REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL NO. 31 OF 2015

WILLIAMSON KARIMI NJOGU……APPELLANT

-VERSUS-

REPUBLIC…….....…….…….....RESPONDENT

(Being appeal from the conviction and sentence of the Principal Magistrate's Court (P. M. Kiama) at Wanguru, 502 of 2014 dated 10th July, 2015)

JUDGMENT

1. **WILLIAMSON KARIMI NJOGU,** the appellant herein was charged with the offence of defilement contrary to ***Section 8 (1) (4)*** of the **Sexual Offences Act No. 3 of 2006** vide Wanguru Principal Magistrate's Court Criminal Case No. 502 of 2014. The particulars of the offence was that on the 27th day of August, 2014 at Kimbimbi Township in Kirinyaga County intentionally caused his penis to penetrate the vagina of (name withheld) a child aged 16 years old. He 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** and the particulars of the alternative charge were that on the same date and place the Appellant intentionally touched the breasts, thighs and vagina of (name withheld) a child aged 16 years with his penis. The Appellant denied both counts and he case proceeded for hearing upon which the Appellant was acquitted of the principal charge but found guilty of the alternative charge and convicted to serve 10 years imprisonment.

2. The evidence adduced before the lower court showed that the complainant, a girl aged 17 years was employed as a house girl by the wife to the Appellant (D.W.4 – A A M) and had worked for about 3 weeks prior to the incident. According to the evidence of P.W.1 (the complainant), she was employed on 1st August, 2014. The wife to the appellant was apparently expectant at the time and that on 25th August, 2014, she went into labour to a hospital in Mwea. On the 27th August, 2014, it is indicated that the appellant left his house with his two children L (D.W.2) and C at around 6.00 a.m. to check out on his wife who had given birth on 26th August, 2014. They went back home later and P.W. 1 told the trial court while she was with L watching Television in the house, the Appellant referred to by the complainant as Baba L, came and sent L on some errand and ordered the complainant to serve him with tea but in the process held her and forced her into the bedroom where in her evidence he defiled her after removing his trousers and forcefully removing her pants. In her own words "the accused entered his penis into my vagina. The accused then went away. I went out of the house." The complainant further testified that prior to the incident, she was a virgin and felt a lot of pain. After the ordeal, the complainant went out and sought help from a lady called Mama Wanjiku (P.W.3 – J W N) who took her to village in charge known as E W G (P.W.2). She was then taken to the area chief who referred them to Kimbimbi

sub district Hospital and Wanguru Police Station where the complaint was lodged. At Kimbimbi hospital, the complainant was treated as per the treatment notes tendered as Prosecution Exhibit 1 in evidence by Dr. Kennedy Nyaga. The Doctor tendered P3 form as Prosecution Exhibit 2 and indicated that the medical examination he carried out was not conclusive as far as penetration was concerned. The doctor further testified that though the hymen was broken, in his opinion "it may have broken earlier because there was no bleeding on the vagina."

3. The Appellant in his defence denied the offence and raised alibi as a defence stating that at the material time he was with his wife (D.W. 4) at the hospital where she had given birth a day earlier. D.W. 2 (Linda Wanjiru), the Appellant's mother in law (D.W. 3 – Teresia Wairimu Njoroge) and the said wife (D.W.4) all testified and supported the Appellant in his alibi. D.W. 5 (Martin Kiranga Ndegwa) and D.W. 6 (Simon Mwangi) to some extent also backed the Appellant's alibi.

4. The trial court on the basis of the evidence tendered found that there was no evidence to support the main charge of defilement and gave him the benefit of doubt. The learned trial magistrate however, found that the evidence tendered was sufficient to prove the alternative charge of committing an indecent act with a child contrary to ***Section 11 (1)*** of the **Sexual Offences Act**, convicted him and sentenced him to serve 10 years imprisonment as provided by law. While dismissing the defence of alibi, the trial court found that the Appellant had both time and opportunity to commit the crime.

5. The Appellant felt aggrieved by the above decision and filed this appeal raising 11 grounds which he later with leave of the court, amended as follows:-

(i) That the learned magistrate misdirected himself in law on sentence by unlawful exercise of discretion in passing the sentence.

(ii)That the learned magistrate erred in sentencing by taking into account an irrelevant factor or factors and/or applied wrong principles making the sentence so excessive and an error in principle.

(iii) That the learned magistrate erred in not appreciating that the charge sheet was naturally defective in regard to age given on oath and recorded on the charge sheet.

(iv) That the learned magistrate erred in concluding that the evidence of P.W.2, and P.W.4 was credible.

(v) That the learned magistrate erred in failing to record the evidence of P.W. 4 on the question of the defence of alibi.

(vi) That the learned magistrate erred in law by not analyzing well the evidence of alibi

(vii) That the learned magistrate erred in arriving at a conclusion that P.W.3 was left at hospital whereas the evidence on record was that she was accompanying the Appellant person from the hospital.

(viii) That the trial magistrate made an error by making a finding on the alternative count without any basis.

(ix) That the learned magistrate misdirected himself by concluding that the appellant had committed the alternative offence whereas no evidence was tendered to that effect.

(x) That the learned magistrate failed to note that once the main charge failed, then the alternative count could not stand.

(xi) That the learned trial magistrate erred by not considering appellant's alibi.

(xii) That the alternative count of committing an indecent act with a child contrary to section 11(1) of Sexual Offences Act was defective as it only cited the punitive provision of the law.

(xiii) That the particulars of the alternative count did not disclose any offence because the word "unlawful" – a mandatory ingredient was missing from the particulars.

(xiv) That the learned magistrate erred in law and fact in disregarding the fact that the prosecution did not prove the particulars of the alternative charge beyond reasonable doubt.

(xv) That the learned magistrate erred in law and fact in disregarding the fact that the complainant was not a truthful and credible witness.

(Xvi) That the learned magistrate erred by making a judgment which was against the weight of evidence.

6. This appeal proceeded through written submissions by both the Appellant's and the Respondent's counsel. The Appellant's counsel chose to submit on ground 13 of the amended petition separately and combined grounds 4, 8, 9, 14 and 16 together. The Respondent through the office of Director of Public Prosecutions represented by learned counsel Mr. Sitati, has made general submissions opposing this appeal and submitting that in fact the Appellant should have been found guilty of the main charge.

7. The Appellant has taken issue with the way the particulars in the charge were framed and in particular the fact that in Count II, upon which the Appellant was found guilty, the word "unlawful" was missing from the particulars and in his view the word forms an important ingredient in an offence of indecent act as defined under ***Section 2*** of **Sexual Offences Act No. 3 of 2006. Mr. Magee** counsel for the Appellant has submitted that the omission of the word unlawful rendered the charge fatally defective and conviction was unsustainable on the basis of such. The Appellant has relied on the following 2 authorities in his submissions:-

(i) Mohammed Abbas Athman -Vs- R [2007] eKLR.

(ii) Ernest Isinya -Vs- R (MSA H.C. CR A No. 16 of 2004).

8. The Respondent has however, contested this view and accused the Appellant of trying to ride on a technicality without disclosing any prejudice suffered by the Appellant or any violation to his right to a fair trial under Article 50 of the Constitution. Mr. Sitati has responded that the authorities cited by the Appellant are archaic and have no room in the new constitutional dispensation.

9. I have considered this ground and a look at the particulars on Count II of the charge reveals that the Appellant was being charged with "intentionally touching the breast and thighs and the vagina" of the complainant - a child indicated to be aged 16 years old. The Appellant was charged under ***Section 11 (1)*** of the **Sexual Offences Act** and it is true that the section provides for the sanction for any person who commits an indecent act with a child. ***Section 2 (1)*** of the Act defines an "indecent act" as "unlawful intentional act which causes (of relevance to this appeal)

"any contact between any part of the body of a person with the genital organs, breasts or buttocks of another but does not include an act that causes penetration."

It is this Court's considered view that the word "unlawful" does not constitute a key ingredient to an offence under ***Section 11 (1)*** of the **Sexual Offences Act**. What is key in that section is that the particulars must reveal that the act complained of was intentional and indecent in nature. The particulars of the count clearly reveal that the act that the Appellant was being accused of was intentional and indecent. The word 'unlawful' in my view was relevant in the now repealed section of the Penal Code (Section 139) that placed importance to lack of consent as a key component in a charge of rape. The authorities cited by the Appellant in the case of **MOHAMMED ABAAS ATHMAN (Supra)** and **Ernest Isinya (Supra**) should be viewed in that light. The enactment of the **Sexual Offences Act No. 3 of 2006**

rendered the above decisions irrelevant in so far as the importance of the use of the word "unlawful" is concerned. This Court finds that technically the charge and the particulars of the offence facing the Appellant as framed were sound in law and clearly revealed that an offence had been committed and the Appellant clearly knew what charges faced him at the trial. There was no prejudice suffered in that regard. But as to whether the charge and the particulars of the charge was supported sufficiently by the evidence tendered to justify the finding made by the learned trial magistrate is an issue that calls for a separate consideration and determination. I will come to that later in this judgment.

10. The Appellant has also faulted the drafting of the Charge Sheet pointing out that the section creating the offence ***(Section 2 (1)*** of **Sexual Offences Act No. 3 of 2006** was not cited and in his view that defect rendered the charge fatally defective. It is true as I have mentioned above that the section cited by the charge facing the accused was the punitive part and it was necessary for the state to cite ***Section 2 (1)*** of the Act which creates the offence upon which the Appellant was charged with. However I agree with the Respondent that the omission to cite the section that created the offence was not fatal to the prosecution case. The defect in my view is one of those defects that are curable under ***Section 382*** of the **Criminal Procedure Code** as the same did not prejudice the Appellant or occasioned a failure of justice. The Appellant was also ably represented by counsel at the trial and was in a position to raise an objection about the same if he felt that he was prejudiced by the omission by the prosecution to cite the section creating the offence. The Appellant was well informed of the charge facing him and was not prejudiced in defending himself. I have looked at the cited provisions of ***Section 137 (1)*** of the **Criminal Procedure Code** and agree that the charge against the Appellant should have contained both ***Sections 11(1)*** and ***2 (1)*** of the **Sexual Offences Act** but as I have found out, the omission of ***Section 2 (1)*** was not fatal. The cited section in the charge was sufficient to reveal the nature of the charge facing the Appellant and the omission in my considered view was minor and curable under ***Section 382*** of the **Criminal Procedure Code**.

11. The Appellant combined grounds 4, 8, 9, 14 and 16 of his amended petition in his submission and I will consider them as such. It has been submitted that the evidence tendered did not support the substance of the charge that the Appellant was convicted upon. He has pointed out that the complainant in her evidence to the trial court did not state the Appellant touched her breasts and thighs with his penis. In his view touching a person's thighs does not constitute an indecent act as defined under ***Section 2 (1)*** of the **Sexual Offences Act.** It has been further submitted the evidence tendered by the complainant was that there was some penetration and that in his view did not support or proved the particulars of the alternative charge beyond reasonable doubt. It has been submitted that none of the witnesses summoned to testify suggested that the Appellant had touched the breasts and the thighs of the complainant as indicated in the alternative charge. It was the Appellant's contention that the evidence tendered did not establish the particulars of the charge against the Appellant. The appellant cited a Court of Appeal authority in the case of **ISAAC OMAMBIA -VS- R (NBI CR. A No. 47 of 1995** to support his contention. In that case an Appellant had been accused for unlawfully and indecently assaulting the complainant by "touching her private parts" but the evidence tendered at the trial indicated that the Appellant had touched the buttocks of the complainant with his penis. The Court of Appeal found that the discrepancy between the evidence tendered and the particulars of the charge were so glaring that there should have been an amendment at the trial under ***Section 214*** of the **Criminal Procedure Code** and that in the absence of any amendment, the prosecution was bound by the particulars of the charge.

12. **Mr. Sitati's** response on this contention is that the prosecution in this case proved beyond reasonable doubt that the Appellant touched the vagina of the complainant with his penis as particularized in the charge sheet. It is his contention that the Appellant's penis came into contact with the vagina of the complainant and that fact in his view was proved beyond reasonable doubt.

13. I have considered this ground carefully because in my view the same forms main ground in this appeal. It is important to note from the onset that this being a first appeal, I am bound and guided by the principles illustrated in the case of **OKENO -VS- R (1972) E.A**. where the Court of Appeal clearly spelt out the duty and functions of a first appellate court in a criminal appeal as follows:-

"An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to

afresh and exhaustive examination (Pandya -VS- R (1957) E.A.) by the appellate's own decision on the evidence. The 1st appellate court must itself weigh conflicting evidence and draw its own conclusion……It is not the function of a 1st appellate court to merely scrutinize the evidence to see if there were some evidence to support the lower court's finding and conclusion, it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's finding should be supported. In doing so it should make allowance for the fact that the trial court had the advantage of hearing and seeing the witnesses……."

14. The learned trial magistrate in this appeal evaluated the evidence by the prosecution and concluded that the Appellant had "stripped the complainant and touched her private part." It is true that as contended by the Appellant, that the learned magistrate did not clearly illustrate what constituted "private part" in his judgment and should have done better by giving a clear illustration and findings about the guilt of the appellant because the same was key in the judgment. I have considered the weight of the evidence tendered by the prosecution and it is apparent that the learned magistrate findings and especially in regard to the second count was due to the evidence of the doctor (P.W.4 - Dr. Kennedy Gitonga Nyaga) who testified that the only finding made upon medical examination of the minor was a broken hymen and in his opinion the same was not conclusive that there was penetration because the same could be caused by a sexual assault or an instrument. He further stated that the absence of sperms on the vagina of the complainant and the fact that there was no bleeding could mean that the complainant's hymen may have been broken earlier. I have however, noted from the treatment notes produced as Exhibit 1 by the same doctor that the doctor's testimony in court was somewhat inconsistent with page one of the treatment notes which appear to confirm that penetration was positive due to the sexual assault. The expert though confirming that there was no tears and blood noted upon examination, noted visible white discharge on the vulva. I have also noted that the treatment notes on the back side of the said exhibit were made by the said witness (P.W.4) but it is not clear from the testimony of the doctor whether another doctor or medical officer was responsible for the findings of the 1st part but what is apparent from the record of proceedings is that the doctor appeared uncomfortable when cross-examined by the defence counsel. He stated that it was not true to say the complainant was a virgin and it is recorded that he said so while having a second look at the treatment sheet. One would have expected a keen prosecutor to interrogate the document tendered further but that did not happen. Although I note from the record of proceedings that the trial magistrate indicated that the doctor testified that there were spermatozoa or pulse seen, the learned trial magistrate appears to have erroneously omitted the word "no" because in his judgment, he clearly and correctly observed that the doctor had said there were no spermatozoa seen. This is evident from the lab results produced as Exhibit 4. It is nonetheless important to note that it is now a well settled position that the conclusions or the findings of an expert witness should not be taken as the gospel truth by courts and it is proper that such evidence must be subjected to court's own evaluation before using them to determine issues of controversy in a given case.

15. The doctor at the trial did not positively state that there was no penetration. His evidence taken as a whole was that he could not conclusively conclude that there was penetration. This is where the learned trial magistrate missed the boat. The doctor did not say that the minor was not penetrated. What he said was that based on his findings he could not say for certain that penetration occurred. It is clear therefore that the testimony of the doctor was indecisive and that is where the learned trial magistrate should have evaluated the exhibits tendered and the doctor's own testimony to arrive at his own conclusion which in my own considered view should have led him to conclude that penetration had been established. This Court in this regard is guided by the decision in **PARVIN SINGH DAALAY -VS- R [1997] eKLR** where the Court of Appeal made the following observations which I consider relevant in this appeal:-

""It is now trite law that while courts must give proper respect to the opinions of experts, such opinions are not, as it were, binding on the courts or that the courts must accept them. Such evidence must be considered along with all other available evidence and if there is proper and cogent basis for rejecting the expert opinion, a court would be perfectly entitled to do so". We will repeat what this Court said in the case of Elizabeth Kameme Ndolo -VS- George Matata Ndolo (Civil appeal No. 128 of 1995) where the court said with regard to the evidence of experts;

"The evidence of P.W. 1 and the report of Munga were, we agree, entitled to proper and careful

consideration, the evidence being that of experts but as has been repeatedly held the evidence of the experts must be considered along with all other available evidence and it is still the duty of the trial court to decide whether or not to believe the experts and give reasons for its decision. A court cannot simply say:- because this is the evidence of an expert, I believe it."."

16. In my considered view the conclusion of **Dr. Kennedy Nyaga** (P.W.4) that the issue of penetration was not conclusive was in conflict with the other evidence tendered including the medical findings recorded on the 1st page of the treatment chit (Exhibit 1) -. The doctor examined the complainant a few hours after the incident and examined her pants which the witness had confirmed in her evidence that it was same pants she wore before and after the incident. According to the said doctor the pants had "no blood stains other than whitish discharge." According to the complainant (P.W.1) in her own words the Appellant "took off my trouser, he took off my pants then raped me." She explained further that "he entered his penis into my vagina" and that when she was examined she was "wearing the same clothes". Under cross-examination the complainant remained resolute and stated

"……the trouser was lowered to my ankles. The accused took off my trouser and inserted his penis into my vagina. It is true I was a virgin before the incident……I felt a lot of pain. The accused did not insert the whole penis. He inserted part of the penis. The accused left me on the bed. We were in the children's bedroom. I do not know where the accused went. He went out fast."

The trial court in his judgment observed that the minor appeared truthful and found her credible. This observation in my view was key in light of the provisions of ***Section 124*** of the **Evidence Act** that provides that, a court can find a conviction based on evidence of the complainant only if that is the only evidence available and if the victim is found to be truthful based on reasons to be recorded. The learned trial magistrate in this case found the minor truthful because he found her credible consistent and not "shaken at all" on cross-examination. On the basis of this, and the fact that the doctor's inconclusiveness was in conflict with the other cited evidence tendered before the trial court, the learned trial magistrate ought to have discounted the doctor's evidence and conclude that penetration had been proved beyond reasonable doubt notwithstanding the inconclusive opinion of the said doctor.

17. The Appellant has faulted the trial magistrate for making the observation about the credibility of the witness belatedly at the stage of judgment and contended that the demeanor of the witness should have been recorded in the body of the proceedings as per the findings of a decision in the case of **ROSEMARY MICHERE MITHAMO -VS- R [2010] eKLR.** I have looked at the decision and with due respect to the finding in that decision there are many schools of thought on where a trial court should record the demeanor of a witness. There is a school of thought that the demeanor of a witness that how he/she behaves while testifying should be recorded in the body of the proceedings but in brackets to show that it is an observation by a trial court. Another school of thought has it that the demeanor should not be part of the proceedings and should not therefore be in the body of proceedings but off the marginal lines to show that it is an observation made by the trial court besides what the witness is actually stating. The other school of thought is that the demeanor if it is important to the findings of the trial court should be recorded elsewhere on a separate sheet that will only help the trial court to remember the demeanor once it retires to write the judgment. In my considered view, there is no hard and fast rule on this. I am not persuaded that recording the demeanor of a witness in the judgment is belated or improper. What is important is the observation made by a court on a demeanor of a witness but where it is made or recorded in my view is immaterial.

18. I have considered the evidence tendered by P.W. 2 (E W G) the village in charge who took up the report of defilement when it was made known to her and the evidence of P.W. 3 (J W N) also referred to as Mama Wanjiku and find that the evidence tendered by the two witnesses corroborated the evidence of the complainant. The Appellant in his defence stated that the two witnesses had no grudge against him. The complainant on her part was still new in the area where the incident took place. P.W. 3 stated in cross-examination that at the time she did not know the Appellant. This in my considered view indicated that said prosecution witnesses (P.W.1, P.W.2 AND p.w.3) had no reason to frame up the appellant. If anything, the Appellant has not alluded to being framed up by either the complainant or the other

witnesses. The witness had no reason to testify falsely against the Appellant. This fact could only point to one direction which was the fact that the evidence tendered by the prosecution strongly supported the main charge of defilement facing the Appellant. The learned trial magistrate appeared to have misdirected himself on a point of law by failing to properly evaluate the evidence tendered by the doctor because had he done so he would have found out that the conclusion made by the doctor that penetration was not conclusive, was as pointed out above questionable in view of the findings made on the treatment chit as a result of the medical examination conducted on the minor.

19. This Court finds that contrary to the contention by the Appellant, touching on the thighs of a girl or a woman deliberately and indecently constitute an indecent act. That in my view is the spirit of law in that section. What the section precludes is an action that causes penetration. I would therefore agree with the appellant that the learned trial magistrate was in error to find that the Appellant was guilty of indecent act when the evidence tendered showed that the act complained of caused penetration as illustrated above. It is true that ***Section 2 (1)*** of **Sexual Offences Act** indecent act does not include an act that causes penetration. The evidence tendered by the prosecution indicated that there was penetration and in my view the absence of spermatozoa or blood stains could not negate the fact that penetration had been established. Penetration as defined under ***Section 2 (1)*** means either partial or complete insertion of the genital organ of a person into a genital organ of another person. The complainant at the trial did testify that the Appellant inserted part of his penis into her vagina and that in my view constituted penetration in view of the other evidence that I have pointed out.

20. It has been also contended that the Appellant's defence of alibi was not considered by the trial court. I have considered the Appellant's version of what happened on the material day. I have also considered what the witnesses he called to support his defence of alibi stated. There is no doubt that the Appellant's wife was on the material date admitted at a local maternity Hospital and that the Appellant had in the early morning visited her with his two children and his mother in law. I do not doubt that he may have had a mechanical problem on the same date and had his car repaired as per the evidence of Simon Mwangi (D.W.6) the mechanic who stated that he repaired the car. The witness however, told the Court that the Appellant called him at around 10 a.m. therefore what transpired between 8.30 a.m. and 10 a.m. is what the learned trial magistrate concluded that the Appellant had the opportunity to commit the crime. I also find that the credibility of D.W.2, D.W.3, and D.W.4 could have been compromised by their attempt to get the Appellant out of trouble. The learned trial magistrate in my view was justified in disregarding the defence of alibi and/or finding no weight in the defence put forward by the Appellant that in my view does not mean that the defence was not considered.

21. In light of the above findings the other grounds of appeal are spent. The sentence meted out against the Appellant though lawful was on the basis of a conviction which as I have pointed out was wanting on the aspects highlighted. I agree with the Appellant and indeed bound by the decision cited in the case of **MWANIKI -VS- R [2001]1 E.A. 158 (CAK)** that the framing of the particulars of the charge in the 2nd count particularly the use of the conjunctive word "and" made it necessary for the prosecution to prove that the appellant had touched all the 3 parts pointed out in the particulars of the charge with his organ before a conviction can be found. However, as I have said, this point is now academic.

22. On the question of the age of the complainant, this Court finds the estimate given that is 17 years correct because the birth certificate tendered in evidence as Exhibit 5 indicates that the minor was born on 29th September, 1997. A simple calculation reveals that she was 16 years and 11 months old and not just 16 years old as indicated in the charge sheet. The discrepancy was insignificant and could not have affected the direction the sentence handed out to the appellant took.

The long and short of the above is that this appeal in part succeeds. On the basis of the observations made above and analysis of the evidence this Court finds that the trial magistrate erred in making a finding on the alternative count or charge when the evidence tendered by the prosecution at the trial was as pointed established beyond reasonable doubt that the complainant had been defiled as indicated in the main charge. The trial court ought to have properly directed itself on the evidence tendered and had it done so, it could have found the Appellant guilty of the main charge of defilement contrary to ***Section 8 (1) (4)*** of the **Sexual Offences Act No. 3 of 2006**. In that regard there would have been no need or legal

basis to make a finding on the alternative charge. Consequently I hereby quash the conviction of the Appellant and the sentence meted out on the alternative count of committing an indecent act with a child contrary to ***Section 11 (1)*** of the **Sexual Offences Act**. The sentence of 10 years imprisonment is set aside. I hereby invoke my powers under ***Section 354 (3) (ii)*** of the **Criminal Procedure Code** and convict him under ***Section 8(1) (4)*** of the Sexual Offences Act No. 3 of 2006 and sentence him to serve 15 years imprisonment as provided by law. It is so ordered.

Dated and delivered at Kerugoya this 25th day of October, 2016.

R. K. LIMO

JUDGE

25.10.2016

Before Hon. Justice R. K. Limo J.,

State Counsel Mr. Omayo

Court Assistant Naomi Murage

Appellant present

Interpretation English/Kiswahili

Magara Miss holding brief for Magee for the appellant.

Omayo for the Respondent.

COURT: Judgment signed, dated and read in the open court in the presence of Magara advocate holding brief for Magee for the appellant and Mr. Omayo for the State.

R. K. LIMO

JUDGE

25.10.2016