REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CRIMINAL APPEAL NO. 25 OF 2018

NM.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal from the Judgment of Hon. C. A. Mayamba (SRM) in the Senior Resident Magistrate's Court at Kilungu Criminal Case No.34 of 2018, delivered on 5th July, 2018)

JUDGEMENT

1. On **Count I** the appellant was charged with defilement contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act No. 3 of 2006.

- The particulars being that on the diverse dates between 13th March 2016 and 15th January 2018 at [particulars withheld] village, Ndolo Location in Kilungu Sub-County within Makueni County intentionally caused his penis to penetrate the vagina of GWM a child aged 15 years.

2. On the alternative he was charged of committing indecent act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006.

- The particulars of the offence are that on the diverse dates between 13th March 2016 and 15th January 2018 at [particulars withheld] village, Ndolo Location in Kilungu Sub-County within Makueni County intentionally touched the buttocks/breasts/anus/vagina of GWM a child aged 15 years with his hands.

3. On **Count II** he was charged with supplying drugs to procure abortion contrary to section 160 of the Penal Code.

- The particulars of the offence are that on 25th day of April 2018 at in [particulars withheld] village, Ndolo Location Kilungu Sub-County within Makueni County unlawfully supplied drugs to GWM a child aged 15 years with an intention to procure miscarriage.

4. He pleaded not guilty and the matter went into full trial. He was convicted and sentenced to life imprisonment in respect of Count I and 3 years imprisonment in respect of Count II.

5. Being aggrieved with the verdict he lodged instant appeal and set out 6 grounds of appeal. During hearing the appellant supplied court with 3 amended grounds of appeal together with submissions. The grounds are:-

(1) That the trial magistrate erred in law and fact by failing to find that the elements of the offence were not conclusively proved to warrant a conviction.

(2) That the trial magistrate erred in law and fact by relying on the evidence of PW1 whose credibility was questionable.

(3) That the trial magistrate erred in law and fact by failing to find that the whole of the prosecution's evidence was based on no evidence.

6. The parties agreed to canvass appeal by way of submissions. The appellant filed same but prosecution opted to rely on the evidence on record.

Appellant's Submissions:

7. The appellant submitted that in the present case the issue of penetration has no contention as the same was medically proved. On the second element of age, is also not in contention that the victim was below 18 years of age. What the appellant contends is that he was culpable. This was a fabrication case that was intended to taint the character of the appellant and protect the integrity of another.

8. PW1 alleged that the appellant had severally requested her to engage in sex with him. She also submitted that she obliged on the same and was not forced to have sex with the appellant. This puts into question as to whether it is the appellant who had caused the alleged offence or was simply fabrication to conceal the identity of another. The appellant being a man of low I.Q was unable to defend himself.

9. It is clear from the evidence on record that PW1 could not have disclosed on the same until the time when she had miscarriage. She could not have disclosed on the same at all. It is then that she alleged that the appellant supplied her with the drugs to procure abortion.

10. He submitted that for fair determination of the present appeal, according to the charge sheet, the alleged offence was committed between 13/3/2016 – 15/1/2018. At all this time, PW1 had not disclosed on anything. The alleged drug was given to her on 25/4/2018. Was the alleged abortion caused by the drugs as PW1 claim?

11. The other issue that the appellant submits that clearly shows that he was not involved in the alleged defilement or the alleged abortion was the issue of the origin of PW1's pregnancy. PW1 stated that, ***"the pregnancy belonged to Muoki Kyalo."*** The appellant asks the honourable court to note that the appellant's name is not Muoki Kyalo, who is alleged to have impregnated PW1. Several questions now comes into play:-

(a) If the appellant was not the cause of the pregnancy, why was the said Muoki Kyalo not arrested?

(b) It is clear that she had a habit of having sexual intercourse with men willingly putting her credibility into question.

(c) She could not have disclosed the alleged defilement but only did the same after the alleged miscarriage.

12. All these questions are the advantage of the appellant he was not involved in the commission of the alleged offence and was only sacrificed to hide the name and integrity of another.

13. The appellant submits that the prosecution did not prove beyond reasonable doubt that the appellant was involved in any way on the alleged offence to the exclusion of all others. May the court observe the same and accord the appellant benefit of doubt.

14. The appellant wishes to submit that the character and integrity of PW1 was also questioned. First, she testified to the court how she used to remove her clothes voluntarily, not once. She also narrated that she knew the origin of the pregnancy to be by Kyalo. The question that would linger to a reasonable person is how she learnt that the pregnancy belonged to **Kyalo** and not by the appellant yet she was not a medical practitioner and claimed that even the appellant used to have sex with her?

15. Her allegation that the pregnancy belonged to Kyalo is to the advantage of the appellant in two ways:-

(a) She knew 100% that it belonged to Kyalo because deep in her heart, she could not have had sex with the appellant to allege that the pregnancy was his.

(b) The appellant had no reason to give her the drug in order to commit abortion without clear proof that PW1 was pregnant.

(c) If the alleged date of the offence was in January.

16. The appellant submits that he was not at all involved in the alleged offence and may this honourable court accord him the benefit of doubt.

17. It is humbly submission that there was no direct, cogent, convincing, and compelling evidence to warrant the trial court to convict him.

18. To give an appellant person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an appellant is sufficient. The appellant is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right.

19. In ***Bater vs Bater [1950] ALL ER 458 & 459*** it was stated:-

"In criminal cases, the charge must be proved beyond any reasonable doubt and if there may be degrees of proof, that standard must be great. Judges have said that in comparison as the criminal activity is enormous, so ought the proof to be clear."

20. He humbly submits that the evidence adduced fell short of the standard required in a trial of this magnitude and the circumstantial aspects relied upon were disjoined and incapable of sustaining a conviction.

The Duty of the First Appellate Court:

21. This being a first appeal, the role of this Court as an appellate Court of first instance is well settled, it should re-analyse and re-evaluate the evidence adduced before the trial court and come up its own conclusion.

22. This was held in the case of ***Okeno vs. R (1977) EALR 32*** and in the Court of Appeal case of ***Mark Oiruri Mose vs R (2013) eKLR*** that the Court on first appeal is duty bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyze it and come to its own independent conclusion on the matter in while at the same time bearing in mind that I did not have the advantage of seeing the witnesses testify.

23. The duty of the first appellate court is to evaluate evidence recorded by trial court and reach its own conclusion.

Prosecution's Case:

24. **PW1** stated that appellant summoned her while she had gone to fetch firewood and requested to sleep with her. It was her testimony that appellant formed that habit of having sexual intercourse with her every time he met her of which she used to accept. It was her testimony that she used to have sex with appellant in the bush all the times they met. It was her testimony that she used to remove her inner wear as he also removed his trouser before inserting his sexual organ into her genital. It was her testimony that she could not recall concretely the time they started having sex.

25. PW1 further stated that on the 25/4/2018, she met appellant again and he was carrying a drug. He claimed that she had a cold and that she should swallow the same. It was her testimony that appellant proceeded to collect water from a nearby stream using a polythene paper and gave her to use to take the two tabs he had given her. She proceeded to swallow the same. It was her testimony that they were at Kyambeke area.

26. On the 26/4/2018, she woke up feeling unwell. She was sent to Katondoloni market to buy sugar when she started to bleed from her genitals. She was taken to Muani Hospital before being transferred to Katalamba Hospital and then moved to Matiliku Hospital. She was again taken to Makueni Referral Hospital where she was treated and discharged.

27. PW1 stated that the area D.O came to her home and asked her why she was not going to school. She informed him that she had been given some medicine. She was taken to Kyambeke before being taken to Kilome Police Station. It was her testimony that she had attended Muani Clinic earlier on as she was pregnant. It was her testimony that the pregnancy had been terminated at the time she was bleeding. It was her testimony that appellant is the one who gave her the drugs. She also informed this court that the pregnancy belonged to Muoki Kyalo.

28. **PW2** stated that appellant is her relative and the complainant was her daughter. It was her testimony that she was called when her daughter collapsed as she was bleeding. She collected her daughter and took her to Muani Clinic but she was not treated. She again walked her to Katalamba Hospital where she was again chased. She took the complainant to Matiliku Hospital where she was referred to Makueni Hospital. It was her testimony that at the hospital the Area Sub-Chief gave her Kshs.1,000/= to help her take the complainant to Makueni Hospital.

29. PW2 stated that she arrived at Makueni Hospital at around 11 pm and the complainant was x-rayed and put on what drips before foetus was removed. It was her testimony that the complainant informed her that it was the appellant who had given her the drugs prior to her fainting. It was her testimony that when she went to collect the complainant her clothes were stained with blood and was bleeding from her genitals. It was her testimony that the D.O of the area came to their home wanting to know who had caused those things to the complainant and the latter mentioned everyone.

30. **PW3** stated that they received information that appellant who had gone into hiding in connecting with this case was sighted at Kalamba where he was working as a mason. They proceeded to the homestead of Daniel Musembi and arrested him before handing him over to Kilome Police Station.

31. **PW4** examined the complainant who had her pregnancy terminated. He noted that her hymen was broken and the scan also released that she had aborted. It was his conclusion that she had been defiled owing to her age together with medical findings. He tendered the P3 form as Pex 1, age assessment report showing that the child was aged between 16–17 as Pex 2.

32. **PW5** carried out investigations and preferred the current charges. It was his testimony that when he interrogated the complainant, she confirmed that appellant herein had given her some tabs which led to her complications. It was her testimony that the complainant stated that appellant used to time her while coming from school and proceeded to have sexual relationship with her. It was his testimony that the drugs, appellant had given led to the termination of the complainant's pregnancy. He preferred the current charges as against appellant person, since the complainant was 15 years old.

Defence Case:

33. **DW1** stated that on the 20/2/2017, he got a job at Machinery area as a mason. It was his testimony that he continued to work until the year 2018, when he got another job at Kalamba area. He was called with information that there was a family meeting on the 26/4/2018 of which he attended at around 2 pm. He was later tasked with the family to take money and clothes to Wote where the complainant was admitted. He went to Makueni Hospital and found the complainant's mother outside and gave her the money and clothes. It was his testimony that he did not see G in the Hospital. He stated that he was arrested for giving G drugs het he had not seen her. It was his testimony that the case was brought against him by the mother of G as he had refused to give them a ride on this motorcycle.

34. DW2 denied that they had sent the appellant to Makueni Hospital as on that day, they only met as a family over the sickness of one Katua Kyele. They gave money to Katua Kyele to help him go back to the hospital.

35. DW3 denied knowing anything about Nzomo, the same sentiments maintained by DW4.

Issues:

36. After going through evidence on record and the submissions tendered, I find the singular issue is; **whether the prosecution proved its case beyond reasonable doubt?**

Analysis and Determination:

The burden of proof:

37. It is the law in Kenya as entrenched in the constitution under **Article 50 (2) (a)** that an appellant person is presumed to be innocent until the contrary is proved. The evidence **Act Cap 80 of the Laws of Kenya at section 107 (1)** provides thus, ***"whoever desires any court to give judgement as to any right or liability dependent on the existence of facts which he asserts, must prove those facts exist."***

38. As to what constitutes the burden of proof beyond reasonable doubt the case of ***Miller v Minister of Pensions [1947] 2 ALL ER 372 – 373*** provides as flows in a passage alluded to me considered the greatest jurist of our time Lord Denning:

> ***"That degree is well settled. It needs not reach certainly, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of doubt. The law would prevail 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 of his favour which can be dismissed with the sentence of course it is doubt but nothing short of that will suffice."***

39. In our criminal justice system there is no duty on the appellant to prove anything on the allegations of a criminal nature filed by the state in a court of law. That burden of proof of an appellant guilt rests solely on the prosecution throughout the trial save where there are admissions by the appellant person.

40. It was the prosecution's case that the complainant herein was 15 years old at the time of the incident complained of. PW1 who was the complainant stated that she was 16 years old and was in Class 6. The P3 form also indicates that she was 15 years old. The prosecution also availed age assessment report which further confirmed that the child was between 16-17 years old which still put her within the age bracket she had indicated.

41. The age of minority was proved and the trial court accepted it guided by the case of ***Francis Omuron vs Uganda Criminal Appeal No. 2 of 2000*** where the court held that:

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

42. The defence did not contest the age of this child as she had put it at 16 years old. Thus same was sufficiently proved that the child was 16 years old and consequently below 18 years as per the age assessment report tendered as Pex 2. From the definition of consent this child could not give consent.

43. The complainant informed court that the appellant had defiled her several times prior to their last encounter when the latter gave her some tablets to take which later turned out to be abortion pills, suffice to note that the latter disputed the averment herein.

44. Thus there was need to look at the evidence of the victim and assess that evidence, like any other evidence and determine whether it was cogent. Was her evidence truthful and reliable enough to be the basis of a conviction? Does the evidence of the victim alone leave the court without reasonable doubt that the appellant committed the offence and should be convicted?

45. In the instant case there was evidence presented by the prosecution that indeed the victim had been penetrated. The medical findings revealed that indeed the victim had been pregnant until the time she had a miscarriage and the hymen was broken. It presupposes that indeed she had penetration. It goes therefore without saying that indeed the victim had been had carnal knowledge of with the question being by whom.

46. The defence has not contested this finding save for denial of his culpability but that does not shift to him the burden of proving or disapproving the same.

47. The trial court had the advantage of seeing this victim when she testified and noted that she clearly though shy was very strong in her recollection of what had transpired. She gave a narration of how appellant started making his advances whenever she met him while going from school and or going to fetch firewood.

48. It was her testimony that appellant always implored on her for sexual favour in the bush of which she obliged. She was noted to be a child of slow learning and thus opined that clearly one could take advantage of her as can be noted that at 16 years old, she was still in Class 6.

49. The trial court stated in judgement: "***in cross examination of this evidence where the victim narrated as to how she was lured into the bush and made to remove her inner wear by the appellant who proceeded to defile, the defence failed to rebut the same. He posed the question in rebuttal but the victim remained unshaken. She was able to recollect their meetings to satisfactory standards owing to the lapse of time noted since the incidences happened far between. The victim from her demeanour did not exhibit any attitude to point at a grudge against the appellant at all. Her evidence clearly was never challenged. There was nothing in her demeanour to suggest that she was anxious and she gave her testimony in a more cogent manner"***

50. Thus the trial court held that, ***"I do therefore find that from the available evidence, the complainant was had carnal knowledge of and her recollection was cogent and truthful".***

51. The victim informed the court that appellant defiled her several times in the bush when she had gone to fetch firewood and also when coming from school. Further trial court opined, ***"I am privy to the fact that in sexual offences, rarely do you find witnesses to the actual commission of the offence and so in most cases, the two are always alone"***. Then it relied on section 124 of the Evidence Act, Cap. 80 Laws of Kenya which states –

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

52. And thus concluded, "***I am conscious of the fact that before the doctrine that positive identification prevails over denial or alibi may apply, it is necessary that the identification must first be shown to be positive and beyond question in this case, I was able to not the following;***

> **a) The complainant gave a narration as to how appellant used to time her while going to fetch firewood and also when coming from school before imploring on her to have sexual intercourse with her. A fact that appellant did not rebut at all. She was truthful.**
>
> **b) The complainant informed the court that she was defiled in the bush several times, a fact that appellant did not challenge as well as the same was confirmed by the medical findings as her hymen was broken. She was again truthful.**
>
> **c) The offence of defilement or sexual breach often occurs between people in close proximity and so identification in this coupled with the reasons advanced above could not be washed away. I did believe the evidence as presented by the complainant.**
>
> ***I am therefore satisfied with the complainant assertion as to what had transpired between her and the appellant. She did not have any reason to cheat this court and was cogent and consistent in her recollection of what had transpired. Given that appellant was a man well known to the child being a relative as per the former's own admission, there exists clear recognition."***

53. However the court forgot that the alleged offence was according to the charge sheet committed in the span ranging between13th March 2016 and 15th January 2018 .No specific date of incident is stated in the evidence of PW1 nor does she state ever reporting the incident to anybody further for the alleged span of 2 years of commission of offence, nobody was ever called to testify as to ever seeing both together.

54. This is the same victim who stated that she was carrying one Kyalo's pregnancy at the same time which never disclosed to anybody least of all her parents. The trial court total ignored aforesaid facts and concentrated on empathizing with her rather than deal with the evidence at hand.

55. If Kyalo was still penetrating her to the extent of impregnating her at the alleged period of alleged offence, what was the effect of that piece of evidence? Same was ignored. Why was Kyalo not arrested and charged with defilement if it was true? This creates doubt as to whether the penetration noted by the medical officer was occasioned by Kyalo or the appellant or both. Is this a girl whose credibility could be accepted 100%? I doubt.

56. The evidence on defilement was thus insufficient to warrant conviction of the appellant with charged offence under the provisions cited. On defence tendered, the court held, "***in consideration of the defence, appellant contention was that he had got employment at Machinery area and also at Kalamba area as a mason. I do note that alibi is the weakest of all defences since it is easy to concoct and difficult to disprove. For this defence to prosper, the proof that the appellant was in a different place at the time of the crime was committed is insufficient. There must be evidence that it was physically impossible for him to be within the immediate vicinity of the crime during its commission. It was clear from the defence that appellant could not demonstrate satisfactorily that it was physically impossible for him to be at the locus criminis at the night of its commission."***

57. Of course it is apparent the court was shifting burden to the appellant to prove his innocence. Even if he did not deny having been at Katondoloni area as there were many people who get to work but still resides at their homestead, same was not prove that he committed the offence.

58. In respect to the count on abortion, the court stated, "***I am also seized with the charge of giving the complainant tablets which eventually led her to miscarry her developing pregnancy. I have also considered the evidence in recollection by the complainant whereby she informed court that, "I met him. He had some drugs. He claimed that I had a cold. He collected water from the stream using a polythene bag. He gave me to swallow which I did. He gave me two tablets." The complainant gave her testimony as have been stated***

above in a more cogent and consistent manner. It was evidenced that the following day after consuming these tablets, the victim started to bleed as she went to the market and later the foetus was removed when she got admitted at Makueni Hospital. I do believe this victim when she stated that her miscarriage was induced and the same was not natural."

59. With respect to the trial court, it never alluded to the fact that pw1 said the person responsible for pregnancy was Kyalo NOT appellant.Why ould appellant sponsor abortion he was not responsible for? The trial court did not interrogate that aspect. The allegedly drug given according to pw1 to swallow for cold was not disclosed type and dosage. The expert who testified PW4 only stated that the pregnancy was terminated. The causes of termination of pregnancies are many and many drugs and methods vary.

60. From **Wikipedia,** the free encyclopedia**;**

"Abortion is the ending of a pregnancy by removal or expulsion of an embryo or fetus before it can survive outside the uterus.[note 1] An abortion that occurs without intervention is known as a miscarriage or spontaneous abortion. When deliberate steps are taken to end a pregnancy, it is called an induced abortion, or less frequently "induced miscarriage". The unmodified word abortion generally refers to an induced abortion.[1][2] A similar procedure after the fetus has potential to survive outside the womb is known as a "late termination of pregnancy" or less accurately as a "late term abortion.

- *Types*

- *Induced*

An induced abortion may be classified as therapeutic (done in response to a health condition of the women or fetus) or elective (chosen for other reasons) [29].

Approximately 205 million pregnancies occur each year worldwide. Over a third are unintended and about a fifth end in induced abortion. [18][30] Most abortions result from unintended pregnancies.[31][32] In the United Kingdom, 1 to 2% of abortions are done due to genetic problems in the fetus.[13] A pregnancy can be intentionally aborted in several ways. The manner selected often depends upon the gestational age of the embryo or fetus, which increases in size as the pregnancy progresses.[33][34] Specific procedures may also be selected due to legality, regional availability, and doctor or a woman's personal preference.

Reasons for procuring induced abortions are typically characterized as either therapeutic or elective. An abortion is medically referred to as a therapeutic abortion when it is performed to save the life of the pregnant woman; to prevent harm to the woman's physical or mental health; to terminate a pregnancy where indications are that the child will have a significantly increased chance of mortality or morbidity; or to selectively reduce the number of fetuses to lessen health risks associated with multiple pregnancy.[35][36] An abortion is referred to as an elective or voluntary abortion when it is performed at the request of the woman for non-medical reasons.[36] Confusion sometimes arises over the term "elective" because "elective surgery" generally refers to all scheduled surgery, whether medically necessary or not.[37]

- *Spontaneous*

Main Article: Miscarriage

Miscarriage, also known as spontaneous abortion, is the unintentional expulsion of an embryo or fetus before the 24th week of gestation. [38] A pregnancy that ends before 37 weeks of gestation resulting in a live-born infant is a "premature birth" or a "preterm birth".[39] When a fetus dies in utero after viability, or during delivery, it is usually termed "stillborn".[40] Premature births and stillbirths are generally not considered to be miscarriages although usage of these terms can sometimes overlap.[41]

61. *Only 30% to 50% of conceptions progress past the first trimester.[42] The vast majority of those that do not progress are lost before the woman is aware of the conception,[36] and many pregnancies are lost before medical practitioners can detect an embryo.[43] Between 15% and 30% of known pregnancies end in clinically apparent miscarriage, depending upon the age and health of the pregnant woman.[44] 80% of these spontaneous abortions happen in the first trimester.[45]*

62. *The most common cause of spontaneous abortion during the first trimester is chromosomal abnormalities of the embryo or fetus,[36] [46] accounting for at least 50% of sampled early pregnancy losses.[47] Other causes include vascular disease (such as lupus), diabetes, other hormonal problems, infection, and abnormalities of the uterus.[46] Advancing maternal age and a woman's history of previous spontaneous abortions are the two leading factors associated with a greater risk of spontaneous abortion.[47] A spontaneous abortion can also be caused by accidental trauma; intentional trauma or stress to cause miscarriage is considered induced abortion or feticide.[48]*

Methods

- *Gestational age may determine which abortion methods are practiced.*

- *Medical*

- *Main article: Medical abortion*

Medical abortions are those induced by abortifacient pharmaceuticals. Medical abortion became an alternative method of abortion with the availability of prostaglandin analogs in the 1970s and the antiprogestogen mifepristone (also known as RU-486) in the 1980s.[10][11][49][50][51]

63. *The most common early first-trimester medical abortion regimens use mifepristone in combination with misoprostol (or sometimes another prostaglandin analog, gemeprost) up to 10 weeks (70 days) gestational age,[52][53] methotrexate in combination with a prostaglandin analog up to 7 weeks gestation, or a prostaglandin analog alone.[49] Mifepristone–misoprostol combination regimens work faster and are more effective at later gestational ages than methotrexate–misoprostol combination regimens, and combination regimens are more effective than misoprostol alone.[50] This regime is effective in the second trimester.[54] Medical abortion regiments involving mifepristone followed by misoprostol in the cheek between 24 and 48 hours later are effective when performed before 70 days' gestation.[53] [55].”*

64. None of the known type and cause of abortion was explained even the possible cause of the termination which could also have been natural. The court and the PW1 were not expert to state that the pregnancy was terminated by the allegedly drug swallowed by the PW1. PW4 did not shed light neither to help court on possible causes of the termination of the pregnancy. There was no evidence to warrant conviction of appellant under provisions of section 160 of the Penal Code.

65. Thus court finds merit in the appeal herein and make the following orders;

> ***i) The appeal is allowed, conviction is quashed and sentence is set aside and appellant to be set at liberty unless otherwise lawfully held.***

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKUENI THIS 11TH DAY OF OCTOBER, 2019.

……

C. KARIUKI

JUDGE