

PARTIES TO CRIME

1.1 Introduction

- Individual and multiple participation in crime
- The concept of joint criminal enterprise
- Primary liability and secondary liability to crime (or complicity)
- Kenya adopts two main distinctions of parties to offences; perpetrators and accessories;
- These two categories are all referred to as principal offenders
- A conviction for all these categories of parties to offences (the principal offenders) carry similar consequences
- The difference arises at sentencing: see *Lydia Wamaita Wambui v Republic [2019] eKLR, Criminal Appeal 96 of 2018*
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1.2 Perpetrator: -

- one whose act is the most immediate cause of the *actus reus*; the primary offender
- incidences of Individual and multiple perpetrators

1.3 Accessories: -

- Also called secondary offenders
- who may participate in committing the offence but are not directly responsible for the *actus reus*
- they include, aiders, procurers, abettors, accessories before and after the fact

Aiding: It involves providing assistance, helping or supporting the perpetrator to commit the offence before or at the time of its commission

Abetting: It suggests encouraging or instigating, or inciting

Counselling: Also involves advising, soliciting, encouraging, instigating or inciting the commission of an offence

Procuring: putting the perpetrator up to commit an offence either through persuasion or threats

- Kenyan Courts use the terms interchangeably without giving much thought to distinguish them. See *Shadrack Kinyanjui Mugo & Anor v R [1995]eKLR*