NMM v Republic (Criminal Appeal E074 of 2021)
[2023] KEHC 17540 (KLR) (18 May 2023) (Judgment)

Neutral citation: [2023] KEHC 17540 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CRIMINAL APPEAL E074 OF 2021

A. ONG'INJO, J

MAY 18, 2023

BETWEEN

NMM ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the judgment of Hon. C. A. Ogweno (RM) delivered on 12th August 2021 in Mombasa S. O. Case No. 17 of 2019, Republic v NMM)

JUDGMENT

Background

1. The Appellant, NMM was charged with the offence of defilement contrary to Section 8(1) (2) of the *Sexual Offences Act* No. 3 of 2006.

2. Particulars were that NMM on the 8th day of February 2019 in Likoni Sub-County within Mombasa County unlawfully and intentionally caused his penis to penetrate the vagina of KM a child aged 9 years.

Prosecution case

3. PW1, KM the complainant underwent voire dire examination and court established that she seemed not to appreciate the purpose or importance of an oath although she understood what the truth entailed. She was therefore allowed to give an unsworn testimony. She informed court that she was in class 3 at a school she did not know and that she stayed with her mother but did not know her name. PW1 testified that she was playing with body oil containers and that she was alone in the morning when Baba Mercy called her (pointing at the accused). That he pulled her hands and asked to send her to the shop then pulled her to his house and covered her mouth and nose as he held her by the neck.

4. PW1 informed court that he then did 'tabia mbaya' to her. She stated that he then inserted his mdudu in her vagina and made her to lie on the cement floor. That she was wearing a biker, tights and a shirt which he removed and when he was done, he chased her away saying 'toka, toka nje'. PW1 stated that she informed Mama M, the accused's wife, but she did nothing about it. That she also told Nzadze Mangale where they went to Inuka Police Station and later to hospital and back to the police station with N, SM and baba.

5. PW1 testified that no one else was in the house when she was defiled and that he closed the door as she tried to run away. PW1 informed court that the accused was their neighbour and she knew him. She also stated that two other people had defiled her before and one was younger aged 10 years old while the other was Baba M. That she tried to scream but he covered her mouth and there were no people around. PW1 stated the she reported the 10 years old to the police and he was arrested together with the accused but was released. That she told the doctor about who had defiled her.

6. PW2, SM, stated that he is the husband to the complainant's sister, N. He stated that on 5.2.2019, he went to work then returned in the evening and the next day the complainant cried that she wanted to go with M who was PW2's younger sister and they went to the house of PW2's mother. That after 3 days, PW2 was informed that the complainant had a cold and later that she had been taken ill. PW2 testified that they took her to a chemist/dispensary where she was examined and PW2 was later informed that the complainant had been defiled. PW2 stated that the following day, he was called by the doctor and that there was a boy who had been identified by the complainant to have defiled her. That the complainant also identified one Baba Mercy as another person who had defiled her.

7. PW2 stated that he learnt that the accused who was his stepfather (pointing at him) had taken himself to Inuka Police Station. He informed court that he went to the police station and recorded his statement. That PW2 took the complainant to Likoni sub-county hospital where he was given medical reports – PRC form dated 22.2.2019 (PMFI-1a) which he took to the police station. PW2 pointed out that the complainant said that she was called by Baba M while she was playing and that he covered her eyes and held her neck, removed her panty and defiled her. That the accused herein was arrested when he went to the police station while the other boy was arrested and taken to Tononoka Law Courts but discharged because he had not attained 10 years. He stated that a P3 Form was filled in Likoni on 12.3.2019 (PMFI-1b) and that the PRC form was filled a day after the child was seen at the chemist but he could not tell when the complainant was defiled.

8. PW3, MNM, stated that the complainant is his daughter and that she is 10 years old. That on 21.2.2019, he was called by M at around 7.30 pm that the complainant was at the hospital. He stated that he was called to go to the police station which he did. That he went and found the complainant and her brother PW2 at Likoni District Hospital where the doctor examined the child and said that she had been defiled. He testified that the complainant informed him that she had been defiled in the accused's home. That the accused sent his daughter to the shop and defiled the complainant. PW3 stated that he saw the accused at the police station but was unknown to him before.

9. PW4, Stephen Kalai, a Clinical Officer (Reproductive Health) at Likoni Sub-County Hospital testified that on 22.2.2019 at around 2.20 pm, the complainant under Ref. No. 2119/2019 was presented to the facility and was referred to him after treatment as per the treatment notes (PMFI-1c). That she had a history of defilement and identified one of the defilers as her stepfather. Upon examination, PW4 stated that the hymen was broken with an old scar and she had pus discharge oozing from the vagina. That he took a hi-vaginal swab and sent her to the laboratory for tests where VDRL and Hepatitis B were negative but there were numerous epithelial and pus cells. That a urinalysis test revealed blood stains and several pus cells indicative of a vaginal infection. PW4 stated to court that treatment was

administered and he produced the PRC Form (PExh-1a), treatment notes (PExh-1c) and laboratory request form (PExh-1d). That PW4 referred them back to Inuka Police Station and on 15.3.2019, the victim went back with a P3 Form which he filled. PW4 pointed out to court that the injuries were classified as harm probably caused by a blunt object. He produced the P3 form as PExh-1b.

10. PW5, No. 107481, PC Miriam Mumbua Kavita previously at Inuka Police Station stated that on 23.2.2019 at around noon, she was at the station when the complainant presented and OB number to her and she established that it was a defilement case. That they gave PW5 a treatment book from Likoni District Hospital where the child was said to have been defiled. PW5 testified that she accompanied the child and the accused to the office and the child's father and other relatives were present. That she interrogated the complainant who said that on 8.2.2019 in the morning while she was playing outside, the accused called her and sent her to the shop. That he pulled her into his house, pulled up her clothes, lay her on the floor and inserted his penis into her vagina.

11. PW5 further testified that the complainant's sister is married to the accused's stepson and that the accused later called the stepson that the complainant was unwell. That the child's mother gave her medication and that the child's sister later on while bathing the child noticed some abnormally in the child's vagina and the child was taken to hospital. PW5 stated that the doctor referred the relatives to the police station and PW5 issued the child with a P3 form. That upon further interrogation, the child said she had previously been defiled by a 10-year-old child. She informed court that the offender was also there and that she opened a protection and care file for the child offender at Tononoka Children's Court. PW5 stated that the complainant was 9 years old from the information in her notification of birth. That she also had a copy of the clinic card showing the child was born on 22.2.2010 (PMFI-2) and that the mother went back home with the original. PW5 did not visit the scene, that the accused and the victim were unknown to her before, that she did not establish any bad blood between the two, and that the child identified both the accused and the 10-year-old child who had defiled her before.

12. PW6, No. 106294 PC Dushman Abdulrahman, the Investigating Officer at Inuka Police Station stated that she took over the file from PC Miriam Mumbua. She stated that she had a copy of the clinic card from the complainant which was issued at Kwale Mkongani Dispensary (Exh P-2). PW6 testified that the child was born on 22.2.2010 and Exh P-2 was duly certified and signed on 19.3.2021 as a true copy of the original issued at the facility by the medical superintendent. She produced it as PExh-2.

13. PW6 informed court that she took the accused person to Likoni Sub-County Hospital where he was examined by Dr. Stephen Kalai who had also examined the victim and filled the PRC and P3 forms. That the vaginal swab from the victim was not retained and a DNA report could therefore not be conducted. PW6 presented the doctor's response dated 16.4.2021 and that the accused was not subjected to a HIV test.

Defence Case

14. The accused, NMM, was placed on his defence and he gave unsworn statement where he stated that on 20.11.2015, he met his wife who had lost her husband in 2008 and that he had also lost his 1st wife in 2013. That she had 8 children while the accused had 6 children and that his children were schooling in the village, so he took 2 of her children to school with them. He testified that his wife did not want to go to the village while he wanted her to go take care of the children. The accused stated that on 10.2.2017, they disagreed and did not speak for 3 days but on the 4th date, she asked for forgiveness and they reconciled but she still declined to go to the village. That on 20.8.2018, the accused met another woman Sidi Iddi whom he married and took her home on 18.9.2017 but he did not know the woman had an affair with MS. That the said M went to his home and expressed his displeasure and that the

accused decided to severe the relationship with S and continued to live with M's mother. That the accused decided to look for another woman to marry and stay with his kids in the village.

15. The accused further stated that on 10.2.2017, he met another woman called S in the village and on 22.11.2018, the accused and the said S went to the village but trouble ensued thereafter between him and S and on 7.1.2019, they went back to the village. The accused testified that when they returned to Mombasa, S went to M's place and on 18.1.2019, M asked the accused for money but he did not have and on 25.1.2019, M returned with his wife and in-law who is the victim herein.

16. The accused testified that M left the child there and travelled to the village for a burial and he returned on 1.2.2019 and took the child. That on 12.2.2019, the accused went to the village to prepare for the wedding with S and he returned to Mombasa on 15.2.2019. He informed court that on 16.2.2019, S went to M's place and when she returned, she had changed and said that all shall end. That on 22.2.2019, M went to the accused's house at 7.30 am and alleged the accused had defiled the child and the accused asked that they go to the police station. The accused stated that the men with M wanted them to settle the matter at home but when he insisted that they go to the police, they agreed. That the child was taken to the police station at around 11 am and that he had no associations with the child. He stated that he was taken to the hospital and on 23.2.2019 he went back to the police station and that is when he was booked and arrested. That the charges against him were false and that DNA test and finger dusting were not conducted.

17. Based on the evidence by the prosecution and the appellant's unsworn statement, the trial magistrate found the appellant guilty and he was convicted and sentenced to serve life imprisonment.

18. The appellant was aggrieved by the decision of the trial court and he preferred the appeal herein on the following amended grounds: -

    1. That the trial court failed in law and fact by not seeing that the evidence that was adduced by the prosecution was insufficient to sustain a conviction.

    2. That the trial court erred in both law and fact when it failed to observe that the prosecution evidence was marred with material contradictions.

    3. That the trial court erred in fact by failing to see that the conduct of the complainant was incompatible with that of a minor who had been defiled.

    4. That the trial court erred in both law and fact when it failed to see that the matter in question was a frame-up resulting from disharmony with the complainant's mother.

    5. That the trial magistrate having convicted me proceeded to impose a sentence that did not take into consideration of my mitigation submissions.

19. This appeal herein was canvassed by way of written submissions.

Appellant's Submissions

20. The Appellant pointed out that PW1 was categorical in her testimony that she told the Appellant's wife who did nothing about the incident and that she later told NM with whom she went to Inuka Police Station. That the Appellant is perturbed by how the matter found its way to the police station after a period of 10 days and that the complainant never alluded to any specific date when the alleged incident took place posing the question how the date of 8th February 2019 found its way to the charge sheet.

21. The Appellant further submits that the complainant only identified him at the police station when he had gone for fact finding in respect to the allegations that were made against him. He stated that there

was another allegation that the minor victim had been defiled by a 10-year-old boy which incident was also reported on the same day, which matter was referred to Tononoka Children's Court. The Appellant cited the case of Faud Dumla Mohammed Cr. App No. 210 of 2003 which held that in sexual offences, sometimes complainants tell lies for no reason at all. The Appellant in urging the court to find that he was being framed for an offence he did not commit also relied on the holding in Peter v Sunday Post (1958) EA 424 where it was held that an appellate court has jurisdiction to review the evidence to determine whether the conclusion originally reached upon that evidence should stand. Also, in the case of Dhalay Singh v Rep. Cr. App. No. 10 of 1997 where the case has not been proved beyond reasonable doubt, an accused is entitled to an acquittal.

22. The Appellant in the submissions stated that the manner in which the complainant conducted herself was also very suspect, particularly how she kept on performing her chores undisturbed before she raised the alarm over the issue. The Appellant relied on the decision in David Jairo & Another v Rep. Cr. App. No. 515 of 2007 on this issue.

23. Submissions by the Appellant indicate that the complainant gave unsworn evidence because she lacked the capacity to testify on oath and her evidence had to be corroborated to sustain conviction. That it is unclear what informed the decision of the trial magistrate to place much reliance on the sole evidence of the complainant despite the questionable demeanor during her evidence. The Appellant cited the cases of Jon Wardon Wagner v Rep & 2 Others [2011], Soki v Rep. [2004] KLR and Twehangane Alfred v UG Cr. App No. 139 of 2001 [2003] UG CA 6.

24. The Appellant submitted on the underlying disharmony that the marriage between him and the complainant's mother had tribulations of infidelity on the part of his wife, with occasions where she went to live with her parents for some time. That the tribulations got to the area chief after parents failed to resolve them but the chief referred the matter back to the assistant chief with directions that he engages the village elder to resolve the same and report back to him. He stated that the disharmony escalated and his wife and children conspired to falsely incriminate him to pave way for her evil conduct.

25. The Appellant averred that he briefly explained in the trial court the genesis of the matter and that there was evidence by the prosecution witnesses how he had interacted disharmoniously with them. That the learned trial magistrate failed to evaluate his defence particularly against the questionable evidence that was tabled by the prosecution witnesses.

26. On the sentence, the Appellant submitted that he told the trial court in his defence testimony that he had six children whose mother had passed on and who were living in destitution in his absence. Further, that the under Section 8 (2) of the *Sexual Offences Act* under which the Appellant was sentenced contains the word shall which connotes a minimum mandatory provision which has since evolved and is seen as an encroachment on the independence of the judiciary and an infringement on the rights of the accused.

27. That the position above was clarified in the Muruatetu Case and that in the High Court in Machakos, G. V. Odunga, J. in Philip Mueke Maingi & 5 Others v Rep., Const. Pet. No. E017 of 2021 where it was held that legislation in existence before promulgation of *the Constitution* of Kenya 2010 should be aligned. The Appellant also cited the case of Yusuf Shiunz Kunani v Rep. Const. Pet. No. 24 of 2019 where the petitioner was afforded lesser years in prison of 15 years. The Appellant therefore urged the court of record to borrow from the precedence and adjust his sentence to one that will allow him to rejoin his loved ones soon. The Appellant therefore prays that this appeal succeeds, conviction quashed and sentence set aside.

Respondent's Submissions

28. The Respondent submitted that the evidence tendered by the prosecution's case met the required threshold of proof beyond reasonable doubt and that all the ingredients of the offence that were proved by the evidence included penetration, age of the victim and identity of the perpetrator. On penetration, the Respondent stated that according to the evidence of PW1, the Appellant did 'tabia mbaya' to her and she pointed to her private parts. That it is trite law that the evidence of the victim through corroboration by the medical evidence needed no further corroboration. Section 124 of the *Evidence Act* was cited and it provides that if the court is satisfied that a victim of sexual offence is truthful, such evidence does not need corroboration. The Respondent asserted that the trial court observed the demeanor of the victim as indicated on page 47 of the record and it found the victim as being truthful since the child was 9 years old and had been consistent in what she told PW2, PW3, PW4, PW5 and in court during her evidence in chief which was equally unshaken during cross examination.

29. On medical evidence, the Respondent submitted that the victim sought treatment on 22.02.2019 about 14 days after the incident as it had occurred on 08.02.2019. That the observation was that the victim's hymen was broken with an old scar and she had pus discharge oozing from her vagina. The Respondent stated that further tests revealed the presence of epithelial, blood stains and pus cells indicative of a vaginal infection. That the clinical officer produced the PRC form, treatment notes, laboratory request form filled on 22.2.2019 and the P3 form which was filled later based on the findings of the P3 form.

30. The Respondent submitted on the age of the complainant that it was sufficiently proved by production of a certified clinic card by PW6 on page 25 of the Record of Appeal. That P Exb-2 showed that the complainant was born on 22.02.2010, therefore, 8 years 11 months and 17 days old at the time of the offence which was rounded up to 9 years old on the charge sheet.

31. According to the Respondent, there was no doubt that the Appellant was properly identified as he was the complainant's stepfather and that he lived in the same house with the complainant who referred to him as Baba M. The Respondent further pointed out that the offence occurred during morning hours and thus providing proper conditions for identification/recognition. It also brought to the attention of the court that the Appellant was not the first person to ever defile her as she had also been defiled by another boy who was 10 years old but could not be charged since he is incapable of canal knowledge as per the law.

32. The Respondent submitted that Section 8 (2) of the *Sexual Offences Act* provides for life imprisonment. That the trial court sentenced the Appellant to life imprisonment which is a lawful sentence. That the court found no mitigating factors to warrant a lenient sentence since the victim was only 9 years old and the appellant owed her protection not harm. Most notably, that the Appellant was not remorseful and did not offer any mitigation for consideration by the court during sentencing other than deny committing the offence. That the lower court found the circumstances aggravating rather than mitigating and properly exercised its discretion in sentencing. The Respondent therefore urged the court to dismiss the appeal and uphold both conviction and sentence.

Analysis and Determination

33. This being the first appellate court, it is guided by the principles in David Njuguna Wairimu v Republic [2010] eKLR where the court of appeal held: -

> " The duty of the first appellate court is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without

overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions."

34. After considering the grounds of appeal, records of the trial court and submissions, the issues for determination are as follows: -

i. Whether the evidence adduced by the prosecution was insufficient to sustain a conviction

ii. Whether the prosecution evidence was marred with material contradictions

iii. Whether the conduct of the complainant was incompatible with that of a minor who had been defiled

iv. Whether the matter in question was a frame-up resulting from disharmony with the complainant's mother

v. Whether the appellant's mitigation was considered

Whether the evidence that was adduced by the prosecution was insufficient to sustain a conviction

35. To sustain a conviction in a charge of defilement, the prosecution is required to prove elements of age of the complainant, penetration and identification of the assailant beyond all reasonable doubt. This position was held in the case of Charles Wamukoya Karani v Republic, Criminal Appeal No. 72 of 2013 where it was held: -

> " The critical ingredients forming the offence of defilement are; age of the complainant, proof of penetration and positive identification of the assailant."

36. Additionally, Section 8 (1) and (2) of the *Sexual Offences Act* provide as follows: -

1. A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

2. A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

37. On the age of the complainant, PW6 No. 106294 PC Dushman Abdulrahman, the Investigating Officer at Inuka Police Station testified that she had a copy of the clinic card for the complainant which was issued at Kwale Mkongani Dispensary (Exh P-2). PW6 testified that the child was born on 22.2.2010 and Exh P-2 was duly certified and signed on 19.3.2021 as a true copy of the original issued at the facility by the medical superintendent. She produced it as PExh-2. The age of the complainant was therefore properly proved and the charge under Section 8 (1) and (2) of the *Sexual Offences Act* properly preferred.

38. On the element of penetration, the complainant upon being examined to establish whether she understands the purpose and meaning of an oath was found not to understand but it was established she understood what the truth entails and the trial magistrate ordered that she gives an unsworn statement. The complainant narrated that she was playing outside the Appellant's house when the appellant pulled her by the hands asking to send her to the shop and once inside his house the Appellant covered the complainant's mouth and nose and defiled her while lying on the cement floor after

removing her biker, tights and shirt. That when he had defiled her, he chased her out of the house. That she reported to the accused person's wife whom she referred to as nyanya but she did nothing. When she reported to Ne NM, she was taken to Inuka Police Station and they were referred to the hospital where she was treated. They subsequently went back to the station with NM, SM and her father.

39. PW4, Stephen Kalai, the Clinical Officer (Reproductive Health) at Likoni Sub-County Hospital testified that he examined the complainant and found that her hymen was broken with an old scar and she had pus discharge from her vagina. High vaginal swab revealed numerous epithelial and pus cells and urinalysis test revealed blood stains and several pus cells, an indication of a vaginal infection. He classified the injuries as harm probably caused by a blunt object. The injuries observed from the complainant's genitalia was evidence of penetration and therefore the second element of penetration was proved beyond reasonable doubt.

40. Whether the perpetrator of the defilement was identified, evidence was adduced that the complainant accompanied M the younger sister to the Appellant's home on 5.2.2019 and that after 3 days, he learnt that the complainant had been taken ill and it turned out that the illness was due to having been defiled. The assailant was well known to the complainant as they resided in the same house with him and PW2's mother. The incident happened in the morning when the complainant clearly saw the assailant and she reported to M's mother but when she did not take action against her husband, she reported to her sister, the wife of PW2. There is therefore no doubt that the Appellant was properly identified as the perpetrator of the offence of defilement.

41. All the elements of the offence of defilement were proved beyond all reasonable doubt and the evidence tendered was sufficient to sustain a conviction.

Whether the prosecution evidence was marred with material contradictions

42. Contradiction in evidence were addressed in Philip Nzaka Watu v Republic (2016) CR APP 29 OF 2015 as follows: -

> "The first question in this appeal is whether the prosecution case was riddled with contradictions and inconsistencies of the magnitude that would make the conviction of the appellant unsafe. It cannot be gainsaid that to found a conviction in a criminal case, where the trial court has to be satisfied of the accused person's guilt beyond reasonable doubt, the prosecution evidence must be cogent, credible and trustworthy. Evidence that is obviously self-contradictory in material particulars or which is a mere amalgam of inconsistent versions of the same event, differing fundamentally from one purported eyewitness to another, cannot give the assurance that a court needs to be satisfied beyond reasonable doubt.
>
> However, it must be remembered that when it comes to human recollection, no two witnesses recall exactly the same thing to the minutest detail. Some discrepancies must be expected because human recollection is not infallible and no two people perceive the same phenomena exactly the same way. Indeed, as has been recognized in many decisions of this Court, some inconsistency in evidence may signify veracity and honesty, just as unusual uniformity may signal fabrication and coaching of witnesses. Ultimately, whether discrepancies in evidence render it believable or otherwise must turn on the circumstances of each case and the nature and extent of the discrepancies and inconsistencies in question."

43. Save for where the complainant could not recall the name of the school she went to and the name of her mother, this court finds no contradictions in the prosecution case to render conviction of the Appellant unsafe.

Whether the conduct of the complainant was compatible with that of a minor who had been defiled

44. The Appellant alleged that the complainant conducted herself in a suspect manner and kept on performing her chores undisturbed before she raised the alarm over the issue, and the unexplained delay in reporting the matter. However, this is contrary to the chronology of events in the evidence of the prosecution witnesses that led to discovery that the complainant had been defiled. The complainant had reported to the Appellant's wife that he had defiled her but she took no action. According to PW2, the complainant accompanied Mercy, the daughter of the Appellant's home on 6.2.2019 and after3 days, he learnt that the complainant was sick and when she was taken to the hospital it was found that she had been defiled. It is not true that there was a delay in reporting the offence rather it is the Appellant's wife who concealed the fact that the Appellant had defiled the 9 years old child. This court finds that this ground of appeal has no basis and therefore falls.

Whether the Appellant was framed up as a result of disharmony with the complainant's mother

45. From the evidence on record, the only connection between the complainant and the Appellant appears to be that he was cohabiting with the mother of PW2 who is a brother-in-law to the complainant. The Appellant did not cross- examine PW2 as to any other relationships that would have led to him being fabricated with the allegation of defiling the minor herein. The father of the complainant PW3 said he did not know the Appellant and the Appellant did not cross examine him when he testified in court. All that PW3 knew was that the complainant was staying with her sister and PW2 in Likoni. As at the time that this offence was committed, PW2's mother was cohabiting with the Appellant and a report was made to her about the defilement but she did not take action. The allegations by the Appellant in his unsworn statement of the multiple relationships are an afterthought and extraneous to the facts herein and were not put to the prosecution witnesses for verification. The same cannot be regarded.

Whether the appellant's mitigation was considered*

46. The Appellant submitted that the sentence did not take into account his mitigation but he did not offer any mitigation to be considered during sentencing. The life imprisonment is however hereby reviewed to a determinate period of time 25 years to commence from 25th February 2019 in consideration that he remained in custody during trial pursuant to proviso to section 333 (2).

47. In conclusion, this court finds that the appeal does not have merit and the same is dismissed save for the sentence which is substituted from life imprisonment to 25 years imprisonment effective from the 25th February 2019 when the Appellant was first arraigned in court pursuant to the proviso to Section 333(2) of the Criminal Procedure Code. Right of appeal within 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,

THIS 18TH DAY OF MAY 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Barile- Court Assistant

Mr. Ngiri for the Respondent

Appellant present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE