REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL AND TAX DIVISION

CIVIL CASE NO. E.237 OF 2019

MAIYOHO GENERAL CONTRACTORS LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

AMANI DEVELOPMENT COMPANY LIMITED.....DEFENDANT/APPLICANT

RULING

APPLICATIONS

There are two Applications for the court's determination: Both Applications have been filed by the Applicant/Defendant both dated **29th November 2019.** The Applicant's applications are supported by the affidavits of **Dr. Constatine Mwadime** sworn on **29th November 2019** and **Abdul Agonga** sworn on **29th November 2019** respectively. The Applicant's application is opposed by the Respondent/Plaintiff through the Replying Affidavits sworn by **Patrick Gitau Mburu** on **21st January 2020.**

CHAMBER SUMMONS APPLICATION

The Applicant filed Chamber Summons Application dated **29th November 2019** for orders; -

That the Plaintiff/Respondent's Plaint filed herein be struck out with costs.

That in the alternative to prayer (i), the hearing and/or proceedings in the Plaint as filed be stayed forthwith.

That the dispute between the parties herein be referred to arbitration.

That the defendant/applicant be at liberty to apply for such further or other orders as this Court may deem fit and just to grant in the circumstances

That costs of this application be awarded to the Defendant/Applicant

The Application is supported by the affidavit of **Dr. Constantine Mwadime** and based on grounds that; -

The parties entered into a construction agreement dated **14th February 2014** for construction of Sixty-Nine residential town houses and Clause No. 45 of the said agreement explicitly elevates the aspect of arbitration in settlement of disputes between the parties.

The said clause gives strict timelines on issues of notice in writing, commencement of the arbitration process, conclusion and issuance of an award.

The suit instituted by the Plaintiff/Respondent is in violation of the agreement as stipulated in **Clause 45**. The Plaintiff/Respondent instituted a suit in violation of the agreement and the Defendant/Applicant was not accorded an opportunity to settle the dispute by way of an arbitration. The Court therefore lacks jurisdiction over this matter as disputes ought to be referred to arbitration.

The Applicant states that by virtue of the agreement, the parties are bound to the terms of the said document. Further, that the Plaintiff/Respondent's conduct is injudicious as they are not interested in settling the dispute through arbitration.

REPLYING AFFIDAVIT

The Application is opposed vide an affidavit dated **21st January 2020** and filed in court on **22nd January 2020** and sworn by **Patrick Gitau Mburu**. He stated that on about **14th February 2014**, the parties entered into an agreement where it was agreed that the Plaintiff as the Contractor was to undertake the construction of Sixty-nine town houses and the Defendant would pay to the Plaintiff at the times and the manner specified in the agreement.

Further, that at the time of the existing contract, the Defendant received two Interim Certificates from the Project Architect being **Certificate No. 1** and **Certificate No. 2** on the **28th October 2012** and **11th February 2016** respectively which Interim Certificates as issued certified that the sums of **Kshs.9,000,000** and **Kshs.40,508,010.82** were respectively due to the Plaintiff from the Defendant as per the terms of the contract and pursuant to the work done at different levels and times.

He avers that despite the Interim Certificates being issued by the Project Architect certifying works done and payments due and owing, the Defendant only honored **Certificate Number 1** and was unable to pay the certified sums as per **Certificate Number 2** despite persistent demands for payment of the same.

As a result of the said default by the Defendant to pay the sum of **Kshs.40,508,010.82** due and owing, the parties entered into another agreement on **17th February 2016** titled "**Mutual Agreement for Final Settlement**", in which the Defendant admitted to being indebted to the Plaintiff to the tune of **Kshs.40,508,010.82** and offered to offset and pay the money due by awarding and assigning to the Plaintiff, 3 units of the Town houses being **units No. 39, 56 and 67** in consideration of the debt to cover the Contractor's final account for the work done.

He stated that it was an express term of the Mutual Agreement for Final Settlement that the town houses shall be completed within eighteen months upon signing of the Agreement. The parties then proceeded to execute three separate sale agreements for the sale of the units which were clear and unambiguous that the consideration for sale was the final account as agreed upon.

The Apartments had not been completed after the eighteen months and in compliance with **Clause 8** of the Mutual Agreement for Final Settlement on Notices, the Plaintiff sent a letter dated **15th June 2018** to the Project Manager of the Defendant communicating the default on their part of the Agreement. Further, on **13th November 2018** the Plaintiff wrote a letter to the Project Manager of the Defendant requesting for settlement of the outstanding dues. On **14th November 2018**, the Plaintiff also wrote a letter to the Defendant addressing it on the delayed payments and the intention to sue.

A demand letter **(for Kshs.54,939,592.82)** was sent to the Defendant who went ahead to make promises that they had planned to secure funds from a financial institution which funds they would settle the debt of **Kshs.54,939,592.82**. Following the Defendant's default to pay the amount owing, the Plaintiff filed a claim on **1st August 2019** and proceeded to serve the summons to enter appearance and pleadings upon the Defendant to which they acknowledged receipt.

The Defendant failed to file a defense within the prescribed time and this led to the Plaintiff filing an application for interlocutory judgment for the liquidated claim of **Kshs.54,939,592.82** and the same was entered and a Decree issued.

He avers that the Defendant has already admitted to being indebted to the Plaintiff for the sum of **Kshs.54,939,592.82** as such reference of this matter to Arbitration is neither here nor there as there exists no dispute among the parties but a deliberate ploy by the Defendant to buy time.

NOTICE OF MOTION APPLICATION

The Applicant also filed a Notice of Motion Application dated **29th November 2019** for orders; -

i. The court be pleased to issue and order staying the execution of the judgment issued and dated **23rd October, 2019** and any other subsequent orders/decree thereto.

ii. The court be pleased to review, vary, rescind and/or set aside the judgment issued and dated **23rd October 2019** and any other subsequent orders/decree thereto.

iii. The court be pleased to enlarge time and admit the statement of defence filed out of time.

The Application is supported by the affidavit of **Abdul Agonga** and based on grounds that; -

The Applicant filed a Notice of Appointment in good time but the Statement of defence was late and the Advocate's mistakes ought not be meted on the innocent client. The said statement of defence raises triable issues in relation to jurisdiction. The matters herein need to be referred to arbitration.

The application is for stay of execution, review and/or setting aside of the default judgment issued and delivered on **23rd October 2019** which application has been brought without unreasonable delay since the notification on **21st November 2019**.

The jurisdiction of the court has been denied on account of an arbitration clause and/or proceedings being the first point of reference in any dispute. In addition, a separate application by way of Chamber Summons has been filed under **Section 6** of the Arbitration Act for

consideration of commencement of arbitration process.

REPLYING AFFIDAVIT

The Application is opposed vide an affidavit dated **21st January 2020** and filed in court on **22nd January 2020** and sworn by **Patrick Gitau Mburu**. He stated the Applicant was served with the summons to enter appearance and the pleadings but failed to put in a Statement of Defence at all.

The action by the Defendant not to put in a statement of defence within the prescribed timelines is negligent and deliberate action or inaction on its part and that of its Advocates who had at all material times been aware of the proceedings chose not to comply by filing defence or protest /Preliminary Objection.

The Application seeking to set aside and/or stay execution of a regular judgment is a ploy by the Defendant/Applicant to delay the expeditious disposal of this suit further delaying the payment of the debt which is due and owing.

The Application should be dismissed with costs and in any event the Applicant has not offered any security to warrant setting aside of the judgment. The entire decretal amount should be deposited to safeguard the interest and the continued losses suffered financially.

DEFENDANT/APPLICANT'S WRITTEN SUBMISSIONS

The Defendant/Applicant submitted that the ex – parte judgment and all subsequent orders made by the court was out of jurisdiction and the Plaintiff's invocation of the jurisdiction was not made in accordance with the provisions **Section 10 of the Arbitration Act**. This issue was settled in the case of ***Midland Finance & Securities & Another Vs Attorney Geneneral & Another [2008]eKLR*** which was cited with approval by Olga Sewe L. J. in ***Sospeter Gitonga Njiru t/a Stepper Electrical & Suppliers Vs Nation Media Gorup Limited [2016]eKLR*** where it was stated; -

> ***"This means that the arbitration clause is regarded as constituting a separate and autonomous contract. It means that the validity of the arbitration clause does not depend on the validity of the contract as a whole. By surviving the termination of the main contract, the clause constitutes the necessary agreement by the parties that any dispute between them should be referred to arbitration. I take the view that determination, whether by effluxion of time or by the Defendant, would not affect the arbitral agreement, given the principle of separability of the arbitral agreement."***

Further, the Defendant/Applicant submitted the Plaintiff/Respondent resorted to filing the suit without exhausting the provisions of **Clause 45** and **15** respectively in relation to dispute resolution under the provisions of **Section 6 (1) of the Arbitration Act.**

The Arbitration Clause in the contract prevents the courts from exercising jurisdiction. The subject matter of this case is within the jurisdiction of the courts but the arbitration clause limits courts intervention. In the case of ***Seven Twenty Investments Limited Vs Sandhoe Investments Kenya Limited [2013]*** it was stated; -

> ***"Perusal of S.7 of the Arbitration Act clearly shows that the issue of whether or not there was a dispute or whether there would be losses by either side would not be a factor for a court when declining whether or not it should grant the said interim measure of protection or injunction to safeguard the subject matter of the arbitral proceedings. All that a court would be interested in is whether or not there was a valid arbitration agreement and if indeed the subject matter of the arbitral proceedings was in danger of being wasted or dissipated so as to preserve the same pending the hearing and determination of the arbitral process."***

It is their submission that the *ex parte* judgment and subsequent orders obtained by the Plaintiff/Respondent were irregular. Further, that the Respondent did not disclose that legal point which squarely placed the proceedings under the Arbitration Act. The Applicant has thus met the test of specific provision of **Section 6** of the Arbitration Act.

The Applicant submitted that the failure to file a defence in good time was not intentional but was occasioned by an excusable reason. That this application stems from fundamental principle of natural justice which states that no party should be condemned unheard. That the well-established principles of setting aside interlocutory judgment are laid out in the case of ***Patel Vs East Africa Cargo Handling Services Limited [1974] EA 7;*** -

> ***"There are no limits or restrictions on the Judges' discretion to set aside or vary an ex parte judgment except that if he does vary the judgment, he does so on such terms as may be just. The main concern of the court is to do justice to the parties and the court will not impose conditions on itself to fetter the wider discretion to it by rules…… that where there is a regular judgment as is the case here, the court will not usually set aside the judgment unless it is satisfied that there is a defence on the merits. In this respect, defence on the merits does not mean that the defence must succeed. It means a triable issue that is an issue which raises a prima facie defence which should go to trial for adjudication."***

In light of the foregoing, it is the Applicant's contention that its defence raises serious triable issues, queries the jurisdiction of the court and that it is only fair and just that it be given leave to file its defence out of time.

The court is called upon to exercise its direction to set aside the *ex parte* judgment. This discretion must always be exercised judicially with the sole intention of dispensing justice to all parties with each case evaluated on its merit. Among the factors to consider is whether the applicant will suffer any prejudice if denied an opportunity to be heard on merit. In the case of ***Tree Shades Motor Limited Vs D.T. Dobie & Another [1998] IEA 324*** it was held; -

> ***"Even if service of summons is valid, the judgment will be set aside if the defence raises triable issues. Where a draft defence was tendered with an application to set aside a default judgment, the court hearing the application is obliged to consider if it raised a reasonable defence to the Plaintiff's claim. Where the Defendant shows a reasonable defence on the merits the court should set aside the ex parte judgment."***

In the case of ***Sebel District Administration Vs Gasyali & Others [1978] E.A. 300*** the court observed that; -

> ***"The court should not only focus on the poverty of the Applicant's excuse for not entering appearance or filing a defence within the prescribed time. The nature of the action should be considered, the defence if one has been brought to the notice of the court however irregularly should be considered, the question as to whether the Plaintiff can reasonably be compensated by costs for any delay occasioned should be considered and finally I think it should always be remembered that to deny the subject a hearing should be the last resort to a court. It is wrong under all circumstances to shut out a Defendant from being heard. A Defendant should be ordered to pay costs to compensate the Plaintiff for any delay occasioned by the setting aside and be permitted to defend."***

PLAINTIFF/RESPONDENT'S WRITTEN SUBMISSIONS

The Plaintiff/Respondent submissions highlight two issues for determination. Whether the judgment was regularly entered on behalf of the Plaintiff and whether the defense filed out of time is meritorious. It is the Plaintiff submission that after the filing of the Plaint dated **31st July 2019**, summons were extracted and together with the suit documents served upon the Defendant on **5th September 2019**. Thereafter, the defense entered appearance but failed to file a defense within the statutory period prompting the Application for interlocutory judgment.

In the case of ***Fidelity Commercial Bank Ltd Vs. Owen Amos Ndung'u and Another HCCC No. 241 of 1998 (UR)*** Njagi J. stated; -

> ***"A distinction is drawn between regular and irregular judgments. Where summons to enter appearance has been served, and there is a default in the entry of appearance, the ex parte judgment entered in default is regular. But where the ex parte judgment sought to be set aside is obtained either because there was no proper service or any service at all of the summons to enter appearance, such a judgment is irregular, and the affected Defendant is entitled to have it set aside."***

The Plaintiff/Respondent submits that the provision of **Order 10 Rule 11 CPR 2010** is not couched in mandatory terms but in a way that gives court the discretion to act upon such terms as it may deem just in the circumstances. The reasons as put out to the court for failing to file their defense is not convincing enough to set aside a regular judgment. The failure by the Applicant's advocates to file a defense is not excusable and mere citing of the mistake on the part of the advocate is not sufficient excuse for failure to file a defense within the prescribed time.

In the case of ***Gerald Mwithia Vs Meru College of Technology & Another [2018] eKLR***, the courts have held on several occasions before that; -

> ***"Clients cannot continue to hide behind the failure of their advocates to perform certain required actions on their part and that it is incumbent upon the clients to follow up the progress of their case, this premised on the fact that the case does not belong to the advocate but the client."***

On the issue of whether the defense is meritorious, the Plaintiff/ Respondent submits that on the face of the record the defense does not raise any triable issues and the raised issue of Arbitration has been overtaken by their admission of debt. This admission clarifies that there is no dispute between the parties. It is their contention that the admission of debt compounds the application of **Section 6(1) (b) of the Arbitration Act** that the court ought not to refer a matter to Arbitration where there is no dispute between the parties.

On whether the Plaint should be struck out with costs - the Plaintiff/Respondent submits that the court should look at whether the Plaint as filed does not raise any reasonable cause of action against the Defendant; it is untenable even by way of amendment and that it is not a sham. The Court of Appeal in ***Blue Shield Insurance Company Limited Vs. Joseph Mboya Oguttu [2009] eKLR*** restated these principles thus:

> ***"The principles guiding the court when considering such an application which seeks striking out of a pleading is now well settled. Madan J. A (as he then was) in his judgment in the case of D. T. Dobie and Company (Kenya) Limited Vs Muchina (1982) KLR 1 held that …. The power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable."***

It is the Plaintiff/Respondent's submission that the Plaintiff has a valid claim arising out of a Contractual Agreement. The Plaintiff performed its part of the bargain and sought payment for the work done from the Defendant and the Defendant neither denies its indebtedness to the Plaintiff as such the prayer to strike out the Plaint is misplaced and should not be entertained by Court.

Whether there exists a dispute between the parties worthy of referral to Arbitration – the Plaintiff reiterates the provision of **Section 6 (1) (b) of the Arbitration Act** and states that before a court can order parties to go to arbitration it has to be satisfied that there is indeed a dispute over the claim in the issue as was held in the case of ***Addock Ingram East Africa Limited Vs Surgilinks Limited.***

In determining whether there is a dispute between the parties the Plaintiff relied on the case of ***UAP Provincial Company Limited Vs Michael John Beklelt HCC No. 1310 of 2001*** where it was stated thus; -

> ***"I decline to stay proceedings herein as there is nothing to be referred to arbitration, there is no dispute between the parties all there is, is the Plaintiff's right to be paid as per agreement and that has nothing to do with the policy … if on the other hand the court comes to the conclusion that the dispute is not within the scope of the arbitration agreement, then the right forum for resolution of the dispute is the court."***

It is their further submission the Defendant's prayer for staying any further proceedings by invoking the Arbitration Clause is not automatic and the Applicant/Defendant has to satisfy the court that there is a dispute between the parties with regard to the matters agreed to be referred to arbitration. As it stands, the Defendant has not satisfied the court that indeed there exists a dispute to warrant the stay of any further proceedings in court.

The Plaintiff submits that there exists no dispute between the parties and as such no stay orders can be issued nor can parties be referred to arbitration and the application should be dismissed with costs.

ANALYSIS AND DETERMINATION

Issues for determination:

a) Whether the judgment was regularly entered on behalf of the Plaintiff?

b) Whether the defense filed out of time raises triable issues?

Whether the judgment was regularly entered on behalf of the Plaintiff?

Makhandia, Ouko & M'inoti, JJ. A in ***Civil Appeal No. 6 OF 2015 James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [2016] eKLR*** defined a regular judgment as follows; -

> ***"In a regular default judgment, the defendant will have been duly served with summons to enter appearance, but for one reason or another, he had failed to enter appearance or to file defence, resulting in default judgment. Such a defendant is entitled, under Order 10 rule 11 of the Civil Procedure Rules, to move the court to set aside the default judgment and to grant him leave to defend the suit. In such a scenario, the court has unfettered discretion in determining whether or not to set aside the default judgment, and will take into account such factors as the reason for the failure of the defendant to file his memorandum of appearance or defence, as the case may be; the length of time that has elapsed since the default judgment was entered; whether the intended defence raises triable issues; the respective prejudice each party is likely to suffer; whether on the whole it is in the interest of justice to set aside the default judgment, among other. See Mbogo & Another v. Shah (supra), Patel v. E.A. Cargo Handling Services Ltd (1975) EA 75, Chemwolo & Another v. Kubende [1986] KLR 492 and CMC Holdings v. Nzioki [2004] 1 KLR 173)."***

A default judgment obtained regularly can only be set aside upon application by the defendant and satisfying the court as to the reasons for failure to file a defense. That is the import of **Order 36, rule 10 CPR 2010** is that;

> ***"Any judgment, given against any party who did not attend at the hearing of an application under this Order, may, on application be set aside or varied on such terms as are just".***

The Plaint was filed on **1st August 2019**. The Plaint and summons to enter appearance were served on/to the Defendant directly and personally as confirmed from Affidavit of Service filed on 9th October, 2019, dated **5th September 2019** as evidenced by the 'received stamp', signed and recorded date **5th September 2019.** There is an Affidavit of Service filed on **9th October 2019** by Process Server **Daniel Gatutha** confirming that he called the Defendant on mobile phone number 0722826498 and informed him of contents of documents of intended service. He sent his sister who called the Process Server, through Mobile Number 0722320997 and sought where to collect the documents and did so on 5th September 2019.

The Defendant filed a Memorandum of appearance on **9th October 2019** but thereafter failed to file a defence.

Order 6 rule 1 and Order 7 Rule 1 of CPR 2010, the Defendant had 14 days to enter appearance and then thereafter another 14 days to file and serve Statement of Defense. The Defendant entered appearance on **19th September 2019.**

The Plaintiff/Respondent then wrote to the Court on **8th October 2019** and sought entry of default judgment under **Order 10 Rule 4 CPR 2010**. The Deputy Registrar entered default judgment on **23rd October 2019.** From the foregoing facts a default judgment was merited.

The Defendant then filed Defense out of time without leave of Court on 19th November 2019.

The Applicant contended that the reason for the delay in filing the statement of defense was a result of constant bickering and in fighting between the directors of the Defendant Company, thereby necessitating a prolonged tussle in issuance of tangible, adequate and full instructions to enable the Defendant's Advocate act on the matter.

The Plaintiff rightfully applied to Court and was granted default judgment on 23rd October 2019. The order was extracted on 19th November 2019. On 21st November 2019 the Plaintiff/Respondent notified the Defendant/Applicant of the entry of default judgment.

In light of the above, it is evidently clear that a regular default judgment was entered because in spite of the Defendant being duly served with summons to enter appearance and Plaint for one reason or another the Defendant still failed to file defense. It is a regular judgment.

Whether the defense filed out time raise triable issues?

The defense raises 2 triable issues; the aspect of Arbitration in the settlement of disputes as enunciated in Clause 45 of the parties' agreement which challenges the jurisdiction of the court.

Clause 45.0 of Agreement & Conditions of Contract for Building Works at Pg 47 provides;

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

However, from the submissions by parties through their respective Counsel, the issue of whether there is a dispute for arbitration is contested.

The Defendant /Applicant submitted that by virtue of **Section 6 (1) of Arbitration Act**, that the *exparte* judgment and consequential orders were issued by the Court without jurisdiction as the dispute/claim ought to have been made to arbitration and not the Plaint filed in Court which ought to be struck out. Further that in spite of termination of contract between parties, the Arbitration clause/Agreement remained valid. Therefore, the Court ought to set aside the *ex parte* default judgment and down its tools and let the matter proceed to Arbitration.

The Plaintiff/Respondent submitted that, although there is an arbitration agreement, the claim emanated from Interim Certificates of Works issued by the Project Architect in 2014 and 2016 respectively,for work carried out by the Plaintiff on site.

The 1st Certificate of Ksh 9m the Defendant paid the Plaintiff. The 2nd Certificate of Ksh 40,508,010.82/- the Defendant failed to pay the Plaintiff.

Instead the Plaintiff and Defendant entered into a **Mutual Agreement for Final Settlement** duly executed by both parties. The Defendant admitted the outstanding debt and promised to offset the debt by assigning the Plaintiff 3 houses **Nos 39,56 & 67** to cover Contractor's Final Account for the work done. After 18 months the Defendant failed to pay or assign the houses and the agreement lapsed.

On 29th March 2019 the Plaintiff's advocates wrote to the Defendant a demand letter. The Defendant replied vide letter dated 23rd April 2019 as follows;

> ***"We refer to the abovementioned subject and wish to acknowledge receipt of your letter dated 29th March 2019. After receiving your letter, we informed your Client that we have made arrangements from 1of the Finance Institutions to secure funds which will enable us to pay him. The plan to secure funds are in a very advanced stage and hence we are requesting for additional 14 days to be able to complete the process……"***

Mutual Agreement for Final Settlement of 17th February 2016 and the above cited letter disclose an admission of indebtedness to the Plaintiff by the Defendant. Therefore, there is no dispute in light of the admission to refer to Arbitration.

Secondly, the Defendant disputes that the Plaintiff loss and denies that it owes the Plaintiff any funds or payment. The Plaintiff has waited for money owed to be paid to him from 2014 to date due to construction work done and financial obligations of repaying loans as shown by letter of 5th June 2018 are pending. The Plaintiff acknowledged the part payment made but the outstanding amount remains unpaid.

Thirdly, the Applicant contends that the Defendant was not accorded any notice or opportunity to ventilate any dispute out of Court by way of or arbitration or towards amicable settlement.

The attached documents confirm the opposite;

a) Mutual Agreement for Final Settlement of 17th February 2016

b) Letter dated 23rd April 2019 seeking time to pursue independent line of Credit.

DISPOSITION

1. The default judgment of this court of 23rd October 2019 was regularly entered following service of the summons to enter appearance in accordance with Order 5 rule 8 CPR 2010. The Applicant entered appearance but failed to file Defense within the requisite statutory period.

2. The circumstances presented that caused delay or oversight are not borne out by evidence. The judgment entered on a

liquidated demand for which the court was empowered to enter judgment in terms of Order 10 rule 4 (2) CPR 2010.

3. The defense does not raise triable issues as the Defendant admitted being indebted to the Plaintiff. In spite of a valid Arbitration Agreement/Clause, there is no dispute for determination due to the admission by the Defendant of the debt.

4. The application to strike out the Plaint and/or set aside the default judgment is dismissed with costs to the Respondent.

DELIVERED SIGNED & DATED IN OPEN COURT ON 26TH FEBRUARY 2021 (VIDEO CONFERENCE)

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF;

ABDUL AGONGA & ASSOCIATES ADVOCATES FOR APPLICANT

GACHIE MWANZA & CO. ADVOCATES FOR RESPONDENT

COURT ASSISTANT: TUPET