Amisi v Republic (Criminal Appeal E041 of 2024)
[2026] KEHC 3684 (KLR) (18 March 2026) (Judgment)

Neutral citation: [2026] KEHC 3684 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

CRIMINAL APPEAL E041 OF 2024

WM MUSYOKA, J

MARCH 18, 2026

BETWEEN

IVAN AMISI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Appeal from conviction and sentence, by Hon. T. Madowo, Senior Resident Magistrate, SRM, in Busia MCSOC No. E032 of 2023, of 6th March 2024)

JUDGMENT

1. The appellant was convicted of defilement, of a minor of 12, on diverse dates between the month of November 2021 and February 2022, at [Particulars Withheld], Teso South, Busia, contrary to section 8(1)(2) of the *Sexual Offences Act*, Cap 63A, Laws of Kenya. He denied the offence, and a trial was conducted, where 4 witnesses testified.

2. PW1, BM, was the minor complainant, aged 12, at the material time. The appellant was an employee of the grandmother of PW1. PW1 used to share sleeping quarters with another employee of her grandmother, by the name Eva. One night in November 2021, Eva opened the door to their sleeping quarters, and let in the appellant, who defiled PW1. That went on until February 2022. In April 2022, PW1 confided in her aunt, Rebecca, that the appellant had defiled her. She was taken to hospital, and a report was made to the police. She stated that the appellant had threatened to kill her, if she informed anyone of the happenings.

3. PW2, MB, was the grandmother of PW1. She identified the appellant and Eva as her employees. She stated that she had left PW1, at home, with the 2 workers, and went to Nairobi for treatment. She later learnt, on 10th April 2022, that the appellant had defiled PW1, during her absence. She escorted PW1 for medical examination, and a report was made to the police. She stated that PW1 was 12 years at the time, having been born on 10th July 2010.

4. PW3, Justus Wandera Ouma, was a clinician. He examined PW1 on 10th April 2022. He testified that PW1 had been brought to hospital on 10th April 2022, with a history of having been defiled repeatedly, by a casual labourer at home. There was no bruising or bleeding, but there was presence of a yellow foul-smelling discharge. There was also an old hymenal tear. Urinalysis revealed some pus and epithelial cells. She was treated for STI. He filled a post rape case (PRC) form, which he produced as PEX 3. He confirmed that he did not examine the appellant.

5. PW4, No. 101646, Police Constable Anne Kapel, received the report of the incident, on 11th April 2022. She investigated the matter, and detailed the steps taken, in the course of it. she produced a baptism card, as PEX 4.

6. It was ruled, on 23rd October 2023, that the appellant had a case to answer. He was put on his defence. He made an unsworn statement, on 24th November 2023. He denied the offence. He conceded that he had been employed by PW2. He said that he left the employment at the end of March 2022, after his salary was not paid. When he visited PW2, to pursue the payment, he was paid, but was later tricked to go to a police station, where he was arrested.

7. Judgment was delivered, on 31st January 2024. The appellant was convicted. The court found that all the elements of the offence had been established. The appellant was sentenced, to 40 years' imprisonment, on 6th March 2024, to run from the date of his arrest.

8. The appellant was aggrieved, hence the instant appeal. He grounds his appeal on fair trial rights being violated; the investigation being unreliable, inaccurate and incapacitated; the medical evidence not linking him to the offence; and the punitive sentence being externally manipulated.

9. The appeal was canvassed, by way of written submissions.

10. The only submissions I see on record were filed by the appellant. He submits around the charge being defective and non-existent; failure to comply with section 198(4) of the Criminal Procedure Code, Cap 75, Laws of Kenya; unfair hearing, on account of non-compliance with Article 50(2)(g)(h) of *the Constitution*, with respect to legal representation; the age of the complainant; proof of penetration; shifting of burden of proof; defence of alibi; and sentence.

11. Chacha Mwita vs. Republic Petition No. 33 of 2018 (unreported), Republic vs. Chengo & 2 others [2017] eKLR [2017] KESC 15 (KLR)(Maraga CJ&P, Mwilu DCJ&VP, Ibrahim, Ojwang, Wanjala, Ndungu & Lenaola, SCJJ), Albanus Mwasia Mutua vs. Republic [2006] KECA 346 (KLR) (Omolo, Githinji & Deverell, JJA), Dominic Kibet Mwarena vs. Republic [2013] eKLR (Ndolo, J), Alfayo Gombe Okello vs. Republic [2010] KECA 319 (KLR) (Gicheru, Bosire & Waki, JJA), Kaingu Elias Kasono vs. Republic Criminal Appeal No. 504 of 2010 (unreported), Kelvin Kiprotich Amos alias Rotich vs. Republic Bungoma HCCRA No. 89 of 2016 (Aroni, J)(unreported), Daniel Mwasi vs. Republic HCCRA No. 458 of 1985 (Schofield, J)(unreported), Benard Kebiba vs. Republic Criminal Appeal No. 104 of 2000 (unreported),, Victor Mwendwa Mulinge vs. Republic [2014] eKLR [2014] KECA 710 (KLR) (K. Kariuki, Musinga & Gatembu, JJA) and James s/o Yaram vs. Rex [1950] 18 EACA 147 (Sir Barclay Nihill P, Sir G Graham Paul CJ & Lockhart-Smith, JA), are cited.

12. I sit in this appeal as a first appellate court. In a first appeal, the appellate court handles the appeal by way of a re-trial. It re-considers and re-evaluates the evidence, recorded by the trial court, afresh, and draws its own conclusions. See Okeno vs. Republic [1972] EA 32 (Sir William Duffus P, Law & Lutta, JJA). I have evaluated the entire record, from the pleadings, the testimonies recorded from the witnesses, and the judgment of the court, and I have drawn my own conclusions.

13. Let me first deal with the ground of appeal around constitutional fair trial principles. The starting point should be with *the Constitution* of Kenya, 2010. Kenya is in a new constitutional dispensation. It has come up with new principles and standards that had not been clearly spelt out in *the Constitution* retired in 2010, nor in the Criminal Procedure Code. The fair trial or hearing principles, in Article 50 of *the Constitution* of 2010, have introduced to the menu, of a criminal trial, a fresh raft of principles, and added emphasis on those existing prior.

14. *The Constitution* is the supreme law in Kenya, by dint of its Article 2. All the other laws derive their legitimacy from it. It binds all persons and all State organs, institutions and entities, including the courts. It is the first port of call, for anyone or entity exercising judicial authority. What *the Constitution* requires to be done, regarding criminal trials, should take primacy over what the Criminal Procedure Code, and other legislation, governing criminal trials, may have to say on the subject.

15. The fair hearing principles and standards, in Article 50 of *the Constitution*, spell out how a trial is to be conducted, and how an accused person is to be handled or treated, right from when he is arraigned or presented to court for the first time, during trial and at the end of it. The rights of an accused person, at trial, are spelt out. He should be informed of the charges that he faces. The charges should be read to him in a language that he understands. He should be given the evidence in advance. He should be afforded facilities to prepare himself for the trial. He should be informed of his rights to legal representation, and of his right to be provided with an Advocate paid for by the State, should he be unable to afford one of his own. He is entitled to confront his accusers, by way of cross-examination. He is entitled to adduce evidence, if he so wishes, and to challenge that presented by the prosecution. In a nutshell, that is a brief on some of those rights.

16. Where the rights are granted by law, a corresponding duty is imposed. In the case of the fair trial principles, in Article 50, the duty bearer is the trial court. It is the duty of the trial court to ensure that the trial measures to the standards in Article 50, in terms of the language used in court; the advance disclosure of the evidence; the provision of facilities to the accused for purposes of preparation for trial; communication on his rights and entitlements, with respect to legal representation generally, and to an Advocate provided by the State; the right to confront witnesses; among others.

17. This is a heavy duty, on the trial court, to ensure that *the Constitution* is complied with. Where there is no compliance, or the compliance does not meet the standards, the trial would be a nullity, by dint of Article 2(4) of *the Constitution*. A trial court should strive not to labour in vain, by ensuring that it complies with Article 50. Upon that compliance, it should keep a record of what it has done, towards that compliance. If the record is silent, on the compliance, the presumption would be that there was no compliance.

18. So, what happened here? The appellant was arraigned on 20th April 2022. The record is silent on the language that the appellant was comfortable with. It is silent on whether an inquiry was made in that direction, and on what the appellant might have said with regard to that. The record indicates that the trial court proceeded, using the 2 languages of the court, English and Kiswahili, and the responses, by the appellant, were recorded in Kiswahili. However, there is nothing to show that that was a language that he was competent in, for purposes of the trial.

19. Did the non-compliance, with respect to language, place the appellant at a disadvantage? It is hard to tell. However, from the shortness of the responses that he elicited from the prosecution witnesses, when he cross-examined them, would be a pointer that he could have had challenges with the language that he was using for that purpose. A more extensive cross-examination would have suggested a more confident litigant, comfortable in the space that he found himself in, able to handle the task that was before him.

20. Article 50 casts a duty, on the court, to inform the accused person of his right to legal representation, by an Advocate of his own choice. The record is silent on whether the trial court addressed that issue. Additionally, the trial court is required, by Article 50, as read with the *Legal Aid Act*, Cap 16A, Laws of Kenya, to inform the accused person of the right to an Advocate provided by the State. That should be preceded by an evaluation of the circumstances of the accused person, in terms of assessing his means and his ability to navigate the trial process, taking into account the seriousness of the offence, and the complexity of the charges.

21. The trial court did not address itself to that subject, going by the silence in the record. It did not arise at arraignment, on 20th April 2022, nor at the mentions that followed, and not even on 2nd December 2022, when the trial started in earnest. Yet, the appellant faced a charge that exposed him to a sentence, upon conviction, of a statutory or mandatory life imprisonment. In the end, upon conviction, he was sentenced to 40 years' imprisonment. The charge was serious, in the circumstances, and all due precautions ought to have been taken, to ensure that the appellant was in a position to meaningfully participate in the trial, and if not, to inform him of his right to appoint an Advocate of his own choice, and, if he could not afford to appoint one, from his resources, of his right to apply to have one appointed for him, paid for by the State. That was not done.

22. Was the non-compliance above prejudicial? I think so. The appellant was described, in the proceedings, variously as a casual labourer, caretaker of a homestead and a herdsman. His level of education was not disclosed, but the nature of his employment engagements was a pointer. Judicial notice could be taken of it. Such employment usually attracts individuals of minimal educational background. A herdsman could not possibly afford to obtain legal representation at his own expense. He needed assistance, and the law provides for it, under *the Constitution* and the *Legal Aid Act*. He was indigent. Given his apparent educational background, judicial notice could be taken, that he could not possibly navigate the legal terrain, that he was being invited to, through his arraignment, unaided. He needed someone to hold his hand, given that he faced a life sentence, in the event of conviction. His case necessitated or deserved, more than any other, legal representation, at State expense.

23. Article 50 also talks of advance disclosure of the prosecution evidence. That essentially should be a copy of the charge sheet, witness statements, treatment notes, P3 form, and other documents that the prosecution purposes to rely on at trial. This serves several purposes. One, it informs the accused person of the charges facing him. Two, it helps him to prepare in advance for the trial, so that he is not caught flat-footed when witnesses are presented. Three, it helps him formulate his defence, and work out strategies on how to confront his accusers, by way of cross-examination of the prosecution witnesses, and also by way of his defence.

24. When the appellant was arraigned, on 20th April 2022, the trial court did not address the matter of advance disclosure of the evidence. The issue came up later, on 8th June 2022, when the court ordered that the statements be supplied. There was an undertaking, by the respondent, on 6th July 2022, to supply the same. The order to supply the advance evidence was renewed by the court on 20th July 2022 and 29th August 2022. The appellant confirmed to have had received the statements, on 12th September 2022. That meant that by the time the oral hearing of the matter commenced, on 2nd December 2022, the appellant had been furnished with the evidence, and he was not ambushed or taken by surprise.

25. The other grounds turn around the ingredients of the offence of defilement not being established, that is about the age of the victim, the fact of penetration, and the identification of the perpetrator of the penetration.

26. Proof of age is critical. Why? Because defilement is an offence committed against individuals of a certain age. Proof, of whether the victim falls within the contemplated age, becomes a prerequisite. Section 8 of the *Sexual Offences Act* protects sexual exploitation of minors, that is persons below the age of majority. It is an offence that can only be committed against persons under the age of 18, and adults suffering mental disability. Section 8(1) defines the offence of defilement of minors. Subsections (2)(3) and (4) prescribe the penalty for defilement of minors of certain ages. Section 8(2) caters for minors aged 11 years and below. The penalty is mandatory life imprisonment, upon conviction, for defilement of minor victims falling within that category. In the instant case, what the prosecution was required to establish was that the victim, PW1, fell between the age bracket of 0 and 11 years, both inclusive.

27. Was it proved that PW1 fell within that age bracket? The charge alleged that the victim was 12 years of age, as at the material time, when the offence was committed. When she testified, on 2nd December 2022, she put her age at 12 years old. Her grandmother, PW2, said she was 12, having been born on 10th July 2010. PW4 placed before the court a child dedication card, which reflected the date of birth as 10th July 2010.

28. Was that adequate proof? The usual way of proving the date of birth is by way of a certificate of birth. A certificate of birth would issue where the birth is registered with the Registrar of Births and Deaths. Where that registration has not happened, it can be proved by other means, and other documentation. The fact that a human being exists is testimony that he or she was born, and where registration of their birth was not done, there should be other ways of establishing when they were born, for they must have been born at some date. The testimony of a parent, particularly that of the biological mother would suffice, and so should production of other records, such as school or church records, where recording of dates of birth also happens.

29. In this case, PW2 was the grandmother of PW1. She was a person who would be expected to be knowledgeable about the date of birth of her grandchild. Her testimony, on the matter of the date of birth, was further supported by the child dedication card. The trial court also had the benefit of having PW1 before it, and seeing and hearing her testify, and, thereby getting a chance to evaluate her age, as against the testimony of PW2, and the documents produced in evidence, with respect to age. The age of the victim, PW1, was sufficiently established.

30. However, the age proved was 12, which was the age in the charge sheet. Yet, the appellant was charged under section 8(2), which prescribes the sentence, upon conviction, where the victim of the defilement is aged 11 and below. PW1 was not aged 11 or below. She did not fall under section 8(2). The age, to be proved, if the charge were to remain section 8(2), was 11 or below. If the correct age was 12, then the appellant should have been charged under section 8(3), which prescribes the sentence, where the victim of the defilement is aged between 12 and 15, of not less than 15 years in prison. If the case was made out against the appellant, it was a case under section 8(3), and not the section 8(2) charged. Anyhow, I shall deal with the consequence of that anomaly here below.

31. Penetration is about the entry, however slight, of the genital organ of the perpetrator, into the genital organ of the victim. The charge was that the vagina of PW1 was penetrated by the penis of the appellant. That was what the prosecution was required to prove.

32. Was there proof of that? The prosecution presented PW1 and PW3, for the purposes of establishment of that allegation. PW1 was the victim. It was alleged that it was her vagina that was penetrated by the penis of the appellant. She gave a fairly straightforward account of what happened, in effect saying that the appellant inserted his member or sexual organ into her vagina, not once, but several times, between November 2021 and February 2022.

33. In her own words, she said, from the handwritten record of the trial court:

> " November 2021 I was at my grandmother's home ... At night Eva opened the door for Amisi ... Amisi removed his trouser ... He then removed my underwear. He then inserted the thing he urinates with and placed it inside the thing which I urinate with. He had laid on top of me on my bed ... This was the first incident that happened to me. I felt pain in my urinating area after the incident ... He kept defiling me. He left for Christmas and he came back and defiled me again. He used to defile me at night and Eva used to open the door for Amisi. He defiled me in December 2021 after Christmas ... The last time the Accused defiled me was in February 2022."

34. Those were the exact words of the child of 12. It was clear enough. There was penetration. It happened to her. It was her vagina that was penetrated, and she gave a graphic account of it.

35. PW3 was the clinician. He saw, examined and treated PW1, on 10th April 2022, which was about 2 months or so after the last incident of defilement, according to PW1. He produced the documents on the forensics, being the P3 form, the PRC form and the treatment notes. Even after the lapse of 2 months, there was still evidential material pointing to defilement. There was a foul-smelling vaginal discharge, pus and epithelial cells, and an old hymenal tear. PW1 was just 12 years old, and had testified that the appellant was the first person to defile her. The trial court saw and heard her, and believed her testimony. The medical evidence supported or corroborated the oral testimony of PW1. Her vagina was penetrated. There was proof, beyond reasonable doubt, that there was penetration of the vagina of PW1.

36. The third element is identification of the perpetrator of the alleged penetration. The allegation was that the penetration was by the appellant. The duty, on the prosecution, was to establish that the vagina of PW1 was penetrated by the penis of the appellant, as alleged in the charge.

37. Did the prosecution discharge that burden, of establishing that it was the penis of the appellant that penetrated the vagina of PW1? PW1 was the victim. It was her vagina that was penetrated. The penetration had, in fact, happened, as evidenced by the medical forensics. What remained was establishing that the appellant was responsible for that penetration. PW1 said that he was responsible. She testified that the appellant was her grandmother's employee, and he was staying with her and a female employee, at the grandmother's home. He was being let in to her sleeping quarters by another employee, Eva, who was sharing a room with her. She gave a graphic narration of how it used to happen. PW1 and the appellant lived in the same compound. PW2 left PW1 under the custody of the appellant and his co-worker, Eva. Instead of acting as her protector, given that she was just a minor of 12, they took advantage of her. The trial court believed her testimony. There was opportunity for the defilement to happen. When put on his defence, the appellant chose to give an unsworn statement. An unsworn statement is among the weakest of evidence. The fact that it is unsworn shields it from scrutiny and challenge, by way of cross-examination. It is untested evidence. It is largely worthless. It cannot, possibly, displace sworn testimony.

38. Based on the above, there would be justification, for the conclusion, by the trial court, that defilement was proved against the appellant.

39. The appellant has argued that the medical evidence presented did not demonstrate who did it. I agree, it did not. It merely established the defilement, but it was not evidence of who did it. The evidence of who did it came from the testimony of PW1. PW1 was the victim of the defilement. She testified that the person who defiled her was the man who Eva used to open their bedroom to, and she gave details of how things played out. There was opportunity for him to do it, and there was no evidence of any

other man coming into the picture within that period. The events involved individuals who knew each other very well. I do not think the trial court was mistaken.

40. The appellant is, perhaps, raising issue about the medical evidence not pointing to him as the offender. It is true. The medical evidence or the forensics did not connect him to the offence. No fluids were apparently collected from PW1 and subjected to deoxyribonucleic acid (DNA) testing, to attempt to connect the appellant to the offence. No spermatozoa was found on PW1, which could be harvested for DNA testing. The law is that defilement and rape can be proved, without DNA or forensic evidence. That evidence is not mandatory. A conviction can be procured based only on the testimony of the victim, regardless of whether it was corroborated, so long as the court found it truthful, reliable or believable. In this case, there was other evidence, apart from forensics, which connected the appellant to the defilement.

41. The appeal is also grounded on an alibi defence. An alibi is evidence that the accused person was not at the scene where the alleged offence was committed, but at a different location, hence he could not possibly have committed the offence charged. In this case, the appellant offered no such defence, and presented no evidence that would have pointed to such a defence. His defence statement placed him at the home of PW2, where PW1 alleged the defilement happened. He did not talk about PW1 at all. He did not say that he was elsewhere within that period. His testimony did not disclose an alibi, but a mere denial of the facts.

42. In his written submissions, he has argued that the charge was defective and non-existent. Why? Because the provision, creating the offence and prescribing sentence, was cited as section 8(1)(2), instead of section 8(1) as read with section 8(2). To my mind, that is splitting hairs. Ideally, the charge should state both the provision creating the offence and that prescribing sentence. Whether stated as section 8(1)(2), or as section 8(1) as read with section 8(2), amounts to the same thing. There is no difference. The accused would be able to understand that both provisions apply to his case. One would carry definition of the offence, and the other the sentence. He would be clear on the provisions upon which his trial is to be founded. The issue is one of little relevance. Both framings convey the same message.

43. The only issue about the charge, which should be of some relevance, is the fact that section 8(2) covers minors of tender years, that is those aged 11 and below. PW1 was not one of them. She was 12. Her case fell under section 8(3). The charge should have been founded under section 8(3), but not under section 8(2). However, that would not be fatal. If there was evidence that defilement did happen to PW1, the appellant could still be sentenced under section 8(3), on the basis of the discretion given to the court, under section 179 of the Criminal Procedure Code. The offence, disclosed by the evidence, would be lesser, by way of a lesser sentence, and the trial court could consider that lesser sentence. The alternative would be to acquit him of the charge founded on section 8(2), and convict him of the alternative charge, of an indecent act with a child, contrary to section 11(1) of the *Sexual Offences Act*.

44. In the written submissions, the appellant also argues that burden of proof was shifted to him. He has, however, not demonstrated how that was so. I have read and re-read the trial record, but I have not come across any incidence where it could be said that there was a shift in the burden of proof.

45. On sentence, he submits that it was harsh and excessive, for a first offender like him. Sentences, under the *Sexual Offences Act*, are either mandatory or minimum. In either case, discretion is restricted in sentencing. The sentence prescribed under section 8(2) is mandatory life, while that under section 8(3) is a minimum of 20 years imprisonment.

46. The appellant was convicted under section 8(2), and should have been given the mandatory life sentence. However, the court chose to exercise discretion, based on caselaw from the Court of Appeal, which had pronounced life imprisonment unconstitutional, and gave him a definite sentence of

40 years. The Supreme Court has since stated that there is nothing unconstitutional about the life sentence. That would mean that the appellant should have gotten the mandatory sentence, of life in prison.

47. As discussed above, there was a problem with convicting under section 8(2), given that that provision caters for those aged 11 and below. PW1 fell above that age bracket, and a charge, with respect to her, should have been founded on section 8(3), and that is the provision that the appellant should have been convicted under. In considering sentence, the trial court should have reckoned with a minimum of 20 years. Given that minimum, 40 years would be on the higher side. If the court chose to move away from the main count, and convict under the alternative count, the minimum sentence would have been 10 years, and the trial court would have considered the overall sentence with that in mind.

48. In view of the above, it would appear, based on the material presented, that there was proof, beyond reasonable doubt, that defilement happened, perpetrated by the appellant. There was an issue around sentence, which would be correctable on appeal. Based on that I should dismiss this appeal.

49. However, there are constitutional issues. There was non-compliance with certain provisions of *the Constitution* on fair trial. The appellant was obviously indigent. Provision of an Advocate, paid for by the State, should have been considered. His level of education too. The seriousness of the offence, considering the stiff sentence that he was exposed to, was a factor that the trial court should have taken into account.

50. It is not just about ploughing through with the trial, and getting on with it; it is about justice. Justice cuts both ways. It is not one-way traffic. It should deliver justice to both sides. For the complainant, it is about the court taking evidence, to establish the guilt of the person accused of committing an offence against her, for the purpose of having that person punished. For the accused person, it is about being taken through a trial process, where his rights, as enshrined in Article 50, are respected. Where the said rights, variously referred to as fair hearing or fair trial rights, are trampled upon, it would be a fallacy, to say that justice was delivered, for it would have been delivered only to one side.

51. As fair trial rights were not respected, or, put differently, as constitutional prerequisites for a fair trial were not complied with, the trial of the appellant was not fair. There was a mistrial. There was no equality of arms. The case was balanced against him, in the manner that I have discussed above. I, accordingly, declare that the proceedings, in Busia CMCCRC No. E032 of 2022, amounted to a mistrial. The same are hereby quashed. The effect of the quashing order, is that the conviction is equally quashed, and the sentence set aside. There shall be a retrial, to be conducted at the Busia Chief Magistrate's court. The appellant shall, forthwith, be released from prison custody, and handed over to the police, for presentation at the magistrate's court, for retrial.

52. Of course, the quashing of the proceedings of the trial court, and the ordering of a retrial has the effect of reversing everything, and is inconvenient. However, not complying with *the Constitution* is inconvenient and expensive. Trial courts must, therefore, be always alert, to what *the Constitution* commands, and conduct trials in strict compliance with constitutional tenets, so that justice is delivered to all, to the victim and the perpetrator alike.

53. There could be argument that the infrastructure for compliance with or implementation of Article 50(2)(g)(h) of *the Constitution* and section 43 of the *Legal Aid Act* has not been set up, to facilitate provision of Advocates, to indigent accused persons, facing serious charges. That may be the case. However, *the Constitution* and the *Legal Aid Act* provide for that right. *The Constitution* became effective in 2010 and the *Legal Aid Act* in 2016. The State has had more than adequate time to ensure that that infrastructure is in place. Constitutional and statutory provisions are not for decorative

purposes only, they must be made real, for they are intended to provide concrete rights to citizens and residents of Kenya.

54. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 18TH DAY OF MARCH 2026.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Ivan Amisi, the appellant, in person.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the Republic.