Bett v Republic (Criminal Appeal E001 of 2022)
[2023] KEHC 22841 (KLR) (27 September 2023) (Judgment)

Neutral citation: [2023] KEHC 22841 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

CRIMINAL APPEAL E001 OF 2022

RL KORIR, J

SEPTEMBER 27, 2023

BETWEEN

GILBERT KIPROTICH BETT ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(From the Conviction and Sentence in Sexual Offence Case Number 70 of 2018 by Hon. Kiniale L. in the Principal Magistrate's Court at Bomet)

JUDGMENT

1. The Appellant herein was convicted by Hon. L. Kiniale, Principal Magistrate for the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*. The particulars of the charge were that between the nights of 27th and 28th December 2018 at Merigi Location within Bomet County, he intentionally caused his penis to penetrate the vagina of JC, a child aged 13 years.

2. The Appellant faced an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. The particulars of the charge were between the nights of 27th and 28th December 2018 at Merigi Location within Bomet County, he intentionally touched the vagina of JC, a child aged 13 years with his penis.

3. The Appellant pleaded not guilty to the charges before the trial court, and a full hearing was conducted. The prosecution called four (4) witnesses in support of its case.

4. At the close of the prosecution case, the trial court ruled that a prima facie case had been established against the Appellant and he was put on his defence.

5. At the conclusion of the trial, he was convicted on the charge of defilement and sentenced to serve twenty (20) years in prison.

6. Being dissatisfied with the Judgment dated 21st December 2021, Gilbert Kiprotich Bett appealed to this court on the following grounds:-

   i. That the trial Magistrate erred on the burden of proof.

   ii. That the trial Magistrate erred in relying on the evidence of PW1, the medical officer who examined a different victim known as CC on 29th December 2019 contrary to the evidence of PW2, PW3 and PW4 and further there is variance of particulars in the Charge Sheet.

   iii. That the Prosecution failed to call evidence of proof of arrest of the Accused and PW2 at the Accused's residence and therefore the trial Magistrate erred on relying on the evidence of PW4.

   iv. That the trial magistrate erred in relying on the evidence of PW2, PW3 and PW4 without weighing the defence case against the same.

   v. That the trial Magistrate erred in relying on the evidence of PW1 who failed to prove an act of defilement and failure to prove the age of PW2.

   vi. That the trial Magistrate erred in making inference which was not supported by evidence.

   vii. That the trial Magistrate erred in finding the Appellant guilty of the offence before analysing the defence case.

   viii. That consequently, the findings of the trial Magistrate were bad in law and fact and against the weight of the evidence.

   ix. That the sentence of 20 years was harsh and oppressive on the Appellant who was a first offender.

   x. That the Prosecution failed to prove its case beyond reasonable doubt.

7. The Appellant further filed Supplementary Grounds of Appeal on 20th February 2023 and relied on the following reproduced verbatim grounds:-

   i. That the trial Magistrate erred in the law and fact by failing to realise that the Prosecution witnesses' evidence was not sufficient for a prima facie case to be established against me the Appellant.

   ii. That my arrest was an afterthought.

   iii. That the 3 ingredients of defilement i.e. penetration, identity of the perpetrator and the age of the complainant were not proved beyond reasonable doubt.

   iv. That my right to a fair trial was violated contrary to Article 50(2) of *the Constitution*.

   v. That PW1's testimony was untrustworthy in unsworn statement.

   vi. That the Prosecution case was not proved beyond any reasonable doubt.

   vii. That the trial Magistrate erred in both law and facts by convicting me on a single uncorroborated testimony of PW1.

   viii. That the Prosecution witnesses adduced contradictory and inconsistent evidence.

   ix. That the present case was shoddily investigated.

   x. That the medical evidence exonerated me the Appellant from the present case.

xi. That the vital witnesses were not brought to court to testify whose testimony could have guaranteed my acquittal.

xii. That my alibi defence was overlooked by the trial Magistrate.

xiii. That the mandatory minimum sentence meted on me is unconstitutional and the court lacked discretion and the element contained in Article 28 of *the Constitution*.

xiv. That I was not medically examined as required by the law and *Sexual Offences Act* No. 3 of 2006.

xv. That my alibi defense was wrongly dismissed.

8. This being the first appellate court, I have a duty to re-evaluate the evidence on record afresh. The Court of Appeal in the case of Mark Ouiruri Mose vs Republic (2013) eKLR, held that:-

> " That this Court is duty bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyse it and come to its own independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanour of the witnesses and hearing them give evidence and give allowance for that"

The Prosecution's Case.

9. It was the Prosecution's case that the Appellant defiled J.C (PW2) on the nights of 27th and 28th December 2018. PW2 testified that she went to the Appellant's home on 27th December 2018 and they had sex.

10. Julius Magut (PW1) who was the clinical officer testified that she examined the minor (PW2) on 29th December 2018 and he found that her external genitalia was normal and had no bruises and lacerations but had a freshly torn hymen. He further testified that he found numerous pus and epithelial cells. That due to the freshly torn hymen and the presence of epithelial and pus cells which signified friction, he concluded that there was penetration.

The Accused/ Appellant's Case.

11. The Appellant, Gilbert Kiprotich Bett denied committing the offence. That he finished his exams in 2018 and left for Olenguruone. He further testified that he only returned on 28th December 2018 between 9 a.m. to 3 p.m. to check his results after which he returned home.

12. Gilbert Kigen (DW2) testified that he was with the Accused on 27th December 2018 at Olenguruone. That he brought the Appellant to Merigi on 28th December 2018 and left him there. That after a week, the Appellant called him and informed him that he had been arrested.

13. On 22nd February 2023, I directed that this appeal be dispensed off by way of written submissions.

The Appellant's Submissions.

14. It was the Appellant's submission that his arrest was an afterthought as he was not found with the complainant. That he was arrested much later in a bid to bridge the Prosecution's collapsing case.

15. The Appellant submitted that the medical evidence produced did not support the victim's testimony and exonerated him from the offence. That the clinical officer (PW1) examined CC and filled in the P3 form with the details of the said CC who was not the complainant. He further submitted that the medical examination was done two days after the alleged incident.

16. It was the Appellant's submission that the age of the victim was not proved as no age assessment was conducted on the complainant.

17. The Appellant submitted that he was not positively identified and that only left dock identification which was misleading leading to a miscarriage of justice.

18. It was the Appellant's submission that the Prosecution's case was marred with contradictions and inconsistencies and that the exact date of the alleged offence remained unknown.

19. The Appellant submitted that the present case took a long time before it was concluded and that resulted in an unfair trial. That after the case begun de novo, the witnesses said different things. He further submitted that he was not supplied with all the documentary evidence that the Prosecution relied upon like the Investigation Diary and Exhibit Memo.

20. It was the Appellant's submission that the Charge Sheet was defective as the charge and particulars in the Charge Sheet were erased without being counter signed.

21. The Appellant submitted that the Prosecution did not prove its case beyond reasonable doubt and that a conviction could not be sustained based on the uncorroborated testimony of a single witness. He submitted that PW1 and PW2 were incredible witnesses who could not be trusted. He relied on Ndungu Kimanyi vs Republic (1979) KLR 283.

22. It was the Appellant's submission that the trial Magistrate erred in dismissing his alibi defence. That his alibi defence was strong enough and was not investigated by the Prosecution.

23. On sentence, the Appellant submitted that the mandatory minimum sentence imposed on him was a nullity as the court was robbed of its discretion to issue an appropriate sentence.

24. It was the Appellant's submission that this court should interfere with the sentence by either setting him at liberty, reducing the sentence or order a retrial.

The Prosecution's/Respondent's Submissions.

25. The Respondent submitted that the victim was aged 13 years at the time of the incident. That a Birth Certificate (P.Exh1) was produced and the evidence was not challenged by the Appellant during the trial and it therefore remained uncontested.

26. It was the Respondent's submission that it was manifestly clear from the victim's testimony that there was penetration. That the medical evidence also lend credence to the victim's testimony. It was the Respondent's further submission that the clinical officer who examined the victim produced exhibits and noted a freshly torn hymen. That he formed the opinion that the victim's genitals had been penetrated.

27. The Respondent submitted that the issue of identification was not in doubt. That one could easily discern that the Appellant and the victim were not strangers to each other. The Respondent further submitted that they attended the same school and resided in the same area, a fact that the Appellant acknowledged in his defence.

28. It was the Respondent's submission that the trial court was right in dismissing the Appellant's defence of being framed up. That the Respondent's evidence was overwhelming and the conviction was safe and the sentence issued proper.

29. I have gone through and given due consideration to the trial court's proceedings, the Petition of Appeal dated 4th January 2022, the Supplementary Grounds of Appeal and Appellant's Written Submissions

both filed on 20th February 2023, the Respondent's Written Submissions dated 10th March 2023 and the following issues arise for my determination: -

i. Whether there were procedural issues affecting a fair trial.

ii. Whether the Prosecution proved its case beyond reasonable doubt.

iii. Whether the Defence places doubt on the Prosecution case.

iv. Whether the Sentence preferred against the Accused was manifestly excessive, harsh and severe.

i) Procedural Issues Affecting Fair Trial

A.Whether The Charge Sheet Was Defective.

30. The Appellant contends that the Charge Sheet relied on by the trial court to convict him was defective. The substantive law on defective Charge Sheets is Section 134 of the Criminal Procedure Code which provides as follows:-

> Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

31. In determining whether a Charge Sheet was defective or not, Ngugi J. (as he then was) in B N D vs Republic (2017) eKLR the court held that: -

> " The principle of the law governing charge sheets is that an accused should be charged with an offence known in law. The offence charged should be disclosed and stated in a clear and unambiguous manner so that the accused may be able to plead to a specific charge that he can understand. It will also enable an accused person to prepare his defence.
>
> 29. The answer from our decisional law is this: the test for whether a charge sheet is fatally defective is a substantive one: was the accused charged with an offence known to law and was it disclosed in a sufficiently accurate fashion to give the accused adequate notice of the charges facing him? If the answer is in the affirmative, it cannot be said in any way other than a contrived one that the charges were defective."

32. Similarly, the Court of Appeal Court in Sigilani vs Republic (2004) 2 KLR, 480 held as follows:-

> " The principle of the law governing charge sheets is that an accused should be charged with an offence known in law. The offence should be disclosed and stated in a clear and unambiguous manner so that the accused may be able to plead to specific charge that he can understand. It will also enable the accused to prepare his defence".

33. The Appellant submitted that the defectiveness of the Charge Sheet was defective because the particulars were erased and altered without countersigning. I have gone through the Charge Sheet and I have noted that in the particulars of the offence section, the victim's name was erased using whiteout and initials of her name were inserted. I have also noted that in the same Charge Sheet, the victim's name was included as the complainant therefore the Appellant was aware who the complainant/victim was. This court takes judicial notice that present jurisprudence dictate that the identity of the minor should be reducted to protect the interests of such minor.

34. In relation to Section 134 of the Criminal Procedure Code, the substance of the Charge and its particulars were read out to the Appellant in a language he understood and he pleaded not guilty. The Appellant was present during the trial and cross examined all the Prosecution's witnesses. He thereafter presented his defence and his witness. This demonstrated that the Appellant fully understood the Charges he faced. It is my finding therefore that the impugned Charge Sheet was not defective.

B.Whether The Appellant's Right To A Fair Trial Under Article 50(2)(j) Of *The Constitution* Was Infringed Upon

35. Article 50 (2)(j) of *the Constitution* provides that:-

> Every Accused person has the right to a fair trial, which includes the right to be informed in advance of the evidence the prosecution intends to rely on and to have reasonable access to that evidence.

36. The Appellant submitted that he was not furnished with an Investigation Diary and an Exhibit Memo thereby occasioning him an unfair trial. I dismiss this submission because there was evidence on record that the Prosecution supplied the witness statements, and the P3 Form to the Appellant. The trial court record showed that on 23rd September 2020, the Appellant confirmed that he had been given the P3 form and that he had received all the witness statements.

II.Whether The Prosecution Proved Its Case Beyond Reasonable Doubt.

37. It is trite law that for the offence of defilement to be established, the age of the victim, penetration and positive identification or recognition of the offender must be proved.

38. In sexual offences, the age of a victim is an important ingredient to be considered when deciding the penalty to be meted out to an accused person. The age of the victim may be proved through the production of a birth certificate or a parent's testimony.

39. Rule 4 of the Sexual Offences Rules of Court 2014 provides that:-

> When determining the age of a person, the court may take into account evidence of the age of that person that may be contained in a birth certificate, any school documents or in a baptismal card or similar document.

40. In the case of Edwin Nyambaso Onsongo vs Republic (2016) eKLR, in which the court cited the case of Mwolongo Chichoro Mwanyembe Vs Republic, Mombasa Criminal Appeal No.24 Of 2015 (UR) the Court of Appeal held that:-

> " ... the question of proof of age has finally been settled by recent decisions of this court to the effect that it can be proved by documents, evidence such as a birth certificate, baptism card or by oral evidence of the child if the child is sufficiently intelligent or the evidence of the parents or guardian or medical evidence, among other credible forms of proof....."

41. BL (PW3) produced a Birth Certificate and the same was marked P.Exh 1. The Birth Certificate indicated that JC (PW2) was born on 18th May 2005. The authenticity of the Birth Certificate or its production was not challenged during the trial. I find the Birth Certificate admissible and based on its contents it is my further finding that the time of the commission of the alleged offence, JC was aged 13 years.

42. With regard to the issue of identification, the Court of Appeal in the case of Cleophas Wamunga vs Republic(1989)eKLR expressed itself as follows:-

> " Evidence of visual identification in criminal cases can bring about miscarriage of justice and it is of vital importance that such evidence is examined carefully to minimize this danger....."

43. The victim (PW2) testified that she had sex with the Appellant in his house. Upon cross examination, PW2 testified that they knew each other from school and they went to the same school. This fact was confirmed by the Appellant who upon cross examination stated that he knew their home and that they went to the same school. It was her further testimony upon cross examination that she was in a relationship with the Appellant.

44. This evidence in my view is more of recognition than identification. In the case of Peter Musau Mwanzia vs Republic (2008) eKLR, the Court of Appeal expressed itself as follows: -

> " We do agree that for evidence of recognition to be relied upon, the witness claiming to recognise a suspect must establish circumstances that would prove that the suspect is not a stranger to him and thus to put a difference between recognition and identification of a stranger. He must show, for example, that the suspect has been known to him for sometime, is a relative, a friend or somebody within the same vicinity as himself and so he had been in contact with the suspect before the incident in question. Such knowledge need not be for a long time but must be for such time that the witness, in seeing the suspect at the time of the offence, can recall very well having seen him earlier on before the incident....."

45. Flowing from the above, there is no doubt in my mind that the Appellant was well known to PW2 as they went to the same school. PW2 also identified the Appellant as the perpetrator in the dock. I am satisfied that PW2's evidence in relation to identification was free from error and doubt and it is my finding that she positively identified the Appellant as the perpetrator of the offence.

46. With regards to penetration, Section 2 of the *Sexual Offences Act* defines penetration as the partial or complete insertion of genital organs into the genital organs of another person. In the case of Bassita vs Uganda S. C Criminal Appeal Number 35 of 1995, the Supreme Court of Uganda held that:-

> " The act of sexual intercourse or penetration may be proved by direct or circumstantial evidence. Usually, the sexual intercourse is proved by the victims own evidence and corroborated by the medical evidence or other evidence....."

47. Penetration is proved through the evidence of the victim corroborated by medical evidence. The testimony of the victim in this case coupled with a medical examination must be sufficient to determine whether penetration occurred.

48. JC (PW2) testified that on the material day (27th December 2018), she went to the Appellant's home and they had sex at night. It was her testimony that on 29th December 2018, her mother (PW3) and police officers found her at the Appellant's home and arrested both of them.

49. When the Appellant cross examined PW2, she confirmed that they had sex on the material night.

50. Julius Magut (PW1) who was the clinical officer at Longisa County Referral Hospital testified that when he examined PW2, he found that her hymen was freshly broken. That her external genitalia had no bruises and that she had no lacerations. PW1 further stated that he found epithelial and pus cells which were indicative of friction and it was his conclusion that there had been penetration.

51. PW1 produced P3 and PRC Forms that were marked as P.Exh 3 and 5 respectively. The P3 form (P.Exh.3) indicated that at the time of examination, PW3's injuries were about two days old. The findings on the P3 Form were that that PW3 had a torn hymen and that she had no bruises or lacerations. The P3 Form also indicated that pus and epithelial cells were found on the victim. The findings in the PRC Form (P.Exh. 5) mirrored those contained in the P3 Form. The two exhibits were not contradictory as alleged by the Appellant.

52. Further, the above findings upon medical examination of PW2 corroborated the evidence tendered by the clinical officer (PW1).It is therefore not true that there was no corroboration as by the Appellant. I am satisfied based on the testimonies of PW1 and PW2 and the contents of the P3 and PRC forms that JC (PW2) was penetrated on the material day.

53. I also observe that the Appellant's allegation that the clinical officer (PW1) examined one CC and not the victim in this case to be untrue. In his testimony, PW1 indicated that he examined JC (PW2) and the P3 and PRC Forms contain the name of PW2 and the findings of the examination.

54. Upon my evaluation of the evidence as stated above, It is my finding that the Prosecution evidence was sufficient to establish the elements of the offense being age of the complainant, penetration and positive identification of the perpetrator. The Prosecution proved its case against the Appellant beyond reasonable doubt. I thus uphold the conviction.

III.Whether The Defence Places Doubt On The Prosecution Case.

55. I have considered the Appellant's defence in which he denied committing the offence. He stated that he completed his exams in the year 2018 and left for Olenguruone. That on 28th December 2018, he returned (to Merigi) to check his results and returned home at 3p.m. It was his further testimony that when he went to town, he was arrested by a police officer from Merigi. That the police officer claimed that the he was with the victim at their home.

56. The Appellant testified that they had a land dispute in the year 2017 in which the victim's father wanted to buy land from them and that the dispute went all the way to the DO in Longisa.

57. On the issue of the land dispute, the Appellant cross examined BL (PW3) who was the victim's mother and she stated that she did not know the Appellant's family well and that they had no grudge. The Appellant did not call any witness to corroborate his claim that their families had a land dispute. In my view, the land dispute claim remained an allegation as it was not proved.

58. The Appellant had an alibi defence through his witness one Gilbert Kigen (DW2) who testified that he was with the Appellant on 27th December 2018 and he stayed with him until 28th December 2018 when he brought him to Merigi and left him there.

59. The Black's Law Dictionary, 10th Edition defines alibi as:-

> A defense based on physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of crime at the relevant time.

60. In the case of R vs Sukha Sign S/O Wazir Singh & 7 Others (1939) 6 EACA 145, the former Court of Appeal for Eastern Africa held that:-

> " If a person is accused of anything and his defence is an alibi, he should bring forward that alibi as soon as he can because, firstly, if he does not bring it forward until months afterwards, there is naturally a doubt as to whether he has not been preparing it in the interval, secondly, if he brings it forward at the earliest possible moment, it will give prosecution

an opportunity of inquiring into the alibi and if they are satisfied as to its genuineness, proceedings will be stopped".

61. It is trite that once the Appellant raised an alibi defence, the onus was on the Prosecution to displace the defence of alibi after the defence raises it at the trial. This was held in the Court of Appeal case of Victor Mwendwa Mulinge vs Republic (2014) eKLR as:-

> " It is trite law that the burden of proving falsity, if at all, of an accused's defence of alibi lies on the prosecution".

62. The Court of Appeal in the case of Wangombe Vs Republic (1980) KLR 149 held as follows:-

> " ..... In Ssentale vs. Uganda (1968) EA 365, 368 (Sir Udo Udoma CJ).... said that a prisoner who puts forward an alibi as an answer to a charge does not thereby assume any burden of proving that answer; it is a misdirection to refer to any burden as resting on the prisoner in such a case; for the burden of proving his guilt remains throughout the prosecution. We agree, we have ourselves said so on more than one occasion. . . .The defence of alibi was put forward for the first time some four months after the robbery when the appellant made his unsworn statement in court. Even in such circumstances the prosecution or the police ought to check and test the alibi wherever possible".

63. The Appellant's defence of alibi was raised at the defence hearing and not at the beginning of the trial thus denying the Prosecution an opportunity to verify the alibi. I have also noted that the issue of the alibi was not put across the Prosecution witnesses during cross examination. This in my view was an afterthought by the Appellant.

64. In totality, I find that the Appellant's defence did not raise or place a doubt on the Prosecution's case.

IV.Whether The Sentence Preferred Against The Accused Was Manifestly Excessive, Harsh And Severe.

65. The penal section for a defilement case for a child of 12 years is provided by Section 8 (3) of the *Sexual Offences Act* which states that:-

> A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

66. The Appellant was sentenced to 20 years as prescribed by the law. The sentence is couched in mandatory terms and as such trial courts are minded to pass such sentence as set out by the law.

67. In the present case, at the commission of the offence, both the Appellant and the victim were school going children and from the evidence on record, they were engaged in a sexual relationship. From the evidence, the age of the Appellant was not stated. He was said to have just cleared form four examination and may therefore have just crossed into adulthood. Further the victim lied to her mother that she was going for treatment when she left home and headed to the Appellant's house upon accepting his invitation. The unlawful sexual activity they engaged in for two days while her parents frantically looked for her was though unlawful, mutually planned and executed. Being the older party, the Appellant clearly took advantage of the victim. Nevertheless owing to the circumstances aforestated, and the youthful age of the Appellant, it is my view that the mandatory sentence of 20 years meted was harsh.

68. The question then becomes whether I have the discretion to reduce a mandatory minimum sentence and the answer is in the affirmative. The Court of Appeal in Dismas Wafula Kilwake vs. Republic (2019) eKLR in which it expressed itself as hereunder: -

> "Here at home in a judgment rendered on 14th December 2017 in Francis Karioko Muruatetu & Another v. Republic, SC Pet. No. 16 of 2015, the Supreme Court concluded that the mandatory death sentence prescribed for the offence of murder by section 204 of the Penal Code is unconstitutional. While appreciate that the decision had nothing to do with the *Sexual Offences Act*, we cite it because of the pertinent observations that the apex Court made regarding mandatory sentences.....
>
> ..... In principle, we are persuaded that there is no rational reason why the reasoning of the Supreme Court, which holds that the mandatory death sentence is unconstitutional for depriving the courts discretion to impose an appropriate sentence depending on the circumstances of each case, should not apply to the provisions of the *Sexual Offences Act*, which do exactly the same thing."

69. I am also persuaded by Odunga J. (as he then was) in Maingi & 5 others v Director of Public Prosecutions & another (Petition E017 of 2021) [2022] KEHC 13118 (KLR) (17 May 2022) (Judgment) where he held:-

> "It may be argued that these decisions of the Court of Appeal ought not to be followed on the ground that they are per incurium in light of the clarification in Muruatetu 2. However, it is my view that the Supreme Court in Muruatetu 2 did not address itself to the constitutionality of mandatory minimum sentences. It simply clarified that Muruatetu 1 only dealt with murder. I agree with that clarification. However, the Supreme Court left it open to the High Court to hear any petition that may be brought challenging inter alia mandatory minimum sentences and make a determination one way or another. The Supreme Court did not hold that the High Court ought not to apply the reasoning in Muruatetu 1.
>
> In my view, even without the application of the ratio in Muruatetu 1, based on what I have stated hereinabove, I find that whereas the sentences prescribed under the *Sexual Offences Act* are not unconstitutional by the mere fact of such prescription and the trial courts are at liberty to impose them, the imposition of the same as the minimum mandatory sentences does not meet the constitutional threshold particularly section 28 of (sic!) *the Constitution*."

70. I uphold the conviction. Owing to the peculiar circumstance of this case, I find it just and fair to reduce the sentence from 20 years imprisonment to 7 years imprisonment. The sentence of 7 years shall run from 21st December 2021 being the date of sentencing.

71. The Appellant has 14 days' right of appeal.

Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 27TH DAY OF SEPTEMBER, 2023.

.....

R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of the Appellant virtually present at Kericho Main Prison, Mr. Njeru for the Respondent and Siele (Court Assistant)