REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. 251 OF 2015

IN THE MATTER OF THE LAW REFORM ACT (CAP 26) SECTIONS 8 & 9

IN THE MATTER OF REGISTRATION OF PERSONS ACT CAP 407

IN THE MATTER OF ARTICLE 12 & 47 OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF REFUGEE ACT 13 OF 2006

BETWEEN

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

AND

PRINCIPAL REGISTRAR OF PERSONS.....1ST RESPONDENT

COMMISSIONER FOR REFUGEE AFFAIRS.....2ND RESPONDENT

EX-PARTE: SUADA DAHIR HUSSEIN

JUDGEMENT

Introduction

1. By a Motion on Notice dated 12th August, 2015, the *ex parte* applicant herein, **Suada Dahir Hussein**, sought the following orders:

> **1. An order of Mandamus compelling the 1st Respondent to issue the Ex Parte Applicant with a National Identity Card and the 2nd Respondent to deregister the Ex Parte Applicant as a Refugee.**
>
> **2. An order of Certiorari to bring to the High Court for purposes of being quashed the Refugee card issued by the 2nd Respondent.**
>
> **3. An order of Prohibition prohibiting the Respondent, their officers, agents, servants and any other person under their authority from harassing, intimidating or seeking any**

favours from the Ex Parte Applicant.

4. **The costs of this application be provided for.**

<u>The Applicant's Case</u>

2.It was the Applicant's case that she is a Kenyan citizen by birth having been born in the year 1992 to Dhahir Hussein Ibrahim (deceased) and Fatuma Hassan Ali, as her father and mother respectively, both of whom were/are Kenyan citizens. According to her, she was born in Hubsey Location and brought up in Wajir Town before she later in the year 2009 came to Nairobi with assistance of her uncle one Isack Hussein Ibrahim where she eventually settled at Eastleigh Mall near Kenya Bus Garage with one of her relatives.

3.When in the year 2012, she turned 18 years of age, she was advised to go where she was born for purpose of applying for a National Identity Card and on 5th June 2012 at the Registrar of Persons Office, Wajir District within Wajir County, she applied for an Identity Card whereby she was issued with an application for registration acknowledgment Serial Number 2318/06314 and advised to wait for the processing of the card. However while carrying out her normal business of selling tea to customers at Eastleigh 12th Street, she was arrested and later charged in Chief Magistrate's Criminal Case No. 1313 of 2012 *Republic vs. Suada Dhahir Hussein* for false representation contrary to the provisions of the *Registration of Persons Act* Cap 107 Laws of Kenya and being unlawfully in Kenya contrary to the *Kenyan Citizen and Immigration Act No. 12 of 2011* upon being found with a UNHCR card which formed the basis that having full registered as a refugee she could not be a Kenyan Citizen. She was however acquitted under section 21 of the *Criminal Procedure Code* as the prosecution was unable to prove that she was not a Kenyan Citizen.

4.According to the *ex parte* applicant, she was misled into registering as a refugee at the UNHCR offices in order to qualify for refugee status so that she would get European Citizenship.

5.The *ex parte* applicant averred that despite making efforts to be issued a National Identity Card by the Respondents, the Respondents had refused to deregister her as a refugee and issue her with a National Identity Card, which actions, in her view, are *ultra vires* their powers, erroneous in law, in bad faith, tantamount to abuse of power, irrational, biased, illegal, oppressive and are against her legitimate expectation.

6.The applicant contended that lack of the National Identity Card has and continues to expose her to harassment, intimidation and threats of arrest by employees and or agents of the respondents which acts she was seeking to be restrained by this Court.

7.It was submitted on behalf of the ex parte applicant that pursuant to Article 12(1) of the Constitution, all Kenyan citizens are entitled to the rights privileges and benefits of citizenship subject to the limits provided or permitted by the Constitution and a Kenyan passport and any documents of registration or identification issued by the State to citizens. One such right, it was submitted is the right to be issued with any documents of registration or identification issued by the State to citizens.

8.It was therefore submitted that the Government is under a Constitutional and statutory duty to register all its citizens and issue them with registration or identification. The applicant submitted that the 1st Respondent therefore ought to perform his statutory duty and register any applicant who presents himself/herself for purposes of registration for issuance of an identity card if the applicant meets the conditions set.

9.It was contended by the Applicant that the process of determining her suitability to apply for the identity card having been completed, and without any evidence of further investigation having been carried out, the 1st Respondent has no justification to deny her the identity card.

10.Based on Republic vs. Cabinet Secretary for Ministry of Interior and Coordination of National Government & Ors Ex Parte Patricia Olga Howson, Miscellaneous Application No. 324 of 2013, the applicant submitted that a delay of three years in making a determination on her application was unreasonable in terms of Article 47 of the Constitution.

Respondents' Case

11. In response to the application, the 1st Respondent filed the following grounds of opposition:

> **1. That Judicial Review cannot be used to curtail public bodies from the lawful exercise of power within their statutory mandate.**
>
> **2. That the application has no merit and is based on baseless allegations and hearsay.**
>
> **3. That the application is misconception of the law, vexatious and an abuse of the court process thus should be dismissed with costs to the respondents.**

12. The 1st Respondent submitted that he were unable to process the applicant's application for issuance of a National Identity Card as it was discovered that the applicant had already been registered and issued with a refugee identity card when she applied for the said National Identity Card. To the 1st Respondent, the applicant may have committed a criminal offence when she registered as a refugee.
13. In his view, their actions were in accordance with the relevant law. While acknowledging that under Article 12(1)(b) every Kenyan citizen is entitled to a Kenyan passport and any document of registration or certification issued by the State, it was contended that the said documents may be denied, suspended or confiscated in accordance with an Act of Parliament.
14. According to the 1st Respondent though under section 8(1) of the ***Registration of Persons Act***, they are entitled to demand proof of information applicants, the applicant herein did not comply with the same before being issued with the ID Card.
15. The 1st Respondent asserted that it must take due diligence while executing their statutory mandate in the spirit of promoting and safeguarding national security and interests hence all citizens must comply with all requirements before being issued with an ID Card. In the Respondents' case in the proceedings of this nature the Court does not deal with the merits but with the process. They therefore urged the Court to dismiss the application with costs based on the authority of **Githua, J** in **Republic vs. Commissioner of Customs Services ex parte Africa K-Link International Limited Nairobi HC Misc. JR No. 157 of 2012 [2012] eKLR**.

Determination

16. The scope of the judicial review remedies of *Certiorari*, *Mandamus* and Prohibition was the subject of the Court of Appeal decision in **Kenya National Examinations Council vs. Republic *Ex parte* Geoffrey Gathenji Njoroge Civil Appeal No. 266 of 1996** in which the said Court held *inter alia* as follows:

> **"Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision…Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings…The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy**

the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way…These principles mean that an order of *mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done…Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the present appeal the respondents did not apply for an order of *certiorari* and that is all the court wants to say on that aspect of the matter."

17. Article 12 of the Constitution provides:

(1) Every citizen is entitled to—

(a) the rights, privileges and benefits of citizenship, subject to the limits provided or permitted by this Constitution; and

(b) a Kenyan passport and any document of registration or identification issued by the State to citizens.

(2) A passport or other document referred to in clause (1) (b) may be denied, suspended or confiscated only in accordance with an Act of Parliament that satisfies the criteria mentioned in Article 24.

18. It is therefore clear every Kenyan Citizen is entitled to a Kenyan passport and any document of registration or identification and once a person proves that he or she is a Kenyan citizen the State is under a Constitutional obligation to issue him or her with the said documents free of charge unless the limitations contemplated in Article 24 of the Constitution apply. To do otherwise would amount to a violation of the person's constitutional rights by the State. However once a person proves that he or she is entitled to issuance of the said documents, Article 24(3) of the Constitution provides that:

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

73. What this provision means is that with respect to legislative provisions limiting or are intended to limit fundamental rights and freedoms, there is no presumption of constitutionality: they must meet the criteria set in the said Article. In determining the said criteria the guidelines or principles were set in **Lyomoki and Others vs. Attorney General [2005] 2 EA 127** where the Constitutional Court of Uganda held that:

i. **The onus is on the petitioners to show a *prima facie* case of violation of their constitutional rights.**

ii. **Thereafter the burden shifts to the respondent to justify that the limitations to the rights contained in the impugned statute is justified within the meaning of Article 43 of the Constitution. Both purposes and effect of an impugned legislation are relevant in the determination of its constitutionality.**
iii. **The constitution is to be looked at as a whole. It has to be read as an integrated whole with no particular provision destroying another but each supporting the other. All provisions concerning an issue should be considered together so as to give effect to the purpose of the instrument.**
iv. **Where human rights provisions conflict with other provisions of the Constitution, human rights provisions take precedence and interpretation should favour enjoyment of the human rights and freedoms.**

19. The same position was adopted in **Institute of Social Accountability & Another vs. National Assembly & 4 Others High Court Petition No. 71 of 2014 [2015] eKLR**.
20. This position is justified on the basis that fundamental human rights recognised under the Constitution, it must be emphasised, are not given by the State since human rights are generally universal and inalienable rights of human beings. A Constitution simply recognises the natural and original human rights of mankind which any and every human being should have in order to lead a dignified life till his natural death. That a distinction exists between rights and restrictions was appreciated by **Nyamu, J** (as he then was) in **Kenya Bus Services Ltd & 2 Others vs. Attorney General [2005] 1 KLR 787** when he expressed himself as follows:

"The only difference between rights and the restrictions are that the restrictions can be challenged on the grounds of reasonableness, democratic practice, proportionality and the society's values and morals including economic and social conditions etc. whereas rights are to the spiritual, God given, and inalienable and to the non-believers changeless and the eighth wonder of the World."

21. In this case the applicant has exhibited documents issued by agents of the State itself acknowledging that the applicant had applied for issuance of the National Identity Card. That acknowledgement is dated 5th June, 2012, nearly 4 years ago. The 1st Respondent has not sworn any affidavit justifying their delay in processing the applicant's application. Instead the 1st Respondent has attempted to justify their inaction by way of evidence from the bar in the form of submissions. With due respect this will not do where a person claims that her fundamental rights have been violated since the burden is upon the 1st Respondent to justify their action.
22. Article 47 of the same Constitution which provides:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

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

23. The foregoing provision deals with "every person" other than every citizen. Accordingly the applicant whether or not a citizen of Kenya is entitled to the protection of her rights enshrined in Article 47 of the Constitution. This position was confirmed by Nyamu, J (as he then was) in Republic vs. Minister For Home Affairs and Others Ex Parte Sitamze Nairobi HCCC No. 1652 of 2004 [2008] 2 EA 323 in which he expressed himself as follows:

"Although the applicant as a foreigner may not have the same standing as the Kenyan Citizens in respect of some of the rights in the Constitution, section 74(1) is available to protect the applicant because it applies to all persons and it echoes human rights which are recognised by all modern and democratic societies and Kenya is one of such states. Further, the provisions of section 74(1) of the Constitution of Kenya are echoed in article 7 of the International Covenant on Civil and Political Rights, 1966, (ICCPR) which states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or

punishment. The Kenyan provision applies to all persons and not only to citizens. Therefore the applicant has a right as a foreigner not to be subjected to torture, inhuman or degrading treatment or punishment both under the Constitution and also under the said ICCPR. The right cut across board, and it is inherent in mankind. However, the applicant must demonstrate that section 74(1) has been infringed in relation to him and onus of doing so is purely on him. Although his right under the said section is guaranteed, evidence must be availed to the Court to determine if there is any infringement."

24. To drive the point home I wish to refer to **Karua vs. Radio Africa Limited T/A Kiss Fm Station and Others Nairobi HCCC No. 288 of 2004 [2006] 2 EA 117; [2006] 2 KLR 375** in which it was held:

"The right to protection of law under section 70 of the Constitution has been accorded to every person. The Constitution gives equal protection in relation to enjoyment of fundamental rights and freedoms and it is only where a right or freedom has permissible limitations when the court is called upon to consider competing values and interests such as necessity of limitation, reasonableness, whether reasonably justifiable in a democratic society, proportionality (whether the means justify the end)…Except where there are limitations clearly set out in the Constitution or any written law made pursuant to the Constitution a court of law cannot impose a limitation to the enjoyment of the right at all. Even when there is a specific limitation to the enjoyment of a right or freedom such a limitation is designed to ensure that the enjoyment of those rights and freedoms by an individual does not prejudice the rights and freedoms of others or the public interest. Thus, the limitations are aimed at ensuring that the rights and freedoms are equally enjoyed and the enjoyment achieves common good and also exercised responsibly so as to achieve the equilibrium and an orderly society…The fundamental rights and freedoms have over the years acquired an international dimension which can nolonger be ignored by the municipal courts and courts should therefore recognise that there is international public law dimension to the Chapter 5 rights and freedoms and also that the interpretation should also be guided by the underlying purpose of the right and freedom…One of the principles in the case concerning reasonableness of the limitation is that the interest underlying the limitation must be of sufficient importance to outweigh the constitutionally protected right and the means must be proportional to the object of limitation. Since what is at stake is the limitation of fundamental rights, that must mean the legislative objective of the limitation law must be motivated by substantial as opposed to trivial concerns and directed towards goals in harmony with the values underlying a democratic society…The rights of each person are limited by the rights of other, by the security of all, and by the just demands of the general welfare in a democratic society."

25. It follows and I so hold that the applicant herein is entitled to the rights enshrined in Article 47 of the Constitution. *Prima facie* a delay of more than three years in processing an application for National Identity Card, in my view amounts to inordinate and unreasonable delay. It must always be remembered that the delay in processing such an application deprives the applicant from the enjoyment of certain rights conferred upon citizens hence there ought not to be an undue delay in processing such applications. To sit on an application for National Identity Card for such a long period in my view cannot be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors. Such a delay in my view amounts to an implied unjustifiable limitation on the fundamental rights and freedoms of a person which calls for action by this Court.
26. I associate myself with the position adopted in **Masalu and Others vs. Attorney General [2005] 2 EA 165** that:

"The Constitution has to be given a generous, rather than a legalistic, interpretation aimed at fulfilling the purpose of the guarantee and securing the individual's the full benefit of the instrument. Both the purpose and the effect of the legislation must be given effect to and this is the generous and purpose construction... A Judge has to pass between the Government

and the man whom the Government is prosecuting; between the most powerful individual in the community and the poorest and the most unpopular. It is of the last importance, that in the exercise of these duties he should observe the utmost fairness. The judicial department comes home in its effects to every man's side; it passes on his property, his reputation, his life, his all. It is to the last degree important that he should be rendered perfectly and completely independent with nothing to influence or control him but God and his conscience. The greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent Judiciary."

27. The purpose of judicial review is to check that public bodies do not exceed their jurisdiction and carry out their duties in a manner that is detrimental to the public at large. It is meant to uplift the quality of public decision making, and thereby ensure for the citizen civilised governance, by holding the public authority to the limit defined by the law. Judicial review is therefore an important control, ventilating a host of varied types of problems. The focus of cases may range from matters of grave public concern to those of acute personal interest; from general policy to individualised discretion; from social controversy to commercial self-interest; and anything in between. As a result, judicial review has significantly improved the quality of decision making. It has done this by upholding the values of fairness, reasonableness and objectivity in the conduct of management of public affairs. It has also restrained or curbed arbitrariness, checked abuse of power and has generally enhanced the rule of law in government business and other public entities. Seen from the above standpoint it is a sufficient tool in causing the body in question to remain accountable.
28. Judicial review is a constitutional supervision of public authorities involving a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view of forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational, or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or through a failure for any reason to take into account a relevant matter, or through the taking into account of an irrelevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. While the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies, it is perfectly clear that in a case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence. See **Reid vs. Secretary of State for Scotland [1999] 2 AC 512.**
29. Whereas it is appreciated that under Article 12(2) of the Constitution, a passport or other document of registration or identification may be denied, suspended or confiscated in accordance with an Act of Parliament that satisfies the criteria mentioned in Article 24, it is upon the 1st Respondent to prove that there in fact exist such an Act and that the circumstances and conditions set out under the Act militate against the issuance of the said document. In this case, there is no attempt to show that this is the case by way of acceptable evidence.
30. For public authorities to sit on a person's application to be allowed to meaningfully exercise his or her fundamental rights, in my view would fall foul of Article 47 of the Constitution and amount to an abuse of power. As was held in **Keroche Industries Limited vs. Kenya Revenue Authority & 5 Others Nairobi HCMA No. 743 of 2006 [2007] KLR 240**,while citing **Reg vs. Secretary of State for the Environment Ex Parte NottinghamShire Country Council [1986] AC:**

"A power which is abused should be treated as a power which has not been lawfully exercised…Thus the courts role cannot be put in a straight jacket. The courts task is not to interfere or impede executive activity or interfere with policy concerns, but to reconcile and keep in balance, in the interest of fairness, the public authorities need to initiate or respond to change with the legitimate interests or expectation of citizens or strangers who have relied, and have been justified in relying on a current policy or an extant promise. As held in *ex parte Unilever Plc* (*supra*) the Court is there to ensure that the power to make and alter

policy is not abused by unfairly frustrating legitimate individual expectations. It is no defence for a public body to say that it is in this case rational to change the tariffs so as to enhance public revenue. The change of policy on such an issue must a pass a much higher test than that of rationality from the standpoint of the public body. The unfairness and arbitrariness in the case before me is so clear and patent as to amount to abuse of power which in turn calls upon the courts intervention in judicial review. A public authority must not be allowed by the court to get away with illogical, immoral or an act with conspicuous unfairness as has happened in this matter, and in so acting abuse its powers. In this connection Lord Scarman put the need for the courts intervention beyond doubt in the *ex-parte Preston* where he stated the principle of intervention in these terms: "I must make clear my view that the principle of fairness has an important place in the law of judicial review: and that in an appropriate case, it is a ground upon which the court can intervene to quash a decision made by a public officer or authority in purported exercise of a power conferred by law." The same principle was affirmed by the same Judge in the House of Lords in *Reg vs. Inland Revenue Commissioners, ex-parte National Federation of Self Employed and Small Business Ltd [1982] AC 617* that a claim for judicial review may arise where the Commissioners have failed to discharge their statutory duty to an individual or have abused their powers or acted outside them and also that unfairness in the purported exercise of a power can be such that it is an abuse or excess of power. In other words it is unimportant whether the unfairness is analytically within or beyond the power conferred by law: on either view, judicial review must reach it. Lord Templeman reached the same decision in the same case in those helpful words: "Judicial review is available where a decision making authority exceeds its powers, commits an error of law commits a breach of natural justice reaches a decision which no reasonable tribunal could have reached or abuses its powers." Abuse of power includes the use of power for a collateral purpose, as set out in *ex-parte Preston,* reneging without adequate justification on an otherwise lawful decision, on a lawful promise or practice adopted towards a limited number of individuals. I further find as in the case of *R (Bibi) vs. Newham London Borough Council [2001] EWCA 607, [2002] WLR 237*, that failure to consider a legitimate expectation is a failure to consider a relevant consideration and this would in turn call for the courts intervention in assuming jurisdiction and giving the necessary relief."

31. From the submissions filed on behalf of the Respondents, the 1st Respondent seems to be contented with the position that since the applicant applied for refugee status, she might have committed a criminal offence. However attempts to charge the applicant with a criminal offence seems to have hit the wall and the 1st Respondent seems to have resigned to the position that there was nothing else he could do. In those circumstances it is clear that the 1st Respondent has no justification for not processing the applicant's application for National Identity Card.
32. Section 6(4) of the ***Fair Administrative Action Act***, 2015 provides that:

"if an administrator fails to furnish the applicant with the reasons for the administrative decision or action, the administrative action or decision shall, in any proceedings for review of such action or decision and in the absence of proof to the contrary, be presumed to have been taken without good reason."

33. This was the position adopted by **Simpson, J** (as he then was) in **Re Hardial Singh and Others [1979] KLR 18; [1976-80] 1 KLR 1090** where he held that in the ordinary way and particularly in cases, which affect life, liberty or property, the concerned authority should give reasons and if he gives none the court may infer that he had no good reasons. Similarly where the reason given is not one of the reasons on which the he is lawfully and justifiably entitled to rely, the Court is entitled to intervene since such action would then be based an irrelevant matter.
34. In this case the 1st, Respondent had an opportunity of justifying its actions but they have failed to do so. In the premises I find that the applicant's application is merited.

Order

35.Consequently I grant the following orders:

1. **An order of Certiorari is hereby issued bring into this Court for purposes of being quashed the decision by the 2nd Respondent to issue the applicant with a Refugee card which decision is hereby quashed.**
2. **An order of Mandamus is hereby issued compelling the 1st Respondent to issue the Ex Parte Applicant with a National Identity Card and the 2nd Respondent to deregister the Ex Parte Applicant as a Refugee.**
3. **An order of Prohibition prohibiting the Respondents, their officers, agents, servants and any other person under their authority from harassing, intimidating or seeking any favours from the Ex Parte Applicant based on her citizenship status.**
4. **Considering the ex parte applicant's conduct of registering as a refugee which conduct may have contributed to the Respondents' decision there will be no order as to costs.**

Dated at Nairobi this 19th day of May, 2016

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Anyoka for the Applicant

Mr Kioko for the Respondent

Cc Mutisya