REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L MISCELLANEOUS APPLICATION NO. 15 OF 2019

CHESERET ARAP KORIR.....APPLICANT

VERSUS

EQUATORIAL LAND HOLDINGS LIMITED.....RESPONDENT

RULING

1. **Cheseret Arap Korir**, the Applicant, seeks through the Motion dated the 6th May, 2019 brought under **Article 48 and 159 of the Constitution**, ***Section 35 of the Arbitration Act 1995, Rule 7 of the Arbitration Rules 1997*** and ***Order 46, Rule 6 of the Civil Procedure Rules*** to have the arbitral award dated the 30th April, 2019 and delivered on the 3rd May, 2019 set aside and costs. The application is based on the fifteen (15) grounds on its face marked (a) to (o) and is supported by the affidavits sworn by the Applicant on the 6th May 2019 and 28th January, 2020. That it is the case of the Applicant that the arbitral award is defective as the procedure followed was not in tandem with the court ruling of 1st March, 2019 in Eldoret ELC No. 127 of 2018 and agreement of the parties. The application is opposed by Equatorial Land Holdings Limited, the Respondent, through the replying affidavits sworn by David May, the Managing Director, on the 16th May 2019, 3rd February, 2020. That it is the Respondent's case that the application was filed prematurely as the three months provided in the Arbitration Act expires on the 3rd August, 2019. That the lease agreement did not have a provision for the Applicant as the lessor to issue notice of non-renewal, and the one dated 19th March, 2018 was not grounded on any contractual or legal foundation. That the lease contains a covenant for renewal/extension of the lease term which confers on the lessee an immediate term with a right to a further term, and that option is an irrevocable offer. That the appointment of the single arbitrator was done in accordance with the lease agreement and the award thereof was lawful. That the court ruling of 1st March, 2019 provided for an arbitrator to be appointed.

2. The Respondent filed the Motion dated the 10th June, 2019 that is brought under **Section 36 of the Arbitration Act**, seeking for the final arbitral award dated the 30th April, 2019 to be recognized as binding, adopted and enforced as an order of this court, and for leave to enforce the award as a decree of the court and costs. The application is based on the six grounds on its face and supported by the affidavit sworn by David May, the Managing Director, on the 10th June, 2019. That it is the Respondent's case that after the court ruling of 1st March, 2019 giving the parties two months to engage in arbitration in compliance with clause 12.1 of the lease agreement dated the 12th June 2009, the arbitral proceedings commenced on the 15th March, 2019. That the final award dated 30th April, 2019 was delivered on the 3rd May, 2019. That the Applicant filed an application dated 6th May, 2019 challenging the arbitral award before the 30 days provided under **Section 34 of the Arbitration Act** had lapsed. That the 30 days period under **Section 34** of the said Act lapsed on 3rd June, 2019 and the Respondent is entitled to seek for adoption, recognition and enforcement of the arbitral award as an order and decree of the court. That the Applicant's application dated the 6th May, 2019 and their application dated 10th June, 2019 be heard simultaneously. The application is opposed by the Applicant through his replying affidavit sworn on the 5th July, 2019. The Applicant's case is that the application is made in bad faith and should be stayed to allow his application dated 6th May, 2019 and to which the Respondent has replied, be heard and determined first. That the ruling of 1st March, 2019 on the appointment of the arbitrator was not complied with. That the arbitrator exceeded the scope of his authority by purporting to compel the parties to agree on the rent payable and the award is untenable.

3. That learned Counsel for the Applicant and Respondent filed their written submissions dated the 21st May, 2019 and 25th May, 2019 respectively. The Counsel for the Respondent and Applicant also filed their written submissions dated 3rd October, 2019 and 15th October, 2019 respectively.

A. **APPLICANT'S SUBMISSIONS ON THE MOTION DATED 6TH MAY, 2019.**

- The learned Counsel for the Applicant submits that the ***Section 35 of the Arbitration Act, 1995 Laws of Kenya*** allows an application for setting aside an award under subsections (2) and (3) on various grounds including where the arbitral award dealt with a dispute outside or beyond the reference, the award was induced or affected by undue influence, the subject matter of the dispute is not capable of settlement by arbitration under the Kenyan law or the award is in conflict with the

public policy of Kenya.

- That the matters referred to the arbitrator by the Respondent were first, a declaration that the Defendant was contractually bound to honour the provisions of the lease agreement particularly Clause 2.2 and secondly, an order directing the Applicant to comply with Clause 2.2 of the lease agreement dated 12th June, 2009 and extend the lease in favour of the Respondent for 10 years from 22nd January, 2019. That however, the award at page 32 was not in tandem with the reference as he renewed the lease arbitrarily for 10 years and left the question of the rent to be agreed by the parties, hence leaving it open for another arbitration. The learned Counsel submitted that amounts to misconduct on the part of the arbitrator and the award should not be allowed to stand. The Counsel referred to the Court of Appeal decision in ***Josephat Waweru Miano & Another Vs Samuel Mwangi Miano & Another [1997]*** **eKLR** on the effect of misconduct.
- That the award was induced by undue influence as the arbitrator had been appointed on the 17th January, 2019 before the court ruling of 1st March, 2019 which directed on how the arbitrator was to be appointed and parties to submit to arbitration. That the arbitrator proceeded with the matter notwithstanding the court order. That the arbitral fee of Kshs.523,500 was wholly paid by the Respondent which goes to show existence of undue influence, and the award should not be recognized as to do so would be against public policy as was held in ***Goodison Sixty-One School Ltd Vs Symbion Kenya Ltd [2018] eKLR***.
- That it was absurd for the arbitrator to order the parties to agree on rent payable as the parties cannot be coerced to contract against their will. That as the lease agreement did not have a formula of arriving at the rent payable, then it was not self-contained and the rent dispute is incapable of settlement by arbitration under the Laws of Kenya. That accordingly, the award should not stand.
- That the lease agreement was entered into before the advent of the Constitution, 2010 which birthed the new Land Laws regimes. That accordingly, the lease should be read with the said land laws in mind including **Section 61(2) of the Land Act No. 6 of 2012** which provides that future leases that are expressed to be for a period of more than five years ***"shall have no effect unless and until it is registered"***. That as the lease sought to be enforced is in the future and not registered, then it contravenes the said provision of the Land Act. That further, the new land law dispensation requires spousal consent and as none had been obtained in this case, the renewal cannot be enforced. That further, renewal of the lease is subject to the Land Control Board consent as the land is agricultural. That as Clause 2.2 of the lease agreement shows that the lease was indefinite as all it required was for the Respondent to show intention to renew and that the Applicant's intention was immaterial, then the agreement was contrary to justice and morality. The learned Counsel referred to the Court of Appeal decision in ***Kasturi Ltd Vs Nyeri Wholesalers Ltd [2014] eKLR***, where the court held inter-alia that ***"it is the duty of the courts to ensure that no individual is prevented from taking possession and/or enjoying their property. A tenant cannot impose or force him/herself/itself on a Landlord".***
- That the Respondent does not have a Mining licence as the licence is held by ***Karebe Gold Mining Ltd***, a third party. That the Applicant has no agreement with the said third party. That accordingly, the award should not be allowed to stand as it is inconsistent with the ***Constitution Land Act, Mining Act, Land Control Act*** and further contrary to justice and morality.
- That as the application was filed within the three months set by **Section 35 of the Arbitration Act,** it should be allowed and the arbitral award set aside in its entirety.

B. RESPONDENT'S COUNSEL SUBMISSIONS ON THE MOTION DATED 6TH MAY, 2019.

- The learned Counsel for the Respondent submitted that the lease agreement between the Applicant and Respondent of 12th June, 2009 at Clause 2.2 allowed the Respondent to extend the lease for further term of 10 years upon expiry of the initial term, by issuing the Applicant with a notice six months before expiry of the initial term, which was to expire on the 21st January, 2019. That the Respondent issued the renewal notice dated 3rd July, 2018 but the Applicant objected and asked the Respondent to vacate from the lands. That the Respondent complied with the provision of Clause 12.1 and 12.6 on negotiations and arbitration and an arbitrator was appointed through the letter dated 17th January, 2019 by the Chairman, Chartered Institute of Arbitrators. That the Respondent also filed Eldoret ELC No. 127 of 2018 and its application filed therein was allowed on the 1st March, 2019 among others restraining the Applicant from evicting the Respondent and directing the Applicant to submit to arbitration as provided in their lease agreement. That the parties filed their documents with the arbitrator. That the Applicant objected to the arbitrator for reasons that he had not been appointed by consent and that he had been appointed before the court ruling of 1st March, 2019. That the arbitrator heard the parties on the Applicant's objection and made a determination on the 12th April, 2019 overruling the objection. That after the Applicant failed to meet his share of the arbitrator's fee, the Respondent was constrained to pay and thereafter the award was delivered on 3rd May, 2019.
- That in terms of **Section 33 of the Arbitration Act**, the arbitral proceedings are terminated by the arbitral award.
- That the Applicant failed to comply with **Rule 7 of the Arbitration Rules, 1997**, which requires application filed under **Section 35 of the Arbitration Act** to be served on the other party and the Arbitrator. That the Applicant confirmed to the court on the 20th May, 2019 that he had not served the arbitrator and hence the application is fatally defective and should be dismissed with costs as it would against rules of natural justice to condemn the arbitrator for the misconduct and undue influence allegations without giving him an opportunity to be heard. The learned Counsel referred to the case of ***Victoria Furnitures Ltd Vs Zadock Furniture Systems Ltd [2017] eKLR*** and ***Heva Fund LLP Vs Katchy Kollections Ltd [2018] eKLR***, where the court held that under ***Rule 7 of the Arbitration Rules***, the other party and arbitrator must be served with the application.
- That in view of the findings of the Court of Appeal in ***Anne Mumbi Hinga Vs Victoria Njoki Gathara [2009] eKLR*** and ***Kenyatta International Convention Centre (KICC) Vs Greenstar Systems Ltd [2018] eKLR***, ***Nyutu Agrovet Ltd Vs Airtel Networks Ltd [2015] eKLR*** and ***Heva Fund LLP Vs Katchy Kollections Ltd [2018] eKLR*** that **Section 10** of the **Arbitration Act makes the said Act** a complete code and that the Section is not made inactive by ***Rule 11 of the*** **Arbitration Rules**, then **Order 46 Rule 16 of the Civil Procedure Rules** cited in this application is not applicable.
- That an application under **Section 35 of Arbitration Act** must keep strictly within the grounds set thereto. That such an

application is not an appeal against the arbitrator's award.

- That the arbitrator did not deal with any issues outside the matters referred to him for arbitration which were all to do with clause 2.2. That the renewal option did not invalidate the lease agreement as clause 2.2 provided the parties were to agree on the rent in one month before the end of the lease term. That it is the Applicant who has declined to renew the lease and to negotiate on the rent payable hence breaching his contractual obligations under Clause 2.2.
- That the allegations of misconduct and undue influence of the arbitrator has not been proved in the strict and specific sense.
- That the court order of 1st March, 2019 required the parties to engage in arbitration in compliance with Clause 12.1 of the lease agreement and the Applicant was directed to submit and co-operate in the process as provided in the lease agreement of 12th June, 2009. That the arbitral proceedings could not have started before the court ruled on the injunctive prayer and order for the Applicant to submit to the process. That once the court delivered its ruling, the arbitral process commenced and were completed in 60 days as ordered by the court.

C. **RESPONDENT'S COUNSEL SUBMISSIONS ON THE MOTION DATED 10TH JUNE, 2019**

- That the application is pursuant to **Section 36 of the Arbitration Act**. That both parties filed their pleadings and fully participated in the arbitral proceedings after the court order and directions of 1st March, 2019 in Eldoret ELC No. 127 of 2018. That the arbitrator heard the Applicant's preliminary objection and overruled it on the 12th April, 2019 and no appeal on the ruling was filed.
- That the sole arbitrator had been legally and correctly appointed and he exercised his jurisdiction properly and after considering the pleadings and evidence tendered made his final award, which was restricted to the terms and scope of the reference.
- That there is no justification why the court should not adopt the award as a decree of the court to pave way for enforcement.
- That this court has no jurisdiction in view of **Section 10 of the Arbitration Act** to interfere with the award or substitute it with its own findings, as the Applicant's application and objections do not fall on the strictures of **Section 37 of the Arbitration Act,** and proof thereof tendered, which in this matter has not been done.
- That the application dated 10th June, 2019 should be allowed with costs.

D. APPLICANT'S COUNSEL'S SUBMISSIONS ON THE MOTION DATED 10TH JUNE, 2019

- That the Applicant's application to set aside the arbitral award should be determined first and Respondent's Motion dated 10th June, 2019 to adopt the award be dismissed with costs. That the arbitrator was served with the setting aside application on the 12th July, 2019 in line with **Clause 7 of the Arbitration Rules** and affidavit of service dated 23rd September, 2019 filed.
- That the Applicant was not given proper notice of appointment of the arbitrator contrary to **Section 37(1)(a)(iii) of Arbitration Act**. That the process of appointing the arbitrator ought to have started afresh after the court ruling of 1st March, 2019. That to hold otherwise would mean the arbitrator who had been appointed on the 17th January, 2019 ought to have completed the proceedings by 17th March, 2019 so as to comply with the court order for the two months. That accordingly as the award was not completed until 30th April, 2019 the arbitrator arrogated himself jurisdiction he did not have, and the award is therefore a nullity. The Counsel referred to the Court of Appeal's decision in **Mairi Vs Ngonyoro "B" & Another [1986] eKLR**. That the award being a nullity should not be adopted.
- That the arbitrator had preliminary meeting with the Respondent's Advocate without the Applicant's representation which leads to the conclusion that his action was actuated by undue influence in contravention with **Section 37(1)(a)(vii) of the Arbitration Act.**
- That the arbitral award dealt with a dispute not falling within the terms of the reference to arbitration contrary to **Section 37(1)(a)(iv) of the Arbitration Act, 1995** by renewing the lease instead of making a ruling as to whether the Applicant was contractually bound to honour the lease agreement, in particular, Clause 2.2. That the award should therefore not be adopted. That the arbitral award is yet to become binding upon the parties as the rent payable has not been agreed. That as the notice of non-removal was communicated on the 19th March, 2018 long before the Respondent purported to exercise the option of renewal on 3rd July, 2018, no effective renewal of the lease has taken place and the arbitral award cannot be adopted.
- That award was in conflict with the public policy, the land statutes and the Constitution and hence should not be adopted.
- That the adoption application should be dismissed with costs.

4. The following are the issues for the court's determinations;

(a) Whether the Applicant has made a reasonable case for setting aside the arbitral award.

(b) Whether the Respondent has established a case for the arbitral award to be adopted as an order and decree of this court.

(c) Who pays the costs of each of the two applications?

5. The court has considered the grounds on the two applications, the affidavit evidence by both parties, the written submissions by Counsel

for the two parties and come to the following determinations;

(a) That the parties are in agreement that they entered into a lease agreement dated the 12th June, 2009 in respect of land parcels Nandi/Chemase/974 and Nandi/Legemet/224 for ***"Mining activities and usual conveniences connected therewith "for"*** ten (10) years, unless otherwise determined as provided for in this lease. ***"That the commencement date of the lease under Clause 1.1 (c) is specified as the 21st January, 2009".***

(b) That under Clause 2.2 of the lease agreement, the Respondent, as the lessee was granted an option of extending or renewing the lease in the following words;

> **"2.2.The Lessee shall have the option to extend the term by notice in writing given to the lessor six (6) calendar months prior to the end of the term for a further period of ten (10) years on the same terms and conditions as this agreement (save for any amendments and/or variations agreed between the parties) and the rent payable shall be agreed between the parties at least one calendar month prior to the expiry of the term".**

That having considered the superior court decisions cited by both Counsel on the import of the foregoing clause, the court finds and holds that it amounts to an offer by the lessor (Applicant) for the Lessee (Respondent) to consider, and if appropriate communicate acceptance to the lessor six (6) months before the expiry of the ten (10) years lease term.

(c) That the Applicant (Lessor) served the Responent (Lessee) with the letter dated 19th March, 2018 headed ***"NOTICE FOR NON-RENEWAL OF THE LEASE".*** The notice refers to **Clause 10(1) and (2) of Lease Agreement** that deals with Notices and Addresses of the parties. The said notice indicated that the Applicant had ***"no intention to renew the lease agreement"*** and gave the Respondent ***"notice to vacate the premises immediately after the lease expiry date"***. That the said notice was received by the Respondent in view of their letter dated the 16th April, 2018 in which they responded that the ***"notice is therefore premature and offends the terms and conditions encapsulated and enshrined in the lease contract"*** and as the Respondent had not breached or failed to perform or observed the conditions and covenants, the Applicant ***"has absolutely no contractual, legal or other justifications for issuance of the notice"***. That come the 3rd July 2018, the Respondent issued and served the Applicant with the letter under reference ***"Renewal of Lease Agreement on 21st January, 2019"***. The Applicant responded to the said letter by theirs dated 10th July, 2018 indicating that he does not wish to renew the lease as requested. That several other correspondences between the Respondent and Applicant through their Counsel followed without either party changing their position. That the Respondent then wrote the letter dated 13th October, 2018 to the Chairman, Chartered Institute of Arbitration (Kenya) pursuant to Clause 2.2 and 12.1 of the lease agreement seeking for the appointment of a single arbitrator to hear and determine the dispute between the parties. The said Chairman vide his letter dated 17th January, 2019 appointed Githiri A. Kimani as the sole Arbitrator. The said arbitrator's award is the one the Applicant seeks to be set aside and the Respondent wants to be adopted by the court through the applications dated 6th May, 2019 and 10th June, 2019 respectively.

(d) That in the meantime, the Respondent filed ELC No. 127 of 2018 against the Applicant and vide an application filed with the plaint sought for an order of permanent injunction restraining the Applicant, and those claiming through him from terminating the lease agreement, evicting the Respondent from the leased parcels..., pending the hearing and determination of arbitration. They also sought for an order directing the Applicant to submit to and co-operate with the arbitration as provided in the lease agreement dated 12th June, 2019. The application was heard and the ruling delivered on the 1st March, 2019. The court among others issued the injunction order restraining the Applicant from evicting the Respondent ***"pending arbitral proceedings which should be conducted within a period of 2 months from the date of appointment of the arbitrator"***, that the Applicant to ***"submit to and co-operate in the arbitration as provided in the lease agreement dated the 12th June, 2009"***, and that the parties to agree to the appointment of an arbitrator and to submit to the process of arbitration. That both the Respondent and Applicant appear to take different positions as to whether the arbitrator appointed vide the letter dated the 17th January, 2019 and who made the arbitral award subject matter of the two applications, was appointed in accordance with the court's directions. That there is nothing in the court ruling of 1st March, 2019 to suggest that the arbitrator appointed by the Chairman of Chartered Institute of Arbitration on the 17th January, 2019 was deemed to have been appointed through the agreement of the parties. The arbitrator's appointment was pursuant to the Respondent writing to the Chairman after the Applicant declined to the renewal of the lease, and to participate in the arbitral process. That the said arbitrator cannot therefore be taken to have been appointed in accordance with the court directions of 1st March, 2019 which was to the effect that the parties to engage in arbitration in compliance with Clause 12.1 of the lease agreement and to agree to the appointment of an arbitrator and to submit to the process of arbitration. That it is important to note that the court proceedings and application through which the orders of 1st March, 2019 were issued had been filed by the Respondent and there is no explanation tendered why the court's directions on agreeing on the appointment of the arbitrator was not attempted or followed. That had it not been for the failure to obey the 1st March, 2019 court directions on appointment of the arbitrator, the appointment of the sole arbitrator of 17th January, 2019 that was in accordance with the Clause 12.1 of the 12th June, 2009 lease agreement between the parties would not have been faulted.

(e) That long before the Respondent wrote their letter dated 3rd July 2018 to indicate or communicate their intention to have the lease renewed in terms of Clause 2.2 of the lease agreement, the Applicant had through the letter of 19th March, 2018, communicated his intention not to renew the lease. That position was not accepted by the Respondent while the Applicant did not accept the Respondent's desire for renewal. That the court having taken the option in Clause 2.2 of the lease agreement to have been an offer by the Applicant awaiting to be accepted by the Respondent within the timelines given, the question that arises is the effect of the Applicant's notice not to renew dated the 19th March, 2018. The court has considered the submissions by both Counsel on the matter and the decided cases cited and come to the finding that the Defendant's letter dated 19th March, 2018 effectively negated or withdrew the offer to renew the lease that existed through Clause 2.2 before the Respondent communicated their desire to renew. That it therefore follows that by the time the Respondent did their letter dated 3rd July 2018, there was no offer to renew capable of being accepted.

(f) That the provision of ***Section 61(2) of the Land Act No. 6 of 2012*** that a future lease which is expressed to be of a period of more than five years shall be of no effect unless and until it is registered would not have been an impediment in renewing the lease for ten years under Clause 2.2 of the lease agreement had both parties agreed to it. That is because they would have proceeded to register it or alternatively agreed to reduce the term to five years or below. They would also have dealt with the issue of spousal consent and Land Control Board consent. The problem arises where as held in (e) above, the Applicant had clearly indicated that he had withdrawn the offer to renew and therefore the Respondent could not accept what was not on offer.

(g) That though the Applicant has on one part questioned the sole arbitrator's impartiality or undue influence in the arbitral proceedings, the Respondent has on the other part defended the said arbitrator's conduct. That having considered the parties depositions and the learned Counsel's submissions, the court finds the Applicant has failed to present before the court evidence sufficient to establish a case of undue influence or impartiality attributable to the arbitrator. That however, the apparent haste of the arbitrator to proceed with the proceedings without the parties confirming whether his appointment was in line with the court's directions of 1st March, 2019 may have resulted to the Applicant having doubts on his impartiality. That fact forms a reasonable basis for the Applicant to seek for the award made thereof to be set aside.

(h) That the issues referred to arbitration by the Respondent, and the prayers sought thereof were basically a declaration that the Applicant was contractually bound to honour Clause 2.2 of the lease agreement, and an order directing him to comply with the contractual provisions thereof. That however, the award by the arbitrator has been challenged by the Applicant for dealing with matters beyond the scope of the reference. That it is clear the award is to the effect that the lease was properly and validly renewed pursuant to Clause 2.2 by the Respondent's notice of 3rd July, 2018 for a further 10 years commencing from 22nd January, 2019 and that the parties to agree with the rent payable. The Court has carefully considered submissions by both Counsel on the matter and found that the reference to arbitration did not raise the issue of the legal effect of the Respondent's notice dated 3rd July, 2018 but whether the Applicant was bound to honour and comply with Clause 2.2 of the lease agreement. That accordingly, the award dealt with a matter that was outside the reference in contravention with ***Section 37(1)(a)(iv) of the Arbitration Act, 1995***.

(i) That it is quite clear the lease agreement between the parties herein was entered into before the promulgation of the Constitution, 2010 and the enactment of the post 2010 Land Statutes including the **Land Act No. 6 of 2012**. That **Article 2(4)** of the said Constitution provides that all Laws including customary law that is inconsistent with the Constitution is void to the extent of the inconsistency and any act or omission in contravention of the Constitution is invalid. That **Section 7(1)** of the Sixth Schedule to the Constitution provides that ***"All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptions, qualifications and exceptions necessary to bring it into conformity with this constitution"***. That the Land Act is a post Constitution, 2010 legislation and in accordance with **Article 68 of the Constitution**. That **Section 56(a) of the said Act** provides for the power to lease private land for a ***"definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee…".*** That the court takes the Applicant's notice not to renew dated 19th March, 2018 to have been issued in exercise of his statute recognized powers to terminate the offer to renew the lease months before the Respondent indicated their willingness vide their letter dated 3rd July, 2018 to renew. That **Section 61(2) of the Land Act** provides that ***"A future lease which is expressed to be of more than five years shall be of no effect unless and until it is registered"***. That the arbitral award is to the effect that the Plaintiff has renewed a ten year lease commencing 22nd January, 2019. That renewal had been through the letter dated 3rd July, 2018 and was then a future lease. There is no evidence that it has ever been registered or other statutory consents obtained and therefore offends **Section 61(2) of the said Act**. That the arbitral award is therefore in violation of the said provision of the law and in the absence of parties' agreement to negotiate, and bring it in line with the provision of the Constitution, 2010 and the Land Laws regimes that were enacted after the said Constitution, it offends public interest.

6. That flowing from the foregoing, the Court finds and order as follows:

(i) That the Applicant's Motion dated 5th May, 2019 has merit and is hereby allowed as prayed with costs.

(ii) That the Respondent's Motion dated 10th June, 2019 fails and is dismissed with costs.

Orders accordingly.

Dated and **signed** at **Eldoret** this **26th** day of **February, 2020.**

S. M. KIBUNJA

JUDGE

Ruling read in open court in the presence of:

Mr. Kimani for Applicant.

Mr. Menezes and Maganga for Respondent.

Court Assistant: Christine