

**IN THE HIGH COURT OF TANZANIA  
(MAIN REGISTRY)  
AT DAR ES SALAAM**

**(MGETTA, MASOUD AND KISANYA, JJJ)**

**MISC. CIVIL CAUSE NO. 2 OF 2022**

**IN THE MATTER OF THE CONSTITUTION OF THE UNITED REPUBLIC  
OF TANZANIA, 1977 AS AMENDED**

**AND**

**IN THE MATTER OF A PETITION TO CHALLENGE MANNER AND  
PROCESS OF RESIGNATION OF JOB YUSTINO NDUGAI FROM THE POST  
OF THE SPEAKER OF THE NATIONAL ASSEMBLY OF THE UNITED  
REPUBLIC OF TANZANIA FOR BEING UNCONSTITUTIONAL**

**BETWEEN**

**JAMES FRANCIS MBATIA.....PETITIONER**

**VERSUS**

**JOB YUSTINO NDUGAI.....1<sup>ST</sup> RESPONDENT**  
**THE CLERK OF THE NATIONAL ASSEMBLY.....2<sup>ND</sup> RESPONDENT**  
**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**26 & 28 Jan, 2022**

**MGETTA, J:**

By way of originating summons filed under certificate of urgency supported by affidavit sworn by James Francis Mbatia (henceforth the petitioner) and made under **articles 26 (2) and 108 (2) of the Constitution of the United Republic of Tanzania, 1977** as amended (henceforth the Constitution) and **section 2(3) of the Judicature and**

**Application of Laws Act, Cap 358** (henceforth Cap 358), the petitioner is praying against Job Yustino Ndugai (the 1<sup>st</sup> respondent), the Clerk of the National Assembly (the 2<sup>nd</sup> respondent) and the Attorney General (the 3<sup>rd</sup> respondent) for the following reliefs:

1. A declaratory order that the 1<sup>st</sup> respondent's Notice of Resignation from the seat of Speaker of the National Assembly is invalid, unconstitutional, null and void; and, the resignation in pursuant of the said Notice of Resignation is invalid and ineffective for contravening the provisions of **Articles 149 (1) (c) & (2) of the Constitution**;
2. A declaratory order that the 1<sup>st</sup> respondent is still a speaker of the National assembly of the United Republic of Tanzania;
3. Each party to bear his own costs of the petition; and,
4. Any other or further order(s) or relief(s) incidental thereto which the court shall deem fit to grant.

Along with filing counter affidavit sworn by Mr. Prudens Rusticus Rweyongeza, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents also filed a notice of preliminary objection complaining that:

1. The petition is untenable in law as the Petitioner has alternative remedy to pursue the complaint; and,
2. The petition is untenable in law for want of affidavit of admissibility, thus contravening the provision of **section 4(2) of the Basic Rights and Duties Enforcement Act, Cap 3** (henceforth Cap. 3)

As the matter before us was filed under certificate of urgency, we decided to deal and hear both the preliminary objection and the petition together, meaning that if the preliminary objection is upheld then the matter ends there. But if it is dismissed, then we would proceed determining the petition.

When the preliminary objection and the petition were called on for hearing, the petitioner was represented by a team of six learned advocates led by Mr. Daimu Halfan. Others in the team were Boniface Mwambukusi, Prisca Chogero, Eden Silayo, Pasience Mlowe and Mohamed Tibanyendera. On the other hand, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents enjoyed legal service of a team of eight learned State Attorneys led by Mr. Gabriel Malata, the Solicitor General. Others in the team included Principal State Attorneys, namely, Mark Mulwambo, Mussa Mbura, Deodatus Nyoni, Ponsiano Lukosi and Hangi Chang'a. Others were Vivian Method, the learned Senior State Attorney and

Stanley Kalokola, the learned State Attorney. Despite efforts to serve him physically and through substituted service made by the petitioner, the 1<sup>st</sup> respondent neither appeared nor filed any document. We proceeded in his absentia considering the fact that the matter was brought under certificate of urgency and it was in the public interest that the National Assembly was scheduled for 1<sup>st</sup> February, 2022.

We began with hearing of the preliminary objection. We considered rival submissions made by Mr. Malata and Mr. Daimu and we are of the settled view that the raised points of preliminary objection are not meritorious. This is because the petitioner herein is challenging the constitutionality of the resignation of the 1<sup>st</sup> respondent from the seat of speaker of the National Assembly for his failure to comply with **article 149(1) (c) and (2) of the Constitution**. Mr. Malata was of the view that the prayers sought by the petitioner suggest that the matter falls under judicial review. With due respect, we find that argument to be a misconception because the appropriate reliefs in constitution petition are declaratory in nature. Given the fact that the petitioner is not challenging any administrative acts or omissions, we don't see any other remedy available to the petitioner other than coming to this Court which have

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inherent jurisdiction to grant or refuse to grant the declaratory orders sought.

With regard to the second limb of objection, we have considered that the petitioner is not challenging contravention of **articles 12 to 29 of the Constitution** and that the petition was not made under the provisions of **Cap 3**. We are of the considered view that the petition being brought under **articles 26(2) and 108(2) of the Constitution** and **section 2(3) of Cap 358**, is properly before this court. For purposes of emphasis, we are of the settled position that **Cap 3** is inapplicable to the matter before us.

Considering the foregoing, it goes without saying therefore that the assertion that **section 4 (2) of Cap 3** was contravened by the petitioner could not hold water. Therefore, there was no requirement for the petitioner to support his petition with affidavit of admissibility. See: **Odero Charles Odero Versus Director of Public Prosecutions and Another**; Misc. Civil Cause No 20 of 2021 (high Court - Main Registry) (unreported); **Zitto Zuberi Kabwe Versus The President of the Republic of Tanzania and Three Others**; Misc. Civil Cause No. 1 of 2020; and, **Paul Revocatus Kaunda Versus The Speaker of the National Assembly and Two Others**; Misc. Civil Cause No 10 of 2020.

As pointed out earlier and for the reasons given herein, the two points of preliminary objection raised by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are not meritorious and are accordingly dismissed.

We now turn to the submissions made in respect of the petition as hereunder. After hearing the learned counsel for their respective clients, and having gone through the relevant law and the pleadings, we found that the main issue which is contentious is whether the 1<sup>st</sup> respondent's resignation from the seat of speaker is in compliance with **article 149(1) (a) (c) and (2) of the Constitution**, which for easy of reference is quoted from Kiswahili version as hereunder:

*"149. (1) Mtu yeyote mwenye dhamana ya kazi yoyote iliyoanzishwa na Katiba hii (pamoja na kazi ya Waziri, Naibu Waziri au Mbunge, isipokuwa Mbunge ambaye ni Mbunge kwa mujibu wa madaraka ya kazi yake), aweza kujiuzulu kwa kutoa taarifa iliyoandikwa na kutiwa sahihi kwa mkono wake, kwa kufuata masharti yafuatayo:*

*(c) iwapo mtu huyo ni Spika au Naibu Spika wa Bunge, basi taarifa hiyo ya kujiuzulu ataiwasilisha kwenye Bunge;*

*(2) Mtu aliyetoa taarifa ya kujiuzulu kwa mujibu wa masharti ya ibara ndogo ya (1) ya ibara hii, atahesabiwa kuwa amekiuzulu tangu siku ile ambayo taarifa yake ya*

*kujiuzulu itakapokelewa na mtu anayehusika au kikao kinachohusika au itakapokelewa na mtu yeyote aliyeruhusiwa kuipokea taarifa hiyo na mtu anayehusika au kikao kinachohusika, lakini kama taarifa hiyo ya kujiuzulu imeeleza kwamba mtu huyo atajiuzulu tangu siku nyingine baada ya taarifa hiyo kupokelewa na mtu anayehusika au kikao kinachohusika, basi mtu huyo atahesabiwa kuwa amekiuzulu tangu siku hiyo nyingine ya baadaye”*

The following below is English version that:

*"149. (1) Any person holding any office established by this Constitution (including the office of Minister, Deputy Minister, or Member of Parliament, except an ex-officio Member of Parliament) may resign by giving notice in writing and signed by him, in accordance with the following procedure:*

*(c) If that person is the Speaker or Deputy Speaker of the National Assembly, the notice of resignation shall be submitted to the National Assembly;*

*(2) A person who has given notice of resignation pursuant to the provisions of subarticle (1) of this Article shall be deemed to have resigned from the day the notice of resignation is received by the person or body of persons concerned, or when it is received by any person authorized by a person or body of persons concerned to*



*receive the notice of resignation, but where the notice of resignation states that that person will resign some later day after the receipt of that notice by the person or body of persons concerned, then that person shall be deemed to have resigned from such later day”.*

It is not in dispute that **article 149 (1) (c) and (2) of the Constitution** provides for the procedures of resignation of the speaker and that notice of resignation is also issued pursuant to that article. It is common ground therefore that the notice of resignation of the speaker must be submitted to the National Assembly. Now, what we can see is that the disagreement between the parties involved in this petition is the mode or on how the notice of resignation of the 1<sup>st</sup> respondent was submitted and to whom it is supposed to be submitted.

In his submission, Mr. Daimu stated that the notice of resignation must be submitted by the 1<sup>st</sup> respondent to the National Assembly constituting its members, i.e. Members of Parliament, and not to the 2<sup>nd</sup> respondent or to the Secretary General of Chama cha Mapinduzi (henceforth the SG CCM). He insisted that it is only upon the submission of the notice to the National Assembly, that the resignation of the speaker becomes effective. He stated that it is the National Assembly that elected the 1<sup>st</sup> respondent under **article**

**84 (2) of the Constitution.** Likewise, it is the National Assembly which has control over him.

As to the effective date of resignation, Mr. Daimu submitted that **article 149 (2) of the Constitution** must be construed in the light of **article 149 (1) (a) of the Constitution**. In this matter, he submitted, the resignation of the 1<sup>st</sup> respondent is not effective because the notice of resignation was submitted to the Secretary General of Chama cha Mapinduzi and copied to the 2<sup>nd</sup> respondent. In addition, he argued that there was no notice of resignation of the 1<sup>st</sup> respondent which was submitted to the National Assembly. He based his submission on the set of two documents annexed to the petitioner's affidavit which are titled as *Taarifa kwa Vyombo vya Habari* (annexture A) and *Taarifa kwa Umma* (annexture B) issued by the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively. The press release issued by the 1<sup>st</sup> respondent is quoted as hereunder:

**"JAMHURI YA MUUNGANO WA TANZANIA**

**BUNGE LA TANZANIA**

**TAARIFA KWA VYOMBO VYA HABARI**

*NAOMBA KUTOA TAARIFA KWA UMMA WA WATANZANIA*

*\*KUWA LEO TAREHE 06 JANUARI, 2022 NIMEANDIKA*

*BARUA KWENDA KWA KATIBU MKUU WA CHAMA CHA MAPINDUZI (CCM) KUJIUZULU NAFASI YA SPIKA WA BUNGE LA JAMHURI YA MUUNGANO WA TANZANIA. UAMUZI HUU NI BINAFSI NA HIARI NA NIMEUFANYA KWA KUZINGATIA NA KUJALI MASLAHI MAPANA ZAIDI YA TAIFA LANGU, SERIKALI NA CHAMA CHANGU CHA CCM.*

*PIA NAKALA YA BARUA YANGU HIYO YA KUJIUZULU NIMEIWASILISHA KWA KATIBU WA BUNGE LA JAMHURI YA MUUNGANO WA TANZANIA KWA AJILI YA HATUA STAHILI KWA MUJIBU WA KATIBA YA NCHI NA SHERIA NYINGINE HUSIKA ILI KUWEZESHA MCHAKATO WA KUMPATA SPIKA MWINGINE UWEZE KUANZA.*

*NACHUKUA NAFASI HII KUTOA SHUKRANI ZANGU ZA DHATI KWA WABUNGE WENZANGU. MHE RAIS SAMIA SULUHU HASSAN, SERIKALI KWA UJUMLA, WANANCHI WA JIMBO LANGU LA KONGWA NA WATANZANIA WOTE KWA USHIRIKIANO MKUBWA MLIONIPA KATIKA KIPINDI CHOTE NILIPOKUWA SPIKA WA BUNGE LETU TUKUFU*

*MUNGU IBARIKI TANZANIA*

*JOB YUSTINO NDUGAI*

*06 JANUARI, 2022"*

On the other hand, the Public Notice issued by the Office of the National Assembly reads as follows:

**"JAMHURI YA MUUNGANO WA TANZANIA**

**BUNGE LA TANZANIA**

**TAARIFA KWA UMMA**

*Katibu wa Bunge anautaarifu Umma wa Watanzania kuwa amepokea nakala ya barua kutoka kwa Mhe. Job Y. Ndugai, Mb. ya kujiuzulu nafasi ya Spika wa Bunge aliyompelekea Katibu Mkuu wa Chama cha Mapinduzi (CCM) ambacho kilimdhamini alipogombea nafasi hiyo.*

*Aidha, amepokea barua kutoka kwa Katibu Mkuu wa Chama cha Mapinduzi (CCM) iliyomtaarifu kuwa Mhe. Job Y. Ndugai, Mb. amejuzulu nafasi ya Spika wa Bunge la Jamhuri ya Muungano wa Tanzania kuanzia tarehe 06 Januari, 2022 na kwamba Chama hicho kimeridhia.*

*Taarifa kuhusu taratibu za uchaguzi kwa ajili ya 'kujaza nafasi ya Spika zitatolewa baadaye.*

*Imeolewa na:*

*Kitengo cha Mawasiliano na Uhusiano wa Kimataifa,  
Ofisi ya Bunge,*

**DODOMA**

*6 Januari, 2022"*

Mr. Daimu submitted further that the submission of the notice of resignation of the 1<sup>st</sup> respondent was in contravention of **article 149 (1)(c) of the Constitution** because the purported notice was addressed and submitted to the SG CCM, and copied to the 2<sup>nd</sup> respondent. According to Mr Daimu, the 2<sup>nd</sup> respondent is not authorized person to receive the notice of resignation of the 1<sup>st</sup> respondent under **article 149 (2) of the Constitution**. For that reason, he said, the notice of resignation of the 1<sup>st</sup> respondent was not in conformity with the procedures laid down under **article 149(1) (c) and (2) of the Constitution**. Thus, the 1<sup>st</sup> respondent is still the speaker of the National Assembly of the United Republic of Tanzania.

On his part, Mr. Malata submitted that the 1<sup>st</sup> respondent has already resigned from the seat of speaker and is no longer a speaker of the National Assembly of the United Republic of Tanzania. He produced one set of documents, one being a notice of resignation that was submitted to the 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent. For easy of reference, we quoted it as hereunder:

"Kumb. Na. PCF/MB/1534/4      06 Januari 2022

*Ndugu NeneIwa J. Mwihambi,*

*Katibu wa Bunge,*

*S.L.P. 941.*

**DODOMA.**

***KUH: KUJIUZULU NAFASI YA SPIKA***

*Naomba kukujulisha kuwa, nimeamua kujiuzulu nafasi ya Spika wa Bunge la Jamhuri ya Muungano wa Tanzania kuanzia tarehe 06 Januari, 2022. Uamuzi huu ni wa hiari na umezingatia maslahi mapana ya Taifa.*

*2. Hivyo, kwa kuzingatia masharti ya Ibara ya 149 (1) (c) ya Katiba ya Jamhuri ya Muungano wa Tanzania ya Mwaka, 1977 nawasilisha uamuzi wangu huo ili ulitaarifu Bunge katika Kikao cha Kwanza cha Mkutano ujao wa Bunge kwa hatua stahili za kujaza nafasi hiyo.*

*3. Nawasilisha.*

***Job Yustino Ndugai, Mb.***

*Nakala: Mhe. Daniel Godfrey Chongolo,*

*Katibu Mkuu wa Chama cha Mapinduzi (CCM) Taifa,*

*Makao Makuu,*

***Dodoma."***

Referring to **articles 149(2) and 87 (2) of the Constitution**, Mr.

Malata submitted that the 2<sup>nd</sup> respondent being the chief executive officer of

the National Assembly was authorized and competent to receive such notice dated 6/1/2022 indicating that, with effect from 6/1/2022, the 1<sup>st</sup> respondent is no longer the speaker of the National Assembly. The provisions of **article 87 (2) of the Constitution** which reads in Kiswahili and English as thus:

*"87. (2) Katibu wa Bunge atakuwa ndiye mtendaji mkuu katika Ofisi ya Bunge na atawajibika kwa utendaji bora wa shughuli za Bunge kwa kuzingatia masharti ya Katiba hii na ya sheria inayohusika".*

*"87. (2) The Clerk of the National Assembly shall be the Chief Executive in the office of the National Assembly, and shall be responsible for the efficient discharge of the business of Parliament in conformity with the provisions of this Constitution and of the relevant law".*

He also referred us to **section 8(1) and (2) (d) of the National Assembly (Administration) Act, 2008** which read and we quote that:

*"8. (1) The Clerk shall be responsible for the efficient discharge of the business of Parliament in conformity with the provisions of the Constitution and of other relevant laws.*

*(2) without prejudice to the generality of subsection (1), the functions of the Clerk shall include:*

*(d) to be responsible for keeping records and for custody of all documents which are required to be kept by the Standing Orders, which shall be open for inspection by Members of Parliament and the general public”.*

Taking the totality of all the above, Mr. Malata submitted that the Notice of resignation quoted herein above was dully submitted by the 1<sup>st</sup> respondent in compliance with **article 149 (1) (c) and (2) of the Constitution**. He submitted further that much as the notice of resignation dated 6/1/2022 indicated that the resignation was with effect from 6/1/2022, the 1<sup>st</sup> respondent is no longer the speaker of the National Assembly. It was also Mr. Malata’s argument that the notice was copied to the SG CCM because it is that party which sponsored the 1<sup>st</sup> respondent at the time of contesting for the seat of speaker. His argument is supported by **Kanuni 9(2) of Kanuni za Kudumu za Bunge, Toleo la Juni, 2020** (Standing Orders) which read and we quote that:

*“9(2) Chama cha Siasa kitakuwa na haki ya kupendeleza jina moja la mbunge wa chama hicho ambeye atakuwa mgombea wa nafasi ya spika kwa mujibu wa Katiba”.*



In conclusion, Mr. Malata was of the firm view that the submission of the notice of resignation properly followed the procedure and was submitted to a proper person, i.e. the chief executive officer of the National Assembly pursuant to **article 149 (2) of the Constitution**. It is worth noting that Mr. Malata insisted that **Article 149 (2) of the Constitution** should be read together with **article 149 (1) (c) of the Constitution** to see how the notice of resignation complied with the Constitution.

Having all the above in mind, we recalled the issue framed herein before. The issue is whether the 1<sup>st</sup> respondent resignation is in accordance with the provisions of **Article 149 (1) (c) and (2) of the Constitution**. Of course, we have no doubt that in terms of **article 149 (1) (c) and (2) of the Constitution** the speaker of National Assembly who wishes to resign is required to submit the notice of resignation to the National Assembly. That fact is not disputed by both parties. What is in dispute is who should receive the notice of resignation and when does the resignation becomes effective.

As rightly submitted by Mr. Daimu, we have noted that there were two sets of documents on how the 1<sup>st</sup> respondent resigned from the seat of the Speaker of the National Assembly. The first set includes the press release

and the public notice (Annexures A and B) annexed to the petitioner's affidavit. Both documents were to the effect that the notice of resignation was submitted to the SG CCM and copied to the 2<sup>nd</sup> respondent. The second set is comprised of two documents annexed to the counter affidavit. This include the notice of resignation (Annexure OSG 1) which indicated that the 1<sup>st</sup> respondent's notice of resignation was submitted to the 2<sup>nd</sup> respondent and copied to SG CCM. Mr. Daimu did not doubt the authenticity of Annexure OSG 1 to the counter-affidavit. Therefore, in view of the provision of **Article 87(2) of the Constitution**, it is clear that the notice of resignation was submitted to the chief executive officer of the National Assembly. We are of the considered view that the National Assembly is an institution which have officers responsible of taking care of its day to day activities.

Thus, so long as there is nothing in **article 149 (2) of the Constitution** explicitly providing that such sub article (2) refers only and should be read in connection to sub article (1) (a), but in isolation of other clauses (b), (c) and (d) to sub article (1), we are of the considered view that the 2<sup>nd</sup> respondent is also covered in sub article (2). It is clear under sub article (2) that *"a person who has given notice of resignation pursuant to the provisions of sub article (1) of this article"* include notice of resignation issued

under clause (c). Thus, Mr. Daimu's construction of sub article (2) which excludes its application to clause (c) to sub article (1) is unfounded. On the other hand, we agree with construction given by Mr. Malata that sub article (2) applies to the entire sub article (1) to **article 149 of the Constitution**.

In the same vein, the notice of resignation quoted hereinabove provides that the effective date of resignation of the 1<sup>st</sup> respondent is with effect from 6/1/2022. It is the same date the notice of resignation was received by the 2<sup>nd</sup> respondent in accordance with **article 149 (2) of the Constitution**.

In that respect, we are in agreement with Mr. Malata that the 2<sup>nd</sup> respondent to whom the notice of resignation was submitted by the 1<sup>st</sup> respondent, and who under **article 87 (2) of the Constitution**, is the chief executive of the office of the National Assembly is the authorized and competent to receive a notice of resignation of the speaker. With regard to the notice at issue, we find that indeed the 2<sup>nd</sup> respondent was the authorized person to receive such notice.

We have also noted the concern that the information that was issued to the public was to the effect that the notice of resignation was submitted

by the 1<sup>st</sup> respondent to the SG CCM, and copied to the 2<sup>nd</sup> respondent. Assuming that the assertion is correct, to us we find that the concern is not an issue because on the same date, 6/1/2022, there was undisputed notice of resignation quoted herein, that was submitted to the 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent. After all, the 1<sup>st</sup> respondent was not barred from submitting another notice of resignation to the 2<sup>nd</sup> respondent.

Unfortunately, as alleged by Mr. Daimu, the petitioner has failed to obtain a resignation notice purportedly written by the 1<sup>st</sup> respondent and submitted to the SG CCM and purportedly copied to the 2<sup>nd</sup> respondent. What was annexed to the affidavit is the 1<sup>st</sup> respondent's press release to the public that he has resigned from the post of speaker. Furthermore, the National Assembly has issued public Notice that is annexed to the affidavit stating that the 2<sup>nd</sup> respondent has received a letter from the SG CCM informing her that the 1<sup>st</sup> respondent has resigned from the post of speaker of the National Assembly with effect from 6/1/2022. On our part, we find no harm to notify his party on his resignation from the post of speaker.

All in all, we thus find that the 1<sup>st</sup> respondent is no longer occupying the seat of speaker of the National Assembly of the United of Republic of Tanzania with effect from the 6/1/2022, following his notice of resignation.

The procedure which was taken by him was valid, effective, constitutional and legal because the notice of resignation was made and submitted pursuant to the provision of **article 149 (1) (c) and (2) of the Constitution**. It is therefore upon the 2<sup>nd</sup> respondent as the chief executive of the office of the National Assembly to table the notice of resignation of the 1<sup>st</sup> respondent to the National Assembly in accordance with the law.

In the event, we find the petition without merit and is accordingly dismissed. In the circumstances of this case and since order for payment of costs is discretionary, we order that each party has to bear its own costs.

It is accordingly ordered.

**Dated at Dar es Salaam** this 28<sup>th</sup> day of January, 2022.



**J. S. MGETTA**

**JUDGE**



**B. S. MASOUD**

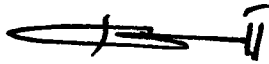
**JUDGE**



**E. S. KISANYA**

**JUDGE**

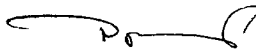
**COURT:** This Judgment is delivered today this 28<sup>th</sup> January, 2022 in the presence of Mr. Daimu Halfan, Mr. Boniface Mwambukusi and Mr. Pasience Mlowe, all learned advocates for the applicant and in the presence of Mr. Mussa Mbura and Mr. Hangi Chang'a, both the learned Principal State Attorneys assisted by Mr. Stanley Kalokola, the learned State Attorney, all for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.



**J.S. MGETTA**  
**JUDGE**  
**28/01/2022**



**B. S. MASOUD**  
**JUDGE**  
**28/01/2022**



**E. S. KISANYA**  
**JUDGE**  
**28/01/2022**