



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL APPEAL NO 135 OF 2014**

**PETER MUTISO MBUVA .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(An appeal against the original conviction and sentence of Hon. M.A. Opanga (Ag. SRM) in Criminal Case No. 72 of 2013 arising from a judgment delivered on 11<sup>th</sup> March 2013 in the Principal Magistrate’s Court at Kithimani)**

**JUDGMENT**

**The Appeal**

The Appellant was charged in the trial court with charge of robbery with violence contrary to section 295 as read with 296 (2) of the Penal Code. The particulars of the offence as per the charge sheet were that the Appellant on 27<sup>th</sup> January, 2013 at about 1:00 am at Maiuni village Kaluluini Sub location in Yatta District within Machakos County, and jointly with others not before court, robbed John Ndambuki Mbuva of his mobile phone make Techno valued at KShs. 2,800/-, and immediately before such robbery stabbed him with a knife on the chest, on the back and left leg thigh.

The Appellant was convicted of the charge of robbery with violence, and sentenced to suffer death. The Appellant is aggrieved by the judgment of the trial magistrate and has preferred this appeal by way of a Petition and Memorandum of Appeal he filed in this Court on 7<sup>th</sup> May 2014.

His grounds of appeal are as follows:

- a) That the charge sheet was defective in that it was duplicitous for the fact that it incorporates both sections 295 and 296 (2) of the Penal Code.
- b) That the charge sheet was defective in that the particulars of the charge did not allege that the Appellant was armed with any dangerous or offensive weapons; in contravention of the provisions of section 296 (2) of the Penal Code.
- c) That the learned trial magistrate erred in both law and fact by failing to find that the prosecution did not prove to the required standards that the prevailing conditions at the time were conducive for positive identification of the appellant.
- d) That the learned magistrate erred in law and fact by failing to find that the prosecution witnesses’ narrations of evidence were unbelievable and illogical.

- e) That the testimonies tendered to establish the Appellant's mode of arrest were riddled with doubt and were not enough to sustain a conviction.
- f) That the conviction had been arrived at on the basis of mere suspicion.
- g) That the learned trial magistrate erred in law and fact by failing to note that the witnesses were all coached and that investigations were done when the Appellant had already been arrested.
- h) That the tenets of a fair trial were infringed when the Appellant was forced to continue with the hearing of the case despite the fact that he had informed the trial court that he was sick.
- i) That the learned trial magistrate erred in law and fact by failure to draw adverse inference against the prosecution for failure to summon an essential witness, in contravention of the provisions of section 146 (4) and 150 of the Criminal Procedure Code.
- j) That the learned trial magistrate erred in law and fact by relying on hearsay evidence.
- k) That the learned trial magistrate erred in law and fact by failing to find that the prosecution's case was not proved beyond reasonable doubt.
- l) That the learned trial magistrate erred and misdirected himself in law and fact by evaluating and analyzing the respective cases of the prosecution and the defence in a speculative, skewed, slanted and unfair manner against the Appellant.
- m) That the learned trial magistrate had not considered the totality of the evidence, which raised doubt that indeed the Appellant committed the offence.

The Appellant also availed written submissions wherein he addressed himself on the duplex charge, defective charge sheet, his identification and recognition, and what he termed as grey areas of the evidence adduced against him.

Ms Mogoi Lilian, the learned Prosecution counsel opposed the Appellant's appeal, in submissions she filed in Court dated 20<sup>th</sup> July 2017 in which she responded to the issues raised by the Appellant, and urged this Court to uphold the conviction of the trial Court and confirm the sentence.

As this is a first appeal, I am required to conduct a fresh evaluation of all the evidence and come to an independent conclusion as to whether or not to uphold the conviction and sentence. This task must have regard to the fact that I never saw or heard the witnesses testify (see **Okeno v Republic [1973] EA 32**).

### **The Evidence**

The Prosecution in this regard called four witnesses to testify in the trial court. John Ndambuki Nduva the complainant (PW1) testified that on the night of 26<sup>th</sup> January, 2013, he suddenly woke from his sleep to find people tying his hands. They had gained entry through a wooden door. He was commanded to be quiet or else he would be killed. He stated that the two were the Appellant and another man. They hit him with a metal bar and covered his head using a bed sheet. He went unconscious for a while and gained consciousness outside the fence where they had taken him, where the Appellant stabbed him severally on the stomach using a knife.

PW1 further testified that the two demanded for KShs. 100,000/- and forced him to disclose to them his M-Pesa pin number. He gave them the pin number with which they confirmed that he had no money in his M-Pesa account. He was asked to call someone to send him money. He called his mother who said she did not have money. The Appellant then gave his accomplice the phone to speak to PW's mother who later looked for money and sent to him KShs. 20,000/-. The two then transferred the money to themselves. PW1 stated that he was tied on a thorn tree near a dam for 30 minutes and screamed for help after the assailants left.

PW1 also stated that he bit the appellant's finger in self defence during the struggle while at the house, and was able to identify the Appellant, who was his brother, using the light from the spot light and security light. He further stated that the Appellant was fond of coming home during odd hours to demand for money. He stated that he has scars on his chest, stomach, thighs and buttocks.

Elizabeth Mbuva Mukola (PW2) testified that both the Appellant and PW1 are his sons. She stated that on 27<sup>th</sup> January, 2013 at 1.27 am she received a text message indicating that PW1 had tried to call her. She returned his call and he told her that he was in trouble. She went to his house and found his door broken with blood all over his bed and floor. She was alarmed and went to the administration police. PW1 then called her and told her to send him money and a man speaking in Kikuyu dialect told her to send money if she wanted PW1 alive. She then sent KShs. 20,000/-.

PW2 testified that she called the police and alerted neighbours all over. She stated that she managed to rescue PW1 who informed her that the Appellant was one of the thieves who attacked him. Further, that two days later when PW1 was still in hospital, the Appellant called him demanding KShs. 50,000/- failure to which he would kill all of them and kill himself. That the Appellant returned home and his father who is a police officer wanted to shoot him dead. PW2 stated that the Appellant is a problem.

PC Sammy Kipkurui (PW3) attached at Matuu Police Station testified as follows. On 27<sup>th</sup> January 2013 at 3.00 am, received a call from OCS Chief Inspector Nzuma requesting him to accompany him to a scene of robbery at the home of PW2. That on arrival she told them that her son PW1 had been asleep in an adjacent house when he was abducted. That the abductors used his phone to demand money. That they proceeded to the said house where they found the wooden door broken and blood on the floor. The home was also disturbed and PW1 was missing. That he and the villagers followed the foot marks and blood into the maize plantation for a distance of about 1 Kilometer. There they found PW1 tied on a thorn tree with stab wounds on the stomach, thigh, neck and back.

Upon interrogation, PW1 indicated that he recognized one of the abductors whose finger he bit as there was security light. They returned to the home and found a bloodstained knife and also took the wooden door as an exhibit. PW3 further testified that they received a call on 30<sup>th</sup> July, 2013 from the Appellant's father that he had spotted the Appellant at Kateki. They rushed to the scene and arrested the Appellant. PW3 produced the knife, rope and broken piece of door as P. Exhibits 1, 2 and 3 respectively.

Richard Kimei (PW4) who is a Clinical Officer testified that PW1 visited the outpatient department at Matuu District Hospital. He stated that his shirt was blood stained. That PW1 indicated to him that he had been assaulted by two people one being his brother. He stated that PW1 was sober and well kempt. Upon examining him, he found him to have a swelling on the forehead, several cuts on the forehead nose chin and head, cuts on the thorax and abdomen on the back, cuts around his right thigh and the age of the injuries was 7 hours. He stated that the weapon used was sharp and blunt. He had not received treatment before visiting the hospital and the degree of injury was harm. He produced a P3 form as P. Exhibit 4.

The trial magistrate found that the prosecution had established a *prima facie* case and put the Appellant on his defence. In his defence, the Appellant gave an unsworn statement as follows. That on 26<sup>th</sup> January, 2013 he went to work, and on the following day, his mother called him on her cellphone and informed him that PW1 had been attacked by robbers and that he was at Matuu hospital. He indicated to her that he had no bus fare and that he would go on 29<sup>th</sup> January, 2013. That he went home at 8.00 pm and two hours later nine people and his mother and stepbrother went and assaulted him, and the police went and arrested him. He testified that he knew nothing about the charge he was faced with.

### **The Determination**

After considering the grounds of appeal, submissions thereon and evidence adduced in the trial Court, I find that the main issues raised by the Appellant in his appeal are firstly, whether the charge sheet was defective; secondly whether his identification was proper; and lastly, whether he was convicted on the basis of consistent, reliable and sufficient evidence.

### ***Was the Charge Sheet Defective?***

The first limb of the Appellant's arguments as to the defects in the charge sheet was that while the charge sheet alleges that the attackers were armed with pangas, it does not claim the said weapons were either dangerous or offensive, thereby the charge sheet was defective as it omitted an essential ingredient as envisaged under section 296 (2) of the Penal Code. On this point, the appellant cited **Erick Macharia Mugo and Another v. Republic**, Nyeri CA Criminal Appeal No. 32 of 2014, **George Omondi & Another v. Republic**, Mombasa CA Criminal Appeal No. 5 of 2005, **John Gichuki Ngatia v. Republic**, Nyeri CA Criminal Appeal No. 103 of 2013 among others.

The courts in all these cases emphasized the importance of stating in the particulars of the charge the weapon or instrument an accused was armed with was a dangerous weapon or an offensive one, where the prosecution is relying on the element of being armed.

I have perused the charge sheet and note that it does not indicate therein that the attackers were armed with pangas as alleged by the Appellant. However, the requirement of the Appellant being armed with an offensive weapon are in my opinion sufficiently indicated in the particulars of the charge, which indicate that the Appellant immediately before the robbery the Appellant stabbed the complainant with a knife on the chest, on the back and left leg thigh.

In this respect the Court of Appeal in **Kimemia and Another vs Republic (2004) 2 KLR 46** held that a knife would be a dangerous and offensive weapon for the purposes of section 296(2) of the Penal Code, if the assailant in the course of wielding it during a robbery intends to use it for causing injury to any person. The charge sheet was therefore not defective as it included the element that that the Appellant was armed with an offensive weapon.

The second limb of the Appellant's arguments on the defective charge was that the charge sheet set out two different sections of the Penal Code i. e. Sections 295 and 296 (2) of the Penal Code. That the correct section of the law to charge the offence of robbery with violence is Section 296 (2) and that to charge under both sections 295 and 296 is incorrect. The Appellant cited a number of authorities among them **Maurice Oduor Oduol and Another v. Republic (2017) e KLR** where the court was guided by the Court of Appeal decision of **Joseph Njuguna Mwaura & 2 others v. Republic (2013) e KLR** where it was held that charging an accused person under both sections amounts to duplex charge.

The Judges of Appeal in the latter case reiterated their holding in the case of **Joseph Onyango Owuor & Cliff Ochieng Oduor v. Republic (2010) e KLR** as follows:

**“We reiterate what has been stated by this court in various cases before us: the offence of robbery with violence ought to be charged under section 296 (2) of the Penal Code. This is the section that provides the ingredients of the offence which are either the offender is armed with a dangerous weapon, is in company of others or if he uses any personal violence to any person. The offence of robbery with violence is totally different from the offence defined under section 295 of the Penal Code which provides that any person who steals anything, and at, or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or to property in order to steal. It would not be correct to frame a charge for the offence of robbery with violence under section 295 and 296(2) as this would amount to a duplex charge.”**

The Prosecution on the other hand submitted that although there have been concessions before as to duplicity of charges hence a retrial, in this case this ground should fail for the reason it is evident from the proceedings that the Appellant was aware that he was facing the offence of robbery with violence, and he cross examined the witnesses based on the said charge. Hence he did not suffer any prejudice based on the framing of the offence.

The Prosecution cited the decision of the Court of Appeal in **Paul Katana Njuguna v. Republic, (2016) e KLR** in this regard. In this case the Court of Appeal appreciated the defect in charging an accused

under both sections, but went further to discuss the effect of that defect. It was held that what court needs to have in mind is whether or not a failure of justice occurs with that defect. That the confusion that would arise due to the duplicity did not occur since the accused in that case fully cross examined the witnesses and raised no complaint both before the trial court and the High Court. So that while it would be undesirable to charge an accused person under both sections, it would not be prejudicial to that accused person if there is no risk of confusion in the mind of an accused as to the charge framed and evidence presented, in which case a charge which may be duplex will not be found to be fatally defective.

I am guided by the decision of a five-judge bench of the Court of Appeal in Joseph Njuguna Mwaura & 2 Others v Republic [2013] e KLR (*Criminal Appeal No 5 of 2008*) that explained and laid to rest the reasons why charging an accused person with the offence of robbery with violence under sections 295 and 296(2) of the Penal Code would amount to a duplex charge. The said Court, while following its earlier decisions in Simon Materu Munialu vs Republic [2007] eKLR (*Criminal Appeal 302 of 2005*) and Joseph Onyango Owuor & Cliff Ochieng Oduor v R [2010] eKLR (*Criminal Appeal No 353 of 2008*), stated as follows:

**“Indeed, as pointed out in *Joseph Onyango Owuor & Cliff Ochieng Oduor v R (Supra)* the standard form of a charge, contained in the Second Schedule of the Criminal Procedure Code sets out the charge of robbery with violence under one provision of law, and that is section 296. We reiterate what has been stated by this Court in various cases before us: the offence of robbery with violence ought to be charged under section 296 (2) of the Penal Code. This is the section that provides the ingredients of the offence which are either the offender is armed with a dangerous weapon, is in the company of others or if he uses any personal violence to any person.**

**The offence of robbery with violence is totally different from the offence defined under section 295 of the Penal Code, which provides that any person who steals anything, and at, or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or to property in order to steal. It would not be correct to frame a charge for the offence of robbery with violence under section 295 and 296 (2) as this would amount to a duplex charge.”**

I am also persuaded by the explanation by the Court of Appeal in Paul Katana Njuguna vs Republic (2016) eKLR that as the offence of robbery with violence includes the elements of the offence of robbery, if the particulars of the charge sheet show the elements of the offence of robbery with violence which are proved, then this is a defect that is not fatal and can be cured by this Court under section 382 of the Criminal Procedure Code.

*The converse position therefore is that if the evidence adduced pursuant to such a charge does not disclose the offence of robbery with violence, then this is a defect that is not curable under section 382 of the Criminal Procedure Code, for reasons that there will be two offences disclosed by the charge namely simple robbery and robbery with violence, which offences attract different penalties under the law, and prejudice would be caused to an accused person in this regard as it would not be clear what offence or sentence is applicable to him and to which he should raise a defence.*

This Court will therefore have to also interrogate the other issues raised of the identification of the Appellant, and whether there was sufficient evidence to convict the Appellant for the offence of robbery with violence, to be able to make a determination as to whether the duplicity in the charge sheet was fatal or not.

### ***Was there Positive Identification?***

It is argued on this issue by the Appellant that although PW1 stated that he recognized him, it was not clear from the evidence whether he recognized him visually or by voice. To elaborate this point, he referred to PW1’s evidence vis- a- vis that of PW3. PW1 stated that “They had a spotlight. I recognized my brother Peter Mutiso Mbuva and another man who had a Kikuyu accent.” PW3 on his part stated that PW1 told him that “the man whom he bit raised alarm that is when Ndambuki knew it was Peter Mutiso.”

It was further argued that it was alleged that PW1 was unconscious during the robbery, and it is not known for how long he was in that condition. That therefore it is not known for how long the Appellant was under observation by PW1. Further, that the intensity of the light is also not clear from the evidence on record. Therefore, that the Appellant was not positively identified as per the standards required by law.

The Appellant relied on the decisions in Paul Kimathi Sungu v. Republic, (2005) e KLR , Toroke v. Republic, Criminal Appeal No. 204 of 1987, Maitanyi v. Republic, (1986) KLR 198, Paul Etole & Another v. Republic ,(2001) e KLR and Wamunga v. Republic, (1989) KLR 424. These cases highlighted the need for a court to warn itself of the special need for caution before convicting an accused in reliance on the correctness of identification thus the likelihood of mistaken identity.

The Appellant emphasized that the issues that the court ought to take account of when dealing with the issue of identification are; whether the accused was known to the identifying witness at the time of the offence; the length of time the witness took to identify the accused; the distance from which the witness identified the accused and the source of light that was available at the material time. The Appellant submitted that there was no other evidence that placed him at the scene of crime other than identification.

The Prosecution submitted that the Appellant identification was by recognition considering that the Appellant was PW1's brother, and that there was sufficient light and time to see and recognize the Appellant. That further, the Appellant and his accomplice were demanding money from PW1 hence he was also able to hear the Appellant's voice and recognize him. It was submitted that the prevailing circumstances in this case cannot be termed as difficult. Lastly, that PW1 spent a reasonably long time with the two hence he was able to see and identify who the Appellant was.

On the issue of identification, **the** Court set out what constitutes favourable conditions for a correct identification by a sole testifying witness in Maitanyi vs Republic , (1986) KLR 196 as follows:

**“Subject to well-known exceptions it is trite law that a fact may be proved by the testimony of a single witness but this rule does not lessen the need for testing with greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the possibility of error”.**

I have also reminded myself of the guidelines in the case of Mwaura v Republic [1987] KLR 645, in which the Court of Appeal held, *inter alia*, that:

**“In cases of visual identification by one or more witnesses, a reference to the circumstances usually requires a judge to deal with such matters as the length of time the witnesses had for seeing who was doing what is alleged, the position from the accused and the quality of light”.**

In addition it has been stated by the Court of Appeal in Anjononi and Others vs Republic, (1976-1980) KLR 1566 that when it comes to identification, the recognition of an assailant is more satisfactory, more assuring and more reliable than the identification of a stranger because it depends upon some personal knowledge of the assailant in some form or other.

The evidence of identification at night must also be tested with the greatest care using the guidelines in Republic - v- Turnbull, (1976) 3 All ER 549 and must be absolutely watertight to justify conviction as held in Nzaro -v- Republic, (1991) KAR 212 and Kiarie - v- Republic, (1984) KLR 739. In the case of Maitanyi -v- Republic, (supra), the Court of Appeal stated that in determining the quality of identification using light at night, it is at least essential to ascertain the nature of the light available, what sort of light, its size and its position relative to the suspect.

In the present appeal, the robbery took place during the night. PW1 testified that he saw the Appellant

during the assault using a spotlight and a security light, before they covered his head with a bed sheet. He also stated that the assailants told him to shut up or they would kill him, and severally demanded for his pin number for Mpesa. On cross-examination, PW1 also stated that the Appellant gave the number to which to transfer the money. Lastly, PW1 testified that the assault took about 30 minutes before the attackers fled.

I find that even if there were difficult circumstances at the time of identification, this is clearly a case of recognition for two reasons. The Appellant was previously known to PW1 as he was PW1's brother, and PW1 was able to see him using the spotlight and security lights which were on at the time of the attack. Therefore, there could have been no mistake as to visual identification as PW1 recognised the Appellant.

In addition, and for the same reason, the Appellant's voice was well known to PW1, and the Appellant at the time of reporting the incident did clearly indicate to PW3 that the person who attacked him was the Appellant. The Court of Appeal in *Karani v Republic* [1985] KLR 290 and in *Mbelle v. R* [1984] KLR 626 held that *identification by voice nearly always amounts to identification by recognition, and laid down the requirements for a court to find recognition by voice identification as follows:-*

- (a) The voice was that of the Accused.
- (b) The witness was familiar with the voice and recognized it.
- (c) The conditions obtaining at the time it was made were such that there was no mistake in testifying to what was said and who had said it."

As the Appellant was PW1'S brother, his voice was familiar to PW1 and was recognized during the attack, and I accordingly rely on PW1's sole evidence of identification I find that the circumstances of the identification of the Appellant by PW1 were favorable for a positive identification.

### ***Was the Evidence adduced Sufficient?***

The Appellant on the issue of the evidence adduced contended that although it was alleged that PW1 bit his finger during the struggle, the prosecution did not prove that allegation; that the allegation that money was sent to the Appellant and his companion was not proved; that the he was not found in possession of the stolen money, and that the trial magistrate relied on extraneous evidence having held that PW1 did not say what became of his phone, and believed that the Appellant and his counterpart made away with it. Therefore, that in the circumstances, the prosecution did not prove its case beyond reasonable doubt.

The Prosecution after summarizing the evidence adduced submitted that the same was consistent, and there was no doubt created that the Appellant committed the offence of robbery with violence or as to his identification. It was further stated that the Appellant's evidence was a mere denial and did not mention his whereabouts on the night of the offence. Lastly, that the Appellant's evidence did not shake the prosecution's case.

Section 296 (2) of the Penal Code provides as follows with respect to the said offence:

**"If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death."**

The prosecution must therefore prove theft as a central element of the offence of robbery with violence, as the offence is basically an aggravated form of theft.

The other elements of the offence of robbery with violence were elaborated by the Court of Appeal in *Ganzi & 2 Others v Republic* [2005] 1 KLR and in *Johanna Ndungu Vs Republic, Cr. App No. 116 of 2005 (unreported)* as follows:

- 1. If the offender is armed with any dangerous or offensive weapon or instrument, or**
- 2. If he is in the company with one or more other person or persons, or**
- 3. If at or immediately before or immediately after the time of the robbery, he wounds, beats strikes or uses any other violence to any person.**

I am alive in this regard to the requirement that proof of any one of the ingredients of robbery with violence is enough to base a conviction of robbery with violence under section 296 (2) of the Penal Code as was held in **Oluoch vs Republic, (1985) KLR 549.**

*In this regard the evidence stated in the foregoing given by PW1 does not indicate that his phone was taken by the Appellant as alleged in the charge sheet, neither was evidence of ownership of the phone produced by the Prosecution, nor was the said phone recovered. Moreover, even though PW1 and PW2 testified as to the transfer of money by the Appellant to and from PW1's phone; the theft of this money was not a particular in the charge sheet.*

*I therefore find that an essential element of the offence of robbery with violence, which is that of theft of the complainant's mobile phone make Techno valued at KShs. 2,800/-, was not proved beyond reasonable doubt, and the charge cannot therefore stand, and was to this extent also defective and is not curable under section 382 of the Criminal Procedure Code.*

In light of this finding, it is not necessary to consider if the other elements of the offence of robbery with violence were met. However, given the positive identification of the Appellants at the scene of the alleged offence; *the evidence adduced by PW1 of his stabbing by the Appellant; and the evidence by PW4 as to the injuries suffered by PW1 upon medical examination, this Court finds that the evidence adduced did disclose the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. In addition, the P3 form produced by PW4 as the Prosecution's exhibit 4 assessed the degree of the injuries suffered by the PW1 a "harm".* The punishment provided for the offence of assault causing actual bodily harm under section 251 of the Penal Code is imprisonment for up to five years.

This Court is empowered under section 179 of the Criminal Procedure Code to substitute an offence with one for which the evidence is established, provided that the offence being substituted is cognate and minor to the offence the accused person was initially charged with. The said section provides as follows:

**“(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and the combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.**

**(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.”**

Pursuant to the provisions of section 179(2) of the Criminal Procedure Code, I accordingly hereby quash the conviction of the Appellant for the offence of robbery with violence, and substitute it with the conviction of the Appellant for the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. I also substitute the death sentence imposed upon the Appellant with a sentence of five (5) years imprisonment for assault causing actual bodily harm, which sentence is to run from the date of conviction by the trial Court.

Orders accordingly.

**DATED AND SIGNED AT MACHAKOS THIS 21<sup>st</sup> DAY OF SEPTEMBER 2017.**

**P. NYAMWEYA**

**JUDGE**