



**Republic v Mulaya (Criminal Appeal E060 of 2023)
[2026] KEHC 1126 (KLR) (9 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1126 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E060 OF 2023**

RK LIMO, J

FEBRUARY 9, 2026

BETWEEN

REPUBLIC APPELLANT

AND

EMILY KIVALI MULAYA RESPONDENT

JUDGMENT

1. This is an appeal lodged by the State through Office of Director of Public Prosecution against the ruling of Hon P.C Biwott delivered on 20/5/2019 vide Kitale CM’s Court Cr. Case NO.3836 of 2014 where the respondent herein was charged with various counts of conspiracy to defraud contrary to section 317 of the Penal Code, Stealing contrary to section 275 of the Penal Code, making a document without authority contrary to section 347(f) of the Penal Code and uttering a false document contrary to section 353 of the Penal Code.
2. The respondent denied all the counts and the appellant presented a total of ten (10) witnesses to prove their case. At the close of the prosecution the trial court was called upon to determine whether there was a sufficient case established to place the respondent on her defence. The trial court evaluated the evidence and found that the prosecution’s case on the overall did not establish that the respondent had a case to answer in all the 12 counts and therefore having not discharged its burden of proof the respondent was acquitted under section 210 of the Criminal Procedure Code in all the 12 counts.
3. The state felt aggrieved and preferred this appeal and raised the following grounds namely;
 - i. That the trial magistrate erred in law and in fact in dismissing the appellant whereas the appellant did prove its case to the required standard at that stage.
 - ii. That the trial magistrate erred in law and in fact in applying wrong principles while determining the evidence adduced in support of the prosecution’s case and reached wrong conclusion in assessment of the evidence provided in total disregard to the *Evidence Act*.



- iii. That the trial magistrate erred in law and in fact in failing to take into consideration the evidence of the appellant and the submissions filed when making its decision.
 - iv. That the learned magistrate misdirected himself in assessment of facts tendered and made a wrong decision.
 - v. That the trial magistrate prematurely dismissed the prosecution's case under section 210 of the Criminal Procedure Code despite the prosecution having provided sufficient evidence to warrant the respondent being put on her defence.
 - vi. That the trial magistrate failed to understand that the prosecution's case ought to be proved beyond reasonable doubt and not beyond shadow of doubt.
 - vii. That the trial magistrate erred in his ruling by heavily relying on the submissions by defence without testing the defence evidence to weigh it against the prosecution's case.
 - viii. That the trial magistrate erred in reaching a wrong finding on the issue of revocation of Power of Attorney in total disregard to the evidence adduced by the prosecution and further without the production of the alleged Power of Attorney in evidence by the defence as the same was only marked for production yet the trial magistrate heavily relied on it in reaching its decision in total disregard to the rules of evidence.
4. In its written submissions dated 23/5/25 done through learned counsel Mark Mugun, the Principal Prosecution Counsel, the appellant gives a chequered background of the trial pointing out that immediately after the ruling of no case to answer and lodging of an appeal, the lower court file went missing. That the sudden disappearance of the file led to this court granting them leave to file appeal out of time.
 5. The appellant has expressed surprise that by the time the original file disappeared the proceedings were already typed and extracted. It submits that both parties to this appeal have not challenged the accuracy of the typed proceedings.
 6. The State cites a Court of Appeal decision in *John Karanja Wainaina –vs- Republic (2004)eKLR* where the court made the following guidelines;

“In such a situation as this, the court must try to hold the scales of justice and in doing so, must consider all circumstances under which the loss has occurred. Who occasioned the loss of the file? Is the appellant responsible? Should he benefit from his own mischief and illegality? In the final analysis the paramount consideration must be whether the order proposed to be made is the one that serves the best interest of justice. An acquittal should not follow as a matter of course where a file has disappeared. The interest of justice as a whole must be considered.”
 7. The appellant though not directly accusing the respondent for the disappearance of the lower court file, it wonders how death certificate earlier tendered in evidence at the trial and supposed to have been part of the record of the missing file, was later used as an exhibit in a succession cause in *Milimani HC SC 758/21* where the respondent was petitioning for letters of administration. The State submits without pointing fingers that this court is duty bound to deny whosoever participated in the file's sudden and mysterious disappearance from achieving the goal of frustrating justice. The state submits that because the reconstructed file is reliable and credible, it should be relied on in determining this appeal.



8. In its submissions to the main appeal dated 14/8/24 done through learned counsel Jackline Kiptoo, Senior Assistant Director of Public Prosecution, the appellant has enumerated the 12 counts that were preferred against the respondent at the trial in the lower court.
9. It submits that the ruling of no case to answer should be set aside and the respondent be put on her defence based on the evidence tendered during trial.
10. The State points out that it was erroneous for the trial court to rely on a document marked for identification but not produced to find that there was no case to answer. In that regard the appellant relies on the case of Kenneth Nyaga Mnige –vs- Austin Kiguta & 2 Others (2015)eKLR where the court held that if a document is marked for identification and not produced and marked as an exhibit the document would only be hearsay, untested and unauthenticated account.
11. The appellant submits that PW2 marked the Revocation of Power of Attorney as MFI 1. That there is no evidence that the same was produced as an exhibit but in its ruling, the trial court relied on it to find “by the complainant revoking the General Power of Attorney and agreeing to have donated it, Count V thus becomes confusing. The confusion will give the benefit to accused.”

The appellant submits that by relying on a marked document the trial court erred because the document was not produced and contends that on that ground the ruling should be set aside.
12. The appellant points out the summary of the evidence tendered by prosecution’s witnesses at the trial. That the evidence of Abigael Khayesa Sitanda (PW1), the 1st wife of the late Henry Khaemba, the donor of the disputed or impugned Power of Attorney indicated that the deceased did not transfer or authorize anyone to sell parcel of land in Liavo or Kapomboi. The appellant further states that PW2 Edgar Chilande Wanyama, son to the deceased donor stated that his late father informed him in March 2013 that his title deeds with respect to Trans-Nzoia/Liavo/36 and Trans-Nzoia/Kapomboi/193 were missing from their home and that the deceased did not report the loss because he did not have copies. That when a search was conducted with respect to parcel at Kapomboi/193 it was discovered that the same had been sold to one David Kinisu.
13. The appellant further points out that the evidence of PW3 confirmed that the respondent sold 50 acres of land at Kapomboi and that the Power of Attorney did not touch Liavo/36 but the same had changed hands to the respondent. That PW7 stated that the deceased donor of the impugned Power of Attorney was shocked at these developments. That PW8 testified that the deceased donor put restrictions on Liavo/36.
14. The appellant further contends that the evidence of the investigating officer (PW9) showed that the deceased donor reported on 15/3/2014 that the respondent had transferred Liavo/36 to herself and that Kapomboi/193 had changed hands to one David Kinisu. The appellant points out that the impugned Power of Attorney was not executed by the deceased donor and that the document examiner (PW1) confirmed that fact.
15. The appellant submits that the respondent was charged with conspiracy with others not before court and that it proved the case to the required standard warranting the accused to be placed on her defence. The State points out that evidence was tendered showing how the deceased donor (Henry Khaemba) found that title deeds with respect to Kapomboi parcel and Liavo were missing from his house in Ongata Rongai and that the same happened when the deceased and the respondent were living together. The State contends that the charge of stealing the 2 titles was well established and the accused had a case to answer. Still on the charge of stealing, the appellant submits that the respondent was charged with stealing Identification Card of Henry Khaemba on top of his two titles with respect to Trans-Nzoia/Liavo/36 and Kapomboi/193 all of which were found missing from the house. The



appellant contends that the respondent had a case to answer with regard to charge of stealing title deeds which led to transfer of Kapomboi/193 parcel to David Kinisu and Liavo/36 to herself.

16. The appellant further submits that the charge on uttering false document contrary to section 353 of the Penal Code was proved beyond reasonable doubt because it established that application to the Land Control Board in regard to Liavo/36 was forged and that Transfer of Land document purported to be signed by Henry Wanyama Khaemba were established to be forged by a handwriting expert and that the forged document was presented to Deputy Land Registrar purporting it to be a genuine Transfer of Land Form duly executed by Henry Wanyama Khaemba.
17. The appellant submits that from the evidence adduced a prima facie case was established warranting the respondent to be placed on her defence to explain adding that the failure by the trial court to place her on her defence was erroneous.
18. Mr Mugun for the appellant further submitted that an acquittal under section 210 of the Criminal Procedure Code means that the prosecution's case was so helpless and there was no need to place the accused on her defence. The State contends that the allegations against the respondent were that the deceased who was the complainant did not execute documents for transfer or authorize the same contending that all were forged and lists the documents as follows;
 - i. Power of Attorney.
 - ii. Statutory declaration.
 - iii. Transfer Forms.

It is submitted that the prosecution in support that the documents were not authored by the deceased complainant brought a forensic document examiner (PW10) who compared the handwriting of the deceased and the ones on the impugned documents and concluded that the complainant was not the maker of impugned documents. The State submits that by virtue of the strength of that evidence alone, the prosecution's case was good enough for the court to find that the respondent had a case to answer.

19. The appellant's case is that with the proof of forgery the subsequent offences of uttering false documents followed suit. That because the forged documents were used in the transfer of two properties, there was need to put the respondent on her defence to explain how the forged documents found their way to the Land Registrar.
20. It faults the trial court for finding in some part that it did not believe the defence entirely and went on to acquit her instead of placing her on her defence. The State submits that an error occurred which requires to be reversed and corrected so that the respondent can be put to answer about the forged signatures.
21. The respondent on the other hand has strenuously opposed this appeal through written submission by learned counsel Ongoya & Wambola Advocate dated 15/9/2024 and further oral submission by Ongoya Advocate.
22. The respondent supports the trial court's finding that there was no case to answer in view of the evidence tendered by the prosecution.
23. The respondent submits on legal principles on prima facie case citing the decision in Republic –vs- Ndege (2019). She submits that a prima facie case is that which is strong sufficiently to call an accused person to answer and that a prima facie case is that which establishes a case that in absence of any evidence in rebuttal is sufficient to sustain a conviction. The respondent in that regard relies on the following authorities;



- a. Republic –vs- Alex Mwanzia Mutangili (2017) eKLR
 - b. Republic –vs- Owuor (Cr.Case NO.E002/22)(2024)KLR
 - c. Pius Arap Maina –vs- Republic (2013)eKLR
24. In the above decisions the courts in summary found that a mere fact that some evidence supporting a charge is insufficient to place the accused on defence. That the court should weigh and determine if the evidence is sufficient to convict even if the accused was to opt to remain silent. That where there are some material gaps in the prosecution’s case an accused should not be placed on defence and should there be any material doubts, the same should be in favour of accused.
 25. In response that the trial court relied heavily on the revocation of Power of Attorney that was marked for identification and not produced in evidence, the respondent contends that PW1 referred to the impugned document and admitted its existence. That PW2 Edgar Wanyama also conceded to the existence of revocation of the Power of Attorney. That admission of the said fact by prosecution witnesses dispensed with further proof of the fact. She supports the trial court for relying on the said document despite the fact that the same was not produced.
 26. The respondent urges this court as the first appeal court to examine the evidence as a whole and determine whether the trial court erred in its finding. She relies on Kiilu & Anor –vs- R (no citation given).
 27. On conspiracy to defraud, the respondent submits that a lone person cannot conspire with herself. That the prosecution did not demonstrate the person she conspired with. To her that count cannot stand even if she was to remain silent if she was placed on her defence.
 28. On Count II that is the charge of stealing of the title deeds, the respondent submits that PW2 and PW9 conceded that advocate Nelson Harun admitted that the deceased complainant and the respondent took the titles to him. The respondent submits that the elements of mens rea and actus reus were not proved.
 29. She further submits that there was no evidence tendered with respect to Count III, IV, VIII and IX and that there was no evidence that the respondent made a document without authority or that she acted without authority. The respondent contends that she did not utter any false document and could not be placed on her defence to answer the above cited counts.
 30. She contents in regard to Count 10 (that is uttering a false document to Hellen Mutai PW5 with respect to Parcel No.Liavo/36, there was no substantiation. According to her PW5 did not implicate her in any way.
 31. In regard to Count 12 that is conspiracy to defraud, the respondent submits that there was no evidence to show the persons she conspired with and therefore the elements of mens rea and actus reus are missing and could not be placed on defence as such.
 32. She submits that it is not her duty to fill the gaps left by prosecution and that the prosecution failed to establish a prima facie case.
 33. In her further oral submissions through Ongoya Advocate, the respondent regretted the disappearance of the lower court file and expressed optimism that despite the problem, this court as a first appellate court is still able to re-evaluate and analyze the evidence tendered and reach own conclusion.
 34. The respondent contends that the transactions with regard to land parcels which were a subject to the criminal case were also a subject to ELC No.120/14 and 119/14 where judge Nyagaka found that all



- the transactions done were above board. The respondent's reasons that the standard of proof required in civil cases is on a balance which in her view is comparable to standard applicable in criminal cases when determining whether there is a case to answer.
35. The respondent contends that the prosecution's case against her was hopeless and there was no need to place her on her defence. She argues that the very claims of fraud were raised in the Environment and Land case and that there is a judicial finding that the claims could not stand. It is her contention that the facts have not changed and urges this court to make similar finding in this appeal because the trial court also arrived at the same conclusion.
 36. She submits that since a superior court has separately and independently considered the same facts in issue and concluded that there was no evidence of fraud on a balance of probabilities, it is her contention that the lower court was right and cannot be faulted in finding that there was no case to answer.
 37. The respondent submits that since PW1 conceded to the existence of revocation of a Power of Attorney, the validity of the Power of Attorney cannot be questioned because revocation means there was a valid Power of Attorney.
 38. The respondent submits that the person who prepared the Power of Attorney was not called as a witness. That the deceased died before he testified due to delay and that Counts 3,4,8 and 9 could not stand because no evidence was adduced to support them.
 39. She further submits that the trial court could not rely on expert evidence alone but had to consider the entire evidence in totality. To her the Land Registrar did not state that she appeared in her office and therefore the count on uttering a false document could not stand.
 40. This court has set out in summary both the appellant's case as well as the respondent's response. This appeal revolves around the finding by the trial court that the respondent had no case to answer in all the 12 counts she faced in the lower court. The main issue(s) in this matter is whether the appellant established a prima facie case in any of the 12 counts the respondent was charged with. The determination of this question therefore necessitates an interrogation on what is a "prima facie" case?
 41. The legal definition of a prima facie case as per google dictionary indicates that the term prima facie is a Latin term meaning "at first sight" or "on the face of it". It refers to evidence that is considered sufficient to establish a fact or a case unless disproved or rebutted by contrary evidence. That it is the "evidence presented by the prosecution which is adequate to support a claim or allow a case proceed to defence and that the evidence must be strong enough that a reasonable tribunal properly applying the law can convict an accused if no explanation or rebuttal is offered by defence." In other words a prima facie case is where the evidence presented by the prosecution is sufficient to create a rebuttable assumption that the accused committed the offence in the absence of any rebuttal or challenge on the evidence presented. The above definition is in tandem with the definition given in the case cited by the respondent in Republic -vs- Ndege (2022)eKLR.
 42. It is therefore well settled that a prima facie case in a criminal case is established where the prosecution has placed before a trial court sufficient evidence that on the face of it and without any rebuttable or challenge by the accused is able to sustain a conviction. The standard of proof required though slightly lower than beyond reasonable doubt is high because the evidence must establish a case that on the face of it or first sight is sufficient to counter general presumption of innocence and warrant a conviction in the absence of a rebuttal by the accused.
 43. Now before I delve into the re-evaluation of evidence, it is important to note and express regret at the mysterious disappearance of the lower court file after the ruling of case to answer. It is important to



observe that the wheels of justice are capable of rolling despite hurdles that may be placed on its path by anyone out to derail its course. The prosecution is commended for the efforts made to ensure that a skeleton file is availed. In view of the mysterious availability of court proceedings which are accepted by both sides as a true reflection of the trial, it is comforting to allay fears that justice will not be dispensed because of disappearance of the lower court file.

44. Now back to the case that is the subject of this appeal. The appellant in its submissions has listed down the 12 counts together with the respective particulars. In the interest of judicial time I find it unnecessary to repeat each and every count here in detail. Suffices to state that the nature of the counts in the 12 counts are as follows;
- i. Conspiracy to defraud contrary to section 317 of the Penal Code (Count 1 & 12).
 - ii. Stealing (titles) contrary to section 275 of the Penal Code.
 - iii. Making a document without authority (General power of attorney) contrary to section 347 (d) of the Penal Code (Count 3, 4, 8 &9).
 - iv. Uttering a false document (General Power of Attorney), Transfer Forms, Application of Land Control Board) contrary to section 353 of Penal Code (Count 5,6,7,10 and 11).

45. The prosecution's case on the overall was based on a complaint made by the complainant (now deceased) that his 2 title deeds went missing together with his National Identity Card. The evidence of PW2 (Edgar Chilande Wanyama) a son to the deceased complainant indicates that the deceased reported to him about the missing titles. This is how he stated;

“In March 2013 my father told me that title deeds in respect to the above mentioned parcels (i.e. Trans-Nzoia/Liavo/36 and Trans-Nzoia/Kapomboi/193) were missing from the house in Ongata Rongai”

The witness further stated that shortly thereafter in December 2013, a caretaker known as Fred Simiyu called him and told him that “serikali imebadilika” and was being evicted. That is the time the son suspected that something dubious could have taken place and that is the reason he said the family decided to conduct a search.

46. The evidence of PW8 supported the evidence with regard to disappearance of 2 titles belonging to the deceased complainant. That the deceased informed him about the same and that at that time the deceased was ailing. He further stated that he was a cousin to the deceased complainant and knew that the respondent lived with the deceased before they parted ways in 2014. That the deceased due to ill health asked him to report to the police regarding loss of his Identification Card and title deeds. That he went to Central police station but the police wanted the complainant in person and copies of lost documents.
47. I have perused through the evidence of PW9 (the investigating officer), without the need or necessity of going into the details of his evidence, it is apparent that the deceased complainant made a report to Kitale Police Station on 15/3/2014 regarding the unauthorized transfer of Liavo/36 and Kapomboi/193. Now if something disappears in a house occupied by two persons and a report is made linking the disappearance with subsequent actions or transactions on the lost documents with one of the occupants of that house, then certainly the person responsible or linked to those transactions should surely have an explanation or put in another way, the situation creates a presumption that the person who is linked with the subsequent actions on the lost documents certainly has a hand in the disappearance or how else could subsequent transactions on lost documents be explained. In my view the evidence of PW2, PW4, PW8, PW9 when weighed in light of the evidence of PW10



established a clear case to answer with respect to stealing (Count 2). The evidence of PW3 despite restrictions on his testimony showed that the buyer of Kapomboi/193 after paying initial deposit demanded to be shown original documents by the respondent. This creates a rebuttable assumption that the respondent showed the buyer both the original title and the general Power of Attorney. PW4 confirmed receiving the documents before effecting transfer of Kapomboi/193 to David Kinisu Sifuna. PW9 was categorical that deceased told him the titles were stolen. There was sufficient case to place the respondent on her defence in that regard.

48. In regard to the two counts on conspiracy to defraud contrary to section 317 with respect to parcel Kapomboi/193 and Liavo/36, the respondent contends that the prosecution's case is lacking because there is no evidence of persons who purportedly conspired with the respondent. This court finds that the charges were framed properly because it states that the respondent conspired with others not before court. The evidence of PW2 indicates that the deceased complainant made a complaint to the police regarding the manner in which transactions affecting his two parcels Liavo/36 and Kapomboi/193 were carried out without his authority.
49. It is obvious that transfer of land from one individual to another involves a process and documentation. One individual alone cannot actualize transfer without collusion or involvement of others. The evidence of a property agent (PW3) shows how negotiations and eventual transaction of Kapomboi/193 happened. The evidence of PW9 stated that when he questioned advocate Nelson Aron "he was evasive" and that "he wanted to charge him" but left the decision to Office of Director of Public Prosecution to review it. The failure to charge the "alleged conspirator", in my view left the charge of conspiracy hanging because conspiracy entails two or more persons agreeing to commit an alleged or an overt act. The prosecution was required to name the individual(s) who conspired with the respondent to defraud the complainant in the charge sheet.
50. This court finds that the respondent is correct to contend that there was no case to answer in that regard because the person she conspired with is not named and/or that there was no evidence adduced showing conspiracy of her with other person(s). To that extent this court finds that the trial court was correct to find no case to answer with respect to count 1 and 12.
51. With regard to the counts on making a document without authority and uttering a false document, this court finds that the evidence of PW2 indicates that the deceased complainant denounced the impugned transactions with respect to Liavo/36 and Kapomboi.193. That fact was corroborated by PW7 (Eliud Butali Khaemba) a brother to the deceased complainant. The evidence of PW5 (Aggrey Kabeshi) a Land Registrar who was based at Kitale at the material time testified with respect to Liavo/36 and stated that PW2 went to the Land Registry with deceased complainant who appeared sickly and that he complained about the transfer of Liavo/36 and he placed restrictions on them and found the matter "sensitive".
52. This court further finds that the evidence of PW9 and the forensic expert PW10 was significant in establishing a prima facie case. The defence at the trial and in appeal case heavily relied on revocation of Power of Attorney. It is however my considered view that PW2 gave adequate explanation on the legal advice he obtained from counsel. In my view without the document being tendered in evidence there was no added weight to the defence. A document must be produced or tendered in evidence for the same to be admissible. The revocation of General Power of Attorney was merely marked and the contents were merely hearsay and could not form a basis of a determination of whether there was a case to answer or not. To the extent that the trial court heavily relied on it to make its determination,



it was erroneous. There is no dispute that the same heavily weighed on its mind. In its ruling the trial court clearly observed;

“The presence of a withdrawn Power of Attorney gives doubt to the accused as well. The deed of revocation suggests that the complainant who was husband to accused could have revoked a power he had donated to the accused.”

53. The revocation of the said Power of Attorney in my considered view had no nexus with its validity because revocation in itself cannot ordinarily sanitize a document that could have been invalid ab initio. For clarity, this court has not found the impugned document invalid. That is an issue that is certainly outside the scope of this judgment. My observations in regard to the validity of the Power of Attorney are simply hypothetical.
54. Having said that this court further finds that the issue of revocation of Power of Attorney, a subject that the respondent certainly anchored her defence at the trial, is an issue that mainly arose during cross-examination of prosecuting witnesses. This means that the defence was simply showing the witnesses the said document and inviting their comment therefrom.
55. The respondent in this appeal has also placed some considerable weight to a decision by an Environment and Land Court through a judgment by Hon Justice Nyagaka. The gist of the weight is that the issues before the Environment and Land Court were the same issues at the trial and that given the similar findings by the two courts, this court should find no merit in this appeal. I am however not persuaded for the following reasons;
 - i. The nature of issues and/or pleadings filed in the Environment and Land Court have not been disclosed. This court cannot base the decision of this appeal on submissions from the bar.
 - ii. Secondly and more importantly, when the decision which is the subject of appeal herein was being made, the decision of Hon Justice Nyagaka whether relevant or not had not been made.
 - iii. Thirdly the issues touching on various counts at the trial court are matters that exclusively fell under the jurisdiction of a criminal court. The jurisdiction of the Environment and Land Court is limited by Article 162 (2) of *the Constitution*.

All the 12 counts in the trial court as drawn disclose offences known in law. It is therefore erroneous and misleading to say that a finding of the Environment and Land Court binds a criminal court in determining whether or not a crime has been committed. This is because the law assigns each court with specific jurisdiction. It would have been different if the finding on whether fraud, conspiracy or making a false document was made by this court exercising its appellate or original jurisdiction. This was not the case here. Having said that I will leave the matter at that.

56. This court without the necessity of delving into details of the evidence tendered by PW2, PW3, PW4, PW5 and PW7 finds that the prosecution’s case was not so hopeless as suggested by the respondent’s counsel. It is certainly not desirable at this stage to specify with specificity the nature of the evidence I consider significant in the prosecution case and this is for obvious reasons. This court does not wish to prejudice any of the parties in this appeal. Suffices to state that the evidence of PW9 and PW10 in light of the evidence of the witnesses cited above, in my view clearly demonstrated that the appellant established a prima facie case sufficient enough to place the respondent in her defence in respect to Counts 2,3,4,5,6,7,8,9,10 and 11. In the premises this court to that extent allows this appeal and the trial court’s decision dated 20/5/2019 for these reasons aforesaid is set aside. The respondent will be escorted forthwith to the Chief Magistrate’s court or (duty court) for reallocation and/or further orders with respect to bond terms and further date for directions given that the trial magistrate who



delivered the ruling was transferred. For avoidance of doubt the trial magistrate who will take over the case is given liberty and latitude to determine directions to give pursuant to the requisite provisions of section 200 of the Criminal Procedure Code given the long history of this case.

DELIVERED, DATED AND SIGNED AT KITALE THIS 9TH DAY OF FEBRUARY , 2026.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Judgment delivered in open court

In the presence of

Ongoya Senior Counsel for the Respondent

Okoth for the State

Duke/Chemosop –Court assistants

