



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CR. APPEAL NO.81 OF 2002

MAULIDI MOHAMED APPELLANT

VERSUS

REPUBLIC RESPONDENT

CONSOLIDATED WITH

(CR. APPEAL NOS.82,83,,84,85,86,87,88,89, & 90 OF 2002)
(Being appeal from Original Convictions and Sentences in Original Criminal
Case no.1576 of 2001 of the Snr. Resident Magistrate’s Court at Kilifi –P.M.
Mutani –SRM)

Coram: Before Hon. Justice Mwera
Ogoti – State Counsel
Gichana for ALL Appellants.
All appellants present.

J U D G E M E N T

In all ten (10) appeals were consolidated and heard together. They sprung from one Kilifi SRM Cr. Case No.1576/2001 where all the appellants were the accused. If the following order be correct by their first names, and doing the best where the appellant’s lawyer did little to help the court in the line-up, let alone setting out the background and salient important aspects of the appeals, Maulid (Cr. A. 81/2002, accused 1), Harry (Cr. A.82/2002, accused 7), Charo Abdalla (Cr. A.85/2002, accused 4), Stephen (Cr. A.86/2002 accused 6), Baya (Cr. A. 87/2002, accused 2), Athuman (Cr. A.88/2002 accused 10), Joshua (Cr. A.89/2002 accused 9), and John (Cr. A.90/2002, accused 11) were charged jointly with robbery contrary to section 296(2) Penal Code and others separately with counts of defilement contrary to section 145(1) Penal Code. The two charges of defilement carried the alternative ones of indecent assault contrary to section 144(1) Penal Code. In all there were 12 accused persons in the lower court but seemingly accused No.3 Obed was placed in a borstal institution while Stephen was separately charged under S.162(a) Penal Code, a charge which took place on 4.7.01. And No.8 Mustafa was seemingly acquitted.

The offences were allegedly committed on 27.6.2001 at 3 a.m. at a place called Kibarani village Kilifi District. While the 3rd count of robbery with violence by all 12 accused persons i.e. including the present ten (10) appellants alleged that they were armed with dangerous weapons to wit pangas and axes when they robbed Rose Kombe of her property, Count 2 under the same provision of law was that only appellants Maulid, Baya, Abdalla and Charo robbed John Mwakina. In Count 1 again the very 4 appellants were involved to rob one Harrison Mwango.

In Count 4 the present appellants Stephen, Harry and Athman were charged with defiling M.K a girl

below the age of 14 years on 4.7.2001. With this went the alternative charge of indecent assault on a female.

The fifth count also of defilement faced appellants Stephen and Joshua. That they defiled B.K again on 4.7.2001 a girl below the age of 14 years. Similarly there was the alternative charge of indecent assault. The 6th and last count under S.162(a) Penal Code of unnatural offence faced Stephen alone in that he had carnal knowledge of B.K against the order of nature.

The learned State Counsel who helped the court in reconstructing all the above, the lower court record having been poorly made and kept, added that when it came to conviction, the learned trial magistrate did not state that he had on evidence reduced the charges under S.296(2) Penal Code to fall under S.296(1) Penal Code. Nonetheless he did convict the appellants and sentence them thus:

Count 1: Appellants Maulid, Baya, Abdalla and Katana to serve each 14 years imprisonment, hard labour plus 5 strokes of the cane. Thereafter each to be under police supervision for 5 years.

Count 2: Another robbery with violence all accused persons were acquitted.

Count 3: Appellants Harry, Stephen, Joshua, Athman, John and Katana got 14 years imprisonment, hard labour, 5 canes each and to remain under police custody for 5 years.

On Count 4, Harry Thomas got 14 years imprisonment, 5 strokes of the cane for defilement. What he got here would run consecutively with sentences he got on other counts. Seemingly there were no convictions and sentences regarding counts 5 and 6. The above then gave rise to the present appeals which this court heard with due authority under S.359 CPC

Mr. Gichana began on the basis that he would argue separately the ten grounds in the amended petition of 21.9.03 but down the line he criss-crossed about all those grounds and the court will endeavour to do its best to set out the arguments as also it tries to piece together and make some sense of the equally scattered about recorded proceedings and "judgement" of the lower court. On sentences Mr. Gichana appeared to argue that while the appellants were convicted of defilement the learned trial magistrate imposed sentences based on robbery. That the sentences were thus excessive and harsh (not wrong?) He attacked the sentence meted out to Harry on the defilement charge (Count 7) and that it was made excessive and harsh when the learned trial magistrate ordered that that sentence had to run consecutively with the sentences for robbery, that that would result in a very long prison term.

That the appellant(s) testified regarding defilement by putting up an alibi. Before that aspect was fully ventilated, Mr. Gichana then chose to argue across all the grounds in the petition and he attacked the medical evidence of Dr. Mwita who examined PW.2 M.K. That he also examined Harry and found that he had syphilis and yet the complainant (PW.2) was not infected.

On identification the court was told that the offence took place at night when complainants including R.K (PW.1) were asleep. That she claimed that a lamp was burning in her room when raiders got there without saying why the lamp was on, where it was in the room and the intensity of the light being emitted. This was raised on the basis that R.K saw and identified attackers: Maulid, Stephen, Baya, Joshua, Athman, and Katana (some of the appellants). That fright alone on seeing these people made it impossible for positive identification. A similar position was taken regarding the evidence of M.K (PW.2) who was not sleeping in the same room with R.K (PW.1). That she too in the circumstances would not positively identify the raiders.

Identification parades (see PW.5 J.M) were also termed invalid because suspects were put among six people as opposed to eight. The court looked at the identification parade forms produced including (Exh.10) and found this claim as not justified. There are eight names of the parade participants. But quoting the case of SAID MAKARI & OTHERS NOS. R CR. A. 90/2003 (C.A.) Mr. Gichana maintained that even a parade with 7 people is still invalid due to irregularity of numbers.

Further that R.K (PW.1) had the earliest and first opportunity while reporting to the police to indicate that she recognized or would identify her attackers which she did not do. On alibi, Mr. Gichana posited that the appellants put it up in their respective defences but the learned trial magistrate did not ensure that it was displaced and why he did not accept it and deal with that aspect as per the case of David Anguswa and Others vs. R. (1982-88)1 KAR 457. The appellants grounds may at this point be said to be on sentences (harsh and excessive), identification and alibi.

The learned State Counsel began by urging the court in its first appellate jurisdiction to evaluate the evidence as recorded and find that the learned trial magistrate not only deviated from the requirements of S.169 CPC on crafting of a judgment but also made findings and conclusions that did not accord with the facts and evidence. He supported the convictions but not the sentences as shall appear presently.

The learned State Counsel said that the charges under S.296(2) P.C. were proved when it was shown by evidence that the attackers were more than one, they were armed with dangerous weapons, and that they struck and used personal violence on the victims. One of these ingredient being proved was enough but that all of them were proved. That instead of so finding and thus sentencing accordingly, the learned trial magistrate without reason or stating so did end up giving prison sentences under S.296(1) Penal Code. The court heard also that defilement was proved by the victims, PW.1, 2 (and PW.3) plus the evidence of Dr. Mwita (PW.9) which provided corroboration.

As for the light in the rooms which were raided, it came from a lamp and by it PW.1 identified, nay recognised Katana and John. That she saw John take her box of clothes and Katana who had a gun thereafter broke the lamp. And that the attackers who were neighbours or people the victims used to see in the village took 15 minutes in their act and did not even need to be identified at any parade. But witnesses did identify them though: Stephen, Harry, Joshua, Athman, John, Katana. That Stephen stood guard all the time.

The court was told that PW.2 (M.K) did talk with Katana who inquired after the whereabouts of her father. Then she was defiled. That Harry once painted their house (of PW.2) and that PW.2 used to see Joshua at Kibarani. She identified them at the parade. That the evidence of PW.3 (B.K) was similar to that of the others including picking out the appellants on parades. That indeed the learned trial magistrate had found as a fact that lamp light referred to by the witnesses was sufficient for identification and this court need not interfere with that.

On alibi the State Counsel argued that neither at the time of the offences nor even before this court did the appellants remove themselves from the scene. The focus then moved to the learned trial magistrate's judgment. That it was biased and improper in that even before he analysed evidence he right away proceeded to decide about the guilt of the appellants – all contrary to section 169 CPC That he had no reason to reduce the charges from under S. 296(2) Penal Code to S.296(1) Penal Code and even without stating so in the judgment or sentences. That his flew right in the face of the evidence that the appellants were more than one, armed with a pistol and other weapons and used personal violence. That all in all the laying out of conviction and the sentences pronounced were a mass of confusion and in gross breach of principles in criminal law. And that under S. 14 Penal Code the learned trial magistrate was not to be faulted and consecutive sentences imposed on Stephen were lawful. The issue of first instance revealing/reporting the names of the attackers did not seem to carry much weight with the learned State Counsel who said that the victims knew their attackers before anyway.

That an alibi by Maulid simply denied being at the scene, so did Baya, Abdalla, Charo and Harry who merely spoke of arrest. Otherwise the other appellants denied being on the scene but knew the complainants. That all in all this court had power to interfere with the lower court sentences and enhance them in accord with the notice the learned State Counsel had filed and served on Mr. Gichana.

Most of what goes into this determination is set out above in that this being a first appeal this court must and will evaluate the lower court evidence all over again and put it side by side with the judgement there. The charges in the lower court have been sat out with the sentences and how they were handed down. A notice to enhance sentences was served. In essence these appeals outcome will hinge on the matters

canvassed: identification, alibi and sentence. The learned state counsel supported conviction but sought enhancement of sentences.

We begin with the evidence of R.K (PW.1), the mother of M.K and B.K (PW.2, PW.3). They lived in their home at [particulars withheld]. Her evidence is that about 6 people raided her house at 2 a.m. while armed with pangas, knives, sticks and a pistol. A lamp was on and she was able to see Stephen, Harry, Joshua, John Athman, Charo, Katana with another, not among the appellants. That Katana carried a pistol while John had a panga. They demanded for money which they took in addition to PW.1 wrist watch etc and Katana slapped her. He then put off the lamp by breaking it. It all took about 15 minutes. The raiders then broke into the room where PW.1's children slept, after they locked her in her own room. They had threatened to kill her if she screamed. That after the robbers left one C came and opened for PW.1. She got out and went to her children's room where she found M.K screaming and bleeding from her vagina. She reported the incident to police and later picked out the appellants at an identification parade. She had seen them during the robbery and she would recall Harry, Athman and John whom she used to see at [particulars withheld] before the incident. In cross examination PW.1 said that she knew some of her attackers while others were strangers all of whom she told the police she would identify. That while Katana took Sh.3000/- from her John took her radio.

The next evidence is that of M.K (PW.2) who said that she was aged 16 years (but 15 years) at time of the incident. She was asleep in her room with her sister B.K at 2 a.m. on the material day when they were attacked. A lamp was on and she was thus able to see the attackers. That they asked for money but PW.2 told them to go and ask her mother (PW.1). They went there and returned to PW.2's room. They threatened to have sex with her forcefully. That Katana asked where her father was. He had a pistol. PW.2 recalled that then Katana, John, Harry and Joshua took turns having carnal knowledge of her. This was actually rape and not defilement since PW.2 was 15 years of age. PW.2 said that while Athman was their tenant Harry was a neighbour who once painted their house. She used to pass and see Joshua and John at [particulars withheld] as she (PW.2) went to school. She also identified Stephen who stood guard over the room during the incident that took 25 min. Then she reported the matter to the police; she was given a P3 form and she identified Harry, Joshua, Athman, John and Katana at a parade. In cross examination PW.2 maintained that a lamp was lit in her room and Stephen stood armed with a rungu near her. That PW.2 knew Harry who was a neighbour and she identified him by lamp light in her room.

Then B.K (PW.3). A girl aged 13 years at the time of her evidence, her story was more or less the same as that of her sister M.K. They were sleeping in the same room when 6 robbers raided it and demanded money. They went to her mother's room and returned. Then Athman (Accused 10) had sex with PW.3. So did another not an appellant here. She saw them well by the lamp that was in the room. PW.3 also saw Katana, Harry, Athman, John (and another Mustafa) and that the robbers stayed for about an hour. When she reported to the police she got a P3. PW.3 then took part in an identification parade and picked out Stephen (who does not appear as among the gang in the house). That PW.3 regularly met accused 3 (Obed not among the appellants) and that Joshua was their neighbour (not also said to have been seen in the house). But that Harry (and Mustafa A.8) were neighbours). So is John. That while Katana had a pistol, John and Harry had a panga each. Obed had a knife.

In cross examination PW.3 answered that he saw Baya (A2) well by the lamp light (she did not say so in her examination in chief). But she maintained that she saw Stephen on the robbery night and he stood guard over them in their room as they were raped. He was a neighbour and she knew him before although she never gave his name to the police as a suspect. Then she said that the more than six robbers put off the lamp as they entered the room. She insisted that Katana carried a pistol.

H.M (PW.4) was attacked on the material night by five robbers at his house. They robbed him of money and personal property and he saw the robbers by the light from the torch Maulid (A1) had and which he flashed around the room. He saw Baya (A2) and Charo (A5) also – his neighbours. That Maulid carried a panga. He picked them out at an identification parade.

J.M (PW.5) and H.M's (PW.4) neighbour was also robbed at the same time by a gang of about 5 thugs. They stole money and other items. They carried a big long torch (by Maulid A1) which was flashed

around PW.4's room and thus he saw Charo (A5) also. That they were neighbours and C's mother later approached PW.4 to settle the matter out of court. He declined. That PW.4 picked out these two at an identification parade. IP Wafula (PW.8 conducted the identification parade that Mr. Gichana found irregular.

Dr. Michael Mwita (PW.9) saw four people and completed their P3 forms: M.K (PW.2) was found to have been subjected to forcible carnal knowledge. So was B.K (PW.3). There was another patient, not a complainant, and Stephen (A6) was also examined. He was found to have syphilis. Other prosecution witnesses testified. The accused persons were put on their defences and this is the evidence the appellants gave.

Maulid (A1). He did not refer to 4.7.001. His story begins with being arrested and roughly handled by police on 8.7.01, alleging that he defiled small girl. That on the material night he was asleep in his house. Only one person picked him out on the identification parade. Baya (A2) began his story with 7.7.2001 when he was arrested by police officers. He had gone to buy household goods and he committed no offence. On his part another appellant Abdalla (A4) said that on 1.7.2001 he had returned home from Mombasa and on 7.7.2001 he was arrested by police officers from Kilifi Police Station. He was made to participate in an identification parade where a neighbor picked him up. He did not participate in any robbery. In cross-examination is when Abdalla says that between 1st and 7th July he had been at a place called Shukunse. It is not said if this Shikunse is the same as Kilifi bus stage where this appellant was arrested on 7.7.2001.

Charo (A5) referring to the material day, 27.6.2001 said that he sold nuts and slept at home up to 28.6.01. Then police arrested him on 8.7.2001. He was identified at a parade by M (complainant in count 2). He did not know why he was arrested.

Stephen's (A6) story was that he was at home working the whole day as quarry digger. He was arrested on 4.7.2001 when he had gone to Kilifi Hospital. He never committed any offences. That on an identification parade some women mentioned this appellant for reasons he did not know. That he did not know why police took him to hospital for medical examination. Stephen did not know M.K whom he was alleged to have raped. He did not sexually assault R.K either. Harry (A.7) said that on 7.6.2001 he was at home and then he went to work at a factory on a day-night shift until 20-8-01 when the factory closed. Some vigilantes arrested him on 23-9-2001 and took him to the police station because he had disagreed with the brother of R.K. R.K picked him out at a parade; he did not participate in any offence.

Joshua (A9) in his defence said that he lived with his parents at Kibarani and he did not rob H.M. On 27.6.01 he was at home and at work at a factory. He did not go to the home of R.K (PW.1) – a neighbour. That he was on duty. May it be noted that neither Harry nor Joshua called their workmates or supervisors at the factory where they worked to support the claims that they were indeed factory workers and on duty during the material time – 27-6- 2001 or 4-7-2001. What those two dates bring to the fore is that while robbery offence (counts 1 & 2) were allegedly committed on 27- 6-2001, the 3rd robbery charge (count 3) and the sexual offence took place on 4-7-2001. Why they were all lumped up in one charge sheet one cannot easily tell.

Athman (A10) on his part said that on the material day he was at a place called Lugangani – not Kibarani, doing some building work. By that time, Athman had since ceased to be R.K's tenant. He was arrested on 22/9/2001; he never raped anyone.

John (A11) was at Mikindani Mombasa on 4.7.01. Although he knew R.K as a neighbour he did not rape her daughters or rob her. Lastly Katana (A12) was heard in his defence. R.K (PW.1) was her neighbour but on 3.7.2001 he was at Mombasa on a certain building site. He was arrested on 1.10.2001 at Changamwe; he never raped or robbed anybody.

The learned trial magistrate began by setting out the charges but in less than nine lines of the judgement he had completed going over the prosecution case on robbery and rape counts. He termed that a "brief" overview of the prosecution case. Equally the twelve accused persons cases were said to have "in general

and in particular” to have been that they were never at the scene. So on the same page by line 15 the learned trial magistrate compressed the entire case and found that:

“--- PW.1 was able to identify accused 6, 11, 7, 9, 10 and accused 11 and 12 are some of the persons who broke into her house while armed with knives, sticks, pangas and a pistol and stole from her. I find the lamp light in her room provided sufficient lighting for the identification in so far as Count 3 is concerned. I find in particular that PW.1 was able to see clearly the pistol that accused 12 carried.”

Now, assuming as it naturally is that judgement-writing is a personal thing and different judicial officers have different ways of doing the job, does what the learned trial magistrate did here accord with S.169 C.P.C? Hardly. That provision of law reads:

“169 (1) Every judgement shall except as otherwise expressly provided by this Code be written by or under the direction of the presiding officer of the court in the language of the court and shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.”

The provision goes on to say that in case of a conviction the judicial officer shall specify the section of the Penal Code under which the conviction fell and the sentence (S.169(2)).

Taking it that the issue to be determined here was identification, then the learned trial magistrate had a duty to set out the evidence from the prosecution and the defence on this subject and then conclude that R.K had actually by the lamp light, identified the subject appellants giving reasons for such conclusion. All this is lacking here, much as the learned state counsel urged the court not to overturn the finding of fact that indeed identification was proper. It shall however remain so.

Then after being satisfied that R.K identified Stephen, Harry, John, Joshua, Athman and Katana (and Obed A3) who were a group armed with dangerous weapons (Katana with a pistol), the learned trial magistrate took the violence used during the robbery (count 3) to have been intended to sexually assault M.K and B.K – not for the robbery. Then they were convicted under S.296 (1) Penal Code. It was all wrong because the ingredients under S.296(2) Penal Code as charged were proved and in any case sexual assaults as laid in the charge sheet (marked “c”) in the record of appeal did not take place on 27.6.01 but on 4.7.01. From all the above what this court is constrained to remark is that the learned trial magistrate was utterly careless, inattentive and in breach of the mode of crafting judgments in criminal cases. All looks very inept indeed. If it was the violence as described by the learned trial magistrate directed to getting sex that made him reduce the charge to S.296(1) P.C. then he lacked the proper appreciation of the law regarding ingredients of robbery under S.296(2) C.P.C. In paraphrase either of the following constitute that offence; the offenders being more than one; being armed with dangerous weapons; using violence (see John Ndungu Vs. R. Cr. A. 115/95 C.A. MBA). So the learned trial magistrate, after finding that the thugs were a group and armed with dangerous weapons including a pistol, ought to have convicted those named under S.296(2) Penal Code. But he did not. Then the judgment moved to count 4 – the rape of M.K (she was 15 years). It had 4 accused persons. Even with M.K’s evidence, the learned trial magistrate was only satisfied that Harry and Obed A3 (not an appellant) were guilty of the offence and M.K had seen them by lamp light. That PW.1 R.K spoke of finding M.K crying as she bled from her private parts. There was also corroboration by PW.9 (Dr. Mwita) but it was not referred to. Neither was the fact that dates of the two offences were more than a week apart.

Next was count 5 – where B.K was defiled. The lower court found the victims evidence inconsistent and acquitted Stephen and Joshua. The evidence, as regards the whole set of charges was definitely bound to be unclear since witnesses who spoke of being sexually molested on 4.7.2001 also said that on that night the thugs went and robbed their mother (see count 3 relating to 27.6.01). If only the learned trial magistrate had been more attentive in the whole thing! As for count 6 unnatural offence contrary to S.162(a) Penal Code Stephen was bound to be acquitted here because B.K (PW.3) did not claim that that offence was committed on her, but PW.9 (Dr. Mwita) found so.

Back to count 1 (robbing H.M), although the learned trial magistrate did not set out and analyse the

evidence here he found Maulid, Baya and Charo guilty. Also found guilty were Obed (A3) and Abdalla (A4) – but under S.296(1) Penal Code because according to the lower court any violence used was meant for getting illicit sex. Again let it be said that illicit sex was on 4-7-2001 while robberies were committed on 27.6.2001.

The lower court acquitted every accused person (of robbery) in count 2 for lack of proper identification. Perhaps the learned trial magistrate was not satisfied with J.M's (PW.4) identification of the robbers by use of torch light.

Come the sentences, the learned trial magistrate treated the convicts as first offenders and considered their mitigating factors. Obed (A3) was found to be a minor aged 15 years) and was committed to a borstal institution for 3 years. So for count 1 Maulid (A1), Baya (A2), Abdalla (A4) and Charo (A5), each got 14 years imprisonment hard labour plus 5 strokes of the cane then police supervision for 5 years.

The evidence of H.M (PW.4 and complainant in Count 1 of robbery) has been set out above. He said that he identified Maulid, Baya and Charo in his house at time of the robbery by the torch light which one of the thugs held from the door way, and that he picked out Maulid and Charo at an identification parade. Abdalla (A4) features nowhere in evidence but apparently he was convicted! The appellants challenge their identification and the learned trial magistrate did not resolve that aspect. This court finds that a doubt remains over this issue and it is resolved in the appellants favour. Conviction is quashed and sentences set aside as regards count 1. There was no lamp light in H.M's house and torch light by one of the thugs cannot be taken to have been good enough to identify the robbers by the victim who was frightened by the attack. The torch light is not said to have been flashed over the faces of the thugs either.

For count 3 (robbery against R.K PW.1) Stephen (A6), Harry (A7) Joshua (A9) Athman (A10) John (A11) and Katana (A12) each got 14 years imprisonment, hard labour, 5 strokes and police supervision. R.K's evidence was that by the lamp light in her room she identified – Stephen (A6) John A11), Obed (A3), Harry (A7), Joshua (A9), Athman (A10) Charo (A12). The learned trial magistrate found as a fact that the identification was positive and this court does not interfere. This court is satisfied from PW.1's evidence that she identified her attackers some of whom were her neighbours. As remarked on earlier evidence pointed to conviction under S.296(2) Penal Code and the learned trial magistrate ought to have done just that. He did not.

Sentencing in regard to count 4 (the rape of M.K) Harry (A7) got 14 years imprisonment, and 5 strokes to run consecutively with the sentence(s) in count 3. It is not clear why Harry (A7) was convicted for raping M.K. M.K testified that he was only in the gang and in cross-examination she said of Harry (A7) "You never raped me." All in all Harry ought not have been convicted of this offence. There was no evidence to support that. Conviction here is thus quashed and sentence set aside.

Having gone over conviction and sentences, and it was a rather confused course indeed, the issue of identification is set to rest. Alibi did not need much attention because it was not placed before the lower court as to warrant displacing. The defences are set out above and no appellant here firmly claimed that he was at such and such place, and not at the scene on the material day and called evidence to support that claim in order to have the prosecution displace it. All were merely and simply claims made in passing.

The conviction and sentence remaining here relates to count 3 only. Having considered all above, the offence involved and other relevant aspects like how the learned trial magistrate handled the whole case, on its own review of it all, this court is minded to have the convictions and sentences meted out against the appellants there remain. They will not be enhanced either. The nature of enhancement was not stated in the notice. Had it been so stated as in submission, this court would have for instance considered to warn the appellants that if they persisted in their appeals it was likely from the evidence on record that the conviction under S.296(1) Penal Code which the learned trial magistrate for no justification undertook, stood to be set aside and substituted with one under S.296(2) Penal Code of the initial charge, whereupon the appellants would have had a death sentence. That course having not been taken the appeals preferred against conviction and sentence under count 3 in the lower court are dismissed.

For those appellants not affected by that finding their appeals are allowed, conviction set aside and ordered to be set at liberty unless otherwise lawfully held. For the avoidance of doubt the appeals of Stephen (A6), Harry (A7), Joshua (A9), Athuman (A10), John (A11) and Katana (A12) on count 3 are dismissed.

Judgment accordingly.

Delivered on 22nd March, 2004

J. W. MWERA

JUDGE