Alego v Kabuito Contractors Limited (Civil Appeal 126 of 2018)
[2023] KECA 1166 (KLR) (6 October 2023) (Judgment)

Neutral citation: [2023] KECA 1166 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 126 OF 2018

HM OKWENGU, JM MATIVO & GWN MACHARIA, JJA

OCTOBER 6, 2023

BETWEEN

MICHAEL OWINO ALEGO ..... APPELLANT

AND

KABUITO CONTRACTORS LIMITED ..... RESPONDENT

(An Appeal from the Judgment and Decree of the Employment and Labour Relations Court at Nairobi (M. N. Nduma, J.) delivered on 4th November in ELRC Cause No. 1606 of 2013)

JUDGMENT

1. The dispute between the appellant, Michael Owino Alego, and the respondent, Kabuito Contractors Limited, revolves around the employment of the appellant, who filed a claim in the Industrial Court of Kenya at Nairobi (which Court has since been renamed "Employment and Labour Relations Court") in Cause No. 1606 of 2013.

2. In his Memorandum of Claim datedOctober 4, 2013, he claimed to be a skilled mechanic by profession, and that on June 5, 2008, he was employed by the respondent as such at a daily wage of Kshs.500/-, which was later enhanced to Kshs.650/-. He was paid at the end of every week a sum of Kshs.3,900/- except for the last week of the month when he received Kshs.2,640/- as he was deducted Kshs.1,260/-, being PAYE, NSSF and NHIF remissions. He worked until 21st August 2012 when he was informed that it would be his last day at work. As fate had it, he had been dismissed from employment.

3. He averred that the said dismissal was discriminatory, unfair, unlawful and wrongful since he was not given notice; that the termination was not based on any lawful grounds; that it amounted to a violation of his constitutional right to fair labour practices; that it did not comply with the procedural requirements stipulated under section 41 of the *Employment Act*; that he was never accorded an opportunity to be heard; and as a result, he suffered loss and damages. It was his further contention

that, during the duration of his employment, he never took leave and was never paid for overtime; that he was entitled to holiday allowance; that his NSSF deductions were never remitted; that he was never issued with a certificate of service; and that he was not provided with housing accommodation. He sought the following prayers; -

a. a declaration that his dismissal was unprocedural, unfair, unlawful and unconstitutional;

b. an order for compensation for violation of his constitutional rights;

c. a certified tax deduction card showing details of tax deducted and paid to Kenya Revenue Authority during the time that he was employed by the respondent;

d. in the alternative to (c), the respondent be ordered to remit the deducted income tax to Kenya Revenue Authority;

e. certificate of service;

f. a fine of Kshs.100,000/- against the respondent for failure to comply with section 51(3) of the *Employment Act*;

g. unpaid leave days at Kshs.54,600/-;

h. holiday allowance at Kshs.23,400/-;

i. unpaid overtime of Kshs.202,176/-;

j. unremitted NSSF deduction (400/ X 31);

k. service pay for the years worked;

l. 3 months' salary in lieu of notice Kshs.58,500/-;

m. punitive and aggravated damages;

n. compensation equivalent to 12 months wages of Kshs.234,000/-;

o. unpaid housing allowance 140,400/-;

p. interest on (c), (d) and (f); and

q. Costs of the suit.

1. The respondent in its response dated 13th November 2013, averred that it is a civil engineering contractor which depends on government road projects and engages its employees on a casual basis as, and, when work is readily available, and that the contracts are pegged on the duration of the road project. From 2010 to mid-2012, it had one project for the Kenya National Highway Authority (KENHA), being the maintenance of Thika-Magumu road; that payment for the project was made in a haphazard manner, resulting to financial difficulties; that it consequently issued a notice dated 5th December 2011 to its employees informing them of a possible redundancy; that the works were suspended on March 23, 2012, but resumed in mid-May 2012, and was completed in mid-August 2012; and that it handed over the project on September 27, 2012.

5. The respondent went on to state that the appellant was employed on a casual basis in November 2010, as an assistant/junior mechanic and was paid a daily rate of Kshs.450/- until July 2011; that the wage was enhanced to Kshs.500/- between August 2011 and January 2012 and later to Kshs.650.00 from February 2012 to August 2012; that he was duly paid his accrued leave days and other benefits which

he acknowledged receipt of; and that he confirmed that the respondent does not owe him any other benefits.

6. The respondent denied that the appellant worked overtime, or that he was entitled to a 3-month notice before he was dismissed. It also contended that the appellant's daily wage had factored in the house allowance; that it remitted all statutory deductions; that his termination was lawful; and that the respondent was not entitled to any compensation or award of damages.

7. The suit proceeded for hearing with the parties calling one witness each. The appellant as the sole witness in his case testified that he was employed by the respondent as a mechanic on June 8, 2008. Whilst reiterating his claim, he stated that he was employed on a daily wage basis which commenced at Kshs.450/- then it was increased to Kshs.500/- and finally to Kshs.650/-. His grievance was that, although the respondent deducted from his wage NHIF and NSSF statutory deductions, it never remitted them, and so he was entitled to compensation. He also took issue with the manner in which his employment was terminated on August 21, 2012without notice or reason. He further claimed that he worked overtime for two hours each day for 6 days a week and that he was never paid for the overtime worked; that he was a permanent employee and so he was entitled to leave days; that during Christmas period they closed on 24th December and resumed work on 2nd January and for that period, he never received his dues; that since he worked on holidays, he was entitled to compensation; and that no leave allowance was ever paid which he also claimed. Finally, he was dissatisfied with the respondent for failure to accord him a hearing prior to his termination.

8. On behalf the respondent, one Florence Awino, its accountant gave evidence. She basically reiterated the contents of the response to the claim, and we thus shall not rehash her testimony. In cross examination, she stated that since the appellant was a casual employee, he would be paid for the days worked; that all casual employees would be released each day upon completion of their task; that casual employees never worked continuously; that all statutory dues were remitted; and that the appellant was paid all his dues before he left the employment of the respondent and he acknowledged receipt of the payments.

9. Upon analyzing the evidence, the trial court found that the appellant had destroyed his credibility, and that he stood out as someone who was not truthful. This finding was premised on the fact that, amongst the documents that he (appellant) was relying on in support of his case, was a memorandum of claim in ELRC Cause No. 2349 of 2012- himself vs Kenya Builders and Concrete Company Limited. He had sued the respondent therein for similar reliefs as in the instant case, claiming that he was employed by the respondent during the period between July 2009 and August 2010, which was the same period he claimed he was employed by the respondent herein. The court found that he had filed the instant claim so as to unjustly enrich himself. The converse was that the court believed both oral and documentary evidence of the respondent, which is that the appellant was employed by it from November 2010 as a casual worker until March 23, 2012; that upon the completion of the Thika-Magumu road, it re-engaged him on May 14, 2012until July 2012; that he was paid all monies due to him in respect to leave days not taken and house allowance which was embedded in the daily gross pay; that he was also paid severance pay in terms of section 40 of the *Employment Act*; that all NSSF dues deducted were remitted; that his termination was upon the completion of the project and in accordance with the law as he had been notified of the anticipated expiry of the project; and that he had not proved that he was entitled to the reliefs sought except the claim for unpaid holidays as the respondent had admitted to not paying them. The court therefore awarded him Kshs.23,400/- for unpaid holidays, upon noting that he worked continuously between November 2010 and 23rd March 2012, with interest at court rates from the date of filling the suit until payment in full. It also ordered the respondent to

issue the appellant with a certificate of service within 30 days of the Judgment, and made no orders as to costs.

10. Dissatisfied with the trial court's judgment, the appellant preferred this appeal. He has raised 8 grounds of appeal in a memorandum of appeal dated 8th April 2018 which we have collapsed to 5, being: that the learned Judge erred in law and in fact in finding that the claimant was a casual employee despite holding that the respondent admitted that he worked continuously between November 2010 to March 2012 and further that it paid all terminal dues owed to him including severance pay in accordance with section 40 of the Employment Act; that the learned Judge erred in law and fact in disregarding the documentary evidence produced by the respondent in form of appendix 7 which supported his claim that he was a permanent employee and not a casual labourer; that the learned judge erred in law and in fact in finding that he presented himself as a person who would make false claims to unjustly enrich himself; that the learned Judge erred in law and in fact in failing to apply the provisions of sections 37 and 40 of the *Employment Act*; and that the learned Judge erred in law and in fact in finding that he was terminated after the completion of the project in accordance with the law and was duly informed of the anticipated expiry of the project.

11. We were asked to allow the appeal, and compensate the appellant for wrongful and unfair dismissal equivalent to 12 months' wages at Kshs.234,000/-, and award him costs.

12. The appeal came up for hearing before us on 16th February 2023. Learned counsel Mr. George Ogembo holding brief for Mr. Richard Kamotho appeared for the appellant while learned counsel Mr. Njuguna appeared for the respondent. Both counsels relied on the parties' respective written submissions but also made brief oral highlights.

13. Whilst relying on written submissions dated October 12, 2018, Mr. Ogembo submitted that the trial court erred in finding that the appellant was entitled to unpaid holiday allowance because he had worked continuously, but in contradicting itself, made a conclusion that he was a casual employee; and that he was also paid compulsory deductions which the permanent employees would be deducted. According to the counsel, section 2 of the *Employment Act* defines a casual employee as someone who is paid wages at the end of the day. However, the court ignored the provisions of section 37 of the Act which provides that when an employee works for a certain period of time, he is automatically converted to a permanent employee. To this end, reliance was placed on the case of *Cosmas Kawelu v Kabuito Contractors* - Nairobi Industrial Court Case No 1991 of 2011 in which Mbaru, J. held that:

> " Therefore, if the respondent continued to employ the claimant for over three months at a time as confirmed in his employment in 2011 from January to June, they did not pay him daily nor did he stop his service within 24 hours, then by operation of the law, the claimant became a full time employee with all rights due to him as any other employee with benefits as against a casual employee."
>
> Further reliance was placed on this court's decision in the case of *Rashid Odhiambo Allogoh & 245 others v Haco Industries Limited* [2015] eKLR for the same proposition.

14. He argued that the trial court failed to interrogate the manner in which the appellant's employment was terminated, thereby holding that upon expiry of the project the employees were discharged from duty. It was his argument that the respondent did not provide any formal contracts that showed that the employment of the appellant was tied to the life of the project.

Furthermore, even after the end of the project, the respondent had in its employment 145 employees, and that therefore, the expiry of a project did not exempt it from complying with section 40, 41 and 43 of the *Employment Act*. Hence, no criteria was used to declare the redundancy as the law requires.

In this regard, the appellant relied on the case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR where Murgor, JA. had this to say:

> " Section 40(1)(c) of the Act specifies the criteria to be followed in the selection of employees to be declared redundant, which should have due regard to seniority in time and to the skill, ability and reliability of each employee ... Clearly, the selection process is required to be based on seniority, skill and experience and ability of the employee... The "seniority in time" in section 40 (1) (c) of the *Employment Act* and the "length of service" in Article 15 of the above ILO Recommendation No. 119- Termination of Employment Recommendation, 1963, in my view, embrace the ILO principle of "last-in- first-out" and is among the criteria to be considered. It cannot therefore be an alien inapplicable principle as counsel for the appellant contended."

15. Counsel also faulted the trial court for: holding that the appellant had been paid all his dues despite there being a contention of how much was paid; finding that the appellant explained why the two periods during which he worked for the respondent were not continuous, instead of finding that they were intertwined, and therefore ought to have been considered as a continuous working period; and for concluding that the appellant was dishonest and deserved censor.

16. Relying on submissions dated October 29, 2018, Mr. Njuguna in rebuttal submitted that the trial court arrived at the correct finding; that employees were engaged only when a project was active, and upon the expiry of a project, there would be no need of engaging employees; and that the appellant had filed another suit in which he claimed to have been employed during the same period that he currently claims he was under the employment of the respondent herein. Counsel submitted that the respondent proved that the project was for a specific period and that the appellant was paid all his dues; that amongst the payments made were for two redundancies which was a testament that his employment was not continuous; and that in any case, the issue of redundancy was not litigated during the trial, and so it could not be raised at this stage.

17. Mr. Ogembo in brief rejoinder submitted that there was no law advanced to show that employees in construction industries are tied to projects. Section 10 of the *Employment Act* gives power to employers to issue contracts of service if they engaged employees on contracts, and that in this case, the respondent failed to comply accordingly.

18. This is a first appeal and it is our duty to re-appraise and re- analyze the evidence so as to reach our own conclusions and draw our own inferences of facts but must do so conscious that we have not had the advantage the trial Judge had of hearing and observing the witnesses as they testified. See *Selle v Associated Motor Boat Company Limited & others* [1968] EA 123.

19. We have accordingly considered the record, the submissions by the parties and the law. We find that the appeal turns on the determination of what the nature and duration of the appellant's employment was, whether his termination was unfair and unlawful and whether he was entitled to any terminal benefits, and if so, the extent of those dues.

20. On the first issue, the appellant urges that he was employed by the respondent onJune 5, 2008while the respondent urges that the employment relationship started in November 2010. The trial court in its judgment disbelieved the appellant on account that he had filed another claim in the Industrial Court, being Case No. 2349 of 2012 between himself and Kenya Builders & Concrete Company Ltd where he was contending that he was an employee from July 2009 to August 2010 when he was terminated without justifiable cause. Mr. Ogembo in his arguments stated that the trial court did not take into considerations the appellant's explanation with respect to his employment during this period.

21. We have looked at the trial court proceedings for September 29, 2015. In cross examination, the appellant admitted to having filed Industrial Court Case No. 2349 of 2012 and to have been issued with a certificate of service by Kenya Builders & Concrete Company Ltd. In re-examination, he told the court that he worked for Kenya Builders & Concrete Company Ltd from October 3, 2006 to December 14, 2007before going to the respondent's company fromJune 8, 2008 to 2012; that the certificate of service issued to him by the company had an error with respect to the period he worked for it; and that he never alerted his counsel about the error. He was quick to state that the errors with the timelines were recorded in Industrial Court Case No. 2349 of 2012 but are not borne in the instant case.

22. From the above explanation, it is not evident to us what the learned Judge failed to take into consideration. To our minds, it cannot be that the appellant filed a claim in Industrial Court Case No. 2349 of 2012, in the year 2012 and three years down the line he had yet to realize he had made an error as to the timelines, specifically as to the period he worked for his employer when he filed that claim. This error ought to have been corrected in the pleadings in that suit.

23. It is trite that parties are bound by their pleadings and anything else stated outside what can be discerned from the pleadings is just but mere comments. This position has severally been affirmed by this Court. For instance, in the case of *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others* (2014) eKLR, the Court cited with approval the Supreme Court of Nigeria in *Adetoun Oladeji (NIG) v Nigeria Breweries PLC* SC 91/2002 in which Adereji, JSC had this to say:

> "..it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded...
>
> In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation."
>
> Therefore, the appellant cannot renege on pleadings he never amended, and to our minds he did not amend them because he wanted the trial court to rely on them.

24. What is also intriguing is that the alleged errors were evident in the certificate of service issued to him by Kenya Builders & Concrete Company Ltd, the demand letter dated October 24, 2012 to Kenya Builders & Concrete Company Ltd and the labour complaint letter dated 4th January 2011, all of which stated that he worked for that company until August 2010. As noted above, by his own admission, he testified that he worked for the respondent from June 8, 2008 to 2012. The simple interpretation of these dates is that, at some point he was serving two masters at the same time. How then can we fault the learned trial Judge's reasoning that he was an untruthful person? The answer is in the negative; it is written in black and white and we need not belabor on it. We can only support the learned Judge's conclusion that since he never amended the pleadings or corrected the error in any way, the perception we also draw in the circumstances is that the appellant is a man who is determined to reap from where he did not sow.

25. From the totality of the evidence adduced, and from our perusal of the employment form, weekly payment sheets, certificate of service and worksheets in which the appellant's name started appearing in November 2010, and further having regard to the fact that the respondent's contract commencement date was on August 1, 2010, we arrive at the inescapable conclusion that the appellant's employment with the respondent commenced in November 2010 and not earlier.

26. Moving on to the second issue, which is whether the appellant's termination was unfair and unlawful, the appellant in his testimony stated that he was not issued with an appointment letter, and that he was also never issued with termination of employment notice. Unfair termination refers to a termination that is done without due process on the part of the employer. In this case, the laid out administrative procedure that ought to be followed before termination is not given due regard or is not followed. It means that an employee should be notified of the reasons for termination and if he/she contests the same he/she should be subjected to administrative process so as to defend his/her case for retention in employment. If this process is not followed, then the termination is said to be unfair. On the other hand, when an employee is accorded a fair hearing prior to termination, then it is said that he was terminated fairly.

27. From a perusal of the record, we note that the appointment letter was neither contained in the record of appeal nor was it available for our perusal. We cannot then tell with certainty the date the employment terminated. Nevertheless, an employer is under a duty to issue a termination notice of not less than one month as provided under section 35 of the *Employment Act*. The same reads:

    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.

    3. If an employee who receives notice of termination is not able to understand the notice, the employer shall ensure that the notice is explained orally to the employee in a language the employee understands.

    4. Nothing in this section affects the right—

        a. of an employee whose services have been terminated to dispute the lawfulness or fairness of the termination in accordance with the provisions of section 46; or

        b. of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.

    5. An employee whose contract of service has been terminated under subsection (1)(c) shall be entitled to service pay for every year worked, the terms of which shall be fixed.

    6. This section shall not apply where an employee is a member of—

        a. a registered pension or provident fund scheme under the *Retirement Benefits Act*;

        b. a gratuity or service pay scheme established under a collective agreement;

c. any other scheme established and operated by an employer whose terms are more favourable than those of the service pay scheme established under this section; and

d. the National Social Security Fund.

28. We then grapple with the question as to whether the respondent complied with the above provision. The respondent vide a notice dated December 5, 2011 addressed to all employees announced about a possible redundancy on account that the project of the construction of Thika-Mugumu road was to end in February 2012, and that their employment would continue contingent on further Government of Kenya projects. The letter read as follows:

> "RE: Possible Redundancy of Employment
>
> This project (Thika-Mugumu) is to end in February 2012. Therefore, please note that your employment will only continue contingent on further GoK projects. As discussed earlier, this company has been expecting a government job may be in mid-Apr.
>
> Please take notice of redundancy to be implemented as necessary. Please acknowledge underneath.
>
> Meanwhile, you are being paid your leave and all other dues.
>
> Thanks.
>
> …."

29. From the above excerpt, we conclude that the appellant's termination was on account of redundancy, in which case unfair process of termination is cushioned under section 45(1) of the Act which reads as follows:

> 2. A termination of employment by an employer is unfair if the employer fails to prove—

a. that the reason for the termination is valid;

b. that the reason for the termination is a fair reason—

i. related to the employees conduct, capacity or compatibility; or

ii. based on the operational requirements of the employer; and

c. that the employment was terminated in accordance with fair procedure.

30. Section 40 (1) of the Act on the other hand provides for termination on account of redundancy as follows: -

> 1. An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—

a. Where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy.

b. Where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

c. The employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

d. Where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

e. The employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

f. The employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

g. The employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service.

31. In our view, the above notice was sufficient in the circumstances of the nature of the project the respondent was engaged in. Indeed, a copy of the notice which the respondent adduced in evidence bears a signature, as an acknowledgement of receipt by the appellant, in which case he cannot purport to say he was not issued with a notice of intended termination of the employment. Furthermore, the notice is dated December 5, 2011 whereas the redundancy programme was to take effect in February 2012. The period of notice was no doubt of more than 30 days as envisaged under section 40(1) of the *Employment Act*; hence the appellant cannot claim that the respondent did not issue a termination of employment notice.

32. As to whether the termination was unfair and unlawful, there is no doubt that the appellant was employed for a specific project, upon whose completion his employment lapsed. It is also in the public domain that work in the construction industry is based on projects which have specific commencement period and specific ending date; and that the employees are contracted to work for the duration of the project. Therefore, the appellant's claim that his termination was unfair, unlawful and unconstitutional is unsustainable;and having suffered no loss, damage or a violation of his rights as alleged, he was not entitled to compensation.

33. Finally, our determination falls on whether the appellant was entitled to terminal benefits, claim for unremitted NSSF deductions, unpaid housing allowance and service pay. The appellant was paid on the basis of a daily wage which would ordinarily be inclusive of house allowance. Also, being a casual labourer, he was not entitled to service pay. He did not also avail any documentary evidence to show that the respondent owed him any overtime allowance. The trial court also rightly awarded him a compensation for holiday allowances amounting to Kshs.23,400/- for the continuous period he worked between November 2010 and 23rd March 2012. With due respect to the appellant, he did not contest the various "Agreements for full and final settlement of dues" adduced by the respondent and borne in the record of appeal. We think that it is necessary we highlight them. They are:

a. One dated August 21, 2012for settlement of all dues including July 2012 by which he received Kshs.4,225/.

b. One dated December 15, 2010for settlement of all dues including for December 2012 by which he received Kshs.6,525/-.

c. Another dated December 9, 2011 for settlement of all dues including for December 2011 by which he received Kshs.16,500/-.

1. In each of the 'agreement', the appellant unequivocally committed that he had no further claim whatsoever with the respondent. For this reason, the burden lay on him to prove that the respondent owed any other monies.

35. All the same, the above notwithstanding, the trial court was entitled to scrutinize the record availed and draw its conclusion as to whether the respondent owed any sums to the appellant. That is why it awarded the appellant the sum for holiday allowance. In the same vein, we too, as a first appellate court bear the duty of re-appraising ourselves with the record, and equally draw our own conclusions bearing in mind that we never saw or heard the witnesses and therefore we cannot determine their demeanour. We have dutifully carried this mandate.

36. On the unremitted NSSF dues, the appellant annexed his member statement of account which shows that remissions were done for the year 2011 and 2012. These are in tandem with the respondent's NSSF contributions which also show contributions were made commencing January 2011 to July 2012. The month of April was not included as the project had stalled and the appellant did not work. The respondent failed to prove that it remitted NSSF contributions for the months of November and December 2010. Hence, the appellant is entitled to NSSF contributions of Kshs.400x2.

37. Other than the above, we are unable to fault the findings of fact and law arrived at by the learned trial Judge because, in our view, they were sound and based on the evidence adduced before him. We also find no error on his part in the manner he evaluated the evidence before him and in the application of the law before arriving at the decision he made.

38. We have accordingly reached the conclusion that this appeal manifestly lacks merit other than that the respondent is to pay Kshs.800/- to the appellant, being NSSF remissions owing. We order that each party will bear its own costs.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2023.

HANNAH M. OKWENGU

.....

JUDGE OF APPEAL

J.M. MATIVO

.....

JUDGE OF APPEAL

G.W NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR