Thika Coffee Mills Ltd v Rwama Farmers Co-operative Society Ltd (Civil Appeal 251 of 2013) [2018] KECA 1 (KLR) (12 October 2018) (Judgment)

Thika Coffee Mills Ltd v Rwama Farmers Co-operative Society Ltd [2018] eKLR

Neutral citation: [2018] KECA 1 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 251 OF 2013

MSA MAKHANDIA, PO KIAGE & K M'INOTI, JJA

OCTOBER 12, 2018

BETWEEN

THIKA COFFEE MILLS LTD .... APPELLANT

AND

RWAMA FARMERS CO-OPERATIVE SOCIETY LTD .... RESPONDENT

(An appeal from the Ruling and Decree of the High Court of Kenya at Nairobi (Mabeya, J.) delivered on 28th September, 2012 in H.C.C.C. No. 836 of 2003)

JUDGMENT

1. Before this Court for determination is an interlocutory appeal that arises from the ruling of the High Court (Mabeya, J) dated 28th September 2012, in which he dismissed Thika Coffee Mills Limited's "the appellant" application dated 7th March 2012. In the application, the appellant sought to set aside an arbitral award dated 12th September, 2011 that had ordered the appellant to refund to Rwama Farmers Co-operative Society Limited "the respondent" Kshs. 15,422,160.25. However, that award was subsequently amended and the arbitrator, Kamau Karori Esq, on 21st November 2011 issued what is termed as the Final Award. In that Final Award, the aforesaid amount to be refunded was corrected to Kshs. 15,097,783.99. It is this final award that the appellant sought to set aside vide the application aforesaid as well as the arbitrator's order on costs of the arbitration.

2. Initially, the respondent had instituted a suit against the respondent claiming the sum of Kshs.43,473,741.25 on account of coffee deliveries and sales to the appellant which the parties consented to refer to arbitration. Following the arbitration proceedings, the arbitrator awarded the appellant Kshs. 15,097,783.99 together with interest thereon at 16% per annum from 6th December 2011 till payment in full. The appellant was further ordered to pay Kshs. 1,148,479.99 as the costs of the arbitration.

3. The premise of the appellant's application to set aside the award was that the same was fundamentally flawed as it was determined outside the scope of the arbitrator's terms of reference; that the arbitrator's findings were based on un-pleaded claims and could not have been contemplated by the terms of reference; that the appellant was not afforded an opportunity to respond to the claim and was thus denied a fair hearing contrary to Article 50 of the Constitution; that in any event, the refund constituted unjust enrichment of the respondent which offended public policy.

4. The respondent opposed the application and maintained that the parties were accorded a fair hearing during the arbitral proceedings. It termed the application misconceived, ill-advised and meant to defeat its application to have the award adopted as a judgment of the court. It also denied that the award was against public policy or unconstitutional.

5. Since the application was brought pursuant to section 35 of the Arbitration Act, and rule 7 of the Arbitration Rules, 1997, the learned Judge was cognizant of the fact that the he could not delve into the merits of the award as the application was not an appeal against the award of the arbitrator but was a bid to set it aside. According to M'Inoti, JA in *Nyutu Agrovet Ltd v Airtel Networks Ltd* (2015) eKLR;

> "....section 35 sets out "the only" situations under which the High Court may set aside an arbitral award. The section provides a closed catalogue of circumstances that justify intervention by the courts in an arbitral award, leaving no room for intervention on grounds other than those stipulated in the provision. "

6. The Judge went on to add that an arbitral award may be set aside on such grounds as incapacity of a party; illegality of the arbitral proceedings; breach of the rules of natural justice; excess of jurisdiction; fraud; bribery; corruption; undue influence and breaches of public policy.

7. As is discernable from the application, it was based on grounds that the award went beyond the scope of reference to the arbitrator; was illegal or unconstitutional for failing to comply with Article 50 of the Constitution and was against public policy based on unjust enrichment. The Judge upon hearing the two applications, i.e. to set aside the award and the adoption of the award as a judgment of the court, found that though the claims for Kshs. 7,500,000/- and Kshs. 1,1623,245.65 had not been pleaded, the parties introduced the same in the course of the arbitral proceedings and therefore refund of the same could not constitute unjust enrichment which is against public policy. He further rejected the appellant's claim that it was not accorded a fair hearing in the proceedings. He therefore dismissed the appellant's application with costs but allowed the respondent's application with costs, meaning therefore that he upheld the award and adopted it as a judgment of the court.

8. Dissatisfied by those findings, the appellant lodged the present appeal seeking to impugn the Judge's determination on the grounds that he erred in finding that the parties had contemplated or submitted to the arbitrator for adjudication the issues of whether the sums of Kshs. 7,500,000.00 and Kshs. 1,623,245.65 had been refunded or paid to the respondent since the latter had admitted receipt of the same in its pleadings; failing to find that the refund of the aforesaid sums constituted unjust enrichment and was therefore against public policy; erred in failing to find that the issues conceded by the respondent in its pleadings could not lawfully constitute issues for adjudication and adjudicating on the same was a violation of Kenyan law to wit, section 120 of the Evidence Act; failing to find that the appellant's right to fair trial was violated by the respondent introducing its claim for the sum of Kshs. 7,500,000.00 and Kshs. 1,623,245.65, respectively as an issue for determination in its closing submissions before the arbitrator, thus denying the appellant opportunity to respond or rebut the same.

9. In its written submissions in support of the appeal, the appellant reiterated that the learned Judge erred in finding that the refund of Kshs. 15,097,783.99 constituted an issue contemplated by the parties and which fell within the arbitrator's terms of reference. It maintained that it had paid Kshs. 7,500,000.00 vide cheque No. 00100 to the respondent and a further sum of Kshs. 1,623,245.65 which the respondent had admitted in its plaint. According to the appellant, the issues for determination by the arbitrator had been framed and agreed upon by the parties prior to the proceedings. It argued therefore that facts admitted could not lawfully constitute issues for adjudication by the arbitrator and any decision in respect thereof was a violation of the law and public policy.

10. The appellant was categorical that the respondent introduced the issue of refund of the aforesaid amounts in its closing submissions. As such, it contends that it was denied the opportunity to recall its witnesses to respond to the issues. Accordingly, it was denied the constitutional right to a fair hearing. The appellant further submitted that one of the key elements of a fair trial under Article 50 of the Constitution was the right to know, beforehand, the case it was set to face and to be accorded the opportunity to adequately prepare its defense. In this case, it submitted that the respondent introduced new claims at the submission stage when the parties had closed their cases. Further, the new claims were based on matters that were not justiciable as they were admissions set out in the plaint. The appellant contended that the issues for determination were derived from the pleadings and the respondent had failed to amend its plaint to include the issues raised in the submissions or recant the admission in its plaint that it had received the stated amounts. The appellant cited the case of *David Sironga Ole Tukai V Francis arap Muge & 2 Others* (2014) eKLR for the proposition that a court will not grant a remedy, which had not been applied for and will not determine issues which the parties had not pleaded.

11. The appellant pointed out that the respondent had in its plaint conceded that it had been paid Kshs. 31,970, 889.65 by the appellant, inclusive of Kshs. 7,500,000.00. Further, the plaint was supported by a verifying affidavit sworn by one Robert Ndiga Kagwi, who deponed that he had read the contents of the plaint and verified them as true and correct. It is on that basis that the appellant submitted that it could not offer any rebuttal as an admission could not found a cause or establish the basis of a dispute.

12. The appellant also faulted the learned Judge for failing to find that the arbitral award of Kshs. 15,097,783.99 constituted unjust enrichment and was thus contrary to public policy. It submitted that the award was contrary to section 120 of the Evidence Act. In light of the respondent's admission to having received the amounts, the appellant was of the view that the Judge's refusal to set aside the award amounted to unjust enrichment of the respondent, which was against public policy and a basis for setting aside the award pursuant to section 35 of the Arbitration Act. It contended further, that a party having admitted a claim cannot thereafter be allowed to claim for a refund of the same because that would be contrary to justice and amounts to unjust enrichment. It cited the cases of *Christ for All Nations v Apollo Insurance Company Ltd.* (2002) EA 366 and *Standard Chartered Financial Services Ltd & 2 Others v Manchester Outfitters Ltd. (2016)* eKLR for the proposition that the award was contrary to public policy.

13. In conclusion, the appellant was of the view that, the fact that section 35 of the Arbitration Act was silent on whether a decision based on the provision was appealable to this Court does not by itself bar the right of appeal. It relied on the case of *DHL Excel Supply Chain Kenya Ltd v Tilton Investments Ltd*. (2017) eKLR for the proposition that an appeal to this Court can only be limited by statute.

14. The respondent through its written submissions opposed the appeal on two fronts; first, that in view of section 39(3) of the Arbitration Act and further in the absence of an agreement between the parties, an appeal to this Court could only lie with leave of court, upon being satisfied that a point of law of general importance is involved. It cited the authority of *Nyutu Agrovet Ltd v Airtel Networks Ltd*. (2015) eKLR

for these propositions. This Court in the above case stated that no court ought to interfere in any arbitral process except in the manner specifically agreed upon by the parties or in particular instances stipulated in the Arbitration Act. On the issue that the appeal was filed outside the 90 days timeline set out in the conditional leave, the respondent cited the authority of *Patrick Kiruja Kithinji v Victor Mugira Marete* (2015) eKLR.

15. The respondent further denied the appellant's contention that the refund of Kshs. 7,500,000.00 and Kshs. 1,623,245.65 amounted to unjust enrichment. It maintained that both the arbitrator and the High Court confirmed the amounts were rightfully due to it after analyzing the evidence tendered by the parties. In response to the appellant's submission that it was estopped from denying facts it had admitted in its pleadings, the respondent relied on section 24 of the Evidence Act. The said provision provides that admissions are not conclusive proof of the matters admitted and may operate as estoppel subject to section 120 of the Evidence Act. It relied on the authority of *CMC Aviation Ltd v Kenya Airways Ltd. (Cruisair Ltd.)* (1978) eKLR, where Court observed that pleadings are not normally evidence. The respondent added that the averments made in pleadings depend upon evidence as proof of their contents. It also cited the case of *Nagubai Ammal & Others v shama Rao & Others* 956 AIR 593, 1956 SCR 451 where the Supreme Court of India held that an admission in pleadings is not conclusive truth of the matters pleaded therein and must depend on the circumstances under which it was made.

16. According to the respondent, no objections were made before the arbitrator with regard to the refund of the disputed amounts and both parties had the opportunity to present their cases in respect of these amounts and were accorded a fair hearing before the arbitrator contrary to the submissions of the appellant.

17. The issues for determination in this appeal are in my view; whether the appellant had a right of appeal to this Court; refund of Kshs. 7,500,000.00 and Kshs. 1,623,245.65 respectively, and whether it was beyond the terms of reference; whether the refund constituted unjust enrichment and finally; whether the arbitrator failed to comply with Article 50 of the Constitution.

18. Dealing with the first issue, the respondent has submitted that there is no right of appeal to this Court unless as provided under section 39 of the Act. The provision allows an appeal to this Court only where the parties have agreed prior to the delivery of the award that an appeal shall lie or where this Court grants leave to appeal upon being satisfied that a point of law of general importance is involved, the determination of which will substantially affect the rights of one or more of the parties. According to the respondent, since there was no prior agreement that an appeal will lie, the appellant ought to have first sought and obtained leave of this Court before lodging the instant appeal. The respondent further challenged this appeal on the basis that it was filed outside the stipulated 90 day timeline, given when conditional leave was granted.

19. But according to the appellant, it is entitled to appeal the decision of the High Court and cited the authority of *DHL Excel supply Chain (K) Ltd*. (supra) where this Court observed that while section 35 was silent on whether an appeal may lie to this Court from a decision of the High Court, that by itself could not bar the right of appeal. The Court in that case stated that an appeal emanating from the High Court under section 35 can only be restricted by express statutory terms. It's noteworthy that in that case, the applicant was seeking leave of court to appeal and having found that it had a right of appeal, leave was granted. The appellant on the other hand cited the case of *Nyutu Agrovet Ltd* (supra) where the Court of Appeal held that there is no right of appeal to this Court except where agreed upon by the parties or in the particular circumstances stipulated under the Act. As is discernable from the foregoing, there are conflicting decisions emanating from this Court. This Court in a recent decision, *Kenya Bureau of Standards v Geo-Chem Middle East*, Civil Application No. 132 of 2017

(Nbi) grappled with the same question of whether there exists a right of appeal emanating from the different constructions of sections, 35 and 39 of the Act while deliberating on whether or not grant leave to appeal. The Court observed that the same question before it was the subject of three petitions pending before the Supreme Court, namely, *Nyutu Agrovet Limited v Airtel Networks (K) Ltd*, Petition No. 12 of 2016; *Bia Tosha Distributors Limited v Kenya Breweries Limited & Others*, Petition No. 10 of 2017; and *Synergy Industrial Credit Limited v Cape Holdings Limited*, Petition No. 2 of 2017. In proceeding to grant leave to appeal as had been sought by the appellant therein, the Court stated as follows;

> "Although unlike section 39, section 35 does not specifically provide that an appeal to this Court will lie from a decision of the High Court setting aside an arbitral award, we reiterate that it does not, in the same breadth, expressly bar a party aggrieved by the setting aside to come to this Court for redress. If the intention was to circumscribe the right to appeal, nothing stopped the Legislature from expressly saying so."

Further that,

> "...................we hold the view that the effect of the decision of the High Court under section 35 is just as critical as that made under section 39 because both sections deal with an award. An award is the final outcome of an arbitration and when it is confirmed, varied, set aside, or remitted to the arbitral tribunal for re-consideration, parties are bound to be aggrieved. We do not believe it was intended that aggrieved parties be left without recourse to appeal. With that conclusion, we join those who share the view that nothing stops this Court from granting leave to appeal from a decision of the High Court made under section 35...... In reaching the decision on whether or not there is a right of appeal, we bear in mind that under the Arbitration Act, the right of appeal is granted automatically and/or denied expressly. Where the Act is silent, the aggrieved party may, with leave lodge an appeal." (Emphasis put)

20. Noting the conflicting decisions emanating from this Court and in light of the three petitions pointed out earlier that are pending consideration and final determination of the Supreme Court, the Court chose to uphold the rights of parties before it pending the determination by the Supreme Court on the matter by granting leave.

21. In the instant appeal, and persuaded by the Court's reasoning in the above quoted case, it would be prudent and for good order for me to uphold the parties' rights pending the final determination of the issue by the apex court.

22. In light of the uncertainty that currently exists in regard to appeal to this Court and also in my opinion, it would be justifiable to extend the benefit of doubt to the appellant and proceed to determine the appeal on its merits. This is also considering the fact that the respondent failed to move this Court appropriately under the relevant rules for striking out of the appeal if at all it felt strongly about its objections. Instead, the respondent submitted itself to the jurisdiction of this Court and opposed the appeal on merit.

23. As alluded to by the respondent, the essence or gist of the appellant's complaint is based on the assertion that the Judge erred in finding that the claim of Kshs. 7,500,000.00 and Kshs. 1,623,245.65 was within the arbitrator's terms of reference. The respondent has conceded that it had in its plaint admitted to receiving the two now impugned sums of money. The appellant argues that having conceded the same, the issue could and did not form the issues the parties framed for determination by the arbitrator. The appellant has contended that by the arbitrator resolving that the amounts be refunded to the respondent then the arbitrator dealt with issues that did not fall within the terms of reference of

arbitration and therefore constituted a decision on matters beyond the scope of the reference, thereby rendering the award a candidate for setting aside under section 35 of the Act.

24. According to the appellant, the issues for determination by the arbitrator had been framed and agreed upon by the parties prior to the arbitration. It is on that basis that the appellant submits that it could not offer any rebuttal as an admission could not found a cause or establish the basis of a dispute. The respondent has in reply submitted that admissions are not conclusive proof of the matters admitted and has provided authorities which emphasise that pleadings depend upon evidence to prove their contents.

25. So was the finding that the amounts were due to the respondent beyond the scope of reference for the arbitrator? In its submissions, the respondent sought to explain the basis upon which the arbitrator awarded the amounts. It stated that in the course of the proceedings before the arbitrator, it became evident that some of the amounts conceded as having been paid to it by the appellant were actually never paid. Among these, was Kshs. 7,500,000.00 and Kshs. 1,623,245.65 respectively. The Judge noted that the arbitrator was cognizant of its terms of reference and the fact that the statement of issues, which had been drawn by the respondent and which was also adopted by the appellant, constituted his terms of reference such that the award was to be limited to the issues referred to him for determination. The arbitrator was also cognizant of the fact that he was bound by the parties' pleadings. However, the Judge in his determination found that the parties expended a lot of time and energy addressing these advances allegedly paid to the respondent. According to the arbitrator, the appellant produced bank statements, copies of cheques, crop advances agreements and payment vouchers to prove that the crop advances were actually paid. That although the issue of crop advances was not specifically covered by the parties' pleadings, the respondent demonstrated that several payments allegedly paid to it as crop advances were not actually paid. At that point and by implication, the issue of whether or not payments allegedly made by the appellant to the respondent were actually paid became an issue. Furthermore, the arbitrator found that the issue could as well have been canvassed under the broad issue crafted by the parties of 'Whether Thika Coffee Mills is indebted to Rwama Farmers Cooperative Society Limited for coffee deliveries made before period year 1999/2000 and 2000/2001'. In those circumstances, the appellant's contention that the refund was outside the arbitrator's scope of reference is rejected.

26. The appellant also faulted the Judge for his finding that the respondent was entitled to the amount of Kshs. 9,123,245.65 so that the same could not amount to unjust enrichment which was against public policy. The respondent had disputed payment of Kshs. 7,500,000.00 since none of its accounts reflected such payment by the cheque. The arbitrator in his award found that once the respondent disputed receipt of the alleged payment made vide Cheque No. 100100 on 24th January 1998, the appellant had the burden to prove actual payment which it failed to discharge. The arbitrator after analyzing the evidence adduced found that there was no evidence to show that the amount of Kshs. 7,500,000.00 was paid to the respondent. In the premise, he ordered that the money be refunded to the respondent. After the appellant filed a request for clarification of the award pursuant to section 34 (1) (b) of the Act, the arbitrator confirmed that the respondent was entitled to the money. In his consideration of the evidence, the learned Judge concluded that he was not persuaded that Cheque No. 100100 ostensibly issued by the appellant to pay the respondent Kshs. 7,500,000.00 was ever released to or received by the respondent. Having found that the respondent was entitled to the amount, the argument that the refund amounted to unjust enrichment and by extension ran contrary to public policy cannot lie.

27. The appellant has further contended that the High Court erred in failing to set aside the arbitral award since the arbitrator overlooked the provisions of Article 50 of the Constitution. According to the appellant, claims for refund were introduced by the respondent in its closing submissions, and was

therefore denied an opportunity to be heard to rebut the claims. In his determination the arbitrator observed that the procedure adopted by the parties in the proceedings was a departure from the normal process as parties agreed to file and exchange documents even in the middle of the oral hearing. In his decision, the Judge noted that arbitral proceedings are not subject to the strict rigours of the rules of procedure unless the parties authorize the arbitrator to do so. In its submissions the appellant maintains that when the appellant filed its request for clarification, both parties appeared before the arbitrator post-award and were heard. Having opted out of the strict compliance to rules of procedure, it can be reasonably observed that the appellant indeed had the opportunity to rebut even then. As it is, there is simply no evidence to support the appellant's allegations that it was denied a fair hearing in violation of Article 50 of the Constitution.

28. From what has fallen from my lips this far, this appeal is for dismissal.

Accordingly, the appeal is dismissed with costs to the respondent.

As Kiage, JA also agrees, those shall be the orders of this Court

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF OCTOBER, 2018.

ASIKE MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

JUDGMENT OF KIAGE, JA

29. I have had the advantage of reading in draft the judgment of my learned brother Makhandia, JA and I am respectfully in agreement with his reasoning and the conclusions he has reached.

30. The sticking point in this appeal is whether this Court is possessed of jurisdiction to entertain an appeal emanating from a decision of the High Court in a challenge to an Arbitrator's award. It is a question that has engaged this Court on numerous occasions with disparate and divergent results. Some of those cases have been cited by Makhandia JA in his judgment and there is neither wisdom nor utility in my having to rehash them. Indeed, the single question awaits a final authoritative pronouncement from the Supreme Court, once the apex court determines the appeals on the same pending before it.

31. My own answer to that question was first given in Judicial Service Commission & Anor vs. Hon. Justice Rawal & Others Civil Application Nai. 308 of 2015 [2016] eKLR where I expressed myself as follows;

> " I now must comment on the [Nyutu Agrovet Limited vs. Airtel Networks Limited [2015] eKLR] case cited to us by Mr. Abdullahi, SC. I must, with great respect, confess to having much difficulty with conclusions made by this Court in that case which I have anxiously read and re-read. I am not sure, from my said reading, that there is a discernible engagement with the epochal shift of jurisdictional and right of appeal source location from statute to the Constitution that I have adverted to herein. I apprehend that there was not sufficient weight placed on the cases, including [Anarita Karimi Njeru vs. Republic [1979] eKLR] which all show the legal consequence of a situation where jurisdiction is constitutionally conferred, as now is under Article 164 (3) of the Constitution. I am not, moreover, convinced that Sections 35 and 39 of the Arbitration Act, separately or together, have the effect of denying a right of appeal from a decision of the High Court. It is indeed perplexing that the Court construed Section 39 of that Act in exclusionary as opposed to inclusionary terms. I am also

troubled that in professing to respect and uphold finality of the arbitral process, this Court inadvertently invested the High Court and not the arbitrator, with finality – even where the High Court may have set aside or refused to set aside an award, or otherwise acted in plain error. Far from being a basis for the contention that even post-2010 this Court's jurisdiction and the right to appeal to it must still be donated or conferred by some statute in express terms, I would for my part treat the Nyutu decision with much caution. It denies a right of appeal absent express statutory exclusion and I find it quite confounding. At any rate, I am persuaded that the majority decision in Kenya Shell Ltd vs. Kobil Petroleum Ltd Civil Appeal No. 57 of 2006 (unreported)] represents the correct position in law."

32. I still hold the view that upon a proper appreciation of the arbitral process both as an alternative that gives a measure of control and party autonomy to the parties who go through it, and as one that (in conception at least, if not in practice) represents economy of time and money. It therefore lessens the burden of adjudication of disputes and enforcement of rights and within a context of less formality, greater expertise and specialization at that, thus deserving of, and is indeed invested with, finality. That finality has to relate to the arbitral award. It is open to challenge only within very narrow strictures set out by the Arbitration Act itself.

33. With that understanding in mind, I am unable to accept as correct any interpretation of the relevant provisions of the Act that transfers finality from the chosen arbitrator's award and places it upon a judge of the High Court as consistent with the spirit and intendment of conferment of finality to the arbitral process. Indeed, it is not difficult to see why such a position is potentially and fatefully anathema to the whole process and attractiveness of arbitration, which stands thereby greatly impelled.

34. I am unable to see why a decision of the High Court, which may improperly have set aside an otherwise proper and well-founded arbitration award, should be clad in iron finality when it represents the very antithesis of finality for arbitral awards. I have no difficulty whatsoever holding that, like in all other decisions of the High Court unless expressly excluded, this Court has jurisdiction to entertain appeals such as the one before us.

35. I am persuaded that we have properly exercised that extent jurisdiction, and that on the merits this appeal is to be determined in accordance with the orders proposed by Makhandia, JA.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF OCTOBER, 2018.

O. KIAGE

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

JUDGMENT OF M'INOTI, JA

36. In Nyutu Angrovet Limited v. Airtel Networks Kenya Limited, Civil Appeal (Application) No. 61 of 2012, I agreed with my learned brothers and sisters, Karanja, Mwera, Musinga and Mohammed, JJA that no appeal lies to this Court under the Arbitration Act outside section 39 of the Act. I further took the view that Article 164(3) (a) of the Constitution creates the jurisdiction of the Court of Appeal, which is a different and distinct issue from a right of appeal to the Court. Being still of the same mind, I am persuaded that the appellant has no right of appeal to this Court. I would therefore, under the principle in the Owners of the Motor Vessel "Lilian S" v. Caltex Oil (Kenya) Ltd [1989] KLR 1, down my tools and dismiss the appeal with costs.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF OCTOBER, 2018.

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR