

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION
CRIMINAL APPEAL CASE NO. E018 OF 2025 AS
CONSOLIDATED WITH ACEC APPEAL E019 OF 2025

NYAKERI	MAGEKA	HESBONE.....	1ST
APPELLANT			
GEORGE	WANJAU.....		2ND
APPELLANT			
RONALD	NANJERO	NDALE.....	3RD
APPELLANT			

VERSUS

REPUBLIC
RESPONDENT

.....

JUDGEMENT

1. The appellants herein filed two separate Petitions of appeal, both dated the 1st July, 2025. When the appeals came up for directions on the 31st July, 2025, both appeals were consolidated by consent of all the parties with E018 /2025 as the lead file with Nyakeri Mageka Hezbone, George Wanjau and Ronald Nanjero Ndale appearing as the 1st, 2nd and 3rd appellants, respectively. In their Petitions of appeal which

contain the same grounds, the appellants are seeking that the appeals be allowed and the lower court judgement delivered on the 24th June, 2025 to be set aside. They are also seeking that the sentence be set aside and the appellants be set at liberty.

2. The grounds of appeal are that;

- 1) THAT the learned magistrate erred both in fact and in law when he convicted the appellants where evidence had not been sufficiently proved beyond reasonable doubt.**
- 2) THAT the learned Magistrate erred both in fact and in law when she placed a higher burden of proof to the Appellants despite the fact that the prosecution case was not sufficiently proved.**
- 3) THAT the learned magistrate erred both in fact and in law when she failed to consider the evidence of the Appellants.**
- 4) THAT the learned Magistrate erred both in fact and in law when she failed to consider the submissions tendered by the Appellants.**
- 5) THAT the learned Magistrate erred in fact and in law when she shifted the burden of proof to the Appellants.**
- 6) THAT learned Magistrate erred I both law and fact by aiding the Respondent's case in isolation from the Appellant's case.**
- 7) THAT the learned Magistrate erred both in fact and in law when she relied on erroneous principles of law and sentenced the accused persons as she did.**

3. In the trial court, the appellants were charged with various counts as follows;

COUNT I - RECEIVING A BRIBE CONTRARY TO SECTION 6(1) (A) AS READ WITH SECTION 18 OF THE BRIBERY ACT NO. 47 OF 2016.

Particulars of offence (Ronald Nanjero Ndale)

On the 4th day of August, 2020 at Imara Daima Police Post in Embakasi within the Nairobi City County, being a person employed by a public body, to wit, Ministry of Interior and Coordination of National Government (National Police Service), improperly requested a financial advantage of Kshs.20,000/- from Alex Ayub and Kevin Ouma with intent that in consequence, thereof you would release back their two welding machines and forbear charging them with an alleged offence of illegal electricity connection, a matter related to the affairs of the said public body.

COUNT II - RECEIVING A BRIBE CONTRARY TO SECTION 6(1)(a) AS READ WITH SECTION 18 OF THE BRIBERY ACT NO. 47 OF 2016.

1. RONALD NANJERO NDALE

On the 6th day of August, 2020 at Imara Daima Police Post in Embakasi, within the Nairobi City County, being a person

employed by a public body, to wit, ministry of Interior and Coordination of National Government (National Police Service) improperly requested a financial advantage of Kshs.3,000/- from Alex Ayub and Kevin Ouma, with intent that in consequence, thereof, you would release back their two welding machines and forbear charging them with an alleged offence of illegal electricity connection, a matter related to the affairs of the said public body.

COUNT III

RECEIVING A BRIBE CONTRARY TO SECTION 6(1)(a) AS READ WITH SECTION 18 OF THE BRIBERY ACT NO. 47 OF 2016.

1. RONALD NANJERO NDALE

On the 6th day of August, 2020 at Kwa Reuben in Embakasi within the Nairobi City County, being a person employed by a public body, to wit, Ministry of Interior and Coordination of National Government (National Police Service), improperly received a financial advantage of KShs.3,000/- from Alex Ayub, with intent that in consequence thereof you would release their two welding machines and forbear charging them with an alleged offence of illegal electricity connection, a matter related to the affairs of the said public body.

COUNT IV

OBSTRUCTION CONTRARY TO SECTION 66(A) AS READ WITH SECTION 66(2) OF THE ANTI-CORRUPTION AND ECONOMIC CRIME ACT NO.3 OF 2003

1. RONALD NAJERO NDALE

On the 6th day of August 2020 at Imara Daima Police Post in Embakasi, within the Nairobi City County, without justification or lawful excuse obstructed EACC investigators from effecting arrest by causing a scuffle, while the said investigators were effecting lawful arrest, under the Anti-Corruption and Economic Crimes Act No. 3 of 2003.

COUNT V

OBSTRUCTION CONTRARY TO SECTION 66(A) AS READ WITH SECTION 66(2) OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO.3 OF 2003

2. NYAKERI MAGEKA HEZBONE

On the 6th day of August, 2020 at Imara Daima Police Post in Embakasi, within the Nairobi City County without justification or lawful excuse obstructed EACC investigators from arresting Ronald Ndale by drawing

firearm, while the said investigators were effecting lawful arrest, under the Anti-corruption and Economic Crimes Act. No. 3 of 2003.

COURT VI

OBSTRUCTION CONTRARY TO SECTION 66(A) AS READ WITH SECTION 66(2) OF THE ANTI-CORRUPTION AND ECONOMIC CRIME ACT NO. 3 OF 2003.

3. GEORGE WANJAU

On the 6th day of August, 2020 at Imara Daima Police Post in Embakasi, within the Nairobi City County, without justification or lawful excuse obstructed EACC investigators from arresting Ronald Ndale by drawing firearm while the said investigators were effecting lawful arrest under the Anti-Corruption and Economic Crimes Act No. 3 of 2003.

COUNT VII

CONCEALING CONTRARY TO SECTION 66(1)(a) AS READ WITH SECTION 66(2) OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003.

1. RONALD NANJERO NDALE

On the 6th day of August, 2020 at Imara Daima Police Post in Embakasi, within the Nairobi City County, being a person employed by a public body, to with, the Ministry of Interior and Co-ordination of National Government (National Police Service), concealed Kshs.3,000 to which you had reasonable ground to believe will be used as evidence in an investigation into an offence of corruption under the Anti-Corruption and Economic Crime Act No.3 of 2003.

4. They denied all the charges and in the course of the trial, the prosecution called nine witnesses in support of the charges that were brought against the appellants. At the end of the trial, the learned Magistrate in her judgement delivered on the 24th June, 2025, found all the appellants guilty and convicted and sentenced them accordingly.
5. Before the trial court, one of the complainants, Alex Ayub Mwangi, testified that on the 4th August, 2020 he was doing welding when power went off at his workshop for three days. A

neighbor agreed that they could use his power as long as they were willing to pay for it and they connected. As they were doing their work, two people approached them and informed them that they were police officers and they told them that they had connected the power illegally. The two people threatened to carry their machines unless they gave them Ksh,20,000 and since they could not raise the money, the two people went with their machines.

- 6.** That on the 5th August, 2020, they realized their machine would not be returned, they reported the matter to the EACC who asked them to record a statement and on the 6th August, 2020 in the company of Kelvin Ouma Khahoya, (PW2), and officers of EACC, they went to the Station but before leaving, the EACC offices, the EACC officers had prepared Ksh.5,000 and had photocopied the bank notes. On arrival at the Station, the 3rd appellant asked them if they had come with the money which they had negotiated to Ksh. 5000. In addition himself (PW 1) he was given an audio-visual recorder and he was shown how it works.

7. At the Station, he found the 3rd appellant and he managed to bargain further and they agreed at Ksh,3,000 which he gave to him and he put it in his pocket and he was allowed to pick his machine. He flashed the EACC officers who were within the Station compound who came and in the process of arresting the 3rd appellant, a scuffle ensued. In the process, another officer took a pistol and corked it and he was urged not to shoot by a fellow officer who was in the Station. He did not shoot but went to the side and disconnected the gun. They were allowed to leave by an officer called Vincent, who is one of the EACC officers' who had accompanied them.

8. The other complainant testified as PW2, Kelvin Ouma Khahoya. He stated that on the 4th August, 2020, he was at work with PW1 when two police officers came to the workshop and accused them of illegally connecting power and asked them for Ksh. 20,000 failing which, they would carry the machine. That since they did not have the money, the two officers carried the machine to Imara Daima Police Post and when they went to the police post in the evening they bargained with the officers and

settled at Ksh. 5,000 and since they did not have the money, they went back home.

9. It was his further evidence that on the 6th August, 2020 in the company of PW1, they went to EACC where they were given two officers with whom they went to Imara Daima police post and on reaching there the EACC officers remained behind. PW1, was given a mobile recording device and Ksh. 5,000 which was treated and serialized. They engaged the 3rd appellant to reduce the money and he agreed to reduce to Ksh 3,000 PW1 gave him the money and flashed the EACC officers whom they had gone with, and when they tried to arrest the 3rd appellant, the other officers objected his arrest.

10. John Otieno Nyagara, an investigating officer with EACC testified as PW3. He stated that he was on duty on the 6th August, 2020 when he received a complaint from PW1 against a corporal from Imara Daima police post who had asked for a bribe of Ksh. 20,000 in order to release his welding machine that had been confiscated and put in the police station by the said corporal. He assigned the case to some officers who

accompanied PW1 to Imara Daima Police post for the operation. He later learnt from the investigating officer that the person who was demanding the money was the 3rd appellant and two officers who were armed and snatched the key to the EACC vehicle were the 1st and 2nd appellants herein.

- 11.** Zelpah Awour who works with the EACC as an investigator (PW4) stated that he was requested by Shee Bakari to assist in treating Ksh 5,000 that was going to be used in operation. He photocopied the notes which was in 1000 denomination, treated the money with APQ and put it in an envelope and he prepared an inventory and signed the same.
- 12.** Corporal Francis Aloba (PW5), who is attached to Kenya Power stated that on the 6th August,2020, he was on duty with his colleagues within pipeline when he received a call from the 3rd appellant who informed him that a suspect had been arrested while illegally connecting power within the area. That since he had not collected any evidence at the scene and the suspect had been in police custody for three days, he informed him

that they could not proceed with prosecution of the suspect. He later recorded his statement with the EACC.

- 13.** Corporal Benard Bichii (PW6) an officer attached to EACC police Station stated that he accompanied EACC officers led by Shee Bakari, Samba and Abdi Sirach to Imara Daima police post following complaints by PW1 and PW2 that an officer had demanded Ksh 5,000 in order to release welding machines that had been confiscated. That they gave PW1 a garget to record which was both audio and virtual. PW1 recorded the conversation that took place and they established that there was a demand for Ksh. 3,000. They told the 3rd appellant that he was under arrest but he resisted arrest and they tried to recover the money he raised alarm and other officers who included the 1st and 2nd appellants came. The 1st and 2nd appellants were armed with a ceska pistol and AK 47. A commotion ensued and the 1st and 2nd appellants cocked the rifles threatening to shot them but the officer incharge arrived on time and managed the situation. The 1st and 2nd appellants whisked the 3rd appellant aside, grabbed the EACC officers

ignition keys of the motor vehicle which they refused to give them back and they had to call for a spare key. In X-examination, he stated that they had introduced themselves via identity cards and the other officers had reflector jackets.

14. Chief Inspector Hassan Mohammed (PW7) was in-charge of Imara Daima Police post at the material time and the appellants worked under him. He stated that on the 4th August, 2020, he had seen a copy of the OB relating to welding machine that had been detained by the 3rd appellant which had been recovered at Reli area, Mukuru Kwa Njenga. That the officers had alleged that they found someone doing illegal connection.

15. He stated that he was not at the post on the material day but he received a phone call and he was informed that there was a confrontation between officers at his post and EACC officers. That he was told the EACC officers were trying to arrest the 3rd appellant allegedly for receiving Ksh. 5,000 from the owner of the welding machine, but his officers reacted as they did not see a reason as to why the 3rd appellant was being

arrested and he calmed the officers. He confirmed that the three appellants had been issued with fire arms on the material day.

16. In x-examination, he stated that he could not see the Samsung garget and the reflector jackets in the video. Though he stated there was a scuffle at the scene, he stated that he did not think it was an obstruction.

17. Shee Bakari (PW8) an investigator with EACC stated that on the 5th August, 2020 he was assigned a case of bribery allegation to investigate. That the complainant had reported that police officers in plain clothes had visited his welding kiosk at Imara Daima and detained his two welding machines for an alleged offence of illegal power connection. It was explained to him that the officers were demanding Ksh.20,000 so as not to charge him and to return the said machines but later on, the complainant told him that he had managed to negotiate to Ksh. 5,000

18. That the money was prepared, which include photocopying the notes, capturing the serial numbers and treating it with

APQ. That him and his team and in the company of the two complainants travelled to Imara Daima and took a stop a few meters from the Station so as not to be seen within the vicinity and released the two complainants after he had advised them to operate the device.

19. That the complainants proceeded to the Station, held conversations with the suspects and returned the device to the officers and upon listening they established a demand of Ksh 3,000 from Ksh 5,000 , He removed Ksh, 2000 and handed Ksh, 3,000 to PW1 and advised him to ring his phone when the money has changed hands. That PW1 signaled him that money had changed hands and they quickly rushed to the Station and introduced themselves to the suspect (3rd appellant) and they told him that he was under arrest. They tried to handcuff him but some of his colleagues among them the 1st and 2nd appellants became violent as they tried to rescue their colleague. The 2nd appellant who was armed drew his pistol and threatened to kill them and the 1st appellant became violent and instructed us not to hand cuff the 3rd

appellant's other hand. The scene was chaotic and the 3rd appellant refused to co-operate and to be swabbed and from the clips and the strength they had, shooting would have occurred as we were few and the appellants were armed.

20. That they took the suspect to the office of the Station Commander and later to the OCPD whom they informed of the commotion that had ensued. That during that commotion the EACC vehicle was damaged and the car keys were destroyed by one of the officers and they had to request for a spare key from their offices. Thereafter, he recorded witness statements including that of the officer in-charge of Imara Daima police post who assisted them in identifying the voices of those captured in the clip after the recording was played to him.

21. In X- examination, he stated that when they reached at the Station, they identified themselves to the suspects as officers from the EACC and none of them had reflector jackets. That the issue of stealing had not been reported to Kenya Power

but was only reported after the suspects were arrested. He stated that the operation money was not recovered.

22. Vincent Simba an investigator with EACC testified as PW9. It was his evidence that he was requested to accompany PW8 to Imara Daima police post as he had been assigned to investigate. That in the company of the two complainants, PW8, PW6 and Abdi Noor they went to Imara Daima police post and PW8 gave PW1 a garget and the complainants were instructed by PW8 to alight from the vehicle and proceed to meet the suspected police officers. After a few minutes, the complainants took back the recording which the officers played in their presence and they established a demand of Ksh. 3,000 by the suspected police officer. The two complainants alerted the officers and proceeded to arrest and handcuff the 3rd appellant and while they were handcuffing the 3rd appellant, the 2nd appellant drew a pistol and threatened to shoot them.

23. He stated that a commotion ensued and the 2nd appellant was joined by the 1st appellant who was armed and was in police

uniform and took the suspect from them and the 3rd appellant refused to be swabbed. The 2nd appellant forcefully took their vehicle ignition keys from him and went away with it and he was forced to call their incharge who sent them a spare key. He took over investigations from PW8 who was transferred on the 16/11/2020, recorded statements of witnesses and compiled the inquiry file and forwarded it for recommendations/action for the appellants to be charged in court.

- 24.** In x-examination he stated that when they arrived at Imara Daima police post they introduced themselves as officers from EACC . That he did not see anybody at the scene receiving Ksh. 20,000 but the clip showed the 3rd appellant receiving Ksh,3,000. That at the Police post, there was a push and pull with the officers at the Station pulling the 3rd appellant and at some point the officers of EACC were overwhelmed and the officers at the police post took away the 3rd appellant from them. That the 1st and 2nd appellants

were armed and they obstructed them when they were arresting the 3rd appellant.

25. At the close of prosecution's case, the appellants were all placed on their defence and they gave sworn evidence.

26. In his defence, the 1st appellant testified that on the material day, he was at the report office at the police post when he heard a commotion outside and heard the 3rd appellant asking "who are you". That he told his colleague to hold his gun and when he got outside he saw two people holding the 3rd appellant and his two hands had been hand cuffed. That the 3rd appellant asked the 1st appellant to take his gun and they all went to the crime office to try and agree. In the process, an officer from the EACC put his hand in 3rd appellant's pocket and removed Ksh 5,000 but it was not part of the treated money. He stated that he did not obstruct officers from the EACC from arresting the 3rd appellant. According to him there was nothing wrong with him assisting a colleague. In X-examination, it was his evidence that he was protecting the

3rd appellant's life as at that point, the officers had not identified themselves.

27. The 2nd appellant stated that on the material day he was at the police post and he went to the police lines shortly and on his way to the report office, he found the 3rd appellant being held by two men and one of his hands had been handcuffed. He asked them who they were as they had arrested his colleague and at that point, the 3rd appellant asked him to take his pistol from his waist. That the EACC officers tried to struggle when they arrested the 3rd appellant. He insisted that he did not obstruct the officers as alleged.

28. In X-examination, he stated that it is only police officers who arrest using hand cuffs. That he was not issued with a firearm on that day and the one he had was for the 3rd appellant which he took from him.

29. The 3rd appellant on his part testified that on the material day he went on patrol with sgt. Matete and at "Kwa Reli Area" within Embakasi they came across two welding machines which had been illegally connected to the Kenya Power post

and they sought to know from the boys why they had connected them illegally and they ran away prompting him and the other officer to carry the machines to Imara Daima police post and booked OB 16/ 4/8/2020

30. That on the material day, he was at the post when two people came pretending to be reportees to make a report to the police. He asked them how he could help them but before he finished talking to them one took his left hand and the other his right hand and they hand cuffed him and they started to drag him from the report office as if to take him towards the gate and in the process he raised an alarm to his colleague the 2nd appellant and he told him to take his pistol, which he did. The 1st appellant also intervened. The officer incharge of the post asked them who they were and told them to record the occurrence Book

31. That they told the officer in charge that he had taken Ksh 5,000 and upon searching him, the EACC officer's found Ksh 5,000 in his pocket and on comparison with the EACC officer's treated notes, it was not theirs. They removed the handcuffs

and they all went to the office of the officer incharge of the police post one Isaboke and the OCPD and DCIO had by then arrived and the EACC officers introduced themselves and they said they were on an operation within Imara Daima area. They went to Embakasi headquarters and he was left at the post. He stated that he did not obstruct anyone and that he obeyed all the orders, that he was dusted and his finger prints taken and that he did not conceal anything.

- 32.** Henry Isaboke Nyabera who was the deputy incharge at Imara Daima police post at the material time testified that he was on duty on the material day. He heard a commotion and on getting out he saw two EACC officers trying to hand cuff the 3rd appellant and intervened and they explained to them that they were from the EACC. That they explained to him that the 3rd appellant had asked for Ksh, 5,000 from the complainants and he had been given the money. That they all went to his office and a search was carried out and some money was found on the 3rd appellant but it was not money belonging to the EACC. According to him, there was not obstruction and

the 2nd appellant helped to safeguard the pistol. That the EACC officers did not introduce themselves to him.

- 33.** When the appeal came up for hearing the court gave directions on filing of Submissions and all the parties complied with the directions on filing of the same.

Appellants' submissions

- 34.** The appellants submitted that the prosecution failed to satisfy the statutory requirements of **Section 6(1) (a)** of the **Bribery Act**. That the 3rd appellant's conversation was about cash bail and no demand or request for bribe was made by him. Reliance was placed on the case of Paul Kipchumba Kivai Vs Republic. That the evidence failed to link the 3rd appellant with the treated money in that the Ksh.5.000 recovered from his pocket never matched the treated money meaning that the prosecution failed to establish a positive, direct link between the 3rd appellant and the crime money and this creates an insurmountable evidential gap.
- 35.** With regard to the obstruction, the appellants have submitted that the appellants actions were neither lawful nor malicious

but were justified police duty in response to a perceived threat, as confirmed by the defence witnesses and the 3rd appellant.

36. That the EACC officers violated the principles of Article 10 of the Constitution which demands transparency by bouncing on an officer in civilian clothes without reflective jacket and without identifying themselves thus created a scenario where the appellants reasonably perceived a threat from unknown armed civilian.

37. The appellants further submitted that the failure to follow established arrest protocols constitutes a violation of the Criminal Procedure Code which requires an arresting officer to clearly identify themselves and especially when using force in a public security zone as the court of appeal emphasized in the case of **Republic Vs John Njuguna Maina & 2 others**. That the physical pounce and seizure of the 3rd appellant's person and property by unidentified EACC officers without a warrant constituted an arbitrary invasion of his right to

privacy and the right not to have his person searched as enshrined in **Article 31** of the **Constitution**.

38. The appellants further submitted that there was judicial failure to evaluate Electronic evidence by the defence. That the electronic evidence (video evidence) was fundamentally misconstrued by the trial Magistrate . That the video recording clearly showed no introduction or identification of the EACC officers which contradicts the evidence of PW8 testimony that they identified themselves by “word of mouth”. The learned Magistrate failed to consider these contradictions. Reliance was placed on the case of **Richard Munene Vs Republic**, on contradictions in evidence.

39. They have submitted that the evidence produced by the prosecution in support of their case was insufficient and would not have led to a conviction. The case of **Davis Wanyama Wafula vs Republic (2012) KEHC 4806 (KLR)** was relied on. That the prosecution did not provide sufficient evidence to meet the standard of proof beyond reasonable doubt as the court stated in the case of **Muthini vs Republic**

(Criminal Appeal 15 of 2023 (2024) KEHC 2182 (KLR)).

That in the video footage that was taken on the day of arrest there is no sight of the appellants causing obstruction of the arrest of the 3rd appellant as alleged by the prosecution.

- 40.** The appellants contended that the trial Magistrate committed an error by shifting the burden of proof to the appellants instead of requiring the prosecution to exclude every reasonable hypothesis of innocence thus violating the core tenets of criminal jurisprudence which requires that the prosecution must prove a criminal charge beyond reasonable doubt. The case of **Pius Arap Maina** was cited in support of that submission.
- 41.** On sentence, it was submitted that the same is excessive, harsh and that it failed to adhere to the sentencing guidelines. That the trial Magistrate erred by failing to adequately consider the strong mitigating factors and that the conviction on multiple counts of obstruction, all stemming from a single incident less than five minutes within the police post, should have attracted concurrent and not cumulative

sentences. The case of Peter **Mbugua Kabui vs Republic (2016) KECA 713 KLR** was relied on.

Respondent's Submissions

- 42.** The respondent submitted on the ingredients of the offence of receiving a bribe, obstruction and concealing a bribe and submitted that there was overwhelming evidence by prosecution witnesses that the 3rd appellant solicited a bribe of Ksh. 20,000 which was later negotiated and reviewed downwards to Ksh. 3000 and there is every reason on record to believe that the same was actually paid out and received by the 3rd appellant. That the mobile phone conversation between the 3rd appellant and the complainant given as evidence was one such reason to believe so, keeping in mind that the evidence thereof remained unchallenged by the defence.
- 43.** With regard to the offence of obstruction, the respondent has urged the court to find that there is sufficient evidence on record showing that the appellants herein jointly and severally, without justification or lawful excuse, obstructed,

hindered, assaulted and threatened to injure the EACC officers who were acting in ordinary course of their duty. That there is also undoubted evidence on record showing, and having reason to believe that the 3rd appellant either destroyed, concealed or removed documents, records forming part of the evidence against him, which he believed was relevant to the investigations and proceedings before the trial court.

44. Further, that the evidence against the appellants concerning soliciting of a bribe, obstruction and concealing material evidence remained steadfast and unchallenged. That the facts and issues raised by the appellants in cross examination were not weighty enough to exonerate them from criminal culpability. The respondents relied on the cases of **Arnold Ochieng and Republic (Criminal appeal No. E065 of 2024 and Okeno Vs Republic (1972) EA 32.**

45. The 3rd appellant filed supplementary submissions. He has submitted that the time of arrest in the DPP's submissions at 11.00 a.m. does not match the time given by PW1 in his

testimony at 6.30 p.m. That the DPP's analysis of PW8 evidence does not match the details in the armed movement book, that in exhibit 10 it is only Nyakeri and Ndale who were issued with firearms but in the video, Nyakeri is seen without a firearm. That the firearm that Wanjau is seen with in the video was the firearm retrieved from Ndale. That pointing the pistol upwards and squeezing of the trigger is the standard procedure of safety to ensure safety of the firearm and it cannot be categorized as a threat.

Analysis and Determination

46. The court has considered the grounds of appeal, the submissions by the parties and I have also re-evaluated the evidence that was adduced before the trial court. The issues for determination are;

a) Whether the prosecution proved the case against the appellants beyond any reasonable doubt.

b) Whether the sentence that was imposed on the appellants should be set aside on account of it being excessive and/or harsh.

47. It is the role of the first appellate court to review the evidence at trial and reach its own conclusion. These were the

sentiments of the Court of Appeal in the case of **OKeno Vs Republic (1972) EA 32** in which the court held;

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and the appellate court must itself weigh conflicting evidence and draw its own conclusions. It is not the function of the first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s finding and conclusion. It must make its own finding and draw its own conclusions only then can it decide whether the Magistrate’s finding should be supported . In so doing, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses”.

48. Similarly, in the case of **Mutheu vs Republic (Supra)** the Judge relied on the case of **David Njuguna Wairimu Vs Republic (2010) eKLR** and stated;

“The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusion on that evidence.....”.

49. This being a criminal case, the burden of proof squarely lay on the prosecution to proof the case against the appellants

beyond any reasonable doubt. This is a legal requirement and it is provided for in **Section 107** of the **Evidence Act**. See the case of **Muthini Vs Republic (supra)**

50. The appellants herein were charged with various counts to wit

- a) Receiving a bribe3rd appellant
- b) Obstruction.....All the three appellants
- c) Concealing..... 3rd appellant.

51. On the 5/ 06/ 2020, PW1 and PW2 reported the matter to EACC who asked them to record witness statements and on the 6/08/2020, EACC who included PW6, PW8 and PW9 in the company of PW1 and PW2 proceeded to Imara Daima police post but before leaving the EACC offices, PW3 treated Ksh. 5,000 with APQ, photocopied the notes. In addition they gave PW1 and audio and virtual recorder and he was shown how it works.

52. On arrival at the police post the 3rd appellant asked them if they had come with the money which they negotiated to Ksh. 5,000 and PW1 managed to bargain to Ksh 3,000 which PW1

gave the 3rd appellant and he put it in his pocket and he was given the machine. PW1 flashed the EACC officers who were within the Station compound who came and in the process of arresting the 3rd appellant, a scuffle ensued and in the process, the 2nd appellant took a pistol and corked and was urged not to shot by a fellow officer.

53. The events that took place at the material time were captured in an audio- visual recorder that PW1 was provided with by Pw8 and the was shown how to operate.

54. The offence of Receiving a bribe is provided for in Section 6 of the Anti- Bribery Act and it reads;

6(1) A person commits the offence of receiving a bribe if-

(a)the person requests, agrees to receive or receives a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly whether by that person receiving the bribe or by another person.

(b) the recipient of the bribe requests for, or agrees to receive or accepts a financial or other advantage and the request,

agreement or acceptance itself constitutes the improper performance by the recipient of a bribe of a relevant function or activity

(c) in anticipation of or as a consequence of a person requesting for, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by that person, or by another person at the recipient's request, assent or acquiescence.

- 55.** The evidence of PW1 and PW2 corroborates that of the 3rd appellant that they had illegally connected power. The 3rd appellant and other officers asked them for Ksh20,000 so that they could forgo to charge them and since they did not have the money, the officers among them, the 3rd appellant took away their welding machine to Imara Daima police post.
- 56.** PW2 and PW2 reported the matter to the EACC and the EACC officers in the company of PW1 and PW2 proceeded to the police post to arrest the 3rd appellant but before leaving EACC offices PW8 gave them treated money and an audio-visual recorder and showed PW1 how to use it.

- 56.** The audio-visual recording was produced in evidence. The conversation between PW1, PW2 and the 3rd appellant was recorded and produced as exhibit 7 and transcribed in prosecution exhibit 8. The officer incharge of the Police post assisted in identifying the voices of the appellants herein and from the conversation there is no doubt that the 3rd appellant requested for a bribe and received some money which PW1, PW2 and PW 8 stated was Ksh. 3,000. The 3rd appellant can clearly be seen receiving the money from PW1 after PW1 bargained and even after receiving the money the 3rd appellant can be heard complaining that it was little.
- 57.** In his defence, the 3rd appellant claims that PW1 was pleading with him to reduce the police bond which is not true as the conversation is very clear and no where does any of them mention police bond.
- 58.** On the offence of obstruction, the audio and video clip captured the EACC officers arresting the 3rd appellant. As stated by PW1, PW2, PW6, PW8 and PW9, the 3rd appellant resisted arrest and raised alarm and the 1st and 2nd appellants

came to his rescue. The 1st and the 2nd appellant became violent and the scene was chaotic and at some point the 2nd appellant threatened to shot the EACC officers. PW7 an officer who was attached to Imara Daima police post confirmed that there was confrontation between the EACC officers and the officers from the police post who included the appellants herein.

59. According to the 1st and the 2nd appellants, they reacted in defence of the 3rd appellant whose security was threatened by un known intruders as the EACC officers had not identified themselves. From the clip, the EACC officers can be heard identifying themselves as officers and it is not therefore true that the appellants herein did not know who the EACC officers were.

60. On the offence of concealing, I concur with the learned Magistrate that the prosecution did not tender sufficient evidence to support the charge.

61. In the end and for the reasons that I have given, I find that the case against each of the appellants was proven and I find no merits in their appeals. The same are hereby dismissed.

61. It is so ordered.

**Signed, dated and delivered virtually on this 17th day
of December 2025.**

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**L.M. NJUGUNA
JUDGE**

In the presence of:-

*Miss Kemunto h/b for Mr. Mwongeri for the 1st and 2nd appellant
Mr. Wati for the 3rd appellant
Mr. Mwongeri for the respondent
Court assistant - Adan*