IN THE COURT OF APPEAL

AT KISUMU

(CORAM: NAMBUYE, OKWENGU & SICHALE JJ.A.)

CIVIL APPEAL NO. 52 OF 2016

BETWEEN

MICHAEL OTIENO NYAGUTI..... 1ST APPELLANT

MICHAEL OGINGA DACHE..... 2ND APPELLANT

ROBERT OUKO OKUMU.....3RD APPELLANT

AND

KENYA NATIONAL HIGHWAYS AUTHORITY.....RESPONDENT

(Being an appeal against the Ruling of the Environment and Land Court at Kisumu (Hon. S. M. Kibunja, J.) dated 11th November 2015

in

Kisumu Petition No. 10 of 2015

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JUDGMENT OF THE COURT

This is a first appeal arising from the Ruling of the High Court of Kenya at Kisumu in Environment and Land Court (ELC) Petition Case No. 10 of 2015 (**S. M. Kibunja, J.**) dated 11th November 2015.

The background to the appeal is that the appellants filed Petition No. 10 of 2015 against the respondent under numerous **Articles** of the **Constitution**, provisions of the **Land Act, the National Land Commission Act** and the **Environment and Land Act** as variously cited in the heading of the petition, substantively seeking orders paraphrased *inter alia* that a permanent injunction be issued restraining the respondent from demolishing structures and evicting appellants and other affected persons from **Plot Nos/Otonglo/18** and **LRs No. Kisumu/ Korando/2322**, **2306**, **2284, 2286,** and **4263** (the suit properties) pending public consultation as provided for in the Constitution of Kenya and other statutory provisions of relevant **Acts**, valuation and payment of commensurate compensation; a declaration that the threatened demolitions and evictions infringed appellants constitutional rights; an order directing the respondent to pay appellants general damages for loss of business, costs and any other such further or other orders as the Honourable Court may deem fit to grant.

The petition was supported by supporting affidavits sworn by the appellants on 22nd April, 2015, together with annextures thereto. In summary, appellants contended that they were conversant with: the resettlement action plan, meetings convened by the respondent (KENHA) on 20th April, 2012 at Kisian Primary School, the public notice issued by KENHA on 5th November, 2012 through the media to owners of alleged illegal structures encroaching on road reserves along Nyamasaria-Kisumu Highway including Kisumu bypass road to remove them failure to which they would be demolished, the letter KENHA addressed to the County Commissioner Kisumu on 26th August, 2014 requesting for security personnel to assist the demolition team execute the demolitions, a letter from the Hon. Member for Kisumu West Constituency addressed to the Regional Manager KENHA in Kisumu seeking clarification on contentious issues of the proposed demolitions on behalf of his constituents, contents of the Hansard report of the National Assembly dated Tuesday 4th December, 2012 addressing a question by private notice as raised by Hon. Member for the then Kisumu Town West Constituency.

Further, that the disputed parcels of land were lawfully registered in their names and were therefore not illegal encroachments on the road reserve as erroneously claimed by the respondent; and lastly, that they would suffer irreparable loss and damage if the threatened demolitions and evictions were carried out.

The petition was opposed by a replying affidavit sworn by **Thomas Gacoki** on 22nd June, 2015 contending *inter alia* that: under **section 4(2)(b)** of the **Kenya Roads Act, 2007**, (the **Act**) the respondent is mandated to control national roads, road reserves and access to road side developments, the Kisumu Busia Road is a classified public road with a clearly designated and delineated road reserve, in the month of April, 2012, they held public meetings with members of the local community, provincial administration and elected leaders at Kisian Primary School, Korando Chief's office and Kosewe Social Hall in Kisumu County to educate and inform the public about encroachment on both the road and railway reserves. During the said meetings members of the Korando Community were sensitized on the extent of their encroachments on public land reserved for the expansion of the road, and that markings would be employed to educate the public on the extent of such encroachment on the road reserve. They were also informed that persons whose developments/structures illegally encroached on road reserves would be required to remove them at their own costs failing which the respondent would remove them at their own costs pursuant to **section 49(5)** of the **Act**.

Further, that notices, issued on 5th November, 2012 and 17th June, 2014 among numerous others requested the affected persons to remove their illegal structures from the road reserve to pave way for the construction of the Kisumu-Kisian section of road B1 into a dual carriage highway. Appellants as affected persons were advised to liaise with the respondent to address among others, issues appellants were belatedly raising in their petition. It was only after appellants failed to heed numerous notices issued to them by the respondent requiring them to remove illegal structures on the road reserve that demolitions and evictions were carried out. The respondent's actions were therefore carried out in accordance with the law. Lastly, that appellants were nonsuited on their petition for failure to comply with the mandatory prerequisite in **section 67(a)** of the **Act** which provides for the giving of a one-month notice to the respondent before commencing a suit against it.

On 22nd June, 2015 the respondent raised a preliminary objection against the petition on the grounds that:

> **"i) Under section 67(a) of the Kenya Roads Act, 2007, the petitioners ought to have given the Director General of the 1st respondent a one-month notice before commencing this suit.**
>
> **ii) Under the Kenya Roads Act, 2007, the petitioners if aggrieved by the actions of the 1st respondent herein, they should have channeled their grievances to the cabinet secretary in charge of transport and infrastructure before commencing the present suit.**
>
> **iii) The petition is otherwise misconceived, unfounded, has no merit and is otherwise an abuse of the due process of this Honourable Court"**

The preliminary objection was canvassed through written submissions filed by the 1st appellant on his own behalf and co-appellants and the respondent. The submissions were orally highlighted, at the conclusion of which the learned Judge analyzed the record and identified issues for determination.

On the issue of noncompliance with the prerequisite in **section 67(a)** of the **Act**, the learned Judge construed this provision in light of the rival positions postulated before Court and expressed himself thereon as follows:

> **"(a) That indeed Section 67 (a) of the Kenya Roads Act No. 2 of 2007 requires a one-month notice containing particulars of the claim and the intention to commence legal action to be served upon the Director – General by the party or its agent before legal proceedings are commenced. The requirement is coached in mandatory terms. The 1st Defendant has submitted that no such notice was served before the petition was filed. The Petitioner has submitted that "the 1st Petitioner wrote to the Director- General KENHA on behalf of would be Victims giving him notice of intended Civil litigation proceedings on 13th April 2015 and delivered via email". However, the copy of the said email has not been printed and availed before the court and there is therefore no evidence to controvert the 1st Respondent's contention that no notice was served before the filing of this suit.**
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> **The court holds the view that the requirement of a notice being served on the Director General would not amount to hindering a litigant from accessing the seat of justice (court). It only creates an opportunity to the Director General's office of exploring an out of court settlement and is in line with the provision of Article 159 of the constitution which at sub-article 2(c) encourages '' alternative forums of dispute resolutions''. The provision of section 67 of the Kenya Roads Act, 2007 is not in contravention with the Constitution of Kenya 2010.**

Turning to issue as to whether vitiating the proceedings as initiated would render appellants remediless, the learned Judge reviewed a wealth of case law on jurisprudence on the issue and applying the threshold therein to the rival position before court expressed himself thereon *inter alia* as follows:

> **(c) That superior courts have in several cases taken the position that where infringements of rights under the Constitution can be pursued adequately as a claim under a substantive legislative framework, then the court will decline to declare whether there has been a breach of the said rights. The superior courts have also held that other constitutional bodies or state organs under a legislative framework should be given the opportunity to resolve the dispute before the court can exercise its jurisdiction under the Constitution. In the case of International Centre for policy and Conflict & 5 Others vs. The Hon. Attorney General & 4 Others [2013] Eklr cited in Anne Wangui Ngugi & 2222 others vs. Edward Odundo C.E.O. Retirement Benefit Authority [2015]eKLR the court observed as follows:**
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> *"{109} An important tenet of the concept of the rule of law is that this court before exercising its jurisdiction under Article 165 of the Constitution in general must exercise restraint. It must first give an opportunity to the relevant constitutional bodies or state organs to deal with the dispute under the relevant provision of the parent statute. If the court were to act in haste, it would be presuming bad faith or inability by that body to act.) .....*

{110} Where there exists sufficient and adequate mechanisms to deal with a specific issue or dispute by other designated constitutional organs, the jurisdiction of the court should not be invoked until such mechanism have been exhausted...."

Also in the case of Republic – vs- the National Environment Tribunal & 2 Others Exparte Abdulhafidu Sheikh Ahmed Bubadi Zubedi [2013] eKLR, the court observed that where an infringement can be redressed within a legislative framework, the course to follow is to take out proceedings under the framework and not under the constitution unless that framework does not provide an efficacious and satisfactory answer to the litigants' grievance. Similar position was taken by the courts in Busia Petition No.10 of 2014 Joseph Owino Muchesia & Another vs. NEMA & 2 Others, Busia Petition No.8 of 2014 Joseph Ojwang Ounde vs. NEMA & 7 Others, Busia HC Misc. App. No. 84 of 2015 Republic vs. Kenneth Okukui Okulu & Another Exparte Busia Sugar Industry & Another. The court concurs with the position taken in the foregoing decisions and is of the considered finding that the petitioners claims could have been pursued within the legislative framework.

(d) That the road project whose construction is under way and through which structures developed on the road reserves were demolished has been going on since December 2014 (See paragraph 14 of the replying affidavit of Thomas Gacoki sworn on 22nd June 2015. Prior to the commencement of the construction there has been public hearings and sensitizations from 2013 {paragraph 6 to 12 of the said affidavit). Any concerns that the petitioners may have had and especially the prayers in the petition could adequately have been addressed through the Kenya Roads Act No. 2 of 2007 and or an ordinary claim, instead of a constitutional petition, filed in court.

5. That for reasons set out above the preliminary objection by the 1st Respondent is upheld. The petition and notice of motion amended on 14th May 2015 are hereby struck out with each party bearing their own costs."

Appellants were aggrieved and are now before this Court on a first appeal raising six (6) grounds of appeal which may be paraphrased that the learned Judge erred in law and fact in: holding that the requirement that a notice be served on the Director General KENHA before commencing litigation would not amount to hindering a litigant from accessing the seat of justice; finding that **section 67(a)** of the **Act** is not in contravention of the Constitution of Kenya 2010; sustaining the respondent's preliminary objection and ignoring appellant's concerns; erroneously holding that appellants claim could be pursued within the legislative framework of the **Act,** or an ordinary civil claim without any basis.

The appeal was canvassed virtually through written submissions filed by respective parties, that were fully adopted and orally highlighted by the 1st appellant on his own behalf and co-appellants, and learned counsel **Mrs. Olembo** for the respondent, together with legal authorities, that were relied upon by the respective parties in support of their opposing positions in this appeal.

Supporting the appeal, appellants submitted that the learned Judge rightly relied on the case of **Kenya Revenue Authority vs. Habimana Sued Hemed & Another [2015] eKLR** in which the Court affirmed the High Court decision declaring **sections 32)(a)** and **70** of the **Kenya Revenue Authority Act, Chapter 472** unconstitutional but faulted the learned Judge for failure to properly apply the threshold in **Article 262** of the Constitution to **section 67** of the **Act** and likewise found it unconstitutional in so far as it purported to interfere with appellants right of access to justice before complying with the prerequisite provided for therein. It is, therefore, their contention that had the learned Judge properly construed and applied the said Article to the rival positions before him, he would have appreciated that the purpose of the prerequisite of giving a notice to the Director General under **section 67** of the **Act** was to acquaint the Director General with the particulars of the intended suit. In the instant appeal, the Director General was already aware of those particulars given their own averments in the replying affidavit that they had engaged appellants over the issue since 2012.

Appellants also faulted the learned Judge for holding that they (appellants) had adequate parallel legal remedy through alternative judicial processes. According to them, the office of the Director General KENHA not being a constitutional office clothed with powers of a tribunal had no capacity to sufficiently address the appellants' grievances with regard to the manner in which demolitions and evictions of the appellants were carried out by the respondent; failing to properly appreciate, consider and fault the respondent's arbitrary use of State power in the manner demolitions and evictions were carried out against appellants in total disregard to proposed resettlement plan by the Director's office resulting in gross infringement and denial of appellants' rights whose only recourse for vindication according to them lay in instituting a constitutional process for appropriate redress.

The learned Judge was also faulted for failure to properly appreciate and explain explicitly in his judgment how it was fair, convenient or conducive for proper administration of justice to require appellants to abandon pursuit of their constitutional remedy in favour of other legal civil processes.

It is also the appellants' complaint that the learned Judge fell into error when he relied on **Republic vs. National Environment Tribunal & 2 others Ex-parte Abdulhafidh Sheikh Ahmed Zubeidi [2013] eKLR; Joseph Owino Muchesia & Another vs. Joseph Owino Muchesia & Another [2014] eKLR; Joseph Ojwang' Oundo vs. National Environment Management Authority & 8 Others [2015] eKLR;** and **Republic vs. Kenneth Okukui Okulu & Another Exparte Busia Sugar Industry & Another Busia HC Misc. App. No. 84 of 2015** cases which in their opinion are distinguishable from the circumstances obtaining in this appeal as in all of those quoted cases, there was provision for legally established tribunal mechanisms for disputes resolution, unlike in the instant appeal where compliance with **section 67(a)** of the **Act** only required service of a notice to the Director General of the respondent which in their opinion does not amount to a legal redress mechanism that could be said to be efficacious and satisfactory so as to adequately address appellants grievances.

Appellants also faulted the learned Judge for erroneously accepting respondent's claim that relevant public hearings and sensitization meetings were conducted during the project implementation process in the absence of any concrete evidence tendered by the respondent as proof of any such *interpartes* discussions that allegedly took place; and second for failure to address issue of lack of proof of service of notices on appellants requiring them to remove alleged illegal structures failing which structures would be demolished and owners evicted to controvert appellants contention that newspapers notices were never meant for them not being illegal encroachers on respondent's road reserves as they were duly registered land owners vested with appropriate title deeds to the suit properties. Lastly, appellants faulted the

learned Judge for failure to appreciate that the Constitution provides explicitly that appellants rights to apply for a constitutional redress was without prejudice to existence of any other dispute resolution mechanism lawfully available for seeking such redress within the **Act**.

To buttress the above submissions, appellants availed legal authorities without pointing out their jurisprudential relevance to the issues in controversy we are seized of herein. We appreciate appellants are lay people, however, appellate process being adversarial, we find it imprudent to embark on scouring through those authorities on our own with a view to conjuring up for ourselves their jurisprudential worth to the issues in controversy herein. It is, therefore, sufficient for us just to state for purposes of the record only that appellants relied on a number of case law in support of their appeal whose jurisprudential worth to the issues in controversy herein was never highlighted before us by them.

In rebuttal, the respondent condensed all appellants' grounds of appeal into one thematic issue and submitted that **section 67(a)** of the **Act** is couched in mandatory terms. It is therefore not optional. This being the correct position in law, it was mandatory for appellants to serve the Director General of KENHA with one-month notice before commencing their petition. Failure to comply with the above prerequisite rendered appellants' petition null and void. Second, that there was an available alternative dispute resolution mechanism which appellants ought to have invoked, instead of resorting to a constitutional process to vindicate their alleged grievances.

To buttress the above submissions, the respondent cited the case of **Anne Wangui Ngugi & 2222 others vs. Edward Odundo C.E.O. Retirement Benefit Authority [2015]eKLR; Lipisha Consortium Limited & another vs. Safaricom Limited [2015] eKLR;** and **International Centre for Policy and Conflict & 5 Others vs. Attorney General & 5 Others [2013] eKLR** all for propositions *inter alia* that: Courts will normally not consider a constitutional question unless the existence of a remedy depends on it, if a remedy is available to an applicant under some other legislative provision or some other basis whether legal or factual, a court will usually fail to determine whether there has been a breach of rights, where there is in existence sufficient and adequate mechanism as well as remedies to deal with a specific dispute, the High Court's jurisdiction under **Article 165(3)(b)** of the Constitution ought not be invoked, the High Court in the exercise of its mandate under **Article 165(3)(b)** of the Constitution must exercise restraint, where exists sufficient and adequate disputes resolution mechanism to deal with specific issues or disputes by other designated constitutional or statutory organs, the jurisdiction of the Court should not therefore be invoked until such mechanisms have been exhausted.

In addition, these cases were relied on in support of the submissions that appellants' compliance with statutory prerequisite in **section 67(a)** of the **Act** which required appellants to give respondent one-month notice was not only mandatory but also for good reason, namely, to enable respondent deal with and resolve issues in controversy as between it and appellants before resorting to Court processes.

In light of the above submission, the respondent submitted that the impugned decision is sound both in law and facts especially when the record is explicit that the trial court took into consideration totality of matters relied upon by the rival parties in support of their opposing positions and arrived at the correct conclusions thereon that appellants petition was premature and sustained respondent's preliminary objection and accordingly dismissed the petition, a position we were urged to affirm.

The appeal arises from the trial courts exercise of judicial discretion to sustain the respondent's preliminary objection against appellants' petition. The principles that guide the Court in exercise of its unfettered discretionary mandate in law have been crystallized by case law. See **Githiaka vs. Nduriri [2004] 1 KLR 67** in which **Ringera Ag. J.A** (as he then was) stated that proper exercise of judicial discretionary requires that it be exercised judiciously that is to say with reason and not caprice, whim or sympathy.

The principles that guide the power of the Court to interfere with the exercise of that mandate has also been crystallized by case law. In **Mbogo & Another vs. Shah [1968] E.A 93, Sir Clement De Lestang**; **V.–P.** expressed himself on this issue as follows:

> **"I think it is well settled that this Court will not interfere with the exercise of discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."**

See also **Sir Charles Newbold, P.,** in the same case wherein he expressed himself as follows:

> **"For myself, I like to put it in the words that a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice."**

We have considered the record in light of the above threshold. In our view, only one issue falls for our consideration namely; whether the learned Judge exercised his unfettered discretionary mandate judiciously when he sustained respondent's preliminary objection against appellants' petition. The principles that guide the Court on the threshold for sustaining a preliminary objection are those crystallized by the predecessor of the Court in the case of **Mukisa Biscuit Co. vs. West End Distributors Ltd [1969] E.A 696,** wherein **Law, J.A**, expressed himself on this issue as follows:

> **"...So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."**

See also **Sir Charles Newbold, P.:,** in the same case wherein he expressed himself as follows:

> **"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion..."**

We have given due consideration to the above expositions. In our view, the following are elements/ingredients for sustaining a preliminary objection:

> **i) It must be a pure point of law;**
>
> **ii) It must have been pleaded. Alternatively, it may also arise by clear implication out of pleadings if not specifically pleaded;**
>
> **iii) If argued as a pure point of law, it may dispose of the suit;**
>
> **iv) It must be argued on the assumption that all facts pleaded by the opposite party are correct; it cannot succeed if any fact has to be ascertained; or if what is sought is the exercise of the Court's discretion.**

We have applied the above threshold to the rival position herein, we find element/ingredient (i) was satisfied because the substratum of item (1) of the preliminary objection was objection to the appellants petition as laid for noncompliance with **section 67** of the **Act**. It provides as follows:

> **"Where any action or other legal proceeding lies against an Authority for any act done in pursuance or execution, or intended execution of an order made pursuant to this Act or of any public duty, or in respect of any alleged neglect or default in the execution of this Act or of any such duty, the following provisions shall have effect –**
>
> **(a) the action or legal proceeding shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim and of intention to commence the action or legal proceedings, has been served upon the Director-General by the plaintiff or his agent; and**
>
> **(b) such action or legal proceedings shall be instituted within twelve months next after the act, neglect, default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.**

Our construction of the above provision leaves no doubt in our mind that it is couched in mandatory terms as contended by the respondent. The **Act** is an Act of Parliament. It therefore has the force of law. The P.O on noncompliance with this provision is, therefore, on a pure point of law as there is no other way of addressing the respondent's, P.O other than by way of construction and application of **section 67(a)** of the **Act** as construed and applied by the learned Judge at the trial and now by us on appeal which we have done and are satisfied as did the learned Judge that item 1 of the respondent's P.O was on a pure point of law and fell for merit consideration before the learned judge as such.

Element/Ingredient (ii) was also satisfied before the learned Judge at the trial and now before us on appeal as it is explicit from the record that it was raised in the respondent's replying affidavit at paragraph 25 thereof as follows:

> **"25. That I am advised by the advocate on record for the Applicant which advise I verily believe to be true that this suit is premature as the petitioners have not complied with the mandatory legal provision under section 67(a) of the Act, which provides for the giving of the one-months' notice against the Director General of the respondent before commencing a suit."**

In light of the above, we are satisfied that the substratum of the P.O was specifically pleaded, notwithstanding that it also arose by implication from the above highlighted summary of pleadings of the respective parties.

Element/ingredient (iii) was also satisfied that is why appellants petition was struck out upon the trial court sustaining the P.O. It is the same position obtaining before this Court because once the trial courts order sustaining the P.O is affirmed, the appeal will stand dismissed.

Element/ingredient (iv) was also satisfied because facts as pleaded by appellants and on the basis of which they sought the Court's intervention to redress their grievances made no mention of any action taken by them to issue notice of intention to sue the respondent as provided for in **section 67(a)** of the **Act**. None was pointed out to the learned trial Judge. Neither has any been drawn to our attention by appellants in their submissions. What we have on record is what the learned trial Judge alluded to in the impugned ruling that appellants had in their submissions before the trial court mentioned that they had served the requisite notice by email which they failed to avail to the trial court. Neither has any been pointed out to us on appeal.

The core of appellants pleading was that the demolitions and eviction carried out by respondent against them were irregular, illegal and therefore unlawful majorly because they were executed contrary to the resettlement plan; and second, before payment of commensurate compensation. Further, that existence of alternative dispute resolution mechanism for their grievances if any should not have been employed by the trial court as basis for the trial court slamming the door of justice in their faces and sending them away empty handed from the trial courts seat of justice, a position they urge this Court to reverse.

The position of the respondent on the other hand was that the acts complained of by appellants were executed by them (respondent) regularly and lawfully pursuant to **section 4** of the **Act**, donating power to them to take care of National roads. The Kisumu/Busia Highway fell into the category of roads they were mandated to take control of. That it was in discharge of its mandate as provided for under the said provision that they confirmed upon taking appropriate measurements of the width of the road that it was discovered that appellants' structures abutted the road reserve. They took appropriate measures as was required of them by **section 49(1)** and **(5)** of the **Act** by marking the encroached

area, issuing requisite notices to appellants to remedy the extent of encroachment but they (appellants) failed to do so. After carrying out necessary sensitization of the impending demolitions and evictions to pave the way for road construction, and also upon engaging all other stake holders as alluded to in the replying affidavit is when the demolitions and evictions were carried out.

The learned trial Judge agreed with respondent's assertion not only that there was contest as to whether the demolitions and evictions had been carried out and if so how much but whether appellants had complied with the statutory requirement stipulated in **section 67(a)** before seeking the Court's redress. Finding none, vitiated the petition. This is the same parameter that we have been invited by appellants to vitiate and the respondent to affirm. Being a mandatory provision of law, there is no way the learned Judge can be faulted in the conclusion reached when sustaining this element/ingredient of the P.O. The trial court also rightly held a position we affirm on appeal that the P.O left no room for exercise of discretion by the trial court and now us on appeal. Once upheld, the trial court had no discretion to sustain the suit. Likewise, as we have already alluded to above when dealing with element/ingredient (iii), that, if the conclusions reached by the trial court are affirmed, the appeal will stand dismissed is the correct position in our view.

In light of the totality of the above assessment and reasoning, it is our finding that the trial court's finding and reasoning as to why the P.O was sustained were well founded both on law and facts as demonstrated above. They are accordingly affirmed. The appeal is, therefore, without merit and is accordingly dismissed with costs to the respondent.

DATED** and **DELIVERED** at **NAIROBI** this 19th **day of February, 2021.

R. N. NAMBUYE

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JUDGE OF APPEAL

HANNAH OKWENGU

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR