REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIVASHA

CRIMINAL APPEAL NO 14 OF 2019

DMK.....APPELLANT

VS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in the Chief Magistrate's Court

at Naivasha Sexual Offence Case No.45 of 2018 delivered by Hon. K. Bidali (CM)

on 30th April, 2019).

JUDGMENT

Background

1. **DMK,** the Appellant herein was charged in Count 1 with the offence of incest contrary to **Section 20 (1)** of the **Sexual Offences Act No. 3 of 2006**.The particulars were that on diverse dates of 1st and 2nd June, 2018 at [particulars withheld] village in Gilgil Sub-county within Nakuru County intentionally and unlawfully caused penetration to his granddaughter with his genital organ namely penis into the genital organ namely vagina of EWM, a girl aged 10 years. In the alternative he was charged with the offence of committing an indecent act with a child contrary to **Section 11(1)** of the **Sexual Offences Act** in that he indecently touched her private parts namely the breasts and vagina.

2. The Appellant pleaded not guilty to both charges. Upon trial, he was convicted of incest and sentenced to 20 years imprisonment under **Section 20(1)** of the **Sexual Offences Act**. Aggrieved by both his conviction and sentence, he preferred the instant appeal.

Grounds of Appeal.

3. The Grounds of Appeal were filed on 13th May, 2019 by M/s Njihia Njoroge & Co. Advocates. I duplicate them as under:

> ***a. THAT the trial magistrate erred in law and misdirected himself in proceeding to try and convict the appellant on a charge of Incest yet the relationship between the appellant and the Complainant did not fall within the meaning of Sections 20 and 22 of the Sexual Offences Act.***
>
> ***b. THAT the learned trial magistrate erred in law and fact by failing to consider the evidence of both the Complainant and the Appellant that besides the Complainant the Appellant also resided with and took care of a brother namely SM and MW whose evidence would have assisted the trial court in reaching a different verdict.***
>
> ***c. THAT the learned trial magistrate erred in law and fact by failing to question how the Complainant was able to attend school under severe pain without the school not noticing which evidence if considered would have led to a different verdict.***
>
> ***d. THAT the learned trial magistrate erred in law and fact by failing to appreciate that the offence could have been committed by other persons other than the Appellant.***
>
> ***e. That THAT the learned trial magistrate erred in law and fact by basing his conviction and sentence on the evidence of only the Complainant who may have been spinning lies given her poor parenting background having been abandoned by her mother who had grudges against him, having dumped the Complainant with the stepfather to the victim, the Appellant herein.***

f. That the learned trial magistrate erred in law and fact by failing to observe that no specimens were extracted from the body of the Complainant nor from the Appellant for the purposes of a DNA analysis.

g. That the learned trial magistrate erred in law and fact by shifting the onus of proof from the prosecution to the Appellant which was itself a misdirection which would have otherwise led to a different verdict.

Summary of Evidence

6. The prosecution called a total of four witnesses. Its case can be summarized as follows. **PW1, EWM** was the complainant in the case. She and her brother, SM as children were left under the care of their grandfather, the Appellant as their mother worked in Kitengela. There was another child called MW who too was under the case of the Appellant. It is not however clear from the evidence whose child M was. PW1's grandmother was sick and under the care of her children, namely PW2, the mother to PW1 and another daughter. At the material time, she was living with PW2's sister.

7. According to PW1, it was on 1st June, 2018 in the evening, the Appellant called her and told her to go and sleep on the seat where he was sitting in the living room. She used to sleep in the same room with her brother. It is then that he forced her to remove her clothes and had forced sexual intercourse with her. He repeated the assault on the following day on 2nd June, 2018. She went to school the next day as usual. When she returned, she borrowed the Appellant's mobile phone which he used to call her mother and informed of what had happened. Her mother **JM, PW2** advised PWI to run to a neighbour's (mama W) home for refuge. PW2 also informed her sister of the incident. PW2 also raised her sister who came an d took PW1 to Gilgil Police Station where the matter was reported.

8. PW1 was then referred to hospital where she was treated and both PRC and P3 Forms were issued. The Form was later filled by **DR. Kuria, PW3** who adduced it in evidence. PW2 identified PW1's Birth Certificate which was adduced in evidence by PW4, the investigating officer in the case. According to PW4, PW1 presented herself in hospital with a complaint of having been defiled by her grandfather. He noted that the hymen was raptured. There was redness confirming carnal knowledge. She had both pus and red blood cells. HIV and Syphilis tests were negative. The doctor concluded the PW1 was defiled and he recommended a repeat of HIV test.

9. **PW4, CPL Nancy Odero** investigated the case. She summed up the evidence of the prosecution witnesses. She is the one who issued the P3 Form to PW1. She emphasized that PW1 knew that it was the Appellant, her grandfather who defiled her and she respectively identified him.

10. At the conclusion of the prosecution case, the trail court ruled that the prosecution had established a prima facie case and accordingly put the Appellant on his defence. He gave an unsworn statement of defence. He stated that he was a carpenter by occupation. He conceded that PW1 was his granddaughter and her mother was PW2. He also confirmed that PW1 and other minors were left in his house where since January, 2018, he was taking care of them. He added that he raised her mother. He therefore did not understand why the minor raised the complaint against him. He adduced in evidence a hospital card which showed that he was HIV positive. It was his defence therefore, that if he had defiled PW1, she too would have tested HIV positive.

11. The trial court took into account the submissions of the parties and in its determination relied on the testimony of the Complainant/victim herein PW1 finding her evidence believable. The trial court further relied on the medical evidence from the PRC and P3 forms as produced by PW3. The court addressed the issues for determination as what was the relationship between the Appellant and the Complainant and secondly, whether the accused person had sexual intercourse with the Complainant. In addressing these issues, the court took into account the provisions of Sections 20 and 22 in determining the degree of consanguinity between the Appellant and the Complainant. It ruled out the possibility of a mistaken identity. The court further relied on Section 124 of the Evidence Act to posit that the sole testimony of a child in sexual matters could be relied because in its view, she was truthful.

12. In sentencing the Appellant, the trial court considered the Appellant's mitigation that he was a first offender and HIV positive. It however noted that the offence was prevalent and the child was traumatized and accordingly sentenced him to 20 years imprisonment.

SUBMISSIONS

Appellant's submissions

13. The Appellant's submission were filed on 13th August, 2021 by his counsel, M/s Njihia & Co. Advocates. It was submitted that the prosecution failed to link the Appellant to the offence. This was premised on the assertion that, PW1 shared a bed with other children who were possible culprits. The Appellant stated the brother to the Complainant cannot be ruled out as a suspect.

14. Furthermore, it was not explained how the Appellant could have called PW1 in the night, force her to remove her clothes on the seat where he was without raising the attention of other occupants (children) in the house. Again, that if the complainant felt a lot of pain as she alluded, the Appellant doubted how she was able to perform her other routines on the following day, including going to school, without difficulty.

15. The Appellant also casts aspersions as to who advised the Complainant from school to call her mother. He doubted why these people were not called to testify and whether they were not motivated with ulterior motives. He added that another person mentioned by PW2, Mama W, ought to have been called as witness.

16. The Appellant submitted that PW3's (doctor) evidence did not indicate that the Complainant had been put under HIV PEP treatment thus his stating that the Complainant be retested.

17. It was the Appellant's submission that PW1 and PW2 were not credible witnesses. He contended that their testimonies were not consistent and ought to have been disregarded. In this regard, the case of ***Machakos HC Criminal Appeal 96 of 2017 Michael Mumo Nzioka vs Republic [2019] eKLR*** which quoted ***Dickosn Elia Nsamba Shapwata & Another vs The Republic Cr Appeal No.92 of 2007*** was cited where the court noted that a trial court ought to direct its mind to determine whether discrepancies and inconsistencies are minor or whether they go to the root of the matter. It was submitted that since PW1 did not speak the truth, the proviso to Section 124 of the Evidence Act was not applicable. In this regard, reference was made to ***Kiambu H.C. Criminal Appeal 28 of 2017MKM vs Republic [2018] eKLR.***

18. It was submitted that the Prosecution di not discharge it burden in proving the case beyond a reasonable doubt. That the evidence they adduced was merely intended to earn a conviction against the Appellant at all costs. It thus urged that the appeal be allowed.

Respondent's submissions

19. Learned State Counsel, Ms. Maingi relied on written submissions dated 20th September, 2021. It was her submission that the degree of consanguinity was established as the Appellant was a step-grandfather to the Complainant. She cited the case of Mombasa ***Criminal Appeal No. 232 of 2009 BNM Vs Republic [2011] eKLR*** where it was held that the absence of a biological link does not exclude the consanguinity contemplated under Section 20 of the Sexual Offences Act as under Section 22(1) of the Act, a stepfather stood in the *'loquo parenthis'* and can legally be charged with the offence of incest. Counsel relied on ***Kiambu HC Criminal Appeal 154 of 2016 DKG vs Rep 2018 eKLR*** where the court held that despite that step-grandfather is not mentioned in Section 22 of the Sexual Offences Act he falls within the prohibited degree of consanguinity.

20. On the failure to avail PW1's bother and the girl called MW as witnesses as alleged by the Appellant, learned counsel submitted that as per Section124 of the Evidence Act, the evidence of a sole child victim would be sufficient to convict. Further regard was had to the Court of Appeal decision in Eldoret ***Criminal Appeal 257 of 2009 Benjamin Mbugua Gitau vs Republic [2011] eKLR.*** She denied the existence of oblique motive on the prosecution's part for not calling on them. Whilst relying on ***Criminal HC. Cr. Appeal No.31 of 2015 Julius Kalewa Mutunga vs Republi***c, she submitted that the prosecution is at the discretion of calling any number of witnesses who are sufficient to support their case.Counsel also relied on Section 143 of the Evidence Act which states that no number of witnesses are required to prove a fact.

21. In addressing the ground that the failure to conduct a DNA analysis meant that the Appellant was not linked to the offence, she submitted that DNA test is not an ingredient in proving defilement as was held by the Court of Appeal in ***Eldoret Criminal Appeal 257 of 2009 Benjamin Mbugua Gitau vs Republic [2011] eKLR***. It was her submission that penetration was proved sufficiently by medical evidence adduced by PW3 who produced the P3 and PRC Forms.

22. On the ground that the Appellant's defence was not considered, learned counsel submitted that the trial court considered the same but found it general and failing to oust the prosecution case. It was her conclusion that the prosecution had proved their case beyond all reasonable doubt. She urged the court to dismiss the appeal.

Analysis and determination

23. This being the first appellate court, its duty is to reconsider and reevaluate the evidence adduced before the trial and make sits own conclusions. It should however give regard to the fact that it has neither seen nor heard the witnesses. See: ***Kisumu Criminal Appeal 28 of 2009 David Njuguna Wairimu V – Republic [2010] e KLR*** where the court of appeal stated:

> ***"The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions."***

24. I have considered the evidence adduced before the trial court, the grounds of appeal and the respective rival submissions. I have narrowed the issues for determination to be:

> ***a) Whether the offence of incest was proved.***
>
> ***b) Whether the sole evidence of the Complainant was sufficient to convict the Appellant.***
>
> ***c) Whether DNA evidence was necessary in proof of the offence.***

Whether the offence of incest proved.

25. The offence of incest is defined in **Section 20(1)** of the Sexual Offences Act as:

> ***"(1) Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years, provided that if it is alleged in the information or charge that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person."***

26. Thus the ingredients for the offence of incest are:

(i) Proof that the offender is a relative of the victim.

(ii) Proof of penetration or indecent Act.

(iii) Identification of the perpetrator.

(iv) Proof of the age of the victim.

27. On the first ingredient, the Appellant raised as a ground of appeal that the prosecution did not prove the degree of consanguinity between the Appellant and the victim. Counsel for the Appellant did not however submit on this issue. The evidence of PW1 was that the Appellant was her grandfather and at the material time, she was living with him. Her mother, PW2, further expounded on the actual relationship stating that the Appellant was her stepfather. In cross examination, she insisted that the Appellant was her father and that the only point of departure was that he had two wives. That her real mother was, at the particular time, unwell and was living with her sister.

28. To understand whether indeed the degree of consanguinity contemplated under **Section 20** of the **Sexual Offences Act** was established, reference is made to **Section 22** of the Act which provides that:

> ***"22(1) In cases of the offences of incest, brother and sister includes half-brother, half-sister and adoptive brother and adoptive sister and a father includes a half father and an uncle of the first degree and a mother includes a half mother and an aunt of the first degree whether through lawful wedlock or not …"***

29. Further, sub-section (3) reads:

> ***"22(3) A accused person shall be presumed, unless the contrary is proved, to have had knowledge, at the time of the alleged offence, of the relationship existing between him or her and the other party to the incest."***

30. In this case, the complainant testified that the Appellant was her grandfather and the father to her mother, with her mother (PW2) testifying that he was her stepfather. It is common knowledge that although Section 22 does not use the word stepfather, the phrase half father refers to a stepfather. Hence, by being a stepfather to PW1, the Appellant's relationship with PW1 fell within the prohibited degree of consanguinity contemplated under **Section 20** and **22** of the Act.

31. I do, in the circumstances, align myself with Court of Appeal decision cited by the Respondent, being ***Mombasa Criminal Appeal No. 223 of 2009- BNM V Republic [2011] eKLR***. The Court held thus:

> ***"Does this fact that no biological or blood ties exist between the two negate a charge of Incest? The answer is to be found in section 22 of the Sexual Offences Act which deals with 'Test of relationship'. S. 22(1) provides as follows:***
>
> ***"22(1) In cases of the offences of Incest, brother and sister includes half brother, half sister and adoptive brother and adoptive sister and a father includes a half father and an uncle of the first degree and a mother includes a half mother and an aunt of the first degree whether through lawful wedlock or not …"***
>
> ***My own understanding is that 'half father' is a term which means exactly the same as 'step-father' – it means one who is not a biological father of the child. Therefore by dint of this S 22(1) of the Act the appellant being a step-father of the complainant and one who stood in 'loquo parenthis' can legally be charged and indeed convicted of the crime of Incest with her.***
>
> ***In her evidence the complainant made a brief statement in which she said that her 'daddy' whom she positively identified in court put his finger into her vagina."***

32. On proof of penetration or indecent act, the evidence of PW1 was that the Appellant had carnal knowledge of her, implying there was penetration. **Section 2** of the **Sexual Offences Act** defines penetration as;

> ***"the partial or complete insertion of the genital organs of a person into the genital organs of another person".***

33. PW1 testified that the Appellant defiled her twice in the sitting room by putting his thing for urinating into her thing for urinating. PW1 used wits by borrowing her grandfather's (Appellant) phone and she called her mother and immediately reported the matter to her. Her mother advised her to seek refuge in a neighbour's home. She was later that night joined by her aunt, one LW with whom the matter was reported to the police. She was subsequently referred to hospital. PW3, Dr. Kuria who filled PW1's P3 Form testified that upon examination, there was redness in the vagina and the hymen was raptured. He stated that the redness was a sign that there had been carnal knowledge in PW's vagina. She was accordingly treated and recommended to repeat the HIV test.

34. The examination by PW3 was done on 6th June, 2019 whereas the offence was allegedly committed on 1st and 2nd June, 2018. Hence, examination was done only four days after the offence. This sealed the case that PW1 was indeed speaking the truth. The redness was a sign that carnal knowledge had recently taken place.

35. The Appellant submitted that the learned trial magistrate erred in relying solely on the evidence of PW1 to convict him. It is almost obvious that sexual assault cases especially those involving minors are committed in exclusion of eye witnesses. That is why the law came to the aid of these vulnerable victims by dint of the proviso to **Section 124** of the **Evidence Act**. The same reads:

> "***Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth" (emphasis added).***

36. The proviso stipulates that a court can convict an accused person in a sexual assault cases where the minor is the victim solely on the victim's evidence as long as the court believes that the minor is speaking the truth. The learned trial magistrate did believe the evidence of the minor. This court too, has no reason to doubt that she told the truth. She did not condone the acts of the Appellant as she spoke immediately she was assaulted. As fate had it, the medical evidence capped it that she was indeed sexually assaulted. It is also clear that the Appellant took advantage of the fact that he had been left to take care of PW1. Instead of cementing the trust bestowed on him, he turned the beast and defiled his grandchild.

37. I need not therefore emphasize that the Appellant's identification was by way of recognition. He was a person well known to PW1 and besides, a relative.

38. The age of a victim in a case of incest is paramount in view of the sentence as prescribed under **Section 20(1)** of the **Sexual Offences Act**. According to PW2, the victim's mother, PW1 was born on 20/4/2008. She was therefore aged ten (10) years as at the time of the offence.

39. It was submitted by the Appellant that the prosecution did not link him to the offence because the Appellant proved he was HIV positive when he adduced his defence but the complainant was negative. It is common knowledge that a person can have sexual intercourse with a HIV positive person and not contract the disease at all. This is referred to as discordancy. At the same time, even the second person were to contract the disease, the same is not transmissible on the sport. That is why, as PW3, the Doctor testified, he recommended a repeat test for the HIV test. It should be noted a HIV test result is not a requirement for proof of the offence of sexual assault irrespective that the offender was HIV positive. A contraction of HIV does not establish penetration. The P3 and PRC Forms adduced by PW3 attested to the fact that penetration did happen and that PW1 was sexually assaulted.

40. Nevertheless, I am guided by the holding in Nyeri ***Criminal Appeal No. 270 of 2012 George Kioji Versus Republic*** the court expressed itself thus on proof of commission of a sexual offence:

> "***Where available, medical evidence arising from examination of the accused and linking him to the defilement would be welcome. We however hasten to add that such medical evidence is not mandatory or even the only evidence upon which an accused person can properly be convicted for defilement. The court can convict if it is satisfied that there is evidence beyond reasonable doubt that the defilement was perpetrated by accused person. Indeed, under the proviso to section 124 of the Evidence Act, Cap 80 Laws of Kenya, a court can convict an accused person in a prosecution involving a sexual offence, on the evidence of the victim alone, if the court believes the victim and records the reasons for such belief.,"***

Whether DNA evidence was crucial in determining the offence of incest

41. The Appellant contended that had DNA samples been collected from the Complainant and himself, it would have led to his acquittal. Turning on to Section 36 of the Sexual Offences Act, which provides for DNA testing, it is couched not in mandatory but permissive terms. The Court of Appeal, in ***Criminal Appeal No. 109 of 2014 Williamson Sowa Mbwanga v Republic [2016] eKLR,*** stated:

> "***...A DNA test of the appellant would at most determine whether he was the father of PM's child, which is a different question from whether the appellant had defiled PM. As the Court of Appeal of Uganda rightly stated, in the sexual offence of defilement, the slightest penetration of the female sex organ by the male sex organ is sufficient to constitute the offence and that it is not necessary that the hymen be ruptured. (See TWEHANGANE ALFRED V. UGANDA, CR. APP. NO. 139 OF 2001)."***
>
> ***It is partly for this reason that section 36(1) of the Sexual Offences Act is couched in permissive rather than mandatory terms, allowing the court, if it deems it necessary for purposes of gathering evidence to determine whether or not the accused person committed the offence, to order that samples be taken from him for forensic, scientific, or DNA testing."*** [Emphasis my own]

42. In the present case, the evidence of PW1 coupled with that of PW3 was sufficient to establish the offence charged. There was no need for further evidence of DNA analysis. It is not a mandatory requirement. PW1 spoke the truth and the truth vindicated her. I dismiss this ground of appeal for want of merit.

43. The other ground of appeal raised by the Appellant was that the prosecution did not call all relevant witnesses. Reference was made to a boy called M, a brother to PW1 who the Appellant also took care of and a girl by the name MW who lived with the Appellant. It was stated that had their evidence been called the trial court would have reached a different verdict.

44. It is now settled law that there is no particular number of witnesses that the prosecution is required to call to prove any fact. (See; **Section 143** of the **Evidence Act**). What is paramount is that the prosecution calls such number of witnesses as would be sufficient to establish their case. The prosecution discharged this burden as their case ably ousted the Appellant's defence).

45. In ***Nairobi High Court Criminal Case 67 of 2012 Republic Vs Cliff Macharia Njeru [2017] eKLR*** the court said:

> "***The prosecution's burden in regard to witnesses is to call witnesses who are sufficient to establish a fact. It is not necessary to call all the people who know something about the case. The issue is whether those called are sufficient to aid the court establish the truth, whether the evidence is favourable to the prosecution or not."***

46. The same reasoning was echoed by the Court of Appeal in ***Mombasa Criminal Appeal 44 of 2016 Sahali Omar V Republic [2017] eKLR*** thus :

> ***"Section 143 of Evidence Act provides that:-***
>
> ***'No particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact."***
>
> ***The principle used to determine the consequences of failure to call witnesses was succinctly stated in Bukenya& Others v Uganda [1972] EA 549; where the Court held that:-***
>
> ***"(i) The prosecution must make available all witnesses necessary to establish the truth even if their evidence may be inconsistent.***
>
> ***(ii) That Court has the right and duty to call witnesses whose evidence appears essential to the just decision of the case.***
>
> ***(iii) Where the evidence called is barely adequate, the court may infer that the evidence of uncalled witnesses would have tended to be adverse to the prosecution."***

47. The unsworn defence of the Appellant was that indeed PW1 was his granddaughter and was left in his house where he took care of her since January, 2018. He wondered why she raised the complainant yet he had well taken care of her and raised her mother. She produced a Ministry of Health card which showed that he was HIV positive. His defence was that if he had defiled the PW1, then she too, would have tested HIV positive. My take is that this defence did not at all rebut the strong case advanced by the prosecution against him.

48. I then conclude that the prosecution proved its case beyond all reasonable doubt. The conviction of the Appellant was based on cogent evidence adduced by the prosecution and I uphold it. On sentence, **Section 20(1)** of the **Sexual Offences Act** provides that:

> ***"(1) Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years, provided that if it is alleged in the information or charge that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person."***

49. This provision is couched in mandatory terms such that a trial court cannot exercise discretion by deviating from the sentence provided. The learned trial magistrate rendered an illegal sentence by imposing a twenty-year jail term. He should have imposed the mandatory life imprisonment. This court, under **Section 354 (3)(a)** and **(b)** of the **Criminal Procedure Code** is mandated to correct an illegality meted in sentencing. The same provides as under as regards powers of the High Court in an appeal:

> ***"(3) The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may-***
>
> ***(a) in an appeal from a conviction-***
>
> ***(i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction; or***
>
> ***(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence; or***
>
> ***(iii) with or without a reduction or increase and with or without altering the finding, alter the nature of the sentence;***
>
> ***(b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;"***

50. In the end, I uphold the conviction. I set aside the 20-year jail term and substitute it with an order that the Appellant shall serve life imprisonment.

51. It is so ordered.

DATED AND DELIVERED AT NAIVASHA THIS 24TH DAY OF FEBRUARY, 2022.

G. W. NGENYE-MACHARIA

JUDGE

1. Appellant in person.

2. Ms. Kirenge for the Respondent.