**Nyariki & 2 others v Republic (Criminal Appeal 38 of 2015)**
**[2021] KECA 122 (KLR) (5 November 2021) (Judgment)**

Neutral citation: [2021] KECA 122 (KLR)

**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL AT KISUMU**

**CRIMINAL APPEAL 38 OF 2015**

**RN NAMBUYE, HM OKWENGU & F SICHALE, JJA**

**NOVEMBER 5, 2021**

**BETWEEN**

**JONNES ONDICHO NYARIKI ..... 1ST APPELLANT**

**ERICK ACHIKI ORERI ..... 2ND APPELLANT**

**EVANS NYACHIRO MARANGA ..... 3RD APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Being and appeal from conviction and sentence by the High Court of Kenya at Kisii (Asike-Makhandia & R.N Sitati, JJ.) dated 30th September, 2011 in Kisii HC CRA. No. 205, 211 and 213 of 2010)***

## JUDGMENT

1. This is a second appeal arising from the Judgment of the High Court at Kisii in Criminal Appeal No. 205,211 and 213 of 2010 (consolidated) (Asike-Makhandia & R. N. Sitati, JJ.) dated 30th September, 2011, dismissing appellants' consolidated appeals against both convictions and sentences handed down against them by the trial court.

2. The appellants were arraigned jointly before the Principal Magistrate's Court at Nyamira in Criminal Case No. 726 of 2009, charged with the offence of Robbery with violence contrary to Section 296 (2) of the *Penal Code*. The particulars of the offence were that, on 4th November, 2009 at Boisanga II sub location in Nyamira District within Nyanza Province, jointly with others not before court being armed with offensive weapons, namely pangas and knives, they robbed Joseph Mariti Magari of a mobile phone make Samsung E250, Earphones and cash Kshs. 4000/= all valued at Kshs.9990/= and at or immediately after or immediately before the time of such robbery used actual violence to the said Joseph Marita Magari.

3. The 1st appellant, Jonnes Ondicho Nyariki also faced an alternative count of handling stolen goods contrary to section 322(2) of the Penal Code, in that on the same date and place otherwise than in the course of stealing, he dishonestly received or retained a mobile phone, earphones and cash money Kshs.505/= knowing or having reason to believe them to be stolen goods.

4. The appellants denied the charges prompting a trial in which the prosecution called six (6) witnesses to prove the charge, while appellants were the only witnesses in support of their respective defences.

5. The brief facts of the prosecution case are that Joseph Marita Magari (PW1), was on 4th November, 2009 walking home at 8.00pm, while in the company of one, Isaac Dennis Makenya when they were accosted by the 2nd and 3rd appellants whom PW1 knew very well as local residents and the 1st appellant whom he identified with the help of bright moonlight. PW1 was robbed of items forming the first count. He reported the incident to Wilfred Ombaki Osicho PW2, the area chief naming the 2nd and 3rd appellants whom PW2 also knew very well as his assailants. PW1 also gave a description of the 1st appellant. PW2, accompanied by, PW3 APC Henry Muguna Mugambi of Ekerenyo AP camp left for the homes of the 2nd and 3rd appellants which PW2 knew very well. He arrested the 3rd appellant alone from his house, while the 1st and 2nd appellants were arrested from the house of the 2nd appellant from where PW2 and PW3 also recovered a panga stained with fresh blood described as sticky and a phone and earphones. PW1 identified the items as some of the items of which he was robbed that very night. Appellants were handed over to PW5, P.C Micah Kipkoech of Nyamira police station who caused blood samples to be taken from them and PW1 and forwarded these together with the blood-stained panga recovered from the 2nd appellant's house to the Government chemist in Nairobi for DNA analysis. The analysis which was conducted on 14th December, 2009 by PW6 Henry Kiptoo Sang, confirmed that the blood stains found on the panga recovered from the house of the 2nd appellant matched the DNA profiles generated by the blood samples taken from Joseph Marita Magari (PW1). The DNA report was produced in evidence as P. Exhibit 9.

6. PW1 was first treated at Itibo Health Centre before being referred to Nyamira District Hospital where he was attended to on 6th November, 2009 by PW4, Lamech Karanga, a clinical officer, who filled a P3 form. PW4 noted in the P3 form that PW1 had tenderness on the anterior lateral aspect of the neck due to attempted strangulation, tenderness on the left shoulder, stitched cut wound on the left knee, two stitched cut wounds on the scalp posterior 3cm and 4cm long, inflicted by a sharp weapon. He classified the injuries as harm and produced the P3 form as P. exhibit 6.

7. The appellants each gave sworn evidence and called no witnesses. They each denied involvement in the perpetration of the robbery against PW1.

8. The trial magistrate upon hearing, analyzing and assessing the evidence, was satisfied that there was overwhelming evidence against all appellants. He therefore rejected their defences, found the charges proved to the required threshold of proof beyond reasonable doubt, and each of the three (3) appellants guilty as charged. He accordingly convicted each of the appellants and sentenced each to suffer death as the law then provided. He made no finding in regard to the alternative charge.

9. The appellants were aggrieved and separately preferred appeals numbers 205, 211 and 213 of 2010 to the High Court at Kisii each raising his grounds of appeal, that were consolidated and heard together. The Judges re-assessed and re-analyzed the record and made findings thereon that they were satisfied as did the trial court that the ingredients for proof of the offence of robbery with violence had been established to the required threshold; the convictions of the three (3) appellants was founded on recognition and identification of the appellants by PW1 and partially founded on the doctrine of recent possession arising from PW2 and 3's evidence on the recovery of the exhibits from 1st and 2nd appellants; the case for recognition and identification revolved around the evidence of PW1, a single

identifying witness, and also that the offence was allegedly committed at about 8.00p.m on a rough road. Bearing all the above in mind, the Judges took into consideration the case of *Karanja vs. Republic [2004] 2 KLR* on the law on recognition/identification.

10. Applying the threshold in the above case to the evidence on the record the learned Judges expressed themselves as follows:

> " The issue here is whether there was sufficient light to enable P.W.1 recognize the 2nd and 3rd appellants and also to identify the 1st appellant, all of whom P.W.1 later gave names and description of respectively with his first report to P.W.2.We are satisfied that P.W.1's description of the light that was available on that night of the attack was informed by the fact that this was going to be an issue during the trial. Although the trial court did not say anything about the right, we ourselves have reconsidered the circumstances and the evidence of P.W.1 and we are satisfied that the very bright moonlight was sufficient to enable P.W.1 to recognize the 2nd and 3rd appellants and to identify the 1st appellant.....In the instant case, P.W.1 had personal knowledge of both Oreri and Maranga, the former being a very close friend and the latter, a kind of brother in-law. Oreri admitted that he knew P.W.1 as they were neighbors from the same village.
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> In addition to the above we have also carefully considered the fact that P.W.1 was the sole single identifying witness. The law is clear that the evidence of identification or recognition in difficult circumstances must be tested with the greatest care and circumspection and can only form the basis for conviction if it is absolutely watertight"

11. As to whether the said items were recovered from the appellants, the Judges had this to say:

> " Nyariki has alleged that the phone that was recovered from him was his; Oreri has alleged that PW2 had a grudge against him while Maranga also alleged that PW2 was out to punish him because he had refused to work as a vigilante. In cross examination however, Maranga said he was a member of the vigilante group.
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> In our considered view, the evidence of PW1 against each of the appellants was beyond reproach. There is also additional evidence of recovery of both of the stolen phone Samsung E250 together with the earphones and the panga. We accept the evidence that the panga which was used to assault PWI is the same panga that was recovered from the house where the 1st and 2nd appellants were sleeping. The blood sample recovered from that panga matched the blood sample taken from the blood of PW1. Further, PW1's Samsung E250 and the earphones were all recovered from the same house where the 1st and 2nd appellants were. Each of the appellants was under a duty to explain how they came to be possessed of those properties just some hours after they were stolen from PW1. The allegation that the phone and earphones belonged to the 1st appellant had no basis.
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> As for the 3rd appellant, we note that he was found hiding under the bed when PW2 and PW3 had knocked and identified themselves. Such conduct on the part of the 3rd appellant was not consistent with innocence. This fact coupled with PW1's undoubted recognition places the 3rd appellant directly at the scene of crime"

Consequently, the learned Judges dismissed the appellants consolidated first appeals and affirmed the appellants' convictions and sentences as handed down against them by the trial court.

12. Undeterred, the appellants are now before this Court on a second appeal. Their complaints cumulatively are that the learned Judges of the 1st appellate court failed to discharge their mandate

as a first appellate court as was required of them by law, not only in failing to properly appreciate the evidence adduced regarding the recognition and identification of the appellants during the perpetration of the offence against PW1, but also by misapplying the principles that guide the court on the admission and acting on such evidence as a basis for conviction. Second, for failing to appreciate that the doctrine of recent possession was not applicable in the circumstances of this appeal.

13. The appeal was canvassed by way of written submissions adopted by learned counsel for the respective parties without oral highlighting.Learned counsel Mr. Onsongo and Ms. Anyango Owino appeared for the 1st appellant, Mr. Odoyo appeared for the 2nd and 3rd appellants, while Mr. Ligami the learned Senior Prosecution Counsel (SPPC) appeared for the State.

14. In support of the 1st appellant's appeal, Ms. Fiona Anyango Owino relied on the case of *Wamunga vs. Republic [1989] KLR 424* and *John Mwangi Kamau vs. Republic [2014] eKLR* and submitted that in the circumstances described by PW1 as to what transpired at the scene of the robbery, PWI was not in a position to identify the 1st appellant as it was dark to the point that a flashlight had to be used. It was therefore imperative for an identification parade to be conducted to confirm that indeed the 1st appellant had been identified by PW1 as one of the robbers who robbed him on the material night and since none was conducted, 1st appellant's conviction is not safe and should be vitiated. In addition, the learned Judges failed to appreciate that the conditions prevailing at the scene of the crime were absolutely difficult for a witness to make any significant identification; and, lastly, the Judges failed to appreciate that the application of the doctrine of recent possession to place the 1st appellant at the scene of the robbery, had no sufficient basis to support it.

15. In support of the 2nd and 3rd appellants appeal, Mr. Odoyo relied on the case of *Wamunga vs. Republic [1989] KLR 424* for the holding inter alia that:

> " It is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial Court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction";

Also relied on by Mr. Odoyo is the case of *Francis Muchiri Joseph vs. Republic [2014] eKLR* in which the court similarly expressed itself interalia as follows:

> " Although the learned trial magistrate warned himself of the danger of convicting the appellant based on the evidence of a sole identifying witness, the factors that weakened the evidence of A were not well considered. Had the two courts below considered the possibility of an injustice likely to be occasioned on the appellant due to mistaken identity, for reasons that the appellant's name was not given in the first report; the statement recorded by A with the police named a "Macharia" as one of the people who attacked her; there was no evidence to show that the appellant was also known as "Macharia". A also testified that she recognized the appellant's voice and there was no voice identification that was carried out; the light emitting from the torches was not tested as there was no evidence of the direction, distance or its intensity. If all these factors were brought to bear, the two courts below would have arrived at a different conclusion."

Counsel faulted the Judges for affirming the trial court's finding pinning responsibility for the perpetration of the robbery against PW1 on the 2nd and 3rd appellants without basis.

16. In rebuttal, the State urged the court to affirm the concurrent findings of the two courts below because the prosecution proved its case beyond reasonable doubt on the evidence tendered through the six (6)

prosecution witnesses which evidence was well founded on both recognition and identification and also partially on the doctrine of recent possession and was therefore unassailable.

17. They rely on the case of *Anjononi vs. Republic [1980] KLR* for the holding inter alia that;

> "Recognition of an assailant is more satisfactory, more assuring and more reliable than identification of a stranger because it depends upon personal knowledge of the assailant in some form or other."

18. In support of their position that in the instant appeal, PW1 had personal knowledge of both the 2nd and 3rd appellants, as persons well known to him as fellow local residents, a position not only affirmed by PW2 but was also never controverted by the 2nd and 3rd appellants. Their recognition by PW1 at the scene of the robbery is therefore unassailable.

19. It is also the State's position that further, proof that the appellants' convictions were sound and were therefore properly affirmed by the first appellate court based on the sequence of evidence on how PW2 and 3 arrested the appellants and made recoveries of the items that had recently been robbed from PW1, and the fact that the 1st and 2nd appellant's failed to explain how they came to be in possession of those properties just some few hours after PW1 was robbed and this was additional proof of appellants culpability in the commission of the offence.

20. Further, evidence that a panga stained with blood that PW6, the Government Analyst confirmed beyond doubt matched that of PW1 was recovered from the house where the 1st and 2nd appellants were arrested from left no doubt that this was the panga that was used to inflict injuries on PW1 in the course of the robbery. The State therefore urges that the convictions were sound and well-founded both on the facts and the law and should not be interfered.

21. This is a second appeal. This court's mandate under section 361 (1) of the *Criminal Procedure Code* is limited to considering matters of law only. In *Dzombo vs. Republic [2014] eKLR*, the Court stated inter alia as follows:-

> "As already stated, this is but a second appeal. Under the law we are only concerned with matters of law and not fact. Put differently, in a second appeal such as this one, matters of fact are for the trial court and the first appellate court. See Okeno vs. Republic [1972] E.A.32.
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> By dint of the provisions of section 361 1(1) (a) of the Criminal Procedure Code our jurisdiction does not allow us to consider matters of fact unless it be shown that the two courts below consider or failed to consider matters that they should have considered or that looking at the evidence they were plainly wrong.
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> "Accordingly, we must not "interfere with the decision of the trial or first appellate court unless it is apparent that on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding that the decision is bad in law."

See also *Njoroge Macharia vs. Republic [2011] eKLR* and *Chemagong vs. Republic [1984] KLR 213*.

22. We have considered the record in light of the rival submissions of learned counsel for the respective parties herein as well as case law relied upon in support of their rival positions herein. Our take on the same is as follows: the court wholly concurs with the concurrent findings of the two courts below that the evidence tendered proved the offence of robbery with violence to the required threshold as the record is explicit that it was established beyond doubt that the robbers were more than one, they were armed with an offensive weapon namely, a panga and used violence on the victim. See the case of

*Cleophas Otieno Wamunga vs. Republic [1989] eKLR* and *Pius Jasunga s/o Akumu vs. Reginam (1954) 21 EACA 331.*

23. What remains for our determination is whether there was basis for the two courts below pinning responsibility on the appellants for the perpetration of the robbery against PW1. As already highlighted above, the prosecution case was anchored on the evidence of recognition by a single witness, the doctrine of recent possession and the Government Analyst's report that confirmed that the blood stains on the panga recovered by PW2 and 3 from the house of 2nd appellant from where both 1st and 2nd appellants were arrested, matched the blood sample taken from PW1 which according to the prosecution was sufficient proof that the panga recovered from the 2nd appellant's house was the one used to inflict injury on PW1 in the course of the robbery that had just occurred a few hours to the recovery of the said panga.

24. Starting with recognition and identification, the position in law is as has been highlighted above in the case of Wamunga vs. Republic [supra] Francis Muchiri Joseph vs. Republic [supra] and Anjononi vs. Republic [supra] among numerous others and which we fully adopt asbeing the principles of case law that guide the court not only when admitting but also acting on evidence of both recognition and identification as a basis for conviction at the trial and sustaining that conviction on a first appeal. Key of these as distilled above is that for evidence on recognition to be sustained, the witness is obligated to state that he/she knew the assailant prior to the incident, state the length of time he has known the assailant, give reasons as to why he/she was sure the assailant was the person he/she knew before and that there was no mistaken recognition.

25. While that on identification is that it is imperative for the complainant to state among numerous others, the circumstances surrounding the identification, the source of light, any striking features that made him/her register the appearance of the assailant, if at night the source of the lighting, proximity from the assailant to the victim, any possible impediments to positive identification, and lastly, giving a description of the assailant to those who either responded to the victim's distress call or to the police at the earliest opportunity.

26. We have applied the above two thresholds sets to the concurrent findings of the two courts below in light of the rival submissions on this issue herein. Our take thereon is that it was not in dispute that PW1 knew both the 2nd and 3rd appellants very well prior to the incident. That is why he named them to PW2. They were arrested the very night of the robbery and a panga with blood stains that matched PW1's DNA as per the content of the Government Analyst's report and items fitting the description of items robbed from him as reported to PW2 were recovered from the 1st appellant who was in the company of the 2nd appellant in the 2nd appellant's house. PW1 also recognized the voices of the 2nd and 3rd appellants when him and his companion were commanded firstly to stop and secondly to handover whatever they had to the accosters as he had interacted with them severally. The 1st appellant was identified through moonlight said to have been very bright. That is why PW1 gave his description to PW2. PW2 confirmed that the 1st appellant was arrested because he fitted the description given by PW1 as one of the robbers. It is appreciated an identification parade should have been held for PW1 to confirm his registration of the 1st appellant's appearance at the scene.

27. It is however our position that in light of the totality of the evidence on record, this short coming on the part of the prosecution was not fatal to the prosecution's case. It was well cured by the evidence on recent possession. We therefore make no hesitation in affirming the position taken by the two courts below that appellants were positively recognized and identified in connection with the robbery committed against PW1 which occurred on a road with no objects alleged to obstruct or to impede PW1's clear view of the assailants in the manner described in the evidence by PW1.

28. Turning to the doctrine of recent possession, in the case of *Hassan vs. Republic [2005] 2 KLR* it was held inter alia that:

> " Where an accused person is found in possession of recently stolen property in the absence of any reasonable explanation to account for this possession, a presumption of fact arises that he is either the thief or a receiver."

*In Gicheru vs. Republic [2005] 1 KLR 688*, the court adopted the definition of possession in Section 4 of the Penal Code to mean that:

> " Being in possession of or to have in possession, includes not only having in own personal possession, but also knowingly having anything in the actual possession or custody of any other person or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person, and if there are one or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession of each of them and further that when an accused person is found in possession of items which had been stolen a short while back the doctrine of recent possession applies"

In *Isaac Ng'ang'a Kahiga & Another vs Republic [2006] eKLR*, the ingredients for the application of the doctrine of recent possession were given inter alia as follows:

> " ...It is trite that before a court of law can rely on the doctrine of recent possession as a basis for conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof, first, that; the property was found with the suspect, secondly, that; the property is positively the property of the complainant, thirdly, that the property was stolen from the complainant and lastly, that; the property was recently stolen from the complainant. The proof as to time, as has been stated over and over again, will depend on the easiness with which the stolen property can move from one person to the other."

29. In the instant appeal, we adopt the 1st appellate court's analysis and assessment of the evidence on the recovery of the subject items already highlighted above as we find the same to be a true reflection of the summary of the witnesses' accounts of the recovery of the subject items with regard to where recovered from and from whom. Being concurrent finding of facts by the two courts below, we find no reason to differ with those findings. We are therefore satisfied as did the two courts below that the 1st appellant while in the company and in the house of the 2nd appellant was found in possession of items recently robbed from PW1, in respect of which no reasonable explanation was given.

30. Allegation that PW1 did not produce receipts to prove that the items belonged to him was rightly rejected by the two courts below as we find nothing on the record to suggest that PW2 and 3 who recovered the said items from the 1st appellant who was in the 2nd appellant's house and who were found by the two courts below to be credible and believable witnesses, and who were categorical in their respective testimonies that they were present during the recovery of those items from the 1st appellant who was in the house of the 2nd appellant, had any reason to fabricate the recoveries against these appellants. Neither do we find basis for us to doubt PW1's testimony that those items were indeed robbed from him earlier in the night before they were recovered by PW2 and 3 in the manner described above. The description he gave fitted what PW2 and 3 recovered from the 1st appellant who we have stated above was with the 2nd appellant in the 2nd appellant's house. Considering the above in light of the threshold for the application of the doctrine of recent possession, we entertain no doubt in our

minds that the doctrine of recent possession was properly applied as additional evidence to place the 1st and 2nd appellants at the scene of the robbery.

31. As for the sentence, we stand guided by the guidelines given in the case of *Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR*, which we fully adopt.

32. This Court has already expressed itself on the mode of procedure with regard to compliance with the above Supreme Court guidelines on resentencing in circumstances where the Court has affirmed the conviction, but found it prudent to temper with the sentence handed down against an appellant by a trial court, and affirmed by a first appellate Court, in instances where the death penalty is the only lawful sentence for the offence such an appellants were convicted of. We find it prudent to highlight a few of such instances.

33. In *Juma Anthony Kakai vs. Republic [2018] eKLR*, where there was mitigation and the appellant was a first offender, the Court re-sentenced the appellant and substituted the death sentence with a sentence of twenty (20) years imprisonment from the date of conviction. In *Peter Mwania Munywoki & Anor. vs. R. Criminal Appeal No. 256 of 2007*,in which the appellant had been incarcerated for eighteen (18) years, the Court was of the view that remitting the matter back to the High Court or the trial court to reconsider the sentence would, in the Court's view, cause further delay in the matter and add to the back log of cases. As the mitigation was already on record, the Court found it fit and in the interests of justice to set aside the sentence handed down against the appellant by the trial court, and affirmed by the 1st appellate court and substituted therefore a sentence of imprisonment for twenty-five (25) years, to run from the date of the appellant's first conviction on 4th October, 2001.

34. In *Bernard Mulwa Musyoka vs. R. Criminal Appeal No. 25 of 2016*, the Court intimated that it has jurisdiction to direct a sentence re-hearing by the court (s) below or pass any appropriate sentence that the trial magistrate's court could have lawfully passed. In *Mohammed Hussein Mohammed vs. Republic -Criminal Appeal No. 126 of 2015*, the Court after taking into consideration the sentencing guidelines as enunciated in the Muruatetu case (supra), deemed it fit to interfere with the death sentence meted out against the appellant with respect to the offence of robbery with violence and substituted the same with a sentence of 20 years' imprisonment which the Court deemed as commensurate to the circumstances of the case and the appellant's culpability. Lastly, in *Criminal Appeal No. 6 of 2009-Yohana Hamisi Kyando Vs. Republic*, the Court remitted the matter back to the High Court for rehearing on sentencing only, consistent with the guidelines pronounced by the Supreme Court in the Muruatetu case.

35. From the above survey of the trend in the Courts' pronouncements on the issue of re-sentencing, it is evident that the determining factor in deciding either to remit the matter to the trial court for resentencing or the court assuming that role and proceeding with the resentencing exercise depends on the peculiar circumstances of each case. In the instant appeal, the appellants were arrested on 5th November, 2009 a period of about twelve (12) years ago. They were convicted and sentenced on 14th October, 2010, which is now a period of eleven (11) years. The items robbed from PW1 were partly recovered. Injuries inflicted in the course of the robbery were not grave.

36. At the sentencing, 1st and 3rd appellants had no previous records and were treated as first offenders, 2nd appellant had a previous conviction in Criminal Case No. 371 of 2008 where he had been charged with stealing contrary to Section 275 of the penal code. When given an opportunity to mitigate, the 1st appellant said that he was sick. The 2nd appellant said that his mother had passed on and left two children and that his father had remarried a sister to the assistant chief of his location and pleaded for help. The 3rd appellant said he had no parents and was left with two siblings to look after. He asked the court to consider his case.

37. Considering all the relevant factors herein, we are inclined to interfere with the sentence that was passed by the trial court and affirmed by the High Court. We have taken into consideration the appellant's mitigation, the circumstances under which the offence was committed, the value of the items stolen and the nature of injury that was inflicted on the victim of the robbery. We are fully cognizant that sentencing is a trial court function but, given that mitigation was taken and is on record, interest of justice would demand that we should not remit the matter back to the trial court for sentencing. Instead we should exercise that mandate ourselves.

38. In the result, we dismiss the appeal against conviction. We hereby allow the appeal on sentence, set aside the death sentence and substitute it with a jail term of twenty (20) years from 14th October, 2010 when the appellants were convicted and sentenced.

**DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF NOVEMBER, 2021.**

**R. N. NAMBUYE**

**.....**

**JUDGE OF APPEAL**

**HANNAH OKWENGU**

**.....**

**JUDGE OF APPEAL**

**F. SICHALE**

**.....**

**JUDGE OF APPEAL**

***I certify that this is a true copy of the original***

**DEPUTY REGISTRAR**