



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL CASE 94 OF 2010**

J N G.....PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL.....DEFENDANT

**JUDGMENT**

1. By a plaint dated 13<sup>th</sup> April 2010 and filed on the 14<sup>th</sup> April 2010, J N G, the plaintiff sued The Hon. Attorney General for and on behalf of the Ministry of Health, Rift Valley Provincial Hospital (Nakuru) alleging negligence by its doctors Amos Otara and Joaquem Ogindo alongside with its nurses and other staff.

2. The plaintiff states that about March 2009 she was diagnosed with a tubal blockage and was admitted therein for a tuboplasty and on the 15<sup>th</sup> April 2009 surgery for the above purpose was done by the above hospital doctors and staff but the plaintiff states that the same was negligently done from which she suffered serious complications, pain and suffering.

3. In her particulars of negligence against the said hospital, its servants, employees and or its agents she listed among others, the following:

- a) *Performing or attempting to performs medical procedure while under the influence of intoxicants and narcotics.*
- b) *Failing to exercise due care and attention while performing the surgery.*
- c) *negligently leaving an abdominal pack (foreign body) inside the plaintiffs abdomen*
- d) *Failing to make proper use of medical device, namely the abdominal pack.*
- e) *Allowing unqualified persons to perform a sensitive intrusive medical procedure on the plaintiff without exercise of due care and skill*
- f) *Discharging the plaintiff before she had sufficiently recovered.*
- g) *Failing to offer the plaintiff the best care as demanded and required of an institution specialising in rendering medical services to the public.*

4. The plaintiff states that as a consequence of the defendants servants negligence she had to undergo two further operations that caused further complications, pain and suffering which she itemised as:

- a) *anterior abdominal hematoma*
- b) *fallopian tubes inflamed and attached to the ovaries.*
- c) *perorations on the small intestines.*
- d) *Puss oozing from the anterior rectal cavity and inside the abdomen*
- e) *matted and distended gut*
- f) *Marked paeritonitis with faecal matter and puss*
- g) *anatomic leaks*

5. For the above, she claims general and special damages pleaded as follows:

a) Medical reports	-	<b>3,000/=</b>
b) Treatment expenses	-	<b>1,786,000/=</b>
c) Travel, accommodation and attendant expenses	-	<b><u>34,000/=</u></b>
Total	-	<b><u>1,832,000/=</u></b>

She further claims future medical expenses.

6. The defendant denies all the particulars of negligence attributed to itself by or through its doctors, staff and employees in its defence dated 14<sup>th</sup> July 2010 and filed on the 22<sup>nd</sup> July 2010, and that the procedure was professionally carried out and the plaintiff is put to strict proof of the particulars of negligence attributed to its servants and agents.

Each of the parties filed their witness statements and document.

## **7. Plaintiffs case and evidence**

The plaintiff testified as PW1. She testified that she was diagnosed with blocked fallopian tubes and visited Nakuru Provincial General Hospital for surgery to unblock them.

That on the 15<sup>th</sup> April 2009, she was taken to the theatre, procedure was done and discharged on the 22<sup>nd</sup> April 2009 with a discharge summary – (Pexh 2) and paid Kshs.7,200/= as treatment fees (Pext 3) – bundle of receipts.

On the 24<sup>th</sup> April 2009 she returned to the hospital for bandage removal, and at that time the scar had healed and was given pain killers, but the pain persisted.

The plaintiff testified that on the 16<sup>th</sup> May 2009, she went to Avenue Hospital, Nairobi and upon an Ultra-sound done, fluid was detected in the uterus and on the 18<sup>th</sup> May 2009 she was operated upon to find the cause of the fluid. It was her testimony that upon this operation, she was told that some foreign matter, an abdominal pack had been left in the stomach and it had damaged the intestines, the tubes and ovaries from the previous operation it was her evidence that she underwent many other operations to repair the leakage and the intestines.

She produced as MFI-6 a medical report from the Avenue Healthcare Hospital and an invoice of

Kshs.1,436,479 – Pexh 7 being hospital treatment fees from the Avenue Hospital. It was her statement that she had not paid the said sum.

Later in June 2009, she stated that she further visited **Mariakani Hospital** was admitted and a discharge summary was issued together with fees invoices of Kshs.320,000/=, Kshs.313,600/= and Kshs.11,000/= on the 14<sup>th</sup> June 2009, 10<sup>th</sup> July 2009 and 11<sup>th</sup> July 2009 respectively – (Pexh. 9A, and 10(a) 10B).

8. It was her evidence that thereafter she reported the matter to the Kenya Medical and Dentists Board on 23<sup>rd</sup> November 2009 - Pexh 11 by her letter of complaint dated 11<sup>th</sup> March 2010 but the board did not write back to her upon its investigations.

She then issued a notice of intention to sue the Attorney General Peh 15.

It is her testimony that she is not well and continues to attend Avenue Healthcare Hospital and as a result, she has suffered mentally, physically and economically.

She blames the doctors who treated her at Nakuru Provincial General Hospital for her woes, and the eventual financial loss.

9. Upon cross examination, the plaintiff stated that she did not know the name of the operating doctors and bandages we removed on the **24<sup>th</sup> April 2009** but did not go back for check up on 19<sup>th</sup> May 2009 as she was advised, and admitted it was better if she went back to the same hospital instead of going to other hospitals. Asked about the foreign body in her stomach she stated that she was shown an abdominal pack but she was not certain that it was left in her stomach, but also stated she was sure it was left in the stomach at the Nakuru Provincial Hospital, and was from her stomach.

She stated that she did not go back to Avenue Healthcare Hospital but again shifted to Mariakani Cottage Hospital when the wound become septic. Asked why she did not go to Kenyatta National Hospital, she said that the hospital was slow and Nakuru Provincial General Hospital failed her so she opted for private hospitals.

10. Upon further cross examination on why she chose to sue Nakuru Provincial Hospital the wound alone yet she had attended many hospitals, she responded that it was the initial hospital where she was operated from. She lamented that the Medical Doctors and Dentists Board did not give her its decision on her complaint, but chose to sue the Nakuru Provincial General Hospital nevertheless.

11. **PW2 J K K** is the husband of the plaintiff.

He adopted a statement he recorded on the 27<sup>th</sup> June 2012.

On cross examination, he confirmed having taken the plaintiff for treatment at Nakuru Provincial General Hospital, Avenue Hospital and that she never saw any doctor before going to Nakuru Provincial General Hospital for the operation. He stated:

***“I was shown something which was alleged to have been left in her stomach. I was told by the doctor. I would not myself be sure whether the item came from her stomach or elsewhere.”***

He denied a plan to sue the Government by going to numerous hospitals. for financial gain. He confirmed that he did not attend the operations.

12. **PW3 Was Dr. Mugambi Mimigu** then working at New Avenue Hospital, Nairobi. He was testifying on behalf of Dr. Nyawira Kinyua having been granted leave by the court pursuant to **Sections 33 and 77 of the Evidence Act.**

He produced a medial report that was marked for identification “MFI 6”

13. **PW4 Dr. J N K**

Was a doctor at Avenue Health Hospital **Nairobi**.

She prepared a medical Report on the plaintiff while at the Avenue Healthcare Hospital on the 21<sup>st</sup> July 2009.

Her findings were that the patient had an abdominal scar – markedly distended abdomen with signs of high blood pressure, but she did not perform any surgery on her.

14. **PW5 Dr. Ben Ndirangu Waitara**

Performed the operation on the plaintiff at New Avenue Hospital. He holds a Masters Degree in Surgery and in Paediatric Surgery, and a private practitioner in Nairobi. He is not a gynaecologist.

His testimony was that based on abdominal scan, he formed an opinion of abdominal infection, and decided to carry on an operation that revealed an abdominal gauze pack which was confirmed by knotted intestines, that he removed gauze pack from the intestines and removed it but the process got knotted perforated or pieced which required further rejecting the norm lineage term intestines and joining the normal ones. He further stated that thereafter there was leakage of faecal matter from the intestines necessitating a further operation to repair the leakage. Later, this Doctor learned that the plaintiff had been admitted at Mariakani Cottage Hospital for Management of the wound and infection. He further revealed that on 13<sup>th</sup> September 2012, the plaintiff approached him and upon examination and treatment, he prepared his medical report on the 11<sup>th</sup> October 2012 – Pext 16A.

He then produced a receipt for his court attendance fees of Kshs.55,000 – Pext 16 B.

15. Upon cross examination, Dr. Waitara stated that it is possible to have the intestines injured during the operation and that the plaintiff had severed post operative and immunity lowered. He raised an issue that questions of costs as to who would pay when a patient moves from one hospital to another.

He stated:

***“The success of surgery to correct infertility is a matter which none is able to give an opinion. I am not a gynaecologist. The protocol before and after surgery is crucial, the two nurses counts loudly the number, eg. Instruments, swabs etc and even ask X-ray expert to come and scan.”***

16. **Defendants case**

The defence evidence was taken before me, the plaintiffs evidence having taken before the Hon. Emukule J who had left the station.

**DW1 Joaquim Otieno Ogindo** is a medical doctor at the Nakuru Provincial General Hospital a Consultant Obstetrician & Gynaecologist. He saw the plaintiff at the hospital on the 17<sup>th</sup> February 2009 with documents from a Nairobi Hospital for a second opinion.

He made diagnosis of Tubal factor infertility and advised surgery which was conducted on the 15<sup>th</sup> April 2009.

He gave the theatre medical teams including two operating doctors, a medical officer and a gynaecologist, himself.

He went through the operation procedure and confirmed success.

17. It was his testimony that in the procedure they did not use gauze packs, but in different operations,

gauze packs may be used. He confirmed that at the beginning and end of surgery all instruments were counted and confirmed as correct.

The patient was then wheeled to the ward for observation and to rule out post operation complications for 7 days.

18. The doctor testified that on the 2<sup>nd</sup> day, signs of infection were noted and conservative management was done and the plaintiff seemed to have recovered and was discharged on the 7<sup>th</sup> day and stated on normal diet, and medication.

She was advised to report back for check up after two weeks but she did not.

Shown PExt 5- Dr. Waitara's medical report, DW1 stated that if a gauze pack is left in the stomach during surgery, signs set in immediately and at most within two weeks and not more and if an ultra sound scan is done, it should pick the pack in the abdomen.

19. He further confirmed that after any abdominal procedure, infection may set in. He stated that another procedure Laparotomy was done after one month and that could have caused further complications that could not be attributed to the first operation at the Nakuru Provincial Hospital. He stated that his operating team was highly qualified and not intoxicated as implied by the plaintiff.

He further stated that the surgery he performed does not guarantee conception but has chances of 20-70% success. He discounted the plaintiff's claim that due to the operation she was unable to conceive.

20. On cross examination, Dr. Joaquim Ogindo stated that the nurses counted the instruments twice, and that the doctor does not count any instruments.

Looking at Dr. Waitara's report, he confirmed that the plaintiff sought further medical intervention from other hospitals and confirmed serious complication from the surgeries. He stated that it is not correct to state medically that the subsequent surgeries were to correct mistakes and complications from other hospitals. He re-affirmed that the 1<sup>st</sup> surgery was done well and achieved its aim and the complications the plaintiff developed were well managed before discharge and subsequent complications were not as a result of the 1<sup>st</sup> surgery where his team did the best. He urged that the plaintiffs claim be dismissed with costs.

21. That is the parties evidence. I have considered the pleadings, the evidence submissions, and cited authorities by the respective parties. Upon the above I am under a duty to evaluate the said evidence, frame the issues arising and come up with findings and conclusions in respect thereof.

In my considered opinion, the issues that arise for determination being a re-edition of the parties framed issues are as hereunder:

***1. Whether the defendant by its agents and employees owed a duty of care to the plaintiff while conducting the operation and if so, whether that duty was breached.***

***2. Whether a foreign body, namely a gauze pack, was left in the plaintiff's uterus after the tuboplasty operation on the 15<sup>th</sup> April 2009.***

***3. Whether the plaintiff has proved on a balance of probability that the defendants agents and servants were negligent in the manner and procedure of the tuboplasty operation conducted on the plaintiff leading to the post operation complications the plaintiffs post operation complications are as a result of the defendants negligence.***

***4. Whether the plaintiff is entitled to the reliefs sought in terms of special damages in the sum of Kshs.1,832,000/= and general damages.***

## 5. Costs.

### 22. Analysis of Evidence and findings

There is no dispute that the plaintiff underwent tuboplasty at the defendants Nakuru Provincial General Hospital under its doctors, nurses and staff on the 15<sup>th</sup> April 2009. It is also evident that upon discharge on the 22<sup>nd</sup> April 2009 the plaintiff failed to go back to the said hospital for post operation check up after two weeks as advised. Well after the two weeks, precisely on the 16<sup>th</sup> May 2016, the plaintiff consulted other doctors at the Avenue Hospital Parklands, Nairobi and upon an ultra sound done, fluid was seen in her uterus. An operation was conducted on the 18<sup>th</sup> May 2009 to find out the cause of the fluid. No foreign body was seen in the ultra sound scan on the 16<sup>th</sup> May 2009. According to Dr. Joaquem Otieno DW1 the 1<sup>st</sup> operating surgeon, on Dr. Waitara's medical report, it was his testimony that if a gauze pack is left in patients stomach, signs would set in immediately and not more than within two weeks.

He further stated that an ultra sound scan would have picked and shown the gauze pack crediting evidence of Dr. Waitara that the ultra sound scan he performed on the plaintiff revealed only fluid in the uterus and no foreign body.

I have looked at all the medical reports. Dr. Nyawira Kinyua report is dated 21<sup>st</sup> July 2009 and is from the Avenue Healthcare (PExt 6).

23. I have also looked at the discharge summary Pext 5 from the said hospital dated 18<sup>th</sup> May 2009. The information therein is repeated in the medical report by Dr. Nyawira -Kinyua.(PEX 6).

Salient features are that upon the operation, an abdominal pack was found in the right paracolic gutter and inflamed matted and knotted gut with perforations on the small intestines and tubes inflamed and attached to the ovaries but the uterus was normal.

The abdominal pack was removed, and abdomen closed.

Two more exploratory operations were performed on the 23<sup>rd</sup> May 2009 and 29<sup>th</sup> May 2009.

24. Dr. Waitara in his report states that the plaintiff developed post operative complications and wound sepsis. It was his conclusion that the plaintiff endured severe pain and agony caused by an intra-abdominal post operative gauze pack and that as a result of severe peritonitis i.e abdominal sepsis and this would further complicate her infertility.

25. I have carefully read the discharge Summary dated 22<sup>nd</sup> April 2009 from the Nakuru Provincial General Hospital where the first operation was conducted.

The Diagnosis was Tubal factor infertility. On the 7<sup>th</sup> post operative day, patient was doing well and stable and was discharged to come back after two weeks. The discharge shows that the plaintiff went back on the 24<sup>th</sup> April 2009 with abdominal pains and was treated.

Pext 8 is a Discharge Summary from Mariakani Cottage Hospital dated 8<sup>th</sup> July 2009. The final diagnosis was septic, laparotomy wound which was treated.

26. In the plaintiffs submissions several authorities were cited in support of the duty of care to a patient by a hospital. These are **Jimmy Paul Semenye -vs- Aga Khan Hospital & 2 Others (2006) e KLR**, **Herman Nyangala Tsuma -vs- Kenya Hospital Association T/a The Nairobi Hospital & 2 Others (2012) e KLR**.

The general thread running through the above authorities is that a hospital owes a duty of care to its patients, and they are liable for breach of that duty by its members and staff if the duty is not observed.

Relying on the medical reports of the various doctors and post operations, the plaintiff submits that the defendants doctors were negligent and therefore liable in negligence and damages.

27. The defendants submissions are that no negligence has been proved at all against its doctors/ employers and citing the case of **Hatcher -vs- Black and Another (1954) Lord Denning in the said court summoned up that:**

*“When a person goes in for treatment, there is always some risk, no matter what care is used...”*

It is further cited the case **Herman Nyagala Tsuma -vs- Kenya Hospital Association t/a Nairobi Hospital (Supra)**. It was held:

*“A doctor cannot be held negligent simply because something went wrong. A doctor can be found guilty only if he falls short of standards of reasonable skillful medical practice. The true text, therefore, to hold a medical practitioner guilty of negligent is to have a positive finding of such failure on his part as no doctor of ordinary skill would be guilty of care with reasonable and ordinary care---the mere fact that something has gone wrong is itself not sufficient to sustain a tort of professional negligence.”*

28. Dr. Joaquim Otieno Ogindo, the operating doctor, together with Dr. Asiago at Nakuru Provincial Hospital descried himself as a consultant Obstetrician and Gynaecologist of 8 years practice.

He was accompanied by a team of other qualified staff at the operating theatre. He gave a chronology of what went on at the theatre.

The plaintiff and her witnesses did not say that the said doctor and his team did not meet the required standards to be able to perform the operation.

- See **Jimmy Paul Semenyé** case cited in the **Herman Nyangala Tsuma** Case above.

It has not been suggested by the plaintiff in her evidence in Chief or upon cross examination, that the operating team or any of them were not qualified to perform the procedure or were under the influence of alcohol as stated in the plaint.

In deed the plaintiff has stated numerous particulars of negligence against the defendants doctors, nurses and employees.

29. It is upon the plaintiff to strictly prove that the said medical staff did not exercise the duty of care and skill expected upon them in the circumstances of this case. In the **Herman Nyangala case (Supra)**

It was stated:

*“It is not enough to state that some doctor or a team of doctors of greater or equal skill and knowledge have said so, or would have prescribed a different way of treatment, or is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, although a body of adverse, opinion also existed along medical men.”*

30. When dealing with issues of medial professional negligence, it is not easy to determine breach of duty as stated by **Lord Scarman** in **Maynard V. West Midlands Regional health Authority reported in Times of May 1983.....**

*“Differences of opinion and practice exist, and will always exist in the medical as in other professions. There is seldom any one answer exclusive of all others to problems of professional judgment.*

***A court may prefer one body of opinion, but that is no basis for conclusion of negligence.”***

31. The main bone of contention in the present case is whether the defendants doctors left a gauze pack in the plaintiffs abdomen after the 15<sup>th</sup> April 2009 operation, and if so, whether the post operative complications were as a result of the said gauze pack being left *insitu*.

There is no dispute that both Dr. Joaquim Ogindo and Dr. Ndirangu Waitara are qualified surgeons and of substantial experience save that Dr. Waitara is not a gynaecologist, but a paediatric surgeon.

They both hold different professional opinions on the subject.

32. Dr. Joaquim Ogindo categorically stated that in the operation on the plaintiff, he did not use gauze packs, and therefore could not have left gauze packs in the plaintiff's stomach. It was his opinion that if such gauze pack was left, in the stomach, an ultra sound scan conducted at Avenue Health Care Hospital two weeks after the operation would have picked and shown it. He therefore has categorical that no such abdominal pack was left *insitu*

33. Dr. Waitara stated that upon the Ultra sound scan done on the plaintiff, he formed an opinion of abdominal infection and decided to carry on an operation, that it was after the operation that revealed the abdominal pack in the plaintiff's abdomen.

34. The plaintiff in her evidence was heard to say that on the 16<sup>th</sup> May 2009 upon an ultra-sound scan, it showed fluid in her uterus, and was advised to see a gynecologist for an operation. Dr. Waitara Ndirangu who is not a gynaecologist as stated by himself was the operating doctor at the Avenue Health Care Hospital where apparently the abdominal pack was discovered in the plaintiff's abdomen. The plaintiff was not sure whether the alleged abdominal pack was from her abdomen.

In the case **Teresia Njoki Gichoni -vs- AG (2013) e KLR**, in very similar circumstances the plaintiff had a caesarian operation and experienced a lot of pain the next day. Upon admission to another hospital, an ultra sound scan revealed an abdominal pack in the uterus; that an X-ray in the defendants hospital did not reveal such gauze pack.

The court upon analysis of the evidence found that as the defendant hospital was the last hospital where the plaintiff was operated, the foreign body could only have been left in the plaintiff's body by its doctors, and therefore held he defendant liable in negligence.

35. The present case is not as straight as the above. Two very qualified surgeons have presented their different opinions.

The plaintiff did not go back to the defendants hospital post operatively, within the two weeks yet she testified that she experienced pains. She opted to consult numerous hospitals and doctors. Other than statements in evidence and upon cross examinations, both the plaintiffs and her witnesses and the Defendants only witness, Dr. Joaquim Ogindo, did to produce the X-rays of the ultra sound scan before or after the 1<sup>st</sup> operation at the defendants hospital and also at Avenue Health Care Hospital or Mariakani Cottage Hospital or any other to confirm whether or not the foreign body, the abdominal pack was indeed left in the plaintiffs abdomen.

36. The plaintiff in her evidence in Chief testified that when she was operated at Avenue Hospital, she was shown something and was told it was from her stomach, and that she was not certain that it was left in her stomach. She had differing opinion as to whether it was left in her stomach. She did not explain who or in whose presence she was shown the **“something”** and when it was shown to her. When questioned why after the operation at Avenue Hospital she never went back for review at went back for review at the same facility, she could not give a satisfactory answer, yet after 4 days he went for admission at Mariakani Cottage Hospital. This was the same position as concerns the defendants hospital.

37. I have agonised over the whole case. From the evidence nothing comes out clearly as to whether the defendants doctors and staff were negligent by failing to exercise the duty of care they owed to the plaintiff. I find that though a complaint was lodged with the Medical Practitioners and Dentists Board who are mandated to investigate complaints of professional negligence against its members, no report was filed.

Being guided by the holding in **Philip J. Washamina -vs- Kenya National Hospital Board Nbi HCCC No 512 of 1999**, Justice Lenaola (as he then was) while considering whether the defendant was negligent, set out the test to be applied in medical negligence matters: that

***“In the realm of diagnosis and treatment, there is ample scope for genuine differences of opinion and one man clearly is not negligent mainly because his conclusion differs from that of another man--- The true test of establishing negligence and treatment on the part of a doctor is whether he has been proved to have been guilty of such failure as no doctor of ordinary skill would be guilty of its acting with ordinary care.”***

38. Further the court in **Racarda Njoke Wahome -vs- The AG and 2 Others HCCC No. 792 of 2004** (Nairobi) held that:

***“To hold in favour of the existence of negligence associated with the action or inaction of a medical professional requires an in depth understanding of the workings of a professional as also the nature of the job and of errors committed by chance, which did not necessarily involve the element of culpability.”***

39. In its totality, the evidence as presented by all the parties both the plaintiff and the defendant does not persuade me to find that the defendants doctors and employees were negligent and in the particulars of negligence attributed to it in the plaint. There is a disconnect in the evidence of the two man doctors Dr. Waitara and Dr. Joaquim Ogindo who are two main actors in the case. Where there is a difference in opinion by these well qualified surgeons in their special disciplines, an independent opinion ought to have been called to give an independent opinion on the alleged negligence and generally the operation.

That evidence is lacking I concur with various judge's decisions stated above that a doctor cannot be held negligent because, while in the course of an operation something goes wrong and the expected results are not achieved, unless it is shown, to the required standards of proof, that the doctor was negligent and fell short of the reasonable skill expected in the particular medical practice.

40. For those reasons, I come to the findings, on the stated issues, that no professional negligence was established against the defendant or its employees nor was any breach of duty of care owed to the plaintiff by the defendant established. It is also my further finding that no satisfactory evidence was tendered that the alleged foreign body (gauze pack) was left in the plaintiff's abdomen by the Defendant's doctors or employees at the defendants hospital, and therefore I find that the defendant is not liable for the post operative complications from which the plaintiff has suffered loss and damage in terms of special and general damages.

41. Had the plaintiff proved negligence against the Defendant, I should have awarded damages under the various heads as follows:

**1. Special damages are pleaded as Kshs.1,823,000/=**

***It is noted that other than invoices from Avenue Hospital in the sum of Kshs.1,436,479 (Pext. 7), no proof of payment was tendered. The plaintiff admitted to not having paid the medical costs. Receipts for payment of doctors fees for preparation of the medical report, and consultations in the sum of Kshs.3,500/= were produced no other payments are proved. That sum of Kshs3,500/= would have been allowed.***

**2. General damages. Had I found that the defendant was negligent and therefore liable in**

*damages, I would have awarded a sum of Kshs.3,000,000/= as general damages for pain and suffering.*

*In arriving at that sum, I have taken guidance from the cases Mwaura Muiruri -vs- Suera Flowers Ltd & Another (2014) e KLR and Herman Nyangala case (Supra).*

42. The upshot of the above is that the plaintiffs suit is dismissed. Due to the nature and circumstances of the case, an order is issued that each party bears its own costs of the suit.

**Dated, Signed and Delivered this 20<sup>th</sup> Day of April 2017.**

**J. N. MULWA**

**JUDGE**