



**Waikwa v Absa Bank Kenya PLC (Cause E022 of 2021)  
[2024] KEELRC 1038 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1038 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E022 OF 2021  
ON MAKAU, J  
APRIL 18, 2024**

**BETWEEN**

**JANE WAIRIMA WAIKWA ..... CLAIMANT**

**AND**

**ABSA BANK KENYA PLC ..... RESPONDENT**

**JUDGMENT**

1. By a Statement of Claim dated 15<sup>th</sup> April 2021, the claimant accused the respondent of unfair and unlawful termination of her employment and prayed for the following reliefs: -
  - a. A declaration that the claimant's termination is unfair, unlawful and contrary to the provisions of *the Constitution* of Kenya, the *Employment Act*, 2007 and the *Fair Administrative Actions Act*, 2025.
  - b. Damages and compensation for unfair, unlawful and wrongful termination of the claimant at the rate of Kshs.109,661.00 per month for 12 months as provided by law.
  - c. Exemplary and punitive damages, bearing in mind the frustrations, mental torture, anguish and suffering, the claimant unfairly has been subjected to with impunity and the magnitude of the unfair treatment the claimant has been deliberately forced to go through.
  - d. Unpaid salary of the days worked, unpaid leave and off days not consumed and or paid by the Respondent.
  - e. Cost of the suit and interest and certificate of service.
2. The respondent admitted that it employed the claimant until 2<sup>nd</sup> March 2021 when it dismissed her from employment. However, it denied that the dismissal was unlawful and averred that it was indeed fair since the reasons were valid and a fair procedure was followed. It therefore prayed for the suit to



be dismissed with costs. It further counterclaimed against the claimant Kshs.1,307,843.00 being loan plus interest outstanding from her.

## Evidence

3. The claimant adopted her written statement dated 15<sup>th</sup> April 2021 as her evidence in chief and produced a bundle of documents as exhibits. In brief, the claimant's evidence was that she joined the respondent in 2008 when it operated as Barclays Bank of Kenya Limited before it became ABSA Bank Kenya PLC. She worked until 2<sup>nd</sup> March 2021 when she was dismissed. As at that time she had been promoted to the position of SME Banker Nanyuki Branch earning Kshs.109,661.00 per month.
4. She contended that she was subjected to sexual harassment by her Branch Manager who told her that he was in the panel that recommended for her promotion. When she turned down the said demands manager threatened her with a dismissal. As a result, she was served with two show cause letters dated 2/9/2020 and 16/12/2020 leading to first and second warning letters. She reported the matter of sexual harassment to the HR Director but no action was taken against the perpetrator.
5. She stated that her dismissal of the claimant was kick started by the second show cause letter which accused her of failure to reach out to a customer to regularise her account in respect of two cheques which were due for payment. She contended that the said reason did not warrant her dismissal because it was not part of her job description to call clients to replenish their accounts. She contended that the Branch Manager was the person who signed the show cause letters, hearing notices and the dismissal letters to fulfil his promise that he would ensure that she was unsuccessful.
6. In view of the foregoing matters, she contended that her dismissal was unlawful and prayed for the reliefs sought in the suit.
7. On cross examination she reiterated that she joined the respondent in February 2008 and in March 2018 she was promoted. Subsequently, she was served with a show cause letter dated 2<sup>nd</sup> September 2019 on the basis of capability and under performance. She responded on 4<sup>th</sup> September 2019 and a hearing was done followed by a first warning letter dated 13<sup>th</sup> September 2019.
8. Therefore, she was served with second show cause letter accusing her of unprofessional conduct, change of mandate for Redeemed Gospel Church and disrespectful conduct. Another hearing was done which culminated to a final warning dated 29<sup>th</sup> September 2020.
9. She admitted that she was served with yet another show cause letter dated 16<sup>th</sup> December 2020 charging her with failure to contact a client contrary to bank procedures and in gross negligence. She was further charged with dishonesty and questionable integrity.
10. She responded on 19<sup>th</sup> December 2020 and on 22<sup>nd</sup> February 2021 she attended a disciplinary hearing after which she received a dismissal letter dated 2<sup>nd</sup> March 2021. She appealed the dismissal vide letter dated 8<sup>th</sup> March 2021.
11. She reiterated that she wrote to the Head of HR Mr.Vaslas in October 2020 to report a case of sexual harassment against her Branch Manager. She admitted that she had a lunch date with the Branch Manager to improve on work relationship as advised by her seniors.
12. She further admitted that the investigation report stated that it is the responsibility of Relations Manager to call a client to ensure that any authorised excess was regularised on or before expiry. She admitted that she was the Relations Manager and the material accounts were streamed to her. However, she clarified that the responsibility to follow up a client arises where there is an authorised excess but in this case the matter was in respect of an overdrawn account.



13. She maintained that the reason for not calling the client was because she was on duty outside the bank.
14. As regards the counter claim, she admitted that she had a loan balance of Kshs.1,307,843 as at January 2021 and she has since not paid the same due to lack of income.
15. In re-examination she clarified that she was dismissed for failure to contact a customer to regularise her accounts to clear cheques in her overdrawn account. She maintained that the Relations Manager is required to follow up a customer where she has issued authorised excess. She clarified that she never issued any authorised excess to the said customer (Fridah Kiende) and therefore she had no duty to follow the customer to regularize her overdrawn account.
16. The claimant called Ms. Anna Nyambura Wangai as an expert witness and she testified as CW2. She stated that she worked as a banker for 16 years at the HFCK and became a Branch Manager at Nanyuki until 23<sup>rd</sup> March 2020. She stated that she is conversant with bank process. She testified that when a customer issues a cheque, it is his/her responsibility to ensure that there are funds in the account when the cheques mature for payment. If there are no funds in the account the cheques bounce and the customer is penalised. She contended that the failure to notify a customer about lack of funds to pay cheques is not a reason to dismiss an employee of the bank.
17. The claimant also called Rev. Anderson Mwiti of Redeemed Gospel Church, Nanyuki Town as CW3. In brief, he confirmed that the claimant delayed charge of mandate for a church account insisting that outgoing signatories should visit the bank to introduce the incoming signatories which was not easy. He then raised the issue with the Branch Manager who advised him to make a written complaint. He was directed by the Branch Manager on what to write and he did so. He did not however intend to have the claimant penalised because in his view she never frustrated the church. He sympathized with the claimant for what happened to her.
18. The respondent called its Head of Employee Relations Mr. Vaslas Odhiambo Agola as RW1. He adopted his written statement dated 27<sup>th</sup> May 2021 as his evidence in chief and produced 28 documents as exhibits. In brief he stated that the claimant was dismissed for her failure in her role as SME Banker to contact a customer to fund her account, despite being notified by voucher processing Centre (VPC) via email of intention to unpay two cheques due to insufficient funds. As a result, the customer complained about poor services and threatened to leave the bank.
19. The second reason for the dismissal was that she lied that the failure to contact the customer was because she was on duty outside the office. However, investigations done revealed that she was in the office which pointed to her integrity.
20. RW1 testified that SME Banker like the claimant is a Relations Manager with the duty to follow up customers to ensure that any authorised excess on or before the expiry date. In this case the claimant failed to follow up the customer as advised and thereby affected the reputation of the bank and that of the customer. RW1 contended that the claimant's job description included the duty to ensure that the customers received exceptional relationship management by identifying and meeting their needs through a range of products and services.
21. RW1 further testified that the claimant was dismissed for reasonable grounds and she was accorded a fair hearing. She had also been served with show cause letter and warning letters before the dismissal.
22. On cross examination, RW1 stated that he joined the respondent in November 2016. He admitted that the customer is the person with the duty to ensure that cheques issued are paid. The customer also has the duty to ensure that the account has sufficient funds and that it is an offence for a customer to issue



- cheques when there are no sufficient funds in the account. He further admitted that the bank penalises its customers for any unpaid cheque.
23. He reiterated that the claimant was dismissed for failure to advise a customer that her account had insufficient funds to pay cheques issued. He admitted that the email about the insufficient funds was sent to several persons and not the claimant alone.
  24. He clarified that the duty to follow up a client is in respect of authorised excess which is normally given by the Bank to be paid within a given period. Such authorisation is a term given during the account opening. However, he did not have in court copy of the account opening for the concerned accounts. He denied that the customer's accounts had an overdraft facility.
  25. He further testified that the claimant lied that she was out of the office but the investigations done on the CCTV footages showed that she was in the office. He clarified that the dismissal of the claimant had nothing to do with the complaint by Redeemed Gospel Church.
  26. He admitted that the claimant wrote to him complaining about sexual harassment by her Branch Manager but after investigations the allegations were found to be untrue. He admitted that the Branch Manager who was accused by the claimant is the same person who signed her show cause letters, and invitation to the disciplinary hearings. He clarified that the signing of the said letters by the Branch Manager was based on the Bank's Policy.
  27. In re-examination, he stated that, authorised excess is an arrangement that allows payment of cheques even when the account has insufficient funds. He explains that in such a case the Voucher Payment Centre notifies the Relations Manager about insufficient funds in the account and then the Relations Manager contacts the customer to regularise the account. In this case the claimant failed to notify the customer and that was the second time she had failed to contract the customer.
  28. He denied that the claimant filed an appeal against the dismissal. He contended that the copy of the appeal letter filed did not bear a receiving stamp of the bank. However, he admitted that a response to show cause letter dated 4<sup>th</sup> September 2020 did not bear a receiving stamp but clarified that as at that time the claimant was still in employment and the letter bore the ABSA Logo.
  29. Mr. Nicholas Njenga, former respondent's Branch Manager Nanyuki testified as RW2. He is currently the Branch Manager NCBA Bank Thika. He adopted his written statement dated 22<sup>nd</sup> April 2023 as his evidence in chief. He then confirmed that he worked with the claimant and after serving her with show cause letter, she falsely accused him of sexual harassment. He responded by his letter dated 9<sup>th</sup> December 2020 denying the said allegations.
  30. On cross examination he admitted that he received written complaint from the church against the claimant about the procedure for change of mandate. The claimant was requiring former signatories to introduce new signatories which is not the procedure in the bank. He contended that, only a letter from the church is required to change mandate. He called the claimant and verbally instructed her but she refused to follow his instructions. As such, he personally used the letter from the pastor to change the mandate as requested.
  31. He clarified that the reason for the dismissal of the claimant was failure to contact a client to ensure that there were sufficient funds to pay cheques issued. He contended that a circular dated 2018 provided that SME Banker (Relations Manager) must ensure that they contact the customer to regularise accounts. He contended that the issue at hand was excess not authorised excess.
  32. He explained that when a client is contacted he can promise to pay later and the cheque will be paid. He showed the email dated 26<sup>th</sup> October 2020 from the VPC Headquarters to the claimant as the



- Relations Manager and copied to him. He admitted that he never contacted the claimant on that issue until the cheques were unpaid. He denied that the claimant was out of office and contended that she could not go out without his permission. He contended that he saw her in the bank on the said date but she failed to contact the customer. He stated that the customers' accounts were streamed to her.
33. Mr. Michael Kioko testified as RW3. He is an investigator employed by the respondent. He is a certified Examiner in Fraud Environment. He is the one who did the investigations in the subject matter of this suit at Nanyuki Branch upon request by RW1. The complaint was by customer called Fridah Kiende at Nanyuki Branch in respect of Account No. XXXX (Kevins stores) and 204 2831428 (Fricam Investment).
  34. The complaint by the customer was that the bank had failed to notify her of unavailability of funds before issuing cheques to suppliers which led to the cheques being unpaid. RW3 then interviewed the claimant and obtained a statement from her. The two accounts were streamed to her as the SME Relations Manager for the two Accounts. During the interview the claimant stated that she was out of the office for two days doing sales duties when the cheques were unpaid.
  35. However, when he reviewed the CCTV footages for the two days, he confirmed that the claimant was in the office most of the hours when the cheques were unpaid. The observations from the investigations was that;
    - a. The two cheques were sent to the claimant via email and they were delivered to her inbox.
    - b. The claimant failed to act on the cheques for the two days despite being in the office most of the time.
    - c. CCTV footage showed that the claimant was not out of the office for the two days
  36. RW3 stated that he made recommendations that staff should adhere to the circular RBB 003-2018 that Relations Managers on SME Bankers to go follow up with customers to ensure that any authorised excess is regularised before the lapse of the required time. He described authorised excess as arrangement where cheques are cleared despite lack of funds and then a negative figure is reflected in the account. He stated that every day, a report of received cheques for accounts without funds is circulated to the Relations Managers (SME Bankers) to notify clients to replenish their accounts. In this case the claimant failed to contact the change and as a result he recommended for disciplinary action against her. He produced the Investigation Report as Exhibit D.29 for the respondent.
  37. On cross examination, RW3 stated that he reviewed the CCTV footages and transmitted the same to an electronic device which he did not produce as exhibit in court. He stated that page 12 of the Investigation Report is a table of the hours the claimant was in the office in the two days material to this case. It shows that she was out of the office for shorter hours than the ones she was in the office.
  38. He maintained that the accounts herein were streamed to the claimant at the time they were opened. He contended that both the bank and the customer have a duty to ensure the cheques are not unpaid. He explained that authorised excess puts Relations Managers to a duty to contact the customer to ensure that cheques do not bounce. Had the claimant herein called the customer there would have been no case against her. He stated that the two accounts had no overdrafts facility.

## Submissions

39. The claimant submitted that the termination of her employment was unfair, wrongful and contrary to section 43 and 45 of the *Employment Act*, 2007 and also contrary to Article 47 and 50 of *the Constitution*. She submitted that the employer is obliged to prove a valid reason for the termination



- and in default the termination is unfair. She maintained that all the allegations made against her Branch Manager were baseless because she had failed to give in to his sexual demands and bullying.
40. As regards the unpaid cheques, she submitted that she had no control over the same since the duty to ensure availability of funds to pay cheques rested with the customer. Therefore, she contended that the reason for her dismissal was not valid and fair. Further, that the procedure followed was flawed and contrary to Article 47 (1) and 50 of *the Constitution*.
  41. In view of the foregoing, the claimant submitted that she is entitled to the reliefs sought in her pleadings. As regards the counter claim by the respondent, she submitted that this court lacks jurisdiction to entertain commercial and civil matters by dint of Article 162 (2) (a) of *the Constitution*.
  42. On the other hand, the respondent submitted that there were valid reasons for dismissing the claimant namely: -
    - a. Failure to contact customer to fund her account despite being notified by the voucher processing Centre by email of the intention to unpaid cheques.
    - b. Acting in dishonesty and questionable integrity upon being asked to explain the above failure to act on the notice from the VPC.
  43. The respondent submitted that the claimant acted contrary to bank procedures and performed her duty negligently. The said offences amounted to gross misconduct. It submitted that the allegation by the claimant that she was framed for turning down sexual demands by the Branch Manager was baseless. It submitted that there was no evidence to support the alleged sexual harassment.
  44. The respondent submitted that the evidence from the investigations done confirmed that the two accounts in issue were streamed to the claimant as the Relations Manager. Further, RBB Circular 003-2018 -SME Credit Monitoring and Control provides that it is the responsibility of the RM/ Banker to follow up the customer to ensure that any authorised excess is regularised on or before expiry. (See page 10 of Respondent's documents). Consequently, it submitted that the claimant had the sole duty of ensuring that all the activities and duties were carried out in full compliance with regulatory requirements.
  45. The respondent further urged the court to disregard the evidence by CW2 because it did not meet the criteria of an expert witness as set by section 48 of the *Evidence Act*. It submitted that CW2 had no capacity to speak on its guidelines on excess monitoring. As regards the second offence of dishonesty, the respondent submitted that the claimant acted in dishonesty and questionable integrity upon being asked to explain her failure to contact the customer to fund her accounts. She was faulted for lying that she was out of the office for outside duties which was disproved by the investigator. It maintained that the reasons for the termination were valid and verifiable.
  46. For emphasis, the respondent cited several cases including the Court of Appeal decision in *Ken freight (EA) Limited v Benson K.Nguti* [2016] eKLR.
  47. The respondent further submitted that the dismissal of the claimant was done in accordance with a fair procedure. It submitted that the claimant was accorded a fair hearing before the dismissal in accordance with section 41 of the *Employment Act*. For emphasis several precedents were cited including Court of Appeal decision in *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR.
  48. In view of the foregoing, the respondent submitted that the claimant is not entitled to the reliefs sought. On the contrary, it urged that it is the claimant who should be ordered to pay it the sum counterclaimed being Kshs.1,307,843.00 plus interest at commercial rates. It submitted that the claimant took the loan on her own volition and expressly undertook to repay. As regards the issue of



jurisdiction, the court was urged to reject that submission because there is a ruling on that issue dated 16<sup>th</sup> September, 2022.

### **Issues for determination**

49. Having considered the pleadings, evidence and submissions, there is no dispute that the claimant was employed by the respondent until 2<sup>nd</sup> March 2021 when she was dismissed for gross misconduct. The issues falling for determination are: -
- a. Whether the dismissal was unfair and unlawful.
  - b. Whether the Claimant is entitled to the reliefs sought.
  - c. Whether the respondent is entitled to the sum sought by its counterclaim.

### **Unfair and unlawful termination**

50. Section 45 (1) and (2) of the *Employment Act*, 2007 provides that: -

- “(1) No employer shall terminate the employment of an employee unfairly.
- (2) 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 employee’s 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.”

51. The foregoing provision is clear that termination of employment must be based on valid and fair reason, and fair procedure must be followed. The termination letter dated 2<sup>nd</sup> March 2021 cited the reason for termination as follows: -

“ Absa Bank Kenya PLC  
Retail  
Nanyuki Branch  
PO Box 214, 10400  
Nanyuki, Kenya  
Tuesday, 02 March 2021  
Jane Waikwa  
Staff ABIW582, Brid H10032631  
C/0 Nanyuki Branch



Dear Jane,

Termination Letter

Reference is made to the Show Cause letter dated 16 December 2020, your response dated 19 December 2020, letter dated 12 January 2021, the letter dated 11 February 2021 and the Disciplinary Hearing held on 22 February 2021 in regards to the incidents involving unpaid cheques of amounts Kshs.250,000 and Kshs.40,000 on 10<sup>th</sup> September 2020 and 26 October 2020 respectively both for customer INO Fridah Kiende Mukindia.

Further to the disciplinary hearing, we have reasonable grounds to conclude as follows;

1. That, on 10 September 2020 and 26 October 2020 you acted contrary to bank procedures and in gross negligence when you failed to contact the customer to fund her accounts despite you being notified by the Voucher Processing Centre (VPC) on email of intention to unpay cheques of amounts Kshs.250,000 and Kshs.40,000 with reason insufficient funds for the customer Ino Fridah Kiende Mukindia of account XXXX Fricham Investment and Account XXXX -Wakevins Stores respectively. Consequently, the said cheques were unpaid leading to the customer expressing her frustration on the bank services and threatened to sever her relationship with the bank.
2. That, you acted in dishonesty and questionable integrity when upon being asked to explain your above failure to take action you indicated that you were out of office on official duties while evidence shows that you were in the office in your workstation on the dates the mentioned emails were sent from VPC.

The above acts/omissions not only exposed the bank to reputation risk and financial loss through claims but also amounts to gross misconduct warranting summary dismissal.”

52. The basis of the dismissing the claimant for the failure to contact the customers was her position as the SME Relations Manager, and also the RBB Circular 003-2018-SME Credit Monitoring and Control on excess monitoring. The circular allegedly provided in paragraph 6 that: -

“It is the responsibility of the RM/Banker to follow up with the customer to ensure that any authorized excess is regularized on or before expiry.”

53. The said circular was not produced as exhibit and therefore the court copied the above paragraph as quoted in the Forensic Report produced by RW3. Going by the said paragraph, I agree with the claimant that the reason for dismissing her was invalid because there was no authorized excess extended to Fridah Kiende. Without prove that there existed such authorized excess, the duty to call the customer to replenish her accounts to clear issued cheques does not arise.
54. Defence witnesses alleged that authorized excess is a term agreed during account opening but no account opening documents were produced to prove that such term was agreed during the account opening. It follows that the respondent has not proved that indeed, the claimant had a duty to contact the customer, Ms Fridah Kiende to regularize her accounts to avoid unpayment of cheques issued. Consequently, I find and hold that the customer was solely to blame for issuing cheques to her creditors when she had no sufficient funds in her accounts. It was her duty to ensure that she had sufficient funds to pay the cheques before issuing the same to the suppliers.
55. As regards the act of dishonesty by claimant lying that she was out of the office at the time when the cheques were unpaid, I wish to say that, the respondent has failed to prove that she had duty to contact the customer. Secondly, RW3 confirmed during his investigation that the claimant was out of the office



during some of the hours in the said two days. It was therefore a true statement that she was out of office for sales when the cheques were unpaid.

56. She said that she was unable to act on the notification from VPC because she had outside duties. In view of the foregoing matters, I find and hold that the reasons cited for dismissing the claimant were not valid and fair. The duty to ensure accounts have sufficient funds to clear cheques issued rests with the customer and any policy by the bank to alert the customer about insufficient funds to clear cheques issued is secondary and cannot form the ground for dismissing an employee if the employee failed to alert the customer. In the case of *Kenfreight (EA) Ltd.*, supra, the Court of Appeal held that:-

“It is considered unfair to terminate contract of service if the employer fails to demonstrate that the reason for the termination is valid and fair; that the reason relate to the employee’s conduct, capacity and compatibility or is based on the operational requirements of the employer.”

57. As regards fair procedure, section 41 of the *Employment Act* provides that:-

“(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”

58. In this case, the claimant was served with a show cause letter dated 16<sup>th</sup> December 2020 and thereafter she was afforded a hearing before a committee. She was made aware of the allegations against her and she was accorded a fair opportunity to defend herself. Consequently, I am satisfied that the claimant was dismissed in accordance with a fair procedure as required by section 41 and 45 of the *Employment Act*, 2007.

## Reliefs

59. In view of the finding above that the reasons for the dismissal were not valid and fair, the claimant is entitled to declaration that the termination of her contract by the respondent was unfair and unlawful. Flowing from the above declaration, she is also entitled to award of damages under section 49 (1) of the *Employment Act*, 2007 including salary in lieu of notice and compensation for unfair termination.
60. Her contract did not state the period for a termination notice but I award her one-month salary in lieu of notice as offered vide the termination letter. Further, considering her long service from 2008, and also the fact that she was dismissed for no valid and fair reason, I award her ten (10) months’ gross salary as compensation for unfair termination. The said award is in addition to the two leave days offered in the termination letter. The said award is subject to statutory deductions.



**Counterclaim**

61. The claimant admitted the counterclaim. Her only issue was the jurisdiction of this court to entertain the counterclaim. The loan was advanced to the claimant as a staff of the bank and therefore since the parties are before the court in a dispute related to their separation, the court has jurisdiction to determine the counterclaim. Having said that, I allow the counterclaim of Kshs.1,307,581.73 but since the termination was unfairly done by the respondent the interest will remain at staff rates.

**Conclusion**

62. I have found that the termination of claimant’s employment was unlawful and awarded her compensatory damages. I have also found that the respondent is entitled to the sum sought in the counterclaim. Consequently, I enter judgment for the two sides as follows: -

- a. Claimant
  - Notice.....Kshs. 109,661.00
  - Compensation.....Kshs. 1,096,610.00
  - Leave.....Kshs. 7,310.73
  - Kshs. 1,213,581.73
  - Interest at court rates from the date of this judgment less statutory deductions.
- b. Respondent counterclaim Kshs.1,307,581.73 plus interest at staff rates.
- c. Since both parties have succeeded in their respective claims, I award no costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 18TH DAY OF APRIL, 2024.**

**ONESMUS N MAKAU**

**JUDGE**

**Order**

**This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**ONESMUS N MAKAU**

**JUDGE**

