Villa Sandra Company Limited v Matete (Employment and Labour Relations Appeal E115 of 2024) [2025] KEELRC 859 (KLR) (14 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 859 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS APPEAL E115 OF 2024

JW KELI, J

MARCH 14, 2025

BETWEEN

VILLA SANDRA COMPANY LIMITED ..... APPELLANT

AND

MUTUNGA MATETE ..... RESPONDENT

(Being an Appeal from the Judgment and Decree of the Honourable S.N Muchungi (PM) delivered at Nairobi on the 8th March, 2024 in Nairobi MCELRC No. E633 of 2022)

JUDGMENT

1. The Appellant,dissatisfied with the Judgment and Orders of the Honourable S.N Muchungi (PM) delivered at Nairobi on the 8th March, 2024 in Nairobi MCELRC No. E633 of 2022 between the parties filed a Memorandum of Appeal dated 8th April 2024 seeking the following orders:-
    a. That the Appeal be allowed with costs;
    b. The Respondent's Claim at the Lower Court be dismissed with costs;
    c. In the alternative, this Honourable Court do make its own findings on the appeal; and
    d. Costs of the appeal

Grounds of the Appeal

2. The Learned Magistrate erred both in law and fact by holding that there was a contract of employment between the Appellant and the Respondent contrary to the evidence tendered before the Court and in complete disregard to the provisions of Section 107 of the *Evidence Act* Chapter 80 Laws of Kenya.

3. The Learned Magistrate erred both in law and fact by holding that the Respondent was an employee of the Appellant between 2014 and 2022 without any evidence in support of the allegation being tendered before Court and which is in contravention of Section 9 of the *Employment Act*, 2007.

4. The Learned Magistrate erred both in law and fact by taking into account hearsay evidence which is inadmissible under the *Evidence Act* Chapter 80 Laws of Kenya and thus arrived at a wrong decision.

5. The Learned Magistrate erred both in law and fact by holding that the Respondent was an employee of the Appellant undertaking three different kinds of jobs at the same time when the Respondent was unable even to tender/state the specific duties he was discharging at the Appellant's rental premises where university students were residing save for the occasional cleaning of common areas when called upon to do so on casual basis and payment for the work done promptly made.

6. The Learned Magistrate erred both in law and fact by failing to appreciate the facts of the case, prevailing conditions of COVID 19 pandemic and the provisions of the *Employment Act*. 2007 and thus arrived at a wrong decision.

Background to the Appeal

7. The Claimant filed a suit against the Respondent vide a Memorandum of Claim dated 7th April, 2022 seeking the following orders:-

    a. A declaration that the Claimant was constructively terminated and that the constructive termination of the Claimant by the Respondent on 16/8/2021 was unfair and unlawful;

    b. An order compelling the Respondent to pay the Claimant his terminal benefits amounting to Kshs. 5,406,547.20; and

    c. Costs of the suit and interest on b) and c) above at Court rates from the date of filing suit till payment in full.

8. The Claimant filed his verifying affidavit, witness statement, and list of documents all of even date together with the bundle of documents (see pages 7-30 of ROA).

9. The claim was opposed by the Respondent who entered appearance and filed a Memorandum of Response dated 31st March, 2023 (pages 31-34 of ROA), Respondent's Witness statement of Mohamed Ali Iddow dated 5th April, 2023, Mercy Kaguuru dated 12th May, 2023 and the Respondent's list and Supplementary list and a bundle of documents (Pages 35-42 of ROA).

10. The claimant's case was heard on the 20th November, 2023 where the claimant testified on oath in the case, produced his documents, and was cross-examined by counsel for the Respondent Ms. Rotich (pages 58-62 of the ROA).

11. The Respondent's case was heard on even date where RW1 Mr. Mohammed Ali and RW2 Mercy Kaguuru testified on behalf of the Respondent. They relied on their filed witness statements. They were cross-examined by counsel for the claimant ,Mr. Obiero (pages 63-67of the ROA).

12. The parties took directions on filing of written submissions after the hearing. The parties complied.

13. The Trial Magistrate Court delivered its Judgment on the 8th March, 2024 in favour of the Claimant awarding the Claimant a total sum of Kshs. 303,543.9 comprising of unpaid salary from May, 2021-16th August 2021, notice Pay in the sum, underpayment; unpaid leave, service pay, compensation for unlawful termination and costs of suit and interest at court rates (Judgment at pages 69-75 of the ROA).

Determination

11. The appeal was canvassed by way of written submissions. Both parties complied.

11. This being a first appellate court, it was held in Selle v Associated Motor Boat Co. [1968] EA 123 that:- "The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

11. The court is further guided by the principles on appeal decisions in Mbogo v Shah [1968] EA De Lestang V.P (as he then was) observation at page 94: "I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

Issues for determination

14. Both the Appellant and the Respondent submitted on the merits of the Appeal.

15. The court having perused the grounds of appeal was of the considered opinion that the issues for determination in the appeal were as follows:-

    a. Whether the trial court erred in fact and law on the employment relations between the parties.

    b. Whether the trial court erred in fact and law in its decision on relief.

Whether the trial court erred in fact and law on the employment relations between the parties.

16. The grounds of appeal as stated related to the issue being:-

    a. The Learned Magistrate erred both in law and fact by holding that there was a contract of employment between the Appellant and the Respondent contrary to the evidence tendered before the Court and in complete disregard to the provisions of Section 107 of the *Evidence Act* Chapter 80 Laws of Kenya.

    b. The Learned Magistrate erred both in law and fact by holding that the Respondent was an employee of the Appellant between 2014 and 2022 without any evidence in support of the allegation being tendered before Court and which is in contravention of Section 9 of the *Employment Act*, 2007.

    c. The Learned Magistrate erred both in law and fact by taking into account hearsay evidence which is inadmissible under the *Evidence Act* Chapter 80 Laws of Kenya and thus arrived at a wrong decision.

    d. The Learned Magistrate erred both in law and fact by holding that the Respondent was an employee of the Appellant undertaking three different kinds of jobs at the same time when

the Respondent was unable even to tender/state the specific duties he was discharging at the Appellant's rental premises where university students were residing save for the occasional cleaning of common areas when called upon to do so on casual basis and payment for the work done promptly made.

e. The Learned Magistrate erred both in law and fact by failing to appreciate the facts of the case, prevailing conditions of COVID 19 pandemic and the provisions of the *Employment Act*. 2007 and thus arrived at a wrong decision.

17. The trial court held that the claimant's evidence as regards the issue of employee –employer relationship was generally not controverted as follows:-

> ''The claimant told the court that he was employed as a cleaner through an oral agreement with the Respondent on 8/05/2014 at a monthly salary of Kshs. 12000. He however ended up taking up more roles whenever other workers/ employees left the respondent's employment .... His evidence was corroborated by his witness who stated the claimant was a jack of all trades at the Respondent's premises. The respondent's witness who couples as their agent was unable to rebut this evidence. In actual sense she supported the claimant's evidence. She stated that when she was engaged in May 2021. She found the claimant in the respondent's employment. The respondent told her the claimant worked for them as a caretaker at monthly salary of Kshs. 12000. She was told that he used to run the hostel business and also cleaned the premises. Having worked for the respondent as a cleaner, driver and caretaker from 2014 until when his services were terminated his employment cannot be termed to have been in a casual basis as the respondent would want the court to believe. A casual employee is paid a daily wage and is engaged when the need arises which does not appear to have been the arrangement herein. The claimant worked on a day to day basis and received a monthly salary.''(Excerpt from judgment at pages 72-73 of ROA)

The appellant's submissions

18. The appellant submitted that at the hearing the respondent testified and called as his witness Mohamed Ali Iddow. The appellant called as its witness Mercy Kaguure. During the hearing, the respondent confirmed there were no short text messages produced in court to prove communication and no evidence of salary payment for the entire period. The issue of the father being sick and burial expenses had no nexus with the employment claim. The appellant submitted that the respondents did not produce any of the following :-

a. Any M-PESA statement from 2012 to 2020.

b. SMS from the alleged directors of the respondent.

c. Any document from the respondent e.g. letter of appointment, any documents from the respondent.

19. The Appellant contended that the notice to residents (page 25 of ROA) relied on to prove the respondent was an employee of the appellant was not on the letterhead of the appellant and does not bear the stamp of the appellant. There was nothing to show it was prepared by the appellant. That it could have been typed and printed by anyone hence of no evidential value. The receipt of rent of where the respondent resides had no relevance to the case(page 39-40 of ROA). The produced M-PESA statement had no single entry of receipt of money from the appellant(pages 17-24 of ROA).That the respondent did not produce evidence in court to show that the people he had mentioned, being Esther and Andrew Nyamwamu, that they were directors for the appellant. No

evidence of communication between the respondent and the said persons was tendered in court. The allegations were unsubstantiated as per section 109 of the *Evidence Act*. The issue of driving unknown Motor Vehicle was unsubstantiated and strange. No evidence on details of the said Motor Vehicle produced. The appellant maintained that the hostel was for university students who are not driven around like primary school children. The respondent assertions that he used to drive the university students from the hostel to unknown university was absurd and unacceptable.

20. The respondent took issue with the testimony of its witness Mercy Kaguuru that by the time she took over the management of the appellant's premises, the respondent was not in employment of the appellant but was informed that if she needed a person for cleaning the common areas of the hostel she could contact the claimant. The appellant submitted that the said Mercy Kaguuru never interacted with the respondent during the alleged period of employment and what she said about the alleged employment was hearsay and therefore inadmissable.

21. The appellant maintained that the respondent was called upon to clean the common areas of the hostel when necessary and payment was done, that to employ a cleaner for common areas of hostel was strange and it was common knowledge that common areas in a building are cleaned periodically. The appellant to buttress it assertion that the respondent's case was not proved on a balance of probabilities relied on the provisions of section 47(5) of the *employment act* to wit:-"(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer."

Respondent's submissions

22. The Respondent in opposition to the appeal submitted as follows:-

23. An employee is defined in the *Employment Act* as: -

> "employee" means a person employed for wages or a salary and includes an apprentice and indentured learner; and an employer is defined as- "employer" means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company; "forced or compulsory labour" In the same breath, employer-employee relationship is defined in Black's Law Dictionary 10th Edition as "the association between a person employed to perform services in the affairs of another, who in turn has the right to control the person's physical conduct in the course of that service. At common law the relationship was termed master-servant"

24. Flowing from the above definitions of an employee, employer and the employee-employer relationship, and considering the instant case, the Respondent was engaged by the Appellant vide an oral contract of employment for which he was paid monthly for the services he rendered for the Appellant as a caretaker, cleaner and driver of the appellant. The Appellant's witness, that is Mercy Kaguuru, in her testimony and in reference to page 65 and 66 of the records of appeal, confirmed that the Respondent was engaged as a cleaner and caretaker and paid Kshs. 12, 000/- per month. This testimony by the Appellant's witness was also buttressed by the Respondent documents which was marked as Claimant's Exhibit 3 where the Appellant addressed the residents through its directors that all payments for purposes of rents were to be forwarded to the Respondent for verification. The said notice indicated the Respondent as an employee of the Appellant and engaged as the caretaker of the Appellant's hostels. This in itself was an admission that indeed the Respondent was an employee of the

Appellant engaged to that extent and hence there was a creation of employer-employee relationship prior to his termination.

25. It is trite law that an employment relationship as defined in the *Employment Act* is for payment of wages periodically either daily, weekly or monthly, in cash as provided in section 18 of the Act which provides as follows: -

> ''18. When wages or salaries due
>
> (1) Where a contract of service entered into under which a task or piece-work is to be performed by an employee, the employee shall be entitled—
>
> (a) when the task has not been completed, at the option of his employer, to be paid by his employer at the end of the day in proportion to the amount of the task which has been performed, or to complete the task on the following day, in which case he shall be entitled to be paid on completion of the task; or
>
> (b) in the case of piece-work, to be paid by his employer at the end of each month in proportion to the amount of work which he has performed during the month, or on completion of the work, whichever date is the earlier.
>
> (2) Subject to subsection (1), wages or salaries shall be deemed to be due—
>
> (a) in the case of a casual employee, at the end of the day;
>
> (b) in the case of an employee employed for a period of more than a day but not exceeding one month, at the end of that period;
>
> (c) in the case of an employee employed for a period exceeding one month, at the end of each month or part thereof;
>
> (d) in the case of an employee employed for an indenite period or on a journey, at the expiration of each month or of such period, whichever date is the earlier, and on the completion of the journey, respectively. At trial, the Appellant's witness told the court that she was informed by the Appellant, through its directors while engaging her services as an agent of the Appellant, that the Respondent used to run the hostel business and that he was paid Kshs. 12, 000/- every month for the services he rendered as captured under page 66 of the records of appeal. In the Statement of Claim of the Respondent at Paragraph 3 thereof, he indicated that he was being paid Kshs. 12, 000/- every month for the work he did as the caretaker of the Appellant, this therefore confirms that indeed the Appellant engaged the Respondent and that he paid him a salary of Kshs. 12, 000/-. 24. There was proof that the Respondent was an employee and the same was confirmed by the Appellant's witness whose evidence did not controvert the claim that indeed the Respondent was an employee of the Appellant and was unfairly terminated as per the findings of the trial court.

26. The Respondent, to buttress his claim in the trial court, submitted that the Appellant did not prove his claim at the trial court and the grounds upon which they mount in support of this appeal that there was no employment relationship between the Appellant and the Respondent is unfounded as the Appellant failed to give evidence to rebut the fact that the Respondent was its employee during trial. Flowing from the above paragraph, the Court be guided by the decisions in Protus Wanjala Murike -

v- Aglo African Properties t/a Jambo Mutara Lodge Laikipia (2021) eKLR where D.K Marete J held that: -

> "it binds the claimants at the onset bring out the case of unlawful termination for employment to which the respondent shall adduce evidence in justification failure of which a claim is lost."

Further in Casmir Nyakundi Nyaberi -v- Mwakikar Agencies Limited (2016) eKLR where Justice Ndolo Observed at paragraph *11* as follows: -

"11. This Court is fully aware that it is the responsibility of an employer to document the employment relationship and in certain respects, the burden of proving or disproving a term of employment shifts to the employer. This does not however release the Claimant from the burden of proving their case. Even where an employment contract is oral in nature, the Claimant must still adduce some evidence whether documentary or viva voce to corroborate their word. More importantly, where an employee believes that the employer has in its possession some documents that would support the case of the employee, that employee is obligated to serve a production notice."

27. The burden of proof is explained under section 107(1) and (2) of the *Evidence Act* to wit: -

''107. SUBPARA (1)

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.''. Further, the *Employment Act* under section 47 (5) delineates the burden of proof in employment claims to wit:-

''47(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer."

The Respondent did prove through his evidence that indeed the Appellant did engage his services for the purposes of caretaker, driver and cleaner at the Appellant's hostels. This evidence has been supported by the Appellant's own evidence through its witness. Thus, the burden for purposes of proving that the Respondent was not an employee of the Appellant, rests on the Appellant as submitted herein above and in reference to the decisions of the courts.

28. Section 45 (2) of the *Employment Act* provides that unlawful dismissal occurs when an employer fails to prove the below pointers-

a) The validity of the reasons to have the employee terminated

b) The reasons for termination as being fair in the circumstances of the employment set up and

c) That the termination was done in accordance with the fair procedures. Section 45 (4)(b) of the Act states that for termination to be deemed as fair, then it must be founded on the circumstances that the employer acted only in accordance with set procedures in law and purely on a justifiable basis. It goes then that if the Employer is unable to provide fair reasons and comply with the set procedures of terminating an employee, then the termination is termed as unlawful, this position was not demonstrated by the Appellant through evidence at trial.

31. In our circumstances, the Respondent proved that he was employed by the Appellant and there existed an employment relationship and he was terminated without any reasons, he got frustrated at work, worked without pay, his duties given to another person so that he can leave his employ and he was not also not given any notice of termination and/or given any explanation for the actions by the directors of the Appellant, this evidence remains un-rebutted. In effect, the Respondent was an employee who was dismissed, constructively and the court to find as such.

29. On whether the appeal should be allowed, the Respondent submitted that he was constructively dismissed as he was frustrated into leaving his employment by not being paid for his services. Looking through the evidence of the Respondent coupled with the testimony of the Appellant's witness, it is vivid that the Respondent was employed by the Appellant and was later frustrated by not being paid until he left his work. This position was supported by the Appellant's witness who testified that she engaged the Respondent Ten times but did not pay him his dues as need be. Reference is made to page 66 of Records of Appeal. Having submitted as such, in the foregoing paragraphs, it is clear that indeed the burden of proving employment relationship between the Respondent and the Appellant was discharged and the same was not rebutted through evidence by the Appellants during trial. For the interest of justice, the Court is urged uphold the trial court's decision and dismiss this appeal with costs to the Respondent.

Decision

30. The Respondent pleaded in detail is employment relations with the appellant represented by one Andrew Nyamwamu and Esther Kwamboka who he stated were directors of the appellant. He further stated he was engaged as caretaker of hostel of the appellant at a monthly salary of Kshs. 12000. He produced his M-pesa statement where on 7th may 2021 he received Kshs. 12000 from Andrew Nyamwamu(page 22 of ROA). The Respondent stated he was constructively dismissed having absented himself for the frustration of salary payment and reduced salary. He called as his witness Mohammed Ali Iddow who recorded a statement dated 5th April 2023. Mohammed told the trial court that he saw the Respondent cleaning the common arears of the hostel and driving students to school. He used to be with the respondent sometimes waiting for security team to report. (pages 36-37 of ROA).

31. The Appellant's witness Mercy Kaguuri recorded witness statement dated 12th may 2023. She was the agent of the appellant. She wrote that the claimant was engaged by the appealing on casual basis to do cleaning and had no existing form of salaried employment. That during COVID outbreak the tenants left and the cleaning services of the respondent were not required hence an agent was engaged to manage the premises. That the Appellant extended the Kshs. 12000 as token for the sick father of the respondent and the money was not as salary. The statement was to the effect that all monies paid by the respondent by the two persons was on basis of good relations and not salary.

32. During cross-examination the respondent told the court he was employed as a cleaner in 2014. In 2017 after the caretaker left he took over and cleaned hostel and then dropped students at various universities which he named. He did not produce his driving licence. During Covid 19 pandemic only one student was left. He left to bury his late father and on return found an agent had been engaged as a caretaker. It was the hostel owner who used to pay him. The agent never paid him. After the burial, Esther Kwamboka sent him Kshs. 3000 for rent.The respondent told the trial court he was paid salary on monthly basis. CW2 was Mohamed. On cross-examination he stated that he knew the respondent as a driver and cleaner of the Appellant but in 2020 he stopped driving. CW2 knew the Vehicle of the Appellant driven by the Respondent as white Toyota but had forgotten the registration number.

33. RW1 was Mercy Kaguuru who on cross-examination stated that she started working as managing agent of respondent hostel in 2021. She was not privy to what happened in 2020. The claimant was introduced to her as someone who was managing the hostel. The respondent had told him he used to pay the claimant Kshs. 12000 when he was running the hostel but did not say the work he was doing. She engaged the claimant for less than 10 times but payment was done by the respondent . During re-exam RW1 told the trial court that the appellant had told him he used to engage the respondent to run the hostel bus and for day to day cleaning. She engaged him for a number of days on need basis. She found the respondent working but not much business. After the hearing it was recorded the appellant stated that RW1 had not supported its case and wished to call another witness which request was denied.

34. From above analysis the court found that the respondent had proved he was employed by the Appellant from 2014 to sometimes 2021 when an agent took over. There was evidence he was paid salary of Kshs. 12000 on monthly basis from the evidence of M-PESA statement and as corroborated by RW1. The respondent position that the claimant was a casual could not hold water as it was not disputed he worked from 2014 to 2021 when he was replaced by the agent. Section 37 of the *Employment Act* applied to find that such engagement even if it started as casual converted to contract of service as follows:- ''37. Conversion of casual employment to term contract

    (1) Notwithstanding any provisions of this Act, where a casual employee—

        (a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or

        (b) performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more, the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of service.''

35. The appellant submitted there was no evidence that Nyamwamu and Kwamboka were directors. The court applying the provisions of section 47 (5) of the *Employment Act* found that the claimant proved his case of employment on a balance of probabilities and the same was corroborated by the CW2 and RW1. The respondent had the duty to rebut that evidence which it failed in totality. The claimant had pleaded with precision the employment relationship and the defence statement admitted to the monies received(page 33 of the ROA).The court upheld the decision of the trial court that the claimant was on contract of service with monthly salary of Kshs. 12000.

Whether the trial court erred in fact and law in its decision on relief.

36. The respondent pleaded that for frustration on salary payment(reduction of salary to Ksh. 6000 and non-payment) and appointment of agent, he left work and never returned and hence was constructively dismissed. The trial court held that the claimant was justified to stopping working for the respondent since they had made the conditions unbearable for him. He proved that he was constructively dismissed from employment and his termination was thus unfair and unlawful. 37. The trial court relied don he decision on constructive dismissal in Coca-Cola East And Central Africa Limited V Maria Kagai Ligaga 2015 e KLR to hold the contract was frustrated by the appellant making it unbearable to continue to work. The trial court held the Respondent was underpaid as a cleaner/ general labour and applied the Minimum Wages Orders of 2017 and 2018 being for Kshs. 12926.55 and 13,572.90 respectively. The claimant was awarded unpaid salary from May 2021 to 16th August

2021 less Kshs. 3000 sent by Kwamboka. Notice pay underpayment, leave pay for 18 months, service pay and compensation for 8 months.

37. The appellant did not submit on the reliefs awarded. Taking into account the evidence before the trial court of the claimant having been engaged as a cleaner/ caretaker at salary of Kshs. 12000, the Minimum Wage Orders of 2017 and 2018, the replacement of the claimant with agent without any reason given to him and fact that he never went on leave the court on appeal found not basis of disturbing the award of the trial court as held in in Mbogo v Shah [1968] EA De Lestang V.P (as he then was) observation at page 94: "I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

38. In the upshot the Judgment and Decree of the Honourable S.N Muchungi (PM) delivered at Nairobi on the 8th March, 2024 in Nairobi MCELRC No. E633 of 2022 is upheld.

39. The appeal is dismissed with costs to the Respondent.

40. 30 days' stay is granted.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF MARCH , 2025.

J.W. KELI,

JUDGE.

In the Presence of:

Appellant –Moranga h/b Ondabu

Respondent –Abiero