Nyaguthie v Republic (Criminal Appeal 10 of 2019)
[2023] KEHC 20676 (KLR) (19 July 2023) (Judgment)

Neutral citation: [2023] KEHC 20676 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NANYUKI

CRIMINAL APPEAL 10 OF 2019

FR OLEL, J

JULY 19, 2023

BETWEEN

CHARLES RITHO NYAGUTHIE ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(BEING AN APPEAL FROM THE CONVICTION AND SENTENCE DELIVERED ON 15TH MARCH 2019 IN NANYUKI SEXUAL OFFENCE NO 15 OF 2017 BY HON W. J. GICHIMU (P.M)

JUDGMENT

Introduction

1. The appellant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* of 2006. The particulars of the offence were that on the 10th day of March 2017 in Laikipia Central sub county of Laikipia county within the Republic of Kenya intentionally and unlawfully caused his penis to penetrate the vagina of LWW, a child aged 11 years.

2. In the alternative, he was charged with committing an indecent act with a child contrary to section 11(1) of the *sexual offences Act* No 3 of 2006. The particulars of the offence were that that on the 10th day of March 2017 in Laikipia Central sub county of Laikipia County within the Republic of Kenya intentionally and unlawfully touched the vagina of LWW, a child aged 11 years with his penis.

3. At trial the prosecution called five (5) witnesses in support of their case. The appellant was placed on his defence and gave unsworn evidence. The trial magistrate in his considered judgment found the appellant guilty and sentenced him to imprisonment for life.

4. The appellant being dissatisfied by the judgment and sentence filed a petition of appeal on March 21, 2019 on the grounds that;

a. The learned trial magistrate erred in law and fact by failing to note that the medical examination was done a week after the alleged incident.

b. The learned trial magistrate erred in law and fact by failing to note that there was no any independent evidence from any independent body brought before court to ascertain the truth.

c. The learned trial magistrate erred in law and fact by convicting the appellant with single evidence without realizing the dangers surrounding his decision.

d. The learned trial magistrate faulted in matters of law and fact by failing to note that the prosecution did not prove their case beyond reasonable doubt.

e. The learned trial magistrate erred in law and fact by rejecting the appellant defence without any content reason.

He thus prayed for the court to consider his appeal and set-aside the sentence laid upon him.

Facts at Trial

5. The prosecution called 5 witnesses. PW1 underwent viore dire examination and gave sworn evidence. She stated that she was a pupil at [Particulars Withheld] Academy and was 11 years old. She lived with her grandmother and her father goes to work. She recalled that the offence took place on a Thursday, she had been sent to the shop to but credit by her grandmother. On her way to the shop she met the appellant, he was a person she knew as he mostly fetched water for people and had fetched water for her grandmother before.

6. When she met the accused, he threatened he would kill her if she told anybody what he intended to do to her. He held both her hands and led her to his home as she cried. He told her he wanted to do "tabia mbaya" to her. She could not run because the appellant had threatened to kill her if she screamed. The appellant's house was about 20m from the scene from where he had accosted her. The appellant put her on the bed, then locked the door from inside. The house was one room, and she was laying on the bed as he locked the door facing upward. The appellant had tied both hands with a string. He had earlier tied her legs but untied them. The appellant blocked her mouth with his palm and removed the short and pant she was wearing, he then removed his pair of trousers and pant and initially put his finger between her legs. PW1 states this while pointing to her private part.

7. The appellant then smeared some jelly (mafuta) on her genitalia, the jelly used was in a container next to the bed and again inserted his fingers into her genitalia, he had laid on her as she lay on the bed. He then inserted things used by boys to urinate in between her legs (she testified to this while pointing to her genitalia). She felt pain and cried continuously throughout the ordeal. PW1 further testified that the accused did not talk to her. When he was through, he rose up. She told him she wanted to go home so grandmother wouldn't ask for her why she had taken long. The accused threatened to kill her if she told anyone what had happened. The appellant then dressed her up and allowed her to leave.

8. PW1 stated that when she reached home, she informed her grandmother what had happened. Her grandmother had asked her why she was walking with difficulties, she informed her that the appellant had defiled her. She was feeling pain in her genitalia and was rushed to hospital by her grandmother. She further testified that she was not present when the accused was arrested and had no difference with him. She identified the accused person on the dock. In cross examination, she stated that she told her grandmother that it was the appellant who had defiled her, her grandmother then went and reported the incident to the police.

9. PW2 JWM, testified that she stays in [Particulars Withheld] area and was a farmer. She was the grandmother to PW1. (she was a daughter of her son). She stated that on March 13, 2017 she noticed that PW1 was walking with difficulties. She had earlier sent her to buy credit card from the shop and she had delayed in coming back. She asked PW1 why she took long in coming back from the shop but she did not tell her anything, she looked fearful. The following day she noted PW1 was sitting with difficulties and looked stressed. she persisted with her inquiry and beat her up. PW1 told her that on the day she had gone to the shop, she met the accused person, who had taken her to his home where he removed her underpants, tied her hands, smeared jelly on her genitals after forcing her to the bed and proceeded to defile her. She told her that the accused threatened to kill her if she reported what happened.

10. PW1 then left for school, while in school, the teacher called her and told her to take the child to hospital. She had not check on the child's genitalia, she noted she had blood on her dress. She went to the home of the appellant, and did not find him, but she did inform the appellant's brother of what had transpired. The appellant was a person she knew as he used to visit her home, and for her fetch water. On March 14, 2017 the school teacher called her after she noted the complainant was having difficulties sitting. She went to school but did not find the class teacher. PW1 narrated to PW3 (the deputy headteacher) what had happened. She took PW1 to hospital and they were referred to Nanyuki Teaching and Referral Hospital. They further reported the incident at Mureru Police post. The appellant was arrested while they were in hospital. She identified the appellant on the dock and stated that he was a person she knew and his home was 300m away from her home. Further they had no differences with the accused.

11. In cross examination, she stated that she went to the appellants house when PW1 told her what he had done to her. It is not true that he was assaulted by her son. He was taken to the police station by members of the public. She said she took time to report the incident because the accused brother and relatives wanted her to settle the matter out of court.

12. PW3, MMN, testified that she was the deputy head teacher at [particulars withheld] primary school. She testified that on March 15, 2017 she sent for the grandmother of the complainant to come to school because her class teacher had noticed some indiscipline. PW1 was not writing as ordered by the teacher although she had a book and pen. PW1 told her she had no problem. The grandmother came and told her than a man had defiled the child, Ritho was his name. She called PW1 who told her that one day, when she had been sent to the shop, the appellant held her, tied her and took her to his home and defiled her. The suspect assaulted her and threatened to kill her if she reported anything. She counseled the child and released her. She requested the grandmother to take the child to hospital and report to the police. In cross examination, she said the minor told her that it was the appellant who had defiled her.

13. PW4 was SWM, the father of the minor testified that on March 16, 2017 he received a called from PW2 who informed her that the complainant was sick. He found PW2 and PW1 at Wirera hospital. The minor was crying and only mentioning the name Ritho. She told him "Ritho alinifanyia tabia mbaya", the appellant had held her and took her to his home which was not far from their home, took off her clothes and defiled her. This confession emotionally hurt PW4 and he did not ask any further questions. He testified that he had known the appellant from childhood and used to remove jiggers from his leg as well as from the appellants brother. They reported the matter at the police station and took the child to Nanyuki hospital. He said he had no difference with him. In cross examination, he said he beat up the appellant because he was angry for what he did to his child and denied assaulting him with a panga.

14. PW5 Stephen Mwangi Mugo, the Clinical Officer testified that he was a qualified clinical officer holding a diploma in clinical medicine and surgery from KMTC and had worked at Nanyuki for slightly more than three years. He testified that he was the medic who examined PW1. She had a history of being defilement by a person known to her. She had changed her clothing. On examination, the external genitalia was normal but there was pain on the vulva. The hymen was broken, there was white discharge. The high vaginal swab was dry as the vulva was painful and tender. The tenderness on the vulva means there was forceful penetration. The discharge was normal. In cross examined he said he could not tell whether the appellant had defiled the child.

15. The appellant was placed on his defence. All that he stated was that, he had been slandered.

Submissions

16. The appellant did not file submissions.

17. The respondent filed submissions on January 23, 2023 in which they submitted that the prosecution proved their case beyond reasonable doubt and proved that the appellant had committed the offence. The trial magistrate correctly relied on section 124 of the *Evidence Act* and on the case of *J.W.A v Republic* [2014] eKLR. The evidence of penetration was proven by PW1 and corroborated by PW5 who examined her. Further, that the appellant was positively identified by PW1 as the person who used to fetch water for PW2 and this was corroborated by PW2.

18. The age of PW1 was proven by her father PW4 and the medical record that the victim was 11 years old. Reliance was placed on the case of *Francis Omuroni v Uganda* [2000].As regards the sentence, it was submitted that it was lawful and mandatory.

Determination

19. This being the first appeal, this court is expected to re-evaluate the evidence tendered before the trial court and to come up to its own logical conclusion by taking into account the fact that it did not have the advantage of seeing and hearing the witnesses and their evidence and/or see their demeanor. This court is guided by *Okeno v Republic* (1927)EA 32 & *Pandya v Republic* (1975) EA 366.

20. Further being the first appellant court, it must itself also weigh conflicting evidence and allow its own conclusion. In *Shantilal M. Ruwala v Republic* (1975) EA 57, it was held that;

> "It is not the function of the first appellant court to merely scrutinize the evidence to see if there was some evidence to support the lower court findings and conclusion. The court must make its own findings and draw its own conclusion only then can it decide whether the magistrate's finding should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses.

21. Upon consideration of the facts of this case, the grounds of appeal and the submissions on record, the following issues are pertinent for consideration:

    a. Whether the offence of defilement was proven to the required standard thereby warranting a conviction.

    b. Whether the sentence of the appellant should be reviewed

22. It is trite law that all criminal offences require proof beyond reasonable doubt. Lord Denning in *Miller v Ministry of Pensions* (1947) 2 All ER, 372 stated as follows:

> " That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is beyond reasonable doubt, but nothing short of that will suffice."

23. Section 8 (1) and (2) of the *Sexual Offences Act* provides 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.

24. The ingredients for the offence of defilement can be summarized as follows;

a. Age of the victim (must be a minor),

b. Penetration and

c. Proper identification of the perpetrator.

(see *Wamukoya Karani v Republic* criminal appeal No 72 of 2013 and *George Opondo Olunga v Republic* [2016] eKLR)

25. The Court of Appeal in *Edwin Nyambogo Onsongo v Republic* (2016) eKLR stated as follows in respect of proving the age of a victim in cases of defilement:

> " ... the question of proof of age has finally been settled by recent decisions of this court to the effect that it can be proved by documents, evidence such as a birth certificate, baptism card or by oral evidence of the child if the child is sufficiently intelligent or the evidence of the parents or guardian or medical evidence, among other credible forms of proof. We think that what ought to be stressed is that whatever the nature of evidence preferred in proof of the victim's age, it has to be credible and reliable." (emphasis added).

26. In the case of *Francis Omuroni v Uganda*, Court of Appeal criminal appeal No 2 of 2000, it was held thus;

> " In defilement cases, medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim in absence of any other evidence. Apart from medical evidence, age may also be proved by birth certificate, the victim's parents or guardian and by observation and common sense

27. PW1 stated that her names were LWW and was aged 11 and was a pupil at [partiulars withheld] primary school, class 5. PW2 the child, father also confirmed the age. PW5 the clinical officer too testified that, he filled the P3 form for PW1. She was aged 11 years at the time. The child was treated at Nanyuki Teaching and Referral Hospital, where he worked. She had a history of being defiled.

28. The trial court in its considered judgment dated March 15, 2019 considered the issue of age and made a finding that the age of PW1 was proved by the father and the medical records produced before court.

29. I have analyzed the evidence tendered with respect of the complainant's age. The charge sheet stated that she was 11 years old, which was confirmed by the complainant when she testified. All the medical evidence presented indicated that the age of the child was 11 years old. I do find that there was no age assessment report presented in court to prove the age of the complainant and it cannot he held that a P3 form, and PRC form which indicate that age of a minor constitutes medical evidence as the details therein are filled based on information not scientifically verified. The medical evidence as contemplated in law is an age assessment report made by a medical practitioner. PW4 also just stated that her daughter was 11years old, but did not produce the birth certificate nor did he specify when she was born.

30. Be that as it may as held in several citations, apart from medical evidence age may also be proved by birth certificate, the victim's parents or guardians' evidence or by observation and common sense amongst other credible forms of proof. See *Edwin Nyambogo Onsongo v Republic* (2016) Eklr and *Francis Omuroni v Uganda* Court of Appeal criminal appeal No 2 of 2000 amongst others.

31. The complainant testified that she was 11years old and was a pupil at [particulars withheld] Academy. She testified before the magistrate who physically saw her and was able to assess her age group. This was confirmed by her father PW4 and PW5 also noted her age to be 11 years of age. As established in law age can also be established by common sense, observation or other credible forms of proof. I do find as a fact that by observation and common sense the trial court can approximate the age of a child and know if indeed she is 11 years or she is in that age bracket/group. It is common knowledge that a child in class 5 is still a child of tender years and given the circumstances and facts of this case it was safe to conclude that she was 11 years as presented in evidence. The only question which would remain uncertain is if the there is a possibility of her being older than the stated years as that would have a direct bearing on the sentence to be imposed.

32. The second element which the prosecution has to prove is penetration.

Section 2 of the *Sexual Offences Act* defines penetration as;

> " penetration" means the partial or complete insertion of the genital organs of a person into the genital organs of another person."

33. PW1 recalled that the incident took place on a Thursday. The appellant waylaid her as she went to the shop, led her forcefully to his house, tied her hands and removed her shorts and pant before defiling her. Her verbatim evidence was that;

> " I was wearing a short and pant. The accused removed my pants and short. The accused removed his pair of trousers and pant. The accused person put his finger between my legs-first to her private parts.
>
> The accused then smeared some jelly (mafuta) on my genitalia. At home I use baby care jelly. The jelly accused used was next to the bed and was in a container. Accused inserted his fingers into my genitalia. Accused had laid on me as I lay on the bed. The accused then inserted his thing used by boys to urinate between my legs-pointing to her genitalia. I felt pain. I cried continuously. Accused did not talk to me. He had blocked my mouth as he committed the offence. When he was through, the accused rose up. I told him I wanted to go home so that my grandmother would not ask me. The accused said that he would kill me if I told anybody what happened. The accused is the one who dressed me up."

34. The evidence of the medical officer confirms that there was penetration. The hymen was broken and there was pain in the vulva. This was captured in the P3form as well are the PRC form .It was his testimony that the tenderness of the vulva means there was forceful penetration. This evidence corroborates the evidence of the victim who said she was defiled by the appellant. Penetration was thus sufficiently proved beyond any doubt.

35. The third issue which the prosecution had to prove is the whether the perpetrator was properly identified. PW1, PW2 and PW3 all identified the appellant as "Ritho". In particular, PW1 knew him as the person who used to fetch water for her grandmother whom she lived with. This incident occurred in the afternoon, PW1 had ample time to clearly see the appellant and his identification was in the form of recognition of a person known to the other. PW1 evidence as relates to identification was corroborated by her grandmother PW2 who also confirmed that the appellant was their neighbor and she would pay him to fetch for her water.

36. The appellant in the grounds of appeal did allege that the trial magistrate erred in convicting him based on the evidence of a single witness without realizing the dangers that surround the said decision.

37. Evidence of recognition must be carefully examined to satisfy if the circumstances of identification were favourable and free from possibility of error before it can safely be made as a basis of conviction. See *Wamunga v Republic* (1989) KLR at 426. This incident occurred in the afternoon during the day, the complainant was able to describe the house of the appellant and vividly describe what he did. She also knew him by name and called him "Ritho" as a neighbor. She stated that

> "It was during the day. On the way to the shop I met Ritho. I know him. He is accused in court. I used to see him. He mostly fetch water for people. He had fetched water for my grandmother once.

38. Section 124 of the *Evidence Act*, cap 80 provides as follows:

> "Notwithstanding the provisions of section 19 of the Oaths and Statutory Declaration Act, where the evidence of the victim admitted in accordance with that section on behalf of the Prosecution in the proceedings against any person for an offence, the accused shall not be liable to be convicted in proceedings against him unless it is corroborated by other evidence in support thereof implicating him.
>
> Provided that where in a criminal case involving a sexual offence, the only evidence is that of the alleged victim of the offense, the court shall receive the evidence of the alleged victim and proceed to convict the accused person, if for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth."

39. Thought the court based on section 124 of the *Evidence Act*, cited above can convict an accused person if for reason recorded it is satisfied that the victim is telling the truth, in the present proceedings, PW1 evidence was also corroborated by evidence of PW5 who confirmed that there was medical evidence of penetration. Having carefully examined the evidence adduced the identification of the appellant was by way of recognition and reliance on the same was safe. The trial court cannot be faulted for arriving at that conclusion.

40. I therefore find that all the ingredients for this charge were proven beyond reasonable doubt by the cogent and irrefutable evidence presented by the prosecution witnesses.

41. The appellant also alleged that the trial magistrate erred in law and fact by rejecting his defense without any reason. When the appellant testified, he only alleged he had been slandered. He did not present any

evidence which the court could consider as a defense against the serious charges levelled as against him. He did not explain how he was slandered and how it was related to the charges he was facing. The trial magistrate thus cannot be faulted in any manner at arriving at the decision he arrived at.

42. As regards the sentence and whether it should be reduced, this court is guided by the principles in the Court of Appeal case of *Bernard Kimani Gacheru v Republic* [2002] eKLR where it was stated as follows;

> " It is now settled law, following several authorities by this court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor or took into account some wrong material, or acted on a wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist."

43. The Court of Appeal also rendered itself as follows on sentences in sexual offences in the case of *Athanus Lijodi v Republic* [2021] eKLR

> " On the issue of sentence, we reiterate that the life sentence imposed by the trial magistrate and affirmed by the High Court is not unconstitutional and can still be meted out in deserving cases *Muruatetu's case* (supra) notwithstanding. This Court has on many occasions invoked the Muruatetu decision to reduce sentences that were hitherto deemed as minimum sentences. (See for instance *Evans Wanjala Wanyonyi v Republic* [2019] eKLR). Having said that however, we must hasten to add that this court will uphold a sentence prescribed by the *Sexual Offences Act* if upon proper exercise of sentencing discretion and consideration of the facts of each case, such sentence is deserved or merited."

44. The same court in the case of *Dismas Wafula Kilwake v Republic* [2019] eKLR stated as follows;

> " Being so persuaded, we hold that the provisions of section 8 of the *Sexual Offences Act* must be interpreted so as not to take away the discretion of the court in sentencing. Those provisions are indicative of the seriousness with which the legislature and the society take the offence of defilement. In appropriate cases therefore, the court, freely exercising its discretion in sentencing, should be able to impose any of the sentences prescribed, if the circumstances of the case so demand. On the other hand, the court cannot be constrained by section 8 to impose the provided sentences if the circumstances do not demand it. The argument that mandatory sentences are justified because sometimes courts impose unreasonable or lenient sentences which do not deter commission of the particular offences is not convincing, granted the express right of appeal or revision available in the event of arbitrary or unreasonable exercise of discretion in sentencing."

45. In *Maingi & 5 others v Director of Public Prosecution & another* (petition No E117 of 2021) (2022) KEHC 13118 (KLR) the petitioners who were convicts serving offences under *Sexual Offences Act* No 3 of 2006 sued the Attorney General and sought for declaration that the mandatory nature of sentence under the *Sexual Offences Act* were unconstitutional as it fettered the discretion of judges and

magistrates in meting out sentence. Justice G.V Odunga *vide* his considered judgment dated May 17, 2022 did find that –

> " to the extent that the *Sexual Offences Act* prescribed minimum mandatory sentences, with no discretion to the trial court to determine the appropriate sentence to impose, such sentence fall foul of article 28 of the *Constitution*. However, the courts are at liberty to impose sentences prescribed thereunder so long as the same are not deemed to be mandatory minimum prescribed sentences."

46. The provision of section 8(1) as read together with provisions of section 8(4) of the *Sexual Offences Act* No 3 2006 and legislation that was in force before commencement of the *Constitution* of Kenya 2010 must be considered with adaptation, qualification and exception when it comes to the mandatory minimum sentence and in particular when the said sentences do not take into account the dignity of the individual as mandated under article 27 of the *Constitution* and as appreciated in the Francis Muruatetu case and applied by courts in several cases . See *Christopher Ochieng v Republic* Kisumu CA criminal appeal No 202 of 2011 and *Jared Koita Injiri v Republic* Kisumu CA criminal appeal No 92 0f 2104.

47. The trial magistrate did consider the appellant's mitigation and also took into consideration all the circumstances of this case and sentenced the appellant to life imprisonment.

48. At this point before considering the sentence it would be prudent to revisit the issue of the age of the complainant. While by observation one can objectively assess and approximate the age of a child, when it comes to sentencing under provisions of the *Sexual Offences Act*, it would have been necessary to know with precision the exact age of a child for purposes of sentencing as this determines the amount of sentence to be imposes on conviction. See *Gilbert Miriti Kanampius v Republic* (2013) eKLR HCC at Meru criminal appeal No 97 of 2009

49. The only evidence presented in these proceedings was that of PW1 who testified that she was in class 5 and was 11 years old. Her father confirmed the same and she had informed the clinical officer who treated her that she is 11 years old and on that basis the P3 form and PRC form indicated as much. The charge sheet also indicated that she is 11 years old. While it can be safely can be assumed that PW1 age is 11 years, for purpose of sentencing it would be necessary to establish the exact age of PW1 as this would impact on the sentence meted out. It should be noted too that the investigating officer never testified.

50. In such borderline cases justice and fairness would dictate that additional evidence be taken to prove the exact age of PW1 to enable the court make an informed decision while considering the question whether the sentences imposed was proper or it was harsh and excessive. This is in line with article 27 and 50(2) of the *Constitution* of Kenya 2010, which calls for equality and fairness.

51. In criminal appeal this court is empowered to order the retaking of additional evidence. Section 358 of the *Criminal Procedure Code* provides that;

    a. "In dealing with an appeal from a subordinate court, the high court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court.

    b. When the additional evidence is taken by a subordinate court, that court shall certify the evidence to the high court, which shall thereupon proceed to dispose the appeal.

    c. Unless the high court otherwise directs, the accused or his advocate shall be present when the additional evidence is taken.

d. Evidence taken in pursuance of this section shall be taken as if it were evidence taken at trial before the subordinate court."

52. For the reasons advanced in paragraph 54 and 55 above and especial for purposes of sentencing it would be proper to get the specific age of PW1.

53. I do therefore order as follows:-

1. This file be sent back to the trial magistrate to take additional evidence with regard to the age of PW1. The evidence shall be recorded by the trial magistrate and if already transferred such evidence be taken by the Chief Magistrate –Nanyuki Law Court.

2. The evidence will be taken in the presence of the appellant and his advocate if he opts to have one. He will be at liberty to cross examine the witness.

3. The trial magistrate shall certify the evidence so taken and have it forwarded to this court within 60 days for final orders as regards this appeal.

JUDGEMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 19TH DAY OF JULY 2023.

RAYOLA FRANCIS

JUDGE

Delivered on the virtual platform, Teams this 19th day of July2023.

In the presence of;

.....Appellant

.....for ODPP

.....Court Assistant