REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. 171 OF 2019

REPUBLIC.....APPLICANT

VERSUS

THE LAW SOCIETY OF KENYA ADVOCATES DISCIPLINARY TRIBUNAL...RESPONDENT

AND

KAVEKE MASYUKO.....1ST INTERESTED PARTY

YUMBYA MASYUKO.....2ND INTERESTED PARTY

AND

FRANCIS JACOB MULU.....*EX PARTE* APPLICANT

JUDGMENT

The parties

1. The Applicant, Francis Jacob Mulu is an Advocate of the High Court of Kenya practicing as such in the name and style of Mulu & Company Advocates at Mwalimu Centre, 1st Floor, Door 17, Syokimau Street, Machakos.

2. The Respondent, the Advocates Disciplinary Tribunal is a Disciplinary Tribunal established under section 57 of the Advocates Act.[1]

3. The first and second Interested Parties are Kenyan adults of sound minds.

The factual Matrix

4. The factual chronology of the events which triggered these proceedings as far as I can distill them from the pleadings is essentially common cause or not disputed. Differently put, m*y reading of the respective parties' pleadings is that the history of this dispute is uncontroverted. Notably, the applicant* an advocate of the High Court of Kenya represented the Interested Parties in accident claims in Mutomo Senior Resident Magistrates Court Civil Case Numbers 6 and 14 of 2013 in which the Interested Parties were on 29th November 2013 awarded Ksh. 183,000/= and Ksh. 465,530/= respectively as damages.

5. The point of departure is that the applicant states that the judgments were appealed against in Machakos High Court Civil Appeals Numbers 3 and 4 of 2014. The applicant also states that the appeals were compromised by consent of the parties. He states that he recovered the decretal sums and paid the Interested Parties the amounts he deemed to be their dues which they accepted without any protest and signed discharge vouchers. He states that subsequently the Interested Parties filed a complaint with the Respondent being cause number 111 of 2015 claiming that they were underpaid. He states that the cause was heard but despite his strong defense, the Respondent convicted him on 3rd October 2015 of the charge of professional misconduct and failure to pay clients their full entitlements.

6. The applicant states that on 21st June 2016, he appealed against the said decision in Nairobi High Court Civil Appeal Number 316 of 2016. He also states that on 20th February 2017, the Respondent after hearing his mitigation, passed sentence and fined him Ksh. 30,000 and costs

of Ksh. 10,000/= to the Law Society of Kenya payable within 60 days. The applicant states that he paid the said fine and the costs as ordered and that he complied with all the Respondent's orders, hence the Respondent became functus *officio* in the said cause.

7. The applicant states that on 16th July 2018 his advocate appeared before the Respondent and it confirmed that the matter was settled. He states that surprisingly the Respondent illegally re-opened the cause on 5th October 2018 and gave fresh orders for him to comply with, which were not specified. He claims he was no afforded a hearing. He states that since 15th October 2018 he has appeared before the Respondent twice and on 18th March 2019 the Respondent made an order that he complies with the Respondents orders within sixty days in default he would be struck off the roll of advocates. He states that despite his plea to the Respondent to specify which orders he has not complied with, no response has been forthcoming.

Legal foundation of the application

8. The applicant states the Respondent acted without jurisdiction. He states that on 15th October 2018 the Respondent unlawfully re-opened the cause on grounds that the applicant had not complied with its orders. He also states the Respondent failed to communicate the said orders and also it ignored Certificate of Taxation issued in Miscellaneous Civil Application Numbers 11 and 13 of 2015. He states that it has no jurisdiction to order the withdrawal of an already taxed advocates/client bill of costs taxed by a court of competent jurisdiction.

9. The applicant claims that his rights under Article 50 (2) (j) of the Constitution were violated in that he is being subjected to double jeopardy. He urged that unless the relief sought is granted, he will suffer irreparable loss in that the impugned actions are likely to bring his illustrious career spanning over 25 years to an end thereby affecting his means of livelihood.

Reliefs sought

10. As a consequence of the foregoing, the applicant prays for the following orders:-

> *a. An order of prohibition do issue directed to the Respondent barring the Respondent from continuing, further sentencing, continuing with prosecution, trial or taking proceedings against the applicant in respect of Advocates Disciplinary Tribunal cause number 111 of 2015 or any fresh cause related to matters heard and dealt with in its cause number 111 of 2015.*
>
> *b. An order of certiorari do issue removing to this honourable court and quashing the decision made by the Respondent on 18th March 2019 in its cause number 111 of 2015 in which the Respondent issued summons to the applicant to show cause why he should not be struck off the roll of advocates and all proceedings, judgment and sentence taken pursuant to the Respondent's decision made on 18th March 2019.*

Respondent's Replying Affidavit

11. Mercy K. Wambua, the Respondent's Secretary swore the Replying Affidavit dated 25th October 2019 in opposition to the application. She deposed that on 26th June 2015, they received a complaint by the first Interested Party on behalf of himself and the second Interested Party against the applicant relating to breach of undertaking, dishonorable conduct, undertaking an appeal without informing client, failure to pay client's their full dues and false accounting of bill of costs.

12. She deposed that upon receipt of the complaint, they informed the applicant in writing that a *prima facie* case had been established and that the matter was scheduled for plea on 5th October 2015. She avers that on the said date the applicant's advocate asked to be supplied with copies of a complete affidavit of the complaint and all annextures and the plea was deferred to 7th December 2015 when a plea of not guilty was entered and the applicant was directed to file a response within twenty one days.

13. She deposed that the applicant filed his response on 17th December 2015, and on 1st February 2016, the Respondent directed that the matter proceeds by way of affidavits as provided under Rule 18 of the Advocates (Disciplinary Committee) Rules and judgment was reserved for 23rd May 2016 when he was convicted of all charges and mitigation and sentence were scheduled for 3rd October 2016. She states that on the said date the applicant did not attend, hence, mitigation was deferred to 20th February 2017 when sentenced was passed as follows:-

> *a. The advocate is admonished and fined Ksh. 30,000/= to be paid within 60 days from today;*
>
> *b. The advocate to pay costs of Ksh. 10,000/= to the Law Society of Kenya within 60 days from today;*
>
> *c. The advocate to withdraw his bill of costs from the High Court to file them before the Tribunal within 30 days from today. This will help the Tribunal to determine the amounts due and payable to the complainants if any.*
>
> *d. Mention on 22nd May 2017 to confirm compliance and for further directions.*
>
> *e. The advocate is supplied with a copy of the judgment of this Tribunal.*

14. She averred that the cause came up for mention on several occasions to confirm the applicant's compliance with the said orders, and, on 16th July 2018, in the absence of the Interested Parry the applicant asked that the matter be marked as closed. She deposed that the Respondent on the mistaken belief that the parties had complied marked the matter as closed.

15. She deposed that the Interested Party by an application dated 20th September 2018 sought to re-open the case and on 15th October 2018 the Respondent rules as follows:-

> *a. That the order closing the file was made ex parte, from the complainant's affidavit, it seems clear that the complainant (sic) issues had not been fully resolved. Therefore, the complainant's application dated 20th September 2018 is hereby allowed;*
>
> *b. The Law Society shall serve on the accused advocate all orders made by the Tribunal that the accused advocate is required to comply with, i.e. all outstanding orders to be served upon the accused advocate within 21 days;*
>
> *c. The matter is mentioned on 18th March 2019 to confirm compliance.*

16. She deposed that on 18th March 2019, the matter was mentioned and the Respondent made the following orders:-

> *a. Law Society of Kenya to serve all the orders on the accused advocate;*
>
> *b. –*
>
> *c. A Notice to Show Cause is issued against the accused advocate that if the account is not settled within 60 days then he will be struck off the Roll of advocates;*
>
> *d. Hearing of Notice to Show Cause to be heard on 3rd June 2019.*

17. M/s Wambua deposed that when the matter came up for Notice to Show Cause on 3rd June 2019, the applicant sought leave to file fresh accounts and certified copies of the order given by the courts in Machakos High Court and the lower courts. She averred he was granted twenty one days to file the same and on 15th July 2017 the Respondent ordered that:-

> *a. The complainant files a response to the statement of account filed in court on 24th June 2019 within 30 days;*
>
> *b. …..*
>
> *c. Mention on 18th November 2019 for further orders.*

18. She further deposed that it is the order issued on 18th March 2019 which prompted the filing of the instant judicial review application. She deposed that the said order was clear that the Notice to Show Cause would be issued if the applicant did not settle the account within 60 days, and, that, the applicant even sought and was granted leave to file fresh accounts. She deposed that in the circumstances, it is pre-mature for the applicant to impute what decision the Respondent shall make, and, that, in the event of being aggrieved, he has the right to appeal to the High Court.

Interested Party's Response

19. Kaleve Masyuko, the first Interested Party filed the Replying Affidavit dated 4th November 2019. He deposed that he filed a complaint with the Law Society of Kenya after he noted that the matter was marked as settled. He stated that he wanted the applicant to subtract the 30% they agreed when he instructed him and to handover the balance to him. He urged the court to dismiss this case with costs.

Courts directions

20. Despite clear directions by the court issued on 19th September 2019, 28th October 2019, 18th November 2019 and 27th November 2019 on filing of pleadings including submissions, the Respondent's counsel did not file submissions. The applicants counsel filed his submissions on 30th October 2019. On his part, the first Interested Party relied on his replying affidavit. On 27th November 2019, after the Respondent's counsel's failure to file submissions on two occasions, the court granted her leave to file their submissions within ten days from the said date in default the court would proceed to render the judgment. As at the close of the ten days, the Respondent had not filed their submissions, hence the court proceeded to write the judgment the said failure notwithstanding.

Applicant's advocate's submissions

21. The crux of the applicant's counsel's submissions is that the applicant is challenging the legality of the Respondent's decision to re-open the case and issue him with a Notice to Show Cause. He argues that the Respondent is acting without jurisdiction. He argued that litigation must come to an end and submitted that after conviction, the Respondent was left with no power except sentencing.

22. He also argued that by directing the applicant to withdraw his bills from court, the Respondent acted without jurisdiction. He argued that the Respondent re-opened the matter without offering sufficient reasons and urged the court to quash the summons. He submitted that the applicant's continued prosecution is unconstitutional in that it offends Article 50 (2) (o) of the Constitution. He argued that the Respondent is *functus officio*.

23. Additionally, he argued that the Respondent is acting *ultra vires* and without jurisdiction, because, since the applicant's bills were taxed, the Respondent has no mandate no revisit the issue or determine what was due to the Interested Party nor does it have jurisdiction to direct

the applicant to withdraw his bills filed in court. He submitted that the Tribunal cannot supervise proceedings filed in the High Court.

24. He also argued that the Respondent has no jurisdiction to tax bills and that the taxation was done by the Deputy Registrar. He relied on *Braeburn Limited v Tony Gachoka & Another*[2] for the holding that the decision of the taxing master is generally speaking final, hence, the Respondent over reached its mandate. He maintained that the Respondent's jurisdiction is limited to investigating and trying complaints involving conduct and discipline of advocates. He submitted that a tribunal cannot assume jurisdiction not conferred to it by the statute and maintained that the Respondent has no power to tax bills, especially where the bill is already filed in court. He relied on *Republic v The Law Society of Kenya*[3] for the holding that the Respondent has no powers to tax bills of costs.

Determination

25. This case provides an opportunity for this court to restate the scope of judicial review jurisdiction and the distinction between appellate jurisdiction and judicial review jurisdiction.

26. The starting point is that there is a long-established and fundamental distinction between appeal and review. A court of appeal makes a finding on the merits of the case before it; if it decides that the decision of the lower court or tribunal was wrong, then it sets that decision aside and hands down what it believes to be the correct judgment. By contrast, in Judicial Review the reviewing court cannot set aside a decision merely because it believes that the decision was wrong on the merits. A court of review is concerned only with the lawfulness of the process by which the decision was arrived at, and can set it aside only if that process was flawed in certain defined and limited respects.

27. Judicial Review is about the decision making process, not the decision itself. The role of the court in Judicial Review is supervisory. It is not an appeal and should not attempt to adopt the 'forbidden appellate approach'. Judicial Review is the review by a judge of the High Court of a decision; proposed decision; or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction - reflecting the role of the courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised.

28. Judicial Review is more concerned with the manner in which a decision is made than the merits or otherwise of the ultimate decision. As was held in *Republic vs Attorney General & 4 others ex-parte Diamond Hashim Lalji and Ahmed Hasham Lalji**[4]*:-

> *"Judicial review applications do not deal with the merits of the case but only with the process. In other words judicial review only determines whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters. It follows that where an applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect urges the Court to determine the merits of two or more different versions presented by the parties the Court would not have jurisdiction in a judicial review proceeding to determine such a matter and will leave the parties to resort to the normal forums where such matters ought to be resolved. Therefore judicial review proceedings are not the proper forum in which the innocence or otherwise of the applicant is to be determined and a party ought not to institute judicial review proceedings with a view to having the Court determine his innocence or otherwise. To do so in my view amounts to abuse of the judicial process. The Court in judicial review proceedings is mainly concerned with the question of fairness to the applicant..."*

29. The applicant's case as I understand it assaults the impugned decision on the following fronts:- *First,* that the Respondent erred in re-opening the case. The argument here is that the Respondent had already pronounced itself, hence it was *functus officio,* and therefore it acted without jurisdiction.

30. This ground of assault id legally frail, unsustainable and collapses on not one but several grounds, namely: - **(a)** it is undisputed that the matter was mentioned several times to confirm whether the applicant had complied with the orders issued by the tribunal and in one such mention, the applicant's counsel in the absence of the Interested Parties prayed that the matter be marked as closed. The Respondent believing that was the correct position, complied and marked the file as closed. The matter could have ended there had there been no other developments. **(b)** By an application dated 20th September 2018, the Interested Party applied to review and or set aside the orders made on 16th July 2018 marking the matter as closed. He prayed that the case be re-opened. His argument was that the matter was not yet settled. The Respondent considered and allowed the application. **(c)** The law as I understand it is that a court or a Tribunal has jurisdiction to review, set aside or vary its order upon being moved by way of an application for review. Such was the application which triggered the orders re-opening the case. Interestingly, this order was made in the presence of the applicant's counsel. The argument that the Tribunal had no jurisdiction to re-open the case or that it was *functus officio* collapses. I say no more.

31. *Two,* the order re-opening the case cannot be said to have been made without jurisdiction. If the applicant is not happy with it, as it appears, then his only way out is to challenge the order by way of an appeal as opposed to a judicial review application. That way, an appellate court will be better placed to address its mind on the question whether the order re-opening the case was merited and whether the Respondent properly addressed itself to the law and facts.

32. *Third,* the invitation to this court to fault the said order is a clear affront to the scope of judicial review jurisdiction which does not deal with the merits of a decision. I decline the invitation to venture into the forbidden appellate jurisdiction.

33. The second ground of attack mounted by the applicant is that the Respondent continued to entertain the case after rendering its judgement and that it even issued a Notice to Show Cause. The question here is whether the Respondent has powers to enforce its orders. Again, this is a merit question and not a ground for review. Closely tied to this question is whether the applicant has defied Tribunals orders to the extent that the Notice to Show Cause is warranted and what remedy does the Interested Parties have to ensure compliance. In addition, pertinent questions arises as to whether the Respondent is powerless when it comes to enforcing its orders. The said questions run deep into the wisdom or merit of issuing the Notice to Show cause. Simply put, this is ground of appeal not review.

34. The third ground fronted by the applicant is that the Respondent has no powers to order the applicant to withdraw bills of costs filed in the High Court. I find this ground misleading. *First,* there is a finding that the appellant charged exorbitant bills in the judgment dated 23rd May 2016. *Second,* on 20. 2. 2017, the Respondent ordered *inter alia* that the applicant withdraws his bills and file them in the tribunal for taxation. Despite this order, the applicant proceeded to tax the bills on 23rd March 2017, barely one month after the said order. The law as I understand it is that a party is bound to comply with a court order even if he believes it's wrong, unless and until the order is set aside, varied, reviewed or overturned on appeal. The applicant is an advocate of the High Court and he was and is still ably represented by an advocate. He should be the last person to disobey the Respondent's orders. To proceed with the taxation in breach of such a clear order is a grave transgression to the Rule of Law coming as it does from a legally trained person. It suggests bad faith.

35. In any event, ground six of his appeal filed in the High Court faults the Respondent for proceeding with the matter while the issue of fees was pending taxation. This is a clear confirmation that the applicant appreciates that the issue under consideration is a ground of appeal not a matter for judicial review. I say no more.

36. The applicant also argues that the Respondent has no jurisdiction to tax bills. Again, this argument is legally frail. It is an affront to section *60(7)* of the Advocates Act[5] which provides:-

> *(7)* ***If a bill of costs has been filed in Court*** *by the advocate against whom a complaint is being* ***heard but has not been taxed,*** *the Tribunal may adjourn the complaint for such period as it considers reasonable to allow such taxation:*
>
> ***Provided that if at the expiry of such adjournment, the bill is still not taxed, the Tribunal may make its own estimate of the costs due to the advocate and make orders accordingly.***

37. The Respondent is statutorily mandated to entertain all complaints of professional misconduct against advocates. Under section 60 (6), (7) & (8) of the Advocates Act,[6] the Respondent can order an advocate against whom a complaint has been lodged before it to file a bill of costs and if the advocate fails to do so, then the Respondent can determine the fee payable to the advocate. The Respondent has jurisdiction to tax bills of costs as was held in *Republic v Advocates Disciplinary Tribunal & 2 others Ex-parte Thomas Letangule & 3 others.*[7]

38. The applicant has failed to demonstrate that the applicant acted *ultra vires* is asking him to withdraw the un taxed bills, and if it erred, this would be a ground of appeal as opposed to a ground for review. As *De Smith's Judicial Review*[8] writes :-

> *"in essence the doctrine of ultra vires permits the courts to strike down decisions made by bodies exercising public functions which they have no power to make. Acting ultra vires and acting without jurisdiction have essentially the same meaning, although in general term "vires" has been employed when considering administrative decisions and subordinate legislative orders, and "jurisdiction" which considering judicial decisions, or those having a judicial flavor."*

39. The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision maker. The instrument will normally be a statute or statutory instrument, but it may also be an enunciated policy, and sometimes a prerogative or other "common law" power. The courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies to act within the "four corners" of their powers or duties. They are also acting as guardians of Parliament's will, seeking to ensure that the exercise of power is in accordance with the scope and purpose of Parliament's enactments.

40. In his classic enumeration of the three main grounds of judicial review, Lord Diplock described "illegality" as a failure by a public body to understand correctly the law that regulates its decision-making power or a failure to give effect to the law. A public body must therefore act within the scope of its powers and duties and may not purport to exercise a power that it does not possess. It has jurisdiction in the narrow sense (ie legal authority to act), to deal with the matter in question. If it does not, it will be acting *ultra vires* in the literal meaning of that expression.[9]

41. Our Constitution requires a purposive approach to statutory interpretation.[10]The purpose of a statute plays an important role in establishing a context that clarifies the scope and intended effect of a law.[11] The often-quoted dissenting judgment of Schreiner JA, eloquently articulates the importance of context in statutory interpretation:-

> *"Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that 'the context', as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and within limits, its background."*[12]

42. The Supreme Court of Appeal of South Africa in *Natal Joint Municipal Pension Funds v Endumeni Municipality*[13] acknowledged the interpretation that gives regard to the manifest purpose and contextual approach as the proper and modern approach to statutory interpretation. Wallis JA pointed out that "in resolving a problem, where the language of a statute leads to ambiguity the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation."[14]

43. In the United Kingdom, the Chancery Division of the High Court, per Lord Greene MR in *In re Birdie v General Accident Fire and Life Assurance Corporation Ltd*,[15] stated the following on the contextual approach to statutory construction:-

> *"The real question to be decided is, what does the word mean in the context in which we here find it, both in the immediate context*

of the sub-section in which the word occurs and in the general context of the Act, having regard to the declared intention of the Act and the obvious evil that it is designed to remedy."

44. A contextual or purposive reading of a statute must of course remain faithful to the actual wording of the statute. A contextual interpretation of a statute, therefore, must be sufficiently clear to accord with the rule of law.[16] In *Stopforth v Minister of Justice and Others; Veenendaal v Minister of Justice and Others*[17] Stopforth Olivier JA provided useful guidelines for the factors to be considered when conducting a purposive interpretation of a statutory provision:-

> "*In giving effect to this approach, one should, at least, (i) look at the preamble of the Act or at the other express indications in the Act as to the object that has to be achieved; (ii) study the various sections wherein the purpose may be found; (iii) look at what led to the enactment (not to show the meaning, but also to show the mischief the enactment was intended to deal with); (iv) draw logical inferences from the context of the enactment."*

45. My reading of section 60 (6) is that where an advocate against whom the Tribunal is hearing a complaint relating to fees and costs has not filed a bill of costs in court, the Tribunal may upon the request of the complainant, order such an advocate to produce before it a detailed fee note. In addition, subsection (7) is clear that if the bill of costs has been filed, the Tribunal adjourns the matter pending taxation. However, this provision is to be read together with the proviso thereto which empowers the Respondent to tax a bill where taxation has not been done. In the instant case, the Bill of Costs had been filed but taxation had not been done. The Respondent acted within its powers in ordering the applicant to file his bill before it. Even assuming the Respondent was wrong on this issue, being wrong is not the same as acting without jurisdiction. While many people may agree or disagree with the decision and the judge's or tribunals reasons**, it must be remembered that a judge or a tribunal has the authority and the power to be wrong as well as right**.

46. The principle is that judges or tribunals can be wrong as long as their decisions are arrived at in good faith after considering the facts and the law. What constitutes improper/ inappropriate use of the power or acting without jurisdiction must be differentiated from a judicial officer's error in law which can only be the subject of appeal. Differently put, if the Respondent committed an error of law on the issue under consideration, that is a ground of appeal as opposed to judicial review.

47. To me, all the grounds cited by the applicant are simply invitations to this court to engage in merit review. Whatever the purpose of Judicial Review is deemed to be, some propositions have become clear: orthodox principles of administrative law prescribe that courts engaged in review should not reconsider the merits of the decision because they are not the recipients of the discretionary power.[18] Judicial review is not an appellate procedure in which a judge reverses the substantive decision of an administrative body because of the sole ground that the merits are in the applicant's favour. Rather, it is a supervisory procedure whereby a judge rules only upon the lawfulness of an executive decision, or the manner in which one was reached. The question for review, therefore, is whether the decision was 'lawful or unlawful;' the question for appeal by contrast is whether the decision was 'right or wrong.'

48. Craig has sought to justify this distinction between review and appeal by reference to the source of judicial powers: powers of review derive from the courts' inherent jurisdiction, whereas appeals do not – they are statutory.[19] Others, however, have justified this distinction in less neutral terms. For instance, Lord Irvine, has argued that the courts should not review merits. His argument is that to do so violates the constitutional imperative of judicial self-restraint. Lord Irvine identifies at least three bases for this imperative. *First*, 'a constitutional imperative': public authorities should exercise discretionary powers that have been entrusted to them by Parliament. Every authority has within its influence a level of knowledge and experience which justifies the decision of Parliament to entrust that authority with decision-making power. *Second*, 'lack of judicial expertise': it follows that the courts are ill-equipped to take decisions in place of the designated authority. *Third*, 'the democratic imperative': it has long been recognized that elected public authorities, and particularly local authorities, derive their authority in part from their electoral mandate.[20]

Final orders

49. In view of my analysis of the issues distilled herein above, the conclusion becomes irresistible that the applicant has not demonstrated any grounds to warrant this court to grant the Judicial Review orders sought. Accordingly, I find and hold that the applicant's application dated **18th** September 2019 must fail. Consequently, I dismiss the said application with no orders as to costs to the Respondents and the Interested Party.

Orders accordingly.

Signed, Delivered and Dated at Nairobi this 13th day of February, 2020.

John M. Mativo

Judge.

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[1] Cap 16, Laws of Kenya.

[2] {2009} e KLR.

[3] {23013} e KLR.

[4] {2014} eKLR.

[5] Cap 16, Laws of Kenya.

[6] Ibid.

[7] {2015} e KLR.

[8] 6th Edition, London Sweet & Maxwell 2007, “Concept of Jurisdiction and Lawful Administration,” Chapter 4 , pp 177.

[9] Judicial Review: Principle and Procedure, Ibid.

[10] For examples of a purposive approach to statutory interpretation, see *African Christian Democratic Party v Electoral Commission and Others* {2006} ZACC 1; 2006 (3) SA 305 (CC); 2006 (5) BCLR 579 (CC); at paras 21, 2

5, 28 and 31; *Daniels v Campbell NO and Others* {2004} ZACC 14; 2004 (5) SA 331 (CC); 2004 (7) BCLR 735 (CC) at paras 22-3; *Stopforth v Minister of Justice and Others*; *Veenendaal v Minister of Justice and Others* {1999} ZASCA 72; 2000 (1) SA 113 (SCA) at para 21.

[11] Thornton Legislative Drafting 4ed (1996) at 155 cited in JR de Ville *Constitutional and Statutory Interpretation* (Interdoc Consultants, Cape Town 2000) at 244-50.

[12] *Jaga v Dönges NO and Another; Bhana v Dönges NO and Another* 1950 (4) SA 653 (A) at 662-3.

[13] 2012 4 SA 593 (SCA).

[14] Ibid, at (610B–C).

[15]1949 Ch D 121 130.

[16] *Dawood and Another v Minister for Home Affairs and Others; Shalabi and Another v Minister for Home Affairs and Others; Thomas and Another v Minister for Home Affairs and Others* {2000} ZACC 8; 2000 (3) SA 936 (CC) ; 2000 (8) BCLR 837 (CC) at para 47.

[17] {1999} ZASCA 72; 2000 (1) SA 113 (SCA) at para 21.

[18] S. De Smith, H. Woolf and J. Jowell, *Principles of Judicial Review* (Sweet and Maxwell, 1999) at 20.

[19] P. Craig, *Administrative Law*, 5th ed (Sweet and Maxwell, 2003) at p. 9.

[20] Lord Irvine, “*Judges and Decision-Makers: the Theory and Practice of Wednesbury Review”* [1996] PL 59, at 60-61