

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT VOI**

**CRIMINAL APPEAL NO. E043 OF 2025**

**1. SALIM MUKISA TSUMA**

**2. BENJAMIN NDORO JOTO.....**

**APPELLANTS**

**=VERSUS=**

**REPUBLIC.....**

**RESPONDENT**

**(Being an appeal from the Conviction and Judgment of Hon. A.  
M. Obura (CM) in Voi CMCCR Case No. 629 of 2022 delivered on  
1<sup>st</sup> July 2025)**

**JUDGMENT**

1. The two Appellants together with another who was the first Accused Person who absconded court since 24<sup>th</sup> September 2024 were charged with robbery with violence contrary to Section 295 as charged with Section 296(2) of the Penal Code.
2. The particulars of the charge were that on the night of 7<sup>th</sup> and 8<sup>th</sup> September 2022 along Mombasa – Nairobi Highway at Manyatta Area within Voi Sub-County, the two Appellants jointly with another not before court robbed **GABRIEL CHENGO KARISA** of a

truck registration number KCJ 998S/ZE 3899 Axor loaded with 28 tonnes of maize and 800 litres of diesel the property of **AMANA DESTINY ROADWAYS SERVICES LTD** and two mobile phones (neon registration worth Kshs. 5,000 and Nokia worth Kshs. 8,000 and Mpesa Kshs. 5,000 the property of **GABRIEL CHENGO KARISA** all valued at Kshs. 7,745,760/= and during such robbery killed the said **GABRIEL CHENGO KARISA**.

3. The Appellants pleaded not guilty and they were represented at the trial by Mwawasi Advocate.
4. The prosecution evidence was that the deceased who was the driver of motor vehicle registration number KCJ 998S/ZE 3899 Axor left KIPEVU at the Port of Mombasa with the said motor vehicle on the night of 7<sup>th</sup> and 8<sup>th</sup> September 2022.
5. The deceased was found dead in the said motor vehicle at Manyatta Area along Nairobi - Mombasa road. The maize consignment was intact but his personal effects were missing.
6. Sometimes in the same month of September 2022, **PW7 JOSEPH MWADULE** received a Neon Ray mobile phone from the 1<sup>st</sup> Accused.
7. PW7 was confronted on 5<sup>th</sup> October 2022 following police investigations and he is the one who led police to the arrest of the 1<sup>st</sup> Accused Person.

8. The 1<sup>st</sup> Appellant in this case was also traced through one Nadzua Nyiro who was found using the deceased's second phone.
9. The said Nadzua Nyiro led police to the 1<sup>st</sup> Appellant and the 1<sup>st</sup> Appellant led police to the 2<sup>nd</sup> Appellant.
10. The 1<sup>st</sup> Accused Person in the trial court, **HAMISI KAZUNGU MUGAZA** absconded when the three of them were put on their defence.
11. The 1<sup>st</sup> and 2<sup>nd</sup> Appellants who were the 2<sup>nd</sup> and 3<sup>rd</sup> Accused during the trial denied the charges and said in their defence that they did not the deceased or the vehicle he was driving.
12. The 1<sup>st</sup> Appellant said he was arrested for no apparent reason and the 2<sup>nd</sup> Appellant also claimed his co-accused were strangers to him. He said he stays at Taru and that one morning police visited him and when he identified himself they escorted him to the police station and he was charged.
13. The trial court found the Appellants guilty as charged and sentenced them to death.
14. The Appellants have appealed to this court on the following similar grounds of appeal:-
  - (i) **THAT I pleaded NOT GUILTY to the offence.**
  - (ii) **THAT the learned trial Magistrate erred in law and in facts by failing to appreciate that the investigation that was done in this matter was shoddy.**

- (iii) THAT the learned trial magistrate erred in law and in fact by failing to find that the defense of the appellant as was stated did exonerate him from the scene of the crime.**
- (iv) THAT the sentence imposed was harsh and excessive since it was applied in mandatory terms as provided by the statute.**
- (v) THAT further grounds shall be adduced at the hearing of this appeal.**
- (vi) THAT I wish to be present during the hearing and determination of this appeal.**
- (vii) THAT I pray to be supplied with the record of trial proceedings and the judgment to enable me erects other grounds and also be prepared for the hearing of my appeal.**

15. The parties filed written submissions as follows:- The Appellants did not file any submissions

16. The Respondent's submissions argue that the trial court's conviction and death sentence against the two appellants should be upheld. The prosecution maintains it proved the offence of robbery with violence beyond reasonable doubt through six witnesses. PW1, the deceased's employer, identified the body at

the crime scene, while PW2 and PW3 confirmed the post-mortem findings. PW6 produced the post-mortem report showing death resulted from asphyxia due to strangulation and multiple stab wounds. PW4 testified that the deceased's two mobile phones were missing, but tracking the IMEI number and SIM card led to the first appellant, who then led to the second appellant within a month of the offence. Neither appellant gave a reasonable explanation for possessing the deceased's phone, thereby failing to rebut the doctrine of recent possession. On sentence, the submissions cite the Judiciary Sentencing Policy Guidelines and clarify that the Muruatetu II decision applies only to murder cases, not robbery with violence, for which death remains mandatory under Section 296(2) of the Penal Code. The Respondent therefore prays that the appeal be dismissed and the trial court's judgment upheld.

**Dated, signed and delivered this 30<sup>th</sup> day of April 2026 in open court at Voi High Court.**

**ASENATH ONGERI**

**JUDGE**

**In the presence of:-**

**Court Assistant: Millicent/Eghwa**

**Prosecutor:**.....

**Appellants:** .....

ORIGINAL