



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CONSTITUTIONAL PETITION NO. 7 OF 2016

IN THE MATTER OF ARTICLES 2(1)&(4), 3(1), 10, 19, 20(1), 22(1), 23(1)&(3), 155(2), 159, 165(3)(B)&(D)(II), 232(1)(A),(E)&2(A), 258(1) AND 259(1) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF RULE 5, 8, 10, 11 AND 14 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURES RULES, 2013

AND

IN THE THE MATTER OF THE FAIR ADMINSTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT 2015

AND

IN THE MATTER OF THE ALLEGED ONTRAVENTION OF THE RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 27(1)&(2), 29(C)&(D), 31(A)&(B), 35(1)(A&(B), 40(1)&(3), 43 AND 47(1)&(2) AND THE VIOLATION OF ARTICLE 10, OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

RONALD NYAGA KIURA.....PETITIONER

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

**PRINCIPAL SECRETARY, MINISTRY OF INTERIOR & CO-ORDINATION OF
NATIONAL GOVERNMENT..... 2ND RESPONDENT**

EMBU COUNTY COMMISIONER.....3RD RESPONDENT

AMOS GATHECHA.....4TH RESPONDENT

EMBU TRAFFIC BASE COMMANDER.....5TH RESPONDENT

JOHN RAGARA.....6TH RESPONDENT

J U D G M E N T

1. The petitioner claims several reliefs against the respondents in his petition dated 9th March 2016. He describes himself as a resident of Embu County where he works for gain.

2. The 1st respondent is the Attorney General sued in his capacity as the principal legal advisor of the National government while the 2nd

respondent is the principal secretary in the Ministry of Interior and Co-ordination of the National Government. The 3rd respondent is the office of the County Commissioner, Embu while the 4th respondent is Amos Gatheca. The county Commissioner who was in occupation of the office at the material time. The 5th respondent is the office of the Embu Traffic Base Commander's office at the material time.

3. The petition is supported by the affidavit of Ronald Nyaga Kiura in which he deposes that he is the beneficial owner of two vehicles registration numbers KAG 520G and KKK 870 make Land rovers. He is also the occupier of residential premises erected on L.R. Kagaari/Kangethia/T29 located at Ena market within Embu County registered in his late mother's name Aliet Mutitu Kiura and is valued at KShs.4,905,000/= as per valuation report attached to his supporting affidavit.

4. It is further stated that the respondents raided the petitioners home on 15/07/2015 assisted by police officers and national youth service personnel and unlawfully demolished the house. His two vehicles were impounded and towed to Embu police station yard where they were detained even at the time of filing this petition.

5. The petitioner claims that he has lost business at the rate of Shs.260,000/= per month due to the unlawful detention. He claims to have suffered loss for the demolition of the house and seeks damages based on its value.

6. It is the petitioners case that his constitutional rights were violated by the actions of the respondent as follows:-

(i) The right to equal protection and equal benefit of the law in the manner his property was destroyed (Article 27(1))

(ii) He suffered psychological torture by the display of what he refers as sadistic, primitive, raw and brutal force on his property (Article 29(d)).

(iii) His right not to have his home unlawfully searched and to have his property wrongly seized and violation of his right for protection of property (Article 31, 40).

(iv) Violation of his right to fair administrative action for not being given an opportunity to be heard (Article 47).

(v) That the respondents failed to observe national values and principles of governance, the principles of leadership and integrity and values and principles of public service (Article 10, 73).

7. The petitioner seeks several reliefs including declarations reliefs that his constitutional rights were violated by the actions of the respondents and orders for compensation of the losses suffered.

8. He claims KShs.10,000,00/= for the violation of his rights, KShs.4,905,000/= being the market value of his residential house and loss of business at a monthly rate of KShs.260,000/= from 15th July 2015 to the time the vehicles will be repaired. He also seeks for an order of mandamus to compel the 5th and 6th respondent to unconditionally release the two vehicles. The cost of cleaning, towing and repairs of the vehicles, the cost of removing the debris of the demolished house are also claimed in addition to the costs of this petition.

9. The petitioner also claims indemnification by the respondents of any suits by the County Government or by the National Environment Management Authority as well as by the National Construction Authority. The interest rate of 14% is pegged to the damages claimed and costs of the petition until payment in full.

10. The petition was vehemently opposed by the respondents through two affidavits. The first one was sworn by 4th respondent Amos Gatheca, the then County Commissioner on behalf of himself and on behalf of the 1st, 2nd and 3rd respondents. The 5th respondent one John Lugala, the Embu Traffic Base Commander at the material time swore the 2nd replying affidavit.

11. The 4th respondent gives a lengthy history of the efforts by the national government to fight illicit brew which was prevalent in the country and the challenges encountered in the operations in the cracking down on illicit brew trade. This was after a host of deaths and serious health complications were experienced in the country at large leading to crackdown on manufacturers and distributors of the illicit brew.

12. It is further stated that intelligence reports identified the petitioner as one of the major manufacturer and distributor of the stuff using his premises at Ena market disguised as residential. Several operations prior to the one complained of had been carried out in the premises where over 30,000/= litres were seized and destroyed.

13. The wife of the petitioner one Cecily Njoki Jamleck was charged in Embu Criminal case No. 980 of 2015 with selling 70 litres of illicit brew and was released on bond of Shs.100,000/= as per the charge sheet attached to 4th respondent's affidavit.

14. It was deposed that on 15/07/2015, the 3rd and the 4th respondent acting on further intelligence reports that the petitioner continued with the illegal business, raided his premises at Ena market assisted by police officers and National Youth Service personnel.

15. The occupants fled on noticing the presence of the team in the compound. In order to access the stuff which was over 30,000/= litres of illicit brew, the bankers on the ground floor had to be destroyed.

16. The 6th respondent in his affidavit deposes that on 15/07/2015, he was instructed by his boss the Officer Commanding Police Division

Embu West to go to Ena market and join a team led by the 4th respondent which was carrying out operations on crackdown of illicit brew trade. It was during the operation at the market that he came across two land rovers vehicles registration numbers KKK 870 and KAC 520C unattended and parked on a road reserve. He conducted an inquiry with members of public to find out who the owner was but was not successful.

17. The vehicles had suspect insurance certificates, number plates and lacked inspection stickers as required by the law. He then caused the vehicles to be towed to Embu police station for further investigations on ownership.

18. The petitioner never claimed the vehicles and that the 6th respondent only came to know that the petitioner was the beneficial owner of the said vehicles after being served with this petition. This was despite 6th respondent having released another vehicle to the petitioner around the same period registration No. KNP 472 which had been detained in a separate incident.

19. At the time the petition was served, the owner of the vehicles who had not been traced was due to be charged with various traffic offences revealed as a result of the investigations. These various traffic offences included changing the colour of one of the vehicles without complying with the law, expired insurance certificates, having no stickers among others.

20. The respondents claim that their actions were lawful and based on protecting the public from the hazardous effects of consumption of illicit brew and other effects that go with the menace.

21. This petition was argued by way of written submissions filed by Oyoni Opini & Gachuba advocates from the petitioner and the Attorney General for the respondents.

22. The issues arising from this petition are as follows:-

- (a) Whether the constitutional rights and freedoms of the petitioner were violated.
- (b) Whether the actions of the respondent were founded on public interest.
- (c) Whether the orders of mandamus should issue.
- (d) Whether the petitioner should be compensated in of damages.

23. Article 27 of the Constitution gives every person equality and freedom from discrimination. Article 27(1) provides that “every person is equal before the law and has the right to equal protection and equal benefit of the law”. The provision requires that any person claiming violation under this provision must satisfy the court that there was distinction made between him and others.

24. In the case cited by the respondent ***Federation of Women Lawyers Kenya (Fida-K) & 5 Others Vs Attorney General & Anther [2011] eKLR***, the Court of Appeal held:-

.....the law on equality does not mean that everyone should be treated the same way, that is, the substantive law should be the same for all persons, or that the law should be applied to all persons equally without discrimination as this would not only be unreasonable but unjust.....

25. Article 29 (d) gives every person the right to freedom and security of the person, which includes the right not to be subjected to torture in any manner, whether physical or psychological.

26. The test is whether the petitioner suffered humiliation, psychological torture and indignity from the acts of the respondents. This will depend on whether there was any basis in law for the respondent to engage in the actions complained of.

27. Article 31(a) and (b) provides:-

Every person has the right to privacy, which includes the right not to have—

- (a) their person, home or property searched;
- (b) their possessions seized.

28. Article 40 provides:-

- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
- (2).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation —

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament

(4)

(5)

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

29. In the course of the searches, and other acts that followed, the petitioner claims that his rights to privacy and arbitrary deprivation of property protected under Article 31 and 40 were violated in that any searches must be conducted in accordance with the law.

30. Section 52 of the Alcoholic Drinks Control Act, 2010 requires that the respondent be authorized to inspect the premises by the Cabinet Secretary or by a warrant issued by a court of law. The respondents did not claim to have such documents of authorization and pleaded justification of their actions based on public interest.

31. Article 47(1) provides that *every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.*

Article 47(2) states that *If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.*

32. These provisions are rephrased in the Fair Administrative Action Act, 2015 thus:-

“administrative action” includes-

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

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

33. The petitioner claims that he was not given reasons for the search and impoundment by the respondent. The respondent did not deny this allegation relying on the plea of protection of consumers rights under Article 46 of the Constitution and acting on public interest.

34. The gist of this petition is whether the respondents' actions were justified under the law. Article 24 gives situations for limitation of rights and fundamental freedoms. It provides that:-

24 (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

(a) the nature of the right or fundamental freedom;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and

(e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

24 (3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.

35. Article 2(1) provides that the Constitution is the supreme law of the land and binds all persons. The court is enjoined by Article 259 to interpret the constitution in a manner that promotes its purposes, value, and principles, advances the rule of law, human rights and fundamental freedoms in the bill of right and in a manner that promotes good governance.

36. On the the impounding of the vehicles, the petitioner annexed some receipts showing that the vehicles were bought from different people. Vehicle No. KAG 520 G was allegedly bought from Kenya Wildlife Services in April 2011. The 2nd vehicle KKK 870 was said to have been bought from one Robert Mugo Munyi and the vendor was paid through M-pesa. A copy of a handwritten sale agreement dated 6/01/2015 between the petitioner and the seller was annexed by the petitioner. The agreement was not witnessed by an advocate or any other

witness.

37. Investigations conducted by the 6th respondent showed that the vehicle was registered in the name of John Kinyanjui as per the copy of records annexed by the 6th respondent. The copy of records does not mention the said owner (John Kinyanjui) as the registered owner since the initial official registration of the vehicle which was done on 31/01/2000. Robert Mugo Munyi who purports to have sold the vehicle therefore had no authority to sell the said vehicle to the petitioner because he was not the owner at the material time. It would be correct to say that the ownership of this vehicle KKK 870 has not been established.

38. The vehicle KAG 520 G was registered in the name of Kenya wildlife services according to the copy of records and the copy of logbook. It was allegedly bought by the petitioner on 17/04/2025. The respondent cited Section 8 of the Traffic Act which provides that "the person in whose name the vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle".

39. In this regard, the petitioner was not the registered owner of any of the two the vehicles seized and detained by the 5th and 6th respondent. He produced receipts of payment of the purchase price purportedly issued by Kenya Wildlife but no agreement between himself and the seller or a signed transfer form in favour of the petitioner was tendered in evidence. Even if the petitioner was to be presumed to be the beneficial owner of the vehicle, documents for the vehicle show that one year after the purchase, he has not complied with Section 9(1) of the Traffic Act which states:-

No motor vehicle or trailer the ownership of which has been transferred by the registered owner shall be used on a road for more than fourteen days after the date of such transfer unless the new owner is registered as the owner thereof.

40. It was not explained why transfer of the vehicle to the petitioner's name has taken so long to execute. At the time the vehicle was seized, it was in the possession of the petitioner for more than one year and yet transfer was yet to be effected. The vehicle had an insurance certificate authorizing it to carry seven passengers although it was not a public service vehicle. This change of user was not authorized by the law as required.

41. The vehicles according to the 6th respondent were found parked outside a bar but not in the premises of the petitioner. One vehicle KKK 870 had an expired insurance cover No. B4119885 issued by Gateway Insurance Co. Ltd. Both vehicles had no inspection stickers according to the undisputed evidence of the 6th respondent.

42. The colour of the vehicle registration KKK 870 had been changed from green to metallic without the authority and notification of Registrar of motor vehicles in contravention of the Traffic Act.

43. The outcome of the investigations by the 6th respondent revealed grey areas in respect of the ownership of the two vehicles which required that further investigations be carried out with a view of preferring traffic charges against the petitioner.

44. The suspect insurance certificates, the failure to transfer and conversion of one vehicle from commercial to a public service vehicle (PSV), as well as various contraventions of the law strengthen the respondent's case for questionable ownership and the need for detailed investigations which justified the seizure and detention.

45. Upon seizure of the vehicles on 15/07/2015, the 6th respondent booked them in the occurrence book and obtained the copies of records within five (5) days. This was a demonstration of reasonableness on the part of the respondents and a justification that investigations were being conducted in good faith. The 6th respondents as a traffic police officer was within his official duties to investigate the case which was founded on the valid facts.

46. On the issue of seizure and detention of the vehicles, I find that the respondents acted in good faith and within the law in the impounding and detaining the vehicles in issue.

47. The respondent mitigated the need to protect the public from the manufacturers and distributors of illicit brew given the deaths and hazardous effect that result from consumption of the liquor. The operation was conducted under the provisions of the Alcoholic Drinks and Control Act which falls under the enforcement of the respondents.

48. It was admitted that search warrants were not obtained before the operation was conducted by the respondents. The 4th respondent deposed that the enactment of the Alcoholic Drinks Control Act was necessitated by numerous deaths and health complications including blindness caused by the widespread consumption of illicit brew in this country.

49. He cited various incidents, one being of November 2001 where over 140 people died after consumption of illicit brew and another one of June 2005 where 49 people died and 174 were hospitalized. In 2014 more than 80 people died of similar causes while over 170 were hospitalized. These statistics were not disputed by the petitioner in his further affidavit.

50. The high incidents of deaths raised a public outcry to which the government responded to by enacting the current legislation to curb the menace. This is confirmed by the preamble of the Alcoholic Drinks Control Act which gives the purpose of the Act amongst others as follows :-

to adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting.

51. The Act recognized the need for joint action of various government agencies in carrying out operations of bringing to book the rogue manufacturers and distributors. Section 25(3) provides:-

A police officer not below the rank of Inspector shall report in writing to the chairperson of the appropriate District Committee every case in which a licensee is of drunken habits or keeps a disorderly house, or commits any breach of any of the provisions of this Act or of his licence.

52. The respondent being aware of the grave dangers caused by the illicit brew trade and in recognition that the petitioner was a known and major brewer and trader in the illicit drink, organized an inter-agency team to raid the premises. The information was gathered through intelligence reports, the public, the media and the leaders of the area where the petitioner lived. The operation was organized by the District Security Committee accompanied by the Embu County Commissioner.

53. This was not the first raid because the Embu West District Security Committee and the area member of parliament had led another operation earlier and recovered over 30,000/= litres of the brew stored in the underground bankers of the premises. The 2nd operation led by the 4th respondent also recovered a lot of illicit brew from the same bankers. Since the petitioner or his agents had fled, the team had to use force to access the premises.

54. Although the petitioner denied that there was a first raid and an outcry by the public, the evidence of the 4th and 6th respondents left no doubt that the petitioner was a known manufacturer and trader of the prohibited commodity. It was also stated that he was so defiant that after the first raid, he reinforced his premises with concrete and continued with his business as usual. It was said that he was popularly known as “Kathambo” by members of the public in the area.

55. The petitioner said that during the 2nd operation, his so called “residential” house was vacant. The word “Vacant” presupposes that no one was living in there at that time. He did not state whether his family and himself had moved to a new home or even attempt to explain their whereabouts which was material to this case. The petitioner produced a letter from a doctor to show that he was in Embu Level 5 hospital on the material day receiving treatment. The treatment notes which would bear the Outpatient Card number were not attached to prove that he was actually treated.

56. It is also noted that the petitioner did not disclose in his pleadings the kind of business he was carrying out in the premises. This was indeed material in this petition since he has claimed compensation for loss of business. This omission seems to have been deliberate and confirms the evidence of the respondents that an illegal business was being conducted in the premises. There were no attached records of income made in a particular month in the supporting affidavit. Neither was the issue explained in his submissions.

57. It was held in the case of *Nairobi Metropolitan PSV Sacco Vs County Government of Nairobi Petition No. 486 of 2013* in which the decision of *Hambarda Wakhan Vs Union of India AIR 554* was cited with approval that:-

“In examining the constitutionality of a statute it must be assumed the legislature understands and appreciates the needs of the people and the law it enacts are directed to problems which are made manifest by experience and the elected representatives assembled in a Legislature enacts laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is therefore, in favour of the constitutionality of an enactment.”

58. It has been demonstrated by the respondents and documented in the relevant law that the Alcoholic Drinks Control Act was enacted to curb the widespread menace caused by the consumption of illicit brew. The respondents gave examples of the menaces as hampering economic growth for the youth who were rendered unproductive due to engaging in the addictive and excessive consumption of the illicit liquor instead of doing other income earning activities.

59. The education sector was not left behind for youth dropped out of school enhancing illiteracy and became irresponsible citizens who were a burden to not only their parents but to the state. The effects of the consumption of illicit brew are indeed devastating to any given society. The impact caused by the manufacturers and the traders is to enrich themselves at the expense of society at large.

60. The rights of the petitioner must be balanced with those of the society and more specifically the citizens of this country. The petitioner just one Kenyan who maybe unjustly benefiting from the illegal trade as majority of citizens continue losing their lives, languishing in poverty and suffering from a host of health complications including loss of vision and reduced lifespans.

61. In the case of *JOHN MUNYAKA & OTHERS VS COUNTY GOVERNMENT OF KIAMBU PETITION NO. 5 OF 2014*, it was observed that:-

Consumption of alcohol may also leave certain effects on its consumer. These effects may take one form or another and perhaps it is partly because of such effects that the reasons behind its consumption are as myriad as the effects it has on its partakers. The trouble is some of the effects alcohol has on its consumers are unintended and more often than not are detrimental to the consumers’ health and their well-being generally; it is not uncommon that in worst case scenarios, these effects are fatal. In my humble view, it is in the context of these circumstances that legislation is necessary to regulate the production, sale and consumption of alcoholic drinks, of course, bearing in mind the rights of all those involved and those not involved.

As noted people drink for a variety of reasons; however, while they have every right to take as much alcohol as they can stomach, that right must be regulated as far as it is necessary to protect the rights of other members of society who have little or nothing at all to do with alcohol but whose rights may in one way or another be affected by the unfettered production, sale and consumption of alcohol.

62. The respondent in articulating public interest cited Article 26 of the constitution which provides that “every person has the right to life”. It was argued that this right must be protected in safeguarding the interests of the public at large and that this can only be achieved by protecting the public from widespread manufacture and distribution of illicit brew which goes with harmful and hazardous effects.

63. In the case of ***KENYA GUARDS ALLIED WORKERS UNION VS SECURITY GUARDS SERVICES & 38 OTHERS MISC. 1159 OF 2004*** cited by the respondent, it was held that the crackdown of illicit liquor was in line with public interest and that public interest supersedes the private claims on individual.

64. The provisions of Article 46 of the constitution impose a duty on the government to protect consumers as follows:-

(1) Consumers have the right—

- (a) to goods and services of reasonable quality;
- (b) to the information necessary for them to gain full benefit from goods and services;
- (c) to the protection of their health, safety, and economic interests; and
- (d) to compensation for loss or injury arising from defects in goods or services.

65. The enactment of the Alcoholic Drinks Act was consistent with this constitution provision. The respondents action on the operation carried out on the 15th July 2015 was intended to achieve the said purpose and objectives of the law.

66. The crackdown on illicit liquor at the material time was being conducted on all manufacturers and dealers countrywide. The petitioner was not an exception and was not treated differently from persons of that class or group of people who were carrying out the prohibited business. In pursuance with the provisions of Article 27(1) which prohibits discrimination, the petitioner has not presented any material before the court to show that he was discriminated against.

67. Article 29 relates to the right to freedom and security of the person sub-articles (d) and (f) prohibits torture and inhuman treatment while Article 31(1) protects the right to privacy. The right of a fair administrative action is guaranteed by Article 47 while Article 40 guarantees property rights.

68. All these are rights that may be limited under Article 24 provided the limitation is the provisions of the law.

69. Like any other Kenyan, the petitioner is entitled to all the rights he claims were violated. The constitution highly values and offers protection of those rights by itself and through legislation. However,, those rights must be balanced with the rights of others. Article 24 was designed to allow limitation of fundamental rights and freedoms for the purpose of balancing and protecting other people's rights. The principle of public interest overrides individual rights. In this petition, the facts lead to the interrogation on whether the limitation is reasonably justifiable in a democratic society.

70. It was observed in ***Nairobi High Constitutional Petition No. 397 of 2016 JACQUICLINE OKULA AND JACKSON NJERU VS HON. ATTORNEYGENERAL AND DIRECTOR OF PUBLIC PROSECUTIONS***

Nevertheless, relatively few rights can be enjoyed in absolute terms. Most rights are subject to limitations that are necessary and reasonable in a democratic society for the realization of certain common good such as social justice, public order and effective government or for the protection of the rights of others.

71. The occupants of the premises had fled upon seeing the respondents. No one was found in the premises so as to be informed of the reasons for the raid. The right to fair administrative action was not violated.

72. Under Article 40 the property rights of the petitioner are guaranteed but may be limited based on the facts that the premises were being used for illegal business and as a result the rights of the public to life and to good health were being infringed.

73. In this petition and for the reasons given earlier in this judgment, it is my finding that public interest overrides private rights and that the actions of the respondents were fair, reasonable and justifiable in the circumstances.

74. The petitioner failed to show that the 4th and 5th respondents violated Article 10 of the Constitution in the course of the operation. The respondents by their actions were indeed promoting the national values of human dignity, social justice and human rights.

75. It follows that the petitioner having contravened several provisions of the Traffic Act in respect of the vehicles is not entitled to compensation for loss of business. In his evidence, he did not disclose the nature of business or adduce evidence of earnings in order to lay a basis for an award of damages. Had the petitioner come to court with clean hands, he would have made the necessary disclosures as to the nature of his business.

76. I find the petitioner has failed to prove any violation of rights as claimed in this petition and is therefore not entitled to general damages or to compensation for any loss incurred in the operation.

77. In effect this petition fails and is accordingly dismissed.

78. Each party to meet their own costs.

79. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 25TH DAY OF JULY, 2017.

F. MUCHEMI

JUDGE

In the presence of the Petitioner