Kenya National Highways Authority v Broadways Enterprises Ltd & 3 others (Civil Appeal 27 of 2018) [2024] KECA 515 (KLR) (26 April 2024) (Judgment)

Neutral citation: [2024] KECA 515 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 27 OF 2018

SG KAIRU, P NYAMWEYA & PM GACHOKA, JJA

APRIL 26, 2024

BETWEEN

KENYA NATIONAL HIGHWAYS AUTHORITY ..... APPELLANT

AND

BROADWAYS ENTERPRISES LTD ..... 1ST RESPONDENT

MINISTRY OF LAND, HOUSING AND URBAN DEVELOPMENT .... 2ND RESPONDENT

THE NATIONAL LAND COMMISSION ..... 3RD RESPONDENT

THE HON ATTORNEY GENERAL ..... 4TH RESPONDENT

(An appeal from the Ruling of the High Court of Kenya at Nairobi (Lenaola J.) dated 23rd February 2017 and delivered on 24th February 2017 by Chacha Mwita J.in Nairobi Constitutional Petition No. 265 of 2014)

JUDGMENT

1. The appeal arises from a ruling dated 23rd February 2017 by the High Court at Nairobi (Lenaola J.) (as he then was) in Constitutional Petition No. 265 of 2014 which was delivered by Chacha Mwita J. on 24th February 2017, and in which an application dated 24th June 2016 by Kenya National Highways Authority ("KENHA"), the Appellant herein, was dismissed with costs. The Appellant had in the said application sought to stay execution of the orders, and to review and set aside the ruling given on 13th November 2015 and 24th May 2016 by the High Court. The effect of the said rulings were that the Appellant took possession of the suit property on 14th April 2012 and was liable to pay the Broadways Enterprises Ltd ("Broadways"), the 1st Respondent herein, Kshs 13,768,934/- as interest.

2. A brief background of the events leading to the application is as follows. Broadways filed a Petition in the High Court at Nairobi dated 12th June 2014, seeking an order of mandamus directing the

Ministry of Lands, Housing and Urban Development and the National Lands Commission, the 2nd and 3rd Respondents herein to promptly pay it the sum of Kshs 90,234,750/- together with interest at 14% per annum from 17th April 2012 until payment in full, in respect of its 0.8866 ha of land that was compulsorily hived off from its property L. R. No 13562/26. Broadways further claimed that on 23rd December 2011, the Government of Kenya through Gazette Notice No 16180 issued a directive that it intended to compulsorily acquire land along Nairobi- Thika Road for the expansion and construction of the Thika Super Highway, and the Commissioner following an inquiry on the compulsory acquisition of its land, gave an award on 4th April 2012 of Kshs 90,234,750/- in respect of the 0.8866 ha of land. On 17th April 2012, Broadways duly signed the statutory statement accepting the award and provided the bank details.

3. However, that two years down the line, the 2nd to 4th Respondent had failed to pay it compensation as per the award in breach of the provisions of the Land Acquisition Act (now repealed) and *Land Act* No. 6 of 2012 that demanded that compensation be made promptly after an award had been. Simultaneously with the Petition, Broadways also filed a Notice of Motion dated 12th June 2014 seeking the same order of mandamus sought in the Petition. In a ruling delivered on 13th November 2015 by Lenaola J. (as he then was), it was noted that the parties had reached a settlement and KENHA had paid Broadway the sum of Kshs 90,234,750/= and that the ruling was limited to the issue of interest and costs only. The learned Judge accordingly ordered that KENHA pays Broadway interest at 6% on the sum of Kshs 90,234,750/= from the date it took possession of the land in issue, until payment in full, that is, from 14th April 2012 until 21st January 2015.

4. Broadways subsequently filed a Notice of Motion application dated 11th April 2016 seeking orders that KENHA pays the resultant decretal sum computed at Kshs 14,981,441/= which had been demanded within 7 days of the order, and that in default the Director General of KENHA be summoned to show cause why contempt of Court proceedings should not be instituted against him for committal to civil jail for 6 months. On 24th May 2016, the said application was determined by a consent entered into between Broadway and the 2nd Respondent that KENHA shall pay Broadway Kshs 13,768,934/= being the interest ordered on 13th November 2015; that the said sum be paid before 30th June 2016; and that the matter be mentioned on 27th July 2016 for directions on any balance that may be outstanding.

5. KENHA thereupon filed the Notice of Motion dated 24th June 2016 seeking a stay and review of the rulings of 13th November 2015 and 24th May 2016, that was the subject of the impugned ruling. The grounds for the application were that there was an apparent error and or mistake on the face of the Court record in respect of the ruling delivered on 13th November 2015 in that the order for payment of interest at 6% per annum on the principal sum was made on the erroneous assumption and mistaken belief that KENHA took possession of the property on 14th April 2012, since it had not been given constructive nor actual possession of the suit property. KENHA stated that following the award of the compensation on 4th April 2012 by the Commissioner of Lands and the signing of the acceptance of the compensation award by Broadway on 17th April 2012, there was no gazettement of the date upon which the Commissioner of Lands would take possession of the suit property as required by the law, or notification to the Land Registrar of the possession thereof by KENHA for the purpose of making the appropriate entries on the Register of Titles. Therefore, that the issue of interest payable on the compensation amount to the 1st Respondent ought not to have arisen in the first place.

6. Furthermore, that KENHA later discovered that its counsel previously on record conceded liability to pay interest without its instructions or consent and they urged the mistake of counsel should not be visited upon the client. In addition, that subsequent to the impugned orders, there was discovery of new and important evidence, namely that the 30-day statutory notice of taking possession was in fact

given on 17th May 2016, but the government was yet to take actual possession as the notice had not lapsed. They argued that the interest was only payable in instances where actual possession had taken place or government's notice of intention to take possession had lapsed.

7. Therefore, that it was a mistake and a gross error apparent on the face of the record for the court to rule that possession was taken by KENHA on 14th April 2012 whereas the same had not taken place, and the ruling and order of 13th November 2015 and 24th May 2016 failed to take into account that no evidence had been led by Broadway to arrive at such a finding. It was also asserted that the consent order of 24th May 2016 between Broadway and the 2nd Respondent in the absence of KENHA was without its consent, and in the circumstances, it was unjust and unlawful to award interest and contrary to public interest.

8. Broadway in response filed a replying affidavit on 1st August 2016, sworn by its Director, Niraj Shah, in which he reiterated the assertions in the petition. The learned Judge (Lenaola J.) (as he then was) in dismissing KENHA's application held in the ruling dated 23rd February 2017 that assertions by KENHA that it had not taken possession of the land was an afterthought and in bad faith, since its correspondence and conduct all along the litigation was to the effect that it had taken possession in April 2012 and the Court made its ruling on account of the information and submissions presented to it and relied on both section 16 of the Land Acquisition Act (since repealed) in the context of information supplied to it by KENHA, as well as the authority of Shanzu Investments Ltd vs Commissioner of Lands [1993] eKLR. In effect, that there was no error apparent on the face of the record nor mistake in the making of the decision.

9. In addition, that the 2nd Respondent's counsel recorded the consent upon instructions from KENHA as contained in the latter's letter of 13th April 2016 and there was no evidence that those instructions were later withdrawn. Therefore, the consent order in issue was lawfully entered into. Lastly, that while KENHA's funds are from public coffers, compulsory acquisition of land is also made for the benefit of the same public, forcefully so, as the land owner has no say in the acquisition save that he is entitled to prompt compensation, and had KENHA paid Broadway its compensation promptly, interest would never have been an issue.

10. KENHA has raised twenty (20) grounds of appeal in their Memorandum of Appeal dated 19th January 2018 and lodged in this Court on 6th February 2018 which revolve around the findings on the date of KENHA's possession of the compulsorily acquired land, the legality of the award of interest and the validity of the consent entered into between Broadway and 2{{^nd}Respondent. Broadway in turn filed a Notice of Cross Appeal dated 18th January 2021 seeking that the ruling dated 23rd February 2017 be varied to provide for payment of interest at 14% per annum from 14th April 2012 until payment in full.

11. We heard the appeal and cross appeal on this Court's virtual platform on 23rd October 2023. Learned counsel Ambrose Waigwa appeared for KENHA while, learned counsel Mr. Caxstone Kigata holding brief for learned counsel Mr. Allen Gichuhi, appeared for Broadway. There was no appearance for the 2nd, 3rd and 4th Respondents despite being duly served with the hearing notice on 9th October 2023. The counsel present proceeded to briefly highlight their written submissions dated 23rd August 2018 and 4th October 2018 respectively.

12. This being a first appeal, the duty of this Court as set out in the decision of Selle & Another vs Associated Motor boats Co. Ltd & Others (1968) EA 123 is to reconsider the evidence, evaluate it and draw our own conclusion of facts and law. We will only depart from the findings by the High Court if they were not based on evidence on record; where the said Court is shown to have acted on wrong

principles of law as held in Jabane vs Olenja (1968) KLR 661, or where its discretion was exercised injudiciously as was held in Mbogo & Another vs Shah (1968) EA 93.

13. On the first issue on the date of possession of the subject land, Mr. Waigwa submitted that the learned trial Judge did not address himself to the question of the actual date of possession in fact and under the law. Counsel placed reliance on section 19 (1) of the Land Acquisition Act, (since repealed) whose gist was that after an award had been made, the Commissioner would take possession of the land by serving notice on the interested persons; that the National Lands Commission, being the successor of the Commissioner issued a notice of taking possession to Broadway on 17th May 2016 pursuant to section 120 of the *Land Act* of 2012, indicating that it would take possession in 30 days from the date of the notice. The Appellant thus took possession of the land on 17th June 2016. The Appellant submitted that this notice was new and important evidence which could not have been produced before the ruling of 13th November 2015, and was sufficient ground to justify the review of the ruling.

14. Mr. Kigata in response submitted that KENHA's submissions in the High Court averred that that possession took place in April 2012 and at no time during the proceedings did it contest the date of actual possession as being any other date and that the law applicable was the Land Acquisition Act (repealed) as opposed to the *Land Act* which commenced in May 2012, a month after the acquisition. The date of acquisition of the property was at all material times never in issue, and reliance was placed on the holding in Serah Njeri Mwobi vs John Kimani Njoroge [2013] eKLR that the doctrine of waiver operates to deny a party his right on the basis that he had accepted to forego the same right having known of their existence, while the doctrine of estoppel operates as a principle of law which precludes actions or statements of that person. Therefore, that KENHA was estopped by its conduct from claiming that the date of actual possession was any other than that which it has submitted all along.

15. Further reliance was placed on the definition of possession in Black's Law Dictionary 6th Edition 1990 at page 1163 that:

> The law, in general, recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it. a person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

16. The counsel therefore submitted that the minute land was compulsorily acquired, constructive possession was immediately acquired by the State since the previous owner having accepted compensation did not have any legal control over the land and could not sell, rent or deal with the land in any manner. Further, that section 19 (1) of the Land Acquisition Act (repealed) was in conflict with Article 40 (3)(b) of *the Constitution* on prompt compensation. And in any event the Act was repealed on 2nd May 2012 which was less than 30 days from the assessment on 4th April 2012 and acceptance of the award on 17th April 2012.

17. It is necessary to determine which was the applicable law regulating the acts that are the subject of this appeal, namely the possession of the suit property and payment of interest on the award. In this respect it is notable that the *Land Act* of 2012 was not yet enacted on 23rd December 2011 when the Notice of Intention to compulsorily acquire the suit property was gazetted, nor on 17th April 2012 when the award was made to Broadway. Therefore, the operative law on those dates with respect to any procedures relating to the compulsory acquisition was the Land Acquisition Act, which has since

been repealed. Section 19 of the repealed Land Acquisition Act in this respect provided as follows as regards possession, once land was compulsorily acquired:

> " 19.
>
> (1) After the award has been made, the Commissioner shall take possession of the land by serving on every person interested in the land a notice that on a specified day, which shall not be later than sixty days after the award has been made, possession of the land and the title to the land will vest in the Government."

18. Upon taking possession of land the Commissioner was to serve upon the registered proprietor of the land and the Registrar of Land a notice that possession of the land has been taken and that the land has vested in the Government. Our reading and interpretation of section 19 of the repealed Land Acquisition Act is that the Commissioner was required to give notice of the date of taking possession within sixty days of the award, and after the expiry of the sixty days, the possession and title of the land compulsorily acquired automatically vested in the government. While the provisions of section 120 of the *Land Act* are similar, the time limits within which notice of possession was to be given by the Commissioner are omitted. This in our view, is the crucial difference between the provisions of section 19 of the repealed Land Acquisition Act and section 120 of the *Land Act*, which does not provide for a presumption and automatic vesting of possession and title.

19. In addition, in law, possession of land bears a specialized meaning defining the nature and status of a particular relationship of control by a person over land. ' As explained in Elements of Land Law, 5th Edition by Kevin Gray and Susan Francis Gray at page 153 in paragraph 2.1.7:

> " At common law the phenomenon of possession' involves much more than a bare physical occupancy of land. Indeed, a person may be in 'possession' of land without being in occupation of it at all. Possession is an inherently behavioural phenomenon which incorporates a particular mind set. Far from connoting mere factual presence upon land, possession is constituted by a range of inner assumptions about the power conferred by such presence. The relevant emphasis is on the deliberate, strategic control of land. Possession is the self-evident state of affairs which prevails where one person is in a position to 'control access to land by others and, in general, decide how the land will be used. For this reason, whereas 'occupation' is a question of fact, 'possession' is a conclusion of law, and its presence or absence leads to important legal consequences."

20. Therefore, there must be co-existence of both factual possession as well as a possessory intent which is permanent and exclusive in nature, and the presence of one without the other connotes an absence of, or discontinuance of possession. In the present case, it is not disputed that there was a gazette notice of the intention to compulsorily acquire the suit property and an award of compensation for the acquisition. This is clear evidence of the intention to possess the subject property, and when coupled with the presumption set out in section 19 of the repealed Land Acquisition Act, we find that the requisite elements of possession by the Commissioner were therefore in place within sixty days of the making of the award.

21. In this respect, it is notable that the notice of taking possession issued on 17th May 2016 did not qualify to be new evidence and the subject of a review by the trial Court since it was issued five years after the ruling sought to be reviewed. It is notable that Order 45 of the Civil Procedure Rules requires such new evidence to be evidence which, after the exercise of due diligence, was not within a party's knowledge or could not be produced by that party "at the time when the decree was passed or the order

made". The new evidence therefore must be in existence at the time of the delivery of the subject ruling or judgment sought to be reviewed, and what an applicant is required to demonstrate that it was not within his or her knowledge at the time.

22. In Rose Kaiza vs Angelo Mpanju Kaiza [2009] eKLR, this Court quoted with approval the following passage from Mulla's Commentary on the Indian Civil Procedure Code, 15th Ed. at page 2726 on the extent and limits of review on account of discovery of new evidence:

> "Applications on this ground must be treated with great caution and as required by r 4(2) (b) the Court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of a discovery of new evidence, it must be established that the applicant had acted with due diligence and that the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the Court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made."

23. The reason for the caution sounded in the above commentary is evident from the decision in D.J. Lowe & Company Ltd vs Banque Indosuez, CA No. Nai. No. 217/1998, where this Court stated as follows: -

> " Where such a review application is based on fact of the discovery of fresh evidence the court must exercise greatest of care as it is easy for a party who has lost, to see the weak part of his case and the temptation to lay and procure evidence which will strengthen that weak part and put a different complexion. In such event, to succeed, the party must show that there was no remissness on his part in adducing all possible evidence at the hearing."

24. On the interest payable, Mr. Waigwa submitted that section 16 (1) of the Land Acquisition Act (since repealed) provided that interest shall be paid on the amount awarded at a rate which shall not be less than six per cent per annum from the time of taking possession until the time of payment or payment into Court. However, that since the time of taking possession was 17th June 2016 and full payment of the compensation amount of Kshs 90,234,750/- was made by 21st January 2015 before the taking of possession, there was no interest payable to Broadway and thus the learned trial Judge erred in fact and in law in finding that interest was payable for the period between 17th April 2012 to 21st January 2015.

25. Mr. Kigata's position was that once the land was gazetted for compulsory acquisition, the proprietor gave up his right to the property and there was a legitimate expectation of prompt payment so as to capitalize on the time value of money at the time of the award. That the State therefore needed to make just compensation in accordance with *the Constitution* and *Land Act*, and the failure by KENHA to compensate Broadway promptly amounted to an infringement of its rights and entitled it to interest on the amount due.

26. Since interest was clearly provided for section 16 (1) of the Land Acquisition Act (since repealed), and was dependent on the date of possession which we have found to have been sixty days from the date of award, we find no reason to interfere with the exercise of the discretion by the learned trial Judge, save to adjust the commencement of the period of interest from 17th April 2012 to 17th June 2012, which was the operative dated after the sixty days provided for in section 19 of the repealed Land Acquisition Act, after which possession was deemed to have been taken by the Commissioner of Lands. This is the only error apparent on the face of the record that we are of the view may justify a review of the

ruling of 13th November 2015, save for the fact that the said ruling was overtaken by the consent order subsequently entered into on 24th May 2016.

27. On the validity of the consent order, Mr. Waigwa submitted that a reading of the letter dated 13th April 2016 written by KENHA to their former advocates showed that the advocates was being instructed to confirm from Broadway's advocates, on a without prejudice basis, the amount payable per the order of the Court and to acquire the bank details. Therefore, that KENHA did not instruct the advocate to proceed to record a consent and the letter did not indicate concurrence with the computation method given by the Court in the ruling. Consequently, that the consent order of 24th May 2016 was made without the KENHA's authority or instructions.

28. Further, that the letter was privileged communication between and advocate and client, the same was produced to this Court without its instructions or consent. Counsel drew this Court's attention to section 134 of the *Evidence Act* with regards to the protection of privileged communication between advocate- client and cited the decisions in the cases of Helga Ohany vs Germany School Society [2017] eKLR and Law Society of Kenya vs Martin Day & 3 Others [2015] eKLR in this regard. Therefore, that the said letter was inadmissible in the first instance; and that the consent was unlawful and not binding upon KENHA and ought to be set aside. The decisions in the cases of Flora N. Wasike vs Destimo Wamboko [1988] eKLR and Samson Munika practicing as Munika & Company Advocates vs Wadube Estates Limited [2007] eKLR were cited in support of this proposition.

29. Mr. Kigata's submissions were that it was trite law that where consent was recorded in Court in the presence of the parties' advocates, the consent gained a contractual effect and became binding upon the parties on whose behalf they appear, and could only be varied if the existence of the factors that vitiate a contract was shown. The counsel cited the decision in the case of Kenya Commercial Bank Limited vs Benjoh Amalgamated Limited & Another [1998] eKLR that an advocate had authority to enter into a compromise on behalf of his client where he acted bona fide and in line with his client's instructions, and that an advocate client relationship was similar to that of principal and agent. Also cited was the decision in Flora N. Wasike vs Deimo Wamboki [1988] eKLR that a consent judgment or order has a contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled.

30. Counsel urged that Broadway, by a letter dated 11th March 2016, demanded payment for the sum of Kshs 14,981,441/= in respect of the accrued interest from KENHA's advocate, and that KENHA's Head of Legal and Regulatory Affairs, through a letter dated 13th April 2016 responded with a counter offer of Kshs 13,768,934/= and further sought the Broadway's bank details in the event that the offer was acceptable. Their advocates proceeded to record a consent. According to the counsel, an offer made by a party on a without prejudice basis consequently became admissible in Court, where it was accepted by the other party as to constitute a valid contract between the parties. Reliance was placed on the decisions by this Court in Mumias Sugar Co. Ltd & another vs Beatrice Akinyi Omondi [2016] eKLR and Lochab Transport Ltd vs Kenya Arab Orient Insurance Ltd [1986] eKLR for this position. Therefore, that KENHA's letter dated 13th April 2016, even though written on a no-prejudice basis, was rightly admissible to show that the consent was duly entered by the previous advocates as per the client's instruction.

31. We have perused the letter dated 13th April 2016 from KENHA to its advocates, and it is stated therein as follows in the material parts:

> " Based on the ruling in this matter which indicated that interest shall be paid from 14th April 2012 to 21st January 2015 our Finance department has calculated the same and found that

the amount due is Kenya shillings 13, 768, 934 based on the dates of the payments were made worked out as follows.....

Kindly confirm on a without prejudice basis with the advocates for the Plaintiff to confirm if the amount stated is in order and avail their bank details to enable transfer of funds via real time growth settlement."

32. The contents of the letter are self-evident and its ordinary meaning is that KENHA was instructing its advocates to communicate to Broadway that it was ready and willing to pay an amount of Kshs 13,768,934/= as interest and if acceptable, the said funds were to be transferred to Broadway's account. On 24th May 2016, while the record indicates that only the counsel for Broadway and for the 2nd Respondent were present in Court during the adoption of the consent order, a replying affidavit by the said counsel for the 2nd Respondent on record sworn on 20th May 2016, 4 days before the recording of the impugned consent, which was in response to the application by Broadway dated 11th April 2016 is instructive in two respects.

33. Firstly, the said counsel depones that she was an advocate practicing in the firm of advocates that were on record for KENHA and to whom the letter dated had been written, and was also competent to swear the affidavit on behalf of KENHA. Secondly, the said counsel proceeds to depone as follows:

> " 5. THAT on 17th March 2016, we received a letter from the Petitioner's advocates indicating that their computation of interest comes to 14,981,441 /= and demanding that the 4th Respondent (KENHA) pays the said sum without delay. Annexed and marked "CC1" is a copy of the letter in that regard.
>
> 6. THAT subsequently, we advised our client, the 4th Respondent on the Petitioner's demand and computation of interest.
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> 7. THAT on. 18th April. 2016, the 4th Respondent wrote to us indicating that their computation of interest amounted to Kshs 13,768,934/= on the total principal sum of Kshs 90,234,750/= based on the dates when the payments were made and requested us to confirm the Petitioner's bank's details to enable them transfer the funds. Annexed and marked "CC2" is a copy of the letter in that regard.
>
> 8. THAT on 8th April to 2016, we sought to confirm with the Petitioner's advocates on our client's computation of interest and inquired on the account details where the payment was to be made to facilitate our client's payment of the same.
>
> 9. THAT subsequently and vide a letter dated 20th April 2016, the Petitioner's advocates responded to the effect that our client pays the sum of Kshs 13,768,934 and the difference be determined by the court
>
> 10. THAT the 4th Respondent has not declined to pay the interest but the reason for the delay in payment of the interest is the parties' non concurrence on the amount and/or mode of calculation of interest"

34. It is thus clear that the instructions were given by KENHA to its advocates, and KENHA was part and parcel of the consent adopting the said sum of interest, as the counsel who was present, who appeared for the 2nd Respondent, was also the counsel on record as having instructions from KENHA.

The admissibility of the letter dated 13th April 2016 or whether it was protected by client-advocate privilege are therefore non-issues, since the said counsel is on record repeating and confirming the same instructions in an affidavit filed in the trial Court, which has not been struck out. No reason has therefore been demonstrated to review or set aside the said consent order.

35. On the Notice of Cross Appeal dated 18th January 2021, Mr. Kigata made an oral application during the hearing to withdraw the Cross Appeal with no orders on costs. KENHA did not object to the application for withdrawal but sought costs. We however note that KENHA did not file any submissions on the said cross-appeal, and we therefore find no basis to award it the costs.

36. We accordingly find no merit in the appeal by KENHA, which is hereby dismissed with costs to Broadway. The Notice of Cross Appeal dated 18th January 2021 by Broadway is on the other hand hereby marked as withdrawn, with no orders on costs.

37. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF APRIL, 2024

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

P. NYAMWEYA

.....

JUDGE OF APPEAL

M. GACHOKA, C.Arb, FCIArb

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR