



**Gold Crown Beverages (Kenya) Limited v Ngugi (Cause 635 of 2016)  
[2023] KEELRC 2345 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2345 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 635 OF 2016  
M MBARÚ, J  
SEPTEMBER 28, 2023**

**BETWEEN**  
**GOLD CROWN BEVERAGES (KENYA) LIMITED ..... CLAIMANT**  
**AND**  
**MAINA NGUGI ..... RESPONDENT**

**JUDGMENT**

1. The claimant employed the respondent through letter dated 6 January 2015 as the general manager-domestic sales with effect from 1<sup>st</sup> February 2015 at a monthly salary of Kshs. 500,000 and to be based in Nairobi reporting to the Managing Director. The salary paid was inclusive of house allowance and car allowance.
2. It was part of the employment contract that either party was entitled to terminate the employment contract through 3 months' notice or payment in lieu thereof.
3. On 4 June 2016 the respondent terminated his employment contract and issued notice but this was in breach of the contract as he failed to give the required notice of 3 months or payment thereof. for breach of contract, the respondent is liable to the claimant for Kshs. 1,500,000 being 3 months' salary in lieu of notice.
4. During the course of employment, the respondent's duties included approving new customer accounts and credit, authorising supply of goods to existing customers and ensuring that the customer accounts were settled within the credit period. The claimant availed the respondent the privilege of vouching for the creditworthiness of the customers he brought into the claimant's business.
5. During his employment, the respondent engaged in several dubious and underhand activities;
  - a. The respondent failed to carry out an appraisal of the customer's creditworthiness before approving credit to them;



- b. As a result of the respondent's conduct, there was breach of the common law duty of good faith and promoting the success of the claimant as an employee where he opened and approved customer accounts which have since then defaulted while some turned out to be fictitious;
  - c. When issuing credit to unworthy customers, the respondent proceeded to unlawfully and fraudulently demand money as kickback from these customers so as to settle their debts without pressure from the claimant;
  - d. The respondent unlawfully and without permissions supplied goods beyond the claimant's customer's capacity so as to record higher sales. As a result, the claimant was forced to incur expenses of double transportation amounting to Kshs. 688,999 after the customers intimated that they were supplied with excess goods. Also, these excess goods had to be returned to the claimant's Mombasa factory for repackaging and this costed the claimant an additional Kshs. 488,211; and
  - e. The respondent unlawfully extorted pay outs from the claimant's service providers and suppliers who consequently overcharged the claimant in order to recover monies extorted from them by the respondent.
6. The claim is that the conduct of the respondent was in breach of his contract of employment and common law duties as an employee on the grounds that he failed to exercise due diligence and care in carrying out his duties as the general manager-domestic sales. He failed to promote success of the claimant by appraising customer accounts and issued credit to unworthy customers and also opened fictitious customer accounts for his own personal gain and at the expense of the claimant. The respondent breached his employment contract by receiving money as kick back from customers and unlawfully supplying goods in excess beyond the customer's capacity and request and also extorting money for the service providers and suppliers.
  7. As a result of the respondent's conduct and breach of his employment contract, the claimant recorded a high number of defaulters during the responder's tenure leading to commercial loss and legal costs arising from debt recovery suits following defaulting customers.
  8. The breaches of contract by the respondent have also caused the claimant injury to its reputation built over the years both nationally and internationally. This has costed claimant several of its customers and loss of finances.
  9. On diverse dates in the year 2015 and 2016 the claimant advanced the respondent with monies, which monies were to be deducted from his salary; On 29 January 2015, money paid to Auto Selection at Kshs. 595,000; On 29 January 2015, money paid to Pwani Oil products Kshs. 991,892; On 18 March 2015 money aid to Pearl Africa for motor vehicle KCC 779K at Kshs. 690,000; On 15 April 2015 money paid to Barclays Bank to offset an outstanding loan Kshs. 234,574; On 15 May 2015 advance salary at Kshs. 10,000; On 25 May 2015, money paid to NIC bank Kshs. 43,695; On 31<sup>st</sup> December 2015, purchase of Samsung galaxy tablet Kshs. 26,100; On 18 April 2016, advance salary Kshs. 100,000 Total Kshs. 2,691,261.35.
  10. At the time the respondent resigned from his employment, he had only paid Kshs. 1,549,796 leaving a balance of Kshs. 1,141,466.35 and which he has refused to pay.
  11. In the ear 2015 and 2016 the claimant, upon the request of the respondent advanced him monies for travelling to the tune of Kshs. 693,198 and out of which, he only accounted for Kshs. 285,724.49 and the claimant is claiming Kshs. 407,471.51 which has remained unaccounted for to date.



12. The claim is also for Kshs. 60,000 being monies extended to the respondent as IOU during his employment contract and which amount has remained unsettled to date despite demands for the same.
13. The claimant's case is that the respondent was in breach of contract and should be ordered to pay the following;
  - a. general damages for breach of contract leading to loss of business reputation;
  - b. special damages for financial loss all at Kshs. 1,176,211;
  - c. Kshs. 1,500,000 in lieu of notice,
  - d. Kshs. 1,141,466.35 being salary advances,
  - e. Kshs. 407,473.51 being travelling advances,
  - f. IOU Kshs. 60,000, and
  - g. Costs of the suit.
15. The claimant filed the witness statement of Daniel Karanja the finance manager on the grounds that the respondent was employed by the claimant with effect from 1<sup>st</sup> February 2015 and then resigned on 4 June 2016. The resignation was to take immediate effect contrary to the employment contract which required 3 months' notice or payment in lieu thereof and he thus owes the claimant Kshs. 1,500,000.
16. The respondent had various duties including approving new customer accounts and credit, authorising supply of goods and ensuring the accounts are settled within the credit limits and period but the respondent went ahead and used his office to extort money and failed to secure the creditworthiness of some customers leading to dubious and underhand activities. This led to irrecoverable debts and financial exposure of the claimant leading to suits against defaulters in order to recover debts going up to 20 million.
17. The respondent demanded for money and kickbacks from customers so as to enable the defaulting customers to settle their debts without pressure particularly Jazz Supermarket c/o Jackson Mwangi one of the claimant's customers who owe Ksh.5.7 million. The respondent received kickback from Jackson Mwangi and Mary Mugo the proprietors of the business; On 9 January 2016 Jackson Mwangi paid the respondent Kshs. 10,000; On 17 March 2016 Mary Mugo paid the respondent Kshs. 10,000; On 19 April 2016 Mary Mugo paid the respondent Kshs. 5,000.

These payments were made through the phone transfers.
18. The respondent supplied goods beyond the claimant's customer's capacity in order to record higher sales leading to a loss to the claimant amounting to Kshs. 1,176,211 for costs incurred in transporting these goods and repackaging them after the customers had intimated that they were supplied with excess goods.
19. The respondent extorted money from service providers, suppliers and his fellow employees. The respondent received Kshs. 1,026,000 as kickback from a supplier, EWD Limited who in turn overcharged the claimant in order to recover the same.
20. The actions and conduct of the respondent were in breach of his employment contract leading to grievous loss to the claimant financially and in terms of its reputation built over many years.



21. The respondent was advanced various monies in the course of his employment, money paid to his garage and personal expenses amounting to Kshs. 2,691,261 and at the time he resigned he had only repaid Kshs. 1,549,795 leaving a balance of Kshs. 1,141,466.35 unpaid.
22. While in employment, the claimant advanced the respondent monies for travelling amounting to Kshs. 693,198 and he only accounted for Kshs. 285,724.49 and the balance of Kshs. 407,473.51 remains unpaid and the claim should be allowed as prayed with costs.
23. The claimant filed the statement of Solomon Mwangi a director of Talanta Kenya Limited on the grounds that his company was contracted by the claimant in the year 2015 to offer merchandising personnel to sell their products in various supermarkets and outlets. The company was dealing with the respondent through telephone number No. 0722 ... 825 the general manager- domestic sales who instead of engaging professionally made demands for cash payments for doing business and these were paid through his phone number. These payments were made through coercion in fear of losing business.
24. The claimant also filed the statement of Betty Ogina a director of Brand Experts Limited and that in the year 2016, the company was contracted by the claimant to supply services in the form of merchandisers in various outlets within Nairobi and has retained such business but the respondent through his phone number 0722 ... 825 demanded for cash payments so that the company could be given business. These were kickbacks.

#### **Response and counter-claim**

25. In response, the respondent filed his reply and counter-claim.
26. The response is that the claimant initiated criminal complaint against him in Bungoma Criminal Case No.1190 of 2016 and the claims made are without merit and should be dismissed for lack of proof.
27. The respondent was under his contract of employment to perform his duties in Nairobi where he was resident and the listed monies as owed are without proof. If any monies were owed as alleged, the respondent submitted all receipts to the finance department regarding all expenditure and the claimant has custody of all such matter.
28. The alleged misuse of authority by the respondent is made without any proof and the respondent did not cause the claimant any loss or violated the law of his contract of employment.

#### **Counter-claim**

29. In counter-claim, the respondent's case is that through a letter dated 6 January 2015 he was employed by the claimant earning a salary of Kshs. 500,000 per month but through the managing director and finance director and personnel manager (HR), they engaged in unfair labour practices to the detriment of the respondent by failing to provide him with a job description for work that he had been employed for and was constantly tossed from one job to another without certainty. The respondent was forced to work or undertake work in an area that he had not been hired for and not in his area of expertise especially in debt collection without training or consultations. The claimant ignored his communications between the parties even when he made job related emails making work unbearable and difficult. The respondent was subjected to uncondusive and harsh work conditions and environment by the claimant hence breaking down communication and then withholding his payments from the moment he served the claimant with the resignation notice.



30. The respondent in counter-claim has challenged his unfair, unlawful and constructive dismissal by the claimant on the grounds that he had no job description contrary to Section 10 of the [Employment Act](#), the claimant forced him to work in an area where he had not been hired for and without expertise, the claimant ignored communications received from the respondent, and refusing to issue a certificate of service or payment in lieu to notice and terminal dues.
31. The counter-claim is also that the claimant's officers through the managing director, finance director and personnel manager acted in a manner that constituted repudiatory breach of the terms of the employment contract and despite allegations made, the respondent was not taken through the disciplinary process and hence there was constructive dismissal. This was in violation of fair labour practices and the notice to resign on 4 June 2016 was to allow the respondent serve his notice period of 3 months but the claimant frustrated the respondent out of his employment and should pay for the notice period.
32. The respondent's case is that he was subjected to inhumane conduct by the claimant orchestrated with false accusation that resulted in false imprisonment for 5 days in Bungoma occasioning him embarrassment, serious mental and emotional anguish and holds the claimant liable in damages. Through notice dated 8 August 2016, the respondent made demand for redress which the claimant ignored.
33. The respondent is seeking the following;
  - a. A declaration that the claimant's conduct amounted to unfair, unlawful and constructive dismissal and in breach of the employment contract;
  - b. Damages for unfair and constructive dismissal from employment at 12 months;
  - c. Refund of all unlawful deductions made from the respondent's salary by the claimant during his employment;
  - d. 3 months' notice pay Kshs. 1,500,000;
  - e. Service pay at 15% for every year worked from January 2015 to June 2016;
  - f. Unpaid leave days from 2015 to 2016;
  - g. Terminal dues;
  - h. Certificate of service; and
  - i. Costs of the suit.
34. In support of his case, the respondent statement is that upon employment by the claimant as the general manager-domestic sales he worked diligently but later in the course of his work, the claimant started making unbearable demands and ignoring his communications leading to frustrations and left without a job description and allocation of duties outside his expertise, debt collection that he had no training on. The claimant accused him of undertaking his own duties without taking the respondent through any disciplinary process or warnings.
35. The respondent's case is that upon his resignation, he was willing to serve notice period but the management frustrated him and working became unbearable and leading to false accusations resulting in unlawful and false imprisonment which caused him embarrassment and emotional anguish.



36. During the entire course of his employment, the respondent was never summoned for any disciplinary proceedings by the claimant with regard to his employment and it was inhumane treatment; and upon the constructive dismissal, the claimant has refused to pay terminal dues.
37. At the close of the hearing, both parties agreed to file written submissions.
38. The claimant submitted that under Section 36 of the *Employment Act*, 2007 (the Act) a party in an employment contract is allowed to terminate employment upon notice. In this case, the parties had agreed to a 3 months' notice or payment in lieu thereof before termination of employment. At his salary of Kshs. 500,000 the respondent was to terminate employment by notice or payment of Kshs. 1,500,000 in lieu thereof which he failed to do when he resigned from his employment through notice dated 4 June 2016 immediately.
39. During his employment, the respondent had outstanding and unpaid monies advanced by the claimant and which were not settled at the time he resigned from his employment. The respondent had salary advances which have not been settled to date and despite demand from a total of Kshs. 1,549,795 the respondent had a balance of Kshs. 1,141,466.35 and advances of Kshs. 407,473.51 unpaid.
40. The claimant submitted that the conduct of the respondent caused financial and reputational loss. The respondent engaged in malpractices and dubious conduct with various customers resulting in financial loss contrary to Section 44(4) (c) of the Act. Due to this conduct, the respondent lost Kshs. 1,176,211 and the respondent is liable to pay the same.
41. For breach of the employment contract, the respondent should pay general damages to the claimant and as pleaded in the memorandum of claim and the counter-claim dismissed with costs.
42. The respondent submitted that he was placed under intolerable, untenable and uncondusive work environment leading to unfair and unlawful termination of employment. Without a job description, with allocation of proper work duties based on the respondent's expertise, the claimant placed the respondent under unfair working conditions leading to constructive dismissal as held in *Milton M Isanya v Aga Khan Hospital Kisumu* [2017] eKLR. Constructive dismissal is defined in *Nathan Ogada Atiagaga v David Engineering Limited* [2015] eKLR which apply in this case. The respondent resigned and wanted to serve notice but due to unbearable work conditions, he could not and hence he is entitled to notice pay as held in *Edwin Beiti Kipchumba v National Bank of Kenya* [2018] eKLR. The counter-claim should be allowed with costs.
43. On the claim and counter-claim, the issues which emerge for determination are whether there was breach of the employment contract by the respondent, whether the respondent suffered constructive dismissal and whether the remedies sought by the claimant should issue and whether the counter-claim should be allowed and who should pay costs.
44. The employment of the respondent by the claimant as general manager – domestic sales is not contested.
45. The employment relationship was regulated under a written contract dated 6 January 2015 and the respondent was the general manager – domestic sales with effect from 1<sup>st</sup> February 2015. The respondent worked until 4 June 2016 when he resigned from his employment on the grounds that;

Resignation Notice

The above refers. I here tender my Resignation From Gold crown beverages Ltd. I appreciate the opportunity to learn and grow with your organisation. ...



46. The claim is that the respondent was in breach of the employment contract since he resigned with immediate effect and without payment for the notice period in lieu thereof of 3 months as agreed under clause 11 of the employment contract.
47. The respondent's case is that he resigned from his employment due to being placed under intolerable working conditions leading to constructive dismissal and he had wanted to serve notice period but this was unbearable and hence, he was forced to exit employment.
48. On the claim, the claimant's case is that the respondent as the employee engaged in various malpractices, extorted money from customers, breached the employment contract contrary to the common law duty of care and attention to his allocated duties and eventually terminated his employment without notice. as the employer, unlike the position subsisting before the enactment of the Act in the year 2007, an employee who engages in misconduct or gross misconduct should be dealt with in terms of the provisions of the Act under Section 35, 41, 43 and 44 which requires notice to issue with regard to the employee's misconduct or gross misconduct over any matter that the employer genuinely believes that forms such conduct and to allow the employee to attend and defend himself. Whether the employer is the claimant of the respondent, under the Act, such burden does not shift in terms of Section 47(5) of the Act as held in the case of *Milano Electronics Limited v Dickson Nyasi Muhaso* [2021] eKLR that;

The standard of proof is set out under Section 47(5) of the Act. In terms thereof, the employee shall adduce prima facie evidence that there was no valid reason to dismiss him from employment and once that is done the employer bears the burden of justifying the dismissal. In other words, the respondent bears the evidential burden of rebuttal. If the employer is unable to rebut the evidence by the claimant, then the employee is said to have proven that there was no valid reason to dismiss him on a balance of probabilities.

49. Section 47(5) of the has two parts - the employee has the burden of proving the unlawfulness of the termination; and the employer has the burden of justifying the termination.
50. Overall, the law is that the employer has the duty to provide evidence to establish the validity of the termination in terms of sections 43 and 45 of the Act with an interplay between sections 43 and 47(5) of the Act, as held in *Muthaiga Country Club v Kudheiha Workers* [2017] eKLR that

The grievants having denied, through their witness, the reasons given for their dismissal, discharged their obligation under Section 47(5) of the Act by laying the basis for their claim that an unfair termination of employment had occurred. This brought into play Section 43(1) and 47(5) of the Act that places the burden upon the appellant to prove the alleged reasons for termination of the grievants' employment, and justify the grounds for the termination of the employment.

51. In this case, despite the claimant collecting various matters of the respondent with regard to his conduct and that in the year 2015 and 2016 he engaged various customers to extort money and failed to do his duties properly without the due attention required of his position, until he resigned from his employment, no action was taken against him. The statements from Solomon Ngugi and Betty Ogina are not dated. Save to confirm that the respondent was extorting money from them to manipulate business, lack dates when such statements issued and cannot apply to extricate the claimant from its duty to bring to the attention of the respondent as the employee any matters of his misconduct or gross misconduct and to allow him a fair chance to respond in terms of Section 41 of the Act.



52. Ultimately, the respondent resigned from his employment and gave notice dated 4 June 2016. He does not offer to serve the 3 months' notice period required under his employment contract under Clause 11 thereof.
53. In terms of Section 35 and 36 of the Act, before termination of employment, the court reading of the employment contract and the law, the respondent should have issued the required notice of 3 months which is not apparent in his notice as served upon the employer, the claimant.
54. The claimant is entitled to 3 months' pay of Kshs. 1,500,000 in lieu of the respondent serving or paying in lieu of the notice period.
55. Upon termination of his employment, the respondent as the employer had been advanced various payments by the claimant as the employer, and under the provisions of Section 10(6) of the Act, is the custodian of all work records.
56. With termination of employment, the claimant as the employer had a legal right in terms of Sections 17 and 19 of the Act to deduct and demand the respondent to pay for monies advanced to him during employment and to claim for any loss incurred due to improper performance of his duties or due to negligent conduct. section 19(1)(b) of the Act provides that;
1. Notwithstanding section 17(1), an employer may deduct from the wages of his employee—
    - (a) ...
    - (b) a reasonable amount for any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the wilful default of the employee;
    - (c) ...
    - (d) an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee whose contract of service provides specifically for his being entrusted with the receipt, custody and payment of money;
57. Save to deny the allegations that the various sums advanced to perform his duties were accounted for and receipts left with the finance office, the respondent as the employer required to render an account does not offer any material response to controvert the claims that; On 29 January 2015, money paid to Auto Selection at Kshs. 595,000; On 29 January 2015, money paid to Pwani Oil products Kshs. 991,892; On 18 March 2015 money paid to Pearl Africa for motor vehicle KCC 779K at Kshs. 690,000; On 15 April 2015 money paid to Barclays Bank to offset an outstanding loan Kshs. 234,574; On 15 May 2015 advance salary at Kshs. 10,000; On 25 May 2015, money paid to NIC bank Kshs. 43,695; On 31<sup>st</sup> December 2015, purchase of Samsung galaxy tablet Kshs. 26,100; On 18 April 2016, advance salary Kshs. 100,000 Total Kshs. 2,691,261.35.
58. Without any account, with end of employment, such monies are lawfully due to the employer, the claimant.
59. Also, the claimant submitted evidence that on various occasions, the respondent received monies from customers in the course of his duties as a result of extortion and kickbacks. The following payments are not controverted in any material way;
- On 9 January 2016 Jackson Mwangi paid the respondent Kshs. 10,000;
- On 17 March 2016 Mary Mugo paid the respondent Kshs. 10,000;



On 19 April 2016 Mary Mugo paid the respondent Kshs. 5,000.

60. The statements from Solomon Mwangi and Betty Ogina were not contested.
61. The loss to the claimant in terms of the business manipulation arising from such transactions, with end of employment is due all at Kshs. 25,000.
62. As part of his duties, the allocations made to the respondent should have been accounted for. For travel advances at Kshs. 407,473/51 and IOU of Kshs. 60,000, both are due to the claimant for lack of accounting for the same and the demand for the same is lawful
63. With regard to the claim for general damages for loss of business reputation and goodwill following the gross misconduct of the respondent, as noted above, these matters were not brought to the attention of the respondent before he resigned. There are no audited accounts with regard to the particulars of the losses incurred in this regard. Save for the particular special damages losses, this claim is without evidence.
64. In this regard, the claim is hereby found with merit and the following awards are awarded;
  - a. 3 months' notice pay at Kshs. 1,500,000;
  - b. Monies advanced to the respondent and unaccounted for at Kshs. 2,691,261.35 of which the respondent paid Kshs. 1,547,795 leaving a balance of Kshs. 1,141,466.35 is due and payable;
  - c. Advances made to the respondent in the course of his employment all at Kshs. 407,473.51 is payable;
  - d. The IOU at Kshs. 60,000 is due and payable.
  - e. Monies from customers Ksh.25,000.
65. On whether there was constructive dismissal, as correctly submitted by the respondent, the concept of constructive dismissal applies where an employer places an employee under intolerable working conditions forcing the employee to resign from his employment. The respondent's case is that the claimant failed to give him a job description, he was made to work outside his work area and work expertise and made to do debt collection duties without training. That the claimant caused him to be arrested and remained in custody in Bungoma for 5 days and was charged in Criminal Case No.1190 of 2016.
66. The respondent resigned and issued notice dated 4 June 2016 without giving any reasons. There is nothing to suggest that the notice was for 3 months as required under clause 11 of the employment contract. The lack of a job description for the period of 1<sup>st</sup> February 2015 to 4 June 2016 is not stated or any matter addressed in this regard. The alleged communications that were sent to the claimant and who is said to have failed to respond is not attached in evidence. the criminal case No.1190 of 2016 in Bungoma following the arrest of the respondent on 23 July 2016 and the charge registered on 25 July 2016 post his employment with the claimant.
67. Such matters cannot form the basis of the alleged constructive dismissal. To apply such concept as alleged by the respondent would negate its essence. That of repudiation of contract on the part of the employer who frustrates the employee in his duties without good cause. The resignation notice on its words and tenor does not suggest the there was any frustration of employment at all.



68. The respondent terminated his employment with immediate effect from 4 June 2016 and he failed to issue notice as required or make payment in lieu thereof. constructive dismissal cannot be inferred in this case.
69. The counter-claim for notice pay is unwarranted in this case.
70. The claim for compensation for alleged unfair termination of employment is not available in a case where the respondent resigned from his employment.
71. The alleged refund for unlawful deductions made to the respondent's salary is not particularised or addressed in his statement. On the findings above with regard to the claims made and on the monies advanced to the respondent by the claimant, salaries advanced being due, this claim must fail.
72. The respondent is seeking service pay at 15% for every year worked. service pay is due in terms of Section 35(6) of the Act where the employer fails to remit statutory deductions and does not place the employee under a benefits for social security or medical benefit. Under clause 3 of the employment contract, the respondent had a medical benefit for self and family. He is removed from service payment.
73. The claim for payment of terminal dues is not particularised.
74. A certificate of service is due at the end of employment terms of Section 51 of the Act and the best practice is to allow the employee to attend and undertake clearance and issuance of the same.
75. With regard to costs, this matter having taken since the year 2016 to conclude and the part being the failure by the claimant's witness to attend court during the date allocated for hearing, it is only fair each party to bear own costs.
76. Accordingly; judgment is hereby entered for the claimant, Gold Crown Beverages (Kenya) Ltd in the following terms;
  - a. The respondent unlawfully terminated the employment contract without notice;
  - b. 3 months' notice pay at Kshs. 1,500,000;
  - c. unaccounted funds at Kshs. 1,141,466.35;
  - d. Advances made to the respondent at Kshs. 407,473.51;
  - e. The IOU at Kshs. 60,000 is due and payable;
  - f. Monies from customers Ksh. 25,000.And;
  - (f) the counter-claim is hereby dismissed on its entirety;
  - (g) the dues owed to the claimant by the respondent shall be paid within 30 days from the date hereof after which the same shall accrue interests at court rates from the dates of filing suit and until payment in full;
  - (h) the claimant shall issue the respondent with a Certificate of Service in terms of Section 51 of the [Employment Act](#), 2007.And;
  - (i) Each party to bear own costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 28TH DAY OF SEPTEMBER 2023.**



**M. MBARŪ**  
**JUDGE**

