



Equity Bank (Kenya) Limited v Westlink Mbo Ltd & 2 others (Civil Appeal 532 of 2019) [2024] KECA 518 (KLR) (26 April 2024) (Judgment)

Neutral citation: [2024] KECA 518 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 532 OF 2019
SG KAIRU, F TUIYOTT & JW LESSIT, JJA
APRIL 26, 2024**

BETWEEN

EQUITY BANK (KENYA) LIMITED APPELLANT

AND

WESTLINK MBO LTD 1ST RESPONDENT

PETER NJUGUNA 2ND RESPONDENT

MARTIN NJAU NGOCHI 3RD RESPONDENT

(An appeal against the judgment of the High Court of Kenya at Nairobi (Kasango, J.) dated 13th June 2019 in High Court Civil Case No. 142 of 2009)

JUDGMENT

1. In this appeal, Equity Bank (Kenya) Limited, the appellant, is challenging a judgment of the High Court at Nairobi (Kasango, J.) dated 13th June 2019 awarding Westlink Mbo Ltd, the 1st respondent, an amount of Kshs. 39,720, 000.00 with interest thereon at the rate of 20% p.a. from the date of filing suit; general damages of Kshs. 2,000,000.00 and costs of the suit.
2. The facts are that Westlink Mbo Ltd (Westlink) was in the business of distributing Safaricom's products and in that regard traded with Safaricom's agents in Nairobi and elsewhere. It (Westlink) was at the material time a customer of Equity Bank (Kenya) Limited (the Bank) and maintained and operated current account number 0180292062194 at the Bank's Community Corporate Branch in Nairobi. The trading mode of operation Westlink devised with its customers, including one Elinah K. Zablon Tai, was that its customers would make money deposits into Westlink's said bank account and on the strength of the Bank Deposit Slips presented to it by its customers, Westlink would release products of equivalent value to its customers. The arrangement between the Bank and Westlink regarding bank statements was that the same would be supplied at the end of every month.



3. In the month of August 2008, the said Elinah K. Zablon Tai presented Westlink with numerous bank deposit slips on the strength of which Westlink supplied her with products in the belief that corresponding money deposits had in fact been made into its said bank account. Later, Westlink established that between 9th August 2008 and 30th August 2008, an amount of Kshs.27,335,000.00 represented by 13 deposit slips was not credited to its said bank account.
4. By its plaint dated 2nd March 2009, Westlink filed suit against the Bank and against two of the Bank's employees, the 2nd and 3rd respondents, asserting fraud on the part of the two named Bank employees. Westlink averred that, with the aim of defrauding it and in breach of bank-customer relationship, the employees "issued to Ms. Elinah K. Zablon Tai deposit slips which were merely reprints of earlier deposits with new date stamps while failing to credit the same" to its account.
5. Westlink also averred that on 26th August 2008 the Bank failed to credit its said account with a funds transfer in the amount of Kshs. 7,500,000.00 from the account of the said Elinah K. Zablon Tai. In addition, Westlink pleaded that the Bank fraudulently debited its account with an amount of Kshs. 4,485,000.00. Westlink claimed those amounts.
6. In the end, Westlink sought judgment for Kshs. 39,720,000.00 (should be Kshs. 39,320,000.00) made up of:
 - i. Kshs. 27,335,000.00
 - ii. Kshs. 7,500,000.00
 - iii. Kshs. 4,485,000.00 Total:39,320,000
7. Sala Hussein Ibrahim (PW1) a director of Westlink testified on behalf of Mustafa Aden Gedi, the Managing Director of Westlink, whose witness statement dated 10th April 2017 was adopted as his evidence in chief. He stated that the Managing Director had fallen sick in Mombasa and was therefore unavailable to testify. He reiterated the averments in the plaint that the 2nd and 3rd respondents had in the course of duty, and, as employees of the Bank, received the Kshs. 27,335,000 from Westlink's customer but failed to credit the same into the account; that the Bank's employees fraudulently and illegally generated and issued to the said Elinah K. Zablon Tai "genuine deposit slips which were merely reprints of earlier deposits with new dates stamps while failing to credit the same" to Westlink's account; that as a consequence, Westlink had issued goods to its customer on the strength of those deposit slips.
8. PW1 testified further that an amount of Kshs. 7,500,000.00 which the said customer transferred from her account was not credited to Westlink's account; and further that on 1st September 2008 the Bank, without authority or justification debited its said account with Kshs. 4,485,000.00. The witness went on to say that on discovery of the discrepancies, these matters were reported to the Bank and discussed with the head of security; that it was established that the Bank's software system had weaknesses and could generate receipts without actual money deposits being made and also facilitated reprints of previous genuine deposit slips; that the matter was reported to the Criminal Investigation Department who undertook a forensic audit; and that as a result of the experience, the Bank changed its software to disabled reprints; and that despite promises by the Bank to make good the loss, it did not do so.
9. Under cross-examination, the witness maintained that Westlink sold products, namely cards, to its customer, who would deposit cash in its bank account and on the strength of the bank slips, goods would be released; that bank statements would come later once a month when reconciliation would be done; that the matter was reported to the Branch Manager of the Bank and that the 2nd and 3rd respondent's employment with the Bank was terminated as a result.



10. Stanley Mworira Gatonga, a Credit Administrator, testified on behalf of the Bank. Although the transcript of the trial court proceedings indicates that he adopted a witness statement of 16th November 2018, what is on record is a witness statement by Gerald Gakiri, a Credit Manager of the Bank based at Community Supreme Branch in which it is stated that it is general banking practice that only a bank account statement can be relied upon to indicate the accurate and true status of a bank account; that neither the Bank, nor its employees received any monies with respect to the impugned transactions; that the alleged deposit slips were fake and were not issued by the 2nd and 3rd respondents in the course of their employment; and that the Bank, as well as the 2nd and 3rd respondents did not receive the amount of Kshs. 27,335,000.00 from the said Elinah K. Zablon Tai on behalf of Westlink as alleged.
11. As regards the alleged transfer of Kshs.7,500,000.00 from the account of Elinah K. Zablon Tai, it was stated that on 26th August 2008, the available funds in the said account of Elinah K. Zablon Tai were insufficient for an effective transfer of that amount as the account only had Kshs. 1,201,975.80.
12. Regarding the claim for Kshs. 4,485,000.00, it was stated for the Bank that the same was justified and permissible being a reversal and correction of earlier erroneous crediting of Westlink's account.
13. As regards the dismissal of the 2nd and 3rd respondents from employment, it was stated that the Bank had the discretion to release any of its employees and there was no reason for Westlink to conclude that they were dismissed on account of the matters it complained of.
14. Under cross examination, the witness stated that he was not personally involved in the matter; that indeed the 2nd and 3rd respondents were dismissed from employment; that bank statements were issued at the end of the month and Westlink could only have realized the discrepancies at the end of August; that to the extent that the account name on the deposit slips was different, the slips were fake even though the account number was that of Westlink; that the 'wet stamp' on the slips concealed the date and security number; that Westlink should have called the Bank to verify the deposit slips before releasing products on the strength of the same even though, in his words "I cannot blame anyone for relying on deposit slips issued by a teller"; that tellers were not employed to issue fraudulent receipts; and that "the customer might get confused not knowing the teller was acting on his own behalf not (on) behalf of the Bank."
15. After reviewing the evidence and considering the submissions, the learned Judge found that Westlink had produced "Cash deposit slips which (on) close examination one notices that they are one and the same of a previously printed cash deposit slips" and that the reprinting of cash deposits was repeated 10 times with a result that the account was short of the amount of Kshs. 27,335,000.00; that the fraud of reprinting genuine cash deposit slips pretending them to represent current cash deposits successfully deceived Westlink to release goods to its customer as evidenced by the cash sales of the products bought by the customer.
16. The Judge concluded that Westlink had established fraud to the required standard of proof and that the bank statements produced showed that the reprinted cash deposit slips did not translate into credits into Westlink's bank account; that the "cash deposit slips bearing the teller's stamp were issued by the bank's employees in the course of their duty" and the Bank was vicariously liable for the acts of the 2nd and 3rd respondents.
17. In relation to the claim for Kshs. 7,500,000.00 the Judge stated:

"The finding above on those deposit slips is also the same finding on the cash transfer form of Kshs. 7.5 million. That form was intended to and did indeed deceive both the plaintiff



and Ms. Tai to believe that that amount of Kshs. 7.5 million was credited into the plaintiff's bank account. As a consequence of the deception, the plaintiff suffered loss.”

18. And in relation to the claim for Kshs. 4,485,000.00 the Judge found that the Bank did not give a satisfactory explanation why it reversed that amount in Westlink's account.
19. Aggrieved, the Bank lodged this appeal which was canvassed before us on 7th November 2023. Learned counsel, Mr. Munyalo, appeared for the Bank while Mr. Sagana, learned counsel, appeared for Westlink. Counsel orally highlighted their respective written submissions dated 7th August 2020 and 1st April 2021. Although the Bank has challenged the judgment on ten grounds set out in its memorandum of appeal, the issues that arise are: first, whether Westlink established its claims for Kshs. 27,335,000.00; Kshs. 7,500,000.00; and Kshs. 4,485,000.00 respectively. If so, whether the Bank is vicariously liable for the actions of its employees, the 2nd and 3rd respondents. Third, whether the Judge erred in awarding Westlink general damages of Kshs. 2,000,000.00; and fourth, whether the Judge erred in awarding interest at the rate of 20% p.a.
20. Counsel for the Bank submitted that the Judge misapprehended and failed to consider the Bank's defence or to address whether there was collusion between Westlink and Elinah K. Zablon Tai; that the evidence tendered on behalf of Westlink by PW1 was inadmissible hearsay evidence as PW1 adopted the contents of the witness statement of the Managing Director Mustafa Aden Gedi while he had no personal knowledge of the matters to which he testified. For the argument that hearsay evidence is inadmissible, counsel cited decisions in *Mayers vs. Akira Ranch Limited* [1974] EA 169 as well as *Abiero vs. Thabiti Finance Company & another* [2001] eKLR.
21. It was submitted further that whereas the parties had framed and submitted numerous issues for determination, the Judge ignored those issues and only considered three issues, namely, whether the Bank and the 2nd and 3rd respondents fraudulently issued the banking slips in question, whether Westlink relied on them, and the question of costs. Relying on the case of *Cosmas Maweliwe Wepukhulu vs. Sameer Africa Limited*, Civil Appeal No. 236 of 2017, it was submitted that the parties were entitled to an answer on all the issues that were framed for determination and the trial Judge erred in failing to do so. In that regard, it was submitted that the Judge should have addressed the issue of liability of the Bank, and the issues of contribution and collusion. It was urged that Westlink did not have any cause of action against the Bank since the alleged deposits were made, not by Westlink, but by a third party.
22. It was submitted further that the claim that Westlink supplied goods on the strength of the impugned deposit slips and suffered loss was not proved; that the evidence of alleged supply of goods to Elinah K. Zablon Tai was inadequate; that the receipts produced lacked necessary particulars and no ETR receipts or books of account were produced and neither did the Judge address the question of Westlink's negligence in relying on the impugned deposit slips without verification with the Bank; that the fact that the impugned deposit slips bore the account name as “other Westlinks Mbo Limited” as opposed to “Westlink Mbo Limited” should have put Westlink on notice and should have prompted it to refer to the Bank.
23. It was submitted that, in any event, the Bank cannot be held vicariously liable for the actions of its employees, the 2nd and 3rd respondents, whose “fraudulent wrong doings were outside the scope of their employment” and who were “on their frolic of their own.” The case of *Rashid Ali Faki vs. A. O. Said Transporters* [2016] eKLR was cited.
24. With reference to Westlink's claim for Kshs. 7,500,000.00 for “failed transfer” it was submitted that the Judge failed to consider, not only the collusion between Westlink and Elinah K. Zablon Tai, but also



- the fact it was demonstrated that the account of Elinah K. Zablon Tai from which the transfer was to be made did not have sufficient funds. It was urged that in relation to the claim for Kshs. 4,485,000.00, the Judge failed to consider the evidence tendered to show that it was a justifiable and permissible reversal to correct erroneous credits into Westlink's account; and that the amount belonged to other clients of the Bank.
25. As regards the award of interest, it was submitted that the prayer in the plaint was for interest at "court rates" and the awarded rate of 20% was neither pleaded nor supported by any evidence. Reference was made to the decision in *Alba Petroleum Limited vs. Total Marketing Kenya Limited* [2019] eKLR for the argument that the award of 20% constituted a wrong exercise of discretion by the trial Judge.
 26. Lastly, it was submitted that the award of general damages of Kshs. 2,000,000.00 was not justified; that no basis was laid for the claim or the award; and that the figure was plucked from the air. Reliance was placed on the decision in *Kenya Tourist Development Corporation vs. Sundowner Lodge Limited* [2018] eKLR.
 27. For Westlink, it was submitted that the trial Judge cannot be faulted for the conclusions reached. For a start, it was submitted, relative to the evidence of DW1, who the Judge observed was "not a witness of the facts relating to the matter" and testified "more out of duty" "rather than testifying on the truth or facts" the Judge was impressed by the evidence and the candour of PW1 whose testimony she found to be "truthful and clear".
 28. It was submitted that the complaint that the Judge did not address all the issues presented for determination has no merit; that rather than submitting an agreed statement of issues, the parties submitted separate statements of issues which the Judge then collapsed into three appreciating that the claim was founded on fraud; that under Order 15 Rule 2 of the Civil Procedure Rules it was within the discretion of the Judge to frame the issues absent an agreed set; and to that extent it was submitted that the case of *Cosmas Maweliwe Wepukhulu vs. Sameer Africa Limited* (above) is distinguishable.
 29. Regarding the claim and award for Kshs. 27,335,000.00, it was submitted that it was established that the Bank employees, the 2nd and 3rd respondents, received that amount of money in the course of their employment but failed to credit Westlink's account; that it was established that the 2nd and 3rd respondents as bank tellers fraudulently generated and issued Westlink's customer with "genuine deposit slips which were merely reprints of earlier deposit slips with new date-stamps"; that Westlink discharged its burden of proof; that in accordance with Section 109 of the *Evidence Act* and on the authority of *Maria Ciabaitaru M'Mairanyi & Others vs Blue Shield Insurance Company Limited*, Civil Appeal No. 101 of 2000 [2005] 1 EA 280, it was incumbent upon the Bank to support its claim of alleged collusion between the Bank and Elinah K. Zablon Tai.
 30. It was submitted further that the claim for Kshs. 7,500,000.00 was proved; that evidence was led that the money transfer was duly processed, verified, and approved and Elinah K. Zablon Tai transferred that amount from her account, but it was not credited to Westlink's account; that in relation to the claim for Kshs. 4,485,000.00, it was established that there was no basis for the Bank to debit Westlink's account with that amount.
 31. On vicarious liability, it was submitted that the Bank's witness DW1 confirmed that the 2nd and 3rd respondents' employment with the Bank was terminated following investigations into the matter; and that the Bank, acknowledging weaknesses of susceptibility to manipulation of its system, subsequently changed its software, and the Bank cannot therefore claim that fraud was perpetrated by Westlink and Elinah K. Zablon Tai; that contrary to claims that the Judge should have apportioned liability, it was the Bank's negligence and failure to exercise caution that resulted in the loss sustained by Westlink.



Reference was made to the English decision in *Barwick vs. English Joint Stock Bank* (1867) LR2 cited with approval in *Patriotic Guards Ltd vs. Great Rift Valley Transporters Ltd* [2010] eKLR for the proposition that the Bank is vicariously liable for the fraudulent actions of its employees, the 2nd and 3rd respondent.

32. It was submitted further that the awards of general damages of Kshs. 2,000,000.00 and the award of interest at 20% p.a. were justifiably granted; that in relation to interest, the Judge properly exercised the court's discretion under Section 26 of the *Civil Procedure Act* having regard to the principle that where a successful party has been deprived of use of goods or money by reason of the wrongful act, there should be compensation for such deprivation by award of interest; that on the strength of *Abiero vs. Thabiti Finance Company Ltd & another* [2001] eKLR awards for general damages and special damages are awardable in a claim of fraud.
33. We have considered the appeal and the submissions. As already indicated, there are four main issues for our determination and in keeping with our mandate, under Rule 31(1)(a) of the Court of Appeal Rules, 2022 we have reviewed the evidence with a view to drawing our own conclusions bearing in mind that we did not have the advantage of either hearing or seeing the witnesses as they testified.
34. The award of Kshs. 39,320,000.00 comprised of Kshs. 27,335,000.00 arising from re-prints of cash deposits without funds credited into the account; Kshs. 7,500,000.00 being an amount that Elinah K. Zablon Tai is said to have instructed the Bank to transfer to Westlink's account but was not done; and Kshs. 4,485,000.00 said to have been wrongfully debited from Westlink's account.
35. In relation to the amount of Kshs. 27,335,000.00, the learned trial Judge found as a fact that the Bank, through the 2nd and 3rd respondents, generated and issued Westlink's customer, Elinah K. Zablon Tai, with genuine cash deposit slips but which were reprints of previous deposits with the result that Westlink's account was not credited with the funds represented by the re-printed deposit slips. Was there evidence to support this finding? Counsel for the Bank has in this appeal castigated the evidence tendered by Sala Hussein Ibrahim (PW1) as inadmissible hearsay to the extent that he adopted the witness statement of the Managing Director of Westlink, Mustafa Aden Gedi, who did not testify. The record of proceedings of 21st November 2018 when PW1 testified however shows that when PW1 took to the stand, he stated that he is a director and shareholder of Westlinks and that he was adopting the previously filed witness statement of Mustafa Aden Gedi as his evidence. No objection was raised. He was then cross examined at length by counsel for the Bank without any suggestion that he (PW1) did not have personal knowledge of the matters to which he testified. It is noteworthy that the trial Judge, who had the benefit of observing the witnesses observed that PW1 "was in my view truthful and clear in his testimony" while the Bank's witness "was not a witness of the facts relating to this matter" and who "testified more out of duty, as an official of the bank, rather than testifying of the truth or facts he had intimate knowledge of" and to whom, giving evidence, the Judge noted, "seemed more of a chore than anything else." In our view, it is rather late in the day for objection to be taken on the admissibility of PW1's evidence. Objection should have been taken before the trial court which should then have ruled on the matter.
36. On the evidence, it is not in dispute that the 2nd and 3rd respondents were employees of the Bank and served as tellers for the Bank. Although they were joined in the suit as defendants, they did not defend and judgment against them was entered. PW1 was able to demonstrate that deposit slips that represented and corresponded with credits in Westlink's account, were then reprinted and issued to Westlink's customer without corresponding deposits. For instance, a deposit slip in respect of Kshs. 3,000,000.00 deposited in Westlink's account on 7th August 2008, was then reprinted twice on 9th August and 15th August 2008, effectively misrepresenting, that an amount of Kshs. 8,000,000.00 had



been deposited into Westlink's account, when in fact no deposits of that amount had been made. Another illustration is a deposit slip in respect of Kshs. 4,000,000.00 deposited in Westlink's account on 13th August 2008, was then reprinted twice on 22nd August and 25th August 2008, effectively misrepresenting, that an amount of Kshs. 8,000,000.00 had been deposited into Westlink's account, when in fact no deposits of that amount had been made. On the strength of the reprints, Westlink supplied goods to its customer Elinah K. Zablon Tai.

37. That modus operandi by the Bank's employees was repeated with reprints of deposits on several other occasions. The pertinent deposit slips re-prints to the extent of the amount of Kshs. 27,335,000.00 was in our view demonstrated by production of the reprints as well as the bank statements that demonstrated that there were no corresponding credits in Westlink's account.
38. It is not in doubt that the deposit slips and the reprints emanated from the Bank having been generated from the Bank's system by its employees, the 2nd and 3rd respondent notwithstanding the testimony of DW1 that "the teller was acting on his own behalf not behalf of bank(sic)". Evidently, the Bank tellers, the 2nd and 3rd respondents, would receive the payments, issue the reprints of the deposit slips to the unsuspecting depositor, and not credit Westlink's account with the amount.
39. As the learned Judge correctly stated, the cash deposit slips, with the teller's stamps, were issued by the Bank's employees in the course of their duty. Black's Law Dictionary, 8th edition refers to vicarious liability as "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties." See Samson Kairu Chacha vs. Isaac Kiiru Kingori [2016] eKLR; Patriotic Guards Ltd vs Great Rift Valley Transporters Ltd [2010] eKLR.
40. In the end, we hold that the finding by the learned Judge that the Bank is liable to Westlink for Kshs. 27,335,000.00 is well supported by the evidence and we have no basis for interfering with that finding.
41. As regards the award of Kshs. 7,500,000.00 being an amount that Elinah K. Zablon Tai authorized the Bank to transfer from her account to Westlinks account, the Judge was of the view that "the finding above on those deposit slip is also the same finding on the cash transfer form of Kshs. 7.5 million." With respect to the learned Judge, different considerations apply. Whereas it was demonstrated that Elinah K. Zablon Tai applied for the transfer of those funds from her account to that of Westlink, the Bank was able to demonstrate that the account of Elinah K. Zablon Tai did not have the funds, sufficient to meet that application. An application by a customer to the Bank requesting the transfer of funds is in our view different from a deposit slip issued by the Bank which is for all purposes prima facie evidence of receipt of funds represented by such deposit slip. To that extent, we are persuaded that the award of Kshs. 7.5 million was erroneous and that award is hereby set aside.
42. As regards, the award of Kshs. 4,485,000.00, Westlink pleaded in its plaint that that amount was debited from its account by the Bank without authority or justifiable cause. In its statement of defence, the Bank denied that claim and pleaded further that if any amount was withdrawn or debited from Westlink's account, which was denied, "the same was done as a justifiable permissible reversal to correct earlier erroneous crediting of the said account, at various dates with the sum amounting to a total of Kshs.4,485,000.00, in the aggregate, which amount was not deposited by the plaintiff or on his behalf." That was reiterated in the witness statement of Gerald Gakiri, the Credit Manager to which reference has already been made. In awarding Westlink the amount of Kshs. 4,485,000.00, the learned Judge stated:

"The bank failed to explain why it deducted, from the Plaintiffs bank account Kshs. 4,485,000.00. That deduction, reflected in the Plaintiffs bank account on 8th September



2008 as “reversal” was not proved by the Defendant to have had a corresponding correction of earlier credit in error.”

43. The Bank produced in its bundle of documents, Westlink’s bank statement for the period 3rd April 2008 to 23rd October 2008. It was incumbent upon the Bank to demonstrate to the trial court, based on that statement, the erroneous credit entries amounting to Kshs. 4,485,000.00 that were being reversed. The statement shows that the “reversals” were executed on 8th September 2008 in ten separate varying amounts adding up to Kshs. 4,485,000.00. The dates on which the erroneous credits were made was indicated against the narrative relating to the debits/reversals. For example, a reversal of Kshs. 685,000.00 on 8th September 2008 corresponds with a credit of the same amount on 28th August 2008 indicated as “cash deposit from Mamangina”. For each of the 10 reversals/debits made on 8th September 2008, there are corresponding credits, three on 28th August 2008 and seven of them on 1st September 2009. The Judge was therefore in error in stating that there were no corresponding credits.

The statements show otherwise. What the Bank did not do, which in our view it had a duty to do, was to explain why the credits were erroneous. To that extent, the Judge was right that the Bank did not explain. In the circumstances, absent an explanation or justification by the Bank for the reversal, we uphold the finding by the Judge awarding Westlink the amount of Kshs. 4,485,000.00 debited from its account without explanation.

44. As regards the award of general damages of Kshs. 2,000,000.00, counsel for Westlink submitted that it was “justifiably awarded to cater for the loss of business and loss of investment opportunity” and was therefore correctly awarded. Apart from the fact that the figure of Kshs. 2,000,000.00 appears to have been “plucked from the air”, a claim of that nature is one that should have been pleaded and proved. No proper basis was laid to justify that award. We hereby set it aside.
45. As regards the award of interest, in its plaint, Westlink prayed for interest “at court rates”. Justification was required for awarding interest at the rate of 20% which was not claimed in the plaint, and which was not supported by any evidence. See *Alba Petroleum Limited vs. Total Marketing Kenya Limited* [2019] eKLR.
46. In conclusion:
- a. We uphold the awards by the High Court in favour of Westlink of Kshs. Kshs. 27,335,000.00 and Kshs. 4,485,000.00 (total Kshs. 31,820,000.00) with interest at court rates (12% p.a.) from date of filing suit until payment in full.
 - b. We set aside the awards in favour of Westlink of Kshs. 7,500,000.00 and Kshs. 2,000,000.00.
 - c. As the appellant has partially succeeded in the appeal, it will have 2/3 of the costs of the appeal while Westlink will have the costs of the suit in the High Court.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF APRIL 2024.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL



J. LESIIT

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

