



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
Election Petition 1 of 2003**

STEPHEN KINYANJUI MBURUPETITIONER/APPLICANT

AND

SIMON RUBIRU GAKUHA1ST RESPONDENT

ELECTORAL COMMISSION OF KENYA.....2ND RESPONDENT

WAITHAKA MWANGI K.....3RD RESPONDENT

RULING

Although there are five prayers in this Notice of Motion dated 29th September 2005 both Counsel for the Applicant, Mr. N.W. Amolo and Mr. P.L. Mutuli, inform me that they are before me seeking orders in respect of prayers (c), (d) and (e) only, as (a) and (b) are now spent. Mr. Kimani Muhoro is appearing for the three Respondents.

Prayer (e) is for costs of this application. Prayers (c) and (d) seek the following orders respectively:-

“(c) THAT pending the hearing and determination of an intended appeal to the Court of Appeal the Honourable Court be pleased to stay the issuance of the Certificate as to the determination of the Election Petition as required by section 30 of the National Assembly and Presidential Elections Act.

“(d) THAT pending the hearing and determination of an Intended Appeal to the Court of Appeal this Honourable Court be pleased to order a stay of further proceedings in this cause.”

This Notice of Motion, herein after also referred to as the Application, is based on the grounds stated on its face and supported by the Applicant’s affidavit dated 29th September 2005.

The Respondents did not file replying affidavits as Mr. Muhoro may have placed a lot of faith in his belated Notice of Preliminary Objection filed on 5th May 2007 and served thereafter when I allowed him do so following my refusal to hear him on 2nd May 2007, the first day I was scheduled to handle this Election Petition and also hear this Notice of Motion, when he tried to raise the objection, without having given the relevant notice, to the Applicant’s Counsel who protested ambushed. I heard the preliminary objection on 16th May 2007 and dismissed it on 5th June 2007 giving way to the hearing of this Notice of Motion, Mr. Muhoro being allowed to address me during the hearing of the application on points of law only.

This Notice of Motion is brought under Sections 44 and 60 of the Constitution of Kenya and Section 23 subsections (1) and (d) and (4) and section 30 of The National Assembly and Presidential Elections Act and the Inherent Powers of the court.

From the background, as brought before me by the Applicant’s Counsel, this Election Petition was first filed in the High Court at Nairobi before the Chief Justice directed it to be heard in the High Court at Nyeri where Hon. Mr. Justice J.V.O. Juma was gazetted to hear it, prayers in the petition being as follows:-

“(a) That it be ordered that there be a scrutiny of the votes recorded as having been cast in the Civic, Parliamentary and Presidential elections in the Constituency;

(b) that it be ordered that there be a scrutiny of the rejected and spoilt ballot papers in the Civic, Parliamentary and Presidential elections in the Constituency;

(c) that it be ordered that there be a recount of the ballot papers cast at the elections in the Constituency and incase your Petitioner is then found to have received the highest number of votes he be declared duly nominated and elected as the member of the National

Assembly in place of the Second Respondent;

- (d) that there be a scrutiny of the Forms 16A submitted by the various Presiding Officers in the Constituency to the First and Second Respondents to determine their validity or otherwise;*
- (e) that alternatively the said Parliamentary elections in Kinangop Constituency be determined and declared null and void;*
- (f) that the said election of the Second Respondent to the National Assembly be declared null and void;*
- (g) that the respondents be condemned to pay your Petitioner's costs of this Petition and matters incidental thereto;*
- (h) that such other further orders be made as this Honourable Court may deem just."*

While the Petition was in court and the learned Judge had entered a consent order allowing the First and Second Respondents to request for particulars, the Petitioner and his Counsel noticed what they called "offending Requests for Particulars," made by the three Respondents. That prompted the Petitioner to file a Notice of Motion dated 7th April 2003 to strike out the said "**offending Requests for Particulars**". But when the Respondents were served with that application, it was as if they had been forced into a retaliation and did retaliate by the First and Second Respondents filing a Notice of Motion dated 28th April 2003 while the Third Respondent filed his Notice of Motion dated 24th April 2003, both similar applications; more or less, as the Notice of Motion dated 28th April 2003 asked for the following orders:-

- "1. THAT the Petition be struck out as the same is incurably defective.*
- 2. THAT the petition be struck out as the same discloses no cause of action as it seeks prayers against the 2nd Respondent that are unenforceable.*
- 3. THAT the petition be struck out as the same seeks ORDERS against the 2nd Respondent which this Honourable Court has absolutely no jurisdiction to grant."*

A similar Notice of Motion filed by the Third Respondent and dated 24th April 2003 prayed for orders:-

- "(a) THAT the petition be rejected/dismissed summarily for not disclosing sufficient grounds for granting the relief sought.*
- (b) THAT the petition be struck out as the same is incurably defective.*
- (c) THAT the petition be struck out for disclosing no cause of action against the 3rd Respondent.*
- (d) THAT the Petitioner struck out for being vexatious, frivolous and scandalous as the same is based upon rumours and hearsay."*

Justice Juma heard all the three applications together and in his ruling dated 15th May 2003, he granted the Petitioner's Notice of Motion dated 7th April 2003; and dismissed the two applications filed by the three Respondents. In dismissing the Respondent's applications, the learned Judge stated as follows as can be seen from page 3 of his ruling the last paragraph up to the first paragraph on page 6:

"The Respondents have argued that the Petition is incurably defective as some of the prayers sought are directed against the 2nd Respondent, the Electoral Commission. Such prayers are unenforceable. They pointed out prayers (c) and (f) of the petition."

The Judge quoted prayers (c) and (f) in the petition (ibid) and went on to say:-

"It is quite clear that the Petitioner meant 3rd Respondent instead of 2nd Respondent. Counsel for the Petitioner have argued that even if the two offending prayers were struck out, the Petition would still stand. There were other grounds and prayers capable of sustaining the Petition. They have fallen on prayer (e) of the Petition which ---"

The learned Judge quoted prayer (e) of the Petition (ibid) and continued to state:

"They have argued that once there is sufficient evidence to declare the elections null and void, it follows that the 3rd Respondent shall lose his seat.

It cannot be denied that prayers (c) and (f) of the petition are defective as drawn in so far as they refer to the Electoral Commission instead of Waitihaka Mwangi K, the 3rd Respondent. I have perused the Petition and I am satisfied that even without the two offending prayers, the Petition is capable of being sustained. It can still stand without those two paragraphs. It has also to be understood that this is an election petition and not an ordinary civil suit. Even if I were to strike out the Petition against the 3rd Respondent, the Petition would proceed between the Petitioner and the 1st and 2nd Respondents. But what are three parties fighting for? The answer is Kinangop Constituency. Would it be fair to determine the conduct of elections in that constituency in the absence of the Member of Parliament who will be directly affected by the outcome? The answer is No.

The upshot is that the Respondents have raised serious issues in their application, issues, however, that cannot be determined at this stage for reasons given earlier. The application by the Respondent is therefore dismissed.

The Respondents were aggrieved with that decision and the matter was made worse when their application to stay hearing of the Petition was also dismissed by that Election Court.

Thereafter the Respondents filed their respective notices to appeal to the Court of Appeal. But when the Court of Appeal also dismissed their application for a stay of proceedings in the Petition in the Election Court, that was the end of the matter as there was no appeal filed.

In the circumstances therefore, hearing of the Petition started in the High Court and proceeded before Justice Juma who heard and recorded evidence from 29 witnesses, including the Petitioner, thereby concluding the Petitioner's oral evidence pending the conclusion of his case by the receipt of the then Nyeri High Court Deputy Registrar's report concerning the counting of ballot boxes and ballot papers which the Judge ordered. Mr. Njoroge Muniu was the Deputy Registrar. That was to be the last part of the Petitioner's case before the Respondents could start their respective cases by calling witnesses.

But certain unexpected complications beyond control by the parties as well as the Election Court arose. The Election Court then being presided over by Justice Juma could not proceed with the Petition by reason of the suspension of Justice Juma by President Mwai Kibaki acting in accordance with the advice of Chief Justice J.E. Gicheru following the appointment by the President, under section 62 of the Constitution of Kenya, of a tribunal to investigate the question of removing Justice Juma from the bench as a puisne Judge. That was towards the end of the year 2003.

The consequence was that a new Election Court was subsequently Gazetted by the Chief Justice to handle this Election Petition and the Judge so gazetted was Justice P.J. Ransley who started handling the case on 22nd October 2004. According to the learned Judge at bottom of page 2 of his ruling dated 13th July 2005:

"It was agreed that the petition should continue from the point where the Learned Justice (meaning Justice Juma) has completed part of the hearing."

He said Counsel for the Petitioner informed him that they had completed their case.

The record shows that thereafter the case was adjourned several times until the time when the Respondents filed their Notices of Motion starting with the First and Second Respondent's Notice of Motion dated 11th March 2005 seeking the following orders:-

"(1) THAT the petition be struck out as the same is incurably defective;

(2) THAT the said Petition be struck out as it does not disclose any or any reasonable cause;

(3) THAT the Petitioners witnesses affidavits are all incurably defective and the same should be expunged from the record;

(4) THAT the Court Record purporting to be Examination in Chief of the Petitioner's witnesses be expunged from the said record."

The Third Respondent's Notice of Motion dated 15th March 2005, and filed on the same day as the Notice of Motion filed by the First and Second Respondents, sought the following prayers:-

1. THAT the Petitioner's Petition be struck out and forthwith dismissed;

2. THAT the Petitioner's witness affidavit be struck out and expunged from record.

3. ALTERNATIVELY and without prejudice to the foregoing, the court record purporting to be evidence in chief of the Petitioner's witnesses be struck out and expunged from record."

Looked at closely, what the First and Second Respondents were saying in their Notice of Motion dated 11th March 2005 was virtually the same as what they had said in their Notice of Motion dated 28th April 2003 decided by Justice Juma save for the inconsequential additions. The same can be said in respect of the Third Respondent's Notice of Motion dated 15th March 2005 as compared with his Notice of Motion before Justice Juma dated 24th April 2003.

Nevertheless, there followed a full hearing of both applications before Justice Ransley, the Petitioner's Counsel arguing, among other things, that the two Applications were resjudicata as similar applications had been heard and decided by Justice Juma, and that there was also an estoppel.

While the learned Judge agreed with the Petitioner's Counsel on the issues concerning defects in witnesses affidavits, he did not agree with Counsel concerning the issue caused by prayer (f) of the Petition when the Electoral Commission is referred to as if it were the Third Respondent. According to Justice Ransley, Justice Juma had declined to rule on that submission. Referring to what had happened, Judge Ransley stated in his ruling dated 13th July 2005 from bottom of page 1 to page 2as follows:

“During the course of the submission the Respondents sought an order that the Petition was incurably defective as some of the prayers were directed against the 2nd Respondent, the Electoral Commission. The Respondents referred to prayer (f) in the Petition, which states”

The Judge quoted prayer (f) (ibid) adding that Judge Juma pointed out that the reference to the 2nd Respondent was intended to refer to 3rd Respondent and referred to Justice Juma’s statement which says:-

“It cannot be denied (c) and (d) of the Petition are defective as drawn in so far as they refer to the Electoral Commission instead of Waithaka Mwangi K, the 3rd Respondent. I have perused the Petition and I am satisfied that even without the two offending prayers, the Petition is capable of being sustained. It can stand without those two paragraphs.”

Judge Ransley went on to quote what Justice Juma had later said at the conclusion stating:-

“The upshot is that the Respondents have raised serious issues in their application, issues, however, that cannot be determined at this stage for reasons given earlier.”

It was Judge Ransley’s view that Justice Juma had declined to rule on the submission. Ransley J, therefore went ahead to rule on the said submission stating as follows:

“The result is that as Mr. Muhoro and Mr. Cerere submitted, no person is referred to in prayer (f) and as such it cannot be granted.

The prayers were granted in terms prayer (a) (b) (c) and (d). Prayer (e) is a prayer in the alternative. Mr. Muhoro and Mr. Cerere submitted that this prayer was defective as it did not refer to a person and was not therefore a matter which could be raised under the provision of the Constitution set out above.

Although I think it might have been possible to raise as an issue in a Petition that a named person had not been elected, due to election irregularities and offences, the prayer as drawn in the Petition does not meet the requirements of the Constitution.

I am therefore of the view that the prayers of the Petition which are capable of being granted have now been spent and as such I dismiss this Petition with costs to the Respondent.”

That was on 13th July 2005 and the Petitioner felt aggrieved as he is saying the Petition was dismissed without due process. The Petitioner therefore filed a Notice of Appeal on 22nd July 2005. He also applied to this court’s Deputy Registrar for a certified copy of the Ruling and uncertified copy of the proceedings.

According to section 23(4) of the National Assembly and Presidential Elections Act, an appeal to the Court of Appeal has to be filed within 30 days from the date of the Judgment, ruling or order appealed from. Up to now, no such appeal has been filed although the Notice to appeal was filed in time. The Petitioner says the reason is that he has been waiting for copies of proceedings from the Deputy Registrar of this Court. He does not indicate whether by now he has got the proceedings. The two court case files I am using seem to have all the proceedings already typed. I do not know when they were typed and why the Petitioner is not speaking of having obtained them and having attempted to file the intended appeal. There were no replying affidavits from the Respondents to assist the court on those facts.

It is now Mr. Amolo’s query in his submissions that although the statute stipulated that the appeal to the Court of Appeal be filed within 30 days, did that statute take into account the capacity of the High Court to ensure that typed relevant proceedings are available for filing within the prescribed 30 days? He says that there is a lacuna in the law because the capacity of the court was not considered by the Legislature and argues that the lacuna has to be filled by the court. He refers to the Judgment in this same case by a Constitutional Court presided over by Rawal J, Nyamu J and Fred Ochieng Ag. J dated 19th May 2004 where the learned Judges said at pages 12 to 13 that where there is a lacuna in the law, it is the responsibility of the court to fill that lacuna. Of course the learned Judges were concerned with a different situation where the Statute, the National Assembly And Presidential Elections Act, was in 1977, amended in section 19(3) making an Election Court be presided over by one Judge instead of three Judges but the relevant rules, The National Assembly Elections (Election Petition) Rules, 1993 were not amended to reflect the change. That was a lacuna in the law, the learned Judges talked about and what they used as authority is useful even in this Notice of Motion before me bearing in mind what Counsel on both sides, particularly Mr. Amolo, are saying about a lacuna in law.

The three Constitutional Court Judges referred to the authority of **Peters And Another v Attorney General (Trinidad and Tobago) And Another** (2002)3 LRC 32 as providing the court the responsibility to fill such a lacuna in the law. They quoted what the Court of Appeal for Trinidad and Tobago said at page 65 thus:

“There is abundant authority for the proposition that where matters of pure procedure have not been prescribed in relation to the exercise of a jurisdiction conferred by statute, the court has an inherent jurisdiction to approve or direct the procedure to be adopted.”

They pointed out that the Trinidad and Tobago Court of Appeal cited with approval the **decision by Lord Diplock, in Jaundoo v Attorney General of Guyana (1971) AC. 972 at 982** and that that Court noted at page 66 of the report that:

“The clear intention of the Constitution that a person who alleges that his fundamental rights are threatened should have uninhibited access to the High Court is not to be defeated by any failure by Parliament or the rule-making authority to make specific provision as to how that access is to be gained.”

The National Assembly And Presidential Elections Act in section 23(4) fixed the time limit within which an appeal must be filed from the decision of an Election Court to the Court of Appeal. But unlike other Statutes like the Civil Procedure Act, the Matrimonial Causes Act and the Companies Act which allow for the extension of time, section 23(4) of The National Assembly And Presidential Elections Act is silent about such extension, yet it is a fact that sometimes and without blame to any of the parties in an election petition, the Election Court, for some reason, may not be able to release the required certified copies of the proceedings and judgment within sufficient time to enable the intending appellant file his appeal within the thirty days limit. There may be some other reasonable cause for the delay, not emanating from the Election Court, although it may or may not emanate from the parties or one of the parties in the Election Petition. Did the Legistere think such human problems could not arise in an Election Petition proceedings, although the problems could arise, for example, in Criminal Proceedings and Matrimonial Proceedings? Parliament must have had good and special reasons for so thinking. Parliament must have had good and special reasons for so thinking and **Omolo JA** said in **Emanuel Karisa Maitha’s** case he did not think “the Courts should presume to know better than Parliament what is or is not democratic”, as **Kwach JA in Alicen J.R. Chelaite’s** case added “--- for Parliament is forever wise ----“ and the **learned Judges of the Court of Appeal in Mwai Kibaki’s** case concluded:

“--- can (that is Parliament) and often does decree certain things which may not seem wise to persons unschooled in its way of doing things. But the courts must accept the wisdom of Parliament, unless, of course, they are contrary to the provisions of the Constitution.”

Perhaps that is why the Petitioner in this petition insists he must appeal to the Court of Appeal to get the answer and one hopes from now onwards the Petitioner would be more aggressive in pursuing that course of action than he has been to date when he is merely referring to the following and more other authorities as the time is running out on him not only within but also outside the provisions of The National Assembly And Presidential Elections Act:

Hoystead And Others –vs- Taxation Commissioner (1925) AII ER. 56;

and

Rajwani –vs- Chief Magistrate Law Court Nairobi (unreported);

Mburu Kinyua –vs- Gashini Tuti (1978) KLR 69;

Civil Appeal No. 36 of 1996

Uhuru Highway Development Ltd.-vs-Central Bank of Kenya & Others (unreported);

Patrick Otembo –vs- Afrispace Kenya Limited and 3 Others (unreported) HCCC No. 313 of 2003;

all about the doctrines of resjudicata and estoppel; and **Mudavadi –vs- Kibisu And Another** (1970) E.A. 585 where it was held, during that time when The National Assembly And Presidential Elections Act had not yet given appellate jurisdiction to the Court of Appeal from an order determining the validity of an election, that the Court of Appeal had jurisdiction to hear an appeal from an order of the Election Court which did not determine the validity of the election; and,

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in Civil Appeal No. 292 of 1998 at Mombasa, where the issue of the competence of the appeal was raised, not by the Parties in the election petition, but by the Court of Appeal on its own Motion, and the decision of the court was a majority, and not a unanimous, decision so that some doubt may be cast on the correctness of the majority decision.

The Petitioner, through Mr. Amolo, strengthen the cushion around himself with the case of **Trust Bank Ltd. –vs- Eros Chemists Ltd. (2000) 2 EA. 550** where it was stated at letters G to I page 553 by this Country’s Court of Appeal, that:

“The decisions of the House of Lords upon questions of law are normally considered by the House to be binding upon itself, but because too rigid adherence to precedence may lead to injustice in a particular case and unduly restrict the proper development of the law the House will depart from a previous decision when it appears right to do so. So should this Court. For these reasons we are satisfied that as a matter of judicial policy this court, as the final Court of Appeal for Kenya, while it was normally regard a previous decision of its own as binding, should be free in both civil and criminal cases to depart from such a previous decision when it appears right to do so;”

On the other hand Mr. Muhoro, learned Counsel for the Respondents, insists, on behalf of the Respondents; that section 23(4) is mandatory and has been correctly and sufficiently interpreted in the majority decision of the Court of Appeal in the Case of **Emanuel Karisa Maitha** (ibid) and that even if it were that relevant rules had been made, the situation would have remained the same as it was unlikely that the rules would have violated the express provisions of section 23(4) of The National Assembly And Presidential Elections Act, the Rules Committee having been given no power to make rules inconsistent to provisions of the Act.

Mr. Muhoro points out that the majority decision in **Emanuel Karisa Maitha’s** case was unanimously approved by a bench of five Court of Appeal Judges in **Civil Appeal No. 172 of 1999, Mwai Kibaki –vs- S.M. Kivuitu and The Electoral Commission of Kenya** – which

also approved the Court of Appeal's decision in Civil Appeal No. 150 of 1998, Alicen J. R. Chelaite –vs- David Manyara Njuki And Two Others where a three bench Court of Appeal had presided over the case. In that case (Alicen J. R. Chelaite's), Kwach JA said

“Election Petitions are governed by a special regime and they follow a rigid timetable under constant supervision of the Court. That is why under rule 5 a request for particulars must be made by a formal application to the Court to ensure that there is no delay in dealing with them.”

He went on to say mid page 12 of his judgment:

“The amendments introduced by Act No. 10 of 1997 clearly reflected the intention of Parliament. In the past, election petitions were known to drag on from one election to the next, with the result that some members of Parliament whose election could have been nullified survived for the full term by default. This time round election petitions are to be determined expeditiously including any appeals which must be heard and determined on priority basis ---”

The learned Judge did not know there could be some other election petitions, such as this one, which even to-day could survive for a full time by default. But that is beside the point. Later in the same Judgment the learned Judge pointed out that

“even in the absence of an express power to do so, a court can strike out a petition or a pleading under its inherent powers.”

He added that a petition could be dismissed or struck out through an interlocutory application within the meaning of section 23(2) of The National Assembly And Presidential Election Act.

Concerning technicalities following complaints that the use of technicalities defeated the need to have substantive issues raised in the election petition decided on merits thereby occasioning a failure of Justice, the learned Judge remarked in part as follows:-

“I would expect that any Advocate retained to file an election petition would first find out what the law is by looking at the Act, ---”

The late Justice Pall in his Judgment in the same case added:-

“As I have already said non-compliance with these provisions makes the petition incompetent. These matters are not technicalities which an election court could disregard. They are fundamental provisions which cannot be ignored. It is true that primary duty of a court is to do substantial justice but then there are certain fixed rules of every game. They are there to ensure fair play and avoid miscarriage of justice. No law can survive without necessary rules of procedure. They are important instruments in the administration of justice. They cannot be ignored particularly when legislature makes them mandatory.”

That is how Mr. Kimani Muhoro has cushioned himself and Mr. Amolo, Mr. Mutuli and Mr. Muhoro know very well that they came before me for a stay of execution as prayed for in the Notice of Motion dated 29th September 2005 prayers (c) and (d) quoted at the beginning of this ruling. They did not come before me in an application for leave to appeal out of time or in any other application. In any case, an application for leave to file appeal out of time or for the extension of time to file appeal, has to be made to the court to which the intended appeal has to be made. It is made to the court to be appealed to; and in this matter, that court is the Court of Appeal.

In the Notice of Motion before me therefore, I do not think any of the parties before me, despite the many things they have said, expects me to decide, for example

(a) Whether the Petitioner has failed to comply with section 23(4) of The National Assembly and Presidential Elections Act;

(b) Whether the Petitioner's right to appeal has been extinguished or whether, in law, he has no capacity to appeal from the decision of Mr. Justice P.J. Ransley dated 13th July 2005.

Properly at this stage of this Election Petition, in law, those are the type of questions now to be answered by the Court of Appeal only. The Petitioner has clearly indicated before me that he is anxious to go to the Court of Appeal to have those questions answered. He seems to be hopeful, if not confident, that the questions will be answered in his favour and I would not, in the circumstances, like to stand in his way – in the exercise of my discretion in this Notice of Motion.

Whether or not the certificate as to the determination of the Election Petition is issued as required by section 30 of The National Assembly And Presidential Elections Act, the Third Respondent is already, and will remain in the contested seat, in Parliament until the intended appeal, if filed, is heard and determined or until the next Parliamentary general election is held. But in case the Certificate is issued, the Petitioner's intended appeal will no doubt be rendered a nugatory if the appeal succeeds – in good time for him to benefit – from that success.

Otherwise the Petitioner may be said to have an arguable appeal, if filed. I am not supposed in this application to say more than that on that issue, except to add, repeating what I said earlier, that there is need for him to show more seriousness in and more commitment to what he is saying including faster action.

Concerning prayer (d) in the Notice of Motion in particular, while what I have said above applies, I may add that granting it may

strengthen the sense of sanity found in these proceedings, to avoid wasting time and money in battles in interlocutory applications in this court when the parties should be using that time and money fighting in the war to be won in the Court of Appeal. Granting prayer (d) will therefore be in the interest of justice to all concerned.

To conclude this ruling therefore, and to avoid doubt the Petitioner's Notice of Motion herein dated 29th September 2005 be and is hereby granted as follows:-

(i) *In terms of prayer (c) as prayed.*

(ii) *In terms of prayer (d) to read as under:-*

THAT pending the hearing and determination of an Intended Appeal, there be a stay of further proceedings in this cause in this Election Court in particular and in the High Court and any Subordinate Court thereof generally.

It is further ordered, under the inherent powers of this Court,

THAT proceedings for leave to file the said intended appeal be immediately commenced in the Court of Appeal by the Petitioner, and in any event, not later than 30 days (inclusive of weekends and public holidays if any) from the date of this ruling failure to which the stay granted in (i) and (ii) above to stand vacated from 23rd July 2007.

Dated and delivered at Nairobi this 22nd day of June 2007.

J.M. KHAMONI

JUDGE

Present:

Mr. Amolo)

Mr. Mutuli) for the Applicant

Mr. Kimani Muhoro for the Respondents

Buoro – court clerk