



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 305 OF 2016

FARMCHEM LIMITED.....PETITIONER

VERSUS

PEST CONTROL AND PRODUCTS BOARD.....RESPONDENT

NORDOX AS.....1ST INTERESTED PARTY

CHEMINOVA AS.....2ND INTERESTED PARTY

JUDGMENT

1. The Petitioner is a limited liability company incorporated in Kenya under the provisions of the Companies Act. The Petitioner has been an importer, agent and distributor of pest control products, including fertilizers, adjuvants and seeds, which it imports in bulk and packages in small quantities for retail and wholesale.

2. The brief facts of the petition are that since 1978 the Petitioner has been the locally registered and recognized entity for distribution of certain agrochemical products within Kenya in partnership with several foreign companies. It is the petitioner's case that for a period of almost four decades, it has conducted research on its products, registered them, traded them and effectively marketed them to gain a sizeable market share within the country.

3. The Respondent on the other hand is the regulator of the sector the petitioner operates in and is responsible for registration of those intending to deal in the products regulated by the provisions of the Pest Control Products Act, (Cap 346) Laws of Kenya. The interested parties are manufacturers of some of the controlled products.

4. In or about 2015, the respondent registered other entities to deal in some of the products that the petitioner previously dealt in, which the petitioner now contends was done without its consent or knowledge. The petitioner contends that once it was the registered dealer, it acquired an exclusive right to deal with those products and for any changes to be made with regard to registration of other dealers or transfer of the same products, would require the Respondent to give notice, consult and provide a basis to the petitioner as the registered holder of the right over those products. And the registered holder of a product is required to issue the Respondent with a letter of "no objection" in order to allow third parties to legally import and trade in those products.

5. The petitioner avers that in an unconscionable turn of events, it discovered that the respondent had effected changes that affected its registered products in the 2015 Pest Control Products Registered List for Use in Kenya (10th Edition); that on 27th March, 2015 the Petitioner wrote to the respondent expressing concern over the product agency changes effected without their consent, notification, and sought clarification on the issue. The petitioner states that the letter elicited no substantive response from the respondent although the respondent continued to allow third parties continue to illegally trade in products registered in the name of the Petitioner.

6. The petitioner contends that although a meeting was held to try and resolve the matter, it failed to address the petitioner's grievances and as a result of the respondent's unlawful actions, the Petitioner has suffered tremendous financial loss and has been forced to sever invaluable relationships with its partner due to their inability to acquire registration of their products and/or registration renewals, or any explanation from the Respondent.

7. The Petitioner further contends that the respondent has subjected them to capricious whims in the discharge of her regulatory functions in total disregard and violation of the rules of natural justice, the respondent's regulations, statute and the Constitution. The petitioner avers that due to non-registration and renewals, it has not been able to import, distribute or trade in those products. And as a result, it has also lost business from January 2015 to June 2016 amounting to USD 1,750,904. The Petitioner terms the respondent's actions as not only being unfair but also that they amount to violation of its fundamental rights and freedom; that the respondent has discriminated against it owing to the fact that other parties were unlawfully, illegally and unconstitutionally register to deal in those products to the petitioner's detriment.

8. The Petitioner further avers that the refusal and/or failure by the respondent to give an explanation to the Petitioner's inquiries is contrary to its constitutional right of access to information and fair administrative action. The Petitioner that the respondent's actions amounted to arbitrarily deprivation of their property in violation of Article 40 of the Constitution. In a nutshell, it is the petitioner's case that the process used to de-register her products and to register other parties to deal in the same product was un-procedural, unlawful, illegal, unconstitutional and a blatant violation of the petitioner's right to fair administrative action and fair hearing contrary to Articles 47(1) and 50(1) of the Constitution.

9. The petitioner sought the following reliefs:-

a) A declaration that the actions of the Respondent in failing, refusing, and/or neglecting to renew; de-register and or varying and transferring to third parties the Petitioner Company's registered products with the Respondent without following the due process is unlawful, illegal and unconstitutional and therefore null and void ab initio and should be expunged

b) A judicial review order of certiorari be and is hereby issued bringing into this Honourable Court, the Respondent's decision contained in the Pest Control Products Registered for Use in Kenya 2015 (9th & 10th Edition) for purposes of the same being quashed in so far as the Petitioner Company's registered products that were transferred to third parties unlawfully, illegally and unconstitutionally.

c) An order for judicial review of mandamus be and is hereby issued commanding the Respondent compelling it not to de-register and/or vary or transfer the Petitioner Company's registered products without following the due process and in accordance with the law.

d) An order of compensation to the Petitioner Company by the Respondent of United States of America (USD 1,750,904- One Million Seven Hundred and Fifty Thousand Nine Hundred and Four dollars only)

e) An order of compensation for general damages.

f) An order of compensation by way of aggravated/exemplary damages by the Respondent to the Petitioner Company for the manner in which the Respondent unfairly, unlawfully, illegally and unconstitutionally treated the Petitioner Company in handling the entre process which reeked with mischief and malice and outright partiality exhibited by the Respondent in the way it conducted its regulatory functions towards the Petitioner Company.

g) Costs of this Petition be and hereby awarded to the petitioner Company.

h) An order that the award in prayers (e), (f) and (g) above shall attract an interest at the rate of 12% per annum from the date of the award until fully paid.

i) Any other relief that this Honourable Court shall deem just, fit and proper to grant in the circumstance of this case.

Respondent's Case

10. The Respondent a statutory body with the mandate to regulate the importation, exportation, manufacture, distribution and use of products used for the control of pests and of organic function of plants and animals, filed a replying affidavit sworn by Peter Opiyo sworn on 6th October, 2016. He deposed that the respondent reminded agents including the Petitioner to renew registration of their licenses vide a letter dated 22nd October, 2015, but the letter to the petitioner was returned unacknowledged. Lack renewal of registration and of communication from the Petitioner, made some of the overseas manufacturers complain to the respondent that the Petitioner had become inaccessible and was not responding to their communication. He deposed that failure to reach the petitioner led to the overseas manufacturers to open local offices to enable them deal directly with their products in the market.

11. Mr. Opiyo stated that the Petitioner failed to renew registration of most of its products leading to time lapse by over 5 years. According to Mr. Opiyo, the law requires that for such products to be renewed after such lapse, they should be re-submitted by the applicants afresh for registration as required by regulation 8(8) of Legal Notice No. 123 of 2007. Secondly, the regulation requires that a holder of a certificate of registration gives notice to the respondent in writing three (3) months prior to the expiry of the registration which the Petitioner did not do hence most of their registration expired. He denied that the respondent had infringed the petitioner's rights or violated any of the constitutional provisions.

1st Interested party's response

12. The 1st Interested Party filed a replying affidavit in response to the Amended Petition sworn by Joseph Muli on 6th October, 2016. Mr. Muli deposed that the 1st Interested Party is the manufacturer of various agrochemical products registered, sold and distributed in Kenya. He further deposed that the Petitioner had been their local agent until 28th November, 2014 when the agency agreement was terminated vide a letter of even date communicating that information.

13. According to Mr. Muli, prior to that, the 1st Interested Party had requested for a change of agency which the respondent accepted on 3rd February, 2015. This was after the Petitioner had closed its business causing the 1st interested party loss of income to the tune of USD 681,648.74. He stated that the 1st Interested Party had demanded for payments from the petitioner on various occasions and although the petitioner acknowledged indebtedness in a letter dated 12th March, 2015, no payment was made leading to termination of the agency.

14. He contended that it became difficult to conduct business with the petitioner due to its unknown physical and contact address, lack of communication and failure to renew licences for some of its products forcing the 1st Interested Party to open a local office in January 2015 as it did not require authority to market its own products registered in Kenya.

2nd Interested Party's response

15. The 2nd Interested Party filed a replying affidavit by Eric Kimunguny, sworn on 13th January, 2017. He deponed that the 2nd interested party has never engaged the Petitioner as its agent in Kenya, contending that its first agent in Kenya was M/s Anset International Ltd who was appointed on 23rd November, 2001 and subsequently entered into an agency agreement on 30th November, 2004. According to Mr. Kimunguy, on 15th November, 2010, the respondent accepted an application for change of agency from M/s Anset International Ltd to M/s Pytech Chemical GMBH. He contended that 2nd interested party wrote a letter to the respondent confirming that the Petitioner has never been its agent and, therefore, had no right over their products.

Petitioner's submissions

16. Mr Dullo, learned Counsel for the Petitioner, submitted highlighting their written submissions dated 28th May 2018, that the petitioner was discriminated against in that original products were transferred to other parties without its knowledge and or explanation. Counsel contended that even when reasons were sought, none was given.

17. According to counsel, the petitioner applied for renewal of 10 products on 23rd March 2015 without success and although reasons were sought why renewal was not done, reasons were not given. Relying on Legal Notice No 124 of 2006, counsel submitted that the respondent is required to give reasons in writing (page 15 of petition) yet it refused or declined to do so. In counsel's view, refusal to give reasons violated Article 47(2) of the Constitution and the Fair Administrative Action Act, 2015.

18. Relying on Article 40 of the Constitution, Mr Dullo submitted that the Article protects the right to property and according to counsel, registration of products conferred property to the petitioner which fell to be protected under Article 40. In that regard, he submitted, transferring the products to third parties without the petitioner's Knowledge or consent and refusing to renew registration for those remaining violated the petitioner's right to property.

19. He contended that the petitioner was registered in 1978 as the owner of the products under the Pest Control Products Act (1982), yet the products were transferred to other parties including the interested parties without the petitioner's knowledge or consent making it impossible for the petitioner to deal in those products and at the same time the petitioner cannot get renewal which is a violation of her rights.

Respondent's submissions

20. Mr Sekwe, learned counsel for the respondent, submitted, also highlighting their written submissions dated 28th May 2018, that the respondent's functions are stipulated in section 6 of the Pest Control Products Act; and that the petitioner was a registered local agent and distributor of those products. He submitted that the petitioner is also jointly registered with manufacturers of these products and that Manufacturers can have local agents or do the distribution themselves.

21. According to Mr Sekwe, the petitioner's registration was for a year renewable yearly. He contended that the petitioner did not renew its registration between 2010 and 2016 which had serious negative consequences to the industry. He argued that the respondent as regulator, made several attempts to have the petitioner regularize the position without success and relied on paragraphs 11-14 of the replying affidavit to demonstrate the effect they had.

22. Counsel submitted that the respondent was then contacted by the manufacturers after they terminated their agency relationship with the petitioner to have the transfer effected. It is their submission that the petitioner has not proved any violations.

Interested Parties submissions

23. Mr Mutua, learned counsel for the 1st interested party, submitted highlighting their written submissions, that any party or authority intending to deal in Pest Products Controlled under the Act, must hold an annual licence as required by section 2 of the Pest Control Products and Regulations, without which one cannot import, store or distribute these products.

24. Learned counsel submitted that the last time the petitioner held a licence was in 2010 while the first time the petitioner raised the issue of renewal was on 30th November 2015. Counsel contended that this meant the petitioner did not have the legal capacity to carry out business on those products. He argued that from that factual position, there was no violation of property rights or loss of business hence the claim for damages either general or special is unsustainable.

25. Relying on the competition Act, learned counsel submitted that the Pest Control Products Act had given exclusive rights thus was against the competition Act. He also contended with regard to the interested parties that the respondent wrote to the petitioner on 23rd October 2015 informing it that some parties had applied to trade in the same products and wanted a response but the petitioner did not respond. He therefore argued that the registration of other parties was done properly. He contended that the interested parties as owners of the products terminated the petitioner's agency on 28th November 2014 which means prayers (b), (c) and (d) of the petitions cannot be granted in the absence of the agency and evidence of loss.

Determination

26. I have considered the petition, the responses, submissions on behalf of the parties and the authorities relied on. The question that arises for determination is whether the petitioner's rights were violated, and if so whether the petitioner suffered loss and damage.
27. The petitioner was registered in 1978 and had been an agent and distributor of certain pest control products. To do that, it had been registered under the Pest Control Products Act and regulations made there under. The petitioner contends that the registration which had conferred on its proprietary rights was later transferred to other parties without her knowledge or consent. The petitioner further contend that although it sought reasons from the respondent why this had been done, none was given in violation of Article 47 of the Constitution. It is the petitioner's case that the respondent's action also violated its right to property given that the registration conferred on it a property right which could not be taken away since it was protected by Article 40 of the Constitution.
28. The respondent, who is supported by the interested parties, contends that the petitioner though he had registered, was required to renew registration annually; that the last time renewal was done was in 2010 and that efforts made to have the petitioner renew her registration never bore fruits since letters to the petitioner went unheeded. The respondent further contends that the manufacturers of the products terminated the petitioner's agency hence registration of other parties was properly done since the petitioner was no longer an agent.
29. The petitioner pleads violation of its rights under various Articles of the Constitution.. In order to resolve the issue of violation of rights and fundamental freedoms, it is important first to determine whether the petitioner had a right to property which would give rise to the rest of the rights said to have been violated.
30. The petitioner contends their right to property was violated in contravention of Article 40 of the constitution and in its view, this violation entitles it to redress from the court.
31. Article 40 provides that, every person has the right, either individually or in association with others, to acquire and own property of any description; and in any part of Kenya. Article 260 defines property to includes any vested or contingent right to, or interest in or arising from —land, or permanent fixtures on, or improvements to, land; goods or personal property; intellectual property; or money, choses in action or negotiable instruments.
32. In this regard, the petitioner's registration conferred on it an interest in the goods it was registered to deal in import, and distribute subject to the terms and conditions of such registration. That is why the court observed in *Evelyn College of Designs Ltd v Director of Children's Department and another* (Petition No 278 of 2013), that the thrust of Article 40 is to protect proprietary rights under the law.
33. However, for Article 40 to be called into action, a party seeking to rely on it must show the existence of a right capable of protection under the law. As seen from the definition of property in Article 260, property rights may arise in various forms and where it exists, the court has an obligation to protect it under the constitution and the law.
34. The petitioner's claim of the right to property arises from the fact that the registration of the Pest Control products conferred to the petitioner an exclusive right or interest to import and distribute those products. In the view of the petitioner, no one other person could import and or distribute those products except with a letter of "**no objection**" from it. The petitioner contends that being the registered and, therefore, rights holder, any other registration infringed on its right to property.
35. It is not in dispute that the petitioner was the registered agent, importer and distributor of the Pest Control Products in question. The registration was done under the Pest Control Products Act and the regulations made there under. Section 3(1) of the Act, however, provides that "**no person shall manufacture, package, store, display, distribute, use or advertise any pest control product except in accordance with conditions prescribed by regulations made under this Act.**" In the same breath, section 4(1) provides that "**no person shall import into, or sell in, Kenya any pest control product unless that product has been registered, packaged and labelled in accordance with regulations made under this Act and conforms to the standards specified in those regulations.**"
36. The Pest Control Products (Registration) Regulations, 1984(as amended) require that registration be renewed yearly, a fact that is not contested by the petitioner. The respondent and the 1st interested party contend that the petitioner did not renew its registration between 2011 and 2016 as required by law. For this reason, they argue the petitioner did not have the right to import and distribute the products and, therefore, there was no right to property known in law.
37. On this point, the petitioner was at pains to demonstrate to court that it indeed had complied with the law and renewed the registration as required. If the petitioner did not renew its registration to enable it deal in those products, it could not be said to have a right over them. It is the registration and its continued renewal that would have sustained the petitioner's right to deal in those products. Failure to renew registration obviously denied the petitioner any right it may have had and, in my respectful view, the right no longer existed once registration expired.
38. More importantly, the petitioner was an agent of the manufacturers and not the owner of the products. The registration merely conferred on it the right to deal in the products as long as the agency subsisted. It was on that basis that if any other party intended to deal in the same products, the respondent had to seek a letter of "no objection" from the petitioner as the local agent and representative of the manufacturer, so long as the petitioner maintained a yearly renewal of its registration over the controlled products.
39. The respondent has contended that after other parties applied for registration to deal in the same products, it sought the petitioner's views but got no response. The respondent has attached letters to that effect which the petitioner does not dispute, save to state that it had changed its postal address. The 1st interested party a manufacturer and principal went as far as writing to the respondent stating that it could not reach the petitioner on phone or email. The two further contend that the petitioner's agency was terminated and as a result, it had no right to deal in the products, giving way to the registration of other players.
40. It is also contended that failure to reach the petitioner by both the respondent and the 1st interested party, coupled with the importance of

the products to the agricultural sector, left them with no option but to register other players in view of the petitioner's failure to respond to their inquiries in order to avoid the challenges the sector was facing, the 1st interested party states that it was forced to open a local office to save her products. The petitioner has not denied this fact at all.

41. I have perused the responses and the documents relied on by the respondent and the 1st interested party. Among the documents there is a letter dated 3rd March 2016 from the respondent to the petitioner being a response to the petitioner's letter of 17th December 2015 on the renewal of registration. In that letter, the respondent informed the petitioner that it could renew registration of the products that "were not in dispute" while advising the petitioner to resolve the remaining dispute with the manufacturers. This supports the 1st interested party's contention that the petitioner was indebted to them and that they had demanded payment through a firm of advocates.

42. It would appear that there a number of issues between the petitioner and manufacturers. What is however clear, is that the petitioner was contacted for purposes of renewing its registration but no response was received from it and, as a result, other players were registered. It is also not in dispute that the petitioner failed to comply with the law to renew its registration between 2011 and 2016. The first time there was an attempt to renew registration was in 2015 after other players had been registered. In that regard, the petitioner had no right to deal with the products between 2011 and 2016 when it was no registered. That being the case, there could be no right to property in terms of Article 40 of the Constitution.

43. Having disposed of the question of the right to property, I now turn to consider the issue of violation of certain other rights under the Constitution. The petitioner contended that its right under Article 47 was violated. The Article grants every person the right to fair administration action that is expeditious, efficient, lawful, reasonable and procedurally fair. This Article is intended to subject administrative actions to constitutional standards of legality and fairness. Any public body, certainly including the respondent, must act fairly, efficiently, lawfully and its actions must not only be reasonable but also expeditious.

44. In the case of *Dry Associates Limited v Capital Markets Authority & another* [2012] eKLR, the court observed that **Article 47** is intended to subject administrative processes to constitutional discipline hence relief for administrative grievances is no longer left to the realm of common law or judicial review under the *Law Reform Act (Cap 26 of the Laws of Kenya)* but is to be measured against the standards established by the Constitution.

45. And in the case of *Kenya Anti-corruption Commission v Lands Limited and Others* [2008] eKLR the Court stated that the right of hearing is of fundamental importance to our system of justice and even when this is not expressed specifically in any law, the supreme position of the Constitution must be implied in every act, especially the right to due process. The court was clear that constitutional rights cannot be taken away without due process.

46. That administrative actions have now to be subjected to constitutional standards of legality, cannot be gainsaid. The Court of Appeal stated as much in the case of *Judicial Service Commission v Mbalu Motors Musyimi* [2013]elk that:

[23]...Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.

47. In the South African case of *Pharmaceutical Manufacturers Association of South Africa & Another: exparte President of the Republic of South Africa & Others* (CCT) 31/99 [2000] ZACC 1; 2000 (2) ZA 674, it was held that;

"...the Constitution itself has conferred fundamental rights to administrative justice and through the doctrine of Constitutional supremacy prevented legislation from infringing on those rights. Essentially, the clause has the effect of 'constitutionalizing' what had previously been common law grounds of judicial review of administrative action. This means that a challenge to the lawfulness, procedural fairness or reasonableness of administrative action or adjudication of a refusal of a request to provide reasons for administrative actions involves the direct application of the constitution."

48. Article 47(1) comes into play where a party has a right that is protected and is capable of being violated. This is the spirit of Article 47(2) which states that if a right or fundamental Freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons. There must be a right, first followed by violation or likelihood of violation to bring the matter within the scheme of Article 47. As I have however stated elsewhere in this judgment, there was no right and that being the case, I find it difficult to agree with the petitioner that Article 47 could have been violated in the absence of a protected right.

49. The other constitutional provision the petitioner claims to have been violated is Article 27 of the Constitution. The petitioner contends that it was discriminated against when its property was taken away and registered in favour of other parties. This, the petitioner argues, violated its right to equal protection and benefit of the law. It is the petitioner's case that its products were deregistered and transferred to other parties without subjecting it to equal protection of the law.

50. In advancing this argument, the petitioner relies on the case of *Tom Ojienda v/a Tom Ojienda & Associates Advocates v Ethics and Anti-corruption Commission & 5 others* [2016]eKLR, where the court stated that discrimination is ***"a distinction whether intentional or not but based on grounds relating to personal characteristics of individual or groups, which has the effect of imposing burdens, obligations, or disadvantages on such individuals or group not imposed upon others or which withholds or limits access to opportunities, benefits, and advantages available members of society"***

51. It also relies on the case of *Willis v the United Kingdom No 36042/97 ECHR 2002 – IV*, and *OKPISZ v Germany* No 59140/00 (25th October 2005), where again the court observed that discrimination means “*treating differently without any objective and reasonable justification, persons in similar situations*”.

52. Article 27 of our Constitution prohibits discrimination in absolute terms. It should be borne In mind, however, that what is prohibited is the unjustifiable discrimination. In that regard, for there to be actionable discrimination, a person or group of persons in similar circumstances must have been subjected to differential treatment that has no legitimate government purpose. In the present case the petitioner was bound to show that it was treated differentially from others who were in similar situations like her, which treatment violated Article 27 of the Constitution.

53. The petitioner could do this, for example, by showing that those who were registered to deal in the same products, had expired registration but were still treated differently and allowed to continue trading in the same products the expiry of their registration not with standing. That, however, is not the petitioner’s case here. The question of discrimination must be clear and visible for the court to act with a view to redressing it. It is not enough for a party to just allege discrimination but fail to prove it on that basis alone. I am not satisfied that there was such differential treatment as to result into direct or indirect discrimination against the petitioner in violation of Article 27 of the Constitution.

54. There was also the claim that Article 35(1) of the Constitution was violated. The Article relates to the right to information providing that; every citizen has the right of access to information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom. The Article further guarantees every person the right to the correction or deletion of untrue or misleading information that affects the person.

55. Anyone relying on this Article must show that s[he] sought to access information which was however denied. Moreover The Access to Information Act, 2015 provides for the procedure for enforcing this right where the request to access has been denied. If the petitioner’s contention is that its right of access was violated, it had to follow the procedure laid down in the Act. It could only come to this court after complying with the procedure provided for and only come to this court for assistance to access the information and any other relief. In the circumstances of this case, I am not satisfied that the petitioner’s right under Article 35 was violated.

56. It is important to point out that it is principle of law that a petitioner should link the right said to have been violated and the constitutional provisions concerned. It was in that regard that the Supreme Court stated in *Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR, that there is the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement which plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement. The petitioner was to establish and link the rights to the Articles of the constitution and the infringement.

57. Taking the above observation into account, I am unable to find violation of any of the petitioner’s rights or fundamental freedoms enshrined in the Bill of Rights.

58. The petitioner has claimed to both general and special damages, General damages would arise if the petitioner had succeeded in showing that its rights were violated and, therefore, required redress in the form of compensation to alleviate those violations. Having however found that there was no violation of rights, a claim for general damages could not arise.

59. Regarding special damages, it is settled law that special damages must be not only be pleaded but specifically proved. There are many authorities on this and the court need not be labour them here. The petitioner’s claim is that it lost business because it could not sell the products between 2015 and 2016, resulting into a substantial loss. The respondent contended that the petitioner was not registered for that period hence it could not trade in the controlled products.

60. The petitioner did not prove that it had a right to trade in the products during the period in question. This is so because its registration had long expired and it had not been renewed. If the petitioner imported those products and or traded in them, it did so in violation of the law. It cannot therefore ask the court to compensate an illegality. Had the petitioner renewed the registration, imported goods but failed to distribute them during the currency of its registration for reasons attributable to the respondent’s failures, the court would have looked at the matter differently. That is not the position in this case since there is no failure on the part of the respondent and interested parties.

61. Having carefully considered this petition, the responses, submissions and the law, I am not persuaded on of this petition. Consequently, the petition dated 13th July 2016 is declined and dismissed with costs.

Dated, Signed and Delivered at Nairobi this 1st Day of January. 2019

E C MWITA

JUDGE