



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 554 OF 2015

MITI BREWERIES & DISTILLERS CO. LIMITED.....PETITIONER

VERSUS

THE HONOURABLE ATTORNEY GENERAL.....1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

HON. J.M. MANJE.....3RD RESPONDENT

JUDGMENT

INTRODUCTION

1. In the petition filed on 11th December 2015, the petitioner herein, who describes itself as a limited liability company registered in Kenya, sued the respondents herein following the then much touted crackdown on illegal brews in the country in furtherance of an alleged presidential directive to curb illicit alcoholic drinks.

2. The 1st respondent is Honourable Attorney General of the Republic of Kenya sued in his capacity as the Principal Legal Advisor of the Government of Kenya to represent the Cabinet Secretary for the Ministry of Interior and Coordination of the National Government.

3. The 2nd respondent is impleaded under Article 245 of the Constitution being the state officer charged with the command of the National Police Service while the 3rd respondent was then the Member of Parliament for Kajiado North Constituency.

The petitioners case

4. The petitioner's case was that it was at all material times a duly authorized 'manufacturer' of alcoholic drinks within the meaning of Section 2 of the Alcoholic Drinks Control Act at its premises situate at Kimani Road in Ongata-Rongai, Kajiado. The petitioner states that it manufactured and offered for sale at the factory and elsewhere, brands of alcoholic drinks of potable spirits with vodka, gin and brandy flavor with the name Hawaii under permits and licences that were issued as follows:

a) Open licence by the campaign against Alcohol and Drug Abuse (Nacada) dated 14th May 2014;

b) Standardization Marks Nos. 17858, 17859 to run to 15th April 2016 respectively and 21948 to run to 16th June 2016 issued by the Kenya Bureau of Standards(KEBS);

c) Licence to Manufacture Exercisable Goods by the Kenya Revenue Authority for the year 2015.

d) Liquor Licence, Single Business Permit and Health Clearance by the County Government of Kajiado valid for the year 2015

5. The petitioner attached copies of the licences to the supplementary affidavit as annexures A, B, C, D and E. A compact disk containing a video showing the manner in which the raid was conducted at the petitioner's factory was also annexed as annexure "F". The petitioner states that upon being so licenced, it became entitled to manufacture and sell alcohol unimpeded by the respondents or any other person or bodies acting or claiming to act at their behest, but that on 6th July 2015, whilst the said licences were still in force, the respondents jointly, severally and in the company of their agents, unruly drunk youths, thugs, miscreants and busy bodies invaded the petitioners factory where

they perpetrated acts which were listed as follows:

- i. Forcibly and violently entered the factory without a warrant or other lawful authority;
- ii. Disabled, looted, destroyed, stole, and set on fire the equipment, machinery and items listed in paragraph C hereinafter with their respective values;
- iii. Drunk and carted away large quantities of drinks vide paragraph C *ibid*;
- iv. The said Assistant Chiefs stole from the factory and shared out amongst themselves kshs 70,000/- in cash;
- v. Illegally arrested one **Joseph Mwangi** and one **Kwendere Masinde Kizito** the manager and care-taker of the factory respectively and unlawfully incarcerated them incommunicado at the said police station and releasing them 2 days after on 8th July 2015 without any charge after the OCS corruptly solicited, extorted and was paid kshs 100,000/- as a bribe for their release.
- vi. Shut down the factory after leaving the same barefoot (sic) of all manufacturing equipments and stock in trade;
- vii. Caused and instilled general fear and despondency to the workforce.

6. It was averred that while perpetrating the aforesaid actions, the respondents and their agents purported to act at the behest and/or in furtherance of a presidential directive to curb illicit drinks.

7. The petitioner's case was that the respondent aforesaid actions were arbitrary, high-handed, unlawful, malicious and unconstitutional as the petitioner was not given any notice, warning or communication with regard to any violation of the law and was not accorded a hearing before the adverse action was taken against him. The petitioner listed the provisions of the Constitution violated as Articles 29, 31, 40, 43, 47, 49, 50, and 51.

8. The petitioner further listed the nature of injury, loss and damage caused its business as follows:

- a. Gas chromatography machine - kshs 2,000,000/=
- b. Installation of (a) - kshs 160,000/=
- c. Flow meter - kshs 600,000/=
- d. Filling machine - kshs 500,000/=
- e. 2 No. Carbon Cylinders - kshs 400,000/=
- f. Installation of (c) and (d) and (e) - kshs 250,000/=
- g. KRA stamp Applicator - kshs 250,000/=
- h. Potable spirits 700cartons x 24x150 - kshs 2,500,000/=
- i. KRA Stamp 6,000 @ 17.50/= - kshs 105,000/=
- j. Filling machine, carbon cylinders - kshs 330,000/=
- k. ETR machine - kshs 30,000/=
- l. Packaging materials - kshs 250,000/=
- m. Labels - kshs 150,000/=
- n. Empty bottles 4,000 x 12/- - kshs 48,000/=
- o. Ten filters @13,000/= - kshs 130,000/=
- p. Water tank - kshs 27,000/=
- q. Drums 12 x 3,000/= - kshs 36,000/=
- r. 12 drums full of liquor @ 30,000/= - kshs 360,000/=

s. Honey five (5) buckets@5,000/=	- kshs	25,000/=
t. Tv and decorder	- kshs	65,000/=
u. Sufuria	- kshs	2,500/=
v. Hard cash	- kshs	70,000/=
w. County Government of Kajiado		
licence	- kshs	102,000/=
x. KRA licence	- kshs	100,000/=
y. KEBS licence	- kshs	60,000/=
z. Bribe alluded in paragraph 5(v) ibid	- kshs	100,000/-

Total - kshs 8,650,500/=

9. The petitioner further stated that its factory was closed following the invasion and has remained closed to date despite its protests and appeals thereby leading to the loss of daily profit in the sum of kshs 30,000/= per day. The petitioner sought the following orders:

1. The sum of kshs 8,650,500/= specified under paragraph C (10 herein before);
2. Exemplary and punitive as compensation for violations of its constitution rights vide the articles captioned above and loss of reputation and business;
3. **AN ORDER OF INJUNCTION/PROHIBITION** directed at the respondents, their agents and servants restraining them from interfering with the petitioner's business and/or factory;
4. **DECLARATORY ORDERS** do issue as follows:
 - a) That in entering, searching, and trespassing on the petitioner's premises without warrant or authority, the respondents violated the petitioner's right to privacy under Article 31 of the Constitution.
 - b) That in destroying, looting and confiscating the petitioner's property the respondents violated the petitioner's right to property under Article 40 of the Constitution.
 - c) That in destroying the petitioner's business and only source of income and livelihood, and in refusing to release and issue exercise stamps as the case may be, the respondents violated the petitioner's economic rights under Article 43 of the Constitution;
 - d) That in failing to afford the petitioner due legal process and failing to accord the petitioner and opportunity to be heard before the aforesaid actions, the respondents violated the petitioner's rights to fair administrative action, access to justice, fair hearing under Articles 47,48 and 50 of the Constitution.
5. Interest on 1 and 2 above from 6th July 2015;
6. Costs of this petition and interest from the date hereof;

1st and 2nd respondent's response

10. The 1st and 2nd respondent opposed the petition through the replying affidavit of **Dr. William N. Okedi**, the Chief Executive Officer of the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) sworn on 15th February 2016 in which he confirms that on 14th May 2014 the petitioner applied to NACADA to be issued with a licence to manufacture alcoholic drinks.

11. He further states that NACADA received documents comprising Kenya Bureau of Standards Certificate to use the standardization mark, public health certificate, Kenya Revenue certificate, a single business permit, liquor licence permit and a certificate of incorporation from the petitioner which it verified and permitted the petitioner to continue manufacturing alcohol while awaiting inspection of premises and issuance of certificate. He further avers that in the year 2015, it became necessary to streamline the alcohol manufacturing sector and on 2nd July 2015 the president directed that a nation-wide campaign against illicit brews be undertaken in order to control alcohol abuse menace which prompted the Cabinet Secretary for Interior Coordination and National Government to gazette an Inter Agency Task Force on control of potable spirit and combat illicit brew through gazette Notice No. 5069 dated 10th July 2015.

12. He further avers that since there were many sources alcoholic products, a crackdown became necessary which crackdown affected

manufacturers, distributors and sellers of alcoholic products without exception and that when the petitioner's facility was inspected, it was found to be lacking and unfit to be issued with a licence and was ordered to cease alcohol production.

13. He further states that the Inter Agency Task Force team, upon analyzing the chemical content of one of potable spirit christened 'Hawai' found that it failed the safety test as it had lead and excess ethanol content. It was the respondent's case that the petitioner was on 21st November 2015 informed of the task force's findings.

Determination

14. I have considered the pleadings filed herein the parties' submissions together with the authorities cited. The issues for determination are as follows:

a) Whether the respondents' actions violated the petitioner's rights under Articles 29, 31, 40, 43, 47 and 50 of the Constitution were violated.

b) Whether the petitioner is entitled to the orders sought.

15. It was not disputed that the petitioner was a duly licenced manufacturer and seller of alcoholic drinks as shown in the copies of licences that were produced as annexures A-E. It was further not disputed that the petitioner's property and alcoholic drinks were destroyed following what the respondents described as 'a presidential directive to curb illicit brews'. The respondents did not however establish through tangible evidence that the alcohol that was manufactured by the petitioner was harmful or unfit for human consumption. All that the respondents did was to allege that an Inter Agency's report on analysis of the chemical content of one of the petitioner's products failed the test as it showed that the alcohol had lead and excess ethanol content and that the petitioner was informed of the task force's findings. The respondent did not produce the said report in court in order to confirm its existence and to justify the action taken against the petitioner.

16. Article 47 of the Constitution of Kenya provides as follows:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

17. The right to fair administrative action is an integral part of the Bill of Rights and an essential feature of our Constitution. It is a right that is considered to be at the heart of a democratic society without which democracy and the rule of law cannot be said to exist. The right to fair administrative action has therefore been firmly embedded in our Constitution as a way of ensuring that administrative actions meet the standards set by the Constitution.

18. It is now trite law that even in cases where there is no express requirement that a person be heard before a decision that affects them is made, the tribunal or authority entrusted with the mandate of making the decision must act fairly. In the case of **Judicial Service Commission vs. Mbalu Mutava & Another [2015] eKLR**, the Court of Appeal held that:

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

19. The importance of fair administrative action as a Constitutional right was stated in the South African case of **President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others (CCT16/98) 2000 (1) SA 1**, at paragraphs 135 -136 where it was held as follows with regard to similar provisions on just administrative action in section 33 of the South African Constitution:

"Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades..."

20. In **Baker v. Canada (Minister of Citizenship & Immigration) 2 S.C.R. 817** it was held:

"The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions."

21. The ingredients of fairness or natural justice that must guide all administrative decisions are; firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material.

22. The above cases and principles emphasize the fact that whatever form of proceedings adopted by an authority must meet the basic elements of fairness. In the instant case, it is clear that an adverse action of destroying the petitioner's property was taken without any notice or information to them and without inviting them to defend themselves against the claim that the alcohol they were producing was not fit for consumption.

23. Article 47 of the Constitution envisages that the petitioner would have been notified of the alleged unsuitability of its alcohol and given a hearing before a decision to destroy its equipment and alcoholic drinks was taken. This court notes that the respondents employed 'surprise and attack' method in dealing with the petitioner's case when it descended on the factory without any prior notice and carried out an operation that resulted in the destruction of the petitioner's property.

24. In the case of **Geothermal Development Company Limited v Attorney General & 3 Others 2013] eKLR** it was held:

“As a component of due process, it is important that a party has reasonable opportunity to know the basis of allegations against it. Elementary justice and the law demands that a person be given full information on the case against him and given reasonable opportunity to present a response. This right is not limited only in cases of a hearing as in the case of a court or before a tribunal, but when taking administrative actions as well..... Hilary Delany in his book, Judicial Review of Administrative Action, Thomson Reuters 2nd edition, at page 272, notes that, “Even where no actual hearing is to held in relation to the making of an administrative or quasi-judicial decision, an individual may be entitled to be informed that a decision which will have adverse consequences for him may be taken and to notification of the possible consequences of the decision.”

25. In the present case, the respondents claimed that the crackdown on illegal brews was justified being a presidential directive that was effected by the Cabinet Secretary for Interior through gazette Notice No. 5069 dated 10th July 2015. I note that when dealing with a similar case in which the presidential directive on alleged illicit brews was challenged, being Petition No. 295 of 2015 involving **Keroche Breweries Ltd & Others vs The Attorney General & 10 Others** Odunga J. held, *inter alia*, that the said directive was unconstitutional as it did not comply with the provisions of Article 135 of the Constitution and was, pursuant to Article 2(4) of the Constitution void.

26. In the present case the respondents are reported to have descended on the petitioner's factory on 6th July 2015 in execution of the alleged presidential directive. I find that the respondents had no legal basis whatsoever for destroying the alcoholic products and any other property belonging to the petitioner. My take is that even assuming that the presidential directive had not been declared unconstitutional, such a directive can only be acted upon within the confines of the law and cannot suspend the clear provisions of Article 47 of the Constitution. My finding is that the totality of the evidence tendered by the petitioner points to the fact that the respondents violated the petitioner's right to fair administrative action under Article 47 of the Constitution. Moreover, the respondents did not demonstrate they informed the petitioner of the intended adverse action that was taken against it.

27. My finding is that having shown that it was licensed to manufacture alcohol, the respondents actions violated the petitioner's freedom to security, right to privacy, rights to property and socio economic rights as enshrined under Articles 29, 31, 40 and 43 of the Constitution respectively.

28. On the rights of arrested persons under Article 49 of the Constitution, the petitioner alleged that two of its employees were arrested and unlawfully incarcerated by the police during crackdown but were released after two days without being charged in court after parting with a bribe of kshs 100,000/=. The petitioner claimed the sum of kshs 100,000/= that it allegedly paid as a bribe to the police.

29. My finding on this claim is that it was not proved to the required standards or at all. No material was placed before this court to show that the 2 employees were arrested or incarcerated incommunicado at the police station as alleged. The petitioner identified the affected employees as **Joseph Mwangi** and **Masinde Kizito**. I note that if indeed the two gentlemen were arrested and placed in police custody as alleged, then the least that the petitioner would have done in proving the claim would have been to present the OB reports or the employees' sworn affidavits to confirm the claim.

30. I therefore find that the claim on violation under Article 49 of the Constitution was not proved. I also find that the claim for the payment of Kshs. 100,000/- being refund for the bribe allegedly paid to secure the release of the 2 employees cannot be entertained or awarded by this court as allowing it would be tantamount to validating an illegality given that bribery is criminal offence under our laws.

PRAYERS SOUGHT

31. Turning to the prayers sought by the petitioner, I note that apart from the declaratory orders, the petitioner also sought both special and general damages arising from the respondents unlawful actions on his alcoholic drinks manufacturing business.

32. In the case of **Kampala City Council v Nakaye [1972] EA 446** the Court of Appeal was of the view that a special damage claim need not only be specifically pleaded but must also be strictly proved.

33. It is also trite law that he who alleges must prove. Sections 107,108 and 109 of the Evidence Act Cap 80 Laws of Kenya are clear that

107(1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he

asserts must prove that those acts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108 The burden of proof in a suit or proceeding lies in that person who would fail if no evidence at all were given on either side.

109 the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

34. In the instant case, petitioner quantified its special loss at Kshs. 8,650,500 and produced a bundle of documents marked annexure "H" in support of special damages that it allegedly suffered. I have perused the said documents marked "H" and I note that they are receipts and invoices relating to the purchase of products and equipment in the year 2014 and 2015. In the case of **Great Lakes Transport Co. (U) Ltd V Kenya Revenue Authority [2009] eKLR** the court took cognizance of the fact that an invoice is not a receipt for goods supplied unless it is specifically endorsed to the effect that the goods for which invoice was prepared were paid for. The court further noted that in such a case the endorsement should be visible on the invoice and then the invoice plus the endorsement on it can be treated as receipt for payment. In this case the petitioner did not show that there was any such endorsement made in the invoices.

35. As I have already found in this judgment it was not in dispute that the respondent raided the petitioner's factory on 6th July 2015 and that alcoholic drinks and other items were destroyed. My take is that the petitioner was required to specifically prove the extent of the loss and destruction through an expert's loss assessment/valuation report. The petitioner's claim was that its business was an ongoing concern before it was raided by the respondents and I find that it is not possible that all the products and items purchased in 2014 and 2015 were sitting pretty unused and unsold until the premises were raided July 2015. In the circumstances of this case I find that it was not enough for the petitioner to merely tender receipts of items and machinery purchased during the installation of factory, the petitioner needed to show that the said items were actually destroyed and in the manner that was alleged in the petition. I am not satisfied that the claim on special damages was proved to the required standards or at all. In the case of **Ryce Motors Ltd & Another vs Muchoki (1995-98) 2 E. A 363 (CAK)** commenting on statements of accounts presented without more as in this case stated, this Court observed;

"... The pieces of paper produced as evidence of income could not be accepted as correct accounting practice. They did not constitute proof of special damages."

36. Turning to the claim on loss of profits, the petitioner claimed its business netted daily profits of Kshs. 30,000/=. I however note that no evidence was led by the petitioner on this aspect. There was no specific proof of such profits through bank statements, books of accounts or income tax returns was produced in court to confirm the alleged profits. The sum of Kshs. 30,000 daily profits was strictly speaking an abstract figure which was 'thrown' to the court. I am therefore unable to grant the prayer on loss of profits.

General damages.

37. Having found that the petitioners rights under the constitution were violated I now turn to determine whether the petitioner is entitled to compensation for damages for the violations. In view of the clear provisions of the Constitution and having found that the petitioners' constitutional rights were violated, I further find that this court is empowered by Article 23 (3) of the Constitution to grant appropriate reliefs in any proceedings seeking to enforce fundamental rights and freedoms such as this one. What amounts to "appropriate relief" was discussed by the South African Constitutional Court in **Minister of Health & Others vs. Treatment Action Campaign & Others(2002) 5 LRC 216** at page 249 as follows:-

"...appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case, the relief may be a declaration of rights, an interdict, a mandamus, or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the court may even have to fashion new remedies to secure the protection and enforcement of these all important rights...the courts have a particular responsibility in this regard and are obliged to "forge new tools" and shape innovative remedies, if need be to achieve this goal."

38. The principles applicable to award of damages for constitutional violations under the Constitution were exhaustively discussed by the Privy Council in the famous case of **Siewchand Ramanooop vs. The AG of T&T**, PC Appeal No 13 of 2004 wherein it was held that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense.

Per Lord Nicholls at Paragraphs 18 & 19:

When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches.

All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award.

39. In **Peters v. Marksman & Another** [2001] 1 LRC the Eastern Caribbean Supreme Court quoted with approval the words of Patterson JA in **Fuller v A-G of Jamaica (Civil Appeal 91/1995, unreported)**, where the Court held that:

"It is incumbent on the courts to develop appropriate principles and guidelines as to the quantum of awards of compensation where applicable... Where an award of monetary compensation is appropriate the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective as an infringement of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the state itself. But that does not mean that the infringement should be blown out of all proportion to reality nor does it mean that it should be trivialized. In like manner the award should not be so large as to be a windfall nor should it be so small as to be nugatory."

40. The Supreme Court of Canada established a consideration on when a remedy in a Constitutional violation case is "just and appropriate" in **Doucet-Boudreau v. Nova Scotia (Minister of Education)**, 2003 SCC 62 to include, a remedy that will :

- (1) meaningfully vindicate the rights and freedoms of the claimants;*
- (2) employ means that are legitimate within the framework of our constitutional democracy;*
- (3) be a judicial remedy which vindicates the right while invoking the function and powers of a court; and*
- 4) be fair to the party against whom the order is made.*

41. Having regard to the above judicial experience and philosophy, it is clear that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court but that such discretion is limited by what is "appropriate and just" according to the facts and circumstances of a particular case in view of the fact that the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. In the present case, the petitioner did not quantify the amount payable to it in damages for the violation of his constitutional rights. I am however of the view that an award in the sum of Kshs. 1 million will be adequate compensation for the said violations.

42. In view of my findings and conclusion in this matter, I find and hold that the following are the appropriate reliefs in this case therefore order as follows:

- i. A declaration is hereby issued that in entering, searching, destroying, looting and confiscating the petitioner's property the respondents violated the petitioner's right to privacy, property and economic rights under Articles 31, 40 and 43 of the Constitution respectively.*
- ii. A declaration is hereby issued that in failing to afford the petitioner due legal process and failing to accord the petitioner and opportunity to be heard before the aforesaid actions, the respondents violated the petitioner's rights to fair administrative action under Article 47 of the Constitution.*
- iii. The petitioner is awarded kshs. 1 million general damages with interest at court rates from the date of this judgment.*
- iv. Costs of this petition and interest from the date hereof;*

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 5th day of November 2018.

W.A. OKWANY

JUDGE

In the presence of:

Miss Namasakha for the petitioner

Mr Ogosso for the 1st and 2nd respondents

Court Assistant – Kombo