Irungu v Kenya Pipeline Company Limited (Cause E950 of 2022)
[2023] KEELRC 459 (KLR) (23 February 2023) (Ruling)

Neutral citation: [2023] KEELRC 459 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E950 OF 2022

BOM MANANI, J

FEBRUARY 23, 2023

BETWEEN

DR. SAMSON MACHARIA IRUNGU ..... CLAIMANT

AND

KENYA PIPELINE COMPANY LIMITED ..... RESPONDENT

RULING

1. This is a claim for *inter alia*, an order of injunction to restrain the Respondent from effecting alterations to the Applicant's contract of employment whose consequence would be to reduce the Applicant's term of service from five (5) to (3) years. In the alternate, the Applicant prays for compensation for the unexpired term of his contract. At the time of writing this ruling, the Respondent was yet to file a defense to the cause.

Application for Injunction

2. Together with the Memorandum of Claim, the Applicant has filed the application dated 20th December 2022. In the application, the Applicant seeks a number of interim reliefs pending the hearing and determination of both the application and the main suit. In general, the prayers relate to: a request to stay and set aside the Respondent's decision communicated through its letter dated 9th December 2022; and an order of injunction restraining the Respondent from processing the removal and replacement of the Applicant as its Managing Director as more particularly set out later in this decision.

3. The gist of the Applicant's case is that he was initially hired by the Respondent to serve in the position of Managing Director for a period of three (3) years. However, this was to later change on 18th August 2021 when the Respondent extended this term to five (5) years. Consequently, the Applicant contends that his term ends on 1st January 2025.

4. The Applicant indicates that on 1st December 2022, he received communication from the State Corporations Advisory Committee (SCAC) indicating that the aforesaid extension was made out of an error. That shortly thereafter, the Respondent convened a Special Board meeting at which a decision was taken to revise the Applicant's term back to three (3) years. This decision was subsequently communicated to the Applicant through the Respondent's letter of 9th December 2022.

5. The Applicant argues that the above decision is in contravention of the law and his rights. He argues that it was not open to the Respondent to unilaterally alter the term of his contract more than one year after it had been extended. As a result, the Applicant has sought interim orders of injunction to prevent the Respondent from executing the impugned process.

6. On the other hand, the Respondent's case is that the changes that were introduced to the Applicant's term of service on 18th August 2021 were in error. The error arose from SCAC's communication in June 2021 erroneously implying that the Applicant's job grade was eligible for extension of its term from three (3) to five (5) years. That when this error was noticed, the Respondent took steps to rectify it. That the rectification was intended to align the Applicant's term of service with the Respondent's Human Resource Policy (hereafter referred to as HR policy or HR instrument).

7. It is the Respondent's case that the changes arising from the decision of the Respondent's Board meeting of 7th December 2022 were lawful. The Respondent prays that the Applicant's prayer for the various interim reliefs be declined.

Analysis

8. When the application came up for hearing, it was agreed by the parties that it shall be canvassed through written submissions. The submissions have since been filed.

9. In order to be able to appropriately address the issues arising in the application, it is perhaps necessary that I begin by examining some general issues that will impact on my final decision. After this brief commentary, I will consider the merits of the application in the context of the general issues that I shall have glossed over and the law on injunctions as enunciated in the case of *Giella v Cassman Brown* [1973] E.A 358.

The Place of Human Resource Manuals in Contracts of Service

10. A HR policy is a set of internal rules designed by the employer for purposes of governing the conduct of employees in the workplace. It contains general policy statements by the employer on a variety of workplace issues. Through it, the employer sets standards on various matters that are of interest at the workplace.

11. Whilst HR policies do not automatically form part of contracts of service, most times employers will incorporate the terms of these instruments into employment contracts by making express reference to them in the contracts. Where this happens, the HR policies become part of the affected employees' terms and conditions of service (see *Heritage Insurance Company Limited v Christopher Onyango & 23 others* [2018] eKLR).

12. HR policies occupy a special place in labour relations. Indeed as was stated in *Oyatsi v Judicial Service Commission* (Petition E111 of 2021) [2022] KEELRC 3 (KLR), the instruments are often considered as quite critical to an institution's governance processes as to be described as kingpins of good corporate governance.

13. Important as they are, HR policies do not necessarily occupy a position that is superior to express terms and conditions of a contract of service. Provisions in the HR instruments are not in the nature of statutory provisions. To the extent that when incorporated into a contract of service, the HR policy forms part of the terms and conditions of the contract, there is a sense in which provisions in HR instruments and terms and conditions of contracts of service stand on the same pedestal.

14. That these instruments are not necessarily superior to terms of a contract of service may sometimes be expressly acknowledged in a contract of service or the instrument itself. Where this is the position, the contract or instrument will specifically provide that in case there is a conflict between the provisions of the applicable HR policy and a term of the contract, the latter will prevail (*Shashikant Chandubhai Patel v Oriental Commercial Bank Ltd* [2014] eKLR).

15. As internal instruments of governance, HR policies are usually initiated by the employer. If issued during the continuation of an employment relation and they are intended to affect this relation, the employer must draw the attention of the employee to the provisions in the instruments and seek to build consensus around them. The same requirement applies where there are amendments to existing HR instruments. This requirement is in tandem with section 10 (5) of the *Employment Act* which obligates employers to consult employees over changes to terms of employment.

16. Where the HR policies affect employees in the public service sector in Kenya, there is general consensus that in formulating and or amending the instruments the input of the Public Service Commission is required. This is because except where the *Constitution* expresses a contrary intention, the constitutional mandate on setting human resource standards and other human resource issues in the public realm in Kenya vests in the Public Service Commission.

Employer's Managerial Prerogative to Manage the Workplace

17. Employer's managerial prerogative denotes the right of the employer to make and act upon decisions affecting the workplace generally. As a general rule, employers enjoy wide powers to make decisions that affect the workplace. These decisions touch on a plethora of issues including but not limited to the: hire, transfer, deployment, discipline and termination of contracts of staff.

18. As a rule of the thumb, courts ought to exercise restraint not to interfere with the exercise of this power. Otherwise they will be viewed as taking over the position of the employer at the workplace. This is an undesirable eventuality.

19. That notwithstanding, it is critical that when exercising this power, employers do not trample on the rights of employees. Where this happens, courts are entitled to intervene to stop abuse of the power.

20. As was observed in *Ali v National Health Insurance Fund & 2 others; Transparency International & 2 others (Interested Parties)* (Cause E714 of 2022) [2022] KEELRC 13443 (KLR), courts will only interfere with the exercise of the employer's managerial prerogative where there is evidence that the employer's action is in breach of the law or an internal regulation at the workplace or where there is otherwise evidence of manifest abuse of the power. Even then, the intervention will only be to the extent that the employer remedies the malady in question.

Variations of Contracts of Service that are Adverse to Interest of Employees

21. A general rule of the law of contract is that once a contract has been concluded, neither of the parties to the transaction may unilaterally vary it. This rule has application to contracts of employment in much the same way that it does to other forms of contract.

22. In Kenya, prohibition against unilateral variation of an employment contract that is adverse to the employee's interests is founded not just on the general principles of the law of contract but the *Constitution* of Kenya 2010 and the *Employment Act* as well. Article 41 of the *Constitution* entrenches the right to fair labour practices whilst article 47 entrenches the right to fair administrative action. Both rights would stand in the way of unilateral variations to contracts of employment to the detriment of employees (see *Gerald Kanyaga Mathakia & another v Dedan Kimathi University of Technology* [2020] eKLR).

23. Section 10 (5) of the *Employment Act* is perhaps of significance in this respect. It provides as follows:-

''Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.''

24. The matters contemplated in the section are many. They include issues touching on: the form and duration of the contract; and the job description of the employment.

Variations to a Contract of Service that are Advantageous to Employee

25. Whilst the law frowns upon adverse unilateral variations to contracts of service, the employer is generally at liberty to make adjustments to these contracts as long as they are advantageous to the employee. Such variations need not be evidenced by an instrument executed by the parties in order to be binding. In this respect, the employer can for instance unilaterally: vary the salary clause to increase an employee's emoluments; and promote an employee to a higher rank.

26. Commenting on this truism, George Ogembo in his publication entitled ''*Employment Law Guide for Employers*, Revised Edition'', LawAfrica Publishing (K) Ltd, 2006 expresses himself as follows:-

''Correspondences between the employer and an employee may create or vary the express terms of the contract of employment in a non-detrimental manner. These correspondences must not be countersigned by an employee in order to become binding.''

Role of State Corporations Advisory Committee (SCAC) in the Management of State Corporations

27. Section 26 of the *State Corporations Act* establishes the State Corporations Advisory Committee often referred to as the SCAC. The Committee's primary mandate is spelt out under section 27 of the *Act*. The section provides as follows:-

    i) The Committee shall advise on the matters and perform any functions it is required by this Act to perform and in addition shall:-

        a) with the assistance of experts where necessary, review and investigate the affairs of state corporations and make such recommendations to the President as it may deem necessary;

        b) in consultation with the Attorney-General and the Treasury, advise the President on the establishment, reorganization or dissolution of state corporations;

        c) where necessary, advise on the appointment, removal or transfer of officers and staff of state corporations, the secondment of public officers to state corporations and the terms and conditions of any appointment, removal, transfer or secondment;

        d) examine any management or consultancy agreement made or proposed to be made by a state corporation with any other party or person and advise thereon;

e) examine proposals by state corporations to acquire interests in any business or to enter into joint ventures with other bodies or persons or to undertake new business or otherwise expand the scope of the activities and advise thereon.

28. A cursory analysis of the aforesaid functions implies that in addition to its other mandates, the SCAC has, where appropriate, the power to advise State Corporations on human resource issues relating to the appointment, removal or transfer of officers serving the State Corporations. This supposition is augmented by section 5(3) of the *Act* which provides as follows:-

> ''A state corporation may engage and employ such number of staff, including the chief executive on such terms and conditions of service as the Minister may, in consultation with the Committee, approve.''

29. Together, these provisions appear to give the SCAC some form of mandate over human resource issues in State Corporations. Yet, it has been observed in a number of judicial decisions that the human resource function in the public realm is the exclusive constitutional mandate of the Public Service Commission. As a matter of fact, courts have questioned the constitutionality of the statutory provisions permitting SCAC's involvement in human resource matters in State agencies in the face of clear constitutional provisions that vest this mandate in the Public Service Commission (see *Anthony v Communications Authority of Kenya & 3 others* (Petition E161 of 2021) [2022] KEELRC 1117 (KLR)).

30. In the face of this, it appears that the SCAC is mandated to execute every other mandate that is vested in it with the exception of the function touching on human resource management in the public service. In a sense therefore, the legitimacy of the involvement by SCAC in the management of human resource issues of State agencies appears questionable.

The Merits of the Application

31. As mentioned earlier in the decision, the Applicant moved the court for various interim reliefs including the following:-

a) That the court stays the decision by the Respondent communicated to the Applicant through the Respondent's letter of 9th December 2022 asking the Applicant to express interest in the position of Managing Director of the Respondent within 14 days from 9th December 2022.

b) That the court issues an order of temporary injunction restraining the Respondent from commencing the process of recruitment, advertising, interviewing or employing any person in the position of Managing Director of the Respondent pending the hearing and determination of the case.

32. The Applicant argues that although the Respondent had initially granted him a three (3) year contract for the position of Managing Director this term was subsequently extended to five (5) years. He relies on the Respondent's letter dated 18th August 2021 to advance this position. The letter states that as a result of the variations to the Applicant's initial contract, his term of office was now to run up to 1st January 2025.

33. On the other hand, the Respondent argues that the extension in question was out of a mistake. That the error has since been corrected with the consequence that the Applicant's term reverted to three (3) years and therefore came to a close on 31st December 2022.

34. In evaluating the merits of the application for injunction, I have considered the contrasting positions by the parties on the dispute. The principles for the grant of orders of temporary injunction are as enunciated in the celebrated decision of *Giella v Cassman Brown* [1973] E.A 358. These are:-

    a) The Applicant must establish a prima facie case with a probability of success.

    b) The Applicant must demonstrate that he is likely to suffer irreparable injury which cannot be compensated by damages if the orders sought are not granted;

    c) If the court is in doubt then it can decide the application on a balance of convenience.

35. These principles have since been affirmed in a series of judicial pronouncements. I will consider the aforesaid principles in the context of the facts of this case and the various matters that I have commended on in the preceding sections of this decision. The principles shall be analyzed sequentially.

36. On whether the Applicant has established a prima facie case with a probability of success, I note that the Applicant's case is built around the decision by the Respondent's Board to extend his contract of service to five (5) years. It is the Applicant's case that this extension was lawful.

37. The Applicant argues that the extension gave him legitimate expectation that he will serve the Respondent until 1st January 2025. He argues that the Respondent cannot unilaterally reverse the extended term more than one year after it was granted as Respondent has purported to do. In the Applicant's view, such alteration is illegal, unfair and in contravention of his constitutional right to fair administrative action.

38. It is not disputed by the Respondent that it indeed passed a resolution at its 92nd meeting extending the Applicant's term from three (3) to five (5) years. Under the new arrangement, the Applicant's term was to run up to 1st January 2025. It is also not disputed by the Respondent that this decision was communicated to the Applicant through the Respondent's letter dated 18th August 2021.

39. However, the Respondent now argues that the extension was out of a mistake. As a result, the extended term was lawfully revoked on 7th December 2022 following an advisory opinion by SCAC through its letter of 8th October 2022.

40. It is the Respondent's case that the alleged irregular variation to the Applicant's contract was effected following SCAC's letter of 30th June 2021 in which the agency inadvertently referred to job group KPC 1 whilst advising the Respondent on the term of service for job grades KPC 2 & 3. It is indicated that the letter intended to refer to job grades KPC 2 & 3: not KPC 1 which applies to the Applicant. As a consequence of the alleged inadvertence, the Respondent appears to suggest that it entertained the thought that SCAC had approved extension of the Applicant's term to five (5) years and hence the alleged erroneous amendment to his contract. It is argued that the erroneous alteration placed the Applicant's contract at cross purposes with clause 2.5.2 of the Respondent's HR policy which limits the term of Managing Director to three (3) years.

41. It is the Respondent's position that this error was however realized much later when SCAC raised the issue. This led to the Respondent's resolution on 7th December 2022 adjusting the Applicant's term back to three (3) years.

42. As indicated earlier, the role of SCAC in shaping and managing human resource issues for State agencies appears doubtful. The agency's involvement in this respect appears to be inconsistent with provisions of the *Constitution* which vest this mandate in the Public Service Commission. Therefore,

whether the Respondent could legitimately rely on the advice of SCAC to make adverse changes to the Applicant's contract appears questionable.

43. As indicated, HR instruments for the public sector and amendments thereto are expected to be processed with the involvement of the Public Service Commission as the body charged with the constitutional mandate to regulate human resource issues in the public realm. The SCAC appears to have limited or no role in this respect.

44. I do not understand either of the parties as stating that formulation of the Respondent's June 2019 HR policy was without the input of the Public Service Commission. Similarly, I do not understand the parties as stating that the Respondent's resolution of 18th August 2021 to vary the term of the Applicant's contract from three (3) to five (5) years which in effect varied (correctly or otherwise) clause 2.5.2 of the HR policy as incorporated in the Applicant's contract did not receive the concurrence of the Public Service Commission.

45. That being the position, the court is of the view that at this preliminary stage, there is no sufficient material placed before it to suggest that the contested extension to the Applicant's term from three (3) to five (5) years was illegitimate. The attempted involvement by the SCAC in the process which appears to have been the reason for the Respondent's decision to revoke the extension appears to have been in excess of the SCAC's mandate, at least in so far as the power to regulate human resource issues for State agencies lies with the Public Service Commission (see *Anthony v Communications Authority of Kenya & 3 others* (Petition E161 of 2021) [2022] KEELRC 1117 (KLR)). Consequently, it will be premature for the court to censure the extension at this preliminary stage.

46. It appears from the evidence presented so far that the decision to extend the Applicant's term was by a resolution of the Respondent at its meeting held on 18th August 2021. In law, a corporate body such as the Respondent makes its decisions through Board resolutions. To the extent that the decision of 18th August 2021 was by the Respondent's Board, it is prima facie valid.

47. As indicated earlier, a decision by an employer to introduce advantageous terms and conditions of employment into a subsisting contract of service is generally considered as legitimate notwithstanding that the employee may not have been consulted on the matter. Further and as was mentioned earlier, such advantageous variations do not require to be countersigned by the employee for them to be binding.

48. In the case before me, it is without doubt that the alteration to the Applicant's contract extending his term to five (5) years was advantageous to him. From the record, the Applicant did not sign an instrument to sanction the changes. However, he accepted them. Therefore, the variation became part of the contract between the parties and was, prima facie, binding on them. It is therefore clear to me based on the preliminary evidence before me that through the aforesaid changes, the Applicant is entitled to legitimately expect to serve in the position that he holds up to January 2025.

49. Conversely, the preliminary record shows that the decision to revoke the Applicant's extended term was taken unilaterally. It is the Respondent's preliminary evidence that upon learning of the mistake that led to the extension, it convened a Special Board meeting on 7th December 2022 at which the decision to revise the Applicant's term to three (3) years was approved. The minutes of the meeting do not suggest that the Applicant was consulted on the subject.

50. The downward revision of the Applicant's term was undoubtedly detrimental to him. He refers to the decision as an illegality. The Applicant argues that the revision was an attempt at constructively terminating his employment. Although employers enjoy managerial prerogative to alter a contract of

service, the exercise of this power must nevertheless follow the prescribed procedure so that it does not prejudice the affected employee.

51. As pointed out earlier, any adverse changes to an employee's contract ought to be made in consultation with the employee. Section 10 (5) of the *Employment Act*, as indicated requires the employer to not only consult the employee on such changes but to complete the process by advising the employee of the changes in writing. A number of judicial determinations suggest that failure by the employer to involve the employee in the process is fatal to the employer's decision. Such action violates not just the provisions of the *Employment Act* but the *Constitution* and the *Fair Administrative Actions Act* as well (see *Anthony v Communications Authority of Kenya & 3 others* (Petition E161 of 2021) [2022] KEELRC 1117 (KLR) and *Gerald Kanyaga Mathakia & another v Dedan Kimathi University of Technology* [2020] eKLR).

52. Even assuming for a moment that the Respondent was entitled to rely on SCAC's advice to revoke the Applicant's extended term, I doubt that it was open to the Respondent to process the exercise in the manner that it did. Having reached the conclusion that the Applicant's contract was perhaps erroneously extended, I think that the Respondent was obligated to consult the Applicant on the proposed reduction of his term before convening the Special Board meeting in compliance with section 10(5) of the *Employment Act*.

53. This is particularly because chapter eight (8) of the Code of Governance for State Corporations (Mwongozo) which applies to the Respondent obligates it to follow the law in executing its mandate. This includes the duty to uphold the *Employment Act* and the *Fair Administrative Actions Act*.

54. The preliminary evidence demonstrates that the Respondent relied on SCAC's advisory to alter the Applicant's term. However, as has been shown, the legitimacy of the Respondent's engagement with SCAC on human resource issues is doubtful. Second, the Respondent's decision to recall the Applicant's extended term appears to have been made without regard for due process under the *Constitution*, the *Fair Administrative Actions Act* and section 10 (5) of the *Employment Act*. This brings to question the legitimacy of the decision.

55. On the other hand, there is prima facie evidence that the Respondent extended the Applicant's term at a validly convened Board meeting. There is evidence that pursuant to the extension, the Applicant assumed his role for the extended period until more than one year later when an attempt to alter the arrangement was made by the Respondent. Clearly, at the time of the attempted revision, the Applicant had legitimate expectation that he would remain in the service of the Respondent for the extended period. Based on these facts, I have no doubt in my mind that the Applicant has established a prima facie case warranting the grant of an order of injunction.

56. A prima facie case is not one that must ultimately succeed. It is sufficient for purposes of granting an interim injunction that the Applicant has at the preliminary stage, presented sufficiently compelling material to warrant the court to reach the preliminary view that there is a threat of violation of a right which warrants further interrogation of the matter (see *Mohamed Abubakar v Benjamin Sila t/a Legacy Auctioneers Services & 3 others* [2022] eKLR).

57. On the question of irreparable harm, it is the legal position that the burden lies with the applicant to demonstrate that if the order of injunction is not granted, he stands to suffer harm that is incapable of compensation by an award of damages. No matter how strong the applicant's case may appear to be at the preliminary stage, the court ought not to grant him an injunction if he is unable to demonstrate that the harm that he is likely to suffer if the order is not granted will be so great as not to be adequately compensated in damages.

58. It has been indicated that the conditions for grant of interim injunction are cumulative. They are not alternate. In addressing this issue, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR expressed itself as follows:-

> "In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;
>
> (a) establish his case only at a prima facie level,
>
> (b) demonstrate irreparable injury if a temporary injunction is not granted, and
>
> (c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.
>
> These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially..... If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If [a] prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted."

59. That the Applicant has presented a prima facie case with a probability of success is not in doubt. However, he has not in my respectful view demonstrated that he is likely to suffer irreparable injury if the injunction order that he seeks is not granted. He has failed to demonstrate that the resultant injury will be incapable of fair redress through an award of damages.

60. The burden of proof lies with the applicant to show that if an injunction is not granted he will suffer irreparable harm (see *Nguruman Limited v Jan Bonde Nielsen & 2 Others*) (*supra*). I have studied the Applicant's Notice of Motion dated 20th December 2022, the supporting affidavit dated the same day and the supplementary affidavit dated 9th February 2023. Apart from the indication in the supporting affidavit that the Respondent's action will infringe on his right to fair administrative action, the Applicant does not address the question of the kind of injury he is likely to suffer as a result of the impugned process. The nearest that he comes to addressing the matter is through submissions by counsel which are statements from the bar.

61. The Respondent has, through the replying affidavit, specifically contested the fact that the Applicant's case meets the threshold for the grant of injunction. It is specifically stated that the Applicant has failed to demonstrate that he will suffer irreparable loss should the order of injunction not issue. With this

objection, it was necessary that the Applicant addresses this issue through affidavit evidence. He did not.

62. I note that the Applicant's extended term, if uninterrupted, would come to an end in January 2025. In effect, the Respondent's action, if not rescinded, will expose the Applicant to loss of emoluments for a period of approximately two years.

63. In *Esso Kenya Ltd v Mark Makwata Okiya* [1992] eKLR, the court made the following observations that are, in my view, pertinent to the issue at hand:-

> ''The Court ought to look at the allegations in the affidavits by the plaintiff and the defendant and weigh them whether there is a possibility of the plaintiff succeeding or whether there is a possibility of quantifying damages. Only in cases of doubt the Court will proceed on the basis of the balance of convenience while being aware that formal evidence will be adduced at the hearing.
>
> .....The respondent having pleaded breach of the agreement and prayed for damages, the Court ought to have denied him injunction and the order of reinstatement because his claim could have been quantified and be compensated by the award of damages as one of the considerations enumerated in *Giella v Cassman Brown & Co Ltd* [1973] EA 358.''

64. In the case before me, the Applicant has made a prayer for alternative relief for compensation in the form of salary and other emoluments for the unexpired term of five (5) years. In effect, he appreciates that the injury he is exposed to as a consequence of the Respondent's action is capable of being measured in damages.

Determination

65. Although the Applicant has established a prima facie case with probability of success, he has not demonstrated that the injury he is likely to suffer if the order of interim injunction that he seeks is not granted will not be adequately compensated by an award of damages. Consequently, the prayer for an injunction must fail.

66. The application dated 20th December 2020 is therefore dismissed.

67. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED ON THE 23RDDAY OF FEBRUARY, 2023

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Applicant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties 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.

B. O. M MANANI