



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(Coram: A. C. Mrima, J.)

CONSTITUTIONAL PETITION NO. E292 OF 2020

-between-

1. AMIR LODGES LTD

2. SHARIFF FOREX BUREAU LTD.....PETITIONERS

-AND-

1. MOHAMMED OMAR SHARIFF

2. DIRECTOR OF CRIMINAL INVESTIGATIONS.....RESPONDENTS

RULING NO. 1

Introduction:

1. There are pending civil proceedings between the Petitioners herein and the 1st Respondent before the Milimani High Court Commercial and Tax Division being Civil Case No. E284 of 2020 *Amir Lodges Ltd and Shariff Forex Bureau Ltd vs. Mohammed Omar Shariff* (hereinafter referred to as '**the civil case**').
2. The civil case sought a declaration that the 1st Respondent herein is not a Director of the Petitioners herein, a permanent injunction against the 1st Respondent from in anyway holding himself as a Director of the Petitioners and costs.
3. The 1st Respondent laid a criminal report before the 2nd Respondent in the manner in which he was removed from the directorship of the Petitioners. He alleged fraud and forgery in procuring the documents used to effect the change of directorship at the Companies Registry.
4. Pursuant to the complaint, the 2nd Respondent initiated investigations. The Directors of the Petitioners were summoned by the 2nd Respondent for interrogation.
5. As a result of the intervention of the 2nd Respondent aforesaid, the Petitioners instituted the current proceedings seeking to bar the Respondents from in any manner proceeding on with the investigations.
6. In the meantime, the Petitioners *vide* an application by way of a Notice of Motion dated 24th September, 2020 sought interim conservatory orders.
7. The Petition and the application are opposed by both Respondents.
8. This ruling is on the application.

The Application:

9. The prayers in the application were tailored as follows: -

1. That this Honourable Court be pleased to certify the instant application as urgent, the same be heard Ex-parte in the first instance and service be dispensed with.
2. That pending hearing and determination of this suit, this Honourable court be pleased to issue conservatory orders staying all criminal investigations launched by the 2nd Respondent against the Directors of the petitioners.
3. That pending heard and determination of this application, this Honourable court be pleased to issue conservatory orders staying all criminal investigations launched by the 2nd Respondent against the Directors of the petitioner.
4. That costs of the application be in the cause.

10. The application was supported by the Affidavit sworn on 24th September, 2020 by one *Jaffer Omar Shariff*, a Director of the Petitioners (hereinafter referred to as '**Jaffer**').

11. Jaffer deposed that when the 1st Respondent was served with the process in the civil case, he lodged a criminal complaint with the 2nd Respondent a result of which he was summoned to the Serious Crime Office at the DCI Headquarters in Kiambu.

12. On arrival at the DCI Headquarters, Jaffer saw the 1st Respondent's car parked and wondered why he had been ambushed since he had not been informed that he was going to meet the 1st Respondent thereat.

13. Jaffer further deposed that he was interrogated about the documents he had signed and filed at the Companies Registry relating to the affairs of the Petitioners. He explained that the matter was subject of the civil case, but the 2nd Respondent was adamant on proceeding with the investigations and compelled him to record a statement. Jaffer successfully sought for time to prepare and record the statement.

14. Being apprehensive that the investigations were rushed with a view of intimidating and compromising the civil case, the Petitioners sought this Court's intervention. They claimed that their rights under Articles 49(1) b, 50(1) and 160(1) of the Constitution were variously infringed.

15. The Petitioners submitted that they had demonstrated a *prima facie* case since the investigations were not undertaken in good faith and with a view to meet the ends of justice, but as a collateral and with the aim of stealing a match and aiding the 1st Respondent to scuttle the civil case as the 1st Respondent had long lost his directorship in the Petitioners.

16. It was further submitted that in the event the Petitioners and their Directors are charged and the civil case succeeds, then that will lead to an embarrassment of the rule of law and will erode the principle of finality of justice.

17. While referring to several decisions, the Petitioners urged the Court to allow the application.

The Responses:

18. The 1st Respondent filed Grounds of opposition dated 5th October, 2020 together with written submissions dated 26th January, 2021 and a List of Authorities.

19. The 1st Respondent pleaded that he lodged a genuine complaint with the 2nd Respondent over the irregular manner in which he was removed from the directorship of the Petitioners long before the civil case was instituted. The 1st Respondent contended that the documents in support of his ouster lodged at the Companies Registry were not genuine and were possibly forged, hence the invitation of the 2nd Respondent.

20. He argued that unless the genuinity of the documents which are relied upon by the Petitioners in the civil case is established, he stands to be prejudiced as the Court will perpetrate the illegality and fraud.

21. It was submitted that the 2nd Respondent has the mandate to carry out investigations once a complaint was lodged and that no impropriety had been demonstrated on its part. The 1st Respondent referred to several decisions in support of his opposition to the application.

22. The 2nd Respondent filed submissions dated 12th March, 2020. While referring to various decisions and reiterating the 1st Respondent's position, the 2nd Respondent submitted that the Constitution, the law and the circumstances of the case did not aid the grant of the orders sought given that the threshold for such orders had not been attained.

23. The 2nd Respondent also urged the Court to dismiss the application.

Analysis and Determination:

24. I have carefully considered the application, the parties' responses, the submissions and the Petition. The main issue for consideration and determination in this matter is whether the Petitioners satisfied the principles applicable in applications for conservatory orders and whether the orders sought ought to issue as prayed.

25. Before I deal with the said issues, a reminder of the nature and purview of conservatory orders is in order. The Court in Nairobi Civil Appeal 151 of 2011 **Invesco Assurance Co. Ltd vs. MW (Minor suing thro' next friend and mother (HW))** [2016] eKLR defined 'conservatory orders' as follows: -

5. A conservatory order is a judicial remedy granted by the court by way of an undertaking that no action of any kind is taken to preserve the subject until the motion of the suit is heard. It is an order of status quo for the preservation of the subject matter.

26. In **Judicial Service Commission v Speaker of the National Assembly & Another** [2013] eKLR the Court had the following to say about the nature of conservatory orders: -

Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under the Constitution, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.

27. In view of the foregoing, there is need to exercise caution in dealing with applications for conservatory orders so as not to venture into the arena of the main Petition. **Ibrahim, J** (as he then was) in **Muslim for Human Rights (Milimani) & 2 Others vs Attorney General & 2 Others** (2011) eKLR rightly so rendered himself as follows: -

The court must be careful for it not to reach final conclusion and to make final findings. By the time the application is decided; all the parties must still have the ability and flexibility to prosecute their cases or present their defences without prejudice. There must be no conclusivity or finality arising that will or may operate adversely vis-a vis the case of either parties. The principle is similar to that in temporary or interlocutory injunctive in civil matters. This is a cardinal principle and happily makes my functions and work here much easier despite walking a tight legal rope that I could easily lose balance with the slightest slip due to any laxity or being carried away by the passion or zeal of persuasion of any one side.

28. In **Speedex Logistics Limited & 2 Others v Director of Criminal Investigations & 3 Others** [2018] eKLR, the Court furthered the caution as follows: -

In considering an application for conservatory orders, the court is not called upon to make any definite finding either of fact or law as that is the province of the court that will ultimately hear the petition. At this stage the applicant is only required to establish a prima facie case with a likelihood of success. Accordingly, in determining this application, this Court is not required, and is in fact forbidden from making any definite and conclusive findings on either fact or law.

29. A Court must therefore maintain a delicate balance whenever dealing with a request for conservatory orders.

30. There are four principles for consideration on whether to grant conservatory orders which have been developed by Courts over time.

31. The *locus classicus* is the Supreme Court decision in **Gatirau Peter Munya -v- Dickson Mwenda Kithinji & 2 Others** (2014) eKLR. At paragraph 86, the Court stated as follows: -

[86] Conservatory orders" bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as "the prospects of irreparable harm" occurring during the pendency of a case; or "high probability of success" in the Applicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant courses.

(emphasis added)

32. In **Wilson Kaberia Nkunja vs. The Magistrate and Judges Vetting Board and Other** Nairobi High Court Constitutional Petition No.154 of 2016 (2016) eKLR the Court summarized the three principles for consideration as follows:

(a) An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.

(b) Whether, if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory; and

(c) The public interest must be considered before grant of a conservatory order.

33. A look at the principles shall now follow.

(i) On whether a prima-facie case was established: -

34. Courts have settled the definition of a prima facie case in respect of civil applications. For instance, in **Mrao vs. First American Bank of Kenya Limited & 2 Others** (2003) KLR 125 the Court defined a prima facie case to mean: -

... In a civil application includes but is not confined to a 'genuine and arguable case'. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.

35. The Court of Appeal in Nairobi Civil Appeal No. 44 of 2014 **Naftali Ruthi Kinyua vs. Patrick Thuita Gachure & Another** (2015) eKLR while dealing with what a *prima facie* case was, made reference to Lord Diplock in *American Cyanamid vs. Ethicon Limited* (1975) AC 396 when the Judge stated thus: -

If there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant's proposed activities, that is the end of any claim to interlocutory relief.

36. In **Re Bivac International SA (Bureau Veritas)** (2005) 2 EA 43, the Court while expounding on what a *prima-facie* case or arguable case was, stated that such a decision is not arrived at by tossing a coin or waving a magic hand or raising a green flag, but instead a Court must undertake an intellectual exercise and consider without making any findings, the scope of the remedy sought, the grounds and the possible principles of law involved.

37. Applications for conservatory orders to stay criminal investigations are essentially against the investigators. Without venturing into the merits of the Petition, suffice to say that the Constitution and the law variously provide for the investigative powers of the police. Such powers ought to be sparingly interfered with, and if need be, should be in the clearest of cases more so at an interlocutory stage.

38. I have considered the Petitioners' allegations against the Respondents as well as the contra-position taken by the Respondents in this matter. There is no dispute that the 1st Respondent was, at one time, a director of the Petitioners. It is also not in doubt that he was removed from the directorship thereof. There is in pendency the civil case which aims at sealing the fate of the directorship of the 1st Respondent in the event it is successful.

39. The 1st Respondent cried foul in the manner he was removed from the said directorship. He alleged that the acts amounting to his said removal were perpetrated by criminality. He lodged a criminal complaint with the 2nd Respondent.

40. Jaffer was summoned by the 2nd Respondent over the matter. He was interrogated, but had not recorded a statement at the time he rushed to Court and initiated the current proceedings. Whereas the Court declined to grant any interim orders, the most current position of the investigations is not clear to the Court.

41. The Petitioners are apprehensive that the investigations will compromise the fair hearing of the civil case since the issues under investigations are the same in the civil case.

42. This Petition, therefore, hinges on the provisions of **Section 193A** of the Criminal Procedure Code, Cap. 75 of the Laws of Kenya relating to concurrent criminal and civil proceedings. In Nairobi High Court Constitutional Petition No. E033 of 2021 **Maura Muigana vs. Stellan Consult Limited & 2 Others** (unreported) this Court dealt with the issue and expressed itself thus: -

60. *In Kenya, the aspect of concurrent civil and criminal proceedings is provided for in Section 193A of the CPC.*

61. *First, is a look at the said provision, which states as follows: -*

Concurrent criminal and civil proceedings:

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.

62. *In an Article titled 'Unjust Justice in Parallel Proceedings: Preventing Circumvention of Criminal Discovery Rules, the author, Randy S. Eckers, defines concurrent proceedings as independent, simultaneous investigations and prosecutions involving substantially the same matter and parties.*

63. *More often than not, the currency of the twin proceedings is challenged before Courts. In the above article, the author reiterates that a determination to either stay or allow the continuation of parallel proceedings depend on existence of certain requirements. He observes: -*

The Courts only block parallel proceedings in special circumstances. A defendant may move for a stay to block parallel proceedings, which will be granted only if the defendant can prove either that the government is acting in bad faith and using malicious tactics to circumvent the strict criminal discovery rules, or that there is a due process violation...

Even if a defendant meets one of these requirements, a stay is not guaranteed. The Court takes many other factors into account in deciding whether a stay is appropriate in a specific situation. These factors include the commonality of the transaction or issues, the timing of the motion, judicial efficiency, the public interest, and whether or not the movant is intentionally creating an impediment." Absent special circumstances, both cases will probably proceed.

64. *It is, hence, deducible that the quest to stay concurrent proceedings must first be premised on the fact that there is in existence two or more active cases of civil and criminal nature in respect of the same entity or person. While discussing the general principles*

applicable in such scenarios, the Supreme Court of Appeal of South Africa in **Law Society of the Cape of Good Hope v MW Randell** (341/2012) [2013] ZASCA 36 (28 March 2013) stated as follows: -

...it applies where there are both criminal and civil proceedings pending which are based on the same facts. The usual practice is to stay the civil proceedings until the criminal proceedings have been adjudicated upon, if the accused person can show that he or she might be prejudiced in the criminal proceedings should the civil proceedings be heard first....

65. The Learned Judges of the Supreme Court of Appeal further stated that it was not automatic for an Applicant to be awarded stay of the civil proceedings. It found support in numerous English decisions among them, **Jefferson Ltd v Bhetcha** [1979] 2 All ER 1108 (CA) and **R v BBC, x p Lavelle** [1983] 1 All ER 241 (QBD) and observed as follows;

[24]. In dismissing the application, the Court emphasized that there was no established principle of law that if criminal proceedings were pending against a defendant in respect of the same subject matter, he or she should be excused from taking any further steps in the civil proceedings which might have the result of disclosing what his defence or is likely to be, in the criminal proceedings.

[25]. Jefferson was followed in **R v BBC, x p Lavelle** [1983] 1 All ER 241 (QBD) at 255 where Woolf J stressed that there should be no automatic intervention by the court. The learned judge pointed out that while the court must have jurisdiction to intervene to prevent serious injustice occurring, it will only do so in very clear cases in which the applicant can show that there is a real danger and not merely notional danger that there would be a miscarriage of justice in criminal proceedings if the court did not intervene.

66. Closer home, our Courts have also had the occasion to address the issue of parallel proceedings. Before the Court of Appeal in Nairobi Civil Appeal No. 181 of 2013, **Lalchand Fulchand Shah v Investments & Mortgages Bank Limited & 5 others** [2013] eKLR was the contention whether the High Court was right in granting orders restraining the Inspector General of Police, as well as the Director of Criminal Investigations from commencing, sustaining or proceeding with any investigations against Investments & Mortgages Bank Limited in connection with an alleged criminal conduct of its officers on account of a charge instrument whose execution was the subject of contention in a pending civil suit.

67. In determining the issue, the Learned Judges of Appeal acknowledged that the Office of the Director of Public Prosecutions is an independent constitutional office. However, that office is subject to the control of the Court in appropriate instances where illegality, irrationality and procedural impropriety is demonstrated. The Court made reference to the decision of the Supreme Court of India in Criminal Appeal No. 590 Of 2007, **State of Maharashtra & Others -vs- Arun Gulab & Others** where the power of the Court in checking excesses of the prosecutorial agency was discussed as follows: -

The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the F.I.R./Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction to the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it soft-pedal the course of justice at a crucial stage of investigation/proceedings.

The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr.P.C.") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that esteem of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers.

68. The Appellate Court further discussed limitations Courts ought to impose on **Section 193A** of the **CPC**, the provision that allows parallel prosecution of civil and criminal cases and remarked as follows: -

[47]. In terms of Section 193A of the Criminal Procedure Code, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings does not bar the commencement of criminal proceedings. **However, where the criminal proceedings are oppressive, vexatious and an abuse of the court process or amounts to a breach of fundamental rights and freedoms, the High Court has the powers to intervene.** But this power has to be exercised very sparingly as it is in the public interest that crime is detected and suspects brought to justice.

69. The Learned Judges cited with approval its earlier decision in **Commissioner of Police & the Director of Criminal Investigation Department & another -vs- Kenya Commercial Bank Ltd & 4 others** [2013] eKLR, where the role of the Court in ensuring prosecutorial powers are exercised while having regard to public interest, the interests of administration of justice and to avoid abuse of legal process was discussed as under:

...in terms of Article 157(11) of the Constitution, quoted above, in exercising powers donated by the law, including the power to direct the Inspector General to investigate an allegation of criminal conduct, the DPP is enjoined, among other considerations, to have regard to the need to prevent and avoid abuse of the legal process. The court on the other hand is required to oversee that the DPP and the Inspector General undertake these functions in accordance and compliance with the law. If it comes to the attention of the court that there has been a serious abuse of power, it should, in our view, express its disapproval by stopping it, in order to secure the ends of justice, and restrain abuse of power that may lead to harassment or persecution.

70. Further, the Court of Appeal in **Commissioner of Police and Director of Criminal Investigations Department vs. Kenya**

*While the law (section 193A of the Criminal Procedure Code) allows the concurrent litigation of civil and criminal proceedings arising from the same issues, and while it is the prerogative of the police to investigate crime, we reiterate that the power must be exercised responsibly, in accordance with the laws of the land and in good faith. What is it that the company was not able to do to prove its claim against the bank in the previous and present civil cases that must be done through the institution of criminal proceedings? It is not in the public interest or in the interest of administration of justice to use criminal justice process as a pawn in civil disputes. **It is unconscionable and travesty of justice for the police to be involved in the settlement of what is purely dispute litigated in court.** This is a case more suitable for determination in the civil court where it has been since 1992, than in a criminal court. Indeed, the civil process has its own mechanisms of obtaining the information now being sought through the challenged criminal investigations.*

*71. The High Court in **Kuria & 3 Others vs. AG** (2002) 2 KLR appreciated the validity of existence of concurrent civil and criminal proceedings when it made the following findings: -*

*.... The normal procedure in the co-existence of civil and criminal proceedings is to stay the civil proceedings pending the determination of the criminal case as the determination of civil rights and obligations are not the subject of a criminal prosecution...A prerogative order should only be granted where there is an abuse of the process of the law, which will have the effect of stopping the prosecution already commenced. There should be concrete grounds for supposing that the continued prosecution of criminal case manifests an abuse of the judicial procedure, much that the public interest would be best served by the staying of the prosecution... **It is not enough to state that because there is an existence of a civil dispute or suit, the entire criminal proceedings commenced based on the same set of facts are an abuse of the court process. There is a need to show how the process of the court is being abused or misused and a need to indicate or show the basis upon which the rights of the Applicant are under serious threat of being undermined by the criminal prosecution.** In the absence of concrete grounds.... it is not mechanical enough that the existence of a civil suit precluded the institution of criminal proceedings based on the same set of facts. The effect of criminal prosecution on an accused person is adverse but so also are their purpose in the society, which are immense... an order of prohibition cannot also be given without any evidence that there is manipulation, abuse or misuse of court process or that there is a danger to the right of the accused person to have a fair trial. (emphasis added).*

72. In the current Petition, the Petitioner has been charged in the criminal case, but there are no civil proceedings in place. On that basis, the Petitioner contends that the criminal case was instituted to settle a civil dispute hence it is an abuse of the Court process. That now takes me to the next sub-issue.

43. From the discussions in the superior Courts decisions and the other comparative decisions from foreign jurisdictions, the rule of the thumb in respect of concurrent criminal and civil proceedings based on similar set of facts and circumstances is that the criminal case ought to proceed unless it can be demonstrated that the prosecution of the criminal case will either result to infringement of the rights and fundamental freedoms of the accused persons or will lead to the contravention of the Constitution.

44. In agreeing with the above position, I will attempt two practical assumptions based on the facts in this matter. The assumptions are on terminating the investigations or staying the civil case in favour of the investigations.

45. On the first assumption, that is terminating the investigations, there is no doubt that the investigations and the civil case are based on similar facts and background. On one hand, one of the hotly contested issues under investigations relate to the alleged fraudulent manner in which the 1st Respondent's directorship was terminated. On the other hand, the Petitioners contend through the civil case that the 1st Respondent is no longer a director and he should be permanently stopped from attending to the affairs of the Petitioners.

46. In the event this Court allows the application then effectively the investigations will stand terminated. The civil case will proceed. One of the possibilities is that if for instance the 1st Respondent raises the issue of fraud in the civil case and the High Court is satisfied that fraud was committed either before, during or after the removal of the 1st Respondent from the directorship of the Petitioners, the matter is likely to be taken up by the police for further dealing. Those culpable, who are the Petitioners herein, are likely to be charged. In that case, investigations similar to the current ones will again be instituted against the Petitioners. In other words, after all said and done, the parties herein will find themselves back to where they are currently.

47. But what if the civil case is stayed in favour of the investigations? It will mean that the police will be accorded an opportunity to complete their investigations and resolve the alleged issue of fraud. If the investigations reveal that the Petitioners are not culpable then the civil case will proceed on without any further consideration of the issue of fraud.

48. The other possibility is the event the Petitioners are found culpable of fraud and are successfully charged and convicted. If that happens, then it means that the claims based on fraud against all the Petitioners will succeed and that will have a significant impact on the civil case.

49. From the two scenarios, there is, therefore, logic in the general position that where there are concurrent criminal and civil cases based on similar facts and circumstances, the criminal case or investigations ought to be first dealt with.

50. Having said so, it remains clear in the mind of this Court that the foregoing general position is subject to exceptions including whether the criminal case infringes the rights and fundamental freedoms of the accused or is in contravention of the Constitution.

51. This Court, therefore, finds and hold that a Court cannot terminate a criminal case or criminal investigations solely on the basis of a pending civil case based on similar facts and circumstances.

52. For a Court to so halt a criminal case or investigations, there must be more to the pendency of a civil claim. In this case, the Petitioners attempted to demonstrate how the investigations will prejudice the civil case and infringe their right to fair trial. However, from the foregoing analysis, this Court is unable to agree with the Petitioners. I say so because the Petitioner's claim is largely based on the fact that they filed a civil claim. The allegations of impropriety on the part of the Respondents remain too remote, if any.

53. In the end, this Court is persuaded that the Petitioners have not demonstrated any *prima facie* case at the moment. The position may, however, change at the main hearing of the Petition.

54. Having so found and going by the guidance of the Court of Appeal in *Naftali Ruthi Kinyua vs. Patrick Thuita Gachure & Another* case (supra) that '*... If there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant's proposed activities, that is the end of any claim to interlocutory relief*', the application is capable of determination at this point in time. As such, the consideration of the other principles will be academic. This Court opts to end the discussion at this point.

55. In the end, and with a view of fast-tracking the determination of the Petition, the following final orders do hereby issue: -

- (a) The Notice of Motion dated 24th September, 2020 is hereby dismissed. Costs shall be in the Petition.**
- (b) The Petition shall be heard by way of reliance on the pleadings, Affidavit evidence and written submissions.**
- (c) The Petitioners shall be at liberty to file and serve any supplementary response to the Petition, if need be, together with written submissions within 14 days of this ruling.**
- (d) The Respondents shall file and serve their respective written submissions within 14 days of service.**
- (e) Highlighting of the submissions on a date to be fixed by the Court.**

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF JANUARY, 2022.

A. C. MRIMA

JUDGE

Ruling No.1 virtually delivered in the presence of:

Mr. Kiptoo, Counsel for the Petitioners.

Mr. Kinaro, Counsel for the 1st Respondent.

Mr. Marwa, Counsel instructed by the Hon. Attorney General for the 2nd Respondent.

Elizabeth Wanjohi – Court Assistant