IN THE COURT OF APPEAL

AT NYERI

(CORAM: VISRAM, KOOME & OTIENO-ODEK, JJ.A.)

CRIMINAL APPEAL NO. 67 OF 2014

BETWEEN

DAVID MUCHIRI GAKUYA …….....…..APPELLANT

AND

REPUBLIC.....RESPONDENT

(An appeal from Judgment of the High Court of Kenya at Nyeri (Wakiaga & Ombwayo, JJ.) delivered on 4th April, 2014

in

H.C.CR. Appeal No. 52 of 2010)

****

JUDGMENT OF THE COURT

1. David Muchiri Gakuya was charged with the offence of robbery with violence contrary to ***Section 296 (2)*** of the ***Penal code***. The Information against the appellant was that on the 30th day of January, 2008, at Gatondo village in Nyeri District within Central Province, jointly with another not before court being armed with dangerous weapons namely metal bars robbed Francis Mathenge Wamae of a mobile phone make Nokia 3310 Serial No. 359746000385042 valued at Ksh. 8,500/=, and cash Ksh. 300/=, all to the total value of Ksh. 8,800/= and at or immediately before or immediately after the time of such robbery used actual violence to the said Francis Mathenge Wamae.
2. The complainant PW1, Francis Mathenge Wamae, testified that on 30th January 2008 at 8.30 pm, he was going home from work. That he reached an area at Gatondo shopping centre and met some two men one of them called Mithamo and Weru whom he had employed to pick tea at his place; that he entered with them a pub called Starehe; he was with them for 30 minutes and they arranged how they would work for him the following day; that it was during the Africa Cup of Nations matches and there were many people in the pub; that he left the men at around 10.00 pm and bid goodbye; he left the pub alone; he used a road with electricity lights but at some points there was darkness; when he entered the place of darkness he was hit on the left ear and left cheek with something sharp; he tried to go to the road side but tripped on a stone and fell down; he was hit again on the face with something like a metal; someone stepped on his chest with his foot and told him to lie down; he could see one person; the person dipped his hands in his left trouser pocket

and removed his Nokia phone 3310 and Ksh. 300/=; he then told him to rise and go; he heard footsteps going towards the darkness and realized they were two; he heard one telling the other "*that is Kulman and I am through with him*." That he stayed there for about 30 minutes and rose up and went to the place with lights and went back to the shopping centre and back to the Starehe pub; he told the people at the pub what had happened to him and they investigated who had gone his way before him; the people said it was Daniel Muchiri who had gone ahead of him; the people resolved to go to his place and many people went including the complainant; they found him at his place sleeping and they called him and he woke up; upon being questioned he denied being involved; one Miano said he remembered something connected to the incident and he would talk in the presence of the assistant chief; people resolved to go to the assistant chief and the assistant chief was called and he woke up; Miano explained what he knew and the sub-chief resolved that we go to David Muchiri Gakuya's home; it was 1.00 am when they went and did not find him; Miano said he knew where David Muchiri Gakuya could be found and they went to a second home and did not find him and then a 3rd home where the assistant chief told the owner of the home Mwangi to open the door. Mwangi opened the door and David Muchiri was sleeping inside there; he was told to remove the phone; the assistant chief then emerged with the phone and the complainant positively identified the phone using its features; they went to the police and he produced an official receipt for the phone dated 15th September 2006; that he (PW1) was treated at Karatina Hospital and a P3 Form was filled. In cross-examination, the complainant (PW1) stated that he was able to identify the voice of the appellant as the person who said "that is Kulman"; that he told the police he identified the voice of the appellant; however, the police did not write it down in his statement.

3. PW 2 Benard Miano Wangui testified that on 30th January 2008 he was at a bar at Gatondo at around 11.00 pm; that they were about three people with Muchiri and another Muchiri; that one Muchiri is the appellant and is known as David Muchiri; that the appellant left leaving him with a paper bag containing flour; he also left his beer; he never said where he went; he stayed for about 30 minutes and came back and they went home; on the way the appellant removed a phone from his pocket; it was a Nokia and he asked him (PW2), to switch it on and it was not working; he said he was sorry for he had removed the battery; he returned the phone to him with the battery and he asked PW2 to remove the sim card; he told him to destroy the sim card which he declined and he just dropped it; he told him that he had snatched the phone from one Mathenge who is the complainant; he knew Mathenge as they were drinking together; he arrived at his home and the appellant went his way; shortly PW2 realised that the appellant had done a bad thing so he decided to go back to the bar and alert anyone; he found Mathenge, (PW1), and other people; PW1 was bleeding from the head; he asked PW1 what had happened; he said someone attacked him on the way and robbed him of a phone; he asked PW1 the make of the phone and he said it was a Nokia; he told him he saw a Nokia phone with the appellant but first they go to the sub-chief; that they went to where the appellant resides at his place of work but did not find him; so they went to Mwangi's place and they found him and the phone was recovered.
4. PW3 Robert Mwangi Mundi testified that on the night of 30th/31st January, 2008, at around 2.00 am at night he was sleeping when someone knocked at his door and it was David Muchiri Gakuya (appellant); the appellant told him he had a phone to sell and he advised him he could not buy as his employer had promised him a phone; the appellant told PW3 that he would sleep there; PW 3 told the appellant he had no permission to allow anyone to sleep there; shortly PW3 heard people coming and the sub-chief knocked the door and asked if Muchiri, the appellant, was there; that he said he was and they entered and PW3 saw that PW1 had been injured; the sub-chief asked the appellant to produce the phone; PW3 told the sub-chief that the appellant had put a phone on the ceiling when PW3 declined to buy it; the phone was recovered from the ceiling board; PW1 identified the phone as his; the sub-chief asked for a rope and tied the appellant and he was arrested.
5. PW4 Daniel Muchiri Karoki testified that he was present when the phone was retrieved from the ceiling; that the recovered phone was a Nokia which was identified in court by PW1 as his stolen phone. PW5 Joseph Muhoro Mathenge, the assistant chief testified on how he received the report relating to offence and went to PW3 Mwangi's house where the stolen phone was recovered and he arrested the appellant. PW6, Maina Ndirangu, a clinical officer testified that the complainant PW1 had suffered bruises on the face on the left side, bruises on the inner part of the mouth and a

fracture on the 3rd and 4th left fingers; that the degree of injuries was grievous harm.

6. The appellant in his defence testified as follows:

> ***"That on 30th January, 2008, I woke up in the morning and found Joakim Stakwa who had kept a bar at Gatondo and he came and told me to stand in for him and work for him on that day as he was going for a trip in Muranga; I opened the bar at 11.00 am and worked till 11.00 pm; 1 was about to close the club and 1 called Stakwa on phone and he told me he was on his way and I could wait for him at Mwangi house his cousin's workman; that I went and waited for him for 30 minutes; he came and I gave him his money; he told me it was late and I could just sleep at the place of Mwangi the workman of his cousin. I slept and at 2.00 am the door was knocked and Mwangi came out and I heard someone say he was the sub chief and he wanted the phone sold to him by PW2; that Mwangi did not initially say where the phone was and the sub-chief asked me if I knew about the phone; I was abit confused and so the sub-chief stated that I and Bernard Miano and the owner of the house Mwangi were to be taken away and we were taken to Ihwagi police post. I was locked up in my own cell whereas the others were put in one other cell. I was later taken to Karatina Police Station and charged with the offence; the other people were released".***

7. DW 2 Joakim Waire Stakwa testified that he knew the appellant as a workman at home; that on 30th January, 2008, he told the appellant to go to his bar and open it as he was going for a family gathering; that he informed the appellant to wait for him; that as it was late around 11.00 pm, he advised the appellant to go to Mwangi's place and wait for him; that he later arrived at Mwangi's place and did the accounts and he told the appellant to sleep there; that the following day he found that the appellant had not milked the cows and he was told the appellant had been arrested; that he went to Ihwagi police to check and he learnt that someone had been beaten at night. DW 2 testified he was not at the scene of crime.
8. Upon hearing and considering the prosecution and defence evidence, the trial magistrate convicted the appellant for robbery with violence and sentenced him to death. In convicting the appellant, the trial court expressed as follows:

> ***"Was the accused the culprit? I find that PW1 has stated that at the place he was attacked, there was darkness. Although PW 1 has stated that he recognized the voice of the accused, he only said this during cross-examination and not in his evidence in chief. The logical conclusion to make is that PW1 was not able to identify his assailants at the place of attack. However, there is circumstantial evidence that greatly and overwhelmingly does incriminate the accused person. Firstly, it is evident that prior to the attack, accused had been in that bar. He had been with PW1 in the same bar and he had been drinking with PW2. And after PW1 had left, PW2 has averred that the accused had also left leaving PW2 to take care of accused persons paper bag and beer. It means that the accused was in the vicinity of the incident. There is again the direct evidence of PW2 who avers that as they later walked home in that night, accused showed him a Nokia phone that he (accused) had snatched from Mathenge (PW1). Accused has not categorically denied that piece of evidence of PW2. And this is the same phone PW2 identified in court as MFI and which PW1 identified as his. Further, after realising that accused had done something bad, PW2 had not let the matter just rest there. He decided to go back to the bar and alert the people he would find there. And it is then that he found PW1 already injured and bleeding on the head. It is then that PW2 decided to assist in tracing accused and accused was eventually found in the house of PW3 one Mwangi. It is not precisely clear as to who retrieved the phone from the ceiling of PW3's house. But it is pertinent to note that by then, there were several people, including PW1, 2, 3, 4 and 5. Apart from PW3, all the others had one mission, to trace the accused and the phone. And so it came to be that the phone was traced in that house. There is also no evidence to indicate that PW3 was incriminating the accused when he said that the accused came to his house that night at 2.00 am wanting to sell a phone Nokia to him and PW3 had declined and that is when the accused had put it in the ceiling. Further,***

the accused has not rebutted that evidence of PW3. It then follows that the accused is the one who had taken the phone from PW1, and considering that this is the phone which had been taken from PW1 just earlier in the same night, then I am inclined to believe that accused had participated in the attack that had been carried on PW1 where the latter's Nokia phone and Ksh. 300/= were taken and PW1 was also seriously injured. I find that the evidence is overwhelmingly against the accused. The prosecution has proved its case beyond reasonable doubt".

9. The appellant's first appeal to the High Court was dismissed. The High Court in upholding conviction and death sentenced expressed as follows:

"From the evidence tendered by PW1 and PW6, it is clear that the complainant suffered grievous harm during the said robbery and therefore the prosecution was able to prove the element of violence in the definition of robbery with violence. We are unable to agree …that a lesser offence was proved. It is clear from the evidence tendered that the mobile phone was recovered from the appellant who had informed PW2 that he had snatched the same from the complainant and PW3 that he wanted to sell the same. We find that the appellant was properly connected to this robbery and therefore his conviction was safe".

10. Aggrieved by the dismissal of appeal by the High Court, the appellant has lodged the instant appeal before this Court. His supplementary memorandum of appeal raises the following grounds *to wit:*

i. ***That the learned judges erred in law in failing to notice that there was great variance in the identification of the stolen mobile phone and the one that was actually recovered.***

ii. ***That the learned judges erred in law in failing to notice that the identification of the appellant as the robber or one of the robbers was not proved beyond reasonable doubt.***

iii. ***That the learned judges erred in law in their application of the doctrine of recent possession as it was not proved beyond any reasonable doubt that it was the appellant who was in possession of the stolen mobile phone.***

iv. ***That the learned judges erred in law in failing to come to the conclusion that the burden of proof was shifted by the trial magistrate to the accused in two critical occasions thereby prejudicing the appellant's case.***

v. ***That there was no evaluation or no proper evaluation and analysis of the defence evidence to establish its veracity or otherwise.***

vi. ***That the totality of the evidence fell short of the standard/burden of proof required to convict.***

11. At the hearing of the appeal, learned counsel **S. K. Njuguna** appeared for the appellant while the state was represented by the Assistant Director of Public Prosecution **Mr. J. Kaigai**.
12. Counsel for the appellant elaborated the grounds of appeal and submitted that the identity of the stolen mobile phone was not established; that as per the charge sheet, stolen mobile phone was a Nokia 3310 valued at Ksh. 8,500/= but the receipt produced by PW1 is for a Nokia mobile phone 2310 bought at Ksh. 7,000/=; a question that arises is whether the recovered phone was actually the purchased phone and if indeed it belonged to the complainant; that the complainant's phone as per the receipt of purchase is Nokia 2310 and it is inconceivable how the charge sheet could indicate a value of Ksh. 8,500/= while the receipt is for a different model valued at Ksh. 7,000/=; that the complainant could not mistake the value of his phone; that the complainant only identified the phone in court by its features, that these distinctive features were not explained in evidence; that the model of the phone stated in the charge sheet is not what was recovered; no effort was made to amend the charge sheet or to explain the anomaly. Counsel submitted that the

complainant was not trustworthy as the circumstances surrounding his attack leaves a lot to be desired; that the complainant alleged he had been beaten by persons known to him yet he was attacked in a dark place; that he gave two versions as to the value of the phone one being Ksh. 8,500/= stated in the charge sheet and another Ksh. 7,000/= written on the purchase receipt; that why did the complainant give two versions of the purchase price; the allegedly recovered sim card from the testimony of PW2 was not tendered in evidence and this raises doubt as to whether the complainant indeed had a phone; that the defence evidence was not considered, the critical part of the defence testimony is that the appellant was the bar man selling in the bar and how could he have left the bar and returned later; counsel for the appellant faulted the first appellate court in its application of the doctrine of recent possession; it was submitted that the appellant was arrested at 2.00 am in the morning in a house which does not belong to him; at the time of arrest the appellant denied having possession or knowledge of the phone; the person who retrieved the phone from the ceiling was not called to testify and hence exclusive possession of the phone on the part of the appellant was not proved; the evidence shows the phone was not recovered in the physical possession of the appellant and the doctrine of recent possession was inapplicable.

13. The State in opposing the appeal supported conviction and sentence meted on the appellant. It was submitted that all the elements required for the doctrine of recent possession to apply were proved; that PW 2 testified he was shown the recovered phone by the appellant while they were walking home; that PW3 testified the appellant tried to sell him the recovered phone and when he declined, the appellant put the phone in the ceiling; that the serial number of the recovered phone is the same as the serial number of the phone in the purchase receipt; that the variation in model and value of the phone as per the charge sheet and the purchase receipt are minor differences that do dent the prosecution case that was proved to the required standard; that the defence evidence was considered and it did not displace the prosecution case. It was submitted that there were concurrent findings of fact by the two courts below and this Court was urged not to interfere with the findings of fact.

14. We have considered submissions by both learned counsels and note that this is a second appeal which must be confined to points of law. As was stated in ***Kavingo – v – R, (1982) KLR 214***, a second appellate court as a general rule does not interfere with concurrent findings of fact of the two courts below unless they are shown not to have been based on evidence. In ***David Njoroge Macharia – v- R, [2011] eKLR,*** it was stated that under ***Section 361*** **of the** ***Criminal Procedure Code*****:**

> ***"Only matters of law fall for consideration and the court will not normally interfere with concurrent findings of fact by the two courts below unless such findings are based on no evidence, or are based on a misapprehension of the evidence, or the courts below are shown demonstrably to have acted on wrong principles in making the findings. (See also Chemagong vs. Republic (1984) KLR 213)".***

15. In the instant case, the appellant faced a charge of robbery with violence contrary to ***Section 296 (2)*** of the ***Penal Code***. A charge under this section has three essential ingredients that must be proved by the prosecution. In ***Johana Ndungu –v– R, Criminal Appeal No. 116 of 1995***, the ingredients for the charge of robbery with violence were stated to be:

i. ***if the offender is armed with any dangerous or offensive weapon or instrument or***

ii. ***if he is in company with one or more other person or persons or***

iii. ***if, at or immediately before or immediately after the time of robbery, he wounds, beats, strikes or uses any other violence to any person***.

16. We are alive to the requirement that proof of any one of the ingredients of robbery with violence is enough to base a conviction on under ***Section 296 (2)*** of the ***Penal Code***. It is our duty to examine if the two courts below erred in law in finding that the prosecution had proved the essential ingredients of the charge of robbery with violence.

17. The appellant contends that the trial court and the first appellate court did not properly evaluate the evidence and reconcile the contradictions in the testimony of PW1. From the record it is clear that the complainant was not able to positively identify his attackers at the scene of crime; the complainant was attacked in a dark place and it is not in dispute that he did not see the attackers. The complainant alleged that through voice recognition he identified the appellant as one of his attackers. The trial court specifically stated that it was not satisfied the complainant through voice recognition identified the appellant as one of his attackers. The High Court did not disturb this finding by the trial court. We see no fault in the trial court and High Court concurring that the complainant did not through voice recognition identify the appellant. When PW1 went back to Starehe Pub, he did not inform the other patrons that through voice recognition he could identify one of his attackers; the record shows that when PW 1 went back to the pub, he wanted the people there to investigate who followed his way; from this item of evidence, it is clear that the PW 1 did not identify any of his attackers particularly the appellant through visual or voice recognition. We find that the two courts below properly ruled out voice recognition on the part of PW1 as a means of identification of the appellant.

18. The charge sheet indicates that the person(s) who robbed the complainant was armed with dangerous weapons namely *"metal bars"*. We have examined the testimony of the complainant PW1 to determine if an error of law occurred when the High Court drew inferences and conclusions from the facts adduced in evidence. Nowhere in his testimony does PW1 specifically refer to "metal bar" as the dangerous weapon used by the persons who robbed him. In his testimony, PW1 stated he was hit by "something like a metal". No object was produced in court as an exhibit; no decisive evidence was led in connection with the use or existence of *"metal bars"*. Since no evidence was led to prove the existence of the alleged dangerous weapons in the form of "metal bar", the prosecution failed to prove the first limb of the essential ingredient of the charge of robbery with violence.

19. The other issue for us to consider is whether it was proved that the appellant was in the company of another person at the time of the robbery. PW1 testified that he heard footsteps and knew that he had been attacked by two people. What evidence is there to prove beyond reasonable doubt that the complainant PW1 was attacked by two people? PW1 was attacked in the dark; there was no lighting at the scene of crime. The only evidence available is the remark by PW1 "that he heard footsteps going towards the darkness and realized they were two; that he heard one telling the other *"that is Kulman and I am through with him"*. From this testimony, PW 1 never saw two attackers. His testimony on voice recognition was rejected by the two courts below. What then is the probative value of his alleged hearing of footsteps and that led him to conclude there were two attackers? It is our considered view that the two courts below having discounted the evidence on voice recognition, and PW1 not having seen two people attacking him, there is no cogent evidence on record proving that the complainant was attacked by two persons. The second limb for the ingredient of the offence of robbery with violence was not proved to the required standard**.**

20. The third limb for the ingredient of robbery with violence is that the victim was either wounded, beaten, struck or some other form of violence was used on any other person. In the instant case, PW6 Maina Ndirangu, a clinical officer testified that the complainant PW1 suffered grievous harm. We find that the third ingredient for the offence of robbery with violence was proved.

21. A critical issue in this appeal is whether the appellant was properly identified as the person or one of the persons who attacked the complainant. The testimony of PW2, PW3 and PW5 provide the circumstantial evidence that link the appellant to the crime. There is an unbroken and consistent chain of events linking the appellant not only to the scene of crime but to recovery of the stolen mobile phone. PW2 testified that the appellant had shown him a Nokia mobile phone and stated he had snatched it from the complainant; PW3 testified that the appellant tried to sell him a Nokia mobile phone and that when he declined, the appellant placed it in the ceiling board; PW5 testified how the mobile phone was recovered from the ceiling board at the house where the appellant had gone to sleep. Our examination of the evidence on record shows that there was no error on the part

of the two courts below in analysing the evidence and arriving at the conclusion that it was the appellant who attacked the complainant. What is clear is that PW3 was not at Starehe pub where the complainant, the appellant and other patrons were. There is no evidence placing PW3 at the scene of crime; it is inconceivable that PW3 could have had possession of the mobile phone when he was neither at the scene of crime nor at the pub. The inference is that phone could only have been taken to PW3's house by a person who was either at the scene of crime or at the pub. The only person who is linked to the scene of crime and was at the pub is the appellant. This circumstantial evidence on record when weighed against the testimony of PW2 and PW3 lend credence to the finding by the two courts below that the evidence irresistibly points to the appellant as the perpetrator of the offence. The evidence on record does not point to any other person except the appellant. We find that the prosecution had proved its case beyond reasonable doubt and identified the appellant as either the person or one of the persons who attacked the complainant.

22. On the contention that the trial court and the first appellate court erred in shifting the burden of proof to the appellant, we have examined the judgment of the two courts below. The statements in the trial court's judgment that tend to shift the burden of proof are as follows:

> ***"PW2 testified he was walking home with the appellant when the appellant showed him a Nokia phone; that the appellant did not categorically deny this piece of evidence of PW2. In addition, PW3 testified that the appellant came to his house that night at 2.00 am and wanted to sell a phone Nokia to him and when PW 3 declined that is when the appellant put the phone in the ceiling; that the appellant had not rebutted this item of evidence of PW3".***

23. We have examined the context in which the trial magistrate phrased these statements and what emerges is that the trial court was alluding to the shifting evidential burden in a trial particularly when the doctrine of recent possession is applicable. In all criminal trials, whereas the legal burden of proof at all times remains in the prosecution, there is a shifting evidential burden or burden to adduce issue specific evidence especially when the doctrine of recent possession is invoked. In the instant case, we agree that the language and phraseology adopted by the trial court seems to suggest the shifting of the legal burden of proof to the appellant. However, we are comforted that the evidence on record when re-evaluated as a whole by the first appellate court clearly showed that the doctrine of recent possession was applicable and the appellant had been cogently identified as the perpetrator of the offence. It is our considered view that the statements by the trial magistrate when weighed against the evidence on record and ***Section 112*** of the ***Evidence Act*** did not result into a miscarriage of justice or prejudice to the appellant.

24. We note that the prosecution's case is wholly based on circumstantial evidence which is that the appellant was found in possession of the stolen mobile phone and the appellant had shown PW2 and PW3 the stolen mobile phone which was recovered in the house where the appellant was sleeping. In the case of ***Margaret Wamuyu Wairioko –v – R, Cr. Appeal No. 35/2005*** it was stated that circumstantial evidence is very often the best evidence. In the case of ***R v. Kipkering Arap Koske and Another, (1949) 16 EACA 135*** it was stated:

> ***"In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden which never shifts to the party accused".***

25. It is our considered view that the circumstantial inculpatory evidence linking the appellant to the crime are that he was the only person who could have taken the phone to PW3's house; he showed PW2 a Nokia Mobile phone; he showed PW3 a Nokia mobile phone and placed it in the ceiling board; that the Nokia mobile phone recovered from the ceiling board was the same Nokia mobile phone stolen four hours ago; the mobile phone was recovered during the same night of the

attack and there is no other circumstantial evidence pointing to or linking any other person as having been in possession of the phone. We find that the prosecution led cogent evidence to prove the doctrine of recent possession to the required standard. This Court in ***PETER KARIUKI KIBUE VS REPUBLIC***, ***Criminal Appeal No. 21 of 2001,*** at Nairobi (unreported) dealt with a similar matter where the appellant was found in possession of recently stolen items and he failed to give a satisfactory explanation as to how he came by them. This Court stated that:

> ***"The appellant was in law duty bound to offer a reasonable explanation as to how he came to be in possession of the items, otherwise than as the thief or guilty receiver. This is a rebuttable presumption of law based on the provisions of Section 119 of the Evidence Act".***

26. On the whole, we find that the case against the appellant in relation to the charge of robbery with violence contrary to ***Section 296 (2)*** of the ***Penal Code*** was proved beyond reasonable doubt. The two courts below properly applied the doctrine of recent possession. The difference in the model of the phone whether Nokia 3310 or 2310 does not prejudice the appellant since the complainant positively identified the recovered mobile phone as his and being the phone that was stolen during the attack. Being a second appellate court, we are reluctant to delve into issues of credibility of witnesses and we are convinced that the appellant did not place before us reasons to doubt the finding by the two courts below that the complainant was credible. In any event, the testimony of the complainant that he was injured and his mobile phone stolen is corroborated by PW6 who testified on the injuries sustained as well as evidence relating to recovery of the mobile phone. In totality, we find that the prosecution proved its case against the appellant on the charge of robbery with violence contrary to ***Section 296 (2)*** of the ***Penal Code***. We find that this appeal has no merit and is hereby dismissed.

Dated and delivered at Nyeri this 17th day of March, 2015.

ALNASHIR VISRAM

……..……

JUDGE OF APPEAL

M.K. KOOME

……..……

JUDGE OF APPEAL

J. OTIENO - ODEK

…….……

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR