Thande v Pratt (Civil Appeal E337 of 2020)
[2024] KEHC 11893 (KLR) (30 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11893 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL APPEAL E337 OF 2020

TW OUYA, J

SEPTEMBER 30, 2024

BETWEEN

RICHARD THANDE ..... APPELLANT

AND

W KRISTINA PRATT ..... RESPONDENT

(Being an appeal against the ruling of the Hon. M.W. Murage. (SRM) delivered on 25th November, 2020 in Nairobi Milimani CMCC No. 8148 OF 2018)

RULING

BACKGROUND

1. W. Kristina Pratt, (hereinafter the Respondent), the Plaintiff before the lower Court, initiated Nairobi Milimani CMCC No E037 of 2020 (hereinafter lower Court suit) as against Richard Thande, (hereinafter the Appellant), the Defendant before the lower Court by way of plaint on 12th September 2018 claiming a liquidated sum of Kshs. 4,980,000/-. It was averred that on 29th November, 2011, the Respondent and the Appellant entered into a written contract wherein the latter acknowledged that he owed the Respondent the sum of Kshs. 5,000,000/- and stated that the same would be settled in installments of Kshs. 20,000 per month beginning the 23rd December, 2011. That having entered that agreement the Appellant only settled the sum of Kshs. 20,000/- and despite numerous requests and demands in the month of June 2018 to the Appellant to refund the remaining balance of Kshs. 4,980,000/-, he has declined to settle the same.

2. The Appellant entered appearance on 25th September 2018 whereafter on 12th October, 2018, the Respondent moved the lower Court vide a motion (hereinafter the Respondent's motion) expressed to be brought pursuant to Sections 3A of the *Civil Procedure Act* (CPA), Order 36 Rule 1(1)(a) and (2) and Order 51 Rule 1 of the *Civil Procedure Rules* (CPR) seeking inter alia that the lower Court be

pleased to summarily enter judgment against the Appellant for the sum of Kshs. 4,980,000/- together with interest thereon at the Court's rate; and costs of the motion.

3. The grounds on the face of the motion were amplified in the supporting affidavit sworn by the Respondent, who gist was that the Appellant owes her the sum of Kshs. 5,000,000/- as per a contract dated 29th November, 2011 wherein the Appellant agreed to pay the outstanding debt in installments and settled at the outset Kshs. 20,000/- in part payment of the same. That despite demand to the Appellant, he failed and or refused to settle the outstanding amount of Kshs. 4,980,000/- and therefore he was indebted to the tune of the forestated amount together with interest at the Court's rate. He further deposed that the Appellant has no bonafide defence capable of resisting her claim therefore given that the lower Court suit is in respect of a liquidated claim it is only fair and just that the matter should be tried summarily with judgment being entered against the Appellant as sought.

4. On 21st January, 2019 the Appellant filed a statement of defence denying the key averments in the plaint. He further averred that the Respondent is by operation of the law statutorily time barred from instituting the lower Court suit and the debt is accordingly irrecoverable under Section 4 of the *Limitation of Actions Act*. The statement of defence was thereafter followed by a preliminary of objection dated 3rd June, 2019 that was premised on the sole ground that at the hearing of the Respondent's suit the Appellant would raise a preliminary objection that the entire suit filed on 12th September 2018 ought to be struck out on grounds that the suit is statutory time barred under Section 4 of the *Limitation of Actions Act*, Cap 22 Laws of Kenya.

5. On 6th June, 2019 when the Respondent's motion came up for hearing, directions were taken in limine on disposal of the Appellant's Preliminary Objection by way submissions. In a ruling delivered on 8th November 2019, the lower Court dismissed the Appellant's Preliminary Objection. And subsequently, parties took directions on disposal of the Respondent's motion, equally by way of written submissions.

6. The lower Court's ruling allowing the Respondent's motion seeking summary judgment provoked the instant appeal, which is based on the following grounds: -

> " 1. The learned trial Magistrate erred in law in holding that the application was undefended.
>
> 2. The learned trial Magistrate erred in law in holding that the Respondent's suit was statutorily time barred under the *Limitation of Actions Act*, Cap 22 Laws of Kenya.
>
> 3. That the learned trial Magistrate erred in both law and fact in holding that the Respondent's application for summary judgment was proven.
>
> 4. That the learned trial Magistrate erred in fact in arriving at the wrong decision in that there was no evidence tendered in support of the said application." (sic)

7. In light of afore captioned itemized grounds of appeal, the Appellant seeks before this Court orders to the effect that: -

> " a) That the appeal be allowed.
>
> b) The judgment in favour of the Respondent be set aside
>
> c) The order made by the learned Magistrate in the trial Court as to costs be set aside

d) The Appellant be awarded costs of this appeal and in the trial Court." (sic)

8. Directions were taken on disposal of the appeal by way of written submissions, of which the Court has duly considered.

Submissions

9. The Appellant's submissions were condensed on a singular issue. Addressing the Court on whether the trial Magistrate was in error by holding that the Respondent's motion for summary judgment was proven, counsel anchored his submissions on the provisions of Section 36 of the *Civil Procedure Rules*, the decisions in *Osodo v Barclays Bank Ltd* [1981] KLR as cited in *Lucy Momanyi t/a L.N Momanyi & Co. v Nurein M.A Hatiny & Another* [2003] eKLR, *Continental Butchery Limited v Samson Musila Ndura*, Civil Appeal No. 35 of 1997 and *Blue Sky EPZ Limited v Natalia Polyakova & Another* [2007] eKLR as cited in *Washington Ochieng v Strathmore University* [2021] eKLR to submit that Court's have held over time that the discretion of the Court to enter summary judgment can only be entered against a defendant whose defence does not raise any triable issue.

10. While calling to aid the decision in *Kenya Trade Combine Ltd v N.M Shah* [2001] eKLR counsel went on to submit that the Court erred in striking out the Appellant's statement of defence as the same raised triable issues meanwhile the same had been on record for almost two (2) years before delivery of the impugned ruling. It was further asserted that notwithstanding that trial Court's finding that the Appellant's statement of defence was improperly on record and or filed after the Respondent's motion, the learned Magistrate was still obligated to consider the same. Counsel reiterated the defence raised triable issues, in light of the fact that the suit was time barred given that upon execution of the agreement between the parties, the Appellant's default on the second installment on 23rd January, 2012 led to a cause of action in respect of breach of contract that ought to have been filed on or before 23rd January 2018. Meanwhile, the instant suit was filed some eight months of the latter date and was therefore caught up by limitation. In the alternative to the forestated, counsel contended that it could reasonably be stated that the cause of action arose in 2011 and therefore a finding of limitation was still a triable issue that ought to have been considered by the trial Court. The decisions in *Nesco Services Ltd v CM Construction* (EA) Ltd [2021] eKLR and *E.M.S v Emirates Airlines* [2012] eKLR were cited in the forestated regard. Penultimately, it was argued that the Respondent's motion was devoid of any annexures therefore the trial Court was in error when it referred to acknowledgment of the debt, on the backdrop of the agreement dated 29th November, 2011 that was not evinced alongside the motion. In summation the Court was urged to allow the appeal with costs.

11. On the part of the Respondent, retorting to the Appellant's submissions on whether the motion for summary judgment was merited, counsel equally anchored his submission on Order 7 Rule 1, Order 36 of the *Civil Procedure Rules* and the decisions in *Charles Mwalia v The Kenya Bureau of Standards* [2001] eKLR, *Crown Health Care v Jamu Imaging Centre Ltd* [2021] eKLR, *Mbogo v Shah* (1968) EA 116, *Abok James Odera t/a J.A Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR and *Macauley v De Boer & Another* (2002) 2 KLR as cited in *Agence France-Presse v Eziok Wubundu Okoh* [2021] eKLR to submit that the decision of the Court to enter summary judgment against a party is discretionary whereas the said discretion ought not to be interfered with unless proven that the decision was manifestly wrong. That it is not contention that the claim before the trial Court was for a specific sum of money in respect of a contract whereas the Appellant filed his statement of defence months after the motion for summary judgment had been filed and without the requisite leave.

12. While calling to aid the decisions in *Gupta v Continental Builders Ltd* [1978] KLR 83 and *Margaret Njeri Mbugua v Kirk Mweya Nyaga* [2016] eKLR counsel summarily contended the instant appeal

ought to be dismissed on grounds that; - the Appellant failed to reasonably explain the delay in filing his defence within prescribed time; the Respondent's motion for summary judgment was filed expeditiously; the Appellant's defence raises no triable issues; and the Appellant throughout the proceedings both before the lower and superior Courts has failed to act diligently. Concerning whether the Respondent's suit was statutorily time barred, it was submitted that the issue was raised by the Appellant through a preliminary objection of which was determined vide a ruling meanwhile no appeal has since preferred as against the said decision. That the Appellant's attempt to canvass the same through this appeal is an afterthought and a back door attempt to challenge the trial Court's earlier ruling on the issue. Further, the question of limitation was equally not the subject of the impugned decision of the trial Court to thus warrant the same to be canvassed in the instant appeal. In the alternative to the forestated, counsel argued that the cause of action was not statute barred as time begins to run when the cause of action accrues and not when parties contract, the cause of action herein being the Appellant's breach of contract. Therefore, the suit was instituted on time and was properly before the trial Court. The provisions of Section 4 of the *Limitation of Actions Act* and the decision in *South Nyanza Sugar Company Limited v Dickson Aoro Owuor* [2019] eKLR were called to aid in respect of the forestated. In conclusion the Court was urged to dismiss the appeal with costs.

Disposition And Determination

13. The Court has considered the record of appeal, the pleadings before the lower Court as well as the submissions by the respective parties. The duty of this Court as a first appellate Court is to re-evaluate the evidence adduced before the trial Court and to draw its own conclusions, but always bearing in mind that it did not have an opportunity to see or hear the witnesses testify. See *Kenya Ports Authority v Kusthon (Kenya) Limited* (2000) 2 EA 212; *Selle and Anor. v Associated Motor Boat Co. Ltd and Others* (1968) EA 123 and *Ephantus Mwangi and Another v Duncan Mwangi Wambugu* (1982) – 88) 1 KAR 278.

14. The Respondent's motion before the lower Court was expressed to be brought inter alia pursuant to Section 3A of the CPA & Order 36 Rule 1(1)(a) & (2) of the CPR. The trial Court in allowing the Respondent's motion stated in part that; -

> " I have considered the application and submissions filed.
>
> I have also read the record and find as hereunder:
>
> The Defendant filed a memorandum of appearance on 25/9/2018 and thereafter a defence on 21/1/2019.
>
> No leave was sought by the Respondent to file the defence out of time. As such the statement of defence is improperly on record. The only remedy is to strike it out.
>
> For the applicant to be granted summary judgment the applicant's case must be plain and obvious.
>
> The Defendant acknowledged the debt on 29/11/2011. There is no evidence that this amount has been paid to date. Further the defence on record even if it was to be admitted is in itself a mere denial.
>
> I find that the application herein is merited. I allow the same as prayed for.
>
> Orders accordingly." (sic)

15. Section 3A of the CPA invoked in the Respondent's motion specifically reserves "the inherent power of the Court "to make such orders as may be necessary for ends of justice or to prevent abuse of the

process of the court". The purport of the forestated provision was reasonably canvassed by the Court of Appeal in *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR and thus requires no restatement. That said, the salient provision invoked in Respondent's motion was Order 36 Rule 1(1)(a) & (2) of the CPR, which provides that: -

(1) In all suits where a plaintiff seeks judgment for—

(a) a liquidated demand with or without interest; or

(b) the recovery of land, with or without a claim for rent or mesne profits, by a landlord from a tenant whose term has expired or been determined by notice to quit or been forfeited for non-payment of rent or for breach of covenant, or against persons claiming under such tenant or against a trespasser, where the defendant has appeared but not filed a defence the plaintiff may apply for judgment for the amount claimed, or part thereof, and interest, or for recovery of the land and rent or mesne profits.

(2) The application shall be supported by an affidavit either of the plaintiff or of some other person who can swear positively to the facts verifying the cause of action and any amount claimed.

16. As rightly argued by the respective parties, the grant or refusal of a motion seeking summary judgment entails the exercise of discretion by the Court. As to this Court's liberty to interfere with the discretion exercised by a trial Court, the same was addressed by the Court of Appeal in *Mashreq Bank P.S.C v Kuguru Food Complex Limited* [2018] eKLR, wherein it observed that ;-

> " This Court ought not to interfere with the exercise of a Judges' discretion unless it is satisfied that the Judge misdirected himself in some matter and as a result arrived at a wrong decision, or that it is manifest from the case as a whole that the Judge was clearly wrong in the exercise of discretion and occasioned injustice. Conversely, a court exercising judicial discretion must be guided by law and facts and not ulterior considerations. This much was stated by the Court of Appeal in the case of Mbogo v Shah, (supra)
>
> ".....A court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising this discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and as a result there has been injustice". [Emphasis added]
>
> See also; United India Insurance Co. Ltd v. East African Underwriters (K) Ltd [1985] E.A 898: -

17. The gist of the Respondent's motion before the trial Court quintessentially sought that summary judgement be entered against the Appellant in the sum of Kshs. 4,980,000/-. Thus, to this Court's mind, this appeal turns on the key question whether summary judgment ought to have been entered against the Appellant in favour of the Respondent given the issues canvassed before the trial court. In *Trikam Maganlal Gohil & Another v John Waweru Wamai* (1983) eKLR the Court of Appeal stated the following:

> " The respondent if he wants leave to defend may show he is entitled to it by affidavit or oral evidence or otherwise. Order XXXV rule 2. So, if the applicant has set out in his affidavit(s) in support of his motion and exhibits facts which are probably true and sufficient to warrant the granting of his prayer for summary judgment the respondent must discharge the onus on him of showing his defence(s) raises triable or bona fide issues. They will be ones of law

or fact. If they are of fact, then, bare denials by the respondent or his advocate in a pleading or a letter will not do because there must be a full and frank disclosure of the facts before the court which will be proper and sufficient for it to rule that those issues are raised".

18. Moreover, in *Attorney General v Equip Agencies Ltd* (2006) 1KLR 10 the same Court spelt out the rationale behind the provisions of Order XXXV (now Order 36) as follows:

> " The purpose of the proceedings in an application for summary judgment is to enable a plaintiff to obtain a quick judgment where there is plainly no defence to the claim... The summary nature of the proceedings should not, however, be allowed to become a means for obtaining, in effect, an immediate trial of the action, for it is only if an arguable question of law or construction is short and depends on few documents that the procedure is suitable... A defendant who can show by affidavit that there is a bona fide triable issue is to be allowed to defend that issue without condition."

19. Therefore, a defendant confronted with a summary judgment application is required to demonstrate to the Court that he has a reasonable defence and that he ought to be allowed to defend. A reasonable defence is one that raises a bona fide, hence prima facie triable issue or issues, though not necessarily one that would ultimately succeed. See the Court of Appeal's definition of a reasonable defence in the case of *Olympic Escort International Co. Ltd. & 2 Others v Parminder Singh Sandhu & another* [2009] eKLR.

20. Here, it would be appropriate to first contextualize the events before the trial Court as can be deduced from the original record and or record of appeal. As earlier captured in this judgment, the suit before the trial Court was filed on 12th September, 2018 whereafter the Appellant entered appearance on 25th September, 2018. The Respondent shortly thereafter moved the Court on 12th October, 2018 vide an application dated 9th October, 2018 seeking summary judgment as against the Appellant. When the said motion came up for hearing on 29th October, 2018 the same was not heard due to non-service of the motion upon the Appellant. On 21st January, 2019, the Appellant filed his statement of defence followed by a preliminary objection on 4th June, 2019 whereafter it was not until 6th June, 2019 that the Respondent's motion came up for directions however counsel appearing for the Appellant informed the Court of the pending Preliminary Objection of which was disposed of in limine. The trial Court vide its ruling delivered on 8th November, 2019 dismissed the Appellant's Preliminary Objection whereafter the Respondent's motion was disposed of leading to the impugned ruling of 25th November 2020 that is the subject of the instant appeal. It would be important to note that when the Respondent's motion came up for directions, counsel appearing for the Appellant informed the Court of his intention not to file a response to the same however emphasized that the motion may be disposed of by way of written submissions in light of having filed documentation in response to the Respondent's suit.

21. With the forestated set of facts in reserve, it is evident that the Respondent's motion was filed prior to the Appellant filing a statement of defence. Further, the Appellants' objection in limine in respect of the Respondent's suit being statute barred was determined vide a ruling delivered on 8th November, 2019. This Court while applying its mind to the dicta in *Trikam Maganlal Gohil* (*supra*), Equip Agencies Ltd (supra) and reading of Order 36 Rule 2 of the CPR, it was obligatory of the Appellant to evince by way of affidavit material or oral evidence that summary judgment ought not be entered and that leave to defend ought to be accorded to him. It is evident from the record he failed to file any affidavit in response to the motion seeking summary judgment. However, it appears from the Appellant's argument before this Court, is that he duly had a defence on record that raised triable issues

prior to determination of the Respondent's motion and notwithstanding the trial Court's finding that the Appellant's statement of defence was improperly on record and or filed after the Respondent's motion, the learned Magistrate was still obligated to consider the same.

22. The learned Magistrate's reasoning in respect of the Respondent's motion was set out earlier in this judgment. She particularly made a finding in respect of the Appellant's defence that the same was filed without leave and as a consequence improperly on record meanwhile proceeded to strike out the same from the record. Firstly, what was before the Court was an application for summary judgment pursuant to Order 36 of the CPR and not a motion seeking to strike out pleadings pursuant to Order 2 Rule 15 of the CPR; secondly, no judgment in default of defence pursuant to Order 10 Rule 4 was entered in respect of the Respondent's claim to warrant the defence being moot and or improperly on record; thirdly it is trite that the striking out pleadings has been described variously as draconian, drastic, discretionary, a guillotine process and an order of last resort See;- *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another*[1980] eKLR and *Kivanga Estates v National Bank of Kenya Limited* [2017] eKLR. Therefore, for all intents and purposes notwithstanding the late filing of the statement defence without leave there was no prejudice occasioned upon the Respondent by same, as such the trial Court was in error to summarily strike out the same as it did. However, it is important restate and not to digress that what was before the trial Court was not a motion for strike out of the Appellant's pleadings.

23. Thus, despite the forestated, this Court had earlier herein found that the Appellant had failed to comply with the procedural dictates of Order 36 Rule 2 of the CPR upon the Respondent presenting his motion. However, given that there was a defence on record, as rightly argued by the Appellant, the trial Court was obligated to consider whether the same raised any triable issue. The Appellant filed a five (5) paragraphed defence in response to the Respondent's suit which this Court views would be germane to quote verbatim in this judgment. It was averred that: -

> " 1. Save that which is herein expressly admitted the Defendant denies each and every allegation contained in the Plaint as if the same were set out herein verbatim and traversed seriatim.
>
> 2. .....
>
> 3. The Defendant denies that he owes the Plaintiff the alleged amount of Kshs. 4,980,000/- (debt) or any money at all and put the Plaintiff to strict proof thereof.
>
> 4. If which is denied the Defendant ever owed the Plaintiff the alleged debt or any money at all, the Defendant avers that the Plaintiff is by operation of law statutorily time barred from instituting this suit and the debt is accordingly irrecoverable under Section 4 of the *Limitation of Actions Act* Cap 22 Laws of Kenya.
>
> 5. The jurisdiction of this honorable Court is admitted." (sic)

24. Applying my mind to the dicta in *Olympic Escort International Co. Ltd*. (*supra*) the Court is of the view that upon a consideration of the record, rather than the Appellant tendering a reasonable defence, the same amounted to a mere denial and was not a reasonable defence that raised a bona fide, hence prima facie triable issue or issues, though not necessarily one that would ultimately succeed. The Appellant merely denied owing the Respondent Kshs. 4,980,000/- without setting out any further particulars on non-indebtedness. Whereas the only discernable triable issue that could have warranted the Appellant defending the suit was determined vide the ruling delivered on 8th November, 2019, with same neither

being set aside or challenged on appeal as at writing of this judgment. As to the test laid out in the fore-captioned decision, the Court iterates that the same amounts to a mere denial and or lacks in particulars. In *Magunga General Stores v Pepco Distributor Ltd*, EA (1986 – 89) 334 the Court of Appeal had stated the above principle as follows: -

> " First of all, a mere denial is not a sufficient defence in this type of cases. There must be some reason why the Defendant does not owe the money. Either there was no contract, or it was carried out and failed. It could also be that payment had been made and could be proved. It is not sufficient therefore simply to deny liability without some reason given."

25. Later, in *Margaret Njeri Mbugua v Kirk Mweya Nyaga* [2016] eKLR the Court of Appeal considered several authorities on the point before holding that, in a suit for a liquidated debt or sum, a mere denial is not sufficient. The court proceeded to state that:

> "From the above case it is therefore clear that a mere denial or general traverse is not sufficient in an action for a debt or liquidated amount and to that extent, the Appellant's defence did not provide a reasonable defence. Applying all the principles stated in the above quoted cases to this appeal we are of the view that the trial court was right in striking out the defence. The Plaint contained details of the transaction that took place, however, the respondent rather than giving a fair and substantial answer gave a general denial of the facts. In the replying affidavit sworn by the respondent he more or less admitted having received the money yet demanded proof. In the circumstances there was no reasonable defence proffered, and the striking out of the defence was proper. In the absence of the defence the logical consequence was the entering of judgment in favour of the Appellant."

26. The foregoing thus brings the Court to the question whether there was merit to the Respondent's motion? The trial Court in allowing the motion arrived at the conclusion that the Appellant acknowledged the debt whereas there was no evidence that the said amount had been paid. The Appellant has on appeal contended that the Respondent's motion was unsupported by any evidentiary material in respect of the forestated fact as such the trial Court erred in allowing the motion. As earlier noted, the Respondent's motion was more or less unopposed in light of the fact that the Appellant opted not to file a response to the Respondent's motion. It can therefore be purposefully stated that no set of alternative triable facts were offered by the Appellant by way of an affidavit in reply compounded by the fact that the latter's defence constituted mere denials with no offer as to a singular triable issue. Thus, to answer whether there was need to shore up the Respondent's motion despite the indubitable finding in respect of the Appellant's defence, the decision of the Court of Appeal in *Daniel Lago Okomo v Safari Park Hotel Ltd & Attorney General* [2017] KECA 132 (KLR) comes to mind, where the Court stated that; -

> " 12. This Court has addressed the issue of summary judgment on several occasions. Summary judgment can only be entered in the clearest of cases where the amount claimed is a liquidated amount, and where the claim is either admitted or not expressly denied and where it is clear to the court that the defence tendered is s sham and only meant to delay the matter. This Court in its decision in ICdc V Daber Enterprises Ltd [2000] 1EA 75 pronounced itself as follows;
>
> "The purpose of the proceedings in an application for summary judgment is to enable the plaintiff to obtain a quick judgment where there is plainly no defence to the claims. To justify summary judgment, the matter must be plain

and obvious, a party to a civil litigation is not to be deprived of his right to have the case tried by a proper trial where if necessary, there has been discovery and oral evidence subject to cross examination".

(See also *Continental Butchery Ltd V Ndhiwa*, (1989) KLR 573).

In *Dhanjal Investments Ltd V Shabaha Investments Ltd* Civil Appeal No. 232 of 1997, the Court had earlier stated as follows regarding summary judgment:-

> " The law on summary judgement procedure has been settled for many years now. It was held as early as in 1952 in the case of Kandlal Restaurant v Devhi & Company (1952) EACA 77 and followed by the Court of Appeal for Eastern Africa in the case of Souza Figuerido & Company Ltd v Mooring Hotel Ltd (1959) EA 425 that, if the defendant shows a bona fide triable issue, he must be allowed to defend without conditions..."

27. In view of the foregoing, in the absence of a tenable defence and alternative particulars in response to the Respondent's motion to justify a triable issue, it would be difficult in the circumstance to find that the trial Court erred in its finding notwithstanding the manner in which it arrived at its conclusion. Thus, it is my considered deduction that the trial Court properly exercised its discretion and arrived at a correct decision. For all the foregoing reasons, the Court finds no merit in this appeal and will dismiss it with costs to the Respondent.

28. Determination

i. This Appeal is dismissed.

ii. Costs are awarded to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF SEPTEMBER, 2024

ROA 14 days.

HON. T. W. Ouya

JUDGE

For Appellant Kibiku

For Respondent Ms Bundi holding brief for Gitonga

Court Assistant Martin Korir