



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JR MISC. APPLICATION NO. 295 OF 2013

**IN THE MATTER OF A CAUTION REGISTERED ON THE 20TH JANUARY 2009 AGAINST L.
R. NO. LIMURU/RIRONI/461**

AND

**IN THE MATTER OF AN APPLICATION BY MUGUGA PYRETHRUM GROWERS CO-
OPERATIVE SOCIETY LIMITED FOR LEAVE TO APPLY FOR AN ORDER OF
CERTIORARI, AN ORDER FOR MANDAMUS AND FOR AN ORDER OF PROHIBITION
RELATING TO THE CAUTION REGISTERED ON THE 20TH JANUARY 2009 AGAINST
L.R.NO. LIMURU/RIRONI/461**

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

DISTRICT LAND REGISTRAR KIAMBU.....1ST RESPONDENT

COUNTY GOVERNMENT OF KIAMBU.....2ND RESPONDENT

AND

RIGAKI COMMUNITY BASED

ORGANIZATION.....INTERESTED PARTY

EX PARTE: MUGUGA PYRETHRUM GROWERS

COOPERATIVE SOCIETY LTD

JUDGEMENT

Introduction

1. By a Notice of Motion dated 13th November, 2013, the *ex parte* applicant herein, **Muguga Pyrethrum Growers Cooperative Society Ltd**, seeks the following orders:
 - a. That an order of certiorari do issue to bring into the High Court and quash the decision of the District Land Registrar Kiambu made on the 10th June 2013 to remove the caution

- registered on the 10th January 2009 against LR NO. LIMURU/RIRONI/461
- b. **That an order of Mandamus do issue directing the Land Registrar Kiambu to restore upon the Land Registrar of LR NO. LIMURU/RIRONO/461**
 - c. **That an order of prohibition do issue to prohibit the District Land Registrar Kiambu from removing the caution registered on the 20th January 2009 against LR NO. LIMURU/RIRONI/461 without taking a record of proceedings and giving a written and reasoned decision**
 - d. **That the costs of this application be provided for.**

Ex Parte Applicant's Case

2. The application is supported by a supporting affidavit sworn by **Samuel Nduati Njau**, the Applicant's chairman on 13th August, 2013.
3. According to the deponent, the Applicant was registered under the Cooperative Society Rules on the 26th November 1953 vide Certificate of Registration No. 404 of 1953. He deposed that the County Government of Kiambu is by reason of the provisions of the Constitution of Kenya 2010 the successor of the County Council of Kiambu and is enjoined in these proceedings as a Respondent.
4. On the 15th May 1973, it was averred the Finance and General Purposes Committee of the County Council of Kiambu allocated to the Applicant certain parcels of land situated at Makutano (to be used as a collection centre) and at Muguga, Kahuho and Rironi (to be used for Pyrethrum drying and storage) and the Applicant by its letter dated 18th August 1986 applied for formal purchase of a 99 year lease of the plot allocated to it which was then known as Plot 388 Rironi. However, the County of Kiambu failed, neglected or refused to process the application by the Applicant to purchase the lease of the allocated plot and failed, neglected or refused to act on the written follow up contained in the letter dated 29th September 1988 notwithstanding that the said council by its letter dated 30th January 1989 Ref. No. KCC/M/CM/RIR/384/VOL.1/92 acknowledged receipt thereof and called for documents to enable it process the lease.
5. It was deposed that despite several visits made by the Applicants officials to the County Council of Kiambu no lease was prepared and the plot at Rironi is still in the said councils' name and this informed the Applicant's decision to lodge a caution against the plot which is now known as L. R. NO. LIMURU/RIRONI/461. However it has come to the Applicant's knowledge that the County Council of Kiambu has unlawfully and without due process and without affording to it (the Applicant) the opportunity to be heard purported to allocate LR NO. LIMURU/RIRONI/461 to Rigaki Community Based Organization without the prior termination or nullification of the allocation made in favour of the Applicant in the ear 1973.
6. According to the deponent, the decision by the County Council of Kiambu is oppressive, arbitrary highhanded and prejudicial to the interest of the membership of the Applicant it is on the basis thereof the decision the subject of the compliant that the County Council of Kiambu has moved to apply to the District Land Registrar Kiambu to remove the Applicant's caution hence the necessity of these proceedings.

1st Respondent's Case

7. In opposing the application, the 1st Respondent filed the following grounds of opposition:
 1. **That the decision that the Applicant is seeking to quash is not attached to the application as it is mandatorily required by the civil, procedure rules and that failure to attach the decision is fatal to the application**
 2. **That the application is based on issues of merits which a judicial review court do not have jurisdiction to deal with.**
 3. **That the application does not raise any issue triable in judicial review.**
 4. **That the application be dismissed with costs to the first Respondent.**

2nd Respondent's Case

8. On the part of the 2nd Respondent the following grounds of opposition were file:
1. **The Ex parte Applicant has no legal interest in the suit property L.R. No. Limuru/Rironi/461**
 2. **The decision of the 2nd Respondent to allocate the suit land to the Interested Party cannot be challenged in these proceedings and indeed the period provided under the law has expired**
 3. **The decision by Kiambu County Council to re-allocate the land was within its mandate and was lawful**
 4. **The 2nd Respondent has no powers to remove a caution and is therefore not a proper part as a Respondent**
 5. **The application is bad in law, misconceived and should be dismissed.**

Interested Party's Case

9. In opposition to the application, the 1st interested party herein filed a replying affidavit sworn by **Paul Wandati Mbochi**, its Treasurer on 22nd January, 2014.
10. According to the deponent, the application lacks merit, is frivolous and an abuse of court process meant to vex the Respondent and Interested Party. In his view, the application is incapable of being granted as the *Ex parte* Applicant has absolutely no interest in the Plot L.R. Number Limuru/Rironi/461, the same having been allocated for lease to the Interested Party on the 14th June 2011 upon the Interested Party's application for allotment dated the 4th April 2011. It was further deposed that vide its minute number WTPMH/128/2011 the Respondent granted the Interested Party authority to construct and establish ponds on the said plot and further allowed the Interested Party to carry out their fish-farming project on the plot. According to him, the Interested Party commenced its fish-farming project on the 1st February 2012. However, the *Ex parte* Applicant came into the plot and engaged in acts of wanton destruction, demolishing all the fish ponds that the Interested Party had started constructing as well as the training centre.
11. It was averred that the Interested Party was being funded in its project by the Ministry of Fisheries under the Economic Stimulus programme hence the Interested Party was required to submit a current search but to its consternation, the Interested Party found that the *Ex parte* Applicant had placed a Caution against the plot at the Kiambu Land Registry and therefore applied to have the caution removed as the same served no purpose. It was contended that it is after the caution hearing that the *Ex parte* Applicant realized that its removal was imminent hence the present application.
12. It was therefore averred that the *Ex parte* Applicant has come to court with unclean hands having engaged in acts of wanton destruction of the Interested Party's project structures instead of coming to court to seek an injunction and preserve status quo, an act which has occasioned the Interested Party economic loss.
13. In the deponent's view, the application is futile as the *Ex parte* Applicant has not filed any suit claiming ownership of the plot in question and if granted, the caution on the plot in question will remain indefinitely and the plot will fall into disuse hence nothing will be achieved by the present orders sought.
14. It was contended that though the *Ex parte* Applicant claimed to have been allotted a different plot, Number 328, Rironi, the same was non-existent having been closed on subdivision into plot Numbers 455-461. He added that the plot that is the subject matter of the review application measures approximately 1.0 acres whereas the plot that the *Ex parte* Applicant was purportedly allocated measured 3.4 acres which was subdivided into seven (7) plots and the one allocated to the interested party, plot Limuru/Rironi/461 is only one of the plots emanating from the subdivision of L.R. Limuru/Rironi/328.
15. It was therefore contended that the Applicant has no reason to maintain the caution and the same should be removed by the Respondent and that the application herein should be dismissed with costs.

Applicant's Rejoinder

16. In a rejoinder, the applicant filed a further affidavit sworn by aforesaid chairman on 21st March, 2014.
17. According to him, the Ex parte Applicant has been in possession of and has utilized the land the subject matter of this cause namely L.R. No. Limuru/Rironi/461 since August 1973 and the fence that has been erected around the suit land was destroyed by the Interested Party's member or agents.
18. According to him, the interested party's letter of application dated 14th April 2011 was in general terms and did not relate to LR No. LIMURU/RIRONI/461; by virtue of the Council of Kiambu's Town Planning, Marketing and Housing Committee Minute No. WTPMH/128/2011 dated the 14th June, 2011 read with the County Council of Kiambu's Full Council Minute No. KCC/10/2011 dated 29th June, 2011 the 2nd respondent purported to allocate part of LR NO. LIMURU/RIRONI/461 to the Interested Party to build a fish pond project and this was act in futility because the ex parte applicant had already been allocated the said LR No. LIMURU/RIRONI/461 and the said parcel of land was not available for alienation to the Interested Party.
19. According him since the letter dated 2nd April, 2012 REF NO. CCK/TC/6/1/2/VOL.TEMP/498 signed by **Joseph K. Kiruthi**, County Clerk required the interested party to procure "**...necessary approvals from relevant government departments particularly the District Physical Planning Officer before embarking on your interested developments**" , the depositions in paragraph 8 of the replying affidavit that the Interested Party commenced fish farming project on 1st February, 2012 was not true and could be true. In his view, the letter dated 4th September 2013 Ref. No. LIM/ADM/15/9/VOL.677 signed by **Michael K. Gachanja**, Assistant County Commissioner, Limuru clearly addressed issues concerning a dispute between the Ex parte Applicant and the Interested Party and the payment of the dues payable to the youths and consequently there was no issue raised in the letter regarding alleged acts of wanton destruction of ponds.
20. It was reiterated that given the delay in the processing of its lease, the Ex parte Applicant caused a caution to be lodged against L.R No. LIMURU/RIRONI/461 on the 28th January 2009 way before the Interested Party mooted its project and perhaps before it even came into existence hence the Ex parte Applicant's decision was prudent because the subsequent actions of the 2nd Respondent and the Interested Party show that had the Ex parte Applicant not acted prudently, the land would have been given and alienated to another person. In his view, the Ex parte Applicant is under no obligation to file any suit against the 2nd Respondent because it is the lawful lessee in possession of LR No. LIMURU/RIRONI/461 and is utilizing it and the obligation to file suit to assert a claim (if any) over the said parcel of land actually lay with the Interested Party.
21. The deponent was of the view that the Replying Affidavit are needlessly argumentative and that the dispute in these proceedings is not related to the PLOT No. 328 RIRONI or PLOT Nos. 455 to 461 but specifically to a caution which had been registered against LR No. LIMURU/RIRONI/461; that the Interested Party had not demonstrated that it is possessed of a right that is superior to that of ex parte Applicant by saying that it has a title; that the Ex parte Applicant was seeking reliefs for orders of Certiorari to quash the decision by the land registry Kiambu from removing the caution, Mandamus to restore the caution and Prohibition to prevent the removal of the caution.

Ex parte Applicant's Submissions

22. It was submitted on behalf of the Applicant that the decision of the District Land Registrar, Kiambu to remove the caution lodged against LR No. Limuru/Rironi/461 is illegal and failed to take into account the fact that the County Council of Kiambu had alienated the land to the ex parte applicant, hence the alienation of the same land to the interested party was illegal.
23. In his oral highlighting, **Mr Amolo** however concentrated on prayer (c) in the Motion since he contended that the caution had not been removed. According to him, being a quasi-judicial Tribunal the Land Registrar in removing the caution ought to follow the law. Since the Registrar had not deposed that the caution had been removed, he contended that the Court ought to prohibit

the removal of the same. In learned counsel's view there was no reason to file suit if the applicant's interests could be preserved by the lodging of the caution.

Respondent's Submissions

24. It was submitted on behalf of the Respondent that since the application raises issues of ownership and possession of the suit land, these are issues which call for viva voce evidence hence cannot be the subject of judicial review proceedings as judicial review proceedings are not efficacious in the circumstances. In support of this submission reliance was placed on **Seventh Day Adventist Church (East Africa) Limited vs. Permanent Secretary, Ministry of Nairobi Metropolitan Development & Another [2014] KLR.**
25. It was further submitted that without annexing the decision sought to be quashed, the order of certiorari cannot issue and in support of this submission, the Respondent relied on **Republic vs. Registrar of Societies & 2 Others ex parte Samuel Maina & 3 Others [2013] KLR.**
26. It was submitted that since the applicant contends that the caution has been lifted and seeks to quash the decision lifting the same, prohibition cannot be issued where what is sought to be prohibited has already taken place and the Respondent relied on **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others Civil Appeal No. 266 of 1996.**
27. It was submitted that since the prayer for certiorari must fail, as the same is intertwined with relief for mandamus, the later cannot be granted without an order for certiorari.
28. According to **Miss Cheruiyot**, learned counsel for the 1st Respondent, the instant application was incompetent for failure to comply with the provisions of Order 53 rule 7(1) which requires the decision sought to be quashed to be exhibited. In her view the application raised issues of ownership since both the applicant and the interested party are claiming ownership of the suit land which is an issue that would require viva voce evidence to determine yet judicial review proceedings are not the most efficacious means of determining the same. In her view the Court, if it were to grant prayer (c) might end up acting in vain if it eventually turns out that the caution had been removed. According to learned counsel, it was upon the applicant to bring before the Court the factual situation since it is not upon the Respondent to prove the case.
29. On behalf of the 2nd Respondent **Mr Gikonyo** while associating himself with the 1st Respondent's position contended that the position was very unclear since it was unknown whether the caution had been removed or not. In his view, based on the facts as adduced by the applicant the order of prohibition cannot issue. In his view the applicant concentrated on the issue of allocation of the plot to itself and the interested party and never complained of the process yet this court cannot deal with the allocation of the plot in question.
30. It was further submitted that the applicant has no right which can be protected and that the issue of the placing and removal of the caution was within the mandate of the Registrar.

Interested Party's Submissions

31. It was submitted that without disclosing the reason for maintaining the caution, the orders sought herein are incapable of being granted as the Court will be acting in vain since to grant the orders sought would be tantamount to granting indefinite injunction. It was submitted that whereas the applicant claims LR No. 328, the orders sought herein are in respect of LR No. 461 which is one of the parcels which emanated from the subdivision of LR No. 328. It was submitted that the applicant has not shown the interest he has in LR No. 461.
32. According to the interested party the actions of the applicant before coming to court of carrying out acts of wanton destruction on the suit land amount to coming to Court with unclean hands.
33. **Mr Njoroge**, learned counsel for the interested party submitted that no issue was raised with respect to the process of removal of the caution under section 53. In his view, it is not for the Court to direct the Land Registrar on how to remove the title and in attempting to do so the Court would be making orders in vain. According to him, there is no evidence to show that the Registrar is in the process of removing the caution so that the Court cannot prohibit gut feelings in the applicant. From the evidence, it was submitted that there is nothing to support the allegations made in respect of plot 461 hence the order maintaining the caution will not serve any purpose as the applicant is seeking orders of ownership through the back door.

Determinations

34. The parameters of judicial review were set out by the Court of Appeal in **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others** (supra) as follows:

“Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision.....Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings.....The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way.....These principles mean that an order of *mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done.....Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”

35. In **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001** was held:

“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision.”

36. In **Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Limited [2008] eKLR** it was

held that the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of Judicial Review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matter in question. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing abuse of power, be itself, guilty of usurpation of power. See *Halsbury's Laws of England 4th Edition Vol (1)(1) Para 60*.

37. It must be remembered that judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See *R vs. Secretary of State for Education and Science ex parte Avon County Council* (1991) 1 All ER 282, at P. 285.
38. In this case, it is not contended that the Land Registrar has no jurisdiction to remove the caution. Section 73 of the Land Registration Act, No. 3 of 2013 clearly gives the Land Registrar powers to remove a caution after notifying the cautioner. In this case it is not contended by the applicant that the intended removal of the caution was being undertaken without it being afforded an opportunity of being heard. What is contended is that the applicant had a right to have the caution in place since it was the first allottee of the suit parcel. For this Court to find that the Registrar, in the circumstances of the evidence adduced by the applicant ought not to have removed or ought not to remove the caution would amount to this court substituting its discretion for that of the Registrar and that it has been held render this Court guilty of usurpation of power.
39. In my view a caution *per se* does not confer interest in land but simply preserves alleged or perceived interest therein. Whereas the applicant case that having been allotted the suit land, the same was no longer available for allocation to another person may well be correct, that is not an issue which this Court in this proceedings embark on as the same would entail a full-fledged hearing for a determination of the process by which each claimant to the suit land obtained its interest therein. As was held in in **Sanghani Investment Limited vs. Officer in Charge Nairobi Remand and Allocation Prison [2007] 1 EA 354:**

“Section 8 of the Law Reform Act specifically sets out the orders that the High Court can issue in judicial review proceedings and the orders are, mandamus, *certiorari* and prohibition. A declaration does not fall under the purview of judicial review for the simple reason that the court would require *viva voce evidence* to be adduced for the determination of the case on the merits before declaring who that owner of the land is. Judicial review on the other hand is only concerned with the reviewing of the decision making process and the evidence is found in the affidavits filed in support of the application.....Whereas it is true that the underlying dispute herein is ownership of the land, Judicial Review proceedings is not a forum where such a dispute can be adjudicated and determined as there would be a need for *viva voce* evidence to be adduced on how the land was acquired and came to be registered in the names of the applicant; whether the title is genuine or not. In cases where the subject matter or the question to be determined involves ownership of land, and the rights to occupy land namely occupation, and disposition, there would be need to allow *viva voce evidence* and cross-examination of the witnesses which is not available in judicial review proceedings. Even if the respondents had filed documents, they would be copies that would not be sufficient to establish authenticity of the title. The original documents would need to be produced at a full hearing where oral evidence would be adduced.....It may indeed be true that the notice that is impugned is irregular or unlawful and an order of *certiorari* would be deserved, but it is not in every case that the court will grant an order of judicial review even though it is deserved. Judicial review being discretionary remedy will only issue if it will serve some purpose. *Certiorari* is a discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The discretion of the Court being a judicial one must be exercised on the basis of evidence and sound legal principles.....So that in this case, even though this application were

properly before this Court and the application had merit, the court may not have granted an order of *certiorari* because it would not be the most efficacious remedy in the circumstances. Even if the notice under challenge is quashed, the issue over the ownership of the land still stands and it will require determination by way of filing pleadings and *viva voce* evidence at another forum preferably the Civil Courts.”

40. See also **Commissioner of Lands vs. Hotel Kunste Ltd Civil Appeal No. 234 of 1995.**

41. In judicial review, it is upon the applicant to provide sufficient evidence in support of the particular relief he seeks and to show that the said relief is efficacious. I am cognisant of the position stated in *Halsbury's Laws of England 4th Edition Vol. II page 805 paragraph 1508*, that the Court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining and the discretion of the court being a judicial one must be exercised on the evidence of sound legal principles. Being discretionary in nature, judicial review remedies are not guaranteed and hence a court may refuse to grant them even where the requisite grounds exist. The Court has to weigh one thing against another and see whether or not the remedy is the most efficacious in the circumstances obtaining and since the discretion of the court is a judicial one, it must be exercised on the evidence of sound legal principles. The court does not issue orders in vain even where it has jurisdiction to issue the prayed orders. The Court can therefore withhold the gravity of the order where among other reasons there has been delay and where a public body has done all that it can be expected to do to fulfil its duty or where the remedy is not necessary or where its path is strewn with blockage or where it would cause administrative chaos and public inconvenience or where the object for which application is made has already been realised. See **Anthony John Dickson & Others vs. Municipal Council of Mombasa Mombasa HCMA No. 96 of 2000.**

42. It is therefore incumbent upon the supplicant for judicial review relief to convince the Court that circumstances which would militate against the grant of the reliefs sought do not exist in the particular case. In a case where a party seeks an order of prohibition it is therefore incumbent upon the applicant to satisfy the Court that the event which is sought to be prohibited has not taken place in order not to place the Court in an embarrassing situation of granting orders in vain. In this case, it was upon the applicant to adduce satisfactory evidence showing that the subject caution had not been removed. However it is clear from the nature of the orders sought that the applicant was not certain of this position. In fact it was contended on its behalf that the fact that the Respondent and interested parties have not sworn an affidavit is a clear manifestation of the fact that the caution was still in place. With due respect that was not a factual situation but a deduction not based on evidence. The applicant ought to have exhibited a search indicating that the caution was still in place more so in light of the conflicting evidence as to the status of the suit land.

43. Having considered the application herein I am not satisfied that the applicant has brought itself within the purview of judicial review jurisdiction. I am further of the view that the applicant has not met the threshold for the grant of reliefs in the nature of judicial review. Apart from that the facts evidence adduced before me are insufficient to merit the grant of the orders sought taking into account the uncertainty of the status of the subject caution.

Order

44. It follows that the Notice of Motion dated 13th November, 2013 lacks merit and the same is dismissed with costs to the Respondents and interested party.

Dated at Nairobi this day 13th day of November, 2014

G V ODUNGA

JUDGE

Delivered in the absence of the counsel for the parties.

Cc Patricia