IN THE COURT OF APPEAL

AT NAIROBI

CORAM: MUSINGA, KIAGE & J. MOHAMMED, JJ.A)

CIVIL APPEAL NO. 308 OF 2017

BETWEEN

JADES COLLECTIONS LIMITED.....APPELLLANT

AND

KENYA UNION OF COMMERCIAL FOOD &

ALLIED WORKERS UNION LIMITED..... RESPONDENT

(An appeal from the ruling of the Employment and Labour Relations Court of Kenya at Nairobi (Abuodha, J.) dated 23rd June, 2017

In

ELRC CAUSE No. 1342 of 2013)

****

JUDGMENT OF J. MOHAMMED JA

Background

1. The appeal herein turns on the sole issue of whether the learned Judge, (**Abuodha, J.**), erred in the exercise of his discretion in dismissing the application for review of a judgment dated 23rd November, 2015 filed by **Jade Collections Limited** (the appellant) which was entered against the appellant. It follows therefore that the appellant is calling upon this Court to interfere with the said discretion.

2. In the oft cited case of **Mbogo & Another vs. Shah [1968] EA 93**, the predecessor of this Court stated as follows:

> ***"An appellate court will not interfere with the exercise of discretion by a trial court unless the decision was exercised in a manner that is clearly wrong because the Judge misdirected himself or acted on matters which the court should not have acted upon or failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."***

3. Before delving into the merit of this appeal, a summary of the pertinent facts will place the issue at hand in context. On 10th April 2013, the respondent reported a trade dispute on behalf of 17 employees of the appellant under the ***Labour Relations Act (LRA***) to the then Ministry of Labour & Human Resource Development. The dispute revolved around what **Kenya Union of Commercial Food & Allied Workers Union Limited** (the respondent) claimed was the victimization of the said employees by the appellant on account of their membership with the respondent. A conciliator was appointed to spearhead the conciliation proceedings between the parties. However, the conciliation did not resolve the issues and the conciliator issued a certificate to that effect.

4. Subsequently, the respondent referred the dispute to the Employment and Labour Relations Court (ELRC) vide ERLC Cause No. 1342 of 2013 and sought an array of orders, including payment of the said employees' terminal dues. The memorandum of claim and summons to enter appearance were served upon the appellant. The appellant instructed **Tim Okwaro Associates Advocates** to enter appearance on its behalf, which they did, by a memorandum of appearance filed on 3rd September 2013.

5. No statement of defence was filed on behalf of the appellant. Further, when the matter came up for hearing on 13th October 2015 there was no appearance for the appellant. As a result, the matter proceeded for formal proof wherein the respondent tendered evidence in support

of its case. By a judgment delivered on 23rd November, 2015, the learned Judge found that the respondent had established the claim of only 12 employees and granted each of the 12 employees terminal dues as well as 12 months' compensation for the unfair termination of their services.

6. It was the appellant's contention that the impugned default judgment came to its attention on 1st December, 2015 when one of its officers read in the **Business Daily** Newspaper that it had been condemned to pay an aggregate 2.77million to the said employees. Consequently, the appellant filed a memorandum of review on 22nd December 2015 seeking, *inter alia*, the setting aside of the default judgment and leave to file a statement of defence.

7. The application was premised on the grounds that despite instructing its former advocates, **Tim Okwaro Associates Advocates,** to take up the conduct of the matter, the advocates failed to do so. Subsequently, following the filing of the memorandum of appearance, the said advocates through numerous correspondence asked for payment of legal fees on the alleged basis that they had been taking action in the said suit. The appellant contended that at all material times, the said advocates led the appellant to believe that it was adequately represented. Therefore, the appellant attributed the failure to file a defence or appear during the hearing on the negligence of its former advocates.

8. Secondly, the appellant stated that the intended defence raised triable issues, including denying victimizing the said employees. The appellant averred that the employees were given notice to show cause why disciplinary action should not be taken against them before they were suspended; and that the action taken against the employees was above board and in accordance with the law. The draft defence also called into question the competency of the suit before the ERLC on the ground that the appellant averred that the employees in question were not members of the respondent and if they were, they only joined after the termination of their services; that the respondent did not represent a simple majority of the appellant's unionisable employees; and that the conciliation proceedings were a nullity due to the issue of membership as well as lack of a recognition agreement between the parties herein.

9. Thirdly, the appellant also raised the issue of the respondent's locus to institute the suit as a ground for review. In that regard, the appellant contended that the respondent lacked the requisite locus since there was no recognition agreement between the parties. Fourthly, that the hearing notice for the 13th October, 2015 was served by an unlicensed process server. Fifthly, the appellant was condemned unheard, hence it was in the interest of justice for the appellant to be allowed to defend the suit.

10. Strenuously opposing the application, the respondent claimed that after the service of the summons to enter appearance the appellant instructed its former advocates to file a memorandum of appearance. Thereafter, all correspondence and court processes with respect to the suit were served on the said advocates. In point of fact, a preliminary objection filed on 19th September, 2013 at the instance of the appellant was withdrawn on 31st July, 2014 and its advocate prayed for 21days within which to file the statement of defence, which request was allowed by the court. The statement of defence was however never filed.

11. It was the respondent's further contention that the respondent had on numerous occasions invited the appellant's advocates to fix a hearing date at the court registry but on almost all occasions the advocates failed to turn up. With regard to the hearing which proceeded on 13th October, 2015, a hearing notice of the said date was served upon the appellant's advocates on 15th June, 2015 and that the said advocates acknowledged service. As far as the respondent was concerned, it was the appellant's duty to follow up with its advocates on the progress of the suit, which it failed to do. It was the respondent's claim that in the circumstances, the respondent cannot absolve itself from blame.

12. On the issue of *locus standi*, the respondent posited that the purpose of a recognition agreement is to facilitate collective bargaining between an employee and the recognised trade union. In this case the dispute was not related to collective bargaining, thus there was no requirement for the respondent to have a recognition agreement before instituting the suit. Besides, the issue of whether it represented the simple majority of the appellant's unionisable employees was the subject of another suit, that is, ELRC Cause No. 526/14. As to when the employees in question became members of the union, the respondent claimed that it was between March and April, 2013. Lastly, the respondent was adamant that the appellant had not demonstrated any justification to warrant review of the default judgment.

13. Upon addressing its mind to the application and the rival arguments advanced by the parties, the ELRC in a ruling dated 23rd June, 2017 dismissed the application. In doing so, the learned Judge expressed himself as follows:

> ***"The applicant has not raised any substantive defence to the claim herein. What it has done is to raise technical questions as to the existence of recognition agreement, legal capacity of the Conciliator and validity of the process server. Nothing has been tendered that countered the substance of the court's judgment sought to be reviewed.***
>
> ***The court is in agreement with the respondent that a trade union need not have a recognition agreement for it to invoke the dispute resolution mechanisms under the Labour Relations Act.***
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> **……..**
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> **…….**
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> **……**
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> ***The court therefore does not think the applicant has demonstrated a reasonable or triable defence to warrant the review of the judgment of the Court."***

14. It is that decision that is the subject of the appeal before us which is anchored on 11 grounds which can be summarised as that the learned Judge erred by: failing to find that the respondent lacked *locus standi* to institute the suit; failing to find that the conciliation

proceedings were null and void; failing to find that there was no proper service of the hearing notice as **Keya Nyakundi,** who allegedly served the notice, was not a licensed process server; failing to appreciate that the appellant had established grounds to warrant the review sought; failing to appreciate that since the failure to file defence or appear during the hearing was solely attributable to the appellant's former advocates, the same should not be visited upon the appellant; failing to appreciate that the appellant had been condemned unheard; failing to consider the appellant's submissions in support of the review of the impugned judgment; and in finding that a trade union need not have a recognition agreement for it to invoke the dispute resolution mechanism under the Labour Relations Act.

Submissions by Counsel

15. At the plenary hearing, **Mr. Nyumba** appeared as the representative of the respondent union, while there was no appearance for the appellant despite service of the hearing notice. The appellant's absence notwithstanding; the Court will consider the written submissions filed on behalf of the union which **Mr. Nyumba** relied entirely on, as well as the appellant's written submissions which are also on record.

16. In its written submissions, the appellant restated its version of the sequence of events that led to the judgment sought to be reviewed. The appellant asserted that the matter proceeded as an undefended cause because of the mistake or misconduct of its former counsel, which in the interest of justice should not be visited upon it. Expounding on that line of argument, the appellant submitted that despite following up on the matter from time to time its former advocates misled it on the actual status of the suit.

17. According to the appellant, the fact that the mistake was not attributable to it was sufficient for the learned Judge to exercise his discretion in its favour by setting aside the judgment. Further, the appellant urged that the court's discretion in an application for review is meant to ensure that a litigant does not suffer injustice on account of an excusable mistake or error. The appellant submitted that a court's concern is basically to do justice to the parties.

18. The appellant further contended that the draft defence annexed to its application for review raised triable issues which call for consideration on merit. In that regard, reference was made to the case of ***Peter vs. EA Cargo Handling Services LTD*. [1974] EA 75**. The appellant reiterated that the respondent lacked *locus standi* to not only institute the suit which is the subject of this appeal but also to provoke the alleged conciliation proceedings that led to the suit. All in all, the learned Judge was faulted for misapprehending the grounds for setting aside or review as enshrined under ***Rule 32*** of the ***Industrial Court (Procedure) Rules, 2010*** (***repealed by the Employment and Labour Court (Procedure) Rules, 2016***.

19. In opposing the appeal, the respondent submitted that an employee's right of freedom of association is recognised and protected under the ***Constitution*** as well as international Conventions. The respondent contended that the essence of the right of freedom of association is twofold namely, representation of employees' grievances and collective bargaining. The respondent further contended that a trade union is not required to execute a recognition agreement with an employer in order to act as a representative of employees concerning what it termed as work place grievances.

20. The respondent postulated that the objective of a recognition agreement is meant for an entirely different purpose, that is, it is what clothes a trade union with authority to engage in collective bargaining with an employer as delineated under ***Section 54(1)*** of the **Labour Relations Act** (***LRA)***. This Court was invited to find that the issue in dispute in the suit subject of this appeal related to victimization of employees on account of their membership of the respondent and not collective bargaining. As such, the respondent contended that the ground that it lacked *locus standi* to institute the suit has no merit.

21. It was the respondent's further submission that after service of the memorandum of claim and summons to enter appearance on the appellant, appearance was entered on behalf of the appellant by the firm of **Tim Okwaro Associates Advocates**. All court processes had been served upon the said law firm. The respondent further submitted that it had invited the appellant's then advocates on numerous occasions to fix hearing dates for the suit at the ELRC registry, but the said advocates failed to turn up. It was the respondent's submission that after fixing the hearing date of 13th October, 2015, it served the appellant's advocate with a notice of the hearing dated 4th May, 2015 which was received. Nonetheless, there was no appearance for the appellant during the hearing. The respondent contended that the appellant had a duty to follow up with its advocates to ensure that it was adequately represented and the failure by the appellant could not be visited upon the respondent. In any event, the respondent argued, the above conduct was indicative of the appellant's reluctance to expeditiously prosecute its defence.

22. The respondent posited that the appellant had not demonstrated any ground that would warrant review of the impugned judgment as envisioned under ***Rule 33*** of the ***ELRC (Procedure) Rules, 2016***. Moreover, the respondent called upon this Court to find that the appellant having filed the review application in the ELRC it should not have filed the appeal before us. According to the respondent, the appellant had squandered its chances of lodging an appeal by filing the application for review.

23. In addition, the respondent claimed that the draft defence does not disclose any triable issues. According to the appellant, there was no evidence that any of its members were called upon to show cause or defend themselves before any disciplinary action was taken. Further, the employees in question were harassed, victimized, and eventually terminated unlawfully. Counsel urged the Court to dismiss the appeal with costs.

Determination

24. I have considered the grounds of appeal, submissions by the parties as well as the law. As earlier stated, this appeal turns on whether the learned Judge exercised his discretion properly in dismissing the review application.

25. It is well founded law that this Court will not interfere with the discretion of a Judge appealed from unless it is satisfied that the trial court erred in the way it exercised its discretion. See ***Hillary Rotich v Wilson Kipkore [2008] eKLR, Nairobi Civil Appeal No. 232 of 2010).*** In ***United India Insurance Co. Ltd v. East African Underwirters (Kenya) Ltd [1985] EA 898,*** Madan, JA. (as he then was), stated that the

Court of Appeal is only entitled to interfere with a decision if one or more of the following are established:

> ***"first, that the judge misdirected himself in law; secondly, that he misapprehended the facts; thirdly, that he took account of considerations of which he should not have taken account; fourthly, that he failed to take account of considerations of which he should have taken account, or fifthly, that his decision, albeit a discretionary one, is plainly wrong."***

26. On the powers of the Employment and Labour Relations Court to review its decisions, we are guided by the case of ***JMK V MWM & another [2015] eKLR*** where this Court rendered itself thus:

> ***"It does not take much imagination to see that under section 16 as read with rule 32, the Industrial Court is empowered to exercise its review jurisdiction on far much broader grounds than the High Court is allowed under Order 45 of the Civil Procedure Rules. Under Rule 36(6), if the court allows an application for review, it is empowered to review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again."***

27. In the instant appeal, the appellant sought that the ex *parte* judgment of the trial court be reviewed, set aside and that it be allowed to defend and respond to the claim against it for various reasons, including the misconduct of its advocate, lack of *locus standi* by the respondent, and lack of legal backing in the conciliation process.

28. The review court properly considered the parameters and grounds for which the court could review its judgment as set out under **Rule 32** of the **Industrial Court (Procedure) Rules 2010** and found that the application satisfied the parameters for review. The review court however went ahead to state that this was not enough and that the appellant must go further and demonstrate that the allegations are reasonably proved to merit the disturbance of Rule 32.

29. In ***CMC Holdings Ltd v. James Mumo Nzioki [2004] eKLR, Nairobi Civil Appeal No. 329 of 2001***, the Court considered the rationale of a court's discretion in setting aside an ex parte judgment. It held:

> ***"Our view is that in law, the discretion that a court of law has, in deciding whether or not to set aside ex parte orders such as before us was meant to ensure that a litigant does not suffer injustice or hardship as a result of among other things an excusable mistake or error. It would in our mind not be a proper use of such a discretion if the Court turns its back to a litigant who clearly demonstrates such an excusable mistake, inadvertence, accident or error. Such an exercise of discretion would in our mind be wrong in principle."***

30. In considering similar circumstances where judgment was entered against the appellant due to error by its counsel, the court reasoned that the action of the trial court in advising the appellant on the avenue available to sue his counsel, d*rove the appellant out of the seat of justice empty handed*. The review court in this matter erred and failed to grant the appellant proper recourse.

31. While it considered whether a triable defence was raised, it however raised the standard beyond that which was required by law by requiring that the defence raised ought to have been *'reasonably proved'*, yet the law requires the appellant to raise triable issues. This was set out in the **CMC case** above, where the court stated that:

> ***"What we feel the trial court should have done when hearing application to set aside ex parte judgment, was to ignore her judgment on record and look at the matter afresh considering the pleadings before her (i.e. plaint, defence and counterclaim) and see if on their face value a prima facie triable issue (even if only one) was raised by the defence and counterclaim. If the same was raised then, whether the reason for the applicant's appearance were weak, she was in law bound to exercise her discretion and set aside exparte judgment so as to allow the appellant to put forward its defence"***

32. In ***Gupta v. Continental Builders Ltd [1976-80] 1 KLR 809,*** Madan, JA. (as he then was) stated that:

> ***"A triable issue is said to exist if there is a dispute in the facts, which dispute can only be resolved after ventilation in a full hearing. In the case of Giciem Construction Company v Amalgamated Trade & Services LLR No. 103 (CAK) this Court stated:***
>
> > ***"As a general principle, where a defendant shows that he has a fair case for defence or reasonable grounds for setting up a defence or even a fair probability that he has a bona fide defence, he ought to have leave to defend. Leave to defend must be given unless it is clear that there is no real substantial question to be tried; that there is no dispute as to the facts or law which raises a reasonable doubt that the plaintiff is entitled to judgment."***
>
> ***"A bona fide triable issue needs not to be one that must succeed." (emphasis mine).***

33. The review court considered the appellant's submissions but did not appear to consider the appellant's draft statement of defence, which raised a substantive defence against the claim being that the grievants were rightfully terminated. In ***Tree Shade Motors Limited vs D T Dobie & Company (K) Limited & Joseph Rading Wasambo, Civil Appeal No. 38 of 1998,*** the court stated:-

> ***"Where a draft defence is tendered with the application to set aside the default judgment, the Court is obliged to consider it to see if it raises a reasonable defence to the plaintiff's claim. If it does, the defendant should be given leave to enter and defend."***

34. It was the respondent's contention that the appellant having sought the review of the judgment dated 23rd November, 2015 it could not

file or prefer the current appeal. It is trite that an application for review of a decision is an alternative remedy to an appeal against such a decision. A litigant cannot pursue both. See this Court's decision in ***Nguruman Limited vs. Jan Bonde Nielsen & 2 others*** **[2013] eKLR** and ***Mary Wambui Njuguna vs. William Ole Nabala & 9 others*** **[2018] eKLR**.

35. This position was succinctly discussed in ***Mulla on the Code of Civil Procedure (15th Ed, 1997) Pages 2732-273*** to show the consequence that a successful application for review of an order has on an appeal against that order:

> ***"Where an application for review has been presented by a party to the suit, and an appeal is afterwards preferred from the same decree, whether by the same party or by other party to the suit, the Court to which the application for review is made is not thereby deprived of jurisdiction to entertain the application. But that power exists so long as the appeal is not heard, because once the appeal is heard, the decree on appeal is the final decree in the case, and the application for review of judgement of the Court of first instance can no longer be proceeded with. And this is so even if the appeal is dismissed under O.41, r.11. An appeal dismissed as presented out of time is no bar to the hearing of a petition for review which had been filed before the appeal. On the other hand, if the application for review is granted, and a new decree is passed, the appeal cannot be heard and it must be dismissed, for the decree appealed from is superseded by the new decree".***

36. In the instant case, the appellant sought review of the default judgment in the ELRC which was declined by a ruling dated 23rd June, 2017. The subject of this appeal is the ruling dated 23rd June, 2017 and not the default judgment, hence the respondent's contention lacks merit.

37. Moving to the merits of the appeal, this Court while discussing the criteria for allowing an application for setting aside a default judgment held as follows in ***James Kanyiita Nderitu & Another vs. Marios Philotas Ghikas & Another [2016] eKLR:***

> ***"In a regular default judgment, the defendant will have been duly served with summons to enter appearance, but for one reason or another, he had failed to enter appearance or to file defence, resulting in default judgment. Such a defendant is entitled, under Order 10 rule 11 of the Civil Procedure Rules, to move the court to set aside the default judgment and to grant him leave to defend the suit. In such a scenario, the court has unfettered discretion in determining whether or not to set aside the default judgment, and will take into account such factors as the reason for the failure of the defendant to file his memorandum of appearance or defence, as the case may be; the length of time that has elapsed since the default judgment was entered; whether the intended defence raises triable issues; the respective prejudice each party is likely to suffer; whether on the whole it is in the interest of justice to set aside the default judgment, among other…"*** (Emphasis supplied)

38. Applying the above principles to the circumstances of this case, the reason advanced for failure to file a defence and attend the hearing by the appellant was that it was a result of the negligence and misconduct of its former advocate. Was this a plausible or excusable reason? From the record it is clear from the correspondence annexed to the review application by the appellant that once it instructed its former advocates, **Tim Okwaro Associates Advocates**, the appellant did not fold its hands and fall into slumber. There are numerous letters from the said advocates to the appellant informing it of the status of the suit and demanding payment of fees. There is also evidence of payment of some of the fees requested. Of particular importance is a letter dated 16th September, 2013 asking the appellant to pay the said advocate's professional fees to enable them file a statement of defence.

39. Further, there is also correspondence from the appellant to the said advocates inquiring on the status of the suit. The last correspondence on record is dated 15th December, 2014 wherein the appellant's former advocates informed it of the status of the suit. The pertinent portion of the said correspondence read as follows:

> ***" …***
>
> ***Further to our letter dated the 25.11.2014 we write to advice you that on 5.12.2015 the representative of the Kenya Union of Food and Allied Workers failed to attend at the Court Registry for the purpose of taking a mutually convenient date for the hearing of this case.***
>
> ***We are writing to the Union to appear again at the Court Registry for the same purpose.***
>
> ***We have recorded to advise you further."***

40. As to what happened after the last correspondence of 15th December, 2014 up to the date when the appellant learnt of the default judgment, the appellant argues that it believed that it was well represented by its former advocates who had not ceased acting. It is also not in dispute that the said advocates were served with the hearing notice of 13th October 2014, though the service is challenged on account of the process server not being licenced as such. Similarly, it has not been disputed that the said advocates never brought the said hearing date to the attention of the appellant. I, like the ELRC, give the appellant the benefit of doubt that it had been misled as to the actual status of the suit. Therefore, we hold that the reason advanced by the appellant for failure to file a defence and attend hearing is attributable to its former advocate and should not be visited upon the appellant.

41. Taking into account that the appellant discovered the entry of the default judgment on 1st December, 2015, I find that the review application was filed without unreasonable delay on 22nd December, 2015.

42. On whether the draft defence raises triable issues, I am satisfied that the learned Judge misdirected himself on this aspect. For starters, the averment that the appellant had followed due procedure in giving the employees notice to show cause why disciplinary action should not be taken against them on account of misconduct, is an issue that warrants to be ventilated at the trial where evidence would be adduced. There is also the issue of the competency of the suit on account of whether the employees in question were members of the respondent, and if

so, the point at which they attained their membership. This issue also calls for consideration on merit.

43. All in all, I unlike the learned Judge, find that upon considering the degree of prejudice that would arise as concerns both parties if I allow or disallow the appeal, I find that justice would be best served in allowing the appellant to defend the suit. My position is guided by this Court's sentiments in ***Kenya Power & Lighting Co Ltd vs. Abdulhakim Abdulla Mohamed & Another [2017] eKLR*** that-

> ***"The overriding consideration in an application to set aside a default judgment where the intended defence raises triable issues and, absent evidence of intention or deliberate action by the appellant to overreach, obstruct or delay the cause of justice, is to do justice to both parties."***

44. In the result, I find that the appellant satisfied the threshold of reviewing the default judgment as stipulated under ***Rule 32(1)(e)*** of the ***Industrial Court (Procedure) Rules, 2010 (repealed by the ERLC (Procedure) Rules, 2016***) which provided:-

> ***"32 (1)A person who is aggrieved by a decree or an order of the court may apply for a review of the award, judgment or ruling:-***
>
> ***a) If there is a discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or***
>
> ***b) On account of some mistake on the face of the record.***
>
> ***c) On account of the award, judgment or ruling being in breach of any written law.***
>
> ***d) If the award, the judgment or ruling requires clarification; or***
>
> ***e) For any other sufficient reason."*** *(Emphasis supplied)*

45. Based on the foregoing reasons, I find that the appeal has merit and is hereby allowed. I hereby set aside the ruling dated 23rd June 2017 and substitute therefor an order allowing the appellant's application dated 22nd December 2015. The effect of the order is that the judgment of the Employment and Labour

Relations Court dated 23rd November 2015 is reviewed and set aside. The respondent's claim shall be heard *de novo* with the appellant being afforded an opportunity to file its defence and be heard before any judge of the Employment and Labour Relations Court other than Nzioki wa Makau, J. and Abuodha, J. In the circumstances of this appeal, I order each party to bear its own costs. It is so ordered.

Dated and delivered at Nairobi this 19th day of June, 2020.

J. MOHAMMED

…….

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: MUSINGA, KIAGE & J. MOHAMMED, JJ.A)

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(An appeal from the ruling of the Employment and Labour Relations Court of Kenya at Nairobi (Abuodha, J.) dated 23rd June, 2017

in

ELRC CAUSE No. 1342 of 2013

CONCURRING JUDGMENT OF D.K. MUSINGA J.A.

I have had the benefit of reading the judgment of the Hon. Lady Justice Jamila Mohammed, J.A.in draft. I entirely concur with her findings and I have nothing useful to add. As the Hon. Mr. Justice Kiage, J.A. agrees, the final orders of the Court shall be as proposed by the Hon. Lady Justice Jamila Mohammed, J.A.

Dated and delivered at Nairobi this 19th day of June, 2020.

D.KMUSINGA

JUDGE OF APPEAL.

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CONCURRING JUDGMENT OF KIAGE, J.A

I have had the benefit of reading the judgment of the Hon. Lady Justice Jamila Mohammed, J.A. in draft. I entirely concur with her findings and I have nothing useful to add.

Dated and delivered at Nairobi this 19th day of June, 2020.

P. O. KIAGE

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JUDGE OF APPEAL