



IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D.S. MAJANJA J.

TAX APPEAL NO. E053 OF 2020

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

SONY HOLDINGS LIMITED RESPONDENT

(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 27th March 2020 in Tax Appeal No. 376 of 2018)

JUDGMENT

Introduction and Background

1. The Appellant (“the Commissioner”) appeals against the decision of the Tax Appeals Tribunal (“the Tribunal”) dated 27th March 2020 holding, inter alia, that the Respondent was entitled to the refund claim of KES. 33,187,669.00 and that it was entitled to carry forward the credit until it is lawfully offset or refunded.
2. The Appeal is grounded on a Memorandum of Appeal dated 26th May 2020 and record of appeal. The Respondent opposes the appeal and filed its Statement of Facts dated 23rd June 2020. Both sides filed written submissions which their counsel highlighted at the hearing.
3. The facts giving rise to this appeal are common ground and are as follows. The Respondent is the owner of Westgate Shopping Mall (“the Mall”). It is common knowledge that the Mall suffered a terrorist attack on 21st September 2013 causing the Respondent to lose substantial income. Although it paid income taxes for the year 2013, following losses incurred it applied to the Commissioner for a tax refund of KES. 33,187,669.00 for the years 2013 and 2014 by the letter dated 14th May 2015. In response to the application, the Commissioner conducted a refund audit covering the years 2013 and 2014 pursuant to **section 47(2)** of the *Tax Procedures Act* (“the *TPA*”) in 2016 to ascertain the claim.
4. By the letter dated 25th January 2017 titled, “*REFUND AUDIT FINDINGS*”, the Commissioner informed the Respondent that it was entitled a net refund of KES 33,187,669.00 (“the Refund”). It added that, “Please note that we have forwarded our findings to our refunds section for processing. Kindly note that this is only our letter of finding and does not mean the amount is due until the refund processing unit recommends the same and is approved by the Commissioner.”
5. In due course and by a letter dated 23rd February 2017, the Commissioner issued an agency notice against the Refund for the purpose of offsetting the tax liabilities of the Respondent’s parent company, Atlantic Group (K) Limited (“*Atlantic*”) for an aggregate amount of KES. 25,577,401.00. This offset was in consonance with a previous request made by the Appellant. Unfortunately, despite various requests by the Respondent, the Commissioner did not complete the offset and by an email dated 23rd February 2017 informed the Respondent that, “*the refund process is still ongoing and no set off has been done yet. We will communicate when the process is complete.*”
6. Since the Refund was not made, the Respondent continued to reflect it as a tax credit. The Commissioner rejected these tax credits through Income Tax Claim Rejection Orders (“Tax Rejection Orders”). Although the Respondent objected to these decisions, the Commissioner did not render objection decisions in respect of those decisions. On 30th August 2018, the Commissioner issued a rejection order 20148051943

for the year 2015 for the said sum of KES. 33,187,669.00.

7. The Respondent formally objected by filing its Notice of Objection dated 28th September 2018. The Commissioner rejected the objection and affirmed its position in its decision contained in the letter dated 23rd October 2018 (“the Objection Decision”). In the decision, the Commissioner informed the Respondent that the Refund had been processed and used to offset its tax liabilities and those of Atlantic leaving a balance of KES. 3,350,138.00 due to be refunded to the Respondent. The Commissioner also informed the Refund could only be claimed once and not in subsequent years as it was extinguished once the claim was lodged. It accused the Respondent of making a fraudulent claim by claiming a refund to which it was not entitled to contrary to **section 97(b)** of the *TPA*. The Respondent appealed to the Tribunal.

8. The Tribunal framed three issues for consideration. First, whether the Tax Rejection Orders were valid. Second, whether the Respondent was entitled to the Refund and if so, whether the refund as claimed had been made.

9. On the first issue, the Tribunal found as a fact that after the audit, the Respondent was in a credit position for the years 2013-2014 which fact was communicated in the letter dated 25th January 2017. It found that despite the Respondent’s request to offset the liabilities attributed to Atlantic, this was not effected and at the time of filing the appeal, the Commissioner had not notified the Respondent of any outstanding liabilities. The Tribunal dismissed the Commissioner’s claim that the Respondent was claiming the credit from year to year and held that the Respondent was entitled to carry forward the credit pending finalization.

10. On the second and third issues, the Tribunal held that based on the evidence available, the Respondent was entitled to the Refund and that the Commissioner had not shown that it had, in fact, paid the Refund. In conclusion, the Tribunal allowed the appeal and held that the Respondent was entitled to the refund claim of KES. 33,187,669.00, that it was entitled to carry forward the credit until the same is lawfully set off or refunded. It revoked the Tax Rejection Orders and directed that they be removed from the Respondent’s *iTax* Platform.

Commissioner’s Case

11. Although the Memorandum of Appeal contains 8 grounds of appeal, the Counsel for the Commissioner condensed its case in four broad grounds which I shall outline shortly.

12. The first broad ground was that the Tribunal misdirected itself by stating that the Respondent was entitled to carry forward the credit claim in subsequent years. It stated that the Respondent made a refund claim manually on 14th May 2015 for the year of income 2013 amounting to KES. 33,197,669.00 and one on *iTax* on 21st June 2016 for the year of income 2015 claim number KRA201604467449 amounting to KES. 33,187,669.00. That the claim lodged manually on 14th May 2015, was processed and was the one subject of the 25th January 2017 audit findings. In the Commissioner’s view, the credit was not extinguished as it was still under investigation yet the Respondent continued to claim it annually as a new refund contrary to law and practice.

13. The Commissioner maintains that the Respondent was not entitled to carry forward this claim in successive years after it had been claimed for the year 2013 as this amounts to a double claim of the same credit. Counsel for the Commissioner submits that the Tribunal erred by stating that the credit can be rolled over in subsequent years as the same would amount to a re-claim. This, the Commissioner, submits that a double claim of refund will be in contravention of **section 97(b)** of the *TPA* which states, “*Any person, who in relation to a tax period knowingly – (b) claims any relief or refund to which he or she is not entitled to commits an offence.*”

14. The Commissioner’s second ground of argument is that the Tribunal failed to apply the provisions of **section 47 (4)** of the *TPA* which allows the Commissioner to apply any overpaid taxes in the payment of any outstanding liabilities owed by the tax payer. **Section 47(4)** empowers the Commissioner to utilize any tax refunds in order of priority as follows:

47 (4) Where, in relation to an application for a refund made under this section or made under any other tax law, the Commissioner is satisfied that a taxpayer has overpaid a tax, the Commissioner shall apply the overpayment in the following order—

- (a) in payment of any other tax owing by the taxpayer under the tax law;
- (b) in payment of a tax owing by the taxpayer under any other tax law; and
- (c) any remainder shall be refunded to the taxpayer.

15. Based on the aforesaid provisions, the Commissioner submits that it is empowered to apply the Refund to the tax liability owed by the Respondent. The Commissioner rejects the Respondent’s claim that the tax liability assessed is an afterthought. It states that its statutory mandate to assess and collect taxes is distinct and the assessments are available to the Respondent through the *iTax* portal. It maintains that it was justified in conducting an audit to verify the validity of the claim for refund and satisfy itself that such a refund was actually due before making any payment that would lead to loss of revenue. In its view, the Tribunal ought to have considered that the Commissioner was entitled to further interrogate the Respondent’s tax affairs in order to determine whether a refund ought to be paid or used to offset outstanding liabilities.

16. The Commissioner submits that the Tribunal erred in failing to consider the evidence that the Respondent had been audited for further liabilities in accordance with **section 47** of the *TPA* prior to making any refunds. It further submits that the import of the letter dated 25th January 2017 is that the audit findings were not final and were still subject to further internal processing by the refunds section. The Commissioner emphasizes that a claim for refund cannot be allowed when the taxpayer is in a tax liability position. That in this case, the Respondent was informed that the audit could be re-opened where new information became available. The Commissioner maintains that after due diligence exercise, it established that the Respondent had outstanding taxes and as a result the refund was utilized to offset this liability.

17. The third ground of attack concerns the evidence of Ms. Dorcas Matoke contained in a witness statement dated and filed on 18th February 2020. The Commissioner impugns the Tribunal's decision on the ground that it failed to take into account the witness statement of Ms. Dorcas Matoke and expunging it without giving any reasons thereby denying the it the right to be heard guaranteed by **Article 50** of the Constitution. The Commissioner submits that its relied on the evidence of Ms. Dorcas Matoke to demonstrate the internal processes undertaken to process the Refund and to show that it was used to offset the Respondent's outstanding liabilities amounting to KES. 34,407,069 for the years 2007,2008 and 2009. The Commissioner argues that by expunging the statement, the Tribunal denied it the opportunity to rely on the evidence. Counsel for the Commissioner cited **Kenya Agricultural Research Institute (KARI) v Farah Ali, Chairman Isahakia self-help group (sued on his own behalf and on behalf of members of the group) and Another NKR HCCC No. 23 of 2011 [2011] eKLR** in which the court held that the court ought to hear and consider the case of both parties in any dispute in the absence of any good reason for it not to do so. It further relied on **section 26** of the **Tax Appeals Tribunal Act** ("the **TATA**") which imposes on the Tribunal a duty to ensure that every party to proceedings is given a reasonable opportunity to present its case and to inspect any documents in relation to the proceedings and make submissions.

18. The final issue the Commissioner addresses in its submissions is whether the Tax Rejection Orders were validly issued. It submits that the Respondent having manually made a refund application proceeded to make subsequent applications for refund and to carry forward the same as a tax credit in its ledger; KRA201503159598 on 4th January 2018, KRA201604467449 on 21st June 2016 and KRA 2017028881708 on 26th April 2017.

19. The Commissioner submits that these applications were made dishonestly as the Respondent knew or ought to have known that the credit claim for the years 2014 and 2015 could not be processed as different claims because the Refund could only be claimed once and not every year and that it would amount to double claim, hence the claims were properly rejected.

20. The Commissioner states that it informed the Respondent on 2nd February 2018 why the Tax Rejection Orders No. 201488036599 dated 16th October 2017 and 20148039985 dated 4th January 2018 could not be revoked as the same reflected on *iTax* as credits carried forward from 2013. The Commissioner therefore submits that it could not process any further claims for subsequent years as the credit had been utilized and could not be carried forward because it was extinguished the moment the Respondent lodged the refund claim. The Commissioner explains that in order to extinguish the subsequent refund claims from *iTax* it was necessary to issue the Rejection Orders which is an administrative function as leaving them on the system would continuously reflect the Refund as a tax credit which is not the case.

21. The Commissioner submits that it was well within its right to reject the subsequent refund claims.

The Respondent's Response

22. The Respondent supports the Tribunal decision and opposes the appeal. Counsel for the Respondent submits that despite numerous reminders to settle the Refund, the Commissioner failed to do so but instead started issuing Tax Rejection Orders without any basis in law. The Respondent contends that in as much as the Commissioner purports to have made the Refund, it has not received it.

23. The Respondent submits that under **section 47(4)** of **TPA**, when the refund due is finally determined, then it can be applied for any other tax due under the tax law and the balance refunded to the taxpayer. That until this is done, it remains a refund claim from year to year so long as the Commissioner fails to make a decision within 90 days of receiving the application under **section 47(3)** of the **TPA**. The Appellant rejects the Commissioner's contention that **section 97(b)** of the **TPA**, which is concerned with making a false claim, is relevant to this case. It submits that the issue at hand is the Commissioner's failure to make a decision on the Refund and which it reflected as a credit in its returns for the successive years.

24. The Respondent further submits that the provisions of **section 47(4)** of the **TPA**, which allows the Commissioner to apply any overpaid taxes in the payment of any outstanding liabilities owed, was not an issue raised in the Objection Decision hence it is contrary to **section 12** of the **TATA**.

25. On the issue of whether a refund claim can be carried forward, the Respondent submits that the Commissioner cannot rely on its own default in order to justify the unlawful issuance of the Rejection Orders because under **section 47(3)** of the **TPA**, it is required to resolve the refund claim within 90 days of the application. It states that the Commissioner failed to make a decision for four years and instead of dealing with the application, it resorted to issuing Tax Rejection Orders which were unlawful and unjustified.

26. In response to the Commissioner's argument that the Refund was applied towards settlement of outstanding liabilities, the Respondent submits that the Objection Decision does not state that the amount was applied towards payment of its outstanding tax liability. It draws attention to the fact that the Refund was applied to settle the liabilities of *Atlantic* and argues that despite ascertaining the validity of the Refund in the letter dated 25th January 2017, the Commissioner purported to encumber it by qualifying it with a process or procedure alien to **section 47** of the **TPA** with the Commissioner by referring the audit findings for further investigation. The Respondent submits that the Commissioner not only failed to comply with the statutory provisions for processing such a claim but it further proceeded to unreasonably, falsely and recklessly place barriers on its statutory right to a refund. Counsel for the Respondent submits that there is no provision in the tax legislation, which extinguishes, a refund claim as part of the returns for a taxpayer unless and until the Commissioner makes a decision as such the Commissioner's submission that the refund claim could not be carried and reflected as such from year to year has no basis.

27. The Respondent submits that the Commissioner cannot purport to augment its Objection Decision by claiming that it further interrogated the Respondent's tax affairs in order to determine whether a refund ought to be paid or used to offset outstanding liabilities. Counsel for the Respondent submits that in any event, the purported outstanding tax liabilities are not within the Respondent's knowledge or information and do not arise from the Objection Decision. By raising this issue, the Respondent submits that the Commissioner has violated its right to a fair process.

28. The Respondent supports the Tribunal's decision to exclude and expunge the evidence of Ms Dorcas Matoke as it was introduced after

the Objection Decision. The Respondent submits that the Commissioner sought to introduce Ms Matoke's affidavit on the day of the hearing when it was not admissible under the provisions of **section 15** and **16(2)** of **TATA**. It urges that the Tribunal was concerned only with the Objection Decision which is the appealable decision in terms of **sections 12** and **52** of **TATA** as such the Commissioner could not introduce by way of Ground of Appeal and argument an issue which was not in the Objection Decision.

29. Counsel for the Respondent further submits that although the Respondent objected to the introduction of Ms. Matoke's witness statement, the Tribunal declined to strike it out but instead took it into account in its judgment when it held that Ms Matoke's statement was inconsistent with the totality of the evidence particularly the fact that the Commissioner never made any demand for outstanding taxes.

30. The Respondent adds that the Commissioner did not issue any assessment or demand to justify setting off the amount so claimed from the Refund. In the circumstances, the Respondent submits that the Commissioner predicated its appeal on a false premise and that Tribunal was entitled to adopt a flexible approach to the hearing by dealing with Ms. Matoke's statement in the manner it did. Counsel for the Respondent cited **Disarano Limited v Kenya National Highways Authority & Attorney General NRB Petition No. 13 of 2015 [2017] eKLR** and **Kenya Revenue Authority v Menginya Salim Murgani NRB CA Civil Appeal No. 108 of 2010 [2010] eKLR** to support this position.

31. The Respondent rebuffs the Commissioner's contention that the Tax Rejection Orders are valid. It submits that the Commissioner could not issue the Tax Rejection Orders while its Refund was being reviewed hence the Tribunal did not err in revoking them. The Respondent further submits that since the Commissioner failed to make an objection decision on each of the Tax Rejection Orders within 90 days, the objections were deemed to succeed under **section 51(11)** of the **TPA**.

32. The Respondent's position is that it was entitled to make the tax refund claim every year of income when the Commissioner had failed to make a determination on its application for the refund and the refund remained outstanding. Counsel for the Respondent urged the court to dismiss the Commissioner's appeal and find that the Tribunal's determination was correct.

Analysis and Determination

33. In considering this appeal, this court is guided by **section 56(2)** of the **TPA** which provides that, "An appeal to the High Court or to the Court of Appeal shall be on a question of law only." This means that in exercising appellate jurisdiction, apart from dealing with issues of interpretation of the law, the court is guided by the settled principle that in so far as the facts are concerned the court's engagement with them is limited to background and context and to satisfy itself that the conclusions reached by the Tribunal are based on the evidence on record and are not so perverse that no reasonable tribunal would have arrived at them (see **Gatirau Peter Munya v Dickson Mwenda Kithinji and 2 Others SCK Application No. 5 of 2014 [2014] eKLR** and **John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others NRB CA EPA No. 5 of 2018 [2018] eKLR**).

34. The fact that the Respondent was entitled a refund of KES 33,187,669.00 is not in dispute on several grounds. First, the Refund audit findings communicated in the letter dated 25th January 2017 confirm the amount. Second, in the Objection Decision the Commissioner confirmed that the Refund had been partially utilised to offset liabilities as follows:

TAX HEAD	Amount (KES)
PAYE for Atlantic Group Limited	25,037,884.00
WHT for Atlantic Group Limited	539,517.00
Corp Tax 2014	1,928,498.00
Corp Tax 2016	3,881,032.00
Balance refunded to the taxpayer	3,350,138.00
TOTAL	34,737,069.00

35. Even from the totality of the facts and evidence, the Commissioner admits that the Respondent is entitled to the Refund but justifies why the Respondent cannot be paid or the sum appropriated in the manner requested by the Respondent. Therefore, the issue at the heart of the appeal before the Tribunal and this Court is whether the Respondent was entitled to the Refund and whether the reasons given by the Commissioner are justified in law.

36. The law concerning refund of overpaid tax is to be found in **section 47** of the **TPA** which underpins the taxpayers statutory right to apply to the Commissioner for a refund. It imposes on the Commissioner the duty to consider the application, audit the claim if necessary, and thereafter make a decision on it within 90 days of application as provided by **section 47(3)** which states:

47. Refund of overpaid tax

(3) The Commissioner shall notify in writing an applicant under subsection (1) of the decision in relation to the application within ninety days of receiving the application for a refund. [Emphasis mine]

37. The Commissioner is correct to assert that the under **section 47(4)**, which I have set out at para. 14 above, it is entitled to apply the overpayment to settle any other tax liabilities of the taxpayer. Lastly, if any refund has been made in error, under **section 48** of the *TPA*, the Commissioner may demand the amount so erroneously paid and the taxpayer shall pay it.

38. Despite communicating to the Respondent the Refund audit findings by the letter dated 25th January 2017, the Commissioner failed to make decision within 90 days as provided by **sections 47(3)** of the *TPA*. This communication was, in my view, ambivalent and did not amount to a decision. I therefore hold that since the refund claim was neither denied nor rejected, the Respondent was entitled to claim the refund in its returns in subsequent years until the matter was resolved. I do not find anything in the *TPA*, nor has the Commissioner pointed to any provision of the law, that states that a taxpayer can only make a refund claim once whereupon the claim is extinguished notwithstanding that it has not been settled. Additionally, I reject the Commissioner's contention that the Respondent has committed an offence by making a claim that it genuinely believes it is entitled to when the Commissioner has not dealt with its application for the refund.

39. On the issue whether the Commissioner had effected the Refund as tabulated in the Objection Decision and set out at para. 34 above, the Tribunal observed as follows:

[26] In a nutshell, from where we sit, despite the long and at times, convoluted argument, our view is that what was before us was an empirical exercise. A refund was due to the Appellant as agreed, what remained was a simple exercise, proof of payment. This we find the Respondent failed miserably...

40. I agree with the Tribunal's finding aforesaid. Under **section 56(1)** of the *TPA*, the Respondent bore the burden of proving that the tax decision was incorrect before the Tribunal. The Respondent discharged the burden by showing the Commissioner had not made a decision on the Refund or in fact paid or appropriated the Refund as set out in the Objection Decision. The burden then shifted to the Commissioner to show that the Refund decision had been made and that the Refund had, in fact, been applied in accordance with the position set out in the Objection Decision.

41. At this juncture it is important to point out that from the entirety of the evidence and correspondence, the Objection Decision is the affirmative evidence the Commissioner had indeed processed the Refund and applied it to clear other liabilities including those of *Atlantic* leaving KES 3,350,138.00 to be paid over to the Respondent. I have reviewed the record and like the Tribunal, I do not find any evidence on record that part of the Refund has been set off against *Atlantic*'s tax liabilities or that the surplus has been received by the Respondent. I do not find any reason to depart from the Tribunal's factual findings in this respect.

42. Turning to the issue of evidence of Ms Matoke, from the record of proceedings, the Respondent applied for her witness statement to be struck out but the Tribunal ruled that it would consider the objection and the Commissioner's response holistically in its decision. Indeed, in the Judgment, the Tribunal observed as follows:

(iv) During the final submissions, the Respondent purported to rely on a Witness Statement irregularly on record to justify the extinction of the refund. We note that even if we were to admit this allegation, there has been no withdrawal of the letter of 15th January, 2018. One wonders, is the Respondent alleging to have applied the refund credit twice. Even if we were to assume the letter of 15th January, 2018. Stood withdrawn one would expect a formal demand by the Respondent of the alleged outstanding taxes in the sum of Kes. 214,661,464/- the Appellant, never mind that they date back thirteen (13) years.

43. This pronouncement by the Tribunal demonstrates that the evidence, in as much as the Tribunal considered that it had been irregularly introduced, was taken into account. Tribunal reached the conclusion that the evidence was of no consequence in light of the Commissioner's letter dated of 25th January 2017 which I believe the Tribunal was referring to and not a letter dated 15th January 2018 which does not exist on the record.

44. The statement by Ms Matoke was to the effect that after the communicating to the Respondent the audit findings, the Commissioner proceeded with verification of the refund claim and came to the conclusion that the Respondent had income tax liabilities amounting to KES. 214,661,464.00. She stated that the Commissioner used the tax credit to settle the Respondent's debts for 2007, 2008 and 2009 amounting to KES 34,407,069.00. It must be recalled that the Objection Decision was grounded on the fact that the Commissioner has already used the Refund to offset certain liabilities including those of *Atlantic* and refunded the balance of KES. 3,350,138.00 to the Respondent and that it could not claim refunds in subsequent years.

45. I find that the position expressed in Ms Matoke statement is inconsistent with the position taken by the Commissioner in the Objection Decision. The Commissioner cannot purport, on the one hand, to have utilised the Refund to clear liabilities owed by *Atlantic* and when the Respondent appeals, change tact and assert that used the same Refund to offset other tax liabilities owed by the Respondent. I hold that in the event the Commissioner came to the conclusion that further verification of the Respondent's affairs revealed other liabilities, nothing would have been easier than for it to issue and serve tax assessments and demands to the Respondent for the outstanding taxes. Ms Matoke did not produce any tax assessments or demands served on the Respondent in respect of these fresh liabilities.

46. Finally, **section 48** of the *TPA* entitles the Commissioner to demand from the taxpayer any refund made in error. If the Commissioner had acted in accordance with the Objection Decision and subsequently come to the conclusion that the refund was made in error, nothing would have been easier than to demand tax erroneously appropriated or refunded.

47. From the totality of the evidence, I agree with the submission by Counsel for the Respondent that if this Court and Tribunal were to accept Ms Matoke's position, it would undermine the Commissioner's position set out in the Objection Decision to the extent of holding that it was based on a false premise. I therefore reject the Commissioner's contention that the Tribunal did not consider Ms Matoke's evidence and I cannot fault the Tribunal for the course it took and the conclusion it reached in that regard.

48. The last issue for consideration is whether the Tribunal erred in directing that the Commissioner to remove Tax Rejection Orders

20148039985 of 4th January 2018, 20148051943 of 30th August 2018 and 20148036599 of 16th October 2017 from the Respondent's *iTax* platform. Having found that Tribunal correctly held the Respondent was not only entitled to the Refund but also entitled to carry the credit forward until it was resolved, it follows that the Tax Rejection Orders could not stand. The Tribunal's decision is correct in that regard as the revocation of the Tax Rejection Order is a direct consequent of finding that the Refund was due to the Respondent.

Conclusion and Disposition

49. In conclusion and for the reasons I have set out above, I find that the Commissioner's position in this appeal wholly inconsistent with the position it had taken in the Objection Decision that it appropriated the Refund to clear certain liabilities of the Respondent and it's holding company leaving KES. 3,350,138.00 to be paid to the Respondent.

50. I affirm the decision of the Tribunal dated 27th March 2020. The appeal is therefore dismissed with costs to the Respondent.

SIGNED AT NAIROBI

D. S. MAJANJA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MAY 2021

JOHN M. MATIVO

JUDGE

Court Assistant: Mr M. Onyango.

Ms W. Ng'ang'a, Advocate instructed by Kenya Revenue Authority for the Commissioner of Domestic Taxes.

Mr Oraro, SC with him Ms Omondi instructed by Oraro and Company Advocates for the Respondent.