



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. ELECTION PETITION APPLICATION NO 3 OF 2017

HON. SILVERSE LISAMULA ANAMI.....CLAIMANT

AND

JUSTUS KIZITO MUGALI.....1ST RESPONDENT

ORANGE DEMOCRATIC MOVEMENT PARTY.....2ND RESPONDENT

IN THE MATTER OF

REPUBLIC.....APPLICANT

VERSUS

JUSTUS KIZITO MUGALI.....1ST RESPONDENT

ORANGE DEMOCRATIC MOVEMENT PARTY.....2ND RESPONDENT

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION3RD INTERESTED PARTY

AND

EX-PARTE APPLICANT

HON. SILVERSE LISAMULA ANAMI

RULING

1. This is an application for contempt. **Hon. Silverse Lisamula Anami**, the applicant, is the current member of the National Assembly for **Shinyalu Constituency**, Kakamega County, having been elected on the 2nd respondent's (**ODM**) ticket in 2013. He contested for his party's nomination certificate for the same constituency with **Justus Kizito Mugali**, the 1st respondent herein, held on 15th April 2017. That nomination was marred with anomalies, although the 1st respondent was declared winner.

2. The applicant complained to the 2nd respondent's, **NEB**, which nullified the nomination results and ordered a repeat, which was conducted on 28th April 2017 and the 1st respondent was again declared the winner, but just like the first nomination, the applicant complained of irregularities and filed a complaint

with **IDRM** of the party on 29th April 2017. According to the applicant, the appeal was heard by **IDRM** on 5th May 2017, but by 7th May 2017, no decision had been made, prompting the applicant to write a letter requesting for a decision.

3. On 8th May 2017 having not received either a response to his letter or a decision on his appeal, the applicant filed a complaint with the **PPDT** seeking to restrain the 2nd respondent from issuing a certificate to the 1st respondent and or cancellation of the certificate.

4. After hearing the complaint, the **PPDT** ordered a repeat of nomination but declined to stop issuance of the certificate as prayed for. This decision was made on 10th May 2017 and a decree extracted on 11th May 2017. The applicant states that the order to repeat nomination was not complied with and has now moved this court by motion dated 20th May 2017 seeking to commit officials of the 2nd respondent for contempt, and to restrain IEBC from receiving or accepting nomination certificate issued by the 2nd respondent in respect of that constituency.

5. The applicant's main ground of attack is that the 2nd respondent is in contempt of the judgment issued by **PPDT** since it has refused to conduct nomination as ordered by **PPDT**, that by flagrantly disobeying the orders of **PPDT**, the applicant has suffered and continues to suffer substantial damage, loss and derivation and curtailment of his fundamental and political rights even after the 2nd respondent received demand to comply with the order of **PPDT**.

6. The 1st respondent filed a replying affidavit sworn on 24th May 2017 denying that it committed contempt of court and averred that the application as couched is in the form of an appeal rather than an application for contempt, and that the application is intended to stop him from running for the parliamentary seat for **Shinyalu constituency**. The 1st respondent deposed that he was also not served with the order and further stated that the applicant has already submitted his papers to **IEBC** to contest for the same seat as an independent candidate, but wants to keep him perpetually engaged in court. The 1st respondent further stated that the applicant had not served the 2nd respondent's principal officials with the court order, and has argued that by the time the applicant applied for and obtained the orders from **PPDT**, he had already submitted himself as an independent candidate.

7. The 2nd respondent filed both grounds of opposition dated 24th May 2017 and a replying affidavit sworn on the same day by **Oduor Ongwen** the 2nd respondent's Executive Officer. In its grounds of opposition, the 2nd respondent took the view that the application was intended to achieve collateral purpose of removing the 1st respondent from competition for election, and that the orders were not served.

8. In the replying affidavit, Mr. **Ongwen** deposed that the application as couched is intended to act as an appeal to enforce orders of the **PPDT**. It was further deposed that the persons alleged to be contemnors have not been identified by name which is improper, that service was not effected on contemnors, and that they did not handle the disputes filed in the various tribunals against the 2nd respondent.

9. The deponent stated that he was never served and had no personal knowledge of the order in question as is clear from the affidavit of service by Josephat **Kutekha Khatwikwi**. Mr. Ongwen further deposed that according to the **IEBC's web link**, the applicant is an independent candidate who has already submitted his details for purposes of standing for election in the same constituency as an independent candidate, hence his application has not been brought in good faith.

10. According to the deponent, at the time the applicant filed and obtained the orders from **PPDT**, he had already submitted his name as an independent candidate and for that reason; he is using the application to clear competition against him for the seat.

11. At the hearing of this application, **Mr. Lubulellah**, leading Miss Ngeresa for the applicant, submitted

that the respondents were in contempt of court for disobeying orders of the **PPDT**. Learned Counsel submitted that the decree was extracted and served on the respondents and referred to the affidavit of service by **Josphat Kutekha Khatikwi** sworn on 19th May 2017 to support this assertion.

12. Learned Counsel contended that the 1st respondent was duly represented before the **PPDT**. Later, the 2nd respondent moved to set aside the orders issued on 10th May 2017 but lost. In counsel's view, it could not, therefore, be true that the 2nd respondent was not aware of the court orders. **Mr. Lubulellah** argued that the 1st respondent was issued with a nomination certificate before the nomination exercise had been carried out as ordered by **PPDT**, and which was not appealed against. Counsel maintained that the orders were made in the presence of the respondents' counsel and any allegation that there was no service was incorrect.

13. On the reply by respondents that the applicant is an independent candidate, learned counsel submitted that he was not aware of that suggest. Counsel argued that the judicial authority of the court was under threat by flagrant disobedience of the orders of **PPDT** and urged the court to act on the respondents' conduct since the nomination certificate issued to the 1st respondent was issued in contravention of orders of **PPDT**.

14. **Mr. Makori**, learned counsel for the 2nd respondent, who was next to submit, argued that the application was seeking to review matters that were before **PPDT** or was an appeal to this court disguised as an application for contempt. According to counsel, the statutory statement accompanying the motion does not contain names of alleged contemnors either in the title or statement of facts.

15. **Mr. Makori** went on to argue that the 2nd respondent having been sued in its corporate name, the applicant was under duty to satisfy the court that there was actual service as well knowledge of the court order by the principal officers alleged to be contemnors. Counsel referred to a decision in the case of **Republic V Chisang Resident Magistrate & another Ex parte Paul Karanja Kamunge t/a Davisco Agencies & 2 others [2016]eKLR** to support the submission that service and or knowledge of the order was important in contempt of court cases. Counsel submitted that any issuance of a certificate by the 2nd respondent did not amount to an illegality.

16. **Mr. Ondieki**, Learned Counsel for the 1st respondent on his part submitted that although the orders by **PPDT** were against a corporate entity, the present orders are sought against parties who have not been cited. Learned counsel argued that corporate entities act through individuals and a beneficiary of a court order who considers that an individual has acted in contravention of the court order, the individual has to be cited and served. And in the case of contempt, counsel argued, the person must be served with both the original order and the citation for contempt.

17. Learned counsel added that from the affidavit of service, the process server did not seek to serve the **CEO** or any official of the 2nd respondent. According to learned counsel, there is no evidence that the officials of the 2nd respondent were served. Counsel again referred to the decision in **Republic v Chasan case (supra)** to fortify his submissions that service must be proved to the satisfaction of the court.

18. **Mr. Ondieki** went on to argue that since contempt was of a criminal nature, the standard of proof required is slightly higher than that of balance of probability, and the court must be satisfied that it has been proved to the required standard. Learned counsel further argued that the complaint by the applicant before **PPDT** was made before **IDRM** made a decision.

19. Learned counsel added that **PPDT** did not nullify proceedings before **IDRM**, neither did it nullify the nomination certificate, if any. Counsel maintained that there was no service of the order hence the application should be dismissed.

20. I have considered the application, responses thereto, submissions by counsel for the parties and the authority cited. What is before court is an application to cite the respondents for contempt of court. The

applicant's case is that the respondents violated an order by **PPDT** directing that fresh party nomination for **Shinyalu** constituency be conducted. The order was made on 10th May 2017. The applicant has stated that the respondents were served with the order but failed to conduct repeat nomination. He has therefore cited them for contempt of court for disobedience of that order.

21. Contempt of court refers generally to conduct that defies or disrespects authority of court. **Wikipedia encyclopedia** defines contempt as ***an act of deliberate disobedience or disregard for the laws, regulations, or decorum of a public authority such as a court or legislative body.*** It defines contempt of court as ***behavior that exposes or defies the authority of the court.***

22. **Black's Law Dictionary 9th Edition**, on the other hand defines contempt as;

“the act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice”

23. Contempt can also be said to be the behavior or wrong doing that conflicts with, or challenges the authority of the court. **The Contempt of Court Act, (No 46) of 2016**, the (Act) defines **civil contempt** in **section 4(a)** as:

“Willful disobedience of any judgment, decree, direction, order or other process of a court or willful breach of an undertaking given to a court.”

24. From the above definitions, the essence of contempt is that it impairs the fair and efficient administration of justice. **Section 5** of the Act confers jurisdiction to superior courts to punish for contempt of court and uphold the dignity and authority of subordinate courts. The purpose of punishing for contempt of court, therefore, as stated in **section 3** of the **Act**, is ***to uphold the dignity and authority of the court, ensure compliance with directions of the court, ensure the observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by the courts.*** Without meeting the above objectives, there would be a serious threat to the rule of law and administration of justice. Before one commences contempt proceedings, there must have been an order, judgment, decree or direction by a court of law and that order, judgment, decree or direction must have been breached and or disobeyed by a party to whom it was directed.

25. The application before court seeks to have the 2nd respondent's Secretary General, Executive Officer, and or Chairperson of the National Elections Board (**NEB**) summarily or otherwise cited and held in contempt of the **PPDT's** orders of 10th May 2017 by committing them to civil jail for six months, and a fine. The applicant further prays that these officials be directed to purge their contempt by conducting party nomination as ordered by **PPDT**. He also wants **IEBC** restrained from receiving nomination certificate issued to the 1st respondent.

26. **Ibrahim J** (as he then was) dealing with the issue of contempt in the case of **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005]KLR 828**, underscored the importance of obeying court order when he stated:-

***“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void”.**(emphasis)*

27. The **Supreme Court** of India also emphasized on the dangers of disobeying Court orders in **T. N.**

Gadavarman Thiru Mulpad [(2006) 5 SCC] thus;

“Disobedience of orders of the court, strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs.”

28. Contempt of Court is in the nature of criminal proceedings and a case against a contemnor must be proved at a higher degree than that of balance of probability. This is because it involves liberty of a subject and therefore, one must be proved to have willfully and deliberately disobeyed the court order if he were to be found in contempt. In the case of **Gatharia K. Mutikika v Baharini Farm Limited [1985]KLR 227**, the Court stated:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not...”

29. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is a requirement that the order be served and the person cited for contempt should have had personal knowledge of that order. The applicant deposed that the order was served and an affidavit had been sworn by the process server wherein he stated that the order was indeed served. The affidavit was sworn by **Josephat Kutekha Khatikwa** on 19th May 2017, three days before the filing of this application. For the purpose of this ruling, I reproduce the relevant parts of that affidavit here below:

2. “That on 12th May 2017 at about 08:10 am, I received a letter dated 10th May 2017, a decree dated 11th May 2017 and a copy of judgment dated 10th day of May 2017 from M/s Ngeresa & Okallo Associates, Advocates with instructions to serve the stated documents upon the 2nd respondent’s ODM, Orange Democratic Movement party and a copy to the IEBC, Independent Electoral and Boundaries Commission herein.

3. THAT on the same day I proceeded to the 2nd respondent’s ODM, Orange Democratic Movement offices located at Orange house along Menelik Road Kilimani Area Nairobi. There I found several people gathered outside the 2nd respondent’s offices and I believe they were also waiting to serve the 2nd respondent.

4. THAT I further proceeded to Mr. Moses Adeku, the 2nd respondent’s legal clerk desk which well known to me (sic) and located at the back of the receptionist and I explained to him the purpose of my visit which he requested (sic) to have a look at the stated documents which he accepted by stamping and signing on my principal copies at 08:55 a.m which I retained duly served” (sic).

30. First and foremost, it is clear from the process server's affidavit of service that the documents were served on a legal clerk. The process server did not disclose how he came to know the legal clerk, and who told him that the legal clerk had authority to accept service of process on behalf of the 2nd respondent. The 2nd respondent upon registration, became a corporate entity capable of suing and being sued in its corporate name. **Section 16 of the Political Parties Act, 2011** provides that ***a political party which has been fully registered under the Act becomes a body Corporate with perpetual succession and a common seal, and is capable of acquiring and disposing of property suing and being sued, and doing or performing all such acts and things as a body corporate may by law do or perform.***

31. The procedure for serving a corporation is clear. **Order 5 rule 3 of the Civil Procedure Rules** provides that in the case of a corporation, service should be effected on ***the officers namely the secretary, director or other principal officer of the corporation.*** There are alternative modes of service provided for under this rule where it is not possible to serve the principal officers or where the principal officers of the corporation cannot be found.

32. The process server in the present case, did not say that he served a principal officer of the 2nd respondent. He did not even say that the person he served had authority to receive process, or that he had tried on several occasions to serve principal officers but failed to get them. He says that he found other people waiting but he decided to go and serve a legal clerk, a person who had no authority to receive process on behalf of the 2nd respondent. From the above facts, it is clear to the court that there was no proper service of the judgment and decree on the 2nd respondent as required by law. Addressing a similar issue of service on a corporation in the case of **African Management Communication International Limited v Joseph Mathenge Mugo & another [2013] eKLR, Mabeya J** observed;

“Given that the 2nd defendant is a company, the question that arises is how service of an order is to be effected upon a company if the directors of such a company are to be committed for disobedience of such an order..., in order to hold a corporation with liability for contempt, it is necessary to show that the corporation has been properly served or that service has been dispensed with on the basis that an appropriate officer of the company had knowledge of the order. In the same way, in order to hold the directors of such a corporation personally liable for breach of an order, such directors should be served with the order or it must be shown that they had personal knowledge of the same.”

33. The above position applies aptly in the present case. There is no proof that the officers of the 2nd respondent were aware of the judgment and decree and that they had an opportunity to obey it and that there was deliberate disobedience.

34. Another issue that has been raised in this application is whether the officials of the 2nd respondent namely; **the Secretary General, the Executive officer** or the **Chair person** of the 2nd respondent's, **NEB** were served or were aware of the judgment and decree but disobeyed it. This is intertwined with service of the order. The process server is clear that he served a legal clerk. There is no evidence that the **Executive officer**, the **secretary general**, or any other **principal officer** of the 2nd respondent was served or was aware of the judgment and or decree which was disobeyed. For one to be held in contempt, the applicant must demonstrate that there was willful disobedience of the order.

35. In this regard, **the Supreme Court of India** held in the case of **Indian Airports Employees Union v Ranjan Catterjee & Another [AIR 1999 SC 880: 1999(2) SCC:537]** that ***in order to amount to “civil contempt” disobedience must be willful. If disobedience is based on the interpretation of court's order, notification and other relevant documents, it does not amount to willful disobedience.***

36. The applicant attempted to submit that 2nd respondent and its officers were aware of the judgment and decree because an application was filed to set aside that judgment and decree but was dismissed. The application that was filed before the **PPDT** seeking to set aside the judgment and decree is not part of the record before this court. It has not been shown who swore the affidavit in support of that application as a

way of demonstrating that any of the principal officers of the 2nd respondent was aware of that judgment. I have perused the ruling of the **PPDT**, but there is no reference to the deponent of the supporting affidavit. Disclosure of the deponent would have been important to show that there was personal knowledge of existence of the judgment and decree said to have been disobeyed, so that the deponent could be held liable. It is critical when dealing with the issue of contempt of court that the guilt of the contemnor be established to the satisfaction of the court because contempt is the deliberate act of disobeying a court order and attracts appropriate sanctions.

37. That is why it was stated by the **Supreme Court of India** in the case of **Mahinderjit Singh Bitta v Union of India & Others 1 A NO. 10 of 2010 (13th October, 2011)**, that:

“In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. (Emphasis).”

38. The emphasis as shown in the above cases is on the ***willful and deliberate disobedience of court orders***. There cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first, that the contemnor was aware of the court order having been served or having personal knowledge of the same, and second; that he deliberately and willfully disobeyed it. As the court stated in the case of **Peter K Yego & others v Pauline Wekesa Kode, Acc no. 194 of 2014**, ***it must be proved that one had actually disobeyed the court order before being cited to contempt.***

39. In the case of **Katsuri Limited v Kapurchand Depor Shah [2016] eKLR, Mativo J** cited the **South African** case of **Kristen Carla Burchell v Barry Grant Burchell Eastern Cape Division case No 364 of 2005**, where it was stated that ***in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, knowledge of the terms by the respondent, failure by the respondent to comply with the terms of the order.***

40. The above elements of civil contempt were also stated by the **Supreme Court of Canada. Cromwell J**, writing for that court in the case of **Carey v Laiken, 2015 SCC 17 (16th April 2015)**, expounded on the three elements of **civil contempt** of court which must be established to the satisfaction of the court, that is ;

i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.

ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.

iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.(emphasis)

41. In the present case, it has not been sufficiently demonstrated that the 2nd respondent’s principal officers were either served or were aware of the terms of the judgment, but despite that knowledge, deliberately disobeyed the judgment. Contempt proceedings are a serious undertaking because courts exercising this jurisdiction are minded to ensure the orderly functioning of society and the rule of law. On conviction, the alleged contemnor stands to lose his/her liberty. It should not, therefore, be taken lightly. As was again stated in the Indian case of **Re: Vinay Chandra Mishra [(1995) 2 SCC584]** ;

“The judiciary has a special and additional duty to perform, viz, to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the court has to be respected and protected at all costs.”

42. But even as courts punish for contempt to safeguard the peaceful and development of society and the rule of law, it must be borne in mind that the power to punish for contempt is a discretionary one and should be used sparingly. That is why the court observed in Carey v Laiken (supra), that if courts were to find contempt too easily, ***a court’s outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect The court’s contempt power should be used cautiously and with great restraint. It is an enforcement power of last resort rather than first resort.***

43. The respondents’ counsel further submitted that the application was not clear on who was cited as the contemnors. I have perused the motion and prayers 5 and 7 thereof. These prayers have merely sought to have the Secretary General, the Executive Officer and Chair person of NEB of the 2nd respondent cited for contempt, which is a general plea. Those officials have not been identified by name, and as I said earlier, it was not shown that any one of them was served with the judgment and decree. Even in these proceedings, these officials have not been served although there was a direction that parties be served. Only the executive officer has sworn an affidavit denying service and or knowledge of the orders.

44. The officials of the party that were the target of contempt should have been properly identified and served with the citation to give them an opportunity to respond to the accusations leveled against them, so that they are not condemned unheard. The applicant did not give the name of the Secretary General, the Executive Officer, and Chair person of **NEB**. That is; these people are not parties to these proceedings. It was the duty of the applicant to be clear and also serve the people targeted.

45. The other aspect that I find necessary to mention, is about the judgment and decree. It is clear from the record that the applicant had lodged a complaint on the nomination with **IDRM** of the party. He however moved to the **PPDT** before **IDRM** rendered its decision, and sought to restrain the 2nd respondent from issuing a nomination certificate to the 1st respondent, and or **IEBC** from receiving a nomination certificate issued by the 2nd respondent to the 1st respondent. In the alternative, the applicant prayed for cancellation or nullification of such a certificate, if it had been issued. According to the judgment and the decree extracted, **PPDT** declined to grant the reliefs as prayed in the claim. **PPDT** however, ordered a repeat nomination in accordance with the party constitution and rules.

46. The **PPDT** had been asked to restrain issuance of a nomination certificate to the 1st respondent or nullification of such a certificate. That request was declined. In the application before court, the applicant has attached a nomination certificate issued to the 1st respondent by the 2nd respondent and dated 29th April 2017 showing that the 1st respondent had been nominated to contest as member of the National Assembly for **Shinyalu Constituency**. What then would happen to the **IDRM** proceedings, and suppose **IDRM** upheld the result of the nomination yet the **PPDT** declined to cancel the certificate and as it is, a certificate had been issued even before **PPDT** rendered it decision?. Can this be said to have caused confusion and ambiguity in the decision by **PPDT**? The answer, in my view, is yes. An order must be clear, unambiguous and capable of implementation. In the circumstances of this case, there was no clarity in the matter. **PPDT** having declined to cancel the certificate or restrain issuance of one, or give directions on what to do in the event there was one already issued, or the fate of the proceedings before **IDRM**, made the **PPDT** decision more confusing. This is what the court meant when it said in Carey v Laiken (supra) that ***the order alleged to have been breached “must state clearly and unequivocally what should and should not be done to ensures that a party will not be found in contempt where an order is unclear.*** The judgment and decree was unclear since it did not address the potential conflict of there being a certificate, or a result from **IDRM** that would be different from its own decision.

47. Taking into account the circumstances of this case and considering interests of justice, I am not satisfied that the applicant has proved his case to the required standard. Consequently, the application dated 20th May 2017 is declined and dismissed. Each party will however bear their own costs.

Dated Signed and Delivered Nairobi this 30th Day of May 2017

E C MWITA

JUDGE