



**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO 253 OF 2014**

**MOSES NANDALWE WANJALA..... PETITIONER**

**VERSUS**

**KENYATTA UNIVERSITY.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The petitioner was a student pursuing a Bachelor of Arts degree in the respondent university to which he had been admitted in 2007. He alleges that the respondent violated his constitutional rights in the disciplinary proceedings that culminated in his expulsion from the institution in July 2009.
2. The petitioner had been elected sometime in March, 2009 as the Academic Secretary of the Kenyatta University Students Association Governing Council (KUSA). Following the eruption of demonstrations and violence by the University students, the petitioner was subjected to disciplinary proceedings before the Students Disciplinary Committee on 8<sup>th</sup> July, 2009. The disciplinary proceedings culminated in his expulsion from the University by a letter dated 15<sup>th</sup> July, 2009 on allegations of breaching the University Students Rules and Regulations.

**The Case for the Petitioner**

3. The petitioner sets out his claim against the respondent in his petition supported by his affidavit sworn on 4<sup>th</sup> June, 2014, as well as submissions dated 16<sup>th</sup> March, 2015. His case was presented by his Learned Counsel, Mr. Gitobu Imanyara.
4. In his affidavit, the petitioner states that he and other members of KUSA took responsibilities of leadership which included negotiation with the University administration on students' welfare matters. He claims that from his appointment as the Academic Secretary to lead the negotiations with the University administration, the respondent, through the Vice-Chancellor, started a campaign of intimidation and terror directed at him so as to prevent him from fulfilling his leadership mandate on behalf of KUSA. Such intimidation took the form of verbal and unwarranted warnings, summonses by police at the instigation of the respondent, and ultimately expulsion from the University.

5. According to the petitioner, on or about 18<sup>th</sup> March, 2009, students began protests against the harassment and intimidation directed at him by holding peaceful demonstrations within the Kenyatta University compound. The demonstrations turned violent when the respondent directed its security organs to forcefully remove the students from the campus and close the University.
6. The petitioner states that as a member of the Student's Council, he was one of the 12 student leaders who wrote to the Vice-Chancellor a letter dated 25<sup>th</sup> March, 2009 requesting a meeting. Prior to this, the respondent had on 13<sup>th</sup> March, 2009 written to him a warning letter through the Acting Dean of Students warning him against what the respondent referred to as "misleading notices to the student community". The letter of 13<sup>th</sup> March 2009 was allegedly followed by another one on 24<sup>th</sup> March, 2009 suspending him from the University. He also avers that he received a letter dated 22<sup>nd</sup> June, 2009 summoning him to appear before the Student's Disciplinary Committee on 8<sup>th</sup> July, 2009 to answer various charges framed against him, all of which related to acts that were contrary to the University Rules and Regulations governing student conduct.
7. The petitioner avers that he was not guilty of the charges levelled against him as he was merely performing the role of a duly elected student leader. He states that he duly appeared before the Students Disciplinary Committee where he was subjected to a farcical exercise of a disciplinary hearing before a committee that was not properly constituted as it had no student representation; refused to give him an opportunity to prepare his defense; failed to inform him that he had a right to be represented by an advocate; subordinated his constitutional rights and freedoms guaranteed to him as a Kenyan citizens to Students Disciplinary Regulations that curtailed the said rights; and was intent on finding any reason to expel him from the University.
8. It is his contention that the respondent intimidated and harassed him, and that this continued unabated as he was detained on various occasions at the Industrial Area GK Prison and Kahawa Sukari Police Station between April 2009 and June 2010. He claims that in April 2009, while he was leaving Hon. Mwandawiro Mghanga's residence at Kahawa Sukari, he was arrested by CID officers at the instigation of the Vice Chancellor and thereafter taken to Industrial Area Police Station, then to Kasarani Police Station where one Inspector James Githinji served him with a requisition to compel attendance before him on 26<sup>th</sup> July, 2009.
9. The petitioner further claims that he was again arrested on 13<sup>th</sup> October, 2009 and taken to Kahawa Sukari Police Station for a night then ferried to Kasarani Police Station where he was released on 18<sup>th</sup> October, 2009, and again a requisition to compel attendance was served on him by one Benson Omondi to appear before him on 19<sup>th</sup> October, 2009.
10. It is also his deposition that in June, 2010, he was arrested at the Kenyatta University compound and detained in the University Security compound toilet the whole day before he was handed over to CID officers from Kasarani Police Station where he spent seven days. He also claims that on 29<sup>th</sup> May, 2014, at about the time he was preparing to file the instant case and while at the Academic Registrar's office to get documents necessary for the filling of the case, the Vice-Chancellor ordered that he be arrested and locked up in a toilet pending the arrival of police officers from Kasarani Police Station, to whom he was handed over. He states that he was later released without any charges when it was established that he had committed no offence.
11. The petitioner states that an investigation carried out by the Parliamentary Committee on Education, Research and Technology which had sought to establish the underlying reasons behind the two strikes at Kenyatta University in the month of March, 2009, and to further establish what made the students cause massive destruction such as burning of buildings and looting of computers in the second strike, had found the University Administration responsible for the disturbances.

12. According to the petitioner, the Parliamentary Committee, upon completion of its work, issued a very comprehensive report that touched on and made recommendations on, among other things, student registration deadlines, poor student-administration relationship, “rumours of the University” (sic); suspension of KUSA leadership; penalizing of students with Kshs1000/=; shortened semesters; weak management systems; negative ethnicity; new KUSA leadership; and poor coordination of the security system. He contends that the issues on which the Parliamentary Committee made recommendations on were the same issues that the student leadership had sought audience with the Vice-Chancellor to discuss.

13. It is his claim, further, that the Parliamentary Committee performed a more comprehensive, thorough, independent and impartial investigation and its findings fully exonerated him of the charges levelled against him, and he urged this Court to concur with the Parliamentary Committee findings, allow his petition and grant him the following orders:

- a. ***Damages for breaches of the fundamental rights and freedoms set out as having been breached.***
- b. ***Costs and interest.***
- c. ***Such further orders as the Honourable Court may deem expedient and just.***

14. In his submissions on behalf of the petitioner, Mr. Imanyara argued that the respondent has not presented any minutes or notes of the Students Disciplinary Committee meeting to show that it was properly constituted, nor does it avail minutes with respect to the appeal heard by the Appeal Committee of the University. Mr. Imanyara submitted that the Student Disciplinary Committee is a creature of the Kenyatta University regulation 4(b) (5) which is clear that the Committee should have had two student representatives.

15. He reiterated the petitioner’s averment that the respondent failed to inform him that he had a right to be represented by an advocate, and that it subordinated his constitutional rights and freedoms to the Students Disciplinary Regulations that curtailed those rights and freedoms it was his submission that the University was intent on finding any reason to expel the petitioner from the University; that the petitioner has, on his pleadings alone, proved his case and was entitled to the orders that he was seeking. He asked the Court to enter judgment for the petitioner and set the matter down for assessment of damages.

### **The Case for the Respondent**

16. The respondent opposes the petition and has filed an affidavit in reply sworn by Prof. Wangari Mwai, the then acting Deputy Vice Chancellor of the respondent University, on 16<sup>th</sup> September 2014, as well as submissions dated 21<sup>st</sup> April, 2015. Learned Counsel, Ms. Wanjiru Ngigi, presented its case.

17. In her affidavit, Prof. Mwai avers that on or about 9<sup>th</sup> October, 2008, the petitioner posted a notice under the title “***It’s Not Yet Independence***” in which he incited fellow students against the University management and KUSA. The respondent wrote to him warning him against inciting students and informing him that it was an offence under the Penal Code to do so. It also informed him that any notices from student to student can only be made in the hand of the Secretary General of KUSA as provided in Section 17 of the KUSA Constitution.

18. On 10<sup>th</sup> March, 2009, the petitioner issued an internal memo addressed to all students, in particular those who had not registered for the semester in time, stating that KUSA was “*laying down strong strategies to ensure that you [unregistered students] are allowed to register as soon as possible.*” The respondent states that it communicated to the petitioner its dissatisfaction with the aforesaid memo and reminded him that his actions were un-procedural since the registration deadlines, including the deadline for any late registration of students, had already been addressed

- by its management. Prof. Mwai averred that it was the respondent's standard policy and practice to have all students registered within the stipulated deadlines and where a student is unable to comply with this, he or she would have to forfeit the semester and register afresh in the subsequent semester.
19. According to the respondent, following the internal memo issued by the petitioner, a meeting was held by its management and the KUSA officials to address the matter on 16<sup>th</sup> March, 2009. However, on 17<sup>th</sup> March, 2009, the petitioner organised an illegal demonstration, demanding that the unregistered students be registered instead of deferring the semester in accordance with University practice. The respondent states that it issued another warning letter to the petitioner against misleading the student body. The petitioner was at the time, according to the respondent, an unregistered student since he had not completed the payment of his fees for the semester.
  20. The respondent further states that on 18<sup>th</sup> March, 2009, the petitioner led another illegal demonstration on the University premises, making the same demands while ejecting students from hostels, lecture halls and other University facilities, thereby disrupting learning activities and the general order of the University. The respondent therefore informed the petitioner of his suspension on 24<sup>th</sup> March, 2009, pending appearance before the Student Disciplinary Committee where he would be given an opportunity to defend himself. He was also informed of the offences he was alleged to have committed, and was barred from entering the University premises or using its facilities.
  21. Prof. Mwai deposes that on the night of 29<sup>th</sup> March, 2009, the petitioner with others stormed into the University's main campus and Ruiru campus and set ablaze the hostels while his colleagues were asleep, as well as the respondent's computer laboratories, thereby causing extensive damage and destruction to university property. The university was as a result closed for more than four months.
  22. The respondent confirms that the petitioner was invited, by a letter dated 22<sup>nd</sup> June 2009, to appear before the Students' Disciplinary Committee on 8<sup>th</sup> July, 2009 at 9:00 a.m. He was also informed that he would be afforded an opportunity to make representations on the charges levelled against him. He duly appeared before the Committee, was heard, and upon consideration of his representations and the evidence against him, the Committee made the decision to expel him. The decision as well as the reasons therefore was communicated to him on 15<sup>th</sup> July, 2009, as well as the right to lodge an appeal against the decision to the Vice-Chancellor.
  23. The respondent states that the petitioner duly exercised his right of appeal, appeared before an Appeals Committee constituted under Statute V, Section 6 of the Kenyatta University Act (now repealed), and after hearing the representations of the petitioner, the Appeal Committee upheld the decision of the Students Disciplinary Committee. Prof. Mwai avers that the decision of the Appeals Committee was subsequently vetoed by the Vice-Chancellor who substituted the expulsion with a four-year suspension, and the decision by the Vice-Chancellor was upheld by the University Senate on condition that during the period of his suspension, the petitioner was not to enter the University's premises without its prior permission, and failure to comply would lead to his expulsion.
  24. The respondent's case is that contrary to these express conditions, the petitioner continued to enter its premises and incite students against the administration, a breach of the condition set by the University Senate in the letter dated 18<sup>th</sup> September, 2009. This prompted the respondent to reverse its decision and expel the petitioner.
  25. With regard to the petitioner's arrest, the respondent states that since it is a statutory body, the properties that were destroyed in the various strikes and demonstrations were state properties, thereby prompting the police to take over the matter without making further reference to it. It denies that it in any way instigated the arrest of the petitioner; and if he was arrested, this was due

- to his having trespassed into the University's premises contrary to the terms of the suspension letter and the two expulsion letters sent to him.
26. The respondent notes that the petitioner has not informed the Court when the alleged harassment against him took place, nor has he brought any evidence before the Court to demonstrate such harassment. Should the case be, as he alleges, that he had been detained for more than 24 hours, then the proper course would have been to pursue a claim against the police and not the University.
27. With respect to the alleged Parliamentary Committee Report, the respondent's position was that it was unaware of any Parliamentary report which recommended the petitioner's re-instatement to the university. Its case, however, was that a recommendation contained in a report of the Parliamentary Committee on Education, if any, could not, of itself and without more, bind the respondent.
28. The respondent argued that the petitioner was properly expelled, the expulsion took place five years ago, and the petitioner had not explained the great delay in instituting these proceedings.
29. In its submissions, the respondent observed that there has been a trend in which parties have sought to convert their land disputes, contractual disputes or judicial review claims into constitutional issues, the most obvious advantage of which is to allow parties to avoid their respective prescribed limitation periods.
30. It argued, further, that as constitutional issues do not have a limitation period, all a party needed to do to avoid the relevant limitation period is to make reference to a constitutional provision and claim it has been infringed in its case. While placing reliance on the decision in **Ochieng' Kenneth K'Ogutu vs Kenyatta University and 2 Others, Petition No 306 of 2012**, it was its argument that the petitioner had six months to challenge his expulsion, after which the claim became time barred. Its case was that permitting him to revive his stale claim by clothing it as a constitutional issue poses dangers to the constitutional court, constitutional grievances and to the respondent.
31. In its view, this petition is the petitioner's belated attempt to re-animate judicial review on a decision made 5 years ago. The respondent relied on the decision in **Abraham Kaisha Kanzika alias Moses Savala Keya t/a Kapco Machinery Services and Milano Investments Ltd vs Governor Central Bank of Kenya and 2 Others [2006] eKLR**, and contended that the constitutional court serves the important function of allowing parties to ventilate their legitimate constitutional grievances. This function, in its view, would be compromised were the scarce judicial resources available to the Court inundated with time-barred claims that have been conveniently converted to constitutional claims. It would also diminish the importance of constitutional claims by expanding this category of claims to include any ordinary claims with any identifiable constitutional connection, no matter how strained this nexus is.
32. With respect to the time lapse of five years, the respondent argued that the failure to observe limitation periods not only causes significant injustice to the defending party but also robs them of a legitimate defence as this is a statutory defence prescribed by Parliament. In its view, it could not have been the intention of the drafters of the Constitution to promote justice for one party, the petitioner, by causing injustice to the other party, the respondent. In the present case, with respect to the minutes of the disciplinary proceedings against the petitioner, its contention was that its records are not in the same state as they were when litigation could reasonably be expected, that is during the six months following the expulsion decision; that time has taken its toll and the records have become imperfect; that personnel with knowledge of the case have departed and old documents have given way to new live documents.
33. In this regard it relied on the decision in **O'Reilly vs Mackman [1982] 3 ALL ER** and submitted further that after the expiry of the time, it was entitled to treat the expulsion decision as a valid

decision and arrange its affairs accordingly especially in terms of record keeping. Ms. Ngige submitted that since the University made its decision and no challenge was raised within the prescribed period, it was not obliged to maintain perfect records and the absence of the minutes and any evidence on how the Committee was constituted is the petitioner's fault.

34. With regard to the fairness of the disciplinary proceedings, the respondent acknowledged that there were regulations in place to govern its relationship with the petitioner and the petitioner was informed of these regulations when he was being admitted. It observed that as noted by the Court in **Oluoch Dan Owino vs Kenyatta University [2014] eKLR**, an educational institution has the right to set certain rules and regulations and those wishing to study in that institution must comply with such rules.
35. Its submission was that the petitioner had an obligation to abide by the regulations but had breached them at least four times in the span of six months between October 2008 and March, 2009, before he was suspended. The respondent observed that the petitioner had not denied sending the memos or participating in the demonstration, alleging instead that the memos were necessary and the demonstrations were peaceful. He does not also, according to the respondent, challenge the validity of the said regulations which he in any event voluntarily subjected himself to. Its prayer was that the petition be dismissed with costs.

### **Determination**

36. From the pleadings and submissions of the parties set out above, it is evident that there is substantial convergence on the factual situation leading to the filing of this petition. The petitioner was a student in the respondent university. He authored some internal memos, some demonstrations were held which resulted in destruction of university property; he was subjected to a disciplinary process which resulted in his expulsion in 2009.
37. From the respondent's pleadings, the petitioner was given a lifeline in that his expulsion by the Disciplinary Committee was converted by the Vice-Chancellor to a four-year suspension, provided that he met certain conditions, which he failed to do.
38. He has now approached this Court alleging violation of his right to education and his right to a fair hearing under Article 50(2). He does not seek re-admission to the respondent, but damages for the alleged violation of his rights. The issue for determination therefore is whether the petitioner has established a violation of his constitutional rights that would entitle him to compensation in damages.
39. It appears to me, from the petitioner's pleadings and submissions, that he wishes the Court to take one of three courses of action. While he does not state so expressly, his petition seeks a review of the decision made by the respondent. In this respect, I bear in mind that the role of a court exercising powers of judicial review is limited to the process involved in arriving at a decision, and does not require the court to enter into an inquiry on the merits of a decision-see **Civil Appeal No. 180 of 2013- Isaack Osman Sheikh vs IEBC & Others** where the Court expressed itself in the following terms:

***“A judicial review of administrative, judicial and quasi-judicial action and decisions of inferior bodies and tribunals by the High Court in exercise of its supervisory jurisdiction flowing from Article 165(6) of the Constitution is not in the nature of an appeal. It concerns itself with process and is not a merit review of the decision of those other bodies. And it does not confer on the High Court a power to arrogate to itself the decision-making power reserved elsewhere.”***

40. The petitioner's main grievance appears to be in two limbs. First, that the disciplinary committee against him did not have student representation, and secondly, that he was not informed that he had a right to legal representation. The petitioner does not dispute that the respondent had the power to conduct the quasi-judicial process against him following the allegations of breach of the

university regulations made against him. The law in this regard is clear that courts will not interfere with the decisions of such organs unless it is shown that there was a breach of statute or the rules of natural justice so as to render the decision reached a great injustice to a party affected. This was the position aptly captured in the case of **Daniel Nyongesa and Others vs Egerton University College CA No. 90 of 1989** in which the Court (Nyarangi JA) stated:

***“Courts are very loathe to interfere with decisions of domestic bodies and tribunals including college bodies. Courts in Kenya have no desire to run Universities or indeed any other bodies. However, courts will interfere to quash decisions of any bodies when the courts are moved to do so where it is manifest that decision has been made without fairly and justly hearing the person concerned or the other side... it is the duty of the courts to curb excesses of officials and bodies who exercise administrative or disciplinary measures. Courts are the ultimate custodians of the rights and liberties of people. Whatever the status and there is no rule of law that courts will abdicate jurisdiction merely because the proceedings or inquiry are of an internal disciplinary character.”***

41. In the present case, what the petitioner has placed before the Court is an allegation that the Student’s Disciplinary Committee was improperly constituted because it did not have two student representatives. He then casts the burden on the respondent to prove that there were two representatives. Had this petition been brought earlier, I would have been minded to agree with the petitioner that the respondent had a duty to provide the minutes of the Disciplinary Committee. However, the matter has been brought five years after the event, after the petitioner was heard, appealed against the decision, and despite losing the appeal, his expulsion was countermanded by the Vice Chancellor and the Senate and he was given a four year suspension. At this point in time, and on the basis of the material before me, I am unable to find that the proceedings before the Committee were unlawful on account of the Committee being improperly constituted.

42. Secondly, the petitioner seems to be asking the Court to substitute the decision of the respondent in its disciplinary process with that reached by the Parliamentary Committee when it enquired into the strikes that took place at the respondent university. He asks that the Court adopts the decision of the Parliamentary Committee on education which was more comprehensive and accurate and exonerated him from wrongdoing. However, neither in his pleadings nor in the submissions made on his behalf did the petitioner show a legal basis for this argument. The Court cannot substitute its own view of a matter on the merits for that of the body mandated by statute to make a determination on the matter. Similarly, it is difficult to see the basis on which the finding or decision of a Parliamentary Committee can be substituted for that of the body mandated by law to make a determination on a matter.

43. The third limb of the petitioner’s case is related to the first. It is that the respondent violated his constitutional rights to fair administrative action, fair hearing and education in the disciplinary proceedings against him, and in expelling him.

44. Article 47 provides that:

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

45. The petitioner’s case is that this right was violated as he was subjected to a disciplinary proceeding that was flawed in that there was no student representation, he was not given an opportunity to prepare a defence and that the respondent failed to inform him of his right to be represented by an advocate.

46. I have considered the documents relied on by the petitioner in this regard. I note that by a letter dated 22<sup>nd</sup> June 2009, the petitioner was invited to attend the disciplinary proceedings. He was also informed of the charges he was facing, and that he was required to give his side of the story. He appeared before the Committee on 8<sup>th</sup> July, 2009, when the case against him was heard. He

appealed against the decision of the Committee and the result of the appeal was communicated to him vide a letter dated 18<sup>th</sup> September, 2009. He filed the present petition five years later on 17<sup>th</sup> September, 2014. On the material before me, I am unable to find a violation of the right to fair administrative action.

47. The petitioner also alleges a violation of his right to be represented by an advocate of his choice, and to be informed of this right promptly. He therefore alleges that his right under Article 50 (2) (g) of the Constitution was violated. This Article provides that:

***“Every accused person has the right to a fair trial, which includes the right to choose, and be represented by, an advocate, and to be informed of this right promptly.”***

48. Three observations will suffice with respect to this part of the petitioner’s claim. First, the events in question took place in 2009, prior to the promulgation of the new Constitution. The provisions of Article 50(2) cannot therefore be said to be applicable to the petitioner in 2009, given that the Constitution does not have retrospective application as was held by the Supreme Court in **Samuel Kamau Macharia vs Kenya Commercial Bank and 2 Others, Civ. Appl. No. 2 of 2011**.

49. Secondly, even were the provisions of Article 50(2) applicable, they would not be applicable to the present matter. Article 50 (2) relates to the rights of an accused person facing trial, and as was held by the Court of Appeal in **Julius Kamau Mbugua vs The Republic, Criminal Appeal No. 50 of 2008**, the right to a fair hearing under Section 77(1) of the former constitution, which is now guaranteed under Article 50 (2), relates to proceedings at the trial. The proceedings against the petitioner were not a “trial” as contemplated under Article 50(2). They were disciplinary proceedings before a committee of an educational institution.

50. Thirdly, the disciplinary proceedings such as the petitioner was facing are subject to the rules of procedure of such tribunals or bodies. In **Oluoch Dan Owino vs Kenyatta University (supra)**, this Court stated that:

*“[65]... The right of a party to be represented by Counsel in quasi-judicial proceedings such as the petitioners were subjected to is well recognized, but is subject to the rules of procedure of the tribunal to which a party is appearing before, and must be requested for before a violation of the right to legal representation can be alleged. In the case of **Republic vs Pwani University College Ex-parte Maina Mbugua James & 2 Others Misc. App. No. 28 of 2009**, the court stated:*

***“The respondent’s contention is that there was no denial of legal representation since there was no such request in the first instance. There doesn’t seem to be a hard and fast rule – going by the different approaches – in Enderby Town FC Ltd v The Football Association (1971) 591 at 605 Lord Denny ruled: “It may be a good thing for the proceedings of a domestic tribunal to be conducted informally, without legal representation. Justice can often be done better by a good layman than by a bad lawyer.” The situation in Kenya was captured in the case of Geoffrey Mwangi Kariuki v University of Nairobi. – but where the distinction can immediately be drawn in that the college Disciplinary Committee refused to allow Geoffrey to be represented by advocates in the proceedings, and the High Court ruled that he was entitled to such representation. My own view is that if an individual requests for legal representation, then he should be entitled to such representation but in the present scenario there was no such request and no such denial, so the breach alleged does not arise at all.”***

51. In the circumstances, I can find no basis for imposing a requirement on the respondent to inform the petitioner that he had the right to choose, and be represented by an advocate. Neither can this Court find a basis for faulting the respondent on the basis that it did not inform the petitioner of the right to be represented by Counsel when he did not make such request and was denied by the respondent. I am therefore unable to find a violation of the petitioner’s rights under Article 50(2), even had it been applicable in the circumstances of this case, which it was not.

52. The petitioner has also made various allegations relating to his arrest by police, and alleges torture and harassment. Regrettably, apart from making the allegations, the petitioner has not presented any evidence on the basis of which the Court could make any findings. He has also not enjoined the police who effected the arrests as parties to the proceedings. Should there have been unlawful arrests, or incarceration beyond the constitutional time limits, there should have been some evidence in support, and some linkage with the respondents to enable the court make findings on the matter.

53. In the circumstances, based on the material before me, I can find no violation of the petitioner's rights. Despite being found guilty of breaches of the students' regulations and expelled, he was given a lifeline by the Vice-Chancellor and the Senate, which he disregarded and continued on the path that ultimately led to his expulsion. He cannot now be heard to allege a violation of his constitutional rights, which he has not in any event established.

54. His petition has no merit, and is hereby dismissed but with no order as to costs.

**Dated Delivered and Signed at Nairobi this 17<sup>th</sup> day of September 2015**

**MUMBI NGUGI**

**JUDGE**

**Mr. Imanyara instructed by the firm of Gitobu Imanyara & Co. Advocates for Petitioner.**

**Ms. Wangiru Ngige instructed by the firm of Mohammed & Muigai & Co. Advocates for the respondent.**