REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

APPELLATE SIDE

CRIMINAL APPEAL NO. 78 OF 2018

TOBIAS SIMIYU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence delivered on the 21st day of September 2018 in Eldoret Chief Magistrate's Criminal Case No. 149 of 2017 by Hon. H. Barasa, PM)

JUDGMENT

[1] The appellant herein, **Tobias Simiyu**, was the accused person in Eldoret **Chief Magistrate's Criminal Case No. 149 of 2017: Republic vs. Tobias Simiyu**. He had been charged before the lower court with the offence of defilement of a child contrary to **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act, No. 3 of 2006**. The particulars of the charge were that on the 27th day of July 2017 at [particulars withheld] in Nzoia Location in Likuyani Sub-county within Kakamega County, he unlawfully and intentionally caused his genital organ (penis) to penetrate the genital organ (vagina) of **MN,** a child aged 8 years.

[2] In the alternative, the appellant was charged with indecent act with a child, contrary to **Section 11(1)** of the **Sexual Offences Act,** in that, on the 27th day of July 2017 at [particyulars withheld] in Nzoia Location in Likuyani Sub-county within Kakamega County, he unlawfully and intentionally caused his genital organ (penis) to come into contact with the genital organ (vagina) of **MN,** a child aged 8 years.

[3] As the appellant denied those allegations, the Prosecution adduced evidence from four witnesses in proof thereof. Thereafter, in a considered Judgment delivered on **17 August 2018**, the trial court found the appellant guilty of the Main Count of defilement and convicted him pursuant to the provisions of **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act**. The Appellant was thus sentenced, on the **21 September 2018,** to life imprisonment; which is the penalty prescribed for the offence under **Section 8(2)** of **the Sexual Offences Act**.

[4] Being aggrieved by his conviction and sentence, the Appellant preferred this appeal on **5 October 2018** on the following grounds:

[a] That the alleged penetration was not proved beyond reasonable doubt;

[b] That medical evidence did not establish the offence as required;

[c] That facts building the allegation were a sham thus the trial magistrate failed to properly evaluate the evidence and find the fabricated falsity;

[d] That the appellant is a minor below 18 years who was entitled to be treated in accordance with **Section 141** and **191** of the **Children Act;**

[e] That the age of the alleged minor was not proved at all;

[f] That the exhibits, especially the P3 Form was unreliable and inconclusive;

[g] That the case was shoddily investigated;

[h] That the mode of his arrest, by "Nyumba Kumi" was unconstitutional and prejudicial;

[i] That no forensic examination under **Section 36** of the **Sexual Offences Act** was done to link him with the offence;

[j] That he was given an unconstitutional sentence of life imprisonment in contravention of **Articles 25, 27 and 50** of the **Constitution, 2010.**

[5] The appellant thereafter filed Amended Grounds of Appeal and thereby reduced his grounds of appeal to the following:

[a] That the learned trial magistrate erred both in law and fact when he convicted him on the evidence of the Prosecution which was incredible;

[b] That the learned trial magistrate erred both in law and fact when he failed to observe that the essential exhibits were not tendered to clear out the obvious doubts on medical evidence;

[c] That the learned trial magistrate erred both in law and fact when he failed to conduct a fair trial which left him vulnerable;

[d] That the learned trial magistrate failed in law and in fact when he convicted him on contradictory evidence tendered by the prosecution witnesses;

[e] That the learned trial magistrate failed to appreciate the provisions of **Section 191** of the **Children Act**.

[6] It was on the basis of the foregoing grounds that the Appellant prayed that his appeal be allowed, the conviction quashed and the sentence set aside. He argued the appeal by way of written submissions, on the basis of the five grounds set out in the Amended Grounds of Appeal. His contention was that he was convicted on the basis of shoddy and incredible evidence. He relied on **Maina vs. Republic** [1970] EA 370 and **Abel Monari Nyanamba & Others vs. Republic**, Criminal Appeal No. 86 of 1994, for the proposition that it is dangerous to rely on the uncorroborated evidence of a complainant, in urging the court to find that it was unsafe for the trial court to rely on the evidence of **PW1**.

[7] The appellant further submitted that, although it was the contention of the Prosecution that, as a result of the incident the clothes of the minor were blood-stained, the said clothes were not produced before the lower court as exhibits. He further questioned why the treatment notes and the Birth Certificate of the minor were never produced before the lower court and urged the Court to find that the case against him was merely contrived to secure a conviction. It is for the same reason that he urged the Court to disregard the Age Assessment Report as it was not prepared in the interest of justice but only to bolster the Prosecution case. He referred to **Richard Wahome vs. Republic**, Criminal Appeal No. 61 of 2014 to support his submission that, if the mother of the complainant was unable to tell the lower court the date of birth of her daughter, then the rest of the evidence on age amount to nothing but hearsay.

[8] In respect of Ground 3, it was the submission of the appellant that the learned trial magistrate superintended over an unfair trial and thereby contravened **Article 50** of the **Constitution**. He complained that he was not asked which language he was comfortable with. He cited **David Nyongesa Okwatenge vs. Republic** [2010] eKLR for the proposition that the indication that the language used was "English/Kiswahili" was ambiguous.

[9] Lastly, it was the submission of the appellant that at the time of his arrest and arraignment in court, he was but a minor aged 17 years; and was therefore entitled to be accorded the treatment provided for in **Section 191** of the **Children Act**. He impugned the Age Assessment Report produced in evidence contending that it was not produced by the maker; and should therefore be disregarded.

[10] In response to the Appellant's written submissions, **Ms. Mumu**, Learned Counsel for the State, submitted that the Prosecution proved its case before the lower court beyond reasonable doubt. She pointed out that the minor's age was proved by a Medical Report; and that the appellant was positively identified by the minor who knew him by his name, **Tobias**; he being a neighbour of theirs. On penetration, **Ms. Mumu** urged the Court to note that the complainant's testimony was corroborated by the evidence of the Clinical Officer, who, on examination of the minor, found her with bruises in her vagina and noted that her hymen had been broken. The Clinical Officer accordingly confirmed that the minor had been defiled. In the circumstances, Counsel for the State urged the Court to dismiss the appeal, adding that the appellant was taken for age assessment and found to be over 18 years old.

[11] I have given careful consideration to the appeal. I have also taken into account the written and oral submissions made herein by the Appellant and Learned Counsel for the State. This being a first appeal, I am mindful of the obligation to reconsider afresh the evidence adduced before the lower court and the need for this Court to come to its own conclusions thereon. In **Okeno vs. Republic [1972] EA 32,** the Court of Appeal for East Africa had the following to say in this connection:

> **"An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination ... and to the appellate court's own decision on the whole evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions...It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; 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 had the advantage of hearing and seeing the witnesses..."**

[12] A re-consideration of the evidence shows that the complainant testified as **PW1**, and told the lower court that, on the **27 July 2017** at about 5.00 p.m. she was playing with another girl by the name **C** when the appellant called her and sent her to the shop to buy for him a

matchbox, two cigarettes and a packet of salt. It was her evidence that she obliged and was given Kshs. 20/= for the items; and that upon purchasing and taking the said items to the appellant's house, the appellant closed the door, got hold of her and removed her clothes and defiled her, all the while threatening her with dire consequences if she screamed. She reported the incident to her grandmother and her mother; whereupon the appellant was arrested and charged; and that she was taken to Matunda Hospital for treatment. She explained, in cross-examination that this was not the first time for the appellant to send her to the shops to run errands for him.

[13] **Terry Wekesa (PW2)** was then a Clinical Officer based at **Matunda Sub-County Hospital**. She testified that she was on duty on **28 July 2017** when the complainant herein went to their facility for examination following allegations of defilement. She further testified that upon examining the minor, she found her with bruises on her vagina; and that her hymen was broken and there was some white discharge on her thighs. She accordingly sent her for laboratory examination; and that the result revealed that HIV test was negative; the urinalysis revealed leucocyte and pus cells; and that a High Vaginal Swab revealed numerous epithelial cells. She accordingly put her on antibiotics. She produced the P3 Form that she filled and signed in respect of her examination of the complainant as the **Prosecution's Exhibit No. 1**, along with the treatment notes (**the Prosecution's Exhibit 2)** and the Post-Rape Card (**the Prosecution's Exhibit 3)**. She came to the conclusion that the minor had been defiled.

[14] The mother of the complainant, **YW** testified on **4 April 2018** as **PW3**. Her evidence was that she met the complainant on **27 July 2017** at about 5.00 p.m. as she was coming from school and noticed that she was walking with difficulty. She asked her what the problem was and that the complainant told her that she was feeling pain in her private parts. She further stated that she took the minor home and on checking her genitalia, she noted that **"…it had been interfered with…"** That the complainant then revealed to her that the appellant, a neighbour of theirs, had sent her to the shops and that on return, he got hold of her and defiled her in his house and thereafter warned her not to reveal the incident to anybody.

[15] On learning what had befallen her daughter, **PW3** took action by reporting the incident to Nyumba Kumi and the village elder before filing a formal complaint at **Matunda Police Station**. She also took the complainant to **Kibungucha Hospital** for treatment. She was thereafter issued with a P3 Form which was completed and returned to the Police Station.

[16] The last prosecution witness was **Michelle Atika (PW4)**, a police officer attached to **Matunda Police Station**. She testified that she was on duty on **28 July 2017** when a case of defilement was reported involving the complainant herein. Both the complainant and the offender were present when the report was made. She therefore booked the report and escorted the complainant and the suspect to **Matunda Hospital** for examination, having issued them with P3 Forms. She thereafter recorded the statements of the witnesses and caused the appellant to be charged with the offence of defilement of the complainant who was then aged 8 years. She produced the Age Assessment Report for the complainant as the **Prosecution's Exhibit 4** before the lower court.

[17] Upon being placed on his defence, the appellant denied the allegations against him, contending that they are untrue. According to him, on the **26 July 2017**, he woke up in the morning and picked his hoe to go and commence his daily chores when he got to the gate, he met **Y.W. (PW3** herein) in the company of two men. He was then arrested by the two men and taken to **Bururu AP Camp** without being told the reason for his arrest. He was then taken to **Matunda Police Station,** and was subsequently arraigned in court in connection with the defilement of the complainant; an offence he did not commit. He explained in cross-examination that, while **PW3** was his employer, he did not know the complainant at all; and that he saw her for the first time in court.

[18] Granted the foregoing summary of the evidence, the learned trial magistrate correctly framed the issues for determination in his Judgment at page 49 of the Record of Appeal. He then proceeded to analyze the evidence and the applicable law before coming to the conclusion that all the essential ingredients of the offence of defilement as set out in the Main Count had been proved beyond reasonable doubt. The Main Count had been laid pursuant to **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act,** which provision stipulates that:

> **(a) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.**
>
> **(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to life imprisonment.**

[19] In the premises, the burden of proof was on the Prosecution to prove beyond reasonable doubt that:

[a] That the Complainant was, at the material time, a child for purposes of **Section 8(2)** of the **Sexual Offences Act**;

[b] That there was penetration of the complainant's genital organ;

[c] That the penetration was perpetrated by the Appellant.

[a] <u>On the age of the Complainant:</u>

[20] In **<u>Kaingu Kasomo vs. Republic Criminal Appeal No. 504 of 2010</u>** the Court of Appeal reiterated this point thus:

> ***"Age of the victim of sexual assault under the Sexual Offences Act is a critical component. It forms part of the charge which must be proved the same way as penetration in the cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed will be dependent on the age of the victim".***

[21] Accordingly, in **Rule 4** of the **Sexual Offences Rules of Court Rules** it is recognized that:

"When determining the age of a person, the court may take into account evidence of the age of that person that may be contained in a birth certificate, any school documents or in a baptismal card or similar document."

[22] In her *voir dire* examination, which was conducted by the lower court on **19 March 2018, PW1** stated that she was 10 years old at the time; and that she was in Standard 3 at **[particulars withheld] Primary School**. Indeed, it was the evidence of her mother, **PW3,** that the complainant was 8 years at the time of the incident although she was yet to apply for her Birth Certificate. Moreover, the Prosecution caused an age assessment to be undertaken in respect of the minor and the report to that effect was before the lower court as **the Prosecution's Exhibit 4.** It does confirm that the minor was aged between 8 to 9 years. There was therefore credible and uncontroverted evidence on record before the lower court to show that the complainant was aged 8 years at the material time and was therefore a minor for the specific purposes of **Section 8(1) as read with Section 8(2)** of the **Sexual Offences Act,** noting that it is applicable to minors age 11 years old or less.

[b] <u>On Penetration of the Complainant:</u>

[23] The minor testified as to how the defilement occurred; namely that she had been sent to the shops by the appellant and that on return with de the items she had bought, he got hold of her and defiled her. The evidence of the minor was corroborated by the evidence of the Clinical Officer, **PW2,** who testified that upon examining the minor, on **28 July 2017,** she found her with bruises on her vagina; and that her hymen was broken and there was some white discharge on her thighs. She also sent her for laboratory examination; and that the result revealed that HIV test was negative; the urinalysis revealed leucocytes and pus cells; and that a High Vaginal Swab revealed numerous epithelial cells. She accordingly put her on antibiotics. She produced the P3 Form that she filled and signed in respect of her examination of the complainant as the **Prosecution's Exhibit No. 1**, along with the treatment notes (**the Prosecution's Exhibit 2)** and the Post-Rape Card (**the Prosecution's Exhibit 3)**. She, thus, came to the conclusion that the minor had been defiled. This evidence was entirely uncontroverted, noting that in his defence, the appellant denied having known the minor before the date of her testimony before the lower court.

[24] Clearly, there was cogent proof, in the light of the foregoing, that the complainant was subjected to penetration of her genital organ for purposes of **Section 8(2)** of the **Sexual Offences Act;** Accordingly, in my re-evaluation of the evidence, I am satisfied that the Prosecution did prove beyond reasonable doubt that the minor was defiled as charged in the Main Count as the medical evidence was cogent.

[c] <u>On whether the penetration of the Complainant was perpetrated by the Appellant</u>:

[25] There was no dispute before the lower court, or in this appeal that the appellant and the mother of the minor are neighbours and therefore well known to each other. In fact, the appellant's defence was that the complainant's mother was his employer. It is therefore incredible that the appellant should say that he did not know the complainant. On the other hand, the complainant was confident in her assertions before the lower court that she did not only know the appellant by name; but also that this was not the first time for him to send her to run errands for him. It is also noteworthy that the incident complained of occurred during broad daylight and therefore it cannot be said that there was any impediment to positive identification on the part of **PW1**. Moreover, the lower court record shows that **PW1** informed **PW3** at the first opportunity that she had been defiled by the appellant, mentioning him by name. This, then, explains his prompt arrest the following day.

[26] The Appellant complained that he was not subjected to medical examination to verify the allegations against him, with reference to **Section 36(1)** of the **Sexual Offences Act**, which provides that:

"Notwithstanding the provisions of section 26 of this Act or any other law, where a person is charged with committing an offence under this Act, the court may direct that an appropriate sample or samples be taken from the accused person, at such place and subject to such conditions as the court may direct for the purpose of forensic and other scientific testing, including a DNA test, in order to gather evidence and to ascertain whether or not the accused person committed an offence."

[27] It is instructive therefore that whereas **Section 36** of the **Sexual Offences Act** provides for DNA testing, that provision is not mandatory. In **<u>Evans Wamalwa Simiyu vs. Republic [2016] eKLR</u>** the Court of Appeal had occasion to consider a similar argument and was of the following view:

"...section 36 of the Sexual Offences Act that gives the trial court powers to order an Accused person to undergo DNA testing uses the word "may". Therefore, the power is discretionary and there is no mandatory obligation on the court to order DNA testing in each case. In our view, in the case of the appellant DNA testing was not necessary. This is because the minor complainant identified the appellant who was known to her as the person who sexually violated her. The trial magistrate who saw and assessed the demeanor of the witnesses believed the complainant that it was the appellant who violated her. Moreover, the trial court found material corroboration of the complainant's evidence in the evidence of Dr. Mayende a medical doctor (PW4) who examined the complainant and confirmed that vaginal swab taken from her had spermatozoa..."

[28] Similarly, in **<u>AML vs. Republic [2012] eKLR</u>** the Court expressed the view that:

"The fact of rape or defilement is not proved by way of a DNA test but by way of evidence."

[29] **The same principle was restated by the Court of Appeal in *<u>Geoffrey Kionji vs Republic</u>*,** *Cr. Appeal No 270 of 2010***,** as follows:

"Where available, medical evidence arising from examination of the accused and linking him to the defilement would be welcome. We however hasten to add that such medical evidence is not mandatory or even the only evidence upon which an accused person can properly be convicted for defilement. The court can convict if it is satisfied that there is evidence beyond reasonable doubt that the defilement was perpetrated by the accused person. Indeed, under the proviso to section 124 of the

Evidence Act, Cap 80, Laws of Kenya, a court can convict an accused person in a prosecution involving a sexual offence, on the evidence of the victim alone, if the court believes the victim and records the reasons for such belief."

[30] And in this case, the learned trial magistrate was convinced that **PW1** was a credible witness. He made mention of this in his Judgment thus:

> **"As regards the issue as to whether the accused was identified as the perpetrator of the said act, this court carefully listened to the minor's oral evidence in court and observed how she answered questions during cross-examination by the accused. Despite her tender age, her evidence was consistent and the same was not shaken in any way during cross-examination. She did not give me any impression that she had been coached by anyone. I have no reason to disbelieve her evidence as presented before this court. This is a girl who definitely knew the accused person prior to the incident and that is why she allowed him to send her to the shop. She described what the accused did to her and there is no doubt from the details she gave that the accused actually defiled her. I have no reason to believe that the complainant's mother framed the accused up for the offence herein because she owed him money which she had no intention of paying back as he wanted this court to believe. I am satisfied that the minor herein identified the accused as the person who defiled her. The defence tendered by the accused did not sufficiently shake the evidence tendered by the prosecution."**

[31] In the premises, there can be no merit to the appellant's argument that he ought to have been taken for DNA examination and profiling. Likewise, failure by the Prosecution to produce the clothes that were worn by **PW1** at the time of the incident; or to call one **Cheptoo** as a witness, do not in any way vitiate the appellant's conviction. In respect of **C, PW1** explained that she went home when the appellant sent her to the shops. She was therefore not a witness to the act of defilement. Moreover, **Section 143** of the **Evidence Act, Chapter 80** of the **Laws of Kenya**, provides that:

> **"No particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact."**

[32] Hence, in **Keter vs. Republic [2007] 1 EA 135**, it was held, *inter alia,* that:

> ***"The prosecution is not obliged to call a superfluity of witnesses but only such witnesses are sufficient to establish the charge beyond any reasonable doubt."***

[33] In the premises, the obligation of the Prosecution is to only avail such witnesses as are sufficient to establish the charge beyond reasonable doubt, as was underscored by the Court of Appeal in the case of **Daniel Muhia Gicheru vs. Republic Criminal Appeal No. 90 of 2007 (UR)** as hereunder:

> ***"The often trodden principle of law is that the prosecution is obliged to prove its case against an accused person beyond any reasonable doubt. How many witnesses is it expected to call to satisfy that burden? In BUKENYA AND OTHERS V. UGANDA [1972] EA 349 the Court of Appeal for Eastern Africa held that the prosecution has the discretion to decide as to who are the material witnesses. That Court, however, qualified that general principle by stating that:***
>
> ***"…. There is a duty on the Director to call or make available all witnesses necessary to establish the truth, even though their evidence may be inconsistent …. While the Director is not required to call a superfluity of witnesses, if he calls evidence which is barely adequate and it appears that there were other witnesses available who were not called, the court is entitled, under the general law of evidence, to draw an inference that the evidence of those witnesses, if called, would have been or would have tended to be adverse to the prosecution case."***

Thus, not much turns on this ground of appeal, given the peripheral nature of the role that **C** played.

[34] In Ground 3 of his Amended Grounds of Appeal, it was the submission of the appellant that the learned trial magistrate superintended over an unfair trial and thereby contravened **Article 50** of the **Constitution**. He complained that he was not asked which language he was comfortable with; and that he was detained for more than 24 hours in violation of his constitutional rights under **Article 49(1)(f)** of the **Constitution.** In respect of the language used, the appellant cited **David Nyongesa Okwatenge vs. Republic** [2010] eKLR for the proposition that the indication that the language used was "English/Kiswahili" was ambiguous. I however have no hesitation in dismissing that assertion, granted that the appellant was able to effectively communicate with the court and that he was able to effectively cross-examine witnesses.

[35] Regarding the appellant's contention that he was detained for more than 24 hours before his arraignment before the lower court, authorities abound to show that in such situations, the complainant would have recourse in civil litigation for the vindication of such rights; and therefore, a violation this kind, even if proved, would not vitiate the conviction recorded by the lower court. One such authority is **Evans Wamalwa Simiyu vs. Republic [2016] eKLR** wherein the Court of Appeal held that:

> **"This issue has been the subject of several decisions of this Court. The correct position in law was set out in *Julius Kamau Mbugua v Republic (2010) eKLR*, where the Court stated that the violation of the appellant's right to be produced in court within twenty-four hours would not automatically result in his acquittal. Instead, the appellant would be at liberty to seek remedy, in damages, for the violation of his constitutional rights. On this basis, we do not consider the issue fatal to the prosecution even if proved."**

[36] In the light of the foregoing, I am satisfied that the appellant's conviction was premised on sound basis and that the lower court came to the correct conclusion on the basis of the evidence presented before it. Regarding the sentence, **Section 8(2)** of the **Sexual Offences Act,**

does provide for life imprisonment, and whereas it is expressed as a minimum sentence, the trial magistrate did not feel constrained in any way in passing the life sentence on the Appellant. The record shows that he put into consideration the nature of the offence and the circumstances under which it was committed as well as what the appellant had to say in mitigation. On the basis of the Age Assessment Report for the appellant, which showed that the appellant was an adult at the time of commission of the offence, the learned trial magistrate cannot be faulted for not making reference to **Section 191** of the **Children Act.**

[37] Nevertheless, following the decision of the Supreme Court in **Francis Karioko Muruatetu vs. Republic [2017] eKLR,** the mandatory nature of life sentence as prescribed by Section 8(2) of the Sexual Offences Act, has since been held to be unconstitutional. Here is how the Court of Appeal looked at the matter in **Jared Koita Injiri vs. Republic [2019] eKLR**:

> **Arising from the decision in** *Francis Karioko Muruatetu & Another vs Republic, SC Pet. No. 16 of 2015* **where the Supreme Court held that the mandatory death sentence prescribed for the offence of murder by** *section 204* **of the** *Penal Code* **was unconstitutional. The Court took the view that;**
>
> *"Section 204 of the Penal Code deprives the Court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the Courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in an appropriate case. Where a Court listens to mitigating circumstances but has, nevertheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to the accused persons under the Article 25 of the Constitution; an absolute right."*
>
> **In this case the appellant was sentenced to life imprisonment on the basis of the mandatory sentence stipulated by** *section 8 (1)* **of the** *Sexual Offences Act***, and if the reasoning in the Supreme Court case was applied to this provision, it too should be considered unconstitutional on the same basis."**

[38] In the premises, the appellant is entitled to a review of the sentence based on the circumstances of the case and any mitigating circumstances evinced by the record. Accordingly, having perused the mitigation given by the appellant before the lower court and the other pertinent circumstances, including the age of the minor, I would set aside the sentence of life imprisonment imposed on him by the lower court and replace it with imprisonment for 20 years, to be served from the date of his conviction and sentence by the lower court.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 3RD DAY OF DECEMBER, 2019

OLGA SEWE

JUDGE