IN THE COURT OF APPEAL

AT KISUMU

(CORAM: AZANGALALA, OTIENO-ODEK, & KANTAI JJ.A.)

CRIMINAL APPEAL NO. 60 OF 2014

BETWEEN

P M ..... 1st APPELLANT

L M ..... 2nd APPELLANT

P N..... 3rd APPELLANT

AND

REPUBLIC.....RESPONDENT

(An appeal from Judgment of the High Court at Kakamega

(S.Chitembwe & B.T. Jaden JJ.) dated 24th October 2012

in

H.C.CR. A No. 76 of 2010)

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JUDGMENT OF THE COURT

1. The three appellants were jointly charged with the offence of robbery with violence contrary to ***section 296 (2)*** of the Penal Code, Cap 63 of the Laws of Kenya. The particulars are that on the 11th day of March 2008 in Kakamega North District within Western Province, jointly with others not before court, while armed with dangerous weapons namely pangas and rungus robbed ***S M L*** cash Ksh. 470,000/= and at or immediately before or immediately after the time of such robbery, used actual violence to the said S M L. The appellants faced two additional counts of assault causing actual bodily harm to ***S M*** and ***D M*** respectively contrary to ***Section 251*** of the Penal Code and one count of creating a disturbance in a manner likely to cause a breach of peace contrary to ***Section 95 (a)*** and ***(b)*** of the Penal Code. The trial magistrate convicted all the three appellants for the offence of robbery with violence and sentenced them to death. The 2nd appellant was also convicted of assault causing actual bodily harm to D M and S M. The 1st appellant was also convicted of creating a disturbance in a manner to cause breach of peace. The sentences on the non-robbey offences were however held in abeyance

as they had been sentenced to death for robbery with violence.

2. The appellants appeal to the High Court was dismissed. Aggrieved, they have lodged the instant appeal. The appellants raise four grounds of appeal as follows:

i. the High Court abdicated its duty of evaluating the evidence before it, assessing the relevant questions of law and fact, weighing conflicting evidence and thereafter drawing its own conclusions and making due allowance to the fact that it had neither seen nor heard the witnesses and the court was thus guilt of massive misdirection in law;
ii. the High Court erred in not attempting to determine if the ingredients of the charges had been proved;
iii. the judges erred in not attempting to determine whether the trial court in evaluating the prosecution evidence took into account the defence testimony and satisfied itself that the prosecution had not left any reasonable possibility of the defence being true; and
iv. the High Court erred in not attempting to determine whether the offence with which the appellants were charged actually existed in the Laws of Kenya.

3. At the hearing of this appeal, learned counsel ***G. Anyumba*** and ***G. Lore***, represented the appellants while the State was represented by the Principal Prosecution Counsel, ***Mr. L. K. Sirtuy***.

4. The complainant in the count of robbery with violence was ***PW1 S L M***. He is the father to the appellants. The trial having started *de novo* PW1 testified as follows on 27th July 2009:

"On 11th March 2008, I was in my house at 8.00pm when I heard a loud bang on the door. I was with my wife D M and my daughters S M and J M. There was a hurricane lamp on the table. The door was forcefully broken and people entered as I was sitting on my bed. They were seven people. I identified four of them. The four I identified were P M, H M, N M and L M. The four I identified are my children. I had just been paid for sugarcane which I had harvested from 40 acres of my land. The money was in a box inside the house. I told them where the money was. They broke into the box and took Ksh. 470,000/= from the box. All of them participated in breaking the box and taking the money. P M cut me with a panga on the neck. L also cut me on the right hand as I tried to shield my neck. Peter cut me on the right shoulder with a panga. N hit me on the right side of the abdomen with a rungu. They also pulled my wife D outside. They also cut my wife before pulling her outside. H and L are the ones who cut D on the head. S was cut on the head by P M. J was not cut because she was hiding under the table. Z L M heard the screaming and came to see what was happening. … I knew the accused persons because they are my children. I knew their voices and the hurricane lamp was alight. There was enough light inside the house. I was admitted at Kakamega General Hospital. The police visited me and I told them the four people I had identified. When I left hospital I found the appellants had been arrested. I was issued with P3 Form."

5. ***PW2 D M*** testified as follows:

"On 11th March 208 at 8.00 pm, I was with my children S and J and Mzee M L. I was in the house when 7 robbers entered the house after breaking the door. The children were in the sitting room while I and Mzee were in the bedroom sitting on the bed. Out of the seven robbers I identified four of them. They were H M, P M, N M and L M. They had rungus and pangas. L was the first to order Mzee M to produce the money as the others followed and demanded money. Mzee agreed to give them money but asked them not to kill him. Mzee M directed them to the box which had money and L and P broke the box and took Ksh. 470,000/= from it. The children were in the sitting room at the time having been frightened by the robbers. L cut me on the head as H was holding my right hand. N and the others ran away with the

money. S asked the robbers why they had cut me and Mzee M and they also cut her on the head. I recognized the voices of the four since they were my children. The chimney lamp had illuminated the house. I did not identify the other three accomplices. S had screamed attracting the attention of Z and other people. I was issued with P3 Forms. There is a dispute at home because the accused are demanding land from Mzee."

6. ***PW 4 S M***, testified on 20th November 2009 as follows:

"On 11th March 2008, I was in my parent's house reading. I was with my sister J when seven people broke the door forcing it to fall down and they entered. Out of the seven I identified P, L, N and H all of whom are my brothers. They went to where my father sleeps with my mother and demanded money. They did not say anything to me. My father told them where the money was in a box and they took Ksh. 470,000/=. My father and mother were also cut on their heard. The attackers then left. The accused persons are my brothers. I know their voices very well and the hurricane lamp in the house had enough light which enabled me to see them. I was treated in hospital; the accused could not be traced in their houses, they had run away. Later they were arrested. H has not been arrested to date. I was reading when they entered the house. I was using the light from the hurricane lamp to read. I had counted the Ksh. 470,000/= which was stolen during the day."

7. ***PW 5 J M*** testified as follows:

"I recall on 11th March 2008 at 8.00 pm. I was on table reading with my sister S M. I was surprised the door fell inside and I looked and saw seven people. They entered and I recognized four of them as H, P, N and L. I never recognized the others, they passed until the bedroom and asked dad to remove money, dad told them the money is in the suitcase and P and H carried dad and took him to the sitting room and started cutting him. P and L carried mum and took her outside the house and cut her and when we saw we started screaming and the people fled…. The lamp was on until the people fled. I knew the accused because they are my brothers. I used to talk to them and eat together with them. Even L M and S knew there was money in the home. I counted the money with dad and got 470,000/=. It just passed one day after counting and the money was stolen. Many people knew he had money because he had harvested cane."

8. ***PW 6 Partick Luchevi Murukwa*** testified that he was at his house on 11th March 2008 when he head screams from ***Mzee S M's*** compound. A child was screaming. That they share a common boundary with Mzee M and his house is about 15 metres from that of Mzee M. That he directed his torch towards M's house and identified four people L M, H M, P M and N M.

9. ***PW 7 Kizito Sifuna*** testified that he is a clinical officer at Malava District Hospital. That on 11th March 2008 he treated a patient by the name D M (PW2) who had deep cut wounds on the forehead. She was referred to Kakamega Hospital for further treatment; later the patient was referred to Moi Referral Hospital. The general assessment of the degree of injury was grievous harm and a P3 Form was filled. That on the same day he treated a 75 year old patient S M (PW1) who had deep cut wounds at the base of the neck and right temporal bone; there was a cut wound at occipital region, cut wound at right scapula and there was swelling at the back with tenderness at the chest and the patient was vomiting at the time. The probable type of weapon used to cause injury was blunt and sharp. PW7 produced the P3 Forms that he had filled.

10. The 1st appellant, ***P M*** gave sworn evidence that on 11th March 2008 he was at his house sleeping when he heard screams; he woke up, dressed and got outside and heard the screams were coming from Mzee M's place; he went there and found neighbours had gathered including his step brothers; he

found Mzee M and Mama D had been injured and he called one ***Enori*** on phone to come with a motor vehicle to take them to hospital; that they were taken to hospital and he visited them on 12th March 2008; that he went back home and continued farming; that his step brother Z came and asked him why he was still working on the farm and dad was in hospital; that Z went to his home and came armed with his step brothers; the 1st appellant testified that he fled and reported the matter to the sub-chief at Butali who advised him to report at Malava Police Station where he was arrested and put in the cells; that his step mum D vowed to finish them because of the land dispute.

11. The 2nd appellant ***L L M*** testified that he graduated from university in 1999 and he was born out of wedlock; that when he graduated in 1999, he came home with his graduation gown which got lost; that he sought the assistance of the District Commissioner Kabras who gave him police and they went home and arrested his dad (PW1) and D (PW2) and this was the cause of dispute between him and PW1 and PW2; that his graduation gown was recovered from PW2; that on 11th March 2008 he was at his home and his place is near a neighbour who was bereaved and as per custom, he slept outside the neighbour's home; that at the time of the alleged robbery, he was at the neighbour's home keeping vigil and the alleged crime occurred about 6 to 7 kilometres away; that it was not until the next morning that he came to learn that there was an incident at his father's home; that when he went to his dad's home he found Judith and S who told him that thugs had attacked them and they could not identify anybody; that on 19th March 2008, he was put in the cells without knowing why he was arrested.

12. The 3rd appellant testified that on 11th March 2008 he was inside his house not far from dad's house. That he heard screams woke up and got outside; people were screaming and he went there and found Zachariah Lumbasi holding dad, S was with mum in the kitchen and upon inquiry he was told that thugs had attacked the parents and cut them.

13. At the hearing of this appeal, counsel for the appellants reiterated the grounds of appeal; he submitted that the High Court erred in failing to discharge its obligation to assess the evidence on record and weigh the same; that there is contradiction in the evidence of PW1 and PW2 and PW4; that there is also contradiction in the testimony of PW3 and PW 6. Counsel submitted that when PW4 and PW5 testified, they were minors and the record does not show whether a *voir dire* examination was conducted. It was submitted that while PW2 testified that the robbers broke the box where there was money; PW4 stated that the money was in the suitcase. A further contradiction is that PW 3 stated he was the first to arrive at the scene while PW6 also testified that he was the first at the scene. Counsel submitted that there was no proper identification of the appellants and crucial witnesses were not called to testify; that the investigating officer did not testify and the record does not show how the police came to know about the crime since no initial report or occurrence book was produced; that there was no proof that PW1 actually had Ksh. 470,000/= in the house; that for the offence of robbery with violence to exist, one must steal something; that the prosecution failed to prove that something was stolen; that bank statements were not produced as exhibits and no statement from the sugar company was tendered to prove that the complainant was indeed paid the money; there was no indication whether the money was paid in cash, when it was paid, and no withdrawal slip to show that PW1 had withdrawn any cash from the bank; that the alleged broken box was never produced in evidence. Counsel pointed out that the facts of the case do not come within the definition of robbery as stipulated in ***Section 295*** of the Penal Code and there is no offence known as robbery with violence in the Laws of Kenya; it was submitted that the State had conceded that the charge against the appellant was mishandled; that the offence with which the appellants were charged is under ***Section 296 (2)*** of the Penal Code which does not create an offence; that it is ***Section 295*** that creates the offence. It was submitted that due to the contradictions in evidence, the learned judges of the High Court erred in their duty to re-evaluate and re-assess the evidence on record and arrive at their own independent conclusions.

14. Counsel for the appellant cited various authorities in support of his submission. The case of ***Gabriel Kamau Njoroge – v- R (1982-88) KAR*** was cited to support the submission that the appellants are entitled as a atter of law to have the evidence against them re-assessed and re- evaluated by the High Court. Counsel cited the case of ***Ouma – v- R, Criminal Appeal No, 91 of 1985*** in support of the submission that at the time of evaluating the prosecution's evidence, the court must have in mind the accused person's defence and must satisfy itself that the prosecution had by its evidence left no reasonable possibility of that defence being true.The persuasive Tanzanian case of ***DPP – v- Salum Ali Juma, Criminal Application No. 2 of 2005*** was cited in support of the proposition that there is no express definition in the Penal Code of the offence of robbery with violence; that ***Section 295*** of the Penal Code creates the offence of robbery and ***Section 296 (2)*** only enhances the sentence if the robber used violence, or is armed with dangerous or offensive weapon or is in the company of another; counsel urged this Court to follow the persuasive Tanzanian decision and find that there is no offence known as robbery with violence in the laws of Kenya.

15. The State in opposing the appeal submitted that the offence of robbery with violence is known to the laws of Kenya and the jurisprudence from the Kenyan courts is rich with the definition of the offence. It was submitted that whereas this was a second appeal limited to points of law, the appellants have raised issues of fact such as identification which have already been determined by the two courts below; that in a second appeal, this Court should not delve into facts of the case. It was submitted that both the trial court and the High Court took into account the defence testimony in evaluating the evidence and the alibi raised by the 2nd appellant. The State submitted that the identification of the appellants was through recognition and voice identification; that there was no error by the High Court in re- evaluating the entire evidence on record; that the prosecution proved its case to the required standard.

16. We have considered the evidence on record, submissions by counsel and have analyzed the judgment of the High Court. In ***Salim Juma Dimiro –v – R, Criminal Appeal No.114 of 2004 at Mombasa***, this Court stated re- evaluation of evidence is a matter of law. This is a second appeal and we are only concerned with points of law. As stated in *David Njoroge Macharia -V -R [2011]e KLR*, under ***Section 361*** of the Criminal Procedure Code:

"Only matters of law fall for consideration and the court will not normally interfere with concurrent findings of fact by the two courts below unless such findings are based on no evidence, or are based on a misapprehension of the evidence, or the courts below are shown demonstrably to have acted on wrong principles in making the findings."

17. There is no dispute that there was a robbery at the house of the complainant and he was wounded. The instant appeal turns on one decisive question whether each of the appellants was positively identified as one of the persons who attacked and robbed the complainant. In ***Anjononi & Others vs. Republic (1976-80) 1 KLR 1566*** at page 1568 this Court held,

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

18. In the case of **Wamunga vs. Republic (1989) KLR 424** it was stated that:

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

19. In the instant case, the appellants' contention is that they were not properly identified as the perpetrators of the crime; that there was no investigation report and it is not clear how the police came to know about the offence; and the investigating officer was not called to testify. The key prosecution witnesses testified that they recognized the appellants. Both PW1 and PW2 testified that they recognized the appellants as there was light in the bedroom from the hurricane lamp. PW3 and PW 4 testified that they were in the sitting room reading using a chimney lamp and they recognized the appellants who are their brothers. PW1, PW2, PW4 and PW5 all testified that they recognized the voices of the appellants. PW1 stated that he recognized their voices as they were his children; PW4 and PW5 testified that they recognized their voices as the appellants are their brothers and they talk to each other and have been eating together. On the issue of voice identification, in ***Karani vs. Republic* (1985) KLR 290,** this Court held at page 293:

"Identification by voice nearly always amounts to identification by recognition. Yet here as in any other cases care has to be taken to ensure that the voice was that of the appellant, that the complainant was familiar with the voice and that he recognized it and that there were conditions in existence favouring safe identification."

20. We concur with the findings of the High Court that the appellants were identified and recognized by PW1, PW2, PW3 and PW4. The testimonies of these witnesses place each of the appellants at the scene of crime. PW 6 also testified that he recognized the appellants using light from his torch. On voice recognition, we put less weight as the exact words spoken by the appellants that led to voice recognition are not clearly stated in the record.

21. We note that the crime was committed at 8.00 pm in the night and conditions for positive identification or recognition can be difficult. Evidence of visual identification should always be approached with great care and caution **(see *Waithaka Chege – v- R {1979} KLR 271)***. Greater care should be exercised where the conditions for a favourable identification are poor. **(*Gikonyo Karume & Another – v – R {1900} KLR 23)*.** Before a court can return a conviction based on identification of any accused person at night and in difficult circumstances, such evidence must be water tight. **(See *Abdalla bin Wendo & Another – v- R {195} 20 EACA 166; Wamunga – v- R {1989} KLR 42;* and *Maitanyi – v- R 1986 KLR 198)*.** Before acting on such evidence, the trial court must make inquiries as to the presence and nature of light, the intensity of such light, the location of the source of light in relation to the accused and time taken by the witness to observe the accused so as to be able to identify him subsequently.

22. In the instant case, the High Court in dealing with identification of the appellants at night expressed itself as follows:

"The evidence of PW4 and PW5 (the two daughters) corroborated that of their parents (PW1 and PW2). The evidence of PW4 and PW5 also points to the attack by seven people among them the appellants who were their step brothers. … The two sisters testified that they were reading using a "chimney lamp" when the attack took place. According to the two sisters, the attackers passed through the sitting room where they were reading then proceeded to the bedroom where their parents were. … The evidence of PW1, PW2, PW3, PW4 and PW5 is that of the same family. However, we take cognizance of the fact that an attack at night will invariably find family members together. We have however considered the evidence of the said witnesses against the backdrop of the family acrimony, the polygamous background and the land dispute which every witness including the appellants have testified about. We are however satisfied that there was sufficient light that enabled the witnesses to see the attackers. PW6 who is an independent witness has also identified the appellants. The appellants were positively identified by all six prosecution witnesses who were at the scene."

23. On our part, we have analysed the record and the judgment of the High Court on the issue of night identification and recognition of the appellants. We are satisfied that PW1, PW2, PW4, PW5 and PW6 all positively recognized the appellants as part of the gang of attackers. The testimony of these witnesses place the appellants at the *locus in quo*; their evidence was not shaken in cross-examination; the evidence displaced the alibi raised by the 2nd appellant; the light from reading lamp as testified by PW4 and PW5 and the light in the bedroom as testified by PW1 and PW2 as well as the torch light as testified by PW 6 lead us to concur with the finding of the two courts below that despite the fact that the offence was committed at night, the appellants were positively recognized by the witnesses. We find no error in identification and recognition of the appellants.

24. The appellants submitted that the High Court erred in not considering the defence testimony. The judgment reveals that the learned judges expressed themselves as follows on the defence case:

"The gist of the defence by the 1st and 3rd appellants is that this case is a frame up due to the land dispute in their polygamous family. The 2nd appellant also talked about the same and the perceived jealous (sic) over his high level of education and further that he was at a neighbours home at the material time. We have considered the defence case by each of the appellants. However, we are not convinced that this is a case of frame-up. Although a land dispute existed between the family members, the complainants would not have occasioned grievous harm on themselves and then marshalled up a case against the appellants. We find that the prosecution case was strong and the defence raised did not cast reasonable doubts on the same in Count I, II and III".

25. Our own examination of the judgment reveals that not only did the High Court evaluate the defence testimony, it considered the alibi by the 2nd appellant, addressed the family acrimony and noted the land dispute in the family and weighed all these against the prosecution evidence on recognition which placed all the appellants at the scene of crime as part of the gang that attacked and robbed the complainant. We are satisfied that the principle in ***Ouma – v- R, Criminal Appeal No, 91 of 1985*** wherein the court must have in mind the accused person's defence was aptly followed and we find no error of law on the part of the High Court.

26. A further contention by the appellants is that there were contradictions in the testimony of the prosecution witnesses. We have noted the contradictions and observe that they do not affect the guilt of the appellants. It is not in dispute that the complainants were attacked. The key issue is who attacked them. The prosecution evidence places all the appellants at the *locus in quo*; the testimony of PW1, PW2, PW3, PW4 and PW6 identifies the appellants as part of the gang of robbers. We are satisfied that despite the minor contradictions, the prosecution proved its case against the appellants to the required standard.

27. A further contention by the appellants is that the High Court erred in not ensuring that the ingredients of the offence of robbery with violence were proved. In the present case, the appellants are faced with a charge of robbery with violence contrary to S***ection 296 (2) of the Penal Code***. Ancharge under this section has three essential ingredients that must be proved by thenprosecution. In ***Johana Ndungu –v – R Criminal Appeal No. 116 of 1995****,* the ingredients for the charge of robbery with violence were stated to be:

"***(i) if the offender is armed with any dangerous or offensive weapon or instrument; or***

(ii) if he is in company with one or more other person or persons; or

(iii) if, at or immediately before or immediately after the time of robbery, he wounds, beats,

strikes or uses any other violence to any person."

28. We are alive to the requirement that proof of any one of the ingredients of robbery with violence is enough to base a conviction under ***Section 296 (2)*** of the Penal Code. In the present case, the testimony of PW1, PW2, PW4 and PW5 all show that the appellants were armed with dangerous and offensive weapons. The appellants cut PW1, PW2 and PW4 using pangas; they also had rungus. PW1 and PW2 testified that they were beaten;the prosecution case also shows that there was more than one robber. The testimony of PW7 corroborates the fact that PW1 and PW2 were injured. We are satisfied that the ingredients of the offence of robbery with violence were proved beyond reasonable doubt.

29. A further contention by the appellants is that the offence of robbery with violence is an offence that does not exist in the laws of Kenya. In support of this, the appellants cited a Tanzania case as persuasive authority. We concur with the submission by the State that there is rich jurisprudence in Kenya that shows the offence of robbery with violence exists in the laws of Kenya. We have cited the case of ***Johana Ndungu –v – R Criminal Appeal No. 116 of 1995***, where the ingredients for the charge of robbery with violence are stated. This is just but one of the cases that demonstrate theoffence of robbery with violence exists in Kenya's legal system.

30. The appellants further contend that PW4 and PW5 were minors when they testified and the record does not show whether a *voire dire* examination was conducted. PW4 testified on 20th November 2009 and indicated she was 17 years old; the robbery occurred when she was 16 years old. PW 5 testified on 20th November 2009 and stated that she was 19 years old. ***Section 125 of the Evidence Act*** provides that all persons are competent to testify unless the court considers that they are prevented from understanding questions put to them, or from giving rational answers to those questions by reason of, *inter alia,* tender years. In ***Kibageny v R [1959] EA 92***, the predecessor of this Court observed that there was no definition in the Oaths and Statutory Declarations Act of the expression *"child of tender years"* and the Court took it to mean that a child of tender years is any child of an age or apparent age of less than fourteen years. ***Section 2 of the Childrens Act No. 8 of 2001*** defines *"child of tender years"* to mean a child under the age of ten years. Guided by the provision in ***Section 2 of the Childrens Act***, we are satisfied that both PW4 and PW5 were competent witnesses and were not children of tender years to require a *voire dire* examination in order to give evidence. Both P W4 and PW5 were above the age of 10 years at the time of the offence and at the time they testified. The age of majority, namely 18 years, is not the age used to determine the competence of a person to testify.

31. A further contention by the appellants is that the investigating officer was not called to testify among other crucial witnesses**. Section 143 of the Evidence Act** Cap 80 Laws of Kenya provides:-

"No particular number of witnesses shall in the absence of any provision of law to the contray be required for the proof of any fact"

In the case of ***Kihara versus Republic (1986) KLR 473*** the Court of Appeal held *inter alia* that,

"The prosecution is not compelled to call as many witnesses as there could be as what matters is not the number of witnesses but the best sound evidence that can be given in court"

32. Failure to call a witness can only be construed against the prosecution if it can be demonstrated that had such a witness been called, his/her evidence would have been against the prosecution. The question that ponders our mind is whether the evidence of the investigating officer would be prejudicial to the appellants. We think not, the investigating officer would collect, collate and repeat what PW1, PW2, PW3, and PW4, PW5 and PW6 as well as other prosecution witnesses stated. We are of the considered

view that failure to call the investigation officer and other witnesses was not fatal to the prosecution case. In all cases, the investigating officer is not an eye witnessand in the instant case, the testimonies of the eye witnesses was sufficient to convict the appellants.

33. Finally, the appellants contend that in a charge of robbery with violence, there must be proof that something was stolen; that in this case, there was no proof that Ksh. 470,000/= was stolen from PW1. We have considered this submission. PW1 testified that the appellants took Ksh. 470,000/= during the robbery; PW 3 and PW4 testified that they had counted the money. In ***Tayab - v - Kinanu (1983) KLR 114,*** this Court stated that an appellate court will not interfere with a trial court's finding of fact based on assessment of the credibility and demeanour of witnesses who give evidence, unless it was wrong in principle. We see no reason to doubt the credibility of PW1, PW3 and PW4 that indeed PW1 had cash Ksh. 470,000/= in the house. In totality, we find that the learned judges did not err in their re-evaluation of the evidence adduced against the appellants. We are satisfied that the appellants were recognized by PW1, PW2, PW4, PW5 and PW 6 as being among the persons who committed the offence as charged. For the reasons given, we find that this appeal has no merit and is hereby dismissed.

Dated and delivered at Kisumu this 10th day of December, 2014.

FESTUS AZANGALALA

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JUDGE OF APPEAL

OTIENO-ODEK

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JUDGE OF APPEAL

SANKALE ole KANTAI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR