



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
MISCELLANEOUS CIVIL APPLICATION NO 246 OF 2016

IN THE MATTER OF APPLICATION BY

- 1. JOHN KAHARE.....1ST TENANT/APPLICANT**
- 2. JAMES GACHANJA.....2ND TENANT/APPLICANT**
- 3. CHARLES NJ.....3RD TENANT/APPLICANT**
- 4. PETER MWANGI.....4TH TENANT/APPLICANT**
- 5. ELIUDGITHAIGA.....5TH TENANT/APPLICANT**
- 6. PAUL NYOIKE.....6TH TENANT/APPLICANT**

FOR LEAVE TO COMMENCE PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES AND SECTION 8 AND 9 OF THE LAW REFORM ACT

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN, THE BUSINESS PREMISES RENT TRIBUNAL....1ST RESPONDENT

INTERFINA LIMITED.....2ND RESPONDENT

RULING

Introduction

1. On 31st May, 2016, this Court granted leave to the applicants herein to apply for judicial review for the following orders:

i. An order of certiorari to remove into this honourable court and quash the decision of the 1st respondent or officers subordinate to him and or their agents and or servants from evicting the applicants from the premises known as plot number 209/668/Nairobi.

ii. An order of prohibition directed at the 2nd respondent in person or through officers subordinate to it, be prohibited from interfering in any manner whatsoever with the applicants business on plot number 209/668/Nairobi

iii. An order of mandamus directed at the 2nd respondent, in person or through its subordinate to compel it to issue a rent book to the applicants and recognize them as its protected tenants

2. The applicants also sought for and was granted an order that the grant of leave herein do operate as a stay of the order of the orders of the business premises rent tribunal dated 27th May, 2016.

3. According to the applicants, they have all been tenants in the premises known as Interfina House, Ronald Ngala/Tom Mboya junction, plot number 209/688 Nairobi for more than 5 years in which they all pay rents of Kshs 30,000/- monthly and are upto date with the rental payments and are not in breach of terms and conditions of tenancy. The said rents, according to them are paid directly to the account of the 2nd respondent at Diamond Trust Bank A/C No. 0105808003 and that they give the deposit slip to the landlord.

4. The applicants disclosed that they are all businessmen carrying out various businesses in the premises including electrical shops, M-pesa, rental and hardware's and have heavily invested in these businesses and further employed other persons who are dependent on these businesses. However, as a result of verbal threats by the landlord to evict them from the subject premises, they we filed a reference at the Business Premises Rent Tribunal No. 114/16 Nairobi objecting to the same and upon hearing the application, the honourable chairperson of the business premises rent tribunal on 27th May, 2016 delivered a ruling dismissing their application stating that the same lacked merit as the applicants were not tenants of the 2nd respondent.

5. The applicants however asserted that they were tenants of the 2nd respondent paying monthly rents as evidenced by deposit receipts confirming that they were up todate in their rental payments. In the applicants' view, they were protected tenants hence did not need to have a written lease as proof of rental payments was sufficient.

6. It was averred by the applicants that orders of the honourable chairperson of the business premises rent tribunal of 27th May, 2016 had exposed their businesses to dangers as they stood to be evicted anytime and incur great losses and damages. The applicants contended that it was unjust to evict them without notice as envisaged by the provisions of section 4 of Chapter 301 of the Laws of Kenya.

7. The applicants contended that the said orders of the honourable chairperson were unfair and unconstitutional as they exposed their property in the subject premises to wastage and dissipation by 2nd respondent. Further, they termed the said orders as unfair, unjust and illegal in that they permitted their eviction without a relevant notice as envisaged by section 4 of Chapter 301 of the Laws of Kenya. The said orders, it was contended were in breach of the principles of natural justice as they were made without due regard to relevant considerations, are oppressive unjust and unfair.

2nd Respondent's Application

8. Being unhappy with the said orders, the 2nd Respondent filed an application dated 13th June, 2016 in which they sought the following orders:

i. The orders issued on the 31st May 2016 granting leave to the exparte applicants to apply for

orders of certiorari, prohibition and mandamus be set aside.

ii. The orders issued on 31st May 2016 granting leave to the ex parte applicants to apply for orders of certiorari, prohibition and mandamus and such leave to operate as a stay from eviction be set aside.

iii. Costs be in the cause.

9. According to the 2nd Respondent, the genesis of this matter was that on 30th July, 2015, the company (the 2nd respondent) gave one **James Nganga Nene** a notice of its intention not to renew a lease for 5 years 6 months which was expiring on 30th October, 2015. Subsequently, **James Nganga Nene** filed a complaint at the BPRT being BPRT Case No. 796 of 2015 where he obtained orders allowing him occupation pending the hearing of the complaint. This complaint, it was averred was filed after the lease had expired on 2nd November, claiming that he had become a protected tenant. It was disclosed that the 2nd respondent entered into a lease agreement with **Joseph Ngugi Nganga** which was to commence on 1st November, 2016. However **Joseph Ngugi Nganga** was unable to take possession due to various cases as enumerated herein below.

a. That current applicants armed with court, order in BPRT Case NO. 796 of 2015 invaded the 2nd respondent's premises where they forcibly occupied the same with the help of the police where the said Joseph Ngugi Mungai had initiated renovations in readiness to take possession

b. It is averred that the ex parte applicants gained possession on 4/11/2015 by aid of the tribunal order in 796 of 2015 at the insistence of the said James Nene who is not a party to these proceedings.

c. After several hearings at various seats of the tribunal being Embu, Eldoret, Nyeri and Mombasa and hearing oral evidence, together with cross examinations, the tribunal painstakingly came to a finding that there existed no controlled tenancy relationship as per the provisions of section 2 of Cap 301 as the lease was for a period of over 5 years. The decision was rendered on 26th January, 2016.

d. On the same day, the 26th November, 2016, the ex parte applicants approached the honourable tribunal and without disclosing the existence of BPRT No. 796 of 2015 obtained ex parte orders barring interference of their "tenancy".

e. The honourable tribunal issued the orders on 26th November, 2016, the same date it issued a ruling in BPRT No. 796 of 2015.

f. The 2nd respondent approached the court and filed an application premised on material non disclosure by the ex parte applicants of the relevant facts and the tribunal on 28th January, 2016 set aside the aforesaid orders on the ground of concealment in tribunal Case No. 114 of 2016.

g. However, the tribunal gave directions that the complaint be heard and all parties were directed to file all the papers and after the hearing on 5/2/2016, rendered its decision on 27/5/2016 and found that the imposter tenants who invaded the premises on 4/11/2015 and who had filed a complaint on 26/1/2016 had no landlord and tenant relationship with the 2nd respondent.

10. To the 2nd respondent had the ex parte applicant's disclosed their facts to the Court, no leave and stay could have been granted to institute the proceedings.

11. The 2nd respondent disclosed that as the tribunal under section 12 has no power to order eviction, the company has been forced to file in the High Court an eviction suit to legally get possession. However, there is no eviction order from the tribunal and none is envisaged as aforesaid. In its view, these

proceedings are premised on the misapprehension of the law, are obtained by concealment of material facts to obtain certain result from the Court and that is to create a tenancy through the back door under all means.

12. According to the 2nd Respondent, there is no notice under Cap 301 required for trespassers such as the ex parte applicants.

Applicants' Response to the 2nd Respondent's application

13. In their response to the application, the applicants averred that while filing the application dated 31/5/2016 and the notice of motion dated 3/6/2016, they were candidly disclosed all material facts to this Court.

14. According to them, they have been in the 2nd respondent's premises at Interfina House, as tenants and not hooligans and or trespassers for more than five (5) years now and that if they were hooligans and or trespassers the 2nd respondent should have made a report to any police station or authority which he has never done to date. In their view, the orders of the business premises rent tribunal effectively gave way for the eviction of the applicants. To them, it is therefore clear that from the 2nd respondent that they do acknowledge that the applicants are in possession of the premises and that they want the applicants evicted therefrom based on the orders obtained from the business premises rent tribunal.

15. The applicants averred that they were never part and parties of the case at the tribunal in business premises rent tribunal case No. 796 of 2015 James Nganga Nene vs. Interfina Limited & Anor. and were never served with any documents in respect of the said matter. Accordingly, not having been parties in business premises rent tribunal case no 796 of 2015, the respondent would not have expected them to know the going in this matter. They also denied the allegation that their advocates in the said matter N.A. Owino & Co. Advocates appeared for any party in the said case. The applicants averred that having been in occupation of the said premises for a period of over five years it was only fair and just that the landlord serves them with a notice to terminate tenancy as provided by the provisions of section 4 of Chapter 301 of the laws of Kenya before obtaining adverse orders against them.

16. The applicants reiterated that the orders of the tribunal dated 30/5/2016 which declared that there was no landlord/tenant relationship between them and the 2nd respondent were wrongly and unconstitutionally arrived at because.

- a. The 2nd respondent does admit that we are in possession of two shops of the premises.
- b. The exhibited rental receipts to show that we are lawfully in occupation of the subject premises.
- c. The allegation by the 2nd respondent that they looked for his account and started depositing monthly rents is dishonest as he never instructed his bank to refuse to collect our rents nor has he reported or complained to any authority for the last five (5) years during which period we have been in occupation
- d. The said orders had the direct effect of allowing the 2nd respondent to effectively evict them from the subject premises without due notice and this is the reasons why the 2nd respondent has filed eviction in high court ELC No. 641 of 2016 against us.
- e. That the said orders have opened their businesses to interference, damages and loses and that is why the 2nd respondent deposes that he has already leased the premises which the applicants are still occupying.
- f. That the said orders of the tribunal are in gross violation of the Article 40 of the Kenya constitution 2010 that protects personal property in that it exposes their business property to

dissipation and losses.

g. That the said orders of the tribunal are and were unconstitutional as they have interfered with their rights to have a quiet and peaceful atmosphere to undertake their businesses and therefore investment.

h. That the said orders were in breach of the provisions of Chapter 301 of the Laws of Kenya which Act was brought into being to protect tenants against the oppression and manipulation of greedy dishonest landlords

17. The applicants therefore asserted that when they filed their application for judicial review, they disclosed all material facts at their disposal to this honourable court and never duped the court and or intended to abuse the process of this Court.

18. The applicants asserted that the matter at tribunal was a complaint and the ruling having been delivered, cannot be a subject of appeal but can only be a subject of judicial review hence our application. In their view, they have a constitutional and legal right to file the judicial review in this court having been aggrieved by the orders of the business premises rent tribunal delivered on the 30/5/2016 against them. To them, they are not interested in the ownership of the property the subject of this matter but we are interested in the protection of their rights as tenants in the subject premises.

Determination

19. I have considered the issues raised herein.

20. That this Court has jurisdiction to set aside leave and/or stay granted in judicial review proceedings is not in doubt. The Court of Appeal made this clear in **R vs. Communications Commission of Kenya & 2 Others ex Parte East Africa Televisions Network Ltd. Civil Appeal No. 175 of 2000 [2001] KLR 82; [2001] 1 EA 199** where it held:

“Leave should be granted if, on the material available, the Court considers, without going into the matter in depth, that there is an arguable case for granting leave. The appropriate procedure for challenging such leave subsequently is by an application by the Respondent under the inherent jurisdiction of the Court, to the Judge who granted leave to set it aside.”

See also **Njuguna vs. Minister for Agriculture Civil Appeal No. 144 of 2000 [2000] 1 EA 184.**

21. That the Court has jurisdiction to set aside stay while leaving the leave intact was appreciated in **Republic vs. Kenya Anti-Corruption Commission & Another Ex Parte Crossley Holdings Ltd Kisumu HCMCA No. 12 of 2010** where the Court expressed itself as follows:

“The stay order is provisional and therefore reviewable prior to the hearing and disposal of the substantive application. Under the provisions of the Law Reform Act Cap 26, sections 8 and 9 and under Order 53 Rule (1)(4), the High Court has jurisdiction to review, vary, discharge or set aside orders of stay granted under subrule (4) and an aggrieved party has the option of returning to the Judge who issued the orders or to file an appeal to the Court of Appeal.”

22. In my view, even where the Court grants orders of stay under the aforesaid provision, it has wide powers to do so on such terms as are just including the period for which the stay is to last. This Court has similarly held that as opposed to the grant of leave which a party is entitled once a *prima facie* case disclosing grounds for judicial review are established, the grant of direction that the leave operate as a stay is an exercise of judicial discretion which must be based on the prevailing circumstances. It may be granted at any stage of the proceedings and may similarly be varied, set aside or vacated all together depending on the circumstances of the case. It follows that an application for stay of the proceedings or decision in question can be made at any stage of the proceedings in a judicial review application as the

determination of an application for stay must necessarily depend on the prevailing circumstances and where the circumstances change, the court is perfectly entitled to grant stay. In other words a decision made with respect to stay is not necessarily caught up by the doctrine of *res judicata* though the same may amount to an abuse of the process of the court if made with the intention of overturning an earlier decision or as a means of haranguing the court.

23. However as was expressed in **Nakumatt Holdings Limited vs. Commissioner of Value Added Tax [2011] eKLR:**

“Although leave granted *ex parte* can be set aside on an application, that is a very limited jurisdiction and will obviously be exercised very sparingly and on very clear cut cases unless it be contended that judges of the Superior Court grant leave as a matter of course which is not correct. Unless the case is an obvious one, such as where an order of *certiorari* is being sought and it is clear to the court that the decision sought to be quashed was made more than six months prior to the application coming to court and there is, therefore, no prospects at all of success, the court would discourage practitioners from routinely following the grant of leave with application to set aside. Fortunately such applications are rare and like the Judges in the United Kingdom, the court would also point out that the mere fact that an applicant may in the end have great difficulties in proving his case is no basis for setting aside leave already granted.”

24. Similar sentiments were expressed by the same Court in **Aga Khan Education Service Kenya vs. Republic & Others Civil Appeal Number 257 of 2003, the Cort of Appeal** where the court pointed out that:

“We would, however, caution practitioners that even though leave granted *ex parte* can be set aside on an application, that is a very limited jurisdiction and will obviously be exercised very sparingly and on very clear-cut cases, unless it be contended that judges of the superior court grant leave as a matter of course. We do not think that is correct. Unless the case is an obvious one, such as where an order of *certiorari* is being sought and it is clear to the court that the decision sought to be quashed was made more than six months prior to the applicant coming to court, and there is, therefore, no prospects at all of success, we would ourselves discourage practitioners from routinely following the grant of leave with applications to set leave aside. Fortunately such applications are rare and like the judges in the United Kingdom, we would also point out that the mere fact that an applicant may in the end have great difficulties in proving his case is no basis for setting aside leave already granted.”

25. On what amounts to material facts it was held in **Brink's MAT Ltd vs. Elcombe [1988] 3 All ER CA 188** that:

“...The material facts are those which it is material for the judge to know in dealing with the application as made; materiality is to be decided by the court and not by the assessment of the applicant or his legal advisers...”

26. This position as appreciated by Ibrahim, J (as he then was) in **Republic vs. Kenya National Federation of Co-Operatives Limited ex Parte Communications Commission of Kenya [2005] 1 KLR 242** where he held:

“The requirement of full and frank disclosures by applicants in judicial review is the same as in injunction applications. There is no criteria for lowering of standards in the said statements. It does not matter the type of case or matter, once a matter is before the Court in the absence of another or other parties (*ex parte*) the duty of full and frank disclosures are imposed on applicants and the standard must always be fairly high considering the authorities. The rule of the court requiring *uberima fides* on the part of an applicant for an *ex parte* injunction applies equally to the case of an application for the rule *nisi* for a writ of prohibition and if there is suppression of material facts by the applicant, the Court would

refuse a writ of prohibition without going into the merits of the case. It is the duty of a party asking for an injunction to bring under the notice of the court all the facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts, which he has omitted to bring forward. Every fact must be stated, or even if there is evidence enough to sustain the injunction, it will be dissolved. If the applicant does not act with *uberima fides* and put every material fact before the court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted, but that he must come again on a fresh application. Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant and once that confidence is undermined, he is lost. The court must insist on strict compliance with the rules pertaining to non-disclosure to afford protection to the absent parties at the *ex parte* stage... An applicant and its counsel are required to carry out a diligent inquiry on all the facts including the applicable law before making an *ex parte* application and it is the duty of an applicant to inquire as to whether there exists an alternative remedy... It is of fundamental importance that applications for judicial review should be made with full disclosure of all material available to the claimant. This is a case which I can properly use in order to send a message to those who are making applications to this court reminding them of their duty to make full disclosure; failure to do so will result, in appropriate cases, in the discretion of the Court being exercised against (a claimant) in relation to the grant of (a remedy).”

27. Where the Court finds that its process is being abused, it has the inherent power to terminate the proceedings without going to the merits of the case. This position was appreciated by **Kimaru, J** in **Stephen Somek Takwenyi & Another vs. David Mbutia Githare & 2 Others Nairobi (Milimani) HCCC No. 363 of 2009** where he expressed himself as follows:

“This is a power inherent in the court, but one which should only be used in cases which bring conviction to the mind of the court that it has been deceived. The court has an inherent jurisdiction to preserve the integrity of the judicial process. When the matter is expressed in negative tenor it is said that there is inherent power to prevent abuse of the process of the court. In the civilised legal process it is the machinery used in the courts of law to vindicate a man’s rights or to enforce his duties. It can be used properly but can also be used improperly, and so abused. An instance of this is when it is diverted from its proper purpose, and is used with some ulterior motive for some collateral one or to gain some collateral advantage, which the law does not recognise as a legitimate use of the process. But the circumstances in which abuse of the process can arise are varied and incapable of exhaustive listing. Sometimes it can be shown by the very steps taken and sometimes on the extrinsic evidence only. But if and when it is shown to have happened, it would be wrong to allow the misuse of that process to continue. Rules of court may and usually do provide for its frustration in some instances. Others attract *res judicata* rule. But apart from and independent of these there is the inherent jurisdiction of every court of justice to prevent an abuse of its process and its duty to intervene and stop the proceedings, or put an end to it”.

28. Similarly **Kimaru, J** in **Rev. Madara Evans Okanga Dondo vs. Housing Finance Company of Kenya Nakuru HCCC No. 262 of 2005** held:

“The court will always invoke its inherent jurisdiction to prevent the abuse of the due process of the court. The jurisdiction of the court, which is comprised within the term “inherent”, is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of the substantive law; it is exercisable by summary process, without plenary trial, it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of the court. The inherent jurisdiction of the court enables the court to exercise control over process by

regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process. In sum, it may be said that the inherent jurisdiction of the court is virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.”

29. What then should the Court do when at *inter partes* hearing it turns out that the applicant did not disclose material facts? It is trite that where a party, at the *ex parte* stage of an application fails to disclose relevant material to court and thus obtains an order from the court by disguise or camouflage the court will set aside the *ex parte* orders so obtained. This was the position adopted in Hussein Ali & 4 Others vs. Commissioner of Lands, Lands Registrar & 7 Others (2013) eKLR where it was held that:

“It is well settled that a person who makes an *ex-parte* Application to court, that is to say in the absence of the person who will be affected by that which the court is asked to do is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage by him. That is perfectly plain and requires no authority to justify it.”

30. See also R vs. Kensington Income Tax Commissioners, ex p. Princess Edmond de Polignac [1917] 1 KB 486 and The Owners of the Motor Vessel “Lilian S” vs. Caltex Oil (Kenya) Limited C.A. No. 50 of 1989 .

31. In Uhuru Highway Development Ltd vs. Central Bank of Kenya & 2 Others Civil Application No. Nai. 140 of 1995, it was held that if the Court finds at the time of *inter-partes* hearing that there was lack of disclosure at the time of *ex-parte* application it should strike out the application. In Margaret Nduati & Another vs. Housing Finance Company of Kenya Nairobi (Milimani) HCCC No. 307 of 2001 it was held that a person who makes an *ex parte* application to the Court is under an obligation to the Court to make the fullest possible disclosure of material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceeding and he will be deprived of any advantage he may have already obtained by means of the order, which has thus wrongly been obtained by him.

32. In Johnson Kimeli vs. Barclays Bank of Kenya Ltd. Kisumu HCCC No. 171 of 2003, it was held that:

“Where the plaintiff is seeking an equitable remedy he must show a good account of himself for the Court would be reluctant to extend its hand to a person with dirty and unclean hands for he would soil the hands of justice. Secondly a Court would not allow a person to benefit from his own wrong for that would amount to judicial treason...The failure to make a candid disclosure of all material and essential facts would militate against the person concealing that evidence or facts from the Court...There is an obligation upon a person seeking an equitable remedy of injunction to make full disclosure and to show expression of good faith... The courts would be strict on non-disclosure of material facts by a party seeking an *ex parte* order more so when he has obtained the orders by concealing important material from the Court at the first instance.”

33. For a party to fail to disclose material facts or to disclose them in such a way as to mislead the court as to the true facts, amounts to abuse of the Court process and the court ought, for its own protection and to prevent an abuse of the process, to refuse to proceed any further with the examination of the merits.

34. I have considered the affidavits on record and I am not convinced that the applicants, based on the same, as opposed to the submissions made before this Court, set out to present their case in such a way as to mislead the Court into granting the leave sought herein. I therefore decline to set aside the leave

granted herein as I am convinced that the relevant material was disclosed.

35. However, it does not follow that where leave is merited a stay must necessarily be granted. As was held in **Taib A. Taib vs. The Minister for Local Government & Others Mombasa HCMISCA. No. 158 of 2006** the purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made. In other words, stay is meant to prohibit the continuation of the decision making process where the process is still ongoing. Where however the decision has been made, the implementation thereof can still be stayed where the same is yet to be implemented.

36. Order 53 rule 1(4) of the ***Civil Procedure Rules*** provides:

The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise.

37. In my view “proceedings in question” refer to the proceedings in respect of which leave is sought. In this case, the proceedings in question are the proceedings of the Tribunal made on 27th May, 2016 in Case No. 114 of 2016. On that day the Tribunal found that there was no landlord tenant relationship between the applicants and the respondent and proceeded to strike out the application and references dated 26th January, 2016 as incompetent. Consequently, the orders issued in respect of the *status quo* were vacated.

38. It is therefore clear that the Tribunal did not grant any positive orders which the 2nd Respondent is implementing in order to invite stay orders. The effect of the grant of the stay in the manner sought would be to revive the order of *status quo* which was not the substantive order but just a consequential order which was unnecessary once the case was struck out. In other words, once the case was struck out, apart from the costs there were no pending proceedings or an action to be taken pursuant thereto for which stay can be granted.

39. Although the applicants contend that the case was a complaint and no appeal lies therefrom, from the order it is clear that it was in fact a reference. In my view the best shot would have been to file an appeal and seek orders of injunction rather than stay. In the premises the order of stay granted herein on 31st May, 2016 is hereby vacated and set aside.

40. The costs of this application will be in cause. It is so ordered.

Dated at Nairobi this 8th day August, 2016

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Juma for Mrs Owino for the Applicant

Mr Muturi for the 2nd Respondent

Cc Mwangi