



REPUBLIC OF KENYA



**Okal v Awiti (Civil Appeal E937 of 2023)
[2024] KEHC 14405 (KLR) (Civ) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E937 OF 2023

TW OUYA, J

NOVEMBER 18, 2024

BETWEEN

PETER BODO OKAL APPELLANT

AND

CHURCHILL ONYANGO AWITI RESPONDENT

*(Being an appeal against the Ruling of the Hon. C. Ndumia (Adjudicator)
delivered on 1st September, 2023 in Nairobi Milimani SCCC No. E2281 OF 2023)*

RULING

Background

1. This appeal emanates from the ruling delivered on 01.09.2023 by the lower Court in Nairobi Small Claims Court Case (SCCC) No. E2281 OF 2023. Churchill Onyango Awiti, (hereinafter the Respondent), the claimant before the lower Court, initiated suit by way of statement of claim dated 31.03.2023 as against Peter Bodo Okal, (hereinafter the Appellant), the respondent before the lower Court seeking judgment in the sum of Kshs. 770,000/-, compensation as may be ordered by the Court, costs of the claim and interest at Court rates, in respect of a course of action that arose on 27.02.2021.
2. It was averred on the date in question the parties hereto entered into a Sale Agreement (hereinafter the Agreement) where the Appellant purported to sell Mukaa/Mukuu/ Komarock Block 1 (hereinafter the suit property) to the Respondent for the sum of Kshs. 750,000/-. That as at January, 2022, the Respondent has paid Kshs. 745,000/- by way of installments however as he was getting ready to finalize payment in February of the same years, the Appellant informed him that he had sold the suit property to a third party. It was further averred that upon the Appellant's realization that the Respondent would pursue the matter with the police the former refunded Kshs. 150,000/- and later the Appellant intimated that upon payment of a further Kshs. 175,000/- he would sell an alternative plot next to



- the suit property. That in spite of making the latter payment, to date, there has been no sale of the alternative plot meanwhile despite several demands to the Appellant to refund the sums paid out, he has refused and ignored to repay the monies he fraudulently obtained from the Respondent.
3. The Appellant entered appearance and filed a response to the claim by acceding to the fact that there was sale agreement towards the sale of the suit property to be completed by end of February 2022 however despite being accorded a period of one (1) year to pay the balance, the Respondent was unable to complete payment as agreed. It was further averred that in spite of several phone calls and notice to terminate the contract, the Respondent was still unable to complete payment whereafter on 30.08.2022 the Appellant commenced the process of refunding the Respondent by depositing Kshs. 150,000/-. The Appellant denied payment by the Respondent of the extra Kshs. 175,000/- and averred that what was received by the Appellant was Kshs. 150,000/- that had been earlier refunded to the Respondent.
 4. On 13.06.2023, parties hereto recorded a consent wherein judgment was entered in favor of the Respondent as against the Appellant for the sum of Kshs. 770,000/- with an order to the effect that parties agree on costs and its mode of payment.
 5. The Appellant thereafter moved the Court vide a motion dated 15.08.2023 expressed to be brought pursuant to Section 41(1)(b) & (2) and 42(1) of the [Small Claims Court Act](#) seeking inter alia that leave be granted to the M/s Andrew Ombwayo & Co. Advocates to represent the Appellant in place of M/s Jaleny & Co. Advocates pursuant to the Advocates consent dated 15.06.2023; that leave be granted to the Appellant to extend time to lodge his application for review of the judgment and decree; and that the judgment & decree dated 06.07.2023 for Kshs. 770,000/- costs & interest be and is hereby reviewed by setting it aside in its entirety and substituted with an order striking out this claim for want of jurisdiction with costs.
 6. The grounds on the face of the motion were amplified in the supporting affidavit sworn by Appellant, whose gist was that on the back drop of the Agreement in respect of the Suit Property, this Court lacks jurisdiction to entertain the Respondent's claim as it is precluded from doing so under Section 12 & 13 of the [Small Claims Court Act](#), Section 13(2)(d)(e) & 26(3) of the [Environment and Land Court Act](#) as read with Section 9(a)(iv) & (iv) of the Magistrates Court's Act. He went on to depose that the land in question is equally situated in Machakos County as evinced by the Agreement therefore the lower Court lacks the geographical jurisdiction to entertain the suit. That his erstwhile counsel had neglected to advise him that the lower Court lacked jurisdiction to entertain the claim as such the consent judgment was entered without his knowledge and is unsustainable. It was further deposed that the Court with proper jurisdiction ought to hear the matter meanwhile there was an error apparent on the face of the record because the questions of both subject and geographical jurisdiction were never brought to his attention or that of the trial Court. In conclusion, he stated that the motion ought to be allowed as prayed.
 7. The Respondent opposed the motion by way of grounds of opposition dated 28.09.2023, on grounds that the said motion is misconstrued, bad in law and otherwise an abuse of the court process; that the motion is frivolous, lacks merit, incompetent and an afterthought and brought after inordinate delay and therefore overtaken by events and should therefore be dismissed; that the Appellant's motion is guilty of laches; that allowing the Appellant's motion will highly prejudice the Respondent's right to fair and speedy hearing enlaved in [the Constitution](#); that the motion has not been presented with clean hands hence the Appellant does not deserve the orders sought; that the change of counsel is indicative of bad faith; that the Court has jurisdiction as the suit is based on a commercial transaction whose value is within the pecuniary jurisdiction of this Court.



8. The Appellant’s motion was disposed of by way of written submissions. By way of a ruling delivered on 01.09.2023, the trial Court found the motion lacking in merit and proceeded to dismiss the same with costs.

The Appeal

9. Aggrieved with the outcome, the Appellant preferred the instant appeal challenging the finding by the lower Court premised on the following grounds in its memorandum of appeal as itemized hereunder: -

- “ 1. That the trial Court erred in law in misconstruing the Land Sale Agreement dated 27.02.2021 for sale of property known L.R. Mukaa/Mukaa/Komarock Block 1 measuring 40 x 60 vides for Kshs. 750,000/- and passing of title thereto whose purported breach resulting in refund of sale price as an ordinary contract the did not fall outside its jurisdiction under Section 13(5) of the *Small Claims Court Act*.
2. That the trial Court erred in law conferring jurisdiction over the trial case upon itself outside the parameters of Section 12(1) of the *Small Claims Court Act*.
3. That the trial Court erred in law in failing to appreciate that the Small Claims lacked jurisdiction over the subject matter before her pursuant to Section 13(2) (d)(e) of the *Environment and Land Court Act* and Section 9(a)(iv) & (v) of the Magistrates Court’s Act.
4. That the trial Court erred in law by misconstruing its jurisdiction for review under Section 41(1)(b) & (d) of the *Small Claims Court Act* that it did not apply to a consent judgment.
5. That the trial Court erred in applying the case of Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd (1982) KLR P. 485
6. That the trial Court failed to appreciate that by taking up jurisdiction over the land matter such as the one appealed from, it constructively conferred to this Court jurisdiction over a land matter, to the High Court under Section 38(1) of the *Small Claims Court Act* in contravention of 13(2)(d) & (e) of the *Environment and Land Court Act*, Article 162(2)(b) as read with Article 165(5)(b) of *the Constitution*.
7. That the trial Court misconstrued the law and arrived at an erroneous decision conferring jurisdiction over the subject land matter upon it.” (sic)

10. In light of the aforecaptioned itemized grounds, the Appellant seeks before this Court orders to the effect: -

- “ 1. That the entire ruling order of Hon. Caroline Ndumia, Adjudicator (SRM) delivered on the 31st August 2023 in Milimani SCCC Comm. No. E2281 of 2023 be and is hereby set aside and substituted with a ruling and order allowing the Notice of Motion dated 15.08.2023 with costs.
2. That the costs of the appeal be awarded to the Appellant.” (sic)



11. Before this Court, directions were taken on disposal of the appeal by way of written submissions of which this Court has duly considered the same in their totality.

Submissions

12. Counsel for the Appellant anchored his submissions on Section 41(1)(b) & (c) of the *Small Claims Court Act* meanwhile condensed his appeal on a singular issue for the Court's consideration. Submitting on whether the trial Court acted injudiciously in failing to oust itself of jurisdiction, counsel cited the provisions of Section 12(1) & 13(5) of the *Small Claims Court Act*, Section 13(1), (2)(d) & (e) of the *Environment and Land Court Act*, Section 9(a)(iv)(v) & 13(4) of the Magistrate's Court Act to contend that the trial Court misconstrued the law and arrived at a wrong decision by upholding the consent as it did. Further, the trial Court misconstrued the dicta in Kenya Commercial Bank Ltd (supra) contrary to the provisions of Section 41(1)(b) & (c) of the *Small Claims Court Act* that permitted the trial Court to review the consent. Counsel went on to submit that the limitations in the forestated decision were not applicable in the matter. That in light of the fact that the Appellant had no knowledge of the consent, given previous counsel failure to advise him that the Court lacked jurisdiction to adopt that said consent, meets the preconditions for setting aside the consent, especially on the ground of it being against the policy of the Court not to entertain an illegality hence there was no reason why the trial Court would decline the motion. In summation, this Court was urged to allow the appeal as lodged.
13. On the part of the Respondent, equally addressing the singular issue of jurisdiction as challenged by the Appellant, counsel began by contending that the latter's change of counsel post the consent judgment and thereafter seeking to set aside the same is a mischievous attempt at hoodwinking the Court. That the Appellant's erstwhile advocate was learned enough and alive to the question of jurisdiction nevertheless went ahead to prosecute the Appellant's claim on the basis that the lower Court was vested of jurisdiction. While calling to aid the decision in Suzanne Butler & 4 Others v Redhill Investments & Another [2016] eKLR as cited in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others [2017] eKLR and Thomas Mutuku Kasue v Housing Finance Company Ltd (HFC) & another [2021] eKLR it was posited that applying the predominate purpose test, by a parity of reasoning, the lower Court claim was a commercial contract issue and not a claim on interest in land. Penultimately, it was submitted on accord of the fact that the lower Court claim was contractual in nature, the trial Court appropriately applied itself on the question, when a consent order can be set aside therefore the instant appeal is not a proper case for setting aside a consent order. Counsel therefore urged this Court to dismiss the appeal with costs.

Analysis And Disposition

14. The Court has duly considered the Record of Appeal, the Supplementary Record of Appeal, the original record as well as the respective parties' submissions. This is a first appeal. Section 38(1) of the *Small Claims Court Act* specifically prescribes that appeals from the Small Claims Court to the High Court be premised solely on matters of law. Ordinarily on a first appeal, the appellate Court ought not to interfere with a finding of fact made by a trial Court unless such finding was based on no evidence, or if it is demonstrated that the court below acted on wrong principles in arriving at the finding it did. Ephantus Mwangi & Another vs Duncan Mwangi Wambugu (1982 – 1988) 1 KAR 278. Nonetheless, by dint of Section 38(1) of the *Small Claims Court Act*, the trial Court is a specialized Court meanwhile this is no ordinary first appeal and the Court must first satisfy itself that the appeal before it satisfies the prescription of Section 38(1) of the Act.



15. The Court of Appeal in *Kenya Breweries Ltd v Godfrey Oduyo* [2010] eKLR, discussed its mandate on a second appeal, that is, on points of law only. Equally, like this appeal, albeit being a first appeal, the *Small Claims Court Act* prescribes that an appeal to this Court from the Small Claims Court be on matters of law. In the *Kenya Breweries Ltd* case, the Court of Appeal made a distinction between matters of law vis-à-vis matters of fact. Black's Law Dictionary defines the two concepts as; - "Matter of fact as: A matter involving a judicial inquiry into the truth of alleged facts and Matter of law: A matter involving a judicial inquiry into the applicable law."
16. The Court of Appeal in its subsequent decision in *Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others* [2014] eKLR, in addressing the question whether the memorandum of appeal, though on a second appeal, raised factual issues, recognized that an appellate Court when faced with a situation where a memorandum of appeal raises factual issues it is at liberty to strike out the offending ground(s) while retaining those that are compliant. In this appeal, having reviewed all seven (7) of the Appellant's grounds of appeal and I am convinced that they are compliant with the strictures of Section 38(1) of the *Small Claims Court Act*.
17. The Appellant's motion before the lower Court was saliently expressed to be brought pursuant to Section 41(1)(b) & (2) and 42(1) of the *Small Claims Court Act*. In disallowing the Appellant's motion, the learned Magistrate stated in part that;

"The Application was canvassed by way of written submissions and upon consideration of the same this court finds as follows –

Jurisdiction

The applicant claims that the court lacks jurisdiction to entertain this claim as it is precluded from doing so under sections 12 and 13 of the *Small Claims Court Act* 2016 and Section 13(2) (d) (e) and 26(3) of the Environment and Land Court 2012 as read with section 9(a) (iv) and (v) of the Magistrates Act.

Section 12 of the SCCA provides that

The claimant's claim was in respect to seeking a refund on amounts paid to the respondent. The respondent in his response admitted to refunding Kshs 150,000/- to the claimant.

Section 13(5) provides that A claim shall not be brought before the Court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labor relations

As mentioned above the claim herein was in respect to a refund of the outstanding balance of money advanced to the respondent in consideration of the sale of land which he had started refunding by paying Kshs 150,000/-. The claim does not raise any dispute in respect to title to or possession of land as provided for under Section 13(5)

Setting aside the Consent

The parties on 13th June 2023 entered into a consent for the amount claimed being kshs 770,000/- and judgment in respect to the said consent entered on the said date.

The Court of Appeal in the case of *Kenya Commercial Bank Ltd v. Specialized Engineering Co. Ltd* (1982) KLR P. 485 held that: "A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or by an agreement contrary to the Policy of the Court or where the



consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the Court to set aside an agreement.”

In this case the applicant has not alleged fraud and/or misapprehension or ignorance of such facts. The respondent by his own admission has refunded Kshs 150,000/- and therefore by refunding the said amount had initiated vitiation of the said agreement.

Therefore, taking all the above into consideration this court finds that the application for review lacks merit and the same is dismissed with costs.” (sic)

18. With the above in reserve, the Appellant’s motion before the lower Court essentially sought for a review of the lower Court’s decision by dint of Section 41 & 42 of the Small Claims Court Act, by way of setting aside of the consent judgment on grounds that the trial Court lacked the requisite jurisdiction to entertain the claim as presented. The above was anchored on Section 12 & 13 of the Small Claims Court Act, Section 13(2)(d)(e) and 26(3) of the Environment and Land Court Act as read with Section 9(a)(iv) & (iv) of the Magistrates Court’s Act to assert that the trial Court lacked locus to record the consent order on 13.06.2023.
19. Reading of Section 41(1)(b) of the Small Claims Court Act provides that: -
 - (1) An Adjudicator may, on application by any aggrieved party or on his or her own motion, review any order of the Court on the ground that—
 - (a)
 - (b) the claim or order was outside the jurisdiction of the Court;
 - (c)
 - (d)
 - (e)
20. It would be pertinent to note that the wording of Section 41 of the Act as read with Section 29 of the Small Claims Court Rules to an extent mimics the provisions of Order 45 of the Civil Procedure Rules as read with Section 80 of the Civil Procedure Rules. At the risk of repetition, it would appear that the Appellant invoked the Section 41(1)(b) of the Act as read with Section 29(1)(a) of the Rules to assert that the Court lacked the requisite jurisdiction to entertain the matter and therefore it ought to review the consent order by way of setting aside the same in totality.
21. The words of Nyarangi. JA (as he then was) in the locus classicus case of Owners of the Motor Vessel “Lillian S” on the question of jurisdiction require no reaffirmation here. Further, as held in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, a Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
22. This Court has repeatedly held that the Small Claims Court is a specialized Court and it generally draws its jurisdiction by dint of Section 12 & 13 of the Act. That said, relevant to the appeal herein is Section 12(1) and 13(5) of the Act. The former provides that: -
 - (1) Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—
 - (a) a contract for sale and supply of goods or services;



- (b) a contract relating to money held and received;
- (c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
- (d) compensation for personal injuries; and
- (e) set-off and counterclaim under any contract.

23. Whereas Section 13(5) of the Act provides that: -

- (5) A claim shall not be brought before the Court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labor relations.

24. The pertinent and undisputed facts as can be garnered from the record before this Court are as follows:
- The parties hereto entered into an Agreement towards the sale of the Suit Property. The sale appears not have materialized nevertheless the Respondent received monies from the Appellant towards the purchase of the Suit Property. As a consequence, of lack of the forestated materialization, the Respondent filed suit to recover the monies paid out to the Appellant wherein as a result of the consent order on 13.06.2023 judgment was entered in favor of the Respondent as against the Appellant. It is on the premise of the said consent order that the Appellant moved the lower Court vide the dismissed motion that is the subject of the instant appeal, arguing that this Court lacks jurisdiction to entertain the Respondent's claim as it is precluded from doing so under Section 12 & 13 of the Small Claims Court Act, Section 13(2)(d)(e) & 26(3) of the Environment and Land Court Act as read with Section 9(a)(iv) & (v) of the Magistrates Court's Act.

25. On this appeal, as in the lower Court, parties took rival positions on the matter. This Court gathers to be the gist of the Appellant's argument that by dint of the forestated provisions the trial Court lacked jurisdiction to entertain the matter whereas it acted injudiciously in failing to oust itself of jurisdiction. The gist of the Respondent's retort was that applying the predominate purpose test, by parity of reasoning the lower Court claim was a commercial-contractual issue and not a claim on interest in land therefore the Court was imbued with jurisdiction to entertain the lower Court suit.

26. Having, captured the above, to my mind, this appeal turns on the question whether the trial Court correctly applied itself to the law in declining the Appellant's application for review by way of setting aside the consent order? Relevant to the above question are the earlier cited provisions of the Small Claims Court Act as read with Section 13(1), (2)(d) & (e) of the Environment and Land Court Act. However, Section 9(a)(iv)(v) & 13(4) of the Magistrate's Court Act would not apply to the matter on accord of this Court's earlier deduction that the Small Claims Court is a specialized Court and to the forestated end has its own Act and Rules. Nevertheless, Section 13(1), (2)(d) & (e) of the Environment and Land Court Act provides that: -

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;



- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.

27. In addressing the salient issue on whether the trial Court was endowed with jurisdiction to entertain the lower Court suit, this Court will draw guidance from the decision of the Court of Appeal in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] eKLR wherein the Court in addressing a preliminary jurisdictional question, applied the “Pre-dominant issue test”, (as submitted by the Respondent herein) in determining which court, between the Environment and Land Court and the High Court had the jurisdiction to entertain a dispute arising from a charge executed in favor of a bank. The Court stated inter alia that:

“In *Paramount Bank Limited vs. Vaqvi Syed Qamara & another* [2017] eKLR, this Court while discussing the jurisdiction of the Employment and Labour Relations Court over a claim of malicious prosecution expressed itself thus,

“The origin of the dispute between the 1st respondent and the appellant was presented as a dispute arising from an employee/employer relationship, where the appellant accused the 1st respondent of theft followed by a criminal charge of stealing by servant. This was further followed by suspension and finally summary dismissal. There cannot therefore be any doubt that, in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation, which flowed directly from the dismissal, was equally within the jurisdiction of the court. In the exercise of its powers under Section 12 of the *Employment and Labour Relations Court Act*, the court could entertain the dispute in all its aspects and award damages appropriately.”

By parity of reasoning, the dominant issue in this case was the settlement of amounts owing from the respondents to the appellant on account of a contractual relationship of a banker and lender.”

While exclusive, the jurisdiction of the ELC is limited to the areas specified under Article 162 of *the Constitution*, Section 13 of the ELC Act and Section 150 of the *Land Act*; none of which concern the determination of accounting questions. Consequently, this dispute does not fall within any of the areas envisioned by the said provisions.

For the above reasons, the appellant’s objection on jurisdiction was rightly dismissed.”

See also:- *Paramount Bank Limited vs. Vaqvi Syed Qamara & another* [2017] eKLR

28. Applying my mind to the above dicta, it can be garnered from the Respondent’s case before the lower Court that the dispute was essentially predicated on a contract in respect of the Agreement for sale of the suit Property wherein the Respondent essentially sort to recoup the sums he had paid out to Appellant. The same can further be construed from the body of the claim and reliefs sought for before the trial Court, the gist of which this Court had earlier set out in this judgment. The above of which seems to fall within the jurisdiction of the *Small Claims Court Act* by dint of Section 12(1)(b) of the Act notwithstanding the purpose for which the monies were received. That said, aside the fact that the Agreement concerned the sale of the suit property, the Respondent’s claims did not appertain



disposition of interest in suit property. The Appellant's feeble invitation to interlink the cause of action to the Respondent's claim to disposition of interest in land therefore cannot sustain.

29. It can be observed from the impugned decision that the trial Court in its ruling, indeed appeared to address itself to the question of jurisdiction before proceeding to canvass the issue of setting aside the consent judgment. Palpably, apart from the peripheral issues raised in the Appellant's motion before the trial Court the crux of it was that the trial Court lacked jurisdiction to entertain the claim by dint of Section 12 & 13 of the *Small Claims Court Act*, Section 13(2)(d)(e) and 26(3) of the *Environment and Land Court Act*. Upon addressing the question of jurisdiction, the Court was not obligated to proceed to address the question of the consent on accord of having settled the question of jurisdiction. Since the latter was the whole purport of the review application by way of setting aside. Despite, its tangential approach on the issues, ultimately the learned Magistrate arrived at the same conclusion as this Court that the trial Court was well endowed with jurisdiction to entertain the matter. Meanwhile, given this Court's earlier deduction that the subject matter did not appertain a disposition in an interest in land it follows that the question of geographical jurisdiction as advanced by the Appellant equally does not arise.
30. Therefore, reviewing the totality of the rival arguments and material relied on, this Court cannot fault the learned Magistrate's decision, for arriving at the conclusion it did on jurisdiction. Further, in spite of the above, it must be remembered that what was before the Court was reference to ouster the trial Court's jurisdiction to entertain the claim and not a reference challenging the consent order and or judgment. This despite the interlink and prescription of the *Small Claims Court Act*. Jurisdiction is a preliminary issue in limine wherein upon the learned Magistrate addressing herself to the same she was not obliged to address the merits or demerits of the consent, as the challenge on the latter hinged of the trial Court's jurisdictional mandate to entertain the Respondent's claim.
31. In view of the foregoing, this Court reasonably believes it has sufficiently addressed itself to the issue. Therefore, it would be difficult in the circumstance to find that the trial Court erred in its finding despite the exception, taken by this Court on its approach. Thus, it is my considered finding that the learned Magistrate properly exercised her discretion and arrived at the correct decision by dismissing the Appellant's motion.

Determination

32. Consequently, the Court finds that the instant appeal lacks merit.
- i. This Appeal is hereby dismissed.
 - ii. Costs are awarded to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF NOVEMBER, 2024

ROA 14 days.

HON. T. W. OUYA

JUDGE

ROA 14 days.

For Appellant.....Ombwayo

For Respondent.....Owala

Court Assistant.....Martin

