



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1428 OF 2011**

**ISAAC KAMITHA MWANGI.....CLAIMANT**

**-VERSUS-**

**RIFT VALLEY RAILWAYS (K) LIMITED.....1<sup>ST</sup> DEFENDANT**

**KENYA RAILWAYS CORPORATION.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Claimant was employed by the 2<sup>nd</sup> Respondent from 1.3.1982 to 1.11.2006 when his services were transferred to the 1<sup>st</sup> Respondent following a Concession Agreement between the Respondents dated 23.1.2006. The transfer of the Claimant's services was sealed by the Appointment letter dated 25.10.2006 and accepted by the Claimant on 6.11.2006.
2. On 6.12.2008 the Claimant was suspended by the 1<sup>st</sup> respondent vide a letter dated 28.11.2008 for the reason that he was on 26.11.2008 arrested and charged in court with the offence of stealing by servant. He was to continue receiving his full salary until the case was determined. However, before the case was heard and determined, he was served with the dismissal letter dated 8.1.2008 under the 1<sup>st</sup> Respondent's HR Policies and Procedure Manual and the Employment Act.
3. Aggrieved by the said dismissal, the Claimant filed this suit against the 1<sup>st</sup> Respondent on 23.8.2011 alleging that the dismissal was unfair, and seeking compensatory damages plus terminal benefits totalling Kshs. 8,280,705.10 and costs of the suit.
4. The 1<sup>st</sup> Respondent filed defence on 19.9.2011 admitting that it employed the Claimant from 1.11.2006 until 8.1.2009 when it dismissed him for negligent performance for his duties as the officer assigned to be in charge of the store when the Water Pump disappeared. It contended that it complied with the procedure in its HR Procedure Manual before dismissing the Claimant by carrying out thorough inquiries into the theft of the pump and concluded that the Claimant had performed his duties negligently. It denied that the dismissal was unlawful or act of victimization.
5. By a Notice of Motion dated 18.10.2017, the Claimant sought leave to substitute the 1<sup>st</sup> Respondent with the 2<sup>nd</sup> Respondent on grounds that the Concession Agreement between the Respondents had been terminated effective 31.7.2017; that the liabilities of the 1<sup>st</sup> Respondent should be settled by the 2<sup>nd</sup> Respondent; and that the Claimants employment claim survives the discontinuation of the concession. Based on the leave granted the Claimant amended the claim and brought the 2<sup>nd</sup> Respondent on board.
6. The 2<sup>nd</sup> Respondent filed its defence on 15.11.2015 denying liability and contending that the Claimant ceased being its employee in 2006 when his services were transferred to the 1<sup>st</sup> Respondent which become responsible for payment of all the benefits during the subsistence and termination of employment. It contended further that it was a stranger to the alleged stolen water pump and the acquittal of the Claimant from the said criminal offence and averred that those were matters which happened while the Claimant was employed by the 1<sup>st</sup> Respondent. It averred that under the Concession Agreement dated 23.1.2006 the Claimant's claims as an employee were governed by his employment contract with the 1<sup>st</sup> Respondent.
7. In addition to the said defense, the 2<sup>nd</sup> Respondent filed a Notice of Preliminary Objection contending that the suit against it is time barred by dint of section 87(a) and (b) of the Kenya Railways Act Cap. 397 Laws of Kenya, the Limitation of the Actions Act Cap. 22 of the Laws of Kenya and Order 1 Rule 10 of the Civil Procedure Rules.
8. By the Notice of Motion dated 21.1.2019, the Claimant sought leave to re-join the 1<sup>st</sup> Respondent as defendant citing the reason that it was not clear how liability was apportioned between the Respondents; and that there were documents discovered which revealed that there was

likelihood of sharing of liability or shifting of liability between Respondents.

9. After obtaining the leave, the Claimant re-amended his claim but the 1<sup>st</sup> Respondent did not participate in the suit thereafter and the hearing proceeded between the Claimant and the 2<sup>nd</sup> Respondent. Thereafter the said parties filed written submission.

## EVIDENCE

10. The Claimant testified as CW1 and stated that he joined the 2<sup>nd</sup> Respondent on 1.3.1982 and worked until 2006 when his services were transferred to the 1<sup>st</sup> Respondent.

11. The Claimant further testified that theft was rampant at the Respondent's Makadara yard which he had reported from January 2008 and the last was the one for the water pump. He explained that he left the store locked on 17.10.2008 and when he came back on Tuesday 21.10.2008 after Kenyatta day holiday, he found the water pump missing from the store and reported to his supervisor immediately. However, he was arrested and charged in court with **criminal case number 1939 of 2008**. Again he contended that, without any prior investigations to establish his guilt, the Respondent suspended him with full pay on 28.11.2008 and dismissed him from service on 8.1.2009.

12. The Claimant further testified that on 13.5.2011 the criminal case was concluded with an acquittal in his favour confirming that his dismissal was for no valid reason and therefore unfair. He contended that his trade union had earlier written a memo dated 3.7.2008 complaining on the habit by the 1<sup>st</sup> Respondent of dismissing employee without good reasons.

13. As regards the procedure followed, the Claimant admitted that he appeared before the Disciplinary Committee but contended that they had already made up their mind to dismiss him even before hearing his defence. He produced a press statement (Exh. 2) on audit which showed that the 1<sup>st</sup> Respondent had dismissed over 200 employees and retrenched over 600 others by July 2008.

14. He contended that he suffered loss due to the unfair termination as tabulated in his re-amended claim totalling to Kshs. 8,280,705.10 but he sought oral leave to increase the figure to Kshs. 16,198,718 during the hearing.

15. He stated that he has sued the 2<sup>nd</sup> Respondent for negligence because on 16.10.2006, he was given a memo on the concession commencement promising a retirement package and indicating that his terms were going to be better under the 1<sup>st</sup> Respondent. However, he contended that the 2<sup>nd</sup> Respondent acted negligently by failing to secure his interests and instead allowed the 1<sup>st</sup> Respondent to leave the jurisdiction of the Court.

16. On cross-examination the Claimant admitted that he worked for the 2<sup>nd</sup> Respondent from 1982 to 1.11.2006 when he was taken over by the 1<sup>st</sup> Respondent and signed a new employment contract. He further admitted that by the letter dated 30.10.2006 the 2<sup>nd</sup> Respondent's Managing Director indicated that his services were transferred to 1<sup>st</sup> Respondent following a concession Agreement between the two companies.

17. He admitted that the 1<sup>st</sup> Respondent was responsible for the transferred employees by dint of Clause D.2 of the concession agreement. He further admitted that after the transfer, he became entitled to benefits under the scheme. He also admitted that Clause D4.2 provided that any retrenchment done within 3 years of the transfer, the Respondents were to share the costs. He confirmed that the retrenchment package was provided under clause D4.3.

18. He further confirmed that Clause M.I.F provided that employment contracts entered before the 1<sup>st</sup> Respondent and transferred employees would be its responsibility. He admitted that by the letter dated 11.7.2007 his appointment by the 1<sup>st</sup> Respondent was confirmed on permanent terms. He further admitted that one cannot be an employee of two people but contended that in this case he was entitled to return to his initial employer.

19. He reiterated that he was suspended on 28.11.2008 for alleged criminal conduct and was dismissed by the letter dated 8.1.2009. He appealed against the dismissal but the appeal was disallowed on 29.1.2009. Again on 7.6.2012, his union wrote to the 1<sup>st</sup> Respondent for reinstatement but he was not reinstated and he brought this suit on 23.8.2011 against the 1<sup>st</sup> Respondent.

20. He contended that after the concession Agreement was terminated on 31.7.2017, he sought and obtained leave to join the 2<sup>nd</sup> Respondent to the suit in March 2018 because it had allowed the 1<sup>st</sup> Respondent to leave the jurisdiction of Kenya. He admitted receipts of his dues under Clause 4.3 of the Concession Agreement after the dismissal being Kshs. 457830 plus pension of Kshs. 532430 from the Pension Scheme payable in monthly instalments. He admitted that he knew that there was limitation within which to file suit against the 2<sup>nd</sup> Respondent.

21. On re-examination, the Claimant contended that under Clause 2 of the Concession agreement the 2<sup>nd</sup> Respondent remained bound to compensate him if termination of his services occurred within 3 years of the transfer of services to the 1<sup>st</sup> Respondent. He admitted receipt of retrenchment package from the 2<sup>nd</sup> Respondent although he was not retrenched by the 1<sup>st</sup> Respondent. He contended that his claim is for compensation for unlawful dismissal by the 1<sup>st</sup> Respondent.

22. The 2<sup>nd</sup> Respondent's Senior HR Manager testified as RW1 and admitted that the Claimant was dismissed by the 1<sup>st</sup> Respondent on 8.1.2009. He contended that the Claimant was an employee of the 1<sup>st</sup> Respondent upon a transfer of service from the 2<sup>nd</sup> Respondent. He contended that the Claimant was among 3296 employees who were transferred to the 1<sup>st</sup> Respondent and signed new contracts with the new

employer after 31.10.2006. He contended that the Respondents are distinct legal entities and as such the Claimant ought to sue 1<sup>st</sup> Respondent who dismissed him.

23. On cross-examination, RW1 maintained that the Claimant was transferred to the 1<sup>st</sup> Respondent pursuant to a concession Agreement but he was given an individual letter dated 30.10.2006. He contended that upon transfer of staff, the 2<sup>nd</sup> Respondent was only required to pay terminal dues to the transferred employees.

24. He admitted that Clause D4.2 of the Concession Agreement provided for shared responsibility for retrenchment done within 3 years after the transfer and the package was provided in Clause D4.3 of the Agreement. However, he admitted that Clause D4 did not provide for what would happen in the event of a dismissal of a transferred employee.

25. He contended that although the Claimant was dismissed, the dismissal was treated as retrenchment and a package was paid to him under Clause D4 of the Concession Agreement because he was dismissed within 3 years of the transfer. The package was paid by the 2<sup>nd</sup> Respondent in 2015 while this suit was pending in court.

26. RW1 admitted that the court ordered the 2<sup>nd</sup> Respondent to retain the 1<sup>st</sup> Respondent's employees after the end of concession Agreement. He further admitted that after the termination of the agreement, the 2<sup>nd</sup> Respondent took back its assets while the 1<sup>st</sup> Respondent disposed of its assets.

27. On re-examination, RW1 reiterated that after signing a new contract of service within the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent lost control over the Claimant. He further contended that the 2<sup>nd</sup> Respondent paid retrenchment package as per Clause D4 .2 & 3 of the Concession Agreement upto 31.10.2006 because he lost his job within 3 years of transfer to the 1<sup>st</sup> Respondent.

28. RW1 contended that it had no control over the assets of the 1<sup>st</sup> Respondent after cancellation of the concession agreement when they were sold. Finally he contended that the 2<sup>nd</sup> Respondent never signed a new contract with Claimant after his dismissal by the 1<sup>st</sup> Respondent.

## SUBMISSIONS

29. The Claimant submitted that the termination of his contract of service by the 1<sup>st</sup> Respondent on 8.1.2009 was unfair because there was no valid reason and the procedure followed was not fair as required by section 45 of the Employment Act.

30. He submitted that his suspension from duty and the subsequent dismissal was grounded on his arrest by police and arraignment in court for the offence of stealing by servant. He contended that the dismissal was prematurely done contrary to his Appointment Letter which provided for dismissal if he was found guilty of any criminal offence which affects his employment with the company. In his view, once charged in court, the 1<sup>st</sup> Respondent was required to wait for the outcome of the court proceedings and only dismiss him if found guilty by the court.

31. He further submitted that the dismissal contradicted the suspension letter which correctly suspended him with full pay pending the outcome of the criminal proceedings. He contended that the fact that he was acquitted from the criminal offence meant that the dismissal was not justified and as such he was entitled to reinstatement. He maintained that he was dismissed for theft he did not commit.

32. As regards the procedure followed he submitted that the disciplinary hearing was a sham since the Disciplinary Committee had standing instructions to dismiss any employee summoned to appear before it for whatever reason. He relied on his trade union's letter vide which a complaint was raised with the Managing Director about the Disciplinary committee's conduct of proceedings and the Managing Director responded by his letter dated 8.7.2008 promising to address the grievance. Therefore, he prayed for damages for unfair termination under the Employment Act 2007.

33. With respect to the second Respondent, the Claimant submitted that his claim is based on the termination of the Concession Agreement. He contended that the claim is grounded on the Doctrine of Legitimate expectations and in the alternative negligence by the 2<sup>nd</sup> Respondent.

34. He submitted that his transfer to the 1<sup>st</sup> Respondent was pursuant to the Concession Agreement and created expectation that upon the end of the Concession Agreement, he would return to the 2<sup>nd</sup> Respondent. He contended that the Concession Agreement envisaged a situation where, on termination or expiry of the agreement, the 1<sup>st</sup> Respondent would return all the assets of the 2<sup>nd</sup> Respondent and pay all expense and debts incurred prior to the expiry date. Therefore, in the Claimant's view, he had legitimate expectation that the 2<sup>nd</sup> Respondent would ensure that the 1<sup>st</sup> Respondent satisfied all liabilities owned by the transferred employees. Accordingly, he contended that the 2<sup>nd</sup> Respondent was liable to satisfy his claim in full and not just the retrenchment claim and pension.

35. For emphasis, he relied on **James Okello Ouma & 4 Others v Rift Valley Railways (Kenya) Ltd[2018]Eklr**, **Jane Kiongo & the Others v Laikipia University & 7 Others[2019]eKLR** and Canadian case of **Attorney General v Mavi[2011]2 SCR 504**

36. As regards the case of negligence, he relied on **Kenya Wildlife Services v Rift Valley Agricultural Contractors Ltd [2018] eKLR** where the Supreme Court held that public bodies can be held liable in negligence for their negligent exercise of statutory duties and powers. He argued that in the instant case, the 2<sup>nd</sup> Respondent owed a duty of care to the transferred staff while terminating the Concession Agreement with the 1<sup>st</sup> Respondent.

37. On the other hand, the 2<sup>nd</sup> Respondent submitted that the claim against it is unfounded, bad in law and time barred. It further submitted that the cause of action relates to acts done by the 1<sup>st</sup> Respondent of which it had no control of. It contended that upon the Claimant's transfer to the 1<sup>st</sup> Respondent and being given a new appointment vide he letter dated 25.10.2006, he ceased being its employee; and that all contractual obligations and liabilities were accordingly transferred to the new employer.

38. For emphasis, it relied on **Joseph Sebastian Ringo v Kenya Railways Corporation [2015] eKLR** where the court held that a transfer of employment ends any other employment relationship, and any liabilities for the previous employer may move with the transfer of such employment. In the end the court held that the employee had ceased being employee of the corporation upon transfer of his employment.

39. As regards the claim under the doctrine of legitimate expectation, the 2<sup>nd</sup> Respondent submitted that the said issue did not form part of the pleadings and as such it cannot be procedurally brought at the stage of submission. It further contended that, entertaining the said issue would be prejudicial because there will be no chance to respond to the same as expected in an adversarial system. It contended that the Claimant has relied on **James Okello & 4 Others vs Rift Valley Railways** without stating the facts, the court findings and how they related to the instant case.

40. Finally, the 2<sup>nd</sup> Respondent submitted that the doctrine of legitimate expectation does not apply in this case because it applies only where there is a duty by public bodies to act fairly and which can only be enforced through administrative action of judicial review. It contended that the claim herein does not fall within the province of public law but rather contract of service which is purely private law matter.

41. For emphasis it relied on **O'Reilly v Markman[1983] 2 C 237** and **Jane Kiongo & Others v Laikipia University**

### **ISSUES FOR DETERMINATION**

42. I have carefully considered the pleadings, evidence and submissions. It is without dispute that the Claimant was employed by the 2<sup>nd</sup> Respondent from 1982 to 1.11.2006 when his employment was transferred to the 1<sup>st</sup> Respondent following a Concession Agreement between the Respondents. It is also without dispute that the Claimant entered into a new contract with the 1<sup>st</sup> Respondent effective 1.11.2006 and remained in the employment of the 1<sup>st</sup> Respondent until 8.1.2009 when he was dismissed for misconduct. Finally, it is common ground that while this suit was pending, the 2<sup>nd</sup> Respondent paid the Claimant a retrenchment package under the Concession Agreement, and facilitated for payment of his pension from the period of service ending in October 2006.

43. The issues for determination are broadly divided into two namely, those issues which relate to the claims against the 1<sup>st</sup> Respondent and then those that relate to claims against the 2<sup>nd</sup> Respondent. The issue are therefore:

- (a) Whether the dismissal was unfair and unlawful.*
- (b) Whether the Claimant is entitled to any reliefs against the 1<sup>st</sup> Respondent.*
- (c) Whether the claim against the 2<sup>nd</sup> Respondent is time barred.*
- (d) Whether the 2<sup>nd</sup> Respondent acted negligently and violated the Claimants legitimate expectation.*
- (e) Whether the 2<sup>nd</sup> Respondent should be held liable to satisfy claims by the Claimant against the 1<sup>st</sup> Respondent.*

### **UNFAIR TERMINATION**

44. **Section 45** provides that;

*“(1) No employer shall terminate the employment of an employee unfairly.*

*(2) A termination of employment by an employer is unfair if the employer fails to prove—*

*(a) that the reason for the termination is valid;*

*(b) that the reason for the termination is a fair reason—*

*(i) related to the employee's conduct, capacity or compatibility; or*

*(ii) based on the operational requirements of the employer; and*

*(c) that the employment was terminated in accordance with fair procedure. ...*

*(5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour officer, or the Industrial Court shall consider—*

*(a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;*

*(b) the conduct and capability of the employee up to the date of termination;*

*(c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;*

45. The upshot of the foregoing provision is that, the termination of an employee's contract of service must be substantively and procedurally fair. The substantive fairness relates to the reason for the termination while procedural fairness relates to the process adopted in terminating the contract.

#### **Reason for the dismissal**

46. Section 43 (2) of the Act defines reason for terminate as those matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.

47. In this case the dismissal was communicated to the claimant by the letter dated 8.1.2009 which set out the reasons for the dismissal as follows;

*“Reference is made to the incident whereby a Honda Water Pump, property of the Rift Valley Railways (K) Ltd, was reported missing from the store on 21.10.2008 while in your custody. The subsequent inquiry into the matter on 15/12/2008 at RVR headquarters established the following:*

*1. That, though you had borrowed the pump from the Shop 041 on 17/7/2008 for a specified assignment, you failed to return it immediately after use for safe keeping, leading to the disappearance.*

*2. That, at the time of the disappearance of the pump, you had secured it in a store where you were the only person who handled the keys.*

*3. That, there was no evidence of breakage or tampering with the locks of the store where you had secured the pump.*

*It was therefore concluded that you improperly performed your duties leading to loss of company property.*

*Consequently, in line with our Human Resources Policies and Procedures Manual as well as the Employment Act 2007, it has been decided that you be dismissed from the service of the Rift Valley Railways (K) Ltd immediately.”*

48. The reason for the dismissal of the claimant according to the foregoing letter was not that he had stolen the Water Pump from the company but that he had improperly or negligently performed his duties as a Store Keeper leading to loss of the pump which was directly in his custody. He admitted that the pump was indeed stolen from the store and he is the one who reported the matter to his Supervisor. He did not deny that he was the custodian of the keys to the store. He also did not deny that there was no breakage or tampering with the locks. Consequently, it is my view that the employer was justified to conclude, as it did, that the claimant acted negligently, first by failing to return the pump to Shop 041 immediately after the use, and secondly by failing to ensure that the pump was not stolen from his custody.

49. Section 44(4) (c) of the Employment Act provides that the employer is entitled to summarily dismiss his employee if the latter wilfully neglect to perform or carelessly performs work which is his duty under his contract. In this case, the claimant performed his duty carelessly or negligently leading to the loss of the employer's Water Pump from his custody. He did not exonerate himself from the charge of negligence or improper performance of his duties as the custodian of the Pump after borrowing it from the employer's Shop 041. Therefore I am satisfied that the 1<sup>st</sup> Respondent herein had a valid reason for dismissing the claimant. It is immaterial that the criminal case had not been determined.

#### **Procedure followed**

50. The claimant acknowledged that he was accorded a hearing but complained that the Disciplinary Committee did not act fairly. He contended that every employee summoned for hearing ended up being dismissed prompting the trade union to protest to the Managing Director by a letter. However, in my view, this was a fairly straight forward case before the Disciplinary Committee because the claimant, voluntarily, admitted that the Pump disappeared while in his custody and there was no evidence of breakages or tampering with the store locks.

51. In view of the foregoing, I find and hold that the alleged predetermined dismissal was not true in respect of this case, and proceed to hold that the claimant was given a chance to defend himself before the dismissal as required under section 41 and 45 of the Employment Act. I further hold that the employer was not bound to wait until the conclusion of the criminal case before commencing the disciplinary process against the claimant. It is now trite law that criminal process against an employee can run parallel to the disciplinary process because none of the two binds the other, and the standard of proof in the two processes are quite different.

52. Having found that the reason for the dismissal was valid and that the claimant was accorded a chance to defend himself in a hearing, it is

obvious that the claimant has failed to discharge his burden of proving that his dismissal was unfair within the meaning of section 45 of the Employment Act as required under section 47(5) of the Act

### **RELIEFS AGAINST THE 1<sup>ST</sup> RESPONDENT.**

53. In view of the foregoing finding, I hold that the claimant is not entitled to compensation for unlawful dismissal under section 49 of the Act. Again since the claimant was lawfully dismissed on 8.1.2009, he is not entitled to any claim for salary or leave or any other employment benefits from the 1<sup>st</sup> respondent after the date of dismissal because no such benefits can accrued after separation. He is, however entitled to the undisputed claim for leave of 28 for 2008 equalling to Kshs. 38,266.66, from the 1<sup>st</sup> respondent plus interest.

### **TIME BARRED SUIT AGAINST THE 2<sup>ND</sup> RESPONDENT.**

54. The claimant admitted that he was paid his retrenchment package and pension and the only claims he had was for the period he was serving the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent was enjoined to this suit through the Amended Claim filed on 26.3.2019 so as to pay claim related to unlawful termination. The said cause of action arose on 8.1.2009 when the claimant was dismissed from service by the 1<sup>st</sup> respondent.

55. In my view, the claim against the 2<sup>nd</sup> respondent was only being raised conveniently after the claimant realized that it would be difficult to proceed with this case against the 1<sup>st</sup> respondent after the termination of the Concession Agreement. The said claim against the 2<sup>nd</sup> respondent is that it should be held liable for the liabilities arising from the employment contract between him and the 1<sup>st</sup> respondent which ended on 8.1.2009.

56. Section 90 of the Employment Act which came into effect in 2008, provides that a claim arising or based on the Act or contract of service in general cannot lie or be instituted unless it is commenced within three years next after the act, neglect or default complained of or in the case of a continuing injury or damage within twelve months next after the cessation thereof.

57. In this case, the injury complained was not continuing in nature but termination of the contract of service on 8.1.2009. The joinder of the 2<sup>nd</sup> respondent was done in March 2019, ten years after the termination of the contract of service. Consequently, I must hold that the suit against the 2<sup>nd</sup> respondent was brought out of time and it is time bared by dint of section 90 of the Act.

58. Having found that the suit against the 2<sup>nd</sup> respondent is time barred, I see no need of answering the remaining issues for determination framed hereinabove in relation to the claims against the said respondent.

### **CONCLUSION**

59. I have found that the dismissal of the claimant by the 1<sup>st</sup> respondent was fair and lawful, and consequently, dismissed the claim for compensatory damages for unfair termination. I have further found that the claimant is not entitled to salary or any other employment benefits after the date of dismissal but I awarded him leave for the year 2008. Finally I have found that the suit against the 2<sup>nd</sup> respondent is time barred and declined to consider it. Therefore, I dismiss the suit save for the claim for leave awarded to the claimant as against the 1<sup>st</sup> respondent. Each party shall bear his or its own costs of the suit. It is so ordered.

**Dated, signed and delivered this 20<sup>th</sup> day of May, 2021.**

**ONESMUS O. 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**