REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

BUSIA PETITION NO.1 OF 2014

JOSEPH OWINO MUCHESIA …….....……1ST PETITIONER

AGGREY HILLA SAKALA …….…….....…….2ND PETITIONER

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY ……...….1ST RESPONDENT

AFRICA POLYSACK LIMITED …….....……..2ND RESPONDENT

AND

COUNTY GOVERNMEN TOF BUSIA .....INTERESTED PARTY

J U D G M E N T

PLEADINGS

1. The setting up and development of a milling complex christened the Busia Sugar Factory Complex is the subject of this Constitutional Petition. The Petitioners, who are two individuals, are of the view that the commencement of the said development is unconstitutional and an affront to their Right to a Clean and Healthy Environment.

2. That Petitioners seek the following four prayers:-

1. **"A DECLARATION that the commencement of operations by the 2nd Respondent in respect of the project in developing a milling factory complex, Busia Sugar Factory Complex, in Busibwabo location, Matayos sub-county in Busia County prior to the issuance of the Environmental Impact license from the 1st Respondent is unconstitutional and contravenes the provisions of Sections 58,59,60,61,62 and 63 of the Environmental Management and Co-ordination Act, 1999 and provisions of Regulations 17,22,23 and 24 of the Environmental (Impact Assessment and Audit) Regulations, 2003.**
2. **A DECLARATION that the Petitioners' right to a clean and healthy environment as guaranteed by Article 42 of the Constitution of Kenya has been violated by the action of the 2nd Respondent to commence operations of the Busia Sugar Factory prior to the issuance of and/or due to the irregular issuance of the Environmental Impact license by the 1st Respondent.**
3. **AN ORDER of prohibition stopping the operations of and/or work in the Busia Sugar Factory complex by the 2nd Petitioner and/or any the entity without the requisite**

Environmental Impact license obtained after due process has been observed.

4. **This Honourable Court be pleased to issue any other order that it may deem to be fit and just to ensure that Law and Order is maintained in church(?) and that the Rule of Law is upheld."**

3. In the Petition dated 20th December 2013 and filed on the same day, the Petitioners lay out the Constitutional and legal foundations that underpin their plea. They then turn to the crux of the Petition which is brought for the enforcement of the Constitutional Right to a Clean and Healthy Environment. Cited in the Petition is Article 42 of the Constitution which provides:-

"42. Every person has the right to a clean and healthy environment, which includes the right-

a. **To have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and**
b. **To have obligations relating to the environment fulfilled under Article 70."**

4. The Petitioners also aver that Sections 58 to 63 of The Environmental Management and Co-ordination Act, 1999 (**EMCA**) provides for the procedure in issuing and/or obtaining an Environmental Impact Assessment (**E.I.A**.) License. They also refer to Regulation 17 of The Environmental (Impact Assessment and Audit) Regulations 2003 which provides for public participation in processing an E.I.A approval.

5. The Petitioners are aware that the 2nd Respondent, intending to develop Busia Sugar Factory Complex in Busibwabo location, Matayos sub-county in Busia applied for an E.I.A from The 1st Respondent (hereinafter also referred to as **NEMA**). Subsequently, the 1st Respondent placed a Notice in the dailies on 15th November 2013 inviting the public to submit comments on an Environmental Impact Assessment Study Report prepared by the 2nd Respondent. The Notice invited the members of the public to submit oral or written comments within (30) days from the date of its publication.

6. It is averred that in contravention of the provisions of EMCA and The Environmental (Impact Assessment and Audit) Regulations 2003, the 2nd Respondent commenced the project even as the public was still submitting its comments on the E.I.A Study Report. The Petitioners further stated that the works on the project begun before the 2nd Respondent had been issued with an E.I.A License by the 1st Respondent.

7. On a different plane, the Petitioners aver that the proposed project is less than 40 kilometers from Mumias Sugar Factory and its establishment is a violation of Section 2 of The Sugar Act which prohibits the establishment of competing mills within a radius of 40km of each other.

8. The Response by the 1st Respondent is that an E.I.A License No.0070469 was issued on 19th December 2013 in respect to the project. That this was after adequate and meaningful Public Participation and compliance with Regulation 21 of The Environmental (Impact Assessment and Audit) Regulations. The 1st Respondent also averred that it issued the License after duly considering all comments and objections received from various stakeholders and Lead Agencies.

9.For the 2nd Respondent, it was stated that the Petitioners are not residents of Busia County and that the setting up of a Sugar Factory in Busia County would not affect them. That on the converse, the project had the support of the Local Community and Administration. The 2nd Respondent further averred that it had obtained an E.I.A License after complying with the law and its project, which is a huge investment outlay, should not be stopped.

10. On agreement of the Petitioners and Respondents, leave was granted by this Court to the County Government of Busia to be enjoined as an Interested Party herein. It was stated by the County Government that under the 4th Schedule of The Constitution, 2010 one of its functions is Agriculture and

Trade Development. That the County Government has an overall Constitutional and legal obligation to participate, manage and administer all matters that concern the social, economic and political wellbeing of the Residents and Inhabitants of Busia County. The County Government supported the establishment of the Busia Sugar Factory Complex and thought that this Petition was motivated by fights over the control of raw sugarcane in Busia by some existing factories.

THE EVIDENCE

11. The evidence in support of the Petition was contained in the Joint Affidavit of the Petitioners sworn on 20th December 2013. The Notice to the public to submit comments on the Environmental Impact Assessment Study Report for the proposed Busia Sugar Factory Complex was published in the The "Standard" Newspaper of 15th November 2013. The Notice invited submissions of oral or written comments to the Report within thirty (30) days from the date of Publication.

12. The 2nd Respondent commenced construction works of the project while the process of submission was ongoing and before an E.I.A License had been issued. In this regard the Petitioners attached copies of 23 photographs of the construction works in progress as at 17th December 2013.

13. Professor Geoffrey Wahungu is the Director General of The 1st Respondent. In an affidavit sworn on 1st April 2014, he stated that an Environmental Impact Assessment (EIA) study report for the proposed project was submitted to the National Environmental Management Authority (NEMA) on 18th October 2013. Subsequently and pursuant to Regulation 20 of The Environmental (Impact Assessment/Audit) Regulations of 2003, the report was dispatched to the Ministry of Agriculture Livestock and Fisheries, The Ministry of Lands, The Water Resources Management Authority, The County Director of Environment, Busia County and The Governor, County Government of Busia. He further confirmed that a Notice to the public to submit comments on the proposed project was published in The "Standard" Newspaper of 15th November 2013.

14. Stakeholders and Lead Agencies submitted their comments. One of the members of public who submitted his comment was The 1st Petitioner. In that submission dated 10th December 2013, made jointly with one Bilha Orlando, the 1st Petitioner was opposed to the project and closed with the following remarks:-

> **"The timelines and responsibilities in the EMP are inadequate, misplaced and/or inapplicable. On this basis we register our disapproval of this project on the basis of being both unsustainable and illegitimate."**

15. It was the further evidence of the 1st Respondent that it consulted the Kenya Sugar Board who are a key Lead Agency in respect to the operationalization of any sugar factories and confirmation was received from the Board that the proposed project met the requisite threshold for licensing as a sugar factory. Subsequently, on 19th December 2013 the 1st Respondent issued an E.I.A License to the 2nd Respondent. The license was No.0020469. The date of issue of 19th December 2013 must turn out to be critical!

16. On the part of the 2nd Respondent, Dhadho Omar its Administration Manager, confirms that the 2nd Respondent was issued with the E.I.A. License dated 19th December 2013. In that License the objective of the project is said to be,

> **"Construction of a sugar factory complex (with a processing capacity of 900,000 tons of sugarcane per annum), a power general unit and auxiliary facilities"**

17. Crucially however, Mr Omar neither comments on nor denies the authenticity of the copies of the photographs attached to the Petitions affidavits or the Petitioners allegations that construction works on the project were ongoing by 17th December 2013. Just like the date of E.I.A License this shall turn out to

be critical!

A PRELIMINARY ISSUE

18. There seems to be two issues, which may be alternatives, that have irked the Petitioners. Firstly, that the 2nd Respondent commenced the implementation of the project and construction prior to issuance of the E.I.A. License. The second, which is stated in a more subtle manner is that the 2nd Respondent is holding a license that has been procured unprocedurally. This allegation is found in paragraphs 32 and 36 of the Petition, which I take the liberty of reproducing:

"32.The 2nd Respondent has been allowed to commence work on the project while lacking the requisite license and/or having a license that has been procured unprocedurally.

36. The actions by the 1st Respondent to issue the license to the 2nd Respondent and/or those of the 2nd Respondent to commence operations prior to the approval and issuance of the said license by the 1st Respondent clearly contravenes the law as aforesaid and is meant to deny the public the right to participate in the decision concerning licensing (or not) of the project. The project will clearly affect the livelihoods of people in the region as a whole."(my emphasis)

19. A question that was taken up by the 2nd Respondent's Counsel as a Preliminary Objection was that this Court did not have jurisdiction to hear and determine the matters raised in this Petition in view of the establishment and existence of The National Environment Tribunal (hereinafter also called **the Tribunal**) which is seized of authority to hear and determine such matters. Counsel cited the provisions of Sections 125,126,127 and 129 of EMCA. And although it was agreed, at the commencement of the hearing of the Petition, that this Objection would be taken up as part of the Response to the Petition, I take the view that I should determine it early as a prefatory issue.

20. In arguing that this Court is bereft of Jurisdiction, the Court was reminded that Articles 162 and 169 (1) (d) of The Constitution 2010 approves the establishment of Tribunals. The latter would be more pointed and provides:-

> **169(1) The subordinate Courts are-**
>
> **a)……..**
>
> **b)……..**
>
> **c)……..**
>
> **(d) any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162 (2)."**

Counsel then made the point that EMCA, vide Section 129, establishes The National Environment Tribunal which is empowered under the provisions Section 129 (2) thereof, to hear and determine appeals against decisions of NEMA. The 2nd Respondent saw no reason why the Petitioners should not have raised the matters complained of here before the Tribunal. That view was supported by the Interested Party while the 1st Respondent thought that Section 129(1) was limited in scope and could not cover situations such as this where the complaint is against issuance, as opposed to refusal, of a license.

21. On this question Dr Khaminwa (Senior Counsel) for the Petitioners made reference to the provisions of Article 69 (1) of The Constitution to press the point that the State had Constitutional obligations in respect of the Environment. That this Court is part of the State and has a clear mandate in the enforcement of Environmental Rights under Article 70(1) of The Constitution of Kenya which provides:-

> **"70.(1) If a person alleges that a right to a clean and healthy environment recognized and**

protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter."

Counsel then argued that the Court, not the Tribunal, must invoke the power and authority of the State.

22. On another aspect, Counsel thought that the provisions of Section 129 of EMCA were inapplicable because there was a Constitutional violation that resulted from the 2nd Respondent's conduct of commencing the construction before the E.I.A. License was issued. That this was not a dispute that was within the contemplation of the provisions of Section 129 of EMCA which dealt with decisions of NEMA.

23. As pointed out earlier, one of the grievances of the Petitioners is that the 1st Respondent issued an E.I.A. License to the 2nd Respondent in a procedure that did not conform with the provisions of EMCA and The Environmental Management and Coordination (Impact Assessment and Audit) Regulations, 2003. In essence, the Petitioners were challenging the decision of NEMA in issuing the License. No doubt, a person who is aggrieved by such a decision has a Right to Appeal to the Tribunal. Section 129(2) of EMCA is clear on this and provides:-

"2) unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of The Authority to make decisions, such decisions may be subject to an Appeal to the Tribunal in accordance with such procedures as my be established by the Tribunal for that purpose." (my emphasis)

This Court is unable to find any provision in the Act, either express or indirect, barring an Appeal against a decision to grant an E.I.A. License.

24. Indeed as though to confirm that such a decision is Appealable under the provisions of Section 129, Regulation 46 (1) of The Environmental (Impact Assessment and Audit) Regulations 2003 states:-

"1) Any person who is aggrieved by:-

…….

……

…..

……

(f) the Approval or reinstatement by the Authority of an environmental Impact Assessment License, may within sixty days after the date of the decision against which he or she is dissatisfied, Appeal to the Tribunal." (my emphasis).

25. I reach the same decision as my brother Odunga J in Nrb Misc Civil Application No.155 of 2012 **Republic –vs- 1) The National Environment Tribunal 2) Monica Nzilani Mweu 3) The National Environment Management Authority (NEMA) Exparte Abdulhafidu Sheikh Ahmed Zubeidi** [2013] eKLR that an Appeal against the decision of the Authority to issue an E.I.A License lies under Section 129 (2).

26. It is now popularly held that where an infringement can be redressed within a legislative framework, the course to follow is to take out proceedings under the framework and not under the Constitution unless that framework does not provide an efficacious and satisfactory answer to the Litigants grievance. There is a line of authority in this regard and has been restated recently in **Nrb petition No.461 of 2012 Isaac Ngugi –vs- Nairobi Hospital & Another [2013) eKLR** and **Nrb Petition No.173 of 2014 Rich Productions Ltd –vs- 1) Kenya Pipeline Company 2) Public Procurement Oversight**

Authority[2014] eKLR.

27. At the hearing of this Petition, this Court drew the attention of the parties to the Decision in C.A. No.84 of 2004 **Damian Belfonte –vs- The Attorney General of Trinidas and Tobago** which set out the approach to be taken in examining whether the invocation of a Constitutional relief, where a parallel remedy exists, amounts to an abuse of Court. The Court held:-

> **"(19) The opinion in Jaroo has recently been considered and clarified by the Board in AG v Ramanoop. Their lordships laid stress on the need to examine the purpose for which the application is made in order to determine whether it is an abuse of process where there is an available common law remedy. In their lordship's words:**
>
> ***"….Where there is a parallel remedy, constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule, there must be some feature, which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of such a feature would be a case where there has been an arbitrary use of state power."* (emphasis added)."**

28. One must bear this in mind in construing the provisions of Article 70(1) of the Constitution. That Article provides:-

> **"70(1) If a person alleges that a Right to a Clean and Healthy Environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a Court for redress in addition to any other Legal remedies that are available in respect to the same matter." (emphasis added)**
>
> (my emphasis)

The words "in addition" should be read to mean that the Constitutional redress should be resorted to only where the other available remedies are not efficacious or adequate. Constitutional redress is in addition, not a substitute, to the other Legal remedies.

29. One of the reasons advanced by the Petitioners for approaching this Court was that the Tribunal would not be the appropriate forum to deal with issues raised herein because, as Counsel submitted, the Tribunal "**will be subject to parochialism and intellectual inability to appreciate the instruments of International Law**." Quite to the contrary, the provisions of EMCA on Membership to the Tribunal are intended to ensure that the Tribunal has the necessary professional, intellectual and technical competence. Section 125 (1) reads:-

"125. (1) There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members-

a. **A chairman nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a Judge of the High Court of Kenya.**
b. **An advocate of the High Court of Kenya nominated by the Law Society of Kenya.**
c. **A lawyer with professional qualifications in environmental law appointed by the Minister and**
d. **Two persons who have demonstrated exemplary academic competence in the field of environmental management appointed by the Minister."**

It has not been suggested or proved that the current Membership of the Tribunal does not meet these criteria! The argument that the Tribunal suffers a dearth of Intellectual and Technical competence is not a fair argument and is without merit.

30. Upon hearing an Appeal, the Tribunal may confirm, set aside or vary the decision of the Authority (Section 129(3)). From the pleadings and arguments, the Petitioners attack both the procedure adopted in issuing the License and its merit. For those reasons the Petitioners seek to stop the implementation of the project. This is a result they could achieve if they persuaded the Tribunal that the decision by the Tribunal to issue the License was erroneous and should be set aside. A cancellation or revocation of the License would bring a stop to the implementation of the project. In that sense, the remedy that is available at Appeal seems adequate enough.

31. Something else demonstrates that the avenue of Appeal is an efficacious route. Simultaneously with filing this Petition, the Petitioners filed an application for injunction in the following terms:-

> **"2. <u>THAT</u> this Honourable Court be pleased to issue a prohibitory injunction restraining the 2nd Respondent, its agents, employees and/or representatives from in any way commencing and/or continuing with operations at the Busia Sugar Factory Complex in Busibwabo location, Matayos sub-county in Busia County pending the hearing and determination of this application.**

Had they filed an Appeal to the Tribunal, the Petitioners need not have troubled themselves with motions of an injunction in view of the provisions of Section 129(4) which provides:-

> **"Upon any appeal to the Tribunal under this Section, the status quo of any matter or activity, which is the subject of the Appeal, shall be maintained until the Appeal is determined."**

Status quo in respect to an activity that has commenced has been interpreted to mean that the activity will be stopped. Upon Appealing, Petitioners would have obtained an automatic order stopping the commencement or continuation of the construction until the Appeal is determined. That is exactly what the Petitioners were bespeaking in the Interlocutory Application.

32. The inevitable result this Court reaches is that the Petitioners challenge of the E.I.A License by way of a Constitutional Petition is an abuse of Court Process. The proper course for the Petitioners would have been an Appeal to the Tribunal under the provisions of Section 129 (2) of EMCA.

<u>THE FINAL DETERMINATION</u>

33. But as earlier noted, there is another limb of the Petition. That by commencing the construction of the factory and implementation of the project prior to the issuance of an E.I.A License, the 2nd Respondent affronted the Petitioners Right to a Clean and Healthy Environment. It is not a complaint against NEMA and would not be a subject of Appeal under Section 129. It is directed at the 2nd Respondent and is a matter that this Court is properly seized of.

34. The 2nd Respondent and the Interested Party doubted the Petitioners standing to bring this Petition in the very first place. Emphasis had been made that the Petitioners are not residents of Busia County and then it had been submitted,

> **"……..it is not conceivable and demonstrated how the setting up of a Sugar Factory in Busia County would affect them."**

The provisions on *locus standi* in respect to the enforcement of Environmental Rights are found in Articles 42 and 70(3) of The Constitution. Under Article 42, every person has a Right to a Clean and Healthy Environment while Article 70(3) provides:-

> **"For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury."**

This generous allocation of standing allows the Petitioners herein to bring this limb of the Petition.

But to succeed in their plea they must demonstrate that their Right under Article 42 has been or was likely to be denied, violated, infringed or threatened.

35. It is common cause that the implementation of The Busia Sugar Factory Complex could not be undertaken unless an Environmental Impact Assessment in respect to the project had been concluded and approved in accordance with the provisions of EMCA and the Regulations made thereunder. There was uncontroverted evidence that construction in respect of the Factory had commenced and/or was ongoing by 17th December 2013. It is common ground that The E.I.A License in respect to the said project was issued on 19th December 2013. Clearly then the activities prior to the date of the License contravened the law and in particular Regulation 4(1) of The Environmental (Impact Assessment and Audit) Regulations 2003 which provides that:-

> **"4.(1) No proponent shall implement a project-**
>
> **a) Likely to have a negative environmental impact, or**
>
> **b) For which an environmental impact assessment is required under the Act or these Regulations, Unless an environmental impact assessment has been concluded and approved in accordance with these Regulations."**

Of concern to this Court is whether that contravention of the law amounted to an infringement of the Petitioners Right to a Clean and Healthy Environment (Article 42). Dr Khaminwa (S.C) argued with some skill and vigour about the interface of the concept of The Environment Impact Assessment and the principle of Sustainable Development in urging this Court to see an infringement. Those arguments and responses made to it are considered in the Courts determination of this question.

36. Article 42 of the Constitution provides:

"42. Every person has the right to a clean and healthy environment, which includes the right-

> **a) To have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and**
>
> **b) To have obligations relating to the environment fulfilled under Article 70."**

Although EMCA is a pre-constitution 2010 statute it gives effect to the Constitutional provisions in respect to Environmental Rights.

37. In dealing with matters on Environmental Rights, Section 3 of EMCA directs that the High Court shall be guided by the principles of Sustainable Development. Some of those principles are:-

> **"(a) the principle of public participation in the development of policies, plans and processes for the management of the environment;**
>
> **…….**
>
> **……**
>
> **(d) the principles of intergenerational and intragenerational equity;**
>
> **……..**
>
> **(f) the pre-cautionary principle."**

38. This Court accepts the proposition by Dr Khaminwa (S.C) that the requirement for E.I.A under EMCA is an element of The principle of Sustainable Development. Counsel referred to the following

passage from The Bill of Rights Handbook (5th Edition at page 527),

> **"The principle of "sustainable development" has both substantive and procedural elements. From the substantive perspective one way of ensuring that development decisions do not disregard environmental considerations is for the legislature to provide for Environmental Impact Assessment (EIA) for all development projects."**

In Kenya, EMCA specifies projects that require E.I.A. Admittedly The Busia Sugar Factory Complex is one such project. It is from the perspective that E.I.A is an important tool for the management and protection of the Environment that the conduct of the 2nd Respondent must be viewed.

39. The definition and core purpose of an Environmental Impact Assessment is set out in Section 2 of EMCA. It states that an E.I.A is:-

> **"A systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment"**

40. As pointed out earlier the Busia Sugar Factory Complex required the conclusion and approval of an E.I.A before it was implemented. It was required that a determination be made whether the project would have any adverse impact on the Environment before it was undertaken. Indeed in the Environmental and Social Impact Assessment Study Report submitted by the 2nd Respondent to the 1st Respondent its own consultants identified one main task under the study as the determination of the potential Impacts on various Environmental aspects of the proposed project.

41. Under Section 63 of EMCA the mandate of scrutinizing and approving that study falls on NEMA:

> **"63. The Authority may, after being satisfied as to the adequacy of an Environmental Impact Assessment Study, evaluation or review report, issue an Environmental Impact Assessment License on such terms and conditions as may be appropriate and necessary to facilitate sustainable development and sound Environmental management."**

42. To therefore proceed with the implementation of the project and the construction of the factory without the approval of the E.I.A Study was to proceed without an approved determination as to the possible Environmental impact of the project. The 2nd Respondent's conduct did not have due regard to whether or not the project could possibly have an adverse impact on the Environment. It was also indifferent as to what NEMA might eventually make of the views of the Public and other Stakeholders. Because of these, the implementation of the project in the pre-license period was a threat to a Clean and Healthy Environment. That was an affront to the Petitioners Right to a Clean and Healthy Environment.

43. What then is the appropriate relief to be granted? An E.I.A License was subsequently issued on 19th December 2013. That License is still valid. This Court has not been told that the implementation of the project post the License date is not in conformity with the terms and conditions of the License. Neither is the Court told that it is being implemented in a manner that is deleterious to the Environment. There may be no reasonable basis to stop the implementation of the project as requested by the Petitioners and I decline to grant the prayer. But I must add that this Court would have awarded Damages to the Petitioners had they sought them.

44. That said, I have found that the construction undertaken by the 2nd Respondent prior to 19th December 2013 was wrongful and a flagrant breach of the law. In addition, an offence may have been committed. For this reason I direct that a copy of this Judgment be forwarded to the Director of Public Prosecutions for his decision as to whether the 2nd Respondent's conduct warrants investigation.

45. One limb of the Petition succeeded, in part, but the other limb failed. It would be fair, I think, if each of the parties herein bear their own costs. That is my order on costs.

F. TUIYOTT

J U D G E

DATED, DELIVERED AND SIGNED AT BUSIA THIS 11TH DAY OF JULY 2014.

IN THE PRESENCE OF:

KADENYI .....COURT CLERK

OKUTTA H/B FOR KHAMINWA FOR 1ST & 2ND PETITIONER.

WABWOTO FOR THE 1ST RESPONDENT.

MAKOKHA H/B FOR ASHIOYA FOR 2ND RESPONDENT.

MAKOKHA FOR THE INTERESTED PARTY.