

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MACHAKOS  
CRIMINAL APPEAL NO. E095 OF 2024

FRANCIS MAITHYA MUTAVI.....1<sup>ST</sup> APPELLANT  
JOEL KASERA.....2<sup>ND</sup> APPELLANT  
JOSPHAT NYAGA NGUGI.....3<sup>RD</sup> APPELLANT  
LAWRENCE KITHALE MWANIA.....4<sup>TH</sup> APPELLANT  
MICHAEL MUSYOKI.....5<sup>TH</sup> APPELLANT  
MUSYOKA KIVULI alias MUKOKO.....6<sup>TH</sup> APPELLANT

-VERSUS-

THE REPUBLIC.....RESPONDENT  
*(Being an appeal against conviction and sentence issued on 4<sup>th</sup> October 2024  
by Kithimani Senior Principal Magistrates Court (Hon P. Wechuli PM) in  
criminal case number 285 of 2021)*

**JUDGMENT**

In the lower court, the appellants were charged with malicious damage to property contrary to Section 339(1) of the Penal Code particulars being that on 17-11-2021 at Kaewa market in Masinga Sub-County, within Machakos County, jointly with others not before the court, they willfully and unlawfully destroyed a house under construction causing damage of approximately Kshs 681,400.00, the property of Mary Ndila Nyolo.

The appellants pleaded not guilty and in efforts to prove the case, the prosecution called seven witnesses and after a full trial, the court convicted all the appellants and sentenced each of them to a fine of Kshs 10,000.00 and in default to serve three months in jail. Being aggrieved by both conviction and

sentence, the appellants have through a petition of appeal dated 17<sup>th</sup> October 2024 raised the following grounds;

1. The learned trial Magistrate erred in law and in fact by convicting the accused persons on a charge that was at variance with the evidence adduced before court.
2. The learned trial Magistrate erred in law and in fact in failing to appreciate that the accused persons could not be lawfully convicted of malicious damage to a plot other than the plot stated in the charge sheet.
3. The learned trial Magistrate erred in law and in fact in failing to appreciate that the town stated in the charge sheet is different from the town referred to in the evidence adduced in court.
4. The learned trial Magistrate misdirected himself in law and in fact by failing to appreciate that the prosecution's case was not only insufficient but also speculative and lacked probative value to justify a conviction.
5. The learned trial Magistrate erred in law by convicting the appellants on uncorroborated evidence.
6. The learned trial Magistrate erred in law in holding that the prosecution had proved its case beyond any reasonable doubt yet there was no such proof before court.

This being a first appeal, this court has a duty to re-analyse and re-evaluate the evidence produced before the trial court and come to its own independent conclusion but bear in mind the fact that it did not take the evidence of the witnesses and did not have the advantage of observing their demeanour hence

give due allowance to that. In **Julius Wariomba Githua v Republic [2008] KECA 264 (KLR)**, the Court of Appeal cited with approval the holding in *Okeno v R (1972) EA 32* thus;

*‘In Okeno v R [1972] EA 32 at p. 36 the predecessor of this Court stated, inter alia:*

*‘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 [1975] EA 336). 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] EA 424’*”.

Similarly, the Court of Appeal held in **Kiilu & another v Republic [2005] KECA 335 (KLR)** that;

*‘An appellant on a first appeal was entitled to expect that the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate court’s own decision on the evidence. The first appellate court had to itself weigh conflicting evidence and draw its own conclusions.’*

To enable me re-analyse and re-evaluate the evidence of the parties, it is prudent that I reproduce the testimony of the parties which I do as hereinbelow albeit in an abridged version.

### ***Prosecution's case***

The complainant testified that on 17.11.2021, while in Nairobi she received a phone call from her mother who told her that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> appellants were at a construction site with a ladder in plot no 137 in Kivaa market which she owned. She called her husband Stephen Muendo Muema to go check. Later the husband told her that he went and found the named appellants with a ladder at the back and that they had gone under a shade. She advised the husband and a caretaker known as Munyao to remain there to see what was happening. The caretaker stayed there until 9 pm.

The complaint added that at 11.00 pm she was called by the caretaker and friends who told her that the a groups known as five alive group (hereinafter referred to as 'the group') which had a case over the plot with her was in the site demolishing the building. She claimed that a court had determined that she was the rightful owner of the plot after which the group filed an appeal in Machakos.

The complaint stated further that she called her father and husband who went to the site. On 19.11.21 she went to the plot and found the building which comprised of three one bedroomed houses and seven bed sitters and gate had been demolished. She explained that she had already built on the plot during the dispute but she stopped the construction due to the case.

She added that, it was not the first time the group was interfering with the plot and stated that in October, 2018 her father had found the group fencing it at which time her mother was using it and they told him that they owned the plot. She added that, she removed the fence and they reported at Kamburu where she was summoned in December 2018 but they did not appear for the meeting. Instead, they went to the DCIO Masinga who advised that a surveyor should verify ownership. She added that the surveyor's report showed that she was the owner of the plot upon which the group was not satisfied and they reported at Kithimani.

She identified the appellants in court as the ones who demolished her building and stated that the 1<sup>st</sup> to 5<sup>th</sup> appellants were part of the group and the 6<sup>th</sup> was a friend to the 1<sup>st</sup>. She added that she purchased the plot which she said was number 137 but initially number 60 from one Phoebe Njeri Kariithi in 2013 through a sale agreement which she identified in court. She also identified receipts for payment of land rates which she claimed to have been paying. She also identified a surveyor's report.

In cross-examination, the complainant told the court she had never testified in court over ownership of the plot. She insisted that she purchased the plot in 2013 from Phoebe Kariithi and that she did due diligence before purchasing it. She admitted that she did not carry the decision of the court in her favour.

Fidelis Kivota was the 2<sup>nd</sup> witness. He stated that on 18/11/2021 at 7.30 a.m., he passed through a shop of the 5<sup>th</sup> appellant who asked him if he knew what had happened at Kivaa and when he answered in the negative, he (Musyoki) told him that they had demolished the building of Muema who is the husband to the complainant which the witness had started to construct. He claimed that he was the one who did its roofing. He went to check and found the front and back door had been demolished. The witness identified photographs which he claimed showed the demolished building.

When he was cross-examined, the witness told the court that he went to the 5<sup>th</sup> appellant's shop to get nails for construction of a church and the said appellant was alone. He denied that he had any differences with the 5<sup>th</sup> appellant who was his supplier.

PW3 was Stephen Muema, a businessman who testified that on 17/11/2021 at 1.00 pm, he was informed by his mother-in-law that someone had told her that people were at a family plot he was constructing. He immediately went and found people seated under a shade, greeted them and went round the plot. He found the back door open and called caretaker called one Samson Munyao Kivuva to come with the keys. He opened the front door, entered and found footsteps of persons who had trespassed upon which he bought a padlock and locked the back door.

All that time, people he referred to as suspects were seated under the shade talking. He called his lawyer Joseph Munguti and informed him who just warned him to be careful. He added that the caretaker called at 10 p.m. and told him that the people he had seen during the day were doing damage upon which he went with his vehicle and put on full lights and saw the appellants run away. He saw the damage and called his father-in-law and the next day they reported to the police. The witness identified the appellants in court as the people he saw running.

He was cross-examined by counsel for the appellants upon which he told the court that, the plot in question is in Kivaa which is a busy market with many people. He admitted that the footprints he saw was of unknown people. He reiterated that he found the appellants damaging the house with crow bars, sledge and hammers but he did not recover any weapon from them. He added that some of the appellants escaped to a neighbouring plot where some of them resided. He added that he saw them boarding a motorcycle. He added that the plot which is number 137 is co-owned by him and his wife but registered in his wife's name.

Samson Kivuva was the 4<sup>th</sup> prosecution witness. He told the court that he was a watchman at PW3's home and that on 17/11/2021 at 2 pm, he saw young men seated under a shade of a tree. They stayed there until 5 p.m. and left. He left the site at 9 p.m. and when he came back, he found the gate open and heard someone from inside. He turned on his torch and

saw Nyaga, Michael, Chief Kasera and Mucoba hitting the walls. They threw stones at him and he ran away. Outside, he found Mathayo and another person he did not know. They threw stones at him and he called the owner who came in 15 minutes.

The witness added that when the four men saw vehicle shine light on them, they ran. They entered the house with the owner and found that they had split the wall. They also found a wheelbarrow, 5 spades, 2 saws and 4 metal bars stolen had been stolen. He identified the people he saw who he named as Michael, Chief Kasera, Josphat Nyaga, Mbogo in court. He maintained even in re-examination that these are the four people he saw seated under a shade at 4 pm and at 9 pm damaging the building.

Mr. Daniel Makau, a Land Surveyor with town survey office Machakos was the 5<sup>th</sup> witness. He told the court that he visited the site on 16/4/2021 after the DCIO wrote about a dispute of Plot number 137 located at Kivaa Market in Masinga. The summary of his report which is relevant to this case is that one Mary Ndila and the group were sharing the same plot. According to him Mary Ndila bought the plot from Njeri Kariithi who had bought from Barini Mueni. Barini had bought from Ibrahim Mutave, the original allottee. The group bought from one John Wambua Maingi who had an allotment letter from the County Government of Machakos.

The witness added that he had found that the allotment letter of John Maingi was not valid since the plot in it did not exist on the ground. The plot in it was removed from their record and therefore no rates and rent could be paid. He added that the group should have first conducted due diligence about the existence of the plot through search of records before purchasing. He concluded that all the transfers were conducted by the County Council and approved. He produced his report as an exhibit.

In cross-examination, the witness stated that he started working for Machakos County in 2000. He confirmed that, the dispute was between Mary Ndila Nyolo and the group which was essentially 2 parties fighting over the same site. One was saying their plot was number 58 and the other number 37 formerly 50. He added that his work was to determine ownership and that he had the register, measuring equipment and notebook at the time he was carrying on the exercise. He added that plot number 58 was never in their record but was inserted in 2020 by someone in their office after collusion. When he was shown some receipts, he stated that he could not confirm whether they were genuine since they showed that it was a registration process being done which was illegal. He added that their register dating to 1980's and 1990's shows the plot does not exist.

The witness identified a Kivaa market register for 2007/2008 and added that it did not have plot numbers 57, 58, 59 and 60.

He added that plot number 58 was inserted from 2013 as 58 against Wambua Maingi. He stated further that to insert a plot therein, the process must go through a town planning committee but in this case, it is not a committee that inserted but was a collusion with an officer at Masinga. He added that they should have cancelled the plot, but since it was in court, they were waiting for the court process. He testified further that the 2007/2008 register did not have plot number 137 I but he could confirm that the plot was registered on 12/9/2012. He denied knowledge of some maps he was shown and stated that Kivaa market does not have a map.

The next witness, John Ileri Nderitu who is a valuer and surveyor testified that he got instructions from PW3 to visit a property in Kivaa and assess the damages caused on it. He added that PW3 took him to the site which had two blocks of single storey houses on 22/11/2021 upon which he conducted his work and prepared a report. He stated that the wall of the gate was demolished. He produced his report dated 30-11-2021 which showed that the value of the damage was Kshs. 681,000/- as an exhibit.

In cross-examination, he admitted that the report did not have a plot number and the sketch in the map was not to scale and did not indicate the neighbouring plots. He added that he was instructed by Mary Ndila Nyolo but he was paid by the husband. He stated further that when he asked for the plot

ownership details, he was given an allotment letter which he attached to the report.

No. 18775 PC Josphat Gachiri, the investigating officer was the last witness. He told the court that the complainant came to his station with complaints of her property having been maliciously damaged by people unknown to her. He went with the complainant to the scene and took photographs and went back to the office. He added that they identified the main suspects and culprits through witness statements and he was not concerned with the ownership of the property. He stated further that the complainant had payments receipts for the plot at Kivaa and a sale agreement. He arrested the suspects and charged them with the offence. The wall and the gate were severely damaged. He concluded that the people he arrested were the ones in dock.

When he was cross-examined, PW7 stated that he was not aware that at the time he took up the matter, there was a civil case number E035 of 2021 which was proceeding at Kithimani law courts. He was also not aware that the appellants had a sale agreement or a letter of allotment for the plot. He was also not aware that appellants were paying rates to County Government of Machakos. He concluded by stating that the distance from Kivaa to Kaewa is between 5 to 10 kilometres.

### ***Defence case***

After they were found with a case to answer, the appellants opted to give sworn statements. The 1<sup>st</sup> appellant told the court that he was a businessman in Kivaa. He added that the complainant was known to him for long and her family is familiar to his family. He added that they had a dispute over a plot in Kivaa market, which they bought in 2018 from one Wambua Maingi upon which they planted a live fence which the complainant and her family destroyed but left the group's sign post. They reported the matter to the Chief's office upon which they were called to Chief's office but they declined. He added that the people who destroyed the fence were led by PW1 and PW3.

The 1<sup>st</sup> appellant added that they the opted to report to the police station on 24/12/2018. After engaging with the police, they got a lawyer and filed civil suit number ELC 035 of 2021 which was yet to be determined. He added that they had documents for the plot in form of an agreement, an allotment letter, an approved development plan and receipts for rates.

The 1<sup>st</sup> appellant added that the group which is duly registered and of which he is the Secretary is the owner of the plot and that when the complainant started building, they tried to call them to negotiate but they said they could not sit with the group. He alleged that the OCPD even assisted the complainant to build and that they went to court to stop them from constructing but even after getting the court order, they continued constructing.

The 1<sup>st</sup> appellant added that he did not demolish the building as alleged and stated further that Kaewa to Kivaa is far. He stated that he did not demolish any building in Kaewa. He also stated that even assuming the building was in Kivaa, he did not demolish any building on a plot owned by the complainant. He alleged that the complainant's family demolished the building themselves. He added that PW3's claim that he saw them at night was not true and denied being at the scene. He said that eh was a law-abiding person and he even went to DCIO when they were called by OCPD after the alleged demolition.

In cross examination, the witness stated that a year after the complainant had been summoned by the Chief, they went to Kaewa police station and denied that they were not forum shopping. He admitted that he had not produced an order stopping the construction and that the court rejected their application for injunction. He insisted that they had been paying rates though in the name of Maingi who has since passed away as they had not changed ownership. He added that he did not know if complainant's house was destroyed claiming to have discovered from the charges.

When the other appellants took the witness stand, all that they said was as follows;

The 2<sup>nd</sup> appellant- I am Joel Kasera. I am the 2<sup>nd</sup> accused. I am from Kivaa. I am a businessman. I associate myself with the evidence of DWI. I heard s the prosecution witness. It is not fair for our land to be taken from us. We want to evict anyone from that land.

The 3<sup>rd</sup> appellant- I am Justus Nyaga Ngugi. I am from Kivaa. I am a businessman. I am the Chairman of 15 Alive. Am chairman of Catholic Church Machakos. I agree with DWI 's evidence and say the complainant and her husband used the police to continue constructing that plot. It was a family issue. Stephen just found us at home but no evidence of demolition. I do not know if the house was destroyed.

The 4<sup>th</sup> appellant- I am Lawrence Kithale Mwanja. I am from Kivaa. I am a businessman. I associate myself with evidence of DW1 save to state that I know the complainant well. We are her fellow businessmen. She just chose businessmen she could set.

The 5<sup>th</sup> appellant- I am Michael Musyoki. I am a businessman from Kivaa. I associate with evidence of DW1. There is witness Kivota who said he came to my shop. I did not see him in my shop that day. I have a hardware and welding. I sell construction materials. I am not a mason. I did not go to the scene.

The 6<sup>th</sup> appellant- I am Musyoka Kivuli from Kivaa. I am a farmer. I associate myself with evidence of DW1. I am not a member of 15 Alive so I do not know why I came to court. Police said they cannot refuse Kshs. 100,000/- over me. I have no issue with the demolished house. I am not

afraid. Other accused are neighbours. Yes, I am a casual labourer. I was not paid to demolish the house. Yes, I fractured my leg when I was on top of a tree. I was not cutting the wires.

***Analysis and determination.***

I have considered the evidence of both the prosecution and the appellants as reproduced above. I have also read the submissions of the appellants dated 16<sup>th</sup> December 2025 as well as those of the respondent dated 20<sup>th</sup> February 2026. Having done so, I hold opinion that the issues for determination raised in this appeal are;

- a. Whether there was variance between the charge sheet and the evidence produced by the prosecution and if so, whether it was fatal.
- b. Whether the prosecution proved the case against the appellants beyond any reasonable doubt.

It is trite that where the particulars of a charge are at variance with the evidence of the prosecution witnesses in a material way, it would not be safe to convict the accused person. However, it is notable that not every variance would entitle an accused person to an acquittal. The variance must be so material that it leads to prejudice to the accused person's defence. Where it is clear from the proceedings that an accused person understood the charges he was facing in a manner that would enable him to sufficiently mount his defence, the court should not acquit the accused person purely on the basis of the variance. In ***Obedi Kilonzo Kevevo v Republic [2015] KECA 127 (KLR)***, it was held that;

*'The test applicable by an appellate court when determining firstly the existence of a defective charge, and secondly its effect on an appellants' conviction is whether the conviction based on the alleged defective*

*charge occasioned a miscarriage of justice resulting in great prejudice to the appellant.'*

The appellants have vehemently argued that the charge sheet spoke of the plot being in Kaewa market which is the correct position while the evidence produced by the prosecution placed the plot in Kivaa market. The respondent on the other hand argues that the charge was not defective and if there was any variance, the same was curable under Section 382 of the Criminal Procedure Code.

It is true that all the prosecution witnesses talked of the building which was allegedly damaged by the appellants being situated in Kivaa. The appellants who were ably represented by an advocate followed the proceedings on the basis that the plot was in Kivaa. The first time the appellant raised the issue of the location of the plot was during their testimony. The only time during the prosecution case the appellants raised issue of Kaewa and Kivaa is during cross examination of PW7 when the advocate asked about the distance between the two markets.

Both sides gave a clear picture of dispute both in this matter and in civil proceedings having been on a plot situated in Kivaa. The dispute was long standing since 2018 during which the parties went to several offices including the area Chief, Kaewa police station and Kanyonyoo police station. The appellants were residents or business people in Kivaa or at least they were conversant with the market and there was no mention of any other plot in Kaewa.

Based on the above, it is my view that the appellants understood the charges they were facing related to a plot situated in Kivaa and that is why in their

defence they produced documents filed in the civil suit which was in respect of the plot in Kivaa. My conclusion on this issue is therefore that the appellants were not prejudiced by the variance between the charge sheet and the evidence produced in respect of the location of the plot and as such the case should not be defeated by that fact only. The grounds of appeal related to this issue are therefore not merited.

The other issue is whether the prosecution proved the offence beyond any reasonable doubt. Reasonable doubt is a situation where the totality of the evidence produced leaves the court with a doubt as to culpability of the accused person and create a possibility that the accused may not have committed the offence. It cannot be created by an isolated fact and must be looked at in the mirror of all the facts as it is never expected that human beings will get or recollect every single and minor details of events or describe them in the same way. In ***Elizabeth Wathiegeni Gatimu v Republic [2015] KEHC 1136 (KLR)***, it was held that;

*‘Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all 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.’*

It is clear from the proceedings that the only eye witnesses to the alleged damage were PW3 and PW4. PW4 claimed to have seen the appellants at 1 pm seated under a shade. It was alleged that they did nothing from 2 pm until 5 pm when they left. PW3 alleged that when he was called by PW4 to the scene at 10 pm, he went with his vehicle and put its full lights on upon which he saw all the appellants who he mentioned by name running away. He alleged that some escaped to a neighbouring house where they resided while others boarded a

motor cycle. He claimed that the appellant had tools which he could not recover because he was alone.

On the other hand, PW4 alleged that at 2 pm he saw four men seated under a tree and when he came back at 9 pm, he heard someone inside the house and when he put his torch on, he saw Nyaga, Michael, Chief Kasera and Muvuku who threw stones at him forcing him to run away. He claimed that when he went outside, he found Mathayo and others he did not know upon which he called PW3. This witness was very firm that he saw four men and not six.

I find the evidence of the two witnesses contradictory and inconsistent in some aspects. According to PW3 he arrived at 10 pm while the PW4 discovered the people at 9 pm which is a difference of one hour. PW3 alleged that PW4 came after 15 minutes. In my view, a prudent watchman who finds his master's house being intruded or destroyed cannot logically sit back for one hour without raising an alarm especially after stones were thrown at them.

As the witnesses indicated, the market is a very busy one with many people. One should be careful to wonder why only these two closely related individuals by virtue of employer/employee relationship saw this incident. I do understand that it was at night but I refuse to believe that the two could not raise an alarm to attract other people and watchmen in the market. I also doubt that the appellants would stay in the house for an hour after being discovered by the watchman who they chased with stones.

PW3 claimed to have seen six people run away and mentioned them by name, yet the first person to arrive was categorical that he saw four and not six. I am not satisfied by the way PW4 identified to the court the four persons he saw. In a case like this, it is not prudent or safe for the prosecution to lead identification

of the perpetrators by mentioning one name or pseudo name without linking each accused person to the specific name. This in my view creates doubt or confusion as to the true identity of the perpetrators which leads to reasonable doubt as to who was actually at the scene.

In ***John Muriithi Nyagah v Republic [2014] KECA 506 (KLR)***, the Court of Appeal was faced with a situation where the issue of recognition of the appellant was contested. In finding that the recognition was not safe due to the conduct of the appellant, the Court stated that;

*‘The appellant was at his place of work when he was arrested. His conduct was not consistent with guilt. He never went underground. It would not be normal in a case where a robber is known by his victim for such robber to expose himself to his victim contrary to what PW1 alleged the appellant did. It is hardly likely that such robber would even engage in a conversation with the victim before robbing him. It would be foolhardy for such robber to then continue working next door to the victim’s place of work without any fear! Yet this is the scenario presented by the evidence adduced by the prosecution. It is simply not credible! This is clearly a case of mistaken identity.’*

Even if I were to assume that the Michael, Chief Kasera, Nyaga and Muvuku who the witness said he saw are the 5<sup>th</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> appellants, I would still find the confusion of the number of people between PW3 and PW4 material especially noting that the identification by PW3 is to me suspect. The prosecution should have led the witness to indicate which of the persons he named was which accused person. Identification or recognition of the offender is a crucial element in proof of a criminal offence and it should not be a matter of chance or assumption.

The investigating officer is on record saying that the complainant reported that their house was damaged by persons unknown to her yet in her evidence, the complainant stated that she was called by her mother who told her the appellants were at the site. The complainant also spoke of the appellants being at the site with a ladder which contradicts the narration by PW3 and PW4 that they saw people seated under a shade. None of the witnesses explained how the complainant later identified the persons who damaged the property and how the appellants were arrested. The investigating officer simply indicated that he arrested the appellants and charged them without telling the court how he came to know that they were the persons at the scene.

This in my view, was a poorly investigated matter and it is not safe for the conviction to stand especially noting that there has been a long-protracted dispute over the plot and the complainant and her family may have a motive in framing the officials of the group which is claiming the plot. It is important to note that two of the appellants are the Chairman and Secretary of the group.

I have looked at the judgement of the trial court and one of the reasons for conviction was that the appellants did not explain where they were. While it is important or desirable for an accused person to tell the court where they were at the time of the commission of the offence they are facing, they have no duty to do so unless they are raising defence of alibi. The appellants denied being at the scene and the duty of placing them there lied with the prosecution all through the proceedings. The court was wrong in shifting that burden to the appellants.

I do not want to go to the issue of ownership of the plot as the same is a subject in some civil proceedings between the group and the complainant. In any event the ownership is not material in this matter.

Having said the above, I come to conclusion that the conviction of the appellants was not safe and I proceed to make the following orders;

1. The conviction and sentence of the appellants in Kithimnai Senior Principal Magistrate's Court criminal case number 285 of 2021 are hereby and set aside and quashed and substituted for an order acquitting the appellants of the charge therein.
2. I note that the appellants had paid the fine which was imposed on them. The same shall be refunded to them forthwith.

Dated signed and delivered at Nairobi this 15<sup>th</sup> day of May 2026.

**B.M. MUSYOKI**  
**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Miss Kitanga holding brief for Mr. Mutua Mboya for the appellants and in absence of the respondent.