AIC Kijabe Hospital v Itabuild Imports Limited (Miscellaneous Civil Application E262 of 2022 & Commercial Arbitration Cause E037 of 2022 (Consolidated)) [2023] KEHC 18747 (KLR) (Commercial and Tax) (24 March 2023) (Ruling)

Neutral citation: [2023] KEHC 18747 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

MISCELLANEOUS CIVIL APPLICATION E262 OF 2022 &
COMMERCIAL ARBITRATION CAUSE E037 OF 2022 (CONSOLIDATED)

DO CHEPKWONY, J

MARCH 24, 2023

BETWEEN

AIC KIJABE HOSPITAL ..... APPLICANT

AND

ITABUILD IMPORTS LIMITED ..... RESPONDENT

RULING

1. There are two application pending in the consolidated matter which are subject of this ruling. The first application is a Notice of Motion application dated 4th May, 2022 in which the Applicant, AIC Kijabe Hospital seeks the court to set aside the award dated 27th September, 2021 by the Arbitral Tribunal (Prof. (Quantity Surveyor) Hezekiah Gichunge) published on 4th February, 2022.

2. The second application is a Chamber Summons application dated 4th April, 2022 by Itabuild Imports Limited (for purposes of discussion in this ruling to be referred to as "the Respondent") which seeks leave to enforce the said tribunal's award dated 27th September, 2021.

3. The Applicant's case in support of the application for setting aside the Arbitral Award as is in the grounds contained on the face of the application, the Supporting and Supplementary Affidavits of David Nganga Muthumbi sworn on 4th May, 2023 and 6th July, 2022 respectively, and the submissions dated 17th October, 2022 is that the Respondent was engaged by the Applicant for the construction and completion of new Paediatrics Wings comprising of Childrens' Wings, Hospital Link Corridor, demolitions and relocations of Quonset Hut, complete the new Paediatrics following which the Applicant terminated the contract and demanded the forfeiture of the performance bond.

4. Aggrieved by the termination, the Respondent filed HCCC No.407 of 2014 to stop performance bond which the Applicant had called and the same was summarily allowed by the High Court in a ruling dated 27th February, 2015. The Applicant challenged the High Court's decision and the Court of Appeal directed the same be considered on merit.

5. Further to that, the Respondent filed a suit being HCCC No.582 of 2014 seeking to regain the site and stop the Applicant from going on with the construction. However, the court found that the contract was properly terminated by effluxion of time. Nonetheless, the Respondent filed its Statement of Claim before the Arbitral Tribunal seeking among other reliefs, special damages, payments of amounts indicated in a final account and interests. The Applicant also counter claimed against the Respondent.

6. Upon considering the case made by the parties, the Arbitrator concluded that the Applicant had breached Clause 38 of the Agreement and awarded the Respondent the sum of Kshs.49,672,971.86 together with post award interests at the rate of 14% per annum. The Applicant's Counter-claim was however dismissed.

7. The Applicant avers that the award was made without due regard to decisions of the High Court in HCCC No.582 of 2014 and Court of Appeal's decision in Civil Appeal No.107 of 2015. That the award goes against the principles of natural justice and fairness especially by amending the final Award by including dates for computation of interests, failing to determine on the Respondent's legal fees and delivering final Award II outside the legal stipulated thirty (30) days. The Applicant has added that the Arbitrator in making the final Award II, the Arbitrator proceeded beyond his jurisdiction and scope of authority, acted in contravention of public policy and *the Constitution* of Kenya and finally, that the Arbitrator proceeded to determine issues not contemplated by the parties and failed to address the issues within his mandate as a determination of costs.

8. For the Respondent, the tribunal which delivered the final Award was appointed by the Architectural Association of Kenya in line with Clause 45.1 of the Agreement between the parties after the recusal of Quantity Surveyor Litiku and the death of the initial Arbitrator Quantity Surveyor Mururu. Thus, the Arbitrator was correctly appointed in line with Clause 45 of the Agreement and granted the requisite jurisdiction to address the dispute as per the same Clause contrary to assertions by the Applicant.

9. The Respondent averred that the Arbitrator was a qualified Quantity Surveyor and he rendered a wholly reasoned award which was later supplemented by an additional Award II on request of the Applicant under Section 34 of the *Arbitration Act*. Therefore, the dates for computation of interests were a clarification on the issues raised by the Applicant and they did not change the substratum of the initial final Award.

10. The Respondent added that the court in HCCC No.582 of 2014 observed that the Tribunal would conclusively determine on whether the termination was justified. That the decision by the Court of Appeal in Appeal No.107 of 2015 likewise did not even deal with the issue of validity of the termination.

11. Nonetheless, the Respondent averred that the Applicant failed to establish grounds for setting aside the award as laid out in the *Arbitration Act* and the instances pointed out by the Applicant are invites for the court to re-evaluate the Award and make a different finding.

12. In its submissions dated 13th June, 2021, the Respondent began by submitting that although the Arbitrator notified parties of the ruling on 3rd February, 2022, the Applicant filed the application for setting aside the Award on 4th May, 2022 which is two months later contrary to the timelines for challenging the Award.

13. It buttressed the argument with an excerpt from the case of University of Nairobi –vs- Multiscope Consultancy Engineers Ltd[2020]eKLR, where the court held such application for setting aside ought to be brought at the earliest opportunity of accessing the signed copy.

14. It is submitted that the agreement between the parties under Clause 45 of the Agreement adequately granted the Arbitrator jurisdiction to address any dispute which might have resulted between the parties. Thus, the argument that the Arbitrator lacked jurisdiction or otherwise dealt with issues not before him are misguided and were never raised or dealt with in the said arbitration. The Respondent has argued that parties had filed a list of agreed issues which guided the decision of the Arbitrator.

15. Finally, that the issue of costs, although the same was left for the parties to agree on, the Applicant was unco-operative and since no agreement was arrived at, the Respondent moved the Arbitrator to quantify the same and later issued a Certificate of Costs dated 15th July, 2022.

16. In the Chamber Summons seeking enforcement of the Award, the Respondent reiterated that the final Award is dated 27th September, 2021 and since the Applicant has not provided viable grounds for setting aside the Award, then the same ought to be adopted for enforcement as this court's decision.

17. In response to the Chamber Summons application, the Applicant reiterated the grounds adduced in support of the application for setting aside the Arbitral Award. According to the Respondent, the Award failed to appreciate the decisions in HCCC No.407 of 2014 and in HCCC No.582 of 2014 hence repugnant to public policy. That the Award published on 27th September, 2021 failed to specify the amount in damages and interest awarded to the Respondent. Upon request for clarification in line with Section 34 of the *Arbitration Act*, the Arbitrator delivered the final Award II quantifying damages and interest and failed to determine the issue on costs as provided under Sections 32 and 32B of the Act. The Applicant thereafter highlighted various grounds in which it thought the Award was repugnant to public policy and against natural justice.

Analysis and Determination

18. Having carefully considered the two applications, the affidavits and the submissions made on behalf of the parties as well as the authorities relied on, I find that the issues which come up for determination are:-

    a. Whether the application dated 4th May, 2022 is time barred;

    b. Whether the Applicant has made a case for setting aside the final Arbitral Award dated 27th September, 2021;

    c. Whether the Arbitral Award dated 27th September, 2021 should be adopted as Judgment of this court.

19. On whether the application for setting aside the Arbitral Award is time barred, the Respondent submitted that the notice of the final Award was made on 27th September, 2021 and time started counting as from that date. Therefore, the application for setting aside the Arbitral Award having been made on 4th May, 2022 was made out of the timelines in which an application for setting aside the Award ought to have been made. The Applicant's submissions were silent on the issue. Nonetheless, Section 35(3) of the *Arbitration Act* No.4 of 1995 is the guiding provision on the subject. It provides as follows:-

> " An application for setting aside the Arbitral Award may not be made after 3 months have elapsed from the date on which the party making that application had received the Arbitral

Award, or if a request had been made under Section 34 from the date on which that request had been disposed of by the Arbitral Award."

20. It then follows that a party seeking to set aside an Arbitral Award should make such an application within three (3) months of receiving the Award. The delivery of the Award can be inferred at the instance the Arbitral Tribunal either gives, yields possession, releases or makes available for collection a signed copy of the Award to the parties.

21. In that regard, I have considered the Arbitral Award dated 27th September, 2021 and on its face, it is indicated that the same was dispatched to the parties on 4th February, 2022. Therefore in my view, the three (3) months period stipulated under Section 35(3) started running from 4th February, 2022 and lapsed on 5th May, 2022. The application having been made on 4th May, 2022, was thus filed within the timelines prescribed by Section 35(3) of the *Arbitration Act*.

22. I now turn to the second issue of whether a case has been made for setting aside of the Arbitral Award. The applicable law on this is Section 35(2) of the *Arbitration Act* which sets out the conditions under which an Arbitral Award can be set aside. The Section states as follows:-

" An Arbitral Award may be set aside by the High Court only if-

a. the party making the application furnished proof-

i. that a party to the arbitration agreement was under some incapacity; or

ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, the laws of Kenya; or

iii. the party making the application was not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

iv. the Arbitral Award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration or contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the Arbitral Award which contains decisions on matters not referred to arbitration may be set aside; or

v. the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate; of failing such agreement, was not in accordance with this Act; or

vi. the making of the Award was induced or affected by fraud, bribery, undue influence or corruption;

b. the High Court finds that-

i. the subject matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or

ii. the Award is in conflict with the public policy of Kenya."

23. A reading through the provisions under Section 35(2) above leaves no room for doubt that an Arbitral Award can only be set aside if the conditions specified therein are established. However, in considering the present application for setting aside the Arbitral Award, the court has in its mind that an arbitration is matter of an agreement between parties and the court's mandate does not extend to hearing the claims of factual or legal error, that were made by an Arbitrator as an appellant court does in reviewing decisions of lower courts. Such was the position reiterated with approval by the Supreme Court of Kenya in the case of Geo Chem Middle East –vs- Kenya Bureau of Standards [2020]eKLR. In this case, the court observed thus:-

> "It is not the function or mandate of the High Court to re-evaluate such decisions of an Arbitral Tribunal, when the court was called upon to determine whether or not to set aside an Award ....if the court were to delve into the task of ascertaining the correctness of the decision of an Arbitrator, the court would be sitting on an appeal over the decision in issue. In light of the public policy of Kenya, which loudly pronounces the intention of giving finality to Arbitral Awards, it would actually be against the said public policy to have the court sit in appeal over the decision of the Arbitral Tribunal."

24. In the instant case, the Applicant has adduced a myriad of grounds for seeking to have the Arbitral Award set aside which can be summarized as, the Arbitration Tribunal having dealt with a dispute not contemplated between the parties, the Arbitration Tribunal having lacked jurisdiction and proceeded beyond the scope of the dispute before it, and the Award being contrary to public policy.

25. To determine whether the Arbitral Tribunal dealt with a dispute not contemplated or falling within the terms of the reference, or whether its Award contains decisions on matters beyond the scope of the reference to arbitration, an arbitral clause or agreement is critical to a court. The underlying inquiry would therefore be whether the Award exceeded the scope of the arbitration agreement as opposed to whether it has exceeded the claims made by the parties in their respective pleadings.

26. In determining the issues that have been raised by the Applicant, I wish to reproduce the Dispute Resolution Clause in the Agreement as it is germane for ease of reference. It is Clause 45:0 – Settlement Of Disputes.

45.

1 In case any dispute or difference shall arise between the Employee or the Architect on his behalf and the contractor, either during the progress or after the completion or abandonment of the works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty (30) days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of the Architectural Association of Kenya on the request of the applying party.

45.

2. The arbitration may be on the construction of this contract or on any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any matter or thing left by this contract to the discretion of the Architect, or the

withholding by the Architect of any certificate to which the contractor may claim to be entitled or the measurement and valuation referred to in Clause 34.0 of these conditions or the rights and liabilities of the parties subsequent to the termination of contract.

45.

3 Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within ninety (90) days of the occurrence or discovery of the matter or issue giving rise to the dispute.

45.

4 Notwithstanding the issue of a notice as stated above the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties.

45.

5 In any event, no arbitration shall commence earlier than ninety (90) days after the service of the notice of a dispute or difference.

45.

6 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the works or abandonment of the works or termination of the contract by either party.

45.

6.

1 The appointment of a replacement Architect, Quantity Surveyor or Engineer upon the said persons ceasing to act.

45.

6.

2 Whether or not the issue of an instruction by the Architect is empowered by these conditions.

45.

6.

3 Whether or not a certificate has been improperly withheld or is not in accordance with these conditions.

45.

6.

4 Any dispute or difference arising in respect of war risks or war damage.

45.

7 All other matters in dispute shall only be referred to arbitration after the practical completion or alleged practical completion of the works, or abandonment of the works, or termination or alleged termination of the contract, unless the Employer and the Contractor agree otherwise in writing.

45.

8 The Arbitrator shall, without prejudice to the generality of his posers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

45.

9 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

45.

10 The Award of such Arbitrator shall be final and binding upon the parties.

27. The Applicant submitted that the Arbitrator took upon himself at Paragraph 184 – 187 of the final Award to express his reference on how the contract ought to have been drafted instead of interpreting the same. I have read through the said Paragraphs 184 – 187 of the final Award in which the Applicant avers that the Arbitrator erred in interpreting the contract. I find the paragraphs are clear on the expression of the Arbitrator's interpretation on the appointment of sub-contractors. In his view, the consultancy team failed to differentiate the contractual differences between domestic sub-contractors and nominated sub-contractors, hence the delays in nomination.

28. In my humble view, I find that the Arbitrator was well within the interpretation of Clauses 31 and 32 of the Agreement as I have not seen any bit of interpretation which indicates that the Arbitrator took it upon himself to express an opinion on a dispute not contemplated under Clause 45 as reproduced above. Similarly, I am not persuaded with the claim that the Tribunal proceeded on its own frolic under Paragraphs 207, 230, 231 and 375 of the final Award as alleged by the Applicant. All the issues addressed therein were well within the scope of the agreement and this court's mandate does not extend to hearing and determining claims of factual or legal errors by an Arbitrator therein.

29. On whether the Tribunal had jurisdiction and or whether it proceeded beyond the scope of dispute before it, in its submissions, the Applicant highlighted that the Arbitrator under Paragraphs 207 and 228 of the final Award, exceeded his jurisdiction by determining that the termination of the contract was not lawful, that he awarded damages not contemplated under Clauses 34 and 38 of the Agreement or are limited to Clause 39.5 of the Agreement.

30. In my view, the jurisdiction of the arbitration Tribunal is dictated by the Arbitration Clause which has been reproduced hereinabove. Clause 45.9 of the Agreement dictates that the Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable on order to determine the rights of the parties and assess and award any sums which ought to have been subject of or included in any certificate.

31. The Clause bestowed jurisdiction on the Arbitrator to determine on the rights of the parties with regard to any sums awardable without limiting assessment on any form damages including the Award

made under Paragraph 382 of the final Award. Moreso, I have read through Paragraphs 354 – 366 of the Arbitral Award and established that the award of damages was within the Arbitrator's jurisdiction.

32. Finally, I have read through Clause 39.5 of the Agreement which the Applicant alleges that it limits damages on direct loss or damages. The said Clause 39.5 of the Agreement reads as follows:-

39.

5 After taking into account amounts previously paid under this contract, the Contractor shall be paid by the Employer;

39.

5.

1 The total value of work completed at the date of termination.

39.

5.

2 The total value of work begun and executed but not completed at the date of termination, the value being assessed in accordance with Clause 30.6 of these conditions as if such work were a variation required by the Architect.

39.

5.

3 Any sum assessed in respect of direct loss and or expense under Clause 37.0 of these conditions (whether assessed before or after the date of termination).

39.

5.

4 The cost of material or goods properly ordered for the works for which the Contractor shall have paid or for which the Contractor shall be legally bound to pay, and which have been recorded in accordance with sub-clause 39.4.2, and on such payment by the Employer, any materials or goods so paid for shall become the property of the Employer and shall not be removed from the site without the authority of the Employer.

39.

5.

5 The reasonable cost of removal under sub-clause 39.4.3.

39.

5.

6 Any direct loss and or damages caused to the Contractor by the termination.

33. A plain reading of the above Clause shows that it is untrue that it limits remedies to direct loss or damages as alleged by the Applicant. In my view, the Applicant seems to be aggrieved by the factual and

or legal errors made by the Arbitrator and on those grounds seeks the court to inter lack of jurisdiction by the Arbitrator.

34. Having earlier stated that arbitration is matter of an agreement as between parties, I do reiterate that this court's jurisdiction to interfere on discretion of an Arbitrator is limited by Section 10 of the *Arbitration Act*. Consequently, I do find that the Arbitrator correctly exercised the jurisdiction conferred to him by Clause 45 of the Agreement between the parties.

35. The other ground advanced by the Applicant was that the Award was contrary to public policy. That being the case, it is necessary for the court to interpret what constitutes "contrary to public policy" as a ground for setting aside the Arbitral Award. Various courts have previously attempted a definition of this term and I wish to adopt the basis already laid. I stand guided by the decision in the case of Christ For All Nations –vs- Apollo Insurance Company Limited, NRB HCC No.477 of 1999, where the court had the following to say:-

> " .... I take the view that although public policy is a most broad concept incapable of precise definition .....an award will be set aside under Section 35(2) (b)(ii) of the *Arbitration Act* as being inconsistent with the Public Policy of Kenya if it was shown that it was either;
>
> a. Inconsistent with *the Constitution* or other laws of Kenya, whether written or unwritten; or,
>
> b. Inimical to the national interest of Kenya; or,
>
> c. Contrary to justice and morality..."

36. What I gather from the above decision is that, for one to successfully claim that an Arbitral Award is contrary to public policy, he/she must establish that the Award is either contrary to fundamental laws and or policies of Kenya, or that the enforcement of the Award would be contrary to justice and morality.

37. In this case, the court has been asked to set aside the decision by the Arbitrator for being contrary to public policy of the Republic of Kenya for ignoring the High Court decisions in HCCC No.582 of 2014 and the Court of Appeal decision in Civil Appeal Nol.107 of 2015. According to the Applicant, in those two cases, the court appreciated that the contract was terminated by effluxion of time and the Arbitrator was likewise bound. Therefore, in finding that the agreement was wrongfully terminated, the Arbitrator committed a grave legal error.

38. I have read through the two decisions and whilst in agreement with the Respondents submissions, the Court of Appeal decision entirely commented on calling of the performance bond but not the legality of the termination of the agreement. On the other hand, Paragraph 13 of the decision in HCCC No.582 of 2014, partly reads as follows:-

> (13) Now, the main issue here is whether the said termination was justified. As I have said, this is the issue to be determined conclusively by the Arbitrator. The duty of this court here is simply to "peep" into the act, so to speak, and to consider, in a very broad manner, whether the actions of the Defendant in terminating the contract were justifiable".

39. It then follows that the two decisions did not limit the Arbitrator's liberty in determining the legality of termination of the agreement without restricting his decision to termination of the same by effluxion of time. It was therefore available for the arbitrator to make a finding that the agreement was wrongfully terminated without offending the decision of HCCC No.582 of 2014.

40. Further, the Applicant submitted that the decision was against public policy for relying on decisions by Malaysian law, partly for reviewing Arbitral Award I vide Arbitral Award II and by awarding excessive damages. In my view, these are not viable grounds to infer an award as being repugnant to public policy. None of those grounds establish the award to either be contrary to fundamental laws and or policies of Kenya, or that the enforcement of the award would be contrary to justice and morality.

41. For clarity purposes, although persuaded by principles in a decision of foreign jurisdiction, the Arbitrator made a distinct and independent conclusion. Moreso, the law does not preclude Tribunals from considering guidance in foreign judicial authorities. Similarly, I do not agree with the Applicant that the final Arbitral Award II amended final Arbitral Award I by including the rate of interest as 14%. In my view, since the Arbitrator had awarded interest in the Award I, quantifying the rate at 14% per annum would properly fit as removal of ambiguity and furnishing clarity under Section 34 of the *Arbitration Act*.

42. Finally, on whether the Award is impugned by failure to assess the claimant's legal costs, and whether the Arbitrator became functus officio after delivery of the final Award so as to lack jurisdiction to assess costs, I take the view that the Applicant did not deny that the Arbitrator directed parties to agree on legal costs and it failed to respond on the invitation by the Respondent to agree on costs. Indeed, at W. DISPOSITION AND AWARD (X)

43. the Tribunal reserved failing of the agreement of parties, determine by its Further Award, the claimants recoverable legal costs on the basis described at Sub-sections 32B(1) and 34(5) of the *Arbitration Act*, 1995 (as amended in 2012) pursuant to Paragraphs 384 and 388 herein. Hence the Arbitrator could become functus officio only if the award did not reserve costs for later consideration in failing of agreement by the parties.

44. Similarly, had the award not reserved for on failing of agreement by the parties then the Arbitrator would be bound to determine the issue of costs as inferred by the Applicant. Section 32B of the *Arbitration Act* having vested the Arbitral Tribunal with exclusive jurisdiction to determine costs and expenses and upon failure of agreement by parties, I am persuaded that the Arbitrator was right in determining the costs.

45. In view of the foregoing, it is this court's conclusion that the Applicant has failed to establish that the Arbitral Award in this case falls within any of the circumstances stipulated under Section 35(2) of the Act to warrant being set aside. Consequently, the Applicant has failed to establish a basis for setting aside the Arbitral Award dated 27th September, 2021 as sought. In the premises, it is my finding that the Notice of Motion dated 4th May, 2022 lacks merit and is hereby dismissed with no orders to costs.

46. I now turn to the second application dated 4th April, 2022 in which the Respondent, seeks for adoption of the Arbitral Award dated 27th September, 2021 to be adopted as the Judgment and Decree of this court for enforcement. The Respondent has annexed an affidavit in support of the application in which it has produced the Arbitral Awards made during the arbitration proceedings including the Certificate of Taxation.

47. Section 37 of the *Arbitration Act* sets out the grounds upon which this court can decline to recognize and or enforce an Arbitral Award. These grounds are similar to those that warrant the setting aside of an Arbitral Award as provided under Section 35(2) of the *Arbitration Act*. Section 36 of the *Arbitration Act* further states that a domestic Arbitral Award is to be recognized as binding and, on application to court in writing, it shall be enforced unless the grounds set out under Section 37 are demonstrated.

48. In the present case, I have already found that the Applicant vide his application dated 4th May, 2022 has failed to establish the existence of any of the grounds that would justify the setting aside of the Arbitral Award dated 27th September, 2021. In the circumstances, I find merit in the Respondent's application dated 4th April, 2022 and the same is allowed.

49. In the resultant, the Arbitral Award dated 27th September, 2021 is hereby recognized and adopted as an Order of the court for purposes of enforcement.

50. Each party shall bear its own costs.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF MARCH, 2023.

D.O CHEPKWONY

JUDGE