Disney Insurance Brokers Ltd v Joho & 4 others (Petition 37 of 2020) [2021] KEHC 353 (KLR) (17 December 2021) (Ruling)

Neutral citation: [2021] KEHC 353 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

PETITION 37 OF 2020

JM MATIVO, J

DECEMBER 17, 2021

BETWEEN

DISNEY INSURANCE BROKERS LTD .... PETITIONER

AND

ALI HASSAN JOHO & 4 OTHERS .... RESPONDENT

RULING

1. This ruling disposes the Preliminary Objection dated 21st May 2021 filed by the 1st, 2nd and 3rd Respondents and an application dated 12th November 2020 filed by the 4th Respondent. The common thread between the two is that both invite this court to strike out the instant Petition. The only difference is that whereas the Preliminary Objection seeks to have the entire Petition struck out, the 4th Respondent's application seeks to have the case against him dismissed or in the alternative his name be struck out from the Petition.

2. Before examining the grounds in support of the Preliminary Objection and the application, I find it useful to albeit briefly, highlight the Petitioner's case as I glean it from the Petition. This approach will put both objection and the application into a proper perspective.

3. For starters, the genesis of the Petitioner's grievance is a judgment dated 28th February 2018 rendered in its favour in High Court Civil Suit No. 1 of 2013 decreeing that the Mombasa County Government pays it Kshs. 58,958,263/= plus interests and costs. It is averred that a decree and a Certificate of Order Against the County Government of Mombasa was issued and served as required. Also, the Petitioner avers that no appeal or review has been preferred against the said judgment, and that the Petitioner filed Judicial Review application number 63 of 2018 and obtained an order of Mandamus compelling the County Government of Mombasa to satisfy the decree. Further, that after the County Government of Mombasa failed to comply with the said orders, the Petitioner obtained Warrants of Arrest on 25th July 2019 against the 2nd and 3rd Respondents, namely, Asha Abdi and Mariam Mbaruk respectively.

4. The nub of the instant Petitioner is that it has been unable to enforce the said warrants owing to concerted frustrations by the Respondents and despite demand, the County Government of Mombasa has refused to pay the said sum standing at Kshs. 108,234,713/= inclusive of accrued interested.

5. As a result of the above failure, the Petitioner avers that the Respondents have failed to put into consideration the best interests of the County Government of Mombasa and the tax payers by paying the said sum, thereby allowing huge amounts of interests to accrue against the County Government of Mombasa in breach of section 149 of the *Public Finance Management Act*[1] and Article 10 of the *Constitution*. It contends that the 1st Respondent has failed to comply with court decrees thereby occasioning loss of public funds by way of accrued interests and by failing to safeguard public.

6. Additionally, the Petitioner avers that the 1st Respondent has failed to discharge his official functions as the Governor of Mombasa County and has violated Articles 10, 73, 74, 75 of the Constitution and sections 5, 7, 8 and 9 of the *Public Servants (Values and Principles) Act*. As a consequence of the foregoing, the Petitioner claims it has suffered loss as enumerated at paragraph 21 of the Petition. It prays for orders that the Respondents have violated Articles 10, 73, 201 and 207 of the Constitution, so they are unfit to hold office; a declaration that the Respondents failed to have regard to personal integrity, character, competence and suitability as state officers in the County Government of Mombasa; and costs of the Petition be awarded to the Petitioner.

The 4th Respondent's application

7. The 4th Respondent filed an supplication dated 12th November 2020 seeking an order that the Petition against the 4th Respondent be dismissed with costs or in the alternative the 4th Respondent be struck out from these proceedings.

8. The application is premised on the grounds that this suit offends section 10 of the *Office of the County Attorney Act* and section 113 of the *County Governments Act*.[2] Additionally, he states that he has never been a party to any of the proceedings giving rise to this Petition. Further, the 4th Respondent states that no grounds have been pleaded against him in the Petition nor is he the accounting officer within the meaning of section 2 (1) (b) as read with sections 103 (2) of the *Public Finance Management Act*.[3]

The 1st, 2nd, and 3rd Respondents' Notice of Preliminary Objection

9. The other hurdle erected in front of this Petition is the 1st, 2nd, and 3rd Respondent's Notice of Preliminary Objection dated 21st May 2021 seeking to have this Petition struck out. They state that this Petition seeks to circumvent the alternative procedures and mechanisms provided for by the Constitution and the law because: -

    i. The Ethics and Anti-Corruption Commission is mandated by the Constitution and the law to deal with issues relating to ethics and integrity of public officers under chapter 6 of the Constitution.

[1] Act No. 18 of 2012.

[2] Act No. 18 of 2012.

[3] Act No. 18 of 2012.

ii. That Section 13 of the Public Service (Values and Principles) Act[4] provides adequate redress to address matters falling under the said act.

iii. Article 35 of the Constitution and Section 23 (3) of *Access to Information Act*[5] allows any aggrieved person to lodge a complaint with the Commission on Administrative Justice established under Section 3 of the *Commission on Administrative Justice Act*, 2011 which can address the alleged failure to provide information

They contend that this Petition seeks to usurp the Constitutional powers and functions granted to the various independent commissions and other legal bodies described above and created to deal with these issues thus undermining the constitutional structure and order.

a. That the Petition is an omnibus, its prejudicial to the 1st respondent and is an abuse of the courts judicial process whose natural consequence is the violation of the 1stRespondent's constitutional right to due process.

b. That a petition must set out with reasonable precision the acts or omissions as well as the provisions alleged to be violated, hence, it does not show the violated provisions with precision.

c. That the Petition is fatally defective and ought to be struck out with costs against the 1st 2nd and 3rd Respondents.

The 4th Respondent's Replying affidavit

10. The 4th Respondent, the Acting County Attorney, Mombasa County Government, filed a Replying affidavit to the Petition. The crux of the affidavit is that it is a misdirection to cite the County Attorney in these proceedings because his role is not to pay legal debts or to facilitate such payments but it's limited to rendering legal services to the various departments within the County Government of Mombasa. Further, section 10 of the Office of the County Attorney Act, 2020 protects the County Attorney personal liability in respect of any proceedings in a court of law or in the course of discharging his functions.

The 4th Respondents advocates submissions

11. In his submissions, Mr. Tajigbhai, counsel for the 4th Respondent submitted that the functions of the County Attorney under Section 7 of the Office of the County Attorney Act[6] do not include payment judgement debts or liabilities and that the Petitioner is premature and it does not demonstrate that the 4th Respondent has infringed its rights.

The 1st, 2nd and 3rd Respondent's advocates submissions

12. The 1st, 2ndand 3rd Respondent's counsel cited the definition of a Preliminary Objection in *Mukisa Biscuit Manufacturing Company v West End Distributors Ltd & Another*[7] which defined a Preliminary Objection as comprising of a pure point of law and argued that the instant objection meets the said test. He argued that the doctrine of exhaustion of statutory remedies provides for the need to explore all the

[4] Act No. 1 of 2015

[5] Act No. 31 of 2016.

[6] Act No. 14 of 2020.

[7] {1969} E.A. 696.

available mechanisms of dispute resolution before approaching the courts. To buttress his argument, counsel cited *Republic v Kenya Revenue Authority Ex Parte Keycorp Real Advisory Limited*[8] which held that where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should strictly be followed.

13. To fortify his argument, counsel cited *Boniface Nyamu v Mike Sonko Mbuvi*[9]which held that the alternative primary mechanisms decreed by law must be pursued before approaching the court. Additionally, he cited *Krystalline Salt Limited v Kenya Revenue Authority*[10] which underscored the proposition that where there is an alternative remedy, or where Parliament has provided a statutory appeal process, it is only in exceptional circumstances that an order for Judicial Review would be granted. He submitted that the Petitioner rushed moved to this court in violation of the doctrine of exhaustion. He argued that there are various mechanisms which can address Petitioner's grievances such as the Ethics and Anti-Corruption Commission. He cited Francis Curukia v Peter Gatirau Munya & 2 others[11] and submitted that there are established procedures and institutions under the Constitution such as the *Leadership and Integrity Act*[12] and the *Ethics and Anti-Corruption Commission Act*[13]which can address the allegations cited in this Petition. He submitted that this Petition is incompetent for avoiding the established primary alternatives including mechanisms provided under Article 243 of the Constitution.

14. Counsel submitted that this Petition seeks to usurp the Constitutional powers and functions granted to the various independent commissions and other legal bodies bestowed with the necessary powers to address the allegations. (Citing *Francis Curukia v Peter Gatirau Munya & 2 others*[14]). He submitted that the courts should not to usurp the powers of other validly constituted bodies and cited *In the Matter of the Mui Coal Basin Local Community*[15] in support of the proposition that the rationale for the doctrine of exhaustion is based on sound constitutional policy embodied in Article 159 of the Constitution. He cited *Beekey Supplies Ltd & Ano v Attorney General & Ano* [16] which underscored the need for parties not to rush to court where a tribunal is seized of powers to grant a remedy. He submitted that the Petitioner has an alternative remedies as stated above to ventilate its grievance and urged this court to strike out the Petition.

The Petitioner's advocates submissions

15. The Petitioner's counsel's position is that this Petition raises questions touching on the 1st to 4thRespondents' integrity, particularly the manner in which they conducted the affairs of Mombasa County Government and alleged breach of Articles 10 and 47 of the Constitution.

8 {2019} e KLR.

9 {2019} e KLR.

10 {2019} e KLR.

11 {2017} e KLR.

12 Act No. 19 of 2012.

13 Act No. 22 of 2011

14 {2017} e KLR.

15 {2015} e KLR.

16 {2017} e KLR.

16. Counsel submitted that a Petition brought under the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013[17] cannot be struck out easily, and a court of law should be slow in striking out pleadings summarily. He argued that the Preliminary objection is convoluted, it's not plain, and it has not been disclosed which other alternative procedures the Petitioner could have and why it overrides the constitutional duty of the court to determine a constitutional Petition. Further, counsel submitted that whether the Petition is an omnibus is a matter of evidence. He submitted that the Petition carefully sets out the provisions of the Constitution alleged to have been violated. Lastly, counsel submitted that striking out a Petition is a draconian step which should only be deployed rarely and in very clear cases. He urged the court to dismiss the Preliminary objection and allow the case to proceed for hearing.

Determination

17. A useful starting point is to underscore the fact that before me is a constitutional Petition expressed under the provisions of Articles 10, 22, 23, 27, 28, 35, 40, 48, 50, 176(1), 201 and 227 of the Constitution, section 149 of the *Public Finance Management Act*, sections 5, 7, 8 and 9 of the Public Service (Values & Principles) Act, and alleged contravention of the Public Office Ethics Act.

18. It is also important to mention that Constitutional Petitions are governed by the Constitution of Kenya *(Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*[18] (the Rules) which provide for the form of Petitions and the informality rule. In addressing the two hurdles erected in front of this Petition, the overriding objective of the rules as provided under Rule 3 which is to facilitate access to justice for all persons as required under Article 48 of the Constitution must be kept in mind. In addition, rule 3(3) provides that the Rules must be interpreted in accordance with Article 259 (1) of the Constitution and shall be applied with a view to advancing and realizing the- (a) rights and fundamental freedoms enshrined in the Bill of Rights; and (b) values and principles in the Constitution. Also relevant is sub-rule 4 which provides that in exercise of its jurisdiction under the Rules, the court shall facilitate the just, expeditious, proportionate and affordable resolution of all cases.

19. The gravamen of the 1st to the 3rd Respondent's Preliminary Objection is premised on the doctrine of exhaustion. With tremendous respect, the 1st, 2nd and 3rd Respondents grossly misconstrued the doctrine of exhaustion of remedies which prohibits a party from applying for judicial review of an administrative action where the enabling statute provides for a dispute resolution mechanism.

20. For the sake of brevity, it is important to underscore that the question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks Judicial Review of that action without pursuing available remedies before the agency itself. The decision, acts or omission under challenge were not rendered by the agencies cited by the 1st, 2nd and 3rd Respondents. Simply put, the Petitioner is not challenging a decision rendered by the Ethics and Anti-Corruption Commission or an institution established under the Public Service (Values and Principles) Act[19] or a body established under the *Access to Information Act*. The Petitioner is not aggrieved by a decision rendered by any of the institutions cited by the 1st, 2ndand 3rd Respondents. This being the correct position, it is beyond peradventure that the attempt to invoke the doctrine of exhaustion of administrative remedies in the circumstances of this case is innately erroneous.

[17] Legal Notice No. 117 of 2013.

[18] Legal Notice No. 117 of 2013.

[19] Act No. 1 of 2015

21. The other reason why the 1st, 2nd and 3rd Respondent's misunderstanding of the doctrine of exhaustion is manifest is because they failed to note that before this court is not a judicial review application seeking to review an administrative action undertaken by any the agencies, they referred, but an alleged breach of the Constitution and constitutional rights cited by the Petitioner all of which fall within the constitutional mandate of this court. The authorities cited relate to judicial review applications and failure by the applicants in the said cases to exhaust the dispute resolution mechanisms established under the enabling statutes impinged in the cited cases which is not the case here. Before me is not a dispute under any of the statutes cited but an alleged breach of clear provisions of the statutes and the Constitution. Before me is a Constitutional Petition citing specific breaches of the Constitution and statutory provisions.

22. Also, the 1st, 2nd and 3rd Respondents in their quest to upset this Petition forgot the clear provisions of section 9 of the *Fair Administrative Action Act*[20] which provides a statutory underpinning to the doctrine of exhaustion. It provides: -

> 9. Procedure for judicial review
>
> (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.
>
> (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
>
> (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
>
> (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
>
> (5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.

23. By now, it is beyond doubt that the above provision clearly prohibits a court from reviewing an administrative decision where the statute provides for a dispute resolution mechanism. Before me is a constitutional Petition not a judicial review application. The attempt to invoke the doctrine of exhaustion in these proceedings is misguided and must fail.

24. Notwithstanding my above finding, I will now address the 1st, 2nd and 3rd Respondent's invitation to this court to strike out the Petition and also the invitation by the 4th Respondent to strike out the case against him or dismiss him from these proceedings. It is basic law that decided cases are in agreement on the applicable principles to guide the courts in striking out of pleadings. These principles were set out

[20] Act No. 4 of 2015.

with sufficient clarity in *D T Dobie & Company (K) Ltd v Muchina.*[21] Principally, no suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. It has not been shown that the alleged defect (if any) in the instant Petition cannot be cured by way of an amendment.

25. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it. The rationale for this reasoning is due to a realization that the exercise of the powers of summary procedure are draconian, coercive and drastic. And because a party may thereby be deprived of his right to a plenary trial, the court exercises those powers with the greatest care and circumspection and only in the clearest of cases as regards the facts and the law. The summary procedure should therefore only be adopted when it can be clearly seen that a claim or case is clear and beyond doubt unarguable and the judicial system would never permit a party to be driven from the judgement seat without any court having considered his right to be heard, except in cases where the cause of action was obviously and almost incontestably bad.

26. Striking out a pleading is a draconian act which may only be resorted to in plain cases. Whether or not a case is plain is a matter of fact. A court may only strike out pleadings where they disclose no semblance of a cause of action or defence and are incurable by amendment[22] or where a pleading is vague or frivolous. A pleading or an action is frivolous when it is without substance or groundless or fanciful and is vexatious when it lacks bona fides and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble or expenses.[23] A pleading which tends to embarrass or delay fair trial is a pleading which is ambiguous or unintelligible or which states immaterial matters and raises irrelevant issues which may involve expenses which will prejudice the fair trial of the action.[24] In *Madison Insurance Company Limited v Augustine Kamanda Gitau*[25] the court addressed the grounds for striking out a pleading with admirable clarity. It stated: -

> 11. The power to strike out pleadings must be sparingly exercised and it can only be exercised in clearest of cases. If a pleading raises a triable issue even if at the end of the day, it may not succeed then the suit ought to go to trial. However, where the suit is without substance or groundless of fanciful and or is brought is instituted with some ulterior motive or for some collateral one or to gain some collateral advantage, which the law does not recognise as a legitimate use of the process, the court will not allow its process to be a forum for such ventures. To do this would amount to opening a front for parties to ventilate vexatious litigation which lack bona fides with the sole intention of causing the opposite party unnecessary anxiety, trouble and expense at the expense of deserving cases contrary to the spirit of the overriding objective which requires the court to allot appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

[21] {1982} KLR 1.

[22] See *Co-Operative Merchant Bank Ltd. v George Fredrick Wekesa* Civil Appeal No. 54 of 1999.

[23] See *Kivanga Estates Limited v National Bank of Kenya Limited* {2017} e KLR.

[24] See Trust Bank Limited v Amin Company Ltd & Another (2000) KLR 16.

[25] {2020} e KLR.

27. In *Yaya Towers Limited v Trade Bank Limited (In Liquidation)*[26] the court stated: -

> "A plaintiff is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant can demonstrate shortly and conclusively that the plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial…It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved…If the defendant assumes the heavy burden of demonstrating the claim is bound to fail, he will not be allowed to conduct a mini trial upon affidavits…It is not the length of arguments in the case but the inherent difficulty of the issues, which they have to address that, is decisive… The issue has nothing to do with the complexity or difficulty of the case or that it requires a minute or protracted examination of the documents and facts of the case but whether the action is one which cannot succeed or is in some ways an abuse of the process of the Court or is unarguable…Where the plaintiff brings an action where the cause of action is based on a request made by the defendant he must allege and prove inter alia, both the act done and the request made for doing such an act. In the absence of any request shown to have been made by the defendant in the particulars delivered of such allegation, it would not be possible for the plaintiff to prove any request made by the defendant and without this the essential ingredient of the cause of action cannot be proved and the plaintiff is bound to fail…No suit should be summarily dismissed unless it appears so hopeless that it is plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment."

28. It has not been shown that this is a proper case for the court to issue such draconian orders. As stated above, striking out a pleading is a drastic and draconian step that should be resorted to in and clear circumstances where a pleading is hopeless and incurably defective. Even then, it is a jurisdiction which must be exercised with great care and circumspection because it impacts on the right to access justice and the right to be heard.

29. In addition to the above time-tested principles, it is also paramount to remember that this is s constitutional Petition governed by Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013[27]. A useful point of reference to be kept in mind is the overriding objective of the rules as provided under Rule 3 which is to facilitate access to justice for all persons as required under Article 48 of the Constitution. Courts are constitutionally obligated to adopt an approach which prefers determination of cases on merits as opposed to procedural technicalities. Simply put, to be preferred is an approach that places emphasis on determination of cases on merits as opposed to undue technicalities. Courts should critically examine the meaning of the term "on the merits," how the principle has permeated our procedural theory and architecture, courtesy of our transformative, liberal and progressive Constitution and why, despite the allure of the procedural rules, we should prefer the "determination on the merits" principle.

30. Perhaps, I should clarify that a resolution "on the merits" occurs when a lawsuit is decided according to procedural rules that (1) are designed, interpreted, and implemented to give the parties a full

[26] Civil Appeal No. 35 of 2000.

[27] Legal Notice No. 117 of 2013.

opportunity to participate in presenting the proofs and reasoned arguments on which a court can decide a case, and (2) do not systematically affect the outcomes of cases due to the intended operation of a principle other than the principle of allowing the parties a full opportunity to participate. One thing is beyond argument, that is, the principle of resolving cases on their merits is now deeply ingrained in our Constitution. It's no longer a mere common law principle. Major aspects of the procedural laws both criminal and civil flow directly from the constitutional dogma that parties deserve a full opportunity to participate in shaping decisions about their claims and defenses.

31. The other reason why I am persuaded that both the Preliminary Objection and the application must fail also flows from the Constitution. The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013[28] were promulgated pursuant to Article 22 of the Constitution to enforce the Bill of Rights. Perhaps I should mention that Article 19 of the Constitution provides: -

> 19. Rights and fundamental freedoms
>
> (1) The Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies.
>
> (2) The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
>
> (3) The rights and fundamental freedoms in the Bill of Rights—
>
> (a) belong to each individual and are not granted by the State;
>
> (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with this Chapter; and
>
> (c) are subject only to the limitations contemplated in this Constitution.

32. Due to the sanctity, it is clothed with, the Constitution deserves to be accorded utmost deference and veneration. It must enjoy a sufficient degree of permanence and stability. As was opined by in *Harrikissoon v Attorney General of Trinidad and Tobago*[29] it is unwise; and can only lead to undesired consequence when "... the Constitution as the supreme law is treated with little sympathy or scant respect, or is ignored without strong and compelling reasons."

33. For so long as the Constitution stands, the right to challenge the constitutional validity of any act, conduct, decision or omission by any person will remain, as will this court's power and its duty, when properly called upon to test the validity of the challenged act, conduct, decision or omission on merit. The Constitution is not an ordinary document, it is a sacred legal instrument, which is the fundamental and supreme law of the country. It is the embodiment of the expression of the people's vision, values, will, and aspirations. It governs the three arms of government or State – namely the Executive, Legislature, and the Judiciary – as much as it governs the ordinary individual and the

[28] Legal Notice No. 117 of 2013.

[29] {1981} AC 265.

society at large. Crabbe V.C.R.A.C. in *Understanding Statutes*[30] describes the Constitution as the fundamental law; and so, it:-

a. "Contains the principles upon which the government is established;

b. regulates the powers of the various authorities it establishes;

c. directs the persons or authorities who shall or may exercise certain powers;

d. determines the manner in which the powers it confers are to be confined or exercised; and

specifies the limits to which powers are confined in order to protect individual rights and prevent the abusive exercise of arbitrary power."

34. So, when a person approaches this court under Article 22 of the Constitution or under any constitutional provision challenging the constitutional validity of any act, conduct or omission or suitability or any person to hold office, the jurisdiction of this court to entertain such a grievance cannot be easily ousted. Courts are required to hoist high the fundamental rights and freedoms. The alleged breach of the constitution implicated in this Petition warrant determination on merits. The draconian orders sought in the objection and the application are totally unmerited. The upshot is that the 1st, 2nd and 3rd Respondent's Preliminary Objection dated 21st May 2021 and the 4th Respondent's application dated 12th November 2020 are hereby dismissed with no orders as to costs.

Orders accordingly

SIGNED, DATED AND DELIVERED AT MOMBASA (VIRTUALLY) THIS 17 TH DAY OF DECEMBER 2021.

JOHN M. MATIVO

JUDGE

30 Cavendish Publishing Ltd., 1994), Crabbe V.C.R.A.C. (the Parliamentary Counsel who was placed in the unenviable position of drafting the 1966 pigeonhole Constitution of Uganda), at p.129,