REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CRIMINAL APPEAL NO. E050 OF 2025

COLLINS OKOTH AMAGA alias WUOD AMAGA .... APPELLANT

VERSUS

REPUBLIC .... RESPONDENT

JUDGMENT

1. This is an appeal from the conviction and sentence meted out by the Hon. C.N.C. Oruo (PM) given on 30.04.2025 in Rongo MCCR No. E212 of 2022. The Appellant was charged with robbery with violence contrary to section 295, as read with section 296(2) of the Penal Code. The particulars of the charge were that on 29.05.2022 at Rongo township in Rongo subcounty of Migori County, the Appellant and another, being armed with offensive weapons, to wit, iron bars, robbed Samuel Majanja Miheso, 1 pistol make Jericho, Serial No. 44338470 loaded with three rounds of ammunition, the property of the Kenya Police, and immediately before the time

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of such robbery, used actual violence against the said Samuel Majanja Miheso.

2. In count two he was charged with being in possession of a firearm without a firearm certificate contrary to section 4(1) as read with section 4(3) of the Firearms Act, Cap 114 Laws of Kenya. The particulars of the charge were that on 06.07.2022 at Awendo Township in Awendo Subcounty of Migori County, the Appellant was found in possession of a Jericho pistol, Serial No. 44338470 without a firearm certificate.

3. The appellant was acquitted in relation to count one. He was convicted in count 2 and sentenced to serve 10 years' imprisonment.

4. The Appellant filed a petition of appeal dated 17.05.2025 and set forth the following grounds:
    a) The appellant was not found in physical possession of the exhibits.
    b) The firearm was not dusted for fingerprints to determine whether the appellant handled it.
    c) The trial court knocked down the defence of the appellant without giving cogent reasons (cogent).
    d) The prosecution failed to prove their case beyond doubt.

<u>Evidence and proceedings</u>

5. There were initially three accused persons in the matter. They pleaded not guilty and opted to represent themselves. The accused persons were granted bond. The second accused

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took a French leave, and as a result, the charge sheet was amended to remove the second appellant.

6. There was a surety for the second accused, who absconded and has not yet been dealt with. This may need to be addressed, and the Ksh. 100,000/= for surety should be sent to the exchequer.

7. PW1 was PC Daniel Sindi from Awendo Police Station. He stated that they received information that there were people with guns. They looked for a rental house with three occupants, two men and one woman, at 0300 hours. The appellant and the accused woman were present in the house. PC Onchari found a pistol in the jacket that the appellant was using as a jacket. The pistol found was No. 44338470, with 12 rounds of ammunition. The suspects were interrogated, leading to the arrest of the second accused in Uriri. They recovered the Jericho Pistol number 44338470.

8. On cross-examination, the witness stated that the information was from an informer, and they arrested the appellant. The appellant was sleeping on the pistol. On cross-examination by the second accused, the witness stated that the two persons were sleeping in the same room but separated by a bedsheet. The appellant was sleeping with the female occupant.

9. PW2 was PC Stephen Onchari attached to DCI Awendo. He recalled that on 06.09.2022, he was called and informed that two suspects were seen with two women and were suspected

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of carrying a pistol. He knew the appellant as WUOD Amala Johanes, as he had worked at Ranen previously. Winnie Achieng was one of the ladies they were with. At 4-5 am, they got a breakthrough, which led them to Winnie's house; she had gone to the toilet.

10. He continued that they followed her into the house and found two suspects sleeping on a mattress on the floor, completely naked. They recovered a pistol from a corner of the house with 12 bullets. The suspects and the lady were arrested. They learnt the pistol was stolen from the Deputy OCS Rongo Police Station and injured him. The pistol was stolen when fully loaded with 15 rounds of bullets. They led the police to a hideout in Uriri, where Samuel Ochieng was arrested and handed over to the DCI for further investigation.

11. On cross-examination, the witness stated that the appellant was known to him. His home was at Ranen. He stated that the Appellant even shot the other accused using the gun. The said accused later escaped. The pistol was recovered in Winnie's house. The information they had was that the appellant had a gun and went to hide at Winnie's house.

12. PW3 Samuel Achia Magari testified that he was from Rongo and a businessman. He testified relating to the robbery.

13. PW4 Cpl. Leonard Pamba works as a DCI and was the investigating officer. He, the Deputy OCS, was robbed of his gun. He recalled that on 6.07.2022, three suspects were

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arrested and were found with a Jericho pistol Serial Number 44338470. It had three spent cartridges and 12 rounds of ammunition. He sent for an examination by a ballistic expert. On cross-examination, he stated that the appellant was in possession of the firearm in the house where he was sleeping.

14. PW5 and PW6 gave evidence relating to the robbery, which is not in issue.

15. PW7 was IP Samuel Miheso, the Deputy OCS at Kamagambo Police Station since 2021. He recalled that on 29.05.2022, at around 12.00 am, it was dark, three men assaulted him and took away his pistol Serial No. 44338470. He stated that he signed from the armoury on 27.05.2022. Later, the said gun was found in possession of people who assaulted him. He could not identify the people as it was dark. He stated that the firearm was found with less two bullets. On cross-examination, he stated that the assailant was the same height as the appellant. He stated that he did not know the appellant and co-accused, as it was at night. His evidence related to the robbery.

16. PW9 PC Kiplagat was the investigating officer. The initial investigating officer was the one who produced the original firearms movements.

17. PW10 Lawrence Nthiwa was a firearms examiner attached to the firearms laboratory at DCI Headquarters. He has a

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Master's in Security Management and has been undertaking training in firearm examination for 21 years. He produced the firearm, magazines, 12 rounds of ammunition, and the ballistic report. He was not cross-examined.

18. PW11 and PW12 gave evidence on the robbery.

19. PW13 was Winnie Achieng Okatch from Awendo. She is a barmaid at Hyde Out Bar. On 5.07.2022, she was at work and got drunk with the appellant and accused 2. They went to her house, where she slept with the appellant on one mattress, and the second accused slept on another mattress in the sitting room. The appellant had a black jacket. At 6:30 am, the police came to her house and searched, lifted mattresses, and got a black jacket in which they found a pistol.

20. She never knew the appellant had a gun. On cross-examination, she stated that the house they slept in was hers. She denied that the pistol was hers. She was sure that the pistol was found in the mattress where both of them slept. On cross-examination by the court, she stated that the jacket and pistol belonged to the appellant. It was under the mattress where she slept with the appellant.

21. The prosecution closed its case. The court complied with section 211 of the Criminal Procedure Code. The appellant opted to give sworn evidence.

22. The appellant testified that he is from Ranen and a businessman. He stated that he was in Awendo town on

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5.7.2022, went to Hyde Out Bar, and met accused 2. They drank until 2200 Hours. They went with PW13 to her house. At 0600 hours, her waiter called to inform her that she was at the police station to collect her bag at the centre. She went out and came with the police, who found him in the house. The police went under the mattresses and found a firearm. He knew nothing of the offence of robbery with violence.

23. He denied being a rider in 2022. On 29.05.2022, he was not with the second accused. He stated that he was in jeans, a black t-shirt, and a sweater. The bullets were under the mattress where he slept with Winnie.

24. The second accused denied the charge. On cross-examination, he stated that he saw the police recover a gun. The appellant did not cross examine the second accused.

Submissions

25. The Appellant filed undated submissions filed on 17.4.2025 by which it was submitted that the charge sheet was not provided, and had a supplementary ground. He stated that the evidence was inconsistent and fell short of proving. He stated that the state failed to produce the inventory for the gun recovered. He stated that the ballistic examiner's report was not produced by the maker and that essential prosecution witnesses were not called. The court was said to have overlooked the appellant's defence. He relied on the case of **Joseph Ndungu Kimanyi v Republic**

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[1979] KECA 5 (KLR), where the court of appeal [Madan, Miller & Potter JJ A] held as follows:

> **We lay down the minimum standard as follows. The witness upon whose evidence it is proposed to rely should not create an impression in the mind of the Court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness, which makes it unsafe to accept his evidence.**

26. The evidence was also said to be insufficient. Reliance was placed on the case of **Okethi Okale & Others Vs. Republic (1965)EA** page 555, where it was held *inter alia* as follows:

> *In every criminal trial a conviction can only be based on the weight of the actual evidence adduced and it is dangerous and inadvisable for a trial judge to put forward a theory not canvassed in evidence or in court speeches.*

27. He also submitted that the mattresses were not brought to court. He stated that the recovering officer contravened the law on recovery by failing to produce an inventory.

28. The appellant submitted that the court was biased by contravening section 150 of the Criminal Procedure Code by not calling the ballistic expert. The standard of proof was thus not met. He submitted that that sections 779(3) and 78(r) of the Evidence Act were contravened. He stated that the

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informer was not called to testify to be cross-examined under Article 50(1)(b)(j) (k) of the Constitution.

29. He submitted that the evidence given in defence was reasonable compared to that of PW1 and PW2. He stated that the possibility of planting the gun and ammunition was high. He submitted that the appellant does not assume responsibility for proving an alibi. This is strange, as none was raised in the court below in respect of the count on which he was found guilty. Reliance was placed on the case of Jo**seph Waiguru Wang'ombe v Republic [1980] KECA 6 (KLR**).

30. It is unknown if the respondent filed submissions, as they were said to be sent via email as opposed to CTS.

Analysis

31. This being a first appeal, this court is under a duty to reevaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence firsthand. In the case of *Mbogo and Another vs. Shah [1968] EA 93* the court stated:

> **…that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which is should not have acted or because it**

failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.

32. The duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in **Pandya -vs- Republic** [1957] EA 336 as follows:-

> On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court different.

33. An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination as held in the case of **Okeno v Republic [1972] EA 32** at 36 where the East Africa Court of Appeal stated on the duty of the Court on a first appeal:

> **“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya v. R., [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (Shantilal M. Ruwala v. R., [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see Peters v. Sunday Post, [1958] E. A. 424.”**

34. The issue in this case is whether the prosecution proved its case to the required standards. Within this issue there are sub-issues that were raised, that is, in the petition of appeal and in the submissions. The court will not deal with issues raised in submissions as they are not pleadings.

35. A party cannot find a claim in submissions. They are neither evidence nor pleadings. Mwera J, posited as follows when postulating on what is the role of submissions are. He stated that they are a course by which counsel or able litigants focus the court’s attention on those points of the case

that should be given the closest scrutiny in order to firmly establish a claim. In the case of **Nancy Wambui Gatheru vs. Peter W Wanjere Ngugi Nairobi HCCC No. 36 of 1993**:

> "Indeed, and strictly speaking, submissions are not part of the evidence in a case. Submissions, to this court's view, are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim/charge or disprove it. Once the case is closed a court may well proceed to give its judgement. There are many cases especially where parties act in person where submissions are not heard. Even some counsel may opt not to submit. So submissions are not necessarily the case."

36. Submissions are not, strictly speaking, part of the case, their absence of which may do no prejudice to a party. Their presence or absence does not in any way prejudice a case as held in **Ngang'a & Another vs. Owiti & Another [2008] 1KLR (EP) 749**, where the Court held that:

> "As the practice has it and especially where counsel appears, a Court may hear final submissions from them. This, strictly speaking, is not part of the case, the absence of which may do prejudice to a party. A final submission is a way by which counsel or sometimes (enlightened) parties themselves, crystallise the substance of the case, the evidence and the law relating to that case. It is, as it were, a way by which the Court's focus is sought to be concentrated on the main aspects of the case which affect its outcome. Final

> submissions are not evidence. Final submissions may be heard or even dispensed with. But the main basis of a decision in a case, we can say are: the claim properly laid, evidence fully presented and the law applicable."

37. The Court of Appeal was more succinct in that Submissions cannot take the place of evidence when they addressed the question in the case of **Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR**:

> "Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "***marketing language***", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented."

38. The sub issues were:
    a. Whether the appellant was in possession of the gun.
    b. Whether there were inconsistencies and contradictions.
    c. Whether the defence evidence was considered or ignored.

39. It must be remembered that the duty to prove a criminal case was on the state. The appellant entered proceedings having the presumption of innocence. The most oft quoted

English decision of by Viscount Sankey L.C in the case of **<u>H.L. (E) Woolmington vs. DPP [1935] A.C 462 pp 481</u>**, comes in handy in describing the legal burden of proof in criminal matters, that;

> "Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.''

40. An accused enters these proceedings presumed to be innocent. In the case of *<u>R vs. Lifchus</u>* {1997}3 SCR 320 the Supreme court of Canada explained the standard of proof as doth:-

> "The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the crown has on evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty…the term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so

> engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy you of the guilty of the accused beyond a reasonable doubt. On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high. In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilty beyond reasonable doubt."

41. The legal burden refers to the burden of proof which remains constant throughout the trial. It is the obligation of a party to establish the facts and contentions necessary to support its case, in this case the prosecutor. According to Halsbury's Laws of England, 4th Edition, Volume 17, paras 13 and 14:

> "The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish

these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case of with separate issues."

42. The standard of proof required in such cases was addressed by Brennan, J. in the United States Supreme Court decision of *In re Winship* 397 U.S. 358 (1970), at pages 361–364, where he stated that:

> "**The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatised by the conviction…Moreover use of the reasonable doubt standard is indispensable to command the respect and confidence of the community. It is critical that the moral force of criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned.**"

43. In criminal cases, the standard of proof is beyond reasonable doubt and it was due to this that Mativo, J (as he

then was) in **Elizabeth Waithiegeni Gatimu vs. Republic [2015] eKLR** expressed himself as hereunder:

> **“To my mind the rule that the prosecution may obtain a criminal conviction only when the evidence proves the defendant’s guilt beyond reasonable doubt is basic to our law. It is necessary that guilt should not only be rational inference but also it should be the only rational inference that could be drawn from the evidence offered taking into account the defence offered if any. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty…Having considered the circumstances of this case, the prosecution evidence and the defence offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favorite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all**

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> **the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge."**

44. Reasonable doubt needs not reach certainty, but it must carry a high degree of probability. It was held by the Court of Appeal in **Moses Nato Raphael vs. Republic [2015] eKLR** as doth:

> "What then amounts to "reasonable doubt"? This issue was addressed by Lord Denning in Miller v. Ministry of Pensions, [1947] 2 ALL ER 372 where he stated:-'That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.'"

45. Starting with defence evidence, the appellant started to allege that the gun was brought in at 6.00 am by PW13.

46. However, this was not put to the said witness in cross examination. Her evidence was that the jacket and pistol belonged to the appellant. This evidence was supported by the accomplice, DW2 and the evidence of the police who

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recovered the gun. It was no doubt that the appellant and PW13 slept on the same mattress and the appellant's jacket was placed below.

47. The defence posited that he was framed. However, this is not borne out by evidence. It is not worth that a case cannot be based on suspicion. He was caught with the firearm in his jacket. In the case of **Faith Lucas V Republic** [2008] KECA 267 (KLR), the court of appeal stated as follows:

> It has not been shown that the appellant's explanation was not plausible. There was evidence of bad blood between the appellant's family and Konde's family. It is to be observed that indeed Konde and his sons were arrested and charged (jointly with the appellant) in respect of the death of the deceased. It would appear that the appellant was arrested, charged, convicted and sentenced purely on mere suspicion. We must point out that suspicion, however strong, cannot be used as evidence in a criminal case of this nature. It was upon the prosecution to prove its case against the appellant beyond reasonable doubt. In this case, the members of Konde family and or their agents are not excluded from being persons who might have been involved in the death of the deceased.

48. PW2 was PC Stephen Onchari who recovered the gun in the presence of the appellant and PC Daniel Sindi. Indeed, it came out that the appellant used the same gun and injured the second accused, who was taken to hospital and escaped.

The court was therefore correct that the appellant was in possession.

49. The appellant has now stated that the gun was not in his physical possession. Section 89(1) of the Penal Code defines what possession of a firearm means as follows:

> **(1) Any person who, without reasonable excuse, carries or has in his possession or under his control any firearm or other offensive weapon, or any ammunition, incendiary material or explosive in circumstances which raise a reasonable presumption that the firearm, ammunition, offensive weapon, incendiary material or explosive is intended to be used or has recently been used in a manner or for a purpose prejudicial to public order is guilty of an offence and is liable to imprisonment for a term of not less than seven years and not more than fifteen years.**

50. By removing his clothes and becoming stark naked, the appellant cannot run away from possession. Possession has connotation of carrying or has in his possession or under his control. It is irrelevant that they were in PW13's house. He had exclusive control of his jacket. This was seen by DW2 and PW13, PW1 and PW2. The appellant was arrested while in the premises and according to PC Stephen Onchari, the appellant used the gun and released spent cartridges, which were produced in evidence.

51. PW1 and PW2 arrested the accused. There was no question of identification. There was no break in the chain of custody.

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A question of contradictions and inconsistences was raised. There were no inconsistencies. Minor contradictions are expected. I therefore find and hold that the appellant was found in possession.

52. There were allegations of discrepancies and inconsistencies. These must be regarding major items. On this, the court must determine whether the alleged discrepancies and contradictions were fundamental and prejudiced the appellant. In **Joseph Maina Mwangi Vs. Republic ca no. 73 of 1992 (Nairobi)** Tunoi, Lakha & Bosire JJA held:

> 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, to wit, whether such discrepancies are so fundamental as to cause prejudice to the appellant or they are inconsequential to the conviction and sentence.

53. In this case, the prosecution's evidence was consistent. It was actually corroborated by defence evidence. There was no basis for impugning the judgment.

54. Before I depart, I note that the court wrongly acquitted the appellant of lack of direct evidence on robbery with violence. Having been found with the gun recently stolen from the complainant PW7 IP Samuel Miheso, the appellant was either a possessor or a thief. He owed a duty to explain the possession of the recently stolen gun.

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55. In the case of **William Oongo Arunda (Hitherto referred to as Patrick Oduor Ochieng) v Republic [2022] KECA 23 (KLR)**, the court of appeal [**A Mbogholi-Msagha, SG Kairu & P Nyamweya, JJA]** held as follows:

> **We start with the question whether the doctrine of recent possession was properly invoked. As regards the circumstances under which the doctrine of recent possession may apply, in Athuman Salim Athuman vs. Republic [2016] eKLR, thisCourt held that:"The essence of the doctrine is that when an accused person is found in possession of recently stolen property and is unable to offer any reasonable explanation how be came to be in possession of that property, a presumption of fact arises that he is either the thief or receiver. (See MALINGI V. REPUBLIC (1989) KLR 225 H.C and HASSAN V. REPUBLIC (2005) 2 KLR 151). The circumstances under which the doctrine will apply were considered in ISAAC NG'ANG'A KAHIGA ALIAS PETER NG'ANG'A KAHIGA V. REPUBLIC, CR. APP. NO. 272 of 2005, where this Court stated:**
>
> > **"It is trite that before a court of law can rely on the doctrine of recent possession as a basis of conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof, first that the property was found with the suspect, secondly, that the property is positively the property of the complainant; thirdly that the property was stolen from the**

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> **complainant and lastly, that the property was recently stolen from the complainant. The proof as to time, as has been stated over and over again, will depend on the easiness with which the stolen property can move from one to the other.”**

56. Consequently, there was no basis for the acquittal. However, there is no appeal before me on that issue.

57. Given that there is no appeal on sentence, the appeal is dismissed.

Determination

58. In the circumstances, I make the following orders:-

a) The appeal on conviction is dismissed for lack of merit.

b) 14 days right of appeal.

c) The file is closed.

DELIVERED, DATED and **SIGNED** at **NYERI** on this **10th** day of **March, 2026**.

Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

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In the presence of: -

Mwangi for the State

Appellant present

PC Robert Ntabo at Migori Main Prison

Court Assistant – Michael/Martin

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