REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO. 26 OF 2019

(Being an appeal from Original Conviction and Sentence by Hon. P. Achieng in

Bomet Senior Principal Magistrate's court Sexual Offence Number 11 of 2018)

LEONARD KIPKEMOI NGETICH ..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Appellant was convicted by Hon. P. Achieng, Senior Principal Magistrate for the offence of defiling a minor contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No. 3 of 2006, Laws of Kenya and was sentenced to life imprisonment. The particulars of the Charge against the Appellant were that on 24th April 2018, at [Particulars Withheld] village, Chepalungu Sub County, within Bomet County, he intentionally and unlawfully caused his penis to penetrate the vagina of MCS, a child aged 8 years.

2. The Appellant also faced an Alternative Charge of committing an indecent act with a child contrary to Section 11(1) of the Sexual Offences Act No. 3 of 2006. The particulars of the Alternative Charge were that on the material day at [Particulars withheld] village, Chepalungu Sub County within Bomet County, he unlawfully caused his penis to come into contact with the vagina of MCS, a child aged 8 years.

3. The Appellant pleaded not guilty to the charges before the trial court, and the case went to trial in which the prosecution called seven (7) witnesses in support of its case.

The Prosecution case.

4. It was the Prosecution's case that the Accused defiled the minor MCS. on 24th April 2018. The court conducted *voire dire* examination on the minor victim and concluded that she would give unsworn evidence. She testified as PW1. She told the court that she knew the accused person as he usually to collected nappier grass from her home. She testified that the Accused followed her to their house which had iron sheets and told her to lie on the floor. He then told her to remove her clothes and thereafter he unzipped his trousers and 'removed his thing'. PW1 testified that the Accused then put 'his thing' in to her private parts. The court record indicated that she pointed to her private parts. She told the court that the Accused did 'bad manners' to her.

5. It was PW1's testimony that her father found her naked and he beat up the Accused who then ran away. That her father called her brother EK. She said that she was later taken to the hospital and police station.

6. PW2 was a minor and a brother to PW1. The trial court conducted a *voir dire* examination and determined that he would tender an unsworn statement. PW2 testified that PW1 was roasting maize when the Accused asked him if his father was around. It was PW2's testimony that his father who was standing close to the house called him. When he approached the house he saw the Accused running towards the back of the house. He testified that PW1 came out of the house crying and that his father told him that the Accused had done 'bad manners' to PW1. PW2 testified that he was not aware of any disagreement between his father and the Accused.

7. The victim's father (PW3) testified that on 24th April 2018 he was at home herding cattle within the compound. He testified that he heard PW1 crying from the house where the children sleep. That he went to the house and found PW1 and the Accused inside. That PW1 was standing, crying and had her clothes on. He testified that he inquired from PW1 what had happened to her but she kept on crying. It was PW3's testimony that he concluded that PW1 had been defiled. That when they (PW2 and PW3) accosted the Accused, he overpowered them and ran away. PW3 testified that he took PW1 to hospital at Siongiroi Health Centre where she was examined. PW3 further testified that the Accused was arrested by the Administration Police. That he recorded a statement at the police station and was issued with a P3 form.

8. PW4 testified that he was the Assistant Chief. That on 24th April 2018 he met the Accused who had been tied by a group of people. He was informed that the Accused had defiled a child aged 8 years. It was his testimony that he escorted the Accused to the Chief's office where they met a police officer called Billo. That police officers from Siongiroi were called to collect the Accused. PW4 testified that he boarded a vehicle and went to Chebunyo Police Station where he recorded a statement.

9. PW5 testified that he was a police officer stationed at the Chief's camp. That on 24th April 2018, he found the Accused having been tied by a group of people and upon inquiry was informed that he had defiled a child. PW5 testified that he asked for the child's parents and advised them to take PW1 to be treated.

10. PW6 was the Clinical Officer based at Sigor sub-county hospital who examined PW1 on 25th April 2018. He testified that he found normal genital anatomy, a broken and inflamed hymen. He found no vaginal discharge or bleeding but after urinalysis was done, pus and epithelial cells were seen. PW6 testified that upon a high vaginal swab did not show any spermatozoa. He opined that sexual intercourse had taken placed but could not tell when. He also found that there was attempted penetration as the hymen was broken.

11. PW7 was the Investigating Officer. She testified that she was stationed at Chebunyo Police Post where, PW1 and her parents reported a defilement case on 24th April 2018. She testified that she recorded the statements of the complainant and the witnesses before she escorted PW1 to Siongiroi Health Centre. She charged the Accused after the P3 from was filled.

12. At the close of the Prosecution case, the trial court ruled that a *prima facie* case had been established against the Accused and he was put on his defence.

The Defence.

13. The Accused testified as DW1. He tendered an unsworn statement and did not call any witnesses in aid of his defence. He told the court that he had borrowed Kshs.5,000 from PW3 which he was unable to refund as agreed. That on 25th April 2018, he got a call from PW3 and one Philip Sigei who requested him to wait for them at the shops from where they went to the Chief's office where he was locked in the cells by AP officers. It was the accused's testimony that PW3 wanted to be paid Kshs.20,000 for the matter to be settled. He stated that he did not have that amount of money and he was taken to Chebunyo and put in the cells. It's his testimony that PW3 told his children to lie and that he was arrested by PW3's brothers.

14. At the conclusion of the trial, the Accused was convicted of the main charge and sentenced to life imprisonment.

15. Being dissatisfied with the judgment, the Accused, now Appellant appealed to this court on grounds which can be condensed as follows:-

i. **THAT** the learned trial magistrate erred in law and fact by convicting the Appellant by relying on inconsistent and uncorroborated evidence that could not be used to prove a case beyond reasonable doubt.

ii. **THAT** the learned trial magistrate erred in both law and fact by determining the case without considering the fact that the medical evidence was based on forgery.

iii.**THAT** the learned trial magistrate erred in both law and fact by failing to consider the Appellant's Defence thus contravening section 69(1) of the Criminal Procedure Code.

iv. **THAT** the trial court contravened Section 165 of the Criminal Procedure Code.

16. The Appeal was canvassed through written submissions.

The Appellant's submissions.

17. The Appellant submitted that the prosecution had failed to cure the discrepancy that the medical evidence could not ascertain at what point penetration happened. That the medical evidence did not state or point out the evidence of bruises or tenderness to suggest the penetration occurred on the same day. It is the Appellant's submission that the act of penetration could not be tied to the accused person. That his identification as the perpetrator was wanting. The Appellant relied on the case at **Kenga Hisa Vs Republic Malindi High Court, Criminal Appeal No. 3 of 2019,** to support his submission.

18. It is the Appellant's submission that the trial magistrate did not consider his Defence and did not give it the kind of weight it deserved. That an in-depth consideration of the Appellant's Defence would have demonstrated the inconsistencies in the prosecution's case. The Appellant wondered why the Prosecution did not summon the witnesses who allegedly arrested him. It was the Appellant's submission that the only remedy to his case was to quash the conviction. He relied on the case of **David Ochieng Aketch Vs Republic, Siaya High Court, Criminal Appeal No. 30 of 2015.**

The Respondent's submissions.

19. It was the Respondent's submission that the testimonies of PW1 to PW7 demonstrated that the complainant was at home when she was lured by the Appellant who was well known to her to another house and where he proceeded to defile her. That the complainant's evidence was corroborated by PW2, PW3 and PW6.

20. With respect to identification, the Respondent submitted that the appellant was well known to the complainant, PW2 and PW3. That PW2 saw the Appellant leave the complainant's room while PW3 found him in the vicinity of the scene of the crime moments after the incident had occurred.

21. The Respondent submitted that under Section 143 of the Evidence Act there was no direction on the number of witnesses to call in order to prove any fact and that failure to avail BK a child of 2 years was immaterial to the case.

22. It was the Respondent's submission that it was clear from the testimony of PW1 that the Appellant coerced her to engage in sexual intercourse and that penetration was corroborated by PW6, the clinical officer who filled out the P3 form.

23. The Respondent submitted that the Appellant gave unsworn evidence and failed to call any witness in support of his assertions of malice on part of PW3. That the Appellant never cross-examined PW3 on this aspect and therefore his Defence was an afterthought.

24. It was the Respondent's submission that the provisions of sections 65 and 165 of the Criminal Procedure Code which the Appellant cited related to the trial procedures at the High Court and lunacy proceedings and do not relate in any way to the current proceedings.

25. With respect to the sentence, the Respondent submitted that the relevant guidelines were laid out in the case of **Wanyema Vs Republic (1971) E.A 494**. That it was evident from the record that the trial court considered aggravating circumstances in which the offence happened, the Appellant's mitigation and his status as a first offender before handing down the sentence of life imprisonment. The Respondent reiterated that the sentence was legal, lawful and just and that this court should not interfere with it.

26. This being a first appellate court, this court has a duty to re-evaluate the evidence on record. The Court of Appeal case of **Okeno – Vs – Republic (1972) EA 32** has been consistently cited as follows:-

> ***"An appellant is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the Appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. It is not the function of the first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and conclusions. Only then can it decide whether the magistrate's findings can be supported. In doing so, it should make an allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses."***

27. In a more recent case, the Court of Appeal in **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."***

28. I have given due consideration to the Petition of Appeal filed on 7th November 2019, the Appellant's Written Submissions dated 10th May 2021 and the Respondent's Written Submissions dated 12th March 2021. The following four issues arise for my determination:-

i. Whether the Prosecution proved its case.

ii. Whether the Defence places doubt on the prosecution case.

iii. Whether the Sentence preferred against the accused person was just.

i. Whether the Prosecution proved its case.

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

30. In **Ouma Vs Republic (1986) KLR 619**, the court of appeal gave direction on proper evaluation of evidence as follows:-

> ***"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 the defence being true. If there is doubt, the benefit of that doubt always goes to the accused person"***

(i) Age of the victim

31. Section 8 (1) of the Sexual Offences Act No. 3 of 2006 states that any person who commits an act which causes penetration with a child is guilty of an offence of defilement. The Children's Act no. 8 of 2001 defines a child as any human being under the age of eighteen years.

32. The importance of establishing the age of the victim was emphasized by the Court of Appeal in **Hadson Ali Mwachongo Vs Republic (2016) eKLR**, thus:-

> ***"The importance of proving the age of the victim of defilement under the Sexual Offences Act by cogent evidence cannot be***

gainsaid. It is not in doubt that the age of the victim is an essential ingredient of the offence of defilement and forms an important part of the charge because the prescribed sentence is dependent on the age of the victim. In Alfayo Gombe Okello vs. Republic Cr. App 203 of 2009 (Kisumu) this Court stated as follows

"In its wisdom, Parliament chose to categorize the gravity of that offence on the basis of age of the victim, and consequently the age of the victim is a necessary ingredient of the offence which ought to be proved beyond reasonable doubt. This must be so because dire consequences flow from proof of the offence under section 8(1)."

33. The ways in which the age of the complainant can be proved were discussed in the case of **Thomas Mwambu Wenyi Vs Republic, Criminal Appeal No. 21 of 2015 (2017) eKLR** cited with approval the case of **Francis Omuromi Vs Uganda, Court of Appeal Criminal Appeal No. 2 of 2000** which held that:-

"In defilement cases, medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence age may be proved by birth certificate, the victim's parents or guardian and by observation and common sense."

34. Further, in the Court of Appeal case of **Richard Wahome Chege Vs Republic (2014) eKLR**, the court held as follows:-

"On the contention that the age of the complainant was not established, it is our considered view that age is not proved primarily by production of a birth certificate. PW2 the mother of the complainant testified that the complainant was 10 years old. What better evidence can one get than that of the mother who gave birth? It is our considered view that the age of the complainant was not only proved by PW2 but supportive evidence was given by PW3 who examined the complainant, and the complainant herself."

35. In the present case PW3 who was the father of PW1 produced a Birth Certificate which showed that the victim (PW1) was born on 3rd July 2010. Based on the production of the Birth Certificate, I am satisfied that the age of PW1 was proved to be 8 years at the time of the commission of the offence.

(ii) Penetration

36. Regarding the ingredient of 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 **EE Vs Republic (2015) eKLR**, the Court stated that:-

"An important ingredient of the offence of defilement is that there must have been penetration. Penetration or act of sexual intercourse has therefore to be proved to sustain a charge of defilement."

37. 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 victim's own evidence and corroborated by the medical evidence or other evidence. Though desirable it is not hard and fast rule that the victim's evidence and medical evidence must always be adduced in every case of defilement to prove sexual intercourse or penetration. Whatever evidence the prosecution may wish to adduce, to prove its case, such evidence must be such that it is sufficient to prove the case beyond reasonable doubt."

38. PW1 testified that the Appellant found her in the house roasting maize and told her to go to a room that was in another house within the homestead. It was her testimony that the accused person followed her there and told her to lie on the floor where he proceeded to do 'bad manners' to her. In giving details to the trial court, PW1 testified that the Appellant "removed his thing" after opening the zip of his trouser and "he put his thing in her private parts".

39. PW1's testimony was neither shaken nor challenged at the cross-examination. She clearly detailed what the Appellant had done to her. This court observes that courts have determined the use of the words "bad manners" or "tabia mbaya" as acceptable definitions of sexual intercourse by children. In the case of **Muganga Chilejo Saha Vs Republic (2017)eKLR,** the Court of Appeal held that:-

"Naturally children who are victims of sexual abuse are likely to be devastated by the experience and given their innocence, they may feel shy, embarrassed and ashamed to relate that experience before people and more so in a court room. If the trend in the decided cases is anything to go by, courts in this country have generally accepted the use of euphemisms such as "alinifanyia tabia mbaya."

40. The medical evidence in this case was given by Ian Samoei (PW6), a Clinical Officer at Sigor Sub-County hospital who examined PW1 on 25th April 2018. He testified that upon physical examination, he found normal genitalia anatomy and that the hymen was broken and inflamed. There were no laceration or discharge. It was PW6's testimony that a lab test and urinalysis was done and pus and epithelial cells were seen. No spermatozoa was seen. It was the opinion and finding of PW6 that there was attempted defilement. PW6 further stated that PW1 must have engaged in sexual intercourse at some point because her hymen was broken. PW6 produced the P3 Form as P.Exhibit 2 and the Post Rape Care Form as P.Exhibit 3 which supported his findings.

41. The Appellant contended that evidence of penetration found by the clinical officer (PW6) did not link him to the offence. It was his contention that the evidence did not show when the penetration occurred. The Appellant suggested that the absence of the complainant's

hymen suggested that she had had intercourse before.

42. It is not true as contended by the Appellant that the medical evidence was contradictory. A look at the testimony of PW6 reproduced above and P3 Form (Exhibit 2) and Post Rape Care Form (Exhibit 3) which he produced show that there was penetration. PW6 stated that the examination showed that the hymen was missing and vulva was swollen. There was also no spermatozoa found in the vagina. PW6 opined that there was attempted defilement.

43. Section 2 of the Sexual Offences Act however defines penetration as "the partial or complete insertion of the genital organs of a person into the genital organ of another person" therefore the penetration need not be complete for the offence to be proved. Further the issue of absence of spermatozoa is mute. In **Mark Oiruri Mose Vs. R, (2013) eKLR**, the Court of Appeal clarified this issue thus:-

> ***"Many times the attacker does not fully complete the sexual act during the commission of the offence. That is the main reason why the law doesn't require the evidence of the spermatozoa be availed. So long as there is penetration whether only on the surface, the ingredient of the offence is demonstrated……and penetration need not be deep inside the girl's organ….."***

44. It is also true as stated by the Appellant that PW6 testified that he could not tell when the hymen was broken and that the complainant may have had sexual intercourse before the incident. It might very well be that the complainant had had sexual intercourse before. This however would do nothing to exonerate a subsequent offender. Such a fact would only demonstrate that the minor had been defiled before and such defilement would not justify a subsequent defilement.

45. In conclusion, I have found nothing contradictory in the medical evidence given by PW6. I have also not found any substantiation that the said evidence was fraudulently procured as claimed by the Appellant in his grounds of appeal. The medical evidence, as I have found corroborates the testimony of the minor victim that she had sexual intercourse.

46. I am satisfied that based on the findings of PW6 and on the evidence contained in the P3 form and Post Rape Care Form and going by the definition under Section 2 above, that there was penetration.

(iii) Identification of the perpetrator

47. 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. Whenever the case against a defendant wholly depends or to a great extent on the correctness of more identifications of the accused which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of the identification."***

48. The English case of **R Vs Turnbull (1977) QB 224** is useful in this regard:-

> ***"If the quality (of identification evidence) is good and remains good at the close of the accused's case, the danger of mistaken identification is lessened; but the poorer the quality, the greater the danger. In our judgment when the quality is good, as for example when the identification is made after a long period of observation, or in satisfactory conditions by a relative, a neighbour, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it; provided always, however that an adequate warning has been given about the special need for caution."***

49. It was the testimony of PW1 that she knew the accused person as he used to go to their home to collect nappier grass. She further testified that they were not related. From the court record, the Accused did not cross-examine PW1 on the issue of identification when PW1 identified the Accused in court.

50. PW2 and PW3 who were the brother and father of PW1 respectively placed the Accused in the house where the offence occurred. PW2 testified that when he was called by PW3 to the house, he saw the Accused leaving and running towards the back of the house. PW3 on the other hand testified that he found the Accused in the sitting room and upon asking him what had transpired, the Accused sought forgiveness. Thereafter a scuffle ensued between the Accused and PW3. The Accused did not cross-examine PW2 and PW3 on the issue of identification.

51. It is salient to note that other than PW1, none of the prosecution witnesses witnessed the act. However, the evidence of PW3 clearly placed the Appellant at the scene. He found the Appellant inside the house with the victim and the Appellant ran away.

52. In addition, the court is empowered by the above section to convict an accused person solely on the evidence of the complainant. Section 124 of the Evidence Act states that:-

> ***"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 of it, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth."***

The above position was affirmed in the case of **J.W.A Vs Republic (2014) eKLR**, where the Court of Appeal held that:-

"We note that the appellant was charged with a sexual offence and the proviso to section 124 of the Evidence Act clearly states that corroboration is not mandatory. The trial court having conducted a voire dire examination of PW1 and being satisfied that the complainant was a truthful witness, we see no error in law on the part of the High Court in concurring with the findings of the trial magistrate."

53. A similar position was taken in **Mohamed Vs Republic (2006) 2 KLR 138,** where the Court held that:-

"It is now settled that the courts shall no longer be hamstrung by requirements of corroboration when the victim of a sexual offence is a child of tender years if it is satisfied that the child is truthful."

54. In this case, PW1 was taken through *voire dire* examination by the trial magistrate and from the proceedings, it is clear to me that PW1 recounted very well what happened to her. I am satisfied that PW1 though being of tender years understood the duty of speaking the truth and answered questions well. She was even cross-examined by the accused person and thus the court had every reason to believe her testimony as truthful and accurate.

55. PW1 also testified she had seen the accused person before as he would go to their house to collect nappier grass. Therefore the accused person was not a stranger to her.

56. In light of the foregoing, I am satisfied that there was positive identification of the Appellant that the Prosecution proved the ingredients necessary to sustain the charge of defilement and the same were proved beyond reasonable doubt.

57. In one ground of his Appeal, the accused person stated that section 165 of the Criminal Procedure Code had been contravened. The Appellant did not bother to submit on the same but for the record, the said section 165 of the Criminal Procedure Code was repealed by the Criminal Law (Amendment) Act No. 5 of 2003.

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

58. The Appellant gave an unsworn statement in which he stated that he had borrowed Kshs.5,000 from the complainant's father (PW3). That at some time in March 2018, PW3 wanted his money back, money which the accused person could not raise. It was the accused person's testimony that on 25th April 2018, PW3 and one Philip Sigei called him and asked him to wait for them at the shops. That when they met, they asked him what wrong he had done, and PW3 attempted to hit him. That PW3 suggested that they should go to the Chief.

59. The Appellant stated that upon reaching the Chief's post, they met AP officers who then locked him up in the cells. He further stated that PW3 demanded Kshs.20,000 for the matter to be settled. Later on, he was taken to Chebunyo and put in the cells. That he was charged in court the following day.

60. I have analysed Appellant's defence and I consider it to be an afterthought. The Appellant raised the issue of PW3 loaning him money and using the AP officers unscrupulously in efforts of trying to get his money back. The Appellant had a chance to cross-examine PW3 and none of those issues were raised or put to PW3. He did not call any witness to give evidence to the allegations of a dispute over money.

61. It is my finding that his defence which also appears to have been an afterthought, does not cast any doubt on the prosecution case which I have already found proven.

iii. Whether the Sentence preferred against the accused person was just.

62. In **Bernard Kimani Gacheru Vs Republic (2002) eKLR**, the Court of Appeal stated that:-

"It is now settled law, following several authorities by this court and the high court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist."

63. In this case the Appellant was charged under Section 8(1) as read with section 8(2) of the Sexual Offences Act. The provisions state:-

(1) a person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

(2) a person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

64. The Appellant stated in his mitigation that he had been in remand for one year and 7 months and prayed that the court consider both sides. Indeed the sentence handed to him was stiff. However the mandatory nature of this sentence does not make it illegal. The recent directions in the Supreme Court case of **Francis Karioko Muruatetu and Another Vs Republic, Petition No. 15 & 16 (Consolidated) of 2015** provide that:-

"We therefore reiterate that, this Court's decision in Muruatetu did not invalidate mandatory sentences or minimum sentences in the Penal Code, the Sexual Offences Act or any other statute."

Conclusion

65. In the final analysis it is my finding that the charge against the Appellant was proved to the required legal standard. I uphold both conviction and sentence.

66. Consequently, the appeal is dismissed. The Appellant has 14 days right of appeal.

67. Orders accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED THIS 30TH DAY OF SEPTEMBER, 2021.

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R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of the Appellant (virtually present at Naivasha prison), Mr. Wawire holding brief for Mr. Murithi for the Respondent and Kiprotich (Court Assistant).