



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 15 OF 2020

(Coram: Odunga, J)

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL
FREEDOMS UNDER ARTICLE 19, 20, 22, 25, 27, 28, 29,50, 51, 159 AND 165 OF THE CONSTITUTION
OF KENYA AND ALL OTHER ENABLING POWERS AND PROVISIONS OF THE LAW**

AND

**IN THE MATTER OF: APPLICATION AND ENFORCEMENT OF SECTION 333 (2) OF THE
CRIMINAL PROCEDURE CODE IN RELATION TO SENTENCES THAT HAVE NOT FACTORED
THE TIME SPENT IN CUSTODY.**

AND

**IN THE MATTER OF: CONSTITUTIONAL INTERPRETATION OF SECTION 46(2) CAP 90
OF THE PRISON'S ACT IN RELATION TO COMPUTATION OF REMISSION OF SENTENCE**

BETWEEN

VINCENT SILA JONA.....1ST PETITIONER AND 87 OTHERS

VERSUS

KENYA PRISON SERVICE.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION.....2ND RESPONDENT

OFFICE OF THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. On 18th January, 2021, after considering the issues placed before me in this petition, which petition was substantially unopposed, I issued the following orders:

1) A declaration that trial courts are enjoined by section 333(2) of the *Criminal Procedure Code*, in imposing sentences, other than sentence of death to take account of the period spent in custody.

2) A declaration that those who were sentenced in violation of the said section are entitled to have their sentences reviewed by

the High Court in order to determine their appropriate sentences.

3) A declaration that section 333(2) applies to the original sentence as well as the sentence imposed during resentencing.

4) A declaration that in determining “admission” by the prison authorities for the purposes of section 46(2) of the *Prisons Act*, the relevant date is the date when the prisoner was first admitted to prison upon conviction and not the date of resentencing.

5) That any review of the sentences be considered on a case to case basis.

6) There will be no order as to the costs.

2. This ruling is the subject of a Motion on Notice dated 25th January, 2021, by the 3rd Respondent herein, **the Hon. Attorney General**, in which he seeks the following orders:

a) **THAT application herein be certified as urgent and service of the application be dispensed with in the first instance.**

b) **THAT pending the hearing and determination of this application *inter-partes* this Honorable court be pleased to stay the orders issued on 18th January 2021.**

c) **THAT this Honourable Court be pleased to set aside the Judgment of the Court issued on 18th January, 2021 and any other consequential Orders therein.**

3. The said application is supported by an affidavit sworn by **Marwa Christopher**, a Senior State Counsel in the Attorney General’s Chamber, on 25th January, 2021.

4. According to the deponent, this petition proceeded to hearing in the absence of the Applicant/Respondent. He disclosed that the Applicant was served with the Notice of Motion Application together with the Petition dated 16th September, 2020 on 25th September, 2020 and upon service, they proceeded to prepare instructions letter to the 1st Respondent, Kenya Prison Service in order for the Applicant to be able to understand and prepare a detailed response to the Petition. However, they were never notified by the Petitioner when the matter was scheduled for Mention and subsequently slated for hearing.

5. It was deposed that on 7th December 2020 they prepared another letter to the client ministry requesting for instructions and it is on that date they were notified that the matter was already heard and the same was pending judgment, a copy of which they received on 22nd January 2021 and upon perusal of the said judgment noted that the Court proceeded to hear the Petition without according them an opportunity to be heard.

6. According to the deponent, this Court has jurisdiction to set aside, vary or discharge the orders contained in the judgment delivered dated 18th January 2021 since the Respondents are dissatisfied with the orders and as provided under rule 25 of the ***Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*** have elected to apply for their setting aside, variation or discharge. It was averred that the Petitioners are now seeking to enforce the orders which orders were issued even before the Respondents was served with a Mention Notice or even a hearing notice.

7. The Court was urged to set aside, *ex-debito justitiae* as orders issued against the Respondents were issued contrary to the principles of natural justice as the 1st and 3rd Respondent never got an opportunity to be heard. The Applicant lamented that the orders have occasioned the Respondents great prejudice and have literally denied the respondents right to a fair hearing and condemned the Respondents without any hearing. On the other hand, the Petitioners will not suffer any damage that is not curable by award of costs other than a little delay in the hearing of the matter.

8. It was contended that the Application has been made without undue delay and thus the order sought should be granted as it is in the interest of justice and safeguarding the Applicants’ constitutional right to be heard. It was urged that this Court has unlimited and unconditional powers and/or discretion to grant the orders sought and indeed this is a clear case which the court ought to exercise discretion favour of the Respondents/Applicant and in the interest of justice.

9. It was submitted on behalf of the Applicants that despite them being the main Respondents and whose dispute in question directly affected, the matter was heard in their absence as the Petitioners deliberately declined to inform the 1st and 3rd Respondents when the matter was scheduled for mention and subsequently heard by the Court. Since in the Petition, the Petitioners challenged the 1st Respondent’s decision to compute their remission from the date of their sentence rather than from the date of their conviction, it was submitted that clearly the dispute was between the 1st Respondent and Petitioners.

10. According to the Applicant, both the 2nd Respondent and Petitioners/Respondents have not disclosed in their respective Replying Affidavits that they served the 1st and 3rd Respondents with a Mention or Hearing and the said Respondents elected not to attend Court and that there is no evidence of service. It was submitted that the Petition dated 16th September 2020 was Mentioned before the High Court on 25th September 2020, while the 1st and 3rd Respondents were served with a copy of the said Petition on 29th September 2020. Clearly there was no way the 1st and 3rd Respondent could have known when the matter was scheduled for another Mention without them being notified by the Petitioners. In support of their submissions, the Applicants relied on **Republic vs. National Land Commission & 2 Others Ex Parte Archdiocese of Nairobi Kenya Registered Trustees (St. Joseph Mukasa Catholic Church Kahawa West) [2018] eKLR, The**

Management Committee of Makondo Primary School and Another vs. Uganda National Examination Board, HC Civil Misc Application No.18 of 2010 and **Mandeep Chauhan vs. Kenyatta National Hospital & 2 others [2013] eKLR** and submitted that having established the importance of the right to a fair hearing, the 2nd Respondent and the Petitioners/Respondents have not demonstrated with evidence that indeed the 1st and 3rd Respondents were issued with summons and declined to attend Court. It was submitted that the Applicants right to fair hearing as enshrined in Article 50 of the Constitution was greatly contravened and reliance was placed on the matter of **Richard Nchapai Leyanguvs IEBC & 2 others** and Rule 25 of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** and it was submitted that the High Court has the discretion to set aside the judgment delivered on 18th January 2021 if satisfied that indeed the rules of natural justice in particular the right to a fair hearing was violated.

11. It was asserted that the Orders of the High Court contained in the judgment of the Court dated 18th January 2021 were issued contrary to the principles of Natural justice as the 1st and 3rd Respondents never got an opportunity to be heard and that it is mandatory that a party to a suit must be served with summons to enter appearance based on the case of **Law Society of Kenya vs. Martin Day & 3 others [2015] eKLR**.

12. It was contended that the Applicants/Petitioners Notice of Motion Application dated 16th September 2020 was served upon us on 29th September 2020, days later after the matter had been Mentioned on 25th September 2020. The matter was mentioned on 16th September 2020 and we received the documents on the 28th September 2020. How were they to know when the matter was scheduled for mention and subsequently slated for hearing. When the matter was again mentioned on 13th October 2020 as evidenced in the 2nd Respondent's Replying Affidavit, the 1st and 3rd Respondents were never informed of the said mention date and this is not denied by any of the Parties.

13. According to the Applicant, it is not true that they deliberately declined to attend Court upon receipt of the Application. As clearly indicated they received the Application on 29th September 2020. The Application dated 16th September 2020 was Mentioned before the High Court on 25th September 2020, clearly four days later before receiving the Petitioners' pleadings. Reliance was placed the case of **James Kanyita Nderitu and Another vs. Marios Philotas Ghikas & Another (2016) eKLR** and it was submitted that there was no service of any Notice to the 1st and 3rd Respondents and it is for that reason that this Court ought to set aside the judgment of the Court delivered on 18th January 2021. The applicant also relied on the case of **Republic vs. Truth, Justice and Reconciliation Commission & Another Ex-Parte Beth Wambui Mugo [2016] eKLR**, and submitted that there was a deliberate intention to deny the 1st and 3rd Respondent an opportunity to be heard. The applicant also cited the case of **John Peter Kiria & Another vs. Pauline Kagwiria [2013] eKLR**.

14. According to the Applicant, the decision passed by the High Court in the matter particularly the fourth declaration which direct the 1st Respondent to use the date a prisoner was first admitted to prison upon conviction and not the date of resentencing in computing sentence has occasioned confusion and that's the reason they we are appealing with High Court to set aside its Judgment and allow the participation of the 1st Respondent who is directly affected by the said decision.

2nd Respondent's Response

15. The application was opposed by the 2nd Respondent vide the following grounds of opposition:

16. It also relied on the replying affidavit sworn by **Felister Njeru**, a Prosecution Counsel at the Office of Director of Public Prosecution I which the deponent averred that she was served with the Notice of Motion together with the petition on 29th September, 2020 and filed a replying affidavit thereto. After setting out the sequence of the events, the deponent averred that the 1st Respondent is contented with the judgement and denied that the hearing of the petition proceeded in the absence of the 1st and 3rd Respondents. Having been served with the petition, the 2nd Respondent averred that the 3rd Respondent was aware of these proceedings and opted not to attend and having failed to carry out their duties, they have themselves to blame. It was therefore prayed that the application be dismissed as the court is *functus officio*.

17. It was submitted on behalf of the 2nd Respondent that since the Petitioners were accused persons who were charged and prosecuted by the 2nd Respondent and the Petitioners appealed against their convictions up to the Court of Appeal and the appeals were prosecuted by the 2nd Respondent, the 2nd Respondent is a key player in this Petition.

18. The 2nd Respondent insisted that the Applicants have not approached this Court with clean hands as they have not presented the evidence to prove that they were served on 29th September 2020 with the Petition and that the said Petition did not indicate the matter was coming for mention on 13th October 2020. In support of the principle that he who alleges must prove, the 2nd Respondent relied on the case of **Leonard Otieno vs. Airtel Kenya Limited (2018) eKLR** and submitted that, from the applicant's own submissions, it is clear the petitioners served the 2nd and 3rd Respondents on the same date that is 29th September 2020 and the next court date was clearly indicated as 13/10/2020 for Mention.

19. It was therefore submitted that the applicant has not met the criteria for setting aside this court's judgment delivered on 18th January 2021 since the applicant has confirmed he was served with the Petition on 29th September 2020 but has not placed before this court the said evidence to prove that indeed the petition served did not give a mention date for 13/10/2020. It was submitted that the applicants condemned themselves to being unheard and that their constitutional rights were never violated during the hearing and finalization of this petition. On *functus officio* the 2nd Respondent relied on **Telkom Kenya Limited vs. John Ochanda (suing on his own behalf and on behalf of 996 Former Employees of Telkom Kenya Limited) [2014] eKLR**, **Jersey Evening Post Ltd vs. Al Thani [2002] JLR 542 at 550** and **Raila Odinga & 2 Others vs. Independent Electoral & Boundaries Commission & 3 Others [2013] eKLR** and submitted that the applicants have not presented before this court any evidence to prompt a change of mind on the final decision arrived at by this court. According to the 2nd Respondent, by failing to provide any evidence to prove that the applicants were not served with a mention date of this petition, the same has perfected this court's judgment and this matter should be laid to rest.

20. It was therefore urged that the application dated 25th January 2021 be dismissed for lack of merit and this court's judgment delivered on 18th January 2021 be maintained. The Petition dated 16th September 2020 be marked as finalized.

21. The Petitioners also opposed the application substantially on the ground that the Applicants were duly served on 25th September, 2020.

22. On behalf of the Petitioners, it was submitted based on Shah vs. Mbogo [1967] EA 116 as reiterated in Joseph Nathaniel Kipruto Arap Ng'ok vs. Attorney General (On Behalf of the Permanent Secretary Ministry of Trade & Industry) & Another [2010] eKLR, Wachira Karani vs. Bildad Wachira [2016] eKLR and Patel vs. East Africa Cargo Handling Services that the fact that setting aside is discretion of the court is not disputed. What is contested is whether the applicant has demonstrated "*sufficient cause*" to warrant the exercise of the courts discretion in its favour and according to the Petitioners, the Applicants have not established a sufficient cause to warrant setting aside of the judgment of this Honourable Court dated 18/1/2021.

23. According to the Petitioners, the meaning of "*Sufficient cause*" was discussed by the Supreme Court of India in the case of *Parimal vs Veena* where it was observed that:-

"Sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously."

24. It was submitted that the court in the above case added that while deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away with the illegality perpetuated on the basis of the judgment impugned before it. Therefore, the test to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called for hearing. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand.

25. In this case it was submitted that the Respondents vide Replying Affidavit dated 17/2/2021 demonstrated that it is indeed correct that the 1st and 3rd Applicants were served with the court processes in relation to petition dated 16/9/2020 and were well aware of the proceedings hence no sufficient reason for non-attendance has been demonstrated by the 1st and 3rd Applicant to warrant granting of their prayers in the Notice of Motion application dated 25/1/2021.

26. On the issue of prejudice, the Petitioners relied on Sammy Musembi Mbugua & 4 Others vs. Attorney General & Another [2019] eKLR and it was submitted that the applicants' application is meant to further deny the Respondents the desired remission of their sentences. It was contended that the Petitioners stand to be prejudiced by the granting of the orders sought in the Applicants' application dated 25/1/2021 as the setting aside of the judgment of this Honourable Court dated 18/1/2021 without a justifiable cause translate to continuous incarceration of the respondents despite qualifying for remission.

27. It was the Petitioners' position that the Applicants have to establish sufficient cause to warrant granting of the orders sought, the Respondents stand greatly prejudiced if the orders sought are granted and that it is in the interest of justice that the Application dated 25/1/2021 is dismissed with costs.

Determination

28. The application before me is expressed to be brought pursuant Articles 48 and 50 of the Constitution and Rule 25 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*. Articles 48 and 50 of the Constitution deal with the rights of access to justice and fair hearing respectively. Rule 25 aforesaid provide for setting aside an order issued under rule 22 which unfortunately only deals with written submissions. I take it that the correct rules that is referred to in rule 25 should be rule 23 and not rule 22. Rule 23 deals with conservatory or interim orders. The orders which the applicant seek to set aside are however neither interim nor conservatory in nature. I however note that Rule 3(8) of the said Rules reserves the Court's inherent powers. Based on that provision, I find that this Court has the power to set aside its judgement and therefore this Court is *functus officio* as is contended by the Petitioners.

29. However, the power to set aside the judgement is discretionary and the principles guiding the exercise of discretion apply with equal force. Like any other judicial discretion, it must be exercised on fixed principles and not on private opinions, sentiments and sympathy or benevolence but deservedly and not arbitrarily, whimsically or capriciously. The Court's discretion being judicial must therefore be exercised on the basis of evidence and sound legal principles, with the burden of disclosing the material falling squarely on the supplicant for such orders.

30. In this case, the Applicants contend that they were never afforded an opportunity of being heard since they were not notified of the date when the petition was to be mentioned or heard. They however depose in the supporting affidavit that:

"...we were served with the Notice of Motion Application together with the Petition dated 16th September, 2020 on 25th September, 2020."

31. This position seems to be not in sync with the submissions filed on behalf of the said Applicants in which they contend at paragraph 11 that:

“It is also important for the High Court to appreciate that the Petition dated 16th September 2020 was Mentioned before the High Court on 25th September 2020, while the 1st and 3rd Respondents were served with a copy of the said Petition on 29th September 2020. Clearly there was no way the 1st and 3rd Respondent could have known when the matter was scheduled for another Mention without them being notified by the Petitioners.”

32. At paragraph 26 they state that:

“Your Lordship the Applicants/Petitioners Notice of Motion Application dated 16th September 2020 was served upon us on 29th September 2020, days later after the matter had been Mentioned by the High Court on 25th September 2020. The matter was mentioned on 16th September 2020 and we received the documents on the 28th September 2020. How were we to know when the matter was scheduled for mention and subsequently slated for hearing.”

33. However, this Court is bound by the depositions in the affidavit which were made on oath. On the basis of the same, it is clear that the Applicants were served with both the application and the petition on 26th September 2020. Pursuant to Rule 15 of the ***Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013***, the Applicants were enjoined to respond to the petition within 14 days of service thereof. In this case the 3rd respondents aver that they proceeded to prepare instructions letter to the 1st Respondent, Kenya Prison Service, in order to enable them understand and prepare a detailed response to the Petition. On 7th December 2020 they prepared another letter to the client ministry requesting for instructions and it is on that date they were notified that the matter was already heard and the same was pending judgment, a copy of which they received on 22nd January 2021.

34. What comes out from the foregoing is that the Applicants were duly served but because of the failure by the 1st Respondent to furnish the 3rd Respondent with instructions, the 3rd Respondent did not respond to the petition. This is therefore not a case where service was not effected. It cannot therefore lie in the mouths of the Applicants to contend that they were denied an opportunity of being heard. As was held by the Court of Appeal in **Union Insurance Co. of Kenya Ltd. vs. Ramzan Abdul Dhanji Civil Application No. Nai. 179 of 1998**:

“Whereas the right to be heard is a basic natural-justice concept and ought not to be taken away lightly, looking at the record before the court, the court is not impressed by the point that the applicant was denied the right to defend itself. The applicants were notified on every step the respondents proposed to take in the litigation but on none of these occasions did their counsel attend. Clearly the applicant was given a chance to be heard and the court is not convinced that the issue of failure by the High Court to hear the applicant will be such an arguable point in the appeal. The law is not that a party must be heard in every litigation. The law is that parties must be given a reasonable opportunity of being heard and once that opportunity is given and is not utilised, then the only point on which the party not utilising the opportunity can be heard is why he did not utilise it.”

35. The same principle was restated by the same Court in **Issa Leshan Keres and 4 Others vs. Kipoki Oreu Tasur and 10 Others Civil Appeal No. 5 of 2004**.

36. The question that this Court is therefore called upon to determine is the reason for the failure to respond to the Petition. According to the Applicants, the 3rd Respondent was not furnished with instructions from the 1st Respondent which would have enabled them to respond. No affidavit has been sworn by or on behalf of the 1st Respondent to support the allegation that the 3rd Respondent sought instructions from them and why the same were not forthcoming. Apart from that there is no explanation at all why the Applicants did not seek the Court's indulgence to have the time for filing their response enlarged in order to file their responses. The obligation to respond under Rule 15 of the ***Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013***, is not contingent upon the service of the notice for hearing since the timelines for response starts running as soon as service is effected. Having failed to file their response, the Petitioners were not obliged to serve any further notices upon the Applicants who had not intimated that they intended to oppose the petition.

37. Ringera, J (as he then was) in **Omwoyo vs. African Highlands & Produce Co Ltd [2002] 1 KLR 698** expressed himself as hereunder:

“A factor, which a judge must weigh in the balance, is the pressure on the courts caused by great increase in litigation and the consequent necessity that, in the interest of the whole community, legal business should be conducted efficiently. We can no longer afford to show the same indulgence towards the negligent conduct of litigation as was perhaps possible in a more leisured age. There will be cases in which justice will be better served by allowing the consequence of the negligence of the lawyers to fall on their own heads rather than by allowing amendment at a very late stage of the proceedings...The time has come for the legal practitioners to shoulder the consequences of their acts or omissions like other professionals do in their fields of endeavour.”

38. A proper consideration of the material placed before me leads me to the conclusion that the failure by the 3rd Respondent to defend the petition was simply based on inaction on the part of the 3rd Respondent, The Respondent had in its powers what it could take to seek indulgence from this court while seeking instructions from the 1st Respondent assuming that was the position but he simply did nothing. In **Mwangi vs. Mwangi [1999] 2 EA 234**, it was held that:

“The burden lies on a party who seeks the exercise of a Court's discretion in his favour to place some material before the Court upon which material the discretion is to be exercised. To simply say “it is the mistake of my counsel”, is really no

answer...Pure and simple inaction by counsel or a refusal by him to act, cannot amount to a mistake which ought not to be visited on a client. Simple inaction by a lawyer coupled with client's careless attitude may be enough to say: "I am not going to exercise my discretion"

39. That was the position adopted in **Maneno Mengi Ltd and Others vs. Nyamachumber and Another [2004] 1 EA 116** where it was held that it is now settled that an advocate's lack of diligence and inaction is no ground for circumventing the clear provisions of the Rules.

40. It must have been the realisation that the explanation proffered in the supporting affidavit was not going to carry much weight that informed the decision by the Applicants to change their version and attempt to juggle the dates in the submissions. In my view a default that is sought to be explained away by contrived grounds is not made *bona fide*. In my view favourable orders cannot be sought and obtained on the basis of an explanation that is less than candid and is meant to mislead. In that event, the application would be refused since default ought not to be explained away by contrived grounds. See **John Kiragu Mwangi vs. Ndegwa Waigwa Civil Application No. Nai. 179 of 2000.**

41. In this case the 3rd Respondent is the Chief Legal Adviser to the Government of the Republic of Kenya. That office is held in trust for the people of the Republic of Kenya. It follows that the said office is not just like any other chambers of an advocate. The office of the Attorney General bears a much heavier weight than that of a private firm of advocates. Accordingly, it is expected to be efficient in carrying out its mandate since its mandate is funded by the public funds. Article 73(1) of the Constitution provides for the responsibilities of leadership and provides that the authority assigned to a State officer is a public trust to be exercised in a manner that is consistent with the purposes and objects of the Constitution while Article 232 which prescribes the values and principles of public service require efficient, effective and economic use of resources.

42. In my view inaction on the part of the 3rd Respondent to robustly defend claims brought against the government due to inaction must be seen as a dereliction of duty failure to effectively undertake its mandate as expected under the foregoing Articles. In this case it is my view that the circumstances do not satisfy the conditions for setting aside the judgement. As was held in **Shah vs. Mbogo (1967) EA 166**:

"this discretion to set aside an ex-parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to assist the person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice."

43. The impression I get from the position taken by the Applicants is that the Court ought to have gone out of its way to notify the 3rd Respondent of the status of the proceedings notwithstanding lack of indication that the 3rd Respondent was opposing the petition. With due respect, it is not the duty of this court to hold brief for the 3rd Respondent and inquire why it is not opposing a petition. To do so would amount to this court extending to the 3rd Respondent undue advantage and treating the 3rd Respondent differently from other litigants yet this Court is sworn to do justice to all parties before it without fear or favour.

44. Having considered this application dated 25th January, 2021 I find it unmerited and dismiss it with no order as to costs.

45. It is so ordered.

JUDGEMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 10TH DAY OF JUNE, 2021.

G.V. ODUNGA

JUDGE

In the presence of:

Ms Masaki for Mr Omari for the Petitioner

Mr Ngetich for the 2nd Respondent

Mr Marwa for the 1st and 3rd Respondents