



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

PETITION NO 12 OF 2013.

IN THE MATTER OF THE CONSTITUTION OF KENYA 2010

AND

**THE MATTER OF ARTICLES 22, 23(3), 25(c), 27(1),(2)&(3), 25, 31(a) &(b), 47(1), &(2), 50, 157
(6)(b),(10)&(11) AND 251 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE INSPECTOR GENERAL OF POLICE AND THE OFFICER IN
CHARGE OF THE KAJIADO POLICE STATION AND THE POLICE CASE FILE NO
731/58/2013**

BETWEEN

LYDIA LUBANGAPETITIONER

VERSUS

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

THE OFFICER IN CHARGE KAJIADO

POLICE STATION.....2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS3RD RESPONDENT

INSPECTOR WAIHENYA.....4TH RESPONDENT

SENIOR PRINCIPAL MAGISTRATE

COURT, NAKURU.....5TH RESPONDENT

JUDGMENT

Introduction

The Petitioner is a civil servant employed by the Public Service Commission as Senior Land Valuer in the Ministry of Land and Settlement at the Kajiado Land Registry since 1st January 2006. She is in charge of all the Land Revenue Collection Assessment and Valuation within the whole of the Kajiado County. The

1st Respondent is the duly appointed Inspector General of all the police force in the Republic of Kenya as provided for under the Constitution of Kenya and National Police Commission Act, while the 2nd Respondent is the duly appointed officer in charge of the Police Station at Kajiado in charge of all administrative management of the police station.

The 3rd Respondent is the Constitutional office holder in charge of all the public prosecutions in the Republic of Kenya by virtue and power vested on that office under Article 157 of the Constitution of Kenya. The 4th Respondent is a duly appointed Inspector and Officer attached with the anticorruption unit and who has been assigned the case against the Petitioner under the police file No. 731/58/2013 now **Ethics and Anti-Corruption Criminal Case No. 2 of 2013, at Chief Magistrate's Court at Nakuru** as the investigation officer.

Lastly, the 5th Respondent herein is a Magistrate's Court that was enjoined to this petition by an order of this Honourable court dated the 27th October 2015 for purpose of staying the proceedings in which the Petitioner has been charged being **R vs Lydia Lubanga, Ethics and Anti-Corruption Criminal Case No. 2 of 2013, at Chief Magistrate's Court at Nakuru** that are pending in the said Court.

The Petitioner filed a petition dated 14th March 2013, wherein she averred that the 1st, 2nd, 3rd, & 4th Respondents have been involved in systematic, methodical and/or intentional breach of and threatened breach of various provisions of the Constitution of Kenya 2010, and invoked this Court's jurisdiction under Articles 22 (1), 23(3) and 50 as read together with Articles 165(3), (6) & (7) of the Constitution.

In particular the Petitioner alleged the breach and threatened breach of her entitlement to fair trial, natural justice and freedom and administrative of justice; her right to equal protection and benefit to the law as provided under Article 27 of the Constitution; and her right to fair and efficient administrative action as provided for under Article 47 of the Constitution.

The Petitioner's Case

The Petitioner's case is in her Petition dated 14th March 2013, and a supporting affidavit and supplementary affidavit she swore on 14th March 2013 and 24th July 2013 respectively. The Petitioner expounded that on 1st March 2013 while working at her offices at the Kajiado Land Registry, 14th May 2015, she was granted a sum of Kenya Shillings thirty thousand (Kshs.30,000.00) by two land brokers called Mr. Stephen and Kasaine David both of whom were well known to her for many years, and which was meant to be an appreciation token for having previously and severally been introducing them on diverse occasions to various prospective vendors and purchasers and on successful land transactions.

However, that upon receiving the aforementioned sum of cash Kenya shillings thirty thousand (Kshs.30,000.00) two gentlemen claiming to be officers from the Kenya Anti Corruption unit stormed forcefully into her offices which was an open office shared by two other officers, and went straight to her unlocked drawer where they found the cash intact.

It is the Petitioner's claim that although she made attempts to explain to the said officers that the cash had been given to her by the Land Brokers voluntarily as an appreciation and hence it was not solicited nor was it received as a bribe, the said officers proceeded to dust the offices and the wad of notes smeared with chemical treatment and arrested the Petitioner and took her to Kajiado Police Station for further interrogations. The petitioner was subsequently released on a bond of Kenya shilling twenty thousand (Kshs.20,000.00) and directed to appear in the Nakuru Anti-Corruption Court on 20th March 2013 to be charged with the offence of soliciting and receiving a bribe contrary to the provisions of section 50 of the Ethics and Anti-Corruption Act.

It is the Petitioner's contention that the 4th Respondent has formed a habit of frequently calling her cell phone and threatening, harassing and intimidating her of having certain charges preferred against her, and that the whole exercise of setting her with powered money, her arrest and arraignment at the police

Station and the frequent calls of intimidation and harassment are all a well calculated designed and /or planned to interfere with their work, human rights and right to fair hearing, equality before the law and equal protection and benefit.

The Petitioner further alleges that the Respondents have breached her rights so as to favour of some of her senior colleagues in office who are contemptuous of her opposition in participation in corrupt act being practiced in the office by them and who are also envious of her diligence, dedication and excellent performance as the Senior Land Valuer. Further, that the Petitioner is being harassed, punished, intimidated and despised by her own colleagues in the office in order to allow them to freely get involved and participate in acts of corruption for self enrichment and aggrandizement from the public resources.

The Petitioner therefore seeks the following relief:

1. A declaration that the investigation, allegation, allegation and the summon to appear in court on 20th March 2013 under the contents in police file No. 731/58/2013 allegedly for soliciting and receiving bribe contrary to section 50 of Ethics and corruption Act is an infringement, breach or otherwise a contraction of the petitioners right to a fair trial as enshrined in Article 50 of the Constitution of Kenya.
2. A declaration that the allegation made by the 1st, 2nd, 3rd, and 4th Respondent against the petitioner in police File No. **731/58/2013** is a breach, infringement, violation and denial of the fundamental rights of the petitioner to equality before the Laws, Equal protection and equal benefits of the laws as enshrined in Article 27(1) of the constitution.
3. A declaration that the allegation contained in Police file No. 731/58/2013 against the petitioner of having solicited and received a bribe from unknown person is vexatious, oppressive, unsubstantiated, malicious, driven by a person vendetta and envy, harassment, intimidation and abuse of the court process and contrary to the public interest of the Administration of Justice contrary to Article 157(11) of the Constitution of Kenya.
4. An order of Judicial Review the in form of prohibition do issue prohibiting the 1st, 2nd, 3rd and 4th Respondents from thereafter harassing, intimidating and prosecuting or attempting to prefer or prosecute the charges against the petition in Nakuru Anti Corruption Court allegedly for soliciting and receiving bribe contrary to the provisions of Section 50 of the Ethics and Corruption Act.
5. Costs of this petition to be awarded to the Petitioner.

The Respondents' Case

The 1st, 2nd 3rd, and 5th Respondents did not file any replying affidavit to the Petition and relied on the Replying Affidavits sworn by the 4th Respondent. The 4th Respondents filed two Replying Affidavits he swore on 22nd May 2013 and 27th June 2013 respectively, which were relied upon by the Respondents as their response to this Petition. The 4th Respondent stated that he is an investigator employed by the Ethics and Anti- Corruption Commission (hereinafter referred to as the Commission) which is a body corporate established under the Ethics and Anti-corruption Commission Act No. 22 of 2011 and is the investigator in this matter. The 4th Respondent's account of the facts leading to this petition is as follows.

That on 28th February 2013, the Commission received a complaint from one Mr. Christopher Seki that the Petitioner had corruptly solicited for a benefit of Kshs. 30,000 as an inducement so as to undervalue a piece of land in Kajiado registered as KAJIADO KAPUTEI SOUTH/2510. The case was then assigned to a team comprising of 3 investigators including the 4th Respondent, which commenced investigations and took down the complaint's statement.

Further, that the said team conducted a sting operation on 1st March 2013 which included fitting the complainant with a recording device where the Petitioner was recorded soliciting a bribe Kshs.30,000 and actually receiving and acknowledging receipt of Kshs.10,000. The hey then arrested the complainant on 1st March 2013 and booked her at Kajiado Police Station, where she was released on a cash bail of Kshs.20,000 and instructed to appear in court on 20th March 2013 at Nakuru.

The 4th Respondent also stated that on the 11th March 2013 the Director of Public Prosecutions (DPP) gave directions that the Petitioner be charged in court as recommended by the commission, but that the Petitioner has severally failed to appear in Court on 20th March 2013, 18th April 2013 and on 9th May 2013 to plead to the charges.

According to the Respondents, the action of the Director of Public Prosecutions in recommending prosecution was in conformity with powers as enshrined in Article 157 of the Constitution of Kenya 2010. Further, that the money received by the Petitioner was not a token as alleged but a bribe which is contrary to the Anti-Corruption and Economic Crimes Act 2003, Ethics and Anti-corruption Commission Act No. 22 of 2011 and the Constitution of Kenya 2010.

The 4th Respondent denied calling, threatening, harassing or intimidating the Petitioner, and he stated that upon the Petitioner's release from Kajiado Police Station, his colleague, a Ms. Nyambu called her from his telephone and asked her to attend court on 15th March 2013 instead of 20th March 2013. However, the commission decided to allow her to take a plea on 20th March 2013 because her husband had come to their office and asked them not to defer the plea to 15th March 2013 since they had been bereaved. Further, that on the contrary the person who introduced himself as the Petitioner's husband is the one who has been calling and sending messages to the 4th Respondent's telephone in an attempt to influence and/or intimidate him to drop the charges against the Petitioner.

The 4th Respondent averred that there has been no violation of the Petitioner's rights to a fair hearing neither has she been treated unequally before the law nor denied equal protection and / or benefit of the law as alleged.

The Issues and Determination

The Petition was canvassed by way of written submissions filed by the parties. The Petitioner's counsel, Naikuni, Ngaah & Miencha Company Advocates, filed submissions dated 9th November 2015. The 1st, 2nd, 3rd, and 5th Respondents relied on submissions dated 27th November 2015 filed by Cliff Machogu, a Prosecution Counsel in the office of the Director of Public Prosecutions. Grace M. Omari, the Advocate for the 4th Respondent filed submissions dated 23rd November 2015. I have read and carefully considered the pleadings and submissions made herein. There are three issues for determination as follows:

1. Whether the circumstances leading to the arrest of the Petitioner amounted to entrapment.
2. Whether the institution of criminal proceedings against the Petitioner is in breach of her constitutional rights under Article 27(a), 47 and 50 of the Constitution, and
3. Whether the Petitioner is entitled to the reliefs sought.

On entrapment

The Petitioner submitted on this issue that her arrest was an entrapment set up by the police officers in collusion with the Land Brokers and other land officials at the Kajiado Land Registry who have been eyeing the position of the petitioner being that of the senior land valuer. Further, that the gift of Kenya shillings thirty thousand (30,000/-) given to her as an appreciation token for a successful land transaction she had concluded, was a well calculated entrapment set by the said land brokers and the 1st, 2nd and 4th Respondent respectively.

The Petitioner contended that the said parties actions are malicious, in bad faith and intended to oppress, humiliate and prejudice the petitioner. Further, that she was not accorded the right to a fair hearing as contemplated under Article 47 of the Constitution as she was not given an opportunity to give an explanation about some facts. According to the Petitioner this was a clear case of entrapment and no court of justice should allow such kind of practice that undermines human dignity as clearly stipulated under Article 27, 28 and 29 and 50 of the Constitution of Kenya 2010.

Reliance was placed by the Petitioner on the decision in **Mohammed Koriow Nur vs Hon. AG, Constitutional Petition No. 181 of 2010**, and the various decisions cited therein including **R. vs Loosely (2001) UKHL53**, **Ridgeway's v The Queen (1995) 184 CLR 19**, **R v. Mack, (1988) 2S.C.R. 903** and **Keith Jacobson v. United States, 503 US 540 (1962)** on the law as regards entrapment.

The 4th Respondent on his part submitted on the first issue that the arrest of the Petitioner was justifiable as she admitted having received some money from two gentlemen who are well known to her and given that the complainant had reported the same to the commission about the Petitioner soliciting for a benefit in order for her to perform her duty as a public officer. Reliance was placed in this regard on the decision in **Hussein Khalid and 16 Others vs Attorney General and 2 other s (2014) eKLR** .

Further, that there was no entrapment in the circumstances leading to the arrest of the Petitioner for the reasons that firstly, the Petitioner had already solicited for benefit and the complainant reported the same to the commission on 28th February 2013, and the complainant availed the money on 1st March 2013 as advised by the Petitioner. Secondly, for the reason that the Petitioner was not induced or coerced by any law enforcement officer to commit a crime. And lastly, because the criminal plan did not originate from the state agents but the Petitioner herself when she solicited for a benefit from the complainant. Reliance was also placed on the case of **Mohamed Koriow Nur vs Attorney General (2011)eKLR** on what entrapment entails.

On the Petitioner's submissions that the money received was a gift, all the Respondents submitted that the Petitioner is a public officer by virtue of Article 260 of the constitution and as such is subject to section 14 of the Leadership and Integrity Act of 2012 under which a gift in monetary terms is prohibited.

On the law applicable, entrapment was defined in **Mohamed Koriow Nur vs Attorney General (2011)eKLR** as follows:

“Entrapment occurs when (a) the authorities provide a person with an opportunity to commit an offence without acting on a reasonable suspicion that this person is already engage in criminal activity or pursuant to a bonafide inquiry, and (b) although having such a reasonable suspicion or acting in the course of a bona fide inquiry, they go beyond providing an opportunity and include the commission of an offence”

The constitutional issues raised by entrapment normally relate to various rights. The right to privacy is one of those right as entrapment would most probably also give rise to a criminal charge which exposes the person entrapped to unwarranted and undesirable publicity and societal ridicule. Another right normally affected is the right to personal liberty as entrapment entails either the coercion or inducement of an individual to a course of action he would not otherwise have chosen: the commission of an offence. The right to dignity is the third right that is affected by entrapment whereby the sole aim of entrapment is that of exposing an individual to the sanction of the criminal law and to societal shame and embarrassment that comes with a criminal conviction.

Lastly, since entrapment is an unfair method of police investigation, it is a violation of the right to fair trial because the entrapped accused ought not to have been prosecuted at all. In addition, conviction on the basis of evidence obtained through entrapment is a violation of an accused's right to have evidence obtained in violation of a constitutionally guaranteed right excluded because such evidence will render the trial unfair.

However, a distinction needs to be made between legitimate undercover investigation as accepted methods of police investigation and entrapment. The Court has defined entrapment as a situation where the officers involved whether members of the security forces or persons acting on their instructions do not confine themselves to investigating criminal activity in an essentially passive manner, but exert such an influence on the subject as to incite the commission of an offence that would otherwise not have been committed, in order to make it possible to establish the offence, that is to provide evidence and institute a prosecution.

In R vs Loosey [2001] UKHL 53 the English House of Lords held as follows as regards entrapment *viv-avis* the limits of acceptable police conduct and investigations:

“As already noted, the judicial response to entrapment is based on the need to uphold the rule of law. A defendant is excused, not because he is less culpable, although he may be, but because the police have behaved improperly. Police conduct which brings about, to use the catch-phrase, state-created crime is unacceptable and improper. To prosecute in such circumstances would be an affront to the public conscience, to borrow the language of Lord Steyn in *R v Latif* [1996] 1 WLR 104, 112. In a very broad sense of the word, such a prosecution would not be fair.

But what is *meant* by 'state-created crime'? What is the legal concept underlying oft-repeated expressions such as lure, incite, or instigate? What is the distinction, of relevance in the commission of a crime, which these phrases are seeking to draw? If an undercover policeman asks a known drug supplier for drugs, is he 'luring' the unsuspecting supplier into committing a crime? If not, why not? What does 'lure' mean in this context? By what criteria is a trial judge to distinguish the acceptable from the unacceptable?

Questions such as these have generated extensive overseas judicial utterances and also academic literature, both in this country and abroad. The several suggested answers have different emphases and, to a limited extent, different practical consequences. Underlying some of the learning is the notion that expressions such as state-created crime and lure and incite focus attention on the role played by the police in the formation of the defendant's intent to commit the crime in question. If the defendant already had the intent to commit a crime of the same or a similar kind, then the police did no more than give him the opportunity to fulfil his existing intent. This is unobjectionable. If the defendant was already presently disposed to commit such a crime, should opportunity arise, that is not entrapment. That is not state-created crime. The matter stands differently if the defendant lacked such a predisposition, and the police were responsible for implanting the necessary intent.”

In the present Petition the Respondents claim that the Petitioner had already solicited the money that she describes as a gift, and that they acted upon a complaint made by the person who was to provide the said gift. The Respondents have in addition identified the provisions of the law that create possible offences arising from the Petitioner's conduct namely section 14 of the Leadership and Integrity Act and section 50 of the Anti-Corruption and Economic Crimes Act 2003.

The Petitioner admits to knowing and receiving the said money from the said complainant, but alleges that it was not solicited but was a token of appreciation for a successful land transaction she had completed.

In the circumstances I do not find that there was any entrapment of the Petitioner, given that she has indicated that she was a willing participant in receiving the money that is the subject matter of the criminal charges that have been instituted against her, and therefore had an intention of receiving the same. All the Respondents did in the circumstances that are said to constitute entrapment was to document the receipt of the said money, and they did not lure, incite or instigate the Petitioner in any manner to receive the said money.

On Infringement of Rights

On the second issue as to whether there was infringement of the Petitioner's rights by the Respondents, the Petitioner submitted that under Article 27(1) and (2), 28, 29 and 50 of the Constitution every person is equal before the law and has the right to equal protection and equal benefit of the law including the full enjoyment of all rights and fundamental freedoms as was held in Ronald Leposo Musengi vs The Director of Public Prosecution & 3 Others, Constitutional Petition No. 436 of 2014. Further, that any limitation to such a right must be with the parameters of contemplated by Article 24; that is by law and only to the extent that the limitation is reasonable and justifiable in an open and democratic society

based on man dignity, equality and freedom.

It is the Petitioner's contention that it is undisputed that under Article 156(6) of the Constitution the Director of Public prosecution has discretion to institute and undertake criminal proceedings against any person before a court of law in respect of any offence alleged to have been committed. However, that his power although discretionary, must be exercised judiciously, and the Petitioner cited various judicial authorities in this regard including Njuguna S. Ndung'u vs Ethics & Anti Corruption Commission (EACC) & 3 Others (2014) eKLR, Musyoka Kimanthi vs Inspector General of Police & 2 others (2014) eKLR, and Peter Macharia Ruchachu vs The Director of Public prosecution and Another, Miscellaneous Constitutional Application No. 4 of 2013. According to the Petitioner, the investigation in this matter was poorly done, as no statements that were made by the witnesses, that is the two land brokers have been appended to show that the Petitioner was culpable. Furthermore, that the complainant in this case remains unknown.

The alleged infringements by the Respondent s according to the Petitioner commenced when the 2nd Respondent proceeded on the 11th March 2013 under the direction, control and order of the 1st Respondent to the office of the Petitioner and set up an entrapment against the Petitioner where they intimidated, harassed and arrested the petitioner on grounds of corruption.

The 2nd Respondent then allegedly handed over the matter to the 4th Respondent being the investigation attached to the Anti-corruption unit who with full knowledge that this was a case of an entrapment against the Petitioner and without undertaking any sort of investigation to ascertain and convince himself of the legality of the matter, proceeded to forward Police Case file No. 731/58/2013 to the 3rd Respondent herein, who proceeded to institute and undertaking ACC No. 2/2013 at the Chief Magistrate Court at the Nakuru Law Courts without subjecting the case to any investigation, scrutiny and evaluation which the Petitioner submit that this is an abuse of the court process and an infringement of the rights of the Petitioner to be at liberty.

This Court has already found that there was no entrapment of the Petitioner, and therefore any claim that the Petitioner's rights were infringed arising from the alleged entrapment must also fail. The only outstanding allegation that needs to be determined is whether the Petitioner was arrested without the necessary investigations being undertaken as alleged.

The 1st, 2nd 3rd and 5th Respondents submitted in this regard that the Petitioner has not demonstrated that in making the decision to prefer criminal charges against her, the 3rd Respondent acted without or in excess of the power conferred upon him by the law, or has infringed, violated, contravened or in any other manner failed to comply with the provisions of the Constitution of Kenya. Further, that that the 3rd Respondent is yet to tender any evidence against the Petitioner in the trial court with regard to the charges. It was alleged that the 3rd Respondent has sufficient evidence to support the charges against the Petitioner and this will be adduced before the trial court where the Petitioner will be given a chance to defend herself.

All the Respondents also submitted that the Petitioner was arrested on an allegation of soliciting and receiving a bribe, and that before her arrest the arresting officers introduced themselves and explained the reason for the arrest and Article 49 of the constitution was complied with. It was also submitted by the Respondents that the petitioner is yet to be charged as she was arrested, released on police bond and has refused to plea to the charges. Therefore that there has been no infringement of the petitioner's right to a fair hearing.

The office of the DPP is constitutionally mandated to institute and undertake all prosecutions in Kenya. Under Articles 157(10) and (11), the Constitution provides as follows with regard to the exercise of power by the DPP:

“ (10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her

powers or functions, shall not be under the direction or control of any person or authority.

(11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.”

It has been held in several decisions of the High Court that the Court will only be entitled to interfere with the exercise of powers by the Director of Public Prosecutions if it is clearly demonstrated that he has acted without due regard to the public interest, has acted against the interests of the administration of justice, or has not taken account of the need to prevent and avoid abuse of the process of the Court. The Petitioner made various allegations that she was the subject of harassment by the Respondents, and of envy and bad motive by her supervisors in the workplace. She however did not place any evidence before the Court of such harassment or bad motive.

Having discounted any entrapment of the Petitioner, I am therefore not persuaded, on the facts before me and for the foregoing reasons, that there is an ulterior or improper motive in the Petitioner's prosecution, or that the Director of Public Prosecution has abused his constitutional mandate under Article 157 of the Constitution.

Entitlement to the Reliefs Sought

In light of the findings herein above the Petitioner is not entitled to the declarations sought as to infringement of her rights, abuse of the Court process and the public interest in the administration of justice arising from the alleged entrapment. As regards the order sought of prohibition, the Respondent submitted that the trial court is better placed to consider the evidence and decide whether or not to place accused person on their defence. Further, that the fact that the Petitioner alleges the same was a set up by respondents with an objective of ousting the petitioner out of office for their own selfish interest and person aggrandizement does not warrant this court in interfering with criminal process.

I agree with the Respondents that the proceedings in this Court are not the proper proceedings in which the correctness of the evidence or truthfulness of the witness is to be gauged. The task is solely reserved for the trial court which is constitutionally bound to determine the proceedings in accordance with the law. It may be, as alleged by the Petitioners, that the amount that she was supposed to receive from the complainant was not a bribe but, as submitted a token of appreciation. However, the 1st, 2nd, 3rd and 4th Respondents have the mandate to investigate cases of corruption among public officers and to prosecute respectively, and they have determined that there is sufficient evidence to charge the Petitioner. The matter is now in the hands of the 5th Respondent, which is legally seized of the matter, to hear the evidence and reach a conclusion.

The Petitioner will have the opportunity to raise the issue of the admissibility of the evidence against her and provide explanations as to the money received before the trial Court, whose duty it is to hear the evidence, weigh it, and reach a conclusion on the guilt or otherwise of the accused person before it. As Warsame J (as he then was) held in the case of **Michael Monari & Another vs Commissioner of Police & 3 Others**, Miscellaneous Application No.68 of 2011:

"It is not the duty of the court to go into the merits and demerits of any intended charge to be preferred against any party. It is the function of the court before which the charge shall be placed and which shall conduct the intended trial to determine the veracity and merit of any evidence to be tendered against an accused person. It would be improper for this court to try and/or attempt to determine the intended criminal case which is not before it. There is no evidence to show that the Respondents exceeded jurisdiction, breached rules of natural justice or considered extraneous matters or were actuated by malice in undertaking the investigations against the applicants. The purpose of criminal proceedings is to hear and determine finally whether the accused has engaged in conduct which amounts to an offence and on that account is deserving punishment."

In the circumstances, I find that there is no merit in the petition, and it is hereby dismissed. Each party shall bear their respective costs of the Petition.

Orders accordingly.

Dated Signed and Delivered at Machakos this 15th day of February 2016

P. NYAMWEYA

JUDGE