



**Cheruiyot & another v Republic (Criminal Appeal 036 of 2024)
[2025] KEHC 14897 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14897 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL APPEAL 036 OF 2024
JRA WANANDA, J
OCTOBER 23, 2025**

BETWEEN

VINCENT KIBET CHERUIYOT 1ST APPELLANT

COLLINS KIPRUTO KIPKOECH 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the Judgment dated 15/08/2024 and sentence delivered in Iten Senior Principal Magistrates Criminal - Sexual Offence - Case No. E053 of 2022 by Hon. V Karanja-PM)

JUDGMENT

1. The Appellants, upon their respective cases being consolidated, were charged in Iten Criminal Case No. E053 of 2022 with the offence of Gang Rape contrary to Section 10 of the *Sexual Offences Act*, No. 3 of 2006. It was alleged that the Appellants, on 09/07/2021, at [.....] village in Keiyo Sub County, within Elgeyo Marakwet County, jointly with another not before Court, having a common intention to cause the penetration of the vagina of SK, aged 50 years, intentionally and unlawfully caused their genital organs (penis) to penetrate the vagina of SK.
2. The Appellants pleaded not guilty to the charge and the case then proceeded to full trial in which the Prosecution called 5 witnesses. At the close of the Prosecution case, the Court found the Appellants with a case to answer and put them on their defence. The Appellants then gave sworn statements and called no other witnesses. By the said Judgment delivered on 15/08/2024, they were both convicted and on the same date, sentenced to serve 15 years' imprisonment each.
3. Dissatisfied with the decision, the Appellants, through Messrs Bundotich Korir & Co. Advocates, filed this appeal. In the Petition of Appeal dated 23/08/2024, 7 grounds reproduced verbatim were listed, as follows:



- i. That the learned Magistrate misdirected himself in fact and law by convicting the appellants when evidence on identification had not been proven beyond a shadow of doubt.
 - ii. That the learned Magistrate misdirected himself in fact and law by not appreciating (sic).
 - iii. That the learned Magistrate erred in law in failing to consider and determine all the issues raised at the trial and the submissions.
 - iv. That the learned Magistrate erred in law and that in failing to take into consideration matters that she ought to have taken into consideration and taking into consideration matters which she ought not to have taken into consideration and thus arrived at a wrong finding.
 - v. That the learned Magistrate erred in law and in fact by exercising her discretion injudiciously by relying on some evidence not produced by the maker.
 - vi. That the learned Magistrate misdirected himself in fact and law by relying on evidence particularly the P3 which was marred by inconsistencies.
 - vii. That the learned Magistrate misdirected himself in fact and law by not factoring in the number of years the appellants had served while in remand.
4. PW1 was the complainant and had already testified before the two cases were consolidated. She was thus recalled to testify after the consolidation. She was again, for a third time, recalled to testify after the Appellants instructed Mr. Korir Advocate, to represent them.
 5. When she returned to testify, she stated that the 2nd Appellant came to her house as she was in the kitchen, grabbed her by the neck, threw her down, and strangled her, she screamed, the 2nd Appellant removed her pant, and others came and pinned her down while others raped her in turns. She added that one covered her eyes, the 2nd Appellant also covered her eyes and bit her on the cheeks as they raped her, she afterwards went and informed people who took her to hospital, they reported the matter to the police who issued with her a P3 Form. She stated that she knew the Appellants as they were from her village, but then stated that it was her first time to see the 2nd Appellant, and the 1st Appellant was her neighbour, and that the incident occurred around 5.00 pm. Under cross-examination by Mr. Korir, she stated that she was unable to speak after the incident and thus, her statement was recorded from her narration of the events, and that one of the attackers, Michael Kipsanai, left his belt behind. She stated that two of the suspects disappeared after the incident. Perhaps to clarify the matter, she then stated that she knew the 1st and 2nd Appellants even before the incident as they were her neighbours. She denied that she was drunk on the date of the incident, and reiterated that the incident took place in her kitchen, a mabati (iron sheets) structure, that it was raining, and the assailants never closed the door. She stated further that she knew 4 of the assailants but did not know 3, and that they were therefore 7 in total, that she was being bitten and her legs opened, so she does not know who exactly did the act. She agreed that she had not seen her clothes in Court, and stated that she took the belt to the police, she went to hospital on the following day, and that all the assailants disappeared for one year before they returned and were eventually arrested.
 6. PW2 was David Rotich. He stated that on 09/07/2021, he went to the shops and used a shortcut through the complainant's home when he heard the complainant screaming that "they" wanted to kill her, he went to the house and lit his torch, and that one person came out but that person is not before Court. He stated that he saw the complainant who was covered in mud, there was a kitchen, a store and a main house, and the complainant was in the store, he saw Kipsanai come out of the kitchen and he (PW2) told the complainant to enter the main house and lock herself in, the complainant looked confused during that time, and he (PW2) then proceeded to his house thereafter. He stated



- that he knew the Appellants as they came from his home area, and the complainant is his neighbour, as their houses were about 800 metres apart. Under cross-examination by Mr. Korir, he stated that it was around 8:30 pm, and agreed that it was dark. He stated that he only saw Kipsanai, but none of the Appellants
7. PW3 was Vincent Kiprop who testified that he was the Chief, Maoi Location. He described how on 11/11/2021, he was alerted by a member of the public that the 1st Appellant had been spotted at the shopping centre, how he, accompanied by his Assistant, went there and found the 1st Appellant in a bar, arrested him and presented him to the police. Regarding the 2nd Appellant, he stated that he was arrested on 19/01/2023. He added that at the police station, the complainant was called and identified the 1st Appellant, although he (PW2) was not present during the identification.
 8. PW4 was Police Constable Monica Kanda attached to the Metkei Police Station. She stated that on 9/07/2021 at about 1700 hours, the complainant came and reported a gang rape case committed against her by 4 known suspects, and that after booking the report, she referred her for treatment and issued a P3 form. She confirmed that the 1st Appellant was arrested by the area Chief on 11/11/2023 who presented him to the police, and the 2nd Appellant was arrested on 19/01/2023. In cross-examination, she stated that the complainant indicated 4 suspects whom she identified but did not indicate who did the penetration. She, too, confirmed that the complainant identified the 1st Appellant at the police station immediately after his arrest. She contended that there was no need for identification parade as the complainant knew the Appellants. She stated that there was a witness, PW2, but who never mentioned the two Appellants, and that it is the complainant who named and identified them.
 9. PW5 was Dr. Irene Simiyu, a Medical Doctor from the Moi Teaching and Referral Hospital (MTRH). Her attempt to produce the P3 Form on behalf of Dr. Taban Tobosan was opposed by the defence but which she proceeded to produce after the trial Magistrate overruled the objection. PW5 then testified that the complainant was 50 years old, was examined on 10/07/2021 at about 11:30 am, and that on examination, she was found to have bruises on the face and neck, her cheeks were swollen and tender, she had plucked hair spaces on the scalp, mild tenderness on the gums, and also tenderness on thigh and back. She testified further that there was a tenderness around the vagina area (redness and painful), laboratory results showed Venereal Disease Research Laboratory (VDRL) test positive, and that she concluded that there was vaginal penetration consistent with gang rape. In cross-examination, she stated that from the history given, both the complainant and perpetrator were drunk, and agreed that alcohol may impair identification. She testified further that the assault was on 9/07/2021 and the complainant was examined on 10/07/2021, less than 24 hours later. She pointed out the indication in the Report that the complainant was in dirty muddy clothes, and had not taken a bath, and agreed that it is not indicated whether semen was taken from the scene, and that taking of semen and conducting genetic tests could assist in identification. She stated that theirs is not to determine how many people penetrated, but only whether there was penetration.
 10. As aforesaid, after the Prosecution case, the Court found the Appellants to have case to answer and put them both to their defence. The Appellants then gave sworn testimonies.
 11. The 1st Appellant testified as DW1. He denied the charges and stated that on 9/07/2021, he was at home the whole day and only left in the evening when he went to the Centre where he stayed until 9.00 pm, and in the morning of 10/08/2021, he went to milk his cow.
 12. The 2nd Appellant testified as DW2. He, too, denied the charges, and stated that 9/05/2021, in the morning, he went to spray trees, then he later went to the Centre to look for seedlings and to Kamwosor, from where he returned home at 9.00 pm. He stated that on the following day, he went to the Centre from where he learnt of the incident the subject hereof.



13. As further aforesaid, after the trial, the Court convicted both the Appellants and sentenced them to serve 15 years imprisonment.
14. This Appeal was then canvassed by way of written Submissions. The Appellant filed the Submissions dated 6/05/2025 through Messrs Bundotich & Korir Advocates, while the Respondent, through Prosecution Counsel Rachel Mwangi, filed the Submissions dated 24/06/2025.

Appellant's Submissions

15. Mr. Korir, Counsel for the Appellants, submitted that the alleged offence occurred at night about 8:30 pm, and as such faulted the conviction on the issue of identification. He urged that the Learned Magistrate did not extensively analyze the evidence on identification which was a very crucial element to sustain a conviction. He pointed out that it is only the complainant who is claimed to have seen or identified the Appellants, and that the evidence on identification is that of single witness which ought to have been corroborated. He submitted that the evidence of the witness who claims to have heard the complainant's screams and came to her rescue was that when he arrived at the scene, he lit his torch and saw one Kipsanai come out of the house, and who, in cross-examination, was not among those in Court. He cited the case of *Maitanyi -vs- R (1986) KLR 198*, and also the case of *Wamunga vs R [1989] KLR 424*. Counsel doubted the complainant's evidence that she recognised the Appellants as being among her attackers and contended that it did not meet the threshold for evidence of recognition. He pointed out that the complainant testified that it was her first time to see the Appellants and therefore, her identification cannot qualify as that of recognition. Regarding the testimony of PW2, Counsel asserted that, PW2 having stated that he spotted a person he referred to as Kipsanai coming out of the complainant's house, who was not among the persons in court, his testimony is of no probative value.
16. He submitted further that for the identification testimony to meet the threshold of recognition, the complainant ought to have given names of the assailant at the time she reported the incident, which however she never did, as confirmed by PW4, the Investigating Officer. Counsel submitted that the complainant never gave the Appellants' names to the police shortly after the incident to qualify such evidence as identification by recognition, as it was only until after the Appellants were arrested that she identified them. He cited the case of *Republic vs Turnbull & Others (1976) 3 ALL ER 549*, and also *Nakuru Criminal Appeal No. 17 of 2019, E.S., O.S.J. vs Republic*. He submitted further that an identification parade should have been conducted to confirm whether the arrested persons were the same as those identified by the complainant. He cited the case of *Kinyanjui & Others vs Republic 1989*.

Respondents' Submissions

17. Ms Mwangi, on her part, submitted that the evidence of identification was proved, that according to the complainant, the incident occurred around 5.00 pm, before dark, and she was able to identify the Appellants. She also pointed out that, according to the complainant, she knew the Appellants as they were her neighbours, thus there was no possibility of mistaken identity. She cited Section 124 of the *Evidence Act* on single witness evidence and urged that the identity of the appellants was proved beyond reasonable doubt. On identity of the assailants, she asserted that on 3 different occasions, the complainant testified, and on all those occasions, her evidence was consistent and without contradiction. She cited the case of *Francis Kariuki Njiru & 7 Others vs Republic (2001) KECA 58 (KLR)*. Counsel also cited Section 2 of the *Sexual Offences Act* on the relevant definitions, and also Section 10 and maintained that all the ingredients of gangrape were proved, and corroborated by the medical evidence and findings confirmed by PW3, the doctor, who testified on behalf of her colleague who conducted the examination. On an expert testifying on behalf of a colleague, Counsel cited Section 33 and 77 of the *Evidence Act*, and also the case of *Okumu v Republic (Criminal Appeal*



No. 178 of 2018) [2023] KECA 353 (KLR) (31 March 2023) (Judgement). Regarding the sentence of 15 years imprisonment, she submitted that the Appellants have failed to demonstrate that it was manifestly excessive, illegal or founded on wrong principles. She pointed out that Section 10 of the *Sexual Offences Act* stipulates a possible imprisonment term of 15 years which may be enhanced to life. She however conceded that the trial Court should have taken into account the time spent in custody pursuant to Section 333(2) of the Criminal Procedure Code. Regarding mandatory or minimum sentences under the *Sexual Offences Act*, she cited the case of Republic vs Mwangi; Initiative for Strategic Litigation in Africa & 3 Others (Amicus Curiae) Petition E018 of 2023 (2024) KESC 34 KLR, and submitted that the same are still valid.

Determination

18. As a first appellate forum, this Court is obligated to revisit and re-evaluate the evidence afresh, assess the same and make its own conclusions, bearing in mind that the trial Court had the advantage of hearing and observing the demeanour of the witnesses (see Okeno vs. Republic [1972] E.A 32).
19. The issues that arise for determination in this matter are evidently the following:
 - a. Whether the Gang Rape charge against the Appellants was proved beyond reasonable doubt.
 - b. Whether the trial Court failed to take into account the period spent by the Appellants in remand custody before sentencing.
20. Section 10 of the *Sexual Offences Act* provides that:

“Any person who commits the offence of rape or defilement under this Act in association with another or others, or any other with common intention, is in the company of another or others who commit the offence of rape or defilement is guilty of an offence termed gang rape and is liable upon conviction to imprisonment for a term of not less than fifteen years but which may be enhanced to imprisonment for life”
21. The same Act in Section 2 provides that “gang” means “two or more persons”.
22. As has been held in several authorities, it is therefore generally agreed that under Section 10 aforesaid, for the Prosecution to obtain a guilty verdict in the offence of gang rape, it needs to prove the following elements:
 - i. Commission of rape; Penetration as defined by section 2 of the *Sexual offences act* without consent thereof;
 - ii. In association with another or others, or any other with common intention, is in the company of another or others who commit the offence of rape
 - iii. Positive identification of the perpetrator.
23. The ingredients of “rape” which the prosecution must prove are set out in Section 3(1) of the Act as follows:

“A person commits the offence termed rape if –

 - a. He or she intentionally or unlawfully commits an act which causes penetration with his or genital organs.
 - (b) The other person does not consent to the penetration; or



- (c) The consent is obtained by force or by means of threats or intimidation of any kind.”
24. Regarding “penetration”, from the medical evidence tendered by PW5, it is indicated that the complainant was examined on 10/07/2021, within 24 hours after the incident took place on 9/10/2021. The examination revealed the complainant as having bruises on the face and neck, swollen and tender cheeks, plucked hair spaces on the scalp, mild tenderness on the gums, and on the thigh and back. She testified further that there was a tenderness around the vagina area (redness and painful), and the conclusion reached was vaginal penetration consistent with gang rape. I therefore agree that there was evidence of penetration, and further, through violent or forced means.
 25. Regarding “consent”, it was the testimony of the complainant that she was attacked and forcefully violated. From the sequence of events, it is evident that she never gave consent to the sexual acts.
 26. Regarding “use of force” by the assailants, I have already found that the same was established by the medical findings evidence. I also cite the complainant’s narration of how she was slapped, thrown to the floor, and trousers and pant forcefully removed, how other assailants joined in, and how they raped her in turns. PW3 also testified that she found the complainant covered in mud.
 27. As for “identification”, the complainant stated that the attack occurred at around 5.00 pm. She stated that she knew the Appellants as they were from her neighbourhood, which testimony the Appellants did not dispute. Although at one point, the complainant is captured as stating that she was seeing the 2nd Appellant for the first time during the incident, reading her testimony in totality, it is likely that this may not be what she had meant to say. I say so because her general testimony, even from cross-examination, is that she knew both the Appellants. That the Appellants were both from the neighbourhood, was also confirmed by the neighbour, PW2, and also by the area Chief, PW3. The P3 Report produced in evidence also indicates that the report made by the complainant was that the offence had been committed by “people known to her”. There was also evidence that the Appellants “went missing” immediately after the incident that occurred on 9/07/2021, and were only arrested when they eventually returned, the 1st Appellant on 11/11/2022, and the 2nd Appellant on 19/01/2023. The other attackers are said to be still at large. I however also observe that PW2, who testified that he stated that he is a neighbour of the complainant, stated that he heard the complainant’s screams when he was passing through a short-cut to his home, through the complainant’s home at around 8.30 pm, and when he went to check and lit his torch, he saw the complainant covered in mud, in her store, while one Kipsanai came out of the complainant’s kitchen. In cross-examination, he reiterated that it was at 8.30 pm and it was dark.
 28. While therefore PW2 gave a contradictory time of 8.30 pm as opposed to the 5.00 pm given by the complainant, this was a question of fact and the trial Magistrate, having heard and seen the witnesses, chose to believe the complainant. She cannot be easily faulted for that finding. In any event, I also note that PW4, the Investigating Officer, on his part, stated that the complainant made her report at the police at 1700 hours on 9/07/2021, the same date of the incident. The P3 Report also gives the incident reported time as 1700 hours. Further, contrary to the submissions by Mr. Korir, nowhere in the record is it expressly stated that the complainant never mentioned the name of her attackers until after the Appellants were arrested. In fact, although the record of the trial Magistrate is not very clear on this point, my interpretation of the testimony of PW4, the Investigating Officer, is that the complainant identified 4 attackers whom she named.
 29. In any case, being a gang-rape, the incident must have taken some time, meaning that the complainant spent considerable time with the assailants, enough to identify those among them that she knew earlier. Even assuming that it was dark, she would therefore, in my view, still be in a position to recognize them.



I thus agree with PW4 that there was no need for identification parade as the complainant knew the suspect.

30. Under the above circumstances, I do not find any grounds to depart from the trial Court's findings that the complainant's identification of the Appellants was sufficiently credible. I thus agree that this was a case of "recognition" rather than identification of a stranger. Such "recognition" evidence is clearly more reliable and believable in "identification".
31. In respect thereto, in the case of *Reuben TabuAnjononi & 2 Others v Republic* [1980] eKLR, the Court of Appeal guided as follows:

"..... This was, however, a case of recognition, not identification, of the assailants; recognition of an assailant is more satisfactory, more assuring, and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other. We drew attention to the distinction between recognition and identification in *Siro Ole Giteya v The Republic* (unreported).

We consider that in the present case the recognition of the appellants by Wanyoni and Joice to whom they were previously well known personally, the first appellant also being related to them as their son-in-law, was made both possible and satisfactory in the two brightly-lit torches which two of the appellants kept flashing about in Wanyoni's bedroom in such a manner that the possibility of any mistake was minimal. In addition, immediately after the robbers left, Wanyoni reported their names to the owner of the farm where he worked. He also later on the same night gave the names of the three appellants to the police as the robbers who had robbed him.

We are satisfied that there was no mistake as to the identity of the three appellants and they were properly found guilty of the offence with which they were charged in count 1."

32. In light of the foregoing, I am satisfied that the trial Magistrate correctly found that the Appellant had been positively identified. This ground of Appeal therefore fails.
33. It is not lost on this Court that the complainant was the only witness to the alleged commission of the incident. What was before the trial Court could therefore be categorized as "single witness evidence". The Court of Appeal tackled the issue of "single witness evidence" in the case of *Kiilu Vs Republic* (2005) 1 KLR 174 in which it quoted the following statement made in the earlier case of *Abdalla bin Wendo and Another v. R* [1953], 20 EACA.166:

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



34. Further, the Court of Appeal in the case of *Rajab Iddi Mubarak v Republic* [2018] eKLR, while analyzing the ratio decidendi in its earlier case of *Maitanyi Vs Republic* (1986) KLR 198, stated as follows:

- “1. Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult.
2. When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light available conditions and whether the witness was able to make a true impression and description.
3. The court must warn itself of the danger of relying on the evidence of a single identifying witness. It is not enough for the court to warn itself after making the decision. It must do so when the evidence is being considered and before the decision is made.”

35. I may also state that, the proviso to Section 124 of the *Evidence Act* expressly permits a trial Court, in sexual offence cases, where appropriate, to convict on the evidence of a sole witness without the need for corroboration, where such witness is the victim of the sexual offence.

36. In her Judgment, the trial Magistrate indicated that she believed the complainants’ evidence as no reason was advanced as to why the complainant would come up with wild allegations against the Appellants and frame them, without a known motive. It is clear that the trial Magistrate properly warned herself of the danger of relying upon a single witness before reaching her finding. For this, she cannot be faulted.

37. The next question is whether the rape “was committed with others and with the common intention”. Section 21 of the Penal Code provides that:

“Where two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such persons an offence is committed of such nature that its commission was a probable consequence of such purpose, each of them is deemed to have committed the offence.”

38. In the case of *R v Cheya* (1973)EA, the Court held that:

“The existence of common intention being the sole test of total responsibility, it must be proved that the common intention was and that the common act for which the accused were made to be made responsible was acted upon in furtherance of a common intention”

39. Similarly, in the case of *Njoroge v Republic* [1983] KLR 197 where the Court of Appeal stated that:

“If several persons combine for an unlawful purpose and one of them in the prosecution of it kills a man, it is murder against all who are present whether they actually aided or abetted or not provided that the death was caused by the act of someone of the party in the course of his endeavors to effect the common assault of the assembly, Their common intention may be inferred from their presence, their actions and the omission of either of them to disassociate himself from the assault.”



40. From the complainant's testimony, the Appellants, working together as a team, in conjunction or in association with one another, co-ordinated the sexual attack. They subdued her by among others, beating her, and holding held her legs apart as they took turns in raping her. In view of this testimony, I agree that the existence of a common intention by the Appellants to commit the offence was established.
41. Regarding the defence presented by the Appellants, they amount to mere denials. Considering the state of the evidence presented, I have no doubt in my mind that the trial Magistrate reached the correct conclusion in the circumstances.
42. In the premises, I find no grounds to fault the trial Court for finding that the offence of gang rape was proved to the required standard.
43. Regarding the Appellants' plea that the period that they spent in custody before sentencing be taken into account, I note that the trial Magistrate did not mention whether she took into consideration such period as required by law. In her Submissions before this Court, the Prosecution Counsel conceded this omission by the trial Magistrate.
44. Regarding the issue, Section 333(2) of the Criminal Procedure Code provides as follows:
- “
- “(2) Subject to the provisions of section 38 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”
45. On the issue, the Court of Appeal in the case of Bethwel Wilson Kibor vs. Republic [2009] eKLR stated as follows:
- “By proviso to section 333(2) of Criminal Procedure Code, where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody. Ombija, J. who sentenced the appellant did not specifically state that he had taken into account the 9 years period that the appellant had been in custody. The appellant told us that as at 22nd September, 2009 he had been in custody for ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence.
46. On its part, TheJudiciary Sentencing Policy Guidelines (2014) provides the guidance that:
- “The proviso to section 333 (2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”



47. I note from the charge sheet that, as aforesaid, the 1st Appellant was arrested on 11/11/2022 before being arraigned on 14/11/2022. The 2nd Appellant, on his part, was arrested on 19/11/2023 and arraigned on 23/01/2023.
48. Although the Appellants were granted bond, there is no indication that they complied with the bond terms and obtained release. If so, then it means that they remained in remand custody throughout the trial until 15/08/2024 when they were sentenced. The 1st Appellant therefore spent about 1 year and 9 months in remand custody before being sentenced, while the 2nd Appellant spent about 1 year and 7 months. Under the proviso to Section 333(2) of the Criminal Procedure Code, those periods ought to have been “taken into account”.

Final Order

49. In the circumstances, I rule and order as follows:
- i. The Appeal against conviction fails in entirety.
 - ii. Regarding sentence, the 15 years imprisonment imposed by the trial Court against each of the Appellants shall however be computed from their respective dates of arrest, namely, 11/11/2022 for the 1st Appellant, and 19/11/2023 for the 2nd Appellant.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 23RD DAY OF OCTOBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Ms. Mwangi for the State

Appellants (both present in open Court)

Court Assistant: Brian Kimathi

