REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

ELECTION PETITION DIVISION

ELECTION PETITION NUMBER 4 OF 2018

IN THE MATTER OF THE CHIEF MAGISTRATE'S COURT DECISION IN ELECTION PETITION NO. 6 OF 2017

BETWEEN

BARLEX SAMUEL JUMA PIUS.....APPELLANT

AND

INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION (IEBC).....1ST RESPONDENT

CONSTITUENCY RETURNING OFFICER

(LUGARI CONSTITUENCY).....2ND RESPONDENT

GODFREY BARAZA WAMBULWA.....3RD RESPONDENT

(Being an appeal from the judgment of the Chief Magistrate's Court of Kenya at Kakamega (Hon. Bildad Ochieng) dated 1st March, 2018 in Election Petition number 6 of 2017)

CORAM: LADY JUSTICE RUTH N. SITATI

RULING

Introduction

1. This ruling relates to the 3rd Respondent's Notice of Motion dated 30th May, 2018, in which the said 3rd Respondent, Godfrey Baraza Wambulwa seeks the following orders from this court:

1. THAT this application be certified urgent and the same be heard in the first instance,

2. THAT by failing to serve written submissions as ordered by this court, the Appellant is in breach of the orders of this court, and the Appellant'[s] submissions be expunged from the record of this court.

3. THAT the Record of Appeal was filed out of time and be therefore expunged out of this court's record.

4. THAT this court declares that at the time of drawing the Memorandum and Record of Appeal, and during the pre-hearing conference held by this court on 7th May, 2018, the Appellant'[s] advocate was not qualified to act as an Advocate under the Laws of Kenya, more particularly The Advocates Act.

5. THAT this Honourable Court be pleased to dismiss the appeal

6. THAT the costs of the appeal be awarded to the Respondents.

7. THAT the costs of this application be provided for.

2. The application is premised on four grounds (A-D) set out on the face thereof and is also supported by the 11 paragraph affidavit sworn by GODFREY BARAZA WAMBULWA, on 30th May, 2018. The four grounds are to the effect that contrary to the order of this court requiring the appellant to file and serve his written submissions by 21st May, 2018, the said submissions had neither been filed nor served by 29th May, 2018; that the Record of Appeal was filed on 24th April 2018 being some 26 days after the filing of the Memorandum of Appeal, and same was filed without leave of the court; that the advocate on record for the appellant did not have a valid practising certificate by the time she was drafting the Memorandum of Appeal and during her appearance in court on 7th May, 2018 for the pre-hearing conference and finally that it is in the interest of justice that this application be allowed.

3. The applicant's supporting affidavit reiterates and amplifies the grounds set out above. The applicant depones that the delay by the appellant in complying with court orders and the fact of using an unqualified person to draw the appellant's pleadings is intended to prejudice the other parties to this dispute and to undermine the constitutional imperative of timely resolution of election appeal disputes. He urges the court to allow the application.

Response to the Application

4. The application is opposed by the appellant vide the Grounds of Opposition dated 6th June, 2018, to the effect:-

1. THAT the grounds stated in the Notice of Motion and the Supporting Affidavit cannot be a basis for striking off [of] the appeal.

2. THAT the application runs contra to the spirit and objective of Article 159 of the Constitution and Rule 4 of the Election (Parliamentary and County Election Petition) Rules 2017.

3. THAT the application is mischievous, made in bad faith, is frivolous and [is] aimed at fettering the expeditious finalization of the Appeal on merit.

5. There is also a replying affidavit sworn by the appellant on 6th June 2018, and in it the appellant depones that the appeal herein raises weighty issues which should not be summarily dismissed; that the applicant's Notice of Motion is a delaying tactic which does not observe the spirit of just, expeditious and proportionate and affordable resolution of election disputes; that the delay in filing the submissions was caused by the appellant's counsel's ill-health at the material time. That any delay in filing the Record of Appeal was not inordinate, nor should such delay be a reason for striking out; that the lack of a valid practicing certificate did not make appellant's counsel an unqualified person to file the appeal on behalf of the appellant; that this Hon. Court has the jurisdiction, even on its own motion to extend the time provided for in the Election Petition Rules and finally that the applicant has not shown what prejudice he will suffer if the orders sought are not granted. The appellant thus prays that this application be dismissed so that the appeal can proceed to hearing and determination on the merits.

6. The appellant also filed written submissions alongside the Grounds of Opposition and the Replying Affidavit. I shall return to those submissions later in this ruling.

7. The 2nd Respondent also opposed the application vide the Replying Affidavit sworn by KIPKEMBOI LAGAT JAPHETH on 4th June, 2018. The deponent supports the position taken by the applicant and depones that the High court and all subordinate courts do not have discretion to extend Election Appeals dispute resolution timelines as set out in the provisions of the law. The deponent also avers that due to the delay on the part of the appellant in filing the written submissions, the 1st and 2nd respondents have been denied the opportunity to file and serve their written submissions in good time. The deponent also avers that appellant counsel's allegation that the delay in filing the submissions was caused by the fact that she was indisposed has not been supported by medical evidence, and also urges this court to find that appellant's counsel is not properly before this court and to allow the application as prayed.

Background

8. The appellant in this appeal was the Petitioner in ***Election Petition number 6 of 2017 – Barlex Samuel Juma Pius versus IEBC & 2 others*** filed in the Chief Magistrate's Court at Kakamega on 5th September, 2017. The appellant challenged the election of the 3rd Respondent who was declared the duly elected Member of the County Assembly for Chevaywa Ward within Lugari Constituency. After a careful analysis of all the evidence which included a scrutiny, the honourable learned trial magistrate found and held that the petition dated 5th September, 2017 was unmerited and dismissed the same with costs to the respondent. The learned trial magistrate also found and held that the 3rd Respondent was lawfully elected and declared the Member of the County Assembly for Chevawya Ward. The trial court also issued a certificate of the court's determination in compliance with ***Section 86(1) of the Elections Act, 2011.***

The Appeal

9. Being aggrieved by the above stated outcome, the appellant exercised his right of appeal by filing the Memorandum of Appeal dated 29th March, 2018. The Memorandum of Appeal was filed on the same 29th March, 2018 and consists of six grounds of appeal. As this is only a ruling on the 3rd respondent's Notice of Motion dated 30th May, 2018, suffice it to say here that the appellant wants the appeal allowed and the judgment of Hon. Bildad Ochieng, CM, delivered on the 1st March, 2018 dismissing the appellant's petition set aside and/or substituted. The appellant also prays that the costs of kshs.4 million ordered by the Hon trial magistrate be shared equally between the 1st and 2nd respondents on the one hand and the 3rd respondent on the other hand set aside and the costs revised accordingly.

Directions in the appeal

10. The parties appeared before me on 7th May, 2018 when the following directions were taken:-

> ***1. The appellants shall file and serve their written submission on or before 21/5/2018.***
>
> ***2. The respondents shall file and serve their submissions on or before 4.6.2018.***
>
> ***3. The submissions shall have a maximum of 12 pages of 1.5 spacing font 12.***
>
> ***4. Highlighting of submissions on 7.6.2018.***

11. Then on 31st May, 2018 prompted by the fact that the appellant's submissions were not filed and served within the set timelines, the 3rd Respondent filed the instant application under Certificate of Urgency. In view of the order of highlighting of submissions on 7th June, 2018, I directed the applicant to serve the application upon the appellant as well as the 1st and 2nd respondents and set the same down for hearing interpartes on 7th June, 2018. Due to late service of the application upon the respondents, the same was fixed for interpartes hearing on 15th June, 2017. 15th June was however declared a public holiday and consequently the application was canvased on 22nd June, 2018, though applicants counsel and counsel for the 1st and 2nd respondents were absent.

Issues for Determination

12. In line with the application, the issues for determination are the following:-

> **1. Whether counsel for the appellant was not qualified to act as an advocate until renewal of her practicing certificate on 8th May, 2018.**
>
> **2. Whether the instant application should be struck out for offending *rule 15(1)(c) of the Elections (Parliamentary and county Election) Petition Rules, 2017.***
>
> **3. Whether, the Record of Appeal should be expunged from the record for having been filed outside the stipulated timeline.**
>
> **4. Whether as a result of the foregoing matters the appeal herein ought to be dismissed with costs to the applicant.**

Submissions

13. Parties agreed to canvass the application by way of written submissions which were filed on 13th June, 2018 (applicant's), 13th June, 2018 (1st and 2nd Respondents and 7th June, 2018 (appellant's). In his submissions, the appellant relied on relevant provisions of the Constitution, The Elections Act 2011 and the Election Petition Rules 2017. Reliance was also placed on two authorities: (i) ***Nairobi Court of Appeal Civil Appeal number 228 of 2013 – Salat versus IBEC and 7 others [2013] eKLR***; (ii) ***Republic – versus – RM's Court, Kiambu Exparte Geoffrey Kariuki Njuguna & 9 others [2016] eKLR*** and ***SC Petition number 36 of 2014 – National Bank of Kenya Limited versus Anaj Warehousing Limited [2015]e KLR***. Each of the above cited authorities will become relevant during the analysis and determination stage of this ruling.

Analysis and Determination

14. I shall now move to consider each of the issues as framed above with a view to determining whether the instant application stands or fails.

a. Whether counsel for the appellant was not qualified to act as an advocate until renewal of her practicing certificate on 8th May, 2018

15. It was submitted on behalf of the applicant, and supported by the 1st and 2nd respondents that counsel for the appellant was in breach of the provisions of ***section 9 of the Advocates Act***, because by the time of drawing and filing the Memorandum of Appeal, the Record of Appeal and even during her appearance in court on 7th May, 2018, counsel did not have a valid practicing certificate and was therefore unqualified to practice as an advocates. Section ***9 of the Advocates Act, Cap 16 Laws of Kenya*** provides as follows:-

> "***9. Subject to this Act, no person shall be qualified to act as an advocate unless –***
>
> ***(a) He has been admitted as an advocate; and***
>
> ***(b) His name is for the time being on the Roll; and***
>
> ***(c) He has in force a practicing certificate.***

16. Reliance was also placed on the provisions of ***sections 31 and 34 the Advocates Act*** as well as the Court of Appeal decision in ***Kenya***

Power and Lighting Company Limited versus Mahinda & another [2005] eKLR in which the Court of Appeal held that a Memorandum of Appeal and notice of appeal signed and lodged by an advocate who had no practicing certificate were invalid. The Court of Appeal stated thus:-

> ***"…….if no practicing certificate had been issued when the act was done, the advocate was not qualified to do that act as at the time he did it. We accordingly allow the application and hereby order that the Notice of Appeal and the Memorandum of Appeal be struck out with costs to the applicant. The effect of this order is that the record of appeal itself must be struck out."***

17. On the basis of the above, the applicant submitted that the Memorandum of Appeal dated 29th March, 2018 and the Record of Appeal dated 13th April 2018 are in contempt of court and should accordingly be struck out.

18. In response to the applicant's submissions on this issue, the appellant relied on the ***Supreme Court of Kenya decision in Petition number 36 of 2014 – National Bank of Kenya Limited versus Anaj Warehousing Limited (Supra)*** and urged the court to find and hold that the mere fact that an advocate does not hold a valid practicing certificate at the time of doing certain acts such as drawing pleadings does not in itself invalidate such pleadings.

19. It is not in doubt that this court and other superior courts are bound by the decision of the Supreme Court on the issue of lack of a current practicing certificate by an advocate who has been admitted as an advocate and whose name is for the time being on the Roll. Counsel for the appellant, M/S Otieno Emily Kadenyi has not disputed the fact that before 8th May, 2018, she did not have a current practicing certificate as required of her by the Advocates Act. Her case would have been a straight case for the guillotine if it was not for the above quoted Supreme Court decision. To dispose of this issue in favour of the appellant's counsel, I will rely on two authorities. The first one is ***Salat versus IEBC & 6 others (Supra)*** in which **Ouko JA** considered the delicate balance of striking out pleadings and maintaining such pleadings.

20. At page 3 of the judgment, the learned JA said the following:-

> ***"The power to strike out pleadings, and in the process deprive a party of the opportunity to present his case has been held over the years to be a draconian measure which ought to be employed only as a last resort and even then only in the clearest of cases. Yet the period prior to 2010, when the overriding objective principle and the constitution were promulgated, striking out pleadings, as demonstrated by the cases cited by the respondents, for reasons that were purely technical was the rule rather than the exception. And this court perfected it. This is demonstrated by the brief (1/4 page) decisions cited by the respondents in Augustino Mwai versus Okumu Ndede, Nairobi Civil Appeal number 42 of 1995, Joseph Kinoti versus Aniceta Ndeti Nairobi Civil Appeal number 130 of 1995 and Samuel Wakaba versus Bamburi Portland Cement Civil Appeal number 130 of 1995, all decided between 1995 and 1997.***
>
> ***Deviations from and lapses in form and procedures which do not go to the jurisdiction of the court, or to the root of the dispute or which do not at all occasion prejudice or miscarriage of justice to the opposite party ought not be elevated to the level of a criminal offence attracting such heavy punishment of the offending party, who may in many cases be innocent since the rules of procedure are complex and technical. Instead, in such instances the court should rise to its highest calling to do justice by sparing the parties the draconian approach of striking out pleadings. It is globally established that where a procedural infraction causes no injustice by way of injurious prejudice to a person, such infraction should not have an invalidating effect. Justice must not be sacrificed on the altar of strict adherence to provisions of procedural law which at times create hardship and unfairness. (Emphasis mine).***
>
> ***At page 4/13***
>
> ***I reiterate what the Court said in Githere versus Kimugu [1976-1985] EA 101, that:-***
>
> ***"……..the relation of rules of practise to the administration of justice is intended to be that of a handmaiden rather than a mistress and that the court should not be too far bound and tied by the rules, which are intended as general rules of practice, as to be compelled to do that which will cause injustice in a particular case."***
>
> ***Essentially the rules remain subservient to the Constitution and Statues. Articles 159(2)(d) of the Constitution, Section 14(6) of the Supreme Court Act, Section 3A and 3B of the Appellate Jurisdiction Act, Sections 1A and 1B of the Civil Procedure Act and Section 80(1)(d) of The Elections Act place heavy premium on substantive justice as opposed to undue regard to procedural technicalities. A look at recent judicial pronouncements from all the three levels of court structure leaves no doubt that the courts today abhor technicalities in the dispensation of justice. (Emphasis mine)***
>
> ***At page 7/13***
>
> ***In the circumstances of this appeal, it is common ground that the notice of appeal and the record of appeal were lodged within the time prescribed by the rules. The record of appeal was similarly served within the time allowed. The only sticking point is the service of the notice of appeal on the respondent's within 7 days as required by rule77.***
>
> ***It is noted that the record of appeal that was admittedly served upon the respondents on 3rd September 2013, only 13 days from the date of the judgment contained a copy of the notice of appeal. It can be said that if the notice of appeal was lodged on 22nd August, 2013 and the respondents learnt about the appeal on 3rd September, 2013, there was delay of only four days. In my view, and in the circumstances of this appeal, I find that there was substantial compliance with the rules. (Emphasis mine).***

It must also be noted that an appeal, by dint of Rule 82(1) reproduced at the beginning of this ruling, is instituted by lodging in the registry, various documents listed thereunder, 60 days from the date when the notice of appeal was lodged, and not by serving upon the respondent, the notice of appeal. The failure to serve the respondents within 7 days did not occasion to them any real prejudice. (Emphasis mine)

The contention by the 1st, 3rd to 8th respondents that they were "startled", "unsettled" and "ambushed" cannot amount to a prejudice warranting the striking out of this appeal. There is no evidence that there was intentional or contumelious default on the part of the appellant. For their inconvenience the respondents can be compensated in costs. The period of delay before the respondents were made aware of the appeal was not inordinate; there was no risk of failure of fair trial of the appeal. The proportionality of the sanction of striking out of the entire appeal for the reason only of non-service is unconscionable and unjustified. The invitation to strike the appeal out is, in a manner of speaking, a case of killing a fly with a sledge hammer.

21. The second authority I seek to rely on is ***National Bank of Kenya – Petition number 36 of 2014*** before the Supreme Court –in which the Supreme Court made it clear that the overriding objective in civil litigation is a policy issue which the courts are under a duty to invoke for purposes of obviating hardship, expense, delay and to focus on substantive justice as set out under ***Article 159(2)(d) of the Constitution*** to the effect that ***"justice shall be administered without undue regard to procedural technicalities."***

22. The judgment by the Supreme court in the ***National Bank Case*** (above) has put to rest what we as courts perfected by striking out pleadings on the basis of the Court of Appeal decision in ***Salat Case*** (above) to the effect that an advocate not having a current practicing certificate at the time of drawing certain legal documents, be they charges, or pleadings as in the instant case, was not qualified to act as an advocate.

b. Whether the instant application should be struck out for offending Rule 15(1)(c) of the Elections (Parliamentary and county Elections) Petitions Rules, 2017

23. The appellant's submissions on this issue were premised on the provisions of ***Rule 15(1)(c) of the Election Petitions Rules 2017*** which are as follows:-

"15(1) within seven days after the receipt of the last response to a petition, an election court shall schedule a pre-trial conference with the parties in which the election court shall –

a) frame the contested and uncontested issues in the petition;

b) analyze methods for resolving the contested issues;

c) determine interlocutory applications;

d) confirm the number of witnesses the parties intend to call;

e) give an order, where necessary, for furnishing further particulars;

f) give directions for the disposal of the suit or any outstanding issues;

g) give directions as to the place and time of hearing the petition;

h) give directions as to the filing and serving of any further affidavits or the giving of additional evidence;

i) give directions on limiting the volume of any copies of documents that may be required to be filed; or

j) make such orders as may be necessary to prevent unnecessary expenses.

(2) An election court shall not allow any interlocutory application to be made on conclusion of the pre-trial conference, if the interlocutory application could have, by its nature, been brought before the commencement of the hearing of the petition."

24. It was submitted on behalf of the appellant that the instant application is a proper candidate for dismissal because of the mandatory terms in which ***Rule 15 of the Election Petition*** (Rules) is couched.

25. The applicant on the other hand contends that ***Rule 15 of the Election Petition Rules*** does not apply because this court is not an election court set up to hear and determine election petitions. The applicant further contends that this is an election appeal court which is not obliged to hold a pre-trial conference, but a case conference which is a totally different animal from a pre-trail conference. Further, that the issues raised in the application could only be raised after the pre-case conference.

26. The issue that arises for determination is whether the instant application is one that could have, by its nature been brought before the commencement of the hearing of the appeal. Apart from prayer 2 of the application alleging that the appellant's submissions were not filed within the ordered timelines (an eventuality that arose after the pre-trial conference), prayers 3 and 4 of the application concern matters that were within the knowledge of the applicant before the pre-trial conference on 7th may, 2018 seeking prayers in terms of prayers 3 and 4 of the application herein. It is worth noting that by the time the application was filed, the appeal had already been set down for hearing. I have

no doubt in my mind that the application was intended to delay further progress in the hearing and determination of the appeal. Clearly, the action of filing the application at the time he did, the applicant was not assisting the court in complying with the provisions of ***Article 159(2) (b) of the Constitution, 2010.*** The applicant's argument on whether or not this court as constituted is an election court is neither there nor there, and nothing much turns on it.

27. For the above reasons, I find and hold that the instant application was filed in contravention of Rule 15of the Election Petition Rules, 2017, and thus liable to being dismissed.

c. Whether the Record of Appeal should be expunged from the Record for having been filed outside the stipulated timeline.

28. The applicant submitted that the Record of appeal was filed some 5 days outside the stipulated time and that in the circumstances, there is no Record of Appeal to talk about because what was filed ought to be expunged from the record.

29 While supporting the applicant that the record of appeal should be expunged from the record, the 1st and 2nd respondents correctly stated that the applicant has misapprehended the provisions of ***Rule 19 of the Elections Petition Rules*** by alleging that this court has no power to enlarge the time for the doing of any act that requires to be done under the ***Elections Act*** and the rules made thereunder. ***Rule 19 of the Election Petitions Rules 2017*** donates power to this court to enlarge the time in the following terms:-

> ***"19(1) Where any act or omission is to be done within such time as may be prescribed in these Rules, or ordered by an election court, the election court may, for the purposes of ensuring that injustice is not done to any party, extend or limit the time within which the act or omission shall be done with such conditions as may be necessary even where the period prescribed or ordered by the court may have expired.***
>
> ***(2) Sub-rule 1 shall not apply in relation to the period within which a petition is required to be filed, heard or determined."***

30. From a reading of the above, it is only the time within which a petition is to be filed, heard or determined that cannot be extended. The time for the doing of any other act or omission can be extended. In this regard, I also agree with the holding of **Chitembwe J** in ***Twaher Abdulkarim Mohammed versus Mwatethe A. Kadenge & 2 others (2015) eKLR***

> ***"The difference of time between 19/12/2014 and 8/7/2015 is quite minimal to make in a contentious issue. Had that matter been raised during the directions stage, this court could have exercised its power under Rule 20 of the Election Petition Rules and extend (sic) the time of service. More still, Section 59 of the Interpretation and General Provisions Act, Cap 2, allows the court to extend time even if the application to extend time is made after the expiry of the allowed period. What is important is to focus on the overriding objective of the rules as per rule 4 which is to facilitate fair and affordable dispute resolution."***

31. In light of the above the applicant's prayer that the appellant's Record of Appeal which was filed 5 days after the stipulated timeframe be expunged from the record is dismissed. I accordingly extend the time for filing of the Record of Appeal up to the date on which the same was filed, namely 13th April, 2018.

32. The above findings shall apply *Mutatis Mutandis* to the issue of the appellant's failure to serve the written submissions and I accordingly enlarge the time for filing and serving the same to 30th May, 2018.

33. In concluding this ruling the words of **Joel Ngugi J** in ***Republic versus Resident Magistrate's Court at Kiambu, Exparte Geoffrey Kariuki Njuguna & 9 others (Supra)*** will add value to the arguments against the applicant's application. The learned judge stated that:-

> "***A claim in law and a course of action belongs to the client and not the advocate. It is hard to justify, in this era where the Constitution (at Article 159) commands the courts to privilege the ideals of substantive justice as opposed to legal formalism, statutory interpretation which bereaves a party of a valid substantive claim because his or her lawyer failed to adhere to a procedural requirement unrelated to the claim in question. The case would be different, of course, if there is evidence that the client acted in bad faith or with knowledge of the failure of the lawyer to take out a practicing certificate but still persisted in having the lawyer represent them. No such evidence was presented here. Instead, we have a group of innocent members of public who instructed a law firm – not even a particular lawyer – to file a claim on their behalf. The law firm so instructed, then assigned the file to a lawyer in the firm who happened not to have taken a practicing certificate. In my view, to paraphrase the Supreme Court, the fact of this case and its clear merits lead me to a finding that the pleadings drawn and signed by Mr. Nyanyuki as well as the submissions he made in the two suits are not invalid merely by dint of Mr. Nyanyuki's failure to take out a practicing certificate."***

34. In the instant case, no evidence was adduced by the applicant to the effect that the appellant was aware that M/S Emily Kadenyi did not have a valid practicing certificate at the time of taking instructions from him nor was any evidence adduced to show that in spite of having the knowledge that counsel did not have a valid practicing certificate, he insisted that she represents him in this matter. I must however point out that I find no merit in appellant's counsel's allegation that she did not act timeously because she was indisposed. That allegation is not supported by any medical evidence.

d. Other issues raised by the applicant

35. The applicant also contended that the appeal should be dismissed on grounds that applicant's counsel has not exhibited any authority from the appellant to her instructing her to act for him nor has counsel filed either a notice of appointment or a notice of change of advocate since a different counsel was on record for the appellant right up to the time when judgment was delivered by the trial court. Although these

issues may have substance, I am of the considered view that raising those issues goes beyond the scope of the application dated 30th May, 2018. These are issues that may be canvased during the hearing of the appeal. I say no more on the same.

Conclusion

36. In conclusion, I make the following orders:-

1. The Notice of Motion dated 30th May, 2018 has no merit and the same is hereby dismissed in its entirety.

2. The time for the filing of the Record of Appeal be and is hereby extended to 13th April, 2018 and the said Record of Appeal is deemed as duly filed and served.

3. The time for the filing of the appellant's written submissions be and is hereby extended to 30th may, 2018 and the said submissions are deemed as duly filed and served.

4. The respondents shall file and serve their written submission upon the appellant by close of business on Friday, 10th August, 2018.

5. Highlighting of submissions shall be on Monday, 13th August, 2018.

6. The costs of this application shall abide the outcome of the appeal.

It is so ordered.

Ruling written and signed at Kapenguria

R. N. SITATI

JUDGE

Ruling delivered, dated and countersigned in open court at Kakamega on this 28th day of September 2018.

WILLIAM M. MUSYOKA

JUDGE

In the Presence of

.....for Appellant

.....for Respondent

.....Court Assistant