



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**(Coram: D. K. Kemei J.)**

**MISC. CIVIL APPLICATION NO. 21 OF 2019**

**KINYANJUI NJUGUNA & CO. ADVOCATES.....DECREE HOLDER/APPLICANT**

**VERSUS**

**INVESCO ASSURANCE CO. LTD.....JUDGEMENT DEBTOR/1<sup>ST</sup> RESPONDENT**

**MBUSERA AUCTIONEERS.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 13<sup>th</sup> January 2021 filed under certificate of urgency on 14<sup>th</sup> January 2021, the decree holder/applicant seek the following orders:-

**1. Spent**

**2. THAT the Honourable Court be pleased to review its order issued on 3<sup>rd</sup> December, 2020 and order the Judgement debtor to satisfy the entire decretal sum.**

**3. THAT in the alternative to (2) above, the order granted to the judgement debtor on 3<sup>rd</sup> December, 2020 herein be reviewed by way of unconditional discharge of the orders.**

**4. THAT the costs of this motion be provided for by the Judgement debtor.**

2. The ruling of this court delivered on 3<sup>rd</sup> December 2020 in respect of a Notice of Motion dated 28<sup>th</sup> July 2020 and filed on 5<sup>th</sup> August 2020 by the judgement debtor provoked the decree holder to file the Notice of Motion herein seeking review in particular of order 5, the only prayer allowed by the court. The order allowed read as follows;

**“The Honourable Court be pleased to set aside, and/or quash the Proclamation, attachment and/or sale of the Applicant’s tools of trade in the 2<sup>nd</sup> Respondent’s proclamation dated 27<sup>th</sup> July 2020, namely reception desk with chairs, reception chair, office chair, 100 computers, water dispensers, telephone heads, boardroom table with chairs, personal workstations, printers and photocopy machines.”**

3. The judgement debtor’s application had been premised *inter alia* on section 44(1) of the Civil Procedure Act. Under section 44(1) the tools and implements of a person necessary for performance of his trade or profession and books of accounts are exempted from attachment in execution of decrees.

4. The decree holder’s application herein is supported by the supporting affidavit of Don Oturi sworn on 13<sup>th</sup> January 2021. According to him, the decree holder’s motion raises sufficient reasons to warrant review of the court order herein. He deponed that there has been consistent material nondisclosure/misrepresentation on the part of the judgement debtor. That at the time of rendering the ruling of 3<sup>rd</sup> December 2020, this court was not privy to a consent order dated 2<sup>nd</sup> September, 2020 entered into between the parties in Milimani Insolvency Petition No. E155 of 2019. According to him, the judgement debtor is estopped therefore from arguing that the continued executions are barred by dint of the said Petition. He deponed that the said consent order has not been varied and/or set aside. That the proclamation dated 27<sup>th</sup> July 2020 is lawful and the court ought to review its orders issued on 3<sup>rd</sup> December 2020 on account of the consent order dated 2<sup>nd</sup> September 2019 which the court is not privy. According to him, the judgement debtor is forum shopping for injunctive and

stay orders by misleading the court.

5. In the converse, the judgement debtor's Legal Manager, Paul Gichuhi swore a replying affidavit dated 27<sup>th</sup> January 2021 to oppose the application herein. Based on the advice of the judgement debtor's advocate, he deponed that at the time of hearing and determination of the application dated 28<sup>th</sup> July 2020, the consent order was immaterial since it was the subject of litigation in ***Insolvency Petition No. E155 of 2019 Kinyanjui Njuguna & Co. Advocates vs. Invesco Assurance Co. Limited*** which is pending for ruling on all filed applications and judgement in the main Petition on 18<sup>th</sup> March 2021. According to the advice of the advocate, he deponed that the consent entered into between the decree holder and judgement debtor on 2<sup>nd</sup> September 2019 contravened section 429 and 430 of the Insolvency Act hence void and unenforceable. That the consent order purported to commit the company to pay the Applicant out of the company's asset in violation of section 429(1) (a) and (b) of the Insolvency Act and accordingly *ex turpi causa* and void. Based on his advocate's advice, he believed that once a winding up Petition is presented like in the Petition herein, all assets of the company are presumed to be under the custody of the court and the court has a duty to protect the interests of all creditors including those not before court. Further, that the decree holder is guilty of material non-disclosure for intentionally failing to inform the court that it engaged in an illegal consent with the judgement debtor, took out proclamations against the judgement debtor and at the same time commenced insolvency proceedings against the judgement debtor vide Insolvency Petition No.E155 of 2019 against the clear proscription against two or more execution processes at the same time in section 429 and 430 of the Insolvency Act No.18 of 2015. According to the Legal Manager, the consent, warrants of attachment and any claim for review is unprocedural and abuse of the court process designed to cripple the judgement debtor's operations as opposed to recovery of the decretal sum. That the proscription of the aforesaid legal provisions is mandatory and not discretionary. On the advice of the advocate, he averred that the applicant has failed to disclose to court the fact that payment was made to it during the cause of the initial suits despite the applicant making reference to a decree of the court. That contrary to Don Oturi's assertion in paragraph 4, 5 and 6 of his supporting affidavit, in response, the judgement debtor's legal manager averred that the orders sought to be reviewed were made pursuant to the revelation that the decree holder was engaging in more than one mode of execution contrary to the Insolvency Act. Based on the advice of the advocate, he averred that the decree holder has not disclosed to court that in Petition No. E155 of 2019 there are stay orders barring any execution against the judgement debtor that were issued by ***Nzioka J.*** That the said orders have never been set aside or varied. By virtue of section 428,429,430,471 and Second Schedule to the Insolvency Act, he averred based on the advice of the advocate that the legal provisions preclude any disposition of the assets of any company undergoing insolvency proceedings and voids any such warrants and consents to utilize the company assets to settle debts. Lastly, he averred based on the advice of the advocate that under section 34 of the Civil Procedure Act where a question arises out of a decree issued by a court, the judgement debtor is mandated to move the court that made the decree. That it is therefore clear that the judgement debtor is not forum shopping. He averred that the Notice of Motion should be dismissed with costs for being argumentative, frivolous and without merit.

6. In addition, Seth Khisa, an advocate, on behalf of the decree holder filed a supplementary affidavit he swore on 26<sup>th</sup> February 2021. He averred that the court at paragraph 25 of its ruling determined that the judgement debtor as a company is not afforded protection under section 44(1) of the Civil Procedure Act hence Order 5 ought not to have been granted by court. He averred that the issue before court is not about liquidation of the judgement debtor as a company but rather the issue of execution of an undisputed and valid decree issued by court on 6<sup>th</sup> February 2020 requiring the Respondent to pay the Applicant a decretal sum of Kshs. 2,425, 532.50/-. According to him, the judgement debtor is unscrupulously convoluting issues before court by raising issues of liquidation pending before another court of competent jurisdiction. He averred that there is no liquidation order in Petition E155 of 2019 pursuant to section 431(2) of the Insolvency Act, 2015 which provides that liquidation commences upon the court hearing an insolvency petition making the liquidation order. According to him, no subsisting stay and/or status quo orders have been granted in the Petition to prevent lawful execution proceedings in other courts rightly executing decrees issued by them. The insolvency Petition is pending hence no liquidation process would commence pursuant to section 429 and 430. That section 428 allows a company before liquidation order has been made to apply to the court hearing the liquidation petition to stay and/or restrain further proceedings against the company before another court. According to the advocate, the court on 27<sup>th</sup> July 2020 did not grant the judgement debtor substantive orders it had sought in the interim but merely stated the status quo be maintained. The advocate averred that the judgement debtor has deliberately misrepresented facts by claiming that it has stay orders against lawful execution proceedings based on the status quo court order of 5<sup>th</sup> August 2020 in Petition No. E155 of 2019. To the contrary, the advocate made reference to what was made to ***Ong'udi J.*** ruling in ***Invesco Assurance Co. Ltd vs. Kinyanjui Njuguna & Co. Advocates & Another [2020] eKLR*** where at paragraph 30-32 the Judge dismissed the Respondent's insinuation that status quo order amounts to stay orders. He averred that the mere filing and/or pendency of Insolvency Petition before a liquidation order is made or the Insolvency court issuing an order staying and/or restraining lawful proceedings pending in other courts does not amount to courts properly dealing with execution proceedings of decrees issued by them setting aside and/or quashing proclamation notices, warrants of attachment and sale relating to execution of the undisputed and valid decrees. Accordingly, there is no order staying and/or restraining lawful proceedings pending in other courts or a liquidation order made in the mentioned Petition hence the court ought not to have granted prayer 5 in the Notice of Motion. That in the absence of the liquidation order the judgement debtor is not under liquidation or receivership hence no official receiver has been appointed hence the judgement debtor's directors have full control of the company. Again, the absence of the liquidation order is prejudicial and contrary to the decree holder's property rights to set aside and/or quash proclamation notices, warrants of attachment and sale when the judgement debtor continues to make profits but declines to settle the decretal amount. He averred that the consent referred to by the judgement debtor's Legal Manager in his replying affidavit, is a consent that was actually adopted on 24<sup>th</sup> October 2019 by the court in the Petition. That no appeal or orders have been sought to set aside the consent order hence tantamount to contempt against the consent order which permitted the decree holder to obtain decrees for matters pending ruling or already taxed. He averred that the judgement debtor should not enjoy the discretion of this court to prevent or delay lawful execution of the undisputed and valid decree. He averred that the judgement debtor has not settled part of the decretal sum since the remittance advice attached and marked as 'PG-3' do not amount to settlement of the decree. In conclusion, the advocate averred that the Notice of Motion herein together with the supporting and Supplementary affidavit raise sufficient reasons to warrant review.

7. On behalf of the decree holder, it is submitted that there is no liquidation order or stay that precludes the decree holder from enforcing payment of the decree issued in its favor. According to the decree holder, it is not in dispute that there is a decree issued by court requiring the judgement debtor to pay Kshs. 2,425,532.50/-. That it is also not in dispute that the Insolvency Petition No. E155 of 2019 is pending. It is pointed out that under section 427(1) of the Insolvency Act, the court may make orders that; (a) *an order dismissing the application;*(b) *an order adjourning the hearing, conditionally or unconditionally;*(c) *an interim liquidation order;* or (d) *any other order that, in the opinion, the circumstances of the case require.* That section 431(2) provides that liquidation of company commences on the making of the liquidation. It is submitted that Insolvency Petition No. E155 of 2019 has not been determined hence there is no liquidation order. That liquidation of a company only commences upon making of a liquidation order. Reference is made to sections 429 and 430 as read together with section

431(2). According to the decree holder, in the absence of the liquidation Order then the judgement debtor has an obligation to settle the decretal amount failure to which execution should commence against the judgement debtor. Reliance was placed on the case of **Invesco Assurance Co. Ltd vs. Kinyanjui Njuguna & Co. Advocates & Another [2021] eKLR**. According to the decree holder the court referred to under section 432(2) is the Insolvency Court. It is submitted that as a result of lack of a liquidation order, the decree holder is unfairly prevented from undertaking the execution process against a judgement debtor. According to the decree holder, the claim herein is in respect of execution of the decree issued by court on 6<sup>th</sup> February 2020 and not liquidation of the judgement debtor as sought in the Insolvency Petition No.E155 of 2019. That Insolvency Petition is governed under Insolvency Act while execution process is governed under the Civil Procedure Act and Rules hence a misconception of law that two modes of execution are being undertaken against the judgement debtor. It is submitted that the court where Insolvency Petition No. E155 of 2019 has been filed and this court are courts of equal status thus neither can deny the other jurisdiction save as provided in law. That this court can only stop the execution process proceedings if what the decree holder refers to as the 'Insolvency Court' had pursuant to section 428 issued stay of proceedings against the judgement debtor in other courts. In relation to section 428, reference is made to the application dated 27<sup>th</sup> July 2020 attached to Paul Gichuhi replying affidavit sworn on 27<sup>th</sup> January 2021 and marked 'PG-4' where the court is said to have not granted any stay orders in the interim. It is submitted that the lack of stay orders can be confirmed in the copies of orders attached to Seth Khisa supplementary affidavit and marked as 'SK-1' and 'SK-2'. Reference was made to **Invesco Assurance Co. Ltd vs Kinyanjui Njuguna & Co. Advocates & Another [2020] eKLR** in particular at paragraph 36 of the ruling. That in the Notice of Motion dated 28<sup>th</sup> July 2020, the judgement debtor misrepresented to court that it had stay orders emanating from the Insolvency Petition No. E155 of 2019 to prevent lawful execution against it. Further Paul Gichuhi on behalf of the judgement debtor continued to misrepresent about the stay orders in his replying affidavit sworn on 27<sup>th</sup> January 2021. According to the judgement debtor, the misrepresentation prompted the court to grant order 5 which is the subject order for review. That the status quo orders given by court on 5<sup>th</sup> August 2020 cannot be interpreted to mean stay orders. Further that the status quo orders lapsed since they have not been extended. Reliance was placed on the case of **Invesco Assurance Co. Ltd vs. Kinyanjui Njuguna & Co. Advocates & Another [2020] eKLR** in particular at paragraph 30-32 of the ruling.

8. As regards whether sufficient reasons have been demonstrated by the decree holder to warrant a review of the court orders of 3<sup>rd</sup> December, 2020, reliance was placed on *Order 45 Rule 1(1) of the Civil Procedure Rules 2010* and the case of **George Ndemo Sagini vs. AG & 3 Others [2017] eKLR**. It is submitted that when the court determined that the judgement debtor was not a natural person contemplated under section 44(1), the court had no option but to dismiss the Notice of Motion dated 28<sup>th</sup> July 2020. According to the decree holder, the court gave the judgement debtor an undeserving protection beyond its discretionary power. Reference was made to the court decisions where such applications were dismissed; **Invesco Assurance Co. Ltd vs. Kinyanjui Njuguna & Co. Advocates & Another [2020] eKLR** ruling by **Odunga J.**, **Invesco Assurance Co. Ltd vs. Kinyanjui Njuguna & Co. Advocates & Another [2019] eKLR** ruling by **Ongeri J.** and **Invesco Assurance Co. Ltd vs. Kinyanjui Njuguna & Co. Advocates & Another [2020] eKLR** ruling by **Ong'udi J.** The decree holder has urged the court to review the court order of 3<sup>rd</sup> December 2020 by allowing the Notice of Motion herein.

9. In the converse, in response to Don Oturi averments, the judgement debtor submitted that the stated consent was immaterial as at the time of the hearing and determination of the Notice of Motion dated 28<sup>th</sup> July 2020 since it was the subject of litigation in the Insolvency Petition No. E155 of 2019. According to the judgement debtor, the decree holder was aware of the consent since 2<sup>nd</sup> September 2019 but never bothered to raise it during the hearing of the Notice of Motion dated 28<sup>th</sup> July 2020 hence estopped from relying on facts that were well within its knowledge. It is submitted that sections 428,429,430 and 431 holistically construed prohibits any disposition, executions, attachments and/or sequestration of the assets of the company after 21<sup>st</sup> June 2020 when the Insolvency Petition was filed. That pursuant to section 431(3), liquidation of the company commenced on 21<sup>st</sup> June 2020 hence all proclamations against the company were illegal and void. According to the judgement debtor, execution proceedings defeat the very purpose of an insolvency Petition. Reliance was placed on the case of **Ndane Construction Co. Ltd vs. Spencon Kenya Limited**. It is submitted that the consent entered into between the judgement debtor and decree holder cannot excuse the compliance with the statutory provision. That no legal remedy or benefit can flow from an illegal contract and/or consent 'ex turpi causa non oritur actio' as observed by **Lord Morris of Borth-y Gest in Mistry Amar Singh vs. Kulubya [1963] EA**. According to the judgement debtor, the decree holder intentions are to cripple the judgement debtor instead of sustaining it as a going concern contrary to the primary objective of the Insolvency Act 2015 as stated under section 3(1) (c). That it is unjust and in bad faith for the decree holder to seek dissolution of the judgement debtor and at the same time dissipate the judgement debtor's assets vide an execution process. According to the judgement debtor, execution during the pendency of the liquidation proceedings is tantamount to undercutting of ranking interests of other creditors in circumvention of section 471. It is submitted that it is only fair that the existing assets be preserved and protected from further diminution pending determination of the Petition on 18<sup>th</sup> March 2021 and in the interest of all creditors. That all claims must be proved in the liquidation proceedings pursuant to section 429 hence the decree holder is estopped from pursuing its claims to the claims in the Petition in different courts. According to judgement debtor, in light of section 429(1) (a) and 430 non-disclosures of an ongoing Insolvency Petition and consent by the decree holder amounts to gross abuse of the court process. Reliance was placed in **Abraham Lenauia vs. Charles Katekeyo Nkaru [2016] eKLR** and **Castelli vs. Cook [1849]68 E.R**. It is submitted that pursuing multiple claim in different courts is bound to muddy the waters and inhibit the expeditious, cost effective and timely conclusion of the disputes between parties. Reliance was placed on the cases of **Kagwimi Kangethe & Co. Advocates vs. Olerai Nurseries Ltd [2020] eKLR**, **Re Kenya Bus Services Ltd[2019]eKLR**, **Woods Auto & Allied Supplies vs. Kenya Bus Services Ltd & Another [2015]eKLR**, **Ndane Construction Co. Ltd vs. Spencon Ltd[2016]eKLR** and in **Re Alvik Prestige Ltd(Formerly Alvik Kenya Ltd) [2006]eKLR**. According to the judgement debtor, the balance of convenience tilts in its favour. That upon determination of the Insolvency Petition, the decree holder will still be able to recover all the sums owed to it, if any. The judgement debtor urged the court to dismiss the Notice of Motion herein.

#### **Determination**

10. I have considered the application, rival affidavits and written submissions by respective parties.

11. It is not in dispute that there is a filed Insolvency Petition No. E155 of 2019 in court. It is also not disputed that there is an existing court decree dated 6<sup>th</sup> February 2020 that the decree holder seeks to execute. The decree holder faults the court for according the judgement debtor protection under section 44(1) of the Civil Procedure Act when it is not a natural person. It is further disputed that the court in Petition No. E155 of 2019 granted stay orders or issued a liquidation order.

12. The decree holder is aggrieved by order 5 granted by court to the effect that the 2<sup>nd</sup> Respondent's proclamation dated 27<sup>th</sup> July 2020 was

set aside and/or quashed, consequently execution process was stopped. The issue that fall for determination is *whether an order for review is merited or not.*

13. Njuguna J. in *Francis Njoroge vs. Stephen Maina Kamore*[2018]eKLR stated that *Order 45 Rule 1* of the Civil Procedure Rules,2010 is very explicit that the court can only review its orders if the following grounds exist:-

- a. **There must be discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made; or**
- b. **There was a mistake or error apparent on the face of the record; or**
- c. **There were other sufficient reason;**
- d. **The application must have been made without unreasonable delay.**

14. The substantive power of review by the court is provided for under section 80 of the Civil Procedure Act. *Mativo J.* in the case of *Republic vs. Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR at paragraph 30 expressed himself as follows:-

- “i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.**
- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.**
- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.**
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.**
- v. A decision/order cannot be reviewed under section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.**
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.**
- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.**
- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination.....”**

15. According to Don Oturi, the motion demonstrates other sufficient reasons. Having set out the grounds to be satisfied for review to succeed, does the Notice of Motion herein demonstrate ‘*other sufficient reasons*’ to warrant an order of review?

16. The Court of Appeal in *Tokesi Mambili & Others vs Simion Litsanga* [2004] eKLR held that where the application is based on sufficient reason, it is for the court to exercise its discretion. *Mativo J.* (supra) stated that the expression “*any other sufficient reason*” appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds. Similarly, the court in *Sadar Mohamed vs. Charan Singh & Another* [1963] EA 557 held that:-

**“Any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter.”**

17. The decree holder’s case is based on the submission that the decree holder is not protected under section 44(1) of the Civil Procedure Act since it is not a natural person hence the 2<sup>nd</sup> Respondent’s proclamation herein for purposes of execution of decree ought not to have been set aside and/or quashed. Further, that there is no liquidation order or stay that precludes the decree holder from enforcing payment of the decree issued in its favor. That Paul Gichuhi on behalf of the judgement debtor has misrepresented to court that the court in **Petition No.E155 of 2019** issued stay orders when there are none.

18. According to the judgement debtor, the decree Holder is estopped for not disclosing to court about the consent which was within its knowledge. The judgement debtor is silent about section 44(1) (supra) but submitted that execution process defeats the purpose of the Insolvency Petition herein. That it is unjust and in bad faith for the decree holder to seek dissolution of the judgement debtor and at the same time dissipate the judgement debtor’s assets vide an execution process. According to the judgement debtor, the decree holder should wait until determination of the Insolvency Petition since it will still be able to recover all the sums owed to it, if any.

19. I agree with the judgement debtor that the Notice of Motion herein is one that should not be entertained by court for review. The existence of the consent in the Insolvency Petition was within the knowledge of the decree holder and judgement debtor. Both cannot accuse

each other of non-disclosure of the consent well aware of its existence. The decree holder cannot claim that the court was not privy to the consent when it was within its knowledge. The issue of lack of a liquidation order and/or stay orders as submitted by the decree holder when the judgement debtor submits there were stay orders is an issue that would require a detailed examination by court and not in a review application. The dispute whether the judgement debtor has paid part of the decretal amount is not an issue to be handled in a review application but in a trial court. The contest about section 44(1) is an issue that would fall under the realm of appeals and not in review. In *Abasi Belinda vs. Fredrick Kangwamu & Another {1963} E.A 557 Bennet J.* held that:-

**“A point which may be a good ground of appeal may not be a good ground for review and erroneous view of evidence or law is not a ground for review though it may be a good ground for appeal.”**

20. It is worth noting that the court at page 18 of its ruling held that the decree holder could not be afforded protection under section 44(1) and for the court to allow order 5, the court stated that the import of sections 429,430 and 431 was that bankruptcy proceedings take precedence over execution proceedings. The decree holder seems to view the court’s reasoning as a misconstruction of law and hence if that is the position then the proper forum would be an appeal and not review. It is apparent that the decree holder had mounted a two pronged assault against the judgement debtor by filing the two causes of action. If the decree holder saw it fit to proceed with a winding up cause then it should be patient for the insolvency court to determine the issues. Indeed, the decree holder being a creditor will eventually get it relief by that court. The order sought to be reviewed was granted based on the above grounds and was to prevent abuse of court process as there was need to hold the actions of the decree holder’s actions which could cripple the judgement debtor. Further, if the decree holder applicant feels that this court went into error regarding the application of section 44 of the Civil Procedure Act then the proper way to deal with it is via an appeal to a higher court. I am satisfied that the applicant’s application has not met the requisite threshold for review.

21. In my view, the reasons offered by the decree holder do not qualify to be sufficient reasons within the meaning of the rules nor are they analogous to the other reasons stipulated in order 45 Rule 1. I find that this is not a proper case to grant the review sought or even to exercise its discretion in favour of the decree holder as contemplated under Order 45 Rule 1 of the 2010 Rules.

22. Accordingly, the Notice of Motion dated 13<sup>th</sup> January 2021 lacks merit and is hereby dismissed with no orders as to costs.

It so ordered.

**DATED AND SIGNED AT MACHAKOS THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2021**

**D. K. KEMEI**

**JUDGE**

**DELIVERED AT MACHAKOS THIS 12<sup>TH</sup> DAY OF OCTOBER, 2021**

**G. V. ODUNGA**

**JUDGE**