



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NUMBER 440 OF 2011

EDWARDS KINGS ONYANCHA MAINA

T/A MATRA INTERNATIONAL ASSOCIATES.
PLAINTIFF/APPLICANT

VERSUS

CHINA JUANGSU IETC CORPORATION 1ST
DEFENDANT/1ST CONTEMNOR

JAMES OCHIENG ODUOL

T/A OCHIENG ODUOL & CO. ADVOCATES. 2ND DEFENDANT/2ND
CONTEMNOR

RPV WENDO.
3RD DEFENDANT

J NYAMU.
4TH DEFENDANT

M G MUGO.
5TH DEFENDANT

K H RAWAL..
6TH DEFENDANT

J P RANSLEY.
7TH DEFENDANT

CHIEF JUSTICE
8TH DEFENDANT

ATTORNEY GENERAL.
9TH DEFENDANT

AND

OCHIENG ONYANGO KIBET & OHAGA

ADVOCATES.3RD CONTEMNOR

CECIL LAZARO KUYO. 4TH
CONTEMNOR

R U L I N G

1. On 30th September, 2014, the applicant lodged in this court a Notice of Motion dated 22nd September, 2014 under the provisions, of inter alia, Orders 40, 39, 22, 10 of the Civil Procedure Rules, Section 5 of the Judicature Act and Articles 2, 3, 10, 19-25, 47, 50, 156, 159, 165 and 259 of the Constitution of Kenya. The motion sought the following prayers: -

“2) Pending the hearing inter parties and disposal of this Notice of Motion and Plaint the 1st, 2nd, 3rd and 4th contemnors be summoned and bound to attend court during the contempt proceedings.

3) The said same 1st, 2nd, 3rd and 4th contemnors be condemned and punished for the:-

a) repetitive and unfettered contempt,

b) repetitive and unfettered disobedience,

c) repetitive and unfettered breach,

With impunity and contumacy of the numerous various court orders by different court on different dates in different court files especially and not limited to the following undischarged Court Orders issued on:-

- i. 26.7.1993 and on 1.3.1994 (RN Nambuye J) in Nakuru HCCC 125/93 and in Nakuru HCCC 132/93;***
- ii. 19.1.1996 (SC Ondeyo J) in Nakuru HCCC No. 125/93 and in Nakuru 132/93;***
- iii. 24.10.1995 (Omolo, Tonui (sic) & Lakha JJA) in Court of Appeal CA 70/95 and CA 71/95***
- iv. 26.2.1997 (AI Hayanga J) in Nairobi HCCC 1227/96;***
- v. 30.4.1998 (J Aluoch J) in Nairobi HCCC 1227/96***
- vi. 27/10/1995 (AM Akiwumi JA) in Court of Appeal Civil Application NAI 259/95;***
- vii. 06.10.1997 in Court of Appeal (Gicheru Kwach & Lakha JJA) in Civil Appeal CA 193/95 and CA 194/956.***

4. The 2nd contemnor alias James Ochieng Oduol t/a Ochieng Oduol & Co Advocates be punished for the:-

a) repetitive and unfettered contempt,

b) repetitive and unfettered disobedience,

c) repetitive and unfettered breach,

With impunity and contumacy of the exparte voluntary professional undertaking

tendered, canvassed, recorded and entered ex parte on 26.7.1993 into court skeleton files Nakuru HCCC 125/93 and in Nakuru HCCC 132 /93 illegally and irregularly by James Ochieng Oduol t/a Ochieng Oduol & CO. Advocate the legal counsel for the judgment debtor alias defendant alias the 1st contemnor alias China Jiangsu IETC corporation.

5.0 The 1st alias China Jiangsu IETC Corporation alias judgment debtor in Nakuru HCCC No. 125/93 and in Nakuru HCCC 132/93 including in Court of Appeal Civil Appeal CA 70/95 and CA 71/95 and in Nairobi HCCC 1227/96 and 2nd contemnors alias the legal counsel wef 10.3.1993 in HCCC 125/93 and in Nakuru HCCC 132/93 and the appellate legal counsel in Court of Appeal CA 70/95 and CA 71/95 and in Nairobi HCCC 1227/96 be compelled by orders of the court to pay 20% p.a accrued interests.

6.0 The Deposit amount Kshs.1,425,830.25 vide court orders on 1.3.1994 (RN Nambuye J) and on 19.1.1996 (SC Ondeyo J) in Nakuru HCCC 125/93 and in Nakuru HCCC 132/93 accrue 26.5 p.a. interests w.e.f 1.3.94.

7.0 The 1st contemnor be sequestrated (sic) for Kshs. 2,708,752,141 forthwith in execution of the:-

7.0.1 The amount in the restituted Warrants of attachment dated 17.11.1993 in execution of decretal sum amount Kshs.352,537 plus taxed costs amount Kshs.143,36.50 and accrues interests amount Kshs.26,567.60 in Nakuru HCCC 125/93.

7.02. The amount in the restituted Warrants of attachment dated 17.11.1993 in execution of decretal sum amount Kshs.5,488,325 plus taxed costs amount Kshs.129,737.65 plus Accrued interests amount Kshs.350,752.30 in Nakuru HCCC 132/93 on 19.1.1996;

7.03 Accrued interests amount Kshs.7,745,823 being accrued interests on Kshs.1,425,830.25 at the rate of 26.5% vide Conditional Stay orders on 1.3.1994 in Nakuru HCCC 125/93

7.04 Remittance of Kshs.10800 being total of Kshs.2,400 plus Kshs.8,400 being accrued interests at 20% p.a wef 26.2.1997 in Nairobi HCCC 127/96

7.05 Remittance to the court of Kshs.400 being Court Adjournment Fees pursuant to the conditional adjournment orders on 26.2.1997 in Nairobi HCCC 1227/96.

7.06 The amount in the Warrants issued on 17.2.2003 for amount Kshs 86,940 being total of amount Kshs.16,527 in Certificate of taxation on 13.9.2002 plus 20% p.a accrued interests wef 22.11.1993 in Court of Appeal Civil Appeal CA 70/95

7.07 The Amount in the Warrants issued on 17.2.2003 for amount Kshs.85,940 being total of amount Kshs.16,527 in certificat4eof taxation on 13/9/2002 plus 20% p.a accrued interests wef 22.11.1993 in Court of Appeal Civil Appeal CA 71/95,

7.08 The amount of Kshs.54,288,000 (Kshs.10,440,000 + 43,848,000) being compensation for loss of user of technical workshop tool amount calculated total of Kshs.10,440,000 (Kshs. 120,000 x 87) as mathematical product of Kshs.120,000 value of the said technical workshop tools and a multiplier Effect factor figure of 87 representing 24% p.a annuity compound interest consequent to the admission and confessions made by Mianghao Wang Assistant General Manager Languages of China Jiangsu IETC Corporation tendered and entered in evidence-in-chief into Nakuru SRMCR 326/89 on 21.8.1990 genesis of judgment on 14.7.1993 and decree dated

15.7.1993 in Nakuru HCCC 125/93 plus the amount Kshs.43,848,000/- being 20% pa accrued interest (ksh.10,440,000 x 20% p.a X 21 ¾ years) wef 3.3.1993 dated Nakuru HCCC 125/93 got instituted.

7.09 The amount of Kshs.151,554,00 (Kshs.122,409,000 + being compensation for loss of business Economic Calculated total of Kshs.29,145,000 (Kshs.335,000 x 87) as mathematical produce of Kshs.335,000 Decretal award in Nakuru HCCC 125/93 and multiplied effect factor figure f 87 representing 24% pa annuity compound interest consequent to the admissions and confessions made by Mianghao Wang Assistant General Manager Languages of China Jiangsu IETC Corporation tendered and entered in Evidence in-chief into Nakuru SRMCR 326/89 on 21.8.1990 genesis of judgment on 14.7.1993 and decree dated 15.7.1993 in Nakuru HCCC 125/93 plus the amount Kshs.122,409,000 being 20% p.a accrued interest (29,145,000 x 20% x 21 ¾ yrs) w.e.f 3.3.1993 dated Nakuru HCCC 125/93 got instituted.

7.10 the Amount of Kshs.2,462,118,440 (Kshs.473,484,275 + Kshs.1,988,634,165), the total of amount Kshs.473,484,275 (kshs.5,488,325 x 87) being compensation for loss of Business Economic propensity calculated as Mathematical Product of Decretal Award in Nakuru HCCC 132/93 and a Multiplier Effect Factor figure of 87 representing 24% pa annuity compound interest consequent to the admissions and confessions made by Mianghao Wang Assistant General Manager Languages of China Jiangsu IETC Corporation tendered and entered in Evidence-in-chief into Nakuru SRMCR 326/89 on 21.8.1990 genesis of judgment on 14.7.1993 and decree dated 15.7.1993 in Nakuru HCCC 125/93 plus the amount Kshs.1,988,634,165 being 20% pa accrued interest (473,484,275 x 20% pa x 21 ¾ yrs) wef 3.3.1993 dated Nakuru HCCC 132/93 got instituted.

Which stand unpaid and remitted at all so far despite repetitive demands via Notice to Show Cause dated 21.8.2001 in Nairobi HCCC 1227/96 and Warrants of attachment issued on 17.11.1993 in Nakuru HCCC 125/93 and in Nakuru HCCC 132/93 plus warrants of attachment issued on 17.2.2003 vide certificate of taxation on 13.9.2002 in court of Appeal Civil Appeal CA 70/95 and CA 71/95 and including sequel of contempt of court and court orders yet to be punished by the court.

8.0 the 1st contemnor be ordered and compelled by court orders to restitute Technical Workshop Tools worth Kshs.120,000/- taken and held in detinue by China IETC Corporation at Garissa, Muranga (Makuyu) and Narok Primary Teachers Training College construction sites w.e.f. 01.01.1989 and pay compensation in damages the amount of:-

8.10 Decretal sum and 20% p.a. accrued interests in HCCC 1227/96

Kshs.40,791,701

8.20 Compensation for loss of user of technical workshop

tools in the amount in Nakuru HCCC125/93 Kshs.54,288,000

8.30 compensation for loss of business economic propensity consequent to Breach of contract dated 1.12.1988 in the amount in Nakuru HCCC 125/93 Kshs.151,554,000

8.40 Compensation for loss of business economic propensity consequent to breach of contract dated 11.11.1988 genesis of decretal award amount Kshs.5,488,325 on 5.7.1993 in Nakuru HCCC 132/93 in the sum amount – Kshs.2,462,228,440

Making grand total amount of compensation Kshs.2,708,752,141

And further in default be arrested condemned and committed into imprisonment for two (2) calendar years forthwith upon being sequestered (sic) attached and sold by Legacy Auctioneering Services in execution of:-

- a. ***Decree dated 15.7.1993 on Nakuru HCCC 125/93 and in Nakuru HCCC 132/93.***
- b. ***Certificate of taxation on 13.9.2002 in Court of Appeal in Civil Appeal CA 70/95***
- c. ***Certificate of taxation on 13.9.2002 in Court of Appeal in Civil Appeal CA 71/95***
- d. ***Certificate of taxation in Court of Appeal in Civil Application NAI 259/95 for Kshs.6,818 w.e.f 27.10.1995 court adjournment orders on 26.2.1997 in Nairobi HCCC 1227/96 and in the alternative***

9. The 1st contemnor alias 1st defendant alias China Jiangsu IETC Corporation be declared bankrupt and placed under receivership forthwith.

10. The said James Ochieng Oduol t/a Ochieng Oduol & Co. Advocates, Cecil Lazaro Kuyo and Ochieng Onyango Kibet & Ohaga be condemned for abuse of court trust bestowed unto them as court officers and barred from legal practice for 15 calendar years forthwith.

11. The court be at liberty to levy extra court fees.

12. The costs w.e.f 19.11.1993 in Nakuru HCCC 125/93 and in Nakuru HCCC 132/93 as well as in Nairobi HCCC 1227/96 and in Nakuru HCCC 299/2009 now Nairobi HCCC 440/2011 be condemned upon the contemnors.

2. The grounds upon which the application was grounded upon were set out in the body of the Motion and the Supporting Affidavit of Edward Kings Onyancha Maina sworn on 29th September, 2014. These can be summarized as follows: -That there has been no end to this litigation because he 1st Respondent, China Jiangsu IETC Corporation and the 2nd Respondent, James Ochieng Oduol, have been in contempt of court orders and undertaking given in Nakuru HCCC No. 125/93, NKR HCCC No. 132/93 and court orders made in Civil Appeals NO.s 70 and 71 of 1995 and NRB HCCC No. 1227/1996; that the 2nd Respondent has colluded and procured court orders that are contemptuous whereby various courts have made Orders that are contrary to law including orders dated 8th May 2014 and 176/1/2013 (sic) in this case; Order dated 11th June, 2009, 6th February, 2009, 1st October, 2004, 10th March, 2003, 10th April, 2002, 26th February, 1997 and 22nd October, 1996 in NBI HCCC No. 1227 of 1996 and orders dated 19th January, 1996, 1st March, 1994 and 26th July, 1993 in Nakuru HCCC Nos. 125 and 132/1993.
3. That a judgment made in Nakuru HCCC Nos. 125 and 132 of 1993 and warrants issued therein have not been satisfied; that the Respondents have disobeyed court orders made on 1st March, 1994 and 19th January, 1996 in Nakuru HCCC NO. 125 of 1993 as well as 24th October, 1996 by the court of Appeal in (Civil Appeal Nos. 70 and 71 of 1995 and an order made on 26th February, 1997 in Nairobi HCCC NO. 1227 of 1996. That further, the Respondents have resisted execution of warrants issued on 17/11/93 in KNR HCCC 125/93 17/2/2003 in CA No. 70 & &1 of 1995 and 26/2/97 in NBI HCCC No. 1227/96, respectively.
4. The Applicant further lamented that the courts have variously assisted the Respondents to breach court orders through the following orders to wit, orders dated 26/1/93 and 19/1/96 in NKR HCCC No.125/93, 26/2/97, 10/4/02, 10/3/03, 1/10/04, 6/2/09 and 11/6/09 in NBI HCCC No. 1227/96 and orders dated 17/1/03 and 8/5/14 in NBI HCCC No. 440/2011. That a professional undertaking given by the 2nd Respondent on 26/7/93 has never been obeyed. That judgments made on 14/7/93

- in HCCC No. 132/93 has never been obeyed or settled. That costs ordered in CA No. NAI 301 and 302 of 1995 respectively have never been paid.
5. The applicant further contended that by virtue of various orders for costs and judgments in various cases which the Respondents had not settled and applying interest of 20% and 26.5% per annum on the said sums, the Respondents should remit to him, the Applicant, a sum of Kshs.2,708,752,141/=. The Applicant gave calculations in paragraphs 107 through 127.30 how the said figure of Kshs.2.7 billion plus is arrived at. The Applicant urged that the application be allowed.
 6. The Respondents opposed the application by way of Grounds of Opposition dated 22/10/14. The Respondent contended that the court did not have jurisdiction to entertain the application as drawn as the matter was res judicata, that the court has variously found the Applicant to be in abuse of the court process for seeking to re-litigate same issues over and over; that the Applicant is a vexatious litigant; that the application is frivolous, scandalous, vexatious and an abuse of the court process. That the Applicant had not shown what orders had been disobeyed.
 7. The parties filed written submissions as follows; the Applicant on 03/2/15 and 9/3/15 while the Respondents filed theirs on 16/2/15. The parties also filed various authorities in support of their respective positions. On 26th June, 2015, the applicant applied that the court files in CA Nos. 70 & 71 of 1995, CA No. 139 of 1995 and HCCC No. 440 of 2011 formally Nakuru HCCC No. 299 of 2009 be availed to this court for perusal before making a decision on the present application. That application was allowed and the files were duly presented to this court. I have carefully considered the said submissions and authorities which needless to say were voluminous but well meaning and applicable to the issues before court. I have also perused the said files that were availed to this court.
 8. I will first deal with Prayer Nos. 5, 6 and 8 of the Motion. The said prayers seek orders that the 1st and 2nd Respondent be compelled to pay 20% p.a. accrued interest in NKR HCCC Nos.125 & 132/1993, CA Nos.70 & 71 of 1995 and NBI HCCC No.1227 /1996. They also sought an order that an amount of Kshs. 1,425,830/25 ordered to be deposited on 1/3/94 and 19/1/96 in NKR HCCC Nos.125 and 132/1993 do attract interest of 26.5% p.a. with effect from 1/3/1994. It also sought an order that the 1st Respondent do pay the Applicant a sum of Kshs.2,708,752,141/= as compensation for loss suffered in NKR HCCC 125 and 132 of 1993 and NBI HCCC No. 1227/1996.
 9. In support of those prayers, the Applicant contended that various amounts were ordered in those cases which had not been settled; that the rates of interest sought would be fair compensation. Looking at the application as drawn, I do not think that those orders can be granted at this stage. Those amounts, if at all were ordered to be paid in those cases, I doubt if this court has jurisdiction to grant the said orders in a summary manner as sought by the applicant. If the amounts arise out of judgment and decrees as the Applicant contends, then they are supposed to be recovered through the process of execution in the suits in which they were decreed and not by way of a summary nature in the case before court. I reject those prayers
 - 10.As regards prayer Nos. 9, 10 and 11, the Applicant sought that the 1st Respondent be declared bankrupt and be placed under receivership; that the 2nd Respondent be barred from legal practice for 15 years and that the court do levy extra fees. I have always known that if a party requires to put a company into receivership, the procedure for such is clearly set out in the Companies Act. Such an order can be made by a company court exercising its jurisdiction properly invoked as per the law provided. I do not think that jurisdiction has been properly invoked and I decline that prayer.
 - 11.As regards barring the 2nd Respondent from practicing, there was no material that was placed before the court to warrant such an order. In any event, that is a remedy that lies elsewhere under the Advocates Act and not this court. I have always known that if an Advocate misbehaves as an officer of the court, the sanction by the court is to punish such an officer for contempt of court. As to debarring an Advocate, the Applicant did not point out the provisions of the law that allows this court to grant such an order in a summary manner as is sought here. Likewise, there were no grounds and/or law that was advanced to show why the court should levy additional fees. In any event, it was not clear from both the application and the lengthy submissions made by the Applicant which extra court fees and how much was leviable against the Respondents. I also

- reject those prayers.
12. This leaves me with prayer Nos. 2, 3, 4, 5 and 7 of the motion. These seek committal orders against the 2nd to 4th Respondent and an order of sequestration against the assets of the 1st Respondent. The grounds for these prayers are as already set out above.
13. Section 5 of the Judicature Act Chapter 8 of the Laws of Kenya, provides that:-

“The High Court and the Court of Appeal shall have the same powers to punish for contempt as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of the subordinate courts.”

14. In **Shimmers Plaza Ltd Vs National Bank of Kenya Ltd (2015) eKLR** the Court of Appeal delivered itself as follows:-

“This provision subjects the proceedings of contempt of court in Kenya to the current law governing the High Court of justice in England. The law governing the justices in England previously was subject to common law and Order 52 of the Supreme Court Rules. However, England enacted the contempt of Court Act of 1981 and Part 81 of the procedure in Civil Procedure (Amendments NO.2) Rules, 2012 that replaced order 52 of the Supreme Court Rules for contempt proceedings in the Supreme Court of England.....

Consequently, a careful consideration must be had to the provision of the contempt of Court Act of 1981 Act and PART 81 of the Civil Procedure (Amendment No. 2) Rules 2012 with regard to contempt proceedings in Kenya.”

15. Accordingly, the practice and procedure applicable in contempt of court proceedings is that obtaining as at September, 2014 when the present application was lodged. The Respondents relied on the cases of **Nyamongo & Anor Vs Kenya Posts Telecommunication Corporations (1993) eKLR** and **Nairobi City Commission E.A. NO. 95 of 1988** and submitted that it had not been shown that any court order with a notice of penal consequences had been served personally upon the Respondents.
16. With due respect, I do not think the said cases are any longer good law. Whilst the issue of service of the order or judgment with a notice of penal consequences is central in contempt proceedings, the requirements for personal service have now been overtaken by knowledge. As early as 2012, Lenaola J delivered himself thus, **in Basil Criticos Vs Attorney General and 8 others (2012) eKLR:-**

“.....the law has changed and as it stands today knowledge supersedes personal service....where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered nugatory.”

17. In **Christine Wangari Gachege Vs Elizabeth Wanjiru Evans & 11 others CA No. NAI 233 of 2007** the Court of Appeal delivered itself thus:-

“The dispensation of service under Rule 81.8 (1) is subject to whether the person can be said to have had notice of the terms of the judgment or the order. The notice of the order is satisfied if the person or his agent can be said to either have been present when the judgment or order was given or made, or was notified of its terms by telephone, email or otherwise. In our view ‘otherwise’ would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgment and/or order. This would definitely include a situation where a person is represented in court by Counsel. Once the applicant has proved notice, the Respondent bears an evidential burden in relation to willfulness and mala fide disobedience.”

18. From the foregoing, it is trite law that service of the judgment or order alleged to be breached with

a penal notice upon an advocate representing the alleged contemnor is sufficient service unless it can be proved that the alleged contemnor was never notified by his advocate. The burden is on the alleged contemnor to show that the order was not brought to his notice, as in the normal course of business, it is expected that the advocate keeps his client updated on all that happens in a client's case. This was ably put by the Court of Appeal in the **Shimmers Plaza Ltd Case** (supra)that:-

“There is an assumption, which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client's case. This is the position in other jurisdictions within and outside the commonwealth.”

- 19.From the material on record, it is clear that some of the orders and/or judgments complained of were appealed against by the 1st Respondent and or there was protracted correspondence touching on them. The 2nd Respondent acted on behalf of the 1st Respondent throughout. Accordingly, I am of the view that the 1st and 2nd Respondent had knowledge of the orders and judgments complained of. However, that is not the case as regards the 3rd and 4th Respondents. This has not been shown that the 3rd and 4th Respondents were aware of the orders complained of.
- 20.Is the knowledge of the orders or judgment sufficient to commit the Respondents? I do not think so. Firstly, the Respondent raised the issue of res judicata. Although they never produced evidence, I have seen exhibit “CPQ 2” in the Applicant's Supporting Affidavit. It is the ruling of Ougo J in this matter dated 8/5/2014. At page 7 thereof, the court stated:-

“16. On the Plaintiff's first prayer that the 1st defendant should be committed to civil jail, I find that the Plaintiff has failed to demonstrate to this court why this court should grant the said order. As submitted by the Respondent, the applicant did not obtain the court's leave as required by law neither did the applicant comply with the procedure for commencement of committal proceedings as required by the Judicature Act. I do agree with the Respondent that some matters raised in the two applications are res judicata and were determined by the High Court Justice Odunga ruling dated 17/1/2013.”

- 21.It is clear that, from the foregoing, the issue of committal proceedings may have been previously litigated upon and findings made thereon. The same cannot be raised now.
- 22.Secondly, Part 81 Rule 13 of the Civil Procedure (Amendment No.2) Rules 2012, requires that before the substantive application for committal is lodged by way of application Notice under Part 23, permission to do so be sought from court. This permission is what previously was known under Order 52 (2) of the Rules of the Supreme Court as leave. The Applicant having failed to seek the permission under that Rule, the application in court is incompetent and fatally defective.
- 23.Thirdly, Rule 10 of Part 81 provides:-

“(1) A committal application is made by an application under Part 23 in the Proceedings in which the judgment or order was made or the undertaking was given.”

These requirements also apply to an application for sequestration.

- 24.Having perused the court record and the files that were availed to court, there is nothing to show that Nakuru HCCC Nos.125/93 and 132/93, NBI HCCC Nos. 1227/96 and 299/2009, Civil Appeal Nos. 70 and 71 of 1995 and CA No. NAI 301 and 302 of 1995 were ever consolidated and or merged into this suit. Any orders and judgments made in those cases, in my view, should be enforced in their respective court files. How can this court surely purport to enforce orders of the Court of Appeal by way of committal? I doubt if this court has any such jurisdiction.
- 25.Even if this court had the jurisdiction to entertain the application or that the said suits had been consolidated and merged into this suit, I still do not think that the orders and judgments

complained of are capable of being enforced. The orders and judgments the subject of the application were made between 1993 and 17/2/2003. That is well over 12 years now. Under Section 4 of the Limitation of Actions Act, a judgment, as well as an order, of the court has a life span of twelve (12) years. Can it be enforced outside that period? I do think so.

26. For the foregoing reasons, I am of the firm view that the application is without merit and the same is hereby dismissed with costs to the Respondents.

DATED and DELIVERED at Nairobi this 31st day of July, 2015.

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A. MABEYA

JUDGE