

UGANDA / JUDGMENT

Bukenya Patrick and Anor v Uganda

[2002] UGSC 37 (18 December 2002)

[2002] UGSC 37

COURT

Supreme Court of Uganda

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{\rtf1\ansi\ansicpg1252\uc1\deff0\stshfdbch0\stshfloch0\stshfhich0\stshfbi0\deflang1033\deflangfe1033{\fonttbl{\f0\froman\fcharset0\fprq2{*\panose 02020603050405020304}Times New Roman;}}

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{\f278\froman\fcharset177\fprq2 Times New Roman (Hebrew);}{\f279\froman\fcharset178\fprq2 Times New Roman (Arabic);}{\f280\froman\fcharset186\fprq2 Times New Roman Baltic;}{\f281\froman\fcharset163\fprq2 Times New Roman (Vietnamese);}

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{\f903\fswiss\fcharset238\fpqr2 @Arial Unicode MS CE;}{\f904\fswiss\fcharset204\fpqr2 @Arial Unicode MS Cyr;}{\f906\fswiss\fcharset161\fpqr2 @Arial Unicode MS Greek;}{\f907\fswiss\fcharset162\fpqr2 @Arial Unicode MS Tur;}{\f908\fswiss\fcharset177\fpqr2 @Arial Unicode MS (Hebrew);}{\f909\fswiss\fcharset178\fpqr2 @Arial Unicode MS (Arabic);}{\f910\fswiss\fcharset186\fpqr2 @Arial Unicode MS Baltic;}{\f911\fswiss\fcharset163\fpqr2 @Arial Unicode MS (Vietnamese);}{\f912\fswiss\fcharset222\fpqr2 @Arial Unicode MS (Thai);}{\colortbl;\red0\green0\blue0;\red0\green0\blue255;\red0\green255\blue255;\red0\green255\blue0;\red255\green0\blue255;\red255\green0\blue0;\red255\green255\blue0;\red255\green255\blue255;\red0\green0\blue128;\red0\green128\blue128;\red0\green128\blue0;\red128\green0\blue128;\red128\green0\blue0;\red128\green128\blue0;\red128\green128\blue128;\red192\green192\blue192;}{\stylesheet{\ql \li0\ri0\nowidctlpar\faauto\lin0\itap0 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \snext0 Normal;}{*\cs10 \additive \ssemihidden Default Paragraph Font;}{*\ts11\tsrowd\trftsWidthB3\trpaddl108\trpaddr108\trpaddfl3\trpaddft3\trpaddfb3\trpaddfr3\trcbpat1\trcfpat1\tscellwidthfts0\tsvertalt\tsbrdrt\tsbrdr1\tsbrdrb\tsbrdr\tsbrdrdgl\tsbrdrdgr\tsbrdrh\tsbrdrv\ql \li0\ri0\nowidctlpar\faauto\lin0\itap0 \fs20\lang1024\langfe1024\cgrid\langnp1024\langfenp1024 \snext11 \ssemihidden Normal Table;}{\s15\ql \li0\ri0\nowidctlpar\faauto\lin0\itap0 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext15 Style1;}{\s16\qc \li0\ri0\sl-216\slmult0\nowidctlpar\faauto\lin0\itap0 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext16 Style2;}{\s17\qc \li0\ri0\nowidctlpar\faauto\lin0\itap0 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext17 Style3;}{\s18\ql \li0\ri0\nowidctlpar\faauto\lin0\itap0 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext18 Style4;}{\s19\ql \li0\ri0\nowidctlpar\faauto\lin0\itap0 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext19 Style5;}{\s20\qj \li0\ri0\sl-414\slmult0\nowidctlpar\faauto\lin0\itap0 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext20 Style6;}{\s21\qj \li0\ri0\sl-281\slmult0\nowidctlpar\faauto\lin0\itap0 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext21 Style7;}{\s22\ql \li0\ri0\nowidctlpar\faauto\lin0\itap0 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 \sbasedon0 \snext22 Style8;}{\s23\qj \li0\ri0\sl-415\slmult0\nowidctlpar\faauto\lin0\itap0

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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 IN THE SUPREME COURT OF UGANDA}
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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 (CORAM: ODER, TSEKOOKO, KAROKORA,
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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 CRIMINAL APPEAL NO. 15 OF 2001}
\cs37\fs26\cf1\insrsid9990889\charrsid9990889

\par }}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 BETWEEN

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RAJABU) \tab APPELLANTS

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UGANDA

RESPONDENT

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$$\frac{1}{\Gamma(\frac{1}{2})} \int_0^1 \frac{1}{\sqrt{1-t}} dt = 1$$

(Appeal from the decision of the Court of Appeal at {}

\cs35\b\i\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs26\cf1\insrsid9990889\charrsid9990889 Kampala by the Hon. Justices Kato, Berko,
 Mpagi-}\cs35\b\i\fs26\cf1\insrsid9990889\charrsid9990889 }

\cs35\b\i\fs26\cf1\insrsid9990889\charrsid9990889 Bahigeine, JJA dated 26}
{\cs35\b\i\fs26\cf1\super\insrsid9990889\charrsid9990889 th}
{\cs35\b\i\fs26\cf1\insrsid9990889\charrsid9990889 April 2001 in Criminal}

\cs35\b\i\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs26\cf1\insrsid9990889\charrsid9990889 Appeal No. 15 of 1999)

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 {\cs39\b\fs26\ul\cf1\insrsid9990889\charrsid9990889 JUDGMENT}
 {\cs39\b\fs26\ul\expnd2\expndtw10\cf1\insrsid9990889\charrsid9990889 }{

\cs39\b\fs26\ul\cf1\insrsid9990889\charrsid9990889 OF}
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 {\cs39\b\fs26\ul\cf1\insrsid9990889\charrsid9990889 THE}
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\cs39\b\fs26\ul\cf1\insrsid9990889\charrsid9990889 COURT

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This is a second appeal. The appellants were tried and convicted by the}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889
 High Court sitting at Fort Portal on 17th March 1999 for aggravated}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889
 robbery contrary to sections 272 and 273(2) of the Penal code and were}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 sentenced to death. Their appeal to the Court of
 Appeal was dismissed}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
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on 26th April 2001. They appealed to this court.

\par }\pard \s20\ql \li0\ri0\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889
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 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 The facts of the case were as follows: -

\par }\pard \s20\qj \li0\ri0\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 On 8}
 {\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 th}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889

May, 1996 at about 3:00 am while the complainant, Hussein}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889
 Sebbi (PW6), was sleeping together with members of his family at his}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889
 home in Nzara Fort Portal Municipality, a group of robbers forced the}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 rear door open and entered the house. The
 robbers had a panga and}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }

torches. They demanded money from him. One of the robbers placed a}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889
 panga on the throat of Hussein Sebbi (PW6) and threatened to cut him if}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 he
 did not produce money. The robbers collected a number of household}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 properties which included a brief case, a suit case,
 clothes such as one}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }

brown suit, a white and black Kaunda suit, one black pair of shoes and}
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 cash Shs. 300,000/= from his room. From another room the robbers}{

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 took a small brief case labelled "President" and a hand bag containing}
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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 ladies clothes. One of the young girls in the house
 called Fatuma Ismail}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
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(PW8) recognised the second appellant by voice. The rest of the robbers}
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 were not recognised.

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 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 On 17/6/96 when the complainant was driving in
 Fort Portal town he}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }

sighted the first appellant wearing his Kaunda suit which had been }
{

stolen on 6/5/96. He stopped and greeted him. The first appellant was}
{scared and then started running away. The complainant raised an alarm}{

and many people answered the alarm, chased him and arrested him. He}
{

was handed over to police. The police interrogated the l}
{st
{appellant and}{

as a result of the interrogations, the police recovered some property from}
{

appellant's home at Rugombe Fort Portal - Kampala road.

{

At the trial the first appellant made an unsworn statement denying}{

participation in the robbery. He stated that on 9/5/96 his mother sent}
{

him to Fort Portal to buy drugs for her. He met one Nyakojo Rogers who}
{borrowed Shs. 4,000/= from him and handed some clothes to him as}{

security. However, on 17/4/97 while the l}
{st

appellant was wearing a}
{shirt which was one of the clothes Rogers Nyakojo had given to him as}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 security for the loan of Shs. 4,000/=, PW6 met him and caused his}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 arrest. After the 1}{

\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 st}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 appellant was arrested and handed over to police}
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CPL Okello, PW7, stated that he decided to search 1}
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 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 appellant's home}
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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 from where he recovered more property stolen during the robbery at}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 PW6's home. The evidence con

necting the 2nd appellant with robbery}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 was that during the night of the robbery Fatuma, an 11 years old girl}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 (PW8) identified him by his voice which she knew before the robbery.

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However, immediately after the robbery, the 2nd appellant disappeared}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889
 from the area. When he re-appeared in the area in April 1997, he was}{

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 arrested and charged for the robbery together with the 1}
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appellant. At}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 the trial he denied involvement in the robbery.

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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 The learned trial Judge accepted the prosecution
evidence and rejected}}

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }}\cs37\fs26\cf1\insrsid9990889\charrsid9990889
the defence of both appellants and convicted them. Their appeal to the}
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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 Court of Appeal was dismissed hence this appeal.

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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 The appeal to this court is based on four grounds;
namely,

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The learned Justices of Appeal erred in law on r\hich\af0\dbch\af34\loch\fo elying on the}
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\hich\af0\dbch\af34\loch\fo uncorroborated evidence of a child of tender years, who was a}
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\hich\af0\dbch\af34\loch\fo single identifying witness, in upholding the conviction and}
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\hich\af0\dbch\af34\loch\fo sentence against the 2nd appellant.}
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(2) The learned Justices of Appeal erred in fact and law by upholding that the doctrine of recent possession applied to the 1st appellant.

(3) The learned Justices of Appeal erred in fact and law by relying on the circumstantial evidence that was improbable and insufficient in upholding the conviction and sentence against the two appellants.

(4) The learned Justices of Appeal erred in fact and law when they rejected the defence presented for the two appellants.

The learned Justices of Appeal erred in fact and law when they rejected the defence presented for the two appellants. Mrs. Eva Luswata Kawuma argued grounds one and four together.

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 concerning the second appellant and then grounds 2, 3 and 4 for the 1}\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 st}{\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 }

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 appellant Mr. Michael Wamasebu, Assistant Director of Public}\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }\{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 Prosecutions opposed the appeal.

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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 defence was an outright denial of the charge and had set an alibi that he}\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }\{\cs37\fs26\cf1\insrsid9990889\charrsid9990889

never went to Njara village on 8/5/96 where the robbery took place. The}\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }\cs37\fs26\cf1\insrsid9990889\charrsid9990889 thrust of counsel's argument was that it was wrong for the trial Judge to}\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }\cs37\fs26\cf1\insrsid9990889\charrsid9990889 rely on the evidence of identification by a single identifying witness}\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 Fatuma (PW8) who was a young girl aged 11 years without corroboration.}\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }\{\cs37\fs26\cf1\insrsid9990889\charrsid9990889

She contended that sudden disappearance by the second appellant from}\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }\cs37\fs26\cf1\insrsid9990889\charrsid9990889 the area was not corroboration.

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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }\cs37\fs26\cf1\insrsid9990889\charrsid9990889 Judge to the effect that PW8 had known the 2nd appellant for 3 years;}\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 and that the 2nd appellant used to go to her grandfather's shop at Njara}\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }\{\cs37\fs26\cf1\insrsid9990889\charrsid9990889

trading centre at least three times a month where she would hear him}

{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 talk. The Court of Appeal re-evaluated the evidence of Fatuma (PW8)}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 before upholding the finding of the trial judge. This is how the court re-}
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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 evaluated the evidence before rejecting the appeal.

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{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 "We think, that the instances narrated by PW8 were}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 sufficient to enable her to identify the voice of the}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
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2nd appellant. She even told the police that she}

{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }

{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 did recognise the voice of the 2nd appellant during}{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }

{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 the robbery. That led the police to look for him.}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 We do not, however, agree with the learned counsel}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }

{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 that the evidence of PW8 required corroboration as

}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }

{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 a matter of law. At the time of the incident she}
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 was 11 years, but she was 14 years at the time of}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
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trial. She was therefore not a child of tender years}

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{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 since the issue as to whether a child is of tender}{

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{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 years arises only at the time of trial and not when}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }}

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 the offence was committed. See }

{\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 John Muchami}

{\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 }}

\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 alias Kalule vs. Uganda Cr. Appeal No. 3 }

{\cs35\b\i\fs22\ul\expnd10\expndtw50\cf1\insrsid9990889\charrsid9990889 of}

{\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 1993}{

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{\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 (SC)}

{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 unreported.

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{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 We therefore think that the evidence of PW8 alone}{

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{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 was enough to connect the 2nd appellant with the}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }}

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 offence. But it so happened that her evidence is, in}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }

{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 actual fact, corroborated by the sudden}{

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{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 disappearance of the 2nd appellant from the}

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village soon after the robbery. We find no merit in}

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{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 the appeal of the 2nd appellant."

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ohn Muchani alias Kalule v Uganda}{\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 } {\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 (supra)} {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889

that the issue as to whether a child is of tender years arises only} {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 at the trial but not when the offence was committed. We may add that}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 corroboration in such a case is not a requirement by law. However, in} {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 the instant case there was an unchallenged evidence of PW7 (No. 23577){\cs37\fs26\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889

CPL Okello) that after the robbery, Fatuma (PW8) told them that she had} {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 identified A2 as one of the robbers from his voice which she knew very-}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 well. D/CPL Okello testified that after the robbery A2 disappeared from} {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 the area and that when he (A2) surfaced in the area, police got}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889

information and arrested him. We think that the conduct of A2 as} {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 described above provided sufficient corroboration to PW8's evidence of}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 identification.

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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 In the result, grounds one and four must fail.

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\cs37\fs26\cf1\insrsid9990889\charrsid9990889 We turn to grounds 2, 3 and 4 which attacked the
conviction of the 1}{

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\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 }
\cs37\fs26\cf1\insrsid9990889\charrsid9990889 appellant of robbery on the basis of the doctrine
of possession of recently}{

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stolen property. Mrs. Eva Luswata Kawuma argued these grounds}
\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889

together and contended that the 1}{\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 st}
\cs37\fs26\cf1\insrsid9990889\charrsid9990889 appellant explained how he came}
\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 into possession of the property. Mr. Michael
Wamasebu for respondent}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
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opposed the appeal and urged us to dismiss it. He argued that the 1}
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appellant's explanation as to how he came into possession of stolen}
\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889
property was not credible.

\par }\pard \s20\qj \li0\ri0\sb14\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889
\cs37\fs26\cf1\insrsid9990889\charrsid9990889 The Court of Appeal reviewed the entire evidence
and arguments of}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 counsel from both sides. The Court then upheld
the conclusions of the}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
\cs37\fs26\cf1\insrsid9990889\charrsid9990889 trial judge to the effect that the 1}{

\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 st}
\cs37\fs26\cf1\insrsid9990889\charrsid9990889 appellant's possession of Kaunda shirt}
\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889

and other properties belonging to }{\cs34\fs22\cf1\insrsid9990889\charrsid9990889 PW6 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 soon after the robbery, without}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 any reasonable explanation and that the
 possession was incompatible}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
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with his innocence. It concluded that the learned trial judge was right to}
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889
 convict the 1}{\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 st}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 appellant of robbery on the doctrine of recent
 possession}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 of stolen property.

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 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\fs20\insrsid9990889\charrsid9990889

\par }{\pard \s23\qj \li0\ri0\sb158\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 We reiterate what we stated in }
 {\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889

Magidu Mudasi v Uganda Cr. Appeal}{\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 No. 3 }
 {\cs35\b\i\fs22\ul\expnd10\expndtw50\cf1\insrsid9990889\charrsid9990889 of}{

\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 1998 (SC) (unreported)}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 that:-

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 \li1008\ri1008\sb173\sl360\slmult1\widctlpar\faauto\rin1008\lin1008\itap0\pararsid9990889
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 "It is now well established that a court may}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 presume that a man in possession of stolen
 goods}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 soon after the theft is either the thief or has}{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 received the goods knowing them to have
 been}}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889
 stolen unless he can account for his possession.}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 This is an inference of fact which may be
 drawn as}}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 }}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 a matter of common sense from other facts}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 including the particulars of the fact that the}}
 \cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 accused has in his possession property which
 it is}}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 \cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 proved had been unlawfully obtained shortly
 before}}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 he was found in possession. It is merely an}
 \cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 application of the ordinary rule relating to}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889
 circumstantial evidence that the inculpatory facts}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 against the accused person must be
 incompatible}}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 }}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 with innocence and incapable of explanation
 upon}}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889
 any other reasonable hypothesis than that of guilt.
 \par }}\pard \s23\qj \li0\ri0\sb67\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 We repeated the same principle in the case of }
 {\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 Bogere Moses}}
 \cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 & }
 {\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 Anor v}
 {\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 Uganda Cr. Appeal No. 1 }}

\cs35\b\i\fs22\ul\expnd10\expndtw50\cf1\insrsid9990889\charrsid9990889 of}
 {\cs35\b\i\fs22\ul\cf1\insrsid9990889\charrsid9990889 1997 (SC) (unreported)}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
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where we stated}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 that:-

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 \li998\ri979\sl360\slmult1\widctlpar\faauto\rin979\lin998\itap0\pararsid9990889
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 "It ought to be realised that where evidence of}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 recent possession of stolen property is proved}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 beyond reasonable doubt, it raises a very
 strong}{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 presumption of participation in the stealing so
 that}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 if there is no innocent explanation of
 possession,}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 the evidence is even stronger and more
 dependable}

{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 than the eye witnesses evidence of
 identification in}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 a nocturnal event. This is especially so because}
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 invariably the former is independently
 verifiable}{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 while the later solely depends on the
 credibility of}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 the eye witness."

\par }\pard\plain \s20\qj \li0\ri0\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889
 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\fs20\insrsid9990889\charrsid9990889

\par }\pard\s20\qj\li0\ri0\sb163\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 In this case the trial court considered whether the 1}\{\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 st}{

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 appellant was a} {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 thief and not a receiver and concluded that:-

\par }\pard\plain\s23\qj\li1013\ri1018\sl360\slmult1\widctlpar\faauto\rin1018\lin1013\itap0\pararsid9990889 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\fs20\insrsid9990889\charrsid9990889

\par }\pard\s23\qj\li1013\ri1018\sb163\sl360\slmult1\widctlpar\tldot\tx7330\faauto\rin1018\lin1013\itap0\pararsid9990889 {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 "These were personal effects which could not}{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 } {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 readily pass from hand to hand and could not have}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 done so over night, any way. The accused said he}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 } {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 used to sell shoes and at times do masonry work.}{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 } {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 He was not trading in second hand items and was}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 } {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889

not even selling them at the time of the arrest. He} {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 } {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 had decided to wear them as his own. Before} {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 inferring the guilt of an accused person from} {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 } {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 circumstantial evidence, the law enjoins me to} {

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 } {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 ensure that there are no other co-existing} {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 } {\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889

circumstances which would weaken or destroy the
inference. I have seen none in this case "

The learned trial judge then further reviewed the evidence against A1
before convicting him.

We agree with the Court of Appeal that the 1
appellant's explanation
was not consistent. At first he stated that he had bought Kaunda shirt
from Kyomuhendo who in fact denied having sold it to him. In court the
first appellant changed his story and stated that
the Kaunda shirt was
part of the properties one Rogers Nyakojo gave to him as security for a
loan of Shs. 4000/= he (1)
appellant) lent to him on 9/5/96. However,
PW9, the mother of the 1
appellant testified that on 9/5/96 when she
sent the 1

\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 st}
{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 appellant to buy drugs for her, he returned with a
bag}{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }
{\cs37\fs26\cf1\insrsid9990889\charrsid9990889

containing properties and gave it to his wife and that the shirt he was}
{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889
found wearing on 17/6/96 was among the properties that were in the}{

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bag. The court of Appeal concluded that:-

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\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\fs20\insrsid9990889\charrsid9990889

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\li1032\ri1003\sb173\sl360\slmult1\widctlpar\faauto\rin1003\lin1032\itap0\pararsid9990889
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 "The first appellant was therefore found in}
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 possession of some of the stolen property
within 24}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 hours after they were stolen. He gave}{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 contradictory explanation as to how they
came into}{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 his possession. That raises a very strong}
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 presumption of participation in the stealing.
The}{

\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 trial judge was therefore right to rely on the}
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889

doctrine of recent possession of stolen property to}
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 }
{\cs35\b\i\fs22\cf1\insrsid9990889\charrsid9990889 convict the 1st appellant."

\par }\pard\plain \s20\qj \li0\ri0\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889
\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\fs20\insrsid9990889\charrsid9990889

\par }\pard\s20\qj\li0\ri0\sb178\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 We have not been persuaded that either the trial judge or the Justices of}}

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 Appeal erred in law or in fact in their conclusions. In the result, grounds} {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }

\cs32\fs22\expnd4\expndtw20\cf1\insrsid9990889\charrsid9990889 2,3} {\cs32\fs22\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 and }{\cs32\fs22\expnd4\expndtw20\cf1\insrsid9990889\charrsid9990889 4}{

\cs32\fs22\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 must fail.

\par }\pard\s20\ql\li0\ri0\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889 {\fs20\insrsid9990889\charrsid9990889

\par

\par }\pard\s20\ql\li0\ri0\sb34\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 Therefore this appeal has no merit. It is accordingly dismissed.

\par }\pard\plain\s27\ql\li0\ri0\sb77\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889 {\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\cs37\fs26\cf1\insrsid9990889

\par }{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 Dated at Mengo this 19} {\cs37\fs26\cf1\super\insrsid9990889\charrsid9990889 th} {\cs40\b\i\fs30\cf1\insrsid9990889\charrsid9990889 } {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 day of December 2002.}}

\cs37\fs26\cf1\insrsid9990889\charrsid9990889 }{\cs37\fs26\cf1\insrsid9990889

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\par }\pard\s27\qc\li0\ri0\sb77\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 A. H. O ODER,

\par }\pard\s27\qc\li0\ri0\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889 {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 JUSTICE OF THE SUPREME COURT

\par }\pard\plain\s19\qc\li0\ri0\sb120\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889 {\fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\cs37\fs26\cf1\insrsid9990889

\par {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 J. W. TSEKOOKO,}
{\cs37\fs26\cf1\insrsid9990889

\par {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 JUSTICE OF THE SUPREME COURT

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{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 A. N. KAROKORA,

\par }\pard \s27\qc \li0\ri0\sl360\slmult1\widctlpar\faauto\rin0\lin0\itap0\pararsid9990889
{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 JUSTICE OF THE SUPREME COURT}
{\cs37\fs26\cf1\insrsid9990889

\par

\par {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 J. N. MULENGA,

\par JUSTICE OF THE SUPREME COURT

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\li528\ri0\sl360\slmult1\widctlpar\faauto\rin0\lin528\itap0\pararsid9990889
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{\cs37\fs26\cf1\insrsid9990889\charrsid9990889 G. W. KANYEIHAMBA,}
{\cs37\fs26\cf1\insrsid9990889

\par {\cs37\fs26\cf1\insrsid9990889\charrsid9990889 JUSTICE OF THE SUPREME COURT.

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