IN THE COURT OF APPEAL

AT MOMBASA

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

CIVIL APPEAL NO. 85 OF 2018

BETWEEN

MIDDLE EAST BANK KENYA LIMITED.....APPELLANT

AND

MOHAMED DINE MOHAMED.....1ST RESPONDENT

NURREYNNEN DINE MOHAMED.....2ND RESPONDENT

ABDULKADIR DINE MOHAMED.....3RD RESPONDENT

HAJI MOHAMED HAJI.....4TH RESPONDENT

CASSIM AHMED MOHAMED.....5TH RESPONDENT

OMAR DINE MOHAMED.....6TH RESPONDENT

QAYRAT FOODS LIMITED.....7TH RESPONDENT

(An appeal from the Ruling and Order of the High Court

***of Kenya at Mombasa (Njoki Mwangi, J.) dated 16th March, 2018* in**

HCCC NO. 18 OF 2017)

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JUDGMENT OF THE COURT

[1] This appeal essentially challenges the Judge's (**Mwangi J.,**) exercise of discretion in granting orders of injunction in favour of the respondents as against the appellant (***Middle East Bank Kenya Limited***) in an interlocutory application. The other germane issue challenged was that the Judge declined to allow the appellant's application seeking to strike out the suit. It is trite that an order made in exercise of a Judge's discretion cannot be interfered with lightly by an appellate court unless it is shown that the discretion was clearly wrong because the Judge misdirected herself or acted on matters which she/he should not have acted upon or failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. See **United India Insurance Co Ltd & 2 Others -v- East African Underwriters (Kenya) Ltd [1985] eKLR 898** Madan, JA stated thus:

> *"The Court of Appeal is only entitled to interfere if one or more of the following matters are established: first, that the judge misdirected himself in law; secondly, that he misapprehended the facts; thirdly, that he took account of considerations of which he should not have taken account; fourthly, that he failed to take account of considerations of which he should have taken account, or fifthly, that his decision, albeit a discretionary one, is plainly wrong."*

[2] The matter before the Judge which has now escalated to the instant appeal was a motion dated 16th February, 2017 filed by the

respondents where the principle order that was sought as against the appellant was:-

> **"That pending the hearing and determination of this suit a temporary injunction do issue restraining the appellant (sic), its servants, agents and/or employees from destroying, selling, alienating, transferring, charging, disposing, removing or in any manner whatsoever dealing with the management and assets of the 7th respondent including parcel of land (sic) known as Kilifi/Mtwapa/1865 or altering any company records of the company pending the hearing and determination of this application** (sic);

[3] The application was supported by an affidavit sworn by ***Omar Dine Mohamed (Omar)*** the 6th respondent on 16th February, 2017 in which he averred that he together with the 1st, 2nd, 3rd, and 4th defendants formed a company called **Qayrat Foods Limited** (Company) being the 7th Respondent on the 2nd April, 2007 and thereafter incorporated it as a private limited liability company on the 6th May, 2007. He stated that on the 29th May, 2007, the said company purchased the property known as ***Kilifi/Mtwapa/1865*** (suit property) for purposes of carrying on the business of the Company.

[4] According to the suit filed by the respondents, they complained that ***Aweys Ahmed Mohamed*** named as the 2nd defendant in the said suit was charged with the responsibility of managing the company; however, on the 7th October, 2015, the respondents obtained a CR 12 search certificate from the Registrar of Companies named in the suit as the 7th defendant from which they discovered several irregularities regarding the dealings with the suit property as well as the company. They realized the title to the suit property was irregularly charged to Bank of India and Middle East Bank Limited. This they contended was done without the Company resolutions; there were no reports done to indicate the company's profit or loss, audit reports, or a declaration thereto as well as the Company returns that were given to the respondents.

[5] The respondents further blamed the other shareholders or directors being, ***Aweys Ahmed Moahamed***, ***Safiya Ahmed Mohamed***, ***Zein Ahmed Mohamed*** and ***Abdifatah Hassam Mohamed*** whom they accused of continuing to control the physical possession and operation of the affairs of the Company in a personalized manner in blatant disregard of management structures and shareholders consent that caused loss and detriment to them as they had invested huge sums of money with legitimate expectations that they would reap returns which have not been forthcoming since 21st November, 2008. In the supporting affidavit ***Omar*** deposed that the suit property was worth Ksh. 45,000,000/=. Further that Omar and other shareholders made attempts to resolve the issues surrounding the Company and settlement of the said loans by the defendants to no avail as the defendants failed to adhere to a time schedule on how to settle the monies agreed.

[6] After their personal efforts bore no success, the respondents tried to resolve the issue of the loans obtained with the suit property and how the property could be discharged from the ***Middle East Bank of Kenya*** (appellant) through discussion with their advocate Messrs **V. N. Okata & Co. Advocates** and the appellant's officials. The appellant's officials explained that the outstanding loan had to be paid before the title deed for the suit property which was charged as security could be discharged. The respondents maintained that the charging of the property was done without their consent or knowledge as the legitimate owners/ shareholders of the Company that charged the suit property. Since ***Aweys*** and his cahoots did not service the loans and they had failed to keep to the timelines for payments as initially agreed in the charge, the appellant was threatening to realize the security by way of an auction of the suit property which provoked the respondents to file the said suit to forestall any damage and loss which in their view was going to be irreparable.

[7] The appellant resisted that application by way of grounds of opposition dated 27th March, 2017. In it, it claimed that it is only ***Qayrat Foods Limited*** that can bring a cause of action to redress any alleged wrongs done to its property by the appellant. The other shareholders had no *locai standi* to file suit as such; that the 1st to 6th respondents could not either bring a cause of action or derivative action as they had not suffered any actionable loss as shareholders by the alleged wrong in charging the suit property of the company to the appellant. Counsel for the appellant maintained that the suit was misconceived and an abuse of the process of the court as the 1st to 6th respondents did not have any *locus standi* to institute the suit. Counsel also pointed out that the directors of the company had not authorized the filing of the suit as neither the plaint nor the notice of motion was signed by a duly authorized advocate of the Company as provided for under ***Order 2 rule 16*** and ***Order 9 rule 1*** of the **Civil Procedure Rules**. It was further indicated that the Plaint was not verified by an officer authorised under the seal of the company as required by ***Order 4 rule 1(4)*** of the **Civil Procedure Rules**. Counsel concluded by stating that a *prima facie* case with a probability of success was not demonstrated by the respondents as against the appellant.

[8] As aforestated the matter fell for hearing before **Mwangi J.,** and by the ruling dated16th March, 2018 the subject matter of this appeal, the learned Judge found the application was meritorious and accordingly allowed it with costs. The respondents were also given leave to amend the pleadings and also the appellant was at liberty to amend their defence. Dissatisfied with that decision, the appellant filed the instant appeal which is predicated on some 19 grounds of appeal. We think they are prolix and therefore they can be summarized into four thematic issues which were dominate in the written and oral submissions. That is the learned Judge erred in fact and in law by; acting on the wrong principles and or exercised her discretion injudiciously; failing to appreciate the evidence placed before the court did not show a *prima facie* case with a probability of success against the appellant; nor show that damages would not be adequate compensation; holding that 1st to 6th respondents had no *locus standi* to file the suit and that the proper plaintiff was the 7th respondent, filing of the suit by the 7th respondent had not been authorised by its directors nor ratified later and the plaintiffs'' pleadings had 'anomalies' which needed to be 'regularized' by amendments; misdirecting herself in not appreciating that the appellant did not contest the facts deponed in the affidavit in support of the application for an injunction, and such there was no need for nor obligation on the appellant to place any further evidence in opposition to the said application.

[9] During the plenary hearing Mr. Esmail, learned counsel, for the appellant relied on his written submissions and made some oral highlights. He emphasized that the respondents' case failed to meet the threshold according to the principles that govern granting of interim orders of injunction. Counsel faulted the learned Judge for relying on the wrong principle of law as the aforesaid application did not express a single ground challenging the charge created over the suit property in favour of the appellant, nor of any wrong doing by the appellant or any reasons why the appellant should have been restrained by an order of injunction. Placing reliance on the Companies Act, counsel contended that shareholders' consent is never a requirement to charge a property and made reference to many clauses in the Company's articles of association that gave powers donated to the directors to manage the company including borrowing; it is the management of the Company comprising of directors, who are entitled to make decisions on the day to day running of the company and in this case they did

charge the suit property as stipulated under clause 3(u) of the memorandum of association and as per clause 23 of the articles of association of the said company. A company runs in perpetuity and change of directors or management cannot affect decisions that were made by the previous directors.

[10] Referring to the record, counsel for the appellant postulated that despite the learned Judge having observed that the respondents' pleadings had anomalies which needed to be regularised, she nonetheless went ahead to find in their favour and suggested they could amend the pleadings. To allow amendments generally went against the clear provisions of ***Order 8 rule 5*** of the **Civil Procedure Rules** which requires a Judge to specify the exact amendments that needed to be made. Counsel stated that an order for amendment cannot issue to make unspecified amendments to a plaint to rectify unspecified anomalies, he cited **KIG Bar -v-Gatabaki (1972) EA 503** to drive home this particular *point.* Moreover, Mr. Esmail indicated that such orders to amend pleadings could not be made *suo motu* without giving the other party an opportunity to address the court on the amendments, as amendments of pleadings was not in issue before the Judge. This therefore violates the appellant's right to fair hearing as stipulated under ***Article 50*** of the Constitution.

[11] On *locai standi* of the 1st to the 6th respondents to file the suit, counsel made reference to the case of; - **Sultan Hasham Lalji and others -v- Ahmed Lalji and others [2014] eKLR**, and submitted that the 1st to 6th respondents had no capacity to bring the action with the 7th respondent which position was accepted by the learned Judge as the true position of the law. Despite the above notion, the learned Judge declined to dismiss the respondents' case against the appellant, and to follow the dicta enunciated in the ***Sultan Hasham Lalji*** (supra) which was on all fours with the application and was binding on the Judge. On the alleged fraudulent conduct by the appellant as claimed in the plaint, counsel argued that the particulars pleaded therein did not constitute any fraud in law as against the appellant and as such, the said complaints against the appellant were without merit. He went on to refer to ***Section 24*** and ***26*** of the **Land Registration Act**, which provides that the appellant's title was indefeasible until the loan secured was paid; that there was no complaint against the appellant other than that the charge

was created without the authority of the so called '**legitimate owners/ shareholders'** of the 7th Respondent which position is untenable in law as the 1st to the 6th recourse was an action against the directors of the Company and not the appellant who lent the money based on a pure commercial transaction that money was borrowed and would be repaid. For the aforesaid reasons counsel urged us to allow the appeal.

[12] This appeal was opposed by Mrs. Okata learned counsel for the respondents; she too filed written submissions and made some oral highlights. Counsel defended the orders of injunction, refusal to strike the suit and the leave granted to amend the pleadings. This in her view was supported by the evidence of the allegations of fraud that the appellant colluded with the 1st, 2nd, 3rd, and 5th defendants to create the charge over the suit premises which was not denied by the appellant. These allegations were not responded to by way of an affidavit therefore the respondents established a *prima facie* case. Counsel cited the case of **Peter Atandi Nyabuti -v-Mellen Kemunto Philip [2016] eKLR w**here this Court had opined that in an appeal from an interlocutory decision, a court should restrain itself from making any findings or pronouncements and determinations that would pre-empt the final judgment of the court. Counsel therefore stressed that this Court is to determine whether the trial court abused its discretion in granting the interlocutory orders and not any other issue that can be determined in the pending suit before the High court. In this case, regarding the legality of the charge, counsel contended that this Court cannot make a determination as to whether respondents have a cause of action against the appellant since this would be pre-empting the trial court's decision.

[13] Commenting on the legality of the charge, counsel for the respondents stated that although it was contended that the directors of the company could charge the suit property and that the shareholders' consent was not necessary to do so, however, the signature of one the directors was forged, and the shareholding changed to include a party who is a beneficiary of a loan in unclear circumstances, the same cannot give rise to a legitimate charge. Counsel was of the view that the Judge properly applied the principles for granting of an injunction as set out in **Giella -v- Cassman Brown Co. Ltd (1973) E.A. 358** and further satisfied herself of the existence of three principles the respondents satisfied to warrant the injunctive orders. On whether the appellant's right to a fair hearing was impinged upon, counsel pointed out that was not the case as the appellant was given an opportunity to amend its defence immediately, they were served with the amended plaint; a plaint can be amended at any time and the court is not limited as to the time and manner of making such orders. Moreover, they would have a chance during hearing to call witnesses and adduce its evidence. Counsel urged us to dismiss the appeal with costs.

[14] The above is the brief summary of the matter before us, which we have considered with some level of caution bearing in mind that this is an interlocutory appeal as the hearing of the suit on its merit before the High court is yet to take place. Accordingly and as this Court stated repeatedly, in an interlocutory appeal where the suit is yet to be tried this Court should refrain from expressing concluded views on any issue which it thinks may arise in the pending trial. In dealing with the notice of motion that gave rise to the impugned ruling, there is no doubt the Judge was exercising judicial discretion which we cannot interfere with unless we are satisfied that the discretion was not exercised judicially. See **Mbogo** & **Another vs. Shah [1968] EA 93**, *where* the parameters for interference with the discretion of a trial court were delineated, thus:-

"An appellate court will interfere if the exercise of the discretion is clearly wrong because the judge has misdirected himself or acted on matters which it should not have acted upon or failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. It is trite law that an appellate court 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 and has been clearly wrong in the exercise of the discretion and that as a result there has been injustice."

[14] That said, there are about four issues that we think are discernable for our determination; that is, whether the respondents established a *prima facie* case with a probability of success to warrant the granting of the orders of injunction; whether the respondent's suit failed to disclose a cause of action against the appellant; whether the Judge misdirected herself by *suo motu* giving leave to the respondents to make blanket and unspecified amendments to the pleadings and lastly whether the Judge erred by not striking the suit against the appellant.

[15] In answering the above issues we have asked ourselves whether the principles stated in the ***Mbogo Case*** (supra) and so many other cases including the timeless ***Giella Case*** (supra) which was cited by counsel for the respondents were met. It is important also to remind ourselves

what constitutes a *prima facie* case as stated in the case of; **MRAO v. FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**:-

> **"A prima facie case in a Civil Application includes but is not confined to a 'genuine and arguable case'. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."**

[15] The respondent's bone of contention was that they were shortchanged by one ***Aweys Ahmed Mohamed*** who was managing the Company who took advantage of the absence from the country of the 1st to the 5th respondents to charge the suit property with the appellant to secure a loan of Ksh.35,100,000 without any legal authority, resolutions, knowledge of the other directors/shareholders and converted the loan proceeds for his personal use. As a matter of fact the following is an extract from the deposition of ***Omar Dine Mohamed*** in support of the application;-

> ***"19. That the 2nd Defendant took advantage of the 1st to the 5th Plaintiffs' absence in the country to further plunder and cause wastage to the 7th Plaintiffs' assets by;***
>
> ***(a)Fraudulently charging the property known as Kilifi/Mtwapa/1865 to Bank of India on the 21/11/2008 without any authority, resolutions, knowledge of the other Directors/shareholders and using the proceeds for his personal use.***
>
> ***(b)Fraudulently charging the property known as Kilifi/Mtwapa/1865 to Middle East Bank Ltd on the 13/2/2012 for a sum of Kshs.35,100,000/= without any legal authority, resolutions, knowledge of the other Directors/shareholders and using the proceeds for his personal use.***
>
> ***(c)The property known as Kilifi/Mtwapa/1865 continues to be held by the 6th Defendant illegally.***
>
> ***(d) Continuing to use Company property for his own benefit by storing trucks on the said premises and obtaining payments for such storage without placing profits in the Company books or accounting for such storage.***
>
> ***(e) Appropriating Company property for his own personal use and for personal gain.***
>
> ***(f) Failing to render accounts for the illegal use of Company property***."

[16] We have looked through the plaint and the following allegations and particulars of fraud are made against the appellant:-

> **"PARTICULARS OF FRAUD, ILLEGALITY OF THE 6TH DEFENDANT**
>
> ***(a) Failing to carry out due diligence in charging Kilifi/Mtwapa/1865.***
>
> ***(b) Failing to ensure that all the Directors/Shareholders of the 7th plaintiff's company had sanctioned the charging of***
>
> ***Kilifi/Mtwapa/1865.***
>
> ***(c) Failing to ensure that the relevant minutes, resolutions, meetings had been filed with the 7th defendant.***
>
> ***(d) Enriching the 2nd defendant to the tune of Kshs.35,100,000/= using Company property.***
>
> ***(e) Illegally allowing the charging of Company property without the plaintiffs' consent.***
>
> ***(f) Failing to obtain all signatures of all the Directors on the charged documents."***

[17] In response to these allegations, the appellant filed a defence and denied all those allegations. In particular we find the following pleadings pertinent:-

> ***"5 As regards paragraph 8 of the Plaint at all material times the only two Directors of Qayrat were First Plaintiff and Second Defendant; the rest of the persons mentioned therein were shareholders in Qayrat; and there is no concept known in law as "Directors/shareholders."***
>
> ***6. As regards paragraph 10 of the Plaint as the subscribers to the Memorandum of Incorporation of Qayrat, the parties named therein did not agree to take an allotment of shares mentioned therein. The Bank denies that all of these persons were also Directors of Qayrat on its incorporation.***
>
> ***7. Further, any attempt to appoint more than five Directors of Qayrat would be null and void ab initio as under Article 16 of Qayrat Articles of Association maximum number of Directors was fixed at five.***

8. The Bank admits that or or about 29th May, 2007 Qayrat acquired the property comprised in Title Number Kilifi/Mtwapa/1865 ("the suit property").

9. The Bank is a stranger to the alelgations made in paragraph 12 of the Plaint and makes no admission in respect of the same, if the Second Defendant took over the management of Qayrat then it was with the express and or implied consent of all the shareholders or the Board of Directors whose member he was.

10. Further, internal management issues or conflicts within a company are no concern of third parties like the Bank cannot affect any transaction made by Qayrat with third parties.

11. The Bank is a stranger to the allegations made in paragraph 13 of the Plaint and makes no admissions in respect of the same. The changes to the shareholdings were made in accordance with agreements between the parties concerned and provisions of the Articles of Association of Seventh Plaintiff.

12. The Bank denies allegations made in paragraph 14 and 15 of the Plaint; granting of a Charge over the property of Qayrat did not require to be authorised by an special resolution of Qayrat or any joint resolution of "directors/Shareholders," an unknown concept under the Companies Act.

13. On or about 13th February, 2012, Qayrat by a duly registered Charge, granted to the Bank a charge over the suit property as a security for a banking facility in sum of Shs.35 million given to Fifth Defendant by the Bank.

14. The said Charge was given by the said Directors of Qayrat in accordance with the powers which were given to them by

Article 3(u) of Qayrat's memorandum of Association and

24 of Qayrat's Articles of Association; Qayrat's Common Seal was affixed to the said Charge in presence of the said Directors in accordance with Article 28 of Qayrat's Articles of Association, and also in presence of Qayrat's advocate, one

Jane Kagu.

15. All formal resolutions of the Board of Directors of Qayrat, if at all necessary in the circumstances, were duly passed by the said Directors; these acts and deeds did not require consent or knowledge of the shareholders to be valid or effect."

[18] In addition to the above pleadings the appellant filed grounds of opposition raising some points of law that basically challenged the locus of the 1st to the 6th respondents to file a suit against the appellant. This is because the relationship created by the charge of a borrower and lender did not involve the 1st to the 6th respondents. The appellant also challenged the joinder of the appellant as a defendant and that the notice of motion did not disclose a prima facie case to warrant the injunctive relief granted. The respondents' main arguments appear to be based on impropriety of the execution of security documents to secure a loan by the directors for their own personal use without disclosing to the shareholders; not whether the loan was disbursed on the basis of those security of the suit property or on the accuracy of accounts or on the assertions that the charged property was unique and irreplaceable. We take the view, as this Court did in the case of;- **Ecomil Pasag Co. Limited & 2 others v UAP Insurance Co. Limited [2017] eKLR,** that the suit property was offered as security in a commercial transaction by the directors of the Company who wielded the instruments of power at the material time and the consequence of alienation was anticipated if there was default. In this regard if the Company obtained the loan and it is not denied, the same as to be paid and in default the consequences follow. If any damage is suffered by the shareholders it is quantifiable and there was no evidence that the appellant would be incapable of paying the damages if the main suit ultimately succeeds.

[19] We may also reiterate what this Court stated in the case of;

John Nduati Kariuki t/a Johester Merchants v National Bank of Kenya Ltd [2006] eKLR that:-

"**The applicant may well in due course make out a case to challenge the calculations of his indebtedness to the bank. He may or may not be successful. The legal issue however is whether the dispute on the outstanding loan can scuttle the exercise by a chargee of its power of sale. On that legal proposition this Court has expressed itself before and we need only refer to J.L. Lavuna & others V. Civil Servants Housing Co. Ltd. & Another – Civil Appl. No. NAI 14/95 where Kwach J.A. stated:-**

"I have always understood the law to be that a court should not grant an injunction restraining a mortgagee from exercising its statutory power of sale solely on the ground that there is a dispute as to the amount due under the mortgage. The legal position on this point is to be found in Halsbury's Laws of England, Volume 32, 4th edition at paragraph 7255:

***"725 When* mortgagee may be restrained from exercising power of sale.**

The mortgagee will not be restrained from exercising his power of sale because the amount due is in dispute, or because the mortgagor has begun a redemption action, or because the mortgagor objects to the manner in which the sale is being arranged. He will be restrained, however, if the mortgagor pays the amount claimed into court, that is, the amount which the mortgagee claims to be due to him, unless, on the terms of the mortgage, the claim is excessive".

The Court observed in the process, that '*a bank has no money of its own and it is axiomatic that it uses public funds to trade with. The applicant obtained a large amount of those funds and had full benefit of it.'* And so it is in this case.

[20] As demonstrated above, there is no dispute that a charge was created over the suit premises by the Company to secure a loan of over Ksh.35 million. There is no dispute also that the persons named as plaintiffs and defendants in the suit where directors/shareholders of the company. It is also not denied that as at the time the charge was created, ***Mohamed Dine Mohamed*** and ***Aweys Ahmed Mohamed*** were the directors of the company. The respondents claim that as shareholders they were not consulted when the charge was created and that the directors defrauded them. That may very well be so but the respondents nevertheless did not point out the particular clause of the company's memorandum and articles of association of Company or even the Company's Act that the appellant went against in lending the money to the Company. The appellant's statement of defence that the charge was executed by the directors of the company in accordance with the powers given to them under article 3 (u); with the common seal which was affixed to the charge in the presence of the directors was not controverted. What plays out clearly is the shareholders and directors internal wrangling of blame game that the directors who were in office acted without consulting and to the detriment of the shareholders.

[21] On our own evaluation, of the above coupled with the documents on record being the company documents that were principally filed by the respondents, we are afraid these documents did not identify any wrong doing by the appellant regarding the execution of the charge; that the loan was disbursed to the company; that the same loan had not been paid. In view of this, there is considerable doubt that the respondents had established a *prima facie* case with a probability of success to injunct the appellant from dealing with the charged property.

[21] We dare say even if the respondents had established a *prima facie* case, it was necessary for the Judge to consider whether the injury they would suffer if the injunction is not granted, will be irreparable. The law is that if damages recoverable in law are an adequate remedy and the appellant is capable of paying, no interlocutory order of injunction should normally be granted, however strong the claim may appear at that stage. We find that the second principle in the ***Giella Case*** was totally ignored and once again, with respect, it was a misdirection on the part of the Judge which calls for interference with the discretion of the court.

[22] We have said enough, we think, to satisfy ourselves that the discretion exercised in this matter must be interfered with. We however decline to strike out the suit while agreeing with the Judge that striking a suit is a matter of last resort. We also find the orders allowing the amendments as granted will not be prejudicial to the appellant as it was given an opportunity to file an amended defence. In the upshot we set aside the orders made on 16th March, 2016 and substitute thereto with an order dismissing the Notice of motion dated 16th February, 2017 and discharging the order of injunction issued thereto.

Those being our orders we order the costs of this application be in the suit.

Dated and delivered at Malindi this 19th day of June, 2019

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

W. KARANJA

.....

JUDGE OF APPEAL

M. K. KOOME

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR