REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 103 OF 2008

NAFTALI KINGORI NJOROGE…………………….....1ST APPELLANT

CHARLES WACHIRA MWANGI…………………….2ND APPELLANT

FRANCIS WANJOHI NYUTHE…………………....3RD APPELLANT

VERSUS

REPUBLIC…………………………………………….RESPONDENT

(Appeal against conviction and sentence in Nyeri Chief Magistrates' Court Criminal Case No. 1958 of 2006 (Hon. J.K. Ng'eno) delivered on 5th May, 2008)

JUDGMENT

The appellants together with some other person not before the trial court are alleged to have robbed five different people of their property and money at Ngangarithi village in Nyeri district of the then central province on or about the night of 27th of April, 2006 or the morning of 28th April, 2006. At the time of the robbery, so it was alleged, they are said to have been armed with dangerous weapons namely, pangas and iron bars, and at or immediately before or immediately after the time of such robbery, they used actual violence on their victims.

Accordingly, they were charged with five separate counts of robbery with violence contrary to **section 296 (2)** of the **Penal Code**; the material particulars of offence in relation to the date, time and place of the robberies were similar in every respect except for the victims of the robbery and the properties alleged to have been robbed from them.

The learned magistrate convicted them on four of those counts and sentenced them to death on each of them. The appellants then filed separate appeals against both their convictions and sentences. Their appeals were consolidated and heard before Wakiaga and Ombwayo, JJ. who, in their judgment delivered on 5th February, 2014, upheld the trial court's decision. Being dissatisfied, the appellants proceeded to the Court of Appeal and appealed against that decision. The Court of Appeal, in its judgement delivered on 25th January, 2016 concluded that the bench of Wakiaga and Ombwayo JJ. was incompetent to hear and determine the appellant's appeal because Ombwayo, J. did not have jurisdiction to preside over cases reserved for the High Court and therefore the judgement was a nullity. The court remitted this appeal back to this court for hearing afresh by a properly constituted bench.

The 1st appellant incorporated his grounds of appeal in his undated written submissions which he adopted at the hearing of the appeal; as I understand them, these grounds are as follows:

1. The trial court erred in law and in fact in failing to note that the information in the charge sheet was contrary to or inconsistent with the evidence given in court;

2. The trial court erred in law and in fact in relying on the evidence on identification when it was clear that the circumstances for a proper identification were difficult;

3. The trial court erred in law and in fact in concluding that the appellant was arrested with the stolen items which he had nothing to do with;

4. The trial court erred in law and in fact in adopting a procedure that was irregular in the trial against them; and

5. The trial court erred in law and in fact in failing to evaluate the defence case alongside that of the prosecution contrary to **section 169 (1)** of the **Criminal Procedure Code**;

The 2nd appellant filed what he described as "amended memorandum of appeal" alongside his written submissions that he too adopted at the hearing of the appeal. His grounds of appeal are no different from those outlined by the 1st appellant. Similarly, the 3rd appellant raised more or less the same grounds as his joint appellants; they all revolved around the form the charge or information took, identification of the appellants and the recovery or possession of the items allegedly stolen from the complainants. He added that the learned magistrate erred in law and in fact in rejecting his alibi.

The record shows that the prosecution called eight witnesses four of whom were the complainants. The 1st complainant, **Jackson Ngumba Kiritu (PW1)** testified that he was attacked while he was in his house on the night of 27th of April 2006 or at the wee hours of 28th April, 2006. He said it was between 2 and 3 am and therefore the attack must have been on this latter date.

Three people entered his room; they were armed with pangas, a metal bar and a rungu. Each of them also had a torch. One of them ordered the other to collect his 2kg gas cylinder. The same person also ordered the complainant to give him his cell phones. He picked those phones which were of C200 Motorolla and Samsung N710 makes. One of them also picked the complainant's camera of Yashika make and his wallet in which he had kept Kshs 120/=. The complainant was also hit with a panga on the right side of his neck. The robbers then left and went to rob from the neighbouring houses.

The commotion created during the robbery alarmed the police who were on patrol; they came to the scene and took the complainant's statement.

On 1st May, 2006, the complainant learnt that some items had been recovered by the police; he visited Nyeri police station where he found four cell phones. He identified two of these phones to be his. He demonstrated to the court how he was able to open one of the phones using his personal identification number. The other phone, the motorolla 200, did not have a sim card.

Two days later he returned to the same police station and identified his gas cylinder; he was able to identify it because of its defective regulator.

The witness testified that he identified the robbers because the electricity in his room was on; he described one of them as being black with a police beret while the other one wore an Islamic cap. According to him, the 3rd appellant was the one wearing the police beret and he is the one who ordered the 1st appellant to collect the complainant's gas cylinder. The 1st appellant wore the Islamic cap and he was the person who demanded money from the complainant and also took his camera. The complainant identified him as the one who cut him with a panga.

Although this complainant testified that he could not identify the 3rd person because he came in and left, he said the 2nd appellant was the one who took his wallet. He admitted, however, that he did not give the description of any of the attackers to the police when he lodged his complaint.

The 2nd complainant, **Michael Wamwea Kimeria (PW2),** was attacked on the same date and at around the same time as the 1st complainant. He was sleeping when he heard a bang on his door; thereafter the robbers gained entry into his house. He had not switched off the electricity light although when the robbers entered his house one of them smashed the lightbulb. They beat him up and took his wrist watch, a cell phone of Sagem make, a car radio (make LFG) and Kshs 200/=. They also took his cap and shoes. He admitted that the attackers were strangers to him and he could not see their faces.

The following day he made a report to the Criminal Investigation Department office at Nyeri where he found his phone; he had been given this phone by his aunt. He also found his car radio at the same place.

On 28th April, 2006, the 3rd complainant, **Lewis Macharia Waititu(PW4)** reported to his employer, **Ephrahim Gathigu Karanja (PW3)**, that he had been attacked and robbed of money, a wrist watch and a cell phone. On the same day, the said Ephraim Gathigu Karanja was in Florida bar in Nyeri when saw the appellants drinking beer together; the 1st appellant had a phone similar to that which his employee owned; he was showing to the 3rd appellant. According to his evidence, he was able to recognise the phone because of its colour and shape. He immediately called the police who arrested the appellants.

Waititu (PW4) himself testified that he worked for **Ephrahim Gathigu Karanja** and that on 28th of April 2006 at about 2 AM, he was in his house together with his wife when three men broke into the house and demanded for cell phones and money. They took the complainant's phones of Motorola C115 and C116 makes and a 6-kg gas cylinder. The complainant also gave them Kshs 1,800/= before they left. The complainant raised alarm and two police officers responded and came to the scene. He also reported the incident to his employer.

The complainant said that he could recognise the attackers because his lights were on when they broke into his house. In particular, the 3rd appellant hailed from his home area where he is popularly known as "Ndungu". He was able to identify his cell phone Motorola C116 which still had its sim card and his line 0723591452 intact. He had been given this phone by his employer. He also identified his gas cylinder at the police station.

On cross-examination, the complainant said that he was able to identify the 1st appellant because he had a broken or missing tooth on his lower jaw and he gave this information to the police officers when he reported the incident. He however admitted that he did not tell the police that he was able to recognise anybody.

The 4th complainant, **Joseph Gitonga (PW5)** also testified that he was attacked on 28th April, 2006 at about 2 am. He was able to see his attackers because electricity lights in his house were on. He showed them Kshs 3400/=, a radio, a paraffin stove and a cell phone of siemens A35 make. He later found the radio at the police station and he was able to identify it because it had some stickers. He admitted that he did not give the description of his attackers to the police when he reported the robbery.

The two radios that were stolen from the two complainants were found in possession of one **Geoffrey Maina Gatere (PW6)**; he testified that he was a taxi driver in Nyeri town and that on 27th of April 2006 the 1st appellant called him for his services. He knew him because he had driven on two previous occasions. He drove to where he was and found him with two other people. They wanted to be driven to Kamakwa. He dropped one of them along the way and proceeded to Kamakwa where the 1st appellant and third person alighted. This was at around 4 AM in the morning.

When the witness returned to the taxi bay, he realised that two radios had been left in his car. He tried to conduct the 1st appellant in vain and therefore decided to keep the radios at his wife's place of work.

Later the police officer summoned him to the taxi bay and asked him for the radios. He accompanied the police to the cells where he found the 1st appellant. The witness was able to identify the radios in court.

The investigations officer, **Corporal Peter Njoroge (PW7)** testified that on 28th April, 2006 at about 1:30 PM the three appellants were brought to the police station by administration police officers; they were alleged to be suspects in a case of robbery which the investigations officer had, earlier in the day, been instructed to investigate. The appellants were also brought with four cell phones and that one of the persons who accompanied the appellants to the station told him that he had alerted the officers when he found one of the appellants selling a phone which he identified as belonging to his employee. The officer summoned the victims of the robbery some of whom identified their phones by their ring tones.

The 3rd appellant, according to the investigations officer, led him to a person he identified as “shylock”; this shylock was keeping the gas cylinders. He also told him that it is possible they left some radios in the taxi. He gave them the name of the taxi driver and his cell phone number. The taxi driver led them where he had kept the radios. The complainant identified the recovered items and thereafter he preferred the charges against the appellants.

The arresting officer **Constable Albert Kimathi Mbaka(PW8)** testified that on 28th of April, 2006 at around 10 AM, he was on patrol with his colleague police Constable Ndete when a man approached them and reported that he had seen three people in Florida bar selling a phone which belonged to his employee and which had been stolen during a robbery on the previous night. They accompanied this man to Florida bar where he pointed out the appellants as the three people he had seen selling the phone. The officer arrested them and found four cell phones on their person. He took them to Nyeri police station and handed them over to the Criminal Investigation Department.

The 1st appellant gave sworn evidence in his defence; he testified that on 25th April, 2006 he was called by his brother to attend a funeral in Nakuru. He left for Nakuru on 24th April, 2006. On 26th April, 2006, he left for Nyahururu and that he arrived in Nyeri from Nyahururu, accompanied by his brother on 28th of April, 2006. He went to a bar and while he was taking beer policemen came and arrested him. He produced receipts to show that he was not in Nyeri at the time of the alleged robbery but that he was in Nakuru. He denied having committed the offences.

His wife, **Lucy Njeri Njuguna (DW4),** testified that she travelled together with her husband to Nakuru on 25th April 2006 to attend his brother’s funeral. They travelled back to Nyeri on 28th April, 2006. She left the appellant in town as she proceeded home. She later learned that had been arrested.

The 2nd appellant gave unsworn statement. He said that he was a turn boy and that on 28th April, 2006 he took his vehicle to a garage because it had developed mechanical problems. He then went to Florida bar to take a meal. He saw a police officer he was familiar with in the bar; this officer came and arrested him together with other people and took them to Nyeri police station. He alleged that the officer who arrested him had an affair with his wife.

The 3rd appellant testified that he was a loader at Nyeri market and that on 27th April, 2006 he went back home after work and that he never left until the following day when he went to work again. He also testified that he worked at Florida and his job entailed removing empty crates of beer from the bar and replacing them with crates of beer. He was waiting for his payment on 28th April, 2006 when three people came and sat at the same table he was sitting; two of them were the 1st and 2nd appellants. The other person left and returned with two others who identified themselves as police officers. He was then arrested and taken to Nyeri police station. His wife, Agnes Njoki Wanjohi testified that she was with him on the night of 27th April, 2007 and that he never left home until the 28th April, 2007 when he left at 7 AM.

Section 295 of the Penal Code defines the offence of robbery; it states as follows:

> ***295. Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.***

Section 296(2) of the Code prescribes circumstances when robbery metamorphoses into robbery with violence; it says: -

> ***296 (2). If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.***

It is apparent from this section that an accused person will be convicted of the offence of robbery with violence if the prosecution will prove that the robbery victim was not only robbed but also that at the time of the robbery any of the following circumstances were brought to bear: -

> (a) The accused was armed with any weapon or instrument that may deemed to be dangerous or offensive;
>
> (b) The accused was in the company of one or more persons;
>
> (c) Immediately before or immediately after the time of the robbery, the accused wounded, beat up, struck or used violence to any person.

The prosecution presented evidence to the effect that at least four people in the neighbourhood were robbed on 28th April, 2006 at about 2 am. The four victims were all consistent in their evidence that they were attacked and robbed by a gang of three men armed with crude weapons and amongst the property to they lost in the course of the robbery were cell phones, gas cylinders, money and other personal items. There is nothing in their evidence to suggest that their evidence was concocted in this respect. The learned trial magistrate who heard and saw them found their testimony to be credible and worthy of belief. I have no reason, because there is none on record, to come to any different conclusion that indeed **Jackson Ngumba Kiritu (PW1), Michael Wamwea Kimeria (PW2), Lewis Macharia Waititu(PW4)** and **Joseph Gitonga (PW5)** were violently robbed and therefore an offence under **section 296(2)** was committed.

The only question that this court needs to answer is whether the trial court came to the correct conclusion that the appellants were the perpetrators of the robbery against the complainants. There are two components to it: the first is whether the appellants were properly identified and second, whether any or all of them were found in possession of the stolen property and therefore whether the doctrine of recent possession was applicable to their conviction.

On the issue of identification, the evidence of the four complainants who testified is central; **Jackson Ngumba Kiritu(PW1)** testified that there was electricity light in his room when the robbers struck. In fact, in his evidence he gave their description and what each one of them did in the course of the robbery. However, he did not give these descriptions to the police when he recorded his statement and had he done so the appropriate course for the investigations to take would have been to conduct an identification parade from which he could possibly pick them out considering that he had not seen, at least two of these robbers, before.

This witness also admitted earlier in his evidence that he could not identify the third person because he left as soon as he entered his house yet he testified in court that this person must have been the 2nd appellant. If he could not identify him at the time of robbery, there is absolutely no basis for his conclusion that the 2nd appellant is the person he must have seen.

As far as the 2nd complainant, **Michael Wamwea (PW2),** is concerned he said that these robbers were strangers to him and that he was not able to see their faces. On his part, **Lewis Macharia Waititu (PW4)** testified that he recognised the 3rd appellant because he hailed from his home area where he was known as "Ndungu". He identified the 1st appellant because he had a gap or a broken tooth in his lower jaw. He also accompanied the 1st and 2nd appellant to the police station when they were arrested. He admitted later in his evidence that he could not recognise anybody.

Joseph Gitonga (PW5) testified that he saw his attackers because the lights were on in his house; however, he did not give their description to the police.

Except for **Lewis Macharia (PW4)** who accompanied the appellants to the station after they were arrested, an identification parade would have been necessary for the other two witnesses who are alleged to have identified the appellants at the time of robbery; however, since they did not even give the description of the robbers to the police such parade would have been of little or no value at all. In **Gabriele Kamau Njoroge V R (1982-88)1 KAR 1134 a**nd in **Ajode Vs. Republic (2004)2 KLR 81** the Court of Appeal held that it is trite that before an identification parade is conducted, and for it to be properly conducted, a witness should be asked to give the description of the accused; it is only then that the police can be said to have conducted a fair identification parade.

Lewis Macharia's (PW4's) evidence on identification is less significant since he saw the appellants when they were arrested and accompanied them to the police station. It is also worth noting that he admitted that he never told the police that he had recognised or identified any of the attackers when he recorded his statement.

The end result is that whatever evidence these witnesses gave on the identification of the appellants was nothing more than dock identification. Such evidence has been declared in **Ajode versus Republic** (supra) to be generally worthless. However, in **Muiruri & Others versus Republic (2002) 1KLR 274** the Court of Appeal took a less rigid position on the necessity of identification parades and the value of dock identification; it held as follows:

> ***"It is believed because an accused sits in the dock while witnesses give evidence in a criminal case against him, undue attention is drawn towards him. His presence there may in certain cases prompt a witness to point him out as the person he identified at the scene of a crime even though he might not be sure of that fact. It is also believed that the accused's presence in the dock might suggest to a witness that he is expected to identify him as the person who committed the act complained of…we do not think it can be said that all dock identification is worthless. If that were to be the case then decisions like Abdulla bin Wendo versus Republic (1953) 20 EACA 166, Roria versus Republic (1967) EA 583 and Charles Maitanyi versus Republic (1986) 2KLR 76 among others, which over the years have been accepted as correctly stating the law concerning the testimony of a single witness on identification will have no place in our jurisprudence. In those cases the courts have emphasised the need to test with greatest care such evidence to exclude the possibility of mistaken identification before such evidence is accepted and acted upon to found a conviction. We do not think that the evidence will be rejected merely because it is dock identification evidence. The court might base a conviction on such evidence if it is satisfied on facts and circumstances of the case the evidence must be true and if prior thereto the court warns itself of the possible danger of mistaken identification." (Underlining mine).***

Again, in the case of **Bernard Mutuku Munyao & Another versus Republic, Nairobi Criminal Appeal No. 222 of 2004 (2008 eKLR)** the Court of Appeal held that a conviction based on dock evidence is safe and that failure to hold an identification parade is not always fatal. At page 3 of the judgment, the Court said: -

> ***"Evidence of identification parade is part of the whole process of subjecting the evidence on record to careful scrutiny and considering the surrounding circumstances as stated in R v Turnbull (1976) 63 Cr. App. R. 132.The absence or presence of it goes to the weight to be placed on the available evidence and does not make such evidence inadmissible or of no probative***

value. One would think of circumstances where lack of an identification parade would seriously weaken the evidence of visual identification where there is a solitary witness or it is the only evidence available and the identification was made in difficult circumstances. We have no reason to doubt that the findings of the two courts below that the two witnesses positively identified the two appellants at the scene in circumstances that were conducive to such identification."

Even if all these factors were taken into account I am still of the humble opinion that the appellants were not properly identified mainly because the witnesses omitted to include in their statements to the police the descriptions of the appellants; I therefore hold that the learned magistrate fell into error when he took the contrary view and based his conviction partly on the evidence of identification.

Having discounted the evidence on identification, the only other possible link between the appellants and the robbery was the possession and recovery of the stolen items; the crucial items in this respect would be the complainant's cell phones and their radios.

The recovery of these items was obviously central to the arrest of the appellants; the person who set the recoveries in motion was **Ephrahim Gathiga Karanja (PW3)** when he saw the 1st appellant with his employee's cell phone. According to his evidence, the 1st appellant was showing it to the 3rd appellant. He could tell that it was his employee's phone because of its colour and shape. He immediately called the police who arrested the appellants.

I do not doubt the evidence of **Gathiga Karanja (PW3)** because the 3rd appellant confirmed that he was seated at a table with three men at Florida bar before one of them left and came back with policemen who arrested them. The person he was referring to must have been **Ephrahim Gathiga Karanja (PW3**) who testified that when he saw the 1st appellant with his employee's phone, he went and summoned the police.

Lewis Macharia Waititu (PW4) was later to confirm at the police station that indeed the phone the appellant was found in possession of was his. According to him, the phone was of Motorola C116 make and he identified it because the sim card together with his line which identified as number 073591452 were still intact.

The occurrence book of the 28th of the April, 2006 which was produced in court on the application of the 3rd appellant, showed that the appellants were booked at the station at 2:20 PM; amongst the items they were booked with were four mobile phones one of which was **Waititu's (PW4's)** Motorola C116 cell phone. The appellants complained that they did not have the chance to cross-examine the prosecution on this document; however, there is no evidence that they sought to cross-examine any of the prosecution witnesses, including the one whom they themselves called to produce the occurrence book and their application was rejected.

It must also be remembered that one of the officers who arrested the appellants, administration police constable **Albert Kimathi Mbaka (PW8)** testified that upon arresting the appellant he, together with his colleague, conducted a search on their person and recovered four cell phones. According to his evidence, two appellants had one phone each while the other one had two. He could not recall, however, which of the appellants had an extra phone.

Jackson Ngumba Kiritu (PW1), another victim of the robbery was also able to pick out his two phones from the ones that were booked at the police station. His sim card was still in one of them which identified as Samsung N710; he demonstrated to court how the phone opened when he keyed in his personal identification number. He also identified his second phone which was a Motorola 200; however, although he said that he had a receipt for its purchase he did not produce it. There was no proof, therefore, that this particular phone was his. In his evidence, this witness stated that it was the 1st appellant who took the two phones at the time of the robbery.

Besides the recovery of the phones, two radios were recovered; according to the investigations officer he

got the information that led to the recovery of the radios from the 3rd appellant. The 3rd appellant gave him the contact of a taxi driver, **Geoffrey Maina Gatere (PW6),** in whose car the radios had been left. Indeed, when the investigations officer called him, **Gatere (PW6),** confirmed that he had driven the 1st appellant and two other people the previous night. He also confirmed that they had left two radios in his car and that he had been attempting to contact the 1st appellant, apparently to collect them.

It is important to note that the 1st appellant hired the **Gatere's (PW6's)** taxi at about 4 AM; this was soon after the robbery incident in which the two radios had been stolen. It is therefore logical that, the 1st appellant and his two colleagues he was with when he hired Gatere's taxi were in possession of the two radios.

There is no basis to doubt the evidence of the investigations officer, that he got the information on the whereabouts of the two radios from the 3rd appellant since that information turned out to be consistent with the evidence of the taxi driver. In fact, there is no way he would have known about the taxi driver if he had not been given the information concerning him by all or any of the appellants who had hired his services.

Joseph Gitonga (PW5), was one of the victims of the robbery, identified one of the radios as his; it was of ATEC make and he identified it because it had peculiar stickers. The other radio belonged to **Michael Wamwea Kimeria (PW2)**; he said that he identified it by virtue of its make. However, this was not sufficient proof because it was not proved that this make was the only one of its kind and that nobody else could own such kind of radio.

Some of the complainants also identified the gas cylinders that were recovered as belonging to them; in particular, **Jackson Kiritu (PW1)** picked his out because it had a defective regulator and **Lewis Macharia Waititu (PW4)** who admitted, however, that his did not have any special or unique features. His ownership of the cylinder was therefore not established beyond reasonable doubt.

The evidence of the recovery of the cylinders was not conclusive to the extent that the person in whose custody or possession they were found was not called to testify; this evidence would have been crucial to the extent that he would have confirmed whether all or any of the appellants gave him the cylinders. Again, the ownership of one of the cylinders, as noted, was not established. In the circumstances, the recovery of the cylinders was not useful to the prosecution case.

Be that as it may, it is clear from the evidence that some of the items recovered were stolen from the complainants at the time of the robbery; these items are at least three cell phones and one radio. They testified as having been violently robbed of these items which were found in possession of the appellants soon after the robbery. It follows that in the circumstances, the doctrine of recent possession was applicable to this case and to that extent I agree with the learned magistrate.

The doctrine of recent possession was explained in **Chaama Hassan Hasa versus Republic (1976) KLR at page 10** where the High Court **(Trevelyan and Hancox JJ) stated as follows:**

> ***"Where an accused person has been found in possession of property very recently stolen, in the absence of an explanation by him to account for his possession, a presumption arises that he was either the thief or a handler by way of receiving (though not by way of retaining)."***

Considering that the appellants were found in possession of the stolen items just a few hours after they had been stolen the trial court was bound presume that they were the thieves who had violently robbed the complainants of these items. It is for this reason that I am persuaded that the 1st, 2nd and 5th counts of robbery with violence were properly proved. The 5th count would not hold because the complainant in that count did not prove the ownership of the radio.

The appellants also impugned the magistrates' judgment on the ground that he did not consider their evidence. I have had occasion to read the judgment of the learned magistrate and what I gather is that he

considered the appellant's defences but dismissed them for reasons that are explicit in that judgment. Take the 1st appellant for instance, the learned magistrate found as a fact the alibi raised was not sustainable because the appellant's narrative contradicted that of his wife who testified on his behalf. I have also noted that it is only his wife who testified that she travelled with him on the material date; the appellant himself never made any reference to his wife.

The 2nd appellant's defence was that one of the arresting officers had an affair with his wife; there was no evidence of such an affair and it is noted that this particular officer did not even testify. The two officers who arrested the appellants were on patrol and in my assessment of the evidence on record it was only a coincidence that **Ephrahim Gathiga Karanja (PW3)** met them and sought for their assistance to arrest the appellants.

The third appellant gave the investigations officer the information that led him to the taxi driver who confirmed that indeed he had been hired by the 1st appellant. He further gave him information that led to the recovery of the radios. The investigations officer's evidence in this regard was not shaken by the 3rd appellants alibi and therefore the learned magistrate was correct in rejecting it.

For the reasons I have given I will allow the appellants' appeal only in respect of their conviction and sentence on the third account; they are quashed and set aside respectively. Their appeal against conviction and sentence in respect of the rest of the counts is dismissed.

Signed, dated and delivered in open court this 13th January, 2017

Ngaah Jairus

JUDGE