REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 341 OF 2016

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CERTIORARI AND PROHIBITION.

AND

IN THE MATTER OF NAIROBI CITY COUNTY PHYSICAL PLANNING ACT (CAP 286 LAWS OF KENYA) NAIROBI CITY COUNTY BY –LAWS

BETWEEN

REPUBLIC………………...…………………......APPLICANT

VERSUS

NAIROBI CITY COUNTY …………………….RESPONDENT

RAPHAEL NGIGI MUIRURI ……….EX-PARTE APPLICANT

JUDGMENT

1. On 2nd August 2016 Honourable Justice Lenaola (as he then was) granted to the exparte applicant herein Raphael Ngigi Muiruri leave to file Judicial Review proceedings and on 19th August 2016 the exparte applicant filed the substantive notice of motion dated 18th August 2016 seeking orders:

a) An order of certiorari do issue to bring this honourable court for purposes of it being quashed, the notice of the respondent dated 28th July 2016 requiring the exparte applicant to demolish/remove suit premises situated in plot No. ‘B’ UHURU ESTATE PHASE IV within the next seven(7) days;

b) An order of prohibition prohibiting the respondent from continuing to issue any further defective, unlawfully and illegally enforcement notice to the exparte applicant in relation to his property plot No’B’ Uhuru Estate Phase IV.

c) That costs of this application be provided.

2. The application is supported by the statutory statement and verifying affidavit sworn by Raphael Ngigi Muiruri on 1st August 2016 and filed together with the chamber summons for leave.

3. The exparte applicant claims that the respondent through its Director of Planning Compliance and Enforcement Department has issued a defective, illegal and unlawful notice dated 28th July 2016 giving the applicant seven (7) days to demolish and or remove the premises for the applicant's house on plot No. B at Uhuru Estate Phase IV.

4. According to the applicant's deposition, on 13th August 1998 he was allocated by the respondent residential plot No. 'B' Uhuru Estate Phase IV and he duly paid the allotment fees upon which he was issued with a beacon certificate.

5. Later, the applicant in 1999 submitted his building plans to the respondent's Town Planning Committee who approved them on 16th April 1999.

6. The applicant alleges that he also submitted building structural and architectural plans to the respondent and they duly were approved. He then commenced construction of the foundation of his house in 1999 but owing to insufficient finances, the construction stalled.

7. In the intervening period, he was issued with a lease agreement by the City Council of Nairobi pending grant of lease.

8. In September 2006, the applicant alleges that he resumed construction of his premises after securing relevant renewal of the building, structural and architectural plans for the respondent which plans were duly approved by the respondent.

9. According to the exparte applicant, throughout the construction period, the respondent's servants, agents or employees used to supervise and ensure that the building was constructed in accordance with the approved plans.

10. To his utter surprise on 28th July 2016, the respondent without any lawful cause whatsoever purportedly issued an enforcement notice dated the same day requiring the exparte applicant to stop developing and demolish the property on the suit premises.

11. According to the exparte applicant, the enforcement notice is defective, illegal and unlawful because:

a. The notice alleges that the suit premises is an 'open space at Uhuru Estate' whilst in reality and from the foregoing, he had developed the plot extensively and that the plot was privatized in 1998 when he was allocated the property.

b. That the notice states that the developments done on the suit premises are done contrary to the provisions of the Physical Planning Act Cap 286 Section 30(1) and the Nairobi City County Building By-laws yet the developments on the premises were done with the consent and approvals by the respondent.

c. That the enforcement notice was served on 28th July 2016 requiring compliance within 7 days of stoppage of further illegal development on the suit premises and remove the same yet there were no developments going on, in the same suit premises and that the already developed premises were done with the approval of the respondent as required under the Physical Planning Act hence it is unfair for the respondent to demand that the premises be removed within 7 days.

12. It was further alleged by the exparte applicant that the enforcement notices did not accord him the opportunity to be heard by the Appeals Liaison Committee as the notices were served on him on 28th July 2016 yet he was supposed to have appealed to the Liaison Committee by 3rd July 2016 which is unfair and unjust and contrary to the rules of natural justice on the right to be heard.

13. The applicant therefore urged the court to intervene and quash the impugned notice of enforcement

and prohibit the respondent from issuing any further unlawful, illegal and defective notice in relation to the suit premises.

14. On 15th November 2016, the respondent filed grounds of opposition to the exparte applicant's application contending that this court lacks jurisdiction to determine this application as the matter involves land use, land planning and management matters which are exclusively within the jurisdiction of the Environment and Land Court as per Section 13(2) of the Environment and Land Court Act, Cap 12A Laws of Kenya, and the Constitution of Kenya, 2010.

15. It was further contended that the alleged approvals did not emanate from the Nairobi City County Government.

16. Thirdly, that even if the alleged approvals emanated from the Nairobi City County, the exparte applicant did not commence and complete the construction of the alleged approved structures within two years of allegedly obtaining the approvals.

17. Further, that the exparte applicant did not renew the alleged approvals after the lapse of two years from the year 2008; and finally, that the Nairobi County Government was therefore right in issuing the enforcement notice to the exparte applicant hence the application filed by him should be dismissed with costs.

18. The respondent also filed a replying affidavit on 23rd November 2016 sworn by Dr Robert Ayisi, the then Acting County Secretary complementing the grounds of opposition. While conceding that the exparte applicant is an allottee of the suit premises, whose development plans were approved in 1999 by the defunct Nairobi City Council, nonetheless, it was contended that the exparte applicant is not the legal owner of the said premises hence the respondent has the mandate to issue enforcement notices if the exparte applicant is non complaint.

19. The Ag County Secretary maintained that the property is an open space as per the enforcement notice issued to the exparte applicant. That a letter of allotment is merely an intention to allot the land and not a registrative (sic) interest in land hence the suit land is still legally owned by the respondent who is allowed to deal with it as the principal owner.

20. According to the respondent, the development approval dated 16th April 1999 by the Town Planning Committee was conditional that such development should have been commenced within 12 months of the approval date and if the development was not completed in two years of the date of approval, the approval would be null and void.

21. That the exparte applicant having failed to develop the plot in 1999 and instead started to develop it in 2006 and that as there is no current development approval, the current development is null and void as the approvals are required after every 2 years.

22. That the developments if any are contrary to Section 30 of the Physical Planning Act which prohibits any development without approval of the local authority.

23. That the suit property is reserved as an open space pursuant to Section 29(f) of the Physical Planning Act hence the applicant has no right to the open space which is also public property.

24. It was further contended that the applicant had not shown that from 2006, 2008-2016 he had any approvals to develop the said plot.

25. That therefore this court cannot prohibit further issuance of enforcement notices to the applicant as the respondent is mandated by Section 29(f) of the Physical Planning Act to control the use of and development of land and buildings within the Local Authority area and that as Section 38 of the Physical Planning Act empowers the Local Authority to issue such enforcement notices where the developer proceeds to develop without permission or where the conditions attached to the

development permission have been breached.

26. In a rejoinder, the exparte applicant swore a supplementary affidavit on 2nd December, 2016 deposing that the replying affidavit sworn by Dr Robert Ayisi is misleading and arbitrarily aimed at depriving the applicant of his rights and interests over the suit premises on plot No. ‘B’ Uhuru Estate Phase IV.

27. The applicant maintained that he is the lawful owner of the suit plot as the letter of allotment dated 13th August 1998 has never been withdrawn hence his rights still stand.

28. That there is no way the plot is an open space as he pays standard premium and annual ground rent from 1998 todate.

29. That on 15th August 2006 the respondent in a Daily Nation advertisement made it clear that the letter of allotment and beacon certificates can be used as ownership documents for purposes of development plans submission.

30. That the plot having been privatized through allocation of the same on 13th August 1998 and a lease agreement executed on 16th September 2006, it cannot be a reserved open space.

31. That the respondent cannot purport to use their rights as registered owners of the plot to arbitrarily deprive the applicant of his rights and interests over the suit property as lesee by issuing defective notices indicating that the suit plot is an open space.

32. That the enforcement notices interfere with the applicant’s rights and interests and harassment to his family and that the construction was completed between 2006 and 2008 after obtaining relevant renewal of the building structural and architectural plans from the respondent.

33. That since 2008 the applicant had not carried out any construction on the suit plot as alleged and so he did not require any current construction permits or approvals and therefore the respondent was being malicious as it has never reclaimed the premises since 2006 hence the enforcement notice is illegal, unlawful and malicious since there are no developments carried out without approval or permission from the respondent.

34. That Sections 29 and 30 of the Physical Planning Act do not permit the respondent to abuse its power.

35. That unless this court intervenes the respondent’s actions will place the applicant’s family in jeopardy and that they shall suffer irreparable damages unless the orders sought are granted.

36. Both the parties’ advocates filed and exchanged written submissions and authorities.

37. The exparte applicant filed his submissions dated 22nd March 2017 on 23rd March 2017 restating his case and the response by the respondent while framing the following key issues for determination:

a. Whether or not the enforcement notice dated 28th July 2016 is defective, illegal and unlawful.

38. In answering this issue, the applicant maintained in his submissions that the notice described the applicant’s plot as open space yet the applicant is a legal allottee of Plot No. ‘B’ at Uhuru Estate Phase IV since 1998 and which allotment has never been revoked or withdrawn and that the exparte applicant is still the owner thereof, paid survey fees, standard premium and ground rent since 1998 todate.

39. Further that there is a binding lease agreement between the applicant and the respondent dated 6th September 2016 hence the enforcement notice is illegal.

40. The exparte applicant denied being in contravention of Sections 29 and 30 of the Physical Planning Act as alleged by the respondent that he had no authority to construct on the plot or that he was constructing on the plot without necessary approvals, or that he had since 1999 failed to construct on the plot. He maintained that he had since 2008 not constructed on the plot as the construction commenced in 2006 and ended in 2008 and since then, no construction works had been undertaken on the plot hence no law had been violated by him.

41. It was further submitted that by serving the applicant with notice on 28th July 2016 requiring him to comply within 7 days to appear before the Liaison Committee on 5th July 2016 a date which had already passed, denied the exparte applicant the opportunity of being heard at the Liaison Committee concerning the suit premises hence, a violation of the Rules of Natural Justice. Reliance was placed on **Onyango v Attorney General CA 152/1986[1978] e KLR** where in allowing the appeal the Court held that the principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly by giving them an opportunity to be heard before imposing a loss of liberty.

42. It was submitted that a notice requiring the applicant to appear before the Liaison Committee on 3rd July 2016, yet the notice was dated 28th July 2016, was defective and therefore denied the exparte applicant an opportunity to be heard before being asked to demolish/remove the premises. He also claimed that Article 47 of the Constitution that guarantees every person the right to fair administrative action had been violated by the respondent.

43. On the part of the respondent, its counsel Senior Counsel Professor Tom Ojienda's firm filed written submission dated 18th April 2017 on the same date reiterating the grounds of opposition and replying affidavit sworn by Dr Robert Ayisi contending that the exparte applicant had not demonstrated that he deserves the Judicial Review orders of certiorari and prohibition. The case of **Council of Civil Service Union vs Minister of State for Civil Service [1984] 3 ALL ER 935** was cited, setting out the grounds upon which Judicial Review would issue namely, illegality, procedural impropriety and irrationality. Further reliance was placed on **Republic vs The Commissioner of Lands Exparte Lake Flowers Limited Nairobi HCC Miscellaneous Application 1235/1998** as adopted in **Republic vs Commissioner General, Kenya Revenue Authority Exparte BOC Kenya Limited [2014] e KLR.**

44. According to the respondent, it has a statutory mandate under Sections 29 and 30 of the Physical Planning Act hence it is under a duty to regulate and monitor development plans and activities within its area and to enforce non compliance.

45. That in this case the applicant has no right of ownership of the impugned plot since there is no lease in favour of the applicant and therefore the enforcement notice was in order as there was no approval prior to the alleged developments.

46. It was submitted that under Schedule Four of the Constitution, the respondent has a mandate to control County Planning and Development hence it must ensure that all property within its scope are developed in accordance with the Physical Planning Act.

47. That in enforcing the Physical Planning Act as stipulated under Section 38 of the Act, the respondent had not acted irrationally by issuing an enforcement notice and that it would be extremely dangerous to allow developments in the City County without approval by the respondent.

48. It was further submitted that the applicant is confused as to when he was issued with approvals to develop the plot due to the contradictory statements. Reliance was placed on **Republic vs Attorney General & 4 Others Exparte Peter Gathecha Gachiri & Another [2014] e KLR** where Majanja J

stated, inter alia, that Section 38 empowers the local authority to issue an enforcement notice where the developer proceeds to develop without permission or where the conditions attached to the development permission have been breached.

49. It was submitted that the applicant had not obtained the requisite approvals for development on the plot and that he has built in a property that belongs to the public which is a public utility hence the applicant should not be in its occupancy.

50. On whether the letter of allotment gives interest in land, it was submitted that only a lease and not a letter of allotment gives rise to propriety interest in land hence the applicant's right to a property under Article 40 of the Constitution did not arise. Reliance was placed on **Wreck Motors Enterprises s v The Commissioner of Lands & 3 Others Nairobi CA 71/1997** (Unreported) where the court held inter alia:

> ***" Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of a title document."***

51. In the view of the respondent, the applicant did not abide by the letter of allotment which states that the buildings were to be for residential purposes but that instead, the applicant had constructed a block of flats upto two levels and that the applicant had not been issued with a lease because of non compliance with the right procedures and had build on public utility land. further that the applicant had breached the conditions contained in the allotment letter that he could only construct single family dwelling units, a block of flats.

52. Relying on **John Mukora Wachihi & Others vs Minister of Lands & Others HC Petition 82 of 2010** cited in **Evans Kafusi Mcharo & Permanent Secretary Ministry of Roads, Public Works and Housing & another (2013) e KLR,** it was submitted that the court observed that "***the distinction between the holder of a letter of allotment and of a lease or a title document, is based on the fact that the right to property protected under the law and the Constitution is afforded to registered owners of land; that a letter of allotment is not proof of the title as it is only a step in the process of allocation of land."***

53. In light of the above, it was submitted that the respondent cannot be prohibited by this court from issuing enforcement notices as it owns the land in issue and as it is so mandated under Section 38 of the Physical Planning Act to so issue notices, protecting the land under Section 29(f) of the Physical Planning Act otherwise the court will be interfering with the powers of the county as stipulated in the Physical Planning Act to reserve and maintain all land planned for open spaces. The respondent urged the court to dismiss the applicant's application with costs.

<u>DETERMINATION</u>

54. I have considered the exparte applicant's case, the respondent's responses and their respective advocate's written submissions as supported by constitutional, statutory and case law cited.

55. In my humble view, this matter raises very import legal questions. However, one very critical legal question that must first be determined before the court delves into the merits and demerits of the motion is whether this court has jurisdiction to hear and determine the issues raised in this matter.

56. In the respondent's grounds of opposition filed on 15th November 2016 and which the exparte applicant has not countered in his submissions, question whether or not this court has jurisdiction to hear and determine this application on account that it involves land use, land planning and management, matters which are exclusively within the jurisdiction of the Environment and Land Court as per Section 13(2) of the Environment and Land Court Act Cap 12A Laws of Kenya, and the Constitution was raised.

57. The question of whether this court has the requisite jurisdiction to hear and determine a matter must be considered in line with both the constitutional and legal imperatives because it is trite law that jurisdiction stems from the constitution and the law. The court cannot arrogate itself jurisdiction which it does not have(see **Samuel Kamau Macharia vs Kenya Commercial Bank Ltd & Others [2012] e KLR (SC).**

58. On the other hand, the constitution or statute could limit jurisdiction of a court and where there is such limitation of jurisdiction by the Constitution and or statute, a court of law would be acting in vain if it heard and determined a matter where it is clear that the court had no jurisdiction to hear and determine a matter. It is for that reason that when an issue is raised as to whether or not a court has jurisdiction to deal with a particular matter before it, it is crucial to be clear about what is meant by jurisdiction. Lord Diplock L.J (as he then was) in **Garthwaite v Garthwaite [1964] 2 ALL ER 233** stated:

> ***" In its narrow and strict sense, the "jurisdiction of validly constituted court connote the limits which are imposed upon its power to hear and determine issues between persons seeking to avail themselves of its process by reference***
>
> ***i. To the subject matter of the issue, or***
>
> ***ii. To the persons between whom the issue is joined, or***
>
> ***iii. To the kind of relief sought or to any combination of these factors.***
>
> ***In its wider sense, it embraces also the settled practice of the court as to the way in which it will exercise its power to hear and determine issues which fall within its "jurisdiction" the strict sense, or as to circumstances in which it will grant a particular kind of relief which it has jurisdiction (in the strict sense) to grant, including its settled practice to refuse to exercise such powers or to grant such relief in particular circumstances."***

59. **John Beecroft Saunders** in his Treatise **Words and Phrases Legally Defined VOL.3 at page 113** states:

> " ***By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restruction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the king and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may pertake both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."***

60. The above definition of "jurisdiction" was cited with approval by the Court of Appeal by Nyarangi JA (as he then was) in **Motor Vessel 'Lilian S' vs Caltex Oil (K) Ltd [1989] KLR 1** and in **Seven seas Technologies Ltd v Eric Chege (IC) Miscellaneous Application 29/13 [2014] e KLR** Nzioka Wa Makau J held that where a court of law finds that it has no jurisdiction to hear and determine a matter, it must down its tools.

61. What the respondent is saying is that this court (High Court) lacks the competence to hear and determine this application because the issues raised herein fall within the jurisdiction of the Environment and Land Court as stipulated in Section 13(1) of the Environment and Land Court Act and the

Constitution.

62. Although the specific provisions of the Constitution are not cited, this court is deemed to know the law and from whence it derives its jurisdiction.

63. Article 165 of the Constitution confers in the High Court unlimited original and appellate jurisdiction in criminal and civil matters; jurisdiction to determine that the right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; jurisdiction to hear an appeal from a decision of a tribunal appointed under the constitution; to consider the removal of a person from office, other than a tribunal appointed under Article 144 of the Constitution; Jurisdiction to hear any question respecting the interpretation of this constitution including the determination of……..;Any other jurisdiction, original or appellate conferred on it by legislation.

64. Under Article 165(5), the High Court is expressly prohibited from hearing and determining matters reserved for the exclusive jurisdiction of the Supreme Court under the Constitution or falling within the jurisdiction of the courts contemplated in Article 162(2) of the Constitution.

65. The High Court is however conferred with supervisory jurisdiction under Article 165(6) of the Constitution over subordinate courts and over any person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.

66. In addition, Article 165(7) of the Constitution makes it clear that for the purposes of Clause (6) of High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in Clause(6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

67. Of significance is that the High Court's jurisdiction is limited by Article 165(5) of the Constitution in that it is prohibited from hearing and determining matters in the exclusive jurisdiction of the Supreme Court and courts contemplated in Article 162(2) of the Constitution.

68. Under Article 162(2) of the Constitution, the Constitution contemplates the establishment of specialized courts with the status of the High Court to hear and determine disputes relating to(a) Employment and labour relations and(b) The Environment and use and occupation of, and title to land, and the jurisdiction of the said courts of equal status is to be determined by Parliament through legislation.

69. In 2012, the National Assembly enacted the Employment and Labour Relations Court Act and the Environment and Land Court Act, which have since been severally amended.

70. Section 13(2) of the Environment and Land Court Act confers on the Environment and Land Court jurisdiction , original and appellate to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of the Act or any other law applicable in Kenya relating to environment and land .

71. In exercise of the jurisdiction under Article 162(2) (b) of the Constitution, the court shall have power to hear and determine disputes:

> *a) Relating to environment planning and protection, climate issues, land use planning title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources:*
>
> *b) Relating to compulsory acquisition of land;*
>
> *c) Relating to land administration and management.*
>
> *d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable in land; and*

e) Any other dispute relating to environment and land.

7.In exercise of its jurisdiction under the Act, the court shall have power to make any order and grant any relief as the court deems fit and just, including-

a) Interim or permanent preservation orders including injunction;

b) Prerogative orders.

c) Award of damages;

d) Compensation;

e) Specific performance

f) Restriction;

g) Declaration or

h) Costs

72. From the above plethora of constitutional and statutory provisions, it is clear to me that the High Court's jurisdiction to hear and determine any dispute or matter relating to the title, ownership, land use, occupation of land, control and management of land or it use is expressly ousted and the jurisdiction is expressly vested in the Environment and Land Court.

73. Furthermore, the power to issue Judicial Review Order formerly known as prerogative orders in matters land and environment is vested by dint of Section 13(7) (b) of the Environment and Land Court Act, in the Environment and Land Court.

74. In this case, the issues raised in the notice of motion include title to and legal ownership of the land in issue namely plot 'B' Uhuru Estate Phase IV.

75. The respondent issued enforcement notice under Section 38 of the Physical Planning Act Cap 286 Laws of Kenya requiring the applicant to, within 7 days of the notice, demolish, remove the suit premises situated in the named plot and has extensively argued that a letter of allotment does not confer title and therefore legal right to the applicant since a lease has not been issued. It also claims that the plot is an open space public utility plot and was allotted for development of a single dwelling not multiple flats which the applicant has done.

76. Further, the respondent claims that the applicant breached the terms and conditions of allotment in that he did not commence to develop the plot within 12 months from the date of allotment and neither did he complete the development within 24 months from date thereof. It also claims that no renewal of approvals were made by the respondent for the subsequent construction.

77. The applicant on the other hand asserts that the respondent is malicious, has issued a defective and illegal enforcement notice which does not accord him a right to be heard under Article 47 of the Constitution and that as the notice is dated after the contemplated date of hearing by Physical Planning Liaison Committee; that it denies him the right to be heard. He further denies that the plot is an open space and maintains that the letter of allotment and lease agreement confer on him good title pending issuance of a lease. He further maintains that he sought and obtained all the necessary approvals from the respondent's predecessor Nairobi City County.

78. The discourse above no doubt concerns ownership, occupation, land use, management and planning by the respondent as the disputed land falls within its jurisdiction. That being the case, I have no hesitation in finding that only the Environment and Land Court has the requisite jurisdiction

to hear and determine the issues raised by each of the parties which even go beyond the scope of Judicial Review remedies of certiorari and prohibition, as judicial review is concerned with the process and not on the merits of the decision.

79. The High Court's jurisdiction in such matters of the title to land, use and or occupation of land is expressly ousted by Article 165(5) of the Constitution and expressly vested in the Environment and Land Court.

80. This court would therefore be usurping the jurisdiction of the court of equal status if it heard and determined the merits of the motion before it. The Environment and Land Court has jurisdiction under Section 13 of the Environment and Land Court Act to determine all the issues raised in this application and to grant the prerogative/Judicial Review orders sought herein should it find the application merited.

81. As these proceedings were instituted long after the establishment and operationalization of the Environment and Land Court, the applicant cannot be excused from wandering in a wrong forum, and therefore he cannot benefit from the transitional and consequential provisions of Part V Section 22 of the Constitution as the application was filed over 5 years after the promulgation of the Constitution.

82. For those reasons, I find and hold that this court has no competent jurisdiction to hear and determine the application dated 18th August 2016 the same is found to be incompetently filed before a court whose jurisdiction in such matters is expressly ousted by the Constitution.

83. Having so found, the only logical thing is to down my tools and say no more on the merits of the application which is hereby struck out for want of jurisdiction.

84. I order that each party shall bear their own costs of these proceedings.

85. Those are the final orders of this court.

Dated, signed and delivered at Nairobi this 16th day of October, 2017.

R. E ABURILI

JUDGE