



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CORAM: MWERA, GBM KARIUKI & M'INOTI, J.J.A.**

**CRIMINAL APPEAL NO. 523 OF 2010**

**BETWEEN**

**JOSEPH KAMAU GICHUKI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**(Appeal from a judgment of the High Court of Kenya at Nairobi (Oguk & Osiemo, JJ) dated  
9<sup>th</sup> June, 1998**

**in**

**HCCR.A NOS. 1418 &1419 OF 1993)**

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

On 9<sup>th</sup> September, 1992, at about 12.30 pm **KIRAN SOMAT SHAH** (deceased) walked out of his shop, Shaan Enterprises, in Nyeri Township towards his Toyota Pick-Up Registration No. KZZ 861 parked outside. He had with him in a paper bag some KShs.110, 000/= in cheques and cash which he was going to bank. Before he could get to the vehicle he was accosted by the appellant, **JOSEPH KAMAU GICHUKI** and **JUSTUS KARIUKI GAKURU**. A struggle ensued and the deceased was shot. He staggered back into the shop bleeding and still holding unto his money before collapsing in the hands of his brother, **Vanishad Samad Shah**, who had been left attending the shop. The deceased was rushed to the nearby Nyeri Nursing Home where was pronounced dead on arrival.

Stanley Mathenge Withaka (PW 5) who witnessed the incident told the trial court that while standing outside the office of the Democratic Party (DP) opposite the deceased's shop, he saw the appellant and his accomplice. They made as if to go into the DP office, but at the verandah, they appeared to change their minds and instead stood nearby for about 10-15 minutes. They then crossed the street as the deceased was emerging from his shop and accosted him. They struggled with him as he made towards his parked vehicle. The witness heard gunshots and saw the appellant and his partner holding pistols. The deceased staggered back into his shop while his assailants walked away firing indiscriminately. The witness rang the police and reported the incident. On 18<sup>th</sup> September, 1992, he identified the appellant at an identification parade at Nyeri Police Station.

The appellant was arrested a few minutes after the shooting incident when James Waigwa Kimata (PW 3), who had seen the appellant sweating and running, traced him to a public bathroom where he was squatting. One live ammunition was recovered from the appellant at the police station. James Waigwa Kimata and Francis Kange'the Kanyi (PW4) subsequently identified the appellant as the person who had been hiding in the bathroom.

On 5<sup>th</sup> October, 1992 the appellant and Justus Kariuki Gakuru were jointly charged with attempted robbery with violence contrary to **section 296(2) of the Penal Code**. In addition, the appellant was charged alone with a second count of being in possession of ammunition without holding a valid certificate contrary to **section 4 (1) (a) of the Firearms Act, Cap 114 Laws of Kenya** as read with **Legal Notice No. 179 of 1971**.

After a full trial in which the prosecution called sixteen [16] witnesses, judgment was reserved for 10<sup>th</sup> August, 1993. Unfortunately, the trial magistrate passed away before delivering the judgment, thus compelling a new magistrate to take over the case under **section 200(1) (b) of the Criminal Procedure Code** and to write and deliver the judgment. The appellant and his co-accused were convicted on the first count and sentenced to death as required by the law. On the second count, the appellant was conditionally discharged under **section 35 of the Penal Code**.

Aggrieved by the decision of the learned magistrate, the appellant and his co-accused lodged in the High Court Criminal Appeals Nos. 1418 of 1993 and 1419 of 1993. These appeals were consolidated and heard by Oguk and Osiemo, JJ who on 9<sup>th</sup> June, 1998, allowed the appeal by the appellant's co-accused, Justus Kariuki Gakuru and quashed his conviction and set aside the sentence. They, however, upheld the conviction and sentence of the appellant, thus provoking this second appeal.

The appellant filed a memorandum of appeal on 23<sup>rd</sup> February, 2011 and a supplementary memorandum of appeal on 17<sup>th</sup> October 2012, raising altogether a total of thirteen [13] grounds of appeal. At the hearing of this appeal, Mrs Betty Rashid who appeared for the appellant argued only four grounds of appeal as follows:

1. *the trial court did not comply with the mandatory provisions of section 200 of the Criminal Procedure Code, and therefore the trial was a nullity;*
2. *the judgment of the trial court was a nullity because it was not signed;*
3. *the rank of the prosecutor before the trial court was not disclosed and therefore the appellant was prosecuted by an unqualified person; and*
4. *the High Court erred by not properly or at all re-evaluating the evidence as it was duty bound to do and thereby failed to note obvious and glaring errors in the evidence.*

On the first ground of appeal, Mrs Rashid argued that the trial commenced before M. K. Kabugu, Principle Magistrate but on 10<sup>th</sup> August, 1993, the trial was taken over by J. S. Muchelle Senior Resident Magistrate, who concluded the same and delivered the judgment. Mrs Rashid submitted that the appellant was not informed by the succeeding magistrate that he had a right to demand the re-summoning and re-hearing of any witness. She relied on the case of ***HARRISON MIRUNGU NJUGUNA V R, CR APP. NO. 90 OF 2004***, where this Court stated that failure to inform an accused person of his rights given to him by law is not a procedural irregularity which can be cured under the provisions of **section 382 of the Criminal Procedure Code**. For her part, Mrs T. Ouya, the Senior Assistant Director of Public Prosecutions who appeared for the respondent submitted that **section 200 of the Criminal Procedure Code** was not breached because the succeeding magistrate did not commence the hearing as contemplated by **section 200 (c)** but merely wrote and delivered judgment on the basis of the evidence taken by the previous magistrate.

The record of the trial court shows that the trial started on 18<sup>th</sup> November, 1992, before M. K. Kabugu,

Principal Magistrate. The magistrate heard the case until 21<sup>st</sup> July, 1993, when the defence closed its case and judgement was reserved for 10<sup>th</sup> August, 1993. The record reads as follows on 10<sup>th</sup> August, 1993:

*“10/8/93*

*Before J. S. Mushelle-SRM*

*CP - IP Auma*

*C/Clerk - Gichuki*

*Both Accused present*

*COURT:*

*The trial magistrate passed away on 31/7/93.*

*ORDER*

*Since I have jurisdiction to handle this case, this case to proceed under S. 200(1) (b) CPC.”*

**Section 200 of the Criminal Procedure Code** makes provision for situations where an accused person is convicted on evidence partly recorded by one magistrate and partly by another. The section reads as follows:

*“200. (1) Subject to subsection (3), where a magistrate, after having heard and recorded the whole or part of the evidence in a trial, ceases to exercise jurisdiction therein and is succeeded by another magistrate who has and exercises that jurisdiction, the succeeding magistrate may -*

*(a) deliver a judgment that has been written and signed but not delivered by his predecessor; or*

*(b) where judgment has not been written and signed by his predecessor, act on the evidence recorded by that predecessor, or re-summon the witnesses and recommence the trial.*

*(2) Where a magistrate who has delivered judgment in a case but has not passed sentence, ceases to exercise jurisdiction therein and is succeeded by a magistrate who has and exercises that jurisdiction, the succeeding magistrate may pass sentence or make any order that he could have made if he had delivered judgment.*

*(3) Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be re-summoned and reheard and the succeeding magistrate shall inform the accused person of that right*

*(4) Where an accused person is convicted upon evidence that was not wholly recorded by the convicting magistrate, the High Court may, if it is of the opinion that the accused person was materially prejudiced thereby, set aside the conviction and may order a new trial.”*

On 10<sup>th</sup> August, 1993, J S Mushelle who took over the trial had two options open to him under **section**

**200 (1) (b) of the Code.** He could have acted on the evidence recorded by his deceased predecessor and simply written the judgment, or he could have re-summoned the witnesses and recommenced the trial. He opted for the former option.

This Court has previously held that **section 200 of the Criminal Procedure Code** should be invoked sparingly and only in cases where the ends of justice will be defeated if a succeeding magistrate does not continue a trial commenced by his predecessor. Some of the considerations to be borne in mind before invoking **section 200** include whether it is convenient to commence the trial *de novo*, how far the trial had proceeded, availability of witnesses who had already testified, possible loss of memory by the witnesses, the time that had lapsed since the commencement of the trial and the prejudice likely to be suffered by either the prosecution or the accused.

In ***NYABUTO & ANOTHER V REPUBLIC, (2009) KLR 409***, the appellants had been tried before a judge of the High Court who, after having fully heard the case and received the opinion of assessors, reserved the judgment to be delivered on notice. However, he died before he had delivered the judgment. The case was taken over by another judge who acted on the evidence recorded by the late judge and convicted the appellants and sentenced them to death. The appellants appealed to this Court on, among others, the ground that the trial judge erred in writing and delivering judgment without having heard any of the witnesses and upon evidence wholly recorded by another judge. In dismissing the appeal, this Court stated as follows regarding **section 200(1) (b) of the Criminal Procedure Code**:

*“It is plain that the late Kaburu Bauni J died after he had heard and recorded the whole of the evidence in the trial. By dint of section 200(1) (b) of the Criminal Procedure Code a succeeding judge may act on the evidence recorded wholly by his predecessor. However, section 200 aforesaid is a provision of the law which is to be used very sparingly and only in cases where the exigencies of the circumstances, not only are likely but will defeat the ends of justice if a succeeding judge does not, or is not allowed to adopt and continue a criminal trial started by a predecessor owing to the latter becoming unavailable to complete the trial. See *Ndegwa vs R (1985) KLR 535*. In this case the trial judge passed on after having fully recorded evidence from 7 witnesses and from the two appellants and had in fact summed up to the assessors. The trial, moreover, was not a short one but a protracted one which had taken over five years to conclude. The passage of time militated against the trial being started *de novo*. Though prosecution witnesses might have been available locally, re-hearing might have prejudiced the prosecution, and possibly also, the appellant because of accountable loss of memory on the part of either the prosecution witnesses or the appellants. Musinga J in our view acted in an attempt to dispatch justice speedily and cannot be faulted because the law permitted him to do so. It cannot be lost in mind that public policy demands that justice be swiftly concluded.”*

In the present appeal, we find that the succeeding magistrate acted properly under **section 200(1) (b) of the Criminal Procedure Code** and that the circumstances of the case fully justified that approach. There was no violation of **section 200 (3) of the Criminal Procedure Code** and that the appellant was not prejudiced so as to warrant an order for re-trial under **section 200 (4) of the Criminal Procedure Code**.

Before we leave this point, we would like to observe that the case of ***HARRISON MIRUNGU NJUGUNA V R, (supra)*** relied upon by the appellant is not a relevant authority in the present appeal. That case involved amendment of a charge under **section 214 of the Criminal Procedure Code**. The Code requires that once a charge is amended, the accused person should be called upon to plead to the amended charge and further entitles him to demand the recall of witnesses who have already testified to give their evidence afresh or to be further cross examined. In that case the charge was amended but the accused person was not called upon to plead to the amended charge. This Court held, correctly in our view, that the trial was substantially defective. The effect of amending the charge was to alter the case that the accused person had to meet. Hence, he had to plead to the amended charge afresh and had to be informed of the right to re-call witnesses to testify on the charge as amended and to be cross-examined.

The second ground of appeal was that the judgment of the trial court was a nullity because it was not

signed. Mrs Rashid relied on **section 169(1) of the Criminal Procedure Code** which requires, among other things, that the judgment shall be dated and signed by the presiding officer in open court at the time of pronouncing it. We called for the original record of the trial court and conformed, in the presence of leaned counsel for the appellant and the respondent that indeed, the judgment was duly signed by the trial magistrate and that he had appended the same signature to his order for forfeiture of the recovered bullet to the State, immediately after the judgment. Accordingly, this ground of appeal was abandoned.

The third ground of appeal was that the rank of the prosecutor was not disclosed in the proceedings and, therefore, the appellant could have been prosecuted by an unqualified person. Before 2007, **section 85 (2) of the Criminal Procedure Code** provided as follows:

*“The Attorney General, by writing under his hand, may appoint any advocate of the High Court or person employed in the public service, not being a police officer below the rank of Assistant Inspector of Police, to be a public prosecutor for the purposes of any case”.*

By **Act No 7 of 2007, section 85 (2)** was amended to delete the words **“not being a police officer below the rank of Assistant Inspector of police”**. That amendment was a reaction to a number of cases where the courts in Kenya had nullified proceedings and acquitted accused persons whose prosecution was conducted by police officers below the rank of assistant inspector. (See for example, ***ELIREMA & ANOTHER V R, (2003) KLR 537***).

In the present appeal, this ground of appeal is a mere red herring and has no merit. The record of the court leaves no doubt that Chief Inspector Kimanzi prosecuted the case from the commencement to conclusion. When the appellant took his plea on 5<sup>th</sup> October, 1992, the record shows that Inspector of Police Auma was present for the prosecution. Chief Inspector Kimanzi was the prosecutor on 18<sup>th</sup> November, 1992 when the prosecution opened its case against the appellant and his then co-accused, and presented the evidence of PW1, PW2, and PW3. When the hearing resumed on 19<sup>th</sup> November, 1992, for further cross-examination of PW3 and the taking of the evidence of PW4 and PW5, the record for that day starts with the words, *“coram as before”*, meaning that the proceedings were taking place before or in the presence of the same people that were present during the last occasion. On 15<sup>th</sup> January, 1993, when the court took the evidence of PW6, PW7, PW8, PW9, PW10, PW11 and PW12, the record once again starts by the words, *“coram as before”*.

The court record on 9<sup>th</sup> March, 1993, indicates that when the case was called out, Superintendent of Police, Mbuvi was present in court for the prosecution. S.P. Mbuvi is recorded telling the court that *“the matter is conducted by Chief Inspector Kimanzi”* and applying for adjournment as Chief Inspector Kimanzi was not present. The trial resumed on 6<sup>th</sup> May, 1993, when PW13 testified. As before, the record of the court started with the words *“coram as before”*. PW 14 and PW15 testified on 1<sup>st</sup> July, 1993, and once more the record opened by noting that coram was as before. The prosecution closed its case with the evidence of PW16 on 2<sup>nd</sup> July, 1993, when the coram was again recorded to have been as before. The defence was heard on 16<sup>th</sup> and 21<sup>st</sup> July, 1993, and on both days, the record shows coram to have been as before.

There is no indication who was the prosecutor on 3<sup>rd</sup> November, 1993, when the judgment was read. All that is noted on the record is that there was a prosecutor who presented the previous records of the appellant and his co-accused before sentencing. In our opinion, the omission to record who the prosecutor was on the date of the judgment cannot vitiate the proceedings on the basis of **section 85(2) of the Criminal Procedure Code** as it then stood. Even if we assume that the prosecutor on the date of judgment was not Chief Inspector Kimanzi, the prosecution had been effectively concluded by Chief Inspector Kimanzi.

This Court has previously held that even if a prosecutor who was not qualified under **section 85(2) of the Criminal Procedure Code** as it stood before the 2007 amendment participated in part of the proceedings, that in itself would not render the trial a nullity. In ***PETER KIHIA MWANIKI V R, CR APP. NO. 280 OF 2005***, the Court expressed itself as follows:

*“In the matter before us, Cpl Osiemo, who by virtue of the aforesaid provision (S. 85(2)) was not qualified to prosecute the appellant’s case, did not conduct the whole trial. He only participated in leading the evidence of one prosecution witness. What would be the legal effect of his aforesaid action? The invalidity of what he did may only properly affect the proceedings relating to the time he prosecuted. In our view the invalidity should not extend to what was done according to law. We think that, as submitted by Mrs Murungi, the evidence of the fourth prosecution witness can be expunged from the record without doing violence to the rest of the proceedings.”*

We have stated that the record is clear enough that the entire trial was conducted by Chief Inspector Kimanzi, a qualified prosecutor within the meaning of **section 85(2)** as it then stood. This ground is absolutely without merit.

The last ground of appeal was that the first appellate court did not properly or at all re-evaluate the evidence as it was duty bound to do and it thereby failed to note obvious and glaring errors in the evidence. Under this ground, Mrs Rashid urged three issues, namely violation of the appellant’s constitutional right to be brought to court within fourteen [14] days after his arrest, the unsafe identification of the appellant and lastly, alleged contradiction of prosecution witnesses.

On the first issue, Mrs Rashid argued that if the Court had properly re-evaluated the evidence, it could have noticed that the appellant was arrested on 9<sup>th</sup> September, 1992 and was not brought to court until 5<sup>th</sup> October, 1992, in breach of his rights under the former constitution. The issue of violation of the appellant’s rights was not raised before the trial and the first appellate courts; and even before us it was raised rather obliquely as an issue of re-evaluation of evidence. In **MORRIS NGACHA NJUGUNA & 3 OTHERS V R, CR NO. 232 OF 2006**, the issue of violation of the constitutional rights of one of the appellants was raised for the first time in this Court. The Court expressed itself as follows:

*“If the 2<sup>nd</sup> appellant felt his rights under the constitution had been violated, the best course of action would have been to file an appropriate application under the provisions of the constitution to enable the relevant court investigate the issue. As the matter stands now, the issue having not been raised in the two courts below, we can only base our decision on the material before us. The material is inadequate and on that basis it cannot be said that the 2<sup>nd</sup> appellant’s rights under S. 72(3) (b) of the constitution were breached.”*

(See also **LYDIAH NJERI MBARA V R, CR NO. 221 OF 2007**).

The extent to which the validity of a trial is affected by the violation of an appellant’s constitutional rights, in particular the right to be produced in court within the prescribed period, has been an issue of great controversy in our jurisdiction. On the one hand is a line of decisions that have held that a trial preceded by such a violation is null and void. (See for example **ALBANUS MWASIA MUTUA V R, (CR NO. 120 OF 2004** and **GERARD MACHARIA GITHUKU V R, CR NO. 119 OF 2004**. On the other hand are decisions which perceive such violation as one that should be properly remedied by an award of damages, without affecting the validity of the trial. (See for example **J.K. V R, CR NO. 83 OF 2007, ELDORET** and **SAMUEL NDUNGU KAMAU & ANOTHER V R, CR NO. 223 OF 2006**. The most comprehensive decision of this court to have attempted to address the divergent views is **JULIUS KAMAU MBUGUA V R, CR NO. 50 OF 2008**. In an opinion rendered on 8<sup>th</sup> October, 2010, this Court undertook a thorough review of previous decisions of the courts in Kenya as well as relevant or related decisions from other jurisdictions. The court noted that the first line of decisions were peculiar to our jurisdiction and had no parallel in international jurisprudence. The Court concluded in the following terms:

*“In our view, it is not the duty of a trial court or an appellate court dealing with an appeal from a trial court to go beyond the scope of the criminal trial and adjudicate on the violations of the right to personal liberty which happened before the criminal court assumed jurisdiction over the accused. However, the trial court can take cognizance of*

*such pre-charge violation of personal liberty, if the violation is linked to or affects the criminal process. As an illustration, where the prolonged detention of a suspect in police custody before being charged affects the fairness of the ensuing trial, e.g. where an accused has suffered trial-related prejudice as a result of death of an important defence witness in the meantime, or the witness has lost memory, in such cases, the trial court could give the appropriate protection-like an acquittal. Otherwise the breach of a right to personal liberty of a suspect by police per se is merely a breach of a civil right, though constitutional in nature, which is beyond the statutory duty of a criminal court and which is by section 72(6) expressly compensatable by damages.”*

We respectfully agree. In addition, as this issue was never raised before the trial and first appellate courts, we find no merit in this argument.

Next Mrs Rashid challenged the evidence of identification of the appellant. She contended that the three witnesses, namely PW3, PW4 and PW5 who identified the appellant had seen him only in a flash and may have been mistaken. She relied on the decision of this Court in ***JOEL SAIYANGA OLE MWANIKI & ANOTHER V R, CR NO. 229 OF 2003***, to emphasize that great care is needed to eliminate the possibility of an error or mistake before a conviction can be based on visual identification.

We are satisfied that the High Court comprehensively re-evaluated the evidence and addressed the issue of identification of the appellant. The court noted that the incident took place in broad daylight. It was witnessed by PW 5 who had seen the appellant and his co-accused standing near the DP offices for 10 to 15 minutes. He saw the two cross the street and accost the deceased. He saw them holding pistols after the shooting. He saw the two walking away and shooting in the air. The court concluded as follows:

*“We think the evidence of Mathenge (PW5) cannot be lightly taken, as in our view, he had clearly seen the assailants of the deceased in good light and within a considerable period of time. He subsequently identified both appellants at identification parades.”*

The Court went even further to assure itself that there was no mistake in the identification of the appellant. The learned judges aptly stated:

*“It is true, as was stated by the appellants in their submissions, that a witness may be honest as was Mathenge (PW5) in this case, and yet be mistaken in his identification of the complainant’s assailants. Even though the trial magistrate and ourselves were greatly impressed by the testimony of Mathenge, we would, in view of the seriousness of the offence that was facing the appellants, look for corroboration, although in law, conviction can still safely be based on the testimony of a single witness.”*

The Court then considered the circumstances of the appellant’s arrest, which it noted was quite relevant and provided the necessary corroboration of the testimony of PW5. The Court specifically considered the fact that PW5 had seen the direction which the appellant and his co-accused had taken before they were pursued by the police; that the appellant was seen by PW3 running and later found squatting in a bathroom from which he was arrested; that PW4 also saw the appellant in the bathroom and witnessed his arrest and that PW7 arrested the appellant as testified by PW4. The Court concluded that the conduct and circumstances of the arrest of the appellant was consistent with the testimony of PW5 who stated that the assailants of the deceased had escaped to the direction from which the appellant was arrested. The recovery of a bullet from the appellant was also noted as reinforcing the evidence of PW5.

On the conduct of the identification parade in which the appellant was identified, we note that the circumstances in ***JOEL SAIYANGA OLE MWANIKI & ANOTHER V R, (Supra)*** which the appellant relied upon, were completely different from the present appeal. In that case no identification parade had been conducted. After the appellant was arrested, the Court noted, the police merely called witnesses to go and informally identify the person they had arrested. The prosecution did not adduce any evidence of an identification parade, even when offered the opportunity to do so, prompting this Court to conclude:

*“In our view, the deficiency that emerged from the prosecution case as a result of failure to tender identification parade evidence was such that the trial court should have concluded that the failure to adduce identification parade evidence by the prosecution was because such evidence could have weakened the prosecution case.”*

In the present appeal, PW14 tendered evidence of the conduct of the identification parade, on the basis of which the trial court found the parade to have been properly conducted. The High Court re-evaluated and analysed the evidence touching specifically on the identification parade and concluded:

*“It was the contention of the appellants that the said parades were not properly conducted by I.P. David Murunga (PW14). We have scrutinized the evidence of the said police officer with regard to the conduct of the said parades, and with respect, we find no fault whatsoever in the manner in which he conducted the said parades. We are satisfied that the two separate parades at which the 1<sup>st</sup> and 2<sup>nd</sup> (appellants were) identified, were properly carried out as required by the Force Standing Orders. In our view, the learned magistrate was entitled to rely upon these parades and to consider the outcome thereof along with the evidence of PW5 who was the sole eye witness to the incident.”*

This Court has stated many times that it will pay homage to concurrent findings of fact made by the two courts below unless such findings are based on no evidence at all or on a perversion of the evidence, or unless on the totality of the evidence, no reasonable tribunal properly directing itself would arrive at such findings. (See **ADAN MURAGURI MUNGARA V R, CR NO. 347 OF 2007, NYERI**). We do not see any justification in taking a different approach in this appeal. We find this issue too, lacks merit.

The last issue which Mrs Rashid argued, and which is not again borne out by the record is the alleged contradiction in the evidence of PW7 and that of PW8. According to Mrs Rashid, PW7, PC Julius Irungu told the trial court that when he arrested the appellant, he did not recover anything from him. However, PW 8, Sgt Josiah Kiplagat, informed the court that he recovered live ammunition of 7.65 mm caliber from the accused at Nyeri Police Station. We agree with Mrs Ouya that a proper reading and analysis of the evidence of the two witnesses does not bear out the contradiction alleged and that both the trial court and the first appellate court came to the right decision. PW7, on cross examination stated that he had done a “quick search” on the accused at the time of arrest and did not recover anything from him. On his part, the evidence of PW8 was that before he booked the appellant at the station, he conducted “a thorough search” on him from which he recovered the ammunition which he produced in court as an exhibit. We do not find any merit in this issue either.

We have come to the conclusion that the appellant was properly convicted of the offences with which he was charged. We do not find any merit in this appeal which, we accordingly dismiss and uphold the conviction and sentence.

**Dated and delivered at Nairobi this 26<sup>th</sup> day of July, 2013.**

J. W. MWERA

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JUDGE OF APPEAL

G. B. M. KARIUKI

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR