



**Mbatia v Kirinyaga Water & Sanitation Company (KIRIWASCO) (Employment and Labour Relations Cause 851 of 2022) [2023] KEELRC 3364 (KLR) (14 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3364 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 851 OF 2022  
BOM MANANI, J  
DECEMBER 14, 2023**

**BETWEEN**

**ANNE WANGARI MBATIA ..... CLAIMANT**

**AND**

**KIRINYAGA WATER & SANITATION COMPANY  
(KIRIWASCO) ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The instant suit seeks to inter alia, determine whether the Respondent wrongfully declined to renew the Claimant's fixed term contract of service when it lapsed in August 2021. The Claimant contends that the Respondent was under obligation to renew the contract. Conversely, the Respondent disputes that it was under such obligation.

**Claimant's Case**

2. The Claimant avers that she was hired by the Respondent in August 2008 to serve as its Procurement Officer. Initially, the engagement between the parties was on casual basis renewable after every three months. The Claimant avers that after some while, the contract was converted to fixed term and extended periodically until 19<sup>th</sup> January 2016 when she was issued with a letter confirming her in the position of Procurement Officer on permanent and pensionable terms.
3. The Claimant avers that on 31<sup>st</sup> May 2017, the Respondent issued her with a letter deploying her to the position of Acting Procurement Manager. She was subsequently successfully interviewed and appointed to the substantive position of Procurement Manager with effect from 2<sup>nd</sup> August 2018. According to the letter of appointment, the Claimant was to hold the position for a term of three years.



4. The Claimant avers that the letter of 2<sup>nd</sup> August 2018 indicated that if she wished to have the three year contract renewed, she had to lodge a request for renewal in writing at least six months before the contract lapsed. The Claimant states that in line with this requirement, she lodged a written request with the Respondent dated 2<sup>nd</sup> February 2021 for renewal of her contract.
5. The Claimant contends that she had legitimate expectation that her contract would be renewed because of various reasons. First, she avers that she had offered the Respondent exemplary service for approximately 13 years. She contends that the Respondent's practice was to inevitably renew contracts of service for best performing employees. According to her, this practice gave her assurance that her contract would be renewed since she had performed very well throughout.
6. Second, she contends that her previous position as Procurement Officer was held on permanent and pensionable terms. Thus, her subsequent fixed term engagements with the Respondent were to inevitably be renewed courtesy of her previous permanent and pensionable status.
7. Third, she argues that the contract of 2<sup>nd</sup> August 2018 gave her an assurance that her contract would be renewed if she requested for its renewal in writing at least six months before its expiry date. Since she had complied with this requirement, she expected the Respondent to inevitably grant her request.
8. Fifth, the Claimant contends that the Respondent still required her services. Thus, it (the Respondent) ought to have renewed her contract.
9. Finally, the Claimant contends that the contract of 2<sup>nd</sup> August 2018 assured her that her contract could only be terminated if she failed to perform well. In such case, she was to be issued with a one months' notice to terminate the contract. According to her, since her performance was good and no notice of termination had been served on her, she expected the contract to be renewed.
10. The Claimant contends that despite her expectation that the contract would be renewed, she received a letter from the Respondent dated 25<sup>th</sup> June 2021 indicating that its Board of Directors had resolved not to renew it (the contract). The Claimant states that upon this communication, she got into informal discussions with the Respondent's officers following which, the said officers assured her that the contract will be renewed for one year.
11. The Claimant avers that notwithstanding these informal assurances, she later learned that the Respondent was still not going to renew her contract. She indicates that as a result of these developments, she issued the Respondent with a formal demand to either renew the contract or face legal action. The Claimant contends that despite her aforesaid demand, the Respondent, through its lawyers, wrote declining to renew the contract thus necessitating this action.
12. The Claimant avers that it was contrary to section 37 of the *Employment Act* and *the Constitution* for the Respondent to have subjected her and other employees to short-term contracts of service over the years. Further, she contends that once the Respondent issued her with the contract of 19<sup>th</sup> January 2016 appointing her as its Procurement Officer on permanent and pensionable terms, it was no longer open to it (the Respondent) to revert her status to fixed term. Therefore, the Respondent's decision to appoint her on fixed term basis on 2<sup>nd</sup> August 2018 violated her right to fair labour practice under article 41 of *the Constitution* of Kenya 2010.
13. The Claimant has accused the Respondent of refusing to extend her contract allegedly because she refused to allocate procurement contracts to one of its directors. She asserts that as a result of this refusal, the Respondent accused her of tender irregularities and sent her on leave. The Claimant believes that she was victimized because of her refusal to irregularly award tenders to the Respondent's Directors.



## Respondent's Case

14. Although the Respondent filed a Statement of Defense, it did not call witnesses in the cause. However, it (the Respondent) advanced its case on the matter on the basis of the evidence that it procured through cross examination of the Claimant.
15. From the cross examination, it is evident that the Respondent does not deny that the parties had an employment relation based on the various contracts that the Claimant has alluded to. It is also clear that the Respondent does not deny that in January 2016, the Claimant was confirmed into the position of Procurement Officer on permanent and pensionable terms.
16. The Respondent got the Claimant to admit that the substantive position of Procurement Manager was advertised whilst she was serving in it in acting capacity and that she voluntarily applied for it. The defense also had the Claimant admit that at the time she applied for the new position, she was aware that it was for a fixed term of three years.
17. Further, the defense got the Claimant to confirm that she voluntarily attended the interview for the advertised position. In addition, the defense got the Claimant to admit that she accepted the terms of the new position by signing the letter of appointment dated 2<sup>nd</sup> August 2018.
18. The Respondent questioned the Claimant on the renewal requirements under the new contract. As a result, the Claimant confirmed that she was aware the contract was for three years. However, she hoped that the Respondent will allow her to renew it.
19. Further the Respondent got the Claimant to confirm that her expectation that the contract was to be renewed for a further term of one year was premised on an informal discussion that she had with the Respondent's Managing Director. The Claimant indicated that the Managing Director had indicated that he was pursuing the matter through informal negotiations.

## Issues for Determination

20. After hearing the Claimant and evaluating the pleadings on record, I have formed the view that the following issues that fall for determination:-
  - a. Whether the various renewals of the Claimant's contract violated section 37 of the *Employment Act* and *the Constitution* of Kenya 2010.
  - b. What was the legal effect of the appointment of the Claimant as the Respondent's Procurement Manager on her permanent and pensionable status under her previous contract as Procurement Officer?
  - c. Whether the Claimant had legitimate expectation that her fixed term contract of service contained in the contract of 2<sup>nd</sup> August 2018 would be renewed.
  - d. Whether renewal of the aforesaid contract was tied to the Claimant's performance.
  - e. Whether the Respondent's discretion not to renew the contract of 2<sup>nd</sup> August 2018 was fettered.
  - f. Whether the Respondent was duty bound to provide the Claimant with notice and reasons for non-renewal of the fixed term contract of 2<sup>nd</sup> August 2018.
  - g. Whether the Claimant is entitled to the order sought.



## Analysis

### **Whether the various renewals of the Claimant's contract violated section 37 of the Employment Act and the Constitution of Kenya 2010.**

21. There is no dispute that between August 2008 when the Claimant was employed and 23<sup>rd</sup> of March 2010 when she was appointed as the Respondent's Assistant Procurement Officer, she had been serving the Respondent as a casual employee. As is evident from her witness statement dated 29<sup>th</sup> July 2021 which she adopted as part of her evidence in chief, throughout this period, the Claimant served the Respondent on short term contracts of three months. It is only on 23<sup>rd</sup> of March 2010 that she was eventually placed on a three year fixed term contract as an Assistant Procurement Officer.
22. Section 37 of the Employment Act decasualizes casual employment where the casual employee has:-
  - a. worked for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or
  - b. performed work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more.
23. In effect, the Claimant's contention that the manner in which the Respondent handled her employment between August 2008 and March 2010 was in violation of section 37 of the Employment Act is correct. Under section 37(4) of the Act, an employee who is subjected to this kind of treatment is entitled to move the court for an order to decasualize her employment. Regrettably, the Claimant did not challenge this violation when it subsisted.
24. The Claimant has now moved the court for a declaration that the Respondent's conduct in this respect violated her constitutional rights under article 41 of the Constitution 2010. Unfortunately, this order cannot issue. At the time of these violations, Kenya had not promulgated the 2010 Constitution which constitutionalized the right to fair labour practice. As such, this right cannot be applied retrospectively.
25. Further, the Claimant approached the court with this grievance on 29<sup>th</sup> July 2021 more than three years since the time she last served as a casual employee in March 2010. As a result, the claim relating to violation of section 37 of the Employment Act is time barred in terms of section 90 of the Act.
26. As the record shows, after 23<sup>rd</sup> of March 2010, the Claimant's engagement with the Respondent shifted from casual employment to fixed term employment. This was to remain the position until 19<sup>th</sup> January 2016 when she was confirmed in the position of Procurement Officer on permanent and pensionable terms. The Claimant confirms this fact in the witness statement of 29<sup>th</sup> July 2021.
27. Fixed term contracts of service are distinct from casual employment contracts. As a result, section 37 of the Employment Act does not apply to them (fixed term contracts). At the same time, fixed term contracts being legitimate in law cannot be said to infringe the provisions of the Constitution.

### **What was the legal effect of the appointment of the Claimant as the Respondent's Procurement Manager on her permanent and pensionable status under her previous contract as Procurement Officer?**

28. The evidence on record shows that after the Claimant was confirmed into the position of Procurement Officer on permanent and pensionable terms through the Respondent's letter dated 19<sup>th</sup> January 2016, she was issued with another letter dated 31<sup>st</sup> May 2017 deploying her to the position of Procurement



- Manager in acting capacity. In cross examination, the Claimant stated that she moved to the new position because there was no office holder for it (Procurement Manager) at the time.
29. According to the letter dated 31<sup>st</sup> May 2017, the Claimant was to be paid an acting allowance for the duration that she was to serve as acting Procurement Manager. However, her terms and conditions of service remained as per her contract of Procurement Officer.
  30. In effect, the decision to appoint the Claimant as the Respondent's acting Procurement Manager did not extinguish her contract as Procurement Officer. She was only to serve in the new position in acting capacity for the duration that the Respondent had not appointed a substantive Procurement Manager.
  31. The Claimant confirmed in cross examination that whilst she was serving as acting Procurement Manager, she saw an advertisement by the Respondent for the substantive position of Procurement Manager. She confirmed that she understood that the advertised position was for a fixed term of three years.
  32. The Claimant confirmed that she applied for this position whilst seized of the above information. She confirmed that she attended the interview, was successful and was offered the three year contract. She confirmed that she accepted the contract and signed the letter of offer dated 2<sup>nd</sup> August 2018. In her testimony during cross examination, she said that she considered the new position as a promotion.
  33. The Claimant's acceptance of the new position of Procurement Manager extinguished her previous contract of Procurement Officer. With this acceptance, the Claimant lost the permanent and pensionable terms that she was enjoying under the position of Procurement Officer and entered into an entirely new three year fixed term contract with the Respondent as Procurement Manager.
  34. The Claimant cannot therefore blame the Respondent for the loss of her permanent and pensionable position. She voluntarily gave up this status of her own free will.

**Whether the Claimant had legitimate expectation that her fixed term contract of service contained in the contract of 2<sup>nd</sup> August 2018 would be renewed.**

35. The Claimant confirms that the contract between the parties dated 2<sup>nd</sup> August 2018 was for a fixed duration of three years. A perusal of the contract confirms the Claimant's position that it (the contract) had a renewal clause.
36. Under the clause, the Claimant was required, if she so desired, to apply for renewal of the contract at least six months before it lapsed. She was to do so in writing.
37. In compliance with this requirement, the Claimant indeed applied for renewal of the contract. As she indicated, this request was made through her letter dated 2<sup>nd</sup> February 2021.
38. The evidence on record shows that the Respondent declined the Claimant's request. In its letter dated 25<sup>th</sup> June 2021, the Respondent wrote to the Claimant intimating that its Board of Directors had considered her request and declined to grant it.
39. The Claimant avers that the Respondent's decision not to renew her contract violated her legitimate expectation that the contract would be renewed. The law on legitimate expectation is now fairly settled.
40. Black's Law Dictionary describes the concept as follows:-

"Expectation arising from the reasonable belief that a private person or public body will adhere to a well-established practice or will keep a promise."



41. In, Kenya Revenue Authority v Export Trading Company Limited (Petition 20 of 2020) [2022] KESC 31 (KLR) (Civ) (17 June 2022) (Judgment), the Supreme Court quoting De Smith Woolf & Jowell, “Judicial Review of Administrative Action” 6th Edn Sweet & Maxwell page 609, expressed itself on the subject as follows:-

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage.”

42. The court in Kenya Revenue Authority v Export Trading Company Limited (supra) went on to state as follows of the doctrine:-

“... we take the view that the question of whether a legitimate expectation arose is more than a factual question. It is not merely confined to whether an expectation exists in the mind of an aggrieved party, but whether viewed objectively, such expectation is in a legal sense, legitimate.”

43. In Republic v Pharmacy and Poisons Board & 2 others Ex-parte Juliet Lihemo Agufa [2015] eKLR, the court indicated that in order for one to successfully plead the doctrine of legitimate expectation, there must be evidence of the following:-

- a. There must have been a representation or promise in relation to the issue at hand.
- b. The representation must have been clear, unambiguous and devoid of relevant qualification.
- c. The expectation that is premised on the representation must be reasonable.
- d. The representation must have been made by the decision-maker.
- e. The decision-maker must have had the competence and legal backing to make the representation.

44. In Teresa Carlo Omondi v Transparency International- Kenya [2017] eKLR, the court expressed itself as follows on the concept:-

“The burden of proof, in legitimate expectation claims, is always on the Employee. It must be shown that the Employer, through regular practice, or through an express promise, leads the Employee to legitimately expect there would be renewal. The expectation becomes legally protected, and ought not to be ignored by the Employer, when managerial prerogative on the subject is exercised. Legitimate expectation is not the same thing as anticipation, desire or hope. It is a principle based on a right, grounded on the larger principles of reasonableness and fair dealing between Employers and Employees. The Employee must demonstrate some rational and objective reason, for her expectation. The representation underlying the expectation must be clear and unambiguous. The expectation must be induced by the decision maker. The decision maker must have the authority to renew. Repeated renewals, extended service beyond the period provided for in the fixed term contract, and promise of renewal, are some of the elements that would amount to objective reasons underlying expectation of renewal. The presence of these elements however, is not to be taken as conclusive proof of legitimate expectation.”

45. The Claimant asserts that she had legitimate expectation that the Respondent would grant her request to renew her contract because her initial fixed term contracts before she was confirmed as a permanent employee in January 2016 had always been renewed on account of her excellent performance. Since she



had allegedly performed exceptionally well under the contract of 2<sup>nd</sup> August 2018, she expected that the Respondent would keep to the same trend by renewing the said contract.

46. Despite this assertion, the Claimant did not provide evidence to demonstrate that her fixed term contracts that ran up to January 2016 were renewed solely on account of her excellent performance. Therefore, there was no evidence to suggest that the Respondent's past conduct had raised the Claimant's expectation that her 2<sup>nd</sup> August 2018 contract would be renewed on account of her good performance. There was no evidence that the Respondent had established this practice.
47. At the same time, the Claimant did not provide evidence to suggest that the Respondent had made any promise to her, whether express or implied, that her contract of 2<sup>nd</sup> August 2018 was to be renewed. The fact that the contract had a renewal clause is of itself no evidence of a promise to renew it.
48. As was observed in *Kenya Revenue Authority v Export Trading Company Limited* (supra), legitimate expectation is not to be inferred merely because the aggrieved party had some expectation existing in his mind. The test whether legitimate expectation ought to be inferred is an objective one. The facts of the case should objectively lead to the conclusion that the aggrieved party was, in the circumstances, sensibly entitled to entertain such expectation.
49. In my respectful view, it does not make sense that merely because the contract between the parties had a renewal clause, the Claimant should have entertained expectation that it will inevitably be renewed. Beyond such clause, there ought to have been evidence of a promise by the Respondent, either express or implied, which established hope in the Claimant that the contract will be renewed.
50. In *Teresa Carlo Omondi v Transparency International- Kenya* [2017] eKLR for instance, the renewal clause in the contract under consideration provided as follows:-

“further extension of this contract shall be subject to satisfactory performance and ongoing requirement of your services by TI-Kenya.”
51. Based on this clause, the trial Judge concluded that there was a promise by the employer to renew the employee's contract. The promise was based on the assurance by the employer that the contract would be renewed if the employee performed well and so long as her services were still required. Based on the evidence on record, the court was able to reach the conclusion that the employee had performed fairly well and was therefore entitled to legitimately expect that the employer would keep its promise to renew her contract if she performed well.
52. In the instant case, no such assurance was given to the Claimant by the Respondent. The alleged informal assurances to the Claimant by the Respondent's Managing Director that her contract was to be renewed were not, if at all, made by an individual with authority to renew the contract. Only the Respondent's Board of Directors was capacitated to renew the contract. Therefore the alleged promises by the Respondent's Managing Director were of no legal effect. They cannot provide the anchor for a claim for legitimate expectation by the Claimant.
53. For the above reasons, I arrive at the conclusion that there was nothing from the Respondent that would have raised legitimate expectation in the Claimant's mind that her fixed term contract of three years was to be renewed. The renewal was clearly at the absolute discretion of the Respondent.



**Whether renewal of the aforesaid contract was tied to the Claimant's performance.**

54. The renewal clause in the contract of 2<sup>nd</sup> August 2018 reads as follows:-

“Should you wish to be re-appointed in the same position, you will be required to make a written request at least six (6) months before the expiry date of this contract.”

55. On the other hand, the performance clause reads as follows:-

“The company will use certain performance criteria in order to evaluate your contribution to the company business. In general terms this performance measurement system is intended to address specific functional targets such as profit maximization, cost reduction, quality enhancement and efficiency etc which reflect the company's priorities and objectives at a particular point in time. It will also address general management effectiveness issues.

The specific nature of the criteria will be agreed upon.”

56. Nowhere in these two clauses is it indicated that the Claimant's exemplary performance would be a ticket to the automatic renewal of her contract. Nowhere in the clauses does the Respondent make a promise to the Claimant that should her performance be excellent, her contract would be renewed.

57. It is not contested that good performance is usually a key element in determining whether to renew a contract of service. However and unless the employer has expressly indicated that it will be an obvious factor in renewing an employee's contract, the employee cannot hang on it (good performance) as a ground for compelling the employer to renew her contract.

**Whether the Respondent's discretion not to renew the contract of 2<sup>nd</sup> August 2018 was fettered.**

58. Unless a fixed term contract has a specific clause that obligates the employer to renew it, the decision to renew such contract is at the discretion of the employer. This discretion is unfettered. Indeed, this reality is informed by the age old doctrine of employer prerogative.

59. Neither the court nor the employee can compel the employer to renew the contract. If the court were to do otherwise, it will be imposing contractual obligations on the parties where none exist.

60. Quoting the decision in National Water Conservation & Pipeline Corporation vs Jayne Kanini Mwanza, Civil Appeal No. 178 of 2014 (UR), the Court of Appeal in Amatsi Water Services Company Limited v Francis Shire Chachi [2018] eKLR stated as follows:-

“The general principle, as we understand it, is that a fixed term contract will terminate on the sun set date unless it is extended in terms stated in the contract. A court cannot rewrite the terms of a contract freely entered into between the parties. Once there is a written contract, the court will seek to give meaning to such contract giving ordinary meaning to its terms in determining any issue that may arise.”

**Whether the Respondent was duty bound to provide the Claimant with notice and reasons for non-renewal of the fixed term contract of 2<sup>nd</sup> August 2018.**

61. Except where a fixed term contract contains a clause which either expressly or impliedly obligates the employer to renew it, the contract will automatically lapse on its sunset date. The employer has no obligation to provide reasons for the closure of the contract except that it has been closed on account



of lapse of the contractual period. Similarly, except where a clause in the contract expressly imposes a requirement as to giving of notice to terminate, the employer has no obligation to provide notice for closure of such contract.

62. This matter was addressed in *Bernard Wanjohi Muriuki vs Kirinyaga Water And Sanitation Company Limited & Another* [2012] eKLR where the trial Judge observed as follows:-

“In the view of the Court, there is no obligation on the part of an employer to give reasons to an employee why a fixed- term contract of employment should not be renewed. To require an employer to give reasons why the contract should not be renewed, is the same thing as demanding from an employer to give reasons why, a potential employee should not be employed. The only reason that should be given is that the term has come to an end, and no more. The contract required the claimant to express his interest to renew six months before the expiry. He did this in December 2009. This clause did not create any obligation on the 1<sup>st</sup> respondent to renew; it merely directed the claimant on the procedure of seeking renewal. Reasons, beyond effluxion of time, are not necessary in termination of fixed-term contracts, unless there is a clause in the contract, calling for additional justification for the termination.”

#### **Whether the Claimant is entitled to the order sought.**

63. The Claimant has sought a number of reliefs. These include:-
- a. A declaration that the Respondent’s failure to renew her contract amounted to unfair termination of her contract of employment.
  - b. A declaration that conversion of the Claimant’s contract from permanent and pensionable to a three year fixed term contract was unfair, unlawful and unconstitutional.
  - c. A declaration that the Respondent’s act of employing the Claimant for 13 continuous years and then purporting that she was on short term contracts is an unfair labour practice in violation of article 41(1) of *the Constitution*.
  - d. An order reinstating the Claimant back to her position of Procurement Manager.
64. In respect of prayer a) in the list of primary reliefs, the court has found that after the Claimant’s contract lapsed by operation of time, the Respondent was under no obligation to renew it. Consequently, the Respondent did not act unfairly in declining to renew the contract. Thus, this relief is not available to the Claimant.
65. With regard to prayer b) in the list of primary reliefs, the court has found that the Claimant voluntarily extinguished the permanent and pensionable contract between her and the Respondent when she entered into the fixed term contract of service dated 2<sup>nd</sup> August 2018 appointing her as Procurement Manager. Therefore, this prayer is not available to her.
66. With regard to prayer c) in the list of primary reliefs, the court has found that the short term casual contracts between the Claimant and the Respondent that ran between August 2008 and March 2010 were executed prior to promulgation of *the Constitution* 2010 which entrenches the right to fair labour practice. Thus, the court cannot apply the right retrospectively to redress the grievance aforesaid. On the other hand, the contracts between the parties after March 2010 were fixed term contracts that are not subject to section 37 of the *Employment Act*. Similarly, it is not unconstitutional to enter into fixed term contracts such as those that were concluded between the parties to this action between March 2010 and August 2018. As a result, the relief sought by the Claimant in this respect is not available.



67. Prayer d) in the list of primary reliefs seeks for an order to reinstate the Claimant to her position as Procurement Manager. As has been indicated, this position was lost as a result of effluxion of time. Thus, the court cannot order reinstatement. To do so would be tantamount to re-writing the contract between the parties.
68. In the alternative the Claimant prays for the following orders:-
- a. General damages for violation of her legal and constitutional rights.
  - b. General damages for unfair termination.
  - c. Costs of the suit.
69. In respect of prayer a), the court finds that there is no evidence to demonstrate that the Claimant's constitutional rights were violated by the Respondent. The fixed term contracts that the parties concluded after 23<sup>rd</sup> March 2010 were lawful. The last contract entered into on 2<sup>nd</sup> August 2018 lapsed due to effluxion of time. Therefore, the plea for general damages for alleged violation of the Claimant's constitutional rights is unmerited.
70. With respect to prayer b), it has been demonstrated that the Claimant's contract of service terminated on account of effluxion of time. Therefore, there was no unfair termination of her contract to warrant a plea for compensation for unfair termination of employment.
71. As regards costs, the Claimant has lost the claim in its entirety. As costs follow the event, the award of costs is not available to her (the Claimant). Instead, the Respondent who is the successful party in the action is entitled to costs of the suit.

### **Determination**

72. After evaluating the evidence on record, I find that the Claimant's case against the Respondent is unmerited.
73. As a result, the case is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED ON THE 14<sup>TH</sup> DAY OF DECEMBER, 2023**

**B. O. M. MANANI**

**JUDGE**

**ORDER**

In light of the directions issued on 12<sup>th</sup> 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**

