REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI
Criminal Appeal 260 of 2005

RAYMOND KIPTOO ROTICH …..…….…… APPELLANT

AND

REPUBLIC ……..…… RESPONDENT

(Appeal from a conviction and sentence of the High Court of Kenya at Nairobi (Rawal, J) dated 12th July, 2005

in

H.C. Cr. Case No. 50 of 2003)

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JUDGMENT OF THE COURT

The appellant, Raymond Kiptoo Rotich, was on 20th November, 1999, a police constable driver with Kenya Police. Inspector Joseph Muguna (PW 11) said in evidence that at the relevant time, the appellant was attached to Pangani Flying Squad but based at Tigoni Flying Squad where he was housed while his work station was Pangani. In an information dated 20th July, 2000, the Attorney General informed the Court that the appellant was charged with the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code. The particulars of that offence were that on 20th day of November, 1999 at Kenchic along Tigoni - Karuri road in Kiambu District of the Central Province, he murdered David Kamau Gakere. He pleaded not guilty and the case first started before the superior court (Ombija, J) but after hearing two witnesses, the learned Judge disqualified himself from hearing the case and the hearing started afresh before another judge, (Rawal, J) who after full hearing found the appellant guilty of the offence, convicted him and sentenced him to death. The appellant felt dissatisfied with that conviction and naturally with the sentence also and hence this appeal before us which was first based on seven grounds filed by the appellant in person but which thereafter proceeded on the first ground filed by the appellant in person and on eight other grounds filed by the appellant's learned counsel by way of supplementary memorandum of appeal. The eight grounds in the supplementary grounds of appeal which formed the backbone of the appellant's case on appeal were:

"**1. That the learned trial Judge erred in law by allowing the admission of evidence which was wrongly produced and allowing comments which amounted to opinion evidence to the prejudice of the appellant.**

2. That the learned trial Judge erred in law by admitting and holding that the evidence of identification was positive, free from error safe and met the required legal standards.

3. That the learned trial Judge erred in law by holding that the prosecution had discharged its legal burden and proved their case beyond reasonable doubt.

4. That the learned trial Judge failed to consider the plausible defence raised by the appellant.

5. That the learned trial Judge erred in law by holding that the circumstantial evidence adduced by the prosecution met the required legal standards.

6. That the appellant's fundamental rights to affair (sic) trial and protection of the law under section 72 3(b) (sic) and section 77 of the Constitution were violated.

7. That the learned Judge erred in law by convicting the appellant on mere suspicion which was not a sufficient ground to convict the appellant for murder.

8. That the learned trial Judge erred in law by holding that the damaged fired bullet was fired by the appellant without any iota of evidence to support this finding."

The first ground in the original memorandum of appeal which was incorporated in the submission by Mr. Ondieki, the learned counsel for the appellant, reads:-

"**1. That the learned Judge erred in law by failing to find that the prosecution denied me a defence by contravening provision of section 77(2) (c) Constitution (sic) of Kenya when they failed to avail requested O.B. from Embakasi Police Station dated Octomber (sic)/September 1999."**

In his submissions in support of the appeal, Mr. Ondieki cited in summary the ingredients of the charge of murder and having done so, he contended that in this case there was no proof of malice aforethought which is a necessary ingredient that needs to be proved before a suspect is convicted of murder. He further maintained that the learned Judge in applying **section 77** of the Evidence Act, as amended, to allow non-makers of documents on expert opinion, did allow the same non-makers to make comments on the matters covered by the documents. He cited the production of the post-mortem report by a doctor who did not examine the deceased. That, he said, was prejudicial to the appellant.

On identification and particularly on identification parade, the learned counsel contended that it should not have been considered against the appellant as the appellant had consistently maintained both at the parade stage and in his defence that the identifying witness was coached. On circumstantial evidence, he submitted there were so many contradictions in the prosecution evidence that the required unbroken chain in the evidence establishing circumstantial evidence was lacking. He pointed out in particular the evidence of the ballistic expert and that of the police officer who took the alleged murder weapon for examination. He wound up his submissions by maintaining that the contradiction rendering the circumstantial evidence untenable extended to the evidence as to the time at which the alleged offence took place.

Mr. Kaigai, the learned Senior State Counsel, on the other hand while conceding that malice aforethought was not proved to the standard required in law and therefore settling for a substitution of the offence to manslaughter, felt however, that other than the question of malice aforethought, all other ingredients were properly proved and the offence of manslaughter was proved beyond reasonable doubt.

This is a first appeal. We are therefore enjoined to analyse the evidence on record afresh, evaluate it and come to our own independent conclusion but always remembering that the trial court had the advantage of seeing the witnesses' demeanour and hearing the witnesses as they gave evidence and making allowance for that – see the well known case of **Okeno vs. Republic (1972) EA 32**.

The facts of the entire case are brief and straight forward. The deceased, David Kamau Gakere, was, immediately prior to his death, an employee of William Thomas Lloyd Brown (PW 3), a tea farmer at

Tigoni area near Limuru. Francis Gichuhi Mwangi (PW 1) was also working for Mr. Brown at Tigoni. At about 7.30 p.m. they went to a place where there was a ceremony. They met Godfrey Maina (PW 4) and Aman Muthumbi (PW 6) at that ceremony. They stayed at the ceremony till sometime after 9.00 p.m. when all the four of them left the ceremony. It is not clear as to the exact time when they left the ceremony as Francis Gichuhi Mwangi says they left at 9.00 p.m. whereas Godfrey Maina says they left at 9.45 p.m. and Aman Muthumbi puts the time at 9.50 p.m. Suffice it to say they left the ceremony at between 9.00 p.m. and 9.50 p.m. On the way home, they saw a vehicle but apparently they did not identify it by registration. The vehicle passed them from infront, but after going a short distance, it made a u-turn and this time it was following them. They heard the sound of a gun shot. Two of them ran to various directions but Francis Gichuhi Mwangi, Geoffrey Maina and Aman Muthumbi heard the deceased screaming in agony. Francis heard him screaming that he was dead. Godfrey heard him shouting that they had killed him whereas Aman Muthumbi heard the deceased shouting saying "*Oui Oui I am dead*." Francis Gichuhi Mwangi did not run away. He approached the vehicle and asked the driver what wrong they had done and if they had done any wrong, then they should be taken to police station. As Francis was talking, he (Francis) observed that there were some other people in the vehicle. The driver to whom he was talking beat him up and ordered him to get into the boot of that vehicle. He did so and Godfrey witnessed the same from far as he was hiding. In the meantime, the deceased ran away and none of his colleagues including Francis knew where he ran to. Francis was taken in the vehicle to Tigoni Police Station and was taken to the booking officer by the driver of that vehicle. He was asked a few questions and then released. He said he was able to see the driver clearly once they were at the police station.

Faith Muthoni (PW 2) was a girlfriend of the appellant. She was working at Karuri Police Station canteen. On the night of 20th November, 1999, the appellant went to the canteen and asked her to prepare food for him. She did so and thereafter at 11.00 p.m., she accompanied the appellant to Tigoni where the appellant was staying. The appellant was the driver, according to her evidence, but although she was in the vehicle, she was drunk and was asleep and she did not know at what time they reached home, but she remembered that when they reached home, the appellant told her that while he was driving home, some people stopped him at the road. Godfrey Maina who had gone into hiding in fear, after watching Francis being put into the vehicle's boot and driven away, ran home. He found Francis's brother and told him what had happened to Francis. They returned to the place where the ceremony was but the deceased was not there. They went back home and slept. Next day was a Sunday. They went to the deceased's friends' houses but the deceased was not in any of the houses. As they were contemplating the next action to take in tracing him, they heard that he had been found. They went and found him dead but did not check the injuries as they were waiting for the police to arrive at the scene. Aman Muthumbi also saw the deceased on the same Sunday when he was dead.

That same Sunday morning on 21st November 1999, Chief Inspector George Bundi, the then Deputy OCS Tigoni Police Station reported on duty at 6.30 a.m. and after conducting morning call up, he started a discussion with his officers on duty. As a result of what they told him about the activities of the previous night including that of Francis being taken to the police station by the appellant, and being released after interrogation, he inquired whether these activities were booked but it transpired that they were not booked. At 11 a.m. a report was made to his police station that a dead body was found lying near Kenchic not far from the police station. He rushed to the scene with his personnel. He found members of the public including the news media personnel. They were observing the dead body of the deceased. It had two wounds at the back which looked like gun shots. He, together with his personnel, took the body to the mortuary and handed the investigation to the Criminal Investigation Department. At about 2.00 p.m. the same day, i.e. Sunday 21st November, 1999, the appellant went to Inspector Joseph Muguna seeking to change the number plates of his vehicle. The vehicle the appellant was driving was registration number KAD 810K. Inspector Muguna advised the appellant to go to the CID Headquarters as he (Muguna) did not have any spare number plates. Immediately thereafter, Inspector Muguna left for other duties but on his return, he found the appellant's vehicle now had KAJ 145J as its registration number. On enquiring, he learnt that the appellant was seen carrying the new number plates from his (Muguna's) office. The normal procedure for change of number plates by police officers is to get permission to do so from the CID Headquarters and that is why Inspector Muguna was advising the appellant to follow the rules. The body of the deceased was examined by Dr. Olumbe who prepared the post-mortem report on his findings. Maurice Chege Wanyama (PW 5) together with the deceased's

brother identified the body of the deceased to Dr. Olumbe. By the time the case came up for hearing, the prosecution informed the court that Dr. Olumbe was out of jurisdiction as he was in Australia. The prosecution sought to have the same post mortem report produced by Dr. Jane Wasike (PW 9). Mr. Abwao, the learned counsel then representing the appellant, did not object to that application and Jane Wasike produced the post mortem examination report. The cause of death, according to the report, was gun shot wound to the chest. That post mortem examination report was produced as exhibit (2). Inspector John Nzomo (PW 8) was attached to CID Headquarters Armoury section. He confirmed in evidence that on 2nd November 1999, a firearm ceska serial number F 3670 was issued to No. 57244 Pc Raymond Rotich, the appellant. He produced the same gun in evidence.

On 26th November, 1999, Chief Inspector Boniface Mwaura was requested to and did conduct an identification parade in which the appellant consented to take part and did take part as one of the members of the parade. Francis was the witness at that parade. The appellant was pointed out at the parade by Francis. On 30th November 1999, Chief Inspector Peter Ngugi (PW 7) escorted the appellant to police surgeon for assessment of age and mental status. The appellant was examined and a P3 form filed in that respect. On 24th December 1999, Cpl. Venaazio Njeru (PW 14) escorted a firearm make ceska serial No. F 3670 and 19 rounds of 9 mm live ammunition and a used bullet head plus an already prepared exhibit memo form to a ballistic expert in Nairobi. The firearm, ammunition plus the used bullet head were examined by one William Lubanga but who, as at the time of the trial, had retired and was untraceable. The prosecution again applied for the report to be produced under **section 77** of the Evidence Act and as Mr. Abwao had no objection, the ballistic report was produced by Lawrence Nthiwa (PW 10), who was also an arms examiner attached to the Firearms Laboratory but did not himself examine the exhibits. The opinion of the firearms examiner was that ceska pistol S/N F 3670 was a firearm under the Firearms Act and the ammunition plus the bullet head were ammunitions under the Firearms Act. The report also showed that the fired bullet head was fired from the ceska pistol S/N F 3670. The appellant was arrested on 25th November, 1999 and was thereafter arraigned in court.

In his defence before the trial court, the appellant gave sworn evidence in which he stated in brief that he was a police driver. On the material day, he was at the police canteen for supper and was there upto 11.00 p.m. and proceeded to Tigoni Police Lines where he was living. He was with Faith Muthoni. He did not meet anyone on the way between the canteen and his house and he did not shoot anybody. He admitted that he had been provided with a firearm by the police force, but he did not stop anywhere on the way nor did he perform any police duties. He went home straight. He further explained that of the ammunition he was given by the police, he used some in two shootouts involving other criminals. On identification parade, his evidence was that the witness was watching him "from top" when he was being taken to the parade. He stated that he changed the number plates of the vehicle he had because the vehicle had been involved in many shoot outs. There was on the same date the deceased was killed a shoot out about 3 to 4 km from the place the body of the deceased was found. On cross-examination, he was unable to recall the serial number of the ceska pistol he was given by the police force but on being referred to an exhibit, he said it was serial No. F 3670. He admitted that he had the firearm on 20th November, 1999. He did not however agree with the opinion of the ballistic expert that the bullet had been fired from the same gun.

The above were the salient facts of the entire case as far as we could decipher from the record. Having perused the same, we do agree with Mr. Ondieki, the learned counsel for the appellant, that the evidence that was availed by the prosecution was largely circumstantial. It was not in doubt and was not contested that the deceased died and that he died of bullet wounds. However, nobody gave evidence that he saw the appellant shoot the deceased. The law as to the principles to be applied by the courts when considering a case based purely or to some extent on circumstantial evidence is now well settled. In the case of **KIPKERING ARAP KOSKEI AND ANOTHER VS. R. [1949] 16 EACA 135,** the predecessor to this court held, *inter alia*, as follows:

"**That in order to justify, on circumstantial evidence, 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, and 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 always on the prosecution and never shifts to the accused."

It was further stated in **Pravin Singh Dhalay v. R. – Cr. A. 10/97 (unreported)** following **Teper V Reginam (1952) AC 480** that:

"**It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."**

See also **Simoni Musoke v. R**. **[1958] EA 715**.

It is also the law that in order for the court to rely on the circumstantial evidence as a basis for conviction, the chain of that evidence must not be broken. This is common sense for if the chain of that evidence is broken, then the evidence could give rise to a different reasonable hypothesis.

In this case, as we have stated, the deceased died from bullet wounds. This was the opinion of the ballistic expert and that opinion was not in any way challenged. The next question that we must resolve is who inflicted the gun shot wounds that caused the death of the deceased? Francis Gichuhi Mwangi, Godfrey Maina and Aman Muthumbi all agree on certain happenings in their evidence. These were that they were together at a place where there was a ceremony and as they were walking home from that place, a vehicle approached them, passed them, and then after a short distance, that vehicle made a u-turn and drove towards them from behind; a gun shot came from that vehicle and Godfrey Maina and Aman Muthumbi ran away. The deceased was shot and all the three witnesses heard him cry in agony. At that time, none of them knew the driver of the vehicle nor did any one of them read the number plate of the vehicle and if things had stopped there, it might have been difficult to know who had shot at them.

Fortunately for justice, however, matters did not end there. Scaring as it was, Francis Gichuhi Mwangi gathered courage and went to the driver of the vehicle. Further, as he went to the driver of the vehicle, Aman Muthumbi was able to witness the events from his hiding place and he saw the driver who beat up Francis and put him into the boot of the vehicle. The appellant admits that he drove on that road that night. Faith Muthoni, his girlfriend, though drunk and asleep in the vehicle which was driven by the appellant, stated that the appellant told her that some people had stopped him on the road but the appellant did not tell her why they had stopped him. Francis who was put in the boot of the appellant's vehicle was taken to the police station and was after interrogation released. He said the appellant went with him to the police station after he was removed from the boot and that is when and where he clearly saw the appellant. It cannot escape one's observation that this witness (Francis) was with the appellant right from the time the gun shot came from the appellant's vehicle upto the time they were at the police station. It is also of importance that his question to the appellant immediately the shooting took place, as to what they had done and if they had done anything, why not take them to police, was not challenged. It is important because it was an immediate reaction to the shooting - see **section 6** of the Evidence Act. When this evidence is considered against the evidence of the appellant and that of Faith Muthoni that the only other person in the vehicle where the shots came from was Faith Muthoni who had no gun, then the only inference that is inescapable is that the person who was seen by Francis and later identified at a well organized parade by the same Francis was the appellant and as he was the only other person in that vehicle where the gun shot came from, he must have been the person having the gun from which the shot came. Mr. Ondieki discredits the parade on grounds that the appellant said Francis had been coached before hand, but that statement must be considered against what the appellant was recorded to have stated that the parade was properly conducted and he signed the parade form. The allegation that the witness was coached lacks probative value as no allegation was made as to who coached him. We feel that it was rightly rejected by the trial court, and we, as well, reject it. As we have stated, it is clear from the evidence on record that the only inference that could be made was that the appellant was the only person in that vehicle that had a firearm and he is the only person who could have used the firearm.

The next question that comes to mind is which firearm was the appellant having that night, it being clear that he was the only person in that vehicle who had a firearm from which a shot was fired. Inspector John

Nzomo's evidence is that on 2nd November 1999, he had issued the appellant with a firearm ceska pistol serial No. F 3670. The appellant in his evidence in cross-examination at first said he could not recall the pistol's serial number, but when shown an exhibit, he admitted that it was number F 3670 issued to him for his duties. Was this gun involved in the incident? The appellant says this firearm was recovered from him by police on 25th November, 1999 when he was arrested. On 24th December, 1999 this same ceska pistol serial No. F 3670 together with 19 rounds of ammunition, 9 mm live ammunition and a used bullet head were taken to ballistic expert. The expert's opinion was that the bullet head had been fired from the same gun. Thus, the appellant had a gun in the night of 20th November 1999 and was with it in a vehicle from which Francis, Godfrey and Aman heard gun shot. That gun was the gun given to him earlier on 2nd November, 1999 by Inspector John Nzomo and it is from that gun that the bullet head was fired. The superior court found that the bullet head was found in the body of the deceased. That has not been challenged either. The totality of all this is that only one inference could be drawn from the entire evidence and that is that the appellant is the person who fired the gun shot that caused the death of the deceased.

Mr. Ondieki has raised several questions on the standard of proof in this case particularly the effect of various contradictory evidence in the case. First was that the time as stated by the prosecution witness could not tally. In our view, the times that were mentioned by the prosecution witnesses could only have been estimated times. None claimed to have looked at his or her watch so as to vouch for the accuracy of the time. In any case, Francis, Godfrey and Aman mentioned times between 9.00 p.m. and 9.50 p.m. We do not see much contradiction in their evidence when we consider that these were estimated times. Faith talked of 11.00 p.m. We have to accept her evidence with a hindsight, first, that she was almost being declared hostile and secondly, that she admitted that she was drunk and was asleep most of the journey from the canteen to the appellant's house. We thus see nothing that turns on the contradiction as to the time of the event.

The second point raised by Mr. Ondieki was that the trial court should not have allowed comments by the witnesses who produced the reports which they did not make. We agree that that should not happen, but in this case, other than the prosecution telling the court that it wanted to call witnesses to comment and produce these reports, we have not been shown any independent comment made by those witnesses that adversely affected the original reports by the experts or that was a departure from the reports. We attach no importance to that submission.

Having come to the conclusion that the appellant caused the death of the deceased, the next aspect we need to consider is whether or not the appellant did this of malice aforethought. **Section 203** of the Penal Code is clear on this. Conviction for murder cannot be entered against an accused person unless he caused the death of the deceased by unlawful act or omission of malice aforethought, and malice aforethought is defined in **section 206** of the Penal Code as follows:

> "**206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:-**
>
> **(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not.**
>
> **(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied with indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.**
>
> **(c) an intent to commit a felony.**
>
> **(d) an intention by the act or omission to facilitate the fight or escape from custody of any person who has committed or attempted to commit a felony."**

That the appellant shot the fatal bullet from the gun that was given to him is certain and we have found so

on our own fresh analysis and evaluation of the evidence available. To that extent, we do agree with the trial court. However, the question that weighs heavily in our mind and causes us concern is as to whether he did so with any of the above four ingredients of malice aforethought. In other words, whether it was established that the appellant caused the death by unlawful act with malice aforethought. It was not established that he was aiming at the deceased when he shot the fatal bullet. There was no evidence to establish that he had the intention of killing the deceased or anybody else. There was no evidence that he intended to commit a felony. There was also no evidence that he knew or he had knowledge that his act of shooting would cause death or grievous harm. He shot in the dark and although he was reckless and trigger-happy, no evidence was adduced to prove that he used his gun with the intention of causing death or grievous harm to anybody. With respect, on this point, we do agree with Mr. Ondieki and Mr. Kaigai.

The learned Judge did not specifically mention the aspect of malice aforethought, neither did she seek evidence proving it but she made findings in her judgment which indicated that she was alive to the issue and the need to prove the same. She stated:

> "**In total absence of the reason of shoot out when the four citizens of this country were walking on a public road, I cannot even assume that the same was committed in pursuance of the police duty by the accused.**
>
> **He as a police officer should have been aware of his responsibilities. One cannot use a firearm for his own frolic (sic) which seems to be the case here.**
>
> **In the premises, I find the prosecution has proved its case beyond reasonable doubt. I thus enter a finding of guilt against the Accused and convict him for the offence of murder as levelled against him."**

From the above part of the superior court's judgment we have reproduced, it appears that the superior court took the view that as there was no reason for the shoot out, the appellant must have intended to cause the death of the deceased and that as a police officer, failing to be aware of his responsibilities when handling a firearm amounts to his being criminally responsible for the offence as was charged. In our view, the learned Judge was plainly wrong. It was the duty of the prosecution to adduce evidence that would lead to the establishment of malice aforethought within the definition in **section 206** of the Penal Code and in the absence of such evidence, the benefit must be given to the accused, in this case the appellant. As we have stated, the act was no doubt reckless, and unlawful, but as malice aforethought, an essential ingredient of murder charge was not proved to the standard required, the offence that was proved was manslaughter and not murder. We so find.

Before we proceed to finalise this judgment, there are two observations we feel constrained to make. First, the record shows that immediately after the prosecution closed its case, the superior court made the following entry:

> "**Mention on 2.3.2005 to take date for defence hearing as Mr. Agwao (sic) waits to take instructions. Accused remanded in custody. Three assessors to be paid.**
>
> **K.H. Rawal**
>
> **JUDGE**
>
> **16.2.2005."**

On 2nd March 2005, defence hearing was fixed for 11.4.2005 and thereafter it was adjourned from time to time till 16.5.2005 when all that is on record is that the appellant gave his sworn statement in defence. There is throughout, no where indicated in the record that the superior court complied with the provisions of **section 306(2)** of the **Criminal Procedure Code Chapter 75 Laws of Kenya** which requires the court, at the close of the prosecution case, if it considers that a *prima facie* case has been made out, to inform the accused of all his rights i.e. the right to give evidence either on oath or unsworn, the right to

keep quiet if he so desires and the right to call witnesses, if he has any. However, as the appellant did not raise this apparent omission and as the appellant was represented, we can only assume that the court did comply with that provision although such compliance was not recorded. We must however, emphasize the need to record every aspect of the proceedings so that it is apparent at all stages of the trial that the law was complied with. As we have stated, as the appellant was represented and as the appellant did not raise this as a ground of his appeal, we will assume there was compliance and take no further action on the apparent omission. Secondly, the record shows that the sentence was part of the judgment and was read together with the judgment such that the appellant was not allowed his right to say anything in mitigation. It is true that the conviction for the offence of murder carries with it a mandatory death sentence. However, the court ought to have been aware that before such a sentence is executed, the appellant would have a right to seek clemency and further that the appellant had a right of appeal from the court's decision and that one of the results of such an appeal could be substitution of the conviction of murder with that of manslaughter as we intend to do in this case. These two aspects demand that mitigating factors be on record. The superior court was therefore wrong in incorporating the sentence as part of the judgment and reading the same together with the judgment thereby depriving the appellant of his right to put forward mitigating factors, if anything, for his future interests.

In the final analysis and in view of the foregoing reasons, we set aside the conviction for the offence of murder and the sentence of death and substitute the same with the conviction for manslaughter under **section 202** as read with **section 205** of the Penal Code. The appellant is sentenced to **twelve (12) years** imprisonment with effect from **12th July, 2005** when he was convicted by the trial court. Order accordingly.

Dated and delivered at Nairobi this 15th day of December, 2006.

E.O. O'KUBASU

…….

JUDGE OF APPEAL

P.N. WAKI

……

JUDGE OF APPEAL

J.W. ONYANGO OTIENO

…….

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR