REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

CORAM: MUMBI NGUGI J

ACEC PETITION NO 1 OF 2020

PETER ODHIAMBO AGORO.....PETITIONER

VS

ANN KANANU MWENDA.....1ST RESPONDENT

HON. MIKE MBUVI SONKO.....2ND RESPONDENT

COUNTY ASSEMBLY OF NAIROBI.....1st INTERESTED PARTY

DIRECTOR OF PUBLIC PROSECUTIONS...2ND INTERESTED PARTY

RULING

1. The petitioner in this matter approached the court by way of his petition dated 13th January 2020 in which he sought, among others, an order barring the 2nd respondent from appointing a Deputy Governor and restraining the 1st Interested Party from proceeding with the process of vetting the 1st respondent, the nominee for the seat of the Deputy Governor of the County of Nairobi. Together with the petition, the petitioner filed an application premised on Article 1, 165, and 258 of the Constitution of Kenya, section 3 of the Judicature Act (High Court Practice and Procedure Rules Cap 8 and Rule 5(a) and 13 of the Practice Directions for the Anti-Corruption and Economic Crimes Division of the High Court seeking orders as follows:

> ***1. (spent).***
>
> ***2. That pending the hearing of this application inter partes, this Honourable court be pleased to grant an order of a temporary injunction barring, restraining, stopping and/or prohibiting the Interested party from vetting the 1st respondent for the position of the Deputy Governor Nairobi County.***
>
> ***3. That pending the hearing of this application inter parties, this Honorable court be pleased to grant an order of a temporary injunction barring, restraining, stopping and/or prohibiting the 2nd respondent from nominating any other person for the position of the Deputy Governor until the conclusion of Anti- Corruption criminal case 32 of 2019***
>
> ***...***
>
> ***4. That pending the hearing of the petition, this honorable court be pleased to grant an order of a temporary injunction barring, restraining, stopping and/or prohibiting the interested party from vetting the 1st respondent for the position of the Deputy Governor Nairobi County.***
>
> ***5. That pending the hearing of this petition, this honorable court be pleased to grant an order of a temporary injunction barring, restraining, stopping and/or prohibiting the 2nd respondent from nominating any other person for the position of the deputy governor until the conclusion of Anti Corruption Criminal Case 32 of 2019.***
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> ***6. Costs be in the cause.***

2. When the matter came up before the court, I directed that the matter be served on the respondents and the Interested Party, as well as the Office of Director of Public Prosecution which the court subsequently joined as the 2nd Interested Party, for directions on 22nd January 2020. Directions were given on 22nd January 2020 for the respondents and interested parties to file their responses to the application, and the matter was then fixed for further mention on 17th February 2020.

3. On this day, the petitioner renewed his application for interim orders. After hearing the parties' respective submissions on the application for conservatory orders pending inter partes hearing of the application, I granted orders restraining the 1stInterested Party from proceeding with the vetting of the 1st respondent as the Deputy Governor of the County Assembly of Nairobi pending *inter partes* hearing of the application. It is this ruling that is the subject of the application for review dated 17th February 2020.

4. The application by the 1st respondent is expressed to be brought under the provisions of section 3A of the Civil Procedure Act, Orders 1 Rule 8(i) and (ii), 51 Rules 1 and 15; 45 Rule 1(1), (2) and 3(2) of the Civil Procedure Rules and all other enabling provisions of the law. The applicant seeks the following orders:

> ***1. (spent)***
>
> ***2. That the interim orders issued by this honourable court on the 17th February 2020 be and are hereby reviewed to the effect that the application dated 13th January 2020 be heard and determined before the 5th day of March 2020.***
>
> ***3. That the interim orders issued by this honourable court on the 17th February 2020 are hereby set aside.***
>
> ***4. The costs of this application be provided for.***

5. The application was supported by an affidavit sworn by the applicant on 19th February 2020 as well as grounds set out in the application. It was canvassed before me on 24th February 2020.

6. Mr. Kiarie, learned Counsel for the applicant, submitted that the applicant was seeking to review the orders on the grounds that the court made an error in granting substantive orders on a mention date. Further, that there was also a constitutional timeline guided by **Advisory Opinion No 1 of 2015** with regard to the time within which a nominee for the seat of County Governor should be vetted.

7. According to the 1st applicant, the court had made an error in issuing the interim orders on a mention date. Reliance was placed on the decision in **National Bank of Kenya Limited v Ndungu Njau [1997] eKLR** for thesubmission that an order for review may be granted where the court considered that it was necessary tocorrect an error or omission on the part of the court.

8. With regard to the limitation of time within which the Deputy Governor should be vetted by the Interested Party, Mr. Kiarie submitted that Article 177 established the County Assembly as a state organ that ought to perform its legislative processes without interference, and he sought support for this submission in the Supreme Court case of **Justus Kariuki Mate & another v Martin Nyaga Wambora & another [2017] eKLR (Supreme Court Petition No. 32 0f 2014**) (hereafter the **Wambora decision**). According to Mr. Kiarie, the applicant was of the view that the orders issued on 17th February 2020 were interfering with the doctrine of separation of powers.

9. While conceding that under Article 165 of the Constitution the court is granted supervisory jurisdiction over other State organs, Counsel submitted that its powers ought to be exercised with a lot of restraint. In the applicant's view, the court should have limited itself to its functions while taking into account the prevailing circumstances of Nairobi City County, which are a matter of publicinterest.

10. Mr. Kiarie noted that through press releases on 16thJanuary and 7th February 2020, the Supreme Court and the Judiciary had stated that it is premature and misleading to imply that the ball with regard to the appointment of the Deputy Governor of the County Government of Nairobi is in the Supreme Court when preliminaries on the case before it have not been completed. It was his submission that this was a clear indication that the Supreme Court recognizes the doctrine of separation of powers and does not want to interfere with the constitutional process of other state organs.

11. In supporting the application for review, Mr. Kinyanjui for the 2nd respondent submitted that the jurisdiction to review an order under Order 45 requires the court to go back and consider its order and set it aside if it shows that it was rendered in error. He observed that the court can even do so *suo motu* from the inherent powers of the court. According to Mr. Kinyanjui, this matter was scheduled for mention for directions. The respondents had sought time to file responses to the application and had been given time to do so. It was therefore not within the purview of the court to grant the substantive orders on a mention date.

12. Reliance was placed on the case of **Barclays Bank vs Gladys Mutwiri& Others**(neither the authority nor its citations were provided). Mr. Kinyanjui submitted that the decision was on a par with what has transpired in this case. He submitted that there was no formal application before the court and reiterated that no substantive order can be made on a mention date, emphasized that the decision was binding on this court, and further sought reliance on the decision of Njagi J in **Awal Limited & 3 Others v Kenya Revenue Authority [2006] eKLR** in urging the court to set aside the orders issued on 17th February 2020.

13. Mr. Miller for the 1st Interested Party also supported the application and associated himself with the submissions of Mr. Kiarie and Mr Kinyanjui. He submitted that the position taken by Mr. Njenga on 17th February 2020 that the 1st interested party would abide by the decision of the court had not changed. Rather, it was guided by the fact that the court had asked the petitioner to consider whether he was properly before the court.

14. In his submissions in reply, Mr. Gitonga for the petitioner termed the application an attempt by the respondentsto have a second bite at the cherry. He observed that the respondents and the 1st Interested Party had been in court on 17th February 2020 when the court had issued the orders they were now seeking to set aside. They had made extensive submissions and the 1st Interested Party had undertaken to abide by the decision of the court. None of the parties in support of the application for review had raised the issues they were presently raising. In his view, there was no basis for the court to exercise powers of review.

15. Mr. Gitonga further submitted that Order 45 was not the proper provision of law to base the application on. His submission was that the application should have been made under the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules)**.

16. It was also Mr. Gitonga's submission that the key ground relied on by the applicant is also the key ground sought to be relied on by the 2ndrespondent, who had lodged a Noticeof Appealin the Court of Appeal on 18th February 2020 and had sent to the court a letter calling for typed proceedings, which letter had also been served on the parties. According to the Petitioner, Order 45 which the applicant seeks to rely on precludes a party who has filed an appeal from applying for review. In his view, once a notice of appeal has been filed, then a substantive appeal is deemed to have been instituted and order 45(1) precludes a review. Mr. Gitonga accordingly urged the court to disregard the submissions by Mr. Kinyanjui made on behalf of the 2nd respondent.

17. It was also Mr. Gitonga's submission that under Order 45(2), whereas the law allows a party who has not instituted an appeal to apply for review, the window is not open where the grounds of appeal are similar to the ground of review, and where the grounds of review and appeal are common. In his view, the applicant and the 2nd respondent can present to the appellate court the case upon which they are applying for review.

18. With regard to the contention that the court erred in issuing orders on a mention date, Mr. Gitonga submitted that the court is clothed with inherent powers under section 3A of the Civil Procedure Code to issue such orders. Further, that as this is a constitutional petition, Rule 3(8) of the Mutunga Rules, which reproduces the provisions of Rule 3A of the CPC, gives the court inherent power to give any order in the interests of justice and to prevent abuse of the court process.That under Rule 23, the Mutunga Rules provide for the issuance of conservatory or interim orders, and an application for such orders can, under Rule 24, be made orally. The application for conservatory orders in this case was not oral; that it was a written application which the court had power to hear and grant orders.

19. With regard to the contention by the applicant that there is a time limit for vetting of the Deputy Governor nominee that was to lapse on 5th March 2020, Counsel for the petitioner submitted that Rule 3(6) of the Mutunga Rules imposes a duty on a party or advocate to assist the court in reaching the overriding objectives of the Rules by complying with orders and directions of the court.He noted that despite the court on two occasions making orders for the respondents to file responses in order for all the issues in the petition to be addressed, the 1st respondent was yet to file a response, and the 7 days given for fling responses had expired on 24th February 2020. In his view, if the respondents were truly conscious of time as alleged, they ought to have filed their response.

20. Counsel asked the court to take judicial notice that the period of 60 days referred to by the applicant was captured by the Supreme Court in **Reference No 1 of 2015**. He noted that what the applicant had left out was that the procedural step of vetting after 60 days was supposed to come after the first step, the nomination of the Deputy Governor within 14 days of the vacancy.The alleged vacancy in this case occurred in January 2018, while the decision cited by the applicant was rendered in March 2018. The nomination in this case was done two years later, instead of the 14 days' timeline indicated in the decision. His submission was that the applicant and the 2ndrespondentwere now rushingto court waving the time limit of 60 days and urging the court to rush its decision and determine the matter by 5th March 2020 andexercisejurisdiction to review its order while they had two years for the appointment of the Deputy Governor, and the court should not allow this.

21. Finally,Counsel for the petitioner submitted that Rule 30 of the Mutunga Rules provides for extension of time if the court finds that the time has lapsed. His submission was that if the court finds that time has elapsed as a result of the orders of the court, the Rule allows the court to extend the time. Further, that the power of the court to interrogate the process to ensure that it complies with the law is sacrosanct and cannot be said tointerfere with the doctrine of separationof powers.

22. The 2nd Interested Party also opposed the application for review. Its Learned Counsel, Mr. Kihara, relied on an affidavit sworn by Ms. Thuguri on 24th February 2020.Mr. Kihara raised three points in his opposition to the application. The first was that while the applicant was seeking review of the orders issued on 17th February 2020, she had not shown that there was an error or omission apparent on the record nor had she shown that there were matters that were not within her knowledge at the time of the application. He observed that a perusal of the application before the court indicates that what the applicant was seeking or emphasising was the appointment of a Deputy Governor, and she was emphasising to the court the importance of constitutional timelines. His submission was that this was not sufficient to form a basis for review of the orders of the court.

23. The 2nd Interested Party's second argument was that the applicant's submissionswith regard to the constitutional timelines ought to have been presented to the court on 17th February 2020 as the court had on that date given the parties ample time to address it on the issue of interim orders.

24. To the applicant's contention that the orders issued were in violation of the doctrine of separation of powers, Mr. Kihara submitted that the issue was not a new issue that hadcometo theknowledge of the applicant, and it was not a material issue for ventilation in an application for review. His submission was that the orders of 17th February 2020 were not final orders but wereinterim in nature, The court had not therefore issued a substantive order on a mention date.In any event, the arguments with regard to the issuance of a substantive order were not raised in the application before the court and the submissions in this regard should not be considered. In the 2nd Interested Party's view, the applicant, like the 2nd respondent, should have appealed against the orders of the court. Mr. Kihara urged the court to dismiss the application with costs.

25. In his submissions in reply, Mr. Kithi who appeared with Mr. Kiarie for the applicant argued that contrary to the submissions by the Petitioner, Order 45 does not preclude a review. Where there are distinct parties before the court, their rights are distinct and separate both procedurally and substantively. Consequently, a notice of appeal by one party does not preclude another party from filing an application for review. Further, the petitioner had not indicted which grounds in the application for review were similar to the grounds of appeal, noting that in any event, the grounds of appeal were not before the court as a notice of appeal launches an appeal but does not state the grounds, which are usually contained in the Memorandum of Appeal. In any event, according to Mr. Kithi, the present application was filed by the 1st respondentwhile the appeal is filed by the 2ndrespondent.

26. With regard to orders being issued on a mention date, his submission was that Article 50 envisagesthe right to fair hearing in an adversarial system. Where a matter was set for mention, a mention notice was substantially directing the parties to what wouldtranspire before court; that the 1st applicant was not given a chance to be heard because the issue was dealt with at a mention; that the applicant's prior preparation was to come for a mention and not a hearing, and the applicant did not have notice of a hearing.

27. With regard to the petitioner's submissions that the court had issued orders on the basis of section 3A and the Mutunga Rules, Mr. Kithi submitted that the court did not indicate that it issued the orders under section 3A. Further, that while Rule 3(a) of the Mutunga Rule requires that the orders issued by the court should meet the ends of justice, the orders issued in this case do not meet the ends of justice as they were issued on a mention date.

28. He further noted that there were powers delineated to the courts under the doctrine of separation of powers. Counsel referred the court to the **Wambora** decision and the holding that the court should not direct how other state organs should conduct themselves.

29. Counsel maintained that the applicant had established the grounds for review and urged the court to grant the orders sought. He noted that there was an error on the part of the court for failing to consider the timelines for appointment of a Deputy Governor. Further, that Oder 45 does not preclude review of interim orders, and the context of the orders under challenge was permanent.

30. As for the argument that there had been a two-year period within which the Deputy Governor could have been appointed, the applicant's response was that there have been two previous appointments which have not passed the vetting, and the time for vetting therefore does not begin to ran until the appointment was made.

31. Counsel sought to distinguish the timelinesgiven in **Petition 1 of 2014 reference No 1 of 2015**) with respect to timelines for appointment and vetting of a Deputy Governor which weregiven as 14 and 60 days respectively. The distinction, according to Mr. Kithi, is that the substantive vacancy was on 12th January 2018; that the decision in the**Wambora**case was in March 2018, and the time limit cannot be applied retrospectively. It could only apply in context, and it did not say what would happen if a nomination is rejected by a County Assembly.

32. Mr. Njenga for the 1st Interested Party reiterated its support for the application, though he conceded he had indicated that the 1st Interested Party would abide by the court's decision, though he added the rider that all parties have a duty to be guided by the court's decisions.

33. I have considered the submissions of the parties to this matter on the question whether I should review the interim orders issued on the 17th of February 2020. I note that though the application had been scheduled for hearing some days before, the parties were not adequately prepared in so far as the judicial authorities they intended to rely on were concerned. Reference was made to several decisions by the parties, but they neither had copies of the authorities or the citation, leaving it to the court to find the said authorities. While I have endeavoured to do so, I was not able to find some of the decisions cited, and I have therefore disregarded those decisions that were cited but not furnished to the court.

34. At the core of the application are two grievances: that the court issued substantive orders on a mention date, and that there is a timeline for vetting of Deputy Governors by the 2nd Interested party which had been affected by the ruling of the court that the applicant seeks review of. A third argument advanced is that the court erred in that it disregarded the doctrine of separation of powers in rendering the decision of 17th February 2020.

35. The application is premised on Order 45 of the Civil Procedure Code which provides as follows:

> ***(1) Any person considering himself aggrieved—***
>
> > ***(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or***
> >
> > ***(b) by a decree or order from which no appeal is hereby allowed,* and *who* from the 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 <u>on account of some mistake or error apparent on the face of the record</u>, or <u>for any other sufficient reason</u>, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.***
>
> ***(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party <u>except where the ground of such appeal is common to the applicant and the appellant</u>, or when, being***

respondent, he can present to the appellate court the case on which he applies for the review.

(Emphasis added)

36. In an application for review, the applicant thus has to demonstrate '*some mistake or error apparent on the face of the record'*. In its decision in National Bank Of Kenya Limited v Ndungu Njau [1997] eKLR, the Court of Appeal held as follows:

> ***"A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."***

37. In its decision in **Christopher Musyoka Musau v N. P. G. Warren & 8 others [2017] eKLR**, the Court of Appeal held as follows with respect to an application for review:

> ***"This Court has repeatedly held that the jurisdiction and scope of review is not the same as that of an appeal and that the jurisdiction of review can be entertained only if the three conditions stipulated in Order 45 rule 1 are met, that is, where, one, there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or the order made, or, two on account of some mistake or error apparent on the face of the record, or three, for any other sufficient reason."***

38. In **Muyodi vs. Industrial and Commercial Development Corporation & Another [2006] 1 EA 243**, the Court of Appeal considered what amounts to an error apparent on the face of the record and stated as follows:

> ***" In Nyamogo & Nyamogo -vs- Kogo (2001) EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal…"***
>
> (Emphasis added)

39. In the present case, the applicant and those who support the application have not been able to identify an error apparent on the face of the record. Their arguments revolve around the fact that the interim restraining orders were issued on a mention date, that the 1st Interested party has a timeline within which to appoint a Deputy Governor, and thirdly, that the orders of the court are in breach of the doctrine of separation of powers.

40. With regard to the last two arguments, they do not constitute "***errors of law apparent on the face of the record."***They constitute, in my view, arguments on matters of law and constitutional interpretation that would have to *"….be established by a long drawn process of reasoning or on points where there may conceivably be two opinions"* and would call for consideration of the powers of the High Court under Article 165 of the Constitution. They are legal arguments that were not presented before the court at the time it issued the orders sought to be reviewed.

41. The other argument on the basis of which the court is asked to review its order is that it issued substantive orders at a mention date, which it ought not to have done. It is correct that, as submitted by the 2nd respondent and echoed by the applicant, though this was not a ground set out in her application, that the court should not make substantive orders on a mention date, but there is a rider to this. In **Rahab Wanjiru Evans vs. Esso (K) Ltd. Civil Appeal No. 13 of 1995 [1995-1998] 1 EA 332**, the Court of Appeal held that when a matter is fixed for mention, it cannot be heard unless the parties consent to the hearing. In the same vein, the court held in **Central Bank of Kenya vs. Uhuru Highway Development Ltd. & 3 Others Civil Appeal No. 75 of 1998**, that when a matter is fixed for mention, the matter should not determine the substantive issues in the matter unless the parties so agree, and only after hearing submissions on the matter from the parties.

42. It has, however, also been held in **Rev. Madara Evans Okanga Dondo vs. Housing Finance Company of Kenya Nakuru HCCC No. 262 of 2005** that:

> ***"The court will always invoke its inherent jurisdiction to prevent the abuse of the due process of the court. The jurisdiction of the court, which is comprised within the term "inherent", is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of the substantive law; it is exercisable by summary process, without plenary trial, it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of the court. The inherent jurisdiction of the court enables the court to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process. In sum, it may be said that the inherent jurisdiction of the court is virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to***

do justice between the parties and to secure a fair trial between them.”(Emphasis added)

See also **Ryan Investments Ltd & Another vs. The United States of America [1970] EA 675.**

43. In this case, the petitioner filed a constitutional petition questioning the constitutionality of the exercise of powers by the 2nd respondent to appoint the applicant as the Deputy Governor of the County of Nairobi. The appointment was made during the pendency of criminal charges against the 2nd respondent, a condition of whose bail terms was that he would not exercise powers of the office of Governor. The question pending before the court was whether the 2nd respondent could exercise such powers. In his application, the petitioner had sought interim orders to stop the 2nd interested party from proceeding with the vetting of the applicant pending *inter partes* hearing of the application, a prayer that the petitioner revived on 17th February 2020 when the court granted the orders the subject of this application for review.

44. It is not in dispute, I believe, that the court has inherent jurisdiction to issue such orders as are in the interests of justice. Where, as in the present case, the orders being sought are intended to preserve a certain state of affairs and failure to preserve that state of affairs would result in injustice and render the entire proceedings academic, in my view, the court is entitled, even at a mention date but after hearing the parties, to issue conservatory orders.

45. In reaching this conclusion, I bear in mind the provisions of the **Mutunga Rules**. Rule 3 of the said Rules provides that:

Scope and objectives.

3. (1)….

(2) The overriding objective of these rules is to facilitate access to justice for all persons as required under Article 48 of the Constitution.

(3) These rules shall be interpreted in accordance with Article 259(1) of the Constitution and shall be applied with a view to advancing and realising the—

(a) rights and fundamental freedoms enshrined in the Bill of Rights; and

(b) values and principles in the Constitution.

(4) The Court in exercise of its jurisdiction under these rules shall facilitate the just, expeditious, proportionate and affordable resolution of all cases.

(5) For the purpose of furthering the overriding objective, the Court shall handle all matters presented before it to achieve the—

(a) just determination of the proceedings;

(b)…;

(c)

(6) A party to proceedings commenced under these rules, or an advocate for such party is under a duty to assist the Court to further the overriding objective of these rules and in that regard to—

(a) participate in the processes of the Court; and

(b) comply with the directions and orders of the Court.

(7)…;

(8) Nothing in these rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

46. More importantly, in dealing with any matter before it, the court is enjoined by the Constitution at Article 159 to deal with the matter before it without undue regard to procedural technicalities, which requires the application by the court of its inherent powers to do substantive justice to the parties before it.

47. Taking all the above matters into consideration, I am not satisfied that there is a basis for reviewing the orders issued on 17th February 2020. The said orders were issued as an interim measure to preserve the substratum of the petition. All the parties were heard before the orders were issued. Further, the applicant has not demonstrated the existence of any of the conditions prescribed by the provisions of Order 45 to warrant the exercise of the powers of review by this court.

48. Accordingly, it is my finding that the present application has no merit, and it is hereby dismissed.

Dated and Signed at Nairobi this 22nd day of April 2020

MUMBI NGUGI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent and pursuant to notices issued on 8thand 15thApril 2020. The parties have waived compliance with Order 21 rule 1 of the Civil Procedure Rules which requires that all judgments and rulings be pronounced in open court.

MUMBI NGUGI

JUDGE