



REPUBLIC OF KENYA



**KENYA LAW**  
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**Onyango v Kenya Revenue Authority (Cause E595 of 2022)  
[2025] KEELRC 167 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 167 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E595 OF 2022  
HS WASILWA, J  
JANUARY 30, 2025**

**BETWEEN**

**LILLIAN A ONYANGO ..... PETITIONER**

**AND**

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

**JUDGMENT**

1. The Claimant, through a Memorandum of Claim dated 24<sup>th</sup> August 2022, stated that she was employed under the Customs Department of the Kenya Revenue Authority (KRA) from 2002 until 29<sup>th</sup> August 2019, when her employment was terminated based on unfounded allegations. The Claimant averred that she was placed on suspension from 8<sup>th</sup> February 2016 to 29<sup>th</sup> August 2019, a period exceeding three and a half years, and that during this time, she was never provided with documents related to her case. She contended that this failure was contrary to the Respondent's Code of Conduct and the *Access to Information Act*.
2. The Claimant asserted that the delay in concluding her disciplinary case contravened her rights under Article 47 of *the Constitution*, the *Employment Act* 2007, KRA's Employee Code of Conduct, and other labour-related laws. She further argued that the delay violated the guidelines issued by Amb. Francis K. Muthaura on handling cases involving public officers suspected of corruption, which require administrative action to be taken promptly and in accordance with the law. The Claimant alleged that the flawed disciplinary process, coupled with acts of discrimination, infringed on her right to fair administrative action and other constitutional rights.
3. She maintained that the Respondent, despite being issued with a demand and notice of intention to sue, failed to address her grievances. The Claimant sought a declaration that her termination and the delay in taking administrative action were illegal, null, and void. She prayed for compensation for time lost out of employment, damages for unlawful termination, costs of the suit, and any other relief deemed appropriate by the court, with interest on all monetary awards.



4. The Claimant swore a Verifying Affidavit dated 24<sup>th</sup> August 2022, stating that she is the Claimant in this case and is well-versed in the facts of the claim, making her competent to swear the affidavit. She affirmed that she had read the contents of the Memorandum of Claim and confirmed them to be true. She further stated that the matters deponed to in the affidavit were true to the best of her knowledge, information, and belief.
5. The Claimant, in her statement dated 24<sup>th</sup> August 2022, stated that she was employed under the Customs Department of the Kenya Revenue Authority (KRA) from 2002 and worked diligently until her termination on 29<sup>th</sup> August 2019. She claimed her termination was based on unfounded allegations and noted that she had been on suspension from 8<sup>th</sup> February 2016 to 29<sup>th</sup> August 2019, a period exceeding three and a half years. The Claimant asserted that she was never provided with documents related to her case, even after lodging an appeal, which was contrary to the Respondent's Code of Conduct and the [Access to Information Act](#). She alleged that the case against her was unduly delayed, violating her rights under Article 47 of [the Constitution](#), the [Employment Act](#) 2007, KRA's Employee Code of Conduct, and other labour laws. She also cited the guidelines issued by Amb. Francis K. Muthaura on handling cases of public officers suspected of involvement in corruption, which emphasize the need for timely and lawful administrative actions.
6. The Claimant stated that the delay in resolving her case, a flawed disciplinary process, and acts of discrimination infringed on her right to fair administrative action and other constitutional rights. Despite demand and notice of intention to sue, the Respondent had allegedly declined to address her claims. The Claimant concluded by seeking a declaration that her termination and the delay in administrative action were illegal, null, and void, an order for adequate compensation for time lost out of employment, damages for unlawful termination, costs of the suit, and any other relevant relief with interest on all sums awarded.

#### **Claimant's Written Submissions**

7. The Claimant, in her written submissions dated 29<sup>th</sup> November 2024, stated that her termination by the Respondent was unlawful, citing a suspension period that exceeded the six-month limit prescribed under the Respondent's Code of Conduct and related labour laws. She argued that her suspension, lasting over three and a half years from February 2016 to August 2019, violated guidelines issued on 24<sup>th</sup> May 2010 for handling cases involving public officers suspected of corrupt practices. The Claimant emphasized that she was terminated without being accorded a hearing, contrary to Sections 41, 43, and 45 of the [Employment Act](#) and the [Access to Information Act](#), as she was not provided with documents related to her case. She contended that these actions violated her constitutional right to fair administrative action under Article 47 and protections afforded to public servants under Article 236.
8. The Claimant testified that she diligently served in the Customs Department of the Kenya Revenue Authority from 2002 until her termination on 29<sup>th</sup> August 2019. She reiterated that she was neither supplied with documents regarding her case nor invited to a disciplinary hearing. The documents alleged to have been sent to her were not received, as her account was suspended, and she only learned about them through a colleague after her termination. She denied receiving any communication via email or phone, asserting that she operated only one email account during that period. The Claimant also filed an appeal against her termination, stating that she was not accorded a hearing, and the appeal documents were included in the Respondent's evidence.
9. The Respondent's witnesses, John Kiilu and Peter Kiambi, failed to provide substantive evidence against the Claimant. Kiilu, the investigating officer, admitted he was unaware of the operational procedures during the relevant period and could not produce registers or link the Claimant to any



wrongdoing. Kiambi, on the other hand, confirmed the Claimant's prolonged suspension but was not directly involved in the disciplinary process or document delivery. The Claimant maintained that her role was clerical, involving recording bonds in a register, and she denied any involvement in issuing bonds or the alleged misconduct.

10. The Claimant cited multiple cases to support her submissions, including Catherine Muthoni Wairimu v Walter Reif [2015] eKLR, where the court emphasized the need for valid reasons for termination and found an ulterior motive in the claimant's removal from office. She also relied on Rebecca Ann Maina & Others v Jomo Kenyatta University of Agriculture and Technology [2015] eKLR, where the court held that protracted disciplinary proceedings amounted to an unfair labor practice and violated Article 41(1) of *the Constitution*. The Claimant highlighted Margaret Ayuma Katungu v Attorney General [2018] eKLR, where the court found prolonged interdiction and disregard for procedural guidelines unlawful. Additionally, in Emy Amwayi Matiakwa v Kenya Revenue Authority [2022] eKLR, the court ruled that prolonged disciplinary processes contravened Articles 47 and 236 of *the Constitution*, as well as the Respondent's Code of Conduct. The Claimant cited the Indian case of P. V. Mahadevan v M.D. Tamil Nadu Housing Board (2005) 6 SCC 636, where the court emphasized that prolonged disciplinary inquiries against government employees should be avoided. The court held that such delays are detrimental not only to the interests of the employee but also to the public and the broader objective of maintaining confidence among government employees.
11. The Claimant submitted that the delay in resolving her case, flawed disciplinary process, and discriminatory treatment caused her mental anguish and violated her constitutional rights. She argued that the termination lacked substantive and procedural fairness, contravening Sections 41, 43, and 45 of the *Employment Act*, Article 47 on fair administrative action, and Article 236 on the protection of public officers. The Claimant, therefore, prayed for a declaration that her termination was illegal, null, and void; adequate compensation for the time lost out of employment; damages for unlawful termination; costs of the suit; and interest on all awarded amounts.

### **Respondent's Case**

12. The Respondent filed a Statement of Response dated 14<sup>th</sup> October 2022 and on 1<sup>st</sup> November 2022 filed an Amended Statement of Response. In the Respondent's Amended Statement of Response dated 1<sup>st</sup> November 2022, the Respondent categorically denied all allegations in the Claimant's Statement of Claim, except for those explicitly admitted.
13. The Respondent affirmed its establishment under Section 3 of the *Kenya Revenue Authority Act*, which mandates it with the primary function of assessing, collecting, and accounting for all revenues. It confirmed that the Claimant, employed as a Data Entry Operator Grade KRA '13' through letter dated 28<sup>th</sup> May 2004, and confirmed in her appointment by letter dated 29<sup>th</sup> March 2005, was employed until her termination on 29<sup>th</sup> August 2019 due to gross misconduct, specifically negligence of duty. The termination was effected through letter dated 29<sup>th</sup> August 2019, following an investigation into fraudulent actions.
14. In response to paragraph 3 of the Claimant's Statement of Claim, the Respondent clarified that the Claimant's employment was governed by various statutes, including the *Kenya Revenue Authority Act*, the *Value Added Tax Act*, the *Income Tax Act*, the *Tax Procedures Act*, the East Africa Customs Management Act, and the Kenya Revenue Authority's Code of Conduct. The Claimant was placed on suspension on 9<sup>th</sup> November 2016 to facilitate investigations into allegations of fraudulent activities, including facilitating the processing of fake Customs Transit Bonds purported to be from Occidental Insurance, valued at Kshs. 13,931,272. The Claimant was also alleged to have received Kshs. 2,627,990 from Alex Mutende Nandwa, a key figure in the fraud scheme.



15. On 1<sup>st</sup> February 2016, the Deputy Commissioner-Human Resource received the investigation report dated 28<sup>th</sup> January 2016, which resulted in criminal charges being laid against the Claimant. Following this, the Claimant received a show cause letter on 15<sup>th</sup> March 2017 to which she responded on 27<sup>th</sup> March 2017. The matter was referred to the Investigation and Strategic Operations Department, which completed its report on 31<sup>st</sup> August 2018 and recommended disciplinary action against the Claimant.
16. On 15<sup>th</sup> July 2019, the Claimant was issued a further show cause letter based on findings from the investigation that she had deliberately failed to enter customs bonds in the Customs Movement Register between January 2011 and June 2015, facilitating the processing of fake customs bonds. Additionally, the Claimant had received Kshs. 2,627,990 via Safaricom from Alex Mutende Nandwa, which she claimed was proceeds from selling maize. However, this explanation was unsupported. Despite being given an opportunity to respond to the allegations, the Claimant failed to provide written representation and did not attend the disciplinary hearing on 23<sup>rd</sup> August 2019, as invited via letter dated 13<sup>th</sup> August 2019.
17. As a result, the Claimant's services were terminated on 29<sup>th</sup> August 2019 for gross misconduct, in accordance with the provisions of the Kenya Revenue Authority Code of Conduct and Section 44(4) (c) & (g) of the *Employment Act*, 2007, which address the grounds for dismissal due to misconduct such as negligence and dishonesty.
18. The Claimant appealed the termination in letter dated 25<sup>th</sup> October 2019, but her appeal was dismissed on 12<sup>th</sup> November 2019 due to her failure to provide new evidence, in line with Clause 9.1.2 of the KRA Code of Conduct. The Respondent further confirmed that the Claimant cleared with the Authority, and all her terminal dues were settled in December 2019, which included payment for her salary up to 29<sup>th</sup> August 2019, withheld salary, transport allowance, and three months' salary in lieu of notice.
19. The Respondent argues that the termination was lawful, fair, and procedural, adhering to the *Employment Act*, 2007, the *Kenya Revenue Authority Act*, and the Kenya Revenue Authority Code of Conduct, specifically referencing Section 41 (dealing with the procedural fairness of dismissals) and Section 44 (addressing dismissal on grounds of gross misconduct). The Respondent denies any violation of the Claimant's rights under Article 47 of *the Constitution* of Kenya, the *Employment Act*, 2007, and the Code of Conduct, asserting that the actions taken were proportionate to the offense committed.
20. The Respondent further contends that no loss or damages were attributable to the Claimant, and she is not entitled to any compensation. The Respondent prays that the Claimant's suit be dismissed with costs, asserting that the suit is without merit.
21. The Respondent in their witness statement dated 19<sup>th</sup> November 2024, stated that Peter Kiambi, an Assistant Manager in the Human Resource Division under the Employee Relations Unit at Kenya Revenue Authority (KRA), had read and understood the Memorandum of Claim filed by the Claimant, Lilian Onyango, dated 24<sup>th</sup> August 2022. They indicated that the Claimant was employed as a Data Entry Operator, Grade KRA '13', on 28<sup>th</sup> May 2004, confirmed on 29<sup>th</sup> March 2005, and later terminated on 29<sup>th</sup> August 2019 for gross misconduct following an investigation. The Respondent outlined that the Claimant's contract was governed by various statutory provisions, including the *Kenya Revenue Authority Act*, the *Value Added Tax Act*, the *Income Tax Act*, the *Tax Procedures Act*, the East Africa Customs Management Act, and the Respondent's Code of Conduct.



22. The Respondent asserted that the Claimant was suspended on 9<sup>th</sup> November 2016 to facilitate investigations into allegations of her involvement in processing fake Customs Transit Bonds purporting to be from Occidental Insurance, valued at Kshs. 13,931,272, and receiving Kshs. 2,627,990 from Mr. Alex Mutende Nandwa, the main suspect in the fraud. They further stated that an investigation report dated 28<sup>th</sup> January 2016 recommended criminal charges against the Claimant and others. Subsequently, the Claimant was issued a show cause letter dated 15<sup>th</sup> March 2017 and another on 15<sup>th</sup> July 2019 following the completion of internal investigations, which revealed that the Claimant had facilitated fraudulent transactions by failing to follow procedures. Specifically, the Claimant had allegedly failed to record customs bonds in the movement register and knowingly processed fake bonds, while also receiving money through her mobile number from the main suspect.
23. The Respondent noted that the Claimant did not submit any written representation in response to the show cause letter and was invited to a disciplinary hearing scheduled for 23<sup>rd</sup> August 2019, but she did not attend despite receiving the invitation. The Respondent determined that the Claimant had violated various clauses of the KRA Code of Conduct, including Clauses 6.2.5.6, 6.2.5.4, and 6.2.2.1, as well as Section 44(4)(c) and (g) of the Employment Act, 2007, and dismissed her summarily for gross misconduct.
24. The Respondent stated that the Claimant's appeal against her termination was declined on 12<sup>th</sup> October 2019 for lack of new evidence, and her final dues, including salary up to the termination date, withheld salary, transport allowance, and three months' salary in lieu of notice, were fully settled in December 2019, along with a certificate of service. They refuted allegations that the Claimant was not provided with necessary documents or that the process contravened her constitutional and statutory rights, asserting that the investigation and disciplinary process were conducted lawfully and within a reasonable timeframe.
25. The Respondent contended that the Claimant was given ample opportunity to defend herself, enjoyed full salary and allowances during the investigation period, and her termination was fair, procedural, lawful, and justified. They denied any breach of the Claimant's constitutional rights under Articles 41, 45, 47, and 50 or any provisions of the Employment Act, maintaining that the Claimant lacked merit and should be dismissed with costs to the Respondent.

### **Respondent's Written Submissions**

26. The Respondent, in their written submissions dated 15<sup>th</sup> January 2025, stated that the Claimant was employed as a Data Entry Operator Grade KRA '13' on 28<sup>th</sup> May 2004 and was confirmed in her position on 29<sup>th</sup> March 2005. She was suspended on 9<sup>th</sup> November 2016 to allow investigations into allegations that she facilitated the processing of fake Customs Transit Bonds purporting to be from Occidental Insurance and valued at Kshs. 13,931,272 while working in the Customs Bonds section. Further allegations included receiving Kshs. 2,627,990 from one Mr. Alex Mutende Nandwa, identified as the main perpetrator of the fraud. On 1<sup>st</sup> February 2016, an investigation report dated 28<sup>th</sup> January 2016, forwarded by the Investigation and Enforcement Department, recommended criminal charges against several officers, including the Claimant. A show cause letter dated 15<sup>th</sup> March 2017 was issued to the Claimant, and she responded on 27<sup>th</sup> March 2016. The matter was further investigated internally, culminating in a report dated 31<sup>st</sup> August 2018 recommending disciplinary action against the Claimant for her alleged involvement in fraudulent issuance of fake customs bonds.
27. The Claimant was issued another show cause letter on 15<sup>th</sup> July 2019 based on findings that, as Secretary to the Customs Bonds section from January 2011 to June 2015, she failed to record bonds in the customs movement register as required. This omission facilitated the processing of fake bonds



- purportedly from Occidental Insurance. Investigations also revealed that the Claimant had received Kshs. 2,627,990 from Mr. Nandwa, which she claimed were proceeds from a maize business, though she did not provide evidence to support this assertion. The show cause letter was sent to the Claimant via her official email on 18<sup>th</sup> July 2019, and she acknowledged receipt. Despite being invited to a disciplinary hearing scheduled for 23<sup>rd</sup> August 2019, the Claimant failed to attend or provide written representation. Consequently, her services were terminated on 29<sup>th</sup> August 2019 on grounds of gross misconduct, and she was notified of her entitlements and the right to appeal, which she later exercised on 25<sup>th</sup> October 2019.
28. The Respondent argued that the termination met the procedural and substantive requirements under the *Employment Act*, 2007. Citing Sections 41 and 45, they contended that procedural fairness and substantive justification were upheld. The Court of Appeal decisions in *Cooperative Bank of Kenya Limited v Banking Insurance & Finance Union (K)* [2017] eKLR and *Iyego Farmers Co-operative Sacco v Kenya Union of Commercial Food and Allied Workers* [2015] eKLR were relied upon to emphasize the dual requirement of valid reasons for termination and adherence to procedural fairness. Additionally, Section 43 of the *Employment Act* was invoked, requiring an employer to prove the reasons for termination.
  29. The Respondent submitted that there were valid and justifiable reasons for termination. The Claimant's failure to follow the procedure for bond processing as outlined in the Procedure Manual for Bond Execution demonstrated gross negligence. The investigation established that she deliberately failed to record bonds and received money from Mr. Nandwa, as confirmed during cross-examination. Further, the Respondent highlighted that the Claimant was charged with making false documents and conspiracy to commit a felony, offenses under Sections 347(a), 349, and 393 of the Penal Code, as documented in Nairobi Chief Magistrate Criminal Case No. 259 of 2016. Under Article 6.1.1.7 of the KRA Code of Conduct, an employee may be terminated if reasonably suspected of committing a criminal offense against the employer. Gross misconduct, as defined under Article 3 of the KRA Code, includes fraud, forgery, and bribery, regardless of a criminal conviction.
  30. Regarding procedural fairness, the Respondent contended that the Claimant was accorded due process in line with Section 41 of the *Employment Act* and natural justice principles as articulated in *Samsung Electronics East Africa Ltd v K. M* [2017] eKLR and *Githiga & 5 Others v Kiru Tea Factory Company Ltd (Petition 13 of 2019)* [2023]. The Claimant received the show cause letter and an invitation to the disciplinary hearing through multiple channels, including email, WhatsApp, and official correspondence. Despite evidence of receipt, she failed to appear or provide written representation. The Respondent referred to *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike* [2017] eKLR to demonstrate compliance with the hearing requirements under Section 41, including notifying the Claimant of charges, inviting her to the hearing, and advising her of her right to representation.
  31. The Respondent emphasized that the Claimant's failure to attend the hearing was unjustified, relying on *BIFU v Barclays Bank of Kenya (Cause 1660 of 2013)* and *Gideon Akwera v Board of Governors Church on the Rock Academy* [2015] eKLR to argue that an employer cannot be faulted for an employee's non-attendance. The Claimant was informed of her termination, entitlements, and the right to appeal.
  32. The Respondent further stated that Section 62 of the *Anti-Corruption and Economic Crimes Act*, which provides for suspension of public officers charged with corruption, does not set a definite timeline for disciplinary processes. While the Respondent endeavors to conclude such matters within six months, unavoidable circumstances may necessitate delays, and each case is determined on its



- unique circumstances. The Respondent submitted that prolonged interdiction does not benefit the organization, as the employee continues to draw benefits without rendering services.
33. In this case, the Respondent exercised patience, ensuring proper investigations were concluded and recommendations for disciplinary action were made before dismissing the Claimant. The Respondent maintained that the Claimant received half salary without delays during her interdiction, and the termination letter dated 29th August 2019 confirmed that she would receive the remaining withheld salary and allowances, which served as sufficient compensation for the interdiction period. Additionally, the Claimant and her dependents continued to benefit from medical cover during the interdiction.
  34. The Respondent asserted that the Claimant failed to demonstrate any prejudice suffered due to the delay in concluding the disciplinary process and did not disclose to the court the benefits she received during the interdiction period. The Claimant's allegations of mental anguish were unsubstantiated, given her failure to raise concerns during the delay. The Respondent further argued that the Claimant sought unjust enrichment by withholding material facts about the benefits offered in the termination letter. Since the Claimant was accorded an opportunity to attend a disciplinary hearing, which she failed to honour, the Respondent submitted that there was no breach of Article 47 of *the Constitution* of Kenya.
  35. Regarding the remedies sought, the Respondent contended that the termination was lawful and that the Claimant was not entitled to any of the reliefs claimed. The Respondent emphasized the need for proportionality in compensatory awards, as underscored in *D.K. Njagi Marete v. Teachers Service Commission* [2013] eKLR, where the court noted that awards should address economic injury without punishing employers. The Respondent argued that the Claimant was not entitled to compensation for lost time out of employment since she was on half pay and enjoyed benefits such as medical cover during the interdiction. The Respondent also submitted that damages for unlawful termination were unwarranted, as the termination process was lawful and grounded in the findings of the investigation report, which established the Claimant's culpability. The Respondent cited *Cecilia Karuru Ngavu v. Barclays Bank of Kenya & Another* [2016] eKLR and *Republic v. Rosemary Wairimu Munene* to emphasize that costs follow the event and should not penalize the losing party. The Respondent concluded that they adhered to procedural fairness throughout the disciplinary process and that the Claimant's termination was lawful and justified under the *Employment Act*, 2007, and the claim lacked merit, warranting dismissal with costs.
  36. I have examined all the evidence and submissions of the parties herein. The main contention by the claimant herein is that she was unfairly terminated having been terminated without any valid reasons and was subjected to a flawed disciplinary process. The claimant further avers that she was placed on suspension for a period of over three years contrary to the respondents own human resource manual.
  37. From the evidence on record, it is true that the claimant was placed on suspension and also issued with a show cause letter. She contended that the suspension was on the 9<sup>th</sup> November 2016 and show cause letter was on the 15<sup>th</sup> March 2017. This fact can be verified from the letter addressed to the claimant and produced by the respondents dated 15<sup>th</sup> July 2019 reference number conf/6230/(32) which makes reference to the said letters. The letter is however incomplete but only refers to negligence of duty. The respondents seem to indicate that it is a show cause letter.
  38. The Claimant has averred that this letter was never delivered to her as it was sent to her KRA email account which was blocked when she was suspended. It is indeed true that the letter was send to claimant's official email when she was on suspension having been placed on suspension in 2016 and therefore it is safe to conclude that this second show cause letter was never received by the claimant.



39. The claimant also averred that she was never subjected to any disciplinary hearing. The respondents aver that they invited the claimant to a disciplinary hearing on 13<sup>th</sup> August 2019 but she never appeared. The respondents refer to an email sent on the said date which email was also sent to an email [lilieonyango@yahoo.com](mailto:lilieonyango@yahoo.com). The claimant averred that she never received the said email and that she only learnt of her termination through a colleague. The respondents have not established that the email address in question belonged to the claimant and that they had previously communicated to her on this email or even that she had declared the same as hers.
40. In the absence of any confirmation that the claimant was indeed invited to a disciplinary hearing and she declined to attend, it follows that there is no evidence that the claimant was subjected to a fair disciplinary process and that there were valid reasons leading to her termination.
41. The claimant also avers that she was placed on suspension for over three years contrary to the respondents' human resource manual. She avers that no documents were also provided to enable her defend herself. Despite this assertion, the claimant failed to produce the alleged manual for reference and also failed to prove that she indeed sought for certain documents which were never provided.
42. Section 45(2) of the [Employment Act](#) 2007 states as follows; -  
A termination of employment by an employer is unfair if the employer fails to prove—  
a. that the reason for the termination is valid;  
b. that the reason for the termination is a fair reason—  
i. related to the employees conduct, capacity or compatibility; or  
ii. based on the operational requirements of the employer; and  
(c) that the employment was terminated in accordance with fair procedure.
43. The law is clear that an employee should not be terminated without proper reasons being established and without due process. Having found that the claimant was terminated without due process and without establishing the existence of valid reasons leading to the termination, I find that the claimant was unfairly and unjustly terminated.
44. As concerns remedies sought by the claimant, I find for the claimant and award her as follows-  
A. 8 months' salary as compensation for the unfair termination based on her gross pay=  
8x119,000=952,000/- less statutory deductions  
B. The Respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgement

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY, 2025.**

**HELLEN WASILWA**

**JUDGE**

