



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KIHARA KARIUKI (PCA), GITHINJI & J. MOHAMMED, JJ.A.

CRIMINAL APPEAL NO. 159 OF 2014

BETWEEN

ROBA GALMA WARIOAPPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Nairobi (Mwilu, J) dated 16th March, 2013

in

H.C.CR.C NO. 84 of 2008)

JUDGMENT OF THE COURT

1. This appeal arises from the judgment of Mwilu, J (*as she then was*) in High Court Criminal Case No. 84 of 2004. The appellant, **ROBA GALMA WARIO**, was charged and convicted with the offence of murder contrary to **section 203 as read with section 204 of the Penal Code, Cap 63 Laws of Kenya**. The appellant was convicted of the murder of one **JAMES MWANIKI MUREITHI** (hereinafter the „deceased?). The prosecution relied on ten witnesses to prove the charge against the appellant.
2. The following is a brief summary of events that led to the commission of the offence, PW4, Isago Barako Boi, together with the appellant went to a bar by the name of Home Pub (the Pub) on 26th September 2008, at around 11:00 p.m. The Pub was owned by the deceased. The two found PW5, Hassan Ibrahim Hassan alias Sora (an acquaintance of PW4) already there and proceeded to drink alcohol.
3. Between 1:00 a.m. and 3:00 a.m. the appellant had a slight altercation with a female customer. The deceased intervened and told the appellant to leave the Pub. The appellant returned to the Pub and was, once more, forcibly removed. It was the evidence of PW4 and PW5 that at this point the appellant removed a small knife from his pocket and stabbed the deceased with it. PW4 and PW5 tried to prevent the appellant from stabbing the deceased again in the process of which PW5's hand was injured. The appellant fled from the scene and followed PW4 into the home of the appellant's relative home which was near the Pub, where PW4 informed them that the appellant

had stabbed someone. Meanwhile, the deceased was taken to Kenyatta National Hospital but was declared dead on arrival and was later taken to the City Mortuary.

4. The post-mortem report confirmed that the deceased had died as a result of a stab wound. The small knife was however, never recovered. A mental assessment carried out by one Dr. Kamau on 7th October 2008 revealed that the appellant was mentally fit to stand trial. Initially the police arrested five suspects, including PW4 and PW5 who were released after investigations were carried out and found that there was insufficient evidence against them. Further it was the evidence of the investigating officer, PC Peter Mutiso [PW 10] that the appellant voluntarily recorded a statement confessing that he had indeed stabbed the deceased. The investigating officer stated that there was overwhelming evidence against the appellant.
5. The learned Judge put the appellant on his defence after a finding that there was sufficient evidence adduced by the prosecution making out a *prima facie* case against him. The appellant chose to give an unsworn statement and called no witnesses.
6. The appellant stated that he and PW4 had been drinking heavily and chewing *miraa* prior to going to the Pub. He gave evidence that while at Home Pub the deceased sent a watchman to ask PW4, PW5 and the appellant to leave the premises as they were making too much noise and causing a disturbance. The three asked to be given time to finish their drinks and the deceased gave them fifteen minutes which they found to be too short. The appellant told the trial Court that he suffered verbal and physical abuse at the hands of the deceased, and at one point he was slapped and then thrown out of the premises. The deceased followed them out with a *masai rungu* with the intention of assaulting the appellant with it but was stopped by PW4. It was the appellant's testimony that both he and PW4 beat the deceased and abandoned him when they realised that he was bleeding. They were both arrested the following morning when they were informed that the deceased had died. The appellant denied stabbing the deceased.
7. The learned Judge in analysing the evidence categorised the witnesses into two groups: the eye witnesses and the other witnesses whose evidence went to support the causation of the offence. In her analysis and evaluation of the evidence, the learned Judge was aware of the required standard and burden of proof that was on the prosecution, recognising that anything below the threshold would lead to an acquittal of the murder charge. This would mean that the two ingredients of murder - *actus reus and mens rea* – had both to be present to satisfy a charge and conviction of murder.
8. On the first ingredient of murder, that of *actus reus*, the learned Judge concluded that it was indeed the act of the appellant that led to the death of the deceased. The learned Judge accepted the evidence of PW4 and PW5, having found that they corroborated each other in all material aspects. The learned Judge rejected the appellant's defence, terming it as “**escapist at best and untruthful at worst**”. Was this act punctuated with malice aforethought? The learned Judge answered this question in the affirmative. The appellant used a knife as a weapon with knowledge that it would cause grievous harm. The learned Judge found no basis to the appellant's version of events that accentuated his inebriation and thus his inability to know what exactly he was doing.
9. The learned Judge indicated that it was not clear whether the accused was raising the defence of insanity due to intoxication or he was claiming that he was so intoxicated as to be incapable of forming the necessary intention to commit murder. In any event the learned Judge determined that the appellant had failed to discharge the burden required of the defence of insanity due to intoxication. The learned Judge made reference to the case of **MANYARA V R, (5) [1955] 22 EACA 502**. The learned Judge found that the evidence of PW4 and PW5 dislodged any evidence of intoxication on the appellant's part that would disable the constituting of the intent to commit murder.
10. The learned Judge found no material contradictions as alleged in the submissions of the defence counsel to vitiate the guilty finding or water down the evidence adduced against the

appellant. The learned Judge did not find any evidence that PW4 and PW5 were accomplices of the appellant as she found no common intention in the commission of the offence and cited the case of ***WATETE V UGANDA, [2000] 2 EA 559 (SCU)*** where it was stated that:

“...In a criminal trial a witness is said to be an accomplice if, inter alia, participated as a principal or an accessory in the commission of the offence, the subject of the trial.”

11. On the issue that, one Peter Maina, who could have given evidence adverse to the prosecution, was not called as a witness, was rejected by the Judge who determined that there was nothing to show what evidence and its probative value, if any, that witness had. In her determination, the learned Judge was satisfied that the prosecution had discharged its onus and found the appellant guilty of the offence of murder and convicted him accordingly.
12. Aggrieved and dissatisfied with the decision of the High Court, the appellant brings this appeal citing 12 grounds of appeal in his Memorandum of Appeal. These grounds can be summarised as follows: that the learned Judge erred in fact and in law in:
 - a. *Allowing the appellant to take plea without the assistance of an interpreter;*
 - b. *Failing to find that there was no mens rea;*
 - c. *Failing to find that a crucial witness had not been called;*
 - d. *Failing to find that the appellant had been provoked;*
 - e. *Failing to find that if the crime was committed, then the appellant acted in self-defense;*
 - f. *Failing to find that the evidence of PW4 and PW5 was accomplice evidence;*
 - g. *Shifting the burden of proof to the appellant;*
 - h. *Convicting the appellant on the basis of inconsistent evidence;*
 - i. *Relying on evidence of witnesses whose testimony could not pass the test of veracity;*
 - j. *Limiting the defence’s advocate’s participation in the defence case;*
 - k. *Admitting to evidence an alleged confession made to the investigating officer; and*
 - k. *Failing to consider appellant's defence.*
13. When the appeal came up for hearing on 27th May 2015, both parties were represented by counsel: Mr Paul Nyaga represented the appellant while Mr O. J. Omondi, Senior Assistant Director of Public Prosecutions [SADPP], was present for the respondent.
14. Mr Nyaga, submitted that the appellant was prejudiced by the court’s failure to provide a Borana interpreter for him and conducted the entire trial in Kiswahili. The appellant was, as a result, unable to defend himself against the charges against him. Counsel referred the Court to ***Article 50(2)(n) of the Constitution, 2010***, which required that a trial should be conducted in a language which the accused person can understand.
15. Counsel further submitted that the prosecution failed to prove that the appellant had formed the necessary intention to commit the offence of murder. Counsel argued that the appellant was so

intoxicated that he lacked awareness that he was committing murder, therefore, he lacked the capacity to form *mens rea*.

16. Counsel further contended that if the appellant committed the offence, it was because the appellant had been provoked to act in a moment of heated passion, whilst being thrown out of the pub and during a confrontation.

17. Counsel submitted that there were material contradictions in the evidence given by the prosecution witnesses which could not warrant a conviction: that is, differing accounts on whether the deceased was stabbed inside or outside of the pub. Further, that a material witness who reported the crime, the watchman at the Pub, one Peter Maina, was not called by the prosecution which was fatal to their case.

18. Finally counsel urged the Court to consider the appellant's evidence that together with PW4 they beat up the deceased; that they were accomplices and the only reason PW4 was not charged was because he was a nephew of a senior police officer and on account of a meeting of Borana elders. Counsel submitted that both PW4 and PW5 were accomplices and the trial court should have warned itself when considering their evidence.

Counsel cited the case of ***KINYUA V R, [2002] 1 KLR 256***. Counsel urged this Court to allow the appeal and quash the conviction thus setting aside the death sentence.

19. Mr Omondi, counsel for the respondent opposed the appeal. On the issue of language, counsel submitted that there was no evidence on record to show that the appellant did not understand Kiswahili as he pleaded „not guilty? in Kiswahili and gave an unsworn statement in Kiswahili.

20. On *mens rea*, counsel submitted that the issue was considered by the trial court which held that there was no evidence to show that the appellant's intoxication was to the extent that negated *mens rea*. Counsel submitted that the learned trial Judge drew inference for this determination from the conduct of the appellant on the fateful night, which showed that he was aware of what he was doing. Counsel contended that the burden of proof fell squarely on the appellant if he intended to rely on the defence of intoxication.

21. Counsel urged the Court to find that there were no contradictions in the evidence of prosecution witnesses, neither was there any evidence to show common intention on the part of the appellant, PW4 and PW5, despite the fact that they were drinking together, which fact is not denied. Counsel reminded the Court that both PW4 and PW5 tried, albeit unsuccessfully, to keep the appellant from attacking the deceased. PW5 was injured in the process as he tried to prevent the appellant from stabbing the deceased a second time. As to the uncalled witness (the watchman at the Pub). Counsel argued that there was nothing to show what kind of adverse evidence he would have adduced against that which PW4 and PW5 gave. Counsel urged the Court to dismiss the appeal for lack of merit and uphold the conviction and sentence meted by the trial court.

22. In reply, counsel for the appellant reiterated that the appellant was not in charge of his faculties at the time he committed the offence, which was supported by the fact that the appellant was, just before the offence was committed, disturbing customers. Counsel urged the Court to quash the conviction of murder and set aside the sentence.

Determination

23. This being a first appeal, this Court is obligated to re-evaluate and analyse the facts and evidence that resulted in the decision in the High Court and then arrive at its own decision. See: ***OKENO V R, [1972] E.A. 32*** which stated:

“The first appellate court must itself weigh conflicting evidence and draw its own

conclusion (*SHANTILAL M RUWALA V R*, [1957] EA 57). It is not the function of a first appellate court merely to scrutinise the evidence to see if there was some evidence to support the lower courts' findings and conclusions; it must make its own findings and draw its own conclusion 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 witness."

24. The appellant has raised several issues to challenge the murder conviction: intoxication, provocation, self-defence, accomplice evidence and its credibility.

25. **Section 203 of the Penal Code** provides as follows:

"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder." S.206 of the same Code defines what malice aforethought is. It provides

as follows:

"Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances -

- a. **an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;**
- b. **knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;**
- c. **an intent to commit a felony;**
- d. **an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony."** (emphasis added).

26. For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.

27. On the issue of intoxication, the appellant simply states that he was '*really drunk*'. The extent of his intoxication is unknown, and further it is the evidence of PW4 and PW5 that the appellant was not drunk to the extent that he was incapable of knowing what he was doing. For someone who claims to have been '*really drunk*' the appellant recalls the events of that fateful night in great detail, all except the stabbing. He alleges being unaware of the stabbing and denies that he stabbed the appellant.

28. Was the appellant so intoxicated as to be unable to form the required malice aforethought necessary to sustain a murder charge? The appellant states that both he and PW4 beat up the deceased to the point where he bled. When they realised that the deceased was bleeding, they left. Were these the actions of a person who did not know what he was doing? He was still cognizant enough to know what he was doing and to realise what he had done. The intention to cause grievous harm can be inferred from his actions.

29. Both PW4 and PW5 state that they were trying to prevent the commission of the offence by the appellant. Evidence, from the other witnesses, shows that the deceased was bleeding from a stab

wound and not from a beating. This is supported by the post-mortem report which does not reveal the appellant suffered from such injuries as were alleged by the appellant. The report stated that the deceased died from internal haemorrhage into the chest cavity and the right lung caused by a stab wound which caused the deceased internal bleeding.

30. Intoxication has been provided for as a defence to a criminal charge under **Section 13 of the Penal Code** and it provides as follows:

“13. (1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

2. **Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and -**

a. **the state of intoxication was caused without his consent by the malicious or negligent act of another person; or**

b. **the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.**

3. ***Where the defence under subsection (2) is established, then in a case falling under paragraph***

a. ***thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code and of the Criminal Procedure Code relating to insanity shall apply.***

4. ***Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.***

(5) For the purpose of this section, “intoxication” includes a state produced by narcotics or drugs.”

(emphasis added).

31. Though provided by law, it is clear that the defence of intoxication is very narrow in its application. **S. 13(4) of the Penal Code** should not be read in isolation. It should be read within the confines of **Sections 13)(1),(2)(a)&(b)**. The learned Judge considered this defence in her judgment. Was the appellant so drunk that he was driven to temporary insanity? Or was the appellant so drunk that he did not know what he was doing? The learned Judge considered both instances and in citing the case of ***Manyara v R, (supra)*** she was well aware that the burden of proof remained on the prosecution in the latter case. She determined that the prosecution had succeeded in proving its case. In the former case, she held that the appellant had done nothing to show insanity due to intoxication.

32. In the case of ***KANGORO s/o MRISHO V R, [1956] 23 EACA 532*** the predecessor to this Court, the Court of Appeal for East Africa referred to the case of ***CHEMININGWA V R, EACA CR NO. 450 OF 1955 (unreported)***, in which it was stated:

“It is of course correct that if the accused seeks to set up a defence of insanity by reason of intoxication, the burden of establishing that defence rests upon him in that he must at least demonstrate the probability of what he seeks to prove. But if the plea is merely that the accused was by reason of intoxication incapable of forming the specific intention required to constitute the offence charged, it is a misdirection if the trial court lays the onus of establishing this upon the accused.” See: Joshua

Matata Ndonge v R, [2001] Eklr, CR NO. 122 OF 1991 (Kwach, Shah & O'Kubasu JJ.A).

33. In the case of NYAKITE s/o OYUGI, [1959] EA 322 at page 325 it was stated by the predecessors to this Court that:

“In the present case we think, with respect, that the learned trial judge erred in directing himself that the burden of raising a defence of intoxication so as to negative intent to kill or cause grievous harm was on the accused.”

34. In the case of BONIFACE MUTETI KIOKO AND WILLY NZIOKA NYUMU V R, [1982-88] 1 KAR page 157 it was held:

“It was the duty of the Judge to deal with alternate defences, such as intoxication, that emerged from the evidence, which might reduce the charge to manslaughter.”

35. In the present case, the learned Judge was clearly alive to the defence of intoxication that emerged from the evidence on record and dismissed it.

36. This Court in the case of KUPELE OLE KITAIGA V R, [2009] eKLR, CR. NO. 26 OF 2007 stated:

“A clear message must also go out to those of the appellants ilk who deliberately induce drunkenness as a cover up for criminal acts. Unless a plea of intoxication accords with the provisions of section 13 of the Penal Code it will not avail an accused and does not avail the appellant in this particular case.” (Emphasis added)

37. We concur with the findings of the learned trial Judge that the evidence of the prosecution that the appellant was not so drunk as to not know what he was doing. The evidence of PW4 and PW5 was well corroborated and there was no reason to reject their testimony. The learned judge was quite clear on why she rejected the unsworn defence of the appellant which she termed as untruthful and evasive. Further, though alleged to be highly intoxicated, the appellant was strong enough to wrestle with the deceased as well as PW4 and PW5 and manage to cut PW5 on his hand when they were trying to prevent him from stabbing the deceased a second time. In Joshua Matata Ndonge v R, (*supra*) the argument of the appellant's wife and which was accepted by this Court, was that her husband was not so drunk as to be unable to form the necessary intention: if he had been he would have been unable to overpower her.

38. To distinguish the present case from that which has been cited by the appellant's counsel, ANTHONY NDEGWA V R, CR NO. 352 OF 2012 [2014] eKLR the appellant in this case was said to have met the deceased outside a bar and without word stabbed the deceased on the neck and thereafter ran away. The witnesses saw no reason for the appellant to have stabbed the deceased. It was stated in the evidence that the appellant had been on a drinking spree. The High Court stated that the appellant had been drunk at the time but made no finding on it. This Court determined that the prosecution had failed to establish that despite being drunk the appellant had formed the requisite intention to kill. In the instant appeal, we find that the prosecution discharged its burden of proving that though the appellant had been drinking, it was not to the extent that he was not aware of what he was doing; that by using the knife to stab the deceased, and struggling to stab him again though restrained by PW4 and PW5, he had the intention to cause grievous harm, as provided under **S. 204(a) of the Penal Code**.

39. The appellant also introduced the defence of provocation. The Penal Code makes provision for provocation under **Sections 207 & 208** and states:

“207. When a person who unlawfully kills another under circumstances which, but for the

provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only.

208. (1) The term “provocation” means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial or fraternal relation, or in the relation of master or servant, to deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.

- 2. When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.*
- 3. A lawful act is not provocation to any person for an assault.”*

40. In his unsworn statement, the appellant stated that the deceased had physically and verbally abused him and was going to hit him with a *rungu*. The evidence of PW1, PW4 and PW5 shows that the deceased with the assistance of the watchman had asked the appellant and his drinking companions (PW4 and PW5) were escorted out. Their evidence did not tally with the accusations of the appellant that the deceased had resorted to violence or abuse. There is no indication, therefore, that the appellant was in such great danger from the deceased that would warrant the use of a knife. In *TEI s/o KABAYA V R, [1961] EA* the Court held:

“In considering whether provocation was sufficient to reduce offence to manslaughter it is material to consider the degree of retaliation as represented by the number of blows and the lethal nature of the weapon used.” (Emphasis added).

41. The appellant also raises the defence of self-defence: that he acted to defend himself. In *ROBERT KINUTHIA MUNGAI V R, [1982-88] 1 KAR 611* the Court stated that excessive use of force in defence of a person or property, whether or not there is an element of provocation present may be sufficient for the Court to regard the offence not as murder but as manslaughter.

42. *S. 17 of the Penal Code* provides:

“17. Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.”

43. The Common Law position on the issue of self-defence was recognised by our Courts in *AHMED MOHAMMED OMAR & 5 OTHERS V R, CR. NO. 414 of 2012 [2014] eKLR* as having been stated in the English case of *DPP V MORGAN, [1975] 2 ALL ER 347*: that the essential element of self-defence is that the accused believed that he was being attacked or in imminent danger of being attacked but this belief should be based on reasonable grounds. The ground of self-defence also fails, as evidence on record does not bring out that the appellant faced any kind of danger that made him fear for his life.

44. It was also argued that PW4 and PW5 were the appellant's accomplices. The learned Judge considered this and failed to find common intention to commit an offence. *S. 21 of the Penal Code* and as interpreted in this Court in the case of *DICKSON MWANGI MUNENE & ANOTHER V R, CR. NO. 314 OF 2011 [2014] eKLR* deduces common intention:

“... where there are two or more parties that intend to pursue or to further an unlawful object or a lawful object by unlawful means and so act or express themselves as to reveal such intention.

It implies a pre-arranged plan. Although common intention can develop in the course of the commission of an offence ... ”

45. In the above case, for common intention to be proved, it was stated that one must show: *criminal intention to commit the offence jointly with others; the act by one or more of the perpetrators in respect of which it is sought to hold an accused guilty, even though it is outside the common design, was a natural and foreseeable consequence of effecting that common purpose; and that the parties were aware of this when he or she agreed to participate in the criminal act.*

46. In ***R V TABULAYENKA s/o KIRYA, [1943] EACA 51*** cited in ***Dickson Mwangi Munene & another v R, (supra)*** it was held that:

“The common intention may be inferred from their presence, their actions and the omission of either of them to disassociate himself from the assault.”

The learned Judge determined there was no common intention formed, and PW4 and PW5 were witnesses to the incident. In fact PW4 and PW5 tried to prevent the stabbing, resulting in injury to PW5. They disassociated themselves from the assault. Though PW1 testified that after the deceased was stabbed the three of them (PW4, PW5 and the appellant) ran away, this is opposed by evidence proving the fact that PW5 was arrested at the scene, as was everyone present at the time. PW4 and the appellant were arrested the following morning. PW4 was later released.

47. The appellant also claimed that one Peter Maina, (the watchman at the pub) was not called as a witness yet he was the one who made the report to the police. There is no indication of the possible materiality of his evidence since there were other witnesses who gave an account of what happened, and whose evidence the learned Judge accepted as well-corroborated. ***S. 143 of the Evidence Act Cap 80 Laws of Kenya*** states that no particular number of witnesses shall be required to prove any fact in the absence of any provision of law to the contrary. Consequently, the inclusion or exclusion of Peter Maina's evidence was not prejudicial to the case against the appellant. A negative inference should not be drawn for the prosecution's failure to call him as a witness. We are guided by the case of ***MWANGI V R, [1984] KLR 595*** where this Court stated:

“Whether a witness should be called by the prosecution is a matter within the discretion of the prosecution and the court will not interfere with that discretion unless it may be shown that the prosecution was influenced by some oblique motive.”

In the instant appeal there is no indication that the prosecution was influenced by some oblique motive. This ground of appeal, therefore, fails.

48. On the issue that the proceedings were conducted in a language that the appellant did not understand, the appellant represented by counsel gave unsworn evidence. The appellant's counsel did not raise this issue to the attention of the trial judge. It cannot, therefore, be said that he suffered prejudice as he did not understand the proceedings or was not afforded an opportunity to adequately defend himself.

49. In the case of ***Watete v Uganda, (supra)*** it was held that a court must consider all factors likely to colour, taint or in any way affect a relevant witness's testimony or accuracy. We note that the appellant ran away after the incident occurred. The conduct of the appellant was indicative of the fact that he was conscious of what he was doing and that what he had done was wrong. The learned Judge considered all factors when evaluating the evidence before her and came to the conclusion that the appellant had satisfied the ingredients of the murder charge. The learned Judge

also considered all the elements alluded to by the appellant that might substitute a murder charge to one of manslaughter. Accordingly, we find that the trial court rightly convicted the appellant with the offence of murder. In the result, we uphold the conviction and sentence for murder and dismiss this appeal in its entirety.

Dated and delivered at Nairobi this 17th day of July, 2015.

P. KIHARA KARIUKI, PCA

JUDGE OF APPEAL

E. M. GITHINJI

JUDGE OF APPEAL

J. MOHAMMED

JUDGE OF APPEAL

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

DEPUTY REGISTRAR