



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 418 OF 2018.

PROF. TOM ODHIAMBO OJIENDA.....PETITIONER/APPLICANT

VERSUS

THE KENYA REVENUE AUTHORITY.....1ST RESPONDENT

THE LAW SOCIETY OF KENYA.....2ND RESPONDENT

RULING

1. The petitioner/applicant herein describes himself as an adult male of sound mind currently serving as a member of the Judicial Service Commission. The 1st respondent is the Kenyan Revenue Authority (KRA) established under Chapter 469 of the Laws of Kenya and charged with the responsibility of collecting revenue on behalf of the Government of Kenya. The 2nd respondent is the Law Society of Kenya (LSK), a body corporate registered under the Law Society Act. Through a petition filed on 22nd November 2018, the petitioner filed the instant petition in which he seeks the following orders:-

a) A declaration that the petitioner's constitutional right to equality before the law, human dignity, fair administrative action and fair hearing as guaranteed by Article 25(c), 27, 28, 29, 47 and 50 of the Constitution have been violated and /or threatened to be violated by the respondent, its agents, employees and /or servants;

b) This Honourable court be pleased and do hereby grant a judicial review order of mandamus to compel the respondent to issue the petitioner with the tax compliance certificate for the year 2018/2019 forthwith;

c) This Honourable court be pleased and do hereby grant a judicial review order of mandamus to compel the 2nd respondent to accept the nomination of the petitioner as the Law Society of Kenya male representative to the Judicial Service Commission nominee and/or candidate for the forthcoming Law Society of Kenya Judicial Service Commission male representative election without a tax compliance certificate for the year 2018/2019.

d) Costs of this petition.

e) And any other or further relief as this Honourable court may deem fit to grant.

2. A summary of the petitioners case is that he currently serves as a member of the Judicial Service Commission (JSC) having been duly elected pursuant to Article 171 (1)(f) of the Constitution and that his term of service expires on 6th April 2019. He intends to seek re-election for a further term as the Law Society of Kenya male representative to the Judicial Service Commission under Article 38 and 171(4) of the Constitution.

3. On 14th November 2018, the 2nd respondent advertised for the nomination of the Law Society of Kenya male representative to the Judicial Service Commission. The deadline for the said nominations is 10th December 2018 and one of the requirements for such nominations is the submission of the current Tax Compliance Certificate (TCC) which is a document issued by the 1st respondent to all tax compliant tax payers.

4. The petitioner's case is that he has held tax compliance certificates issued to him by the 1st respondent during the years 2011, 2012, 2013, 2014, 2015, 2016 and 2017. He states that following the expiry of his current tax compliance certificate on 13th November 2018, the Law Society of Kenya coincidentally advertised vacancies for nomination for the position of the Law Society of Kenya male representative. According to the petitioner, this was a deliberate move calculated to lock him out of the contest for the position of Commissioner of the

Judicial Service Commission.

5. The petitioner claims that pursuant to his intention to vie for the position of the Law Society of Kenya male representative to the Judicial Service Commission, he obtained all the requisite clearances towards his nomination and on 12th November 2018 he made an application to the 1st respondent for issuance of the Tax Compliance Certificate for the year 2018-2019 having complied with all the conditions and submitted all compliant accounts but that his application for the said certificate was rejected thereby precipitating the filing of the instant petition and the application that is the subject of this ruling.

Application

6. The applicant seeks the following orders in the application dated 22nd November 2018:-

1. Spent

2. The Honourable Court do issue a mandatory order compelling the 1st respondent, Kenya Revenue Authority, to issue the applicant Prof. Tom Odhiambo Ojienda with a tax compliance certificate for the year 2018/2019 forthwith pending the hearing and determination of this application.

3. The Honourable Court do issue a mandatory order compelling the 1st respondent, Kenya Revenue Authority, to issue the applicant Prof. Tom Odhiambo Ojienda with a tax compliance certificate for the year 2018/2019 forthwith pending the hearing and determination of this petition.

4. Upon grant of prayer 2 and 3, the Honourable court do issue a mandatory order compelling the 2nd respondent to accept the nomination of the petitioner/applicant for the position of the Law Society of Kenya Male representative to the Judicial Service Commission nominee and/or candidate for the forthcoming Law Society of Kenya Judicial Service Commission Male representative Election for 2019-2023 without a tax compliance certificate or the year 2018/2019, if the 1st respondent fails to comply within 3 days;

5. The costs of this application.

6. Any other or further relief which this Honourable court deems fit and just to grant.

7. The application is supported by the petitioner's affidavit sworn on 22nd November 2017 wherein he reiterates that he currently serves as a member of the Judicial Service Commission having been duly elected pursuant to Article 171(1)(f) of the Constitution and that his term of the Judicial Service Commission expires on 6th April 2019 but that he intends to seek a re-election for a further term as the Law Society of Kenya male representative to the Judicial Service Commission under Article 171(4) of the Constitution.

8. He further states that on 14th November 2018, the Law Society of Kenya advertised for the nomination of the Law Society of Kenya representative to the Judicial Service Commission and gave a deadline of 10th December 2018 as the last date for the submission of the nomination papers which papers include a current tax compliance certificate.

9. The applicant's case is that he has over the years complied with tax payments and the filing of returns and that his tax compliance certificate for the year 2017/2018 expired on 13th November 2018 thereby prompting him to make an application for the 2018/2019 Certificate on 12th November 2018 but that his said application was rejected by the 1st respondent despite the fact that he had submitted compliant accounts and had surplus tax remittances of kshs 1,103,577.80 as shown in the 1st respondent's acknowledgement receipt number KRA 201812599863 which he attached to his supporting affidavit as annexure "PTO7"

10. The petitioner avers that all that an applicant for Tax Compliance Certificate needs is remittance of accounts and payment of appropriate tax for the year in question which condition he has complied with as he has always done for all the past years.

11. He further states that his application for issuance of Tax Compliance Certificate for the year 2018/2019 has maliciously and irrationally been rejected by the 1st respondent in order to lock him out of the upcoming election of the LSK male representative to the JSC election on the basis of tax assessments done by the 1st respondent for the years 2009-2014 which assessment was quashed by Odunga J. in a judgment delivered on 11th May 2018 in Miscellaneous Application No. 471 of 2016 **Professor Tom Odhiambo Ojienda SC t/a Professor Tom Ojienda & Associates** (hereinafter "**the JR case**") which is currently the subject of a pending appeal filed by the 1st respondent in Civil Appeal No. 285 of 2018 **Kenya Revenue Authority v Professor Tom Odhiambo Ojienda t/a Professor Tom Ojienda & Associates**. He attached a copy of the rejection letter referred to herein above to his affidavit as annexure "**PTO8**".

12. He further states that all his appeals to the 1st respondent to reconsider his application for Tax Compliance Certificate have not yielded any positive response from the 1st respondent and that this is a clear show of malice, bad faith, witch hunt, wednesday unreasonableness and total disregard to the court process and abuse of office calculated to ensure that he is locked out of the nomination of the Law of Society of Kenya male representative to the Judicial Service Commission race that is to be concluded on 10th December 2018 in violation of his political rights under Article 38 of the Constitution.

13. The applicant further states that he is baffled at the 1st respondents refusal to issue him with the Tax Compliance Certificate yet his law firm of Odhiambo & Odhiambo advocates has already been issued with a tax compliance certificate for the year 2018/2019.

14. At the hearing of the application, the applicant, who appeared in person, submitted that he is entitled to the orders of mandamus sought as he has already fully complied with all the requirements relating to the issuance of the TCC and that the only reason for 1st respondent refusal to issue him with a Tax Compliance Certificate is the alleged taxes for the years 2009-2016 which taxes were the subject of the JR case which was heard and determined in his favour on 11th May 2018. He further submitted that he is entitled to the conservatory orders sought owing to the limited period within which he has to submit all his documents for the nominations for the LSK elections slated to close on 10th December 2018.

15. The petitioner submitted that he is apprehensive that the 1st respondent may not comply with the order of this court to issue him with the Tax Compliance Certificate and thus his alternative prayer in the application that the 2nd respondent be compelled to accept his nomination for the position of the Law Society of Kenya male representative to the Judicial Service Commission should the 1st respondent fail to issue him with the said Tax Compliance Certificate.

1st respondents response

16. The 1st respondent opposed the application through the replying affidavit of its employee one **Rael Ivayo** who avers that by a letter dated 7th June 2016, the 1st respondent directed the applicant herein to pay the sum of kshs 443,631,900.00 as total tax due and owing to the 1st respondent for the period 2009 to 2016. She annexed a copy of the said letter to the replying affidavit as annexure "KRA1".

17. She states that the applicant was aggrieved by the said demand and initiated the judicial review proceedings against the 1st respondent and that in a judgment delivered on 11th May 2018, Justice Odunga quashed and prohibited the 1st respondent from demanding the said sum of kshs 443,631,900.00 but did not stop the 1st respondent from determining the applicants tax liability. She adds that the implication of the decision in the judicial review proceedings is that where there is an outstanding tax dispute and that a tax compliance certificate cannot issue.

18. It is the respondent's case that for a Tax Compliance Certificate to issue, the 1st respondent has to undertake a compliance check into the applicant's tax affairs and be satisfied with his compliance status in line with the provisions of Section 72(2) of the Tax Procedures Act. The 1st respondent's deponent concedes that the applicant was notwithstanding dispute over the tax assessment for the years 2009 – 2016 issued with TCC for the subsequent years being 2016/2017 and 2017/2018.

19. At the hearing of the application, Mr Nyaga learned counsel for the 1st respondent submitted that the applicant has not met the conditions set for the granting of the conservatory orders sought namely; that he has a prima facie to warrant the issuance of a mandatory injunction, that he will suffer a irreparable damage if the orders sought are not granted and that the balance of convenience tilts in his favour.

20. Counsel submitted that following the decision in the Judicial Review proceedings in which the court held it could not determine the applicant's tax liability, the applicant filed a constitutional petition No. 377 of 2018 in which he has obtained orders to prohibit the 1st respondent from questioning, assessing or reviewing the taxes that were the subject of the judicial review proceedings and that in the circumstances, the 1st respondent cannot satisfy himself on the applicant's tax status.

21. Counsel submitted that the court should not allow the applicant to misuse it to circumvent clear provisions of the law. He maintained that the applicant will not suffer any irreparable loss if the orders sought are not granted as all that he has to do is to lift the orders issued in the judicial review proceedings so as to allow the 1st respondent to assess his tax status and then grant him a Tax Compliance Certificate.

22. According to the 1st respondents, the prejudice to be suffered by the petitioner cannot outweigh the prejudice on the public interest of over 10 million tax payers who have to comply with the provisions of the Tax Procedure Act. It was also submitted that granting the orders sought will mean that the applicant is exempt from the provisions of the Tax Procedures Act thereby elevating the applicant to a status higher than any other Kenyan in clear violation of Article 27 of the Constitution.

23. Counsel further argued that the applicant had not discharged the burden of proving a prima facie case that demonstrates a violation of his rights and therefore the balance of convenience tilts in favour of not granting the conservatory orders sought.

2nd respondents case.

24. The 2nd respondent opposed the application through the replying affidavit of **Florence Muturi** the 2nd respondents Deputy Secretary and CEO in charge of Compliance and Ethics dated 29th November 2018. She confirms that the 2nd respondent issued a notice for the nomination for election of the Law Society of Kenya male representative to the Judicial Service Commission for a term of 5 years commencing on 6th April 2019 which notice sets out a deadline for the nominations and an eligibility criteria that among others, requires a prospective candidate to have a current Tax Compliance Certificate.

25. She further states that the 2nd respondent is non partisan in the nomination process and that the nomination notice was issued in compliance with the Constitution, the Law Society of Kenya Act and the 2nd respondent's Electoral Code of Conduct.

26. At the hearing of the application, Mr. Muite SC, learned counsel for the 2nd respondent submitted that one of the requirements for nomination to be the Law Society of Kenya representative to the Judicial Service Commission is Chapter 6 of the Constitution on Leadership and Integrity and further, that the Tax Compliance Certificate is one of the parameters of measuring the integrity threshold.

27. Counsel submitted that the 2nd respondent complied with its code of conduct in announcing the nomination for the elections and that

each nominee must be subjected to the same criteria in which case, the court cannot be asked to issue a mandatory order to compel the 2nd respondent to accept a nomination without a Tax Compliance Certificate.

28. Counsel submitted that the ratio decidendi of several authorities on mandatory injunction at an interlocutory stage is that it is a rarity to be granted only in most exceptional cases and added there was nothing exceptional in the present case as the election date has not been set.

29. Counsel urged the court to hear the case on its merit as there was no urgency in it and maintained that granting the orders sought may lower the public confidence in the administration of justice.

Analysis and determination

30. I have considered the instant application, the respondents' response and the parties' submissions together with the authorities that they cited. I find that the main issue for determination is whether the applicant has made out a case to warrant the granting of the conservatory orders sought.

31. The gist of the application is that having held Tax Compliance Certificate for every single year since 2011 till 13th November 2018 when his 2017/2018 Tax Compliance Certificate expired and having fully complied with the requirements for the issuance with the Tax Compliance Certificate for the year 2018/2019, and further, his law firm having been issued with the TCC for the current year 2018/2019, he is entitled to be issued with the said Tax Compliance Certificate so as to enable him complete in the upcoming elections for the Law Society of Kenya male representative wherein nominations are set to close on 10th December 2018.

39. Courts have severally held that in considering an application for conservatory orders the court is not called upon to make any definite finding either of fact or law as that is the province of the court that will ultimately hear the petition. At this stage the applicant is only required to establish a *prima facie* case with a likelihood of success. Accordingly, in determining this application, this Court is not required, and will not venture into making any definite and conclusive findings on either fact or law as to do so may have the impact of prejudicing the hearing of the main Petition.

40. Apart from establishing a *prima facie* case, the applicant must further demonstrate that unless the conservatory order is granted he or she stands suffer real danger or prejudice. See **Centre for Rights, Education and Awareness (CREAW) & 7 others vs. The Hon. Attorney General**, Nairobi HC Pet. No 16/2011, **Muslims for Human Rights (MUHURI) & 2 others vs. The Attorney General & Judicial Service Commission**, Mombasa HC Pet. No. 7 of 2011

41. In the case of **Centre for Rights Education and Awareness (CREAW) & 7 Others Nairobi** Petition No. 16 of 2011 **Musinga, J** (ahtw) stated that:

“...It is important to point out that the arguments that were advanced by Counsel and that I will take into account in this ruling relate to the prayer for a Conservatory Order in terms of prayer 3 of the Petitioner’s Application and not the Petition. I will therefore not delve into a detailed analysis of facts and law. At this stage, a party seeking a Conservatory Order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the Conservatory Order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”

42. In a majority decision in the case of **The Centre for Human Rights and Democracy & Others vs. The Judges and Magistrates Vetting Board & Others Eldoret** Petition No. 11 of 2012, it was held as follows:

“In our view where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right or any burden is imposed in the contravention of any Constitutional or legal provision or without the authority of the law or any such legal wrong or injury is threatened, the High Court has powers to grant appropriate reliefs so that the aggrieved party is not rendered, helpless or hapless in the eyes of the wrong visited or about to be visited upon him or her. This is meant to give an interim protection in order not to expose others to preventable perils or risks by inaction or omission.”

43. Similarly, in **Judicial Service Commission vs. Speaker of the National Assembly & Another [2013] eKLR** this Court expressed itself as follows in regard to Conservatory orders:

“Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under the Constitution, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore such remedies are remedies in rem as opposed to remedies in personam. In other words they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.”

44. This position was adopted by the Supreme Court in **Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 Others, S.C. Application No. 5 of 2014**, the Court held as follows at paragraph 86 and 87:

“Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the

constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes...The principles to be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:

i. the appeal or intended appeal is arguable and not frivolous; and

ii. Unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.

These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of the Constitution of Kenya, 2010, a third condition may be added, namely:

iii. That it is in the public interest that the order of stay be granted.

This third condition is dictated by the expanded scope of the Bill of Rights, and the public spiritedness that run through the Constitution.”

32. Starting from the question of whether the applicants have established a *prima facie* case I find that it has been held that a *prima facie* case is not a case which must succeed at the hearing of the main case but is rather a case which is not frivolous. In other words the applicants needed to demonstrate that their case discloses arguable issues and in this case arguable Constitutional issues.

33. As I have already stated in this ruling, the applicant’s case is that he will be barred from contesting in the upcoming Law Society of Kenya elections for the Judicial Service Commission male representative unless the orders sought are granted. The 1st respondent has confirmed that it has not issued the applicant with the TCC owing to the tax dispute that is currently the subject of an appeal before the Court of Appeal. It is the petitioner’s case that the rejection of his application for the TCC amounts to an infringement of his political rights to be a candidate for public office as enshrined under Article 38 of the Constitution.

34. My take is that considering the totality of the issues raised in this petition, this court cannot say that the petitioner’s case is frivolous. Indeed, I find that the dispute between the petitioner and the 1st respondent over the issue of assessment of taxes is a longstanding legal battle that began way back in 2016 when the petitioner filed the judicial review case which was determined in his favour in May 2018 in a judgment that has been alluded to by all the parties in these proceedings.

35. It has not been disputed that the applicant has fully complied with the requirements for the issuance of the Tax Compliance Certificate for the year 2017/2018. It is also not in dispute that the reason for the 1st respondent refusal to issue the applicant with the Tax Compliance Certificate for the current year is because of the pending dispute over the taxes assessed for the period between 2009-2016 that were the subject of the judicial review proceedings that is currently pending on appeal.

36 It was further not in dispute that despite the existence of the dispute revolving around the assessment of taxes for 2009-2016, the 1st respondent subsequently issued the applicant with Tax Compliance Certificate for the years 2016/2017 and 2017/2018. This court notes that the parties conceded that the subject of the assessment of taxes for 2009-2016 is the subject of an appeal filed by the 1st respondent being Civil Appeal No. 285 of 2018, for the above reasons, I find that it would not be appropriate to delve into the issue of the disputed taxes for the year 2009 to 2016 as to do so would be tantamount to not only sitting on appeal on the decision of Odunga J. in the judicial review proceedings, but would also amount to usurpation of the jurisdiction of the Court of Appeal that is currently seized with the matter.

37. I will therefore confine myself to the matter before me which is whether the petitioner/applicant has made out a prima case to warrant the granting of the conservatory orders sought. My finding is that the petitioner has established that he has an arguable case against the respondents which case may be rendered nugatory should the orders sought be denied considering that the nominations for the subject elections are set to close on 10th December 2018. Both respondents have not disclosed the loss or prejudice that they will suffer if the orders sought herein are granted.

38. On the substantial loss to be suffered if the orders sought are not granted, I find that it was not disputed that the applicant currently serves as a member of the Judicial Service Commission having been duly elected to the said position in 2013. He has expressed a desire to contest for a fresh mandate of the Law Society of Kenya male representative to the JSC in the new term set to begin on 16th April 2019. It is not disputed the Tax Compliance Certificate sought through the instant petition/application is one of the requirements for the said nominations. It logically follows that, without the Tax Compliance Certificate the applicant will not be able to contest in the said elections thereby losing the opportunity to be a candidate for public office which is a political right guaranteed under Article 38 of the Constitution.

39. On the flipside, the respondents have not stated which loss they stand to suffer if the orders sought are granted. I find that the 1st respondent will still be at liberty to recall or cancel the TCC issued to the applicant in the event that the instant petition is unsuccessful. For the above reasons, I find that the petitioner has sufficiently established that he will suffer irreparable loss if the orders are not granted.

40. The court takes cognizance of the fact that a mandatory injunction is not ordinarily issued at an interlocutory stage except in certain exceptional circumstances. The test on whether or not to grant an order for mandatory injunction has been discussed in several cases. For instance, in the case of **Locabail International Finance Ltd vs Agro Export & Others [1986] ALLER 901** it was held:

“A mandatory injunction ought to be granted on an interlocutory application in the absence of special circumstances and then only in a clear case either where the court thought that the matter ought to be decided at once or where the injunction was

directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a match on the plaintiff.

Moreover, before granting a mandatory interlocutory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction. The principles of law enunciated by these decisions have received full approval by the court within our jurisdiction. See the case of Belle Maison Limited vs Yaya Towers Limited HCC 2225 of 1992, per Bosire J (as he then was) and the Ripples Limited vs Kamau Mucuha HCC No.4522 of 1992 per Mwera J.”

41. Similarly in the case of Kenya Breweries Ltd & 2 Others –vs- Washington Okeyo[2002] eKLR, the Court of Appeal expressed itself as follows:

“The test whether to grant a mandatory injunction or not is correctly stated in Vol. 24 Halsbury’s Laws of England 4th Edition paragraph 948 which reads:

A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a match on the plaintiff.....a mandatory injunction will be granted on an interlocutory application.”

42. In the instant case, it was not disputed that the petitioner and the 1st respondent have had a long standing legal tussles over the issue of tax assessment one such tussle being the judicial review case which was determined in the applicants favour thereby precipitating an appeal that is still pending determination before the Court of Appeal.

43. It was also not disputed that the applicant filed another petition before this court and obtained orders to restrain the 1st respondent from initiating civil of criminal proceedings against him over the subject of the contested tax assessment that was the subject of the JR proceedings.

44. The 1st respondent’s counsel, Mr. Nyaga, submitted before this court that the only way that the applicant could obtain a Tax Compliance Certificate is if he lifted the orders imposed by the court orders in the cases that he has with the 1st respondent. From the above foregoing position one cannot help but get feeling that the real reason behind the 1st respondent refusal to issue the applicant with the Tax Compliance Certificate, especially at this point in time when he requires it in order to contest in the all-important LSK elections of the male representative to the JSC, is to pile pressure on the applicant to give up or withdraw the cases that he has filed against the 1st respondent.

45. My take is that in the circumstances of this case, the 1st respondent fits the description of a party who is attempting to steal a match on the applicant, in the pending cases against it, for which the issuance of a mandatory injunction is merited

46. The 2nd respondent argued that a court order compelling it to accept the applicant’s nomination without the TCC would go against the provisions of Chapter 6 of the Constitution on Leadership and integrity and its Code of Conduct. My take is that the applicant’s position is in the instant case is not that of a person who has failed to present a tax compliance certificate but one of a party who has, as far as the tax returns for the year 2018-2019 is concerned, fulfilled all the conditions for issuance of the Tax Compliance Certificate but the issuing body has declined to issue him with such certificate.

47. It is my further finding that the balance of convenience tilts in favour of granting the conservatory orders sought in the present application and I therefore allow prayer no. 3 of the said application and issue a mandatory order compelling the 1st respondent to immediately issue the applicant with the Tax Compliance Certificate for the year 2018/2019, and in any event not later than Thursday the 6th day of December 2018, pending the hearing and determination of the petition.

48. Considering the nature of this case and the long standing legal battle between the applicant and the 1st respondent, this court deems it necessary to grant prayer 4 of the application dated 22nd November 2018 as an alternative order should the 1st respondent fail to issue the applicant with the tax compliance certificate within the timelines set for the nominations for the election of the Law Society of Kenya male representative to the Judicial Service Commission which is set for 10th December 2018.

49. The costs of this application shall abide the outcome of the main petition.

Dated, signed and delivered in open court at Nairobi this 4th day of December 2018.

W. A. OKWANY

JUDGE

In the presence of:

Mr Havi for the petitioner

Mr Kirugi for the 1st respondent.

Mr Olemba for Muite S.C. for the 2nd respondent

Court Assistant – Kombo