David v Republic/Odpp (Criminal Revision E017 of 2023)
[2024] KEHC 1292 (KLR) (5 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1292 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

CRIMINAL REVISION E017 OF 2023

TA ODERA, J

FEBRUARY 5, 2024

BETWEEN

FELIX HAMISI DAVID .... APPLICANT

AND

REPUBLIC/ODPP .... RESPONDENT

RULING

1. The Applicant, Felix Hamisi David, filed a Notice of Motion dated 22.5.2023 through the firm of Suyianka Lempaa & Co. Advocates, seeking the following orders:
    1. Spent.
    2. That this Honourable Court be pleased to call for and examine the record of the proceedings in respect to the Senior Principal Magistrate Court Criminal Case No E743 of 2023 at Ogembo Law Courts for purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of the proceedings therein.
    3. That this Honourable Court be pleased to revise the orders issued and the custodial sentence handed down to the Applicant herein on 11th May, 2023 by the Senior Principal Magistrate Court at Ogembo Law Courts in Criminal Case No E743 of 2023 thus quash the conviction therein and set aside the sentence imposed on the Applicant herein.
    4. That costs of this application be provided for.
2. The grounds on the face of the application are that the Applicant was charged with 2 counts of attempted suicide and escape from lawful custody to which he pleaded guilty. He was sentenced to serve 5 years on count 1 and 2 years on count 2. The trial court ordered that the 2 counts should run consecutively. The trial court is alleged to have infringed upon the Applicant's rights because it failed to inform him of his right to choose and be represented by an advocate, failed to inform him of his right

to be assigned an advocate by the State if substantial injustice would be occasioned on him, failed to call for a mental assessment report and probation report to confirm the mental status and social life of the applicant. The foregoing prejudiced the Applicant and the proceedings leading to the conviction and sentence were therefore a nullity. The entire trial was at best a mistrial and the conviction should be quashed and the sentence set aside. The sentence was harsh and, in any event, the sentence ought to have run concurrently.

3. The Application was supported by an affidavit sworn by the Applicant on 22.5.2023. He deponed that he had been charged with 2 offences at the Senior Principal Magistrate's Court at Ogembo. The offences were attempted suicide contrary to Section 226 as read with Section 36 of the *Penal Code* and the escaping from lawful custody contrary to Section 123 as read with Section 36 of the *Penal Code*. He deponed that the Trial Court recorded that he had pleaded guilty to the 2 counts and was sentenced to serve 5 years for count 1 and 2 years for count 2 and further, that the 2 counts run consecutively. He deponed that the Trial Court failed to inform him of his right to choose to be represented by an advocate; failed to inform him of his right to be assigned an advocate at the State's expense if substantial justice would be occasioned to him. He deponed that failure to inform him of his rights rendered the trial unfair. In support of this, he attached and cited the case of HC Migori Cr. Appeal No E040 of 2021 and HC Migori Cr. Appeal No 42 of 2019. He deponed that the Trial Court had failed to call for his mental assessment and the probation report to confirm his mental status and enquire on his social life before sentencing. He urged the Court to quash the conviction and set aside the sentence.

Submissions

4. Mr. Maroko for the Applicant submitted that Section 36 of the *Penal Code* prescribes a sentence of 2 years for a misdemeanour. The offences that the Applicant was charged with were misdemeanours under Sections 123 and 226 of the *Penal Code* and thus fell under Section 36 of the *Penal Code*. The sentences meted out were therefore contrary to the law and contrary to paragraph 22.12 of the *Sentencing Policy Guidelines*. In addition, the trial court did not seek to establish the mental status of the Applicant and there was need to avail and rely on a report from the relevant authorities to assist the court in arriving at a just sentence. The Applicant was not informed of his rights under Articles 50(2)(g) and (h) of the *Constitution* hence a violation of right to a fair trial. He also prayed that the submissions apply to E018/2023.

5. Mr. Ochengo for the Respondent submitted that the Applicant was fit to be sentenced. They were not opposed to the recommendations in the 2 reports.

Determination

6. I have considered the Application and the Submissions from both parties.

7. The crux of the Applicant's Application is that he was not informed of his right to legal representation which violated his right to a fair trial. He also submitted that the sentence meted out was harsh in the circumstances in view of the fact that offences he was charged with were misdemeanours liable to a punishment of a term not exceeding 2 years or to a fine or both.

8. Articles 50(2)(g) and (h) of the *Constitution* provide thus:

   (2) Every accused person has the right to a fair trial, which includes the right-

      (g) to choose, and be represented by an advocate, and to be informed of this right promptly;

(h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result and to be informed of this right promptly.

9. At what point is the court required to inform an accused person of his right to legal representation? According to the Article 50(2) of the *Constitution*, an accused person shall be informed of this right at the outset, hence the use of the word "promptly". *Black's Law Dictionary*, 9th Edition, defines prompt as "to incite, esp. to immediate action." "Immediate" is defined as "occurring without delay; instant".

10. I am persuaded by the decision in *Sheria Mtaani Na Shadrack Wambui v Office of the Chief Justice & another; Office of the Director of Public Prosecutions & another (Interested Parties)* [2021] eKLR. In that case, the Court referred to its decision in Migori High Court Criminal Appeal No 44 of 2019 *N.M.T. alias Aunty v R* where the Court held that an accused person must be informed of his right to legal representation so that s/he elects to have counsel present or proceed on their own. The Court further held that this must be captured in the court's record. In support of this, the Court relied on the decision of the South African Court in *S v Daniels & another* 1983(3) 275(A) at 299 G-HB where the Court held thus:

> " ...the accused's rights were explained to him, must appear from the record, in such a manner as, and with sufficient particularity, to enable a judgment to be made as to the adequacy of the explanation."

11. In the case of *Joseph Kiema Philip v Republic* (2019) eKLR, Nyakundi J. held thus:

> " ...it is paramount that the record of the trial court should demonstrate that the accused was informed of his right to legal representation and whether or not in the case that he cannot afford an advocate, one may be appointed at the expense of the state. It (the court record) must show that the court did take the profile of the accused person before the trial commenced..."

12. To add my voice to the foregoing, the reason the court calls for the trial court's record is to satisfy itself as to the correctness of the proceedings before the trial court. Only then can this Court determine whether the proceedings therein were proper or otherwise. Anything that is not recorded and not part of the proceedings will be presumed not to have occurred. Hence the reason why the trial court must record that it indeed informed the accused person of his/her rights.

13. I have perused the trial court file. The Applicant was not informed of his right to choose and be represented by an advocate during plea or at any other time. To that extent, I am in agreement with the Applicant that the proceedings were flawed.

14. What should happen then? I am persuaded by the decision in *Sheria Mtaani Na Shadrack Wambui v Office of the Chief Justice & another; Office of the Director of Public Prosecutions & another (Interested Parties)* [2021] eKLR. In that case, the Court referred to its decision in Migori High Court Criminal Appeal No 44 of 2019 *N.M.T. alias Aunty v R* where the Court held that there exists 2 schools of thought. One school states that the entire proceedings, judgment and sentence are vitiated and stand null and void ab initio. The second school of thought states that the proceedings are not necessarily vitiated unless substantial prejudice was occasioned to the accused person. The Court proceeded to hold that derogation of the rights of the accused persons renders the trial a nullity. I am in agreement with the same.

15. In the instant suit, the Applicant was arrested on the same day that the alleged offences were committed. In addition, he pleaded guilty. The present application was filed 11 days after his conviction and sentence. I find that there has been no substantial prejudice on the Applicant.

16. I will go by the edicts of the Court of Appeal in the case of *Muiruri v Republic* (2003) KLR, 552 where the court held that a retrial would be ordered where the interests of justice dictate as much and if it is unlikely to cause injustice to the applicant. In addition, in the case of *Diriye v Republic* (Criminal Appeal 115 of 2020) [2022] KECA 24 (KLR) (4 February 2022) (Judgment), the Court of Appeal held that whether a retrial would be ordered will depend on whether the proceedings were illegal or defective. In that case, the plea taking process was found to be flawed and the Court of Appeal ordered for a retrial. I am guided by the said decision and I hereby set aside the conviction and sentence of the Trial Court. The Applicant shall be produced before the Ogembo Law Courts for fresh plea-taking before another magistrate other than Hon. P.C. Biwott (SPM).

17. The Applicant has raised a question on his right to be provided with legal representation at the State's expense. What is the law as regards legal representation at the State's expense? In the case of *Republic v Karisa Chengo & 2 others* [2017] eKLR, the Supreme Court held that the right to legal representation at state expense is a fundamental ingredient of the right to a fair trial. However, the right only becomes available "if substantial injustice would otherwise result." The Supreme Court further relied on Section 36 of the *Legal Aid Act*, 2016 which stipulates persons entitled to legal aid and that the National Legal Aid Service will only provide legal aid where those factors are met. The Supreme Court further held:

(93) In recognizing the discretion exercisable by any Court in making the determination as to whether the accused person is entitled to legal aid, the Supreme Court of India held as follows:

> "The Court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the Court."

(94) In the above context, it is obvious to us that in criminal proceedings legal presentation is important. However, a distinction must always be drawn between the right to representation per se and the right to representation at State expense specifically. Inevitably, there will be instances in which legal representation at the expense of the State will not be accorded in criminal proceedings. Consequently, in view of the principles already expounded above, it is clear that with regard to criminal matters, in determining whether substantial injustice will be suffered, a Court ought to consider, in addition to the relevant provisions of the *Legal Aid Act*, various other factors which include:

(i) the seriousness of the offence;

(ii) the severity of the sentence;

(iii) the ability of the accused person to pay his own legal representation;

(iv) whether the accused is a minor;

(v) the literacy of the accused;

(vi) the complexity of the charge against the accused;

18. Therefore, the right to legal representation is not absolute and may be limited. In addition, the Court has the discretion to determine who is entitled to legal aid. Section 43 of the *Legal Aid Act* provides for

the duties of a Court where an accused person is unrepresented. Section 431A of the said Act provides for the factors the court should consider in determining that substantial injustice would occur. They are:

(a) the severity of the charge and sentence;

(b) the complexity of the case; and

(c) the capacity of the accused to defend themselves.

19. It therefore behooved the Applicant to establish that the Court exercised its discretion in a manner that was not judicious. Looking at the circumstances of the case, the Applicant was charged with misdemeanours punishable by a maximum of 2 years, the cases cannot be termed complex and the Applicant opted not to mitigate at all. I disagree with the Applicant that he has a right to be assigned an Advocate by the State.

20. The Applicant also failed to establish that the Trial Court exercised its discretion in a capricious manner.

21. The Applicant also raised an issue with the sentence handed down by the trial court. Sentencing is generally at the discretion of the trial court. I am persuaded by the decision in *Maingi & 5 others v Director of Public Prosecutions & another* (Petition E017 of 2021) [2022] KEHC 13118 (KLR) (17 May 2022) (Judgment), the Court held that "…In *S v Mchunu and another* (AR24/11) [2012] ZAKZPHC 6, Kwa Zulu Natal High Court held that:

> " It is trite law that the issue of resentencing is one which vests a discretion in the trial court. The trial court considers what a fair and appropriate sentence should be. The purpose behind a sentence was set out in *S v Scott-Crossley* 2008 (1) SACR 223 (SCA) at para 35:
>
> > 'Plainly any sentence imposed must have deterrent and retributive force. But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the only ones, or for that matter, even the over-riding ones.'

22. The Court further held that the purpose of sentencing is to ensure that the sentence imposed is commensurate and proportional to the offence committed.

23. However, this Court may interfere with the same where the circumstances so dictate. I am persuaded by the decision in *MM1 v Republic* [2022] eKLR, where the Court held as follows:

> The principles guiding interference with sentencing by the appellate Court were properly, in my view, set out in *S v Malgas* 2001 (1) SACR 469 (SCA) at para 12 where it was held that:
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> > " A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would usurp the sentencing discretion of the trial court… However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial

court is so marked that it can properly be described as “shocking”, “startling” or “disturbingly inappropriate.”

24. The Court further cited the case of *Shadrack Kipkoech Kogo v R*. Eldoret Criminal Appeal No 253 of 2003 where the Court of Appeal held that:

> “ Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also Sayeka v-R. (1989 KLR 306))

25. The Court also cited the Court of Appeal case of *Ogolla s/o Owuor v Republic* [1954] EACA 270, where it held that “The Court does not falter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”

26. Sections 362 and 364 of the Criminal Procedure Code provides for this Court’s power of revision and its powers on revision. The question that I am called upon to answer is whether the trial court acted upon wrong principles or overlooked some material factors.

27. I find that indeed the trial court acted on wrong principles and overlooked material factors. For one, the offences of attempted suicide and escaping lawful custody are misdemeanours. Section 36 of the *Penal Code* provides for the punishment for misdemeanours. It reads thus:

    36. General punishment for misdemeanours

    When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine, or with both.

28. The trial court sentenced the Applicant to serve 5 years for attempted suicide and 2 years for escaping from lawful custody. It follows that the sentence of 5 years was illegal in the circumstances as it is not informed by statute or precedent.

29. Secondly, the trial court ordered that the sentences should run consecutively. It is evident that the 2 offences occurred within the same transaction and the law is that such sentences should run concurrently.

30. Section 14 of the Criminal Procedure Code provides as follows:

    14. Sentences in cases of conviction of several offences at one trial

    (1) Subject to subsection [3], when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

    (2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, the send the offender for trial before a higher court.

    (3) Except in cases to which section 7[1] applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences-

(a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or

(b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.

(4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

31. Section 37 of the *Penal Code* provides as follows: -

37. Sentences when cumulative

Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof.

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under subparagraph [j] of paragraph [c] of subsection [1] of section 28 or any part thereof.

32. Recently, the Sentencing Guidelines (2023) were gazette. They provide as follows as regards consecutive and concurrent sentences:

The Principle of Totality and Concurrent Sentences

2.3.21 Notwithstanding the provisions under the Criminal Procedure Code and the *Penal Code* summarized in paragraph 2.3.4 above, the discretion to impose concurrent or consecutive sentences lies with the court. There are two elements to the concept of totality, and these apply as much to terms of imprisonment as they do to community service and fines.

2.3.22 Firstly, all courts when sentencing for more than one offence shall pass a total sentence which reflects all the offending behaviour in a way that is just and proportionate. This is whether the sentences are consecutive or concurrent and will usually mean that concurrent sentences will result in a longer sentence overall than a single sentence for one offence. However, the court must avoid 'double counting' where the additional offences are ancillary to the main offence e.g. robbery with a weapon- the presence of a weapon- an intrinsic part of the main offence of robbery- will likely aggravate the sentence on robbery and so the weapon offence should run concurrently and will not necessarily exceed the sentence for the robbery itself.

2.3.23 Secondly, it is rarely possible to arrive at a just and proportionate sentence by simply adding together single sentences for each offence. The court must address the offending behaviour as a whole together with the personal circumstances of the offender. Accordingly, the court must bear in mind the purposes of sentencing set out in paragraph 1.3.

2.3.24 A concurrent sentence will normally be appropriate where the offences arise out of the same incident or facts. E.g. poaching of several animals that vary in the degree of protection they are afforded under the law, a burglary 'spree' of several properties committed in one night; fraud and associated forgeries, or a dangerous driving incident where multiple victims are injured as a result of one offence of dangerous driving e.g., driving into a bus stop.

2.3.25 A consecutive sentence will normally be appropriate where the offences arise out of unrelated facts or incidents e.g., attempting to obstruct the course of justice in relation to an unrelated offence, where the defendant is convicted of dealing in drugs and also possession of a firearm upon arrest- the firearm offence is not in an intrinsic part of the drugs matter and requires separate recognition, or where the accused commits a theft on one occasion and an assault on a different victim on another occasion.

2.3.26 A consecutive sentence may also be appropriate where the offences are of the same or similar kind but where the court is of the view that a concurrent sentence will not sufficiently reflect the overall criminality e.g., assault of a police officer whilst trying to evade arrest for the original offence; assault of the same victim committed in the context of domestic violence or where there are sexual offences against the same victim.

2.3.27 Other considerations that apply include the following:

i. Where an accused person commits an additional offence during the operational period of a suspended sentence, and the court decides to activate the suspended sentence, the additional sentence should normally be consecutive as it will have arisen out of separate facts.

ii. Where consecutive sentences are to be passed, the court must add up the sentences together and then consider if the total is just and proportionate. A downward adjustment can then be made. See Part V and the GATS.

iii. Where sentencing multiple offenders who each have differing levels of culpability based on their role in the offence, any downward adjustment must be applied by the same proportion for each accused person so that the lead offender can be clearly identified.

iv. Where several offences are all imprisonable but none of the individual offences merit a custodial sentence, the custody threshold may be crossed by reason of multiple offending.

v. Indeterminate sentences should generally be ordered to run concurrently. In the absence of parole or similar mechanisms, it is not practicable at this stage to advise on the application of either determinate or indeterminate sentences imposed after the passage of a previous indeterminate sentence. The general principles of proportionality should be applied.

2.3.28 In the case of imprisonment in default of payment of a fine, the sentence cannot run concurrently with a previous sentence.

33. In the decision of the Court of Appeal in *Kipchumba v Republic* [2023] KECA 294 (KLR), the Court cited Section 14 of the *Criminal Procedure Code*. The Court further held that:

> " 16. From the cited law, the decision as to whether the sentence should run consecutively or concurrently is one bestowed on the trial court. We, however, point out that such a discretion being discretionary should be exercised based on the laid down principles. What then are the principles established within our jurisdiction that guide courts in making that decision? This court in the case of *Peter Mbugua Kabui v Republic* [2016] eKLR gave guidance as follows:
>
> > "As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/

> transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment."

In *John Waweru Njoka* (supra), this court pointed out that:

> "In law it lies in the discretion of the Court to order whether sentences should run concurrently or consecutively. Nevertheless, it is an established principle of law that where offences are committed in one transaction, the sentences ought to run concurrently even when laid in separate counts."

Lastly, in *Sawedi Mukasa s/o Abdalla Aligwaisa* [1946] 13 EACA 97, the defunct East African Court of Appeal stated as follows:

> "The practice in cases where a person has been charged with and convicted on two counts involving the same transaction, one for burglary or housebreaking and one for stealing has been to direct the sentences to run concurrently. In the present case the accused, a person with a long list of previous convictions, was found guilty on two counts, one for burglary and one for stealing, and sentenced to consecutive sentences of 7 years on each count. While we recognize that the accused is a hardened criminal deserving of a severe sentences, our view is that where, as here, both offences have been committed at the same time and in the same transaction, the practice referred to should be adhered to save in very exceptional circumstances, where, for instance, a person breaks and enters a house and commits the felony of rape therein where an order that the sentences on both counts might be directed to run consecutively. In this case we increase the sentence on the charge of burglary to 10 years, allow the sentence of theft of 7 years to stand, and direct that the sentences shall run concurrently.

17. The inherent theme in the authorities cited above is that for offences committed in the same transaction, the sentence ought to run concurrently save where there are exceptional circumstances to warrant a directive that the sentence should run consecutively. In the present case, the appellant was arrested on allegation of defilement. Upon being arrested, he was frisked and two rolls of bhang recovered in his pocket. In our view, had the appellant not been arrested for the offence in count 1, the offence in count 2 could not have been detected. The two offences can therefore be said to have arisen from the same transaction as one offence led to the discovery of the other. In that case therefore, the learned magistrate erred in ordering the sentences to run consecutively. The concession to the appeal on this ground by the respondent's counsel was therefore the correct and just thing to do. In the circumstances, we accept the appellant's invitation to intervene, which we hereby do, and order that the sentences do run concurrently."

34. On the matter of mental assessment, Section 11 of the *Penal Code* provides that every person is presumed to be of sound mind until the contrary is proved. Section 162 of the Criminal Procedure Code provides that a court should inquire into the fact of soundness of mind where it has reason to believe that the accused is of unsound mind.

35. That said, I am persuaded by the decision in *Republic v Lewis* (Criminal Case E077 of 2021) [2021] KEHC 272 (KLR) (Crim) (1 November 2021) (Ruling) where the Court explored the requirement to ascertain an accused person's mental state and held as follows: "…39. There are a number of ways in which a suspect's particular and individual mental state may be relevant to whether a prosecutor can prove that they had the mens rea for the offence alleged. This can range from a diagnosed mental health condition or disorder, to evidence that a suspect (without proof of a condition) did not, for instance, appreciate or turn their mind to a risk which was present in a case."

36. Similarly, in the present case, the Applicant is alleged to have escaped lawful custody and jumped into a swollen River Gucha with intention to kill himself by drowning. Clearly, the Applicant exposed himself to serious risk as the chances of death from such an act are very real. I find and hold that out of abundance of caution, the Trial Court ought to have acted cautiously and enquired into the Applicant's mental condition in light of his actions.

37. The Applicant also faulted the Trial Court for not calling for a pre-sentence report. The wording on this is permissive. In the Muruatetu Case, the Supreme Court noted as much in par.43 of its Judgment. I find that while it is good practice to call for the said report, failure to call for the report does not in itself render the proceedings a nullity.

38. In conclusion, I find that the Application dated 22.5.2023 is partially merited and I allow it in the following terms:

    1. The Applicant's rights to a fair trial were violated as he was not informed of his right to elect to have an advocate represent him.

    2. The sentence meted out by the Trial Court was illegal and harsh in view of the circumstances.

    3. The Trial court ought to have inquired into the Applicant's mental state in light of the offences he was charged with.

    4. I hereby set aside the conviction and sentence of the Trial Court in Ogembo SPMCCr. E743 of 2023.

    5. The Applicant shall be produced before the Etago Law Courts for fresh plea-taking before another magistrate other than Hon. P.C. Biwott (SPM). Mention on 7.2.24.

    6. Each party shall bear its costs.

DATED, DELIVERED AND SIGNED AT KISII THIS 5TH DAY OF FEBRUARY 2024.

TERESA ODERA

JUDGE

In the presence of:

Mr. Maroko for the Applicant absent.

Applicant present

Mr. Koima for the Respondent.

Oigo -Court Assistant