



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII.
CRIMINAL APPEAL NOS. 241 AND 241B OF 2008
(CONSOLIDATED)

BETWEEN

ERICK OLUOCH OUMA..... 1ST APPELLANT

PETER ODHIAMBO OBUODA.....2ND APPELLANT

AND

REPUBLIC.....RESPONDENT

**(Being an appeal from the original conviction and sentence in Homa bay SRM's Court
criminal Case number 1608 of 2006 by Hon. D. Kemei SRM dated 1st December 2008)**

JUDGMENT

1. The two appellants herein, Erick Oluoch Ouma and Peter Odhiambo Obuoda were the 2nd and 1st accused, alongside Daniel Ngure Kiboye (3rd accused) in Homa Bay Senior Resident Magistrate's Criminal case Number 1608 of 2006. They were jointly charged with robbery with violence contrary to **section 296 (2)** of the Penal Code in counts I, II, III, IV and V. In count VI, the 3rd accused was separately charged with being in possession of public stores contrary to **Section 324 (3)** of the **Penal Code**. The third accused died in the course of the proceedings before the trial court.

2. In Count I, the two appellants, together with their co-accused were charged that on the 15th day of December, 2006 at Rodi Kopany Township in Homa Bay District, within Nyanza Province, jointly and with others not before court, robbed Leonida Abungu Oluoch of cash Kshs. 10,000/= and a mobile phone make Sagem 926 valued at kshs. 5,500/= and at the time of such robbery, beat or struck the said Leonida Abungu Oluoch.

3. In count II, the trio were charged that on the 15th day of December 2006, at Rodi Kopany Township in Homa Bay District within the Nyanza Province, jointly with others not before court, robbed John Otieno Okombo of Cash Kshs. 33,400/=, I.D Card and one Trade Test Certificate and at the time of such robbery, beat or struck the said John Otieno Okombo.

4. In Count III the three were charged that on the 15th day of December 2006 at Rodi Kopany township in Homa Bay district, within the Nyanza Province jointly and with others not before court, robbed Kennedy Odoyo Ndiege of cash Kshs. 7,000/= and at the time of such robbery, beat or struck the said Kennedy Odoyo Ndiege.

5. In Count IV, the three were charged that on the 15th day of December 2006 at Rodi Kopany Township in Homa Bay District within the Nyanza Province, jointly and with others not before court, robbed Lyndon Momanyi Ongiri of cash Kshs 2,100/=, Mobile phone Motorola C117 valued at Kshs 3,000/=, wrist watch make Motina valued at Kshs 1,600/=, a pair of shoes, a cap, a belt and 2 remote controls (sharp and sonny) all valued at Kshs 12,600/= and at the time of such robbery beat or struck the said Lyndon Momanyi Ongiri.

6. In Count V, also being a robbery with violence charge, the trio were charged that on the 15th day

of December, 2006 at Rodi Kopany township in Homa bay district within Nyanza Province jointly and with others not before court, robbed Kennedy Odhiambo Otieno of cash Kshs. 700/= and at the time of such robbery beat or struck the said Kennedy Odhiambo Otieno.

7. Count VI of the charge is irrelevant to this appeal because it concerned Daniel Ngure Kiboye who is since deceased.

8. The two appellants denied all the charges and the case went to hearing.

9. Briefly, the facts of this case are that on the 15th Day of December 2006, at about 8.00pm, robbers struck at Rodi Kapony Township. They raided a number of homes, attacking the victims and robbing them of cash and other valuables such as mobile phones. A report was made to the Police at Homa Bay Police Station. Investigations commenced. The 2nd appellant was the first one to be arrested and with his help, the 1st appellant and the deceased 3rd accused were arrested. The three were then charged with the various offences as detailed hereinabove.

10. The prosecution called a total of 11 witnesses in support of this case. PW1 was Leonida Abungu Oluoch, a resident of East Kanyada Location, in Rodi Kopany Village. On 15th December, 2006 at about 8.00 p.m., she was in her house together with her co-wife Betty (PW6), a daughter called Naomi, another daughter called Maureen who was by then aged 15 years. They had just prayed and as they prepared to lock the door 3 people wearing green jungle jackets entered the house and positioned themselves at the far end of the house, near the store and near the door respectively. The one who stood at the far end of the house was armed with a pistol and wore a green cap similar to those worn by police. At the time, the electricity light was on in the house and so was the TV. They were ordered to lie down by the man carrying the pistol and they all complied. The lights were still on. The man with the pistol then asked for the owner of the house but before PW1 could reply, another person entered the house and pointed at PW1 and also went to where PW1 was. PW1 was ordered to stand up by the person who was carrying the pistol. She got up and was ordered to proceed to the bedroom, accompanied by 2 persons- the one with the pistol and the one who had entered the house latest.

11. While in the bedroom, the person with the pistol asked her to give them Kshs. 400,000/= for which he said they had been sent. He also asked her for her mobile phone which she said was in the sitting room. She was ordered to go for it, and she did so again in the company of the person who was carrying a pistol. She handed the phone to him and at that point, the 4th person went out of the house. PW1 was ordered to lie down again in the sitting room by the person carrying a pistol and she complied. She was then ordered to get up and go to the bedroom which she did accompanied by the same person who was armed with a pistol. While in the bedroom, the person asked her to give him Kshs. 400,000/= and that if she did not give the money, she would see. She gave him the purse which contained Kshs. 7,000/= and told him that she had given the rest of the money to an Asian dealer. She was ordered to sit down and by this time the lights had been switched off.

12. As she counted the money from the purse the person slapped her. He then took the money together with the purse and a key. He dropped the purse and the key and ordered PW1 to lie on the bed. Before she could lie down the person again ordered her to stand up and he took Kshs. 1,000/= from her which was tied in her sweater and a further Kshs. 3,500/= which was in her sweater pocket, making a total of Kshs. 10,500/=. PW1 was again ordered to lie across the bed, while he lifted the mattress in search of money, but there was no money there. The person warned PW1 that she would see if she gave him no other money, as he opened the drawers of the bed.

13. At that moment PW1's husband, Samuel Aringo Okitu (PW7) arrived home to the rude shock of the robbery. As PW7 entered the 4th person who had entered the house also re-entered the house and ordered PW1 to go and call her husband since he (PW7) had arrived home. PW1 was held by the chest and forced to look outside at PW7 from the window. There was security light outside the house and there was also light at the house of PW6. PW1 refused to call PW7 as ordered.

14. There was much movement in the house, with the person who was armed with a pistol going to the bedroom again while the 4th person who had entered the house latest went outside the fence. The rest of the people then went outside the house and stood near the kitchen which had light. There were five of them. Pw1 and the rest of her people raised an alarm and neighbours came. The persons who had robbed Pw1 of the money then disappeared into the nearby maize plantation.

15. Pw7 reported the incident to police at Rodi Kopany. Police came to the scene. Among those who visited the scene was Pw 11 No. 63459 Cpl Henry Momanyi of Homa Bay Police Station. He is the one who investigated the case. Pw11 was informed that Pw1 had been robbed of Kshs 10,500/= and a mobile phone make Sagem. Pw1 told Pw11 that she could identify the thugs if she saw them. Pw11 also went to the other houses that had been robbed among them the house of John Otieno Kakai (PW4) from whom the robbers stole Kshs. 33,000/- on the same night of the attack at around mid night.

16. Pw3, Kennedy Odoyo Ndiege and his family were attacked between 1.30 and 2.00 am on the night of 15th December 2006. The robbers entered into his house, pulled him out of bed and slapped and pinched him. He was bundled out of the house into a neighbour's house. As he was being escorted out of the house, a cool metal was placed on his neck. Pw3 said he was able to identify one of the robbers. The robbers were armed with bright torches. He identified the 1st appellant and the deceased 3rd accused.

17. Pw2, Lynda Momanyi was robbed of cash, a remote control, a mobile phone - Motorola 117 but he was not able to identify any of the robbers.

18. Pw5, Kennedy Odhiambo otieno was attacked at around 2.00am on the 15th December 2006, after he was woken up by people who knocked on his door and claimed they were policemen. Of the people who entered the house of Pw5, one had a pistol. After making all manner of allegations against Pw5 from dealing in bhang to selling fake radios the people demanded to be given money. Kshs 700/= was taken from him before he was tied hands to back. Pw5 stated that at the time of the robbery he had lit a lamp that was on and was thus able to identify the 1st appellant herein although he did not give any names of the robbers to the police.

19. Pw6, Owuor Betty Akumu was together with Pw1 when they were attacked. She said both the lights, including security lights and the TV were on when the thugs struck at about 8.00pm. The thugs were not disguised on their faces.

20. PW8, Atieno Loice Akumu was also together with Pw1 and Pw6 when the robbers struck. Though the thugs switched off the lights inside the house (3 bulbs) they left the 2 security lights outside and the TV inside the house on. She heard the thugs asking Pw1 for kshs 400,000/= after they were all ordered to lie down. The TV was switched off when Pw7 came home. She was able to identify some of the robbers.

21. After the robbers fled some items were recovered from the vicinity of Pw7's house. On the 18th December 2006, Number 87016317 APC Moses Cheligo accompanied by (PW9), Sgt Kibosia were led to Kakule by the local Chief. They arrested the 2nd appellant and took him to Rodi Police Station on suspicion that he had taken part in the spate of robberies that were committed on 15th December 2006. With the help of the 2nd appellant, Pw8 also managed to arrest the 1st appellant from whose house were found a knife and a whip hidden in the mattress. The 2nd appellant helped PW9 to arrest the appellant's deceased co-accused in the lower court.

22. Pw10 No 231195 Chief Inspector of Police David Kibet Lawendi conducted identification parades in respect of the two appellants and the other suspects. This was on 21st December 2006 at about 11.30 am. He did not know any of the suspects before the parades were conducted. The 2nd appellant was the subject of the first identification parade. He choose not to have either a solicitor or friend to attend the parade. There were 9 members of the parade, inclusive of the 2nd appellant, all of similar age, body build and body colour. The 2nd appellant stood between members number 4 and 5. He was

identified by the first witness, Loise Abungu, (Pw8). PW1 was unable to identify the suspect who stood between members 2 and 3. The suspect then placed himself between member 1 and 2. He was not identified by PW6. PW3 managed to identify the 2nd appellant who had placed himself between member number 3 and 4. Kennedy Odhiambo Otieno, PW5 was unable to identify the 2nd appellant. After all the parades, PW10 signed the identification parade form which was countersigned by the 2nd appellant. The same was produced as **P. Exhibit 2**.

23. Pw10 also conducted an identification parade in respect of the 1st appellant herein, Erick Oluoch Ouma who was identified by Loise Abungu, Pw8, Leonida Abungu, Pw1, Awuor Betty akumu, Pw6 and Kennedy odhiambo Otieno, Pw5. Kennedy Odoyo Ndiege (Pw3) was unable to identify the 1st appellant on the parade. The identification parade form duly signed by the 1st appellant and countersigned by Pw10 were produced as **p. Exhibit 4**.

24. Apart from the whip, knife, small sword, one jungle jacket and a rain coat (**p. Exhibit 5 – 8**) no other items was recovered from either appellant at the time of the arrest.

25. At the close of the prosecution case, each of the 2 appellants elected to give sworn evidence and called no witnesses. The 1st appellant, Erick Oluoch Ouma stated that on the 18th December 2006, while he was asleep in the house, at Kanyada where he operates a bicycle taxi business, he was woken up from sleep by a knock on the door. Those who knocked the door identified themselves as Police Officers. When he opened the door, he was ordered to kneel down and was handcuffed before his house was searched. Nothing was recovered. He was then forced into a waiting vehicle and driven to Rodi Kopany town and later placed into police cells. Thereafter he was taken Homa Bay Police Station and after 3 days he was taken for an identification parade before being arraigned in court on charges he knew nothing about. He said that on the 15th December 2006, he never left his home at all.

26. The 2nd appellant Peter Odhiambo testified that he sells bread at Rodi Kopany. He said he could not recall what happened on the 15th December 2006, but on 18th December 2006, he said he woke up early and went to his farm, returned home later, showered and then took lunch. He remained at home until about 6.00 pm when his area Chief John Nyandega Agado came to the house. He was not in good terms with the said Chief because of the 2nd appellant's failure to attend the Chiefs Baraza held on 10th December 2006, as a result of which the chief had vowed to fix him. The chief arrested him and took him to Rodi Police Post. Later that same night, he was escorted to Homa Bay Police Station and locked up in cells together with people he did not know. Then some people who had seen him at Rodi Police camp were called to identify him at the identification parade conducted by Inspector Kibet Lawendi (PW10). though he raised his complaints about the parade, he was told to keep his complaints for another date. He said he did not sign the parade form. He denied committing the alleged offences. He stated that the allegations about him regarding 15th December 2006 were unknown to him since he had remained in his house throughout the day due to illness.

27. After carefully considering the evidence that was placed before him, the trial court convicted each of the 2 appellants on counts 1, 3 and 5 and sentenced each one of them to death as law prescribed.

28. Being aggrieved by conviction and sentence, the two appellants filed their respective appeal number 241 and 241B of

2008. By an order of this court dated 18th January, 2011, the two appeals were consolidated under appeal file number 241 of 2008.

29. The appellants' complaints against the judgment of the trial court are in general the following:-

1. The Learned Trial Magistrate erred in law and fact by not considering the environment at which the identification parade was conducted and thereby reached the wrong conclusion on the evidence of Pw1 and Pw5.

2. The Learned Trial Magistrate erred in law and fact in failing to give due weight to the sworn

defence given by the appellants and in particular that there was a grudge between Pw4 and the 2nd appellant herein.

3. The Learned Trial Magistrate erred in law and fact in relying on the evidence of identification in the house when there was not sufficient light therein for such identification.

30. When this appeal came up for hearing before us on the 18th January, 2011, each of the 2 appellants choose to prosecute their appeal by way of written submissions. We have carefully read and considered those submissions which are on record. Both appellants urged us to allow their appeals, quash the conviction, set aside the sentence and set them free.

31. On his part, Mr. Mutuku, the Senior principal State Counsel submitted that the conviction of the 2 appellants was based on sound evidence and particularly the evidence of Pw1, Pw3, Pw6, Pw7 and Pw10. he urged us to dismiss the appeal and to find that the circumstances under which each of the 2 appellants was identified were conducive to positive identification and that the said circumstances cannot be faulted. Counsel also submitted that the evidence of the identification parade was sound as the parade was carried out in accordance with the rules. The only concession Mr. Mutuku made was that the court ought to have sentenced the 2 appellants to death only on one count of robbery and ordered the other sentences to remain in abeyance. With that concession we agree because a man can die only once and no more.

32. Having heard the submissions, it is now our binding duty to reconsider and evaluate the evidence that was placed before the trial court. That duty was imposed upon an appellate court of instance by such decisions as **okeno – vs- Republic (1973) Ea 32; Njoroge –Vs- republic (1989) KLR 313 and Kiilu & another –vs- Republic (2005) 1 KLR 174** among others. Our duty goes beyond merely scrutinizing “the evidence to see if there was some evidence to support the lower court’s findings and conclusions.” We are expected to submit the whole evidence to a fresh and exhaustive examination as was held in **Pandya –vs- Republic (1957) EA 336** and to reach our own decision on the evidence. We are also expected, as a first appellate court, to weigh conflicting evidence and to draw our own conclusions. See **Shantilal M Ruwala –vs- Republic (1957) EA 570**. This duty is enormous and it is onerous.

33. We have now reconsidered and evaluated the evidence that was placed before the lower court. From the reconsideration and evaluation, it is clear to us that the prosecution case rested entirely on the evidence of identification of the appellants during the robbery and on the identification parade evidence as adduced by Pw10. the principles applicable in cases of visual identification are now well settled. Beginning with the case of **Roria –vs- republic (1967) EA 583** in which the appellant was convicted on the evidence of a single identifying witness, the court, applying the principles as set out in the case of **Abdala Bin Wendo & another –vs- Republic (1957) 20 EACA 166** at **page 168** thereof said the following on the issue of identification: -

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

34. There is thus the need for this court to test with the greatest care the evidence of identification upon which the trial court in this case based its conviction of the appellants on counts 1,3 and 5 of the charge. This issue was again a subject of detailed discussion by the Court of Appeal in the case of

Karanja & another –vs- Republic (2004) 2 KLR 140. At page 147 of that judgment, the Court referred to its earlier decision in the case of **Wamunga –vs- republic (1989) KLR 424** in which the same court said the following:-

“We now turn to the more troublesome part of this appeal, namely the appellants’ conviction on counts 1 and 2 charging him with robbery of Indakwa (pw1) and Lilian Adhiambo Wagude (Pw3). Both these witnesses testified that they recognized the appellant among the robbers who attacked and robbed them.....what we have to decide now is whether that evidence was reliable and free from possibility of error so as to find a secure basis for the conviction of the appellant. Evidence of visual identification in criminal cases can bring about a miscarriage of justice and it is of vital importance that such evidence is examined carefully to minimize this danger whenever the case against a defendant depends wholly or to a great extent on the correctness of one or more identifications of the accused which he alleged to be mistaken, the court must warn itself of the special need for caution before convicting the defendant on reliance on the correctness of the identification. The way to approach evidence of visual identification was succinctly stated by Lord Widgery L.C in the well known case of Republic – vs- Turnbull (1976) 3 All ER 549 at page 552 where he said:-

“Recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognize someone whom he knows the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.”

***HCCRA NOS. 241 AND 241B OF 2008
(CONSOLIDATED)
NO. 57***

35. The court of Appeal has decided on this question of visual identification in a number of other cases. The reason for this is that robbers, like all thieves, usually strike at those times when it is most difficult to identify them, thereby casting an extremely difficult burden on the prosecution to show through visual identification by its witnesses that the accused is the person they saw during the attack. The task for the court is equally onerous. In the case of **Paul Etole & another – vs- Republic criminal Appeal No 24 of 2000**, the Court of Appeal stated the following in part of its judgment:-

“.....to evidence of visual identification, such evidence can bring about miscarriage of justice. But such miscarriage of justice occurring can be much reduced if whenever the case against an accused depends wholly or substantially on the correctness of one or more identification of the accused, the court should warn itself of the special need for caution before convicting the accused. Secondly, it ought to examine closely the circumstances in which the identification by each witness came to be made. Finally, it should remind itself of any specific weakness which had

appeared in the identification evidence. It is true that recognition may be more reliable than the identification of a stranger; but even when a witness is purporting to recognize someone whom he knows, the court should remind itself that mistakes in recognition of close relatives and friends are sometimes made.”

All these matters go to the quality of the identification evidence. When the quality is good, and remains good at the close of the accused's case, the danger of mistaken identification is lessened, but the poorer the quality the greater the danger."

36. It is with the above principles in mind that we are looking at the evidence of the prosecution with regard to counts 1, 3 and 5 of which the 2 appellants were convicted. The complainant in count 1 was Leonida Aluoch Abungu. She was in the house with her co-wife, daughter and other people. The time was about 8.00 pm. They had just prayed and were preparing to eat when the robbers struck. The electric lights and the TV were on. As soon as the robbers, who were dressed in police jungle jackets entered, and one of whom was armed with a pistol, they took strategic positions and then ordered everyone in the house to lie down. They did so, face down. They all obliged. At the time they were being ordered to lie down, the lights were still on. Then she was ordered to get up and go to the bedroom, she obliged. They came back to the sitting room for the mobile phone as demanded by the armed robber. She was once again ordered to go to the bedroom to give out the money-Kshs. 400,000/= demanded by the armed robber. She went to the bedroom and after giving the armed robber Kshs. 7,000/= she was ordered to sit down. And then she said "the light had been switched off." Pw1 however told the court that she was able to identify the armed robber who is the 2nd appellant in this case, while in the bedroom as the appellant opened drawers looking for cash. She said she was able to do so when she looked at him in the face at the window when the 1st appellant opened the curtain which let in light from the security lights in the kitchen and her co-wife's house. She also said that the armed robber searched her sweeter pockets for more money and that at that time, she saw him very clearly since the black police beret he was wearing on the head had not covered his face. She described him as brown and almost her height and not very fat. Pw1 was however, unable to pick out the 2nd appellant from the identification parade. She also said she did not see the 1st appellant on the night of the robbery. Pw1 also stated that when she went to report the matter to the police, she did not mention the names of the robbers.

37. We have tested this evidence by Pw1 against the principles of visual identification as enunciated in the cases we have cited above. The conclusion we have reached in this regard is that the circumstances under which Pw1 is said to have identified the two appellants were so difficult that the alleged clear identification spoken of by Pw1 cannot be said to have been without error. The identification parade was conducted by Pw10 only some few days after the robberies and yet Pw1 was unable to identify the two appellants. She is said to have identified the 3rd and 4th accused persons in the lower court. Unkind as it may seem to the victims of the robbery in count 1, it is difficult for us to agree with the Learned Senior Principal State Counsel that the conviction of the two appellants as far as count 1 goes was safe.

38. As for count 3, the complainant in the said count was Kennedy Odoyo Ndiege, Pw3. He was woken from sleep at about 2.00 am on 15th December 2006. The robbers broke the door and entered the house and immediately pulled him out of bed. The robbers had a very bright torch and he was able to recognize them. He was then taken out of the house and led to a neighbouring house. Thereafter he reported the matter to the police and he was able to identify the 2nd appellant herein and the 3rd accused who was acquitted. He said the robbers had 2 bright torches.

39. We note from the evidence that the two appellants were total strangers to Pw3, and that the only source of light which enabled him to identify them were the torches which the robbers had. There is no evidence as to which direction the torches were being shone during the robbery. There is also no evidence from this witness as to how much time he had the two appellants under observation so as to satisfy himself that the two appellants were the robbers. He admitted during the cross examination that the night was dark though he testified that the 2nd appellant herein had his head uncovered. We are therefore not satisfied that the circumstances prevailing at the time of the robbery of Pw3 were conducive to positive identification of either of the two appellants.

40. We have also closely examined the identification parade evidence and find that the witnesses were

in fact exposed to the appellants at the police station at rodi Kopany before the parade was later conducted at Homa Bay police Station.

41. As regards Count 5, the complainant therein was Kennedy odhiambo Otieno, Pw5, whose testimony was that at about 2.00 am on 15th December 2006, he was woken up from sleep by people who were knocking on his door and demanding that he opens for them. He did so upon which he was accused of being a bhang peddler and a seller of fake radios before the robbers took Kshs. 700/= from him and then took him out of the house to a neighbour's house. He said he was able to identify the two appellants herein. He said before he opened the door, and because the people had told him they were police officers, he lit a lamp before opening the door. The lamp was on when the robbers entered the house and he could see them. The 1st appellant tied PW5 hands.

42. In Pw5's further evidence, Pw5 stated that he saw the 1st appellant at Rodi Kopany before going to Homa Bay Police Station for the identification parade. Pw5 was however adamant that the 1st appellant was not a stranger to him because he (1st appellant) had visited Pw5 at the latter's business with the intention of buying a radio compact from Pw5. He also said that though he had seen the 1st appellant at Rodi, that was not the reason for picking him out of the identification parade; the reason Pw5 gave was that the 1st appellant was indeed one of the robbers who knocked on his door and for whom he opened the door after he had lit the lamp. Pw5 also said that he clearly saw the 2nd appellant as they walked him to the neighbours house. PW5 also knew the 2nd appellant before. 43. We have reconsidered the evidence of Pw5 and are satisfied that he saw the two appellants on the night of the robbery, first in his own house and later at the neighbours where the appellants took him. We have considered the defence by each of the two appellants and find nothing in the defence to suggest that Pw5 had any reason to make him want to give false testimony against the appellants. The evidence of Pw5 gives the testimony of a man who was composed during the robbery. The robbers did not force him to lie face down as was the case with Pw1. We believe his testimony and although none of the stolen items was recovered from either appellants, we are satisfied that the appellants were both present during the robbery on Pw5. As the appellants took Pw5 money, they threatened to use personal violence on him by pointing the pistol at him.

44. In the premises and for the reasons above given, we allow the appellants appeal on counts 1 and 3. We quash the conviction and set aside the sentence of death.

***HCCRA NOS. 241 AND 241B OF 2008
(CONSOLIDATED)
NO. 57***

45. However, the appeal in respect of count 5 is dismissed.

46. It is so ordered.

Dated and delivered at Kisii this 07th day of April, 2011.

**ASIKE MAKHANDIA
JUDGE.**

**RUTH N SITATI
JUDGE.**

In the presence of:

Present in person for 1st Appellant

Present in person for 2nd Appellant

Mr. Mutai (present) for Respondent

Mr. Bibu - Court Clerk/also interpreting