



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

MISC.CIVIL APPLICATION NO. 288 OF 2017

THE TRUSTEES OF THE NEST CHILDREN'S HOME.....APPLICANT

-VERSUS-

ATLAS PLUMBERS & BUILDERS (K) LIMITED.....RESPONDENT

RULING

[1] The Notice of Motion dated **28 June 2017** was filed herein by the Applicant, the **Trustees of the Nest Children's Home**, pursuant to **Articles 10, 48 and 165** of the **Constitution of Kenya, Section 35(2)(a)(iv) and (b)(ii)** of the **Arbitration Act, No. 4 of 1995, Rule 7** of the **Arbitration Rules, 1997** and all enabling provisions of the law. It seeks the following orders:

[a] That the Final Award dated **31 March 2017** by **QS. Emmanuel O. Odhiambo** in the arbitration between the Applicant and the Respondent be set aside;

[b] That the Costs of the application be provided for;

[c] That any other order the Court deems fit to grant in the circumstances be issued.

[2] The application is predicated on the grounds that the Final Award, dated **31 March 2017** deals with a dispute not contemplated by the Applicant and not falling within the terms of reference to arbitration; is in conflict with the public policy of Kenya; and amounts to a denial of the Applicant's constitutional right to Access to Justice. It was further contended that the Final Award was made in gross ignorance of the contractual obligations of the parties and is therefore unjust and inequitable in the circumstances of the case. It was lastly contended that the Final Award is in gross violation of the law and the Constitution and therefore that it would only be just and equitable that it to be set aside.

[3] These grounds were expounded on in the Supporting Affidavit sworn on **28 June 2017** by **Prof. Julius Kyambi**, one of the Registered Trustees of the Applicant. He averred that the Applicant is an incorporated Trust under **the Trustees (Perpetual Succession) Act, Chapter 164** of the **Laws of Kenya**; and that on **4 January 2011**, the Applicant entered into an agreement with **Visaro Construction Co. Ltd** (the Contractor) for the construction and completion of **the Nest Children's Home** for the contract sum of **Kshs. 121,814,425/=**. As the Agreement permitted sub-contracting by the Contractor, another Agreement dated **26 January 2011** was made between the Contractor and the Respondent herein, **Atlas Plumbers & Builders (K) Limited** (the Sub-contractor), for the carrying out of plumbing and associated works for the proposed **the Nest Children's Home**.

[4] It was further the averment of **Prof. Kyambi** that, after the completion of the project, a dispute arose in connection with the final accounts, which dispute was on or about **6 April 2016**, referred for arbitration; and that in the course of the arbitration, the Respondent joined the proceedings purporting to claim against the Applicant, monies that were due to it from the Contractor, but which had not been paid. **Prof. Kyambi** further averred that on **10 October 2016**, the Arbitrator, **Mr. Emmanuel O. Odhiambo**, delivered his Interim Award in favour of the Contractor for the balance of the money owing under the Main Contract, which the Applicant has since paid to the Contractor. He added that thereafter, the Arbitrator purported to issue a Final Award in favour of the Sub-Contractor on **31 March 2017** in the sum of **Kshs. 15,133,101.86**, which is what the Applicant is aggrieved about.

[5] According to the Applicant, that Final Award was made in complete ignorance of the terms of both the Main Contract as well as the Sub-Contract; and that it purports to amend the terms of the Sub-Contract by conferring contractual obligations on the Applicant, yet the Applicant was not a party to the Sub-Contract. The Final Award was further attacked on the ground that it purports to deal with a dispute which was not contemplated by the Applicant and which does not form part of the terms of reference to arbitration. In particular, the Applicant took issue with the fact that the Final Award was made in disregard of **Clause 1.7** of the Sub-Contract, which stipulated that the

Contractor was responsible for paying the Sub-Contractor; and by which the sums payable to the Sub-Contractor, the Respondent herein, were limited to **Kshs. 9,392,454.75** only.

[6] Thus, it was the contention of **Prof. Kyambi** that the Arbitrator completely failed to justify the grounds under which he shifted contractual obligations from the Contractor to the Applicant, who is a stranger to the Sub-Contract; and that the net effect of the erroneous Final Award is that the Applicant has been wrongfully condemned to pay the Sub-Contractor a huge amount of money after full payment of the contractual sums under the Main Contract to the Contractor. It was on account of the foregoing averments that the Applicant moved the Court for the setting aside of the Final Arbitral Award dated **31 March 2017**.

[7] The application was resisted by the Respondent, on whose behalf a Replying Affidavit was sworn by **Harish Bhanderi** on **22 September 2017**. **Mr. Bhanderi** confirmed that the Applicant did enter into an Agreement with the Main Contractor for the construction and completion of **the Nest Children's Home** on **4 January 2011**. He further confirmed that, since the said works comprised of specialist components by way of plumbing and drainage works, the Respondent was procured by the Applicant through its consultants and was handed over to the Main Contractor; whereupon a Sub-Contract was entered into between the Contractor and the Respondent as the Sub-Contractor. After restating the pertinent parts of both the Main Contract and the Sub-Contract, **Mr. Bhanderi** refuted the Applicant's assertion that the Final Award ignored the method of payment provided for in **Clause 23.6** of the Sub-Contract. His averment was that, to the contrary, the dispute arose because the Quantity Surveyor, the Architect and the Applicant failed to fulfil their duties and accordingly failed to avail funds to the Contractor from which the Respondent could be paid.

[8] As to why the Final Award sum is higher than the contractual amount stated in **Clause 1.7** of the Sub-Contract, it was the averment of **Mr. Bhanderi** that the Contract Price was thereafter varied, in accordance with the terms of **Clause 10.0** of the Sub-Contract, and **Clauses 22 and 30** of the Main Contract; and that the variations took into account the interest due on the delayed payments as provided for both in the Main Contract (at **Clause 34.6**) and the Sub-Contract (at **Clause 23.7**). Hence, he asserted that the Final Award was made to compensate the Respondent in the name of the Main Contractor for the failure by the Architect to exercise his powers in accordance with the terms of the Contracts.

[9] Thus, it was the contention of the Respondent that the Final Award is not the product of wilful omission by the Arbitrator, but is the determination of the claim based on the parties' pleadings before the Arbitrator, and in the exercise of the powers of the Arbitrator as recognized and provided for by the parties in **Clause 45.8** and **45.9** of the Main Contract. Thus, the Respondent asked that the instant application, which seeks the setting aside of the Final Award, be dismissed with costs.

[10] The Applicant responded to the Respondent's averments vide the Supplementary Affidavit sworn by **Prof. Julius Kyambi** and filed herein on **24 October 2017**. It reiterated its posturing that the Final Award was in conflict with the public policy of Kenya in so far as it was made by the Arbitrator in disregard of the law and the provisions of the contract from which the Arbitrator derived his authorities. It was further reiterated that, the Arbitrator transferred liability for the payment of the Respondent from the Main Contractor to the Applicant in blatant disregard of **Clauses 1.7, 23.6, 23.7** and **23.8** of the Sub-Contract, yet full payment for the entire contract had been made to the Main Contractor.

[11] The Main Contractor herein, **Visaro Construction Company Limited**, also filed an affidavit in response to the application. The affidavit was sworn on **2 November 2017** by **Vishram Arjan Ramji**, one of the Directors of the Main Contractor. He confirmed that, as the Main Contractor, **Visaro Construction Company Limited** allowed the Sub-Contractor to join the Arbitration as the 2nd Claimant to prosecute their part of the claim; and therefore that the Arbitration involved two Claimants, namely **Visaro Construction Company Limited** under the Main Agreement and **Atlas Plumbers & Builders (K) Limited**, under the Sub-Contract. It was therefore the averment of **Mr. Ramji** that the Interim Award was only in respect of part of the Claim for the Main Contract; while the Final Award was restricted to the plumbing and associated works undertaken by the Sub-Contractor. **Mr. Ramji** further asserted that the Interim Award did not contain any amount that was the subject of the Respondent's Claim in the arbitration; and denied that the Final Award, if executed, would constitute a double payment by the Applicant.

[12] The application was canvassed by way of written submissions pursuant to the directions given by the Court on **3 November 2017**. Consequently, the Applicant's written submissions were filed herein on **4 January 2018** by the firm of **Walker Kontos Advocates**; while the Respondent's written submissions were filed on **2 February 2018** by **M/s Nyagah B. Kithinji & Co. Advocates**. I have carefully considered those submissions in the light of the averments set out in the Notice of Motion dated **28 June 2017** and the two affidavits filed herein. What emerges therefrom as undisputed facts are that the Applicant is an incorporated charitable Trust. A Certificate of Incorporation in that regard was exhibited as **Annexure "IB1"** to the Supporting Affidavit confirming that the Plaintiff was registered under the **Trustees (Perpetual Succession) Act**.

[13] There is further no dispute that on **4 January 2011**, the Applicant entered into an agreement with **Visaro Construction Co. Limited** for the construction and completion of **the Nest Children's Home** at the contract price of **Kshs. 121,814,425/=**; which agreement was exhibited at pages 5-54 of the Supporting Affidavit. In turn, the Main Contractor engaged the Sub-Contractor, **Atlas Plumbers & Builders (K) Limited** vide an agreement dated **26 January 2011** in respect of the plumbing aspects of the building contract, limited to **Kshs. 9,392,454.75**; and the agreement in that regard was exhibited herein at pages 75-99 of the documents annexed to the Supporting Affidavit.

[14] It is also manifest that, although the project was executed to completion, a dispute thereafter arose in connection with the Final Accounts between the Contractor on the one hand, and the Applicant/Employer on the other hand; which dispute was referred to arbitration, in accordance with **Clause 45** of the Main Contract. The Respondent herein applied for joinder and was duly enjoined to the arbitral process in accordance with the terms of the contract, and in particular **Clauses 31.4** and **31.5** of the Sub-Contract. Hence, an Interim Award dated **10 October 2016** was made by the Arbitrator, **QS Emmanuel Ochola Odhiambo**, in respect of the Contractor's Claim and a Final Award made on **31 March 2017** in connection with the Sub-Contractor's Claim. The salient part of the Interim Award is as follows:

"I HOLD THAT;

The Respondent is liable to the Claimant in the sum of Ksh. 6,283,995.51 including interest as at this date of award, that is the 11th of October 2016, plus simple interest of 14.5% per annum from the award date on the amount of Ksh. 6,283,995.51 until full payment.

AND ACCORDINGLY I DO HEREBY MAKE AND PUBLISH THIS INTERIM AWARD AND DIRECT THAT;

49. The Respondent shall within 60 days after that when either party shall have taken up this award pay to the Claimant the sum of Ksh 6,283,995.51 plus 14.5% per annum simple interest on Ksh 5,149,717.36 from date of this award until payment in full.

50. The Respondent shall pay the Claimant's costs in this arbitration within 60 days from date the Claimant shall have submitted his cost to the Respondent or (in the event of a disagreement on such costs and the same being referred to me by either party) then from the date I shall have made my determination pursuant to paragraph 51. The said costs shall earn simple interest at 14.5% per annum until fully paid.

51. I RESERVE to my further or Final Award determination, if not agreed of the amount of costs and interest thereon (for which purpose I shall give my further directions upon application of either party).

52. The Respondent shall also pay and bear my fees and expenses in respect of this arbitration and award; which amount I have already determined as Ksh 1,048,600.00 plus 16% VAT of 167,776.00 thereon making a total of Ksh 1,216,376.00.

53. The respondent to reimburse the Claimant Ksh 116,000 (inclusive of deducted withholding tax) already paid to me by Claimant as deposit and the balance of Ksh. 984,376.00 (exclusive of deposit paid by respondent of 116,000 inclusive of deducted withholding tax) should the Claimant pay this amount in taking up the award then the respondent shall forthwith reimburse him with that amount plus 14.5% simple interest per annum from the date of the Claimant's payment until the date of reimbursement."

[15] In the Final Award, on the other hand, the Arbitrator delineated the dispute to be the Respondent's failure to determine the Final Account; and the neglect by the Architect to certify payments due to the 2nd Claimant in accordance with the Main Contract and the Sub-Contract, thereby occasioning unconscionable delay in settling the accounts of the 2nd Claimant. Hence, the Final Award was that:

"a) The Respondent shall within 60 days after that when either party shall have taken this award pay to the 2nd Claimant;

i) The Sum of Kshs. 9,091,731.11 (Nine million ninety one thousand seven hundred and thirty one cents eleven) as determined in paragraph 77.

ii) Interest as computed at paragraph 86 amounting to Kshs. 6,041,370.75 (Six million forty one thousand three hundred and seventy cents seventy five)

AND

iii) The amount awarded at 87(a)(i) shall be subject to the addition of 14% simple interest from the date of this award up to the date of payment.

88. The RESPONDENT shall pay the 2nd CLAIMANT'S costs in this arbitration within 60 days from date the Claimant shall have submitted his cost to the Respondent or (in the event of a disagreement on such costs and the same being referred to me by either party) then from the date I shall have made my determination pursuant to paragraph 89. The said costs shall earn simple interest at 14% per annum from the date of this award until fully paid.

89. I RESERVE to my further Award or determination, if not agreed of the amount of costs and interest thereon (for which purpose I shall give my further directions upon application of either party).

90. The Respondent shall also pay and bear my fees and expenses in respect of this arbitration and award; which amount I have already determined as Ksh 899,000.

91. The respondent to reimburse the Claimant the amount of Ksh 899,000 stated in paragraph 90 should the Claimant pay this amount in taking up the award. The respondent shall forthwith reimburse him with that amount plus 14% simple interest per annum from the date of the Claimant's payment until the date of reimbursement."

[16] Needless to say that the primacy of arbitration as an alternative dispute resolution mechanism in this country is underscored by Article 159(2)(c) of the Constitution; and, as was pointed out by the Court of Appeal in Nyutu Agrovet Limited vs. Airtel Networks Limited [2015] eKLR, where parties opt for arbitration, it is to be understood that they expect nothing but finality and due expedition from the process. Here is what the Court of Appeal had to say in this regard:

"Arbitration as a dispute resolution mechanism is not imposed on parties. They choose it freely when they incorporate the arbitration agreement into their contract, and at times even include the finality clause as was the case here. When they do so, they send the message that they do not wish to be subjected to the long, tedious, expensive and sometimes inconvenient

journey that commercial litigation entails. That is what party autonomy, a concept that the courts treats with deference, is all about."

[17] Accordingly, Section 10 of the Arbitration Act, No. 4 of 1995 is explicit that:

"Except as provided in this Act, no court shall intervene in matters governed by this Act."

And in Prof. Lawrence Gumbo & Another Vs. Honourable Mwai Kibaki & Others, High Court Miscellaneous No. 1025 of 2004, Nyamu, J. had the following to say in connection with Section 10 aforementioned, which I find instructive:

"Our section 10 is based on the United Nations Model Law on arbitration and all countries who have ratified it recognize and enforce the autonomy of the arbitral process. Courts of law can only intervene in the specific areas stipulated in the Act and in most cases that intervention is usually supportive and not obstructive or usurpation-oriented..."

[18] In the premises, since the Arbitration Act, does recognize that a party can challenge an Arbitral Award on any of the grounds set out in Section 35 of the Act, what presents itself for determination herein is whether the Applicant has made out a good case for the purposes of Section 35(1) and (2) of the Arbitration Act, which provide as follows:

"(1) Recourse to the High Court against an arbitral award may be made only by an application for setting aside the award under subsections (2) and (3).

(2) An arbitral award may be set aside by the High Court only if-

(a) the party making the application furnishes proof--

(i) that a party to the arbitration agreement was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, the laws of Kenya; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration or contains decisions on matters beyond the scope of the reference to arbitration provided that if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award which contains decisions on matters not referred to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate; or failing such agreement, was not in accordance with this Act; or

(vi) the making of the award was induced or affected by fraud, bribery, undue influence or corruption;

(b) The High Court finds that--

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or

(ii) the award is in conflict with the public policy of Kenya.

[19] Thus, looking at the Grounds set forth in the Applicant's Notice of Motion, the application relates to the questions as to whether the Final Award dealt with a dispute not contemplated by the Applicant when the reference was made, and therefore not falling within the terms of reference to arbitration; and whether the Final Award is in conflict with public policy of Kenya.

On the Scope of Arbitration:

[20] There is no gainsaying that Arbitrators are the masters of facts and therefore ought not to be faulted for their interpretation of the terms of the subject contract. Hence, in the English case of Geogas S.A vs. Trammo Gas Ltd (The "Balears") (which was cited with approval by the Court of Appeal in Kenya Oil Company Limited & Another vs. Kenya Pipeline Co. [2014] eKLR), a question arose as to whether it was permissible to review as an error of law a finding of fact by arbitrators, which was challenged on the ground that there was no evidence in support thereof. The Court (per Lord Justice Steyn) took the position that:

"The arbitrators are the masters of the facts. On an appeal the court must decide any question of law arising from an award on the basis of a full and unqualified acceptance of the findings of fact of the arbitrators. It is irrelevant whether the Court considers those findings of fact to be right or wrong. It also does not matter how obvious a mistake by the arbitrators on issues of fact might be, or what the scale of the financial consequences of the mistake of fact might be. That is, of course, an

unsurprising position. After all, the very reason why parties conclude an arbitration agreement is because they do not wish to litigate in the courts. Parties who submit their disputes to arbitration bind themselves by agreement to honour the arbitrators' award on the facts. The principle of party autonomy decrees that a court ought never to question the arbitrators' findings of fact."

[21] The same posturing was restated by Ransley, J. in Mahican Investments Limited and 3 others vs Giovanni Gaida & Others [2005] eKLR, in which the Learned Judge held that:

"A court will not interfere with the decision of an Arbitration even if it is apparently a misinterpretation of a contract, as this is the role of the Arbitrator. To interfere would place the court in the position of the Court of Appeal, which the whole intent of the Act is to avoid. The purpose of the Act is to bring finality to the disputes between the parties."

[22] Having perused the Interim and Final Awards, I find nothing therein to show that the Arbitrator travelled beyond the terms of reference. The Arbitrator appears to have focused attention on the disputed Final Accounts and made a determination thereon. Indeed, in the Supplementary Affidavit of Prof. Kyambi sworn on 24 October 2017, the Applicant averred thus:

"The Respondent's Replying Affidavit is based on mistaken notion that the Applicant is challenging the arbitration process. However, the issues raised by the Applicant relate to the merits of the decision by the Arbitrator which is in disregard of the law and the provisions of the contract from which the Arbitrator has derived his authority."

[23] It is manifest therefore that the application is premised, not on any misconduct or frolic on the part of the Arbitrator, but on his interpretation and analysis of the pleadings and the material placed before him by way of evidence. Thus, there is no indication that the Arbitrator travelled outside the boundaries of the reference or the contract between the parties. In the premises, I find no merit in the Applicant's first ground of complaint.

On Public Policy:

[24] The main plank of the Applicant's argument on the public policy ground, is that the Final Award was made, not only in breach of **Articles 10, 48 and 165 of the Constitution**, but also in breach of the applicable statute, **the Arbitration Act**. **Article 10** has to do with national values and principles of governance; while **Article 48** mandates the State to ensure access to justice for all persons. **Article 165** of the **Constitution** provides the bedrock of the jurisdiction of the High Court.

[25] In the light of the aforementioned constitutional provisions, the Applicant urged the Court to find that, in ignoring the provisions of **Section 29(5)** of the **Arbitration Act**, by failing to enforce the express terms of the Main Contract and the Sub-Contract, the Arbitrator's determination is inimical to the public policy of Kenya. **Section 29(5)** of the **Arbitration Act** does provide that:

"In all cases, the arbitral tribunal shall decide in accordance with the terms of the particular contract and shall take into account the usages of the trade applicable to the particular transaction."

[26] The Court's attention was drawn to certain clauses in both the Main Contract and the Sub-Contract to demonstrate the Applicant's contention that the Arbitrator contravened the express provisions of the law in making the Final Award. Some of the clauses relied on by the Applicant are **Clauses 2.4 and 2.5** of the Main Contract wherein the Contract Sum was specified to be **Kshs. 121,814,425.00** and **Clause 31** which provided for sub-contracting. In particular, **Clause 31.20** of the Main Contract was cited, by which the parties covenanted that:

"Neither the existence nor the exercise of the foregoing powers nor anything else contained in these conditions shall render the Employer in any way liable to any nominated sub-contractor."

[27] In connection with the Sub-Contract, the Applicant relied on **Clauses 1.4 and 3.1** which gave the Sub-Contractor an opportunity to scrutinize and acquaint itself with the terms of the main Contract; **Clauses 1.7 and 23** that provided for the Sub-Contract sum of **Kshs. 9,392,454.75** and which specified that the payment was to be made by the Contractor. In particular, **Clause 23.13** was explicit that:

"The final certificate issued under sub-clause 34.21 of the main contract shall be final and binding on the sub-contractor in the same manner that it is binding on the Contractor."

[28] What amounts to public policy was well considered by Ringera, J. (as he then was) in Christ for all Nations Vs Apollo Insurance Co. Ltd. [2002] EA 366, and his expressions were as hereunder:

"An award could be set aside under Section 35(2) (b) (ii) of the Arbitration Act as being inconsistent with the public policy of Kenya if it is shown that it was either (a) inconsistent with the Constitution or the other laws of Kenya, whether written or unwritten or (b) Inimical to the national interest of Kenya or (c) contrary to justice or morality.

[29] Hence, whereas it was permissible for the Respondent herein to join the arbitral process as it did, there can be no dispute that the responsibility of the Applicant, as the Employer, was circumscribed and limited to paying the Contractor the contract sum of **Kshs. 121,814,425/=** (inclusive of VAT) in consideration of the Contractor carrying out all the works envisaged by the Works Agreement. In the same vein, whereas **Clauses 31.5 and 31.5.7** of the Main Contract made provision for sub-contracts, it was clearly understood that those sub-contracts would fit in the contract sum. Hence, by dint of **Clause 1.7** of the Sub-Contract between the Contractor and the Respondent, it was agreed that **"The Contractor shall pay the Sub-Contractor the sum of Kshs. 9,392,454.75"** for the plumbing works. It was therefore imperative that these clauses be taken into consideration by the Arbitrator in making his Awards. The Final Award ought to have explicitly stated how and in what respects it accorded deference to the Main Contract and. Hence, to the extent that the Arbitrator severed the two

agreements and made independent awards in respect of each would not only offend **Section 29(4) and (5)** of the **Arbitration Act**, but also **Articles 3 and 10** of the Constitution in terms of the need for all persons charged with decision-making to ensure the qualities of equity, social justice, equality and non-discrimination when interpreting any law or implementing public policy decision; granted that the two contracts were intertwined; and that the Applicant's responsibility to pay was limited to the Main Contract and the Contractor. It is also not lost on the Court that the Applicant is a non-profit making charitable organization whose objective is to create an equalizing environment for the less fortunate by providing for orphaned children. It would therefore be against justice and morality for it to pay out unjustified sums of money that would have been put to better use.

[30] It is also notable that whereas it is the general trend and industry practice for parties to split the costs of arbitration, including the arbitrator's fees, the Applicant was condemned to pay full costs to both the Contractor and the Sub-Contractor. Granted that the Arbitrator has the discretion to determine who pays the costs, where, as in this case, there is a departure from the general trend, some justification ought to be given by the Arbitrator for his decision. No reasons having been given as to why the Applicant ought to bear the full costs of the arbitration; and again, considering that the Applicant is a charitable organization, it does offend the sense of justice and morality, and therefore public policy, for the Applicant to unnecessarily bear the full brunt of such costs without cause.

[31] Whereas it was argued by the Applicant that the Final Award was in disregard of the constitutional tenets of access to justice and right to own property, the Applicant did not satisfy the Court that these rights were violated or threatened with violation in any way. Thus, the only valid ground raised herein is the ground that the Applicant was made to bear the contractual responsibility of the Contractor without a clear basis having been shown for it. It is therefore on that basis that I would allow the application dated **28 June 2017** and set aside the Final Arbitral Award dated **31 March 2017** with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF APRIL 2018

OLGA SEWE

JUDGE