



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MILIMANI (NAIROBI)

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO.384 OF 2017

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED VIOLATION AND INFRINGEMENT OF THE RIGHTS UNDER THE CONSTITUTION IN PARTICULAR ARTICLES 3,10,22,23,24,38,73(2)(A), 193,252,253 258 OF KENYA CONSTITUTION OF KENYA

AND

IN THE MATTER OF CHAPTER SIX OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 12A, 13(C) AND (G), AND SECTION 30 OF THE LEADERSHIP AND INTEGRITY ACT, 2012

AND

IN THE MATTER OF SECTION 25 OF THE ELECTIONS ACT NO. 24 OF 2011

AND

IN THE MATTER OF INDEPENDENT ELECTIONS AND BOUNDARIES ACT, 2011

AND

IN THE MATTER OF THE OATHS AND STATUTORY DECLARATIONS ACT, CAP 15 LAWS OF KENYA

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION.....PETITIONER

VERSUS

NELSON KIVALI MUSYOKA.....1ST RESPONDENT

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION...2ND RESPONDENT

UNIVERSITY OF NAIROBI.....3RD RESPONDENT

JUDGMENT

1. The petitioner through a petition dated 2nd August 2017 and filed on even date seeks the following orders:-

- a. A Declaration be and is hereby issued that the 2nd Respondent in exercising its mandate of conducting elections and institutionalizing a sustainable electoral process in Kenya is bound by the Constitution of Kenya and national legislation.
- b. A Declaration be and is hereby issued that Articles 99(A declaration that Articles 88(4) (f) and 193(1) (b) of the Constitution of Kenya and Section 4(f) of the Independent Electoral and Boundaries Commission Act, 2011 bestow upon the 2nd Respondent a duty to inquire into the eligibility of candidates for election and to register only those candidates who meet the legal requirements for the positions that they aspire to hold.
- c. A Declaration be and is hereby issued that Article 193(1) (b) of the Constitution bestowed upon the 2nd Respondent an obligation to inquire into the veracity of the Integrity verification report submitted to it by the Petitioner or in any other lawful manner satisfy itself of the eligibility of the 1st Respondent as a candidate for the position of a Member of the County Assembly for Voo Kyamatu Ward in Kitui County, in the 2017 General Elections.
- d. A Declaration be and is hereby issued that the 2nd Respondent failed to observe its obligation to undertake further investigations and/or any other judicious inquiry from the Petitioner and/or the 1st Respondent in respect of the allegations clearly revealed in the integrity verification report submitted by the Petitioner.
- e. A Declaration be and is hereby issued that the 2nd Respondent failed to observe the constitutional and statutory principles governing leadership and integrity by registering the candidate of the 1st Respondent for the upcoming 2017 General Elections for the position of a Member of the County Assembly for Voo Kyamatu Ward in Kitui County, in the face of a report by the Petitioner to the effect that that 1st Respondent forged a Degree Certificate purported to be issued by the 3rd Respondent.
- f. A Declaration be and is hereby issued that Article 38(3) (c) of the Constitutional guaranteeing the 1st Respondent the right of candidacy of a public office is not absolute and is subject to the eligibility criteria specified under Article 193(1)(b) of the Constitution.
- g. A Declaration be and is hereby issued that the 1st Respondent is not eligible for candidacy as a Member of the County Assembly for Voo Kyamatu Ward in Kitui County, in the 2017 General Elections on 8th August 2017.
- h. A Declaration be and is hereby issued that any election of the 1st Respondent to the position of a Member of the County Assembly for Voo Kyamatu Ward in Kitui County, or any other County Ward in the Republic of Kenya without meeting the ethical qualification prescribed by law for candidates for such an office is null and void.
- i. A Permanent Injunction barring the 1st Respondent from contesting any general elections for the position of a Member of Member of the County Assembly for Voo Kyamatu Ward in Kitui County, or any other County Ward in the Republic of Kenya without meeting the ethical qualifications prescribed by law for candidates for such an office.
- j. A Declaration be and is hereby issued that the 1st Respondent having been found to have violated the moral and ethical requirements provided in Article 193(1)(b) of the Constitution, Section 13(1)(g) and Section (30) of Leadership and Integrity Act, is not fit to hold any state office.
- k. A permanent injunction barring the 1st Respondent from holding any public office for breaching the ethical requirements of Chapter Six of the Constitution of Kenya.
- l. The Honourable Court be pleased to issue such further and other reliefs that the Honourable Court shall deem just and expedient to grant.
- m. Costs of this Petition.

2nd Respondent's Preliminary Objection

2. The 2nd Respondent upon service of the petition and an application dated 16th August 2017 filed a preliminary objection on both the application dated 16th August 2017 and the petition dated 2nd August 2017 raising the following grounds of objection:-

- a. **THAT** this Honourable Court lacks jurisdiction to hear the Petition in view of the provisions under Section 76(2) of the Elections Act, which vests jurisdiction on the Elections Court to hear and determine matters in respect of the validity of elections of candidates for elections.
- b. **THAT** the dispute herein can only be resolved by way of an election petition filed in accordance with articles 87, 105(1) (b) of the Constitution and Section 76 of the Elections Act.
- c. **THAT** the Petition herein is time-barred and overtaken by events in view of the provisions of Article 87(2) of the Constitution and Sections 74, 75 and 76 of the Elections Act, 2011.

d. **THAT** the Petition herein is therefore incompetent and should be struck out with costs to the Respondent.

Petitioner's Response

3. The petitioner on the other hand filed grounds of opposition to the 2nd Respondent's preliminary objection raising the following grounds:-
- a. This Honourable Court has original and unlimited jurisdiction in interpreting the Constitution of Kenya in line with Article 165(3) (d).
 - b. The Preliminary Objection is premised on a restrictive and unworkable presentation of the jurisdiction of this Honourable Court under Article 165(3) (d) (ii) that would leave the Petitioner without a remedy.
 - c. Additionally, this Honourable Court has supervisory jurisdiction over the 2nd Respondent under Article 165(d) and (7) of the Constitution in instances where the 2nd Respondent has either expressly or constructively failed to carry out its constitutional mandate or where its decisions result in obstinate decisions.
 - d. This Honourable Court has jurisdiction to determine whether an individual is eligible to contest for an electoral position or office in accordance to Articles 73(2) (a) and 193(1) (b). The fact that the 2nd Respondent clears candidates to vie for elective positions does not oust the jurisdiction of this Honourable Court in determining the question of eligibility.
 - e. The Petitioner raises legitimate issues of law which this Honourable Court is capable of adjudicating upon. The declarations sought in the Petition are within this Honourable Court's jurisdiction.
 - f. The 2nd Respondent's Preliminary Objection dated 23rd October, 2017 is frivolous, vexatious and without merit.

Directions

4. The court directed that written submissions be filed within 7 days from 9th April 2019 with response to submissions being filed within seven (7) days from the date of service and set the matter down for highlighting on 4th June 2019. The 1st and 2nd Respondents filed their submissions on 3rd June 2019 and 4th June 2019 respectively. The petitioner filed submissions dated 29th April 2019 with list of authorities.

Analysis and Determination

5. I have very carefully perused the petition, the notice of motion, preliminary objection, grounds of opposition to the preliminary objection, counsel rival written submissions, oral submissions and authorities in support and from the above the issues arising for consideration can be summed up as follows:-

a. Whether the Honourable Court has jurisdiction to hear and determine this matter?

b. Whether the petitioner's claim is time barred?

A. Whether the Honourable Court has jurisdiction to hear and determine this matter?

6. In the instant petition, the 2nd Respondent contend, that this honourable court lacks jurisdiction to hear the petition herein in view of the provisions of section 76(2) of the Elections Act, which vests jurisdiction on the Elections Court to hear and determine matters in respect to the validity of elections of candidates for election, urging further such dispute can only be resolved by way of an election petition filed in accordance with Articles 87, 105(1) (b) of the Constitution and Section 76 of the Election Act.

7. The petitioner on the other hand is of the view, that this court has original and unlimited jurisdiction in interpreting the Constitution of Kenya in line with Article 165(3) (2) of the Constitution of Kenya 2010. It is further petitioner's contention, that this Honourable Court has supervisory jurisdiction over the 2nd Respondent under Article 165(6) and (7) of the Constitution in instances where the 2nd Respondent has either expressly or constructively failed to carry out its constitutional mandate or where its decision result in obstinate decisions. It is further contended, that the Honourable Court has jurisdiction to determine whether an individual is eligible to contest for an electoral position or office in accordance to Article 73(2) and 193 (1) (b) of the Constitution of Kenya 2010. It is further contended the petition raises legitimate issues of law which the Honourable Court is capable of adjudicating upon and, that the declaration sought are within the Honourable court's jurisdiction.

8. It is trite, that preliminary objection, raises a pure point of law which is argued on assumption, that all the facts pleaded by the other side are correct. This proposition was well enunciated in the case of **Mukisa Biscuits Manufacturing Co. Ltd vs Went End Distributors Ltd (1969) E A 696**, where Sir Charles Newbold, P Emphasized that:-

"....The increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be called a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice must stop."

9. From the above, a preliminary point of law cannot be raised if any fact is to be ascertained or if all facts pleaded by the other party are not admitted as correct. This follows a preliminary objection is argued on the assumption, that what is pleaded by other side, is correct or is true. The petitioner herein has pleaded as a fact, that upon request of the 2nd Respondent, the petitioner compiled an integrity verification report of 16182 candidates who intended to contest for elective position in the 2017 general elections. The integrity verification report revealed the 1st Respondent he had forged a degree certificate purportedly from the 3rd Respondent and also from the 1st Respondent he had forged the signature of Alice Wahome Advocate on his Self-Declaration Form submitted to the petitioner in pursuance of the position of Assistant Director Corporative in Kitui County Government. It is further contended based on forged documents, the 1st Respondent secured the position of Assistant Director Corporative in Kitui County, thus he was impurely appointed to the said office which contravened provision of chapter six of the Constitution of Kenya 2010 as reads with Section 52 of the Leadership and Integrity Act.

10. The petitioner contend, that in spite of the 2nd Respondent having benefit of the integrity verification report, it went ahead to clear and publish the 1st Respondent, name in Kenya Gazette No.6253 Vol. (XIX- No. 2 dated 27th June 2017 to contest for the position of member of County Assembly, County Government Kitui, Kitui East Constituency, Voo Kyamatu Ward in 2017 General Election. That by that time, the Dispute Resolution Committee of the 2nd Respondent was no longer sitting. The petitioner further contend the issue raised do not fall under the provisions of Article 88(4) of the Constitution of Kenya 2010:-

11. Article 88(4) (e) of the Constitution of Kenya 2010 provides:-

"(e) The settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results."

12. Article 193(1) (b) of the Constitution of Kenya 2010 provides that a member of County Assembly is eligible for election if he/she satisfies the moral and ethical requirements prescribed by the Constitution or an Act of Parliament. Further under **Article 73(2) (a) of the Constitution** the court is vested with jurisdiction to determine the suitability of candidate contesting for an election on the basis of their personal integrity, competence and suitability. The moral and ethical requirements are provided for in **section 13(1) of the Leadership and Integrity Act 2012**.

13. It is further provided for under, **section 4(5) of the Leadership and Integrity Act 2012**, that where a public entity has failed to ensure compliance with and enforcing provisions of chapter six of the Constitution of Kenya 2010, the petitioner may make an application before a High Court Judge for appropriate orders requiring the public entity to comply.

14. In the instant suit, the petitioner duly compiled verification report of candidates intended to contest for elective petition in the 2017 General election, with all relevant information regarding the 1st respondent, that he had forged a degree certificate and signature of Alice Wahome Advocate, pointing to the fact that the 1st Respondent had misrepresented information to 2nd Respondent, a public body and the 2nd Respondent failed in its duty to consider the petitioner's integrity verification report, prior to gazettelement of the nominated candidates. In its failure the 2nd Respondent failed to uphold the provision of chapter 6 of the constitution, thus **Article 73 of the Constitution of Kenya 2010**.

15. In the case of **Luka Angaiya vs. Otieno Kajwang & another (2013) eKLR** the court held:-

"26. While am cognizant of the important tenet of the concept of the rule of law expressed above that this court before exercising its jurisdiction under Article 165 of the Constitution in general, must exercise restraint and must first give an opportunity to the relevant constitutional bodies or State organs to deal with the dispute as envisaged under the relevant statute, the failure of the IEBC to exercise that jurisdiction is of great concern and without saying more, where such a situation obtains, then it is my view that this court has the mandate to determine the matter."

"29. In my view therefore, the Petitioners have invoked the jurisdiction under Article 165(3) (d)(i) and (ii) to determine this matter and in particular whether the 1st Respondent has generally qualified under Chapter Six of the Constitution to run for the office of Senator. This is within the jurisdiction of this court...and so in spite of my findings and misgivings above, I find the Petition to be property before me and in the circumstances of the dispute between the parties, I reiterate that I have jurisdiction to determine them."

16. In this matter, it is important to note, that the Elections (General) Regulations Rules of Procedure on settlement of Dispute at **Section 4(1) (b)** provides mandatorily, that the issue regarding nomination of candidate shall be dealt with by the Dispute Resolution Committee.

17. An aspiring candidate is required by the statute to first comply with all qualification required which include but not limited to meeting moral and ethical requirements under Leadership and Integrity Act. It is upon complying and presenting all the requisite papers to **IEBC**, that an aspiring candidate is then issued with nomination certificate by the Returning Officer.

18. Rule 9 of the Elections Regulations, Legal Notice No. 139 of 2012, sets out the grounds upon which one may file a complaint on dispute arising from nomination of candidate such as the ones raised herein in this petition.

19. In Supreme Court in the case of **Mohamed Abdi Mohamud vs. Ahmed Abdullahi Mohamad & 3 others; Ahmed Ali Muktar (Interested Party) (2019) eKLR** while dealing with the question whether an Election Court has jurisdiction to determine Pre-election disputes, pronounced itself as follows:-

"... i) Pre-election disputes, including those relating to or arising from nominations, should be brought for resolution to the IEBC or PPDT, as the case may be, in the first instance."

ii) Where a pre-election dispute has been conclusively resolved by the IEBC, PPDT, or the High Court sitting as a judicial review Court or in exercise of its supervisory jurisdiction under Article 165(3) and (6) of the Constitution, such dispute shall not be a ground in a petition to the election Court.

iii)

20. In view of the above decision of the Supreme Court, the matter raised by the petitioner herein has already been settled. The petitioner herein was aware of the facts pertaining to the 1st Respondent's lack of degree and the issues ought to have been raised before the Dispute Resolution Committee of IEBC, and the decision not to file the dispute before the aforesaid committee bars the petitioner from relying on it as a ground in the instant petition.

21. It should further be noted, that the Supreme Court in the Mohamed Abdi Mohamud Case (supra), in highlighting the importance of following the procedure pronounced itself thus:-

"....If we were to allow contestants, or any other person, to consciously incubate a dispute, bypassing the Constitution, and originating it at an election Court, that would surely render Article 88(4) (e) of the constitution inoperable. For if one can originate any dispute at an election Court, why bother with the IEBC. The IEBC, in relation to election disputes, would surely become otiose!"

22. In the case of **Manjula Dhirajlal vs Dukes Investments International Limited & 2 others [2018] eKLR** quoting the case of **In the Matter of the Interim Independent Electoral Commission, Constitutional Application No. 2 of 2011** pronounced itself as follows:

"...Where the Constitution exhaustively provide for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."

23. In addition to the above the Court in case of **Seven Seas Technologies Limited vs Eric Chege [2014] eKLR**, while addressing the question of jurisdiction, quoted the locus classicus case of **Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1** in which it was held as follows:-

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

24. The petitioner contend, that this court have original and unlimited jurisdiction in interpreting the Constitution of Kenya in accordance with **Article 165(3) (d) of the Constitution**. It is however instructive to note, that the court in case of **William Kabogo Gitau vs Ferdinand Ndung'u Waititu (2016) eKLR**, while dealing with the issue of original and unlimited jurisdiction, stated as follows:-

"....Does this Court then have the jurisdiction to hear and determine the issues aforesaid? My answer that is in the negative. I hold so firstly because, the issues raised by the Petitioner, and which he seeks this court to interrogate, touch on matters within the purview of other constitutional bodies... I hold the view that the Petitioner's contentions in regard to the commission of the alleged offences must be raised with the relevant authorities and this Court cannot at this juncture usurp the powers of such authorities."

25. Upon perusal of the petition it is clear, that the issue raised contrary to the petitioner's contention do face under **Article 87(2) or 88(4) of the Constitution**. **Article 88(4) (e) of the Constitution** provide, that it is the 2nd Respondent herein, who is mandated to settle the issues, that has been raised in the instant petition in respect of and including disputes relating to or arising from nomination but excluding election petitions and dispute subsequent to the declaration of election results. It should further be noted, that under **Rule 9 of the Elections Regulations, Legal Notice No. 139 of 2012**, the procedure for resolving disputes are well outlined, including the one raised in this petition. This is not disputed by the petitioner in its submissions especially under paragraph 24 of the submissions. The petitioner is not challenging the conduct of elections or that the 1st Respondent's won in 2017 general elections but the **nomination** of the 1st Respondent on the grounds of failure to satisfy the moral and ethical requirement as envisaged under **Article 193(1) (b) of the constitution**. In view of the petitioner's admission; I find this dispute should have been handled by the 2nd Respondent's through its Dispute Resolution Committee which is mandated to handle such disputes, hence this petition is wrongly before this court as it does not have jurisdiction to handle the issue related to nomination of candidates.

26. Further to the above, it is instructive to note the court in the case of **William Kabogo Gitau vs Ferdinand Waititu (supra)** the court had the following to say:-

"....This Court has the general jurisdiction to enforce Chapter Six of the Constitution pursuant to Article 165 but such jurisdiction is to be exercised subject to existing and especially derivative statutes, if any...it would be premature for this Court to exercise its jurisdiction on matters that fall within the jurisdiction of other authorities specifically mandated..."

27. Further in Court of Appeal in the case of **Jaldesa Tuke Dabelo vs Independent Electoral and Boundaries Commission [2015] eKLR** while dealing with the issue of overriding objective principles pronounced itself as follows:-

"....A litigant cannot ignore the jurisdictional competence of a court or the procedure for commencing a cause of action and then aver that he has not been heard. Article 159 of the Constitution or the Overriding Objective principles are not blanket provisions that shelter a party who disregards the proper forum or jurisdictional competence of a court or fails to follow the procedure for commencing a cause of action."

28. I have carefully considered the operation of **Article 88(4) (e) of the Constitution of Kenya; Section 74 of the Elections Act and Regulations, Legal Notice 139 of 2012**, the parties rival submissions and authorities relied upon in support and in opposition of the preliminary objection and I find that this court, in view of the subject-matter in the petition, is divested of jurisdiction to entertain the present petition. I find that in view of subject-matter, that this court is not clothed with necessary jurisdiction to handle the instant petition.

B. Whether the petitioner claim is time barred?

29. I now wish to consider whether the petitioner's claim is time barred in case I am faulted on my finding on issue of jurisdiction herein above. The 1st and 2nd Respondents contend, that the petitioner's petition and application dated 2nd August 2017 and 16th August 2017 respectively have been overtaken by events, in view of the fact, that the 1st Respondent was vetted and cleared to contest for election as the Member of County Assembly of Voo/Kyamatu Ward, Kitui East Constituency by the 2nd Respondent, **IEBC** and his name gazetted on 28th August 2017.

30. The petitioner raised the issue on question of leadership and integrity through a confidential letter dated 30th May 2017, however it did not file a formal complaint nor pursued the matter through the Disputes Resolution Committee of the 2nd Respondent. The 1st Respondent was sworn as a Member of County Assembly of Voo/Kyamtu Ward, Kitui East and gazetted by 2nd Respondent on 28th August 2017. The **IEBC** fully discharged its constitutional mandate as provided under **Article 88(4) (e) of the Constitution of Kenya 2010** and **Section 74 of the Elections Act 2011**. **Article 87(2)** of the constitution provides that petition concerning an election, other than presidential election, shall be filed within twenty eight (28) days after the declaration of the election results by **IEBC**. Whereas **Article 88(4) (e) of the Constitution** provides, that the settlement of electoral disputes including disputes relating to or arising from nominations are matters to be handled by **IEBC**. In view of the provisions of **Article 87(2), Article 88(4) (e) of the Constitution of Kenya 2010** and **Section 74, 75 and 76 of the Elections Act, 2011**, the petition and application herein are time barred and overtaken by events. That after the elections are conducted and results announced and gazetted the right institution to hear and determine any election dispute is the High Court as provided under **Article 87(2) of the Constitution of Kenya 2010** and **Section 75 and 76 of the Elections Act, 2011**, provided it is filed within the prescribed period of 28 days after declaration of the election results by **IEBC**.

31. In the case of **Justine S. Sunyai vs Judicial Service Commission & another [2017] eKLR** while dealing with the issue of suits being time barred the court quoted the case of **Augustine Odhiambo Abiero vs K.K. Security Ltd** in which it was held that:-

"...A suit that is time barred is incompetent and bad in law."

32. I find though the petitioner herein acted in good faith and intended to have the 2nd Respondent, a public entity to ensure compliance with and enforcing provisions of chapter six of the constitution, it failed to vigilantly pursue the matter but sat on its right. In that it failed to have the matter referred to and dealt with by the Disputes Resolution Committee of the 2nd Respondent. The petitioner is pursuing the issue of nomination in this matter to which it had been overtaken by events. In light of the above, I find it would be an act in vain; inimical to justice and unjust for this court to entertain this petition and the application since it would be an exercise in futility for reasons herein above.

33. Notwithstanding my findings herein above, and considering that this matter has been brought under the Constitution of Kenya 2010, which in my view, is transformative constitution and the decision herein has been based on preliminary objection as regards the issue of nomination but not on merits. The issue resulting to petitioner's objection to the 2nd Respondent related to documents allegedly obtained fraudulently by the 1st Respondent, which is against chapter VI of the constitution of Kenya 2010 as relates to the issue of integrity. The issue of fraud or forged document has not been determined in this ruling, in view of the nature of the subject matter, this court was dealing with the Notice of Preliminary Objection. The issue of fraud is similarly not for this court. It is an issue that calls for **DPP** to direct the Inspector General of the National Police Service to investigate the matter. Under **Article 157(4) of the Constitution of Kenya 2010** and upon receipt of relevant information to take appropriate action. The fact that petitioner's claim relates to nomination process which has been overtaken by events do not mean that the 1st Respondent should not be investigated and appropriate action taken against him and his accomplices; if it is disclosed an offence was committed.

34. The upshot is that the preliminary objection dated 23rd October 2017 is meritorious. I proceed to make the following orders:-

a. The preliminary objection dated 23rd October 2019 is upheld in the following terms:-

i. This court has no jurisdiction to entertain both the application and the petition.

ii. Both the Application and the Petition are time barred and have been overtaken by events.

b. The application and petition are dismissed. However as this matter was brought in public interest each party to bear its own costs.

c. The Deputy Registrar to furnish a copy of this Ruling to DPP for investigation and appropriate action as directed under paragraph 33 of this Ruling.

Dated, signed and delivered at Nairobi this 9th day of October, 2019.

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J .A. MAKAU

JUDGE