



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO, (P), KOOME & KANTAL, J.J.A.)

CIVIL APPEAL NO. 192 OF 2015

BETWEEN

LEISURE LODGES LIMITED.....APPELLANT

AND

AMIRALI SHARIFF.....RESPONDENT

(Being an appeal from the Judgment of the Industrial Court at Nairobi (S.M. Madzayo, J.) delivered on 22nd May, 2012

in

Industrial Cause No. 826 of 2011)

JUDGMENT OF THE COURT

The outcome of this appeal, in our considered view, must turn on whether or not the respondent's claim was barred by the statute of limitation and whether or not his dismissal from the appellant's employment was lawful. This is how these questions arise. The respondent had been in the employment of the appellant from 1976 and rose from the position of an accountant to that of Chief Accountant/ Deputy Manager. By his own letter of 1st November, 2000 he sought to be allowed to take an early retirement. From the communications, and as shall shortly be apparent this request was accepted by the appellant on 28th February 2001. At this point in time, the appellant had initiated an audit of its accounts covering 5 years and had appointed the firm of Ray & Ray Certified Accountants to carry it out. For this purpose, the appellant requested the respondent to stay on as his participation in the audit exercise was required. It was agreed that the respondent would continue in service and to be paid in accordance with the letter dated 1st February, 2001. This is evident from the appellant's letter to the respondent dated 12th February 2001. However, on record we are unable to trace the said letter dated 1st February 2001. But from the contents of the letter of 12th February, 2001 it is apparent that with effect from 1st January, 2001, the respondent's salary was increased to Kshs. 172,000 per month.

The audit report was eventually presented to the management. According to it, the respondent, as the Chief Accountant, had failed to maintain proper books of accounts; that as a result thereof, the appellant sustained substantial losses attributed to misappropriation of funds, pilferage and loss of revenue during the relevant audit period; and that the respondent failed to co-operate with the auditors by refusing or neglecting to supply them with books of account at the point when they were required and when requested.

Consequently, the Chairman of the appellant company demanded a response regarding these allegations from the respondent within 7 days from the 4th of September, 2001 or face disciplinary action. He denied the accusations and was subsequently invited to show cause why he should not be summarily dismissed. His response was found to be unsatisfactory and he was accordingly summarily dismissed by the appellant's letter dated 1st October, 2001. It was reiterated in the letter that he kept incomplete records and that in some instances the records were not available; that he was involved in wrongful acts of commission or omission resulting in excessive payments; that there were unreconciled differences between trial balance and general ledger and; that there were irregularities in VAT. On the basis of the foregoing, he was summarily dismissed. He was however granted permission to reside in the house which had been provided to him by the appellant until the end of January, 2002. It was the appellant's case that it paid to the respondent Kshs. 262,177 in full and final settlement of all the sums due to him.

The dismissal aggrieved the respondent who moved to the then Industrial Court (now renamed the Employment and Labour Relations Court) where he asked the court to declare that his dismissal was not only wrongful but also unlawful; that the decision by the appellant not to pay

him his retirement benefits amounting to Kshs. 4,365,548 was null and void.

The appellant, for its part, denied these assertions and instead argued that, in the first place the respondent's claim was statute- barred under **section 4(1)(a)** of the Limitation of Actions Act having been brought outside the stipulated 6-year period. Secondly, it maintained that the respondent was summarily dismissed for lawful cause after an audit exposed losses attributed to him.

In its determination, the court, (S.M. Madzayo, J) relied on the provisions of **Article 159(2)(d)** of the Constitution to find that the court had jurisdiction to enlarge time within which the claim could be brought; and that it was improper to attempt to bar the respondent on a technicality. In the result he held that the respondent's claim was not statute barred.

On the merit of the claim, the Judge found that the books of accounts (cash and payment receipts vouchers) were in full custody of the Joint Interim Liquidators and not the respondent; that to apportion blame on him would be unfair; that there was no justification for not conducting the audit on an annual basis or why it was being conducted after 5 years; and that there was no direct proof that the respondent had been paid the aggregate sum of Kshs. 262,177 in full and final settlement of all the sums due to him.

Ultimately, the learned Judge absolved the respondent from any liability for the alleged losses, noting that the respondent had a stellar record of service as he had never been served with any reprimand or warning letter and there was no complaint against him by the appellant; that to the contrary, there were several letters praising the respondent as a responsible manager, intelligent, effective and resourceful to the organization; that as a result of these qualities, his salary was increased and after his retirement he was requested and accepted to work on contractual basis. According to the learned Judge, the respondent, having been employed by the appellant on 23rd December, 1976 and retired on 2nd December 2000, he had served the latter for 24 years for which he deserved a fair treatment from the appellant.

Accordingly, the summary dismissal of the respondent was declared wrongful and illegal, judgment entered in favour of the respondent and the appellant ordered to pay him all his final dues for 25 years of service as follows; 20 months' pay @ Kshs. 172,000 amounting to Kshs. 3,400,000 and interest thereon at 12% per annum in accordance with **prayer (d)** of the memorandum of claim.

Dissatisfied by this decision, the appellant lodged this appeal on four main grounds complaining that the learned Judge erred in: holding that under **Article 159(2)(d)** of the Constitution, a substantive provision of law, the Limitation of Actions Act could be ignored as a procedural technicality; ignoring binding decisions of the Court of Appeal and decisions of the then Industrial Court; failing to consider whether or not the respondent had faithfully and fully discharged his duties and responsibilities during the period when the appellant was in interim liquidation as well as thereafter and; failing to consider the appellant's letter in which he assured the respondent that following the accommodation extended to him by the appellant's chairman, he would make no further claims against the appellant.

Highlighting these grounds before us, Mr. Amoko for the appellant, submitted that the learned Judge erred by allowing a suit instituted nine (9) years and eight (8) months after the cause of action arose to prevail by clothing the delay as a procedural technicality whose remedy lay in **Article 159(2)(d)**. Citing the celebrated case of "**The MV Lilian S**" 1989 KLR Pg. 1, counsel submitted that since the issue of limitation goes to jurisdiction it must be dealt with as soon as it arises; that contrary to this, the learned Judge treated the issue as if it was of lesser importance; that he ignored the decisions from this Court with respect to limitations in employment matters thus flouting the principles of judicial precedent and the doctrine of *stare decisis*; that as was held in the cases of **Mukuru Munge Vs Florence Shingi Mwawana & 2 Others**, Civil Application No. 191 of 2011 and **Attorney General & Anor. Vs Andrew Maina Githinji & Anor.**, Civil Appeal No. 21 of 2015, the law of limitation is not a mere procedural technicality that can be overlooked by relying on **Article 159** of the Constitution.

On the respondent's dismissal, counsel submitted that the appellant set out the circumstances which justified the respondent's summary dismissal by its letter dated 1st October, 2001; that earlier before this, by a letter dated 27th September, 2001 the respondent had been issued with a notice to show cause why he should not be summarily dismissed; that he was thus afforded an opportunity to be heard; that by his letter dated 28th September, 2001, the respondent furnished his response shifting blame to the subordinate staff and the appellant's unsatisfactory accounting system. Counsel cited **section 17(c)** of the Employment Act and the case of **Njeru Vs Agip** (1986) KLR 480 to support the position that careless and/or improper performance of duties was a ground for summary dismissal hence the decision to dismiss the respondent was lawful and warranted; that the learned Judge erred in holding that there was no evidence to indicate that the sum of Kshs. 262,177 was paid to the respondent yet the respondent in his letter dated 5th November 2000, indicated that, following his discussion with the appellant's Chairman on 29th October 2001, all issues between him and the appellant had been resolved; that in the result, the appellant paid the respondent an aggregate sum of Kshs. 262,177 in full and final settlement of all the sums due to him and it was expressly stated that the appellant would not pursue any claims against him for losses the appellant had incurred as a consequence of his poor performance and neglect of duty and that in any case the respondent did not deny receiving the said sums.

Lastly on damages, it was submitted that the learned Judge in awarding the respondent Kshs. 3,400,000 described as the respondent's final dues for 25 years of service, failed to show how that figure was arrived at. Had the respondent provided proof for unlawful termination, all he would have been entitled to, in accordance with his contract of employment was payment of one months' salary in lieu of notice.

Mr. Ondego, opposing the appeal, urged that the Limitation of Actions Act did not apply to the dispute and that instead the Employment Act was the law applicable; that like in the case of **Stephen Onyango Achola & Anor V Edward Hongo Sule & Anor**, Civil Appeal No. 209 of 2004, where the High Court relied on **Article 159**, the Judge was entitled to resort to the powers donated to the courts by the Constitution to do justice. That **section 20** of the Industrial Court Act reflects the intentional and identical position that the court is enjoined to act without undue regard to technicalities. See: **Fred C Fedha & Anor Vs Edwin E. Asava Majani**, Civil Appeal No. 84 of 2000. Further, that a court must at least in the present day strive to do substantial justice to the parties, undeterred by procedural rules, as the court in **Wachira Vs Ndanjeru** (1982-88) I KAR 1062 stated.

On the summary dismissal, it was submitted by counsel that the trial court did not enter judgment as against the appellant in favour of the respondent for Kshs. 4,365,548 as claimed, but rather the respondent was only awarded his entitlement for retirement terminal dues and none of the other claims were allowed; that having already retired, the respondent remained in employment on a 6 month contract to assist in

resolving audit queries regarding the conduct of receivers appointed by the appellant; and that this was after he had been promised payment of his terminal dues. Counsel contended that, to avoid payment of the retirement benefits, the appellant, acting in bad faith purported to summarily dismiss the respondent.; and finally that no evidence was produced to support the appellant's claim that the sum of Kshs. 262,177 was paid in full and final settlement of the dues.

Being a first appeal, we are enjoined to subject the entire evidence to a fresh scrutiny and make our conclusions on the facts. See: **Selle & another V. Associated Motor Boat Co. Ltd & Others** (1968) EA 123.

While there cannot be any debate on the fact that the respondent was an employee of the appellant, and that at some point he asked to proceed on early retirement, there is no unanimity on whether his summary dismissal was unlawful. The trial court resolved the issue in favour of the respondent and accordingly entered judgment. For its part, the appellant maintained that, apart from the fact that the claim was statute barred, the respondent's dismissal was justified. These questions, in turn, call for the determination of two issues;

- i. Whether the suit was statute barred, and
- ii. Whether the respondent's dismissal was lawful

It was the appellant's contention that the cause of action arose in October 2001 and the claim lodged some 9 years and 8 months thereafter, beyond the six year period limited by **section 4** of the Limitation of Actions Act. The respondent on the contrary submitted that the Limitation of Actions Act was not applicable to the dispute but the Employment Act which was in force at the time.

The cause of action arose on 1st October, 2001 when the letter of dismissal was issued to the respondent. The suit in which the respondent challenged the decision was instituted on 27th May, 2011. The cause of action therefore arose before the enactment of the present Employment Act, 2007 and the legal regime governing the dispute was the repealed Employment Act (1977) Cap. 226. Unlike the reigning Employment Act 2007, the repealed Act did not provide, as **section 90** of the former does, for the period within which industrial disputes are to be brought to court. **Section 90** of the latest law provides that;

“90. Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof”.

Without a similar provision in the Employment Act, 1977 **section 4** of the Limitation of Actions Act applied. It stipulates that actions founded on a contract must be instituted within 6 years of the date of accrual of the cause of action. This period is obviously more generous than the 12 months provided for in the Employment Act, 2007.

The date of accrual, we repeat was 1st October 2007 and the suit having been brought on 27th May 2011, was hopelessly out of time by nearly 9 years and 8 months. While both the respondent and learned Judge appeared to acknowledge that indeed the action was brought outside the stipulated statutory period, in their view, the issue of limitation was not, in the first place pleaded; and secondly, failure to file the suit within time was not fatal. The learned Judge proceeded to invoke **Article 159** of the Constitution stating that;

“In the case of Consolata Ndinda Owilsh & 4 Others Vs. Banuel Bovis Omambia- NRB HCCC No. 2050 of 1953(2005) eKLR, in his wisdom, the Kubo, J., recognized the principle of substantive justice and quoted Apaloo J.A. in Wachira Vs. Ndanjeru (1982-88) 1 KAR 1062 in which he held;

“.....a court, must, at least at the present day, strive to do substantial justice to the parties, undeterred by technical procedural rules.”

The position is fortified further by the Constitution of Kenya at Section (sic) 159(2)(d) which states:-

“..... justice shall be administered without undue regard to procedural technicalities.”

The learned Judge then concluded that:

“Having allowed the suit to prevail under Article 159(2)(d) of the Constitution of Kenya; and there being no dispute as to whether the Claimant was an employee of the Respondent; the Court find (sic) and confirm that the claimant worked for 24 years for the respondent...”

Starting with the contention that the issue of limitation was not pleaded, the straight answer is paragraph 2 of the Statement of Response in which the appellant stated that;

“2. The Respondent avers that this cause is statute-barred under section 4 (1)(a) of the Limitations of Action Act (Cap 22), having been brought more than six years since the alleged cause of action accrued on 22nd October, 2001”

Needless to say, therefore, the learned Judge based his determination on the constitutional principle that **“justice shall be administered without undue regard to procedural technicalities”** begging the question whether a question of limitation is one of a mere technicality.

It has long been laid firmly that limitation is a jurisdictional issue and therefore can be raised at any stage of the proceedings. This Court in the case of **Kenya Ports Authority Vs Modern Holdings [E.A] Limited**, Civil Appeal No. 108 of 2016, succinctly summarized the principles governing jurisdiction of a court as follows:

“Generally speaking and on the authority of the Supreme Court decision in Samuel Kamau Macharia & Another V Kenya Commercial Bank Limited & 2 Others, a court can only exercise that jurisdiction that has been donated to it by either the Constitution or legislation or both. Therefore it cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Jurisdiction is in the end everything since it goes to the very heart of a dispute. Without it, the court cannot entertain any proceedings and must down its tools. See The Owners of the Motor Vessel Lilian ‘S’ v. Caltex Kenya Limited (1989) KLR 1”.

From the language of **section 4** aforesaid, as a general rule, the courts are barred from entertaining suits that are brought after the expiration of statutory period. It provides that;

“4.(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued

(a) actions founded on contract..” (Our emphasis).

Based on the foregoing, there can be no doubt that limitation is a jurisdictional issue and not a procedural technicality issue. In the case of **Mukuru Munge Vs Florence Shingi Mwawana & 2 Others**, Civil Application No. 191 of 2011, this Court confirmed this and explained the reason why it is important to have the law on limitation:

“We would in particular like to point out that in our view, the applicant’s argument, which equates the law of limitation to mere procedural technicality that can be ignored pursuant to Article 159 of the Constitution, has no basis. The purpose of the law on limitation of actions is to avoid stale claims, based on the sensible and rationale appreciation that over time memories fade and evidence is lost. The law of limitation therefore seeks to compel claimants not to sleep on their rights and to bring their claims to court promptly. Secondly, the law on limitation of actions ensures that claims are instituted within reasonable time after the cause of action has arisen, so as to secure fair trial when all the evidence is available and to ensure that justice is not delayed. In our minds, those are important constitutional values and principles, which are underpinned by legislation on limitation of actions.”

In **Fred Mudave Gogo V G4S Security Services Limited** , Cause No. 846 of 2013, the court also reiterated that;

“It cannot be denied that the cause of action herein is based on a contract of employment. The Claimant’s employment was terminated on 8th August 2008, a period over 3 years from the date of filing this claim in the Industrial Court on the 5th June 2013 and therefore by operation of the law, the claim had already lapsed. There are no good grounds advanced for the delay in causing the claimant/applicant from filing the claim in good time.

This is not a mere technicality as it touches on the substance of the claim and a fundamental flaw if not addressed before parties file their claims. This time can be extended upon the Court being moved by a party who on good grounds finds themselves under this circumstance. That is why the law exists to assist parties who for good reasons are unable to come to court in good time. This was not the case here.”

No explanation for the delay of nearly 10 years was proffered and no attempts were made to seek extension of time within which to institute the suit. Yet, on his own motion, the learned Judge extended time. That leads us to the inevitable conclusion that the respondent’s claim was incompetent and as a result should have been struck out.

This determination should have been sufficient to dispose of the appeal. But, to be fair to the parties who had taken time and submitted on the other grounds, we turn to consider briefly whether or not the respondent’s dismissal was justified. Although the respondent had applied to retire, he was retained in the appellant’s service to facilitate the work of Ray & Ray Chartered Accountants that had been appointed by the High Court to manage the appellant. It was alleged that apart from being a stumbling block to the audit exercise, under his watch as the Chief Accountant, losses to the appellant were found to have occurred. Even though he denied his liability, the appellant went ahead and summarily dismissed him.

An employee may be dismissed for gross misconduct and without notice in the circumstances detailed in **section 17** of the repealed Act, as below;

“17. Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal -

.....

c) if an employee willfully neglects to perform any work which it was his duty to have performed, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly.....”.

According to the appellant, the letter of 1st October, 2001 to the respondent contained reasons why the latter's services were being terminated, key among them being complete failure to maintain books of account and failure to co-operate with the auditors. These accusations were not rebutted. The appellant's explanation did not help. The explanation only passed the blame to junior staff under the respondent. On the basis of the audit report, the appellant was satisfied that the respondent had willfully neglected to perform his duty or carelessly and improperly performed them to the detriment of the appellant. It is our view that under the repealed Act, the employer had absolute discretion, once any of the transgressions under **section 17** aforesaid was demonstrated, to summarily dismiss an employee.

In the case of **Anthony Shiveka Alielo Vs Kenya Post Office Savings Bank & another**, Civil Appeal No. 52 of 2016, this Court stated:

“ [27] Section 44 of the Employment Act (Cap 226) (repealed), provided that summary dismissal would take place when an employer terminates the employment of an employee without notice or with less notice period than that to which the employee is entitled to by any statutory provision or contractual term. Sub-section (3) thereof enabled an employer to dismiss an employee summarily for gross misconduct. From the record, the resolution to dismiss the appellant was in compliance with the contractual terms of employment. Further section 17 of the Employment Act (repealed) which was the law in force at the time of the appellant's termination listed gross misconduct as one of the grounds upon which an employer could summarily dismiss an employee...”

See also: **Moi Teaching and Referral Hospital V. James Kipkonga Kendagor**, Civil Appeal No. 159 of 2012 where this Court stated thus;

“...For example an employer or an employee has a right to terminate a contract of employment without notice so long as it is done in accordance with the law and procedure. Nothing stops an employer from summarily dismissing an employee, except that section 44 requires an employer to demonstrate that the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service by doing or not doing series of things listed in that section and any other related things...”

Under **section 16** of the repealed Act, in a contract of employment, either of the parties may terminate the contract **“without notice upon payment to the other party of the wages or salary which would have been earned by that other party, or paid by him, as the case may be, in respect of the period of notice required to be given...”**. That is all that would be payable for wrongful dismissal of employee under the repealed Act.

The respondent's claim against the appellant was in the sum of Kshs. 4,356,548 made up of salary, accrued leave, final dues and house allowance. The biggest portion of the claim was the so-called *“final dues”* for 25 years served (20 months pay @ Kshs. 172,000) which came to Kshs. 3,440,000. With respect, the Judge, after rejecting all the claims and without justification merely lifted word for word **prayer 4 (d)** of the Memorandum of Claim and made it an order, stating that;

“2. The respondent to pay the claimant all his final retirement dues for 25 years of service (20 months pay @ Kshs. 172,000,000) TOTAL - Kshs. 3,400,000

3. Interest thereon at 12% per annum”

The legal basis of that claim and the subsequent award was not explained and is not apparent from the record.

On this ground, we would like to state the following: first, the respondent had, by a letter dated 1st November, 2000 asked to be allowed to take an early retirement. Responding, the appellant's General Manager, J. Gruebel, wrote on 1st December, 2000 and confirmed as follows;

“We have studied your reasons for taking this drastic step and agree that in the current circumstances you were left with no other alternative. Accept our sympathies for the misfortunes that have befallen your family enterprises.

We note that you have accumulated leave and public holidays and that you intend to stop working on 2nd December 2000. This will enable you to take the pending leave and off days until you complete your notice period of 4 (four) months, which ends on 28th February 2001.

You will recall our pervious discussions and realize that an important audit covering five years is about to commence. Your participation in the exercise is vital and it would therefore be imprudent for the Company to release you at this crucial time. We are therefore willing to pay for your 1999 leave at single rate so that you can continue working. The arrangement will then leave you with pending leave for the year 2000 which we trust is acceptable to you for the time being.

You will receive a letter giving details of your Final Dues in due course.”

From this letter and several others, there is no doubt in our minds that the respondent took an early retirement but was retained to help with the audit exercise. Writing to the respondent's advocate on 5th April, 2002, Kimani Kimondo & Co. Advocates, then acting for the appellant conceded that;

“... the early retirement intended by your client, which was earlier innocently accepted by the management was rejected and instead replaced by a summary dismissal”

So that at the time the letter of 1st October, 2001 purporting to dismiss the respondent was written, he had already retired and was only retained on specific terms; a new salary and permission to commute all his pending leave days in order to maintain continuity. The respondent himself left no doubt that he had retired when the appellant asked him to show cause why he should not be dismissed. He reminded the latter in his letter of 3rd October, 2001 that he had, (in his own words) **“already retired from the company and served my notice, which ended on 28th February, 2001. I was therefore not an employee of Leisure Lodges Limited with effect from 1st March, 2001”**. It is therefore surprising that he would demand to be paid

“final dues for 25 years service”.

That apart, and assuming for the sake of argument, that the respondent continued under the old terms to be in the appellant’s service, **section 17** of the repealed Employment Act places no strictures on the employer when dealing with summary dismissal so long as the conduct stipulated under it has been established. The respondent failed to extricate himself from accusations that he carelessly and improperly performed his duties as the appellant’s Chief Accountant resulting in financial loss to the latter.

The second thing to emphasize on this ground is that, again on the assumption that the respondent was in the service and that the summary dismissal was irregular, it is settled that the measure of damages for unlawful dismissal is the amount which the employee would have earned during the period of notice if the employment was terminable by notice. See: **Moi Teaching and Referral Hospital v James Kipkonga Kendagor**, Civil Appeal No. 159 of 2012, where this Court stated:

“To be absent from work without leave or lawful cause, constitutes a misconduct that can justify the dismissal of an employee. By section 50 of the Employment Act the courts, in determining a complaint or a suit involving wrongful dismissal or unfair termination of the employment of an employee, may consider paying the employee any or all of the following—

“(a) the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;

(b) where dismissal terminates the contract before the completion of any service upon which the employee’s wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph

(a) which the employee would have been entitled to by virtue of the contract; or

(a) which the employee would have been entitled to by virtue of the contract; or

(c) the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.

(2) Any payments made by the employer under this section shall be subject to statutory deductions”.

The claim and an award of Kshs. 3,400,000 did not reflect the law applicable at the time. The appellant contended that the respondent was paid Kshs. 226,177 in final settlement of his terminal dues. Like the learned Judge, apart from mere statements that the amount was paid, we have not been able to find on the record any evidence of payment. That being as it may, we have said that having been properly dismissed, the respondent was not entitled to any payment.

For all these reasons, we come to the ultimate conclusion that the learned Judge misapprehended the facts in dispute and misapplied the law as a result of which he arrived at an erroneous conclusion.

Accordingly, this appeal succeeds. We allow it but make no orders as to costs.

Dated and delivered at Nairobi this 7th Day of June, 2019.

W. OUKO, (P)

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JUDGE OF APPEAL

M.K. KOOME

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

*I certify that this is a true
copy of the original.*

DEPUTY REGISTRAR