REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW AND CONSITITUTIONAL DIVISION

MISC. APPLICATION NO. 277B OF 2016

IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP.26 LAWS OF KENYA

AND

IN THE MATTER OF EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT, 2004

AND

IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF DECISION BY KENYA REVENUE AUTHORITY THROUGH

THE COMMISSIONER OF CUSTOMS SERVICES TO DEMAND FROM GILFILIAN

AIR CONDITIONING LIMITED, BY THEIR LETTER DATED 28/04/2016

ADDITIONAL TAXES AMOUNTING TO A TOTAL OF KSHS. 8,881,557

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

KENYA REVENUE AUTHORITY.....RESPONDENT

EX-PARTE: GILLFILLIAN AIR CONDITIONING LIMITED

JUDGEMENT

Introduction

1. By a Notice of Motion dated 30th June, 2016, the *ex parte* applicant herein, **Gillfillian Air Conditioning Limited,** seeks the following orders:

1. **That the Honourable Court be pleased to grant an order of certiorari to bring to the High Court, for purposes of being quashed, the decision of the Respondents through their officer namely Lawrence Siele dated 28th April, 2016 and Kenneth Ochola dated 24th April, 2016 demanding from the Applicant a sum of Kshs 8,881,557.00 in additional taxes.**

2. **That the Honourable Court be pleased to grant an order of prohibition directed at the Respondents prohibiting them from demanding, issuing agency notices, or in any other way howsoever from effecting the collection of additional taxes demanded vide the Respondent's letters dated 28th April, 2016 and confirmed on 24th May, 2016 amounting to Kshs 8,881,557.00.**

3. **That costs of this application be provided for.**

Ex Parte Applicant's Case

2. According to the applicant, it is in the business of importation and installation of air conditioning equipment. Vide commercial invoices dated 29th April, 2015 and 19th May, 2015, the applicant averred that it imported into Kenya from Mitsubishi Corporation Trading Middle East of Dubai United Arab Emirates various air conditioning related equipment for the purposes of its business in Kenya. Upon arrival of the goods in Kenya, the applicant engages the services of World Freight Logistics Limited for the purposes of undertaking customs clearance as required under the Customs Regulations.

3. It was averred that the said clearing agent duly entered the goods for customs clearance purposes under Entry Numbers 2015MSA5582791 and 2015MSA5582790 as required under the law and assessed the duties payable at Kshs 4,678,520.00 and Kshs 4,665,470.00 and the clearing agent duly invoiced the ex parte applicant for the same through invoice numbers 1009 and 1095 respectively.

4. It was averred that the ex parte applicant duly remitted to the said clearing agent the said sums for payment to the Respondent in order to undertake the clearance of the said goods. However after the goods were released, the applicant discovered that different sets of Form C. 17 (Import Entries) had been used to pay the taxes and release the goods with the sums indicated as Kshs 598,792.00 and Kshs 503,113.00 respectively.

5. Shocked at this revelation the applicant wrote to the Directorate of Criminal Investigations (the DCI) as well as the Respondent requesting for investigations on the issue and for necessary action. However no response was received from the two authorities. After a follow up, the Respondent responded by informing the applicant that World Freight Logistics is not a licensed clearing agent and asked for invoices for consignment which the applicant furnished to enable the Respondent investigate the issue. However the ex parte applicant did not hear from the Respondent or the DCI till 28th April. 2016 when the Respondent demanded from the applicant additional taxes amounting to Kshs 8,881,557.00 being an alleged undervaluation of the applicant's goods. Aggrieved by the said demand the applicant objected to the same based on the earlier communication but the Respondent insisted that the demanded sum was payable within 14 days without informing the applicant of the outcome of the investigations simply insisting that the said agent was not a clearing gent.

6. The ex parte applicant maintained the World Freight Logistics Limited are licensed clearing agents and have access to the Respondents' Simba system for the purposes of clearing customs goods. It was therefore its case that it is extremely irrational and unreasonable for the Respondent to fail to act on the applicant's complaint but to rush to demand taxes from the applicant. In the applicant's view, it is highly likely that the clearing agent acted in cahoots with the Respondent's officers in defrauding the applicant and the government of revenues hence it is unfair for the Respondent to refuse to act on the issue and instead choose to demand additional taxes from the applicant

7. It was the applicant's case that the Respondent's decision is ultra vires, irrational, unreasonable, an illegality and in contravention of the right to fair administrative action enshrined in Article 47 of the Constitution. Further, the applicant contended that it was its legitimate expectation that having duly

complied with all the requirements under the law and as set by the Respondents and having duly remitted the taxes, the Respondent would not demand the said additional taxes to the detriment of the applicant.

Respondent's Case

8. According to the Respondent, on 11th November, 2015 and 16th November, 2015, the applicant wrote to the DCI requesting the DCI to investigate the anomalies alleged by the applicant. Similarly the applicant wrote to the 2nd Respondent requesting for similar investigations.

9. According to the Respondent, the responsibility of investigating criminal complaints rests with the DCI and not the 2nd Respondent. The Respondents however averred that the applicant's allegations that the Respondents failed to act on its complaint and to communicate its findings were untrue. It was averred that on 3rd December, 2015, barely a month after the applicant's complaint, the 2nd Respondent responded, informing the applicant that World Freight Logistics Limited was not a clearing agent and requested for invoices of the consignments in issue. On 4th January, 2016, the applicant did furnish the same which the Respondents reviewed and analysed after which the 2nd Respondent communicated its findings to the applicant on 28th April, 2016 setting out the outcome of the audit being that the anomaly had arisen due to gross undervalue of imports contrary to the law. According to the Respondents, the audit ascertained the customs entry forms that were actually lodged in respect of the two consignments as 2015MSA5582791 and 2015MSA5582790. The audit revealed that the customs value of the goods declared in these customs entries was however less than the actual value of the said consignments leading to a shortfall of Kshs 8,881,557.00.

10. Unhappy with this response, the applicant objected to the same and vide a letter dated 24th May, 2016, the Respondent reiterated the said findings and based on sections 130 and 135 as read with section 203 of the ***East African Community Custom Management Act*** (EACCMA), 2004. Apart from that the Respondents reiterated that the transactions had been entered by one Transonic Logistics Limited and not World Freight Logistics Limited and informed the applicant that the latter was not licensed under section 145 of the EACCMA at the material time and as such could not lawfully transact with the 2nd Respondent as duly authorised agents.

11. It was the Respondents' case that the fact that the applicant was displeased with its findings is not enough to invalidate the Respondents' findings as the Respondent was obligated by law to collect any short levied duty from the owner of the goods because the liability for any outstanding duty falls on the owner of the goods pursuant to the aforesaid provisions of EACCMA. According to the Respondents, pursuant to section 148 of the said Act, the owner is liable for the acts of its agents.

12. It was therefore the Respondents' contention that it acted within its statutory mandate set out under the said Act and had the legal basis to impose duties on the Applicant and in executing their duty, they acted within the confines of Article 47 of the Constitution. It was further averred that the Respondents had published notices informing the importers to remit import taxes directly to the 2nd Respondent and not through clearing agents hence the applicant ought to have exercised due diligence in the payments of taxes.

13. The Respondents contended that where the applicant's taxes have not been paid the applicant cannot rely on the principle of legitimate expectation as it would be contrary to public policy to exonerate the applicant from tax liability and to allow it to retain un-customed goods contrary to the law.

14. It was submitted on behalf of the Respondents that it is a statutory body established under the ***Kenya Revenue Authority Act***, Cap 469 Laws of Kenya (the Act), as a Central Agent of the Government for the assessment and collection of all Government Revenue. In exercise of its mandate, the Respondent is under section 5(2)(a)(i) of the Act empowered to enforce and administer all provisions of the written laws set out in Part 1 of the First Schedule to the Act, among them the ECCMA. Further, the Respondent's statutory obligation is enshrined under Articles 209 of the Constitution of Kenya to assess and collect taxes on behalf of the Government of Kenya.

15. According to the Respondents, judicial review is a discretionary remedy and the court has a wide discretion to issue orders in Judicial Review. However this discretion is limited. Indeed even the ***Law Reform Act*** at section 8(1) limits such of the courts discretion in the wording of the said section:

> *1.* ***The High Court shall not The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of mandamus, prohibition or certiorari;***
>
> *2.* ***In any case in which the High Court in England is, by virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, (1 and 2, Geo. 6, c. 63) of the United Kingdom empowered to make an order of mandamus, prohibition or certiorari, the High Court shall have power to make a like order.***

16. It was submitted based on **NRB. H.C.J.R. Misc App No. 374 of 2006 Kenya Revenue Authority Exparte Yaya Towers** that:

> **"The grounds for judicial review have experienced unprecedented increase and the challenge for the court is to weigh each and every case presented before it on its own merits. However, there are conservative grounds that have remained outstanding in judicial review challenge such as:-**
>
> ***(i) Abuse of discretion.***
>
> ***(ii) Irrationality.***
>
> ***(iii) Excess of jurisdiction.***
>
> ***(iv) Improper motives.***
>
> ***(v) Failure to exercise discretion***
>
> ***(vi) Abuse of the rules of natural justice***
>
> ***(vii) Fettering of discretion.***
>
> ***(viii) Error of law."***

17. It was argued that the court has to therefore look at the issues raised by the Applicants to see whether those issues fall within the scope of Judicial Review and call for the court to exercise its supervisory jurisdiction over the respondent. It was however the Respondents' submission that the Application before the court is one that is not within the scope of Judicial Review and that the Applicant is calling upon this court to delve into the merits of the statutory decision made by the Respondent by reviewing the evidence. However, they contended, this judicial review process is not an Appeal process and the Applicant ought not be allowed to use this to ventilate its appeal.

18. In support of their case, the Respondents relied on sections 130 and 135 as read together with section 203 of EACCMA, 2004.

19. According to the Respondents, they not only acted within their statutory mandate set out in EACCMA, 2004 to impose duties on the Applicant but also within the confines of Article 47 of the Constitution, as the administrative actions of the 2nd Respondent were expeditious, efficient, lawful, reasonable and procedurally fair. The Respondent duly communicated its findings to the Applicant in writing and in a timely and consistent fashion per Article 47(2) of the Constitution.

20. It was therefore contended that the ground of unreasonableness as formulated in W*ednesbury unreasonableness"* does not apply here because the decision made by the Respondent was a reasoned decision and was well within its mandates as provided by the provisions of the law cited. In support of

their submissions the Respondents cited **SDV Transami Kenya Limited vs. Commissioner of Customs Services [2012] eKLR**.

21. The Court was urged to be o guided and to dismiss these judicial review proceedings with costs.

22. With respect to the doctrine of legitimate expectation, it was submitted that the doctrine of legitimate expectation protects the procedural expectation to be accorded a hearing as well as the substantive expectation that a regular practice giving some benefits, privilege or advantage would be continued or be retained. In this regard the Respondents relied on **De Smith, Woolf and Jowell** in ***Judicial Review of Administrative Action 5th Ed***, that legitimate expectation:

> ***"arises where a person responsible for taking a decision had induced in someone who may be affected by the decision, a reasonable expectation that he will receive or attain a benefit or that he will be granted a hearing before the decision is taken".***

23. The Respondents further relied on the Court of Appeal decision in **Oindi Zarppeline 39 others-vs-Karatina University & Another [2015] eKLR** and the Supreme Court decision in **Communications Commissions of Kenya & 5 Others –vs- Royal Media Services Ltd and 5 Others Petition No. 14 of 2014 in particular the latter** in which the court stated at paragraph 269 that the emerging principles on legitimate expectation may be succinctly set out as follows:

> ***a. there must be an express, clear and unambiguous promise given by a public authority;***
>
> ***b. the expectation itself must be reasonable;***
>
> ***c. the representation must be one which was competent and lawful for the decision-maker to make; and***
>
> ***d. there cannot be a legitimate expectation against clear provisions of the law or the Constitution.***

24. According to the Respondents, by law, the Ex-parte Applicant is required to ensure that the correct taxes are paid in respect of its consignments and it remains liable for the acts of its agents and relied on sections 147 and 148 of EACCMA .

25. In the Respondents' view, the above provisions read together with section 130 and 135(1) clearly demonstrate that the Respondent acted within its statutory mandate under EACCMA 2004 in imposing taxes against the Ex-parte Applicant. In this case the Applicant confirms that it made payments to World Freight Logistics Limited and not the Respondents. For the transaction in issue, duty was remitted by Transonic Logistics Limited, which duty was less than what was payable based on the customs value of the goods indicated in the invoices furnished by the Ex-parte Applicant. In view of the foregoing, the Respondent's decision to demand the short levied taxes is backed by statute and cannot be termed as double taxation.

26. It was the Respondents' case that the Ex-Applicant cannot discharge its tax liability on the basis that it sums of money paid to World Freight Logistics Limited and referred to Regulation 131 of the ***East African Community Customs Management Regulations, 2010*** that:

> ***131.(1) Duties shall be paid at the Customs office or at such other place as the Commissioner may direct.***
>
> ***(2) Credit notes showing that the amount of duty has been paid into a bank to the credit of the Customs and cheques that have been certified by a bank or in respect of which a standing bank guarantee has been lodged with the Customs may be accepted in payment of duty.***
>
> ***(3) The Commissioner may authorize payment of duty through electronic transfer of funds in***

such manner as he or she may prescribe

27. In the Respondents' view, the foregoing provision is very clear as to what would constitute payment of duty. The Respondents went an extra mile by publishing notices informing importers to remit import taxes directly to the 2nd Respondent and not through clearing agents. Therefore having failed to exercise due diligence and complying with the law on payment of duty, the Ex-parte Applicant cannot be heard on a claim of legitimate expectation against clear provisions of the law.

28. To buttress their assertions, the Respondent sought to rely on the decision of **Korir, J** in **Republic vs. Kenya Revenue Authority Ex-parte African Boot Company Limited [2012] eKLR**.

29. The upshot of the foregoing, it was submitted, it is clear that the Ex-parte Applicant has himself to blame for want of due diligence. Be that as it may, it follows that this application has no merit and the same ought to be dismissed with costs.

Determination

30. Section 147 of the Act provides as follows:

> ***A duly authorised agent who performs any act on behalf of the owner of any goods shall, for the purposes of this Act, be deemed to be the owner of such goods, and shall, accordingly, be personally liable for the payment of any duties to which the goods are liable and for the performance of all acts in respect of the goods which the owner is required to perform under this Act:***
>
> ***Provided that nothing herein contained shall relieve the owner of such goods from such liability.***

31. Section 148 of the same Act, on the other hand provides *inter alia* as follows:

> ***An owner of any goods who authorises an agent to act for him or her in relation to such goods for any of the purposes of this Act shall be liable for the acts and declarations of such duly authorised agent and may, accordingly, be prosecuted for any offence committed by the agent in relation to any such goods as if the owner had himself or herself committed the offence.***

32. Therefore where an importer fails to pay the taxes, he cannot be heard to say that he is not liable to pay the same due to illegal actions perpetrated by the agent since the liability of the agent does not preclude him from meeting his own obligations to pay taxes. Under the said sections both the owner of the goods and its agent are liable under the Act.

33. Dealing with sections 145, 146, 147 and 148 of the Act, **Korir, J** in **Republic vs. Kenya Revenue Authority ex parte African Boot Company Limited Nairobi Misc. Cause No. 54 of 2010** expressed himself as follows:

> **"A look at the above quoted Part XI of the Act clearly shows that the Commissioner of Customs only licenses customs agents. The agents however act on behalf of the importers of goods. The person who appoints the agent to carry out a particular transaction is the importer. That means the customs agent becomes the agent of the importer and not the Commissioner of Customs. The respondent therefore does not foist a particular customs agent on a taxpayer. The taxpayer is the one who goes out to look for a particular agent to clear goods on his behalf.**
>
> **Counsel for the respondent provided a good analogy when he told the court that just like the Law Society of Kenya licenses advocates to practice law, the Kenya Revenue Authority through the Commissioner of Customs licenses customs agents to clear goods and baggage which have been imported into the country. If a lawyer becomes rogue and misappropriate the client's money, the client cannot turn to LSK for compensation. The same case applies**

here so that when a customs agent engages in fraudulent activities, the importer cannot ask the respondent for compensation. The importer has to bear the loss with fortitude and find a way of recovering the money misappropriated from the customs agent. A prudent taxpayer will always monitor the activities of its agent so as to ensure compliance with the law. The only civil duty a taxpayer can do is to report the agent so that the license can be revoked by the respondent. The applicant argued that Hellmann acted in concert with the respondent's employees so as to defraud it of the money that was meant to pay custom duties. That may as well be true but just as the applicant did not authorize its agent (Hellmann) to steal so did the respondent not authorize its employees to engage in fraudulent activities. May be the applicant could have had a stronger case had it established that Hellmann was the respondent's agent. It is however clear that the applicant was defrauded by its agent.

It is unfortunate that the applicant suffered such a big loss. The only answer to its application, however, is that the same must be dismissed and it is so dismissed. Considering the loss suffered by the applicant I find it in the interest of justice that there should not be orders as to costs and I so order."

34. Similar circumstances arose in **Republic vs. Kenya Revenue Authority ex parte Alltex EPZ Limited Nairobi High Court Judicial Review Application No. 709 of 2008** in which **Majanja, J** held:

"The language of the statute leaves no doubt that the legislature intended that for purposes of collection of duty, the owner of the goods would be liable for the actions of the agent whatever the circumstances."

35. In Mombasa Court of Appeal Civil Appeal No. 157 of 2007 – **The Commissioner of Customs, The Kenya Revenue Authority and the Registrar of Motor Vehicles vs. Amit Ashok Doshi and Mehil Patel**, the Court of Appeal held that if the process of verification would ultimately result in the applicant being required to pay duty and taxes, the Respondent would not lawfully be estopped from exercising its statutory duty and recovering the duty imposed by the law which should have been paid but for the fraud of the importers and that it would be contrary to public policy to shield the applicant through judicial review from operation of the law and allow him to retain unaccustomed goods contrary to the law.

36. In this case, the ex parte Applicant allegedly remitted that duty vide a Clearing Agent, World Freight Logistics Limited. Even from the applicant's own evidence it is clear that less duty was paid to the Respondent. Pursuant to the foregoing sections, the applicant is clearly prima facie liable unless by its conduct, the Respondent represented to the applicant that the liability would shift to some other party or unless it is satisfactorily shown that the Respondent was to some extent responsible for the failure to have the amount remitted.

37. In this case, it is clear that the applicant itself was not certain of the circumstances under which the duty was underpaid. That must be the reason it lodged a complaint with the Director of Criminal Investigations as well as the Respondents. However as rightly contended by the Respondent, it is not the duty of the Respondents to carry out such investigations. The Respondents have however contended that World Freight Logistics Limited was not a licensed clearing agent under section 145 of the EACCMA at the material time and as such could not lawfully transact with the 2nd Respondent as duly authorised agents. It was contended, which contention was not controverted that the transactions in question had been entered by one Transonic Logistics Limited and not World Freight Logistics Limited. This goes to corroborate the Respondent's contention that World Freight Logistics Limited was not an authorised agent for the purposes of clearing goods at that time.

38. The Respondents have gone further and contended that they published notices informing the importers to remit import taxes directly to the 2nd Respondent and not through clearing agents hence the applicant ought to have exercised due diligence in the payments of taxes. This contention has similarly not been controverted.

39. It is therefore clear that the underpayment of the duty cannot be blamed on the Respondents but must

fall squarely on the ex parte applicant. This must be so since the law expressly places liability on the ex parte applicant unless there exist exceptional circumstances which I do not find in this case. In the premises, legitimate expectation which does not normally operate against the law cannot be invoked in aid of the applicant's application. In this regard I rely on sections 130 and 135 of EAMCCA which provide as follows:

> ***130. (1) Where any goods are liable to duty, then such duty shall constitute a civil debt due to a Partner State and be charged on the goods in respect of which the duty is payable; and such duty shall be payable by the owner of the goods and may, without prejudice to any other means of recovery, be recovered summarily by legal proceedings brought by the Partner State.***
>
> ***135. (1) Where any duty has been short levied or erroneously refunded, then the person who should have paid the amount short levied or to whom the refund has erroneously been made shall, on demand by the proper officer, pay the amount short levied or repay the amount erroneously refunded, as the case may be; and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was short levied or erroneously refunded, as the case may be, were liable.***

40. This was the position adopted by **Warsame, J** (as he then was) in **SDV Transami Kenya Limited vs. Commissioner of Customs Services [2012] eKLR** where in dismissing an application seeking to quash an assessment of short levied taxes had this to say:

> **"It is therefore clear that the respondent did not make a decision without giving the applicant and the Interested Party an opportunity to present their position and views. The applicant and the Interested Party participated in the decision making process and gave valuable inputs and their side of the story before the final decision was made.**
>
> **In conclusion it is my view that the respondent demanded the short levied taxes legally and in accordance with section 135(1) of the East African Community Customs Management Act. It is a statutory duty bestowed upon the respondent which must be exercised without interference in the absence of any violation, omission or acts committed by the respondent."**

41. Had there existed exceptional circumstances I would have adopted the position of **Musinga, J** (as he then was) in **R vs Kenya Revenue Authority & The Commissioner General, ex parte Unilever Tea Kenya Limited Misc. Civil Appl. No. 1109 of 2005** that:

> **"It cannot be denied that in law, the interested party was an agent of the applicant. The fact that the interested party had earlier been vetted by KRA does not make him an agent of KRA. However, all the goods that were imported by the applicant and cleared by the interested party were under the control of KRA as per section 12 of the Customs and Excise Act and section 14 of the Value Added Tax Act. This control included the rigorous checking of all the documents accompanying the said goods. The procedure of clearing goods is closely controlled by KRA. Although it was alleged by KRA that the interested party presented various false document which were vital for clearing of the applicant's goods, all of those documents were inspected and passed by officials of KRA. The applicant had no hand in such scrutiny. KRA cannot therefore simply allege that there was fraud in clearing the goods and lay all blame upon the applicant…One of the requirements of KRA before a person is registered as a clearing agent is provision of a bond under Regulation 259 of the Customs and Excise Regulations. The agent undertakes that he "shall faithfully and uncorruptly perform his/their duties as agent to the satisfaction of the Commissioner". I agree with the applicant that this clearly requires KRA to have a watchful eye over all clearing agents to ensure that they perform their duties faithfully. In the event that corrupt officials of KRA collude with corrupt clearing agents to pocket money that is paid as duty by a principal through a clearing agent, it would be unjust to require the principal to shoulder the burden of making another payment…It is an accepted principle of commercial law that where an agent acts without or in excess of authority or in fundamental breach of a contract between him and a principal the**

agent will be personally liable for such acts."

42. Unlike in **Republic vs. Commissioner, General, Kenya Revenue Authority ex parte BOC Kenya Limited Nairobi Judicial Review Miscellaneous Appl. No. 340 OF 2012,** in which this Court held that the officials of KRA ought to have scrutinised the documents presented properly before clearing the goods and taking into account the stringent procedures put in place by the Respondent, one cannot be faulted for forming an opinion that the said clearance was either as a result of negligence or corruption perpetrated by or with the knowledge of the Respondent's officials and for that the applicant ought not to be crucified, in this case there is uncontroverted evidence that the Respondents had notified the importers not to make payments through clearing agents. Therefore this case is distinguishable from the one **Korir, J** was dealing with in **R vs. Kenya Revenue Authority & Another ex parte Krones Les Centre East Africa Limited [2012] eKLR** where he expressed himself as follows:

> **"In a case where a customs agent has been involved in fraudulent activities, it would be more beneficial to the taxing authority if it went after the agent. The importer does not normally deal directly with the taxing authority's employees and the only people who can collude to defraud the taxman of his dues are the employees of the clearing agent and the employees of the taxman. The only way the taxman can fight corrupt activities is to demand taxes from the clearing agent. The taxing authority also has powers to cancel the licence of a rogue clearing agent. Going after the importer would seem unfair in a situation where there is clear evidence that the clearing agent has misappropriated the money meant for clearing the goods and corruptly cleared the goods."**

43. In the circumstances I find the Notice of Motion dated 30th June, 2016 unmerited.

Order

44. In the result the Motion fails and is dismissed with costs.

45. It is so ordered.

Dated at Nairobi this 19th day of September, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Makori for the ex parte applicant

CA Ooko