



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIVIL APPLICATION NO. 15 OF 2009

(FAMILY DIVISION)

**IN THE MATTER OF AN APPLICATION FOR THE RETURN OF AN
ABDUCTED MALE CHILD ZAJ TO THE JURISDICTION OF THE
HIGH COURT OF JUSTICE FAMILY DIVISION, UNITED KINGDOM**

AND

IN THE MATTER OF AN APPLICATION

BY

SAJ.....APPLICANT

VERSUS

AOG.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

JUDGMENT

1. The petitioner filed the petition herein on the 2nd March 2009 under the provisions of sections 4(1)(2)(3), 6(1)(3), 10(1)(5), 11, 13(1), 22, 76, 81, 87(1), 88, 114(f)(g), and 115 of the Children Act No. 8 of 2001, section 63 (c)(e) of the Civil Procedure Act, Cap 21, Laws of Kenya and Order XXIX rules 2 and 2A(1), 2 of the Civil Procedure Rules (now repealed) and the inherent powers of the Court, seeking prayers that the child the subject of the proceedings be returned to the High Court of Justice Family Division England within three days, that 2nd respondent liaises with the United Kingdom's Central Authority to the intent that the child is placed under the wardship of the High Court of Justice, Family Division, England and for the 2nd respondent to produce before this Court a Certificate of Compliance and a stay of proceedings and of execution of any order issued or made in Nairobi Children's Case No 439 of 2008.

2. The petitioner seeks several declarations, being that the High Court of Justice, Family Division, England is vested with exclusive jurisdiction, and constitutes the convenient fora to the exclusion of any other foreign court to hear and determine any and all custody and ancillary issues between the petitioner and the 1st respondent relating to the care, custody, possession, rights, and the welfare of the male child born in Bolton United Kingdom on 5th May 2005 and known as (ZAJ), a declaration that the habitual residence of ZAJ prior and up to his wrongful removal from Bolton United Kingdom in November 2007 is Bolton United Kingdom, a declaration that the removal from Bolton, United Kingdom in November 2007 ZAJ was wrongful and in breach of the petitioner's rights as his biological's father and in breach of the child's rights to parental rights and affection. The petitioner further seeks a determination as to whether the provisions of Sections 13(1), 17 and 18(1) of the Children's Act No. 8 of 2001 are applicable in determining the rights of ZAJ and as to whether the abduction of the child by the 1st respondent constituted child abuse.

3. The matter has been to the Supreme Court and back. Rawal J made interlocutory orders in the matter on 18th March 2009, which provoked an appeal to the Court of Appeal in Civil Application No. Nai 99 of 2009 (UR 61/2009). A determination by the Court of Appeal provoked a further appeal to the Supreme Court. The Supreme Court allowed the appeal and directed that the petition be heard by the High Court on a priority basis. The petitioner thereafter filed a composite affidavit sworn on 30th September, 2013. In the affidavit, he relied on the depositions he had previously filed in relation to this matter namely: -

- (1) An affidavit in support of the Notice of motion sworn on 2nd March, 2009;
- (2) A verifying affidavit to the petition sworn on 2nd March 2009;
- (3) A replying affidavit sworn on 16th June, 2009;
- (4) An affidavit sworn on 10th November, 2009;
- (5) An affidavit sworn on 9th February, 2010, and
- (6) Depositions filed in the Court of Appeal and exhibits thereto.

4. The petitioner testified that the Children’s Court of Kenya lacked jurisdiction in dealing with international child abduction cases. He, however, maintained that he had never been served with process in the Nairobi Children’s Court Case No. 439 of 2009 lodged by the 1st respondent. He argued that the court must in the circumstances make a finding on the issue of abduction of the child which is the primary issue in these proceedings. He contended that the proper forum to ventilate child custody cases is the court of the child’s habitual residence which he believed is the High Court of Justice, Family Division, United Kingdom and not the Kenyan Children’s Court in a case of international child abduction. He asserted that the 1st respondent’s continued retention of the child in Kenya was an illegal action. He asserted that the conduct by the 1st respondent amounted to a contravention of Article 2(5) of the Constitution of Kenya, 2010, Kenya’s obligation under the African Charter on the Rights and Welfare of the Child, and a blatant disregard of the best interests of the child. He submitted that the 1st respondent was merely taking advantage of the lacuna in the law of international child abduction, since there were no set rules. According to him, the 1st respondent was seeking to assert her Kenyan nationality and oust that of the child.

5. He urged the court to make a finding of fact on the international child abduction for reasons that the 1st respondent relocated to Kenya under the guise of holidaying in Kenya knowing well that he would have objected to the relocation, and the 1st respondent had not demonstrated an intention to return to the United Kingdom an act crystallized as child abduction. He maintained that the 1st respondent abducted the child from the United Kingdom thereby depriving the child of his nationality rights and his right to parental care and protection. He asserted that the 1st respondent was aware of the international child abduction proceedings in the United Kingdom, and had even sought to challenge the veracity of the orders of the Court in England. He pointed out that the 2nd respondent had sided with the 1st and 3rd respondents, instead of protecting the rights of the child. He urged the court to take into account the cross-cutting principles of child abduction and the international practice acceptable in child abduction cases in making a determination. He submitted that any judgment or order enforced by this court must fall within the ambit of the Foreign Judgments (Reciprocal Enforcement) Act, Cap 43 Laws of Kenya.

6. The 1st respondent responded to the petition by way of a replying affidavit sworn on the 11th March 2009. She also testified in the matter. She opposed the petition, stating that she and the child ZAJ and she had been ordinarily resident in Kenya since November 2007 and thus his habitual residence had always been the Republic of Kenya. She further stated that the Republic of Kenya was not signatory to the civil aspects of international child abduction, that is the Hague Convention, and that no statute known in Kenyan law donated any powers to the Kenyan court or any tribunal in enforcement or interpretation of Kenyan law to issue any orders in keeping with the said convention. She invoked the provisions of section 76 of the Children Act and cited the best interests of the child. She stated that the child was not abducted from the United Kingdom, and that the invocation of any Convention on abduction was only meant to sensationalize the proceedings and paint her in bad light in the eyes of the court. She urged the court to assert the sovereignty of the Republic of Kenya and its jurisdiction. The respondents submitted that the petition was disguised as an enforcement of the rights of the child when it in fact dealt with issues of custody which ought to be dealt with by the Children’s Court. The respondents asserted that the Foreign Judgments (Reciprocal Enforcement) Act Cap 43 was not applicable in this instance, and is that while section 3(3)(e) provided that the Act did not apply in proceedings in connection with the custody or guardianship of children, the matter at hand revolves around the alleged abduction of a child.

7. From the arguments presented by both parties, the issues for determination are whether the 1st respondent’s act of removing the child from the United Kingdom and retaining him in Kenya amounted to international child abduction as alleged and which should be the correct forum for determining the issue of custody of the child. Put differently, the question is whether the removal of the child from Bolton, United Kingdom in November 2007 was wrongful and in breach of the petitioner’s rights as his biological father and in breach of the child’s rights to parental rights and affection.

8. Section 22 of the Children Act provides that where a person alleged that any of the provisions on the rights accorded to children were being or likely to be contravened, that person may apply to the High Court for redress on behalf of the child. It is on that premise that the petitioner filed the instant petition alleging that the child has been deprived of his nationality and his right to parental care, and by causing the child to remain in Kenya, he had been deprived of the petitioner’s care. The petitioner had averred that sections 13(1), 17 and 18(1) of the Children Act had been violated and so had his rights as the biological father and those of the child. The said provisions provide that: -

‘13. Protection from abuse, etc.

(1) A child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person.

14 ...

15 ...

16 ...

17. *Leisure and recreation*

A child shall be entitled to leisure, play and participation in cultural and artistic activities

18. *Torture and deprivation of liberty*

(1) No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty ...'

9. The petitioner claimed that the 1st respondent breached the provisions of the Section 13(1) above when she abducted the child from Bolton, United Kingdom in November 2007 and subsequently wrongfully detained him to date. That, the petitioner claimed was done without his consent or prior notice. It was the petitioner's averment that the child was a citizen of the United Kingdom and the 1st respondent's actions amounted to a denial or violation of the child's right to a nationality. The 1st respondent denied the allegation and stated that it was in fact the petitioner who drove her and the child to the airport and that the petitioner was fully aware of the whereabouts of the child and had visited them in Kenya and had stayed with them for a period of six months. She countered the petitioner's claim of the child being denied a right to nationality stating that the child was entitled to dual citizenship. She stated that the child was well provided for, attended school and the petitioner was well aware of this.

10. This court has inherent power and constitutional jurisdiction to uphold, defend, protect and enforce the Bill of Rights and any other law premised in Articles 3, 10, 20(3)(4)(5), 21, 23, 24, 159, 165(3)(b)(d), 258, 259 and 260 of the Constitution of Kenya. Article 259 provides the manner in which the Constitution is to be interpreted. It requires that the Constitution should be interpreted in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights, and that contributes to good governance. Article 159(2) (e) of the Constitution mandates the Court, in exercising its judicial authority, to protect and promote the purpose and principles of the Constitution.

11. The courts have severally discussed matters that ideally ought to be addressed in constitutional petitions of the nature that is before me. In *James Kugocha v Chief County Officer Department of Infrastructure* [2018] eKLR, the court explored the competencies of a petition by stating that: -

'24. As to whether the petition is competent, the law was settled in the Court of Appeal case of Mumo Matemu vs. Trusted Society Of Human Rights Alliance & 5 Others [2013] eKLR and that of Anarita Karimi Njeru Vs Attorney General Petition No. 1 of 1979 1 KLR 154.

25. A petitioner must be specific as to the rights violated and give particulars of it. This serves the purpose of generating the issues for determination before the court and assists the opposite party to prepare a comprehensive response. The Constitution of Kenya (Protection of Rights and Procedure Rules, 2013 require in Rule 10(2) that a constitutional petition shall contain the facts relied upon; the constitutional provision violated; the nature of injury caused and the relief sought."

12. In the South African case of *S. vs. Zuma & Others* (1995)2 SA 642(CC)[A3] it was held that

'A party alleging violation of a constitutional right or freedom must demonstrate that the exercise of a fundamental right has been impaired, infringed or limited.'

13. When determining whether an argument raises a constitutional issue, the court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the court to consider Constitutional rights or values. Where the court is satisfied that the petition meets the threshold of a constitutional petition, the court will proceed to hear and determine it under powers donated by Articles 23 and 165 of the Constitution of Kenya. It is also important to bear in mind the constitutional command in Article 259 of the Constitution of Kenya which obligates this court to interpret the constitution in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights and permits the development of the law and contributes to good governance.

14. The Bill of Rights as provided for by Chapter Four of the Constitution and as stated in Article 19(1) of the said Constitution is an '*... integral part of Kenya's democratic state and is the framework for social, economic and cultural practices.*' Article 20(3) (a) of the said Constitution of Kenya goes on to state that '*in applying a provision of the Bill of Rights, a court shalladopt an interpretation that most favours the enforcement of a right or fundamental freedom.*' Article 23(1) of the Constitution grants Jurisdiction to the High Court to hear and determine applications for redress of a denial, violation or infringement of, or threat to a right or fundamental freedom.

15. Article 53 (1) of the Constitution of Kenya provides as follows:

'53.Children

(1)Every child has the right—

(a) to a name and nationality from birth;

(b) to free and compulsory basic education;

(c) to basic nutrition, shelter and health care;

(d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;

(e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and

(f) not to be detained, except as a measure of last resort, and when detained, to be held—

(i) for the shortest appropriate period of time; and

(ii) separate from adults and in conditions that take account of the child's sex and age.

(2) A child's best interests are of paramount importance in every matter concerning the child.'

16. In *Refugee Consortium of Kenya & another v Attorney General & 2 others* [2015] eKLR, it was stated with regard to Article 53: -

'In that context, Section 28(2) of the South African Constitution, which is exactly the same as Article 53(2) of the Kenyan Constitution, has been interpreted by South African Courts to be a right and not just a guiding principle - See Sonderup vs Tondelli and Anor 2001 (1) SA 1711.'

17. In *AOO & 6 others v Attorney General & another* [2017] eKLR that:

'Children need special protection because they are among the most vulnerable members of society. They are dependent on others - their parents and families, or the state when these fail - for care and protection. As a result, the drafters of our Constitution made children's rights a priority - and stated that the best interests of a child are the overriding concern when it comes to any matter affecting a child. Thus, the inclusion in the Bill of Rights of a provision on the rights of the child was an important development for Kenyan children...'

18. Section 4(2) (3) of the Children Act provides that: -

(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (The same is reiterated by Article 3 of the United Nations Convention on the Rights of the Child)

(3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act 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;

(c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.'

19. Section 6 of the Children Act on the other hand provides that:

'6.Right to parental care

(1) A child shall have a right to live with and to be cared for by his parents.

(2) Subject to subsection (1), where the court or the Director determines in accordance with the law that it is in the best interests of the child to separate him from his parent, the best alternative care available shall be provided for the child.

(3) Where a child is separated from his family without the leave of the court, the Government shall provide assistance for reunification of the child with his family.'

20. Section 76(1) of the Children's Act provides as follows:

'Subject to section 4 where a court is considering whether or not to make one or more orders under this Act with respect to a child it shall not make the order or any other orders unless it considers that doing so would be more beneficial to the welfare of the child than making no order at all.'

21. In *MA vs. ROO* (2013) eKLR, it was held that:

‘ ... What is the best interest of the child has not been defined by the law. This is as it should be because the best interest of each particular child will depend on the circumstances of each particular case at any one particular time. What is not in dispute, however, is that there are certain minimum requirements that have universally been accepted to constitute the best interest of the child. This includes the right of a child to be provided with shelter, food, clothing and education. The child is entitled to medical care. The child’s welfare should be taken care of under the best possible circumstances. The child is also entitled to parental guidance. This guidance shall where possible, be provided by both parents. The child is further entitled to be given a suitable, conducive and loving environment in which to grow up in. ‘... This court agrees with the Respondent that his right as the biological father of the child should not in the circumstances be ignored. However, such right shall be subject to what constitutes the best interest of the child. As an adult, the right of the respondent as the father of the child cannot be considered to be of paramount importance to that of the best interest of the child ... ’

22. In *KMM vs. JIL* (2016) eKLR, it was stated that -

‘ ... At the International level, the legal instruments on rights of the child, the International Convention on Rights of the Child (UNCRC) and the African Charter on Rights and Welfare of the Child (ACRWC) focus on child’s best interests, welfare and considerations as paramount. Secondly, both parents of the child shall contact, access and interact with the child irrespective of whether parents are married or not or if they reside in different states for purposes of the child’s upbringing and development. The member states are obligated to facilitate an expeditious process for the parent to contact access and interact with the child ... ’

23. In terms of Article 2(5)(6) of the Constitution of Kenya, the general rules of international law and any treaty or convention ratified by Kenya form part of the law of Kenya under the Constitution.

24. The International Convention on Rights of the Child has provisions which are relevant to the matters at hand. They state as follows -

‘Article 9(1). States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

(2) ...

(3) States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.’

‘Article 10(2). A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (order public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.’

‘Article 11(1) States Parties shall take measures to combat the illicit transfer and non-return of children abroad.’

‘Article 18(1) States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

‘Article 35 States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.’

25. On the other hand the African Charter on the Rights and Welfare of the Child, Article 4(1), provides that *‘in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.’* The Preamble to the International Covenant on Economic, Social and Cultural Rights, insofar as it recognizes the indivisibility of human rights, is applicable to children’s rights as well. Thus, it notes that *“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”* and that *‘these rights derive from the inherent dignity of the human person.’* The Universal Declaration of Human Rights contains two articles that specifically refer to children. Article 25(2) states: *‘[m]otherhood and childhood are entitled to special care and assistance.’* The International Covenant on Civil and Political Rights contains general provisions from which children are entitled to benefit as well as certain specific provisions on safeguards for children in the administration of justice and as members of a family unit. Thus, Article 2 obliges States Parties *‘to respect and to ensure to all individuals within its territory and subject to its jurisdiction’* the rights recognized in the International Covenant on Civil and Political Rights, *‘without distinction of any kind’*; to adopt laws to give effect to those rights; and to provide effective remedies where there are violations.

26. Child abduction in the context of the petition before me has nothing to do with the crime defined in the Penal Code cap 63 Laws of

Kenya, but refers to removal of a child from one jurisdiction to another without the consent of the parent. According to the *Black's Law Dictionary*, 9th edition, abduction is defined as the act of leading someone away by force or fraudulent persuasion. Article 29(1) of the African's Charter on the Rights and Welfare of the Child directs state parties to take measures to prevent the abduction of children for any purpose of in any form, by any person including parents or legal guardians of the child. The Children's Act at section 13(1) provides that a child shall be entitled to protection from abduction by any person.

27. In light of the above, it is important to examine whether the 1st respondent's actions amount to abduction and whether the petitioner's application to have the child returned to the wardship of the English court has merit. In determining this, I shall examine the English cases on this matter which though persuasive, can be used as guiding principles where the Kenyan jurisprudence is not well established on this matter.

28. In *McKee vs. McKee* (1951) AC 352, the Privy Council stated thus: -

'It is the law ... that the welfare and happiness of the infant is the paramount consideration in questions of custody...To this paramount consideration all others yield. The order of a foreign court is no exception. Such an order has not the force of a foreign judgment. Comity demands not its enforcement, but its grave consideration. This distinction ... rests on the peculiar character of the jurisdiction and on the fact that an order providing for the custody of an infant cannot in its nature be final.'

29. Buckley J. in *McKee vs. McKee* (supra) while weighing in on the issue of sending a child back to the jurisdiction from which he has come stated that: -

'To take a child from his native land, to remove him to another country where, maybe, his native tongue is not spoken, to divorce him from the social customs and contacts to which he has become accustomed, to interrupt his education in his native land and subject him to a foreign system of education are all acts...which are likely to be psychologically disturbing to the child, particularly at a time when his family life is also disrupted. If such a case is promptly brought to the attention of a court in this country, the judge may feel that it is in the best interests of the infant that these disturbing factors should be eliminated from his life as speedily as possible...The judge may well be persuaded that it would be better for the child that those merits should be investigated in a court in his native country than that he should spend in this country the period which must necessarily elapse before all the evidence can be assembled for adjudication here.'

30. The above case demonstrates that in such instances, the court is required to assume jurisdiction to determine whether to send the children back to the jurisdiction from whence they came without going into the details of the dispute between the parents, and without more than such investigations as satisfies the court that the children will come to no harm.

31. In determining the petition at hand then, it is not enough for the petitioner to claim that the 1st respondent abducted the child. He has to go further and demonstrate that the child has suffered prejudice as a result of his continued retention in Kenya. In all matters involving a child, the best interest of the child must be given paramount consideration. In *Re R (Childs) (Wardship: Jurisdiction)* (1981) 2 FLR 416, Ormond LJ summarized the state of the law in such instances when he stated that:

'... the strength of a summary order for the return of the child to the country from which it has been removed, must rest, not on the so-called 'kidnapping' of the child, or an order of a foreign court, but on the assessment of the best interests of the child. Both, or either, are relevant considerations, but the weight to be given to them must be measured in terms of the interest of the child, not in terms of penalizing the 'kidnapper', or of comity, or any other abstraction. 'Kidnapping' like other kinds of unilateral action in relation to children, is to be strongly discouraged, but the discouragement must take the form of a swift, realistic and unsentimental assessment of the best interests of the child, leading, in proper cases to the prompt return of the child to his or her own country, but not the sacrifice of the child's welfare to some other principle of law.'

32. The definition of child abduction or kidnapping in the *Black's Law Dictionary* describes the circumstances of this case whereupon the 1st respondent is accused of abducting the child from the United Kingdom, bringing him to Kenya and retaining him in Kenya. The evidence presented by the parties indicated that the child came to Kenya sometime in the year 2008 when he was only two years old. It is about ten years since, which means the child is about twelve (12) years of age at now. The 1st respondent submitted that the child goes to Premier School and participates in all activities required of his Muslim religion. She presented evidence to show that the child had been afforded his rights to: education, religion, health care and leisure and recreation. The 1st respondent argued that she had not deprived the child of his nationality, and that by virtue of the Constitution of Kenya 2010, the child was a Kenyan. Article 14(1) of the Constitution provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or the father of the person is a citizen. It is by virtue of this that the 1st respondent, the child's mother, maintained that the child had not in any way been deprived of his nationality.

33. It is clear that almost ten years have lapsed since the 1st respondent 'abducted' the child as alleged. It is most probable than not that the child is now settled in his new environment and an order for his return would only jeopardize his welfare and benefit the petitioner. Article 53(2) of the Constitution, section 4(2) of the Children's Act, 2001, Article 3(1) of the Convention on the Rights of the Child and Article 4(1) of the African Charter on the Rights and Welfare of the Child, all provide that in actions concerning the child, the best interest of the child shall be the primary consideration. While Kenya is not a signatory to the Hague Convention 1980, its provisions can be employed to ensure that the best interest of the child is given primary consideration. This is also with regard to the principle of legal reciprocity. At the time of the alleged 'abduction' the child was living with the petitioner and 1st respondent in the United Kingdom which is a signatory to the Convention. Article 1 of the Convention states that one of the objectives of the Convention is to secure the prompt return of children wrongfully removed to or retained in any contracting state. Article 4 of the Convention states that it applies to any child who was habitually resident in a contracting state immediately before breach of any custody or access rights. However, in this instance, the custody case is yet to be determined and the provisions of the Convention alluded to herein do not apply. Even if the provisions did apply, they must be measured against the best interest of the child as cited above.

34. Having analyzed the circumstances of this case, I find that the application for return of the child lacks merit. It will only work to the advantage of the petitioner and interfere with the wellbeing of the child. I shall accordingly dismiss the same, but with no order as to costs. Since there are pending proceedings in the Children's Court, it is practical to await the determination on which of the parties will be granted custody.

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 31ST DAY OF JANUARY, 2019

W. MUSYOKA

JUDGE

DATED, SIGNED and DELIVERED at NAIROBI this 15TH DAY OF FEBRUARY, 2019

ASENATH ONGERI

JUDGE