REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO 291 OF 2013

JOSEPH AYUNGE KIMEU…..……... APPELLANT

VERSUS

REPUBLIC…… RESPONDENT

(From original conviction and sentence in Criminal Case Number 347 of 2009 in the Chief Magistrate's Court at Nairobi delivered by A. Lorot (SPM) on 13th May 2010)

JUDGMENT

INTRODUCTION

1. The Appellant, Joseph Ayunge Kimeu, was tried, convicted and sentenced by A. Lorot, Senior Resident Magistrate for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code Cap 63 (laws of Kenya).
2. The particulars of the charge were that :-

On the 16th day of January 2009 at around midnight at Kiambiu Village within Nairobi Area Province jointly with others not before Court while armed with dangerous weapons namely swords robbed George Maina a Mobile phone make Q7 and cash Kshs 4,000/= all valued at Kshs 9,900/= and at immediately before or immediately after the time of such robbery used actual violence to the said George Maina.

3. Being dissatisfied with the said judgment, on 20th May 2010 the Appellant filed a Memorandum of Appeal. His Amended Grounds of Memorandum of Appeal filed on 15th October 2013 listed following grounds of appeal:-

i. **That the learned trial magistrate erred in law and fact in relying on identification/ recognition evidence by PW 1 the complainant, whereas the same were not free from possibility of error or mistakes.**
ii. **That the learned trial magistrate erred in law and fact in putting reliance on prosecution witness and whereas the evidence was insufficient and incredible.**
iii. **That the learned trial magistrate erred in law and fact in failing to appreciate that the prosecution had failed to prove its case to the standard required in law, that is, proof, beyond reasonable doubt.**
iv. **That the learned trial magistrate erred in law and fact in convicting him on inconsistent and contradictory evidence.**

v. **That the learned trial magistrate erred in law and in fact in convicting him whereas no documentary evidence was tendered in court to clear doubt on the possession and the alleged sales transaction pursuant to Section 117 of the Evidence Act Cap 80 (laws of Kenya).**
vi. **That the learned trial magistrate erred in law and fact in failing to give inter alia, points for the determination, the decision thereon, and or failing to consider and or failing o give reason why he disregarded his defence.**

4. When the matter came up for the hearing of the appeal on 15th October 2013, counsel for the State urged the court to uphold the conviction and sentence passed by the trial magistrate on the ground that the same was proper.
5. At the conclusion of the said parties' oral submissions, the court noted that the learned trial magistrate had earlier noted that the Appellant was aged 17 years at the time he appeared in court on 24th January 2009. This issue was neither raised by the Appellant, the Prosecution or the trial court and its judgment did not allude to this issue at all.
6. As this matter was handled by this bench during the Criminal Service Week, 2013, the failure of the Principal of St Lukes School, Machakos County to attend court on 13th November 2013 to shed more light on the Appellant's age, this court referred the matter to the Presiding Judge of the Criminal Appeals Division, Honourable Justice Mbogholi Msagha J to enable his court proceed with the matter.
7. However, on 13th May 2014, the bench of Honourable Justice Mbogholi Msagha and Honourable Lady Justice Lydia Achode referred the file back to this court as the matter was only awaiting judgment. It is on that basis that this court found itself dealing with the matter again. When the matter came up in court on 3rd June 2014, the judgment herein was reserved for 30th June 2014.
8. Notably, from the aforesaid grounds of appeal, this court is being asked to determine the following issues:-

i. **Whether or not the Appellant was positively identified?**
ii. **Whether or not the Prosecution had proved its case beyond reasonable doubt?**

ANALYSIS

9. This being a first appeal, this court is mandated to analyse and re-evaluate the evidence afresh in line with the holding in the case of **Odhiambo vs Republic Cr. App No. 280 of 2004 (2005) 1 KLR** where the Court of Appeal held that:-

"**On a first appeal, the court is mandated to look at the evidence adduced before the trial afresh, re-evaluate and reassess it and reach its own independent conclusion. However, it must warn itself that it did not have the benefit of seeing the witnesses when they testified as the trial court did and therefore cannot tell their demeanour".**

10. The grounds of appeal relied upon by the Appellant are intertwined. However, the court will analyse the same under the heads of identification and proof of the Prosecution's case with a view to establishing the guilt of the Appellant herein in the robbery that allegedly occurred on 16th January 2009.

IDENTIFICATION

11. George Maina Mbugua who was PW 1 testified that he was a Pastor with Rivers of Joy Ministries in Kiambiu slums, Eastleigh South, Nairobi. It was his evidence that on `16th January 2009, he had escorted some members who were among twenty five (25) others who had come for an overnight vigil when he encountered three (3) young men who had emerged from a route next to the Church armed with swords. He stated that there was security light in the Church compound.
12. He told the trial court that they cut him on the left parietal region of the head. The one who first cut him took his phone, make Q7, from his jumper jacket. The other person hit him on the right side of the head with something that looked like a hammer and took his wallet from the right side

of his trouser. He averred that the said wallet had a sum of Kshs 4,000/=, an Identity Card and some other contact documents. He said that the battery in his said phone had the name "Oliver" who bought the same for him for a sum of Kshs 5,900/=. He tendered a receipt to prove that he had purchased the said phone.

13. He contended that he knew his attackers because they were young men in the village and that he reported the incident at Eastleigh Police Station and informed the police that he could identify his attackers physically. He produced a Police Abstract Report to prove that he had sustained injuries during the said attack which nobody could hear because there was music playing from the key board system.
14. It was his further testimony that on 19th January 2009, he asked a young man by the name of Robinson who charged phones to be on the lookout for his phone. He said that the said Robinson called him on 20th January 2009 to tell him that a young man had dropped the battery for charging. He said that when the said man came to pick the said battery, he nabbed him and took him to AP Camp in Kiambiu where the said young man was interrogated in his presence.
15. He averred that the young man disclosed that he had been sold the phone by one Mishack, who PW 1 stated was his witness. He said that the AP came with another young man who he identified as the one who cut him on the head. He identified him as the Appellant, a young man he used to see at Kiambiu. He said that he had been able to see the Appellant clearly during the attack as there was security light and the Appellant had made no effort to conceal his face.
16. During cross-examination by the Appellant, PW 1 was emphatic that it was the Appellant who had cut him on the head. He admitted that no one else witnessed the incident but was categorical that he knew the Appellant physically because of his nature of work as a pastor.
17. Robinson Ndegwa Maina was PW 2. It was his evidence that on 20th January 2009, at about 7.00 am, a young man, whom he had seen severally and knew physically, brought a phone to his shop to be charged. He further said that PW 1 had informed him of the theft of the phone the previous day. He said that he knew the phone belonged to PW 1 as it had the name "Oliver" in the battery having removed the same so as to charge with the universal charger. He said that when the young man came to collect the said phone, PW 1 confronted him and he told him that he had purchased the same.
18. During cross-examination, PW 2 said that the young man who had brought the phone was not in court and that it was not the Appellant who brought the same.
19. PW 3 was Mishack Ogonda Ondiru, a student at Multi-Media University (formerly KCCT-Mbagathi). He testified that on 19th January 2009, the Appellant who was his friend for over four (4) years came with a phone that he was selling. It was his testimony that the Appellant informed him that he had rent arrears which he wanted to clear and therefore sold him the phone at Kshs 2,000/=. He paid a sum of Kshs 1,500/= with the balance which was to be paid later. He said that he asked for the receipt which the Appellant promised to give him.
20. He stated that as the phone had low battery, he took it for charging. He said that he was told that the phone would be charged overnight. It was his evidence that when he went to collect the phone in the morning, he found PW 2 and another old man who claimed that was his phone. He said that he led them to the house of the person who sold him the phone, the Appellant herein. He said old man said that he knew who had hit him as a result of which he was released after recording a statement.
21. During cross-examination, PW 3 stated that he was with a friend when the Appellant sold him the said phone. He also said that the Appellant had confirmed to the arresting officer that he was the one who sold him the phone. It was his contention that the Appellant did not resist when he was released and that he would not have been a mad man to lead the police to his house.
22. PW 4, Elizabeth Ndinda Mutoo said that she was at the overnight vigil at River Joy Ministries Church on 16th January 2009 when at about 1.00 pm PW 1 came screaming and banging on the door. She said that he was bleeding from the head and that they poured oil on a hole sunk in his head. It was her evidence that the bleeding was arrested whereupon PW 1 sat and he told them that he had been cut with an object that looked like a panga or a saw by a young man. She said that they stayed at the Church till morning.
23. It was her further evidence that on 20th January 2009, a young man called Robbie went to her house and told her that he had found PW 1's phone. He asked her where PW 1 was whereupon she

called him using her phone and he came to her house. She said that the said Robbie then showed PW 1 the young man who had brought the phone for charging. She stated that the said young man was beaten by people and after being arrested by PW 1, the said young man, who she said had already testified, said that he had bought the said phone which she said, she knew well. She told the trial court that she was then shown the person who allegedly sold the said phone and identified him as the Appellant herein.

24. During cross-examination, PW 4 was emphatic that they found the Appellant in his house and that he admitted that he is the one who had sold the said phone.
25. PW 5 was AP Sgt Paul Achebi No 95055600. He said that he was at Kiambiu's Chief Camp when a man he knew as a pastor came to the post with a lady and a young man. dent. He said that the said pastor reported to him that on 16th January 2009, he was attacked by the young man who injured him and took his phone and a sum of Kshs 4,000/=. He stated that the young man led them to the Appellant's house where the said Appellant admitted that he is the one who sold the phone to the other young man.
26. In his cross-examination, PW 5 stated that the Appellant admitted having sold the phone to PW 3 even before he had been interrogated and that in any event, PW 1 had said that he had seen him.
27. PW 6 was Dr Zephania Kamau, a police surgeon based at Milimani. He said that he examined PW 1 on 21st January 2009 and found injuries which were about four (4) days old on the left anterior frontal scalp. He testified that the said injuries could have been caused by a sharp and blunt object.
28. The Investigation Officer was PW 7, No 46775 PC Paul Karebei. He testified that on 20th January 2009, he was asked to investigate a matter where a man had reported that he had been assaulted and robbed the previous night. It was his evidence that PW 1 informed him that the phone had been recovered at a place where phones were charged after the person manning the phone charging shop alerted PW 1 that the phone was at his shop.
29. During cross-examination, PW 7 contended that the Appellant even asked to be allowed to agree with PW 1 and that the Appellant's accomplice whose name the Appellant had mentioned, had been shot dead at Buru Buru.
30. The Appellant gave unsworn evidence. He stated that on 20th January 2009, he was at his house sleeping when he was woken up by two (2) police officers who took him to Kiambiu Police Post. Save for saying that PW 1 had said he lost property worth Kshs 9,900/=, he did not say anything about the said property. He said he only got to know of the charges facing him when he brought to court.
31. In his judgment, the learned trial magistrate found that the evidence before him was "largely unchallenged" and "watertight". It was his finding that PW 1 identified the Appellant as the area was well lit, that the Appellant had made no effort to conceal his face and that he PW 1 knew the Appellant from his work as a pastor.
32. The learned trial magistrate found that the phone led to the Appellant's arrest and that the latter offered no defence against the assertion of PW 1. He also found that PW 7 knew the Appellant as his accomplice called Nero was later shot at Bujumbura in a botched robbery through police machinery.
33. The Appellant argued all his grounds of appeal together. He submitted that the identification recognition evidence by PW 1 was not safe and the same being full of errors could not sustain a conviction. It was his argument that PW 1 did not give the distance of light which he used to identify him and that no evidence was led as to the intensity and quality of light, which must be proved and not presumed.
34. It was his further argument that the learned trial magistrate did not direct his mind to the circumstances obtaining at the time of the attack as PW 1 must have been shocked and anguished and could not have had reasonable time to register his face following the striking by pangas and hammers. He said there was a possibility of errors in his identification. In short, he contended that the circumstances were not favourable for positive identification.
35. The Appellant further argued that the conviction was not well founded as PW 1 did not adduce evidence to show that he noted his complexion or special features or where he resided despite saying that he had been visiting young men in the village. It was his contention that if indeed PW 1 knew him, he would have led the other church goers to his house immediately and that in any event nothing that was stolen was found on him.

36. He submitted that his conviction was based on the evidence of a single witness that was uncorroborated and that if the learned trial magistrate had warned himself of the dangers of relying on such evidence, he would have returned a verdict of "Not guilty".
37. He relied on the cases of **Cr Appeal Case No 24 of 2000 Paul Etole & Reuben Ombima vs Republic** , **Cr Appeal Case No 88 of 2001 Bende Damau vs Republic**, **R vs Turnbull (1976) 3 ALL ER 549** and **Cr Appeal No 20 of 198 Cleophas Otieno Wamunga vs Republic** to support his submission that he was not properly identified as the attacker at the material time.
38. On the contention that he had sold the said phone to PW 3, the Appellant submitted that the evidence was contradictory because he did not furnish the trial court with a sale agreement to prove the sale transaction and further that the evidence by PW 3 left a lot to be desired as they could not agree on a balance to be paid later without putting the same down in writing. He questioned why the police believed PW 3 in the absence of any documentation to prove the sale transaction. He also argued that the said Oliver was not called to corroborate PW 1's evidence and neither the serial numbers on the phone were not compared or the mark "Oliver" shown to the trial court. He also contended that the evidence of how information came to reach PW 1 was also conflicting.
39. He also relied on several provisions of the Evidence Act Cap 80 (laws of Kenya) to show that the case had not been proven. It was his argument that the case was not properly investigated and that the onus of proof lay on the Prosecution and that there was no obligation on his part to prove his innocence. He contended that the evidence was not free from error and that the judgment had occasioned him great miscarriage of justice. He prayed that his evidence be allowed.
40. On its part, the State opposed the appeal herein. Its counsel submitted that the Prosecution dispensed with its burden of proving the case beyond reasonable doubt. He argued that PW 1 had known the Appellant for a long time and that his recognition could not have had any error. It argued that the chronology given by the Prosecution was sufficient to warrant the conviction herein as there was evidence to show that there was a robbery and that the recovered phone was traced back to the Appellant who did not contest the evidence that was led against him. In addition, it contended that PW 6 confirmed the injury caused to PW 1.
41. It argued that the phone, battery, receipt and P3 Form were tendered as evidence in the trial. It averred that all the ingredients of the charge of robbery with violence were present to sustain the said charge and that in the event this court were to find inconsistencies in the evidence adduced, then the same were not material to change or prejudice the Prosecution's case. It was its submission that the learned trial magistrate had complied with the provisions of Section 169 (1) of the Criminal Procedure Act.
42. In response to the said oral submissions by the State, the Appellant was adamant that he was not involved in the robbery, it was dark at the time of the alleged robbery, nothing was found on him and that he only came to know of what he was charged with when he came to court.
43. Failure by a trial court to interrogate the quality and intensity of light in the scene of the crime which was not well lit will automatically invalidate a finding that an accused person was properly identified. A guilty verdict will be quashed and set aside where the trial court makes an assumption that there must have been light at the scene of the crime when such evidence has not been adduced or proven to the required standard. Identification of an accused person who is alleged to have committed an offence in places where the intensity and quality of light is not obvious must be justified and proven beyond reasonable doubt.
44. The court has carefully considered the submissions by both the Appellant and the State and notes that the evidence of his identification through recognition was critical as the attack is said to have occurred at 1.00 am when it is pitch dark. The court has noted that there was no evidence that was led to the quality and intensity of the security lights in the Church compound either by PW 1 or PW 7. PW 7 who was the Investigation Officer did not appear to have gone to the scene of crime and merely relied on the evidence of PW 1 who testified that there were security lights in the Church compound. It was incumbent upon PW 7 to adduce evidence to show that the area where PW 1 was attacked was well lit and that in the circumstances PW 1 would have been able to recognise his attackers.
45. It is not clear how PW 1 identified the Appellant as one of the young men but was unable to identify the other attackers who he said he was familiar with in his work as a pastor. This court is not satisfied that the learned trial magistrate interrogated the question of the Appellant's

identification against the backdrop of the lighting in the Church compound to the required standard.

46. This court has no hesitation in rejecting the State's submission that the recognition of the Appellant as the attacker could sustain the conviction herein and the learned trial magistrate's finding that PW 1 identified his attacker. On this ground only, the Appellant's appeal would therefore succeed.
47. In the circumstances foregoing, this court has come to the conclusion that the Appellant was not positively identified as one of PW 1's attackers at the material time and date.

PROOF OF THE PROSECUTION'S CASE

48. If this court were found to have been wrong on the issue of identification of the Appellant herein, the court is of the view that the doctrine of recent possession which would have placed the Appellant squarely in the scene of crime is not applicable in the case herein. The robbery is alleged to have occurred on 16th January 2009 and the said phone was recovered on 20th January 2009. This was sufficient time for the said phone to have changed hands or not at all.
49. The connection between the recovery of the said phone and the fact that the Appellant was the robber at the material time was not established. It is not full proof that the Appellant was the robber as he was not found with the said phone or any of the items that were alleged to have been stolen from PW 1. PW 1, PW 7 and the learned trial magistrate chose to believe the evidence adduced by PW 3. There is no plausible explanation why they chose to believe him and not the Appellant herein. As the Appellant rightly pointed out, he was under no obligation to prove his innocence as the burden of proof squarely lay with the Prosecution.
50. The Appellant could have given an alibi but it does not make his defence less plausible that he did not say where he was on 16th January 2009. There is no indication that PW 7 sought to establish the same from him and he was unable to explain where he was on that material date.
51. The evidence of PW 3 and PW 7 that the Appellant admitted selling the said phone to PW 3 ought to have been interrogated further. PW 3 did not call his friend to corroborate that the Appellant is the one who sold him the said phone. Similarly, it was PW 7's evidence against that of the Appellant as to whether indeed the latter admitted that he was the one who sold the said phone to PW 3 as there was no written confession by the Appellant.
52. The learned trial magistrate's observation that the Appellant failed to explain where he was on 16th January 2009 or that he offered no defence against the assertion by PW 1 or PW 3 was unfairly burdensome upon the Appellant. The learned trial magistrate's conclusion that such failure by the Appellant's negated his innocence in this matter could not have been farther from the truth. The fact that the Appellant gave unsworn evidence would not have been reason enough to have disbelieved him or to have treated his evidence as inferior as the law allows an accused person to adduce unsworn evidence in his defence. He also had the option of remaining silent and let the Prosecution prove its case.
53. Having said so, there were also several inconsistencies about the chronology of events and the court therefore disagrees with the State and the finding of the learned trial magistrate in this regard. The Appellant was correct when he raised the issue of the said inconsistencies in the Prosecution witnesses' evidence. One of these inconsistencies can be found in respect of the date of the alleged attack.
54. PW 1 testified that the alleged attack occurred on 16th January 2009 at 1.00 am while PW 7 said that he had been told to investigate a matter where a man had claimed to have been attacked the previous night which was essentially on 19th January 2009. It is not therefore clear from the evidence herein when this alleged theft occurred.
55. However, bearing in mind the State's submission that even if the court were to find inconsistencies, the conviction could still stand, the importance of the chronology of how PW 1 became aware of his phone at PW 2's shop has not escaped the mind of this court.
56. PW 1 said that PW 2 sent for him through a church member. He did not identify which Church member this was. PW 7 also said PW 1 went to report the incident with a certain lady. PW 7 did not also identify who this lady was. Noteworthy, PW 4 was a Church member but it is not clear from the evidence adduced before the trial court whether she was the same person who was referred to by PW 1 and PW 7.

57. Be that as it may, PW 1 said that he went to PW 2's shop and found the phone being charged and after waiting, a young man came to pick the phone. On the other hand, PW 4 said that a young man called Robbie came to her house and she called PW 1 who also came to her house. She said that the Robbie showed PW 1 a young man who had brought the battery for charge. She did not seem to say where this happened.
58. The evidence adduced by PW 4 in this regard was too sketchy and seemed to contradict that of PW 2. There was also no nexus created to explain how PW 2 knew that PW 1 was known to PW 4 or why he went to give the information to her when PW 1 had gone to his shop the previous day. PW 1 may have given this information to PW 2 but this did not come out during the evidence. It would be unwise for the court to speculate on this but nonetheless, questions abound in the mind of this court how the two (2) came to be linked on the issue of PW 1's phone.
59. The court would not wish to dwell on that issue because what was relevant before this court is whether or not the Prosecution submitted cogent evidence as far as that chronology of events was concerned. It is the finding of this court that contrary to what had been submitted by the State or found by the learned trial magistrate, the chronology did not flow but largely left a lot of gaps or lacuna that leaves doubt in the mind of this court as to whether indeed, the Appellant was involved in the alleged robbery.
60. From the evidence of PW 1 that he knew the attackers due to his work as a pastor, it would have been expected that PW 1 would have commenced investigating the whereabouts of the Appellant. It is also not clear why if at all PW 1 recognised the Appellant during the attack he requested PW 2 to keep a stake out of his phone at his shop. In addition, doubts have been raised regarding the identification of the Appellant as PW 1 appeared to believe that PW 3 was the one who had stolen his phone before the said PW 3 allegedly led them to the Appellant's house.
61. This court was also not satisfied with the evidence of PW 7 that seemed to suggest that the person who was killed at Buru Buru was the Appellant's accomplice. He did not say whether or not they were accomplices in the alleged robbery herein as he had alleged. That was critical evidence that ought not to have been left as mere hearsay from the police machinery. If it was true, nothing would have been easier than for the Prosecution to call the informant to make its case watertight.
62. Due to the seriousness of the offence and the repercussions following a conviction, the evidence of a sole witness must be beyond reproach. For an offence of robbery with violence to be proved, certain critical ingredients must be present.
63. Section 295 of the Penal Code Cap 63 (laws of Kenya) provides as follows:-

"Any person who steals anything, and, or at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained , is guilty of the felony termed robbery."

64. Section 296 (2) of the Penal Code further provides that:-

"If the offender is armed with any dangerous or offensive weapon or instrument, or is in the 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."

65. Therefore to prove an offence of robbery with violence under Section 296(2) of the Penal Code, all that the Prosecution what was required to show was that the following ingredients were present at the time of commission of the offence:-

i. **That the offender was armed with any dangerous or offensive weapon or instrument, or**
ii. **That he was in the company with one or more other person or persons, or**
iii. **That at or immediately before or immediately after the time of the robbery, he wounded, beat, struck or used any other violence to any person.**

66. From the aforesaid evidence, what has emerged is the Prosecution was not able to place the Appellant at the scene of crime, that he was in the company of one or more persons or that

immediately before or after the time of the alleged robbery, he wounded, beat, struck or used any other violence to PW 1 for the reason that the Appellant was not properly identified. The possibility of it having been a case of mistaken identity is not far removed from the mind of this court.

67. In criminal cases, the standard of proof is beyond reasonable doubt. The moment doubt is created in the mind of the court it is sufficient for it to find that the threshold to convict a person has not been met. It is the responsibility of the Prosecution to present a water tight case so as to clinch a conviction. If there are gaps, a trial or appellate court is mandated to find that a conviction of guilt cannot be sustained.
68. Whereas the judgment of the trial magistrate had duly complied with the provisions of Section 169 of the Criminal Procedure Code in that it contained the points of determination, the decision and reasons for the decision and that it was dated and pronounced in open court in the presence of the Appellant on 13th May 2009, the said judgment was flawed on the ground that the learned trial magistrate did not satisfy himself to the required standard that the Appellant had been positively identified. In view of the gaps aforementioned, this court is thus not satisfied or convinced that the Prosecution proved its case beyond reasonable doubt.
69. Having given careful consideration to all the circumstances of the case and the submissions by both the Appellant and the State, the court is satisfied that the learned trial magistrate did not properly convict the Appellant and that the conviction was unsafe having been based on a single witness whose evidence of identification was not corroborated. In this regard, all the Appellant's grounds of appeal succeed in their entirety.

DISPOSITION

70. For the foregoing reasons, the benefit of doubt created in the mind of this court leads it to quash, set aside the conviction and sentence that was meted upon the Appellant by the trial court. We hereby order that the Appellant be set free forthwith unless held or detained for any other lawful reason.
71. It will not be necessary for the court to delve into the question of the Appellant's age due to the fact that his appeal has been allowed as prayed.
72. It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this 30th day of June 2014

E. OGOLA

JUDGE

J. KAMAU

JUDGE

In the presence of:-

…….. Appellant

…….. State

Teresia and Kipkurui – Court Clerks