



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
PETITION 33 OF 2011

MILKA ADHIAMBO OTIENO.....1ST PETITIONER

BETTY CHEPCHIRCHIR ABURA.....2ND PETITIONER

AND

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

KENYA SUGAR BOARD.....2ND RESPONDENT

NICHOLAS ODONGO ORICHO.....3RD RESPONDENT

J U D G M E N T

On the 23-7-2011 the Petitioners **MILKA ADHIAMBO OTIENO & BETTY CHEPCHIRCHIR ABURA**, filed this petition seeking the following prayers:-

(1)That the sugar elections held and conducted on the 21-7-2011 in the six Electoral Areas namely Soin/Muhoroni, West Kenya, Nzoia, Sony/Gucha/Transmara, Chemelil/Nandi, Miwani and Mumias, Busia be declared null and void abinitio.

(2)That in the alternative the elections held and conducted in the Chemelil, Nandi, Miwani electoral area be declared null and void abinitio.

(3)That this honourable court declares that the rights of the petitioners have been contravened and is threatened with further contravention.

(4)That this honourable court declares invalid any law that denies the petitioner and other women the right to occupy at least one third of the Sugar Board upon an election.

(5)That this honourable court issues an order of injunction restraining the 1st respondent, the Minister of Agriculture, the 2nd respondent, their agents, servants and or employees from recognizing, acknowledging and or gazetting the purported winners in all the six electoral areas namely: Soin/Muhoroni, West Kenya, Nzoia, Sony/Gucha/Transmara, Chemelil, Nandi, Miwani and Mumias, Busia for purposes of constituting the board.

(6)That in the alternative this honourable court issues an order of injunction restraining the 3rd respondent from assuming office of the growers representative for Chemelil, Nandi/Miwani electoral area in the Kenya Sugar Board.

(7)That this honourable court makes a conservatory order restraining the 1st petitioner, the Minister for Agriculture, the 2nd respondent, their agents, servant, and or employees from recognizing, acknowledging and or gazetting the purported winners in all the six electoral areas

namely: Soin/Muhoroni, West Kenya, Nzoia, Sony/Gucha/ Transmara, Chemelil, Nandi, Miwani and Mumias/Busia for purposes of constituting the board.

(8)That this honourable court makes an order for compensation by the 1st and 2nd respondent.

(9)That such other orders as this honourable court shall deem just.

The said petition was brought under the provisions of **Articles 20,21,22,23,27,81 and 258** of the **Constitution 2010** and the provisions of **The Sugar Act No. 10/2001** together with **The Sugar (election) Regulations No. 5 (1) 9,10,11 and 12 of 2002**.

Contemporaneously on the same day the petitioners did file a chamber summons seeking the following orders:-

(1)That the application be certified as urgent.

(2)That this honourable court issues a temporary order of injunction restraining the 1st respondent, the Minister of Agriculture, the 2nd respondent, their agents, servants and or employees from recognizing, acknowledging and or gazettement the purported winners in all the six electoral areas namely: Soin/Muhoroni, West Kenya, Nzoia, Sony/Gucha/ Transmara, Chemelil, Nandi, Miwani and Mumias/Busia for purpose of constituting the Kenya Sugar Board pending the hearing of the application inter parties.

(3)That this honourable court issues an order of injunction restraining the 1st respondent, the Minister of Agriculture, the 2nd respondent, their agents, servants and or employees from recognizing, acknowledging and or gazettement the purported winners in all the six electoral areas namely: Soin/Muhoroni, West Kenya, Nzoia, Sony/Gucha/ Transmara, Chemelil, Nandi, Miwani and Mumias/Busia for purpose of constituting the Kenya Sugar Board pending the hearing of the petition.

(4)That in the alternative this honourable court issues an order of temporary injunction restraining the 3rd respondent from assuming office of the growers representative for Chemelil/Nandi, Miwani Electoral Area in the Kenya Sugar Board pending the hearing of the application inter parties.

(5)That further in the alternative this honourable court issues an order of temporary injunction restraining the 3rd respondent from assuming office of the growers representative for the Chemelil, Nandi, Miwani Electoral Area in the Kenya Sugar Board pending the hearing of the petition herein.

(6)That this honourable court makes a conservatory order restraining the 1st respondent, the Minister of Agriculture, the 2nd respondent, their agents, servants and or employees from recognizing, acknowledging and or gazettement the purported winners in all the six electoral areas namely: Soin/Muhoroni, West Kenya, Nzoia, Sony/Gucha/ Transmara, Chemelil, Nandi, Miwani and Mumias/Busia for purposes of constituting the board.

(7)Costs of this application.

(8)That such other relief as this honourable court shall deem fit to grant.

The petitioners' application is supported by the grounds thereof and the affidavit of **Milka Adhiambo Otieno** the 1st respondent, sworn on 22-7-2011.

This court granted temporary orders pending *inter partes* stage. Several preliminary objections were raised and the same were disposed of paving way for the hearing of the substantive application. The

respondents were of the view that the matter raise weighty constitutional issues and they petitioned the court to refer the same to the honourable Chief Justice to appoint a three judge bench to determine the matter. The Honorable Chief Justice allowed the request and appointed the bench now presiding over the matter on the 16-11-2011.

The parties filed various rival affidavits, submissions and authorities, which we have considered in determining this matter. Indeed we are grateful to the counsel on record for the parties. We further note that ever since the new constitution was promulgated various competing parties and interested groups have taken advantage of the expanded space brought about by the same and indeed there are several pending petitions in our courts seeking judicial interpretation of the Constitution and its enforcement.

Our duty as a court is to interpret the Constitution and other statutes and more so to give life to the letter and spirit of the Constitution as far as possible. In this case we shall strive to interpret the provisions of the Constitution broadly to the extent that the rules of interpretation permit. We are alive to the historical background that led to the constitutional reforms in this country culminating in the **Constitution of Kenya 2010**. The said Constitution is an embodiment of the wishes and aspirations of **all Kenyans**. The road to the enactment of the same was a struggle for a new dispensation by various stakeholders including women and other vulnerable groups for various reasons including redressing past injustices. (Emphasis ours)

In this regard, we are guided by several authorities. *In REYES V THE QUEEN (2002) 2 AC p 235 at p. 246* the court stated as follows on constitutional interpretation

“When (as here) an enacted law is said to be incompatible with a right protected by a Constitution, the court’s duty remains one of interpretation. If there is an issue (as here there is not) about the meaning of the enacted law, the court must first resolve the issue. Having done so it must interpret the Constitution to decide whether the enacted law is incompatible or not. Decided cases around the world have given valuable guidance on the proper approach of the courts of the courts to the task of constitutional interpretations.....”

As in the case of any other instrument, the court must begin its task of Constitutional interpretation by carefully considering the language used in the Constitution. But it does not treat the language of the Constitution as if it were found in a will or a deed or a charter party. A generous and purposive interpretation is to be given to constitutional provisions protecting human rights. The court has no licence to read its own predilections and moral values into the Constitution, but it is required to consider the substance of the fundamental right at issue and ensure contemporary protection of that right I the light of evolving standards of decency that mark the progress of a maturing society.....”

In RICHARD KARIUKI V THE ATTORNEY GENERAL & KARIUKI ENTERPRISES LTD MISC CIVIL APPLICATION 7 OF 2006, Nyamu J as he then quoted a Canadian case *re PUBLIC SERVICE EMPLOYEE RELATIONS ACT (1987) 38 DLR (4TH) 161* as follows;

“While a liberal and not an overly legalistic approach should be taken to constitutional interpretation, the charter should not be regarded as an empty vessel to be filled with whatever meaning we might from time to time. The interpretation of the charter, as of all constitutional documents, is construed by the language, structure and history of the constitutional text, by constitutional tradition, and by the history, traditions and underlying philosophies of our society”

In JAMES V COMMON WEALTH OF AUSTRALIA (1936) A.C. 578 lord Wright said;

“that a Constitution must not be construed in a narrow or pedantic manner and that construction must be beneficial to the widest possible amplitude of its powers must be adopted, or

that a broad and liberal spirit should inspire those, whose duty is to interpret the Constitution.”

Having laid the ground for the task ahead of us we now look at the facts of the case. The two petitioners are women. They state that they are cane growers within Chemelil area which falls within the region known commonly as the “Sugar belt”. It is their case that the second petitioner submitted herself to the election as a member of the sugar board. Her desire was to represent Chemelil/Nandi/ Miwani Electoral Area. One of her qualification was that she was a sugarcane farmer from the said region. According to the affidavit of the 1st petitioner sworn on her behalf and on behalf of the 2nd petitioner, and in support hereof, the 2nd petitioner was the only woman who presented her candidature for nomination and later elections. She was the only woman out of 49 men. The 2nd petitioner was not elected. The petitioners’ contention is that the said exercise was marred with several irregularities which we shall list shortly. From the results of the election exercise the 2nd petitioner garnered 609 votes and came number five against the 3rd respondent who garnered 2,696 votes. She was dissatisfied hence this petition which she filed together with her co-petitioner.

The petition has been strongly opposed by the respondents in their various affidavits. The 1st respondent filed a replying affidavit dated 12-10-2011 and sworn on 12-10-2011 by one **Romano M. Kiome** . He is its Permanent Secretary. The 2nd respondent filed its affidavit through its Chief Executive Officer **Solomon Odera** the same was filed on 11-10-2011 and sworn on 10-10-2011. The 3rd respondent swore an affidavit on 3-8-2011 and filed at the registry on 3-8-2011. The petitioner further filed a further affidavit dated 14-10-2011. In brief the respondents argued that no Constitutional provision had been infringed. That the provision said to be infringed can only be realize progressively

The activities relating to Sugar and sugarcane growing are governed by the **Sugar Act No. 10 of 2001**. Ordinarily there is a board commonly known as the Sugar Board, the 2nd respondent herein, whose mandate and duty is clearly spelt out in the afore stated Act. **Section 4** clearly states *inter alia*,

“4 (1) the object and purpose for which the board is established is to:-

- (a)Regulate, develop and promote the sugar industry.**
- (b)Co-ordinate the activities of individuals and organizations within the industry.**
- (c)Facilitate equitable access to the benefits and resources of the industry by all interested parties.**

The composition of the said board is spelt out in **Section 5** thereof, thus in **Section 5 (c)** the board shall constitute of:-

- (a)A non executive Chairman elected by the board from among the representatives of growers’ representatives on the board and appointed by the Minister.**
- (b)Seven representatives elected by growers and appointed by the minister.**
- (c)Three representatives elected by millers and appointed by the Minister.**
- (d)The Permanent Secretary Ministry for the time being responsible for matters relating to agriculture.**
- (e)The Permanent Secretary to the Treasury.**
- (f) The Director of Agriculture and**
- (g)The chief executive of the board appointed under section 10 who shall be an ex- officio member and the secretary to the board.**

The board members shall hold the office for a period of three years. Pursuant to the above, the 1st respondents on 17-6-2011 vide gazette notice No. 1748 issued a notice requiring an election to be done on 12-7-2011 in the electoral areas. These electoral areas are:-

(1) Sony, Transmara, Gucha zone.

(2) Chemelil, Nandi, Miwani zone

(3) Nzoia zone.

(4) West Kenya/Butali zone.

(5) Mumias/Busia zone.

The **Sugar (Elections) Regulations** covers the process by which the board is elected.

The 1st respondent gave notice for the convening of the meetings for purposes of holding elections. On 22-6-2011 the Director of Agriculture published an election programme for all electoral areas within the country. The said notice set out the following:-

(a) The polling stations in all the electoral areas.

(b) Qualifications a candidate was to satisfy including documents in support of the nomination.

(c) The nomination process.

(d) The date for the elections.

(e) A sample of the nomination form.

It must be noted that the said election was open to every person regardless of their gender provided he or she meets the relevant requirements.

Having set the above background, we considered the respective pleadings, annexures, authorities cited and submissions by the rival parties, we are of the considered opinion that this petition raises two basic issues namely:-

1. Alleged election malpractices and
2. Alleged breach of fundamental rights.

In addressing the first issue; whether or not there was any breach of the election rules we shall also consider whether this is the right forum for the same to be addressed.

It is now not in dispute that the 2nd petitioner was the only woman in Kenya who offered herself for nomination and election to represent her zone namely Chemelil/Miwani/Nandi zone. She came 5th as earlier on alluded in the supporting affidavit of the 1st petitioner. The Petitioners contended and identified the following key features which made the 2nd petitioner lose the seat.

(1) That 30 days notice was not issued by the 1st respondent after postponement of the election date. This affected the would be women candidates who would have desired to enroll.

(2) The voters register was tampered with at Chemase polling station on 21-7-2011 by the presiding officer as well as by the 3rd respondent at Kasese Catholic Church. They manually added new

voters.

(3)Actual violence was meted against the 2nd petitioner's supporters on the material day.

(4)The returning officer for the 1st respondent published in the print media the deadline for presentation of nomination papers for the growers representatives would be on the 5-7-2011 but extended the date in favoured the male candidates without a subsequent publication of a notice of extension of the same thus inhibiting growers who would have wanted to nominate female candidate were left out.

The respondents have vehemently opposed these allegations. Infact their contention is that this court has no jurisdiction for now to entertain the reference and that adjudication of any alleged election malpractices of the sugar Board elections is the preserve of the Sugar Tribunal established under **Section 31 of the Sugar Act 2001**. Their argument is based on **Regulation 13 (2) of Sugar (Elections) Regulation 2002** which provides that all disputes arising out of an election under Sugar (Elections) Regulation shall be lodged with the aforesaid tribunal.

Section 13 of the Sugar (Election) Regulations 2002 states:

“A person aggrieved by the decision of the returning officer to reject his candidature or right to vote may appeal to the tribunal within 14 days of the date of rejection”.

During the submissions by the parties herein it was brought to the attention of the court that there was a petition pending before the Sugar Tribunal over the said elections. This is case **No. 1260/2011**. No documentary proof was brought before us but the parties acknowledged that indeed such a petition was awaiting determination. It was also acknowledged that the issues therein alleged relate to the election malpractices referred to by the petitioners in this although the parties therein are not different.

We are in agreement with the respondents on this limb to the extent that the Sugar Tribunal has the mandate of arbitrating over election malpractices. Parliament gave it jurisdiction and we cannot take it away as long as it is operating within the confines of the law. Election violence, tampering with voters register, irregular or unlawful notices are in the purview of the said tribunal. In which case the petitioners should be able to refer any allegations of election malpractices to the said tribunal. In any event this court is still seized with the constitutional mandate to determine any appeal emanating from the said tribunal and therefore all shall not be lost for the petitioners. We therefore find and hold that the issue squarely lies within the jurisdiction of the Sugar Tribunal. It follows therefore that the petitioners ought to have preferred any complaints of election malpractice to the said tribunal in the first instance.

Having determined that the issues of election malpractices ought to be heard by the relevant tribunal, we now turn to the second limb of the petitioners' complaint. The issue of infringement of their fundamental rights; namely that the 1st respondent did not ensure that there was gender parity within the Kenya Sugar Board as envisaged by our new constitution.

Mr. Jamusumba counsel for the petitioners argued that the sugar board elections held on 21-7-2011 following the nominations published in the Daily Nation of 17-7-2011 contravened **Article 27** of the Constitution as there were no measures taken **to** include affirmative action programmes and policies designed to ensure that not more than two thirds of the elective public body is of the same gender. He further contended that there was failure on the part of the intermediary agencies in the industry and the government to promote rights of the vulnerable women groups in the industry. He claimed also that the respondents failed to oversee the formulation of mutual rights and obligations of growers and of the interested parties in line with the **Constitution of Kenya 2010**.

In opposing the application and in particular the above contention, the 1st respondent through its **counsel Miss Aliong'o** argued that the **Sugar Act 2001** and the **Sugar (Election) Regulation 2002** do not create a slot specifically for one gender. The 1st respondent's counsel further argued that

Article 27 (8) in which the petitioners relied on is not mandatory but constitute what he referred to as directive principles of State Policy and which do not create a corresponding right. Counsel further argued that the process of achieving the provisions of **Article 27 (8)** as per the **5th schedule** of the Constitution is five years and that it was premature for the petitioners to have brought this petition.

The 2nd respondent through its *counsel Mr. Tiego* while agreeing with the 1st respondent went on to argue that it is the duty of parliament to bring on board such amendments to **The Sugar Act** so as to streamline its provisions with **Section 27(8) of the Constitution** and that the enjoyment therefore of the provisions of **Article 27(8)** and **81** of the Constitution according have not crystallized. Further that the respondents can still put measures in place to comply with the constitutional provisions, In short the application was premature.

The 3rd respondent was represented by **Mr. P.J. Otieno**, who joined the position taken by the other two respondents. On his part he took issue with the 1st petitioner for lodging a complaint yet she did not even offer herself for nomination as a woman candidate. He further argued that it is only through legislation that special seats for women can be created in the board, further that the provision as envisaged in the Constitution is progressive and incremental. It was also his contention that **Article 27(6)** of the Constitution had in mind that the rights have to be supported by legislation before giving full effect to the same. He also argued that there is a window of opportunity to address gender imbalance if any in filling the positions for nominated members of the board. The 3rd respondent went further to accuse the petitioners of fostering their own interests and not those of the larger or greater women folk.

The issues herein can be divided thus; whether the petitioners' rights have been infringed in terms of the new constitution, Whether this court has jurisdiction or not. Is their petition premature? Have the 1st and 2nd respondents breached their mandate to ensure that there was compliance with **Articles 20, 21, 22, 23, 27(8), 81 & 258 of the constitution?**

First we shall consider whether this matter is rightly before us.

Article 165 (3) d sets out the jurisdiction of the high court to include

“jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;”

We therefore find and hold that the second issue is properly before us in line with the Article 165 (3) d.

Article 259 (1) of the **Constitution 2010** sets out the manner in which the same is to be interpreted it states;

“This constitution shall be interpreted in a manner that:

- (a) Promotes its purposes, values and principles.**
- (b) Advances the rule of law and the human rights and fundamental freedoms in the Bill of Rights.**
- (c) Permits the development of the law and**
- (d) Contributes to good governance.”**

In forming our opinion we shall be guided by the above principles set out by the Constitution itself, coupled with the wise counsel of legal scholars we referred to yonder

The issue raised by the petitioners fall under the Bill of Rights which is enshrined in **Chapter four** of the Constitution as set out in the Articles herein below.

Article 21 (3)

“All state organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic, religions or cultural communities”.

Article 27 (8)

“In addition to the measures contemplated in clause (6), the state shall take legislative and other measures to implement the principle that two thirds of the members of elective or appointive bodies shall be of the same gender”.

Article 27 (6)

“To give full effect to the realization of the rights generated under this article, the state shall take legislative and other measures including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination”.

From the plain reading of the above quoted articles, and in breathing life to the constitution and in giving it a purposive meaning, it is clear to this court that the state and public officers have a duty to deliberately bring into fruition the spirit and the letter of the said constitutional provisions by taking such steps so as to ensure that the aspiration of women and other vulnerable groups are well taken care of. In particular the one third rule ought to be complied with.

Special emphasis was placed by the parties on **Article 81 (b)** of the constitution which states:

“The electoral system shall comply with the following: (b) not more than two thirds of the number of elective public bodies shall be of the same gender.”

It is not therefore true for the respondents to argue that **Article 81** dealt only with legislative election. It is our view that the same articulates broad principles governing all electoral systems.

Having stated as above, we shall now critically look into the composition of the Sugar Board.

The Sugar Board comprises seven representatives elected by the growers, three representatives elected by millers, two permanent secretaries each from the Ministry of Agriculture and Finance and the Director of Agriculture. The total number sums up to thirteen directors. It is obvious that the said Sugar Act as it stands now does not indicate whether the thirteen directors should be of the same gender or not. In fact the 1st respondent has clearly admitted that as it is now, there are no reserved seats for women in the board or specific electoral areas, where only women growers have been elected. From the 1st and 2nd respondents perspective the process is simply competitive and the winner takes it all.

This may be the spirit of democracy as envisaged in the Sugar Act, we believe, however that Kenya being a democratic Country, its people in enacting the new Constitution appreciated the inequalities of the system and put measures in place to curb the same. That being the case all subordinate legislation including the **Sugar Act** must comply with the provisions of the **Constitution 2010**. The issue of affirmative action was well within the minds of the drafters of our Constitution. There was arguably the need to bridge historical imbalance. That is the import of the said articles. The same were a deliberate move to take care of the said inequalities. We also take cognizance of the role women play in the agricultural sector of our economy. They shoulder much of the work although; as the parties verily admitted it is the men who take home the spoils. The parties also conceded that in the sugar belt zone women do not own title deeds. Women may indeed not have an equal playing field with the men.

From the election herein it is clear that out of the fifty candidates only the 2nd petitioner was a

woman. The question to pose is where are the rest of the women? What happened to them? The answer is not for us to speculate. In any event, history speaks volumes and aloud on this matter and we need not say more, our view nevertheless is that it is imperative that the affirmative action envisaged by the **Constitution 2010** ought to be given life and purposive meaning. Two issues however were raised by the respondents, namely that the time frame of five years to implement the same is yet to expire and that the petition before us is premature. We do agree with the respondents only to the extent that the time to legislate in support of **Article 27(8)** under the Fifth schedule of the Constitution is given as five years from the date of promulgation. However, the said Article creates room to achieve the same before legislation is put in place. The article also stipulates other measures of achieving the same through affirmative action and direct state policy. This in our view was a deliberate move bearing in mind that legislation may take long. The respondents therefore have a duty; they also have ways and means of undertaking such steps and policies towards achieving this call.

Having considered submissions by the rival parties, we agree with the petitioners' counsel that the 1st and 2nd respondents have done nothing absolutely to ensure that this very essential requirement in the Constitution is attained. We are now into one year and seven months since the Constitution came into force. It is the responsibility of the 1st respondent to ensure that legislation is put in place to comply with the requirements of the new Constitution. The 2nd respondent on the other hand failed to demonstrate any deliberate policy it has undertaken pending legislation, in the meanwhile to adhere to the spirit and letter of the Constitution.

The respondent referred this court to the only other case that has so far dealt with the issue at hand under the new Constitution. **FIDA AND (4) OTHERS-VS- ATTORNEY GENERAL, Nairobi HC. Pet. NO. 102 of 2011.** We agree with our brethren only to the extent that;

“The purpose of article 27 (8) is to provide or place obligation upon the state to address historical and traditional injustices that may have been encountered or visited a particular segment of the people of Kenya.”

We however, as alluded elsewhere in this judgment, are of the view that the provision of the Constitution gives the States and public officers other steps and measures to be undertaken whether legislation is in place or not.

We fault the respondent for not ensuring that the process of complying with the provision of Article 27(8) is set in motion. There shall soon be another election of the 2nd respondent perhaps before the expiry of the five years period. Shall the 1st respondent claim that the statutory period has not lapsed and therefore we cannot be faulted?

We are of the considered opinion that both the 1st and the 2nd respondents need to undertake such legislative, affirmative action and policy measures to ensure that they bring into force the letter and spirit of Article 27 (8).

Having stated as above we turn now to look at the situation of the case before us. The Board of the 2nd respondent is yet to be fully constituted. In our view, compliance with **Article 27(8)** of the Constitution or not would become obvious after the full board has been put in place. The one-third rule comes into place once the board of 13 is known. In this regard we agree with the respondents that the current application before us is premature as it is not known yet of what gender the remaining members of the board will be composed of. The process of constituting the board was on going and was stopped by this court pending final determination of this petition. Much emphasis was laid by **Mr. Tiego** and **Mr. P.J. Otieno** counsel for the 2nd and 3rd respondents, that although the people elected by the growers were men, it ought to be a deliberate duty of their clients to ensure that the rest of the board members were from the opposite gender. Although these were submissions from the bar we take it, that the counsels had instructions to that effect as these shall be in the interest of the petitioners and other women.

It is hoped that by dint of this judgment the 1st respondent, the State and other agencies shall

undertake legislative measures, affirmative action, steps, programmes and direct state polices designed to redress the inequalities and marginalization of disadvantage groups including women.

All in all, we disallow the petition for the reasons above stated. This being a matter of national interest, we shall order each party to bear their respective costs.

We thank the parties and their legal counsels for their worthy participation and submissions. It is through such cases that the new Constitution shall receive interpretation and come to life to the betterment of the people of Kenya.

Dated, signed and delivered at Kisumu this 28th day of February, 2012.

**ALI-ARONI
JUDGE**

**S.J. CHITEMBWE
JUDGE**

**H.K CHEMITEI
JUDGE**

In the presence of:

.....for the petitioners

.....for the respondents