



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

MILIMANI COMMERCIAL COURTS

(FORMERLY KAJIADO HCCC NO. 14 OF 2019)

HCCC NO. 121 OF 2019

HAIDCO LIMITED.....PLAINTIFF/APPLICANT

VERSUS

KIPETO ENERGY LIMITED.....DEFENDANT/RESPONDENT

AND

JAMII BORA BANK.....INTERESTED PARTY/RESPONDENT

RULING

1. Although there are two Applications before this Court for determination, a resolution of one determines the other. So I first consider the Application of 14th May 2018.

2. The unspent prayer of that motion is:-

1. THAT this Honourable Court be pleased to issue Temporary Injunctive Orders against the Defendant and/Interested Party either by themselves or through their agents or other persons acting through them from releasing, issuing, paying to the Defendant and/or any other party in rem the Performance Bond for USD 569,511.17 in respect of the Contract dated 23rd March 2018 between the Plaintiff and the Defendant for construction and Building works pending the hearing and determination of the suit.

3. This Court must, this early, point out what appears to be some difficulty in the manner in which the Application is brought when considered in the context of the Complaint filed herein.

4. After setting out what it considers to be its cause of action Haidco Limited (the Plaintiff or Haidco) states as follows (Paragraph 10).

“The Plaintiff avers that it is aware that the contract provides for Arbitration in the United Kingdom but it is only just if the Plaintiff seeks for an interim relief before the High Court as interim measure of protection”.

5. That relief is the one available under the provisions of Section 7 of the Arbitration Act which reads:-

“(1) It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.

(2) Where a party applies to the High Court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the High Court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application”.

Indeed, in the face of the Application, the provisions of Section 7 are invoked.

6. Now, notwithstanding that the stated objective of the entire proceedings is to provide Haidco with a platform for seeking interim measures

of protection, it seeks the following reliefs in the suit:-

- a) Permanent Injunctive orders against the Defendant and/interested party either by themselves or through their agents or other persons acting through them from releasing, issuing, paying to the Defendant and/or any other party in rem the Performance Bond for USD 569,511.17 in respect of the Contract dated 23rd March 2018 between the Plaintiff and the Defendant.
- b) An order of specific performance of the contract directing the Defendant to honour the contract till completion of the building works.
- c) In the alternative and without prejudice to the above general damages for the breach of the contract.
- d) Costs of the suit; and
- e) Any other order the Court deems fit.

7. Once Haidco admits that the dispute herein is for Arbitration then the prayers sought in the Plaint can only be granted by the Arbitral Tribunal to which the dispute shall be referred.

8. But in its final arguments to Court, counsel appearing for Haidco reiterated that these proceedings were brought under the umbrella of Section 7 of the Arbitration Act yet that is not the end of the matter as to the true nature of the Application before Court.

9. In reacting to the proceedings, Kipeto Energy Limited (the Defendant or Kipeto) entered appearance on 7th June and filed a Defence on the same day. Because of the filing of Defence, Haidco now takes the position that Kipeto has waived its right to insist on the matter going to arbitration and cites the Court of Appeal decision in Mt. Kenya University v Step Up Holdings (K) Ltd [2018] eKLR where it held:-

“The appellant herein entered appearance, and then responded to the respondent’s application for injunction before filing the application seeking an order for reference to arbitration. Critically the appellant’s response to the respondent’s application for injunction amounted to the taking of a procedural step in the matter before the initiation of the reference process”.

10. The reaction by Kipeto, and this is borne out by the Defence, is that save for the issue relating to the Defendant’s right to call up the performance Bond under the contract, the other disputed matters and alleged breaches of the contract are matters for Arbitration. So there is unanimity that the main dispute belongs to arbitration.

11. In my view, the nature of the Application must be construed as presented and characterized by Haidco itself. That is that it was brought under the auspices of Section 7 of the Arbitration Act for measures of interim protection, this is because there is convergence by both sides that the gravamen of the dispute which is whether there is breach of contract is a matter to be dealt with at Arbitration.

12. Once it is clear that the Notice of Motion before Court is a Section 7 application, then the manner in which this Court is to approach it is that famously stated by Nyamu J. A in Safaricom Limited v Ocean View Beach Hotel Limited & 2 others[2010] eKLR:-

“Interim measures of protection in arbitration take different forms and it would be unwise to regard the categories of interim measures as being in any sense closed (say restricted to injunctions for example) and what is suitable must turn or depend on the facts of each case before the Court or the tribunal – such interim measures include, measures relating to preservation of evidence, measures aimed at preserving the status quo measures intended to provide security for costs and injunctions. Under our system of the law on arbitration the essentials which the court must take into account before issuing the interim measures of protection are:-

1. The existence of an arbitration agreement.
2. Whether the subject matter of arbitration is under threat.
3. In the special circumstances which is the appropriate measure of protection after an assessment of the merits of the application”
4. For what period must the measure be given especially if requested for before the commencement of the arbitration so as to avoid encroaching on the tribunal’s decision making power as intended by the parties”.

13. A brief background to the dispute.

14. On 23rd March 2018, Haidco entered into a contract with Kipeto for the construction of houses at a consideration of USD 3,796,741.13 Haidco states that some terms of the contract were:-

- i The accepted contract amount was USD 3,796,741.13.
- ii The commencement date was 8th May 2018 when the Notice to proceed was issued and was last for duration was for six (6) months (*sic*).
- iii The Plaintiff would issue the Defendant with a Performance Bond, Advance payment Bond by a Prime Commercial Bank.

iv The Defendant would pay the Plaintiff all the amounts in the payment certificate that are agreed between the parties as being due and payable within 7 days of such agreement.

v The Plaintiff would be entitled to an extension of the Construction period in respect of a section or the works and the extent of that completion or the works due to a variation of works.

vi In the event the contract was terminated by the Defendant, the Architect would arrange for a joint inspection with the Plaintiff and the quantity surveyor for the purpose of taking a record of the work done, plant or materials delivered on the site, the contractors equipment and the temporary buildings.

vii The quantity surveyor shall within reasonable time after inspection prepare a final account for the part of the works carried out by the contractor by the date of termination of the contract.

15. In performance of that contract, Haidco obtained an advance payment Bond for USD 284,755.88 and a performance Bond for USD 569,511.17 from Jamii Bora Bank (the Bank or Interested Party).

16. That on 12th March 2017 Kipeto confirmed in writing that it was aware and expected the date of completion of the project to be in May 2017. That however in 17th April 2017, Kipeto issued a notification of material breach of contract. This aggrieves Haidco. Haidco itself alleges that Kipeto is in breach of contract which it particularizes as follows:-

i Failing to clearly identify the site upon which the construction would be carried out and the access thereto pursuant to clause 3.1 of the contract.

ii Failing to properly identify, to the Plaintiff, the site, set up boundary pegs and beacons and the datum level pursuant to clause 18.1 of the contract between the parties.

iii Failing to timely remit finances for the building works to proceed under the contractual timelines.

iv Failing to suspend the works for safety reasons of persons involved pursuant to Clause 23.1.2 of the Contract.

17. At the center of Kipeto's resistance to the application is that the performance bond is a separate and distinct contract from the underlying contract between it and Haidco and it should be honoured as it had, through a letter of 30th April 2019, made a demand for its payment.

18. This Court has considered the submissions by both sides of the divide and starts by rehashing the law relating to the nature of a performance Bond, its centrality to commercial transactions and when a Court of law can stay or countermand its performance. In this respect I have, partly, drawn from the authorities cited by counsel for both sides.

19. In the decision of Civicon Limited v Kivuwatt Limited [2013] eKLR Muya J quotes the "Breach on Commercial Injunctions" Fifth Edition as defining a performance bond as:-

"In the treatise Commercial Injunctions fifth edition at page 430 a performance bond is defined,

"as a security for good performance which ensures that the contractor will take a continuing interest in satisfying his customer and which in the event of dispute, enables the principal as long as he does not act fraudulently to get cash in hand from the bond, leaving any dispute to be resolved with the contractor already out of pocket.

Page 431. The bank will not be involved in any dispute on the underlying transaction and in general has only to concern itself with the documents presented to it".

20. According to Black's Law Dictionary Tenth Edition a performance bond is:-

1. A bond given by a surety to ensure the timely performance of a contract.

2. A third party's agreement to guarantee the completion of a construction contract upon the default of the general contractor.

In the matter at hand the Bank as surety gave the bond to Kipeto (the Plaintiff) underwriting the timely performance of the contract.

21. The similarity between a letter of credit, guarantee and performance bond has often been alluded to. For example, in Edward Owen Engineering Ltd v Barclays Bank International Ltd(1978) ALL ER 976, Lord Denning observed;

"It has been established that when a letter of credit is issued and confirmed by a bank, the bank must pay it if the documents are in order and the terms of the credit are satisfied. Any dispute between buyer and seller must be settled between themselves. The Bank must honour the credit.

....It seems to be plain enough that the opening of a confirmed letter of credit constitutes a bargain between the banker and the

vendor of the goods, which imposes upon the banker an absolute obligation to pay, irrespective of any dispute which there may be between the parties on the question whether the goods are up to contract or not. An elaborate commercial system has been built up on the footing that bankers' confirmed credits are of that character, and, in my judgment, it would be wrong for this Court in the present case to interfere with that established practice". To this general principle there is an exception in the case of what is called established or obvious fraud to the knowledge of the Bank".

22. Drawing from Lord Denning's observations, Warsame J (as he then was) added his voice in Mea Limited v Echuka Farm Limited & 2 others[2007] eKLR as follows:-

"The court's approach to the enforcement of obligations under instruments such as promissory notes, bills of exchange, letter of credit and performance bond has equal force and application in relation to issues going to the validity of such instruments and the nature of transaction itself without unnecessarily impeding the flow of benefits of commerce. The court would significantly not allow challenges to the propriety of demands made under instruments but the only recognized exception has been in cases of fraud. It is inappropriate for a party to be allowed to gain substantial benefits when allegations of fraud and misrepresentation is leveled against him. One issue that has heavily weighed in my mind is the conduct of the plaintiff in facilitating the preparation and securing of the letter of credit. It shows the plaintiff was acting in good faith to ensure the completion of the sales agreement dated 17th January, 2007. By putting in place a performance and a corporate guarantee, the plaintiff's conduct also gives an indication of its willingness to see through the supply of the goods".

23. The efficacy and centrality of a performance bond, guarantee or letter of credit in the commercial world is undoubted and Denning MR in Power Curber International Ltd v The National Bank of Kuwait: SG [1981] 3 ALL ER at page 612 had this to say regarding international letters of credit:-

"All subscribe to the Uniform Customs and Practice which declare in the general provisions and declarations. ...Credits, by their nature, are separate transactions from the sale or other contracts on which they may be based and banks are in no way concerned with or bound by such contracts..."

If the Court of any of the countries should interfere with the obligations of one of its banks (by ordering it not to pay under a letter of credit), it would strike at the very heart of that country's international trade. No foreign seller would supply goods to that country on letters of credit because he could no longer be confident of being paid. No trader would accept a letter of credit issued by a bank of that country if it might be ordered by its Courts not to pay. So it is part of the law of international trade that letters of credit should be honoured and not nullified by an attachment order at the suit of the buyer".

The same holds in respect to performance bond at the national level.

24. Gikonyo J in Lagoon Development Limited v Beijing Industrial Designing & Research Institute [2015] eKLR joins Warsame J (as he then was) in Mea Limited (*supra*) in reiterating that Courts will not allow challenges to the propriety of demands under instruments such as performance bonds save in cases of fraud. Put differently, Courts will only intervene to stop the enforcement of a performance bond where the demand is fraudulent or patently oppressive.

25. What are the circumstances here? First, the Performance Bond sought to be enforced is dated 7th May 2018 and extended to 7th May 2019. It was a promise by the Bank to Kipeto as follows:-

Jamii Bora Bank,

7th May 2018

To: Kipeto Energy,

NAIROBI.

JBBL/LEG/AW/2018/207/Kilimani

PERFORMANCE BOND FOR USD.569,511.17 IN RESPECT TO THE CONTRACT DATED 23RD MARCH 2018 BETWEEN KIPETO ENERGY LIMITED AND HAIDCO LIMITED FOR CONSTRUCTION AND BUILDING WORKS AS VARIED BY THE CERTIFICATE OF PARTIAL SATISFACTION OR WAIVER OF CONDITIONS PRECEDENT (TOGETHER THE CONTRACT)

We have been informed that HAIDCO LIMITED of P.O. Box 72566 – 00200 Nairobi (hereinafter called the "Principal") is your contractor under the said contract, which requires him to obtain an irrevocable unconditional on demand performance bond (being this instrument).

At the request of the Principal, we Jamii Bora Limited (hereinafter called the "Surety") hereby enter into this Bond and unconditionally and irrevocably and as primary obligor undertake to pay you, the beneficiary, any sum or sums demanded by not exceeding in total amount of (USD, 569,511.17) (the "Bond amount") forthwith within 5 days upon receipt by us of your first demand in writing and your written statement stating that payment is due to you under this Bond and in accordance with the terms of the contract, and the amount of any such sum that is due.

Any demand for payment shall be accepted as conclusive evidenced for all the purposes of this Bond.

Payment due under this Bond shall be made notwithstanding any dispute between the beneficiary and the principal and whether or not the beneficiary and the principal are or might be under any liability towards one another. For the avoidance of any doubt proof of occurrence of a breach is not required. The beneficiary shall not be obliged to pursue any means of recourse against the principal without being entitled to enforce this bond against the surety and the beneficiary shall be at liberty to compromise, release, waive or neglect any surety as it sees fit without impairments of its rights under this bond.

Payments due under this bond shall be made free and clear of and without any set off reduction of any liability whatsoever including without limitation any present or future taxes or charges of any nature whatsoever and by whomsoever imposed and notwithstanding any dispute between the beneficiary and the principal and whether or not the beneficiary and the principal are or might be under any liability form one another.

Payment by the surety under this bond shall be deemed to be a valid payment for all the purposes of this bond and shall discharge the surety from liability to the extent of such payments.

The surety consents and agrees that the following actions by the beneficiary may be made and done without notice to or consent of the surety without in any ways affecting or releasing the surety from its obligation under this bond and the liability of the surety hereunder. The actions are:-

- a) Waiver or suspension by the beneficiary of any of the terms, provisions, conditions, obligations or agreements of the principal or any failure to make action against the principal;
- b) Any modifications, supplementation or changes to the contract;
- c) The granting of any extension of time to the principal;
- d) The insolvency, winding up, administration or any analogous proceedings relating to the principal.

No invalidity in the contract or its avoidance or termination shall affect or impair the liability of the surety under this bond.

The obligations of the surety under this bond shall cease on the date that the beneficiary informs the surety that (i) the certificate of practical completion has been issued in respect of the last section to be completed under the contract; (ii) the beneficiary has received the warranty period, warranty bond; and (iii) the contractor has complied with all of its obligations under the contract as at such date (expiry date) save in respect of any demand presented prior to such expiry date.

The beneficiary may assign (including, without limitation, by way of security), charge or transfer its rights and benefits under this bond, without the consent of the Bank, to such persons that the beneficiary's rights or obligations under the contract have been assigned (including, without limitation, by way of security), charge, novated or otherwise transferred. The surety shall be notified of any such assignment or transfer.

Any claim or demand hereunder must be received by the surety in writing at the following address; Jamii Bora Bank Limited, Argwings Kodhek Road, P.O. Box 22741-00400 Nairobi attention Credit Department. (or such other alternative address of the surety as the surety shall notify the beneficiary in writing from time to time) not later than 21 days before the expiry date.

This bond shall be governed by the laws of Kenya.

The guarantee is valid until the 30th December 2018

Name: Dickson Njeru (signed)

Name: Samuel Nyamu (signed)

In the presence of Alexander Irungu Wokabi Advocate.

26. On 30th April 2019 ,Kipeto called in the Bond :-

Kipeto Energy,

NAIROBI.

30th April 2019

Attention: Credit Department

Demand for payment under performance security bond in respect of the contract between Kipeto Energy Limited and Haidco

Limited

We are in possession of the Jamii Bora Limited Performance Security Bond (Ref: LG/2019/1063) dated 21st March 2019 for the value of USD 569,511.17 in respect of the contract dated 23rd March 2018 between Kipeto Energy Limited and Haidco Limited for construction and building works.

We hereby demand payment of the full amount of the Performance Bond to the value of USD 569,511.17. We confirm that this amount is due under the contractual conditions between the Principal and the beneficiary.

The Bank is reminded that *“Payment due under this Bond shall be made notwithstanding any dispute between the Beneficiary and the Principal and whether or not the Beneficiary and the Principal are or might be under any liability towards one another. For the avoidance of any doubt proof of occurrence of a breach is not required”* and *“Payments due under this bond shall be made free and clear of and without any set off reduction of any liability whatsoever including without limitation any present or future taxes or charges of any nature whatsoever and by whomsoever imposed and notwithstanding any dispute between the beneficiary and the principal and whether or not the Beneficiary and the Principal are or might be under any liability to one another”*.

According to the Bond conditions, payment shall be due within 5 days of this demand and will be unconditional.

Payment can be made to the following account.

Account Name: Kipeto Energy PLC

Bank Name: Citibank N. A Kenya

Account No.: 0104736008

Currency: USD

27. To be observed is that neither in its pleadings nor in the application does Haidco say that the demand made by Kipeto was fraudulent or intended to achieve a fraudulent end. That then may have been the end of the matter because Haidco would have been hard put to make out a case of fraud which must be specifically pleaded.

28. Yet to be fair to Haidco, this Court examines two allegations made by it that to allow the Bond to be paid would be to unjustly enrich Kipeto. It is averred that Haidco has completed 90% of the works while the outstanding payment to it is more than USD740,923.64. That it is therefore unfair for Kipeto to enforce the Bond worth USD 569,511.17 when it hold sums of USD339,396.36 and a further sum of USD 401,527.28 on account of certificate 8.

29. On the amount said to be due on certificate 8, on being confronted by Kipeto as to the accuracy of claim, Haidco conceded:-

[5] That in response to Paragraphs 15(a) the Plaintiff confirms that indeed on 18th April 2019 there was a request for recovery of USD 401,527.28. As per the primary Contract between the parties the Defendant issues its own Progress Payment Certificate to confirm the Plaintiff's Summary Statement and request for the Payment Certificate. In this instance the Defendant failed to issue a confirmation to the Plaintiff after parties differed on the amount that was to be paid on Account of the Interim Payment Certificate Number 8. This forced the Plaintiff to deem it as money owed to it. As it stands, given that the Defendants have admitted to the said figures and payment to its suppliers it may be deemed as money paid out to the Plaintiff on account of Payment Certificate Number 8.

So really there may be no money owed on certificate 8.

30. As to the sum of USD 385,185.57 held by Kipeto as liquidated damages, Kipeto justified it on an express agreement between it and Haidco of 8th May 2018. A term of the agreement was that in default Kipeto was:-

[c] Be entitled to rely on the Jamii Bora Bonds, notwithstanding that these do not meet the issuer requirements provided for under the construction contract, and to exercise the same rights it would have had in relation to the Jamii Bora Bonds as though they had been issued by a Prime Commercial Bank acceptance to Kipeto Energy Limited; and

[d] Be entitled to withhold a sum equivalent to ten percent (10%) of the value in each interim payment certificate issued under the Construction Contract (the Retention Amount and the term Retention Amounts shall be construed accordingly) until such time as the Acceptance Advance Payment Bond and the Acceptable Performance Bond are issued in favour of Kipeto Energy Limited.

If Kipeto Energy Limited receives the Acceptable Advance Payment Bond and the Acceptable Performance Bond within the time stipulated above, then Haidco Limited shall be entitled to a release of the aggregate of the Retention Amounts (the Retained Amount). The Retained Amount shall be released to Haidco Limited upon receipt by Kipeto Energy Limited of the Advance Payment Bond and the Performance Bond as aforesaid) with the Retained Amount provided herein.

31. It is common ground that Haidco did not provide the contemplated performance Bond but it argues that Kipeto was entitled to rely on the performance Bond already provided by the Interested Party and to exercise the rights thereunder. This was in clauses (a) (b) and (c) of the Agreement which reads:-

“In the event that Haidco Limited procures the Acceptance Advance Payment Bond but is unable to procure an Acceptable Performance Bond within ninety (90) days from the date of this Certificate, then Kipeto Energy Limited shall be entitled to, without prejudice to any other rights and remedies available to Kipeto Energy Limited under the Construction Contract:

- a) To deem such failure by Haidco Limited as a material breach of its obligations under the construction contract, and the provisions of clause 35.2 of the Construction contract shall apply;
- b) To retain the Retained amount as liquidated damages;
- c) Draw on the Jamii Bora Bonds for an amount equivalent to 15% of the value of the works remaining to be completed at such time under the construction Contract less the retained amount.

32. Relying on those clauses, Haidco asserts that it was malicious and ill-advised for Kipeto to use its (Haidco) failure to provide replacement Bonds as a ground for material breach of the contract when it had all along accepted the Bonds issued by Jamii, albeit ,with reservations.

33. The Court takes the view that whether or not the terms of Clause (c) and (d) precluded Kipeto from invoking the default clause on the expiry of 90 days is a call to be made by the Arbitral Tribunal that will eventually determine the dispute. To be observed for now is that before that issue is decided, it cannot be out rightly said that Kipeto was not within its right to deem the failure of Haidco to provide the acceptable performance Bond as a material breach of its obligations and to invoke the default clause.

34. Under the terms of the Agreement of 8th May 2018, Kipeto was entitled to retain the retention amount of approximately USD 385,185.57 as liquidated damages.

35. Further, on calling off the contract because of the alleged material breach, clause 32.2 of the construction contract would apply. It reads:-

[32.2] After taking into account amounts previously paid under the Contract, the contractor shall be paid by the Employer:-

[32.2.1] The total value of work completed at the date of termination.

[32.2.2] The total of work begun and executed but not completed at the date of termination.

[32.2.3] The cost of plant or materials properly ordered for the works for which the contractor shall have paid and title to which have passed to the Employer.

Each of the above as determined by the Quantity Surveyor on Mutatis Mutandis the basis set out in clause 28.4 – Clause 28.6 (both inclusive) Employer shall pay the termination amount to contractor within 30 days of determination of such amount by the Quantity Surveyor.

36. From the rival affidavits placed before Court it is not agreed as to who between the employer and contractor owes the other. The contractor states that a joint final valuation of works was carried out and it shows that it is owed USD 443,165.94 by the employer. This is depicted in the table below:-

Financial status at Contract Termination (09/05/20190		
Item	Description	Amount (USD)
	Actual Works	
a	Total Valuation of works done & Material on site.	4,135,782.51
)	Total Value of works paid thorough IPCs (Including Advance)	4,014,373.78
b) Less recovered Advance Payment	(379,674.12)
c) Less 10% Retention Amount	(387,670.52)
)	Amount Due to the Contractor = (a-e)	888,753.36
d) Suppliers/Wages advancing & Recovery	
f)	Total Amount Advanced to Suppliers and Wages	1,885,423.97

g)	
h)	
Total Amount Recovered for Suppliers and Wages	(1,439,836.55)
i)	
Balance of Supplier /Wage Payments to be recovered = (f-g)	445,587.43
j)	
Actual Amount due to Contractor = (f-i)	443,165.94

37. While the employer admits that there was a site valuation conducted on 7th May 2019 and 20th May 2019, it challenges the amounts indicated by the Plaintiff in the tabulation as not agreed as it takes it to be exorbitant, excessive and inflated. For example, it points out that the 10% retention amount which it claims to have been expressly claimed has been included by the contractor. Again, it is clear that there is a dispute as to the real outcome of the joint valuation. A dispute that truly belongs to the province of Arbitration. Further I am not too certain that the joint valuation truly amounts to the determination by the Quantity Surveyor contemplated by clause 35.2.

38. While there could be arguments as to whether or not Kipeto is entitled to demand the full settlement of the performance Bond, on the material before this Court, I am unable to find that Kipeto are fraudulent in making the demand or that the demand is so overtly unconscionable and oppressive as to deserve the intervention of this Court. For that reason, the Court must treat the Bond as separate, distinct and independent of the underlying contract and will permit Kipeto to call and enforce it notwithstanding any dispute between it and Haidco.

39. Given my view of the matter I dismiss the Notice of Motion dated 14th May 2018 with costs and allow prayer 4 of the Notice of Motion dated 21st May 2019 but with no orders as to costs.

Dated, Signed and Delivered in Court at Nairobi this 21st Day of February 2020

F. TUIYOTT

JUDGE

PRESENT:

Orende for Plaintiff

Ouma for Abaso for Defendant

Orende holding brief Kimani for Interested Party

Court Assistant: Nixon