



**Kimani v Republic (Criminal Appeal E096 of 2023)
[2024] KECA 615 (KLR) (24 May 2024) (Judgment)**

Neutral citation: [2024] KECA 615 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPEAL E096 OF 2023
A ALI-ARONI, LA ACHODE & JM MATIVO, JJA
MAY 24, 2024**

BETWEEN

MOSES NDANU KIMANI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the judgement of the High court (Hon Meoli J)
delivered on 4th February 2019 at Kiambu in HC Cr Case No. 58 of 2016)*

JUDGMENT

1. This is the first appeal arising from the judgment of Hon Meoli J delivered on 4th February 2019 at Kiambu in High Court Criminal Case No. 58 of 2016. The appellant had been arraigned in court on an information of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars in the information stated that on 20th September 2014, at Githunguchu Location, Gatundu South sub-county, the appellant murdered Doris Muthoni Maina.
2. Briefly, the case before the trial court was that PW1 Boniface Kamau Kimani, was at home with his father PW2, on 20th September 2015, at about 9.00 am, when they heard screams from a neighbour’s compound, about 15 meters away. They ran to the compound and found the neighbour’s daughter screaming that she had been stabbed. She was trapped between the water tank and a sink, with her hair caught in the Kei apple fence. She had a stab wound near her waistline from which blood was trickling into her trousers. She informed them that the perpetrator was a stranger and he had fled. Nearby, they noticed a bloody kitchen knife lying on the grass.
3. PW6 Patrick Mburu Muthoni a casual labourer working in a home in the neighbourhood, also heard the screams. He ran out of the gate immediately to responded to the cry and saw a man he had known from their primary school days and whom he identified as Moses, run out of the neighbour’s gate. The



- man pointed at a different home as the source of the screams, then he fled towards the main road. PW6 had seen him in the area before that day.
4. PW6 found the indicated home deserted and the doors locked. He realized that Moses had misled him. He entered the gate where Moses had emerged from and found PW1 and PW2 attending to an injured girl. He pointed PW1 in the direction Moses had taken and together they pursued and caught up with him approximately 2 km late and arrested him.
 5. PW3 PC Japheth Kiptala of Gatundu Police Station, was on mobile patrol duties near Gatundu Law Courts in Gatundu Township on 20th September 2014, at about 09:30 am accompanied by the OCS C.I Kanye. They came across a large crowd beating up a young man. They were informed that the young man had stabbed a young girl and was attempting to flee. The police rescued the young man from the angry mob and escorted him to Gatundu Police Station. PW1 and PW6 accompanied them to the police station to record statements.
 6. They then rushed to Gatundu District Hospital where they found the young girl being attended to by clinical officers. She recounted that she was at home washing utensils when an intruder, whom she recognized only by physical appearance and not by name, entered the compound and attacked her. He tried to rape her and when she repulsed him, he grabbed a knife from among the utensils and stabbed her. She screamed and the intruder fled, leaving the kitchen knife behind. PW3 visited the scene of crime and recovered the bloodstained kitchen knife a few meters from where the utensils were. Later that evening, the victim succumbed to her injuries. PW1 and PW6 identified the intruder they pursued from the scene of crime as the appellant herein, while PW3 identified him as the person he rescued from the angry mob.
 7. PW4 Lucy Waruiru, the mother to the victim, left home that morning to go to work near Gatundu Shopping Centre, leaving her 18 years old daughter at home alone. Shortly after 9:00 am, her husband called and told her to rush back home and take their daughter to hospital because she had been stabbed. PW4 hurried home and found neighbours attending to the girl. She took her to Gatundu hospital where she later succumbed to the injuries. PW4 recognized the appellant as someone who used to pass by her shop before. She did not know his name.
 8. PW7 CPL Mwendu Mbayo of Gatundu DCIO investigated the murder. On 22nd September, 2014 he escorted the body of the deceased to Kenyatta University Mortuary for post-mortem examination, which PW5 Sarah Wanjiku Ndegwa, a family friend of the victim witnessed. On 30th September 2014, he also escorted the suspect to Gatundu hospital for a mental status assessment and he was certified fit to stand trial. PW7 recorded statements from the witnesses and brought charges of murder against the appellant.
 9. The appellant was represented by Mr. Njuguna Advocate. His case stated by way of a sworn testimony. He stated that on the morning of 20th September 2014, he was going to work when he heard screams and froze momentarily. When he resumed walking he met PW6, who enquired about the screams and the appellant said he did not know the source. He declined to help PW6 find out who had screamed because he was heading to work. The location of the screams was behind him, in the direction he was coming from. He talked with PW6 for about five minutes and advised him to report to the police if necessary.
 10. As the appellant continued on his way to work another man also enquired about the screams from him. He met yet another group of people who also asked about the screams, but he did not stop to assist any of them. Instead, he advised them to investigate for themselves. He then noticed a man who was wielding a stick approaching fast with other men running alongside him coming toward the appellant.



The appellant realized that he was being pursued and sensing danger, he ran screaming into a field. However, he was caught and assaulted on accusations of stabbing someone. The police arrived and re-arrested him.

11. The appellant denied knowing the deceased or any member of her family. He also denied being at the scene of crime on the material morning. While admitting that he had donned a coat, he denied that it had any blood stains when he was arrested. He stated that although the police took his clothes, they were not produced in court. He asserted that he was an innocent person caught on mere suspicion by the villagers.
12. At the end of the trial, the appellant was found guilty of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. Meoli J convicted him and sentenced him to life imprisonment.
13. Aggrieved by the judgement of the court, the appellant filed this appeal against both conviction and sentence. He filed grounds of appeal and supplementary grounds of appeal, stating that the learned trial judge erred in law and facts in failing to find that: the charges were defective; investigations were poorly done; material contradictions were not resolved in his favour; the evidence was insufficient; the trial was unfair and contrary to constitutional principles and his plausible defence was not considered.
14. M/S Alala Calvince Siogoma Advocate filed written submissions dated 10th December 2023 on behalf of the appellant and raised the following three issues for determination: whether the appellant was convicted on insufficient evidence: whether the life sentence given to the appellant was unduly severe and whether the appellant's 'conviction and sentence should be annulled, leading to his immediate release'.
15. M/S David Okachi, Senior Assistant Director of Public Prosecution, filed written submissions dated 4th December 2023 on behalf of the respondent. He urged us to find that the appeal lacks merit and is a futile attempt to challenge the prosecution's compelling case and dismiss it.
16. We have considered the record, the grounds of appeal, the submissions thereon, and the law, and in our view, the paramount issues for determination are:
 - I. Whether the elements of murder were proved beyond reasonable doubt.
 - II. Whether the contradictions and inconsistencies in the evidence were material.
 - III. Whether the sentence was excessive in the circumstances.
17. This being a first appeal, our mandate involves revisiting the evidence presented to the trial judge, conducting an independent analysis thereof, and subsequently drawing our own conclusions. It is, however, essential to acknowledge that we did not have the opportunity to witness, or hear the witnesses firsthand and make allowance therefor. This was aptly stated in the case of *Okeno vs. Republic* [1972] EA 32, as follows:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya vs. R.* [1957] E.A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (*Shantilal M. Ruwala v. R.*, [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the



trial court has had the advantage of hearing and seeing the witnesses, see *Peters v. Sunday Post*, [1958] E.A. 424.”

We have therefore, subjected the record to scrutiny in accordance with the mandate stated above.

18. }On the first issue as to whether the elements of murder were proved beyond reasonable doubt, Section 203 and 204 of the Penal Code under which the appellant was convicted and sentenced read as follows:
 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
 204. Any person who is convicted of murder shall be sentenced to death.
19. There are three elements that the prosecution must prove beyond reasonable doubt in order to secure a conviction for the offence of murder under Section 203. They are: (a) the death of the deceased and the cause of that death; (b) that the accused caused the death of the deceased and (c) that the accused had malice aforethought. (See-Nyambura & Others-Vs-Republic [2001] KLR 355.)
20. On the first element there is no dispute that Doris Muthoni Maina died on 20th September 2014 and that the cause of death was a stab wound in the abdomen. Her death was confirmed through a post-mortem report prepared by Dr. Johansen Oduor, in which he concluded that the deceased had died of a stab wound in the abdomen. This finding was corroborated by the testimonies of PW1, PW2, and PW6, who arrived at the scene of crime when the victim screamed. They provided an account of the victim’s fatal injury and her last moments before she died later in the day, while in the hospital. The bloodstained knife used in the stabbing was recovered on the grass next to the injured girl.
21. The more irksome element is whether it was the appellant who committed the unlawful act that caused the death of the deceased. The appellant submits that the conviction was unjustified due to insufficient evidence. He asserts that his conviction was predominantly based on circumstantial evidence and that the pivotal question is whether the Prosecution met the threshold required to secure a conviction based on circumstantial evidence.
22. The appellant asserts that failure to subject the knife and the jacket recovered with alleged blood stains to forensic analysis, coupled with the inconsistencies in the witness testimonies undermine the prosecution case. The appellant also challenges the reliability of the prosecution evidence arguing that the witness testimonies were based on hearsay and lacked corroboration. For that reason his conviction is rendered unsafe warranting reconsideration by this Court.
23. The appellant refers to the case of *Joan Chebichii Sawe vs Republic* [2003] eKLR, where this Court established the stringent criteria for justifying guilt based on circumstantial evidence and submits that several factors undermine the strength of the circumstantial evidence relied upon by the trial court to convict him. He specifically refutes the prosecution evidence that placed him at the scene of crime, urging that such assertions were not supported by concrete evidence, since he was not arrested at the scene. Further, there is no connection between his conversation with PW6 and the stabbing of the deceased.
24. The State counsel submits in rebuttal that PW6 met the appellant leaving the scene of crime and he misled PW6 and refused to accompany him back to investigate the source of the screams. That PW6 identified the individual he met leaving the scene of crime as the appellant, a person who was known to him before that day. That PW1 pursued the appellant and arrested him with the help of members of the public in a nearby farm where he sought refuge. That the appellant was the last person seen departing from the compound where the deceased was found. The State counsel asserts that the learned judge



reached a fair decision in convicting the appellant and subsequently sentencing him in accordance with the law.

25. From the record no one saw the appellant stabbing the deceased. The prosecution's case rests on circumstantial evidence. The manner in which circumstantial evidence should be considered was stated in the case of *Teper vs. R* (1952) AC by this Court as follows:

“Circumstantial evidence must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of accused's guilt from circumstantial evidence, to be sure that there are no coexisting circumstances which could weaken or destroy the inference.”

26. Circumstantial evidence must be taken with utmost caution where the court relies on it entirely. It must satisfy several conditions as set in the case of *Ahamad Abolfathi Mohammed and another* [2018] eKLR (supra) thus:

“Before circumstantial evidence can form the basis of a conviction however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the Accused person, and to no other person, as the perpetrator of the offence. In *Abang'a alias Onyango v. R* Cr. App. No 32 of 1990, this court set out:-“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and none else.”

27. The Court reiterated the foregoing conditions in *Joan Chebichii Sawe* (supra) and added that the prosecution must also establish that there are no other coexisting circumstances, which could weaken or destroy the inference of guilt.

28. In *Musili Tulo v Republic* Cr. App. No. 30 of 2013 this Court laid down the test to be applied in considering whether the circumstantial evidence placed before the court can support a conviction as follows:

“Before circumstantial evidence can form the basis of a conviction however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the Accused person, and to no other person, as the perpetrator of the offence. In *Abanga alias Onyango v R* Cr. App. No 32 of 1990, this court set out the conditions as follows:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
- (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused;
- (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and none else.



29. Lastly, in *Neema Mwandoro Ndunya vs. Republic* CRA 466 of 2007, the Court of Appeal cited with approval the case of *R vs. Taylor Weaver and Donovan* (1928) 21 CRC 20 stating that:

“Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with the accuracy of mathematics”.

30. In the judgement of the superior court, the learned judge considered the evidence of identification and observed thus:

“The transaction described by PW1, PW2 and PW6 moved in quick succession and in light of their immediate response, these witnesses would have found or seen any other person who may have entered the Deceased's home. Events occurred in such quick succession that the men (PW1 and 6) were able to pursue and catch up with the Accused as he continued running away from the locale of the incident of stabbing. It is unfortunate that the deceased succumbed before identifying her assailant and that alleged blood stained jacket won by the Accused on arrest was not forwarded, alongside the knife collected at the scene, for DNA analysis. Nonetheless, there is no evidence that PW6 though known to the Accused had any axe to grind with him, and as for PW1 he had merely seen the Accused 'idling' in the neighbourhood prior to the incident on previous days and on the material morning but did not actually know him.”

31. The evidence against the appellant being primarily circumstantial, we examine the key strands of evidence to see whether they satisfy the conditions in *Ahamad Abolfathi Mohammed* (supra), to establish whether the inference of guilt is cogent, firmly established and unerringly points to the appellant as the perpetrator of the offence. The relevant evidence in the case before us comes from the testimonies of PW1, PW2, and PW6.

32. PW6, who was the first to respond to the distressed screams coming from a neighboring compound, went out of the gate immediately to investigate. The only person he found outside was the appellant, who was a person known to him from primary school days and he was hastily leaving from the deceased's gate. The appellant deliberately pointed PW6 elsewhere, to a house that PW6 quickly found to be locked. When PW6 entered the gate where he had found the appellant he found PW1 and PW2 having just arrived and were attending to the injured girl. PW6 pointed PW1 in the direction the man he had seen leaving the victim's gate went. He and PW1 gave chase, caught up with him and apprehended him.

33. Of importance is the fact that PW6 was familiar with the appellant whom he had known from their primary school days. He had observed him loitering around the deceased's gate on numerous occasions in the days preceding the attack. PW1 had also seen the appellant 'idling' in the same area on previous days and also on the material morning, although he did not know him by name. The testimony of PW1 therefore, corroborates the account of PW6.

34. This being a criminal case the appellant is under no duty to prove his innocence. The burden of proof rests with the prosecution.

The appellant's testimony must, however, be considered together with the rest of the evidence on record. Having sifted through the record, we find that the testimony of PW6 aligns with that of PW1 and PW2. They all said they met the appellant fleeing from the direction of the screams immediately after they emerged from their respective compounds. He was the only person near the victim's gate and he fled from the scene just before they entered the victim's gate. In his defence the appellant admits



that he met PW6 soon after the screams rent the air and that they engaged in a conversation for about five minutes before he continued on his way to work. He also admits that he met PW1 and PW2 as they stated.

35. The testimonies of PW1, PW2, and PW6, therefore, provide consistent accounts placing the appellant in the vicinity of the crime scene before, during, and after the incident. First, Pw6 had noticed him loitering around the deceased's gate in the days preceding the attack, while PW1 had not only seen him on those other days, but had also seen him idling outside the said gate on the ill-fated morning. Second, the appellant admits in his defence that he met PW1, PW2 and PW6 just as they described. Third, the appellant pointed PW6 in the wrong direction and took flight thereafter. Fourth, there was no one else outside the gates when the three core witnesses emerged from their respective gates in answer to the screams.

36. The circumstances from which an inference of guilt is to be drawn are therefore, cogently and firmly established. They are of definite tendency unerringly pointing towards the guilt of the appellant. The facts taken cumulatively from the time the distress call was heard, to the arrest of the appellant form a chain so complete that there is no escape from the conclusion that, within all human probability the crime was committed by the appellant and none else. We find no other coexisting circumstances which would weaken or destroy the inference of guilt. The facts presented justify the reliance on circumstantial evidence to establish the appellant's guilt beyond reasonable doubt. We therefore agree with the findings of the learned trial judge that the appellant was the assailant.

37. The next element is whether the appellant had malice aforethought when he assaulted the deceased. Section 206 of the Penal Code defines Malice aforethought as follows;

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 or to do grievous harm to any person, whether that person is the person actually killed or
- 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..."

38. The East African Court of Appeal pronounced itself on proof of malice aforethought in *Rex vs Tubere s/o Ochen* [1945] 1Z EACA 63, as follows:

"In determining existence or nonexistence of malice one has to look at the facts proving the weapon used, the manner in which it is used and part of the body injured."

39. Also, in the case of *Hyam vs DPP* [1974] A.C. the Court held inter alia, that:

"Malice aforethought in the crime of murder is established by proof beyond reasonable doubt when during the act which led to the death of another the accused knew that it was highly probable that, that act would result in death or serious bodily harm."



40. The intention to kill, or malice aforethought may be inferred from the acts of the accused person as stated in Ernest Asami Bwire Abanga alias Onyango vs R (CACRA No. 32 of 1990), where the Court held:

“the question of intention can be inferred from the true consequences of the unlawful acts or omission of the brutal killing, which was well planned and calculated to kill or to do grievous harm upon the deceased.”

41. The deliberate use of a deadly weapon in this case, and the vicious nature and location of the injury inflicted, indicate that the attack was aimed at causing the victim grievous harm or death. The description of the victim's injuries in the post-mortem report supports the inference of malice aforethought. The appellant's act of deliberately misleading PW6 who was responding to the distress call, coupled with his flight thereafter did not speak of his innocence or aid his case. We therefore find no basis to depart from the conclusion arrived at by the learned judge in the trial court.

42. Next, we shall consider whether the contradictions and inconsistencies in the evidence are material. On this, the learned judge stated as follows in her judgement:

“According to PW1 and PW2, the victim had told them upon their arrival that her assailant had fled. If indeed PW6 was the first respondent at the scene, as it appears, the conduct of the Accused at being found at the victim's gate and subsequently in misleading PW6 while taking the opportunity to run away appears to strongly point to him as the assailant. To PW6 and to this court the Accused did not give a plausible reason for both this conduct or even his presence at the area within the scene prior to and soon after the offence. His unexplained proximity to the home where the offence occurred so immediately after screams of the victim rent the air suggests that he was the assailant, as confirmed by his refusal to accompany PW6 inside the compound, misleading PW6 and then taking advantage to escape, and keep running until he was caught.”

43. Minor discrepancies or variations in testimonies are not uncommon and do not necessarily undermine the credibility of the witnesses, or the overall strength of the prosecution case. Courts have consistently recognized that witnesses may recall events differently due to factors such as the passage of time, individual perspectives, and the traumatic nature of the events in question.

44. The definition of inconsistencies and discrepancies was rendered by the Court of Appeal of Nigeria in the case of David Ojeabuo vs. Federal Republic of Nigeria [2014] LPELR-22555(CA), where the court stated as follows:

“Now, contradiction means lack of agreement between two related facts. Evidence contradicts another piece of evidence when it says the opposite of what the other piece of evidence has stated and not where there are mere discrepancies in details between them. Two pieces of evidence contradict one another when they are inconsistent on material facts while a discrepancy occurs where a piece of evidence stops short of, or contains a little more than what the other piece of evidence says or contains.”

45. In John Cancio De SA vs. V N Amin Civil Appeal No. 27 of 1933 [1934] 1 EACA 13: the Court held that:

“Probably every judge has had occasion at some time or other to regard discrepancies as showing veracity, and to regard uniformity as showing fabrication, but it depends upon



the nature of the discrepancies and the uniformity. If two people allege that they made a journey together from Kampala to Nairobi and they differ on such details as the time the train stopped at Eldoret, what they had for lunch and dinner, and whether it rained on the journey and where, it would be more reasonable to argue a difference in memory than that the journey was never undertaken. But if one says they made the whole of the journey by rail, and the other says they went to Entebbe by car and thence by air to Nairobi, it would be more reasonable to argue that the journey never took place than that one or both suffered from a defective memory.”

46. In the case before us the core witnesses corroborate each other on key aspects of the incident. PW1, PW2, and PW6 all recall hearing screams and rushing to the scene, where they found the victim with a stab wound. They all describe encountering the appellant as the only person in the vicinity of the victim’s gate shortly after the screams were heard. The minor inconsistencies in the case do not therefore detract from the overall coherence of the prosecution’s narrative. Crucial elements, such as the identity of the victim, the nature of her injuries, and the presence of the appellant at the scene, and the steps taken to apprehend the appellant are consistently affirmed by multiple witnesses.
47. We note that while there may be minor discrepancies in the witness statements, the core narrative of the prosecution’s case remains robust and compelling. Any variations are to be viewed within the broader context of the witness testimonies and do not undermine the overall credibility of the prosecution case. We therefore find that nothing turns on this issue.
48. Lastly, the appellant submits that the sentence is unduly harsh and excessive in the circumstances of this case. That it is severe and disproportionate to the offence in light of what he terms as weaknesses in the prosecution case. He urges that the Court should reconsider the sentence in light of mitigating factors. In response the State counsel submits that the appeal lacks merit and is a futile attempt to challenge the otherwise compelling prosecution case.
49. The principles that guide interference with sentencing by the appellate Court were set out by the predecessor of the Court of Appeal in the case of *Ogolla s/o Owuor vs Republic*, [1954] EACA 270, where the Court pronounced itself thus:

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”
50. Whereas the sentence imposed in this case is lawful, nonetheless, we are cognizant of the constitutional edict pronounced by the Supreme Court in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR, where the apex Court expressed itself thus:

“...If a Judge does not have discretion to take into account mitigating circumstances it is possible to overlook some personal history and the circumstances of the offender which may make the sentence wholly disproportionate to the accused’s criminal culpability. Further, imposing the death penalty on all individuals convicted of murder, despite the fact that the crime of murder can be committed with varying degrees of gravity and culpability fails to reflect the exceptional nature of the death penalty as a form of punishment. Consequently, failure to individualise the circumstances of an offence or offender may result in the undesirable effect of ‘over punishing’ the convict.”
51. While the *Francis Karioko Muruatetu* (supra) decision indeed, highlights the importance of considering mitigating factors in sentencing, it however, does not preclude the imposition of life imprisonment as a sentence. Instead, it underscores the need for substantive consideration of



individual circumstances before sentencing. The courts exercise discretion on a case-by-case basis, with a view to imposing appropriate and just sentences.

52. In the case before us the appellant's deliberate and brutal actions resulted in the senseless slaying of a young life who repulsed him when he tried to rape her
53. This demonstrates a callous disregard for the victim's life on his part. The victim was a young university student with a promising life ahead of her, which was viciously snuffed out by an intruder she barely knew, within the sanctity of her own home. This was a calculated act of violence visited upon the victim by the appellant. From the evidence of PW1 and PW6 he had been seen around her home for days on end to find the opportune moment to strike.
54. On his part the appellant was a young man who was treated as a first offender. We are therefore, inclined to interfere with the sentence meted upon him and impose a definite term in place of the life sentence, to give him hope for the future.
55. In the result, this appeal succeeds in part, to the extent that, we set aside the life imprisonment sentence and substitute therefor, a term of forty (40) years imprisonment. The period the appellant spent in remand during trial to be taken into account as constituting part of the sentence, as required by law.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MAY, 2024.

ALI-ARONI

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

