



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**PETITION NO. 6 OF 2020**

**MOHAMED ABDI FARAH.....PETITIONER**

**VERSUS**

**SPEAKER, GARISSA COUNTY ASSEMBLY.....1<sup>ST</sup> RESPONDENT**

**THE CLERK, GARISSA COUNTY ASSEMBLY.....2<sup>ND</sup> RESPONDENT**

**THE MINORITY PARTY WHIP,**

**GARISSA COUNTY ASSEMBLY.....3<sup>RD</sup> RESPONDENT**

**RULING ON PRELIMINARY OBJECTION**

**DATED 10/6/2020**

1. By a petition dated 4/6/2020 the petitioner sought orders that; declaration that his right of fair administrative action and right to fair hearing were under threat of violation by the respondents, injunction preventing any further violation of the aforesaid rights, injunction stopping respondents 1 and 2 from acting upon any resolution from the 3<sup>rd</sup> respondent in relation to his removal as leader of minority party inter alia.
2. Along with petition he lodged a motion seeking conservatory orders dated on even dates. The same pleadings were supported by petitioner's supporting affidavit and further affidavits.
3. The respondents replied by lodging a notice of preliminary point of law and a replying affidavit by the 1<sup>st</sup> respondent. The court directed that since the Preliminary Objection centered on the court's jurisdiction the same to be canvassed first. The both sides advocates canvassed the Preliminary Objection via oral submissions.
4. The Preliminary Objection dated 10/6/2020 the Respondents objected to the petition herein on the grounds –

**1) The supporting affidavit filed together with the petition is an illegality and a blatant violation of the mandatory requirements of:**

**a) Article 165(3) of the Constitution of Kenya, 2010 which provides:**

**Subject to clause (5), the High Court shall have-**

**(c) Jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144.**

**b) Section 40 of the Political Parties Act, No. 11 of 2011 which states:-**

**1.) The Tribunal shall determine-**

**a.) Disputes between the members of a political party.**

**b.) Disputes between a member of a political party and a political party.**

**c.) Disputes between political parties.**

**d.) Disputes between an independent candidate and a political party.**

**e.) Disputes between coalition parties and**

**f.) Appeals from decisions of the Registrar of the political parties under this Act.**

**40 (2.) Notwithstanding sub-section (1), the Tribunal shall not hear or determine a dispute under paragraphs (a), (b), (c) or (e) unless the dispute has been heard and determined by the Internal Political Party Dispute Resolution Mechanism.**

5. The Respondents in the Preliminary Objection's case is captured as per the 1<sup>st</sup> Respondent's Replying Affidavit sworn on 11/6/2020 as follows. That members of the NASA Coalition constitute the Garissa County Assembly's wing of the Minority and are a sum total of fourteen (14) members.

6. On 4<sup>th</sup> day of June 2020 at 1200 hours, the 1<sup>st</sup> Respondent received a written communication dated 04/06/2020 from the Minority Whip, the 3<sup>rd</sup> Respondent herein which he has annexed and marked as 'COM 1' being a copy of the Communication.

7. The said communication notified him that after a meeting held on 4<sup>th</sup> June 2020 by members of the NASA Coalition, one Hon. Mohamed Ali Sheikh, member for Abakaile Ward was elected as the Leader of Minority, County Assembly of Garissa.

8. That Hon. Mohamed Ali Sheikh was elected after members of the NASA Coalition voted out the Hon. Mohamed Abdi Farah the Petitioner herein. The written communication from the Minority Whip were the minutes of the meeting held by members of the NASA Coalition on 4<sup>th</sup> June, 2020, which replaced the Petitioner herein with Hon. Mohamed Ali Sheikh, member for Abakaile Ward.

9. The written communication from the Minority Whip, the 3<sup>rd</sup> Respondent herein, was the attendance-sheet signed by a sum total twelve (12) members bearing details of their identity card numbers, telephone contacts and signatures vide the annexed and marked as 'ATT 1' a copy of the Attendance-sheet.

10. The 1<sup>st</sup> respondent satisfied himself that the said minutes and the attendance-sheet were authentic and bore the true signatures, telephone contacts and identity-card details of the members present.

11. He also satisfied himself that the Hon. Mohamed Abdi Farah, the Petitioner herein was present in the said meeting and the referenced minutes and the attendance-sheet reflected the same.

12. Further he was satisfied himself that the process of removing the Leader of Minority, the Petitioner herein and his subsequent replacement was in conformity with the requirements of Standing Order No. 16 of the County Assembly Standing Orders.

13. He verified that the 3<sup>rd</sup> Respondent in communicating to him the removal and subsequent replacement of the Petitioner herein was in conformity with the requirements of Standing Orders No. 16 (4) of the County Assembly Standing Orders.

14. He avers that he did not receive any complaint or communication from the Petitioner herein, protesting the communication of the 3<sup>rd</sup> Respondent to his office.

15. Thus he communicated the election of one Hon. Mohamed Ali Sheikh, member for Abakaile Ward as the new Leader of Minority at 2.30pm on 4<sup>th</sup> June 2020 when the House met at the Garissa County Assembly he annexed and marked as 'HAN 1' a copy of the Assembly Hansard of 4<sup>th</sup> June 2020).

16. The new changes took effect on the 4<sup>th</sup> day of June 2020 at 2.30pm and the Hon. Mohamed Ali Sheikh, member for Abakaile Ward promptly assumed office as the Leader of Minority.

17. The Petitioner in the Preliminary Objection case is captured in Petition as follows: That the meeting convened by the 3<sup>rd</sup> Respondent herein and held at the Assembly Chambers on 4<sup>th</sup> June, 2020; wherein it was resolved that he be removed from the position of Leader of Minority Party, was convened un-procedurally and without adequate notice.

18. The 3<sup>rd</sup> Respondent arbitrarily and with mala fide called for a meeting of the Minority Coalition of Parties on the night of 3<sup>rd</sup> June, 2020 at 9.59 pm, which notice was sent through short message service (SMS) and indicated that there was to be a 'consultative' meeting on 4<sup>th</sup> June, 2020 at 10.00 am at the Assembly Chambers, vide a copy of the notice of the meeting annexed and marked A.

19. That despite the notice indicating that the agenda of the meeting was '*consultation*', the meeting went ahead to deliberate and resolve that he be removed from the position of Leader of Minority Party; without according to him due notice, written reasons for his removal or a chance to be heard.

20. The resolution to remove him from his office was dully communicated to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 4<sup>th</sup> June, 2020, as per the requirements of Standing Orders No. 16 of the Garissa County Assembly, vide a copy of the Standing Order No. 16 annexed and marked B.

21. During the sitting of the Assembly on 4<sup>th</sup> June, 2020 the speaker acknowledged receipt of the resolution, which in effect meant that the

changes are deemed to have taken effect.

22. He further avers that, he is an elected member of county assembly for Dadaab Ward and current Leader of Minority Party, Garissa County Assembly.

23. That at meeting of Members of County Assembly called by the 3<sup>rd</sup> Respondent and held on 4<sup>th</sup> June 2020 at the Assembly Chambers, by resolving that he be removed from his seat as Leader of Minority Party contravened provisions of Article 47 of the Constitution of Kenya.

24. That he was not furnished with written reasons for the administrative action and without according him a chance to be heard. That the adoption of a resolution aforesaid contravened provisions of Articles 47 and 50 of the Constitution.

25. That the Petitioner is apprehensive that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein intend to adopt a resolution adopted in contravention of Articles 47 and 50 of the Constitution at a sitting of the Assembly to be held on 4<sup>th</sup> June 2020.

26. That the 3<sup>rd</sup> Respondent arbitrarily and with mala fide called for a meeting of the Minority Coalition of Parties on the night of 3<sup>rd</sup> June, 2020 at 9.59 pm, which notice was sent through short message service (SMS) and indicated that there was to be a 'consultative' meeting on 4<sup>th</sup> June, 2020 at 10.00 am at the Assembly Chambers, vide a copy of the notice of the meeting annexed and marked A. He also attaches a copy of the Standing Order No. 16 annexed and marked B).

### **SUBMISSIONS**

27. In his submissions Mr. Bishar for the respondents argued that, the Preliminary Objection dated 10/6/2020 is based on Article 165 (3) constitution of Kenya and Section 40 Political Parties Act No. 11 of 2011

28. He contended that, Section 40 (2) is to the effect that, if there is a dispute between members of a party, they have first to lodge same in the Party's Dispute Mechanism then to the PP Tribunal. That the 3<sup>rd</sup> Respondent is Minority Whip for the Party (NASA). No protest so far failed to contest his grievances. He relies on the case **BORN BOB MAREN VS THE SPEAKER NAROK COUNTY ASSEMBLY & 3 OTHERS**.

29. The Petition lodged in court was in form of complaints of breach of his rights. The matter raised are in the realm of the Political Party Tribunal. See case of **JENNIFER EKHUYA VS COUNTY ASSEMBLY OF VIHIGA & ANOTHER**. Where Removed via a vote of party members. A petition was filed in court which declined mandate to hear the same. The court was of the view that the mechanism was provided by statute to resolve the dispute arising thereof.

30. It is submitted that, since the instant matter is on a political process the court should not frustrate member's intention, desire and resolve. He relies on the case of **REPUBLIC VS COUNTY ASSEMBLY OF MIGORI & 4 OTHERS EXPARTE OWINO 2014 EKLK** where **MAJAJA J** held: "*Election of Majority Leader is a prerogative of party members in the assembly....*"

31. Also cited is the case of **MINISTER FOR HOME AFFAIRS VS BICKLE & OTHERS 1985 LRC WHERE LENAOLA J** as he then was held that "*courts will not normally consider a constitutional question unless the constitutional question depends on it; if a remedy is available to an applicant under some other legislative provision... a court will usually decline to determine whether there has been a breach of declaration of rights.*"

32. Thus, it is submitted that the petitioner should have started with internal party dispute resolution, then political parties' tribunal before ascending or escalating dispute to the High court.

33. MR. NYIPOLO for the petitioner submitted that the Preliminary Objection is bad in law and improperly raised. He relied On the case of **MUKHISA BISCUIT MANUFACTURING CO. LTD VS WEST END DISTRIBUTORS LTD (1969) EA 696**.

34. The said case set out the premises for raising a Preliminary Objection which are; (1) it should be raised on assumption that the facts are proper. Preliminary Objection does not deal with matters of fact. Allegations can only be determined if matter is heard on merit.

35. **On merit:** same Preliminary Objection is mischievous mode of denying Petitioner access to justice. The Petition in court is not a political dispute. It is a violation of Bill of Rights particularly contravention of Article 47 and 50 of the Constitution of Kenya.

36. For that only one forum is available to protect and to consider rights violation in Bill of Rights. It's only the courts. Article 23 of the Constitution together with Article 165 vest only in High Court power to determine violation of rights under Bill of Rights.

37. This was reiterated in **PROTUS MOINDIUS, SPEAKER OF COUNTY ASSEMBLY KISII COUNTY ASSEMBLY & 2 OTHERS. WAKIAGA J** stated: "*The jurisdiction of the High Court is donated by Article 165 (3) of the Constitution to enquire into the legality or constitutional of any act done or said to be done pursuant to Constitution or the law.*"

38. The office of 3<sup>rd</sup> Respondent (Minority Whip) is a statutory whip. It's an office established by Section 10 of County Government Act; it is not a political office. The Bearer may be a political party member; but office is a statutory office.

39. The actions of bearer of a statutory office are actions of administrative in nature which must be executed in compliance with Constitution of Kenya and principles of natural justice.

40. The petitioner is challenging the 3<sup>rd</sup> Respondent actions which violated principles in Constitution of Kenya, in Fair Administration Act and principles of natural justice.

41. Petitioner was bundled out of office without notice. There was no supply of reasons for being removed or even being heard. There was an SMS at 10 pm on night of 3/6/2020 inviting petitioner for meeting at 10 am. The same indicated the agenda would be consultation of NASA Affairs. When Petitioner attended meeting, he realised election were to be conducted for his removal.

42. The acts by 3<sup>rd</sup> Respondent were mala fide, unconstitutional, arbitral and abuse of discretion. It was well choreographed so that the meeting to be held at the resolution were to be provided to the speaker so that at 2.30 pm the petitioner was to be out of office. It is alleged petitioner did not lodge protest with speaker. No law provides for protest.

43. Thus, the petitioner rushed to only forum dealing with violation of rights in Bill of Rights. Same day seeking to protest violation of Constitutional rights. The court did not issue orders till next morning 5/6/2020. Court issued injunctive reliefs.

44. The Respondent seeks the court to cede constitutional jurisdiction and lead him to political party tribunal which has no jurisdiction on matters of violation of Bill of Rights (BOR).

45. He avers that he has no dispute with political party but complaints of administrative acts of 3<sup>d</sup> respondent. He argues that if he goes to political party, he will have no remedy.

46. He submits that under Art 23 of the constitution of Kenya only the High court can grant sought remedies. See **Wakiaga J** holding in Kisii case of **PROTUS MOINDIUS, SPEAKER OF COUNTY ASSEMBLY KISII COUNTY ASSEMBLY** (Supra).

47. He reiterates his quarrel is with 3<sup>rd</sup> respondent breach of Art 47 and 50 of the Constitution but not with any political party.

#### **ISSUES, ANALYSIS AND DETERMINATION**

48. After going through the materials before me, I find the issues are; that whether the p o raised meets the threshold to be canvassed as a P O, if above in affirmative, is the instant dispute in the right forum? If above in affirmative what is the order of the court?

49. In analysis and determination, the starting point is petitioner's contest that the p o does not meet threshold of **Mukhisa Biscuit** case. The definition of a preliminary objection was well set out in the case of **MUKISA BISCUIT MANUFACTURING CO. LTD VS WEST END DISTRIBUTORS LTD (1969) EA 696**.

**"So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit."**

50. This was followed up by the judgment of Sir Charles Newbold in the same case:

***"The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary Objection. A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop."***

51. This court must now consider whether the issues raised in this Preliminary Objection are matters of fact or law. I have perused the reasons by the applicant in his Preliminary Objection. I have seen points of law that have been raised. What has been raised are purely matters of law which the petitioner's counsel had a chance to respond to.

52. I hold the view that by filing such an objection, the respondents have not denied the petitioner the opportunity to the same Preliminary Objection.

53. As a matter of Law, a party upon whom a Preliminary Objection is served, does not have a right to respond factually and can only place before the court the law applicable.

54. Law JA, in the same case stated that, ***"...a Preliminary objection consists of a point of law argued as a preliminary point may dispose of the suit..."*** ***It is clear to me that the issue raised by the defendants pertaining to representation of these parties, would require evidence and in which case they cannot be entertained by way of Preliminary Objection as relations cannot be inferred and, on that ground, alone, this objection cannot be sustained."***

55. It is clear to me that the issue raised by the respondents pertaining to forum to adjudicate instant dispute, would require no evidence and in which case they can be entertained by way of Preliminary Objection as to the import of provisions of Section 40 of **POLITICAL PARTIES ACT NO. 11 OF 2011** and on that ground alone, this objection can be and is sustained.

56. In a book **Handbook on Election Disputes in Kenya Context, Legal Framework, Institutions and Jurisprudence published by LSK and Judiciary 2013 sub-title Political Party Disputes**, the following material was extracted.

57. Like other mechanisms for electoral dispute resolution in Kenya, dispute resolution mechanisms within political parties, as prescribed by law, was largely informed by the political and electoral context in Kenya. Weak political parties as institutions, lack of internal democracy within political parties, undemocratic party nomination processes and lack of effective dispute resolution mechanisms within political parties were some of the factors that influenced the shape of the law and the institutional framework as we know it today.
58. Section 39 of the Political Parties Act establishes the Political Parties Dispute Tribunal (PPDT) to determine disputes arising from political parties.
59. Under Section 40 of the Political Parties Act, the PPDT has both original and appellate jurisdiction which include: **a) disputes between the members of a political party; b) disputes between a member of a political party and a political party; c) disputes between political parties; d) disputes between an independent candidate and a political party; e) disputes between coalition partners; and f) appeals from decisions of the Registrar of Political Parties under this Act.**
60. Section 40(2) of the Political Parties Act then prescribes that: Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a) (b), (c) or (e) unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms.
61. From the foregoing statutory prescriptions, save for disputes (d) and (f), two institutional mechanisms exist for resolving political party disputes, namely, the internal political party dispute resolution mechanisms as established by the individual political parties' constitutions, and, the Political Parties Disputes Tribunal as established under the Political Parties Act 2011. It is important to note that a dispute is only admissible before the Political Parties Dispute Tribunal once one has exhausted mechanisms within the party.
62. This primacy of the internal party dispute resolution mechanisms followed by the tribunal as a forum of dispute resolution before one take recourse to the jurisdiction of mainstream courts has been reaffirmed in a number of cases.
63. In the case of **Stephen Asura & Others v the Orange Democratic Movement Party & Others**, the petitioners sought to restrain the confirmation of the grass root elections of the 1st Respondent in respect of Makadara constituency held at City Hall in Starehe Constituency.
64. They argued that the conduct of the said elections of the party were unconstitutional. They also sought to have the matter referred to arbitration by the court.
65. The High Court held that it did not have jurisdiction over the matter in light of the nature of the dispute and the parties involved. The court ordered the 1st Respondent to put in place mechanisms for resolving the petitioner's grievances failing which the petitioners would have recourse to the Political Parties Disputes Tribunal.
66. In the case of **Engineer Ephraim Maina v the Independent Electoral and Boundaries Commission**, the petitioner challenged the constitutionality of the decision of Safina party to expel him from the party as it was likely to lead to the loss of his seat as a Member of Parliament for Mathira constituency.
67. The High Court held that the petitioner was under an obligation to exhaust the internal party dispute resolution mechanism. If aggrieved at the party level or if the party refused to activate the party mechanism, the court held further, the petitioner would have to make recourse to the Political Parties Disputes Tribunal.
68. It is arguable, particularly considering the jurisprudence from the two decisions above, that this requirement of exhaustion of internal party dispute resolution mechanisms is applicable only where there exist effective mechanisms for resolution of disputes within the party.
69. It would be elevating this innocent provision of the law to the level of fetish if the tribunal or court were to insist on exhaustion of internal party dispute resolution mechanisms if it is demonstrated that such mechanisms are prima facie ineffective and cannot deliver the requisite remedy or are designed to be cumbersome.
70. There are instances where insisting on exhaustion of internal party mechanisms would defeat the ends of justice.
71. In the instant matter, it is not in dispute that, the members of the NASA Coalition constitute the Garissa County Assembly's wing of the Minority and are a sum total of fourteen (14) members.
72. On 4th day of June 2020 at 1200 hours, the 1st Respondent received a written communication dated 04.06.2020 from the Minority Whip, the 3rd Respondent herein which he has annexed and marked as 'COM 1' being a copy of the Communication.
73. The said communication notified him that after a meeting held on 4th June 202 by members of the NASA Coalition, one Hon. Mohamed Ali Sheikh, member for Abakaile Ward was elected as the Leader of Minority, County Assembly of Garissa.
74. That Hon. Mohamed Ali Sheikh was elected after members of the NASA Coalition voted out the Hon. Mohamed Abdi Farah the Petitioner herein. The written communication from the Minority Whip were the minutes of the meeting held by members of the NASA Coalition on 4th June, 2020, which replaced the Petitioner herein with Hon. Mohamed Ali Sheikh, member for Abakaile Ward.
75. The written communication from the Minority Whip, the 3rd Respondent herein, was the attendance-sheet signed by a sum total twelve (12) members bearing details of their identity card numbers, telephone contacts and signatures vide the annexed and marked as 'ATT 1' a copy of the Attendance-sheet.

76. The 1st respondent satisfied himself that the said minutes and the attendance-sheet were authentic and bore the true signatures, telephone contacts and identity-card details of the members present.
77. He also satisfied himself that the Hon. Mohamed Abdi Farah, the Petitioner herein was present in the said meeting and the referenced minutes and the attendance-sheet reflected the same.
78. Further he was satisfied himself that the process of removing the Leader of Minority, the Petitioner herein and his subsequent replacement was in conformity with the requirements of Standing Order No. 16 of the County Assembly Standing Orders.
79. He verified that the 3rd Respondent in communicating to him the removal and subsequent replacement of the Petitioner herein was in conformity with the requirements of Standing Orders No. 16 (4) of the County Assembly Standing Orders.
80. He avers that he did not receive any complaint or communication from the Petitioner herein, protesting the communication of the 3rd Respondent to his office.
81. Thus he communicated the election of one Hon. Mohamed Ali Sheikh, member for Abakaile Ward as the new Leader of Minority at 2.30pm on 4th June 2020 when the House met at the Garissa County Assembly he annexed and marked as 'HAN 1' a copy of the Assembly Hansard of 4th June 2020).
82. The new changes took effect on the 4th day of June 2020 at 2.30pm and the Hon. Mohamed Ali Sheikh, member for Abakaile Ward promptly assumed office as the Leader of Minority.
83. The petitioner complaint is that the 3rd Respondent arbitrarily and with mala fide called for a meeting of the Minority Coalition of Parties on the night of 3rd June, 2020 at 9.59 pm, which notice was sent through short message service (SMS) and indicated that there was to be a 'consultative' meeting on 4th June, 2020 at 10.00 am at the Assembly Chambers, vide a copy of the notice of the meeting annexed and marked A.
84. That despite the notice indicating that the agenda of the meeting was 'consultation', the meeting went ahead to deliberate and resolve that he be removed from the position of Leader of Minority Party; without according to him due notice, written reasons for his removal or a chance to be heard.
85. The resolution to remove him from his office was dully communicated to the 1st and 2nd Respondents on 4th June, 2020, as per the requirements of Standing Orders No. 16 of the Garissa County Assembly, vide a copy of the Standing Order No. 16 annexed and marked B.
86. During the sitting of the Assembly on 4th June, 2020 the speaker acknowledged receipt of the resolution, which in effect meant that the changes are deemed to have taken effect.
87. The petitioner attended meeting of their party/coalition and never raised any objection of the meeting on the basis of short notice or agenda. He participated in the elections held of minority leader without any objection and was defeated and thus the 3<sup>rd</sup> respondent communicated to the 1<sup>st</sup> respondent the result of the party decision under Standing Order No. 16 of the Assembly.
88. The petitioner grievances are that of the party/coalition decision to remove him as minority leader which if felt was unfair ought to have been impugned as per provisions of PPA No. 11 of 2011.
89. In **Peter Ochara Anam & 3 Others v. Constituencies Development Fund Board & 4 Others**, Kisii High Court Petition No. 3 of 2010 held as follows:

***“Jurisdiction we all know is everything and once raised it must be confronted from the onset and if successful, the court must down its tools.” The court further stated that, “I do not think that it is right for a litigant to ignore with abandon a dispute resolution mechanism provided for in a statute and which would easily address his concerns and rush to this court under the guise of a constitutional petition for alleged breach of constitutional rights under the bill of rights.”***

90. They also relied on the **Isaiah Gichu Ndirangu & 2 Others vs. I.E.B.C & 4 Others** where it was held as follows:

***“In our view, the appellants have not rationalized the transmutation of the issue from an ordinary nomination matter to a constitutional one to warrant the same to be heard by the High court sitting as constitutional court. As we have demonstrated earlier the constitution has created autonomous structures/organs charged with electoral dispute resolution, and the courts need to safeguard the autonomous exercise of their respective jurisdiction. It would be perverse for the High court or this court to ignore those tribunals and hijack their jurisdiction.”***

91. The court finds that the Petitioner's dispute ought to have been commenced at the Parties/Coalition then appeal to the PPDT if any and then eventually in the High Court as a second appeal.
92. Thus, this court finds merit in the Preliminary Objection herein and upholds the same thus making the following orders;

***i) The Preliminary Objection is allowed and the petition and motion herein are hereby struck out.***

*ii) Parties to bear their costs.*

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 19<sup>TH</sup> DAY OF JUNE, 2020.**

.....

**C. KARIUKI**

**JUDGE**