Otana v Equity Bank Limited (Civil Appeal E032 of 2022) [2025] KECA 1324 (KLR) (18 July 2025) (Judgment)

Neutral citation: [2025] KECA 1324 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MOMBASA

CIVIL APPEAL E032 OF 2022

SG KAIRU, KI LAIBUTA & GWN MACHARIA, JJA

JULY 18, 2025

BETWEEN

GEOFFREY SADAT OTANA .... APPELLANT

AND

EQUITY BANK LIMITED .... RESPONDENT

(Being an appeal from the Judgment and the Decree of the Employment and Labour Relations Court of Kenya at Mombasa (Linet Ndolo, J.) dated 30th July 2020inELRC Cause No. 249 of 2014)

JUDGMENT

1. The precursor to this appeal was a suit instituted by the appellant, Geoffrey Sadat Otana, before the Employment and Labour Relations Court at Mombasa "the ELRC" by way of a Statement of Claim dated 5th September 2014, which was later amended on 1st December 2014 seeking:

    i. Damages for wrongful termination -Kshs 660,000.00;

    ii. One month's salary in lieu of notice -Kshs. 55,000.00;

    iii. Salary for the month of June 2014 -Kshs. 55,000.00; and

    iv. Costs of defending criminal case -Kshs.150,000.00; Total -Kshs. 920,000.00

2. The background to this appeal is that the appellant and the respondent, Equity Bank Limited, entered into an employee-employer relationship. The respondent employed the appellant to work for it as a Banking Clerk on permanent basis on the terms set out in the appointment letter dated 7th November 2006. The appellant pleaded that he believed that he faithfully and diligently worked for the respondent to the best of his ability and, as a result, his salary was increased from Kshs.25,000 to Kshs.55,000 per month as of 6th May 2011.

3. Despite the appellant absolving himself of the blame, together with some colleagues, that they were arrested and criminal proceedings against them commenced vide Mombasa Chief Magistrate's Criminal Case No. 1755 of 2011 in which the appellant was the second accused person. From the Record of Appeal as put to us, we have ascertained that the charge sheet is not one of the documents forming part of the record. We cannot therefore tell what offence he and his colleague were charged with. We hasten to add that the proceedings of the criminal trial were part of the exhibits that the appellant relied upon to absorb himself of blame. It is from these proceedings we confirm that indeed the case was dismissed under section 202 of the *Criminal Procedure Code* on a date which, again, we cannot ascertain as the page containing the proceedings was poorly uploaded on the Court's CTS system. It is these charges, according to the appellant, that led to his dismissal from employment vide a letter dated 13th June 2011 which the appellant contends was backdated to take effect from 30th May 2011. The appellant blamed the poor supervisory structures of the respondent, which led to a loss of Kshs.1,232,000 in the year 2014 or thereabouts. The appellant stated that the termination was not justified considering that:

    a. the issues raised in the letter which informed the termination were pending in court;

    b. the respondent did not follow due process and the termination was procedurally flawed;

    c. the appellant was not afforded a chance to defend himself thus rendering the termination arbitrary;

    d. the respondent failed to observe the rules of natural justice and in the process, handled the appellant in an oppressive and callous manner; and

    e. there was no reason that justified the dismissal.

4. The appellant stated that he was acquitted of the criminal charges, but that the respondent failed to reconsider its decision to terminate his employment and, as a consequence, it was liable to pay him Kshs. 526,437.50 from the afore- stated loss.

5. On 12th August 2014, the respondent filed a Replying Memorandum and Counterclaim, admitting the uncontested facts as to the appellant's employment, his role and the salary earned. It was averred that the appellant worked at its Changamwe Branch as an Accountant, and that he was the custodian of the strong room [reserve] and the ATMs; that, on 26th May 2011, the respondent's Manager at the Branch was informed of a shortage of funds of Kshs.833,000 from ATM2 which was under the custody of the appellant and one Joseph Kimani; and that the respondent conducted its own investigations in the strong room which, led to the discovery of: three [3] bundles of Kshs.1,000,000 of 1000 notes had shortages of Kshs.100,000 each, totalling to Kshs.300,000; Kshs.200.00 bundles had an average of two notes missing; Kshs.100.00 bundles had an average of two notes missing; and the Kshs.50.00 bundles had an average of 11 notes missing.

6. Thereafter, the respondent instituted disciplinary proceedings against the appellant and the other suspected accomplices; that it explained to the appellant the gravity of the charges and the nature of the allegations brought against him which constituted theft and fraud; that, on being informed of the allegations, the appellant gave a 'blanket' denial and did not make a satisfactory explanation of the accusations against him; that the respondent was not satisfied by the explanation as to why the appellant did not offer a plausible explanation as to why, together with Joseph Kimani, they elected to load ATM2 machine with Kshs.1,000,000 when it already had a balance of Kshs.3,558,200 and why they stayed with the sum of Kshs.1,000,000 for more than one hour after removing the money from the strong room; that this led the respondent to summarily dismiss the appellant from work with effect

from 30th May 2011 when the alleged theft and fraud was committed; and that, in view thereof, the appellant duly informed the respondent of the accusations against him.

7. The respondent further stated that an acquittal in a criminal case does not render an employee immune to disciplinary action since the two processes are distinct, and each has its own standard of proof; that the allegations of unfair and/or unlawful termination are a non-starter and have no basis in law as the procedure that was followed was fair, proper and valid; and that the appellant was not entitled to Kshs.920,000 and/or the damages as pleaded by him.

8. In its counterclaim, the respondent took issue with the appellant for: failing to perform his duties diligently with due care; failing to act in its best interest; failing to comply with its employment rules and regulations; failing to act in good faith; and acting in collusion with other employees to defraud it. Further that it is in fact the appellant and his colleague, Joseph Kimani who caused it to suffer loss of Kshs.1,134,150. The respondent prayed that the loss should be apportioned between the two so that the appellant be found liable for the sum of Kshs.516,437.50, as well as the advanced staff loan of Kshs.43,937.28, making a total of Kshs. 560,372,78 together with interest until payment in full.

9. The respondent prayed that the court: reject and/or dismiss the appellant's Statement of Claim dated 30th May 2014; enter judgment in the sum of Kshs.560,372.78 with costs to it; and give such other order and further relief as it deemed just.

10. In his testimony, the appellant reiterated the events leading to his dismissal. He testified that he was never called to answer to the allegations preferred against him; and that, as per paragraph 17.4.14 of its Policy Manual, disciplinary processes with the respondent should commence with a show cause letter which the respondent did not comply with.

11. In cross-examination, the appellant testified that, after being released by the police, he received a call from Changamwe Bank Branch Manager who informed him that he was needed at the Headquarters; that he enquired of the meeting's agenda; that he had not received a termination letter at this time; that he did not go to the Human Resource Manager since there was no official communication to that effect; and that the decision by the criminal court ought to have affected the decision by the bank. The appellant admitted that he had an outstanding loan balance of around Kshs.43,000 owed to the respondent.

12. In its defence, the respondent called Winfred Kyalo, its Senior Officer Employee Relations, who testified as DW1. She testified that, after the appellant was released from custody, he was invited to a disciplinary hearing through a letter, but that he did not show up; and that, on account of failure to attend the disciplinary proceedings, coupled with the lost funds, the appellant was summarily dismissed on 30th May 2021.

13. In cross-examination, DW1 stated that a show cause letter was sent to the appellant although she did not have it in court; that, by the time the invitation to the disciplinary hearing was made in 2011, the criminal case against the appellant had not been concluded; that, even if the court had acquitted the appellant, that would not have affected the respondent's disciplinary proceedings; and that the bank's code of conduct calls for utmost trust, honesty and integrity on the part of its employees.

14. DW2, Joakim Ireri, a fraud investigator with the respondent, testified that, during his investigations, he established that there were missing bundles of notes from the money removed from the reserve by the appellant and the other custodian; that there was negligence in handling of the cash as a result of which the bank lost Kshs.1,300,000; and that he recommended that the four individuals involved in the fraud be surcharged.

15. In its judgment delivered on 30th July 2020, the ELCR [Ndolo, J.] found that the appellant was indeed dismissed vide a letter dated 13th June 2011, the reasons therefor being the loss of Kshs.1,232,000 from the ATM at the respondent's Changamwe Branch where he was a custodian together with one Joseph Kimani. The court observed that the appellant conceded that loading the ATM with the extra Kshs. 1,000,000 was not necessary as it would have bust the cash limit of ATM 2; that the fact that the appellant stated that his password was stolen was reason enough for him to avail himself at the respondent's head office to state his case if he was not at fault; that there was no nexus between internal disciplinary procedure and criminal proceedings on the same set of facts; and that, by failing to present himself at his employer's head office, the appellant locked himself out of the procedural fairness safeguards provided by the law and, as such, he could not be heard to complain that he was not heard.

16. In view of the foregoing, the claims for general damages and salary in lieu of notice were dismissed. However, the appellant was awarded salary for the 13 days worked in June 2011 since the dismissal letter was dated 13th June 2011. The Judge held that there was no basis for the respondent to backdate the dismissal to 30th May 2011. The prayer for the costs of defending the criminal case was also dismissed for failure to present evidence.

17. As for the respondent's counterclaim, the trial court found in favour of the respondent in the sum of Kshs.49,937 on account of the outstanding loan balance.

18. Aggrieved by the learned Judge's decision, the appellant preferred this appeal. In his Memorandum of Appeal dated 23rd March 2022, he faults the learned Judge for:

> " i. holding that the appellant ought to have presented himself at the respondent's offices to state his case without considering that there was an on-going criminal case against him which was to determine the same issue;
>
> ii. disregarding the appellant's contention that the loss could have been occasioned by poor supervisory structures and systems and thereby blaming the appellant for the loss;
>
> iii. holding that the respondent had a valid reason for dismissing the appellant under Section 43 of the *Employment Act*, Cap 226 without considering that due process was not followed;
>
> iv. placing a lot of weight on the fact that the appellant declined to meet the Human Resource Manager without considering that: no formal communication was made to him; the appellant was not served with the show cause letter regarding the accusation levelled against him; the appellant was not invited to disciplinary hearing; and the criminal case against the appellant was on going;
>
> ii. holding that the claim for general damages for unlawful termination and salary in lieu of notice was without basis; and
>
> ii. failing to hold that the respondent had violated its own procedure manual in dismissing the appellant without formal communication and without according the appellant a chance to be heard on the charges levelled against him."

19. Consequently, the appellant prayed that: the appeal be allowed with costs, the order dismissing the claim for general damages and salary in lieu of notice and the decree derived therefrom be set aside; and

that the Court grants judgement for the appellant for general damages and salary in lieu of notice as pleaded in the plaint, and general damages for unlawful termination.

20. The appeal was canvassed on 4th February 2025 by way of written submissions with brief oral highlights. The appellant's submissions are dated 3rd February 2025 while those of the respondent are dated 24th January 2025. Mr. Wameyo, learned counsel, appeared for the appellant while learned counsel Mr. Ireri appeared for the respondent.

21. Highlighting the appellant's submissions, Mr. Wameyo condensed the grounds of appeal into two issues. The first issue related to the question as to whether the appellant was fairly terminated from employment. On this issue, counsel submitted that, contrary to section 41[1] of the *Employment Act* [hereinafter the Act], the respondent did not conduct any disciplinary proceedings; that the reasons for the intention to terminate the appellant's employment were never communicated to him; and that he was not given an opportunity to be accompanied with a colleague during the explanation as required under the Act.

22. Secondly, counsel conceded that a criminal trial process is distinct from an internal disciplinary process and that, therefore, due process ought to have been followed before termination. Counsel took issue with the fact that the report recommending termination of the appellant was dated 15th June 2011 while the termination letter was dated 12th June 2011, meaning that termination was carried out prior to the recommendation and investigation. Counsel urged that the appellant should have been given an opportunity to prove his innocence through a formal hearing.

23. On the part of the respondent, Mr. Ireri submitted that the appellant conceded that he was summoned by way of a telephone call and asked to visit the human resource department at the respondent's headquarters; and that this comprised sufficient notice to attend disciplinary proceedings; and that the criminal process did not stop the respondent from commencing internal disciplinary proceedings. Reliance was placed on the persuasive decision of Republic v Public Service Commission of Kenya ex- parte James Nene Gachoka [2013] KEHC 3195 [KLR]; and this Court's decisions in Nelson Mwangi Kibe v Attorney General [2003] KECA 194 [KLR]; and Teachers Service Commission v Joseph Wambugu Nderitu [2016] KECA 678 [KLR] for the proposition that an acquittal in criminal cases does not render an employee immune to disciplinary action by an employer. Counsel urged that the appeal be dismissed.

24. This being a first appeal, our mandate is encapsulated in rule 31[1] [a] of this Court's Rules, 2022 which provides that on an appeal from the decision of a superior court exercising its original jurisdiction, this Court has the power to re-appraise the evidence and to draw inferences of facts. We are also cautious that, unlike the trial Judge, we do not have the advantage of assessing the demeanour of the witnesses, if any testified, for which reason we must make allowance.

25. Our mandate as a first appellate court was underpinned in the case of Kenya Ports Authority v Kuston [Kenya] Limited [2009] 2 EA 212 as follows:

> " On a first appeal from the High Court, the Court of Appeal should 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 allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence."

26. Again, in Peters v Sunday Post Ltd [1958] EA 424, a decision of the then Court of Appeal for Eastern Africa, Sir Kenneth O'Connor, P at p 429 said:

> " It is a strong thing for an appellate Court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witness."

27. In the same vein, the High Court sitting in Kerala, India in a decision by V.R. Krishna Iyer, J., had the following to say on the role of a first appellate court in Kurian Chacko v Verkey Ouseph AIR 1969 Kerala 316:

> " A first appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. It is the appellate Court's function not to find out whether there is perversity in the trial Court's judgment but whether it is wrong. There is very wide difference between a wrong conclusion and a perverse conclusion."

28. The House of Lords in England and Wales in Sotiros Shipping Inc v Sameiet Solholt [The Solholt] [1983] 1 Lloyd's Rep 605 [CA] on the same subject likewise observed that:

> " It is uncertain whether their Lordships should have reached the same conclusion on the evidence, but it is important that, sitting in the appellate Court they should be ever mindful of the advantages enjoyed of the trial judge who saw and heard the witnesses and was in a comparably better position than the Court of Appeal to assess the significance of what was said, how it was said, and, equally important, what was not said."

29. We have considered the record of appeal, the oral and written submissions of both parties and the law. In our view, two issues fall for our determination, being whether the appellant was given an opportunity to be heard prior to his summary dismissal, and whether criminal proceedings are a bar to internal disciplinary proceedings.

30. We start by highlighting the uncontested facts. It is common ground that the appellant was employed by the respondent and that, as at the time of his dismissal, he held the position of an Accountant earning a salary of Kshs.55,000. It is also agreed that the appellant was a custodian of the ATM machines, and he was to oversee their loading with money when need arose.

31. The internal investigation report dated 15th June 2011 established that there was a loss of a total of Kshs.1,232,350 comprising money from ATM2 [Kshs.833,400] and the strong room [Kshs. 398, 500]. This report was not challenged by the appellant. Finally, it is factual that criminal proceedings against the appellant were commenced vide Mombasa Chief Magistrate's Court Criminal Case No. 1755 of 2011. However, the appellant was acquitted under section 202 of the *Criminal Procedure Code*, Cap 75 for the reason that the prosecution failed to avail its witnesses on several occasions.

32. The appellant argued that he was not properly summoned to attend the disciplinary proceedings prior to his termination. He particularly stated that the respondent breached the provisions of section 41[1] of the Act, which provides as follows:

> "Notification and hearing before termination on grounds of misconduct."
>
> 1. Subject to section 42[1], an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor

performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44[3] or [4] hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection [1], make.

33. The Act provides for the right to a pre-dismissal hearing by placing an obligation on the employer to afford an employee the opportunity to be heard prior to termination of employment, including summary dismissal on the alleged grounds of misconduct or poor performance.

34. The rationale is grounded on the principles of the right of fair hearing ingrained in Article 50[2] of *the Constitution* which provides, inter alia, that a person facing any charge, has the right to be informed of it in advance and be given an opportunity to prepare a proper defence. The law does not restrict the form and procedure to be adopted by an employer in conducting a disciplinary hearing, but the hearing must at all times be fair. The employer must observe the rule of audi alteram partem. This is a fundamental principle of natural justice that requires anyone making a decision that affects the employee to give the employee a fair platform and opportunity to present his or her case and respond to accusations levelled against him or her.

35. This Court in Postal Corporation of Kenya v Andrew K. Tanui [2019] KECA 489 [KLR] expounded on the principles derived from section 41[1] of the Act as follows:

> " Four elements must thus be discernible for the procedure to pass muster: -
>
> i. an explanation of the grounds of termination in a language understood by the employee;
>
> ii. the reason for which the employer is considering termination;
>
> iii. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
>
> iv. hearing and considering any representations made by the employee and the person chosen by the employee."

36. From the record before us, there is no evidence that the appellant was suspended from his employment even after the criminal charges were instituted against him. He continued to be in the respondent's employment and was paid salary as the internal investigations into the allegations were continuing. The appellant was summarily dismissed from employment by a letter dated 13th June 2011.

37. Section 44[1] of the Act defines what constitutes summary dismissal as an instance where an employer terminates the employment of an employee without notice or less notice to that which the employee is entitled under any statutory provision or contractual terms. Section 44[4] of the Act allows an employer to summarily dismiss an employee if the employee has breached his obligations arising out of the contract of service. On what would constitute justifiable and lawful grounds for summary dismissal under the provision, includes:

a. without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;

b. during working hours, by becoming or being intoxicated, an employee renders himself unwilling or incapable to perform his work properly;

c. an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;

d. an employee uses abusive or insulting language, or behaves in a manner insulting, to his employer or to a person placed in authority over him by his employer;

e. an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer;

f. in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment and is not within fourteen days either released on bail or on bond or otherwise lawfully set at liberty; or

g. an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.

38. Prior to the summary dismissal, the respondent stated that it summoned the appellant by a phone call to attend a disciplinary hearing, a fact which the appellant did not dispute. The appellant took issue with the fact that the respondent did not inform him of the hearing in writing contrary to paragraph 17.4.14 of its Policy Manual, and that there were pending criminal proceedings.

39. On the first limb of the objection, section 41[1] of the Act states that an employee is to be notified of the reason for termination. However, the law does not make it mandatory that the notification be in writing. Of importance is that the employee be notified.

40. We make an observation that the respondent's Human Resource Department Policy Manual which the appellant relied upon as one of his exhibits, does not have a clause

17.4.14. Clause 17.4 is headed 'Procedure [in Cases of Disciplinary Action]' which is serialised up to sub-clause

17.4.6. For our purpose, the relevant sub-clause is 17.4.3 which reads:

> At such an inquiry, the employee involved should be fully advised of the charges against him and should be given an opportunity to fully explain his side of the story in his defence.

41. The appellant did not explain the prejudice suffered by not being notified in writing as opposed to notification by a telephone call, of the disciplinary proceedings. On this ground, we find that there was sufficient notice inviting the appellant to the disciplinary hearing, which he declined to attend.

42. On the issue as to whether criminal proceedings are a bar to internal disciplinary proceedings, the appellant declined to attend the hearing on the ground that there were pending criminal proceedings which he alleged would have influenced the decision of the disciplinary proceedings against him. The law is clear that pending criminal proceedings are not a bar to the employer to commence disciplinary

proceedings. The Supreme Court of India in State of Karnataka v Umesh [2022] 3 SCC 304 rendered itself thus:

> "The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction."

43. This position was echoed by this Court in Teachers Service Commission [supra] as follows:

> "...it is our view that this Court has made itself clear on the issue as to whether a successful outcome of a criminal process against an employee has primacy over an internal disciplinary process against such an employee arising from the same set of circumstances. The two processes are distinct from each other."

44. There were obvious consequences of the appellant's failure to attend the disciplinary proceedings. All the appellant had to do was honour the summons and present himself before the respondent to set the record straight on his involvement in the alleged loss of Kshs.1,232,350 under his watch. However, he failed to make an appearance when he was required to. Instead, he gave the excuse that the on-going criminal proceedings would be prejudicial to him.

45. In our view, appellant's conduct prevented the fulfilment of an obligation of the right to a fair hearing by frustrating the disciplinary proceedings. He locked himself out of procedural fairness. We are fortified by the decision of the South Africa Supreme Court in its findings in the case of Old Mutual v Gumbi [2007] SCA 52 [RSA] where it held that:

> "The right to a pre-dismissal hearing imposes upon employers nothing more than the obligation to afford employees the opportunity of being heard before employment is terminated by means of a dismissal. Should the employee fail to take the opportunity offered, in a case where he or she ought to have, the employer's decision to dismiss cannot be challenged on the basis of procedural unfairness."

46. We also respectfully agree with the sentiments of the Supreme Court of Canada in its decision in Bank of Montreal v Kuet Leong Ng, [1989] 2 S.C.R. 429 where the Court rendered itself as follows on the duty of an employee working in a bank, an institution which holds sensitive dockets as follows:

> "If good faith is the foundation of every contract of employment, it requires that to each measure of trust and authority placed in the employee correspond a like measure of responsibility and obligation. A senior employee, such as the respondent, who enjoys control over large sums of the employer's money must be held accountable for his disposition of those funds and is required to turn over to the employer profits made through the abuse of his position. Without such accountability, the respondent's commitment

> to execute in good faith his obligations under the contract of employment is without substance…There is no doubt that a breach of the obligation of good faith can ground the dismissal of the employee; equally, a breach of the obligation of good faith can give rise, like a breach of any contractual obligation, to the employee's responsibility for damages caused to the employer by the breach."

47. We fully concur with the decision of the learned Judge of the ELRC at para 47 of her Judgment that:

> " Additionally, by failing to present himself at his employer's Head Office as instructed the Claimant effectively locked himself out of the procedural fairness safeguards provided by the law and he cannot therefore now complain that he was not heard."

48. Flowing from the foregoing, we conclude by stating that the appellant wilfully elected not to participate in the disciplinary proceedings when called upon to. Since he was working in a sensitive docket, it behoved him to present himself before the respondent and explain the genesis of the loss of the money. His failure to do so, and more so to meet the Human Resource Manager grounds reasons that there were parallel criminal proceedings that were on-going, is not sustainable.

49. In the end, we find that this appeal is unmeritorious and must fail. The same is hereby dismissed with costs to the respondent. Consequently, we hereby uphold the Judgment of the ELRC at Mombasa [Ndolo, J.] delivered on 30th July 2020.

50. Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 18TH DAY OF JULY, 2025.

S. GATEMBU KAIRU, FCIArb

JUDGE OF APPEAL

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DR. K. I. LAIBUTA CArb, FCIArb.

JUDGE OF APPEAL

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G. W. NGENYE-MACHARIA

JUDGE OF APPEAL

I certify that this is the true copy of the original

signed

DEPUTY REGISTRAR