



**IN THE REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**ELRC. CAUSE NO 956 OF 2017**

**CHRISTOPHER NGURU WARUTERE.....CLAIMANT**

**VERSUS**

**KENYA AIRPORTS AUTHORITY (KAA).....RESPONDENT**

**JUDGMENT**

1. The Claimant was employed by the respondent in October 2000 as an Assistant Mechanical Engineer and rose the ranks to become Mechanical Engineer and later Ag. Airport Engineer JKIA. On 27.6.2015 he received a letter dated 26.6.2015 terminating his employment for alleged gross misconduct and in the public interest. He brought this suit on 23.5.2017 contending that the termination of his services was wrongful, unlawful and without any justification and sought for the following reliefs:

(a) **Order for reinstatement.**

(b) **Declaration that the purported dismissal of the claimant by the respondent was wrongful and without justification.**

(c) **Payment of the following:**

- **Reinstatement to employment**
- **Three month's salary in lieu of notice Kshs 1,113,437.37**
- **Accrued salaries and allowances, earned upto the date of termination but unpaid Kshs 457,746.47**
- **Accrued but unutilized leave days Kshs 1,500,000.00**
- **Service pay equivalent to one month salary for each year worked Kshs 5,567,186.85**
- **12 months' pay for wrongful termination Kshs 4,453,749.48**
- **Loss of expected earnings up to retirement age based on last salary Kshs 80,031, 402.85**

**Total** **Kshs 93,123,524.02**

(d) **General damages for defamation, slander and loss of career.**

(e) **Costs of interest.**

2. The respondent filed defence admitting that it employed the claimant from 21.9.2000 till 26.6.2015 when it terminated his services on grounds of misconduct and public interest. It contended that the termination was substantively and procedurally fair because the reason for the termination was valid and the procedure followed was fair. Consequently, it averred that the claimant is not entitled to the reliefs sought except salary in lieu of notice upon completing clearance.

3. It further denied the claim for defamation contending that it did not publish any defamatory statements concerning the claimant and also because general damages for defamation and loss of career is not a remedy available under any regime of employment law. Therefore it

prayed for the suit to be dismissed with costs.

4. The Claimant testified as Claimant Witness 1 and reiterated that he was employed by the respondent from 2.10.2000 and worked until 26.6.2015 when he was dismissed. He explained how he was served an interdiction letter dated 19.5.2015 after some interrogations. The reason cited for that action was in relation to a tender for USD 120000 for Airport Buses. He explained that his role in the tendering process was that of a technical person in the evaluation committee in 2012 which made recommendations to the Tender Committee to award.

5. He testified further that after the tender was awarded by the Tender Committee he appointed was a member of the Negotiations Committee to discuss implementations of the contract. The committee made a report dated 25.7.2012 recommending that due to unavailability of funds, the tender process be discontinued and the procurement process be repeated. He clarified that the negotiation committee did not invite the bidder for negotiations because they were told that the budget was not adequate and the terms of reference given by the Tender Committee were not communicated to the Evaluation Committee.

6. He further testified that upon receipt of the negotiations committee above, the Tender Committee observed that the Negotiation Committee did not adhere to the terms of reference and recommended that there was need for renegotiation by the same team but with expansion to include AOC Chairperson at JKIA, GM (Marketing and Business Development, GM (Finance) and GM (Procurement and Logistics). The expanded committee was approved by the Managing Director on 2.11.2012 however, the Chair of the Negotiations Committee was replaced by a letter dated 26.11.2012. The Airport Manager JKIA represented the Airline Operations Committee (AOC) in the Committee.

7. CW1 explained that the Committee invited the bidder and a third and final meeting was held on 5.8.2013 where all issues negotiated were summarized and a final report was put together prepared. The tender committee received the negotiation report and deliberated on it on 30.8.2013, the Tender Committee approved the signing of the concession agreement with the successful bidder. The Tender Committee further recommended that Marketing and Business Development Department should negotiate with airlines on the rates to apply.

8. He stated that after signing of the concession agreement, the buses were delivered between November and December 2014. Thereafter a rate of USD 60 per trip was recommended and no complaint was raised by anyone until 15.5.2015 when the President visited the airport and told the press that he was not happy with the tender for the buses. The claimant stated that as a result of the protest by the president, six staff members including himself were interdicted and all staff members notified for the action via internal memo dated 20.5.2015. Thereafter he was invited to disciplinary hearing on 26.6.2015 and he was heard between 8 pm and 10 pm. The following day he received the termination letter dated 26.6.2015.

9. CW1 further stated that before his dismissal the respondent board referred the tender matter to the EACC for investigations and in December 2016, the EACC made a decision to close the inquiry file of the case after it found that the procurement process was done within the law. He referred the court to Gazette Notice dated 2.12.2014 No CX 8 No 149 of page 4785.

10. He maintained that his dismissal was not justified and it was extremely unfair consequently, he prayed for reinstatement plus other reliefs set out in his statement of claim.

11. On cross-examination he admitted that he was a member of the Evaluation Committee and the negotiations Committee but a member of the Tender Committee. He admitted that the Negotiation Committee found that there was no funds to sustain the tender for the Apron Buses. He admitted that he was also appointed member of the expanded negotiations Committee to negotiate implementation of the contract because the tender had already been awarded in 2012.

12. He admitted that he was served with a show cause letter and responded by his letter dated 9.6.2014 to the acting Managing Director saying that the Tender Committee rejected the report of the first negotiation committee because the negotiation was not done in line with the awarded tender.

13. He contended that he was dismissed in the public interest but due process was not followed. He contended that the reason for the termination was not true but he was accorded a disciplinary hearing. Finally he admitted that his employer was remitting NSSF and pension contributions in his favour.

14. The respondent's Acting manager Employee Relations, Ms Jacinta Wafubwa testified as RW1. He confirmed that he joined the respondent after the exit of the claimant and as such her testimony was based on his personal knowledge of the respondent's policies and the claimant's employment records. He further confirmed that the claimant was employed by the respondent from 21.9.2000 and worked until 26.6.2015 when his appointment was terminated for gross misconduct and public interest.

15. RW1 testified that on 6th and 7th December, 2011 the respondent invited tenders for provision and management of Apron Buses to transfer passengers from gate terminals to aircrafts and vice versa within JKIA. He testified further that two bidders tendered and after evaluation by the Tender Evaluation Committee which included the claimant, the winning bidder was awarded the tender. Thereafter the Claimant was appointed into a Negotiating Committee to review the modalities of the tender but in the end the committee resolved that there was insufficient funds to sustain the tender, hence the tender be terminated and fresh tenders be floated.

16. RW1 further stated that on 8.11.2012 the claimant was appointed to an expanded negotiation committee in respect of the same tender and recommended to the Tender Committee that the Project was viable and sustainable despite the fact that no funding had been availed towards the tender.

17. He further stated that following the president's directives that an inquiry into the tender be conducted the claimant was on 18.5.2015

asked to record a statement on his involvement in the tender and he obliged. Thereafter, the respondent commenced an Accident and Risk Management Committee of the Respondent's Board of Directors on 19.5.2015 to conduct an inquiry into the tender and in so doing they went through the statements prohibited by those who were involved in the tender including the claimant.

18. RW1 further explained that the Committee of the Board found that the tender advertisement had contravened the 2006 Public Procurement and Disposal Regulations 10(2) cds which required sufficiency of funds to sustain the procurement process and also Regulation 10 (2) (e) which required that the procuring entity not to pay in excess of the prevailing Market value. He stated that the lack of funds was the reason why the tender was initially rejected by the Negotiation Committee in which claimant was a member before the tender was later awarded by the Tender Committee and the reconstituted Negotiations Committee in which the claimant was also a member.

19. RW1 testified that on 19.5.2015 the claimant was interdicted vide a show cause letter which charged him with failure to not in the respondent's best interest and for recommending for the implementation of tender despite being part of the negotiation Committee that had earlier rejected the tender due to lack of funds.

20. He confirmed that the claimant responded to the show cause letter on 9.6.2015 but the same was not to be satisfactory. As a result the claimant was invited to a disciplinary hearing on 23.6.2015 where he attended and was given opportunity to make representation on the charges levelled against him. Thereafter the Board met on 26.6.2015 and resolved to terminate claimant's employment from that date for gross misconduct and public interest pursuant to Clause N11 of the Respondents' HR policy manual.

21. RW1 contends that the termination letter enumerated the claimant's terminal dues which were paid including pension benefits from the Respondents' Staff pension scheme. He contended that the claimant is not entitled to the reliefs sought in the suit save for three months' salary lieu of notice after completing clearing because the termination was for a reason it genuinely believed to exist. She further contended that the respondent was not obligated to contact, apologize, reinstate or compensate the claimant after the outcome of the investigations by the EACC. It further contended that it followed the due process provided in the law, its HR policy and the tenets of natural justice.

22. As regards the claim for defamation, RW1 contended that the claimant has not quoted any publication solely attributed to the respondent for the respondent to raise a defence thereto and whether or not such utterances or publications amount to defamation.

23. On cross-examination RW1 admitted that he never sat in the claimant's disciplinary hearing. He further admitted being aware that the president made a complaint about the tender for the Apron Buses after which the claimant was placed on disciplinary process. He also admitted that the claimant was senior and his case was dealt with by the board. He explained that termination in the public interest occurs where the image of the institution reflects badly to the public.

24. He further clarified that severance pay is only paid to those who are declared redundant. Finally he stated that three employees were dismissed in relation to the bus tender issue.

## Submissions

25. The claimant reiterated his averments in his pleadings and evidence. He maintained that the tender for buses was a concession model contract that was self financing where Airlines were to pay for use of the buses and the proceeds would pay the operators. He submitted that the only budget provision needed was to meet any deficit if any arose in the initial days. He contended that the Tender Committee satisfied itself on all the issues pertaining to the procurement including financing before awarding the tender in May 2012. He mentioned that after the signing of the concession contract all the apron Buses were delivered and continued operating without any problem until May 2015 when the President complained about the tender.

26. The claimant further stated that on 20.5.2015 the respondent invited EACC to investigate the tender but instead of waiting for the EACC investigations report, it rushed to dismiss him from service without any evidence to justify the dismissal. Thereafter, EACC made findings that the respondent had need to procure Apron buses and the procurement process was within the applicable law, the repealed Public Procurement and Disposal Act 2005 and there was no evidence of excessive monthly service charge as alleged.

27. The claimant further submitted that the findings of the EACC proved him innocent and that the reason for his dismissal was false, unfair and unjustified. He contended that he acted in the best interest of the respondent and undertook his work diligently. Further he contended that the respondent ought not have dismissed him without evidence to justify the same and that upon being found innocent by the EACC, the respondent ought to have reinstated him to his employment. According to him, his dismissal amounted to discrimination and victimization.

28. As regards the claimant for defamation he submitted that the media did not have anything to publish until the respondent rehearsed press statements to the media editors therefore the claimant narrated that the respondent defamed him by making press releases that were subsequently published by the media.

29. As a consequence of the matters highlighted in his submissions above, the claimant contended that he is entitled to the reliefs sought in his suit including severance pay and relied on **Allan Mwangi Muturi V Kenya Airways (sic) Authority [2020] eKLR** where the court awarded severance pay to a permanent and pensionable employee in total the claimant submitted that he is entitled to Kshs 93,123,254.02 and prayed for judgement.

30. The respondent submitted that the claimant was entrusted with a crucial duty but he failed to act in its best interest and as such it was justified to dismiss him. It maintained that the dismissal was justified because the claimant did not exercise due diligence while sitting in the Negotiation Committee that approved a tender after earlier recommending for its discontinuation. It relied on **Kenya Revenue Authority V Remwel Waithaka Gitahi & 2 Others [2019] eKLR** where the Court of Appeal held that the claimant was a public officer who was required to have utmost trust and integrity and once trust was irretraceably broken down the employer was entitled to dismiss him.

31. In addition the respondent submitted that the claim for defamation should fail because the particulars of thereof have not been pleaded and proved. For emphasis it relied on **Zadock Makhanu Khaemba & Another V John Bosire & Another [2020] eKLR** where the court held that in an action for libel or slander order 2 rule 7(1) of the Civil Procedure Rules provides that a plaintiff is required to give particulars of the facts and matters on which he relies in support of such issues.

32. Finally, the respondent submitted that the claimant is not entitled to the reliefs sought and prayed for the suit to be dismissed.

#### **Issues for determination**

33. There is no dispute that the claimant was employed by the respondent from the year 2000 to 26.6.2015 when his services were terminated. The issues for determination are:

- a. Whether the reason for termination was valid and fair.
- b. Whether the procedure followed was fair.
- c. Whether the claimant is entitled to the reliefs sought.

#### **Reasons for termination**

34. Under section 45(2) of the Employment Act termination of employment contract of an employee is unfair if the employer fails to prove that the action was satisfied by a valid and fair reason. Again section 43 (1) of the Act provides that in every legal proceedings challenging termination of employment by an employee, the employer as a burden of proving that for terminating the contract and that it existed as at the time of terminating the contract.

35. In this case the reason for dismissing the claimant was stated in the resolution of the respondent's Board of directors passed on 26.6.2015.

*“that the employment of Eng. Christopher Warutere, Ag Airport Engineer, Jomo Kenyatta International Airport (JKIA) be terminated for gross misconduct with immediate effect”.*

36. The termination letter dated 26.6.2016 stated that the Board found that the claimant had insubordinated the Board of Directors that he was incompetent and lacked control of his role as the Ag. Airport Engineer JKIA; that he had failed to take responsibility as the Airport Engineer and passed the blame to his subordinates; and that he had carelessly and improperly performed his duties under the terms of his employment which amounted to gross misconduct.

37. The letter further stated that the claimant's conduct was manifested both in his written and oral responses. The proceedings of the Disciplinary hearing were not produced as exhibit and no member of the Disciplinary Committee testified in this cast to substantiate the said allegation. Consequently, existence of the alleged oral responses has not been proved by evidence. The offending written response referred to by the termination letter was the letter dated 9.6.2015 which was produced as exhibits by the claimant.

38. I have carefully perused the letter and in my opinion, which I believe resonates with that of any reasonable employer, neither the tone nor the contents thereof is disrespectful to the employer. In my view it is a polite response to allegations that the claimant did not act in the best interest of the employer. The mere stated how he was appointed to negotiate terms and condition of a contract with a defined terms of reference which did not include the bid price and budget.

39. He listed down the terms of reference for the negotiators committee and clarified that his appointment to that role was on 8.11.2012 after the Tender Committee had already awarded the Tender to the bidder on 3.5.2012 and a letter of notification issued on 14.5.2012. He explained that he carried out his responsibility in good faith and in the best interest of the employer and prayed that no disciplinary action should be taken against him.

40. The court notes that as early as 11.2.2011, the respondent's Board of Directors resolved that there was a need for Airside Buses and observed that the same be outsourced both purchase and management by way of concession. The Managing Director approved request for tender for Apron Bus Operators to provide 5 Apron buses and operate them at JKIA. Under the proposed deal the respondent was to charge airlines for the services and pay the Apron Bus Operator on monthly basis.

41. The tender was advertised and bidders applied. The claimant sat in the Evaluation Committee which passed the lowest valid bidder. The Tender Committee considered the same and awarded the tender as recommended by the Evaluation Committee on 3.5.2012 and issued a letter of notification to the bidder on 14.5.2012.

42. Thereafter, the claimant was appointed to a negotiation committee with terms of reference to discuss modalities and terms of the contract between the contractor and the respondent. However, that never took place after the committee made a resolution that there were no sufficient funds to procure the services of the contractor and recommended for termination of the deal and instead recommend for a fresh procurement process.

43. It is common knowledge that the Tender Committee found that the negotiation committee did not act within its terms of reference and that its resolution was grounded on misconception of the nature of the contract. The Tender Committee clarified that the intended contract was supposed to be an outsourcing concession agreement to be self-funding through a service charge levied from the airlines for the uses of

the Apron Buses. The Tender Committee recommended for the negotiation Committee to be reconstituted and expanded to include key senior managers of the respondent.

44. After several meetings, the said Committee on the 30.8.2012 resolved and recommended for the signing of the concession contract for the Apron Buses between the respondent and the operators at the tender price of USD 120,000 per month for 5 buses. The committee further recommended that the marketing Department should negotiate with the airlines one the rates to apply.

45. The Tender Committee approved the said recommendations and a lawyer was retained to draw the contract, which was signed. Thereafter the buses were delivered and business proceeded peacefully until the President visited the Airport to open terminal Two and Three protested the procurement of the said Apron Buses until then, neither the respondent not the contractor or the airlines raised any complaint.

46. After the protest by the President the respondent pretended not to know anything about the procurement of the Apron Buses and interdicted the claimant and invited various Government Agencies to investigate the matter citing a directive from the President. Before, the Agencies could file reports of their findings, the claimant was taken through disciplinary process which culminated in his dismissal on 26.6.2015.

47. The claimant maintained his defence of innocence and compliance with the law in his response to the show cause letter and interdiction letter and also in this suit. The respondent did not produce the proceedings of the disciplinary hearing to prove that it had any evidence at the time it dismissed the claimant showing that he indeed violated the laws and misconducted himself in the role plated in the procurement process of the said Apron Buses at JKIA.

48. In fact after the dismissal of the claimant, the EACC made a finding that the procurement of the said Apron buses was done properly within the applicable law and there was no evidence of excessive monthly service charge as alleged. That finding was published on 2.12.2016 via Gazette Notice VOL. CX VIII – No 149 page 4785 which also stated that the DPP had accepted for the closure of the inquiry file.

49. Having considered all the evidence and the submissions by both parties, I am of the view that the respondent has failed to prove on a balance of probability that the reason for dismissing the claimant from service was valid. There was no reasonable basis upon which to prove that the claimant had flouted the procurement law or that he had not acted in the interest of his employer with respect to the Apron Buses tender before the dismissal was decided on 26.6.2015.

50. Whereas the respondent was not bound to wait for the EACC investigation or the outcome of the investigators, the findings of the EACC investigators or the outcome of the investigators the findings of the EACC investigations corroborates the claimants case that there was no justifications for his dismissal since the procurement of the Apron Buses was done within the law and that he had acted faithfully in the interest of the respondent under section 43 of the Employment Act, where the employer fails to prove the reason for dismissing an employee, the dismissal is unfair within he meaning of section 45 of the Act.

51. I have observed with surprise that, though the Board cited only one reason for termination in its resolution, namely gross misconduct, the dismissal letter by the Ag. Managing Director added a second reason, that is, Public Interest under HR manual Clause N.11.

### **Procedure followed**

52. Section 45(2) (c) of the Employment Act further provides that termination of employment contract is unfair if the employer fails to prove that the termination was done in accordance which a fair procedure. Subsection (4) further provides that termination of employment shall be unfair where it is found out that in all the circumstances of the case, the employer did not in accordance with justice and equity in terminating the employment of the employee.

53. Subsection (5) further provides that in deciding whether it was just and equitable for the employer to terminate the employment of the employee the trial court shall consider, (a) whether the procedure adopted to dismiss the employee, the communication of the decision to the employee and the handling of any appeal against the decision; and (c ). Whether the employer complied with Section 51 of the Act by issuing a certificate of service and the procedural requirement set out in section 41 of the Act .

54. *Section 41 of the Act provides that*

*“(1)*

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

*(2)*

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

55. In this case the claimant was served with an interdiction letter dated 19.5.2015 setting out the charges and on 4.6.2015 he was served with show cause letter and he responded in writing. Again, on 23.6.2015, he was invited to a disciplinary hearing on 26.6.2015 at 2 pm at the respondent’s office. Thus far the procedure followed was fair.

56. However, the court notes several the most of the process had some issue which needs to be highlighted. First the letter inviting the claimant for hearing did not give him the right of being accompanied by a fellow employee to the hearing. Secondly although the hearing was scheduled to start at 2 pm, the claimant was kept waiting until 8 pm when the hearing commenced and continued until past 10 pm. Keeping the employee in the office till late in the night and conducting disciplinary hearing after working hours, in my view is not only unfair but also oppressive to the employee. In my view an employer has all the time to conduct disciplinary hearing within working days and time. Consequently, any disciplinary hearing conducted too late after the working hours or during non-working days or public holidays should naturally be deemed as unfair.

57. Third, the procedure adopted to communicate the decision to terminate was not fair since it was first, communicated through the press and later by email. Finally, the court notes that the respondent did not issue the claimant with a certificate of service in compliance with section 57 of the Act. Considering all the circumstance of the case, I find that the respondent did not terminate the claimant's employment in accordance with a fair procedure as required under section 45 (2), (4) and (5) of the employment Act.

### **Defamation**

58. The claimant alleged the he was defamed by the respondent by broadcasting and publishing falsehood against him in the media and Nation Newspaper. He contended that the said publications exposed him to embarrassment, ridicule, pain and odium in the eyes of the right thinking members of the society and depicted him as an incorrigibly corrupt person who is not fit to hold a responsible office. The respondent denied publishing any defamatory words about the claimant as alleged and averred that the publications were done by the respective media houses.

59. I have carefully considered the alleged defamations claim which is contained in a single paragraph out of the 20 paragraphs in the statement of claim. The claimant has not specifically pleaded the words complained of, the dates they were published and whether the claim is arising out of the ordinary meaning of the words published or inuendos. In the circumstances I must agree with the respondent that the alleged defamation claim is not properly pleaded. Consequently, I reject and strike out the claim for defamation because it is not elegantly pleaded.

### **Reliefs**

60. In view of the finding herein above that the respondent has failed to prove a valid reason for dismissing the claimant and that the dismissal was done in accordance with a fair procedure, I make a declaration that the dismissal of the claimant by the respondent was wrongful and without justification as prayed. Under section 49 (3) of the Employment Act, an order for reinstatement would be warranted. However as correctly pleaded by the respondent, it is too late to grant the said relief due to a statutory bar provided under section 12 (3) (Viii) of the Employment and Labour Relations Court Act which limits the time within which to order reinstatement to 3 years from the date of separation.

61. As a consequence of the forgoing statutory limitation , I proceed to award the claimant salary in lieu of notice plus salary compensation for the wrongful and unjustified dismissal under section 49(1) of the Act. Under the letter of confirmation of appointment, the claimant was entitled to three months notice before separation and as such I award him three months' salary in lieu of notice. In addition I award him 12 months' salary as compensation from the wrongful and unjustified dismissal considering his long service of about 15 years without any warning letter. He also did not contribute to the dismissal through misconduct.

62. The claims of unpaid salary and accrued leave days lack particulars and evidence and are therefore dismissed. As submitted by the respondent, the payslip for June 2015 indicates that the claimant was paid all his salary for the period up to the date of his exit. He did not produce any bank statement to rebut the allegation by the employer that the salary was paid.

63. The claim for service pay is also dismissed because it is common round that the claimant was a member of both NSSF and the respondent's Staff Pension scheme. Under section 35(6) of the Employment Act, he was disqualified from claiming of service pay because he was a beneficiary of the said NSSF and the pension.

64. The claim for salary expected to be earned until retirement age is dismissed because it has no basis in law or contract.

65. The claim for general damages for defamation is dismissed because as held above the tort has not been elegantly pleaded.

### **Conclusion and disposition**

66. I have found that the reasons for dismissing the claimant was not valid and the procedure followed was not fair and declared the dismissal wrongful and unjustified. I have further found that the claim for defamation is not properly pleaded and proved. Finally, I have found that the claimant is entitled to salary in lieu of notice plus compensation for the unjustified dismissal.

67. Consequently, I enter judgement for him in the following terms;

Notice                    Kshs 1,113,437.37

Compensation        Kshs 4,453,749.48

Total Kshs 5,567,186.85

The sum awarded is subject to statutory deductions. The claimant will also have costs and interest at court rate from the date hereof.

**Dated, signed and delivered at Nairobi this 22nd day of April, 2021**

**ONESMUS N. MAKAU**

**JUDGE**

**ORDER**

**In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> April 2020, this judgment 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.**

**ONESMUS N. MAKAU**

**JUDGE**

**Dated, signed and delivered at Nairobi this 22nd day of April, 2021**

**ONESMUS N. MAKAU**

**JUDGE**