



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: WAKI, OUKO & MURGOR, JJ.A)**

**CIVIL APPEAL NO. 98 OF 2011**

**BETWEEN**

**LAWRENCE ADIYO.....APPELLANT**

**AND**

**KENYA REVENUE AUTHORITY.....RESPONDENT**

*(Being an appeal from the judgment and decree of the High Court at Nairobi (Mwera, J. (as he then was) dated 29<sup>th</sup> September 2010*

**In**

**HCCC 825 of 2003)**

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**JUDGMENT OF THE COURT**

In this appeal, **Lawrence Adiyio, (Lawrence) the appellant** claims underpayment of salary and benefits from his former employer, the **Kenya Revenue Authority, the respondent**, for reasons that he had been placed in the lower salary scale of the respondent's two tier salary structure, instead of the executive salary scale.

By way of a plaint filed on 11<sup>th</sup> August 2003, and amended on 12<sup>th</sup> May 2009, Lawrence sought a declaration that the respondent's two tier salary structure was discriminatory, unconstitutional and contrary to public policy, as a consequence of which he claimed a sum of Kshs. 5,529,594 together with interest and costs.

Briefly, the facts are that, on or about July 1995, Lawrence was seconded by the Ministry of Finance, to the respondent as a Chief Inspector in the Value Added Tax Department. By a letter of 23<sup>rd</sup> September 1996, the respondent offered him that position on permanent and pensionable terms with effect from July 1996. Lawrence agreed to the offer and was placed in job group "M" earning a salary of Kshs. 23,870/-. On 20<sup>th</sup> January, 1997 he was promoted to Assistant Commissioner in the job group "N" at the entry point of Kshs. 30,800 per month, and on 1<sup>st</sup> January, 1999 to Senior Assistant Commissioner at Job Group "P" where his entry point salary was Kshs. 42,315/= per month.

In his view, Job Groups M, N and P on the lower salary scale translated to K.R.A. Grades 7, 6 and 5 respectively, in the executive salary scale.

On 1<sup>st</sup> December 2000, he opted for voluntary early retirement following which he was paid his gross salary, three months' salary in lieu, severance pay of a month's salary for every year worked and an ex gratia payment, all totaling Kshs. 2,556,078.

Lawrence's case is that whilst in the respondent's employment, it came to his knowledge that the respondent maintained and applied a two-tier salary structure for its employees, comprising a lower and a higher executive scale; that this resulted in persons of equivalent job group and grade earning different remuneration packages. The effect was that the minimum basic salary in the lower scale was 68% less than the minimum earnings in the *Kshs. 3,132,288. Kshs. 2,185,179 Kshs. 211,527 Kshs. 5,529,594* higher executive salary scale, while the maximum basic salary under the lower scale averaged 49% less than the maximum basic salary under the higher executive scale.

Lawrence's complaint was that for the entire period of his employment with the respondent, he was relegated to the lower scale which placed him at a disadvantage compared to a fellow employee earning the equivalent in the higher executive scale. He also claimed that placement in

the higher executive scale was based on extraneous factors, including political connections and not on any policy, job qualification and/or competence, that it was selective, discriminatory, unconstitutional and contrary to public policy, as employees of similar circumstances were not treated in a similar manner.

As a consequence Lawrence claimed for salary underpayment for the period 1<sup>st</sup> January 1999 to 31<sup>st</sup> December, 2000; underpayment on the severance package and on the three months' salary in lieu of notice.

The particulars of loss and damage were specified as;

*Salary underpayment Underpayment of severance package*

*Under payment on three months' salary in lieu of notice Total*

In its defence, the respondent admitted that Lawrence was employed as a Chief Inspector, under the terms and conditions stipulated in the employment contract, and that he voluntarily and without coercion agreed to the respondent's terms of the contract. Upon retirement, he was paid his terminal dues and as such, nothing was owed to him.

The respondent maintained that it entered into individual employment contracts with each of its employee, which resulted in variances of terms and conditions of remuneration based on market forces, skill, competencies, resources and performance among other factors. Furthermore that, it carried out periodic evaluations of individual employees regularly reviewed remuneration packages and promotions, and ensured that career progression was merit based. It emphasized that Lawrence was a beneficiary of such periodic reviews as evidenced by his career progression to Assistant Commissioner and then to the position of Senior Assistant Commissioner.

The existence of a two tier system was denied, with the respondent maintaining that Lawrence was not privy to other employment contracts between it and other individual employees.

The respondent asserted that the prayer for a declaration that the executive scale salary was discriminatory and unconstitutional contravened procedural rules for suits filed in pursuit of fundamental rights and freedoms under **section 84** of the retired **Constitution**, and therefore it claimed that the matter was not properly before the court.

As a result, the respondent denied responsibility for loss and damage to Lawrence and instead contended that the suit as instituted was bad in law, incompetent and fatally defective and was for striking out.

During the hearings, Lawrence called two witnesses while the respondent called one witness. Lawrence, (PW1) testified that he was seconded from the Ministry of Finance to the respondent on 23<sup>rd</sup> September 1996; that he signed the letter of appointment and accepted the terms set out in the letter. He stated that he was placed in the lower or ordinary scale of Job Group "M" where he earned Kshs. 23,870, instead of being placed in the executive scale of KRA 7 to earn a salary of Kshs. 49,240, and as Assistant Commissioner he was placed in Job Group "N" instead of KRA 6, and when he was promoted to Senior Assistant Commissioner to Job Group "P" instead of KRA 5. He indicated that there was no difference between him and other ordinary scale members.

He stated that of the two groups, one comprised core staff, who were revenue collectors and the other were executive or support staff including Information Technology; that the support staff enjoyed executive scale salary and benefits. He identified one, Lucy Njue and one Kagiri, who came from other ministries as support staff, and that Kagiri, a supplies officer, earned an executive salary.

**Mary Njenga (PW2)**, a Supplies Manager, and **Chesit Moses Chemben (PW3)**, an accountant employed by the respondent, testified as Lawrence's witnesses. Both witnesses stated that they were employed at the lower or ordinary salary scale, and were aware of the two tier structure. They further stated that they were still in employment when the harmonization of salaries was effected, which resulted in their basic salaries being adjusted upwards.

**Lorraine Malinda (DW1)**, the Head of Human Resources testified on behalf of the respondent. She confirmed that Lawrence joined the respondent as a Chief Inspector on the ordinary scale at Job Group "M"; that he retired in December 2000, as a Senior Assistant Commissioner in Job Group "P" which was equivalent to KRA 5, and upon his retirement he was paid all his retirement dues. He was therefore not entitled to claim a salary on the executive scale.

On the two tier salary structure, the witness stated that there was an executive salary scale which included commissioners, professionals comprising lawyers, accountants and Human resource staff from the private sector and government ministries who were referred to as support staff serviced management, who were 62 in number. There was also an ordinary or lower scale comprising 4,315 employees who had been seconded from the Income Tax, Value Added Tax, Custom Service Departments of the Ministry of Finance and from the Ministry of Roads and Transport. She stated that staff recruited from outside were in higher positions, and that no employee in the ordinary scale earned executive salaries.

The witness testified that a circular dated 30<sup>th</sup> January, 2002 implemented harmonization of salaries recommendations with effect from January 2002, but due to budgetary constraints, its implementation was completed in 2005. Lawrence had already retired by this time, and therefore the salary adjustments did not apply to him as he was no longer on the payroll.

Highlighting his submissions, Lawrence informed the trial court that he required the court to determine whether or not he had been underpaid, and at the same time abandoned the prayer for a declaration that the maintenance of the two tier salary structure was discriminatory, unconstitutional and against public policy.

With this in mind, the learned judge went on to determine three issues;

- i. whether the contract was binding on the litigants;
- ii. the two tier salary structure and its impact; and
- iii. whether the appellant was underpaid.

In so far as Lawrence's contract was concerned, the court found that the parties had entered into a contract, and that the respondent duly paid Lawrence's salary and benefits until he retired.

On the second issue, the court found that a two tier salary system existed, but held that Lawrence's contract placed him in the ordinary or lower scale, and not in the executive scale, and further that there was no evidence of discrimination against him.

In respect of the third issue, the learned judge observed that the harmonization of the two salary scales was completed in 2005, long after Lawrence had retired, and that therefore he was precluded from benefiting from its strictures. The court concluded that Lawrence was not underpaid but received remuneration commensurate with the salary bracket within which he was employed. And with that, the learned judge dismissed Lawrence's suit.

Aggrieved, Lawrence appealed to this Court on grounds that the High Court failed to appreciate that the respondent was formed to harmonize revenue collection under one authority and retain competent staff through offering competitive remunerations; that the court failed to analyse his contractual position and remuneration in relation to the respondent's salary and benefits structure; that the court failed to appreciate that he was not paid all his dues including transport allowance, house allowance, at an executive level or at all; that the court erred in concluding that he retired as Senior Assistant Commissioner at Job Group "P" while the respondent stated that he retired as Senior Assistant Commissioner KRA Grade "5"; that the learned Judge failed to appreciate that he was entitled to the difference between job groups "M", "N" and "P" and approved KRA Salary scale of grades "7", "8" and "9"; and finally that the court declined to allow him to call the relevant witnesses to support his case.

Lawrence who appeared in person filed written submissions on 12<sup>th</sup> October, 2016. Whilst highlighting them, he referred us to the contract of 23<sup>rd</sup> September 1996 which he submitted was overtaken by events when the respondent issued an effective date for the new structure of the organization on 1<sup>st</sup> July 1996, and that salaries and allowances would be adjusted accordingly; that the circular came into effect in July 1996 and that he left employment in 2000, and filed this suit in 2001. The appellant drew our attention to a publication by the name of the 'Kenya Confidential' which set out the respondent's salary structure, and in particular the executive payroll. Lawrence stated that, he was entitled to promotions and salary under the executive structure, which translated to a total underpayment of Kshs 5.5 million. He concluded his submissions by citing the case of ***Simon P. Kamau 10 others vs Teachers Service Commission [2008] eKLR*** and urged us to uphold the decision of this Court on the proposition that retiree were entitled to receive salary enhancement and benefits arising from an agreed remuneration package.

On his part **Mr. Rimui**, learned counsel for the respondent relying on the written submissions filed on 6<sup>th</sup> December 2016, submitted that employment is a matter of contract where the terms are as agreed upon between the employer and employee; counsel asserted that the appellant had abandoned the claim for discrimination, and therefore, what this Court required to determine was whether an employment contract existed, and if so, whether the terms had been breached.

Counsel further submitted that following his secondment, the appellant joined the respondent, and during the period of service was paid his salary and increments upto the time of his retirement. Counsel emphasised that an executive scale existed for 62 employees recruited from the private sector with specialized expertise, and that there was no discrimination among the employees of the same job group and level, which was the finding of the High Court.

Counsel asserted that the harmonized salary scales of 2002, were not backdated to 1996, and were only applicable to employees who remained in employment as at the effective date.

We have considered the record and the parties' submissions. This is a first appeal, and as stated in ***Kenya Ports Authority vs Kuston (Kenya) Limited (2009) 2 EA 212***;

***"On a first appeal from the High Court, the Court of Appeal shall reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has never seen or heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on the record and not to introduce extraneous matters not dealt with by the parties in evidence."***

Whilst adhering to these principles, it is our view that the issues for consideration are;

- i. whether the trial court did not allow the appellant to call witnesses;
- ii. whether the appellant entered into an employment contract with the respondent;
- iii. whether the respondent maintained a two tier employment structure, and if so, whether it was lawful;
- iv. whether the appellant's contract entitled him to earn a lower scale salary or an executive salary scale;

v. whether the appellant was entitled to the underpayment claimed as a result of the salary harmonization process.

On the initial issue of whether Lawrence was not permitted to call witnesses, the record shows that though he intended to call 9 witnesses, he called only two witnesses. Despite being provided an opportunity to obtain witness summons for all potential witnesses, he failed to do so. After the two witnesses testified he voluntarily closed his case. We can find nothing to show that his witnesses were barred from testifying, and dismiss this ground.

As to whether an employment contract existed between Lawrence and the respondent was a matter that was dealt with extensively by the High Court. In concluding that an employment contract existed, the trial judge stated thus;

***“In the court’s opinion the plaintiff and the defendant entered into a binding contract. There were two tier salary structures but the plaintiff admits that he was in the ordinary one. That is what he signed for. He was paid his salary and he got other benefits fully and regularly from the defendant until he retired.”***

Section 2 of the retired Employment Act, Cap 226, which was the law applicable at the time, defined a ***“contract of service”*** as ***“an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for any period of time, and includes a contract of apprenticeship and indentured learnership...”***

And in the case of ***Gascol Conversations Ltd vs Mercer (1974) 9 I.T.R 282***, when considering a statement of terms and conditions of employment, Lord Denning, MR stated;

***“It is well settled that where there is a written contract of employment, as there was here, and the parties have reduced it into writing, it is the writing which governs their relations. It is not permissible to say they intended something different.”***

It is not in dispute that when the respondent offered Lawrence the position of Chief Inspector on 23<sup>rd</sup> September, 1996, he received a letter of appointment that read as follows in relevant part;

**“OFFER OF APPOINTMENT**

*I am pleased to inform you that the Kenya Revenue Authority has decided to offer you appointment as CHIEF INSPECTOR on permanent and Pensionable terms of service with effect from 1<sup>st</sup> July, 1996 subject to the terms and conditions set out here below;*

*The salary scale attached to the above position is job Group “M” VIZ Kshs. 20, 980 – 29,820 and your entry point is Kshs. 23, 870 p.m.*

*You will be eligible for leave, housing, medical and other fringe benefits applicable to employees of the Authority which will be communicated to you in due course.*

*You will abide by the Kenya Revenue Authority Code of Conduct and all Rules and Regulations governing employees of the Authority.*

.....

*Please Signify your acceptance or non-acceptance of this offer in writing by duly completing the attached election form and returning it to this office within a period of thirty ( 30) days form the date of this offer”.*

Lawrence confirmed his acceptance of this offer, and as a consequence, we so find, a written contract came into existence between Lawrence and the respondent, which set out the terms of their relations. More particularly, the contract specified that he was appointed in job group “M”, and that the salary scale attached to the position was Kshs. 20,980 to Kshs. 29,820. His entry point was to be Kshs. 23,870 per month.

Lawrence’s case however, was that if indeed, the respondent operated a two tier salary structure comprising a lower scale and a higher executive scale and given his long years of service and experience, he ought to have been placed in the executive scale.

This leads us to the next issue of whether the respondent maintained a two tier salary structure for its employees. The High Court concluded that a two tier salary structure existed comprising, *“... the executive scale for professionals only lawyers, I.T. accountants, supply officers etc. They were a smaller group called the support staff who enjoyed better terms than the staff in the ordinary scale (the core staff) where the plaintiff belonged-tax collectors etc.”*

The existence of a two tier salary structure was initially denied, but in her evidence, Lorraine Malinda (DW1) admitted that the respondent maintained a salary structure which comprised an ordinary salary scale and an executive salary scale; that the executive scale applied to 62 members of staff, who were recruited from the private sector and government bodies and comprised commissioners and professionals including, accountants, lawyers, as well as, Human Resource personnel; that, the ordinary salary scale applied to 4,315 members of staff in revenue collection who were seconded from the Income Tax Department, Value Added Tax, Customs Service and the Roads and Transport Departments of the Ministries of Finance and Transport.

It was explained that the rationale for establishing the two salary scales arose from budgetary constraints that impeded the respondent’s ability to maintain one harmonized salary structure at the time it commenced its operations.

In view of the above, it is undeniable that the respondent maintained a two tier salary structure.

Before addressing the issue of whether the two tier structure was lawful, it is observed that despite having abandoned the prayer for a declaration that the two tier salary structure was discriminatory, in his written submissions, Lawrence has once again raised the issue before us. However, having abandoned the issue in the trial court, it cannot be raised at this stage of the proceedings, and we see no reason to address it.

Having said that, as to whether the two tier system was lawful can be discerned from the Kenya Revenue Authority Act. Beginning with appointments, besides the positions of the Commissioner of Customs and Excise, the Commissioner of Income Tax, Commissioner of Value Added Tax and such other Commissioner as may be deemed necessary, which were specified to be Board appointments, all other appointments remained the responsibility of the respondent's Commissioner General. **Section 13 (3)** of the **Kenya Revenue Authority Act** provides;

***“The Commissioner- General shall appoint all other members of staff as may be required by the Authority for the efficient performance of its functions.”***

**Section 13 (4)** further provides that;

***“The terms and conditions of all persons employed by the Authority shall be determined by the Board.”***

The above provision empowered the respondent's Board to determine the terms and conditions of all persons employed by the respondent. Such terms and conditions of employment would include salaries, allowances and benefits. So that, if the respondent's Board considered it efficacious to maintain a two tier salary structure, it was well within its mandate so to do, provided that the decision was made in the best interest of the respondent, whilst at the same time according the employees their lawful dues. That said, we can find nothing to show that the two tier structure was contrary to the provisions of the law.

Having so found, the question that now presents itself is whether Lawrence's salary ought to have been on the lower scale salary or the executive salary scale.

In rationalizing Lawrence's placement in the lower scale the learned judge observed;

***“The plaintiff was not a professional in the sense that he did not have a full CPA (K) certificate. But due to his long experience, performance etc he was in KRA 5. That was his rightful place. He signed for it on appointment. So it was an error on his part to claim that he was relegated to the ordinary scale. He was at no time in the executive scale.”***

Whether the appellant was rightly assigned to the ordinary or lower salary requires an interrogation of the recruitment process of the respondent's staff at its inception. Following enactment of the Kenya Revenue Authority Act, the respondent was established as a central body for revenue assessment, collection and enforcement of laws relating to revenue. To carry out its objectives, the new authority was to be staffed by revenue staff seconded to the respondent from Ministry of Finance and Transport, as well as by other professional staff. The evidence shows that about 4,315 revenue staff were seconded.

In a communication to staff of 6<sup>th</sup> July 1995, from the respondent's Chairman entitled **“THE TAKE OVER OF THE STAFF IN THE REVENUE DEPARTMENT”** the staff were informed that;

***“In the implementation of the Kenya Revenue Act you have all been seconded to the Authority for a period of three months, during which time the Authority will decide on those who will be absorbed in its service. That exercise, including preparation of appropriate packages of salaries and benefits, will commence at once.”***

According to the respondent, the applicable salary scale for all seconded staff that were assigned to a job group was the ordinary or lower salary scale. Lawrence was one of the 4,315 seconded revenue staff, and his letter of appointment clearly assigned him to job group “M”, thereby placing him in the ordinary or lower salary scale. Having accepted the terms of the contract, Lawrence also accepted to be in the ordinary salary scale, and in so doing, was effectively bound by those terms.

This notwithstanding, Lawrence's grievance is that his qualifications and experience made him a deserving case for placement in the executive salary scale, rather than the lower scale. A further complaint was that, the caveat stipulating that persons eligible for the executive salary were professionals, was not applied across the board, as there were seconded staff who benefitted from the executive salary. Lawrence drew the court's attention to one, Lucy Njue.

The answer to this is that, since one's employment contract was the determinant factor of whether one received ordinary or executive terms, it goes without saying that, unless those terms were expressly varied to offer him the executive scale, Lawrence's terms remained as specified in the initial contract.

Equally, it is observed that the criteria for placement in each tier were clearly specified. The executive scale comprised of professionals who were recruited from the private sector and other government bodies, while the ordinary scale included all seconded revenue staff. Lawrence was a secondee in the Value Added Tax department, and as the learned judge rightly ascertained, he *“... was not a professional in the sense that he did not have a full CPA (K) certificate...”*. Based on these criteria, it is evident that his secondment and the nature of his qualifications required that he be assigned to the lower salary scale, and not the executive scale.

On the issue that the salary scales were not applied equitably to all employees, besides the evidence that Lucy Njue who was a member of the seconded staff assigned to the executive scale, there was no evidence to suggest that the laid down assignment criteria was not adhered to. And in Lucy Njue's case, it was explained that she was upgraded from a tax assessor to the Public Relations department on the executive scale. Though there was no documentary evidence produced to support the respondent's explanation, based on the specified criteria, the change to professional status probably made her eligible for recruitment as support staff on an executive salary.

We are therefore satisfied that Lawrence's placement in the lower scale was in accordance with the parameters of the salary structure maintained by the respondent at the time, and the learned judge rightly concluded that Lawrence's placement in the ordinary scale was proper.

The next issue for consideration is whether Lawrence was entitled to benefit from the salary harmonization process that took effect from 30<sup>th</sup> January 2002.

Lawrence's claim for underpayment is made on the basis that, since the harmonization of salaries of 2005 backdated the revision of basic salaries to 1996, having been employed for 4 years during that period entitled him to receive the revised salary amounts.

On this issue, the formulations of the various circulars are instructive. To begin with, the Internal Memo from the Commissioner General dated 30<sup>th</sup> January 2002 addressed to all staff recognized the existence of the two tier salary structure. A further circular of 31<sup>st</sup> January 2005, stipulated;

***"...following Board approval, the Authority has undertaken the second and final phase of Salary Harmonization. The new salary levels were to be paid to the affected staff in the January, 2005 Payroll.***

***The first phase of harmonization was undertaken in July, 2002. This included abolishing the lower salary scale and bringing everyone into the approved KRA Salary Scale and allowances. However, due to funding constraints, all the affected staff were placed on the starting point of their respective basic salary scales. Phase one cost the Authority an additional Kshs. 54,000,000 (fifty four million), per month (or Kshs. 648 million per annum). The second and final phase is meant to slide the affected staff to the appropriate point based on the years served from the time when the approved KRA Salary Scale applied ..."***

The circulars are clear that the harmonization process was to be implemented in phases and that it was targeted at 'affected staff'. In other words, it was limited in application to the respondent's current employees who existed on the payroll as at the date of the circular, that being 30<sup>th</sup> January 2002.

The circumstances of this case are to be distinguished from the case of *P. Kamau vs Teachers Service Commission (supra)* where an agreement was signed between the Kenya National Teachers Union and the respondent relating to a remuneration package for all teachers. The package was to become effective after 1<sup>st</sup> July, 1997, and was to be implemented in phases. In determining who were the affected teachers this Court stated thus;

***"At the outset it is clear to us that the agreement between the two parties speaks for itself as material, both as regards the benefits covered and the description of those entitled to benefits. It is clear to us that the agreement covered serving teachers and retirees involved. The latter group includes the plaintiffs and those they represent."***

In this case, by the time the Harmonization scheme came into operation on 30<sup>th</sup> January 2002, Lawrence had already retired. As it did not make any reference to employees who had resigned or retired prior to implementation of the process, it is apparent that, retirees were intentionally excluded from the package. This differed from the case of *P. Kamau vs Teachers Service Commission (supra)* where, not only was the scheme implemented during the retirees contract, but, the agreement there expressly provided that persons who had already retired were entitled to receive the salary and benefits.

The exclusion of retirees can be traced to **section 13 (4)** of the *Kenya Revenue Authority Act*. As seen earlier, the responsibilities of the respondent's Board were limited to, *"The terms and conditions of all persons employed by the Authority"*. The inference here is that the Board's mandate did not extend beyond the employees to other persons not employed by the respondent. It was for this reason that the learned judge concluded, and we agree that, since Lawrence was not an employee of the respondent at the time of harmonization, he could not be considered a member of staff affected by the harmonization process, and so was not eligible to receive the salary and benefits enhancements as set out therein.

The final issue is whether Lawrence was entitled the sums claimed as underpayment. On this issue the High Court had this to say;

***"He was paid salary as he was entitled to. On severance package and salary in lieu of 3 months' notice, all was based on the plaintiff's last salary per month Kshs0,767/-(sic). Again the plaintiff fell into error to base his claim on the salary enjoyed by the executive staff. That was not his bracket."***

As seen above, Lawrence's terms and conditions of employment were based on the employment contract of 23<sup>rd</sup> September 1996. Any sums due to him would have been derived from that contract as would the computation of any payments. The record shows that as at the date his contract ended, he was paid all his entitlements and dues, and having been locked out of the harmonization scheme by virtue of his retirement, he was not entitled to receive any of the benefits specified under the scheme. Consequently, the question of underpayment did not arise.

We have said enough to show that the appeal is without merit, and we order that the same be and is hereby dismissed. The appellant being a

retired senior citizen, we order each party to bear its own costs.

*It is so ordered.*

*Dated and delivered at Nairobi this 16<sup>th</sup> day of February, 2018.*

**P.N. WAKI**

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**JUDGE OF APPEAL**

**OUKO**

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**JUDGE OF APPEAL**

**K. MURGOR**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**