REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

CIVIL SUIT NO. 189 OF 2019

ASSOCIATED CONSTRUCTION COMPANY (K) LIMITED.....PLAINTIFF/APPLICANT

VERSUS

MINISTRY OF TRANSPORT, INFRASTRUCTURE HOUSING URBAN

DEVELOPMENT & PUBLIC WORKS.....1ST DEFENDANT/RESPONDENT

THE ATTORNEY GENERAL.....2ND DEFENDANT/RESPONDENT

RULING

1. The Application for consideration is the Plaintiff's Notice of Motion dated 13th August, 2019 seeking the following orders:

i. Spent

ii. Spent

iii. Spent

iv. THAT pending the referral of this dispute to Arbitration and conclusion thereof, an Order be and is hereby issued restraining the 1st Defendant from terminating the Contract dated 13th June 2011 between the Plaintiff and the 1st Defendant for the Construction of Ndau Seawall Lamu County W.P Item No. D59/CO/LMU/1001 JOB No. 9781A.

v. THAT the dispute herein between the Plaintiff and the 1st Defendant be and is hereby referred to Arbitration pursuant to clause 67.3 of the Contract dated 13th June 2011 between the Plaintiff and the 1st Defendant for the Construction of the Ndau Seawall Lamu County W.P. Item No. D59/CO/LMU/1001 JOB No. 9781A.

vi. THAT the costs of this Application be provided for.

2. The Application is anchored on **Order 51 Rule 1, Order 40 Rule 1 & 2** of the **Civil Procedure Rules, Sections 1A, 1B, 3A, 63(e), 79G & 95** of the **Civil Procedure Act, Sections 6 & 7** of the **Arbitration Act** and all other enabling provisions of Law. It is predicated on the grounds on the face of it and supported by an Affidavit sworn by the Plaintiff's director **KIRAN BHAMRA** on 13th August, 2019.

3. The deponent averred that on 13th June, 2011, the 1st Defendant engaged the Plaintiff to carry out the construction of Ndau Seawall under W.P. Item No. D59/CO/MU100/JOB No. 9781A, in Lamu County (hereafter "the contract"). The initial contract sum was Kshs. 322,994,283.10/= and the amount for additional works awarded thereafter was Kshs. 42,109,510.90/= thus making a total contract sum of Kshs. 365,103,794/=. He asserted that pursuant to Clause 29 of the contract, the Plaintiff procured Bank Guarantee No. ML/057/2011-Ref. 511150001 on 30th May, 2011 from Middle East Bank Kenya Limited in favour of the 1st Defendant to guarantee performance of the subject contract.

4. He averred that the tender contract period was One Hundred and Four (104) weeks and the commencement date was 24th June, 2011 implying therefore that the contract was to run from 24th June, 2011 to 21st June, 2013. However, the 1st Defendant instructed a variation to the contract comprising additional works on 24th September, 2012. Consequently, the Plaintiff applied for an extension of time on 21st May, 2013 and the same was approved by the 1st Defendant on 26th June, 2013 granting the Plaintiff thirty-three (33) weeks extension of time thereby making the revised contract completion date to be 24th December, 2014.

5. He noted that the Plaintiff applied for a further extension of the completion period on 11th May, 2015 and the 1st Defendant granted a second extension of time on 10th September, 2015 for a further period of ninety three (93) weeks, thereby making the total revised contract period to be two hundred twenty seven (227) weeks and the revised contract completion date to be 9th November, 2015. However, this was subsequently extended by mutual agreement and understanding between the Plaintiff and the 1st Defendant and the last such arrangement made and agreed upon was that the Plaintiff was to complete all the pending works by **31st July, 2019**.

6. He averred that the completion date has been extended in the same manner from time to time by mutual consent of the parties. However, the 1st Defendant has largely contributed to the delay in achieving any set completion date by its inability to make timely periodic payments for works certified complete and interim payment certificates issued in that regard.

7. Further, that in accordance with sub-clauses 60.2, 60.4, 60.5 and the Appendix to the Form of Bid, the Plaintiff was to receive payment of interim certificates within ninety (90) days of the date of signing by the Engineer under the contract. However, the delay for payments occasioned by the 1st Defendant has been prolonged, spread over and extended in the entire period from the commencement of the works to date thereby occasioning disruption, slow pace and delay on the works being undertaken on site. It was also his contention that in addition to the delayed payment on the interim certificates issued, some of the certificates are yet to be settled by the 1st Defendant which has financially strained the Plaintiff's operations on site extensively.

8. Further, that some of the additional factors that have contributed to the delay in the completion of the contract are as the Plaintiff's demobilization of its plant equipment due to environmental factors from time to time; remobilization of the plant and equipment back on site from its site in Nairobi to restart the works; staff re-mobilization on the site which often took a long period of time due to insecurity reasons; and frustration on transportation of materials which was at times only allowed during day time along the Garsen-Witu-Mokowe Highway due to insecurity and logistics in terms of tides in the ocean.

9. He averred that despite all these challenges, the Plaintiff has substantially carried out the contracted works to the tune of ninety percent (90%) or thereabout and is fully committed to completing the remaining works which are very minimal.

10. He deposed that however, on 25th July, 2019, the 1st Defendant served the Plaintiff with a Notice of Termination dated 14th July, 2019 pursuant to clause 63.1 of the General Conditions of the contract notifying the Plaintiff of the 1st Defendant's intension to terminate the subject contract within Fourteen (14) days from the date of the letter. It was deposed that the Plaintiff is not subject of any of the matters, events or situations listed in the said sub-clause 63.1 and neither has the Plaintiff ever received any certifications to the 1st Defendant by the Engineer under the Contract of the matters set out under sub-clause 63.1 (a) (b) (c) (d) and (e) of the General Conditions of the Contract. It was his view that in the circumstances, the said Notice of Termination is pre-mature, irregular, unwarranted, in bad faith and therefore invalid, null and void *ab initio*.

11. He asserted that the Plaintiff responded to the said notice on 26th July, 2019 but the 1st Defendant has declined, refused and/or ignored to sufficiently address the said response at all which necessitated these proceedings in order for the Plaintiff to fully safeguard its interest.

12. He stated that the notice to terminate the contract is not justified at all and is in breach of the contract. He argued that it is only fair and just that the Plaintiff is accorded the contractual space and opportunity under the contract2 to enable it fully complete the same since any termination of the contract at this advanced stage will expose the Plaintiff to enormous financial loss and damage including the recalling of the performance bond issued in favour of the 1st Defendant by the Middle East Bank Kenya Limited and this will frustrate the Plaintiff's business operations. It was also his view that all the orders sought ought to be granted in the interests of justice and equity.

13. In opposition, the Defendants jointly filed a Replying Affidavit sworn on 16th September, 2019 by **ENG. H.J.N. NYAANGA**, the 1st Defendant's Chief Engineer (structural).

14. He averred that the contract was indeed awarded to the Plaintiff on 13th June, 2011 and works under the contract commenced on 24th June, 2011 with a scheduled completion date of 21st June, 2013. He deposed that the Plaintiff did not complete the works within the stipulated contractual period due to its slow progress of works and thus sought for the first extension of time on 21st May, 2013. That consequently, the Plaintiff was granted thirty (30) weeks extension of time making the revised completion date to be 24th January, 2014. This was followed by a letter to the Plaintiff with instructions to expedite the progress of the works since the same had been quite slow. He contended that at the lapse of the revised contractual period, the Plaintiff was granted a second extension of 93 weeks thus reviewing the completion date to 9th November, 2015.

15. It was his contention that during this period, the Plaintiff suspended works on account of delay in payment of interim payment certificates without giving due notice as required under the Conditions of the Contract. That even after being paid its dues, there were still unreasonable delays in the resumption of work by the Plaintiff that resulted in delayed execution of the works under the contract. This was followed by a third 86 weeks extension of time from the 2nd revised completion date of 9th November, 2015 thus reviewing the completion date once again to 6th July, 2017.

16. Further, he deposed that the Plaintiff issued the 1st Defendant with a Notice of Intention to Terminate the Contract dated 11th November, 2015 on account of default for delays in payment of an Interim Certificate No. 11. He also confirmed that there was indeed a delay in payment of certificate No. 17 but stated that the Plaintiff discounted the same with the bank and monies were released to it before actual payment by the 1st Defendant. He averred that even as at the third revised completion date of 6th July, 2017, the Plaintiff had not completed the works under the contract. However, the 1st Defendant allowed the Plaintiff to remain on site and complete the works subject to 1st Defendant's claim for liquidated damages in accordance with Sub-Clause 47.1 and Appendix to the form of tender, which amount was rightfully deducted from Certificate No. 20.

17. It was his further contention that despite being on site and the project having had adequate allocation of funds during the 2018/2019 financial year, the Plaintiff failed to complete the works under the contract thus necessitating the 1st Defendant to issue it with letters complaining of slow progress of work resting with a Default Notice dated 7th February. Vide a letter dated 19th February, 2019, the Plaintiff promised to fully resume works under the contract and complete the same by 30th July, 2019 but failed to do so despite the fact that all the interim certificates raised had been duly settled by the 1st Defendant.

18. He deposed that the 1st Defendant deemed the Plaintiff's conduct as repudiation of the contract which necessitated it to issue a Notice of Termination dated 10th July, 2019 pursuant to Sub-Clause 63.1 of the General Conditions of the Contract. He averred that if at all there were any delays in the payment of the interim certificates, the Plaintiff had recourse under the Sub-Clause 60.7 on Conditions of the Contract to claim simple interest on the basis of the number of days delayed by notifying the 1st Defendant of this intention within fourteen (14) days of receipt of the delayed payment, which it never did.

19. He averred that the project under the contract had been undertaken for the interest of the residents of Lamu and it has been over eight (8) years since the project started yet they have not been able to realize this benefit owing to the conduct of the Plaintiff. He noted that the general public who were the intended beneficiaries of the project continue to suffer irreparable damage due to non-completion of the project whose completion is long overdue. Further, it was contended that it is clear from the correspondences between the parties that their relationship is already constrained. As such, it is in the public interest and interest of justice that the 1st Defendant be allowed to procure another contractor to complete the works within the shortest time possible even as the intended arbitral process continues so as to mitigate its losses.

20. In addition, it was contended that the Performance Bank Guarantee from Middle East Bank Kenya Ltd which the Plaintiff furnished the 1st Defendant with was only valid up to 30 days after the date of issue of the Certificate of Completion. That the said Bank wrote to the 1st Defendant on 16th January, 2018 and 25th July, 2019 advising that the said Bank Guarantee had expired in its books and has since been cancelled which fact the Plaintiff has never bothered to communicate to the 1st Defendant. He deposed that it is clear from that conduct that the Plaintiff is in clear breach of the contract for failing to provide the 1st Defendant with a valid performance bank guarantee as provided under Sub-Clause 10.1 of the General Conditions to the Contract.

21. Further, that the 1st Defendant only came to learn of an existing Bank Guarantee from the KCB Bank from the documents submitted by the Plaintiff for the purpose of this suit but an original copy of the same was never deposited with the 1st Defendant as required in the contract between the parties. He argued that the Plaintiff is well aware that it does not have a valid performance guarantee as required under the contract. As such, its claim that recalling of the Guarantee from Middle East Bank Kenya Ltd will lead to financial losses is misleading to the court.

22. Finally, he contended that in any event, the Plaintiff does not stand to suffer any prejudice if the contract is terminated since its claim is quantifiable, and can therefore be compensated by way of special and general damages, if at all.

Plaintiff/Applicant's submissions

23. The application was canvassed by way of written submissions filed by the parties' respective advocates.

24. In its written submissions dated 12th August, 2020 the Plaintiff contended that the contract between the parties is subject to the "Conditions of contract for works of civil Engineering Construction, Fourth Edition 1987, reprinted in 1992 with further amendments prepared by the Federation Internationale Desingenieus Conseils (FIDIC)" which contain procedures that govern the parties' obligations pending referral of a dispute to arbitration in the event of a dispute as stipulated under Clauses 67.1 and 67.3 and which the 1st Defendant's Notice has threatened to bypass by not only unilaterally terminating the contract but by also appointing another contractor to replace the Plaintiff even before the arbitration process has been complied with pursuant to the Conditions aforesaid.

25. The Plaintiff further submitted that apart from opposing the 1st Defendant's notice of termination for lack of grounds, it referred the dispute to the engineer by way of a letter dated 9th September 2019, pursuant to Clause 67.1 of the Conditions of Contract which provides, *inter-alia*, that;

> *"If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party.*
>
> *Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.*
>
> *……If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute.*

26. It was submitted that the Engineer is yet to respond to the Plaintiff's aforesaid letter, admittedly because of the pendency of this application. The Plaintiff urged the court to direct the parties to strictly comply with the arbitration procedures as stipulated in the Conditions of contract aforesaid regarding whether the Contract can be terminated. According to the Plaintiff, key among these Conditions is Clause 67.1 which provides as follows on the issue of continuity of works and which invalidates the 1st Defendant's threat to look for another contractor to complete the works;

> "*Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award."*

27. The Plaintiff reiterated that not only should the dispute be referred to the arbitration but in the meantime, it should be allowed the contractual space to carry on with works as provided for under Clause 67.1. It was therefore urged that the 1st Defendant be restrained from replacing the Plaintiff with another contractor or from calling in the bank Guarantee until the dispute is arbitrated and finalised in accordance with Clauses 67.1 and 67.3 of the General conditions. It was the Plaintiff's further contention that, replacing it with another contractor at this stage will not only occasion substantial loss to its business but would also obviate the need for the arbitration process and render the same an academic exercise since the subject matter to be arbitrated upon, being the completion of works by the Plaintiff, would have been extinguished.

28. Further, the Plaintiff submitted that the 1st Defendant cannot unilaterally choose to bypass an arbitration agreement it entered into voluntarily by urging this court to ultra vires sanction its unlawful threats to terminate the contract and replace the Plaintiff with a different contractor without first allowing for the procedures stipulated under Clauses 67.1 and 67.3 of the General conditions to run their course. In support of this, the Plaintiff cited the case of **Nyutu Agrovet Limited v Airtel Networks Limited [2015] eKLR** where the court stated that arbitration is often chosen freely by parties through incorporation of the arbitration agreement into their contract. Reliance was also placed on the case of **East African Power Management Limited v Westmont Power (Kenya) Limited Civil Appeal No. 55 of 2006** where the court held the view that when parties agree that a dispute shall be determined by arbitration, they voluntarily cut themselves off the recourse to the courts of law and they must be held to their agreement by courts of law in accordance with the Arbitration Act, 1995.

29. Finally, the Plaintiff urged that in view of the long duration taken to determine this Application, in case the Application is allowed and the dispute is referred to arbitration, the timelines in respect of compliance with the conditions of the contract should start afresh to enable the whole arbitration process be followed sequentially.

Defendants' submissions

30. The Defendants' written submissions are dated 12th June, 2020. It is submitted that the only issue for determination is whether the Plaintiff is entitled to the interim measures of protection pending referral of the dispute to arbitration. It was submitted that Section 7(1) of the Arbitration Act vests this Honorable Court with the requisite jurisdiction to issue interim measures of protection before or during the pendency of arbitral proceedings. It was contended that Clause 5.1(a) of the Conditions of Particular Application on the other hand vests upon the Kenyan Courts the exclusive jurisdiction to hear and determine all actions and proceedings in connection with and arising out of the contract.

31. In support of the factors that the Court ought to consider in exercising this jurisdiction, the Defendants cited the case of **Seven Twenty Investments Limited v Sandhoe Investment Kenya Limited [2013] eKLR** where the court stated that when considering whether or not to grant interim measures of protection under Section 7 of the Arbitration Act, a court would only be concerned with whether or not there was a valid arbitration agreement and if indeed the subject matter of the arbitral proceedings was in danger of being wasted or dissipated so as to preserve the same pending the hearing and determination of the arbitral reference. They also relied on the conditions set down for the grant of interim measures of protection in the case of **Safaricom Limited v Ocean View Beach Hotel Limited & 2 others [2010] eKLR**.

32. Relying on the foregoing jurisprudence, the Defendants confirmed that there is a valid arbitration agreement between the parties under Clause 67.1 - 67.3 of the Conditions of the contract. It was also submitted that Clause 67.1 & 67.2 sets down the pre-requisites to referring a dispute for arbitration and that it is in the purview of the arbitral tribunal appointed pursuant to the contract to determine the same under **Section 17 of the Arbitration Act**. To support this, they relied on Nyamu, JA's sentiments made in the case of **Safaricom Limited v Ocean View Beach Hotel Limited & 2 others [supra].**

33. On whether the subject matter of arbitration is under threat or in danger of being wasted, the Defendants cited the cases of **CMC Holdings Limited & Another v Jaguar Land Rover Exports Limited [2013] eKLR** and **Seven Twenty Investments Limited [supra]** for the position that termination of a contract cannot be deemed to be a tangible asset that is capable of being conserved under **Section 7 of the Arbitration Act** and, that preventing a party from exercising what it would be entitled to do under an agreement between itself and the other party would amount to rewriting the contract that had been entered between the parties.

34. On the basis of the said decisions, the Defendants submitted that the issue in dispute between the parties herein relate to the intended termination by the 1st Defendant. They contended that the nature of the orders that the Plaintiff is seeking from this Court would in effect be preventing the Defendant from terminating the contract and realizing the performance guarantee issued in its favour under the contract which would in essence be re-writing the contract between the parties. They argued that the issue of whether the termination is right or wrongful and whether the realization of the performance guarantee is justified under the contract are issues that can and ought to be determined by way of arbitration as per the terms of the contract.

35. In totality, it was the Defendants' view the orders that the Plaintiff is seeking cannot issue and the application should be dismissed with costs to the Defendants.

Analysis and Determination

36. I have carefully considered the Plaintiff's application, the Defendants' response thereto, the parties' respective written submissions, together with the authorities that they rely on. In my humble view, the main issue for determination is whether the Plaintiff has established a case for the granting of an interim measure of protection under **Section 7 of the Arbitration Act** pending the referral of the dispute to arbitration.

37. Section 7 of the Act provides as follows:

> ***"It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings an interim measure of protection and for the High Court to grant that measure."***

38. In the case of **Safaricom Ltd v Ocean View Beach Hotel Limited & 2 Others [supra],** the Court of Appeal interpreted the meaning of interim measures of protection in arbitration law in the following terms:

> ***"By determining the matters on the basis of the Giella principles, the superior court failed to appreciate what interim measures of protection entail in terms of arbitration law, during or before the commencement of an arbitration. It may be necessary for an arbitral tribunal or a national court to issue orders intended to preserve evidence, to protect assets, or in some other way to maintain the status quo pending the outcome of the arbitration proceedings themselves. Such orders take different forms and go under different names…whatever their description, however, they are intended in principle to operate as "holding" orders, pending the outcome of the arbitral proceedings."***

39. In the **Blacks' Law Dictionary, 8th Edition,** an interim measure of protection is defined as follows:

> ***"An intentional tribunal's order to prevent a litigant from prejudicing the final outcome of a lawsuit by arbitrary action before a judgment has been reached. This measure is comparable to a temporary injunction in national law."***

40. In **CMC Holdings Ltd. & Another v Jaquar Land Rover Exports Ltd [2013] eKLR,** the court while highlighting the purpose of interim measures of protection held as follows:

> ***"The measures are intended to preserve assets or evidence which are likely to be wasted if conservatory orders are not issued. These orders are not automatic. The purpose of an interim measure of protection is to ensure that the subject matter will be in the same state as it was at the commencement or during the arbitral. The court must be satisfied that the subject matter of the arbitral proceedings will not be in the same state at the time the arbitral reference is concluded before it can grant an interim measure of protection."***

41. In the **Safaricom Ltd Case [supra]**, the Court of Appeal set down four conditions necessary for the grant of an interim measure of protection under Section 7 of the Act. It pronounced itself on the same as follows:

> ***"Interim measures of protection in arbitration take different forms and it would be unwise to regard the categories of interim measures as being in any sense closed (say restricted to injunctions for example) and what is suitable must turn or depend on the facts of each case before the court or the tribunal – such interim measures include, measures relating to preservation of evidence, measurers aimed at preserving the status quo, measures intended to provide security for costs and injunctions. Under our system of the law on arbitration the essentials which the court must take into account before issuing the interim measures of protection are: -***
>
> ***i. The existence of an arbitration agreement;***
>
> ***ii. Whether the subject matter of the arbitration is under threat;***
>
> ***iii. In the special circumstances which is the appropriate measure of protection after an assessment of the merits of the application?***
>
> ***iv. For what period must the measure be given especially if requested for before commencement of the arbitration so as to avoid encroaching on the tribunal's decision making powers as intended by the parties?"***

42. In the present case, it is not in doubt that the parties herein intended that their disputes be resolved by an arbitral tribunal and this is clear from the arbitration clause in their agreement. To that end, the first condition for the grant of an interim measure of protection has been fulfilled.

43. On the 2nd condition; whether the subject matter of the arbitration is under threat, it is notable that the main dispute between the parties relates to the legitimacy or otherwise of the intended termination of the contract by the 1st Defendant. The Plaintiff argues that the 1st Defendant overlooked the agreed procedure by purporting to unilaterally terminate the contract and appoint another contractor in its place before reference to arbitration. On its part, the 1st Defendant contends that the termination is justified as the Plaintiff has taken too long to complete the project. The Defendants claim that granting the orders sought by the Plaintiff will be akin to re-writing the contract between the parties and that the issue of whether the termination is right or wrongful ought to be determined by way of arbitration as per the terms of the contract.

44. At this point, that the court must restrain itself from commenting on the merits of the Plaintiff's claim since doing so would be

tantamount to delving into the realm of the arbitral proceedings whereas this court lacks the jurisdiction to deal with any of the issues raised in the parties respective Affidavits. I am guided by the provisions of **Section 10** of the **Arbitration Act, 1995** which provides thus:-

> ***"Except as provided in this Act, no court shall intervene in matters governed by this Act."***

45. However, what is clear to the court's mind is that the contract between the Plaintiff and the 1st Defendant is not an asset or something tangible that can be preserved under **Section 7** of the **Arbitration Act**. Granting the order sought by the Plaintiff would mean this court would be preventing the 1st Defendant from terminating the contract yet this is something that it is entitled to do under the subject contract. It would also be akin to the court re-writing the said contract and as such, there would be no dispute capable of being referred to the arbitral tribunal as the court would have stopped such termination any way.

46. My considered view is that the court cannot interfere with the contracts entered into between the parties. What this means is that the Plaintiff has not satisfied the conditions necessary for the grant of an interim measure of protection restraining the 1st Defendant from terminating the contract pending referral of the dispute to arbitration.

47. Be that as it may, it suffices to point out that termination of a contract does not lead to automatic loss of all rights under the contract. I have no doubt that damages would be an adequate remedy although I cannot comment on the merit of the same bearing in mind that this is a matter that is in the purview of the arbitral proceedings. (See **Isolux Ingeniera, S.A v Kenya Electricity Transmission Company Limited & 5 others [2017] eKLR** and **Stansha Limited v Athi Water Works Development Agency [2019] eKLR).**

48. In the upshot, I find that the Plaintiff's application dated 13th August, 2019 is devoid and hereby dismissed. The costs of the application shall abide the outcome of the main suit.

DATED AND DELIVERED AT NAIROBI THIS 10TH MARCH, 2021

G.W.NGENYE-MACHARIA

JUDGE

DELIVERED THIS 10TH MARCH, 2021 BY:

A.MABEYA

JUDGE

In the presence of:

1. ..... *For the Plaintiff/ Applicant.*

2. ..... *for the Defendants/Respondents.*