



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MIGORI**

**CONSTITUTIONAL PETITION NO. 3 OF 2016**

**MIGORI COUNTY TRANSPORT SACCO.....PLAINTIFF/PETITIONER**

**= VERSUS =**

**MIGORI COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**MOSES CHAMWADA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This Petition presents yet another opportunity which this Court is called upon to reflect on the challenges facing devolution in Kenya.
2. The Petitioner herein, **MIGORI COUNTY TRANSPORT SACCO** (hereinafter referred to as '**the Petitioner**') is a duly registered co-operative society under the Co-operative Societies Act, Chapter 490 of the Laws of Kenya. The Petitioner was formally registered by the Commissioner for Co-operative Development on 21/04/2015 and was issued with Certificate of Registration No. CS/18103.
3. The Petitioner as one of the very many players in the larger transport sector operates public service vehicles from Migori town to various destinations including Homa Bay, Kisumu, Kisii and Sirare. As at 30/07/2015 the Petitioner had a fleet of around 34 such vehicles. The Petitioner has its operational and administrative offices in Migori town.
4. The Petition is dated 01/04/2016 and was filed on 13/05/2016. The Petition is supported by the twin Affidavits sworn by one **PETER NJAGA** which were filed on 13/05/2016 and 03/01/2017 respectively. It is contended by the Petitioner that although it was formally registered as a co-operative society aforesaid, its members had been operating the public service vehicles long before the birth of the County Government of Migori under the current constitutional order. Indeed, the Petitioner reveals that it used, so then, to operate from a popular destination within Migori town known as Posta Bus Park. That was during the currency of the Municipal Council of Migori.
5. According to the Petition, the prevailing problem that made the Petitioners to knock unto the doors of justice revolves around the continued existence of the Petitioner on one hand and the discharge of the lawful functions and mandate by the County Government of Migori (hereinafter referred to as '**the County Government**'). Briefly the Petitioner contends that the County Government has not been discharging its duties and responsibilities towards it as envisaged in the Constitution of Kenya and has in particular frustrated the operations of the Petitioner by denying to provide it with crucial documents for its licensing including '**the Certificate of Picking and Dropping**' (hereinafter referred to as '**the Certificate**'). According to the Petitioner, the Certificate is one of the documents required by the **National Transport and Safety Authority** ((hereinafter referred to as '**the Authority**') to enable the Petitioner to be fully licensed and to secure a TLB Portal as to fully digitalize its operations towards full compliance with the law. To the Petitioner, the County Government continues to deliberately conduct itself as such due to its vested interests in the sector which were manifested by the registration of a rival co-operative society in the name of **MIGORI AWENDO CLASSIC SACCO** through the proxies of the County Government's County Executive Committee Member for Transport one **MOSES CHAMWADA**, the second Respondent in this Petition, including his brother. Petitioner complains that the intention of the County Government and the second Respondent collectively is to phase out the Petitioner from business and to that end they have so continued to use all and any possible means to achieve that.
6. It remains the Petitioner's contention that the County Government and the second Respondent have and so continue to deny the Petitioner the requisite Certificate and have even gone ahead to unilaterally close its operational base which the Petitioner has been operating from long before the advent of devolution. That is the famous Posta Bus Terminus. Further to that, the County Government and the second Respondent have refused to allocate the Petitioner any alternative operational base and simply dismisses the Petitioner and directs it to operate from any of the available Bus Parks within the town without any regulation, order, guidance or direction. To the Petitioner, that is a recipe for chaos since the Petitioner may have to either displace or interfere with the operations of any other operational co-operative society. The Petitioner drew reference to the ugly chaos which took place at the famous Posta Bus Park when its operations were interfered with by the said Migori Awendo Classic Sacco in wanting to displace the Petitioner therefrom. As a result of the illegal closure of the Bus Park, the Petitioner has been rendered in a very difficult position and is in the meantime operating therefrom contrary to and without the blessings of the County

Government and the second Respondent and that has led to many of its members being arrested and charged with serious offences under the law.

7. The Petitioner further contends that the foregone state of affairs purposely and unlawfully created by the County Government and the second Respondent has made it not able to fully comply with the licensing requirements and as such it continues to lose many of its members who opt to join other compliant co-operative societies including the said Migori Awendo Classic Sacco. The Petitioner has therefore continued to suffer huge losses and incur heavy operational costs including salaries, office rent, taxes to the extent that it is now near collapse and closure.

8. The Petitioner therefore prays for the following orders: -

**a) Declaratory judgment that Defendant's actions prohibiting a legally registered Sacco (Plaintiff) to operate transport businesses in Migori County which is conflict with the laws and violating the rights to operate.**

**b) Moreover, declaratory judgment that plaintiff is subject to Defendant's business letter of authority regime and shall operate business in the county without fear or intimidation from any individual and/individuals or body or organization.**

**c) Defendants refusal to allow Plaintiff as tabulated here above. However, the second respondent is directly answerable to the first respondent. In this regard, the plaintiff is imploring a declaration from this Honourable court to impose complete, speedy, and adequate compensation from the first respondent to the plaintiff as tabulated above and or as the Honourable court deems necessary,**

**d) Orders to the cost.**

**e) This suit is filed under certificate of urgency.**

**f) Any such additional relief as this Honourable court deems just and equitable.**

9. The Petition is opposed. The Respondents filed a joint Replying Affidavit through one **CHRISTOPHER ODHIAMBO RUSANA**, the County Secretary of the County Government sworn on 13/12/2016. The Respondents contend that the Petitioner never applied for the alleged Certificate although they acknowledge the Petitioner's reminder letters dated 22/12/2015 and 25/01/2016 and as such the Respondents were not in a position to issue any such Certificate to the Petitioner.

10. The Respondents however explained that they indeed issued a Trade Licence to the Petitioner which enabled it to carry out its work within the entire Migori County but on condition that the Petitioner operates from any of the designated bus parks across the County. To the Respondents once entities that trade in public transport are organized into SACCOs they are permitted to freely and lawfully pick and drop passengers at any of the designated bus parks across the County. It was therefore argued that the Petitioner's assertion that her operations had been hampered by the lack of the Certificate as it was not able to obtain a TLB Portal was erroneous and misleading. The Respondents further wondered why the Petitioner was only keen to obtain the Certificate to operate at a bay near Kilimanjaro Hotel within Migori town whereas it has been operating from that very bay since 2014.

11. It was re-emphasized that since the Petitioner has been in operation and has been carrying on its business since 2014, long before it legally came into existence in April 2015, and without the said Certificate then it's now position is unfounded both in fact and law. It was further asserted that as a show of good faith and even though it was not a legal requirement, the County Government went ahead and wrote a letter to the National Transport and Safety Authority and advised them that the Petitioner had been authorized to operate from the designated County Bus Parks and that she had recommended the Petitioner for registration.

12. The Petitioner was then challenged to demonstrate any entity or institution that had refused to engage with it in any business or transaction for want of the Certificate. The Respondents further took the position that even as at the institution of these proceedings there was nothing due to the Petitioner from the County Government relating to the Petitioner's business. The Respondents denied that they ever created any hurdles for the Petitioner to operate either as alleged or otherwise and so contended that the Petition is only founded on falsity as the Petitioner has failed to show which of its alleged rights and how they were infringed. They called for the dismissal of the Petition.

13. The Petition was heard by way of oral submissions. The Petitioner who was not represented appeared through its duly appointed representative one Peter Njaga largely reiterated the contents of the Petition in calling for the grant of the prayers sought.

14. Mr. Marvin Odera, Learned Counsel for the Respondents, relied on the Affidavit of the County Secretary in opposing the Petition. Counsel re-emphasized that there was no requirement in any law for the alleged Certificate but only a Licence which the County Government had issued to the Petitioner. As to the permission to operate from the bay near the Kilimanjaro hotel, Counsel submitted that the Respondents are not able to so allow the Petitioner as it is free to operate from any designated bus park within the County but not therefrom since it is not a designated bus park.

15. In a rejoinder, the Petitioner submitted that the Respondents were under a constitutional duty to plan the Migori town and to allocate an operational base to the Petitioner but not to just order it to move from its area of operation which it has been so operating from for years by now without any proper relocation. It called the Respondents to emulate the other counties in the country who are way ahead in planning. To the Petitioner, the Petition is merited. Having therefore dealt with the background of the Petition, I will now venture into the merits or otherwise of the Petition. To that end, the starting point is the Constitution of Kenya 2010.

16. The promulgation of the Constitution of Kenya 2010 (hereinafter referred to as '**the Constitution**') brought in many and major changes

in all sectors of life and the transport sector was not an exception. One of such changes resulted from the distribution of functions between the National Government and the County Governments under **Articles 186(1), 187(2)** and the **Fourth Schedule** of the **Constitution**. To enable the County Governments, discharge such constitutional mandates, **Article 185(2)** of the **Constitution** gave legislative authority and powers to the County Assemblies.

17. The transport function is one of the shared functions between the National Government and the County Governments. The **Fourth Schedule** of the **Constitution** captures the said function and spells out the functions of both levels of governments as follows: -

**Part 1 –National Government**

18. Transport and communications, including, in particular-

- (a) Road Traffic*
- (b) The construction and operation of National trunk roads;*
- (c) Standards for the construction and maintenance of other roads by counties*
- (d) Railways;*
- (e) Pipelines;*
- (f) Marine navigation;*
- (g) Civil aviation;*
- (h) Space travel;*
- (I) Postal services;*
- (j) Telecommunication; and*
- (k) Radio and Television broadcasting*

**Part 2 – County Governments**

5. County transport, including-

- (a) County Roads;*
- (b) Street lighting;*
- (c) Traffic and parking;*
- (d) Public road transport; and*
- (e) Ferries and harbors, excluding the shipping and matters related thereto.*

18. In discharging the road traffic function, the National Government through the legislative arm, the National Assembly, enacted the **National Transport and Safety Authority Act** No. 33 of 2012 (hereinafter referred to as '**the Act**'). The Act was assented to by the President of the Republic of Kenya on 12/10/2012 and came into operation on 01/12/2012. The main purpose of the Act, as so captured in its preamble, was to establish the **National Transport and Safety Authority** ((hereinafter referred to as '**the Authority**')) and to provide for its powers and functions and for other connected purposes.

19. The functions and powers of the Authority are provided for under **Section 4** of the Act. For clarity purposes, I will reproduce them verbatim and as follows: -

***(1) The functions of the Authority shall be to –***

- (a) Advise and make recommendation to the Cabinet Secretary on matters relating to road transport and safety.*
- (b) Implement policies relating to road transport and safety*
- (c) Plan, manage and regulate the road transport system in accordance with the provisions of this act;*

- (d) Ensure the provision of safe, reliable and efficient road transport services; and
- (e) Administer the Act of Parliament set out in the First Schedule and any other written law.

**(2) In the performance of its functions under subsection (1), the Authority shall:**

- (a) Register and licences motor vehicle;
- (b) Conduct motor vehicle inspections and certification;
- (c) Regulate public service vehicle;
- (d) Advise the Government national policy with regard to transport system;
- (e) Development and implement road safety strategies;
- (f) Facilitate the education of the members of the public on road safety;
- (g) Conduct research and audits on road safety;
- (g) Compile inspection reports relating to traffic accidents;

20. The Authority has the sole discretion to grant or refuse any license. In processing any type of a license, the Authority may attach any such condition(s) it deems necessary thereto. The conditions for the issuance of a license are provided for under **Section 30** of the Act. **Section 30(3)** of the Act provides as follows: -

(3) Subject to the provisions of this Act, the authority may attach to a road service licence such conditions as it may consider fit for the purpose of ensuring that; -

- (a) the fares imposed for the carrying of passengers are reasonable and ensure fair competition within the transport industry.
- (b) Copies of the timetable and fare timetable are carried and available for inspection; and
- (c) **The safety of passengers and in particular, that they alight and are picked from such areas as may be designated for that purpose, and generally for securing the safety and convenience of the public. (emphasis added).**

21. Further to the provisions of the Act on *inter alia* the licensing of public service vehicles, there are some regulations contained in a subsidiary legislation dealing with the operation of public service vehicles. They are known as the **National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014** (hereinafter referred to as '**the Regulations**'). The Regulations as well, provide for a raft of conditions to be met by any intended licensee. In respect to commuter services, **Regulation 9** provides as follows: -

**9. Commuter services:**

**Every operator of a commuter service vehicle shall ensure that a driver, conductor or any other staff member employed to work in the vehicle-**

- (a) Does not work for a period longer than eight hours in any twenty-four hours' period;
- (b) Receives a regular salary and is not paid a commission based on the number of trips made per day;
- (c) Does not shout, make loud noise or harass passengers or other person in, or awaiting to board a vehicle;
- (d) **at all times only picks up and drops off passengers at designated bus stops; and**
- (e) Complies with the by-laws or County legislation of the County or the city or urban area which the vehicle is registered to operate. **(emphasis added).**

22. From the provisions of the Act and the Regulations, it is quite clear that the Authority is indeed concerned with, among many others, the safety of the passengers and particularly where they are picked and dropped. The contention by the Petitioner has all along been that the Authority has not fully licensed it and given it a TLB Portal on grounds that it has to attach to its application for a license the Certificate. However according to the Respondents such a Certificate is not a legal requirement.

23. It is indeed clear under **Section 30(3)(c)** of the Act that the Authority has the legal authority to require any evidence as to where an intended licensee will pick and drop passengers prior to issuing any license. That is what the Petitioner is contending that the Authority

requires prior to its full licensing. Although the Act and the Regulations do not expressly provide for what the Petitioner describes as the Certificate, the requirement of such evidence on the picking and dropping of passengers by the Authority cannot be flatly denied. Therefore, the argument by the Respondents that the Certificate, so to say, is not a legal requirement for licensing of a public service vehicle by the Authority is not legally correct. The request by the Authority is hence founded in law and since the Petitioner is in the process of seeking full licensing then one wonders why the Petitioner would cling unto requesting for such a Certificate for such a long period and to the detriment of its operations if the same is not a requirement by the Authority. I however wish to draw the attention of the parties herein that such a Certificate or its equivalent can only be issued by the County Government in view of the distribution of the functions between the two levels of government under the Constitution.

24. It is not lost to this Court that the County Government as well as the office of the second Respondent are a creation of the law. To that end, and like caged animals, they can, but move within the confines of the law in discharging their public functions. It remains proper to remind ourselves at this point in time that the focal point of devolution is to decentralize service provision to the lowest possible levels in the society. The Respondents are hence public servants and under the Constitution they are called to discharge such duties in full compliance with the Constitution. The Respondents are hence not an exception to compliance with, *inter alia*, **Article 10** of the **Constitution** on national values and principles of governance. The said **Article 10** is tailored as under: -

***(1) The national values and principles of governance in this Article bind all state organs, state officers, public officers and all persons whenever any of them-***

*(a) applies or interprets this constitution;*

*(b) enacts, applies or interprets any law; or*

*(c) makes or implements public policy decisions.*

***(2) The national values and principles of governance include-***

*(a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*

*(b) Human dignity, equity, social justice, inclusiveness equality, human rights, non-discrimination and protection of the marginalized;*

*(c) Good governance, integrity, transparency and accountability; and*

25. Coming back to the matter at hand, it is not in doubt that the Constitution devolved some aspects of the transport function to the County Governments. Of importance to this matter are the components of traffic, parking and public road transport. The County Government therefore remains under a legal obligation to come up with County legislations to provide for the said aspects of the transport function. Such legislations will definitely provide for, among other issues, the general management of the public service vehicles including the picking and dropping of passengers within the County and by that the issue of the Certificate would be easily and firmly dealt with. Needless to say, such pieces of legislations would go a long way into the regulation and provision of the transport function by the County Government.

26. This Court therefore agrees with the Petitioner that to expect the County Government to exercise such planning, control and regulation of its transport sector is not to call for an impossibility. That has and continues to happen in many other Counties in this country. Constitutionally, Migori County is not an exception. I hence find that it was not enough for the County Government to just tell the Petitioner to generally operate from any of its designated bus parks; it remains under a legal duty to allocate specific designated places for specific routes. By so doing the County Government would be discharging its functional aspect. It is of course one of the desired outcomes that one day one will walk into the town of Migori or any other town within the County and easily find a designated bus park for public service vehicles plying a certain route(s), as the case may be. That is indeed the premise in which the Authority is operating on.

27. I further find that the Respondents having acknowledged that they received two letters from the Petitioner as a follow up on the issue of the Certificate, although no formal application was lodged by the Petitioner, proceeded to further issue its letter dated 17/02/2016 to the Authority confirming their no objection to the Petitioner being considered for licensing. I am hence satisfied that the said letter operated as the Certificate or its equivalent.

28. I will now deal with the prevailing status of the Petitioner on the ground. It is not in dispute that the Respondents do not recognize the Posta Bus park at which the Petitioner is currently operating from as a designated bus park. That is why they ordered its permanent closure at the time when there was a dispute between the Petitioner and one of its rival Saccos.

29. Whereas the County Government has the power and responsibility to plan the town of Migori and/or any other town within the County, such exercise of the power has to be within the Constitution. It is a fact that the Petitioner was in existence, although not in its present form, long before the advent of the devolution and the birth of the County Government. That was during the reign of the now defunct Municipal Council of Migori. It is also not disputable that during the time of the now defunct Municipal Council of Migori, the bay where the Petitioner is operating from was the famous bus terminus in Migori town.

30. That being so, the Respondents were called by the Constitution to handle the issue of the closure of the bus park and exit of the Petitioner from the said bus park with the participation of the people, integrity, transparency, accountability just to name a few values. The Respondents were to fully involve the Petitioner in the discussions and processes towards reaching the decision to close the bus park and to possibly relocate the Petitioner. That is because the Petitioner was the main stakeholder and stood to be affected by any decision on the bus park. Further, the Respondents were duty bound to relocate the Petitioner to a specific designated place moreso because the Petitioner was in

operation long before the County Government came into being and that it had in its employment many people who support their families and the national and county economies in one way or the other. Therefore, any action towards the interference with the Petitioner was to have an all-inclusive approach and on an organized manner and with respect to human dignity.

31. I wish to however guard from being understood to say that the Petitioner must have agreed to the decision of the Respondents. That is not so. What I am saying is that the Petitioner ought to have been involved in the process towards reaching any decision(s). Whether or not the Petitioner would have been agreeable to the resultant decision is a complete different thing.

32. The Petitioner now contends that due to the manner in which the issue of the closure of the bus park was handled, it has been rendered destitute since there is no available designated bus park from where it can operate from. That explains why the Petitioner has continued to remain at the 'closed' bus park and as such its complaint that that has exposed its members to frequent arrests and prosecution lends credence. The other complaints that many of its members have had to leave the Petitioner for compliant Saccos and that it is now almost closure due to its inability to fully operationalize its functions cannot be said to be far-fetched. Indeed, the Petitioner is aggrieved by the collective actions of the Respondents.

33. I have seen the evidence of the Petitioner's office rent expenses paid to the Landlord at the rate of Kshs. 20,000/= monthly. It cannot be denied that the Petitioner has had to make good the resultant daily and monthly expenses against its diminishing financial muscle. As to the alleged salaries of the drivers, there is no such evidence of payment or demands for non-payment thereof. I also note that it is the Petitioner's position that many of its members left with their vehicles and drivers for other compliant Saccos. It is not therefore expected of such drivers to demand any payment from the Petitioner. The frustrations and humiliations of the Petitioner in the hands of the Respondents is not only laid bare in the Petition but also in the correspondences annexed thereto as well as having been demonstrated by the Petitioner's representative during the hearing of the Petition who took the Court through how the Respondents had unfairly handled them and without any regard to the law. It is true that the Petitioner has cried for justice against the deaf ear of the Respondents. The Petitioner even sought the intervention of the County Commissioner in vain.

34. The Petitioner having therefore come to Court by way of a Constitutional Petition is under a duty to demonstrate with particularity its rights and how they are allegedly contravened. (See the case of **Anarita Karimi Njeru vs The Attorney General (1975) KLR 154**). From the detailed Petition on record it is easily clear that some rights of the Petitioner and its members as provided for under the Bill of Rights were variously contravened. The Respondents unilaterally closed the Posta bus terminus; that is without giving an opportunity of hearing the Petitioner who had been operating therefrom for many years. By so doing the Petitioner's right to a fair administrative action as guaranteed under **Article 47** of the **Constitution** was contravened. Further the Petitioner was curtailed from engaging in its lawful endeavors as to earn a decent living by the unilateral closure and the failure to relocate the Petitioner. The rights of the Petitioner's members to life and human dignity were therefore infringed contrary to **Articles 26, 28** and **43** of the **Constitution**. Some of its members were forced to join other compliant Saccos as to continue being in business and to avoid the immeasurable intimidation and sustained police action. The members' freedom of association under **Article 36** of the **Constitution** was curtailed. The Petition is therefore so properly before Court and that calls for this Court's intervention in terms of granting appropriate reliefs as envisaged under **Article 23** of the **Constitution**.

35. In considering the reliefs in this matter, I have seriously considered how the real problems in issue can be sorted out with finality. I have as well weighed the rights of the Petitioner and its members against the way the Respondents handled the issue of the closure of the Posta bus park. The Petitioner has prayed for declarations, compensation and costs. In as much as there is no much hurdle in granting the requisites declaration(s), I wish to address the aspect of compensation a bit longer.

36. This suit is a Constitutional Petition as opposed to a civil claim for damages. Generally constitutional remedies ought to be forward-looking, community-oriented and structural. Since an award of damages is not a forward-looking remedy as it requires the Court to look back to the past in order to determine how to compensate the victim or even punish the violator, a very sound basis for such an award must therefore be laid before a Court exercises its discretion in favour of such a victim. Such basis may include, but not limited to, instances where an administrative decision was taken in bad faith or under glaring corrupt circumstances or completely without jurisdiction or with impunity and in blatant disregard to the law.

37. In this case the County Government was well aware of the existence of the Petitioner and its operations. It even assisted it in its licensing process. The County Government was hence well aware that the Petitioner and its members had all along been engaging in economic activities that not only sustained themselves but also the County Government and the National Government in respect to payment of various forms of taxes. It is on that score that the County Secretary and the County Commissioner attempted to intervene and seek a compromise in the matter. It is on record that the County Secretary had one time convened a meeting between the Petitioner and other rival Sacco and reached a working compromise that both Saccos do operate from the same bay (See paragraph 8 of the Supporting Affidavit of Peter Njaga filed on 13/05/2016). A similar intervention was attempted by the County Commissioner. (See the Petitioner's letter dated 15/02/2016 annexed as Exhibit MCMS-7 of the Supporting Affidavit of Peter Njaga filed on 13/05/2016).

38. However, despite such meaningful progress, the County Government through its members including the second Respondent, woke up one day and unilaterally 'permanently' closed the bus park and refused to relocate the Petitioner amid intimidations that the decision was irreversibly. It remains on record that the second Respondent challenged the Petitioner to do anything it so wished in the matter as on his part the second Respondent he would do anything he wished as no any Court in the land, save the Supreme Court, was in a position to curtail him. This Court is surprised that despite such serious allegations being made against the second Respondent on oath and touching on him as a person, chose not file any personal response to the same. It is always a good practice for a party to respond to issues which have a person effect on such a party in any matter before Court rather than relying on general denials and averments by another party. By so doing, the Court handling such a matter would be better placed to make up its mind on the issue raised. A party that fails to do so runs the risk of specific orders being made against it including costs.

39. Be that as it may, this Court is convinced that the Petitioner has laid a just basis for an award of damages as it is clear that the administrative decision was taken in bad faith and with impunity and in blatant disregard to the law.

40. As this Court comes to the end of this judgment, the following final orders do hereby issue: -

- a) A declaration be and is hereby issued that the unilateral decision taken by the Respondents to ‘permanently’ close the Posta Bus park without giving the Petitioner an opportunity to be heard and the failure by the Respondents to justly relocate the Petitioner to another operational base prior to closing the Posta Bus park is unconstitutional, null and void *ab initio*;
- b) The Petitioner and its members shall, in the meantime, continue to operate from their traditional bay at the former Posta bus park pending any possible relocation to a designated bus park by the County Government of Migori;
- c) The County Government of Migori shall in coming up with the decision to possibly relocate the Petitioner and its members adhere to the Constitution of Kenya and to any other attendant law;
- d) The County Government of Migori shall accordingly compensate the Petitioner in the sum of Kshs. 2,000,000/= (Read: Kenya Shillings Two Million only);
- e) The County Government of Migori shall bear the costs of the Petition.

These are the orders of the Court.

**DELIVERED, DATED and SIGNED at MIGORI this 28<sup>th</sup> day of March 2017**

**A. C. MRIMA**

**JUDGE**