REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(Coram: Odunga, J)

PETITION NO. 11 OF 2019

IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 165(3), 258 AND 259 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS IN ARTICLES 24, 25, 27, 33, 35, 37, 43, 47, 48 AND 50 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS) PRACTICE AND PROCEDURE RULES 2013

BETWEEN

GIDEON OMARE..……..……PETITIONER

VERSUS

MACHAKOS UNIVERSITY…..…….....……..…….....RESPONDENT

RULING

1. On 22nd July, 2019, this court issued the following orders:

> **1) A declaration that the Respondent's Regulations 10(2)(d) to the extent that it unreservedly outlaws picketing, 11(6)(c) to the extent that it does not allow for legal representation and 11(7)(b) to the extent that it does not allow for a hearing; of *Rules and Regulations Governing the Conduct and Discipline of Students of the University* unjustifiably limit the Petitioner's rights under the Constitution and are therefore unconstitutional, null and void.**
>
> **2) A declaration that the suspension and expulsion of the Petitioner from the Respondent University was null and void ab initio for having violated the Petitioner's constitutional rights under the Constitution.**
>
> **3) An order do issue compelling the Respondent to re-admit the Petitioner to join the University's Bachelor of Education year III.**

2. The Respondent has now moved this court by way of an application dated 2nd August, 2019 seeking the following orders:

> **1) THAT this Application be certified urgent and service thereof be dispensed with in the first instance.**
>
> **2) THAT this application be admitted and heard by the duty judge under the Vacation Rules.**
>
> **3) THAT this Honourable Court be pleased to order a stay of execution and all consequential orders arising therefrom**

pending inter partes hearing hereof and final disposal of this application.

4) THAT this Honourable Court be pleased to order a stay of execution and all consequential orders arising therefrom pending the hearing and determination of the lodged appeal.

5) THAT the costs of this Application be in the cause.

3. The application was supported by a rather brief affidavit sworn by **Mary G. Kamau**, the Respondent's Advocate on 2nd August 2019. According to the deponent, the Applicant intends to appeal the said judgement and in the absence of stay order by this court, the applicant is exposed to eminent execution at any time as another school semester is just about to begin.

4. It was the deponent's view that the appeal raises triable issues hence the court ought to allow the same to be determined on merit lest it be rendered nugatory. It was deposed that the application has been made promptly without any delay and that it is in the interest of justice that it be allowed to enable the applicant prosecute the intended appeal to its logical conclusion.

5. By a further affidavit dated 14th August, 2019 deposed to by the same deponent, it was averred that this court issued orders on 2nd April, 2019 permitting the Respondent to sit for April, examinations and directed that the results be withheld pending further orders. Which orders the applicant complied with and the Respondent sat for the exams. By a letter addressed to and received by the applicant on 2nd August 2019 the Respondent's Advocates demanded that the Respondent's results be released without delay.

6. According to the Applicant, in a clear demonstration of intention to execute, the Respondent has extracted a decree pursuant to the said judgement. It was therefore the Applicant's view that the chronology of the events point to a clear imminent execution against the Applicant unless an order of stay of execution is granted.

7. The application was however opposed by the Petitioner/Respondent. According to him, there is no prejudice the Applicant stands to suffer by re-admitting him. Having determined the issues in the petition, he was of the view that this application is bad in law. He further contended that the present application has been brought with inordinate delay. It was his contention that the mere allegation that he has extracted a decree and duly served the same upon the Applicant is not sufficient ground to grant the orders of stay and that the Applicant should have gone further to show the court hoe his intended execution of the orders of the court would lead to irreparable suffering. He therefore stated that the balance of convenience tilts in his favour.

8. He lamented that if the stay is granted his right to education as enshrined in the Constitution will be infringed on and he will be greatly prejudiced bearing in mind that he has already wasted a lot of time (two academic years) away from school. On the other hand, the Applicant university will not suffer any prejudice if he is re-admitted since the Applicant has other options available in law if stay orders are not granted and they proceed with the appeal and the appeal succeeds which include recalling and/or cancelling his academic credentials.

9. The Respondent urged the court to direct the Applicant to deposit in lieu of costs in the sum of Kshs 750,000 since the appeal has no chances of succeeding.

10. It was submitted by the Applicant that Applicant has approached the court timeously. The decision being appealed from was delivered on 22. 07.2019 and the application herein for stay of execution was filed on 2. 08.2019. In support of its submissions the Applicant relied on ***Halai & Anor. v Thornton & Turpin (1963) Ltd (1990) KLR 365*** *as quoted in* **Kiplagat Kotut v Rose Jebor Kipngok [2015] eKLR**, **Richard Muthusi v Patrick Gituma Ngomo & another [2017] eKLR**, **Chris Munga N. Bichage –vs- Richard Nyagaka Tongi & 2 Others (2013) eKLR, Shell Ltd v Kibiru and Another [1986] KLR 410, Daniel Chebutul Rotich & 2 Others vs. Emirates Airlines Civil Case No. 368 of 2001** and ***Antoine Ndiaye vs. African Virtual University [2015] eKLR*.**

11. According to the applicant, in the said judgement, the court declared the Applicant's Regulations 10(2)(d), 11(6)(c) and 11(7)(b) that govern the conduct and Discipline of students of the University as unconstitutional. On the basis of the said declaration, the court found that the Petitioner's constitutional rights had been violated and ordered that he be re-admitted back to join the Respondent Bachelor of Education Year III. According to the applicant, in the event our appeal in the matter succeeds, it would be rendered nugatory if stay orders are not granted herein.

12. It was submitted that the University stands to suffer great difficulty in maintaining law and order in the Administration of over 8,000 students if stay orders are not granted. The said judgement has caused continuing unrest and tension within the University precincts among the student body as the students that have been suspended by the University in the past now seek forceful re-admission back to the University based on the said judgement. Secondly, the Applicant has been deprived of the moral authority to punish for disciplinary cases suspending all disciplinary proceedings as the confidence and influence the University Regulations have inspired in the past stands eroded. The Applicant stands to suffer irreparably if the stay orders are denied. There would be a much larger risk of injustice if the court found in favour of the Petitioner, than if it determined this application in favour of the Respondent/ Applicant.

13. It was submitted that the totality of consequences the University will be subjected to while in the administration of over 8,000 students in the event there is no stay of execution will be far- reaching and may affect the quality of delivery of education offered by the Applicant since discipline matters are an integral part of the learning. To the applicant, having been dissatisfied with the judgement of this Honourable Court, it is only in the interest of justice that he been granted an opportunity to exercise the cherished right of appeal as status quo prevailing before the said judgement is maintained and stay of the orders issued by this Honourable Court is granted.

14. In the applicant's view, its appeal is arguable with chances of success. It raises serious triable issues that should be determined on merit as captured in the draft memorandum of appeal *inter alia* that the case ought to have been commenced by way of judicial review since it was challenging the decision of an administrative body. In support of its submissions, the applicant further relied on **Jaribu Holdings Ltd v Kenya Commercial Bank Ltd. CA No. 314 of 2007)**, **Wangui Kathryn Kimani v Disciplinary Tribunal of Law Society of Kenya &**

another [2017] eKLR, **and Mangungu vs. National Bank of Commerce Ltd [2007] 2 EA 285.**

15. It was the applicant's view that the requirement for furnishing security will not be necessary since the case does not relate to money decree. The court was urged to exercise its discretion in the Applicant's favour as per the decision of the Court of Appeal in **Butt vs. Rent Restriction Tribunal [1982] KLR 417.**

16. The Respondent, on his part relied on the case of **Jaber Mohsen Ali & another vs. Priscillah Boit & Another [2014] eKLR**, **Kiplagat Kotut vs. Rose Jebor Kipngok [2015] eKLR** and submitted that the Applicant has not at all demonstrated by virtue of providing specific details how it would suffer substantial loss if the orders of stay are not issued by this Honourable Court stopping me from resuming classes. To the Respondent, there is absolutely no substantial harm would suffer if the orders of stay are not granted as the applicant has not proved produced an iota of evidence in support of his allegations that it would suffer irreparable harm.

17. It was therefore submitted that the Applicant has failed to satisfy the elements necessary for issuance of an order of stay of execution in accordance with Order 42 rule 6 of the Civil Procedure Rules and therefore his Application must suffer the fate of dismissal.

Determination

18. I have carefully considered the application, the affidavits filed, submissions made as well as authorities cited by counsel for both parties. **Order 42 rule 6(1) and (2)** of the ***Civil Procedure Rules*** provides as follows:

> ***"(1) No appeal or second appeal shall operate as a stay of execution or proceeding under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.***
>
> ***(2) No order for stay of execution shall be made under subrule (1) unless –***
>
> > ***(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and***
> >
> > ***(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant."***

19. In **Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. Nai. 15 of 1990 [1990] KLR 365,** the Court of Appeal held that whereas the Court of Appeal's power to grant a stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 41 rule 6 of the ***Civil Procedure Rules*** is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay. To the foregoing I would add that the stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in sections 1A and 1B of the ***Civil Procedure Act***, the Court is nolonger limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the ***Civil Procedure Act*** or in the interpretation of any of its provisions. According to section 1A(2) of the ***Civil Procedure Act*** "the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective" while under section 1B some of the aims of the said objective are; the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.

20. In **Stephen Boro Gitiha vs. Family Finance Building Society & 3 Others Civil Application No. Nai. 263 of 2009, Nyamu, JA** on 20/11/09 held *inter alia* that the overriding objective overshadows all technicalities, precedents, rules and actions which are in conflict with it and whatever is in conflict with it must give way.

21. The same Judge in **Kenya Commercial Bank Limited Vs. Kenya Planters Co-Operative Union Civil Application No. Nai. 85 of 2010** held that:

> **"where there is a conflict between the statute (overriding objective principle) and a subsidiary legislation (rules of the court) the statute must prevail. Although the rules have their value and shall continue to apply subject to being O2 complaint, the O2 principle is not there to fulfil them but to supplant them where they prove to be a hindrance to the O2 principle or attainment of justice and fairness in the circumstances of each case".**

22. It therefore follows that all the pre-Overriding Objective decisions must now be looked at in the light of the said provisions. This does not necessarily imply that all precedents are ignored but that the same must be interpreted in a manner that gives effect to the said objective. What is expected of the Court is to ensure that the aims and intendment of the overriding objective as stipulated in section 1A as read with section 1B of the ***Civil Procedure Act*** are attained. It is therefore important that the Court takes into consideration the likely effect of granting the stay on the proceedings in question. In other words, the Court ought to weigh the likely consequences of granting the stay or not doing so and lean towards a determination which is unlikely to lead to an undesirable or absurd outcome. What the Court ought to do when confronted with such circumstances is to consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing and see where the scales of justice lie considering the fact that it is the business of the court, so far as possible, to secure that any transitional motions before the Court do not render nugatory the ultimate end of justice. The Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice. See **Suleiman vs.**

Amboseli Resort Limited [2004] 2 KLR 589. This was the position of **Warsame, J** (as he then was) in **Samvir Trustee Limited vs. Guardian Bank Limited Nairobi (Milimani) HCCC 795 of 1997** where he expressed himself as hereunder:

> **"Every party aggrieved with a decision of the High Court has a natural and undoubted right to seek the intervention of the Court of Appeal and the Court should not put unnecessary hindrance to the enjoyment and exercise of that right by the defendant. A stay would be overwhelming hindrance to the exercise of the discretionary powers of the court…The Court in considering whether to grant or refuse an application for stay is empowered to see whether there exist any special circumstances which can sway the discretion of the court in a particular manner. But the yardstick is for the court to balance or weigh the scales of justice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgement. It is a fundamental factor to bear in mind that, a successful party is *prima facie* entitled to the fruits of his judgement; hence the consequence of a judgement is that it has defined the rights of a party with definitive conclusion. The respondent is asserting that matured right against the applicant/defendant…For the applicant to obtain a stay of execution, it must satisfy the court that substantial loss would result if no stay is granted. It is not enough to merely put forward mere assertions of substantial loss, there must be empirical or documentary evidence to support such contention. It means the court will not consider assertions of substantial loss on the face value but the court in exercising its discretion would be guided by adequate and proper evidence of substantial loss… Whereas there is no doubt that the defendant is a bank, allegedly with substantial assets, the court is entitled to weigh the present and future circumstances which can destroy the substratum of the litigation…At the stage of the application for stay of execution pending appeal the court must ensure that parties fight it out on a level playing ground and on equal footing in an attempt to safeguard the rights and interests of both sides. The overriding objective of the court is to ensure the execution of one party's right should not defeat or derogate the right of the other. The Court is therefore empowered to carry out a balancing exercise to ensure justice and fairness thrive within the corridors of the court. Justice requires the court to give an order of stay with certain conditions."**

23. On the first principle, **Platt, Ag.JA** (as he then was) in **Kenya Shell Limited vs. Kibiru [1986] KLR 410**, at page 416 expressed himself as follows:

> **"It is usually a good rule to see if Order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money".**

24. On the part of **Gachuhi, Ag.JA** (as he then was) at 417 held:

> **"In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgement. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement."**

25. The general rule is that the Court ought not to deny a successful litigant of the fruits of his judgement save in exceptional circumstances where to decline to do so may well amount to stifling the right of the unsuccessful party to challenge the decision in the higher Court. In **Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63** it was held that:

> **"to be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court".**

26. In an application for stay the Court must consider the overriding objective and balance the interest of the parties to the suit since the court is enjoined place the parties on equal footing. Since the overriding objective aims, *inter alia*, to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act, the balancing of the parties' interest is paramount in an application for stay of execution pending appeal. However, the law still remains that where the applicant intends to exercise its undoubted right of appeal, and in the event it was eventually to succeed, it should not be faced with a situation in which it would find itself unable to get back its money. Likewise, the respondent who has a decree in his favour should not, if the applicant were eventually to be unsuccessful in its intended appeal, find it difficult or impossible to realize the decree. This is the cornerstone of the requirement for security, and it is trite that once the security provided is adequate its form is a matter of discretion of the Court. See **Nduhiu Gitahi vs. Warugongo [1988] KLR 621; 1 KAR 100; [1988-92] 2 KAR 100.**

27. The court has to balance the interest of the applicant who is seeking to preserve the *status quo* pending the hearing of the appeal so that his appeal is not rendered nugatory and the interest of the respondent who is seeking to enjoy the fruits of his judgement. In other words, the court should not only consider the interest of the applicant but has also to consider, in all fairness, the interest of the respondent who has been denied the fruits of his judgement.

28. Therefore, in an application of this nature, it is upon the applicant should show the damage it would suffer if the order for stay is not granted since by granting stay would mean that the *status quo* would remain as it were before the judgement and that would be denying a successful litigant of the fruits of his judgement which should not be the case if the applicant has not given to the court sufficient cause to

enable it to exercise its discretion in granting the order of stay.

29. In my view, the chances of success of the intended appeal ought not to take centre stage in an application for stay of execution by the High Court of a decision of the same Court pending an intended appeal to the Court of Appeal. To ask the court to determine an application for stay of its orders based on the chances of success of an intended appeal would amount to asking the same court to interrogate its decision an action which in my view is not contemplated under Order 42 rule 6 of the ***Civil Procedure Rules***. The Court of Appeal, however, being a Court of superior jurisdiction is perfectly entitled, in an application for stay of execution of a decision of the High Court pending an appeal to that court to consider the chances of success of the intended appeal. Similarly, it is my view that where the High Court is hearing an application for stay of execution of a decision of a subordinate court pending an appeal to the High Court, the latter is perfectly entitled to consider the chances of success of the intended appeal.

30. While I appreciate that in an application for stay pending appeal, it is permitted for the applicant to disclose the nature of his intended appeal so that the Court satisfies itself that in determining whether or not to exercise its discretion in favour of the applicant, it is not doing so on frivolous grounds, under Order 42 rule 6 of the ***Civil Procedure Rules***, it is not a condition for grant of stay that the applicant satisfies the Court that his appeal or intended appeal has overwhelming chances of success. In my view the omission to include such a condition is for good cause. It is in my view meant to insulate the Court from which an appeal is preferred from the embarrassment of holding a mini-appeal as it were. Accordingly, whereas the Court of Appeal is in a better position to gauge the chances of success of an appeal or intended appeal, this Court in an application seeking stay of execution of its decision pending an appeal to the Court of Appeal is not enjoined to consider such condition. In fact, it would be highly undesirable to do so, though it may superficially make reference to the grounds of the intended appeal. This was the position adopted in **Universal Petroleum Services Limited vs. B P Tanzania Limited [2006] 1 EA 486** where the Court held that:

> **"The granting or otherwise of an order of stay of execution under rule 9(2)(b) is at the discretion of the court and in the exercise of that judicial discretion the court as and where is relevant considers a number of factors, notably, whether the refusal to grant stay is likely to cause substantial and irreparable injury or loss to an applicant, whether the injury or loss cannot be atoned by damages, balance of convenience, and whether prima facie the intended appeal has likelihood of success. Above all, further to considering the above factors the court takes into account the individual circumstances and merits of the case in question…At this stage one has to be careful not to pre-empt the pending appeal and for that reason, the court has to discourage a detailed discussion of the weaknesses or otherwise of the decision intended to be impugned on appeal… There is also a danger in saying or making a finding that an appeal has an overwhelming chances of success."**

31. In **Mangungu vs. National Bank of Commerce Ltd [2007] 2 EA 285**, the Court expressed itself on the issue as follows:

> **"Generally the merits of a party's case in a stay application is not a particularly relevant matter for consideration at this stage. Although it is true that the Court under rule 9(2)(b) has discretion to stay execution, but only on grounds which are relevant to a stay order. Whether or not the appeal has good chances of success is a matter, which should be raised in the appeal itself. The correctness of the judgement should not be impugned in an application for stay of execution save in very obvious cases such as lack of jurisdiction."**

32. Accordingly, I do not intend to make any finding with respect to the chances of success of the intended appeal.

33. However, as was held by the Court of Appeal in **Re: Timothy Riziki Hopkins Civil Application No. Nai. 194 of 2008,** a "stay" does not reverse, annul, undo or suspend what already has been done or what is not specifically stayed nor pass on the merits of orders of the trial court, but merely suspends the time required for performance of the particular mandate stayed, to preserve a status quo pending appeal and that the Court has no jurisdiction at the stage of application for stay of execution pending appeal to grant an order whose effect would be to reverse the decision of the Superior Court and legalise the resolution and the contract already nullified until the determination of the appeal since that can only be nullified upon the hearing of the appeal.

34. In this case, it is my view that if the stay is granted with the consequence that the Applicant University continues applying the regulations which have been found unconstitutional and based thereon metes disciplinary punishments against the students which punishments may include their expulsion from the University, the substratum of this judgement in so far as those students are concerned will dissipate. In other words, by granting the orders of stay sought herein, these proceedings would be rendered an academic exercise if by the time the intended appeal is determined, assuming it does not succeed, the impugned regulations would have been applied to the affected students. In the the Nigerian Court of Appeal decision of **Olusi & Another vs. Abanobi & Others [suit No. CA/B/309/2008],** it was held that:

> **"It is an affront to the rule of law to… render nugatory an order of Court whether real or anticipatory. Furthermore… parties who have submitted themselves to the equitable jurisdiction of courts must act within the dictates of equity."**

35. It is generally agreed that parties who have invited the Court to adjudicate on a matter which they are disputing over ought not to create a situation whereby the decision to be made by the Court would be of no use. In that event as held by the Nigerian Court of Appeal in **United Cement Company of Nigeria versus Dangote Industries Ltd & Minister of Solid Mineral Development [CA/A/165/2005]**, the Court ought to ensure that:

> **"appropriate orders are made to prevent acts which will destroy the subject matter of the proceedings or foist upon the court a situation of complete helplessness or render nugatory any judgement or order."**

36. The question that the Court must decide is therefore whether the refusal to grant stay or conservatory orders would destroy the subject matter of the proceedings and foist upon the Court a situation of complete helplessness so that even if the applicant succeeds there would be no return to the *status quo*. In this case what this court did was to nullify those regulations whose effect were to deny the students the right to fair hearing. It did not give the students immunity from being disciplined. The university has not stated what difficulty it has in effecting the

judgement pending the hearing and determination of the intended appeal. To my mind there is none. As I have said hereinabove stay can only be granted where it is shown that the applicant will be subjected to substantial loss. The applicant has not even attempted to give an indication of what loss if any it stands to suffer by implementing a judgement whose effect is to afford fair hearing to the students.

37. As regards the order compelling the University to admit the Petitioner, it is now clear that the Petitioner has been subjected to another disciplinary process and the matter is once again a subject of dispute. In other words, as far as the University is concerned the order for admission has been overtaken by subsequent events. As to whether the subsequent decision is in itself lawful is another matter altogether.

38. In my view if the intended appeal succeeds, there will be no difficulty in recalling the academic credentials of the affected students and cancelling the same. However, if, based on the impugned regulations students are thereby terminated, clearly substantial loss will be occasioned to them. In other words, applying the doctrine of proportionality and equality of arms, the balance tilts in favour of disallowing this application.

39. In the result I decline to grant the orders sough herein and order that the Notice of Motion dated 2nd August, 2019 be and is hereby dismissed with costs.

40. It is so ordered.

Read, signed and delivered in open Court at Machakos this 19th day of December, 2019.

G. V. ODUNGA

JUDGE

In the presence of:

Miss Munyao for the Respondent

CA Geoffrey