



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO. 157 OF 2020

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 2, 3, 10, 19, (3), 20, 21, 22, 23, 25 (C), 38, 47, 48, 50, 91, 159(2) (C), 165(7), 238(2), OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF JUBILEE PARTY

BETWEEN

HON.KIPCHUMBA MURKOMEN.....1ST PETITIONER

HON. SUSAN KIIHIKA.....2ND PETITIONER

VERSUS

JUBILEE PARTY.....1ST RESPONDENT

RAPHAEL TUJU.....2ND RESPONDENT

NELSON DZUYA3RD RESPONDENT

KENYA AFRICAN NATIONAL UNION.....4TH RESPONDENT

REGISTRAR OF POLITICAL PARTIES5TH RESPONDENT

SPEAKER OF THE SENATE6TH RESPONDENT

RULING

BACKGROUND

1. The Petitioners herein filed a Petition dated 11th May 2020 simultaneously with a Notice of Motion of even date and further Amended Notice of Motion dated 13th May 2020. The Petitioners in the Petition sought the following orders:-

a) A declaration that the Post-coalition Agreement between 1st and the 4th Respondents is unconstitutional, illegal, unreasonable, irrational and procedurally unfair in Contravention of 2, 3, 10, 19(3), 20, 22, 21, 23, 25(c), 38, 47, 48, 50, 91, 108, 159(2) c, 165(7), 238(2) and of the Constitution of Kenya, 2010.

b) A declaration that decisions made against the Petitioners by any of the Respondents have resulted in the violation and infringement and threats to violate and infringe the Petitioners' fundamental rights under Articles 27, 28, 38, 40, and 47 of the Constitution.

c) A declaration that the actions by the Respondents in so far as it purports to remove the Petitioners from office is in the violation and infringement and threatens to violate and infringe the Petitioners' fundamental rights under Articles 27, 28, 38, 40, and 47 of the Constitution.

d) An order restraining and/or prohibiting the 6th Respondents and whomsoever form acting on the basis of the 1st, 2nd, 3rd, 4th and 5th Respondents' resolutions, decisions and/or notifications to effect the changes the Party Leadership whether by removing the Petitions or presiding over an election under Standing Orders 19(5) and (6) of the Senate.

e) An order of mandamus compelling the 5th Respondent to deregister the purported Coalition Agreement dated 8th May 2020 filed by the 2nd and 3rd Respondent together with the official of the 4th Respondent.

2. Both Petition and the Notice of motion were duly served upon all the Respondents'.

3. The 1st Respondent through the firm of M/s Njoroge Regeru & Company Advocates filed a Preliminary Objection to the Petition raising eight grounds of opposition. Further the firm of M/s Kamotho Njomo & Company Advocates filed six (6) ground of opposition to the Notice of Motion on behalf of the 1st Respondent.

4. The firm of M/s Victor Lee Advocates for the 2nd Respondent filed a Preliminary Objection dated 13th May 2020 raising 1 ground of opposition.

5. The firm of M/s Njoki Mboce & Company Advocates filed a Preliminary Objection on behalf of the 3rd Respondent dated 13th May 2020 raising 4 grounds of opposition.

6. The firm of M/s Gordon Ogola, Kipkoech & Co. Advocates filed Notice of Appointment of Advocate, appearing for 4th Respondent. The 4th Respondent filed Replying Affidavit and Notice of Preliminary Objection and submissions on its preliminary objection.

7. The 5th and 6th Respondent did not file any documents in this matter. All parties in this matte were represented by respective counsel who are appeared before this Court on 14th May 2020, and 11th June 2020 before or by the time the Petition was withdrawn.

8. The Petitioners through a Notice of Withdrawal of suit pursuant to **Order 25 Rule 1 of the Civil Procedure Rules 2010** and **Rule 27 (a) of the Constitution of Kenya (Protection of Rights and Fundamental freedoms) Practice and Procedural Rules 2013** dated 20th May 2020 filed and served a Notice of withdrawal of the Petition herein. The Respondents did not when the matter was mentioned before this Court on 11th June 2020 object to withdrawal but sought costs to be awarded to them. Consequently the Petitioners Notice of Withdrawal of the Petition was allowed and Petition marked withdrawn.

9. The Court directed that, parties do seek settlement on costs out of court and in default, do file written submissions on costs. The parties were unable to reach settlement on costs hence they each filed their respective submissions save the 5th and the 6th Respondents.

ANALYSIS AND DETERMINATION

10. I have very carefully considered the pleadings herein, Petitioners submissions dated 10th July 2020; the 1st Respondent's submissions dated 29th June 2020, the 2nd Respondent's submissions dated 13th July 2020; the 3rd Respondent's submissions dated 14th July 2020 and the 4th Respondent's submission dated 13th July 2020. From the pleadings by Petitioners and Respondents as well as from Counsel respective Rival submission the issue arising for determination is one thus:-

a) Who is entitled to costs (if any)?

11. The Petitioners contention is that the Petitioners were at liberty to withdraw the Constitutional Petition they had filed subject to the Provisions of **Rule 27(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (Otherwise known as "the Mutunga Rules")**.

12. **Rule 27(1) (2) and (3) of the Mutunga Rules** provides:-

"27. (1) The petitioner may—

(a) on notice to the court and to the respondent, apply to withdraw the petition; 1750 1750 Kenya Subsidiary Legislation, 2013

(b) with the leave of the court, discontinue the proceedings.

(2) The Court shall, after hearing the parties to the proceedings, decide on the matter and determine the juridical effects of that decision."

13. The 1st Respondent urges that she is entitled to costs against the Petitioners for several reasons. First it is 1st Respondent's contention that it is a cardinal principle of law that costs follow the event. It is urged that in this case the Petition was withdrawn following Preliminary Objection lodged by among others, the 1st Respondent. The 1st Respondent seem to urge that the Petitioners conceded to 1st Respondent's Preliminary Objection dated 13th May 2020.

14. It is further stated by the 1st Respondent the Petition herein was an abuse of the court process especially because it raised matters, which admittedly were also pending before the **Political Parties Disputes Tribunal in PPDT Appeal Number 1 of 2020 Caleb Kositany & 3 others v. Registrar of Political Parties and 4 others**. It is contended the 1st Respondent's Preliminary Objection exposed the abuse. It is further submitted that the Courts have consistently stated that even in a public interest litigation; pointing out the Petition before this court is not a public interest litigation, the Courts ought to award costs against those who abuse the court process.

15. In support of the above proposition the 1st Respondent sought support from the case of **Feisal Hassan & 2 others v. Public Service Board of Marsabit County & another [2016] eKLR**, where the Court stated as follows:-

“In constitutional litigation, the principle of access to the Court must, consistently with the public importance and interest in the observance and enforcement of the Bill of Rights in the Constitution, override the general principle that costs follow the event, unless it can be shown that the petition was wholly frivolous, or that petitioner was guilty of abuse of the constitutional court process by say filing a constitutional petition on matters that do not raise purely constitutional issues and which properly belonged to other competent courts or tribunals, and which should, therefore, have been filed and competently disposed of by those other courts of tribunals” (Emphasis added).

16. Thirdly the 1st Respondent aver that the 1st Respondent is highly prejudiced by incurring enormous costs having to defend two similar suits in different courts.

17. Fourthly, it is contended that the Petitioners did not make any attempt to resolve the dispute herein through internal dispute resolution mechanisms as mandatorily required by **Section 48(1) and (2) of the Political Parties Act** no. 11 of 2011. It is 1st Respondent's contention that had that been done, the costs incurred in this litigation would have been avoided.

18. Fifthly, it is urged the 1st Respondent was compelled to defend itself in these proceedings under circumstances of extreme urgency hence exposing the 1st Respondent to untold anxiety and expenditure.

19. The sixth reason relied upon by the 1st Respondent in demanding for costs is that, the Petition herein is said to be neither a public interest litigation nor a proper constitutional litigation. It is 1st Respondent's position that has been confirmed by the Petitioners' own withdrawal of the Petition and continued prosecution of the Appeal before the PPDT. It is stated by the 1st Respondent that the Petitioners in this Petition were merely pursuing personal political ambitions in the name of the seats of majority leaders and chief whip, in the Senate. It is further urged under seventh reason, that the effect of the litigation is inter alia, to drain the 1st Respondent's finances which are mainly drawn from contributions by other members of the 1st Respondent. It is 1st Respondent's averment the Petitioners, who are only two (2) individuals should not be allowed to expand monies which are painstakingly contributed to by other members of the 1st Respondent numbering to millions.

20. The 1st Respondent urge that it is not relevant that the Petitioners have withdrawn the Petition at what they refer to as an early stage. Such consideration it is averred can only affect the quantum of costs not the question whether costs should be awarded or not. It is the 1st Respondent's position at any event, the petition was withdrawn only after the 1st Respondent had taken full instructions on the Petition, carried out extensive research and filled its preliminary objection and Bundle of Authorities, that the withdrawal also came after the 1st Respondent's Advocates had attended Court at least once and informed the Court that they were ready to prosecute the 1st Respondent's preliminary objection.

21. The 2nd Respondent, urge that he is entitled to costs as he filed responses to the Petition and application and Preliminary Objection raising the issue of the Court's lack of jurisdiction to hear and determine the Petitioners' Notice of Motion. That Notice of Withdrawal of the Petition was filled after the 2nd Respondent's Notice of Preliminary Objection, withdrawing the entire suit against the Respondents.

22. The 2nd Respondent seeks cost for the following reasons; that the Petitioners have instituted the instant Petition and the Application solely for personal gain as opposed to advancing the public interest. It is contended the Petition was to benefit the Petitioners' private political interest and had absolutely nothing to do with advancing and/or protecting the interests of the general public since the ultimate beneficiaries of the orders in the petition and the application, if it was successful, would have been the Petitioners herein, and not the general public nor did it have anything to do with the Petitioners' constitutional rights.

23. It is further the 2nd Respondent's submissions, that the Petitioners knowingly and/or deliberately instituted the instant Petition and the applications in brazen violation of the provisions of **Section 40 of the Political Parties Act** and the established principle of sub judice as they were fully aware that there was another matter being **Appeal No. 1 of 2020; Caleb Kositany & 3 others v. Registrar of Political Parties & 4 others** pending hearing and determination in the Political Parties Dispute Tribunal, which the 2nd Respondent aver raised similar issue as the instant matter.

24. The 2nd Respondent submit that cost follow event urging he should be reimbursed for the expenses incurred so far in defending this suit against himself. The 2nd Respondent rely on the Supreme Court decision in **Jasbir Singh Rai and 3 others vs. Tarlochan Singh Rai and 4 others, Petition NO. 4 of 2012**, where the Court made the following observation;

“[14] So the basic rule on attribution of costs is; costs follow the event. But it is well recognized that this principle is not to be used to penalize the losing party; rather, it is for compensating the successful party for the trouble taken in prosecuting or defending the suit. In Justice Kuloba's words [Judicial Hints on Civil Procedure, at p.94]; “[T]he object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal

measure... Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action.”

[15] it is clear that there is no prescribed definition of any set of “good reasons” that will justify a Court’s departure, in awarding costs, from the general rule, costs-follow-the-event. \in the classic commons law style, the Courts have proceeded on a case-by-case basis, to identify “good reasons” for such a departure.”

25. The 2nd Respondent further rely on the decision by Hon. Justice John Mativo in the case of **Cecilia Karuru Ngayu v. Barclays Bank of Kenya & another [2016] eKLR** where the Judge stated as follows:-

“It matters not that the case was withdrawn or compromised or intended to be compromised as in this case, what matters is whether the second defendants are entitled to costs for the trouble undertaken by them in defending these proceedings.”

26. The 3rd Respondent in seeking costs urges that he took various steps since the suit was served upon him before the Petitioners served their Notice of Withdrawal dated 20th May 2020. The 3rd Respondent urge that he gave full instructions to counsel and Notice of Preliminary Objection filed, and his counsel made relevant court attendances before Notice of Withdrawal of the application and Petition was filed and served. The 3rd Respondent aver that due to steps he had undertaken in this matter he incurred significant financial and time expenses which he would not have incurred but for the said application and Petition.

27. In seeking for award of costs the 3rd Respondent seeks reliance in the decision of **Republic v. Rosemary Munene, Ex-Parte Applicant vs. Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No. 6 of 2004**, where the court held that:-

“...The basic rule on attribution of costs is that cost follow the event... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case. (Emphasis added).

28. The 3rd Respondent aver that the filing of this Petition was ‘against the public interest for the following reasons:-

a) It is contended the matter was filed in abuse of Court process, as both the application and Petition are said to have been filed in violation of the provisions of Section 40(2) of the Political Parties Act, which requires exhaustion of internal dispute resolution mechanisms of the political party which the petitioners had not exhausted. It is contended that the Petitioners therefore knowingly improperly brought the matter before this court.

b) It is urged that the Petitioners in filling this matter, deliberately violated the doctrine of sub-judice; as it is alleged, that the issues raised in this matter were already before the Political Parties Dispute Tribunal in Appeal No. 1 of 2020 Caleb Kositany & 3 others v. Registrar of Political Parties and 4 others.

c) It is urged that the Petitioners in their forum shopping, the Petitioners unnecessarily dragged the 3rd Respondent into unfairly defending multiple suits.

29. The 3rd Respondent urges in its submissions that it filed Notice of Appointment of Advocates, its Replying Affidavits, Notice of Preliminary Objection and submission in support thereof, before the Petitioners had served them with their Notice of Withdrawal of the Petition herein.

30. The 4th Respondent urge that it is entitled to costs because, the honourable court has discretion to award costs, where it deems appropriate. That 4th Respondent and Petitioners have not reached any consent on costs. That Petitioners did not serve their Notice of Withdrawal of the Petition herein on the 4th Respondent timeously.

31. The 4th Respondent state that the Right to withdraw proceedings is subject to costs which can be claimed by the Respondents citing the case of **John Ochanda v. Telkom Kenya Limited (2014) eKLR**. It is further urged that costs follow the event as was held in the case of **Joseph Oduor Anode v. Kenya Red Cross Society (2012) eKLR**, where it was held that where the court decides not to follow this general principle, it is enjoined to give reasons for not doing so.

32. It is further submitted by the 4th Respondent that the Petition is not a public interest litigation hence its withdrawal is not exempt from costs. In **Cecilia Karuru Ngayu v. Barclays Bank of Kenya & another [2016] eKLR** the Court held that matters in the domain of public interest litigation tend to be exempted from award of costs because in public litigation, a litigant is usually advancing public interest as opposed to personal gain.

33. It is 4th Respondents contention is that the Petition herein is an abuse of court process, first for being sub judice to Complaint no. 8 of 2020 which was still pending before the Political Parties Tribunal at the time this Petition was filed and secondly, for the Petitioners having failed to exhaust the internal dispute resolution mechanisms available within the Jubilee Party and the Political Party and the Political Disputes Tribunal forum. In **Feisal Hassan & 2 others v. Public Service Board of Marsabit County & another [2016] eKLR** the Court held that the principle that costs follow the event will be followed where it is shown that the petitioner was guilty of abuse of the constitutional court process by filling a constitutional petition on matters which properly belonged to other competent Courts or tribunals.

34. It is asserted that the 4th Respondent incurred financial expenses and expended its time to respond to the petition herein, which

expenses the 4th Respondent would not have incurred but for the said Petition. In ***Ombati Richard v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR*** the Respondents were awarded costs for the reason that Petitioners elected to file and later withdraw the Petition causing the Respondents to incur costs which they would not have incurred were it not for the Petition.

35. The Petitioners are opposed to costs being awarded to the Respondents. The Petitioners rely on the provisions of ***Order 25 Rule 1 of the Civil Procedure Rules 2010***; which provides:-

“At anytime before the setting down of the suit for hearing the plaintiff may by notice in writing, which shall be served on all parties wholly discontinue his suit against all or any of the defendants or may withdraw any part of his claim; and such discontinuance or withdrawal shall not be a defence in any subsequent action.”

And further the Petitioners refer to ***Rule 27(1)(a) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (otherwise referred to as “Mutunga Rules”)*** where it is provided:-

“27. (1) The petitioner may—

(a) on notice to the court and to the respondent, apply to withdraw the petition.

(b) With the leave of the Court discontinue the proceedings.”

36. The Petitioners on 20th May 2020 filed and served Notice of Withdrawal of the Petition. The Respondents did not object to the withdrawal; consequently on 11th June 2020, the Court marked the Petition withdrawn save for the issue of costs. The Court directed the parties to attempt settlement on the issue of costs and in default, to file written submission on the issue of costs. The parties failed to reach settlement on costs, subsequently submissions were filed for this court’s consideration and determination on issue of costs.

37. The Petitioners contend that they were at liberty to withdraw a constitutional petition subject to the provisions of ***Rule 27(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013***. The Petitioners issued a Notice of withdrawal of the Petition to the Court and the Respondents applying to withdraw the Petition in accordance with ***Rule 27(1)(a) of the Mutunga Rules*** and this Court accordingly marked the Petition withdrawn.

38. The Respondents in their respective submissions have attempted to imply that the Petitioners withdrawal of the Petition was as a result of their preliminary objections and thus they conceded to the Respondents various preliminary objections.

39. I find that argument interesting but do not agree with the same as withdrawal of the Petition herein is not in my view, or in any way a concession by the Petitioners on the Respondents various preliminary objections.

40. The Petitioners have not denied that the petition herein raises matters which were also pending before ***Political Parties Disputes Tribunal in PPDT Appeal Number 1 of 2020 Caleb Kositany & 3 others vs. Registrar of Political Parties & 4 others***. The Petitioners further filed this Petition in violation of the provisions of ***Section 40(2) of the Political Parties Act*** and deliberately violated the doctrine of sub-judice to ***complaint No.8/2020*** still pending before Political Parties Tribunal and did not make any attempt to resolve the dispute herein through internal dispute resolution mechanisms as mandatorily required by ***Section 40(1) and (2) of the Political Parties Act No. of 2011***.

41. The Petitioners submit the Petition was premised on constitutional provisions for the protection of rights and fundamental freedoms on very vital issues and Petitioners’ claims were not frivolous, malicious and spurious. The Petitioners in the instant petition have not demonstrated what public interest they are seeking to advance as opposed to personal gain. The Petition appears to be for personal benefit and having nothing to do with advancing and is protecting the interest of general public as the ultimate beneficiaries of the orders in the Petition, if it were to succeed, would only have been the Petitioners and not general public nor has it been shown that it has anything to do with Petitioners’ constitutional rights. The Petition in short is neither a public interest litigation nor a proper constitutional litigation. This is because the Petitioners were merely pursuing personal political ambitions in the name of the seats of majority leader and chief whip in the senate.

42. The Petitioners argue that the Notice of Withdrawal of the Petition was brought in good faith and timeously and none of the Respondents were prejudiced as to be entitled to costs. The Respondents have had to defend two or so similar suits in different courts under circumstances of extreme urgency. The Respondents incurred financial expenses and expended its time to respond to the Petition herein; which expenses the respondents would not have incurred but for the said petition. The Petitioners in the instant Petition filed their Notice of Withdrawal of the Petition after the Respondents had filed their responses and preliminary objections and after attending the Court and indicated that they will be raising a preliminary objection on the Court’s jurisdiction. The withdrawal was filed after Respondents had been made to incur costs which they would not have incurred, were it not for the said Petition and late filing of the Notice of Withdrawal of the Petition.

43. The Petitioners were at liberty to file and serve Notice of Withdrawal of the Petition but should have been aware that the right to withdraw proceeding is subject to costs which can be claimed by the Respondents. Further it is trite that costs follow the event and where the Court decide not to follow this general principle, it is enjoined to give reasons for not doing so. Under ***Rule 26 (1) (2) of the Mutunga Rules***, the award of costs is at the discretion of the Court. In exercising such discretion to award costs or not, the Court is required to take appropriate measures to ensure that every person has access to Court to determine their right and fundamental freedoms.

44. The Petition herein is not a public interest litigation and it has not been demonstrated that its withdraw is exempt from costs. This litigation do not fall under the exemption category in respect of costs, since it is not a public interest litigation nor is it advancing any public interest as opposed to personal gain or personal benefit.

45. The Petitioners on Court's discretion on whether costs are payable by one party to the other, the amount of such costs and where they are to be paid, urge what this means is that the court ought to appreciate the circumstances surrounding the filing and withdrawal of the suit before awarding costs. To buttress this point the petitioners sought reliance in the case of **Little Africa Kenya Ltd v. Andrew Mwiti Jason [2014] eKLR** where the Court while emphasizing that circumstances differ from case to case stated that:-

'Cost are not awarded as a matter of right. They are awarded at the discretion of the Court. At the risk of monotony, the discretion must be exercised judicially and judiciously; not capriciously; not whimsically but upon define legal principles. The judicial decisions on this subject are ample and legion, but I need not multiply them. But all depends on the circumstances of each case. Therefore, the law in designing the legal phrase that "costs follow the event" recognized the fact that there could be no "one-size-fit-all" prescription on the matter.'

46. It is trite that costs-follow the event and are not awarded as a matter of right but are awarded at the discretion of the Court guided by relevant principles; in which the discretion must as a matter of law be exercised judicially and judiciously, not whimsically. The Court before determining the issue of costs, it should consider the guiding principles inter alia;

- (i) who initiate process***
- (ii) the conduct of the parties***
- (iii) the subject matter of litigation***
- (iv) the circumstances that led to the institution of the proceedings***
- (v) the events which led to the termination***
- (vi) the stage at which the proceedings are terminated***
- (vii) the manner in which they have terminated***
- (viii) the relationship between the parties***
- (ix) the need***
- (x) costs follow event***
- (xi) guard against abuse of court process***
- (xii) need to promote reconciliation and resolve dispute through internal resolution mechanisms***
- (xiii) public interest litigation and proper constitutional litigation***
- (xiv) frivolous litigation***
- (xv) petition for personal***
- (xvi) principle that costs is not to be used to penalize the losing party; rather than compensating the successful party for the trouble taken in prosecuting or defending the suit.***

47. Upon considering the parties rival submissions and the guiding relevant principles, I am satisfied that the Petitioners acted within their rights when they filed Notice of Withdrawal of their Petition. The withdrawal of the suit was not a concession to the Respondents preliminary objections as the Petition was not determined on merits but the same was marked as withdrawn. The withdrawal was made after the 1st to 4th Respondents had filed their preliminary objections amongst other pleadings. They had also appeared during the mention. The notice of withdrawal was filed after the Respondents had responded to the petition and application. It cannot therefore be said it was timeously though not very late. I have considered the 1st to 4th Respondents position and the fact that time for filing pleadings has not closed as the 5th and 6th Respondents had not filed any responses by the time the notice of withdrawal had been filed. The petition and the application were however for hearing. It is not in dispute the 1st to 4th Respondents had been dragged to this matter and had instructed counsel to defend this petition. The right to withdraw proceedings is subject to costs that can be claimed by the party who has responded to the suit, as costs follow the event.

48. In view of the aforesaid I am satisfied that the 1st to 4th Respondents have demonstrated that they are entitled to costs following Notice of Withdrawal of the Petition hereunder. In view of the time of the withdrawal of the Petition, when the Petition was not ripe for hearing, as pleadings had not closed; and that the same was withdrawn before close of pleadings, I find that in the interest of justice to all parties herein the Respondents should not get full costs but 50% of the cost that shall be taxed by the taxing master.

49. The upshot is that the 1st to 4th Respondents application for costs is allowed in the following terms:-

*a) The 1st to 4th Respondents be and are **HEREBY** awarded costs at 50% of costs as shall be taxed by taxing master.*

b) The 5th and 6th Respondents did not file any pleadings by the time the Notice of Withdrawal was filed. I find they are not entitled to any costs.

c) Parties are at liberty to agree on costs or have the same taxed in the usual manner.

Dated, Signed and Delivered at Nairobi on this 15th day of October, 2020.

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J. A. MAKAU

JUDGE