



**NABK v JSZ (Family Appeal 32 of 2022) [2023] KEHC 20466 (KLR) (12 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20466 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
FAMILY APPEAL 32 OF 2022**

**G MUTAI, J  
JULY 12, 2023**

**BETWEEN**

**NABK ..... APPELLANT**

**AND**

**JSZ ..... RESPONDENT**

**JUDGMENT**

1. In a judgment delivered on 26<sup>th</sup> October, 2022 the Hon LKS entered judgment as follows:-
  1. Both the Plaintiff and the defendant have parental responsibility towards the subject minor;
  2. Legal custody is hereby granted jointly between the Plaintiff and the defendant;
  3. A residence order is hereby granted retaining status quo on the residence of the child; that the subject minor continues residing with the paternal grandmother ANS;
  4. The Plaintiff and the defendant to have unlimited access to the minor. The Plaintiff to have unlimited access as she had been doing and during school holidays that don't exceed four weeks and in case a school holiday exceeds four weeks then the Plaintiff to have access on the first 4 weeks and return the minor to her residence in Mombasa;
  5. The defendant is also allowed to travel with the child outside the country so as to have access during school holidays as it shall be agreed on by the parties on when to travel with her but on condition that he returns the child back to Kenya to continue her schooling;
  6. Parties to cooperate with each other when processing the child's travel documents and any other documents and in this case the Plaintiff to supply the Defendant with the child's birth certificate for purposes of processing the child's passport so as to enable her travel in future;
  7. Having held that the status quo on the child's residence be maintained, then the father is not allowed to relocate with the child to UAE unless by consent of both parties or by way of an



application and orders being made on a later date upon a social inquiry being done from the UAE on the suitable of the father's residence for consideration by the Court. Otherwise the status quo on the child's residence not to be disturbed for now;

8. Both the parties to provide for the child within their means and capabilities through the child's grandmother AN;
  9. Either party to be at liberty to apply; and
  10. This being a case brought on behalf of a child then costs to be borne by both parties.
2. The Appellant (who was the Plaintiff in the lower Court) was aggrieved by the decision of the learned Magistrate and appealed to this Court. Her Memorandum of Appeal raises eight grounds which I shall set out below:-
1. The Learned Magistrate erred in law and fact by granting actual custody of the minor JJ to ANS when she is not a party to the suit;
  2. The Learned Magistrate erred in law and fact by granting actual custody of the minor JJ to ANS when her biological parents, in particular the Appellant herein is ready and willing to raise her child;
  3. The Learned Magistrate erred in law and in fact by finding that the Appellant abandoned her minor child while ignoring the fact that the minor was taken to reside with her paternal grandmother ANS after the father of the child abandoned the Appellant and the child with the full knowledge that the Appellant was unemployed;
  4. The Learned Magistrate erred in law and fact by failing to recognize that the Appellant's action of taking her minor child to reside with her paternal grandmother for a while was in the best interest of the minor at that time;
  5. The Learned Magistrate erred in law and fact by giving orders of access outside the Court's jurisdiction;
  6. The Learned Magistrate erred in law and fact by giving orders that the Respondent can by way of an application be granted orders to relocate with the minor to UAE;
  7. The Learned Magistrate erred in law and in fact by determining the suit without interviewing the minor as was earlier directed; and
  8. That the Learned Magistrate erred in law and fact by biasedly relying on the unsupported evidence adduced by the Defendant's in children's case No. E238 of 2021 and in the process partly extinguishing the Appellant's parental rights.
3. The Appellant therefore sought to have the appeal allowed, to be granted actual and physical custody, care and control of the child. She also seeks to have the Respondent condemned to pay for the minor's school fees and school related expenses up to the university level, to take out medical insurance for the minor in a reputable insurance company, pay such maintenance as may be ordered by the Court and costs.

### **Proceeding Before the High Court**

4. The Appellant filed the Memorandum of Appeal on 3<sup>rd</sup> November 2022. The appeal was admitted on 6<sup>th</sup> December 2022.



5. The appeal was canvassed by way of Written Submissions. Both parties filed their Written Submissions. Upon confirming that both parties had done so I fixed the matter for judgment on 7<sup>th</sup> April 2023. The Court sincerely regrets the delay in the delivery of the judgment.

### **Submissions of the Appellant**

6. The Appellant submitted that she got married to the Respondent in 2014 under Islamic law. Their union was blessed with one issue, the minor the subject of the appeal. The Appellant, upon the celebration of the marriage moved into the Respondent's family home in South C. Then, as now, the Respondent lived and worked in Dubai. The family later relocated to Mombasa. The Appellant was unemployed and dependent on the Respondent who works in Dubai and his mother. In 2016 the Appellant opted to relocate to Nairobi as she found Mombasa inhospitable.
7. The Appellant avers that she didn't have sufficient income to bring up the child. She therefore reached out to the Respondent's mother with a request that she temporarily helps her take care of the child as the Respondent wasn't providing for them. She thereafter delivered the child to the Respondent's mother and returned to Nairobi to work for gain. In the course of time her finances improved. She is able to take care of the child. She is aggrieved by the fact that the trial Court gave custody of the child to the paternal grandmother who was not a party to the suit and allowed the Respondent to have custody of the child outside the Court's jurisdiction.
8. The Appellant identified 2 issues for determination by the Court which are:-
  1. Whether or not the trial Court was right in granting actual custody of the minor to the paternal grandmother ANS when the biological mother who is resident in Kenya is ready and willing to cater for her child and was not declared unfit by the trial Court;
  2. Whether or not the trial Court was right in granting access outside the jurisdiction of the Court considering the circumstances of the case.
9. On the first issue the Appellant submitted that the child was born on 17<sup>th</sup> January 2015 by dint of that she is a child of a tender age. The Appellant relying on several decided cases urged that a child of tender age should be under the custody of the mother unless there are serious compelling grounds. I was referred to *Re S (an infant)* [1958] 1 All ER 783 where Roxburgh J held as follows:-

“I only say this, the prima facie rule (which is quite clearly settled) is that, other things being equal, children of tender age should be with their mother, and where a Court gives the custody of the child of this tender age to the father it is incumbent on it to make sure that there really are sufficient reasons to exclude the prima facie rule”.
10. The Appellant urged that the Court below should have premised its decision on the existence of sufficient reasons which would warrant denying the mother custody and giving it to the paternal grandmother instead. This Court was referred to the cases of *Sospeter Ojaamong versus Linet Amondi Otieno*, *Mehrunnissa versus Parves* [1981]KLR 547, *Karanu versus Karanu* [1975] EA 188, *Githunguri versus Githunguri* [1981] KLR 598, *SMM versus ANK* [2022]eKLR and *JO versus SAO* [2016]eKLR. In the latter case the Court of Appeal stated thus:-

“there is a plethora of decisions by this Court as well as the High Court that in determining matters of custody of children, and especially of tender age, except where exceptional circumstances exist, the custody of such children should be awarded to the mother, because mothers are best suited to exercise care and control of the children. Exceptional



circumstances include, the mother being unsettled, where the mother has taken a new husband, where she is living in quarters that in in deplorable state or where her conduct is disgrace and or immoral.”

11. It was submitted that the Court did not say that the Appellant was unsuitable to be the custodian of the child. The Appellant stated that she now has a job with sufficient income. In any case, it was urged custody should not be predicated on financial ability only. I was referred to the cases of MJC versus LAC & Another [2020] eKLR and Githunguri versus Githunguri [1979]eKLR in support of the said proposition. The Appellant submitted that the trial Court did not consider the belt interest of the child when it made its decision.
12. The Appellant referred the Court to Article 53(2) of *the Constitution* of Kenya, 2010 section 4(1) and 6CD of the *Children Act*, 2001 (now repealed), Article 7 of the 1989 convention on the Rights of the child and also Article 19 of the African Charter on the Rights and Welfare of the child. The latter charter provides that:-

“ every child is entitled to parental care and protection and shall whenever possible reside with his or her parent.”
13. It was submitted that it was wrong to give custody of the child to the grandmother when the mother was available to take care of her. The Appellant averred that it was unfair to penalize her for having had the candor to seek help when she needed it. Rather than be vilified she should be lauded.
14. The Appellant argued that the child could adapt to new surroundings fast. She dismissed the argument that it would not be in order to uproot and put her in new environment with the mother. The Court was referred to the case of DMM versus PMN & Another [2020]eKLR where it was held as follows:-

“ the law is leaning mostly towards a child being raised by a parent. The best interest of the child are determined depending on the circumstances of the case. Children are unique human beings who are known to adapt to the surroundings very fast. It would not take long for the minor to adapt to the new environment with the father who is his flesh blood.”
15. It was also submitted that the Respondent had abandoned his family and refused to send maintenance, which failure caused her to seek the assistance of the child’s grandmother.
16. The Appellant submitted in support of the second issue that she had identified that there was a real risk that the Respondent would relocate the child to the country of his residence. It was urged that the Court below failed to put in place measures to ensure compliance with its orders and having the child brought back to the jurisdiction of the Kenyan Courts. The Appellant referred to the possibility that once the child left Kenya she might never come back as the Respondent had indicated that other jurisdictions had better opportunities in terms of education, social protection, healthcare and employment. The Court was referred to the case of HOO versus CSF [2018]eKLR for the proposition that the court must be alive to the risk that a child who is permitted to exit Kenya may not be brought back.
17. The Appellant was also aggrieved by the decision of the Court to allow the Respondent to relocate the minor to the UAE upon making an application. In her view such determination disregarded her rights as the mother of the child and was not in the best interest of the child. It was urged that the best interest of the child lay with her staying in Kenya until she is able to make her own decisions. If she went to UAE it was submitted the Appellant will not be able to have physical access to the minor as



she will be severely circumscribed by finances and wise requirements as she is not a UAE citizen. I was referred to the case of SMN versus ANK [2022]eKLR in support of the said contention.

18. The Appellant thus prayed that I find that the decision of the Children Court was not in the best interest of the child and overturn it.

### **Submissions of the Respondent**

19. The Respondent submitted that when the minor was 2 years old the Appellant due to financial and time constraints handed over control, care and custody of the minor to the Respondent's grandmother ANS and from that time and to date the said grandmother has had custody of the child.
20. He further submitted that he had a stable job in the UAE, had remarried and intended to have the minor reside with him in the said country. The Appellant, he averred, had always had access to the minor at the family home in Mombasa where she resides whenever she was in the said coastal city.
21. The Court was referred to two social inquiry reports. The Respondent submitted that the appeal has not met the threshold set by Article 53 of *the Constitution* and section 8 of the *Children Act* 2022 which require that the best interest of the child be the paramount consideration in every decision involving a child.
22. The Respondent agreed with the Appellant that the 9 grounds of appeal could be condensed into 2. As the said issues are identical to those identified by the Appellant I will not rehash them here.
23. On whether or not the Learned Magistrate erred in law and fact in issuing a residence order that the minor continues to reside with her paternal grandmother, where she has lived for the past 5 years under the legal custody of both the Appellant and the Respondent, with unlimited access to both, the Respondent submitted that the child had stayed with her paternal grandmother for 5 years having been brought when she was 2 years old. Removing her from her present milieu would therefore be disruptive.
24. I was referred to the social inquiry reports of GM and that of MKK. The reports were in regard to the living condition of the Appellant, on the one hand, and the paternal grandmother of the child on the other hand. The former wrote that the Appellant lives in a specious bedsitter with a functional toilet and bathroom and a functional kitchen sink with running water. The paternal grandmother on the other hand lives in a 3 bedroom apartment. The child has her own bedroom.
25. The Respondent submitted that the Learned Magistrate was cognizant of the tender years doctrine and invoked the provisions of Article 53 of *the Constitution* of Kenya, 2010 and sections 8 and 103 of the *Children Act* 2022 and quoted several decisions of the High Court. That notwithstanding, she opted to depart from the said doctrine as special circumstances existed warranting her to do so. The special circumstances she listed were the circumstances under which the child was handed over to the grandmother ANS, the fact that the Appellant had not resided with the child for 5 years preceding the judgment, the child was accustomed to living in Mombasa and was enrolled in Madrassa and British curriculum education in [Particulars withheld] School, Nyali, the personal relationships the child had built with her relatives, cousins and school mates and the difference in lifestyle between the Appellant and the Respondent.
26. I was referred to the decision of Mumbua Matheka J in SMW versus EWN [2019] eKLR where the learned judge pronounced herself thus:-

“every person considering the best interest of the child ought to treat this as the checklist to consider as the guide towards determining the best interests of the child. It is clear that



then it is not just about money, but about the complete welfare of the child, the child's feelings, his or her needs, the capacity of the parents or any other person to provide child's needs. These are questions that the Court ought to ask itself. The Court can obtain more information by seeking reports from relevant authorities as provided for under section 76 (4) and section 78 of the Act.”

27. The Court was urged to take into account the holding of the Court of Appeal in JO versus SAO [2016]eKLR where the Court said:-

“exceptional circumstances include the mother is unsettled, where the mother has taken a new husband where she is living in quarters that are in deplorable state or where her conduct is disgraceful and or immoral.”

It was submitted that the Appellant had not provided evidence of employment or how she intends to take care of the child should be granted custody. I was referred to her prayer that the Respondent should take full parental responsibility without her input even though she claims to be in employment.

28. Given the different material circumstances of the Appellant it was submitted that allowing the appeal would put the child in a strange and peculiar situation that would be detrimental to her. I was thus urged to consider the physiological growth, development and happiness of the child. It was thus submitted that the Court below did not err. It took into account the best interest of the child by not granting physical custody to the mother who did not convince the Court below that she has a stable home and income to warrant to warrant it to destabilize the current status quo.

29. On whether or not the honourable Magistrate erred in law and in fact in granting the Respondent access outside the jurisdiction of the honourable Court the Respondent submitted that there was no error. He submitted that other countries provide better opportunities in terms of healthcare, education, social protection, employment and opportunities. This it was argued had been recognized by Courts. It was urged that the Respondent was only given 1 non exclusive holiday per year, out of the 3 that are usually taken by school going children in every school year. I was referred to the case of CK versus KM [2016]eKLR where the Court notwithstanding the objection by the father allowed the child to be taken out of the jurisdiction because it was in his best interest. I was also referred to a similar holding in MAA versus BS [2018]eKLR. It was urged that the Appellant had not shown what prejudice she would suffer if the child was taken on a holiday in the United Arab Emirates during her school holidays.

30. The Respondent submitted that no aspersions had been cast against him that would warrant the denial of his wish to travel to UAE with his daughter.

31. The Respondent submitted that he remarried after his relationship with the Appellant broke down. He is working in UAE to earn a living and has a family in Mombasa.

32. The Respondent thus urged this Court to dismiss the appeal. In his view the Appellant was still struggling with her circumstances. Her living conditions were not ideal for the upbringing of a child. It was thus urged that the custody of the child do remain with the child's grandmother with the support of both the Appellant and the Respondent.

### **The Duty of the 1st Appellate Court**

33. As the first appellate Court I am mandated to re-evaluate the evidence before the subordinate court as well as the judgment and arrive at my own independent judgment.



34. Mativo J (as he then was) in *Mursal & Another versus Manese* (suing as the Legal administrator of Daphine Kanini Manesa (Civil Appeal E.20 of 2021) [2021] KEHC 282 (KLR) stated that:-

“A first appellate Court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was stated in *Selle & Another versus Associated Motor Boat Co. Ltd & Others* (1968) EA 123 and in *Peters versus Sunday Post Limited* (1958) EA 424.”

35. In considering this matter I will scrutinize the facts and the law. In doing so I will take into account the fact that I did not have the opportunity of observing the demeanor of the witnesses and give due allowance.

### Issues for Determination

36. The Appellant and the Respondent appear to be in agreement that there are 2 issues falling for determination in this appeal. These issues are:-

1. Whether or not the trial Court was right in granting equal custody of the minor to the paternal grandmother ANS when the biological mother who is resident in Kenya is ready and willing to cater for her child and was not declared unfit by the trial Court; and
2. Whether or not the Court was right in granting access outside the jurisdiction of the Court considering the circumstances of the case.

37. I will consider each of the identified issues in turn. Before I do so however I must restate the guiding constitutional, treaty and legal provisions that undergird children custody matters.

### The Applicable law

38. Article 53(2) of *the Constitution* provides that

“a child best interests are of paramount importance in every matter concerning the child”

Section 8 of the *Children Act*, 2022 provides that:-

- “(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
- (a) the best interests of the child shall be the primary consideration;
  - (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule. 19 No. 29 of 2022 Children
- (2) All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—
- (a) safeguard and promote the rights and welfare of the child;
  - (b) conserve and promote the welfare of the child; and
  - (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.



- (3) In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
- (4) The Cabinet Secretary shall issue guidelines to give effect to this section."

Article 19 of the African Charter on Rights and Welfare of the Child states that  
"every child is entitled to parental care and protection and shall whenever possible reside with his or her parents"

### **Analysis of the law and the facts**

39. Having restated the law I will now turn to each of the 2 issues that have been identified by the parties.  
Was the Court right to grant custody of the minor to the paternal grandmother when the Appellant is resident in Kenya and has expressed willingness and readiness to take care of her?
40. In her evidence the Appellant averred that she took the child to her mother-in-law as she was not financially stable. At the time she surrendered the child, she had a job whose pay was too low. The Respondent was not providing support. It was her testimony that she had got a good job that paid her Kes.60,000.00 with a stationery form called Stationery Soko in Nairobi. She testified that when the child was with the grandmother she contributed towards her upkeep. In support of her contention, she provided Mpesa records which show that she send money to ANS. It was her testimony that the child was treated with her NHIF card. Whenever she travelled to Mombasa she would take gifts to her.
41. In cross-examination the Appellant stated that she sends Kes.5,000.00 to Kes.10,000.00 to the child's grandmother. She conceded that the child was in safe custody with her mother-in-law and lacked nothing. The Appellant lives alone in the house where she pays house rent of Kes.15,000.00. Her nanny is a co-worker at her workplace. She indicated that she trusts the mother-in-law and had no objection to the Respondent having access to the child in Dubai.
42. The Respondent testified that he lives and works in Dubai. He comes to Kenya once a year. He has since remarried. The Appellant surrendered the child willingly to his mother and the mother has had custody of the child since. The child goes to school at [particulars withheld] School, Nyalı. He is the one who pays the school fees. He claimed that the Appellant had no concern for the child. The child's grandmother was the Respondent's second witness. She testified that he had a good relationship with the Appellant. In her view the Appellant was irresponsible, whenever she got money she would spend it on ice cream and chocolates rather than the child. When the Appellant got employed she provided for the child for a few times and then stopped thereafter. After filing the case before the Children Court she made a single payment of Kes.5,000.00.
43. From the evidence on record it is clear that the Appellant made a conscious decision to surrender custody of the child when she was 2 years old. At that age, the child was in real need of the mother's love and attention. I have seen that she contributed towards the upkeep of the child in 2018 and 2019 and thereafter stopped.
44. I have perused the social inquiry reports filed in the lower Court. The one by MKK is dated 4<sup>th</sup> July 2022. It states that the child "currently lives in [particulars withheld] Apartments in a 3 bedroom house with all basic amenities. The house is within a gated compound with 24-hour security. The child sleeps in her own bedroom and which had a study table and a chair. It was organized, lit and ventilated". The report goes to say that "the child expressed outright preference to continue living



with her grandmother, schooling in her school where she has many friends. She is currently interacting with the Plaintiff more often now via phone.”

The Appellant on the other hand lives in Ngara. The report states that “the Plaintiff resides at [particulars withheld] Ngara which is a walking distance to Nairobi CBD. She lives in a spacious bedsitter which has a 4 by 6 bed with complete beddings, a plastic chair, a shoe rack with shoes, a 48inch TV which is mounted on the wall a TV stand, a woofer set, iron box inbuilt wardrobe which has her clothes, floor carpet, and mat, the inbuilt cabinet where she has kept food stuff, kitchen utensils, a functional toilet and a bathroom and functional kitchen sink with running water.”

45. I agree with the authorities which have been cited by the Appellant that custody of a child of tender years should be awarded to the mother. The tender age doctrine is however subject to exceptions. In JO versus SAO (supra) the Court stated as follows:-

“ there is a plethora of decisions by this Court as well as the High Court that in determining matters of custody of children, and especially of tender age, except where exceptional circumstances exist, the custody of such children should be awarded to the mother, because mothers are best suited to exercise care and control of the children. Exceptional circumstances include, the mother being unsettled, where the mother has taken a new husband, where she is living in quarters that in in deplorable state or where her conduct is disgrace and or immoral.”

46. The Appellant appears to me to be unsettled. She surrendered custody of a child of 2 years rather than take care of it herself. Even after getting a better paying job she was not in a hurry to seek to have the custody of the child restored to her. As a matter of fact the immediate trigger of the suit was the decision of her mother-in-law to deny her the chance to videocall the daughter. She does not appear to have kept regular contact with her own child. From the Mpesa records that have been provided it would appear to me that she supported the child’s grandmother with difficulty and cut her support between 2019 and mid 2021. As a mother of the child she has an equal duty to provide for the child as the father.

47. The child is presently going to school in Mombasa. The school follows the British curriculum. If the appeal is successful she would have to be uprooted from the said school and taken to another in Nairobi that follows Kenya national curriculum. She would also be moved from her present spacious home in Mombasa to stay with her mother in a bed sitter in Ngara under the care of a nanny who is the mother’s co-worker. The Court in DMM versus PMN & Another (supra) correctly found that “it would not take long for the minor to adopt to the new environment with the father who is his flesh and blood”. In this case the child would be required to change cities, friends and curriculum. On top of this she would have to get accustomed to a much smaller abode. In my view the adaptation the child would be required to make would be extraordinary indeed.

48. For the foregoing reasons I see no reason to disturb the findings of the trial Court.

Whether the trial Court was right in granting access outside the jurisdiction of the Court

49. During the hearing the Appellant indicated that he had no objection to the child being allowed to see the father in Dubai. Although he is presently based in Dubai and is married to a South African called ZJ the Respondent’s family is based in Mombasa. The Applicant has submitted that the Respondent may, upon getting the child, refuse to return her to Kenya. Her fear appears to be that if something of that sort happened Kenyan Courts would not be able to compel the return of the child. I know that such a fear, speaking generally, is not unfounded. Is it however likely to happen in this case?



50. The Respondent is a Kenya citizen. His family resides in Mombasa Kenya. Nothing was produced during trial that convinced the Children Court that the Respondent was a flight risk. In the 2 cases the Appellant cited HOO versus CSF [2018]eKLR and SMM versus ANK [2022]eKLR there was, in each case, a clear and present risk that once custody was granted children wouldn't be brought back.
51. Courts have in fact permitted children to be taken out of Kenya, because in those Courts' reckoning doing so was in the best interest of the concerned children. The Courts, in those cases, did not also find any evidence that would support the allegation the children would not be brought to Kenya.
52. In any case permitting a child to travel outside Kenya gives a child an opportunity to learn new things, expand his or her horizon, spur ambition and motivate them/him/her to excel. I am thus in agreement with the decision of the Court in CK versus KM [2016]eKLR and MAA versus BS[2018]eKLR.
53. I may not agree with the precise wording of each of her orders. The Learned Magistrate appears to me to have considered the law and facts properly and made a decision that is well thought out, fair and just in the circumstances. I do not therefore think I should disturb her findings.
54. I must also add that the Children Court gave the Appellant leave to apply. The judgment of the Court below does not permit the Respondent to relocate the child. Any such decision would require agreement of the parties or the approval by the Court.
55. The upshot of the forgoing is that I find no merit in the appeal. It is in the best interest of the child that she remains with her grandmother.

### **Disposition**

56. I therefore order as follows:-

1. The appeal is dismissed; and
2. I make no orders as to costs this being a family matter.

Orders accordingly.

**DELIVERED, DATED, AND SIGNED THIS 12<sup>TH</sup> DAY OF JUNE 2023 AT MOMBASA VIA MICROSOFT TEAMS**

.....

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Ms. Oluoch-Wambi for the Respondent;

No appearance for the Appellant; and

Mr. Arthur Ranyundo – Court Assistant.

