IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: OKWENGU, MAKHANDIA & SICHALE, JJ.A.)

CRIMINAL APPEAL NO.255 OF 2011

BETWEEN

MICAH HAGAH SAMUEL……APPELLANT

AND

REPUBLIC……RESPONDENT

(Being an appeal from the judgment of the High Court of Kenya at Mombasa (Ojwang & Odero, JJ.) dated 6th June, 2011

in

H.C.Cr.A.No.188 of 2007)

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JUDGMENT OF THE COURT

In the early hours of 7th January, 2007 at 3. a.m. to be precise **J K S (PW1**), her son aged 7 years, **S K (PW5)** and her niece aged about 15 years, **S M B (PW3)** were asleep in PW1's house at ***[particulars withheld]*** village of Taita-Taveta County when a stone was hauled at the door of their house. The trio woke up but it was too late as two men had already forced their way into the house. The men were armed with torches which they flashed at them as they ordered them to keep quiet. They threatened to kill them if they made any noise or screamed for help. They demanded from PW1 money under threat of death. She told them that she did not keep the money in the house but in her shop. The two men were wearing black caps and had covered their mouths with black pieces of cloth. Unexpectedly however, the piece of cloth covering one of the men's mouth fell off and PW1 and PW3 were able to recognize that man as a neighbour, the appellant herein. Whereas, the appellant was armed with a panga, a toy pistol and what appeared to be explosives, his accomplice was armed with a sword. Soon after his disguise fell off, the appellant asked PW1, three times whether she had recognized him. Out of fear she answered in the negative. The appellant then insulted her and warned her that since she had refused to part with the money, she will have to use the same for her own treatment. It was then that he cut her on the head. In the process he took her mobile phone that was on a nearby table and some coins that were in a drawer under her bed. Frustrated with the little money that came by their way, the appellant again struck PW1 with a panga on the back. Sensing danger for her aunt, PW3 volunteered to lead the attackers to where PW1 kept her money and beseeched them not to assault her aunt any further. The appellant's accomplice accompanied PW3 to PW1's step mother's house in the same compound where ordinarily PW1 kept her

money in a hole she had dug on the floor of the house. On the instructions of the accomplice, PW3 persuaded PW1's step mother to open the door claiming that some visitors had arrived. Inside the house PW3 retrieved Khs.10,600/- which she gave to the appellant's accomplice. Together with the accomplice, they walked back to PW1's house and found the appellant still guarding PW1. PW1 and PW5 were then forced to go under the bed by the appellant as PW3 was ordered to lie on the bed. When she resisted, PW3 was pushed onto the bed by the appellant who proceeded to tear her pyjamas, the pant and then had sexual encounter with her. Done, the appellant's accomplice who apparently was keeping vigil outside the house entered and they assisted themselves to 4Kgs wheat flour, 5 kgs rice, 2 kgs sugar, 1/2 kg magadi soda, powder milk and VCD machine, make Panasonic. Still frustrated with the little money they had gotten, the appellant visited his frustration on the television, make Aucma which he slashed with the panga and extensively damaged it. The appellant then ordered PW3 to carry the VCD machine and leave with them. The appellant carried some of the stolen items in a paper bag while his accomplice carried a black bag that contained the other stolen items. The three left the house, walked for a while before entering a gulley. Here the appellant once again forced PW3 to the ground, undressed her and had his second sexual encounter with her. After the appellant was through with her, his accomplice demanded same treatment. He also had sexual encounter with PW3. Satisfied, the appellant ordered PW3 to run back home.

In the meantime, PW3's father, **B S (PW4)** who had been attracted by the commotion in the homestead coming from his sister's house, had seen his daughter accompanied by a stranger go to his mother's house, and shortly thereafter saw her leave the homestead in the company of two strangers. He screamed attracting members of the public to the scene. The door to his house had however been locked from outside. A neighbour assisted and opened it and when they proceeded to PW1's house, they found her seriously injured and bleeding from the head. She was immediately rushed to Taveta sub-district hospital for treatment. However, this was after they had gone by Taveta Police Station and made a report of the incident. The appellant's name was given as having been one of the robbers. The police immediately left for the scene. By the time they arrived, PW3 had returned and she was requested by the police officers to take them to the gulley. An attempt to follow the shoe prints as well as footmarks of the appellant and the accomplice from the area however proved futile. PW3 was then escorted to Taveta sub-district hospital for examination and treatment. She was examined by **Dr. Omondi Ayoro (PW2)** who noted injuries on her genitalia with labia majora and labia minora having bruises. Her genitalia had soil lodged therein and also had whitish discharge. His conclusion was that PW3 had been defiled.

P.C. Jackson Saingori (PW6) of Taveta Police Station knew the home of the appellant. On 8th January 2007 at around 9 p.m. he was requested by **I.P Junias Nyagah** to take him together with **P.C. James Kirwa, (PW8)** and **P.C. Zakariah Shitanda (PW9)** to the appellant's home at Mahoo with a view to arresting him. At the home they were welcomed by barking dogs. The appellant came out of his house, and the police officers introduced themselves, and the purpose of their visit. The appellant turned violent and resisted any attempt to arrest him. He asked his wife to join him and come out armed with a panga. When he tried to escape, PW8 held him and foiled the attempt. He was joined in the fray by the rest of the police officers. The appellant however bit PW8 on the left arm between the 3rd and 4th fingers. He head butted PW9 on the eye brow, punched him on the left side of the head and kicked him on the left leg. When PW6 attempted to handcuff the appellant, he bit him on the left forearm. When I.P. Nyagah intervened, he too was bitten on the right thumb. Eventually they collectively managed to subdue the appellant whom they arrested and escorted to Taveta Police station. The four police officers sought treatment for injuries sustained in the scuffle at Voi sub-district hospital. Subsequently they were issued with P3 forms one of which was filled by PW2. He filled the P3 form in respect of PW6. He classified the degree of injury as harm. **Dr. Henry Ng'eno (PW7)** filled the P3 forms in respect of PW1, PW8 and PW9. With regard to PW1, he assessed the degree of injury as grievious harm whereas in respect of PW8 and PW9, he classified the injuries as harm.

On the basis of all the foregoing the appellant was then arraigned before the Senior Resident Magistrate's court at Taveta on 19th January 2007 on one count of robbery with violence contrary to **section 296(2)** of the Penal Code in which the complainant was still PW1, one count of defilement of a girl under the age of 15 years contrary to **section 8(1)** and **(3)** of the Sexual Offences Act, the complainant being PW3, one count of resisting arrest by police officers contrary to **section 253(b)** of the Penal Code wherein the

complainants were PW6, 8 and 9 respectively, and four counts of assaulting a police officer contrary to **section 253(b)** of the Penal Code. The respective complainants were PW6, 8, 9 and I.P. Junias Nyagah. The particulars of each count were of course given. However we need not reproduce them here. In the course of the hearing count seven in which I.P. Junius Nyagah was the complainant was withdrawn under **section 87(a)** of the Criminal Procedure Code as he was unavailable to testify.

In his defence, the appellant gave unsworn statement and called no witness. It was his defence that on 8th January, 207 at about 9 p.m. whilst in his house in Miembeni village, he heard his dogs barking. He asked the people to identify themselves. Those people claimed to be police officers and were looking for directions to a place known as Darajani. They also claimed that his dogs had bitten them. It is then that they arrested him. He denied committing any of the offences he was charged with.

This is the evidence that the learned magistrate (**J.M. Githaiga SRM**) considered before reaching the verdict that the appellant was guilty of the seven counts convicted and sentenced him as follows:-

- *With regard to the offence of capital robbery, death*
- *Malicious damage – 2 years imprisonment*
- *Defilement – 20 years imprisonment*
- *Resisting arrest and assaulting police officers 1 year imprisonment.*

The learned magistrate correctly ordered that owing to the sentence of death, the other sentences should be held in abeyance unless otherwise ordered.

The appellant was not satisfied with the convictions and sentences and appealed to the High Court of Kenya at Mombasa vide Criminal Appeal No. 188 of 2007. The High Court (**Ojwang as he then was) and (Odero, JJ)** also after considering the appeal, dismissed it and hence this appeal before us premised on the memorandum of appeal dated 23rd October, 2014 filed through **Messrs Ngumbau Mutu**a **and Company advocates**. Two grounds of appeal advanced in the memorandum are, that the 1st appellate court failed to re-analyse and re-evaluate the evidence on record exhaustively and secondly, that the 1st appellate court failed to meticulously examine the issue of identification against the appellant.

In his submissions before us on 6th November, 2014, **Mr. Ngumbau**, learned counsel for the appellant raised in the main three issues. The first issue was identification of the appellant at the scene of crime. In this connection, counsel submitted that conditions obtaining thereat were not favourable for positive identification and or recognition. Both courts below did not give due consideration to this aspect of the appeal. In the process there was no exclusion of possibility of error. That the robbery was committed at night and the only source of light were the torches flashed by the robbers. The intensity of those torches was never interrogated. Further, the evidence suggested that all the victims of the robbery were woken from their sleep. In those circumstances evidence of visual identification and/or recognition was not free from possibility of error. Much as PW1 and PW3 claimed to have recognized the appellant during the episode, they were unable to make such disclosure to the neighbours who responded to their sos immediately. In respect of all these submissions counsel cited the cases of **Wamunga v Republic (1989) KLR 424,** and **R v Turnbull & others (1976) 3 ALL 549**.

The 2nd issue taken up by counsel for the appellant before us was with regard to the convictions and sentences regarding the counts of malicious damage and defilement. These counts, according to counsel were not proved at all by any credible evidence. In any event such convictions could not stand in the light of doubtful evidence of identification. Further with regard to the offence of defilement, counsel submitted that the age of the victim as well as penetration had not been proved, yet these were critical components of the offence. For this proposition, counsel referred us to the case of **Lucas Nyange Majiwa v Republic, Criminal Appeal No.331 of 2011 (UR)**.

The third issue raised was with regard to counts of resisting arrest and also assaulting police officers. It was the appellant's contention that the evidence adduced in respect of those counts was insufficient to sustain the convictions. No independent witnesses tendered evidence. The only evidence led was that of

the complainants who were the victims were. He also doubted the authenticity of the P3 forms tendered in evidence by the complainants as they were filled on 7th May, 2007 whereas the offences were allegedly committed on 7th January, 2007.

Mr. Musyoki, the learned Senior Principal Prosecution Counsel, countered the appellant's submissions by re-asserting that the prosecution proved its case against the appellant on each count beyond reasonable doubt. That the conditions obtaining at the scene of crime were positive for recognition as there was sufficient light. The victims of the robbery were harassed by the robbers for well over 1/2 hour. That PW1 immediately gave out the name of the appellant to the police as well as the neighbours who came to her rescue. For PW3, the robbers even took her to a gulley where they defiled her. Thus the victims spent a lot of time with the robbers thereby eliminating the possibility of error in his identification and or recognition. The appellant was seen by both PW1 and 3 smash the television. The television was as a result extensively damaged. In the circumstances, the appellant cannot be heard to say that no evidence of malicious damage was tendered in court in that regard. With regard to defilement, Mr Musyoki conceded that the age was a critical factor that must be proved. He however hastened to add that it was indeed proved by PW3's P3 being tendered in evidence. There was also proof of penetration having regard to injuries noted on her genitlia by PW2. With regard to the counts in relation to resisting arrest and assaulting police officers, counsel submitted that these too were proved. The complainants were police officers who had gone to arrest the appellant and he turned violent on them. They suffered injuries as a result. Their evidence corroborated each other.

We have anxiously considered the evidence that was adduced in the trial court together with the appellant's defence, the judgments of both the trial court and the first appellate court, the submissions by learned counsel, the charges, the entire file and the law. The main issue in this 2nd appeal and which is a matter of law is identification of the appellant, whether by recognition or visual identification. It is not in dispute that no stolen items were recovered from the appellant. It is also not in dispute that the only witnesses who claim to have recognized the appellant are PW1, PW3 and PW4. It is further not in dispute that the robbery was committed in the wee hours of 7th January, 2007 at 3 a.m. when it was dark. It thus took place during the hours of darkness. The only source of light according to PW1 and 3 were torches held by the attackers. On the other hand PW4 claimed that there was moonlight. However it is instructive that neither PW1 nor PW3 said in their testimonies that they were able to recognize the appellant courtesy of the light emitted from the torches. If anything their testimonies are completely silent as to what medium enabled them to recognize the appellant. This is what PW1 said in her evidence in this regard

> "*… At 3.00 a.m. I heard a stone being thrown at the door. I woke up. I noted 2 men had entered my house. They flashed a torch at me. They told me to keep quite or they would kill me. They started checking inside my cupboard. They told me to hand over money to them or they would kill me. I told them I keep my money in the shop and not at home. The attackers were wearing black clothes. One of the attackers dropped the cloth around his mouth. I noted it was the accused Micah. Apart from a torch the accused's colleague had a sword. The accused had a panga, things that appeared to be explosives and a toy pistil. His colleague also had a toy pistol. The accused asked me whether I had recognized him. I told him I had not recognized him as I feared he would kill me if I said I had recognized him …*"

This was all the evidence of PW1 with regard to her alleged recognition of the appellant. Nowhere in this evidence does she say that the attackers at some point turned the torch lights on to themselves that would have enabled her to see them. Nor does she describe how bright the torch lights were. Were they so bright as to illuminate the entire house so that PW1 could easily have seen and recognized the appellant? This is the only other way perhaps PW1 would have been able to see the appellant sufficiently as to recognize him. Lastly, her evidence was that the torch light flashed on her face. If that be the case then she would have been blinded by the light making it very difficult for her to be able to see the appellant. Yes, PW1, may have stayed with the appellant for half an hour according to her testimony as PW3 went with his accomplice to fetch money from her step mother. However, at no time did she testify that the appellant ever turned the torchlight to himself to assist her in recognizing him or indeed if there was any other source of light in the house. In any event PW3 was categorical that there was no other source of

light in the house apart from the torches. Further PW1 having been violently assaulted by being cut on the head and back with a panga, we doubt whether she would have had the presence of mind to observe the appellant sufficiently to be able to recognize him.

The testimony of PW3 on the same issue was as follows:-

> *"… At around 3 a.m. I woke up after I heard a stone hit the door to the house. I saw 2 men in the house. There was no lamp lit in the house but the 2 men had torches. The torches were shone at my aunt. The two men ordered my aunt to hand over all the money she had. She said she did not have any money. One of them started beating my aunt … The men told SAMUEL AND MYSELF to cover out (sic) heads with beddings. We covered our heads with beddings. I feared the 2 men. They continued beating my aunt. I uncovered my face. I saw the men had cut my aunt. I told the men … I would show them where she kept the money. I took one of them towards my grandmother's house … The man and I entered the house. I showed the man where my aunt had hidden her money in a hole on the floor… The man blind folded me and he took the money. I did not recognize him. The man removed the blindfold … after he took the money … The man took me back to my aunt's house. The man who had been left guarding my aunt pulled me inside the house. He told my aunt to lie under the bed. At one point the cloth the man had tied under his mouth fell and I saw it was the accused in the dock a neighbour … He told me to take the VCD machine and accompany him. I was forced to walk with the accused and his colleague … I asked the accused where I was being taken. He produced a pistol and threatened me telling me to shut up. I saw the pistol. There was moonlight. The accused said he would shoot me…. We entered a gulley. The accused told me to lie down on (sic) the gulley. I refused. He held me and lay me on the ground. He undressed me … The accused had sexual intercourse with me … I did not scream. He threatened to cut me with a panga he had. When he finished with me his colleague also had sexual intercourse with me. The accused told his colleague that they should escape from the gully (sic). The accused told me to go home …"*

One may again ask, throughout this testimony, where does the witness refer to the source of light that enabled her to see and recognize the appellant? Yes, she refers to the appellant and his accomplice having torches. However, she does not say how those torches were of any assistance to her in recognizing the appellant. We are persuaded unlike the two courts below that given the obtaining circumstances in the house of PW1, and failure by the two courts to appreciate whether the torch light was ever directed at the faces of the robbers, PW3 would not have been able to recognize the appellant as she claimed. PW3 testified that as she walked towards the gulley, there was moonlight. However, that moonlight only assisted her to see that the appellant was carrying a pistol and nothing else. She did not go further to state that because of the moonlight and the long walk in the night she was able to see the appellant sufficiently as to be able to recognize him. In any event the intensity of the light emitted by the moon, its location in relation to the appellant, accomplice and PW3 was not subjected to any interrogation as was required of the two courts below.

The testimony of PW4 on the issue was in these terms:-

> *"… At around midnight I heard a bang at the door to KADOGO'S house. I then heard screams …I tried to get out of the house. I found the door to my house had been loked (sic) from outside. I sought help from neighbours. I heard a gunshot. I checked outside the window. There was moonlight. I saw a suspect passing with my daughter Salma. They went to my mother's house … Later I saw the accused and the other suspect and my daughter leaving the compound. I had noted the accused's voice very well. I heard clearly. A neighbour opened the door to my house. I went to my sister's house …."*

From this evidence, PW4 appeared to have recognized the appellant courtesy of the moonlight and his voice. However, nowhere in his testimony does he revert to the brightness or otherwise of the moonlight. In any event he was seeing all these through the window of his house. However, there is no evidence as to the distance between where he was and where PW3 passed in the company of the appellant and his accomplice. With regard to the alleged voice identification of the appellant, there is no evidence that the

appellant ever spoke to anybody in the vicinity of the appellant. Neither is there evidence that the appellant ever spoke to the witness directly during the incident. Lastly, there is no evidence that this witness was familiar with the appellant's voice. See **Choge v Republic [1984] KLR 1**.

How then did the trial court handle the evidence of identification of the appellant? The trial court delivered itself on the issue in this manner:-

> *"… On evaluation of the evidence on record the court notes the first 3 counts are interconnected in that the identity of the 2 men who confronted PW1 Kadogo PW3 Salma and PW5 Samuel in a house at* ***[particulars withheld]*** *village at around .00 a.m. during the night of 06-07-2007 is crucial. The 2 men stayed in the house for quite some time. They talked with the occupants of the house. PW2 Kadogo and PW3 Salma saw the face of one of the men when a piece of cloth he was covering his mouth with fell. PW3 Salma who impressed the court as a credible witness spent more time with the 2 men than any other witness. She escorted one of the 2 men to her grandmother's house where money belonging to PW1 Kadogo was kept. The witness also accompanied the 2 men after they left the house of PW1 Kadogo. She was still with them when they had sexual intercourse with her in a gulley. Bearing in mind all these facts and considering the accused was well known to PW1 Kadogo and PW3 Salma the court has no doubt the accused was one of the 2 men who confronted PW1 Kadogo, PW3 Salma and PW5 Samuel during the night of 06-07-0-2007(sic) in a house at* ***[particulars withheld]****. This finding is made notwithstanding that PW5 Samuel a boy of tender years indicated he did not recognize any of the 2 men and ignoring some of the testimony of PW4 B S who never came into contact with the 2 men. The testimony of PW4 was of little value and could not displace that of PW1 Kadogo, PW3 Salma and PW5 Samuel."*

As it can readily be seen, the trial court made no reference at all as to what means enabled the witnesses who purported to recognize the appellant at the scene to so recognize him. The trial court having appreciated that the offence was committed in the wee hours of the morning was bound to find out or at least comment on the presence of or lack of light. The only way that the witnesses would have recognized the appellant if at all, was by presence of light. The presence of light cannot merely be assumed as the trial court did. There was need for the court to interrogate seriously that aspect of the matter. The case of **Maitanyi v Republic (1986) KLR 198** is emphatic on the need for such interrogation. PW3 may have impressed the court as a credible witness. This Court of course is not bound to interfere with the findings of the courts below based on credibility of witnesses unless no reasonable tribunal could have made such findings. See **Republic v Oyier (1985) KLR 353. W**e are satisfied given that the trial court did not address its mind to the question of the presence or lack of light at the scene of crime, that assessment on the credibility of PW3 may have been flawed. In fact it was erroneous as no reasonable tribunal could have accepted such evidence and made such a findings given the circumstances outlined above.

How about the 1st appellate court? It went about the question of identification this way:-

> *"… though it was dark PW1 and PW3 both state that both of the robbers had torches which they flashed all over the room as they searched the house and emptied out the cupboards. The witnesses were thus able to see the 2 men by the aid of these very torches … The other witness who was present in the house at the time of the attack was PW5 S K young child aged 7 years. He was honest enough to admit that he did not recognize any of the robbers. However he confirms that the two men who had attacked the family both had torches. We are therefore satisfied that there was a source of light being the torches on the night in question … On this crucial issue of identity we find that there has been a clear, positive and reliable identification of the appellant as one of the men who broke into the complainant's house on the material day …"*

In our view, the 1st appellate court's reading and appreciation of the evidence of these witnesses on this aspect of the matter was clearly erroneous. At no point did PW1 or PW3 allude to the fact that the appellant flashed their touches all over the room as they searched the room for valuables to steal. All that PW1 said in examination in chief was "*they flashed a torch at me* … "In cross-examination she stated

"…. *Your colleague and yourself were having torches …*" As for PW3, she stated "*… I saw 2 men in the house. There was no lamp lit in the house but the 2 men had torches. The torches were shone at my aunt. The 2 men ordered my aunt to hand over all the money she had … I saw him well during the incident. I heard his voice …*" Under cross-examination she stated "*… There was moonlight. I did not see any birthmark, injury or any other mark on you …*" From the foregoing it is apparent that the 1st appellate court advanced its own theory as to how these witnesses were able to recognize the appellant. This is not acceptable nor permissible. A court is not allowed to canvas theories that never came through evidence. A court can only act on the evidence adduced and, not go out of its way and advance its own theories. This is exactly what the 1st appellate court did here.

It requires no gainsaying the need for courts to consider the evidence of identification under difficult conditions with the greatest care. It matters not whether the case is of visual identification of a stranger or is one of recognition. We appreciate that whether a stranger or not or whether the person was previously known to the witness, the witness needs to see him first before he can conclude whether he is a stranger or a person he had seen before the incident. In short, whether a stranger or not, the conditions such as the presence of light, its source and strength of light aiding identification if at night must exist and the court is duty bound to inquire into them before feeling safe to convict on identification of a suspect whether a stranger or a person the witness knew or had seen previously. See **Wamunga v R** and **R v Turnbull** (supra). Unfortunately in this case both courts below paid scant or fleeting attention to this issue yet it was at the heart of the matter. In the premises we are not satisfied unlike the counts below that the appellant was positively identified at the scene of crime by PW1, 3, and 4. What this finding means therefore is that the conviction of the appellant on courts 1, 2, & 3 cannot be said to be safe.

With regard to counts 4, 5, 6 and 8, we are satisfied with concurrent findings of the two courts below that the appellant resisted arrest and in the process bit PW6's left hand inflicting multiple small wounds, PW8 too was a victim of his antics. He was bitten on the left arm between the 3rd and 4th fingers. Again in an attempt to evade the arrest, the appellant head butted PW9 on the left of his eye brow, punched him on the left side of the head and finally kicked him on the left leg. The injuries were noted by PW2 and PW7 when they examined the complainants and filled their respective P3 forms which they tendered in evidence. The fact that the complainants were police officers from Taveta Police station is not in dispute. It is also common ground that on 8th January, 2007 they congregated in the home of the appellant with a view to arresting him. By all accounts it would appear the appellant was not going down without a fight. He put up a fierce and spirited fight to avoid the arrest even after the complainants had introduced themselves as police officers and the purpose of their visit. Just like the two courts below we are unable to accept the appellant's defence that he was only charged for letting loose his dogs on the complainants when they were innocently seeking for the direction to Darajani. There is no doubt at all in our minds on the evidence available that the appellant resisted arrest and assaulted the police officers in the process who had gone to execute a lawful arrest. His convictions on these counts cannot therefore be resisted. There is no bar in law that a conviction cannot rest solely on the evidence of the victims and/or complainants. Nor must there be evidence of independent witnesses before a conviction can be returned. Similarly the authenticity of a document and in this case the P3's cannot be challenged merely because they were filled sometime after the event complained of.

In the result we allow the appeal, quash the convictions and sentences in respect of counts 1, 2 and 3. However, we dismiss the appeal and uphold the sentences in respect of counts 4, 5, 6 and 7. We note though that upon conviction, the appellant was sentenced to serve 1 year imprisonment in respect of each of these counts. The sentences were however suspended pending the execution of the death sentence in respect of count 1. Since we have now allowed the appeal in respect of that count and dismissed the appeal in respect of counts 4, 5, 6 and 8, the appellant shall now serve 1 year imprisonment with regard to those four counts effective from the date of this judgment. We also note that the trial court did not direct whether the sentences of 1 year aforesaid should run concurrently on consecutively. However, since the offences were committed in the same transaction, the appropriate order to make is that the sentences shall run concurrently.

These shall be the orders of the Court in this appeal.

Dated and delivered at Mombasa this 8th day of December 2014

H. M. OKWENGU

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JUDGE OF APPEL

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL