Wainaina v Republic (Criminal Appeal E003 of 2021)
[2025] KECA 1368 (KLR) (25 July 2025) (Judgment)

Neutral citation: [2025] KECA 1368 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CRIMINAL APPEAL E003 OF 2021

JM MATIVO, PM GACHOKA & WK KORIR, JJA

JULY 25, 2025

BETWEEN

SAMUEL NDUNG'U WAINAINA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(An appeal against the judgment of the High Court at Migori (R. Wendoh, J.) dated 3rd March, 2021 and delivered at Nyahururu by (C. Kariuki, J.) on 13th May, 2021. in CR Appeal No. 11 of 2017 Formerly Nak. HCR Case No.44 of 2015)

JUDGMENT

1. Samuel Ndung'u Wainaina (the appellant) was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The information stated that on 19th and 20th June 2011 at Matindiri Village, Mirangine District within Nyandarua County, he murdered Joseph Kimani Ledaya alias Abdul Ledaya. He pleaded not guilty, and a trial ensued pitting the prosecution's six witnesses against the appellant's own testimony and that of his single witness. At the conclusion of the trial, the appellant was convicted of the offence and sentenced to 40 years imprisonment.

2. The appellant is now before this Court challenging the said decision.

   In his grounds of appeal dated 15th July 2021, he contends that :

   a. the prosecution evidence was riddled with contradictions and gaps, therefore, it could not prove the charge beyond reasonable doubt;

   (b) the averments of PW1 contained in her statutory declaration dated 16th January 2012 in which she averred that it was difficult for her to say he was the murderer were ignored;

   (c) the learned Judge misdirected himself by finding that PW3 was at the scene;

(d) the evidence contained in the postmortem report was inconsistent with evidence tendered by PW1, PW2, PW3 & PW4;

(e) malice aforethought was not proved;

(f) his defence of alibi and a statutory declaration dated 16th January 2021 produced by DW2 were not considered; (g) the sentence was too harsh and excessive.

3. A summary of the evidence tendered by the 6 prosecution witnesses is necessary. Jane Wangui Rungare (PW1), the deceased's mother testified that on 19th June 2011 at around 5:30pm she found Julia Waithera, Monica Wangui, Daniel Kiarie, Eunice Muthoni Kiarie and the appellant beating the deceased accusing him of stealing Daniel Kiaries's cow. The attackers dragged the deceased to her mother's compound and left him there with a fractured leg. While helping the deceased get home, the appellant, in the company of others, returned with a tyre, stinging nettle (a plant characterized by its stinging hairs that cause a burning sensation when touched), petrol, and a matchbox. Daniel Kiarie placed the tyre on the deceased while the appellant poured petrol on the deceased and lit a match stick. PW1 removed the jacket the deceased wore and put out the fire. However, the ladies continued putting the stinging nettles on the deceased's face while the beatings continued until the deceased succumbed to his injuries. Daniel Kiarie called the local Chief and informed him that the person they sought had been caught and killed by a mob.

4. John Osman Ledaya (PW2), the deceased's brother testified that on 19th June 2011 he arrived home about 7.00 pm and found somebody lying near the gate and with the help of a torch he noticed that it was the deceased who had injuries on the head, he was bleeding, his four front teeth were missing and his leg was fractured. It was his testimony that PW1 informed him that the deceased was assaulted by Daniel Kiarie, Eunice Muthoni, Julia Waithera, Monica Wangui and the appellant who were his relatives. He also testified that after the burial, the appellant and Daniel Kiarie asked for forgiveness and that is how he knew that they were responsible for his brother's demise.

5. Joseph Kimani Wainaina (PW3), an uncle to the deceased and a brother to PW1 testified that on 19th June 2011 at about 5.00 pm while at his home, he heard noise emanating from his brother's home. He went to the said home and found Daniel Kiarie, the appellant, Monica, Julia and Eunice beating up the deceased using sticks and the attempt by PW1 to intervene were thwarted. It was PW3's evidence that he left the scene and later PW1 informed him that the boy had died and that the next day the body was taken to Nyahururu mortuary. Both himself and PW1 were present when the postmortem was done and afterward the deceased was buried in a Muslim Cemetery. Subsequently, a meeting was held which was attended by PW1's brothers, sisters and the elders told Daniel Kiarie and Ndung'u to pay 2 cows and each Kshs.5000/- for killing the deceased and they agreed. Daniel paid Kshs.4,000/- and a cow while Ndung'u didn't pay anything.

6. Peter Kang'athia Waihenya, (PW4) testified that PW1 told them that she wanted Daniel and Samuel to give them land, burial costs for her son and assistance for the deceased's children because according to her, they killed her son. The land dispute was never resolved. However, it was proposed that Daniel and Samuel would each pay Kshs.5,000/-. Regarding the assistance for the deceased's children, they were asked to give a cow each. The appellant never attended the meeting and that is why a second meeting was scheduled only for Daniel to be arrested before the meeting.

7. CPL James Omusia (PW5), the Investigating Officer who took over from PC Lagat testified that he was informed by the OCS, Chief Inspector Mutei that Ledaya had informed her that a suspect who was on the run had been found, they were led to the appellant's house where they arrested him and

took him to the police station where he was charged with the murder which occurred on 19th July 2011. PW5 also produced the clothing the deceased wore at the time of his murder.

8. Dr. Titus Ngulungu (PW6) performed the deceased's autopsy on 20th June 2011 at Provincial General Hospital, Nakuru at 4.45pm. He produced the post mortem report. It was his evidence that the body had a deformed head, which had been smashed into fragments held together by loose connecting tissues, laceration of the scalp, bruises on the wrists in keeping with defence injuries, bruises on the chest, distal tibia fibular fractures and laceration on the right leg. He concluded that the cause of death was severe head injury and lower limb injuries from a fracture and brain laceration due to multiple blunt force application.

9. The appellant called Edward Olaly Cheche, (DW1), an advocate of the High Court as his witness. He testified that one Jane Wangui (PW1) appeared before him at his chambers and swore an affidavit which she had drawn herself. She affixed her thumb print as her signature and he commissioned it. In her affidavit, she quoted case number 675 of 2011. The nib of the affidavit was that she was beseeching the Attorney General to terminate the said case by entering a nolle prosequi because there were many people at the scene and it was unfair that the police only charged the deceased's close relatives with the murder.

10. In his sworn defence, the appellant maintained that he was not aware how the deceased died and while at his home, he heard people saying someone had died but he did not bother to find out who it was, nor was he called to identify the body.

11. We heard this appeal virtually on 30th April 2025. The appellant appeared virtually from Naivasha Maximum Prison. Learned counsel Mr. Opar appeared for the appellant, while learned Senior Assistant Director of Public Prosecutions Mr. Omutelema represented the respondent. Both counsel relied on their respective written submissions.

12. In his written submissions dated 10th February 2024, Mr. Opar submitted that the prosecution did not prove its case beyond reasonable doubt. It was his submission that PW1 did not witness the appellant delivering the fatal blow on the deceased's head leading to his demise. He argued that PW1 never clearly identified among the five persons who attacked the deceased or the person who delivered the fatal blow. Furthermore, PW1 went to DW1's office and swore an affidavit requesting the Attorney General to enter nolle prosequi since the deceased was beaten by many people and it was difficult to tell who killed him. Counsel also submitted that if at all the appellant's action caused the death, then the postmortem report would have mentioned burn wounds on the body but that was not the case. Therefore, the prosecution case was riddled with inconsistencies since PW3 who was at the scene never saw the appellant pour petrol on the deceased as alleged by PW1.

13. Regarding the sentence, Mr. Opar maintained that the same was illegal. However, he urged this Court that, should it uphold the conviction, a lesser severe sentence should be imposed in light of his mitigation and the circumstances of the case.

14. Learned counsel Mr. Omutelema opposed the appeal. In his submissions dated 8thApril 2025, he maintained that the appeal lacks merit because the offence was proved to the required threshold. To support this submission, counsel rehashed the evidence on record and submitted that the prosecution proved each and every element of the offence. Regarding malice aforethought, counsel cited section 206 of the Penal Code and maintained that considering the excessive force used by the appellant and the other four persons, malice aforethought was proved. Counsel stated that PW1 testified that the appellant and four other persons dragged the deceased up to the gate where they lived, later they came with petrol and a tyre and set the deceased ablaze. However, PW1 managed to put off the fire which explains why the deceased did not suffer any burn wounds since PW1 was swift in putting out the fire.

Consequently, it is evident that the appellant and his accomplices had planned to kill the deceased and they even brought petrol to burn him which is a clear demonstration of malice aforethought.

15. Regarding the argument that the prosecution evidence was riddled with contradictions and gaps, Mr. Omutelema maintained that the prosecution witnesses corroborated each other and they remained steadfast in their testimony even on cross-examination.

16. Answering the argument that the learned Judge ignored PW1's statutory declaration dated 16th January 2012, Mr. Omutelema submitted that the said affidavit related to High Court Criminal Case No. 65 of 2011 nor are the parties in that case mentioned in the said affidavit. Therefore, it is not clear to which case or the parties the affidavit relates. Furthermore, the trial court case the appellant was tried and convicted is number 11 of 2017 which yielded the judgment the subject of this appeal.

17. Addressing the ground that the appellant's defence of alibi was not considered, counsel submitted that the alibi was not raised at the onset of the trial and it was therefore an afterthought. He cited the case of *Rex vs Sukha Singh S/o Wazer Signh & Others* [1939] 6 EACA 145 in support of the holding that if an alibi is raised months afterwards, there is naturally a doubt as to whether it existed and if an accused brings it at the earliest time possible, then it will give the prosecution an opportunity to reply to it.

18. Lastly, regarding the sentence, Mr. Omutelema maintained that the sentence was not illegal nor excessive since the learned Judge exercised his discretion in sentencing the appellant to 40 years imprisonment. It was further submitted that the appellant declined to participate during the preparation of a pre-sentencing report and the Probation Officer informed the Court that by conduct, the appellant denied the Court a chance to know his background and therefore the learned Judge relied on the sentencing guidelines.

19. In this appeal, the appellant challenges both the conviction and sentence imposed by the High Court. Our mandate in a first appeal under section 379 (1) of the *Criminal Procedure Code* is akin to a retrial because it involves a reconsideration of the facts and the legal principles relevant to the conviction and sentence. It is the appellant's expectation that this Court will conduct a thorough and fresh examination of the evidence, carefully weigh conflicting testimonies before arriving at its own independent conclusions. In doing so, we must remain alive to the fact that we did not have the opportunity of hearing and observing the witnesses as they testified in order to gauge their demeanour, consequently, we must give room to that fact. (See *Mark Oiruri Mose vs. Republic* [2013] eKLR). Alive to the stated mandate, we have reviewed the record, the submissions, and the authorities cited by counsel. In our view, the issues that arise for determination is whether the offence of murder was proved to the required standard; whether the learned Judge erred in dismissing the appellant's alibi defence; whether there were contradictions in the prosecution evidence and if so, whether they went to the root of the prosecution's case; and whether this Court can interfere with the sentence.

20. Regarding the first issue, section 203 of the *Penal Code* defines the offence of murder as follows:

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

21. A reading of the above section shows that to succeed in a murder case, the prosecution must prove the following ingredients: (a) the death of the deceased. (b) that the death was caused by an unlawful act or omission on the part of the accused. (c) that in causing the death of the deceased, the accused had malice aforethought.

22. It is within the bounds of these three elements that we shall consider all the issues raised by the appellant in his submissions. To start with, the fact and cause of the death of Joseph Kimani Ledaya alias Abdul

Ledaya is not disputed. The postmortem report produced by Dr. Titus Ngulungu (PW6) clearly shows that the body had a deformed head smashed into fragments held together by loose connecting tissues, laceration of the scalp, bruises on the wrists in keeping with defence injuries, bruises on the chest, distal tibia fibular fractures and laceration on the right leg. The doctor concluded that the cause of death was severe head injury and lower limb injuries involving a leg fracture and brain laceration due to multiple blunt force application.

23. Was the death caused by an unlawful act or omission on the part of the accused? Relevant to this issue is the evidence of PW1 which was corroborated by PW3. The totality of this evidence is that appellant in the company of other persons alleged that the deceased had stolen a cow belonging to Daniel Kiarie. They beat the deceased with sticks and fractured his leg. They also used stinging nettle on his face. PW1 testified that when the deceased was dragged home, he had sustained head injuries, and when PW1 asked the deceased who had inflicted the injuries, the deceased confirmed that it was the appellant who hit him with 2 sticks. PW1 also stated that she tried to stop the beating and rescue the deceased to no avail, since the appellant accompanied by Eunice Muthoni, Julia Waithera Kiarie and Monica Wangui came back for the deceased, and this time the appellant had petrol, poured on the deceased and lit a match stick and set the deceased ablaze. However, PW1 was too swift in removing the jacket the deceased wore and managed to put off the fire.

24. It was also PW1's evidence that the beating continued, and this time the appellant and the other assailants were using the timber removed from the gate until the deceased succumbed and even after he died, they continued beating him because the appellant and his accomplices were very angry.

25. Despite being placed at the scene and being mentioned as one of the main perpetrators of the violent attacks unleashed on the deceased, in his defence, the appellant stated that on the day of the incident he had visited his home after attending a church service in Nakuru, he heard the commotion and overheard that someone had been killed but he never bothered to confirm who had been killed. The appellant's counsel strongly argued that the prosecution never proved that it was the appellant who ultimately delivered the fatal blow that killed the deceased.

26. We have carefully considered both the prosecution and the defence evidence. Admittedly, considering the undisputed manner in which the offence was committed, it is not possible to identify who unleashed the fatal blow that occasioned the deceased's death. However, that is how far it goes. This is because the drafters of the law contemplated such scenarios and they left no gap at all. Cases like this one are carefully addressed by section 21 of the *Penal Code* which deals with joint offenders in prosecution of a common purpose. The section provides as follows:

> When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

27. A reading of the above section shows that the key elements of common intention are: (a) the offence must be committed by several persons, (b) the act must be done in execution of a pre-arranged plan, with shared purpose among the individuals, (c) a prior meeting of minds is essential, meaning the individuals must have planned the offence together before its commission. While direct evidence of a prior agreement is ideal, it can be inferred from the conduct of the accused and his accomplices, the surrounding circumstances, the nature of the offence and the manner in which it is committed. Importantly, section 21 of the *Penal Code* is a rule of evidence that makes each person liable for the offence as if they had committed it alone. (See the Supreme Court of India decision in *Balu alias Bala subbramian vs. state* (UT. of Pondichery) 2015 AIR SCW 6245).

28. Section 21 thus lays down the principle of joint liability in committing a criminal act. The essence of that liability is found in the existence of "common intention" animating the accused leading to the furtherance of such intention. This section is intended to meet a case in which it is difficult to distinguish between the act of individual members of a group and to prove exactly what part was played by each one of them. Therefore, it enacts that once it is found that a criminal act has been committed by several persons in furtherance of the common intention of all, each one of them is liable for the criminal act as if it were done by him alone. It is thus an exception to the general rule of criminal justice that it is the primary responsibility of the person who actually commits a crime and only that person can be held guilty and punished in accordance with the law for his individual act. (See Supreme Court of India decision in *State of Rajasthan vs. Shobha Ram* AIR 2013). The foregoing being the law, the argument relentlessly advanced by the appellant's counsel that it is not possible to ascertain who inflicted the fatal blow on the deceased lacks legal basis, it flies on the face of section 21 cited above and it is of no assistance to the accused.

29. Importantly, the act of picking up the deceased accussing him of stealing a cow, attempting to burn him using a tyre and pouring petrol on him and lighting a match and mercilessly beating him using big sticks inflicting life threatening head injuries and fracturing his leg and applying on him stinging nettle ultimately leading to his death, and even continuing to brutalize him even after he was dead is an unlawful act within the meaning of section 203 that led to his death. There is also evidence that efforts and cries to stop them from inflicting the injuries on the deceased fell on deaf ears. Their common intention and insatiable appetite to shed his blood can clearly be inferred from their conduct and the manner they executed the offence. Therefore, the appellant ought to have known that their actions individually and jointly could result in the death of the deceased and it does not matter whether the mob was responsible for the death of the deceased all that matters is that both the appellant and his accomplices had a common intention to prosecute an unlawful purpose which in this case was beating the deceased to death. We therefore find that the elements of common intention as highlighted earlier were proved.

30. Next, we will address the question whether malice aforethought was proved to the required standard. It is important to underscore that malice aforethought is a crucial element in proving a charge of murder. Malice aforethought signifies the intention or state of mind of the accused at the time of the commission of the offence, indicating a deliberate decision to cause death or grievous bodily harm. The statutory definition of malice aforethought is provided in section 206 of the *Penal Code* which reads:

> 206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances –
>
> 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 the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
>
> c. an intent to commit a felony;
>
> d. an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

31. Courts determine the existence or otherwise of malice aforethought based on the circumstances of each case. (See *Morris Aluoch vs. Republic* CR. APP. No 47 of 1996). This Court in *Ibrahim Maramba*

Mukabane vs. Republic [2020] eKLR citing the case of *Republic vs. Tubere s/o Ochen* [1945] 12 EACA 63 acknowledged that in determining whether malice aforethought has been proved the following elements should be considered:

> " 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 injury; the conduct of the accused before, during and after the incident." See also: *George Ngotho Mutiso v Republic* [2010] eKLR, *Republic v Ernest Asami Bwire*, *Abanga alias Onyango v Republic* Cr. Appeal No. 32 of 1990, *Karani & 3 Others v Republic* [1991] KLR 622."

32. Based on the foregoing, there has to be intent to cause harm or death or knowledge that an act can cause death or injury on the part of the accused person. Did the evidence establish the requisite mens rea on the part of the appellant? We have perused the judgment of the High Court and note that while no one saw the appellant delivering the fatal blow that killed the deceased, it has been confirmed by PW1 and PW2 that the appellant was involved in the beating of the deceased using a stick. It is also the evidence of PW1 that when she asked the deceased who inflicted the injuries to his head, the deceased informed PW1 that it was the appellant who had inflicted the said injuries using two sticks/wooden timber. The manner in which the appellant and his co- perpetrators inflicted the injuries and the location of the injuries on the deceased's head, the repeated beatings and attempt to set him on fire, the failure to listen to the pleas made by PW1 for them to stop the beatings, the fracture of the deceased leg and the persistent beatings when he was hopeless and even beating him after he succumbed to the injuries is in our view sufficient to establish malice aforethought. Accordingly, it is our finding that malice aforethought was sufficiently proved against the appellant.

33. Regarding the appellant's complaint that his defence of alibi was not considered, it ought to be noted, as was held by this Court in the case of *Victor Mwendwa Mulinge vs. R*, [2014] eKLR, the appellant did not raise the defence of alibi when the prosecution witnesses were giving evidence. It must be noted that the defence case starts during the cross examination of the prosecution witnesses when the defence is expected to put questions to those witnesses so that by the time the accused testifies his evidence does not come out as an afterthought. The Court of Appeal for *Eastern Africa in R vs. Sukha Singh s/o Wazir Singh & Others* [1939] 6 EACA 145 stated:

> " If a person is accused of anything and his defence is an alibi, he should bring forward that alibi as soon as he can because, firstly, if he does not bring it forward until months afterwards there is naturally a doubt as to whether he has not been preparing it in the interval, and secondly, if he brings it forward at the earliest possible moment it will give prosecution an opportunity of inquiring into that alibi and if they are satisfied as to its genuineness proceedings will be stopped."

34. It is evident that PW1 and PW3 who are the appellant's siblings placed the appellant at the scene of the crime. Their evidence clearly depicted the appellant as an active participant in the deadly assault on the deceased. The appellant's alibi defence did not come out during his cross-examination of the prosecution witnesses and was therefore an afterthought. In any event, our reading of his defence leaves us with no doubt that it did not raise any doubts on the prosecution's case. We therefore find that it was properly rejected.

35. The appellant's counsel maintained that there were contradictions between the findings in the postmortem report and the evidence tendered by PW1, PW2, PW3 and PW4. He also contended that PW6 in the autopsy ought to have indicated burn wounds on the deceased's body since petrol is highly flammable and it was PW1's testimony that the appellant poured petrol on the deceased and set him

on fire, yet no burn wounds were seen, therefore, PW1 was not a credible witness since she gave two different accounts on what happened to her son. In response, Mr. Omutelema maintained that the reason there were no burns on the deceased body is explained by the fact that PW1 was too swift in putting out the fire by taking off the deceased's jacket. In *Philip Nzaka Watu vs. R* [2016] eKLR this Court stated:

> "However, it must be remembered that when it comes to human recollection, no two witnesses recall exactly the same thing to the minutest detail. Some discrepancies must be expected because human recollection is not infallible and no two people perceive the same phenomena exactly the same way. Indeed, as has been recognized in many decisions of this Court, some inconsistency in evidence may signify veracity and honesty, just as unusual uniformity may signal fabrication and coaching of witnesses. Ultimately, whether discrepancies in evidence render it believable or otherwise must turn on the circumstances of each case and the nature and extent of the discrepancies and inconsistencies in question."

36. The accusation that the appellant participated in the brutal beating of the deceased was not controverted. His participation was corroborated by the evidence of PW3 who is the appellant's own brother. Even if the evidence that the appellant poured petrol on the deceased was to be disregarded (and this cannot be done), the evidence putting him at the scene actively participating in the murder was never rebutted. Consequently, we find that if at all there were contradictions in PW1's evidence, then the said contradictions are minor and did not discredit the prosecution evidence which was compelling in all material aspects.

37. Arising from our analysis of the issues discussed above and the conclusions arrived at, we find no basis upon which we can interfere with the trial court's findings on conviction. Accordingly, the appeal against conviction is dismissed.

38. Regarding the legality of the sentence 40 years imprisonment, it is noteworthy that as to the severity of sentence, section 379 (1) (a) &(b) of the *Criminal Procedure Code* provides for this Court's jurisdiction to entertain an appeal against sentence from the High Court thus:

> 379. Appeals from High Court to Court of Appeal.
>
> A person convicted on a trial held by the High Court and sentenced to death, or to imprisonment for a term exceeding twelve months, or to a fine exceeding two thousand shillings, may appeal to the Court of Appeal,
>
> a. against the conviction, on grounds of law or of fact, or of mixed law and fact;
>
> b. with the leave of the Court of Appeal, against the sentence, unless the sentence is one fixed by law.

39. In *Francis Muruatetu & Ano. vs. Republic*, the Supreme Court of Kenya Petition No. 15 & 16 of 2016, [2017] eKLR, the Supreme Court affirmed the importance of judicial discretion in sentencing. It emphasized that courts must weigh the specific circumstances of both the offender and the offence to ensure a just outcome.

40. The trial Judge in the ruling on sentence considered the fact that the appellant refused to cooperate with the probation department and therefore the sentence was meted without the input of the post conviction report. That notwithstanding, the learned Judge considered the aggravating circumstances which included lynching the deceased using a trye, the use of stinging nettle on the deceased face and the continued beating until the deceased died, coupled with the fact that earlier on, the appellant and his co-perpetrators had broken the deceased's leg and were pulling him with the fractured leg, therefore

the deceased must have experienced excruciating pain because of the cruel and inhuman treatment. The learned Judge also considered the mitigation factors such as the appellant being a first offender and in the end exercised his discretion in sentencing the appellant to a period of 40 years which was to run from the date of conviction.

41. We note that the trial court afforded the appellant an opportunity to present mitigation during sentencing. The appellant pleaded for leniency and stated that he was remorseful, even though he refused to cooperate with the Probation Department on post conviction report. Nevertheless, the court found that the gravity and brutality of the offences outweighed the mitigating factors raised. The heinous manner in which the crime was committed called for a maximum sentence and in this case the learned Judge opted for 40 years imprisonment which was an appropriate and proportionate in the circumstances. We therefore find no reason to interfere with the trial court's decision on sentence. Accordingly, this appeal fails both on conviction and sentence and it is hereby dismissed.

DATED AND DELIVERED AT NAKURU THIS 25TH DAY OF JULY 2025.

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR