REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL APPEAL NO. 121 OF 2017

CHARLES KANDENGE ONGAYO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal arising from conviction and sentence in Chief Magistrate's Court (Thika) in Criminal Case No 1277 of 2011 by Hon G. Omodho Senior Resident Magistrate dated 12th October 2017.

JUDGMENT

1. The Appellant herein **Charles Kandenge Ong'ayo** was the accused at the Chief Magistrates Court at Thika Criminal Case No. 1277 of 2011. He was charged with Defilement Contrary to Section 8(1)(2) of the Sexual Offences Act No. 3 of 2006. The particulars of the charge are that on the 26th day of February 2011 at [Particulars Withheld] estate in Kiambu County, he intentionally caused his penis to penetrate the vagina of E M a child aged 11 years.

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 charge were that on the 26th day of February 2011 at [Particulars Withheld] estate in Kiambu County he intentionally by his genital organ namely penis, caused contact to the genital organ namely anus and vagina of E M a child aged 11 years.

2. He pleaded not guilty to the above charges and trial ensued. He was found guilty, convicted and sentenced to life imprisonment. Being aggrieved he filed this appeal citing the following grounds.

> *(i) That he learned trial magistrate erred in matters of law by failing to appreciate the fact that the charges as preferred were incurably defective contrary to Sexual Offences Act 2006 and section 214, 134 and 137 of the criminal procedure Code occasioning a serious prejudice.*
>
> *(ii) That the learned trial magistrate erred in law and in fact in failing to note that my constitutional right to a fair and impartial trial under articles 50(2), (c) (j) of the Constitution of Kenya 2010 for non-disclosure of adverse prosecution evidence were grossly violated.*
>
> *(iii) That the learned trial magistrate erred in law and in facts by failing to find that the prosecution did not prove penile penetration of the complainants' genitalia by the appellant.*
>
> *(iv) That the learned trial magistrate erred in matters of law and facts again in not appreciating the fact that the essential witnesses necessary to prove basis facts were not availed in court.*
>
> *(v) That by failing to find that the complainant was an incredible witnesses whose testimony cannot be relied upon to found a conviction and sentence upon since she was of doubtful integrity.*
>
> *(vi) That the learned trial magistrate erred in matter of law and facts by failing to resolve the explicit evidence of grudge in favour of the defence (appellant)*

3. The evidence on record was as follows: PW1 was the complainant herein. After the trial court conducted a *voire dire* examination on her, it formed the opinion that she was possessed with sufficient intelligence to understand the meaning of an oath and hence she gave sworn testimony. She told the court that the Appellant was her neighbour and on one occasion while she was sitting outside their house, he called her and told her that he wanted to give her mandazi. That when she went to where he was seated, he pulled her inside his house, pinned her down his bed, covered her month, tore her panties, and 'raped' her. That though she felt pain, she did not scream and when he finished, he used his t-shirt to wipe her. He then told her to dress up and go back home.

4. PW1 further stated that the 2nd time he raped her, he saw her walking outside past his house, and called her asking her to assist him with his baby; she agreed but when she entered his house, he pulled her and pinned her down his bed and raped her again. When he finished with her, he told her to go home which she did. She did not tell her mother, but told her teacher S who was also the deputy head teacher. The teacher in turn told her mother and thereafter, she was taken to hospital.

She further, revealed that on the 1st occasion the Appellant raped her, he undressed her but on the 2nd occasion, he told her to undress. He had warned her that if she told anyone what had happened, he would do something bad to her.

5. **PW2 S W N** the deputy headteacher at the complainant's school [Particulars Withheld] Primary School stated that on 1/3/2011 at about 8.30 a.m, the class teacher of class 3 informed her that PW1 was complaining of severe stomach pains and difficulty in walking. She sent for the pupil and when she saw her, she looked sickly.

Upon inquiring on what the problem was, she told her that the Appellant had done '*tabia mbaya'* to her. She said the Appellant was known to her as he lived near the school and was also a parent in the school.

6. She then directed the complainant's class teacher to talk to her again and she reiterated what the Appellant had done to her. Afterwards, she alerted the head teacher one Mr. Kariuki about the case and it was resolved that they alert the child's mother. On arrival of the PW1's mother, the child maintained her story and it was then resolved that they report to the police. They later accompanied the child to hospital. She identified her treatment card as **EXB**1 and lab test slips as **EXB 2a-c.** She further stated that the Appellant was a PTA member and a member of a smaller committee called 'most vulnerable children.' That at some point, the parents ejected appellant from a PTA meeting because there was a complaint that a certain girl in standard 8 had received a soda and mandazi from him as enticement.

7. **PW3 J M N** the complainant's mother recalled that on 2/3/2011 at about 11 a.m her supervisor called her to his office and told her that she was required at PW1's school which was nearby. On arrival, she was directed to PW2's office who inquired from her whether she had ever heard of any report on defilement concerning the PW1 and she in turn answered in the negative. PW2 informed her of what the Appellant had done to PW1. She identified the appellant as her neighbour. They resolved to report the matter to the police in the company of PW2 and the Head Teacher. She identified the documents they were given in hospital as **EXB 1 & 2** and P3 form **EXB 3.** She produced the complainant's birth certificate as **EXB. 4** which confirmed that PW1 was born on 8/8/1999.

8. **Pw4 A K M** the head teacher at the school PW1 attended corroborated PW2's testimony.

PW5 Sergeant Diana Mbura attached to Thika Police Station recalled that on 2/3/11 at around 7:30p.m the complainant was brought by PW2 and Pw3 lodging a complaint of defilement. She issued them with a P3 form which was filled on 3/3/11 and returned. As she was investigating the crime, the Appellant was brought by members of the public whereby she interviewed him and later charged him.

9. **PW7 Dr. Joseph Wanjohi** from Thika Level 5 hospital produced the P3 form in respect of the PW1 which was filled on 9/3/11 by Dr. Jalong'o who was now pursuing post graduate studies at the University of Nairobi. He also stated that he was conversant with her handwriting as he had worked with her for about 2-3 years. He indicated that he had worked at the hospital since 2004. That from the P3 form Dr. Jalong'o noted upon exam of PW1 that the hymen was perforated and there was a whitish visible discharge. A high vaginal swab was conducted but no spermatozoa was noted, no bacterial or yeast were noted , urinalysis was normal and tests for HIV and VDRL were negative.

10. Dr. Jalong'o concluded that there was sexual assault according to the perforated hymen and the complainant was then put on antibiotics, analgesia and post exposure prophylaxis (PEPP) for HIV. He produced the outpatient card, lab tests and p3 form as **EXB. 1, 2 & 3** respectively. He explained that perforation meant the hymen which is a membrane was missing.

11. The appellant on his part chose to adduce sworn evidence and called one witness for his defence. He told the court that he is a chef and on 26/2/11 and 27/2/11 he was at work in the canteen at Gaturura estate. That the canteen and his house are over 25km apart and as chef he was on duty. That on 26/02/11 the students were off. He denied the allegations facing him and stated that on 27/2/11 he was in church at Salvation Army Thika by 8.00am until 2:00p.m. He stated that the prosecution's evidence was cooked up.

12. **DW2 J I G** the complainant's partner in the restaurant business testified that on 26/2/11 being a Saturday was a pay day for most of the clients who ate on credit at the hotel hence they would settle accounts at the restaurant. That he went to the hotel at about 3p.m and left there in the company of the accused at 5:00p.m.

13. When the appeal came for hearing, Professor Hassan Nandisa for the appellant submitted on the 1st ground that the prosecution did not prove its case beyond reasonable doubt as the defence evidence was sound and plausible. On ground two he submitted that the charges of defilement against the Appellant were a fabrication as the Appellant already established that there was bad blood between him and the school management of the complainant's school. On ground 3 Counsel submitted that there was no corroboration of the minor's evidence and on grounds 4, 5 & 6 he submitted that the trial magistrate shifted the burden of proof to the Appellant.

14. He contended that the Appellant raised an *alibi* with DW2 supporting him. Counsel thus submitted that the prosecution's evidence failed to place the Appellant at the scene. On ground 10 he submitted that the Appellant was sentenced to life imprisonment and the trial court wrongfully believed that section 8(2) of the Sexual Offences Act was mandatory. He relied on the case of **M.K v Republic [2015] eKLR** where the Court of Appeal held that in light of section 8(2) of the Sexual Offences Act, section 26 of the Penal Code states that the sentence is not mandatory He thus prayed that the appeal be allowed.

15. Mr. Maatwa for the State in response to the above submission opposed the appeal and submitted that they had proved their case beyond reasonable doubt. He submitted that the complainant was 11 years old at the time of the offence, as per the birth certificate (**EXB4).** PW1's evidence was that she knew the Appellant as a neighbour. On ground 3 he submitted that the trial court believed PW1's evidence which was

supported by PW2, PW3 and PW4. That the Appellant was represented by counsel in the lower court and his defence was dismissed. That PW6 only testified because the doctor who examined her was away most of the time. He submitted that under section 8(1) and 8(2) of the Sexual Offences Act, the sentence is mandatory.

16. This is a first appeal and this court has a duty to re -evaluate and reconsider the evidence adduced and arrive at its own conclusion. It has also to bear in mind that it did not see nor hear the witnesses and give an allowance for that. This was the holding in the case of **Okeno vs Republic 1972 EA 32**

> **" An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandaya v R, [1957] E.A 336) 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. (Shantilal M. Ruwala v R,)[1957] E.A 570). It is not the function of a 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 draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see Peters v Sunday Post, [1958] E.A 424."**

17. The Court of Appeal further in the case of **Patrick & Anor v Republic [2005] 2 KLR 162** held as follows:

> **"An appellant on a first appeal 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. It is not the function of 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 draw its own conclusions."**

18. I have considered the evidence on record, the grounds of appeal, the submissions by both counsels and the cited authorities. The Appellant raised a total of 10 grounds of appeal. Upon considering all that I have stated above I find the issues falling for determination to be:-

> **(i) Whether the evidence of the child E M (PW1) and Dr. Joseph Wanjohi (PW7) was properly recorded, admitted and considered by the trial court.**
>
> **(ii) Whether PW 1 was a Minor.**
>
> **(iii) Whether penetration of PW1's genitals was proved.**
>
> **(iv) If issue no (iii) is YES whether the appellant is the person who defiled PW1.**
>
> **(v) Was the sentence the trial court accorded to the appellant harsh in the circumstances?**

19. With regard to the act of penetration and the identity of the perpetrator of the offence the only evidence available linking the appellant is that of PW1. Other than PW1 there is no other eye witness who witnessed this incident. The evidence of PW1 is therefore very key in this case in line with section 124 of the Evidence Act which provides:

> **"Notwithstanding the provisions of section 19 of the Oaths and Statutory Declarations Act (Cap. 15), where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him: 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."**

20. The proviso to section 124 Evidence Act allows the conviction of an accused based on the evidence of the victim alone and with reasons. It is therefore imperative that the evidence of such victim be properly recorded and admitted. In this case PW1 was a minor aged 11 years. The trial court had a duty to satisfy itself that she was intelligent enough to testify and she understood the oath. This is done by way of *voire dire* examination

21. Section 19 of the Oaths & Statutory Declarations Act (Cap 15) Laws of Kenya provides:

> **(1) Where, in any proceedings before any court or person having by law or consent of parties authority to receive evidence, any child of tender years called as a witness does not, in the opinion of the court or such person, understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the court or such person, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth; and his evidence in any proceedings against any person for any offence, though not given on oath, but otherwise taken and reduced into writing in accordance with section 233 of the Criminal Procedure Code (Cap. 75), shall be deemed to be a deposition within the meaning of that section.**
>
> **(2) If any child whose evidence is received under subsection (1) wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be guilty of an offence and liable to be dealt with as if he had been guilty of an offence punishable in the case of an adult with imprisonment.**

22. What needs to be done during a *voire dire* exam has been set out in various decisions. The Court of Appeal in the case of **Opicho v Republic 2009 KLR 372-374** explained this as follows:

> **"The Construction of that section is now well grounded in many previous decisions and it is surprising that trial courts still get it wrong. The correct procedure for the court to follow is to record the examination of the child witness as to the sufficiency of her intelligence to satisfy the reception of evidence and understanding of the duty to tell the truth."**

The following year in Kibangeny Arap Kolil v R [1959]EA 92, the court stated:

> **"In the present case, the learned trial judge, so far as appears from the record, made no such investigation before affirming either of the two boys witnesses. Such an investigation need not be a lengthy one, but it must be mad and, when made, the trial judge ought to record it.**
>
> **The investigation should precede the swearing and the evidence and should be directed to the particular question whether the child understands the nature of an oath rather than to the question of his general intelligence."**

The procedure for investigation, or preliminary examination of a witness, otherwise referred to in old French and Anglo-Norman as the " *voir dire*" or " *voir dire*" is taken in two steps as summarized in **Kinyua v Republic [2002] 1 KLR 256**:

> **"(a) The court should first ascertain whether the child understands the nature of an oath. An investigation to this effect must be done by the court immediately the child witness appears in court. The investigation need not be a long one but it has to be done and it has to be directed to the particular question whether the child understands the nature of an oath. If upon investigation it appears that the child understands the nature of the oath, then the court proceeds to swear or affirm the child and to take his or her evidence**
>
> **(b) If the child does not understand the nature of the oath, he or she is not necessarily disqualified from giving evidence. The court may still receive the evidence if it is satisfied, upon investigation, that the young person is possessed of sufficient intelligence and understands the duty of speaking the truth. This investigation must be done and when done, it must appear on record. Where the court is so satisfied then the court will proceed to record unsworn evidence from the child witness."**

Further in **John Muiruri v R [1983] KLR 445** this Court re-emphasized, inter alia, that:-

> **"2. It is important to set out the questions and answers when deciding whether a child of tender years understands the nature of an oath so that the appellate court is able to decide whether this important matter was rightly decided.**
>
> **3. When dealing with the taking of an oath by a child of tender years, the inquiry as to the child's ability to understand the solemnity of the oath and the nature of it must be recorded, so that the cause the court took is clearly understood.**
>
> **6. The judge is under a duty to record the terms in which he was persuaded and satisfied that the child understood the nature of oath. The failure to do so is fatal to the conviction.**
>
> **9. The correct procedure for the court to follow is to record the examination of the child witness as to the sufficiency of her intelligence to satisfy the reception of evidence and understanding of the duty to tell the truth."**

23. In the case before me PW1 was the complainant. This is what happened on 15th September 2011.

> **15/9/11**
>
> **Before – Hon. B A Owino (Mrs) SRM**
>
> **C I – Mbila for state**
>
> **CC- Michuki**
>
> **Accused – present**
>
> **Nyongesa for accused – present**
>
> **HON. OWINO**
>
> **SRM**
>
> **15/9/11**
>
> **COURT:** Hearing commences.

PW 1 FEMALE JUVENILE INTERVIEWED BY COURT

My names are E M. I am 11 years old. I am in standard 3 at [particulars withheld] primary school. I attend [particulars withheld] church. I know it is bad to lie. If you lie you will end up in hell.

HON. OWINO

SRM

15/9/11

COURT: Witness understands the difference between telling lies and telling the truth and consequences thereof. Let her be affirmed.

HON. OWINO

SRM

15/9/11

24. There is nothing to show how this child was examined, what questions she was asked and how the trial court came to the conclusion that she could be affirmed. Did she understand the oath she was taking? What the court did was in breach of the requirement of section 19 of the Oaths and Statutory Declarations Act and the elaborate procedure that has been set out by the superior courts.

"This is what the Court of Appeal said in the **Opicho v Republic** case (supra)

> **"The child was a vital witness in the trial and the failure by the court to comply with the procedure in the reception of the evidence vitiates that evidence."**

25. The situation prevailing in this case is no different from what happened in the **Opicho** case. I therefore find that the evidence of PW1 who is a vital witness has been vitiated by the breach occasioned by the learned trial magistrate.

26. During the hearing of the appeal Prof Hassan Nandwa for the Appellant raised issue with the production of the P3 form by PW7 Joseph Wanjohi who did not examine PW1 nor fill the said P3 form. Again the basis for the production of the P3 form by a witness other than the Maker was never set out as shown in the proceedings of 10th March 2016. It is not indicated why Dr. Rose Jalong'o did to come to testify.

27. A similar scenario had prevailed on 18th January 2012 when a Dr Benedict Macharia from Thika level 5 Hospital had been availed. The defence raised an objection and the court directed that Dr. Rose Jalong'o be availed to testify. There was a repeat of the same scenario on 14th January 2014. Mr Maatwa in response to the issue raised by Prof Hassan in respect of PW7 argued that the Doctor who examined PW1 was away most of the time. Further that the defence never raised an objection with the said witness (PW7) testifying.

28. Section 33 of the evidence Act provides:

> **Statements, written or oral or electronically recorded, of admissible facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured, or whose attendance cannot be procured, without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves admissible in the following cases—**

Section 33 (b)

> **When the statement was made by such person in the ordinary course of business, and in particular when it consists of an entry or memorandum made by him in books or records kept in the ordinary course of business or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written or signed by him;**

29. It is true that the defence did not raise an objection as there is nothing on record showing that. Equally there is nothing to show the following:

> **(i) The whereabouts of Dr. Rose Jalong'o**
>
> **(ii) Why she was not attending court to testify and if she had been summoned.**
>
> **(iii) If it had become expensive to procure her attendance.**
>
> **(iv) The response by the defence on the request to produce the report on Dr. R. Jalong'os behalf.**

30. It again shows that the trial court did not address the procedure of admission of a document by one who is not the maker. The evidence of PW7 is therefore vitiated. The evidence of PW1 and the medical evidence (P3) form is very crucial evidence in a case of this nature. As has been set out above, the proper procedure of receiving the evidence of PW1 and PW7 was not followed by the two trial magistrates who handled the two witnesses. PW1's and PW7's evidence has been vitiated.

31. The next issue for determination is whether a retrial should be ordered or not. In the case of **Fahali Manji v Republic 1966 E.A. 343** the Court of Appeal stated thus;

> **"In general a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in it evidence at the first trial; even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame, it does not necessarily follow that a retrial should be ordered; each case must depend on its own facts and circumstances and an order for retrial should only be made where the interests of justice require it."**

In **Muiruri v Republic [2003] KLR 552** the Court of Appeal said

> **"3. Generally whether a retrial should be ordered or not must depend on the circumstances of the case.**
>
> **4. It will only be made where the interest of justice require it and if it is unlikely to cause injustice to the appellant. Other factors include illegalities or defects in the original trial, length of time having elapsed since the arrest and arraignment of the appellant, whether the mistakes leading to the quashing of the conviction were entirely the prosecution's making or the court's**
>
> **5. By the time the trial commenced effluxion of time had taken its toll and several material witnesses had died. It would be an act of futility for the court to order a retrial after a period of 15 years."**

32. Further **in Njenga & Anor v Republic [2006] 1KLR 17** the Court of Appeal found thus:

> **"6. Where a conviction is vitiated by a gap in the evidence or other defect for which the prosecution is to blame, the court will not order a retrial. But where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame it does not follow that a retrial should be ordered. Each case depends on its own facts and circumstances but an order for retrial should only be made where the interests of justice require it.**
>
> **7. In this case, considering the nature of the offence, that the first appellant had completed the sentence imposed by the High court while the second appellant had served a substantial part of her sentence in default of a fine, it would not be in the interests of justice to order a retrial.**

Finally in **Opicho v Republic** (supra) the same court stated that:

> **"In many other decisions of this court it has been held that although some factors may be considered, such as illegalities or defects in the original trial; the length of time elapsed since the arrest and arraignment of the appellant; whether mistakes leading to the quashing of the conviction were entirely the prosecution's making or not; whether on a proper consideration of the admissible or potentially admissible evidence, a conviction might result from a retrial; at the end of the day, each case must depend on its own particular facts and circumstances and an order for retrial should only be made where the interests of justice require it. See *Muiruri v Republic [2003] KLR 552, Mwangi v Republic [1983] KLR 522*, and *Bernard Lolimo Ekimat v republic, criminal Appeal No 151 of 2004 (UR)"***

33. The authorities above confirm that the peculiar circumstances of each case should be individually considered before ordering for a retrial. In this case the procedural breaches were omitted by the court. PW1 who is the victim did not specifically state the time each of these incidents took place. In cross examination she said the first one occurred in the morning. What of the second one? Was it in the morning, noon time or evening?

34. PW3 said she used to leave early for work. Despite her 11 year old having been defiled she did not notice anything strange with her walking yet she lived with the child. The dates of the alleged defilement were a Saturday and Sunday (26th and 27th February 2011).

35. Despite PW2 insisting that she received a report from Teacher R K on 1st March 2011 in respect of PW1's complaints and acted swiftly all indications are that this is not true. PW3 and PW4 stated that they only learnt of this report on 2nd March 2011. The P3 form (**EXB3)** shows that it was issued by Police on 2nd March 2011 after a report had been made.

36. The treatment notes (**EXB1**) confirm that the child was first seen at Hospital on 2nd March 2011. In brief PW2 was not being truthful. Surprisingly teacher R K who was the first to notice PW1's discomfort was never called to testify.

37. In his defence the appellant raised an *alibi* and called one witness (DW2) who supported him saying they were together on 26th February 2011 at their restaurant. The learned trial magistrate stated the following in the judgment that was rendered at page 13-14 of the record of appeal.

"The accused's explanation of being in the hotel the whole morning of February 26, 2011 is unsupported yet if he was serving his many clients at the hotel, it was possible to get any of them to confirm being served at the hotel during that morning. On the February 27, 2011, the accused claims he was in church from 8am to 2pm where he played in the band. It is common knowledge that a band would consist of more that the accused. A member from the church or better still from the bank would have corroborated the testimony of a brethren in trouble as in this case. Having considered this defence I do not find it substantive to challenge the ingredients of the offence as reviewed above, I proceed to dismiss it."

38. The trial court appears to have assumed that the defilement of 27th February 2011 occurred in the morning. That is not in the evidence. The offence is said to have occurred on 26th and 27th February 2011 and the appellant was arrested on 11th March 2011. The trial in the lower court was finalized on 12th October 2017 which was 6 years 7 months since his arrest.

39. Bearing all this in mind plus the shortfalls in the prosecution case which I have pointed out, I am of the opinion that on a proper consideration of the admissible or potentially admissible evidence the chances of a conviction are unlikely. I will therefore not order for a retrial as it will serve no purpose.

40. The result is that the Appeal is allowed, conviction quashed and sentence set aside.

Orders accordingly.

Dated, signed and delivered this 3rd day of August 2018 in open court at Kiambu.

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HEDWIG I. ONG'UDI

JUDGE