



**Wanjohi & 3 others v Kenya Railways Corporation (Civil Appeal
635 of 2019) [2024] KECA 1225 (KLR) (20 September 2024) (Judgment)**

Neutral citation: [2024] KECA 1225 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 635 OF 2019
SG KAIRU, JW LESSIT & GWN MACHARIA, JJA
SEPTEMBER 20, 2024**

BETWEEN

**ELIUD GATUNGU WANJOHI 1ST APPELLANT
WALLACE KAMAU KIRAGU 2ND APPELLANT
ANDREW DISHON MWANGOLA 3RD APPELLANT
JOHN FRANCIS KIBUCHI 4TH APPELLANT**

AND

KENYA RAILWAYS CORPORATION RESPONDENT

(Being an appeal from the Judgment of the Employment and Labour Relations Court at Nairobi (M. Onyango, J.) delivered on 20th May 2019 in ELRC No. 2000 OF 2013)

JUDGMENT

1. This is an appeal from the judgment of the Employment and Labour Relations Court at Nairobi (Onyango, J.) dated and delivered on 20th May 2019 in ELRC No. 2000 of 2013. Eliud Gatungu Wanjohi, Wallace Kamau Kiragu, Andrew Dishon Mwangola and John Francis Kibuchu, the 1st to 4th appellants respectively, sued their former employer, Kenya Railways Corporation, the respondent in this appeal. Their complaint was that just before their retirement, they were promoted from Grade RB Executive 1 to Group RA which became effective from the 25th April 1986, but that due to the failure by the respondent to pay their salaries based on the correct salary scale, they were underpaid, and upon retirement, they earned less pension pay as it was computed based on the incorrect salary. They filed their claim before the Employment and Labour Relations Court (ELRC) to recover their loss in form of arrears of salary caused by underpayment.
2. A brief background of the matter is that the appellants were employees of the respondent having been employed on different dates and years between the years 1960 and 1964. The 1st to 3rd appellants were



employed as Clerk Trainees Div. IIB while the 4th appellant was employed as a Labourer. After a long career, the appellants were placed under retirement at varied periods between the year 1993 and 1994 based on their dates of employment.

3. The appellants filed a suit against the respondent vide a statement of claim which they later amended on 3rd June 2015. They claimed that prior to their dates of retirement they were promoted from Grade RB Executive 1 to Group RA which became effective from 25th April 1988. They contended that due to their accelerated promotion they were entitled to a salary of £4,272 per annum as opposed to the £3,276 that they earned upon entry to Group RA. Further, that their promotion allowed them to leap frog from junior Grades RB. Senior Executive. 'B' and 'C' and RB Senior Executive. A to the higher position of Group RA.
4. They further averred that the payments made to them placed them on the 2nd incremental pay point of Grade RA scale instead of the 8th incremental pay point as per the Special Notice No. 1 of 1992. Further, that the said 2nd incremental pay point afforded them a lower salary than what they are entitled to as the pay point for Group RA scale arose from incremental pay point number 1 being the lowest. In addition, they contended that an increase in their salaries as they are entitled to would lead to an increase to the pension paid out to them.
5. The appellants contended that the respondents in acknowledgment of their claim and in admissions of its veracity, the respondent in January 2013 made part payments of their claim as follows:

1st appellant - Kshs.45,383/=; 2nd appellant - Kshs.54,650/=; 3rd appellant – Kshs.65,000/=;
4th appellant – Kshs.55,000/=.
6. The appellants contend that they had been underpaid as a result of the respondent's failure to pay them their correct salaries based on the correct salary scale. In the amended Statement of Claim the appellants prayed for:
 - a. "Costs of the suit;
 - b. Payment of Salary arrears to the various appellants as follows:
 - i. 1st appellant – Kshs.104,739.65/=;
 - ii. 2nd appellant – Kshs.145,188.45/=;
 - iii. 3rd appellant – Kshs.150, 887.15/=;
 - iv. 4th appellant – Kshs.145, 422.65/=;
 - c. Interest on b) above at Court rates; and,
 - d. Any other relief the Court may deem fit and just to grant."
7. The respondent entered appearance and filed its Memorandum of Response dated 22nd March 2015. The respondent averred that all salary rightfully owed to the appellants were duly paid and particularized by the appellants. The respondent further urged that the said payments were in full settlement of all owing arrears and that the appellants do not dispute receipt of the same.
8. It was averred that the re-conversion of the appellants' salary was in light of the finding of the Inter-Ministerial Committee formed by the Ministry of Transport, after one of the Corporation's employees, one Mr. Shilavula, in similar job group as the appellants, raised a complaint to the respondent Corporation's Management on 7th February 1990. The Management heard and declined the request and review by Mr. Shilavula. Eventually, after interventions through the Head of Civil



Service, a tripartite meeting was held between the respondent and Mr. Shilavula and the Permanent Secretary, Ministry of Transport, and the outcome of the meeting was that the respondent was tied by the Corporation's personnel policy that mirrored the *Employment Act* then. It was contended that in the meeting it was also noted that both policies barred management staff from benefitting from union increments.

9. The respondent averred that the payments eventually made to the appellants were in tandem with the findings of the Inter- Ministerial Committee formed to look into the matter of Mr. Shilavula, and eventually also the appellants' complaint. The respondent contended that accordingly, any arrears owed to the appellants were fully paid off to them.
10. The respondent contended that the appellants were initially unionisable employees under the Job Group RB Executive C.I. before being promoted to management under Group RA with all the attendant benefit of the said Job Group RA which was not in contention. That in addition, the mode of payment of the respondent's staff salaries were determined by the respondent's personnel regulations and that the appellants' salaries, like all the other employees were made pursuant to the provisions of the said regulations.
11. Lastly, it was averred that the respondent at all times treated its employees fairly, including the appellants and that their terms and conditions were uniform within the different job groups as set out by the personnel regulations. Therefore, it was contended, the appellants' claim was meritless, frivolous and vexatious and should therefore be dismissed with costs to the respondent.
12. The appellants in response filed their reply to Memorandum of Response dated 25th May 2015. They averred that they consistently sought to have the issues raised in their suit addressed during the course of their employment. It was also contended that the appellants were promoted to their respective ranks and as per the provisions of the respondent's personnel regulations, 1988 C 7(c) and (e) which stipulates that a situation shall not arise where an employee who is senior and has been receiving a higher salary is overtaken in salary by an employee who had been receiving a lower salary or who is junior to him. They therefore argued that their claim, contrary to what the respondent averred, was meritorious and should be allowed.
13. At the hearing before the superior court, the appellants called one witness to testify on behalf of all of them, that is Andrew Dishon who is the 3rd appellant. He testified that in his career spanning 32 years in Human Resources Management with the respondent, he progressed through a series of promotions up to the rank of Assistant Personnel Officer (Policy Research) Group 'RA' on 25th April 1988 and continued to serve under the same terms and conditions of service as set out in the KRC Personnel Regulations, 1988 without any variation whatsoever until his retirement from service effective from 19th October 1994. He contended that their promotions came with salary increments from K£3,144 per annum, K£3, 672 per annum, K£ 3,804 and K£4,116 per annum respectively for all the appellants. He contended that after he and his co-appellants retired from the respondent's service, the respondent publicly admitted that anomalous situation in salary payments for Group 'RA' officers had occurred between the years of 1988 and 1993.
14. The 3rd appellant testified that the appellants were seeking payment of underpaid salaries as admitted by the respondent. He explained that he and his co-appellants worked in the same grade with Mr. John Shilavula who was equally underpaid and lodged a complaint with the inter-Ministerial Committee and was paid more money yet worked on the same scale. He stated that the offer of Kshs.65,000/- made to them by the respondent was based on 2nd pay point not Grade RA and as a result he and his co-appellants were not satisfied and thus proceeded to file their Claim.



15. The respondent called one witness, Nemwes Mogere Atemba formerly the Human Resource Officer up to the year 2016. He testified that the appellants were employees of the respondent Corporation and that the issue pending for determination before Court was the contention that the appellants were not given the correct salary following their promotion as provided under the Corporation Policy on salaries and remuneration as well as the Staff Personnel *Regulations of 1988*. He stated that the scale that was applicable to the appellants was the maximum at Executive 1 as they were unionisable staff under Grade RB Executive 1, which amount was K€ 3,144 PA. Further, that the appellants were subsequently promoted to Assistant Personnel Officers Grade RA, and were placed on K€3276 PA pursuant to the respondent's Regulations. The witness further testified that the difference between Executive 1 and RA is that the latter referred to management staff and the former to unionisable staff and that unionisable salaries were subject to negotiation and the CBA while management salaries were done by the Board. He testified that the appellants did not serve in Senior Executive A, B and C as they were given accelerated promotion whereby they skipped to RA and placed on a salary of K€ 3276.
16. Mr. Atemba testified that a former colleague to the appellants proceeded to the Ministry of Transport and further to the office of the President to appeal to be placed on the higher point. That it prompted the then Minister of Transport to come up with an Inter-Ministerial Committee to look into the issue, which conducted its investigations and advised that the employee be given a higher increment than he was promoted to. He stated that the appellants relied on the said case as precedent, upon which payments were calculated by the respondent and payment made in full and final settlement to the appellants which, he contended, the appellants did not dispute.
17. Mr. Atemba testified that Clause 7(e) of the Kenya Railways Corporation Staff Regulations provided that the Managing Director (MD) of the Corporation had discretion in promotions. He further testified that the appellants were not disadvantaged as alleged in their statement of claim.
18. After considering the pleadings, the evidence, the oral and written submissions by the parties the learned Judge of the ELRC (M. Onyango, J.) in her judgment dated 20th May 2019 found no merit in the appellants' claim. She found that the appellants had already received salary adjustments following interventions of the Inter-Ministerial Committee and found that their dissatisfaction with the adjustments made as a result of the intervention was not a ground for intervention by the court. In addition, she found that the appellants had not demonstrated that there was any discrimination by the respondent or that the respondent failed to comply with the Regulations to their disadvantage. In the foregoing, the learned Judge dismissed the appellants' claim with no order as to costs.
19. Aggrieved by the said judgment, the appellants preferred an appeal to this Court and in their memorandum of appeal dated 13th December 2019 faulted the learned Judge on the following six (6) grounds: That the learned Judge erred in both law and fact by failing to consider:
 - i. that as a matter of justice, the respondent should not have placed the appellants in a position where they were earning less than their juniors;
 - ii. that the Grades RB Senior Executive A, RB Senior Executive B and RB Senior Executive C, which were junior to Grade RA, were also management and non-unionisable job groups, but still earning more than Grade RA, to which the appellants were promoted;
 - iii. that the payment received pursuant to the Inter- ministerial committee decision was on a without prejudice basis and cannot therefore be deemed sufficient to settle the salary discrepancies owed to the appellants;



- iv. that the Inter-Ministerial Committee recommendations were not final since the power to hear and determine applications in line with the provisions of Clause C.7 (e) of the Kenya Railways Corporation Staff Regulations, 1998 rests with the Managing Director;
 - v. that, in any event, the respondent did not adhere to the Inter-ministerial committee report on the terms provided; and,
 - vi. that the Inter-Ministerial Committee awarded only one installment, therefore still failing to solve the discrepancies resulting from the anomaly created by the respondent.”
20. The appellants proposed to ask this Court to allow their appeal, set aside the judgment of the ELRC (M. Onyango, J.) delivered on 20th May 2019 and costs be awarded to the appellants.
 21. At the hearing before us on the 18th March 2024, learned counsel Ms. Koech appeared for the appellants whereas learned counsel Mr. Agwara was present for the respondent.
 22. Ms. Koech highlighted the appellants written submissions dated 15th September 2020 and urged that whereas discrepancies was raised as a question for determination in the salary payment of the appellants, the same was not addressed by the superior court. She indicated that the main argument before Court was that the appellants, although holding managerial positions in the respondent’s Corporation, ended up receiving salaries that were way below their juniors. Further, the respondent confirmed that the unionisable staff and non-unionisable staffs were being paid under different salary structures.
 23. She submitted that the respondent’s own witness confirmed that there was an Inter-Ministerial Committee that was formed to look into the discrepancies in the salaries that concluded that its analysis failed to prescribe a remedy although it acknowledged the existence of a problem in focus. She contended that the discrepancies in payment was against the constitutional principles of equity, the Equal Remuneration *Convention No. 100 of 1951*, and similarly, section 1(4) of the *Employment Act* which provide that employees doing equal work should be remunerated equally. Counsel dismissed the reasoning by the respondent that the unionisable staff ended up being paid higher salaries because their negotiation power was higher than that of the managerial power.
 24. Counsel submitted that the main defense by the respondent that the appellants accepted a lump sum payment after their retirement was to compensate for the anomaly in the discrepancy in payment, amounted to an acknowledgment on their part that indeed there were discrepancies in payment that needed to be resolved. She urged that the acceptance of lump sum payment by the appellants did not resolve the issue of the discrepancies in salary payment as it affected the pension and/or how their pensions was calculated.
 25. Ms. Koech urged this Court to find that the salary payments that were received by the appellants which were way lower that of their juniors were an anomaly, against the law and the same should be rectified to the position to which they ought to have been paid and which is in accordance with the grading system that the appellants have outlined in their written submissions; and that is, at the highest grading system at the time when they joined Group RA which would have put them at an advantage or at least equal remuneration for the work or the position at which they were performing. She urged that K £4272 would have been the proper figure to adopt for calculation of the appellants remuneration and prayed that the same be allowed.
 26. Ms. Koech submitted that in order to resolve the discrepancy, the respondent should have taken the highest salary of the grade to which the appellants had entered to be their last working salary rather than the highest scale of a lower grade because that affected the calculation of their pension. She further



- stated that even though the appellants accepted payment, the same was not recorded as the correct amount. Moreover, she contended that although the appellants sought intervention from the MD who had the final say, they did not receive any response.
27. Lastly, Ms. Koech admitted that if the court was to react on this matter bearing in mind the [*Legal Notice No. 3 of 1995*](#) that introduced the three scale of unionisable staff that was to be effective in 1995, then the court would be acting retrospectively.
 28. The respondent did not file written submissions. However, Mr. Agwara gave oral submissions and also indicated that the respondent was relying on the respondent's Memorandum of Reply filed at the superior court as well as the witness statement of Mr. Nemwel Mogere Atemba and the attached documents.
 29. Mr. Agwara submitted that the instant appeal does not disclose any sufficient grounds to allow it to be granted and argued that the appellants have not demonstrated any error committed by the Superior Court in arriving at its judgment as now impugned before this Court.
 30. He argued that as noted by the trial Judge, the issue before the court was one of voluntary employment between the appellants and the respondent. He contended that the appellants joined the respondent's employment between 1960 and 1964 and they worked there voluntarily until their subsequent retirements between 1993 and 1994. He added that upon their retirement, they did not raise any issues and had no complaints on their terms of engagement which was voluntary and agreed upon by them and their employer.
 31. Mr. Agwara contended that the appellants' promotion in 1988 was voluntary and that they had the option of rejecting or accepting it, but which they willingly accepted. It was also argued that the appellants were aware of the terms of their promotion as well as the terms of their employments because, initially they were employed as unionisable employees then bound by the Collective Bargaining Agreement (CBA) that was done by the union on their behalf after every two (2) years.
Moreover, he urged, it was clear in their minds that upon their promotion the managerial level, they would not be entitled to the benefits accruing to those of their counterpart, the unionisable, thus were aware that the respondent operated two (2) schemes of salaries; managerial and unionisable.
 32. Counsel noted that it was not disputed that the managerial position had better benefits and more allowances as opposed to those of unionisable employees who only received what had been negotiated in the CBA from time to time. He submitted that the appellants enjoyed the benefits that came with the managerial position until their retirement.
 33. It was submitted that upon retirement, the appellants did not raise any issues until the year 2012 when one Mr. Shilavula, who was in the same rank as the appellants, complained about his payment and when the Inter-Ministerial Committee admitted his complaint and decided that his salary ought to have been reconfigured, the respondent acted in good faith and accepted to apply the readjustment to all the employees that fell within the same category as Mr. Shilavula and that included the appellants.
 34. Counsel contended that it was after that payment that the appellants filed their claim in 2013 thinking that they could receive more money which claim he urged, by the very nature of its filing, was time barred under regulation 87 of Railways Act which required such claim to be filed within twelve (12) months. He further submitted that even after filing and upon its consideration, the trial court found that the progression from unionisable to managerial level was voluntary and there was nothing that was being forced upon the appellants and that the benefits attached to the managerial level far outweighed that which was attracted by the unionisable employees. That in addition, the appellants leapfrogged three (3) groups from where they held, which was a benefit accorded to them by the respondent.



35. Mr. Agwara pleaded that this matter ought to be allowed to rest. The appellants having benefited from their employment should be allowed to continue receiving their pensions as properly computed which they continue to receive to date.
36. Lastly, Mr. Agwara submitted that the appellants' claim before the Superior Court was an afterthought and should be dismissed since all the issues raised before this Court are matters that were articulated before the Inter-Ministerial Committee and a finding arrived at, which finding was acceptable to the appellants without challenging the same. He thus pleaded that the finding should be allowed to bind the appellants and the respondent and urged this court to dismiss the appeal as there should be an end to litigation.
37. In rejoinder, Ms. Koech confirmed that there was a reply to the appellants' Memorandum of Claim but argued that the benefits that accrued to the managers in their managerial position that ought to have been acted upon to equalize the discrepancies, was disputed.
38. On the issue raised by Mr. Agwara that at the time of their promotion the appellants were aware of their salary discrepancies, Ms. Koech denied that and submitted that although at the time of their promotion the appellants received slightly higher salaries than their unionisable counterparts, it was only during their managerial pendency that their counterparts were accelerated making their payment to overlap those of managers, hence it was incorrect for Mr. Agwara to state that the appellants were aware of the discrepancies prior to their promotion.
39. This being a first appeal, it behooves this Court to re-evaluate, re-assess and reanalyze the evidence on record and then determine whether the conclusions reached by the learned trial Judge should hold. In the case of *Kenya Ports Authority vs. Kuston (Kenya) Limited* [2009] 2EA 212, this Court espoused that mandate or duty 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.”
40. We have considered the appeal, the evidence adduced before the learned Judge of the ELRC and submissions relied upon by counsel for both parties. Having carefully considered the same, we find that the issue that lies for our determination is whether the learned Judge of the ELRC erred in dismissing the appellants claim and secondly, what orders we should make.
41. The facts in this case are largely uncontested. The appellants were employees of the respondent between 1960 and 1964, and retired between 1993 and 1994. In 1988, the appellants were promoted to Job Group RB, meaning that on promotion they were translated from unionisable staff to managerial staff. The Claimants upon promotions were management staff whose salaries were reviewed upon consultation with the Minister of Transport through the Directorate of Personnel Management (DPM); while for those staff who were union members their salaries were negotiated between the union and the Respondent, the unionisable staff being subject to CBA, which was negotiated at two years intervals, while that of the managerial staff depended on review by the requisite Ministry and the DPM, which was not held consistently and thus salary reviewed took longer than that of the unionisable staff. This meant that the respondent had different salary schemes for its employees.
42. The issue giving rise to the claim was the 1988 promotion whereby the appellants progressed from the unionisable staff to managerial staff. The appellants served until their respective retirements. It is not



disputed that it is only in 2012 when one Mr. Shilavula who worked in same rank as the appellants and was promoted in 1988 as the appellants, raised the issue of discrepancy in his salary scale with the respondent after his retirement. We need not rehash the events as they are contained herein above. The point is that after raising the issue with the respondent, and all the way to the Head of Public Service, the Committee found in favour of Mr. Shilavula. The respondent carried out a reconversion of Mr. Shilavula's salary in light of the findings of the Inter- Ministerial Committee, and did the same to the appellants as they were equally affected having been promoted at the same time and to the same rank as Mr. Shilavula.

43. The appellants were not satisfied and filed their claim in 2013, 9 years after retirement, and 19 years after the impugned promotion. The issue of the late complaint was not an issue before the trial Court and so will not be determined here, even though Mr. Agwara for the respondent made submissions touching on same.
44. The appellants' issue with the learned Judge's finding was that she did not determine the issue of discrepancies even though the same was an issue raised before her. It was the appellants' position that the respondent's witness having admitted that salary adjustments were made following findings by the Inter- Ministerial Committee, was an acknowledgment of the existence of discrepancy. It was the appellants' position that as a result of the Committee's finding and the respondent's action in tandem with the findings, was sufficient proof that the appellants were discriminated, that the discrepancies in payment was against the constitutional principles of equity, the Equal Remuneration [*Convention No. 100 of 1951*](#), and similarly, section 1(4) of the [*Employment Act*](#) which provide that employees doing equal work should be remunerated equally. It was urged that the Court should have given a remedy to the appellants as the adjustments and payments made to them did not sufficiently address.
45. The respondent's position was that the adjustments were made in alignment of the Inter-Ministerial Committee's finding following the discovery that the appellants' salaries were inadvertently converted from Grade RB Exc. 1 to Group RA, and that payments were made to the appellants in good faith. Secondly, the respondent was bound by the Kenya Railways Corporation Personnel Regulations, 1988 and more specifically Clause C (7), which it complied with at the time of promotion.
46. Addressing this issue, the learned Judge found that:

“The circumstances that the claimants found themselves in was not from the commissions or omissions of the respondent, but from the fact that their promotion was from a unionisable grade to a non-unionisable grade. At the time of promotion they were given higher salaries. However while the non-unionisable grades had to wait for salary increments by the Public Service Commission which were far apart, the unionisable staff salaries were adjusted every time there were negotiations of terms and conditions of service by the union. This was more frequent and led to the salary of RB Exec. 1 catching up and sometimes overtaking the salaries for the non-unionisable but more Senior Grade 'RA' which the claimants had been promoted to.”

47. We have considered the evidence adduced before the learned Judge. What the appellants needed to prove is that the respondent discriminated against them, leading to the salary discrepancies complained. Section 5 of the [*Employment Act*](#) (Acts) provides:
 2. An employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice.
 3. No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee-



- a. on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status or HIV status;
- b. in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.

(5) An employer shall pay his employees equal remuneration for work of equal value.

48. The appellants needed to adduce evidence to show that the respondent discriminated against them directly or indirectly, on any of the grounds set out under section 5 of the Act. Under section 5(1) of the Act, an employer is required to promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice. The appellants did not accuse the respondent of practicing discriminative policy or practice. If anything, the respondent's evidence that it complied with the provisions of its Regulations touching on their promotion was not opposed or controverted by the appellant. It was also adduced in evidence that the appellants had the option of seeking intervention from the Managing Director, which they did not invoke.
49. It is clear from the facts of this case that a problem arose when the appellants were promoted in 1988, but the same was not discovered until the findings of the Inter-Ministerial Committee in 2012. The promotion of the appellants that translated their terms of service from unionisable to managerial was a positive act. The slow pace of salary increment of the staff in the managerial positions compared to those that were unionisable, which was the reason the discrepancies occurred, was not attributable to any acts of discrimination on the part of the respondent. Furthermore, no evidence was adduced to show that the respondent paid unequal pay to persons performing work of equal value. Rather, what is demonstrated is that all appellants and their colleagues serving in the same position got remunerated equally.
50. The appellants' argument that reconversion by the respondent of their salaries and eventual payment of the arrears was an admission, was not an admission of discrimination as against the appellants, but of discrepancy based on the Inter-Ministerial Committee's finding.
51. The learned Judge concluded as follows:
- “From the foregoing, I find no merit in the claim by the claimants. They had already received salary adjustments following intervention of the Inter-Ministerial Committee. Their dissatisfaction with the adjustments made as a result of the intervention is not a ground for intervention by the court. They have not demonstrated that there was any discrimination by the respondent or that the respondent failed to comply with the Regulations to their disadvantage.”
52. Having considered the judgment of the learned Judge, we are satisfied that the conclusions arrived at are sound, are well supported by the evidence and the applicable law, and cannot be faulted.
53. The result of this appeal is as follows:
1. The appellants appeal lacks in merit and is dismissed;
 2. The judgment of the ELRC, M. Onyango, J. dated 20th May 2019 is upheld;
 3. We note that the ELRC did not make any orders as to costs. We make none either.



DATED AND DELIVERED IN NAIROBI THIS 20TH DAY OF SEPTEMBER, 2024.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

