Teacher Service Commission v Nyangau (Employment and Labour Relations Appeal E004 of 2022) [2023] KEELRC 1598 (KLR) (4 July 2023) (Judgment)

Neutral citation: [2023] KEELRC 1598 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

EMPLOYMENT AND LABOUR RELATIONS APPEAL E004 OF 2022

HS WASILWA, J

JULY 4, 2023

BETWEEN

TEACHER SERVICE COMMISSION ..... APPELLANT

AND

REDFERN GEKONGA NYANGAU ..... RESPONDENT

JUDGMENT

1. This appeal arose from the Judgement of Honourable Benjamin B Limo (SRM), in Chief Magistrates Court at Nakuru, case serialized as CMELRC No. 125 of 2018, delivered on 16th February, 2022. The grounds of the Appeal are as follows; -

    1. The learned Magistrate erred in law when he granted orders for reinstatement of the Respondent to employment after expiry of 3 years from the date of dismissal, contrary to the provisions of section 12(3)(vii) of the *Employment and Labour Relations Court Act*.

    2. The Learned Magistrate erred in Law when he granted orders of reinstatement of the Respondent to employment without due consideration of the provisions set out in section 49(4) (b), (c), (d) & (k) of the *Employment Act*.

    3. The Learned Magistrate acted in excess of his jurisdiction and grossly erred in law by determining and subsequently awarding reliefs which were neither pleaded in the body of the Statement of Claim nor argued by the Respondent during trial and in so doing condemned the Appellant unheard contrary to Article 50 of *the Constitution*.

    4. The Learned Magistrate erred in law and fact when he held that the Appellant's employee, the Defence Witness Number 1, had no mandate/written authority to conduct investigations on the Respondent's discipline case. In doing so the learned Magistrate failed to appreciate the Constitutional, statutory and contractual mandate of the Appellant to exercise disciplinary Control over its employees.

5. The finding of the learned Magistrate that Appellant's Defence Witness Number 1 required a letter of authority from Sub County Director of Education to conduct investigations on the Appellant's disciplinary case, is contrary to Regulation 66 (3) of the Code of Regulations for Teachers 2005 and Article 249 of *the Constitution*.

6. By holding that the Respondent was arrested, charged and acquitted as the basis for reinstatement, the learned Magistrate put into consideration and was unfairly influenced by extraneous factors.

7. The learned Magistrate failed to appreciate that it is trite law that the Criminal law regime/ standards has no application in employment contracts.

8. The Learned Magistrate erred in law and fact when he directed the Appellant to pay the Respondent salary arrears from 1/8/2015 to date contrary to the provisions of the *Employment Act* and the common law doctrine that salary is a reward for work done.

9. The learned Magistrate erred in law in arriving at a decision which was contrary to the evidence tendered by the Appellant, law, facts, Submissions and Authorities and binding judicial precedents tendered before court.

10. In holding that the Respondent was not interviewed during investigations, the learned Magistrate irregularly and unfairly imposed an unknown procedure on the Appellant and failed to take into consideration the Appellant's evidence on the issue.

11. The learned Magistrate awarded reliefs which are contrary to the provisions of the *Employment Act*.

12. The learned Magistrate has not provided legal and/or reasoned justification on the awards made in favour of the Respondent.

13. The learned Magistrate grossly misinterpreted and misapplied the relevant law and arrived at an erroneous conclusion of law

2. The Appellant sought for the following Orders:-:

a. This appeal be allowed.

b. The Judgment, Orders and Decree of Hon. Limo B. Benjamin (SRM) delivered on 16/ 2/ 2022 and all consequential orders be set aside.

c. The Chief Magistrate's Court, Employment & Labour Relations Cause ~ No. 125 of 2018 at Nakuru be dismissed.

d. That costs of this Appeal and that of the lower court case to be awarded to the Appellant.

Brief facts.

3. The Respondent herein was employed by the Appellant on 27th October, 2004 and served till 31st July, 2018 when his employment was terminated. Prior to the termination, the Respondent had served the Appellant diligently that he rose through the ranks and became the Deputy head teacher of Mbogo primary school earning a gross salary of Kshs 33,662.

4. On 9th July, 2015, the Respondent was interdicted from services and on 20th August, 2015 he was served with an amended interdiction letter on the basis of having sexual intercourse with a minor, standard

seven pupil, at Mbogo Primary school, where the Respondent was teaching as the Deputy head teacher. He stated that he was not served with any notice to show cause before the said interdiction.

5. The Respondent was charged with defilement under Nakuru chief magistrate criminal case number 109 of 2016, which he was acquitted on the 31st May, 2017.

6. Despite being acquitted of the criminal charges, the Appellant conducted investigations into the allegations of defilement, conducted disciplinary hearing where he was found culpable of immoral conduct and the Appellant resolved to terminate his services.

7. He contends that since the Court had decided on the issue of defilement on the negative, the employer should have abided by that decision and reinstated him back to employment instead of proceeding with disciplinary action that led to his termination. He added that in proceeding with disciplinary hearing, the employer was violating the ruling of the court and the code for regulations for teachers issued on 25th September, 2015.

8. The Appellant in its defence denied unfairly terminating the Respondent and stated that as a commission, it is mandated under section 47(2) of the Teacher Service Commission Act as read with section 5 of the Public Officers Ethics Act to create rules which they did by publishing Code of Regulations for teachers "The code" that outline the general rules governing the teaching profession and penalties to be applied in case of breach and the code of conduct and Ethics 'COCE' to enable it discharge its functions.

9. It is stated that this code has been negotiated and adopted as an integral part of the CBA between the Respondent and the Teachers Unions as such it formed terms of engagement of teachers.

10. In 2010, there was a rise in incidences of sexual harassment and exploitation against learners by teachers and to remedy the situation, the Commission issued on 29th April, 2010 an administrative circular no. 3 of 2010 tiled "protection of Pupils/ students from sexual abuse" and among the acts prohibited in the circular is teachers inviting, hosting or flirting with learners in their personal residence.

11. The Appellant stated that on 29th June, 2015, they received information from the sub county Education officer vide the letter of 25th June, 2015, that the Respondent herein had engaged in acts which amounted to breach of the Code and the COCE and the sub-county officer sought for protection of the learner.

12. To establish the veracity of the issues, the Appellant dispatched two officers to confirm the allegation, which officer visited the school on 30th June, 2015 and recorded statements from the victim, father of the victim and Chairperson Board of management of the school. They also obtained data and evidence on the matter.

13. After investigation, it was discovered that the Respondent herein had been involved in an illicit affair with the pupil(FM) which had gone on for some time unnoticed. The circumstances that led to the said discovery is that the Respondent invited the pupil, into his house and defiled her, which act was not only criminal but also in breach of the Code and the COCE. He was interdicted and invited for defence hearing, which he was to be heard on the 20th November, 2015 but the Respondent sought for more time which was granted and the next hearing slated for 15th July, 2016 at the county director's office.

14. On the material day, the Respondent was arrested for a criminal offense of defilement and the disciplinary hearing had to be adjourned to 14th October, 2016 but the meeting did not proceed and was rescheduled to 22nd June, 2017 when the Respondent was heard. After hearing the complainant's and the defence case, the committee found him culpable and resolved to have him dismissed from

employment and his name removed from the register. This termination was communicated to the Respondent herein on the 31st July, 2017. The Respondent appealed the decision, however the Appellate committee upheld the decision of the Disciplinary committee.

15. The Appellant maintained that it accorded the Respondent ample opportunity to defend himself and communicated the reason for the termination. Therefore, that the termination was justified.

16. Directions were taken for the appeal to be canvassed by written submissions with the Appellant filing on the 10th May, 2023 and the Respondent on 29th May, 2023.

Appellant' Submissions.

17. The appellant submitted on the grounds of appeal and on ground 1, 2 and 11 on the fact that the trial court erred in reinstating the Respondent herein to employment after the lapse of three years. It was argued that section 12(3)(vii) of the *Employment and Labour Relations Court Act* provides for reinstatement of employee to be made within 3 years from the date of dismissal. He submitted that since the Respondent was dismissed on 22nd June, 2017, his reinstatement on 16th February, 2022 was contrary to the law, it having been effected 5 years down the line. To support this position, they relied on the court of Appeal decision in Sotik Highlands Tea Estates Limited V Kenya Plantation an Agricultural workers Union [2017] eklr and the case of Joshua Rodney Marimbah V Kenya Revenue Authority [2021] eklr.

18. It was submitted that the actions of the Respondent in failing to mold the learners as a loco parentis and instead sought carnal knowledge of the very learners he was supposed to protect failed as a professionals and in turn lost trust of its employer. On that it was submitted that the learned trial Court failed in not putting into considering the requirements under Section 49(4) (b)(c)(d) &(k) of the *Employment Act* before reinstating the Respondent herein. He added that the relief of reinstatement was not tenable in the circumstances. In this they relied on the case of Sotik Highlands Tea Estates Limited V Kenya Plantation and Agricultural workers Union (Supra) where the Court held that;

> "That is what this Court stated in the case of Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR where we held that the remedy of reinstatement should not be given except in very exceptional circumstances. The learned Judge in the case leading to this appeal erred in law in failing to consider relevant circumstances and by ordering reinstatement after the expiry of 3 years which he had no power to do. He also erred by not considering or stating which exceptional circumstances existed to entitle him to order that Siro be reinstated to employment when a period of over 3 years had elapsed since Siro was dismissed from employment."

19. The Respondent submitted also that the trial magistrate erred in awarding reliefs that were not sought in the claim. It was argued that the trial court found the termination of the Respondent herein unfair for the reason that the Principal human resource officer, Gilgil Sub County had no authority to conduct investigation touching into the conduct of the employee. It was argued that the authority of the said Sub County officer was not pleaded in the claim to elicit a response from the Appellant, therefore that the trial court erred in framing issues based on that fact and proceeded to make a determination. In this they relied on the case of Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others [2014] eKLR that cited the decision of Nigerian Supreme

Court in ADETOUN OLADEJI (NIG) LTD Vs. NIGERIA BREWERIES PLC S.C. 91/2002, Judge Pius Aderemi J.S.C. expressed himself, and we would readily agree, as follows;

> " ....it is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded."

Other judges on the case expressed themselves in similar terms, with Judge Christopher Mitchell J.S.C. rendering himself thus;

> " In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation."

20. It was submitted that Article 237(2)(e) and (f) of *the Constitution* empowers the Appellant commission to exercise disciplinary control over its employees. The role of investigation is exercised by the Commission through its appointed employees as per Article 252 (c) of *the Constitution* as read with section 18(1) of the *Teachers Service Commission Act*. Therefore, that since the authority emanates directly from *the constitution*, the letter of authority is not necessary in that case. Furthermore, that the trial court, in requiring the officer to obtain authority from the Sub-county directors, failed to appreciate the operational, decisional and administrative independence of the Appellant provided for under Article 249 of *the Constitution*. He affirmed that the Human Resource officer being an officer of the commission had all the authority to investigate the case involving the employee herein. In this they relied on the case of Hezron Mukoko Silunya V Teachers Service Commission [2014] eklr where the Court held that;-

> " Considering the constitutional and statutory framework in place currently concerning disciplinary control over teachers, the Court is unable to find any merit in the contention by the Petitioner that in bypassing the school Principal and the Board of Management, the Respondent was violating any known constitutional, statutory or contractual right of the Petitioner. By appointing County Directors of Education and assigning them some delegated powers or responsibilities, the Respondent was being faithful to the constitutional call to devolve access/services closer to the stakeholders."

21. The Respondent submitted that the trial court did not evaluate its evidence, facts, case law and the submissions. It was argued that the evidence of the minor was comprehensive, which narration was reiterated in the disciplinary hearing but that the Respondent herein did not challenge the circumstantial evidence adduced. In this they relied on the case of Teachers Service Commission V Joseph Okoth Opiyo [2014] eklr and the case of Teachers Service Commission V Joseph Wambugu Nderitu[2016] eklr.

22. It was submitted that the trial court failed to consider the circumstantial evidence as narrated by the victim and some of the students in testimony.

23. The Appellant submitted that just because the Respondent was acquitted of criminal charges does not invalidate disciplinary proceedings because there is no nexus between the two. In any case that the appellant is exempted from strict adherence with the rules of evidence as was held in Teachers Service Commission B Joseph Wambugu Nderitu(Supra) and the case of Bett Francis Barngetung and another

V Teacher Service Commission and another ; Eldoret civil appeal no 26 and 27 of 2012 [2015] eklr where the Court held that;

> "We entirely agree with the learned judge. As we have stated earlier, TSC is empowered to interdict a teacher if it is reasonably alleged that the teacher is not of good moral character. In conducting the disciplinary proceedings thereafter, TSC acts on general evidence or statements relating to the character or conduct of the teacher concerned. Disciplinary proceedings by an employer cannot be equated to criminal proceedings before a court of law. The degree of proof required is certainly different and the objectives of these two types of proceedings are distinct."

24. Similarly, that by reinstating the Respondent herein on the basis of acquittal was erroneous. It was submitted that the case by the appellant was for immoral behavior which was proved to the required standard causing the said dismissal.

25. On the relief for payment of back wages to date, the Appellant submitted that wages are for payment of work done and since the Respondent did not work for the Respondent, he is not entitled to the back wages awarded by the Court. In this they relied on the case of Hema Hospital V Wilson Makongo Marwa [2015] eklr where the Court adopted the holding of Rika J, in D. K. Njagi Marete vs. Teachers Service Commission [2013] eKLR where he stated that:

> "....employment remedies must be proportionate to the economic injuries suffered by the employees. These remedies are not aimed at facilitating the unjust enrichment of aggrieved employees; they are meant to redress economic injuries in a proportionate way."

26. In conclusion, the Appellant urged this Court to find that the Respondent herein violated the code of conduct and the COCE, leading to his termination and therefore set aside the judgment by Hon. Benjamin Limo and substitute with the orders dismissing the case herein with costs to the Appellant.

Respondent's Submissions.

27. The Respondent submitted that this being a first appeal, this Court is tasked with fresh evaluation of evidence of trial court before arriving at its independent conclusion. That irrespective of the determination by the trial court, this Court shall not interfere with the findings of fact of the trial court unless it is based on no evidence or misapprehension of evidence. In this he relied on the case of Coffee Board of Kenya V Thika Coffee Mills Limited & 2 Others [2014] Eklr, the case of Kiruga v Kiruga and another [1988] KLR 348 and the case of Kamau V Mungai and another [2006] I KLR 150, where the Courts reiterated that a court on appeal will not normally interfere with a finding of fact by the trial court in civil and criminal case unless it is based on the no evidence or on misapprehension of evidence.

28. On whether the magistrate erred in reinstating the Respondent herein, it was submitted that the respondent herein was reinstated back to employment for the special circumstances surrounding this case in that, he had been dismissed without any viable reason, suffering immense loss and anguish which could not be compensated by damages leading to the reinstatement. It was submitted that the Respondent was dismissed on 22nd June, 2017 and received communication of the dismissal on 11th October, 2017 and immediately filed the trial suit on 5th December, 2018 within time. He argued that delay in delivery of the judgement was beyond the control of the Respondent herein therefore cannot be used against him.

29. It was submitted that the decision by the trial court to reinstate the Respondent was arrived at after thorough consideration of the conditions in section 49(4) of the *Employment Act*. In this he relied on

the case of National Bank of Kenya V Samuel Nguru Mutonya [2019] eklr where the Court relied on the decision of Co-operative Bank of Kenya Ltd V. Banking Insurance & Finance Union CA No. 188 of 2014 as follows:

> " Our understanding of the Act is that the prescribed remedies...are discretionary rather than mandatory remedies, to be granted on the basis of the peculiar facts of each case. This is made absolutely clear by the use of the word "may", which in the context of the provision imports a discretionary rather than a mandatory meaning. That the remedies....are not a mandatory remedies, is made even clearer by section 49(4) which sets out some 13 considerations which the court must take into account before determining what remedy is appropriate in each case. Those considerations include the wishes of the employee, the circumstances of the termination and the extent to which the employee caused or contributed to it, the practicability of reinstatement or re-engagement, the common law principle that an order for specific performance of a contract for service should not be made save in exceptional cases, the employee's length of service with the employer, the employee's reasonable expectation of the length of time the employment was to last but for the termination, the employee's opportunities for securing comparable or suitable employment, any conduct of the employee that may have caused or contributed to the termination, any action on the part of the employee to mitigate his loses, etc. What all the above means, is that before exercising the discretion to determine which remedy to award, the court must be guided by the above comprehensive list of considerations."

30. On whether the trial court erred in finding the termination of the Respondent unfair, the Respondent submitted that the appellant failed to follow due procedure in terminating it's employment, because he was subjected to a sham disciplinary process with a pre-determined decision to terminate his services.

31. It was submitted that the Sub-County Director of education is the one that is empowered to carry out investigations into the conduct of teachers and by donating such powers without any authority to the Human Resource officer made the proceedings invalid because the Human Resource officer does not have powers to do such investigation. He argued that the allegation by the Appellant that the issues of authority of HR officer was not raised in the claim is not true because the Respondent herein questioned the procedure used in the investigations under paragraph 10 and 11 of the Memorandum of claim.

32. The Respondent submitted that under Rule 8.2.1 of the Teachers Service Disciplinary Rules, a teacher who is suspected of any offense should be subjected to preliminary hearing before a decision is made for interdiction. This procedure was not followed in this case. Further that he was not allowed to cross examine the witnesses in the disciplinary case, neither was he supplied with investigations report in order to mount a proper defence for himself. The Respondent also submitted that he was not informed of the need to have a representative of his choice as was held in Alphonse N Mwachanga V operation 680 Limited [2013] eklr. Also that the Appellant failed to call vital witnesses such as the head teacher of the school and the sports master that would aid in ascertaining the truth in this case.

33. To emphasize on the fact that the termination of the Respondent herein fell short of the dictates of procedural justice, the Respondent relied on the case of Judicial Service Commission V Mbalu Mutava and another [2015] eklr where the Court held that;-

> " The right to fair hearing under the common law is a general right, albeit, a universal one. It refers to the three features of natural justice identified by Lord Hodson in Ridge v Baldwin (supra). Although it is applicable to administrative decisions, it is apparently limited in scope

in contrast to right to fair administrative action under article 47(1) as the latter encompasses several duties – duty to act expeditiously, duty to act fairly, duty to act lawfully, duty to act reasonably and, in the special case mentioned in article 47(2), duty to give written reasons for the administrative action. The duty to act lawfully and duty to act reasonably refers to the substantive justice of the decision whereas the duty to act expeditiously, efficiently and by fair procedure refers, to procedural justice."

34. The Respondent also relied on the case of Mathew Kipchumba Koskei V Baringo Teachers Sacco[2013] eklr where Ongaya J held that;

> " If the employer has initiated and concluded the disciplinary proceedings on account of a misconduct which also has substantially been subject of a criminal process for which the employee is exculpated or found innocent, the employee is thereby entitled to setting aside of the employer's administrative punitive decision either by the employer or lawful authority and the employee is entitled to relevant legal remedies as may be found to apply and to be just."

35. On the back wages awarded, the Respondent submitted that had it not been by the actions of the Appellant in commencing proceedings which led to his unfair termination, he would have been in employment, therefore that since the trial court found his termination unfair, the reinstatement and payment of back wages was in accordance with the law and the trial's court decision was sound.

36. It was also submitted that the Respondent had worked diligently for the Appellant without any warning letter, rising up the ranks to be the Deputy head teacher at the time of dismissal and being that his name has been tarnished, he might not be in a position to get any other employment from any other institution, therefore that reinstatement was the most appropriate remedy in the circumstances. In this he relied on the case of Hellen Khamali V Teachers Service Commission and another [2020] eklr.

37. In conclusion, the Respondent submitted that the decision of the trial court was sound and urged this Court not to interfere with it an instead dismiss the Appeal with costs to the Respondent.

38. I have examined the averments and submissions of the parties herein.

39. This is a 1st appeal and therefore this court is bound to re-evaluate the evidence of this case afresh before arising at a decision.

40. In this case per the evidence adduced, the respondent herein was indeed a teacher employed by the appellants herein.

41. He was accused of defiling a pupil (FM) whom he occasionally invited to his house and proceeded with the illicit act.

42. This matter was reported to the appellants by the Sub-County Education officer.

43. Investigations were done and the respondent was interdicted and thereafter subjected to a disciplinary hearing.

44. He was found culpable and then dismissed from service.

45. The respondent was also subjected to a parallel criminal process wherein he was charged with defilement of the said pupil and was acquitted.

46. During the hearing at the lower court, the respondent herein raised a case that his dismissal was unfair and unjustified for reasons that he had not been interviewed during the investigations carried out by the appellants.

47. He also raised a defence that having been acquitted by the criminal court, the appellants were duly bound to reinstate him on duty.

48. During the lower court's hearing, the appellants raised a defence that the dismissal was proceeded by a fair disciplinary process and was justified.

49. The trial court after considering the evidence arrived at a decision that the dismissal of the respondent was unfair and unjustified and ordered reinstatement and payment of back pay.

50. In this appeal, the appellants have raised pertinent issues which I now proceed to determine.

51. The appellants aver that the trial court proceeded in excess of jurisdiction to order reinstatement of the respondent beyond the 3 years limit.

52. In this regard, I will refer to Section 12 (3) of the ELRC Act which provides for remedies that this court can grant as follows;

> " 12 (3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders—
>
> (i) interim preservation orders including injunctions in cases of urgency;
>
> (ii) a prohibitory order;
>
> (iii) an order for specific performance;
>
> (iv) a declaratory order;
>
> (v) an award of compensation in any circumstances contemplated under this Act or any written law;
>
> (vi) an award of damages in any circumstances contemplated under this Act or any written law;
>
> (vii) an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law; or
>
> (viii) any other appropriate relief as the Court may deem fit to grant".

53. Section 3 (vii) above is very explicit that reinstatement of an employee shall be within three years of dismissal.

54. In this case however the respondent was dismissed on 31st July, 2018.

55. The court however rendered a Judgment on 16th February, 2022 about 4 years after the dismissal reinstating the respondent to work.

56. This was indeed done in excess the court's jurisdiction and was therefore illegal ab initio.

57. This position of the law has further been restated by this court in various decisions (see Sotik Highlands Tea Estate Ltd Vs Kenya Planation & Agricultural Workers Union (Supra) where the issue of reinstatement beyond 3 years was restated as being untenable.

58. In the same vein, the respondents have submitted that the lower court proceeded to award remedies that were neither pleaded nor sought for in the body of the statement of claim.

59. Indeed, in the lower court, the pleadings show that the claimant sought to be paid 3 months salary in lieu of notice, unpaid leave days, gratuity and 12 months salary as compensation for unfair termination.

60. He also sought to be reinstated to his employment. The respondent avers that the trial court was influenced by extraneous matters by ordering a reinstatement.

61. I have considered this argument and I note that the trial court didn't consider extraneous issues in ordering for reinstatement and neither did he award remedies not sought for.

62. However, in view of the fact that trial court ordered for reinstatement even after 3 years of dismissal, he went beyond the perview of his jurisdiction and therefore the order of reinstatement cannot stand.

63. In the same vein, the trial court ordered he be paid 12 months compensation for unlawful termination.

64. In awarding for compensation on this prayer, the trial magistrate considered that the investigations leading to the claimant respondents interdiction were conducted in his absence and he was never given a chance to be heard.

65. The appellants argued that they followed due process on this issue.

66. I note that even after the interdiction, the respondent was summoned to be heard by the appellants.

67. He was therefore given an opportunity to be heard and was heard.

68. Despite his acquittal in the criminal case, there was nothing that barred the appellants from proceeding with their internal disciplinary processes which proceedings were conducted according to the laid down procedures.

69. In my view there was nothing to show that the respondent was not accorded due process and it is my finding that the trial court erred in finding that the respondent was not accorded due process.

70. It is my finding that the appeal has merit and it therefore succeeds.

71. The orders granted by the trial court are set aside in their entirety.

72. Costs to the appellants.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 4TH DAY OF JULY, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Daye for Respondent – present

Njau holding brief Anyuol for Appellants - present

Court Assistant – Fred