Musa v Republic (Criminal Appeal 66 of 2014) [2024] KECA 275 (KLR) (8 March 2024) (Judgment)

Neutral citation: [2024] KECA 275 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CRIMINAL APPEAL 66 OF 2014

MSA MAKHANDIA, A ALI-ARONI & JM MATIVO, JJA

MARCH 8, 2024

BETWEEN

MOHAMMED MUSA .... APPELLANT

AND

REPUBLIC .... RESPONDENT

(An appeal from the judgment of the High Court of Kenya at Garissa (Mutuku, J.) dated 27th November 2013 in Criminal Appeal No. 39 of 2013)

JUDGMENT

1. Mohammed Musa (the appellant) was on 8th March 2010 arraigned before the Resident Magistrate's Court at Hola in Criminal Case No. 43 of 2010 charged with the offence of defilement contrary to section 8 (1) & (2) of the *Sexual Offences Act*. It was alleged that on 24th February 2010 in Ijara District within North Eastern Province, he intentionally and unlawfully caused his penis to penetrate the vagina of ZMA a child aged 9 years. He faced an alternative charge of committing an indecent Act with a child contrary to section 11 (1) of the *Sexual Offences Act*.

   Particulars being he intentionally and unlawfully indecently touched the complainant's genitals.

2. The appellant pleaded not guilty to the charges. In the ensuing trial, the prosecution called a total of 6 witnesses. PW1, the complainant testified that on the material day, she was grazing goats in the field in the company of her younger siblings. It was her evidence that a man of Somali origin who was carrying a jerry can and a luggage approached her and told her he was from Garasweni village. He then slapped her on her cheeks, pushed her to the ground, removed her pants and inserted his penis in her vagina. After defiling her, he left. Her mother found her lying down bleeding from her genitals. Her parents accompanied her to report the incident to the police and took her to the hospital where she was treated. She testified further, that at the material time, the assailant was wearing a red cap (MFI 1), a red jacket

(MFI 2), a black shirt (MFI 3), a black kikoi (MFI 4) and a grey clothing (MF1 5). She identified all the clothes in court. She also recognized the appellant in court as her assailant.

3. PW2, the complainant's mother rushed to the scene after her two young children came home running and reported to her that the complainant had been pushed down by a man. She found the complainant lying on the ground bleeding from her genitals. In the company of her husband and the complainant, they reported the incident to the police and they also took the complainant to the hospital where she was treated and a P3 Form completed. She explained how the complainant described the assailant's clothing to her and her neighbours namely PW4 and PW5, who went to search for the assailant. PW2 gave the age of the complainant as 9 years.

4. PW3, a Clinical Officer examined the complainant 7 hours after the incident. His findings were that she had a whitish discharge from her vagina and a tear. He concluded that she had been defiled. He produced the P3 form in Court. He gave her age as 9 years.

5. PW4 and PW5 after listening to the complainant's description of the assailant's clothes followed footprints from the scene for 25 kilometres and at 6.30 pm, they found a man sitting under a tree. After seeing them, the man started running away. They noted the clothes he wore fit the description given to them by the complainant. They arrested him as he entered a village and handed him over to the police. In their evidence in Court, they described the colour of the clothes the appellant wore and the jerry can he was carrying which they said resembled the description/colour given to them by the complainant.

6. PW6, the Investigating Officer recorded the witnesses' statements.

   In her statement, the complainant described the clothes the suspect was wearing. The witness said he asked the suspect to remove the clothes he was wearing which he recorded and kept as exhibits. It was his evidence that the complainant identified the clothes in court. He also stated that the complainant picked the appellant in an identification parade. He produced the appellant's clothes and the identification parade forms in Court as exhibits.

7. On 12th May 2010, the trial Court put the appellant on his defence after it was satisfied that a prima facie case had been established. However, the appellant stated that he had no evidence to offer, effectively leaving it to the Court to determine the case based on the evidence tendered by the prosecution. Upon analyzing the prosecution evidence, the trial Court was satisfied that the prosecution had proved its case to the required standard. It convicted the appellant and sentenced him to life imprisonment.

8. Aggrieved by the verdict, the appellant appealed to the High Court of Kenya at Garissa in High Court Criminal Appeal No. 39 of 2013. After hearing the appeal, the High Court (Mutuku, J.) upheld the conviction and the sentence in a judgment dated 27th November 2013.

9. The appellant is now before this Court on a second appeal. He seeks to overturn the High Court judgment citing the following grounds:

   (a) that he was not provided with witness statements and other documentary evidence relied upon by the prosecution contrary to Article 50 (2) (j) of *the Constitution*. (b) that he was not positively identified. (c) that the essential elements of the offence, namely, the complainant's age and penetration were not proved to the required standard. (d) that the trial court failed to comply with section 124 of the *Evidence Act*. (f) that the sentence is harsh and excessive since it was imposed without considering his mitigation and the facts and circumstances unique to his case.

10. In his submissions, the appellant who appeared in person argued that he was never furnished with witness statements and documents the prosecution sought to rely on as required by Article 50 (c) and

(j) of *the Constitution* and therefore his right to a fair trial was limited. To buttress his submission, he relied on this Court's holding in Thomas Patrick Gilbert Cholmondeley vs Republic, [2008] eKLR that an accused person should be provided in advance with all relevant materials such as copies of witness statements and copies of documentary exhibits to be relied on during the trial.

11. Regarding identification, the appellant contended that the evidence adduced by the prosecution was essentially the clothing he wore, which was not decisive. He argued that PW1 could not identify the physical features of her assailant. Regarding the evidence of PW4 and PW5, he argued that it was not humanly possible for them to follow footprints for 25kms, bearing in mind that other people also use the same footpath allegedly used by the appellant. Furthermore, there was no evidence that PW4 and PW5 are experienced or professional footprint trackers. He relied on Wamunga vs Republic [1989] KLR 424 in support of the proposition that a court is enjoined to examine identification evidence carefully and be satisfied that the circumstances of identification were favourable and free from the possibility of error.

12. Regarding the complainant's age, the appellant maintained that PW2 who is the complainant's mother never confirmed that PW1 was 9 years old and no document was produced in court to prove PW1's age. He cited Peter Maina Njeri vs Republic [2016] eKLR where it was held that a court cannot presume the age of the complainant, therefore, the prosecution was obligated to adduce evidence to prove the complainant's age.

13. Regarding penetration, the appellant questioned why PW1 testified that she was bleeding yet PW3 who examined her concluded that there was no bleeding. In addition, the appellant argued that PW1 never stated what she felt, heard or saw during the commission of the offence. To support this line of argument, the appellant cited Julius Kioko Kivuva vs Republic [2015] eKLR where the High Court held that sensory details such as whatthe victim heard, saw, felt and even smelled is relevant evidence to prove the element of penetration, because the victim's testimony is the best way to establish penetration.

14. Regarding his argument that the learned magistrate failed to comply with section 124 of the *Evidence Act*, the appellant submitted that the position taken by the trial court and the High Court was contradictory because the same trial court impeached PW1's evidence on identification, yet it found her to be truthful. The appellant argued that despite warning itself of the dangers of relying on the evidence of a single witness, the trial Court proceeded to convict him notwithstanding the contradictions in her evidence. To support his argument, the appellant cited Abdallah Bin Wendo vs R. [1953] 20EACA 166 in support of the proposition that such evidence should be accepted with caution.

15. Regarding sentence, the appellant submitted that his mitigation was not considered because Section 8 (2) of the *Sexual Offences Act* prescribes a mandatory sentence of life imprisonment depriving the trial Court of the discretion to consider an accused person's mitigation and the peculiar circumstances of his case. This, he argued is an affront to the right to a fair trial under Article 50 of *the Constitution* which cannot be limited under Article 25 (c) of *the Constitution*.

16. In addition, the appellant submitted that indeterminate/life sentences have been declared unconstitutional by this Court in Manyeso vs Republic Criminal Appeal 12 of 2021 [2023] KECA 827 KLR. Consequently, he urged this Court to sentence him to a definite lenient sentence other than the life sentence, that he is currently serving.

17. On behalf of the respondent, it was submitted by Mr. Okeyo, learned prosecution counsel that all the ingredients of the offence of defilement were proved beyond reasonable doubt. It was submitted that the complainant's age was proved by way of evidence which was not disputed by the appellant who

had an opportunity to cross-examine both PW1 and PW3. Therefore, raising that issue in this appeal is misplaced and dismissible.

18. Regarding penetration, the respondent submitted that penetration could be partial or complete insertion of the genital organ of a person into the genital organs of another person. Furthermore, PW3 confirmed that PW1 had been defiled. Counsel also submitted that the evidence of PW2 and the medical evidence of PW3 who examined PW1 corroborated PW1's testimony.

19. Regarding identification, the respondent maintained that the clothing the appellant wore as described by PW1 was the same as the description given by PW4 and PW5 who traced the appellant after following his footprints 25 kms away. Further, the fact that the appellant started running away in a bid to escape yet he was 25kms away from the scene of the crime could only mean that he had a guilty conscience. Furthermore, the appellant was arrested barely six hours after the commission of the offence probably before he could change his clothing.

20. The respondent submitted that PW1 did not know the appellant before and therefore, there was no reason to frame him. In addition, the respondent submitted that the issues being raised here ought to have been raised before the trial court since the same cannot be termed as issues of law.

21. Regarding the submission that the trial Court relied on the testimony of a single witness, the respondent submitted that the trial court had an opportunity to observe the demeanour of PW1 before concluding that she was truthful. Furthermore, the trial court adequately explained why it relied on Section 124 of the *Evidence Act*.

22. Regarding the alleged violation of the appellant's rights under Article 50 (2) (f), the respondent maintained that the issue of not being furnished with witness statements was never raised in the 1st appellate court.

23. Lastly, on sentence, counsel submitted that the sentence meted was lawful and in compliance with section 8 (2) of the *Sexual Offences Act*.

24. We have considered the record of appeal and the respective submissions made before us. This is a second appeal; therefore, our jurisdiction under Section 361 (1) of the Criminal Procedure Code is confined to matters of law. As this Court aptly stated, in Wilson Oketch Dachi vs Republic [2012] eKLR:

> "By dint of the provisions of section 361(a) (sic) of the Criminal Procedure Code, our jurisdiction is confined to matters of law only, unless it be demonstrated to us that the first appellate court considered matters it ought not to have considered or that it failed to consider matters it ought to have considered or that looking at the entire decision on such matters that court was plainly, wrong in which case our considering such matters amounts to considering matters of law as in such cases, it would be accepted that the first appellate court failed to revisit the evidence that was before it afresh, analyse it and evaluate it as is required of it in law."

25. We will start by addressing the question of whether the elements of the offence of defilement were established. The starting point in this analysis is section 8 (1) & (2) of the *Sexual Offences Act*. This is because only the law can define a crime and prescribe a penalty. The section provides as follows:

    1. 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 imprisonment for life.

26. A reading of the above provision gives a glimpse of the specific elements of the offence, which the prosecution must prove beyond reasonable doubt to achieve a conviction under section 8 (1) & (2). The ingredients are as follows: (a) Proof of penetration, (b) Proof that the complainant is a child aged 11 years or less, and (c) proof that the accused was indeed properly identified as the perpetrator.

27. In G O A vs Republic [2018] eKLR, the High Court agreeing with a plethora of decided cases on defilement held that:

> " The key ingredients of the offence of defilement include proof of the age of the complainant, proof of penetration and proof that the appellant was the perpetrator of the offence."

28. Penetration is defined in section 2 of the *Sexual Offences Act* as "...partial or complete insertion of the genital organ of a person in the genital organ of another person." As to the standard of proof to establish the element of penetration, this Court in Mark Olruvi Mose vs R. [2013] eKLR stated:

> " Many times the attacker does not fully complete the sexual act during commission of the offence. That is the main reason why the law does not require that evidence of spermatozoa be availed. So long as there is penetration whether only on the surface, the ingredient of the offence is demonstrated and penetration need not be deep inside the girl's organ."

29. The complainant explained how the appellant accosted her, pushed her to the ground, removed her inner wear and defiled her. Her evidence was supported by her mother, who responded to the distress raised by her small children rushed to the scene and found her lying down bleeding from her genitals. PW3, the Clinical Officer examined the complainant barely 7 hours after the incident. She noted that the complainant had a whitish discharge from her genitals. In addition, her genitals had a tear on the external part and her underwear had bloodstains. She concluded that the complainant had been defiled. In our view, the complaint's testimony was sufficiently corroborated by her mother, PW2, and the Clinical Officer.

30. Corroboration is described in DPP vs Kilbourne 1973 ALL ER 440:447H as:

> " ...Corroboration is therefore nothing other than evidence which 'confirms' or 'supports' or 'strengthens' other evidence ... It is, in short, evidence which renders other evidence more probable. If so, there is no essential difference between, on the one hand, corroboration and, on the other, 'supporting evidence."

31. On the face of the above evidence, we find no reason to suggest that the element of penetration was not proved to the required standard.

32. The other crucial element is proof of the complainant's age. Both courts below were satisfied that the complainant's age was proved, that it was not disputed, and that it was captured in the P3 form.

33. In Eliud Waweru Wambui vs Republic [2019] eKLR, this Court stated:

> "The importance of proving the age of a victim of defilement under the *Sexual Offences Act* by cogent evidence cannot be gainsaid. It is not in doubt that the age of the victim is an essential ingredient of the offence of defilement and forms an important part of the charge because the prescribed sentence is dependent on the age of the victim. In Alfayo Gombe Okello v Republic Cr. App. No. 203 of 2009 (Kisumu). This Court stated as follows;
>
> In its wisdom Parliament chose to categorize the gravity of that offence on the basis of the age of the victim, and consequently the age of the victim is a necessary ingredient of the

offence which ought to be proved beyond reasonable doubt. That must be so because dire consequences flow from proof of the offence under section 8(1)."

34. The Ugandan Court of Appeal in Francis Omuroni vs Uganda, Court of Appeal Criminal Appeal No. 2 of 2000 stated 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 also be proved by birth certificate, the victim's parents or guardian and by observation and common sense." (Emphasis added).

35. The appellant in court gave her age as 9 years. Her mother confirmed that the complainant was aged 9 years. The Clinical Officer also stated that the complainant was aged 9 years. The P3 Form produced in Court indicated that the complainant was 9 years old. The date of birth is to be determined based on material on record and appreciation of evidence adduced by the parties.

The complainant's mother who knows her best right from the date of conception was categorical that she was aged 9 years. It would require much more to dislodge her evidence. We find nothing to suggest that the complainant's mother gave the wrong age. Accordingly, we are satisfied that the complainant's age was proved to the required standard.

36. We now address the other important element of the offence, namely, whether the appellant's identification was free from the possibility of error. We must underscore that the fundamental aim of eyewitness identification evidence is to reliably convict the guilty and to protect the innocent.

37. Eyewitness evidence plays an important role in all contested cases. Our system of justice is deeply concerned that no person who is innocent of a crime should be convicted. To avoid that, a court must consider identification testimony with great care, especially when the only evidence identifying the accused as the perpetrator comes from one witness. However, the law is not so much concerned with the number of witnesses called as with the quality of the testimony given. A guilty verdict is permitted, only if the evidence is of sufficient quality to convince the court beyond reasonable doubt that all the elements of the crime have been proved and that the identification of the accused is both truthful and accurate.

38. Identification of a suspect in any criminal offence is always a pivotal question and whenever it arises, the trial court has to satisfy itself that the identification is free from error. The central element of this cautionary approach is that identification should not be accepted unless it has been rigorously tested by requiring the witness to describe the appearance of the person he purports to identify including any special features and description of the clothing.

39. PWI narrated to her mother PW2, PW4, and PW5 the clothes her assailant wore. She also recorded the same information in her statement to the police. PW4 and PW5 followed footprints from the crime scene. After walking for 25 kilometres, they saw a person wearing clothes similar to the description given to them by the appellant. Despite being 25 kilometres away, the person started running away. PW6 stated that PW1 was able to pick the appellant at an identification parade. In Court, PW1 was able to recognize the appellant. In addition, she described to the Court the clothes the appellant was wearing at the material time. She also identified the clothes in Court (i.e. MF1 1 to MFI 5) after they were shown to her. PW4 and PW5 also identified the same clothes as those the appellant was wearing when they arrested him. PW6 produced the appellant's clothes in evidence as exhibits. The record does not show that the appellant ever disowned or disputed the clothes.

40. The other ground urged by the appellant is that the trial Magistrate erred by convicting the appellant despite warning himself of the dangers of relying on the evidence of a single witness. Further, he faulted the courts below for failing to find that PW1 was not truthful. Section 124 of the *Evidence Act* provides:

> Notwithstanding the provisions of section 19 of the *Oaths and Statutory Declarations Act* (Cap. 15), where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused 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 accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.

41. The above proviso stipulates 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 accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth. The trial court, which had the benefit of hearing the witnesses first-hand, observed that PW1 was truthful, candid and credible. The High Court agreed with the trial Court on this point. Assessment of the credibility of a witness is an issue of fact. Where the two courts below have agreed on an issue of fact, this Court ought to be slow in reversing the finding.

42. The complainant's evidence was sufficiently corroborated by her mother and PW3 who examined her. Her mother found her lying down bleeding from her genitalia. PW3 examined her barely 7 hours after the incident and found that she had a whitish discharge from her vagina and a tear. Her pants had bloodstains. She concluded that PW1 had been defiled.

43. In any event, it is competent to convict on the evidence of a single witness if that evidence is clear and satisfactory in every respect. The law is also clear that there is no particular number of witnesses required for proof of any fact. (See sections 107 to 111 of the *Evidence Act*). Further, it has not been shown that the evidence tendered had gaps, which required to be filled by other witnesses.

44. The other ground urged by the appellant is that he was not supplied with prosecution witness statements and documents relied upon by the prosecution. His contestation is that the said failure is a breach of his rights to a fair trial protected by Article 50 (2) (f) of *the Constitution*. Further, the said right is absolute. The appellant argues that the fact that he was entitled to pre-trial disclosure of evidence the prosecution intended to rely on was never brought to his attention as a layman and therefore he proceeded with the trial without being furnished with all the relevant documents.

45. We have carefully gone through the record of appeal and it is evident the proceedings do not indicate there being an order that the appellant be furnished with statement of the witnesses the prosecution intended to call and/or all the documentary evidence to be relied on by the prosecution. It is also noteworthy that the trial court did not set a pre-trial date to confirm that the appellant had been furnished with all the relevant documentation to enable him to prepare his defence. However, it is noteworthy that every time the criminal case came up for hearing, the appellant indicated to the Court that he was ready to proceed and he even cross-examined the prosecution witnesses except the complainant.

46. Granted, Article 50 (2) (c) of *the Constitution* guarantees an accused person the right to have adequate time and facilities to prepare his defence while sub-article (j) provides that an accused has a right to be informed in advance of the evidence that the prosecution will rely upon.

47. In Simon Ndichu Kahoro vs Republic NRB CA Criminal Appeal No. 69 of 2015 [2016] eKLR, this Court was confronted with the issue of whether the failure to give the accused statements was fatal. In that case, although the trial magistrate ordered that the statements be furnished, the trial proceeded without the appellant being furnished with the statements. The court held that the accused's right to a fair trial was violated on that account. However, the Court observed as follows:

> "We should not be understood to be setting up a general principle or precedent that every breach of Article 50 of *the Constitution*, 2010 should automatically result in an acquittal of an accused person. Each case must be considered in the light of its own special circumstances as consequences of breach of fair rights to fair trial depend on all the surrounding circumstances of a case."

48. Where an accused person is a layman on issues pertaining to law and procedures in Court, the trial Court is charged with a higher burden to satisfy itself that such a person has been supplied with witness statements. If the accused is a first offender as was the appellant herein, he would not have been expected to know that he was entitled to witness statements or documentary evidence to enable him to prepare for trial. Granted, the appellant did not have legal representation during the trial and might not have known that he was entitled to receive the relevant witness statements and documentary evidence. Lacking such counsel, the trial court should have directed that the prosecution supply him with the witness statements and documentary evidence. Furthermore, the mere fact that an accused person participates in cross-examining the witnesses does not relieve the prosecution of its constitutional duty to comply with Article 50 (2) (j) aforesaid.

From the record, it is evident that the trial Court failed to direct the respondent to furnish the appellant with the witness statements.

49. Nevertheless, it is noteworthy that the appellant never raised the alleged omission throughout the proceedings before the trial Court. He was always ready to proceed. The appellant's argument is weakened by the fact that the issue was never raised before the trial Court or the first appellate Court. It is trite that the act of supplying or not supplying the witness statement is a matter of fact which when ruled upon by the trial Court, the outcome of the ruling is a matter of law. Since the issue was not canvassed before the High Court, however much we empathize with the appellant, we are unable to entertain the issue at this stage. This is because resolving the said issue requires us first to determine a matter of fact, which is, whether or not he was supplied with witnesses' statements.

50. Regarding the complaint that the sentence imposed is harsh, Section 361(1) of the Criminal Procedure Code limits the jurisdiction of this Court on a second appeal to matters of law. Under Section 361(1) (a), the severity of the sentence is a matter of fact and therefore outside our mandate. However, we are alive of the fact that mandatory minimum/maximum sentences have been the subject of litigation in this country questioning their constitutional validity. In fact, several High Court and decisions of this Court have declared mandatory maximum/minimum sentences to be unconstitutional. Recently,

this Court sitting in Malindi in Julius Kitsao Manyso vs R, Criminal Appeal No. 12 of 2021 [2023] eKLR held:

> "26. We are equally guided by this holding by the Supreme Court of Kenya, and in the instant appeal, we are of the view that having found the sentence of life imprisonment to be unconstitutional, we have the discretion to interfere with the said sentence..."

51. What is decried in prescribed minimum/maximum sentences is the absence of judicial discretion to determine an appropriate sentence taking into account the individual circumstances of an accused person. This deprives an accused person of the right to be heard in mitigation. A law that takes away judicial discretion can only be regarded as harsh and unjust. (See the Supreme Court decision in the Muruatetu case).

52. The fair trial process does not stop at convicting the accused.

    Sentencing is a crucial component of a trial. It is during sentencing that the court hears submissions that impact sentencing. This necessarily means that the principle of fair trial must be accorded to the sentencing stage too. Mitigation is an important congruent element of a fair trial. The fact that mitigation is not expressly mentioned as a right in *the Constitution* does not deprive it of its necessity and essence in the fair trial process. In any case, the rights pertaining to fair trial of an accused pursuant to Article 50(2) of *the Constitution* are not exhaustive.

53. If a Judge does not have discretion to take into account mitigating circumstances, it is possible to overlook some personal history and the circumstances of the offender, which may make the sentence wholly disproportionate to the accused's criminal culpability. Failure to individualize the circumstances of an offence or offender may result in the undesirable effect of 'over punishing' the convict.

54. As the Apex Court stated in the Muruatetu case, another aspect of the mandatory sentence is its discriminate nature; discriminate in the sense that the mandatory sentence gives differential treatment to a convict under that section, distinct from the kind of treatment accorded to a convict under a section that does not impose a mandatory sentence. This differentiation when it comes to sentencing offends Article 27 of *the Constitution*.

55. Accordingly, we are inclined to interfere with the sentence, and in this regard, this appeal succeeds only to that extent. Accordingly, we uphold the conviction and substitute the sentence of life imprisonment to 40 years' jail term. In so deciding, we have considered the age of the complainant at the material time, the inhuman and degrading act that was visited upon the complainant, the scar the incident left in her life and the need to frown upon and discourage commission of similar offences.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MARCH, 2024.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

ALI-ARONI

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR