REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO.548 OF 2015

BETWEEN

OKIYA OMTATAH OKOITI……..……1ST PETITIONER

NYAKINA WYCLIFE GISEBE……..……..2ND PETITIONER

AND

MINISTRY OF TRANSPORT & INFRASTRUCTURE....….....……1ST RESPONDENT

KENYA RAILWAYS CORPORATION…….……...…….2ND RESPONDENT

THE NATIONAL TREASURY……...…….…...……..…3RD RESPONDENT

CHINA ROAD & BRIDGE CORPORATION…….....…….....…….4TH RESPONDENT

THE HON. ATTORNEY GENERAL…….....…….....……5TH RESPONDENT

RULING ON A PRELIMINARY OBJECTION

Introduction

Introduction

1. The present Petition was filed on 9th December 2015 and in it the Petitioners seek the following orders:

> ***"A. A declaration that the 1st – 3rd Respondent violated Articles 10, 35, 46(1)(b), and 232(1)(f) of the Constitution by denying the Petitioners' access to the information the Petitioners requested from them vide the Petitioners' letter dated 2nd April 2015.***
>
> ***B. A declaration that the Petitioners should be given the information they sought from the 1st – 3rd Respondents.***
>
> ***C. A declaration that Articles 10, 47, 232 and 227 of the Constitution were violated by the 1st – 3rd Respondents' decision to procure the SGR project outside the law.***

D. A declaration that the 4th Respondent is bound by the laws of Kenya.

E. A declaration that the procurement of the SGR project must be undertaken strictly in accordance with the law, including through competitive bidding, otherwise the SGR project will be invalid and illegal and, therefore, unconstitutional, null and void ab initio.

F. A declaration that the procurement of the Nairobi – Naivasha phase of the SGR project should be annulled for being invalid and illegal and, therefore, unconstitutional, null and void ab initio.

G. A declaration that the Petitioners are entitled to the payment of damages and compensation for the violation and contravention of their rights and fundamental freedoms by the 1st, 2nd, 3rd, and 4th Respondents herein as stated above.

H. A declaration that the Respondents should bear the costs of this Petition.

I. The Honourable Court assesses the quantum of damages and compensation to be paid by the Respondents.

J. A mandatory order directing the 1st – 3rd Respondents to give the Petitioners the following information:

a. Pre-contract negotiations

b. Tenders

c. Contracts

d. Board minutes and resolutions

e. Emails

f. Letters

g. Memos

h. Study reports (e.g. Project Feasibility & Environmental Impact Assessment)

i. Proposals, and

j. Consultancy reports.

K. This Honourable Court gives any other orders required to advance the cause of justice and the rule of law in this case.

L. The Honourable Court be pleased to issue an order ordering the Respondents to jointly and severally bear the costs of this Petition for being the parties directly responsible, through action and/or omissions, for the violations of the Constitution and the law which necessitated the Petitioners to seek remedy in the Honourable Court."

2. Before the Petition could be heard however, the 2nd Respondent filed a notice of Preliminary Objection in the following terms:

"1. This Honourable Court lacks the requite jurisdiction to hear and determine the matter.

2. The issues raised herein in relation to the procurement of the Standard Gauge Railway (SGR) Project are res judicata, the same having been heard and determined by this Honourable Court in Nairobi Petition No.58 of 2014 as consolidated with Petition No.209 of 2014 which matters were between the same parties herein.

3. The Petition and Application as filed are sub judice as the matters in issue as pleaded in the Petition and the Application herein are also directly and substantially in issue before this Honurable Court in Nairobi High Court Petition No.130 of 2015; Okiya Omtatah Okoiti & Another v The Kenya Railways Corporation and 4 Others, the matter are also pending hearing and determination in both Civil Appeal No.10 of 2015 Okiya Omtatah Okoiti & Another v The Kenya Railways Corporation and 4 Others and Civil appeal No.13 of 2015; The Law Society of Kenya vs The Kenya Railways Co-operation and Others which matters are actively being litigated in the said Courts and are between the same parties herein.

4. The Application together with the Petition as filed herein are frivolous, vexatious and utter abuse of the Court process and a waste of precious judicial time.

3. Mr. Njoroge, Counsel for the 1st, 3rd and 5th Respondents, also filed a Notice of Preliminary Objection along Objection No.2 above as shall be seen below.

1st, 3rd and 5th Respondent's Submissions

4. In his Preliminary Objection dated 6th January 2016, Mr. Njoroge, Learned State Counsel argued that the SGR Project is a single project from Mombasa to Malaba and its procurement process was single too. That any challenge to that procurement cannot be in phases as the Petitioners have stated and that it makes no difference that the Treasury has now been added as a new party since all issues regarding the procurement aforesaid were determined in **Petition No.58 of 2014** and that the Court of Appeal will in any event have the final say in the matter.

5. That for reasons of *res judicata* the Petition herein ought therefore to be struck off.

2nd Respondent's Submissions

6. In submissions filed on 5th April 2016, Mr. Agwara, Learned Counsel for the 2nd Respondent, stated that this Court had no jurisdiction to hear and determine any of the issues raised in the Petition because it is barred by the doctrine of *res judicata* in view of its previous decision in **Nairobi Petition No.58 of 2014** as consolidated with **Petition No.209 of 2014, Okiya Omtatah Okoiti and Anor v Kenya Railways corporation and 4 Others.** That in the said decision, this Court addressed the primary issue of procurement of the Standard Gauge Railway (SGR) project, as well as alleged violation of **Articles 4(2), 10(2)(a), 42, 47, 69, 70, 201(a) 221(5), 223** and **232(1)(d)** of the **Constitution** which same issues are now raised in the present Petition.

7. Relying on the decisions of the High Court in **Okiya Omtatah Okoiti v Communications Authority of Kenya & 14 Others [2015] e KLR** and **Japheth Muroko v AG & 4 Others [2016] e KLR**, he further submitted that a party should not be allowed to engage in piecemeal litigation over the same subject matter.

8. On the rule of *sub judice*, Mr. Agwara submitted that upon the decision in **Petition No.58 of 2014 (supra)** being rendered, the Petitioners filed **Civil appeal No.10 of 2015, Okiya Omtatah Okoiti & Anor v The Kenya Railways Co-orporation and 4 Others** as well as **Civil Appeal No.13 of 2015, Law Society of Kenya v The Kenya Railways Corporation and Others.** They also filed **H.C Petition No.13 of 2015 Okiya Omtatah Okoiti & Anor v The Kenya Railways Co-operation** where the same issues as in the present Petition are pending hearing and determination. Further, that in **Petition No.130 of 2015**, the Petitioners are seeking information under **Article 35** of the **Constitution** which information they have also sought in the present Petition while the issue of procurement of the SGR is pending

determination before the Court of Appeal and therefore the *sub judice* rule is properly invocable.

9. Relying on the decision in **Maggie Mwauki Mtalaki v HFCK [2015] e KLR,** Counsel therefore submitted that no litigant should be allowed to institute proceedings on the same subject matter as that pending determination in prior proceedings.

10. Lastly, Mr. Agwara submitted that the Petition herein is clearly an abuse of Court process and ought to be struck out for the above reasons.

Petitioners' Response

11. In their response dated 4th April 2016, the Petitioners stated that the claim that *res judicata* can properly be invoked is baseless because one of the issues in the present Petition is the procurement of the Nairobi-Naivasha phase of the SGR which was never an issue in **Petition No.58 of 2014** because the latter related to the procurement of the Mombasa – Nairobi phase of the SGR.

12. On the claim of *sub judice*, the Petitioners stated that **C. A. No.10 of 2015** is an appeal against the decision in **Petition No.58 of 2014** on the Mombasa – Nairobi phase of the SGR and is therefore unrelated to the present Petition.

13. Lastly, they have argued that the Preliminary Objections raise no issue of law and should be overruled to enable an expeditious disposal of the Petition and in oral submissions before me, Mr. Okoiti added that it is indeed true that the SGR is generally a Mombasa – Malaba Project but the same is in stages hence the deliberate Petitions against certain phases of it. In any event, that in the present Petition, information is being sought from the Respondents as was advised by the Court in **Petition No.58 of 2014 and therefore** *res judicata* cannot therefore be invoked in the circumstances neither can the rule of *sub judice* be relied upon to defeat the Petition.

Determination

14. The beginning to addressing the Preliminary Objections is the simple exercise of summarizing the issues in the Petitions and Appeal cited above. In that regard I note as follows:

a) In **Petition No.58 of 2014** as consolidated with **Petition No.209 of 2014**, I summarized the issues for determination as:

i) Whether the Court has jurisdiction to hear and determine the Petitions in the face of the ongoing processes before other constitutional bodies.

ii) Whether the consolidated Petitions are supported by valid evidence.

iii) Whether the Petitions demonstrate breaches of fundamental rights or other constitutional provisions.

iv) Whether the Respondents complied with the law in the procurement of the SGR.

v) Whether the SGR project has taken into account environmental considerations.

vi) Whether the Respondents have put in place measures to ensure value for money in undertaking the SGR project.

vii) Who should bear the costs of these proceedings?

b) In **C.A No.10 of 2015**, it is my decision dismissing the Petitions above that is awaiting determination by the Court of Appeal.

c) In **Petition No.130 of 2015** the orders sought are the following:

> ***"A. A declaration that the 1st and 2nd Respondents violated Article 35 and 46(1)(b) of the Constitution by denying the Petitioners' access to the information the Petitioners requested from them vide the Petitioners' letter dated 2nd April 2015.***
>
> ***B. A declaration that Article 47 of the Constitution was violated by the 3rd Respondent's decision to allow the construction of the SGR project to continue while the Commission was investigating allegations of corruption in the award of the SGR project tender to the 4th Respondent.***
>
> ***C. A declaration that the construction of the SGR project can only be legitimately undertaken under the law in circumstances where criminal investigations by the 3rd Respondent clears the project of the alleged corruption in the award of the tender for the project to the 4th Respondent.***
>
> ***D. A declaration that in the event the criminal investigations by the 3rd Respondent establish the alleged irregularities, the current tender for the construction of the SGR project will be invalid and illegal and, therefore, unconstitutional, null and void ab initio.***
>
> ***E. A mandatory order directing the 3rd Respondent to expedite the Commission's on-going investigations into the allegations that the tender for the SGR project was irregularly awarded to the 4th Respondent.***
>
> ***F. This Honourable Court gives any other orders required to advance the cause of justice and the rule of law in this case.***
>
> ***G. The Honourable Court be pleased to issue an order ordering the Respondents to jointly and severally bear the costs of this Petition for being the parties directly responsible, through actions and/or omissions, for the violations of the Constitution and the law which necessitated the Petitioner to seek remedy in the Honourable Court.***

d) In the present Petition, the Orders sought have been reproduced elsewhere above.

15. In that context, when does *res judicata* apply in constitutional matters? I can do no better than reiterate the statement made in **Okiya Omtatah Okoiti v CAK and 14 others (supra)** where this Court stated thus:

> *"The Courts must always be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the Court in another way and in the form of a new cause of action which has been resolved by a court of competent jurisdiction."*
>
> ***I agree with the reasoning of the Court and adopt the same in the instant Petition. I also have no doubt in my mind that the issues the Petitioner intends to canvass in this Petition, if looked at properly, are really all about digital migration, and in essence, to purport to determine them would be akin to re-opening Petition No.14 of 2015, an act that would be frowned upon by the doctrine of res judicata. The words of Kuloba J in Njangu vs Wambugu and Another Nrb HCC No. 2340 of 1991 therefore ring true in that regard. The learned Judge stated as follows as regards the importance of having a closure to litigation;***
>
> *"If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his aces some cosmetic face lift on every occasion he comes to Court, then I do not see the use of the doctrine of res judicata."*

The Court then added thus;

> ***"I agree with the learned judge and as I have stated above, it matters not that the Petitioner has framed different questions for determination or has sought slightly different orders from those in Petition No.14 of 2014. To my mind, the core and crux forming the subject matterof the Petitioner's case is largely the issue of digital migration save the additional issue as regards the Board of the CAK. I am clear that the Petitioner is therefore trying to bring to this Court, in another way and in the form of a new cause of action, a suit that has already been placed before a competent court in earlier proceedings and which was adjudicated upon and judgment delivered. In that regard Richard Kuloba in his book, Judicial Hints on Civil Procedure, 2nd Ed writes as follows;***
>
> *"The plea of res judicata applies not only to points upon which the first Court was actually required to adjudicate but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time. The subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply:* ***Law Ag V-P in Kamunye and others vs Pioneer General Assurance Society Ltd [1971] EA 263 at 265, (20 October 1970)****, on appeal from High Court of Uganda but relying on* ***JadvaKarsan vs Hamam Singh Bhogal (1953 20 EACA 74 (10 March 1953),*** *an appeal from the Supreme Court of Kenya, and has also been followed by the Court of Appeal in Kenya in the case of* ***Hawkesworth vs Attorney-General [1974] EA 406, (7 October 1974)."***

The Court went on to state;

> ***"I am in agreement would only add that it is not proper for parties to have piecemeal litigation. A party ought to litigate in one suit all matters that belong to the subject in controversy and it is not sufficient therefore for the Petitioner to allege now that the issues he has raised for interpretation were not covered by the previous suit more so when he, Mr. Okoiti, admitted that he was in the Court of Appeal during the proceedings before that Court and knew what issues were in contest. In so finding I am also guided by the decision of the Court of Appeal in Pop In (Kenya) Ltd & 3 Others vs Habib Bank AG Zurich (1990) KLR 609 where the Court held that:***
>
> ***'But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings. The* locus classicus *of that aspect of res judicata is the judgment of Wigram VC in Henderson v Henderson (1843) Hare 00, 115, where the judge says:***
>
> *Where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward, only because they have, from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies, except in special cases, not only to points which the court was actually required by the parties to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time'.".*

The Court then concluded thus:

> ***"Whereas these principles {of** res judicata**} have generally been applied liberally in civil suits, the same cannot be said of their application in constitutional matters. I say so because, in my view, the principle of** res judicata **can and should only be invoked in constitutional matters in the clearest of cases and where a party is re-litigating the same matter before the Constitutional Court and where the Court is called upon to re-determine an issue between the same parties and on the same subject matter. While therefore the principle is a principle of law of wide application, it must be sparingly invoked in rights-based litigation and the reason is obvious."***

16. In reiterating the above findings, it is my understanding therefore that for *res judicata* to be invoked, the following criteria must be met:

i) The parties to the subsequent suit must be the same as those in the earlier suit; and

ii) The issues in the subsequent suit must have already been determined on merits by a Court of competent jurisdiction.

17. Applying all the above principles to the present objections, it is not in doubt that it is the SGR project that is the substratum of all the Petitions and Appeal cited above and while it is true that there is only one SGR project in Kenya, at the moment, the first question is; should the Petitioners be allowed to pursue the present Petition after **Petition No.58 of 2014** had been determined? Or should *res judicata* be invoked as a bar?

18. Before answering that question, there is the need to define a Preliminary Objection as known to law and in that regard, it is now accepted that the statement of **Newbold V-P in Mukisa Biscuits Ltd v Westend Distributors Ltd [1969] EA 696** is a good guide in that regard. He stated that a Preliminary Objection;

> ***"… 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 has to be ascertained or if what is sought is the exercise of judicial discretion."***

19. I am also guided by the decision of the East African Court of Justice in **The Secretary General of the East African Community v Rt. Hon. Margaret Zziwa** EACJ Appeal No.7 of 2015 where the Learned Judges of the Appellate Division stated thus;

> ***"In Attorney General of Kenya v Independent Medical Legal Unit [EACJ, Appeal No.1 of 2011], this Court cited with approval the exposition of the law-by Law, J. A. and Newbold, P. in Mukisa Biscuit case (supra) and said the Court must avoid "treating, as preliminary objections, those points that are only disguised as such; and will instead treat as preliminary objections, only those points that are pure law; which are unstained by facts or evidence, especially disputed points of fact or evidence or such like". And in the Attorney General of Tanzania v African Network for Animal Welfare (ANAW) [EACJ Appeal No.3 of 2011], the Court opined that matters which:***
>
> *"involved the clash of facts, the production of evidence and the assessment of testimony … cannot and should not be treated as a preliminary point."*

20. I am duly guided and in the above context, one of the questions raised before me is whether in the procurement process for the SGR, the procurement is done at once or in phases as suggested by the Petitioners. In **Petition No.58 of 2014** however I note that the Petitioners had asked this Court to determine the following questions;

> ***"(a) Whether the 1st, 2nd, and 3rd Respondents willfully or carelessly failed to comply with Article 227 of the Constitution, the Public Procurement and Disposal Act, the Anti-Corruption and Economic Crimes Act, the Public Officer Ethics Act, and the any other laws or applicable procedures and guidelines relating to the procurement, tendering of contracts, management of funds or incurring of expenditures by single sourcing the 4th Respondent to conduct feasibility studies, design of the project then supply and install facilities, locomotives and rolling stock for the Mombasa-Nairobi-Malaba/Kisumu standard gauge railway project.***
>
> ***(b) Whether the so-called Government to Government contract has the capacity to oust the application of and adherence to procurement laws and constitutional provisions on public procurement and provisions on integrity.***

(c) Whether being blacklisted by the World Bank, the 4th Respondent lacks the integrity required to enter contracts with the Government of Kenya and/or its agencies and commissions.

(d) Whether the 1st, 2nd, and 3rd Respondents failed to conduct due diligence evaluation of the 4th Respondent.

(e) Whether integrity is a mandatory virtue to any entity which intends or qualifies to contract with the Government of Kenya or its agencies and commissions.

(f) Whether the rights of the Petitioner and those of other Kenyans were violated by the failure of the Respondents to uphold the Constitution and other laws of Kenya.

(g) Whether in contracting with the 4th Respondent, the 1st, 2nd, and 3rd Respondents were under obligation but failed to meet the constitutional threshold in public procurement which is prescribed in Article 227, i.e. to be fair, equitable, transparent, competitive and cost-effective.

(h) Whether the 1st, 2nd, and 3rd Respondents discharged their mandate constitutionally and in accordance with the procurement laws when they single sourced the 4th Respondent to supply and implement the standard gauge railway project." (Emphasis added)

21. Issue No.(a) above specifically refers to the **"Mombasa-Nairobi-Malaba/Kisumu standard gauge railway project."** Prayer No.(b) of the Petition also refers to the single sourcing of the 4th Respondent to **"supply and implement the standard gauge railway project".**

22. In my judgment in that Petition, I specifically, at paragraphs 12 – 2, set out the Petitioners' case and it was clear to me then and now that they were addressing the SGR project as a whole and not in stages as they have now submitted.

23. Having so said, understood then that only the environmental concerns raised in the Petition had a specific Mombasa – Nairobi aspect in terms of the alleged environmental degradation to be caused to the Tsavo National Park. I also understood that in **Petition No.209 of 2014** the Law Society of Kenya had specifically challenged **"Tender No.KPC/PLN/31/2012 for the supply and installation of facilities, locomotives and rolling stock for the Mombasa – Nairobi Standard Gauge Railway"** but in the consolidated Judgment I addressed the entire project as one and not in any specific phase and dismissed both Petitions having done so.

24. In the present Petition, it can be seen that Prayers A, B and J relate to the right to information under **Article 35** of the **Constitution** predicated on a letter dated 2nd April 2015 from the Petitioners to the 1st – 3rd Respondents. I will return to this aspect of the Ruling when addressing the arguments on the *sub judice* rule.

25. Prayers C, D, E, F and K relate to the procurement of the SGR project and only prayer F refers to the **"Nairobi – Naivasha phase of the SGR project."**

26. At paragraphs 97 – 104, of the Judgment aforesaid, I addressed the legality of the said project against the expectations of both the law on procurement and public finance management and concluded that the project was lawful. In doing so I also addressed the single sourcing of the 4th Respondent as well as the financing of the project. My findings are the subject of **C.A. No.10 of 2015** before the Court of Appeal and it is clear to me that the above issues were fully resolved by this Court and only the Court of Appeal remains to make its decision. To tax this Court again with determination of the same issues is precisely why the doctrine of *res judicata* was created. It matters not that the present Petition has introduced loosely the matter of the **"Nairobi – Naivasha"** phase of the SGR project or that in prayers G, 1, H and L, the Petitioners, who have stated at Paragraph 1 of their Petition that they are public spirited individuals, claim compensation and costs as a result of the alleged breaches of the Constitution and the law. Those

claims are merely consequential upon prior claims being granted and I have said that those claims are barred by *res judicata.*

27. Turning to the argument that the present Petition is also barred by the principle of *sub judice*, in **Petition No.130 of 2015**, Prayer A is similar to Prayers A, B and J in the present Petition as they are all predicated on the information sought in the Petitioner's letter dated 2nd April 2015. I do not see why the Petitioners, while **Petition No.130 of 2015** was still pending, did not simply pursue that issue within that Petition and the *sub judice* rule is therefore properly invocable.

28. In that regard, what is *sub judice* in law? **Section 6** of the **Civil Procedure Act** exemplifies the rule of *sub judice* in the following terms:

> ***"No Court shall proceed with the trial of any suit or proceeding on which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief sought."***

29. The doctrine therefore suggests that a Court is barred from hearing and determining a matter which is under consideration before another Court of competent jurisdiction. In that regard, it has been held that this principle of civil litigation is equally applicable to Petitions under the Constitution within the wider meaning of the expression **"other proceeding"** and no litigant in an ordinary civil case is at liberty to institute a multiplicity of sits on the same claim or subject matter, and similarly, no litigant in the name of a Petitioner is at liberty to institute another suit in the guise of a constitutional Petition in the pendency of a suit seeking the same reliefs or remedies – See **Maggie Mwauki Mtalaki v HFCK (supra).**

30. Applying the above principles to the present objections, it is obvious to me that prayers A, B and J of the Petition should best be pursued in **Petition No.130 of 2015** and not in this Petition by dint of the *sub judice* rule. For avoidance of doubt, Prayers A, B and J are not barred by *res judicata* because the prayers are predicated upon the letter of 2nd April 2015 as well as **Article 35** of the **Constitution** and in my Judgment in **Petition No.58 of 2014** while I expunged certain documents from the record, I did not close the door opened by **Article 35** of the **Constitution** and the Petitioners are at liberty to pursue the obtainance of that information as they have properly done in **Petition No.130 of 2015**.

Conclusion

31. It is obvious from my findings above that all the prayers in the present Petition are barred by either *res judicata* or by the *sub judice* rule. All is however not lost for the Petitioners because in **C. A. No.10 of 2015**, they will obtain a re-look at the decision in **Petition No.58 of 2014** and in **Petition No.130 of 2015,** they will have the issue of information sought addressed. The present Petition is therefore doomed for the above reasons and must be struck out and the option of stay of this Petition pending determination of the Appeal and **Petition No.130 of 2015** is not a viable one for obvious reasons.

32. As for costs, granted, the Petitioners have failed to convince me that their Petition can have life but because the matter was one in public interest (despite their curious claim for damages and costs,) it is best that each Party bears its own costs.

Disposition

33. For reasons above, the Preliminary Objections dated 14th Day of December 2015 are hereby upheld and the present Petition is hereby struck out.

34. Each Party shall bear its own costs.

35. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JULY, 2016

ISAAC LENAOLA

JUDGE

In the presence of:

Muriuki – Court clerk

Petitioner present

Mr. Obuga for 2nd Respondent

Mr. Njoroge for 1st, 3rd and 5th Respondent

Order

Ruling duly delivered.

ISAAC LENAOLA