



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CRIMINAL DIVISION NAIROBI
HIGH COURT CRIMINAL APPEAL NO E 016 OF
2024
(CRIMINAL CASE NO E689 OF 2021CM'S COURT
MILIMANI)
PHINEUS MUGENDI.....APPELLANT

VS

REPUBLIC.....RESPONDENT

JUDGMENT

INTRODUCTION

The Appellant filed the following appeal;

APPELLANT'S AMENDED GROUNDS OF APPEAL

I PHINEUS MUGENDI, C/O OFFICER IN CHARGE, KAMITI MAIN PRISON, after receiving my Trial Records from the trial Court now beg leave of this Hon. Court to amend my previously lodged petition of appeal under section 350 (v) of the Criminal Procedure Code with the following grounds and proceed to argue them by written submissions thus:

1) THAT, the Hon Trial Magistrate erred in matters of law and fact by failing to note that appellants right to a

fair trial in chapter 50 (2) (j) of the Constitution was violated.

2) THAT, the Hon Trial Magistrate erred in matters of law and facts by failing to find that the accused person was not properly identified as the perpetrator of the offence charged since his mode and circumstances of arrest is not justified by the evidence adduced.

3) That, the Hon Trial Magistrate erred in matters of law and fact by failing to find that vital witnesses.

TRIAL COURT EVIDENCE

1. PW1 Benson Kimani Maina stated that on 19/6/2021 at 10 pm he was going to his vehicle at Globe Roundabout and he was crossing the road as people came from the foot bridge tunnel. There were 2 people and they had a knife, they searched him and took ITEL phone worth Ksh 1500/-

2. The Police officers on patrol saw them and came to his rescue and they shot the bullet that mistakenly hit him on his left finger and took him to hospital and he was admitted treated and discharged. One of the boys ran off and the other one the Accused person was apprehended.

3. There was sufficient light at the place they attacked him. He saw their faces and he identified the Accused person who had a knife with blue handle and the one

who ran away had a wooden knife, the Accused person did not harm him as he gave him the phone.

4.PW2 No 235788 PC Royford Kirimi from Ngara Police Station on 19/6/2021 at 10,30 am while on patrol with PW3 around Globe Cinema Roundabout and heard noise and saw commotion. He went to the scene and saw 5 men who moved closer and a man said that he said 2 men were stealing from him and they had knives. He and PW3 ordered the men to drop the knives and one began to approach them He shot in the air to warn him. He knelt down and he was arrested. The other ran away and took the phone. The victim he took him to hospital. He produced the knife with a blue handle as Exhibit 1.

5.PW3 No 249353 PC Juma Aidha of Central Police station was with PW2 on 19/6/2021 at 10.30 pm they were patrolling around Globe Cinema and heard commotion and as he moved closer at 3-10 metres away saw 3 people struggling and one of them saw him & PW2 and ran away. One of them advanced towards them and surrendered and dropped the knife and they arrested him and took the Knife PMFI. He identified the person they arrested as the Accused person in Court. The took the victim to hospital.

6.PW4 No 62831Corporal Patrick Kibogonyi of DCI Nairobi and Investigation Officer, he testified on the reports he received from witnesses, the knife that was recovered was handed over to him. He then recorded Witness Statements and went to KNH to visit the victim PW1 who was mistakenly shot was treated and was recovering. The phone was never recovered.

7.The Trial Court rendered a case to answer. The Accused person did not present any defense or call witnesses and he opted to wait for the Court's Judgment.

8.The Trial Court delivered judgment on 1/3/2022 and found the accused person guilty under **Section 296 (2) Penal Code** and during Pre-sentence proceedings sentenced the Appellant to serve 50 years imprisonment.

APPELLANT'S WRITTEN SUBMISSIONS

1. The **Supreme Court of India in the case of NATASHA SINGH VS CB (2013) 5 SCC 741** it was held as follows:

“Fair trial is the main object of criminal procedure and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the

interest of the accused, the victim and the society, and therefore, fair trial include the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional as well as human right. Thus; under no circumstances can a person's right be jeopardized. (emphasized).

2. Principles of a retrial were stated in **Almer and Kelvin Ochieng Tom-V-R (2018) e KLR** that:

“

in general, a retrial may be ordered only when the original trial was illegal or defective. It will not be orders where the conviction is set aside because of insufficient evidence or for purposes of enabling the prosecution to fill up gaps in its evidence at first trial, even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame, it does not necessarily follow that a retrial should be ordered.

And it will also subject the appellant to double jeopardy as we stated in the case of **Morris Kaberia vs Republic HCCR APPEAL NO. 125 OF 2017** where the appellant was set at liberty by Hon. Mulwa J N. LJ

Considering the totality of the circumstances and facts of the appeal before me, the nature of evidence on record, the possibilities if availability of witnesses who testified way back in 2009 and the nine- year period the appellant

was in custody behind bars, it would be against the constitution tenets under Article 50 (2) (e) of the constitution that guarantees an accused person the right to have his trial begin and concluded without reasonable delay. The trial of the appellant started in 2009 and concluded in 2013. That itself was delay enough. A retrial would without any doubt take more time, all to the prejudice of the appellant for no fault of his.

3. In the case of **JOHN NJAGI KADOGO & 2 OTHERS V REPUBLIC (2006) eKLR**, the Court stated :-

“In the absence of a first report to the police by these witnesses giving a description of the Appellant, their subsequent identification of the Appellant on an identification parade cannot be said to have been properly conducted where a witness had given a description of the attackers to the police in the first report and then his alleged identification is tested by the subsequent identification parade. Failure to observe the foregoing renders any subsequent identification to be dock identification that adds little value to the prosecution case.

In the case of **KAMAU NJOROGE-VS REPUBLIC (1982-88) KLR 1134**. The Court of Appeal held: -

“..... Dock identification is worthless unless precede by a properly conducted identification parade. The complainant should also be asked to

give description of the suspect, and police should arrange for a fair identification parade...

4. The Prosecution failed to prove to the Court that the appellant was among the people who allegedly assaulted and stole from the witness herein as there was nothing in his possession to link him with the said offence

In **R V TURNBULL AND OTHERS (1976)3 ALL ER 549**, it was held that

“The judge should direct the jury to examine closely the circumstances in which identification by each witness came to made such circumstances include; how long did the witness have with the accused under observation? At what distance? Under what light? Was the observation impeded in any way? ha the witness ever seen the accused before? How often? If occasionally, had he any special reason for remembering the accused? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance?”

5. It is also not explained the intensity of light which the witnesses were in and which was used to identify

the robbers. The intensity of light being essential need to be proved by the prosecution in robbery cases

In **MAITANYI-VS-REP (1986) KLR 198** The Court of Appeal in holding that an enquiry as to the intensity of light is essential in testing the accuracy of evidence of identification held that;

“The strange fact is that many witnesses do not properly identify another person even in daylight....it is at least essential to ascertain the nature of light available. What sort of light, its size and its position relative to the suspect, an all important matter helping to test the evidence with greatest care it is not careful test if none of these matters are unknown because they were not inquired into?”

See; **Wanjohi and others-vs-Rep (1989) KLR**

6. Dealing with the issue of identification this court sitting in Nakuru, **Hon. John Mativo (J) (as he then was) in the case of Donald Atemia Sipendi v Republic (2019) eKLR**

stated thus ***‘I am also alive to the fact that it is necessary to test the evidence of a single witness respecting to identification, and take great care and caution to ascertain whether the surrounding circumstances were favorable to***

facilitate proper identification. These in my view include light, time spent with the assailant, clothes or any item that the witness may positively identify and whether the accused was known to the complainant. Such evidence may be reinforced by sufficient collaboration and where there is no collaboration the court needs to treat it with caution. Thus, in evaluating the accuracy of identification testimony, the court should also consider such factors as:-

- a) What were the lighting conditions under which the witness made his/her observation?**
- b) What was the distance between the witness and the perpetrator”?**
- c) Did the witness have an unobstructed view of the perpetrator”**
- d) Did the witness have an opportunity to see and remember the facial features, body size, hair, skin, color, and clothing of the perpetrator”**
- e) For what period of time did the witness actually observe the perpetrator”**
- f) During that time, in what direction were the witness and the perpetrator facing, and where was the witness attention directed’**
- g) Did the witness have a particular reason to look at and remember the perpetrator”**
- h) Did the perpetrator have distinctive features that a witness would be likely notice and remember”**

i) Did the witness have an opportunity to give a description of the perpetrator'' if so, to what extent did it match or not match the accused, as the court finds the accused's appearance to have been on the day in question''

j) What was the mental, physical, and emotional state of the witness before, during, and after the observation''?

k) To what extent, if any, did that condition affect the witness's ability to observe and accurately remember the perpetrator''

7. In **J.O.O VS REPUBLIC (2015) e KLR** where the High Court held in conclusion, at Para 64-

***It is not lost to this court that the offence which the appellant faced was such as serious one and ought to be denounced in the strongest terms possible. However, it also remains a cardinal duty on the prosecution to ensure that adequate evidence is adduced against a suspect so as to uphold any conviction. The standard of proof required in criminal cases is well settled; proof beyond any reasonable doubt hence this case cannot be an exception. This court holds the view that it is better to acquit ten guilty persons than a convict one innocent person.'* (Emphasis added).**

RESPONDENT WRITTEN SUBMISSIONS

1. Whether the ingredients of the offence of Robbery with violence were established?

The ingredients of the offence of Robbery with violence were clearly set out by the Court of Appeal in the case of **OLUOCH VS REPUBLIC (1985) KLR** where it was held that “***Robbery with violence is committed in any of the following circumstances:***

- ***The offender is armed with any dangerous and offensive weapon or instrument; or***
- ***The offender is in company with one or more person or persons; or***
- ***At or immediately before or immediately after the time of the Robbery the offender wounds, beats, strikes or uses other personal violence to any person...”***

In **JUMA MOHAMED GANZI AND 3 OTHERS VS REPUBLIC CRIMINAL APPEAL NO. 275 of 2002** the elements are distinctive in nature and the prosecution needs to prove only one of the three elements to warrant a conviction.

2. In the case of **PATRICK OPONDO OPOLLO AND OTHER VS REPUBLIC. CRIMINAL APPEAL NO.23 OF 2014,**

the question of identification and recognition of the attacker by the victim is very crucial. The court must examine the conditions that existed at the time and

place of the robbery and their favorableness or otherwise to positive identification or recognition as alleged by the complainant.

3. In **FRANCIS KARIUKI NJIRU AND SEVEN OTHERS VS REPUBLIC. CRIMINAL APPEAL NO.6 OF 2001,**

The Court of Appeal stated that evidence relating to identification must be scrutinized carefully, and should only be accepted and acted upon if the Court is satisfied that the identification is positive and free from error. The surrounding circumstances must be considered.

ANALYSIS & DETERMINATION

1. The Court considered the evidence on Trial Court record and written submissions by Appellant and the State through ODPP/Prosecution.

This Court being the 1st Appeal Court, its duty is as set out in the case of **Okeno vs. Republic [1972] EA 32** as follows:-

“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 vs. Republic (1957) EA. (336) and the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting

evidence and draw its own conclusion. (Shantilal M. Ruwala Vs. R. (1957) EA. 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 finding and conclusion; 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.."

2. In criminal case the burden of proof solely rests with the Prosecution. In the celebrated case of **H.L(E)Woolmington vs. DPP [1935] A.C 462 pp. 481, Viscount Sankey L.C** held 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 defense 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.”

3.The standard of proof is proof beyond reasonable doubt. According to Lord Denning on what is proof beyond reasonable doubt in **Miller vs. Ministry of Pensions, [1947] 2 ALL ER 372** stated that:-

“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 favor 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.”

4.The Appellant took issue with the Trial Court that the Trial was not fair as **Article 50 (2) (j) Constitution** was not complied with. It provides; [that the Accused person should]

(j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;

5. The Trial Court's both handwritten and typed proceedings of 20/12/2021 indicate that upon the Investigating Officer being summoned to Court, he confirmed to the Court that the Police file was always available on each hearing date. The Officer he handed the Police file to an Officer and he did not present it in Court. The I/O brought the Police file to Court on 14/12/2021 and the Accused person had all documents required.

6. Therefore, contrary to the issue raised that **Article 50 2 (j) of the Constitution** was not complied with; the Appellant raising the question of service of evidence the Prosecution was going to rely on, the Court record shows he was served with the relevant documents and throughout the Court record he did not object or raise the issue informing the Trial Court that the evidence to be relied on by Prosecution was not availed to him.

7. In evaluating the evidence on record afresh, this Court finds as follows; the court considered the ingredients of the offence of robbery with violence. The case-law cited ably by Respondent; **Juma Mohamed Ganzi & 3 Others vs Republic Criminal Appeal 275 of 2002 & Oluoch vs Republic 1985 eKLR** supra;

confirm that proof of any/some/ and/or all ingredients proved constitutes the offence of robbery of violence c/s **296 (2) of the Penal Code** hereby outlined thus;

295. Definition of robbery

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.

296. Punishment of robbery

(1) Any person who commits the felony of robbery is liable to imprisonment for fourteen years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death

8.The evidence of PW2 & PW3 Police Officers on patrol near Globe Cinema Roundabout testified that they saw a group of people under the tunnel footpath and on

coming near, found PW1 being mugged and rescued him from the group of boys who were armed and on seeing the Officers they fled and left one of them who came towards them. PW1 shot in the air to stop him advancing towards them and mistakenly shot PW1 who was rushed to hospital admitted treated and later discharged. The other boys ran away from the scene and the Appellant surrendered to the Police and they retrieved the Knife which was produced as exhibit during trial in Court.

9. The Appellant submitted that he was not properly identified as the perpetrator of the offence charged since his mode and circumstances of arrest were not justified by the evidence adduced. The Appellant alleged that the prosecution failed to prove to the Court that the appellant was among the people who allegedly assaulted and stole from the witness PW1 herein as there was nothing in his possession to link him with the said offence.

He submitted and cited case-law that laid down principles of identification/recognition of suspect(s) **R vs Turnbull & Others 1976 3 All Eng Reports 549; Maitanyi vs Republic 1986 KLR 198 & Donald Atemia Sipendi vs Republic 2019 eKLR**

10. On the other hand, the Respondent relied on **Patrick Opondo Apollo & Others vs Republic Criminal Appeal 23 of 2014 & Francis Kariuki Njiru & 7 Others vs Republic Criminal Appeal 6 of 2001** on examination of conditions prevailing during the commission of the offence.

11. PW1's testimony, he identified the Appellant at Globe roundabout area which was well lit and the light enabled him to identify the Appellant's face and he identified him in Court as one of the assailants on the fateful day. The knife used at the time he also identified it by the color of the handle when presented in Trial court proceedings.

12. PW2 and PW3's testimonies corroborated each other's evidence and that of the victim's PW1's evidence. All witnesses confirmed that the area of the incident was well lit and therefore there was no difficulty in identification of the Appellant as one of the assailants.

13. The two witnesses further testified that while the Appellant's accomplices ran away, the Appellant surrendered on the spot and was arrested by PW2 & PW3 therein and he had a knife with a blue handle

recovered from him which was produced as Exhibit 1 during the Trial. The conditions at the scene were favorable to allow for positive identification of the appellant, coupled by the fact that he was arrested on the spot at the scene of crime.

14. The Appellant in his defense opted not to offer any evidence or defense and therefore prosecution's case remained uncontroverted.

15. The Prosecution case was proved as to the fact that the 3 witnesses found and placed the Appellant at the scene. All 3 witnesses attest to the fact that there was a group of boys/men in tunnel at Globe Cinema Roundabout, they accosted PW1 but midstream, PW2 & PW3 Police Officers while on patrol pounced on them, they ran off except the Appellant who surrendered. He was arrested on the said spot the knife taken and was produced as exhibit in Court.

16. From the evidence on record, although the Appellant was properly identified, placed and found at the scene and identified to be among the others who ran away after mugging PW1 his mobile Phone Make ITEL worth Ksh 1500/-, PW1 stated that the Accused person did not harm because he gave them the phone. The Appellant

was not in possession of stolen phone, PW4 the Investigation Officer, testified that the phone was not recovered.

17.I find from the facts on record, PW1 was pounced on by a group of boys/men with knives stealing his phone but Police PW2 & PW3 intervened, therefore although the robbery was initiated and was in progress, it was not completed on the part of the Appellant. This is because, although he was placed at the scene of crime, no evidence was adduced that he was connected to the other suspects who accosted PW1, there was no evidence he actually stole PW1's phone whilst assaulting him, the evidence on record is that PW1's phone was stolen at the time he was accosted by group of men with knives and before they harmed PW1, PW2 & PW3 Police officers on patrol rescued PW1. The evidence on record is that the Appellant was at the scene said to be one of those who accosted PW1 but he did not harm him nor snatch him the phone.

18.The totality of the evidence on record confirms that the Appellant was at the scene Globe Cinema Roundabout Tunnel on the fateful night 19/6/2021 at 10 pm, and others not before the Trial Court and they accosted PW1 and his phone was stolen. In the process,

PW2 & PW3 Police officers while on patrol heard the commotion, rushed to the scene and intercepted the robbery.

19. The boys/men ran away and PW2 fired in the air mistakenly shot the victim PW1, foiled the robbery and the Appellant surrendered and was arrested and charged with full blown charge of robbery with violence c/s 296 (2) Penal Code.

20. PW1 identified the Appellant as one of those who accosted him at the scene. Although the circumstances of the robbery incident depict ingredients of robbery with violence, there were more than 1 person; there was threat of violence or actual violence before during or after the theft and/or a weapon was found.

21. In the instant matter, the Appellant though found at the scene where other persons were, he surrendered when PW2 shot in the air, a knife was recovered and produced as exhibit during trial; he was not proved to be part of the gang that pounced on PW1 or that he was alone, or that they were together robbing PW1 or he was in the process of robbing PW1 alone.

22. The evidence on record places him at the scene of crime, PW1 testified that he was at the scene whilst

robbery was ongoing but was not completed W1 confirmed that the Appellant did not harm him and the Appellant was not found with the phone and the Appellant did not steal the phone from him. Therefore, the robbery though in motion was completed, no evidence of Appellant stealing the phone was adduced or the phone recovered and the fact the Appellant did not visit violence on PW1 except a weapon/knife was produced in Court.

23. Where there is doubt as to whether Appellant committed robbery to completion and/or whether he was with others not before Court, there is doubt on the proof by Prosecution on these 2 factors as such the benefit of doubt is to the Appellant.

24. I therefore find that the Appellant is found guilty as charged for the offence of **attempted robbery with violence c/s 297 (1) of the Penal Code**

Attempted robbery

(1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or

overcome resistance to its being stolen, is guilty of a felony and is liable to imprisonment for seven years

-

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.

25. Erick Amwata Onono v Republic [2016] KECA 137 (KLR) Makhandia Ouko M' Inoti JJA CA MSA observed as follows as regards robbery with violence attempted robbery with violence;

To prove the offence of robbery with violence, the element of stealing must be proved coupled with one or all of the other elements set out in section 296(2), namely that the offender was armed with a dangerous or offensive weapon or instrument; was in the company of one or more others; or immediately before or immediately after the time of the robbery he wounded, beat, struck or used other personal violence on the victim. In JOHANA NDUNGU V. REPUBLIC, CR. APP. NO. 116 OF 1995 this Court extrapolated the position as follows:

“In order to appreciate properly as to what acts constitute an offence under section 296(2) one must consider the sub-section in conjunction with s. 295 of the Penal Code. The essential ingredient of robbery under section 295 is use of or threat to use actual violence against any person or property at or immediately after to further in any manner the act of stealing. Therefore, the existence of the afore-described ingredients constituting robbery are pre-supposed in the three sets of circumstances prescribed in s. 296(2)...” (Emphasis added). (See also OLUOCH V. REPUBLIC [1985] KLR 549 and GANZI & 2 OTHERS V. REPUBLIC (2005) 1KLR 52). In the absence of any evidence proving the element of stealing, we agree with the appellant that he could not have been convicted of robbery with violence under section 296(2) of the Penal Code.

26. In the instant case, PW1's evidence was that he was accosted by men/boys in the Tunnel at the Globe Cinema roundabout but PW2 PW3 intercepted and foiled the robbery; all ran off except the Appellant who surrendered. PW1 stated that the Appellant did not harm him (although a knife was recovered and presented as exhibit) and the phone that was stolen was not stolen by the Appellant. For these reasons this Court finds the Appellant guilty of lesser offence of

robbery c/s to **Section 297 (1) of the Penal Code** as the Appellant did not wound beat or strike or occasion personal violence on PW1 and it was not proved that though there were other men/boys at the scene they were together.

SENTENCE

27.Clause 23.8 Sentencing Policy Guidelines 2016

provides mitigating circumstances in this case to include age of Accused person, being a 1st offender and the harm on the victim is negligible as the robbery was foiled by PW2 & PW3 Police Officers on Patrol who rescued the victim PW1.

Clause 1.2 of the Sentencing Policy Guidelines

(2023) lays out the principles underpinning the sentencing process as follows:

i. **Proportionality:** The sentence meted out must be proportionate to the offending behavior; Proportionality of the sentence to the offending behavior is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.

ii. **Equality/Uniformity/Parity/Consistency/**

Impartiality: The same sentences should be imposed

for same offences committed by offenders in similar circumstances.

iii. **Accountability/Transparency:** The reasons behind the determination of sentence should be clearly set out and in accordance to the law and the sentencing principles laid out in these guidelines.

iv. **Inclusiveness:** Both the offender and the victim should participate in and inform the sentencing process.

v. **Totality of the Sentence:** The sentence passed for offenders convicted for multiple counts must be just and proportionate, taking into account the offending behavior as a whole.

vi. **Respect for Human Rights and Fundamental Freedoms:** The sentences imposed must promote and not undermine human rights and fundamental freedoms. Sentencing impacts on crime control and has a direct correlation to fostering an environment in which human rights and fundamental freedoms are enjoyed.

28. Taking into account the above consideration of the Sentencing policy guidelines, the Appellant has served close to 5 years imprisonment and with remission

provided by **Section 46 of Prisons Act** and **Section 333 (2) CPC; Pre-Trial Detention period included;** he has completed his jail term under the offence of **attempted robbery c/s 297 (1) of the Penal Code.** Unless otherwise legally held, the Appellant ought to be released forthwith.

DISPOSTION

- 1. The Appeal on conviction partly successful partly dismissed**
- 2. The Appellant found guilty of attempted robbery c/s 297 (1) of the Penal Code.**
- 3. The sentence of 50 years imprisonment for the offence of robbery with violence is hereby set aside and in place the Appellant is found guilty of attempted robbery c/s 297 (1) Penal Code that carries sentence of 7 years imprisonment.**
- 4. The Appellant has to date served sentence on attempted robbery c/s 297 (1) of the Penal Code.**
- 5. The Appellant shall be released forthwith unless otherwise lawfully held in custody.**

**JUDGMENT READ OUT DELIVERED SIGNED DATED
IN OPEN COURT CRIMINAL DIVISION HIGH COURT
NAIROBI ON 16/3/2026 READ ONLINE ON
23/3/2026.**

M.W. MUIGAI

JUDGE

ORIGINAL