



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION**  
**JR MISC CIVIL APPLICATION NO. 271 OF 2016**

**IN THE MATTER OF: ENFORCEMENT NOTICE UNDER PHYSICAL PLANNING ACT  
LAWS OF KENYA IN RESPECT OF A BOUNDARY WALL ERECTED ON PLOT  
NAIROBI/BLOCK 91/159 GIGIRI**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**NAIROBI CITY COUNTY .....RESPONDENT**

**AND**

**PAUL OWARO .....INTERESTED PARTY**

**EX PARTE: GLOBE DEVELOPERS LIMITED**

**JUDGEMENT**

**Introduction**

1. In these proceedings, the applicant herein, **Globe Developers Limited**, seeks the following orders:

- 1. An order of Prohibition do issue against the Respondent by their agents, employees, servants or officers prohibiting him from demolishing the Applicants Boundary wall erected on PLOT NAIROBI/BLOCK 91/159 GIGIRI.**
- 2. That the Respondent does pay monetary compensation to the Applicant for damages incurred from demolition of the boundary wall on PLOT NAIROBI/BLOCK 91/159 GIGIRI.**
- 3. The costs of this application.**

**Ex Parte Applicant's Case**

2. According to the Applicant, it is the ex parte applicant is the owner of Plot Nairobi/Block 91/159 Gigiri (hereinafter referred to as "the sit property") while the interested party is his immediate neighbour.

Pursuant to the heavy rains which occurred on or about the month of April and May 2016, a part of the boundary wall on the suit property bordering the side of the interested party's land was destroyed by the rains and pursuant to this the officers of the respondent placed X markings on part of the wall near where the wall had collapsed and on the main gate.

3. On or about the 10<sup>th</sup> May, 2016 the ex parte applicant procured a license to repair the said boundary and subsequently, the ex parte applicant begun repairing the boundary wall thereon, with the approval of the Nairobi County, who had been duly notified of the ex parte Applicant's intention. However, the interested party wrote a letter to the Chief Manager of Planning in Nairobi County complaining about the collapse of the wall and how it had occasioned loss. On the 19<sup>th</sup> June, 2016, the officer's from the respondent began demolishing the wall and brought down the gate without having served on the ex parte applicant a requisite notice as required by law. They further demolished part of the wall which was not marked X despite the fact that the applicants were in process of repairing the same.

4. It was therefore the applicant's contention that it was denied an opportunity to be informed of reasons for the destruction of its property and it incurred heavy losses. To it, this went against the Rules of Natural Justice as it is a gross abuse of its right of property, economic rights and the right to fair administrative action.

5. As a result of the foregoing, the applicant's tenant had threatened to vacate the property which would affect the applicant's economic rights.

6. It was contended by the applicant that the said action was taken for the benefit of the interested party for extraneous purposes and that the said administrative action is unlawful, excessive, without any legal or logical basis and unreasonable. Further, the said action is *ultra vires* and a breach of the rules of natural justice and fair administrative action and had exposed the applicant to irreparable loss hence ought to be compensated therefor.

7. It was averred that the said demolition was not concluded because there were cars parked near the walls, and the applicant was apprehensive that the respondent would demolish the remaining part of wall to the applicant's further detriment.

### **Respondent's Case**

8. In opposition to the application, the Respondent averred that the application is premature, misconceived and bad in law as the applicants had not complied with section 13(1) of the ***Physical Planning Act*** Cap 286 Laws of Kenya which requires that any person aggrieved by a decision of the director concerning any physical development plan or matters connected therewith may within sixty days of receipt by him of notice of such decision, appeal to the respective liaison committee in writing against the decision in such manner as may be prescribed.

9. It was contended that the subject matter relates to a development which lacks approvals from the respondent as required by the law. It was therefore the Respondent's position that the applicant's suit is hopelessly misconceived, frivolous, totally devoid of merit and mala fides for the reason *inter alia*, that the plaintiffs/applicants followed the wrong procedure in that it should have instituted an appeal in the liaison committee hence this Court has no jurisdiction to grant the orders prayed for in the application dated 22<sup>nd</sup> June, 2016.

10. It was averred that immediately after the wall collapsed on the suit property, the respondent visited the site and found that the said development lacks proper approvals from the respondent as required by the law. It further found that the developments therein, a garage, posed danger to a residential development on one side and that further collapse of the wall would injure people in the vicinity and the occupants of the subject plot therefore, an enforcement notice was issued to have the subject wall marked for demolition. According to the Respondent, it was a stranger to the alleged approval referred to by the applicants, but averred that a renovation letter was granted for the repair of the collapsed wall, a departure from the enforcement notice and intended enforcement action.

11. It was disclosed that upon the expiry of the enforcement notice the respondent began to demolish the same but the applicant started rebuilding it and that upon the commencement of the reconstruction by the applicants, the respondent visited the subject plot on 24<sup>th</sup> June, 2016 and requested for approved architectural drawings and structural designs for the construction works but the applicant only showed resistance towards the respondents officers and failed to produce any of the aforementioned approvals. The respondent's position was that section 30(3) of the **Physical Planning Act** makes any development without the respondent's approval illegal and any dealings regarding the development is null and void hence the applicant cannot found a cause of action when it is in clear breach of the law.

12. It was the respondent's case that it gave the applicant reasons for its decision of issuing the enforcement order being the absence of the respondents' authority which need to be obtained for any development within its jurisdiction. It asserted that it is authorized by the law under sections 29 and 30 of the **Physical Planning Act** to regulate use and development of land buildings within its jurisdiction hence the actions of the respondent is within the confines of the law. To it, section 38 of the **Physical Planning Act** empowers the respondent to issue an enforcement notice which will be effectual after the expiration of such period as may be specified in the notice. Therefore, the respondent followed the right procedures by the law.

13. The respondent's case was that the grant of orders sought in this application would greatly prejudice the respondent who is mandated by law to regulate any physical planning and developments within its jurisdiction pursuant to section 29 of the **Physical planning Act**. It was the respondent's assertion that the essence of an approval is a wider public interest to regulate an orderly development in the society.

14. This Court was therefore urged not to grant the orders sought herein as the applicant had not adduced any or any cogent evidence to demonstrate to this honourable court that the construction of the boundary wall has been approved neither has it demonstrate that substantial difficulties would be encountered if the said enforcement notice is enforced.

#### **Interested Party's Case.**

15. According to the interested party, the applicant's suit property and the interested party's residential property share common boundary. However, the applicant unlawfully operates a motor vehicle repair garage in the said property located in a residential area under the name of Wheeler Auto Garage.

16. The interested party asserted that contrary to the applicant's claim the wall separating their respective properties was not demolished by the respondent but fell on account of poor workmanship and that the wall facing the road and not the boundary was demolished pursuant to an enforcement notice and not in pursuance of his complaint which complaint was addressed to the applicant and not the respondent.

17. The interested party disclosed that he was aware that on or about 14<sup>th</sup> January, 2010 the respondent issued the applicant with an enforcement notice in respect of the boundary wall requiring stoppage of construction of the said wall, removal of the said wall, submission of building plans and obtaining of approval by Nairobi City County and thereafter proceeded to put demolition mark on the boundary wall.

18. The interested party disclosed that the issue of the applicant's wall has been a subject matter at the public complaints committee of the National Environment Authority (NEMA) which committee in its report dated 20<sup>th</sup> March, 2013 acknowledged issuance of the Enforcement Notice to the applicant and the need to acquire change of user and approval of building plans of the boundary wall subject matter of the suit and in an undated letter in response to the interested party's letter dated 25<sup>th</sup> May, 2016 the applicant acknowledged inconvenience and damage to the interested party's property by the fall of the applicant's wall and as reparation to the destruction caused by the wall the applicant promised to repair the wall on both fronts without additional costs to the interested party.

19. The interested party averred that the fall of the common boundary wall has caused damage to his hedge grass and plants which loss is estimated at Kshs 800,000/= and has also compelled him to seek security to safeguard his compound and thereby incur an expense of Kshs 400,000/= in terms thereof

which loss is solely attributed to the applicant's conduct of neglecting to abide by provisions of the ***Physical Planning Act***.

20. It was therefore the interested party's case that the application lacks merit for the following reasons:-

- a. The said wall was built without approval of building plans by Nairobi City County.
- b. Contrary to the applicant's allegation an Enforcement notice as provided in the Physical Planning Act was duly issued and served upon the applicant.
- c. The wall complained of was built in contravention of the enforcement notice and is therefore a product of illegality *ab initio*.
- d. The applicant has never challenged the issuance of the enforcement notice.
- e. To date the applicant is yet to comply with the requirements contained in the enforcement notice.
- f. The applicant's current predicament including falling of the wall is the unfortunate end result of the applicant's failure to comply with the provisions of Physical Planning Act which require buildings plans and sites to be approved by the regulatory body for safety purposes.
- g. In the absence of compliance or appeal against the enforcement notice the respondent was at liberty to enter upon the suit land and take those measures required by the enforcement notice as provided by Section 39(1) of the Physical Planning Act.
- h. There are alternative remedies under the Physical Planning Act which are equally convenient beneficial and effective to the applicant and which the applicant has failed to exhaust.
- i. The respondent acted in strict compliance with the provisions of the Fair Administrative Action Act.

21. To the interested party, the prayer for damages for the loss allegedly suffered by the applicant lacks merit as the court in an application under judicial review is only concerned with the merit of decision making process as opposed to the rightfulness or otherwise of the decision.

### **Applicant's rejoinder**

22. In its rejoinder, the applicant averred that subsequent to the grant of leave to institute these proceedings and the order of stay which was duly served on the Respondent, on 1<sup>st</sup> July, 2016, a letter was received from an official of the respondent dated 23<sup>rd</sup> June, 2016, purportedly cancelling the authority to repair the boundary wall. However, the applicant was never notified of this cancellation, neither was it invited to voice its opinion on the matter. There is no reason given in the letter as to why the repairs on the boundary wall should be stopped notwithstanding the fact that to fail to repair the wall and to replace the gate torn down by the agents of the respondent grossly affects the security at the site. To the applicant, this letter is in bad faith and is meant to mislead this honourable court into failing to give the orders which have been sought.

23. It was further averred that the loss that the company has suffered owing to the destruction of the wall and main gate is about Kshs 5,000,000/= only being security costs, loss of business, construction of a temporary *mabati* structure and demolition costs. To the applicant, the arguments raised in the affidavit sworn on behalf of the respondent is misleading and factually incorrect for the following reasons:-

- a. Since there was no enforcement notice served upon the applicant, section 13(1) of the Physical Planning Act Cap 286 Laws of Kenya would only come into play upon receipt thereof.
- b. The respondent does admit to granting the renovation approvals. That the departure from the

grant of the renovation approval can be attributed to a failure of the respondent to follow set down procedure.

c. There being no enforcement notice the respondent had no right to demolish the applicant's boundary wall.

d. While the respondent is authorized by law to regulate the use and development of land within its jurisdiction, the respondent did not follow the law as it had already granted prior approval for the construction and repair of the boundary wall.

e. The previous owner of the property had applied for development permission and a change of user from residential to commercial from the Ministry of Lands and Settlement and the Nairobi City Council (now defunct), the predecessor of the respondent. Both approvals were given.

f. The respondent also approved the architectural drawings of the garage which is currently on the premises.

g. The applicant also sought further approval of architectural plans in 2007 when some further changes were done on the premises which architectural drawings clearly show the perimeter wall and the function of the property.

h. Currently all that was to be done on the premises was to repair a wall demolished by the heavy rains as no new structures were being put in place and that was why the renovation authority was granted. It is therefore fallacious and in bad faith for the respondent to insinuate that approved architectural drawings and structural designs or a lack thereof is what caused the respondent to demolish the boundary wall.

24. In response to the interested party's averments, the applicant responded as follows:-

a. The interested party lends credence to my averment that the respondent demolished the wall at paragraph 3(d)

b. The respondent did issue the premises owner with an enforcement notice in 14<sup>th</sup> January, 2010 and the premises owner of the property sought to repair the existing wall which approval was granted on 15<sup>th</sup> January, 2010.

c. The recommendations of the Public Complaints committee were adhered to. The applicant has no knowledge of the letter dated 25/5/16.

d. in response to the demand for incurred expenses by the interested party, the collapse of the wall was an act of God caused by heavy rains and it is therefore not liable to compensate the interested party.

25. According to the applicant, neither the interested party nor the respondent have shown evidence of the enforcement notice which the respondent purportedly relied on when they demolished the applicant's boundary wall and there being no enforcement notice the applicant could not engage the Liaison Committee.

26. It was therefore contended that this application is the most appropriate forum.

### **Determinations**

27. I have considered the application, the affidavits filed in support of and in opposition to the application as well as the submissions made.

28. Although the parties herein made extensive reference to several issues surrounding this dispute, the

real issue for determination before this Court is whether the action of the Respondent was procedural.

29. Section 38 of the **Physical Planning Act**, Cap 286 Laws of Kenya provides as follows:

***(1) When it comes to the notice of a local authority that the development of land has been or is being carried out after the commencement of this Act without the required development permission having been obtained, or that any of the conditions of a development permission granted under this Act has not been complied with, the local authority may serve an enforcement notice on the owner, occupier or developer of the land.***

***(2) An enforcement notice shall specify the development alleged to have been carried out without development permission, or the conditions of the development permission alleged to have been contravened and such measures as may be required to be taken within the period specified in the notice to restore the land to its original condition before the development took place, or for securing compliance with those conditions, as the case may be, and in particular such enforcement notice may require the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities.***

***(3) Unless an appeal has been lodged under subsection (4) an enforcement notice shall take effect after the expiration of such period as may be specified in the notice.***

***(4) If a person on whom an enforcement notice has been served under subsection (1) is aggrieved by the notice the may within the period specified in the notice appeal to the relevant liaison committee under section 13.***

30. It is clear from the foregoing and in particular section 38(4) that the right of appeal to the Liaison Committee only accrues upon service of the enforcement notice. Accordingly where no such notice is served the alternative remedy of challenging the decision by the Respondent is non-existent and hence the applicant cannot be driven from the seat of justice on the basis of the existence of such alternative remedy. In **Republic vs. National Environment Management Authority [2011] eKLR**, the Court of Appeal had this to say at page 15 and 16 of its judgment:

**“ ...in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it.”**

31. In my view, whereas the availability of an alternative remedy is a factor to be taken into consideration, the Court ought not, in its decision to sanitise a patently illegal action on the basis that there is a right of appeal provided by the statute where such a right is less convenient, effective and beneficial. In this case the circumstances of the dispute render such an option a mirage. Therefore if there is no dispute resolution mechanism covering the circumstances of the case, to send the applicant away on a wild goose chase of a non-existent remedy would be absurd. Where the purported alternative remedy leaves an aggrieved party with no effective remedy or at all, such remedy is no remedy at all. I reiterate that where a remedy provided under the Act is made illusory with the result that it is practically a mirage, the Court will not shirk from its Constitutional mandate to ensure that the provisions of Article 50(1) are attained with respect to ensuring that a person’s right to have any dispute that can be resolved by the application of law is decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body, is achieved.

32. In this case I am not satisfied that the remedy of appeal is available to the applicant if it is proved that it was in fact not served with the enforcement notice and to that issue I now turn.

33. The applicant’s case is that following heavy rains which destroyed part of its boundary wall on or

about the 10<sup>th</sup> May, 2016 the ex parte applicant procured a license to repair the same and subsequently embarked on the process of repairing the boundary wall thereon, having obtained the approval from the Respondent. However, on the strength of a letter written by the interested party, the Respondent on the 19<sup>th</sup> June, 2016, began demolishing the wall and brought down the gate without having served on the ex parte applicant a requisite notice as required by law.

34. On its part, the Respondent's position is that immediately after the wall collapsed on the suit property, the respondent visited the site and found that the said development lacked proper approvals from the respondent as required by the law. It further found that the developments therein, a garage, posed danger to a residential development on one side and that further collapse of the wall would injure people in the vicinity and the occupants of the subject plot. Therefore, an enforcement notice was issued to have the subject wall marked for demolition. According to the Respondent, the renovation letter granted for the repair of the collapsed wall was a departure from the enforcement notice and intended enforcement action.

35. The Respondent has however not exhibited the alleged enforcement notice issued subsequent to the collapse of the wall. As was appreciated by this Court in High Court Miscellaneous Application No. 267 of 2014 – **Republic vs. Public Procurement Administrative Review Board & 3 Others**:

**“The applicant having denied notification, it was upon the Procuring Entity to prove on the standard of balance of probability that the applicant was duly notified of the decision of the Procuring Entity. To contend that the applicant ought to have adduced evidence from its computer that it did not receive the notification would not only amount to shifting the onus of proof but to compel the applicant to prove a negative. I appreciate that under Section 107(1) of the Evidence Act, Cap 80 Laws of Kenya, “whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.” I also appreciate the legal maxim that *omnia praesumuntur legitime facta donec probetur in contrarium* (all things are presumed to have been legitimately done, until the contrary is proved). However, as was held by Seaton, JSC in the Uganda Case of J K Patel vs. Spear Motors Ltd SCCA No. 4 of 1991:**

**“The proving of a negative task is always difficult and often impossible, and would be a most exceptional burden to impose upon a litigant. The burden of proof in any particular case depends on circumstances in which the claim arises. In general the rule which applies is *ei qui affirmat not ei qui negat incumbit probatio*. It is an ancient rule founded on considerations of good sense and it should not be departed from without strong reasons...As applied to judicial proceedings the phrase “burden of proof” has two distinct and frequently confused meanings, (1) the burden of proof as a matter of law and pleading – the burden, as it has been called, of establishing a case, whether by preponderance of evidence, or beyond reasonable doubt; and (2) the burden of proof in the sense of adducing evidence...The *onus probandi* rests, before evidence is gone into, upon the party asserting the affirmative of the issue; and it rests, after evidence is gone into, upon the party against whom the tribunal, at the time the question arises, would give judgement if no further evidence were adduced.” See Constantine Steamship Line Ltd vs. Imperial Smelting Corp [1914] 2 All ER 165 (H.L.); Trevor Price vs. Kelsall [1975] EA 752 at 761; Phipps on Evidence 12<sup>th</sup> Ed Para 91; Phipps At Para 95.**

**Similarly, the Supreme Court of Uganda in Sheikh Ali Senyonga & 7 Others vs. Shaikh Hussein Rajab Kakooza and 6 Others SCCA NO. 9 of 1990 was of the view that the general rule that he who alleges must prove applies and since it was the appellants who were alleging that the fifth appellant was qualified, to hold that the negative must be proved by the respondents would be to impose an unnecessary burden on them.”**

36. In this case since the Respondent was obliged to serve the enforcement notice and since the applicant has averred that no such enforcement notice was served, it was incumbent upon the Respondent to adduce evidence showing when the notification was in fact served. In the absence of such evidence, this Court has no option but to believe the applicant.

37. In my view even if the enforcement notice had been issued, following the respondent's authorisation of the applicant to repair the boundary wall on the suit property vide the letter dated 10<sup>th</sup> May, 2016, the Respondent could not unilaterally withdraw such authorisation without notifying the applicant as the said authorisation created legitimate expectation on the applicant that it was free to proceed with the repairs. As appreciated by **De Smith, Woolf & Jowell**, "*Judicial Review of Administrative Action*" 6<sup>th</sup> Edn. Sweet & Maxwell page 609:

**"A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government's dealings with the public."**

38. According to **R vs. Devon County Council ex parte P Baker [1955] 1 All ER:**

**"...expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness; the law recognises that the interest cannot properly be withdrawn (or denied) without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision."**

39. It follows that the authorisation could only be withdrawn upon the applicant being notified of the intention to do so and being afforded an opportunity to respond to that intention. This was this Court's view in **Republic vs. City Council of Nairobi ex parte North Lake Limited High Court Miscellaneous Application No. 84 of 2011 (JR)** where it held that:

**"a person likely to be affected by an administrative action, in my view, is not necessarily a party to the subject of the transaction...It is settled law that a benefit cannot be withdrawn until the reason for withdrawal has been given and the person concerned has been given an opportunity to comment on the reason."**

40. Following the grant of leave herein and stay the Respondent vide its letter dated 23<sup>rd</sup> June, 2016 once more unilaterally purported to withdraw the said authorisation. With due respect this was a most callous action on the part of a public authority. As is appreciated by **Prof Sir William Wade** in his work *Administrative Law*:

**"The powers of public authorities are...essentially different from those of private persons. A man making his will, may subject to any right of his dependants dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law, this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land...regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion, is inappropriate to a public authority which possesses powers solely in order that it may use them for the public good. But for public bodies the rule is opposite and so of another character altogether. It is that any action to be taken must be justified by positive law. A public body has no heritage of legal rights which it enjoys for its own sake, at every turn, all of its dealings constitute the fulfilment of duties which it owes to others; indeed, it exists for no other purpose...But in every such instance and no doubt many others where a public body asserts claims or defences in court, it does so, if it acts in good faith, only to vindicate the better performances of the duties for whose merit it exists. It is in this sense that it has no rights of its own, no axe to grind beyond its public responsibility; a responsibility which define its purpose and justifies its existence, under our law, that is true of every public body. The rule is necessary in order to protect the people from arbitrary interference by those set in power over them..."**

41. Whereas the interested party relied on an enforcement notice served on 14<sup>th</sup> January, 2010, the applicant stated that the defects mentioned therein were rectified. According to the said notice its effective date was the same day 14<sup>th</sup> January, 2010. In my view for a notice to be deemed to be valid for the purposes of section 38 of the aforesaid Act, it must comply with certain requirements. The notice is required to specify the development alleged to have been carried out without development permission, or the conditions of the development permission alleged to have been contravened; such measures as may be required to be taken within the period specified in the notice to restore the land to its original condition before the development took place, or for securing compliance with those conditions, as the case may be; and may also require the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities. It must also give the applicant reasonable time to comply therewith. A notice which is served to take effect the same day cannot amount to a valid notice. In this respect section 4(3)(a) of the *Fair Administrative Act, 2015* provides:

***Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision prior and adequate notice of the nature and reasons for the proposed administrative action.***

42. Less than one days' notice, assuming that it was directed to the applicant herein, which the notice itself does not indicate to be so, cannot be said to meet the requirements of a valid notice.

43. In the foregoing premises the inescapable conclusion I come to is that the Respondent's decision was tainted with procedural impropriety and further that there is no more convenient, beneficial and effectual remedy available to the applicant.

44. It follows that this application is merited in so far as the orders of judicial review are concerned. With respect to damages, there is no satisfactory material laced before me on the basis of which I can determine the quantum of damages in form of compensation as it is my view that under section 11(1)(j) of the *Fair Administrative Act, 2015*, a judicial review Court can only award compensation and not general damages.

### **Order**

45. In the result the orders which commend themselves to me which I hereby grant is an order of Prohibition against the Respondent by their agents, employees, servants or officers prohibiting them from demolishing the Applicants Boundary wall erected on PLOT NAIROBI/BLOCK 91/159 GIGIRI unless and until the due process of the law is adhered to.

46. The applicant will also have the costs of these proceedings to be borne by the Respondent.

47. It is so ordered.

**Dated at Nairobi this 12<sup>th</sup> day of October, 2016**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

***Mr Osioma for the Applicant***

***Mr Njuguna for the interested party***

**CA Mwangi**