Maina & another v Republic (Criminal Appeal E010 of 2023)
[2026] KECA 129 (KLR) (30 January 2026) (Judgment)

Neutral citation: [2026] KECA 129 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CRIMINAL APPEAL E010 OF 2023

MA WARSAME, JM MATIVO & PM GACHOKA, JJA

JANUARY 30, 2026

BETWEEN

SAMUEL MAINA ..... 1ST APPELLANT

JOSEPH MUNGAI WAKORI ..... 2ND APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the decision of High Court of Kenya at Naivasha (Ngenye J.) delivered on 14th day of July 2022. in H.C.CR.A No. 7 & 8 OF 2020)

JUDGMENT

1. These are consolidated appeals against conviction and sentence for the offence of robbery with violence contrary to Section 296(2) of the Penal Code. The appellants were each sentenced to thirty (30) years' imprisonment by the trial court, a sentence which was upheld by the High Court.

2. Before proceeding with the merits of the appeal, it is instructive to note that the appellants were warned on no fewer than three occasions that the respondent has applied for an enhancement of sentence to the mandatory penalty prescribed under Section 296(2) of the Penal Code and should this Court uphold their convictions, the Court would have no option but to impose the mandatory sentence prescribed by law. The warning administered derives from this Court's duty under Section 361 of the Criminal Procedure Code and our overarching duty to ensure that appellants are not taken by surprise where enhancement of sentence is a possibility. Having been duly warned and the consequences explained to them in Kiswahili, both appellants expressly instructed their counsel to proceed with these appeals. We are satisfied that the appellants heard the warning, understood its import in their own language, and fully comprehend the implications and what is at stake, and we proceed accordingly. We shall revisit this issue later in the judgment, if necessary.

3. To place this appeal in context, the appellants were charged with the offence of robbery with Violence contrary to Section 296(2) of the Penal Code. The particulars alleged that on the night of 30th and 31st May 2016 at Jura village in Kipipiri Sub-County within Nyandarua County, the appellants, jointly with others not before court and whilst armed with unknown crude weapons, robbed one William Karanja Mungai (hereinafter "the deceased") of various items valued at Kshs. 81,250/=, and at the time of the said robbery fatally wounded the said William Karanja Mungai.

4. The items stolen comprised: a speaker, music mixer, inverter, keyboard, generator, DVD player, extension cables, two jembes, two shirts, three caps, GO TV decoder, phone charger, two umbrellas, three microphones, one lesso, four pairs of Golden Lion batteries, four bicycle tubes, one pair of gumboots, one pair of rubber shoes, two small radios, one small boy's suit, one girl's dress, one kitchen knife, two bags, two shoe creams, one measuring tape, three packets of wheat flour, one packet of maize flour, three kilograms of sugar, and two jackets.

5. In the alternative, the appellants were charged with the offence of handling stolen goods contrary to Section 322(2) of the Penal Code. The particulars were that on 31st May 2016 at Leleshwa area in Kipipiri Sub-County, the appellants were found in possession of the aforementioned items, knowing or believing them to be stolen goods or unlawfully obtained. Both appellants pleaded not guilty to all charges.

6. The prosecution called ten witnesses. Their evidence may be summarised as follows.

7. PW1, Nancy Muthoni Karanja, the deceased's wife, testified that on 30th May 2016 at approximately 2.00 p.m., her husband left their home. By 8.00 p.m, he had not returned, which was unusual. At around 9.00 p.m, she tried to call him, but his phone was switched off. The following morning at approximately 5.00 a.m., anxiety drove her to the deceased's shop at Njura Shopping Centre. She found the door unlocked but no one inside. Worse still, church property belonging to Njura Full Gospel Church that had been stored in the shop including a generator, amplifier, and other music equipment was missing. She raised the alarm, and members of the public joined in searching for the deceased. The search ended tragically at around 4.00 p.m. when police officers, acting on information received, proceeded to a nearby bush where they recovered the deceased's body. The body had been covered with leaves. Save for his underwear, all other clothes had been removed. The deceased appeared to have been strangled, his neck had been twisted and was reddish in colour. There were swellings on the legs and bruises on the head and chest. The left hand was twisted. There was also a cut on the deceased's head.

8. The events that led to the appellants' arrest were set in motion by PW2, Raphael Chege Njagi alias Mzalendo, a security consultant, private investigator, and trainer in security matters. On 31st May 2016 at approximately 6.08 a.m., PW2 boarded a Nairobi-bound bus at Kamunyu area whilst travelling to Gilgil. After travelling approximately one kilometre, the bus stopped at Kahiga Centre to pick up two passengers. It stopped again after approximately 400 metres near Mustard Seed Academy to pick up three more passengers, one of whom was smoking a cigarette.

9. These three men had three bulky gunny bags and a canvas backpack. They informed PW9, the bus conductor, that they wanted to travel to Nairobi. PW9 put two gunny bags on the bus carrier whilst one was placed inside the vehicle. PW2 could see a piano keyboard protruding from one of the gunny bags inside the bus. One of the men entered with an old generator. Another entered with a fully packed bag. The third man held onto the bag with the piano. As the other gunny bags were being put on the carrier, PW2 noticed they contained what appeared to be speakers.

10. What caught PW2's trained eye was that the men's trousers were wet, yet it had not rained. They were also wearing gumboots. Being a professional security person, he sensed something was amiss. He called

one Corporal Wambugu who was in charge of Kahiga AP Post and informed him that there were suspicious people who had boarded the vehicle with what appeared to be suspected stolen property. He requested Corporal Wambugu to alert traffic police officers along the road to intercept the vehicle. He gave the description of the bus, which had the name "Sony". Corporal Wambugu relayed this message to PW8, APC Esther Wachira, an Administration Police Officer attached to Leleshwa AP Post.

11. As the bus approached Kamahia Trading Centre, PW8 and two other administration police officers stopped it. PW2 alighted and informed the officers that he was the one who had called the police. PW2 and AP Kirui entered the bus, and PW2 identified the three suspicious men as the appellants herein and a third suspect, Mark Nganga Muhinja, who later escaped from police custody.

12. PW8 testified that after intercepting the bus, she ordered it to be driven to Turasha Administrative Police Post where she ordered the appellants to alight with their luggage and detained them.

13. At around 7.00 a.m., PW4, Joseph Mburu Gitau, the Assistant Chief for Kiriko Sub-location in Turasha Location, received a call from the Chief of Leleshwa Location, John Mwangi Nyaga. The Chief informed him that three people had been arrested with shop goods and music equipment, and inquired whether any such theft had been reported in PW4's area. PW4 had received no such report, however, he contacted a Corporal at his local AP Post, who informed him that PW6, Alex Maina Karanja, had reported that his father's shop had been broken into and his father was missing. PW4 and PW6 proceeded to Kipipiri Police Station where the suspects were being held. When they saw the suspects, they immediately recognised the 2nd appellant as their neighbour. Crucially, the 2nd appellant was wearing a blue blood stained jacket which both witnesses instantly recognised as belonging to the deceased.

14. PW10, No. 62646 Corporal Pius Njagi, the investigating officer formerly attached to Kipipiri Police Station, testified that on 31st May 2016 at around 10.00 a.m., the appellants and the third suspect were brought to Kipipiri Police Station by APC Wambugu and APC Esther. The appellants were brought with several items matching those stolen from the deceased's shop. PW10 immediately took the blue jacket from the 2nd Appellant and retained it as an exhibit.

15. Under interrogation, the appellants disclosed that they had thrown the deceased's clothes in a pit latrine at Njura Primary School. PW6 retrieved the clothes from the pit latrine with the help of members of the public. The appellants also disclosed that they had disposed of the deceased's body in a thicket and gave directions to the place. At around 4.00 p.m., PW10, accompanied by the OCS Chief Inspector Kiptoo and three other officers, with the help of members of the public, recovered the deceased's body at Ngecha's farm.

16. PW11, Dr. Patrick Kiruki, a Senior Medical Officer at the County Referral Hospital (J.M. Hospital), Nyandarua, conducted the post-mortem examination on 6th June 2016. He formed the opinion that the cause of death was severe trauma of the head, chest, and abdomen, leading to severe internal haemorrhage and that a blunt object may have been used to hit the deceased, resulting in massive internal bleeding.

17. Both appellants gave unsworn statements in defence. The 1st appellant, Samuel Maina, testified that he was a resident of Githogoro Estate, Nairobi, but had leased land at Ranching area in Nyandarua County. On 27th May 2016, he left Nairobi to check on potatoes he had planted. He worked on the farm on 28th to 30th May 2016. On 31st May 2016 at 5.00 a.m., he left to travel back to Nairobi. He reached the stage at around 5.30 a.m. After 15 minutes, a vehicle arrived. He boarded it, and when they reached Cereals Board area, police stopped the bus. An officer entered and ordered anyone who had boarded at Kahiga stage to alight. He complied. He was ordered back into the vehicle and taken to the

police station. After two minutes, the 2nd appellant and another person were brought to the same cells. While in the vehicle, police brought in items in sacks and bags, a generator, keyboard, and speakers. At Miharati Police Station, he was interrogated, threatened, tied up, and beaten. He was forced to sign papers whose contents he was not shown. He maintained he was innocent.

18. The 2nd appellant, Joseph Mungai Wakori, also gave an unsworn statement denying the offence. His witness testified that he had been in police custody with the appellants and that one night, a police officer took them out, escorted them to the road, and told them to go away. He heard gunshots shortly after but did not know what was happening.

19. Having considered the totality of the evidence, the learned magistrate found that the prosecution had proved its case beyond reasonable doubt. The appellants were convicted of robbery with violence and sentenced to thirty (30) years' imprisonment.

20. Aggrieved, the appellants preferred appeals to the High Court at Naivasha, which were consolidated as Criminal Appeals Nos. 7 & 8 of 2020. The grounds, as amended, included: that the proceedings contained inconsistencies; that the offence was not proved beyond reasonable doubt; that their right to a fair trial was violated; that identification evidence was insufficient; that the charge sheet was defective; and that their defence was not adequately considered. In a judgment dated 14th July 2022, Ngenye J. (as she then was) dismissed both appeals in their entirety, upholding both conviction and sentence. The court stated thus:

> "I find that the prosecution proved beyond any reasonable doubt that the Appellants robbed the deceased. The Appellants conviction for the offence of robbery with violence was therefore sound and is hereby upheld.
>
> Under Section 296(2) of the Penal Code, a person convicted for the offence of robbery shall be sentenced to death. (emphasis mine). What this implies is that both Appellants ought to have been sentenced to death. However, in this case, it appears that by oversight, the Appellants were not given a notice of a possible enhancement of the sentence in the event that the conviction was upheld. On this ground, this court is disinclined to set aside the respective 30-year jail terms imposed by the learned trial magistrate"

21. The appellants now appeal to this Court. In their Memorandum of Appeal, they raise the following grounds: that the court erred in law and fact in upholding their conviction and sentence on evidence which did not amount to proof beyond reasonable doubt; that the court erred by upholding conviction and sentence on a defective charge sheet; that

> the court applied the wrong standard of proof; and that their defence was not considered.

22. When the matter came up before us for hearing on 10th December 2025, learned counsel Mr. Opondo appeared for the appellants whilst Mr. Omutelema, Senior Assistant Director of Public Prosecutions, appeared for the respondent. Both counsel had filed comprehensive written submissions upon which they relied. Having satisfied ourselves, as already detailed, that the appellants fully understood the consequences of proceeding with these appeals in light of the application for sentence enhancement, we proceeded to determine the appeal.

23. This being a second appeal, our mandate is confined to matters of law unless we discern a demonstrable error occasioning a miscarriage of justice in the concurrent findings of fact by the two courts below. We are guided by the well-established principle in Karani vs. R [2010] 1 KLR 73. With this principle in mind, we turn to the grounds raised by the appellants.

24. The appellants contend that the charge sheet was fatally defective and could not sustain a conviction. Specifically, they argue that the particulars were vague, alleging they were armed with unknown crude weapons without specifying the nature of those weapons. They further submit that the charge stated the deceased was "fatally wounded" but failed to indicate how, by whom, or through what act or means this occurred, rendering the charge ambiguous.

25. Section 134 of the Criminal Procedure Code (Cap. 75) provides that a charge must contain such particulars as are necessary to give reasonable information as to the nature of the offence charged. In Jason Akumu Yongo vs Republic [1983] eKLR, this Court affirmed that a charge which fails to disclose the offence to be tried or which gives a misdescription of the alleged offence is defective.

26. Section 296(2) of the Penal Code, provides:

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

27. These three circumstances are disjunctive. In Dima Denge Dima & Others vs Republic (Criminal Appeal No. 300 of 2007) [2013] eKLR, this Court held:

> " The elements of the offence under Section 296
>
> (2) are three in number and they are to be read not conjunctively, but disjunctively. One element is sufficient to found an offence of robbery with violence."

28. In Johana Ndungu vs Republic [1996] eKLR, this Court explained:

> " In order to appreciate properly as to what acts constitute an offence under section 296(2) one must consider the sub-section in conjunction with s.295 of the Penal Code. The essential ingredient of robbery under section 295 is use of or threat to use actual violence against any person or property at or immediately before or immediately after to further in any manner the act of stealing. Therefore, the existence of the afore-described ingredients constituting robbery are pre-supposed in the three sets of circumstances prescribed in s.296(2)... and any one of which if proved will constitute the offence under the sub-section."

29. We have examined the charge sheet. The particulars alleged that "on the night of 30th and 31st May 2016, the appellants, jointly with others not before court and whilst armed with unknown crude weapons, robbed William Karanja Mungai of various items valued at Kshs. 81,250/=, and at the time of the said robbery fatally wounded the said William Karanja Mungai." These particulars expressly disclosed all three disjunctive elements under Section 296(2): the appellants were armed with unknown crude weapons; they acted in company with others not before court; and they used violence, fatally wounding the deceased during the robbery.

30. In Sigilani vs Republic (2004) 2 KLR 480, this Court held that an accused person should be charged with an offence known in law, disclosed and stated in clear and unambiguous terms so that the accused may plead to the specific charge and prepare a defence. That test was satisfied. The charge stated the offence, the particulars disclosed all three aggravating elements that distinguish this offence from simple robbery under Section 295, and the appellants knew precisely what case they had to meet.

31. The complaint that the charge should have specified the exact nature of the "unknown crude weapons" misconceives the very purpose of criminal pleadings. The function of a charge is to give an accused person reasonable notice of the case he must meet, not to provide a forensic inventory of every implement used in the commission of a crime. The description adequately informed the appellants that the prosecution's case was that they were armed during the robbery. That was sufficient.

32. Similarly, the assertion that the charge failed to specify precisely how the deceased was wounded does not render it defective. The particulars alleged that the appellants, whilst armed and acting in concert, robbed the deceased and "at the time of the said robbery fatally wounded" him. This adequately informed the appellants that the prosecution's case included the infliction of fatal injuries during the robbery. The precise mechanism of wounding whether by beating, striking, strangling, or other means was a matter of evidence, not pleading.

33. The appellants understood the allegations. They participated fully in the trial. They raised no objection to the charge at the trial court. They cross-examined witnesses on all three elements. There was no confusion about the case they had to meet and there was no prejudice. We therefore find that this ground has no merit.

34. On the second ground, the appellants contend that the prosecution failed to prove the offence beyond reasonable doubt.

    They assert that the evidence was circumstantial, uncorroborated, and riddled with inconsistencies.

35. It is undisputed that the prosecution's case rested primarily on circumstantial evidence. Circumstantial evidence, properly marshalled, can sustain a conviction. In Ernest Abanga alias Onyango vs Republic (Criminal Appeal No. 32 of 1990) [UR], this Court laid down three principles that must be satisfied before a court can convict on circumstantial evidence;

    i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

    ii. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

    iii. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

36. We now examine whether the circumstances established meet this standard.

37. The appellants were arrested within hours of the robbery. The short interval between the robbery and the arrest is significant under the doctrine of recent possession. The appellants were found on a bus at approximately 6.08 a.m. on 31st May 2016, travelling away from the crime scene in possession of items matching precisely those stolen from the deceased's shop. Furthermore, PW2's evidence about the appellants wearing wet trousers and gumboots at dawn, despite no rain, provided circumstantial evidence that they had been moving through rough terrain or bush, and consistent with having committed the robbery hours earlier and disposing of the body in a thicket.

38. The doctrine of recent possession is well established. Where property is proved to have been recently stolen, and a person is found in exclusive possession of that property shortly after the theft, that person is called upon to give an explanation. If the explanation is unsatisfactory or if none is given, an adverse inference may be drawn. (see Isaac Ng'ang'a Kahiga vs Republic, Criminal Appeal No. 272 of 2005)

39. The appellants were found in possession of a generator, keyboard, music mixer, speakers, and other items. PW5, Mbogo Kuria, a church elder at Njura Full Gospel Church, positively identified the music equipment as belonging to the church. He testified categorically that he personally set up the equipment every Sunday. His evidence was corroborated by PW1, who confirmed that church property was stored in the deceased's shop and had gone missing.

40. The doctrine of recent possession was triggered. The appellants offered no credible explanation for their possession. Their defence consisted of bare denial and allegations that police planted evidence and forced them to sign statements under duress but they never explained how they came to possess property stolen mere hours earlier.

41. Again, the evidence did not rest on possession of stolen goods alone. There was a more damning piece of evidence: the blue blood-stained jacket worn by the 2nd appellant at the time of arrest.

42. PW4, the Assistant Chief, and PW6, the deceased's son, both testified that when they saw the 2nd appellant at Kipipiri Police Station, he was wearing a blue blood-stained jacket. Both witnesses immediately recognised this jacket as belonging to the deceased. PW6 stated that he recognised the jacket because his father wore it frequently. PW5, the church elder, also recognised the jacket as one the deceased wore to church.

43. PW7, Susan Wanjiru Ngugi from the Government Chemist, testified that she examined the blue jacket. Blood stains were visible on the left side of the chest and left arm. DNA analysis was conducted. The DNA profile from the blood stains matched the DNA profile from the deceased's blood sample.

44. In short, the 2nd appellant was found wearing a jacket that belonged to the deceased which was established by three independent witnesses who knew the deceased well. That jacket bore blood stains. Scientific analysis proved that the blood was the deceased's blood. The 2nd appellant offered no explanation for how he came to be wearing the deceased's jacket, nor how the deceased's blood came to be on that jacket.

45. Even though the appellants sought to discredit the DNA evidence, pointing to typographical errors in PW7's report, PW7 acknowledged an error in the table of DNA profiles where one entry incorrectly read "deceased's jacket" when it should have read "deceased's blood." But she explained this error in her testimony and clarified that the DNA profile itself was correctly tabulated. We have examined the report. The error was clerical, not substantive. The DNA analysis itself was sound. The blood on the jacket was scientifically proven to be the deceased's blood.

46. The chain of circumstantial evidence was fortified by yet another fact. PW10 testified that upon interrogation, the appellants disclosed where they had disposed of the deceased's body. Acting on these directions, police recovered the body in a thicket at Ngecha Farm at around 4.00 p.m. on 31st May 2016.

47. The appellants now contend this evidence should be excluded as it was obtained through torture in violation of their constitutional rights under Articles 25(a), 29, 49(1)(d) and 50(4) of *the Constitution*. We have examined the trial record. At no point during the prosecution's case did the appellants raise any objection to PW10's testimony about their disclosure. They did not suggest that this information was obtained through torture or coercion. It was only when they gave their defence that they alluded vaguely to having been assaulted and forced to sign documents. Their allegations were at best unsubstantiated.

48. But even if, we were to accept their allegations and exclude this evidence of their disclosure, which we decline, we are still left with the undisputed fact that the body was found exactly where police said the appellants directed them, and the clothes were retrieved from the precise location the appellants

allegedly indicated. More fundamentally, their defence that they were framed and police planted evidence does not explain the totality of the other evidence against them: their possession of the stolen items within hours of the robbery, the 2nd appellant wearing the deceased's jacket bearing blood scientifically proven by DNA analysis to be the deceased's, and their inability to provide any credible explanation for any of this. Even excluding the evidence of their disclosure, the case against them remains overwhelming, cogent and credible.

49. The evidence of recent possession, corroborated by recognition evidence from multiple witnesses, fortified by scientific DNA evidence, and the appellants' possession of intimate knowledge of where the body and clothes could be found, forms an unbreakable chain of circumstantial evidence. Taken cumulatively, these circumstances point unerringly to the appellants' guilt. The appellants have offered no reasonable explanation consistent with innocence. This ground fails.

50. With regards to the third ground of appeal, the appellants complain that the evidence was riddled with inconsistencies: discrepancies about where they boarded the bus (Kahiga versus Kabati), variations in descriptions of luggage, conflicting accounts of timing, and differing descriptions of the jacket's colour.

51. In our view, these complaints do not withstand scrutiny. PW9 initially testified the appellants boarded at Kahiga, but his police statement said Kabati. Under cross-examination, he clarified that these two stages are less than one kilometre apart. This is not a material inconsistency that undermines the prosecution case. It is a minor variation, one expects when human beings recount events from memory.

52. As to luggage descriptions, PW2 spoke of three bulky gunny bags and a canvas backpack. PW9 mentioned bags, sacks, speakers, woofers, and a generator. These accounts are not contradictory, they describe the same items from different vantage points and with differing levels of detail. Their core testimony; that the appellants boarded with bulky luggage containing music equipment remained consistent throughout.

53. The variation in jacket colour descriptions (blue, green, blackish) is equally unpersuasive. Colours appear differently under different lighting conditions and to different observers. What matters is not whether every witness described the precise shade identically, but whether the jacket itself was positively identified; and it was by PW4, PW5, and PW6, all of whom knew the deceased and had seen him wear that specific jacket.

54. In Philip Nzaka Watu vs Republic [2016] eKLR, this Court observed:

> " In evaluating discrepancies, contradictions and omissions, it is undesirable for the court to pick out sentences and consider them in isolation from the rest of the statements. The Court has to decide whether inconsistencies and contradictions are minor, or whether they go to the root of the matter."

55. We have evaluated these discrepancies in their totality. They do not go to the root of the matter. They are minor variations inevitable when multiple witnesses describe the same events. The material facts remained consistent: the appellants were found in possession of stolen property within hours of the theft; the 2nd appellant was wearing the deceased's blood stained jacket; the DNA on that jacket matched the deceased's blood.

56. The appellants also fault the prosecution for failing to call Corporal Wambugu. Section 143 of the *Evidence Act* provides that no particular number of witnesses is required to prove any fact. The prosecution is entitled to call witnesses it considers sufficient. In any event, Corporal Wambugu's evidence would merely have confirmed what PW2 and PW8 already testified to: that an alert was relayed. His absence does not create reasonable doubt.

57. Similarly, investigative shortcomings, PW10 not signing the inventory, items not being photographed or fingerprinted; whilst regrettable, do not undermine the core evidence. Multiple witnesses testified to the recovery and identification of the items. The items were produced in court and positively identified.

58. Having examined each piece of evidence, we must now stand back and consider the evidence cumulatively. Circumstantial evidence derives its strength not from any single strand but from interwoven threads that together form an unbreakable cord.

59. The facts, viewed chronologically, are damning. On the night of 30th to 31st May 2016, the deceased's shop was broken into, church equipment and other items were stolen, the deceased was brutally beaten, strangled, his body dumped in bush and covered with leaves. Within hours, the appellants were found on a bus travelling away from the crime scene. They were in possession of the stolen items. The 2nd appellant was wearing the deceased's jacket, stained with the deceased's blood. When questioned, they gave an unsatisfactory explanation. They disclosed where the body could be found and where the deceased's clothes could be recovered. The body and the clothes were recovered at the locations they indicated.

60. Each of these facts, considered in isolation, might conceivably be explained away. But they do not stand alone. Together, they form a chain from which there is no escape. The appellants offered no explanation that could possibly account for all these circumstances.

61. We can find no reasonable hypothesis consistent with innocence that explains all of these proven facts. The inculpatory facts are incompatible with the appellants' innocence. They point unerringly to their guilt. In our view, the learned High Court Judge was correct in concluding that the prosecution proved its case beyond reasonable doubt.

62. The appellants contention that the learned High Court Judge applied the wrong standard of proof similarly holds no water. A careful reading of the High Court judgment reveals that the court repeatedly referred to the standard of proof beyond reasonable doubt and applied the correct legal principles governing circumstantial evidence and evaluated the evidence against the correct standard required in criminal cases. This ground too fails.

63. Finally, the appellants argue that the courts below failed to give adequate consideration to their defence. The 1st appellant's defence was that he was travelling from his farm to Nairobi when the bus was stopped. Police brought items into the bus. He was arrested, taken to the police station, interrogated, threatened, tied up, beaten, and forced to sign papers. He denied involvement.

64. On the other hand, the 2nd appellant gave an unsworn statement denying the offence. A defence witness testified about an escape attempt from police custody.

65. It is axiomatic that the burden of proof in criminal cases rests on the prosecution throughout and never shifts to the accused. However, where the prosecution establishes a prima facie case, and the accused offers an explanation, that explanation must be evaluated. If the explanation is reasonably possibly true, it must be accepted. But if the explanation is manifestly false or so improbable that no reasonable person could accept it, it may be rejected.

66. The appellants' asked the courts to believe that: they just happened to be on the same bus, travelling from the same area where the robbery occurred, within hours of that robbery; that they just happened to be carrying luggage that precisely matched the stolen items; that the 2nd appellant just happened to be wearing a jacket belonging to the deceased, stained with the deceased's blood, but could offer no explanation; that the police planted all the evidence and they were forced to give statements disclosing the body's location.

67. In our view, the trial magistrate and the High Court Judge were entitled and indeed, were correct to reject these unsubstantiated claims. Both courts gave reasons for doing so. We find no error in their approach. Hence this ground fails.

68. We have carefully examined each ground of appeal. We have re- evaluated the evidence as we are required to do. We have considered whether the concurrent findings of the two courts below disclose any error of law or miscarriage of justice. We find none. We think the first appellate judge correctly upheld the finding of the trial court

69. The evidence against the appellants was overwhelming. It was properly admitted and carefully evaluated. The trial was fair. The conviction was sound. We therefore uphold the concurrent findings of both courts below, save for sentence.

70. Having upheld the conviction for robbery with violence under Section 296(2) of the Penal Code, the sentence follows as a matter of law. Section 296(2) provides that an offender convicted of robbery with violence "shall be sentenced to death." The sentence is mandatory. We have no discretion in the matter.

    The appellants were dully warned of this consequence and chose to proceed with these appeals fully aware of what was at stake. Accordingly, we set aside the sentence of thirty (30) years' imprisonment imposed by the trial court and upheld by the High Court, and substitute it with the sentence prescribed by law. Accordingly, each appellant is sentenced to death.

71. We so order.

DATED AND DELIVERED AT NAKURU THIS 30TH DAY OF JANUARY, 2026.

M. WARSAME

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JUDGE OF APPEAL J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA CIARB., FCIARB

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR