

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MISCELLANEOUS APPLICATION NO. E004 OF 2023

BETWEEN
LAWRENCE BOSIRE MIRUKA.....
.....PETITIONER

VERSUS
KENYA REVENUE AUTHORITY.....
....RESPONDENT

RULING

Introduction

1. By a Notice of Motion Application dated 23rd February 2023, the Petitioner seeks orders that:

- i. Spent.***
- ii. Pending the inter-partes hearing and determination of this Application and/or the whistleblower protection orders herein the Hon. Court be pleased to issue an order of prohibition, barring the 1st, 2nd, 3rd and 5th Respondents, whether by themselves, or any of their representatives or any person claiming to act under their authority from proceeding to or file any defence or respond verbally on grounds they failed to respond to the same on 14th February 2023, in any way whatsoever, nonetheless the Court to grant the orders of adoption, broadcast, announce or relay to whichever media or portal the***

achievements of the uncontested Civil Appeal No.E005 of 2020 such as the introduction of KESRA to school syllabus based on Forensic and investigative Accounting topics which the Applicant raised the same concerns until KRA woke up from the deep sleep, the new mapping technology as opposed to the use of power meters and water bills which are easily manipulated to nab all wealthy individuals generally landlords, estate property owners, estate agents and high net worth individuals into tax bracket until the Appellant herein access his justice of awards and compensations.

iii. Consequent to the grant of the prayers above the Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders and/or favor the cause of justice.

iv. The costs of this Application be provided for.

Petitioner's Case

2. The Application is sustained by the Petitioner's supporting affidavit, of even date and the grounds on the face of the Application.
3. The Petitioner depones that he has had to endure intimidation and threats from wealthy individuals who have made it their mission to ensure that this matter is not disposed of and that he is traced and killed.
4. He postulates that this is since he allegedly exposed some judicial officers' incompetence, corruption and gross

misconduct hence the tactics that have been employed to delay his matter. He informs that the alleged wrongdoings revolve around economic crime- tax evasion and tax havens, illegal eviction and delay of expediting this matter over 8 years.

5. For context, the matter he refers to is **Petition No. 538 of 2016**. He informs that he was not able to raise the issues herein previously when the matter was heard uncontested on 9th May 2018. He alleges that the Court on this day reserved the matter for further hearing which was not requested for by any party.
6. He asserts that when the Court failed to issue a default Judgment in the matter, the Judicial Service Commission on 10th June 2019 advised him to approach the Court of Appeal wherein he was directed to file his pleadings.
7. He asserts that this matter is extremely urgent as the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents have jointly gone ahead to apply his facts, to map out all landlords, estate property owners, estate agents, high net worth individuals despite the fact that this matter has not yet determined by the Court of Appeal.
8. He contends that the law as regards the consequences of the tax evasion, tax havens and money laundering need to be clarified and enforced by this Court. Likewise, a final

verdict be entered of the whistleblower protection order and awards order, so as to allow bodies such as the EACC, Whistleblower Integrity Commission, the Witness Protection Agency, the CAJ, Judiciary Ombudsman, the Asset Recovery, the ODPP, the DCI, the Parliamentary Budget and Appropriations Committee, the Executive-Treasury, Controller of Budget, the Auditor General, the Hon. Attorney General, the IMF-Kenya, the Central Bank of Kenya, the World Bank-Kenya, the National Whistle Blower Centre-Washington D.C, the ICJ-Kenya and Geneva, the UNOMS-Washington D.C, the UN, the Senate Congress, the ICJ, the ICC, can protect his life.

9. He accuses the 5th and 6th Respondents for losing their autonomy to external partisan interests in collusion with the 1st, 2nd and 3rd Respondents and wealthy individuals. He alleges that this action has caused public funds to the tune of over Ksh.7. 8 trillion yearly to be lost through tax evasion, tax havens, money laundering, bribes and corruption.
10. He as well claims that the Office of the Director of Public Prosecutions (ODPP) is in violation of the Constitution and citizens' rights have continually failed to assist informants who expose economic crimes and seek protection orders, so as not to be killed by the hired assassins contracted to silence them.

11. In view of the foregoing, he stresses that this Court has the unfettered powers and jurisdiction to stop the blatant disregard of the rule of law by the ODPP and the State.

Respondents' Case

12. It is worthy to mention that the Petitioner refers to 6 Respondents however the one named in the instant Application is the Kenya Revenue Authority.

Respondent's response

13. The Respondent filed its Replying Affidavit through its officer, Mohammed M'Maka sworn on 5th May 2023.
14. On the onset, he claims that the matter is res judicata as the issues raised by the Petitioner and equally admitted, were the subject matter in **Constitutional Petition No. 538 of 2016**. He underscores that this Court cannot sit on appeal in this matter.
15. Equally, he depones that the matter is the subject of a live suit before the Court of Appeal in **Civil Appeal No. E005 of 2020**. Further to this, he accuses the Petitioner of material disclosure as failed to inform the Court that the instant subject matter is pending before the Supreme Court in **SCAPP No. E013 OF 2023**, wherein the Respondent is also cited as a Respondent. He contends therefore that this Court

cannot determine matters pending before the superior Courts.

16. That said, he argues that no Petition has been served on the Respondent upon which the Application herein can be anchored upon.

17. Furthermore, he depones that the Respondent on 1st November 2022 held a meeting with the Petitioner and soon after shared the communication. He informs that it was established that:

- i. There was no yield of any rental income emanating from Nairobi Constitutional Petition No. 538 of 2016, the same having been dismissed before full hearing and determination and now the subject matter of the aforesaid Nairobi Civil Appeal No. E005 of 2020 that is pending hearing and determination.*
- ii. In view of that, Section 5A of the Keya Revenue Authority Act which provides for reward of any person for information leading to the identification or recovery of unassessed taxes or duties did not come into play as no recovery of taxes was made.*
- iii. They are not aware of any resultant threats to the Petitioner's personal safety, intimidation, discrimination defamation, high indebtedness, financial constraints and Criminal proceedings warranting witness protection which in any event is beyond the Respondent's statutory mandate, and ought to be taken up by the relevant agencies as per the Respondent's advice in the aforesaid communication.*

18. In sum, he argues that the Application is unmerited and liable for dismissal with costs in addition to the Petitioner being declared a vexatious litigant.

Petitioner's Submissions

19. The Petitioner filed submissions dated 10th April 2025 and 30th July 2025. To commence with, the Petitioner submitted that he filed this suit inter alia owing to the illegal eviction that occurred in Riruta near Kawangware. He asserted that the Respondents in **Petition 538 of 2016** lacked an Eviction Notice before they could evict him. The Petitioner argued that this was contrary to case of **Mitu-Bell Welfare Society v Attorney General & 2 others [2013] KEHC 6337 (KLR)**, which concerned the forced eviction and demolition of homes in Mitumba village and Supreme Court set a precedent for carrying out of forced evictions in Kenya.
20. Secondly, the Petitioner submitted that the Application also concerns economic crimes such as tax evasion. He proclaimed that this is with reference to the illegal, intentional non-payment or underpayment of taxes through collusion amongst the cited individuals. The Petitioner submitted that he joined the Respondent in this suit since it is mandated to assess, collect and account for all revenues in accordance with the written laws.

21. The Petitioner submitted that after the matter in **Petition 538 of 2016** went uncontested, he traversed the Country doing research on landlords. He discovered through the questionnaires that most landlords were not paying taxes.
22. He informed that he issued this report to the Directorate of Criminal Investigation, the Office of the Director of Public Prosecutions, the Office of the Attorney General and the Office of the Judiciary Ombudsman. Furthermore, he lodged the report as his Intellectual Property at the Respondent's Legal Department on 13th February 2020 for it to be investigated by its Intelligence and Strategic Operations, the Commission and Information Center (CIC) as well as the Investigation Department.
23. According to the Petitioner, the report dubbed Whistleblower Information Initiative disclosed that if the Respondent had implemented his data mining process as geo-mapping system then it would have collected Ksh.650 billion lost to tax evasion and tax havens fraud termed as money laundering and corruption carried out by the landlords, estate property owners and estate agents across the country. He asserted that owing to his information the Respondent dispatched its officers across Nairobi County on 19th October 2022 whereby it managed to get around 66,000 landlords.

24. Further from this, on the issue of his uncommissioned and unsigned affidavit, the Petitioner submitted that he is a poor layman who is unable to afford an advocate's services. He underscored moreover that he brought this case under Article 22(1) and 258(1) of the Constitution.
25. Acknowledging the matter before the Court of Appeal, the Petitioner submitted however that he filed this matter because in the context of filing Court documents whereby he has suffered damages due to the infringement and misuse of his intellectual property by the Respondents as well as the threats he has received due to his Whistleblower Information Initiative, so as to receive compensation for the resulting harm. He as such urges the Court to consider the weighty and complex nature of this matter and allow this Application.
26. The Petitioner moreover enlightened that he filed the Supreme Court matter since the Respondent refused to file any response to the Court of Appeal matter and caused long delays.
27. The Petitioner further submitted that the Respondent contrary to its allegations engaged him once through Mohammed Mmaki. He alleged that the Respondent in the purported meeting threatened him and urged that he discontinues the matters in Court, which he declined. He added that the Respondent further questioned him on his intellectual property Whistleblower Information Initiative on

whether it is his. He submitted that he affirmed it was his intellectual property under KIPI Certificate Number KE/U/2024/2823 as well as KECOBO Certificate Number RZ68264.

28. He noted that there was no yield of any rental income emanating from **Petition No. 538 of 2016**, the same having been dismissed before a full hearing and determination and now the subject of the aforesaid **Nairobi Civil Appeal No. E005 of 2020** that is pending hearing and determination.
29. Consequently, the Petitioner urged the Court to find that the Respondent had misused his Whistleblower Information Initiative as his Intellectual Property for damages, compensation and costs amounting Kshs.65 billion plus Annual Loyalties. Moreover, that Mohammed Mmaki used his whistleblower compensations resolution to create the Respondent's own system, in violation of the orders issued by the Commission on Administrative Justice.
30. He as such urged that the Court find that he is an inventor and also whistleblower of deserving damages, compensations and costs amounting Kshs.65 billion for the infringement or misuse of his Whistleblower Information Initiative as his Intellectual Property by the Respondent.

31. On whether the matter is res judicata and sub judice, the Petitioner contended that the matter was uncontested hence his appeal before the Court of Appeal. He emphasized that the instant Application is for review not appeal of the decision as claimed by the Respondent. He further informed that the Industrial Property Tribunal in its Ruling in relation to **Cause No. E001 of 2025** dated 7th July 2025 did not dismiss the Application as alleged but acknowledged that he sought orders for compensation which reliefs are not within its jurisdiction.

Respondent's Submissions

32. The Respondent through Johnson S. Luyiakha filed submissions dated 30th July 2025 and highlighted the issues for discussion as: *whether or not the subject matter is res judicata and sub judice* and *whether or not the Application is merited*.

33. Counsel submitted that the Petitioner averred that the Application originates from **Constitutional Petition No. 538 of 2016**. Equally, Counsel submitted that the matter is subject of proceedings before the Supreme Court and the Court of Appeal. Further to this, Counsel averred that the Petitioner soon after, filed the same dispute in Industrial Property Tribunal at Nairobi, **Cause No. E001 of 2025**, which was dismissed.

34. Counsel in light of this argued that the matter is indeed res judicata and sub- judice as the subject matter was dealt with and now pending before the Superior Court.
35. In the second issue, Counsel argued that the Application is not merited as the Petitioner has not demonstrated that he has an arguable case against the Respondent. Equally, Counsel argued that the Application is not anchored on any Petition and further the supporting affidavit is not commissioned and signed, rendering the Application unsubstantiated. Consequently, Counsel argued that the Application is frivolous, vexatious and wholly unmerited.

Analysis and Determination

36. It is my considered view that the issues that arise for determination are:
- i. Whether the Petition offends the doctrine of res judicata and sub judice.***
 - ii. Whether the Application is merited.***

Whether the Petition offends the doctrine of res judicata and sub judice.

37. This doctrine is provided for under Section 7 of the Civil Procedure Act, CAP 21 as follows:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and

substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

38. The Supreme Court in **Kenya Commercial Bank Limited & another v Muiri Cofee Estate Limited & 3 others [2016] KESC 6 (KLR)** regarding this doctrine held as follows:

"[52] Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights..."

39. Likewise, the Supreme Court in **John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR) (Civ)** opined as follows:

"54. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it

ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.

It emerges that, contrary to the respondent's argument that this principle is not to stand as a technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of Article 159 of the Constitution, intended to override technicalities of procedure. Res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept.

The learned authors of Mulla, Code of Civil Procedure, 18th Ed 2012 have observed that the principle of res judicata, as a judicial device on the finality of court decisions, is subject only to the special scenarios of fraud, mistake or lack of jurisdiction (p 293):

The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision."

40. The Court went on to observe that:

"59. For res judicata to be invoked in a civil matter the following elements must be demonstrated:

- 1. There is a former Judgment or order, which was final;**
- 2. The Judgment or order was on merit;**
- 3. The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and**
- 4. There must be between the first and the second action identical parties, subject matter and cause of action.”**

41. The principle of sub judice is defined under Section 6 of the Civil Procedure Act as follows:

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

42. The Supreme Court of Kenya in **Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] KESC 54 (KLR)** guided as follows:

“[67] The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with

competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

43. Similarly, the Court in **Kenya Bankers Association v Kenya Revenue Authority [2019] KEHC 12178 (KLR)** observed as follows:

“30. The basic purpose and the underlying object of Section 6 is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to prevent multiplicity of proceedings.

31. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue." Therefore, Section 6 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the

whole of the subject- matter in both the proceedings is identical.

- 32. The question which follows is whether the matters in issue in this case are also directly and substantially in issue in previously instituted suits. The key words in Section 6 are "the matter in issue is directly and substantially in issue in the previously instituted suit." The test for applicability of Section 6 is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. However, when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.**
- 33. For section 6 to come into play, the matter in issue in both the suit has to be directly and substantially in issue in the previous. The court may in proper cases invoke its inherent jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of its process. This may be done where the tests of sub judice apply. As was held by the High Court of Uganda in Nyanza Garage vs. Attorney General:-**

"In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter is to be avoided. It is in the interest of the parties because the parties are kept at a minimum both in terms of time and money spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters, and creating and or adding to the

backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits.”

34. For the doctrine of sub judice to apply the following principles ought to be present:- (a) There must exist two or more suits filed consecutively; (b) The matter in issue in the suits or proceedings must be directly and substantially the same, the parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title, the suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

44. A perusal of the pleadings and submissions by the parties reveals that the genesis of this suit revolves around the Petitioner’s allegation that his life is under threat owing to his exposure of the economic crime - tax evasion and tax havens, illegal eviction perpetrated by wealthy individuals in Kenya. The Petitioner in making this case discloses that the Application raises issues which were not included in **Petition No. 538 of 2016** and further seeks a conclusive determination of the issues raised therein as were not determined. In the same breath, the Petitioner averred that aggrieved by the failure of this Court to issue a default Judgment therein he filed an appeal. On the other hand, the Respondent argued that the Application is res judicata and sub judice as the matters are the subject of concluded and ongoing proceedings.

45. To begin with, it is undisputed that jurisdiction is the anchor of a Court's exercise of judicial authority. The Supreme Court addressing its mind on this issue in **Macharia & another v Kenya Commercial Bank Ltd & 2 others [2012] KESC 8 (KLR)** guided as follows:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

46. It is discernible that the matter before this Court seeks to address issues raised in **Petition No. 538 of 2016** now before the Court of Appeal as admitted by the Petitioner.

With reference to res judicata, although the Respondent referred to the cited suit it did not substantiate the claim by producing the attendant Judgment that conclusively dealt with the issues raised therein. This is more so since the Petitioner maintained that the matter was not determined conclusively. In my humble view, therefore the Respondent did not prove this claim. Furthermore, it is also palpable that even where the doctrine of res judicata had not been raised, this Court still lacks the requisite jurisdiction to proceed since it cannot sit on appeal in its own matter as covertly sought by the Petitioner.

47. What is inescapable however is that the matter in **Petition No.538 of 2016** was appealed and pending before the Court of Appeal. This undeniably invokes the doctrine of sub judice as voiced by the Respondent. It is my take therefore that this matter being subject of an active appeal, this Court lacks jurisdiction to entertain the Application. Consequently, the inescapable conclusion is that this Court is divested of any authority to entertain the matter.

Whether the prayers in this Application are merited

48. The Petitioner in his prayers in the Application seeks in a nutshell, whistle blower protection orders, a bar to the Respondents filing a defence, an adoption and public

announcement of the cited achievements of the uncontested **Civil Appeal No. E005 of 2020** and compensation.

49. Evidently, issuance of the second prayer would be in contravention of the right to fair trial which is non-derogable under 25 (c) and Article 50(1) of the Constitution. It is trite law that the right to be heard is a cardinal principle of natural justice captured in the maxim *audi alteram partem* which affirms that no person shall be condemned unheard.
50. Equally, the third prayer is misconceived as Court is mandated to carry out its function in accordance with the Constitution and the law. The judgments of the Court are published in Kenya law and there is open access to the media to publish court proceedings and judgement which court considers to sufficient publication.
51. Correspondingly, the Petitioner in making the case on whistleblower protection orders owing to the alleged threats, is required as established by law to prove these claims. I find guidance in **Otieno v Airtel Kenya Limited [2018] KEHC 9063 (KLR)** where it was held that:

“61. A casual examination of the Petition reveals that it does not disclose a case at all against the Respondent. In particular, no evidence has been presented to demonstrate that the Respondent violated the constitutional and statutory provisions, which protect consumer rights.

62. Section 107 (1) of the Evidence Act 50 provides that "whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist." Sub-section (2) provides that "when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

63. I have severally stated that all cases are decided on the legal burden of proof being discharged (or not). Lord Brandon once remarked:-

"Judge likes to decide cases on the burden of proof if he can legitimately avoid having to do so. There are cases, however, in which, owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just course to take."

64. Whether one likes it or not, the legal burden of proof is consciously or unconsciously the acid test applied when coming to a decision in any particular case. This fact was succinctly put forth by Rajah JA in *Britestone Pte Ltd vs Smith & Associates Far East Ltd*[2007] 4 SLR (R) 855 at 59

"The court's decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him"

65. It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. Decisions on violation of constitutional rights should not and must not be made in a factual vacuum. To attempt to do so would trivialize the constitution and inevitably result in ill-considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not, a

mere technicality; rather, it is essential to a proper consideration of constitutional issues. Decisions on violation of constitutional rights cannot be based upon the unsupported hypotheses.”

52. In my humble view, the Petitioner did not demonstrate that the unassessed tax was as a direct result of the information he shared with KRA or that the statutory preconditions for the compensation had crystallized. Similarly, the allegations on threats on his life and intimidation were not corroborated by evidence as he did not exhibit any police reports to that effect. The allegations made on whistleblowing were thus not substantiated by evidence.
53. The upshot is that the Application lacks merit and is hereby dismissed. I hereby strike out the entire Miscellaneous Application and order this file closed. I make no orders as to costs.

Dated, signed and delivered virtually at Nairobi this 26th day of February, 2026.

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L N MUGAMBI

JUDGE