



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Miscellaneous Civil Application 490 of 2009

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW AND FOR ORDERS OF
CERTIORARI, PROHIBITION AND MANDAMUS

IN THE MATTER OF: THE KENYA COMMUNICATIONS ACT (ACT NO. 2 OF 1998)

IN THE MATTER OF: THE LAW REFORM ACT (CHAPTER 26 OF THE LAWS OF KENYA)

IN THE MATTER OF: THE DECISION OF THE COMMUNICATIONS

COMMISSION OF KENYA PURPORTING TO MIGRATE CURRENT RADIO AND
TELEVISION PROVISIONAL LICENCES TO THE NEW LICENCE REGIME
PROMULGATED BY AMENDMENTS MANDATED BY ACT NO.1 OF 2009

BETWEEN

WEZAN RADIO GROUP LIMITED.....APPLICANT

AND

THE COMMUNICATIONS COMMISSION OF KENYA...RESPONDENT

RULING

1. Before me is the Chamber Summons application dated 18/08/2009 and filed on the same day under Certificate of urgency. It is filed under Order LIII Rule 1(1), (2), (3) and (4) of the Civil Procedure Rules, Section 8 of the Law Reform Act, Section 3A of the Civil Procedure Act and all other enabling provision of the law. The Applicant, **Wezan Radio Group Limited** seeks leave of this Honourable Court to apply for judicial review and specifically for the following orders:-

(a) *AN ORDER OF CERTIORARI to remove into the High Court and quash the decision of the Communications Commission of Kenya contained in the Daily Nation Newspaper dated the 21st July, 2009 purporting to migrate existing television and radio broadcasters from the current provisional legal regime to the new legal regime mandated by amendments to the Kenya Communications Act imposed by Act No. 1 of 2009 without the publication, consideration and or evaluation of a public tender issued in that regard as required by the provisions of the Exchequer and Audit (Public Procurement) Regulations, 2001 and by the Kenya Communications Act.*

(b) *AN ORDER OF PROHIBITION directed at the Communications Commission of Kenya prohibiting it from “migrating existing broadcaster to the new regime starting September this year” without first complying in full with the provisions of the Exchequer and Audit (Public Procedure)*

Regulations 2001 and the licensing requirements of Kenya Communications Act with regard to a formal issuance of a public tender and an objective and transparent process arrived at after due consideration of world wide best practice in the broadcast industry and the adoption of regulations, criteria, standards and qualifications with, perforce, public, industry and stakeholders consultations.

(c) ***AN ORDER OF PROHIBITION** directed at the Communications Commission of Kenya prohibiting it from allowing, licensing, authorizing or acquiescing in, continued broadcast by any person beyond the 02nd January, 2010 without the full compliance with the provisions of Exchequer and Audit (Public Procurement) Regulations 2001 and the licensing provisions of the Kenya Communications Act.*

(d) ***AN ORDER OF MANDAMUS** directed at the Communications Commission of Kenya requiring the said Communications Commission of Kenya to issue a public tender in compliance with the Exchequer and Audit (Public Procurement) Regulations, 2001 and the licencing provisions of the Kenya Communications Act with regard to the licensing of all television and radio broadcasters as required by the relevant amendments introduced by Act No. 1 of 2009 with regard to the regulation and licensing of television and radio broadcasters.*

2. Under prayer 4 of the application, the Applicant prays that the leave so granted to the Applicant to apply for the said Orders of Certiorari, Prohibition and Mandamus do operate as a stay of the decision of the Communication Commission of Kenya published in the **Daily Nation** Newspaper of 21st July, 2009 in the following terms:-

(a) *That all provisional television and radio broadcast permits expire by express provision of law under the Fifth Schedule to the Kenya Communications Act;*

(b) *That all television and radio broadcasters require to apply for new broadcast licenses under the new provisions of the Kenya Communications Act;*

(c) *That the Communications Commission of Kenya is required by the amendments introduced by Act No. 1 of 2009 to promulgate objective and transparent regulations under which new permits are to be applied for and issued;*

(d) *That the Applicant and any other existing or interested party wishing to offer television or radio broadcast must all have equal chance and opportunity to compete for the grant of the broadcast licenses and assignment of relevant frequency spectrum;*

(e) *That such transparent and objective regulations require the scrutiny of and participation by, stakeholders in the industry and must be consistent with the dictates of international best practice, and must, of necessity, address all issues relating to broadcast licensing including but not limited to cross-media ownership, concentration of media in a few persons, direct ownership and related or beneficial ownership criteria, number of licenses per site per licensee, programming content and genre of music and categorization, language of broadcast and equal and equitable access by all tribes and communities to broadcast in their ethnic or vernacular language in national or cosmopolitan licence sites, and any or related subjects expressly contemplated by Act No. 1 of 2009 or reasonably inferred by the said Act;*

(f) *In the absence of strict compliance with (a), (b), (c), (d) and (e) above the Communications Commission of Kenya may not issue any permits under the amendments introduced by Act No. 1 of 2009.*

The Applicant also prays that the costs of this application be in the cause. The grounds in support of the application are that

(a) *the Respondent is acting ultra vires the Exchequer and Audit (Public Procurement) Regulations and the Kenya Communications Act;*

(b) *the actions of the Respondent are discriminatory against the Applicant;*

- (c) *the actions of the Respondent infringe the legitimate expectations of the Applicant*
- (d) *the actions of the Respondent are against the principles of natural justice in that the Respondent is motivated by a desire to prefer a particular pet broadcaster over the other players in the industry*
- (e) *the actions of the Respondent are illegal and contrary to law.*

3. The application is also supported by the Statement of Facts filed simultaneously with the application. The Statement of Facts sets out the reliefs sought by the Applicant, which reliefs are in similar terms as the Orders sought. The grounds upon which the reliefs are sought are that:-

- (a) *The process by which broadcast permits have hitherto been issued in Kenya has been very political, without merit, criteria, standards or objectivity.*
- (b) *Apart from the issuance of permits being politicized there was in fact no legal provision governing the very issuance of broadcast permits and a hotchpotch process was inverted to facilitate issuance of broadcast permits.*
- (c) *The local courts have acknowledged the politicization of the process for the grant of broadcast permits and subsequent assignment of broadcast frequencies;*
- (d) *The Applicant herein (and a host of other prospective broadcasters who desired to enter the broadcast industry) faced serious political hurdles and for many years lobbied for a transparent legal and regulatory regime to govern the broadcast industry.*
- (e) *The “Memorandum of Objects and Reasons” accompanying the publication of the Media Bill clearly indicated that it was the intention of the Bill to, inter alia “empower the Commission to licence, and regulate broadcast services ----“*
- (f) *The functions of the Commission, as set out under section 46A of the Kenya Communications Act in relation to broadcasting services are in a nutshell to:*
 - (i) *promote and facilitate the development, in keeping with the public interest, of a diverse range of broadcasting services in Kenya;*
 - (ii) *promote diversity and plurality of views for a competitive market place of ideas*
- (g) *Section 46D(2) of the Kenya Communications Act expressly states, inter alia, that in considering applications for the grant of a broadcasting licence, the Commission shall have regard to –*
 - (a) *observance at all times of public interest obligations in all broadcasting categories;*
 - (b) *diversity and plurality of views for a competitive market place of ideas;*
 - (c) *availability of radio frequency spectrum including availability of such spectrum for future use;*
 - (d) *efficiency and economy in the provision of broadcast services;*
 - (e) *demand for the proposed broadcasting services within the proposed broadcasting area”.*
- (h) *Sections 77 and 78 of the Kenya Communications Act provide that all licensees, apart from those who are specifically exempted and listed under the Section, are required to apply and the public is allowed to make representations regarding the suitability or otherwise of any application seeking to be granted a licence under the Act. Sections 77 and 78 of the Act provide as follows:-*

77. (1) *Every application for a licence under this Act shall be in the prescribed form addressed to the*

Commission and shall be accompanied by such fee as may be prescribed.

(2) The Commission may, with respect to any application, require the applicant to supply such additional information as it may consider necessary in considering the application.

78.(1) The Commission shall, at least thirty days before granting a licence under this Act, give notice in the Gazette and in such other manner as the Commission considers appropriate –

(a) specifying the name and other particulars of the person or class of persons to whom the licence is to be granted;

(b) stating the reasons for the proposed grant of the licence; and

(c) specifying the time (not being less than thirty days from the date of the notice) within which written representations or objections in respect of the proposed licence may be made to the Commission.

Provided that nothing in this subsection shall apply in respect of licenses for ?

(i) telecommunications vendors

(ii) Radio-communications; or

(iii) Value-added or resale services

(2) The Commission shall in considering the application, take into account any written representations or objections received under subsection (1) (c).

(i) That once the coming into force of the Act, that is to say Act No. 1 of 2009, the Commission has not put in place criteria or standards as required by the said new Act on the licensing of broadcasters.

(j) That the transitional provisions stated in Act No. 1 of 2009, will obviously expire before the Commission is able to operationalise the provisions mandated by the said Act No. 1 of 2009.

(k) That because of the public interest in television and radio licensing, it is imperative that all stakeholders in the industry must be consulted and afforded an opportunity to comment on any proposed regulations or rules, upon giving reasonable notice to the public to apply for such broadcast licenses as shall be pronounced under the new regulations and rules.

(l) That under Act No. 1 of 2009, the successful applicants will require to be gazetted and the general public be invited to comment on the suitability of Applicants to be granted broadcast licences; and thereafter the successful applicants to be notified of the grant of the licenses before the process of rolling out their licensed broadcast services commences.

(m) That the mandatory process outlined above cannot be reasonably activated between now and the mandatory expiry of the provisional licences presently in force under the Fifth Schedule to Act No. 1 of 2005.

(n) That the Commission is in flagrant breach of the law and that the said breach is neither accidental nor unintentional as it seems that the Commission is bent on favouring certain groups of people with a view to maintaining the political status quo;

*(o) That the pronouncements by the Commission that existing broadcasters will be “migrated” to the new regime is a flagrant breach of the law and is ultra vires the express statutory provisions in pretending to state that the Commission will “**start migrating existing broadcasters to the new regime starting September this year**”*

(p) That such “migration” as is alluded to in item (o) above is not contemplated by the Kenya Communications Act or any other law and is therefore illegal and amounts to an abuse of office by the Commission

(q) That the Commission is not exempt from the provisions of the Exchequer and Audit, (Public Procurement) Regulations, 2001, which require that where there are more than a potential applicant for the grant of a licence, a tender must, in the absence of an express exemption, be issued for the mandatory 42 day period.

(r) That the Commission has precipitated a national crisis by allowing a situation to develop in which the country will be faced with an eventuality in which there will be no lawfully authorized and licensed broadcaster (save for the National Broadcaster) after the 02nd January 2010, and that such a crisis has been created specifically to support and grant special favours to specific and existing broadcasters.

(s) That if the Commission is allowed to proceed with the migration as proposed, then the applicant herein will be denied its constitutional right to participate in the provision of broadcast services, which action will also wholly and completely defeat the provisions of Act No. 1 of 2009.

(t) That apart from the fact that the current permit holders have all the available frequency spectrum, the permits that are so held do not comply with the new specifications and mandates of the broadcasting regime under Act No. 1 of 2009.

(u) That the Commission is in further breach of Act No. 1 of 2009 for failing to issue a tender for signal distribution services that are considered critical by the applicant in the effectuation of the new broadcast regime, and that this failure on the part of the Commission is neither accidental nor unintentional.

(v) That infact the reason behind the Commission’s failure to issue tenders for signal distribution is to maintain the relevance of the current holders of provisional permits as to justify the stated connived migration of holders of provisional permit holders under the current status quo

(w) That on the overall, the actions of the Commission are unreasonable and they offend the legitimate and reasonable expectations of the applicant and countless other political broadcasters and that these actions ought to be quashed.

(x) That the actions of the Commission are not only ultra vires various Acts governing broadcasting, but that these actions also go to show that the Commission is:-

(i) hopelessly incompetent to manage the new broadcast regime

(ii) so determined to protect certain vested interests at the expense of the Commission’s mandate as set out under section 46A of the Kenya Communications Act

(iii) controlled and directed by persons outside the Commission in flagrant breach of the independence granted to the Commission by Parliament.

4. The Applicant pleads that it be granted a stay of the Commissions envisaged “migration” otherwise the whole application and proceedings will become nugatory once the proposed migration proceeds unhindered and that if the migration takes place, the Applicant says it will lose the opportunity to participate in the provisions of broadcast services contrary to the provisions of the Kenya Constitution and the Kenya Communications Act.

5. The application is also supported by the verifying affidavit of **Magdalene Njeri** sworn on 17/08/2009. The deponent avers that she is the Managing Director of the Applicant herein and that she has been duly authorized by the Applicant’s Board of Directors to swear and make the affidavit. She says

that the Applicant is a locally incorporated media and broadcast company with the mandate to undertake radio broadcast services in Kenya. The deponent reiterates and verifies the contents of the Statement of Facts as set out above. It is the deponent's contention that unless the Commission is deterred in its purported "migration" only certain preferred and politically connected broadcasters will be allowed to operate at the utter detriment of public interest. She also says that the Commission's actions are aimed at frustrating the growth of a robust and energized broadcast regime which is in the public interest and of immense economic and social benefits to the wider public. The deponent says that the Commission is not interested in discharging its statutory duty with impartiality nor is it interested in offering a level playing field for all interested parties in the broadcast industry.

Genesis of this Application

6. Briefly the Applicant's case is that the Kenya Communications (Amendment) Act came into force on 2/01/2009. The Act effected some amendments to the Kenya Communications Act, 1998. The purpose of the Act, under Section 2 thereof was given as being

"to facilitate the development of the information and communications sector (including broadcasting, multimedia, telecommunications and postal services) and electronic commerce"

7. Mr. Peter Simani advocate for the Applicant told the court that under the Fifth Schedule to the Act and in particular under clause 2(b) thereof, all parties who were holding licences, would at the expiry of one () year apply afresh to the Communications Commission of Kenya (the CCK) for new licences. The relevant clause 2 of the Fifth Schedule reads as follows:-

"2. Broadcasting permits granted by the Minister.

The Commission shall respect and uphold the vested rights and interests of parties holding broadcasting permits issued by the Minister prior to the commencement of this Act;

Provided that ?

(a) such parties shall be granted a period not exceeding one year during which they may continue to operate in accordance with their existing permits; and

(b) before the expiry of the one year period, such parties shall apply to the Commission to be licenced under the Act"

8. Mr. Simani contended on behalf of the Applicant that in light of the above provisions, the Applicant's expectation was that all the permits issued by the Minister prior to the commencement of the Act would expire come January 2010 and that in the meantime, the Communication Commission of Kenya would put into place a mechanism by which the provisions of the Act would be implemented to bring in a new licensing regime. Mr. Simani also submitted that prior to the commencement of the Act there was no regime under which the permit holders operated.

9. The Applicant thus contends that contrary to the Act, the Communication Commission of Kenya, by an advertisement carried in the **DAILY NATION** of Tuesday, 21/07/2009 advised the world as follows:-

"Companies offering broadcast services have up to January 2 next year to adopt the new laws governing operations of the Communications Commission of Kenya.

Communication Commission of Kenya board Chairman Philip Okundi said the commission was currently laying the ground to start regulating broadcast services in line with the new law that has broadened their mandate to cover services offered by broadcasters.

"We expect to start migrating existing broadcasters to the new regime starting September this year," Mr. Okundi told participants at the start of a three-day exhibition showcasing various products

and innovations in the information communication industry.

Stiff competition

Before the enactment of laws widening the commission's mandate early this year, CCK charged with licensing and regulating telecommunications, radio communications and postal services.

Mr. Okundi said CCK next challenge would be its ability to manage the stiff competition being witnessed in the industry. He said the new licensing regime had also freed licensees from investing in supportive fields which may not necessary be their businesses.

The exhibition, at the Kenyatta International Conference Centre was officially opened by Information and Communication Permanent Secretary Bitange Ndemo. Also present was CCK Director General Charles Njoroge."

The Applicants' quarrel with CCK's advertisement is in the following statement attributed to the CCK Board Chairman, who said,

"We expect to start migrating existing broadcasters to the new regime starting September this year".

The Applicant contends that if the CCK proceeds to migrate existing broadcasters to the new regime without following the laid down procedures, all the available frequencies might be taken up before other interested parties the likes of the Applicant are afforded an opportunity to enter the market, hence this application. Mr. Simani also submitted that no prejudice shall accrue to the existing permit holders if the correct procedure is followed since all their licenses are still valid until January 2010.

10. This application was heard ex-parte in Chambers as provided by the rules. The Notice to the Registrar, filed pursuant to Order LIII Rule 1(3) of the Civil Procedure Rules was served on 17/08/2009. The same was duly received on the same 17/08/09. The Notice was accompanied by copies of the Statement of Grounds and Facts dated the 17/08/09 and was also accompanied by a Verifying Affidavit of the same date. The Verifying Affidavit verifies the statement of Grounds and Facts and all these grounds and facts have already been set out earlier in this ruling. The Verifying Affidavit refers to section 46D of the Kenya Communications Act which expressly provides as follows:-

"46D(1) A person shall not be eligible for the grant of a broadcasting licence if such person –

- (a) is a political party
 - (b) is adjudged bankrupt or has entered into a composition or scheme of arrangement with his creditors;
 - (c) is of unsound mind;
 - (d) does not fulfill such other conditions as may be prescribed
- (2) In considering applications for the grant of a broadcasting licence, the Commission shall have regard to ?
- (a) observance at all times of public interest obligations in all broadcasting categories;
 - (b) diversity and plurality of views for a competitive marketplace of ideas;
 - (c) availability of radio, frequency spectrum including the availability of such spectrum for future use;
 - (d) efficiency and economy in the provision of broadcasting services;

- (e) demand for the proposed broadcasting service within the proposed broadcast area;
- (f) expected technical quality of the proposed service, having regard to developments in broadcasting technology;
- (g) suitability, capacity, experience and expertise of the applicant in as far as carrying out such broadcast service is concerned;
- (h) financial means and business record, if any, of the applicant; and
- (i) any other relevant matter that the Commission may consider necessary.

11. In light of the above, the applicant is saying that if the Commission simply migrates the current license holders to the new regime, such license holders will not be subjected to the procedure set out above, and that such a step would prejudice intending entrants into the telecommunications sector, and more so because the preferred licensees would not be subjected to the rigors of applying and the attendant vetting under sections 77 and 78 of the Kenya Communications Act, (the Principal Act).

12. Section 46D is thus clear as to what the Commission should do and/or take into account when considering applicants for broadcasting licenses. The issue that now arises for determination is whether the Applicant has made out a prima facie case to warrant the granting of the orders sought. In determining this issue, the court has to consider the test to be applied in an application for seeking grant of leave to an Applicant for Judicial Review. The Applicant, through the firm of **Simani & Associates Advocates**, relied on two of authorities, namely **Milimani HCCC No. 651 of 1998 – Ahmed Rashid Jibril –vs- East African Television Network Limited & 6 Others** and **Nairobi Misc. Application No. 403 of 1998 – Republic –vs- Minister for Information and Broadcasting & Another**, *Exparte East African Television Network Limited (Applicant)*. I have considered these authorities. I have also considered the case of **Njuguna –vs- Minister for Agriculture [2000] 1 EA 184**, in which the Court of Appeal restated the test to be applied by the court in applications of this type. The holding in that case was applied by Wendoh J in **HCCC Misc. Application Number 747 of 2006 – Hon. Uhuru Kenyatta & 6 Others –vs- Registrar of Societies & 5 Others** where the Judge, quoting from the **Njuguna case** (above) said at page 26 of her ruling that ?

“--- the test as to whether leave should be granted to an Applicant for Judicial Review is whether without examining the matter in depth, there is an arguable case that the reliefs sought might be granted on the hearing of the substantive motion”.

So that in the instant case, I need not go deep into the merits of the Applicant’s complaint against the Communications Commission of Kenya, for that will be the task of the Judge at the hearing of the main motion if the Applicant succeeds, on this application. My only concern here is whether, on the face of it, the Applicant is likely to succeed on the main motion for the reliefs sought.

13. It is imperative at this point to consider the scope of Judicial Review with a view to establishing whether or not the Applicant’s case falls within that scope. In the **Uhuru Kenyatta case** (above) Wendoh J quoted from **Halsbury Laws of England, 4th Edition Reissue – Vol 1** at paragraph 64 which gives the scope of Judicial Review as follows:-

“64. The scope of Judicial Review: the traditional test for determining whether a body of persons is subject to Judicial Review is the source of the power. It is not the sole test however, and it may be helpful to look not just at the source of power but at the nature of the power. The principle distinction that appears from the case is between a domestic or private tribunal on the one hand and a body of persons who are under some public duty on the other. If the duty is a public duty the body in question will be subject to the Public Law “possibly the only essential elements” giving rise to the exercise of the supervisory jurisdiction of the court are what can be described as a public element which can take many different forms, and the exclusion from the jurisdiction of bodies whose sole source of power is a consensual submission to its jurisdiction

A public body suggests a government or quasi governmental element If the source of power is a statute, or subordinate legislation under a statute, then the body in question will be amenable to Judicial Review, ... The crucial consideration will be whether a particular decision of the body is made under a statutory power ... where any person or body exercises a power conferred by a statute which affects the rights or legitimate expectations of citizens and is a kind which the law requires to be exercised in accordance with the rules of natural justice, the court has jurisdiction to review the exercise of that power.

If the source of power is contractual as in the case of private arbitration then the arbitrator is not subject to Judicial Review. Thus the members of trade unions, business associations and social clubs and also students in Universities and colleges who have contractual rights based on contracts of membership should in appropriate cases seek the private law remedies of declarations and injunctions and not the remedy of Judicial Review.”

14. Mr. Simani submitted that the Statement of 21/07/2009 attributed to the Communications Commission of Kenya makes the Communication Commission of Kenya subject to the Judicial Review because the Communication Commission of Kenya is the body with the power to facilitate the development of the information and communications sector (including broadcasting multimedia, telecommunications and postal services) and electronic commerce; that the Communication Commission of Kenya is also a public body with some public duty, that the Kenya Communications Act confers on the Communication Commission of Kenya a power which requires to be exercised in accordance with the rules of natural justice.

15. Having considered the pleadings and the submissions and the law, I think that this is the correct position. A look at sections 46D, 77 and 78 of the Kenya Communications Act suggests that there is a likelihood that the Applicant could succeed on the prayers it proposes to place before the court on the main motion. From the statement emanating from the Chairman of the Communication Commission of Kenya as reported in the **DAILY NATION** of 21/07/2009, it is not clear whether the Communication Commission of Kenya has already complied with sections 46D, 77 and 78 of the Kenya Communications Act. In other words, has the Communication Commission of Kenya taken account of public interest obligations in deciding to migrate the current license permits to the new regime. It is my view that the whole of section 46 of the Kenya Communications Act places a heavy burden on the Communication Commission of Kenya requiring that the letter and spirit of the entire Kenya Communications Act be obeyed; that the Communication Commission of Kenya must in all its actions adhere to the due process of the law in considering applications for licenses. It seems to me therefore that if there will be a wholesale migration of current license holders, then one cannot say that there has been a consideration of any kind, hence the Applicant's apprehension. I believe that an issue has arisen in this case as to whether or not the Communication Commission of Kenya has exercised or not exercised the powers conferred upon it by the Kenya Communications Act as it should, or whether the Communication Commission of Kenya has breached any provisions of the said Act. In the circumstances, I think that the Applicant has established that it has an arguable case; a case that is not guaranteed success but one which is likely to succeed at the hearing of the substantive motion.

16. It is to be noted that the telecommunications sector is one of the most dynamic and fastest growing not only here in Kenya but globally. That being the case, it must be handled with greatest care and circumspection, not only because of its novelty but because of its competitiveness. For the above reasons, I would allow the applicant's application for leave to institute Judicial Review Proceedings in terms of prayers 1, 2 and 3 of the application. I also find that the Applicant's prayer that the leave so granted do operate as a stay of the Commissions intended action scheduled for September 2009 has merit. However, for the very same reasons of dynamism and competitiveness, I am of the view that this whole matter should be pushed forward in the quickest way possible.

17. According, the stay granted to the Applicant shall be for 60 days from the date of this ruling. I direct that the Applicant shall file and serve its substantive notice of motion within 14 (fourteen) days from today's date. The intended Respondents should have sufficient time thereafter to file and serve their replies within reasonable time and before expiry of the stay period. The Applicants shall also comply

with Order LIII Rule 3(3) of the Civil Procedure Rules.

The costs of this application shall be in the cause.

It is so ordered.

Dated and delivered at Nairobi this 27th day of August, 2009.

R. N. SITATI

JUDGE

Delivered in the presence of:-

Mr. Simani (present) for the Plaintiff/Applicant

..... for the Defendant/Respondent

Weche – court clerk