



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**CIVIL APPEAL NO. 5 OF 2019**

**CAROLINE JEBIWOT KIPCHOGE.....APPELLANT**

**=VERSUS=**

**SAFARICOM LIMITED.....1<sup>ST</sup> RESPONDENT**

**THE KENYA POWER AND LIGHTING CO. LTD.....2<sup>ND</sup> RESPONDENT**

**Being an appeal from the Ruling of the Senior Principal Magistrate's Court**

**at Kabarnet PMCC. No. 32 of 2018 delivered on the 13<sup>th</sup> day of February 2019.**

**by Hon. V.O. Amboko, RM/**

**JUDGMENT**

1. Save for the different appellant herein the pleadings, evidence and submissions of the parties are similar to the related appeal Kabarnet HCCA No. 4 of 2019, CHARLES ONCHARI OGOTI VERSUS SAFARICOM LIMITED AND THE KENYA POWER AND LIGHTING CO. LTD., respecting a ruling with respect to a Preliminary Objection as to the suit herein being *sub judice* by virtue of a previous suit Eldoret Employment and Labour Court No. 156 of 2018.

2. For the reasons set out in the Civil Appeal No. 4 of 2019, the Court makes the following orders:

**1. The appellant's appeal is allowed.**

**2. The 1<sup>st</sup> respondent's cross-appeal is rejected.**

**3. The trial court's ruling, order and decree of 13<sup>th</sup> February 2019, the subject of the appeals herein, are set aside.**

**4. The appellant's suit herein Kabarnet S.P.M.C.C.C. NO. 32 of 2018 against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents shall proceed to hearing on dates to be fixed in consultation with the parties before the trial court.**

3. The costs of the appeal shall be costs in the suit.

Order accordingly.

**DATED AND DELIVERED THIS 22<sup>ND</sup> DAY OF JANUARY 2020.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

M/S Onyinkwa & Co. Advocates for the Appellant.

M/S Meritad Law Africa LLP., Advocates for the 1<sup>st</sup> Respondent.

M/S Kibichiy & Co. Advocates for the 2<sup>nd</sup> Respondent.