



**Marwa & 32 others v County Government of Migori (Civil Appeal  
131 of 2019) [2024] KECA 1583 (KLR) (8 November 2024) (Judgment)**

Neutral citation: [2024] KECA 1583 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL 131 OF 2019  
HM OKWENGU, HA OMONDI & JM NGUGI, JJA  
NOVEMBER 8, 2024**

**BETWEEN**

**JOHN NGARIBA MARWA & 32 OTHERS ..... APPELLANT**

**AND**

**COUNTY GOVERNMENT OF MIGORI ..... RESPONDENT**

*(Being an appeal from the judgment of the Employment and Labour Relations Court (ELRC)  
at Kisumu (Rika, J) delivered by Nderi, J on 6th December, 2018 in ELRC No. 10 of 2013  
Consolidated with ELRC No. 309 of 2016, ELRC No. 310 of 2016 and ELRC No. 311 of 2016)*

**JUDGMENT**

1. This appeal arises from the judgment of the Employment and Labour Relations Court (ELRC), dated 6<sup>th</sup> December, 2018. The judgment relates to consolidated suits that were filed by the appellants herein, who are 33 persons, who claimed to have had their employment unlawfully terminated by the County Government of Migori (the respondent herein).
2. In the consolidated suits before the ELRC, the appellants who were the claimants sought various reliefs, which, as consolidated in the re-amended statement of claim, were as follows:
  - i. An order reinstating the claimants to their former positions.
  - ii. An order of temporary injunction barring the respondent from replacing, dismissing, interdicting, and/or interfering with the claimants' employment position pending the hearing and determination of this suit.
  - iii. A declaration that the claimants are qualified to be confirmed as permanent, salaried, and pensionable employees of the respondents.



- iv. In the alternative, the respective claimants are paid damages for wrongful termination of employment by the respondents.
  - v. An order directing the respondents to confirm the claimant as permanent employees in their current positions.
  - vi. In the alternative, the court do vary the terms of service of the claimants with the respondent and declares the claimants as permanent employees of the respondent, employed on terms and conditions of service consistent with the *Employment Act*.
  - vii. Certificate of service to issue to each claimant.
  - viii. An order awarding the claimants appropriate monthly wages from the date of employment and the same be assessed by the court.
  - ix. An order be made that the claimants are entitled to payment of due leave days, and or leave allowances, and the same are assessed by the court.
  - x. An order compelling the respondents to compensate the claimants for working on Sundays and Public holidays without pay.
  - xi. Costs of the claim and interest.
3. The appellants claimed to have been originally employed by Kehancha Municipal Council, on temporary contracts, in different positions, between January 2008 and October, 2012; they each had an initial monthly salary of Kshs. 3,000, and claimed to have served Kehancha Municipal Council for a period exceeding 5 years and 9 months, during which period they enjoyed permanent and pensionable terms, and their monthly salary rose to Kshs. 5,000. They contended that under *the Constitution* of Kenya, 2010, and the *County Governments Act* 2012, the respondent came into existence, and inherited all the assets and liabilities of Kehancha Municipality which became defunct.
  4. According to the appellants, after the takeover, they became regular employees of the respondent by operation of the law, and continued to serve under the respondent, doing the same jobs they were originally assigned. They served for a period of one year, and their salaries were paid by the respondent. They became aggrieved because the respondent refused to convert their employment into permanent and pensionable terms. Instead, on 31st March 2015, the respondent abruptly terminated their employment, without notice or valid reasons, or a fair hearing process. They, therefore, sought relief as already adverted to.
  5. The respondent in its reply to the appellants' claims, though admitting that it took over the assets and liabilities of Kehancha Municipal Council, denied the appellants' claim. It stated that under the *County Governments Act*, the employees of Kehancha Municipal Council were not automatically transferred to serve it, but, the respondent had to identify and employ only qualified employees from the defunct Kehancha Municipal Council; the appellants were asked to produce their original documents and original letters of employment, for consideration for employment by the respondent, but the appellants failed to do so. The respondent could not, therefore, retain them as employees.
  6. The respondent stated in addition, that there were guidelines from the Transition Authority, for former employees of municipal councils to undergo a suitability test, to determine if they could be taken in by County Governments. The respondent did the suitability test in regard to the appellants and generated a report which was adopted by its County Assembly, as the policy of the County Government. The respondent reiterated that the appellants were temporary employees of the defunct Kehancha Municipality; that the respondent offered them contractual employment, but, the



- appellants declined to sign the contracts; that it was not, therefore, feasible to reinstate the appellants or declare them permanent and pensionable employees; moreover, their positions were no longer available as the County Public Service Board had already employed other Revenue Clerks and filled the positions.
7. Lastly, on the issue of notice before termination, the respondent stated that this did not arise, because the appellants were taken through a fair process before their contracts, were validly, terminated upon lapse of the term periods. The respondent maintained that it carried out an open job advertisement to fill the positions, but the appellants did not apply. Thus, the appellants were not entitled to damages for wrongful termination of their contracts, nor were they entitled to damages for unlawful dismissal.
  8. The learned Judge of the ELRC, having heard the evidence for the respective parties, and considered their submissions, delivered a judgment in which he found that the appellants were employed by Kehancha Municipal Council, on a three months' temporary contract, between 2008 and 2012; that they continued working on the same terms with the respondent, after the transition from Kehancha Municipal Council to the respondent; and that their services were terminated on 31<sup>st</sup> March, 2015.
  9. The learned Judge dismissed the appellants claim, finding that they were not entitled to the relief they sought for various reasons. In regard to the relief of reinstatement, this was not available to the appellants under Section 12(3)(vii) of the ELRC Act, because three years had passed from the time their employment was terminated. In addition, the respondent had already advertised and filled the positions in which the appellants were working.
  10. In regard to the claims for salary underpayment, leave days/leave allowances, and compensation for working on Sundays and public holidays, the Judge found that the appellants were not entitled to these reliefs because they did not properly plead their claim in regard to these reliefs, nor did they produce any evidence in support of these reliefs.
  11. As for the claim for unfair and or unlawful termination, the learned Judge noted that the appellants were offered contracts of employment by the respondent, which contracts they refused and or neglected to sign; they could not, therefore, claim that their termination of employment was unfair. The learned Judge also rejected the appellants' prayer, that they were qualified to be confirmed as permanent and pensionable employees, because they had worked continuously for a number of days, beyond the three months' contract, as there was no evidence confirming the appellants' allegations. The Judge rejected the appellants submissions in regard to Section 37 of the Employment Act 2007, contending that the section does not require that where an employee works for a number of continuous working days, which amounts in aggregates to the equivalent of not less than one month, the person is treated as a permanent and pensionable employee; that the section provides, that if a person works for one month, the casual employment is deemed to be one where wages are paid monthly.
  12. Further, the learned Judge referred to Section 137 of the Government County Act which regulates transition of staff from the former municipal councils to County Governments, and provides for the employees of the municipal councils, who were appointed by the Public Service Commission, to continue working in the county governments on secondments. The Judge held that the appellants did not qualify under this section, as they were not appointed by the Public Service Commission, or under delegated authority of the Public Service Commission.
  13. In addition, the County Public Service Board had powers under Section 59 of the County Government Act to establish and abolish County Public Service offices, as well as appoint persons to fill these positions. The learned Judge held, that the respondent's County Public Service Board, acted in accordance with its mandate, in offering the appellants three months contracts, while conducting the suitability tests, and in terminating the appellants contracts once the appellants rejected what was



offered. The learned Judge also noted, that the appellants did not refer the decision of the County Public Service Board to the dispute settlement mechanism provided under Section 77 of the [County Governments Act](#).

14. The appellants have faulted the judgment of the learned Judge on fifteen grounds. The grounds include; the learned Judge having erred in law and fact in failing to make a finding that the appellants were not entitled to damages for wrongful and or unfair termination of employment; in failing to find that the appellants had continuously worked for a period of over three months, and was entitled to be treated as permanent and pensionable employees of the respondent; in disregarding the appellants' letters of appointments and or making a wrong finding that the respondent did not have any obligation in law to retain the appellants; in failing to make a finding that the respondent was in breach of a court order prohibiting termination of their employment; in failing to make a finding that the appellants were entitled to fair living wage and or were being underpaid by the respondent; in failing to make a finding that the appellants were entitled to compensation for leave days earned but not given, and for working on Sundays and public holidays; in failing to make a finding that the appellants had undergone a suitability test as required by the respondent; in failing to make a finding that the appellants services were not terminated by the respondent's County Public Service Board; in finding that the respondent had not taken over the appellants from Kehancha Municipal Council; and in failing to make a finding that the three years from the date of termination of the appellants employment, lapsed when the appellants claims were still pending in the ELRC.
15. In their written submissions, the appellants argued that apart from the initial employment contract between them and the respondent; there was no other contract of employment extending their services, but that they stayed in employment and worked from 2008 to March, 2015, when their services were terminated. Thus, having continuously stayed in employment for a period of seven years, receiving salary from the respondent their employment had taken on the status of permanent and pensionable terms, under Section 35 of the [Employment Act](#).
16. The appellants submitted that the termination was unlawful because there was no explanation of the process undertaken before the termination; moreover, their termination was done in contravention of a court order issued by the trial court, restraining the respondent from terminating their employment, which orders were served on the respondent.
17. In regard to salary underpayments, the appellants maintained that the learned Judge erred in dismissing the claim as the respondent was under an obligation to pay the appellants in accordance with the minimum wage Regulations, which were Kshs.6,130/, Kshs.8,350/, and Kshs.13, 215/ as at 2009, 2011 and 2013, respectively. The appellants maintained that there was unrebutted evidence that they worked even on Sundays and public holidays, and therefore they were entitled to compensation for leave days earned, and days worked on Sundays and public holidays.
18. Further, the appellants submitted that the suitability test done by the respondent recommended the absorption of some of the appellants, but this was not done; the evidence was clear that the respondent had taken over the assets and liability of Kehancha Municipal Council, which included the appellants as employees; and that having worked for more than 3 months, under Section 37 of the [Employment Act](#) the appellants were entitled to have their employment converted to permanent term contracts.
19. Finally, the appellants' submitted that the respondent did not comply with Section 40 and 43 of the [Employment Act](#), with regard to the procedure for termination of employment; that the appellants had a legitimate expectation that their temporary contracts had been converted to term contracts; and that the appellants had in fact proved their claim on a balance of probability.



20. In their written submissions the respondent reiterated what it had stated in its reply to the appellants claim. It submitted that the learned Judge was right in finding that the appellants were employed by the Kehancha Municipal Council on temporary, three months contracts, between the years 2008 and 2012; that although the contracts were renewable, the appellants did not produce anything to show that the three months' contracts were actually renewed; that the appellants continued working during the transition period from the municipal council to county government, until 31<sup>st</sup> March, 2015, when the County Public Service Board terminated their contracts; that the appellants were not automatically transferred to the County Government, but the County Government had to identify and employ only qualified employees from Kehancha Municipal Council; that when asked to produce their original letters of employment for consideration by the respondent, the appellants refused to do so; and that according to the guidelines from the transition authority, the appellants had to undergo suitability test to determine if they were to be taken over by the respondent.
21. The respondent contended that it was not aware of the order that was allegedly issued by the court, restraining it from terminating the appellants employments. It argued that the appellants did not establish what the appropriate wages for their employments ought to have been, nor did they plead any specific figures, or identify any law or collective agreement on wage guidelines. In addition, the appellants failed to prove the number of days that they were entitled to leave, or the computation method in regard to the alleged leave days, Sundays and public holidays; that the respondent advertised the vacancies in 2013 but the appellants did not apply for those vacancies; that the appellants were not entitled to certificate of service because their wages were not paid monthly nor did Section 35(1)(c) of *Employment Act* apply to their contract of service.
22. The respondent reiterated its position in regard to the issue of notice to the appellants before the termination of their contracts, maintaining that the contracts were validly terminated, and that the appellants were not employed by the Public Service Commission of Kenya, and could not, therefore, automatically transition to the respondent. Finally, the respondent argued that it was the mandate of the County Public Service Board under Section 59 of the County Government Act to establish and abolish county public service offices, and appoint persons to fill these offices.
23. This being a first appeal, the court is required to re-evaluate and re-analyze the evidence that was presented before the trial court, in order to arrive at its independent conclusions of law and fact, bearing in mind that the trial Judge had the advantage of seeing and assessing the demeanor of witnesses. (See *Selle vs. Associated Motor Boat Co. Limited* (1968) EA 123). In addition, the court must take cognizance of the fact that it should not interfere with the findings of fact by the trial court, unless they were based on no evidence or a misapprehension of the evidence, or the trial Judge is shown demonstrably to have acted on wrong principles in reaching his findings. (See *Jabane vs. Olenja* (1968) KLR 661).
24. Having carefully considered the evidence as per the record of appeal, the grounds of appeal, and the rival submissions of the parties, we find it common ground that the appellants were employed on temporary terms by Kehancha Municipal Council, before the Municipal Council became defunct pursuant to the repeal of the Local Government Act, the promulgation of *the Constitution* of Kenya, 2010, and the enactment of the *County Governments Act*, 2012. It is also not disputed that pursuant to these legislations the respondent took over the assets and liabilities of Kehancha Municipal Council.
25. The issues for determination before the trial court were whether the appellants were employees of the respondent; whether their contracts of service were unlawfully terminated; and whether they were entitled to the reliefs that they sought. In this appeal we have to reconsider these issues in light of the



appellants fifteen grounds of appeal, and come to our own conclusion as to whether the reliefs sought by the appellants should be granted or whether the appellants claims were properly dismissed.

26. It is not disputed that the appellants were asked by the respondent to produce their original contract of employment as contracted by Kehancha Municipal Council, but they failed to do so. The appellants did not demonstrate that they were employed by the Public Service Commission, or through the delegated authority of the Public Service Commission. Under section 138 of the County Government Act, such employment would have given the appellants the right either to be absorbed by the respondent, or to be seconded to the respondent from the national government. In either of these situations, the transition of the appellants employments from Kehancha Municipal Council to the respondent would have been automatic.
27. In the absence of automatic transition, the respondent testified, and this was not disputed, that under the transition guidelines, it was required to carry out a suitability test in order to identify qualified employees from Kehancha Municipal Council, and determine whether or not, to retain the employees in its employment. That exercise was frustrated by failure of the appellants to produce their original employment record, and also the appellants' reluctance to sign a new employment contract with the respondent. As the appellants were temporary employees, having declined or neglected to sign contracts with the respondent, they were served with notices of termination. The question is whether this was proper.
28. The appellants have maintained that having been in employment for a period of about seven years from 2008 to 2012, their employment ought to have been converted into permanent and pensionable terms. In this regard, the appellants relied on Section 35 and Section 37 of the *Employment Act* No.11 of 2007.
29. Section 35(1) of the *Employment Act* which is headed  
“termination notice” states as follows:
- 35 (1) A contract of service not being a contract to perform specific work, without reference to time or to undertake a journey shall, if made to be performed in Kenya, be deemed to be—
- a. where the contract is to pay wages daily, a contract terminable by either party at the close of any day without notice;
  - b. where the contract is to pay wages periodically at intervals of less than one month, a contract terminable by either party at the end of the period next following the giving of notice in writing; or
  - c. where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing.
- (2) Subsection (1) shall not apply in the case of a contract of service whose terms provide for the giving of a period of notice of termination in writing greater than the period required by the provision of this subsection, which would otherwise be applicable thereto.
- ...
30. In order to determine the termination notice that the appellants were entitled to, it is necessary to look at the letters of employments that were issued to them. These letters were generally similar and we



reproduce herein two letters as examples. First is the letter issued to John Ngariba on 7<sup>th</sup> December, 2008 which reads as follows:

7<sup>th</sup> December, 2008

John Ngariba Kehancha

Dear Sir,

RE: Temporary Employment

Market Maintenance at Bukura East

Following your application to this office for the above post, I am pleased to inform you that you have been offered a temporary employment as above with effect from 7<sup>th</sup> December, 2008 to 28<sup>th</sup> February, 2009.

The salary attached to this post will be fixed to Kshs. 3,000/ per month. Your services terminates automatically at the end of every three months. The management may renew your contract subject to your performance.

Wishing you best of luck in your appointment.

Signed

Christopher O. Rusana Town Clerk

31. The second employment letter which is dated 28<sup>th</sup> November, 2008, was issued to one of the appellants, Vincent Nyamohanga. The letter reads as follows:

28<sup>th</sup> November, 2008

Vincent Nyamohanga

ISEBANIA.

Dear Sir

RE – Temporary Employment as Security - Guard Boarder Station.

Following your application to this office for the above post, I am pleased to inform you that you have been offered a temporary employment as above with effect

from 1<sup>st</sup> December, 2008, to 28<sup>th</sup> February, 2009. The salary attached to this post will be fixed Kshs.3,000/ per month.

Your services terminates automatically at the end of every three months. The management may renew your contract subject to your performance.

Wishing you best of luck in your appointment.

Signed

Christopher Rusana Town Clerk

Municipal Council of Kehancha

32. This shows that the letters of employment were for temporary contracts of three months periods renewable, with the appellants getting salaries at intervals of one month. By the time of transition, John Ngariba and Vincent Nyamohanga, like other appellants, were still in the employment of Kehancha



Municipal Council, their contracts of three months having been regularly renewed although they had no letters to that effect.

33. Under Section 2 of the *Employment Act*, a contract of service means:

“an agreement, whether oral or in writing, and whether express or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which part XI of this Act applies.”

34. Applying that definition, as at the time of transition, the appellants were under a three months renewable contract of service with Kehancha Municipal Council. Under Section 9(1) of the *Employment Act*, a contract of service for a period of three months or more, is required to be in writing; it is the employer’s responsibility to cause the contract to be drawn stating particulars of the employment; and the written contract should be consented to by the employee. In this case, other than the letters of employment, the appellants were not able to produce any contracts or documents showing their terms and conditions of service. As their employer was initially Kehancha Municipal Council, the respondent cannot be held responsible for failing to provide that contract.

35. Going by their letters of employment, the appellants contract of service fell within Section 35(1)(c) of the *Employment Act*, and, therefore, the appellants contract was terminable upon service of a notice of twenty-eight days. The appellants have not produced any evidence that they were entitled to a period of notice greater than what was provided under Section 35(1)(c).

36. It is evident from their letters of employment, that the appellants were not casual employees. Contrary to the terms offered to the appellants in the letters of employment, a casual employee is defined under Section 2 of the *Employment Act* as:

“a person the terms of whose engagement provides for his payment at the end of each day and who is not engaged for a longer period than 24 hours at a time.”

37. The appellants claimed that they worked for a period of about seven years, and, therefore, under Section 35(1)(c) of the *Employment Act* read together with Section 37 of the *Employment Act*, their terms of employment ought to have been converted to permanent and pensionable terms. Section 37 which is headed “conversion of casual employment to term contracts” states as follows:

37(1) Notwithstanding any provisions of this Act, where a casual employee—

- a. works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or
- b. performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more, the contract of service of the casual employee shall be deemed to be one where wages are paid monthly, and section 35(1)(c) shall apply to that contract of service.

2. In calculating wages and the continuous working days under subsection (1), a casual employee shall be deemed to be entitled to one paid rest day after a continuous six days working period and such rest day or any public holiday which falls during the period under consideration shall be counted as part of continuous working days.



3. An employee whose contract of service has been converted in accordance with subsection (1), and who works continuously for two months or more from the date of employment as a casual employee shall be entitled to such terms and conditions of service as he would have been entitled to under this Act, had he not initially been employed as a casual employee.
  4. Notwithstanding any provisions of this Act, in any dispute before the Industrial Court, on the terms and conditions of service of a casual employee, the Industrial Court shall have the power to vary the terms of service of the casual employee, and may in so doing declare the employee to be employed on terms and conditions of service consistent with this Act.
  5. A casual employee who is aggrieved by the treatment of his employer under the terms and conditions of his employment may file a complaint with the labour officer and section 87 of this Act shall apply.
38. As evident from its heading, Section 37 of the *Employment Act* deals with conversion of casual employment to term contracts. As already observed, the appellants were not on casual employment terms, as they were not being paid daily, nor was their salary calculated on daily basis. The appellants were employed on three months contracts; their contracts fell under Section 35(1)(c) of the *Employment Act* under which they were entitled to service of twenty- eight days' notice before termination of their services. Section 35(1)(c) was already applicable to the appellants, and the issue of conversion of their terms under Section 37(1) of the *Employment Act* to permanent and pensionable did not arise, and their claim in this regard was frivolous.
39. It is not disputed that the appellants were not served with notices under Section 15(1)(c) of *Employment Act*, before their services were terminated. Instead, they were served with letters of termination of their services. Again, we reproduce the letter served on John Ngariba which was in the following terms:

31<sup>st</sup> March, 2015.

John Ngariba

ID .....

RE: Termination of Temporary Employment

You are temporarily hired by the defunct local authority as a market attendant on a date we are yet to establish. You continue to work even after the expiry of the engagement period. At the beginning of the devolve Government system, you are found on the ground as an employee.

The government regulations as contained in a *transition to devolved government Act* and best Human Resource practices, required that the County Government carries out a human resource audit and suitability test for all employees of the defunct local authority to establish their suitability test for continued service.

You are invited by the County Public Service Board for a suitability interview by the circular dated 20<sup>th</sup> January,

2015, and you chose not to attend the interview for reasons that we are not aware of.

Section 9(1)(b) of the *Employment Act*, 2007, requires that any contract of service that goes for a period or a number of working days amounting in the aggregate to the equivalent of three months shall be in writing. Subsection 2 and 3 of the same section requires that the employer draws the contract and cause the employee to sign respectively. We have made



several attempts to have you sign such contracts of service with the County Government of Migori, but you have defiantly declined to do so.

Employment relationship is guided by a set of rules and laws that clearly spells out the obligations of the employee and employer. You have clearly demonstrated that you cannot operate within these set of rules and therefore, we have no option but to terminate any employment relationship that existed from the date you refused to sign the contract of service with the County Government of Migori. You are hereby asked to hand over any County Government documents in your possession to the nearest County Revenue office and cease forthwith to act on behalf of the Government at whatever level. The law enforcement agencies are under instructions to arrest any unauthorized persons collecting taxes on behalf of the government.

Signed

Gilbert Nyandiga

For: County Secretary

40. The letters were clearly not notices before termination, but letters actually terminating the appellants' employment. There were no notices that were served on the appellants before these letters of termination were served on them. That is to say, that the appellants employments were terminated without any notice. However, the respondent gave reasons for their action in the letters of termination. The appellants had refused to attend suitability interviews; and had also refused to sign contracts of service that had been offered to them. The appellants were not entitled to automatic transition as employees from Kehancha Municipal Council to the respondent. They had an obligation to cooperate in the transition process. Under section 59 of the County Government Act, the respondent had the responsibility through its County Public Service Board to establish offices and appoint persons holding those offices. The appellants have not denied that they not only failed to produce the original letters of employment for the interviews, but also failed to sign the contracts of employment that were offered to them by the respondent, and also did not apply for the positions which were advertised. In the circumstances, the relationship between the appellants and the respondent not having been firmed up in accordance with the transition process, all the respondent was saying in the letters of termination, was to affirm that the appellants had by their conduct terminated any relationship that existed between them, and the issue of a notice did not arise. The respondent cannot be blamed for taking this position, as it was the logical consequence of the appellant's actions
41. We agree with the learned Judge that "it is foolhardy for an employee to decline to execute a contract of employment, based on frivolities such as were advanced by the claimants (appellants), and upon termination for such refusal, turn around and allege unfair termination." The appellants having rejected the contracts they have only themselves to blame. We find that the appellants did not establish that they were unlawfully dismissed by the respondent, nor did they establish that they were unfairly terminated. The dismissal of their claim for unlawful termination and unfair termination was proper. It follows that their claim for reinstatement could also not succeed.
42. As regards the claims for monthly wages, leave days due, leave allowances, payments for Sundays and public holidays, we have perused the record, but have not found anything in support of these claims. It was for the appellants to prove that they were underpaid and that they had leave allowance and Sundays and public holidays for which they were not paid, and this the appellants failed to do.



43. The upshot of the above is that we uphold the judgment of the trial court as we find no substance in this appeal. Accordingly, we dismiss the appeal in its entirety. Given the circumstances of this case, we do not find it appropriate to make any orders as to costs. Each party shall therefore bear their own costs.

**DATED AND DELIVERED AT KISUMU THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**HANNAH OKWENGU**

.....

**JUDGE OF APPEAL**

**H.A. OMONDI**

.....

**JUDGE OF APPEAL**

**JOEL NGUGI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

