



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CRIMINAL APPEAL NO. 33B OF 2009**

**Consolidated with Appeals Nos. 34/2009, 35/2009, 36/2009, 37/2009**

SAMUEL MUIRURI NGURE..... 1<sup>ST</sup> APPELLANT  
PETER OMITO OYUEKA .....2<sup>ND</sup> APPELLANT  
PAUL MBOYA ASEWE .....3<sup>RD</sup> APPELLANT  
NICHOLAS OKOTH OYOMBA .....4<sup>TH</sup> APPELLANT  
DENIS OTIENO OYOMBA .....5<sup>TH</sup> APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(From the judgment of the Senior Resident Magistrate at Kericho, J. Kwena Esq., given in Kericho SRM CR. C. NO. 1818 of 2006)*

**JUDGMENT**

On 29<sup>th</sup> May, 2009, the five appellants named above were each found guilty of **two counts** of robbery with violence contrary to **Section 296(2)** of the Penal Code and were accordingly convicted by the Senior Resident Magistrate, Hon. J. Kwena, in Kericho Principal Magistrate Court Criminal Case No. 1818 of 2006.

The **two counts** were numbered as count I and count II in the charge sheet that contained a total ten (10) counts. The appellants were acquitted in respect of the other eight counts.

The particulars of the two offences of robbery with violence contrary to **section 296(2)** of the Penal Code were stated as follows:-

**Particulars of Count I**

***On the night of 24<sup>th</sup> August, 2006 and 25<sup>th</sup> August, 2006 at Chepkolon village in Kericho District within Rift Valley Province, jointly while armed with dangerous weapons namely pistols and pangas robbed of Mercy Chebet Kshs. 28,000/=, 1 mobile phone bird 5288 valued at Kshs. 6,000/=, 1 Sony TV valued at Kshs. 12,000/=, 3 suitcases valued at Kshs. 3,000/=, 1 Aistar music centre valued at Kshs. 5,000/=, 1 computer CPU and mouse valued at Kshs. 20,000/=, a carpet valued at Kshs 2,000/=, 1***

**motor vehicle Reg. No. KAT 603V valued at Kshs. 1,000,000/= and seat cushions valued at Kshs. 1,000/= and at immediately before or immediately after the time of such robbery threatened to use actual violence to the said Mercy Chebet**

## **Particulars of Count II**

**On the night of 24<sup>th</sup> August, 2006 and the night of 25<sup>th</sup> August, 2006 at Chepkolon village in Kericho District within Rift Valley Province, jointly while armed with dangerous weapon namely pistols and pangas robbed Jane Cheruto of Kshs. 10,000/=, 1 Goldstar TV valued at Kshs. 20,000/=, 2 speakers valued at Kshs. 30,000/=, and immediately before or immediately after the time of such robbery threatened to use actual violence to the said Jane Cheruto**

As death is the only sentence where one is convicted under **Section 296(2)** of the Penal code, the five appellants were each sentenced to death on 29<sup>th</sup> May, 2009.

Aggrieved by the conviction and sentence, each of the five appellants lodged appeal in this court. When the appeals came up for hearing before us on 21<sup>st</sup> June, 2010, we consolidated them and heard them together as they sprung from the same judgment. We made an order that the appellants would be numbered as follows;

1. **The 1<sup>st</sup> appellant would be Samuel Muiruri Ngare, the appellant in appeal No. 33B/2009 and**
2. **The 2<sup>nd</sup> appellant would be Peter Omito Oyueka, the appellant in appeal No. 34 of 2009**
3. **The 3<sup>rd</sup> appellant would be Paul Mboya Asewe, the appellant in appeal No. 35 of 2009**
4. **The 4<sup>th</sup> appellant would be Nicholas Okoth Oyomba, the appellant in appeal No. 36 of 2009**
5. **The 5<sup>th</sup> appellant would be Denis Otieno Oyomba, the appellant in appeal No. 37 of 2009.**

None of the five appellants had counsel but they each filed written submissions and each made oral submissions before us which we recorded and considered. The thrust of the grounds of appeal in each of the five appeals was the same. Indeed, the Petitions of Appeal of the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> appellants (that is to say, the petitions by appellants Samuel Muiruri Ngare, Peter Omito Oyueka, and Denis Otieno Oyomba) were identical while the other two appeals by the 3<sup>rd</sup> and 4<sup>th</sup> appellants, namely Paul Mboya Asewe and Nicholas Okoth, had similar grounds of appeal save for the nomenclature used.

In summary, the appellants faulted the trial court for relying on the evidence of PW3 and PW6 and for basing conviction on it without considering that the evidence by these two witnesses was contradictory. They contended that the identification parades were not conducted properly and that the regulations on identification parades were flouted.

The 1<sup>st</sup> Appellant also contended in his Petition that the trial court did not consider his defence.

The 2<sup>nd</sup> appellant contended additionally that he was not found in possession of the stolen items which were recovered in the residence of the 3<sup>rd</sup> appellant. He submitted in his Petition that he was a visitor in the house. Moreover, he submitted, as PW3 had claimed ownership of the items, he (*the 2<sup>nd</sup> appellant*) was exonerated.

The 3<sup>rd</sup> appellant, Paul Mboya Asewe, criticized the trial court for hearing Cr. C. No. 1818/2006 whose judgment is the one from which this appeal springs while at the same time hearing Cr. Case No. 1968 of

2006. We took liberty to peruse the file on Cr. C. No. 1968 of 2006. We found that the case related to a different charge for an offence committed on the night of 31<sup>st</sup> August, 2006 and that that case was concluded on 27<sup>th</sup> February, 2009 when judgment was delivered. There was clearly no substance in the complaint of the 3<sup>rd</sup> Appellant who never raised as much as a whimper against being tried by the same trial magistrate.

When the case came up for hearing on 23<sup>rd</sup> May, 2007, the presiding Senior Resident Magistrate was Hon. K. Mogambi. The record shows that Hon. K. Mogambi explained **section 200 (1)** of the Criminal Procedure Code to the appellants and that the appellants told the court that the hearing could proceed. They cannot now turn round to say they were unhappy when they gave their consent. We however think that it is desirable that what the court explains to the accused in relation to this section **(200(1) of CPC)** should be fully recorded and the response of the accused should also be recorded in the accused's own words. This, no doubt, will ensure that the record is clear and that the accused is fully informed as to what the law is and his reply thereto. We are in this case satisfied that the appellants were explained and that they each indicated that the trial could proceed from where it had reached. None of them ever complained even in their submissions or defence in the trial court. The matter featured for the first time in the Petition of appeal. We find no merit in the grievance as it seems clearly unfounded and an afterthought. We dismiss it as lacking in merit.

The 4<sup>th</sup> appellant additionally stated in his Petition that the trial court failed to consider the manner in which he was arrested. The more germane issue is whether he was identified as one of the robbers.

The 5<sup>th</sup> appellant alluded, in addition, to **section 200** of the Criminal Procedure Code and contended that his rights were breached as he was not asked to choose whether the case should be heard *de novo* or whether it should proceed from where it had reached. But the record shows that it was explained to him and that he stated that the case could proceed from where it had reached. We find no merit in this complaint but we reiterate what we have stated above regarding the need to record the court's explanation of **Section 200** and the accused's response thereto.

We have carefully perused each Petition with a view to ensuring that all the grievances captured in them are examined and determined in this judgment. We are cognizant that we are the first appellate court and that the appellants are entitled to have a fresh reconsideration of their case. For these reasons, we have carefully examined the evidence adduced at the trial court and have made our own inferences, deductions and conclusions based on it. We are alive to the fact that as regards credibility of the witnesses, the trial court had vantage position as it is the one that saw, heard and observed the witnesses as they testified before it. This is not however, to say that we cannot interfere if it is clear to us that the trial court went astray in its finding, or conclusion, or inference or deduction if the evidence does not support such finding, deduction, inference or conclusion.

The record of appeal shows that on the night of 24<sup>th</sup>/25<sup>th</sup> August, 2006 in Chepkolon village in Kericho District in the home of Andrew Koech, Mercy Chebet, a first year student at Moi University, and a daughter of Andrew Chebet who was the complainant in count I, was sleeping in the same room with Agnes Emenza, the house help. In the same home also were Philemon Korir, a 3<sup>rd</sup> year student at Moi University and his cousin, Kevin Langat, a Form 4 student at Rongai Secondary School. The driver of Andrew Koech, one Sylvester Kiptanui Koech (PW14), was in another room alone. Jane Jeruto Kirui (PW3) was in another room sleeping. At around 1.30a.m, robbers struck. They gained access to the house by cutting grills and then kicked open the door to the room where Sylvester Kiptanui Koech, PW14, was sleeping. He woke up and went to the sitting room of the house where he found three gangsters. One had a gun and another a panga. The light in the corridor was on. He started screaming and hid in the toilet of the master-bedroom. He was pursued and caught. One of the gangsters had put a knife on his neck and ordered him to keep quiet. They demanded money from him. He had none. They took from him key to motor vehicle KAT 603V, a pickup. They took him to the room where Philemon Korir (PW1) and Kevin Langat (PW15) were and tied him there. They took household items from the house.

Philemon Korir (PW1) who was in the same room with Kevin Langat (PW15) managed to identify

accused No. 1, Samuel Muiruri Ngure in the identification Parade. When he heard Sylvester Kiptanui (PW14) screaming, PW1 woke up and shortly thereafter the door to his room was kicked open. Two people entered. They put on the electric light. It was bright. PW1 and Kevin Langat (PW15) were ordered to lie down. They lain on the bed looking sideways and observed the two gangsters. One gangster pointed a brown gun at them. They took a mobile phone and a Motorola 113. While the lights were still on, they led PW1 and Kevin Langat to another room. PW1 observed them as it was well lit. One of the two gangsters had a green shirt and the other a jacket. The two gangsters had no masks. PW1 and Kevin Langat were led to the room where Mercy and Agnes were. Mercy and Agnes were in different beds and Sylvester Koech had his hands tied to a bed. The girls and Sylvester Langat were covered with a blanket and the lights were off. PW1 and Kevin were ordered to climb into bed. Mercy was led away to another room by one of the gangsters. The gangsters took about 2 hours in the home of Andrew Koech.

In his evidence, PW1 was adamant that he had seen accused No.1 (*now appellant No. 1*) and had identified him from his bodily features and size.

**Agnes Emenza (PW2)** was aged 26 years. She was the house-help in the house of Mr. Koech. According to her evidence, when the gangsters struck, they first put on the lights after gaining entry into the room. Mercy Chebet was taken to another room. One gangster had a gun. Three other gangsters started searching the room. The 3<sup>rd</sup> accused (*Appellant No. 3*) took away Mercy Chebet (PW4) to another room and PW2 could hear gangsters in that room going in and out. PW2 testified that he saw the 2<sup>nd</sup> accused (*Appellant No.2*) well and described him later to the police as a short and black person. She also saw well the 4<sup>th</sup> Appellant among the gangsters and described him as tall and black. She identified a total of four people in the identification parades, that is to say, Appellants Nos. 1 to 4. She told the trial court in evidence that when the gangsters entered the room the lights were on and that is why she saw and identified the four Appellants. She could remember that it was accused No.3 who had led Mercy Chebet, PW4, away to another room. She could also recall that the 3<sup>rd</sup> Appellant had a beard and small ears. She remembered that Appellant No. 4 was the one who had put on the lights in the room and that he had a gun.

**Mercy Chebet (PW4)** gave evidence about her ordeal and the rape by two of the gangsters in her mother's room. She could not identify any of the gangsters. She must have suffered severe trauma and lost her concentration, hence her inability to identify the gangsters. But her mother, **Jane Jeruto Kirui (PW3)** could remember that Appellant No. 2 raped PW4 on her bed in her presence and Appellant No. 1 took Mercy Chebet to another room where he also raped her. The gangsters had first removed PW3's and PW4's inner wear. The lights were on. PW3 observed that one had a pistol and the other a panga. The gangsters demanded money. They were 3 metres from her. PW3 identified Appellant No. 1 on 3<sup>rd</sup> September, 2006 in the identification parade. She saw her daughter being raped by Appellant No. 2 on her bed. The robbers took an hour in her room during which she said that she observed the gangsters with the light in the room initially and later with light in the corridor. She could remember the complexion of the 2<sup>nd</sup> Appellant and that he was black and tall. As she stood in her room during the ordeal, she saw the 3<sup>rd</sup> Appellant twice through the light in the corridor. PW3 also saw and observed the 4<sup>th</sup> Appellant in her bedroom when the lights were on and as the 4<sup>th</sup> Appellant carried the household items out of the room.

PW3 had no difficulty in picking the Appellants Nos. 1 to 4 out in the identification parade. But while she could give descriptions of Appellants Nos. 2, 3, and 4, PW3 did not give the physical description of Appellant No. 1.

Chief Inspector Swanga Karlingham (PW5) acting on a tip off moved with his team and found men who turned out to be Appellants 3, 4, and 5 together in a room on 11<sup>th</sup> September, 2006 in Mortgage Estate which was in the general area of Chepkolon. The house belonged to Appellant No. 3. In the house, PW5 and his team recovered a computer, gas cylinder, table clothes, radio, carpet and generator which were produced as exhibits. He also found metal cutter hidden in a marshy area nearby. These items were marked as MFI 1 to 10 and were produced as exhibit No. 1 to 10. Mr. Andrew Kiplangat Bett(PW9) identified these items as property from his house.

**PW6, Charity Chepngeno Kirui**, a student from Bungoma Adventist Secondary School was in the house when the gangsters struck on the night of 24<sup>th</sup>/25<sup>th</sup> August, 2006. She is the daughter of PW3. She said in evidence that she saw Appellants Nos. 2, 3 and 5. She saw and heard them demand money from her mother. She was raped by Appellant 5 in her mother's bedroom. She saw them rob her mother of mobile phone and cash. She saw them steal a radio and a TV set. During the identification parade, she identified Appellant's Nos. 3, 4 and 5. She said in evidence that that she saw the Appellants with the aid of the electricity light in the house.

**PW13, Beatrice Onsongo**, who worked as a housemaid in the house of PW9 was present on the night of 24<sup>th</sup>/25<sup>th</sup> August, 2006. She confirmed that there was electricity light when four gangsters struck and demanded money. She saw them and was able to identify accused numbers 2, 3, 4, and 5. According to the evidence of Inspector Reuben Onchoka who testified as PW16 the five Appellants agreed to take part in the **identification parades** he conducted. The first identification –parade was on 1<sup>st</sup> September, 2006. The suspect was Samuel Muiruri Ngure and the 1<sup>st</sup> identifying witness was Charity Kirui who was unable to pick out the 1<sup>st</sup> Appellant, Samuel Muiruri Nguru. The second identifying witness was Jane Kirui who was also unable to pick out the said suspect. The third identifying witness was Kevin Kipkemboi who too was not able to pick out the suspect. The 4<sup>th</sup> identifying witness was Sylvester Koech who was also unable to identify the suspect. However, Philemon Korir(PW1) identified the suspect.

On 13<sup>th</sup> September, 2006, PW16 mounted another identification parade with Peter Omito Oyueka, the 2<sup>nd</sup> Appellant, as the suspect. Charity Kirui (PW6) successfully identified him as did Agnes Emenza (PW2) and Beatrice Onsongo (13). Jane Kirui too successfully identified him.

The identification parade relating to the 3<sup>rd</sup> Appellant, Paul Mboya Asewe was held on 13<sup>th</sup> September, 2006. He was identified by Agnes Emenza, Beatrice Onsongo and Jane Kirui.

On 13<sup>th</sup> September, 2006, another parade was held with the Nicholas Okoth Oyomba, the 4<sup>th</sup> Appellant as the suspect. He was identified by Charity Kirui (PW6), Agnes Emenza, Beatrice Onsongo and Jane Kirui.

Still on 13<sup>th</sup> September, 2006, PW16 mounted an identification parade with Denis Otieno Oyomba, the 5<sup>th</sup> Appellant, as a suspect. He was identified by Charity Kirui (PW6), Agnes Emenza(PW2), Beatrice Onsongo(PW13), and Jane Kirui (PW3). The Appellants signed the identification parade forms and confirmed their satisfaction with the manner the parades were mounted and conducted. With the exception of the 1<sup>st</sup> Appellant (who was identified only by one witness (Charity Kirui) while the other witnesses namely Kevin Kipkemboi, Sylvester Koech, and Philemon Korir were unable to identify him when they were called) the other four Appellants were identified by not less than four identifying witnesses each. These identifying witnesses were Charity Kirui, Agnes Emenza, Beatrice Onsongo and Jane Kirui.

In his defence, the 1<sup>st</sup> Appellant told the court in his sworn evidence that he used to sell “*Mitumba*” and that on 24<sup>th</sup> August, 2006 he closed his outfit in the evening and that he planned to go to Nairobi that evening from Kericho. He said that he traveled to Nairobi that night and got to Nairobi on 25<sup>th</sup> August, 2006. He returned to Kericho the same day. He had a receipt which he wanted to produce to prove this fact. Upon his return, he was arrested on 27<sup>th</sup> September, 2006 and was charged alone and taken to Court on 11<sup>th</sup> September, 2008. He said in cross examination that he boarded Silvaline Bus at Caltex at Kericho town and had seat No. 29 and a receipt. He returned in an Eldoret Express Bus whose registration number he could not remember. The trial court erroneously failed to record the evidence of the exhibit in support of the alibi. It also fell in error in not ensuring that the alibi was disproved. As it turned out no cross-examination ensued relating to the defence of alibi or the receipt put up to buttress it.

The 2<sup>nd</sup> Appellant, Peter Omito Oyueka stated on oath that he did business between Kisumu and Kericho and Nairobi and that on 6<sup>th</sup> September, 2006, he got goods in Kisumu and was taking them to Nairobi. He

got into a vehicle and travelled to Nairobi. On 7<sup>th</sup> June, 2006 he went to collect cash for goods he had sent to Nairobi but did not receive the money until 9<sup>th</sup> June, 2006. He returned to Kericho, he said, on 10<sup>th</sup> June, 2006 and went to his brother in law who is the 3<sup>rd</sup> appellant. The latter left for Siaya to attend a funeral. He stated that he was in his said brother's house when strangers came to the house who turned out to be the 4<sup>th</sup> and 5<sup>th</sup> appellants. He said he used to hear of them. He informed his brother-in-law. The said appellants spent the night there and when the 3<sup>rd</sup> Appellant went to buy milk on 11<sup>th</sup> June, 2006, he was followed by police to the house. The police searched the house and removed a TV, LG, 14" gas cylinder, radio (*Sonny*), and other things wrapped in a bed cover. They were arrested. The 2<sup>nd</sup> Appellant did not allude to his whereabouts on the night of 24<sup>th</sup> /25<sup>th</sup> August, 2006 but he was under no obligation to do so as he had no burden to prove his innocence.

The 3<sup>rd</sup> Appellant's statement was also on oath. He told the Court he was a businessman. He knew the 2<sup>nd</sup> Appellant. He went to his house with him and both were arrested there on 11/9/2006 with the other two Appellants. Police recovered goods from the house.

The 4<sup>th</sup> Appellant said in his sworn evidence that he was a driver. He was with the 3<sup>rd</sup> Appellant's house also when he was arrested.

The 5<sup>th</sup> Appellant also agreed that he was arrested in the house of 3<sup>rd</sup> Appellant and that the police recovered items of goods.

Although the 3<sup>rd</sup> Appellant had produced receipts in an effort to show that the goods the police found in his house were his, **JOSOI FAJA GUDKA** testified that the receipts which purported to be from his shop (D.Ext. 3 (a) and (b)) were fake and were not from his shop. He told the trial Court that the rubber stamp on them did not belong to him. He showed the Court a genuine receipt from his shop which was produced as exhibit No. 1. The witness also confirmed that he did not sell carpets as one of the fake receipts purported to show.

In his judgment, the trial Magistrate found the evidence against the appellants overwhelming. He convicted the appellants and sentenced them to death.

The evidence shows that the gangsters robbed, and raped in the house Koech where his driver, Sylvester Kiptanui Koech (PW14) was sleeping and then moved to the house of Kirui where Jane Jeruto Kirui (PW3) was sleeping. They were also robbed and raped there.

The robbers were seen and identified by Philemon Korir (PW1) in the house of Mr. Koech. He was sleeping with Kevin Langat (PW15). The lights were on. Philemon Korir identified the 1<sup>st</sup> and 2<sup>nd</sup> Appellants. He also picked them in the identification parade without difficulty. Kevin Langat was unable to identify any of the robbers. The trial court which saw and observed the witness testifying believed Philemon Korir (PW1) was a witness of truth whose evidence showed that he had keenly observed the gangsters. Philemon Korir was a university undergraduate student at Moi University while Kevin Langat was a secondary school student. The latter had been woken up with a slap and was young and in shock and the trauma that he suffered explained his inability to concentrate in observing the gangsters.

The evidence against the 1<sup>st</sup> Appellant was not cogent. Only PW1 and PW2 claimed to have seen him and picked him in identification parade. His defence of *alibi* on the day the offence was committed was not disproved. We think it would be risky to sustain a conviction on that shaky evidence. It is our finding that the evidence against him fell short of the standard required, namely beyond reasonable doubt. It is our conclusion that it would be too risky to support his conviction in the light of the defence of *alibi* which was not disproved. For this reason, we allow his appeal, quash his conviction and set aside the sentence. Unless otherwise lawfully held, the 1<sup>st</sup> Appellant shall be released and set free forthwith.

With regard to the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Appellants, the evidence was too overwhelming against them. They were identified in circumstances that were conducive to positive identification because there was

electricity light. The robbery took a considerable period of time. PW2, **Agnes Emenza** picked out Appellants 2, 3 and 4 as did PW3, **Jane Jeruto Kirui**. PW5, **Chief Insp. Swanga Karlignham** found Appellants Nos. 3, 4, and 5 together in a house with the stolen items. PW7, **Charity Chepngeno Kirui**, identified Appellants Nos. 2, 3, 4, and 5 and **Beatrice Onsongo**, PW13, identified Appellants Nos. 2, 3, 4 and 5. Apart from identification, Appellants Nos. 2, 3, 4 were found in possession of the items stolen. Under the doctrine of recent possession, the trial magistrate was right to conclude that the Appellants were the persons who had robbed the complainants of the goods found in their possession. In **R.V. LOUGHIN 35 CR. APP. R. 69** the Lord Chief Justice of England stated that “*if it is proved that premises have been broken into and that certain property has been stolen from the premises and that very shortly afterwards, a man is found in possession of that property, that is certainly evidence from which the jury can infer that he is the housebreaker or shop breaker*” In these appeals, not only does the doctrine of recent possession apply, but there is also evidence of identification. The case of **R.V. LOUGHIN** was referred to with approval by the Kenya Court of Appeal in the **NYERI CR. APPEAL NO. 108 of 2003**.

It has been stated repeatedly that the offence of robbery with violence under **Section 296(2)** of the **Penal Code** is committed in any of the following circumstances.

- (i) *Where the offender is armed with any dangerous or offensive weapon or instrument or*
- (ii) *Where the offender is in company with one or more other person or persons or*
- (iii) *Where at or immediately before or immediately after the time of the robbery the offender wounds, beats, strikes, or uses other personal violence to any person.*

The evidence adduced in the trial court shows that the Appellants were a group of four and that they were armed with dangerous weapons to wit gun and that immediately before and immediately after the robbery they used personal violence to the prosecution witnesses some of whom they raped.

We have no hesitation in our decision that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Appellants were the robbers on the night of 24<sup>th</sup>/25<sup>th</sup> August, 2006 and that they were rightly convicted. **We find no merit in their appeals and we accordingly hereby dismiss them that is to say appeals Nos. 34/2009, 35/2009, 36/2009, and 37/2009.** The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Appellants have a right of appeal to the Kenya Court of Appeal if they are dissatisfied with our decision. **The 1<sup>st</sup> Appellant’s appeal is allowed and his conviction is quashed and sentence set aside.** Unless otherwise lawfully held, the 1<sup>st</sup> Appellant shall be released and set free forthwith.

**DATED at KERICHO this 9<sup>th</sup> day of March 2011**

.....  
**G.B.M. KARIUKI**  
**JUDGE**

.....  
**D.K. MARAGA**  
**JUDGE**

**COUNSEL APPEARING**

Mrs. Idagwa State Counsel for the Respondent  
Appellant in person