



OBEDI NDUBI & 7 OTHERS.....APPELLANTS

AND

KAMARA FARMER'S CO-OPERATIVE

SOCIETY LIMITED.....RESPONDENT

(Being an appeal from the award of the Co-operative Tribunal dated 8/03/2006 striking out Co-operative Tribunal Appeal No. 1 of 2003 and consequently entering judgment the appellants jointly and severally).

J U D G M E N T

The Appeal

1. This is an appeal by the 8 Appellants against the award of the Co-operative Tribunal dated 8/03/2006. In the award, the Co-operatives Tribunal (the Tribunal) struck out the Appellant's appeal No. 1 of 2003. In Appeal No. 1 of 2003 the Appellants had appealed to the Tribunal against the decision of Hon. Njeru Ndwiiga, the then Minister for Co-operative Development made on 4/09/2003 dismissing Appeal No. 7 of 2001. Appeal No. 7 of 2001 was an appeal lodged by the Appellants against surcharge orders issued by H.M. Mwangi, the then Registrar of Co-operative Societies under Section 73 of the Co-operatives Act. In the instant appeal the Appellants have set out 6 grounds of Appeal in the Memorandum of Appeal dated 5/04/2006, that is to say –

1. *THAT the Hon. Tribunal erred in law and in fact by finding that the Appellant failed to file Appeal within fourteen (14) days as ordered by the Tribunal.*
2. *THAT the Honourable Tribunal erred in law and in fact by failing to note that the Memorandum of Appeal filed by the Appellants on 25th March 2003 constituted an Appeal by the Appellants.*
3. *THAT the Honourable Tribunal erred in law and in fact in assuming that the record of Appeal was indeed the Appellant's Appeal.*
4. *THAT the Honourable Tribunal erred in law and in fact by finding that Memorandum of Appeal filed on 25th March 2003 was entirely to set aside the Ministers Orders.*
5. *THAT the Honourable Tribunal erred in law and in fact by failing to consider the Appeal before it on merits.*
6. *THAT the Honourable Tribunal erred in law and in fact by considering extraneous matters in arriving at its decision.*

2. On the basis of the above grounds, the Appellants pray for judgment against the Respondent in the following terms:-

1. *THAT the Tribunal's award made on 8th March 2006 striking [out] the Appellants Appeal No. 1 of*

2003 and consequently entering judgment against the Appellants be quashed.

2. *THAT the Appeal against the Surcharge Orders made against the Appellants by afresh by this Honourable Court*
3. *Costs of [the] Appeal*
4. *Any other relief this Honourable Court deems just and expedient.*

Background to this Appeal

3. This appeal has its genesis in the Inquiry Report CS/8063 in respect of Kamara Farmers Co-operative Society Ltd, Meru South District (Chuka). The Inquiry was authorized by the Registrar of Societies under the powers conferred upon him under Section 1997. The purpose of the Inquiry was to inquire into the affairs of the Respondent. The Registrar issued a letter of authority dated 20/06/2000 which letter was subsequently published in the Kenya Gazette vide Gazette Notice No. 4248 of 7/07/2000. The order was subsequently extended vide Gazette Notice No.4831 of 28/07/2000 for a period upto 30/08/2000.

4. As per the Gazette Notice No.4248 of 7/07/2000, the Terms of Reference of the Inquiry of CS/8063/Kamara Farmers Co-operative Society Limited were as follows:

A. *Look into the By-Laws, Working and Financial conditions of the Society.*

B. *Look into the overall management of the Society and in particular the following:-*

(i) *Annual General Meetings and how, when and where they were held for the last three years, highlighting the major resolutions in every meeting.*

(ii) *Management Committee Meetings and Major Resolutions made for the last three years.*

(iii) *The Management of the Society's financial resources by the Management Committee and staff.*

C. *Look into the procurement of goods and services by the Society and establish whether proper procurement procedures were followed.*

D. *Look into the investment of the Society and establish whether they were undertaken through proper procedures and authority.*

E. *Look into the members complaints and any other areas deemed necessary.*

5. Under paragraph 15.7 of the Report, it was recommended that the former Management Committee Members and former Secretary Manager – Dickson Miriti be surcharged for mismanagement, misuse, misappropriation breach of Co-operative regulations and outright abuse of office and position. The 8 Appellants herein are the former Management Committee Members of the Respondent. The 8 Appellants were also to be barred from holding any elective post in the Society for a period of 10 years with effect from 22/12/2000.

6. Consequent to the recommendations of the Inquiry Report, the Registrar of Co-operative Societies, H.M. Mwangi issued a Surcharge Order under the provisions of Section 73 of the Co-operative Societies Act No. 12 of 1997. The letters conveying the Surcharge Order were dated 21/09/2001 addressed individually to each of the Appellants. The surcharge amounts were as follows:-

1. *Mr. Obed Mutua Ndubi – Kshs.981,453/90*

2. *Mr. Julien Mati – Kshs.778,282/20*

3. *Mr. Benson Ruingu – Kshs.773,282/02*

in their positions as former Chairman, Committee Member and honorary Secretary respectively. The Appellants were informed that the decision to surcharge them had been taken at the Special AGM of the Respondent held on 22/12/2000, at which the recommendations of the Inquiry Report were adopted.

7. By a notice dated 8/02/2001, issued by the Registrar of Co-operative Societies (signed by Spencer Dave Obondi), the 8 Appellants were notified that they would be surcharged the following amounts:-

1. *Obed Mutua Ndubi – Kshs.981,453.90*
2. *Gilbert K. Mukungi – Kshs.773,282.20*
3. *Peter Kaburu – Kshs.969,453.90*
4. *Benson Riungu – Kshs.773,282.20*
5. *Julien Mati – Kshs.778,282.20*
6. *Jonas Kamundi – Kshs.773,282.20*
7. *Humphrey Maguta – Kshs.773,282.20*
8. *Dickson Miriti – Kshs.433,759.10*

Total – Kshs.9,736,077.90

8. By a letter dated 29/12/2000, the 8 Appellants, save for Dickson Miriti, responded to the notice of intention to surcharge arguing that all the transactions leading to the alleged misappropriated amounts were done in an open and transparent manner, and with the authority of the Respondent.

Appeal No. 7 of 2001

9. The Appellants filed Appeal No. 7 of 2001 to the Minister under the provisions of Section 27 of the Co-operative Societies Act 12 of 1997 (the Act) against the Surcharge Orders issued on 21/09/2000. The Grounds of Appeal as per the Memorandum of Appeal dated 8/10/2001 were:-

1. *THAT the appellants were duly authorized to borrow by their first special General Meeting after the split from Kiera Farmers Co-operative society Limited a resolution was duly passed by majority of members hence requisite authority obtained. That the authority further limited borrowing up to a tune of Kshs.10 million.*

2. *THAT the tour made by the appellants was well within the framework of the Co-operative Societies Act Section 4(b) which provides among others that education to members and official should be carried out which includes inter alia seminars etc. That a tour to Western Kenya was within approved annual society estimates for that current year.*

3. *THAT on payment of Mbuni Cherry, the appellants made all efforts to secure the Mbuni money and pay to the member but unfortunately the societies bankers and Co-operative Bank of Kenya Ltd. without any consultation or agreement offset the society loan balances and hence no funds as such were released to the appellants to pay its members. That the allegation that salaries were not paid for 13 months is not true, salaries were paid promptly as required.*

4. *THAT at all material times the appellants caused to be kept proper books of accounts and in the conduct of societies business the appellants exercised prudence as ordinary men of business in accordance with section 27 of the Co-operative Societies Act.*

5. *SALES OF COFFEE SEEDLINGS the appellants did not play any role regarding the missing Kshs.13,909, and to date the applicants are not aware how the same was arrived if the manager had misapplied, that ought to be an issue for the Manager to be pursued personally as an employee of the society. The liability is maliciously included.*

6. *THAT the appellants borrowed by way of crop advance that the borrowing was as a result of a resolution passed by majority of members in a meeting held on 30.7.99 as required under section 89.*

7. *THAT the appellants points out that the money paid as commission to one Onyango of Kshs.20,000 was in lieu of collection charges which are legal and payable within the framework of civilized Law.*

8. *THAT the appellants prays that the surcharge orders issued be waived as the surcharge orders are based on assumptions without any evidence in their support.*

9. *THAT the appellant were never afforded any hearing as they were condemned unheard against the constitution of Kenya and other Law of the country.*

10. *THAT the surcharge contravenes section 32 which provides that any person who contravenes the by-laws of a society can only be fined by the management for a sum not exceeding Kshs.5,000/=.*

11. *THAT appellant denies ever paying a liquidator a sum of Kshs.3,480,000 and put the respondent to strict proof.*

12. *THAT the petitioner is aggrieved by the fact that the respondent has refused has kept all documents to the disadvantage for the petition.*

10. According to the Record, the then Minister for Co-operative Development, Hon. Njeru Ndwiga heard Appeal No. 7 of 2001 and made a decision on 4/09/2003 dismissing the appeal. The said appeal was dismissed by the Minister on grounds of non-attendance on the part of the Appellants and their advocate.

Appeal No. 1 of 2003

11. Upon Dismissal of Appeal No. 7 of 2001, by the Minister, the Appellants filed Appeal No. 1 of 2003

before the Tribunal. Among the grounds of Appeal was the Appellants' contention that the Appellants were not aware of the hearing of the appeal before the Minister on 4/09/2003, following the adjournment of the appeal generally by the Minister on 19/08/2003. The Appellants argued that the Minister erred in law by not considering the Appellants' appeal on the merits. In his ruling of 4/09/2009, the Minister said in part –

“The case has been scheduled for hearing several times but the Appellants have failed to turn up. The counsel for the respondent argued that this is the case for the appellants and yet they have failed to come and argue the Appeal. I totally agree with this sentiment. On 19th August, the counsel holding brief for the appellants' counsel seek (sic) for more time and this was granted. Failure to attend the hearing date yet against makes it apparent that the appellants are unwilling to argue their petition” and the Minister then went ahead to dismiss the Petition.

Application Dated 4/09/2003

12. An application dated 4/09/2003 was made to the Minister, Hon. Njeru Ndwiga on behalf of the Appellants seeking to set aside the Minister's dismissal order of 4/09/2003. The gist of the Appellant's application was that no date was given for the hearing of the appeal when appeal No. 7 of 2001 was adjourned generally on 19/08/2003. The Appellants also argued that their appeal had strong chances of success. It was also contended on behalf of the Appellants that failure to attend before the Minister on 4/09/2003 was occasioned by the Appellant's former counsel. The Appellant's counsel argued that the Appellant's former counsel's mistake should not be visited upon the Appellants. The application was heard on 25/09/2003. The Minister declined to set aside his order of dismissal observing that there were other institutions which could handle the matter.

Co-operative Tribunal Case No. 1 of 2003

13. After the Minister refused to set aside his dismissal order of 4/09/2003, the Appellants went to the Tribunal. By its ruling dated 12/03/2004, the Tribunal set aside the Ministers ruling dated 4/09/2003 and gave the Appellants the liberty to file an appeal against the Ministers ruling of 4/09/2003. The Appellants were given 14 days from 12/03/2004 to file the appeal, failing which the Respondent would be at liberty to proceed to recover the Surcharged amount. That meant that the appeal was to be filed on or before 26/03/2004.

14. On 8/03/2006 the Tribunal made an award in “an intended appeal” dated 23/03/2005 in which the Tribunal found that the Record of Appeal herein was filed way out of time on 24/06/2004, some 91 days out of time but without leave for further extension. In the Tribunal's view, there was no competent appeal on record for consideration. The Tribunal also found that since by the Tribunal's ruling of 12/03/2004, the Minister's Orders of 4/09/2004 were set aside, the Appellants ought to have filed a fresh appeal. The Tribunal's main reasoning was that the Act does not allow for extension of time to file an appeal. The Tribunal found and held that the appeal was incompetent and struck it out with costs to the Respondent, with interest thereon at 12% per annum from time of filing suit until payment in full; all payable within 30 days from 8/03/2006. According to the Tribunal, the Appellants should not have filed Appeal No. 1 of 2003.

The Submissions

15. At the hearing of the appeal, Mr. Tiego duly instructed by the firm of Onsando Ogonji & Tiego Advocates appeared for the Appellants while Mr. Muriuki, duly instructed by the firm of Gitonga Muriuki & Company Advocates appeared for the Respondent.

(a) The Appellant's Submissions

16. Mr. Tiego urged this court to conclusively determine the dispute between the parties herein, arguing that since the Tribunal has already made conclusive findings in the matter, remitting the appeal to the Tribunal would prejudice the Appellants.

17. Mr. Tiego submitted that the Report of Inquiry, which is the genesis of this case between the parties was tabled before a Special General Meeting of the Respondent Society and the recommendations therein were adopted. Mr. Tiego also submitted that though the Appellants disputed the recommendations of the Report of Inquiry, there were nonetheless individually issued with notices dated 8/02/2001 of the intention to surcharge them on the basis of the recommendations. By a letter dated 13/02/2001, the Appellants objected to the surcharge on the grounds that all the transactions which were the subject matter of the Report of Inquiry were authorized. Mr. Tiego further submitted that a letter dated 19/07/2001 written on the Appellant's behalf by their former advocates, David J. Mbaya & Co. Advocates, explained to the Registrar the reasons why the Appellants should not be surcharged. That explanation notwithstanding, the Appellants were issued with the surcharge notice. The surcharge notices gave rise to Appeal No. 7 of 2001, but the appeal was dismissed on 4/09/2003 by the Minister for Co-operative Development, the reason being that the Appellants and their advocate failed to attend court for the hearing of the appeal on 4/09/2003. Mr. Tiego made other submissions touching on the Minister's refusal to set aside his order dismissing Appeal No. 7 of 2003, and Tribunal Case No. 1 of 2003 where the Appellants were granted 14 days within which to appeal, and in particular to the Tribunal Ruling dated 12/03/2004.

18. Mr. Tiego submitted that the Memorandum of Appeal was filed on 25/03/2004 pursuant to the Tribunal's leave granted on 12/03/2004. It is to be noted that the Memorandum of Appeal in the Record of Appeal is date stamped 25/03/2004. Mr. Tiego submitted further that subsequent to the filing of the Memorandum of Appeal the Record of Appeal was filed on 25/06/2004. In counsel's view, the Tribunal erred in mistaking the date of filing of the Record of Appeal to be the filing of the Memorandum of Appeal. Mr. Tiego faulted the Tribunal for deciding on matters that were never submitted on by the parties. Mr. Tiego submitted that the Tribunal's finding that the Appeal was filed out of time was erroneous since the Appellant's Memorandum of Appeal was filed within the time allowed by the Tribunal. Mr. Tiego submitted that the Tribunal was even in greater error by thinking and concluding that the filing of the Record of Appeal was the filing of the Memorandum of Appeal; and that the eventual decision by the Tribunal was not based on merit as required by Order XX Rule 4 of the Civil Procedure Rules which provides-

"4. Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

19. Mr. Tiego also said that the award of the Tribunal condemned the Appellants without giving them an opportunity to be heard on the surcharge accusations, and particularly because, Mr. Tiego argued, the Minister gave no response to the questions raised by the Appellants; thus resulting in a violation of the rules of natural justice. Mr. Tiego urged the court to exercise the powers conferred upon it by Section 78 of the Civil Procedure Act to finally determine the issues before the parties and not to remit the Appeal back to the Tribunal. Section 78 of the civil Procedure Act provides –

"78(1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power

(a) to determine a case finally;

(b) to frame issues and refer them for trial;

(c) to take additional evidence or to require the evidence to be taken;

(d) to order a new trial.

(2) Subject as aforesaid, the appellate court Shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein."

(b) The Respondent's Submissions

20. In his submissions, Mr. Muriuki for the Respondent referred to Appeal No. 2 of 2001, the Memorandum of Appeal in respect of Appeal No. 1 of 2003 and the Tribunal's ruling dated 12/03/2004. He also referred the court to the Memorandum of Appeal dated 23/03/2004 in respect of Appeal No. 1 of 2003, and the ruling of the Tribunal in respect of Tribunal Appeal Case No. 1 of 2003. Mr. Muriuki submitted that following the enactment of Act No. 2 of 2004, Section 74 of the Act was amended so as to remove the power from the Minister to hear appeals from Surcharge Orders and vested that same power in the Tribunal.

21. Mr. Muriuki also submitted that according to his understanding, the Tribunal's ruling dated 12/03/2004 gave leave to the Appellants to file an appeal against the Surcharge Orders, and that the Memorandum of Appeal dated 23/03/2004 was subsequently filed. Mr. Muriuki conceded that this Memorandum of Appeal was filed within time, but said that the Memorandum of Appeal No. 1 of 2003 was not the proper document to have been filed on the grounds that the reliefs sought in Appeal No. 1 of 2003 are the same reliefs sought earlier by the Appellants. We note that the content of the Memorandum of Appeal in respect of Appeal No. 1 of 2003 appearing at pages 130 - 132 is substantially the same as that of the Memorandum of Appeal No. 1 of 2003 appearing at pages 119 to 120 of the Record of Appeal; the only difference being that the Memorandum of Appeal dated 23/03/2004 (at pages 130-132 of the Record of Appeal has 10 grounds of appeal; whilst the Memorandum of Appeal appearing at pages 119-120 of the Record of Appeal has 6 grounds. In Mr. Muriuki's view a fresh appeal ought to have been filed.

22. Mr. Muriuki also submitted that because the law had changed by 12/03/2004, the Tribunal ought to have directed the Appellants to apply to quash the Surcharge Order issued by the Commissioner of Co-operatives. On the basis that the procedure adopted by both the Appellants and the Tribunal upon the Tribunal's ruling dated 12/03/2004, was wrong, Mr. Muriuki submitted that this court should find the Appellant's appeal wanting in merit and to dismiss it with costs to the Respondent.

(c) **The Appellant's Reply**

23. In reply, Mr. Tiego for the Appellants conceded that the Appellants filed a fresh Memorandum of Appeal pursuant to the Tribunal's ruling of 12/03/2004, but his position was that it was not now open to the Respondent to raise new issues at this point in time, and that having squandered its opportunity to raise such issues at the hearing before the Tribunal the principle of estoppels applies. Mr. Tiego also submitted that the Appellants prayer to set aside the Minister's Order of 4/09/2003 was still valid in view of the fact that the Minister had not considered the merits of the Appellant's appeal No. 7 of 2001. Mr. Tiego also submitted that as at the time of the Minister's decision on 4/09/2003, there were no proper rules of procedure governing the Tribunal.

The Issues and Findings

24. From the above analysis, there are 2 issues for determination, that is to say –

(a) did the appellants comply with the Tribunal's order of 12/03/2004 with regard to the filing of an appeal;

(b) if the answer to (a) is yes, is the appeal dated 23/03/2004 validly before this court; and if the answer to (b) is yes, what orders should this court make?

25. Regarding the first issue, it is conceded by both parties that the Appellants complied with the order of the Tribunal as to the filing of an appeal pursuant to the Tribunal's ruling dated 12/03/2004. The Appellants complied by filing Appeal No. 1 of 2003 (although this should have read Appeal No. 1 of 2004 since the Memorandum of Appeal is dated 23/03/2004). It appears to us that counsel for the Appellants simply cut and pasted most of the content to the Memorandum of Appeal in Appeal No. 1 of 2003 dated 30/09/2003. Counsel ought to have paid attention to the drafting aspect, but that error notwithstanding, the Appellants complied.

26. The next issue for determination is whether Appeal No. 1 of 2003 dated 23/03/2004 is validly before this court. Our answer to this question is yes. We have studied the Tribunal's ruling dated 12/03/2004 and note that the Tribunal made an error when, after setting aside the Minister's order dismissing Appeal No. 7 of 2001, the Tribunal asked the appellants to file afresh appeal within 14 days from the date of the ruling. The logical consequence of the setting aside of the order of dismissal made by the Minister was that Appeal No. 7 of 2001 had been reinstated for hearing. The Tribunal therefore ought to have given time to the Appellants to fix the reinstated Appeal No. 7 of 2001 for hearing instead of ordering the filing of another appeal. The confusion that arose after the ruling of 12/03/2004 was caused by the Tribunal.

27. We find that though the Tribunal erred in ordering the filing of a fresh appeal when Appeal No. 7 of 2001 had been reinstated by the Tribunal's ruling, the Appellants had to comply or run the risk of facing the wrath of the Respondent for recovery of the amount surcharged. For the reason that the Appellants had no option but to comply with the Tribunal's ruling of 12/03/2004, Appeal No. 1 of 2003, vide the Memorandum of Appeal No. 23/03/2004 is therefore validly before us. We agree with counsel for the Appellants that this is not the forum at which the Respondent should complain about the impropriety of the said Appeal No. 1 of 2003. That Appeal was heard before the Tribunal on 23/03/2005. Mr. Muriuki appeared for the Respondent at the hearing before the Tribunal, but from the record he did not raise the issues he has raised before us in this Appeal.

28. The Tribunal noted in its award that following amendments to the Act, no appeal now lies to the Minister. In the instant case, for example, an appeal against the surcharge order would lie directly to the Tribunal and from the Tribunal to the High Court. This indeed is the procedure that has been followed by the Appellants in this case, as they have appealed to this court against the Tribunal's award dated 8/03/2006. The Tribunal struck out Appeal No. 1 of 2003 on grounds of incompetence. According to the Tribunal, any appeal filed after 12/03.2004 should not have made any reference to the Minister's decision which had "already been set aside as per the ruling of 12/03/2004". The Minister's first decision of 4/09/2003 was an order dismissing the Appellant's Appeal No. 7 of 2001 for non-attendance. The second decision of the same date was the Minister's refusal to review and/or set aside his dismissal order. In our view, there is no way the Appellants would have avoided a reference to the Ministers decision of 4/09/2003, because, according to the Appellants, the Minister's decision denied them the opportunity to be heard on the surcharge claims against them. In light of the above, we find and hold that the Tribunal was wrong in striking out the Appellant's Appeal No. 1 of 2003. We are satisfied that the appeal was filed within time pursuant to the Tribunal's ruling of 12.03/2004. We also find and hold that the Tribunal erred in assuming that the Record of Appeal filed on 14/06/2004 was the Memorandum of Appeal.

29. The next issue for determination is what orders this court should make. The Appellants have urged this court to set aside the Tribunal's award made on 8/03/2006 and to hear the Appellant's Appeal No. 7 of 2001. Our duty as an Appellate court is to reconsider the evidence on record evaluate it itself with a view to drawing our own conclusions on the matters in controversy, whether or not the ruling of the Tribunal striking out Appeal No. 1 of 2003 was sound. (see **Peters vs Sunday Post [1958] p. 424**). We have found as a fact that the issues raised by the Appellants in the Memorandum of Appeal dated 8/10/2001 in respect of Appeal No. 7 of 2001 were not addressed either by the Minister of the Tribunal. That appeal was against the surcharge orders issued by H.M. Mwangi, Deputy Registrar of Co-operatives Societies under Section 73 of the Act. The Surcharge Orders were made pursuant to the recommendations of the Inquiry Report for CS/8063 (the Report) dated July/August 2000. The Appellants' main contention was that the Surcharge Orders were baseless.

30. We have noted that after the Report was issued, the Appellants wrote a response to the Registrar of Co-operative Societies dated 29/12/2000, giving a detailed explanation to each of the allegations made against each of the Appellants in the Report, taking the stand that all the transactions which formed the basis of the Inquiry and the subsequent Report were sanctioned by members. The Appellants also complained that the Inquiry was motivated by political interests.

31. After the Notices of Intention to Surcharge were issued to the Appellants, the Appellants again gave their written submissions showing cause why each of them should not be surcharged. We have considered each of the written submissions dated 13/02/2001, 21/06/2001 and 19/07/2001. We have also

considered the Report and its detailed analysis of each of the Appellants' indebtedness that formed the basis of the surcharge. The conclusion we have reached after careful study of all the available evidence, is that the Appellants did not satisfactorily exonerate themselves from blame. Each of the Appellants gave a blanket excuse that all the transactions were duly authorized. None of the Appellants annexed copies of minutes or such other document showing authority given for these transactions. The burden of proof rested squarely with the Appellants. The Report gave details of how each amount surcharged was arrived at. That evidence given by the Respondent was not rebutted by any of the Appellants.

32. In the result, we find and hold that the surcharge was proper and in accordance with the provisions of the Act. The issues at hand, involving losses of huge amounts of public funds were serious issues and it was incumbent upon each of the Appellants to place all possible evidence before the Tribunal to show that the appellants, either singly or jointly did not commit any of the acts complained of. The Appellants' appeal is therefore without merit and the same is hereby dismissed in its entirety. As for costs, each party shall bear its own costs.

It is so ordered.

Dated and delivered at Nairobi this 22nd day of October 2009.

H.M. OKWENGU

R.N. SITATI

JUDGE

JUDGE

Delivered in the presence of:-

Mr. Tiego (present) for the Applicants

Mr. Gitonga Muriuki (present) for the Respondent

Weche – court clerk