REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

HC ACEC PETITION NO. E002 OF 2020

SOSPETER ODEKE OJAAMONG.....1ST PETITIONER

BERNARD KRAIDE YAITE.....2ND PETITIONER

LENARD WANDA OMBIRA.....3RD PETITIONER

ALLEN EKWENY OMACHARI..... 4TH PETITIONER

SAMUEL ESEKO OMBUI.....5TH PETITIONER

EDNA ADHIAMBO ODOYO.....6TH PETITIONER

RENISH ACHIENG OMULLO.....7TH PETITIONER

SEBASTIAN HALLENSBEN.....8TH PETITIONER

MADAM ENTERPRISES LIMITED.....9TH PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

CHIEF MAGISTRATES COURT

AT NAIROBI ANTI-CORRUPTION.....2ND RESPONDENT

RULING

INTRODUCTION

1. The petitioners herein were charged before the Chief Magistrate Anti-Corruption Court at Nairobi with several counts in ACCC No. 23 of 2018 and their trials were on going at the time of the petition herein.

2. By a petition dated 24th day of September, 2020, the 1st petitioner moved the court for a declaration of mistrial in Nairobi CMCC ACC No. 23 of 2018 on the ground that the same has suffered violation of their constitutional rights to fair hearing, guaranteed under Articles 23(c) and 50 of the constitution, rendering it entirely impossible to achieve any fair trial in the case due to deliberate acts of bias and unfairness, both by the court and the prosecutorial misconduct.

3. It was pleaded that the prosecution, during the hearing in the case, abandoned its constitutional duty under Article 157 (11), to act only in regard to public interest, in regard to administration of justice and the need to prevent and avoid abuse of the legal process by weaponising its prosecution powers and using it to harass the petitioners and or their witnesses, with the deliberate aim of preventing their testimony in court so as to secure conviction at all costs.

4. It was contended that the prosecution failed to show fidelity to the law and to the administration of justice and instead acted on nefarious and illegal motivations outside the law, by active threat and witness intimidation, with the aim of discouraging and colouring their testimony and preventing them from having free and fair participation in judicial proceedings.

5. It was stated that on 22nd July, 2020 on or about 4.30 pm the prosecution council was on his feet cross examining DW1, when the counsel for the 3rd accused rose to his feet, seeking clarification from court on how much time the prosecution needed with the said witness, given that he had been cross examined for two days and it was nearing the close of business on the third day, to which the prosecutor responded that he was not sure, since the witness was being slippery and had proved to be a more important witness.

6. It was contended that at that point the prosecutor stated that after observing the witness, he was going to recommend to the investigating officers why they did not actually go for the said witness, which led to objections by the defence counsels and durational exchange between the prosecution and the defence counsels.

7. It was the petitioners case that the said threats and intimidation hindered and violated the petitioners right under Article 50 (2) (k) of the constitution to call whichever witnesses to adduce testimony in their defence, the effect of which was that the witnesses threatened to abandon the accused person and to refuse to appear to offer any testimony on their behalf due to the threat, causing miscarriage of justice

8. It was contended that the court failed in its duty as a neutral arbiter and umpire in the case resulting in total failure of justice in material and incontrovertible way, by not addressing the issue and or recording the same. It was stated further that the court failed to address the issue of the threat of witnesses which amounted to contempt in the face of the court and therefore failed to protect the integrity of the trial.

9. It was the contention of the petitioners that they could therefore not be assured of fair trial in the case and the trial against them was therefore flawed, which should be declared a mistrial and be terminated on the ground that it will be unjust to restart the same afresh.

10. The petitioners sought the following orders;

> ***A. A declaration be issued that there has been a fatal breach of the fundamental rights of the accused persons right to fair hearing and fair trial and consequently declare a mistrial in the entire case against the 1st to 9th Accused.***
>
> ***B. An order be issued forthwith terminating the 1st respondents case against the petitioners in Nairobi MCC ACECA NO 23 of 2018 and acquitting the petitioners unconditionally.***

11. The petition was supported by an affidavit sworn by the petition stating the factual basis on the same which are not relevant for the purposes of the application before the court.

12. The petition was opposed by the 1st respondent through an affidavit sworn by GRACE MURUNGI Ag. Director of Prosecution and part of the Prosecution Team in the case, in which she deposed that the petition was res judicata, the issues contained therein having been litigated upon and ruling thereon delivered by both the trial court and various High Courts and therefore the matters raised could only be challenged by way of appeal or review and no through a constitutional petition.

13. It was contended that the petitioner had filed a similar application dated 4th September, 2020 in which he raised the same issues and sought the same orders as in the current petition, which application was dismissed by the trial court by reason of lack of jurisdiction to entertain and determine the issue of violation of constitutional right under the bill of rights.

14. It was deposed that the prosecution appealed against the decision of the trial court dated 4th December, 2018 baring the use of evidence gathered during the pendency of the case and eventual use of the same in separate trial, which decision the High Court confirmed.

15. It was deposed that the petitioner further moved this Court in HCACEC No. 5 of 2019 challenging the trial court's decision on further disclosure of exhibits which had not been disclosed during pre-trial, which application was abandoned by the petitioner, thereby rendering this petition res judicata which should be dismissed.

16. It was contended that the issue of admissibility of documents in the trial was addressed by this court (Ngugi, J) in ACEA APPEAL No. 17/2019 where the court held that the petitioner had no right of appeal on interlocutory applications relating to admissibility or otherwise of documents in the trial before the magistrate's court. it was stated further that the issue raised in the petition had been covered in High Court Misc. ACEC Revision Application No. 20 of 2018.

17. It was denied that the prosecution intimidated DW2 and that the records of the proceedings will show that he was never at any time been subjected to any intimidation or threats and that the words spoken by the prosecution counsel complained of, were meant to stress the importance of testifying truthfully as he had opted to testify on oath and did not amount to contempt in the face of the court.

18. It was finally stated that the petitioner had not provided proof that his witnesses had failed to come to court on the basis of the alleged threats and that if one of the prosecution witnesses was in court when DW2 was being cross examined, then the same acted illegally. It was stated the petitioners illegally recorded the proceedings for the consumption of their witnesses for the purposes of witness coaching, which was against the cardinal principles of a criminal trial.

19. The court was therefore urged to dismiss the petition.

DIRECTIONS

20. Directions were issued in the matter that the petition be heard by way of written submissions which were duly filed and served. In the meantime, by an application dated 1st October 2020, the petitioner sought for orders of stay of further proceedings before the trial court, pending the hearing and determination of the petition, which application was allowed by ONYIEGO J.

APPLICATION FOR DETERMINATION

21. On 16th October, 2021, while the petition was pending for hearing, the respondent, took out a Notice of Motion in which he sought for the order that this Honourable court be pleased to certify that the petition raises substantial question of law and ordered that an even bench of judges be constituted by the Chief Justice to hear the matter.

22. The application was premised on the grounds that the petitioner was seek to have the trial before the Chief Magistrate declared a mistrial, which in effect would mean that all the resources so far deployed towards the prosecution of the case would go to waste.

23. That the issues raised in the petition regarding failure by the magistrate to record proceedings properly, touch on the integrity of the court and the judicial process and the dignity of the court and its independence in decision making, ought to be jealously guarded so as to avoid erosion of public confidence in the justice system.

24. That the petitioners seek to rely on electronic evidence purportedly collected by themselves during trial which evidence was unlawfully obtained and therefore could not be relied upon. Further the issues in the petition were res judicata, thereby calling for the court to interpret the question on jurisdiction to entertain the petition.

25. That the protection of witnesses in the cause of trial, was the duty of the trial court and the High Court should refrain from micro managing the trial court.

26. That the allegations by the petitioner that his witnesses were intimidated and threatened raises as to question how witnesses who are not on the stand were threatened yet they were expected to remain outside the court room as the matter proceeded and therefore the court need to determine the weight to attach to the evidence of witnesses who were either seated in court as other witnesses testified or who had the benefit of reviewing court proceedings recorded by the defence before they could testify.

27. That the court will be called upon to determine the role and place of discrete recording of the court proceedings by a party without leave of the trial court and whether a party who has not applied for court assistance to summon his witnesses can say that they have declined to appear in court.

28. That the court will be called upon to determine whether a declaration of mistrial would result into a violation of the victims right under Article 50 of the Constitution.

29. The application was supported by an affidavit sworn by GRACE MURUNGI, Ag. DPP in which she stated that the issues that the court will be required to determine are;

a) Whether a court record can be impugned by a party without evidence of error and omission allegedly committed by the court

b) Whether the mere fact of informing a witness during a trial that they risk being dealt with for perjury by itself would constitute a threat to the witness

c) Whether the principle of res judicata applies to criminal trials and constitutional petitions

d) Whether a party is allowed to record court proceedings without leave of the court and what is the weight if any to be attached to the record.

30. It was deposed that given the stage of the trial, it was only proper that the court rejects the petition and allow the matter to continue from where it had reached since the petitioners were entitled to right of appeal should they be convicted.

31. It was contended further that the issues raised in the petition had been previously dealt with and therefore the petition was not merited, only meant to vex the court and therefore the application for empanelment should be allowed to deal with the issues raised.

SUBMISSIONS

32. Directions were given that the parties to file written submissions on the application. On behalf of the applicant, it was submitted that the petition raised substantial issues of law as it sought the declaration of a mistrial in the subordinate court against the applicant based on recorded proceedings without leave of the court. It was contended that the materials sought to be relied upon by the petitioner to impugne the proceedings were unverifiable and the author thereof undisclosed and therefore was inadmissible.

33. It was submitted that Article 165(4) of the Constitution anticipated a grievance of such a unique facts not covered by the controlling president as in the application before the court , for which the cases , of **SIR CHANILAL vs MEHTA AND SONS LTD vs CENTURY SPINNING AND MANUFACTURING CO. AIR 1962 SC 1341, PHILOMENA MBETE MWILU vs DPP & 4 OTHERS [2018] eKLR AND OKIYA OMUTATA OKOITI & ANOTHER vs ANNE WAIGURU & 3 OTHERS [2017] eKLR** were submitted in support of the principles upon which the order may be granted .

34. It was submitted that a matter may be certified for empanelment if it raises a matter of general public importance as was stated in the cases of **HERMANUS PHILIPUS STEYN vs GIOVANNI GNECCHI- RUSCONE [2013] eKLR** and **DELMONTE KENYA LTD vs COUNTY GOVERNMENT OF MURANGA & 2 OTHERS [2016] eKLR.**

35. It was submitted that in considering an application for empanelment, the court ought to consider the matter on its own unique circumstances and whether in those circumstances an appraisal of the factual and legal matrix would establish the existence of a substantial question of law. It was stated that in the present case the integrity of Tab A. Taib SC and that of the trial court is called to question.

36. It was submitted that failure by the High Court to pronounce itself with finality on the issues could easily cripple criminal proceedings in the lower courts. It was submitted that the jurisprudence that will emerge from the court will impact greatly on the public confidence in the justice system as the issues identified were weighty and had important consequences within the criminal justice system. **THE CASE OF COUNTY GOVERNMENT OF MERU vs ETHICS AND ANTI-CORRUPTION COMMISSION [2014] eKLR** was tendered on the principles to guide the court in the exercise of discretion in the application of this nature.

37. By way of highlighting, Mr. Muteti submitted that there was the question of the interpretation by the court on the proper use of notes taken by the parties to the proceedings as against those taken by the court and the confidentially of the proceedings as was stated in the case of **ERIC GITARI v A.G & ANOTHER [2016] eKLR.**

38. It was stated that the novel issues to be determined was what would constitute a ground for mistrial and what would be the consequential order of such determination taking into account the stage of the trial, which was at the defence stage and whether a party who has a right of appeal may proceed by way of a constitutional petition.

39. On behalf of the respondent/petitioner, it was submitted that the only issue for determination was whether the petition dated 24th September, 2020 raises substantial question of law under Article 165(4) of the Constitution. It was submitted that the court can only refer a matter to the Chief Justice if it raises a substantial question of law of general public importance as was stated in the case of **Chenille Mehta (supra).** It was stated that the court in **MARTIN NYAGA & OTHERS v THE SPEAKER COUNTY ASSEMBLY OF EMBU PETITION No. 7 & 8 OF 2014** stated that substantial questions of law can be discerned from the following factors;

- ***Whether the matter is moot in the sense that a matter raises a novel point***
- ***Whether the matter by its mature requires a substantial amount of time to be disposed off***
- ***The effect of the prayers sought in the petition***
- ***The interest generated by the petition and***
- ***Whether the petition meets the threshold for the constitution of a bench under article 165 (4).***

40. It was submitted that the petition before the court concerns the issue of violation of the petitioners right and freedoms under the bills of right, but that the same had not met the threshold set in the case of **REPUBLIC vs PRESIDENT & 5 OTHERS EX- PARTE WILFRIDA ITOLONDO & 4 OTHERS [2013] eKLR.** It was contended that the application did not raise any novel point of law to warrant empanelment of a bench as the issue of mistrial was well settled by numerous judicial precedent and the statutory duty of the court to maintain true record of the proceeding settled under Section 197 of the Criminal Procedure Code.

41. It was contended that the question of admissibility of the video recording and its evidentiary value in showing failure of justice is not a substantial point of law as the same was settled under Sections 68 and 10B of the Evidence Act. It was stated that the issue of res judicata was not applicable in the petition since there no final decision on merit and the legal concept of res judicata was well settled in the Kenyan courts.

42. It was submitted that the application did not show the public interest generated by the petition to consider it as raising substantial point of law as stated in the case of **HERMANUS PHILIPUS STYEN (supra), REPUBLIC vs PRESIDENT & 5 OTHERS AND THE COUNTY (supra).** It was submitted that to make determination on whether or not to refer the matter solely on the basis of public interest and national importance would amount to elevating such matters to a different class from other disputes for which the case of **UHURU HIGHWAY DEVELOPMENT LTD vs CENTRAL BANK OF KENYA LTD. & 2 OTHERS CIVIL APPEAL No. 36 OF 1996** and **WYCLIFFE AMBETSA OPARANYA & 2 OTHER vs DPP & ANOTHER [2016] eKLR** were submitted.

43. It was finally submitted that empanelment in this matter will cause a delay in its conclusion and that the application was an afterthought as it ought to have been filed at the preliminary stage rather than after the parties had filed their responses and submission and directions given on hearing. It was finally submitted that the issues raised by the applicant were issues that confront judicial officers on regular basis and that the issues raised in the petition were already legally established and a single judge can apply the matter as was stated in the case of **J. HARRISON KINYANJUI vs THE A.G & ANOTHER [2012] eKLR .**

44. It was stated that the application was without merit and should therefore be dismissed and the petition fixed for hearing.

ANALYSIS AND DETERMINATION

45. The factual background and basis of the application is not disputed. Simply put, the petition arises out of the conduct of the proceedings before the trial court which the petitioner complained about as a result of which he has approached the court for a declaration of a mistrial. The applicant on the other hand feels that the issues raised in the petition are so fundamental that the matter ought to be heard by an uneven number of Judges.

46. The law on the issue of reference under the provision of Article 165 (4) of the constitution is now well settle in Kenya, the Supreme Court having pronounced itself thereon in the case of **HERMAN PHILIPUS STEYN (supra)** as follows: -

"[60] In this context, it is plain to us that a matter meriting certification as one of general public importance, if it is one of law, requires a demonstration that a substantial point of law is involved, the determination of which has a bearing on the public interest. Such a point of law, in view of the significance attributed to it, must have been raised in the Court or Courts below. Where the said point of law arises on account of any contradictory decisions of the Courts below, the Supreme Court may either resolve the question, or remit it to the Court of Appeal with appropriate directions. In summary, we would state the governing principles as follows:

> ***(I) for a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest;***
>
> ***(ii) where the matter in respect of which certification is sought raises a point of law, the intending appellant must demonstrate that such a point is a substantial one, the determination of which will have a significant bearing on the public interest;***
>
> ***(iii) such question or questions of law must have arisen in the Court or Courts below, and must have been the subject of judicial determination;***
>
> ***(iv) where the application for certification has been occasioned by a state of uncertainty in the law, arising from contradictory precedents, the Supreme Court may either resolve the uncertainty, as it may determine, or refer the matter to the Court of Appeal for its determination;***
>
> ***(v) mere apprehension of miscarriage of justice, a matter most apt for resolution in the lower superior courts, is not a proper basis for granting certification for an appeal to the Supreme Court; the matter to be certified for a final appeal in the Supreme Court, must still fall within the terms of Article 163 (4)(b) of the Constitution;***
>
> ***(vi) the intending applicant has an obligation to identify and concisely set out the specific elements of "general public importance" which he or she attributes to the matter for which certification is sought .***

46.This decision was adopted by the court of appeal in the case of OKIYA OMTATA OKOITI & another vs ANNE WAIGURU< THE CABINATE SECRETARY FOR DEVOLUTION AND PLANNING (supra)having confirmed the principles as set out by several superior court in the following terms: 34. The High Court has had occasion to consider what constitutes "a substantial point of law" for purposes of Article 165(4) of the Constitution. We sample a few of those decisions. In J. Harrison Kinyanjui v Attorney General & Another (above) Majanja, J. in his judgment delivered on 27th September 2012 stated, correctly in our view, that "it is left to each High Court judge to satisfy himself or herself that the matter is substantial to the extent that it warrants reference to the Chief Justice to appoint an uneven number of judges."

35. The learned Judge was however not persuaded that our courts should emulate a standard used by the Supreme Court of India in the case of Sir Chunilal V. Mehta and Sons Ltd vs. The Century Spinning and Manufacturing Co. Ltd 1962 AIR 1314 1962 SCR Supl. (3) 549 to determine whether a question of law is a substantial one or not. Although the test in that case was applied in the context of an appeal from a decision of the High Court declining a certificate of fitness for appeal to the Supreme Court, it is nonetheless instructive. The Supreme Court of India held that:

> ***"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it … directly and substantially affects the rights of the parties and if so settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by The Highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably whether it is either an open question in the sense that it is not finally absurd the question would not be a substantial of law."***

36. In Judge Majanja's view, to adopt that approach would lead to an untenable situation where "every question concerning our Constitution would be a substantial question of law" with the undesirable result that it "would burden judicial resources to the extent that the value of obtaining justice without delay under Article 159(2)(b) would be imperiled." We do not subscribe to this later view. We do not think that the application of that standard would result in every case concerning the Constitution becoming a substantial question of law. On the contrary, that test provides a sieve, to sift those cases that raise a substantial question or questions of law from those that do not.

37. Subsequently, in a ruling delivered on 20th May 2014 in the case of County Government of Meru vs. Ethics and Anti-Corruption Commission [2014] eKLR, Majanja, J, when dealing with an application to certify a matter as raising a substantial point of law for purposes of Article 165(4), stressed, correctly in our view, that the circumstances of each case must be considered. He stated:

> ***"9. The principles which govern the exercise of discretion in an application such as the one before the court can be distilled as follows;***
>
> ***a. The grant of a certificate under Article 165(4) of the Constitution is an exception rather than the rule.***
>
> ***b. The substantial question of law is a question to be determined in the circumstances of the case. Substantial issue of***

law is not necessarily a weighty one or one that raises a novel issue of law or even one that is complex. Many provisions of our Constitution are untested and bring forth novel issues yet is not every day that we call upon the Chief Justice to empanel a bench of not less than three judges.

c. Public interest may be considered but is not necessarily a decisive factor. It is in the nature of petitions filed to enforce, the provisions, of the Constitution to be matters of public interest generally.

10. The court ought to take into account other provisions of the Constitution, the need to dispense justice without delay having regard to the subject matter and the opportunity afforded to the parties to litigate the matter upto the Supreme Court." [Emphasis]

38. Korir, J. endorsed that approach in his ruling delivered on 11th June 2014 in Samuel Sabuni and 2 others vs. Court Martial and 8 others Petition No. 235 of 2014

39. On his part, Odunga, J. in a ruling delivered on 6th June 2013 in Republic vs. President & 5 others Ex parte Wilfrida Itolondo & 4 others [2013] eKLR, embraced the test used by the Supreme Court of India in Sir Chunilal V. Mehta and Sons Ltd vs. The Century Spinning and Manufacturing Co. Ltd. Later in a ruling delivered on 16th June 2014 in Martin Nyaga and others v Speaker County Assembly of Embu and 4 others and Amicus Curiae, Odunga, J. cautioned that:

"…The decision whether or nor to empanel a bench of more than one Judge ought to be made only where it is absolutely necessary and in strict compliance with the relevant Constitutional and statutory provisions. In this country we still do not have the luxury of granting such orders at the whims of the parties. Judicial resources in terms of judicial officers in this country are very scarce. Empanelling such a bench usually has the consequence of delaying the cases which are already in the queue hence worsening the problem of backlogs in this country. I therefore associate myself with the position taken by Majanja, J. in Harrison Kinyanjui vs. Attorney General & Another [2012] eKLR that the meaning of "substantial question" must take into account the provisions of the Constitution as a whole and the need to dispense justice without delay particularly given specific fact situation."

40. In Okiya Omtatah Okoiti and another vs. President Uhuru Muigai Kenyatta and 4 others, Petition No. 531 of 2015, Lenaola, J. (as he then was) in his ruling delivered on 5th February 2016[1] after reviewing earlier decisions had this to say:

"The different approaches taken by the High Court as shown above would make it clear that whether a substantive question of law arises under 165(4) is dependent on the circumstances of a particular case. Furthermore, that the list of relevant factors is not exhaustive and that the presence or absence of one is not necessarily decisive in a particular case. Ultimately, the presiding judge has to exercise his or her discretion on whether, on his or her appraisal of the factual and legal matrix, a substantial question of law arises."

41. We are fully in agreement with that approach. The position we take whilst embracing the test by the Supreme Court of India in Sir Chunilal V. Mehta and Sons Ltd vs. The Century Spinning and Manufacturing Co. Ltd is that each case must be decided on its own facts and circumstances. No factor alone is decisive. A party seeking certification must lay a basis for the certification. Further, certification under Article 165(4) of the Constitution is a matter in the judicial discretion of the court. Such discretion must however, be exercised on sound basis.

47. I have extensively quoted this Supreme Court decision as this this same settles this issues which the court ought to consider when faced by an application of this nature and find nothing more useful to add to the reasons figures rendition.

48. Applying the principles set out herein by the two courts, I now turn to the application before the court. The petitioner before the court has sought for a declaration of the trial before the lower court as a mistrial. The principles upon which a mistrial may be declared are well settled in our jurisprudence. The effect of a declaration of mistrial by the court is also well settled. The trial is rendered invalid through an error in the proceedings Blacks Law Dictionary 9th Edition defines it as "***a trial that the Judge brings to an end, without determination on merit, because of procedural error or serious misconduct occurring during proceeding."***

49. I would therefore agree with the submissions by the petitioner that all the issues raised by the applicant can be and have been successfully handled by a single Judge of the High Court exercising the jurisdiction conferred upon the court by the provision of Article 165(2) (b) of the Constitution and that the applicant failed to identify any novel point of law raised in the petition which would require empanelment.

50. This court in the case of **R V PHILIP ONDARA ONYANCHA [2017] eKLR** set out the condition for which a mistrial may be declared and stated that it will be where the procedures defect or error is likely to cause or has caused a gross miscarriage of justice to a victim the accused, the victims or the prosecution. The court of appeal in the case of **R. V. EDWARD KIRUI [2014] eKLR** has further settled the issues of when to declare a mistrial and court going to the merit of the petition. I do not see any novel point of view raised in the petition herein.

51. Further the effect of the declaration of a mistrial does not depend on this stage at which the trial has reached as the court will decide at the end of the day what to do with the trial so declared a mistrial. This issue does not meet the Indian test set out in **SANTOSH HAZARI V PURUSHOTTAN TIWAR [2001] B SCC 179** of the matter directly or indirectly affects substantial rights of the parties, the question of general public importance and an issue that has not previously been settled by the court or calling for an alternative view.

52. The issues raised as regards the conduct of the trial before the lower court and the issue of the recording of the proceedings by the petitioner without leave of the court to my mind and without going to merits of the petition, are issues which do not require an empanelment

as they are pure of administrative nature and does not raise any complex issue of law or facts.

53. I consequently find no substantial point of law raised in the petition and therefore find no merit on the application dated 16th November, 2020, which I hereby dismiss and direct that the main petition be fixed for hearing on merit.

54. The cost shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF FEBRUARY, 2021

.....

J. WAKIAGA

JUDGE

In the presence of :-

Miss Mangla for petitioner

Miss Mwangi for Muteti for Respondent

Ms Nyawira for Orengo for Petitioner