



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
(CORAM: OJWANG, J.)
CRIMINAL APPEAL NO. 66 OF 2006

BETWEEN

JOSEPH MBURU KUNG’U..... APPELLANT

-AND-

REPUBLIC.....RESPONDENT

(An appeal from the Judgement of Senior Resident Magistrate Ms. Lucy Mutai dated 29th September, 2005 in Criminal Case No. 259 of 2005 at the Githunguri Law Courts)

JUDGEMENT

The charge brought against the appellant was the commission of an unnatural offence contrary to s.162(a) of the Penal Code (Cap.63). The particulars of the charge were that the appellant, on 12th January, 2005 at Matuguta Village in Githiga Location, in Kiambu District, within Central Province, had unlawful carnal knowledge of ***George Njuguna Mwangi*** against the order of nature.

Section 162 of the Penal Code, which was the basis of the charge, falls under Chapter XV of the statute which bears the heading, “OFFENCES AGAINST MORALITY”. That section in its original form, was amended by Act No. 5 of 2003 and now reads as follows:

“Any person who –

- a. has carnal knowledge of any person against the order of nature; or***
- b. has carnal knowledge of an animal; or***
- c. permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony and is liable to imprisonment for fourteen years:***

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if –

- i. the offence was committed without the consent of the person who was carnally known;***
or

ii. the offence was committed with the person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act."

The question before this Court is whether the appellant, indeed, did commit the offence thus defined by law, on the material date, for which act he was, on 29th September, 2005, convicted and consigned to jail for a period of ten years.

The principles of law to guide this Court in determining the question above-stated, are well known and have been reiterated by superior Courts over the years. Firstly, the first appellate Court, such as this one, has a duty to "rehear and re-adjudicate" [*Bacon, J.A. in Dinkerrai Ramkrishan Pandya v. R* [1957] E.A. 336, at p. 340 (C.A.)] the question in the trial. Secondly, as was stated by the Court of Appeal in *Okethi Okale & Others v. Republic* [1965] E.A. 555, at p.557 (*per Crabbe, J.A.*), "in every criminal trial a conviction can only be based on the weight of the actual evidence adduced and not on any fanciful theories or attractive reasoning."

The prosecution called three witnesses. PW1 was *George Njuguna Mwangi* (the complainant), a fourteen-year-old boy in Standard 6 at Njenga Primary School, and living with his parents at Gituamba Village. In an unsworn statement, PW1 said he was walking home from school, on **12th January, 2005** at 5.00 p.m. PW1 was alone, and as he went by the home of the appellant, he saw the appellant himself, alone, standing by the road. On the reaches of the road were Napier grass plantations; and the appellant, upon sighting the complainant, went into hiding, in the Napier grass. He came out just after PW1 had passed, and began following PW1. The appellant caught up with the complainant, somewhere close to the installation of an electricity transformer. He spoke to the complainant, and mentioned that there was some item (its identity is not clear from the record) he was searching for in the neighbouring farms; and he asked PW1 to help in tracing the said item. Even as PW1 stopped on the road, the appellant approached him and held his hand, dragging him towards a maize plantation nearby. Once they were in the maize farm, the appellant undressed the complainant, by removing the complainant's pair of shorts and underwear, and then knocked the complainant down. The appellant, next, pulled down his own trousers and lay on top, on the rear side, of the complainant. In the words of PW1: "he pushed his penis inside my anus and he peed on me inside. He did it thrice before letting me go. He left me and proceeded to his home. I wore my pants and walked away. When he released me he asked me not to tell anybody, [or] else he would cut me with a *panga*. He had a *panga* at the time."

It was PW1's testimony that he arrived home at 5.30 p.m. He was feeling pain in the lower part of his belly, and in particular when moving the bowels. He did not report the incident to either of his parents, when he got home.

Two weeks later, as the complainant was taking milk to the dairy plant, accompanied his seven-year-old brother, by name *Mbugua*, he met the appellant along the road, close to the *locus in quo*. The time of this meeting was about 1.00 p.m. The appellant spoke to the complainant, saying he wanted a repeat of the act of sex against the order of nature, though the appellant then expressed concern about the fact that young *Mbugua* was present. He made a promise to the complainant: to avail a bicycle to take the complainant to Githiga. When the complainant declined this offer, the appellant said he would meet him the following day, on the complainant's way to school. On school day, the complainant decided to proceed home from school running, and he did not come across the appellant. That evening the complainant had an opportunity to tell his father about the appellant; but as his father took no action, he now told his mother, on the following day (Tuesday). On the advice of his mother, the complainant presented the complaint again before his father, during activities at the dairy plant, when the appellant was himself present. The complaint acquired notoriety, and members of the public present, there and then arrested the appellant and even dispensed violence against him. From that incident, the Assistant Chief called Police Officers from Githunguri Police Station who came and took the appellant away. The complainant recorded a statement at the Police Station, and was issued with a P3 form for the insertion of medical findings. He took the form to Kiambu District Hospital and was examined, and given treatment.

It was the complainant's testimony that it was not on the material date, 12th January, 2005 that the

appellant sodomised him for the first time; the first time had been much earlier, in 1996, when the appellant caught up with him as he was walking to a place known as Matuguta. On that earlier occasion the appellant had chased the complainant, caught him and sodomised him. The complainant had not disclosed that first incident to anybody.

On cross-examination by learned counsel **Mr. Gatere** (for the appellant) (notwithstanding his not being sworn), PW1 testified as follows. His school is far from home, and he is usually alone when going to, or coming from school. On the material day the complainant could only walk and not run to and from school, as he had a boil on the lower back. On the material day the appellant was wielding a *panga* (cleaver), and looked threatening. When, on the material day, the appellant sodomised PW1, the appellant first applied saliva to PW1's anus, and then he thrust in his penis three times. Following this incident, the complainant had a swelling in his anus, and the appellant had left semen on him. It was a painful experience. The complainant feared that the appellant might cause him harm, and so he did not immediately tell his parents. Following that incident, the complainant's anus "kept on producing a watery substance, and my abdomen pained." The doctor at Kiambu District Hospital had done a physical examination on PW1's anus, before prescribing treatment. PW1 had known the appellant since 1996; and his parents' home was only one kilometre from the appellant's home.

PW2, **Margaret Njeri**, a farmer, is the mother of the complainant. While at her home on 31st January, 2005 at 7.00 p.m. the complainant told her that the appellant was timing his movements at Matuguta. On 1st February, 2005 PW1 had told PW2 he had been sodomised by the appellant. PW1 had told her that such acts of sodomy had first taken place in 1998, and then, now, on the material date (12th January, 2005). PW1 had told PW2 that the appellant had threatened to kill him if he dared disclose the sodomy incident to anyone else. Upon receiving the report, PW2 sent the complainant to the dairy plant, and then she followed him there. The matter was fully aired at the dairy plant, in the presence of the appellant; the Headman was called, and he in turn called Police officers from Githunguri Police Station; the appellant was thereupon arrested and detained at the Police Station. PW2, her husband and PW1 then proceeded to the said Police Station, and were given a P3 form which they took to Kiambu District Hospital.

PW2 testified that her son, PW1 used to complain of pains in his abdomen. She said she well knew the appellant, who lived only a kilometre away from her home. She said there had not been any quarrels or differences between her and the appellant.

PW3, **Dr. Samson Gitonga** of Kiambu District Hospital, testified that the complainant had been examined on 1st February, 2005 after a history of sodomy was recorded, at the hospital. The complainant had complained of pain when moving the bowels. PW3's account was as follows:

"On general examination there were no obvious injuries, and a rectal examination [showed that] there [was] no bleeding or discharge. A rectal swab was not taken since he came on 1st February, 2005 and the arrest was on 12th January, 2005. Nothing would be expected. H.I.V. test was done and it was negative."

The doctor produced the P3 form duly signed, setting out the specified details.

On cross-examination by counsel, PW3 testified that PW1 had complained of pain which he experienced while passing stool. He thus expressed his assessment of PW1's experience: "Infection or disease could cause such pains, [which could also occur] when muscles are sprained. Poor eating could not have caused the pain... Sodomy can cause pain on passing stool." PW3 said he had no positive findings in this case, but he was "not ruling out the possibility of sodomy."

The appellant was sworn, and led through his testimony by learned counsel **Mr. Gatere**, and his testimony went as follows. On 12th January, 2005 he was working on his farm. On that day, at 1.00 p.m. he went to milk his cow, which milk he then delivered at the dairy plant at Matuguta, returning home at 3.00 p.m. and proceeding to work his land till 6.00 p.m. His wife was away, and so all through that day, the appellant was working all alone. His children were also away at school. On 1st February, 2005 the

appellant was arrested by the area Chief, when he went to Matuguta to collect cattle feed. PW1's mother and others had come to Matuguta, and complained that he, the appellant, had sodomised PW1. The complainant was at Matuguta at the time, and he identified the appellant, who was then arrested. The appellant denied having sodomised PW1.

On cross-examination, the appellant said he knew the complainant well, and that the complainant was a neighbour of his. He said he had had no differences at all with the complainant or the complainant's parents.

Before the learned Senior Resident Magistrate, learned counsel **Mr. Gatere** urged that the prosecution had not proved their case beyond reasonable doubt. Counsel's main reason was that PW1, an adolescent aged 14 years, had not been sworn, and so his evidence required corroboration, before it could be relied on to found a conviction. Counsel said: "The accused has denied the offence. He has given evidence on oath, and it becomes [the] word of the complainant against that of the [appellant]. The evidence should be taken with caution."

Learned counsel wondered why a traumatic experience such as that said to have been endured by PW1, never sent him screaming; and also wondered why a report to the parents had not been made without delay. Counsel said:

"This leaves doubts to be resolved in favour of the accused."

Of the doctor's medical report, counsel submitted that the pains experienced by the complainant need not have been occasioned by sodomy, as there were other possible causes.

Counsel also raised objections to the fact that the Police investigating officer had not been called as a witness – so he may say why he decided to bring the charge. He contended that the prosecution evidence was "full of gaps," and maintained that the evidence adduced by the appellant remained unchallenged.

How did the learned Magistrate deal with the evidence and the submissions? She noted, from the testimony of PW3, that sodomy was a *possible* cause of the bowel pains which the complainant was experiencing some two weeks since the incident is said to have taken place. The learned Magistrate noted certain particular elements in PW1's testimony: that he had much earlier, in 1996, been sodomised by the appellant; that he was sodomised again by the appellant, on 12th January, 2005 during the day; that the complainant very well knew the appellant, who was a neighbour (a fact also acknowledged by the appellant himself); that the complainant's evidence, though unsworn, "was very clear, very consistent and unchallenged by defence cross-examination"; that the veracity of the complainant's testimony could not be doubted; that "the presence of the accused person at the scene of crime at the material time was not disputed"; that the accused had not differed with the child prior to the material [date]; that the complainant gave testimony that the appellant had been armed with a *panga* at the material time; that the appellant had threatened to harm the complainant if he disclosed the incident to anyone; that there was good cause why the complainant did not immediately report the incident of sodomy; that the complainant as a minor, was genuinely scared of possible danger from the appellant if the complainant disclosed the incident of sodomy. The learned Magistrate made reference to the fact that the complainant was the only eye-witness to the incident of sodomy, but her judicial inclination was thus: "I found that the complainant's evidence was very clear and firm, on cross-examination."

On the testimony of PW2, the learned Magistrate found that since she had not differed, on any matter, with the appellant (and the appellant acknowledged this), there would be no reason for PW2 to use her son (PW1) as a gimmick to orchestrate prosecution against the appellant.

In all the circumstances as reviewed by the trial Court, findings were then made as follows:

"Even if the accused denied the offence as charged, I found that his defence was a mere denial, [and his] evidence failed to discredit that of the prosecution."

“I was satisfied that the complainant was sodomised on the material date. He narrated how he met [the] accused who took him to a nearby maize plantation before [undressing] him....It was well explained...why the complainant never screamed [nor reported] the ordeal immediately to his parents...The evidence of the medical officer supported that of the complainant and even if no tear or swelling or spermatozoa were traced..., this was well explained.”

Of the objection to the failure by the prosecution to call the investigating officer as a witness, the learned Magistrate remarked:

“..but I found that even if called he was never at the scene of crime to know what exactly had happened. What he would have told [the] Court would all have been hearsay.”

The trial Court’s final finding was thus set out:

“The prosecution evidence, I found, was clear and consistent, which evidence has proven that the accused did commit the offence as charged. The defence evidence failed to discredit that of the prosecution.”

The learned Magistrate found the appellant guilty as charged, and, after hearing the plea in mitigation, sentenced the appellant to imprisonment for a period of ten years.

In the petition of appeal, filed on 24th February, 2006 the grounds of appeal are thus stated:

- a. that, the learned Magistrate erred in law and fact, in convicting the appellant solely on the evidence of PW1 who was an unreliable witness;*
- b. that, the learned Magistrate erred in law and fact in shifting the burden of proof to the appellant;*
- c. that, the learned Magistrate erred in law in entertaining highly irrelevant but prejudicial evidence;*
- d. that, the learned Magistrate erred in law and in fact in convicting and sentencing the appellant on mere suspicion;*
- e. that, the sentence is manifestly excessive and was based on wrong considerations.*

Learned counsel **Mrs. Ng’ang’a** represented the appellant at the hearing of this appeal, while the respondent was represented by learned State Counsel, **Ms. Gateru**.

Mrs. Ng’ang’a submitted that the trial Court had convicted the appellant on the basis of unreliable evidence, an averment by only one witness, the complainant, a minor of 14 years, that the appellant had sodomised him by inserting his penis into the complainant’s anus. Learned counsel submitted that the complainant’s averment had not been borne out by the testimony of the doctor (PW3), who said the tests carried out on the complainant had proved negative, owing to lapse of time. So, when the learned Magistrate founded her decision on the pains to the bowels which the complainant was experiencing, counsel urged, she was taking into account irrelevant and “very prejudicial evidence.” Although PW3 had said he would not rule out sodomy as the reason for the complainant’s anal pains, learned counsel urged, the trial Magistrate had misapprehended that testimony, by stating: “this then left us with one reason for the pain experienced, namely sodomy.” On this point, no doubt, learned counsel **Mrs. Ng’ang’a** is, in my opinion, on firm grounds of reasoning – even though that by itself does not dispose of the whole question brought before this Court. There was no positive medical evidence of sodomy as such; except that in terms of medical *possibilities*, a history of sodomy could have explained the persistent anal pains experienced by the complainant.

Mrs. Ng’ang’a contended that the trial Court had based its judgement on “pure imagination”, as there

was no basis upon which the learned Magistrate could state that she had no reason to doubt the prosecution evidence. Counsel urged that, in the absence of the investigating officer, there was no evidence showing that the matter had been investigated. She urged that proof-beyond-reasonable-doubt had not been achieved, and consequently, the conviction should be set aside.

Mrs. Ng'ang'a also contested the term of imprisonment imposed by the trial Court. She submitted that the learned Magistrate had been led by a prejudice: to punish "those who sodomise young persons." The sentence awarded, counsel urged, was excessively harsh and should, on that account, be set aside.

By contrast, learned State Counsel **Ms. Gateru** contested the appeal, and urged that the conviction be upheld, and the sentence affirmed.

Ms. Gateru ascribed justification to the reliance by the trial Court on the evidence of a single witness, the complainant, a minor of 14 years-of-age, without corroboration, as regards the commission against him of the offence of sodomy, on the material date. In the words of learned counsel, "The nature of the offence committed is secret. There are unlikely to be any witnesses for such an offence; and, even on the evidence of a single identifying witness, the Court may convict if convinced of the truthfulness of the testimony." Counsel urged that the learned Magistrate had observed the *demeanour* of the complainant as a witness, and was satisfied that the complainant was saying the truth.

Learned State Counsel submitted that the complainant's testimony was very reliable, and left no doubts in the mind of the trial Court, that, indeed, PW1 had been sodomised by the appellant. The offence had taken place in broad daylight, at about 5.00 p.m., and the complainant very well recognised the appellant who was a neighbour and who the complainant had known for several years. Thus, counsel urged, there could be no question of mistaken identity, in the naming of the appellant as the culprit. Counsel recounted the several preparatory motions which led to the unnatural sex-act which is the basis of the charge, and urged that the account on these by the complainant, as the doing of the appellant, fully identified the culprit, and proved that he it was, who committed the offence charged.

Ms. Gateru submitted that the doctor's testimony (PW3) in no way detracted from the evidence assembled in proof of the offence charged. The doctor had only expressed an opinion, in his professional capacity; and in this scenario it was clear that several factors could have caused the complainant's anal pains, one of them being sodomy.

Learned State Counsel urged that the conviction of the appellant had not been based on mere suspicion; for the evidence showed the appellant to be the culprit; and as the appellant had admitted that no grudge existed between him and the family of the complainant, it followed that the case brought against him was by no means a frame-up prosecution of him.

On sentence, **Ms. Gateru** recalled the provisions of the Penal Code (Cap.63), s.162(a) as read with the proviso to that section; it provides for a maximum prison term of 21 years. Counsel urged that the term of ten years' imprisonment imposed by the trial Court was, indeed, considerably lenient.

In the course of reviewing the evidence, the trial-Court judgement, and the submissions of counsel, I have taken note of certain emerging issues, a resolution to which would well express the findings and Judgement of this Court, on the matters which are the subject of appeal. These may be set out as follows: (i) the role of the complainant (PW1), a minor aged 14 years, was critical in the trial process; (ii) PW1 was an unsworn witness; (iii) what weight would ordinarily be attached to the evidence of such a witness? (iv) on what account was PW1 not sworn as a witness? (v) how is it that PW1 was cross-examined, even though he had not been sworn? (vi) what were the trial Magistrate's personal observations on the truthfulness of the witnesses? (vii) was there overwhelming proof, that the appellant had committed the offence of sodomy, as charged? If so, what were the critical components of such evidence? (viii) can this matter be resolved merely on the basis of the fact that PW1 was an unsworn witness, as set against the fact that the appellant was a sworn witness? (ix) does the medical evidence enhance, or detract from the prosecution evidence?

(a) Proving Sodomy: The Uncorroborated Testimony of an infant

The general law on the kind of evidence that was given by the complainant, is as stated in **Sir Rupert Cross and Nancy Wilkins, *An Outline of the Law of Evidence*** 4th ed. (London: Butterworths, 1975), pp. 93 – 94:

“In criminal cases a warning of the danger of convicting on uncorroborated evidence must be given when the evidence is that of an accomplice, or the sworn evidence of a child....”

It must follow that the unsworn evidence of a child, at a general level, would carry still less weight; and hence such a warning by the trial Court would normally be mandatory.

What form should such a self-warning by the Court take? Must the Magistrate preface the caution with the words: “I warn myself”? Or is it enough to make reference to the inherent shortfall of a child’s testimony? I would hold that a somewhat ritualistic refrain, “I hereby warn myself” is not necessarily the antidote to the contemplated mischief in the trial process. It will, in my opinion, suffice if the judicial officer, in any clear, personal mode, alludes to the *risks* involved in taking the evidence of an unsworn child-witness.

I have re-read the trial Court’s judgement to see if such a caution was administered; and I have noted that the learned Magistrate thus recorded:

“Even if the complainant was all alone on the material date, I found his evidence although unsworn, very clear, very consistent and unchallenged by [the] defence on cross-examination, and I had no reason to doubt the same.”

After looking at the foregoing passage, in the context of the judgement as a whole, I will hold it to constitute a sufficient self-warning by the trial Magistrate, when she relied on the testimony of the unsworn child-witness (PW1). The trial Court was, thus, in my opinion, in perfect compliance with the general test.

I have also taken into account the provision of s.124 of the Evidence Act (Cap.80), which deals with *corroboration* in criminal cases. This section makes *express provisions* regarding *sexual offences*. It thus states:

“Notwithstanding the provisions of section 19 of the Oaths and Statutory Declarations Act [Cap.15], where the evidence of [an] alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him.

Provided that where in a criminal case involving a sexual offence the only evidence is that of a child of tender years who is the alleged victim of the offence, the Court shall receive the evidence of the child and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the Court is satisfied that the child is telling the truth.”

The foregoing provision would have justified the learned Magistrate proceeding as she did, by simply *assessing the veracity of the complainant as a witness*. By dint of the provisions of s.124 of the Evidence Act, it was *not necessary* for the learned Magistrate to proceed under s.19 of the Oaths and Statutory Declarations Act (Cap.15), by subjecting the complainant to a *voire dire* examination and thereafter having the complainant give sworn or unsworn testimony.

On account of the foregoing considerations of law, I would not accept the contention by learned counsel for the appellant, that the trial Court ought to have elected between the sworn evidence of the appellant and the unsworn evidence of the complainant, merely on the criterion of “sworn” or “unsworn”.

(b) What Weight is to be attached to the Evidence of the Complainant?

From the foregoing analysis it follows that, subject to the established rule of law that in all criminal cases the prosecution must establish their case beyond-reasonable-doubt (*Woolmington v. Director of Public Prosecutions* [1935] A.C. 462), the weight of evidence to be attached to the complainant's testimony depended on the Court's assessment of his *truthfulness*, and the nature and quality of all the other evidence placed before the Court. Now on this question, the learned Magistrate was abundantly clear in her conviction that the complainant was a truthful witness, and that his testimony remained entirely unshaken by the cross-examination to which learned counsel for the appellant subjected him.

In that regard I would express agreement with the learned Magistrate. The complainant gave straightforward, clear and unsullied testimony on his encounter with an armed appellant, someone he knew well, and during broad daylight on the material date; and he described in minute detail the appellant's every act of preparation before sodomising him, and then signalling to him that he must not disclose the criminal invasion on the complainant's person and that he would so disclose only on the pain of dire physical punishment. That cannot, I would hold, be an account emanating from just a figment of the imagination. Although not corroborating the complainant's testimony regarding the commission of the offence itself, PW2's testimony, which I believe could not be questioned on grounds of veracity, does provide the proper context in which the offence was reported to the law-enforcement authorities, and in which appropriate follow-ups did take place. I find the testimony of PW2 to have been quite consistent with that of the complainant. I am not, besides, in agreement with learned counsel for the appellant, that there was anything depreciatory in the testimony of PW3, regarding the medical tests on the complainant which was conducted at Kiambu District Hospital. Owing to the passage of time, it was no longer possible to detect in the complainant's body-fluids any clear manifestations of the sodomy which was the subject of the charge. But the medical doctor (PW3) could not rule out the *possibility* that the bowel-pains which the complainant experienced were due to sodomy.

I would say, in conclusion, that proof of the charge against the appellant had been delicately but safely conducted, and the most reliable evidence had been placed before the Court that the appellant, on 12th January, 2005 indeed had carnal knowledge of the complainant against the order of nature, and he thus committed an offence contrary to s.162(a) of the Penal Code (Cap.63).

It is already stated in this judgement that the appellant once found guilty of the offence charged, could lawfully have been sentenced to a 21-year term of imprisonment. This was a matter in the learned Magistrate's discretion, and it is not part of this Court's responsibility, in the absence of good cause, to intervene upon the exercise of such discretion where it is judicially conducted. Although learned counsel for the appellant urged that the sentence awarded by the trial Court was "manifestly excessive," this claim, I believe, was only a bare one; it was too general to be useful in inclining this Court in any particular direction.

I would hold that the sentence of ten years' imprisonment which was awarded by the trial Court, was entirely fair and justified.

(c) How is it that the Complainant was cross-examined even though he had not been sworn?

In principle, being sworn or affirmed as a witness is the essential condition for being cross-examined. The oath or affirmation operates like an initial self-submission to any cross-examination conducted in accordance with the law. However, in the case of the complainant herein, since he was the sole witness upon whom the prosecution was relying, as regards the commission of the offence charged (and in this regard s.124 of the Evidence Act (Cap.80) provided validity for his testimony as an unsworn witness), it would have been a proper exercise of discretion by the learned Magistrate to have him answer certain questions from the appellant's side.

My findings have been set out above; and on that basis I hereby dismiss the appellant's appeal, uphold the conviction recorded by the trial Court, and affirm the sentence of ten years' imprisonment awarded by the trial Court.

Orders accordingly.

DATED and DELIVERED at Nairobi this 18th day of July, 2007.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Tabitha Wanjiku

For the Appellant: Mrs. R.W. Ng'ang'a

For the Respondent: Ms. Gateru