



**AOO v Republic (Criminal Appeal 20 of 2019)
[2023] KEHC 22495 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL APPEAL 20 OF 2019
FR OLEL, J
SEPTEMBER 21, 2023**

BETWEEN

AOO APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant herein AOO was charged with the offence of defilement contrary to Section 8(1) and (2) of the Sexual Offence Act No. 3 of 2006. The particulars of the offence were that on the 1st day of December 2017 at [particulars] village in Umande location within Laikipia County, unlawfully and intentionally caused his penis to penetrate the vagina of BW a child aged 6 years.
2. In the alternative the Appellant was charged with the offence of committing an indecent act with a child contrary to Section 11(1) of the Sexual Offence Act No. 3 of 2006. The particulars were that on the 1st day of December 2017 at [particulars] village in Umande location within Laikipia County, he wilfully and intentionally caused his penis to come into contact with the vagina of BW a child aged 6 years.
3. The Prosecution called five witnesses who testified in support of their case and at the close of the Prosecution case, the Appellant was put on his defence and gave sworn testimony. Upon considering the evidence as presented, the trial court did find that the accused Not guilty on the 1st count on the charge of defilement but on the alternative count of committing an Indecent Act with a child, he was found guilty and the court proceeded to convict him under section 215 of the CPC. The court further did find that the appellant suffered from mental illness and therefore placed him in custody at Nanyuki G.K Prison to be held at the Mercy of the president.
4. The Appellant being dissatisfied with the said conviction and sentence filed his petition of appeal on 24th June 2019, where raised four (4) grounds of appeal. The grounds of appeal raised included;



- a. That, the learned trial Magistrate erred in law and fact without invoking Article 50(2)(f) contravened article 25(a) of the Constitution.
- b. That, the trial Magistrate erred in law and in fact while convicting him under the Presidential pleasure contravening article 50(2), 27(1) and 25 of the Constitution.
- c. That, the trial magistrate erred in both law and fact when the case was not proven beyond reasonable doubt and medical evidence which was inadmissible evidence.
- d. That, the trial magistrate further lost direction when the prosecution failed to call essential witnesses and identification which was not positive

Facts of the Case:

5. PW1, BW (Minor) Underwent voire dire examination and was found not to be sufficiently knowledgeable to understand the meaning of oath. She thus gave unsworn evidence. She testified that the accused put his “pod” in her “pod” (while pointing her private part) and that the ordeal was painful. She testified that the incident occurred on Mama G’s bed in the presence of I and G. She further testified that the appellant asked her to get him water and after the ordeal he bought her a sweet. PW1, stated that when her mother (PW3) returned home, she reported the incident to her and was later taken to see a doctor. PW1 on cross examination by the accused, testified that a M and a Mama M were present.
6. PW2, M.G (Minor) also underwent voire dire examination and was found not to be sufficiently knowledgeable to understand the meaning of oath. She thus gave unsworn evidence. She testified that she was six (6 years old) and that on the material date she was with W, J and the Complainant. The appellant came and knocked the window of their house and he was a person known to them as he was their neighbour. The appellant removed the complainant’s clothes proceeded to place her on the bed before proceeding to do bad manner to the Complainant. PW2 stated that she saw the appellant remove his cloths and lie on PW1. She also went and informed J and also heard the appellant asked PW1 for water.
7. PW3 RMM, mother to the complainant testified that on the material date (01.12.2017) she came back home from work and met her daughter B who appeared as if she was crying. She was with G PW2. Upon inquiring on what was happening, she learnt that a man appeared and defiled her daughter and later asked for water. That she reported the matter to the police and was referred to the hospital where the complainant was examined. The doctor told her that her daughter had been defiled.
8. PW3 identified the P3 form, PRC form and Birth certificate. PW1 was six (6) years old. She concluded her testimony by stating that she had known the accused before as he lived in a plot that neighboured hers and that they had never had any differences before. In cross examination PW3 stated that the doctor had confirmed that PW1 had been defiled.
9. PW4, PC Sabelia Wanjiku Force No. xxxxx from Nanyuki police station who was the investigating officer in the case testified that on the 2nd December 2017, she commenced investigations in the case of defilement that had allegedly occurred the previous day. That she recorded witness statements and issued the complainant with a P3 form which she identified in court. She further testified that she obtained the complainant’s birth certificate from her mother which she produced as Exhibit 3 and which proved that the complainant was a minor at all the material time. The accused was later arrested and charged with the offence.
10. PW5, Dr Wangari Gitau of Nanyuki Teaching and Referral Hospital examined the complainant. She filled a P3 Form for the Complainant a child aged 6 years. She stated that her clothing were clear and



that she alleged to have been defiled by a person known to her. She testified that on examination of the complainant, her general physique as fair, her vagina had bruises on the out genitalia, Hymen was broken, the anal area had no injuries, and she had vaginal discharge which was smelly. High vagina swab was done and some pus cells and yeast cells were seen thus an indication of infection. HIV and STD tests returned negative results.

11. PW5 thus concluded by giving her prognosis that defilement had occurred and that the bruises may have been due to the rubbing during the sexual encounter. She produced the P3 form and PRC form as Exhibits 1 and 2. In cross examination the witness stated that the alleged offence was committed on 1st December 2017 and the hymen broken through sexual penetration.
12. The Appellant was placed on his defence and gave sworn testimony. He testified that on the material day he never committed the offence as charged. He went to Mukima to pick his clothes and the two children saw him and approached his house. He was never taken to the hospital for examination. He denied committing the offence as charged.
13. The Trial magistrate did consider all the evidence tendered and convicted the appellant of the offence of indecent Act contrary to section 11(1) of the *Sexual Offences Act* No 3 of 2006. She also found as a fact that it is likely that at the material time was not in control of his mental judgment. She therefore placed the appellant to be held at Nanyuki G.K prison under the mercy of the president.
14. The appellant did not file any submissions, but the respondent filed their submissions dated 23rd January 2023.

Respondent Submissions:

15. The Respondent did submit that this being a first-time appeal, the Court's duty is to consider the evidence presented to the trial Court with caution while noting that that it neither heard nor saw the witnesses. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it before coming up with its own independent findings.
16. The Respondent's framed issues for determination as deduced from the grounds of Appeal filed to be ;
 - a) Whether the prosecution's case was proved beyond reasonable doubt
 - b) Whether the sentence was appropriate in the circumstances and Whether the Appellant's rights under Articles 25, 27(1), 50(2)(f) of the *Constitution* were violated in convicting him to be held under presidential pleasure.
17. On the issue of violation of the Appellant's rights, the respondent submitted that there was no violation of the appellate rights as it was not clear from the grounds in the petition of appeal or evidence adduced how the appellate rights had been violated. The respondent stated that this ground of appeal was irrelevant to the appeal and thus ought to be disregarded.
18. On whether the prosecution had proved its case beyond Reasonable doubt, it was submitted that the prosecution was bound to prove the ingredients of penetration, identification and age. It was submitted that on the ingredient of Penetration, the minor PW1 testified that the accused put his "pod" on her "pod" and went ahead to point her private part and that she felt some pain. PW2 corroborated PW1's testimony by stating that she saw the accused removing his clothes and doing bad manners to PW1. Further, the P3 form and PRC form were produced by Dr Wangari Gitau who testified observed bruises on the outer genitalia, and that hymen was broken and concluded that defilement had occurred.



The evidence given by the prosecution witnesses was in line with section 124 of the Evidence Act and thus penetration was sufficiently proved.

19. As regards Identification, it was submitted that from the evidence of PW1-3, it showed that they were familiar with the Appellant as he was their neighbour and were all able to identify him in court.
20. Finally on the issue of age of the minor , it was submitted that the minor’s mother PW3 testified that the minor was born in 2011 and her birth certificate was produced and marked as exhibit which showed that the minor was 6 years old. All the elements of defilement had all been proved however the trial court found that there was not enough evidence to convict him on the main charge of defilement and proceeded to convict him on the alternative charge of committing an indecent act with a child.
21. The Respondent further submitted that the sentence passed on the appellant was appropriate. Sentencing was an exercise of the discretion of the court. They relied on the case, in Mokela v The State (135/11) [2011] ZASCA 166, the Supreme Court of South Africa held that:

It is well-established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy *carte blanche* to interfere with sentences which have been properly imposed by a sentencing court.
22. The trial Court bore in mind that the appellant could have been mentally ill at the time he committed the offence and thus justifying his imprisonment at the mercy of the president provided for under section 166 of the Criminal Procedure Code and Article 133 of the Constitution. The court was urged to dismiss the appeal in its entirety.

Analysis and Determination:

23. It is now well settled, that a trial Court has a duty to carefully examine and analyze the evidence adduced a fresh and come to its own conclusion, while at the same time noting that it did not have the advantage of seeing the witnesses and observing their demeanor See *Okeno v Republic* 91972)EA 32 & *Pandya v Republic* (1975) EA 366.
24. Further this being first Appellate Court, it must itself also weigh conflicting evidence and draw its own conclusion (*Shantilal M. Ruwala v R* (1975) EA 57. Where it was stated that it is not the function of the first appellate court to merely scrutinize the evidence to see if there was some evidence to support the lower Court finding and conclusion, it must make its own findings and draw its own conclusions only then can it decide whether the magistrate’s findings should be supported in doing so, it should make allowance for the fact that the trial Court has made the advantage of hearing and seeing the witnesses.
25. Also in *Peter’s v Sunday Post*(1958) EA 424 it was held that it is not the function of the first appellant court merely to scrutinize the evidence to see if there was some evidence to support the lower courts finding and conclusion: it must make its own findings and draw its own conclusions. Only then can it be decided whether the magistrate findings should be supported. In doing so it should make allowance for the fact that the trial court had the advantage of hearing and seeing witnesses.

B. Whether the prosecution discharged the Burden of Proof

26. 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.”

27. In the case of *Republic v Edward Kirui* (2014) eKLR, the Court of Appeal quoted the Supreme Court of India case of *Murugan & Another v State by Prosecutor, Tamil Nadu & Another* (2008) INSC 1688 where the case of *Bhagwan Singh v State of M. P.* (2002)4 SCC 85 was cited as follows:-

“The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view of ignoring the admissible evidence, a duty is cast upon the High Court to re-appreciate the evidence on appeal for the purpose of ascertaining as to whether all or any of the accused has committed any offence or not.”

28. The appellant was charge with the offence of defilement of a minor contrary to provisions of section 8(1) and 8(2) of the *Sexual Offences Act*. 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 trial court did find that the evidence presented did not conclusively prove penetration and proceeded to convict him on the alternative count of committing an indecent Act with a minor.

29. Section 11(1) of the *Sexual Offences Act* provides that:

Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.

30. While Section 2 of the *Sexual Offences Act* provides inter alia as follows: “indecent act” means an unlawful intentional act which causes-

- a. any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration.
- b. exposure or display of any pornographic material to any person against his or her will;

31. The main ingredient for the prosecution to establish with respect to the charge of committing an indecent act with a child are

- a. Establish the age of the child
- b. Establish that there was contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but the same does not include an act of penetration.

32. PW1 testified that she was 4 years old. The minor’s mother, PW3 testified that the minor was born in 2011 and thus at the time of the incident was six (6) years. The said birth certificate No 5XXXXX2 indicated that the Minor was born on 4th November 2011. She identified her birth certificate which was later produced as Exhibit 3 by PW4 the investigating officer. Age of the minor was thus sufficiently established.

33. The complainant PW1 and PW2 testified that they knew the appellant. PW3 also testified that the appellant lived in a plot that neighbours her plot. PW1 and PW2 were also able to positively identify the



appellant in Court and therefore there was no doubt as to the identity of the appellant. Identification was by way of recognition and such evidence carefully examined and considering the circumstances of identification, it could be confirmed that the identification of the appellant was favourable and free from possibility of error. Therefore the same could safely be used as a basis of conviction. See *Wamunga v Republic* (1989) KLR at 426.

34. The final element to be proved was if there was body contact between the appellant and any part of the body of a minor with the contact being on the genital organs, breasts or buttocks of the minor. PW1 testified that the appellant put his “pod” in my “pod” (she pointed to her private parts) and he felt pain. PW2 also testified that she saw the appellant remove PW1 cloths and saw him lie on her. She then went and informed J.

35. PW5 Dr Wangari Gitau who examined the minor did find that she was in a generally fair physical state and had bruises on the outer genitalia. Her hymen was broken and she had smelly discharge. High vaginal swab showed that she had some pus cells and yeast cells which was an indication of infection. The trial court critically examined the evidence adduced and for reasons recorded found that indeed there was contact between the appellant and the minor PW1. The bruises she had on her outer genitalia must have been as a result of the appellant rubbing his genitalia on the minor’s outer genitalia but with no penetration.

36. The evidence adduced looked at in totality did clearly show that the prosecution effectively discharged the burden of proof and the appellant rightly convicted of the offence of indecent Assault.

Whether the sentence was appropriate in the circumstances and Whether the Appellant’s rights under Articles 25, 27(1), 50(2)(f) of the *Constitution* were violated in convicting him to be held under presidential pleasure.

37. The offence of committing an indecent Act with a child attracts contrary to section 11(1) of the *Sexual Offences Act* attracts a penalty of imprisonment of not less than ten (10) years. The appellant was convicted but since it had been demonstrated that he was a person who suffers from mental illness and therefore not in full control of his mental judgment he was placed at Nanyuki prison under the mercy of the president. It is the appellants contention that this sentence contravenes his rights as enshrined under Article 50(2), 27(1) and 25 of the *Constitution* of Kenya 2010.

38. In the Court of Appeal case of *Bernard Kimani Gacheru v Republic* [2002] eKLR 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.”

39. Also the court of Appeal in the case of *Shadrack Kipkoeb Kogo v Republic* , Eldoret Criminal Appeal No 253 of 2003 it was stated that;

“sentencing is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into



account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered. (Also see *Sayeka v Rep* KLR 306)

40. Article 25 (c) of the *Constitution* of Kenya provided for right to fair trial, while Article 27(1) provides that every person is equal before the law and has the right to equal protection and equal benefit of the law. The appellant also referred to Article 50 (2) of the *Constitution*. since this is raised as regards the sentence passed Article 50 (2), (p) would be the relevant provision that he is entitled to benefit from the least severe of the prescribed punishment of the offence convicted of.

41. Section 166 of the *Criminal Procedure Code* does provide that

Defence of lunacy adduced at trial

166 (1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission

- (2) When a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.
- (3) The President may order the person to be detained in a mental hospital, prison or other suitable place of safe custody.
- (4) The officer in charge of a mental hospital, prison or other place in which a person is detained by an order of the President under subsection (3) shall make a report in writing to the Minister for the consideration of the President in respect of the condition, history and circumstances of the person so detained, at the expiration of a period of three years from the date of the President's order and thereafter at the expiration of each period of two years from the date of the last report.
- (4) On consideration of the report, the President may order that the person so detained be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.
- (5) Notwithstanding the subsections (4) and (5), a person or persons thereunto empowered by the President may, at any time after a person has been detained by order of the President under subsection (3), make a special report to the Minister for transmission to the President, on the condition, history and circumstances of the person so detained, and the President, on consideration of the report, may order that the person be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.
- (7) The President may at any time order that a person detained by order of the President under subsection (3) be transferred from a mental hospital to a prison or from a mental hospital, or



from any place in which he is detained or remains under supervision to either a prison or a mental hospital.

42. In *Rep v S.O.M* (2018) eKLR (Majanja, J) looked at the question of sentencing an appellant who was insane to be held at the president's pleasure and looked at whether provision of Section 166 of the *Criminal Procedure Code* limited the courts discretion on sentencing. He held that ;
- a. Although the Francis Muruatetu Case dealt with the mandatory death sentence, the principles it espoused were applicable to the circumstances of the instant case. The provisions of section 166 of the *Criminal Procedure Code* on a finding of the Court that an Accused was guilty but insane were mandatory in nature. The Court had no discretion irrespective of the nature of mental illness or condition of the Accused. The ultimate sentence imposed would depend on the discretion of the President who would determine the conditions under which the Accused would serve the sentence either in a mental institution or a prison or whether the Accused would be discharged.
 - b. The rights of a person with a disability included the right to be treated with dignity. Article 28 of the *Constitution* recognized the right to dignity and article 54(1)(a) of the *Constitution* provided for the right of a person with disability to be treated with dignity and respect and to be addressed and referred to in a manner that was not demeaning. Kenya was also a signatory to the Convention on the Rights of Persons with disability which was part of the laws of Kenya recognized in article 2(6) of the *Constitution*.
 - c. The vesting of discretion on how the Accused would be treated after conviction on the executive was inimical to the fundamental duty of the Judiciary to determine the guilt of the Accused and terms upon which he or she would serve the sentence. By vesting discretionary power on the executive and taking away the judicial function to determine the nature of the sentence to be imposed after the special finding was made, section 166 of the *Criminal Procedure Code* went contrary to article 160 of the *Constitution* and was unconstitutional. It also violated the right to a fair trial as protected under article 25 of the *Constitution*.
 - d. Under section 7(1) of the Sixth Schedule to the *Constitution*, the Court was entitled to construe existing laws, such as the *Criminal Procedure Code* as one of the 'existing laws' that continued to be in force, with such modifications, adaptations, qualifications and exceptions necessary to bring its provisions into conformity with the Constitution. The defect in section 166 of the *Criminal Procedure Code* was that the review of the sentence was to be done by the President and not the Court and hence reference to "the President" under that section had to be read to mean "the Court." In effect, the modification would mean that the Accused would be brought before the Court periodically for a review of the matter. If necessary, the Court would call for evidence including the evidence of experts before making an appropriate order within a framework of a definite period of detention to be imposed by the Court.
 - e. Considering the circumstances of the offence, its gravity and the mental state of the Accused, it was appropriate for him to be committed to a mental institution namely Mathari Mental Hospital for a term of fifteen (15) years subject to period review by the Court in accordance with section 166 of the *Criminal Procedure Code* and in any case before the expiry of every two (2) years.



43. In *AOO and 6 others v Attorney General and another* NRB Petition No. 570 of 2015 [2017] eKLR it was held *inter alia* that;

“the detention of a child found guilty of the offence of murder at the President’s pleasure was unconstitutional. It was held that the indeterminacy of the sentence exacerbated the cruel, inhuman or degrading nature of the sentence as the period of incarceration was unknown to the Accused and depended on the President’s discretion.

The Court also held that leaving the length of the sentence to the discretion of the President violated article 160 of the *Constitution* which provided for the independence of the Judiciary.”

44. In *Hussan Hussein Yusuf v Republic* Meru High Court Criminal Appeal No. 59 of 2014 [2016]eKLR, (Kiarie J.), held that section 167(1) of the *CPC* which provides that a person suffering from mental disability and is unable to understand the proceedings is to be detained at the pleasure of the President is unconstitutional as it violates Articles 25 and 29 of the *Constitution* that prohibit cruel, inhuman and degrading treatment. The learned judge reiterated this position in *B K J v Republic* Meru HC Criminal Appeal No. 16 of 2015 [2016] eKLR. In *Joseph Melikino Katuta v Republic* Voi Hc Criminal Appeal No. 12 of 2016 [2016]eKLR, Kamau J., emphasised the point that keeping a mentally ill person in prison for an indeterminate period of time is cruel, inhuman and degrading treatment contrary to Articles 25 and 29 of the *Constitution*.
45. The appellant has a legitimate expectation that during trial he is subject to equal treatment before law and is accorded a fair hearing, which includes his right to have all relevant provisions of the law to be applied in favourable where the circumstances allow. The right to fair hearing extends to sentencing and for him to be held for an indefinite period at the mercy of the president clearly was a violation of his rights and was a misdirection by the trial court warranting interference by this court. See *Abmad Abolfathi Mohammed & Another v Republic* (2018) eKLR & *Bethwel Wilson Kibor v Republic* (2009) eKLR
46. Sentencing is a discretion of the court. But the court should look at the facts and the circumstances of the case in it’s entirely so as to arrive at appropriate sentence. The Court of Appeal *Thomas Mwambu Wenyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alister Anthony Pereira v State of Maharesbtra* at paragraph 70-71 where the court held the following on sentencing:

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.



Disposition

- 47. Having considered the entire appeal I do find that the appeal as against the conviction is not merited and the same is dismissed.
- 48. The sentence impose on the appellant by the trial Magistrate in Nanyuki (SOA) case Number 57 of 2017, that he be held at Nanyuki G.K Prison under the mercy of the president is hereby set aside . The appellant is sentence to serve six (6) years imprisonment. The appellant was arrested on 2nd December 2017 and was not released on Bond during the trial. He is entitled to benefit from the provisions of section 333(2) of the CPC. The sentence will run from the said date of 2nd December 2017.
- 29. It is so ordered.
- 30. Right of Appeal 14 days.

JUDGEMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 21ST DAY OF SEPTEMBER, 2023.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 21ST DAY OF SEPTEMBER, 2023.

In the presence of;

Appellant

.....for ODPP

.....Court Assistant

