REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

CRIMINAL APPEAL NO. **E012** OF 2025

DUNSTON INDIMULI OKELLO...…………………………...APPELLANT

-VERSUS-

REPUBLIC………………………....................................1ST RESPONDENT

OBADIA OTIENO ABUGA………………………………2ND RESPONDENT

VERONICA WANJIKU WARIARA………………………3RD RESPONDENT

AARON KILYUNGI MUSILI……………………………..4TH RESPONDENT

DAMARIS KAARI NJAGI………………………………...5TH RESPONDENT

JUSTUS MUOKI MUIA……………………………………6TH RESPONDENT

(Being an appeal from conviction and sentence of Hon. E.K. Nyutu PM dated 14th March 2025 and 24th March 2025 respectively in her Chief Magistrate's Court at Milimani Anti-Corruption case No. E029 of 2021)

JUDGMENT

The appellant was charged, tried and convicted in the lower court for offences of abuse of office and money laundering and sentenced to pay a fine of Kshs 900,000.00 and in default to serve 7 years imprisonment and in addition a mandatory fine of Kshs 1,022,000.00 and in default to serve seven years term in the former count. On the latter count, he was sentenced to a fine of Kshs 3,000,000.00 and in default to serve a term of seven years. The 2nd to the 6th respondents were acquitted.

The particulars of the charges against the appellant were as follows;

1. Between 20th August 2019 and 30th September 2019 in Nairobi City County within the Republic of Kenya, being a public officer working at Kenyatta University in charge of central food stores, used his office to improperly confer a benefit on Metnetwork Solutions by preparing and signing the certificate of verification serial number 56888 in favour of Metnetwork Solutions for purported supply of 200 bales of wheat worth Kshs 288,000.00 while the said flour had not been delivered.

2. Between 20th August 2019 and 7th October 2019, within Nairobi City County in the Republic of Kenya, with intent to disguise the disposition of money, jointly engaged in a transaction in connection to an amount of Kshs 288,000/= received from Kenyatta University whilst knowing or having reason to believe the monies were proceeds of crime accrued as a result of corrupt conduct.

Being aggrieved by both conviction and sentence, the appellant has pleaded with this court to overturn the same relying on the following grounds;

1. *THAT the trial Magistrate erred both in law and fact in failing to appreciate that the prosecution had failed to establish their case to the required standard.*

2. *THAT the trial Magistrate erred both in law and in fact in failing to acknowledge and appreciate the glaring contradictions on the prosecution's case which made it unreliable.*

3. *THAT the trial Magistrate erred both in law and fact when she convicted the appellant on contradicting testimonies.*

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4. *That the trial Magistrate erred both in law and fact by entirely relying on uncorroborated evidence of other accused persons in convicting the appellant.*

5. *THAT the sentence imposed on the appellant is manifestly harsh and excessive in the circumstances being a first offender.*

This is a first appeal. It is trite that the first appellate court has the duty of conducting the same as if it was conducting a re-hearing where it must re-evaluate, re-analyse and re-consider the evidence produced in the trial court and come to its own independent conclusion but bearing in mind that it did not have the advantage of taking the evidence of the witnesses or observing their demeanours. In ***Mark Oiruri Mose v Republic [2013] KECA 67 (KLR),*** the Court of Appeal restated the legal position thus;

> *'It has been said over and over again that the first appellate court has the duty to revisit the evidence tendered before the trial court, afresh analyse it, evaluate it and come to its own* independent conclusion *on the matter but always bearing in mind that the trial court had the advantage of observing the demeanor of the witnesses and hearing them give evidence and to give allowance for that.'*

However, in my opinion, the above legal position does not mean that the court must go through the whole of the evidence including that which obviously is not relevant to the appeal or which does not concern issues raised in the petition of appeal. For instance, in this matter, the appellant's co-accused were acquitted and as such this court does not see the need of re-evaluating evidence that touch on the 2nd to the 6th respondents. Actually, I am at a loss why they had to be joined in this appeal. An appeal must be confined to the grounds as pleaded in

the petition of appeal. Section 350(2) of the Criminal Procedure Act provides that;

> *'A petition of appeal shall be signed, if the appellant is not represented by an advocate, by the appellant, and, if the appellant is represented by an advocate, by the advocate, and shall contain particulars of the matters of law or fact in regard to which the subordinate court appealed from is alleged to have erred, and shall specify an address at which notices or documents connected with the appeal may be served on the appellant or, as the case may be, on his advocate; and the appellant shall not be permitted, at the hearing of the appeal, to rely on a ground of appeal other than those set out in the petition of appeal.'*

In this appeal, the grounds of appeal can be condensed into four issues which are; that the prosecution did not meet the standard of proof, that the evidence of the witnesses was contradictory, the court relied on the evidence of the appellant's co-accused persons and that the sentences were harsh and excessive.

Prosecution's case

The prosecution called a total of 13 witnesses. The first witness was Philip Ndwiga Benson who told the court that he was the director Security Services in Kenyatta University. He was informed that a case of fraud had been reported by one Justus Muoki who had claimed that documents had been forged to purport that he had supplied wheat flour worth Kshs 288,000.00. He stated that the appellant informed Justus Muoki who was the University's supplier to invoice for 200 bags of wheat flour.

The witness conducted Justus Muoki and a Mr. Akaki and Nyagara from Ethis and Anti-Corruption Commission (hereinafter referred to as 'EACC') who arranged a meeting at Panafric Hotel. During the meeting, Justus explained to

them that in October 2019, the appellant had approached him to prepare a delivery note and an invoice for 200 bags of wheat flour aforesaid. Justus got money from the university in payment of the invoice and wired Kshs 223,000.00 to the appellant's bank account at the Cooperative Bank in Githurai. Thereafter, the EACC went to the University to conduct investigations in which he assisted in having necessary documents supplied. Justus Muoki is the 6th respondent.

When he was cross-examined, the witness stated that he did not carry internal investigations but assisted in retrieving of documents. At the time they had meeting at Panafric Hotel, Justus Muoki was a complainant or whistleblower as the University was not aware of the fraud before he reported. He added that the appellant was to benefit with Kshs 233,000.00 from the Kshs 288,000.00 for goods which were not supplied. He admitted that procurement of goods was a process and that the appellant did not sit in the procurement office but was a storekeeper. He added that the conversation at Panafric Hotel was recorded by officers from EACC.

PW2 was one James Lucas Njoroge the acting head of central stores. He narrated the procedure for managing the store and stated that the person in charge up to 2020 was the appellant. He identified a delivery note from Metnetwork Solutions (hereinafter referred to as 'Metnetwork') dated 24th March 2019 for supply of wheat flour to Kenyatta University which was received by central food stores and signed by the appellant on the same date.

James claimed that on 15th May 2020, he listened to a recorded conversation in which the appellant was discussing with another person about sharing of Kshs 288,000.00 and how one Justus Muoki would make invoices and delivery notes

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and the appellant would follow up payment. When the recording was played, he alleged to identify the appellant speaking.

In cross-examination, he stated that he was in the procurement department and the complainant was Kenyatta University. He stated that he did not take part in internal investigations and his department did not deal with issuing of awards. He admitted that the supply of 200 bags was posted in their system. He also added that the invoice did not have to come with delivery and could come later and he could not tell when the invoice was submitted to the University. He was shown a requisition marked as DMFI 3 which was made by the 2nd respondent for 1,200 bales of wheat flour which he insisted he did not know about. He maintained that his mandate started when food supplies arrived at the store and he had the LPO.

He added that the person in charge of verification process is the one in charge of the store for the time being and, in this case, the appellant and that inspection came before verification certificate. Finance Stores Receipt (which is hereinafter referred to as RCP) number 79586 which was the genesis of the verification certificate did not match LPOs and documents attached to it as they did not relate to the same period. The RCP was for 2019/2020 financial year while the delivery note was for 2018/2019.

Prosecution witness number 3 was one Rodgers Akaki whose evidence was cut short after the court found it to be inadmissible on the grounds that the same would be in violation of the 6th respondent's right not to give self-incriminating evidence.

Victoria Muema was the next witness who told the court that she was the procurement manager at the Kenyatta University. She stated that in 2018, they

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advertised tenders for supply of foodstuffs and cutlery under tender number 155 which went through the lawful process and among those who won the tender was Metnetwork who was awarded tender to supply wheat flour vide letter dated 2nd May 2018 after which it kept of being given LPOs to supply the flour.

She confirmed that LPO number 122672 came from her office and was given to Metnetwork on 28th March 2019. This LPO and a delivery note number 14 dated 24th March 2019 were shown to her at EACC for her comments. She noted that the delivery note predated the LPO which is not normal. For supply to occur they would raise a purchase requisition then an LPO is raised. The LPO was signed by herself, the registrar finance and the finance office. She could not tell whether the supply in question was actually done but she was categorical that the LPO could not come after delivery.

She also identified a certificate of verification number 56888 dated 24th March 2019 which is generated in the store and whose purpose is to verify the quantity of the goods delivered. The certificate which quoted LPO number 122672 showed that the goods were delivered on 24th March 2019. She added that at the time of the alleged delivery, there was a lot of stock in the stores as per the store's movement register for the period between 1-08-2019 and 30-09-2019.

In cross-examination, Victoria told the court that, an LPO in this matter formed a contract and confirmed that there was no other form of contract signed save for the LPOs. She added that if a supply was to be done in advance of documentation, it must be in writing and only when there is a supply crisis. Since she was not working in the store, she could not tell whether the goods in question were delivered or not neither did she know about any fake documentations before she was called by the EACC officers. She stated further

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that being the procurement manager, she was not engaged in day to day running of the store which was the work of the person in charge of the store.

The witness reiterated that tender number 155 was done regularly and added that it would be the head of store who ask the supplier to supply after all the processes were done. She also confirmed that Metnetwork was asked to supply goods within the period in question. She also confirmed that certificate of verification is signed by the head of stores who reported to her. She also stated that although the payment voucher in question was signed by a Miss Victoria, it was not her as she never signed payment vouchers.

The fifth prosecution witness was Catherine Njeri Gitocha who was the current acting manager catering. He told the court that, at the time of the events under trial, she was an acting manager in the kitchen unit. Her role was to help the manager in overseeing the kitchens and ensure that the stores had supplies so that the units could have enough food for the students. She added that in August 2019, the appellant brought a big file with verification forms and RCPs for signing and she realized that there was one that was off the month which was dated 24th March 2019 signed by the head of stores. She was on maternity leave between 30th January 2019 and July 2019.

The witness identified among other documents, a verification certificate serial number 56888 which showed that 200 bales of wheat flour had been delivered. This certificate was signed by the appellant, herself and the 4th respondent. The certificate was in relation to LPO number 122672. She also identified a payment voucher number 9-0019820, and an invoice from Metnetwork for Kshs 288,000.00.

The witness stated further that the certificate of verification was signed in August 2019 and backdated to 24th March 2019 because comparing it with a booklet known as stores certificate of verification book where it came from, it came after some other documents signed in August. She gave an example of one for beans serial number 56886 which was signed on 20th August 2019 while one with serial number 56887 was canceled.

She was cross-examined by the counsel for the accused persons and stated that she signed the certificate which had the date of 24th March 2019 but she denied inspecting the goods supplied. She explained that she signed in trust because the head of stores had signed and because she was told that the supplier would not deliver subsequent supplies if she did not sign. She insisted that all that she was required to do was to inspect the quantity and quality. She added that the procurement processes were in the docket of the stores department. She signed on behalf or James Wakaba who was the manager catering as she was acting and she took responsibility of the same. She could not tell whether the goods had been paid for or whether the institution had lost any money or whoever was to blame for the payment of Kshs 288,000.00.

She added that Paul Gichuhi was acting in her docket when she was on leave, although she was not sure and there were no things that had to wait for her to come back. Someone was acting including for purposes of verification of what had been supplied, but the big files the appellant brought had many documents for the whole of July 2019 and part of August 2019. She confirmed that she signed without seeing the goods something she had not done before but she denied that she was colluding. The date was put in her own handwriting but she was never treated as a suspect at any given time.

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The sixth witness was John Lokwawi Lokulal a digital forensics analyst working with the EACC. He told the court that on 7-10-2019, he received an exhibit at their forensic lab from the investigator one John Nyagara. The exhibit was a Samsung phone model SMA105F Galaxy A10 and of IMEI number 357872100641704. The investigator was interested in him extracting the audio recordings from the exhibit and communications being calls and sms made between the exhibit and line number 0722277342. He went on to give the court the procedure of extracting the information required. His evidence is not relevant as it was successfully objected to by the defence.

The next witness was one Samuel Nduati Mwai the Chief Finance Officer at the Kenyatta University in charge of the payments at the university which included preparation of payment vouchers. He went on to explain how payment vouchers for creditors were drawn and generated. One of the documents required for preparation of payment vouchers was a certificate of verification which was a document prepared in the stores. Others were RCP in which the stores department input the goods received, a LPO and an invoice from the supplier. The voucher is then verified and examined in the finance department.

The witness identified a payment voucher number 90019820 for Kshs 288,000.00 dated 9-10-2019 which was meant to pay Mentnetwork which was prepared by Veronica Wanjiku an account assistant and verified by Damaris Njagi a senior accountant. The invoice was eventually paid. He also identified the invoice from Metnetwork and certificate of verification number 56888 dated 24th March 2019 signed by the appellant, C. Gitocha and E. Musili and RCP number 79586 which was also generated from the stores and other documents which I consider not relevant to reproduce in this judgment.

He added that comparing the certificate of verification against the RCP dated 29th August 2019, there was inconsistency in serialization and the dates of generation. According to the documents, the relevant RCP showed that the goods were received on 29th August 2019 while the certificate of verification had shown that they were physically received in stores on 24th March 2019. He added that the certificate of verification book was in the custody of the appellant.

On cross-examination, the witness stated that due to the nature of his duties, he was not able to verify the nitty-gritties of the processes of payment and that he relied on the staff working under him in five levels and he only realized the gaps and lapses when the issue was brought to his attention by the investigator. Except this lapse, all the procedures were followed and all the documents necessary for payment were availed.

He added that, he was not able to confirm whether or not the university lost any money but the money in question was paid and according to the documents availed to him, the goods were supplied. He added that if there were goods in the stores, there would be no need to request for purchase and that he could not confirm whether the goods were supplied.

The 8th witness, a Mr. Omar Dambi a security manager with the National Bank was called to produce bank account statements and certificate of electronic evidence which were in respect of payment of Kshs 288,000.00. I do not find it necessary to reproduce his testimony here since there is no dispute that the said amount was paid to the supplier.

Stephen Yego a forensic document examiner was the ninth witness. He testified that he examined the certificate of verification in question, specimen

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handwriting of the appellant, specimen signature of the appellant and the known handwriting of the appellant and in his opinion, they were all made by the same person.

Martin Mbuvi working as an investigator with EACC was the next witness. He told the court that he was assisting John Nyagara in investigating the case. He added that they retrieved some procurement documents from the Kenyatta University, interviewed witnesses and established that Metnetwork had been awarded tender to supply dry food stuff and cutlery. They also retrieved payment vouchers one of which was for Kshs 288,000.00 and had been paid on 16-09-2019 which funds hit the account of Metnetwork on 1-10-2019. They also retrieved a certificate of verification number 56888 which had been signed by the appellant.

The witness added that some Kshs 65,000.00 was withdrawn from the company's account by the company's director on 4th October 2019 and a further Kshs 233,000.00 was transferred to the appellant on 7-10-2019. He added that they also retrieved a delivery note number 14 dated 24-03-2019 for supply of 200 bales of wheat flour and receipt number 79586.

Upon analysis of the retrieved documents and interviewing witnesses, the investigations team concluded that the dry food which was to be supplied by Metnetwork was not supplied as the voucher verification certificate had inconsistencies and the people who were to verify the supply were giving contradicting statements.

Upon being cross-examined, Mr. Mbuvi stated that there was no dispute about the award of the tender. He added that the certificate of verification was signed by several people who gave contradicting reports and that the appellant colluded

with the supplier. He added that the delivery note and the RCP used to process payment voucher for Kshs 288,000.00 had issues because their dates were not in tandem. The date of delivery, the date of production of the receipt and the date of the certificate of verification were different. The receipt dated 29-08-2019 was signed by one Lucas and the appellant. He maintained that the certificate of verification was doctored to bear the date of 24-03-2019 which was the same date in the delivery note.

The witness added that they believed Gitocha's explanation that she was on leave on 24-03-2019 because she showed her leave application and approval form. He explained further that if goods were delivered to the store, the certificate of verification and the RCP must capture the same dates indicating that the goods were delivered and verified the same date.

The 11th witness Austin Amoth was a legall officer working with Equity Bank whose testimony was related to production of bank account statement and account opening documents for Metnetwork. Just as for the witness from the National Bank, I do not find the testimony of this witness relevant for reproduction in this judgment. The same can be said of the 12th witness who came in to produce statements and bank account documents for Cooperative Bank account held by the appellant.

The last witness was John Otieno Nyagara the investigating officer. He complimented what PW9 said and summarised the evidence given by the other prosecution witnesses. He gave the genesis of the investigations as a report made by one Mr. Philip Ndwiga from Kenyatta University on finance impropriety at the university. He interviewed witnesses including the whistleblower and concluded that the appellant and his co-accused were culpable then charged them.

His decision to charge came after establishing that there was no delivery of 200 bales on 24-03-2019 but there was delivery the 200 bales on 20-08-2019 under RCP number 79388. He also added that the appellant showed him a log book of a motor vehicle registration number KAT 186N which he was alleging to have been selling to Justus Muoki, the 6th respondent. The appellant also gave him an agreement dated 20th August 2019. According to him, the issue of the sale of the motor vehicle was an afterthought meant to defeat justice. He added that, the sale did not materialize.

In cross examination, he stated that he did not interview the Vice Chancellor of the university and that the award to the Metnetwork was in order. He interviewed witnesses from the relevant departments but not all. He insisted that he confirmed from the user department that the goods were not delivered. He maintained that he confirmed from the Chief Finance Officer that the university incurred a loss. He stated further that the date of 24th March 2019 fell on a Sunday and he had asked and been told that no deliveries were done on Sundays. He stated further that the appellant brought the agreement for the sale of the motor vehicle on 13th March 2020 after he recorded a statement.

The appellant's case

When he was placed on his defence, the appellant gave an unsworn statement in which he told the court that he was at the material time in charge of the central food store of the university which serves all campuses. He stated that he raised concern that his store was running low of wheat flour following which a requisition for purchase of the same was raised on 13-03-2019 and an LPO number 122672 issued which allowed him to call the supplier to make supplies.

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He called Metnetwork to supply 200 bales to arrest the situation and delivery was done and a certificate of verification prepared. The certificate is signed by a committee set up by the Vice Chancellor in which he was a member together with Aron Musili and the director catering. He added that it was his responsibility to process payments after delivery of the commodity. In this case, the invoice was delivered a few months later. He confirmed that he generated the RCP which he passed to Lucas Njoroge his supervisor.

He stated further that Kshs 233,000.00 was made to his account at the Cooperative Bank for purposes of his personal business with Mr. Muoki who wanted to purchase his motor vehicle registration number KAT 186N. He was to pay in two instalments and the balance was to be paid later but when the issues in this matter came up, they agreed to put the transaction in abeyance. He denied the allegations of corruption against him.

Analysis and determination

I have given due consideration to the evidence as reproduced above together with the exhibits produced in the trial court. I have also considered the submissions of the appellant dated 19th November 2025, the respondent's grounds of opposition dated 26th November 2025, the petition of appeal and the judgement of the trial court. As it has become custom of the 1st respondent in many appeals coming to this court, it has chosen not to file any submissions. In that case, I will consider the grounds of oppositions as the 1st respondent's submissions.

Having considered the above, I have formed opinion that there is no dispute that the appellant prepared and signed with others the certificate of verification number 56888 and the RCP number 79586 neither is there dispute that Kshs 288,000.00 was paid for wheat flour purportedly delivered on 24-03-2019.

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There is alos no dispute that the 6th respondent transferred Kshs 233,000.00 to the appellant on 7-10-2019. What is in contest is whether there was actual delivery and whether the Kshsh 233,000.00 was transferred in order to conceal proceeds of corruption.

The appellant has in his submissions faulted the Honourable Magistrate for failing to consider what he calls a witness statement shared by the 6th respondent which in his view exonerated him. I have gone through the 56 exhibits produced in the trial court and this statement is not captured anywhere as an exhibit. A witness statement and any document for that matter supplied to the defence during the trial cannot form basis for the court's decision unless it has been produced as an exhibit. In ***Kenneth Nyaga Mwige v Austin Kiguta & 2 others [2015] KECA 334 (KLR),*** the Court of Appeal had the following to say on documents not produced as exhibits;

> *'Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.'*

The appellant has also faulted the prosecution for having failed to call the Vice Chancellor of the university who initiated the complaint to the EACC. As far as I understand the proceedings, the complaint emanated from information received by the Vice Chancellor from the 6th respondent. The EACC reacted to the information in the interest of the public and I do believe that in cases of this

nature, there need not be a private complainant as the EACC is always executing its constitutional and statutory mandate by acting on the information. It actually does not have to disclose its informer. It therefore does not matter who is called or is not called as a witness as long as the prosecution can satisfactorily establish that an offence of corruption has been committed. In any event, proof of an offence does not depend on the number of witnesses called. The prosecution does not have to call everyone who possesses information about the events or actions leading to the commission of the offence. The Court of Appeal held in ***Richard Munene v Republic [2018] KECA 186 (KLR)*** that;

> *'We repeat what, in our view is elementary principle of criminal law that, although the prosecution must avail all witness necessary to establish the truth and whose evidence appear essential to the just decision of the case, no particular number of witnesses is required for the proof of any fact; and that the prosecution is not obliged to call a superfluity of witnesses.'*

The appellant has argued that the prosecution witnesses gave contradictory testimony. He has pointed out that the testimony of PW1 contradicts what the 6th respondent said in his recorded statement. According to the appellant, PW1 talked of documents having been forged while the other witnesses said that there was no forgery. He claims that there is another contradiction in that PW1 stated that there were no internal investigations while other witnesses said that there were internal investigations. If these can be termed as contradictions, they do not go to the core of the case.

What was before the court was whether the certificate of verification number 56888 was made by the appellant for purposes of facilitation of payment for goods which were not supplied. To me, it does not matter whether or not there were internal investigations neither is it of importance that the witnesses believed the actions of the appellant bordered on forgery or not. Not every

contradiction would create a reasonable doubt or afford an accused person an acquittal. Honourable Justice John M. Mativo (as he then was) held in ***Republic v Ali [2022] KEHC 10452 (KLR)*** that;

> *'The court's duty is to determine whether there were contradictions and inconsistencies in the prosecution evidence to the extent that a reasonable person would be left in doubt as to whether the charges were proved, or whether the contradictions (if any), are so material that the trial Magistrate ought to have rejected the evidence…………………*
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> *Inconsistencies unless satisfactorily explained would usually but not necessarily result in the evidence of a witness being rejected[37].The question to be addressed is whether the cited contradictions are grave and point to deliberate untruthfulness or whether they affect the substance of the charge.'*

The gist of the case is certificate of verification number 56888 which the appellant in his unsworn statement in his defence confirmed having prepared and signed. The certificate is shown to have been prepared days before the corresponding LPO and months before the RCP were generated. All that the appellant explained was that he raised the requisition for supply of wheat flour and prepared the verification certificate. He did not attempt to explain when and how the goods were received at the store. He also chose to remain silent on why the certificate predated the LPO and the RCP.

No doubt the certificate of verification was prepared for purposes of processing payment for the delivery note number 14 dated 24-03-2019. It is apparent that the leaf of the said certificate was prepared in August as the other leaves immediately before it in the said series were prepared. For instance, leaf for 56886 and 56887 which would obviously have been prepared before the 56888

were done on 20th August 2019. Again, the RCP which was prepared on 29-08-2019 is a clear testament that it related to other deliveries and not the one purportedly done on 24-03-2025.

I am left with no doubt that the goods relating to RCP number 79586 were delivered in August and that the certificate of verification number 56888 could not in all possibilities have been prepared on 24-03-2019. As rightly observed by the trial court, the store record shows that 200 bales were entered on 29-08-2019. None was entered on 24-03-2019 when the delivery note number 14 and certificate of verification were purportedly made. This register (exhibit 16)covers the period between 1-09-2019 and 30-09-2019 meaning that there was no supply on 24-03-2019.

The claim by the appellant that the trial court relied on the evidence of his co-accuseds in convicting the him has no basis. I have looked at the judgment and where the court mentioned the evidence of the co-accuseds, it did not make their testimonies as its basis to reach a finding on the culpability of the appellant. When it came to the analysis of the guilty of the appellant, the court considered the evidence placed before it and, in my view, reached the right decision. In any, event, I find that there was basis of convicting the appellant on the strength of the testimonies of the prosecution witnesses even without the evidence of the co-accuseds. It is therefore my holding that, there is nothing in the trial court's judgment that would point to the fact that the evidence of the appellant's co-accuseds was the basis of the conviction. To the contrary, it is the appellant who urges this court to look into the statement of the 6th respondent which was not even part of the evidence in order to find in his favour.

The inevitable conclusion from the above is that the certificate of verification number 56888 was irregularly prepared for purposes of conferring a benefit of

Kshs 288,000.00 to Metnetwork. The count of abuse of office was therefore proved beyond any reasonable doubt and the conviction thereof was safe.

Regarding the charge of money laundering, the appellant has claimed that the sale agreement between him and the 6th respondent was valid and a genuine transaction. This agreement was given to the investigating officer after the appellant had recorded his statement. It is not lost to the court that the arrangement to prepare the payments came at the same period the sale is purported have occurred. Having considered all this, I reach a conclusion that the agreement was made to sanitise the transfer of Kshs 233,000.00 to the appellant so as to appear as if the transaction was a genuine one. If indeed the transfer was for purposes of the sale of the motor vehicle, why didn't the appellant refund the money less 5 per cent as provided for in the agreement after the transaction failed. This state of affairs squarely falls under the definition of the offence of money laundering as provided in Section 3 pf the Proceeds of Crime and Anti-Money Laundering Act Chapter 59B of the Laws of Kenya (POCAMLA).

The appellant submits that when the charge of conspiracy failed, the other counts should have collapsed. The position in law is that each count is an independent charge and must be proved on its own merits. A collapse of one count cannot result to an automatic failure of the other counts. What was lacking in count 1 was the element of conspiracy and not lack of evidence on the other counts. In ***Ernest Kimathi v Republic [2021] KEHC 4032 (KLR),*** the court held that;

> *'The charges even if committed at the same time and place were separate and distinct and indeed attracted separate and distinct consequences by way of penalties.'*

The appellant submits that the conviction was harsh and excessive. The penalties for the offence of abuse of office is provided for in Section 48 of Anti-Corruption and Economic Crimes Act which provides as follows;

1. *A person convicted of an offence under this Part shall be liable to-*
   a. *a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both; and*

   b. *an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.*

2. *The mandatory fine referred to in subsection (1)(b) shall be determined as follows-*
   a. *the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1)(b);*

   b. *if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.*

In respect of the offence of abuse of office, the appellant was sentenced to a fine of Kshs 900,000.00 in default to serve 7 years whereas the law gives a maximum of one million or ten years in default. He was also sentenced to pay Kshs 1,022,000.00 under Section 48(1)(b) as read together with Section 48(2)(b) or in default seven years in prison. The sentences in my view were in tandem with the law. The university lost a sum of Kshs 233,000.00 and the appellant benefitted to the tune of Kshs 233,000.00, simple arithmetic would

show that the fine imposed by the court were in accordance with law and the jail terms lenient as compared to the provisions of the law

On count the count of money laundering, the appellant was sentenced to a fine of 3 million while Section 16(1)(a) of POCAMLA provides for a maximum of fourteen years imprisonment or a fine of five million or amount of the value of the property involved in the offence whichever is the higher or both the fine and imprisonment.

However, I note that the trial court was not express on whether the sentences on the jail terms were to run concurrently or consecutively and that may be the reason for the appellant to complain that he will serve a cumulative term of twenty one years if this court does not interfere with the sentences. I am alive to the legal position that where the offences for which an accused person is convicted were as a result of the same transaction, the practice is that the court would order that the sentences shall run concurrently. I am guided by the holding of the Court of Appeal's holding in ***William Kimani Ndichu v Republic [2015] KECA 695 (KLR)*** thus;

> *'It is now trite law that in cases where a person has been charged with and convicted of two or more counts involving the same transaction in a charge sheet or information or a trial, the practice is to direct that the sentences should run concurrently.'*

I have no doubt that the offences for which the appellant was convicted emanated from the same transaction. I am therefore persuaded that the appellant deserves an order for concurrent service of the jail terms.

The above discussion leads me to make the following final orders;

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1. The conviction and sentences of the trial court are upheld and appeal against the same is disallowed.

2. The default jail terms shall run concurrently.

Dated signed and delivered at Nairobi this **27th** day of **February** 2026.

B.M. MUSYOKI

<u>JUDGE OF THE HIGH COURT</u>.

Judgment delivered in presence of Mr. Ashiruma for the appellant and Mr. Mongara for the respondent.

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