REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

[Coram: A. C. Mrima, J.]

CIVIL APPEAL NO. 252 OF 2018

TRANS MARA SUGAR CO. LTD.....APPELLANT

-VERSUS-

ALEXANDER MOSETI ORANGI.....RESPONDENT

(Being an appeal from the ruling and order of Hon. M. M. Wachira, Senior

Resident Magistrate in Migori Magistrate's Civil Suit No. 624 of 2018 delivered on 18/12/2018)

JUDGMENT

1. The appeal subject of this judgement is an interlocutory appeal. The gist of the dispute lies on the jurisdiction of the Magistrate's Court and whether the matter ought to be referred to arbitration.

2. The Respondent herein, **Alexander Moseti Orangi,** is a sugar cane farmer who entered into a **Sugarcane Growing and Supply Contract** (hereinafter referred to as '**the Contract**') with the Appellant herein**, Trans Mara Sugar Co. Ltd.** The parties agreed that the Respondent was to grow and sell to the Appellant sugarcane on his parcel of land known as Plot No. 1944 measuring 0.4 Hectares in Muma Sub-Location within Kisii County. The Contract was entered into on 14/04/2011 and it was to be in force for a period of six years or until one plant crop and two ratoon crops of the sugarcane were harvested whichever event occurred first.

3. Alleging breach of the contract, the Respondent filed **Migori Chief Magistrate's Civil Suit No. 624 of 2018** (hereinafter referred to as '**the suit'**). He claimed for compensation.

4. The Appellant entered appearance and contemporaneously filed a Notice of Motion dated 11/09/2018 (hereinafter referred to as '**the application**') where it sought the following orders: -

> ***1. THAT this application be and is hereby certified as urgent and service be dispensed with in the first instance.***
>
> ***2. THAT this Honourable Court be and is hereby pleased to stay the proceedings and computation of time be excluded pending the hearing and determination of this Application inter-parties.***
>
> ***3. THAT the Honourable Court be and is hereby pleased to stay the proceedings and the computation of time be excluded pending the hearing and determination of the dispute herein through arbitration as provided in the Sugarcane Growing and Supply Contract made on the 14th April 2011 between the parties herein.***
>
> ***4. THAT this Honourable Court be and is hereby pleased to refer this matter to Arbitration in accordance with Clause 9.1 to 9.4 of the Sugarcane Growing and Supply Contract entered by both parties herein on 14th April 2011.***
>
> ***5. THAT the Defendant / Applicant be at liberty to strike out the suit with cost to the Defendant and / or grant such further or other orders and direction as this Honourable Court may deem fit and just to grant under the circumstances***
>
> ***6. THAT the costs of this Application be provided.***

5. The application was strenuously opposed. The court rendered a ruling on 18/12/2018 dismissing the application. It is that ruling which prompted the appeal subject of this judgment.

6. The Appellant preferred the following 6 grounds of appeal: -

1. The learned magistrate erred in law and fact in holding that the Honourable Court has jurisdiction to hear and determine the dispute between the parties.

2. The learned trial magistrate erred in law and in fact by holding that parties did not envisage dispute resolution through arbitration and that the Appellant's application did not confirm / satisfy the conditions set out by Section 6 of the Arbitration Act 1995.

3. The learned trial magistrate erred in law and fact in holding that the arbitration agreement entered between the parties is inoperative and incapable of being performed since the Kenya Sugar Board and District Officer are no longer in existence and ignored the transitional and saving clauses in the Crops Act No. 16 of 2013 sections 3, 11, 29, 39 & 40 and the Constitution of Kenya 2010 and the arbitration agreement signed by the parties herein.

4. The learned trial magistrate erred in law and fact in holding that the arbitration agreement entered between the parties is inoperative and incapable of being performed since there is no Sugar Arbitration Tribunal established under the Sugar Act (now repealed) whereas after the promulgation of the new Constitution of Kenya 2010 part 2 of 2 of the Fourth Schedule provided for transition mechanism and there are new Laws (Acts) now in force governing the Sugarcane sector wherein under the first schedule sugarcane is classified under the Crops Act No. 16 of 2013 as one of the Crops with breeding program under compulsory certification and more specifically section 41 of the Crops Act No. 16 of 2013 and section 41 of the Agricultural and Food Authority Act 2013 provides for courts that can handle disputes related to the one herein as are courts established under Article 162 (2) (b) Constitution of Kenya 2010.

5. The learned trial magistrate erred in law and in fact by ignoring the intention of the parties herein to be bound by the terms of the agreement entered between themselves on 14th April 2011 to refer all disputes that may arise between to arbitration.

7. On the basis of the above grounds the Appellant sought the following reliefs: -

1. The appeal be allowed and Appellants Notice of Motion Application dated 11th September 2018 be allowed and the Respondent's suit Migori CMCC 624 OF 2018 - Alexander Moseti Orangi vs Transmara Sugar Company Limited be dismissed and that the dispute be referred to arbitration.

2. That the Orders issued herein do also apply to MIGORI CHIEF MAGISTRATES COURT Civil cases Numbers 545, 548, 550, 551,

552,557,558,559,560,561,566,567,581,582,583,592,593,594,595,596,597,598,599,600,601,602,603,604,505,606,607,608,609,610,611,612,614,615,616,617,618,619,620,622,and 623 of 2018 which ruling applied to the aforesaid cases.

3. The Respondent does bear the costs of this Appeal.

8. Directions were taken and the appeal was disposed of by way of written submissions. Both parties complied.

9. The Appellant mainly contended that the arbitration clause in the contract is operational notwithstanding the change in law. It further contended that there was no lacuna whatsoever and that the Arbitration Committee provided for in the Contract was capable of being properly constituted. It also submitted that any party aggrieved by the decision of the Arbitration Committee has a recourse as provided for under the **Arbitration Act**.

10. On the foregone background the Appellant submitted that the court lacked jurisdiction to in any way deal with the matter. It referred to **Seven Seas Technologies Limited vs. Eric Chege (2014) eKLR** and **Jimmy Mutuku Murithi t/a Oasis Farm vs. Eric Okondo Omanga t/a Cidai Farm (2016) eKLR** in support of its position.

11. The Appellant vehemently faulted the court in failing to hold that the arbitration clause in the contract was operational. To that end the Appellant referred to the provisions of **the Constitution, the Crops Act, the Arbitration Act No. 4** of **1995** (hereinafter referred to as '**the Arbitration Act**'), **the Agriculture, Fisheries and Food Authority Act, No. 13 of 2013** (hereinafter referred to as '**the AFFA Act'**) and to the persuasive decision in **Francis Joseph Kamau Ichatha v. Housing Finance Company Limited (2014) eKLR**. The Appellant also referred to my earlier decision in **Migori High Court Civil Appeal No. 85 of 2018 Clement Nyandoro Onchoke vs. Trans Mara Sugar Co. Ltd** (unreported).

12. The appeal was opposed. The Respondent supported the impugned ruling and relied *inter alia* on his submissions in opposition to the application filed before the trial court. The Respondent prayed for the dismissal of the appeal with costs.

13. The Respondent submitted in detail that the court had jurisdiction to deal with the suit. He also submitted that the contemplated arbitral process provided for in the Contract has since become inoperational by dint of the enactment of the **Crops Act No. 16** of **2013** (hereinafter referred to as '**the Crops Act**') which repealed the **Sugar Act, No. 10** of **2001** (hereinafter referred to as '**the Sugar Act**'). The Respondent contended that as a result of the change in the law the Arbitration Committee cannot be properly constituted since some of its members are no longer known in law and that any party aggrieved by the decision of the Arbitration Committee has no right of appeal to the Sugar Arbitration Tribunal which has so far become defunct.

14. The Respondent further submitted that parties cannot be forced to a non-existent and imaginary procedure in attempting to resolve the dispute.

15. As rightly stated by the Appellant, I have previously dealt with the issue of whether the Arbitral Committee in sugar contracts between farmers and the Appellant herein could still be properly constituted in law in several decisions. I have held in the affirmative. I have further held that the operation of the arbitral clause in contracts entered between the Appellant and the farmers depended on the date on which the individual contract was entered. I have indeed held that in the event the contract was entered during the **Constitution of Kenya, 2010** transitional period and before the enactment of the **Crops Act**, then the arbitral clause would be operational. However, if the contract was entered into after the enactment of the **Crops Act** by the repeal of the **Sugar Act** then the arbitral clause which still referred to non-existent parties in law would not have any legal leg to stand on.

16. Since I still hold the above position I will reproduce what I stated in **Migori High Court Civil Appeal No. 85 of 2018 Clement Nyandoro Onchoke** (supra). This is what I rendered myself: -

> 7. I shall, for purposes of understanding where this matter has come from, briefly revisit the history of the current legislation governing the sugar sector. Following the promulgation of the Constitution in 2010 the Country's legal regime underwent a turn-around courtesy of the transformational nature of the Constitution. By dint of Article 261(1) and the Fifth Schedule of the Constitution Parliament was tasked to come up with various pieces of legislation within prescribed timelines towards the implementation of the Constitution. Pending the foregone, Article 262 and the Sixth Schedule of the Constitution availed the transitional and consequential provisions.
>
> 8. In 2013 among the various pieces of legislations passed by Parliament included the Agriculture, Fisheries and Food Authority Act, No. 13 of 2013 (hereinafter referred to as 'the AFFA Act') and the Crops Act. The AFFA Act as an Act of Parliament on one hand provided for the consolidation of the laws on the regulation and promotion of agriculture generally, to provide for the establishment of the Agriculture, Fisheries and Food Authority, to make provision for the respective roles of the national and county governments in agriculture excluding livestock and related matters in furtherance of the relevant provisions of the Fourth Schedule to the Constitution and for connected purpose. The Crops Act on the other hand provided for the consolidation and repeal of various statutes relating to crops; growth and development of agricultural crops and for connected purposes. One of the statutes repealed by the enactment of the Crops Act was the Sugar Act which established the Kenya Sugar Board under Section 3 and the Sugar Arbitration Tribunal under Section 31.
>
> 9. That is the brief legislative background. I will now turn back to the matter at hand. The Contract was entered into in 2011 which was during the constitutional transition period. It was the period after the promulgation of the Constitution but before the enactment of the AFFA Act and the Crops Act. The parties therefore entered into the Contract while alive to the fact that there were several oncoming legislations and that the country's governance structure had changed. The Contract as expected of a forward looking one and in line with Article 159(2)(c) of the Constitution provided for an alternative mode of dispute resolution under Clauses 9.1, 9.2, 9.3 and 9.4. For ease of this discussion I will reproduce verbatim the said provisions: -
>
> > *9.1 All questions or differences which at any time hereafter arise between the parties hereto touching or concerning this Agreement or the construction hereof or as to the rights, duties obligations of either party hereto or as to any subject matter in any way arising out of or connected with the committee of five people comprising:-*
> >
> > *a) The District Officer in whose area the land on which the cane supply contracted is situated.*
> >
> > *b) One person representing the Kenya Sugar Board.*
> >
> > *c) One nominee of the TRANSMARA SUGAR CO; KTD*
> >
> > *d) One nominee of the Transmara Out Growers Company Limited.*
> >
> > *e) The Divisional Agriculture Officer of the area where the cane in question is still or in his absence an Agricultural Officer holding the rank of Divisional Agriculture Officer or above appointed by the District Agricultural Officer for that purposes.*
> >
> > *9.2 The District Officer shall preside over the meeting of this Arbitration committee.*
> >
> > *9.3 The Arbitration Committee shall have powers to receive evidence from any source including summoning witnesses to testify before it and will have all the powers conferred on arbitrators by the Arbitration Act or any statutory Legislation thereof for the time being in force in Kenya.*
> >
> > *9.4 Any party not satisfied with the decision of the Arbitration Committee may refer the dispute to the Sugar Arbitration Tribunal established under the Sugar Act, 2001 whose decision shall be final and binding on all the parties involved.*
>
> 10. The main argument which now presents itself for resolution is in respect of the composition of the Arbitration Committee and the parties' right of appeal. The Appellant contend that some of the five members of the Arbitration Committee are no longer in existence and as such there can be no valid reference to the Arbitration Committee. The members are the District Officer who is the presiding officer, the representative from the Kenya Sugar Board, the representative from the Trans Mara Outgrowers Company Limited and the Divisional Agricultural Officer.
>
> 11. It is true that among the changes brought about by the Constitution include the governance of our country. These changes are

contained in the Constitution and the various laws in force by dint of Article 2 of the Constitution for which I must take judicial notice of under Section 60 of the Evidence Act, Cap. 80 of the Laws of Kenya. For instance, the former provincial administration gave way to a new outfit. Under the new structure the former Provincial Commissioner became the Regional Commissioner, the then District Commissioner became the County Commissioner and the District Officer became the Assistant County Commissioner. Therefore, the presiding officer of the Arbitration Committee who was the District Officer became the Assistant County Commissioner in whose area the land on which the Contract relates is situated.

12. As to the representative of the defunct Kenya Sugar Board (hereinafter referred to as 'the Board') the provisions of the AFFA Act come into play. Section 3 of the AFFA Act established the Agriculture, Fisheries and Food Authority (hereinafter referred to as 'the Authority') as a body corporate with perpetual succession and a common seal. Section 3(3) of the AFFA Act provides as follows: -

> *The Authority shall be the successor to the institutions established by the Acts repealed under Section 41 existing immediately before the commencement of this Act, the Crops Act, the Livestock Act and Fisheries Act respectively.*

13. **Transitional Provision 1** of the **First Schedule** of **the AFFA Act** defines a '**former institution**' to mean '*any institution established by a repealed Act, or a revoked legal notice, existing immediately before the appointed day'* and those institutions include the Board. Therefore, the functions of the defunct Board were taken over by the Authority. That being the case, the representative of the Board in the Arbitration Committee was hence replaced by a representative of the Authority.

14. On the nominee of the Trans Mara Outgrowers Company Limited, the Appellant submits that the entity was a creation of the **Sugar Act** and is no more and as such no one can attempt to be such a nominee. In answer to the dilemma, the interpretation of who an '**out-grower**' is under **Section 2** of the **Sugar Act** is paramount. The provision defines an '*out-grower*' to mean: -

> ***An out-grower institution registered under the Companies Act (Cap. 486), the Co-operative Societies Act (Cap. 490), Trade Unions Act (Cap. 233) or any other organization registered under any other law the annual general meeting may approve.***

15. From the definition of an 'out-grower' it is clear that the **Sugar Act** was not the creator of the out-grower associations. The **Sugar Act** only recognized those institutions which had specific mandates in the implementation of the **Sugar Act.** I therefore find and hold that the Trans Mara Outgrowers Company Limited which was not a creation of the **Sugar Act** was not terminated by the repeal of the **Sugar Act** and has the capacity to nominate one of its members to the Arbitration Committee.

16. There is also the issue of the Divisional Agricultural Officer. Agreed, as a result of the devolved governance structure under the **Constitution**, agriculture as a function was majorly devolved to the County Governments. I say so because there are some other aspects touching on agriculture which remained as a function of the national government. Those functions include the Agriculture Policy, Veterinary Policy, National Economic Policy and Planning, General principles of land planning and the co-ordination of planning by the counties, Protection of the environment and natural resources among others. Resulting from the foregone, it is therefore not foreign to have representatives from both forms of Government on matters touching on agriculture in the Counties since each has clear and defined mandate.

17. In our case, the ideal officer to the Arbitration Committee must be the one dealing with crop husbandry and in view of the distribution of the functions between the governments under the **Constitution** that officer shall be from the respective County Government and shall be the Agricultural Officer in charge of the administrative division or the equivalent thereof where the land on which the Contract relates is situated.

18. In view of the foregone analysis, I now find and hold that the Arbitration Committee in this case is validly in place with requisite capacity to discharge its mandate.

19. There is also the other issue of the right of appeal. The Appellant submits that since the **Sugar Arbitration Tribunal** (hereinafter referred to as '**the Tribunal'**) is no longer in existence then a party aggrieved by the decision of the Arbitration Committee will not have an avenue of redress on appeal and that renders the arbitration process contemplated in the Contract inapplicable.

20. It is true that no other entity was created in place of the Tribunal. That is the reason why all the sugar cases which were pending before the Tribunal have found their way to the mainstream courts. In this case I have demonstrated that the Arbitration Committee is still validly in place despite the change in the legal regime. The Tribunal now only comes in as an appellate entity. That being the case a look at the general law on arbitration is important.

21. The arbitration processes in Kenya are provided for and regulated by the **Constitution** and the **Arbitration Act**. Whereas the **Constitution** calls for the use of alternative forms of dispute resolution including arbitration on one hand, the **Arbitration Act** on the other hand oversees the arbitral processes more so given that most of the arbitration agreements are self-regulating. Of much importance is the fact that the **Arbitration Act** *inter alia* provides for the enforcement and setting-aside of arbitral awards and appeals.

22. It is hence apparent that since the change in the law removed the Tribunal from the dispute resolution processes, the parties to the Contract were brought into the ambit of the **Arbitration Act** and consequently lost their consensual right of appeal to the Tribunal. That is however not to say that the arbitral process was compromised and rendered inoperative as the parties are still within the protection of the law and as such I am not persuaded that a party aggrieved by the arbitral award will stand prejudiced.

23. There is also the argument that the dispute herein is not among those contemplated under Clause 9.1 of the Contract hence it cannot be referred for arbitration. I have already reproduced Clause 9.1 of the Contract above. A careful reading of Clause 9.1 of the Contract reveal that the same is couched in a manner to include all possible disputes between the parties. I therefore do not agree with the argument and the ground fails.

24. Having considered all the grounds of appeal, I also come to a similar finding as the Learned Magistrate that the arbitration clause in the Contract is still operative even after the change in the legal regime in the sugar sector.

25. As I come to the end of this judgment I must draw the attention of the parties herein to the fact that it remains the desire of Parliament that disputes in the larger crops sector between farmers and other crop dealers be dealt with by way of arbitration. That is so expressly provided for under **Section 41** of the **Crops Act** which states as follows: -

> ***For the purposes of ensuring expeditious resolution of disputes arising between farmers and other crop dealers, the Cabinet Secretary shall make rules to provide the procedure for arbitration of such disputes.***

17. The Appellant also argued that the court lacked jurisdiction in view of the provision of **Section 10** of the **Arbitration Act**. I have not dealt with this issue before. I will henceforth deal with the matter.

18. The jurisprudence on Court's jurisdiction is now well settled. For instance, My Lordship **Ibrahim, JSC** in **Supreme Court of Kenya Civil Application No. 11 of 2016 Hon. (Lady) Justice Kalpana H. Rawal vs. Judicial Service Commission & Others** in demystifying jurisdiction quoted from the decision in **Supreme Court of Nigeria Supreme Case No. 11 of 2012 Ocheja Emmanuel Dangana vs. Hon. Atai Aidoko Aliusman & 4 Others** where **Walter Samuel Nkanu Onnoghen, JSC** and expressed himself as follows: -

> ***…It is settled that jurisdiction is the life blood of any adjudication because a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a court or tribunal without requisite jurisdiction is a nullity - dead - and of no legal effect whatsoever, That is why an issue of jurisdiction is crucial and fundamental in adjudication and has to be dealt with first and foremost…***

19. The Court of Appeal more recently in the case of **Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others (2013) eKLR** had the following to say on the centrality of the issue of jurisdiction: -

> ***So central and determinative is the jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings in concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren cui-de-sac. Courts, like nature, must not sit in vain.***

20. On the source of a Court's jurisdiction, the **Supreme Court of Kenya** in the case of **Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR** stated as follows: -

> ***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. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings … where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.***

21. At the earliest possible opportunity, a Court must satisfy itself on the jurisdiction over the matter. It if it finds that it is not seized of such then it must down its tools forthwith. There are no two ways about it. Conversely, if the Court arrives at a finding that it is properly seized of jurisdiction it must unreservedly discharge its mandate in accordance with the law.

22. **Section 10** of the **Arbitration Act** states as follows: -

> ***Except as provided in this Act, no court shall intervene in matters governed by this Act.***

23. I must state that the learned magistrate handled the issue of jurisdiction well. He considered the provision of **Section 6** of the **Arbitration Act** and was rightly guided by the binding decision in **Charles Njogu Lofty v. Bedouin Enterprises Ltd (2005) eKLR.** I therefore do not find fault in the learned magistrate's holding that *'I thus find section 6 does not oust the jurisdiction of the court to hear the matter if it finds that the conditions set out in section 6(a) and (b) are not met.'*

24. The above holding however elicits the question as to what happens to the suit when the Court finds that the arbitration clause is enforceable. To answer that question, I will look at **Section 36(1)** of the **Arbitration Act.** The said provision is on the enforcement of an arbitral award. It provides that an arbitral award under the **Arbitration Act** is only enforceable by the High Court.

25. It therefore means that if a magistrate's court finds that a dispute before it ought to be referred to arbitration under the **Arbitration Act** then it must remain alive to the provision of **Section 10** of the **Arbitration Act**. Since the magistrate's court has no powers to enforce the resultant arbitral award then it cannot stay the proceedings before it pending the determination of the arbitral proceedings. The rationale thereof is clear. It is because the matter shall not return to the magistrate's court again. Once the award is rendered, it is the High Court which shall enforce it. It is also the High Court which has powers to set-aside an arbitral award.

26. On the basis of the foregone I find and hold that once a Magistrate's Court makes a finding that the dispute before it ought to be referred for arbitration under the **Arbitration Act** then the court must invoke **Section 10** of the **Arbitration Act** and decline any further jurisdiction. The court must terminate the proceedings before it.

27. There is still one other issue which the Appellant raised. The Appellant prayed that the resultant orders in this appeal do apply to several civil suits pending before the Magistrates Court at Migori. I have considered that prayer and find that the same cannot issue on three compelling reasons. **First,** the civil suits pending before the lower court were not consolidated neither was **Migori Chief Magistrate's Civil Suit No. 624 of 2018** a test suit. **Second**, although the impugned ruling applied to several other matters before the magistrate's court, no appeals were preferred in respect to the individual suits. The appeal before this Court is only limited to one suit being Migori **Chief Magistrate's Civil Suit No. 624 of 2018.** The other suits were therefore not formally brought to the High Court as appeals for adjudication. **Third**, I have stated above that the decision on whether the arbitral clauses may be enforceable depend on the date when an individual contract was entered. This Court is unaware of the status of the contracts in the other matters. The Court cannot therefore make such a reckless move and make a blanket order without regard to the contents of each contract document. I therefore decline the invitation by the Appellant.

28. Having dealt with all the issues raised in the appeal I hereby make the following final orders: -

(a) The appeal is hereby allowed and the order dismissing the Notice of Motion dated 11/09/2018 is set-aside.

(b) The Notice of Motion dated 11/09/2018 is hereby allowed in the following terms: -

(i) The dispute between the parties herein is hereby referred to arbitration in accordance with Clause 9.1 to 9.4 inclusive of the Contract.

(ii) Migori Chief Magistrate's Civil Suit No. 624 of 2018 is hereby struck out with costs.

(c) Since the appeal has partly succeeded each party shall bear its own costs.

(d) This judgment shall only apply to Migori Chief Magistrate's Civil Suit No. 624 of 2018.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MIGORI THIS 10TH DAY OF FEBRUARY, 2020

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Miss. Kwamboka Counsel instructed by the firm of Messrs. Ongegu & Company Advocates for the Appellant**.**

Mr. Jura Counsel instructed by the firm of Messrs. Nelson Jura & Company Advocates for the Respondent**.**

Evelyne Nyauke – Court Assistant