REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

CRIMINAL APPEAL NO. E014 OF 2025

RURINGA WANDERI ……

APPELLANT

VERSUS

REPUBLIC……RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of the trial court, Hon. D. N. Bosibori (SRM) delivered on 14.02.2025, in Mûkûrwe'inî CMSO No. E007 of 2023.

2. The Appellant was charged with rape of an imbecile contrary to Section 146 of the Penal Code. There was also an alternative charge of committing an indecent act with an adult contrary to Section 11(A) of the Sexual Offences Act, No. 3 of 2006.

3. The particulars of the offence were that on the 5th day of June, 2023 at around 1400hrs at Ichamara area of Mûkûrwe'inî sub-county within Nyeri County, the appellant unlawfully and intentionally caused his penis to penetrate the vagina of A.W.M aged 38 years, having knowledge that she was an imbecile.

4. There was an alternative count of committing an indecent act with an adult contrary to Section 11(A) of the Sexual Offences Act No. 3 of 2006. The particulars of the offense were that on the 5th day of June, 2023 at around 1400hrs at Ichamara area of Mûkûrwe'inî sub-county within Nyeri County, the appellant unlawfully and intentionally touched the vagina of A.W.M. with his penis against her will.
5. The court heard a total of 9 witnesses and placed the appellant on his defence. Upon hearing the witnesses, the court found the appellant guilty of rape of an imbecile contrary to Section 146 of the penal code. Thereafter, on 14.02.2025 the court sentenced the appellant to 10 years imprisonment commencing on 14.12.2025 (it appears that it meant 14.2.2025). On this the period in custody after suspension of bond on 04.09.2025 and from the date of arrest until he was granted bond was equally ignored.

6. The Appellant, aggrieved, lodged this appeal. The Petition of Appeal dated 17.12. 2024 raised the following grounds:
    a. That the learned magistrate erred in law and fact in failing to comply with section 200 of the Criminal Procedure Code, Cap. 63.
    b. That the learned magistrate erred in law and fact in failing to find that the offence of rape was not proved beyond reasonable doubt.
    c. That the learned magistrate erred in law and fact in failing to find that no medical evidence of the required

standard existed to convict the appellants for the offence of rape.

d. That the learned magistrate erred in law and fact in failing to find that there was failure to comply with sections 210 and 211 of the Criminal Procedure Code Cap.75.
e. That the learned magistrate erred in law and fact in failing to follow the judicial sentencing policy guidelines and in failing to find that imposition of the minimum sentence negated the entitlement and essence of mitigation which was provided for in the law.
f. That the learned magistrate erred in law and fact in failing to take into account the sworn testimony of appellant.
g. That the learned magistrate erred in law and fact in failing to take cognizance of the pre-charge violation of the personal liberty of the appellants contrary to his right under article 49(1) of the Constitution of Kenya, 2010 to be brought before court as soon as reasonably practicable and not later than twenty four hours after being arrested.

Submissions

7. The matter proceeded by way of oral submissions. The state conceded the appeal. The learned prosecution counsel indicated that the only reference to the complainant receiving

psychotic treatment appears in passing. However, the evidence shows that she was taking care of an elderly lady, which suggests she was capable of managing responsibilities. Moreover, she had three children, some of whom were in college. There is therefore no evidence to support the assertion that she had limited intellect.

8. The appellant maintained that the sex was consensual. He denied that the appellant was an imbecile.

9. The court perused the evidence and was shocked on the proceedings undertaken. It is beyond peradventure that the court below created its own offence and convicted the appellant.

10. Of great concern was that the court descended into the arena and became a prosecution counsel. On 20.6.2023, the accused sought for an adjournment which was not opposed. In granting the adjournment the court made the following orders:

> *Hearing on 19 and 24.07.2023. Further mention on 4.07.2023. The complainant be subjected to mental assessment and a report be availed to the prosecution.*

11. This report had not been sought by any party. The case before the court related to the complainant being an imbecile. The court had no business starting an investigation of its own. She has to then make a decision to join the prosecution or maintain a façade of neutrality. Neutrality is crucial for

matters that involve the right to fair trial. The right to fair trial is so sacrosanct that it cannot be derogated from. Article 25 of the constitution provided as follows:

> Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited-
>
> (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;
> (b) freedom from slavery or servitude;
> (c) the right to a fair trial; and
> (d) the right to an order of *habeas corpus*.

12. The foregoing Article is buttressed by Article 50(1) of the Constitution.

> 1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

13. By taking the role of the director of public prosecution the court descended from the hallowed temple of justice to the arena. At least, if the court wished to make sure that the complainant was sane, then the report should have been supplied to court or to both parties. This is crucial that the prosecution had already indicated to the court previously they had supplied a P3 and PRC form together with witness statement.

<u>Evidence</u>

14. The complainant testified that she had three children and had dropped out of Standard 7. She stated that the accused held her on 5.06.2023. The appellant assaulted her at 3.30 pm. She recalled that she woke up, prepared her aunt Waititu and left for hospital. She them went to hospital as she was feeling unwell. The accused showed up to ferry her to her home but took her to his home. The appellant lay on top of her and had sex with her. He removed her inner wear and had sex with her. He then told her to go home. She left for home. She told the cousin what happened. They reported and the matter led to the arrest of the appellant.

15. She was cross examined by the appellant. She stated that the appellant raped her. She stated that the appellant did not speak after the incident. She stated that the appellant offered to take her home but she declined. She stated that the appellant used force to rape her. The court mercifully indicated that the testimony appeared candid, she had a good sense of time and chronology of events.

16. PW2 Samuel Maina Gichuki is a cousin of the complainant who testified that PW1 stays with his parents. She was employed by PW2's family to care for his mother for about 3 yeas intermittently. He stated that the appellant has 3 children and is mentally challenged on and off. On the material day he went to Kihuti centre when PW1 alighted. She wanted to report about someone lying to her and ferrying her to his house.

17. PW3 was Patrick Gathondu and a retired auctioneer. He stated that PW1 was his niece. He stated that the complainant was 34 years old and mentally challenged. He takes her to hospital wherever she falls ill. He was informed of the incident and reported to the area chief leading to arrest. On cross examination, the witness stated that the appellant raped and physically assaulted the complainant.

18. PW4 was Esther Githaiga and a first cousin to the complainant. She took care of her mother. The complainant suffers from mental attacks. She was informed of the incident. On cross examination, she stated that the complainant did not show her torn clothes.

19. PW5 was a clinical Psychiatrist. She had a report dated 5.07.2023. She had been referred for mental assessment. This is the report the court ordered *suo moto*. The history of the good doctor was that for 5 years, the complainant had been treated for schizophrenia. She had no history of being admitted for this condition. She diagnosed her with schizophrenia and intellectual development disorder.

20. On cross-examination she stated that the complainant's memory was intact and coherent. On cross-examination by the Appellant, she added that, based on her grooming, one cannot tell that she is unwell; this can only be discerned upon interacting with her. However, on further cross-examination

by the court, she stated that the complainant took a long time to answer questions and spoke slowly.

21. PW6 Mercy Karugu was a clinical officer from Mûkûrwe'inî. She graduated with a diploma in clinical medicine and surgery. She produced the P3 form and PRC form filled by Edwin Ng'ang'a. The anus and vagina were intact. The hymen was old broken. There were no physical injuries. She was said to be a psychiatric patient on follow up at the clinic. On cross examination, she stated that she could not tell her mental status.

22. PW7 was the arresting officer. He stated that he was assigned by the OCS. The complainant pointed to the appellant and was arrested. He was arrested at 3 pm. The OCS and the witness went to the appellant's house and took photos. He did not understand why they did not go with the appellant to the scene. On cross examination he stated that the appellant was identified by the complaint. The court then cross examined extensively.

23. PW8 testified as the investigating officer. She had been assigned to a rape case. She stated she recorded the statement. They took photographs from the Appellant's house.

24. PW9 produced the Government Chemist's report.

25. PW8 testified again after PW9. She produced the exhibit memo forms.

26. On being put on his defence, the appellant stated that he convinced the complainant to have sex and she agreed. He was later arrested. It was his case that they differed on the payment for services. He was to pay her 50/=. He had a thousand shillings which he was to fuel first, get change and pay her. He left to get fuel and coming back she had left. He went back to the stage and was arrested at 3.45 pm. It was his case that sex was consensual. On cross examination, he stated that the complainant got angry because of Ksh. 50/=. He was to fuel and take her to Kihuti but she left.

Analysis

27. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. Thus the duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in **Pandya -vs- Republic [1957] EA 336** as follows:-

> "On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed

from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court differing from the Judge or magistrate even on a question of fact turning on the credibility of witnesses whom the appellate court has not seen."

28. In the case of **Okeno v Republic [1972] EA 32** at 36 the East Africa Court of Appeal stated on the duty of the court on a first appeal:

> **"An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya v. R., [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (Shantilal M. Ruwala v. R., [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and**

seeing the witnesses, see Peters v. Sunday Post, [1958] E. A. 424."

29. The issue in this case is whether the prosecution proved its case to the required standards. Most oft quoted English decision by Viscount Sankey L.C in the case of **H.L. (E) Woolmington vs. DPP [1935] A.C 462 pp 481**, comes in handy in describing the legal burden of proof in criminal matters, that;

> **"Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.''**

30. In the case of **R vs. Lifchus {1997}3 SCR 320** the Supreme court of Canada explained the standard of proof as doth:-

> "The accused enters these proceedings presumed to be innocent. That presumption of innocence

remains throughout the case until such time as the crown has on evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty…the term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy you of the guilty of the accused beyond a reasonable doubt. On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high. In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilty beyond reasonable doubt."

31. The legal burden refers to the burden of proof which remains constant throughout the trial. It is the obligation of a party to establish the facts and contentions necessary to support its case, in this case, the prosecutor. According to *Halsbury's Laws of England*, 4th Edition, Volume 17, paras 13 and 14:

> *"The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case of with separate issues."*

32. The standard of proof required in such cases was addressed by Brennan, J in the United States Supreme Court decision of *In re Winship* 397 U.S. 358 (1970), at pages 361–364, where he stated that:

> "The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatised by the conviction…Moreover use of the reasonable doubt standard is indispensable to command the respect and confidence of the community. It is critical that the moral force of criminal law not be diluted by a

> standard of proof that leaves people in doubt whether innocent men are being condemned."

33. This matter raises only one question, that is, whether the complainant was an imbecile. It is an archaic word, which may need to be replaced with a more balanced and non-insulting word.

34. The offence is established under section 146 of the penal code. It provides as follows:

> Any person who, knowing a person to be a person suffering from mental illness, has or attempts to have unlawful carnal connection with him or her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the person was a person suffering from mental illness, is guilty of a felony and is liable to imprisonment with hard labour for fourteen years.

35. The offence itself is defilement of person suffering from mental illness. This was introduced by amendment, through the Statute Law (Miscellaneous Amendment) Act, 2023, No 19 of 2023, where section 146 of the penal code was amended by the following phrase:

> *Delete the words "idiots or imbeciles" wherever they appear and substitute therefore the words "person suffering from mental illness".*

36. This court addressed this issue in the case of **PETER OCHACHI OCHACHI v REPUBLIC [2010] KEHC 3660 (KLR)** as follows:

> *I entirely agree with the state that the evidence on record cannot sustain a conviction of the offence charged. It is devoid of all the ingredients of the offence of defilement of an imbecile. There was no evidence to prove that PW1 was an imbecile, not even from her parents or a medical practitioner.*

37. The issues in this appeal are:

a. Whether complainant was person suffering from mental illness.
b. Whether the appellant had knowledge that complainant was a person suffering from mental illness at the time of the alleged carnal connection with her.

38. The complainant testified fluently and with details and exactitude. There was no evidence, medical or otherwise that she was person suffering from mental illness. The complainant was entrusted to take care of an elderly person and had three children of her own. There was no evidence whatsoever that she was person suffering from mental illness. Without this, the case collapses. The second aspect was that there was no evidence led on the appellant being aware of the mental status of the complainant.

39. There is a presumption of sanity. Therefore, the burden of proof on insanity is on the person alleging. Section 11 of the penal code provides as follows:

> *Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.*

40. The presumption applies *mutatis mutandis* to a person suffering from mental illness. It is in that person to prove the mental illness. In this case, the duty was on the state. The state has rightly conceded that there was no proof of the complainant being a person suffering from mental illness. Allegations of being stubborn are not evidence of being a person suffering from mental illness.

41. The evidence was pointing toward a different charge, for which the appellant was not charged. He had hitherto been charged with rape before it was changed to rape of an imbecile. PW2 confirmed that the complainant had three children of her own. It was alleged that she was mentally challenged on and off. PW3 did not put the appellant at the *locus in quo*.

42. PW3 was even not helpful. She says that wherever she falls sick, she took the complainant to hospital. The sickness is not disclosed.

43. PW4 stated that the complainant wanted to report rape. She suffers from mental attacks.

44. PW5 stated that she had a masters in psychiatry from the University of Nairobi. The complainant had been treated for schizophrenia in past 5 years. Her past history was not available. The thought process was slow but well oriented. She had no illusions or perception disabilities. She opined that she lived with intellectual development disorder and schizophrenia. Her memory was intact. She stated that physically one cannot tell that she is unwell since she is well groomed.

45. PW6 was the clinical officer. She produced the P3 and PRC. She did not find any physical injuries. She was calm and sober during the examination. She stated that one who is not an expert could not tell that she had a mental disorder.

46. There was thus conflict between the experts. When such conflict arises the accused gets the benefit of doubt. This court appreciates that courts have impressively expressed the extent of application of an expert opinion in judicial proceedings and the general trend is that such evidence is not necessarily conclusive and binding. As was held in **Shah and Another vs. Shah and Others [2003] 1 EA 290**:

> **"The opinion of the expert witness is not binding on the court, but is considered together with other relevant facts in reaching a final decision in the case and the court is**

not bound to accept the evidence of an expert if it finds good reasons for not doing so."

47. Further, the Court of Appeal, on its part in **Kimatu Mbuvi T/A Kimatu Mbuvi & Bros vs. Augustine Munyao Kioko Civil Appeal No. 203 of 2001 [2007] 1 EA 139** held that:

> *"... such opinions are not binding on the Court although they will be given proper respect, particularly where there is no contrary opinion and the expert is properly qualified although a Court is perfectly entitled to reject the opinion if upon consideration alongside all other available evidence there is proper and cogent basis for doing so."*

48. Courts must give proper respect to the opinions of experts, such opinions are not, as it were, binding on the courts and the courts must accept them as stated in **Parvin Singh Dhalay vs. Republic [1997] eKLR; [1995-1998] 1 EA 29,** it was held that:

> **"It is now trite law that while the courts must give proper respect to the opinions of experts, such opinions are not, as it were, binding on the courts and the courts must accept them. Such evidence must be considered along with all other available evidence and if there is proper and cogent basis for rejecting the expert opinion, a court would be perfectly entitled to do so. We will repeat what this Court said in the case of** *Elizabeth Kamene Ndolo vs. George Matata*

> *Ndolo*, **Civil Appeal No. 128 of 1995. There the Court said with regard to the evidence of experts:-**
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> "*The evidence of PW1 and the report of Munga were, we agree, entitled to proper and careful consideration, the evidence being that of experts but as has been repeatedly held the evidence of experts must be considered along with all other available evidence and it is still the duty of the trial court to decide whether or not it believes the expert and give reasons for its decision. A court cannot simply say:- "Because this is the evidence of an expert, I believe it.*"

49. In the circumstances, PW6 was more consistent in his expert opinion. It is irrelevant that PW5 is an expert in psychiatry. Her evidence was self-contradictory. If the complainant's memory was intact and could recall events vividly, then where is the mental illness.

50. Unfortunately, the court took the major role in cross examining after re-examination. This elicited evidence that had no probative value for failure to be tested by the appellant.

51. The net effect was that though the appellant was charged with an offence under section 146 of the Penal Code, the court proceeded as if it is an offence under section 3 of the Sexual Offences Act. The sexual intercourse, under section 146, has to be other than being rape. The investigating officer must

have been satisfied that the sex was consensual but the complainant was incapable of giving her consent.

52. The evidence on record does not depict rape. Whereas the complainant stated that she was lured and forced to have sex, the evidence does not show any struggle whatsoever. The parties also left each other peacefully. The aspect of force was introduced at a later stage. If the question is the word of the two parties, we must look at circumstantial evidence. For circumstantial evidence to work, it must be inconsistent with the accused's innocence. In the case of **Ahamad Abolfathi Mohammed and Another v Republic** [2018] eKLR, the court had this to say on circumstantial evidence:

> "However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an Accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in R v Taylor, Weaver and Donovan [1928] Cr. App. R 21: -'It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial."

53. There was no torn cloth, any injury or anything suggesting a struggle. When evidence is capable of two opposite explanations, the court will take the one that points to the innocence of an accused person. The explanation that the payment was not made hence the anger looks more credible.

54. This thus rules out rape leaving the offence under section 146 the only offence capable of being proved. The net question is about the consent of the complainant since she had mental illness. From the evidence, she had sporadic episodes of mental illness. It was not possible to know from looking at her. The court observed that she had very sharp memory and could recall events. There was no *voire dire,* meaning the court was already satisfied that she was not an imbecile. The word has since been changed to 'suffering from mental illness'.

55. For the offence to stand, it must be shown that the complainant was suffering from either a congenital or debilitating infirmity of the mind that rendered her incapable of giving consent. In this case, the evidence demonstrated that she was fully aware of her surroundings and able to recall events coherently. In the circumstances, she was not a person suffering from mental illness within the meaning contemplated by Section 146 of the Penal Code.

56. It must be remembered that mental health encompasses a wide spectrum of conditions, including schizophrenia, kleptomania, anxiety disorders, depression, bipolar disorder,

post-traumatic stress disorder, eating disorders, and disruptive or dissocial disorders. The mere presence of any such condition does not, without more, amount to incapacity in law. What must be shown is that the particular condition so impaired the individual's cognitive functioning that they were unable to comprehend their surroundings, appreciate the nature of the act, or communicate their voluntary consent. In the present case, the complainant's coherent recollection of events, appropriate grooming, and ability to interact normally with others demonstrate that she did not suffer from any mental infirmity capable of negating consent within the meaning of the law. In the case of **Samuel Okeno Mauti v Republic** [2018] KEHC 4346 (KLR), J Ngugi, as he then was, held as follows regarding consent:

> 24. On my part, I am not persuaded that there was sufficient evidence to reach that conclusion. The fact of mental impairment in order to displace consent must be established beyond reasonable doubt. In my view, the sparse evidence of mental impairment produced by the Prosecution does not rise to that level. See *Wilson Morara Siringi v Republic [2014] eKLR.*
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> 25. Fortunately for the Prosecution, however, this does not end the analysis. The real question is whether the Prosecution demonstrated beyond reasonable doubt that the Complainant did not give consent to the penetration. In my view, the Prosecution accomplished this goal. It did this by demonstrating that the penetration in this case was achieved through coercion: the Complainant never said yes to sexual intercourse. Indeed, the

> surrounding circumstances – including her visible developmental challenges – clearly communicated non-consent to sexual intercourse. According to our law (sections 3; 42 and 43 of the Sexual Offences Act), having sexual intercourse with a person who has not consented amounts to rape. It is therefore incumbent upon a party to establish that the other party to a sexual act has consented to penetration. Here, the Appellant was aware that the Complainant had not consented to sexual intercourse; yet, he proceeded to penetrate her severally. To be clear, there is no requirement that the victim of rape screams or make any active attempts to resist the rape or run away. It is enough that the victim did not consent to the penetration. The circumstances of each case will determine in a fact-intensive way whether consent had been obtained or not.

57. It is therefore, not mental illness only but must be suffered in a way that vitiated any consent. I am unable to agree with the trial court that the prosecution proved the offence; rape of an imbecile. In totality, the respondent herein did not prove the offence of defilement of a person suffering from mental illness, or as charged, rape of an imbecile against the appellant beyond reasonable doubt.

58. Having found that the conviction was improper, I do not think it will serve any purpose to delve into the issues in the sentence. I find and hold that the prosecution case was not proved beyond reasonable doubt and therefore allow the appeal and set aside the conviction and sentence. The

appellant shall be set free forthwith unless otherwise lawfully held.

Orders

59. I make the following final orders: -

a) The appeal is merited and is hereby allowed.

b) The conviction and sentence of the trial court are set aside in their entirety.

c) The Appellant shall be released from custody forthwith, unless otherwise lawfully held.

d) The file is closed.

DELIVERED, DATED and **SIGNED** at **NYERI** on this **13th** day of **November, 2025**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Pro se Appellant

Mr. Kimani for the Respondent

Court Assistant – Michael