REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC. PET NO. 5 OF 2017

MICHAEL BETT SIROR.....PETITIONER

BETHAM INVESTMENT CO.LTD.....2ND PETITIONER/APPLICANT

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

STEPHEN SUGUT.....1ST INTERESTED PARTY

JEREMIAH CHERUIYOT.....2ND INTERESTED PARTY

JACKSON KOECH.....3RD INTERESTED PARTY

JOSEPH MITEI.....4TH INTERESTED PARTY

RAPHAEL KOECH.....5TH INTERESTED PARTY

KIPKEMOI RUTO.....6TH INTERESTED PARTY

PAUL K. RUTO.....7TH INTERESTED PARTY

K. KETER.....8TH INTERESTED PARTY

BENJAMIN TIROP.....9TH INTERESTED PARTY

KIMUTAI NGENY.....10TH INTERESTED PARTY

CHERUIYOT CHEPKWONY.....1TH INTERESTED PARTY

VERONICA CHEPCHOR.....12TH INTERESTED PARTY

ROSEBELLA MAIYO.....13TH INTERESTED PARTY

RULING

1. By a notice of motion dated **22/10/2019** and filed on **23/10/2019**, the 2nd petitioner/applicant seeks the following orders against the respondents:

(1) …spent

(2) That the court be pleased to enter judgment against the respondents for the injunctive and declaratory orders upon compromise and or agreement.

(3) That in the alternative and without prejudice to any other prayer the court be pleased to enter judgment against the respondents on the injunctive and declaratory orders upon express and or implied admission by the respondents of the petitioner's claim.

(4) That in the alternative and without prejudice to any other prayer the court be pleased:-

A. To grant the applicant/petitioner leave to seek summary judgment against the Government, for the injunctive and the declaratory orders sought.

B. Subject to grant of leave sought in 4 (a) above, to enter judgment against the respondents for the injunctive and the declaratory orders sought as prayed in the petition.

(5) That the court be pleased to give directions as to the prayers and award of general and exemplary damages.

(6) That costs be provided for.

(7) That any other or further orders do issue in the interested of fairness and justice.

2. The application is brought under **Article 159 (2) (b) and (d) of the Constitution, Order 25 Rule 5, Order 13 Rule 2, Order 1 Rule 20, Order 10 Rule 8 of the Civil Procedure Rules 2010.**

3. The application is supported the affidavit sworn on **22/10/2019** by **David Kipchumba Siror**, one of the Directors of the 2nd petitioner/applicant. The said affidavit reiterates the same matters set out in the grounds at the bottom of the application.

4. The grounds upon which the application is premised are as follows: that the respondents have conceded to the 2nd petitioner's claims against the 1st and 2nd respondents and taken corrective measures to redress the same save for compensation and the court needs not apply more judicial time and resources on this matter. The concessions are said to be contained in various correspondence, meetings, discussions, internal memos and consultations. The petitioner invokes **article 159(2)(b**) and **(d)** of the Constitution and avers that justice shall not be delayed or subjected to undue technicalities. It also cites various **Civil Procedure Act** and Rules provisions on compromise of suit, judgment on admission; judgment against the Government and the overriding objective of the **Civil Procedure Act**. These are **order 25 rule 5, order 13 rule 2, order 1 rule 20 and order 10, and section 1A of the Civil Procedure Act.**

5. It is averred that the respondents' concessions contained in the various correspondence and documents nullifies the attempted fraudulent conversion of the petitioner's land from **Parcel No LR 6614 South East Kitale** to **Cherangani Trans Nzoia Block 14/Tunen**. It is said that they obliterate the fraudulent subdivisions surveys and allocations of the petitioner's said parcel and cancel all fake titles issued over it and nullifies all false registry index maps over the land; the claims for injunctions and declarations having been resolved by the said concessions all that remains to be resolved is the issue of general and exemplary damages and costs. The petitioner prays the court to award damages on the basis of the available material on the record and the taxation of costs.

6. In response to the application the 1st respondent filed grounds dated **28/11/2019**. In those grounds it states that the 1st respondent has never, to date, been asked, to compulsorily acquire the parcel **LR No. 6614/6 South East Kitale**, as alleged or at all; that the respondent has to date not invoked or applied its legally exclusive mandate under **Part VIII** of the **Land Act** to acquire the implicated parcel **LR No. 6614/6 South East Kitale**; that the respondents are not parties, are not aware and were not involved in any conversions and changes on the parcel numbers, from **LR No. 6614/6 South East Kitale** to **LR No. Cherangany/Nzoia Block 14/Tunen** or into any other parcels, or with any associated acts of mutations, surveys, sub-divisions, allocations, registry index mappings and or titling; that the 1st respondent is not civilly culpable for any act of commission or omissions as against the 2nd petitioners as alleged by the petitioners or at all and that the 1st respondent asks that the 2nd petitioner's prayers against it (NLC) in the application be dismissed *in toto* and 1st respondent be awarded costs for the application.

7. The 2nd respondent filed grounds of opposition dated **4/2/2020**. In those grounds the following matters are raised: that the notice of motion is based on falsehoods, speculations and hearsay information and it lacks any or any iota of merit; that the petitioners' interests in the suit parcels of land **LR Nos. 6614/51, 6614/52, 6613/53, 6614/51, 6614/55, 6614/56, 6614/57, 6614/58, 6614/59, 6614/60, 6614/61, 6614/62, 6614/63, 6614/64, 6614/65, 6614/66 and 6614/67** are reserved and protected; that the source of the alleged internal memos dated **23/5/2019** and **23/4/2019** or any other undated internal memo herein offends provision of **Evidence Act Cap 80 Laws of Kenya**; that the petitioners have not cogently demonstrated any wrong-doing on the part of the 2nd respondents as no ill-will, bad faith or malice has been demonstrated; that the petitioners' allegations of issuance of any titles or alleged conversion or sub-division has not been demonstrated that general and exemplary damages cannot be granted in circumstances of the issues herein and prays that the application be deemed as having been overtaken by events with no order as to costs as the 2nd respondent does not intend to deal with private properties without petitioners' unequivocal consent.

8. The 2nd interested party having been served with the 2nd petitioner's application dated **22/10/2019** filed grounds of opposition dated **4/2/2020** and further grounds dated **13/3/2020** and filed on **9/4/2020**. The grounds he relies on are that: the application is an attempt to steal a march on the other parties, all parties having filed their pleadings and submissions in favour of a judgment; that the issues raised in the application have already been addressed in the pleadings and submissions; that none of the respondents or interested parties have admitted any of the material on the record; that the basis of the alleged compromise are in the documents not filed with the petition to warrant a defence; that joinder of the Attorney General is not sufficient to enable the court deal with allegations made against the Ministry Of Lands and its officials who are not enjoined in the suit; that it is unfair to grant the orders sought on the basis of claims of admission or compromise by persons not parties to the suit; that there is no evidence that the 1st respondent was undertaking the impugned subdivisions; that the main petition should be determined on the merits.

9. In the grounds dated **13/3/2020**, the 2nd respondent avers that matters of fact contained in the replies to petition and the instant application filed by the 1st and 2nd respondent call for the giving or production of evidence under oath and in the circumstances this matter is not eligible for summary judgment; that he has demonstrated that the plaintiff's title is subject to trust.

10. The 3rd interested part filed his sworn replying affidavit dated **10/3/2020** in response to the application. His response is that vide **ELC Kitale Land Case No 96 Of 2016** he filed suit against the 1st petitioner the basis of a trust, claiming **300** acres part of **LR 6614/6** ; that to defeat the pending suit the 1st petitioner fraudulently subdivided the suit land and transferred part thereof to other parties and that the application should be dismissed.

11. The 12th interested party filed her replying affidavit sworn on **4/2/2020** and filed on **5/2/2020**. Her response to the instant application is that the 1st and 2nd petitioner are one and the same person, the 1st being a major shareholder in the 2nd; that the allegations of admissions are not true because the grounds filed by the 1st respondent deny the allegations in the instant application; that she may be condemned unheard unless the findings of the DCI are brought to light; that the matter has been settled before using the court process; that she was never invited to the forum where the alleged concessions and admissions took place yet the orders sought are against her interests ; that since the matter is still pending investigation there is no applicability of article 159 order 13(2) or Order 25(5)(1). The 12th interested party then launches into a narrative of the history of the suit land, describing herself as among willing buyers invited to save the 1st petitioner from a certain auction of the suit land when he and his partner were indebted to AFC only for the 1st petitioner to have the title released to himself by AFC; ; that she has been in possession of her portion since **1975**; that the land control board determined the shares of the parties; that the 1st petitioner only wants to rob purchasers of their land; that there have been a litany of court cases over the land; that prayers for violation of the petitioners' constitutional rights have been sough against her; that this court is not able to give a decision on the matter without the results of the criminal investigation by the police.

12. I have gone through the record and found no submissions filed on behalf of the parties. I have considered the application and the responses.

Determination

13. The issues that arise from the application are as follows:

> ***(a) Should judgment be entered against the respondents upon their express or implied agreement compromise, or admission of the petitioner's claim?***
>
> ***(b) What directions should issue regarding general and exemplary damages?***
>
> ***(c) Who should pay the costs of the application?***

14. The issues are addressed herein under:

> ***(a) Should judgment be entered against the respondents upon their express or implied agreement compromise, or admission of the petitioner's claim?***

15. The summary of the petitioner's application is that it seeks summary judgment against the respondents upon their alleged admission of the claim. The court must examine whether summary judgment may issue and whether there has been any admission that would warrant such judgment.

16. The instant application is brought under the **Civil Procedure Act** and Rules and **Article 159(2) (b)** of the Constitution. That article of the Constitution provides as follows:

> ***(2)In exercising judicial authority, the courts and tribunals shall be guided by the following principles—***
>
> ***(a) ……***
>
> ***(b) Justice shall not be delayed;***

17. The import of coming under this provision is that since there is an alleged admission on the part of the respondents, judgment should be entered against them summarily without having to go through the normal procedures of hearing of the petition. Subject to whether the applicant can prove that he is entitled to judgment as prayed, the instant application may be considered to be supported by the provisions of **rules 4** and **5(b)** and **(c)** of the **Constitution Of Kenya (Protection Of Rights And Fundamental Freedoms) Practice And Procedure Rules, 2013 (*Mutunga Rules* .)** These cited rules provide for an interpretation of the rules with a view to advancing and realizing the rights and fundamental freedoms enshrined in the Bill of Rights and values and principles in the Constitution, efficient use of the available and administrative resources and timely disposal of proceedings at a cost affordable by the respective parties. All this would go into achieving the purpose of furthering the overriding objective of the rules contained in **rule 2**.

18. Before invoking the **Civil Procedure Act** and **Rules**, the first recourse for the petitioner should be to seek whether summary judgment and judgment on admission is provided for in the **Constitution Of Kenya (Protection Of Rights And Fundamental Freedoms) Practice And Procedure Rules, 2013**

19. Do these rules provide for summary judgment and judgment on admission?

20. I have perused the rules and found them wanting in this regard. However this court should not wring its hands in despair and refuse the application on that basis alone. It should reach out for enabling provisions of the law that will aid an applicant who has come before it with a plea for expedited justice.

21. In the case of **Vallerie Namtilu Wafula & Another V Kenya National Union Of Teachers (Knut) & 2 Others [2012]eKLR** it was stated as follows:

> **"It is the second respondent's contention that in petitions of this nature the civil procedure Rules have no place and therefore any application expressed to be brought under the latter is incompetent. First and foremost it must be noted that under Article 22(3), the Chief Justice is enjoined to make rules inter alia providing for the court proceedings which shall satisfy the criteria that the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedurals technicalities. Although the said Rules are yet to be promulgated (the rules have since been promulgated hereinbefore referred to as Mutunga Rules), the spirit of the foregoing provision as read together with the provisions of Article 159(2) (d) is clear that technicalities of procedure, more particularly in application brought for the enforcement of the Bill of Rights, should not be entertained. Even prior to the promulgation of the current Constitution the relevance of the Civil Procedure Rules was considered in Meme Vs. Republic [2014] 1 EA 124; [2004] 1 KLR 637, in which Rawal J (as she then was), Njagi J & Ojwang' AJ (as he then was) held that at a very basic level the Court is empowered to draw from the Civil Procedure Rules in its exercise of powers under the Constitution of Kenya (Protection of Fundamental Right and Freedoms of the Individual) Practice and Procedure Rules and by virtue of Order 1 Rule 10(2). This decision should put the second Respondent's position on the applicability of Civil Procedure rules to Constitutional petitions to rest."**

22. In the case of **Nicolaas Hendrick Claassen v Commissioner of Lands & 4 Others Kitale Constitutional Petition No 7 of 2015 [2016] eKLR** it was stated as follows by the court (Obaga, J.):

> **"On the first issue, the respondents counsel argued that constitutional petitions are guided by Constitution of Kenya (Protection of Rights and Fundamental Freedoms) practice and Procedure Rules 2013 contained in Legal Notice No.117 of 28.6.2013 commonly referred to as Mutunga Rules. Mr. Odongo state counsel argued that the Mutunga Rules are the only ones guiding the filing of Constitutional Petitions and any applications thereunder and as such there is no need to invoke the provisions of the Civil Procedure Act or Rules. I agree with Mr. Odongo that the Mutunga Rules provide the manner in which constitutional petitions and applications are supposed to be filed. In the case of applications, an application is supposed to be made by way of Notice of Motion as set out in Form D in the Schedule. This is what Rule 19 of the Mutunga Rules states. The question which then arises is whether an application which is filed based on Provisions of the Civil Procedure Rules and Act can be defeated solely on the ground that it has been brought under rules other than the manner provided. I do not think that an application can be defeated just because it has cited wrong provisions of the law. The main concern of the court is to do substantive justice as opposed to technical justice. This is why even the Mutunga Rules provide that the courts should give an interpretation of rules in a manner which furthers the overriding objective of the court with regard to article 259(1) of the constitution. I therefore find that there is nothing wrong in the applicant citing provisions of the civil Procedure Rules and the Act."**

23. It must be stressed that **article 159** of the Constitution abhors the possibility of sacrificing justice at the altar of procedural technicalities. This court finds nothing that would bar the application of the **Civil Procedure Act** and rules in appropriate circumstances in a constitutional petition. In any event it must be borne in mind that **rule 3(8)** of the *Mutunga Rules* emphasizes that nothing in the rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Constitutional petitions are lodged against the national government and public bodies for redress of violations of rights under the constitution and where the respondents are satisfied that they require to admit the claim this court would not hesitate to issue judgment against them on admission, whether in reliance on any written rules or on a plain application of reason and good sense in appropriate circumstances. Therefore, in the absence of specific provisions under the *Mutunga Rules* to cater for the novel situation now emerging, this court is bound to refer to the most readily available procedural regime familiar to our justice system, the **Civil Procedure Act** and **Rules,** for guidance.

24. Having observed as above, now this court has to examine the provisions of the **Civil Procedure Act** and **Rules** that applicant relies on to establish their relevance in the case.

25. Order 25 rule 5 of the **Civil Procedure Rules** states as follows:

> **5. Compromise of a suit [Order 25, rule 5.]**
>
> **(1) Where it is proved to the satisfaction of the court, and the court after hearing the parties directs, that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith.**
>
> **(2) The Court, on the application of any party, may make any further order necessary for the implementation and execution of the terms of the decree.**

26. Order 1 rule 20 provides as follows:

> **20. No judgment against Government without leave of the Court [Order 1, rule 20.]**

(1) A defendant shall not in any event be entitled to enter judgment against the Government under rule 19 without the leave of the court.

(2) Any application for leave to enter judgment against the Government under this rule shall be made by chamber summons served not less than seven days before the return day.

27. Order 1 rule 19 provides as follows:

"19. Judgment against third party in default [Order 1, rule 19.]

Where a third party makes default in entering an appearance in the suit, or in delivering any pleading, and the defendant giving the notice suffers judgment by default, such defendant shall be entitled, after causing the satisfaction of the decree against himself to be entered upon the record, to judgment against the third party to the extent claimed in the third-party notice; the court may upon the application of the defendant pass such judgment against the third party before such defendant has satisfied the decree passed against him:

Provided that it shall be lawful for the court to set aside or vary any judgment passed under this rule upon such terms as may seem just."

28. Order 13 rule 2 provides as follows:

"2. Judgment on admissions [Order 13, rule 2.]

Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just."

29. Order 10 rule 8 provides as follows:

"Order 10, rule 8.

No judgment in default of appearance or pleading may be entered against the Government without the leave of the court and any application for leave shall be served not less than seven days before the return day."

30. This court will not dwell on the provisions of **Order 10 rule 8, Order 1 rule 19** and **Order 1 rule 20** which are set out above for it is clear that they are not applicable in the instant case.

31. Under the guidance of the provisions of **Order 25 Rule 5** has to be applied this court will look for evidence that:

"the petition has been adjusted wholly or in part by any lawful agreement or compromise,"

or that :

"the respondents have satisfied the petitioners in respect of the whole or any part of the subject-matter of the suit."

32. Alternatively under the guidance of the provisions of **Order 13 Rule 2** this court should look out for whether

"…admission of facts has been made, either on the pleadings or otherwise"

which would entitle the applicant to

"…apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties."

33. Now the court must refer to the application and the responses of the respondents to decipher whether there has been compromise or admission as alleged by the applicant.

34. In this court's view more mileage toward establishing this fact will be gathered from the responses of the respondents to both the application and the petition, for they are the principal parties in comparison to the interested parties.

35. A perusal of the responses to the application and petition by the respondents shows that:

a. The 1st respondent denies having acquired or having been asked to acquire **LR No 6614/6 South East Kitale;**

b. The 1st respondent denies being party to or being aware of the conversions and change from **LR No 6614/6 South East Kitale** to **Cherangany/ Trans Nzoia /Block 14 /Tunen,** the mutations, surveys, subdivisions, allocations, preparation of a registry index map or titling. It prays that the petition be dismissed with costs.

c. The 2nd respondent denies that there was any interference in any way with the petitioner's land parcels in question, or that there is any evidence to support the claim that there has been any subdivisions, issuance of title or that the memos and other documents annexed to the application are admissible as evidence in this case. The 2nd respondent reiterates the denials by the 1st respondent with regard to conversions and change from **LR No 6614/6 South East Kitale** to **Cherangany/ Trans Nzoia /Block 14 /Tunen,** the mutations, surveys, subdivisions, allocations, and preparation of a registry index map or titling. He also prays that the petition be dismissed with costs.

36. Thus far the battle lines are clearly drawn. However only one statement in the 2nd respondent's grounds of opposition dated **4/2/2020** completely eviscerates the applicant's claim that there is compromise or admission as follows:

"The source of the alleged internal memos dated 23/5/2019 and 23/4/2019 or any other undated internal memo herein offends the provisions of the Evidence Act Cap 80 laws of Kenya"

The disputed internal memo dated **23/4/2019** reads as follows:
"From: Principal Secretary

To: Ag Director Of Survey.

Date : 23rd April 2019.

We are in receipt of a complaint regarding title preparation for the above parcel of land. The matter is currently under investigation by the directorate of criminal investigation. Further to this the titles which were prepared at the national titling centre have been cancelled due to the error.

In view of the foregoing you are hereby directed to investigate how the Registry Index Map (RIM) was prepared and take the necessary administrative action in rectifying any error.

Dr Nicholas Muraguri

Principal Secretary"

37. This court has perused through the application and found no other internal memo dated **25/5/2019**. However if the documents or some of them, upon which the application is premised are said to be inadmissible by the very respondents who are alleged to have compromised the suit, how can this court enter judgment against them when there is already one triable issue?

38. The notice of motion was filed on **23/10/2019** while the responses to both the application and the petition were filed between **3rd** and **5th February 2020.** They therefore were in direct answer to the application the contents of which the respondents knew of by **February 2020**.

39. Would any reasonable observer say that there has been admission in the circumstances? In this court's view the respondents are simply saying:

"We deny your claim, come forward with evidence and prove it."

40. The alternative available for the respondents was to expressly admit that they had conducted the conversions and change from **LR No 6614/6 South East Kitale** to **Cherangany/ Trans Nzoia /Block 14 /Tunen,** the mutations, surveys, subdivisions, allocations, and preparation of a registry index map or titling and this they did not do. as long as they deny, and those actions form the gravamen of the petitioner's grievance, the issue must be tried.

41. Applications such as the instant one can be granted when there is not the slightest objection from the respondents, for as was said, admissions have to be as straight as a pikestaff. In the case of **Winfred Nyawira Maina V Peterson Onyiego Gichana [2013] eKLR** it was observed as follows:

"The admission can be in a pleading, correspondence or other document. What is paramount is that the admission has to be unequivocal and clear. It cannot apply where there are serious questions of law or fact to be argued. See *Gilbert Vs Smith* [1876] 2 Ch D 686 at 688 – 689*, Kiprotich Vs Gathua and others* [1976] KLR87 at 90."

42. The absence of a written consent signed by all the consenting parties in the suit and the element of denial by the 2nd respondent of some facts and some documents including the internal memos mentioned above casts great doubt on the claim that there is an admission or compromise between the petitioner and the respondents. It would be an interesting voyage indeed to discover whether the persons who gave instructions that enabled the counsel to file the responses on record had earlier on made those documents.

43. In the case of **Choitram Vs Nazari (1982 – 88) 1 KAR 437** Madan JA observed as follows:

> **"For the purpose of Order 12, rule 6 admissions can be express or implied either on the pleadings or otherwise, e.g in correspondence. Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends upon the language used. The admissions must leave no room for doubt that the parties passed out of the stage of negotiations on to a definite contract. It matters not if the situation is arguable, even if there is a substantial argument, it is an ingredient of jurisprudence, provided that a plain and obvious case is established upon admissions by analysis. Indeed there is no other way, and analysis is unavoidable to determine whether admission of fact has been made either on the pleadings or otherwise to give such judgment as upon such admissions any party may be entitled to without waiting for the determination of any other question between the parties".**

44. In the case of **Winfred Nyawira Maina (supra)** on a motion for judgment on admission of a liquidated sum it was deponed that the admissions consisted of dishonoured cheques issued by the defendant in part payment; a memorandum of understanding and loan agreement, a handwritten letter and a transfer of a property. In that case the court considered the concession in a sworn affidavit of the respondent that the applicant had represented to the respondent that she was in a position to secure a loan facility, that acting on the said representation, the respondent surrendered the original title document of the suit property to the applicant. The respondent also deponed that he then instructed his lawyers to "repudiate" the loan agreement and transfer. The court found that cheques in favour of parties other than the plaintiff were not evidence of admission, but relied on a handwritten letter by the defendant to the plaintiff admitting indebtedness of the claimed sum to enter judgment on admission in the plaintiff's favour.

45. In the instant case it has been averred by the interested parties and particularly by the 12th interested party that the averments by counsel in the responses to the applications are not sworn statement at par with those made by the defendant in the **Winfred Nyawira Maina (supra)** to warrant entry of judgment on admission; this court finds that to be the correct position.

46. Whereas this court must take it to be the case that counsel have taken instructions of the respondents to file such responses, it must be remembered that the responses are not wholistic admissions and separating the admissions from the non-admissions in this application at this stage is an arduous task that may be equal to determining the petition on its merits. The absence of affidavit evidence by the respondents also clouds the merits of the application at hand.

47. In the final analysis I find that this is not a case in which summary judgment on admission may be entered and it would be appropriate to await the substantive hearing of the petition which is now nigh, by way of submissions to enable the court arrive at a final judgment on the issues involved.

(b) What Orders should issue?

48. The upshot of the foregoing is that the application dated **22/10/2019** is without merit and the same is hereby dismissed. The court finds that as the application was an endeavour to arrive at an expeditious conclusion of this matter, the costs of the application will be in the cause.

It is so ordered.

Dated, signed and delivered at Nairobi via electronic mail on this 29th day of May 2020.

MWANGI NJOROGE

JUDGE ELC KITALE.