IN THE COURT OF APPEAL
AT KISUMU
[CORAM: NYAMWEYA, ACHODE & MATIVO JJ.A.]

CRIMINAL APPEAL 144 OF 2020

BETWEEN

BERNARD OKEMWA NYAKUNDI….....APPELLANT
AND

REPUBLIC.....RESPONDENT
(Appeal against the judgment of the High Court at Nyamira (Maina, J.) dated 11th July 2019 in HCCR Case No. 9 of 2017).

JUDGMENT OF THE COURT

1. **Bernard Okemwa Nyakundi** (the appellant) has appealed to this Court against the conviction and sentence of twenty years imprisonment imposed upon him by the High Court at Nyamira ***(Maina J.)*** on 11th July 2019 in **High Court Criminal Case Number 9 of 2017** for the offence of murder contrary to section **203** as read with section **204** of the Penal Code. The accusation against him was that on the night of **7th** and **8th** of December 2017, at Kanyerere Village in Masaba North Sub-county within Nyamira County, jointly with others not before the court murdered Zipporah Kwamboka (deceased).
2. PW1, then aged 7 years is a son to the deceased and the appellant. He testified that his father (the appellant) often beat his mother. On the night of **7th** and **8th** December 2017, together with his two siblings, they were sleeping in their room which had no door, therefore, from his bed, he could see his father in the next room beating the deceased using a stick and a panga. There was light from a torch which was hanging from the ceiling, so he could see clearly. His mother screamed as the appellant continued beating her, but no one came to her rescue. She fell and his father carried her out, but he later returned alone. That was the

last time

he saw her alive. The next day, he reported to his uncles and the police what he witnessed. He maintained that it was his father who killed his mother. On cross -examination, he clarified that his father was using a *rungu*.

3. PW3, a sister to the deceased testified that on **8th** December 2017 the appellant called him, and asked her to go to his place. She went with PW2 (her brother) and on arrival at the deceased's home, they did not find the deceased. They questioned the appellant about her whereabouts, but he was adamant that he did not know. He admitted that he had not reported her disappearance to the police. PW2 reported to the village elder, and accompanied by his brother (PW6) they reported the deceased's disappearance at Keroka Police Station. However, they were referred to Keumbu Police Station. Instead, of going to Keumbu Police Station, they returned to the appellant's house to seek more information on the deceased's whereabouts from the appellant. The deceased's children told them that the appellant was hiding behind his house, but, upon checking, they did not see him. In the meantime, Daniel Asande Obwangi (PW4) noticed blood stains behind the house which prompted them to intensify the search, and in the process, they noticed freshly excavated ground and banana leaves behind the house.

4. PW4 poked the freshly excavated ground with a stick, and when he pulled it out, it came out with a green dress. They also discovered a human body in the shallow grave which PW2 and PW3 identified as that of their sister (the deceased). PW2 also identified the green dress as belonging to the deceased. PW3 and PW2 testified that the deceased would occasionally go to their home after fighting with the appellant,

but they would reconcile and she would return to her matrimonial

home. Soon police officers arrived and took the body to Gucha Mortuary. A post mortem conducted by Dr. Morebu revealed that the cause of death was due to asphyxia secondary to manual strangulation. The doctor noted that the deceased had bruises on the face, scratch marks on the anterior neck and the neck trachea and the thyroid gland were broken.

5. Thomas Momanyi Ndege (PW5) the area Chief testified that both the deceased and the appellant hailed from his area of jurisdiction. Previously, he arbitrated over their matrimonial disputes and also received many reports on domestic violence between them and once they were settled, they would continue with their married life. He recalled having received a report concerning the deceased's disappearance from PW2 and being called by him after the body was discovered in a shallow grave. He was present when the body was exhumed by the police to whom he had reported the incident. Further, the accused often beat the deceased when he went home drunk. He stated that by the time the body was discovered, the appellant had disappeared.

6. The Investigating Officer, Sergeant John Okoth (PW9), testified that they were called to the scene by PW5. He found the deceased's body in a shallow grave measuring about 2 feet deep. He stated that the appellant was apprehended as he tried to flee and handed over to Administration Police Officers at Gesima AP Camp, and thereafter, he was handed over to Keroka Police Station. He produced photographs of the deceased's body and also confirmed that the body was taken to Gucha Hospital Mortuary. After the post mortem, the body was released to the deceased's family for burial.

7. At the conclusion of the case, the learned judge was persuaded that the prosecution had established a prima *facie case* against the appellant and put him on his deference. In his unsworn statement, the stated that he was a brick maker. He admitted that the deceased was his wife but maintained that he knew nothing about her death. He stated that on 9th December 2017 while on his way home from work, at Rigoma, two men told him that a police officer needed some bricks and they needed to discuss whether he could make some for them. Instead, they led him to the police post and detained him. Later, he was picked by officers from Keroka Police Station. On 11th December 2017, he was arraigned in court.

8. After evaluating the evidence and the law, the learned Judge was persuaded that the prosecution had proved the offence of murder to the required standard and convicted him as charged. After considering the appellant's mitigation, the learned judge sentenced him to 20 years imprisonment. In this appeal, he seeks to set aside both the conviction and sentence citing three grounds in his memorandum of appeal dated 25th August 2025, which can safely be reduced to two, namely; (a) whether the offence of murder was proved to the required standard, and (b) whether the sentence of 20 years imprisonment is excessive, harsh, and unlawful.

9. During the virtual hearing of this appeal on 3rd September 2025, learned counsel ***Mr. Nanunji*** appeared for the appellant while learned prosecution counsel ***Mr. Mwangi*** appeared for the respondent.

10. While conceding that the fact of death was not disputed, Mr. Nanunji maintained that the contestation is whether it was the appellant who unlawfully caused the deceased's death because none of the prosecution witnesses saw the appellant commit the offence, and PW1

only saw his

father beat the deceased with a panga and a stick. Further, none of the witnesses saw the deceased wearing a green dress, or saw the deceased on the fateful day, therefore, the prosecution evidence was purely circumstantial which did not irresistibly point to the appellant's guilt.

11. Regarding the ingredient of malice aforethought, Mr. Nanunji cited ***Republic vs Moloney [1986] 3 ALL ER 1025*** cited in ***Republic vs Ismail Hussein Ibrahim [2018] eKLR*** in support of the proposition that malice aforethought must be proved. He maintained that the prosecution did not discharge the burden of prove to the required standard nor did any of the prosecution witnesses show that only him could have committed the offence to the exclusion of any other person(s). He cited ***Republic vs Chivatsi & another [1989] eKLR*** to underscore that the prosecution bears the onus of prove and urged this Court to find that the trial court erred in convicting the appellant on circumstantial evidence which as was held in ***Anne Waithera Macharia & 5 Others vs Republic [2019] eKLR*** is indirect evidence which calls for inferences from the nature of things unlike direct evidence. Counsel maintained that no single witness saw the appellant inflict the fatal blow on the deceased.

12. Lastly, Mr. Nanunji maintained that motive was not proved and cited ***Libambula vs Republic [2003] KLR 683*** in support of the proposition that where a case entirely rests on circumstantial evidence, motive is an important element and may be drawn from facts though proof of it is not essential to prove a crime.

13. The respondent's counsel Mr. Mwangi opposed the appeal. Acknowledging that the prosecution evidence was substantially circumstantial, he cited ***Abanga alias Onyango vs Rep Cr. A No.32 of 1990 (Ur)*** in which this Court stated:

"It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (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."

14. He maintained that the prosecution evidence not only met the three tests laid down in the above case, but it also placed the appellant at the center of the offence. He cited the "last seen alive" doctrine which entails that where an accused person was the last person to be seen with the deceased and the deceased is later found dead, and the accused does not give a reasonable explanation as to what happened, a strong inference arises that the accused is responsible for the death. Counsel argued that whereas circumstantial evidence may not alone sustain a conviction, when corroborated by other cogent evidence it can form the basis of a conviction.

15. To underscore the above submission, Mr. Mwangi cited ***Republic vs E K K [2018] eKLR*** in which the High Court emphasized that if the prosecution proves the deceased was last seen with the accused and death followed shortly after, the accused must explain; failure may strengthen the inference of guilt. He stressed that PW1 witnessed the appellant beating the deceased after which he took her out of the house, only to claim later she had disappeared. He argued that the moment the body was discovered in a shallow grave, under the said doctrine, the appellant had a duty to explain what happened to her. He contended that the appellant's disappearance was very suspicious nor did he report the

deceased's disappearance to the authorities and when the body was found he attempted to flee. Therefore, the circumstantial evidence pointed to the appellant as the only person who was in a position to explain what happened to his wife. Further, the body was found buried in a shallow grave very close to his house which leaves no other conclusion other than (that?) he was involved in the death of his wife.

16. Regarding sentence, Mwangi cited this court's decision ***Ngao vs Republic [2021]*** and ***Juma Abdalla vs Republic criminal appeal 44 of 2018)*** in which this Court held that the Supreme Court in ***Francis Karioko Muratetu & another vs Republic [2021] eKLR*** clarified that its earlier decision did not invalidate mandatory sentences or minimum sentences in the Penal code and urged this Court not to interfere with the sentence.

17. In this appeal, the appellant challenges both the conviction and sentence imposed upon him by the High Court. Our mandate in a first appeal under section 379 (1) of the Criminal Procedure Code is akin to a re-trial because it involves a reconsideration of the facts and the legal principles relevant to the conviction and sentence. It is the appellant's expectation that this Court will conduct a thorough and fresh examination of the evidence, carefully weigh conflicting testimonies before arriving at our own independent conclusions. In doing so, we must remain alive to the fact that we did not have the opportunity of hearing and observing the witnesses as they testified in order to gauge their demeanour, consequently, we must give room to that fact. (See ***Mark Oiruri Mose vs. Republic [2013] eKLR***). Alive to the above stated mandate, we have reviewed the record, the submissions, and the authorities cited by

counsel. In our view, the issues that arise for determination are: (a) whether the offence of murder was proved to the required standard; and,

(b) whether this Court can interfere with the sentence.

18. The gravamen of the appellant's case is that the evidence against him was substantially circumstantial and therefore it did not irresistibly point at him as the killer. The appellant's argument in support of the said assertion is premised on his contention that other that PW1 who saw him beating the deceased, no one testified that he saw him administering the fatal blow on the deceased. As the appellant correctly observes, the prosecution evidence was purely circumstantial. Circumstantial evidence refers to indirect evidence that does not directly prove a fact but suggests a conclusion based on a series of related facts. Unlike direct evidence (such as eyewitness testimony), circumstantial evidence is inferred from the situation and surrounding facts. This Court in ***Ahamad Abolfathi Mohammed and Another vs Republic [2018] eKLR*** stated:

> ***"However, it is a truism that the guilt of an accused person can be proved either by direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances of facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence."***

19. Lord Heward CJ in ***R vs Taylor, Weaver and Donovan [1928] Cr. App. R 21*** stated:

> ***"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 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."***

20. In ***Abanga Alias Onyango vs Republic CR. App No. 32 of 1990 (UR*** this Court set out the parameters to be met in the application of circumstantial evidence in order to secure a conviction as follows:

> ***"it is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (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 circumstance taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human possibility the crime was committed by the accused and no one else.''***

21. This Court in ***Sawe vs Republic [2003] KLR 364*** reiterated that in order to justify conviction on circumstantial evidence:

> ***"…the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied upon. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence remains with the prosecution. It is a burden which never shifts to the accused.''***

22. The Supreme Court in ***Republic vs Mohammed & Another, [2019] KESC 48 (KLR)*** summed up the above principles as follows:

> ***"(55)The law on the definition, application and reliability of circumstantial evidence, has, for decades been well settled in common law as well as other jurisdictions. Circumstantial evidence is "indirect (or) oblique evidence … that is not given by eye witness testimony" It is "(a)n indirect form of proof permitting inferences from the circumstances surrounding disputed questions of fact." It is also said to be "(e)vidence of some collateral facts from which the existence or nonexistence of some facts in question may be inferred as a probable consequence ….***
>
> ***59.To be the sole basis of a conviction in a criminal charge,***

circumstantial evidence should also not only be relevant, reasonable and not speculative, but also, in the words of the Indian

Supreme Court, "the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established…." As was stated in the case of Kipkering Arap Koskei & Another v. R (1949) 16 EACA 135, a locus classicus case on reliance of circumstantial evidence in our jurisdiction, for guilt to be inferred from circumstantial evidence, "...the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt, …

68.As was further stated in the case of Musili v. Republic CRA No.30 of 2013 (UR) "to convict on the basis of circumstantial evidence, the chain of events must be so complete that it establishes the culpability of the appellant, and no one else without any reasonable doubt." The chain must never be broken at any stage.16 In other words, there "must be no other co-existing circumstances weakening the chain of circumstances relied on" and the circumstances from which the guilt inference is drawn must be of definite tendency and unerringly pointing towards the guilt of the accused. "Suspicion however strong, cannot provide a basis for inferring guilt."

23. The question before us narrows to whether the circumstantial evidence adduced in this case met this high threshold. PW1 detailed how he watched his father beat the deceased using a stick and a panga. Despite her screams, no one came to assist he. PW1 saw her fall and his father carried her out of the house. That was the last time he saw his mother. After sometime the appellant returned alone and they slept. PW1's account brings into focus two important legal principles. One is ***"the last seen a live doctrine,"*** a principle of circumstantial evidence that places the burden of explaining the deceased's death on the last person seen with them. (See ***Rex vs Kipkering Arap Kosgei & another [1949] 16 EACA 135*** and ***Simon Musoke vs Republic [1958] EA 715).***

24. The evidence that the appellant was the last person seen with the deceased was not controverted. In his defence, he did not deny beating the deceased and taking her out of the house after she collapsed. This

evidence, in our view shifted the burden to the appellant to explain what happened thereafter and to demonstrate that he had nothing to do with her death. He avoided confronting this critical issue even after it was said that after he took the deceased out of the house he returned alone. He was obligated to explain when, where and how he parted with her. In terms of Section **111 (1)** of the Evidence Act, a burden was cast on him to provide a probable and satisfactory explanation of the circumstances, explaining when, where and how they parted and her condition at that particular moment as such facts as are within his special knowledge. (See ***Douglas Thiongo Kibocha vs Republic [2009] eKLR).***

25. However, the last seen alive theory alone is insufficient to sustain a conviction; it requires corroboration from other circumstantial evidence to establish guilt beyond a reasonable doubt and this brings us to the second critical aspect, which is, the appellant's disappearance, despite claiming that the deceased had disappeared and after he was questioned about her where abouts. PW2 testified that the appellant called her on 9th December 2017 and asked her to go to their home. She went with her brother, PW3. On arrival at the appellant's home, PW3 asked the appellant the deceased's whereabouts and his answer was that he did not know. PW3 asked the appellant whether he had reported her disappearance to the authorities and he said he had not. PW3 and PW4 went to report to the police, but when they returned, the appellant had vanished. The appellant's children told PW3 that the appellant was hiding at the back of the house, but they did not find him there. PW 4 saw blood stains at the back of the house. The search for the deceased intensified and shortly her body was buried in a shallow grave. PW9 testified that the appellant who had disappeared from his home was

arrested. The appellant's act of disappearance at this critical moment in

legal parlance is described as **"the post offence conduct".** The following remarks made by Rothstein J. in ***R vs White [1999] 2 SCR*** on behalf of the majority of the Canadian Supreme Court, indicates the approach to the assessment of ***post-offence conduct*** as circumstantial evidence of guilt. He stated:

> ***"The principle that after-the-fact conduct may constitute circumstantial evidence of guilt remains good law. At its heart, the question of whether such evidence is admissible is simply a matter of relevance ... As Major J. noted in White (1998), 'evidence of post- offence conduct is not fundamentally different from other kinds of circumstantial evidence. In some cases it may be highly incriminating, while in others it might play only a minor corroborative role' ... As with all other evidence, the relevance and probative value of post-offence conduct must be assessed on a case- by-case basis ... Consequently, the formulation of limiting instructions with respect to the broad category of post-offence conduct is governed by the same principles as for all other circumstantial evidence."***

26. *"After the fact conduct"* such as attempting to conceal evidence, making false statements, fleeing from the scene or fabricating an *alibi* can suggest that the accused is trying to hide his involvement in the crime. Faced with such circumstances, the court is obligated to determine whether the conduct is relevant to the crime and if it has probative value, meaning it tends to prove guilt. Inferences of guilt drawn from post- offence conduct must be reasonable and supported by evidence and not just speculative. The court considers whether there are other reasonable explanations for the conduct that don't suggest guilt. Our reading of the appellant's defence leaves us with no doubt that he never even offered plausible reasons for his post-offence disappearance. As was held in ***Douglas Thiongo Kibocha vs Republic [Supra]****:*

"When parliament enacted section 111 (1)…, it must have

recognized that there are situations when an accused person must be called upon to offer an explanation on certain matters especially within his knowledge. Otherwise, the prosecution would not be able to conduct full investigations in such cases and the accused in the event, will escape punishment even when the circumstances suggest otherwise. Section 111(1), above, places an evidential burden on an accused to explain those matters which are especially within his own knowledge. It may happen that the explanation may be in the nature of an admission of a material fact."

27. The circumstantial evidence on the record when taken cumulatively shifted the evidential burden to the appellant to explain the whereabouts of the deceased. However, he opted to flee at this critical moment despite claiming that the deceased had fled. This was therefore a proper case for the court to make an inference against the appellant in absence of a plausible explanation as to the whereabouts of the deceased. It was not sufficient to say she had disappeared, and then attempt to flee from the home. We are persuaded that the circumstantial evidence pointed irresistibly to the appellant as the offender and no other reasonable hypothesis can be made after properly analyzing the said evidence.

28. Having placed the appellant squarely at the scene of the crime, we will now address the question whether the ingredients of the offence of murder were proved to the required standard. Section **203** of the Penal Code defines the offence of murder as follows: ***"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."***

29. A reading of the above section shows that to succeed in a murder case, the prosecution must prove the following ingredients: (a) the death of the deceased. (b) that the death was caused by an unlawful act or omission on the part of the accused. (c) that in causing the death of the

deceased, the accused had malice aforethought. It is within the bounds

of these three elements that we shall determine whether the ingredients of the offence of murder were proved. To start with, the fact death is not disputed. In fact, the appellant's counsel said so in his submissions. Therefore, we say no more about this ingredient.

30. The question is whether the deceased's death was caused by an unlawful act or omission on the part of the appellant. Relevant to this issue is the evidence of PW1 that he witnessed his mother being beaten brutally by his father. He saw her collapse and his father took her out of the house only to return alone later. He never saw his mother again. There is also the discovery of blood at the back of the house and ultimately the discovery of the body in a shallow grave at their shamba. In his defence, he did not account for the period he removed the deceased from the house up to the time he returned, and why he casually told PW2 and PW3 that she had disappeared, yet he did not report her disappearance to the police. When he called PW2, he never mentioned that she had disappeared, nor did he adduce any evidence showing that another person other than himself caused the death. We therefore find no basis to fault the trial courts finding that the appellant was proved as the offender. We therefore affirm the trial court's finding that it is the appellant who caused the deceased's death.

31. The other ingredient is malice aforethought. Malice aforethought signifies the intention or state of mind of the accused at the time of the commission of the offence, indicating a deliberate decision to cause death or grievous bodily harm. The statutory definition of malice aforethought is provided in section 206 of the Penal Code which reads:

> ***206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:***

a. ***an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;***
b. ***knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;***
c. ***an intent to commit a felony;***
d. ***an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.***

32. The Eastern Africa Court of Appeal in ***Rex vs Tubere s/o Ochen (1945) EACA 63*** stated that in determining the existence or nonexistence of malice, one has to look at the facts, the weapon used, the manner in which it is used and part of the body injured. Malice aforethought may also be inferred from the acts of the accused person. This Court in ***Ernest Asami Bwire Abanga alias Onyango vs R (CACRA No. 32 of 1990)*** stated that the question of intention can be inferred from the true consequences of the unlawful acts or omission of the brutal killing, which was well planned and calculated to kill or to do grievous harm upon the deceased. (See also: ***George Ngotho Mutiso vs Republic [2010] eKLR, & Karani & 3 Others v Republic [1991] KLR 622)***.

33. As decided cases suggest, there has to be intent to cause harm or death or knowledge that an act can cause death or injury on the part of the accused person. Did the evidence establish the requisite *mens rea* on the part of the appellant? We have perused the evidence tendered before the trial court and the impugned judgment. We note that by attacking the deceased with a panga and a stick, the appellant ought to have known that he would cause grievous bodily harm or death.

Further, the postmortem report shows that the deceased died of asphyxia, secondary to manual strangling. Strangulation, even by itself without any other

injuries, is potentially fatal and the fact that she was strangled until she died manifests a motive to kill, that is, the presence of *mens rea*. *In **Rex vs. Tubere s/o Ochen (Supra),*** it was stated that if repeated blows to the vulnerable parts of the body are inflicted, then malice aforethought can be inferred. In the same vein, strangulation till death occurs is clear evidence of premeditated murder. Accordingly, it is our finding that malice aforethought was sufficiently proved to the required standard.

34. Lastly, the appellant's counsel describes the sentence of 20 years as harsh and excessive. Section 379 (1) (a) & (b)of the Criminal Procedure Code provides for this Court's jurisdiction to entertain an appeal against sentence from the High Court as follows:

> ***1. A person convicted on a trial held by the High Court and sentenced to death, or to imprisonment for a term exceeding twelve months, or to a fine exceeding two thousand shillings, may appeal to the Court of Appeal-***
>
> ***a. against the conviction, on grounds of law or of fact, or of mixed law and fact;***
>
> ***b. with the leave of the Court of Appeal, against the sentence, unless the sentence is one fixed by law.***

35. In ***Francis Muruatetu & Ano. vs. Republic, the Supreme Court of Kenya Petition No. 15 & 16 of 2016, [2017] eKLR*** affirmed the importance of judicial discretion in sentencing. It emphasized that courts must weigh the specific circumstances of both the offender and the offence to ensure a just outcome. The trial Judge considered the appellant's mitigation and ultimately sentenced him to a definite term of 20 years in prison. An appellate court's power to interfere with sentence imposed by courts below is circumscribed. It can only do so

where there has been an irreqularity that results in a failure of justice, or if the court

below misdirected itself to such an extent that its decision on sentence is vitiated or the sentence is so disproportionate or shocking that no reasonable court could have imposed it. The appellant has not demonstrated any grounds upon which we can interfere with the sentence. We find nothing to suggest that the sentence is harsh, excessive or illegal. Conversely, the sentence of 20 years is in our view too lenient considering the nature of the offence and the manner it was executed. The appellant should consider himself lucky that the respondent did not file a notice of enhancement of sentence. We say no more. The upshot of the above is that the appellant's appeal against both conviction and sentence is dismissed for being devoid of merits.

36. Orders accordingly.

Dated and delivered at Kisumu this 30th day of January, 2026.

P. NYAMWEYA

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JUDGE OF APPEAL
L. ACHODE

.....
JUDGE OF APPEAL
J. MATIVO

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed
DEPUTY REGISTRAR