



County Government of Kiambu v Bradonlink Contractors Ltd & another (Civil Appeal 3 of 2022) [2023] KEHC 2338 (KLR) (21 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2338 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 3 OF 2022
JM CHIGITI, J
MARCH 21, 2023**

BETWEEN

COUNTY GOVERNMENT OF KIAMBU APPELLANT

AND

BRADONLINK CONTRACTORS LTD 1ST RESPONDENT

SKYTOPS LIMITED 2ND RESPONDENT

(Being and Appeal against the Judgment of the Principal Magistrate Hon. Wilson Rading, dated 10th day of December, 2021 in Kiambu Chief Magistrates Courts Civil Case No. E084 of 2021)

JUDGMENT

Brief background:

1. The Appellant seeks to overturn the decision in PMCC No. E084 of 2021, Kiambu rendered on 10th December 2021 by Hon. Wilson Rading, Principal Magistrate.
2. In the said case, the Respondents had filed an amended plaint dated 10th June 202 seeking that judgment be entered against the Appellant for the following orders:
 - a. The sum of Kshs.7,984,754/=
 - b. Interest on (a) above at the rate of 15% per month from February 2019 to the date of full and final settlement of the same.
 - c. The sum of Kshs.3,973,800/=
 - d. Interest on (c) above at the rate of 15% per month from February 2019 to the date of full and final settlement of the same
 - e. Costs of this suit and interest thereof.



3. The Appellant filed an amended defence dated 13th July 2021 denying the entire claim.
4. On 7th October 2021 the Respondents called one witness, Mr. John Muiruri Kimani. They submitted that they carried out their legal obligations under the agreements and that when they completed the construction works, they invited the officers of the Appellant to inspect the work to confirm that the same had been executed as per the contracts as evidenced by the work completion certificates dated 12th February 2019 and 16th November 2018.
5. The Respondents contend that the Local Purchase Orders addressed to them by the Appellant were clear acknowledgement by Appellant that the Respondents carried out their legal obligations.
6. They further contended that the Appellant did not provide any evidence in support of the allegation that the Respondents did not participate in the procurement process at the hearing of the suit nor in their pleadings but the averments were only made in their submissions.
7. The Appellant called no witnesses.
8. The Appellant majorly focused on the procurement process and claimed that the Respondents did not participate in the tendering process and therefore could not claim for the works performed.
9. The trial Court noted that the Appellant did not provide any evidence in support of its claims at the hearing of the suit nor did it include the same in its pleadings. The averments were only made in their submissions.
10. The matter culminated upon Judgment dated 10th December 2021 where the trial Court entered judgment in favor of the Respondents as prayed in the Amended Plaint.
11. The Appellant being dissatisfied with the Judgment it filed a memorandum of appeal dated 3rd August 2022 outlining the following grounds of appeal;
 - i. The learned magistrate erred in law and in fact in ignoring and disregarding the Appellants Written Submissions dated 25th October, 2021.
 - ii. The learned Magistrate erred in law and in fact in disregarding the Appellants Statement of Defence together with the evidence presented in court therein.
 - iii. The learned Trial Magistrate erred in law and fact by wrongly applying the principles of law.
 - iv. The learned Trial Magistrate erred in law and fact in failing to determine that the respondents did not participate in the tender process contrary to the provisions of the Public Procurement and Disposal Act.
 - v. The learned Trial Magistrate erred in law and fact in failing to appreciate that the procurement of goods and services by a Government entity is an elaborate process starting from Invitation of tender, evaluation, award by tender Committee, acceptance, issuing of Local Purchase Order (LPO), supply and then payment in accordance with the Public Procurement and Disposal Act and the Public Finance and Management Act and Respondents herein failed to follow the due process of the law.
 - vi. The learned Trial Magistrate erred in law and fact in failing to determine that there was no valid written contract between the Appellant and the Respondent.
 - vii. The learned Magistrate erred in law and in fact by awarding the Respondents payment in full and final settlement of the principal amount of Kenya Shillings Eleven Million, Nine Hundred



and Fifty-Four Thousand, Five Hundred and Four only (Kshs. 11,954,554.00) and yet there was no contract between the parties.

- viii. The learned Magistrate erred in law and in fact in determining that the Respondent be paid interest on Kenya Shillings Eleven Million, Nine Hundred and Fifty-Four Thousand, Five Hundred and Four only (Kshs. 11,954,554.00) at the rate of 15% per month from February 2019 to the date of full and final settlement of the same.
- ix. The learned Magistrate erred in law and in fact by applying interest rate of 15% per month from February 2019 until payment in full and final settlement on the principal amount of Kenya Shillings Eleven Million, Nine Hundred and Fifty-Four Thousand, Five Hundred and Four only (Kshs.11,954,554.00)

Analysis and determination:

12. In *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, the Court of Appeal held: This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.
13. Owing to the fact that grounds 1 through to 7 are closely intertwined, I shall analyze, reassess and evaluate the evidence related to the grounds together.
14. There is no dispute that the parties relationship was pegged on an exchanged documents in the style of LPOs, work inspection/completion certificates, letters, invoices, promises to pay the outstanding debt. In addition, there was no written contract between them.
15. The Appellant did not give evidence to deny that the works were performed as agreed with the Respondent.
16. The *Black's Law Dictionary, 8th Edition* provides the definition of a contract as follows: -
 - “The term "contract" has been used indifferently to refer to three different(i) The series of operative acts by the parties resulting in new legal relations;
 - (ii) The physical document executed by the parties as the lasting evidence of their having performed the necessary operative acts and also an operative fact as itself.
 - (iii) the legal relations resulting from the operative acts, consisting of a right or rights in personam and their corresponding duties, accompanied by certain powers, privileges, and communities. The sum of these legal relations is often called "obligation" William R. Anson — Principles of the Law of Contract”
17. The Respondents submitted that the parties created a legal relationship through various documents executed by the parties and that the documents gave rights in personam as defined in the *Black's Law Dictionary*.
18. According to the Respondents there is no requirement in law requiring the parties to have a written contract under the *Law of Contract Act*. It is not part of the agreements required to be in writing under the act at section 3(1).



19. Most of The Respondents' documents at pages 48 to 58 and pages 101 to 108 of the Record of Appeal, are official documents issued by the Appellant who did not call any witness to deny the authenticity of the same.

20. In *Edward Muriga through Stanley Muriga vs. Nathaniel D. Schuzter* Civil Appeal No. 23 of 1997 the court held that:

“In this matter, apart from filing its statement of defence the Appellant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence remains mere allegations.

...Sections 107 and 108 of the *Evidence Act* are clear that he who asserts or pleads must support the same by way of evidence”

21. The Respondents submitted that from the evidence uttered on oath and the Respondents List of Documents and further List of Documents were conclusive proof of the contractual relationship between the parties.

22. According to the Respondents, the Works Inspection/Completion Certificate, the report of the Inspection and Acceptance Committee at pages 14, 15, 17 and 18 of the Respondent List of Documents as well as pages 3 and 4 of the Plaintiff's Further List of documents provide a contract number obviously filled out by the Appellant showing proof that contractual agreements was created leading to a legal and/or contractual obligations and a debt.

23. According to the Respondents, upon completing the construction works, they invited the Appellant to inspect the same to confirm that the same which they did as set out at:

- a. page 14 of the Respondent List of Documents dated 15th February 2021 the Respondent annexed a Works Inspection/ Completion Certificate dated 12th February 2019. The said certificate is for rehabilitation of Nyanduma Secondary School Githioro Road which is cited as contract number CGK/RTPW8U/152/2017-2018. In the body of the said certificate, it is indicated that the works were inspected by the superintendent of Works and approved by the Sub-County Engineer/Quantity surveyor. Both officers of the Appellant confirm that they inspected the works and were satisfied with the quality of works done and noted that the 1st Respondent ought to be paid the sum of Kshs. 3,986,300.00. This information is further buttressed by the report of the Inspection and Acceptance Committee (IAC) appearing at page 15 of the Plaintiff's List of Documents.
- b. page 18 of the Respondent List of Documents dated 15th February 2021; the Respondent annexed a Works Completion Certificate dated 16th November 2018. The said certificate is for construction and rehabilitation of JN Witeithie Maraba road Kibute access road which is cited as contract number CGK/RTPW9U/272/2017-2018. In the body of the said certificate, it is indicated that the works were inspected by the Clerk of Works and approved by the Subcounty Engineer. Both officers confirm that they inspected the works and were Satisfied with the quality of works done and noted that the 1st Respondent ought to be paid the sum of Kshs. 3,998,404.00. This is further buttressed by the report of the Inspection and Acceptance Committee (IAC) appearing at page 17 of the Plaintiff's List of Documents.
- c. At pages 3 and 4 of the Respondent in their Further List of Documents dated 10th August 2021, annexed a Works Inspection/Completion Certificate dated 12th February 2019. The



said certificate is for rehabilitation of Karatina Special Road which is cited as contract number CGK/RTPW8U/ 153/2017-2018. In the body of the said certificate, it is indicated that the works were also inspected by the Superintendent of Works and approved by the Sub-County Engineer/Quantity Surveyor. Both officers confirmed that they inspected the works and were satisfied with the quality of works done and noted that the 2nd Respondent ought to be paid the sum of Kshs. 3,973,800.00.

24. The Respondents urge the Court to make reference to the same at pages 115 to 166 of the Record of Appeal and find that there were valid contracts between the parties hence no error was made by the Learned Magistrate in arriving at the judgment.
25. I have looked at the aforementioned documents and I arrived at a conclusion that the Appellant did not deny their source nor challenge their authenticity and they are genuine documents.
26. The *Public Procurement and Disposal Act* 2015 is an Act of Parliament to give effect to Article 227 of the *Constitution* to provide procedures for efficient public procurement and for assets disposal by public entities and for connected purposes.
27. The Controversial contracts that form the subject matter of this Appeal were entered into in 2018 after the *Act* came into force.
28. According to Section 2 of the *Act* a "procuring entity" means a public entity making a procurement or asset disposal to which this Act applies. Further the Act provides that a "public entity" includes a county government or any organ or department of a county government. I am satisfied that the Appellant is a procuring entity.
29. A "contractor" means a person who enters into a procurement contract with a procuring entity, and includes the main contractor. A "procurement contract" means an agreement concluded between the procuring entity and a contractor (or contractors) resulting from a tendering proceeding.
30. The *Public Procurement and Disposal Act* 2015 is very clear under Section 85 that all tenders shall be evaluated by the evaluation committee of the procuring entity for the purposes of making recommendations to the accounting officer through the head of procurement to inform the decision of the award of contract to the successful tenderers.
31. The procurement of goods and services by a Government entity is an elaborate process that involves the invitation of tender, evaluation, award by tender Committee, acceptance, issuing of Local Purchase Order (LPO), supply and then payment in accordance with the *Public Procurement and Disposal Act* and the *Public Finance and Management Act*.
32. Section 135 of *Public Procurement and Disposal Act* 2015 provides that the existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer.
33. No contract is formed between the person submitting the successful tender and the accounting, officer of the procuring entity until it is written by the parties.
34. The Respondents argue that on a without prejudice to the above, the Appellant is being less than candid in stating that the proper position of the law with respect to procurement for the value of the works in contention as they fall under section 105 of the *Public Procurement and Disposal Act*, 2015 (PPDA) which exempt the contested projects from requirements of formal contracts.



35. Section 105 of the *PPDA* provides that:
- “When request for quotations may be used: -A procuring entity may use a request for quotations from the registered suppliers for a procurement if the estimated value of the goods, works or non-consultancy service being procured is less than or equal to the prescribed maximum value for using requests for quotations as prescribed in Regulations.”
36. The First Schedule to the repealed *Public Procurement and Disposal Act*, 2003 was applicable in the year 2018 when the Respondents were engaged in the undertaking for the said First Schedule was gazette Legal Notice 106/2013 and indicate that for projects where the maximum level of expenditure is Kshs. 4,000,000.00, the procuring entity may use the procuring method of Request for Quotations.
37. The said First Schedule is annexed to the List of Authorities for ease of reference. The said First Schedule was replaced with a Second Schedule vide Legal Notice 220 of 2020 which provides that a procuring entity can procure for the same works through Request for Quotations up to maximum level of expenditure is Kshs. 5,000,000.00. The said Second Schedule is annexed to the List of Authorities for ease of reference.
38. It is my finding that either way, a written contract is statutory requirement even in cases where parties decide to adopt this approach as argued by the Respondents in the alternative.
39. In its Amended Statement of Defence, the Appellant simply denied that there was any valid agreement between the parties for the works but did not plead that there was a challenge with public procurement and did not call any witness during the trial and only raised the question of procurement in its submissions.
40. In their Supplementary Submissions dated 4th November 2021, the Respondents pointed out that the question of procurement had only been raised at the submissions stage of trial and that the court cannot consider such submissions in a case where the Respondents had not been allowed an opportunity to ventilate or defend themselves against. Parties are bound by their pleadings and they cannot introduce new matters during submissions.
41. The Respondents relied on the case of *Benson W. Kaos & 72 others v Attorney General & 85 others* 2022 eKLR the Court cited *Erastus ade Opande vs. Kenya Revenue Authority & Another Kisumu* HCCA No. 46 of 2007 where it was held that, "Submissions simply concretize and focus on each side's case with a view to win the court's decision that way. Submissions are not evidence on which a case is decided."
42. According to Section 135 (1) *Public Procurement and Disposal Act* 2015 the existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer.
43. Section 135 (2) provides that an accounting officer of a procuring entity shall enter into a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings.
44. Section 135 (4) provides that no contract is formed between the person submitting the successful tender and the accounting officer of a procuring entity until the written contract is signed by the parties.



45. Section 135 (5) provides that an accounting officer of a procuring entity shall not enter into a contract with any person or firm unless an award has been made and where a contract has been signed without the authority of the accounting officer, such a contract shall be invalid.
46. The Respondents argued that the Appellant is bound by the case of *Royal British Bank v Turquand* [1856] 6 E&B 327 (“the rule in Turquand’s Case”) which provided that a company or corporation should not be allowed to escape liability on account of its officers’ non-compliance of statutory provisions and internal management regulations. It urges that that Appellant should not be allowed to escape liability on this account.
47. This case in my view cannot apply where there is an express statutory regulatory framework in the *Public Procurement and Disposal Act* 2015.
48. Sections 72 and 104 of the *Public Procurement and Disposal Act* 2015 expressly provides that a contract resulting from direct procurement must be in writing and signed both parties. The Respondent participated in the illegality by not ensuring it had signed a contract before commencing the subsequent works.
49. Both parties are bound by Article 227 of the *Constitution* which provides for prescription of a policy framework to provide for among other sanctions against contractors that have not performed according to the professionally regulated procedures, contractual agreements and legislation. The legislation is the *Public Procurement and Disposal Act* 2015.
50. In the case of *Heptulla v Noormohamed* NRB CA Civil Appeal No. 62 of 1983 [1984] eKLR the Court of Appeal stated that
- “No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of court, and if the person invoking the aid of the court is himself implicated in the illegality.”
51. The Respondents cannot benefit from the outcomes of a contract that is not in writing through the court. The trial magistrate fell into error when he gave judgment in favour of the Respondents notwithstanding the fact that the cause of action was pegged on a vacuum given that there was no written contract between the parties.
52. In the case of *Royal Media Services v Independent Electoral & Boundaries Commission & 3 others* ML HCCC No.352 of 2014 [2019] eKLR it was held that the courts in this country frown upon illegal contracts and submits that the court must enforce the doctrine of captured in the Latin maxim *ex turpi causa non oritur actio* which implies that no court should enforce an illegal contract nor allow itself to be made an instrument of enforcing obligations that arise from illegal transactions.
53. From the record, it is clear that the works were carried out by the Respondent without following procurement laws and procedures under the *Public Procurement and Disposal Act* 2015 which governs and guides procurement by public entities such as the Appellant. The Respondent admitted that it carried out with the works on the basis of LPOs.
54. It is my finding that the trial magistrate fell into error when he determined a public procurement related claim under the provisions of the *Sale of Goods Act*.
55. In its submissions the Respondents argue that the Local purchase orders given by the Appellant and addressed to the Respondents requiring them to provide construction and rehabilitation works,



- together with the works inspection/ completion certificates duly approved and signed by the Appellant's officers are a clear indicator and/or acknowledgment by the Appellant that the Appellants carried out their legal obligations as per the contracts.
56. In their submissions the Respondents further argued that despite the acknowledgment by the Appellant of the completed works carried out by the Respondent, the Appellant failed to pay the sums owed to the Respondents and as such were and still are in breach of the individual contracts entered into with the Respondent.
57. As a matter of fact, the Appellant issued the Respondents with documents from its records which carry a side note that the documents have been approved for payment.
58. During the cross examination, the Respondents witness one John Muiruri Kimani testified as follows:
- “... I have LPO but no written contract. I am not aware that the contract has to be in writing.
....
... In page 6, I just gave an LPO with no contract.
I also demand at Skytops Kshs. 3,973,800. No contract but LPO.
...I spent Kshs. ...with LPO but no agreement.
During reexamination, the witness told the court, “I have done lots of work with no contract but LPO.”
59. This was a credible witness who gave a very candid account in so far as the issue of the contract. I have to accept his evidence which unfortunately plays against the Respondents case.
60. No contract was created nor implied between the parties herein given that the Respondent did not produce any evidence to show that the engagement was reduced in writing and signed by the parties under Sections 72,104 or Section 135(4) of the [Public Procurement and Disposal Act](#) 2015.
61. The fact that the Appellant issued Local purchase orders to the Respondents requiring them to provide construction and rehabilitation works, together with the works inspection/ completion certificates cannot cure the illegality at hand.
62. In the *locus classicus* case of *Macfoy v United Africa Co LTD* [1961] 3 All ER, 1169, it was held thus: -
- “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...”
63. The Respondent had a statutory duty to comply with Sections 72,104 or Section 135(4) of the [Public Procurement and Disposal Act](#) 2015 and Regulations made thereunder.
64. The contract formed between the parties was not supported by a contract in writing.
65. Article 227 of the [Constitution](#) which provides, inter alia, that procurement must be done in a system that is fair, equitable, transparent, competitive and cost-effective gives procurement a Constitutional significance given that Kenya spends huge public resources in procuring goods and services. The Act, which is based on the Constitutional imperatives must be given effect.



66. In *Attorney General v Kabuto Contractors Limited* (Civil Appeal 638 of 2019) [2023] KECA 230 (KLR) (3 March 2023) The Court of Appeal held that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff (now the respondent) as in the present case, and where there are two mutually destructive stories, the plaintiff (now the respondent) can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the Appellant (now the appellant) is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's (now the respondents) allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff (now the respondent) then the court will accept his version as being probably true. If, however, the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case (now the respondent) any more than they do the Appellant's, (now the appellant), the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the Appellant's version is false."
67. When we talk about a plaintiff having discharged the onus which rested upon him on a balance of probabilities one really means that the court is satisfied on a balance of probabilities that he was telling the truth and that his version was therefore acceptable.
68. I note from the record that the Appellant did not call any witness. Whether or not the Appellant called witnesses or not wouldn't have altered nor cured a suit that was ailing at the root.
69. The Respondents had the burden to prove their case under Section 107 and 109 of the *evidence Act*. They failed to prove their case on a balance of probabilities. A court can draw an inference that a party who fails to call a witness who was available is up to no good. This is however a question of discretion.
70. The Supreme Court in Petition No. 5 of 2015 (Between the Republic as Appellant and Karisa Chengo and two others as Respondents). The court quoted Lord Denning in *Benjamin Leonard Mcfoy United African Company Limited* (UK) [1962] AC 152 in the privy council as opining:
"If an act is void, then it is in law a nullity. It is not only bad ...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".
71. In the case of *Nancy Wambui Gatheru vs. Peter W Wanjere Ngugi* Nairobi HCCC No. 36 of 1993 it was stated that
"Indeed, and strictly speaking submissions are not part of the evidence in a case. Submissions, to this court's views, are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim/charge or disprove it. Once the case is closed a court may well proceed to give its judgement. There are many cases especially where parties act in person where submissions are not heard. Even some counsel may opt not to submit. So, submissions are not necessarily the case."
72. I am in agreement with this. Points of law go to the heart of the jurisdiction of the court. They remain alive at all times and the court cannot ignore them whenever they are raised. They are the underpinning



on which the rule of law is encapsulated within our national values and principles of governance under Article 10 of our Constitution. It is no wonder the court can raise and address points of law suo moto.

73. It is my finding that the Respondents did not prove their case and grounds 1 through to 7 of the Memorandum of Appeal have merit.
74. In Ground 8 & 9 the Appellants argue that the court erroneously awarded an interest rate of 15% per month on the principal sum.
75. The Respondent claimed interest as pleaded in Paragraph 14 and 15 of the Amended Plaintiff. The same is sought as one of the Reliefs.
76. According to Section 140 of The *Public Procurement and Disposal Act* 2015 the following shall apply with respect to delayed performance and overdue amounts owed by a procuring entity and a contractor under a contract for a procurement —
- (a) unless the contract provides otherwise, the procuring entity shall pay interest on the overdue amounts;
 - (b) the contractor shall be liable to liquidated damages for delayed performance;
 - (c) the interest and liquidated damages to be paid under paragraph (a) and (b) shall be in accordance with prevailing mean commercial lending rate as determined by Central Bank of Kenya; and
 - (d) the methods of computing interest liquidated and ascertained damages shall be as prescribed in the regulations.
77. The trial Magistrate allowed interest at the rate of:
- A. 15 % per month from February 2019 to the date of full and final settlement on Kshs.7,984,754 and
 - B. 15 % per month from February 2019 to the date of full and final settlement on Kshs.3,973,800 to the date of full and final settlement.
78. It is my finding that the trial magistrate fell into error when he allowed interest:
- A. Since the same was pegged on principal amounts that were not legally due and
 - B. Contrary to Section 140 of the Public Procurement and Disposal Act 2015.
79. The orders on interest are hereby set aside.

Costs

- 80 The Appellant does not raise any concerns. Having satisfied myself that the Respondents did not prove its case and given that the appeal has merit, the order that commends itself is that the trial magistrate erred in awarding costs to the Respondents. I do hereby set aside the order for costs as issued by the trial magistrate.

Order

- 81 The appeal is hereby allowed with costs the Appellant.

DELIVERED AT KIAMBU THIS 21ST DAY OF MARCH, 2023.

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J. CHIGITI



JUDGE

