REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CIVIL APPEAL NO.112 OF 2017

(Appeal Originating from Nyahururu CM's Court Civ..No.254 of 2013 by: Hon. A.W. Mukenga)

VICTOR MUTUA KAMOLO.....APPELLANT

- V E R S U S -

JOSEPH M. MBUGUA.....RESPONDENT

J U D G M E N T

By a plaint dated 18/12/2013, the appellant, **Victor Mutua Kamolo** filed this suit against the respondent, Joseph M. Mbugua seeking damages for injuries that he allegedly sustained while working as an employee of the respondent.

In the plaint, the appellant averred that on 28/8/2013, while in the course of his employment with the respondent, operating a chaff cutter machine, the machine amputated his four fingers of the left hand. The appellant stated that the respondent was to blame for the accident in that he failed to provide the appellant with proper and safe systems of work; that the respondent failed to provide the appellant with protective devices and failed to warn the appellant of the danger involved in working with the said machine; that the respondent allowed the appellant to work in a dangerous environment and a defective machine.

In the alternative, the appellant alleged that the respondent was in breach of the contract of employment by failing to provide the appellant with a safe working environment and protective devices. The appellant therefore blamed the respondent for the injuries and loss that he suffered and claimed general damages, special damages; loss of earnings and loss of earning capacity plus costs.

The respondent filed his defence on 7/2/2014 in which he denied that he was negligent or in breach of any contract of employment. The respondent further averred that the appellant was the author of his own misfortune by entering the room where the chaff cutter machine was, putting his hand in the chaff cutter contrary to instructions, by operating the machine while under influence of bhang and drugs, operating the machine from a wrong position and failing to adhere to safety instructions.

The respondent relied on the doctrine of *volenti not fit injuria* and denied that he was liable to compensate the appellant.

After close of the pleadings, the case was heard by **Hon. A. Mukenga R.M**. who found that the plaintiff was partly to blame for the accident and apportioned liability at 50%, awarded general damages of Kshs.600,000/=, special damages of Kshs.10,250/= and future medical expenses of Kshs.50,000/=. The claim for lost earnings and earning capacity was however dismissed.

It is from the above orders that the appellant appeals and prays that the judgment be set aside, the respondent's case be dismissed and there be a reasonable judgment in favour of the appellant. On the other hand, the respondent filed a cross appeal seeking dismissal of the appeal and the cross appeal be allowed; that the lower court judgment be set aside and substituted with a dismissal of the suit.

The appellant raised 11 grounds of appeal but the appellant's counsel condensed them into five grounds as follows:

> ***1. That the court erred in law and fact and misdirected herself in finding that the respondent had proved his case to the required standard despite the glaring inconsistences and contradictions in the respondent's evidence;***
>
> ***2. The trial magistrate erred by shifting the burden of blame to the appellant which was inconsistent with her finding that the machine was being used under the express instructions of the respondent and that the cutting blades were not covered;***
>
> ***3. That the Hon. Magistrate failed to appreciate that the appellants position at the time of operating the machine did not matter but that the injuries were caused as a result of the machine's erratic motion caused by the green maize stalks;***
>
> ***4. That the court erred in failing to appreciate that the issue of causation between the purported defect and the accident in***

question when it was admitted by the respondent that the machine meant for cutting stalks would stall if green stalks were fed into the machine;

5. That the magistrate erred by putting undue reliance on irrelevant and immaterial evidence and misconstrued the evidence adduced by the appellant thereby arriving at the wrong conclusions and findings;

6. That the learned magistrate erred in holding that the appellant was 50% liable in the absence of any credible evidence.

The respondent on the other hand filed a memorandum of cross appeal dated 18/8/2015 citing three grounds as follows:

1. That the trial magistrate erred by holding that the respondent was liable in negligence without any evidence to support that finding;

2. That the learned magistrate erred in holding that the respondent was guilty of contributory negligence without evidence in support thereof;

3. That the trial magistrate erred in failing to follow superior court's decisions in Wanyule v Said C/O Jomvu Total Service Station (2004) I KLR 217 and Nakuru HC 117/2000, John Ouko Yogi v Spin Knit Ltd and thereby misapprehended the law.

Appellant's Case:

The appellant testified as PW1. His case was that he had been employed by Joseph Mbugua since March, 2011; that on 28/8/2013, about 3 – 4 p.m., the respondent (DW1) and another employee, Marene (DW2) brought to him green maize stalks to be chopped by the chaff cutter; that he started cutting them but after a while, the machine developed problems by stalling; that the chaff cutter stalled and pulled his fingers. He managed to stop the machine but was injured on his left 4 fingers which got cut while the thumb was injured; that the respondent (DW1) and other people who were nearby assisted in retrieving his hand from the machine and he was taken to hospital at Ol Kalou and later, Nakuru Provincial General Hospital where he was admitted.

He blames DW1 for the occurrence of the accident because the machine did not have wire mesh on the side of feeding the fodder; that the machine was defective and that DW1 failed to provide him protective clothing i.e. gloves. PW1 also said that he was working on the machine with the defendant's permission and denied having been any bhang or drugs at the time.

The defence case was as follows:

DW1 Joseph Mbugua admitted to have employed the appellant whom he paid a monthly salary; that on 28/8/2013, the appellant was at work and had been allocated the duties of carrying maize stalks from the farm to near the machine, where Mavene DW2, was chopping the stalks; that the appellant worked till lunch time came back and found DW2 feeding the machine; that the appellant entered the machine room and started pushing the maize stalks into the machine and a few minutes later, the machine stopped. He heard the appellant say that his hand was trapped in the machine. DW1 said he was supervising the cutting of stalks from about three metres away. DW1 denied that the machine was defective. He said that the machine was supposed to be fed from outside the machine room and that it is not possible for one to be cut if he is outside the machine room. DW1 denied that the machine had any faults as it was new. He blamed the appellant for the accident because he was not supposed to enter the machine room. DW1 said that he had not given the appellant gloves but the machine would have cut through the gloves if PW1 put the hand inside the machine anyway.

DW2 Francis Marene, another employee of DW1 was present when the accident occurred. DW2 said that he was operating the machine when the appellant entered the machine room and started feeding it with green maize stalks. He reiterated what DW1 told the court on how the incident leading to the appellant's injury occurred.

DW3 Simon Chege a child aged about 13 years said that he went to DW1's home about 1-2p.m. when he heard the Chaff cutter roaring. He found DW2 cutting fodder and went to assist; that after a few minutes, the appellant came and entered the machine room, started pushing the maize stalks into the machine and it pulled his hand. He denied that the machine stalled.

Both **Ms. Mugweru** counsel for the appellant and **Mr. Chege,** counsel for the respondent filed written submissions. At the hearing, Ms. Ndegwa held brief for Mr. Chege.

Ms. Mugweru condensed the 11 grounds into five. On the first ground, counsel submitted that despite the fact that she raised numerous contradictions in the defence evidence during submissions, the trial court failed to consider the said contradictions; that had the court considered them, then it would not have found the appellant 50% to blame for the accident. I will consider each of the alleged contradictions and the response thereto by the respondent, later on in this judgment.

Counsel submitted that the court having found that the machine was not guarded and having dismissed the doctrine of *volenti not fit injuria*, should have found the respondent 100% liable.

Ms. Mugweru also submitted that DW1 told the court that he was present at the scene and saw PW1 enter the machine room. He had seen the appellant operate the machine from inside the room there before and did it properly. DW3 also used to see PW1 operate the machine from inside the room. Counsel questioned how, if the employees had been instructed on how to operate the machine when outside the room, how come PW1 operated it from inside and DW1 did not query it?

Counsel also argued that even though the appellant raised the issue that the machine was not where it had been, the court failed to consider

that piece of evidence and found the appellant to have failed to take care by entering the machine room.

It was also submitted that even though the appellant had explained that the machine was faulty, he was compelled to continue working. Counsel urged that the appellant had no option but continue work on the machine with bare hands. Counsel relied on ***Halsbury's Laws of England 4th Edition Vol.28 paragraph 88*** where the authors observe that a servant is not able to choose freely in a master servant relationship.

On loss of earnings, counsel submitted that the appellant worked as a farm hand which required him to use both hands and having lost his fingers, he could not engage in the same work. Counsel blamed the court for not analyzing the evidence in regard to that issue.

On quantum Ms. Mugweru submitted that the appellant cited various authorities where similar injuries were sustained but the court ignored them.

On special damages, counsel urged the court to accept the receipt produced by the Doctor for the court attendance, because it was produced in evidence. Counsel urged this court to dismiss the cross appeal because the evidence against the respondent was overwhelming and the respondent should bear full responsibility for the accident and injuries suffered by the appellant.

On the issue of lost earning capacity, counsel asked this court to award the appellant Kshs.540,000/= calculated using Kshs.4,500/= salary per month and a multiplier of 12 years.

As regards quantum, it was counsel's view that the same be enhanced and she distinguished this case with the cases that were cited by the respondent as having been decided long time ago.

Ms. Ndegwa addressed each allegation made by Mrs. Mugweru that there were glaring contradictions in the defence case.

On liability, Ms. Ndegwa was of the view that the appellant was the author of his misfortune because he knew the machine was supposed to be operated from outside the machine room but he decided to enter the machine room thus exposing himself to danger; that the defendant only owed the appellant a reasonable duty of care to the employee which he fulfilled by placing the machine in a room in such a way that it was to be operated from outside and therefore the doctrine of *volenti non fit injuria* applies. Counsel's view was that there was no evidence to prove that the machine was faulty.

On the failure to provide protective gear and gloves, counsel argued that the lack of gloves is not the cause of the injuries and the gloves could not have mitigated the appellant's harm. Counsel relied on the decision of ***Statpack Industries v James Mbithi Munyao (2005).*** In that case, the House of Lords held:

> ***"…even assuming that the defendants were in breach of their duty in not providing a safety belt to their deceased employee nevertheless they were not liable in damages because their breach of duty was not the cause of the damage suffered."***

In reply to the issue of loss of earnings, it was submitted that it is a special damage claim which must be specifically pleaded and proved.

On loss of earning capacity, counsel urged that it is a general damage claim which has to be proved and that the court made a proper decision in not granting an award on that head.

As regards the allegation that the trial court erred in not awarding special damages in respect of the doctor's attendance fees, counsel submitted that it had not been pleaded.

The respondent urged the court not to disturb the award by the trial court unless for good reason and the cross appeal be allowed.

Liability:

I have considered the grounds of appeal, submissions by counsel and the judgment of the lower court. This being the first appeal, this court is mandated to examine all the evidence tendered in the trial court afresh, analyze the evidence and come to its own conclusion. The court will only interfere with the findings of the trial court if it finds that the court failed to take into account particular circumstances or probabilities or if impression of the demeanor of a witness is inconsistent with the evidence generally. This court has to bear in mind that it did not have the opportunity of hearing or observing the witnesses.

I will first deal with the alleged contradictions in the defence case. Ms. Mugweru submitted that DW3's evidence was that it took 15 minutes to chop 1½ carts of maize stalks then how come it took the appellant 10 minutes to cut less than half a cart of maize stalks. In reply the respondent stated that DW3 may not have had a good appreciation of time or he did not check the time. I agree with the respondent's explanation. DW3 was a child aged 13 years and may not have appreciated time nor is it possible that he was checking on the time because it was not anticipated that an accident would occur. DW3's evidence was a mere estimation that one cannot be faulted for.

Ms. Mugweru also alleged that DW1 referred to the appellant as a casual laborer but later changed and said that he had worked for him for 2 years. I find that there was really no dispute that the appellant was an employee of DW1 and he was paid on a monthly basis and was on duty on the day he was injured. There was overwhelming evidence to that effect.

The fourth allegation is that DW3 told the court that he was present when the cutting of maize stalks began, upto completion; that DW3 found DW2 already cutting the stalk and DW1 came later and watched from a distance; that to the contrary, DW1 stated that he went to the

machine room with DW3 where they found DW2 already operating the machine and when about to finish cutting the stalks is when the appellant arrived and the incident occurred.

In reply, counsel for the respondent stated that DW3 never stated that he had been at the machine room since morning. I do agree with the respondent. I however, did find DW3's testimony curious, when he stated that on that day, the appellant had been allocated other duties, other than working on the machine and that the appellant had been carrying fodder, which is totally contradictory to what DW1 told the court; that DW3 came to that scene about 1 – 2 p.m. DW3 also stated that the appellant brought fodder and left. But how could DW3 know what duties had been assigned to the appellant on that day when he was not at the scene? I found DW3's testimony to be hearsay and that puts his testimony to question as to his truthfulness.

The other alleged contradiction is that DW2 stated that the appellant should be blamed because he was not assigned any work that day but changed during cross examination he agreed that the appellant was present. I do agree with the respondent that what was in issue is the nature of work assigned to the appellant that day and both DW1 & 2 said it was DW2 who was assigned to work on the machine that day. I found no serious contradictions as to affect the respondent's case.

It was the appellant's case that the chaff cutter was not positioned near the window as alleged by DW1, but was moved near the window to tailor the defence. To support this contention, DW3 had told the court that whenever he went to see the machine cutting the fodder, he would find the appellant feeding the stalk in the machine while inside the machine room and that it would be in the presence of DW1, who normally supervised the cutting of fodder, just as it was on the fateful day. If that is the case, the question is why did DW1 never warn the appellant not to operate the machine from inside the room? DW1 did not say anything to PW1 when he entered the room and started to operate the machine before he was injured. It means DW1 did not disapprove of PW1 cutting fodder from inside the machine room.

I find it very probable that the machine was operated from inside the room and the appellant was doing what he ordinarily did in the cause of his work. From the evidence, it is apparent that it is the appellant who knew how to use the said machine because he is the one who had trained DW2 on how to use the said machine.

It was the appellant's evidence that the cause of his injuries was the stalling of the machine caused by the green stalks because the machine was not meant to cut green stalks but dry stalks. DW1 denied that fact and told the court that the machine was meant for cutting green stalks and that he had a separate machine for cutting dry stalks. On the other hand DW2 told the court that the machine was designed to cut both green and dry fodder. However, the appellant maintained that the machine was meant to cut dry stalks. The trial court believed the appellant's version that the machine was meant for cutting dry stalks in view of the contradictions in the defence evidence. The court also found that having used green stalks, the court could not rule out that the machine stalled. Contrary to Ms. Mugweru's submissions, I find that the trial court did give the issue of stalling of the machine due consideration and found that it may have stalled because of the green stalks. Therefore the machine may have been defective or the wrong machine was used for cutting green stalks.

DW1 admitted that he had not supplied the appellant with protective apparel i.e. gloves, though he was handling a dangerous machine. Counsel submitted that failure to supply gloves was contrary to rules of strict liability under the Factories Act. In my view, even if gloves were not supplied, the court found that they would not have mitigated the injury and I agree.

Whether the machine was guarded:

DW1 & DW2 told the court that the machine was guarded but DW3 said that the machine had no guard. He means that the guard seen on the photographs produced in court had been fixed on the machine to help tailor the defence case. The trial court, after considering the photographs produced in evidence by the respondent, concluded that had the machine been guarded at the time of the accident, it would not have been able to pull the appellant's hand through the small opening on the machine and then trap his fingers. The trial court agreed with the appellant that the machine was not guarded at the time of the accident. The trial court had the opportunity to see the photographs as the working of the machine was demonstrated to her. I have no reason to interfere with the factual findings of the court. Since the machine was not guarded, it therefore means that the respondent did not provide a safe working environment for the appellant.

Whether defence of volenti non fit injuria is available to the defence:

The next question the court grappled with is, now that the appellant was aware that the machine was not guarded, is the defence of ***volenti non fit injuria*** available to the defence as pleaded.

There is a common law duty placed on an employer to take all reasonable steps to ensure that the employee's safety is guaranteed. However, the employer cannot be blamed if the employee acts negligently. In the case of ***John Ouko Yogi v Spin Knit Ltd Supra***, the court said:

> ***"Liability in respect of breach of statutory duty is strict. However this does not absolve an employee who obviously engages in a dangerous conduct contrary to specific instructions of the employer from blame in the event of an accident occurring where he gets injured…..The respondent had also taken all the necessary precautions to warn its employees….on how the said machine was operated. Further, the appellant was warned not to use or expose his bare hands to the moving parts of the machine."***

When DW1 was asked whether he had given the appellant any specific instructions on how to operate the machine, he denied having done so even though it was said that the appellant knew how to operate the machine and even taught DW2 to operate it. There is evidence on record that when the appellant was in the machine room, the respondent was standing a few (about 3) metres away supervising the cutting of the fodder. DW1 was able to see how the appellant was operating the machine. DW1 did not intervene to warn or stop the appellant from what he was doing if indeed it was contrary to the mode of operating the machine. The respondent never stopped the appellant from operating the machine from inside the room. I am inclined to agree with the trial court's finding that there was no evidence that the respondent had trained the appellant on the use of the machine or warned him on how it was operated or on its danger. The doctrine of *volenti non fit injuria* would therefore not apply.

In Halbury's Laws of England the 3rd Edition, Vo.28 paragraph 88, the writer says "***where the relationship of master and servant exist, the defence of volenti non fit injuria is theoretically available but is unlikely to succeed. If the servant was acting when the compensation of his duty to his employer, acceptable of the risk, will rarely be informed. Owing to his contract of service, a servant is not generally in a position to choose freely between acceptance and rejection of the risk and so the defence does not apply in an action against the employer***."

Whether the appellant contributed to the occurrence of the accident:

As properly pointed out by the trial court, the appellant was said to have been familiar with the operations of the machine so that he had even been training DW2. He knew the risk he was exposed to as he fed the fodder in the machine. The appellant owed himself a duty of care and should have taken great care in feeding the machine from a distance. Since he had noticed that the machine was stalling, he should have exercised even greater care that he was not injured.

In the end, I find that the respondent did not provide a safe working environment for the appellant. However, the appellant having known the machine, failed to exercise great care for protecting of himself and I will attribute some negligence on the appellant and apportion liability.

I find that the trial magistrate's decision to apportion liability at 50% to have been erroneous. I find that the employer should bear most of the blame having failed to provide a safe working environment for the appellant. I apportion liability at 80% as against the respondent.

General damages:

The medical report in respect of the appellant was produced by PW2. The appellant suffered traumatic amputation of the four fingers on his left hand and a deep cut wound on the thumb. The doctor opined that the appellant suffered 60% permanent disability. In the lower court, the plaintiff suggested that an award of Kshs.1,000,000/= be made in general damages while the respondent submitted an award of Kshs.300,000/=. The court made an award of Kshs.600,000/=. The appellant contends that that award is too low while the respondent contends that it is too high.

The case of ***Kemfro Africa Ltd T/O Meru Express Services (1976) v Lubia Anor (2) CA 21/1984,*** the Court of Appeal gave guidelines on when the appellate court may interfere in an award of damages awarded by the Lower Court. The court said:

> ***"The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of East Africa to be that it must be satisfied that either the judge, in assessing the damages took into account an irrelevant factor or left out of account a relevant one or that short of this the amount is inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."***

The appellant relied on the decisions of:

> ***1. Joseph Wando Akech v Corrugated Sheet Ltd (2002) K where an award of Kshs.600,000/= was made for traumatic amputation of 2nd – 4th fingers and severe crush of the thumb.***
>
> ***2. Pyramid Packaging Ltd v Humphrey Wanjala (2012) where the plaintiff suffered traumatic amputation of left index finger, middle finger and left ring finger and swollen left hand. An award of Kshs.650,000/= was made.***

Other cases cited include ***Cosmas Kipkoech Sigei v Madrugada Ltd & another HCC.176'B'/2005*** where an award of Kshs.2,000,000/= was made in 2010 for amputation of the hand at the wrist and was upheld by court of Appeal in ***Nyeri CA.54/2012***. The injuries in this case were more serious than the appellant's. On the other hand, the respondent relied on the decision in;

> ***1. James Kuria Irungu v Murang'a Timber Ltd HCC.1176/2000 (Nairobi) where the plaintiff sustained amputation of 3rd and 4th fingers and multiple cut wounds on 5th finger and an award of Kshs.200,000/= was made; and***
>
> ***2. Boniface Musango Kisamwa v Blanket Industries Ltd HCC.118/2003 Mombasa. The court awarded Kshs.400,000/= for loss of use of the right hand.***

I take into account the fact that the authorities cited by the respondent were made over 15 years ago. The most comparable decision is that of ***Pyramid (Supra)*** made in 2012, about 6 years ago.

Upon considering the comparable decisions and incidence of inflation, I find that the award made by the trial court was on the lower side. Consequently, I make an award of Kshs.800,000/= in general damages which I think is fair compensation for the appellant.

I note that the appellant's counsel had asked for Kshs.1,000,000/= in the trial court. Counsel has now submitted an award of Kshs.2,000,000/=, but the court cannot change what was first asked for.

Special damages:

Whether the appellant is entitled to special damages relating to the doctor's court attendance of Kshs.20,000/=; It was counsel's submission that the doctor testified and produced the receipt for the court attendance and therefore the court should have awarded the same. The said claim was opposed for not having been pleaded. Special damages must be pleaded and specifically proved. The said sum was not pleaded.

Since the appellant knew that he intended to call the doctor as a witness, he should have applied to amend the plaint even on the hearing date to have the claim included. The trial court correctly dismissed that claim.

Loss of earning capacity:

The trial court also declined to make an award for loss of earning capacity and future earnings. In dismissing the claims, the court said that the appellant was a herdsman and he had not proved that he could not be able to perform his duties.

In ***Butler v Butler (1984) KLR 225***, the Court of Appeal held inter alia:

> ***"……..a person's loss of earning capacity occurs where as a result of his injury, his chances in the future of any work in the labour market or work, as well paid before the accident are lessened by his injury."***

In the case of ***Mumias Sugar Co. Ltd v Francis Wanalo CA.91/2003.***

> ***"The award for loss of earning capacity can be made both when the plaintiff is employed at the time of the trial and even when he is not so employed. The justification for the award when plaintiff is employed is to compensate the plaintiff for the risk that the disability has exposed him of either losing his job in future or in case he loses the job, his diminution of chances of getting an alternative job in the labour market while the justification for the award where the plaintiff is not employed at the date of trial, is to compensate the plaintiff for the risk that he will not get employment or suitable employment in future. Loss of earning capacity can be claimed and awarded as part of general damages for pain, suffering and loss of amenities or as a separate head of damages. The award can be a token one, modest or substantial depending on the circumstances of each case. There is no formula for assessing loss of earning capacity. Nevertheless, the Judge has to apply the correct principles and take the relevant factors into account in order to ascertain the real or approximate financial loss that the plaintiff has suffered as a result of disability."***

In the above case, it was held that though loss of earning capacity is a general damage claim, it can be awarded on its own. The factors that the court has to consider in awarding them are; the age of the appellant, qualification, length of working life, the disability. The trial magistrate found that the appellant was a herdsman. He told the court that he used to feed the cows, prepare the feed and milk cows.

Though the appellant may have done some of these jobs using one hand, yet he needs both hands to perform his duties effectively. For example, the carrying and placing of fodder in the machine, he needs both his hands and fingers for milking cows. Lack of fingers on one hand obviously affects performance of his duties and in my view, he is entitled to compensation. In the ***Mumias case***, the Court of Appeal held that there is no specific mode of determining how much to award and it all depends on the court's discretion. The appellant earned about Kshs.5,000/= per month. He was aged 40 years at the time. He may have worked for another 20 years as a herdsman till 60 years but he would have mitigated the loss. Due to uncertainties and vagaries of life, I would find that he may have worked for 10 years. In the exercise of my discretion, I will make an award of Kshs.400,000/= as damages for loss of earning capacity.

Loss of future earnings:

In respect of loss of future earnings, it is a special damage claim that needed to be specifically pleaded and proved. In the ***Butler case (Supra),*** the court said:

> ***"……Loss of earning capacity is a different head of damages from actual loss of future earnings. The difference is that compensation for loss of future earnings is awarded for real assessable loss proved by evidence where compensation for diminution of earning capacity is awarded as general damages."***

Claim for loss of future earnings was not pleaded and proved and is dismissed.

In the end, I allow the appeal to the following extent:

I enter judgment for the appellant against the respondent as follows:

The respondent to bear 80% liability

General damages.....Kshs.800,000/=

Special damages (proved).....Kshs.10,250/=

Loss of earning capacity.....Kshs.400,000/=

Future medical expenses.....Kshs.50,000/=

Total.....Kshs.1,260,250/=

Less 20%.....Kshs.1,008,200/=

Costs of the appeal and lower court to the appellant.

The cross appeal is hereby dismissed.

Dated, Signed and Delivered at *NYAHURURU* this *7th* day of *November,* 2018.

……

R.P.V. Wendoh

JUDGE

PRESENT:

Mr. Chege for respondent

Soi – Court assistant