Macharia v Republic (Criminal Appeal 69 of 2017)
[2024] KECA 933 (KLR) (26 July 2024) (Judgment)

Neutral citation: [2024] KECA 933 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CRIMINAL APPEAL 69 OF 2017

FA OCHIENG, GWN MACHARIA & WK KORIR, JJA

JULY 26, 2024

BETWEEN

PETER NJUGUNA MACHARIA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal from the judgement of Hon. Meoli, J. dated and delivered on 28th June 2017 in HC. CR. C No. 50 of 2015)

JUDGMENT

1. On 15th July 2013, Peter Njuguna Macharia (the appellant) together with his erstwhile co-accused Ernest Muchiri Njoroge were jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

2. The particulars of the information were that on 6th July 2013, at Weru area in Nyandarua South District within Nyandarua County, the accused persons jointly murdered Julius Njuguna Maina (deceased). The accused persons denied the charge. A trial ensued and at the tail end, Ernest Muchiri Njoroge was found not guilty and was acquitted under section 322 of the Criminal Procedure Code, while the appellant was found guilty of the offence charged and upon conviction was sentenced to suffer death in the manner prescribed by law.

3. Dissatisfied, the appellant proffered this appeal on six grounds in an undated memorandum titled 'grounds of appeal' on both conviction and sentence summarised as follows:

    a. That the learned judge erred by convicting the appellant on circumstantial evidence that the clothes found in his home were blood stained while in fact he only assisted to carry the deceased to hospital.

b. That the learned Judge erred in law and in fact in convicting the appellant in a case marred with contradictions, inconsistencies and therefore there was no corroboration to support a conviction.

c. There was no malice aforethought established in order to prove the murder charge against the appellant.

d. That the death sentence was unwarranted in the circumstances.

4. The appellant prayed that the appeal be allowed, the conviction be quashed, the sentence be set aside and he be set at liberty.

5. This being a first appeal, this Court is mindful of its duty as was enunciated in the case of Erick Otieno Arum v Republic [2006] eKLR as follows:

> "It is now well settled, that a trial court has the duty to carefully examine and analyse the evidence adduced in a case before it and come to a conclusion only based on the evidence adduced and as analysed. This is a duty no court should run away from or play down. In the same way, a court hearing a first appeal (i.e.) a first appellate court) also has a duty imposed on it by law to carefully examine and analyse afresh the evidence on record and come to its own conclusion on the same but always observing that the trial court had the advantage of seeing the witnesses and observing their demeanour and so the first appellate court would give allowance for the same."

6. Even as we exercise our mandate as per the dicta in Erick Otieno Arum (supra), we are further minded that as we exercise our discretion to revisit the evidence placed before the trial Judge and come up with our own independent findings, we did not have the opportunity to observe the witnesses' demeanour or hear the witnesses' first-hand testimonies and we make allowance thereof. This was also aptly stated in the case of Okeno v 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 v 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."

7. Taking cue of the duty conferred on us as a first appellate court, and in order to contextualise the circumstances which led to the conviction of the appellant, we have summarised the prosecution's evidence adduced in the High Court as hereunder.

8. PW2, John Kangure Maina, the brother to the deceased testified that on 7th July 2013 at 6.00 a.m. he was called by his sister that she had spotted their brother on the roadside while severely wounded, as she was taking her child to school. He rushed to the scene which was about 700 metres from their home and found that his brother (the deceased) had severe head and hand injuries and was bleeding. The neighbours came and helped to take the deceased to Weru Dispensary. His testimony was that on

arrival at the dispensary, the deceased spoke albeit in a laboured voice that the appellant and his co-accused (Ernest Muchiri) assaulted him.

9. PW2 reported the incident to a neighbouring administration police post. It was his evidence that the appellant, who happens to be his first cousin walked in with his mother. He identified him to one police officer by the name Dennis as one of the assailants. He noticed that the appellant's jacket had blood stains. The appellant was then locked in cells. The deceased was transferred to Naivasha District Hospital where he was declared dead on arrival. A further report was made at Naivasha Police Station. He went on to testify that at the scene, he saw pieces of broken wood (sticks) which were used to assault the deceased and which he also identified in court; that the police headed to the appellant's house and retrieved a bloody trouser; that the blanket used to carry the deceased to the hospital, was from the appellant's home and brought by one Peter Kangure Maina; and that the appellant did not assist in carrying the deceased to hospital. He identified the blood stained trouser and jacket in court.

10. It was further the evidence of PW2 that the deceased was assaulted on a path near the home of the appellant; and that he was not aware of any bad blood between the deceased and the appellant. He too had no quarrel with any of the accused persons. He also identified the body of the deceased during the post mortem exercise.

11. PW3, Tabitha Wairimu Maina the sister to the deceased, testified that as she was escorting her child to school, she saw a man lying on the ground. She went to check on the man and found that it was her brother. She raised an alarm which the neighbours responded to. She later recorded a statement with the police and learnt that her brother had passed on.

12. On his part, PW4, Maina Kangure, the father of the deceased stated that he responded to the alarm raised by PW3. At the scene, there were sticks which had blood stains. He stated that the appellant gave the blanket that was used to take the deceased to hospital but that he (the appellant) did not carry the deceased to hospital.

13. PW5, APC Dennis Ogaro of Weru Administration Police Post at the material time recalled that on 7th July 2013 at around 6.00 a.m., he heard noises at the post. He met PW2 who reported that his brother's body was found on the road with injuries. Together with APC Muchiri, they rushed to the crime scene and they met some people carrying the deceased. PW2 then came to report that one of the people had bloody clothes and pointed at the appellant. The appellant was apprehended and locked in cell. They took the appellant to his house and demanded to see the clothes he wore the previous night, but they did not find anything. PW5 could not tell if the appellant was one of the persons who carried the deceased to the hospital.

14. PW6, PC Philip Gatheru then attached to Kinangop Police Station recalled that on 7th July 2013 at around 2.40 p.m., PW4 came to report that his son had died at the Naivasha District Hospital. He stated that together with Bernice and CPL Egada they went to Weru AP Post and found the appellant and his co-accused. They then proceeded to the crime scene and collected sticks which had blood stains. Afterwards, they went to the appellant's house and upon conducting a search, they found a jeans trouser which had blood stains. He then took blood samples from the deceased and the suspects which he took for the government chemists for analysis.

15. PW7, Lawrence Kinyua Muthuuri, a Government analyst stated that on 12th July 2013 he received blood sample of the deceased and each of the accused persons, a brown jacket, beige trouser, shirt and 3 pieces of wood for blood stains' examination. His findings revealed that the shirt belonging to the appellant's co-accused (E2) did not have blood stains while the brown jacket (C2), beige trouser (C3) belonging to the appellant and the sticks had blood stains. The DNA generated from C2, C3 and wood 1 all matched the profile of the deceased. The other pieces of wood did not generate a DNA profile.

16. The post mortem on the body of the deceased was conducted by PW1, Dr. Titus Ngulungu, a pathologist based at the then Nakuru Provincial General Hospital. It was his evidence that the cause of death of the deceased was severe head injury and subdural haematoma caused by blunt trauma. He adduced a post mortem report in this regard.

17. PW8, CPL Mathew Parkishon Lekadar attached to Kinangop Police Station investigated the case. His testimony was that on 7th July 2013, he was called by his colleague and informed of the murder incident at Weru. In addition to interviewing the witnesses, he recovered the exhibits from the scene of crime and the blood-stained trousers from the appellant's house.

18. Upon considering the prosecution's evidence, the trial court found that the prosecution had made out a prima facie case against the appellant and placed him on his defence. The appellant elected to give an unsworn evidence and did not call any witnesses in support of his defence.

19. The appellant's defence was that on 7th July 2013, he was at home. PW4 came and asked to be given a blanket stating that the deceased had been injured. He wore a jacket, went to the scene, and assisted to carry the deceased. Since it was raining, he fell. He then went back to his house, changed his trouser and left it under the seat before proceeding to join the persons carrying the deceased to the dispensary. While he was at the dispensary, PW4 came while accompanied by police officers who arrested him; he was subsequently charged with murder.

20. In her judgment (Meoli, J.), the learned Judge found that the prosecution's evidence was primarily circumstantial. Regarding the link between the appellant to the deceased's death, the significant piece of evidence which the learned Judge considered was the blood stained trouser recovered from his home after the arrest. Concerning the appellant's defence that his clothes got stained from carrying the deceased, the learned Judge held that this was negated by PW2 and PW4's evidence that he did not assist in taking the deceased to hospital. The learned Judge held that it is unlikely that the appellant's clothes were stained by the deceased's blood while carrying him since he was not in direct contact with the deceased's body.

21. It was further held that the deceased's dying declaration could not be relied upon in light of the apparent time and circumstances of the assault. The trial Judge held that one of the sticks found at the scene tested positive for the deceased's blood. The death was consistent with injuries inflicted with several blows with sticks such as the one found on the deceased's blood. The intention was to cause grievous harm if not death.

22. The learned Judge was satisfied that the evidence pointed to the appellant as the person who inflicted the injuries that ultimately caused the death of the deceased. She found him guilty and convicted him for the offence of murder. On sentence, the learned Judge found that the appellant would suffer death in the manner authorized by law.

23. Aggrieved by the decision of the learned Judge, the appellant is now before this Court as a first and perhaps the final appellate court. The grounds of appeal are as we have already set out hereinbefore.

24. The appeal was heard before us virtually on GoTo platform. The appellant was present in court alongside his counsel Ms. Ekesa while Mr. Omutelema, Senior Assistant Director of Public Prosecutions appeared for the respondent. Ms. Ekesa relied on her written submissions dated 28th September 2023. Mr. Omutelema similarly relied on his submissions dated 6th March 2024 and briefly highlighted them.

25. On behalf of the appellant, it was submitted that the evidence adduced by the prosecution before the trial court, was not sufficient to sustain a conviction; that the appellant's conviction was based on

circumstantial evidence, a dying declaration made by the deceased before he died and the fact that the deceased was found in a local footpath within the appellant's homestead, all which did not meet the requisite threshold for proof of the case premised on circumstantial evidence. In this regard, counsel referred to this Court's cases of Henry Kaindio v Republic [2016] eKLR and Neema Mwandaro Ndurya v Republic [2008] eKLR where the Court set out instances where circumstantial evidence is the best evidence upon which an accused person can be convicted.

26. It was not denied that the appellant was convicted on the basis that his trouser and jacket had blood stains; and that the trouser was recovered in his home while he was wearing the jacket during his arrest. It was however urged in defence that the appellant tendered concrete explanation of how the blood stained his clothes; because he assisted in lifting the deceased and placing him on the blanket which he had given to one Kangure Maina to assist take the deceased to hospital. It was additionally submitted that the prosecution failed to call the said Kangure Maina as its witness since he would have tendered evidence that was favourable to him (the appellant).

27. The appellant further submitted that the deceased was his first cousin; and that none of the witnesses testified that there was bad blood between them. Hence, it was clear that the prosecution did not establish malice aforethought on his part. It was contended that, whilst the appellant appreciates that section 9(3) of the Penal Code does not make motive an essential element in criminal responsibility, motive is essential for full appreciation of the circumstances leading to the act or omission complained of.

28. On sentence, we were urged to consider the decision in Francis Karioko Muruatetu & Another v Republic [2017] eKLR in which the Supreme Court concluded that Section 204 of the Penal Code offends several provisions of the Bill of Rights by prescribing death sentence as a mandatory sentence for the offence of murder, thus denying the sentencing court the opportunity to consider the accused person's mitigation and the circumstances of the case in meting out an appropriate sentence. We were urged to consider Criminal Appeal No. 72 of 2007 John Muoki Mbathya v Republic (unreported) and Criminal Appeal No. 130 of 2007 Fred Michael Bwayo v Republic (Unreported) where the principles of sentencing were outlined, as well as the Judiciary Sentencing Policy Guidelines.

29. On his part, Mr. Omutelema submitted that although it is the appellant's contention that his clothes got stained while he was helping in carrying the deceased to hospital, the evidence by the prosecution's witnesses indicated that he never participated in carrying the deceased person. Therefore, based on those circumstances the only inference that can be drawn is that those clothes were stained during commission of the crime.

30. It was submitted that the appellant only donated his blanket, none of the witnesses saw him carry the deceased. Furthermore, the appellant never told PW5, PC Dennis Ogaro that his clothes got stained with blood while carrying the deceased to hospital; and that in any case, the blood stained trouser was found hidden under the mattress. It was urged that the only reasonable explanation that could be deduced is that the appellant murdered the deceased and his trouser and jacket got stained in the process.

31. Further, counsel contended that the DNA analysis confirmed that the blood on one of the three blood-stained sticks recovered from the scene, matched the blood stains on the appellant's jacket and trousers and the deceased's DNA profile. Therefore, based on those circumstances the only inference that can be drawn is that those clothes were stained during commission of the crime.

32. The respondent submitted that malice aforethought in this instance, can be inferred from the injuries that were inflicted upon the deceased. The post-mortem showed there was intention to kill or to cause grievous harm.

33. On sentence, we were urged to consider the aggravating circumstances of this case; and that and if this Court was inclined to set aside the mandatory death sentence, then a severe custodial sentence was most appropriate.

34. In rebuttal, Ms. Ekesa conceded that indeed no witness testified that the appellant assisted in carrying the deceased, but that Kangure Maina who was given the blanket by the appellant was not called as a prosecution witness. She was of the view that had Kangure been called to testify, he would have given evidence in favour of the appellant. The appellant's position is that he did not participate in carrying the deceased, but that he assisted in lifting the deceased and placing him on the blanket during which time his clothes got stained with blood.

35. We have considered the record of appeal, the grounds of appeal, the oral and written rival submissions and the law.

We conclude that the paramount issues arising for determination are: whether the conviction based on circumstantial evidence was sound; and whether the sentence meted was excessive in the circumstances.

36. It is now well settled and trite law that the standard of proof in criminal cases is one of beyond reasonable doubt. For the offence of murder to be sustained, the prosecution must prove the fact as to the death of the deceased, the identity of the appellant as the person who committed the offence, and finally, that the appellant had the required malice aforethought in committing the offence.

37. These principles were stated by this Court in the case of Kimani v Republic (Criminal Appeal E096 of 2023) [2024] KECA 615 (KLR) (24 May 2024) (Judgment) as follows:

> " 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)."

38. Undoubtedly, the fact as to the death of the deceased and its cause is not in dispute. PW2 and PW4 did in fact see the body of the deceased with PW2 being present during the post mortem exercise. PW1, the pathologist, vide the post mortem report adduced in court arrived at the conclusion that the deceased died as a result of severe head injury and subdural haematoma caused by blunt trauma. No doubt also that by the nature of the injuries inflicted upon the deceased, they were intended to either cause grievous harm or death, and in this case, the deceased died as a result of those injuries. What is in contestation is whether it is the appellant who caused the death of the deceased.

39. It is common ground that the appellant's conviction was primarily based on circumstantial evidence. The evidence which the trial court relied upon which pointed to the appellant's guilt was summarised at paragraph 15 of the judgment as follows:

> " Regarding the 1st accused, three pieces tended to implicate him in the murder of the deceased. The most significant the recovery of the blood-stained trouser Exhibit 4 from his home after the arrest. On arrest he was admittedly wearing the jacket Exhibit 3 which was retrieved from him by PW5. The second piece of evidence was the fact that the deceased lay in a local foot path within the homestead of the family of the 1st accused and finally, there was the dying declaration allegedly made to PW2 by the deceased before he died."

40. The learned Judge however later on discounted reliance on the death declaration as advanced by PW2, holding that the alleged dying declaration made to PW2, by the deceased could not be relied upon in light of the apparent time and circumstances.

41. Circumstantial evidence can apply where, in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and be incapable of explanation upon any other reasonable hypothesis than that of guilt. See Joan Chebichii Sawe v Republic [2003] eKLR whilst citing with approval R v Kipkering arap Koske & another 16 EACA 135.

42. From the foregoing, we are convinced that the prosecution did not prove beyond reasonable doubt that there were no other inferences other than the appellant's guilt that could have been drawn from the circumstances of the case.

43. It was stated in Abanga v Republic LLR NO. 3975 (CAK)

that:

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

44. The Supreme Court in Republic v Ahmad Abolfathi Mohammed & Another [2019] eKLR pronounced itself on the efficacy of circumstantial evidence as follows: -

> " 56. On its application, circumstantial evidence is like any other evidence. Though, it finds its probative value in reasonable, and not speculative, inferences to be drawn from the facts of a case, Marie-Pier Couturier, "Circumstantial evidence should not be overlooked by Claims Adjusters".....available at; [mccagueborlack.com/emails/articles/possessive.ht ml) and, in contrast to direct testimonial evidence, it is conceptualized in circumstances surrounding disputed questions of fact Jowitt's Dictionary of English Law, 4th Edition, Vol. 1, p. 418, circumstantial evidence should never be given a derogatory tag. Jowitt's Dictionary of English Law, 4th Edition, states thus of circumstantial evidence:
>
> " ...with circumstantial evidence, everything depends on the context: circumstantial evidence can sometimes amount to overwhelming proof of guilt, as where the accused had the opportunity to commit a burglary, and items taken from the burgled house are found in his lock-up garage, ... a fingerprint recovered from the window forced open by the burglar matches the accused's fingerprints, ... [or where there is] a ... DNA match between the accused's control sample and genetic material recovered from the scene of the crime ...."

57. This is why, way back in 1928, the English Court of Appeal asserted 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 accuracy of mathematics." [See R v Taylor Weaver and Donovan [1928] 21 Cr. App. R 20]

45. In Neema Mwandoro Ndurya v R [2008] eKLR, this Court quoted with approval the decision in the case of R v Taylor Weaver and Donovan [1928] 21 Cr. App. R 20 for the position 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 accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."

46. We are persuaded by the findings in the South African Supreme Court of Appeal in Mahlalela v S (396/16) [2016] ZASCA 181 (28 November 2016) which rendered itself as follows in regards to what constitutes circumstantial evidence:

> " It is trite that in cases based on circumstantial evidence the courts are enjoined to follow the judgment in R v Blom 1939 AD 188 at 202. The two 'cardinal rules of logic' relating to inferential reasoning in cases based on circumstantial evidence set out in Blom are: -
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> "(1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
>
> (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct."

47. Ultimately, circumstantial evidence provides a basis from which the facts in dispute can be inferred. The salient question to be answered is whether the prosecution can prove beyond reasonable doubt that the appellant was guilty of the crime allegedly committed. All circumstantial evidence depends ultimately upon facts which are proved by direct evidence.

48. It is common ground that the only direct evidence that the prosecution had linking the appellant to the involvement of the murder, was the blood stains found on his trouser and jacket. The results of the DNA analysis on the blood stains found on the appellant's said clothes vis a vis the sticks found at the crime scene which were alleged to have been the murder weapons, yielded a positive match.

49. The appellant's defence on how he got the blood stains on his clothes was because he came into contact with the deceased while he was assisting to lift the deceased to a blanket he lent the deceased's father.

50. Of significance to us is the evidence of PW2. In cross examination, he confirmed that one Peter Kangure Maina, his (appellant) stepbrother came with a blanket which he had borrowed from the appellant's home. They then used the same blanket together with other villagers to place the deceased on it and took him to the nearest dispensary. PW2 denied that the appellant assisted in ferrying the deceased's body. PW4, the deceased's father in cross examination, could not recall who assisted in ferrying the deceased's body. PW3, the deceased's sister did not speak of what she witnessed when the body was being ferried.

51. Hence, we respectfully disagree with the finding of the trial Judge that PW2 and PW4 confidently negated the fact that the appellant assisted to ferry the deceased's body. Whilst PW4 was unclear whether or not the appellant carried the deceased, PW2 testified that the appellant did not carry the deceased. This inconsistency in the evidence of PW2 and PW4 obviously casts a shadow of doubt in the prosecution assertion that the appellant did not stain his clothes while assisting to lift the deceased on the blanket, and which doubt could have been cleared by the person to whom the appellant gave the blanket.

52. As rightly submitted by the appellant's counsel, the testimony of Peter Kangure Maina, the person who went to fetch the blanket from the appellant's house is the missing link in the prosecution's case. The said Peter was the first person who saw the appellant that morning. He would have at least shed light on whether indeed the appellant followed him to the crime scene or he tarried in his house. This confirmation would have either confirmed or rebutted the appellant's testimony that he joined the villagers to carry the deceased's body before allegedly falling, necessitating him to go and change the seized trouser.

53. The second piece of evidence which the trial court sought to rely upon was the location where the deceased was found, which was on the local footpath within the homestead of the appellant's family. However, this point was not heavily considered as the learned Judge expressly ruled out the possibility of family squabbles.

54. From the foregoing, we are convinced that the prosecution did not prove beyond reasonable doubt that there were no other inferences other than the appellant's guilt that could have been drawn from the circumstances of the case. The mere fact that blood stains were found on the appellant's clothes which matched the blood stains of the sticks found at the crime scene, was not reason enough to have convicted the appellant. The explanation given by the appellant that he got the blood stains after he assisted to lift the injured deceased onto the blanket and he sought to change the trouser after falling on dirt, is plausible enough.

55. It behoves us to reiterate that circumstantial evidence, although it is plausible and as good as direct evidence, must be inferred based on proven facts. It has to be the only reasonable evidence to the exclusion of all other reasonable inferences that an accused person is guilty of the offence charged. To our minds, the prosecution did not muster the test for this threshold.

56. We then conclude that the appellant's conviction was based on the suspicion that since a stained trouser with the deceased's blood was found in his home, then he must have murdered the deceased. The standard of proof for criminal cases is well settled to be beyond reasonable doubt. In as much as there was strong suspicion created around the fact that a blood stained trouser was found in the appellant's house, mere suspicion remains to be so. In the South African Supreme Court decision in Mahlalela (supra), the Court rendered itself thus:

> " No person may be convicted on the basis of a suspicion, no matter how strong."

57. The trial court was under a duty to evaluate and examine the appellant's evidence against that of the prosecution in order to determine whether the prosecution proved its case beyond reasonable doubt.

58. We have said enough. The foregoing discourse brings us to the inescapable conclusion that no factual foundation existed to convict the appellant either by direct evidence or on the basis of inference through circumstantial evidence.

59. Our finding is that the appeal is merited. We find that the prosecution did not prove its case beyond reasonable doubt. Accordingly, we allow the appeal, quash the conviction, set aside the sentence and order that the appellant is hereby set at liberty forthwith unless otherwise lawfully held.

60. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 26TH DAY OF JULY 2024.

F. OCHIENG

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JUDGE OF APPEAL

F. W. NGENYE–MACHARIA

.....

JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR