REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(Coram: A. C. Mrima, J.)

CONSTITUTIONAL PETITION NO. 195 OF 2020

-between-

1. SCION HEALTHCARE LIMITED

2. AUGUSTINE KINYUA.....PETITIONERS

-and-

1. KENYA MEDICAL LABORATORY TECHNICIANS

AND TECHNOLOGISTS BOARD

2. DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENTS

JUDGMENT

Introduction:

1. The practice of medicine as a profession has many facets. One of them is the practice by Medical Laboratory Technicians and Technologists. In the main, the Petition challenged the mandate and powers of the Kenya Medical Laboratory Technicians and Technologists Board, the 1st Respondent herein, on licensing and regulation of the Petitioners.

2. By a Petition dated 08/06/2020 the Petitioners sought the following orders:

(a) A declaration that the 1st Respondent does not have power to license the 1st Petitioner's hospital laboratory or laboratory run and operated by a licensed hospital.

(b) A declaration that the 1st Respondent's powers under the Medical Laboratory Technicians and Technologists Act only extend to: training registration and licensing of medical laboratory technicians and technologists; private businesses of laboratory technicians and technologists' and inspection of medical laboratories.

(c) A declaration that the 2nd Respondent does not have power to prosecute for offences not specified and provided for under the Medical Laboratory Technicians and Technologists Act or any other law.

(d) A declaration that the 1st Respondent breached the 1st Petitioner's patients' rights privacy and human by carting away and studying their medical records and should return the records forthwith.

(e) A declaration that the 1st Respondent's purported closure notice against the Petitioners' laboratory is unconstitutional, illegal, null, void and of no legal effect.

(f) A declaration that the Respondent is in violation of Articles 10, 27, 28, 31, 40, 47 and 50 of the Constitution.

(g) A declaration that the 2nd Respondent is contravention of Article 157 of the Constitution and his prosecution of the 2nd Petitioner has no legal or constitutional foundation, and. is null and void.

(h) An award of special damages against the 1st Respondent for loss of income and loss of business,

(i) An award of general damages against the 1st Respondent for aggravated contravention of the rights of the Petitioners

(j) Order that the Respondent refunds any fees collected from any facility after the delivery of Justice G V Odunga's judgment in *Republic v Kenya Medical Laboratory Technicians & Technologists Board [20191 eKLR*.

(k) Costs of this Petition against the Respondents.

3. The Petition was vehemently opposed.

The Petitioners' cases and Submissions:

4. The Petitioners relied on the Petition dated 08/06/2020, the Supporting Affidavit sworn by Augustine Kinyua, the 2nd Respondent, on 08/06/2020 and the Further Affidavit also sworn by the 2nd Respondent on 12/08/2020 in support of their joint case.

5. The 1st Petitioner is a duly incorporated limited liability company. It operates a hospital known as Scion Healthcare – Kwa Njenga in Nairobi (hereinafter referred to as *'the hospital'*). The 2nd Petitioner is a Director of the 1st Petitioner.

6. It was deponed that the 1st Petitioner was licensed by the Medical Practitioners and Dentists Council (hereinafter referred to as **'the Medical Council'**) to operate as a Level-3 Hospital. The hospital includes a medical laboratory which laboratory is part of the hospital and not a stand-alone facility. The laboratory is alleged to be in line with the Ministry of Health Implementation Guidelines for Singular or Joint Inspections for Public and Private Health Providers by Health Regulatory Bodies, 2015. I will hereinafter refer to the medical laboratory as '*the laboratory*'. The Petitioners posited that the laboratory is an integral part of the hospital without which the hospital is unable to treat its patients since laboratory tests guide the diagnosis of the patients' ailments.

7. The Petitioners narrated how the 1st Respondent, illegally so, attempted to license and regulate the laboratory. The Petitioners took the position that the 1st Respondent lacked any legal powers to license or exercise any regulation over the laboratory.

8. The Petitioners argued that the Medical Council usually carries out an annual inspection of the hospital and, upon satisfaction that the hospital is within the required standards, issues an annual operating license. The 1st Petitioner further posited that the hospital was duly licensed for the year 2020. According to the Petitioners the licence issued by the Medical Council authorized the operations of the hospital and the laboratory including all the professional employees among them laboratory technicians and technologists working in the laboratory. The Petitioners contended that the annual inspection by the Medical Council on the hospital and the laboratory was anchored on both the provisions of the Kenya Medical Practitioners and Dentists Act, Cap. 253 of the Laws of Kenya (hereinafter referred to as '*the Medical Act'*) and the Kenya Medical Laboratory Technicians and Technologists Act No. 10 of 1999 (hereinafter referred to as '*the Medical Laboratory Act'*).

9. The Petitioners further argued that the Medical Council was a public institution established by an Act of Parliament to ensure safe practice of medicine and recognized that the hospital required a laboratory to ensure proper and optimum medical care delivery to the public. It was further posited that the Medical Council had never withdrawn or suspended the license for the current year.

10. Further to lack of any licensing and regulatory capacity over the hospital and the laboratory, the Petitioners averred that the 1st Respondent had also been irregularly, illegally and unconstitutionally categorizing the laboratory in a bid to levy exorbitant and illegal fees.

11. In demonstrating the foregoing, the Petitioners referred to an incident which happened on 30/08/2017. They stated that on the said date some officers of the 1st Respondent allegedly, illegally and arbitrarily, classified the Petitioners laboratory as Class D and threatened to close the laboratory unless the 1st Petitioner paid a mysterious sum of Kenya Shillings 160,000/=. The 1st Respondent was then well aware that the 1st Respondent was engaged in illegal acts.

12. The Petitioners averred that the 1st Respondent had, without any justification, failed to comply with the order in ***Republic v Kenya Medical Laboratory Technicians & Technologists Board [2019] eKLR*** to provide a clear criterion on classification of laboratories so as to avoid arbitrary actions.

13. The Petitioners further averred that the Respondents were bent on acting illegally and disobeying Court orders. That, instead of complying with the order in ***Republic v Kenya Medical Laboratory*** (supra) they had jointly and capriciously invented a scheme to intimidate the Petitioners into paying the illegal fees or to close the laboratory. Having resisted the 1st Respondent's demand for unsubstantiated fees, the Respondents actualized the scheme. The laboratory was closed and a public notice posted on the entrance. According to the Petitioners the Respondents were further out to incite the public against the hospital and to scare away patients. As the closure of the laboratory did not suffice, the 2nd Petitioner was arrested and charged with trumped up charges, claimed the Petitioners.

14. The Petitioners also contended that during the 1st Respondent's illegal raid into the laboratory the officers carted away the 1st Petitioner patient's records in violation of the patients' right to privacy. It was posited that the violation had been aggravated by the publication of the

patients' private particulars in the 1st Respondent's response to the Petition.

15. The Petitioners strenuously argued that the joint actions of the Respondents variously infringed the Petitioners' rights and fundamental freedoms and also contravened the Constitution. They alleged that the 1st Respondent variously acted in contravention of Article 10 of the Constitution by trampling upon the national values and principles of the rule of law, human dignity, good governance, integrity, transparency and accountability. That the actions further contravened the 1st Petitioner's right to equal protection of the law guaranteed under Article 27 of the Constitution and sidestepped the 1st Petitioner's right to lawful administrative action under Article 47(1) of the Constitution. The upshot was a contravention of the 2nd Petitioner's right to fair hearing under Article 50 of the Constitution and the 1st Petitioner's property rights under Article 40 of the Constitution.

16. It was also submitted that the carting away of the medical records of the 1st Petitioner the 1st Respondent infringed the rights to **inherent dignity and the right to have that dignity respected and protected under Article 28 of the Constitution and the patients' right to privacy protected under Article 31(c) of the Constitution.**

17. The 1st Petitioner further contended that the 2nd Respondent was gravely guilty of prosecuting the 2nd Petitioner over non-existent offences and acting in contravention of Articles 50(2)(n)(i) and 157 of the Constitution.

18. The Petitioners jointly prayed that the Petition be accordingly allowed.

The 1st Respondent's cases and submissions:

19. The 1st Respondent opposed the Petition. It relied on the Replying Affidavit sworn by Abdulatif Ali on 03/07/2020. The deponent is the 1st Respondent's Registrar and I will hereinafter refer him to as '*the Registrar'*.

20. The Registrar deponed that the 1st Respondent is established under Section 3 of the Kenya Medical Laboratory Technicians and Technologists Act (hereinafter referred to as '*the Medical Laboratory Act'*). It is a body corporate with perpetual succession capable of undertaking all actions necessary for the proper performance of its mandate. The Registrar further deponed that under Section 5 of the Medical Laboratory Act the 1st Respondent had power to exercise general supervision and control over the training, business, practice and employment of Laboratory Technicians and Technologists in Kenya and to advise the Government in relation to all aspects thereof.

21. It was further deponed that the 1st Respondent performed very important functions including prescribing, in consultation with Kenya Medical Training College and such approved training institutions as the 1st Respondent deems appropriate, courses of instruction for Laboratory Technicians and Technologists, considering and approving the qualification of Laboratory Technicians and Technologists for the purpose of registration under the Medical Laboratory Act, approving institutions for the training of Laboratory Technicians and Technologists, licensing and regulating the business and practice of registered Laboratory Technicians and Technologists, regulating the professional conduct of registered Laboratory Technicians and Technologists and to taking such disciplinary measures as are appropriate to maintain proper professional standards.

22. The Registrar stated that the Medical Laboratory Act elaborately provided for the licensing and regulatory mandate of the 1st Respondent. In discharge of the duty the 1st Respondent usually conducted regular inspections of laboratories countrywide and accordingly charged appropriate fees. The 1st Respondent also ensured that all medical laboratories operated in line with the Medical Laboratory Act and the Medical Laboratory (Equipment and Reagents Validation) Regulations, 2011 (hereinafter referred to as **'***the Regulations'***).** The Registrar summed up the foregoing 1st Respondent's humongous duty as a deliberate Government initiative to ensure uniform standards of Medical Laboratory practice in Kenya in strict compliance with standards all geared towards protecting health of Kenyan public from unregulated Medical Laboratory practice.

23. It was the Registrar's position that some of the regulatory controls provided for under the Medical Laboratory Act included Section 19(1) which prohibited any person from acting as a laboratory technician or technologists in any health institution unless such person is registered under the said Act, Section 19(3) which prohibited any health institution or any medical laboratory from employing a person as a laboratory technicians or technologists who was not registered under the Medical Laboratory Act whereas Section 19(4) and (5) provided for penal consequences for any violation. The 1st Respondent was also charged with registration of medical laboratories.

24. The Registrar further stated that Part IV of the Medical Laboratory Act generally provided for the private practice of the medical laboratory field. It was posited that the 1st Respondent was as well mandated to licence and regulate all medical laboratory technicians and technologists engaged in private practice. The 1st Respondent, in appropriate instances, issued certificates and annual licenses to private practitioners and medical laboratories. Such licenses were renewable.

25. It was further deponed that the 1st Respondent had the power to renew, cancel, withdraw or suspend any certificate or license if satisfied of professional misconduct or breach of any provisions of the Medical Laboratory Act or any regulations made there under.

26. The Registrar accused the Petitioners of instituting the current proceedings without regard to the applicable law and that they willfully omitted, failed and/or neglected to disclose crucial material facts.

27. The Registrar referred to the High Court in ***Republic vs. Kenya Medical Laboratory Technicians and Technologists Board & Anor exparte Anil Tailor & 4 Others (2013) eKLR*** where the Court held *inter alia* that the regulatory mandate of the 1st Respondent was not limited to public institutions but extended to private Medical laboratories and that the 1st Respondent had a regulatory mandate over medical laboratories situate within private health facilities.

28. It was also deponed that in discharging its duty aforesaid, the officers of the 1st Respondent visited the laboratory on 26/08/2014 to carry put an inspection. The inspection revealed that the laboratory was in a residential area and was neither registered nor licence by the 1st Respondent. The officers further found out that the Petitioners had employed laboratory personnel not registered and licensed by the 1st Respondent. As a result, the 1st Respondent issued an immediate closure notice and the same was posted on the entrance. On 27/08/2014 the 1st Respondent's inspectors and officers from serious crime unit made a follow up visit and found out that the Petitioners had removed the closure notice over the laboratory and resumed operations illegally. The 1st Respondent's officers issued a second closure notice over the laboratory and the 2nd Petitioner was accordingly arrested and booked at Embakasi Police Station vide OB NO. 29/27/08/2014. The 2nd Petitioner was eventually charged in Court.

29. The Registrar further deponed that on 23/05/2020 the 1st Respondent's officer one Eunice Kanana visited the hospital as a patient and was attended to from the reception, consultation and to the laboratory and thereafter given some medication. On 27/05/2020 the 1st Respondent's Inspectors Mr. Daniel Kinyanjui, Mr. Hassan Noor and Mr. Livingstone Mwambela visited the laboratory and issued a closure notice which they again posted on the entrance. The 2nd Petitioner was once again arrested and charged.

30. The Registrar urged the Court not to lose focus of the fact that the 1st Petitioner was not licensed by the 1st Respondent to operate the laboratory as it did not meet the minimum standards for registration and licensing. It was also protested that the 1st Petitioner's continued operation of the illegal laboratory posed a great danger to the lives of the members of public.

31. The Court was further urged not to stop the 1st Respondent from discharging its mandate as there was no evidence of outright abuse of power or having acted *ultra vires*.

32. The 1st Respondent filed written submissions. It reinforced the foregoing. It submitted that the Respondents had powers in law to prosecute the 2nd Petitioner in respect of the charges already before court. The decision in ***Geoffrey Sang vs. The Directorate of Criminal Investigation Machakos Petition 19 of 2020*** (unreported) was referred to in support of the submission.

33. Holding that the 1st Respondent had the legal mandate to exercise control over all medical laboratories in Kenya the decisions in ***Republic vs. Kenya Medical Laboratory Technicians and Technologists Board & Anor exparte Anil Tailor & 4 Others (supra)*** and ***Republic v Kenya Medical Laboratory Technicians & Technologists Board [2019] eKLR*** were extensively relied upon.

34. It was also submitted that the Respondents acted within the law and had not violated any of the Petitioner's rights either as alleged or otherwise. This Court was further reminded that the issue of closure of the 1st Petitioner's laboratory was pending before Court.

35. The Respondents further submitted that the Petitioners were approbating and reprobating to the extent of alleging that the 1st Respondent had no legal mandate to exercise any licensing or regulatory control over the Petitioner's laboratory and at the same time advancing the argument that the 1st Respondent was charging inappropriate fees.

36. It was the submission of the Respondents that public interest in the circumstances of this matter outweighed the Petitioners' commercial interests.

37. The Court was hence urged to dismiss the Petition with costs.

The 2nd Respondent:

38. The 2nd Respondent did not participate in this matter. From the record the 2nd Respondent was granted leave to file and serve its response to the Petition on 23/09/2020. There was, however, no compliance.

Issues for Determination:

39. I have carefully considered the Petition, the responses thereto, the parties' submissions and the decisions referred to. I hereby decipher the following issues for determination: -

(a) Whether the Medical Laboratory Technicians and Technologists Board (hereinafter referred to as 'the 1st Respondent' or 'the Board') has any powers to license the laboratory or any other laboratory run and operated by a licensed private hospital or facility.

(b) Whether the 2nd Respondent has powers to prosecute for offences not specified and provided for under the Medical Laboratory Act or any other law, whether the 2nd Respondent contravened Article 157 of the Constitution in prosecuting the 2nd Petitioner and whether the prosecution of the criminal case should be terminated.

(c) Whether 1st Respondent breached the 1st Petitioner's patients' right to privacy and human dignity by carting away and studying

their medical records and should the 1st Respondent be ordered to return the records forthwith.

(d) Whether the 1st Respondent's closure notice against the Petitioners' laboratory is unconstitutional, illegal, null, void and of no legal effect.

(e) Remedies

40. The issues will be dealt with separately.

Analysis and Determination:

(a) Whether the Board has powers to license the laboratory or any other laboratory run and operated by a licensed private hospital or facility:

41. I have come across several decisions that variously dealt with this issue. Two of them were also referred to by the parties herein. I have as well read them. They were ***Machakos High Court Judicial Review No. 408 of 2017 Republic v Kenya Medical Laboratory Technicians & Technologists Board [20191 eKLR*** and ***Kisii High Court Judicial Review No. 82 of 2011 Republic v Kenya Medical Laboratory Technicians & Technologists Board &another; Ex-Parte Anil Tailor & 4 others {2013] eKLR***.

42. In the above twin decisions, the issue as to whether the Board had any powers to license any medical laboratory operated within a licensed private hospital was settled in the affirmative. I have closely followed and understood the respective Judges' arguments in the decisions. I have also considered the law on the issue. I am satisfied that the two decisions dealt with the issue correctly and conclusively.

43. I have tried to enrich the arguments in the said decisions but with little success. The discussions and arguments by the Learned Judges comprehensively dealt with the issue. Therefore, for avoidance of repetition, I will reproduce the relevant part of the ***Machakos High Court Judicial Review No. 408 of 2017*** (supra) which made extensive reference to ***Kisii High Court Judicial Review No. 82 of 2011*** (supra). The Learned Judge rightly so stated as follows: -

62. The first question for determination is therefore whether the Respondent has jurisdiction over the ex-parte Applicant with specific regard to licencing, regulation and inspection. It is not in doubt that the Respondent herein is a creature of The Medical Laboratory Technicians and Technologists Act, No. 10 of 1999 as a body corporate with perpetual succession mandated by the said provision to be capable of doing or performing all such other acts necessary for the proper performance of the Respondent's functions under Medical Laboratory Technicians and Technologists Act (hereinafter referred to as Cap 253A).

63. It is not in doubt that the long title of Cap 253A provides that it is:

An Act of Parliament to provide for the training, registration and licensing of medical laboratory technicians and technologists, to provide for the establishment, powers and functions of the Kenya Medical Laboratory Technicians and Technologists Board, and for connected purposes.

64. It was therefore the applicant's contention that since in the long title the Act solely covers the said technicians and technologists, it does not apply to the licensing of the ex parte applicant which is an entity run by pathologists, who are also laboratory workers but of a specialised nature from the general medical practitioners and who are expressly provided for in and regulated by the Medical Practitioners and Dentists Act Cap 253 and the subsidiary legislation thereto together with the institution they run, if any. According to the applicant, under section 5 of Cap 253A, the Respondent's role is defined and given as expressly dealing with the conduct and practice of medical laboratory technicians and technologists.

65. The position adopted by the Respondent on the other hand was that pursuant to section 5 of Cap 253A the Respondent's objects and functions is to exercise general supervision and control over the training, business, practice and employment of Laboratory Technicians and Technologists in Kenya and to advise the government in relation to all aspects thereof.

66. Since the parties herein, though relying on section 5 of Cap 253A but are unable to agree as to its application and import, it is necessary to set out what the said section provides. According to the said section:

(1) The object and purpose for which the Board is established shall be to exercise general supervision and control over the training, business, practice and employment of laboratory technicians and technologists in Kenya and to advise the Government in relations to all aspects thereof.

(2) Without prejudice to the generality of the foregoing, the Board shall—

(a) prescribe, in consultation with the College and such approved training institutions as the Board may deem appropriate, the courses of instruction for laboratory technicians and technologists;

(b) consider and approve the qualifications of laboratory technicians and technologists for the purposes of registration under this Act;

(c) approve institutions for the training of laboratory technicians and technologists;

(d) licence and regulate the business and practice of registered

laboratory technicians and technologists; and

(e) regulate the professional conduct of registered laboratory technicians and technologists and take such disciplinary measures as may be appropriate to maintain proper professional standards.

67. It is clear that section 5 of Cap 253A refers throughout to laboratory technicians and technologists. Nowhere in the said section does it refer to laboratories. In my view all aspects of the exercise of general supervision and control over the training, business, practice and employment of Laboratory Technicians and Technologists in Kenya cannot be expanded to include general supervision and control over the medical laboratories.

68. The Respondents however relied on the case of Republic vs. Kenya Medical Laboratory Technicians and Technologists Board & Another; Ex-Parte Anil Tailor & 4 Others [2013] eKLR. In that case the Court clearly appreciated that the dispute would not have been before the court if the Ministry responsible for both bodies had ensured adequate legislative and administrative guidance was brought to bear on the two Boards which seemingly have an overlapping oversight in the medical sector with respect to medical and clinical laboratories. The Court however appreciated, rightly in my view that:

"Article 159(2) of the Constitution binds the courts and tribunals when exercising judicial authority to protect and promote the purposes and principles of the Constitution. The import of Article 10 (i) is that a judicial officer is expected to uphold national values and principles of governance when interpreting the law. The national values and principles are enunciated as including human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.
Although not argued on a constitutional pedestal, I am acutely aware that the matters before me touch on two key constitutional rights. One is the right to the highest attainable standard of health care services (Article 43 (i) (a)) and the other the right to consumer protection including the right to goods and services of reasonable quality (Article 46 (i) (a)). The purpose of the regulation under scrutiny in the present case is undoubtedly to protect the public from sub-standard medical or health services that would negate their right to health espoused in the Constitution. The court is therefore duty bound to interpret the law in a manner that upholds the constitutional rights aforestated."

69. The Court found that the purview of the operation of the Act appeared from the preamble to be laboratory technicians and technologists on the one hand and the operation of the Board on the other. The Court also found that from a cursory reading of section 5(1) one would readily agree with the Applicants' submission that these provisions point to regulation of personnel namely, the laboratory technicians and technologists; and, focus more on their training, professional qualifications, and professional conduct; and that the same provisions do not give the Board the jurisdiction to regulate private laboratories. It is not in doubt that section 25 and section 40 of Cap 253A gives the Board the power to make regulations for the better carrying out of the provisions of the Act. Section 25(1) and (2)(a) thereof provides as follows:

> *(1) The Board shall, in regulations, prescribe the terms and conditions of the business and practice of laboratory technicians and technologists engaged in private practice.*
>
> *(2) Regulations under subsection (1) shall in particular provide for—*

(a) the equipment and reagents to be provided in private medical laboratories;

70. It is therefore clear that section 25(2)(a) is a departure from what appears in the long title and the object and purpose of the Board. By empowering the Board to make regulations providing, not only for terms and conditions of the business and practice of laboratory technicians and technologists but also providing for the equipment and reagents to be provided in private laboratories, the Act empowers the Board to actually regulate the manner in which private laboratories are to be stocked and equipped. That in my view is an extension of the power of the Board to not only regulate technicians and technologists but to an extent, private laboratories.

71. Section 40 of Cap 253A on the other hand provides that:

The Board may, with the approval of the Minister, make regulations generally for the better carrying out of the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for—

(e) forms and fees;

(f) ……..

(g) the inspection of medical laboratories.

72. Again it is clear that the Regulations contemplated by section 40 are not limited to those that regulate technicians and technologists but encompass those that deal with inspection of medical laboratories themselves. The Applicant has however made references to several related legal provisions in an attempt to show there are sufficient legal mechanisms which regulate the applicant even in the absence of regulation by the Respondent which in their view amount to double regulation. However as was held by the Court of Appeal in Kimutai vs. Lenyongopeta & 2 Others [2005] 2 KLR 317:

"It is elementary rule that a thing which is within the letter of a statute will, generally, be construed as not within the statute unless it also be within the real intention of the legislature, and the words, if sufficiently flexible, must be construed in the sense which, if less correct grammatically, is more in harmony with that intention…. It was necessary, in order to arrive at the real meaning, to get to the exact conception of the aim, scope and aspect of the whole Act, to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief."

73. In other words, it is necessary, in order to arrive at the real meaning, to get to the exact conception of the aim, scope and aspect of the whole Act, to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief.

74. My view in respect of this matter is informed by the position adopted in Halsbury's Laws of England, 4th edition, Butterworths 1995, Vol 44(1), Para 1484 to the effect that:

"It is one of the linguistic canons applicable to the construction of legislation that an Act is to be read as a whole, so that an enactment within it is to be treated not as standing alone but as falling to be interpreted in its context as part of the Act. The essence of construction as a whole is that it enables the interpreter to perceive that a proposition in one part of the Act is by implication modified by another provision elsewhere in the Act…"

75. In Amalgamated Society of Engineers vs. Adelaide Steamship (1920) 28 CLR 129 at 161-2 Higgins J rightly observed thus:

"The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it; and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning, even if we consider the result to be inconvenient or impolitic or improbable."

76. Whereas the Applicant's case is that since the applicant already pays fees to its regulatory body a demand for fees of any sort to the Respondent amounts to double licensing hence is punitive, to my mind the issue ought to be determined in light of the proposition in the Uganda Supreme Court decision of Attorney General vs. Silver Springs Hotel Ltd and Others SCCA No. 1 of 1989 that:

"...unless the earlier Act and the later one are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied. It is well settled that the court does not construe a later Act as repealing an earlier one unless it is impossible to make the two Acts or the two sections of the Acts stand together i.e. if the section of the later Act can only be given a sensible meaning if it is treated as impliedly repealing the section of the earlier Act."

77. This position reflects the reasoning in United States vs. Borden Co 308 US 188, (1939) that:

"It is a cardinal principle of construction that repeals by implication are not favoured. When there are two acts upon the same subject, the rule is to give effect to both if possible. The intention of the legislature to repeal 'must be clear and manifest'. It is not sufficient as was said by Mr. Justice Story in** Wood v. United States**, 16 Pet. 342, 362, 363, 'to establish that subsequent laws cover some or even all the cases provided for by (the prior act); for they may be merely affirmative, or cumulative, or auxiliary'. There must be 'a positive repugnancy between the provisions of the new law and those of the old; and even then the old law is repealed by implication only,** pro tanto**, to the extent of the repugnancy'..."

78. It is in this respect that I agree with the Learned Judge in Republic vs. Kenya Medical Laboratory Technicians and Technologists Board & Another; Ex-Parte Anil Tailor & 4 Others [2013] eKLR that:

"It is clear from this definition that a hospital and laboratory are regarded as separate institutions. It cannot therefore be said that to inspect a medical laboratory is equivalent to inspecting the hospital and neither can it be said that the regulations made under the Act are** ultra vires **the Act as they are made pursuant to Section 25 and 40 of the Act. Further, from the provisions I have set out above and my extensive reading of the Act, I have found no provision in either the Act or the Regulations made thereunder that exempt the private medical laboratories from the operation of the Act. It is also clear from the provisions of Act No. 10 of 1999 which I have quoted in** extenso **that the Act confers on the Medical Laboratory Technicians and Technologists Board the power to regulate not only the personnel in the field of medical laboratory but the clinical/medical laboratories that offer the services as well."

79. I agree with the learned Judge that the object of the Act does not expressly state the regulations of clinical laboratories, and for that matter laboratories under private hospitals, and that the want of express inclusion of the regulatory function in the objections of the Act is a product of poor drafting. However considering sections 25 and 40 of Cap 253A, I associate myself with the views of the Learned Judge that the said omission ought not to be construed as amounting to lack of intent by Parliament to have all facilities whether public or private which offer medical laboratory services regulated and more so by one body.

80. In those premises I agree with the learned Judge that:

"a contrary interpretation of the Act would lead to the undesired result that persons seeking medical laboratory services from private institutions would be left exposed to the perils of an unregulated practice and service delivery. That would not only be discriminatory but go against the public interest and make nonsense of the principle that law should serve the public interest."

81. What I understand the learned Judge to be saying is that the powers of the Kenya Medical Practitioners and Dentists Board to regulate clinical laboratories in particular private ones may similarly be challenged on the same grounds that the law does not expressly empower that Board to regulate the same, a situation which would obviously be contrary to public interest.

82. While the applicant has referred to several provisions which in its view sufficiently regulate the applicant, it is clear that Cap 253 does not expressly provide in the substantive provisions for the regulation of laboratory services. The applicant has therefore opted to rely on Medical Practitioners and Dentists (Private Practice) Rules made under the Act. It is however my view that to uphold those rules in priority to the rules made pursuant to Cap 253A, an Act of Parliament, would amount to nullifying substantive provisions of the Act at the expense of subsidiary legislation and that is not permissible.

44. I therefore find and hold, which I hereby do, that the Board has unqualified powers to license and regulate the laboratory or any other laboratory run and operated by a licensed private hospital or facility whether the laboratory is within the hospital or otherwise.

(b) Whether the 2nd Respondent has powers to prosecute for offences not specified and provided for under the Medical Laboratory Act or any other law, whether the 2nd Respondent contravened Article 157 of the Constitution in prosecuting the 2nd Petitioner and whether the prosecution of the criminal case should be terminated:

45. The prosecutorial mandate of the Office of the Director of Public Prosecutions is provided for in Article 157(4), (6), (10) and (11) as well as Article 245(4)(a) of the Constitution as follows: -

(4) The Director of Public Prosecutions shall have power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction.

(6) The Director of Public Prosecutions shall exercise State powers of prosecution and may—

(a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;

(b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and

(c) subject to clauses (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).

(10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.

(11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

Article 245(4)(a): -

The Cabinet Secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to-

a) the investigation of any particular offence or offences.

46. The 2nd Petitioner argued that Article 50(2)(n) of the Constitution was infringed in that he was charged with an offence not known in law. The provision provides that no one shall be convicted for an act or omission that at the time it was committed or omitted was neither an offence in Kenya nor a crime under international law.

47. From the reading of Article 50(2)(n) it may appear that the intended prohibition is against the trial court from entering a conviction after conducting the trial and not a prohibition of the trial *per se*. However, Article 157(11) of the Constitution calls upon the public prosecutor to take into account public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process in making and sustaining a decision to charge and prosecute an accused person.

48. Article **259** of the Constitution deals with the interpretation of the Constitution. It obligates anyone interpreting the Constitution to do so in a manner that *'promotes its purposes, values and principles; advances the rule of law, and human rights and fundamental freedoms in the Bill of Rights; permits the development of the law and contributes to good governance'. The* approach is often described as **'a mandatory constitutional canon of statutory and constitutional interpretation'**.

49. There are other settled principles of interpretation of the Constitution. They include that constitutional provisions must be construed purposively and in a contextual manner; that the Constitution must be construed as whole, among others. It therefore behooves a Court interpreting the Constitution to be guided by the language used in the Constitution. A Court should not unduly strain to impose a meaning that the text is not reasonably capable of bearing. It should also avoid what was described as *'excessive peering at the language to be*

interpreted'. (See ***Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re Hyundai Motor Distributors (Pty) Ltd and Others vs. Smit NO and Others [2000] ZACC 12; 2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC) at para 24*** and ***Johannesburg Municipality vs. Gauteng Development Tribunal and Others [2009] ZASCA 106; 2010 (2) SA 554 (SCA) at para 39, which quoted Jaga v Dönges, N.O. and Another; Bhana v Dönges, N.O. and Another 1950 (4) SA 653 (A) at 664G-H***).

50. A Court must also adopt a holistic approach of interpretation. Provisions of a Constitution ought to be taken collectively rather than in isolation.

51. Having said so, the reading of Article 50(2)(n) of the Constitution must be seen in light of the requirement in Article 157(11) of the Constitution which calls upon the public prosecutor to take into account public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process in discharging its constitutional mandate. In holding unto constitutionalism and the rule of law a prosecutor must guard against unlawfulness. A prosecutor must always act within the Constitution and the law. Before a prosecutor approves any charge against an accused person the prosecutor must ensure that the charge has a basis in law. There must be a provision of the law in support of the charge. It cannot be in public interest to drag an accused person through an entire trial based on a charge without any basis in law. Such is tantamount to an abuse of the legal process.

52. In the words of the Court of Appeal in ***Gordon Ngatia Muriuki v Director of Public Prosecutions (DPP) & 2 Others [2017] eKLR: -***

> *10. ……. Courts are reluctant to freeze proceedings before a court of law that has jurisdiction to try criminal cases; only in instances where there are trumped up charges (that cannot be founded in law) or the prosecution is not undertaken according to law, or it is actuated by malice and meant to harass the appellant, having no basis at all in law or in fact. It is in that rare occasion that the Court of Appeal has intervened by dint of its inherent jurisdiction to ensure the ends of justice and prevent the abuse of the process as indeed this is a country that is governed by the Constitution and the dictates of the rule of law.*
>
> (emphasis added)

53. One of the prayers sought by the Petitioners is *'a declaration that the 2nd Respondent does not have power to prosecute for offences not specified and provided for under the Medical Laboratory Technicians and Technologists Act or any other law'.* The prayer sought is as so provided under Article 50(2)(n) of the Constitution. The Petitioners are hence asking the Court to restate what the Constitution has already provided. That is not within the authority of the Court. The task is already undertaken by the Constitution. The prayer sought is hence tautological.

54. As to whether the charges facing the 2nd Petitioner falls within the exception described by the Court of Appeal in ***Gordon Ngatia Muriuki v Director of Public Prosecutions (DPP) & 2 Others*** (supra) as '… *trumped up charges (that cannot be founded in law)',* the starting point is a look at the charges.

55. The 2nd Respondent was charged with three counts in *Milimani Chief Magistrates Court Criminal Case No. 1217 of 2020* (hereinafter referred to as 'the criminal case'). The *first count* was 'Disobeying a lawful order contrary to Section 131 of the Penal Code'. The *second count* was 'Operating a private medical laboratory facility without approval contrary to Section 21 as read with Section 39 of the Medical Laboratory Technicians and Technologists Act No. 10 of 1999'. The *last count* was 'Stocking expired laboratory reagents contrary to Regulation 3(1) as read with Regulation 12 of the Legal Notice No. 113 of 2011 of the Medical Laboratory Technicians and Technologists Act No. 10 of 1999'

56. Each of the counts had the particulars of the charge. I have considered the offences in light of the respective statutes under which they were preferred. The offence in the first count is duly provided for in the Penal Code, Cap. 63 of the Laws of Kenya. The third count as well referred to Regulation 3 which is on regulation of businesses.

57. On the second count, having found that the Board has the mandate to license and regulate private medical laboratories as well as medical laboratories technicians and technologists then the argument that the charge in the second count had no basis and is unknown in law, which argument majorly turned on the interpretation of the provisions of the Medical Laboratory Act, and in the unique circumstances of this matter ought to be properly so first taken up before the trial court. I say so because the charge was preferred on the basis of Sections 21 and 39 of the Medical Laboratory Act which provisions are on the power of the Board to issue certificates and licenses and the resultant penalties respectively.

58. I therefore decline the invitation to find that the charges which the 2nd Petitioner faces in the criminal case are tramped up.

59. On whether the 2nd Respondent contravened Article 157(11) of the Constitution, I am guided by the Supreme Court in ***Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others [2014] eKLR*** where the Court dealt with the burden of proof in Constitutional Petitions as follows: -

> *Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru vs. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.*

60. The Court of Appeal in **Civil Application Nai. 31 of 2016 Alfred N. Mutua v Ethics & Anti-Corruption Commission (EACC) & 4**

Others [2016] eKLR stated as follows: -

> *….. We find that the applicant is entitled in law to institute proceedings whenever there is threat of violation of his fundamental rights and freedoms or threat of violation of the Constitution. Whether there is a threat of violation is a question of fact and evidence must be adduced to support the alleged threat.*

61. I have closely examined the pleadings to ascertain if the 2nd Respondent acted in contravention of Article 157(11) of the Constitution. The Petitioners' case against the 2nd Respondent was mainly based on two fronts. First, that the 2nd Petitioner and the Board had no power to exercise any regulation and licensing over the laboratory and second, that the charges preferred against the 2nd Petitioner were tramped up.

62. I have already dealt with the issue as to whether the charges are tramped up. I have found that the charges are not tramped up. On consideration of the entire body of evidence I am unable to trace any iota of evidence demonstrating that the 2nd Respondent acted contrary to public interest or acted *contra* the interests of the administration of justice and the need to prevent and avoid abuse of the legal process. The 2nd Respondent preferred charges against the 2nd Petitioner which were based on disclosed provisions of the law. That is its constitutional mandate. Whereas the Petitioners pleaded the contravention of Article 157(11) of the Constitution, there was no proof to that end. The contention fails.

63. I therefore find and hold that the charges against the 2nd Petitioner were not tramped up and that the 2nd Respondent did not act in contravention of Article 157(11) of the Constitution. I hence find no ground for terminating the prosecution of the 2nd Petitioner in the criminal case.

(c) Whether 1st Respondent breached the 1st Petitioner's patients' right to privacy and human dignity by carting away and studying their medical records and should return the records forthwith:

64. The Petitioners averred that on 27/05/2020 the 1st Respondent officers carted away patient documents including medical records. As such they sought a declaration that the 1st Respondent breached the 1st Petitioner's patients' right to privacy and human dignity by carting away and studying their medical records and should return the records forthwith.

65. For such a declaration to issue the Petitioners ought to, in the first instance, prove that the 2nd Respondent carted away patients' records and, secondly, that the 1st Respondent studied the said records. The Petitioners contended that there was proof of the impugned acts as the 1st Respondent annexed some of the patients' records to the Response to the Petition.

66. I agree with the Petitioners that the annexing of the patients records to the pleadings is *prima facie* evidence that the 1st Respondent indeed carted away the records. There was however the other limb of proof. The Petitioners had to prove that the 1st Respondent studied the records. That evidence is substantially not on record save the documents for one Ronald Onkundi.

67. I will hence examine the said documents. As said, the documents were in the name of one Ronald Onkundi. There were three laboratory examination reports and a cash receipt. The reports had the results for Helicobacter Pylori Stool, Salmonella Antigen Test and Stool for Ova and Cyst. There were no other details on the documents on identification. Further, the documents bore the 1st Petitioner's date stamp showing that the patient was attended to at the laboratory on 07/06/2020.

68. From a careful scrutiny of the documents I am not satisfied that the identity of Ronald Onkundi was substantively revealed as to interfere with his privacy and dignity. I say so since the possibility of many other people bearing a like name cannot be ruled out and more so that no other identification details or documents were tendered. Further, the said Ronald Onkundi did not personally contend that his right to privacy and the inherent dignity were in any manner contravened by the 1st Respondent.

69. In this head, it was incumbent upon the said Ronald Onkundi to, at least, file a disposition in support of the allegation by the Petitioners. Having failed to do so the allegation by the Petitioners can only be hearsay.

70. The issue is not proved and is for rejection.

(d) Whether the 1st Respondent's closure notice against the Petitioners' laboratory is unconstitutional, illegal, null, void and of no legal effect:

71. The Petitioners challenged the closure notice by the 1st Respondent on three grounds namely that the 1st Respondent did not have the mandate to regulate and license the laboratory, that the decision infringed **Article 47** of the **Constitution** and that the 1st Respondent lacked a proper classification of the laboratories and their respective charges.

72. The first ground of objection has already been settled against the Petitioners. On **Article 47,** it is true that any administrative decision must be expeditious, efficient, lawful, reasonable and procedurally fair. The right is further fortified through the **Fair Administrative Action Act, No. 4 of 2015**.

73. Article 47 of the Constitution. Sub-articles (1), (2) and (3) states that: -

> *(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.*

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall— (a) provide for the review of administrative action by a Court or, if appropriate, an independent and impartial tribunal; and (b) promote efficient administration.

74. The legislation that was contemplated under Article 47(3) is the Fair Administrative Act. Section 5(1) thereof provides that: -

(1) In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall—

(a) issue a public notice of the proposed administrative action inviting public views in that regard;

(b) consider all views submitted in relation to the matter before taking the administrative action;

(c) consider all relevant and materials facts; and

(d) where the administrator proceeds to take the administrative action proposed in the notice—

(i) give reasons for the decision of administrative action as taken;

(ii) issue a public notice specifying the internal mechanism available to the persons directly or indirectly affected by his or her action to appeal; and

(iii) specify the manner and period within which such appeal shall be lodged.

75. Section 2 of the Fair Administrative Act defines an 'administrative action' and an 'administrator' as follows: -

'administrative action' includes –

(i) The powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(ii) Any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

'administrator' means 'a person who takes an administrative action or who makes an administrative decision'.

76. Addressing itself to the foregoing, the Court of Appeal in ***Civil Appeal 52 of 2014 Judicial Service Commission vs. Mbalu Mutava & Another (2015) eKLR*** held that: -

Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.

77. The High Court in ***Republic v Fazul Mahamed & 3 Others ex-parte Okiya Omtatah Okoiti [2018] eKLR*** had the following to say: -

25. *In John Wachiuri T/A Githakwa Graceland & Wandumbi Bar & 50 Others vs The County Government of Nyeri & Ano* ***[39]*** *the court emphasized that there are three categories of public law wrongs which are commonly used in cases of this nature. These are: -*

a. ***Illegality****- Decision makers must understand the law that regulates them. If they fail to follow the law properly, their decision, action or failure to act will be* ***"illegal".*** *Thus, an action or decision may be illegal on the basis that the public body has no power to take that action or decision, or has acted beyond it powers.*

b. ***Fairness****- Fairness demands that a public body should never act so unfairly that it amounts to abuse of power. This means that if there are express procedures laid down by legislation that it must follow in order to reach a decision, it must follow them and it must not be in breach of the rules of natural justice. The body must act impartially, there must be fair hearing before a decision is reached.*

c. ***Irrationality and proportionality****- The courts must intervene to quash a decision if they consider it to be demonstrably unreasonable as to constitute* ***'irrationality"*** *or* ***'perversity'*** *on the part of the decision maker. The benchmark decision on this principle of judicial review was made as long ago as 1948 in the celebrated decision of* ***Lord Green*** *in Associated Provincial Picture Houses Ltd vs Wednesbury Corporation****[40]****:-*

> *If decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere...but to prove a case of that kind would require something overwhelming...*

78. The tug-of-war between the parties herein has a history. A like closure order was first issued by the 1st Respondent on 26/08/2014. A second closure order was issued on 27/08/2014. The third closure order is the subject in these proceedings. It was issued on 27/05/2020. Each of the closure notices had reasons for the closure. The reasons for the closure order dated 27/05/2020 were that the laboratory was unlicensed and that the laboratory stoked expired reagents. Those reasons also formed the basis of the charges preferred against the 2nd Petitioner in the criminal case.

79. Just like the previous closure orders, the closure order in issue was preceded by an inspection of the laboratory which was carried out by the 1st Respondent. It appears that since the 1st Respondent issued the first closure notice in 2014 the 1st Petitioner had persistently held to the belief that the 1st Respondent could not exercise any regulation and licensing over the laboratory. The 1st Petitioner was hence acting in ignorance of the law.

80. I have carefully considered the nature of the laboratory the 1st Petitioner operated, the history of non-compliance on the part of the Petitioners, the fact that the 1st Respondent had reasons to believe that the Petitioners had even stocked and used expired reagents, the obligation on the part of the 1st Respondent to protect and sustain public health and the fact that the 1st Respondent gave its reasons for the order. I hereby find and hold that, in the unique circumstances of this matter and acting in public interest, the 1st Respondent's closure order was lawful, was not unreasonable and was indeed procedurally fair. The closure notice attained the constitutional muster and, as well, did not infringe any law.

81. On whether there was a defined manner on the classification of the laboratories and the basis of the charges demanded by the 1st Respondent, the Petitioners relied on ***Machakos High Court Judicial Review No. 408 of 2017*** (supra). In that matter the Learned Judge dealt with the issue and held as follows: -

> ***89. In order to prevent the arbitrary imposition of fees, I hereby direct the Respondent to immediately commence the process of express classification of laboratories, which process must be completed in 90 days. In default the Respondent will not be permitted to charge any fees thereunder.***

82. The Learned Judge appreciated the need for preventing arbitrary imposition of fees. To that end, he ordered that the 1st Respondent developed a defined classification of laboratories and the modalities on charging levies within given timeline failure to which the 1st Respondent was ordered not to levy any fees. The issue was extensively raised by the Petitioners. The 1st Respondent did not specifically respond to it. I will therefore take it that the 1st Respondent did not comply with the order of the Court. That being so, the 1st Respondent was estopped from demanding any levies from the 1st Petitioner.

83. It must however be understood that the failure to comply with the order was not a *carte blanche* for the Petitioners to engage in unlawful actions. Except for levying of charges the 1st Respondent was still duty bound to carry out its other statutory duties. For instance, the 1st Respondent was not curtailed from carrying out inspections to ascertain the nature of reagents the 1st Petitioner used in its laboratory or whether the laboratory technicians and/or technologists working in the 1st Petitioner's laboratory were licensed.

84. The upshot is therefore that save for the issue of levying of fees the closure notice issued by the 1st Respondent on 27/05/2020 was within the constitutional and legal parameters.

(e) **Remedies:**

85. All the declarations sought by the Petitioners are hereby disallowed.

86. The Petitioners also sought special damages for loss of income and loss of business and general damages for infringement of their rights and fundamental freedoms. Such claims called for proof of infringement of the rights and fundamental freedoms. There was also the further need by the Petitioners to prove the actual losses suffered for the claim on special damages to be sustainable. However, as the Petitioners failed to lead any evidence in proof thereof the prayers for general and special damages are for rejection.

87. There was a further prayer that the 1st Respondent refunds any fees collected from any facility after the delivery of the decision in ***Republic v Kenya Medical Laboratory Technicians & Technologists Board [2019] eKLR.*** The relief sought is problematic. It is so general and fluid with no particularity. The Court was not availed with any evidence of any fees the Petitioners or any other person paid to the 1st Petitioner which fees were within the prohibited degree. The prayer is also unsuccessful.

Conclusion:

88. Having dealt with all the issues raised in the Petition and on the strength of the foregone I now return the finding that the Petition dated 08/06/2020 is unsuccessful. It is hereby dismissed with costs to the 1st Respondent.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 12th day of November 2020

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Nyamweya, Learned Counsel instructed by the firm of Messrs. Nyamweya Mamboleo Advocates for the Petitioners.

Miss. Mwangi, Learned Senior State Counsel instructed by the Honourable Attorney General for the 1st Respondent.

Miss. Kabila, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the 2nd Respondent.

Dominic Waweru – Court Assistant