



**JMK v Republic (Criminal Appeal 137 of 2017)
[2024] KECA 1374 (KLR) (4 October 2024) (Judgment)**

Neutral citation: [2024] KECA 1374 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPEAL 137 OF 2017
W KARANJA, J MOHAMMED & LK KIMARU, JJA
OCTOBER 4, 2024**

BETWEEN

JMK APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from the judgment of the High Court of Kenya at Meru,
(J. Lesiit, J.) dated 14th July 2011 in HCCRC NO. 20 OF 2007)*

JUDGMENT

Background

1. JMK (the appellant) was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars in the information were that on 28th March 2007 at Kathwana Sub-location, Mutino Location, in Meru South District within the then Eastern Province, the appellant murdered Martha Kang'aria Gikware (the deceased).
3. In a bid to prove their case against the appellant, the prosecution called six (6) witnesses. At the end of the trial, the appellant was found guilty, convicted, and sentenced to death.
4. As this is a first appeal, we are mandated to re-evaluate and re-analyze the evidence before the trial Court, while bearing in mind that we did not have the occasion to see or hear the witnesses. In the case of *Chiragu & another v Republic* [2021] KECA 342 (KLR), this Court stated that:

“However, before we grapple with grounds of appeal aforesaid, we must remind ourselves that this being a first appeal from the judgment of the High Court, by dint of section 379 of the *CPC* and guidance provided in the famous case of *Okeno v R.* [1972] EA 32, we are



expected to subject the entire evidence tendered in the trial court to fresh and exhaustive examination so as to reach our own independent conclusions as to the guilt or otherwise of the appellants. In doing so, we must however give due allowance to the fact that we neither saw nor observed the witnesses as they testified. Accordingly, we must give way to the findings of facts and demeanor of witnesses by the trial court. See also *Erick Otieno Arun v Republic* [2006] eKLR. In undertaking this exercise, we must of necessity go over the evidence presented before trial court albeit in summary.”

5. According to the evidence of Caroline Kangai (PW1), she knew both the deceased and the appellant. It was her evidence that on 28th March, 2007 at 3.00pm, she was on her way home from Kathwana market in the company of others, Lucy Kathiri (PW3) and the deceased.
6. PW1 testified that just before they crossed a river, the appellant emerged from the bushes and pushed her out of the way. He then approached the deceased without saying a word and stabbed her in the abdomen with one knife, and in the chest with a second knife. The deceased fell down and the appellant ran away from the scene and escaped. It was PW1’s evidence that the deceased died on the spot. In cross-examination, PW1 testified that the deceased did not hit the appellant.
7. Catherine Nceri Karuku (PW2) testified that on the material day, she left the market in the company of other people including the deceased. It was her evidence that the deceased was her sister. That on their way home, as they were crossing a river, a person emerged from the bushes. She recognized him as the appellant who was her brother-in-law. It was her testimony that he emerged from the bush and stabbed the deceased on the chest and the abdomen. It was her further evidence that the appellant ran away immediately after stabbing the deceased. PW2 testified that she removed two knives from the deceased’s body and on calling her sister (the deceased), she realized that the deceased had died. It was her further evidence that the appellant and the deceased had four children and had stayed together but later separated. One child had died. In cross- examination, she testified that she did not see the deceased do anything to the appellant as they were walking when the appellant stabbed her.
8. Lucy Kathiri (PW3) testified that on the material day, she was in the company of PW1, PW2, and Samuel Muchui Kanduka (PW4) and the deceased. It was her evidence that as they walked home from the market, the appellant emerged with knives. It was her evidence that after stabbing the deceased, the appellant did not speak to anyone and left a knife stuck in the deceased’s chest. It was her evidence that the deceased died on the spot.
9. Samuel Muchui Kanduka (PW4) testified that he was the deceased’s cousin. That he was on his way home from the market in the company of some women including the deceased. It was his testimony that he was ahead of the women by about 60 meters when the incident occurred. That as he was walking, he heard screams and upon looking back, he saw that the deceased had fallen down, crying with blood oozing from her right chest. It was his evidence that two knives were stuck on her body. He identified the two knives. He also found a black hat on the ground and collected all the items and took them to the area Assistant Chief.
10. Joseph Mutuma (PW5) testified that he was the deceased’s cousin and that he identified the body of the deceased for purposes of post-mortem.
11. Cpl John Kanjara, No 63314 (PW6) received a report from CIP Kiptur, the Officer Commanding Station (OCS) that a lady had been seriously injured with a knife. Upon visiting the scene, they found a dead body of a lady with a stab wound just below the ribs at the sternum area. They recovered the two knives and a cap from one Cpl Mwangangi. The appellant surrendered himself at Kagwane Chiefs



- Camp. In cross-examination, PW6 testified that the appellant was drunk on the material day. It was his further evidence that he was not able to establish the degree of the appellant's drunkenness.
12. PW6 produced the post-mortem report which showed that the cause of death of the deceased was cardiopulmonary arrest due to a penetrating chest injury with haemothorax and a cut in the right lobe of the liver.
 13. At the close of the prosecution case, the learned Judge made a finding that the appellant had a case to answer.
 14. When put on his defence, the appellant in his sworn testimony stated that he had no intention of killing the deceased. He attributed his actions of stabbing the deceased to having consumed traditional liquor called 'Ndume'. The appellant also testified that he was not armed with any weapon and that it was the deceased who hit him on the head and the shoulder with a piece of sugarcane as he was talking to her sister (PW2).
 15. The appellant's further testimony was that the deceased threatened to stab him with the knife that PW3 had been using to peel sugarcane. He took the knife that PW2 had and the deceased started fighting him and he stabbed her in the lower abdomen. He then ran to the Chief's camp and surrendered.
 16. In her determination, the learned Judge (Lesiit, J. – as she then was) held that the evidence of PW1, PW2, PW3, and PW4 was direct and consistent in all material particulars; and the appellant emerged from the bushes, he was armed with two knives which he used to stab the deceased without saying a word. The learned Judge believed the testimonies of the prosecution witnesses and determined that there was no provocation as was alleged by the appellant in his defence.
 17. The learned Judge held that the prosecution had established that the appellant formed the necessary intention to cause death or grievous harm to the deceased by stabbing her in two very sensitive areas. The deceased was stabbed near the heart and the liver. The learned Judge further held that by emerging from the bushes abruptly and attacking the deceased, the appellant had carefully planned the attack. Therefore, malice aforethought was proved.
 18. While considering the appellant's defence of intoxication, the learned Judge held that there was no evidence that the appellant was intoxicated at the material time. The learned Judge found that the law is very clear that one cannot plead intoxication if the state was self-induced. The learned Judge found this defence to be an afterthought as the same was not raised until the appellant was put on his defence. Consequently, the learned Judge made a finding that the appellant was guilty of murder. He was convicted and sentenced to death as aforesaid.
 19. Being aggrieved by his conviction and sentence, the appellant lodged this appeal in which he raised four supplementary grounds of appeal to wit that the learned Judge erred:
 - a. in finding that the prosecution had established the ingredients of murder against the appellant;
 - b. in rejecting the appellant's defence;
 - c. in ordering the appellant's case to proceed without considering the provisions of Section 200(3) & (4) of the Criminal Procedure Code; and
 - d. that the sentence imposed against the appellant was in contravention of Articles 19(3), 20(1) & (2), 25, 26(3), 27(1), 28, 48, 50, and 159 of the Constitution.



Submissions by counsel

20. When the appeal came up for hearing, learned counsel, Ms. Ntarangwi was on record for the appellant while learned counsel, Ms. Nancy Njeru, Prosecution Counsel was on record for the State. Both counsel relied on their written submissions with brief oral highlighting.
21. Learned counsel for the appellant faulted the learned Judge for failing to consider the appellant's defence of intoxication under Section 13(4) of the *Penal Code*. Counsel pointed out that the appellant informed the court at the time of taking the plea, that he was drunk at the time of committing the crime. This was indicated in the proceedings dated 23rd May, 2007. Counsel further submitted that the appellant's counsel cross-examined PW6 on the issue of intoxication. The witness confirmed that the appellant was drunk at the time of the commission of the offence.
22. Counsel further submitted that Section 200(3) & (4) of the *Criminal Procedure Code* was not taken into account thereby prejudicing the appellant. Counsel pointed out that the record does not bear any proceedings showing that the appellant was given an opportunity to choose how to proceed with the case once Lesiit, J. (as she then was) took over the matter. Counsel contended that the learned Judge only heard two witnesses before judgment was delivered and that the key witnesses were heard by Emukule, J. Counsel submitted that the learned Judge did not have the opportunity to observe the demeanour of the witnesses.
23. Counsel further submitted that the law imposing a death sentence has since changed and the Court has the discretion to impose any other sentence. Counsel urged that the appeal be allowed, and the conviction and sentence be set aside.
24. Opposing the appeal, learned counsel for the respondent, while relying on the case of *Joseph Kimani Njau v Republic* [2014] eKLR, submitted that the prosecution had established the ingredients of the offence of murder against the appellant. Counsel submitted that the prosecution relied on the evidence of PW1, PW2, PW3, and PW4 who all saw the appellant stab the deceased with two knives; one on the abdomen and another on the chest. Counsel submitted further that the appellant was placed at the scene of crime by his cap which was found at the scene.

Counsel further relied on the post-mortem report which showed that the deceased died as a result of the stab wounds.
25. Counsel further submitted that the issue of intent was not in dispute as the appellant in his defence, placed himself at the scene of crime and did not deny stabbing the deceased.
26. While citing the case of *Juliana Obare Angeso v Republic*, Criminal Appeal No 271 of 2008, counsel submitted that the issue of intoxication was sufficiently dealt with and found to be an afterthought. Counsel further submitted that, in any event, a person who commits an offence while intoxicated is not automatically excused from the consequences of his actions.
27. Counsel conceded that the appellant was not presented to the court within 24 hours as the preliminary objection raised was not heard on 4th October, 2011 as scheduled. Counsel explained that this was because there was a change in counsel representing the appellant. However, counsel was of the view that although the appellant has the right to pursue such a constitutional matter in a court clothed with such jurisdiction, the same does not have any evidential consequence to the murder charge against the appellant.
28. Counsel further submitted that despite the recent jurisprudence on the death penalty, there has been no amendment to the legislation. Counsel further submitted that the Supreme Court in *Francis*



Karioko Muruatetu & another v Republic; Katiba Institute & 5 others, (Amicus Curiae) [2021] eKLR was not an authority for stating that all the provisions of law prescribing mandatory or minimum sentences are outlawed.

29. Counsel urged us to dismiss the appeal and uphold the conviction and sentence against the appellant.

Determination

30. We have carefully considered the record, submissions by counsel, the authorities cited and the law. The issues for determination are; the effect of non compliance with Section 200 of the *Criminal Procedure Code (CPC)* on the appellant's case; whether the appellant's defence of intoxication was considered by the trial court; whether the prosecution case was proved beyond reasonable doubt; and whether the death sentence meted out against the appellant was lawful.

31. Counsel for the appellant contended that the trial court did not give the appellant an opportunity to choose how to proceed with his case as provided for under Section 200 of the *CPC*. Were the appellant's rights violated in this respect?

32. This Court in *Shikari v Republic* (Criminal Appeal 19 of 2016) [2021] KECA 302 (KLR) (17 December 2021) (Judgment) stated as follows regarding Section 200 of the *CPC*:

“The relevance of this Section to the issue before us, and as explained by this Court in *Ndegwa v R* (1985) KLR 535 and *Abdi Adan Mohamed v Republic* [2017] eKLR, is that it is desirable and important for the final arbiter in a trial to be in a position to weigh the evidence taken together with his or her observation of the demeanour of witnesses.”

33. Section 200 of the *CPC* provides as follows:

“Conviction on evidence partly recorded by one magistrate and partly by another

- (1) Subject to subsection (3), where a magistrate, after having heard and recorded the whole or part of the evidence in a trial, ceases to exercise jurisdiction therein and is succeeded by another magistrate who has and exercises that jurisdiction, the succeeding magistrate may—
 - a. deliver a judgment that has been written and signed but not delivered by his predecessor; or
 - b. where judgment has not been written and signed by his predecessor, act on the evidence recorded by that predecessor, or resubmit the witnesses and recommence the trial.
- (2) Where a magistrate who has delivered judgment in a case but has not passed sentence, ceases to exercise jurisdiction therein and is succeeded by a magistrate who has and exercises that jurisdiction the succeeding magistrate may pass sentence or make any order that he could have made if he had delivered judgment.
- (3) Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resubmitted and reheard and the succeeding magistrate shall inform the accused person of that right.



(4) Where an accused person is convicted upon evidence that was not wholly recorded by the convicting magistrate, the High Court may if it is of the opinion that the accused person was materially prejudiced thereby, set aside the conviction and may order a new trial.”

34. Section 201(2) of the [CPC](#) brings the High Court within the ambit of Section 200 and thereby applies the provisions of Section 200 to Judges of the High Court. The provision provides as follows:

“201(2) The provisions of section 200 of this Act shall apply mutatis mutandis to trials held in the High Court.”

35. It is common ground that Emukule, J. heard the testimonies of PW1, PW2, PW3, PW4, and PW5. From the record, on 13th May, 2010 the case was taken over by Kasango, J. who stated thus;

“The case is part-heard before Emukule Judge. I now require the accused to elect whether the case can start de novo or from where it stopped or whether he wishes to recall any witnesses.”

36. Mr. Muchangi, learned counsel for the appellant responded thus;

“I am instructed that the case can start from where it stopped.”

37. However, Kasango, J. did not have the occasion to hear either of the remaining witnesses. On 18th October, 2010, Lesiit, J. (as she then was) took conduct of the case. On 28th February, 2011, the learned Judge directed that proceedings be typed and supplied to the defence counsel and that only two prosecution witnesses remained. Before the matter proceeded on 6th April, 2011, the learned Judge stated thus;

“Case proceeding from where left off by Hon. Emukule, J.”

38. In the case of [Ndegwa v Republic](#) (*supra*), the Court stated that:

“Section 200 is a provision of the law which is to be used very sparingly indeed, and only in cases where exigencies of circumstances, not only are likely but will defeat the end of justice, if a succeeding Magistrate does not, or is not allowed to adopt and continue a criminal trial started by a predecessor or owing to the latter becoming unavailable to complete the trial.”

39. Similarly, in the case of [Joseph Kamau Gichuki v Republic](#), (*supra*), this Court held that:

“This Court has previously held that section 200 of the [Criminal Procedure Code](#) should be invoked sparingly and only in cases where the ends of justice will be defeated if a succeeding magistrate does not continue a trial commenced by his predecessor. Some of the considerations to be borne in mind before invoking section 200 include whether it is convenient to commence the trial de novo, how far the trial had proceeded, availability of witnesses who had already testified, possible loss of memory by the witnesses, the time that had lapsed since the commencement of the trial and the prejudice likely to be suffered by either the prosecution or the accused.”



40. In the case of *Johanes Amadi v Republic* [2018] eKLR this Court stated that:

“Before a Judge proceeds with a trial in which another Judge has partly heard and recorded evidence, the accused person must be informed of his right to have the hearing proceed denovo or proceed from where the previous Judge had reached. Should the accused person choose to proceed with the trial from where it has reached, the court must inform him of his right to have any of the witnesses who have already testified re-summoned and re-heard.”

41. Further, in *Nyabutu and another v R.* (2009) KLR 409, this Court pronounced itself as follows:

“By dint of Section 200(1) (b) of the *Criminal Procedure Code* a succeeding judge may act on the evidence recorded wholly by his predecessor. However, Section 200 aforesaid is a provision of the law which is to be used sparingly and only in cases where the exigencies of the circumstances, not only are likely but will defeat the ends of justice if a succeeding judge does not, or is not allowed to adopt and continue a criminal trial started by a predecessor owing to the latter becoming unavailable to complete the trial.”

42. It is not a requirement of the law that a case should start afresh when another Judge takes over the proceedings from a previous Judge who has ceased having jurisdiction. What the court is obligated to do is to explain the legal provision as specified. In this case, the court did explain to the appellant of his right under Section 200(3) and he chose to proceed with the matter from where it had stopped. In any event, only two witnesses, the doctor, and the investigating officer had not testified. The case had been in court for over four years. Article 159(2) (d) of *the Constitution* demands that justice shall not be delayed.

43. We are therefore satisfied that the trial court did not fall into error when applying Section 200(3) of the *CPC* and that the appellant was not prejudiced by the trial proceedings before Lesiit, J. (as she then was).

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

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

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

46. It is not in dispute that the deceased died. The prosecution witnesses testified that the deceased died on the spot after being stabbed in the abdomen and the chest. The post-mortem report showed that the cause of death was cardiopulmonary arrest due to a penetrating chest injury with haemothorax and a cut in the right lobe of the liver.

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

48. Section 206 of the *Penal Code* defines malice aforethought as follows:

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



- b. Knowledge that the act or omission causing death will probably cause death or grievous harm to some person, whether that person is the person killed or not, accompanied by indifference whether death or grievous injury occurs or not or by a wish that it may not be caused.
 - c. An intention to commit a felony.
 - d. An intention by an act to facilitate the flight or escape from custody of any person who attempted to commit a felony.”
49. It is common ground that the appellant admitted to stabbing the deceased but blamed the same on his state of intoxication.
50. Section 13 of the [Penal Code](#) provides that:

“ 13.

- (1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.
- 2. Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and –
 - a. the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
 - b. the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.
- 3. Where the defence under subsection (2) is established, then in a case falling under paragraph (a) thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code and of the Criminal Procedure Code relating to insanity shall apply.
- 4. Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.
- 5. For the purpose of this section, “intoxication” includes a state produced by narcotics or drugs.”

51. This Court in the case of [Bakari Magangha Juma v Republic](#) [2016] eKLR held that:

“Under section 13 of the [Penal Code](#), intoxication is not a general defence to a criminal offence, except in the circumstances set out in the section. A person who commits an offence while intoxicated is not ipso facto excused from the consequences of his act. In our view the section affords a defence of intoxication in three situations as follows.



The first situation is in what is called involuntary intoxication, where at the time of commission of the act complained of, the accused person does not know that it is wrong or does not know what he is doing, because of intoxication caused without his consent by the malicious or negligent act of another person. In such a case, the court is required to discharge the accused person.

The second situation is where the accused person, by reason of intoxication is insane, temporarily or otherwise, so that at the time of commission of the act complained of, he does not know that it is wrong or does not know what he is doing. This situation brings the case within the M’Naghten Rules and the court is required to deal with the accused person in the manner prescribed by the [Criminal Procedure Code](#) for accused persons who were insane at the time of commission of the offence, culminating in a special finding of guilty but insane and the detention of the accused person in a mental hospital at the pleasure of the President.

In *Rex v Retief* [1940-1943] EA 71, the former Court of Appeal for Eastern Africa explained this aspect of the defence of intoxication as follows:

“The insanity whether produced by drunkenness or otherwise is a defence to the crime charged. The law takes no note of the cause of insanity and, if actual insanity in fact supervenes as the result of alcoholic excess, it furnishes as complete an answer to a criminal charge as insanity induced by any other cause. It is immaterial whether the insanity so induced was permanent or temporary and if a man’s intoxication were such as to induce insanity so that he did not know the nature of his act or that his act was wrongful, his act would be excusable on the ground of insanity and the verdict should be as laid down in section 159 of the Criminal Procedure Code ‘guilty of the act charged but insane when he did the act.’”

The third situation, contemplated by section 13(4), arises where by reason of intoxication the accused person is incapable of forming a specific intent, which is an element of the offence charged. Sometimes this situation is referred to as “intoxication or drunkenness negating mens rea”. In *Said Karisa Kimunzu v Republic*, CR App No 266 of 2006 (Msa), this Court stated thus regarding intoxication or drunkenness negating mens rea:

“But under subsection (4) the court is required to take into account the issue of whether the drunkenness or intoxication deprived the person charged of the ability to

52. When the appellant took plea on 23rd May, 2007, he stated thus:

“It is true but I did not intend to kill her. I was drunk.”

53. The appellant did not in any way express to the court that at the time when he stabbed the deceased, he did not know that his actions were wrong, that he did not know what he was doing, or that his state of intoxication was caused without his consent.

54. In the case of *Buzoya & another v Republic* [1975] EA 215, the Court held that the burden of proving that the appellant was capable of forming the intent necessary to constitute the offence of murder always remained with the prosecution and it was not discharged if the probability emerged from the evidence that the appellant was incapable of forming that intent.



55. In the case *Republic v Tubere s/o Ochen* [1945] 12 EACA 63, the Court established the following elements of malice aforethought:
- “The nature of the weapon used; the manner in which it was used; the part of the body targeted; the nature of the injuries inflicted either a single stab wound or multiple injuries; the conduct of the accused before, during, and after the incident.”
56. We find that the appellant strategically hid in the bushes, waited for the deceased, pushed PW1 aside and stabbed the deceased. He then ran away from the scene and surrendered to the Chief. He stabbed the deceased in the chest with a knife with the knowledge that it was a sensitive area of the body. He also stabbed the deceased in the abdomen.
57. In the circumstances, we find that all the evidence before the trial Court pointed to the appellant’s guilt. There was no evidence that anyone else other than the appellant had stabbed the deceased. The prosecution called four eyewitnesses who all saw the appellant stab the deceased twice. We find that the conduct of the appellant in this instance demonstrates malice aforethought as contemplated under Section 206 of the *Penal Code*.
58. In the circumstances, we are satisfied that all the ingredients of murder in this case met the threshold prescribed by law and the prosecution case was proved beyond all reasonable doubt.
59. As regards the sentence, the appellant was sentenced to death upon his conviction. The learned trial Judge noted that the death sentence, at that time, was the prescribed mandatory sentence for accused persons convicted of the offence of murder. The position has since changed after the Supreme Court, in the case *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Muruatetu case) outlawed the mandatory nature of the death penalty prescribed under Section 204 of the *Penal Code*.
60. The Supreme Court in the *Muruatetu case* pronounced itself as follows:
- “Consequently, we find that section 204 of the *Penal Code* is inconsistent with *the Constitution* and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum penalty...It is prudent for the same court that heard this matter to consider and evaluate mitigating submissions and evaluate the appropriate sentence befitting the offence committed by the petitioners. For avoidance of doubt, the sentence re-hearing we have allowed applies only to the two petitioners herein ...”
61. In mitigation, counsel for the appellant stated that the appellant was a first offender, with a young family of 3 children and that he is the sole breadwinner. Further that he takes care of his mother who is over 80 years old and that he is remorseful.
62. Having considered the evidence on record and the Supreme Court’s decision in the Muruatetu case, we hereby set aside the sentence of death imposed on the appellant by the trial court and substitute therefore a term of imprisonment for thirty-five (35) years with effect from the date the appellant was first arraigned before the trial court.
63. Accordingly,
- a. the appellant’s appeal against conviction is hereby dismissed; and



- b. the appeal against sentence succeeds only to the extent that the sentence of death meted on the appellant by the High Court is hereby substituted for a term of imprisonment of thirty-five (35) years with effect from the date the appellant was first arraigned before the trial court.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF OCTOBER, 2024.

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

