Leseuloi v Republic (Criminal Appeal E030 of 2025)
[2026] KEHC 2959 (KLR) (5 March 2026) (Judgment)

Neutral citation: [2026] KEHC 2959 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MARSABIT

CRIMINAL APPEAL E030 OF 2025

FR OLEL, J

MARCH 5, 2026

BETWEEN

TEDDY LESEULOI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

JUDGMENT

A. Introduction

1. The Appellant's herein Teddy Leseuloi was charged with the offence of Arson contrary to section 332(a) of the penal code. The particulars were that on the 21st day of January 2025 at Laisamis trading Centre within Marsabit South Sub County within Marsabit County willfully and unlawfully set on fire a wooden made Maasai type house and household valued at Kenya shillings 25,000/= the property of Maria Lenangida.

2. The appellant took plea and denied the charge he faced. PW1, the complainant, recalled that on the material night she was at home and had gone out for a call of nature and was surprised, when enroute back to see her wooden house on fire. She shouted for help and while at it, saw a person wearing a blue T shirt, and brown trousers climb over the fence and run away. With the help of her brother (PW2) and neighbour's, they gave chase up to the local bar, where the said suspect had sought refuge, arrested him and he was even subjected to mob justice, but was rescued by a police officer. PW1 confirmed that the person they chased after and arrested was the appellant. He was a person known to her and had been her boyfriend for two years before they parted ways.

3. Under cross examination, PW1 confirmed that they had not slept and as she came back after relieving herself, she saw the appellant climb over the wall and run away. The compound where the incident occurred had light and though initially, she had seen him from behind as he scaled the wall, she eventually saw him again upon arrest, putting on the same cloths and identified him facially. PW1 further confirmed that the appellant had ill will arising from their romantic fallout and that was the

reason why he still held a grudge. He had used petrol to burn the said house and there was nothing which was salvaged therefrom.

4. PW2 Meshack Lenanginda, confirmed that PW1 was his sister and that on the material night he was within the house when he heard PW1 shouting outside that there was fire. He dashed outside and saw a person running away and with the help of neighbours they did chase after him and arrested him. Under cross examination he confirmed that though he did not see the person who light the fire, they had suspected that it was the appellant as he ran away instead of helping in salvaging the situation.

5. PW3 Inp Aseline Gikonyo Wainaina, stated that he was the deputy OCS, Logologo police station and had investigated the arson report made at their police station. On the material night, he was within loglog trading Centre when he got a report from a good Samaritan that a member of the public was being subjected to mob justice. He rushed to Super Arcade club, where he found, the appellant being subjected to Mob justice on grounds that he had committed arson. He restrained the members of the public and later visited the scene and took photographs, which were produced into evidence. Under cross examination he confirmed that the appellant did obtain minor injuries but generally was okey, as the owner of the club had locked him inside the club.

6. The Appellant was placed on his defence, and stated that he resided within Laisamis and eked a living by undertaking casual work and also sold Miraa. On the material day he was selling miraa outside his make shift kibanda and as he talked with his friend, one Samson Kimenyu, a group of about five people came and suddenly started to beat up his friend. The said group almost turned on him, but he told them to keep off him. He then picked his goods and proceeded to walk towards his home, but upon reaching Arcade bar, opted to stay there for a drink.

7. After a short while the police came to look for him and informed him that he was under arrest for burning down PW1's house. He confirmed that PW1 was his wife, but they had been separated for about 7 months. He further testified that previously in 2022, PW1 had taken him to court for making noise and being disrespectful towards her at their home and as a result he had been remanded for 4 months before PW1 withdrew her case. He denied burning down the wooden house and urged the court to find that the evidence presented was insufficient to convict him.

8. The trial court did consider the evidence adduced and proceeded to convict the appellant of the offence of Arson. After mitigation, he was sentenced to serve five (5) years imprison. The Appellant being dissatisfied by the said conviction and sentence passed did file his petition of appeal and though the grounds of appeal are vague, he subsequently raised the following issues in his submission's

    a. The learned trial Magistrate wrongly convicted him of the offence, when the burden of proof had not been established.

    b. The learned trial Magistrate erred in law in convicting him based on inconsistent, contradictory and conflicting evidence.

    c. That the learned trial Magistrate erred in law in convicting him, yet the person who committed the offence was not positively identified.

    d. That the trial Magistrate failed to consider that there was existing grudge between him and PW1 because matrimonial differences.

    e. That the trial Magistrate failed to properly evaluate the evidence presented and wrongly convicted him based on weak circumstantial evidence.

B. Determination

9. This being the first appeal, this court is expected to re-evaluate the evidence tendered before the trial court and to come up to its own logical conclusion by taking into account the fact that it did not have the advantage of seeing and hearing the witnesses and their evidence and/or see their demeanor. This court is guided by Okeno Vs. Republic (1927) E.A 32 , Pandya Vs. Republic (1975) EA 366 & Peter's vrs Sunday Post (1958) E.A. 424

10. I have considered the petition of appeal and the grounds raised therein, the proceedings and judgment of the trial court and the parties' respective submissions. The issues that arise is whether the appellants conviction based on circumstantial evidence was safe, given that the prosecution witnesses was inconsistent and unreliable and/or whether he was properly identified as the culprit.

11. None of the witnesses saw the appellant doze PW1's house with petrol and/or light a match but PW1 saw him run away as she came from a short call and raised alarm. PW1, PW2 and other neighbours gave chase and managed to apprehend the appellant at Arcade bar, where he was subjected to mob justice, before being rescued by PW3. The appellant strongly submitted that the trial magistrate failed to evaluate other co-existing circumstances, such as the fact that PW1 was chewing Miraa and probably was suffering from effects of hallucinations and that PW1 and PW2 provided different description of the cloths he was wearing on the material night and that weaken the prosecution evidence.

12. Proof in criminal cases can either be by direct evidence or circumstantial evidence. When a witness, such as an eyewitness, asserts actual knowledge of a fact, that witness' testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence. Therefore, where circumstantial evidence meets the legal threshold, it may well be a basis for finding the accused person culpable of the offence charged. In fact, in Neema Mwandoro Ndurya v. R [2008] eKLR, the Court of Appeal cited with approval the case of R vs. Taylor Weaver and Donovan (1928) 21 Cr. App. R 20 where the court stated that:

> " Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."

13. In R. vs. Kipkering Arap Koske & Another [1949] 16 EACA 135, in the Court of Appeal for Eastern Africa had this to say:

> " In order to justify the inference of guilt, 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. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden which never shifts to the party accused."

14. Finally In Abanga Alias Onyango vs. Rep CR. A No.32 of 1990 (UR) the Court of Appeal set out the principles to apply in order to determine whether the circumstantial evidence adduced in a case are sufficient to sustain a conviction. These are:

> " 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. (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

iii. (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."

15. In summation, of the aforestated case law, it is thus required that before any conviction based on circumstantial evidence is reached, the said evidence adduced must be adequate to prove the case on the required standard of beyond reasonable doubt. In that regard, the court will admit circumstantial evidence if it meets the following criteria;

a) Evidence that is logically connected to the case.

b) The evidence must prove or disapprove a fact relevant to the case.

c) The evidence should be reliable, trustworthy with minimal chance of falsehood.

d) Its potential to influence a decision should not outweigh the probative value.

e) The evidence should not be hearsay.

16. Accordingly it would be safe to conclude that circumstantial evidence may include;

a) Physical evidence, such as fingerprints or DNA, that connects the accused to the crime or scene of crime.

b) Documentary evidence, for example, documentary records and text messages that support inference of guilt.

c) Behavioral evidence includes the accused's actions that point to his guilt or involvement in the crime. Examples include running away after the offence is committed or attempting to destroy incriminating evidence.

17. PW1 and PW2 clearly saw the appellant running away from the arson scene and with the help of neighbours did give chase and eventually caught up with the Appellant at Arcade bar. Both PW1 and PW2 confirmed that within the compound and in the vicinity, there was enough electricity light and positively identified the appellant both physically and through the cloths he put on. The evidence adduced was thus cogent and formed 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.

17. Further, the grounds raised by the Appellant that PW1 could have been mistaken in her identification since she had been chewing miraa and may have suffered from Hallucinations, is wishful thinking and was not raised by him during his defence. Further on the same issue, I do hold that in light of the fact that he was chased down from the incident scene and was immediately apprehended removes any probability of mistaken identity that it was not him who burnt down PW1's wooden structure house due to their matrimonial differences.

17. Finally on contradictory evidence the appellant submitted that PW1 and PW2 did contradicted themselves as to the cloths he was putting on. PW1 did state that he was putting on a blue T shirt and brown trouser, while PW2 did testify that he was putting on a blue half vest and three quarter trouser

and also that PW2 evidence materially contradicted his statement recorded at the police station during investigations.

17. In Joseph Maina Mwangi vs. Republic CA No. 73 of 1992 (Nairobi) the Court of Appeal it was held that: -

> "In any trial there are bound to be discrepancies. An appellate court in considering those discrepancies must be guided by the working of Section 382 of the Criminal Procedure Code, viz whether such discrepancies are so fundamental as to cause prejudice to the Appellant or they are inconsequential to the conviction and sentence."

17. In this case, I have myself subjected the evidence adduced to fresh scrutiny and though it is true that there were minor inconsistencies in the evidence of the said witnesses, which is common, I am unable to find that the same were material enough to warrant interference with the decision. PW2 witness statement too, was not produced as evidence before the trial court to enable the said court consider and/or appreciate the material inconsistences alleged.

C. Disposition

17. This Appeal is therefore lack's merit and the same is dismissed.

17. Right of Appeal 14 days.

17. It is so Ordered.

JUDGMENT READ, SIGNED AND DELIVERED IN OPEN COURT AT MARSABIT THIS 5TH DAY OF MARCH 2026.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Teams this 5th day of March 2026.

In the presence of;

..... Appellant

.....For O.D.P.P

.....Court Assistant