



Onkwani & 3 others v Republic (Criminal Appeal E007, E010 & E078 of 2022 & E026 of 2023 (Consolidated)) [2023] KEHC 586 (KLR) (Crim) (8 February 2023) (Judgment)

Neutral citation: [2023] KEHC 586 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E007, E010 & E078 OF 2022 & E026 OF 2023 (CONSOLIDATED)
K KIMONDO, J
FEBRUARY 8, 2023**

BETWEEN

**ROBERT MOSETI ONKWANI 1ST APPELLANT
OBADIAH NYAMBANE GWARO 2ND APPELLANT
GRAHAM RIOBA SAGWE 3RD APPELLANT
GLADYS MORAA GICHANA 4TH APPELLANT**

AND

REPUBLIC RESPONDENT

(Appeal from the judgment in Milimani Chief Magistrates Criminal Case No. 1998 of 2010 by Francis Andayi, Chief Magistrate, dated 10th December, 2021)

JUDGMENT

1. The 2nd appellant and the 4th appellant lodged petitions of appeal challenging both their conviction and sentence by the lower court.
2. At the mention of their consolidated appeals on February 8, 2023, they unequivocally abandoned their appeals on conviction. They also offered to restitute to the complainant, now known as Guaranty Trust Bank Kenya (hereafter GTB) the sum of Kshs 3,043,384 each.
3. Learned counsel for the Republic, Ms Oduor, conceded the appeal on those terms.
4. This is a first appellate court. I have re-appraised the evidence and records and drawn my independent conclusions. See *Okeno v Republic* [1972] EA 32, *Njoroge v Republic* [1987] KLR 19.



5. From the prosecution's evidence in the lower court, I am satisfied that the conviction against the 2nd and 4th appellants was safe. I uphold it. In any event, I have stated that the two appellants no longer challenge it.
6. I also find that the sentence on restitution was well within the law. But I find that the more appropriate course for the lower court should have been to apportion blame on liability to each of the appellants. Taking into account the sums posted as bail by the accused persons in the lower court and which were applied to the restitution order; I find that each of the two appellants should retribute to GTB the sum of Kshs 3,043,384.50 (three million, fourty three thousands, three eighty-four shillings and fifty cents). Considering the sums involved, I order that each of the two appellants shall pay the said sums within 4 (four) months of today's date. In default, thereof, the complainant (GTB) will be at liberty to execute for payment of the sums.
7. Since the restitution order carried a suspended sentence, I must order that in the event of default, the appellant or appellants in default will be arrested to serve the suspended sentence by the lower court of 18 months in jail.
8. For the avoidance of doubt, if the 2nd and 4th appellants pay the restitution above-mentioned in full, the suspended sentence shall stand set aside.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY 2023.

KANYI KIMONDO

JUDGE

Judgment read virtually on Microsoft Teams in the presence of-

2nd & 4th appellants

Mr Omari for the 2nd & 4th appellants instructed by Muthoga & Omari advocates.

Ms Oduor for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr E Ombuna, Court Assistant.

