



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 530 OF 2015**

**BETWEEN**

**STEPHEN MUSALIA MWENESI.....PETITIONER**

**AND**

**THE LAW SOCIETY OF KENYA.....1<sup>ST</sup> RESPONDENT**

**THE DISCIPLINARY COMMITTEE.....2<sup>ND</sup> RESPONDENT**

**THE ADVOCATES COMPLAINT COMMISSION.....3<sup>RD</sup> RESPONDENT**

**JACK & JILL SUPERMARKET LTD.....INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. The petitioner, Mr. Stephen Musalia Mwenesi, is an advocate of the High Court of Kenya. He has filed the present petition dated 1<sup>st</sup> December 2015 alleging violation of his right to fair administrative action and to a fair hearing guaranteed under Articles 47 and 50 of the Constitution. The petition is lodged against the Law Society of Kenya, a body corporate established under the Law Society of Kenya Act, Cap 18 of the Laws of Kenya and under section 58 (3) of the Advocates Act, Cap 16 Laws of Kenya, as the 1<sup>st</sup> respondent and the Disciplinary Committee (properly, the Advocates Disciplinary Tribunal) and the Advocates Complaints Commission as the 2<sup>nd</sup> and 3<sup>rd</sup> respondents respectively, both of which are statutory bodies created under the Advocates Act with the mandate to hear and deal with complaints against advocates.

2. In the course of the proceedings, Jack and Jill Supermarkets applied and was permitted to participate in the proceedings as an interested party.

3. This petition arose out of disciplinary proceedings lodged against the petitioner by the interested party before the Advocates Disciplinary Committee. The interested party had complained that the petitioner, whom it had instructed to take action on its behalf in suits pending in the High Court, never took positive

steps to prosecute the said matters for a period of five years, and never informed him, through correspondence, of the position of all his matters.

4. The petitioner took a plea on 19<sup>th</sup> January 2015 and was granted time to file an affidavit in reply, but failed to file the said affidavit in response. Consequently, orders were made against him requiring him to return certain monies paid to him by the interested party, and a car which had also been given to him by the interested party. He was also to be sentenced on 1<sup>st</sup> February 2016.

5. The petitioner therefore filed the present petition alleging violation of his constitutional rights under Articles 47, 48 and 50 of the Constitution, and he seeks:

***(a) A declaration be made that the petitioner's fundamental rights and in particular the right to be heard and access justice, and freedom of the individual under Articles 47, 48 and 50 of the Constitution have been contravened and violated by the respondents herein.***

***(b) The order of prohibition to prevent the Law Society of Kenya by itself or through the Compliance and Ethics Program Director or the Disciplinary Committee from taking out any disciplinary proceedings against or concerning the petitioner whether the same, or arising out of the same fact, as those involved in the Disciplinary Cause No. 156 of 2014.***

***(c) The order of Certiorari to call up into the High Court and to quash the proceedings and decision therein made on the 19<sup>th</sup> October, 2015 declining to hear and determine the Appellant's Notice of Motion dated 9<sup>th</sup> October, 2015 seeking to enlarge time to file a replying affidavit to the complaint lodged by Schon Noorani.***

***(d) The order of Certiorari to call up into the High Court and to quash the decision of the 2<sup>nd</sup> respondent requiring the petitioner to pay the costs of Kshs.6,000 to the Law Society of Kenya and to refund the Complainant in Disciplinary Cause No. 156 of 2014 fees paid to the petitioner being \$5,000 and Kshs.750, 000 and the car (Nissan Serena) within 45 days.***

***(e) The order of Certiorari to call up into the High Court and to quash the decision of the 2<sup>nd</sup> respondent made on 19<sup>th</sup> October, 2015 requiring the petitioner to appear to the Disciplinary Committee of the Law Society on the 1<sup>st</sup> February, 2016 for mitigation and sentencing in respect of Disciplinary Cause No. 156 of 2015.***

***(f) Any further order direction or writ as the Honourable Court deems fit, just and appropriate to grant.***

***(g) Cost of this suit.***

### **The Petitioner's Case**

6. The petitioner's case is set out in his petition and affidavit in support sworn on 1<sup>st</sup> December, 2015, a further affidavit sworn on 14<sup>th</sup> January 2016, and submissions of the same date. His case was presented by his Learned Counsel, Mr. Onindo.

7. In his affidavit, Mr. Mwenesi deposes that he is aggrieved because the respondents have made the decision he now complains of and they are poised, unless prohibited to do so by this Court, to sentence him on 1<sup>st</sup> February, 2016.

8. The decision arose out of a complaint made against him by a Mr. Shon Noorani in an affidavit sworn on 9<sup>th</sup> October, 2014 and filed at the Law Society of Kenya on 10<sup>th</sup> October, 2014. The complaint was that the petitioner's law firm, which had been instructed by Jack and Jill Supermarkets to take certain actions in respect of the complainant's claim, never took positive steps to prosecute his matters for a

period of five years, and never informed him, through correspondence, of the position of all his matters.

9. The petitioner alleges that the respondents served upon his law firm a hearing notice dated 10<sup>th</sup> April, 2015 without the allegations or the affidavit of the complainant. His firm, by its letter dated 29<sup>th</sup> April, 2015, informed the 1<sup>st</sup> respondent's Deputy Secretary, Compliance and Ethics, of the anomaly.

10. The petitioner further avers that on 11<sup>th</sup> May, 2015, he appeared before the Disciplinary Committee with the aim of seeking more time to enable him compile his replying affidavit in response to the serious issues raised by the complainant. He was allowed to file the response within 21 days and the matter was adjourned to 3<sup>rd</sup> August, 2015.

11. On 3<sup>rd</sup> August, 2015, he again sought for more time to file a replying affidavit, but his application was rejected. He however proceeded to compile a replying affidavit but the respondents proceeded to fix the matter for judgment on 19<sup>th</sup> October, 2015

12. The petitioner further avers that on 6<sup>th</sup> October, 2015, his Court Clerk proceeded to the LSK offices with the intention of filing a replying affidavit, which the petitioner had sworn on the same date, but upon reaching the LSK offices, the Clerk was informed that the replying affidavit could not be received as it was time-barred. Mr. Mwenesi deposes that the Clerk was advised to inform him to file an application to enlarge time within which to file a replying affidavit.

13. The petitioner avers that he then filed a Notice of Motion application on 9<sup>th</sup> October, 2015 which was duly received by the Disciplinary Committee and was allocated a mention date of 19<sup>th</sup> October, 2015.

14. On 16<sup>th</sup> October, 2015, he was served with a Notice of Preliminary Objection dated 16<sup>th</sup> October, 2015 from the firm of Maingi Musyimi and Associates, the advocates for the complainant in the Disciplinary Cause No. 156 of 2014, and further that a representative from the said law firm was present before the Disciplinary Committee on 19<sup>th</sup> October, 2015.

15. On 19<sup>th</sup> October 2015, the petitioner appeared before the Disciplinary Committee with the intention of prosecuting his application to enlarge time to file a replying affidavit, which application was intended to arrest the said judgment and allow him to seek leave to file the replying affidavit out of time. The 2<sup>nd</sup> respondent, however, declined to hear his application and proceeded to deliver judgment against him.

16. Mr. Mwenesi contends therefore that the present petition is effective and efficacious in the circumstances of the matter as the 2<sup>nd</sup> respondent's act of declining to hear his application is an infringement of his constitutional rights under Articles 47, 48 and 50 of the Constitution. It is also his contention that the 2<sup>nd</sup> respondent's process is quasi-judicial in nature and therefore ought not to be conducted on the basis of strict procedure to the extent of not affording him a chance to file his replying affidavit out of time.

17. It is also his contention that the 2<sup>nd</sup> respondent's judgment was on matters that could have been proved by the averments made in his replying affidavit annexed to the Notice of Motion Application; that the Disciplinary Committee is poised to sentence him basin on allegations which had been duly responded to in the replying affidavit filed at the LSK, and that the decision by the 2<sup>nd</sup> respondent to hear the said application is *mala fide* and an affront to justice and his rights as underpinned in the Constitution.

18. In his further affidavit sworn on 14<sup>th</sup> January, 2016, the petitioner avers that this Court can grant orders of judicial review in light of the provisions of Article 23 (1) of the Constitution.

19. With respect to the delay in filing his reply to the complaint before the 2<sup>nd</sup> respondent, the petitioner avers that the grounds were well stated in his application for leave to file the said replying affidavit out of time. He contends that his representative at the Disciplinary Committee was not given time to prosecute

the said application, nor was the interested party given time to prosecute his preliminary objection. Accordingly, it is his contention that the discretion to grant orders to extend time can only be exercised after prosecuting the application itself. Consequently, since his application was not prosecuted, there is no way the Disciplinary Committee could have exercised its discretion to allow or deny the application for leave to extend time.

20. It is the petitioner's further contention that though he has a right of appeal against the decision of the Tribunal, he has not been provided with the certified copies of proceedings in the Tribunal, so he cannot exercise his right of appeal as required under the Advocates Act. It is also his contention that in any event, even if the right of appeal exists, he still has the right to move the Court by way of a constitutional petition. His submission is that it is therefore just, meet, and proper that he should be granted the orders that he seeks from the Court.

### **The Interested Party's Case**

21. The interested party opposes the petition and has filed grounds of opposition dated 11<sup>th</sup> December, 2015, a replying affidavit sworn by its Director, Schon Noorani on the same date, and written submissions dated 21<sup>st</sup> January, 2016. Learned Counsel, Mr. Maingi, presented its case.

22. The interested party terms this petition an abuse of the court process and brought *mala fides*. It is its contention that the petitioner seeks to challenge the exercise of discretion by the LSK Disciplinary Tribunal in not allowing extension of time without demonstrating that such discretion was exercised wrongly or contrary to the provisions of the Advocates Act. It is its further contention that the petition seeks judicial review remedies in the guise of a constitutional petition for enforcement of fundamental rights, which the interested party argues offends the rule on alternative remedies and amounts to misuse of the court process.

23. In his affidavit, Mr. Noorani makes various depositions on the facts leading to the present petition, which he terms an abuse of the court process filed with the intention of delaying justice. He avers that the petitioner was invited to appear before the 2<sup>nd</sup> respondent on 19<sup>th</sup> January 2015 for the purpose of taking a plea in the interested party's complaint against him. He appeared as scheduled and entered a plea of not guilty, and was granted 21 days within which to file a replying affidavit. Hearing of the matter was then scheduled for 11<sup>th</sup> May, 2015.

24. On 11<sup>th</sup> May, 2015, Mr. Noorani appeared before the Disciplinary Committee with the interested party's Advocates. The petitioner had not yet filed his replying affidavit, five months from the date of the last appearance. The petitioner requested for more time to put in his reply, which was granted, with an order that he pays to the interested party costs of Kshs.3,000 and a further Kshs.3,000 to LSK. According to Mr. Noorani, these amounts had not been paid as at 3<sup>rd</sup> August, 2015 when the matter next came up before the Committee.

25. On this date, which was three months after the last hearing date, the petitioner, who had not yet filed his affidavit in reply, requested for more time. Upon objection by the interested party's advocate and consideration by the 2<sup>nd</sup> respondent, the 2<sup>nd</sup> respondent rejected the application and set a judgment date for the matter, in accordance with Rule 18 of the **Advocates (Disciplinary Committee) Rules**, for 19<sup>th</sup> October, 2015.

26. Mr. Noorani deposes that all along and throughout the proceedings, the petitioner was represented by Counsel and was well aware of his obligations towards the Tribunal and the prosecution of the case in general. When the matter came up on 19<sup>th</sup> October, 2015, the petitioner purported to make an application for leave to put in a replying affidavit, which application was, on reasonable grounds, rejected. Mr. Noorani asks the Court to note that the petitioner waited until 9<sup>th</sup> October, 2015 to file the application for leave to file his affidavit out time, yet the orders of the Tribunal scheduling the judgment for 19<sup>th</sup> October 2015 had been issued on 3<sup>rd</sup> August, 2015.

27. The interested party therefore argues that the petitioner was granted the requisite opportunity to present his case, and it is dishonest of him to insist that the facts of the case point to infringement of his rights. In its view, the petitioner is the author of his own misfortune. It notes that the petitioner has not explained the laxity on his part in prosecuting his case at the Tribunal notwithstanding that the proceedings were interspersed with long periods of breaks between the hearing dates.

28. The interested party further observes that the petitioner's conduct at the disciplinary proceedings smacks of contempt and disregard of the timelines set by the Tribunal, and he has come to Court with unclean hands. It also observes that the petitioner's negligence as an advocate in the handling of **HCCC No. 183 of 2007- Jack & Jill Supermarket Ltd vs Victor Maina Ngunjiri** and **HCCC No. 452 of 2009** on 6<sup>th</sup> November 2015 has highly prejudiced the interested party's position as a litigant seeking justice. It prays that the petition should be dismissed with costs.

### **The Respondents' Case**

29. Though there is evidence that the respondents were served with the pleadings in this petition, they did not file any documents or participate in any way in the proceedings.

### **Determination**

30. I have considered the pleadings and submissions of the petitioner and interested party. The petitioner alleges violation of his constitutional rights under Articles 47, 48 and 50 of the Constitution by the respondents. The respondents did not deem it fit to respond to the petitioner's allegations, but the interested party denies that any such violations occurred.

31. The issue before me then is whether there has been a violation of the petitioner's rights as alleged, and if there has been, what relief he is entitled to.

32. Before doing so, however, it is useful to consider first whether the Court can grant the orders of judicial review which the petitioner seeks, and which the interested party asserts cannot be properly sought in a petition alleging constitutional violations as there are alternative forums for seeking such orders.

33. The petitioner has relied on the decisions in **Hon. Martin Nyaga Wambora and Others vs The Speaker of the Senate and Others, Petition No. 3 of 2014** and **Hon. Lady Justice Nancy Makokha Baraza vs The Judicial Service Commission and Others, Petition No. 23 of 2012** to support the submission that the Court can grant orders of judicial review in a constitutional petition. In its submissions, the interested party observes that the above authorities do support the jurisdiction of the Court to grant orders of judicial review. It observes, however, that no material had been placed before the Court to support the petitioner's assertion that he deserved more time than he was given by the Tribunal.

34. I believe that this point should not detain us at all. The provisions of Article 23(3) of the Constitution are clear:

***(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including***

***(a) a declaration of rights;***

***(b) an injunction;***

***(c) a conservatory order;***

***(d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;***

*(e) an order for compensation; and*

*(f) an order of judicial review. (Emphasis added)*

35. Should a party in a petition brought under Article 22 make out a case to warrant the grant of judicial review orders, then the Court has the jurisdiction to grant such relief, notwithstanding that there is an alternative forum for seeking orders of judicial review. The question is whether, in the present case, such a case has been made out.

36. The crux of the petitioner's case is that he was not afforded an opportunity to prosecute his application for extension of time. His application was filed on 9<sup>th</sup> October 2015, while judgment in the matter was scheduled for 19<sup>th</sup> October 2015. The petitioner sought to prosecute his application for extension of time on the date of the judgment, with the intention, as he submits, of essentially staying the judgment and obtaining leave to file his affidavit out of time. He argues that since the 2<sup>nd</sup> respondent did not hear his application, it did not exercise its discretion, and it therefore denied him the right to be heard in violation of his rights under Articles 47, 48 and 50 of the Constitution. These Articles guarantee the right to fair administrative action, access to justice and right to fair hearing respectively and are in the following terms:

***47 (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.***

***(3) ...***

***48. The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.***

***49...***

***50. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.***

37. Sub-article (2) of Article 50 deals with the rights of accused persons to a fair trial, which is not relevant for present purposes.

38. In its response, the interested party submits that the above provisions were strictly adhered to by the respondents. The petitioner was afforded an opportunity to be heard, and was granted five months and a further three months to file his reply, but failed to do so. Its case was that the power to extend time by the Disciplinary Committee is a discretionary and equitable relief which must be exercised on the basis of the material placed before it. The interested party relied on the decisions in **Republic vs Law Society of Kenya Disciplinary Tribunal ex parte Michael Kimani Horeria High Court Judicial Review Application No. 86 of 2014 (2014) eKLR**, **Naphtali J.M. Mureithi vs Giro Commercial Bank Limited and Another [2012] eKLR** and **Peter Kinyari Kihumba vs Gladys Wanjiru Migwi and Another [2006] eKLR** in support of its arguments that the Tribunal properly exercised its discretion, and against the grant of any relief to the petitioner.

39. In considering the opposing arguments of the parties, I start by underscoring the pre-eminence of the right to a hearing in the adjudication of disputes. In the case of **Malloch vs Aberdeen Corporation [1971] 2 All ER 1278** this right was underscored in the following observation by Lord Reid at page 1283:

***“An elected public body is in a very different position from a private employer. Many of its servants in the lower grades are in the same position as servants of a private employer. But***

**many in higher grades or ‘offices’ are given special statutory status or protection. *The right of a man to be heard in his own defence is the most elementary protection of all and, where a statutory form of protection would be less effective if it did not carry with it a right to be heard. I would not find it difficult to imply this right*** (Emphasis added)

40. In *Kanda vs Government of Malaya (1962) AC 322* It was held that:

***“If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence is given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them ... it follows, of course, that the Judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other.”***

41. In this case, the 2<sup>nd</sup> respondent was exercising powers under section 58 of the Advocates Act, which deals with proceedings of the Disciplinary Tribunal and provides that:

...

***(5) All proceedings before the Tribunal shall be deemed for the purposes of Chapter XI of the Penal Code (Cap. 63) to be judicial proceedings and for the purposes of the Evidence Act (Cap. 80) to be legal proceedings.***

***(6) The Tribunal may make rules for regulating the making to the Tribunal, and the hearing and determination by the Tribunal, of applications or complaints under this Part or with respect to matters incidental to or consequential upon its orders.***

42. Like all judicial or quasi-judicial proceedings, the proceedings of the Tribunal under the above provision must be conducted in accordance with the rules of natural justice, which presuppose the right to be heard. That right requires that a party be given an opportunity to present his case, and section 60(3) of the Act makes provision as follows:

**(1) ...**

**(2) ...**

***(3) Where a complaint is referred to the Tribunal under Part X or subsection (1) the Tribunal shall give the advocate against whom the complaint is made an opportunity to appear before it, and shall furnish him with a copy of the complaint, and of any evidence in support thereof, and shall give him an opportunity of inspecting any relevant document not less than seven days before the date fixed for the hearing:***

43. Following the lodging of a complaint against him, the petitioner was required to take a plea before the Tribunal on 19<sup>th</sup> January 2015. He was then given a period of 21 days within which to file his affidavit in reply to the complaint. He did not do so, and when he next appeared before the Tribunal on 11<sup>th</sup> May 2015, he again sought time to file a response. He was granted time, subject to payment of costs, and the matter was rescheduled to the 3<sup>rd</sup> of August 2015 for hearing. The petitioner was informed by way of a letter dated 22<sup>nd</sup> May 2015 that he had been given the last adjournment to put in his affidavit, and that the matter had been adjourned to the 3<sup>rd</sup> of August 2015.

44. On 3<sup>rd</sup> August 2015, when the matter came up for hearing again, the petitioner had still not filed his reply, and he again requested for more time to file his reply. This time, upon consideration by the Tribunal, his request for an adjournment and for time to file his reply was declined, and the decision was communicated to him in a letter from the 2<sup>nd</sup> respondent’s Program Officer (Compliance and Ethics) dated 21<sup>st</sup> August, 2015. Judgment on the matter was also set for the 19<sup>th</sup> of October 2015.

45. Two months later, on 6<sup>th</sup> October 2015, the petitioner attempted to file his affidavit in reply, but according to his deposition, he was advised to file an application for extension of time. He did this on 9<sup>th</sup> October, 2015, and the application was given a mention date for the 19<sup>th</sup> of October 2015, when the complaint against him was scheduled for judgment. On this date, the Tribunal declined to entertain the petitioner's application and proceeded to deliver its judgment as scheduled.

46. Was there anything in the conduct of the matter that can be described as an infringement of the petitioner's rights under any Article of the Constitution and specifically under Articles 47, 48 and 50?

47. The petitioner had slightly less than five months, from the date he first took the plea before the Tribunal on 19<sup>th</sup> January 2015 to the 11<sup>th</sup> of May 2015, within which to file his affidavit in response to the complaint by the interested party. At the hearing scheduled for 11<sup>th</sup> May 2015, he sought and was granted more time. He still did not file his affidavit, and three months later, on 3<sup>rd</sup> August 2015, he again sought additional time. This time, the Tribunal declined.

48. Nonetheless, the petitioner sought to file his affidavit on 6<sup>th</sup> October 2015, two months after his request for more time was declined, and on 9<sup>th</sup> October 2015, he filed his application for extension of time which he sought to argue on the date of the judgment, the 19<sup>th</sup> of October 2015.

49. In the case of **Union Insurance Co. of Kenya Ltd. vs Ramzan Abdul Dhanji, Civil Application No. Nai 179 of 1998** the Learned Judge observed that:

*“The law is not that a party must be heard in every litigation. The law is that parties must be given a reasonable opportunity of being heard and once the opportunity is given and is not utilised, then the only point on which the party not utilising the opportunity can be heard is why he did not utilise it.”*

50. In **Republic vs Law Society of Kenya Disciplinary Tribunal ex parte Michael Kimani Horeria (supra)** relied on by the interested party, the Court held as follows:

*[27.] It must always be remembered that the decision whether or not to grant an adjournment is an exercise of discretion based on the material before the Court. Where there is absolutely no material placed before the Court due to the absence of a party, it cannot be said that the discretion was improperly exercised. The principles guiding the grant of adjournment were stated in Famous Cycle Agencies Ltd & 4 Others vs. Masukhalal Ramji Karia SCCA No. 16 OF 1994 in which the Supreme Court of Uganda held as follows:*

*“...the granting of an adjournment to the party to a suit is thus left to the discretion of the court and the discretion is not subject to any definite rules, but should be exercised in a judicial and reasonable manner, and upon proper material. It should be exercised after considering the party's conduct in the case, the opportunity he had of getting ready and the truth, and sufficiency of the reason alleged by him for not being ready. But the discretion will be exercised in favour of the party applying for adjournment only if sufficient cause is shown. Sufficient cause refers to the acts or omissions of the applicant for adjournment. What is sufficient cause depends upon the circumstances of each case and generally speaking, where the necessity for the adjournment is not due to anything for which the party applying for it is responsible, or where there has been little or no negligence on his part an adjournment would not normally be refused. But where the party has been wanting in due diligence or is guilty of negligence an adjournment may be refused.”*

51. In this case, the petitioner was given 21 days, and had the opportunity, to file his replying affidavit between 19<sup>th</sup> January and 11<sup>th</sup> May 2015. He did not. He again was accorded the opportunity to file his replying affidavit between 11<sup>th</sup> May and 3<sup>rd</sup> August, 2015, and again he did not. He had the time, between August and October, 2015, to file his application to extend time for filing his affidavit, but did

not do so until 10 days before the date of delivery of judgment, and sought to argue the application on the date fixed for judgment. The Court further notes that the petitioner had an opportunity to put in written submissions before the judgment that he was served with the complainant's submissions on 18<sup>th</sup> September 2015, but still did not act.

52. In my view, taking all the facts and circumstances of this case together, the 2<sup>nd</sup> respondent could not have done more than it did to accord the petitioner the right to be heard, and to present his case before it. That it declined to adjourn or stay its judgment when the petitioner sought such orders at the eleventh hour cannot be faulted, for the facts before me illustrate a party who did not take the proceedings before the Tribunal at all seriously. To have accorded him any further indulgence would have been to allow an abuse of its process.

53. In the circumstances, I can find no violation of the petitioner's rights in the proceedings before the 2<sup>nd</sup> respondent. The petition is therefore, in my view, totally devoid of merit, and it is hereby dismissed with costs to the interested party.

**Dated, Delivered and Signed at Nairobi this 12<sup>th</sup> day of February 2016**

**MUMBI NGUGI**

**JUDGE**

**Mr. Onindo instructed by the firm of S. Musalia Mwenesi & Co. Advocates for the petitioner.**

**Mr. Maingi instructed by the firm of Maingi Musyimi & Associates for the interested party.**

**No appearance for the respondents.**