



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & JUDICIAL REVIEW DIVISION

PETITION NO 501 OF 2016

OKIYA OMTATAH OKOITI.....PETITIONER

VERSUS

THE KENYA POWER & LIGHTING COMPANY LTD.....1ST RESPONDENT

HAMILTON HARRISON & MATHEWS ADVOCATES...2ND RESPONDENT

JUDGMENT

1. By an Amended Petition, dated 2nd December 2016 the petitioner challenged the procurement by the 1st respondent of the 2nd respondent's Legal Services on grounds that the same violated both the Constitution and the Public Procurement and Assets Disposal Act, **(PPADA)**
2. The 1st respondent is a Public Company and the procuring entity for purposes of this petition. The 2nd respondent is a firm of Advocates, and the supplier of procured services for purposes of this petition.
3. The facts of this petition are not in dispute. According to the pleadings, the facts show that on 13th June 2016, Transcend Media Group Limited (Transcend), filed a request for Review (No 40 of 2016) before the Public Procurement Administrative Review Board **(PPARB)**. In that Review case, the firm of ICTK represented the first respondent while the 2nd respondent herein, represented Scanad Kenya Ltd. **(Scanad)**. The tender was annulled and **PPAB** directed that the tender be awarded to Transcend. The 1st respondent challenged that decision in the High Court in Judicial Review Application No. 302 of 2016. The 2nd respondent represents the 1st respondent in those proceedings.
4. The petitioner states in this petition that one **Mr Adil Arshed Khawala** a senior partner in the 2nd respondent firm of Advocates is also a member of the Board of Directors of the 1st respondent. The petitioner's complaint seems to be that the 1st respondent violated the Constitution including Article 10(2) (a) of the Constitution when procuring services of the 2nd respondent, which he asserts, was done without following the procedure provided for in various provisions of the PPADA (sections 45(3)(c), 46(4), 73, 80, 84, 86(1), 87, 135 and 138).
5. The petitioner stated that there was favouritism in the appointment of the 2nd respondent by virtue of Mr Adil Arshed Khawala's association. It was further stated that the 2nd respondent violated Article 75 (1) of the Constitution and Sections 59(1) and 72 of **PPADA** by purporting to represent the 1st respondent in what he said was conflict of interest.

6. The petitioner therefore sought the following orders.

i. A declaration that the respondent are bound by Articles 3(1), 10(2)(a) and (c), 75(1), 201(a) 226(5) 227(6), 232(1) a, d, e, f and 2(b) of the Constitution.

ii. A declaration that the procurement of legal services from the 2nd respondent contravened Article 3(1) 10(2) a & c, 75(1) 201(a), 226(5) 227(1) and 232(1) a, d, e, f, and 2(b) of the Constitution.

iii. A declaration that the procurement of legal services from the 2nd respondent violated sections 44(1), 45(5), 46(4), 59(1), 71(4), 82, 73, 80, 84, 86(1), 87, 135 and 138 of the Act.

iv. An order that the procurement of legal services from the 2nd respondent be cancelled.

v. An order that all monies paid to the 2nd respondent be refunded to the 1st respondent and an order that costs of the said be provided for.

7. The first respondent filed a replying affidavit through its company secretary **Beatrice Messo**, sworn on 1st December 2016, and filed in court on 2nd December 2016. **Ms Meso** deposed that the petitioner had filed a case before the **ELRC** on 18th November 2016, seeking among others, an order barring renewal of the CEO of the 1st respondent's terms of employment.

8. She also stated that after the Judicial Review Application had been filed, Transcend filed an application in the judicial review seeking to bar the 2nd respondent from representing the 1st respondent in that application.

9. The gist of the judicial review matter was to reverse the decision of the PPRB which had ordered that the tender be awarded to Transcend.

10. The 1st respondent is of the view, therefore, that the present petition is an abuse of the court process since it is being used to delay the proceedings before the ELRC. The 1st respondent stated that the petition though configured as a constitutional petition, is being used by third parties through the petitioner to achieve a result.

11. The 1st respondent further stated that the 2nd respondent has supplied legal services to it for a long time, and that there had been no influence in procuring the 2nd respondent as legal services provider. The 1st respondent was of the view that the petitioner has neither alleged nor proved that the procurement of legal services from the 2nd respondent was not transparent.

Petitioners Submissions

12. The petitioner who appeared in person, submitted that the petition was filed in defence of Public Interest to challenge the 1st respondent's procurement of legal services from the 2nd respondent. The petitioner reiterated the facts relied on in the petition that Transcend had filed a request for review (No. 40 of 2016) before the **PPAB** challenging the tender been awarded to **Scanad** wherein the 2nd respondent represented **Scanad**. The request for review succeeded with the effect that the tender to Scanad was annulled.

13. The petitioner submitted that the petition was properly before Court since the Court has original jurisdiction under Articles 22, 165 and 258 of the Constitution. He further submitted that the petition challenged violation of Articles of the Constitution, more so, whether the 1st respondent violated the constitution during procurement of legal services from the 2nd respondent, which was done without competition and public participation.

14. The petitioner submitted, therefore, that this court has jurisdiction to determine petitions presented before it under Articles 22(1) and 258 of the constitution. Reference was made to the decisions in the case of **Timothy Otuya Afubwa & Another v County Government of Trans Nzoia and 3 Others** [2016]eKLR for the submission that Article 22 was not intended to lock out anybody from the seat of justice when his interest or those of the public are threatened, and **Erick Okeyo v County Government of Kisumu & 2 Others** [2014]eKLR, for the proposition that the Court has jurisdiction where a petition challenges a public procurement process which was deemed to be inconsistent with Articles 10 and 227(1) of the constitution.

15. The petitioner's main submission in support of the petition was that procurement of legal services by the 1st respondent from the 2nd respondent without competition or public participation, and did not consider the fact that one of the 1st respondent's directors is a partner in the 2nd respondent's firm, which was a violation of the Constitution and the law. The petitioner was of the view that the petition raised a real question for determination.

16. Petitioner referred to the case of **Rashid Odhiambo Alossoh & 245 others v Haco Industries Ltd** for the proposition that it is undesirable to summarily dismiss petitions seeking enforcement of fundamental rights. Reference was also made to the case of **Blue Shield Insurance Company Ltd v Joseph Mboya Ogottu**[2009]eKLR which quoted the case of **D.T. Dobie and Company (Kenya) Ltd v Muchina** [1982]KLR 1 for the submission that the power to strike out should be exercised sparingly.

17. On procurement of legal services, the petitioner submitted that Article 227(1) of the Constitution is clear on procurement that contract for goods or services be done in accordance with a system that is fair equitable, transparent and cost effective. He also submitted that any such procurement of legal services should be in accordance with Section 115 of the PPADA. According to the petitioner, procurement of legal services should have been fair, equitable, participatory, transparent and competitive, and ought to have been procured in accordance with Sections 55(3)(b), 59(1), 60, 71, 74 Part 1X, X and X1 of the Act.

18. The petitioner contended that procurement of legal services from the 2nd respondent was against Section 59(1) of the Act since its partner is also a director of the 1st respondent, hence that procurement was unlawful and was not done through any of the procurement methods prescribed under Part IX and X of the Act. According to the petitioner, Pre-qualification of legal services providers does not negate the duty imposed on the respondents to procure legal services in a participatory, transparent and competitive manners. He cited Section 71(A) of the Act to support this submission.

19. The petitioner referred to international best practices on procurement of legal services and argued that the 1st respondent was bound by those best practices. On whether Advocates should compete on legal costs, the petitioner submitted that this was the case and argued that Sections 86(1)(b) or (d) and 124 of the Act applied.

Respondents' submissions

20. Mr Kiragu Kimani, Learned Counsel for the respondents, submitted that the petition lacks basis and should be struck out, and that the court had jurisdiction to do so where the petition, like in this case, was an abuse of the court process. Referring to the case of **Sanitani Services (EA) Limited v Jamia Limited and 16 Others** [2012]eKLR which was struck out because there was no cause of action, Mr Kiragu argued that the Court has inherent powers to prevent abuse of the court process. Counsel referred to the case of **Paul Musili Wambua v Attorney General & 2 Others** [2015] which quoted **Karuri and others v Dania Pharmaceuticals Company Limited & Others** Misc. Application No 1612 of 2005 where it was stated that nothing can take away the court's inherent powers to prevent abuse of its process by striking out pleadings or striking out frivolous and vexatious applications.

21. Learned Counsel went on to submit that the petition is an abuse of the process of the court and a candidate for striking out. In counsel's view, the petition was intended to delay disposal of ELRC

petition No 143 of 2016 which was pending before that Court by the time of filing this petition. Counsel contended that a similar application seeking to bar the 2nd respondent from acting for 1st respondent had been filed on 9th May 2016 by Transcend in the Judicial Review Application No 302 of 2016 which was withdrawn; but the petitioner then used documents which had been filed in that case in the present petition. In counsel's view, this petition was filed at the behest of and for the benefit of a third party as shown by the documents used by the petitioner in the present petition.

22. Mr. Kiragu submitted that the application to bar 2nd respondent filed in the Judicial review case having been withdrawn with a promise by Transcend to pursue the 2nd respondent by other means; to him "*other means*" is the current petition which, in his view, is an abuse of the court process. Counsel referred to the case of *Peter Gichuki Mwangi & 2 Others v Copy Right of Kenya & 3 Others* [2014]eKLR which quoted *Meme v Republic & Another* [2004] 1KLR 63 in which abuse of court process was said to be where the court is being used for improper purpose. Counsel contended therefore, in this matter that the petitioner was misusing the principle of public interest litigation.

23. Mr Kiragu further contended that the petition did not disclose a violation of constitutional rights or the constitution itself. Learned Counsel submitted, in particular, that a constitutional petition should plead with reasonable precision provisions of the constitution alleged to have been infringed and the manner of infringement, and referred to *Anarita Karimi Njeru . (No 1)* 1979 KLR – 154 and *John Githinji Wangondu & 7 others v Coffee Board of Kenya & Another* [2012]eKLR to emphasize on this principle of law.

24. Learned counsel held the view, that the present petition did not disclose breach of constitutional rights or the constitution itself and was not a proper constitutional petition in terms of *Mumo Matemo v Trusted Society of human Rights Alliance & 5 Others* [2013] eKLR.

25. Counsel argued that the petition was merely challenging procurement of legal services but not a constitutional petition and referred to the case of *Okiya Omtatah Okoiti v Communications of Kenya & 12 Others* [2016] eKLR where the Court held that a challenge to procurement of legal services should be taken through the procedure provided for under PPADA. Counsel submitted, therefore the petition lacked basis, was scandalous, frivolous and vexatious. He urged that it be struck out with costs.

Analysis and determination.

26. I have considered the Pleadings herein, submissions and authorities cited. The petition raises one central issue for determination, that is; whether procurement of legal services by the 1st respondent from the 2nd respondent was done in accordance with the Constitution and the **PPADA**.

27. The 2nd respondent is a firm of Advocates which has been retained by the 1st respondent to offer legal services and represents the 1st respondent in various cases in Court, including this petition. The complaint by the petitioner is that the 1st respondent has, as one of its Board members, a partner in the 2nd respondent firm and, according to the petitioner, that partner Mr. Adil Khawaja failed to advise the 1st respondent against retaining the 2nd respondent as its legal advisers and legal service providers while he was in the Board of directors of the 1st respondent.

28. Article 227(1)of the Constitution provides that *when a state organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent competitive and cost effective*. The PPADA is the Act that regulates procurement of goods and services by public entities. It has various provisions in relation to procurement of those goods and services. Part X relates to procurement of consultancy services. Sections 115 provide that the part applies to procurement of professional services which are predominately intellectual or advisory in nature. Section 116 provides for when a request for proposal may be used for purposes of procuring services, while section 117 provides for terms of reference and invitation of tenders from short listed firms which have to be in terms of section 74 of the Act. That Section has details that should be in the invitation for

tenders. The provisions of the Act including Sections in Part X1 of the Act regulate the process of procurement.

29. The petitioner referred to PPOA Circular No 1 of 2012 dated 10th February, 2012 for procurement and contract for provision of legal services The circular, where relevant states;

.....PPOA takes cognizance of the fact that professionals such as lawyers. Architects and quantity surveyors have their prices governed by the Advocates Remuneration order and the Architects and Quantity surveyors Act respectively. The aforementioned documents provide a minimum percentage of fees chargeable for services offered by the respective professionals. The aforementioned documents do not oust the requirement for competition over prices quoted above the legal minimum. In that regard, all PES intending to procure similar professional services are required to keep abreast of such legal and regulatory documents that govern fees for professional services prior to proceeding with procurement procedures.

30. The circular further states that prices quoted by tenderers be considered alongside other factors, including, capacity to deliver services, competition fairness and legality, and that only qualified firms and professionals who adhere to regulations be considered.

31. In the affidavit in support of the petition sworn on 28th November 2016, the petitioner has deposed that procurement of legal services by the 1st respondent from the 2nd respondent was unprocedural and violated the law. It was further faulted for irregularities; that there was no public participation, and further that one of the 1st respondent's directors is a partner in the 2nd respondent firm.

32. I have perused the record herein, especially the petition and affidavits in support thereof. The petitioner has not stated when the 1st respondent procured legal services of the 2nd respondent. The 2nd respondent's affidavit in response to the petition and motion, states that the 2nd respondent had provided legal services to the 1st respondent for many years even to its predecessor.

33. Procurement of services is governed by the PPADA and regulations made there under. For the petitioner to succeed in his quest to question the 1st respondent's act of procuring legal services from the 2nd respondent, he was bound to show, firstly, when the act of procurement complained of took place and the manner it was conducted to enable the Court interrogate the process and determine whether it complied with the constitution and the relevant law. However, the petitioner's complaint is more general than specific on facts in this regard.

34. Without showing when procurement took place and how many firms participated, if any, the court cannot address itself to the question of validity or otherwise of the procurement process. When called upon to decide on issues of procurement, the court is more concerned with the process, and whether the law was followed. The petitioner has simply alleged that the constitution and the law were not followed without demonstrating how.

35. It is a principle of law that **he who asserts must prove** and not otherwise. That is why Section 107(1) of the Evidence Act provides that;

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.

36. Similarly section 109 of the same Act provides that;

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”

37. The above principle of law was reiterated by the Court of Appeal in the case of **Jenifer Nyambura**

Kamau v Humprey Mbaka Nandi[2012]eKLR when it stated that according to Section 108 of the Evidence Act, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. In the case of **Kirugi & Another v Kibaya & 3 Others [1987]KLR 347** the Court of Appeal emphasized that this burden was always on the balance of probabilities. In this regard, the petitioner has not met the threshold of proof as required by law.

38. Secondly, the record reveals rather surprising events leading to the filing of this petition. Transcend participated in a tender advertised by the 1st respondent. It lost and lodged a request for review before PPRB which succeeded. The 1st respondent filed Judicial Review proceedings to the JR Division and at that point, the 2nd respondent acted for the 1st respondent. An application to bar the 2nd respondent firm from acting for the 1st respondent was filed by Transcend. That application was however withdrawn, only for the petitioner to file the present petition seeking the remedy that had been sought in the application by Transcend that was withdrawn. At the same time, the petitioner had another petition before the ELRC where, again, the 1st respondent is represented by the 2nd respondent. This raises the question of bonafides.

39. This petition has been fashioned as a constitutional petition brought under several provisions of the Constitution alleging breach of the Constitution as well as procurement laws. The petitioner has referred to Article 3(1) of the Constitution a general provision which provides that everyone has an obligation to defend and protect the Constitution. He has also cited Article 10 on national values and principles of good governance including public participation democracy and rule of law.

40. The petitioner has also relied on Article 22(1) and (2)(c) on enforcement of the Bill of rights and which allows anyone to move the Court on claims that a right or fundamental freedom has been violated or is threatened with violation, and Article 258 which again allows everyone to come to Court where there is a threat to violation of, or breach to the constitution. It cannot be gain said, that the petitioner has a right to come to Court when there is a breach or threat to violate Constitution. The question of locus is therefore never in doubt.

41. I have perused petition and affidavit by the petition *visa vis* the Constitutional Provisions relied on. I do not see any specific breach or violation that has been identified by the petitioner. It is strite law that a constitutional petition which alleges breach of the constitution or fundamental freedoms must plead with a degree of precision the provisions alleged to have been breached and the manner of such breach. A party should not merely allege breach without showing how that breach has occurred.

42. In **Anarita Karimi Njeru v Republic**(supra) it was stated at page 156 thus;

“...if a person is seeking redress from the High Court on a matter which involves a reference to the constitution. It is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed.”

43. This position was again followed in the case of **Meme v Republic & Another** [2004]1KRL 637 where the Court of Appeal stated that where a person is seeking a redress from the High Court on a matter which involves a reference to the constitution, it is important that he should set out with reasonable degree of precision that which he complains, the provision said to be infringed and the manner of the said infringement.

44. This principle was recently restated in the case of **Mumo Matemo v Trusted Society of Human Rights alliance & 5 Others** [2013]eKLR at para (41)thus:-

“We cannot but emphasize the importance of precise claims in due process, substantive justice and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims.”

45. The petitioner has relied on Article 227(1) of the Constitution on procurement and openness in undertaking tendering exercises and has even alleged that the 2nd respondent's partner who is a director of the 1st respondent may have influenced the award of the tender in favour of the 2nd respondent. The petitioner has not placed before Court evidence to show when procurement of legal services from the 2nd respondent was done, and how it was done to enable the Court weigh legality the process leading to the award of the tender *vis a vis* the constitutional and legal provisions said to have been breached or violated. The petitioner has not even shown when the said partner was appointed to the 1st respondent's Board and how this appointment may have influenced the award of the tender. In a way, this Court is invited to determine an abstract question on the basis of speculation or at best on mere suspicion.

46. The petitioner has referred to the case of ***Erick Okeyo v County Government of Kisumu & 2 Others*** (supra) to support the argument that the 2nd respondent's partner was also a director in the 1st respondent's Board. In the said case the Court found that there was a relationship which made the award of the tender voidable for non-disclosure of that relationship.

47. That decision can be distinguished from the circumstances of this case. First, the petitioner has not shown when the tender was awarded, and second, he has not shown that there was non-disclosure of any relationship that may have existed between the 2nd respondent and the said partner. That is what the petitioner should have done to enable the Court determine whether the process was legal or otherwise.

48. A Court of Law must only act on facts, evidence and the law as a basis for making declarations on breach of the constitution, and or fundamental freedom, but not on mere speculation and suspicion. That would be a decision without a foundational basis.

49. The respondents have argued that this petition is an abuse of the Court process, and that it has been filed on behalf of third parties. The facts of this petition and the record tend to point towards that direction. The petitioner filed a petition before the ELRC against the 1st respondent. A judicial review application was also filed in the Judicial Review Division, where the 2nd respondent is on record acting for the 1st respondent. An application was filed seeking to bar the 2nd respondent from acting for the 1st respondent but was withdrawn.

50. Shortly after, the petitioner to file the present petition. There is another petition by the petitioner pending before the ELRC, where application had been filed by the 1st respondent seeking to strike out that petition. It has been contended by the respondents, that the scheme hatched is to ensure that the 2nd respondent is blocked from acting in those cases in order delay the determination thereof.

51. Articles 22 and 258, of the constitution as much as they allow any body to come to court where there is a violation of a right or threat to violation, or breach or threat to breach the constitution, that right must be properly exercised; and if it is said to be exercised in the public interest, it must be in real public interest. It should never be used for personal gratification or to assist parties escalate legal battles in what would otherwise be abuse of the court process.

52. In the case of ***Peter Gichuki Mwangi & 2 Others v Copy Right Board of Kenya & 3 Others*** [2014]eKLR the court referring to the case of ***Meme v republic & Another*** [2004]1KLR 637 stated that abuse of the court process would in general arise where the court is being used for improper purposes, as a means of vexation and oppression or for ulterior purposes; that is to say process is being misused.

53. In ***Muchangi Industries Limited v Safaris unlimited (Africa) Limited and 2 others*** the Court of Appeal stated.

“The person who abuses process is interested only in accomplishing some improper purposes that is collateral to the proper object of the process and that offends justice”

54. The same court referred to the case of ***Beinosi v Wivley*** [1973]SA 721 SCA at page 734 f-g where the

South African Court of Appeal (Mohamad CJ) stated:-

“What does constitute an abuse of process of the court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of ‘abuse of processes. It can be said in general terms, however, that an abuse of process takes place where the proceedings permitted by the rules of court to facilitate the pursuit of the truth are used for purposes extraneous, to that objective.”

55. In the case of *Jet link Express Limited v East African Safari Air Express Ltd* [2015]eKLR the Court quoted the Nigerian case of *Atta hiro v Bagudo* 1998 3 N WLR Pt 545 which defined abuse of court process thus;

“The term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to proceeding which is wanting in bonafides and is frivolous vexatious or oppressive. The term abuse of process has an element of malice in it.”

56. The same Court referred to another Nigerian case, that of *Karibu – Whytie JC in Sarak v Icotoye* [1992] a NWLR 9 Pt 264) 156 at 118-189 in which the concept of abuse of judicial process was defined thus-

“The concept of abuse of judicial process is imprecise; it implies circumstances and situations of infinite variety and conditions. It’s one feature is the improper use of judicial powers by a party in litigation to interfere with the administration of justice.”

57. The examples of abuse of court process given in the above cases include instituting multiplicity of actions on the same subject matter against the same opponent, on the same issues or a multiplicity of actions on the same matter between the same parties, even where there exists a right to begin the action, instituting different actions between the same parties simultaneously on different grounds, or where two similar processes are used in respect of the exercise of the same right.

58. The Supreme Court of Nigeria again addressed the same issue in the case of *African Continental Bank PLC v Damian Ikehukukwu Mwaigwe 82 Others* SC 35 of 2001 14th January 2011 and stated;

“Abuse of Court Process has been variously defined by this court over the years and includes a situation where a party improperly uses judicial process to the irritation harassment and annoyance of his opponents and to interfere with the administration of justice where two or more similar processes are issued by a party against the same party/parties in respect of the exercise of the same right and same subject matter or where the process of the court has not been used bonafide and properly.”

59. From the facts of this petition and going by the authorities above, it is clear that this petition was filed without bonafides. The facts show that the real dispute is between two tenderers who are still fighting over the same tender in Court. One of the parties had sought to have the 2nd respondent barred from representing the 1st respondent in Judicial Review case but withdrew the application, only for this petition to be filed. The documents used in the Judicial Review application are the same documents that the petitioner has used in this petition. The question that arises is how did the petitioner get the documents if he was not given by one of the parties in that litigation? If that be the case would that mean this petition is an extended fight from the Judicial review matter? Who stands to benefit of the Petition succeeded? The answer to these questions is obvious.

60. It is evident from the facts of this petition that this petition has been initiated by other parties through the petitioner, and is being improperly used to the irritation harassment and annoyance of the opponents, and also to interfere with the administration of justice. It would appear it is being used to harass and or

intimidate the 2nd respondent herein to abandon its quest to represent the 1st respondent. This is so given that the petitioner has a petition pending before the ELRC. There is an application to strike out that petition, filed by the 2nd respondent who are acting on behalf of the 1st respondent, who is a respondent in that petition. Given the above scenario, the present petition is one feature of an attempt for the improper use of judicial process by parties in various litigations to interfere with the administration of justice. It is aimed at accomplishing some improper purpose.

61. I am not satisfied that the petition was instituted for the sole purpose of safeguarding the Constitution and public interest. It was intended to perpetuate wars between third parties stemming from the tender that had been awarded by the 1st respondent, which is now the subject of Judicial Review Application No. 302 OF 2016. This Court cannot allow its process to be abused in the name of defending public interest.

62. Consequently, the amended petition dated 2nd December 2016 is hereby declined and dismissed. Costs being discretionary I order that each party do bear their own costs.

Dated, Signed and Delivered at Nairobi this 2nd Day of August, 2017.

E C MWITA

JUDGE