REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 140 OF 2016

REPUBLIC.....APPLICANT

VERSUS

VETTING OF JUDGES &

MAGISTRATES BOARD……..... RESPONDENT

EX-PARTE

NICHOLAS RANDA OWANO OMBIJA

JUDGEMENT

1. The ex-parte Applicant, Nicholas Randa Owano Ombija was appointed a Judge of the High Court of Kenya in October, 2001. Being a judge in office on the effective date (27th August, 2010) of the Constitution of Kenya, 2010, Section 23 of the Sixth Schedule of the Constitution required that he be vetted on his suitability to continue to serve in accordance with the principles and values set out in Articles 10 and 159 of the Constitution.
2. The task of vetting all judges and magistrates who were in office on 27th August, 2010 fell on the Respondent, the Judges and Magistrates Vetting Board ("the Vetting Board") which is established by Section 6 of the Vetting of Judges and Magistrates Act, 2011 ("the Act").
3. The Applicant opted to undergo the vetting process which was done on 30th July, 2012. The Vetting Board rendered a decision of unsuitability on 22nd December, 2012. As provided by the Act, the Applicant sought a review of the determination. The application for review was allowed on 20th March, 2013. The determination of unsuitability was thus set aside. The Vetting Board directed that the Applicant be vetted afresh.
4. The Applicant was subsequently served with a notice dated 18th September, 2015 to file a response for the purposes of being vetted afresh. The Applicant being dissatisfied with the decision of the Vetting Board to re-vet him moved this Court (J. L. Onguto, J) through **Petition No. 406 of 2015 Nicholas Randa Owano Ombija v the Judges and Magistrates Vetting Board** seeking, *inter alia,* a declaration that he was suitable to serve as a Judge and that the Respondent had no constitutional or statutory power to determine his suitability again.
5. In response to the Petition, the Respondent filed a preliminary objection asserting that the ouster clause in Section 23 (2) of the Sixth Schedule to the Constitution precluded the courts from exercising jurisdiction over matters raised in the Petition because they related to the "removal, or process leading to the removal" of a judge. In a ruling delivered on 3rd November, 2015, the learned Judge struck out the Petition on the ground that he had no jurisdiction to handle the matter.

6. The Applicant who was aggrieved by the decision of J. L. Onguto, J filed **Civil Appeal No. 281 of 2015 Nicholas Randa Owano Ombija v the Judges and Magistrates Vetting Board.** The Court of Appeal held that the learned Judge had erred in finding that he had no jurisdiction to entertain and determine the Petition. The Court further determined that the Vetting Board had no mandate to re-vet a judge or rescind a decision of suitability. The Court concluded that the decisions taken on 21st December, 2012 and 20th March, 2013 were invalid for want of jurisdiction; and that the appellant had been found suitable to continue serving in the Judiciary of Kenya in the determination rendered by the Vetting Board on 10th September, 2012.
7. The Vetting Board being dissatisfied with the decision of the Court of Appeal, appealed to the Supreme Court in **Petition No. 1 of 2016 Judges and Magistrates Vetting Board v Nicholas Randa Owano Ombija.** The appeal to the Supreme Court shall henceforth be simply referred to as Petition No. 1 of 2016. On 7th March, 2016 the Court issued orders as follows:

"Upon considering all the documents tendered by the parties, as well as the detailed submissions of learned counsel, we have formulated a Judgment that will be issued on notice, but the specific Orders of which we now issue, as follows:

1. **The Petition is allowed, on the following specific terms.**
2. **The process of vetting by the Petitioner had commenced before 31st December, 2015.**
3. **The Petitioner shall proceed with the process of hearing, and shall conclude the vetting of the Respondent without any further delay.**
4. **To accord the Respondent full opportunity to partake of his rights to a fair hearing, as well as his right of review, the vetting shall proceed on a day-to-day basis, until concluded by 31st March, 2016, in accordance with the law.**
5. **As established in the precedents of this Court, the vetting process shall be limited to matters arising up to 27th August, 2010.**
6. **As the Petitioner had annulled its decision of 21st December, 2012 and the proceedings leading thereto, the parties legally revert to the position prevailing as at 30th July, 2012.**
7. **The parties shall bear their respective costs, in respect of the appeal herein.**

Orders accordingly."

8. Acting on the strength of the Orders of the Supreme Court, the Vetting Board served the Applicant with a notice to appear for vetting on 15th March, 2016. The advocate for the Applicant filed a response to the complaints on the hearing date. However, at the hearing, the advocate indicated that he had been instructed by the Applicant to withdraw the response as the same had been overtaken by events since the Applicant had voluntarily retired. The advocate then proceeded to place before the Vetting Board the Applicant's resignation letter dated 8th March, 2016.
9. The said letter which was addressed to the Chairman of the Vetting Board and copied to the Chairman of the Judicial Service Commission and the Chief Justice states as follows:

RE: EARLY RETIREMENT

Pursuant to the provisions of section 24(1) (b), (2) and (3) of the Vetting of Judges and Magistrates Act No. 2 of 2011 I hereby elect not to be subjected to the vetting process and instead leave the Judicial Service voluntarily.

Be accordingly guided."

10. Despite the said letter, the Vetting Board proceeded to consider the complaints against the Applicant and released a determination dated 16th March, 2016 declaring the Applicant unsuitable to continue serving as a Judge. The Respondent's actions have triggered these proceedings in which the Applicant seeks an order of *certiorari* to remove into this Court and quash the determination dated 16th March, 2016 declaring him unsuitable to continue serving as a Judge.

11. According to the statutory statement filed together with the application for leave on 21st March, 2016, the Applicant seeks relief on the grounds that:

"1. <u>THAT</u> the Vetting of Judges and Magistrates Board acted in excess of its jurisdiction and thus ultra vires in purporting to vet and subsequently make a determination of unsuitability against the Ex-parte Applicant after he had retired.

2. <u>THAT</u> the Respondent has no jurisdiction to vet a Judge who has voluntarily retired from judicial service. This is because "vetting" is defined in the Vetting of Judges and Magistrates Act as "<u>the process by which the suitability of a serving judge or magistrate to continue serving in the Judiciary is determined</u> in accordance with this Act" [Emphasis Added]. The Judge having voluntarily retired, cannot CONTINUE SERVING in the Judiciary hence there is no jurisdiction to vet him with a view to making a finding as to whether or not he is suitable to continue serving as a Judge.

3. <u>THAT</u> the Vetting of Judges and Magistrates Board acted out of purview of the Constitution, the Vetting of Judges and Magistrates Act, 2011 and the Fair Administrative Action Act, 2015 in making a determination of unsuitability of the Ex-parte Applicant even without him appearing before the Board, and after electing not to participate in the re-vetting process.

4. <u>THAT</u> a determination is an outcome of a process and there having been none in this instance, any determination by the Vetting of Judges and Magistrates Board with regard to the suitability or otherwise of the Applicant is improper, unreasonable, irrational and null. There is no rational connection between what transpired before the scheduled hearing on 15th March, 2016 and the determination of the Board.

5. <u>THAT</u> the Vetting of Judges and Magistrates Board made a determination as to the validity of the Ex-parte Applicant's letter of retirement which is outside its powers under Section 14 of the Vetting of Judges and Magistrates Act.

6. <u>THAT</u> the Ex-parte Applicant's Advocate appeared before the Respondent on the scheduled hearing day and informed the Board that the Judge had elected not to subject himself to the vetting process/Board but instead voluntarily retire from Judicial Service. The Advocate submitted the Judge's letter of retirement to the Board which letter was copied to the Judicial Service Commission and the Chief Justice.

7. <u>THAT</u> the Respondent is not competent to reject the retirement of a judge and neither is it competent to compel him to remain a judge against his will.

8. <u>THAT</u> the Respondent based its determination on the fact that the Ex-parte Applicant could only retire three months of the commencement of the Vetting of Judges and Magistrates Act which commenced on 19th March, 2011 for him to not be vetted. The Applicant is however not restricted by any law to retire at will if and when he chooses to.

9. <u>THAT</u> the intended re-vetting of 15th March, 2016 was ordered by the Supreme Court on 7th March, 2016 and therefore the Applicant being dissatisfied by that decision of the Supreme Court opted to retire voluntarily from judicial service. The Applicant had already been vetted by the Respondent in 2012 this being a Supreme Court Order for re-vetting the option of retiring was available only then.

10. <u>THAT</u> the Respondent is bound by Article 10, 47 and 50 of the Constitution of Kenya, 2010 and Section 4 of the Fair Administrative Action Act, 2015 which it has acted in blatant disregard of.

11. <u>THAT</u> the determination served on the Ex-parte Applicant's Advocates on 17th March, 2016 was not dated and was only signed by 2 members of the Board whilst the Respondent is comprised of nine members making the said determination a nullity and can only be an ulterior motive calculated to prejudice the Applicant's rights.

12. <u>THAT</u> on 18th March, 2016 the Respondent sent a letter explaining the contents of the determination it had sent before and forwarding another copy of the determination dated and signed by the three members of the panel. The said letter cannot qualify the determination served on the Applicant's Advocates on 17th March nor the fact that a panel report cannot constitute the determination of the Board.

13. <u>THAT</u> the determination of the Board can only be made by the full Board (sitting members) and not a panel report. The impugned determination is by a panel and not the full Board.

14. <u>THAT</u> the Applicant was previously vetted by the Respondent and the said process ended on 30th July, 2012. A determination was rendered on 10th September, 2012 and another on 21st December, 2012. The Chairman of the Respondent recused himself then but he was amongst the panellists that intended to re-vet the Applicant. There was reasonable suspicion of bias on his part against the Applicant.

15. <u>THAT</u> the letter of 18th March, 2016 also states that the three members that had recused themselves when the Applicant was first vetted were not part of the Board meeting whilst the Chairman was amongst the three panellists that had recused themselves and yet he was the chair of the panel that was to re-vet the Applicant and he signed the determination of 17th March, 2016."

12. In support of his case, the Applicant relied on the decisions in **Republic v Inspector General of Police, David Kimaiyo Ex-parte Akitch Okola [2014] eKLR, Keroche Industries Limited v Kenya Revenue Authority & 5 others [2007] 2 KLR 240, Supreme Court Petition No. 29 of 2014 Judges and Magistrates Vetting Board v Kenya Magistrates and Judges Association & another (JMVB 2) and Municipal Council of Mombasa v Republic & Umoja Consultants Ltd, Civil Appeal No.185 of 2001; [2002] eKLR.**

13. The Respondent opposed the application through a replying affidavit sworn on 29th March, 2016 by its Secretary and Chief Executive Officer, Reuben Chirchir.

14. The Respondent's case is that the vetting of the Applicant was in compliance with the Supreme Court Orders in Petition No. 1 of 2016; that there is no evidence that the Applicant has indeed resigned or retired from the Judiciary; that the Applicant's purported retirement from the Judiciary does not exempt him from the vetting process; and that the Applicant is subject to the Board's jurisdiction as he did not resign or retire within three months after commencement of the Act as envisaged by Section 24.

15. It is further the Respondent's case that the Applicant had not exhausted the remedies open to him and his application was thus premature; that the Applicant failed to disclose material facts to the court; that the Applicant's notice of motion herein is incompetent as it has not been instituted in the name of the Republic; that a removal or process leading to the removal of a judge or magistrate through vetting is not subject to question or review by any court; and that Respondent properly exercised its jurisdiction and mandate by vetting the Applicant.

16. The Respondent cited the Constitution, Acts of Parliament, the Vetting of Judges and Magistrates (Procedure) Regulations, 2011 and various decided cases in support of its position. One of the cases cited is the decision of the Supreme Court in **Judges and Magistrates Vetting Board & 2 others v Center for Human Rights & 11 others Petition No. 13 A of 2012 (SCK); [2014]**

eKLR (JMVB 1).

17. In light of the pleadings and submissions in this matter, the issues for determination are:

a. The competency of the application;
b. The jurisdiction of the Respondent; and
c. Costs.

18. The Respondent submits that the Applicant improperly titled his application for leave and the main notice of motion. It is the Respondent's case that judicial review orders are issued in the name of the Republic at the instance of an ex-parte applicant and are directed to the person or persons who are to comply with the same. The Respondent submits that failure to follow the procedure renders an application for judicial review incompetent. The Respondent supported its argument by citing the decisions in **Nasieku Tarayia v Board of Directors Agriculture Finance Corporation & another [2013] eKLR** and **Jotham Mulati Welamondi v Chairman, Electoral Commission of Kenya [2002] eKLR.**

19. In response, the Applicant's counsel stated that failure to comply with procedure can only lead to issuance of an order to amend the application and should not lead to denial of orders. Reliance was placed on the decision of Rimita, J (as he then was) and Ombija, J in **Ndarua v Republic [2002] 1 EA 205 (HCK).**

20. In **Ndarua** (supra) the Court stated that:

"Mr Kilonzo for the Applicant submitted that Order LIII of the Civil Procedure Rules has been amended so many times that it is not possible to tell how the notice of motion should be headed. The procedure in England required that the Applicant be the crown and in our case the Republic. The aggrieved party was to be named as the subject and the application was made *ex parte* the subject. The Respondent was to be named as the Respondent. We have perused the provisions of Order LIII of the Civil Procedure Rules. The way the rules refer to the notice of motion and to the Applicant show that after all it may not be necessary to name the Republic as the Applicant. But we are not deciding on this and we had better leave it to the rules committee. There is already confusion on the matter and we hope that the rules committee will as a matter of urgency formulate the forms to be used in applications for judicial review."

21. However, Ringera, J (as he then was) held a firm view in **Jotham Mulati Welamondi** (supra) that failure to make the Republic the applicant renders the application incompetent. He stated that:

"Last, but not least, the objection that the application is made in the name of the wrong person is well merited. In FARMERS BUS SERVICE AND OTHERS V THE TRANSPORT LICENSING APPEAL TRIBUNAL (1959) E.A.779, the East African Court of Appeal held that prerogative orders are issued in the name of the crown and applications for such orders must be correctly intituled. On Kenya's assumption of Republican status on 12th December 1964, the place of the crown in all legal proceedings was taken by the Republic. Accordingly, the orders of Certiorari, Mandamus or Prohibition now issue in the name of the Republic and applications therefor are made in the name of the Republic at the instance of the person affected by the action or omission in issue."

22. Indeed the position as stated by Ringera, J (as he then was) and acknowledged in **Ndarua** (supra) is that the Republic is the applicant in a judicial review application. The person in whose instance the proceedings are commenced is named as the ex- parte applicant. The body against which the orders are sought is the Respondent.

23. It is always important for parties to approach the courts in accordance with the provisions of the law. Had there been an opportunity for the Respondent to take up the issue earlier, and I admit there

was no such opportunity in view of the time constraints that were attendant upon this matter, the Court would have directed the Applicant to amend his application.

24. It is, however, too late in the day to uphold the Respondent's objection, for to do so would amount to shutting out the Applicant on what is essentially a technicality. There is indeed no dispute that what is before this Court is a judicial review application and if any orders will issue, they will issue in the name of the Republic. I will, in the circumstances of this case and in order to address the merits of the application, take refuge under Article 159(2)(d) of the Constitution so as to do justice without undue regard to procedural technicalities. The objection to the Applicant's application for want of form is thus rejected and dismissed.

25. The real question in these proceedings is whether the Respondent exceeded its mandate by vetting the Applicant, considering the contents of his letter of 8th March, 2016.

26. Section 23(2) of the Sixth Schedule of the Constitution has been the subject of litigation before and in **JMVB 1**, the Supreme Court held at paragraph 202 that:

"For the avoidance of doubt, and in the terms of Section 23(2) of the Sixth Schedule to the Constitution, it is our finding that none of the Superior Courts has the jurisdiction to review the process or outcome attendant upon the operation of the Judges and Magistrates Vetting Board by virtue of the Constitution, and the Vetting of Judges and Magistrates Act."

27. The Respondent's case is that by virtue of the said decision this Court has no jurisdiction to handle the Applicant's case. I agree that the Respondent is right to some extent. However, I will in a short while demonstrate why the Respondent's argument is not entirely correct.

28. I will first show why the Respondent is correct that this Court has no jurisdiction on some aspects of the Applicant's case. The Applicant avers that he was served with a determination that was only signed by two out of the three panellists who handled his case. The Respondent replied that all the three panellists signed the determination which was read in their presence.

29. The Applicant also alleges that the Chairman of the Vetting Board, who had recused himself from his initial vetting in 2012, had signed the latest determination even though the Secretary of the Vetting Board had communicated to him that all the three members who had recused themselves from the first vetting had not participated in his vetting. The Respondent did not rebut this averment.

30. In my view, the question whether the Applicant's vetting process and the resultant determination are proper and valid touch on the removal, or process leading to the removal of a judge from office. These are matters shielded from the scrutiny of this Court. This Court therefore lacks jurisdiction to delve into those issues.

31. There is an allegation by the Applicant that the Vetting Board did not follow due process. Again, I find that this issue falls outside the jurisdiction of this Court in light of the decision in **JMVB 1.** It is also important to note that the Respondent explained that it proceeded under the Vetting of Judges and Magistrates (Procedure) Regulations, 2011 which governs its proceedings. Only an application for review under Section 22 of the Act was open to the Applicant in matters relating to the vetting process.

32. Was the Applicant a Judge at the time of his vetting? The Applicant says he was not but the Vetting Board insists he was. To me, this a valid question that calls for the interrogation of this Court for it goes to the root of the Respondent's jurisdiction.

33. There cannot be any plausible argument against the fact that the jurisdiction of the Respondent is limited to assessing the suitability of a serving judge or magistrate to continue serving in the Judiciary. Any attempt by the Vetting Board to vet a former judge or a former magistrate would

invite the intervention of this Court. In such a situation, the Respondent will have crossed its jurisdictional boundary as explained by the Supreme Court in **JMVB 2.**

34. In **JMVB 2,** the Vetting Board had removed some magistrates on the strength of complaints relating to incidences that had occurred after the effective date of the Constitution. In upholding the decisions of the High Court and Court of Appeal that the Vetting Board had overstepped its jurisdiction, the Supreme Court stated at paragraphs 52 and 53 of its judgement that:

> **"[52] This now brings us to the twin questions of *how far back* and *how far ahead?* The answer to the first limb again lies in the wording of Section 23(1) of the Sixth Schedule to the Constitution. In this regard, the operative words are: *"the suitability of all judges and magistrates who were in office on the effective date to continue to serve…"***
>
> **[53] The inescapable conclusions from this wording are as follows:**
>
> **(i) *That the Judges and Magistrates Vetting Board is at liberty to inquire into the conduct of all the Judges and Magistrates "who were in office on the effective date", to determine their suitability to continue to serve.***
>
> **(ii) *That the Judges and Magistrates Vetting Board has no jurisdiction to inquire into the conduct of any Judge or Magistrate "who was not in office on the effective date". The logic of this exclusion from vetting is that the latter, not having been in office before the promulgation of the Constitution of 2010, could not have done or omitted to have done anything in his/her capacity as a judicial officer to warrant the scrutiny of the Vetting Board. Conversely, a Judge or Magistrate "who was in office on the effective date" may or may not have done something at the time he was in office before the promulgation of the Constitution of 2010 to warrant the scrutiny of the Vetting Board."***

35. The Supreme Court wrapped up its decision at paragraph 63 by holding that:

> **"[63] We find and hold that the Judges and Magistrates Vetting Board, in execution of its mandate as stipulated in Section 23 of the Sixth Schedule to the Constitution of 2010, can only investigate the conduct of Judges and Magistrates who were in office on the effective date on the basis of alleged acts and omissions arising before the effective date, and not after the effective date. To hold otherwise would not only defeat the transitional nature of the vetting process, but would transform the Board into something akin to what Lord Mersey once called *"an unruly dog which, if not securely chained to its own kennel, is prone to wander into places where it ought not to be" (Lord Mersey* in *G & C Kreglinger v. New Patagonia Meat & Cold Storage Co. Ltd (1913).* Lord Mersey used the analogy of *"a dog"* to refer to the *"Equity of Redemption"* in the law of mortgages. Here, we use it to refer to *"a jurisdictional mandate"* within our constitutional set-up; and not, the Board *per se."***

36. Where a statutory body, like the Respondent, acts on matters outside its scope, this Court is empowered to stop such excesses. Judicial review comes in handy in such situations for a statutory body must operate within the establishing instrument. In the case of the Vetting Board, its constitutional and statutory boundaries were clearly demarcated by the Supreme Court through the decisions in **JMVB 1** and **JMVB 2.**

37. It is therefore necessary for this Court to closely examine the Applicant's averment that he was no longer a Judge at the time of his vetting in order to determine whether the Vetting Board acted within or outside its jurisdictional mandate. The Vetting Board was set up to determine the suitability of a judge or magistrate who was in office when the Constitution of Kenya, 2010 came into force to continue serving in the Judiciary. It therefore follows that any judge or magistrate, who was serving on the effective date, but leaves the Judiciary before being vetted is beyond the reach of the Respondent.

38. In the case before this Court, it is noted that the Applicant's "retirement" letter dated 8th March, 2016 was reviewed by the Vetting Board in its determination of 16th March, 2016. In concluding that the Applicant had not retired, the Respondent stated that:

"38. In the Board's view, the option of retirement afforded to a judge who did not wish to be vetted had to be exercised within 3 months of the commencement of the Act. The date of commencement of the Act was 19th May 2011. As such the option to retire for a Judge who did not wish to be vetted was available only for 3 months from the commencement of the Act. That being so that option is not now available to the Judge.

39. The Board also notes that the letter had not been delivered to it prior to the vetting interview, and had not been delivered to the Judicial Service Commission or the Chief Justice either. The proper procedure in the event of seeking early retirement is to notify his employer the Judicial Service Commission and not the Judges and Magistrates Vetting Board. The documented letter is therefore not an effective or valid letter of resignation."

39. The question as to whether the Applicant was a Judge had been placed before the Respondent. The Vetting Board tackled that issue and reached the conclusion that the Applicant was still a Judge. The Respondent then proceeded to vet the Applicant as was required of it by the law.

40. The Applicant submits that he has an inherent right to resign and forego the vetting process. It is his submission therefore that the Respondent could not determine his suitability where he had already indicated that he was leaving judicial service voluntarily. In view of this submission, there is need for this Court to establish if the Vetting Board was correct in determining that the Applicant was still in office at the time of the determination.

41. The Applicant's letter was specific that he was exercising one of the options availed to him by Section 24(1) (b), (2) and (3) of the Act.

That Section states:

"24. Voluntary retirement and terminal benefits

1. **A judge or magistrate shall, within three months of the commencement of this Act, elect-**

(a) whether to be subjected to the vetting process; or

(b) to leave the judicial service voluntarily.

(2) A judge or magistrate who elects to leave the judicial service voluntarily or is found unsuitable after vetting shall be entitled to terminal benefits for early retirement.

(3) For the avoidance of doubt, a judge or magistrate who voluntarily leaves service or is found unsuitable after vetting shall be deemed qualified for early retirement."

42. Sub-section (1) speaks for itself. It required a judge or magistrate who wanted to opt out of the vetting process to do so within three months from 22nd March, 2011, the commencement date of the Act. Three months, as correctly submitted by the Vetting Board, lapsed on 22nd June, 2011. The window to get out of the Judiciary under the Act, in order to avoid vetting, was shut at the expiry of three months. Consequently, Section 24(1) became otiose and nothing legal would come out of any action purportedly done in reliance of that provision.

43. It is noted that Section 24 (1) is self-explanatory and the words used therein are quite clear. To say that a judge or magistrate can exit from office under Section 24(1) outside three months from the time of the commencement of the Act is a misinterpretation of a clear provision of the law. The

Vetting Board was thus correct in reaching the decision that the Applicant was still a Judge, in so far as he opted to retire under Section 24(1) of the Act, as that option was no longer available to him.

44. The vetting of judges and magistrates, in my view, has taken longer than was envisaged by the Constitution, 2010. As observed by the Supreme Court in **JMVB 2,** the vetting process was transitional in nature and its lifespan was "not for long" – see paragraph 51 of **JMVB 2.** It was not therefore expected that a judge or magistrate who had opted to be vetted would take a long time in the queue.

45. In my view, however, a judge who had opted for the vetting process could still exit through other constitutional provisions. A judge could as well be removed under Article 168 for post effective date indiscretions or retire under Article 167(1) before being vetted. More importantly, a judge could still leave the Judiciary by resigning from office by giving notice, in writing, to the President as provided by Article 167(5). The Applicant is thus correct that a judge is indeed not bound to serve the Judiciary until retirement age.

46. Considering what I have stated above, I find that the Applicant's assertion that his letter of 8th March, 2016 is enough evidence that he has left judicial service is therefore not supported by any Act of Parliament or the Constitution. As already stated, exit under Section 24(1) was no longer available to the Applicant. The exit of a judge from office is governed by clear provisions of the Constitution. This is meant to ensure that a judge cannot be forced out of office. A judge can only leave office through removal (Article 168), retirement (Article 167(1)), or resignation (Article 167(5)).

47. Having reached the conclusion that the Vetting Board was correct in finding that the Applicant was a Judge at the time of his vetting, it follows that I have no jurisdiction to consider all the other issues raised by the Applicant regarding his removal or the process leading to his removal from office under the Act.

48. In view of what I have stated in this judgement, the Applicant's case therefore fails. The notice of motion filed on 22nd March, 2016 is therefore dismissed. The parties are directed to meet their respective costs of these proceedings.

Dated, signed and delivered at Nairobi this 14th day of April, 2016.

W. KORIR,

JUDGE OF THE HIGH COURT