



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: WAKI, NAMBUYE, & M'INOTI, JJ.A.)

CRIMINAL APPEAL NO. 35 OF 2017

BETWEEN

JOSEPH MUERITHI KANYITA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from the judgment of the High Court of Kenya at Nairobi (Ngenye-Macharia, J.) dated 15th September 2016 in H.C.C.R.A. No. 181 of 2013)

JUDGMENT OF THE COURT

On 13th September 2013, the Chief Magistrate's Court, Nairobi convicted **Joseph Mureithi Kanyitta (the appellant)** and **Michael Mwangi Ngugi**, who is not before us in this appeal, of the offences of **forgery** contrary to **section 350 (i)** of the **Penal Code** and **obtaining registration by false pretences** contrary to **section 320** of the Penal Code. Separately the appellant was also convicted of the offences of **uttering a false document** contrary to **section 353** of the Penal Code and **making a document without authority** contrary to **section 357 (a)** of the Penal Code. For the offences of forgery, uttering a false document and making a document without authority, the court imposed a fine of **Kshs 100,000** for each offence or in default **6 months** imprisonment. For the offence of obtaining registration by false pretences, the court imposed a fine of **Kshs 200,000** or **1 year** imprisonment. **Michael Mwangi Ngugi** was satisfied with the conviction and fine, paid up the fine and went his way, hopefully to lead a more honest and upright life. We shall only hear of him nominally in this appeal, where necessary, as the appellant's co-accused.

The appellant on the other hand was aggrieved by both the conviction and sentence and preferred a first appeal in the High Court. The appeal was heard by **Ngenye-Macharia, J.**, who on 15th September 2015 partly allowed the appeal and quashed the appellant's conviction for forgery and uttering a false document, and set aside the sentences. However she upheld the conviction for the offences of making a document without authority and obtaining registration by false pretences. To the great shock of the appellant, the learned judge enhanced the sentences to **2 years** imprisonment for forgery and **6 months** imprisonment for obtaining registration by false pretences. There was no option of a fine but the sentences were ordered to run concurrently.

In this second appeal, the appellant challenges his conviction for the offences of making a document without authority and obtaining registration by false pretences, which the High Court upheld. He also challenges the enhancement of his sentence as unlawful, and without jurisdiction. Before we delve into

the merits of the appeal, the following is a summary of the background to the appeal.

On the charge of making a document without authority, the particulars were that on 31st August 2007 at Nairobi, with intent to defraud, the appellant, without lawful authority or excuse, made a transfer of lease, purporting it to be a genuine transfer of lease for **Land Title No. Nairobi/Block 94/170**, (the suit property) drawn by **Loice Wairimu Kaguchia** of **Kaguchia & Company Advocates**. As regards the charge of obtaining registration by false pretences, the particulars were that on 13th September 2007 at Ardhi House, Nairobi, with intent to defraud, the appellant and his co-accused jointly obtained registration of Certificate of Lease to the suit property by false pretences.

The evidence that was adduced by the prosecution was that **Captain Moses Kariuki Wachira (Wachira)** purchased the suit property from **Joseph Mwaniki Gitau** and **Milka Njeri Gitau** in 2005 for Kshs **3,800,000**. At the material time Wachira, who was residing in the USA with his wife **Monica Wakiero Karanja** alias **Monica James (Monica)**, decided to register the suit property in Monica's name as his nominee. All the time thereafter, the original documents of title to the suit property were held in the custody of Wachira's advocates, initially **Messrs. S. G. Mbabu & Co Advocates** and later **Messrs. Musyimi & Company Advocates**. According to **Anne Njeri Kimani Mbugua (Mbugua)**, an advocate of the High Court with the latter firm of advocates, the original documents of titles for the suit property were throughout in their possession and safe custody. **Rosina Ndila Mule, Assistant Commissioner of Lands, Registration Section (Mule)**, testified that the documents of title held by Mbugua were originals and that a parcel of land cannot have two original documents of title. Wachira then started developing the suit property, erecting thereon a residential building, which was virtually complete when the offences leading to this appeal were committed.

By a power of attorney allegedly donated by Monica to the appellant's co-accused, the suit property was allegedly sold to the appellant for Kshs. 3,800,000 and transferred to him on 13th September 2007. According to Mule, the documents of title that were used to transfer the suit property to the appellant were also originals, although they could not be traced when Wachira's advocates complained that they were indeed holding the original documents of title for the suit property. On 26th November 2007 the appellant charged the suit property to secure a loan of **Kshs 18,000,000** from **Investments and Mortgages Bank Ltd**, before attempting to sell it to **John Maina Mburu** for **Kshs 25,000,000** on 27th January 2009. Mburu, in a bid to take possession of the suit property, evicted Wachira's workers. Upon learning of the purported sale of the suit property, Wachira reported the matter to the police, leading to the arrest and charging of the appellant and his co-accused as aforesaid.

The power of attorney, which was used to sell and transfer the suit property to the appellant, was purportedly executed by Monica on **5th March 2007** before **Ndegwa Wokabi, Advocate (Wokabi)** and indicated Monica's identification document to be **Passport No. A476174**. According to Wokabi, he did not draw the Power of Attorney and Monica never appeared before him on 5th March 2007 or at all. Indeed it was his evidence that he had never met Monica before testifying in court. Evidence from the Ministry of State for Immigration and Registration of Persons indicated that Monica had reported her **Passport No. A476174** to have been destroyed by fire on 13th March 2006. A copy of the **San Diego Crime/Incident Report** dated 30th August 2006 confirmed that indeed Monica made the report of the loss of her passport. As a result she was issued with a new passport **No. A 1071334** on 7th September 2006. Records from Immigration indicated that the new passport was last used on 11th September 2006. It suggested therefore that as of 5th March 2007 when she purportedly donated the power of attorney, Monica was identifying herself using a passport that she had already reported to be destroyed, rather than the passport issued subsequently. It is also apt to note that Wachira testified that as of the date Monica was allegedly executing a power of Attorney in Nairobi on 5th March 2007, she was in fact with him in the USA. The evidence from immigration was also that Monica was not in Kenya around the period she allegedly donated the power of attorney to the appellant's co-accused.

As regards the transfer of lease that was used to transfer the suit property from Monica to the appellant, the same was allegedly drawn by **L. W. Kaguchia (Mrs.) Advocate** of **Asili Co-op House, 4th Floor, P. O. Box No. 4252-00100 Nairobi**, who also allegedly witnessed the signatures of the appellant and his co-accused on 31st August, 2007. **Loise Wairimu Kaguchia (Kaguchia)** denied having drawn the transfer of

lease or having witnessed the signatures thereon. She denied too that the stamp affixed on the instrument or the signature on it were hers. It was her evidence that she had never met Monica, the appellant or his co-accused. She explained that she practiced law under the name and style of **Kaguchia & Company Advocates** in Nakuru and had a branch office in Nairobi at **KEMU Towers** rather than Asili Co-op House. She also testified that her postal address in Nairobi was **P. O. Box 10187-00100** and not what was indicated in the purported transfer. In addition she added that she had never used the initials **L.W.** or the title **Mrs.** in connection with her legal practice. What was most startling about the alleged transfer of lease was the fact that the photograph affixed on it purporting to be that of Monica as the transferor, was in fact a photograph of the appellant's sister, who the prosecution identified as **Purity Kanyiri**. While admitting that the photograph was not that of Monica, the appellant and his co-accused claimed not to know whose photograph it was.

The other important evidence was the **Forensic Document Examiner's Report** prepared and adduced by **Antipas Nyanjwa (Nyanjwa)**. The witness examined, as against the alleged forgeries, the rubber stamp and specimen signature of Kaguchia, the rubber stamp and specimen signature of Wokabi, and the known signature of Monica against those in the power of attorney and the transfer of lease. He concluded that the signatures were forgeries and that the genuine rubber stamps of the respective advocates did not make the impressions on the power of attorney or the transfer of lease.

When they were placed on their defence, the appellant and his co-accused gave sworn evidence and called two witnesses, who included Monica. The substance of the appellant's defence was that while living in San Diego, USA, he came to know Monica who offered to sell to him the suit property, as she did not intend to come back to Kenya. She gave him a copy of the documents of title after which he conducted a search and upon confirming that the suit property was indeed registered in her name, she came to Nairobi in March 2007 and introduced him to the co-accused, the donee of the power of attorney. They then proceeded to the offices of Wokabi where the power of attorney was prepared. Subsequently he entered into the sale agreement with the co-accused and deposited the purchase price into Monica's account, before the property was transferred in his name in August 2007. The transfer of lease was drawn by Kaguchia at Asili House, Nairobi and the appellant and the co-accused duly signed the same before Kaguchia witnessed their signatures. A **Mr. Muraguri** from Wokabi's office registered the transfer and in November 2007 the appellant was given possession of the suit property. Subsequently he was arrested and charged at the instigation of Wachira. Otherwise, he denied the charges, maintaining that the transaction between him and Monica was legitimate and above board.

The defence of the co-accused was that he had met Monica for the first time in a restaurant in Naivasha through mutual friends. They exchanged telephone contacts because he was interested in migrating to the USA under the Green Card rotary. On 5th March 2007 Monica called him while she was in Nairobi and they met with her and the appellant at Hilton Hotel. Monica informed him that she had a property that she wanted to sell to the appellant and that because she was returning to the USA, she wished to appoint him her attorney for purposes of completing the transaction with the appellant. Thereafter they proceeded to the offices of Wokabi who prepared the power of attorney and witnessed Monica's signature. Monica then gave him, among others, the original documents of title for the suit property. After Monica confirmed to him in August 2007 that the appellant had paid the purchase price, he proceeded to transfer the property to the appellant vide a transfer, which was drawn and witnessed by Kaguchia at her offices in Asili House, Nairobi. All the services he rendered in the transaction were *pro bono* and he received neither payment nor facilitation fees.

Lastly Monica testified in defence of the appellant and his co-accused. She confirmed that at the material time she was married to Wachira but they had subsequently divorced. The suit property was purchased by Wachira and registered in her name in 2005. She had met the appellant in San Diego, California, USA, where she was living with her family while the appellant was attending college. The two started a joint business of exporting medical and electronic equipment to Kenya. She agreed to sell the suit property to the appellant who wished to relocate back in Kenya, for Kshs 20,000,000 but he paid Kshs 3,800,000, with the balance being offset from their business transactions. At the time of the sale of the suit property, Wachira was developing the same and it had a residential house that was nearing completion. For the purpose of the transaction, she donated a power of attorney to the co-accused. She came to Kenya only

for a day, travelling on her Kenyan passport, and left in the evening. The power of attorney was drawn by Wokabi who also witnessed her signature. She however confirmed that the photograph on the transfer of lease was not hers. Subsequently the co-accused transferred the property to the appellant and she had no claim against the appellant as he had paid her the agreed purchase price.

That then is the background to this appeal. Although the appellant's memorandum of appeal contains seven grounds of appeal, the entire appeal revolves around two broad questions, namely first, whether the High Court erred by sustaining the appellant's conviction for the offences of making a document without authority and obtaining registration by false pretences, and second, whether the court erred by enhancing his sentence. Regarding the conviction, **Mr. Kang'ahi**, the appellant's learned counsel, submitted that the charge of making a document without authority was based on the transfer of lease and that at the material time the suit property was owned and registered in the name of Monica, who confirmed that she had indeed sold the suit property to the appellant. He contended therefore that the transaction was genuine; the signatures on the lease were genuine; the appellant was a *bona fide* purchaser for value and that in any case there was no evidence to show that the transfer of lease, if indeed it was made without authority, was made by the appellant. Lastly counsel submitted that had the first appellate court properly re-evaluated the evidence as it was bound to do, it could have concluded that the prosecution did not prove beyond reasonable doubt that the transfer was made without authority and or that it was the appellant who made it.

As regards obtaining registration by false pretences, counsel submitted that for the reason that the transaction between the registered owner of the suit property, Monica, as the seller and the appellant, as the purchaser, was genuine, the registration of the suit property in the name of the appellant was not obtained by false pretences. Accordingly, we were urged to find that the conviction was in error and to allow the appeal and set it aside.

Turning to the appeal against sentence, counsel submitted that the enhancement of the sentence by the first appellate court was unlawful and without jurisdiction. He contended that the sentence by the trial court was a lawful sentence and that the first appellate court had no basis for interfering and enhancing it. He added that the State did not file and serve a cross-appeal against the sentence that was meted out by the trial court and further that the first appellate court did not warn the appellant of the possibility of enhancement of the sentence. Such warning, it was contended, was necessary even though the State had filed a notice of enhancement of sentence. Counsel also faulted the High Court for allowing counsel for PW1, who was watching brief, to participate in the proceedings as regards enhancement of the sentence. The appellant relied on the judgments of this Court in ***JOA v. Republic, Cr. App. No. 25 of 2011*** and ***Charles Muriuki Mwangi v. Republic, Cr. App. No. 24 of 2014*** and submitted that in the absence of a cross-appeal, it was necessary for the court to warn the appellant that the sentence was likely to be enhanced, and having failed to do so, we must allow the appeal against sentence.

Lastly it was contended that since the appellant had paid the fine that was imposed by the trial court, there was no basis for the first appellate court to impose a custodial sentence. In counsel's view having paid the fine, the appellant was deemed to have served the sentence and by enhancing the sentence, the High Court punished the appellant twice. This was the case, even though the High Court ordered the fine paid by the appellant to be refunded to him.

The respondent opposed the appeal contending that the conviction of the appellant for the two offences was proper and fully supported by the evidence on record, and in addition, that the first appellate court had jurisdiction to enhance the sentence and in the circumstances of this appeal the enhancement was lawful and merited. **Mr. Omirera**, learned Senior Assistant Director of Public Prosecutions, urged that Kaguchia, who allegedly drew the transfer of lease on instructions of Monica denied having drawn the instrument or having witnessed the signatures on it. The evidence of Nyanjwa equally confirmed that the signature on the transfer of lease was not Monica's and that the rubber stamp imprint of the instrument was not made by Kaguchia's rubber stamp. Accordingly, it was submitted that the transfer was a forgery and was made without authority.

Regarding the offence of obtaining registration by false pretences, it was submitted that the registration of

the appellant as the owner of the suit property was based on the forged transfer of lease and therefore the registration was obtained by the appellant falsely pretending that the transfer of lease was genuine. It was also submitted that the appellant's registration was procured through false pretences because the original documents of title, which had to be produced to effect a lawful transfer, were still in the custody of Wachira's advocates.

On enhancement of the sentence, counsel submitted that even though there was no cross-appeal, the State had served a notice of enhancement of sentence on the appellant's advocate well in advance and that the appellant was aware of the possibility of enhancement. It was also contended that the appellant did not raise any objection when the notice for enhancement of sentence was served.

It needs no emphasis that this is a second appeal and by dint of section 361(1) of the **Criminal Procedure Code**, it is confined to issues of law only. On matters of fact, we must pay homage to the concurrent findings of the two courts below and we will not interfere with their conclusions unless it is demonstrated that they considered matters they ought not to have considered or that they failed to consider matters they should have considered or that looking at the evidence as a whole, they were plainly wrong in their decision, in which case such errors would be treated as matters of law. (See ***Chemagong v. Republic [1984] KLR 213*** and ***Karani v. Republic [2010] 1 KLR 73***).

The offence of making a document without authority is provided for in section 357 of the Penal Code as follows:

“357. Any person who, with intent to defraud or to deceive –

(a) without lawful authority or excuse makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or electronic record or writing; or

(b) knowingly utters any document or electronic record or writing so made, signed or executed by another person, is guilty of a felony and is liable to imprisonment for seven years.”

That offence is committed by the making, signing or executing a document, electronic record or writing, for or in the name of another person. In addition the making, signing or execution must be without lawful authority or excuse, and with the intent to defraud or deceive. In this case, while the appellant admits that the transfer of lease was made for and in the name of Monica, he contends first that it was made with lawful authority of Monica as the registered owner of the suit property. He further contends that she confirmed that lawful authority in her testimony. Secondly he urges that in any event there was no evidence that he was the one who made the transfer of lease.

It is true that Monica testified that the transfer of lease was genuine and made with her authority. However, the concurrent findings of the trial court and the first appellate court were that Monica was not a witness of truth and that her evidence was concocted in a bid to irregularly dispossess and hurt her estranged husband, Wachira. The trial court had the advantage of hearing and seeing the witnesses as they testified and was not impressed by Monica. The first appellate court, upon re-evaluating the evidence agreed with the trial court on its findings regarding the veracity of Monica's evidence and her low credibility as a witness. We cannot disregard those concurrent findings. In ***Daniel Kabiru Thiong'o v Republic, Cr. App. No. 131 of 2002*** this Court stated the approach as follows:

“To ask us to depart from the conclusions of the two courts, as counsel for the appellant urges us to do...is really tantamount to inviting us to depart from concurrent findings of fact by the trial and the first appellate courts. This Court will not do so unless it can be persuaded that there are compelling reasons for doing so. And the compelling reasons would be that no reasonable tribunal could on that evidence have arrived at such findings or, in other words, the findings were perverse and therefore bad in law.”

In our view, the grounds upon which the two courts below rejected Monica's evidence are valid and

compelling. Kaguchia, whom Monica allegedly instructed to draw and attest the transfer of lease, denied having drawn the said document or having witnessed the signatures of the appellant or Monica. Kaguchia's purported particulars as indicated in the transfer of lease, namely the name, the location of the office in Nairobi and the postal address were not hers. It was also her evidence that she had never met the appellant or Monica before her appearance in court. The photograph on the transfer of lease was not that of Monica but that of the appellant's sister. The evidence of Mule was that the appellant, who was pushing for hurried registration of the transfer of lease, provided that photograph. Mr. Nyanjwa supported Kaguchia's evidence after he found that her purported signature and rubber stamp were forgeries.

It must also be remembered the two courts below made concurrent findings that the power of attorney pursuant to which the transfer of lease was effected was also a forgery because it was not made by Wokabi as alleged by the appellant and Monica and that the report of the document examiner also confirmed that Wokabi's signature was forged. The evidence from Immigration also indicated that Monica was not in Kenya on the day she purported to have signed a power of attorney in Nairobi and that she identified herself by a passport, which she had previously reported destroyed in a fire. Accordingly we are satisfied that the first appellate court did not err in holding that the transfer of lease was made without lawful authority or excuse and with intent to defraud.

Once it is established that the transfer of lease was not made by or with the lawful authority of Monica, we cannot fault the two courts below for holding that in the circumstances of this appeal, it was made by the appellant and his co-accused. It bears repeating that Kaguchia denied drawing and attesting the transfer of lease. The appellant signed it and according to the evidence of Mule took it for registration at the Ministry of Lands where he pushed for its hurried registration on the ground that he was returning to the USA. From the evidence of the same witness, it was the appellant who supplied his sister's photograph, purporting it to be Monica's. In our view there was sufficient evidence from which the two courts below concluded that the transfer of lease was made by the appellant and the co-accused.

Regarding the charge of obtaining registration by false pretences section 320 of the Penal Code provides as follows:

“320. Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence is guilty of a misdemeanour and is liable to imprisonment for one year.”

On the other hand *section 312* of the same Code defines “*false pretence*” thus:

“312. Any representation, made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.”

The evidence we have adverted to above leaves no doubt in our minds that the appellant was properly convicted of the offence of obtaining registration of the suit property in his name by false pretences. He willfully and knowingly used a false transfer to procure registration of the suit property in his name. He submitted the transfer of lease to Mule and falsely represented to her that it was genuine, while in fact he knew it was false. The ingredients of the offence of false pretences as explained by this Court in *Mathlida Akinyi Oware v.*

Republic, Cr App. No 12 of 1989 and *Oware v Republic [1989] KLR 287* were duly proved.

We now turn to the last question, namely whether the first appellate court erred by enhancing the sentence that the trial court imposed on the appellant. The appellant contends that there was no appeal against sentence and that he was not warned before the first appellate court enhanced the sentence. In *JJW v. Republic, Cr. App. No 11 of 2011*, this Court held that notwithstanding the fact that section 354(3) of the Criminal Procedure Code empowers the High Court to enhance or alter the nature of the sentence imposed by the trial court, in the absence of an appeal against sentence, the court must warn the appellant before it enhances the sentence. The Court stated:

It is correct that when the High Court is hearing an appeal in a criminal case, it has powers to enhance sentence or alter the nature of the sentence. That is provided for under Section 354 (3) (ii) and (iii) of the Criminal Procedure Code. However, sentencing an appellant is a matter that cannot be treated lightly. The court in enhancing the sentence already awarded must be aware that its action in so doing may have serious effects on the appellant. Because of such a situation, it is a requirement that the appellant be made aware before the hearing or at the commencement of the hearing of his appeal that the sentence is likely to be enhanced. Often times this information is conveyed by the prosecution filing a cross appeal in which it seeks enhancement of the sentence and that cross appeal is served upon the appellant in good time to enable him prepare for that eventuality. The second way of conveying that information is by the court warning the appellant or informing the appellant that if his appeal does not succeed on conviction, the sentence may be enhanced or if the appeal is on sentence only, by warning him that he risks an enhanced sentence at the end of the hearing of his appeal."

And in ***Samwel Mbugua Kihwanga v. Republic, Cr. App. No. 239 of 2011***, the Court explained that although the practice of warning the appellant before enhancing the sentence was not a requirement of law, it was a matter of practice that had gained notoriety and served to put the appellant on notice of the consequences that would befall him depending on the outcome of the appeal.

In this appeal, we are satisfied that the appellant was appropriately warned that should his appeal fail the State would seek enhancement of the sentence on the ground that it was too lenient. The warning took the form of a notice of enhancement of sentence that was duly served upon the appellant's advocate. In view of the fact that the filing and service of the notice is not challenged or otherwise contested, we do not see any basis in law for the contention that the appellant, who was represented by a lawyer, had to be personally served with the notice of enhancement of sentence.

The question still remains whether in the circumstances of this appeal the first appellate court was entitled to enhance the sentence. It is common ground that the sentence imposed by the trial court was a lawful sentence, which was within its jurisdiction to impose. The prescribed sentence for the offence of making a document without lawful authority is seven years imprisonment while that for the offence of obtaining registration by false pretences is imprisonment for one year. For the first offence the trial court imposed a fine of Kshs 100,000 or in default 6 months imprisonment while for the second, it imposed a fine of 200,000 or 1 year imprisonment in default. By dint of **section 26(3)** of the Penal Code, a person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or in substitution for imprisonment where the prescribed sentence, as in this case, is not a minimum sentence. The trial court was within its power therefore to impose a fine in lieu of custodial sentence particularly after the prosecution stated that they had no previous records of the appellant.

The first appellate court interfered with the sentence and for the first offence enhanced it to two years imprisonment and for the second, to 6 months imprisonment, without the option of a fine. Was the court entitled to so proceed in the circumstances? Decisions of this Court abound to the effect that the discretion on sentence belongs to the trial court and that an appellate court will not easily interfere with the exercise of that discretion. In ***Bernard Kimani Gacheru v. Republic, Cr. App. No. 188 of 2000*** this Court stated the law as follows:

"It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist."

(See also Alex Abuga Omache v Republic, Cr. App. No. 152 of 2000 and I. P. Veronica Gitahi &

Another v. Republic, Cr. App. No 232 of 2016).

In this appeal the sentence by the trial court was not illegal or unlawful. There is no palpable misdirection by that court apparent on the record. We do not perceive any material factor that the trial court overlooked or any immaterial factor that it took into account. It has not been demonstrated that the trial court acted on a wrong principle or that the sentence it imposed was manifestly excessive or manifestly low. In these circumstances, we are satisfied that the first appellate court erred in enhancing the sentence imposed on the appellant.

In the result this appeal fails as regards conviction but succeeds as regards sentence. We allow the appeal on sentence, set aside the sentence imposed by the High Court and restore the sentence imposed by the trial court.

Subject to paying the fine imposed by the trial court or paying back the same in the event it was released to him after the judgment of the High Court, the appellant shall be set at liberty forthwith unless he is otherwise lawfully held. It is so ordered.

Dated and delivered at Nairobi this 28th day of July, 2017

P. N. WAKI

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JUDGE OF APPEAL

R. NAMBUYE

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR