



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISIONS
CIVIL SUIT NO. 222 OF 2014

OLKASASI LIMITED.....APPLICANT

Versus

EQUITY BANK LIMITED.....RESPONDENT

RULING

Restraint of mortgagee's power of sale

[1] The application dated 25th May, 2014 is asking the court to restrain, by way of an injunction, the mortgagee from exercising its power of sale. The facts of the matter are; by a charge dated 20th September 2011, the Respondent advanced a loan of **Kshs. 5,600,000/-** to Unique Distributors Kenya Limited, (hereinafter the borrower). The loan was secured by a legal charge on the Applicant's property known as KAJIADO/KITENGELA/27303 (hereinafter "the suit property"). On or about November 2013 the Applicant received a notice of exercise of statutory power of sale from the Respondent. But, despite what the Applicants called best effort to ensure that the borrower complied with the terms of the loan facility, the borrower failed and or neglected to pay. As a result of the default, on 25th March, 2014 the Applicant was served with a Notification of Sale of the Applicant's suit property by Keysian auctioneers setting the sale of the suit property w to be on 30th May 2014

Undisputed facts and law

[2] Parties filed elaborate submissions. From the arguments thereof, there are matters which are not in dispute. One, the Applicant is the registered owner of the charged property and a guarantor of the Loan advanced to the Borrower, i.e. **M/S Unique Distributors Kenya Limited**. The Applicant admits that, despite best efforts by the Applicant to ensure repayment of the loan, the Borrower has persistently remained in default of the repayment of the loans advanced to it by the Respondent. Similarly, it is not in dispute that the Applicant's property is being sold upon the terms of the guarantee for loan and charge created thereof. Nobody has any quarrel with the course taken by the Respondent, because in law the Lender has right to proceed against a Guarantor on the guarantee. A guarantee constitutes a separate contract from the borrower's simple contract for loan and the liability of a Guarantor is separate from that of the Borrower; it arises upon the default by the Borrower to fulfil the terms of the contract for loan. The Guarantor is, therefore, sued and liable on the guarantee. Except, however, where the guarantee is also given in form of a charge on immovable property of the Guarantor, the guarantor will benefit from certain provisions of the law available to a chargor; I have in mind the Land Act and the Auctioneers Act. Do

keep at the back of your mind the provisions in section 96 and 97 of the Land Act as well as rule 15 of the Auctioneers Rules. I will, however, discuss this aspect fully in the discourse that will ensue in the contested issue formulated below.

[3] The Second issue which is not in dispute is that, the Applicant agrees that the Respondent is entitled to exercise its statutory power of sale of the suit property, except subject to the laws of the land. This statement opens a discussion on the real issue in dispute.

Issues in dispute

[4] The only quarrel the Applicant has fastened is that, in the exercise of the power of sale, the Respondent did not comply with law in two respects. First, they alleged that section 97(2) of the Land Act No. 6 of 2012 was not complied with. The Respondent did not discharge the duty of care under section 97(2) of the Land Act to undertake valuation of the suit property in order to obtain the best market value of the suit property. Second, in the absence of a Notice to sell under section 96(2) of the Land Act, the scheduled sale of the suit property is illegal. Similarly, under this issue, the Applicant argued that, the Notification of sale was invalid having been issued absent the Notice to sell the charged property under section 96(2) of the Land Act.

Forced valuation

[5] The Applicant submitted that after the Notification of sale by Keysian Auctioneers was served on the Applicant on 25th March 2014, it wrote to the Respondent through a letter dated 15th May 2014 requesting the Respondent to undertake valuation before the sale of the suit property on 30th May 2014 and avail a copy of the said valuation to him so as to be aware of the current market value of the suit property. The letter is *exhibit SM- 5*. The Applicant alleged that the Respondent did not respond to the said letter in spite of receiving it. This failure forced the Applicant to seek protection from this Honourable Court through this suit which it filed on 27th May, 2014.

[6] The Applicant was concerned that only an incomplete valuation report was attached to the Respondent's replying affidavit deposed by John Njenga on 5th June 2014 and marked as JN-13. They say that the said valuation report does not contain comparable, encumbrances, services, where the suit property is located and all other essential things a valuation report should contain. The Applicant finds it curious that the Respondent's Valuer states that they inspected the suit property on 16th May 2014 and submitted the report on 19th May 2014. Yet, the suit property was advertised on 7th May 2014 in the Daily Nations as per the Respondent's exhibit JN -12. The Applicant complained also that, although the Respondent admitted it received the said valuation report on 19th May 2014, as at the date of instituting this suit the Respondent had not supplied/ or informed the Applicant of the alleged valuation carried out. The Applicant saw this as a deliberate act to conceal the report. Moreover, the Applicant says that the valuation by the Respondent was a total undervaluation of the market value and forced sale valuation of the property. These shortcomings prompted the Applicant to commission its own valuation on the suit property.

[7] The Applicant urged that the Court has now been presented with two diverse valuation reports over the same property. The Respondent's report, which is dated 19th May 2014 valuing the suit property at:-

1. ***Open market value of Kshs. 35, 000,000/-,***
2. ***Mortgage value of Kshs. 28, 000,000/- and***
3. ***Forced sale value of Kshs. 26,250,000/-.***

And the Applicant's own independent valuation annexed in the further affidavit sworn by Simon Mukiri on 21st July 2014 valuing the suit property as follows:-

1. Open market value at Kshs. 60,000,000/-,

2. Mortgage Value at Kshs. 48,000,000/- and

3. Forced sale value at Kshs. 45,000,000/-.

The Applicant is convinced that, the presence of the two diverse reports make it absolutely necessary for the court to determine the current market value of the suit property. Also, according to the Applicant, their report show that the Respondent has grossly undervalued the property at Kshs. 26,250,000/- for purposes of disposing of the same by public auction. The Applicant contends that “to allow the Respondent to dispose of the property at the said gross undervalue of Kshs. 26,250,000/- would result in injustice to the Applicant and the same would amount to an illegality as the power of sale would have been exercised capriciously and maliciously to the detriment of the Applicant. The Applicant confessed that it is well aware that once the Respondent has undertaken a forced sale valuation, the burden shifts to the Applicant to prove that the value arrived at by the Respondent's Valuer was not the best price reasonably obtainable at the time. They stated that it is standard valuation procedures that valuation methodology is mainly by sales comparison, the developments thereon and distance from the road. The first valuation of the suit property was done on 9th April, 2011 by the said Zenith Valuers. As at the said date the forced sale value was Kshs. 11,200,000/-. But, since then major developments on the environ have made the prices of land on nearby properties to sky rocket and the main reason being that African Nazarene University was built 3km away from the suit property. According to newspaper cuttings at page 16 and 17 of the further affidavit show that an acre of land around the locality of the suit property is Kshs. 8,400,000/-, and those further interior than the suit property from the main road are being sold at Kshs. 5,950,000/- per acre. Also plots adjacent to the suit property measuring 50 by 100 are being sold at Kshs.1, 200,000/-. The suit property is 10 acres and it's open market value would be 85,000,000/- if subdivided but because the same is valued as a single block the Applicant's Valuer valued it at Kshs.60,000,000/-.

[8] Furthermore, the Applicant asserted that the valuation report by the Respondent does not have fundamental information to wit, the date of inspection, whether the valuers examined the survey maps to satisfy the identity and location of the property, the acreage to which the valuation report refers, the environs and neighborhood so as to have comparable, the current market condition etc. As such the Respondent's valuation report does not meet the threshold of a valuation report to be relied upon by this Honourable Court.

The Respondent's view on forced valuation

[9] The arguments by the Respondent on valuation take quite an opposite coordinate from that by the Applicant. They stated that they complied with Section 97(2) the Land Act which provides as follows:

“A Chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.”

They said that they undertook a valuation of the suit premises as demonstrated in the Replying Affidavit at paragraph 20. The Respondent instructed the firm of Ultimate Valuers Limited to carry out a valuation of the Suit Premises for purposes of the auction which was scheduled for 30th May 2014. The Valuation Report (“*JN 13*”) was finalized by Ultimate Valuers Limited and is dated 19th May 2014 after a site visit on 16th May 2014. The Report states as follows in the relevant portion:

“...subject to our terms of reference, limiting conditions and general remarks, we value the freehold interest free from all encumbrances, in LR. No. Kajjado/Kitengela/27303 as at today's date as follows:-

1. Open Market Value

Kshs. 35,000,000/=

2. **Mortgage Value** **Kshs. 28,000,000/=**
3. **Forced Sale Value** **Kshs. 26,250,000/=**

[10] They submitted that the valuation undertaken by Zenith (Management) Valuers Limited was done some three years ago as follows:

i. Open market value in the sum of Kshs.16 million; and

ii. Forced sale value in the sum of Kshs.11.2 million.

The Applicant's further valuation report by Standard Property Services dated 14th July 2014 is nearly two months after the Applicant filed the instant suit. The Respondent's undertook valuation of the suit Premises and filed the Valuation Report dated 19th May 2014. The only objection by the Applicant is that the report does not represent the true market value of the suit property. See paragraph 6 of the Further Affidavit of Simon Mukiri sworn on 21st July 2014. Therefore, as long as the Applicant's application for injunction is predicated on the fact that the Respondent allegedly did not carry out a valuation of the Suit Premises as required by statute, it should fail. The court should now determine which valuation report would be of use in the circumstances. They cited the case of **Zum Zum Investment Limited (Supra)** where Justice Kasango tackled similar arguments and also the case of **Palmy Company Limited vs Consolidated Bank of Kenya Limited (2014)eKLR**.

[11] The Respondent submitted that the Applicant has not placed any material before this Honourable Court to demonstrate in any way that the valuation undertaken by the Respondent is an undervaluation. Indeed, this Honourable Court will no doubt take notice that the valuation undertaken by the Applicant was nearly two months after the suit was filed. If the auction were to proceed, the Respondent states that it is aware of the provisions of Section 97(3) that requires it to sell the property at no less than 25% of the forced sale value.

COURT'S DECISION ON FORCED VALUATION

[12] The primary provision on forced valuation is Section 97(1) and (2) of the Land Act No. 6 of 2012. It applies where the charged land is to be sold in the exercise of power of sale or pursuant to an order of the court. The section is clear that it applies even if the chargor is a guarantor of a loan. Section 97(1) and (2) of the Land Act provides as follows;-

(1) A chargee who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the chargor, any guarantor of the whole or any part of the sums advanced to the chargor, any chargee under a subsequent charge or under a lien to obtain the best price reasonably obtainable at the time of sale.

(2) A chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a Valuer.

Purpose of valuation

[13] From the above section two things are clear. The Respondent is under a statutory duty; 1) to ensure that a forced valuation is undertaken by a valuer; and 2) to obtain the best price reasonably obtainable at the time of sale. The arguments presented brings me to the point where I must state, like I have done in other past cases, including **Palmy Company Limited vs Consolidated Bank of Kenya Limited** that:

“The purpose of a valuation under Section 97(2) of the Land Act is twofold. The first one is to obtain the best price reasonably obtainable at the time of the sale, thus protecting the right of the Chargor to property...the second one is to prevent unscrupulous Chargee from selling the charged property at a price which is peppercorn or not comparable to interests in land of the

same character and quality.”

[14] I have examined and carefully considered all the rival arguments on this issue. I take the following view of the matter. The Respondent undertook a valuation of suit property and the report is annexed to the Replying Affidavit. This fact is admitted by the Applicant. The only quarrel the Applicant has fastened upon the said valuation is that it is a gross undervalue of the suit property. The Report shows:-

1. **Open Market Value** **Kshs. 35,000,000/=**
2. **Mortgage Value** **Kshs. 28,000,000/=**
3. **Forced Sale Value** **Kshs. 26,250,000/=**

The one undertaken by the Applicant shows:-

1. **Open market value at Kshs. 60,000,000/-,**
2. **Mortgage Value at Kshs. 48,000,000/- and**
3. **Forced sale value at Kshs. 45,000,000/-.**

The Applicant has annexed newspaper cuttings to show the value of the land in the locality of the suit property is much higher than shown in the Respondent’s valuation. On that basis, the Applicant concluded that the Respondent has grossly undervalued the suit property. I should state here that this question has received sufficient elucidations by this court. I am content to cite the cases of **Zum Zum Investment Limited (Supra)** and **Palmy Company Limited vs Consolidated Bank of Kenya Limited [2014] eKLR**. In the former case, Kasango J stated the following:

In my view, the Applicant has demonstrated satisfactorily why this Court should disregard the Respondent’s valuation report and only rely on the Applicant’s valuation reports. It is not sufficient for the Applicant to merely claim that the intended selling price is not the best price obtainable at the time by producing a counter-valuation report. The Applicant must satisfactorily demonstrate why the valuation report that the Respondent intends to rely on in disposing of the suit property does not give the best price obtainable at the material time.

Kasango J went ahead to state:

The Applicant needs to show, for instance, that the Respondent’s valuer is not qualified or competent to carry out the valuation, or that the valuation was carried out in consideration of irrelevant factors or that the valuation was done before the time of the intended sale. The Applicant has not raised any of such grounds.

In the latter case of **Palmy Company Limited vs Consolidated Bank of Kenya Limited** this Court stated as follows:

“The onus of establishing on prima facie basis, that the Applicant’s right has been infringed by the Respondent by failing to discharge the duty of care under section 97(1) of the Land Act lies on the Applicant.”

And went on to state that:

“The court needs cogent evidence and material in order to say that prima facie, there has been an undervaluation of the suit property which is an infringement of section 97(2) of the Land Act by the Respondent as to entitle the court to call for an explanation or rebuttal from the Respondent.”

[15] The Applicant has not offered sufficient evidence to show that the valuation is a complete undervaluation of the suit property. The Report was done by a Valuer whose competence has not been questioned. The newspaper cuttings are not the kind of evidence that would disapprove a valuation by a professional Valuer. It is not even a medium to interrogate the market price. It should be known that, the fact that the latest valuation by the Applicant places a valuation which is significantly higher than that by the Valuer appointed by the Bank does not mean the Respondent undervalued the suit property. The Report must be dislodged on real items, terms and legal parameters which are acceptable in the practice and profession of Valuers. There is no evidence of that caliber here and, therefore, the arguments by the Applicant that the Respondent failed to discharge the duty of care under section 97 do not hold sway. I dismiss it. Except, depending on the result of the analysis by the Court of the other issue on Notices, I will revisit the issue on valuation of the suit property for purposes of sale as shall be directed by the Court.

Notices: To sell, Redemption and Notification of sale

[16] The Applicant argued that whereas it was served with a copy of the Statutory Notice under section 90 of the Land Act, it was not served with a Notice to Sell the Charged Property under section 96(2) of the Land Act. On that basis, the Redemption Notice and Notification of Sale issued by the auctioneer are invalid. The Applicant does not deny having been served and received a notification of sale and a cover letter therein titled *"sale in exercise of statutory power of sale"* on 25th March 2014 together with a notification of sale by Keysian Auctioneers. Except, they faulted the notification of sale by citing Section 96(2) of the Land Act which provides that:-

"Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell."

[17] The Respondent insisted that they issued all the relevant Notices under the law including the Notice to sell under section 96(2) of the Land Act. The Respondent argued that, in accordance with the terms of the First Legal Charge (See annexure **"JN3"** of the Replying Affidavit), the Respondent issued on 10th October 2013 a ninety (90) days' notice to the Applicant and the Borrower that if the account was not regularized and the outstanding amount in the sum of Kshs.3,936,130.53 only paid as demanded, then it would exercise its statutory power of selling the Suit Premises. The notices were posted on 17th October 2013 and would be deemed to have been received seven days after posting. The receipt date is thus 24th October 2014. The notice period lapsed on or about 24th January 2014. But the Applicant and the Borrower persisted in default and the Respondent instructed Keysian Auctioneers to realize the security. The auctioneers issued a forty five (45) days' notice on 7th March 2014 (See annexures **"JN9"** and **"JN10"** of the Replying Affidavit). The notices were posted on 10th March 2014 and were deemed to have been received on 17th March 2014. The auctioneers notices lapsed on or about 1st May 2014. The auctioneers advertised the Suit Premises to be sold at a public auction in the Daily Nation newspaper issue of 7th May 2014. (See annexure **"JN 12"**). The public auction was scheduled for 30th May 2014. The Respondent therefore prays that the application for injunction ought to be dismissed and it be allowed to exercise its statutory power of sale to realize the security.

Court's decision on the Notices

[18] I have perused the record and the Notices issued herein and the chronology thereto. I am of this persuasion. In this case, the notice under section 90 of the Land Act was issued on 13th October 2013 to the Borrower and the Guarantor. I have seen a copy which is in full compliance with the law. But I have not seen any notice under section 96 of the Land Act although the Respondent adamantly stated that it issued it. Section 96 of the Land Act provides as follows:-

Section 96

1. Where a Chargor is in default of the obligations under a charge and remains in default at the

expiry of the time provided for the rectification of that default in the notice served on the Chargor under section 90(1), a Chargee may exercise the power to sell the charged land.

2. Before exercising the power to sell the charged land, the Chargee shall serve on the Chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.

The Notice to sell under section 96(2) of the Land Act is mandatory and is part of the protection of equity of redemption provided in law. I have said before and I will repeat; the notice to sell under section 96(2) of the Land Act should not be fused with the requirements of Rule 15 of the Auctioneers Rules. Rule 15 of the Auctioneers Rules applies to sale by public auction of all immovable properties on instructions by a chargee or in execution of a decree. It is not specially tailored to serve the purposes of and obligations of the chargee in section 96(2) of the Land Act. In relation to charged property, the rule comes into play upon instructions by the Chargee. And, in my view, instructions by the chargee to the auctioneer can only be lawful and valid when they are so transmitted by a chargee who and after has complied with all the requirements under the Land Act. In any case, rule 15 is a subsidiary legislation and cannot override clear provisions or be in lieu of substantive later provisions of the Land Act, to wit, section 96(2). Therefore, I insist on my part that rule 15 of the Auctioneers Rules should augment the provisions of the Land Act rather than derogate from them. The chargor has legitimate expectations on benefit and protection of the law; that the chargor will follow the law and issue the required notices before his land can be sold and his equity of redemption extinguished thereof. As a guarantor and a chargor, the guarantee and power of sale in the charge will be realized only in accordance with the applicable provisions of the Land Act and Auctioneers Act and Rules. And as I have stated, section 96 of the Land Act and the requirements of the Auctioneers Act and Rules will also apply on sale of the suit property which is immovable property. The land laws in Kenya were made in consonance with the demands of the Constitution, and they are a perfect exemplification of the protection of property rights for both the chargor and the chargee. When courts say that one party has infringed the rights of the other, it only vindicates the law. Therefore, I find and hold that failure to issue the notice under section 96(2) of the Land Act is an infringement of a right of the Applicant, and vitiates the scheduled sale of the suit property. This rendition is not, however, a foreclosure on judicial as well as literary debate on this subject; it is a foundational stone on which debate is ignited and more discriminating and robust discourse is encouraged for purposes of jurisprudence building. See the following work of this court and ELC on the subject. In **Malindi ELC Land Case No.1'b' Of 2014 Josiah Kamanja Njenga vs, Housing Finance Corporation of Kenya & Another**, Angote J. stated that:

“Having analyzed the chronology of events, I take the view that the auctioneer's fee is only payable once the bank gives to the auctioneer lawful instructions. Section 96(2) of the Land Act stipulates that the Bank cannot exercise its power to sell the charged property until at least 40 days have lapsed. The Applicant was served with the 40 days' notice on 18th October 2013, which was the fourth day after the posting of the letter dated 10th October, 2013. The letter, according to the documents annexed on the Replying Affidavit, was received by the post master general on 14th October, 2013. It is only after 27th November, 2013, which was the 40th day after 18th October, 2013, when the Applicant is supposed to have been served with the letter, that the 1st Respondent would have instructed the 2nd Respondent to proceed to issue to the Applicant with a notification of sale pursuant to the provisions of Rule 15 of the Auctioneers Rules, 1997 and not earlier than that. Consequently, the letter of instructions dated 14th November, 2013 by the 1st Respondent addressed to the 2nd Respondent instructing it to sell the suit property was prematurely issued and is contra-statute. The said instructions and the subsequent notification of sale by the 2nd Respondent are therefore, prima facie, a nullity and cannot be the basis for the auction which had been scheduled for 26th January, 2014 or the loading of the auctioneer's fees on the Applicant's loan account.”

Gikonyo J in **Palmy Co. Ltd-Vs-Consolidated Bank of Kenya limited (HCCC 527/2013)** held that:-

“The Notice issued on 25th September, 2013 together with a Notification of sale of the same date

by the auctioneer was on the instructions by the Respondent Bank. Both were served and received by the Martin K. Manyara on 25th September, 2013, the Director of the Applicant Company. I think, the Notice to sell the suit premises required under section 96(2) of the Land Act should be seen within the land reforms and the constitutional desire to protect the chargor's right to property by allowing reasonable opportunities to redeem the charged property. Therefore, section 96(2) of the Land Act should be seen in that light and thus, places a separate obligation on the chargee to issue a notice to sell which is quite apart from the obligations placed on the auctioneer under the Auctioneers Act to issue a redemption notice before selling an immovable property on instructions of a chargee or court order. A fusion of the notice under section 96(2) of the Land Act and that under rule 15(d) of the Auctioneers Rules, will not only obfuscate a clear distinction between the two, but will also bear the innuendo of a clog on the equity of redemption of the chargor. Section 96(2) of the Land Act uses specific words...Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form..... Banks should use the prescribed notice under section 96(2) of the Land Act and in the absence of any prescribed form thereto, they should adopt a format which complies with the requirement of section 96(2) of the Land Act. Non-adherence with that section is a matter which would vitiate the Notification for sale or any sale based on the flawed process.”

The upshot

[20] On the basis of the foregoing, the Applicant is entitled to some relief. Violation of section 96(2) of the Land Act is evident; thus, a violation of the Applicant's right. In such situation, an award of damages will never be an alternative or adequate relief. Irreparable damage not compensable in an award of damages will certainly result if the suit property is sold on the basis of notices which fall foul of the law. This is a perfect ground on which the Court should issue an injunction on account that prima facie case has been established in terms of **Giella vs. Cassman Brown & Co. Ltd (1973) EA 358**. It also fits the test in the case of **Mrao Limited V First American Bank Limited & 2 Others, [2003] KLR 125**, where the Court of Appeal defined a prima facie case to mean:-

“...prima facie... in civil cases... is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”“... But as I earlier endeavored to show, and I cite ample authority for it, a prima facie is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case”

But, and the Court has observed this in other cases, that, an injunction which is granted on the ground that the notices issued are not proper or none was issued at all, is not an absolute prohibition; such injunction will only subsist for as long as the Bank has not issued a proper Notice. It follows, therefore, that immediately the Bank herein issues a proper Notice of not less than 40 days under section 96(2) of the Land Act, nothing prevents it from giving instruction to the auctioneer who shall upon those instructions issue the Redemption Notice and Notification of sale as per Rule 15 of the Auctioneers Act, and proceed to sell and conclude a contract of sale of the charged property. And that way, the chargor's equity of redemption will be extinguished in accordance with the law. Accordingly, I issue an injunction which will subsist for as long as the Bank has not issued a notice to sell the charged property to the Applicant under section 96(2) of the Land Act, and thereafter, Redemption Notice and Notification of sale of the charged property by the auctioneer in that order. With this holding, invariably considerable time will pass by, and given the rate at which property is appreciating especially those in the vicinity of Nairobi County including the locality of the suit property, i.e. the neighbouring Kajiado County, I direct the Respondent to ensure that another forced sale valuation is undertaken by a Valuer on the suit property, at a time not too far from any future scheduled date of sale. The application dated 25th May, 2014 succeeds to the extent specifically stated in this ruling. Any prayer which has not been specifically granted is denied. Despite this success of the application, I will not award the Applicant any costs of the application given the circumstances of the case and the conduct of the Applicant. It is so ordered.

Dated, signed and delivered in court at Nairobi this 26th day of March 2015

F. GIKONYO

JUDGE