



**Kabuga & 4 others v Republic (Criminal Appeal 158 of 2019)  
[2025] KECA 25 (KLR) (17 January 2025) (Judgment)**

Neutral citation: [2025] KECA 25 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPEAL 158 OF 2019  
W KARANJA, J MOHAMMED & LK KIMARU, JJA  
JANUARY 17, 2025**

**BETWEEN**

**JAMES MWITI KABUGA ..... 1<sup>ST</sup> APPELLANT  
CLINTON MUTUGI GITONGA ..... 2<sup>ND</sup> APPELLANT  
PAUL GITONGA MBAABU ..... 3<sup>RD</sup> APPELLANT  
MATHEW MAWIRA KARURO ..... 4<sup>TH</sup> APPELLANT  
MICHAEL MUTWIRI KABUGA ..... 5<sup>TH</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal against the judgment of the High Court of Kenya at Chuka  
(R. K. Limo, J.) dated 24th October 2019 in HCCR. C. NO. 39 OF 2015)*

**JUDGMENT**

**Background**

1. James Mwiti Kabuga, Clinton Mutugi Gitonga, Paul Gitonga Mbaabu, Mathew Mawira Kaburo, and Michael Mutwiri Kabuga (the 1<sup>st</sup> to 5<sup>th</sup> appellants respectively) were the 1<sup>st</sup> – 5<sup>th</sup> accused persons before the High Court at Chuka. They were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars in the information were that on 2<sup>nd</sup> April, 2015 at Mumbuni market, Kandugu within Tharaka Nithi County, the appellants jointly murdered Morris Muriithi (the deceased).
3. In a bid to prove their case against the appellant, the prosecution called a total of six (6) witnesses. At the end of the trial, the appellants were found guilty of the offence of murder and convicted. The 1<sup>st</sup>



appellant was sentenced to 20 years' imprisonment, while the 2<sup>nd</sup> – 4<sup>th</sup> appellants were each sentenced to fourteen (14) years' imprisonment.

4. As this is a first appeal, we are mandated as a court to re-evaluate and re-analyze the evidence before the trial Court, while bearing in mind that we did not have the occasion to see or hear the witnesses. In the case of *Chiragu & another v Republic* [2021] KECA 342 (KLR), this Court stated that:

“However, before we grapple with grounds of appeal aforesaid, we must remind ourselves that this being a first appeal from the judgment of the High Court, by dint of section 379 of the CPC and guidance provided in the famous case of *Okeno V. R.* [1972] EA 32, we are expected to subject the entire evidence tendered in the trial court to fresh and exhaustive examination so as to reach our own independent conclusions as to the guilt or otherwise of the appellants. In doing so, we must however give due allowance to the fact that we neither saw nor observed the witnesses as they testified. Accordingly, we must give way to the findings of facts and demeanor of witnesses by the trial court. See also *Erick Otieno Arun V. Republic* [2006] eKLR. In undertaking this exercise, we must of necessity go over the evidence presented before trial court albeit in summary.”

5. The brief facts of this case were that the deceased and Newton Karani (PW1) worked in the 1<sup>st</sup> appellant's bar. The deceased and PW1 were suspected to have stolen money from the 1<sup>st</sup> appellant.
6. According to PW1, he was in his house on 2<sup>nd</sup> April, 2015 at around 6:00 a.m. when the 1<sup>st</sup> and 4<sup>th</sup> appellants who were in the company of one Kibara and Edwin Njeru woke him up. It was his evidence that the 1<sup>st</sup> appellant ordered him to stand still as they ransacked his house. They did not find what they were looking for. They then led PW1 to the market where the 1<sup>st</sup> appellant's bar was and locked him there. They informed him that they were going to fetch the deceased.
7. A short while later, the 2<sup>nd</sup> and 4<sup>th</sup> appellants returned to the bar with the deceased. They tied him to the side of the bar and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> appellants started beating him. The 4<sup>th</sup> appellant used sticks, the 1<sup>st</sup> appellant used an electric cable wire, while the 2<sup>nd</sup> appellant used a knife. While doing so, they accused the deceased of stealing Kshs.27,000/- from the 1<sup>st</sup> appellant.
8. PW1 testified that he and the deceased were then removed from the bar and taken outside, where they were tied and beaten. The appellants poured petrol and alcohol on them and forced them to carry a crate of beer as they walked towards the road. PW1 further testified that the deceased was beaten until he died. The area Assistant Chief, one Njiri had intervened and rescued them by untying the ropes binding them shortly before the deceased died.
9. Fabian Mwiti (PW2) testified that he was asleep on the material date at around 2:00a.m. when people who were talking loudly awakened him. He went out and found a crowd of around 10 people at the 1<sup>st</sup> appellant's bar. It was his evidence that he was able to identify the 1<sup>st</sup> appellant among the people. He spoke to the 1<sup>st</sup> appellant who informed him that his bar had been broken into the previous night. PW2 further testified that he went back to his house to sleep. PW2 reiterated PW1's narration of events as they unfolded when PW1 was brought to the bar at around 7:00 a.m.
10. Germann Mwenda (PW3) the Assistant Chief testified that he received a call at around 9:00 a.m. on the material day about the incident. He rushed to the scene and found the deceased lying down with his hands tied to the front and was bleeding from the nose and mouth. PW3 testified that the 1<sup>st</sup> appellant informed him that the deceased had stolen Kshs.30,000/- from him. He then untied the deceased and PW1. According to PW3, the 1<sup>st</sup> appellant appeared to be leading the beating as the 2<sup>nd</sup> appellant



- cheered him on. It was his further evidence that he notified his seniors and then called the police who arrived and took the body of the deceased.
11. Nobert Mwenda Mugo (PW4) was the elder brother of the deceased. He identified the body of the deceased for the post-mortem examination.
  12. Dr. James Kitili (PW5) was the doctor who performed the post-mortem examination on the body of the deceased. He noted that there was a cut on the forehead and bruises on the scalp. He also noted multiple bruises on the chest, neck, shoulders, and back. Further, that there was a fracture on the frontal skull and a blood clot overlying the front part of the brain. PW5 concluded that the cause of death of the deceased was severe head injury due to blunt head injury. He issued a Death Certificate.
  13. Corporal Alfred Akumu (PW6) was the Investigating Officer. He testified that at the scene they found a huge crowd gathering around a body of a deceased person. He recorded statements from witnesses and he recovered four sticks, a black wire cable, a machete-like knife, and a sisal rope. PW3 produced these items in evidence.
  14. At the close of the prosecution case, the High Court (R.K. Limo, J.) found that a prima facie case had been made out against the appellants and placed them on their defence.
  15. In his defence, the 1<sup>st</sup> appellant in his sworn statement told the court that the deceased worked at his bar as a watchman. He stated that on the material day, the deceased called him and informed him that there was a burglary at the bar. He rushed to the bar where he found that the window grills had been broken and Kshs.30,000/- cash and crates of beer had been stolen. He then requested the deceased to accompany him to his brother, Kibari's house where he informed him of the incident. When they returned, a crowd had formed at the bar. He stated that he tried to call the police at Ntumu Police Station but the call did not go through.
  16. The 1<sup>st</sup> appellant further testified that the deceased had informed him that he had seen PW1 standing near the broken window. That this prompted him to go to PW1's house whereupon he brought him to the bar. He stated that when he took PW1 to the bar, the deceased changed the narrative that he had given earlier that he had seen PW1 standing near the window.
  17. The 1<sup>st</sup> appellant testified that he decided to go and sleep in the bar where one Vivian Mwiti woke him up and told him that the deceased was behaving strangely and drinking a lot of beer. When he went closer to the deceased, he found that the deceased had dug a hole and hidden a crate of beer therein. According to his testimony, people surrounded them and they also called the police and informed them that a suspect had been apprehended and bound with ropes. He further told the court that the deceased informed him that he had hidden the money in his brother's bathroom, one Micheni. When he went to check the bathroom, there was no money. He went to look for the deceased's brother and brought him to the bar. The brother denied receiving money from the deceased.
  18. The 1<sup>st</sup> appellant stated that he ordered the deceased to carry the crate of beer to the police station. However, when they reached the road, the deceased refused to continue carrying the crate, thus forcing the people who had gathered to beat him up. The 1<sup>st</sup> appellant stated that he left the deceased to go lock up the bar. He denied beating the deceased or ordering that the deceased be beaten.
  19. In his defence, the 2<sup>nd</sup> appellant in his sworn statement testified that when he heard that two people had been arrested for theft, he went to the market where he found around 60 people beating the deceased and PW1. He moved closer and saw that the two had their hands bound and a crate of beer was beside them. He stated that he was in the process of stopping the mob from beating the two 'suspects' when the Assistant Chief arrived and took charge. He denied taking part in the mob justice and stated that he was surprised when he was arrested 15 days later on these allegations.



20. In his defence, the 3<sup>rd</sup> appellant in his sworn statement denied any knowledge of the deceased or his co-accused, save for the 5<sup>th</sup> appellant who was a parent at the school where he taught. He stated that on the material day, he was on his way to school when he met a crowd of around 50 people milling around two people. He stated that the two people were suspected to have stolen. He denied participating in the beating of the deceased and PW1.
21. The 4<sup>th</sup> appellant in his sworn statement testified that he had gone to pick up his phone from the market where he had left it charging overnight. On arrival, he found a crowd of around 50 people who had surrounded two people who had been tied together using a rope. He stated that he did not know who had tied them up. He told the court that he did not bother to find out what had happened and he proceeded with his business. He denied taking any part in the beating of the deceased or being armed with a knife.
22. The 5<sup>th</sup> appellant in his sworn statement of defence denied committing the offence. He stated that on the material day at around 8:00 a.m., he was on his way to his place of business when he met a crowd of people standing on the road. As he was in a hurry, he did not stop to check on what was happening. He further stated that he was shocked when he was arrested three weeks later and charged with the murder of the deceased. He denied having any involvement in the murder.
23. In his determination, the learned Judge held that there was no contention that the deceased died as was evidenced by the post-mortem report and the death certificate.
24. Upon evaluating the evidence tendered, the trial court held that the evidence of the medical doctor (PW5) was crucial as it indicated that the cause of death of the deceased was severe head injury due to blunt head trauma.
25. The trial court observed that the evidence of PW1, PW2, and part of the evidence of PW3 directly implicated the appellants as the people who had caused multiple injuries to the deceased, from which he later succumbed. The trial court noted that the 1<sup>st</sup> appellant conceded to the sequence of events as narrated by PW1 and PW2 other than having tied the deceased up and beaten him. The other appellants conceded to being at the scene but distanced themselves from the assault of the deceased.
26. As the prosecution witnesses had no reason to implicate the appellants, the trial court held that the element of actus reus had been established and proved against all the appellants. While citing the provisions of Section 20(1) of the Penal Code on criminal culpability where many suspects participated in the commission of the offence, the trial court found that although it was difficult to establish who had specifically inflicted what injury on the deceased, equal criminal culpability lies with any person who acted, abetted, or was complicit in the illegal act or omission.
27. As regards mens rea, the trial court held that the weapons used to beat the deceased were intent on causing great pain and anguish. Further, that the behaviour of the appellants was not only crude but also inhumane. The trial court held that the appellants chose to take the law into their own hands instead of following the lawful procedures in place.
28. Consequently, the trial court found each one of the appellants guilty and convicted them. The 1<sup>st</sup> appellant was sentenced to 20 years imprisonment while the 2<sup>nd</sup> – 5<sup>th</sup> appellants were each sentenced to 14 years' imprisonment.
29. Aggrieved by the conviction and sentences, the appellants lodged the instant appeal raising various grounds of appeal. The 1<sup>st</sup> and 3<sup>rd</sup> appellants raised 12 grounds each, the 2<sup>nd</sup> and 4<sup>th</sup> appellants raised 10 grounds each, while the 5<sup>th</sup> appellant raised 11 grounds.



## Submissions by Counsel

30. When the appeal came up for hearing, learned counsel, Mrs. Mutegi, appeared for the 1<sup>st</sup> appellant; learned counsel Ms. Nelima appeared for the 2<sup>nd</sup> appellant; learned counsel Mr. Kimunya appeared for the 3<sup>rd</sup> appellant; learned counsel Ms. Maina, appeared for the 4<sup>th</sup> appellant; learned counsel Mr. Magua, appeared for the 5<sup>th</sup> appellant while the respondent was represented by learned counsel Mr. Chelule from the office of the Director of Public Prosecutions.
31. The respondent had filed a notice of enhancement of sentence. The notice of enhancement of sentence was brought to the attention of the appellants. The 1<sup>st</sup> appellant opted to withdraw his appeal, and the same was withdrawn under Rule 70(4) of this Court's Rules.
32. The 2<sup>nd</sup> to 5<sup>th</sup> appellants proceeded with their appeals. They relied on their written submissions which counsel briefly highlighted.
33. The appellants all contended that the prosecution case was not proved beyond reasonable doubt as all the ingredients of the offence of murder were not proved.
34. Counsel for the appellants also contended that the evidence of PW1 and PW2 was contradictory.
35. Counsel for the 2<sup>nd</sup> appellant submitted that the prosecution evidence was contradictory regarding whether or not he inflicted injuries on the deceased. Counsel for the 3<sup>rd</sup> appellant submitted that PW1 stated that he used fists and kicks while PW2 stated that he used an acacia stick to beat the deceased. Counsel for the 4<sup>th</sup> appellant submitted that the knife mentioned by PW1 as implicating him was not seen by PW2.
36. Ms. Nelima for the 2<sup>nd</sup> appellant submitted that there was no conclusive evidence that a post-mortem examination was conducted on the body of the deceased as the report produced showed that the examination was done on the body of Moses and not Morris.
37. Counsel further contended that the cause of death (cardiac arrest due to severe head injury) could not be connected to the evidence by the prosecution, as the weapons used to inflict injuries on the deceased were not properly identified.
38. Mr. Kimunya submitted that the 3<sup>rd</sup> appellant's conviction was based on suspicion.
39. Ms. Maina submitted that the evidence adduced by the prosecution to convict the appellant was marred by contradictions which should have been resolved in favour of the appellant. Further, that the ingredients of murder were not proved to the required standard. Counsel asserted that no evidence was adduced to show that the 4<sup>th</sup> appellant previously had conflicts with the deceased as a possible motive of murder.
40. Mr. Magua submitted that the 5<sup>th</sup> appellant was not mentioned by PW1 as one of the people who went to his house, and therefore he did not have a common intention with his co-accused.
41. On sentence, counsel for the 2<sup>nd</sup> appellant relied on the 2<sup>nd</sup> appellant's mitigation. Counsel for the 3<sup>rd</sup> appellant submitted that the sentence meted out was excessive. Counsel urged that the sentence meted on the 4<sup>th</sup> appellant be reviewed downwards and that the number of days he spent in custody before he was released on bond be taken into consideration. Counsel for the 5<sup>th</sup> appellant urged this Court to invoke Section 333(2) of the CPC as he was denied bond. He contended that there was no cross-appeal for the enhancement of the sentence.



42. Opposing the appeal, Mr. Chelule submitted that PW5 made a clarification on the record that the post-mortem examination was done on the body of the deceased. He conceded to a few material contradictions which he pointed out did not go to the root of the prosecution's case. He also pointed out that PW1 had been badly beaten up when he recorded his statement, while the evidence of PW2 was cogent and clear.

43. Counsel conceded that Section 333(2) of the CPC was not considered.

Counsel contended that the sentences meted out against the appellants were very lenient considering the nature of the offence. Counsel called upon the Court to consider the assault on the deceased and PW1, which lasted a very long time from 2:00 a.m. to around 10:00 a.m. Counsel emphasized that the appellants also poured petrol on the deceased.

### **Determination.**

44. We have carefully considered the record, submissions by counsel, the authorities cited, and the law. The issues for determination are whether the prosecution case was proved beyond reasonable doubt as is closely linked with whether the contradictions in the prosecution evidence went to the root of the prosecution's case, and whether or not this Court ought to interfere with the sentence meted out against the appellants.

45. Section 203 of the Penal Code under which the appellant was charged provides that:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

46. To sustain a charge under the said provision, the prosecution had to prove beyond reasonable doubt, the fact and cause of death of the deceased person; that the death of the deceased was a result of an unlawful act or omission on the part of the accused person; and that such an unlawful act or omission was committed with malice aforethought.

47. It is common ground that the deceased died. The prosecution witnesses testified that after the deceased was untied from the ropes that had bound him, he died. This evidence was corroborated by the post-mortem report which showed that indeed the deceased had died as a result of cardiac arrest due to severe head injuries.

48. Therefore, the questions that beg to be answered are; did the death of the deceased occur as a result of the unlawful act or omission of the appellants and was there malice aforethought?

49. It is common ground that PW1 saw the appellants beating the deceased from the time they brought him to the bar and bound him with a rope. PW1 was also beaten up by the 2<sup>nd</sup> to 5<sup>th</sup> appellants. His evidence was corroborated by the evidence of PW2, a bystander who watched the event unfold from the sidelines.

50. Counsel for the appellants contended that the evidence of the two witnesses (PW1 & PW2) was contradictory. They particularly took issue with the testimony of PW1 and PW2 whom they contended did not corroborate each other's testimonies. However, the trial court chose to believe all the prosecution witnesses including the direct evidence by PW1 and PW2.



51. In the case of Anthony Ndegwa Ngari v Republic [2014] eKLR, this Court outlined the essential ingredients of murder as follows:

“...that the death of the deceased occurred; that the accused committed the unlawful act which caused the death of the deceased; and that the accused had malice aforethought.”

52. On the inconsistencies in the prosecution case contended by counsel for the 2<sup>nd</sup> to 5<sup>th</sup> appellants, the trial court found these inconsistencies to be minor and we find no reason to interfere with the same as the trial court had the occasion to examine the demeanour of the said witnesses in arriving at the said conclusion. It is our view that the implied contradictions were not so material as to prejudice the appellants. In any event, every trial is bound to have contradictions and it is our duty to determine whether the said inconsistencies are prejudicial to the appellants. In the case of Joseph Maina Mwangi v Republic CA No. 73 of 1992 this Court held that:

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

53. In the case of Republic v Oyier [1985] KLR 553, this Court laid down this principle in the following terms:

“The first appellate court cannot interfere with the findings by the lower court which are based on the credibility of witnesses unless no reasonable tribunal could make such findings or it was shown that the trial magistrate erred in his findings or that he acted on wrong principles.

54. Accordingly, the trial court having believed the testimonies of the eyewitnesses whom it found to be truthful and credible, we find that the appellants had resolved to beat the deceased with the intention of inflicting fatal injuries on him or until he told them where he had taken the money.

55. Both PW1 and PW2 testified that they saw the appellants beat the deceased. All the appellants were placed at the scene of crime at the time of the incident. The appellants also conceded to being at the scene for one reason or another in their respective defences. The question that was never answered was why in a mob of around 50 people, only the appellants were pointed out to have participated in beating the deceased if they had not done so.

56. We find that in an incident dubbed as mob justice with over 50 people present, only the appellants were pointed out as having participated in the beating of the deceased and PW1. The witnesses who identified the appellants had no known grudges against the said appellants. They had no reason to wrongfully implicate the appellants. In the circumstances, we find that the appellants were directly implicated in the fatal assault of the deceased.

57. As regards malice aforethought, Section 206 of the Penal Code provides the following definition:

“ a An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not.

b. Knowledge that the act or omission causing death will probably cause death or grievous harm to some person, whether that person is the person killed or



not, accompanied by indifference whether death or grievous injury occurs or not or by a wish that it may not be caused.

- C. An intention to commit a felony.
- d. An intention by an act to facilitate the flight or escape from custody of any person who attempted to commit a felony.”

58. In the case *Republic v Tubere s/o Ochen* [1945] 12 EACA 63, the court established the following elements on malice aforethought:

“The nature of the weapon used; the manner in which it was used; the part of the body targeted; the nature of the injuries inflicted either a single stab wound or multiple injuries; the conduct of the accused before, during, and after the incident.”

59. From the evidence on record, the 2<sup>nd</sup> to 5<sup>th</sup> appellants had assaulted the deceased from the early hours of the morning. They had beaten him with an electric wire, sticks, a knife, kicks, and fists, and they had bound him while doing so. By continuing to beat him for over seven hours, the appellants ought to have known that their actions would cause the deceased grievous harm or even death. In the circumstances, we find that malice aforethought was established.

60. We are, therefore, satisfied that all the ingredients of murder in this case met the threshold prescribed by law and the prosecution case was proved beyond any reasonable doubt. We find that the appellants’ conviction was sound.

61. As regards sentence, the respondent filed a notice of enhancement dated 30<sup>th</sup> October, 2022 seeking to enhance the appellants’ sentences from 14 years imprisonment for the 2<sup>nd</sup>-5<sup>th</sup> appellants and 20 years for the 1<sup>st</sup> appellant.

62. Before the appeal was heard, the Court warned the appellants of the dangers of the enhancement of the sentence and gave them an opportunity to choose to make their submissions on the illegality of the sentence or to withdraw their appeals. This was in line with Section 364 (2) of the CPC which provides as follows:

“No order under this Section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.”

63. It is trite that a notice of enhancement is essential before the court can properly consider enhancing the sentence. In the case of *Francis Mburugu Muchena v Republic* [2011] eKLR, this Court held that:

“It is clear from authorities that a notice of enhancement of sentence was essential before the High Court could properly consider enhancing a sentence.”

64. In the celebrated case of *J.J.W. v Republic* [2013] eKLR, this Court held that:

“It is correct that when the High Court is hearing an appeal in a criminal case, it has powers to enhance sentence or alter the nature of the sentence. That is provided for under Section 354 (3) (ii) and (iii) of the Criminal Procedure Code. However, sentencing an appellant is a matter that cannot be treated lightly. The court in enhancing the sentence already awarded must be aware that its action in so doing may have serious effects on the appellant. Because of such a situation, it is a requirement that the appellant be made aware before the hearing or



at the commencement of the hearing of his appeal that the sentence is likely to be enhanced. Often times this information is conveyed by the prosecution filing a cross appeal in which it seeks enhancement of the sentence and that cross appeal is served upon the appellant in good time to enable him prepare for that eventuality. The second way of conveying that information is by the court warning the appellant or informing the appellant that if his appeal does not succeed on conviction, the sentence may be enhanced or if the appeal

65. Similarly, in the case of *George Morara Achoki v Republic* [2014] eKLR, this Court held that:

“...an appellant must be informed at the earliest opportunity, at the commencement of the hearing of his appeal, that there is a real danger that should the appeal be heard and fail a lesser sentence could be enhanced by the High Court in terms of the said Section 354 of the Criminal Procedure Code.”

66. In the circumstances, we find that the respondent properly filed a notice of enhancement as required under Section 354 (3) (ii) of the CPC. This notice was brought to the attention of the appellants before the hearing of the appeal commenced, and it is not lost on us that the appellants had legal representation. The 1<sup>st</sup> appellant opted to withdraw his appeal while the 2<sup>nd</sup> to 5<sup>th</sup> appellants chose to exercise their right of appeal.

67. It is trite that sentencing is at the discretion of the trial court. The principles upon which an appellate court will act in exercising its discretion to review or alter a sentence imposed by the trial court were settled in the case of *Ogolla s/o Owuor v Republic* [1954] EACA 270 wherein this Court stated as follows:

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors”. To this, we would add a third criterion namely, “that the sentence is manifestly excessive in view of the circumstances of the case (*R -v- Shershowsky* (1912) CCA 28TLR 263).”

68. In the case of *Francis Nkunja Tharamba v Republic* [2012] eKLR this Court held as follows with regard to sentencing:

69. In this instance, we find that the trial court failed to take into consideration the gruesome manner in which the appellants assaulted the deceased while he was bound with a rope and unable to defend himself, and forced him to carry a crate of beer on his head and walk to the road. We find that the sentence meted out against the 2<sup>nd</sup> to 5<sup>th</sup> appellants was too lenient and we are inclined to interfere with the sentence imposed on the 2<sup>nd</sup> to 5<sup>th</sup> appellants.

70. In the result, the appeal against conviction and sentence is dismissed.

We enhance the 2<sup>nd</sup> to 5<sup>th</sup> appellants’ sentences of 14 years’ imprisonment to a sentence of thirty (30) years’ imprisonment for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> appellants from the date that the appellants were first arraigned in court.

**DATED AND DELIVERED AT NYERI THIS 17<sup>TH</sup> DAY OF JANUARY, 2025.**

**W. KARANJA**

.....

**JUDGE OF APPEAL**

**JAMILA MOHAMMED**



.....

**JUDGE OF APPEAL**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

