



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 445 OF 2012

IN THE MATTER OF AN APPLICATION BY MARTIN M. MUGI

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF MANDAMUS AND CERTIORARI

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE COMMISSIONER GENERAL, KENYA REVENUE AUTHORITY...RESPONDENT

EXPARTE:

MARTIN M. MUGI

JUDGMENT

The Application

1. The ex parte Applicant herein (hereinafter “the Applicant”), Martin N Mugi, is an advocate of the High Court of Kenya, practicing as such in the name of Mamicha & Co. Advocates. The Respondent, Kenya Revenue Authority, is a Government agency charged with collecting and receipt of revenue on behalf of the Government of Kenya. The Applicant being aggrieved with the assessment of taxes due from him by the Respondent, filed a Notice of Motion dated 14th December 2012 in which he seeks the following orders:

- a) That the Court be pleased to issue or grant an order of Certiorari to quash the decision or order of the Kenya Revenue Authority to place an agency notice with the Applicant’s accounts with their bankers being Kenya Commercial Bank.
- b) That this Court be pleased to issue or grant an order of Mandamus directed to the Commissioner, Kenya Revenue Authority directing him to issue the Respondent herein with a Tax Compliance Certificate.
- c) That this Court be pleased to issue or grant an order of Prohibition directed towards the Commissioner, Kenya Revenue Authority prohibiting him from ever placing an agency notice or in any way interfering with the Applicant’s bank accounts over the alleged tax arrears of Kenya Shillings Three Million Two Hundred Thousand.
- d) That costs of this application be provided be borne by the Respondent.

2. The application is supported by the statement of facts and the verifying affidavit sworn by the Applicant on 14th December 2012, and a supplementary affidavit he swore on 2nd December 2015. The Applicant’s stated that the genesis of the instant application was a request he lodged through his auditors, Mutahi & Co Associates, for a tax compliance certificate, whereupon he was issued with a demand for tax arrears of Kenya Shillings Three Million Two Hundred Thousand(Kshs 3,200,000/=). He averred that he then presented his annual reports, and his financial statements together with his book of accounts, which showed that he had paid all taxes and what was remaining were penalties for late payment.

3. The Applicant deponed that the Respondent instead thereupon placed an Agency Notice with his bankers, Kenya Commercial Bank, meaning that he could not transact business with regard to funds held in the account; and that he requested his auditors to carry out discussions with the Respondent. However, that the issue was not conclusively discussed as the Respondent’s officers first insisted on the

payment of the Kshs 3,200,000/= that was demanded as taxes. Further, that the Agency Notice still persisted, even after the Applicant and his auditors sent letters to the Respondent requesting the lifting of the same.

4. It was the Applicant's case that the Respondent's actions are not only illegal but in breach of its statutory and common law duties, prejudicial to himself and his trade as an advocate; and that he has all along been paying taxes as required albeit sometimes late, which had attracted penalties which he offered all along to pay.

5. The Applicant further averred in his supplementary affidavit that the Respondent has not taken into account the withholding tax paid directly to it by his client, Ms Co-operative Bank, which would clearly show that the amounts demanded have already been paid; and he attached copies of the relevant withholding tax certificates. The Applicant contended that he was not sure of the amount of tax is due, as on 30th September 2004 the Respondent had assessed his outstanding tax to be Kshs 915,675/=; whereas on 11th July 2012 the Respondent demanded a total of Kshs 3,331,278/= which was also in a demand letter dated 23rd August 2012; while on 3rd October 2012 while issuing the Agency Notice the subject matter of this dispute, it was indicated that the amount was Kshs 1,829,296/=, while on another Agency Notice of the same date indicated a sum of Kshs 1,523,616/=.

6. The Applicant also stated that in the process of negotiation, the Respondent in a letter dated 4th May 2015 reviewed the tax due for the year 2007 and 2008, which amounts were not reflected in their systems. In addition, that the said letter was contradicted by another letter he received from the Respondent dated 13th July 2015, where the amount owing for the year 2007 was shown to be Kshs 100,920/=, and for the year 2008 to be Kshs 736,291/=, and that the final computation in the said letter was stated to be Kshs 2,883,296/=, which amount was demanded from the Applicant. That this clearly shows that the computations of the amount of tax that was due was erroneous which makes it uncertain and oppressive to the Applicant.

7. According to the Applicant, it is clear from the notices that the Respondent is uncertain of the amount owing as tax from him, and based on this uncertainty its decision to issue an Agency Notice was based on unreasonable and shaky grounds. The Applicant attached copies of the letters he referred to.

The Response

8. The application was opposed by the Respondent through the replying affidavit and further affidavit sworn on the 7th March 2013 and 7th February 2018 by Eustace Murage, its Revenue Officer in the Domestic Taxes Department. The deponent averred that he has been involved in the assessment, collection and enforcement actions that have given rise to this suit. He contended that an examination of the Applicant's tax records showed that he had a tax debt of Kshs 3,331,278/=, consisting of Kshs 1,829,296/= being unpaid value added tax and penalties, and an income tax self assessment balance amounting to Kshs 1,501,982/=.

9. It was the Respondent's case that it communicated to the Applicant through letters dated the 11th July 2012 and the 23rd August 2012, demanding payment of the outstanding tax arrears of Kshs 3,331,278/= from the year 1999 through to 2009, and as there was no response or payment by the Applicant, on 3rd October 2012 it issued the Agency Notices to the Applicant's bankers Kenya Commercial Bank, through a letter dated 3rd October 2012.

10. According to the Respondent, it is only after it issued the Agency Notices that the Applicant wrote to it through his auditors, objecting to the tax demanded; and indicated that they were compiling the withholding tax certificates and would submit them as soon as possible to prove the payment of the taxes withheld. Further, that in a meeting between the Applicant's accountant and the Respondent, the Applicant asserted that he did not owe the Respondent the tax arrears demanded; that the money paid had not been credited into the Respondent's account; that the Applicant pays tax through the PAYE hence he should not be in debt; and that the taxes withheld have not been credited.

11. The Respondent contends that these claims are not justified, as the Applicant has failed to avail the withholding tax certificates pertaining to the alleged withholding tax purportedly remitted by the alleged third party; and that adjustments cannot be made without the submission of the original withholding tax certificate and the original tax payment receipts. Further, that the tax compliant certificate cannot be issued to the Applicant unless the tax arrears owed are paid in full; and pointed to the admission by the Applicant of his failure to remit taxes within timelines. The Respondent however admitted that the Applicant paid a sum of Kshs 170,000/= on value added tax which was credited, and that the value added tax arrears outstanding from 2000 to 2012 were readjusted to Kshs 1,659,292/=.

12. It was further asserted that the Agency Notices were valid, for reasons that they were issued in accordance with section 96 of the Income Tax Act and section 19 of the Value Added Tax Act; they were issued to the appointed agent (Kenya Commercial Bank) and copied to the Applicant; they were issued in enforcement of the demand notices issued to the Applicant, and in enforcement of taxes properly assessed in accordance with the Income Tax Act and Value Added Tax; and that the same have not contravened any provisions of the law and the rules of natural justice.

13. The deponent in his further affidavit explained the various amounts of taxes demanded as alleged by the Applicant as follows. That the genesis of the disputed value added tax assessment is contained in an assessment dated 6th August 2003 which covered the tax period between May 2000 up to June 2003 and showed that an amount of Kshs 1,604,460/= was due. In addition, that their letter dated 30th September 2004 is not an assessment as purported but a mere demand letter in respect of the value added tax amount then outstanding Kshs 915,675/= Further, that the amount claimed in the demand letter of 11th July 2012 of Kshs 3,331,278/= is made up of a value added tax demand of Kshs 1,829,296/=, and an income tax demand of Kshs 1,523,616/=.

14. The Respondent referred to the Applicant's tax ledger in support of its averment that all the amounts paid by the Applicant were considered, and that it gave credit of withholding tax paid which was supported by withholding tax certificates, against the claimed amount of Kshs 533,720/= in their return for the year of income 2008. Further, that the withholding tax payment claimed in the Applicant's return for the year of income 2007 were not considered, for the reason that withholding tax certificate forwarded were photocopies and apparently had

alterations hence their authenticity was doubtful. It was also reiterated that without the requested documents from the Applicant to support the application for relief of error under section 90 of Income Tax Act, the tax assessed including that for the year 2008 remains payable as contained in the Respondent's letter dated the 13th July 2015.

15. The Respondent explained that the original demand notice has since been adjusted by the following occurrences; the payment of penalty charges of Kshs 170,000/= after the demand notice; reduction of the income tax payable by payments which were transferred from Mamicha Mugi & Co Pin p051121926J to Martin Mamicha Mugi pin A001109067Q; credit of withholding tax paid for the year of income 2008; and interest and penalty adjustments which amounts change at a rate of 2% monthly. Therefore that the total tax payable remains as stated in their letter dated 13th July 2015, which is Kshs 2,839,812/=, which consists of income tax of Kshs 1,180,516/= and value added tax of Kshs 1,659,296/=.

16. Lastly, the Respondent contended that the Applicant was given a fair chance to be heard taking into account that the demand notice issued on 11th July 2012 required him to respond within 14 days, a reminder was issued on 23rd August 2012 giving him seven more days to clear the debt, and that the agency notices were served on the bank much later on 3rd October 2012.

The Determination

17. The Applicant's application was canvassed by way of written submissions. K. Macharia & Co Advocates for the Applicant submitted that it is clear from the pleadings filed herein that the Respondent does not have the correct figures of the tax due from the Applicant, and that without ascertaining the correct amount due, it went ahead and issued agency notices requiring the bank to freeze the Applicant's accounts until the tax is paid. The Applicant reiterated in his submission that all the amounts paid have not been taken into consideration, and it's on this basis that he is aggrieved. In addition, that there is a legitimate expectation on the part of the Applicant that he shall pay tax accurately assessed.

18. The Applicant further submitted that the Respondent has during the subsistence of the proceedings continued to make assessments of the amount due and payable, which was assessed at Kshs 736,291/= as at 7th May 2015, which is an indication that the Respondent has not correctly determined the amount due from him. He emphasised and reiterated that the lack of consistency in the amounts of tax due is an affirmation that the Respondent is wrongfully making demands without first making the correct assessment.

19. Lastly, the Applicant contended that he deserves to be heard, as the Respondent issued an Agency Notice on the Applicant's bank account without going through the records he presented, and thus denied him compliance. That he was therefore condemned unheard based on an assessment that was incorrect and unfair in the circumstances.

20. Sheila C. Sanga Advocate for the Respondent on her part submitted on three headings. The first head was on the powers of the Respondent to undertake the actions he did against the Applicant, as provided under the Kenya Revenue Authority Act, Income Tax Act and Value Added Tax Act. This Court will address these submissions, which were largely not contested, later on in this judgment.

21. The second head was on the realm of judicial review, and it was contended in this respect that the application is founded on the fundamental misapprehension of the jurisdiction of the court, and that the proceedings are an abuse of the court process. Further, that judicial review is not concerned with the merits of the decision, but the decision making process. The Respondent relied on the case of **Coastal Bottlers vs The Commissioner of Domestic Taxes, H.C. Misc Civil Application No 1756 Of 2005** and the Court of Appeal decision in **Pili Management Consultants Ltd vs Commissioner of Income Tax, Kenya Revenue Authority, Civil Appeal No 154 Of 2007** for this proposition.

22. According to the Respondent, this court lacks jurisdiction to entertain the matter for the reason that there is a legal framework and forum to substantively litigate the issues in dispute. It was their submission that section 82 of the Income Tax Act (Cap 471) and section 32 of the Value Added Tax Act (Cap 476) provided for an aggrieved person to proceed by way of an appeal to the Tax Appeals Tribunal, and not by way of judicial review. Reliance was placed on the decisions in **Republic vs Commissioner for Income Tax & Another ex parte Stockman Rozen (K) Limited, (2015) eKLR, Republic vs National Environment Management Authority (2011) eKLR and Speaker of National Assembly vs Njenga Karume, (2008) KLR 425**; where the courts reiterated the principle that where there is an alternative remedy especially where Parliament provided statutory appeal procedures, it was only in exceptional circumstances that judicial review is granted.

23. The third head of the Respondent's submissions was on whether the orders sought are tenable, and it was its submission that an order of certiorari cannot issue to quash the agency notices dated the 3rd October 2012, that was made pursuant to statutory provisions and regulations, specifically section 19 of the Value Added Tax Act (Cap 476) and section 96 of the Income Tax Act. The Respondent relied on the case of **Republic vs Commissioner Of Income Tax Act exparte Coastal Bottlers H.C (supra)** in this respect.

24. Further, that an order of prohibition cannot also issue against the Respondent, as the court cannot prohibit what has been sanctioned by statute. Lastly, that an order of mandamus cannot issue to compel the issuance of a tax compliance certificate, as the Applicant has failed to prove its assertion to by way of providing supporting documentation or that it has paid all the monies due.

25. I have considered the pleadings and arguments of the parties, and I will first address the preliminary issue raised by the Respondent, as to whether the Applicant's application is properly before this Court. This Court agrees with the position taken in **Republic vs. National Environment Management Authority [2011] eKLR** that where there is an alternative remedy and especially where Parliament has provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted. The Court of Appeal in that case in addition observed that it is necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case, and ask itself what is the real issue to be determined and whether the statutory appeal procedure was suitable to determine it.

26. The sections relied upon by the Respondent to challenge this Court jurisdiction, namely, section 82 of the Income Tax Act and section 32

of the Value Added Tax Act, have since been repealed, and replaced by section 52 of the Tax Procedures Act and the provisions of the Tax Appeals Tribunal Act. The repealed sections, which were the sections applicable at the time of filing of the Applicant's application, established the Tax Appeals Tribunal. The then sections 84 and 85 of the Income Tax Act and sections 32 and 33 of the Value Added Tax Act, also since repealed, in addition provided that a matter became subject of an appeal at the Tax Tribunal, once an objection had been made by the person who disputes an assessment of tax, and the Respondent had made a decision on the said objection. Therefore the appealable decision that was to be subject to the jurisdiction of the Tax Appeals Tribunal was the Respondent's decision on an objection.

27. In the current application, what is being challenged by the Applicant is not the Respondent's decision on his objection, but the process it used to issue the impugned agency notices. It cannot therefore be said that the Applicant was precluded from invoking this Court's judicial review jurisdiction, as the subject of his application is the propriety of the process taken by the Respondent in issuing the agency notices, rather than a decision on an objection by the Applicant.

28. On the substantive issues arising from the application, it is not in contention that the Respondent is clothed with statutory powers to undertake action as regards assessment and collection of taxes. As was pointed out by the Respondent in its pleadings and submissions, section 5 of the Kenya Revenue Authority Act empowers the Respondent to administer and enforce the Income Tax Act and the Value Added Tax Act. Further, that in conducting the examination of the Applicant's records, the Respondent was exercising powers as donated by the then section 56(1) of the Income Tax Act (Cap 471) and section 30 of the Value Added Tax Act (Cap 476) (since repealed) which empowered it to obtain full information in respect of the tax liability of persons for the purposes of ascertaining correct declaration of taxes.

29. In addition, the agency notices were issued in accordance with section 19 of the Value Added Tax Act (Cap 476) and section 96 of the Income Tax Act (since repealed), in enforcement of the tax demand that was issued to the Applicant. Although the sections of law in the Income Tax Act and Value Added Tax Act relied upon by the Respondent have since been repealed, and the powers provided therein are now respectively provided under section 58 and 42 of the Tax Procedures Act, Act No 29 of 2015, which has a saving and transitional clause with respect to tax liability incurred before its commencement in section 113.

30. The issues that are in contention and arise for determination are firstly, whether the Respondent acted reasonably and was in breach of the Applicant's legitimate expectations in issuing the Agency Notices with respect to the Applicant's bank account; secondly, whether the Respondent breached the rules of natural justice when issuing the said Agency Notices; and lastly, whether the Applicant is entitled to the relief he seeks.

31. Before embarking on a determination of these issues, it must be clarified by this Court that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected, and that it is no part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matter in question. As was held in **Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Limited, (2008) eKLR**, the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself.

32. Therefore, it follows that in its determination of the instant application, this Court is not concerned with the issue whether the Applicant was liable to pay the taxes demanded or not. That is an issue which goes to the merit rather than the process, as was held in **Pili Management Consultants Ltd vs. Commissioner of Income Tax, Kenya Revenue Authority Civil Appeal No. 154 of 2007**.

33. On the first issue as to whether the Respondent acted reasonably and was in breach of the Applicant's legitimate expectations, the Court notes that the Respondent explained in considerable detail why there were different amounts of tax due that were stated in its letters dated 6th August 2003, 30th September 2004, 11th July 2012 and 13th July 2015. It is notable that three different amounts of tax due namely Kshs 1,604,460/=, Kshs 915,675/= and Kshs 3,331,278/= had been indicated in the said letters before the impugned Agency Notices were issued, and it is my finding that the process used to arrive at the issuance of the agency notice was unreasonable, as it was based on contradictory information given to the Applicant, which raises an inference that the amount of taxes demanded from him were arbitrary. This is more so in light of the onerous effect the decision to issue an agency notice would have on the Applicant's rights, and a reasonable process would have clarified the differences in the figures of tax demanded, before issue of the agency notices.

34. In this regard, I agree with the holding by Odunga J. in **Republic vs Kenya Revenue Authority Ex parte Jaffer Mujtab Mohamed [2015] eKLR** where the learned Judge rendered himself thus:

“46. Therefore whereas this Court is not entitled to question the merits of the decision of taxing authority, that authority must exercise its powers fairly and there ought to be a basis for the exercise of such powers. A taxing authority is not entitled to pluck a figure from the air and impose it upon a taxpayer without some rational basis for arriving at that figure and not another figure. Such action would be arbitrary, capricious and in bad faith. It would be an unreasonable exercise of power and discretion and that would justify the Court in intervening. In Republic vs. Institute of Certified Public Accountants of Kenya ex parte Vipichandra Bhatt T/A J V Bhatt & Company Nairobi HCMA No. 285 of 2006, it was held that in the absence of a rational explanation, one must conclude that the decision challenged can only be termed irrational within the meaning of the *Wednesbury* unreasonableness, was in bad faith and constitutes a serious abuse of statutory power since no statute can ever allow anyone on whom it confers a power to exercise such power arbitrarily and capriciously or in bad faith.”

35. In addition, issuing an agency notice after making differing demands on the amount of tax due goes against the legitimate expectation of a tax payer that the Respondent will state the amount of tax due to it with clarity and unambiguity, as it is mandated to do under the applicable provisions of the law, and that by its various representations to the Applicant it had thereby has not reached a decision on the amount of tax due and payable. As was held in **Keroche Industries Limited vs. Kenya Revenue Authority & 5 Others Nairobi, (2007) KLR 240**.

“.....legitimate expectation is based not only on ensuring that legitimate expectations by the parties are not thwarted, but on a higher public interest beneficial to all including the respondents, which is, the value or the need of holding authorities to promises and practices they have made and acted on and by so doing upholding responsible public administration. This in turn enables people affected to plan their lives with a sense of certainty, trust, reasonableness and reasonable expectation.”

36. As to whether the Respondent breached the rules of natural justice when issuing the impugned agency notices, I must find in the affirmative, as while it did provide evidence of a demand notice issued to the Applicant dated 11th July 2012, and a reminder dated 23rd August 2012 for payment of the tax of Kshs 3,331,278/= , it also annexed a response to the demand notices by the Applicant's Accountant dated 3rd September 2012 wherein the Applicant denied owing the tax demanded and seeking amendment of its record to reflect payments he had made.

37. There was thus evidence of communication by the Applicant with the Respondent before 3rd October 2012, seeking clarification as regards the amount of tax that was demanded. While it is indicated that the Respondent received the letter dated 3rd September 2012 on 9th October 2012, it still proceeded with the agency notices with respect to the demanded amount of tax while knowing that the amount was disputed, and not giving the Applicant the opportunity to prove the payments he alleged to have made.

38. On the last issue as regards the relief sought by the Applicant, in **Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge Civil Appeal No. 266 of 1996** it was held *inter alia* as follows:

“Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way... These principles mean that an order of *mandamus* compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done... Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the present appeal the respondents did not apply for an order of *certiorari* and that is all the court wants to say on that aspect of the matter.”

39. The Applicant has sought orders of certiorari, prohibition and mandamus. I find that as the Respondent has been found to have acted unreasonably, in breach of the Applicant's legitimate expectations and in breach of the rules of natural justice, the Applicant is entitled to the order sought of certiorari to quash the Agency Notices placed by the Respondent with the Applicant's bankers, Kenya Commercial Bank.

40. As the said agency notices will be quashed, there is no longer any reason to grant the prohibition sought, as the Respondent if it still intends to proceed with its claim will have to start the process afresh in accordance with the law, and there is no longer any threat present of an illegal action. See in this respect **Re Hardial Singh and Others (1979) KLR 18**. In addition the Respondent cannot be prohibited from undertaking its statutory duties of assessing the tax due and enforcing payment of the same from the Applicant, which tax is yet to be ascertained.

41. Similarly, with respect to mandamus, as indicated earlier in this judgment, it is not for this Court to determine the amount of tax due from the Applicant and whether it has been paid, and it cannot therefor direct the Respondent to issue the Applicant with a tax compliance certificate.

42. In the premises, the Applicant's Notice of Motion dated 14th December 2012 only succeeds to the extent of the following orders granted by this Court:

1. An order of certiorari bringing to this Court and quashing the Agency Notices dated 3rd October 2012 issued to the Manager, Kenya Commercial Bank, Kipande House Nairobi, placed by the Respondent on the Applicant's accounts with Kenya Commercial Bank for the sums of Kshs 1,829,296/= and Kshs 1,523,616/=.

2. The deposit made by the Applicant herein of Kshs 1,600,000/= shall forthwith be released to the Applicant.

3. The Respondent will bear the costs of these proceedings.

43. Orders accordingly

DATED AND SIGNED AT NAIROBI THIS 18th DAY OF JULY 2018

P. NYAMWEYA

JUDGE