REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 6 OF 2018

JEROTICH SEII.....1ST APPLICANT

EVA MUTUA.....2ND APPLICANT

JAMES GITAU.....3RD APPLICANT

WANJERI NDERU.....4TH APPLICANT

FREDRICK ASIRA.....5TH APPLICANT

VICTOR INNOCENT OTIENO.....6TH APPLICANT

-AND-

APOLLO MBOYA.....1ST PETITIONER

ELECTRICITY CONSUMERS SOCIETY OF KENYA.....2ND PETITIONER

-VERSUS-

KENYA POWER & LIGHTING COMPANY LIMITED.....1ST RESPONDENT

ENERGY REGULATORY COMMISSION.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

AUDITOR GENERAL.....4TH RESPONDENT

RULING

1. Jerotich Seii (the 1st Applicant), Eva Mutua (the 2nd Applicant), James Gitau (the 3rd Applicant), Wanjeri Nderu (the 4th Applicant), Fredrick Asira (the 5th Applicant) and Victor Innocent Otieno (the 6th Applicant) are through the notice of motion application dated 5th December, 2018 brought under Order 51 of the Civil Procedure Rules, 2010 and sections 1A, 1B and 3A of the Civil Procedure Act seeking orders as follows:

> **"(a) This Application be certified urgent and dispensed with at the earliest instance.**
>
> **(b) This Court be pleased to admit the 1st to 6th Applicants as Interested Parties to this Petition.**
>
> **(c) Upon the Court granting prayer number 2 in this Application, this Court be pleased to suspend the consent orders in this Petition pending the hearing and determination of the substantive issues raised by the Interested Parties to this Petition.**

(d) This Court be pleased to make any order that is deemed fit."

The application is supported by the grounds on its face and an affidavit sworn on the date of the application by the 1st Applicant.

2. The 1st Petitioner, Apollo Mboya, and the 2nd Petitioner, Electricity Consumers Society of Kenya, filed a petition dated 11th January, 2018 seeking various reliefs against Kenya Power and Lighting Company Ltd (1st Respondent), Energy Regulatory Commission (2nd Respondent), Attorney General (3rd Respondent) and Auditor General (4th Respondent). On 23rd October, 2018 a consent was recorded between the petitioners and the respondents which resulted in the settlement of the dispute between the parties in the matter. The applicants seek to upset that consent through this application.

3. Several documents were filed for and against the application. The applicants support their application on the grounds that:

"(a) The Applicants file this application on their own behalf and on behalf of the Kenyan people and the customers of the 1st Respondent.

(b) The 1st Petitioner filed this Petition as a representative suit under Article 22(2)(b) of the Constitution, representing the customers of the 1st Respondent as a class, and the Kenyan people in general.

(c) As admitted in the 1st Petitioner's submissions, the 1st, 2nd and 3rd Applicants were all very instrumental to the development of this Petition, and the broad-based public information campaign via audio, print and social media, and direct funding. The 1st and 2nd Applicants co-ordinated with the 1st Petitioner to develop the switchoffkplc@gmail.com email account that contains detailed complaints from hundreds of customers of the 1st Respondent, which is still active and managed by 1st Applicant. The 3rd Applicant provided material guidance and expert information as an Energy and IT specialist.

(d) In a heart shattering moment, and in flagrant breach of trust bestowed upon him by the people of Kenya, the 1st Petitioner chose to settle this Petition by entering a consent order dated 23rd October 2018.

(e) The said consent orders do not address the original prayers in the Petition.

(f) The grievances and burden borne by the Kenyan people on account of the 1st Respondent, as raised in the Petition continue to remain.

(g) The Kenyan people, and customers of the 1st Respondent should not continue to suffer wrongs without remedy."

4. Through further affidavits sworn on the 26th July, 2019 by the 1st, 3rd and 6th applicants, it is disclosed that the 1st Petitioner was compromised in order to settle the matter with the respondents. It is also alleged that the petition filed by the petitioners was firmed up by the strategies and material provided by the applicants. Further, that the 3rd Applicant actually provided financial support to the 1st Petitioner.

5. Through grounds of opposition filed separately and on different dates by the petitioners and the respondents, the application is opposed on the grounds that the Court had become *functus officio* at the time of filing of the application; that joinder of parties cannot occur after judgment; that the applicants were not necessary parties to the proceedings; that the applicants have not explained the delay in applying for joinder despite the court order of 12th January, 2018 giving liberty to any person to join the suit; that the applicants were not parties to the suit and cannot therefore upset the consent order; that the matter is *res judicata*; that no grounds for setting aside the consent judgment have been established; that the applicants have not demonstrated any identifiable stake or legal interest in the proceedings; that there must be finality to litigation; and, that the application is an attempt to have this Court sit on appeal on its own judgement.

6. The parties also filed and exchanged written submissions. The applicants through their submissions dated 26th July, 2019 submit that the consent judgment entered between the petitioners and the respondents should set aside on the ground of collusion. According to the applicants, it is trite law that collusion is one of the main grounds for setting aside a consent judgement. Reliance is placed on the decisions in the cases of **Brooke Bond Liebig Ltd v Mallya [1973] E.A.** (as cited in **Timothy Manyara & 144 others v Pyrethrum Board of Kenya [2005] eKLR**), and **Superior Homes (Kenya) Ltd v East Africa Portland Cement Company Ltd [2014] eKLR** for the proposition that a consent judgement obtained through fraud or collusion or by an agreement contrary to the policy of the court can be set aside.

7. According to the applicants, the further affidavit of the 3rd Applicant is clear that the 1st Petitioner acted in collusion with the 1st and 2nd respondents after the 1st Petitioner was paid Kshs.60 million to settle the petition by way of a consent. It is the applicants' contention that the nature of this transaction and payment to the 1st Petitioner in exchange for the settlement of the petition, not only amounted to collusion but is also an agreement contrary to the policy of this Court.

8. The applicants further submit that the 1st Petitioner was paid Kshs.10,000/- by the 3rd Applicant to have the matter filed in the public interest but ended up acting in his own selfish interest. They assert that this amounts to a fraudulent dealing as the 1st Petitioner was dishonest in his dealings as he got paid both ways.

9. The Court is urged not to sanction such a corrupt arrangement that would rob innocent Kenyans of the right to have the issues raised in the petition heard and determined conclusively in a just and fair manner.

10. The applicants additionally submit that the petition was filed in the public interest as it was filed on behalf of the 1st Respondent's customers. Reference is made to the decision in **Kenya Human Rights Commission v Communications Authority of Kenya & 4 others [2018] eKLR** as defining public interest litigation to mean a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or same interest by which their legal rights or liabilities are affected.

11. The applicants submit that since the petition was instituted in the public interest, the actions of the 1st Petitioner of abandoning the cause and settling to a consent that did not address the main prayers of the petition amounted to a violation of the public trust that had been placed on the petitioners. According to the applicants, the action of the petitioners of settling the matter on terms that did not address the public interest concerns raised in the petition amounted to a conditional withdrawal of the petition.

12. The decision in the case of **Republic v Resident Magistrate's Court at Kiambu ex-parte Kariuki Njuguna & 9 others [2016] eKLR** is cited in support of the submission that a public interest matter can only be withdrawn if the Court is satisfied that the judicial effects of the withdrawal are not adverse to the public interest or the interests of any individuals involved. The Court is urged to find that the consent order did not address the grievances of millions of Kenyans and set it aside so that the petition can be canvassed and argued on its merits by the applicants.

13. Turning to the question of joinder, the applicants point to Order 1 Rule 10 of the Civil Procedure Rules, 2010 ('CPR') as permitting the court to enjoin a person to the suit, if the presence of such a party is deemed necessary. According to the applicants, Rule 10(2) allows the court to order that any person whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit be joined in the suit as a party. The applicants assert that they have vital information in regard to the pertinent issues raised in the petition and their presence in the petition is necessary to enable the court make a just and sound decision.

14. The applicants additionally submit that there existed a principal-agent relationship between the petitioners and the people of Kenya. Their argument is that all public interest petitions do create a *de facto* agency relationship. The applicants contend that since a principal is not bound by the actions of an agent when such agent acts outside the scope of the agency relationship, the people of Kenya are not bound by the petitioners' decision to settle the matter. The decision in **Hitmark Transporters Sacco Society Limited v County Government of Machakos & another [2015] eKLR** is quoted as stating the legal principle that where an act done by an agent is not within the scope of the agent's authority, the principal is not bound by that act.

15. In conclusion, the applicants urge the Court to allow the application. The applicants state that they are not asking for costs since the application is brought in the public interest.

16. In opposing the application, the petitioners' first argument as gleaned from the grounds of opposition dated 31st January, 2020 is that the Court is *functus officio* and has not authority to join the applicants in the proceedings. It is the petitioners' case that Order 1 Rule 10(2) of the CPR contemplates an application for amendment or joinder of parties where proceedings are still pending before the court. The petitioners support their argument by citing **Sarkar's Code of Civil Procedure, 11th Ed. Reprint, 2011, Vol. 1 at page 87; Tang Gas Distributors v Said & other [2014] EA 448;** and **Lillian Wairimu Ngatho & another v Moki Savings Co-operative Society Limited & another [2014] eKLR.** Based on the cited authorities, the petitioners submit that the instant application should fail as it was filed on 15th December, 2018 long after the final orders were entered on 23rd October, 2018.

17. Relying on the maxim that equity aids the vigilant and not the indolent, the petitioners contend that the applicants have not explained the delay in the filing of their application considering that the Court had on 12th January, 2018 authorized the joining of the proceedings by any person who wanted to be admitted to the petition. The Court is therefore asked to dismiss the application on account of laches on the part of the applicants.

18. Finally, the petitioners submit that since the applicants were not parties to the suit they cannot upset the consent order. It is the petitioners' contention that the applicants have not met the grounds stated in **Brooke Bond Liebig (T) Limited v Mallya [1975] E. A.** for setting aside a consent order. It is urged that a proper consent in the sense of the law is one which is made in the presence and with the consent of the parties or their advocates. Such a consent, it is stated, is binding on all parties to the proceedings or action, and on those claiming under them. It is therefore asserted that the applicants who were not parties to the suit cannot be allowed to set aside the consent.

19. The 1st Respondent made brief submissions dated 10th April, 2019. According to the 1st Respondent, the application is frivolous, vexatious and an abuse of the process of the court and ought to be dismissed.

20. The 1st Respondent submits that a stranger ought not to be allowed to participate in a case once judgement is delivered. It is asserted that the court cannot entertain an application for joinder of parties when proceedings have come to an end. The decision of the Court of Appeal in **Telkom Kenya Limited v John Ochanda (Suing on behalf of 996 former employees of Telkom Kenya Ltd) [2014] eKLR** is cited in support of the said argument. It is urged that once a judgement is delivered, the suit remains alive only for the purposes of giving effect to the decision.

21. The 1st Respondent submits that although the applicants admit having been aware of the suit and some of them actually significantly supported the 1st Petitioner when he was prosecuting the petition, they had elected not to join the suit despite an order issued on 12th January, 2018 granting all those who were interested the liberty to join the proceedings.

22. The 1st Respondent also faults the applicants' prayer to suspend the consent order pending the hearing of the petition stating that such a prayer can only be granted if there is an appeal but there is no appeal in this matter. It is urged that the application is an attempt to have the Court sit on appeal over its judgement which is not allowed since this Court has no jurisdiction to sit on appeal over its judgment.

23. The 1st Respondent further relies on the principle of finality in litigation and submits that once the consent was adopted by the Court on 23rd October, 2018 the matter was settled. The Court of Appeal decision in **Nicholas Njeru v Attorney General & 8 others [2013] eKLR** is cited as stressing the importance of the need to have finality in litigation.

24. Finally, the 1st Respondent relies on the decision in **Francis James Khasira v Public Service Commission & 2 others [2016] eKLR** and submits that the matter was settled by the consent of 23rd October, 2018 and cannot be pursued further based on the doctrine of *res judicata.*

25. The 1st Respondent filed further submissions dated 1st November, 2019 in which it reiterated its earlier submissions. The 1st Respondent added that the further affidavits of the applicants raised issues that are irrelevant to the instant application. Further, that the allegations of fraud and collusion amounts to hearsay evidence which is inadmissible. Reliance is placed on the decision in **Kinyatti v Republic [1984] eKLR.**

26. It is also the 1st Respondent's statement that the averments are not matters within the knowledge of the applicants hence the same contravenes Order 19 Rules 3(1) of the CPR which requires that affidavits be confined to such facts as the deponent is able of his or her own knowledge to prove.

27. It is additionally urged that the consent order of 23rd October, 2018 is spent and there is therefore nothing to suspend as requested by the applicants.

28. Finally, it is contended that there exists no agency relationship between the petitioners and members of the public. According to the 1st Respondent, a suit filed on behalf of the public does not establish an agency relationship. It is submitted that through the order issued by the Court on 12th January, 2018 all members of the public were invited to join the suit and present their grievances to the Court. This Court is therefore urged to dismiss the application.

29. Through submissions dated 9th September, 2019 the 2nd Respondent identifies three issues for the determination of the Court. On the question as to whether the applicants can be admitted to the petition at this point, it is submitted that the applicants have not met the test for joinder either under the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 ('the Mutunga Rules') or Order 1 Rule 10 of the CPR. The test, it is urged, is that there must be pending proceedings and an applicant must lay a proper basis for the order of joinder to be granted.

30. The 2nd Respondent submits that the petition was determined on 23rd October, 2018 through a consent order that was adopted as an order of the Court hence the Court is *functus officio*. It is urged that the case can only be alive for the purpose of effecting and implementing the consent order. The decision in **Temple Point Resort Limited v Accredo A G & 5 others [2018] eKLR** is cited as holding that joinder of parties can only be made where proceedings are still pending before court. It is urged that the application for joinder must therefore fail on the ground of non-pendency of proceedings. Further, that since the application for suspension of the consent judgement is premised on the success of the application for joinder, the application for suspension of the consent order should also fail.

31. It is urged that the application for joinder should also fail as the necessity for joinder has not been established. Once again the decision in **Temple Point Resort Limited (supra)** is cited as holding that a party who desires to join proceedings must lay a basis for admission into the proceedings. According to the 2nd Respondent, the grounds for joinder were stated in **Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR** as the establishment of an identifiable interest or stake in the matter; and the need to aid the court in reaching a just determination. It is submitted that in this case there is no pending matter that the applicants are capable of having an interest in and their joinder will not help in the determination of the matter since the same has already been finalized.

32. In support of its claim that applicants are indolent litigants, the 2nd Respondent cited the decision in **Temple Point Resort Limited (supra)** for the statement that an applicant seeking joinder must justify why the application for joinder is being made at that particular point in time in order for the court to determine if the application is being made in good faith. It is urged that even though the applicants were aware of the matter and the Court had allowed interested parties to join the proceedings, the applicants had failed to seek joinder in good time. The 2nd Respondent therefore submit that the applicants are guilty of laches since the delay in the filing of the instant application is inordinate and inexcusable.

33. Turning to the issue as to whether there are sufficient grounds to warrant the suspension of the consent order dated 23rd October, 2018, the 2nd Respondent submits that the order should not be suspended. The 2nd Respondent contends that some of the orders in the consent were executed within thirty days from the date of the consent and suspension of such orders are actions in futility and will only amount to issuance of orders in vain. Further, that the effect of the consent was to settle all the disputes between the parties in the suit and the Court is thus *functus officio*. The case of **Nicholas Njeru (supra)** is cited as upholding the principle that there must be an end to litigation.

34. It is also submitted that the application is an invitation to the Court to sit on appeal on its own decision and the suspension of the consent amounts to stay pending appeal which should not be entertained by this Court.

35. The 2nd Respondent submits that the decision of **Republic v Resident Magistrate Court at Kiambu ex-parte Kariuki Njuguna & 8 others [2016] eKLR** cited by the applicants is inapplicable to this case since it concerned withdrawal of a petition and not settlement. It is urged that settlement of disputes is recognized by law. This assertion is supported by reference to Rule 29 of the Mutunga Rules and the decision in **Timothy Manyara & 144 others v Pyrethrum Board of Kenya [2005] eKLR.**

36. Finally, on the issue as to whether the applicants are entitled to the reliefs sought, the 2nd Respondent contends that they are not entitled

to any orders on the grounds that the applicants are strangers and not parties to the consent; that the applicants have not met the test for the suspension of the consent; and that the application is frivolous, vexatious and otherwise an abuse of the court process.

37. In support of the contention that the consent cannot be set aside because the applicants are not parties to the agreement, the 2nd Respondent cites the decisions in **Nairobi High Court Petition No. 59 of 2018, Apollo Mboya & another v Ministry of Treasury and Planning & 6 others;** and **Savings & Loan (k) Limited v Kanyenje Karangaita Gakombe & another [2015] eKLR.**

38. In support of its assertion that the applicants have not met the grounds for setting aside or suspending the consent, the 2nd Respondent cites the decision of **Pastor Anthony Makena Chege v Nancy Wamaitha Magak & another [2015] eKLR** as enunciating the grounds upon which a consent order can be set aside.

39. It is asserted that the applicants have not established the grounds for setting aside the consent order. It is further urged that the applicants have not specifically pleaded any particulars of fraud as required by Order 2 Rule 4(1) of the CPR. The Court is asked to ignore the allegations of fraud made in the further affidavits of the applicants on the ground that they do not form part of the application.

40. The 2nd Respondent additionally contends that mere allegation of fraud and collusion is insufficient for setting aside the settlement as the standard of proof where fraud is alleged is higher than a balance of probabilities and the applicants have not discharged the burden of proof.

41. The decisions in **Nairobi High Court Petition No. 59 of 2018, Apollo Mboya & another v Ministry of Treasury and Planning & 7 others;** and **Sarah Gatitu Njihia v Martin Njihia Mbugua [2002] eKLR** are cited in support of the allegation that the application is scandalous, vexatious, frivolous and an abuse of the court process. The Court is therefore urged to dismiss the application.

42. The 3rd and 4th respondents did not file any submissions.

43. I have perused the pleadings and submissions of the parties and I find that the only issue for the determination of this Court is whether the applicants have made a case for their admission to these proceedings.

44. The applicants seek to join the petition as interested parties. Joinder of an interested party in a constitutional petition is governed by Rule 7 of the Mutunga Rules which provides that:

> **"7. (1) A person, with leave of the Court, may make an oral or written application to be joined as an interested party.**
>
> **(2) A Court may on its own motion join any interested party to the proceedings before it."**

45. The petitioners and respondents have urged that the power granted to the court to substitute and add parties under Order 1 Rule (10)(2) of the CPR can only be exercised during the subsistence of proceedings. Their submission has merit and finds firm support in the decision of the Court of Appeal in **JMK v MWW & another [2015] eKLR** where it was held that:

> **"*Order 1 Rule (10) (2)* of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or *suo motu*, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party. Commenting on this provision, the learned authors of *Sarkar's Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887)*, state that:**
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> **"*The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.*"**
>
> **This Court adopted the same approach in *CENTRAL KENYA LTD. V. TRUST BANK & 4 OTHERS*, *CA NO. 222 OF 1998*, when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that:**
>
> **"*all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.*"**
>
> **We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court. *Sarkar's Code*, (supra) quoting as authority, decisions of Indian Courts on the provision, expresses the view that an application for joinder of parties can be filed only in pending proceedings. In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10(2) of our Civil Procedure Rules, in *TANG GAS DISTRIBUTORS LTD V. SAID & OTHERS* [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.**
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> **It is not in dispute at all that when the appellant applied to be made a party to the proceedings on 10th June 2014, there were no pending proceedings before the Industrial Court to which he could have been made a party, the judgment having been delivered on 30th May 2014."**

46. The facts of the cited decision are similar to the facts of this case. It is not disputed by the parties before this Court that by the time the instant application was filed, the petition had already been dispensed with by way of the consent recorded on 23rd October, 2018 between the petitioners and the respondents. Once that consent was adopted by the Court, there was nothing more to be done in the case.

47. It is, however, noted that in the already cited case of **JMK v MWW & another [2015] eKLR** despite holding that an application for joinder can only be filed in pending proceedings, the Court of Appeal nevertheless went ahead and held that the prayer for review that had been made alongside the application for joinder ought to have been considered by the Judge. The Court went ahead and allowed the application for review, set aside the judgement and directed that the matter be heard *de novo*.

48. Guided by the Court of Appeal decision and despite finding that the application for joinder cannot be entertained, I will proceed to consider the prayer for suspension of the consent order pending the hearing and determination of the substantive issues raised by the applicants. Although the application appears to seek a review of the consent order, I will take it on its face value and proceed on the understanding that the applicants are simply seeking a suspension of the consent order.

49. The question to be asked is; what will a suspension of the consent order achieve if the applicants are not made parties to this petition? They have not asked for the reopening of the petition that is now deemed finalized.

50. The applicants say they want to be heard on the substantive issues they have raised. However, the substantive issues in any litigation are those raised by the principal parties. It must be appreciated that the role of interested parties is minimal and peripheral. This is informed by the definition of an interested party by Rule 2 of the Mutunga Rules as follows:

> **"a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation."**

51. Interested parties cannot introduce their own issues into the proceedings of the principal parties. This principle was stated by the Supreme Court in **Francis Karioki Muruatetu & another v Republic & 5 others [2016] eKLR** as follows:

> **"[42] Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court."**

52. The principal parties in the concluded petition have compromised the issues with the approval of the Judge as required by Rule 29 of the Mutunga Rules. The applicants cannot therefore be heard to say that they want the consent of the principal parties to be set aside so that they can prosecute the petition. What the interested parties are saying is that the petitioners should be kicked out of their case so that they can prosecute the same on behalf of the petitioners.

53. The applicants alleged fraud and collusion as a basis for setting aside the consent order. However, as correctly submitted by the petitioners and respondents, there is no evidence to support the allegation that the petitioners colluded with the 1st and 2nd respondents so as to settle the petition. The averments by the applicants are premised on street talk in the City of Nairobi which does not meet the standard of evidence as required by the rules of evidence.

54. The averment that the 1st Petitioner was given amounts ranging between Kshs.60 million and Kshs.200 million in order to settle the matter is just but an allegation which is not supported by evidence. What has been placed before this Court is hearsay evidence that cannot form a factual basis for holding and finding that the consent order was founded on fraud and collusion. The applicants have therefore not established fraud and collusion and there is no reason to set aside the judgement.

55. In short, the application dated 5th December, 2018 lacks merit in its entirety. The application is therefore dismissed with no order as to costs.

Dated, signed and delivered virtually at Nairobi this 29th day of October, 2020.

W. Korir,

Judge of the High Court