

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION
CRIMINAL APPEAL NO. E013 OF 2025

PHILIP MUTUA KILONZO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(Being an appeal from conviction and sentence by Hon. Celesa Okore PM
dated 2nd April 2025 in her Chief Magistrate's Court at Milimani Anti-
Corruption case No. E008 of 2024)*

JUDGMENT

The appellant was charged with, tried for, convicted of and sentenced in the following three counts;

Count 1- receiving a bribe contrary to Section 6(1)(a) as read with Section 18(1) and (2) of the Bribery Act No 47 of 2016 particulars being that on the 4th day of October, 2020 at Afro Sayari Hotel, along Eastern bypass within Nairobi City County in the Republic of Kenya, together with others not before court requested for a bribe of Kshs 2.9 million from Joseph Ndambuki Makosi, Shadrack Mutisya Kyungu and Simon Kioko Mwangangi who are officials of United African Evangelical Ministries and Jackson Musyoka Mutie who is an official of Grace Children's Home, with intent that, in consequence, he would influence the writing off of alleged tax due to Kenya Revenue Authority from Grace Children's Home.

Count 1- receiving a bribe contrary to Section 6(1)(a) as read with Section 18 of the Bribery Act No 47 of 2016 particulars being that on diverse dates between 3rd and 8th October 2020, at unknown place within the Republic of Kenya, he requested for a bribe of Kshs 2.9 million from Joseph Ndambuki Makosi, who is an officials of United African Evangelical Ministries with intent that, in consequence, he would influence the writing off of alleged tax due to Kenya Revenue Authority from Grace Children's Home.

Count 1- obtaining money by false pretences contrary to Section 313 of the Penal Code where the particulars were that on 1st day of October 2020, at Busia, within Busia County in the Republic of Kenya with intent to defraud, he unlawfully obtained money in the sum of Kshs 20,000.00 from Simon Kioko Mwangangi an official of United African Evangelical Ministries purporting to be travelling expences from Busia to Kenya Authority Offices in Nairobi for purposes of holding a meeting with Kenya Revenue Authority officials with a view of resolving a tax demand dispute between the said Kenya Revenue Authority and Grace Children's Home, a fact he knew to be false.

Following the conviction and sentencing, the appellant filed this appeal citing the following four grounds;

- a. **THAT** the learned trial Magistrate erred in law and fact in failing to find that the prosecution had not proved its case beyond reasonable doubt by the law.
- b. **THAT** the learned Magistrate erred in law and fact by convicting and sentencing the appellant herein and failing to critically and judicially evaluate evidence adduced by the prosecution.

- c. **THAT** the learned Magistrate erred in law and fact by failing to take cognizance of the glaring contradictions and inconsistencies in the evidence adduced by the prosecution.
- d. **THAT** the learned Magistrate erred in law and fact by relying on evidence that was hearsay and uncorroborated by the prosecution witnesses.
- e. **THAT** the learned Magistrate erred in law and facts by not taking into consideration the defence adduced by the appellant.

On 8-05-2025, the appellant made an application to amend his petition of appeal which I allowed but instead of filing an amended petition of appeal, he filed what he called supplementary grounds of appeal viz;

- a. **THAT** the learned trial Magistrate erred in law and fact by misapplying and misinterpreting the law, leading to an incorrect legal conclusion.
- b. **THAT** the learned trial Magistrate erred in law and fact by incorrectly interpreting the evidence presented by the various prosecution witnesses leading to an inaccurate factual finding.
- c. **THAT** the learned trial Magistrate erred in law and fact by overlooking material contradictions in the prosecution's case casting doubt on the prosecution's case and hence arriving at the wrong legal conclusion.
- d. **THAT** the learned Magistrate failed to consider that the prosecution failed to avail crucial witnesses to prove their case.

e. **THAT** the learned trial Magistrate imposed a sentence that was manifestly excessive and disproportionate in the circumstances of the case.

This is a first appeal. It is trite law that the first appellate court should conduct the appeal as if it was conducting a re-hearing except that it is not involved in taking the evidence of the witnesses. It should re-analyze, re-evaluate and re-consider the evidence of the witnesses taken by the trial court and come to its own independent conclusion but always having in mind the fact that it did not hear the witnesses or observe their demeanour and give due allowance for that. In **Richard Wefwafwa Songoi v Ben Munyifwa Songoi (2020) KECA 942 (KLR)**, the Court of Appeal held that;

‘Being a first appeal, it is our duty to analyze and re-assess the evidence on record and reach our own conclusions.’

Similarly, in **Daniel Otieno Migore v South Nyanza Sugar Co. Ltd (2018) KEHC 5465 (KLR)**, it was held that;

*‘As the first appellate Court, it is now well settled that the role of this court is to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. (See the case of **Selle & Ano. vs. Associated Motor Boat Co. Ltd (1968) EA 123**.)’*

This being so, this court will re-look at the evidence taken by the trial court and find out whether the same was sufficient to prove the case against the appellant beyond any reasonable doubt. In doing so, it is inevitable that this court will reproduce the relevant parts of the evidence of the prosecution and the appellant’s witnesses.

The prosecution's case

The respondent called a total of thirteen witnesses. The first witness was Jospheh Makosi Ndambuki who told the court that he was a pastor employed by United African Evangelical Ministries (hereinafter referred to as 'UAEM') which is concerned with spiritual matter of the community and dealing with orphans and needy children. The ministry buys commodities to help the Grace Children Ministry (hereinafter referred to as 'the Home').

He added that in December 2019 after the donors who came to Kenya on 2018 went back to the U.S.A, they collected commodities and materials that were sent to the Home through a container to help the children upon which they appointed the appellant to help clear the container.

He stated further that the appellant told them the funds needed to clear the container. He produced an email dated 16-01-2020 which enumerated eleven things which were needed for the clearance. He produced the email and its attachments as exhibits.

On 30-9-2020, an email was sent to them by one Aron Moenga who was thought to be from Kenya Revenue Authority (KRA) about some goods damped in their compound. He added that according to the email, they had not paid the advance tax. After receiving the email, the witness called the appellant to advise them on what to do since they had paid him all the monies he had advised.

The appellant told them that they needed to act urgently and facilitate him to meet the KRA officials and discuss how much they needed to pay for the

advance tax which was a surprise to them. They facilitated the appellant's travel as requested with Kshs 20,000.00 sent by the treasurer between 1st and 3rd October 2020.

PW1 recalled that on 3-10-2020, appellant called and told him that he had met KRA officials in the afternoon and asked for an emergency meeting with him. The witness, his boss the director at their headquarters in Kangundo and the appellant held a meeting where the appellant explained how he met KRA officials and told them that the officials needed Kshs 5.8 million for the advance tax. In that meeting, the whole Ministry's Board comprising of Mr. Mutisya, Mr. Mutuku, Simon Mwangangi, Mr. Samuel, Gedion Kilonzo, Jackson Musyoka and himself were in attendance. The appellant gave them an option of either pay the 5.8 million tax or give the officials 70% of that.

The witness stated further that, the appellant called one of the KRA officials to meet them on 4-10-2020 to negotiate what was to be paid and on the said date, they went to meet the KRA officials as introduced by the appellant where two persons flashed their identity cards which he didn't see well and alleged they were KRA officials. One of the persons alleged that he was Moenga. He added that they wore masks and he could not see their faces well.

The meeting which was at Afro Sayari along Eastern bypass was brief and after negotiations, the KRA officials told them that they should pay 50% of the demand which was 2.9 million. They promised that after payment of this money, they would burn all the documents in the presence of the church directors. The appellant escorted the two and came back and told them to act quickly and pay the Ksh.2.9 million.

After consultation and suspecting the transactions, the witness decided to use his telephone handset to record all the conversations with the appellant some of which were in Kikamba. They reported the matter to Ethic and Anti-Corruption Commission (EACC) on 8-10-2020. At this point with the consent of Mr. Gikonyo for the appellant, the audio and its transcription were produced as exhibits. The witness also produced other emails which were following up the payments.

In cross-examination, the witness stated that he did not have a letter of appointment by UAEM which was the same entity as the Home. He added that Gedion Kilonzo a board member recommended the appellant who was based in Busia and his brother to assist in the clearance of the containers.

He stated that they were satisfied with the work the appellant did in clearing the container. The email purportedly from KRA came nine (9) months after receiving the goods. He added that the letters which were in KRA letterhead were copied to himself, Shadrack Mutisya (director), Gideon Kilonzo (board member) and the appellant.

The prosecution's second witness was one Shadrack Mutisya Kyungu, the overseer of UAEM. He told the court that their parent church in USA donated goods which were sent to them in December 2019. The board of UAEM sent PW1 and Gedion Kilonzo to confirm and they found that the container had been sent to the Inland depot at Nairobi.

He added that they looked for an agent to help clear the container and Gedion Kilonzo connected them to his brother, the appellant to clear the same and on 16-01-2020, the container was cleared then they received it and placed it in their compound and later distributed what was in it.

On 30-9-2020, he received an email allegedly from KRA demanding further tax following which he called for a board meeting where he learnt that other board members and the appellant had also received the same email. They called the appellant who was the agent to talk to KRA to find out what the tax was about.

He added that, since the appellant was at Busia, they had to facilitate him to come to Nairobi to inquire about the tax for which their treasurer sent him Kshs 20,000/=. The appellant came and purportedly went to KRA office and had a meeting with them.

The witness added that the appellant told them to have a meeting on 3-10-2020 which they did at their office. The appellant told them that the tax was computed at Kshs 5.8 million as advance tax. The appellant advised the board that they could pay 70% of the computed tax.

The witness added that the appellant scheduled a meeting on 4-10-2020 which was held at Afro-Sayari Hotel along Eastern Bypass where the appellant came with 2 persons alleged to be KRA officers. Because it was Covid-19 period, they were all in face masks. The 2 persons flashed badges at them and one even wore a T-shirt from KRA but they never told them their names.

The witness added that the persons had a file purportedly from KRA which they said contained the computed Kshs 5.8 million tax. They talked at length and they said that they should pay Kshs 2.9 million in exchange of the said file which would then be destroyed. The appellant then escorted the persons and came back.

When back, the appellant told them to make the payments of Kshs 2.9 million as fast as they could. After consulting, they decided to report the matter to EACC which they did on 8-10-2020. The EACC followed up the case and arrested the appellant and charged him.

In cross Examination the witness confirmed that he was an employee of UAEM which is the mother of the Home although he did not have documents to show that. He added that the container was sent to Mombasa port and later to Nairobi at the inland container depot.

The witness stated that when the appellant was appointed to be their clearing agent, he gave them all the requisite fees schedules including his facilitation and the demand for more tax came to them as a surprise. He stated further that, there was nothing wrong in facilitating the appellant with Kshs 20,000.00 to travel to Nairobi. He further stated that Aron Moenga told them that only the agent was required for negotiations. The Kshs 2.9 million was later agreed upon which was in exchange of the destruction of the KRA file that the two people had in a carrier bag.

PW3 a Mr. Jackosn Musyoka Mutie told the court that he worked with Grace Children's Home which is supported by the Baptist Church in United States of America was started in June 2009 as the ministry's manager. He added that their sponsor Church sent them items in a container through UAEM in January 2020. He recalled going with the appellant to the inland container depot clearance yard to clear the consignment.

He added that on 30/9/2020 he was called by one Esther Kimilu Kamande who was a board member of the Home and the UAEM's legal adviser. She informed him that she had received a WhatsApp a tax demand letter from Gedion Nzyoka

Kilonzo which was addressed to the Home through UAEM and advised him to attend a meeting that had been called by the board members of UAEM. He attended the meeting which discussed the contents of the letter and after the meeting, he called the person who had written it one Mr. Moenga from KRA.

He added that when he talked to him, he advised him to conduct the clearing agent who was the appellant. He called Joseph Makosi, the secretary of UAEM and informed him of his conversation with Mr. Moenga but he didn't conduct the appellant. Instead, PW1 took up the matter.

The witness stated further that after PW1 and appellant talked, another meeting was called on 3-10-2020 and they were informed by PW1 that the purpose of the meeting was for the appellant to explain to them the contents of the letter and the way forward. In the meeting, the appellant told them that the contents of the letter from KRA were true and after computing, UAEM had to pay Kshs 5.8 million to KRA or to compromise and pay 70% of the amount to KRA officials.

The witness testified further that on 4-10-2020 after the meeting of 3-10-2020, the appellant was to meet KRA officials to talk about the way forward. At Afro Sayari Hotel, they met appellant and two KRA officials. He added that the two KRA officials had job cards but he could not read them and get contents of the cards neither did he hear their names well.

The two KRA officials said that UAEM had only two options which were; to pay Kshs 5.8 million to KRA or compromise and give them 70% cash after which the appellant negotiated further to 50% of the Kshs 5.8 million which came to Kshs 2.9 million. The money was to be paid within 7 days after which they would hand over the file for destruction in their presence. The money was

to be given to the appellant to forward it to KRA officials who would give appellant the file to destroy.

The witness added that, after the meeting, he called Esther Kalunda Kimilu and informed her about the meeting and they agreed to report the case to EACC which they did on 7-10-2020 and went back on 8-10-2020 to record statements.

He was cross-examined where he stated that they never paid taxes before for donations from the USA since they were tax free goods but they didn't have tax exemption certificates. He added that he had dealt with KRA before in regard to the Home. He was aware that all goods, whether donations or relief attracted duty payable to KRA and that exemption is applied for from KRA. He maintained that when he called Mr. Moenga, he told him to go through the appellant as the agent. The witness could not however confirm when the appellant met the KRA officials and he did not know where the appellant was based.

Simon Kioko Mwangangi was the fourth witness who testified that he worked with UAEM at Kangundo, as its treasurer. He told the court that in January 2020 they had a shipment of goods from the USA to the Home which was cleared on arrival by the appellant. he added that the money to clear the container was made to appellant. He stated that the appellant tabulated the money to be paid for clearance. Some cash of Kshs 505,636.00 was paid to the appellant's KCB personal account No. 11xxxxxx19 and Kshs 150,000.00 was paid to the same account on 7-01-2020. Other payments of Kshs 16,128.00 were paid to Kenya Revenue Authority by PW1.

The witness added that on 30-09-2020 he was shown a letter that demanded advance tax and he was instructed to pay the appellant Kshs 20,000/= to

facilitate him to travel to Nairobi to deal with the demands. He loaded the Kshs 20,000/= to his Mpesa account and sent it to appellant's cell phone number through transaction details QJ152Q8ZQ9 OJ152Q8ZQ9.

Upon cross-examination, the witness stated that the appellant was paid all the monies for purposes for clearing the container as he tabulated and that he is the one who paid as tabulated by the appellant and as directed by the board.

The next witness was Isaack Mulee Gachoka a research manager with the Kenya KRA. He told the court that in 2020, he was Chief Manager Information exchange in the department of intelligence and strategy.

He testified that on 2-11-2020, he received a letter from EACC on a matter they were investigating. It wanted to confirm if some letters attached thereto were authentic and whether they emanated from KRA and whether Aaron Moenga was an employee of KRA. He did internal checks and on 13-11-2020, they responded to EACC on the same. He wrote a letter and signed and reported that the attached letters (exhibits 3, 4 and 8) did not emanate from KRA and that Aaron Moenga was not an employee of KRA.

The witness added that advance tax is only levied on commercial vehicles and it was not applicable to relief goods. He added that although Aaron Moenga purported to be a project manager, they do not have a project manager at KRA.

He testified further that the way the demand was done showed that it was fake since it also mentioned container, while they only demand a certain specific figure in their letters. He pointed many other features and contents in the demand letter which manifested that it was fake.

The witness was cross-examined by the counsel for the appellant and stated that exhibits 3, 4 and 8 allegedly bore the letter head of KRA. He denied that it was a KRA letter head and added that the contents of the letters were not in KRA's language. He explained that they always quote laws and figures in their communication, but the letters had quoted non-existent laws and did not have figures.

The prosecution called Alex Kinyanjui as its sixth witness. Alex was a senior investigations officer at the forensic centre with EACC. He stated that he was a qualified in computer and mobile forensic examinations. Summary of his evidence was that after carrying out investigations on issues in this matter, he prepared a report dated 3-10-2022 which he produced as exhibit 14.

Next was Kennedy Mosoti a chief state counsel working with the office of the Attorney General with duty of litigation and approval of registration. He told the court that UAEM was registered on 30-09-1999 and gave the name of its officials but they could not trace records for Grace Children's Home Ministry Trust.

PC Charles Kambia and Vincent Samba both police officers attached at the EACC police station testified as the eighth and ninth witnesses respectively. They testified on how they assisted in an operation in Busia leading to the arrest of the appellant and escorting him to Nairobi which I don't consider relevant to this appeal.

The tenth witness was one Christopher Musau an employee of Simen Hawk International as a transport logistics manager and director. He added that, he was in clearing business and knew the appellant who was his employee until 2017 but they still interacted. The witness identified the voice of the appellant in

the audio clip which had been produced earlier as an exhibit and signed a certificate at EACC office on 30-06-2022.

He added that in 2020, appellant approached him to clear a container but he declined as he had no agreement with the company that shipped that container. He added that since he was not his employee, he did not assist him to clear the container.

PW11 was Wilson Nzwii Muinde who said that he was working with Daudial Logistics Limited and he was doing clearing of goods. He added that in December 2019, he was called by appellant who had a container for the Home which he wanted to clear. He added that he gave all the requirements for clearing the container and the appellant paid him Ksh.25,000/=. The UAEM members came to Nairobi inland port where they verified the goods and collected them. He stated further that the container was cleared after the UAEM paid all fees and if there were any other charges by KRA, they would have conducted them as the company that did the clearance after which they would have linked up with UAEM to clear it. He was categorical that there was no amount owed to KRA.

In cross-examination, the witness stated that the appellant who he had not known before called him. He added that the container was for both UAEM and the Home.

The director of Daudial Logistics Company, one David Simiyu Sifuna who testified as the twelfth witness told the court that he was aware that in December 2019 a consignment was brought to him by PW11 to clear which he did. He followed up until the consignment was released to its owners.

In cross-examination, he stated the agent/client was the appellant and that KRA fees were paid in full. He added that where there were fees or duty to clear, KRA would conduct them directly.

The last witness was Martin Mbuvi an investigator with EACC and who was the investigating officer in this matter. He testified that on 7-10-2020, EACC received a report of extortion from UAEM, made by one Joseph Makosi Ndambuki, its Secretary General.

The allegations were that Philip Mutua Kilonzo who purported to be a clearing agent from Silver Point International had assisted UAEM to clear a container from KRA from Inland Depot at Embakasi in Nairobi in January 2020 and that he was demanding money from PW1 amounting to Kshs 3 million alleging that UAEM owed KRA for keeping the said container at its compound yet it belonged to the Home. This witness went on to narrate the evidence as received from the witnesses which I have produced above and which I believe I need not repeat.

The appellant's case

After being placed on his defence, the appellant gave a sworn statement and told the court that he received a letter dated 30-09-2020 on his email on a certain date in October, 2020. He admitted that UAEM approached him to clear their consignment of goods that came from USA which he did.

He added that PW1 called him in respect of prosecution exhibit 3 which bears KRA letterhead and signed by Aaron Moenga. He denied knowing Aaron Moenga at that time. He added that, he agreed to assist PW1 and asked for facilitation for him to move from Busia to Nairobi which was for transport,

subsistence, accommodation and all the logistics involved. He received Kshs. 20,000/= from Simon Mwangangi through Mpesa.

He stated further that, he travelled to Nairobi on 2-10-2020 where he met the author of the letter produced as exhibit 3 after he called the mobile number written on the letter. He added that they met along Eastern Bypass and he wanted to find out more about the letter demanding the advance tax. Aaron Moenga told him that they had computed tax of Kshs 5.8 million which he communicated to PW1 after meeting two KRA officials.

He added that, he called PW1 on 3-10-2020 after meeting KRA officials and asked him to bring the board members so that he could explain the tax demand. He travelled to Kangundo where their office is and met PW1, PW2, PW3 and PW4 and he explained what KRA officials were demanding. He called the number of Aaron Moenga and put it on speaker as they talked for the board members to hear what KRA officials wanted. The board members agreed to meet them and they organized a meeting for 4-10-2020 at Afro Sayari Hotel along Kangundo Easter Bypass.

The appellant said that the KRA officials including Aaron Moenga had badges and introduced themselves and produced a file from a carrier bag. The officials produced a demand note for Kshs.5.8 million as advance tax and the board members negotiated to Kshs 2.9 million being 50% of 5.8 million. He alleged that Aaron Moenga is the one who mentioned the 2.9 million during the negotiation and the board members agreed to pay the 2.9 million. He added that, one of the KRA officials said that once the Kshs 2.9 million was paid, he was going to hand over the KRA file to UAEM for destruction but he didn't see the file which was in a carrier bag.

He stated further that, after that meeting, he did not have any contact with the KRA officials. He added that the telephone conversation of 7-10-2020 between him and PW1 came after the 4-10-2020 meeting. He stated that on 7th and 8th October, 2020 they only had a conversation about the meeting held on 4-10-2020 and the conversation was a follow up.

On count 3, the appellant said that he received the money but genuinely used it to carry out the task given to him by PW1 and denied that he received the same by false pretences. He added that he has never worked for KRA and had no reason to doubt contents of exhibit 3 since it had a KRA letterhead.

In cross-examination, he stated that he worked as a KRA clearing agent since 2010 up to the date he was testifying. He testified that during clearance, KRA conducts the clearing agent and not the client.

He stated further that he paid some charges for UAEM while some were paid by them. He stated that the companies that cleared UAEM were not conducted by KRA. He admitted that he was the one who connected Daudial Logistics Company with UAEM and he was expecting the company to conduct him for him to relay the message to UAEM. But in this case, exhibit 3 came to him through an email copied to him by Aaron Moenga. He admitted that his voice was in the audio recording produced as exhibit and confirmed that its transcript, showed that he also participated in the negotiation of the alleged advance tax.

Analysis and determination

Before I go into analysis of the evidence, I wish to remind the respondent and the court below that the correct name for the Act under which count 1 and 2 were based is Anti-Bribery Act and not Bribery Act. I have seen a repetition of

this mistake in several cases and it is important that the correct Act be cited in future matters.

I have given consideration to the submissions dated 11th August 2025 filed by the appellant and the grounds of the petition of appeal as well as what the appellant referred to supplementary grounds of appeal. I have also read and considered the respondent's submissions dated 6th August 2025. In my assessment, the grounds of appeal can be condensed into three grounds as follows;

- a. the trial Magistrate did not analyse the evidence critically;
- b. the prosecution did not prove the case beyond any reasonable doubt;
- c. there were contradictions in the evidence of the witnesses; and
- d. the sentence was harsh and excessive.

I have read the judgement of the trial court and I do not see a reason to fault her for failing to analyse the evidence of the witnesses. Analyzing of the evidence is one thing and arriving at the correct decision is another. Judging by what she said in her judgment, I have no doubt that the Honourable Magistrate went through the evidence of each of the witnesses and in her analysis, gave reasons for reaching the decision she did. The grounds of appeal based on alleged failure to analyse the evidence or consider the defence of the appellant are therefore without merit.

The appellant faced two counts of receiving bribery. The ingredients of this offence are not difficult to understand. The offence carries the elements of an overt act of asking for or receiving a financial or other advantage in order to improperly perform a relevant function. It does not matter whether the person is a public or private individual. In *Mberia v Republic (2022) KEHC 10025 (KLR)*, Honourable Justice E.N. Maina held that;

‘The offence of bribery is therefore completed when one either requests (solicits), agrees to receive or receives a financial advantage intending that a relevant function or activity should be performed improperly whether by the person receiving the bribe or by another person.’

The appellant admitted that he was the clearing agent for the complainant in respect of the consignment which formed the basis of the transaction in question. He also told the court that he had been a KRA clearing agent for fifteen years before the incident and it must be taken that he knew all the processes, procedures and extent of the obligations of a consignee of goods of the nature as the one he cleared.

The genesis of the demand for the alleged tax was the letter produced as exhibit 6 which was copied to the appellant. This letter was calling for advance tax which is said to be applicable to commercial vehicles only. The letter was sent to him while in Busia and in my view if he was a genuine agent, it did not require him to travel to Nairobi to meet the KRA officials. There are KRA offices in the region he was based and this court believes that he could have sorted the issue without traveling to Nairobi.

The appellant was aware that he had cleared the consignment and there were no taxes due or at least the category of the tax indicated in the letter was not applicable to the consignment. He arranged for the meeting between UAEM board members and the alleged KRA officials in a hotel and took part in the negotiations. He was in the group which came up with the initial figure of Kshs 5.8 million and was active in having it scaled down to Kshs 2.9 million. I have looked at the transcript and it is clear that the demand for Kshs 2.9 million was made with the help and active role of the appellant. He is the one who looked

for and arranged the place, time and purpose of the meeting between the UAEM's officials and later made follow-ups with the alleged officials.

Even if we assume that he did not know the two officials, he should have refrained from encouraging or promoting such a deal. The fact that he was passionate about the settlement of the Kshs 2.9 million and made follow-ups beyond 4-10-2020 when the meeting was held at Afro Sayari hotel is a clear indication that he was at the center of the scheme and even if he were not initially a party of the deal, which I do not believe, he was roped in the scandal and acceded to move with the flow of the team that planned it.

The appellant claims not to have been part of the scheme but by virtue of Section 6(3)(c) of the Anti-Bribery Act, when he joined the alleged KRA officials in their demand, he became culpable. That Section provides that;

'For purpose of subsection (1) it shall not matter whether where a person other than the recipient is performing the function or activity, whether that person knows or believes that the performance of the function or activity is improper.'

The conduct of the appellant and sequence of events leading to his meetings in a hotel away from KRA offices and his pursuit of the payment of the Kshs 2.9 million depicts a person who was on a mission to make money out of a well created crisis.

The appellant submits that the witnesses gave inconsistent and contradictory evidence. I have carefully gone through the testimonies of the witnesses and I find them to be consistent with no significant or material contradictions. Even if there were, the position in law is that not every contradiction would merit an acquittal. Witnesses are not expected to say the same thing or describe events in

the same words. Unless the contradictions are so material as to cause doubt to the prosecution's case, the court should not give them undue attention. In ***Kimathi v Republic (2024) KEHC 6582 (KLR)***, the court held that;

'Not every contradiction or discrepancy in the evidence of witnesses goes to the root of the prosecution case.'

In view of the above, I see no reason to disturb the court's finding that the appellant requested for a bribe of Kshs 2.9 million and that he was guilty as charged.

On the count for obtaining money by false presences, the appellant submits that the money was not received by false pretences because he was entitled to the same as compensation for his travelling to Nairobi. It is notable that the complainant was the one who conducted the appellant and the appellant was of course expected to spend in the exercise of sorting out the problem. However, as I have observed elsewhere in this judgment, the appellant knew that the demand for taxes was not genuine even before he traveled to Nairobi.

The money was sent on understanding that the appellant would travel to Nairobi to help sort the issue of the tax in a professional manner. Instead, the plan by the appellant and his accomplice was to travel and meet the complainant on pretext of settling a non-existent tax dispute. The appellant did not tell the court which KRA offices he visited. Tax disputes should and cannot be settled on the roadsides or in hotels with files in a carrier bag. I am convinced that the appellant had intention of not only getting the Kshs 20,000.00 from the complainants by false pretences but also using the same to fraudulently get more from them. The charge was therefore proved and this court will not disturb it.

The last issue is whether the sentence was harsh or excessive. Fines are at the discretion of the trial court but where the same is manifestly excessive and unjustified, the appellate court may interfere with it. It is apparent to me that there was duplicity of the the counts of receiving bribe. The chain of events began on 3-10-2020 and ran up to 8-10-2020. The intention was to commit a single offence of getting a bribe of Kshs 2.9 from the complainant in respect of the same function.

The first count covered 4th October 2020 while the second covered the period between 3rd October 2020 and 8th October 2020. Obviously, the acts forming the first count were part of the acts referred to in the second count except for the list of the persons from whom the bribe was requested but these people represented one entity, which is UAEM. In that regard, I am of the view that that the chain of events did not justify having two counts. The separation of the period in my view resulted to duplicity and charging the appellant with the two counts resulted to prejudice where he was sentenced twice for the same offence. In that regard, I will be inclined in setting aside one conviction and sentence in order to correct that error.

Based on the above discussion, the outcome of this appeal is that;

- a. The conviction and sentence of the appellant in count 1 in Milimani Chief Magistrates anti-corruption case number E008 of 2024 is set aside.
- b. The conviction and sentence in counts 2 and 3 in the same case are upheld.

Dated signed and delivered at Nairobi this **14th** day of **November**
2025.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Gikonyo for the appellant and in absence of the respondent.

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