected from a further prosecution for a different offence on the same facts simply because he had been prosecuted on those facts and acquitted.
43. It is thus possible to prosecute murder and robbery separately without the risk of offending the double jeopardy principle even when the offences arise out of the same transaction as they are constituted by diverse elements of the offence and so are the facts or evidence required to prove. A murder charge will be established by different evidence from that of robbery with violence, the two offences cannot be proved by identical facts. As long as the elements are different the risk of double jeopardy does not arise as the real test is:

“Whether the essential ingredients of the offence of robbery or the evidence that is necessary establish it would suffice to prove a charge of murder”.

44. The other fact that the Petitioners relied on was what they described as the 'same transaction test' in arguing that it is violation of right to a fair trial to subject them to two separate trials at the High Court and the lower Court for what is essentially a single transaction involving several different offenses. They argued that the charged offences were a result of same transaction hence should be tried in one prosecution. The Respondent vehemently opposed that assertion arguing that the offences were separated in time, location and even victims.
45. Explaining the concept of 'same transaction test' from the perspective of double jeopardy, the Court in *Nicholas Kipsigei Ngetich & 6 others v Republic [2016] KEHC 1507 (KLR)* observed as follows:

“... The same transaction test classifies as the same offence all acts which occur out of the same criminal episode. The 'same transaction' test limits piecemeal prosecution by compelling the State to prosecute at one trial all offences which have been committed with a common motivating intent and which has a single ultimate goal. The courts in the United States have set down as a test whether a fundamental unfairness has resulted due to multiple trials...”

46. I keenly studied the charge sheets that were annexed to the affidavit of Sergeant Moses Otiu and noted the following:

In the Charge Sheet registered at the Chief Magistrate Court, Milimani Criminal case No. 477 of 2015 three counts of robbery with violence contrary to Section 296 (2) of the [Penal Code](#) are preferred and particulars are as follows:

- a. Count 1 is a robbery charge whose particulars allege that on 6<sup>th</sup> February, 2015 about 2200 hours along Waiyaki Way Nairobi County one Michael Ngatia Gituto was robbed by persons named in the charge sheet and others not before Court who were armed with dangerous weapons namely a G3 rifle and pistols



of a motor vehicle KBF 796 Nissan Sunny worth Kshs. 400,000, gas cylinder worth 4,000, Huawei mobile phone valued at Kshs. 8000/- and Nokia phone worth Kshs. 4,000/- (all valued at Kshs. 416,000/- and at the time of such robbery threatened to use actual violence to the said Michael Ngatia Gituto.

- b) The particulars of Count II; also a robbery charge alleges that on 7<sup>th</sup> February, 2015 about 0015 hours at Green Belt Estate in Wangige area within Kiambu County jointly one Gladys Waithera was robbed by persons named in the charge sheet jointly with others not before court while armed with dangerous weapons namely G3 rifle and pistols of her motor vehicle registration number KBE 464L make Toyota Spacio valued at Kshs. 600,000/- a mobile phone Samsung Galaxy S3 valued at Kshs.32,000, a laptop make Compaq worth Kshs.36,000/- and cash Kshs.1000/- (all valued at Kshs.669,000/-) and at the time of such robbery threatened to use actual violence to the said Gladys Waithera.
- c) Count III also a robbery with violence charge alleges that on 7<sup>th</sup> day of February, 2015; at about 0015 hours at Green Belt Estate in Wangige area within Kiambu County, the persons named in the charge sheet jointly with others not before Court while armed with dangerous weapon namely G3 rifle and pistols robbed Irene Muthoni Wambui a mobile phone make Huawei valued at Kshs.15,000/- and cash Kshs.600/-all valued at Kshs.15,600 and at the time of such robbery threatened to use actual violence to the said Irene Muthoni Wambui.

47. In the charge sheet at the High of Kenya, Criminal Case Number 29 of 2015; the charges of murder contrary to Section 204 of the Penal Code Cap 63 are preferred against the persons named in the charge sheet and the particulars are as follows:

- a. Count I- On the night of 6/7<sup>th</sup> February, 2015 along Kanyatta Avenue Nairobi County jointly murdered Hon. George Mukuru Muchai.
- b) Count II- On the night of 6/7<sup>th</sup> February, 2015 along Kenyatta Avenue within Nairobi County jointly murdered No. 92634 Constable Samuel Kimathi Kailikia.
- c. Count III = On the night of 6/7<sup>th</sup> February, 2015 along Kenyatta Avenue within Nairobi County jointly murdered No. 81813 Police Constable Samuel Lekakeny Matanta.
- c. Count IV- On the night of 6/7<sup>th</sup> February, 2015 along Kenyatta Avenue within Nairobi County jointly murdered Stephen Ituu Wambugu.

48. Firstly, the incidents of robbery with violence are separated in time and place particularly Count I on one hand as distinguished with Count II & III on the other hand. The particulars of each robbery are distinct in the sense that even though the elements of the offence are similar, the facts required to prove each count as well as the victim vary even in the case of Gladys Waithera and Irene Muthoni Wambui whom the Investigating Officer deponed were robbed simultaneously. They were robbed different items.

49. The offences of murder are very distinct for they not only have different elements to proof but also involved different victims from those of robbery. There is also nothing to indicate they were part and parcel of the single transaction as the robberies.



50. The incidences of robberies and murder thus stand separately and cannot be said to form a single coherent unit amounting to the same transaction hence cannot be lumped together with the robbery offences. Charging the offences separately does not thus undermine the fair trial of the Petitioners.
51. In *Nicholas Kipsigei Ngetich & 6 others v Republic* (supra) citing a decision from United States, Court stated:
- “ .... In the case of *Bob Fred Ashe Vs Haroud R. Swenson Warden* 399, F – 2D 40 (8th Cr. 1968) it was held that
- “The rule against double jeopardy does not forbid the State from prosecuting different offences at consecutive trials even though they came out of the same occurrence. The test is whether such a course has led to fundamental unfairness”
52. In yet another American case of *Hoag v. State of New Jersey*, 356 U.S. 464 (1958), three armed men entered a tavern, lined up five persons against a wall and robbed each of them. Hoag was arrested and charged for the robbery of three of the victims. During trial only one of the victims was able identify Hoag as one of the robbers. The other victims had previously identified Hoag in the photograph, but failed to positively identify him during the trial. Hoag's defense was an alibi. He claimed he was not in the state at the time of the robbery. He was acquitted, but shortly thereafter was indicted and tried for the robbery of another of the victims and was convicted. The Court ruled that the State's decision to try the defendant a second time was not as unreasonable or oppressive as to deprive him of due process of law.
53. Having regard to the foregoing analysis, it is clear by now that this Petition stands no chance of success. This Court is not satisfied that the Petitioners are at any risk of being subjected to double jeopardy because of the separate murder trial in the High Court and the robbery with violence trial in the lower court for reasons given in the foregoing. Firstly, the double jeopardy has not crystallized going by strict application of this principle. Secondly, even if it was to forestall a risk of double jeopardy occurring, going by the facts of this case, that apprehension is far-fetched.
54. I thus dismiss this Petition with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

.....

**L N MUGAMBI**  
**JUDGE**

