REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 94 of 2007

REPUBLIC.....APPLICANT

VERSUS

KENYA REVENUE AUTHORITY.....RESPONDENT

EX PARTE: UASIN GISHU STATIONERS & PRINTERS LTD

JUDGMENT

Introduction

1. The *ex-parte* applicant in this matter, Uasin Gishu Stationers & Printers Limited (hereafter the applicant), is a limited liability company incorporated under the Companies Act, Cap 486 Laws of Kenya. The applicant states that it carries on stationery and printing business in Eldoret and various places within the country.

2. In its Notice of Motion dated 21st February 2007 brought under order LIII Rule 3 of the Civil Procedure Rules, the applicant seeks to quash the assessment of tax by the respondent dated 6th December 2006, 11th January 2007 and any other assessment or demand for payment of tax that may have been issued against the applicant for the years 2001, 2002, 2003, 2004 and 2005. The applicant also seeks an order of mandamus to compel the respondent, its officers and servants, to forthwith release to the applicant the books, statements of account, vouchers, receipt books, ledger books, and all the documents taken and or impounded by the respondent from the applicant, an order of prohibition to be issued against the respondent, its agents and or servants from demanding the tax as assessed or at all relating to the period between 2001 and 2005. It also prays that the respondent be condemned to pay the costs of these proceedings.

3. The application is supported by an affidavit sworn by Rajesh Bachulal Vyas, a director of the applicant, on 9th February 2007, and a statutory statement of the same date. The applicant has also filed written submissions dated 13th April 2007.

4. The respondent opposes the application and has filed an affidavit in opposition to the application sworn by Billy Graham Oyengo Okiiry on 16th March 2007. Mr. Okiiry describes himself as a Revenue Officer with the Domestic Taxes Department of the respondent based at the respondent's Eldoret Office where the applicant's affairs relating to income tax and value added tax are handled. The respondent also filed written submissions dated 24th April 2012.

The Applicant's Case

5. The applicant's case as contained in the verify8ng affidavit sworn by **Rajesh Bachulal Vyas** on 9th February, 2007 as wells as its written and oral submissions, is that it has been paying its taxes to the respondent based on its income and has not defaulted in doing so for the years 2001, 2002, 2003,2004 and 2005. However, on the 6th of December 2006, it was served by the respondent with a notice of the same date requiring that it pays forthwith the sum of Ksh57, 631,154, the amount of assessed tax for the year 2001 – 2005. It also states that the respondent subsequently issued another notice dated 11th January 2007 claiming what it referred to as estimated assessment tax of Kshs27,011,323, as a result of which the applicant was confused as to what tax was due from it.

6. The applicant alleges that the respondent did not disclose how it arrived at the amounts that it was demanding, nor has it disclosed the basis of assessment todate despite the applicant having lodged its objection to the assessment; that it was not given any opportunity to be heard or to make representations before the respondent came up with the figures, and the rules of natural justice were not observed by the respondent. It contends that the figures comprising the amount demanded by the respondent are imaginary, arbitrary mere estimates and oppressive and have no bearing on its income.

7. The applicant contends further that the respondent holds and has continued to hold and retain receipt books, bank statements, vouchers, invoice books, ledger books, master rolls and other documents which it had collected from the applicant on 24th May 2006 for auditing, thus causing the applicant major difficulties in its operations. It has consequently not been able to respond to the claim for tax by the respondent as the respondent only returned a few select documents to it thus hampering the applicant's ability to respond to the tax claim.

8. According to the applicant, by coming up with arbitrary and baseless figures, the respondent acted beyond the jurisdiction conferred on it under the Kenya Revenue Authority Act, the Income Tax Act and the Value Added Tax Act, and its actions were therefore *ultra vires*. The powers granted to the respondent under these statutes do not include the powers to arbitrarily determine the tax payable and it is the duty of the respondent to assess the tax fairly due and to observe the rules of natural justice without prejudicing the applicant.

10. Mr. Katwa, learned counsel for the applicant, submitted that the applicant was confused as to what sum is being demanded particularly as the respondent was holding in its custody the applicant's books of account including the income tax returns for the relevant period. The applicant had been paying all the taxes due for the relevant period and to its knowledge, there were no tax arrears. The actions of the respondent were only meant to harass and intimidate the applicant and coerce it into paying what is an over-estimated, erroneous and oppressive figure when no taxes were in arrears. The acts of the respondent were therefore unreasonable and an abuse of the respondent's public office. The applicant relies, among others, on the **Supreme Court Practice 1997 Vol 53/1-14/6** and the cases of **Kadamas -v- Municipality of Kisumu, (1985) KLR, 954, Mirugi Kariuki -v- Attorney General, Nrb C. A No. 70 of 1991,** which reiterate the duty of a body in which is vested statutory functions to act fairly.

The Respondent's case

9. The respondent's case was presented by its learned counsel, Mr. Matuku and is as contained in the affidavit of Mr. Billy Graham Oyengo Okiiry and the respondent's written submissions. According to the respondent, it received information from an informer that the applicant was avoiding paying Value Added Tax (VAT) by classifying sales which attract VAT as VAT exempt. This was done by issuing cash sale receipts without leaving a carbon copy in the book and then creating a carbon copy later to show that the sale was VAT exempt. Mr. Okwiiry avers that he carried out investigations in the applicant's shop on 23rd May 2006 when he purchased various items from the applicant and verified that the information given by the informer was correct. He collected from the applicant the original receipt book from which the receipt on his purchase had been issued and various other items including; 80 cash deposit books, 7 cheque books, 3 invoice books, 3 receipts books, 2 journals, 2 payment vouchers, 1 file on VAT returns, 6 box files (with composite documents), 29 spring files, 1 cash sales book (VAT book), 1 delivery book and 3 cheque registers.

10. The respondent states that following the collection of the above items, the applicant made two unsolicited payments of Ksh.500,000.00 towards Income Tax and VAT each on 29th May 2006 and on 30th May 2006 respectively. The respondent concluded from these acts of the applicant in making the two unsolicited payments that its tax affairs in respect of Income Tax and VAT needed to be thoroughly examined. Towards establishing the correct income tax and VAT payable by the Applicant, a series of meetings were held on 26th and 30th May 2006, 13th June 2006, 6th July 2006, 27th September 2006 and 20th November 2006. Correspondence was also exchanged between the applicant and the respondent's Eldoret office.

11. The respondent submits that after analyzing the records and documents availed to it, the respondent concluded that not all requisite records under the Income Tax Act and the VAT Act were kept by the applicant; that the applicant did not keep creditors and debtors lists, cash books, sales and purchases records and ledgers, and that the cash sale receipt books printed and used by the applicant were not sequentially maintained. The failure by the applicant to keep these records was contrary to the provisions of section 54A of the Income Tax Act Cap 470 and the Seventh Schedule of the Value Added Tax Act Cap 476 Laws of Kenya.

12. According to the respondent, its investigations also revealed that the applicant's annual Income Tax returns for 2003 and 2004 had not been filed with the respondent contrary to section 52 of the Income tax Act. It therefore issued an estimated tax assessment to the applicant for the two years as it is empowered to do under section 73(1) and 52 B of the Income Tax Act. The tax assessment as at 6th December 2006 comprised income tax of Kshs. 23,753,769.00 for the income tax period 2001 – 2004; VAT for the period January 2001 to April 2006 amounting to Kshs. 24,733,865.00 and Pay as You Earn (PAYE) of Kshs 9,603,540.00 for the period January 2001 to April 2006 derived from deposits into the bank accounts held by Messrs N. A Vyas, V. B. Vyas R.B. Vyas and B.N. Vyas which, according to the respondent, could not be accounted for and were treated as cash receipts (benefits) derived from the applicant, making the total tax assessed as Ksh.57,631,154.00.

13. The respondent contended therefore that the assessment of tax and the demand upon the applicant was arrived at in accordance with the provisions of the law, specifically section 73 and 52 B (1)(a) of the Income Tax Act, Cap 470, paragraph 9(1)(a) of the Seventh Schedule to the VAT Act, Cap 476, and sections 3 and 73 of the Income Tax Act respectively.

14. According to the respondent, the applicant cannot allege a denial of the right to be heard as it was availed time and opportunities to present its case. Further, the basis upon which the tax arrears were arrived at was given to the applicant as illustrated in the documents annexed to the affidavit of Billy Graham Oyengo Okiiry.

15. The respondent also submitted that it had, in assessing the tax due from the applicant, given due consideration for all taxes paid prior to the assessments. Further, that in sending the demand for Kshs 27,011,323.00 on 11th January 2007, it did so under the provisions of section 77 of the Income Tax Act as it had found, subsequent to the service of the demand note for Kshs. 57,631,154.00 on 6th December 2006, that the estimated assessment of Income tax raised against the applicant for the years 2003 and 2004 for failure to file annual returns for those years was less than was due. This further amount was only a revision of the income tax and was not a new demand. While conceding that there were errors in the demand note as it referred to the period 2002-2004 instead of 2003-2004, the respondent contended nonetheless that the error was not fatal and could not defeat the tax claims in light of the provisions of section 81 of the Income Tax Act.

16. The respondent further submitted that the applicant had, through its Advocates, Nyairo and Company Advocates, lodged an objection to the tax assessment on 5th January 2007 but the objection was not valid under section 84 of the Income Tax Act as it was not accompanied by a return of income for 2003, 2004 and any supporting documents, and that in any event the objection could not cover PAYE assessment in view of the provisions of section 37(6) of the Income Tax.

17. The respondent's position was that it did everything within the law in assessing and demanding the taxes from the applicant, that the applicant had not lodged an appeal against the decision to raise the tax amount ofKshs. 24,733,865.00 against it as is provided for under section 33 of the VAT Act and consequently, the tax remains unchallenged and is payable. The respondent relied on the case of **Republic -v- Kenya Revenue Authority, Ex Parte Twiga Properties Ltd, Civil Application No. 665 of 2003** and **Coastal Bottlers Ltd v Commissioner of Domestic Taxes Misc Application No. 1756 of 2005** and urged the court to uphold the role of the Local Committee on Income Tax and VAT to which the applicant should have appealed instead of filing this application. Mr. Matuku therefore urged the court to find that the orders of certiorari, prohibition and mandamus sought by the applicant were unmerited and to dismiss the application with costs to the respondent.

Determination

18. The applicant is seeking orders to quash the decision of the respondent with regard to the assessment of tax due from it for the period 2003-2004, and for orders compelling the respondent to return the books and records currently in its possession. It should be borne in mind that in determining this matter, the court is not entering and cannot properly enter into an analysis of the merits of the decision by the respondent with regard to the tax due from the applicant. As the statutory body charged with the responsibility of collecting tax from parties in the position of the applicant, it is the respondent which has the statutory mandate and technical competence to assess the tax due from the applicant. As the court observed in the case of **Coastal Bottlers Limited -v- Commissioner of Domestic Taxes High Court Misc. Application No. 1756 of 2005:**

'Computation of duty or assessment involves the court going into the details of every claim and the principles of assessment which in our view is not the purview of judicial review.

19. Further, as the authorities relied on both by the applicant and the respondent attest, I believe that there is no dispute between the parties with regard to the powers of the court in dealing with an application seeking judicial review of the decision of a statutory body. This court can only interfere with the decision of the respondent if the respondent, in making its assessment, acted in excess of its statutory powers and in violation of the rules of natural justice, and thereby violated the applicant's right to fair administrative action.

20. The court in **Coastal Bottlers Limited -v- Commissioner of Domestic Taxes (supra)** cited with approval the provisions of the **Supreme Court Practice 1997 Vol 53/1-14/6,** to which this court has been referred by the applicant, and which are in the following terms:

'The remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for Judicial Review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matter in question.'

21. It is also worth noting that the circumstances under which the court will interfere with the decision of a body exercising statutory powers and the nature and circumstances under which orders of certiorari, mandamus and prohibition will issue are fairly well settled. An order of certiorari will only issue to quash a decision if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with. See **Kenya National Examination Council v Republic Ex parte Geoffrey Gathenji Njoroge Court of Appeal Civil Appeal No. 266 of 1996.**

22. In determining this matter therefore, this court is called upon to consider and make findings on two issues: first, whether the respondent violated the applicant's right to a hearing and, secondly, whether it acted unreasonably and in excess of its statutory power in arriving at its decision. The court cannot as demanded by the applicant, require that the respondent brings to court the detailed basis of each item of the tax assessment. The court does not have the jurisdiction or the competence to enter into an inquiry

whether the tax assessment was proper or justified.

The Right to be Heard

23. The applicant contends that it was not given an opportunity to be heard before the tax assessment of Ksh.57,631,154.00 was made; that the basis on which this amount was arrived at has never been disclosed to it despite its having lodged an objection, and that therefore its right to a hearing was violated. The respondent counters that the applicant was availed time and opportunity to present its case and was accorded an opportunity to prove that its affairs concerning tax payments were in order. This was done through correspondence between the applicant and the respondent between 31st May 2006 and 20th November 2006. The respondent also contends that it made it clear to the applicant the basis on which the tax arrears were arrived at.

24. From the documents annexed to the replying affidavit of the respondent, it is clear that there was extensive correspondence and meetings between the applicant and the respondent on the matter of the applicant's tax affairs. From the correspondence on record, the applicant tacitly acknowledges that it had not filed its returns – see BG5, the letter dated 31st May 2006, in which the applicant's auditor was asking for time to file the applicant's returns. This letter appears to be a response to the respondent's letter of 26th May 2006 which refers to failure by the applicant to file its returns for 2003-2004.

25. In the letter dated July 4th 2006 (also annexed to the respondent's affidavit as part of BG 5) the applicant was invited to the respondent's offices to discuss its tax affairs. The contents of the letter indicate that it is a follow-up on the respondent's earlier letter dated 14th June 2006, which refers to a meeting between the parties in this matter held on 30th May 2006. In the letter dated 7th August 2006, the applicant was reminded about the undertaking by its auditors to file its returns within 6 weeks from the date of return of records by the respondent.

26. The court also notes that there was an in-depth audit of the applicant's tax affairs. This is indicated in the notes on the final audit annexed to the affidavit of Billy Graham Okiiry as part of 'BG5'. The tenor of the discussions from the document, titled ***'Note of Concluding Meeting'*** held on 20th November 2006 is that the directors of the applicant, who were not present at the meeting, had failed to avail themselves at various meetings with the respondent, and that records requested for had not been availed to the respondent. At that meeting evidenced in the Indepth Audit of the applicant, none of the directors of the applicant were present. They were represented by their Advocate and auditor. The court also takes note of the documents produced by the respondent as **BG 6** and **BG 7** titled **Schedules of Additional Income and further Tax Due.**

27. From all the documents produced by the respondent and whose contents and import I have set out above, all of which have not been materially controverted by the applicant, it is clear that every effort was made by the respondent to give the applicant an opportunity to present its case. That it did not do so is, according to the applicant, due to the failure by the respondent to return its books.

28. Several letters were exchanged by the parties with regard to the books held by the respondent. In the letter dated 31st May 2006, the applicant was demanding a return of all the books and records held by the respondent. In its letter dated 14th June 2006, the respondent indicates that it would release to the applicant the few records and documents necessary to enable the applicant finalize its returns, noting that the applicant had not filed its income tax returns but was upto date with its Value Added Tax, adding the rider, with regard to the VAT: ***'the issue of the accuracy and completeness of the same notwithstanding'***.

29. The respondent also indicates in its letter dated June 23rd 2006 that it had given to the applicant's auditor all the documents for May 2006 which the applicant was asking for. It also states that it had availed copies of those of the applicant's records that had not been availed to its auditors.

30. The evidence before me does not demonstrate a failure by the respondent to give the applicant an

opportunity to be heard. If anything, it demonstrates efforts made by the respondent, over a period in excess of six months, to get the applicant to comply with the requirements of the law and make its tax returns. The fact that there were meetings and audits which the applicant's directors did not deem fit to attend indicates more of a failure on the part of the applicant to present its case than of the respondent to hear it.

31. After the issuance of the tax demands on the applicant, the applicant was again given an opportunity to produce any additional evidence and records to support its claim that it had paid all taxes due from it. In the letters dated 10th and 11th January 2007 from the respondent to the applicant, the respondent requested the applicant to avail its tax returns and accounts for the 2003-2004 income period within 30 days, failing which the respondent would enforce the collection of the assessed tax. The applicant did not, however,file the returns and accounts demanded.

32. The applicant contends that it lodged an objection to the tax assessment through its advocates, Nyairo and Company Advocates. According to the respondent, however the objection was not valid under section 84 of the Income Tax Act as it was not accompanied by a return of income for the year 2003, 2004 and any other supporting document. Section 84 (1) of the Income Tax Act provides as follows:

'A person who disputes an assessment made upon him under this Act may, by notice in writing to the Commissioner, object to the assessment.

(2) …..

Provided that the objection made within the thirty days shall not be valid unless it is accompanied by a return of income together with all the supporting documents, where applicable.'

33. The totality of the evidence before me indicates that the applicant was indeed accorded an opportunity to be heard and to present its case, both before the tax assessment was made, and before enforcement of collection. The meetings and correspondence between the parties in the period after the investigation of the applicant's tax affairs in May 2006, going up to February 2007, among them the letters dated 26th and 31st May 2006, 14th 20th and 23rd June, and 4th July which I have referred to above, satisfy the requirements with regard to a hearing. It is, I believe, trite law that what the requirements of fairness with regard to a hearing demand depend on the character of the decision making body and the kind of decision is has to make.

34. Further, in***Commissioner General, Kenya Revenue Authority -v- Silvano Onema Owaki t/a Marenga Filling Station Civil Appeal No. 45 of 2000(Unreported)*** the Court of Appeal held that the right to be heard must be determined within the context of the Act in question, as it is in the Act that the duties of the Revenue Authority are set out, and the liabilities of taxpayers to pay tax spelt out.

35. In this case, the requirements are satisfied by the opportunity given to the applicant to present its case through meetings and correspondence between itself, its lawyers and accountants and the respondent. From the evidence before me, the respondent was in communication with the applicant prior to the making of its tax assessment, and it gave the applicant an opportunity to present any objections that it had to the assessment as it was statutorily required to do.

36. If the applicant was dissatisfied with the decision of the respondent in arriving at the tax assessment or with its failure to admit its objection to the tax assessment, what were its options? The respondent argues that the applicant has not followed the mechanisms established under the Income Tax Act and the VAT Act in raising objections, an argument that has not been controverted by the applicant.

37. The procedure for lodging objections to tax assessments on income tax is set out in Section 84(3) of the Income Tax Act which stipulates that a person who has been aggrieved by the decision of a Commissioner to admit an objection under section 84 (2) may, after depositing with the Commissioner the whole or part of the tax amount assessed under the assessment to which the objection is made and on paying any interest under section 94, appeal against the refusal to a local committee. The applicant did

not appeal to the Local Committee after its objection was refused under either section 89 of the Income Tax Act or section 33 of the VAT Act, both of which empower an aggrieved party to appeal to the Tribunal within thirty (30) days of being notified of the decision.

38. As correctly submitted by the respondent, the local committee and the Tribunal (should a party be aggrieved by the decision of the Local Committee) are creatures of statute established under the Income Tax Act and the VAT Act and are intended to provide a fast and expeditious means of disposing of tax disputes through the tax experts who sit in these bodies. The application should have followed the statutory mechanism for the expeditious determination of the issue now before the court. The court would then be entitled to interfere if there was some procedural irregularity or the applicant was not granted an opportunity to be heard. As Justice Emukuke observed in **Republic –v- Kenya Revenue Authority, Ex Parte Twiga Properties Ltd** (supra), a decision assessing tax cannot be said to have an error because the applicant merely says so and he failed to follow the procedure availed in challenging that decision.

39. In the circumstances, I can find no basis for the contention that the applicant was not given an opportunity to be heard before the tax assessment was made, and there is therefore no basis for alleging that the applicant's right to a fair hearing was violated.

Whether the Respondent Acted Arbitrarily and in Excess of its Statutory Mandate

40. The applicant contends that the figures demanded by the respondent are imaginary, arbitrary and are mere estimates which are oppressive and have no bearing on the income of the applicant. It contends therefore that the respondent acted arbitrarily in determining the tax payable and in breach of its duty to assess the tax fairly and to observe the rules of natural justice. It contends that the respondent acted beyond the jurisdiction conferred on it under the Kenya Revenue Authority Act, the Income Tax Act and the Value Added Tax Act, and its actions are *ultra vires*.

41. The power of the respondent to levy income tax is provided for by section 3 of the Income Tax Act. Section 73 of the same Act sets out the method of assessing total tax payable, Section 15 of the Act sets out the method of ascertainment of a person's total income as well as deductions allowed.

42. According to the respondent, at the time the audit of the applicant's tax affairs was being conducted in May and June 2006, the applicant had failed to submit the income tax returns for the 2003 and 2004 income periods. Section 73 (1) of the Income Tax Act provides as follows;

'Save as otherwise provided, the Commissioner shall assess every person who has income chargeable to tax as expeditiously as possible after the expiry of the time allowed to that person under this Act for the delivery of a return of income.'

43. In my view therefore, the respondent was statutorily empowered to raise an estimated income tax assessment of the applicant's income tax liability for the years of income 2003 and 2004 in accordance with section 73(1) of the Income Tax Act as the time for submission of these returns had long expired.

44. Under section 73(2) of the Income Tax Act, where a person has delivered a return of the income, the Commissioner may accept that return and assess him on the basis thereof, but if the Commissioner has reason to believe that the return is not true and correct, he has power to determine, to the best of his judgment, the amount of the income of that person and assess him accordingly. Section 52B of the Income Tax Act provides that every person shall, for the accounting period commencing on or after 1st January 1992, furnish to the Commissioner a return of income, including a self-assessment of his tax on such income, not later than the last day of the sixth month following the end of his accounting period. From this provision of the law, the tax returns for the year 2003 should have been filed at the latest by 30th June 2004, and for 2004, by 30th June 2005. At the time of the audit in May 2006, and by the time the assessment was done in December 2006 and January 2007, the applicant was clearly long in breach of its tax obligations, and the respondent was clearly entitled to act as it did in making the tax assessments. There is nothing before me to indicate that the respondent acted in any way other than it was statutorily empowered to do.

Order of Mandamus

45. The applicant has asked this court to issue an order of Mandamus to compel the respondent to forthwith release to the applicant the books, statements of account, vouchers, receipt books, ledger books, and all the documents taken and or impounded by the Respondent from the Applicant. The applicant contends that the continued retention of these books by the respondent is causing great difficulties in the operations of the applicant.

46. The question is whether the respondent has a legal basis for the continued retention of the applicant's books of account. Under the provisions of Section 56 (1) of the Income Tax Act, the Commissioner is empowered to obtain books of accounts for the purposes of determining applicable tax. The section provides as follows:

'For the purpose of obtaining full information in respect of the income of a person or class of persons, the Commissioner may, by notice in writing, require, in the case of the income of a person, that person or any other person, and in the case of a class of persons, any person -

(a) to produce for examination by the Commissioner at the time and place specified in the notice, any accounts, books of account, and other documents which the Commissioner may consider necessary and the Commissioner may inspect such accounts, books of account or other documents and may take copies of any entries therein;

(b) to produce forthwith for retention by the Commissioner for such period as may be reasonable for their examination any accounts, books of account and other documents which the Commissioner may specify in the notice;

(c) not to destroy, damage or deface on or after service of the notice any of the accounts, books of account and other documents so specified without permission of the Commissioner in writing:

47. The law requires a taxpayer to produce forthwith ***'for retention by the Commissioner for such period as may be reasonable for their examination any accounts, books of account and other documents which the Commissioner may specify in the notice.'*** The books of account and records that were in the possession of the respondent were therefore held in accordance with the law. From the letter dated June 14 2006 annexed to the affidavit of Billy Graham Okiiry, whose contents have not been denied by the applicant, it is clear that that an agreement had been reached for release of documents to enable the applicant prepare its returns for the period in contention, while the letter dated June 23rd 2006 indicates that some documents were released to the applicant's auditors while the rest were retained to enable the respondent conclude its investigation.

48. I am not satisfied, therefore, that the applicant's documents were 'impounded' and that a mandatory order for the return of the documents should issue. However, this application was filed in February, 2007. Such investigations as the respondent needed to carry out ought to have been completed a long time ago, and five years and more from the date the documents were produced to the respondent, investigations cannot be the basis for continuing to hold the applicant's records.

Conclusion

49. The upshot of my findings above is that the Notice of Motion dated 21st February 2007 has no merit and must fail, and the same is hereby dismissed with costs to the respondent.

50. With regard to the applicant's records and documents held by the respondent, I direct that the same be released to the applicant within 60 days of today unless there is a valid reason for continuing to hold them.

Dated Delivered and Signed at Nairobi this 29th day of November 2012

MUMBI NGUGI
JUDGE