



REPUBLIC OF KENYA



**KENYA LAW**  
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**Munyua v Republic (Criminal Appeal E023 of 2022)  
[2023] KEHC 17857 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17857 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL APPEAL E023 OF 2022**

**GL NZIOKA, J**

**MAY 25, 2023**

**BETWEEN**

**OLIVER THANDI MUNYUA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the decision on conviction and sentence, vide Criminal Case No. 223 of 2018, by Hon. K. Bidali, Chief Magistrate, delivered on, 5th July, 2022, at the Chief Magistrate's Court at Naivasha)*

**JUDGMENT**

1. The appellant was arraigned before the court on 15<sup>th</sup> February 2018, charged jointly with others with the offence of conspiracy to commit a felony; contrary to; section 393 of the Penal Code and stealing contrary to section 275 of the Penal Code. The particulars of each charge are as per the charge sheet.
2. He pleaded not guilty to the charges and the case proceeded to full hearing. The prosecution called a total of eight (8) witnesses. The prosecution case in brief is that, on 9<sup>th</sup> February 2015, (PW1), Stephen Chege Kabucho, a relationship manager at Absa Bank; (formerly Barclays Bank), received a report from the data analyst which showed that a sum of Kshs. 30,000,000 had been transferred from a bank account No. 202xxxx of a customer known as Jane Njeri Steinmetz.
3. That prior to the withdrawal a sum of Kshs. 9,000,000 was transferred from the same customer's account No. 0758xxxx to the account No. 202xxxx and then Kshs 30,000,000 transferred to account No. 0278xxxx in the name of; Njau Kayai & Co. Advocates for purchase of land. These bank customer's accounts are held at the Nakuru branch but the transfers were effected at the Naivasha branch.
4. That as (PW1) Kabucho had knowledge that the customer was in Switzerland and that she normally transacted from the Harambee Avenue branch, he doubted the transfer and withdrawal transaction



- and called the customer who confirmed that she was indeed in Switzerland and that she did not carry out the transaction in issue. It became apparent that the transactions were fraudulent and the branch manager informed.
5. That as the matter was still under investigation, a customer by the name Jane Njeri Steinmetz went to the Nairobi West branch on 28<sup>th</sup> June 2018, to transfer Kshs. 7,000,000 but she did not have a sale agreement. As such she could not support the transaction and returned the following day on 29<sup>th</sup> July 2018, with a sale agreement executed by her and one Esther Gateka.
  6. That, while filling the transfer forms, she seemed to have a challenge therefore (PW2), Silas Onyango Abuthi, the branch manager, went to assist her. However, on verifying the documents he noted that the customer looked younger than photo in the system and the passport looked as if it was tampered with.
  7. That he informed (PW1) Kabucho who once again called the customer and confirmed that she was in Switzerland. The forensic officer and the bank team were informed and interviewed the “customer” in the banking hall who was subsequently arrested and charged as the first accused in the trial court criminal matter.
  8. In the meantime, the investigations continued into the fraud at the Naivasha branch and on 12<sup>th</sup> February 2018, (PW5) Kennedy Ochieng Olunga, a senior forensic investigator at Absa bank interviewed staff at the Naivasha branch and collected several documents relating to the suspected transactions in account No. (s) 202xxxx and 0758xxxx in the names of Jane Njeri Kinyanjui Steinmetz, including account opening forms.
  9. That further investigations revealed that the documents used to commit the fraud at the Naivasha branch were similar to those used at the Nairobi West branch and that the suspect arrested in connection with the Nairobi West fraud was involved in the Naivasha branch fraud too.
  10. Furthermore, the land purportedly being sold namely; LR No. 1870/11/200 belonged to different people and not those in the sale agreement presented to the bank. Similarly, the Swiss Embassy confirmed that the passport used to commit the fraud was not genuine, the genuine passport having been reported missing in the year 2015 and that the original number had been erased and the printing technique was different.
  11. In the meantime, the documents collected from the bank, including the withdrawal slips and the account opening forms were forward vide an exhibit memo to the Document Examiner for analysis received by (PW6) No. 96597 PC Evelyne Othin on 1<sup>st</sup> October 2019, for the purposes of verifying signatures and handwriting thereon. The examination established vide a report produced that the documents were made by different persons.
  12. As a result, (PW8) No. 62682 CPL Harrison Mwendo attached to BFID, Central Bank and the investigating officer, arrested the three accused in the criminal case and charged them as herein stated. Further, internal disciplinary was taken against the appellant, and his colleague the 3<sup>rd</sup> accused who were employees of the bank for failure to follow the due process in processing the fraudulent payment.
  13. At the close of the prosecution case, the trial court ruled that, each accused had a case to answer. The appellant gave a sworn statement and stated that he worked as the operations manager at the bank. That, on the 5<sup>th</sup> February 2018 at around midday, a transaction of transfer of Kshs 30,000,000 from the subject customer’s account to the account of, Njai Kayai & Co. Advocate was referred to him for approval.
  14. That he examined the passport of the customer and confirmed that the numbers and perforations tallied. Further, he checked the details on the computer and confirmed that they tallied with those in



- the passport. He also checked the photo and signature and compared them with those in the system and they were similar. That he checked the account balance and noticed that it had only Kshs 21,000,000, which was less than the amount requested for transfer.
15. That he went to the banking hall and informed the customer that account had insufficient funds and the customer informed him that she had another account No. 0758xxx019 with sufficient money, received from rent of stalls along Moi Avenue and requested the deficit be transferred therefrom.
  16. That he checked on the particulars of the second account and confirmed the details being the same as in the first account. He then did a call back using the mobile number provided in the system and observed the customer in the banking hall pick the phone and answer. That, he then gave the customer a transfer form which she filled and signed.
  17. That due to a pop up notification, he called the forensic department and spoke to Chacha and explained that the client wanted to do a transfer. That Chacha gave the approval to continue with the transaction and when he asked the customer the purpose of the transfer and he was informed that she was buying land and the customer produced the sale agreement thereof.
  18. That he went to the cashier's cubicle where he met the customer and the advocate Njau Kayai. He checked the customer's photograph in the system and compared the skin tone, eyes, ears and hairline with the customer in the bank and was satisfied that she was the genuine account holder and approved the transaction.
  19. He further testified that the bank had an identification and verification manual showing the process required and the only means of verifying the identity of the customer at that time was use of the naked eye and perception. Further, the transactions in issue could be done at any branch of the bank and he had authority to approve transaction of Ksh. 30,000,000. He denied the allegations of conspiracy to defraud the bank.
  20. He faulted the prosecution for not availing crucial evidence such as the voice recordings of his call to Chacha, the CCTV video of the banking hall, the system logs, and the statement of the account purportedly defrauded nor the audit reports for the accounts by the bank auditors which would have shown whether he adhered to the processes and procedure. Further the account holder did not lodge a formal complaint. That the passport brought to court was not the same as the one presented to him as the numbers did not tally and the perforations did not allow light to pass through.
  21. At the conclusion of the case the learned trial Magistrate held that the prosecution had proved the case beyond reasonable doubt, convicted the appellant on both counts and sentenced him to serve two (2) years imprisonment on count 1 and one (1) year imprisonment on count two, ordering the sentences to run concurrently.
  22. However, the appellant being aggrieved by the decision of the trial court has appealed against it on the grounds in his amended petition of appeal dated; 23<sup>rd</sup> September 2022 as here below reproduced:
    - a. That, the Learned Trial Magistrate erred in law and facts in convicting and sentencing the Appellant for the offences of Conspiracy to commit a felony contrary to section 393 of the penal code in Count I and stealing contrary to section 275 of the Penal Code when there was no sufficient evidence to prove that the offence of conspiracy to commit felony or the offence of theft by the Appellant.
    - b. That the Learned Trial Magistrate erred in law and facts in failing to consider that the Appellant was charged and convicted with count II of stealing contrary to section 268 (1) as read with section 275 of the Penal Code and yet at all material times the Appellant was the servant



and/or employee of Barclays Bank and the Appellant was only involved in the Bank account transactions on account of his employment which the Appellant contends he did diligently.

- c. That the Learned Trial Magistrate erred in law and facts in failing to acquit the Appellant in both Counts even after discovering discrepancies in PW2 statement and the Testimony. The Learned Trial Magistrate erroneously compared the Appellant transaction with the counterpart (PW 2) in Nairobi West Branch and deduced that circumstantial evidence points that there was conspiracy with the 2<sup>nd</sup> Accused among others, yet the two transactions were completely different and no evidence was adduced that the passport were similar.
- d. That the Learned Trial Magistrate erred in law and facts in failing to appreciate that the owner of Bank Accounts Jane Njeri Kinyanjui Steinmetz never lodged a complaint that her money was lost and in the absence of her evidence being called there was and there still is a serious doubt as to the actual person who withdrew the alleged stolen money.
- e. That, the Learned Trial Magistrate erred in law and fact in failing to find that the handwriting experts opinion did not demonstrate to the Court the features of the so-called disguised handwriting hence the handwriting opinion did not assist the Court to decide the real facts to proof the case against the Appellant.
- f. That, the learned Trial Magistrate erred in law and facts in not finding that the signature of the person being served at the counter by the Appellant was the same signature in the computer system however this is not the signature that was taken to the Document examiner for examination with the signature of the person who carried out the Naivasha incidence and what was taken for examination is the signature in the Account opening Forms.
- g. That the Learned Trial Magistrate erred in law and facts in failing to consider the fact that the prosecution failed to produce the system photograph and signature of the real account holder which was maintained in the bank system and which the Appellant used to ascertain that the person whom he was serving at the counter is the very same person who was in the Bank System.
- h. That the Learned Trial Magistrate erred in law and facts in failing to find that the prosecution failed to secure the Register of Telephone calls maintained at the Banks Headquarters, an audited voice recorded conversation of the Telephone made by appellant to Headquarters to confirm whether or not the Appellant made a call to Chacha of the Forensic Department and Authorised the Appellant to proceed with the transaction.
- i. That the Learned Trial Magistrate erred in law and in facts in not finding that the Prosecution did not tender any evidence as to show how or in what form the authorization from the Forensic section of the Bank in Nairobi was supposed to be given for one to transact with the Accounts of Jane Njeri Kinyanjui Steinmetz.
- j. That the Learned Trial Magistrate erred in law and in facts in holding that the Appellant was required to keep a copy of the Passport used to identify the customer or any or identifying document when there is no evidence that was adduced that the practice of the Bank required the Appellant to keep being served at the Bank.
- k. That the Learned Trial Magistrate erred in law and facts in shifting the burden of proof to the Appellants against the established principles of Criminal procedure and further failed to consider the evidence and submission tendered in Court by the Appellant.



- l. That the Learned Trial Magistrate erred in law and facts in admitting uncertified documents and documents which did not comply with the law to be produced as Exhibits to support the charges against the Appellant as a result the Appellant's case was prejudiced.
  - m. That the Learned Trial Magistrate erred in law and facts in failing to find that the Prosecution failed to call several crucial witnesses who had crucial evidence and crucial documents among them System Log which could have shown who interfered with the Accounts of Jane Njeri Kinyanjui Steinmetz, Audit Report, Bank Account Statements, the CCTV footage System all which could have assisted the Court to know the truth.
  - n. That the Learned Trial Magistrate erred in law and facts in finding that the recovered passport at the Nairobi West Bank was similar or is the one that was used in the alleged offence committed in Naivasha Bank when there is clear and sufficient evidence that it was not the one used in the Naivasha Bank Transaction and the Investigating Officer could not confirm that the recovered passport is the one used in in the Naivasha Bank Transaction.
  - o. That the Learned Trial Magistrate erred in law and facts in failing to find that a Letter from the Swiss Embassy produced in Court as Exhibit 20 clearly indicates that the original Passport of Jane Njeri Kinyanjui Steinmetz bearing the same numbers and particulars as the passport recovered was reported missing in 2015 and one cannot tell in whose hands or who has possession of the Original Passport.
  - p. That the Learned Trial Magistrate erred in law and facts in convicting and sentencing the Appellant when the evidence available and on record is against the conviction and sentence as the Appellant's defence was firm, consistent and the evidence of 3rd Accused who was acquitted materially corroborated the evidence of the Appellant in his defence.
23. The respondent did not file any formal response to the appeal and therefore the appeal stands unopposed, be that as it were, the appeal was disposed of by parties filing of submissions. The appellant filed submissions dated 14<sup>th</sup> October 2022, submitting that the evidence was not sufficient to prove the offence of conspiracy to commit a felony. That an essential ingredient to prove the offence are that; two or more people agree to put into effect a scheme whose ultimate aim would be commission of a felony. He relied on the case of *R v Brisac* (1803) 4 East 164 at P.71 where it was stated that proof of existence of a conspiracy was a matter of inference, deduced from certain criminal acts of the parties done in pursuance of an apparent criminal purpose common to them.
  24. He argued that it was not demonstrated what he did or did not do that constituted the offence as there was no common plan or collusion between him and the other accused person to create an inference that would constitute conspiracy. That, he followed the bank processes to conduct checks on the customer he was serving from the signature, to the physical appearance to calling back the number provided, and verified the information that was in the bank's system.
  25. He further, faulted the Investigation Officer for failing to examine the signatures and writing of the 1<sup>st</sup> accused person with those used in the Nairobi West Branch that place the 1<sup>st</sup> accused as the perpetrator in both incidences. Furthermore, the Investigating Officer did not examine the signatures in the bank system against the signatures in the withdrawal forms.
  26. The appellant submitted although he was also charged with the offence of stealing under section 268 (1) as read with section 275 of the *Penal Code*, there was no sufficient proof of stealing as an audit report was never done nor were the bank account statement for account No.(s) 2025xxxxx04 and 0758xxx019



- produced to ascertain that money was lost. Further, there was no formal complaint by the owner of the bank accounts, and neither was she called as a witness, as she declined to give evidence.
27. That the prosecution case had discrepancies and that, the prosecution produced uncertified documents which the trial court admitted contrary to the provisions of section 106 (3) of the *Evidence Act* and relied on *R v Mark Lloyd Stevenson* HC CR Revision No. 1 of 2016. Further the evidence on record was against the conviction and sentence and prayed that the same be quashed and set aside.
  28. The respondent in its submissions dated 14<sup>th</sup> November 2022 conceded the appeal on the ground that the evidence was not sufficient to prove the offences against the appellant and that the trial magistrate failed to analysis of evidence properly.
  29. That, the connection between the 1<sup>st</sup> accused and the appellant was not established and no evidence was adduced to show that they knew each other. Further, it was the 3<sup>rd</sup> accused who had initial contact with the customer and only referred her to the appellant due to the amounts involved. Furthermore, the 3<sup>rd</sup> accused was the one who executed the final transfer.
  30. Therefore, the trial court erred in acquitting the 3<sup>rd</sup> accused and convicting the appellant guilty. Reliance was placed on the case of *Christopher Wafula Makohga v Republic* (2014) eKLR where the court held that, where the court acquitted a co-accused on the charge of conspiracy the appellant should have been acquitted too.
  31. That the prosecution case had gaps as it failed to call real owner of the accounts who was mentioned severally and at one point was in the country. Further, that the beneficiary owner of the account, Njai Kayai & Co Advocate was never charged nor called as a witness despite being interviewed by the investigating officer. Furthermore, the bank audit and the CCTV were never produced to verify the interaction between the appellant and the other accused person. That, crucial documents such as the signature sample from Naivasha branch and the passport document used at Naivasha were never produced as such, the conviction was unsafe.
  32. At the close of the arguments on appeal, I have considered the arguments advanced by the respective parties and the materials placed before the court and I find that the following issues have arisen for determination: -
    - a. Whether the prosecution adduced adequate evidence proved its case beyond reasonable doubt;
    - b. Whether the trial court shifted the burden of proof to the defence;
    - c. Whether the trial court considered the appellant's defence;
    - d. Whether the appellant had supported the grounds of appeal; and
    - e. Whether the appeal should be allowed.
  33. In addressing the aforesaid issues, I note that, the duty of the first appellate court is to re-evaluate the evidence adduced in the trial court afresh and draw its own conclusion. In so doing, the court is alive to the fact that, it did not have the benefit of the demeanour of the witness.
  34. This duty of the 1<sup>st</sup> appellate court as was well articulated in the case of *Okeno v Republic* [1972] EA 32 that: -

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v. R.*, [1957] EA. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting



evidence and draw its own conclusions. (*Shantilal M. Ruwala v. R.*, [1957] EA. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses.”

35. As such even though the respondent has conceded to the appeal, it is trite that the appellant court should examine the facts afresh and arrive at its finding as stated in the case of; *Odhiambo v. Republic* (2008) KLR 565 that: -

“the court is not under any obligation to allow an appeal simply because the state is not opposed to the appeal. The court has a duty to ensure it subjects the entire evidence tendered before the trial court to a clear and fresh scrutiny and re-assess it and reach its own determination based on evidence.”

36. To revert back to the matter herein, I find that, the appellant was convicted of the offence of conspiracy to commit a felony contrary to section 393 of the *Penal Code* which provides that: -

“Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Kenya would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to that lesser punishment”.

37. Indeed, the elements of the offence of conspiracy to commit an offence were considered by the Court of Appeal in *Evans Waweru Maina v Republic* [2020] eKLR where it was held that:

“17. In *Mulama v Republic* [1975] KLR 24, it was held that if on a charge of conspiracy all the accused but one is acquitted, that one has to be acquitted as well, unless it is charged and proved that someone else not named in the charge has been part of the conspiracy. In *Archibold: Writing on Criminal Pleadings, Evidence and Practice*, pages 2589 and 2590, the learned authors state as follows: -

“The offence of conspiracy cannot exist without the agreement, consent or combination of two or more persons... so long as a design rests in intention only, it is not indictable; there must be agreement... Proof of the existence of a conspiracy is generally a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them.”

18. In the circumstances, since the prosecution did not demonstrate the involvement of any other person, we find and hold that the learned judge erred in law in affirming the appellant's conviction for the offence of conspiracy. Consequently, we allow that ground of appeal”.



38. The evidence adduced by all the prosecution witnesses did not reveal the fact that the appellant was known to the 1<sup>st</sup> accused (who allegedly committed the fraud) before the material date of the offence. In fact, to the contrary it is in evidence that, the 1<sup>st</sup> accused was brought to the knowledge of the appellant by the 3<sup>rd</sup> accused when she went to seek for the necessary approval of the suspect transaction. Thus had the payment amount been within the limit of the 3<sup>rd</sup> accused authorised approval, the appellant would never have met the 1<sup>st</sup> accused. So where is the evidence that the 1<sup>st</sup> accused, the appellant and/or 3<sup>rd</sup> accused had an “agreement” to defraud the bank?
39. If in fact, the appellant was involved in the offence of conspiracy, he would not have gone to the extent explained herein, in establishing the true identity of the customer as supported by the evidence of the 3<sup>rd</sup> accused. Indeed, it was the duty of the prosecution to prove that he failed to follow the bank procedure and/or conduct due diligence which would lead to the conclusion that by so doing he intended to and succeeded in aiding and abetting the crime.
40. The respondent has articulated very well the gaps in the prosecution case and do agree with the same. Of great note is the prosecution failure to rebut the evidence that one Chacha did authorize the appellant to approve the transaction.
41. It cannot therefore be said as stated by the learned trial magistrate that, failure to be “hawk eyed” in performance of one’s duty and/or to conduct due diligence in a transaction and/or even act negligently (if proved), then one is guilty in criminal liability or has the “mens rea” to commit a crime or amounts to an agreement with others to commit a crime. It suffices to note that “not even the devil knows the mind of a man”
42. Furthermore, the due diligence conducted by one officer in a bank on a transaction cannot be a yard mark for the other officers as each case is evaluated on its own merit, circumstances and facts. As can be noted herein, the officer who called the customer in Switzerland had knowledge that the customer was there and transacted in a particular branch of the bank.
43. Indeed, the accounts in question were domiciled in the Nakuru branch and the fraud was committed at Naivasha branch and therefore the appellant may not have met the customer physically before the due date (but of course that is not to justice any lapse that may have occurred).
44. In my considered opinion, the holding by the learned trial magistrate that, the appellant failed to conduct due diligence as did his counterpart at Nairobi West is not supported by evidence of any witness to that effect and therefore without basis. Further in observing that the 3<sup>rd</sup> accused role was perfunctory and at most “negligent and/or careless” is not supported by evidence of any witness and to the contrary she was actually arrested for the same in the same manner the appellant was arrested and charged. As such upon acquitting the 3<sup>rd</sup> accused of conspiracy the same charge could not be sustained against the appellant.
45. The appellant was also convicted of the offence stealing contrary to section 268(1) of the [Penal Code](#). The provisions thereof state as follows: -
- “(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property”.



46. In that regard the court in *Ketan Somaia & another v Republic* [2005] eKLR stated that: -

“The reason for that holding is simple. It is to be found in the definition of the term “stealing” as set out in section 268 of the *Penal Code*. For a person to be convicted for the offence of stealing, he must take or convert the thing, fraudulently. In other words, the prosecution must prove not only the act of taking or conversion, but also that the person had a fraudulent intent. It is therefore not sufficient for the prosecution to prove that the accused person was negligent or reckless.

In the case of *The Republic v Jones* (1976) KLR 1, the High court, Appellate side held that:

“on a charge of theft it was necessary to prove a fraudulent taking or conversion without claim of right, and a person was deemed to have taken or converted money fraudulently if he did so without a claim of right and with intent to use it at his will, even if he intended afterwards to repay the money to the owner.”

47. Similarly, in the case of; *Republic v John William Jones* [1966] eKLR, the court stated that: -

“It is necessary in Kenya for the prosecution, in a case of theft, to prove a fraudulent taking or conversion without claim of right; but the legislature of Kenya, unlike the English legislature, has given a detailed explanation of what is meant by fraudulently taking or converting property, and a man is to be deemed to have taken or converted property fraudulently if he does so with any one of five intents. The intent permanently to deprive the owner of property is only one of the intentions set forth, and a glance at section 268 shows that a man who takes money without a claim of right (and thus presumably without the consent of the owner) is deemed to do so fraudulently if he takes it with an intent to use it at his will, although he may intend afterwards to repay the amount to the owner.”

48. In the instant matter the evidence adduced is that the money was stolen from the account of Jane Njeri Steimenez Kinyanjui yet that customer did not complain formally or otherwise and/or even testify that at any given time her account was a subject of the alleged fraudulent transfers, withdrawals and/or theft. So the question is: were the alleged transactions carried out on her account? was her bank statement produced to prove the same? Whose money was stolen? Was it of the bank or the customer? Where is the evidence that the customer was compensated by insurance for the bank to have acquired the right of subrogation or locus to sue on behalf of the customer?

49. It suffices to note that the learned trial magistrate did not analysis the evidence adduced on this charge and neither did the court analyse the defence case. In my considered opinion, the appellant may have not have conducted due diligence exhaustively and the glaring issue is where he seems to have “suggested” a transfer of Kshs 9,000,000 and/or approved it to top up the Kshs 21,000,000 to enable the transaction of Kshs 21, 000,000. If the customer was the real genuine customer, then she should have known there was insufficient funds for the transaction of Kshs 30,000,000. But its negligence not conspiracy or theft.

50. The upshot of the aforesaid is that, the prosecution did not adduce sufficient or adequate evidence to sustain a conviction and therefore the conviction decision against the appellant is quashed and resultant sentence set aside. The appellant be released forthwith unless otherwise lawfully held.

51. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 25<sup>TH</sup> DAY OF MAY, 2023**



**GRACE L NZIOKA**

**JUDGE**

**In the presence of: -**

Mr Gichuki for the appellant

Mr Atika for the respondent

Ms Ogutu: Court Assistant

