



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION No. 386 OF 2019

PATROBAS AWINO.....PETITIONER/APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

RULING

APPLICATION

1. The Petitioner/Applicant through a Notice of Motion dated 17th February 2021 seek the following orders:-

a) Prayer (1) Spent.

b) That this Honourable Court be pleased to issue a conservatory order staying the intended proceedings before the trial Court in Criminal case No. 1609 of 2019: Republic v Patrobas Awino or any prosecution/plea taking relating to Nairobi/Block 82/7333 (now part of amalgamation of parcels Nairobi block /7813 to Nairobi/Block 82/7856 situated at Donholm) against the members of Sovesava Self Help Group pending hearing and determination of this Application.

c) That this Honourable Court be pleased to reinstate Petition No. 386 of 2019 together with all its interlocutory orders pending hearing and determination of this suit.

d) That this Honourable Court be pleased to set aside its orders issued 30.11.2020 dismissing this Petition for want of prosecution together with its consequential orders/directions and allow the Petition to be heard on its merits.

e) That the Court be pleased to issue order No. 2 and 3 pending hearing and determination of this Application in order to preserve the substratum of the Petition.

f) That the cost of this Application be in the cause.

2. The application is premised on the ground on the face of the application and on affidavit of Patrobas Awino sworn on 17th February 2021 and further affidavit sworn on 15th June 2021.

RESPONDENTS RESPONSE

3. The Respondents filed grounds of opposition dated 24th May 2021 seeking 7 grounds of opposition being thus:-

a) That the applications in baseless and is only meant to scuttle the Hearing of Criminal Case Number 1609 of 2019 a matter in which the Applicant is the accused person.

b) That the Applicant had been using the Petition to delay his prosecution is Criminal Case Number 1609 of 2019.

c) That the Applicant has shown no interest in prosecuting Petition Number 386 of 2019 after being accorded numerous opportunities to do so and has never been eager to prosecute the Petition especially in after obtaining stay in prosecution of

Criminal Case 1609 of 2019.

d) That the applicant has not placed before the Court any reasons why he did not appear in Court when he was summoned to show cause why the Petition should not be dismissed for want of prosecution.

e) That in the event that the Court grants this application for reinstatement that the Court should find it favourable to set aside the stay orders issued on the 9th day of March, 2021.

f) That the Applicant has not come to Court with clean hands as he has been using this Petition to frustrate his prosecution in Cr. 1609 of 2019.

g) That the application for reinstatement is bad in law and devoid of any merits and should be dismissed with costs.

4. The Petitioner/Applicant filed submissions in support of the application dated 17th June 2021; whereas the Respondents filed submissions dated 2nd June 2021.

BACKGROUND

5. The Petition herein was instituted on 27th September 2019 and the 1st Respondent filed Replying Affidavit dated 29th November 2019. Directions were issued on 24th September 2019. The Court granted conservatory orders in the interim on 7th October 2019 which on 22nd October 2019 were ordered to remain in force till the Petition is heard and determined. That upon issuance of the orders the Petitioners ceased to attend Court and took no steps to prosecute the suit. The matter was mentioned on 20/5/2020; 6/7/2020; 21/10/2020 & 30/11/2020 in absence of the Petitioner, who had been served with Notice to show cause why the suit could not be dismissed for 30/11/2020; the Petitioner having appeared before Court last on 7/10/2019.

6. The Petitioner failed to take any steps towards prosecuting the matter and it was mentioned in Court on various occasions including the 21st January, 2020; 18th March, 2020; 20th May, 2020, 6th July, 2020, 21st October, 2020 before it was dismissed on 30th November, 2020. That after the Petitioner failed to attend Court on the aforementioned occasions the Court issued a Notice to Show Cause dated 21st October, 2020 which was then fixed for hearing on 30th November, 2020.

7. The Petitioner failed to respond or file an affidavit in response to the Notice to Show Cause dated 21st October, 2020 and the Petition was dismissed by the Court on 30th November, 2020 for want of prosecution. That after the Petition was dismissed the Applicant herein failed to take any action until 17th February, 2021 when he filed the current Application.

8. The Application dated 17th February 2021 was a reaction to:-

a) The summons issued to the Applicant to appear in Criminal Case No. 573 of 2018 Republic vs. Patrobas Awino & 9 others on 12th January, 2021 and on 3rd February, 2021; and

b) The Summons to take plea in Milimani Chief Magistrate Criminal Case No. 1609/2019 Republic vs. Patrobas Awino on 9th February, 2021 where he failed to appear and fresh summons were issued for him to appear on 2nd March, 2021.

c) That on 2nd March, 2021 when the Applicant was scheduled to take plea he feigned illness and did not appear to enable him seek orders before this Court which orders were issued on 9th march, 2021.

d) Criminal Case No. 1609/2019 Republic vs. Patrobas Awino thus did not proceed for plea taking on 6th April, 2021 due to the Orders issued by this Court.

ANALYSIS AND DETERMINATION

9. I have carefully considered the Application, Affidavits in Support as well as Grounds of Opposition and rival submissions, and from the aforesaid the following issues arise for determination.

a) Whether the Court was justified in dismissing the Petition for want of prosecution.

b) Whether the orders sought can issue in the circumstances.

A. WHETHER THE COURT WAS JUSTIFIED IN DISMISSING THE PETITION FOR WANT OF PROSECUTION.

10. The Court record reveal that the Petitioner's Counsel appeared before this Court on 22nd October 2019 when the Interim Orders were confirmed to remain in force till the Petition was heard and determined. The matter was set down for mention for 21st January 2020 in presence of the Counsel for Petitioner. On 21st January 2020 the parties and advocates were absent.

11. The Petitioner and his Advocate did not attend mentions between 18/3/2020, and 21/10/2020 following which the Court issued Notice to

Show Cause why the Petition could not be dismissed for want of prosecution. The Court record show that he Notice to Show Cause for 30th November 2020 was issued to the Advocates for Petitioner/Applicant and DPP on 21st October 2020.

12. On 30th November 2020 as per Court's record M/s Kabila Counsel appeared for Respondent whereas there was no appearance for the Petitioner nor had the Petitioner filed affidavit showing cause as required, hence the Court noting the last appearance was more than 1 year since Petitioner appeared, the Petition was accordingly dismissed for want of prosecution.

13. The Petitioner in response deposes he became aware of the dismissal of the application and Petition on 17/2/2021 after he was called by his Advocate in the Criminal 1609 of 2019. The Petitioner contend that the same day he travelled to Nairobi and filed the instant Application, the same day, noting its importance. Immediate steps were therefore taken to have the Petition proceed on its merits. The Petitioner urges he would not make these efforts if he was not interested in prosecuting the Petition.

14. It is further asserted in the Petitioner's Affidavit dated 14/6/2021, the Applicant's Advocate received the Notice to Show Cause through Postal Box number 73519-00200 on 22.2.2021 over 3 month's long after the dismissal and after the instant Application had been filed. It is further stated that had the notice to show cause been received earlier by the Advocates they would have attended Court to ensure the Petition was heard on its merits.

15. It is further urged that vide annexure "PA 3" the Applicant kept on requesting and communicating to the Court registry inquiring about the position of the matter, yet no response was forthcoming. The Applicant it is averred was making the request on assumption that the matter was still live in Court. These it is asserted were efforts to ensure the Petition was prosecuted. The Applicant urged he was genuinely and innocently not aware that the matter had already been dismissed for want of prosecution.

16. The Notice to Show Cause was as per Court's record forwarded to George Gilbert Advocates, Uchumi House, 8th Floor, Aga Khan Walk, P. O. Box 73519-00200, Nairobi, on 21st October 2020. This is the same address through which the Petitioner claim to have received Notice to Show Cause on 22/2/2021, copy of which has not been exhibited in this application.

17. The Petitioner aver that through annexure "PA 3" it continued communicating to the Court registry – inquiring about the position of the matter and never got any response.

18. As regards annexure "PA 3", I have perused the Court file and have, save, for annexure attached in support of the instant application, found no such documents as alluded to by the Petitioner. Further the Petitioner or his Counsel has not exhibited the Notice to Show Cause said to have been received on 22/2/2021 showing date of posting and delivery. In addition thereto, the Petitioner and his Counsel have not explained why there was no appearance on their part on 21/1/2020, the said date having been taken in presence of Petitioners' Counsel on 22nd October 2019. In addition no explanation has been offered why the Petition could not be prosecuted over 1 year since the interim order were confirmed.

19. The Petitioner in his Application has not demonstrated, that he has been always willing and ready to prosecute the Petition herein. The excuse that dates were not given during Covid-19 pandemic period, whether for mention or hearing is without justification for Petitioner to fail to honour Court summons bearing in mind, that this Court has been sitting and hearing cases since the first Covid – 19 case was detected in Kenya. Further mention dates and hearing dates have always been given in Constitutional and Human Rights Division. In addition thereto this Court cause list has always been published in the Kenya Law Report for all parties to see and to act appropriately.

20. In view of the aforesaid I find that the petitioner has not demonstrated any plausible reasons for his failure to attend Court on several occasions as set out in the cause list in the year 2020, I find his allegation that he was not served with Notice to show Cause yet the Court record indicates, that the Notice to Show Cause, was served on the Applicant and the Respondent is without merits. It is further noted the Petitioner has not filed various e-mails and alleged correspondences he purported to have sent to the Court to find out the status of current matter in the year 2020 as no single correspondence was found to have been sent in relation to the Petition dismissed on 30th November 2020. I find the Applicant had lost interest in this Petition and had not taken steps since he obtained conservatory orders. The Petitioner purportedly took action after he was issued with summons in **Criminal case 573/2018 Republic vs. Patrobas Awino & 9 others** in which the Applicant herein is charged with among other counts malicious damage to property.

21. I find the Applicant only states he was not aware of the proceedings before the Court leading to the dismissal of the Petition, without giving any reasonable explanation for non-attendance or any steps taken, taking into account, that at this time of digital era, matters for mention/hearing/ judgment and rulings are published in **Kenya Law Reports**. Had the Petitioner and the Counsel been keen with prosecution of the Petition, in the period of 1 year ensuing, he should have noticed the various dates when the Petition herein, had been set down for mention of the Petition or would have enquired with the Court the position of his Petition. This was never done and the burden of proof why the matter was not prosecuted, lie with the Petitioner, who has failed to discharge the same.

22. The Respondent contend that the Petitioner/Applicant had a duty to assist Court in effecting overriding objections but negligently and blatantly failed to observe this duty, when he failed to attend Court on the various occasions despite the service of the Notice to Show Cause dated 21st November, 2020. The Applicant did not file a response to the Notice to Show Cause. It is therefore clear that the Applicant failed to give a satisfactory explanation why he failed to take any step towards prosecuting the Petition and yet the Court was accessible virtually and on the e-filing platform, where the progress of the case is updated. I find that it is therefore evident from the Applicant's conduct that he was not eager to prosecute the Petition before Court and the Court's discretion should not be exercised in his favour. In addition I find that the Court should not aid an indolent litigant who only appeared over three months after the matter was dismissed, by the Court and whose actions were only triggered by the Criminal proceedings against him. Further I find in absence of a plausible explanation for the delay to prosecute the Petition or evidence to support the allegations in the Application, this Court should proceed and dismiss the Application before it.

23. In view of the conclusions and findings I have come to, I find that the Court in reaching its decision leading to dismissal of the Petition,

have acted within the law after issuance of a Notice to Show Cause and after Petitioner/Applicant failure to attend Court hearing and give reason why the Petition could not be dismissed for want of prosecution. The dismissal of the Petition was within a view to ensuring the Administration of Justice in a just and expedient manner as enshrined under **Article 159(2)(b) of the Constitution** and the overriding objectives under **Section 1A and 13 of the Civil Procedure Act**.

24. Reliance of the above proposition is placed in the case of **Nilesh Premchand Mulji Shah & another T/A Ketan Emporium vs. M.D. Popat and others & another [2016] eKLR** where the Court held that:-

“The Appellant has not filed any replying affidavit to this application explaining the reasons for the inaction for nearly 5 years from the last date when the pleadings closed. That being the case, this Court can only make an inference that the Appellant has lost interest in the suit and is only out to achieve the pleadings in Court. The defendants have a counterclaim to prosecute. The delay in setting done the matter for hearing no doubt prejudices the defendant as justice delayed is justice denied. The Appellant has not given any excuse for their inaction. The Court is aware that the act of dismissing a suit is a draconian measure which should be exercised cautiously as it drives the party away from the judgment seat of justice. Nonetheless the Court is bound to do justice to both parties without undue delay, which delay occasions injustice to the either party to the dis0tue and in this case, delay defeats equity.”

25. The Applicant is seeking reinstatement of this Petition pending hearing and determination of Criminal Case filed in 2018; in which plea is yet to be taken, close to 4 years since the Applicant was charged. I find that reinstating of this Petition would not guarantee speedy disposal of this Petition and if the same is not speedily determined, this would be an injustice not only to the Respondent but also the complainant in the Criminal matters before the Subordinate Courts, which were instituted in 2018 and have failed to take off due to the conservatory orders issued by this Honourable Court. It is urged that the complainant in the Criminal proceedings is a private party who has suffered and continuous to suffer as a result of the pendency of this Constitutional Petition. The charges preferred against the Applicant herein by the 1st Respondent in **Criminal Case No. 573 of 2018 Republic vs. Patrobas Awino & 9 others** is that of malicious damage to property belonging to Gidjoy Investments Limited which is a private enterprise. Further in **Criminal case No. 1609 of 2019 Republic vs. Patrobas Awino** the Applicant was charged with various counts of making false documents contrary to **Section 347(d)(i)** as read with **Section 349 of the penal code**, concerning alleged forgery of documents of Title to Land Contrary to **Section 350(1) of the Penal Code** and conspiracy to defraud contrary to **Section 317 of the Penal Code** and the complainant continues to suffer as a result of the Applicant’s actions.

26. I find that whenever there exists a pending Criminal Case, such case it does do not affect one side but both sides. That as long as the Criminal Case continues, parties do suffer prejudice due to pendency of the proceedings and both of them feel as if they are in prison. The Applicant herein as I have noted has no interest in prosecuting the Petition, as he has obtained conservatory orders, and his action can only be intended to frustrate the determination of the proceedings as long as the conservatory orders are in force.

27. I therefore find that the Court was justified in dismissing the Petition for want of Prosecution.

B. WHETHER THE ORDERS SOUGHT CAN ISSUE IN THE CIRCUMSTANCES.

28. The Petitioner seek that the Petition be reinstated contending that the Respondent have completely failed to mention and/or demonstrate what prejudice they shall suffer should the Petition be heard and determined on its merits.

29. The Applicant urge that for the Court to favour the Respondent’s case, the Respondent needs to demonstrate the Prejudice they are likely to suffer if the suit is reinstated, which test they have failed. Reliance in support of the aforesaid is placed in the case of **Joseph Kinyua v GO Ombachi [2019] eKLR** where the Court cited the principles guiding the reinstatement of a suit dismissed for want of prosecution as pronounced in **John Nahashon Mwangi vs. Kenya Finance Bank Limited (in Liquidation) [2015] eKLR** as follows:-

“The fundamental principles of justice are enshrined in the entire Constitution and specifically in Article 159 of the constitution. Article 50 coupled with Article 159 of the constitution on right to be heard and the constitutional desire to serve substantive justice to all the parties, respectively, constitutes the defined principles which should guide the court in making a decision on such matter of reinstatement of a suit which has been dismissed by the Court. These principles were enunciated in a masterly fashion by courts in a legion of decisions which I need not multiply except to state that; Courts should sparingly dismiss suits for want of prosecution for dismissal in a draconian act which drives away the plaintiff in any arbitrary manner from the seat of judgment. Such act are comparable only to the proverbial “Sword of the Damocles” which should only draw blood where it is absolutely necessary. The same test will apply in an application to reinstate a suit and a court of law should consider whether there are reasonable grounds to reinstate such suit-of course after consider The Prejudice that the defendant would suffer if the suit was reinstated against the prejudice the Plaintiff will suffer if the suit is not reinstated.” (Emphasis added)

30. It is contended by the Petitioner/Applicant, that if the Petitioner’s Petition is not reinstated, the Petitioner would expressly suffer prejudice as he would be prosecuted in breach of his rights to fair hearing as per **Articles 25(c), 47, 48 and 50**. The Petitioner aver that on the other side, there is absolutely no prejudice to be suffered by the Respondent.

31. In support of the above proposition the Petitioner/Applicant placed reliance in the case of **Evila v Kyumba**, cited with approval in **Pan African Mills Limited v Silvester Nyarango Obwocha [2018] eKLR**, where the Court in questioning the prejudice to the Respondent held as follows:-

“The defendant must however satisfy the Court that he will be prejudiced by the delay or even that the plaintiff will be prejudiced by the delay. He must show that justice will not be done in the case due to the prolonged delay on the part of the plaintiff before the court will exercise its discretion in his favour and dismiss the action for want of prosecution. Thus, even if delay is prolonged, if the Court is satisfied with the Plaintiff’s excuse for the delay, the action will not be dismissed but it will be ordered that it be set down for hearing at the earliest available time.” (Emphasis added)

32. The Petitioner/Applicant further urged that the Court in *Pan African Paper Mills Limited (Supra)* relied on the Courts of Appeal case in *Richard Ncharpi Leiyagu vs. IEBC & 2 Others CA 18/2013* where the Court of Appeal was categorical that:-

“We agree with the noble principles which go further to establish that the Court’s discretion to set aside an ex parte judgment or order for that matter is intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice.”

33. Similarly in the case of *Mwangi S. Kimenyi vs. Attorney General & another (2014) eKLR*, as cited in *Gerald Mwirigi M’Mbuyi v. Stanley Mworira Muthaura (2019) eKLR* Gikonyo J, stated that:-

“But Courts of law are courts of justice to all the parties. And as I stated earlier, dismissal of a case is a draconian judicial act which drives the plaintiff away from the seat of judgment. It should be done sparingly and in cases where dismissal is the feasible and just thing to do. Therefore, courts should strive to sustain suits rather than dismiss them especially where justice would still be done and fair trial had despite the delay. Any explanation for the delay which is given should be properly evaluated by the Court to see whether it is reasonable.” (Emphasis added)

34. The Respondent in response argued that the Applicant/Petitioner has not given any explanation to warrant exercise of the Court’s discretion to reinstate this matter and the reason given by the Counsel on record is not satisfactory. Reliance in support of the Respondent’s position is placed in the case of *Shah v. Mbogho & Another (1967) E.A 1116*, where the Court stated on the matter of its discretion, that:-

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.” (Emphasis added)

35. It is Respondents contention that the dismissed Petition and the instant Application are aimed at delaying the Criminal prosecution of the Applicant and others which is pending in the Criminal Court. The Court’s discretion to set aside its Order/Ruling/Judgment, it is, averred is not restricted and should be exercised not to cause injustice to any party.

36. I find that it is incumbent upon the party seeking the Court’s favour to adduce sufficient and plausible reasons for the delay resulting in dismissal of the Petition for want of prosecution, that are demonstrable and persuasive to the Court. When this Court made an order for dismissal of the Petition it went ahead and precisely outlined the background of this matter and a chronology of events from the date the matter was filed to the date of notice to show cause and come up for hearing, and from the same it was noted, that it was clear the Petitioner has lost interest in prosecuting the Petition. I find that the current application was triggered by summoning of the Applicant/Petitioner in the Criminal Case and is only intended to stop the criminal proceedings against the Applicant taking off. It is noted that the plea taking has been pending since 2018, a period of over 3 years since the Applicant/Petitioner was charged.

37. It is not in dispute, that the Court has discretion to set aside its own orders/Ruling/Judgment. There are no limitations and restrictions on the discretion of Judge save of the Judgment or Order where it has to be done on terms that are just. In granting or rejecting to grant the orders sought herein, this Court is under an obligation to consider the various interest of the parties, in particular the Applicant and the complainant before the Criminal Court, where matters subject of this Petition, have been pending since 2018 and in which plea is yet to be taken and hearing to commence due to the orders issued herein and further where the matter has been delayed for no good reason for non-prosecution of the Petition on part of the Applicant/Petitioner.

38. The Respondent sought reliance in the case of *Lochab Bros Ltd Versus Peter Karuma T/A as Lumumba, Lumumba Advocates 203 eKLR* where the Court observed that:-

“The main concern of the Court is to do justice to the parties and the Court will not impose conditions on itself to filter the wide discretion given to it by rules.”

39. Similarly support is sought from the case of *Esther Wamaita & 2 others versus Safaricom Ltd (2014) eKLR*, where the Court fortified the legal threshold to determine the rights of the parties on issues like the ones at hand. The Court held as follows:-

“The discretion is free and the main concern of the Courts is to do justice to the parties before it (See Patel Versus E.A Cargo Handling Services Ltd) the discretion 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 a person who deliberately sought, whether by evasion or otherwise, to obstruct or delay the cause of justice (See Shah versus Mbogo). The nature of the action should be considered, the defence if any should also be considered and so should the question as to whether the plaintiff can reasonably be compensated by costs for any delay bearing in mind that to deny a litigant a hearing should be the last resort of a Court. (See Sebei District Administration Versus Gasyali). It also goes without saying that the reasons for failure to attend should be considered.”

40. In view of the facts of this matter and authorities relied upon by both sides, no doubt that the reason for failure to attend Court by the Applicant should be considered including the reasons for delay to prosecute the Petition. There is no doubt further that the Applicant herein slept on his rights and acquiesced to the delay by failing to attend Court. The Petitioner/Applicant on the other hand has been in continuous slumber in this matter following issuance of conservatory orders in his favour only to rise up when he was issued with summons to appear for plea taking in *Milimani Chief Magistrate Criminal Case No. 1609 of 2019* on 9th February 2021, where he failed to appear, resulting into fresh summons for him to appear subsequently.

41. On the issue of injustice for a party who has been not attending Court whenever required to do so the Respondent placed reliance in the case of *Bilha Nygonyo Isaac v Kemu Farm Ltd & another & another [2018] eKLR* where the Court held:-

“There would be no misjustice to a party who for three consecutive times would fail to attend court for hearing of her case, and no satisfactory reasons are given when the court fails to hear him out, then states that she is prejudiced by an order of dismissal. In the circumstances, it is the Respondents who were prejudiced by the Appellant’s failure to prosecute the case without unreasonable delay.”

“Pendency of a case in Court when it is obvious that the Plaintiff is not interested to prosecute it costs time and money to the defendants not to mention mental anguish of having a burden of the case over their shoulders for an unnecessary period of time. In the process, the Court becomes the punching bag, leading to lose of confidence with the judicial system due to delays in finalizing cases, when in effect and in most of the cases, it is the parties, mostly the plaintiffs, who would take the earliest opportunity to delay finalization by requesting for unnecessary adjournments without clear and convincing reasons. A court should desist from allowing parties to have joy rides over their cases to the prejudice of other parties including the Courts.”

42. In the instant Petition the Applicant/Petitioner had on four consecutive times failed to attend Court for directions for hearing of his case, before Notice to Show Cause was issued and was duly served when the Applicant/Petitioner did not attend hearing nor filed a Replying Affidavit showing cause why the Petition could not be dismissed. The petitioner/Applicant did not give satisfactory reason when Notice to Show Cause came up for hearing nor has Applicant now given plausible reason for non-attendance and failure to prosecute the Petition. The Respondent have been ready and willing to have this Petition and the Criminal Case heard. In the circumstances it is the Respondent who have been prejudiced by the Petitioner’s / Applicant’s failure to prosecute this Petition without unreasonable delay. The Court herein acted within the law and was justified in dismissing the Petition, after issuance and service of the Notice to Show Cause and to which the Petitioner/Applicant failed to attend the hearing of the Notice to Show Cause. The dismissal was proper and within the law, whereas it may be urged the dismissal of cases upon summary procedure may be draconian, I find when the occasion calls for such action, no Courts should shy away from rising to the occasion by taking the appropriate measures for ends of justice and doing justice to all irrespective of status. The criminal case has not been heard and whatever defence the Applicant has can be raised before the trial Court and the same shall be considered and a determination be made.

43. ***The upshot is that the application dated 17th February 2021 is without merits and is dismissed.***

44. ***On costs, costs always follow the events but taking into account the nature of the Petition and the outcome herein, I direct that each party bear its own costs.***

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF JULY, 2021.

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J. A. MAKAU

JUDGE