REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 421 OF 2008

BMK.....PLAINTIFF

VERSUS

AIG KENYA INSURANCE LTD.....DEFENDANT

JUDGMENT

(1) The instant suit was consolidated with the (2) other suits vide the Orders of Court made on **30th September 2009.** As a result of said order the following three suits were duly consolidated to be heard as one.

(a) H. Comm. No.421 of 2008

BKK –Vs- AIG Kenya Insurance Co. Ltd

(b) H. Comm No.422 of 2018

JM.K Vs AIG Kenya Insurance Co. Ltd

(c) H. Comm No.423 of 2008

LNM Vs AIG Kenya Insurance Co. Ltd

The lead file was **H. Comm No.421 of 2008**.

(2) By way of a Plaint dated **15th July 2008 BMK** (the Plaintiff) sought the following orders:-

"(a) Declaration that the Defendant is liable and bound under the medical insurance policy No.KK…. to pay for the Plaintiff's medical bill up to the full limit of the policy during the entire period of the Plaintiff's stay in the United States of America.

(b) Special damages of US$ 476,573.65.

(c) General damages for breach of Contract

(d) Costs and interest at commercial rates from the date of filing this suit until payment in full.

(e) Any such other or further relief as this Honourable court may deem appropriate."

(3) The Defendant **AIG KENYA INSURANCE CO. LTD** opposed the suit through its Defence dated **20th August 2008**.

(4) The hearing of the suit commenced on **13th October 2014** before **Hon Lady Justice J Kamau** who heard the first three (3) witnesses. Thereafter **Hon. Lady Justice Olga Sewe** took over the matter on **1st November 2016** and heard the evidence of the Plaintiff's last witness

as well as the Defence. Following the transfer of **Justice Sewe** to the Eldoret High Court I took over the file for purposes of preparation of the judgment.

THE EVIDENCE

(5) The Plaintiff called three (3) witnesses in support of their case whilst the Defendants called only one (1) witness.

(6) **PW1 LNM** was a daughter to the Plaintiff **BMK.** The witness relied on her statement dated **27th January 2012. PW1** told the court that on or about **13th May 2008** her father secured from the Defendant a Travel Medical Insurance Policy to cover his family being Policy Number **KK…..**

(7) On **14th May 2008, PW1** together with her father and her mother travelled to the United States of America to attend the graduation ceremony of one of her siblings. Whilst in the United States the witness states that her mother fell ill which illness necessitated her admission into a **US** medical facility for treatment. That despite being duly informed of this occurrence the Defendant failed and/or declined to meet the medical expenses for the Plaintiff. Due to her mother's illness **PW1** states that she was forced to extend her stay in the **USA** in order to care for the Plaintiff who was still receiving outpatient medical support.

(8) **PW2 BKK** was the Plaintiff in the suit. Although the Plaintiff had recorded a witness statement dated **27th January 2012**, the same was dispensed with by the trial judge due to the Plaintiffs inability to read and identify her said statement on account of medical challenges. As such the court relied on the oral evidence adduced by **PW1**.

(9) **PW1** told the Court that in **May 2008** she travelled to the United States of America together with her husband and daughter (**PW1**) in order to attend the graduation ceremony of another of her daughters. **PW1** states that prior to embarking on their trip, her husband had taken out a Family Medical Insurance Policy to cover them while they were away. **PW1** stated that she was not unwell when she left for the **USA** but told the court that she has been diabetic throughout her life which condition was managed by medication.

(10) The witness stated that she arrived safely and attended her daughter's graduation ceremony without incident. However she thereafter fell ill and found herself admitted at **[Particulars Withheld] University Hospital** where she was treated and then discharged. **PW2** was unable to recall how long she was in hospital but states that upon recovering she returned home to Kenya. She is not aware of how her medical expenses were met or by whom.

(11) **PW 3 TITUS MUTHOMI MUGAMBI** is the insurance broker who handled this matter. He sought to rely on his written statements dated **17th December 2012**. **PW3** stated that at the material time he was the Service Manager with **Package Insurance Brokers Limited**. He stated that on **13th May 2008** one **Mr Joseph Kamau** called him to enquire about travel insurance for himself, his wife and his daughter as the family were intending to travel to the **United States of America** on **14th May 2008** to return on **5th June 2008**.

(12) **PW2** then contacted the Defendant **AIG-Kenya** and relayed this request to them. He spoke to a **Mr. Fred Ochieng** who informed him that for a cover of 15-30 days the charges would be **USD 330** or **Kshs.20,559.00. PW3** then forwarded to **Mr Kamau** a Travel Insurance Application form issued by the Defendant, which was duly completed and he informed the court that according to the Policy Document the cover would be for medical expenses up to **USD 200,000.00.**

(13) On **11th June 2008 PW3** received a phone call from **Mr Kamau** seeking renewal of the Family Travel Insurance which was due to expire. However the Defendant declined to renew the same as they had already been made aware that the Plaintiff had fallen ill while in the United States. **PW3** stated that he was aware that a claim had been made under the policy he sold to **Mr Kamau** and he was also aware that the Defendant had declined to honour the claim on the basis that the Plaintiff had a pre-existing condition which had not been disclosed to the Insurer.

(14) **PW4 JM. K** is the husband of the Plaintiff. He relied on his written statement dated **27th January 2012** as his evidence in chief. **PW4** told the Court that on or about **13th May 2008** he sought and obtained a travel medical insurance cover from the Defendant for the family's intended visit to the United States and that he was issued with a Policy Cover **No.KK….** renewable monthly whose limit was **USD 200,000**.

(15) On **14th May** the family travelled to the United States. Unfortunately while they were there the Plaintiff fell ill necessitating her admission on **20th May 2008** to **[Particulars Withheld] University Hospital** in **Philadelphia** for treatment.

(16) **PW4** states that he immediately notified the Defendant of the Plaintiff's illness and admission into hospital and at the same time requested for an extension of the travel medical insurance cover which was due to expire on **11th June 2008**. However the Defendant declined to renew the cover. **PW4** claims that the Defendants actions exposed the family to great expense in catering for the Plaintiff's medical costs. That he was forced to cut short his visit to the **USA** and return to Kenya in order to secure for funds to cater for his wife's medical costs.

(17) **PW4** claims that the Defendant breached the terms of the policy in declining to cater for the Plaintiff's medical costs and by fraudulently accepting payment of the commission whilst having no intention to assume liability covered by the policy already paid for. He told the Court that this suit was filed to claim for the loss and damage the family have incurred as a direct result of the Defendants breach.

(18) **PW5 DR JAMES CHARLES MUNENE** is a consultant cardiothoracic and heart and chest surgeon based at the **Nairobi Hospital Doctors Plaza**. **PW5** relied on his witness statement dated **22nd April 2013**. **PW5** told the court that on **10th April 2008** the Plaintiff **BKK** was referred to him as a patient by his professional colleague **DR. GATUA**. That in the course of treating the Plaintiff **PW5** performed on

her surgery being a right lower lobectomy on **12th April 2008**. The Plaintiff was then discharged and allowed to leave for her home on **18th April 2008**.

(19) **PW5** states that he did review the Plaintiff post-operatively in his clinic before she travelled to the **United States**. He found that she was healing well with no lingering symptoms and had no hesitation in allowing her to continue with her ordinary life.

(20) On **20th March 2018** the parties agreed by consent to produce the following three medical reports:-

(i) Statement made by **Prof Scolt C. Sylvestry** filed on **16th October 2012.**

(ii) Statement of **Prof Glenn Whitman** filed on **16th October 2012**.

(iii) Statement of **Prof Peter A. Odhiambo** filed on **22nd January 2014**

(21) The Defendants called **DW1 FREDRICK OCHIENG AWUOR** as their witness. **DW1** told the court that he has worked for the Defendant Company as an Underwriter for the past **18 years**. The witness relied upon his written statement dated **5th July 2013**. **DW1** stated that part of his duties included the issuance of Travel Insurance policies to both individuals and families. He confirms that the Defendant did issue a family travel policy to cover the Plaintiff, **PW4** and **PW1** during their trip to the United States of America and that the said travel Insurance Policy which was issued on **13th May 2008** was to run from **14th May 2008** to **11th June 2008**.

(22) **DW1** states that the Travel Insurance Policy expressly defined a family to include the insured person, his spouse and their children aged between 6 months to 19 years or up to age 25 provided the child was in full time education and was primarily dependent on the insured. **DW1** further stated that the policy could be voided on account of misrepresentation, mis-description and/or non-disclosure by or on behalf of the insured person of any information material to the policy.

(23) Lastly **DW1** points out that the Policy provided that the Defendants liability would be excluded in the event of an incident arising directly or indirectly from any pre-existing medical condition. He states that in the application the Plaintiff did not disclose any pre-existing condition and left the space provided for indication of the Plaintiffs medical doctor and hospital blank.

(24) The Defendant takes issue with the Plaintiff for mis-stating the name of **PW4** in the application for mis-stating the ages of the Plaintiff, **PW1** and **PW4** and for failing to disclose the fact that the Plaintiff had recently undergone surgery or that she had suffered from diabetes for 30 years prior to the application for insurance being made.

(25) The Defendant alleges that the condition which led to the Plaintiffs illness and hospitalization in the **USA** was related to the surgery she had undergone at the **Nairobi Hospital**. The Defendant claims that the Plaintiffs real purpose for travel to the **USA** was actually to seek treatment for the Plaintiff after medical attention in Kenya had proved unsatisfactory and that this suit is nothing but a carefully hatched plan to have the Defendant foot the bill for the Plaintiffs medical treatment in the **USA**. That the Plaintiffs are seeking to perpetrate a carefully orchestrated fraud upon the Defendant by taking out Travel medical Insurance knowing and intending that the same be used to cater for the Plaintiffs medical costs whilst in the **USA**.

(26) Finally, the Defendants position is that the Plaintiff are not entitled to collect on their claim on the policy due to material breaches of the Insurance contract perpetrated by the Plaintiff as follows:-

(a) The existence of multiple pre-existing medical conditions on the part of the 1st Plaintiff contrary to the Definitions Clause of the Travel Insurance Policy.

(b) Active and willful misrepresentation/ suppression of material facts inter alia as to the ages of all 3(three) Plaintiffs with a view to wrongfully induce a belief on the Insurer/Defendant's part that the Plaintiffs were eligible for cover and that the contingent chance in respect of the Plaintiffs was low/regular and in the Insurer/Defendant's favour and in relation to the Plaintiffs/Applicants' medical history contrary to the policy.

(c) Generally, an unmitigated breach of the Plaintiff/ Insured's part, of the duty to enter and at all material times conduct themselves in their interactions with the Defendant/insurer in perfect good faith.

(27) The Defendant therefore urges the Court to dismiss the Plaintiffs suit and award costs to the Defendant.

(28) At the close of oral evidence parties were invited to file their written submissions. The Plaintiff filed her written submissions on **7th November 2019.** The Defendant did not file any submissions in the matter as the submissions placed in the file bear no stamp to indicate the date of filing nor is there any accompanying receipt for payment. As such I will ignore those submissions.

ANALYSIS AND DETERMINATION

I have carefully considered the evidence on record, the submissions filed by both parties as well as the relevant law. The law provides that the Burden of Proof rests upon the party who seeks to rely on the existence of a particular fact or set of facts in support of its case. **Section 107** of the **Evidence Act, Cap 80 laws of Kenya** provides as follows:-

"107 Burden of Proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts he must prove that those facts exist.

(b) When a person is bound to prove the existence of any fact to is said that the burden of proof lies on that person."

(29) In the case of **Gichinga Kibutha V Caroline Nduku [2018] eKLR**, the Court stated:-

"It is therefore, settled law that in civil cases, a party who wishes the court to give a judgment or to declare any legal right dependent on a particular fact or sets of facts, that party has a legal obligation to provide evidence that will best facilitate the proof of the existence of those facts. The party must present to the court all the evidence reasonably available on a litigated factual issue."

(30) In my view the following are the three issues arise that for determination in this suit:-

(1) Did the Plaintiff fail to disclose a pre-existing condition?

(2) Was there breach of the Contract of Insurance by either party?

(3) Is the Plaintiff entitled to the compensations sought?

(1) <u>Pre-existing condition</u>

(31) The Defendants submit that the Plaintiff actively and willfully failed to disclose information that was material to the Policy Contract. The Defendant points out the fact that the Plaintiff failed to disclose in the Application for Travel Insurance that she had suffered from Diabetes for over thirty (30) years and also failed to disclose the fact that she had recently undergone major surgery.

(32) The General Conditions of the Policy document issued to the Plaintiff provide for **General Exclusions**. **Clause 17** provides for exclusion in event of:-

"17(a) any pre-existing medical condition: or

(b) any cardiac or cardio vascular or vascular illness or conditions or celebro-vascular illness or conditions or sequelae thereof or complications that in the opinion of a Medical Practitioner appointed by the company reasonably be related thereto, if the insured person has recently sought medical advice or treatment (including medication) for hypertension in the 6 months prior to the commencement of the insured journey."

(33) It is common ground that the Plaintiff fell ill after arriving in the United States. The Plaintiff does not deny that prior to her journey she did fall ill and underwent a "**right lower lobectomy**" performed on her right lung by **Dr. JC Munene [PW5]. PW5** stated that after that surgery the Plaintiff recovered well and was discharged from hospital. According to **PW5** he saw the Plaintiff sometime after her discharge and noted no signs of any lingering symptoms or presenting pathology. The doctor had no hesitation in allowing the Plaintiff to continue with her normal life which presumably included long distance travel.

(34) The Plaintiff denies that she deliberately withheld or failed to disclose information regarding her medical history prior to obtaining the travel medical insurance. The Plaintiff instead claims the **AIG** Application form did not make any provision for the inclusion of information regarding ones previous medical history. The Plaintiff therefore faults the Defendant for failing to devise a form which was sufficiently probing.

(35) There can be no doubt that Insurance contracts are amongst the category of contract which are described as "***uberrimae fidae***" i.e of utmost good faith and require voluntary disclosure by the parties thereto. In **SITA STEEL ROLLING MILLS LIMITED –VS- JUBILEE INSURANE CO. LTD [2007] eKLR, Hon Justice David Maraga** (as he then was) stated as follows:-

"<u>The contract of insurance is perhaps the best illustration of a class of contracts described as uberrimae fidei, that is, of the utmost good faith. That being so the potential parties to such contract are bound to volunteer to each other, before the contract is concluded, information that is material</u>. This principle imposes on the proposer or insured the duty to disclose to the insurer, prior to the conclusion of the contract, but only up to that point, all material facts within his knowledge that the latter does not or is not deemed to know."[own emphasis]

(36) There is therefore the expectation that the insurer will ask material questions necessary to enable it reach an informed decision on whether or not to offer insurance. It is also expected that the insured will honestly answer said questions. Given that no such questions were asked in the application form, the Plaintiff had no opportunity to reveal her past medical history and thus cannot be said to have deliberately withheld that information.

(37) In **WILLIAM OKOTH ABATHA –VS- PIONEER ASSURANCE COMPANY LIMITED [2016] eKLR**, the Court stated thus:-

"I now turn to the issue of whether the policy holder failed to make full disclosure of material facts. The Appellant argued that given the central place of the proposal form in an insurance contract, a court of law cannot make a definitive finding on the lack of good faith without taking a look at the proposal form. Whereas a proposal from would be important in such an

inquiry. I am of the view that it is not mandatory. In this case though, it is not clear what other material facts the policy holder failed to disclose that would have affected the risk taken by the Company. I therefore find and hold that the company failed to establish or prove breach of the doctrine of good faith by the deceased."

(38) The Insurer having failed to ask the relevant questions cannot just sit back and hope that the Insured will voluntarily reveal all material information. Indeed the Defendant had the right to have the intended insured persons examined by a medical doctor of their choice but **AIG** did not avail themselves of this option. They cannot now cry foul. In this aspect I find the Insurance Company (Defendant) was lax and did not conduct the necessary investigations before issuing the insurance cover in question. The Defendant must be faulted for this oversight. The Plaintiff cannot shoulder the blame for this omission on the part of the defendant.

(39) On the question of whether the Plaintiff had a pre-existing condition I would like to make it clear that I have no medical expertise at all. I can rely only on the reports availed by the medical experts and my own understanding of the same.

(40) In the witness statement which was produced by consent **Prof Scott C. Silvestry** who was at the material time an Associate Professor of surgery at **Jefferson Medical College** and Director of Cardiac Transplantation and Mechanical Circulatory Support at **Thomas Jefferson University Hospital** in **Philadelphia** was the Doctor who diagnosed the Plaintiff with "**complicated empyema**". This is what necessitated further surgery on the Plaintiff which was performed on **22nd May 2008**. **Prof. Scott** went on to state that in his expert opinion the "**empyema"** which afflicted the Plaintiff upon her arrival in the **USA** was a complication arising from the lung surgery which the Plaintiff had undergone in Nairobi before travelling.

(41) At the clause 5 of his written statement **Prof Silvestry** states as follows:-

"I was informed at the time that AIG Insurance Kenya who had issued Mrs Kamau with a travel insurance policy had declined to meet her medical expenses on the grounds that her condition was pre-existing. My expert medical opinion is that this most certainly was not the case. Her empyema was a complication of her lung surgery but the empyema does not appear to have been existing prior to when she left Kenya to travel and therefore prior to her purchase of her travel insurance. Further evidence of this is that I was informed that she had been cleared by her doctors in Kenya to travel, a clearance that would not have been given had she been suffering from an empyema at that time. Consistent with this is the fact that Beatrice Kamau had no symptomatic fever or shortness of breath when she left Kenya, by history, further evidence that the empyema was not "pre-existing" prior to her trip to the United States." [own emphasis]

(42) The Professor is categorical that the "**empyema**" which afflicted the Plaintiff in the **USA** was **not** a pre-existing condition. He goes on to state that had this condition been noted in Nairobi post operation then the Plaintiff certainly would **not** have been medically cleared to travel.

(43) The Defendant's medical witness was **Prof Peter A. Odhiambo** a consultant in thoracic and cardiovascular surgeon in Kenya. His report on the Plaintiff dated **2nd August 2013** was produced as an exhibit by consent of all the parties. In said report **Professor Odhiambo** observed as follows:-

"……..to issue a travel insurance means that the insurer is satisfied within and beyond reasonable doubt that the insured is not just boarding a plane that might crush, but is in a good state of health and is fit to be insured, and, on top of that, to travel. Any other analysis is a "post-mortem" contraption without retrospection, or forgivable, or even punishable hindsight. In short, adequate recovery, especially to travel, must be vetted "par capita" patient, per diagnosis, per spot condition." [own emphasis]

(44) Dr. Odhiambo who was the Defendant's own witness emphasizes the fact that the onus lay on the Defendant to satisfy itself that the Plaintiff was in a good state of health and was fit to travel. Again I must note that the Defendant failed to do this.

(45) From the above my finding is that the Plaintiff **did not** have a pre-existing condition. She had admittedly undergone lung surgery in Kenya which was major surgery but by all accounts she had recovered well from said surgery. Indeed the Plaintiff was certified as fit to go on with her normal life which included travel to the **USA**. Whilst in the **USA** the Plaintiff fell ill again. The fact that the **"empyema"** was a complication of her lung surgery does not make it a pre-existing condition. If this were to be so then no person who has had surgery would ever be deemed fit to travel. I therefore find and hold that the Plaintiff did not breach the contract by failing to disclose to the Insurer a pre-existing condition as was alleged.

Breach of Contract

(46) The Insurance Policy dated constituted a binding contract between the Plaintiff and the Defendant. As stated earlier insurance contracts are in the class of contracts to which the doctrine of "**uberimae fidei**" applies. Although the Plaintiff had no pre-existing condition which she was obliged to disclose, I note that the Plaintiffs were not entirely honest to their responses to the questions in the application form.

(47) Firstly **PW4** who filled out the form on behalf of his family gave his name as **JK**. In this Court **PW4** has identified himself as **JM.K**. No reason has been given why the witness put the wrong name on the Application. A name is a critical identifier of a person.

(48) Even if this could be overlooked as human error, more disturbing misrepresentations are revealed. In the said application form it is indicated that **PW1** was 7 years and 29 days old. **PW1** told the court that she was actually **27 years** old at the time of travel. The definition clause at Page 3 of the Policy document defines a child to be the insured persons dependent (unemployed) children between the ages of 6 years – 19 years or under the age of 25 provided they were in full time education, unmarried, not pregnant, without children and primarily dependent on the principal insured person for maintenance and support.

(49) Being aged 27 at the time **PW1** fell outside this definition of children and thus did not qualify for cover under the Family Insurance provided by **AIG.** No doubt this is the reason why her true age was not indicated on the application form. I find that this amounts to a material concealment by the Plaintiffs.

(50) It is equally disturbing that **PW1** admitted that she did not sign the form. **PW1** states that she does not know who signed the form on her behalf. This was obviously in furtherance of the lie that **PW1** was 7 years old. A 7 (seven) year old being a minor would not be expected to sign a document.

(51) Further on the same application the Plaintiffs age is indicated to be **32 years**. However it has come to light that having been born on **6th August 1949**, the Plaintiff was in actual fact aged **59 years** at the time of travel. Likewise the age of **PW4** on the application is indicated to be **37 years**. **PW4** told the court that he was actually **61 years** old. Under cross-examination by Defence Counsel **PW4** stated as follows:-

> **"I am aware of my obligations to state things correctly, honestly and fully. My age in the application appears as thirty seven (37) years but at that time I was sixty one (61) years of age. My wife's age is reading as thirty two (32) and twenty nine (29) days. My wife was about fifty eight (58), fifty nine (59) years. My daughter's age was shown as seven (7) and twenty nine (29) days…"**

(52) **PW4** therefore admits that the Plaintiffs lied about their ages in the application form. I do not accept that the Plaintiffs did not know their true ages. I find that their responses on the application forms were blatantly untruthful. I can only speculate as to why the Plaintiffs choose to misrepresent their ages in this manner. Could it be that the family wanted to represent themselves as youthful and therefore healthy so as to prevent the need for any further enquiry into the state of their health by the Defendant? Whatever the case, I find this amounted to a material misrepresentation on the issue of age which went against the "**uberimae fidei**" principle.

(53) Clause 9 of the General Conditions of the Policy provides as follows:-

> **"9 Misrepresentation. This Policy shall be voidable (at the discretion of the Company) in the event of misrepresentation, mis-description or not-disclosure by or on behalf of the Insured person of any information material to this Policy."**

Having executed the policy this clause bound the Plaintiffs.

(54) In my view the misrepresentation of age by the Plaintiff were material because it brought **PW1** within the ambit of the cover when in actual fact she was **not** eligible to be covered. I have no doubt that had her true age been revealed the Defendant would not have included **PW1** in the Family Insurance Cover.

(55) For the above reasons I find that the Insurance Policy was voidable due to misrepresentation of material facts by the Plaintiffs. It is trite that he who comes to equity must come with clean hands. The Plaintiff having misrepresented their ages in the application form and having secured Insurance Cover on the basis of said misrepresentation cannot now seek to enforce that cover. I therefore find that it was the Plaintiffs who breached the Policy contract.

Whether Plaintiff is entitled to the compensation sought

(56) Although the Plaintiff had no pre-existing condition, the Plaintiffs on account of misrepresentation discussed above are not entitled to enforce the contract for medical cover.

(57) The Plaintiff sought in prayer (b) to be awarded special damages of **US$ 476,573.65**. In **NIZAR VIRANI T/A KISUMU BEACH RESORT –VS- PHOENIX OF EAST AFRICA COMPANY LIMITED [2004] eKLR,** the Court of Appeal held:-

> **"A claim for special damages should not only be pleaded but strictly proved. There is a long list of authorities on that principle but we only cite Eldama Ravine Distributors Ltd & Ano. Vs Samson Kipruto Chebon …where the Court stated:-**
>
> **"It has time and gain been held by the Courts in Kenya that a claim for each particular type of special damage must be pleaded."**

(58) **PW4** claims for his expenses in having to travel back to Kenya in order to source for funds to pay the medical bills for her wife. The Plaintiff also seeks the costs of the extended stay by **PW1** in order to care for her mother.

(59) However no documents, receipts have been availed in support of the amount claimed as special damages. I therefore dismiss the claim for special damages. The Plaintiffs have sought to be awarded general damages. As a general rule general damages are not recoverable for a breach of contract. In any event as I have already noted the Plaintiffs themselves are guilty of material non-disclosure. The Plaintiffs cannot be allowed to benefit from their own wrongdoing. In the circumstances I find that the Defendant is not liable to pay them any damages. The Prayer for general damages is dismissed.

(60) Finally this suit is dismissed in its entirety. I direct that each party shall pay its own costs.

Dated in **Nairobi** this **2ND** day of **October 2020**.

Justice Maureen A. Odero