



**Bin & 2 others v Kenya Revenue Authority & another (Civil Suit  
18 of 2010) [2024] KEHC 5536 (KLR) (14 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 5536 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT 18 OF 2010  
DKN MAGARE, J  
FEBRUARY 14, 2024**

**BETWEEN**

**AHMED KULIMIYE BIN ..... 1<sup>ST</sup> PLAINTIFF**

**ALI SHIBU GAGO STORES ..... 2<sup>ND</sup> PLAINTIFF**

**INLAND AFRICA LOGISTICS LIMITED ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**KENYA REVENUE AUTHORITY ..... 1<sup>ST</sup> DEFENDANT**

**KENYA PORTS AUTHORITY ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The entire time *the constitution* has been in place, this case has seen it all. This matter came before first on me on 13/3/2023 where I directed issues to be settled and compliance to be completed. Luckily, I had a clean slate. The hearing started on 24/4/2023. The matter was heard wherein PW1 testified. DW1 testified on 26/7/2023 on behalf of the 1<sup>st</sup> Defendant.
2. The 2<sup>nd</sup> Defendant closed their case without calling a witness. While matters were pending submissions, the Plaintiff and the 2<sup>nd</sup> Defendant settled the matter. On 12/10/2023, the cases against the 2<sup>nd</sup> Defendant was marked as settled.
3. The matter therefore remained for judgment between the Plaintiff and the 1<sup>st</sup> Defendant. This is what I am delivering today. Ordinarily, when a defendant does not testify, the court makes a negative inference.

**History of the matter**

4. They file consists of several bundles but no meaningful proceedings were undertaken between 10/6/2010 and 13/3/2023. The plaint which is weather beaten was filed on 8/6/2010 and summons



issued on 10/6/2010. The 1<sup>st</sup> Defendant entered appearance on 21/7/2010 and filed Defence on 30/7/2001.

5. The second Defendant filed defence on 9/7/2010. In its defence the 1<sup>st</sup> Defendant stated as follows: -
  - a. That a declaration was made through the Simba systems but denied the declaration was correct and in compliance with East African Customs Management Act 2204 [I note that the same is a 2004 Act].
  - b. The 3<sup>rd</sup> Plaintiff falsified the consignment and the consignee and was discovered upon verification after entry was passed and presented to the 1<sup>st</sup> Defendant.
  - c. They admitted existence of Nairobi JR HC Misc Civil Application 1101 of 2007 but denied that the 3<sup>rd</sup> Defendant (sic) was party to it. The said proceedings were terminated.
  - d. The Plaintiff attempted to have granted alternative to have the goods exported to Zanzibar and facilitated Warmer but denied particulars of further bond.
  - e. The 1<sup>st</sup> Defendant discovered the loss or fraudulent division and had arraignment in Court with the 3<sup>rd</sup> Plaintiff being under investigation.
  - f. The suit is time barred.
6. The 2<sup>nd</sup> Defendant s defence is of no relevancy to the mater in issue.

### **Plaintiff's pleadings**

7. The Plaintiffs sued the Defendants both of whom are statutory bodies establish under their respective Acts of parliament. The 1<sup>st</sup> defendant is a body established under the [Kenya Revenue Authority Act](#), cap 469. The long tile of that Act provides for an Act of Parliament to establish the Kenya Revenue Authority as a central body for the assessment and collection of revenue, for the administration and enforcement of the laws relating to revenue and to provide for connected purposes.
8. The second defendant is established under the [Kenya Ports Authority Act](#), 1978.for purpose of this Judgment, as shall be seen shortly, they are not parties.
9. The 1<sup>st</sup> Plaintiff was said to had metric Tons of 4x20 feet Swaziland VHP sugar packed in 1920 Polyline Polypropylene bags of 50 Kg.
10. The 2<sup>nd</sup> Plaintiff was an importer of 10 x 20 feet containers stc, 195 metric tonnes South Africa C V P sugar packed in Polyline Poly prolythine bags of 50 Kg.
11. The 3<sup>rd</sup> Defendant was the clearing and forwarding agents. The said sugar was marked as Entry No. 2007. Msaa8200049 2007 MSA 820206 Pastel on 31/7/2007 and released electronically by Simba System for transit to the Federal Islamic Republic of Somalia. The Plaintiffs were mobilizing when the 1<sup>st</sup> Defendant issued F89 No. 149087 dated 20/08/2007– Notice of goods deposited in customs warehouse for investigation.
12. The Plaintiffs challenged the 1<sup>st</sup> Defendant actions but the said Judicial Review was dismissed. The Plaintiffs executed a secondary bank guarantee as directed by the court in respect of the BIL of lading Nos. 704021 and DR 707964 Custom entry Nos. 20007MSA 8200049 and 2007. MSA 820206 respectively.
13. The Plaintiff obtained a 50 % vaiver. They pleaded and appealed on 50% waiver. BEFORE the conclusion of waiver issues, the said consignment was fraudulently released to third parties on



- 16/6/2009. The plaintiffs pleaded the particulars of negligence on part of the Defendants and particularized loss.
14. They stated that the 1<sup>st</sup> Defendant failed to cancel bond No. GB1376225/07 to the extent of Ksh. 2,620,095 and Ksh. 6,002,202 under customs entry Nos. 2007MSA 820049 and 2007 MSA 820206 respectively.
  15. They sought the following prayers: -
    - a. USD 125,927.03
    - b. Ksh. 13,798,867
    - c. Euros 29,683.47
    - d. Interest on a, b & c,
    - e. An order compelling cancellation in favour of the 3<sup>rd</sup> Plaintiff of bond No. GB 136225/07 for Ksh. 2,620,095 under customs entry No. 2007MSA 8200049 and bond No. GB 13624/07 for Ksh. 6,402, 202 under customs enter No. 2007 MSA 820206.

### **Plaintiff's Evidence**

16. The Plaintiff's witness Ropy F. Mwathi testified and adopted the statement dated 30/11/2022, and list of documents dated 18/11/2013. In his evidence in chief he reiterated the contents of the Plaintiff. He stated that he was to clear 2 consignments, under bill of lading DR 707964 Au MP 704021.
17. He stated that the 3<sup>rd</sup> Plaintiff took another bond /guarantee through Giro Commercial Bank for Ksh. 2,620,095. They searched for a buyer in the United Republic of Tanzania and the 2<sup>nd</sup> Plaintiff agreed to purchase the goods. The sale agreements were entered into and were at pages 40 – 41.
18. They sought for 100% waiver on taxes. The 2<sup>nd</sup> respondent allowed only 50 % up to when the application was made for 100% waiver thereafter. The Plaintiffs learnt that he containers were illegally released to 3<sup>rd</sup> parties. They prayed that they be compensated for the loss.

### **1<sup>st</sup> Defendant's witness**

19. Sylvester Okello Ogello in his statement dated 20/4/2023 stated that: -
  - a. The goods were destined to the Republic of Uganda but the bill of lading was changed to Kismayu, Somalia.
  - b. The foregoing led to suspicion that the same was for diversion to the local market.
  - c. Due to conflict and the war in Somalia it could be difficult to know if the goods actually reached, if they were released.
20. This resulted in issuance of 3 F89s to RO – Ro and Manifest system. The goods were collected between 2/4/2009 and 3/5/2009. The 1<sup>st</sup> Defendant, blamed the loss on the 2<sup>nd</sup> Defendant for release without payment off taxes. This resulted in Criminal Case No. 3645 of 2009.
21. On cross examination the Plaintiff's witness stated that KPA officers were changed. The witness stated that they claimed USD 37,514.40, being value of goods, USD &2,242.63 as costs, freight and insurance. They also sought cost of empty containers.



22. On being cross examined the 1<sup>st</sup> Defendant's witness stated that goods in transit are kept under customs warehouse, if:
  - a. They are on transit.
  - b. No duty is payable
  - c. Seized for investigation.
23. He stated that the goods had been kept at Roro- Roll in Roll out, next to the customs but not handed over. He stated that the investigations by the DCI confirmed that KPA were culpable. He stated that the containers went missing on 28/3/2009 while seizure was in August 2010. The KPA workers were charged with offences related to 2007.
24. On being cross examined by Mr. Mogaka the witness confirmed that they received a letter dated 13/4/2010 from the plaintiff. The witness confirmed that the Plaintiffs did not receive their goods though they were not stolen by the Plaintiff. They did not have a report of the loss, through all gates were manned by KPA, KRA, Kenya police.
25. He conceded that KRA prevented the owner from receiving the goods. According to him without F89 the goods could have been transhipped. He stated that the value of the goods according to the declaration was USD 7,078,125/=.
26. He stated that the Kenya Revenue Authority did not find any false declaration. It was his case that the 3<sup>rd</sup> Plaintiff was not charged for making false declaration. He clarified that investigations were from KPA and KRA who decided to charge KPA officers in CMCR 3645 of 22009. These said goods were at KPA yard.
27. He stated that a bond is sued based on the value of the goods.

### **Consent**

28. Subsequently, the 2<sup>nd</sup> Defendant and the Plaintiffs entered in to a consent in the following terms: -

“By consent of the Plaintiffs and the 2<sup>nd</sup> Defendant a sum of US\$175,000 all-inclusive to be paid by the 2<sup>nd</sup> Defendant to the Plaintiffs’ Counsel within thirty (30) days from the date of adoption of this consent by the Court in full and final settlement of all the Plaintiff’s claims against the 2<sup>nd</sup> Defendant in this suit including for interest and costs.

Upon payment for the aforementioned amount his matter as against the 2<sup>nd</sup> Defendant shall be marked as settled and the 2<sup>nd</sup> Defendant shall be deemed fully discharged from all claims against it in this suit.

The payment of the aforesaid amount by the 2<sup>nd</sup> Defendant to the Plaintiffs is without any admission of a liability on the part of the 2<sup>nd</sup> Defendant herein.

The matter to proceed further as may be ordered for Court determination.”

29. The consent covered all claims against the 2<sup>nd</sup> Defendant including costs and interest. Though indicated that it is without admission of liability, the same is an admissions of liability. There is yet to



be established the no fault system in Kenya. In the case of Attorney General v Law Society of Kenya & another [2017] eKLR, the Court of Appeal, waki, makhandia & ouko, JJ.A, stated as doth: -

“We reiterate the words of Lord Mansfield CJ in *Holman v Johnson* (1775) 1 Cowp 341 that: “... No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff’s own standing or otherwise, the cause of action appears to arise *ex turpi causa* [“from an immoral cause”], or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff...”

In the circumstances of this appeal, strict liability in the *Rylands V. Fletcher* (1861-73) All ER 1 a sense has no application. We reiterate the oft-cited passage in *Kiema Mutuku V. Kenya Cargo Hauling Services Ltd.* (1991) 2KAR 258, that; “...there is as yet no liability without fault in the legal system in Kenya, and a plaintiff must prove some negligence against the defendant where the claim is based on negligence....”

30. The initial claim by parties was for amounts around 175,000. It is therefore safe to hold and find that prayers (a), (b), (c) of the plaint were spent.

#### **1<sup>st</sup> Defendant’s submission**

31. They submit that the 2<sup>nd</sup> Defendant loaded the goods on to Rift valley railway wagons, which claim they have already settled. They submitted that that there are the following issues are for determination: -
- a. Whether the 1<sup>st</sup> Defendant is liable for the loss of the Plaintiff’s containers.
  - b. Whether the Plaintiff discharged the burden of proof.
  - c. Whether the Plaintiff is entitled to the reliefs sought.
32. The 1<sup>st</sup> Defendant s avers that they are not liable for the loss as it is the 2<sup>nd</sup> Defendant who caused the same.
33. The F89 was issued to the 2<sup>nd</sup> Defendant who was in possession and was never revoked. They state that Bonds attract bank charges. The 1<sup>st</sup> Defendant stated that the bond costed 26,200.98 and lasted for 90 days’ from 16/11/2007.
34. They stated that on 21/4/2010 the 1st Defendant wrote that the bond had expired. At paragraph 9, page 47 of the record of the bundle, the Plaintiff admits that they could not execute the bond of Ksh. 9,022,2777. The bond at page 143 is for 70,600,000 but this was not the bond amount. The payment relates to Simba Commodities Ltd.
35. On whether the burden of proof was discharged, they relied on Justice Mativo’s decision in *Hellen Wangari Wangechi v Carumera Muthoni Gathua* [2015] eKLR, where he stated as follows: -

“All cases are decided on the legal burden of proof being discharged (or not). Lord Brandon in *Rhesa Shipping Co SA vs Edmunds* remarked: -

“No Judge likes to decide cases on the burden of proof if he can legitimately avoid having to do so. There are cases, however, in , owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just course to take.”



Whether one likes it or not, the legal burden of proof is consciously or unconsciously the acid test applied when coming to a decision in any particular case. This fact was succinctly put forth by Rajah JA in *Bristone Pte Ltd vs Smith & Associates Far East Ltd*:-

“The court’s decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him”

With the above observation in mind, the starting point is that whoever desires any court to give judgement as to any legal right or liability, dependant on the existence of fact which he asserts, must prove that those facts exist. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. The burden of proof as to any particular fact lies on that person who wishes the court to believe its existence, unless it is provided by any law that the proof of that fact shall be on any particular person.

It is a well-established rule of evidence that whoever asserts a fact is under an obligation to prove it in order to succeed, ..”

36. They pray that the Court finds that the burden of proof was not discharged in respect of: -
- a. Loss of cargo together with the containers.
  - b. Payment of 9,022,277
  - c. Payment of value of containers demanded
  - d. Bank charges for the bonds beyond the initial payments.
37. They further state that the loss has been fully indemnified by the 2<sup>nd</sup> Defendant. They urge the court to find that the suit against the 1<sup>st</sup> Defendant is not proved.

#### **Plaintiff’s submission**

38. The Plaintiffs submitted that the case against the 2<sup>nd</sup> Defendant was compromised. Save for apportioning liability for record, they state that the goods were lost/stolen from the 1<sup>st</sup> and 2<sup>nd</sup> Defendant’s customs controlled warehouse at Kilindini Port and are not available for release to the Plaintiff.
39. It is there case that DW1 neither exonerated nor established higher liability than the 2<sup>nd</sup> Defendant. They relied on the case of *Modern Holdings (EA) Limited v Kenya Ports Authority (Petition 20 of 2017)* [2020] KESC 53 (KLR) (7 February 2020) (Judgment), where the court stated.
40. They also rebutted the submissions from the defendant stating that they were seeking only Ksh. 26,200.95 and Ksh. 64,022.02. the amount is said to be in paragraph 119(9) of the Plaintiff.
41. They pray that given that the Sugar was lost while in joint custody of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant then it is unfair, unequitable for the Defendants not to discharge the security bonds. They pray that prayer of the plaintiff be granted and an order of payments of charges on the security/ Guarantee as particulate in paragraph 19 (g) of the plaintiff as well as bond fees under paragraphs 19 (h) and J.



42. They submit that it is a clear manifestation on a balance of probabilities that invoices for USD 71,175 and USD 36,960 for the cargo were duly settled. They relied on *PIL KENYA LIMITED V. JOSEPH OPPONG* where J. W. Onyango Otieno JA held that;

“The effect of a notice of withdrawal is to terminate the suit of course subject to costs to the opposite party.”

43. They particularized the damages in paragraph 199 of the submission. They stated that loss of profits ought to be awarded. They say no businessman buys goods without an intention making profits. They claim amounts set out in paragraphs 14, 15 and 19.

### **Analysis**

44. The trouble with this matter is that the Plaintiff stole thunder from it without having regard where to take the lightning. The matter proceeded as a jointly and severally case. However, the Plaintiff and 2<sup>nd</sup> Defendant settled. “All the Plaintiffs claim against the 2<sup>nd</sup> Defendant in this suit including interest and costs.

45. With the foregoing the settlement between the two parties, various heads became blurred. Other than matters where there is a claim against KRA only, it is neither possible nor desirable for this court to apportion the amounts of USD 175,000 to each limb. Whatever the outcome, it is not possible to “apportion liability between the Defendants, the cases against the 2<sup>nd</sup> Defendant having been settled.

46. The consent also did not reserve the finding on liability. In order to deal with the liability of 2<sup>nd</sup> defendant, the first respondent must be a party. However, from the totality of the evidence, the Plaintiff was unable to prove the liability of KRA.

47. The Plaintiff prayed for the following prayers against the Defendant jointly and severally

- a. USD 125,927.03
- b. Ksh. 13,798,867
- c. Euros 29,683.47
- d. Interest on a, b and c above from the date of judgement until payment in full.
- e. An order compelling cancellation in favour of the 3<sup>rd</sup> Plaintiff of Bond No. GB136225/07 for Ksh. 2,620,095.00 under customs entry No.2007MSA820049 and Bond No.GB13624/07 for Ksh. 6,402,202.00 under Customs Entry No.2007MSA820206.

48. The second Defendant settled USD 175,000/= in regard to their liability. The claim was jointly and severally. I have already found that the 2<sup>nd</sup> Defendant was wholly liable for the happenings that led to the loss. The claims in prayers a, b and c. are thus settled.

49. The next question is in regard to the bonds referred above. The bonds expired. However, for some reason the 1<sup>st</sup> Defendant did not want to let go of the bonds. They did not want to let go of the bond. It still stands in credit and as a debt. The 1<sup>st</sup> Defendant knew that the theft had occurred and they had levied the resultant tax on the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant has held the Plaintiff to ransom for more than 15 years.

50. Despite the bonds being expired, it is important that they be nullified to enable the Plaintiff be able to trade without a Damocles sword being held upon them. The court notes from the pleadings and evidence in court that the bond existed to secure the goods that were indisputably stolen eventually.



The goods were also stolen while at the customs area of the Kenya Ports Authority which, Port is under the control of the Kenya Revenue Authority. It is the Plaintiff's case that the loss of the goods by theft was due to negligence on the part of the Defendant s.

51. It is common ground by the parties that said bond dated 16<sup>th</sup> November 2007 was valid only for 90 days. It must thus be taken to have expired since there is no evidence that it was renewed at any time. I however find that the Kenya Ports Authority indemnified the Plaintiffs owing to the loss of the cargo.
52. The issue is thus whether the bond though expired is available for cancelling. The Plaintiff sought an Order compelling the cancellation of the bond no. GB 136225/07 for Ksh. 2,620,095 under customs entry number 2007MSA820049 and Bond No. GB13624/07 for Ksh. 6,402,202 under customs entry no. 2007MSA820206. The bond had validity period of 90 days. It is not in dispute that 90 days lapsed without any renewal. As such,
53. bond is invalid and a nullity. However, it appears, despite the tenure of the bond having expired, the 2<sup>nd</sup> Respond is holding onto the bond in its books. Though there is nothing to cancel, it may be convenient to make an order to do so. In *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169, Lord Denning while delivering the opinion of the Privy Council at page 1172 (1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
54. The above decision was applied with approval by the Supreme Court in *Petition No. 5 of 2015 - Republic v Karisa Chengo & 2 others* [2017] eKLR, (: Maraga, CJ & President; Mwilu, DCJ & Vice-President; Ibrahim; Ojwang; Wanjala; Njoki; and Lenaola, SCJJ).
55. An order for the cancellation of a bond will thus only be necessary on historical reasons and to document release from the KRA system and any attendant penalties. Was it necessary that the 2<sup>nd</sup> Defendant to wait all these years before cancelling the bond? They had already imposed taxes on the first Defendant. There was nothing that was being bonded.
56. To await the court to make a decision on a matter this mundane was capricious, arbitrary, unreasonable and un-business like. It is the Defendant's duty to encourage and not stifle business. They needed to help [parties mitigate losses.
57. Finally, even if I had found the group liable I find that the Respondent could have mitigated losses by paying 500 and claiming a refund later. No sane farmer will prefer to lose a whole crop and fail to mitigate losses by paying Ksh. 500.
58. In *African Highland Produce Limited v John Kisorio* [2001] eKLR, the court of Appeal, Tunoi, Owuor & Keiwua JJ A, as they then were, stated as follows: -

“The guiding principle of law in mitigation of losses is as follows. It is the duty of the plaintiff to take all reasonable steps to mitigate the loss he has sustained consequent upon the wrongful act in respect of which he sues, and he cannot claim as damages any sum which is due to his own neglect. The duty arises immediately a plaintiff realizes that an interest of his has been injured by a breach of contract or a tort, and he is then bound to act, as best he may, not only in his own interests but also in those of the defendant. He is, however, under no obligation to injure himself, his character, his business, or his property,



to reduce the damages payable by the wrongdoer. He need not spend money to enable him to minimise the damages, or embark on dubious litigation. The question what is reasonable for a plaintiff to do in mitigation of his damages is not a question of law, but one of fact in the circumstances of each particular case, the burden of proof being upon the defendant. See Halsbury's Laws of England Vol 11, Page 289, 3rd Edn 1955."

59. Having made such blunder's of monumental proportions, someone has to meet costs. Costs follow the events. The event is the finding that the second Defendant was reasonable in failing to remove the bonds referred herein from its system and release the Applicant from liability. The bond though expired, appears to have created a liability and was hanging precariously on the head of the Plaintiff like the Damocles sword.
60. The concept Damocles sword arose from the tales of Roman philosopher Cicero in his 45 B.C. book Tusculan Disputations, posited that Dionysius, a king of the Sicilian city of Syracuse around 2 centuries BC invited Damocles a courtier or flatterer known, sumptuous banquet where he was served with succulent cuts of meat and lavished with scented perfumes and ointments. and had him seated him on the golden couch beneath a sharp naked sword that was suspended from the ceiling by a single thread. This was to show that there can be no happiness for one who is under constant apprehensions.
61. It follows that after cancelation of bonds and their obligations, the next issue is costs. The matter has been in court forever. Someone has to pick the tab. In the case of Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014eKLR, the supreme court gave certain and binding gray number 2007MSA820049 and Bond No. GB13624/07 for Ksh. 6,402,202 under customs entry no. 2007MSA820206 making a total of Ksh. 9,022,297/=. This will attract a good and lawful costs of 345,000/=.
62. Consequently, an order is hereby issued compelling the 1<sup>st</sup> Defendant to in favour of the 3<sup>rd</sup> Plaintiff of Bond No. GB136225/07 for Ksh. 2,620,095.00 under customs entry No.2007MSA820049 and Bond No.GB13624/07 for Ksh. 6,402,202.00 under Customs Entry No.2007MSA820206. The 1<sup>st</sup> Defendant to pay Ksh. 345,000/= to the Plaintiff.

### **Determination**

63. In the circumstances, I make the following orders: -
  - a. Liability was to be borne by the second Defendant who has settled their claim.
  - b. The case against the 2<sup>nd</sup> Defendant is settled.
  - c. The court is unable to reopen the consent to attribute liability or any monetary liability between the Defendants.
  - d. The 1<sup>st</sup> Defendant is not responsible for the loss suffered by the Plaintiffs vis-à-vis the cargo.
  - e. The 1<sup>st</sup> Defendant is Directed to cancel the bonds and clear the Plaintiffs from all liability arising from the Bond No. GB136225/07 for Ksh. 2,620,095.00 under customs entry No.2007MSA820049 and Bond No.GB13624/07 for Ksh. 6,402,202.00 under Customs Entry No.2007MSA820206.
  - f. The bond is deemed as cancelled 14 days from today.
  - g. The 1<sup>st</sup> Defendant to pay Ksh. 345,000/= to the Plaintiff payable within 30 days.



**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2024.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

**In the presence of:**

Mr. Mogaka for the Plaintiff

Miss Chelangat for the 1<sup>st</sup> Defendant.

Court Assistant - Brian

