



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 401 OF 2014

REPUBLIC.....APPLICANT

VERSUS

THE CABINET SECRETARY, MINISTRY OF INFORMATION

& COMMUNICATION.....1ST RESPONDENT

COMMUNICATIONS AUTHORITY OF KENYA.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

AND

CAROLE KARIUKI & OTHERS.....INTERESTED PARTIES

EX-PARTE: ADRIAN KAMOTHO NJENGA

RULING

1. By a Notice of Motion dated 24th October, 2014 the *ex parte* applicant herein **Adrian Kamotho Njenga** sought the following orders:

- 1. An order of Certiorari to remove into this honourable court and quash the decision and gazette notices Nos. 2915 and 3586 dated 24th April and 20th May 2014 respectively by the 1st Respondent and the 1st Interested Party publishing the names of the shortlisted candidates for appointments to the 2nd Respondent's board and appointing the 2nd to 7th Interested Parties as members of the Communications Authority of Kenya (CAK) Board**
- 2. An order of Mandamus compelling the 1st Respondent to disclose the full composition of the Selection panel chaired by the 1st Interested Party.**
- 3. Costs of an incidental to the application be provided for.**
- 4. Such further and other reliefs that the Honourable Court may deem just and expedient to grant.**

2. After hearing the application, I was of the view if the 1st Respondent's decision was outside the timelines set out by the relevant Act, its decision was arrived at without or in excess of jurisdiction and whatever proceedings flowed from that decision would be null and void since a decision made without jurisdiction must of necessity be null and void.

3. Having found that the appointment of the 2nd to the 7th interested parties was tainted with illegality in that they were appointed outside the statutory timelines provided under section 6B of the ***Kenya Information and Communications (Amendment) Act, 2013***, I found the said application merited. It was my finding that no chaos would will result if the 1st Respondent commenced the process of the appointment of the members of the Board afresh in compliance with the law. Consequently, I granted an order of certiorari removing into the court and quashing the decision and gazette notices Nos. 2915 and 3586 dated 24th April and 20th May 2014 respectively by the 1st Respondent and the 1st Interested Party publishing the names of the shortlisted candidates for appointments to the 2nd Respondent's board and appointing the 2nd to 7th Interested Parties as members of the Communications Authority of Kenya (CAK) Board. I also awarded the costs of the said application to the *ex parte* applicant.

4. It is the order for award of costs that has provoked the instant application dated 10th June, 2020 made on behalf of the 2nd Respondent in which it sought a clarification of the said order in respect to costs since in its view it ought not to pay the said costs. It also sought that a provision be made for the costs of the instant application.

5. The application is based on the following grounds:

a) In these judicial review proceedings, the *ex parte* Applicant challenged the appointment of the 1st to 8th Interested Parties by the 1st Respondent as Directors of the Board of the 2nd Respondent.

b) Even though joined as a party, no factual allegations and/or charges or legal impropriety were made against the 2nd Respondent in respect of any of the matters raised in the proceedings. Accordingly, the 2nd Respondent did not file any response nor did it participate in the hearing.

c) On 29th May 2015, the Court delivered a judgment upholding only one of the grounds upon which the impugned appointments had been challenged i.e. the 1st Respondent failed to comply with the mandatory statutory timelines thus the appointments were unlawful.

d) The only finding of impropriety was against the 1st Respondent in respect to the statutory timelines and it was his [i.e. the 1st Respondent's] decision appointing the 1st to 8th Respondents that was quashed. There was no finding of any impropriety by the 2nd Respondent nor were any orders made against it.

e) As costs follow the event unless expressly held otherwise, in the absence of any finding and/or orders made against it, the 2nd Respondent is not and cannot be liable to pay the *ex parte* Applicant's costs.

f) In the circumstances, it is just and equitable for this Honourable Court to clarify that even though the judgment was not explicit as to which party should pay the said costs, it is not the 2nd Respondent.

6. The said application was supported by an affidavit sworn by **Edward Rinkanya**, the 2nd Respondent's Acting Director Legal Services of Communications in which the same grounds were reiterated.

7. In the submissions filed on behalf of the 2nd Respondent/Applicant, it is contended that this application is not *res judicata* since it was filed pursuant to a Court order, which is not the subject of any challenge. Thus, if anyone was to lodge an appeal taking objection, it should be the Applicant challenging the orders of **Lady Justice Nyamweya**. Secondly, nothing in the said application seeks to re-litigate fully decided matters. The Said Application does not speak to the issues as to the legality of the appointments of the 2nd to 9th Interested Parties not whether or not the Applicant was entitled information as to the process of their recruitment. It speaks only to and triggered by the improper attempt by the Applicant to enforce the order of costs as against the 2nd Respondent. In support of its submissions the 2nd Respondent relied on Section 27 of the **Civil Procedure Act**. According to the 2nd Respondent, the application is simply restricted to the determination of the issue whether the costs order made in this case extends to the 2nd Respondent. Nowhere does it seek to re-litigate the questions of the propriety of the appointments of the 2nd to 8th Interested Parties.

8. It was submitted that contrary to the Applicant's arguments, nothing in paragraph 9 of **Mr. Wangusi's** affidavit, in which he sought the dismissal of the proceedings as against the 2nd Respondent with costs, addressed, not could it have addressed, the question whether the award of costs in favour of the Applicant included payment by the 2nd Respondent. It was submitted that under section 27 of the **Civil Procedure Act**, the costs follow the event- the unsuccessful party pays the successful party's costs and that though the Court has a discretion to depart from this, this has to be done explicitly and reasons for such departure given. In this regard reliance was placed on **Postel Housing Co-operative Society Limited & Another vs. Telkom Kenya Limited & another; Attorney General (Interested Party) [2020] eKLR**, **Richard Brian Wekesa vs. Board of Management Njiiri School & 3 Others [2016] eKLR** and **Kampala HCMA No. 81 of 1993 - Re Ebuneiri Waisswa Kafuko**.

9. Based on the foregoing, the 2nd Respondent submitted that the Applicant was the successful party as against the 1st Respondent and there was no finding of any unlawful conduct on part of the 2nd Respondent nor were any orders made against it. Accordingly, no misconduct was laid at its feet. It is therefore inconceivable to contend as the Applicant seems to be doing, that, contrary to principle and *sub silentio*, awarded costs as against the 2nd Respondent. In the absence of any finding and/or orders made against it, the 2nd Respondent is not and could not be liable to pay the *ex parte* Applicant's costs. In this regard the 2nd Respondent relied on **Peterson Wachira & another vs. Registrar of Trade Unions & Another; Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers (KUDHEIHA Workers) & Another (Interested Parties) [2019] eKLR**.

10. It was based on the foregoing that the 2nd Respondent prayed that the Court should set the Applicant right and clarify that the direction in the judgment that "*the costs of this application are awarded to the ex parte applicant*" does not extend to the 2nd Respondent. As it was his improper attempt to saddle the 2nd Respondent with those costs which triggered its filing and compound matters, the Applicant has resisted it, he should be condemned to pay the costs of and occasioned by the Said Application.

11. In opposing the application, the *ex parte* applicant swore a replying affidavit in which he deposed that the 2nd Respondent is not entitled to the orders sought having approached this Court with unclean hands and resorted to perjury. According to the *ex parte* applicant the averment that the 2nd Respondent did not respond to the main application was incorrect as the 2nd Respondent filed Notice of Appointment of HHMORARO Advocates dated 4th November 2014 and a Replying affidavit sworn by **Francis Wangusi** on 9th December 2014 and

lodged in Court on 9th December 2014.

12. According to the ex parte applicant, the arguments raised in the current application are *res judicata* having been specifically tendered under the said replying affidavit. To the ex parte applicant, the 2nd Respondent is craftily seeking to have limitless bites at the cherry by re-litigating fully decided matters under the guise of what has been christened as a “clarification” hence its Application is frivolous, vexatious and an extreme case of abuse of court process as exemplified by the fact that on 3rd June 2015, the 3rd Respondent filed a Notice of Appeal against the High Court judgment delivered on 29th May 2015, on behalf of all the Respondents including the 2nd Respondent herein; on 4th June 2015, the 2nd Respondent, separately, through the firm of M/S Mohammed & Kinyanjui lodged a Notice of Appeal to the Court of Appeal intending to appeal against part of the High Court judgment delivered on 29th May 2015; on 15th June 2015, the 2nd Respondent filed an application for stay pending appeal at the Court of Appeal at Nairobi; on 3rd February 2016, the 1st Respondent withdrew the Notice of Appeal dated 3rd June 2015; on 3rd February 2016, the 2nd Respondent wholly discontinued/withdrew the application dated 15th June 2015 and the intended appeal; and on 18th April 2016, the 2nd Respondent withdrew the Notice of Appeal dated 4th June 2015.

13. In the ex parte applicant’s view, the arguments contained in the 2nd interested party’s application (sic) and the grounds in particular could only be a subject of appeal at the Court of Appeal where the 2nd Respondent eventually chickened out upon sensing the futility of its intended appeal. According to it, the 2nd Respondent has no liberty of choice to incessantly hop from one judicial forum to another trying to argue a pointless point since litigation cannot be infinite. The ex parte applicant’s position was that the Respondents are jointly and severally liable to pay the *ex parte* applicant’s costs awarded by the High Court on 29th May 2015 with interest at court rate and without devising further time wasting gimmicks and that the instant application is intended to vex, wear out and deprive off the ex parte applicant his just fruits of litigation and should be dismissed.

14. On behalf of the ex parte applicant the contents of the replying affidavit were reiterated and it was submitted that based on section 27 of the *Civil Procedure Act*, a successful party cannot be deprived of his due costs merely because the suit proceeded uncontested on account of another party’s lack of diligence. It was submitted that the argument that no factual allegations, charges or legal impropriety were made against the 2nd Respondent is equally hollow in light of the provisions of Order 1, rule 10 of the *Civil Procedure Rules, 2010*.

15. As regards the issue of *res judicata*, the ex parte applicant relied on Section 7 of the *Civil Procedure Act* and reiterated its position in the replying affidavit and contended that the 2nd Respondent is basically seeking to have immeasurable gaming chances in court by endlessly re-litigating the matter under the guise of what has been now christened as a “clarification”. As self-evident, the 2nd Respondent is literally attempting to lodge an appeal through the ‘keyhole’.

16. According to the ex parte applicant, having specifically tendered similar arguments in the main proceedings, the 2nd Respondent has already had its day in court in so far as the issues raised herein are concerned and allowing the current application would defeat the meaning and purpose of the doctrine of *Res Judicata*.

17. It was the ex parte applicant’s position that the 2nd Respondent has clearly engaged in egregious forum shopping and relied on **Satya Bhama Gandhi vs. Director of Public Prosecutions & 3 others [2018] eKLR**.

18. It was the ex parte applicant’s position that the 2nd Respondent has demonstrably abused the process of court by making back and forth applications to the Court of Appeal and the trial court thereby wasting judicial time as well as time for the parties involved. In its view, had the 2nd Respondent bothered to exercise a slight reflection on the law, available facts and the prospective consequences of its actions, these absolutely unwarranted and unmerited proceedings would never have obtained. Inevitably, due to the 2nd Respondents indiscretion and recklessness, the ex parte applicant has endured relentless vexation, exasperation and needlessly incurred enormous costs and the Court was urged to dismiss the instant application with costs to the *ex parte* applicant.

Determination

19. I have considered the issues raised in this application. The ex parte applicant contends that the instant application is *res judicata* and amounts to an abuse of the court process. According to the *ex parte* applicant, the 2nd Respondent did file a notice of appeal against the decision which it did withdraw hence these proceedings amount to an abuse of the Court process. In **Beinosi vs. Wiyey 1973 SA 721 [SCA]** at page 734F-G a South African case heard by the Appeal Court of South Africa, **Mohomad CJ**, set out the applicable legal principle as follows:-

“What does constitute an abuse of process of the court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of “abuse of process.” It can be said in general terms, however, that an abuse of process takes place where the proceedings permitted by the rules of court to facilitate the pursuit of the truth are used for purposes extraneous, to that objective.”

20. Similarly, the Court of Appeal in Abuja, Nigeria in the case of **Attahiro vs. Bagudo 1998 3 NWLL pt 545 page 656**, stated that the term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. The term abuse of process has an element of malice in it.

21. It is therefore clear that proceedings will amount to abuse of the Court process when employed for achievement of some collateral purpose other than for the achievement of a genuine objective of realization of justice.

22. The purpose of a Notice of Appeal was explained in Yani Haryanto vs. E. D. & F. Man. (Sugar) Limited Civil Appeal No. 122 OF 1992 where the Court of Appeal was of the following view:

“A notice of appeal apart from manifesting a desire to appeal, appears to have a two-fold purpose; one of the purposes is apparent from the rules that follow up to and including rule 79. The other purpose is to enable the High Court to entertain an application for stay of execution before the appeal is filed...An appeal is not instituted in the Court of Appeal until the record of appeal is lodged in its registry, fees paid and security lodged as provided in rule 58 and the inclusion of a memorandum of appeal.”

23. From the foregoing, it is clear that the mere fact that a party manifests an intention to lodge an appeal does not operate as a bar to the party taking any other legal step lawfully available to him in order to obtain relief. Therefore, I am unable to find that by merely filing a Notice of Appeal, the 2nd Respondent is thereby barred from moving this Court in order to correct what in its view is an erroneous omission.

24. As regards res judicata, Section 7 of the *Civil Procedure Act*, provides as hereunder:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

25. It is therefore important to revisit the legal principles guiding the applicability of the doctrine of *res judicata*. In the case of Lotta vs. Tanaki [2003] 2 EA 556 it was held as follows:

“The doctrine of *res judicata* is provided for in Order 9 of the Civil Procedure Code of 1966 and its object is to bar multiplicity of suits and guarantee finality to litigation. It makes conclusive a final judgement between the same parties or their privies on the same issue by a court of competent jurisdiction in the subject matter of the suit. The scheme of section 9 therefore contemplates five conditions which, when co-existent, will bar a subsequent suit. The Conditions are: (i) the matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit; (ii) the former suit must have been between the same parties or privies claiming under them; (iii) the parties must have litigated under the same title in the former suit; (iv) the court which decided the former suit must have been competent to try the subsequent suit; and (v) the matter in issue must have been heard and finally decided in the former suit.”

26. In this case, it is clear that the issue of costs which is the subject of this application was a matter that was directly and substantially in issue in the former proceedings which proceedings were between the same parties who litigated under the same title. It is not contended by any of the parties that this Court was not competent to try the said proceedings. As to whether the subject matter of this application was heard and finally decided in the former suit, it is important to consider the principles awarding costs and whether in light of the said principles, the issue of costs was finally decided.

27. The general rule as to costs is provided for in section 27 of the *Civil Procedure Act* which provides as follows:

Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

28. The phrase “costs follow the event” was the subject of the decision of the Supreme Court in Jasbir Singh Rai & 3 others vs. Tarlochan Singh Rai & 4 others [2014] eKLR where it was held that:

“It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs.”

29. The main object for awarding costs was stated in Vinod Seth vs. Davinder Bajaj Civil Appeal No. 4891 of 2010 where it was held that:

“We must remember that whatever the origin of costs might have been, they are now awarded, not as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he has been subjected, or, as Lord Coke puts it, for whatever appears to the Court to be the legal expenses incurred by the party in prosecuting his suit or his defence...The theory on which the costs are now awarded to a plaintiff is that default of the defendant made it necessary to sue him, and to a defendant is that the plaintiff sued him without cause; costs are thus in the nature of incidental damages allowed to indemnify a party against the expense of successfully vindicating his rights in court and consequently the party to blame pays costs to the party without fault. These principles apply, not merely in the award of costs, but also in the award of extra allowance or special costs. Courts are authorised to allow such special allowances, not to inflict penalty on the unsuccessful party, but to indemnify the successful litigant for actual expenses necessarily or reasonably incurred in what are designated as important cases or difficult and extraordinary cases.”

30. Similarly, in *Halsbury's Laws of England*, 4th ed Re-Issue (2010), Vol. 10, para. 16 it is stated:

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice.”

31. A holistic consideration of the law and the authorities leads me to the conclusion that barring any exceptional or special circumstances, a judicious exercise of the discretion in awarding costs would necessarily mean that the party whose conduct led to litigation which would otherwise have been avoided is the one to shoulder the costs. It therefore follows that not all the Respondents to a suit where the suit succeeds or all Plaintiffs where the suit fails are to be penalised in costs. To do so would amount to an arbitrary exercise of judicial discretion. Being judicious requires the Court to determine who is at fault before determining who pays the costs. It is in this sense that I understand the holding in the case of **Postel Housing Co-operative Society Limited & Another vs. Telkom Kenya Limited & another; Attorney General (Interested Party) [2020] eKLR** where it was held that:

“The general principle which guides our courts when exercising this jurisdiction is that costs follow the event. The dictum “costs follow the event” means that the costs incurred by the successful party are to be borne by the unsuccessful party at the conclusion of the case.”

32. In other words, the Court must determine “the event” under section 27 of the *Civil Procedure Act*. On the definition of the word “event” as used in the expression “costs follow event”, in **Morgan Air Cargo Limited vs. Evrest Enterprises Limited [2014] eKLR**, it is stated as follows:

“The words “the event” mean the result of all the proceedings to the litigation. The event is the result of entire litigation. It is clear however, that the word ‘event’ is to be regarded as a collective noun and is to be read distinctively so that in fact it may mean the “events” of separate issues in an action. Thus the expression “the costs shall follow the event” means that the party who on the whole succeeds in the action gets the general costs of the action, but that, where the action involves separate issues, whether arising under different causes of action or under one cause of action, the costs of any particular issue go to the party who succeeds upon it.”

33. The general position is however as stated in **Kampala HCMA No. 81 of 1993 - Re Ebuneiri Waisswa Kafuko** where the court held as hereunder:-

“The judge in his discretion may say expressly that he makes no order as to costs and in that case each party must pay his own costs. If he does not make an order as to costs, the general rule is that he shall order that he costs follow the event except where it appears to him in the circumstances of the case some other order should be made as to the whole or any part of the costs. But he must not apply this or any other general rule in such a way as to exclude the exercise of the discretion entrusted to him and the material must exist upon which the discretion can be exercised. The discretion, like any other must be exercised judicially and the judge ought not to exercise it against the successful party except for some reason connected with the case. It is not judicial exercise of the judge’s discretion to order a party who was completely successful and against whom no misconduct is even alleged to pay costs.”

34. In this case, it is clear as stated at the beginning of this ruling that it was the 1st Respondent’s actions and/or omissions that provoked the litigation. Section 6B of the *Kenya Information and Communications (Amendment) Act 2013*, placed the duty to act on the Cabinet Secretary or the President. In this case the action was taken by the latter but in so doing he clearly failed to comply with the law. In arriving at the decision I delivered myself, inter alia, as hereunder:

“In my view if the 1st Respondent’s decision was outside the timelines set out by the Act, its decision was arrived at without or in excess of jurisdiction and whatever proceedings flowed from that decision would be null and void since a decision made without jurisdiction must of necessity be null and void...However, having found that the appointment of the 2nd to the 7th interested parties was tainted with illegality in that they were appointed outside the statutory timelines provided under section 6B of the *Kenya Information and Communications (Amendment) Act, 2013*, it follows that I find merit in the instant application... I do not see any likely chaos which will result if the 1st Respondent commences the process of the appointment of the members of the Board afresh in compliance with the law after all, the said appointments are not for life but are term appointments...Accordingly, the order which commends itself to me and which I hereby grant is an order of certiorari removing into this honourable court and quashing the decision and gazette notices Nos. 2915 and 3586 dated 24th April and 20th May 2014 respectively by the 1st Respondent and the 1st Interested Party publishing the names of the shortlisted candidates for appointments to the 2nd Respondent’s board and appointing the 2nd to 7th Interested Parties as members of the Communications Authority of Kenya (CAK) Board.”

35. It is clear that the event, for the purposes of section 27 of the *Civil Procedure Act*. The said section however, entitles and empowers the court or judge to full power to determine by whom and out of what property and to what extent the costs are to be paid, and to give all necessary directions for the said purposes. It is these directions which were omitted when the Court awarded costs to the ex parte applicant. That the Court has inherent jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court is not in doubt. The principles that guide the exercise of the Court’s powers under section 99 of the *Civil Procedure Act* were restated in **Sapra Studio vs. Kenya National Properties Ltd (2) [1985] KLR 1011; [1986-1989] EA 519** in which the Court of Appeal held that the words “at any time” in section 99 of the *Civil Procedure Act* allow the court the power of amendment, even after the issue of the formal order and that the error or omission must be an error in expressing the manifest intention of the court. In other words, there must be an error, which can be corrected so as to express the court’s intention. It has therefore been held that the provision applies to the correction of

clerical and arithmetical mistakes in judgement, decree or order arising therein from any accidental slip or omission; that is to say, errors of the Court involving the meaning or intendment of the judgement, decree or order which the court meant to pronounce. See **Laemthong Rice Co. Ltd vs. Principal Secretary Ministry of Finance [2002] 1 EA 119.**

36. Apart from that provision there is inherent power of the Court to do justice. Inherent power, it must be stressed is not donated by legislation. In **Ryan Investments Ltd & Another vs. The United States of America [1970] EA 675** it was held that section 3A of the **Civil Procedure Act** is not a provision that confers jurisdiction on the court but simply reserves the jurisdiction which inheres in every court. The court has inherent jurisdiction not created by legal provisions, but which only manifests the existence of such powers. Dealing the same issue, it was held in **Republic vs. The Public Procurement Complaints, Review and Appeals Board & Another Ex Parte Jacorossi Impresse Spa Mombasa HCMA No. 365 of 2006** that the Court has power under its inherent jurisdiction to make orders that may be necessary for the ends of justice and to enable the Court maintain its character as a court of justice and that this repository power is necessary to be there in appreciation of the fact that the law cannot make express provisions against all inconveniences.

37. One of the instances in which the court exercises this residual power is in the fulfilment of its obligation to ensure that the orders it issues are not issued in vain. This was recognised by the Court of Appeal in **Nicholas Mahihu vs. Ndima Tea Factory Ltd & Another Civil Application No. Nai. 101 of 2009** where it was held that the Court has the duty to ensure that its orders are at all times effective.

38. Without direction who was to pay the costs of the ex parte applicant, the resultant effect was that the order on costs would be ineffectual. Having considered the issues raised herein I find merit in the application dated 10th June, 2020 made on behalf of the 2nd Respondent and for avoidance of doubt, I hereby clarify that the costs which were awarded to the ex parte applicant in these proceedings are to be borne by the 1st Respondent.

39. There will be no order as to the costs of the instant application and it is so ordered.

40. This ruling was delivered by email by consent of parties.

Ruling read, signed and delivered at Machakos this 17th day of September, 2020.

G.V. ODUNGA

JUDGE

In the presence of:

CA Geoffrey