Wainaina v Republic (Criminal Appeal 96 of 2019)
[2025] KECA 1184 (KLR) (4 July 2025) (Judgment)

Neutral citation: [2025] KECA 1184 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CRIMINAL APPEAL 96 OF 2019

JM MATIVO, PM GACHOKA & GV ODUNGA, JJA

JULY 4, 2025

BETWEEN

SAMUEL MUNYIRI WAINAINA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an Appeal from the Judgment of the High Court of Kenya at Naivasha (Mwongo, J) delivered on 15th October 2019 in Criminal Appeal No. 20 of 2017)

JUDGMENT

1. This is a second appeal lodged by the appellant against the judgement delivered on 15th October 2019 by the High Court at Naivasha (Mwongo, J) in High Court Criminal Appeal No 20 of 2017.That appeal emanated from the judgement of the Chief Magistrate's Court at Naivasha in Criminal Case No. 1770 of 2015 in which the appellant was charged with and convicted of two counts of robbery with violence. The charges were that on 16th May, 2014 at Rubiri area, Naivasha, jointly with others not before court, being armed with dangerous weapons namely pistols and drugs, he robbed Isaac Muigai Karanja of a motor vehicle reg. no. KBN 175N Mitsubishi Lorry valued at Kshs 4,850,000, a mobile phone and driving licence all totalling Kshs 4,884,000 and immediately before the time of such robbery, used actual violence on the said Isaac Muigai Karanja. He also stole a mobile phone make itel valued T Kshs 5,000 and immediately after the time of such robbery killed Solomon Mwangi Wambui. He was also charged with alternative counts premised on the occurrences of 16th May 2014, in that otherwise than in the course of stealing, he dishonestly retained the said motor vehicle, the property of David Kahora Wainaina and also retained the mobile phone of the late Solomon Mwangi Wambui, valued at Kshs 5,000.

2. The facts of the case were that PW2, Isaac Muigai, who was PW1's driver had gone to load sand when he met a person who informed him that he had sand which he wanted delivered to High Peak area.

They exchanged telephone numbers and the next day, 16th May 2014, as he was delivering the sand which he had loaded the previous day, he received a call from an unidentified number and the caller introduced himself as the person he met the previous day. They agreed that the caller would send a man whose description he gave to show PW2 where to deliver his new order. PW2 consulted with PW1 who agreed to the business.

3. When PW2 was done with the order he was delivering, PW2 together with the turnboy Solomon Mwangi Wambui (deceased) met the man who had been sent by the customer. The man boarded their lorry and directed them a site where they met 3 people including the appellant, standing next to a saloon vehicle. The customer asked PW2 to accompany him to the saloon car to receive payment and he obliged and was given Kshs 20,000/=. Just then, another person came to the car and suddenly, PW2 was waylaid, his phone, car keys, driving licence and Kshs 28,000 taken from him. One of the people had a gun while another had a knife. The deceased was also brought where he was and both of them were forced to ingest water mixed with some tablets. PW2, although blindfolded, feigned drunkenness although he could hear what the people were planning. The turnboy, on the other hand, resisted the drink and was beaten by the assailants, among them the appellant.

4. After throwing PW2 out of the vehicle, the assailants drove off with the lorry. PW2 staggered off and met some masons to whom he explained what had happened and then became unconscious. He later found himself at Naivasha District Hospital. The turn boy however succumbed to the injuries. Later, PW2 attended an identification parade and picked out their attackers, including the appellant.

5. PW1, David Kahora Wainaina, the owner of the lorry, confirmed that on 16th May 2014 he had agreed to his driver, PW2, making a delivery of sand to High Peak Area. They had agreed that PW2 would keep in touch with him. However, after some hours, he called PW2 but PW2 did not pick his call. At about 2.00pm whilst he was having lunch, he received a call from a person who identified himself as the Chief of Mirera Location and informed him that his driver had been drugged and carjacked. PW1 immediately called the vehicle tracking company and then reported the incident at Naivasha Police Station. He also went to Naivasha District Hospital where the driver and loader had been taken in critical condition.

6. Meanwhile, the vehicle was tracked as it was heading to Mau Narok. The police, having been informed, sought assistance from their Nakuru colleagues who intercepted the vehicle and three people - the driver and two occupants - one of whom was the appellant, were arrested.

7. PW3, Chief Inspector Nzioka Singi, who was in charge of the Police Flying Squad in Naivasha, was on 15th May 2014 requested by the Investigating Officer to conduct an identification parade. He kept the complainant behind the Flying Squad office while the parade members were in the corridor near the police cells. He conducted the identification parade as detailed in the Parade Form which was exhibited. The Investigating Officer, PC Satrine Ouma, who gave evidence as PW4 received information from the inspector in charge of Flying Squad that a lorry reg no. KBN 175N Mitsubishi had been robbed and was heading towards Njoro via Nakuru Narok road. Accompanied by his colleagues, they gave chase and spotted it at Mauche area. They intercepted it at a roadblock where the three male occupants, driver David Mwangi Mungai, Samuel Wainaina and Benson Wachira Thairu, were ordered out at gunpoint. Upon conducting a search on them, they found a driving licence, National Identity Card No. 279XXX09, Kshs 100 in a wallet, a wallet and two mobile phones Samsung Duo and Samsung Char.

8. PW6, Sergeant David Makau, who was attached to CID Nakuru North was instructed by the Officer-in-Charge Nakuru Flying Squad to attend to the scene where a hijacked lorry had been intercepted. He proceeded there and took over the matter. According to him, the deceased's phone make Itel was

found in the lorry and all the items found were recorded in an inventory which was exhibited. PW6 also went to Nairobi to the car track company that had traced the lorry from where he obtained a printout of the lorry's movement on the material day.

9. He stated that the accused persons, however, absconded during their trial and one was gunned down in Nairobi, but the appellant was re-arrested a year later. The other accused, Benson Wachira Thairu, was tried separately in Naivasha Criminal Case Number 963 of 2014. Both PW4 and PW6 identified the appellant as one of the three accused persons they had arrested in the lorry and subsequently charged, before he absconded and was re- arrested.

10. PW5, Nelson Kanyingi, identified the body of his nephew, Solomon Mwangi Wambui, for the purposes of conducting a post mortem examination.

11. After the hearing, the learned trial magistrate found the appellant guilty in the two main counts and sentenced him to death on count I but held the sentence on count II in abeyance as is the usual practice in such matters since one cannot suffer death twice.

12. Dissatisfied with the decision, the appellant appealed to the High Court but his appeal was dismissed in its entirety.

13. Undeterred, the appellant is before this Court on second appeal. When the matter came before us for plenary hearing on 24th March 2025, learned counsel, Mr Alphonse Barrack, appeared for the appellant while learned Senior Assistant Director Public Prosecutions, Mr Omutelema, appeared for the respondent. Both counsel relied entirely on their written submissions.

14. Although the appellant identified 6 grounds as the basis of his appeal, in the submissions filed, the only grounds that were submitted on were that the learned Judge erred: in upholding the appellant's conviction and sentence when there was no positive identification; in failing to note that crucial witnesses were not called by the prosecution; and in shifting the burden of proof to him yet his defence was reasonable and truthful.

15. It was submitted on his behalf: that the manner in which the appellant was identified, arrested and identification parade conducted was seriously flawed and could not found a conviction; that the appellant was identified by a single witness yet both the trial court and the High Court did not exercise the caution as advised in the case of Abdalla Bin Wendo v R 20 EACA 166; that influenced by an oblique motive, the prosecution failed to call a number of key witnesses to testify such as the chief who relayed the information about the theft of the vehicle to PW1, the masons who PW2 met after being thrown off the vehicle and the medical personnel who treated PW2 at Kijabe Hospital and Naivasha Hospital; that on the authority of Bukenya & Others v Uganda cited in Njoroge v R [2022] KECA 1262, had the said witnesses been called, the court would have been afforded the opportunity to examine the totality of the prosecution's case and pronounce itself on the insufficiencies therein; that on the authority Kimotho Kiarie v R [1984] eKLR, the appellant's alibi defence was improperly dismissed; that the appellant was arrested while he was running on hearing gun shots and was then handed over to flying squad officers; that the police effected an indiscriminate arrest absent any evidence that the appellant was either a person of interest or an accused person; that the mere fact that prosecution witnesses gave a contrary account in evidence in itself did not disabuse the appellant's account of his whereabouts at the time of the commission of the offence, time of arrest and circumstances surrounding the arrest; and that both the trial court and the High Court erred in finding the appellant guilty and convicting him.

16. In opposing the appeal, it was submitted on behalf of the respondent: that the appellant was identified by PW2, PW3 and PW4 under conditions that were favourable for positive identification since the

robbery occurred during the day and PW2 had ample time to observe the appellant to enable him identify him; that the identification parade was properly conducted and as was appreciated in Njihia v R [1986] eKLR, it is not difficult to arrange well conducted parades; that both the trial court and the High Court correctly applied the doctrine of recent possession in finding the appellant guilty of the offence of robbery with violence in line with the decision in Wiliam Mika Amasa v R [2020] eKLR and Simon Kanui Mwendwa v R [2020] eKLR; that the appellant gave no explanation on how he obtained the stolen properties which were recovered from him; that the appellant never raised the defence of alibi at an early stage but only in his unsworn statement which limited its probative value and was not corroborated by other independent witnesses contrary to the holding in Erick Otieno Meda v R [2019] eKLR; that on the authority of May v R [1981] KLR 129, unsworn statement has no probative value and that its potential is persuasive rather than evidential and is required to be supported by evidence in the case. We were urged to dismiss the appeal as lacking in merit.

17. We have considered the above submissions. As stated at the beginning of this judgement, this is a second appeal and the law circumscribes the remit of this Court's jurisdiction by providing in section 361(1) of the *Criminal Procedure Code* that:

> A party to an appeal from a subordinate court may, subject to subsection (8), appeal against a decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section—
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> a. on a matter of fact, and severity of sentence is a matter of fact; or
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> b. against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence.

18. By dint of that section, the jurisdiction of this Court on a second appeal is confined to matters of law. Of course, matters of law include the failure by the first appellate court to undertake its mandate of re-evaluating the evidence and subjecting the case to fresh scrutiny. See Jonas Akuno O'kubasu v Republic [2000] eKLR.

19. When it comes to factual contestations, it was held in Stephen M'Irungi & Another v Republic [1982-88] 1 KAR 360 that:

> Where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court(s) and resist the temptation to treat findings of fact as holdings of law or mixed finding of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law."

20. Where there are concurrent findings of fact by the two courts below, this court is bound by those findings unless it is shown that they were based on no evidence or where it is demonstrated that the trial court and the first appellate court considered matters they ought not to have considered or that they failed to consider matters they should have considered or that looking at the evidence as a whole they were plainly wrong in their decision, in which case such omission or commission would be treated as matters of law. See Njoroge v Republic [1982] KLR 388 and Karani v R [2010] 1 KLR 73.

21. We are also guided by the decision in Adan Muraguri Mungara v R [2010] KECA 131 (KLR) where it was held thus:

> "As this court has stated many times before, it has a duty to pay homage to concurrent findings of fact made by two courts below, unless such findings are based on no evidence at all, or on a perversion of the evidence, or unless on the totality of the evidence, no reasonable tribunal properly directing itself would arrive at such findings. That would mean that the decision is bad in law, thus entitling this court to interfere."

22. In our view, the following issues fall for determination in this appeal: whether the appellant was properly identified; whether crucial witnesses were not called to testify; whether the appellant's defence was considered; and whether the prosecution proved its case to the required standards.

23. Regarding the identification of the appellant, PW2 was categorical that the appellant was part of the group that he found where he was directed by his client's emissary who was sent to show him where the vehicle was to be loaded. He was part of the group that grabbed him and robbed him before administering the substance that sent him into unconsciousness. The whole episode took place in broad daylight and he was positive about the identity of the appellant whom he later picked out in an identification parade. PW2's evidence was corroborated by PW4 who found the appellant in the same vehicle that had been carjacked and in which the identification documents of the deceased were found. In his judgement, the learned trial magistrate stated that:

> I have carefully considered the evidence on record and exhibits produced and there is no doubt in my mind that the robbery incident which is the subject matter of these proceedings did occur. This is because PW2 was clear that the incident occurred in broad daylight and was able to see what was happening. The events that were triggered by this incident are also clear on this. PW2 stated that he saw his attackers clearly and was able to pick them during the conduct of the identification parade. PW4 stated that one of the people that he found in the lorry was the accused herein and this further fortifies the testimony of PW2 as regards identification. PW2 had ample time to see the robbers. He engaged them in talk before they pushed him into the saloon vehicle...There is a clear trail of events and the identification cannot be faulted."

24. The learned Judge of the High Court, on his part held that:

> "I am satisfied that PW2, who had spent some considerable time in broad daylight with the accused during the transactions involving delivery of the sand, was in a good position to identify his assailants."

25. These were two concurrent findings of fact and we can only interfere with them if we are satisfied that there was no evidence to support them. In our analysis, there is no basis for upsetting the findings of the two courts below since they were clearly based on the evidence on record.

26. Regarding the identification parade, it is our view that even if that evidence is discounted, the evidence of PW2 and PW4 is sufficient to place the appellant both at the scene of robbery and thereafter in possession of the vehicle. The appellant in his unsworn statement did not question the manner in which the parade was conducted hence there would be no basis upon which we can, at this stage, fault the manner in which the parade was conducted. We find no merit in this ground.

27. The appellant also took issue with the fact that crucial witnesses such as the masons whom PW2 met after he had been pushed of the vehicle, the chief who relayed the information of the carjacking to PW1

and the medical personnel were not called as witnesses. The starting point when it comes to the number of witnesses to be called by the prosecution is section 143 of the *Evidence Act* which provides that:

> No particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact.

28. This Court dealt with the issue in Suleiman Otieno Aziz v Republic [2017] eKLR and held that:

> Secondly, as propounded in Bukenya v. Uganda [1972] EA 549, the proposition that the court may draw an adverse inference from the prosecution's failure to call important and readily available witnesses arises in cases where the evidence called by the prosecution is barely adequate. In Donald Majiwa Achilwa & 2 Others v. Republic, Cr. App. No 34 of 2006, this Court explained the position thus:
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> > The law as it presently stands, is that the prosecution is obliged to call all witnesses who are necessary to establish the truth in a case even though some of those witnesses' evidence may be adverse to the prosecution case. However, the prosecution is not bound to call a plurality of witnesses to establish a fact. Where, however, the evidence adduced barely establishes the prosecution case, and the prosecution withholds a witness, the court, in an appropriate case, is entitled to infer that had that witness been called his evidence would have tended to be adverse to the prosecution case.'"

29. In this case, there is no evidence that the masons whom PW2 came across witnessed the incident. Their evidence, in so far as the robbery was concerned, would have been, at best, hearsay. They would not have added anything to PW2's evidence. Regarding the Chief, his role in the matter was limited to relaying information to PW1 that his vehicle had been carjacked. Similarly, there is no evidence that he witnessed the robbery. There was sufficient evidence even without his input that PW1's vehicle was carjacked hence his evidence would not have taken the case a notch higher. Regarding the evidence of medical personnel, the case did not entirely hinge upon the treatment that was administered to PW2. Whereas causing injury to a person is an ingredient in such cases, it is not the only ingredient. In Masaku v Republic [2008] KLR 604, the Court reiterated that:

> " It is now well settled that any one of the following needs be proved to establish the offence:
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> 1. If the offender is armed with any dangerous or offensive weapon or instrument; or
> 2. If the offender is in the company of one or more offenders; or
> 3. If at or immediately before or immediately after the time of the robbery he wounds, strikes or uses any other violence to any person.
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> In this case, the particulars of the charge stated that the appellant was with another at the time of the robbery and further that at or immediately before or immediately after the time of such robbery wounded the deceased. It is plain therefore that two of the three ingredients of the offence of robbery with violence under section 296(2) of the *Penal Code* were given. It should be remembered that a single ingredient is sufficient."

30. This is not a case where it can be said that the evidence adduced barely established the prosecution case, so that it can be inferred the prosecution withheld witnesses whose evidence, had they been called would have tended to be adverse to the prosecution case.

31. Regarding the appellant's defence of alibi, it ought to be noted, as was held in the case of Patrick Muriuki Kinyua & another v Republic [2015] KECA 1000 (KLR) that:

> " an alibi is a plea by an accused person that he was not there (was not present) at the place where the crime was committed at the time of the alleged commission of the offence for which he is charged"

32. While the appellant explained that he was amongst the crowd when he was arrested, he did not explain where he was at the time of the robbery. It was the explanation of where he was at the time of the robbery, rather than at the time of his arrest, that would have constituted an alibi defence. Nevertheless, the learned Judge treated his defence as an alibi defence and expressed himself as follows:

> " I have considered the alibi. It amounts to a weak attempt to place himself at the Mauche road block where he was arrested but under circumstances not connected to the intercepted lorry. It appears to me to be an afterthought. For an alibi to have true value, it must be credible and be able to relate a story that truly pokes holes in the evidence of the prosecution and raises a reasonable doubt in the mind of the court."

33. The appellant did not raise the defence 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 case is expected to put to those witnesses so that by the time the accused testifies his evidence does not come out as an afterthought. In R. v. Sukha Singh s/o Wazir Singh & Others (1939) 6 EACA 145, the former Court of Appeal for Eastern Africa upheld a decision of the High Court in which it was 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. In Wang'ombe v the Republic [1980] KLR 149, this Court (Madan, Miller and Potter, JJA) held that:

> " ...in Ssentale vs. Uganda [1968] EA 365, 368 [Sir Udo Udoma CJ]...said that a prisoner who puts forwards an alibi as an answer to a charge does not thereby assume any burden of proving that answer; it is a misdirection to refer to any burden as resting on the prisoner in such a case; for the burden of proving his guilt remains throughout on the prosecution. We agree, we have ourselves said so on more than one occasion...The defence of alibi was put forward for the first time some four months after the robbery when the appellant made his unsworn statement in court. Even in such circumstances the prosecution or the police ought to check and test the alibi wherever possible. On the other hand, however punctilious the prosecution or police, it throws upon them an unreasonable burden when the alibi is pleaded for the first time in an unsworn statement at the trial, out of the blue. Udo Udoma CJ also said that, if the alibi had been raised for the first time at the trial, different considerations might have arisen as regards checking and testing it...In England, in order to distribute the burden of the prosecution fairly, the Criminal Justice Act, 1967, section 11(1), provides that on a trial on indictment the defendant may not without the leave of the court adduce evidence in support of an alibi unless, before the end of the prescribed period, he

gives notice of particulars of the alibi. Under section 11(8) 'the prescribed period' means the period of seven days from the end of the proceedings before the examining justices. Section 11(1) applies where the defendant alone is to testify that he was elsewhere at the material time; see R vs. Jackson and Robertson [1973] Crim. LR 356...The alibi was considered by both courts below, the High Court saying (as we have already set out) that it needed to be weighed with the evidence of the prosecution, particularly that of the complainant and his wife, and the fact that the appellant denied knowing Lucy, and particularly with Lucy's evidence. To weigh one set of evidence with another set of evidence is not to remove the burden of proving that which has to be proved from the party charged with the proof of it. To marshal, analyse and dissect evidence in order to weigh it to determine its value and veracity is a basic function of judicial officers. They do not have to pedantize. What other approach is there? Judicial officers are not clairvoyant!"

35. Having found that, strictly speaking, the appellant's defence was not an alibi defence and as the attempt came very late in the day, there is no basis upon which the said ground can succeed.

36. The last ground was whether the prosecution proved its case to the required standards. In this case it was proved that the appellant and his co-attackers were armed and were more than one in number. They used threats on PW2 and even assaulted the deceased with spades leading to his death and stole PW1's lorry as well as money personal effects of PW2 and the deceased. We are satisfied that all the ingredients of the offence of robbery with violence were proved beyond reasonable doubt.

37. Before we conclude we must comment on the submissions made by the prosecution that an unsworn statement has no probative value. With due respect such a sweeping statement may not entirely correct. In Okumu v Republic [1980] KLR 146, this Court (Miller and Potter, JJ and Simpson, Ag.JA) held that:

> " Underground (4) Mr Owino submitted that the magistrate erred in saying that the appellant had taken advantage of his right to give an unsworn statement and thus avoid cross-examination. He relied upon Lubogo vs. Uganda [1967] EA 440. It is made clear in that case that it is open to the judge to comment on the fact that an accused person has not given sworn evidence, but he should be cautious in doing so, and this consideration should never be used to bolster a weak prosecution case. In this case we do not consider that the magistrate's comment was indiscreet, or that this was a weak case."

38. Similarly, in Amber May v Republic [1979] KLR 38, this Court (Law, Miller and Potter, JJA) was of the view that:

> " No adverse inference can be drawn against the appellant for electing to make an unsworn statement. She was exercising a right conferred upon her by statute (section 211(1) of the *Criminal Procedure Code*); see also Wiston s/o Mbaza vs. R [1961] EA 274. No such adverse inference was in fact drawn by either court below...Mr Morgan submitted that an unsworn statement was evidence, but could cite no authority for this proposition. Our researches have revealed two persuasive authorities from English case, in which this point was considered. In R vs. Frost, R vs. Hale (1964) 48 Cr. App Rep 284, referring to an unsworn statement, Lord Parker, CJ said (at pages 290, 291):
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> > " In the opinion, it is quite unnecessary to consider what is really an academic question, whether it is called evidence or not. It is clearly not evidence in the sense of sworn evidence that can be cross- examined to; on the other hand it is evidence

in the sense that the jury can give to it such weight as they think fit...and should take it into consideration in deciding whether the prosecution have made out their case so that they feel sure that the prisoner is guilty.'

In R vs. Coughan [1977] 64 Cr App Rep, the headnote reads:

> " Held, that when a person charged with an offence chooses to make an unsworn statement from the dock, although such a statement might throw light on the sworn evidence and thus influence the jury's decision, its potential effect was persuasive rather than evidential, for such a person was not a witness, and thus his statement could not prove facts that were otherwise not proved by evidence..."

With reference to section 1(b) of the Criminal *Evidence Act* 1898 (which preserved the right of an accused person in England to make a statement without being sworn), Shaw LJ said (at pages 17, 18):

> " The section makes a clear distinction between the position where an accused person elects to assume the role of a witness in his defence and the situation where he makes an unsworn statement.
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> In the latter case, he is not a witness, and he does not give evidence...What is said in such a statement is not to be altogether brushed aside; but its potential value is persuasive rather than evidential. It cannot prove facts not otherwise proved by the evidence before the jury, but it may make the jury see the proved facts and the inferences to be drawn from them in a different light. Inasmuch as it may thus influence the jury's decision, they should be invited to consider the content of the statement in relation to the whole of the evidence. It is perhaps unnecessary to tell the jury whether or not it is evidence in the strict sense. It is material in the case. It is right, however, that the jury should be told that a statement not sworn to and that tested by cross-examination has less cogency and weight than sworn evidence.'
>
> From all this we are satisfied that an unsworn statement is not evidence as that expression is generally understood. It has no probative value, but should be taken into consideration in relation to the whole of the evidence...an unsworn statement is not strictly speaking evidence, and the rules of evidence cannot strictly be applied to an unsworn statement."

39. Therefore, whereas unsworn statement by an accused, as opposed to the witnesses is not, in the strict sense of the word, evidence, in the sense of sworn evidence that can be cross-examined to, it is "evidence" in the sense that the court can give to it such weight as it thinks fit and should take it into consideration in deciding whether the prosecution have made out their case.

40. Having considered the submissions made in this appeal, we find no merit in it. The appeal is, in those premises, dismissed.

DATED AND DELIVERED AT NAKURU THIS 4TH 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

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is the true copy of the original

signed

DEPUTY REGISTRAR