



**Pamwhite Limited v National Environment Management Authority & another (Environment and Land Appeal E046 of 2022) [2023] KEELC 18783 (KLR) (19 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18783 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND APPEAL E046 OF 2022  
SM KIBUNJA, J  
JULY 19, 2023**

**BETWEEN**

**PAMWHITE LIMITED ..... APPELLANT**

**AND**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 1<sup>ST</sup>  
RESPONDENT**

**HUBERT SEIFERT & DR. ESTHER GETEMBU (SUING AS CHAIRMAN  
AND SECRETARY RESPECTIVELY OF THE NEW NYALI RESIDENT  
ASSOCIATION) ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The appellant, Pamwhite Limited, was the 2<sup>nd</sup> respondent in National Environment Tribunal [NET] Appeal No. 50 of 2020, whose decision of 19<sup>th</sup> October 2022 is the subject matter of the instant appeal. The appellant, being dissatisfied with the said decision filed the Memorandum of Appeal dated the 11<sup>th</sup> November 2022 setting out eight (8) grounds through Ms. Kenga & Company Advocates. The grounds are as summarized herein below;
  - a. That the tribunal erred in law and fact by failing to give reasons for their decision contrary to the requirement of Order 21 Rule 4 of *Civil Procedure Rules*.
  - b. That the tribunal erred in law and fact in failing to consider and distinguish the two types of reports under section 58 (1) and (2) of *EMCA*, that is Project Report and Study Report, that a proponent seeking approval from NEMA should prepare, and the reasons of its decision.
  - c. That the tribunal erred in law and fact in finding that the appellant did not adhere to law on public participation requirement, while there was



uncontroverted evidence of sufficient public participation by way of physical meetings and questionnaires by the members of 1<sup>st</sup> respondent, including Hubert Seifert without giving reasons for its decision.

- d. That the tribunal erred in law and fact by disregarding and failing to consider credible evidence presented by the appellant, misdirecting itself on the law applicable and dismissing the appellant's defence.

The appellant therefore prays for;

- i. The appeal to be allowed by setting aside the judgement of 19<sup>th</sup> October 2022 by NET and substituting it with an order dismissing the NET Appeal No. 50 of 2020 with costs.
- ii. The costs of this appeal to be borne by the respondents.

2. The Appellant filed the Record of Appeal dated the 5<sup>th</sup> December 2022 and the 2<sup>nd</sup> respondent filed the Supplementary Record of Appeal dated the 8<sup>th</sup> March 2023. The documents in the Record of Appeal and Supplementary Record of Appeal inter alia show that the 2<sup>nd</sup> Respondent herein, [Association] had commenced the proceedings before the National Environment Tribunal [NET] against National Environment Management Authority [NEMA and Pamwhite Limited [Pamwhite], who are the Appellant and 1<sup>st</sup> Respondent respectively in the instant appeal, through the Notice of Appeal dated the 4<sup>th</sup> December 2020 as amended on the 26<sup>th</sup> February 2021. That appeal was prompted by NEMA's decision to grant an Environment Impact Assessment [EIA] License dated 5<sup>th</sup> October 2020 to the Pamwhite. The grounds in the appeal included the following;

- a. Lack of seeking views from persons likely to be affected by the project in breach of Regulation 17 and 21 of the *Environmental [Impact, Assessment and Audit] Regulations*, 2003. That the objections to the project raised through the questionnaires that had been distributed to the neighbours were ignored and five of those forms are missing from NEMA's file, while others from staff in shops at Nyali Centre that is far away have been added.
- b. The project has commenced in violation of Regulation EE-6.2 (a) and (b) of the National Building Regulations, 2015 which prohibits the carrying on of any activity, including excavation on public holidays and Sundays. The project's septic tank is located near the water borehole of Hubert Seifert and is likely to contaminate the underground water.
- c. That the project's EIA Study Report was irregular, illegal and cannot be used to support the EIA license as it was commissioned and done before the Pamwhite became the registered owner of the subject land contrary to section 2 of the *Environmental Management and Co-ordination Act*, 1999. The said report was signed on 7<sup>th</sup> February 2020 while Pamwhite became the registered proprietor of the subject property, MN/1/3156 on the 26<sup>th</sup> February 2020.
- d. That Pamwhite did not comply with the recommendations at clauses 6.2.2, 9.3.2 and 9.4.8 of the EIA Study Report dated 7<sup>th</sup> February 2020 by failing to issue at least two week notice before commencement of construction and ensure the occupational safety and health of neighbours.



The Association sought for orders that the EIA licence dated 5<sup>th</sup> October 2020 was issued irregularly, against the law and is therefore null and void; the said EIA licence be revoked; development on MN/1.3156 be stopped; Pamwhite be restrained from proceeding with the development unless and until a proper EIA License is issued by NEMA in compliance with the law; an environmental restoration order be issued directed Pamwhite to restore MN/1/3156 to its status ante under supervision of NEMA in 60 days and costs. The Association relied on the filed witness statement of Hubert Seifert dated the 23<sup>rd</sup> June 2021.

3. In their response to the grounds of appeal dated the 27<sup>th</sup> April 2021, NEMA stated that the proponent of a project specified in Second Schedule of EMCA undertakes an EIA study and submits an EIA assessment project report before it can issue any licence. That in this case, Pamwhite had informed them of its intention to construct a festival city shopping centre, which is classified as a Medium Risk project under the Environment [Impact Assessment and Audit] [Amendment] Regulations, 2016. That on the 28<sup>th</sup> February 2020 Pamwhite presented an EIA Project Report for the proposed construction of an eight (8) floor festival shopping centre at Nyali on MN/1/3156 and after going through it, they wrote to the proponent a letter dated the 14<sup>th</sup> February 2020 seeking it to address some issues that it felt had not been adequately covered. In response, Pamwhite forwarded documentation evidencing ownership of the property. Approval of the development by the County Government, minutes and questionnaires for the public participation. On the 1<sup>st</sup> September 2020, its field officer visited the site of the project and prepared a report showing it was an area of mixed user of residential and commercial buildings. That on the 14<sup>th</sup> September 2020 they received a letter addressed to the County Government and copied to it by the Association objecting to the construction of the said project. That NEMA took note of the Association's complaints when issuing the EIA license dated the 5<sup>th</sup> October 2020 by directing that the project be downscaled from eight (8) floors to two (2) floors. That NEMA acted procedurally and in strict conformity with the laws and regulations. That in preparing a Project Report for a medium risk project under Schedule two of EMCA, a proponent is not required to publicize the project in newspapers, national gazette or the radio, contrary to the Association's claims.
4. Pamwhite opposed the appeal through the replying affidavit of Pamela Auma Ogola, director, sworn on the 26<sup>th</sup> April 2020, in which she inter alia deposed that the EIA License dated the 5<sup>th</sup> October 2020 for development on MN/1/3156 was legally, procedurally and validly issued upon presentation of the environment project report under Regulation 7 and that Regulations 17 and 21 were not applicable in this matter. That she had consulted neighbours in a public meeting and distributed questionnaires to them and there was no opposition to the project lodged. That she had held the public meeting at her hotel at Mtwapa to cut on costs and had invited all neighbours. That the claim that questionnaires by those opposed to the project were missing is not true. That Pamwhite is the registered owner of the property where the project was being done and had prepared an environment project report and not an EIA Study Report.
5. The copy of the proceedings before the NET confirms that the tribunal heard the counsel for the parties on diverse dates and on the 6<sup>th</sup> August 2021, 30<sup>th</sup> September 2021 and 30<sup>th</sup> November 2021 gave directions on filing and exchanging submissions on the appeal. The learned counsel for the Association, Pamwhite and NEMA filed their submissions dated the 14<sup>th</sup> October 2021, 29<sup>th</sup> November 2021 and 22<sup>nd</sup> December 2021 respectively. The judgement was consequently delivered on the 19<sup>th</sup> October 2022. The copy of the NET decree issued on 4<sup>th</sup> November 2022 on the judgement delivered on the 19<sup>th</sup> October 2022 confirms that the following orders were granted;
  - a. That the EIA License dated 5<sup>th</sup> October 2020 on MN/1/3156 was revoked.



- b. The development and construction of ground, 1<sup>st</sup> and 2<sup>nd</sup> floor festival shopping centre stopped.
  - c. Pamwhite restrained from proceeding with the said development on MN/1/3156 unless and until a proper EIA license is issued by NEMA in compliance with the law; and
  - d. Each party to bear their own costs.
6. That pursuant to the directions issued by the court on the 26<sup>th</sup> January 2023 and 14<sup>th</sup> March 2023 on filing and exchanging submissions, the learned counsel for the appellant filed their submissions dated the 16<sup>th</sup> February 2023. They also filed supplementary submissions dated 10<sup>th</sup> March 2023 and 5<sup>th</sup> April 2023 in response to those filed by the 2<sup>nd</sup> respondent. The learned counsel for the 1<sup>st</sup> respondent filed their submissions dated the 15<sup>th</sup> March 2023. The learned counsel for the 2<sup>nd</sup> respondent filed their submissions dated the 8<sup>th</sup> March 2023 and supplementary submissions dated the 4<sup>th</sup> April 2023. The court has considered the submissions by the learned counsel and the superior courts decisions cited thereon.
7. The following are the issues for the court's determinations in this appeal;
  - a. Whether the NET judgement contravenes Order 21 Rule 4 of the *Civil Procedure Rules*.
  - b. Whether the nature of the Appellant's development required a Project or Study Report, and whether the NET erred in its findings.
  - c. Whether there was sufficient public participation and whether NET erred in its conclusions.
  - d. Who pays the costs.
8. The court has carefully considered the grounds on the memorandum of appeal, Record of Appeal and Supplementary Record of Appeal, submissions filed by the Appellant and 1<sup>st</sup> Respondent in support of the appeal, and by the 2<sup>nd</sup> Respondent in opposition thereto, the superior courts decisions cited thereon and come to the following determinations;
  - a. The first onslaught on the NET judgement by the Pamwhite is that it does not comply with Order 21 Rule 4 of the *Civil Procedure Rules* in that tribunal members did not give reasons for their decisions on the issues they had set out for determinations. That though the tribunal members aptly captured the statement of the case at paragraph 59, and accurately set out the crucial issues for determinations at paragraph 60, they proceeded to regurgitate the law, restate the submissions and shockingly went straight to give their conclusions without reasons. On that issue, the learned counsel for NEMA submitted that in deciding the issue of public participation, the tribunal members replicated section 59 and Regulation 17 but did not give their views and or understanding on their application and nexus to public participation. That it is only at paragraphs 70 to 72 of the judgement that the tribunal members showed their position by highlighting the inconsistency between sections 59(1) of EMCA and its subsidiary legislation, but fell short of pronouncing whether it is the proper law guiding public participation in relation to Study Reports. That what one discerns from the judgement was that the EIA Report submitted by Pamwhite to NEMA fell under Section 58(2) of EMCA being an EIA Study Report and therefore required to be in compliance of Section 58(1) and Regulations 17 and 21 of the Environment (Impact Assessment and Audit) Regulations,



2003. That the position of NEMA before the NET and this court is that what Pamwhite submitted to it could only be deemed to be an EIA Project Report under section 58(1) of EMCA and Regulation 7 despite being titled Study Report. For the Association, the learned counsel submitted that, on the ground of the judgement failing to comply with Order 21 Rule 4 of the Civil Procedure Rules, the said Rules do not apply in NET proceedings. That as the appeal before NET was lodged pursuant to section 129(1)(a) of EMCA, the proceedings were then governed by the National Environment Tribunal Procedure Rules, 2003 which do not require the importation of the Civil Procedure Rules, 2010. That in any case, the tribunal had in its judgement outlined the applicable statute and case law and given its reason for cancelling the EIA license as the lack of public participation. In their further submissions dated the 16<sup>th</sup> March 2023, the learned counsel for Pamwhite submitted that Rule 38 of the National Environmental Tribunal Rules 2003, like Order 21 Rule 4 of the Civil Procedure Rules emphasizes the mandatory need for reasons for a decision. In their rebuttal, the learned counsel for the Association submitted in their supplementary submissions dated the 4<sup>th</sup> April 2023 that Pamwhite had not raised the ground of the tribunal judgement not complying with the National Environmental Tribunal Rules 2003 in their grounds of appeals and framed issues for determination.

- b. In determining the contested question of whether the tribunal gave reasons for their decision, it is important to set out the relevant provisions in the Civil Procedure Rules, 2010 and the National Environmental Procedure Rules, 2003 that provides as herein under;  
Order 21 Rule 4 of the Civil Procedure Rules-

“Judgements in defended suits shall contain concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.”

Rule 38 of the National Environmental Tribunal Rules 2003-

“the Tribunal shall give reasons for all its decision, and each of such decisions shall include-

- a. a statement of the findings of fact made from the evidence adduced, including, where applicable, any relevant government policy; and
- b. a statement of the laws and rules of law applied, and the interpretation thereof.”

It is apparent that Order 21 Rule 4 of Civil Procedure Rules and Rule 38 of National Environment Procedure Rules both require reasons for the decisions to be given in the judgement or award. The parties appear to be in agreement that the NET judgement has captured the statement of the case and the issues for determination succinctly. The parting point is on whether the judgement contains reasons for the decision therein. To determine that question, the court has carefully perused the NET judgement and found as follows inter alia;

- i. That paragraph 60 leaves no doubt that to NET, the primary issue for determination was whether there was adequate public participation, and if not, whether the EIA license issued by NEMA to Pamwhite should be cancelled.
- ii. That between paragraphs 62 to 73 NET embarked on setting out the relevant legal provisions, summary of the facts and submissions presented and its determination.

At paragraphs 70 and 73 of the judgement, the tribunal pronounced itself as follows;

“



“70. The Tribunal is aware that the EIA Regulations were not amended after the amendment of section 59(1) of EMCA for uniformity, however, section 31(b) of the Interpretation and General Provisions provides that, “no subsidiary legislation shall be inconsistent with the provisions of an Act.” It follows that the advertisement for two successive weeks is no longer a legal necessity as the Regulations cannot supersede the substantive provisions of the statute.”

“73. Considering the facts presented to the Tribunal on the question of public participation, we find that the Respondents failed to adhere to the law. This ground of appeal succeeds.”

That while one looking at the two paragraphs in isolation would probably be right to conclude they are conclusions without basis, the truth is that the conclusions therein come out from the preceding paragraphs which not only sets out the facts and the parties’ positions on the issues, but also the statute and case law that the tribunal found applicable. Yes, the tribunal should strive to deliberately, concisely and clearly set out their reasons in a way non-legal practitioners and litigants at large seeking justice, or just reading its decisions would comprehend.

c. The provision of section 126 of EMCA on proceedings of the Tribunal provides that;

- “(1) The tribunal shall not be bound by the rules of evidence as set out in *Evidence Act* (Cao. 80).
- (2) The Tribunal shall, upon an appeal made to it in writing by any party or a referral made to it by the Authority on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be.
- (3) The Tribunal shall sit at such times and in such places as it may appoint.
- (4) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.
- (5) Except as expressly provided in this Act or any regulations made hereunder, the Tribunal shall regulate its proceedings as it may deem fit.
- (6) Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an advocate.”

The legal status of the National Environmental Procedure Rules, 2003 that was gazetted under Legal Notice No. 177 of 2003 has not been questioned or challenged by the parties herein. It is clear the provision of section 126 of EMCA set out above, has not specifically stated that the rules made under the *Civil Procedure Act* chapter 21 of laws of Kenya will not apply in NET proceedings, like it has done in respect of the rules under the *Evidence Act* chapter 80 of Laws of Kenya. There is evidence in the in the Record of Appeal filed herein of processes before the Tribunal that invoked some provisions of the Civil Procedure Rules. These includes the Notice of Motion dated 25<sup>th</sup> August 2021 for recusal of Chairman and Vice-Chairman, Memorandum of Appearance dated 25<sup>th</sup> January 2021 filed through Ms. Matata & Mwabonje Advocates for Pamwhite Limited, Notice of Intention to Act in Person and to withdraw suit date 7<sup>th</sup> January 2021 by one Benson Karomo, and Chamber Summons application by Ms. N. O. Sumba & Company Advocates, seeking to cease acting for Pamwhite Limited, and no objections on the provisions cited appear to have been raised before NET by any of the parties.



The court therefore concludes that though the National Environmental Procedure Rules, 2003, are the primary rules guiding proceedings before NET, the Civil Procedure Rules, 2010 may apply in situations not provided for under its rules. That said, it is the finding of the court that Pamwhite has failed to establish that NET failed to give reason for its decision, and that ground fails.

- d. It is trite law that a question of the law can be raised at any stage of the proceedings. However, all the parties in the proceeding desirous of being heard on such a question should be given an adequate opportunity to do so. That it is true Pamwhite and its learned counsel had in the grounds of appeal and submissions only raised the issue of the tribunal's judgement not complying with the provisions of Order 21 Rule 4 of Civil Procedure Rules, without mentioning the provisions of the National Environment Procedure Rules, 2003. It is the learned counsel for the Association who first submitted that NET proceedings are guided by the National Environmental Procedure Rules, 2003 and not the Civil Procedure Rules. It follows therefore, that Pamwhite, through its counsel had a right to submit on the applicability or otherwise of the National Environmental Procedure Rules, 2003, in rejoinder and the objection by counsel for the Association in their subsequent submissions is therefore misplaced.
- e. On the question of whether Pamwhite had undertaken adequate public participation, or rather whether NEMA had ensured the legal requirements had been complied with before issuing the EIA License dated 5<sup>th</sup> October 2020 in respect of the EIA Study Report dated 7<sup>th</sup> February 2020, the court has considered the parties' pleadings, documents presented through the Record of Appeal and Supplementary Record of Appeal, and the submissions by learned counsel and found it necessary to restate some of the uncontested facts before the issuance of the EIA license, as set out herein under;
  - i. That the Environmental Impact Assessment Study Report for the Proposed Commercial Development on L.R. MN/1/3156, Nyali, Mombasa dated 7<sup>th</sup> February 2020 was done for Pamwhite Limited by Andrew Makoti and Anthony Mwaniki. In the executive summary, it indicates that "the proposed Festival City Shopping Centre .... will entail a basement floor, ground floor and 1<sup>st</sup> to 8<sup>th</sup> floor. Evidently, the total build area will be 11,341,855 sqm." That on sewer, the report at paragraph 3.5.3 observed that "Mombasa City has no sewage treatment plants. Thus, each developer is required to manage their liquid and solid waste. During the development, a suitable standard septic tank will be established, which will be sufficient for the envisaged development."
  - ii. That Pamwhite Limited entered into an agreement with one William Kabogo Gitau to purchase land parcel MN/1/3156 on the 17<sup>th</sup> July 2019.
  - iii. That the said land got registered in the name of Pamwhite Limited on the 26<sup>th</sup> February 2020.
  - iv. That by the time Pamwhite contracted for the preparation of the EIA Study Report dated the 7<sup>th</sup> February 2020, it was not the registered owner of the property, MN/1/3156, where the proposed project was to be constructed.
  - v. That considering that NEMA wrote to Pamwhite on 14<sup>th</sup> February 2020 requiring it to address certain matters including providing land ownership documents, it is certain Pamwhite had presented the EIA Study Report to NEMA before it became the registered proprietor of MN/1/3156.



- vi. The EIA License dated the 5<sup>th</sup> October 2020 that was issued by NEMA to Pamwhite states it was for “construction of a festival city shopping center (ground, 1<sup>st</sup> – 2<sup>nd</sup> floor).”[emphasizes added]

That going by the project proponent’s document, the EIA Study Report dated the 7<sup>th</sup> February 2020, the approval being sought was for a construction detailed therein that has a basement and goes up to the eighth floor, with a total build area of 11,341,855 square meters. That project falls outside those classified as Medium Risk Projects that under Rule 2(1)(d) of the Second Schedule of EMCA on urban development consist of “shopping centers, commercial centers and complexes, business premises, shops and stores not exceeding ten thousand square meters.” That the Pamwhite project from inception fell within the High Risk Projects and not Medium Risk Projects as Pamwhite and NEMA appear to believe.

- f. That Parties herein are in agreement that the level of public participation required in Low and Medium Risk Projects are different from that required in respect of High Risk Projects. In the scenario described by the parties herein, it is in doubt as to whether any reasonable public participation took place. That a look at the copy of the minutes of the meeting of 6<sup>th</sup> February 2020 at Pokha Place Building Mtwapa, Kilifi County that is in the Record of Appeal indicates as follows under minute 2;

“the neighbors were informed about the proposed commercial development project for Mrs. Pamela Auma is on Plot No. KILIFI/MTWAPA/6251. Mtwapa, Kilifi County.”

The explanation Pamwhite tendered on why a public meeting for a project at Nyali, Mombasa County was held at Mtwapa, Kilifi County that the hotel [venue] was hers, and therefore meant reduced costs does not appear convincing. There is no evidence to show those in attendance hailed from the neighbourhood of the site of the proposed project. In any case, the contents of the minutes indicate the project subject matter of discussion was not the one on MN/1/3156, Nyali, Mombasa County, but on Plot No. KILIFI/MTWAPA/6251. Mtwapa, Kilifi County. The court has also perused the copy of the minutes of the meeting of the same date and at the same place in the Supplementary Record of Appeal that show at minute 2 that;

“the neighbors were informed about the proposed commercial development project for Palmwhite Limited is on Plot No. MN/1/3156 Nyali, Mombasa County.

That while the two copies of the minutes refer to different parcels of land, and evidentially different projects, the meetings took place at the same time, 1030 hours, on the same date, 6<sup>th</sup> February 2020, and the names of the persons in attendance appear to be the same as seen herein under;

1. Stephen john omondi.
2. Grado india ngak.
3. Pascal achieng okoji.
4. Kevin ochieng.
5. William odhiambo.
6. edward obunga.
7. Sam kazungu.
8. Silas dzombo.



9. Weeklif kahindi.
10. Albert makupe, and
11. Anthony mwaniki murathi.

The question that begs to be answered is if indeed those people had been invited from the neighbourhood of the proposed project site of MN/1/3156, Nyali Mombasa, how come they were the same people deliberating about a project at Plot No. KILIFI/MTWAPA/6251? Conversely, if the people were from the neighbourhood of Plot No. KILIFI/MTWAPA/6251, would their deliberations and resolutions amount to public participation, leave alone sufficient public participation, for a proposed project situated on MN/1/3156 Nyali, Mombasa, that is several kilometers away? The answer is definitely not. The court therefore comes to the conclusion that what Pamwhite Limited and NEMA call evidence of public participation in this case was nothing but a charade.

- g. That though NEMA issued Pamwhite with an EIA License dated 5<sup>th</sup> October 2020 that refers to “the Environment Impact Assessment Project Report received from Pamwhite Limited”, there is no evidence of any such document having been prepared and presented as alleged. What was prepared and presented was an Environment Assessment Impact Study Report dated 7<sup>th</sup> February 2020. The EIA License issued by NEMA to Pamwhite was based on a non-existent Project Report, that was never prepared by Pamwhite and on a project that was not subjected to any public participation. That having come to the above determinations, it follows that the finding by NET that there was no adherence to the legal requirements for public participation in the project subject matter of the EIA Study Report dated 7<sup>th</sup> February 2020, before the issuance of the EIA License dated 5<sup>th</sup> October 2020 cannot be faulted.
- h. That on the issue of costs, the nature of the matter commends that each party to bear their own costs.

9. The upshot of the above findings is that the appeal filed by the appellant and apparently supported by the 1<sup>st</sup> respondent is without merit. Therefore, the court directs as follows;
  - a. The appeal is hereby dismissed.
  - b. The net decision in the judgement delivered on the 19<sup>th</sup> October 2022 is hereby upheld.
  - c. Each party to bear their own costs in this appeal and the tribunal.

10 It is so ordered.

**DATED AND VIRTUALLY DELIVERED THIS 19<sup>th</sup> DAY OF JULY 2023.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the presence of;

Appellant: Mr Kenga Advocate.

Respondents: M/s Machogu for Oluga for 2<sup>nd</sup> Respondent.

Wilson – Court Assistant.

**S. M. KIBUNJA, J.**



**ELC MOMBASA.**

