



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 99 OF 2018**

**IN THE MATTER OF ARTICLE 22(1) & 23 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF RIGHTS OR FUNDAMENTAL FREEDOMS UNDER ARTICLES 27, 28, 29, 39, 45, 47, AND 53 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF SECTION 33 OF THE KENYA CITIZENSHIP AND IMMIGRATION ACT, NO. 12 OF 2011, LAWS OF KENYA**

**BETWEEN**

**DIANA WACEKE WAINANA ..... PETITIONER**

**VERSUS**

**DIRECTOR OF IMMIGRATION SERVICES.....1<sup>ST</sup> RESPONDENT**

**CO-ORDINATION OF NATIONAL GOVERNMENT....2<sup>ND</sup> RESPONDENT**

**AND**

**SERGE LOUODOM.....INTERESTED PARTY**

**JUDGMENT**

**THE PETITION**

1. The Petitioner through a Petition dated 19<sup>th</sup> March 2018 supported by Supporting Affidavit of Diana Waceke Wainaina sworn on 19<sup>th</sup> March 2018 seek the following reliefs:-

*a) A declaration that the decision to tag the Interested Party as a prohibited immigrant without any lawful cause and due process is unconstitutional/unlawful.*

*b) A declaration that the Interested Party is by law entitled to due process if a decision is to be made declaring him a prohibited immigrant.*

*c) A declaration that the failure by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to issue the Interested Party/Petitioner with a written explanation for declaring him a prohibited immigrant is illegal, unlawful and amounts to a denial, breach and violation of the Petitioner's and Interested Party's fundamental right and freedom under Article 47(1) and (2) of the Constitution of Kenya.*

*d) A declaration that under and by virtue of the provisions of Article 27(1) of the Constitution of Kenya the Interested Party is*

*entitled to equal protection of the law.*

*e) A declaration that the absence of the Interested Party from his family in Kenya by virtue of the actions/decision of the Respondents, is in breach and violation of the Interested Party's fundamental rights and freedoms under Article 45(1) and 53(1) (e) of the Constitution of Kenya.*

*f) A declaration that the Respondents are in breach of the Interested Party's fundamental rights and freedoms under Article 39(1) of the Constitution of Kenya.*

*g) An Order to issue to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, jointly and severally and through their agents or officers claiming authority under them, to forthwith remove/delete the tag of a 'prohibited immigrant' placed against the Interested Party in the Respondents' border control data system.*

*h) The Honorable Court be pleased to issue an order of permanent injunction prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, jointly and severally and through their agents or officers claiming authority under them from prohibiting the Interested Party from entering back into Kenya upon exit therefrom using his Cameroonian Passport No. xxxx, based upon the Respondent's December, 2017 declaration classifying the Interested Party as being a Prohibited Immigrant.*

*i) Such other or further relief as this Honourable Court may deem just and fit to grant.*

*j) An Order that this Petition being brought in good faith and in favour of the Interested Party who could not bring it himself, the costs therefore be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally.*

### **PETITIONERS CASE**

2. The Petitioner is a Kenyan Citizen likewise the Interested Party is a National of Cameroon and Passport holder Number xxxx. The Petitioner and Interested Party are husband and wife, blessed with two children namely:- GCD and GSDL. The Interested Party is a legitimate businessman in the hospitality and supplies industries and is also a shareholding director of Gilliana International Limited jointly with the Petitioner.

3. The Petitioner urge that the Interested Party moved to Kenya 14 years ago from his country of origin: Cameroon and has remained in the country lawfully on the basis of valid work permits issued by the Respondents. It is further stated that the Interested Party has invested heavily in his Company and family. On 26<sup>th</sup> June, 2017, the Interested Party left the Country for Cameroon to attend a relative's burial ceremony and for other business dealings; wherefore, he was to return back into Kenya on 19<sup>th</sup> December, 2017.

4. On 19<sup>th</sup> December 2017, the Interested Party flew back into Kenya and upon arrival at the Jomo Kenyatta International Airport, the officers of the 1<sup>st</sup> Respondent denied him entry into the country without any justifiable cause/lawful explanation; to which, the Interested Party timeously informed the Petitioner who made efforts to secure her husband's entry into the country, but without any success.

5. On 23<sup>rd</sup> December 2017, the Interested Party opted to return back to his country of origin, Cameroon, after spending four nights at Jomo Kenyatta International Airport, and without any explanation, written or verbal, as to why he was denied entry into the country. Later on the Petitioner, through verbal communication from an officer of the 1<sup>st</sup> Respondent unknown to her, learnt that the Interested Party was in December, 2017 declared a prohibited immigrant, with no further explanation or justification thereto.

6. The Petitioner aver that **Article 23(3) of the Constitution of Kenya** states that the Court may grant appropriate relief including a declaration of rights, an injunction, a conservatory order, a declaration of invalidity of any law that denies, violates, infringes, or threatens a right, compensation and an order of judicial review; reason wherefore, the Petitioner prays for the orders enumerated in this Petition.

### **RESPONDENTS RESPONSE**

7. The Respondents are opposed to the Petitioner's Petition. They rely on Grounds of Opposition dated 2<sup>nd</sup> November 2018 setting out two (2) grounds of Opposition thus:-

*a) That the Petitioner has no locus standi to institute the proceedings herein as she is not the person who has suffered legal injury following the alleged violation of constitutional rights.*

*b) That the Petition is incompetent, defective and bad in law and as such, the Petition ought to be dismissed.*

8. The Respondents further rely on Replying Affidavit of Alfred Omangi sworn on 2<sup>nd</sup> November 2018.

### **RESPONDENTS CASE**

9. The Respondents are opposed to the Petitioner's Petition and relies on several principle grounds thus:-

*a) That the Interested Party holds a Democratic of Congo passport and a Republic of Cameroon passport making it impossible to determine his true nationality.*

b) That the Petitioner's allegation in paragraph 6 of her Affidavit that the Interested Party moved to Kenya 14 years ago is false. From the records held by the 2<sup>nd</sup> Respondent the Interested Party first arrived in Kenya sometime in the year 2009 and has been a frequent visitor in the Country since then.

c) That the Interested Party is in contravention of Kenya Immigration Laws. From records, the Interested Party submitted his first Work Permit application on 29<sup>th</sup> April, 2010 and was issued with the same on 19<sup>th</sup> June, 2010. He further made two consecutive applications between 2013 and 2015 which were consequently approved and was issued with his last Work Permit on 19<sup>th</sup> August, 2015.

d) That the Interested Party applied for renewal of his Work Permit on 3<sup>rd</sup> July, 2016 which application was approved on 25<sup>th</sup> July 2016. The Interested Party has since failed to make the requisite payment necessary to complete the renewal formalities.

e) That despite being notified to make payments for his Work Permit in 2016; the Interested Party has willfully failed to do so and continues to flaunt the Kenya Immigration Laws with impunity.

f) That the Respondents have credible reasons to believe that the Interested Party has been travelling and working in the country using a tourist visa since 2016 through his company, Gillian International, in total contravention of the law.

g) That the Interested Party was not declared a Prohibited Immigrant. The Interested Party has been denied entry to Kenya on the grounds of reasonable suspicion of operating a business in Kenya without a Work Permit contrary to Section 53(1) of the Kenya Citizenship and Immigration Act, 2011.

h) That having been reasonably suspected to flaunting/contravening Kenya Immigration laws by working without a work permit, the State (Department of Immigration), legally denied the Interested Party entry into the Country.

i) That subject to the provisions of Section 33(1) of the Kenya Citizenship and Immigration Act No. 12 of 2011, the 2<sup>nd</sup> Respondent is given the authority to deny entry and or deport foreign nationals found or reasonably suspected of contravening Kenya Laws.

j) That the International Principle of Sovereignty of states presupposes that the right to entry into the Kenya is a preserve of Kenya Citizens only and the State through its authorized agents (Department of Immigration Services) reserves the right of entry to foreigners.

k) That it is clear from the foregoing that the Petition is false, malicious and unmerited. Based on the evidence produced in this Affidavit, the Respondents urge this Court not to entertain this Petition and pray for the same to be dismissed with costs.

#### **ANALYSIS AND DETERMINATION**

10. Having carefully considered the Petition, the response thereto, the Parties rival submissions, I find that the following issues arise for consideration:-

a) Whether the Petitioner has locus standi to institute the proceedings herein.

b) Whether or not the Respondents are in violation of the rights of the Petitioner and interested Party and whether the Respondents' decision to bar the Interested Party's entry to Kenya was warranted.

#### **A. WHETHER THE PETITIONER HAS LOCUS STANDI TO INSTITUTE THE PROCEEDINGS HEREIN.**

11. The Respondents contend that the Petitioner lacks locus to institute these proceedings as the rights alleged to be violated are individual rights affecting the Interested Party and not the Petitioner or in any way a public interest litigation. It is further urged that the Petitioner has not in any way stated or shown how the actions or inactions of the Respondents has infringed on her rights.

12. The Respondents further aver that the issues raised in the instant Petition are based on hearsay. It is further stated that the issues only touch on the relationship of the Interested Party and the state and not the Petitioner. Reliance in support of the proposition is placed in a decision in the case of *S. P. Gupta vs. President of India and Ors*, AIR 1982SC 149, 1981 Supp (1)SCC 87, 1982 2 SCR 365, where the Supreme Court of India held:-

***“The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury of violation of his legal right or legally protected interest by the impugned action of the state or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress.*”**

13. It is further urged by the Respondents that the Petitioner only alleges that she is the wife of the Interested Party which allegation the Respondents contend, has not been proven. It is on this capacity that the Petitioner purport, to file the instant Petition; alleging she is married to the Interested Party under Kikuyu customary law, which union has to be proven as per **Section 44 and 45 of the Marriage Act**. It is therefore Respondents' position that on this ground alone the Petition is incompetent, defective and bad in law and ought to be dismissed.

14. The Petitioner in response aver that she is rightly before Court in these proceedings. It is urged that the Petitioner's rights and fundamental freedom have been violated and are threatened with future violations by the Respondents.

15. On the enforcement of Bill of Rights **Article 22(1)(2) (a) – (d) of the Constitution** clearly provides that:-

**“22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.**

**(2) In addition to a person acting in their own interest, Court proceedings under clause (1) may be instituted by—**

**(a) a person acting on behalf of another person who cannot act in their own name;**

**(b) a person acting as a member of, or in the interest of, a group or class of persons;**

**(c) a person acting in the public interest; or**

**(d) an association acting in the interest of one or more of its members.”**

16. From the clear reading of **Article 22 of the Constitution**, I find that the Petitioner has a standing to institute the instant Proceedings for enforcement of her rights and fundamental freedoms allegedly violated by the Respondents jointly through their action. In addition the Petitioner can bring up the proceedings in her name or on behalf of the Interested Party who is said to be her husband by dint of **Article 22(2) of the Constitution**.

17. In view of the aforesaid I find and hold that he Petitioner has locus standi to institute these proceedings on her behalf and even on behalf of the Interested Party. The instant Petition is therefore properly before this Court.

**B. WHETHER OR NOT THE RESPONDENTS ARE IN VIOLATION OF THE RIGHTS OF THE PETITIONER AND INTERESTED PARTY AND WHETHER THE RESPONDENTS' DECISION TO BAR THE INTERESTED PARTY'S ENTRY TO KENYA WAS WARRANTED.**

18. The Petitioner contend that the Interested Party is entitled to equal protection of the law. **Article 27 of the Constitution** provides for equality and freedom from discrimination. It is further urged that a person shall not be discriminate directly on indirectly against another person on any of the grounds specified or contemplated under clause 4.

19. The Petitioner stated that the Interested Party is Citizen of Cameroon and holder of Cameroonian Passport No. xxxx. This notwithstanding the Constitution does not distinguish in some respect between the rights of citizens and non-citizens. The only right denied to foreigners is the right to vote or vie for elective offices. All other rights, however, are without such a limitation.

20. Additionally it is submitted by the Petitioner that there are certain human rights to which all persons are entitled to regardless of their nationality. The Universal Declaration explicitly guarantees the rights of due process, political expression and association, and equal protection whereas **Article 2(5) of the Constitution** expressly imports the general rules of International law and makes them part of the laws of Kenya.

21. The Petitioner contend that the Respondents' actions, in declaring the Interested Party a prohibited immigrant and consequently denying him entry into the country where he works and takes care of his family was unconstitutional and a breach of the rights of both the Interested Party and Petitioner.

22. The Petitioner urges that **Section 40 of the Kenya Citizenship and Immigration Act** sets out the process for issuance of work permits while **Section 41** of the same Act sets out the manner in which it can be invalidated. It states:-

**“Where a permit has been issued to a person, and that person-**

**a) Fails, without the written approval of the Director, to engage within ninety days of the date of issue of the permit or of that person's entry into Kenya, whichever is the earlier, in the employment, occupation, trade, business or profession in respect of which the permit was issued or take up residence;**

**b) Ceases to engage in the said employment, occupation, trade, business or profession, whether or not for remuneration or profit, other than the employment, occupation, trade, business or profession referred to in paragraph (a), the permit shall cease to be valid and the presence of that person in Kenya shall be unlawful, unless otherwise authorized under this Act.”**

23. It is Petitioner's case that the Interested Party is holder of a valid work permit which has not been invalidated, he therefore has a right to enter the country. It is therefore averred the holding of a valid work permit entitles the holder to unfettered entry during its validity.

24. The Petitioner urge further that the Interested Party after flying in from Cameroon through Jomo Kenyatta International Airport was denied entry into the country for allegedly being a prohibited immigrant without any explanation whatsoever from the Respondent's. It is contended that the fact that no reasons were given for the Respondent's actions left no room for the interested party or the Applicant to be heard or present a defense against any accusations that could have been the reason for the Respondents actions. It is contended that **Article**

**47 of the Constitution** codifies every person's right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Therefore, there is right to be given reasons for any person who has been or is likely to be adversely affected by administrative action.

25. It is trite that any individual who is affected by administrative decision be given the opportunity to present his case especially where the decision affects their rights, interests and privileges. Further it is clear that even in circumstances where there is no express requirement that a person be heard before a decisions are made the tribunal or authority entrusted with the mandate of making the decision must act fairly. In **Judicial Service Commission –versus- Mbalu Mutava & Another [2015] eKLR, Civil Appeal 52 of 2014** the Court of Appeal held that:-

*“Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in Article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Articles 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires form which administrative law under the common law was developed.”*

26. Further, the Supreme Court in **Baker vs. Canada (Minister of Citizenship & Immigration) 2 S.C.R. 817 6** it held that:-

*“The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.”*

27. Similarly **Section 4(3) (d) of the Fair Administrative Action Act** provides where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision a statement of reasons. It is averred by the Petitioner that no statement of reasons written or even oral were given to the Interested Party or the Petitioner herein.

28. It is averred by the Petitioner that the Interested Party upon re-entry into the country and despite having complied with requisite immigration laws/regulations was denied entry into the country curtailing his freedom without any just cause. Not to mention the psychological trauma on both the Interested Party, the Petitioner and their children from being separated from each other. It is further urged that due process was not followed and the purported declaration of the Interested Party was not handed any order declaring him a prohibited immigrant neither was he accorded any reason for declaring him so. It is urged that the Respondents' action to deny the Interested Party re-entry into the Country despite having all the necessary legal requirements and documents is a clear violation of **Article 39 of the Constitution and International Law**. Further it is averred that under **Article 45 of the Constitution**, the family is the natural and fundamental unit of Society and the necessary basis for social order and shall enjoy the recognition and protection of the State.

29. The Petitioner further contention is that the Petitioner and the Interested Party are husband and wife respectively and are blessed with two children. They are also in the process of adopting the Petitioner's niece, all who are dependent on The Interested Party. By declaring that the Interested Party is a prohibited immigrant with no explanation or justification, the Interested Party has been denied his Constitutional right to be with his children and wife. That would seem to be a matter within **Article 45 of the Constitution** which recognizes and enjoins the State to protect the family as a **“natural and fundamental unit of Society.”** It is therefore urged that due to the Respondents, decision impugned herein, the Petitioner is unable to enjoy the consortium of the Interested Party which includes the companionship, co-operation, affection, aid, financial support to herself and her two children, and sexual relations with her husband.

30. It is further Petitioner's position also, that under **Article 53 of the Constitution** the Children Rights to parental care and protection, which include equal responsibility of the mother and father to provide for the child, whether unmarried or not has been violated. That the Interested Party by being declared a prohibited immigrant with no justification whatsoever and being denied entry into the country, the Interested Party has been unjustly separated from his family and his business that is in Kenya therefore making it almost impossible to earn a decent livelihood to provide for his children.

31. The Respondents in respect to the Petitioner's submission on this issue, contend that the right of person to freedom of movement, to enter, remain in and reside anywhere in Kenya which claim has anchored the Petition herein, is a preserve of the Kenyan citizens which the Interested Party is not. It is further clear that **the Kenya Citizen's and Immigration Act No. 12 of 2015, (hereinafter referred to as “the Act”)** demand that for any person not a citizen of Kenya to enter and remain in Kenya, they are legally bound to have a valid work or resident permit. This is provide under **Section 34 of the Act** which states as follows:-

*“(1) A person who is not a citizen of Kenya or an asylum seeker shall not enter or remain in Kenya unless she or he has a valid permit or pass.*

*(2) Subject to the provisions of this Section, the presence in Kenya of any person who is not a citizen of Kenya shall, unless otherwise authorized under this Act, be unlawful, unless that person is in possession of a valid work permit or a valid residence permit or a valid pass.”*

32. Further it is also provided under **Section 53(m) of the Act** that:-

*“(1) A person who-*

*(m) not being a citizen of Kenya, engages in any employment, occupation, trade, business or profession, whether or not for profit or reward, without being authorized to do so by a work permit, or exempted from this provision by regulations made under this*

**Act; commits an offence.”**

33. Upon perusal of the Respondents Replying Affidavit at paragraphs 7, 8, and 9 it is deponed that the Interested Party is clearly in contravention of the Act and the Constitution. The Interested Party submitted his work permit application on 29<sup>th</sup> April 2010 and the permit was issued on 19<sup>th</sup> June 2010. Subsequently, the Interested Party made renewal application in 2013 and later 2015. The last valid work permit was issued on 19<sup>th</sup> August 2015 which has since expired. On 3<sup>rd</sup> July 2016, the Interested Party applied for a renewal of the work permit which application was approved on 25<sup>th</sup> July 2016. The Interested Party was notified of the approval and consequently to make payments for his work permit but failed to do so. This means the Interested Party has not renewed the work permit since 2015 when permit expired.

34. From the pleadings it is clear that the Interested Party has been residing in Kenya and as clearly admitted by the Petitioner, he has been engaging in employment despite not having a valid work or resident permit. Further if indeed the Interested Party has been residing in Kenya for 14 years as it is alleged by the Petitioner, this means he first arrived in Kenya in 2004, in that case, the Interested Party had resided in Kenya for 6 years without a valid work or resident permit until 2010 when he first applied for a work permit. This admission therefore is a clear and blatant disregard by the Interested Party of the Kenyan Laws which he ironically is seeking to protect him.

35. From the contents of the Respondents affidavits and annexures it is demonstrated that the Interested Party credibility is questionable. It is shown that the Interested Party holds two contradictory passports; one from the Democratic of Congo and the other from Republic of Cameroon. This is evident in the Petitioner's documents as the information given by the Interested Party in his KRA Certificate shows that his place of birth was Congo and not Cameroon as shown in the passport, also produced by the Petitioner. (See Petitioner's Annexures 3 and 4).

36. It is no doubt that the 1<sup>st</sup> Respondent, a department within the 2<sup>nd</sup> Respondent's docket is mandated under the Act with the duties of enforcement and ensuring compliance with the Kenyan immigration laws. On the above premises, the Interested Party, while approaching this Court with unclean hands, has no legal basis to compel the Respondents to allow him into the jurisdiction and the Court lacks the jurisdiction to grant such orders to allow him to be in the Country since any individual seeking entry into the Country can only be allowed entry upon fulfilling the valid laid down conditions in line with safe guarding and promoting national interests and this mandate is bestowed upon the Department of Immigration and which is a sovereign function.

37. To buttress the above stated proposition reliance is placed in the case of **Mohamed Ibrahim Naz vs. Cabinet Secretary Responsible for Matters Relating to Citizenship and the Management of Foreign Nationals & another eKLR (2013)** where the Court held that the right to enter and remain in and reside anywhere in Kenya is inherently vested in Kenyan Citizens to emphasize that the act of remaining in and engaging in economic activities in Kenya is a privilege regulated by law and **“the right to enter, remain in and reside in Kenya is restricted to citizens, both by the Constitution and under international law. While Article 39(1) and (2) with regard to freedom of movement and the right to leave Kenya are guaranteed to all persons, the right to enter, remain and reside anywhere in Kenya is the preserve of citizens.”**

38. In addition thereto subject to **Section 33(2) (g) of the Act**, the Respondents denial of the Interested Party to enter Kenya was on the ground of national interest and as demonstrated above. The Respondents decision was based on legal grounds. As such, the claim against the Respondents is incompetent and misconceived.

39. The Petitioner herein has urged at length how the Interested Party's rights have been violated and placed reliance on a number of articles in support; on how the Respondents have contravened and violated the Petitioner's and Interested Party's rights as provided in various Articles stated thereto in support.

40. The Petitioner has alleged contravention of the Interested Party's rights under **Article 47 of the Constitution**, thus right to fair administrative action, **Article 29(a)** right to freedom and security; **Article 27(1)** right to equal protection under the law, **Article 45(1)** recognizing the natural and fundamental unit of the society being the family, **Article 39(1)** right to freedom and movement.

41. I find as clearly submitted a foreign national has no independent or inherent right to remain in Kenya. The right to reside, work and or engage in any economic activity in Kenya is restricted and can only be exercised by non-citizens in compliance with the statutes regulating the same. The International Principle of Sovereignty of states presupposes that the right to entry into the Kenya is a preserve of Kenya Citizens only and the State through its authorized agents (the Respondents) reserves the right of entry to foreigners. The Petitioner has not demonstrated otherwise to persuade this Court to decide in her favour.

42. I find to the contrary that it is the Interested Party who has violated the Kenyan immigration laws and based on those illegalities as clearly captures herein above, it follows that the Respondents' actions were warranted and there was no violation of his rights.

43. In arriving at the aforesaid I am guided by the decision in the case of **Simon Kiprotich & 2 others vs. Principal Secretary, Ministry of Devolution and Planning & 4 others [2018] eKLR**, where the Court held that a party cannot benefit from an illegality. The Court stated that:-

**“The benefit sought by the Petitioners is not a legal benefit because they were occupying the forest illegally and that no person should benefit from an illegality... Ultimately, the Petition is found without substance as the Petitioners have realized non-justiciable issues and have not even demonstrated that they were in the occupation of the forest albeit illegally and therefore no evidence of violation of rights.”**

44. **The upshot is that the Petitioner have failed to demonstrate that the Petition is meritorious; whereas the Respondents have clearly demonstrated that the Petition lacks merit in its entirety. The Petition is dismissed. Each party to bear its own costs.**

**Dated, Signed and Delivered at Nairobi on this 24<sup>th</sup> day of February, 2022.**

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**J. A. MAKAU**

**JUDGE OF THE HIGH COURT OF KENYA**