Saenyi v Republic (Criminal Appeal 174 of 2018)
[2024] KECA 1824 (KLR) (20 December 2024) (Judgment)

Neutral citation: [2024] KECA 1824 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CRIMINAL APPEAL 174 OF 2018

HM OKWENGU, HA OMONDI & JM NGUGI, JJA

DECEMBER 20, 2024

BETWEEN

ISAAC WANJALA SAENYI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal from the Judgment of the High Court of Kenya at Bungoma (Aroni, J.) dated 1st February, 2018 in HCCRC No. 11 of 2013)

JUDGMENT

1. The appellant, Isaac Wanjala Saenyi, was the accused person in the trial before the High Court in Bungoma Criminal Case No. 11 of 2013. He was charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence were that on 8th September, 2012, at Misanga Trading Centre in Bungoma North District within Bungoma County, the appellant murdered Metrine Nakuminja Munialo (deceased).

2. He pleaded not guilty and a fully-fledged hearing ensued. At the conclusion of the trial, the learned judge convicted the appellant and sentenced him to life imprisonment.

3. The appellant was aggrieved by that decision and has lodged the present appeal. In his Supplementary Memorandum of Appeal, the appellant raised five (5) grounds of appeal, which are that:

    1. The Learned Judge erred in law and in fact in convicting the appellant based on evidence that was not properly investigated and insufficient to support a conviction.

    2. The Learned Judge erred in law and in fact in failing to find that the circumstantial evidence was not enough to sustain a conviction.

3. The Learned Judge erred in law and in fact in relying on the deceased person's supposed dying declaration to convict him.

4. The Learned Judge erred in failing to consider the appellant's defence.

5. The Learned Judge erred in condemning the appellant to a sentence that was harsh and excessive under the circumstances.

4. At the trial court, the prosecution called a total of thirteen (13) witnesses. The evidence that emerged from the trial was as follows.

5. On 9th September, 2012, the appellant's mother went to the home of Peter Munyalo Maria, the deceased's father (who testified as PW1) and told him that the deceased had been admitted at Cherengani Hospital, Kitale, with serious burns, but that the doctors had referred her to Eldoret Hospital since that hospital was not well equipped to treat her. PW1 went to the hospital with his wife, the deceased's mother (who testified as PW2) and found the deceased, her son (Peter Wafula) and the appellant. The deceased and her son had burns all over their bodies, but the appellant only had burns on his feet. The deceased was unrecognizable, save for her face. Just before they left for Eldoret, the doctor informed him that the deceased's son had succumbed to his injuries. Meanwhile, the deceased told him and the doctor who attended to her, that she had a quarrel with the appellant the previous night and when he wanted to beat her, she ran and sought refuge at their neighbour's house. The appellant followed her there and threatened the neighbor, who asked the deceased to return to her house. Later that night as she was asleep with her son, the appellant poured petrol on them and set them on fire.

6. Unfortunately, the deceased also succumbed to her injuries on 12th October, 2012. Upon her death, PW1 reported the matter to the police. On 13th September, 2012, while in the company of police officers, he went to the crime scene where the deceased had lived with the appellant, who had a boda boda business, whereas the deceased had a tailoring business. The house had been razed down by the fire.

7. The testimony of PW2, Jane Rose Nakhungu, was almost similar to that of PW1, save that the deceased told PW2 that she wanted to attend her cousin's funeral but the appellant refused to let her go. A quarrel ensued between them and when it became unbearable, she went to her friend's house, but the appellant went for her and asked the friend to let him take his family. The friend told her to go back to her house but the deceased was reluctant to return as she said the appellant would kill her. Later when they got back home, the deceased saw the appellant pour petrol on her, light a fire and then he left. The deceased threw the child and ran out. She fell in water by the roadside and screamed, thereby attracting a crowd. PW2 also testified that on 8th September, 2012, she attended a funeral at her brother's home, which the deceased failed to attend as a result of the appellant's refusal to let her attend the same.

8. PW3, David Wanyama Mungagenyi, a watchman at Ngaira Academy, told the court that on the material night, between 9.00pm and 10.00pm, he had the screams of a woman and went towards the direction it was coming from. But on his way there, he met the appellant on a motor cycle, coming from the direction of the screams and his clothes seemed to be on fire,. At the scene, he found a house on fire and a woman lying on the roadside crying "my child, my child, water, water". He heard a child crying from inside the house which was on fire. He put a jacket on his head and entered the house, whereby he rescued the child who he found lying under a bed. By this time, a crowd had gathered outside. Immediately after, both mother and child were rushed to hospital for treatment. He was later informed by a neighbor that the child died.

9. PW4, Moses Wafula Zakaria, a watchman and landlord to the deceased and appellant, told the court that on the material night at about 10.00pm, he received a call from his wife who informed him that the appellant had burned down their house with his wife and child inside. Five minutes later, he saw the appellant, whose trousers seemed to be on fire, on a motor bike heading towards Bagadier Police Patrol Base. He followed him and asked him to come back so that they could take the deceased and her child to hospital, and he complied. The deceased and her child were badly burnt. But the appellant only sustained minor burns. At the hospital, he asked the deceased what had happened and she told him that she had a quarrel with the appellant that evening and she went to her neighbour. The deceased told him that thereafter, the neighbour spoke to both of them (deceased and appellant) and they returned to their house. The deceased added that upon their return, she sat against a wall beside a table which had a lamp on top of it. The appellant went to where she was with a jerrican of petrol and poured it on her and the flame from the lamp spread. Later, he got information that the child and the deceased died. He also testified that the appellant used to sell paraffin and diesel, whilst the deceased was a tailor.

10. PW5, Mary Umweno (the deceased's sister), testified that she received information that the deceased had been hospitalized due to burns and was in a critical condition. She travelled to the hospital the same day to see the deceased. Unfortunately, she succumbed to her injuries about a month later.

11. PW6, Dr. Paul Kipkoris Rono, testified on behalf of Dr. Ndiangui who conducted the postmortem on the deceased. He told the court that the deceased died while undergoing treatment at Moi Teaching and Referral Hospital. Dr. Ndiangui observed that her body was burnt, including her hands, legs, chest, neck and head. He concluded that the cause of the deceased death was burns and pneumonia. The pneumonia was as a result of the burns.

12. John Juma Okiring, the area chief testified as PW7. He received the report about the incident on 9th September, 2012, through Community Policing officer, Peter Mapunyi; and visited the crime scene with police officers from Brigadier Camp. Other than household items, they found jerricans, one of which had petrol and the rest were empty but had the smell of petrol.

13. PW8, Edna Wafula, was a neighbour. She told the court that on the material night at about 10.00pm, she heard screams from outside and when she came out, she saw a watchman carrying a child who was burnt. The watchman had rescued the child from the deceased's house which was on fire. At the time, she did not see the deceased. She immediately took the child to a nearby clinic but was referred to Cherengani Nursing Home. She later learnt that the child died.

14. PW9, Brenda Okiri, was a neighbour. She testified that on the material night at about 7.00pm while at home, the deceased knocked on her door with her husband (the appellant) in tow. At the time, the deceased was in tears and told her that the appellant had beaten her. The deceased also told her that she was bereaved and wanted to attend the burial but the appellant had refused to let her go. The deceased further told her that the appellant, who was a boda boda rider, kept giving women rides but he would not carry her. The appellant chimed in and explained that he carried passengers. PW9 tried to help them resolve the issue and they returned to their house. The following day, she learnt that their house had caught fire and the deceased was in hospital, whilst their child had died.

15. PW10, CPL Joseph Sagala, informed the court that he received information from PW7 on 9th September, 2012, about a fire incident at Misanga Market. He went to the scene in the company of another police officer and found a burnt house which had three small jerricans of about a liter each, with petrol inside. They started investigations and later arrested the appellant. He further testified that they got to learn that the appellant was a boda boda rider and also sold petrol.

16. PW11, PC Joseph Mulinge, was the investigation officer. He informed the court that on 11th October, 2012, he got instructions from the OCS, to go and record PW1's statement. PW1 gave him a narration of how the appellant burnt the deceased, as told to him by the deceased before she died. The deceased also told the doctor who attended her, what had transpired, and the doctor's notes on the medical file indicated that the deceased had a history of a domestic issue with her husband who attempted to burn her. PW11 also took statements of other witnesses and attended the postmortem of the deceased. During his investigations, PW11 visited the crime scene and took pictures of the same. At the time, he learnt from PW3, PW4 and PW8 that the appellant had poured petrol on the deceased and since there was a tin lamp nearby, the petrol spilled on the tin lamp and blew up burning the deceased and her child. Whilst the appellant ran out of the house, burning, and rode off towards Brigadier. He testified that PW10 had visited the crime scene in the company of PW7 and found three (3) containers, two (2) of which were full of petrol and the other one was empty. PW11 took the container to the Government Chemist who confirmed the contents therein to be petrol. Later, the appellant was arrested and charged.

17. PW12, CPL Benjamin Mechuli, a scene of crime officer testified on behalf of PC Murunga, who filed a report of the crime scene. He produced as exhibits, photos of the crime scene and photos of the deceased's body, which were taken by PW11.

18. The final witness was PW13, Laban Ombali Mogera, the government chemist. He testified that he received three (3) one- liter plastic containers, two (2) of which had a brownish substance, while the third one was empty. Upon analysis, it was confirmed that the brownish substance in the two containers was petrol; whilst petrol was traceable in the third container. He produced the report of the analysis as an exhibit.

19. When he was placed on his defence, the appellant gave unsworn testimony and called no witnesses. He denied burning his wife (deceased) and son. He told the court that on the material night he was asleep when fire broke out in their house at about 10.00pm. Each of them ran for their lives and he came out with his son and asked the deceased to seek for help. He further testified that they used to sell kerosene and petrol but that he did not know what caused the fire. In addition, he informed the court that the prosecution evidence was untrue as he also got burnt on the face, hands and legs.

20. As aforesaid, the learned Judge disbelieved the appellant's account and concluded that there was sufficient evidence to establish beyond reasonable doubt that the appellant had murdered the deceased. Consequently, the learned Judge convicted the appellant and sentenced him to life imprisonment.

21. This is a first appeal. Accordingly, the role of this Court is to re- evaluate evidence, assess it, weigh it as a whole and reach our own independent conclusions. In doing so, we are required to remember that we neither saw nor heard the witnesses, for which we must make allowance. As Okeno vs. Republic [1972] EA 32 established:

> " 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."

22. With these as our marching orders, we have carefully considered the evidence that was before the High Court, the dueling oral and written submissions made before us, and the law. The appeal was argued by way of written submissions by both parties. During the virtual hearing, learned counsel, Ms. Awuor appeared for the appellant whereas learned counsel, Ms. Chala, appeared for the respondent. Both parties relied on their submissions.

23. Counsel condensed the grounds of appeal into three issues of determination namely:

    1. Whether the trial court properly relied on the deceased's dying declaration.

    2. Whether the trial court misdirected itself in convicting the appellant on circumstantial evidence.

    3. Whether the sentence meted out against the appellant was harsh and excessive.

24. On the first issue, counsel for the appellant challenged the prosecution's evidence, arguing it was inconsistent and unreliable, thus failing to meet the threshold of proof beyond a reasonable doubt. She highlighted discrepancies in the testimonies of key witnesses (PW1, PW2, and PW4) regarding the events leading to the fire and the role of the appellant. These inconsistencies, she contended, undermined the credibility of the evidence and the dying declaration of the deceased.

25. The counsel emphasized that while dying declarations do not legally require corroboration, they should be treated with caution and not solely relied upon for conviction. She cited Aluta vs. Republic [1985] KLR 543; Moses Wanjala Ngaira vs. Republic [2019] eKLR; and Musili vs. Republic [1991] eKLR to support this argument. Additionally, the counsel pointed out that the appellant also sustained burns during the incident, which was consistent with him being present at the scene but not necessarily indicative of guilt. Relying on his presence to corroborate the dying declaration was deemed prejudicial and contrary to legal principles for securing a conviction.

26. The appellant's counsel argued that the prosecution's case, relying on circumstantial evidence and the appellant's presence at the crime scene, was weakened by the fact that he lived in the same house as the deceased due to their marriage. The counsel cited case law (Simon Musoke v. Republic [1958] EA 715) to support the view that circumstantial evidence must not be speculative or ignore other plausible explanations. Pivoting from this, the trial court's inference of guilt based on the appellant's failure to assist the deceased, was contested, as the appellant himself was injured, in pain, and unable to help, facts which, counsel contended, prosecution witnesses corroborated. Counsel further argued that the petrol found in the house was related to the appellant's business and not indicative of intent to commit murder. The injuries sustained by the appellant, the absence of motive or malice aforethought, and the lack of explanation for the death of his own child were highlighted as undermining the prosecution's claim of deliberate intent. Counsel contended that the evidence presented did not meet the threshold required to establish malice aforethought or guilt beyond a reasonable doubt.

27. On the final issue, counsel contended that the trial court erred in convicting the appellant; and the sentence meted upon him was harsh and unlawful. She cited Sayeka vs. Republic [1989] KLR, wherein the court laid down principles on how appellate courts should deal with appeals on sentence. She urged this Court to quash the conviction and sentence by the trial court. However, in the unlikely event that this Court does not find merit in the appellant's appeal against conviction, she prayed that the life sentence be substituted with a more lenient one that tempers justice with mercy.

28. Opposing the appeal, Ms. Chala submitted that the appellant's conviction was anchored on the dying declaration of the deceased. She relied on this Court's decision in Philip Nzaka vs. Republic [2016] eKLR to contend that the dying declaration of the deceased was admissible as PW1 testified that even though she had extensive burns to the extent that she could not open her eyes, she was able to tell him what transpired on the material day, which pointed to the appellant as the person who burnt her. Similarly, PW2 and PW4 testified to the fact that the deceased also told them that the appellant was the one who burnt her. Counsel submitted that this evidence was corroborated by several prosecution witnesses, being PW6, PW9 and PW13. PW6's evidence corroborated the fact that the deceased died as a result of burns. PW13's evidence confirmed that the deceased was burnt with petrol. Whereas PW9 testified that the appellant and deceased had a quarrel over the fact that the appellant had refused to allow the deceased attend a funeral; and the deceased went to her house to seek refuge.

29. The prosecution counsel further argued that malice aforethought was not inferred from the dying declaration but from the act of directly pouring petrol on someone and setting her ablaze. This action, she argued, clearly showed that the appellant knew it would cause grievous harm to the deceased. Additionally, the appellant's act of fleeing the scene and not giving any assistance to the deceased imputed malice aforethought.

30. Lastly, on sentence, the Prosecution counsel submitted that it is a requirement for the trial court to record the mitigation of an accused person and consider it. However, the trial court in this case failed to state whether it considered the appellant's mitigation before meting out its sentence. Consequently, such omission rendered the sentence meted out to the appellant as excessive. For this proposition, counsel relied on this Court's decision in Chai vs. *Republic, Criminal Appeal No. 30 of 2020* [2022] KECA 495 (KLR), wherein it was held that the absence of any demonstration of factors that led to the life sentence meted out upon the appellant, showed that the same was excessive. In the premise, counsel urged this Court to balance the aggravating circumstances of this case such as the heinous nature of the attack and the gender-based violence alluded to, against the mitigating factors of the appellant's remorsefulness, his age and being a first offender; and consider a review of the sentence imposed. Counsel proposed a sentence of thirty (30) years imprisonment.

31. We have carefully evaluated the evidence before the trial court. We have also considered the appeal before us, the rival submissions of the parties and the authorities cited in support of the opposing positions.

32. The question that we must determine on this first appeal is whether the ingredients of the offence of murder were established. Under section 203 of the Penal Code, for the offence of murder to be established, the prosecution must prove three main elements. First, that the death of the deceased occurred, second, that the death was caused by an unlawful act or omission on the part of the accused person and third, that the accused person had malice aforethought in causing the act or omission that caused the death.

33. In Joseph Githua Njuguna v R [2016] eKLR, this Court identified the elements of murder thus:

> [Section 204 states that] any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder. It is clear from this section that there are three elements which the prosecution must prove beyond reasonable doubt to secure a conviction for the offence of murder. These are:
>
> i. The death of the deceased and the cause of the death;
>
> ii. That the accused committed the unlawful act which caused the death of the deceased; and

iii. That the appellant had harboured malice aforethought.

34. In the present case, the fact of the deceased's death is not disputed. It was clearly established by the evidence of the witnesses; and both the appellant and respondent accede to the fact. PW1 (the father of the deceased), PW2 (the mother of the deceased) and PW6 (the pathologist) and even the appellant himself were all categorical that the deceased died in hospital where she had been admitted for treatment of severe burns.

35. The real question on this appeal, then, is whether it was established that the deceased's death arose as a result of a direct consequence of an unlawful act or omission on the part of the appellant, and, if so, whether the appellant committed the unlawful act or omission with malice aforethought.

36. Both parties are agreed that there was no direct evidence incriminating the appellant: no one saw the appellant pouring petrol on the deceased and setting her on fire. Instead, the prosecution relied on dying declarations and circumstantial evidence to draw the inference that the appellant was responsible for the death. This is how the learned Judge analyzed the evidence:

> Apart from the above, the deceased even on her dying bed, with the extensive burns spoke to several people and gave an account of what happened. Her story to all those she spoke to was consistent; that her husband poured petrol on her and their child and since there was a tin lamp within, it blew up burning all of them.
>
> The deceased spoke this to her father, PW1, her mother, PW2, the doctor, PW6, and, indeed, PW4. Her words, in my view, were a dying declaration which was corroborated squarely by the evidence of the witnesses who saw the accused come from the scene of crime burning and indeed the actions of the accused.
>
> PW9 witnessed the quarrel the deceased and the accused had just before the burning incident. From the actions of the accused it is so evident that the accused with malice aforethought poured petrol on the deceased and their child with the intention of burning the deceased and as fate would have it he got the fire as well."

37. It is readily obvious that the learned Judge was conscious that there was no eye witness to the murder of the deceased. However, the learned Judge was satisfied that the appellant's guilt was proved beyond reasonable doubt through the combination of dying declaration and circumstantial evidence.

38. We are in agreement. While dying declaration can, in certain cases, be adequate to secure a conviction, a conviction is much safer when it is corroborated. In the present case, the evidence of dying declarations were, firstly, mutually corroborative because they were made to three different people. Additionally, the evidence was further corroborated through circumstantial evidence which placed the appellant at the scene engaging in conduct which was inconsistent with innocence.

39. Dying declarations are an exception to the hearsay rule. In Kenya, this exception is codified in Section 33(a) of the *Evidence Act*. Under this provision, statements relating to the cause of death are admissible though hearsay:

> " when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of

death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

40. This Court has been clear that a dying declaration is admissible in evidence as an exception to the rule against admissibility of hearsay evidence. Statements made by a person who is dead are admissible where the cause of his death is in question and those statements were made by him as to the cause of his death. See Philip Nzaka Watu Vs. Republic [2016] eKLR.

41. In Peter Kimathi Kanga Vs. Republic [2015] eKLR, this Court gave guidance on how to handle dying declarations as follows:

> Courts have on their part formulated rules to guide the reception and weight to be attached to dying declarations and it is sensible that one made when death is imminent will be accorded a high degree of credit since in the extremity of life's ebbing away, it is expected that one has a strong motive to be truthful. In the interests of fairness to an accused person, a rule has also developed that a court should approach a dying declaration with caution and act on it only if satisfied as to its veracity and if there is corroboration, but only as a cautionary rule of practice, not a legal requirement."

42. In the present case, as the learned Judge analyzed, three witnesses – PW1; PW2 and PW4 – all consistently testified that the deceased told them – separately – that the appellant doused the deceased and her child with petrol and then lit a fire. These testimonies remained unshaken during cross-examination. On appeal, the appellant's counsel seeks to effete the potency of this evidence by suggesting that the Court should doubt the veracity of the dying declarations because they were inconsistent. We have looked at the so-called inconsistencies – that PW1 testified that the deceased told him that while she was asleep with her son, the appellant poured petrol on them and set them on fire; PW2 testified that the deceased told her that the appellant poured petrol on her and lit the fire; whilst PW4 testified that the deceased told him that as she was seated against a wall, beside a table which had a lamp on top of it, the appellant poured petrol on her and the flame from the lamp spread – and we have concluded that none of the alleged inconsistences is material enough to introduce reasonable doubts to the prosecution case. The test that the court utilizes on the effects of inconsistencies on the prosecution case is substantive in nature. This test inquires whether the inconsistencies in the prosecution evidence are to such an extent that a reasonable person would be left in doubt as to whether the charges were proved, or whether the inconsistencies (if any), are so material that the trial court ought to have rejected the evidence. Differently put, not every inconsistency however small, introduces reasonable doubt to the prosecution case. See Erick Onyango Ondeng' vs. Republic [2014] eKLR and Daniel Nyanjong Odede vs. Republic, Criminal Appeal No. 174 of 2017 (unreported). In the present case, the alleged inconsistencies do not affect the substance of the prosecution case.

43. The dying declarations are mutually reinforced when juxtaposed against the two other pieces of evidence presented by the prosecution witnesses.

44. The first one is the evidence of motive as testified by PW1; PW2 and PW8. They all testified that the appellant had violent tendencies against the deceased; and that they had a serious rift slightly before the incident. Indeed, PW8, a neighbour, testified that the deceased had run to her house for safety shortly before the deceased's house was razed in fire. She testified that the deceased only agreed to go back to her house when the neighbour insisted.

45. Secondly, there was evidence – mainly drawn from the testimony of PW4 – that the appellant's conduct was inconsistent with innocence. The evidence was that the appellant not only emerged from the burning house alone without attempting to assist his wife and child, but did not raise any alarm

to attract the attention of good Samaritans to save them. Additionally, after he emerged from the house, he jumped on to his motor cycle and headed in the opposite direction. In other words, he was seen fleeing from the fire. The acceptable inference from that conduct, absent any other reasonable explanation, is that he was the person who set the deceased on fire. The appellant's defence that he used to sell petrol; and that the fire was accidental is overwhelmingly overcome by his conduct: he made no attempts to assist his wife and child; and he fled from the scene after emerging from the burning house.

46. In our view, the circumstantial evidence presented by the prosecution in this case meets the threshold enunciated in our case law. See, for example, the Supreme Court's decision in Republic vs Ahmad Abdolfadhi Mohammed & Anor 2019 eKLR. When the case is viewed as a whole, the facts and circumstances are so closely interwoven and connected that the finger of guilt is pointed unerringly at the appellant and the appellant alone.

47. Having thoroughly re-evaluated the evidence, it is our view that the learned Judge properly relied on the dying declaration of the deceased and the circumstantial evidence presented before the court.

48. Turning to the final question of sentence, we take cognizance of the Supreme Court's decision in Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR, in which the mandatory death sentence under section 204 of the Penal Code was declared unconstitutional. As rightly submitted by the respondent's counsel, the learned judge failed to take the appellant's mitigation into consideration during sentencing. In the circumstances, we take into consideration the appellant's mitigation that he was remorseful; that he was 28 years old at the time of commission of the offence; and that he is a first offender. We also take into consideration the nature and extent of the injuries suffered by the deceased and her son, which led to their deaths.

49. In the circumstances, taking into consideration the circumstances of the offence, offender and the victims, we substitute the life sentence with thirty (30) years imprisonment. The record shows that the appellant was arraigned in court on 25th March, 2013, and released on bond on 8th May, 2013. The trial was conducted while he was out on bond until his conviction which occurred on 1st March, 2018. Therefore, in compliance with section 333(2) of the Criminal Procedure Code, we direct that the period between 25th March, 2013, and 8th May, 2013, shall be taken into account when computing the appellant's sentence.

50. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 20TH DAY OF DECEMBER, 2024.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

JOEL NGUGI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR