REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

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IN THE ENVIRONMENT AND LAND COURT AT ELDORET

JUDICIAL REVIEW APPLICATION NO. 5 OF 2019

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

AND

IN THE MATTER OF THE FOREST CONSERVATION AND MANAGEMENT ACT, NO. 34 OF 2016

AND IN THE MATTER OF THE FOREST (CHARCOAL) RULES, 2009

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION, 2015

AND

IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE DECISION /RULING/ORDER OF THE ELDORET PRINCIPAL

MAGISTRATE'S COURT IN ELDORET CM'S MISCELLANEOUS CIVIL APPLICATIONS NO. 30, 46 AND 80 OF 2019

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE PRINCIPAL MAGISTRATE'S COURT AT ELDORET.....RESPONDENT

AND

PHILEMON KEMBOI KITUM .....1 ST INTERESTED PARTY

ELIJAH K. KIBET .....2ND INTERESTED PARTY

BENJAMIN CHEBOI….....3 RD INTERESTED PARTY

AND

KENYA FOREST SERVICE .....EX PARTE APPLICANT

JUDGMENT

This is a judicial review motion dated 16th September 2019 seeking to quash the following orders:

a) Ruling and order of the Principal Magistrate, Hon. Wairimu, in Eldoret CM's Miscellaneous Civil No. 30 of 2019, Philemon Kemboi Kitum v Chief Conservator of Forests made on 6th May 2019.

b) Ruling and order of the Principal Magistrate, Hon. Wairimu, in Eldoret CM's Miscellaneous Civil Application No. 46 of 2019, Benjamin Cheboi v Chief Conservator of Forests made on 20th June 2019.

c) Ruling and order of the Principal Magistrate, Hon. Wairimu, in Eldoret CM's Miscellaneous Civil Suit No. 80 of 2019, Elijah K. Kibet v Chief Conservator of Forests made on 14th August 2019.

d) That the Judicial Review order of prohibition be issued to bar the Principal Magistrate and/or any other subordinate court from issuing, or purporting to issue licenses, for the production and/or transportation of charcoal, or any authorization in that regard, in Eldoret CM's Miscellaneous Civil No. 30 of 2019, Philemon Kemboi Kitum v Chief Conservator of Forests, Eldoret CM's Miscellaneous Civil Application No. 46 of 2019, Benjamin Cheboi v Chief Conservator of Forests and in Eldoret CM's Miscellaneous Civil Suit No. 80 of 2019 Elijah K. Kibet v Chief Conservator of Forests, or in any such similar applications pending before the subordinate court.

e) That a declaration be made that it is only the Applicant that has jurisdiction to issue any license with respect to movement of charcoal and other forest produce.

Parties agreed to file written submissions which were duly filed.

EX PARTE APPLICANT'S SUBMISSIONS

The applicant relied on the grounds on the face of the application, the statement dated 16th September 2019 together with the sworn affidavit by Thomas K. Kiptoo, the Ecosystems Conservator of Forests in Uasin Gishu County.

Counsel submitted that the decisions of the subordinate court to grant charcoal movement permits is tainted with illegality, as the jurisdiction to issue charcoal movement permits lies with the Ex parte applicant and not the court.

Further that the decision of the subordinate court to grant the interested parties charcoal movement permits was irrational as no evidence of land ownership was presented to prove availability of charcoal from own land.

The Applicant gave a brief background to the case and stated that on 27th May 2019 at around 1930 hours, enforcement officers of the ex parte applicant intercepted a lorry registration number KUY 343 at Kapchorua area within Uasin Gishu county transporting about 100 bags of charcoal. That when asked to produce a charcoal movement licence as required under Regulation 14(1) of the Forest (Charcoal) Rules 2009, the occupants of the lorry produced a court order issued in favour of the 1st interested party in Eldoret CM's Court Miscellaneous Civil No. 30 of 2019 which order allowed the 1st interested party to transport charcoal harvested from the applicant's farm for a period of one year.

It was the applicants contention that it learnt of the existence of court proceedings upon production of the court orders, and further investigations revealed the existence of additional court proceedings instituted by the 2nd and 3rd interested parties against the Ex parte applicant, or some of its officers which prompted the applicant to commence the present proceedings with a view to quashing the decisions of the subordinate courts brought by the interested parties, and to ensure compliance with the statutory procedures for the movement of charcoal.

On the law counsel submitted that the High Court has jurisdiction to issue orders of judicial review when public bodies and inferior tribunals make decisions or undertake acts tainted with illegality, irrationality and procedural impropriety and cited the case of **Pastor vs Kabate District Local Government Council & Others [2008] 2 EA 300**

Mr Oduor for the applicant submitted that the statutory jurisdiction to issue charcoal movement permits lie with the ex parte applicant, and the decisions of the subordinate court to grant charcoal movement permits to the interested parties contravenes the statutory framework in force to ensure sustainable management and utilization of forest and forest produce.

Counsel further submitted that the decision by the subordinate court sidestepped the applicable constitutional and legislative frameworks as there was no dispute between the ex- parte applicant and the interested parties to warrant intervention by the Court and further that the applicable dispute resolution framework under the Forest Conservation and Management Act was not utilized.

Counsel relied on Article 69 of the Constitution that requires the state to ensure the sustainable exploitation, utilization, management and conservation of the environment and natural resources and to ensure the equitable sharing of the accruing benefits. The state is specifically required to work to achieve and maintain a tree cover of at least 10% of the land area in Kenya. Similarly Article 72 of the Constitution requires Parliament to enact legislation to give full effect to the provisions of Chapter Part 11 dealing with environment and natural resources.

Mr Oduor also referred to The Forest Conservation and Management Act, No. 34 of 2016 which was enacted "to give effect to Article 69 of the Constitution with regard to forest resources; to provide for the development and sustainable management, including conservation and rational utilization of all forest resources for the socio-economic development of the country and for connected purposes. In s. 77(e) of the

Act, all subsidiary legislation enacted under the repealed Forests Act, 2005 (No. 3 of 2005) are to remain in force until they are revoked in accordance with the provision of the Act. The Forest (Charcoal) Rules, 2009 is such subsidiary legislation.

It was counsel's submission that Regulation 4(1) of the Forest (Charcoal) Rules designates in no uncertain terms the Ex- parte applicant as the competent authority responsible for the issuance of licenses for the production and transportation of charcoal. Regulation 4(2) buttresses the supremacy of the licensing responsibilities of the ex parte applicant.

Counsel further submitted that in none of the impugned proceedings before the subordinate court copies of an application for the issuance of a charcoal movement permit were presented. The interested parties went to court and sidestepped the statutory role of the ex parte applicant.

Counsel therefore submitted that the subordinate court erred in assuming jurisdiction in the absence of a dispute between the ex parte applicant and the interested parties. Article 162(2) of the Constitution and Section 13 of the Environment and Land Court Act confers jurisdiction on the Environment and Land Court to determine disputes. In the present case, no material was presented to show any engagement between the interested parties and the ex parte applicant the basis of which a dispute could be said to arise.

In addition, the interested parties similarly sidestepped the dispute resolution framework set out Section 70 of the Forest Conservation and Management Act requiring "any dispute that may arise in respect of forest conservation, management, utilization or conservation to be referred in the first instance to the lowest possible structure under the devolved system of government as set out in the County Governments Act, 2012. Where the matter remains unresolved, it is referred to the National Environment Tribunal. Only when the matter remains unresolved by the National Environment Tribunal can the Environment and Land Court assume jurisdiction by way of appeal. The interested parties adopted a procedure that ignores this statutory framework.

Counsel therefore urged the court to allow the application as prayed.

1 ST INTERESTED PARTES' SUBMISSIONS

The 1st Interested Party herein (Philemon Kemboi opposed the application vide a Replying Affidavit sworn on 30th July 2020 and stated that it is not contested that the 1st Interested Party pursuant to the Forest Conservation and Management Act, 2016 and the Forest Act and Charcoals Rules 2009 obtained license and permit to harvest trees.

Further that the 1st Interested Party in paragraph 10 has demonstrated that indeed he made an application for Charcoal Movement Permit to the Kenya forest Services and that the Ex- parte applicant refused to issue him the movement license hence prompting him to seek legal redress from a court of law.

The 1st Interested party also stated that having obtained a Certificate of Origin and permit to harvest 3000 bags of charcoal was forced to move the court by dint of the application dated 6th May 2019 whereof the court having been satisfied with the urgency and reasons presented thereof proceeded to allow 1st Interested Party's application.

Mr Omboto for the 1st Interested party submitted that Article 165(3) gives the Magistrates' courts wide discretionary powers together with jurisdiction to hear and determine applications as that presented by the 1st Interested Party. That the provisions of Article 165(3) of the Constitution provides a Magistrate's court shall have jurisdiction to hear and determine applications for:-

a) Redress for denial

b) Violation or infringement of

c) A threat to a right or

d) A threat to fundamental freedom in the Bill of Rights

It was further counsel's submission that the Ex Parte Applicant in the present application has failed to disclose to the court that pursuant to a gazette notice issued on 21st February 2019, the Moratorium issued by the Cabinet Secretary, Ministry of Environment and Forestry, Keriako Tobiko CBS released a statement on 19th February 2019 which clarified the scope on logging activities in Kenya.

Mr Omboto also stated that the an extract of the release confirmed that logging activities did not cover harvesting and transportation of tree products from private plantations, wood lots and/or private farms. Further that the 1st Interested Party has demonstrated that the trees in question were harvested from a private farm, the 1st Interested Party having purchased the same from one Abraham Kipchumba Komen.

It was Mr. Omboto's submission that considering the fact that the Applicant had already harvested 3,000 bags of charcoal, it was only right and just for the ex parte applicants to issue him with the movement permit.

Counsel therefore submitted that the Ex Parte Applicant has not met the threshold outlined in Section 7 of the Fair Administrative Actions Act to enable this Honourable Court review the decision granted by the Respondent and urged the court to dismiss the application with costs.

2ND AND 3RD INTERESTED PARTIES' SUBMISSION

The 2nd and 3rd Interested parties gave a brief background and stated that on 12th September 2019 at about 11.40 a.m the 2nd Interested Party was informed by Mr. Sammy Yego Kanda that the Lorry KCK 175F had been impounded by the Police and taken to Kaptagat Police Station on allegation that it was ferrying charcoal unlawfully.

That the orders in Eldoret Misc Application No. 80 of 2019 had been given to Mr. Sammy Kanda to give his driver while ferrying the charcoal but the Police disregarded the Court Order and insisted that the transportation of the same was unlawful and the said driver was subsequently charged in Iten SPM CR NO. 637 of 2019.

The Interested party further stated that they had filed Eldoret Misc. Application no. 80 of 2019 and been issued with the Orders allowing them to transport charcoal purchased and harvested from a private farm for a period of one year.

Counsel submitted that the court had the power and authority to issue the said Orders allowing the charcoal and transportation of the charcoal as evidenced vide order in Eldoret Environment and Land Court Misc. Application No. 9 of 2018.

Mr Kiboi submitted that the application before this Honourable Court does not meet the threshold for grant of judicial review orders since no evidence has been furnished to support the assertion that the lower court acted illegally, irrationally or with procedural impropriety.

Counsel relied on the Uganda case of **Pastoli Vs Kabale District Local Government Council and others [2008] 2 EA 300** where the Court cited with approval the case of **Council of Civil Unions Vs Minister for the Civil Service [1985] C 2 and An Application by Bukoba Gymkhana Club [1963] EA 478 at 479** and held:

> *"In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety... Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality... Irrationality is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually a defiance of logic and acceptable moral standards... Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere to and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision."*

Counsel further relied on Halsbury's Laws of England 4th Edition Vol. (1) (1) Para 60 where it is stated that it is not the purpose of judicial review to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matter in question and that unless that restriction on the power of the Court is observed, the Court will, under the guise of preventing abuse of power, be itself guilty of usurpation of power.

Mr Kiboi also cited the case of **In Republic Vs Judicial Service Commission ex parte Pareno [2004] 1 KLR 203-209**, it was held that:

> *"Judicial Review orders are discretionary and are not guaranteed, and hence a Court may refuse to grant them even when the requisite grounds exist since the Court has to weigh one thing against another and see whether or not the remedy is the most efficacious in the circumstances obtaining and since the discretion of the Court is a judicial one it must be exercised on the evidence of sound legal principles... Even where it has jurisdiction to issue the prayed orders, the Court would refuse to grant Judicial Review remedy where it serves no useful or practical significance. Since the Court exercises a discretionary jurisdiction in granting prerogative orders, it can withhold the gravity of the order where a public body has done all that it can be expected to do to fulfill its duty or where the remedy is not necessary...*

On the mandate of the Magistrates 'court, counsel cited the provisions The Magistrates' Court Act No. 26 of 2015, which is an Act of Parliament to give effect to provisions of the Constitution to confer jurisdiction, functions and powers on the magistrates' courts, provides that a Magistrate's Court shall, in the exercise of the jurisdiction conferred upon it by Section 26 of the Environment and Land Court Act 2011 and subject to its pecuniary limits, hear and determine claims relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; compulsory acquisition of land; land administration and management; public, private and community land and contracts, chores in action or other instruments granting any enforceable interests in land; and environment and land generally.

Counsel relied on the case of **Daniel Nyongesa & 4 Others — Vs- Egerton University Civil Appeal No. 90 of 1989** where the court held thus:

> *"It is the duty of court to curb excesses of officials and bodies who exercise administrative or disciplinary measures. Courts are the ultimate custodians of the rights and liberties of people whatever the stations and there is no rule of law that courts will abdicate jurisdiction merely because the proceedings or enquiry are of an internal disciplinary character"*

Counsel therefore urged the court to find that the application is untenable and hence should be dismissed with costs to the interested parties

ANALYSIS AND DETERMINATION

I have considered the applicant and the interested parties' case and find that it is prudent to look at the orders that a court can issue in judicial review proceedings. In the case of **Sangani Investment Limited vs Officer in charge, Nairobi Remand and Allocation Prison (2007) 1 EA 354,** it was held that;

> *"Section 8 of the Law Reform Act specifically sets out the orders that the High Court can issue in Judicial Review proceedings and the orders are Mandamus, certiorari and prohibition. A declaration does not fall under the purview of Judicial Review for the simple reason that the court would require viva voce evidence to be adduced for the determination of the case on the merits. Judicial review on the other hand is only concerned with the reviewing of the decision making process……."*.

I noticed that amongst the prayers by the Ex –parte applicant was declaratory in nature. The same cannot be granted in a judicial review proceeding. Judicial review is only concerned with the process and not the outcome of the decision and that would mean going into the merits of the decision without having the opportunity to hear the evidence.

The issues that arise for determination are whether the Magistrate's Court had jurisdiction to grant the impugned rulings and whether they breached the principles of natural justice; secondly, whether the interested parties had a suitable alternative remedy preventing them from moving the court; and finally, whether the relief sought is available.

The court will not interfere in a case where it is proven that the process was adhered to and the decision was arrived at on merits. It will only interfere where it is established that the institution concerned was guilty of abuse of the discretion as was held in the case of **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001:**

> *"Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters…The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision."*

Further in the case of **Kenya National Examinations Council vs. Republic Ex Parte Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996 eKLR** the Court of Appeal held *inter alia* as follows:

> **"***Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the present appeal the respondents did not apply for an order of certiorari and that is all the court wants to say on that aspect of the matter……..Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice……... …Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice."*
>
> On the first issue whether the Magistrate's court had the mandate to grant the impugned rulings, Section 9 of the Magistrates Court Act, 2015 provides:

A magistrate's court shall —

> (a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act and subject to the pecuniary limits under section 7(1), hear and determine claims relating to —
>
> > (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
> >
> > (ii) compulsory acquisition of land;
> >
> > (iii) land administration and management;
> >
> > (iv) public, private and community land and contracts, chores in action or other instruments granting any enforceable interests in land; and
> >
> > (v) environment and land generally.
>
> (b) in the exercise of the jurisdiction conferred upon it under section 29 of the Industrial Court Act,2011 and subject to the pecuniary limits under section 7(1), hear and determine claims relating to employment and labour relations.

In the case of **Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others [2017] eKLR,** the law was stated as follows as regards the jurisdiction of the Magistrates Court at paragraphs 65 and 71:

> 65. *In our view, conferring jurisdiction on Magistrates courts to hear and determine does not diminish the specialization of the specialized courts considering that appeals from the Magistrates? courts over those matters lie with the specialized courts. As urged by Mr. Kanjama, under the doctrine of judicial precedent, the decisions of the specialized courts would bind the Magistrates? courts and the specialized courts would therefore undoubtedly imprint the "specialized jurisprudence" on the magistrate's courts.*
>
> **…..**

……

71. By parity of reasoning, although under Article 162 (2) of the Constitution Parliament is mandated to establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations and environment and the use and occupation of, and title, to land, that in itself does not confer an exclusive jurisdiction to those specialized courts to hear and determine the specified types of cases. However, as already stated, Article 165 (5) is clear that the High Court has no jurisdiction in respect of matters falling within the jurisdiction of the specialized courts. Whereas Parliament is empowered to enact legislation to confer jurisdiction to the Magistrates courts to hear and determine disputes stipulated under Article 162 (2) of the Constitution, it cannot establish a Superior Court or confer upon a Superior Court jurisdiction to hear employment and labour relations cases and environment and land cases.

From the above provisions it is evident that Magistrates Courts, have jurisdiction to determine disputes stipulated under Article 162 (2) of the Constitution. However, I agree with the submissions of the *ex-parte* applicant, that the Respondent did not have jurisdiction in the first instance to entertain the proceedings before her.

Section 70 of the Forest Conservation and Management Act, 2016 provides;

(1) Any dispute that may arise in respect of forest conservation, management, utilization or conservation shall in the first instance be referred to the lowest possible structure under the devolved system of government as set out in the County Governments Act, No. 17 of 2012.

(2) any matter that may remain un-resolved in the manner prescribed above, shall be referred to the National Environment Tribunal for determination, pursuant to which an appeal subsequent thereto shall, where applicable, lie in the Environment and Land Court as established under the Environment and Land Court Act, 2011 (No. 19 of 2011)

Section 9 (2) and (3) of the Fair Administration Action Act provides;

(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

Section 9 (2) and (3) of the Fair Administration Action Act provides;

Section 70 of the Forest Conservation and Management Act, 2016 has an elaborate procedure for remedies in case a person is aggrieved and in case the matter is unresolved, then it can be referred to the National Environment Tribunal and further an appeal can be filed in the Environment and Land Court. There is no evidence that the Interested parties attempted to follow or exhaust these procedures.

The Court of Appeal affirmed the doctrine of exhaustion in **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others (2015) eKLR** as follows:

"It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews…. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. The ex-parte Applicants argue that this accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution."

In the case of **Alice Mweru Ngai v Kenya Power & Lighting Company Limited [2015] eKLR, Royal Reserve Management Company Ltd v Kenya Power & Lighting Company Limited [2017] eKLR and Robai Kadili Agufa & another v Kenya Power & Lighting Company Limited [2019] eKLR,** courts have found that where there was a clear procedure for redress of any grievance prescribed by the Constitution or statute, that procedure ought to be strictly adhered to, and proceeded to strike out the suits where the procedures were not followed.

I find that the interested parties should have used the administrative structures that have been put in place as per the provisions of the Section 70 of the Forest Conservation and Management, Act and not the Principal Magistrate's Court.

On the issue whether the respondent breached the rules of natural justice, a decision suffers from procedural impropriety if the process of laid down procedures in the statutes are neither followed nor adhered to. The *ex-parte* applicant has submitted that it was not afforded the opportunity to be heard before the impugned rulings and the consequential orders were made.

Article 47 of the Constitution and Section 4 of the Fair Administrative Actions Act, provide that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Where a person's rights or fundamental freedoms is likely to be affected by an administrative decision, the administrator must give the person affected by the decision prior and adequate notice of the nature and reasons for the proposed administrative action; an opportunity to be heard and to make representations; notice of a right to a review or internal appeal against the decision where applicable; a statement of reasons; notice of the right to legal representation and right to cross-examine; as well as information, materials and evidence to be relied upon in making the decision or taking the administrative action.

The *ex-parte* applicant has submitted that it was not aware of the proceedings before the subordinate court and the consequential orders thereon. The *ex-parte* applicant has further stated that it only became aware of the said court orders after its enforcement officers intercepted a lorry registration number KUY 343 at Kapchorua area within Uasin Gishu County transporting 100 bags of charcoal.

I find that the application by the Ex parte applicant has merit and is therefore allowed. I consequently make the following orders"

a) An order of Certiorari is hereby issued quashing the Ruling and order of the Principal Magistrate, Hon. Naomi Wairimu, in Eldoret CM's Miscellaneous Civil Application No. 30 of 2019, Philemon Kemboi Kitum V Chief Conservator of Forests made on 6th May 2019.

b) An order of Certiorari is hereby issued quashing the Ruling and order of the Principal Magistrate, Hon. Naomi Wairimu, in Eldoret CM's Miscellaneous Civil Application No. 46 of 2019, Benjamin Cheboi V Chief Conservator of Forests made on 20th June 2019.

c) An order of Certiorari is hereby issued quashing the Ruling and order of the Principal Magistrate, Hon. Naomi Wairimu, in Eldoret's CM's Miscellaneous Civil Suit No. 80 of 2019, Elijah K. Kibet V Chief Conservator of Forests made on 14th August 2019.

d) Each Party to bear their own costs.

DATED and **DELIVERED** at **ELDORET** this **2ND DAY** OF **MARCH, 2021**

M. A. ODENY

JUDGE