



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CORAM: D. K. KEMEI – J

CIVIL APPEAL NO. 34 OF 2015

DODHIA MOTORS LIMITED.....APPELLANT

VERSUS

MBATHI MULE.....1ST RESPONDENT

COSMAS MBALYA KILONZO.....2ND RESPONDENT

(Being an appeal from the Ruling and Orders of Senior Resident Magistrate Hon. Ms. Kahuya I.M (SRM) delivered on the 2/3/2015 in Machakos Civil Case No. 1574 of 2010)

BETWEEN

MBATHI MULE.....PLAINTIFF

VERSUS

COSMAS MBALYA KILONZO.....1ST DEFENDANT

DODHIA MOTORS LIMITED.....2ND DEFENDANT

JUDGEMENT

1. On 28/5/2010 the First Respondent was lawfully travelling as a fare paying passenger on board the Appellants motor vehicle registration number KAS 480C Nissan Matatu along Machakos-Wote Road at Kimutwa area. The driver in charge of the Appellants motor vehicle lost control, veered off the road and overturned causing the First Respondent to sustain serious bodily injuries. The First Respondent filed civil suit number 1574 of 2010 before the Chief Magistrate Court at Machakos against the Appellant and Second Respondent vide the Plaint dated and filed on 14/12/2010 seeking the following prayers:-

- a. Special damages of Kshs. 2,200/-*
- b. General damages for pain, suffering and loss of amenities.*
- c. Costs of this suit.*
- d. Interest on (a), (b) and (c) above.*
- e. Any other or further relief this Honourable court may deem fit and just to grant.*

2. The Second Respondent who is alleged to have been the driver on the date of the accident filed his defence and list of witnesses dated 19/7/2011. The First Respondent filed his reply to defence on 10/8/2011 and also filed a request for judgment against the Appellant who is alleged to be the registered owner of the suit motor vehicle for failing to enter appearance and file its defence despite being served with Summons to enter appearance. On 30/5/2013 the Appellant filed the Notice of Motion dated 28/5/2013 under certificate of urgency seeking stay of execution and setting aside of the interlocutory judgment and decree entered in default of appearance. The First Respondent filed his grounds of opposition on 7/6/2013 stating that the Appellants application was frivolous, vexatious and an abuse of court process. On 19/8/2013 the Appellants notice of motion was dismissed with costs for non-attendance. On 27/10/2014 the firm of Mulwa, Isika & Mutia Advocates filed on behalf of the Appellant a Notice of Change of Advocates in place of the firm of Mulwa Nduya & Company Advocates

together with the Notice of Motion dated 25/10/2014 under certificate of urgency seeking the court to hear the application on priority basis because:-

- a. The Plaintiff/Respondent had obtained warrants of execution and if execution proceeds, the 2nd Defendant/Applicant stands to suffer irreparable loss and damage.*
- b. The consent order recorded herein in the absence of the 2nd Defendant and to which he was not a party has locked out the Defendant from the proceedings in all the other cases in the series causing the 2nd Defendant a lot of hardships.*

The firm of Mulwa, Isika & Mutua Advocates sought orders that:-

- a. Spent*
- b. The firm of M/S Mulwa, Isika & Mutua Advocates be allowed to come on record for the Second Defendant/Applicant (Appellant herein).*

The application was based on the following grounds:-

- 1. That the Plaintiff has obtained judgment against the 2nd Defendant/Applicant in this suit which had been selected as a test suit.*
- 2. That the said test suit affects 11 other matters in the series and the Plaintiffs' counsel has commenced execution in some of them against the applicant.*
- 3. That the 2nd Defendant/Applicant has appointed the firm of Mulwa, Isika & Mutua Advocates to act for her and the said Advocates cannot come on record without leave as there is already a judgement.*
- 4. That the newly appointed advocate cannot make any substantive application until they are on record.*

The above application was accompanied by a second Notice of Motion dated 25/10/2014 seeking the following orders:-

- 1. Spent*
- 2. THAT there be a stay of execution of the court's decree and/or proceedings herein and in Machakos CMCC Nos. 1519/2010,1555/2010, 1566/2010,1569/2010,1570/2010,1576/2010,1575/2010,1573/2010,1572/2010 and 1571/2010 pending the hearing and determination of this application interpartes.*
- 3. THAT the interlocutory judgement, consent order selecting this suit as a test suit, final judgement and all consequential orders be set aside.*
- 4. THAT the 2nd Defendant be granted leave to defend this suit and all other suits in the series.*
- 5. Costs of this application be in the cause.*

The application was supported by the affidavit of **TANIL MOHA LAL SHAH** and based on the following grounds:-

- a. The 2nd Defendant as registered owner of the accident motor vehicle had been given the impression that his interests were taken care of by the beneficial owners/1st Defendant's insurance.*
- b. The 2nd Defendant sold the accident motor vehicle on the 3rd May 2004 to one James Mitambo Maina.*
- c. The 2nd Defendant was not at the time of the accident in actual possession and or use of the motor vehicle neither was it in the control and/or management of the 2nd Defendant's agent and/or servant.*
- d. The 2nd Defendant has a good defence to the claim herein.*
- e. The 2nd Defendant's failure to file defence was due to an honest mistake that the beneficial owner through his insurance against third party claims would take responsibility.*
- f. The 2nd Defendant was not a party to the consent order recorded in this suit regarding the other suits in the series and it is against natural justice to hold the 2nd Defendant bound by the said consent.*
- g. The execution of the full decretal amounts against the 2nd Defendant only to the exclusion of the real culprit the 1st Defendant is in itself an injustice.*

h. If the consent order continues to be applied and execution is allowed to proceed the 2nd Defendant will suffer a lot of financial loss and hardship on account of matters she is not responsible for.

i. It is in the interest of justice and fair play that the 2nd Defendant be given an opportunity to be heard.

3. **TANIL MOHA LAL SHAH** averred that he is a Director of the Appellant herein, a company that is a dealer of motor vehicles. He averred that the suit motor vehicle was involved in an accident on 28/5/2010 when the motor vehicle had already been sold to James Mitambo Maina on 3/5/2004. He stated that the Appellant provided James Mitambo Maina with logbook and the transfer forms to ensure that he transferred the said motor vehicle to himself but the Appellant learnt that the transfer was not done after it was served with summons to enter appearance. He averred that after inquiries it was found out that the Second Respondent was the beneficial owner of the suit motor vehicle as it turned out that he was the policy holder. He further averred that he was shocked to learn that the insurance company that had insured the suit motor vehicle instructed advocates to represent the Second Respondent and that the said advocates recorded consent that the suit 1574 of 2010 be selected as the test suit to be applied in other suits in the series namely **Machakos CMCC Nos. 1519/2010,1555/2010,1566/2010, 1569/2010,1570/2010,1576/2010,1575/2010,1573/2010,1572/2010 and 1571/2010** some of which were pending while others concluded. He contended that the effect of the consent was to bind the Appellant yet he was never a party unless the consent order is set aside thereby denying the Appellant the opportunity to be heard. He averred that the Appellants movables had already been proclaimed in **CMCC NO.1568 and 1569 of 2010** hence apprehensive that execution proceedings would commence. He added that the Appellant has a good defence that raises triable issues.

4. The Appellant's application was opposed by the First Respondent vide grounds of opposition dated and filed on 5/11/2014. The First Respondent stated that the Appellants application was an abuse of the court process since the Appellant had already settled this suit as per the letter dated 7/8/2013 attached thereto and that the application had already been overtaken by events as judgement had been settled. According to the First Respondent, the Appellant by settling the suit admitted the First Respondent's claim and all other matters in the series hence the application lacks merit.

It is noted that the Second Respondent's insurer's legal manager Carolyn Shavulimo affidavit was filed on 28/11/2014. The Second Respondent inter alia avers at paragraph 7 that:-

“I am advised by my advocates on record, which advice I verily believe to be true and correct that when this suit came up for hearing on 1/10/2012 the Plaintiff(First Respondent herein)successfully applied to have this suit(CMCC No. 1574 of 2010) designated as the test suit for purposes of determining the issue of liability between the Plaintiff and the First Defendant and also for Machakos CMCCNo.1571/2010,1572/2010,1573/2010,1576/2010,1575/2010,1570/2010,1568/2010,1566/2010,1569/2010and 1519/2010 and 1565/2010.”

Further that at paragraph 8 she avers that the suit was dismissed against the Second Respondent herein for failing to demonstrate any liability and a copy of the judgement is attached as annexure 'CS2'. She avers that as a result of the dismissal of the suit against the Second Respondent, the advocates instructed to defend the suit were paid Kshs.285,057.00/- vide a cheque annexed thereto as annexure 'CS3'. In a nutshell the Second Respondent insurance legal manager supports the dismissal of the Appellants Notice of Motion dated 25/10/2014.

TANIL MOHA LAL SHAH filed a further replying affidavit on 5/12/2014 in response to the aforementioned affidavit sworn by Carolyn Shavulimo. He averred that Carolyn Shavulimo admitted that they had insured the Second Respondent's motor vehicle KAS 480C and that she has not denied that the Second Respondent was the owner of the suit motor vehicle. It has been noted by the Appellant that at paragraph 7 of the affidavit Carolyn Shavulimo confirmed that the test suit was for purposes of determining liability between the First and Second Respondents only. He avers at paragraph 11 that the Second Respondent and his insurers are guilty of misrepresentation and material non-disclosure for settling **Machakos CMCC No.1519 of 2010** only as established by annexure 'TMS6'.

The Appellant, First and Second Respondents filed written submissions on 15/12/2014 and 15/1/2015. The Appellant dealt with the issue of whether the interlocutory judgement herein as well as the consent order issued on 11/7/2016 should be set aside. Learned Counsel for the Appellant submitted that the applicant had sold the suit motor vehicle KAS 480C as at the time the accident occurred hence its defence raises a triable issue. Counsel submitted that the fact that the Appellant settled this **CMCC No.1574 of 2010** does not justify it being punished with the burden of all the other claims hence the Second Respondent herein will not suffer any prejudice. Further the fact that the Second Respondent's insurer settled **CMCC No.1519 of 2010** it cannot be said it was unreasonable of the Appellant to expect the same to happen to the other suits. Counsel submitted that the consent order was between the First and Second Respondent hence the same cannot be legally enforced against the Appellant who will be prejudiced since it finds itself bound by the judgement in **CMCC No.1574 of 2010**. Counsel prayed that the interlocutory judgement and consent order should be set aside.

Learned counsel for the First Respondent relied on the grounds of opposition dated 5/11/2014. Counsel submitted that the Appellant's application dated 25/10/2014 was ambiguous, frivolous, incompetent and incurably defective. Further that the Appellant's application had been overtaken by events since the Appellant had settled CMCC No.1574 of 2010 after the court had delivered its judgement hence the claim cannot be revisited. According to First Respondent's counsel, the settling of CMCC No.1574 of 2010 tied the Appellant to all other matters in the series. Counsel pointed out paragraph 5 and 6 of Tanil Mohanlal Shah supporting affidavit wherein Tanil Mohanlal Shah acknowledged that the Appellant received Summons to enter appearance from Machakos Chief Magistrate's court but no indication of whether efforts or attempts were made to defend the suit. Counsel submitted that the Appellant simply chose to sit on its rights of defence. Counsel submitted that the application dated 25/10/2014 was brought after inordinate delay and in bad faith as the claim herein was settled way back on 7/8/2013. Counsel prayed that the application be dismissed with costs.

On 2/3/2015 the learned trial magistrate rendered herself in respect of the Appellant's Notice of Motion dated 25/10/2014 by dismissing the same with no orders which ruling precipitated this appeal. The learned trial magistrate held that there had been undue delay for over one year to file the Notice of Motion dated 25/10/2014 since final judgment had been delivered on 9/1/2013 and that the decretal amount had already been settled by the Appellant on 7/8/2013. She noted that the Appellant had a good defence but the Notice of Motion dated 25/10/2014 had been overtaken by events since the suit had been marked as settled the moment the decretal sum was paid in full. Further she found out that

the reason given by the Appellant as to why it failed to file the appearance had merit but since the suit had been marked as settled she held that the court was *functus officio*. As regards the consent order entered on 1/10/2012 that the test suit be1574 of 2010 for purposes of determining the issue of liability, the Appellant could seek review of the order in all other series yet to be settled on the ground that they were not a party to the consent order. The learned trial magistrate relied on the case of ***Prafula Enterprises Ltd vs Norlake Investement Ltd & Anor. Kisumu HCCC No. 336 of 1999*** where ***Tanui J inter alia*** held that in a matter involving two defendants, if the Plaintiff and the Defendants enter into a consent without involving the other Defendant, the other Defendant is correct in claiming that it had discovered a new matter which after due diligence was not within its knowledge and could not produce it at the time the decree was drawn.

5. The Appellant was dissatisfied with the learned trial magistrate's ruling of 2/3/2015 that has precipitated the filing of the appeal that is before me for determination. The Appellant has filed a Memorandum of Appeal dated 13/3/2015 that raises the following grounds:-

- a. ***The learned trial magistrate erred in law and in fact when she considered only one aspect of the application to the exclusion of all other aspects raised.***
- b. ***The learned trial magistrate erred in law and in fact when she made a finding that the court was functus officio.***
- c. ***The learned trial magistrate erred in law and fact when she refused to review and/or set aside the consent order even after making a finding that the order could be reviewed.***
- d. ***The learned trial magistrate erred in law and fact when she failed to exercise discretion in favour of the Appellant when there were sufficient grounds to do so.***
- e. ***The learned trial magistrate erred in law and fact when she took into account extraneous matters.***
- f. ***The learned trial magistrate erred in law and fact when she failed to apply her mind to the extent of prejudice the Appellant was exposed to.***
- g. ***The learned trial magistrate erred in law and in fact when she dismissed the Notice of Motion filed 27/10/2014 in wholesome.***

The final orders sought being that:-

- a. ***That the ruling delivered on 2/3/2015 be set aside in its entirety and that this Honourable court do make its own findings.***
- b. ***That the costs of this Appeal and the court below be borne by the Respondent.***

6. On 26/1/2021 parties were directed to dispose of this appeal by way of written submissions. Learned counsel for the Appellant and First Respondent filed written submissions on 5/11/2020 and 19/11/2010 respectively. The Second Respondent has not filed written submissions. This being a first appeal, the role of this court is to re-evaluate and subject the evidence to a fresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court as held in the case of ***Selle –vs- Associated Motor Boat Co [1986] EA 123*** that:-

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal from the trial court by the high court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect in particular the court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

The Appellant's counsel has submitted that the necessary two issues for consideration are ***whether the trial court was functus officio and whether the court should set aside the consent order made in the absence of the Appellant***. The First Respondent's counsel submits that the trial court was correct to find it was *functus officio* since the suit had been marked as settled. Appellants Counsel has relied on the Court of Appeal decisions in ***Telkom Kenya Limited vs John Ochanda (Suing on his own behalf and on behalf of 996 Former employees of Telkom Kenya Limited)[2014]eKLR*** and Supreme court decision in ***Raila Odinga & 2 Others vs Independent Electoral & Boundaries Commission & 3 Others[2013]eKLR*** to extensively define *functus officio*. Counsel submitted that Section 99 of the Civil Procedure Act read together with Order 21 Rule 3(3) of Civil Procedure Rules, 2010 are exceptions to the *functus officio* rule hence not an absolute rule. Appellant's counsel submitted that the consent order recorded in the absence of the Appellant puts the Appellant in a precarious position as it binds the Appellant in all the other matters in the series. Counsel submitted that this is an error that ought to be corrected by the learned trial magistrate by setting aside the consent pursuant to Order 10 Rule 11 of the Civil Procedure Rules, 2010 that confers the court discretion to set aside on just terms. Reliance was placed on ***Kneller JA*** observation in the Court of Appeal decision of ***Pithon Waweru Maina vs Thuka Mugiria[1983]eKLR***. Appellants counsel submitted that the Appellant's draft defence found in page 12-13 of the Record of Appeal raises triable issues as to ownership of the suit motor vehicle KAS 480C. Lastly, counsel submitted that the consent order should be set aside since it was entered between the First and Second Respondent herein in the absence of the Appellant who was a party in the suit. Counsel raised and answered the question whether the consent judgment binds a party who was absent by placing reliance on ***Halsbury Laws of England, Vol.26*** where at paragraph 527 it is stated that consent of all parties to the action must be obtained in consent judgements. Counsel submitted that the failure by court to obtain the Appellant's consent amounts to an infringement of the rules of natural justice. Counsel submitted that there was a misrepresentation of fact that the Appellant was a party to the consent when it had not entered appearance.

7. I have given due consideration to the pleadings and written submissions duly filed by parties herein. I find the following issues necessary for determination: -

- a. Whether the trial court was *functus officio*.
- b. Whether the consent order of 1/10/12 ought to have been set aside.
- c. Whether the interlocutory judgment entered on 10/11/11 against the Appellant ought to have been set aside.
- c. What orders may the court make?

On the first issue, the learned trial magistrate held that by marking CMCC No.1574 of 2010 as settled then the court became *functus officio*. The doctrine of *functus officio* has been defined in the **Black's Law Dictionary**, 9th Edn. as: -

“ [having performed his or her office]” (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.”

The Court of Appeal in **Telkom Kenya Limited vs. John Ochanda (Suing on his Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited) [2014] eKLR** held that: -

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.”

Further that :-

"The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued. There do therefore exist certain exceptions and these have been captured thus in Jersey Evening Post Limited vs A1 Thani [2002] JLR 542 at 550: also cited and applied by the Supreme Court;

"A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling or adjudication must be taken to a higher court if that right is available."

The Supreme Court in **Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 others [2013] eKLR** cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, **"The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law"** (2005) 122 SALJ 832 to the effect that:-

"A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling or adjudication must be taken to a higher court if that right is available."

8. It is correct as submitted by the Appellant's counsel that *functus officio* is not an absolute rule. To that effect section 99 of the Civil Procedure Act contemplates exceptions to the rule. It provides that:-

"Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.

In **Mombasa Bricks & Tiles Ltd & 5 Others vs. Arvind Shah & 7 Others [2018] eKLR**, where the court observed on the doctrine of *functus officio* that :-

"I understand the doctrine, like its sister, the res judicata rule to seek to achieve finality in litigation. It is a way of a court saying, 'I have done my part as far as the determination of the merits are concerned hence let some other court deal with it at a different level'. It is designed to discourage reopening a matter before the same court that has considered a dispute and rendered its verdict on the merits. It however does not command that the moment the court delivers its judgment in a matter then it becomes an abomination to handle all and every other consequent, complementary and necessary facilitative processes. As was held by the court of Appeal in Telkom Kenya Ltd vs John Ochanda, the bar is only upon merit-based decisional engagement. To say otherwise would be to leave litigants with impotent decision incapable of realization towards closure of the file."

The learned trial magistrate held that since judgement had been delivered on 9/1/2013 in test suit **CMCC No.1574 of 2010** the court then became *functus officio*. I have noted further that the learned trial magistrate was aware that the test suit had been settled by the Appellant on 7/8/2013. In **Mohmed Dagane Falir v Alfonse Mutuku Muli & another [2020] eKLR Odunga J** relied on the case of **Aneriko M Simiyu vs. Redempta Simati Civil Appeal No. 227 of 2004** where the court held that:-

“It cannot be correct that a court of law would be said to be *functus officio* when moved to correct a mistake or mistakes on the face of the record because the ultimate result would be injustice.”

At paragraph 4 of my ruling in *Francis Muendo John v Republic [2020] eKLR* I stated that:-

“Once a court becomes *functus officio*, the only orders it can grant are review orders which are an exception to the *functus officio* doctrine”

9. The Appellant didn't seek for a review of the judgement despite stating it was not privy to the consent order of 1/10/2012 that made **CMCC No.1574 of 2010** the test suit. I do not find any error or mistake as contemplated under section 99 of the Civil Procedure Act. In any case the learned trial magistrate found that there has been an inordinate delay to file the Notice of Motion dated 25/10/2014 found at page 4 to 11 of the Record of Appeal since the same was filed one year later after the learned trial magistrate had rendered herself in the judgement. The *functus officio* rule buttresses the maxim that litigation must come to end. In any event, the appellant vide its director admitted in the supporting affidavit that it had been served with the summons to enter appearance and thus the judgement entered against it in default of appearance and defence was a regular one. The record of appeal also shows that the appellant sometimes in August 2013 filed an application to set aside the judgement but same was dismissed for want of prosecution. The appellant did nothing until about one year later on 25.10.2014 and filed a similar application seeking similar orders yet it had settled the claim. Clearly, the trial court having recorded the appellant settling the claim then become *functus officio* in the matter. Suffice to add that the appellant vide the said application cleverly avoided to confirm having settled the claim and hence the trial court was right to reject the application.

10. The learned trial magistrate was correct in finding that the court was *functus officio*. From the foregoing it is needless for me to deal with the other issues. However, even if I was to render myself on the setting aside of the consent order and/or the interlocutory judgment against the Appellant, Tanil Mohanlal Shah a director of the Appellant admitted at paragraph 5 and 6 of his supporting affidavit that the Appellant was indeed served with Summons to enter appearance from Machakos Chief Magistrate court. He also confirmed that the appellant settled the claim even without bothering to set aside the interlocutory judgement. He did not adduce any evidence on the action taken by the Appellant upon being served with the suit papers and why it did not enter appearance or file defence within the stipulated period. It means therefore that the interlocutory judgement thereby entered was a regular one and did not deserve to be set aside. Further, the appellant has deliberately avoided to explain why it settled the 1st Respondent's claim if at all he disputed the said claim and why it had to wait for over a year to seek to challenge the claim. Such a conduct does not depict a party desirous of challenging the claim against him. The settlement of the claim by the appellant meant that it had no defence to the 1st respondent's claim and which then gave the trial court the opportunity to conclude the determination of the matter and hence it became *functus officio*. Upon the settlement of the claim, the appellant did not approach the court until much later when it was turned away on the ground that the court was already *functus officio*. The lingering and pertinent question must be **“why did the appellant settle the claim if at all it had a defence to the Respondent's claim and proceed to go about its affairs until 25.10.2014?”** The only irresistible conclusion one comes to is that the appellant had no defence to the claim and was only trying to avoid reckoning with the inevitable fact that it was bound to settle claims arising from the series of the cases related to Machakos Cmcc 1574 of 2010. By settling the claim, the appellant was bound by the orders of the trial court and hence its about turn was rightly rejected by the learned trial magistrate as the court was already *functus officio*. Having arrived at the above finding, a determination of the other issues becomes moot.

11. In the upshot, it is my finding that the appeal lacks merit. The same is dismissed with costs to the 1st Respondent.

It is so ordered.

Dated and delivered at **Machakos** this **12th** day of **March, 2021**.

D. K. Kemei

Judge