Mueke v Republic (Criminal Appeal 46 of 2020)
[2022] KECA 934 (KLR) (19 August 2022) (Judgment)

Neutral citation: [2022] KECA 934 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CRIMINAL APPEAL 46 OF 2020

RN NAMBUYE, HM OKWENGU & A MBOGHOLI-MSAGHA, JJA

AUGUST 19, 2022

BETWEEN

PHILIP MAINGI MUEKE ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(An appeal from the Judgment of the High Court of Kenya at Nairobi Kimaru, J.) dated 8th October 2015 in Nairobi HCCRA No. 58 of 2012)

JUDGMENT

1. The appellant was charged before the Chief Magistrate's Court at Milimani with defilement of a child contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act*. The particulars were that on the 13th day of January 2009 at [Particulars Withheld] Estate Nairobi within Nairobi Province, the appellant knowingly committed a sexual act by inserting the male genital organ (penis) which caused penetration into the female genital organ (anus) of the complainant, a girl of 9 years. In the alternative, the appellant was charged with the offence of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. The particulars of the alternative charge were that on the 13th day of January 2009 at [Particulars withheld] Estate of Nairobi within Nairobi Province, the appellant intentionally touched the anus of the complainant, a child aged 9 years, with his penis.

2. The appellant denied the charges and a trial followed. The prosecution case was that on the material day at about 4:00 pm the complainant was dropped off by her school van at the gate to her parent's compound. The complainant was called by the appellant who was guarding the neighbouring residence of the former Vice President Kalonzo Musyoka. The appellant asked the complainant to accompany him inside the residence of the Vice President and told the complainant that he would introduce her to the Vice President. The appellant took the complainant to a room of a house within the compound and asked her to remove her clothes but the complainant refused. The appellant then sprayed the room with a substance that made the complainant dizzy and lose consciousness. When

the complainant came to, she realised she was naked. She saw the appellant go out after threatening her that he would kill her if she said anything. She hastily dressed up and knocked at the door. The appellant's co-accused at the trial opened the door and escorted the complainant to the gate.

3. The complainant did not disclose the incident to her parents and went to school as usual. However, the complainant was feeling pain in her anus. The complainant's parents PW1 and PW3 noticed that she was not her usual cheerful self and had difficulty sitting and that she complained of pains in the stomach and anus, and that she was not able to go to the toilet. The complainant divulged to her mother what had happened at the Vice President's residence.

4. Her parents took her to Nairobi Women's Hospital where she was examined by Dr Muhombe. In her report, Dr Muhombe observed that the complainant had sustained multiple tender bruises on her upper limbs, abdomen, chest and back. That her lower limbs had bleeding under the skin, particularly over the buttocks. There was reduced anal sphincter (muscle of the anus) and a tenderness on digital radial examination, and a laceration in the anus. The conclusion was that the complainant had been sodomized. Another doctor, Dr Zephania Kamau also came to the conclusion that the complainant had been sodomized after examining her further.

5. A report was made to the Hardy Police Station and PW7 and PW9 were assigned to investigate the case. The police officers who were guarding the Vice President's residence were rounded up and taken to Hardy Police Station. An identification parade was conducted whereby the complainant pointed out the appellant and the appellant's co-accused. The appellant was subsequently arrested and charged with the offence.

6. The appellant, on the other hand, denied committing the offence. He stated that on the material day he was on duty between 12:00 noon and 6:00 pm and was manning the main gate of the Vice President's residence. That he never left his place of work at any time and was in full police uniform as well as his colleagues. That whenever any of them wanted to leave they had to fill in the occurrence book at the gate and be released by the Corporal in charge.

7. In her judgment, the learned trial magistrate concluded that from the evidence of the complainant, her parents and the medical evidence produced, it was evident that the complainant was indeed defiled. Regarding the identity of the person who defiled the complainant, the learned magistrate found that the occurrence book kept at the residence of the Vice President and which was produced in court, confirmed that the appellant was indeed manning the main gate adjacent to the road on the material day. That the appellant admitted that he was acquainted with the complainant as he would see her being dropped off by the school bus, therefore the complainant would not be mistaken in her identification of the appellant. The incident took place in broad daylight in conditions favouring positive identification. That the identification parade was done in accordance with the laid down procedure but was merely to erase any doubts that the complainant knew who had defiled her.

8. The learned magistrate clarified that Section 8 (1) of the *Sexual Offences Act* covered acts involving the insertion of the genital organs of a person into the genital organs of another, where genital organs are defined as including the anus. Therefore, it did not matter what name the doctor gave to the offence so long as the diagnosis clearly indicated penetration was done through the anus.

9. The learned magistrate was not persuaded by the appellant's defence, particularly that he was in full uniform that day, while the complainant had stated that she was defiled by a person in civilian clothes. That the appellant did not call corroborating evidence to this effect despite his undertaking to do so. In the absence of any other evidence contradicting the complainant's evidence, the prosecution had discharged its burden in proving the case beyond all reasonable doubt. The learned magistrate found

the appellant guilty of the main charge and convicted him accordingly. The learned magistrate took note of the appellant's mitigation and sentenced him to life imprisonment.

10. The appellant lodged an appeal against the conviction and sentence in the High Court at Nairobi. The grounds of the appeal set out were that there was a lack of evidence connecting the appellant to the offence, more so in terms of identification; that the prosecution relied on contradictory and unreliable evidence; and that the ingredients of the offence of defilement had not been proved. That the charge sheet was defective and ought not to have formed the basis of his conviction. The trial magistrate selectively applied the standard of proof as regards the truthfulness of the prosecution witnesses. The appellant submitted that no documentary evidence was produced to establish the age of the complainant, that the evidence of the complainant ought to have been corroborated, that the identification parade was improperly conducted, that there was contradictory description of the room in which the complainant was allegedly defiled, that the trial court failed to comply with Section 200 (3) of the *Criminal Procedure Code*, that the trial court shifted the burden of proof, and that the witnesses gave contradictory evidence which did not support the conviction.

11. In his judgment, the learned judge found no merit in the assertion that the appellant was not afforded the opportunity to recall witnesses under Section 200 (3) of the *Criminal Procedure Code*, as the appellant had indicated that he desired the case to proceed from where it had reached when another magistrate took over.

12. Regarding the identification of the appellant, the learned judge found that the complainant was exposed to the appellant for a sufficiently long time to enable her to be certain that she had identified him. That the incident took place during the day and the appellant did not conceal his appearance. That the physical description given by the complainant to the police and her parents tallied with that of the appellant when the complainant identified him at the identification parade. That the appellant was clear about the roles played by the appellant and the co-accused in the incident. The learned judge held that the complainant positively identified the appellant as the person who defiled her.

13. Regarding the age of the complainant, the learned judge held that the prosecution established the complainant's age through the testimony of her parents, the P3 form and medical report produced by the two doctors; and that the court had no reason to doubt the parent's testimony that the appellant was aged 9 years at the time.

14. On whether the prosecution had proved penetration, the learned judge held that the medical evidence adduced by the two doctors established that the complainant's anus was penetrated, and agreed with the trial court's decision that the act constituted defilement under Section 8 (1) of the *Sexual Offences Act*; that the prosecution proved penetration beyond any reasonable doubtand the appellant's defence was mere evasion and did not dent the strong culpatory evidence adduced by the prosecution witnesses. The learned judge dismissed the appeal and upheld the conviction and sentence handed down against the appellant by the trial court

15. Aggrieved by the decision of the High Court, the appellant filed the instant appeal on the grounds that the learned judge erred in law by:

    a. Failing to find that that there was failure to comply with Section 19 of the *Oaths and Statutory Declarations Act* during the trial.

    b. Failing to note that a crucial ingredient of the offence, namely, penetration, was not proved.

    c. Relying on identification evidence that was collected at an improperly conducted identification parade.

d. Basing the conviction on the identification evidence of a single witness.

e. Failing to consider the material contradictions and inconsistencies in the evidence.

f. Failing to note that the appellant's right to a fair trial was violated.

16. Counsel for the appellant began by faulting the manner in which the trial court conducted the voir dire examination of the complainant, submitting that the court failed to look into whether the complainant understood the nature of the oath; and that the court failed to establish whether the minor understood the duty to tell the truth which is a necessary corollary to the test of intelligence. Counsel urged this court to find that the evidence of PW2 was unprocedurally procured and as such lacked any evidentiary value.

17. On the issue of penetration, Counsel argued that this essential ingredient of the offence was not established. The evidence of PW2 denoted that the minor did not witness the appellant remove his clothes nor did she know what was done to her after losing consciousness. Based on the appellant's vague narration, this Court cannot know whether the penetration was penile or by manipulation of another body part or object. As for the medical evidence, Counsel submitted that even though the evidence showed that the minor had a laceration at 6:00 o'clock as being evidence of penetration, what actually caused the penetration remained unknown. That PW10 stated in cross- examination that the characterization of the offence did not tally with the history that was given and therefore according to him the sexual assault was not by a male person, and therefore pointing to another perpetrator other than the appellant. The evidence indicated penetration could have been as a result of the beatings sustained by the complainant as shown by the hematoma and whip marks observed by PW6.

18. Regarding the issue of identification, Counsel submitted that the identification parade failed to meet the laid out procedure and as such, all evidence emanating from it lacked evidentiary value and could not found a conviction. Specifically, Counsel pointed out that the parade violated section 6(iv)(d) of the Force Standing Orders requiring that the accused be placed among at least eight persons, as far as possible, of similar age, height, general appearance and class of life as himself. Counsel contended that the parade comprised solely of suspects collected from the locus in situ, that is, officers on duty at the residence of the Vice President.

19. Counsel submitted further that, the parade was also fatally defective because the witnesses saw the suspects before the identification exercise in violation of paragraph 6(iv)(c) of the Force Standing Orders. That there was a contradiction in the witnesses' testimony regarding whether only one or two parades were conducted. That in violation of paragraphs 6(iv)(f) &(g) of the Force Standing Orders, the mother of the complainant was allowed to participate in the identification, to make the complainant feel comfortable. That given the complainant's evidence that her mother was holding her in the shoulder, Counsel submitted that there was a great possibility that she could subtly communicate to the complainant and influence the identification of the suspects.

20. Regarding recognition of the appellant by the complainant, Counsel cited *Regina v. Turnbull & Another* [1976] 3 WLR 445 and *Freemantle v. The Queen* [1994] 1 WLR 1437 for the proposition that recognition may be more reliable than identification but is still vulnerable to error. Counsel argued that PW2's testimony that she had seen the appellant and the co-accused before and that they would talk to her contrasted with that of her parents PW1 and P3 who testified that they did not know the appellant and only saw him after his arrest.

21. That in the initial report there was no indication that the perpetrator of the offence was recognised, and no description of the assailant was given. Counsel relied on *Terekali s/o Korongozi & others v. Rex* [1952] EACA 259 for the proposition that the initial report's importance is in providing a safeguard

against later embellishments or a deliberately made up case as truth tends to come out in a first statement when recollection is fresh and there has been no opportunity to consult with others. Counsel also cited *Paul Etole & another v. Republic* [2001] eKLR for the proposition that where a case against an accused person wholly or substantially depends on one or more identifications of the accused, there is a need for caution and close examination of the circumstances in which each identification came to be made. Counsel contended that there was no evidence to indicate that the complainant recognized the appellant.

22. Counsel submitted that a court can base conviction on the evidence of a minor so long as it believes the minor to be saying the truth, as provided under Section 124 of the *Evidence Act*. Counsel submitted that the minor is said to have been defiled but nowhere in her evidence did she allege that she was beaten. That this was contrary to the report of the doctor who examined the complainant the next day and observed multiple bruises, inflammation, belt marks and bleeding under the skin, indicating that she had been beaten with slippers and belts. According to Counsel, this could only mean that the minor's evidence was obtained by coercion and serious assault as observed in the similar circumstances of *Paul Kanja Gitari v Republic* [2016] eKLR. Counsel also cited *John Mutua Munyoki v Republic* [2017] eKLR to illustrate a case of a minor's testimony of alleged defilement being tainted by evidence of coercion. Counsel submitted that in the present case, the witnesses concealed that the complainant had been beaten until it was brought up by the police officer PW7. That the reason the minor was beaten was to force her to pinpoint a suspect and she could have identified anyone to make the beatings stop.

23. Counsel submitted that the prosecution's case was marred by a myriad of contradictions which could not be reconciled under Section 382 of the *CPC*. That there were contradictions between the complainant's testimony and her mother's as to the time the complainant went back home, whether she screamed when she found herself naked in the room, when she took a bath after the incident, and the presence of the complainant's mother at the identification parade. That there were also inconsistencies in the witnesses' evidence regarding the time of the identification parade, whether the officers of the OCS or the officers on duty at the Vice President's residence were used in the parade. Counsel also questioned the testimony of PW5 to the effect that the complainant's assailant undressed her, laid her on her stomach, and undressed himself before penetrating her anus. Counsel contended that these facts were nowhere in the evidence as the minor was clear that she did not see the appellant perform these acts, nor did her teachers notice any anomaly, contrary to the evidence of PW5.

24. Counsel submitted that the High Court misapprehended itself by holding that the appellant told the court that he was not on duty at the material time while in fact he had brought out the evidence through his testimony and the excerpt of the OB report to show that he was indeed on duty. Counsel relied on *Oketh Okale vs Republic* (1965) EA 555 for the proposition that a trial judge cannot create their own theories not canvassed in evidence.

25. Counsel submitted that the appellant's right to a fair trial was violated by the failure of the courts below to consider his defence. That there was a failure to give the appellant an opportunity to challenge the prosecution's case during the trial court's consideration of whether a prima facie case had been made out as provided for under Section 210 of the Criminal Procedure Code. That when the trial court made the ruling under Section 210, its failure to issue reasons for the acquittal of the appellant's co-accused fatally curtailed the appellant's ability to mount his defence. Counsel cited Regina y. Seamans L978 CanLII 2829(NBCA) as quoted with approval in *Republic v Daniel Kazungu Karisa* [2020] eKLR and The Prosecutor v, William Samoei Ruto & another (ICC-01/09-01111- 1334 Anx-Corr) for the proposition that the duty of the defence after the ruling on a *prima facie* case is to decide whether or not to call evidence or to close their case immediately.

26. In response to the contention that the voir dire examination of the complainant was improperly conducted, Counsel for the respondent submitted that it is now settled law as was held in *Maripett Loonkomok v Republic* [2016] eKLR that there is no known or legal format as to how voir dire examination is to be conducted. Counsel contended that the court extensively did the examination and concluded that the minor was possessed of sufficient intelligence to justify reception of her evidence. If the minor did not understand the meaning of an oath, she would not have withstood the questioning and cross-examination that she was made to undergo.

27. Regarding the issue of penetration, Counsel contended that the fact of penetration was so clear on the record. There was complainant's testimony of having pain in her anal area as well as the medical evidence where the doctor opined that there was sexual assault in the form of sodomy with soft tissue injuries due to physical assault.

28. Counsel submitted that both the trial court and the High Court rightly held that the appellant was positively identified by the victim, although the evidence of identification was that of a single witness, on the strength of Section 124 of the *Evidence Act*. That the High Court rightly noted that the complainant was sufficiently exposed to the appellant, gave the physical description of the appellant to her parents and police at the earliest opportunity possible and also easily identified the appellant at the identification parade. That the identification parade was free from error and nothing had been advanced in the appeal to fault that finding.

29. Counsel submitted that the appellant did not disclose that after the hearing and determination of the first appeal, he approached the High Court vide Petition No. 436 of 2016 seeking to re-open the matter under Article 50 (6) of *the Constitution*. That the judgment in that petition found that there was no new or compelling evidence to cast doubt as to his conviction. That the matter has been heard by three different courts which found overwhelming evidence against the appellant.

30. In a second appeal, such as the one this Court is currently seized of this Court is to confine itself to matters of law, as provided under Section 361 (1) (a) of the *Criminal Procedure Code*, unless it is shown that the findings of fact by the two courts below considered matters they ought not to have considered or that they failed to consider matters they should have considered or that looking at the evidence as a whole they were plainly wrong in their decision, in which case such omission or commission would be treated as matters of law. See *Chris Kasamba Karani v Republic* [2010] eKLR.

31. It should be noted that the first ground of appeal raises the issue of whether the complainant's voir dire examination was properly conducted. This issue was never canvassed by the appellant at the trial and in the first appeal yet he was represented by an advocate throughout. The issue of whether the appellant's right to a fair trial was violated when the trial court ruled that a prima facie case had been established, was also never brought up before the trial court and the first appellate court. No reason has been given for this failure, and the question then arises as to how the learned judge would have addressed these issues yet they were not raised in the first appeal. The first ground therefore delves into matters that cannot be suitably addressed by this Court. In *John Kariuki Gikonyo v Republic* [2019] eKLR, this Court, when faced with similar circumstances, held that:

> " The question that follows is how then can the learned first appellate Judge be faulted for having failed to address issues that were never placed before her? This Court when faced with a similar issue in Alfayo Gombe Okello v. Republic [2010] eKLR Criminal Appeal No. 203 of 2009; held as follows: "....the issue was not raised since the trial began and was only raised for the first time in this second appeal. The appellant gave no reason for failure to

do so earlier. We must therefore find, and we now do so, that it was not raised at the earliest opportunity although it could and should have."

In line with that finding, we are disinclined to address matters where there is no opinion by the two courts below on new issues introduced for the first time on a second appeal."

32. The appellant's contention is that the identification parade was not conducted according to the procedure prescribed in the Police Force Standing Orders, currently known as the National Police Service Standing Orders. The learned judge did not delve into this particular ground in the first appeal and appeared satisfied with the conclusion of the trial court that the parade was conducted in accordance with the laid down procedure.

33. The appellant contended that the parade comprised solely of suspects but based on the conduct of the parade by PW7, it was clear that the appellant and his co-accused were the suspects. The appellant contended that the witnesses saw the suspects before the identification, an allegation which is not clearly supported by the evidence on record. Only PW1 testified to being at the reception when the suspects were brought into the cells. At that time, the location of the complainant, who was the only witness for purposes of the parade, cannot be established from the evidence on the record. The complainant's testimony was that she found some people in a parade. The appellant intimated that the presence of the complainant's mother in the room introduced the possibility of the complainant being influenced. There is no obvious evidence to support the assertion.

34. The weight put on the evidence regarding an identification parade may be adversely affected if a description of the suspect is not given to the police beforehand, preferably in the initial statement, but this does not automatically render an identification parade invalid. See *Nathan Kamau Mugwe v Republic* [2009] eKLR. In the present case, even though the first statement given to PW5 at the police station did not include the description of the suspect, it was the testimony of PW7 the investigating officer that when she took over the case the following day, the complainant described the suspect to her as a slim, dark, tall guy. The description of the suspect was given to the police before the identification parade, even though it was not given in the initial statement. The upshot is that, by and large, the identification parade was properly conducted.

35. Under Section 124 of the *Evidence Act*, a court may base a conviction in a case involving a sexual offence on the strength of the single witness evidence of the alleged victim, if the court is satisfied that the alleged victim is telling the truth with the only caveat being that great care ought to be exercised by the court to satisfy itself that in all circumstances of the case, it is safe to act upon the evidence of the single witness.

36. The appellant's assertion was that the complainant's evidence could only have been obtained by coercion and serious assault. The appellant pointed to the injuries inflicted on the complainant that were found to have been as a result of a beating with slippers and belts. The appellant also alleged that the prosecution witnesses generally concealed the beating. The case of *Paul Kanja Gitari v Republic* [2016] eKLR relied upon by the appellant is distinguishable from the circumstances demonstrated herein as in that case it was absolutely clear that the alleged victim did not make the complaint on her own volition. There were also other gaps that contributed in raising reasonable doubts in the prosecution case. In the present case, the evidence indicates clearly that even though the complainant initially concealed the incident, she eventually revealed what happened to her on her own volition, a conduct in our view understable considering her age.

37. This Court in *Richard Munene v Republic* [2018] eKLR had the following to say about the effect of contradictions and inconsistencies in the prosecution evidence in a criminal case:

> " 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.

38. In the present case, a majority of the contradictions and inconsistencies the appellant complained of were mainly slight variations in the witnesses' recollection of events and were not fundamental to the main issues in question in this appeal. The one notable contradiction was in the testimony of PW7 where she stated that her interview of the complainant revealed that the appellant undressed himself and proceeded to penetrate the complainant's anus. The complainant was clear in her testimony that after the appellant sprayed a substance, she became unconscious and did not know what happened thereafter.

39. Penetration is defined in the *Sexual Offences Act* as the partial or complete insertion of the genital organs of a person into the genital organs of another person, and genital organs includes the anus for the purposes of the Act.

The evidence of the complainant, her mother as well as the corroborative medical evidence produced by the two doctors, leads to the only logical conclusion that the injuries inflicted on the complainant's anal area was as a result of an act of penetration. However, the complainant herself did not witness the act as she was unconscious and the medical evidence did not completely shed light on the exact nature of the penetration. PW10 testified that the nature of the offence did not tally with the history given and that, from the notes in the report, the assault was not likely caused by a male.

40. The upshot is therefore that the evidence raises doubts as to whether the penetration was by insertion of the male genital organ into the genital organ of the minor. However, since there is no doubt that penetration occurred, the act may fall within the offence of sexual assault under Section 5 (1) of the *Sexual Offences Act*, as elucidated on by this Court in *John Irungu v Republic* [2016] eKLR as follows:

> " The offence is constituted by committing an act which causes penetration of the genital organs of any person by any part of the body of the perpetrator or of any other person or by an object manipulated to achieve penetration. Thus, for purposes of sexual assault, the penetration is not limited to penetration of genitals by genitals. It extends to penetration of the victim's genital organs by any part of the body of the perpetrator of the offence, or of any other person or even by objects manipulated for that purpose. We are satisfied that the offence of sexual assault can be committed against a child."

41. From the evidence on record, the facts proved does not support a charge of defilement as the essential ingredient of penetration with the genital organ is in doubt. However, the facts proved fit into the offence of sexual assault contrary to Section 5 (1) of the *Sexual Offences Act*. Section 186 of the *Criminal Procedure Act* provides:

> " 'When a person is charged with the defilement of a girl under the age of fourteen years and the court is of the opinion that he is not guilty of that offence but that he is guilty of an

offence under the *Sexual Offences Act*, he may be convicted of that offence although he was not charged with it."

42. This Court has jurisdiction under section 186 of the *Criminal Procedure Code* to convict the appellant of the Offence of Sexual Assault under section 5(1) of the *Sexual offences Act* even though the appellant was not originally charged with it. As was clarified by this Court in *James Maina Njogu v Republic* [2006] eKLR:

> "It is clear from this section that the power of the court to convict an accused person of an offence lesser than the offence with which the person is charged is only available when the "remaining particulars are not proved", the "remaining particulars" being the particulars necessary to prove the major offence and which particulars are not required to be proved in respect of the minor offence."

43. This Court in *Robert Mutungi Muumbi v Republic* [2015] eKLR also held that:

> "An accused person charged with a major offence may be convicted of a minor offence if the main offence and the minor offence are cognate; that is to say, both are offences that are related or alike; of the same genus or species. To sustain such a conviction, the court must be satisfied on two things. First, that the circumstances embodied in the major charge necessarily and according to the definition of the offence imputed by the charge, constitute the minor offence. Secondly, that the major charge has given the accused person notice of all the circumstances constituting the minor offence of which he is to be convicted."

44. In conclusion, the appeal ought to be partially allowed to the extent that the conviction for the offence charged is substituted with a conviction for the offence disclosed of a sexual assault contrary to Section 5 (1) (a) (b) and (2) of the *Sexual Offences Act*.

45. That being the case, the sentence is set aside and in place thereof the appellant shall serve 10 years imprisonment as the appropriate sentence for the substituted offence to run from the date of conviction.

46. To that extent only this appeal is allowed, otherwise the same is dismissed.

This Judgement is signed under Rule 34(2) of the Court of Appeal Rules since Justice the Hon. Nambuye ceased to hold the office of a Judge of appeal upon retirement from service

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF AUGUST, 2022.

HANNAH OKWENGU

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JUDGE OF APPEAL

A. MBOGHOLI MSAGHA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR