REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JR MISC. APPLICATION NO. 444 OF 2013

IN THE MATTER OF: ARTICLES 165(6) OF THE CONSTITUTION OF THE KENYA

AND

IN THE MATTER OF: THE LAW REFORM ACT CHAPTER 26 LAWS OF KENYA SECTION 8 AND 9

AND

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDER OF PROHIBITION

BETWEEN

DAVID MATHENGE NDIRANGU..... APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

THE CHIEF MAGISTRATE

IN THE CHIEF MAGISTRATE'S COURT, THIKA.....3RD RESPONDENT

AND

PERCY ARTHUR OYUGI OPIO.....INTERESTED PARTY

RULING

1. By a Chamber Summons dated 11th December 2013, the applicant herein **David Mathenge Ndirangu** seeks leave of this Court to apply for an order of prohibition directed at the 3rd Respondent to prohibit the 3rd Respondent from proceeding with the trial of the Applicant in Thika CMCCR Case No. 3906 of 2012, **Republic vs. David Mathenge Ndirangu** (hereinafter referred to as the criminal case). As is usual in such applications, the Applicant also seeks an order that the leave so granted do operate as a stay of proceedings in the same criminal case.
2. Pursuant to the proviso to Order 53 rule 1 of the ***Civil Procedure Rules*** I directed that the application for leave be heard inter partes.

3. The application was supported by a verifying affidavit sworn by the applicant on 11th December, 2013.
4. According to the applicant, sometimes in 1990, he acquired a beneficial interest over a parcel of land measuring approximately 1 ¼ acre from **Githunguri Constituency Ranching Company Limited** (hereinafter referred to as the Company) and was issued with certificate No.B3094 dated 12th November, 1990. He thereafter retained the beneficial interest until the year 2009 when he was registered as the proprietor of the parcel and issued with a title to the parcel Title No. Ruiru East Block 1/104 (hereinafter referred to as the suit property). He then sold the parcel of land to the Interested Party in 2010 at a consideration of Kshs 5,800,000/- which was fully financed by Equity Bank Limited.
5. According to the applicant, he observed all the terms of the agreement for sale and the Interested Party was on 12th March, 2013 registered as the proprietor of the parcel with a charge to Equity Bank Limited to secure a sum of KShs.7,000,000/-. Prior to the completion date as stipulated in the agreement for sale, the applicant pointed out the beacons to the Interested Party and he confirmed that the parcel was vacant and undeveloped.
6. The applicant was therefore surprised when he was served with court papers in **Nairobi HCELC No.617 of 2011**, **David Mburu Wakaimba vs. Chief Land Registrar and 3 Others** (hereinafter referred to as the civil case) where the plaintiff is claiming ownership of the parcel and alleging fraud and collusion between the defendants. According to the applicant, the Interested Party has filed a defence jointly with Equity Bank Limited in which he is defending the title issued to him and has counterclaimed against the plaintiff for him to be declared the bona fide owner of the parcel. Similarly, the Chief Land Registrar has also filed a defence disowning the plaintiff's claim and further states that all transactions affecting the parcel were in accordance with the law per the legal requirements.
7. He deposed that in the same vein, the Interested Party complained to the police that the applicant obtained money from him by falsely pretending that the former could sell the parcel in question to the later and the applicant was subsequently been arrested and arraigned in court by the 1st Respondent on 10th September, 2012 before the 3rd Respondent in the said Criminal Case for an alleged charge of obtaining land registration by false pretences contrary to section 320 of the ***Penal Code*** and obtaining money by false pretences contrary to section 313 of the ***Penal Code***.
8. According to the Applicant, the complainant in the charge sheet is indicated as the Republic through Kenya Police Ruiru and the Interested Party is named as the Chief witness and neither the Chief Registrar nor the District Registrar, Thika District is the complainant in the said Criminal Case despite their being the custodian of the records in the Thika District Lands Registry where the alleged offence in count I is said to have taken place. He averred that the ownership of the suit property is the main issue for the Court's determination in the civil case and that both the plaintiff in the same and himself claim to trace their titles to the Company which curiously has not been made a party or complainant or witness in either the civil case or the criminal**.**
9. In the applicant's view the pleadings filed on behalf of the Interested Party in the civil case are inconsistent with the charges in the said criminal case and the Interested Party is advancing contradictory positions in the two cases which may lead to conflicting findings thereby causing legal absurdity. To him, the criminal case is an abuse of the Court process and is meant to embarrass him to ensure that he does not adequately advance his defence in the civil case and give the plaintiff an upper hand and is otherwise a fishing expedition for evidence for use in this latter case.
10. To the applicant, this Court has supervisory jurisdiction over the 3rd Respondent by dint of Article 165(6) of the Constitution of Kenya to ensure that the process before the 3rd Respondent is not abused nor does it violate fundamental rights and freedom of individual citizens and hence it is in the interest of justice and fairness that an order of prohibition do issue to prohibit the 3rd Respondent from proceeding with the trial of the Applicant in the criminal case in order to ensure there is parity of arms in the civil case and also that the 3rd Respondent and the Environment and Land Court do not arrive at conflicting decisions.

1st Respondent's Case

11.In opposition to the application the 1st Respondent filed the following grounds of opposition:

1. **THAT the 1st Respondent has a Constitutional and statutory duty to conduct prosecutions and this duty cannot be unnecessarily fettered, in any case no prayer has being sought as against the 1st respondent.**

2. **THAT section 193A of the CPC provides that the fact that a matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.**

3. **THAT an order of prohibition cannot issue in the circumstances of this case as the 3rd respondent is carrying out its constitutional and statutory mandate of conducting criminal trials..**

4. **THAT the application is without merit and should be dismissed with cost.**

12.Apart from the said grounds of opposition the 1st Respondent filed a replying affidavit sworn by PC **Patrick Kiplangat Ronoh**, a police constable attached to the Divisional Headquarters at Ruiru and a lead investigating officer in the said criminal case.

13.According to the deponent, it is apparent from the application herein that the Applicant is protesting about the said criminal case. However, it is mandate of the CID and in the public interest that the CID receive of complaints from the public, carry out investigations and upon reasonable grounds a prosecution may be instituted. According to him, he was duly instructed by the In-charge CID Ruiru office to conduct Investigation into a complaint made by **David Mburu Wa Kaimba,** the owner of **Ruiru East Block 1/104** situated at Kihinguro area on the 8th day of January, 2011 to the effect that the complainant had learned that there was somebody who had fenced the said land without his knowledge and was claiming the ownership of the said property.

14.Upon receipt of the complain, investigations commenced and after completion of the investigations it was found through the records at the Ministry of Lands Thika and in the office of Company that indeed the accused person, the applicant herein had forged the documents in question and therefore the said title deed of land in question was acquired through fraudulent documents. From his investigations he established that the interested party herein **Percy Arthur Oyugi Opio** charged a title deed obtained through fraudulent means; that the land in question herein originally belonged to the **Benard Kuria Waweru** who later transferred it to the complainant herein **David Mburu Wakaimba** the owner of the suit property herein; that the share certificate which the applicant purport that it was issued by the Company did not originate from the said offices and that the investigation revealed that the title deed in question was obtained through forgery.

15.He therefore formed the opinion that without the supporting documents the title deed charged by the interested party herein has no legal basis and the purported whole transfer transaction was done fraudulently by the applicant hence he decided to charge the applicant in the said criminal case since he had reason to believe that the evidence is sufficient to support a prosecution.

16.In his view, under Article 157 (6) of the Constitution of Kenya 2010, the 1st Respondent exercises the state powers and functions of prosecution which entails the institution, undertaking, taking over continuance and or termination of criminal proceedings amongst other functions and duties in addition to thereto, the 1st Respondent in the discharge of its duties and functions, is required to respect, observe and uphold the provisions of the Constitutions. In his view, the applicant has not demonstrated that in making the decision to prefer criminal charges against him, the 1st Respondent has acted without or in excess of the powers conferred upon them by the law or have infringed, violated, contravened and or in any other manner failed to comply with or respect and observe the foregoing provisions of the Constitution or any other provision thereof. Rather it was the deponent's position that the applicant is seeking to curtail the mandate of the criminal justice system actors enshrined in within the Constitution of Kenya; that the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be the ground for any stay, prohibition or delay of the criminal proceedings;

that the applicant has not adduced sufficient evidence before this Court on the merit of each case to show that prejudice has been occasioned; that the accuracy and correctness of the evidence or facts gathered in any investigation can only be assessed and tested by the trial Court which is best equipped to deal with the quality and sufficiency of evidence gathered and properly adduced in support of the charges; that the 1st Respondent does not require the consent of any person or authority for the commencement of criminal proceedings; that the 1st Respondent does not act under the direct or control of any person or authority and as such Article 249(2) of the Constitution, provides that an independent office is subject only to the Constitution and the law and is not subject the direction or control by any person or authority; and that allegation by the applicant is without merit, legal reason or backing.

17. The deponent therefore was of the opinion that in view of the foregoing, the court should exercise extreme care and caution not interfere with the Constitutional powers of the 1st Respondent to institute and undertake criminal proceedings and should only interfere with independent judgment of the 1st Respondent if it is shown that the exercise of powers is contrary to the Constitution, is in bad faith or amounts to abuse of process. In this case, however, the applicant has failed to demonstrate that the 1st Respondent has not acted independently or as acted capriciously, in bad faith or has abused the legal process in manner to trigger the High Court's intervention and has further failed to demonstrate that the 1st respondent lacked jurisdiction or departed from the rules of natural justice in directing that the applicant be charged with the criminal offences hence the application ought to be dismissed in its entirety.

Applicant's Submissions

18. It was submitted on behalf of the applicant that in this case the applicant has presented material which demonstrate that his prosecution in the criminal case is not being undertaken in good faith and is an abuse of the process of the Court process. While the complainant ought to have been the Land Registrar, it is submitted that the Registrar has in the civil proceedings filed pleadings in which he is defending the applicant's title. Similarly, the interested party from whom it is purported the applicant obtain the money has in the same proceedings stated that she has good title. It was therefore submitted that it is clear that the applicant's prosecution is not only irrational and unreasonable but also not in good faith and may well be a means of forcing the applicant to accede to the claim and amounts to an abuse of the Court process.
19. In support of the submissions, the applicant relied on **Republic vs. The Anti Banking Fraud Unit & Others ex parte Selina Betty Pambe Sande HC JR Misc. Application No. 289 of 2013** and **Investments & Mortgages Bank Limited (I & M) vs. Commissioner of Police & Others [2013] KLR**.

1st Respondent's Case

20. On behalf of the 1st Respondent it was submitted that the decision to charge the applicant having been made and implemented through the charging of the applicant in the said criminal case, it would amount to an exercise in futility tantamount to issuing the orders in vain for the court to order that the applicant should not be charged hence the Court cannot stay what has taken place.
21. While reiterating the contents of the replying affidavit the 1st Respondent urged the Court to allow the Magistrate's Court to carry out the criminal proceedings where the rules of natural justice will be followed and the applicant will be accorded the opportunity to put his case forward. In support of the 1st Respondent's case several authorities were considered. However the said authorities were with respect to whether the orders of judicial review can be granted rather than whether leave ought to be granted and whether the grant of the leave ought to be directed to operate as a stay pending the hearing and determination of the substantive motion or further orders of the Court.

Determination

22. The requirement for leave was explained by a three judge bench comprising **Bosire, Mbogholi-Msagha & Oguk, JJ** in **Matiba vs. Attorney General Nairobi H.C. Misc. Application No. 790**

of 1993 in which the Court held that it is supposed to exclude frivolous, vexatious or applications which *prima facie* appear to be abuse of the process of the Court or those applications which are statute barred. Similarly, in **Republic vs. Land Disputes Tribunal Court Central Division and Another Ex Parte Nzioka [2006] 1 EA 321, Nyamu,J** (as he then was) held that leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case for granting leave and that leave stage is a filter whose purpose is to weed out hopeless cases at the earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralysed for months because of pending court action which might turn out to be unmeritorious. **See also Republic vs. The P/S Ministry of Planning and National Development Ex Parte Kaimenyi [2006] 1 EA 353.**

23. **Waki, J** (as he then was), on the other hand, in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others Mombasa HCMCA No. 384 of 1996** put it thus:

"The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived… Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full *inter partes* hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judicially".

24. This position was confirmed by the Court of Appeal in **Meixner & Another vs. Attorney General [2005] 2 KLR 189** in which the Court held that the leave of the court is a prerequisite to making a substantive application for judicial review and that the purpose of the leave is to filter out frivolous applications hence the granting of leave or otherwise involves an exercise of judicial discretion.

25. The circumstances which guide the grant of leave to apply for judicial review remedies were enumerated in **Mirugi Kariuki vs. Attorney General Civil Appeal No. 70 of 1991 [1990-1994] EA 156; [1992] KLR 8** as follows:

"The law relating to judicial review has now reached the stage where it can be said with confidence that, if the subject matter in respect of which prerogative power is exercised is justiciable, that is to say if it is a matter on which the Court can adjudicate, the exercise of the power is subject to review in accordance with the principles developed in respect of the review of the exercise of statutory power…the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject matter… It is not the absoluteness of the discretion nor the authority of exercising it that matter but whether in its exercise, some of the person's legal rights or interests have been affected. This makes the exercise of such discretion justiciable and therefore subject to judicial review. In the instant appeal, it is of no consequence that the Attorney General has absolute discretion under section 11(1) of the Act if in its exercise the appellant's legal rights or interests were affected. The applicant's complaint in the High Court was that this was so and for that reason he sought leave of the court to have it investigated. It is wrong in law for the Court to attempt an assessment of the sufficiency of an applicant's interests without regard to the matter of his complaint. If he fails to show, when he applies for leave, a *prima facie* case, on reasonable grounds for believing that there has been a failure of public duty, the Court would be in error if it granted leave. The curb represented by the need for the

applicant to show, when he seeks leave to apply, that he has a case, is an essential protection against abuse of the legal process. It enables the Court to prevent abuse by busybodies, cranks and other mischief-makers… In this appeal, the issue is whether the appellant in his application for leave to apply for orders of certiorari and mandamus demonstrated to the High Court a *prima facie* case for the grant of those orders. Clearly, once breach of the rules of natural justice was alleged, the exercise of discretion by the Attorney General under section 11(1) of the Act was brought into question. Without a rebuttal to these allegations, the appellant certainly disclosed a *prima facie* case. For that, he should have been granted leave to apply for the orders sought."

26. In **R vs. Communications Commission of Kenya & 2 Others Ex Parte East Africa Televisions Network Ltd. Civil Appeal No. 175 of 2000 [2001] KLR 82; [2001] 1 EA 199**, the Court of Appeal was of the view that leave should be granted if, on the material available, the Court considers, without going into the matter in depth, that there is an arguable case for granting leave.
27. In **Re Bivac International SA (Bureau Veritas) [2005] 2 EA 43 (HCK)**, the Court stated:

"Application for leave to apply for orders of judicial review are normally *ex parte* and such an application does restrict the Court to threshold issues namely whether the applicant has an arguable case, and whether if leave is granted, the same should operate as a stay. Whereas judicial review remedies are at the end of the day discretionary, that discretion is a judicial discretion and, for this reason a court has to explain how the discretion, if any, was exercised so that all the parties are aware of the factors which led to the exercise of the Court's discretion. There should be an arguable case which without delving into the details could succeed and an arguable case is not ascertained by the court by tossing a coin or waving a magic wand or raising a green flag, the ascertainment of an arguable case is an intellectual exercise in this fast growing area of the law and one has to consider without making any findings, the scope of the judicial review remedy sought, the grounds and the possible principles of administrative law involved and not forget the ever expanding frontiers of judicial review and perhaps give an applicant his day in court instead of denying him…. ...Although leave should not be granted as a matter of routine, where one is in doubt one has to consider the wise words of Megarry, J in the case of *John vs. Rees [1970] Ch 345 at 402.* In the exercise of the discretion on whether or not to grant stay, the court takes into account the needs of good administration."

28. What comes out clearly from the foregoing is that the grant of leave to commence judicial review proceeding is not a mere formality and that leave is not granted as a matter of course. The applicant for leave is under an obligation to show to the court that he has a prima facie arguable case for grant of leave. Whereas he is not required at that stage to go into the depth of the application, he has to show that he has not come to court after an inordinate delay and that the application is not frivolous, malicious and futile. The Court is under a duty to filter the application at that stage of leave to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived. Public bodies ought to proceed with their statutory duties without being uncertain as to whether their actions will be overturned in the future and the public ought to be assured that the actions taken by the public bodies will not be overturned. Unless this assurance is given, public affairs are unlikely to be conducted in a manner that guarantees to the public confidence in the administration of its affairs. Therefore leave may only be granted if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full *inter partes* hearing of the substantive application for judicial review.
29. In this case, it is clear that the whole dispute rests on the ownership of the suit parcel of land. In matters of ownership of land, the records kept by the Land Registrar play a crucial part. The applicant has exhibited a copy of the title deed which prima facie shows that he was the registered proprietor of the suit parcel of land. The Chief Lands Registrar in the said civil case on the other

hand seemed to be unaware of the allegations made by the plaintiff therein. Similarly, the purported complainant in the criminal case, the interested party herein, has challenged the plaintiff's allegations made in the said civil case. It is noteworthy that the interested party has not sworn any affidavit in these proceedings.

30. In light of the foregoing, the applicant's contention that the criminal proceedings were instituted in bad faith in my view ought to be subjected to further investigations by this court. In other words the applicant has established a prima facie case justifying the grant of leave sought. Accordingly leave is hereby granted to the applicant to apply for an order of prohibition prohibiting the 3rd Respondent from proceeding with the criminal trial. The said Motion is to be filed and served within 10 days.
31. Where, however, the decision sought to be quashed has been implemented leave ought not to operate as a stay. See **George Philip M Wekulo vs. The Law Society of Kenya & Another Kakamega HCMISCA No. 29 of 2005.**
32. This position arises from the fact that once a decision has been implemented stay is nolonger efficacious as there may be nothing remaining to be stayed. It is only in cases where either the decision has not been implemented or where the same is in the course of implementation that stay may be granted. Where, therefore the stay is in respect of the grant of leave to apply for prohibition, it must be emphasized that prohibition by its very nature looks to the future hence where the impugned decision has already been implemented prohibition is not the best remedy to seek. See **Kenya National Examinations Council vs. Republic *Ex parte* Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996 (CAK) [1997] eKLR.**
33. However it was held in **Jared Benson Kangwana vs. Attorney General Nairobi HCCC No. 446 of 1995** that in an application for leave to apply for judicial review and stay of proceedings the Court has to be careful in what it states lest it touches on the merits of the main application for judicial review. Therefore where the outcome of the judicial review might be contrary to the conclusion reached by the body or person whose decision is challenged, stay of proceedings should be granted as it might lead to an awkward situation where a decision which ought not to have been made has been concluded.
34. **Maraga, J** (as he then was) in **Taib A. Taib vs. The Minister for Local Government & Others Mombasa HCMISCA. No. 158 of 2006** was of the view that:

> **"As injunctions are not available against the Government and public officers, stay is a very important aspect of the judicial review jurisdiction… In judicial review applications the Court should always ensure that the *ex parte* applicant's application is not rendered nugatory by the acts of the Respondent during the pendency of the application and therefore where the order is efficacious the Court should not hesitate to grant it though it must never be forgotten that the stay orders are discretionary and their scope and purpose is limited… The purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made and it is not limited to judicial or quasi-judicial proceedings as it encompasses the administrative decision making process being undertaken by a public body such as a local authority or minister and the implementation of the decision of such a body if it has been taken. It is however not appropriate to compel a public body to act… A stay order framed in such a way as to compel the Respondents to reinstate the applicant before hearing the Respondent cannot be granted."**

35. In this case, it is contended that the applicant has been charged and therefore there is nothing to be stayed. However what the applicant seeks to stay is the continuation of criminal proceedings. In my view, it is only where the decision in question is complete that the Court cannot stay the same. However where what is sought to be stayed is a continuing process, the same may be stayed at any stage of the proceedings. In criminal proceedings the mere fact that the proceedings are ongoing does not bar the Court from staying the same at any stage of the proceedings before they come to an end. Accordingly this Court still has jurisdiction to stay the prosecution of the criminal proceedings.
36. Those then are the principles under which the Courts do exercise their discretion in granting an

order for stay.

37. Whereas the mere fact that the facts of the case constitute both criminal and civil liability does not warrant the halting of the criminal case, in **Republic vs. Chief Magistrate's Court at Mombasa Ex Parte Ganijee & Another [2002] 2 KLR 703**, it was held:

> **"It is not the purpose of a criminal investigation or a criminal charge or prosecution to help individuals in the advancement of frustrations of their civil cases. That is an abuse of the process of the court. No matter how serious the criminal charges may be, they should not be allowed to stand if their predominant purpose is to further some other ulterior purpose. The sole purpose of criminal proceedings is not for the advancement and championing of a civil cause of one or both parties in a civil dispute, but it is to be impartially exercised in the interest of the general public interest. When a prosecution is not impartial or when it is being used to further a civil case, the court must put a halt to the criminal process. No one is allowed to use the machinery of justice to cause injustice and no one is allowed to use criminal proceedings to interfere with a fair civil trial. If a criminal prosecution is an abuse of the process of the court, oppressive or vexatious, prohibition and/or certiorari will issue and go forth.....When a remedy is elsewhere provided and available to person to enforce an order of a civil court in his favour, there is no valid reason why he should be permitted to invoke the assistance of the criminal law for the purpose of enforcement. For in a criminal case a person is put in jeopardy and his personal liberty is involved. If the object of the appellant is to over-awe the respondent by brandishing at him the sword of punishment thereunder, such an object is unworthy to say the least and cannot be countenanced by the court... In this matter the interested party is more actuated by a desire to punish the applicant or to oppress him into acceding to his demands by brandishing the sword of punishment under the criminal law, than in any genuine desire to punish on behalf of the public a crime committed. The predominant purpose is to further that ulterior motive and that is when the High Court steps in..."**

38. Since in this case the persons who ought to be at the forefront in ensuring the wheels of the criminal process runs, the Lands Registrar and the interested party herein seems to have taken a back seat in the whole process, it is only fair that the applicant ought not to be subjected to the said process for the limited period when these proceedings are being heard and determined.
39. In the premises, I direct that the grant of leave herein shall operate as a stay of proceedings in Thika CMCCR Case No. 3906 of 2012, **Republic vs. David Mathenge Ndirangu** pending the hearing and determination of the substantive motion or until further orders of the Court.
40. The costs so of this application shall be in the cause.

Dated at Nairobi this 2nd day of May 2014

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Murithi for Mr Muigai for the applicant

Mr Ndege for the 1st Respondent