REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNG0MA

CRIMINAL APPEAL NO.76 OF 2011

WYCLIFFE WAFULA MATANDA alias WICKY ……..…...1ST APPELLANT

CHARLES LUBONGA ANYORO alias CHARLO ……...……2ND APPELLANT

VERSUS

REPUBLIC ……..……RESPONDENT

(An Appeal arising out of the judgment and sentence delivered on 17th June, 2011 in Webuye Principal Magistrate's Court Criminal Case No.1903 of 2009 by E.C. CHERONO, Principal Magistrate)

J U D G M E N T

1. Sometime in the night of 25th June 2009 and the early hours of 26th June 2009 there was a robbery in Webuye Township in Bungoma at a Cyber Café owned by Gladys Muyundo (PW5) and various items stolen therefrom. In the course of the robbery, violence was used and fatal wounds were inflicted upon Joseph Chumaki Tako (**the Deceased**) who was a Guard at the shop. Arising from this incident four persons namely Wycliffe Wafula Matanda alias Wicky (**the 1st Appellant**), Paul Oriego, Abushira alias Paulo (**Paul**), Charles Lubonga Anyoro alias Charlo (**the 2nd Appellant**) and Peter Wanjala Wacha alias Simo (**Peter**) were arraigned in the Subordinate Court at Webuye and charged with the offence of Robbery with violence contrary to Section 296(a) of The Penal Code. In a judgment delivered on 17th June 2011, a conviction was returned against the Appellants herein and the other two were acquitted. The convicts were each sentenced to death. This Appeal is against both conviction and sentence.
2. It had been alleged that on the night of 25th and 26th day of June 2009 along Nyange Street Webuye Township in Bungoma East District within Western Province, the four and others not before the Court, while armed with offensive weapons namely pangas and iron bars, robbed JOSEPH CHUMAKI TALO of (1) three monitors S/No.7SC7521000240, 20LC26SC536, CZZ92703KM (2) two central processing units 5B0827T14992 and (4) one roll of network cable all valued at kshs 50,000/- and at or immediately before or immediately after the time of such robbery murdered the said JOSEPH CHUMAKI TALO who by then was guarding Concepts Cyber Café owned by GLADYS NANYAMA MUYUNDO. In a hearing that commenced on 05th March 2010 and closed on 20th January 2011, the Prosecution called a total of 12 witnesses. In Defence both Appellants made sworn statements.
3. Paul Kikame Abwoba (PW1) was at the material time to the incident a resident of Wananchi. His house neighbours a Cyber Cafe Christened "Concept Cyber Café" owned by PW5. In the dead of the night, at about 3.00 a.m on 26th June 2009, he was called out by Ken Odali (his cousin) who had spent the night at his house. Odali informed him that the door to the Cyber Case was open.

After looking and indeed confirming that the door was open, PW1 alerted a neighbour about this unusual occurrence. In turn, it would seem, his neighbour informed the watchman of Executive Lodge which is also in the neighbourhood. After a short while two watchmen from Executive Lodge came to the house of PW1 and asked him for a spotlight so that they would check what had happened at the Cyber Case. Later the witness heard the watchmen say "wamemua" (Kiswahili for "They have killed him").

4. Elly Barasa (PW3) was one of the security Guards who was informed about the break into Concept Cyber Cafe. Responding to this information, PW3 visited the scene. He saw that the door to the Cyber Cafe was open. At the stairs outside, there were bloodied footprints. Using a torch, he shone into the Cyber Case and saw his colleague Joseph Talo lying on the floor. His colleague was dead. Other colleagues working with Catwill Security who visited the scene in the early hours of 26th June 2009 are Tobias Wanyonyi Wafula (PW 4) and Johnes Mogesi Ayienda (PW7). They too found the Deceased lying dead on the floor.
5. On his part PW4 recalled the scene. He saw that the rear door grill was broken. He saw broken pieces of soda bottles. He noticed blood oozing from the head of the Deceased. He noticed computers scattered there.
6. As was wont to, PW5 received information about the break into her Cyber Café. This information came in at about 3.00 a.m on 26th August 2009. She in turn, informed her nephew Philip Omondi Wafula (PW 6) about it. At day break, both PW5 and PW6 went to the Cyber Café. There they found the Manager of Catwill Security Firm (presumably PW4) and members of the public. Although PW5 said that Police officers were already on the scene, PW5 says that they (the Police officers) came shortly after them. Both witnesses saw the Deceased lying on the floor in a pool of blood.
7. One of the officers who came to the scene was PC Mulongo Tali (PW 10). He works with the scenes of crime section and his duties include visiting scenes of crime, taking finger prints, dusting finger prints and taking photographs. On that morning, he photographed the scene and uplifted finger prints therefrom. He produced 4 photographs of the scene. The finger prints he uplifted were on the doors, counters, TV and computers within the premises. The witness submitted five of the finger prints obtained to CID Headquarters.
8. PC Alfred Kipoyaso Rubia (PW 9) assisted in investigating the case. Acting on some information from an unnamed source, he arrested the 1st Appellant. The 1st Appellant had a wound on his ear. Upon interrogation the 1st Appellant led the police officers up a hill and showed them a broken computer which was hidden in a thicket. Near it and also hidden was a battery backup. It is said that the 1st Appellant mentioned the other accused persons who were also subsequently arrested.
9. On the morning of 26th June 2009 at about 7.00am, the 1st Appellant and Peter visited the house of Janet Nabwire Okumu (PW2) for some traditional liquor. PW2 noticed that the 1st Appellant had a fresh cut wound on his left ear with blood oozing from it. He also saw him with a computer and a hammer. The 1st Appellant used the hammer to hit the computer. In Court, the witness identified the computer. It was the same one that had been recovered by PW9 and his colleagues as led by the 1st Appellant.
10. Protus Onyango (PW 11) is a Gazzetted Finger Print Expert. He received five photographic lift prints and recorded finger prints of Paul, Peter and the 2nd Appellant from Bungoma Police Station. Upon examination of the prints, he formed the opinion that 4 of the lifts from the scene of crime were identical to the various right fingerprints of the 2nd Appellant.
11. On 27th June 2009, Jeremiah Maktum Talo (PW 8) received the sad news of his brother's death. The Deceased body lay at Webuye District Mortuary. There, PW8 identified the body to Dr Stephen Kimani Ngugi who performed a postmortem on the Deceased. The Postmortem report was produced in Court by Dr Edward Vilembwa (PW 12). The highlights of that report were that the Deceased had suffered a deep cut wound at the base of his neck, on the frontal and parietal region. Internally, the Deceased's lungs and heart had collapsed and he had a penetrating injury to his brain. The Doctor concluded that the Deceased had died due to cardiopulmonary arrest following a severe head injury and hypovolemic shock following a severe head injury.
12. Invited to make their Defences, the quartet all made sworn statements. For purposes of this Appeal, only the Defences of the 2 Appellants are relevant. The 1st Appellant told Court that he

was arrested by Police officers on 10th July 2009 at his home in Maisha Matamu, Webuye. He was handcuffed and a search conducted in his house but nothing was recovered. He was taken to Webuye Police Station where his finger prints were dusted. He was later arraigned in Court for the offences upon which he was convicted. He pleads his innocence.

13. The 2nd Appellant visited Webuye Police Station on 27th July 2007 to report the death of a friend known as Rashid Kizito. As he left the Station, he was confronted by PW9 and another officer by the name Paul Mwita and arrested. He was searched and a cell phone and ksh.2000 taken away from him. That the two threatened him with a pistol and accused him of being a dangerous criminal. On 13th September 2009 his finger prints were taken and he was charged for the present offence on 14th September 2009.
14. The two Appellants had filed separate Appeals but the two were consolidated for hearing and disposal on agreement of both the Appellants and the State Counsel. In his Petition of Appeal, the 1st Appellant raises the following grounds:-

1. **"That the learned trial magistrate erred in law and facts by not considering my written and alibi sworn defense without proper reason.**
2. **My Lordship that the trial magistrate erred in law and facts by failing to appreciate that the accused person was arrested on 12/7/2009, while reporting another incident of murder vide OB 12/7/09. This is that the police had malicious intention against accused rights from the beginning to implicate the accused in this case.**
3. **That the learned trial magistrate failed when he relied upon the exhibit MFI 18thumb print impression on form C.24 in the names of CHARLES LUBONGA ANYOLA without acknowledging that the alleged finger prints based on various documents date the year2008. A case he investigated some years ago.**
4. **That the learned trial magistrate failed when he relied upon the exhibit of finger prints in a letter from the C.I.D. experts without baring in mind that the form does not contain any official rubber stamp from the headquarters office.**
5. **That the learned trial magistrate failed to consider that there was no any witness who pin did not point the accused nor the exhibit was found in possession of 1 the appellant in connection of the commission of alleged offense.**
6. **That the learned trial magistrate misdirected himself in law and fact by failing to appreciate that the prosecution case was not only insufficient but was speculative, conjunctive, fabricative, discredited, unconstitutional and lacked probative values.**
7. **That the learned trial magistrate erred in law and facts by failing to give any adequate consideration.**
8. **For I cannot recall all the ingredients of the case, I therefore pray that may I be furnished with a copy of trial court proceedings in order to raise more grounds in support of my appeal. I wish to be present during the hearing of my appeal."**

15. For the 2nd Appellant, he had on 23rd June 2011 filed some 8 Grounds of Appeal. Upon hiring Counsel, his advocates K.S Ombaye & Co. filed supplementary Grounds of Appeal. At the hearing Counsel only made arguments on the supplementary heads. Looking at both sets of Grounds, we are satisfied that the supplementary Grounds sufficiently, albeit in a more condensed fashion, covers the Grounds raised earlier. The 4 Grounds in the supplementary appeal are:-

1. **"THAT the learned trial magistrate erred in law and fact by convicting and sentencing the appellant to death by his failure to show in his judgment as to whether or not the prosecution fully discharged its burden of proving the case beyond all reasonable doubt.**
2. **THAT the learned trial Magistrate erred in law and fact by convicting and sentencing the appellant to death on evidence based solely on finger print identification evidence which left a lot loopholes and a lot of room for doubt and not corroborated by any other evidence.**
3. **THAT the learned trial Magistrate erred in law and fact by sentencing the appellant to death when there is no evidence on record showing that any witness saw him committing the offence.**
4. **THAT the learned trial Magistrate erred in law and fact by convicting and sentencing the**

appellant to death by his failure to comply with the mandatory provisions of Section 169 (1) of the Criminal Procedure Code."

16. The 1st Appellant made the point that he was tortured into signing something at the Police Station after he had refused to accede to demands of a bribe by the Police Officers who arrested him. He further criticized the Prosecution for failing to call the Police officer who arrested him.
17. On the quality of the evidence, the 1st Appellant was of the view that it was weak and circumstantial. That none of the witnesses alleged to have seen him commit the offence. That the stolen items were not found in the house and he was forced to sign an inventory report of some exhibits recovered by the Police.
18. The 1st Appellant further emphasized that no probative value should have been given to the evidence of PW2 as she was initially a suspect in the case. He characterized her evidence as false and merely intended to "**bury her guilt**."
19. Mr. Ombaye for the 2nd Appellant argued that the Trial Magistrate failed to show in her judgment whether or not the Prosecution had fully discharged its burden of proving the case beyond all reasonable doubt. Counsel further submitted that finger print evidence was the sole basis of the conviction in respect to the 2nd Appellant and so its evidence had to be without any loopholes or room for doubt (**Kinyanjui –vs- Republic [1983] KLR 491**). Counsel argued that it cannot be said with certainty that the finger prints submitted and examined were those of the 2nd Appellant because the Police officer who took the 2nd Appellant's fingerprints did not testify.
20. Lastly, Counsel was of the view that the Trial Court did not comply with Section 169 (1) of The Criminal Procedure Code as the Learned Magistrate did not formulate the points or reasons for his decision.
21. In reply, the State Counsel outlined the evidence of the witnesses so as to demonstrate the guilt of the Appellants. That the 1st Appellant was overheard by PW2 talking about the robbery incident including how he suffered a bit injury to his right ear in the cause of resistance from the watchman. PW2 saw that injury. That information led to the arrest of the 1st Appellant, who while under arrest led the Police to the recovery of some stolen items.
22. The State Counsel further pointed out that on interrogation of the 1st Appellant who mentioned the 2nd Appellant as an accomplice. This led to the taking of the 2nd Appellant's finger prints which upon analysis matched those lifted from the scene.
23. In seeking to distinguish the circumstances of this case from **Kinyanjui** (supra) the State Counsel argued that:-

I. The 2nd Appellant was not solely convicted on the finger print evidence because there was also information made of his involvement by the 1st Appellant.
II. The Arrest here was soon after the commission of the offence unlike that in **Kinyanjui** (supra) where the arrest was one year after the commission of the offence.
III. The 2nd Appellant does not challenge the manner in which the finger prints were taken or that they were indeed taken.

24. On another front, the State Counsel submitted that Section 169 (1) of the CPC was fully complied with as the Trial Court set out the charge, the standard of proof to be discharged by the Prosecution, analysed the evidence of the Prosecution and Defence and compared the two versions. The point was also made that it was not necessary for the Trial Court to restate the burden of proof at the end of the judgment as what really mattered was the analysis of the evidence by the Court and whether the threshold required by law had been reached.
25. That is the abridged version of the evidence we must re-evaluate in detail and draw our own conclusion. That is what we are obliged to do as a first Appellant Court but keeping in mind that we did not have the advantage of seeing and hearing the witnesses testify first hand and some allowance must be given for this (**Republic –vs- Okeno [1932]E.A. 32**).
26. We choose to start with the 2nd Appellants case because as it will be apparent shortly it is much more quickly disposed. It is accepted by both sides that the proposition in **Kinyanjui** (supra) is good law and binding on this Court. The holding there is twofold;

1)If a person is to be charged with an offence and particularly a capital offence on the basis of finger print evidence alone, that evidence must leave no loop-holes, no room for doubt.

2) Where finger print evidence is the only basis for a conviction, it is unsafe to convict unless the circumstances point to the guilt of the accused to the exclusion of any other reasonable hypothesis."

27. Whether or not **Kinyanjui** (supra) applies to the 2nd Appellants case depends very much on whether the finger-print evidence was the only evidence which led to his conviction. From our reading and understanding of Trial Courts judgment, the basis of conviction was solely on the fingerprint evidence. This is how the Court renders itself,

"The 3rd accused's finger prints were captured when the computer which was robbed from the Cyber Case was lifted. The finger print expert gave testimony how he conducted his investigation and found out that the finger prints indeed belong to the 3rd accused. His testimony was not challenged or controverted in any way."

28. The State took a view that there was, in addition to this evidence, the mention of the 2nd Appellant as a co-perpetrator by the 1st Appellant. That this information submitted by The State Counsel is additional evidence that pointed to the guilt of the accused. What do we make of that argument? The information by the 1st Appellant was to a Police officer (PW9).That information incriminated both the 2nd Appellant and the maker himself (the 1st Appellant). This would therefore be a confession by the maker in the manner contemplated by Section 25 of The Evidence Act which provides;

"25. A confession comprises words or conduct, or a combination of words and conduct, from which, whether taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person making it has committed an offence."

That confession implicated a co-accused and so Section 32 of The Evidence Act would also be relevant. The provisions of that Section are:-

"32. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take the confession into consideration as against such other person as well as against the person who made the confession.

(2) In this section "confession" means any words or conduct, or combination of words and conduct, which has the effect of admitting in terms either an offence or substantially all the facts which constitute an offence;"

29. But the admissibility of that confession runs into headwinds as it was not made and/or received as required by Section 25A of The Evidence (out of Court confessions) Rules, 2009. Section 25A reads:-

"25A (1) A confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible and shall not be proved as against such person unless it is made in court before a judge, a magistrate or before a police officer (other than the investigating officer), being an officer not below the rank of Chief Inspector of Police, and a third party of the person's choice.

(2) The Attorney General shall in consultation with the Law Society of Kenya, Kenya National Commission on Human Rights and other suitable bodies make rules governing the making of a confession in all instances where the confession is not made in court."

PW9 who was one of the officers who received the confession was not of the rank of a Chief Inspector of Police. And it did not help that he was the Assistant Investigating officer. As to the other officers present, they are the ones who accompanied PW9 to the 2nd Appellants house. This is what PW9 said,

"We arranged to go to his house with P.C Meto PC Maiyo Sergeant Paul Kiwita and Corporal together with me went to the house of that suspect."

Clearly none of the Police officers is of a rank of a Chief Inspector. Even without considering the other breaches to the Evidence (out of Court confessions) Rules 2009, the confession is inadmissible against both the maker and his co-accused for non-compliance with Section 25.

30. Because the said information (call it purported confession) is not admissible, then we have to agree with the Learned Magistrate's conclusion that it was only the finger print evidence that incriminates the 2nd Appellant and for this reason the **Kinyanjui** (supra) is applicable. So does the manner in which the finger prints were collected, stored, transmitted for examination and examined be said to "leave no loop-holes, no room for doubt"?
31. From Form C.24 intituled "Elimination Finger & Palmprints Form" (P Exhibit 16 (a) + h) the fingerprints of the 2nd Appellant were taken on 13th July 2009 at C.I.D. Webuye by Sgt Mwita. It is true, as pointed out by Counsel for the Appellant, that this officer was not called by the Prosecution. No reason was given for this failure. That in our view was always going to stir a controversy.
32. In his Defence, the 2nd Appellant admitted that the Police officers who arrested him were Paul Mwita and Alfred Kipyaso (PW 9). He further admitted that his finger prints were taken while he was at Webuye Police Station although he thought that this was done on 13th September 2009. But that day may very well be 13th July 2009 not 13th September 2009. We say so because this was the evidence of the 2nd Appellant.

"On 13/09/07 they took my finger prints and returned me back to the cells. On 14/09/2007, I was arraigned before Court charged with this case."

We have taken the trouble of looking at both the typed proceedings (uncertified) and handwritten notes of the Magistrate in Webuye criminal case no.1133 of 2009 in which the first three accused persons were initially charged with the robbery and find that they were first arraigned in Court on 14th July 2009. If the fingerprints of the 2nd Appellant were taken a day before his first Court appearance then they would have been taken on 13th July 2009.

33. For that reason an argument can be made for the Prosecution that the fingerprints taken by Sgt Mwita on 13th July 2009 and produced as P Exhibit (a) + (b) by PW11 are those which the 2nd Appellant admits to have been taken from him on 13th July 2009. But is it that so simple and straightforward?
34. Perhaps not! None of the 12 Prosecution witnesses testified as to who took the fingerprints of the 2nd Appellant. That information only appears on the Form itself. As for the 2nd Appellant himself he does not say who between PW9 and Mwita took the finger prints or who indeed took the fingerprints. So, save for the Form, there is no proof that the fingerprints appearing on the Form (Exhibit 16a and (b)) were taken by Sgt Mwita from the 2nd Appellant.
35. It is our view that when the Prosecution failed to call (without explanation) the officer who took the fingerprints from the suspect or lead evidence as to how the fingerprints were taken from him, it created room for doubt. For that reason the fingerprint evidence in our view, and we so hold, does not pass the test in **Kinyanjui** (supra). This leaves us with no option, regrettably as it may seem, but to reverse the conviction based on that evidence. We hereby quash the conviction against the 2nd Appellant and set aside the Death sentence imposed on him.
36. As for the 1st Appellant, the following evidence appears to implicate him:-

I. The evidence of PW2 as to what she heard him say.
II. The evidence of PW2 as to how she saw him injured and in possession of a computer.
III. The evidence of his arrest by PW9 and how he led them to where some stolen items were. Indeed the Learned Magistrate based his conviction on some of these evidence when he held,

"When the 1st accused was arrested after he was mentioned by Jane Nabwire Okumu, he led the police to the recovery of a computer and battery backup which were identified by the proprietor of concept cyber café as belonging to her. The mere fact that the 1st accused knew where the two items had been kept is a clear indication that he was connected to the commission of this offence."

We now examine this evidence in detail.

37. We start with the evidence on how the 1st Accused apparently led the Police to the recovery of a computer and battery backup. We recall what PW9 said in this respect,

"We interrogated him. We asked him where he kept the things he stole and who were the other robbers. He took us up the hill and showed us a broken computer which was in a thicket (referred P-MFI – 2). This is the one. He also showed us a battery backup(referred P-MFI – 3) it was near where the broken computer had been kept but that was put inside the soil. We took the items to the Station and I prepared an inventory. This is the one PMFI – 8 the suspect also signed."

When the suspect led the Police to the place where he had "kept the things he stole", was incriminating himself. To that extent that conduct amounts to a confession (see Definition of Confession in Section 25 of The Evidence Act set out in paragraph 28 above). We have already (see paragraph 29 above) given reasons why the Confession of the 1st Appellant is not admissible. So the evidence of the 1st Appellant's constructive possession of some of the stolen goods which forms part of the confession is not admissible. On this the Learned Magistrate, in our respective view, fell into error.

38. It was also the argument of the 1st Appellant that the Learned Magistrate ought to have completely disregarded the evidence of PW2 as she was initially a suspect. In her evidence in cross-examination, she stated that she was not a suspect in the Robbery case. However, confronted with entry in the relevant occurrence book she conceded that she had been booked as a suspect. The 1st Appellant cannot therefore be faulted in his submission that the witness was in fact a suspect.
39. Before analyzing the evidence of this witness, we ought to first satisfy ourselves that his evidence is admissible. We take the view, and so hold, that the evidence of a suspect ought to be treated in the same manner as that of an accomplice. Section 141 of The Evidence Act reads;

"An accomplice shall be a competent witness against an accused person; and a conviction shall not be illegal merely because it proceeds upon the uncorroborated evidence of an accomplice."

A suspect is not only a competent witness but his evidence may in some circumstances found a conviction.

40. The evidence of PW2 is that on the morning of 26th June 2009 at about 7.00 a.m the 1st Appellant and Peter visited her house for drinks. Blood was oozing from a cut wound to the 1st Appellants ear. He bought Elastoplast and covered the wound. The witness heard him say that he had on the night of 25th June 2003 with "Simon" attacked a watchmen and stolen 2 computers. That in a physical struggle with the watchman, the watchman bit him on the ear. The witness also saw that the 1st Appellant had a hammer and a computer. He used the hammer to "slowly" hit the

computer. The witness identified a computer in the Court (MFI 2) as the one which the 1st Appellant possessed on that day.

41. This evidence was not debunked or shaken in cross-examination. That the 1st Appellant had a cut wound on his ear was supported by PW9 who arrested the Accused person on 9th July 2009. That was about 13 days after the incident. This evidence, again, was not shaken in cross-examination. In that cross-examination, the 1st Appellant had challenged the witness that he and Sgt Mwita beat him. Curiously in his defence, the 1st Appellant made no mention of it.
42. We take the position that even without the evidence on recovery of the stolen items, the evidence of PW2 as supported in some material respects by that of PW9 was strong enough to found a safe conviction. PW2 had, a few hours after the commission of the robbery, seen the 1st Appellant with a computer. The 1st Appellant suffered a fresh wound on his ear. That wound, obviously not as fresh, was seen by PW9 a few days later. The 1st Appellant was heard talking about the incident of the past night. Although, by lapse on the part of Prosecution, the computer (PMFI 2) which was identified by PW2 as that possessed by the 1st Appellant was not shown to its owner (PW 5) for identification, that did not take away the fact that PW2 had seen the 1st Appellant with a computer. Further, that lapse did not take away the fact that one of the items stolen from the Cyber Café was a computer.
43. In the totality of the evidence of PW2 and PW9, this Court finds that a safe conviction could have been returned against the 1st Appellant for the offence charged. For that reason his Appeal is dismissed.
44. In closing we acknowledge that Prosecution often works under difficult circumstances and constrained in resources and time. We shall, as always be slow in faulting the manner in which Police officers investigate complainants and the State Prosecutes them. That said, we cannot help but feel that the outcome of the Appeal in respect to the 2nd Appellant may have been different if more attention would have been given to the fingerprint evidence.
45. We restate the outcome of this Appeal. The 1st Appellants' Appeal is dismissed in its entirety. The 2nd Appellants' appeal succeeds. His conviction is quashed and sentence set aside. The 2nd Appellant is hereby set free forthwith unless detained for some other lawful reason.

F. TUIYOTT **A. MABEYA**

J U D G E **J U D G E**

COUNTER SIGNED, DATED AND DELIVERED AT BUNGOMA THIS 12TH DAY OF NOVEMBER 2014.

J U D G E

IN THE PRESENCE OF:

GILBERT WANYON'GO COURT CLERK

IN PERSON FOR 1ST APPELLANT

IN PERSON FOR 2ND APPELLANT

MR OIMBO FOR RESPONDENT