



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL APPEAL NO. 82 OF 2011

EVANS ODHIAMBO OMEGA

JOHN OCHIENG OJUKI

ELIAS OMONDI SAOKO.....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

*(Being an appeal from the conviction and sentence in Principal Magistrate's court at Oyugis*

*in Criminal case No.441 of 2010 by Hon. R. Ngetich, PM, delivered on 6<sup>th</sup> day of April, 2011)*

### JUDGMENT

1. This is the Judgment of the Court in consolidated appeals Nos. 82 of 2011 by Evans Odhiambo Omega; 107 of 2013 by John Ojuki; 109 of 2013 for Elias Omondi Aoko, who were respectively the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused persons in the consolidated charge before the Principal Magistrate's Court at Oyugis where they were convicted for the offence of robbery with violence contrary to section 296 (2) of the Penal Code and sentenced to suffer death on the 6<sup>th</sup> April 2011. A fourth accused with whom they were jointly charged was acquitted of the offence.

2. In convicting the appellants, the trial court found that the three had been identified by the prosecution witnesses PW1, PW2 and PW3, and held as follows:

*“I have considered the evidence adduced. From the evidence adduced there is no dispute that PW1 and PW2 were attacked and robbed. What I consider to be in issue is whether A1, A2, A3 and A4 were positively identified as being among the people who attacked and robbed the complainants.*

*PW1 testified that 4 attackers had torches which were on at the material time and that two tin lamps were also in the house. He said that he was able to see and identify A1, A2 and A4 who were his village mates. He recognized them as he had known them before. PW1 said that besides seeing the accused persons as they entered the house and during the attack, he had more time to see them as they attacked PW2 while he lay down after being cut by one of them. PW1 gave the names of A1, A2, A3 and one Nyakundi to PW5 when he visited him at Kisii Level 5 hospital on 5<sup>th</sup> June 2010. PW2 also said that she saw A1, A2, A3 and another by the name*

*Nyakundi during the attack. She said that she never saw A4 but heard that he was outside. PW3 said that he saw A4 at the door as he responded to screams from the complainant's house.*

*PW2 said that it is A3 who started cutting PW1 and that it is the same person who took Kshs.4,000/= from her box. PW3 said that he had a torch which he flashed and saw A4 and another by the name Simeo and Okeyo who are not before Court. He said that there was also light from the torches of the suspects. PW3 said he hit one of them on the head with a hoe and he learnt from village mates that A3 had a wound on his head. PW4 said that before he flashed his torch on A4 he took about 5 minutes looking at him using light from torches that they had and that A4 chased him when he (PW3) flashed a torch on him.*

*Although A1 adduced evidence of alibi indicating that he was with his mother at the material time in her house the evidence of recognition by PW1 and PW2 was consistent and is strengthened by the fact that PW1 gave out his name to PW5 while still in hospital. They both had sufficient light and time to see and recognize A1. I disregard A1's defence of alibi.*

*In so far as A2 and A3 are concerned their names were also mentioned by both PW1 and PW2. PW3 also hit A3 on the head with a hoe. Injury inflicted on him corroborates PW1 and PW2 evidence of recognition. I therefore find that A2 and A3 were positively identified.*

*As for A4 it is only PW3 who mentioned him. He said that he saw him at the door and flashed a torch on him. This annoyed A4 who chased PW3. On the other hand A4 said that he was at Nyawita in Homa Bay at the material time. He availed his wife whom he alleged was with him to corroborate his defence of alibi.*

*In the presence of unchallenged defence of alibi and uncorroborated evidence of PW3 I find it unsafe to convict A4. I therefore acquit A4 of the offence charged under Section 215 of CPC.*

*Having found that A1, A2 and A3 were positively identified I jointly convict them of the offence charged under Section 296 (2) of the Penal Code.”*

3. It is against that finding that the appellants then appealed to this court seeking the quashing of their convictions and setting aside of the sentence. The appellants who were unrepresented at the hearing of the appeals presented written submissions and, in reply to the submissions by counsel for the Republic, made identical oral arguments raising primarily the issue of their identification by the prosecution witnesses. For the Republic, Mr. Shabola, Prosecution Counsel made submissions in support of the conviction and sentence. The verbatim submissions of the parties are as follows:

*“Mr. Shabola: I oppose the appeals by the 3 appellants I submit that this is an appeal from conviction and sentence for robbery with violence. I intend to argue the appeal as a block.*

*During the hearing PW1 Andrew Ojombo testified that on 21<sup>th</sup> June 2010 at around 8.00pm they were in the house with his wife and children having supper when thugs pushed the door open. He testified that there were two lamps which were on and that he saw the thugs come in. He named them and indicated that he knew them before as they were from the same village. This evidence is at p. 5 lines 1-10 of the proceedings.*

*He further testified that the 1<sup>st</sup> accused attacked and cut him randomly. They cut his hand and clipped two left hand fingers. He also sustained a cut on the head. I refer to p. 5 line 12-16. He also testified that in the commotion his brother in law Pius Ogweno cut and beat the 3<sup>rd</sup> appellant. He (PW1) identified the stolen items as a Sonitech radio and Kshs.4,000/= belonging to Helena.*

*PW2 Helena Akoth testified that they were in the house when people came into the house. She confirmed that there were 2 tin lamps. She also said that appellant no. 3 followed her and asked her to produce all the money that she had. I refer to p. 7 line 1-2. She further testified that appellant 3 had a panga which he tried to cut her with. She blocked it and he slapped her using*

the panga. see p. 7 line 4. She went ahead to testify that appellant 3 and the people who attacked her had rungas and pangas. It was her testimony that she saw appellant 3 taking Kshs.4,000/= from the box and that they also took the Sonitech radio valued at Kshs.700/=. I refer to p. 7 line 9-11.

During cross-examination by the 2<sup>nd</sup> appellant she identified him as “Osumba, son of my brother in law” and she testified that he had a black panga. see p. 7 last paragraph.

PW3 Pius Ogweno testified that he heard screams from PW1’s house and he rushed there and that he did flash his flashlight and identified the 3<sup>rd</sup> appellant. He confirmed cutting one of the attackers using a hoe, at p. 8 line, 14-16.

PW4, Justine Juma Assistant Chief testified that he arrested the 1<sup>st</sup> and 2<sup>nd</sup> appellant based on a list that he had been given. PW6 Brian Murema, clinical officer at Rachuonyo District Hospital testified that she examined PW1 and that he had a cut wound on the forehead measuring 8cms. The upper hand left index figure and middle finger were injured, that he had a fracture of the tibia and ulna. He classified the injury as greivous harm and he filed a p3 form. During the lower court hearing, the appellants were positively identified by PW1 and PW2 who were in the house that the appellants went to rob.

The appellants were armed during the attack and I submit that the prosecution proved its case beyond reasonable doubt. I pray that the appeals be dismissed and the conviction and sentence by the lower court be upheld.

**Submissions by the Appellant no. 1 Evans Odhiambo Omega:**

On the 21/6/2010, I was in prison. In the first report, the complainant did not mention my name. At p. 5 line 7 of the proceedings, PW1 said he identified Isaac Osumba Okello, who is not me. At p. 14 line 1, the PW1 told the doctor that she did not recognize or identify any of the attackers.

At p. 12, it was the complainant who gave the names in hospital when he was sick. He mentioned my names but when he came to do the case in court he did not name me. Area chief told the court that the report that he had was from Omega and his wife.

At p. 13 line 3, it talks of one person who was not involved in the case. That person may be me. When the complainant was attacked I was in custody. I was arrested on 10/6/2010. That is all.

**Submissions by Appellant no. 2:**

PW1 p. 4 line 1 said the attack was on 21/6/2010. PW2 p. 6 line 1 said the attack was on 21/6/2010. I was at the police station from the 10/6/2010. PW3 p.8 line 1 said the attack was on 2/6/2010. PW4 p. 10 line 6, said the attack was on 9/9/2010 by Omega and wife. At p. 5 line 7, Isaac Osumba Okello is accused 1. at p. 10 line 11 accused 2 is given as Ojwang.

PW1 p. 5 line 7 – Isaac Osumba Okello is accused 1; Maina is accused 2; accused 3 Simeo; accused 4 Juma Ojuki. PW1 told PW6 that he did not see the person who attacked him. At p. 13 line 1-2 and p. 14 line 1-2 indicates this. That is all.

**Submissions by the 3<sup>rd</sup> Appellant Elias Omondi:**

I was arrested on the 18/6/2010. PW3 states that he attacked 2 people on 2/6/10. It is not clear when the attack took place. Assistant chief said he got the report on 9/6/2010 and he arrested the people on 10/6/10.

PW5 investigating officer states at p. 12 line 8 that the attack was on 2/6/2010. PW6 said at p. 13

line 2 the attack was on 2/6/2010. At the trial court we prayed for statements and we did not get them. We went to see how to present our defence.

PW2 at p. 6 line 4 said I followed her and she gave me money; at p. 14 line 1 she states that it was the 1<sup>st</sup> appellant who took the money. PW6 said that the complainant said that he was attacked by persons he did not know. That is all.”

4. The issues before the court in the appeal are whether the offence of robbery with violence has been proved by the evidence presented by the prosecution before the trial court and whether the appellants were involved in such robbery upon the complainants. As a first appellate court, we have re-evaluated the evidence presented by the prosecution and the defence and arrived at our own independent decision as follows.

#### ***Whether offence of robbery with violence proved***

5.. There was evidence of an attack on the evening of 2<sup>nd</sup> June 2010 on the complainant (PW1) and his family when at least 7 persons raided their home while armed with a rungu and three pangas and attacked the complainant and his wife and grievously wounded the complainant. There was evidence also that during the attack, the persons took the wife’s (PW2) money Ksh.4000/- and a Sonitech radio. We consider that the elements of the offence of robbery with violence under section 296 (2) of Penal Code were present and that the offence was duly proved. According to the Court of Appeal decision in ***Ganzi and 2 Ors. v. Republic*** (2005) 1KLR 52 which is binding upon us, the offence of robbery with violence is committed when any of the following circumstances are proved:

- a. the offender is armed with any dangerous or offensive weapon or instrument; or
- b. the offender is in company with one or more other person or persons; or
- c. at or immediately before or immediately after the time of robbery the offender wounds, beats, strikes or uses other personal violence to any person.” .

#### ***Whether the appellants were involved in the robbery***

6. The prosecution’s case relied on the identification of the appellants by three alleged eye-witnesses, PW1, PW2 and PW3, respectively the complainant, the complainant’s wife and her brother-in-law. On the issue of identification, the three testified before the court as follows:

##### **PW1**

*“I am Andrew Jombo Ongoto. I reside at Kojwach. I am a farmer. On 21.6.2010 at around 8.00 pm I was in my house, I was with my inherited wife Hellena Akoth. We were with the children. The older child is 12 years. The door was locked. We were taking supper. The dogs started barking outside. Hellena called out a boy who was in the near home. I decided to go outside to look for the boy. The door had been opened by a girl called Elsa. As the mother called out the boy she unlocked the door but did not open it. The thugs pushed the door. At that time I had stopped eating and I was going to the door. I saw 4 spotlights when the door opened 4 people entered. There were 2 lamps in the house. They were tin lamps. One was on the table in the sitting room. The other was in another table in the sitting room. I saw the faces of the 4 thieves who entered the house. I used light from tin lamps and 2 spotlights. I saw **Osumba Okello who is A1. I also saw Maina who is A2. I also saw Simeo who is A3 and Juma Ojuki who is A4. I had known A1, A2, A3, and A4 before as we live in the same village. I know them by the names I have mentioned....***

*There was another thug who was in front but he is not in Court. I cut the 1<sup>st</sup> thug using a panga he run away. After I had cut the first thug – the 4 accused persons in Court cut me randomly. The one I cut is called Ameni Nyakundi. They cut me on the hand chopped 2 left hand fingers and cut*

my head. I then fell down. After I had fallen down they went to attack Hellena. I heard them asking her for mobile phone and money. As I lay down I wiped blood from my face and I was able to see what they were doing to the lady in the house...”

### PW2

“I am Hellena Akoth. I reside at Ringa. I am a farmer. On 21.6.2010 at around 8.00 pm. I was in my house. I was with my husband and children taking supper. I heard dogs barking outside. Then the door was hit opened. I called out for boy a son to my brother in-law. His home is near ours. My husband tried to go out. He picked a panga from under the table. The people pushed the door hard and got into the house. I was standing behind PW1 and I was shielded by the door. 2 tin lamps were on. PW1 cut the first person to enter the house. The rest came to attack me after attacking PW1. I know the one who was cut. He is called Amin Nyakundi. The ones who followed him. A3 followed him. He asked me to produce all the money I had. I knew him but I cannot recall his name. **A2 who is called Osumba ordered that money that was remaining in the house. He had a wooden. A3 had panga. He tried to cut me but I blocked it with my hand. He slapped my hand using a panga. He is called Maina. One thug is not before court. They are Okeyo, Nyakundi and Nyakundi's brother. I never saw A4. They looked for money in my 3 boxes. Its A3 who started cutting PW1. They were 7 people who attacked me. They had a rungu and 3 pangas. I got hurt on my left right leg and the chest. They [strangled] me to stop screaming. I saw A3 picking the money – 4000/= which was in my box. They also took Sonitec radio valued at Kshs.700/=.** A child aged 12 years called Quinta run out screaming and my brother in law came.”

### PW3

“I am Pius Ogweni. I reside at Ringa. PW2 is my sister in law. On 2.6.2010 at 8.00 pm I was in my house. I heard screams from PW1's home. I came out of the house. I took a hoe and went to the home. While going I heard a voice saying “ua kabisa”. I moved closer to the door and saw 3 people in the house. **I flashed my spotlight and identified Samwel A4 and Simeo A3. The 3rd called Okeyo Ojuki escaped. Torches belonging to the people in the house were on.** I hit one of the people outside using a hoe on the hand. They started following me with pangas. I run away while screaming. Then I again followed them. They escaped in a maize plantation. I went to PW1's house and found PW1 lying on the floor with cuts. PW2 was crying in the bedroom. I looked for people to help me take PW1 to hospital. We first took him to Atemo – he was referred to Rachuonyo District hospital and later to Kisii. I reported at Ringa AP camp then to Oyugis police station. A3 was arrested at Sondu. I later went to see A1 and A4 at police station. They were all 7 but 4 were arrested.”

### ***Did circumstances that could facilitate positive identification exist?***

7. The attack took place at night at 8.00pm. The evidence before the court by the PW1 and his wife PW2 and neighbor brother-in-law was that there were two tin lamps and four torches held by the four attackers who entered the house. Save for PW3 the eye-witnesses did not have torches themselves. The circumstances of identification were in our view difficult because of the time of night with the source of light being tin lamps whose intensity of light was not disclosed and torches which were held by the attackers and therefore not in the control of the identifying witnesses, save for PW3 who had a torch and who claimed to identify Accused 3 and 4.

8. Accordingly, the Court must warn itself of the dangers of convicting on the basis of such identification and carefully consider the evidence including the strength and position of the sources of light relied on in the identification to determine that it is free from error. See **Karanja and Anor v. R** (2004) 2 KLR 140 where it was held *inter alia* that : -

1. evidence of visual identification in criminal cases can bring about miscarriage of justice and it is of vital importance that such evidence is examined carefully to minimize this danger and

2. whenever the case against an accused person depends wholly or to a great extent on the correctness of one or more identifications of the accused which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the accused in reliance on the correctness of the identification.

See also *Simiyu and Anor. v R* (2005) 1KLR 192.

There was no evidence of the strength of the light from the tin lamps and their position in distance and aspect in relation to the scene of the attack and the attackers. The mere allegation that PW1 used the source of lighting from the 4 torches with the attackers begs the questions whether and why the attackers were flashing the torches onto themselves to allow PW1 to see their faces and identify them.

***Did the witnesses identify the appellants at the scene of the attack?***

9. PW1 claimed to have identified his attackers using the light from the tin lamps and the attackers' torches even after he had been cut on the head, after wiping blood from his face. PW1 said that he had identified one Ameni Nyakundi, who was the first attacker to enter the house and who ran out after being cut on the face by PW1, and the four accused persons who then randomly set upon PW1 after he had cut the first attacker. He allegedly gave the names of the attackers to the Investigating Officer PW5 leading to the arrest of the accused persons. PW5 gave the names of the attackers as given by the complainant PW1 as **Evans Odhiambo Mega, John Ochieng Ojuki, Elias Omondi Saoko alias Simeo, and Nyakundi Manwar Amin**. However, in his own testimony, PW1 gave the names of the attackers as follows:

***“I used lights from tin lamps and 2 spotlights. I saw Osumba Okello who is A1. I also saw Maina who is A2. I also saw Simeo who is A3 and Juma Ojuki who is A4. I had known A1, A2, A3, and A4 before as we live in the same village. I know them by the names I have mentioned.”***

10. There are discrepancies in the names of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons (the 1<sup>st</sup> and 2<sup>nd</sup> appellants), respectively given by the PW1 as Osumba Okello and Maina against the names Evans Odhiambo Mega and John Ochieng Ojuki as given by the Investigating Officer who allegedly got them from PW1. If the names given by PW1 for the two accused persons were aliases, the same was not disclosed in evidence.

11. There was also contradiction in the evidence of the Investigating Officer PW5 with regard to the names of the attackers allegedly given by the complainant PW1. While PW1 said he gave the names of the attackers as he knew them, the names listed by PW 5 as having been given by PW1 did not include Osumba Okello, Maina, and Juma Ojuki whom the PW1 gave in his testimony as being the Accused Nos. 1, 2 and 4 respectively.

12. Additionally, PW2, the PW1's wife, gave the names of the 2<sup>nd</sup> accused (2<sup>nd</sup> appellant) as Osumba while that is the name PW1 gave for the 1<sup>st</sup> accused (1<sup>st</sup> appellant). Although PW2 alleged that the 2<sup>nd</sup> appellant was her brother-in-law's son and she therefore might have been expected to know his name, she referred to him as Osumba rather than his name given in the charge sheet as John Ochieng Ojuki. As regards the 1<sup>st</sup> appellant (1<sup>st</sup> accused), PW2's testimony again contradicted that of PW1 in that she said he was called Maina, the name the husband PW1 gave to the 2<sup>nd</sup> accused. She said:

***“I was standing behind PW1 and I was shielded by the door. 2 tin lamps were on. PW1 cut the first person to enter the house. The rest came to attack me after attacking PW1. I know the one who was cut. He is called Amin Nyakundi. The ones who followed him. A3 followed him. He asked me to produce all the money I had. I knew him but I cannot recall his name. A2 who is called Osumba ordered that money that was remaining in the house. He had a wooden. A3 had panga. Accused 1 had a panga. He tried to cut me but I blocked it with my hand. He slapped my hand using a panga. He is called Maina.”***

13. PW2 named the attackers without expressly stating that she identified them by use of the alleged sources of light from the two tin lamps which she confirmed were on; she also merely gave the names of

other attackers not before the court without disclosing the point of the robbery at which she saw them. PW2's statement sounded much like report from other persons rather than from the witness. She stated:

*“The people pushed the door hard and got into the house. I was standing behind PW1 and I was shielded by the door. 2 tin lamps were on. PW1 cut the first person to enter the house. The rest came to attack me after attacking PW1. I know the one who was cut. He is called Amin Nyakundi. The ones who followed him. A3 followed him. He asked me to produce all the money I had. I knew him but I cannot recall his name. A2 who is called Osumba ordered that money that was remaining in the house. He had a wooden. A3 had panga. He tried to cut me but I blocked it with my hand. He slapped my hand using a panga. He is called Maina. One thug is not before court. They are Okeyo, Nyakundi and Nyakundi's brother. I never saw A4.”*

She does not state at what point she saw the three who she alleged were not before the court.

14. PW3, the neighbor and brother in law of PW2 alleged that he had identified accused No. 3 and 4 at the scene of the attack when he came in response of screams from the latter's house and flashed a spotlight at the attackers. He also allegedly hit and injured one of the attackers on the hand with a hoe, whereupon the attackers chased after him. On cross-examination by Accused no. 3, the witness said that he later learnt from the villagers that a person had similar injury on the hand consistent with the hit that he had occasioned on one of the attackers. It appears to us that if indeed the witness had identified Accused no. 3 when he flashed his torch, there would have been no question of identifying the accused by the alleged injury on the hand consistent to the hit by the witness on the night of the attack. He would have clearly said that he had hit the Accused No. 3 with the hoe. Instead, he said:

***“I flashed my spotlight and identified Samwel A4 and Simeo A3. The 3rd called Okeyo Ojuki escaped. Torches belonging to the people in the house were on. I hit one of the people outside using a hoe on the hand. They started following me with pangas. I run away while screaming.”***

On cross-examination by Accused no. 3 (3<sup>rd</sup> Appellant) the witness said: *“I threw a hoe at you while standing at a distance of 5 metres. Somebody told us that there was a person in the village who had a wound in his hand. We confirmed that it was you.”* The person who said the 3<sup>rd</sup> accused had a wound on the hand was not called as a witness, and this piece of evidence is hearsay.

We can only observe that the alleged circumstances where the witness rushed to help in response to distress calls, hitting one of the attackers on the hand and managing to flash his torch while he is chased by the attackers did not afford favourable conditions for the positive identification of the suspects free from possibility of error and the court must treat the evidence of alleged identification with great caution in accordance with the authorities.

15. PW4, the area assistant chief confirmed that she had been directed by the Chief to assist the police officers who had a list of suspects in tracing and arresting them. This evidence would confirm that the police had a list of suspects, whom PW5 alleges was given by the complainant. However, the differences in the names of the suspects as given by the PW1 and PW5 in their testimonies in court and the arrest and charge of accused no. 4 who although named by PW1 in court as one of the attackers did not appear in the names given by PW5 as having been given by PW1 there arises a doubt as to the correctness of the identification. In addition, there is the incongruence of the names of Accused Nos. 1 and 2 (1<sup>st</sup> and 2<sup>nd</sup> appellants) as given by the PW1, PW2 and as appearing in the list of suspects given by PW5.

16. The appellants gave sworn alibi evidence with the 1<sup>st</sup> appellant (accused No. 1) and the accused no 4. calling witnesses respectively mother and wife in support of their alibis. The trial court accepted the alibi by the accused no. 4 and acquitted him while convicting the other accused persons who have appealed to this court. While the alibis of the accused persons may not have contained convincing details of the accused's alleged engagement elsewhere, it must be accepted that it is for the prosecution to prove the accused's guilt and not for the accused to prove his innocence through alibi evidence or otherwise. As

held by the Court of Appeal in the *Karanja* decision, supra, as a general rule the burden on the prosecution of proving the guilt of a prisoner beyond reasonable doubt never shifts whether the defence raised is an alibi or something else. The burden of proving an alibi does not lie on the prisoner.

17. PW6, the clinical officer who examined the complainant PW1 and filled his Medical Examination Report Police Form P3 testified that the complainant had indicated that he had been attacked by persons unknown to him. The Form P3 in which the PW6 recorded his opinion that the degree of injury on the complainant was grievous harm was, although indicated as having been produced, not contained in the trial court file.

18. From our foregoing consideration of the evidence in the case which purely hinged on the alleged identification of the Appellants, we find that the circumstances of the night attack with the only sources of light being two tin lamps and torches, both of whose strength, intensity, position or direction in relation to the actual scene of attack and the length of the incident were not disclosed, did not afford favourable conditions for identification of the attackers free from the error of mistaken identity.

19. In addition, the inconsistencies in the testimonies of the prosecution witnesses with regard to the names of the alleged identified attackers and the evidence of the clinical officer PW6 that the complainant PW1 had indicated that he had been attacked by **unknown** persons puts a doubt as to the identification, and therefore involvement at the robbery, of the four accused persons before the trial court.

20. We therefore find that the Prosecution did not prove the charge of robbery with violence against the accused persons to the standard of beyond reasonable doubt. We find that the court rightly acquitted the accused No. 4 but in view of our finding herein, the trial court should have acquitted all the four accused persons of the charge.

21. Accordingly, we allow the consolidated appeals by the three appellants and quash the conviction entered against each of them by the Principal Magistrate's Court at Oyugis for the offence of robbery with violence contrary to section 296 (2) of the Penal Code and set aside the death sentence imposed on them, and consequently direct that each of them be released from custody forthwith, unless they are otherwise lawfully held.

**R.N. SITATI**

**E. M. MURIITHI**

**JUDGE**

**JUDGE**

**Dated and delivered this 31<sup>st</sup> day of July, 2014.**

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**RUTH SITATI**

**JUDGE**

**In the presence of: -**

Present in person for the Appellant

Mr. Majale for the Respondent

Mr. Bibu - Court Clerk