IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KARANJA, KOOME & KANTAI, JJ. A)

CIVIL APPEAL NO 79 OF 2018

BETWEEN

PHARMACY AND POISONS BOARD.....APPELLANT

AND

DR. GEORGE WANG'ANGA.....1ST RESPONDENT

THE NATIONAL ASSEMBLY.....2ND RESPONDENT

THE SPEAKER OF THE NATIONAL ASSEMBLY.....3RD RESPONDENT

THE SPEAKER OF THE SENATE .....4TH RESPONDENT

THE HON. ATTORNEY GENERAL.....5TH RESPONDENT

KENYA PHARMACEUTICAL

DISTRIBUTORS ASSOCIATION.....6TH RESPONDENT

NATIONAL DRUG QUALITY CONTROL LABORATORY.....7TH RESPONDENT

(Being an Appeal against the Judgment and Decree of the High Court of Kenya at Nairobi (G. V. Odunga, J.) dated and delivered on 17th January, 2018

in

Misc. C.A No. 391 of 2017)

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JUDGMENT OF THE COURT

1. This is an appeal against the judgment and decree of the High Court of Kenya at Nairobi (Odunga, J.) where the learned Judge entered judgment in favour of the 1st respondent following a Judicial review application against the appellant, 2nd, 3rd, 4th, 5th, 6th and 7th respondents herein hence issuing the following orders; now impugned:

> **"1. An Order of Certiorari removing into this Court for the purposes of being quashed all attendant proceedings and the decision of the 1st Respondent dated 5th April, 2017 that passed the motion to amend Sections 35 A (5) & 35 I (b) of the Pharmacy and Poisons Act under Clinical Officers (Training, Registration & Licensing) Bill 2016;**
>
> **2. A declaration that the amendment to Sections 35A(5) & 35 I(b) of the Pharmacy and Poisons Act under section**
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> **34 of the Clinical Officers (Training, Registration & Licensing) Bill 2016 was passed in a manner that breached the express provisions of the Constitution and is thus unconstitutional null and void."**

2. A brief background of the instant appeal is that vide a private-member proposed motion, the Clinical Officers (Training, Registration and Licensing) Bill 2016 (herein after referred to as "the impugned Bill") was passed by the National Assembly on 15th April, 2017 and assented into law on 21st June, 2017 hence repealing the former Clinical Officers (Training, Registration and Licensing) Act, Cap 260 of the Laws of Kenya. The said Bill makes provision for training, registration and licensing of Clinical Officers; to regulate their practice and to provide for the establishment, powers and functions of the Clinical Officers Council.

3. On 5th April, 2017, as the National Assembly was debating the impugned Bill at the Committee stage of the whole House, a substantive amendment to Pharmacy and Poisons Act, disguised as an amendment to the Clinical Officers (Training, Registration and Licensing) Bill, 2016, was introduced as an amendment to the subject Bill. Subsequently, the said substantive amendment to the Act, under the impugned Bill underwent the 3rd Reading and was later passed as part of the Clinical Officers (Training, Registration and Licensing) Bill, 2016 (**section 34**).

4. The ultimate effect of the impugned Bill was that the former Clinical Officers (Training, Registration and Licensing) Act was repealed by the now Clinical Officers (Training, Registration and Licensing) Act No. 20 of 2017. Further, it amended **section 35 I(b)** and **section 35A(5)** of the Pharmacy and Poisons Act, Cap. 244, which previously read as follows:

> **"35 I(b) The Director (of National Quality Control Laboratory) shall have power to inspect premises (Pharmaceutical Manufacturing Companies) and issue certificates of compliance:**
>
> **35 A(5). The Director of the National Drug Quality Control Laboratory or any member of the Laboratory staff authorized by him shall have power to enter and sample any medicinal substance under production in any manufacturing premises and certify that the method of manufacture approved by the Board is being followed."** by deleting the whole of section **35 I(b)** and substituting **"the Director of the National Drug Quality Control Laboratory"** with **"the Pharmacy and Poisons Board"** in section **35 A(5).**

5. It was the 1st respondent's case that: the Clinical Officers (Training, Registration and Licensing) Act/Bill does not define the word *'Board'* and 'manufacturing premises' but only defines *'Clinical Officers council'* that deals with the training and registration of clinical officers and therefore there was absolutely no nexus between **section 34** and the rest of the Act; the amendments to the Pharmacy and Poisons Act were inserted by the 2nd respondent in the impugned Bill during the Committee Stage vide a notice of motion hence the proceedings and the decision dated 5th April, 2017 passing such motion to amend the aforementioned Act were flawed as they were not done in accordance with the constitutional procedure i.e. the laws governing the legislative enactment of laws by Parliament (**Articles 10, 109, 110, 111, 112, 113, 118(1)(b), 119, 122** & **123** of the Constitution and Standing Orders of both the National Assembly and the Senate); such amendment of the Pharmacy and Poisons Act would lead to the abolition of the issuance of statutory certificate of compliance to Good manufacturing Practices (GMP) which is a universal certification of GMP to the manufacturers of medicines by Governments without which Pharmaceutical Manufacturing companies would be at liberty to manufacture dangerous counterfeit and substandard medicines, which danger was imminent and real to the general public and; such amendment of the Pharmacy and Poisons Act would have an unintended repeal of **section 35D** of the Act which establishes the National Quality Control Laboratory as an autonomous body, hence by implication un-procedurally abolish it in violation of the provisions of the State Corporations Act (Cap. 446) which establishes the State Corporations Advisory Committee whose mandate, in consultation with the Attorney-General and the Treasury, is to among other things, advise the President on the establishment, reorganization or dissolution of State Corporations.

6. In support of the 1st respondent's application, the 7th respondent (National Drug Quality Control Laboratory) reiterated the 1st respondent's averments. In addition, it was its case that the clerk of National Assembly admitted that the procedure of the amendment offended the Constitution and Standing Orders of the National Assembly. Further, that it advised it to write to the Attorney General and Head of Public Service on the matter since the only remaining remedy was to have the Bill, returned to the National Assembly so as to remove the proposed amendments to the Pharmacy and Poisons Act.

7. In opposition of the application, it was the 2nd and 3rd respondents' case that: the 1st respondent's application and resultant prayers threatened the legislative role of Parliament and specifically the National Assembly by being in violation of National Assembly's constitutional mandate to enact, amend and repeal laws; that the impugned Bill was passed into law in accordance with the law; the amendment of the Pharmacy and Poisons Act was intended to harmonise the powers of the Pharmacy and Poisons Board and those of the National Drug Quality Control Laboratory especially with respect to inspection of premises of registered pharmacists by removing an ambiguity that was apparent in the readings of the subject provisions. In summary it denied all factual allegations by the 1st respondent and the 3rd interested party and ultimately urged the court to dismiss the application.

8. The 4th and 5th respondents herein despite being duly represented upon service, did not file responses to the 1st respondent's Judicial Review application.

9. The key issues which fell for determination before the learned Judge were *inter alia;* whether the court was precluded from determining the issues in controversy by dint of the principle of separation of powers (independence of parliament) and the provisions of section 11 of the Parliamentary Powers and Privileges Act; whether the impugned Bill was in fact and in substance enacted in accordance with the Constitution and the applicable legislative laws; whether the impugned Bill concerned county governments functions; and lastly whether the judicial review orders sought were merited.

10. Upon hearing the matter the learned Judge ultimately pronounced himself as follows,

> **"Having considered the issues raised in this application the inescapable conclusion I come to is that the manner in which sections, 35A(5) and 35 I(b) of the Pharmacy and Poisons Act, were amended by the impugned Clinical Officers (Training, Registration and Licensing) Act, was clearly unprocedural, unlawful and ultra vires and was consequently unconstitutional".**

By a judgment dated 17th January, 2018, which is the subject matter of this appeal, the learned Judge issued orders in favour of the 1st respondent as outlined earlier in this judgment.

11. Aggrieved by the said orders, the appellant appealed against the entire judgment, raising 14 grounds of appeal which can be condensed as follows: - that the learned Judge erred in fact and in law: by improperly exercising his discretion hence arriving at an erroneous conclusion; by finding that the amendment to Sections **35A(5)** & **35 I(b)** of the Pharmacy and Poisons Act under **Section 34** of the Clinical Officers (Training, Registration & Licensing) Bill 2016 was unconstitutional and; by finding that the impugned Bill concerned County governments.

12. The appeal was canvassed by way of written submissions and parties were represented by counsel. However, the 4th, 5th, 6th, and 7th respondents despite due representation do not appear to have filed submissions as the same do not appear in the Record of Appeal. During the plenary hearing on 7th October, 2019 Mr. Sisule appeared for the appellant, Mr. Wanjala held brief for Mr. Musyoka for the 1st respondent, Mr. Odhiambo appeared for the 4th respondent, Mr. Kisinga held brief for Mr. Muturi for the 6th respondent and Mr. Wanjala held brief for Ms. Brenda for the 7th respondent. There was no representation for the 2nd, 3rd and 5th respondents.

13. In a bid to demonstrate why the appeal should be allowed counsel for the appellant amplified four (4) main issues being: whether the appellant was granted a fair hearing; whether the amendments to **section 34** of the Clinical Officers (Training, Registration and Licensing) Act were unconstitutional; whether the impugned Bill left certain functions unregulated and; whether the regulation of medicines is a county government function which would have required the input of the Senate.

14. On the first issue counsel, citing **Article 25(c)** and **Article 50(1)** of the Constitution submitted that the learned Judge was in breach of the appellant's right to a fair hearing as the learned Judge failed to refer to and analyse the appellant's case despite it having demonstrated an extensive case and written submissions. He contended that the learned Judge failed to consider its replying affidavits lodged in response to the 1st respondent's application for leave and application for judicial review reliefs sworn by one Dr. Fred Moin Siyoi dated 19th July, 2017 and 16th August, 2017 respectively and its submissions in the judicial review proceedings. That, therefore, there was a violation of the appellant's right to a fair hearing.

15. On the second issue counsel for the appellant contended that the motion mover regarding the impugned Bill complied with the standing orders and that the amendments were duly introduced vide a written notice and ultimately passed by the National Assembly in compliance with the Constitution. Further, that during the debate of the motion, the motion mover duly explained the meaning, purpose and effect of the proposed amendments.

16. He contended that the learned Judge erred in fact and law in finding that the amendments of section **35A (5)** and **35 I(b)** of the Pharmacy and Poisons Act under **section 34** of the Clinical Officers (Training, Registration and Licensing) Act violated the Standing Orders and provisions of the Constitution. Further, that the learned Judge misdirected himself in finding that **section 34** of the Clinical Officers (Training, Registration and Licensing) Act had no nexus with the rest of the Act. That **section 10(d)** empowered the Clinical Officers Council to consult, collaborate and cooperate with the Pharmacy and Poisons Board among other organizations enlisted in discharging its statutory functions.

17. Counsel further posited that the learned Judge erred in fact and law by failing to uphold the principle of separation of powers and as a result went on to interfere with the constitutional mandate of Parliament as well as the internal legislative process of Parliament. He relied on the case of **R v. Pius Wanjala Ex Parte Ministry of Health & 5 Others, Judicial Review Division Misc. Civil Application No. 159 of 2016.**

18. Citing among other cases the case of **John Harun Mwau v. Andrew Mullei & Others, Court of Appeal C.A No. 157 of 2009** he argued that the learned Judge failed to appreciate Parliamentary Privilege as provided for under the National Assembly and Senate (Powers and Privileges) Act Cap 6 which underpins the independence of the legislature which does not allow for decisions of either House or its Speakers to be questioned by any court. That therefore the application before the High Court violated the said principles. Further, he urgued that the learned Judge ought to have been guided by the principle in law that a court cannot substitute a decision of an authority exercising its discretionary jurisdiction; that in this case it amounted to a usurpation of the legislative powers of the National Assembly.

19. Counsel also submitted that the evidence on record revealed that before assenting to the Clinical Officers Act, the President, through the office of the Head of Public Service, sought advice from the Attorney General who confirmed that the Act was properly legislated and that the same was constitutional. He contended that the learned Judge misdirected himself by finding that the Attorney General misdirected the President by advising him to assent to the impugned Bill in order to align the Health sector with the provisions of the constitution. Further, that the proceedings leading to passing of the impugned Bill were done in good faith and in accordance with the law.

20. On the third issue, counsel submitted that **section 3** of the Pharmacy and Poisons Act, establishes the Pharmacy and Poisons Board as the regulatory body. Further, that the Pharmacy and Poisons Act (Amendment) No. 12 of 1992 establishes the National Drug Quality Control Laboratory, 7th respondent herein, and its responsibilities are contained therein. He contended that subsequently in 2010 vide the Pharmacy and Poisons (Registration of Drugs (**Legal Notice No. 192 of 2010**)), Parliament empowered the appellant to conduct inspections in pharmaceutical manufacturing premises either by themselves or through authorized inspectors before issuing certificates of registration of medicinal substances upon approval.

21. Further, that by virtue of the said legal notice the Board has been carrying out such mandate ensuring that licensed manufactures are compliant with the Good Manufacturing Practices (GMP) prescribed by the Board. He maintained that Parliament in enacting the Clinical Officers Act, 2017 amended section **35A (5)** and **35 I(b)** of the Pharmacy and Poisons Act to empower the Pharmacy and Poisons Board to gain access to the manufacturing premises and inspect the medicinal substances and the manufacturing process to certify that they are as approved by the said Board. Counsel argued that the said amendments were with a view to clearly distinguish the responsibilities of the appellant and the 7th respondent. In addition, that the amendments did not abolish the functions of the 7th respondent, but are meant to ensure that the testing of such pharmaceutical substances is done upon the appellant's request and to its standards.

22. Counsel submitted that the Health Act, 2017, which commenced on 24th September, 2017, has transitional provisions providing that any laws or regulations in force before the effective date shall remain in force but shall be construed with such alterations, adaptations, qualifications and exceptions necessary to bring such laws or regulations in conformity with the Health Act, 2017. In addition, that the said Act provides that if a certain function was assigned to a state organ, then the organ to which the Act assigns the function is the legitimate organ to undertake the function. He submitted that the learned Judge erred by limiting the discretionary powers of the appellant to determine who should inspect premises in the process of considering registration applications to choose its inspectors for specific inspections, in accordance with **section 10** of the Pharmacy and Poisons (Registration of Drugs (**Legal Notice No. 192 of 2010**)).

23. Placing reliance on among other cases the Uganda case of **Pastoli v. Kabale District Local Government Council & Others [2008] 2 EA 300,** counsel emphasized on the intended purpose of Judicial Review process by law which is only concerned with the process of reaching a decision and not the merit of the decision itself. He faulted the learned Judge for making the finding that the amendment would expose Kenyans to dangerous sub-standard and counterfeit medicines if the appeal was not allowed. He argued that such findings touched on the merits of the decision and not the process of reaching the decision. He maintained that the learned Judge erred by reviewing, analysing and determining the merits of the case and subsequently issuing orders declaring the amendments unconstitutional, null and void. He further submitted that the amendments to the Pharmacy and Poisons Act did not leave any function unregulated as alluded by the 7th respondent.

24. On the fourth issue counsel citing **Article 94** and **109** of the Constitution, emphasised that the legislative powers of Parliament are conferred upon it by the Constitution. He further cited **Article 110** and the **Fourth Schedule** of the constitution submitting that there is a clear distinction as to the matters that fall under the mandate of the National government and those under the mandate of the County government; that the National government is charged with the function of Health Policy which includes setting quality standards and professional qualifications which is different from the mandate conferred to the County government regarding the control of drugs and pornography.

25. He maintained that the finding by the learned Judge that the function of the regulation of medicines or drugs is a County government function is erroneous; that as per the Fourth Schedule of the Constitution, reference to control of drugs and pornography is clearly not about the regulation or licensing of medicines but has to do with law enforcement. He maintained that as demonstrated, the impugned Bill did not concern county governments and did not have to be submitted to the Senate for consideration.

26. In view of the foregoing he urged this Court to find that the instant appeal has merit and to grant orders as prayed.

27. The 2nd and 3rd respondents supported the appeal. In the submissions filed on their behalf by S.M Mwendwa, counsel submitted that the main issues for the court's determination are: whether the resultant amendments of the Pharmacy and Poisons Act by the impugned Bill are unconstitutional; whether the participation of the Senate was required in enacting the impugned Bill and; who should bear the costs of the suit.

28. On the first issue, counsel submitted under three heads as follows:

1) Whether amendments may be moved at the Committee of the Whole House

Under this head he cited an excerpt from Erskine May's 'Parliamentary Practice' 24th Edition at page 572 submitting that it is a well-established parliamentary practice that notices to amendments to a Bill may be circulated on the day when a Bill is to be considered at the Committee stage and moved by the member who gave the notice. Further, that amendments can be made to every part of a Bill, including addition of new clauses and schedules.

Counsel submitted on public participation citing the case of **Law Society of Kenya v. The Attorney General & 10 Others Petition No. 3 of 2016** where it was held as follows on the issue of public participation: **"…what is required is that a reasonable opportunity be afforded to the public to meaningfully participate in the legislative process."** He further contended that Parliament ought not be faulted if it is shown that public participation was conducted with regards to the Bill, as to do so would be crippling the workings of Parliament in its legislative mandate. In addition, relying on the case of **Institute for Social Accountability & Another v. National Assembly of Kenya & 4 Others (2015) eKLR** he submitted that during the legislative process amendments to the Bill may be moved during the Committee stage provided that the amendment is in substance within the parameters of what had been subjected to public participation during the review process. Further, that to hold that every amendment moved must undergo the process of public participation would negate and undermine the legislative process. He submitted that in the instant case the process leading to the passing of the amendments was in accordance with the Constitution, the standing orders and parliamentary practice. Further, that the legal position is that a Court should not supervise the workings of Parliament. He cited the case of **Pevans East Africa Limited v. Chair, Betting Control & Licensing Board & 7 Others Civil Appeal No. 11 of 2018** where this Court cited the Supreme Court case of **The Speaker of the Senate & Another v. Attorney General & 4 Others (2013) eKLR.**

2) Whether the amendments made by the National Assembly has no nexus with the Clinical Officers (Training, Registration and Licensing) Act

Under this head counsel submitted that the amendments made by the National Assembly in the Pharmacy and Poisons Act were well connected to the Clinical Officers (Training, Registration and Licensing) Act; that by dint of being concerned with matters of the health industry and the practice there, both pieces of legislation are interlinked.

3) Whether the process employed by the National Assembly was irrational, illegal and procedurally wrong

Under this head counsel submitted that Judicial Review is concerned with the process of decision making and not the merits of the decision. Therefore, that the trial court was only required to test the legality, rationality and procedural propriety of the decisions under review. He maintained that in the instant case, the trial court went beyond its mandate by going into the merits of the decision.

See: **Peninah Nadako Kiliswa v. Independent Electoral & Boundaries Commission & 2 Others.** Supreme Court Petition No. 28 of 2014

4) Whether the amendments made in the impugned Bill are unconstitutional Under this head counsel cited among other cases the case of **Institute of Social Accountability & Another v. National Assembly of Kenya & 4 Others** *(supra)* and submitted that when determining constitutionality of a statute, the Court must not only consider the general presumption of constitutionality of the Act, but also look into the object and purpose of the amendments and the intentions of Parliament.

He argued that Parliament's intention was to empower the Pharmacy and Poisons Board to enter and sample any medical substance under production in any manufacturing premises and certify that the method and process of manufacturing is as per the approved standards so as to ensure the best practices and policy is followed in the health sector. Further, that the amendments were with a view to clarify the roles and functions of the Pharmacy and Poisons Board and those of the Director of the National Drug Quality Control Laboratory. Further, that the amendments were to the effect that the Board can authorize any entity it deems qualified to inspect and sample medicinal products and premises including the Director of the National Drug Quality Control Laboratory.

29. On the second issue counsel submitted that the contentious amendments were not submitted to the Senate since they were policy issues within the mandate of the National Government. Citing **Article 186(1)** and the Fourth schedule of the constitution, he submitted that the functions of both levels of government are well defined. He argued that the functions of the National government include "health policy" and those of the county government include "control of drugs and pornography". He further argued that the "control of drugs" referred to the law enforcement in the counties and not to the setting of standards and licencing, since that is a national government policy mandate. In addition, relying on the case of **Pevans East Africa Limited** (supra) he submitted that there is no significant impact that would be occasioned to the counties by the National government's duty to certify that the method of manufacture that is approved by the Board is being followed.

30. He contended that the amendments to the impugned Bill was an attempt by Parliament to fulfil its obligation under **Article 21(2)** of the Constitution. He further argued that it was a misdirection by the learned Judge to find that it is the court which has the final duty to determine whether a Bill concerns County government and not the Speakers of the two Houses contrary to **Article 110(3)** of the constitution. See: **National Assembly of Kenya & Another v. Institute of Social Accountability & 6 Others (2017) eKLR.**

31. On the third issue, counsel placed reliance on the case of **Jasbir Singh Rai & Others v. Tarlochan Rai & Others Petition No. 4 of 2012** arguing that legislation enacted by Parliament is for the benefit of the entire Republic of Kenya, therefore the Application before the trial court would be deemed as a case of great public importance. He maintained that condemning the 2nd and 3rd respondents to pay costs would be akin to condemn the entire Republic to bear the costs of defending their interests. He urged that parties should bear their individual costs.

32. He further submitted that the trial Judge was at fault for directing that the 3rd respondent bear the costs of the suit; that the 3rd respondent neither participated in the enactment of the impugned Bill nor in the proceedings before the trial court and that no fault has been found against the 3rd respondent hence to condemn it to bear costs would be an injustice. In conclusion, counsel urged the Court to allow the appeal.

33. Urging the Court to dismiss the appeal, counsel for the 1st respondent submitted that the issues for determination before this Court are: whether the appellant was given a fair hearing; whether the amendments made by the impugned Bill to the Pharmacy and Poisons Act were done in an unconstitutional manner; whether the substantive amendments to the Pharmacy and Poisons Act were subjected to public participation; whether the impugned Bill was submitted to the Senate; whether the amendments to the Pharmacy and Poisons Act were what was intended and what were the effects; whether the High Court had jurisdiction.

34. On the first issue, citing the case of **Ruiz Torija v. Spain, Application No. 18390/91** and **Hiro Balani v. Spain, Application No. 18064/91,** counsel submitted that the appellant failed to demonstrate that specific relevant submissions in support of his case were not considered by the learned Judge. He contended that the appellant's replying affidavit sworn by one Dr. Fred Moin Siyoi on 19th July, 2017 was lodged in the High Court in reply to the 1st respondent's application for leave to file judicial review proceedings which leave was to operate as stay, an interlocutory proceeding, and not in response to the Judicial Review proceedings. Further, that the other issues raised in the appellant's replying affidavit sworn by the same Dr. Fred Moin Siyoi on 16th August, 2017 lodged in response to the 1st respondent's judicial review application and submissions thereof were extensively canvassed in the learned Judge's judgment.

35. On the second issue, counsel relying on the case of **Constitutional Reference Petition Law Society of Kenya v. Attorney General & Another (2016) eKLR** submitted that the amendments effected by the impugned Bill did not fit into the definition of 'minor amendments'; he maintained that the said amendments were substantive amendments.

36. He further submitted that the subject of the said amendments to the Pharmacy and Poisons Act were not in logical sequence to the subject matter of the Clinical Officers (Training, Registration and Licensing) Bill, 2016. He maintained that the provisions of the two affected Acts were not in dispute, but that what was in dispute was the manner in which the impugned Bill was passed. He submitted that the evidence on record indeed revealed that the amendments to the Pharmacy and Poisons Board, which were substantial and unrelated, were introduced into the Bill at the Committee stage of debating on the Clinical Officers (Training, Registration and Licensing) Bill, 2016 contrary to the Standing Order of the National Assembly and **Article 109**.

37. Relying on the case of **Law Society of Kenya v. Attorney General & Anor.** *(supra)* he submitted that Parliament is bound to comply with its own procedures. He maintained that the learned Judge had not erred in finding that the subsequent observance of **Standing Order No. 133 (11)** by the 2nd respondent could not cure the fatal contravention of **Standing Order No. 133 (5) & (6)**, which has a constitutional underpinning at **Article 10** and **Article 118**. He further submitted that evidence on record disclosed that in the Attorney General's advice to the President he acknowledged that the 2nd and 3rd respondents were in violation of the Standing Orders of the National Assembly.

38. On the third issue, citing **Article 118** of the Constitution and National Assembly Standing **Order No. 127**, he submitted that all

substantive enactments must of necessity be subjected to public participation which by law is to take place between the first and second readings. He maintained that the amendments to the Pharmacy and Poisons Act having been introduced in the Committee stage it was apparent that such substantive amendments were not subjected to public participation. Relying on among other cases the case of **Robert N. Gakuru & Others v. Governor Kiambu County & 3 Others (2014) eKLR (Petition No. 532 of 2013 Consolidated with Petition Nos. 12 of 2014, 35 & 36 of 2014, 42 of 2014, and 72 of 2014 and JR. Misc. Appl. No. 61 of 2014)** he urged that Parliament circumvented the Constitutional requirements of public participation and mischievously short-circuited the letter and the spirit of the constitution. Further, that having been in violation of **Article 10** and **Article 118** of the constitution, the impugned Bill was amenable to Judicial Review prerogative remedies, hence the instant appeal should fail on this ground.

39. On the fourth issue, counsel submitted that the amendments of the Pharmacy and Poisons Act was on issues of health as the Act deals with the Quality Control of Manufacture of Medicines. Highlighting **Articles 109, 110 to 113, 122, 123** and the Fourth Schedule of the Constitution, counsel submitted that it was clear that the amendments raised issues of importance to the County government hence they ought to have been submitted to the Senate for consideration. He maintained that evidence on record revealed that such amendments were never submitted to the Senate after passage by the National Assembly arguing that this was in violation of the aforementioned provisions of the law.

40. He concurred with the learned Judge's finding that the final and ultimate decision as to whether a Bill concerns County government rests with the courts. Placing reliance on the case of **Speaker of the Senate & Anor. v. Attorney General & 4 Others (2013) eKLR** he submitted that failure by the 2nd and 3rd respondents so submit the impugned Bill to the Senate amounted to an express violation of the law.

41. On the fifth issue, he submitted that by a reading of the Hansard, it is clear that Parliament's intention through the impugned Bill was to transfer the function of the 1st respondent of inspection of medicines manufacturing premises and subsequent issuance of the certificate of compliance to the appellant. However, a clear analysis of the amendments of the Pharmacy and Poisons Act as passed by Parliament indicates that the only thing that was transferred was the function of inspection of medicines manufacturing premises. The function of issuing certificates of compliance seems to have remained as a function of the 7th respondent by virtue of **section 35K** of the said Act. Further, that issuance of the certificates requires laboratory facilities which remained in the 7th respondent's domain.

42. He contended that by virtue of deleting section **35 I(b)** of the Act there would be no legal basis to regulate manufacture of medicines hence the danger of imminent exposure to and distribution of counterfeit and sub-standard medicines. Lastly, counsel submitted that he fully relied on the learned Judge's findings and was of the view that the High Court had jurisdiction to address and determine the Judicial Review application before it. He urged the Court to dismiss the appeal.

43. This being a first appeal, this Court has a duty to subject the entire evidence and submissions presented to the High court to a fresh and exhaustive scrutiny with a view to drawing its own conclusions. See:

Selle & another –vs- Associated Motor Boat Co. Ltd & Others (1968) EA 123.

44. Having considered the record of appeal, both written and oral submissions and the applicable law as espoused in the authorities cited by the parties, we distil the pertinent issues falling for determination to be the following: -

i. Whether the trial Court had jurisdiction to entertain the judicial review proceedings before it.

ii. Whether the appellant was accorded a fair hearing?

iii. Whether the decision to pass the impugned Bill was amenable to judicial review and if so whether the learned Judge properly exercised his discretion.

iv. Costs.

45. On the first issue, it is now settled law that jurisdiction is everything and without it, the court cannot entertain any proceedings and must down its tools. As was held by the Supreme Court in **Samuel Kamau Macharia & Another V Kenya Commercial Bank Limited & 2 Others, Application No. 2 of 2011**, a court can only exercise jurisdiction that has been conferred upon it by either the Constitution or legislation or both. Therefore, it cannot arrogate to itself jurisdiction exceeding that which is bestowed upon it by law. See: **The Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited (1989) KLR 1.**

46. Also, this Court in **Adero & Another V Ulinzi Sacco Society Limited [2002] 1 KLR 577,** quite sufficiently summarised the law on jurisdiction as follows;

"1. …

2. The jurisdiction either exists or does not ab initio …

3. Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.

4. Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal."

47. The appellant argued that the trial court lacked jurisdiction to entertain the Judicial Review proceedings stating and submitting that: it

threatened the legislative role of Parliament more specifically the National Assembly's mandate to enact, amend and repeal laws; the trial Court failed to uphold the principle of separation of powers hence interfering with the constitutional mandate of Parliament as well as the internal legislative process of Parliament and; the learned Judge failed to appreciate Parliamentary Privilege as provided for under the National Assembly and Senate (Powers and Privileges) Act Cap 6 which underpins the independence of the legislature which does not allow for decisions of either House or its Speakers to be questioned by any Court.

48. The learned Judge in his decision extensively interrogated the doctrine of separation of powers and the independence of the legislature/ Parliament. In examining the doctrine, he examined the values and systems entrenched in the Constitution including the national values and principles of governance under the preamble and **Article 10** of the Constitution. The Learned Judge went further to examine the provisions relating to the sovereign Will of the people of Kenya as espoused under **Article 1** of the Constitution as well as the binding effect of the Constitution on state organs as espoused in **Article 2** of the Constitution where the Constitution decrees that any law, including customary law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.

49. In addition, the learned Judge examined the constitutional obligation imposed on every state organ as entrenched in **Article 3** of the Constitution where the constitution decrees that every state organ has a duty and obligation to respect, uphold and defend the Constitution.

50. In this respect the trial Court held as follows:-

> **"I associate myself with the positions adopted in these decisions and dare add that when any of the state organs or state officers steps outside its mandate, this court will not hesitate to intervene. It is therefore my view that this court is vested with power to interpret the constitution and to safeguard, protect and promote its provisions as provided under article 165(3) of the Constitution, has the duty and obligation to intervene in actions of other state organs where it is alleged or demonstrated that the Constitution has either been violated or threatened with violation."** (Emphasis added)

51. Indeed, it is evident that the substantive Judicial Review application filed before the High court raised fundamental constitutional issues and questions for determination. The principal question before the court as presented was whether the impugned amendments to the Pharmacy & Poisons Act as contained in the Clinical Officers (Training, Registration and Licensing) Bill 2016 were in violation of the Constitution more particularly **Article 10**, **110**, **113**, **122** and **123** of the Constitution as well as **section 56(1)** and **133 (5)** and **(6)** of the Standing Orders of the National Assembly. In effect, the said challenge invited the High court to interrogate whether the functions and powers of the legislature were exercised in accordance with the Constitution and the relevant law. In this respect, the learned Judge at paragraph 100 held thus;-

> **"*100.* …in that regard, as the petition alleges a violation of the constitution by the Respondents, it is my finding that the principle of independence of the Legislature does not inhibit this Court's jurisdiction or prohibit it from addressing the Applicant's grievances so long as they stem out of an alleged violation of the Constitution. To the contrary, the invitation to do so is most welcome as this is one of the core mandates of the court.**
>
> ***101.* My finding is fortified under the principles that the Constitution is the Supreme Law of this country all state Organs must function and operate within the limits prescribed by the Constitution. In cases where they step beyond what the law and the Constitution permit them to do, they cannot seek refuge in independence and hide under that cloak or mask of inscrutability in order to escape judicial scrutiny."**

52. The Courts have in the past been faced with the same question, as to whether judicial review proceedings threaten the legislative role of Parliament more specifically the National Assembly's mandate to enact, amend and repeal laws. In the Supreme Court case of **The Speaker of the Senate & Another, Supreme Court Advisory Opinion Reference No. 2 Of 2013** the Court expressed itself as follows:

> **"*[55]* ….**
>
> **It is clear to us that it would be illogical to contend that as the Standing Orders are recognized by the Constitution, this Court, which has the mandate to authoritatively interpret the Constitution itself, is precluded from considering their constitutionality merely because the Standing Orders are an element in the "internal procedures" of Parliament. We would state, as a legal and constitutional principle, that Courts have the competence to pronounce on the compliance of a legislative body, with the processes prescribed for the passing of legislation.**

53. Further, in the context of circumstances similar to this case, the doctrine of separation of powers was clearly spelt out in the Supreme Court case of **Interim Independent Electoral Commission Constitutional Application No. 2 Of 2011** where the Court pronounced itself as follows:

> **"[53] Separation of powers is an integral principle in Kenya's Constitution: for instance, Chapter 8 is devoted to the Legislature; Chapter 9 to the Executive; and Chapter 10, on the Judiciary, provides (Article 160(1)) that:**
>
> > **"In the exercise of judicial authority the Judiciary as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority".**
>
> **[54] <u>The effect of the Constitution's detailed provision for the rule of law in the processes of governance, is that the legality of executive or administrative actions is to be determined by the Courts, which are independent of the Executive branch. The essence of separation of powers, in this context, is that the totality of governance-powers is shared out among different organs of government, and that these organs play mutually-countervailing roles. In this set-up, it is to be recognized that</u>**

none of the several governmental organs functions in splendid isolation." (Emphasis supplied)

54. The foregoing in our view answers the question on jurisdiction. The Court, as the last defence line in protection of the rule of law and the supremacy of the Constitution, cannot simply down its tools on the basis of the independence of the legislature or separation of powers even when it is clear that the legislature has exceeded its mandate as circumscribed under the Constitution. The legislative independence of the legislature only applies to the extent that it has acted and operated within the parameters of the Constitution. The judiciary is the people's watchdog and where the institution that is mandated to make laws trample on the same, the judiciary will not fold its hands in helplessness on account of the doctrine of separation of powers.

55. On the issue of Parliamentary Privilege as provided for under the National Assembly and Senate (Powers and Privileges) Act Cap 6, the appellant faults the High Court in its findings that section 11 of the Parliamentary Powers and Privileges Act did not apply in the case before him. On this issue the learned Judge found as follows:

> **"149. I am aware that on 21st July, 2017, the Parliamentary Powers and Privileges Act, No. 29 of 2017 was assented to by the President. Under section 38(1) of the said Act the National Assembly (Powers and Privileges) Act was repealed. However the commencement date of Act No. 29 of 2017 was indicated as 17th August, 2017.**
>
> **….**
>
> **156. There is no stipulation in the Parliamentary Powers and Privileges Act that it was meant to operate retrospectively. Before its commencement, the ex parte applicant had the right to challenge the amendments to the Pharmacy and Poisons Act.**
>
> **…**
>
> **160. It is therefore my view and I hold that section 11 of the Parliamentary Powers and Privileges Act, No. 29 of 2017, assuming without deciding that the provision is in the first place constitutional, does not apply to these proceedings.**
>
> **….**
>
> **162. It is clear from the foregoing that section 12 only deals with civil proceedings. These are judicial review proceedings. It is now trite law that the High Court in the exercise of its judicial review jurisdiction exercises neither a criminal jurisdiction nor a civil one since the powers of the High Court to grant judicial review remedies is sui generis. See Commissioner of Lands vs. Kunste Hotels Ltd (1995-1998) 1 EA 1.**
>
> **163. It however suffices to state that in conducting its proceedings, Parliament is bound to adhere to the provisions of the Constitution and where its actions contravene the Constitution; the same is null and void."**

56. The appellant argued that the privilege of parliament is bestowed upon the legislature to protect parliament in the discharge of its functions as a representative of the people and as an oversight body that provides checks and balances in line with the principles of separation of powers. Further, that the principle of parliamentary privilege of the legislature does not allow for decisions of either house or its speaker to be questioned by any court and that the appellant therefore violated this principle.

57. Section 11 of the Parliamentary Powers & Privileges Act, No. 29 of 2017 provides:-

> **"No proceedings or decision of Parliament or the Committee of the Powers and privileges acting in accordance with the Act shall be quashed in any court."**

According to the appellant, the Court was bound by the said provision of the law and therefore could not quash a decision of Parliament in passing the impugned law.

58. A careful perusal of the record indicates that the impugned law, which was subject of the Judicial review proceedings, was passed by the National Assembly on the 5th April, 2017 and subsequently enacted into law by the National Assembly on the 21st June, 2017. It is not in dispute that as at the time the Judicial Review proceedings were instituted on the 11th July, 2017, the said Parliamentary Powers & Privileges Act law was yet to come into effect.

59. As observed by the learned Judge, the said Act has been repealed by the Parliamentary Powers and Privileges Act No. 29 of 2017 and was assented to by the President on 21st July, 2017. See: **Apollo Mboya v Attorney General & 2 Others, Nairobi High Court Petition No. 472 of 2017**. Further, as perceived by the trial Judge, the commencement of the said law was indicated as 17th August, 2017; there is nothing in the transitional provisions of the said law which suggests an intention that the said law was to operate retrospectively.

60. Therefore, we agree with the learned Judge's findings that the said Act having commenced on 17th August, 2017, this being after the cause of action arose and after the Judicial Review Application had been filed does not apply in the instant case. In view of the foregoing our finding is that the appellant's argument that the High Court lacked jurisdiction to entertain the judicial review proceedings on the basis of the principle of separation of powers and the bar imposed by **section 11** of the Parliamentary Powers and Privileges Act, 2017 does not hold water and must, therefore, fail.

61. On the second issue, the appellant faulted the High Court for violating its right to a fair hearing on the basis that the learned Judge failed to refer to and analyse its evidence despite having demonstrated an extensive case and written submissions. The 1st respondent argues that the appellant had failed to demonstrate any specific relevant submissions in support of its case which were not considered by the learned Judge. Further, the 1st respondent states that one of the replying affidavits highlighted by the appellant in support of its ground that it was not accorded a fair hearing was a pleading lodged in the High court during an interlocutory proceeding and not during the Judicial Review hearing;and that the other affidavit raised issues that were extensively canvassed in the learned Judge's judgment.

62. It is clear from the record that the appellant moved the High Court vide a Notice of Motion dated11th July, 2017 seeking to be joined as a party to the proceedings which eventually gave rise to this appeal. The principal reasons given for the joinder sought was that the appellant was the party to be most affected by the amendments to **section 35A** and **35B** of the Pharmacy and Poisons Act. The application was allowed and the appellant was joined as the 1st interested party in the proceedings. Thereafter it filed lengthy affidavits raising weighty issues in response to the applications. One such affidavit is a 65 paragraph affidavit running to no less than 20 pages, with several annexures, sworn by Dr. Fred Moin Siyoi dated 16th August, 2017. There were also submissions filed on 30th October, 2017 running to 21 pages and lists of authorities of even date.

63. When the learned Judge was writing the impugned judgement, he clearly summarised the applicant's case, and the 3rd interested party's case which was in support of the application. The learned Judge then analysed the 1st and 2nd respondents' case as the only parties who were opposing the application before he went on to make his determination. The learned Judge appears to have given the appellant a total blackout and proceeded as if they were not parties to the suit. We have read the affidavits and submissions in question and in our view the issues raised therein are not pedantic or frivolous in any way. The appellant had a serious stake in the proceedings, its advocates participated fully by filing affidavits and submissions. Its case should have been analysed and the issues they raised should have been considered and determination made on them.

64. In absence of any mention of the said affidavits and submissions by the learned Judge, or the issues raised therein being addressed, we are inclined to agree with the appellant that it was not accorded a fair hearing. It matters not that the learned Judge would probably have arrived at the same conclusion. Ground one of the memorandum of appeal is therefore not an idle ground and we find merit in the same.

65. The third and most fundamental issue that falls for the Court's determination is whether the proceedings and resultant decision to pass the impugned Bill were amenable to judicial review and if so whether the learned Judge properly exercised his discretion. The appellant on this aspect faulted the learned Judge in finding that the amendment of **section 34** of the Clinical Officers Act were unconstitutional and failed to consider **section 133(11)** of the National Assembly Standing Orders. The appellant further faulted the learned Judge's findings that the regulation of medicines is a county affair when in fact **Article 1** of the Fourth Schedule of the Constitution designates the health policy to be a National government function. The appellant further faulted the findings of the learned Judge where he held that in amending **section 35A** and **35 I (b)** of the Pharmacy and Poison's Act through the Clinical Officers Act and the resultant findings that the deletion of section **35(1)** led the function of inspection of premises and issuance of Certificates of compliance unregulated.

66. On the legality and constitutionality of the amendments, it is common ground that on the 5th of April, 2017, the National Assembly while debating the Clinical Officers (Training, Registration and Licensing) Bill 2016 (the impugned bill) introduced substantive amendments to the Pharmacy and Poisons Act which was disguised as an amendment to the impugned bill. It is common ground that the said amendments were moved during the Committee Stage of whole house which subsequently underwent the third reading and was subsequently amended and was later passed as part of the Clinical Officers (Training, Regulation and Licensing) Act 2017.

67. It was contended before the trial court that the said Bill was passed in a manner that violated both the law and the constitution most specifically the provisions of **Article 10**, **109**, **110**, **111**, **112**, **113**, **118(1(b)** , **119**, **122** and **123** of the Constitution and the Standing Orders of both the National Assembly and the Senate. The same was argued to be in breach of the principle of public participation as underpinned by **Article 10** and **118(1) (b)** of the Constitution and the National Assembly Standing **Orders No. 120 to 139**.

68. After extensively analysing all the provisions of the Constitution and the National Assembly Standing Orders the trial court held as follows; -

> **"By introducing a totally new substantial amendment to the Pharmacy and Poisons Act at the committee stage of the whole house, which was neither consequential amendment or amendment within statute law (Miscellaneous) Bill but concerned drug control of manufacture of medicines not only circumvented the constitutional requirement of public participation but with due respect, mischievously short-circuited and circumvented the letter and spirit of the constitution. Its actions amounted to a violation of articles 10 and 118 of the Constitution; there is absolutely no nexus between section 34 and the rest of the sections of the Clinical Officers (Training, Registration and Licensing) Bill 2016, the 1st respondent purported to deal with a different subject and proposed to unreasonably or unduly expand the subject of the Bill and in a manner not appropriate or in logical sequence to the subject matter of the Bill. In other words, the 1st respondent exceeded its powers conferred on it by the constitution as read with the standing orders. By its action, the 1st respondent deleted a provision of the Act which there was not express intention to be deleted.** (Emphasis supplied)

69. From the above excerpt of the learned Judge's judgment it would appear that he delved into the contents of the section 34 and the rest of the Bill and arrived at the conclusion that there was no nexus between them. He even concluded that the National Assembly (2nd respondent) deleted a provision of the Act by mistake. The pertinent question that arises from this is whether he had jurisdiction to do so while sitting on judicial review. We don't have to belabour the point that judicial review is about the process and not about the merit of the decision that is challenged. In determining the relevance of the amendments in question, the learned Judge overstepped his jurisdiction. We appreciate the fact that Parliament has the unfettered constitutional mandate to legislate and where they make mistakes in the substance of the amendments, they have a process of amending the same. The court cannot step into Parliament's shoes and purport to legislate or correct perceived mistakes in the content of the Bills. That is over-reaching and hijacking the constitutional legislative mandate bestowed on the legislature.

70. The order of certiorari sought was to quash the proceedings in the National Assembly that led to the amendments and passing of the

impugned Bill. We reiterate that the National Assembly in its deliberations is guided by the Constitution and its standing orders and the court cannot prescribe to it how to conduct its affairs. We hasten to reiterate however that where Parliament passes a law that is inconsistent with the Constitution, the courts will not shy away from declaring such law a nullity to the extent it contravenes the Constitution. Were the impugned proceedings unconstitutional or did they merely fail to abide by the 1st respondent's standing orders?

71. From the contents of the Judicial Review application the applicant appears to have been aggrieved by the fact that a major amendment was introduced at Committee stage and this amounted to making serious amendments without subjecting the same to public participation, and further that the Bill ought to have been debated by the Senate too as it affected County Governments. Public participation was not going to be done on the floor of the house on the date in question. That would not therefore be a reason to quash those proceedings by way of Judicial Review. Were there sufficient grounds to warrant the learned Judge to exercise his discretion sitting on judicial review to quash the impugned proceedings and Bill?

72. The comprehensive grounds for the exercise of judicial review jurisdiction were stated in the case of **Pastoli v. Kabale District Local Government Council & Others [2008] 2 EA 300 at pages 303 to 304** thus:-

> ***"In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and also Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, miscellaneous application number 643 of 2005 (UR).***
>
> ***Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality…..***
>
> ***Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph "E".***
>
> ***Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876)."*** (Emphasis supplied).

It is within these parameters that we must consider the impugned decision.

73. We are alive to the fact that the scope of the law on Judicial Review has expanded considerably under the Constitution. See this Court's decision in **Suchan Investment Limited vs. Ministry of National Heritage & Culture & 3 Others (2016) KLR** where this Court held that **Article 47** of the Constitution as read with the grounds for review provided by **section 7** of the Fair Administrative Action Act, reveals an essential modification of judicial review to include aspects of delving into the merit of administrative action. This case is nonetheless distinguishable from the Suchan case (*supra)* because the former was challenging an executive/administrative action under the Fair Administrative Actions Act and not the conduct of The National Assembly in exercise of its Constitutional mandate to legislate. We therefore maintain that the learned Judge was out of step in delving into the merits of the amendments in question.

74. As for the Bill not being forwarded to the Senate for debate, Article 110(3) of the Constitution gives the mandate of deciding which Bill should pass through both houses to the two Speakers, the 3rd and 4th respondents herein. The fourth respondent was not complaining that the Bill was not forwarded to it for debate. Nor are we told that the two Speakers discussed the matter and failed to agree on whether the amendments affected the County government or not. The issue was not therefore for the Court to determine. In any event, that issue did not arise in the course of the impugned proceedings. The sum total of the foregoing is that we are not convinced that the proceedings of 5th April, 2017 or the Bill in question were unconstitutional.

75. On the issue of costs, it was the 2nd and 3rd respondents' case that they ought not be condemned to pay costs as it would be equivalent to condemning the entire Nation to bear the costs of defending their interests; they argued that parties should bear their individual costs. In the case of **Farah Awad Gullet v CMC Motors Group Limited, Nakuru Civil Appeal No. 206 of 2015** this Court extensively pronounced itself on the issue of costs as follows:-

> **'Costs of any action, cause or other matter or issue shall follow the event unless the Court of Judge shall for good reason otherwise order… Thus, where a trial Court has exercised its discretion on costs, an appellate Court should not interfere unless the discretion has been exercised injudiciously or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where reasons are given if it considers that those reasons do not constitute "good reason" within the meaning of the rule.'**

See also **Margret Ncekei Thuranira vs Mary Mpinda & another [2015] eKLR."**

76. It is evident that no reasons were advanced as to why the Court awarded costs to the 1st respondent in these proceedings, (ex-parte applicant in the Judicial Review Proceedings) as against 1st to 3rd respondents. The proceedings before the Court were in respect of amendments to the law which affect the general public and not only the 1st respondent. The proceedings were strictly speaking public interest in nature and as such costs awarded against 1st to 3rd respondents would ultimately have to be paid from public coffers. This would have been a good case to order that each party bears its own costs.

77. Ultimately, we find that this appeal has merit. Accordingly, we allow it in entirety and set aside the impugned Judgment dated 17th January, 2018 and all consequential orders arising therefrom. On the issue of costs, the order that commends itself to us is that each party bears its own costs both in this appeal and in the Court below.

Dated and delivered at Nairobi this 24th day of April, 2020.

W. KARANJA

…….……..

JUDGE OF APPEAL

M. K. KOOME

……..…….

JUDGE OF APPEAL

S. ole KANTAI

…….…….

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR