



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

JUDICIAL REVIEW NO. 5 OF 2017

IN THE MATTER OF: AN APPLICATION OF JUDICIAL REVIEW ORDERS OF

PROHIBITION AND CERTIORARI BY WILLIAM

KIBERA WAIGANJO

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: THE LAND COMMISSION ACT

AND

IN THE MATTER OF: L.R NUMBER RUIRU/RUIRU EAST BLOCK 2/97 AND 98

BETWEEN

WILLIAM KIBERA WAIGANJO

(Suing as the legal representative and

guardian of LEAH WACHU WAIGANJO).....APPLICANT

VERSUS

NATIONAL LAND COMMISSION.....RESPONDENT

NJERI MUCHANGIRU.....INTERESTED PARTY

JUDGMENT

There are two matters for determination. One is the **Notice of Preliminary Objection** dated **16th October 2019**, by the Interested Party. The other is a Judicial Review Application brought via the Notice of Motion Application dated **20th April 2017**, by the Applicant seeking for the following orders against the Respondent;-

1. THAT an order of Prohibition do issue to forbid the National Land Commission from conducting any hearing or review over the complaint in regard to the properties known as L.R Nos Ruiru/Ruiru East Block 2/97 & 98.

2. THAT an order of Certiorari do issue to remove into this Court and quash the decision by the National Land Commission to issue a Notice and conduct a review and hearing in respect of the properties known as L.R Nos. Ruiru/Ruiru East Block 2/97 & 98 belonging to Wachu Waiganjo which said decision was communicated to the Applicant through a letter dated 29th September 2016 by the National Land Commission.

3. A declaration do issue that the National Land Commission has no jurisdiction to hear or adjudicate and determine any

proceeding s touching on the properties known as L.R Nos. Ruiru /Ruiru East Block 2/97 & 98 either in the manner suggested by the commission or at all.

4. That the costs of this Application be provided for.

5. That such order or direction as shall be considered fit for the Court to grant in the circumstances of the case be granted.

The Application for Judicial Review is premised on the grounds that the suit properties are registered in the name of the Applicant's sister who is mentally handicapped and has been in occupation of the suit property since **26th August 1988**, when she was issued with the title deed. That there is another suit pending at **Nairobi Environment & Land Court**, being **ELC 578 of 2012**, which matter has been transferred to this Court and therefore the proceedings before the Respondent undermine the Jurisdiction of this Court. Further that the Respondent has no jurisdiction to hear and determine any proceedings touching on the Applicant's properties as the said properties are private land and not public land. That the proceedings before the Respondent have been partisan at best with the Commissioners making highly pre judicial remarks. That the High Court has Jurisdiction under **Articles 23, 165 and 258** of the Constitution exercisable in accordance with part VI of the Law Reform Act Cap 26 of the Laws of Kenya and pursuant to order 53 of the Civil Procedure Rules to receive, entertain and determine the Applicant's claim and grant the Orders sought and give any direction or further orders as the circumstances of the case may necessitate .

The Application is further supported by the Affidavit of **William Kibera Waiganjo**, sworn on **22nd March 2017**. He averred that **Leah Wachu Waiganjo** is the registered owner of land parcels number **Ruiru/Ruiru East Block 2/97 & 98**, having been issued with a title deed on **26th August 1988**. It was his contention that the said **Leah Wachu Waiganjo**, was a shareholder with **Nyakinyua Investments Limited** and had been issued with two share certificates number **02804** and **03148**, which share certificates entitled her to a double plot parcel of land. He further averred that after acquiring the land, she took possession of the land and continued to be in possession until the year **2002**, when the Interested Party complained to the **C.I.D Thika Police Station**, that she had acquired the land through forgery.

He averred that they were arrested and charged before the Senior Principal Magistrate Court at Thika in Criminal Case number **162 of 2002**, wherein they were later acquitted on **31st January 2003**. That he then filed a case against the Interested Party herein for a declaration that the two parcels of land, be declared to be legally and lawfully belong to **Leah Wachu Waiganjo**. That the Interested party also filed her defence and also a counter claim and the suit is pending before the court.

Further that the Interested Party filed a complaint before the Respondent and claimed that he had grabbed her land and that he was using money to corrupt Judicial Officials and the Respondent invited him on **29th September 2016**, to attend the hearing. It was his contention that his Advocate informed the Respondent that the matter was before the **Environment and Land Court at Milimani**. That when the complaint came up for hearing on **28th October 2016** and **25th November 2016**, it could not proceed as the Directors of Nyakinyua Limited did not turn up. However, on **23rd February 2017**, the two rival groups of **Nyakinyua Investment Company limited** appeared before the Respondent and it was difficult to know which group was in office legally. That his Advocate had on **16th February 2017**, written to the Registrar of Companies to issue him with the **CR12** form, but the Registrar on **22nd February 2017**, responded to him and informed him that the Company was embroiled with leadership wrangles and it was therefore not in a position to issue the CR 12. However, when the matter came up for hearing, the Respondent purported to support one group of Directors to the detriment of the applicant, who had the support of the other group of Directors. That his Advocate on **27th February 2017**, wrote to the Respondent and requested one Commissioner who openly showed that she was partisan in the matter to disqualify herself. Further that the same Commissioner had on **30th November 2016**, **9th February 2017** written letters claiming that the two parcels of land were registered in his names (**William Kibera Waiganjo**) a fact that is not true.

It was his contention that despite all his protests and requests that this Commissioner (**Emma Njogu**), disqualifies herself from hearing the matter, she adamantly refused to disqualify herself, and even informed his Advocate in his presence that they had already made a decision.

It was his further contention that the matter is touching on a private land wherein the dispute involve two private individuals and as such the Respondent under **Section 6 of National Land Commission Act**, has no jurisdiction to hear the matter. Further that since the matter was first filed before the High Court and all the preliminaries have been done, and matter certified ready for hearing, the High Court which is in a better place to hear the matter under article **162(b)** of the **Constitution** should be allowed to hear the matter to its final conclusion. It was his further contention that his sister's acquisition of the land was legal and procedural.

In his statement of facts, the Applicant reiterated the contents of the Supporting Affidavit and urged the Court to allows his Application

The Application is opposed and the Respondent through **Brian Ikol** its Director of Legal and Enforcement swore a Replying Affidavit on **8th September 2017**, and averred that the Commission received a complaint from, the Interested Party who alleged that two parcels of land, being title **no. Ruiru/Ruiru east block 2/97 and 98**, allocated to her by **Nyakinyua Investments Limited** had been registered in the name of **Leah Wachu Waiganjo**. He averred that all parties were invited to the Commission's proceedings which were held on **28th October 2016**, **25th November 2016**, **23rd February 2017** and **9th March 2017**. That during the hearing before the commission, the Applicant was duly represented by her Advocates on record in this matter. **F.N Kimani & Associates** advocates, who made submissions on her behalf. It was his contention that the Applicant submitted to the jurisdiction of the Review Committee and did not raise any objection to the case being heard before the Commission.

He further averred that the suit properties are registered in the name of **Leah Wachu Waiganjo**, who is the applicant suing through her legal representative, **William Kibera Waiganjo**. That both the Applicant and Interested Party claimed to be the legal owners of the suit land which were purportedly allocated to each of them as shareholders of Nyakinyua investment limited. He averred that parties were requested to submit to the review proceedings of the Commission, produce documentation in support of their claims over the suit land and the Interested Party submitted, inter alia, a ballot no. **312 of Nyakinyua Investments Limited**, payments receipts for parcel **No. 97 and 98** and share

certificate no. 2424 and 2525, two clearance letters dated **October 16th 2001** and **27th June 2013** issued by **Nyakinyua Investment Limited**, confirming the interested party as the owner of the suit land.

Further that the Applicant submitted, inter alia, payment receipts for parcel no. **97** and **98**, share certificates no. **02804** and **03148** and title deeds of the suit land. He further averred that the charlady of **Nyakinyua Investment Limited, Esther Nduta Ndirangu**, appeared before the Review Committee on **23rd February 2017**, and testified on the behalf of the Interested Party. That **Esther Nduta Ndirangu** was a Director of Nyakinyua Investment Limited from 1989, and her responsibility included processing ownership documents for shareholders. She produce an extract of the register of **Nyakinyua Investment Limited**, that showed the interested party as the rightful owner of the suit land.

He further contended that both parties have an arguable case and the Commissions Review proceedings is best suited to examine the documents adduced by both the applicant and Interested Party and conclusively determine the rightful owner of the suit land. He further averred that it was not disputed that there was a pending court case between the Applicant and Interested Party herein regarding the suit property. However, the parties submitted themselves to the jurisdiction of the Review Committee. The proceedings before the Commission had not been stayed by any court before this honourable court granted the applicant leave to file a Judicial Review Application and ordered that the leave does operate as a stay of the proceedings before the Commission.

He further averred that the hearings before the Commission had been concluded with no objection to the proceedings and the applicant waited until hearing had been concluded and the determination of the Commission was pending before filing this suit. That at the time the stay order was served on the Respondent from this honourable court, the Respondent had concluded the proceedings. He averred that this matter was brought in bad faith with a view of delaying it, and subverting the cause of justice as the court in **Thika Criminal Case No. 162 of 2002**, against the Applicant herein, found and held that the applicant title deeds were a forgery but proceeded to acquit the applicant on the ground that ownership of the property was unclear. He further averred that the allegations of bias levelled against the Commissioner is **unfounded, scandalous** and **unfortunate** as the Applicant has not provided any evidence that the Commissioner has breached her mandate or adopted a procedure that is not supported by the law. He further averred that all proceedings conducted before the Respondent between the Applicant and Interested Party were at all times heard before a well constituted Review Committee as required by law.

It was his contention that the process of reviewing **grants** and **titles** to property involve reviewing the manner in which public land was allotted to private persons and whether the procedure was legal and regular. Therefore, it would defeat the purpose of the Constitution to imagine that unlawfully and irregularly acquired land once registered as private property is no longer within the reach of the Respondent.

The Interested Party in opposing the Application filed a Notice of Preliminary Objection dated **16th October 2019**, on the grounds that the Applicant's suit should be stayed in its entirety pursuant to **section 6** of the Civil Procedure Act as there is an ongoing appeal being **Civil Appeal No. 409 of 2019, Njeri MuchangiruVs... William Kibera Waiganjo (Suing as the legal representative of Leah Wachu Waiganjo**. That the said Appeal was filed on **26th August 2019**, and is ongoing. Further that the Appeal touches on the same subject matter as this suit and the parties are the same. That for the Plaintiff and the Interest Party, to proceed with this matter would consequently offend section 6 of the Civil Procedure Act. The Court directed the Preliminary Objection be determined in the Judgement.

The Applications were canvassed by way of written submissions which the Court has now carefully read and considered and finds that the issues for determination are:-

- 1. Whether the Preliminary Objection is merited.**
- 2. Whether the Applicants have met the grounds for granting of Judicial Review Order of Certiorari and Prohibition.**
- 3. If so, whether the application dated 20th April 2017 is merited.**
- 4. Who is entitled to costs of these proceedings?**

1. Whether the Preliminary Objection is merited

In her Notice of Preliminary Objection, the Interested Party has sought to have the Judicial Review Proceedings herein stayed being that she has filed an Appeal and that the Appeal touches on the same subject matter as this suit. Before the Court can be able to determine whether or not the Preliminary Objection is merited, it will first determine whether what has been raised by the Interested party satisfies the ingredients of what a Preliminary Objection is.

A Preliminary Objection was described in the **Mukisa Biscuits Manufacturing Co. Ltd...Vs...West End Distributors Ltd (1969) EA 696** to mean:-

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Further Sir **Charles Nebbold, JA** stated that:-

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what

is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

This Court having made a finding on the description of a **Preliminary Objection**, it is not in doubt that a **Preliminary Objection** raises pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. However it cannot be raised if any facts has to be ascertained from elsewhere or the court is called upon to exercise judicial discretion. As the Court embarks in determining whether what the 1st Respondent has filed amounts to a Preliminary Objection or not, the Court will firstly be persuaded by the findings in the case of Oraro...Vs...Mbaja(2005) 1KLR 141, where the Court held that:-

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.

In the instant **Preliminary Objection**, the Interested has sought for the staying of the instant suit based on the fact that she has filed an Appeal that touches on the same subject matter as the instant proceedings. It is not in doubt that the instant suit being a Judicial Review will only deal with the process in which the proceedings by the Respondent had been conducted and whether the Respondent had jurisdiction. This Court in Judicial Review proceedings is not mandated to go into the merits of the case. Further an, Appeal in this instant as understood from the proceedings will deal with the merit of the case. Further to be able to find out whether the suit should be stayed the Court will be looking at the issues raised in the Appeal vis a vis the issues raised in the instant proceedings as **section 6 of the Civil Procedure Act** provides that the Court should not try a case in which the issues are substantially the same as those raised in another suit. Therefore, it is this Court’s considered view that for it to be able to determine whether the suit should be stayed, it will require ascertaining facts.

Given the limited scope of the jurisdiction on **Preliminary Objection** and the test to be applied, the Court finds that an issue of *Section 6 of the Civil Procedure Act* involves probing of evidence and therefore the same cannot be determined via a **Preliminary Objection**. This Court finds that given the description of Preliminary Objection in the Mukisa Biscuits case (supra) and given that an issue of *whether or not to stay a suit for offending Section 6 of the Civil Procedure Act* involves ascertaining of facts, then the instant **Notice of Preliminary Objection** as raised by the Interested Party does not meet the test of what amounts to a **Preliminary Objection**. It does not raise pure points of law and it cannot be determined without ascertainment of facts from elsewhere.

Consequently, the Court finds and holds that the **Notice of Preliminary Objection** dated **16th October 2019** is **not merited** and the same is **dismissed entirely** with costs to the applicant.

2. Whether the Applicants has met the grounds for granting of Judicial Review Order of Certiorari and Prohibition.

It is important to set out the purpose of Judicial Review. In the case of Municipal Council of Mombasa...Vs...Republic Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007(2002) eKLR, the Court of Appeal held that:-

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at. Did those who make the decision have the power i.e the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review”.

Further circumstances under which orders of Judicial Review can be issued were elaborated by Justice Kasule in the Uganda case of Pastoli ... Vs..Kabale District Local Government Canal & Others (2008) 2EA

300 at pages 300-304.

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

Illegality, is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision of a law or its principles are instances of illegality----

Irrationality, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

Procedural impropriety, is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice to act or to act with procedural fairness towards one to be affected by the decision – it may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislature instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehidswi... Vs...Secretary of State for the Housing Department (1990) AC 876”.

So what does the Judicial Review orders entails? This was elaborated in the case of Kenya National Examination Council...Vs...Republic Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No.266 of 1996, where the Court held that:-

“That now bring us to the question we started with, namely the efficacy and scope of mandamus, prohibition and certiorari. These remedies are only available against public bodies such as the council in this case. What does an Order of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules or natural justice. It does not. However, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See Halsbury’s Law of England, 4th Edition vol.1 at Pg.37 paragraph 128.”

From the foregoing cases, the applicable law in cases of Judicial Review have already been established, and this Court will now consider the above applicable law and then juxtapose with the available facts to determine whether the **Applicant** is deserving of the orders sought.

As was stated in the case of ***Kenya National Examination Council...Vs...Republic (Exparty Geofrey Gahenji & Another (Supra)***, the Order of *Certiorari* can quash a decision already made as an Order of *Certiorari* will issue if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with or so such like reasons. So have the **Exparte Applicant** established existence of the above conditions to warrant this Court quash the decision of **National Land Commission**, to conduct a Review and a hearing in respect of the suit property?

It is the Applicant’s contention that the Respondent does not have jurisdiction to conduct and Review proceedings in respect of the suit properties as the same revolves around the suit properties which are private properties.

It is the Court’s considered view that the Ex parte Applicant has established the threshold for seeking the orders of Judicial Review proceedings, as she is questioning whether the Respondent has jurisdiction to entertain and conduct review and hearings over private properties.

3. If so, whether the application dated 20th April 2017 is merited

The Court will then have to determine whether the Respondent has jurisdiction to conduct review proceedings involving the suit properties. The Court has considered the provisions of **Section 14(1)** of the **National Land Commission Act** in which the Respondent is granted powers to review all grants or disposition of public land to establish their propriety or legality. Further **Section 14** of the **National Land Commission Act** gives the Respondent power to deal with review of public land but not privately owned freehold titles.

It is therefore not in doubt that the Respondent has jurisdiction to conduct review into how public land was converted into private land. See the case of ***Republic ...Vs... National Land Commission & Another Exparte Muktar Saman Olow [2015] eKLR*** where the Court held that:-

“Under Section 14 of the National Land Commission Act, 2012 the Respondent is given jurisdiction to enforce Article 68(c)(v) of the Constitution and review all grants or dispositions of public land to establish their propriety or legality. In my view, the Respondent can only fulfil this mandate by probing the process under which public land was converted to private land. It would defeat the purpose of the Constitution to imagine that unlawfully and irregularly acquired land once registered as private property is no longer within the reach of the Respondent.”

Article 67 (2) of the **Constitution** provides for the functions of the **National Land Commission** and further **Section 5(2)** of the **National Land Commission Act** also assigns other tasks to the **National Land Commission**, in the following terms:

- “(a) on behalf of, and with the consent of the National and County Governments, alienate public land;***
- (b) monitor the registration of all rights and interests in land;***
- (c) develop and maintain an effective land information management system at National and County levels; and***
- (d) manage and administer all unregistered trust land and unregistered community land on behalf of the County Government.”***

Article 61 (2) of the constitution classifies land in Kenya as public, community or private. **Article 62** of the Constitution defines public land thus:-

“62. (1) Public land is—

(a) land which at the effective date was un-alienated government land as defined by an Act of Parliament in force at the effective date;

(b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;

(c) land transferred to the State by way of sale, reversion or surrender;

(d) land in respect of which no individual or community ownership can be established by any legal process;

(e) land in respect of which no heir can be identified by any legal process;

(f) all minerals and mineral oils as defined by law;

(g) government forests other than forests to which Article 63 (2) (d) (i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;

(h) all roads and thoroughfares provided for by an Act of Parliament;

(i) all rivers, lakes and other water bodies as defined by an Act of Parliament;

(j) the territorial sea, the exclusive economic zone and the sea bed;

(k) the continental shelf;

(l) all land between the high and low water marks;

(m) any land not classified as private or community land under this Constitution; and

(n) any other land declared to be public land by an Act of Parliament—

(i) in force at the effective date; or

(ii) enacted after the effective date.”

Article 64 of the Constitution defines private land in the following terms:-

“64. Private land consists of —

(a) Registered land held by any person under any freehold tenure;

(b) land held by any person under leasehold tenure; and

(c) any other land declared private land under an Act of Parliament.”

From the above provisions of law, it is not in doubt that with the definition of public land and private land, even though the Respondent has the mandate to review dispositions of land involving public land, and not private land, such review does not mean it is only to land that is still public, as then there would be nothing to review. There are Plethora of decisions that the Respondent has jurisdiction to review how a public land was converted to private land that has already been registered and it is held by that private person.

It is the Court considered view that what the Respondent will be reviewing is how the said property was passed from the government to the initial allottee and in essence that would mean how the property became private land. However, the Jurisdiction of the Respondent would only be limited to reviewing how the initial allottee acquired proprietorship of the property. Further, where the initial allottee has transferred the property to a third party and there is a dispute between the allottee and the other party and the question as to how the disposition was transferred to the said allottee to a third party, then it would only mean that such a dispute is between a private party and a private party and the same does not involve how public land was converted to a private land. In essence that would be a dispute between two private parties. See the case of *Republic ...Vs... National Land Commission exparte Holborn Properties Ltd 2016 eKLR* where the Court held that

“The recommendation to the Registrar by the Respondent to revoke title which it finds was illegally issued is only in respect to the initial allottee. However, where the initial allottee of public land has transferred land to a bona fide purchaser for value without notice of defect in the title, the Registrar does not have the jurisdiction to revoke such a title (see Section 14(7) of the National Land Commission Act).”

In this instant Nyakinyua Investment Company Limited is a private entity, It is not in doubt that the suit land had been allocated to the said Company in which the Applicant and the Interested Parties are shareholders are. It is not in doubt that the dispute before the Respondent was who between the Applicant and the Interested Party was entitled to the suit properties as both laid claim to the suit properties alleging that they had been allocated the same by Nyakinyua Investment Company Limited. Therefore, this Court finds that the said dispute was a dispute between private persons and therefore disposition of private land, and the Respondent had no Jurisdiction over the same. Though the Respondent has averred and submitted that the Applicant voluntarily submitted to its Jurisdiction and she is thus estopped from complaining, it is trite that Jurisdiction is everything and without it a Court and or tribunal has to down its tools. No one not even parties to a proceedings can confer jurisdiction to a Court or a tribunal. Jurisdiction can even be raised on Appeal, and by submitting to the Respondent, that did not confer on it any jurisdiction to determine the dispute between private individuals.

Consequently, the Court finds and holds that the Respondent does not have jurisdiction to conduct Review hearings over the suit properties and the orders of Judicial Review for Certiorari as sought by the Applicant are found merited. The upshot of the foregoing is that the Court finds and holds that the Application for Judicial Review dated 20th April 2017 is merited.

4. Who is entitled to costs of these proceedings?

Section 27 of the Civil Procedure Act, gives the Court discretion to grant costs. However, costs always follow the events and the successful party should then be the person to be awarded costs unless there are special circumstances which should warrant the Court from deviating. The Ex parte Applicant in this instant being the successful party is awarded costs of the suit.

Having now carefully analysed the available evidence, the Court finds that the Ex parte Applicant has successfully established that this is a case that deserves Judicial Review Orders of **Certiorari** and **Prohibition** as prayed in the instant Application.

The upshot of the foregoing is that the Ex parte Applicant's Judicial Review Application dated **20th April 2017**, is found merited and the same is allowed entirely, in terms of prayers no. 1, 2, and 3 with costs to the applicant.

It is so ordered.

Dated, signed and Delivered at Thika this 30th day of July 2020.

L. GACHERU

30/7/2020

JUDGE

Court Assistant – Lucy

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

With consent of:

No Consent for the Applicant

Mr. Charles Wambugu Advocates for the Respondent

Nyaga Njeru Advocate for the Interested Party

L. GACHERU

30/7/2020

JUDGE