County Government of Makueni & another v Okoiti & 7 others (Civil Application E019 & E031 of 2024 (Consolidated)) [2024] KECA 1166 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KECA 1166 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MOMBASA

CIVIL APPLICATION E019 & E031 OF 2024 (CONSOLIDATED)

SG KAIRU, KI LAIBUTA & GV ODUNGA, JJA

SEPTEMBER 20, 2024

BETWEEN

COUNTY GOVERNMENT OF MAKUENI ..... APPLICANT

AND

OKIYA OMTATAH OKOITI ..... 1ST RESPONDENT

PARLIAMENT OF KENYA ..... 2ND RESPONDENT

NATIONAL EXECUTIVE OF KENYA ..... 3RD RESPONDENT

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

COUNTY GOVERNMENT OF TAITA TAVETA ..... 5TH RESPONDENT

COUNTY GOVERNMENT OF KWALE ..... 6TH RESPONDENT

MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 7TH RESPONDENT

AS CONSOLIDATED WITH

CIVIL APPLICATION E031 OF 2024

BETWEEN

COUNTY GOVERNMENT OF KWALE ..... APPLICANT

AND

OKIYA OMTATAH OKOITI ..... 1ST RESPONDENT

PARLIAMENT OF KENYA ..... 2ND RESPONDENT

NATIONAL EXECUTIVE OF KENYA ..... 3RD RESPONDENT

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

COUNTY GOVERNMENT OF TAITA TAVETA ..... 5TH RESPONDENT

COUNTY GOVERNMENT OF MAKUENI ..... 6TH RESPONDENT

MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 7TH RESPONDENT

(Being an application for stay of execution of the ruling and orders of the Environment and Land Court of Kenya at Mombasa (L. L Naikuni, J.) dated 12th February 2024 Msa Civil Application No. E019&E031 of 20243of 27 in ELC Petition No. 33 of 2021)

RULING

1. This ruling is in respect of two applications brought by way of Notices of Motion dated 1st March 2024 and 28th March 2024 by the County Governments of Makueni and Kwale (hereinafter referred to as "the applicants"). In the said motions, the two applicants, in substance, seek orders of injunction:

    a. staying the Public Notice to members of the public, business owners and traders in Mtito Andei and Mackinnon Road Towns published in the newspapers on 25th March 2024 by the 5th respondent pending the hearing and determination of the intended appeal; an order staying the execution of part of the order dated 12th February 2024 issued in the Environment and Land Court Petition *on No. 33 of 2021*, Mombasa - Okiya Omtatah Okoiti v The Parliament of Kenya & Others dated and delivered on 12th February 2024:

    b. prohibiting the County Governments of Kwale and Makueni and their agents from collecting revenue in any way whatsoever or howsoever in Mackinnon Road and Mtito Andei Towns where their predecessors did not collect revenue before the establishment of the county governments.

    c. appointing the County Government of Taita Taveta to be the sole authority issuing business permits and levying county taxes in the Mackinnon Road and Mtito Andei Towns just as its predecessor did before the establishment of county governments in 2013, and to deposit all the revenues it so collects into an interest earning bank account opened jointly with Kwale County Government and Makueni County Government respectively pending the hearing and determination of the intended appeal.

2. By the way of synopsis, this dispute was originated when the 1st respondent herein, Okiya Omtatah Okoiti, filed Petition *No. 33 of 2021* – the Okiya Omtatah Okoiti v The Parliament of Kenya & Others dated 19th July 2021 in the Mombasa Environment and Land Court. The said petition was based on the allegations that, due to the simmering boundary disputes pitting Taita Taveta County against Makueni County on the one hand, and Taita Taveta County against Kwale County on the other, it was necessary for the court to: direct Parliament to appoint an independent commission pursuant to Articles 93(2), 94(3) and 188 of *the Constitution* to consider and resolve the said disputes; direct Parliament to enact enabling legislation to implement Articles 94(3) and 188 of *the Constitution*; and order the National Executive of Kenya to survey and erect visible beacons to clearly demarcate the boundaries of Kenya's 47 counties, with preference being given to the boundaries between Taita Taveta and Makueni Counties on the one hand, and Taita Taveta and Kwale Counties on the other.

3. According to the petitioner, the disputes revolve around the location of Mtito Andei Town on the one hand and Mackinnon Road Town (hereinafter referred to as "the disputed towns") on the other, and which county ought to collect levies from the disputed towns which are key tax collection points;

that the disputes have created tensions on the ground and have the high potential of turning violent at the 2022 general elections; that Parliament alone is mandated to alter county boundaries under *the Constitution*; that the law on county boundaries is clear, and that there is enough documentary evidence to resolve the disputes before the August 2022 general elections (now past); that the petitioner received a letter dated 12th July 2021 from 178 residents of Taita Taveta County asking him to intervene and help them find a solution to the dispute, which had been simmering between the three counties since pre- independence days; that the said residents complained of harassment by officials from the said counties thereby forcing them to pay the same taxes to two different counties and, as a result, the residents do not know from which county they should demand services and accountability for the taxes paid; that, whereas the mandate to adjudicate issues touching on county boundaries vests in an independent commission set up as provided in Articles 94(3) and 188(2) of *the Constitution*, Parliament has not set up such a commission, and that the National Executive has not surveyed and erected visible beacons to clearly demarcate the boundaries of the counties; and that Parliament has not enacted a law that will adjudicate disputes concerning county boundaries, and yet an enabling legislation is required to implement Article 188 of *the Constitution*.

4. In his petition, the 1st respondent sought several declarations and mandatory orders which we do not find necessary to reproduce in this ruling.

5. Contemporaneously with the petition, the 1st respondent filed a Notice of Motion dated 19th July 2021 in which he sought, inter alia, that, pending the hearing and determination of the petition, the court issues: interim order of status quo ante appointing the County Government of Taita Taveta to be the sole authority issuing business permits and levying county taxes in the disputed towns as did its predecessor before the establishment of county governments in 2013, and to deposit all the revenues it so collects into an interest earning bank account opened jointly with Kwale and Makueni County Governments respectively; and an order prohibiting the County Governments of Kwale and Makueni or their agents from collecting revenue in any way whatsoever in the disputed towns where their predecessors did not collect revenue before the establishment of the county governments. Those orders were granted in a ruling delivered on 12th February 2024.

6. Dissatisfied with the said ruling, the applicants filed their respective Notices of Appeal dated 23rd February 2024 and 12th February 2024 respectively.

7. The instant applications were supported by affidavits sworn by Kisiwa Mohamed Koja and Dr Justin Kyambi, the County Solicitor and County Secretary of Kwale and Makueni Counties respectively. The precis of the said affidavits is that the implementation of the impugned ruling is likely to occasion grave violation of Article 207(1) of *the Constitution* and section 109(2) of the *Public Finance Management Act* No. 18 of 2012, which obligates county governments to ensure that money raised or received by or on behalf of the county governments is paid into the County Revenue Fund; that the order prohibiting the applicants from collecting revenue will occasion loss of government revenue and the inability of the applicants to offer crucial public services; and that, in the impugned decision, the learned Judge gave a stringent timeframe towards the expeditious disposal of the main petition.

8. According to the applicants, the intended appeal is arguable since the order of status quo ante issued by the learned Judge was not backed by evidence that the 5th respondent was collecting revenue from the disputed towns prior to the establishment of the applicants; and that, whereas the petition does not seek an order stopping the applicants from collecting levy at the disputed towns, the court issued an interlocutory order of injunction without the conditions precedent for the grant of conservatory orders being satisfied.

9. It was the applicants' case that, unless the orders sought are granted, the intended appeal shall be rendered nugatory since, by opening a bank account and depositing government revenue in an account other than the County Revenue Fund, the applicants would have violated the law; that, in the event that the tax collected is paid into an account other than the County Revenue Fund, the substance of the appeal shall have been overtaken by events; and that there is a high chance that the county officers responsible may be cited for contempt of court for non-compliance with the order.

10. The 5th respondent, the County Government of Taita Taveta, opposed the application vide a replying affidavit sworn by Habib Mruttu, the acting County Secretary. The substance of the opposition was that the application was an abuse of the court process intended to derail the expeditious determination of the petition fixed for highlighting on 6th June 2024 and, thereafter, the delivery of judgement on 26th June 2024; that the National Land Commission Historical Land Injustice Case reference No. 3670 of 2021 was fixed for hearing on 2nd and 3rd April 2024; that, on 20th September 2021 when the application dated 19th July 2021 came up for hearing, the court granted interim orders, which were in existence until 12th February 2024 when they were confirmed; that the application filed by the applicants on 11th October 2021 seeking to set aside the interim orders was never prosecuted; that the orders of 12th February 2024 only affirmed the orders issued on 20th September 2021, which had been in force for a period of more than two years, and hence there is no reason to contend that the intended appeal will be rendered nugatory in the event the appeal succeeds; and that no hardship has been demonstrated by the applicants during those two years.

11. The 5th respondent further contended that no prejudice will be occasioned to the applicants by depositing the revenue collected in a joint interest earning account; that, since the applicants have declined to comply with the lawful, just and valid orders of the court, they ought not to benefit from the discretionary orders of this Court; that the applicants have prematurely moved the court since the main petition is yet to be heard and determined, and that this application is an invitation to the Court to determine the merits of the proceedings before the court below; that no irreparable damage will be caused to the applicants since it has not been suggested that the levies from the disputed towns are the only source of revenue for the applicants, or what percentage of the applicants' total revenue is generated from them; that the impugned orders offer a much needed relief as the residents who went to court will no longer be harassed by enforcement officers from the three counties; that it is only fair that the applicants await the hearing and determination of the pending petition on its merits; that the hearing and determination of this application will impact on the merit of the pending petition and bind the trial court thereby rendering the hearing of the petition ineffectual contrary to the right to fair hearing under Article 50(1) of *the Constitution*; and that the applicants did not meet the threshold for the grant of orders under rule 5(2)(b) of the Court of Appeal Rules.

12. In a rejoinder, Kisiwa Mohamed Koja and Dr Justin Kyambi swore supplementary affidavits on 9th April 2024 and 28th March 2024 respectively in which they averred that the hearing dates which were set by the National Land Commission were vacated; that the timetable for the hearing of the petition was likely to be disrupted by, inter alia, an application filed by the said Commission seeking extension of time within which to determine the complaint; that the 5th respondent has never been keen to enforce the interim orders, but only became aggressive after the inter partes hearing; and that, if the intended appeal succeeds, all acts done in furtherance of the implementation of the order of the Environment and Land Court will be prejudicial and detrimental to the applicants, the residents of the two towns and the two Counties of Kwale and Makueni.

13. We heard the applications on 16th April 2024 when Senior Counsel, Mr. Eric Mutua, appeared for Makueni County Government, learned counsel, Mr. Paul Nyamodi appeared for Kwale County

Government, learned counsel, Mr. Muthoki, appeared for the 2nd respondent, learned counsel, Mr. Penda, appeared for the 3rd, 4th and 7th respondents, while learned counsel, Mr. Kipngetich held brief for Mr. Mwangi for the 5th respondent. There was no appearance for the 1st respondent, Mr Okiya Omtata despite due service of the hearing notice upon him.

14. While Mr. Mutua, Mr. Nyamodi, Mr. Penda and Mr. Kipngetich relied on their written submissions, which they briefly highlighted, Mr. Muthoki informed the Court that he was not taking any position in the application.

15. In their submissions, the applicants relied on the decisions in Joseph Gitahi Gachau & Anor v Pioneer Holdings (A) Ltd & 2 Ors, Civil Application No. 124 of 2008; Stanley Kangethe Kinyanjui v Tony Ketter & 5 Ors [2013] eKLR; and Ahmed Musa Ismael v Kumba Ole Ntamorua & 4 Ors [2014] eKLR to highlight the twin conditions to be met being the arguability of the appeal or intended appeal and the possibility of the appeal or intended appeal being rendered nugatory; and the fact that a single bona fide arguable ground of appeal suffices for the purposes of the first condition.

16. In urging the first condition, the applicants reiterated that there was a likelihood of the implementation of the decision violating Article 207(1) of *the Constitution* and section 109(2) of the *Public Finance Management Act* No. 18 of 2012 as its effect would be the depositing of public funds in private bank accounts; that there was failure by the court below to identify the factual existence of an alleged status quo ante before issuing such an order; that the jurisdiction of the Environment and Land Court to entertain the issues in question respecting alteration of boundaries of counties and intergovernmental disputes was under challenge; and that the impugned temporary injunction granted was not anchored in the petition itself.

17. On the nugatory aspect, reliance was placed on Martin Nyaga Wambora v County Assembly of Embu & 6 Ors [2015] eKLR; and Ahmed Musa Ismael v Kumba Ole Ntamorua & 4 Ors (supra) for the submission that instances which may render an appeal nugatory are to be considered within the circumstances of each case; that grant of stay is not automatic, but that it is meant to preserve the integrity of the appellate process so as not to render any eventual success a mere pyrrhic victory devoid of substance or succour.

18. In this case, it was argued that if the orders sought are not granted and the intended appeal succeeds, Article 207(1) of *the Constitution* as well as section 109(2) of the *Public Finance Management Act* No 18 of 2012 shall have been violated, a violation that cannot be undone or adequately compensated for by an award of damages, hence rendering the intended appeal a mere academic ritual; and that, on the other hand, non-compliance with the decision will expose the applicants to contempt of court proceedings. In this regard, the applicants relied on the decision in Kenya Industrial Estate Ltd & Anor v Matilda Tenge Mwachia [2015] KLR, submitting that, whether the appeal will be rendered nugatory depends on whether or not what is sought to be stayed, if allowed, is reversible, and whether damages will reasonably compensate the aggrieved party.

19. While conceding that the intended appeal is arguable, it was submitted on behalf of the 3rd, 4th and 7th respondents that the success of the intended appeal will not be rendered nugatory if the orders sought are not granted; that, in event that this Court finds that the directions given by the trial court are illegal and unconstitutional, the funds would be available, and hence the orders are not prejudicial to any of the parties; that the orders are meant to preserve the funds collected in the interim, and which is an alternative to the chaos that preceded the filing of the petition; that, contrary to the assertion that the residents of both towns would be deprived of services, the directions of the court provide much needed clarity on what needs to transpire while the petition is pending; that, should this Court issue orders staying the said directions, there will be a manifest gap, putting the petitioners and residents of the two

towns at the mercy of the three county governments; that, based on the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR, it is in the interest of the public that the orders become operationalised while the appeal is pending.

20. The submissions by the 5th respondent were to the effect that, in line with the decision in Geoffrey M. Asanyo & 3 Others v Attorney General [2020] eKLR, this Court should decline to assume jurisdiction and instead respect the hierarchy of jurisdiction since the petition is still pending determination; that the court below directed that the funds be collected and deposited in a joint interest earning account and that, therefore, the money collected is not permanently repatriated; that, after the hearing of the petition and the investigations report by the National Land Commission, the county entitled to the revenue shall be determined and, therefore, no revenue will be lost; that the applicants have not shown the extent to which their budgets will be affected by complying with the order; that it is a violation of *the Constitution* for the applicants to collect revenues beyond their boundaries; that, based on the decisions in EACC v Prof. *Tom Ojienda & Associates & 2 Others CA No. 21 of 2019* and Nairobi CA No. E577 of 2023 - The National Assembly & Another v Okiya Omtatah Okoiti & Others, public interest militates against grant of the orders sought as it will breed anarchy and perpetuate the violation of *the Constitution* by the three county governments seeking to impose illegal taxes on the residents of the disputed towns.

21. We have considered the application, the affidavits in support and in opposition thereto, the written and oral submissions, the cited authorities and the law.

22. In applications of this nature, the principles that guide the Court in determining whether or not to grant the orders sought are well settled. Under rule 5(2) (b) of the Rules of this Court, the applicants having mounted the jurisdictional hurdle of filing their Notices of Appeal must then demonstrate that the appeal or intended appeal, as the case may be, is arguable or, as is often said, is not frivolous. In addition, the applicants must satisfy the Court that the appeal or intended appeal would be rendered nugatory absent stay or injunction. The two conditions apply conjunctively and sequentially so that, where an applicant fails to surmount the first hurdle, it becomes unnecessary to consider the second limb. However, where an applicant meets the first condition but fails to meet the second, the application will still fail.

23. The rationale for these twin principles was explained by this Court in Peter Gathecha Gachiri v *Attorney General and 4 Others Civil Application Nai 24 of 2014* (unreported) where it was held that:

> " Rule 5(2)(b) of the Rules of this Court on which the application is premised confers on us independent discretionary jurisdiction exercisable in accordance with the twin principles, namely, that the appeal must be shown to be arguable and, in addition, that the appeal, if successful, shall be rendered nugatory if stay is not granted. These principles have been developed by the court as a guide in the exercise of its discretionary power in determining an application premised on Rule 5(2)(b). The rationale in these principles is intended to balance two parallel propositions; first, that a successful litigant should not be deprived of the fruits of a judgment in his favour without just cause and; secondly that a litigant who is aggrieved by a decision must not be deprived of the right to challenge it in the next higher court (see Butt v Rent Restriction Tribunal [1982] KLR 417. See also Kenya Shell Ltd v. Kibiru & Another [1986] KLR 410...It is imperative for an applicant seeking an order under Rule 5(2)(b) to satisfy the Court on both principles. An applicant must show that the appeal is not frivolous and is arguable. It is now settled that an applicant need not demonstrate a plethora of arguable points. It is sufficient even if there be a solitary arguable point. An

applicant must further show that the appeal, if successful, will be rendered futile if stay is not granted."

24. In Stanley Kang'ethe v Tony Ketter & 5 others (supra), this Court emphasised that it is sufficient if a single bona fide arguable ground of appeal is raised. See Damji Pragji Mandavia v Sara Lee Household & Body Care (K) Ltd, Civil Application No. Nai 345 of 2004. Further, an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous. See Joseph Gitahi Gachau & Another v Pioneer Holdings (A) Ltd & 2 others, (supra). It is one that is deserving of consideration by the Court and warrants a response from the opposite party. See *Kenafric Matches Ltd v Match Masters Limited & Another Civil Application No. E902 of 2021* (UR).

25. In this case, the applicants intend to argue in the proposed appeal, inter alia, that the Environment and Land Court had no jurisdiction to entertain the petition since the dispute revolved around the determination of county boundaries, a matter which can only be resolved by a commission established by Parliament; that the court issued orders which were not based on the petition; and that the orders issued were, inter alia, contrary to the provisions of Article 207(1) of *the Constitution* and section 109(2) of the *Public Finance Management Act*, which enjoins county governments to ensure that money raised or received by them or on their behalf is paid into the County Revenue Fund. We have no difficulty in finding that these issues are arguable since, as held by this Court in National Industrial Credit Bank Ltd v Aquinas Francis Wasike & another [2006] eKLR:

> "It is to be remembered that in an application such as this the grounds are not to be argued; all an applicant is required to do is to point out to the Court the ground or grounds which he believes are arguable and leave it to the Court to decide on the issue of whether or not the matters raised are arguable."

26. While the applicants may at the hearing of the intended appeal still fail to persuade the Court that their appeal is merited, we find, without saying more lest we embarrass the bench that will be seized of the substantive appeal, that the intended appeal is not frivolous. It is arguable as the issues raised are deserving of consideration by the Court and warrants a response from the opposite party. The fact of satisfaction of this condition was rightly conceded by the respondents.

27. On the nugatory aspect, which an applicant must also demonstrate, this Court in Reliance Bank Limited v Norlake Investments Ltd [2002] 1 E.A. 227 held that:

> "..... what may render the success of an appeal nugatory must be considered within the circumstances of each particular case. The term 'nugatory' has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling."

28. As to what amounts to trifling, the Court in the case of Permanent Secretary Ministry of Roads & another v Fleur Investments Limited [2014] eKLR it was held that:

> "A trifling appeal is one of very little importance, one whose determination is of little or no legal consequence because of a past event(s) or an earlier finding by a court of law."

29. In this case, the applicants' argument is that, by complying with the impugned decision, they would be compelled to act contrary to Article 207(1) of *the Constitution* and section 109(2) of the *Public Finance Management Act* No. 18 of 2012; that the order prohibiting the applicants from collecting revenue will occasion the loss of government revenue and the inability of the applicants to offer crucial

public services; that, in the event that they do not comply with the order which they deem to be unconstitutional, they risk being cited for contempt of court.

30. In applications such as this, the position, as was held in *Kenafric Matches Ltd v Match Masters Limited & Another Civil Application No. E902 of 2021* (UR) is that, in line with the overriding objective in sections 3A and 3B of the *Appellate Jurisdiction Act*, in deciding whether an appeal will be rendered nugatory, the Court has to consider the conflicting claims of both parties, and that each case has to be considered on its own merits. Therefore, when exercising this discretion, the principle of proportionality ought to be taken into account and, as was restated in the case of African Safari Club Limited v Safe Rentals Limited [2010] eKLR:

> " ...with the above scenario of almost equal hardship by the parties, it is incumbent upon the Court to pursue the overriding objective to act fairly and justly...to put the hardships of both parties on scale... We think that the balancing act is in keeping with one of the principles aims of the oxygen principle of treating both parties with equality or placing them on equal footing in so far as is practicable."

31. Nyamu, JA in *Kenya Commercial Bank Limited Vs. Kenya Planters Co-Operative Union Civil Application No. Nai. 85 of 2010*, pronouncing himself on the principle of overriding objective held that:

> " where there is a conflict between the statute (overriding objective principle) and a subsidiary legislation (rules of the court) the statute must prevail. Although the rules have their value and shall continue to apply subject to being O2 complaint, the O2 principle is not there to fulfil them but to supplant them where they prove to be a hindrance to the O2 principle or attainment of justice and fairness in the circumstances of each case."

32. In the case before us, if the applicants' contention is found to be correct, by complying with the impugned decision, they would have acted contrary to *the Constitution* and the law. We do not see how an act that has violated *the Constitution* can be said to be capable of being reversed even if the funds are available for contribution. In the same vein, we do not see how the failure by the applicants to render essential services to the public can be said to be capable of being reversed when the appeal eventually succeeds. On the other hand, since the applicants draw their funds from the National Government, we see no difficulty in the 5th respondent getting its rightful share of the revenue in the event that the intended appeal fails. It was also argued that, by granting the orders sought herein, the public would be subjected to double taxation. As the applicants submitted, apart from mere averments, no material has been placed before us to show that the public has been subjected to double taxation. In any case, that issue is at the centre of the petition and we cannot delve into it in details in this application.

33. In our view, a consideration of public interests weighs in favour of protecting the constitutional provisions and ensuring that services are rendered to the public. Our decision is informed by the decision of the Supreme Court in Gitirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR where it held that the Court must consider whether or not it is in the public interest that the order of stay be granted as dictated by the expanded scope of the Bill of Rights and the public spiritedness that runs through *the Constitution*.

34. In view of the foregoing, we find merit in the Notices of Motion dated 1st March 2024 and 28th March 2024 by the County Governments of Makueni and Kwale respectively and, pending the hearing and determination of the intended appeal, we hereby grant:

a. an injunction restraining the implementation of the Public Notice to members of the public, business owners and traders in Mtito Andei and Mackinnon Road Towns published in the newspapers on 25th March 2024 by the 5th respondent;

b. a stay of execution of the order prohibiting the County Governments of Kwale and Makueni and their agents from collecting revenue in Mackinnon Road Town and Mtito Andei Town where their predecessors did not collect revenue before the establishment of the county governments.

c. a stay of execution of the order appointing the County Government of Taita Taveta to be the sole authority issuing business permits and levying county taxes in Mackinnon Road and Mtito Andei Towns and directing it to deposit all the revenues it so collects into an interest earning bank account opened jointly with Kwale County Government and Makueni Couty Government respectively.

35. The costs of the Motions shall be in the intended appeals.

36. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2024.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

DR. K. I. LAIBUTA C.Arb, FCIArb.

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is the true copy of the original

signed

DEPUTY REGISTRAR