



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENY AT NAIROBI

ACEC MISC NO. E029 OF 2021

ETHICS & ANTI-CORRUPTION COMMISSION.....APPLICANT

VERSUS

JEREMIAH KAMAU KINYUA.....1ST RESPONDENT

THERESA NJERI MURIUKI2ND RESPONDENT

CHERYA ENTERPRISES LIMITED.....3RD RESPONDENT

BESTLINE ENTERPRISE LIMITED.....4TH RESPONDENT

RULING

1. In the Notice of Motion Application dated 21st October, 2021 filed herein on 22nd October, 2021 seeks orders as follows:-

“1) Spent

2) That pending the hearing of this application, the honourable court does issue a stay of order no.4 requiring the Applicant to surrender motor vehicle reg no. KCH 625W to the Respondent.

3) That pending the hearing and determination of this application, the honourable court do issue an order directing the Respondent to release the assets and documents seized on the 9th June 2021 and listed in the inventory but not forming part of the order issued on 7th October 2021.

4) That this Honourable court be pleased to summon the investigating officer for cross examination in line with Section 55 (4)(b) of the Anticorruption and Economic Crimes Act.

5) That the orders issued by the honourable court on 7th October, 2021 be set aside, varied and/or quashed.

6) Such other further order(s) the honourable court may deem fit and just in the circumstances.

7) That the costs of this application be provided for.”

2. The Application is premised on the following grounds listed on the face thereof:

- “1) The Applicants are aggrieved by the orders issued by the Honourable court on the 7th October 2021 as they were obtained through misrepresentation of facts and with an intention to publicise, embarrass defame and/or injure the reputation of the Applicants.*
- 2) That on the 15th March 2021, the 1st Applicant voluntarily resigned as an employee of Kenya Revenue Authority to pursue his PhD and personal interests/businesses. He was duly cleared by his employer and given a clean Certificate of Service plus all his benefits.*
- 3) That on the 9th June 2021, the Respondent raided his residence at 5am in the morning and conducted a search on allegation that he was a Public official at Kenya Revenue Authority which facts were untrue.*
- 4) That the officials of the Respondent armed with an application dated 31st May 2021 issued in Chief Magistrate Misc Application No.E1791 OF 2021 (Ethics and Anti-corruption Commission vs Jeremiah Kamau Kinyua) proceeded to seize several assets and documents including title deeds and log books, phones, laptops, firearms and ammunition and other things enumerated in an inventory.*
- 5) That the Application and orders issued through misrepresentation of facts did not indicate what offence the Applicant was facing but a blanket accusation that he has accumulated assets way beyond his income. The said assets were not mentioned in the application.*
- 6) That the Sections relied upon in the lower court application being **Section 118, 118A, 119, 120,121 & 122** provided for seizure of assets where an offence had been established which then is presented before the Honourable court for further orders which is in this case was not done.*
- 7) That the Respondent seized various title deeds for lands which were inherited and others bought prior to the alleged period of investigations while other titles belong to third parties thereby exposing the Applicant to accusation of theft.*
- 8) That the Respondent seized cash amounting to Kshs 900,000/- and others in foreign denominations amounting to Kshs 300,000/- which was part capital and incomes from water business, school fees and money to purchase farm produce thereby incapacitating him of his livelihood.*
- 9) That the Applicant moved the Honourable court on the 10th August 2021 to vary its orders which application was heard inter-partes and a ruling issued on the 23rd September 2021*
- 10) That although the Honourable court held that the orders issued were lawful, it however stated that the Respondent would not be allowed to enjoy the orders indefinitely. The Honourable court raised concern that the Respondent had not reported back the findings of their seizure and neither had they issued any notice to the Applicant under **Section 26 & 55 of the ACECA**. Thus the Honourable court issued an order giving the Respondent IO days from the date of the Judgement to take the necessary action that follows completion of investigations or alternatively return the goods if no action is intended*
- 11) That the Respondent did not comply within the 10 days issued and neither have they applied for an extension or sought to appeal against the ruling but have instead moved this Superior court for fresh orders seeking orders preserving the subject property (the same have never been subject or intended to any sale or disposition).*
- 12) That the said orders before they were even served or brought to the attention and knowledge of the Applicant were leaked to the media in a bid to injure, embarrass and/or defame the applicant together with his spouse and business entities.*

13) That its malicious for the Respondent having never called upon the Applicant to explain the source of the assets to publicise the orders in the public domain to have the Applicant held in disdain by his family, relatives, neighbours, friends and business colleagues.

14) That since the application by listing the assets of interest, presumes a completion of Investigations and the assets highlighted being the only source of unjust enrichment, it's only fair for the Respondent pending the hearing and determination of this Application to be ordered to return all other assets and documents listed in the inventory of seized property and not forming part of the order issued on the 7th October 2021

15) That it's worthwhile to explain before the Superior court the source of all assets listed in the Respondent's application as hereunder;

a) That the titles named as

L.R NO. RUIRU/KIWBLOCK 2/12687 KIAMBU COUNTY L.R NO. RUIRWKIWBLOCK 2/12688 KIAMBU COUNTY L.R NO. RUIRWKIWBLOCK 2/12689 KIAMBU COUNTY L.R NO. RUIRU/KIU/BLOCK 2/12690 KIAMBU COUNTY L.R NO. RUIRU/KIWBLOCK 2/12691 KIAMBU COUNTY L.R NO. RUIRWKIWBLOCK 2/12692 KIAMBU COUNTY L.R NO. RUIRU/KIU/BLOCK 2/12693 KIAMBU COUNTY

L.R NO. RUIRU/KIU/BLOCK 2/12694 KIAMBU COUNTY L.R NO. RUIRU/KIU/BLOCK 2/12695 KIAMBU COUNTY L.R NO. RUIRWKIU/BLOCK 2/12696 KIAMBU COUNTY

Arise from a sub-division of L.R No. RUIRWKIU BLK 2(GITHUNGURI) 2818 which was purchased from one Charles Kagima Njuguna ID no. 0232428 on the 22nd April 2007 for a consideration of Kshs 95,000/-. Transfer was done to the Applicant in the same year and sub-division into the ten plots done in the year 2013 where the ten plots got individual titles. It's the ten titles that seem to elicit negative excitement from the Respondent and accusation of unjust enrichment.

b) That the titles namely

L.R NO. RUIRU/KIU/BLOCK 2(GITHUNGURI/20135 L.R NO. RUIRU/KIU/BLOCK 2(GITHUNGURI/20136

L.R NO. RUIRWKIWBLOCK 2(GITHUNGURI/20137

L.R NO. RUIRWKIU/BLOCK 2(GITHUNGURI/20138 L.R NO. RUIRWKIU/BLOCK 2(GITHUNGURI/20139

Arise from a sub-division of L.R No. RUIRU/KIU BLK 2/1975 which was owned by the Applicant's father the late Joseph Kinyua Mwaniki. Upon his death, His mother Ester Nyambura Joseph obtained a Certificate of Confirmation of grant in Principal Magistrate Court at Wanguru in Succ Cause No. 387 of 2014 that enabled her distribute to her children including the Applicant. From the said land, the Applicant obtained the said 5 plots of land which he is now being accused of unjust enrichment. The certificate of Grant was issued in 21st October 2016 and the plots to the Applicant devolved to him on the 21st November 2017.

c) Titles namely

L.R NO. RUIRU/KIWBLOCK 3/1379 L.R NO. RUIRU/KIWBLOCK 3/1380

Arise from shares bought years ago at kahawa Sukari Limited comprising the matrimonial home wherein titles were only issued in the year 2016 after many years of occupation. The Applicant have since converted the same to a car wash as his only source of livelihood. All

historical documents of ownership were seized by the Respondent.

d) *Titles namely*

L.R NO. 2922/14 LAIKIPIA

L.R NO. NBI/BLOCK 110/782

Arise from money received upon the sale of two blocks of flats at Githurai area. The said houses were sold and purchased through loan financing from Equity bank and which the Applicant fully disclosed in his wealth declaration at KRA All documentations including tax payments relating to Stamp duty and Capital Gains tax are held by the Respondents.

e) The MOTOR VEHICLE Reg. No. KCH 625W was purchased from Japan in the year 2016, Upon import, the relevant duty of Kshs 1,397,756/- was paid to KRA which enabled the issuance of the Log book and registration Number. Since then, it has been the source of the Applicant's transport to and from work and has for the last 5years never raised any issue warranting its seizure or accusation of comprising unjust enrichment. The Respondent has failed to disclose to this Honourable Court that it has been holding the Original Log Book since the 9th June 2021 and what has arisen to warrant the order to also detain the physical motor vehicle and deny the Applicant the only mode of transport. Their intention can only be pure malice if not to handicap the Applicant. The vehicle similar to all other seized vehicles is likely to waste and/or suffer damage in the custody of the Respondent to the detriment and prejudice of the Applicant.

f) The cash of Kshs.900,000/- although not forming part of the order issued by court was seized on the 9th June 2021. This was 4months after the Applicant ceased being a public servant. Have the Respondent linked the money to any abuse of office, corruption or bribe of a public servant? We submit that cash seized cannot in any way be linked to his office or any allegations of unjust enrichment that required explanation.

16) That it's a misrepresentation and mis-interpretation of fact that the only income the Applicant can be presumed to have obtained during the last 16years at KRA would only arise from his salary while ignoring other benefits and allowances received from his employment and incomes from his businesses entities being the 3rd and 4th Applicants.

17) The Applicant during his entire term in the offices of the Kenya Revenue Authority was never called upon on allegations of unexplained wealth and the fact that he was cleared to resign and given a clean Certificate of service was a sign of propriety and Honour, thus a raid disguised as investigating embezzlement of public funds was outrageous and totally uncalled for.

18) That the orders in place heavily deprives the Applicant means of reasonable living expenses causing undue hardship for his family, prejudices his business, and personal affairs thus subjecting him to excessive financial embarrassment; his life and business have stalled owing to his inability to meet his urgent obligations in discharging his business and life obligations which are due.

19) That the Respondent have not availed or demonstrated any reasonable grounds to believe that the assets have either been obtained through public funds and in the alternative it would be unreasonable for the Applicant to have been employed at such a prestigious office but restricted from investing his salaries in properties.

20) That the Respondents application does not state any allegations of corruption, bribery or abuse of office crimes the Respondent is investigating in order to create a nexus between the items or articles seized and the offence or crime purported to have been committed. Thus the Respondent was on a fishing expedition and had therefore sought a blanket warrant which lacked sufficiency and particularity and did not specify the limit and scope of the search.

21) *The warrants were obtained based on falsehood, exaggeration, conjecture, bad faith and complete misapprehension of facts relating to the value/worth of his assets. That there was no evidence linking the Applicant with public funds apart from his salary when in office.*

22) *That there was no proof of any preliminary investigations having been conducted before seeking the warrants. That the continued detention of his documents and funds have exposed him to great risks and hardship thus causing him and his family great anguish and suffering and loss of business.*

23) *That it is in the interest of justice that the orders sought are granted.”*

3. The application is supported by the affidavit of Jeremiah Kamau Kinyua, the 1st applicant, sworn on 21st October, 2021 and the annexures thereto.

4. The Applicants are aggrieved by the preservation orders made by this court on 7th October 2021 on the grounds that the orders were obtained through misrepresentation of facts and with an intention to publicize, embarrass, defame and injure the reputation of the Applicants.

5. In the affidavit in support of the application the 1st Applicant deposes that on 9th June, 2021, the Respondent armed with a search warrant dated 31st May 2021 issued in **Chief Magistrates Misc. Application No. E1791 of 2021; Ethics and Anti-Corruption Commission v Jeremiah Kamau Kinyua (CM Misc. App E1791 of 2021)** raided the Applicant's house, conducted a search and seized several documents including original title deeds and logbook KCH 625W money amounting to Kshs. 900,000/-, phones, firearms, ammunition and other items which they enumerated in their inventory produced as annexures to the affidavit. The applicant contends that on 10th August 2021, he moved this court seeking to vary the orders of the trial court in CM Misc. App E1791 of 2021 which application was declined by the court in a ruling dated 23rd September 2021; That although the Court held that the orders were lawful it directed the respondent herein to take necessary action that follows completion of investigations within 10 days or in the alternative to return the seized property if no action was intended. That the Respondent did not comply with the directions of the court and neither did they apply for extension of time or appeal against the order but instead they moved this court for orders preserving the subject property, which orders were issued on 7th October 2021 (the actual date is 5th October, 2021).

6. The Applicant contends that since the application for an order of preservation presumes a completion of investigations, and the assets listed in the preservation order are presumably the only source of unjust enrichment, it is only fair that the Respondent be ordered to return all other assets and documents listed in the inventory of seized property that are not part of the order, pending the hearing and determination of the main application.

7. The Applicant proceeds to give the following explanation of how the applicants acquired the assets in issue:-

“15) a) *That the titles named as*

L.R NO. RUIRU/KIWBLOCK 2/12687 KIAMBU COUNTY L.R NO. RUIRWKIWBLOCK 2/12688 KIAMBU COUNTY L.R NO. RUIRWKIWBLOCK 2/12689 KIAMBU COUNTY L.R NO. RUIRU/KIU/BLOCK 2/12690 KIAMBU COUNTY L.R NO. RUIRU/KIWBLOCK 2/12691 KIAMBU COUNTY L.R NO. RUIRWKIWBLOCK 2/12692 KIAMBU COUNTY L.R NO. RUIRU/KIU/BLOCK 2/12693 KIAMBU COUNTY

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2007 for a consideration of kshs 95,000/-. Transfer was done to the Applicant in the same year and sub-division into the ten plots done in the year 2013 where the ten plots got individual titles. It's the ten titles that seem to elicit negative excitement from the Respondent and accusation of unjust enrichment.

b) That the titles namely

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e) The MOTOR VEHICLE Reg No. KCH 625W was purchased from Japan in the year 2016, Upon import, the relevant duty of Kshs 1,397,756/- was paid to KRA which enabled the issuance of the Log book and registration Number. Since then, it has been the source of the Applicant's transport to and from work and has for the last 5years never raised any issue warranting its seizure or accusation of comprising unjust enrichment. The Respondent has failed to disclose to this Honourable Court that it has been holding the Original Log Book since the 9th June 2021 and what has arisen to warrant the order to also detain the physical motor vehicle and deny the Applicant the only mode of transport. Their intention can only be pure malice if not to handicap the Applicant. The vehicle similar to all other seized vehicles is likely to waste and/or suffer damage in the custody of the Respondent to the detriment and prejudice of the Applicant.

f) The cash of kshs 900,000/- although not forming part of the order issued by court was seized on the 9th June 2021. This was 4months after the Applicant ceased being a public servant. Have the Respondent linked the money to any abuse of office, corruption or bribe of a public servant? We submit that cash seized cannot in any way be linked to his office or any allegations of unjust enrichment that required explanation.”

8. The 1st applicant asserts that the orders in place heavily deprive him of the means of reasonable living causing undue hardship for his family; prejudice his business and personal affairs causing him undue hardship and excessive financial embarrassment. He states that moreover the Respondent’s application for freezing orders does not detail any allegations of bribery, corruption or abuse of office in order to create a nexus between the items seized and the offence purported to have been committed. He also contends that there was no proof that any preliminary investigations were conducted before obtaining the warrants and contends that the continued detention of his documents and funds have exposed him to great risks and hardships thus causing him and his family great anguish and loss of business and that it is in the interests of justice that the orders sought are granted.

9. In his submissions Counsel for the Applicant submits that the Application is made under **Article 31 and 47 of the Constitution and Sections 55(4) (b) and 56(4) and 56 (5) of the Anti-Corruption and Economics Crimes Act,2003**; That the Applicant is engaged in private business; That the Respondent is using the courts to propagate a malicious agenda and that the Respondent’s intention can only be pure malice if not to handicap the Applicant. Counsel submits that the motor Vehicle Reg No. KCH 625W was purchased from Japan in the year 2016 and there have never been any allegations of corruption or unjust enrichment regarding it. Counsel argues that the ex parte preservation orders were final in nature and tantamount to adjudging the Applicants guilt prematurely without giving him an opportunity to be heard. Counsel further submit that the preservation orders issued by this court on 7th October 2021 had a list of 21 assets yet the Inventory on seized assets contained 60 documents yet the Respondent has not addressed the fate of the other items listed in the inventory and why the same cannot be released as they do not form part of the assets that are the subject of the preservation order.

10. Counsel contends that it is unjust, unlawful and unfair to seize assets without seeking an explanation. He urges this court to grant the applicant leave to cross examine the deponent of the replying affidavit in regard to paragraph 9 and contends that the same relates to facts which the deponent is not able, of her knowledge to prove and yet she has not stated the source of her information and grounds of belief. Counsel also submits that the paragraphs are not only scandalous, irrelevant and oppressive but they also contain falsehoods and are intended to mislead the court and prejudice the applicant’s claim for review.

11. Counsel further argues that the applicant has given a detailed explanation on the acquisition of the assets, which explanation has not been rebutted by the Respondent but only casually dismissed as unsatisfactory and this court is enjoined to interrogate the averments in the Applicant’s affidavit to ascertain whether the freezing orders should stand.

12. Counsel concludes by stating that in its Replying affidavit the respondent did not explain why it requires to hold on to the cash and the original title documents as opposed to photocopies of the same. Counsel states that the applicants’ businesses are in jeopardy as all the title documents are in the custody of the Respondent and he cannot obtain any loan or overdraft facilities without title documents. He therefore urges this court to grant the orders sought.

13. The Respondent opposed the application by filing a replying affidavit sworn 3rd November, 2021 by Danson Siba, an Investigating Officer, in which he deposed that the Commission received a report that Jeremiah Kamau Kinyua, the 1st Respondent herein, who was a public officer until March 2021 had accumulated assets whose value was beyond his known legitimate source of income; That, preliminary investigations revealed that the 1st Respondent was employed as a Graduate Trainee on 28th January 2005 and rose through the ranks to the position of Supervisor-Domestic Taxes Department on 19th November 2015. He held the position until 16th March 2021; That, the Commission in furtherance of its

investigations applied for warrants to search the 1st Respondent's residence and to investigate his bank accounts in **CM Misc. Application No. E1791 of 2021**; That the investigations revealed that the Respondents received numerous frequent and large cash deposits in his accounts and that the funds are suspected to have been obtained through corruption by virtue of the office he held at Kenya Revenue Authority. It was also deposed that there is a huge disproportion between the value of the 1st Applicant's assets and his known legitimate sources of income and the assets are reasonably suspected to be proceeds of crime.

14. The Commission avers that the 1st Applicant received a net salary of Kshs. 11,661,235.01 for the 16 years that he worked at Kenya Revenue Authority but had accumulated assets valued at approximately Kshs. 192,020,582.68 as at the time of filing of the EACC's Originating Summons dated 1st October 2021. For this reason, there is allegedly reasonable suspicion that the preserved assets owned by the 1st Applicant and also registered in the names of the other Respondents within the investigation period are proceeds of crime.

15. Counsel for the Respondent submits that the Applicant has not met the threshold to discharge the preservation orders; that the Applicants have failed to discharge the burden of proof required under **Section 56 (5) of the Anti-Corruption and Economic Crimes Act**; That the 1st Applicant's attempt to explain acquisition of Motor Vehicle Registration No. KCH 625W is unsupported by evidence on the source of the purchase price and the stamp duty paid towards the acquisition and that the applicant has not furnished any evidence to prove the allegations that the assets were acquired legitimately. Counsel submits that the Commission/Respondent is in the process of verifying the documents in respect to properties L.R No. Ruiru/KIU Block 2/2818 (Githunguri) and L.R No. Ruiru/KIU Block 2/1975 and that the investigations are still pending; That the alleged benefits and allowances received by the 1st Applicant during his employment and other incomes from businesses from trading with the 3rd and 4th Respondents are unsupported and that no evidence has been tendered by the 2nd Respondent to demonstrate that she was employed as a teacher until her resignation in 2014.

16. In respect to the cash seized in the residence at Kahawa Sukari, the Respondent submits that this was inadvertently omitted in the Originating Summons dated 1st October 2021 but the error was duly rectified vide **HC ACEC Misc. Application No. E035 of 2021** where the Honourable Court allowed the Respondent to preserve the Kshs. 900,000.00, Yuan 15,648.00, Dirham 435.00 and Rand 100.00 recovered on 9th June 2021 pending the conclusion of the Commission's investigations.

17. Counsel states that the period of focus in the investigations is specific to January 2012 and January 2021 and any income earned or assets acquired outside this period are not relevant to these proceedings; That the attempted explanation by the applicants is unsupported by evidence and is therefore unjustified. Counsel reiterates that the applicant has not discharged the burden of proof required under **Section 56 (5) of the Anti-Corruption and Economic Crimes Act** for this Honourable Court to make an exhaustive conclusion that none of the properties were acquired unlawfully.

18. Counsel also states that justice demands that the Respondent be allowed to continue investigations for the remaining period of time to ascertain whether indeed the alleged sources of income are legitimate, that the documents produced are genuine and to further afford the applicant an opportunity to explain his sources of income. Counsel argues that no prejudice has been suffered by the applicant as he is still earning an income from his alleged businesses; that the fight against corruption and economic crimes is a matter of great public importance and therefore where there is no prejudice being suffered as in this case, the Respondent should be allowed to conclude its investigations.

19. In regard to cross examination of the deponent of the replying affidavit, Counsel submits that the basis upon which the applicant intends to cross-examine the Investigating Officer is **Section 55(4) of Anti-Corruption & Economic Crimes Act** which law is not applicable in the instant proceedings. That **Section 55 Anti-Corruption & Economic Crimes Act** applies only when investigations have been completed and the Respondent has duly filed forfeiture proceedings and that an order of such nature cannot issue as it is premature because investigations are still on-going.

20. On whether the EACC's investigations are intended to vilify the applicant before the public through directed false injurious media publications to depict him as a corrupt individual, Counsel submits that this is not so. Counsel states that the applicant was duly served with the application and the Court orders of 7th October 2021, the very day they were issued and the articles were only published in the newspaper the following day and that Respondent has no control over what the media publishes as cases of this nature attract public interest and pleadings are accessible to the public once filed in court. Counsel submits that the applicant has not established or tendered any proof to show bad faith or malice on the part of **Ethics & Anti-Corruption Commission** in conducting investigations whereas the seriousness of their allegations demand proof of a high order and credibility. Counsel asserts that the investigations being conducted as well as the proceedings under **Section 56 of Anti-Corruption & Economic Crimes Act** are well within the confines of the law and in line with the Respondent's mandate. She therefore reiterates that the Respondent has sufficiently demonstrated that there are reasonable grounds to suspect that the assets in issue were acquired as a result of corrupt conduct and that the applicant has accumulated assets beyond his known legitimate sources of income and that the documentary evidence must be subjected to verification and further analysis, which the Respondent is undertaking and there is need to allow the Respondent to conclude investigations into the investigations.

Analysis and Determination

21. The issues for determination are firstly **whether the applicant has demonstrated sufficient grounds to warrant this court to discharge or to vary the order dated 5th October, 2021 but indicated as dated 7th October, 2021 in the application and secondly whether this court ought to grant leave to the applicant to cross-examine the deponent of the replying affidavit as to the contents of Paragraph 9.**

22. The proceedings against the applicants are brought under **Section 55 of Anti-Corruption and Economic Crimes Act** more specifically under **subsection 3** which states:-

“55 (3) Proceedings under this section shall be commenced in the High Court by way of originating summons.

Section 55 (5) of the Anti-Corruption & Economic Crimes Act then states:-

“55. (5) If after the Commission has adduced evidence that the person has unexplained assets the court is satisfied, on the balance of probabilities, and in light of the evidence so far adduced, that the person concerned does have unexplained assets, it may require the person, by such testimony and other evidence as the court deems sufficient, to satisfy the court that the assets were acquired otherwise than as the result of corrupt conduct”

Section 55 has elaborate provisions of how this court should proceed once the application is brought before it. The Commission must first be allowed to adduce evidence on a balance of probabilities that the respondent has unexplained assets and it is only after that legal burden is discharged that the evidential burden shifts to the respondent. **Section 56(5)** categorically states this court can only discharge or vary an order such as the one the subject of this application if it is satisfied on a balance of probabilities that the property in respect to which the order is discharged or varied was not acquired as a result of corrupt conduct. The Commission/Respondent has explained that it is yet to complete investigations in this case and clearly this court is yet to hear the parties as provided in **Section 55 (4)(5)(6) of the Anti-Corruption and Economic Crimes Act** and it is my finding therefore that this application is premature.

23. As regards cross examination of the deponent of the replying affidavit **Section 55(4) (b) of the Anti-Corruption and Economic Crimes Act** provides that the applicant shall be afforded the opportunity to cross examine any witnesses and to challenge any evidence adduced by the commission and hence he shall have opportunity to do so at the opportune time.

24. Accordingly, this court finds no merit in this application and dismiss it with costs to the Respondent.

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

E.N. MAINA

JUDGE