REPUBLIC OF KENYA

IN THE HGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENTAL & LAND DIVISION

ELC NO. 1229 OF 2014

REGISATERED TRUSTEES OF JAMIE MASJID

AHL-SUNNAIT-WAL-JAMAIT NAIROBI..... PLAINTIFF

-VERSUS-

NAIROBI CITY COUNTY.....1ST DEFENDANT/RESPONDENT

NATIONAL ENVIORNMENT

MANAGEMENT AUTHORITY.....2ND DEFENDANT/RESPONDENT

NATIONAL MUSEUMS OF KENYA.....3RD DEFENDANT/RESPONDENT

RULING

Introduction

1. The suit herein involves a rather interesting yet startling disptue. It is a dispute over a proposed public utility toilet. It is a quarrel between two neighbors. The 1st Defendant owns LR No. 209/1890 which houses a declared and gazetted historical national monument under the Antiquities and Monuments Act (Cap 215). It is the Macmillan Library situate in the middle of the city's Central Business District. The Plaintiff is the 1st Defendant's neighbor. The 1st Defendant wants to erect a public toilet on its plot. The Plaintiff will hear or see none of that.

Background facts

2. The facts which are largely not in dispute can be stated as follows. The Plaintiff and the 1st Defendant are neighbors. The Plaintiff, a corporate entity, runs and maintains a mosque known as the Jamia Mosque. The mosque is on its property. It is common knowledge it is frequented daily by thousands of the City's residents. Within the precincts of the mosque the Plaintiff also has its administrative offices. Whilst some of the thousands of faithfuls spend minutes or a couple of hours daily within the Plaintiff's precincts during the stipulated prayers, the Plaintiff's officers spend hours on end daily managing maintaining, carrying or keeping a proper upkeep of the Plaintiff's premises and visitors.

3. The 1st Defendant on the other hand runs a public library on its property in a building built by and named after Lady McMillan in the 1920's. Lady McMillan was wife to one of the first white settlers in Kenya. The library was established in the building in 1951 and is known as the McMillan Memorial Library. The 1st Defendant took over the management of the library in 1962 and has been running it since. No doubt it welcomes hundreds of visitors daily notwithstanding the rather limited library reading area. Sometime in 2014, the 1st Defendant apparently noted the inconvenience the library users underwent and decided to act. There was no provision for washrooms within the precincts of the library. The 1st Defendant sought permission to construct such washrooms, and having obtained the same proceeded to secure the site. The secured site lay between the Plaintiff's property and the imposing McMillan Memorial Library building.

4. The Plaintiff upon sighting the 1st Defendants actions promptly objected. The Plaintiff wrote to the 1st Defendant through the Governor of the County Government of Nairobi on 9th September, 2014 stating that "*the toilets were not located in the right location and will be a nuisance not just to the many worshipers who pray at Jamia Mosque but also the surrounding citizenry"*. The Plaintiff also expressed its displeasure about the dwindling open spaces, gardens and parks that the city still so vitally needs to maintain its beauty. The letter of objection was also directed to the 2nd and 3rd Defendants.

5. Thereafter controversy emerged. The 1st Defendant was still determined to continue with the ablution project. The Plaintiff determined to stop it, moved the court and sought a negative injunction to restrain the 1st Defendant its agents servants, employees, contractors and howsoever acting on their behalf from constructing ablution and or washroom facilities at the compound of McMillan Memorial Library Nairobi. The Plaintiff also sought a positive injunction directed at the 1st Defendant to restore [the suit property] to its original state prior to the construction of ablution facilities.

The Plaintiff's case

6. The Plaintiff's case is pegged on the grounds stated on the face of the application dated 16th September, 2014. The application also had its base on the supporting affidavit of Ibrahim Ahmed Yusuf.

7. Stripped to detail, the Plaintiff's grounds are to the effect that the intended construction is not in compliance with the provisions of the Environmental Management and Coordination Act. The Plaintiff holds the view that the Plaintiff and its members, read faithfuls, are also entitled to a healthy environment and the ablution project by the 1st Defendant will generate effluent and possible air pollution and that being so there was need for an Environmental Impact Assessment and license to be obtained prior to the project being undertaken. Pleading that the suit has been filed in public interest, the Plaintiff also holds the view that the public input, inclusive of the Plaintiff's input, was necessary prior to the approval of the ablution project and its commencement. For these reasons the Plaintiff has prayed that the ablution project be halted until it is law and environmental complaint.

The 1st Defendant's Case

8. The 1st Defendant states in reply that the project was necessitated by a public demand as there was no public washroom within the precincts of the library for public use. The 1st Defendant further states that it is exercising a statutory right over its property and that it is not in breach of any law as the project does not require an Environmental Impact Assessment. The 1st Defendant also quips that the Plaintiff lacks the necessary locus standi to sue the Defendants herein. Finally the 1st Defendant holds the view that the Plaintiff has not established any prima facie case capable of success and further that it is unlikely that the Plaintiff will suffer any loss incapable of remedy

through damages.

The 2nd Defendant's case

9. The application of 16th September, 2014 did not fetch any orders against the 2nd Defendant. Perhaps, it is only with the consideration that the 2nd Defendant is an innominate party who was neither useful nor useless to the Plaintiff's case that the 2nd Defendant was joined to these proceedings. The Plaintiff has raised issues touching on the Environment and as the lead national regulator the 2nd Defendant would certainly be a necessary party, though not necessarily a proper party, to these proceedings.

10. The 2nd defendant openly supports the ablution project. The 2nd Defendant has made it clear that the Environmental Impact Assessment (EIA) Report was not necessary in this case as inter alia, the purpose of an EIA *"is not and cannot be to deter development and especially those that are purely for public benefit [and] EIA must be based on the principle of sustainable development"*. On the apparent environmental impact the ablution project was likely to have the 2nd Defendant had little to say. Having also identified the same as smell (air pollution) and effluent discharge, the 2nd Defendant stated as follows at paragraphs 8 and 9 of the 2nd Defendant's Replying Affidavit:

> *"8. The area on which the Public toilet is being constructed is within the Central Business District which is a sewered area. The issue of effluent discharge therefore does not arise.*
>
> *9. The issue of smell or air pollution is not a concrete issue as the same only arises operationally and due to mismanagement or negligence. Moreover, the national government is yet to promulgate standards or regulations on air pollution."*

11. The 2nd Defendant then defended the project terming it as 'not illegal' and faulted the Plaintiff for not mentioning any single Section of the Environmental Management & Coordination Act (Cap 383) violated by any party.

The 3rd Defendant's Case

12. The 3rd Defendant basically gave a green card to the ablution project. Having interrogated the intended project, the 3rd Defendant as the custodian of national historical monuments finally gave its seal of approval to the intended ablution project on 1st September, 2014 as the same would *"not impact negatively on the gazetted heritage building"*.

Issues for Determination

13. The issues for determination at this interlocutory stage are basic. Has the Plaintiff established a prima facie case with a probability of success? If an injunction is not granted, notwithstanding a prima facie case being established, will the Plaintiff suffer irreparably? Is the court in doubt? If so, then in whose favour does the balance of convenience tilt? Are there special circumstances as to warrant the court to without delay grant an interlocutory mandatory injunction as sought by the Plaintiff? These issues arise from the various principles set out by case law where a court is dealing with interlocutory mandatory and prohibitory injunctions. The cases of **Giella -v- Cassman Brown & Co. Ltd [1973] E.A 358, American Cyanamid Ltd –v- Ethicon [1975] AC 396, Ibrahim –v- Sheik Bros Investments Ltd [1973] EA 118, Mrao Ltd –v- First American Bank Ltd & 2 others [2002] LLR 3801, Bonde –v- Steyn [2013]2 EA 8, The Despina Pontikos [1975] EA 38** and **Locabail Intern Finance –v- Agro Export & others [1986]1 All ER 901** are all instructive, to mention but a few. It must also be remembered that granting of an interlocutory injunction is a discretionary matter and in the exercise of such jurisdiction the court must take into account all the circumstances of the case including the conduct of the parties prior to and after commencement of the suit.

14. Even though it has previously been stated that the decision of the English House of Lords in **American Cyanamid Ltd. –v- Ethicon [1975]AC 396** did not alter the local principles for granting an interlocutory injunction: see **Mustafa JA** in **Abel Salim –v- Okongo [1976] KLR 42**, I still find **American Cyanamid** (ibid) extremely good law especially when Lord Diplock states at pages 406 and 408 that:

> *"The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at trial.... if damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the Plaintiff's claim appeared to be at that stage".*

One must also not forget the very strong words of Odunga J. in **Bonde –v- Steyn [2013] 2EA 8** where he made it clear that the principles out set in **Giella –v- Cassman Brown Co. Ltd [1973] EA 358** were not conclusive. In fewer words, the court should not be beholden to **Giella –v- Cassman Brown Co. Ltd** (*ibid*). I would not want to expound further on this point save to point out that a court of equity must always keep in mind the fact that if a party can be adequately compensated in damages then there ought to be no rush in granting an injunction even if a prima facie case is established.

Determination - Locus Standi

15. With the case background also in mind, I move now to determine, the issues.

16. First though the 1st Defendant has raised an issue of *locus standi*. It would be important to consider this issue first as if the 1st Defendant's contention succeeds then the Plaintiff's application must fail. The law has for time immemorial held that for a party's case to stand there must be shown a sufficient connection by the party to and harm from the law or action challenged. That is what locus standi is all about and one need not cite any authority in support. It is the right to bring an action or to be heard in a given forum: see **Black's Law Dictionary, 9th Edition, page 1026.**

17. Both the 1st Defendant as well as the 2nd Defendant contend that the Plaintiff had no standing to commence and maintain the action. The 1st Defendant has placed reliance on the case of **Maathai –v- Kenya Times Media Trust Ltd [1989] eKLR** to support that contention. The Defendants further submitted that even though the Plaintiff has alleged breaches of the law, the Plaintiff has not alleged any right to bring an action in respect of the alleged breaches. Finally the 1st Defendant submits that it has not been alleged that the Defendants are in breach of any rights, public or private, in relation to the Plaintiff. No damage too is alleged to have been caused and neither is any anticipated.

18. The Plaintiff submits that it has the necessary standing pursuant to Articles 42 and 70 of the Constitution. The Plaintiff also places reliance on Section 3(1) of the Environmental Coordination and Management Act (EMCA) 1999 as well as the case of **Joseph Leboo & 2 others –v- Director Kenya Forest Services [2013]eKLR**.

19. First, I will point out that as far as the issue of locus standi was and is concerned, **Maathai –v- Kenya Times Media Trust Ltd [1989]eKLR** was and is bad law. Putting aside the circumstances under which that decision was made, it is pretty clear that it was decided prior to not only the promulgation of the Constitution 2010 but also prior to the legislation of the EMCA, 1999. The **Maathai** decision was indeed decided when the majority of court decisions held the view that it was the duty, solely of the Attorney General to sue on behalf of the public for purpose of preventing public wrongs and a private individual could only do so where he was able to show that he would sustain injury as a result of a public wrong and in any event the private individual still

had to obtain the consent of the Attorney General; See **Kariuki –v- County Council fo Kiambu and another [1995- 1998] 1EA 90** and **Gourriet –v- H. M. Attorney General & Union of Post Office Engineering Unions [1977]1 All ER 696**.

20. The Constitution 2010 as well as the EMCA 1999 both however introduced the concept of the "aggrieved person". A liberal reading of Article 70 of the Constitution as well as Section 3 of the EMCA, 1999 reveals this. Both under the Constitution and the EMCA, 1999 an aggrieved person need not show that the respondent's action or omission has caused or is likely to cause to the aggrieved person any personal loss or injury.

21. In my view, both the Constitution and the EMCA 1999 were spot on as it would have been inconsistent with the purpose of environmental law to require that a person's private interest must necessarily be affected for him to be an aggrieved person. The reason is that environmental law proceeds on the basis that the environment is a legitimate concern for everyone, present and future. Consequently if an individual or organization has a genuine interest in or sufficient knowledge of an environmental issue to qualify him or them to raise issues in public interest they should be regarded as aggrieved persons to bring action for determination on merits.

22. It is apparent that the meaning therefore to be attributed to who an aggrieved person is, may vary from statute to statute or constitutional provisions where the environment is concerned but he certainly is one with a legal grievance. As was stated by Lord Denning in the Privy Council case of **Attorney General of Gambia –v- Njie [1961]AC 617, 634** the words aggrieved person

> *"are of rude import and should not be subjected to a restrictive interpretation. They do not include of course, a mere busy body who is interfering in things which do not concern him: but they do include a person who has a genuine grievance".*

23. As is clear from Lord Denning's statement above a distinction must always be drawn between the mere busy body and the person affected or having a reasonable concern in the matter in which the suit relates. While I would not like to risk a definition of what constitutes standing in the context of public and private law (i.e one affected), I would be happy to state that a busy body is someone who interferes in something with which he has no legitimate concern. That alone should be able to help define conversely who has standing.

24. With the foregoing as well as the proviso to Section 3(3) of the EMCA 1999 which prohibits frivolous, vexatious and abuse of process suits in mind, I would state that the Plaintiff herein is not a busy body. The Plaintiff has legitimate concerns both from a private as well as a public perspective. The Plaintiff's property abuts the suit property. A plan has been approved and a development is set to chance. The Plaintiff has a genuine grievance as a neighbor. What happens in the neighboring tenement may affect it. The Plaintiff is entitled to be before the court for its case to be heard and allowed or dismissed on its merits. The Plaintiff is entitled to have the court ascertain whether due process was followed in granting the green light to the intended project.

25. I consequently decline to hold that the Plaintiff lacks the necessary locus standi.

Prima facie case?

26. The Plaintiff's rather straitjacket case is that land use is being changed as the specific place where the 1st Defendant is erecting a public ablution is not designated for such use. The Plaintiff also contends that the intended project required an Environmental Impact Assessment (EIA) report pursuant to the 2nd Schedule to the EMCA, 1999. In both instances, change of use and EIA report, the Plaintiff states that there has been a transgression of the law. Finally the Plaintiff contends that the project is set to be undertaken on a site not approved by the approving authority. To the Plaintiff documents show that the intended project was not approved for construction on the site where it is now continuing. For all these, the Plaintiff, relying on the case of **Mrao Ltd –v- First American Bank of Kenya Ltd & 2 others [2003] KLR 125**, states that it has established a prima

facie case.

27. The Defendants response is simple. This is an approved private project set to benefit the public including the Plaintiff's membership. The Defendants contend that the intended project was reviewed and would not affect either the environment or the historical monument being the McMillan Memorial Library. The 1st Defendant, like the 2nd Defendant, contends that there is no need for an EIA Report as the intended project does not fall within the 2nd Schedule to the EMCA 1999.

28. I must on the onset, point out that the project is being undertaken by the 1st Defendant. The 1st Defendant also happens to be the one who approves plans for construction and development within the city of Nairobi pursuant to the Physical Planning Act, 1996 (Cap 286).

29. The site location plan and the working details were approved on 5th August, 2014. A copy of the approval is annexed to the Replying affidavit of Metrine Nashemo Wakhungu. I have perused it. There is no indication that this plan as approved was subsequently altered or amended. The site consequently would be expected to be nearer to the Banda close and further from the Plaintiff's property. No doubt in approving the site itself the 1st Defendant must be taken to have taken into consideration various factors including but not limited to such factors as access to main amenities like sewer lines as well as surrounding buildings.

30. The affidavit evidence availed by the Plaintiff however appears to indicate that the site has moved. The question then is: who prompted such movement? The 3rd defendant or the 1st Defendant? Was such a move also based on any informed decision? Would the 3rd defendant itself still be contented that the face of the historical monument would still not be affected adversely given that the 3rd Defendants approval was premised on a specific site? To what extent too would the Physical Planning Act allow such 'unilateral' variation by a developer or contractor? These are relatively pertinent questions both of fact and of law which will have to be determined conclusively at trial.

31. Suffice to point out that in my view projects and plans once approved must be undertaken pursuant to such approvals. Alterations or amendments to approved plans ought to be reviewed again by the approving authority. Where such alteration or amendment is not approved then any development undertaken on the basis of the alteration or amendment would not be having the requisite approval under Section 30 of the Physical Planning Act and it is a prohibited development. It would be a recipe for chaos in physical development planning if developers were allowed to unilaterally alter sites and plans after approval.

32. The Plaintiff has further contended that the intended project required a proper Environmental Impact Assessment. In the Plaintiff's view the nature of the ablution, it being a commercial public one contrasted to a private one, meant that there was going to be a major change in land use. In the absence consequently of an EIA license the project should not be allowed to commence or continue, so submitted the Plaintiff's counsel. The 1st and 2nd Defendants both submit that the project does not fall under the Schedule 2 projects to necessitate an EIA.

33. Firstly, let me point out that I have not heard full argument on this issue from the parties. Secondly, looking at the project as a whole I would not view it as a modification or extension of the McMillan Memorial Library for the use by the library users only. It is a commercial venture from the face of the documents availed. It is going to be independently situate. It is not an annex to the library. Thirdly, I tend to agree with Justice Tuiyott in **Joseph Owino Muchesia –v- National Environment Management Authority & another [2014]eKLR** where the learned judge held that the requirement for an EIA under the EMCA is an element of the principle of sustainable development. That principle is a guiding factor when issues of the environment are raised before this court: see Section 18 of the Environment & Land Court Act as well as Section 3 of the EMCA.

34. Of course the purpose of an EIA is as stated in Section 2 of the EMCA. It is to determine whether or not a programme, activity or project will have any adverse impact on the environment. One would imagine that for a more protective approach to the environment and following on that definitive purpose, all programmes, activities and projects are to be subjected to an environmental impact assessment. That is however not so. The legislature in its wisdom has limited projects for which an EIA is to be undertaken by NEMA before approval and commencement. The EIA projects are outlined under Schedule 2 of the EMCA. The Plaintiff relies on Section 1 of the said Schedule 2 to contend that the EIA was necessary. Section 1 reads as follows:

PROJECTS TO UNDERTAKE ENVIRONMENTAL IMPACT ASSESSMENTS

"1. General: -

a. *An activity out of character with its surrounding.*
b. *Any structure of a scale not in keeping with its surrounding*
c. *Major changes in land use*

The other sections oF the 2nd schedule are more specific and where any of the listed projects are being undertaken the need for an EIA is very obvious. Section 1 is however an omnibus section. Literally, all other projects not specifically listed under Sections 2 to 15 of the second schedule would either fall under Section 1 or would not. The question then is who ought to determine which project falls within the provisions of Section 1 of the 2nd Schedule and what is the criteria?

35. A quick read of Section 58(1) of the EMCA, 1999 appears to suggest that the promoter of the project is the one to determine whether the project falls under the Second Schedule. I would also add the National Environmental Management Authority (NEMA) as the lead regulator.

36. The criteria for determination would be to first ascertain if the project falls and is specified under any of the sections of the second schedule. If it does not then a determination has to be made if it falls within section 1 of the second schedule. In my view this is not a simple task. It is not enough consequently to simply state any project as not falling under the second schedule.

37. The second criteria would be to appreciate and understand that an EIA is intended to help protect the environment. Thirdly, would also be to appreciate and understand that the "EIA process is indeed to be an aid to an efficient and inclusive decision making in special cases, not an obstacle race": see **R. (on an application of Jones) –v- Mans field DC[2004] Env. LR 21** per Carnwath L.J, as he then was. With these considerations any person is unlikely to detract from the ordinary duty to inform itself and take into account all relevant matters before deciding whether or not the project requires an EIA.

38. The relevant matters to be taken into account would certainly include but not limited to the characteristic of the intended development, location of the intended development and characteristics of potential impact. The size of the development as well as cumulation with other neighboring developments also matter. Likewise the probability of any environmental impact, the duration and reversibility of such impact ought to be taken into account. These are some of the matters the developer ought to take into account in screening his project for the necessity of an EIA.

39. There is however no indication, that this was done more so as Section 36 of the Physical Planning Act also enjoined the 1st Defendant to consider if an EIA was necessary. There is no indication that the 1st Defendant considered whether an EIA is necessary.

40. It is therefore, in my view not enough to read through the second schedule to the EMCA and state that the intended project does not fall under the said schedule. Importantly that seems to be the approach adopted by the 1st and 2nd Defendants. There is no indication of the criteria used in

determining whether or not an EIA was necessary. Yet from the 2nd Defendant Replying Affidavit it is evident that there is a probability of an environmental impact when the project is ultimately complete and in use. The 2nd Defendant in these respect states that the environmental impact issue of smell or air pollution is not a concrete issue as the same only arises optionally and due to mismanagement or negligence. This is evident admission that the project once complete and in use may have an environmental impact. It would perhaps serve a lot of purpose if the 2nd Defendant undertook a screening opinion and determined if an EIA was required. In my view, I am not completely satisfied that the project does not fall under section 1 of the second schedule to the EMCA 1999.

41. I have also taken into consideration the fact that it is evident that the site was not and has never been designated for use as a public toilet and the current project may amount to a significant change in the land use. The Plaintiff is in better stead when it states and submits that the intended project is not a private annex to the existing McMillan Memorial Library for use by the library users but that it is for the general public. The approved drawing tends to vindicate the Plaintiff as does the 1st Defendant's deposition that the project will benefit even the Plaintiff's patrons, guests, visitors and worshipers as well.

42. I hold the view that the Plaintiff has generally established a prima facie case in terms of the **Mrao** and **American Cyanamid** cases (supra).

Damages?

43. Would the Plaintiff suffer irreparably if an injunction is not granted? With little hesitation I would answer this question in the positive. The issue raised by the Plaintiff concerns the environment. They concern the Plaintiff in a private and also in a more public capacity. As far as the issue of damages in lieu of an injunction is concerned I would refer to A.L. Smith L.J's passage in the case of **Shelfer –v- City of London Election Lighting Co. [1895]1 CH 287** at page 315 where he said

> *"[A] person by committing a wrongful act (whether it be public company for public purposes or a private individual) is not thereby entitled to ask the court to sanction his doing so by purchasing his neighbors rights, by assessing damages in that behalf, leaving his neighbor with the nuisance, or his lights dimmed as the case may be. In such cases the well-known rule is not to accede to the application, but to grant the injunction sought, for the Plaintiff's legal right has been unveiled and he is prima facie entitled to an injunction"*
>
> *There are, however, cases which this rule may be relaxed, and in which damages may be awarded in substitution ..... in my opinion, it may be stated as a good working rule that – (1) if the injury to the Plaintiff's legal rights is small, (2) and is one which capable of being estimated in money, (3) And is one which is frequently compensated by a small money payment, (4) And the case is one in which it would be oppressive to the defendant to grant an injunction – then damages in substitution for an injunction may be given".*

44. The Plaintiff has, as I already founded established a prima facie case. The Plaintiff would be entitled to an injunction. It does not matter that the public interest is pleaded by the Defendants. The Plaintiff too pleads public interest. Secondly the 1st Defendant is committing an evident wrong in constructing on an apparently wrong site. This should not be allowed to continue in the alleged name of public good. Finally, I do not think it would be oppressive to grant the injunction sought and neither do I hold the view that damages will adequately compensate the Plaintiff.

Balance of convenience?

45. In view of the foregoing it may not be necessary to consider the issue of a balance of convenience. However, it may be pointed out that whilst the Defendant's argue that members of the public are frequently inconvenienced due to lack of ablution facilities in or within McMillan Memorial

Library, it is important to note that since it opened its doors in 1931 the library has, it is freely admitted, never had an ablution block. The population has grown over time and the same population has survived without an ablution block. I view it that such a status quo can be maintained until this case is determined as if the intended project is continued and finalized the Plaintiff may be harmed beyond repair.

Conclusion

46. I would consequently allow 2which I hereby do, the application for injunction as prayed in the application dated 16th September, 2014 per prayer number 3 thereof. For the avoidance of doubt the injunction to issue will restrain both the construction as well as user of any ablution and/or washroom facilities at the compound of McMillan Memorial Library Nairobi otherwise known as LR No. 209/1890 Banda Street.

47. I decline however to grant any mandatory injunction as sought in prayer 4 of the application at this stage as I am not satisfied that the case as established by the Plaintiff at this interlocutory stage is so special as to warrant a positive injunction. The probative value of the affidavit evidence will have to be ultimately tested at trial before formal mandatory injunctive orders are issued.

48. The application has largely succeeded. The Plaintiff would be entitled to the costs. I award the costs to the Plaintiff against the 1st Defendant. I also hasten to add that I am grateful to counsel Mr. Ali for the Plaintiff and Mr. Kamwendia for the 3rd Defendant for their incisive submissions in this matter.

49. Orders accordingly.

Dated, signed and delivered at Nairobi this 19th day of January, 2015.

J. L. ONGUTO

JUDGE

In the presence of:-

..... for the Plaintiff/Applicant

..... for the 1st Defendant/Respondent

..... for the 2nd Defendant/Respondent

..... for the 3rd Defendant/Respondent