IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO, MAKHANDIA & OTIENO-ODEK JJ.A)

CONSOLIDATED CIVIL APPLICATION NO. NAI. SUP. 12 OF 2017

AND

CIVIL APPLICATION NO. NAI SUP. 14 OF 2017

BETWEEN

MARGARET NJERI MBIYU...APPELLANT

AND

DAVID NJUNU MBIYU KOINANGE..1st RESPONDENT

EDDAH WANJIRU MBIYU...2nd RESPONDENT

GEORGE KIHARA MBIYU...3rd RESPONDENT

PAUL MBATIA KOINANGE...4th RESPONDENT

STELLA KIBARA..5th RESPONDENT

STEVEN MUNGAI KIBARA...6th RESPONDENT

ESTATE OF ELIZABETH WARUINGI KOINANGE...............7th RESPONDENT

BARBARA WAMBUI KOINANGE...8th RESPONDENT

JOYCE NJERI w/o ISAAC NJUNU MBITU..............................9th RESPONDENT

DAVID WAIGANJO KOINANGE...10th RESPONDENT

SUSAN KAMAU KIHARA w/o SOLOMON

KIHARA KOINANGE...11th RESPONDENT

LENA WANJIKU KOINANGE...12th RESPONDENT

IMPULSE DEVELOPERS LIMITED.......................................13th RESPONDENT

TANGULIZI VENTURES LIMITED.......................................14th RESPONDENT

AND

SYLVIA MARYANNE WAMBUI MBIYU............................CROSS APPELLANT

(Being an application for a certificate that a matter of general public importance is involved pursuant to Article 163 (4) (b) of the Constitution of Kenya with respect to the proposed appeal against the judgment of this Honourable Court (Waki, Makhandia & M'Inoti JJ.A on 24th November, 2017

in

Civil Appeal No. 47 of 2016 CONSOLIDATED WITH ***CIVIL APPEAL NOS. 50 AND 56 OF 2016****)*

****

RULING OF THE COURT

BACKGROUND TO APPLICATION FOR CERTIFICATION

1. The application in this matter relates to the estate of ***Peter Mbiyu Koinange*** (the deceased). The deceased was a polygamous man allegedly with four wives. A dispute arose *inter alia* as to whether ***Margaret Njeri Mbiyu*** and ***Eddah Wanjiru Mbiyu*** were widows of the deceased. After protracted litigation before the High Court and the Court of Appeal, by a judgment dated 24th November 2017, this Court held that ***Margaret Njeri Mbiyu*** and ***Eddah Wanjiru Mbiyu*** were widows of the deceased.

2. Subsequent to the judgment, two applications namely, **Civil Application No. NAI. (SUP) 12 of 2017** and **Civil Application No. NAI. (SUP) 14 of 2017** between the parties to this suit were filed. Both applications seek leave and certification to proceed to the Supreme Court in an intended appeal against the judgment of the Court of Appeal. By an Order of this Court dated 19th February 2018, and with the consent of all the parties, the two applications were consolidated with the holding file being **Civil Application No. NAI. (SUP) 12 of 2017**.

3. Prior to commencement of the hearing of the two applications, it was brought to the attention of the parties that the bench constituted to hear the present application included Makhandia, JA who was part of the Coram that delivered the judgment from which certification for an intended appeal to the Supreme Court is sought. All counsel in this matter indicated that they had no objection to Makhandia, JA being a member of the bench considering the instant applications.

APPLICATION FOR CERTIFICATION

4. By Notice of Motion dated 8th December 2017, the applicant, ***George Kihara Mbiyu*** (3rd respondent) sought an order of this Court to certify that matters of general public importance are involved in the intended appeal against the judgment of the Court of Appeal dated 24th November 2017. The Motion was supported by the affidavit of the said George Kihara Mbiyu.

5. On the face of the Motion, the applicant indicated that the following matters of general public importance have arisen in regard to the judgment of this Court:

> *"(a) That the Court of Appeal purported to introduce a new standard of proof that elevated and gave pre-eminence to untested affidavit evidence over formal testimony with the effect that the Court of Appeal was laying a new standard that a party is bound by affidavits and evidence in interlocutory proceedings, and that it matters not at a full hearing that such evidence is established to be untrue, unreliable or otherwise unverified.*
>
> *(b) That in the foresaid judgment, the Court of Appeal disturbed settled law that personal status must be established by evidence and proof and the Court of Appeal has substituted this settled law with a new principle that allows for personal status to be established by way of estoppel in interlocutory affidavits.*
>
> *(c) That the Court of Appeal created a novel standard suggesting that interlocutory proceedings and untested affidavits filed in such interlocutory proceedings have the legal competence to create a res judicata effect at the hearing of a matter thereby binding parties to such interlocutory pleadings and decisions even as against primary, tested and corroborated evidence adduced at full hearing.*
>
> *(d) That in the said judgment, the Court of Appeal erroneously adopted a new standard of establishing personal status vide the application of the doctrine of res judicata arising from interlocutory proceedings.*
>
> *(e) That the precise role of the Court of Appeal with respect to appeals from the High Court relating to factual determination of status in particular, the appellate standard of review of such factual determinations i.e. retrials, abuse of discretion or clear error, need clarification by the Supreme Court."*

6. There are sixteen (16) parties to this suit. Some of the parties supported the application for certification while others opposed the same.

7. The following respondents supported the application for certification: 9the, 10th and12th respondents. The 10th respondent, ***David Waiganjo Koinange***, supported the application for certification and filed his own **Civil Application No. NAI. (SUP) 14 of 2017** which was consolidated with **Civil Application No. NAI. (SUP) 12 of 2017**. The 12th Respondent, ***Lennah Wanjiku Koinange***, filed a Replying Affidavit dated 16th February 2018 in support of the application for certification.

8. The following respondents opposed the application for certification: 1st and 2nd respondents, the Appellant Ms. Margaret Njeri Mbiyu and the 11th respondent. The 2nd respondent, Ms. Eddah Wanjiru Mbiyu filed a Replying Affidavit dated 5th February 2018 opposing certification. In opposing, it was urged that the application for certification did not meet the criteria for matters of general public importance as enunciated by the Supreme Court in the case of **Hermanus Phillipus Steyn -v- Giovanni Gnecchi-Ruscone, SC App. No. 4 of 2012.**

9. At the hearing of the applications, the following learned counsel appeared for the parties: ***Dr. Kenneth Kiplagat*** holding brief for ***Mr. Okoth Oriema Advocate*** for the Applicant, ***Mr. George Kihara Mbiyu***. **Senior Counsel Ahamednassir Abdulahi** for respondent ***Ms. Margaret Njeri Mbiyu***, ***Mr Gikandi Ngibuini*** and ***Ms Beatrice Karuti*** for appellant.

Senior Counsel Paul Muite for 2nd Respondent Ms. ***Eddah Wanjiru Mbiyu***. ***Ms Muthee*** holding brief for ***Mr. Munge*** for the 9th Respondent ***Ms. Joyce Njeri***, ***Mr. Ochieng Oduol*** and ***Cecil Miller*** for the12th Respondent, ***Lena Wanjiku Koinange***, ***Mr. Desmond Odhiambo*** for the 10th Respondent, ***David Waiganjo Koinange*** and **Mr. P.M. Kamaara** for the 8th and 14th Respondents ***Ms. Barbara Wambui Koinange*** and ***Tangulizi Ventures Limited***.

SUBMISSION BY PARTIES IN SUPPORT OF CERTIFICATION

10. All parties cited and relied on list of authorities filed in the matter.Learned Counsel Dr. Kiplagat prosecuted Civil Application No. NAI. (SUP) 12 of 2017 while learned counsel Mr. Odhiambo prosecuted Civil Application No. NAI. (SUP) 14 of 2017 both seeking certification to proceed to the Supreme Court in the intended appeal.

11. Dr. Kiplagat submitted that the issues raised in the instant application are weighty and not frivolous. That the applicant seeks the Supreme Court's interpretation on legal findings made by the Court of Appeal on the status of interlocutory evidence, *viva voce* evidence and affidavit evidence vis-à-vis oral evidence given at the main trial; that the applicant seeks Supreme Court's interpretation of the standard of proof required at trial in relation to *res judicata* and the doctrine of estoppel. It was submitted that these are issues of general application, public policy and cuts across all branches of law.

12. In his detailed submissions, Dr. Kiplagat reiterated the grounds in support of the application and its supporting affidavit. He submitted that in its judgment, the Court of Appeal disturbed settled principles of law and if the judgment is allowed to stand, it will cause confusion to the lower courts. He submitted that the application is grounded on and fulfills the criteria for certification as specified by the Supreme Court in ***Hermanus*** (supra). In his submissions counsel stated that the applicant takes issue with the reasoning of the Appeal Court at pages 69 and 70 as well as pages 71 and 73 of the judgment. In these pages, it was submitted that it was wrong for this Court to rely on interlocutory findings made by Koome, Nambuye and Githnji, JJ (as they were then). It was submitted that the proceedings before the Justices were interlocutory and the Court erred in holding that averments made by affidavit in interlocutory proceedings were binding notwithstanding that *viva voce* evidence given at full hearing contradicted affidavit evidence.

13. Counsel submitted that interlocutory orders cannot bind a judge at the main hearing or trial; that a trial court is not bound by a partial trial or interlocutory decision if the evidence at trial contradicts interlocutory proceedings. It was submitted that the holding by the Court of Appeal that interlocutory findings bind a trial court in the main hearing disturbs the settled principle of law that *viva voce* evidence prevails over affidavit evidence. It was submitted that the intended appeal to the Supreme Court is to re-set and restate the law to avoid the mix-up caused by the holding of the Court of Appeal.

14. Counsel further submitted that the judgment by the Court of Appeal establishes a principle of estoppel by trial founded on interlocutory proceedings. It was submitted that pleadings cannot give rise to estoppel at a hearing; that parties at an interlocutory stage cannot be barred or prejudiced during main trial. Counsel submitted that the Court in its judgment erred by constantly referring to interlocutory proceedings and findings. In so doing, the Court disturbed the settled principle of law that interlocutory proceedings should not override evidence adduced at main trial.

15. It was further submitted that the Court of Appeal erred by disturbing the well settled principle of autonomy of the trial court. That by referring to interlocutory proceedings and findings the Court compromised the autonomy of the trial court as a trier and finder of fact; that the trial court is required to concentrate only on the evidence given at trial and not evidence adduced in interlocutory proceedings by way of affidavit; that there is no obligation on a party to challenge affidavit evidence given at an interlocutory stage and such interlocutory evidence cannot override evidence given at full trial.

16. Counselconcluded by urging this Court to grant certification to proceed to the Supreme Court. He expressed that if certification is allowed, it is proposed to ask the Supreme Court to reset the law and affirm the primacy of trial evidence as against interlocutory evidence; that the Supreme Court should re-affirm primacy of viva voce evidence over affidavit interlocutory evidence; that the Court should reset the law and confirm that personal status and rights cannot be determined at interlocutory proceedings; that the Supreme Court should reset the law and find that interlocutory evidence is incomplete evidence and cannot bind a trial court.

17. Learned Counsel Mr. Odhiambo, for the 10th Respondent, in supporting the application prosecuted Civil Application NAI. (SUP) No. 14 of 2017.He observed that the application raises similar issues as urged in Application No. (SUP) 12 of 2017 more particularly issues relating to *res judicata* and the doctrine of estoppel. Counsel associated himself with submissions made by Dr. Kiplagat. He submitted that *res judicata* was no longer mechanically and rigidly applied; that it could be relaxed for ends of justice to be met. He emphasized that the rules of procedure are aimed to assist the court and not to deny a party the right to be heard. Submitting on the doctrine of estoppel, counsel urged that estoppel cannot find a cause of action save in proprietary estoppel. He submitted that the Court of Appeal erred in referring to events after the death of the deceased such as Ms. Margaret and Ms. Eddah being invited to family meetings or receiving gifts from the estate of the deceased. Counsel submitted that the Court erred in referring to these events as a basis for arriving at the conclusion that Ms. Margaret and Ms. Eddah were widows of the deceased.

18. Learned Counsel Mr. Ochieng Oduol in support of the application submitted that the criteria to determine matters of general public importance as stipulated in ***Hermanus*** (supra)**,** had been fulfilled in the instant application;that the judgment by the Court of Appeal is precedent setting and is sending a wrong signal to the lower courts; that there is a whole difference between interlocutory evidence and *viva voce* evidence given at full trial; and that the Court of Appeal judgment not only disturbed settled law but gives the impression and insinuation that application of law can be arbitrary.

19. Counsel relying on paragraph 17 of the Replying Affidavit of ***Lennah Wanjiku Koinange*** raised the following additional issues as matters of general public importance that the Supreme Court should consider in the intended appeal:

> "*(a) What is the interplay between customary and statutory marriage as recognized by the Kenyan law including Article 45 of the Constitution;*
>
> *(b) Whether a person who is customarily married to another has the capacity to contract a statutory marriage under the Marriage Act (Repealed);*
>
> *(c) Whether a Certificate of Marriage issued under the Marriage Act negates and/or supersedes a customary marriage contracted under the Kikuyu Customary law;*
>
> *(d) Whether having contracted a statutory marriage under the Marriage Act (repealed) a person has the capacity to contract another marriage;*
>
> *(e) Whether a presumption of marriage can arise or be declared to exist where a person has in fact contracted a statutory marriage under the Marriage Act (repealed);*
>
> *(f) Whether a person who is presumed to be a wife by virtue of a presumption of marriage has equal rights and benefit in the Estate of a deceased as a customary or statutory wife regardless of the period with which the customary and or statutory wife had lived with the deceased prior to her declaration and presumption of such wife;*
>
> *(g) Whether a person who has been found to have intermeddled in the Estate of a deceased contrary to Section 45 of the Law of Succession Act is entitled to a share of the Estate of a deceased including retaining the property which she gained because of the intermeddling."*

20. Learned counsel Mr. Ochieng Oduol concluded by urging this Court to issue a certificate and allow the applicants to proceed to the Supreme Court in the intended appeal. Learned counsel Mr. Muthee, for the 9th Respondent, adopted submissions by all counsel who supported the application for certification.

SUBMISSION BY PARTIES OPPOSING CERTIFICATION

21. In opposing certification, Mr. Muite, Senior Counsel submitted that the instant applications do not disclose any matter of general public importance that necessitate input from the Supreme Court;that the Court of Appeal did not elevate affidavit evidence over *viva voce* evidence or interlocutory evidence over trial evidence; that the Court did what it was supposed to do, that is,to re-evaluate the evidence and come to its own conclusions.He submitted that the Court of Appeal evaluated the evidence on record in various categories: firstly, affidavit evidence; secondly the application for interim letters of administration wherein the applicant listed Ms. Eddah and Margaret as widows; third, the consent order for partial distribution wherein by consent Ms. Eddah and Margaret were given part of the Estate of the deceased as widows. In all these categories, the Court of Appeal correctly re-evaluated the evidence on record.

22. Mr. Muite further stated that the substance of the application for certification was that the Court of Appeal erred in re-evaluating the evidence. He submitted however that the Court was not saying which evidence was superior but looked at the evidence in totality. Urging this Court to decline certification, he submitted that it was strange that the applicant seeks to proceed to the Supreme Court to determine the weight of evidence. Counsel expressed that weight of evidence was not an issue to be canvassed at the Supreme Courtas a matter of general public importance.

23. Mr. Ahmednassir Abdullahi, Senior Counsel in opposing the application urged this Court to find that there was no matter of general public importance for the Supreme Court to consider. That the Court of Appeal did not override interlocutory evidence over *viva voce* evidence; that all the Court asked was why the applicants had changed their position contrary to what was in their interlocutory evidence by way of affidavit. He submitted that ***Section 120*** of the **Evidence Act** does not allow a party to change his position and swing like a pendulum; that it is a settled principle of law that *res judicata* can be raised at an interlocutory stage; that in the instant matter, the Court of Appeal did not disturb the settled principles of *res judicata* and estoppel rather it re-affirmed their application; that application of these two principles by the Court of Appeal is not profound and no further input from the Supreme Court is necessary; and that if certification is granted, it will be a waste of precious judicial time of the Supreme Court.

24. Learned counsel Messrs Gikandi Ngibuini, Mr. Kamaara and Mr. Muriuki all opposed the application for certification urging that there are no novel issues of general public importance that need intervention and input from the Supreme Court.

ANALYSIS AND DETERMINATION

25. We have considered both applications, submissions by counsel and authorities filed and cited. The threshold of analysis is whether mattersof general public importance as indicated in the Supreme Court's decisions in ***Hermanus*** (supra) and **<u>Malcolm Bell - v- Hon. Daniel</u>**

Toroitich arap Moi & Another, S.C. ApplicationNo.1 of 2013 have been established by the applicants.

26. In ***Hermanus,*** the Supreme Court stated, (at paragraph 58), that:

> **"Before this Court, „a matter of general public importance? warranting the exercise of the appellate jurisdiction would be a matter of law or fact, provided only that: its impacts and consequences are substantial, broad-based, transcending the litigation-interests of the parties, and bearing upon the public interest. As the categories constituting the public interest are not closed, the burden falls on the intending appellant to demonstrate that the matter in question carries specific elements of real public interest and concern".**

27. At paragraph 48 in ***Malcom Bell***, the Court expressed: -

> **"Such a position is consistent with this Court?s holding in the *Hermanus Steyn* case, that "the question or questions of law must have arisen in the Court or Courts below, and must have been the subject of judicial determination" – for them to become a "matter of general public importance" meriting the Supreme Court?s appellate jurisdiction. By this test, matters only tangentially adverted to, without a trial- focus, or a clear consideration of facts in the other Courts, will often be found to fall outside the proper appeal cause in the Supreme Court."**

28. In the ***Hermanus*** case, (paragraph 47), the Supreme Court upheld the principle laid out by the this Court in **Koinange Investment & Development Ltd. v. Robert Nelson Ngethe, Civil Application No. 15 of 2012** that "*the requirement for certification under Article 163(4)(b) is a genuine filtering process to ensure that only appeals with **elements of general public importance** reach the Supreme Court.*"

29. The Supreme Court in ***Malcolm Bell*** noted that divers principles have been formulated for the guidance whether a matter is of general public importance. The Court at paragraph 53 held the following to be particularly relevant:

> "**[53]** The categories of questions that merit the appellate jurisdiction of the Supreme Court, on the basis that they are "matters of general public importance", have already been identified in their essence, in ***Hermanus Phillipus Steyn v. Giovanni Gnecchi-Ruscone,*** Sup. Ct. Appl. No. 4 of 2012. These categories are to be found in paragraph 60 of the main Ruling of the Court and in paragraph 17 of the dissenting opinion. These, for convenience, may be set out as follows:
>
> *(i) for a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest;*
>
> *(ii) where the matter in respect of which certification is sought raises a point of law, the intending appellant must demonstrate that such a point is a substantial one, the determination of which will have significant bearing on the public interest;*
>
> *(iii) such question or questions of law must have arisen in the Court or Courts below, and must have been the subject of judicial determination;*
>
> *(iv) where the application for certification has been occasioned by a state of uncertainty in the law, arising from contradictory precedents, the Supreme Court may either resolve the uncertainty, as it may determine, or refer the matter to the Court of Appeal for its determination;*
>
> *(v) mere apprehension of miscarriage of justice, a matter most apt for resolution [at earlier levels of the] superior Courts, is not a proper basis for granting certification for an appeal to the Supreme Court; the matter to be certified for a final appeal in the Supreme Court, must still fall within the terms of Article 163(4)(b) of the Constitution;*
>
> *(vi) the intending applicant has an obligation to identify and concisely set out the specific elements of "general public importance" which he or she attributes to the matter for which certification is sought;*
>
> *(vii) determinations of fact in contests between parties are not, by [and of] themselves, a basis for granting certification for an appeal before the Supreme Court;*
>
> *(viii) issues of law of repeated occurrence in the general course of litigation may, in proper context, become "matters of general public importance", so as to be a basis for appeal to the Supreme Court;*
>
> *(ix) questions of law that are, as a fact, or as appears from the very nature of things, set to affect considerable numbers of persons in general, or as litigants, may become "matters of general public importance", justifying certification for final appeal in the Supreme Court;*
>
> *(x) questions of law that are destined to continually engage the workings of the judicial organs, may become "matters of general public importance", justifying certification for final appeal in the Supreme Court;*
>
> *(xi) questions with a bearing on the proper conduct of the administration of justice, may become "matters of general public importance," justifying final appeal in the Supreme Court."*

30. In the instant applications, having examined them carefully and all the affidavits in support thereof, it is plain to us that the issues claimed to be of general public importance namely, the application of the concept of *res judicata* and the doctrine of estoppel had not been the subject of judicial litigation and determination by the High Court or Court of Appeal and do not, therefore, fall for determination by the Supreme Court.

31. Further, the decisions of the Supreme Court in ***Hermanus*** and ***Malcolm Bell*** require that

> "*the intending applicant has an obligation to identify and concisely set out the* ***specific elements of 'general public importance' which he or she attributes to the matter*** *for which certification is sought."* The applications fail to meet this condition because the High Court and Court of Appeal routinely deal which issues of application of the principle of *res judicata* and doctrine of estoppel.

32. We have taken note of the Supreme Court Ruling in **Issak M?Inanga Kieba -v- Isaya Theuri M?Lintari, Application No. 46 of 2014** whereby the refusal by the Court of Appeal to grant certification was reversed. In that case, the Supreme Court observed that national values and principles of equality before the law and land rights – which are of broad application to the Kenyan public are complex issues of law that have not been sufficiently addressed by the High Court or the Court of Appeal and that further input of the Supreme Court was necessary. The emerging principle from this decision is that complex issue of law that have not been sufficiently addressed by the High Court or the Court of Appeal are matters of general public importance and input from Supreme Court is necessary.

33. In the instant case, the issues for intended appeal cannot be said to be of any special jurisprudential moment. (See Ruling of the Supreme Court in **Prof. Olive Mugenda -v- Dr. Wilfred Itolondo & Others Supreme Court Civil Application No. 21 of 2015).** Further, the issues as identified by the applicant cannot be said to becomplex issue of law, that have not been sufficiently addressed by the High Court or the Court of Appeal in past decisions.

34. We are also of the considered view that the questions and issue raised in the two applications as well as the issues raised in paragraph 17 of the 12th Respondent's replying affidavit are routine issues that do not transcend the circumstances of this particular case. We are guided in this instance by the dictum of the Supreme Court**, i**n ***Malcolm Bell***, where it was held (at paragraph 46,) that: *"It is now sufficiently clear that, as a matter of principle and of judicial policy, the appellate jurisdiction of the Supreme Court is not to be invoked save in accordance with the terms of the Constitution and the law, and* ***not merely for the purpose of rectifying errors with regard to matters of settled law."*** *(*See also Supreme Court Ruling in**Civil Application Motion No. 44 Kenya Banker Association -v- Rose Florence Wanjiru**).

35. We have also considered and noted that the Supreme Court has pronounced itself extensively on the application of the principle of *res judicata* and doctrine of estoppel. (See Supreme Court in Judgment in **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR** at paragraphs 317 to 326 and paragraphs 333,334 and 350-355). We are of the view that in light of the detailed analysis by the Supreme Court, there is no matter of general public importance disclosed in the instant application that require further input of the Supreme Court as regards application of the principles of *res judicata* and doctrine of estoppel.

36. It is our view that the issues enumerated by the applicants as matters of general public importance fall within the duties of a first appellate court to re-evaluate the evidence on record and arrive at its own conclusion. This duty encompasses weighing the evidence on record. It is noteworthy that the record includes interlocutory proceedings and proceedings of the full trial. A trial court cannot ignore any ruling or determination of fact made in interlocutory proceedings. The legal dutiesof the first appellate court is well settled that no further input from the Supreme Court is needed.

37. Onthe whole therefore, the Applicants have failed to demonstrate that matters of general public importance arise in terms of the criteria in ***Hermanus*** and ***Malcolm Bell cases.*** For the various reasons stated in this Ruling, the final orders of this Court are as follows:

> *(a) Leave and Certification to proceed to the Supreme Court be and is hereby declined.*
>
> *(b) Civil Application NAI Sup. No. 12 of 2017 be and is hereby dismissed.*
>
> *(c) Civil Application NAI Sup. No. 14 of 2017 be and is hereby dismissed.*
>
> *(d) Each party is to bear its/his own costs in the applications.*

Dated and Delivered at Nairobi this 27th day of April, 2018.

W. OUKO

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JUDGE OF APPEAL

ASIKE MAKHANDIA

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JUDGE OF APPEAL

J. OTIENO-ODEK

....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

DEPUTY REGISTRAR