Chumba v Republic (Criminal Appeal 34 of 2019)
[2023] KECA 1342 (KLR) (10 November 2023) (Judgment)

Neutral citation: [2023] KECA 1342 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT ELDORET

CRIMINAL APPEAL 34 OF 2019

FA OCHIENG, LA ACHODE & WK KORIR, JJA

NOVEMBER 10, 2023

BETWEEN

JOSHUA KIPROP CHUMBA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an Appeal against the Judgment of the High Court of Kenya at Eldoret (S. M. Githinji, J.) dated 6th November, 2018inH.C.CR.A. No. 47 of 2016)

JUDGMENT

1. The appellant was charged with the offence of robbery with violence contrary to section 295 as read with Section 296(2) of the *Penal Code*. The particulars of the offence were that; on 22nd August, 2015 at around 10pm, at Kapsabet Township location within Nandi County, the appellant, jointly with another not before court while armed with a dangerous and offensive weapon, namely, a knife, robbed Nicholas Mutai of one mobile phone make X-BO V3t IMEI- 355554613394383, ¾kg of meat and Kshs. 200/- all totaling to Kshs. 6,360/- and at or immediately before or immediately after the time of such robbery used actual violence on the said Nicholas Mutai.

2. The appellant was also charged with an alternative charge of handling stolen property contrary to section 322(1) and (2) of the *Penal Code*. The particulars of the offence were that; on 27th August, 2015 at around 6pm at Kapsabet Township within Nandi County, the appellant otherwise than in the cause of stealing, dishonestly received or retained one mobile phone make X-BO V3t IMEI-355554613394383, knowing or having reason to believe it to be stolen property.

3. The appellant denied the charges and trial ensued soon thereafter.

   The prosecution called 5 witnesses who testified as follows:

4. According to the complainant, he used to work at Naivas as a double checker. On 22nd August, 2015 at around 10pm, he left work and was walking towards his house when he was suddenly stopped by two men on a motorcycle at Kokwet, seven meters from the Redeemed Church. The church had security lights and the headlamp of the motorcycle was on, which enabled him to see the two men. They had a brief conversation where the passenger on the motorcycle, who was the appellant herein, asked him where he was going and he said he was going to his house. The appellant then instructed the rider that they should arrest the complainant. The appellant slapped the complainant and held his hands at the back tightly. The rider held the complainant's hands while the appellant slipped his hand into the complainant's right trousers pocket, and took his mobile phone. The complainant kicked the rider. The appellant held his neck and tried to strangle him. The rider took a knife and tried to stab the complainant, but the knife only caught the right pocket of his trousers. The complainant pleaded with the two men to take his phone and spare his life. They pushed the complainant in a ditch and left with his phone and ¾ kg meat. He got up and went home.

5. The following morning, he told his manager about the incident. He then reported the matter at Kapsabet police station. Four days later, he spotted the appellant holding his mobile phone while at Emgwen pool station. The complainant was able to identify the phone by scratch on the side, which had been occasioned by a previous fall. He also produced the receipt which was used to purchase the said phone. The complainant went back to work.

   There, he found some police officers who had come to shop. He informed them about the appellant. The complainant then took the police officers to Emgwen where they found the appellant with the said phone, which he was trying to sell. The appellant was arrested and taken to Kapsabet police station. The complainant did not know the appellant prior to the attack.

6. PW2 was the Clinical Officer who treated the complainant on 28th August, 2015. He stated that at the time, the complainant had tenderness on the right shoulder and the right gluteal muscle. The injuries were 5 days old and the probable weapon used was a blunt object.

7. According to PW3, on 27th August, 2015 at around 6pm, he was called by the complainant who informed him that his phone had been stolen and that he had seen it somewhere. He went to Naivas to meet the complainant who then took him to Emgwen. There, they found the appellant trying to sell the phone. The intended buyer was not called as a witness. He arrested the appellant. The appellant claimed that he was given the phone by another person. The phone was white in colour.

8. PW4 was the investigating officer. He was in the office on 23rd August, 2023 when the complainant reported a case of robbery with violence. He recounted the complainant's testimony. He stated that an informant informed them of the appellant being in possession of the complainant's phone. After the appellant was arrested, he was subjected to an identification parade, where the complainant identified him. When PW4 concluded his investigations, and because the receipt given by the complainant proved that he was the owner of the phone, PW4 charged the appellant.

9. PW5 performed the identification parade on 2nd September, 2015 from 1:30pm to 1:45pm in an enclosed place. He lined up 9 male people of similar age, height, complexion and physical status with the appellant. He informed the appellant of the importance of the parade. the complainant identified the appellant by touching his shoulder. The appellant was satisfied with the way the parade was conducted, and signed the form. According to PW5, PW4 informed him that the complainant was able to identify the appellant but he wanted to be sure. PW5 was not aware that the complainant saw the appellant while he was being arrested.

10. Put to his defence, the appellant stated that he worked at Emgwen.

On 27th August, 2015 he went to work as usual and attended to customers. At around 5pm, a customer requested to charge his phone, he plugged it in and the customer continued to play pool. At around 6pm, three people came. The police officers entered the pool room, prompting the customers to escape for fear of being arrested for being idlers. He identified himself as the pool attendant. They informed him of the phone that was being charged and he told them that a customer had requested to charge the same. The person who had remained outside identified himself as the owner of the phone. PW3 called him outside and asked him to accompany them to the police station so that he could record a statement, and assist them in tracing the person who was charging the phone. At the police station, he was told not to write anything and was placed in the police cell until 31st August, 2015 when he was arraigned in court. On 2nd September, 2015 an identification parade was conducted, the complainant was there. He was charged with an offence he does not know. The parade was done in an unjust way.

11. At the end of the trial, the appellant was found guilty of the offence of robbery with violence. He was convicted and sentenced to life imprisonment.

12. Aggrieved by the judgment, the appellant appealed to the High Court against his conviction and sentence on the grounds that: there was no reliable evidence in support of the charge; his defence was unfairly disregarded; the investigations were shoddy; there was no direct or circumstantial evidence in support of the charge; and that his mitigation was disregarded and the sentence imposed was severe.

13. The learned Judge in his judgment observed that the prosecution had one eyewitness, the complainant, who stated that he had never seen his assailants before, and he did not describe them to the police when he first made his report. He also did not describe them in his statement, and it did not come up during trial that the complainant was able to identify his assailants. The learned Judge was of the view that the complainant did not identify or recognize the appellant, but his phone. The learned Judge observed that, since the complainant was the one who led to the arrest of the appellant, there was no need for an identification parade, and the trial court should not have weighed it positively in the judgment.

14. The learned Judge considered the doctrine of recent possession with regard to this case. He noted that the phone was found 5 days after the robbery incident, and given that second hand phones do not change hands very fast, this was recent. The learned Judge had no doubt that robbery with violence had taken place, because, the assailants were two, they were armed with a knife, they attacked and injured the complainant, and they took the complainant's valuables being a mobile phone and ¾ kg meat. The learned Judge noted that the complainant was able to identify his phone through a scratch on its side and the IMEI number indicated on the purchase receipt. The learned Judge was of the view that the appellant did not give a reasonable explanation of how he came into possession of the phone. The learned Judge found his explanation that the phone belonged to a customer who was charging it, to be an afterthought. The learned Judge was of the view that the appellant did not adequately challenge PW3's evidence that he was arrested while he was trying to sell the phone, or disclose the customer who had the phone. The learned Judge observed that the defence was a crafted lie, and it was properly disregarded by the trial court. The learned Judge held that the doctrine of recent possession applied in this case, and upheld the conviction.

15. As regards sentence, the learned Judge was of the view that the appellant was deserving of a lenient sentence since he was a first offender, his family depended on him, the items robbed were of minimal value and the phone was recovered, and the injuries inflicted on the complainant were not grievous. The learned Judge varied the sentence from life imprisonment to 20 years' imprisonment.

16. Dissatisfied with the judgment, the appellant lodged the present appeal. He raised the following grounds of appeal to wit; that the learned Judge erred in law in:

a. Failing to exhaustively scrutinize all the evidence.

b. Failing to find that the identification of the appellant was not proper.

c. Convicting the appellant when the charges against him were not proved to the required standard.

d. Failing to have regard to material contradictions and relying on inconsistent evidence.

e. Failing to properly evaluate the appellant's defence.

f. Failing to appreciate the appellant's choice of language during trial.

17. When the appeal came up for hearing, Mrs. Orina, learned counsel appeared for the appellant whereas Ms. Muhonja, learned prosecution counsel was present for the respondent. Counsel relied on their respective written submissions.

18. The appellant contended that the learned Judge failed to consider pertinent issues which were raised in his submissions. He was troubled with the finding that it was only the complainant who allegedly saw his assailants in a dark night using security lights from a church which was seven meters away. He noted that this evidence was not corroborated by any other witness, and as such it was dangerous for the trial court to convict him based on the evidence of a single identifying witness.

19. The appellant submitted that his defence was not considered by the trial court. He pointed out that when he was required to call the customer who had left the phone with him for charging, the prosecution had shifted the burden of proof on to the appellant.

20. The appellant was in agreement with the learned Judge that the identification parade had no probative value. He disputed that the prosecution neither led any evidence as to the intensity of the light nor did the complainant at any given instance describe his assailants to the police. The appellant pointed out that the complainant had never met his assailants before, and as such, the complainant could not have been able to recognize his assailants in the circumstances.

21. The appellant submitted that the prosecution had failed to successfully prove the ingredients for the charge of robbery with violence. He noted that the knife he was alleged to have been armed with was not adduced in evidence, and that there was no evidence that he had inflicted injuries on the complainant. He further contended that the prosecution had failed to show any link between him and the recovered item.

22. The appellant pointed out that there were material contradictions in the evidence and also that the prosecution witnesses were neither credible nor reliable.

23. The appellant further pointed out that his right to a fair trial under articles 25 and 50(2) of the *Constitution* were violated, and the said right cannot be wished away. He submitted that the trial court infringed on his right to recall a witness.

24. The appellant submitted that even though Nandi language was used at the beginning of the trial, this changed to English and Kiswahili. He was of the view that this was prejudicial to his case as preferred language was Nandi, yet the court proceeded in Kiswahili and English. He relied on the case of *Elija Njibia Wakanda v Republic*, Criminal Appeal No. 437 of 2010 in buttressing this submission.

25. The appellant further submitted that the prosecutor who conducted his hearing was not qualified to conduct the hearing as the prosecutor, since he was below the rank of an assistant inspector of police.

This was a capital offence which attracted a death penalty. He urged the court to quash the conviction against him.

26. The respondent submitted that the offence of robbery with violence was committed as there was more than one robber, and they were armed with a knife. The respondent was of the view that the complainant described in detail the respective roles played by his assailants. The respondent maintained that there was sufficient lighting from the motor cycle and the security light to enable the appellant to positively identify his assailants.

27. The respondent pointed out that there was nothing on record to show that the prosecution witnesses were not credible. In any case, the issue of credibility of witnesses was a matter of fact which could not be entertained by this court. The respondent was of the view that since the two courts below had made concurrent findings on the identification and the arrest of the appellant, this court should not interfere with the same.

28. Citing the case of *Robert Onchiri Ogeto v Republic* [2004] eKLR the respondent was of the view that the two courts below properly warned themselves on the dangers of convicting the appellant on the evidence of a single identifying witness. The complainant had spotted the appellant four days after the incident while in possession of the phone which had been stolen from him. The respondent was adamant that there was no possibility that the complainant was mistaken in his identification of the appellant as well as the phone.

29. Relying on the provision of Section 119 of the *Evidence Act* and the case of *Gedeon Meitekin Koyiet v Republic* [2013] eKLR, the respondent pointed out that the complainant's phone, which was positively identified through a purchase receipt and a scratch on its side, was found in the possession of the appellant four days after it was reported to have been stolen; thereby the court correctly applied the doctrine of recent possession. The respondent was of the view that once the primary facts were established, the appellant bore the evidential burden to provide an explanation for how he came to be in possession of the phone. The respondent relied on the decision in the case of *Paul Mwita Robi v Republic*, Criminal Appeal No. 200 of 2008 to buttress this submission. The respondent noted that appellant's explanation that a customer at his place of work gave him the phone to charge was an afterthought, as the appellant did not challenge the prosecution evidence during cross-examination that he was found trying to sell the phone.

30. The respondent submitted that since the trial court upon evaluation of the defence concluded that the appellant's defence was baseless and an afterthought, while the first appellate court found that the appellant's defence was a well-crafted lie. The respondent was of the view that, the said defence was accorded the appropriate consideration by the two courts.

31. The respondent pointed out that the entire trial, including the appellant's defence was conducted in Kiswahili. Whenever English was used, the record shows that the same was interpreted to Kiswahili. At no given time did the appellant complain that he did not understand the language used by the trial court.

32. The respondent concluded that it had proved its case against the appellant beyond any reasonable doubt; and urged this Court to dismiss the appeal in its entirety.

33. This being a second appeal, we are legally constrained to consider only issues of law raised in the appeal and not to consider matters of fact tried by the trial court and the appellate court on first appeal. This

is by dint of Section 361(1)(a) of the *Criminal Procedure Code*. This position was reiterated in the case of *M'Riungu v Republic* [1983] KLR 455 where the court stated thus:

> "Where the right of appeal is confined to the question of law, an appellate court has loyalty to accept the findings of fact of the lower courts and resist the temptation to treat findings of fact as holdings of fact and law and it should not interfere with the decision of the trial court or the 1st appellate court unless it is apparent that on evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding that the decision was bad in law."

34. We have carefully considered the record of appeal, submissions by counsel, authorities cited and the law. The main issues for our determination are: whether the language used during trial prejudiced the appellant; whether the alleged inconsistencies and contradictions were material; whether the appellant was properly identified and whether the evidence of a single identifying witness was properly evaluated; whether the appellant's defence was considered and whether the burden of proof was shifted to the appellant; whether the doctrine of recent possession applied in the circumstances of this case; and whether the case against the appellants was proved beyond reasonable doubt.

35. The appellant's contention was that, at the beginning of the proceedings, the interpretation provided was English/Kiswahili/ Nandi. We are meant to understand from the appellant's submissions that he expected this to be the trend throughout the trial, but the trial proceeded in English/Kiswahili. According to the appellant, his choice of language was Nandi, and any other language was the court's choice.

36. Section 198(1) of the *Criminal Procedure Code* provides that:

> "Whenever any evidence is given in a language not understood by the accused, and he is present in person, it should be interpreted to him in open Court in a language which he understands."

37. It is therefore imperative not only for the charge against an accused to be explained to him/her in a language he/she understands but also that the evidence given during the trial is interpreted to him/her in a language he/she understands. It is indeed an integral part of a fair trial and is intended to ensure that an accused person, who risks life and liberty, fully understands the case against him/her and is able to defend himself/herself adequately. This position was held in the case of *Abdalla Hassan Hiyesa v Republic* [2015] eKLR.

38. We note from the record that the appellant on 3rd September, 2015 when plea was taken, the languages used by the court were English, Kiswahili and Nandi. We also take note that the proceedings thereafter proceeded in either English or Kiswahili. Whenever a witness testified in English, the record clearly indicates that there was interpretation to Kiswahili. The appellant, who appeared in person before the court, pleaded not guilty to the charge, he cross-examined the prosecution witnesses and gave his unsworn testimony in Kiswahili. At no given time did he indicate to the court that he did not understand the language being used by the court or that he suffered any prejudice. The appellant cannot therefore be heard to claim that the proceedings were conducted in a language he did not understand. We are satisfied that the appellant understood the proceedings as evidenced by his cross

examination of the prosecution witnesses as well as by the defence he advanced at the trial court. In *Mugo & 2 Others v Republic* [2008] KLR 19 it was held that:

> " On the face of the record, it cannot be said that the appellants did not follow the proceedings. Each of the appellants is shown to have cross examined all witnesses and ask questions which were relevant to the charges...
>
> It is not every case where language is not shown which will make an appellant to successfully raise the issue of language before this Court."

39. The appellant's other grievance was that the evidence by the prosecution witnesses was not credible and that the said evidence was marred with inconsistencies and contradictions. He pointed out that the complainant and PW3 contradicted each other. He contended that the complainant did not lead evidence as to what he had gone to do at Emgwen hotel when he allegedly spotted the appellant. The respondent on the other hand noted that this was a factual issue and this court need not address the same.

40. It is trite that in any criminal trial, where several witnesses testify, there are bound to be contradictions or some inconsistencies. Such inconsistencies or contradictions may be ignored if they do not go to the root of the prosecution case, otherwise they should be resolved in favour of the accused person. In the case of *Richard Munene v Republic* [2018] eKLR, the court stated thus:

> " Contradictions, discrepancies and inconsistencies in evidence of a witness go to discredit that witness as being unreliable. Where contradictions, discrepancies and inconsistencies are proved, they must be resolved in favour of the accused.
>
> It is a settled principle of law however, that it is not every trifling contradiction or inconsistency in the evidence of the prosecution witness that will be fatal to its case. It is only when such inconsistencies or contradictions are substantial and fundamental to the main issues in question and thus necessarily creates some doubt in the mind of the trial court that an accused person will be entitled to benefit from it."

41. From the record we note that there were no significant contradictions that would necessitate this court to overturn the trial court's decision on this ground. The witnesses recounted what happened and what they knew and therefore, they were consistent in their testimonies before the trial court. The trial court, which had the opportunity to see and hear the witnesses, and the first appellate court, which re-evaluated the evidence from the trial court, both found the prosecution witnesses to be credible. In the result, we find no reason to interfere with their findings on the issue.

42. It is common ground that the appellant was unknown to the witnesses prior to the time when the offence was committed. It is also not in dispute that other than the security light, seven meters away, there was light from the motor cycle. However, there was no evidence of the direction which the light from the motor cycle pointed at. No evidence was led before the trial court that, the complainant in the first report, in the occurrence book described any features of the appellant. In our view, these were not conducive circumstances for the witnesses to identify the appellants. In the circumstances, we find the evidence of identification by the complainant, to be unreliable. In the case of *R v Turnbull* [1976] 3 All ER 551, Lord Widgery CJ observed that:

> " The quality of identification evidence is critical; if the quality is good and remains good at the close of the defence case, the danger of mistaken identification is lessened, but the poorer the quality, the greater the danger."

43. It is common ground that the appellant's conviction was on the basis of the complainant's evidence on identification. The law requires the trial court to carefully scrutinize the evidence of a single identifying witness and only convict if satisfied that it was free from the possibility of an error or mistake. In *Wamunga v Republic* [1989] KLR 424, the court stated thus:

> "It is trite law that where the only evidence against a defendant is evidence on identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction."

44. However, it is trite that the evidence of a single identifying witness can still prove a fact in a criminal trial, and lead to a conviction. In *Ogeto v Republic* [2004] KLR 19, the court stated that:

> "It is trite law that a fact can be proved by the evidence of a single witness although there is need to test with the greatest care the identification evidence of such a witness especially when it is shown that conditions favouring identification were difficult. Further, the Court has to bear in mind that it is possible for a witness to be honest but to be mistaken."

45. In *Roria v Republic* [1967] EA 583, the court warned on the dangers of convicting on the evidence of a single identifying witness, stating:

> "A conviction resting entirely on identity, invariably causes a degree of uneasiness... That danger is, of course, greater when the only evidence against an accused person is identification by one witness and though no one would suggest that a conviction based on such identification should never be upheld it is the duty of this court to satisfy itself that in all circumstances it is safe to act on such identification."

46. The complainant informed the police that he was accosted and robbed by two men on a motor cycle who were armed with a knife. Four days later, the complainant saw the appellant at Emgwen hotel with his phone. He was able to identify his phone. When the appellant was arrested, the police conducted an identification parade and the complainant was able to identify the appellant in the parade. However, since the complainant had already seen the appellant prior to the identification parade, the said parade was an exercise in futility. We therefore find that the identification of the appellant at the parade was not proper.

47. We have no doubt in our minds that, while there is no dispute that a robbery took place, there is no evidence on record that the prosecution witnesses were able to identify the complainant's assailants. When the complainant went to Emgwen, he was only able to identify the phone. In the circumstances, the appellant's involvement in the robbery could only be established by application of the doctrine of recent possession.

48. It is trite that doctrine of recent possession allows the court to draw an inference of guilt where the accused is found in possession of recently stolen property, in unexplained circumstances. In the case of *Eric Otieno Arum v Republic* [2006] eKLR, the court stated as follows:

> "In our view, before a court of law can rely on the doctrine of recent possession as a basis of conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof, first; that the property was found with the suspect; secondly, that the property is positively the property of the complainant; thirdly, that the property was stolen from the complainant, and lastly; that the property was recently stolen from the

complainant. The proof as to time, as has been stated over and over again, will depend on the easiness with which the stolen property can move from one person to the other."

49. In the case of *Republic v Kowkyk* [1988] 2 SCR 59, by a majority, the Canadian Supreme Court held as follows:

> " Upon proof of the unexplained possession of recently stolen property, the trier of fact may – but not must-- draw an inference of guilt of theft or of offences incidental thereto. Where the circumstances are such that a question could arise as to whether the accused was a thief or merely a possessor, it will be for the trier of fact upon a consideration of all the circumstances to decide which, if either, inference should be drawn. In all recent possession cases the inference of guilt is permissive, not mandatory, and when an explanation is offered which might reasonably be true, even though the trier of fact is not satisfied of its truth, the doctrine will not apply."

50. The elements of the doctrine of recent possession were laid out in the case of *Isaac Ng'ang'a alias Peter Ng'ang'a Kahiga v Republic*, Cr App. No. 272 of 2005 (UR) where this court held thus:

> " It is trite that before a court of law can rely on the Doctrine of recent possession as a basis for conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof;
>
> i. that the property was found with the suspect;
>
> ii. that the property is positively the property of the complainant;
>
> iii. that the property was stolen from the complainant;
>
> iv. that the property was recently stolen from the complainant.
>
> The proof as to time, as has been stated over and over again, will depend on the easiness with which the stolen property can move from one person to the other".

51. It follows that once the primary facts are established; the accused bears the evidential burden to provide a reasonable explanation for being in possession of the stolen property. The explanation need only be a plausible one. This burden is evidential only and does not relieve the prosecution from proving its case to the required standard. In *Paul Mwita Robi v Republic*, (*supra*), the court observed that:

> " Once an accused person is found in possession of a recently stolen property, facts of how he came into possession of the recently stolen property is (sic) especially within the knowledge of the accused and pursuant to the provisions of section 111 of the *Evidence Act* Chapter 80, the accused has to discharge that burden."

52. The complainant testified that he saw the appellant with his phone at Emgwen hotel, and he immediately informed the police who came and arrested him. PW3 stated that he arrested the appellant while he was trying to sell the said phone. The appellant said that he worked at the hotel and that a customer had requested him to charge the phone for him while he played pool. The appellant further stated that, when the police arrived, the people at the pool section of the hotel scattered and he was the one who remained, as he worked there. He was taken to the police station to record a statement, but when he got to the police station, he was treated as a suspect and charged with the offence of robbery with violence.

53. It has not escaped our understanding that the phone was recovered from where the appellant was. The complainant was able to positively identify the phone as his, and that the phone had recently been reported as stolen. However, we are also alive to the testimony of PW3, who arrested the appellant. He stated that the appellant was trying to sell the phone. He also stated that the appellant claimed to have been given the phone by another person. From the foregoing, we find that the appellant's defence was consistent from the beginning. From the time the appellant was arrested, he remained in custody throughout the trial. It may have been difficult for him to produce, as his witness, the person who might have left the phone for charging.

54. We also find that the appellant's defence does not appear to have been investigated by the police. It ought not have been rejected out of hand. More significantly, the said defence was not an afterthought, as it was raised right from the time when the appellant was being arrested.

55. From the foregoing, we are not satisfied that all the aforesaid elements of recent possession were proved in this case. The stolen phone was recovered four days after the robbery. The prosecution did not disprove the appellant's explanation, concerning how he was in possession of the said phone. The appellant's defence that

    the phone was given to him by a customer to charge was not contradicted or displaced by the prosecution evidence.

56. In the result, we find the appeal herein to be meritorious; and we accordingly allow the same. The conviction is quashed, and the sentence is set aside. We order that the appellant be set at liberty forthwith, unless he is otherwise lawfully held.

DATED AND DELIVERED AT NAKURU THIS 10TH DAY OF NOVEMBER, 2023.

F. OCHIENG

.....

JUDGE OF APPEAL

L. ACHODE

.....

JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR.