REPUBLIC OFKENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 21 OF 2010

IN THE MATTER OF: ARTICLES 2, 19, 20,21, 22,23, 25(c), 31, 35, 40, 50(1), 165(3) 262 AND SECTION 7 OF PART I OF THE 6TH SCHEDULE OF THE CONSTITUTION OF KENYA 2010

AND

IN THEMATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER SECTIONS 75 OF THE CONSTITUTION OF KENYA, 1969 AND ARTICLES 10,21,29,31,40 AND 50(1) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: PLOTS NOS. KWALE/DIANI BEACH/BLOCK 856,551,552,553,554,555,556,557,558 AND 559

AND

IN THE MATTER OF: THE REGISTERED LAND ACT

AND

IN THE MATTER OF: THE GOVERNMENT LANDS ACT

AND

IN THE MATTER OF: MOMBASA HIGH COURT CIVIL SUIT NOS. HCCC 140/2003 AND 108 OTHERS AND KWALE SRMCC 171/2010

AND

IN THE MATTER OF: TITLES NOS. KWALE/DIANI COMPLEX/056 AND 488 OTHERS

BETWEEN

LEISURE LODGES LIMITED.....PETITIONER

AND

THE COMMISSIONER FOR LANDS AND 297 OTHERS.....RESPONDENTS

R U L I N G

By an application dated 14.12.2010, the Applicant/Petitioner, Leisure Lodges Limited sought numerous interim and conservatory orders from the court under the provisions of Section 19,20,21,22,23,40,64,258 and 259 of the New Constitution as against 298 named Respondents and others who are un-named and only referred to as "All Persons interested in the following plots together with all subdivisions thereto". There are 238 plots listed without the express naming or joinder of the registered owners. From the description of the unnamed parties under para No. 299 – it is said that they include not only the registered owners of the said plots but also those interested in the subdivision. The number and particulars of the sub-divisions were not given. There are 234 plots listed.

The Application was filed on the foundation of the Petition herein under the stated provisions of the Constitution alleging contraventions of fundamental rights and freedoms under section 75 of the Constitution of Kenya, 1969 AND articles 10,21,29,31,40 AND 50(1) of the Constitution of Kenya, 2010. The Petition is dated 7.12.2010 and filed in court on 8.12.2010.

The Applicant through its advocates Mr. Kinyua and Mrs. Kibe initially appeared before the court on 8.12.2010 when the court certified an application dated 7.12.10 as urgent and was to be heard on 9.12.2010 ex parte. On 9th December 2010, the Applicant upon discovering a technical problem withdrew the application and subsequently filed the present one which is dated 14.12.2010 and heard on 16.12.2010.

Upon hearing the application, I reserved the decision to grant conservatory orders due to the complexity of the application. I subsequently delivered the court's decision on 5.01.2011 when I granted several injunctive conservatory orders as against the Respondents in the application. There were Prayers 1,2,3,4,5,8,9,10,11,17 and 18 pending the Inter parte hearing on 26th January 2011 at 11 a.m.

On the 26th January 2011 the following advocates attended and appeared before me on the inter partes

hearing.

1. Mr. Kinyua with Mrs. Kibe for the Applicant.

2. Mr. Asige for 116 Respondents

3. Mr. Gikandi for the 9th, 26th, 34th and 215th Respondents.

4. Mrs. Umara holding brief for Mr. A. F. Gross Advocate for Respondents Nos. 200 and 201.

5. Mr. Kamau for the Attorney General's Office for the 1st - 7th Respondents and

6. Mr. Nyabincha for Barclays Bank of Kenya Limited in respect for plots Nos. Kwale/Diani Beach Blocks 622 and 628

7. Mr. Njoroge Mwangi for the 8th Respondent.

8. Mr. Mwakireti for the 298th Respondent.

9. Mr. Mogaka Advocate who had not filed any notice of appointment said that he had received instructions to act for Respondent No. 108.

There was no appearance for the rest of the named Respondents. The firm of Asige Keverenge and Anyanzwa Advocates entered appearance for 116 Respondents which included named Respondents and unnamed interested parties whose properties had been mentioned and listed and its owners suggested to be potential Respondents.

The 8th Respondent filed its Defence, a Replying Affidavit and a Statement of Grounds of Opposition and was ready to proceed with the inter partes hearing represented by Mr. Njoroge Mwangi, Advocate. Mr. Asige for 116 Respondents filed a Notice of Preliminary Objection and was ready to proceed with the inter partes hearing of the application. He wished that the Preliminary Objection be taken first if it was to proceed. Mr. Gikandi for the 4 Respondents he represented filed a Notice of Preliminary Objection and was ready to take them up.

Mr. Njoroge Mwangi for the 8th Respondent pointed out to the court that the petition involved about 800 people, Respondents and/or interested people. He said that while his clients, Kwale County Council was not interested in any of the properties as owners and otherwise yet the matter would be expensive and it would require service of 800 people. He asked the court to give directions as to service. He was otherwise ready to proceed with application in respect of issues of law.

Mr. Asige, Advocate submitted emphatically that:-

- The Petition and application was a serious and grave matter

- It was a test case for the Bill of Rights under the new Constitution.

- It required the court to interpret Chapter 4 of the Constitution – Bill of Rights.

- It was necessary for the court to determine whether the matter was truly a Constitutional matter and whether the issues raised were Constitutional ones.

- This was an ordinary civil dispute crafted as a constitutional dispute.

- The position disclosed that there were existing and pending suits in connection with the suit properties.

- There were court orders in force in many of the suits. The court was obliged to consider the jurisdictional issues arising.

- There was a gross of abuse of the Court process.

- The Preliminary objections in points of law be dealt with first.

- There were 298 named and disclosed Respondents.

- Other potential Respondents were affected by reference of their properties, by reference to Title Numbers. They were 234 in number.

- There were other interested persons who are owners of the Titles mentioned, lessees, licencees etc. and who are not named or disclosed.

- The first question before proceeding is whether all these people had been served.

- The court cannot entertain any Preliminary Objection matter or take any step in the proceedings without before ascertaining the question of service of the application and petition.

- That service of process is of primary importance.

- Service cannot be done piece-meal.

- The filing of the Petition and the Orders, obtained was published in the Daily Nation on 10.1.2011.

- Service of the Petition and Application should have been personal service,

- Court only to allow substituted service in exceptional matters and circumstances.

- This was a Constitutional matter and all persons affected had the Constitutional right to be served.

- Another risk is that not all people read the "Daily Nation". Many people read other daily newspapers like The "people" and the 'citizen".

- Title numbers are not persons or parties

- Many people would not know that the Petition involves or touches on the properties or rights.

- The rights of others will be adversely affected if the matter went on without proper service.

- Their rights will be denied.

- The court should reconsider the question of service. Service must be in the legally prescribed way.

- The mode of service is an assault on the Constitution of Kenya

Mr. Mogaka for the 108th Respondent submitted that the court could not be ready to proceed with the application. He said that the court must first deal with the Preliminary Objections on points of law. Mrs. Umara holding brief for Mr. A.F. Gross Advocate of Nairobi representing Respondents Nos. 200 and 201 said that he had received the pleadings only a day before. She applied for adjournment to enable him take instructions and to file his client's papers. Mr. Nyabincha for Barclays Bank of Kenya Ltd. Also applied for and adjournment. He said that the Bank's property in Diani complex – subdivision No. 627 and 628 had been mentioned in the application. He needed more time to take full instructions.

Mr. Kinyua for the applicant submitted in reply, inter alia that:-

- Article 22 of the Constitution had been invoked and the orders sought were appropriate.

- The court had the jurisdiction to grant injunctive orders.

- The Orders had been given by the High court.

after he took time to argue the application ex parte.

- It was difficult to serve 500 people.

- One cannot serve any title at the lands office without copies of the titles.

- Where was the applicant to find all these people in the circumstances?

- It would take months to serve all persons concerned.

- It was humanely impossible to look for all of them and to serve them personally.

- Substituted service was the only available way to serve in the circumstances.

- Some of the named Respondents also owned the plots under No. 299 without named owners.

- There were sub-divisions going on.

- Orders were only of a conservatory nature.

- No orders affected registration of titles.

Mr. Kinyua further submitted that Preliminary Objections could not be prosecuted as they used to be done under the old Constitution. That under the new Article 50 of the Constitution, fair hearing of disputes was required. He conceded that it was possible that some of the named Respondents may not be aware of the Petition herein and it would not be safe to proceed with the application and orders against them. He applied to the court to allow searches to be carried out. He proposed that to save time, the Preliminary Objection be dealt with in limine. That the circumstances that had led to application were still in existence. He requested the court to extend the orders as against Respondents Nos. 1 – 298 or varied appropriately.

Mr. Gikandi objected to any extensions of any orders as there was no explanation as to why the searches of the Titles were not carried out. That it was the duty of the Applicant to have carried out the searches.

- The applicant should have invoked the provisions of Article 35, the right of access to information. They did nothing in this regard.

- One can only sue persons not plot numbers.

- The Petition is one; it cannot be severed as it also affects all the titles.

- The process is singular affecting all the plots.

- Service must therefore must be done on all.

- The Applicants created an urgency which did not exist.

- The applicant concealed that the disputes have been ongoing for the last 10 years. Cases have been pending since 2003.

- Extending the exparte orders would create great injustice.

- The conservatory orders ought not remain until the other side is served.

- Emotions should be left out.

Mr. Asige agreed with Mr. Gikandi on the question of extension of the ex parte orders. He added that:-

- The court should not allow opening a flood-gate of litigation granting such ex parte orders.

- The court should not allow the upgrading simple civil matters to Constitutional matters unless the ground is sinking, otherwise ex parte conservatory orders should not be given,

- There is a new dispensation and we have just began to interpret the New Constitution.

- This was a golden chance to put the court's in the annals of judicial history on the question of ex parte conservatory orders.

Mr. Mogaka said to extend the exparte order will result in absurdity. The dignity of this court was at stake.

I have considered the matters raised by the counsels for the parties and the submissions made by all counsel.

The first and paramount issue this court must decide upon is that of SERVICE of the Application and the Petition on the Respondents.

The New Constitution came into force on 27th august, 2010 under the provisions of Article 263, Chapter 4 provides for the Bill of Rights. Article 23 confers on the High Court the jurisdiction to enforce the Bill of rights. Article 23 (1) provides that:-

"23 (1) the High court has jurisdiction, in accordance with Article 165 to hear and determine application for redress of a denial, violation or infringement of, or threat to a right or fundamental freedom in the Bill of Rights.……"

Under Article 23 (3) the powers of the court is expressed:

"(3) In any proceedings under Article 22, a court may grant appropriate relief including:-

(a) A declaration of rights;
(b) An injunction,
(c) A conservatory order
(d) A declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Articles 24

(e) An order of compensation and

(f) An order of judicial review."

From the foregoing, there is no doubt that this court has the jurisdiction and power to grant conservatory and injunctive orders.

Under Article 22 the right to institute court proceedings to enforce the Bill of Rights is provided for and protected. It reads:-
"

22 (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, or infringed or is threatened.

……."

Article 22(3) provides that the Chief Justice shall make Rules providing for the court proceedings referred to in the Article. It is a fact that the Honourable Chief Justice to date has not made any rules under Article 22. However, under the said Article the absence of rules does not limit or bar the right of any person to commence court proceedings under the Article.

Article 22(4 provides that:-

"(4) the absence of rules contemplated in Clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court."

In order not to have a vacuum with regard to the Rules for enforcement of the Bill of Rights the Constitution Chapter 18 – 'Provisional and Consequential Provisions in Article 264 read together with the 6th schedule stipulate that the Rules in the former Constitution shall continue in force. The sixth schedule in Part 5 section 19 provides as follows:-

"19. Until the Chief Justice makes the rules contemplated by Articles 22, the Rules for the enforcement of the fundamental rights and freedoms under section 84(6) of the former Constitution shall continue in force with the alterations, adaptations, qualifications and exceptions as may be necessary to bring in conformity with Article 22."

In view of the foregoing transitional provisions, the Rules that apply to this Petition subject to any

adaptation and qualifications to ensure that it is in consistency with Article 22 are the previous - Constitution of Kenya (Supervisory Jurisdiction and Protection of fundamental Rights and Freedoms of the Individual) High court Practice and Procedure Rules 2006. The transitional provisions applying the said Rules is mandatory as the term used is "shall"

It would appear that the Petitioner has followed the procedure in the said Rules by filing the Petition and seeking ex parte interim orders by way of Chamber Summons. Rule 12 provides for the filing of a Petition for the enforcement of fundamental rights and freedoms of an individual. Rules 20, 21 and 23 of the said Rules state as follows:-

"20. Notwithstanding anything contained in these Rules, a judge before whom a petition under rule 12 is presented may hear and determine an application for conservatory or interim orders.

21. An application under rule 20 shall be by Chamber Summons supported by an affidavit and may be heard ex parte.

22. A person affected by an order under rule 20 may apply to set aside such order."

By the said rules, this court had on a prima facie basis at least, the jurisdiction and power to grant conservatory orders and interim orders of injunction. I make this as a general statement and without prejudice to the right of any of the Respondents or any other affected person to question the jurisdiction of the court in granting the ex parte orders herein taking into account the special facts context and circumstances of this unprecedented and unique case.

Having said that, under Rule 22 any Respondents herein or affected person had the right to apply to set aside the orders granted on 5.01.2011. However, this court did not give permanent orders pending the hearing of the Petition or for a long period. This court in exercise of its discretion and appreciating the drastic and extent of the ex parte orders, gave a returnable date within 21 days. The ex parte orders were to be in force only up to 26th January 2011 and could only be extended after that if the matter was not heard and subject to the rights of the Respondent and/or affected parties who appeared and even who did not attend the inter partes hearing on 16.01.2011 and also subject to the facts and circumstances which could justify such extension to another date. In the circumstances, the need for the Respondents and/or affected parties to apply to set aside the ex parte order by a formal application did not arise.

I now come back to the requirements of service of the application and Petition under the said Rules. Under Rule 15, the Petition "Shall be served" within seven (7) days of filing.

"Rule 15. The Petition shall in a criminal case, be served on the Attorney General and in a civil case on the respondent within seven days of filing".

(emphasis mine)

This is a mandatory requirement in the Rules made under the Constitution. Any Respondent served is required to file a Replying Affidavit within fourteen days of service of the Petition. Rule 16 reads as

follows:-

“16. The Attorney General or the respondent, as the case may be, shall within fourteen days of service of the Petition respond by way of a replying affidavit and if any document is relied upon it shall be annexed to the Replying Affidavit.”

The provision is also couched in mandatory terms (“shall”) and so the requirement is that a Respondent in a Constitutional application must as a matter of law file a replying affidavit to respond to the factual allegations of the alleged violations or of breaches of fundamental rights and individual freedoms.

I do hold therefore that a Respondent must be served with the Petition and where there is an application for Interim orders at the initial stage the application must also be served with the Petition. Service is therefore a mandatory condition precedent before any application and/or the Petition is heard. The time lines are very strict but this court may under the proviso in the transitional provision vary the times lines for service, I would think where there is an application for conservatory orders/interim order certified as urgent and to be heard inter partes.

The Rule also envisages, and contemplates a Respondent or Respondents not affected persons or interested parties to be served. The Respondents must be known, named identified and duly served. This is a cardinal requirement of the principles of Natural Justice and fair hearing of judicial proceedings. The right to defend judicial proceedings is a Constitutional right that is non-negotiable and cannot be taken away.

In the application by way of Chamber Summons, the Applicant/Petitioner is asking the court in supporting affidavit (Paragraph 85) that in order to save costs and time the court do direct that the application be heard together with the Petition. This demonstrates the importance and need for the service of both pleadings on the Respondents.

In the application at the ex parte hearing the Application/Petition made a prayer (No. 17) to the effect:-

“THAT” this Honourable court be pleased to direct the Notice of the filing of the Petition and of this application and of the issue of any interim orders be given to the Respondents by way of advertisement in any Daily Newspaper, with wide circulation on a week day, and the said notice to provide that the Respondents may collect copies of the Petition, the |Chamber Summons and the affidavits from the Petitioner’s Advocates’ offices or the court registry as the court may direct.”

This court granted the said order at the ex parte stage but the court is under duty to revisit the issue in view of the representations and submissions of the counsel for the Respondents who have appeared in court on learning of or seeing the advertisement in the Daily Nation of 10th January 2011.

First and foremost, there is no provision in the Rules for service by substituted service. This implies that the Constitutional Rules require that service be personal service on a Respondent. The best service is personal service in legal proceedings in any court or Tribunal. Under the Civil Procedure Rules, there is provision for substituted service by way of formal application through which explanation and reasons are given for the inability to effect personal service. The court must be satisfied that there exist sufficient evidence or material to justify and substituted service. In the absence of any provisions allowing

substituted service then it may be reasonably deemed that the law requires personal service of a petition or process in Constitutional matters.

Be it as it may, I must refer to Article 22 subsection 3(d) which provides:-

"……

3(d) The court, while observing the rules of natural justice shall not be unreasonably restricted by procedural technicalities…"

In my view, I am inclined to hold that in an appropriate case and situations, the court could allow an application for substituted service where the circumstances justify it e.g. where a respondent is shown to be avoiding service of a Petition to defeat the course of justice. In such a case, the Petitioner will have to make a formal application to justify an alternative mode of service.

In the present case there was a formal application for the service by substituted service and although their affidavit was not elaborate on the question, Counsel through his submissions was able to persuade the court that there was urgency and need for service through advertisement in a daily newspaper with wide circulation considering the sheer numbers of the respondents and other unknown interested or affected persons. The court then exercised its discretion taking into account the material before it then and the uncontestable submissions of Counsel for the Applicant as it was at an ex parte stage.

On the returnable date for the inter partes hearing, I do hold that in view of the protests and submissions that the matter of service can and should be revisited. This is absolutely necessary as it is clear that the purpose or objective intended by the substituted or alternative service was not successful or achieved as not all the Respondents did come to court on 26.01.2011 personally or through advocates. In view of the fact the subject matters are properties which belong to the Respondents and these other persons then it can only mean that they did not Notice the advertisement of the Petition, application or orders. It is natural to expect that had they noticed the same that they would have appeared in court to defend their rights as certainly the intended orders and reliefs intend to take any from them proprietary rights that they already have through the titles,leases, licencee etc. This presumption must operate in favour of the persons to be affected adversely by the mode of service and the consequential court orders that may issued or be granted.

For the Respondents and other interested or affected persons who have come to court personally or through counsel, I see no difficulty and thank Providence that they read the 'Daily Nation' and noticed the Advertisement or were informed by other readers of the said 'Daily Nation'. I do hold that there should be no requirement that the Application and Petition should be served personally where the Respondent or affected person has now retained an advocate. It is fair and reasonable that the Advertisement having elicited their reaction and appearance that any service of any pleading not served should be serve on their respective advocates. For those who may have come personally or filed any appearance by the date of the ruling , then it would be fair and just that the Applicant/Petitioner obtains their addresses and served on them unless they agree on other modes of service.

What about those Respondents interested and/or affected persons who have not appeared on record or in court? I think that the court ought to be guided by Articles 24(d) 27 and 50 which provides for fair hearing and equality in the enjoyment of rights and fundamental freedoms. They stipulate as follows:

"24 A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equity and freedom, taking into account all relevant functions, including

(a) –

(b) –

(c) –

(d) The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others, ……"

This provision recognizes all individuals to have equal fundamental rights and individual freedoms and are equal in the eyes of the law. The equilibrium can only change or be tilted to one side after due process and fair hearing of a dispute.

Article 27 provides in Section – (1) and (2) as follows:-

"27 (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms"

I do hold that the Applicant/Petitioner has the right to enjoy and the right to protect of its properties for which it has title which are prima facie evidence of ownership and at the same time the Respondents, interested and/or affected persons in this petition have equal rights to enjoy their properties for which they hold title deed or other legal instruments. Any propriety rights that can be acquired or awarded through court declarations, judgments, decree or orders will be so protected and so acquired after fair hearing of any legal disputes presented in court and consequent to due process.

Lastly, Article 50 (1) provides that:-

"(1) Every person has the right to have any dispute that can be resolved by the application by law decided in a fair and public hearing before a court or if appropriate another independent and impersonal tribunal or body."

For the Respondents interested and/or affected persons in the Petition to enjoy their Constitutional rights to fair hearing and equal protection of the law, they must be served with the Petition and application herein and except as may be ordered by the court for exceptional reasons to be considered and reasons recorded, the service must be effective and actual service which in my mind is "personal service"

In view of the foregoing, I do find and hold that the orders granted by this court, in prayer 17 was granted in disregard of the aforesaid Constitutional provisions which mandatorily provided for the law service of the Petition and any applications thereunder. The facts and circumstances of this Petition required no exceptions as the subject matter are immoveable property. The protection of right to property is guaranteed in Article 40 of the Constitution.

With all humility this court made the Ex parte orders *per incuriam* and the same are contrary and inconsistent with the express provisions of the Constitution. They were made sincerely and in utmost good faith and in the inadvertent but honest belief that the circumstances justified the grant thereof. With hindsight and upon hearing and considering the cries and protests of the Respondents and others who appeared through counsel or otherwise, I do hereby wish to reconsider the grant of the said orders and make immediate amends. It is the right and honourable thing to do.

This court presided by me has, without appearing to be chest-thumping always been a jealous and uncompromising protector of the Constitution and stickler for the Rule of law and the orders granted herein are regretted.

I therefore without any hesitation do discharge and set aside the orders granted under prayer 17 forthwith and unconditionally, *ex debito justiciae*.

The consequence of this order is that it is deemed that any Respondent who has not appeared and any other so-called interested and/or affected persons whose property or a property he has interest in any other way, have not been served. As personal service is a mandatory requirement in Constitutional applications for reasons given hereinabove, the court shall expect and demand that the said parties or individuals must be personally served with the petition and application. The Applicant/Petitioner is at liberty to make a formal application for substituted service on identified and named Respondents. I think that in an appropriate case, the court has jurisdiction and power to consider alternative modes of service but this must be upon a formal application and the court may grant orders for substituted or alternative mode of service where there is merit and also after satisfying the court that exceptional circumstance exist to justify or warrant dispensation of personal service and grant an order of substituted service.

It follows that service of the petition in a Constitutional application just like in ordinary civil proceedings must be served on a party who is identified and named must be a legal person capable of being sued and capable of defending the legal process, action etc.

I do hold that the so-called persons suggested in "Party No. 299" have not been named or identified and they are not capable of being served. There is no noun or possible legal person in so-called No. 299. The Petitioner/Applicant is expected to identify and name the intended Respondents and to join them in accordance with the law so that they can be served. The right to be personally served applies to the intended persons even more than the named and identified Respondents. As of now, they are non-existent and there is no party or Respondent under. Item No. 299. This court cannot order any service or grant any orders against imagined or non-existent persons.

Upon counting they would number 234 although the Petitioner says that some of the named Respondents are also registered as the owners of the plots in Item No. 299. This court does not know this and if this is true why include their plots in Item 299?

They are legal phantoms at this stage over which the court surely, cannot have jurisdiction. If there is no appropriate joinder, this court will proceed to strike out Item 299 from the list of the Respondents and let any legal consequences follow thereafter.

In view of the time taken by counsel for the parties, and as the Respondents who appeared are successful in the proceedings on 26.01.2011, I do order that the Respondents who appeared shall have the costs for the attendance and deliberations on 26.01.2011. Orders accordingly.

Dated and delivered at Mombasa this 2nd day of February 2011.

M. K. IBRAHIM

J U D G E

Coram:
Ibrahim, J
Court clerk – Kazungu
Mr. Kinyua for the Applicant/Petitioner
Mr. Njoroge for the 1st – 7 Respondents
Mr. Gikandi h/b for Mr. Asige for 116 Respondents & other
Mr. Asige walks and is in court now.
Mr. Mogaka for Respondent 108.
Mr. Gikandi for No. 9, 27 and 215.
Mr. Umara holding brief for A.F. Gross for Nos 200 and 201.
Mr. Nyabincha for the Barclays Bank of Kenya Ltd.
Mr. Gikandi h/b for Mr. Mwakireti and Mr. Njoroge Mwangi.
Ruling delivered in their presence.

Ibrahim, J