



IN THE COURT OF APPEAL

AT NYERI

(CORAM: WAKI, GATEMBU, M'INOTI, JJA)

CIVIL APPEAL NO. 66 OF 2016

SUSAN MBOGO NG'ANG'A.....APPELLANT

VERSUS

THE HON. ATTORNEY GENERAL (*Sued for and on behalf of the*

CHIEF MAGISTRATE'S COURT,

NYERI LAW COURTS.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

ETHICS AND ANTI-CORRUPTION COMMISSION.....3RD RESPONDENT

(Being an appeal from the judgement and decree of the High Court of Kenya

IN Nyeri (Jairus, J) dated 21st July, 2015

in

CONSTITUTIONAL PETITION NO. 5 OF 2013)

JUDGEMENT OF THE COURT

INTRODUCTION

1. This is an appeal from the judgement of the High Court (Ngaah Jairus, J) delivered on 31st July 2015 dismissing the appellant's petition seeking to stop criminal proceedings instituted against her. In the petition, the appellant sought declarations: that her right to equality before the law and to equal protection and benefit of the law under Article 27(1) of the Constitution have been breached; that her right to fair administrative action under Article 47 (1) of the Constitution have been violated; and that the arrest, detention, charges and criminal proceedings preferred against her in the Magistrates' court at Nyeri in Anti- Corruption Case No. 13 of 2009 is ultra vires Section 35 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 so as to render the same illegal null and void. The appellant also sought an order of judicial review, *certiorari*, to quash the entire proceedings Nyeri in Anti-Corruption Case No. 13 of 2009 and an order that she be compensated, under Article 20 of the Constitution, with an amount of Kshs. 2,000,000.

Background

2. On 21st August 2009, the appellant then an Assistant Chief at Githiga location, Githunguri in the then Kiambu District, was arrested by officers from the then Kenya Anti-Corruption Commission (KACC) on suspicion of having committed an offence under the Anti-Corruption and Economic Crimes Act No. 3 of 2003 (ACECA). She was subsequently charged before the Magistrates Court at Nyeri in Criminal Case No. 13 of 2009. Initially, she was charged with the offence of corruptly soliciting for a benefit contrary to Section 39(3) as read with Section 48(1) of the ACECA. The particulars of the offence were that on 18th August 2009, she corruptly solicited for a benefit of Kshs. 3,000 from one Ngotho Ngigi as an inducement to release the Single Business Permit that she had confiscated from him. She was called upon to plead on that charge on 7th September 2009 when she pleaded not guilty.

3. Subsequently, the charge sheet was amended to incorporate the second count and the alternative charge. Under count two, she was charged with the offence of corruptly receiving a benefit contrary to Section 39(3) as read with Section 48(1) of ACECA. The particulars of the offence were that on 21st August 2009, she corruptly received a benefit of Kshs. 3,000 from the said Ngotho Ngigi as an inducement to release the Business permit she had confiscated. An alternative charge to count two was the charge of abuse of office contrary to Section 46 as read with Section 48 of ACECA. The particulars of the offence under the alternative charge were that on 21st August 2009, she used her office as an Assistant Chief to improperly confer a benefit on herself by corruptly receiving Kshs. 3,000 from the said Ngotho Ngigi through William Kimani Thuku as an inducement to release the Business Permit that she had confiscated. She took a fresh plea on 13th May 2010 and pleaded not guilty. Thereafter the trial proceeded, the prosecution called 9 witnesses before closing its case on 7th July 2011.

4. On 11th August 2011, the Magistrates' court ruled that the appellant had a case to answer. Thereafter, the magistrate before whom the matter was being heard was appointed as a Judge of the High Court on account of which the case had to be reassigned. On 14th February 2013, the appellant applied for the hearing to start *de novo*.

5. Subsequently, on 18th March 2013 the appellant filed a miscellaneous application before the Magistrates court seeking the termination of those criminal proceedings. That application was based on grounds that the charge sheet initiating the proceedings was drawn and presented jointly by KACC and the Officer in Charge Kiambu police station; that KACC had no mandate under the ACECA to do so; that there were no investigations and no investigation report was submitted to the Attorney General prior to her arrest, detention and charge as required under Section 35 of the ACECA; and that the failure by KACC to secure approval or recommendation of the Attorney General rendered the criminal proceedings fatally defective, null and void.

6. After hearing that application, the Magistrates' court dismissed it in a ruling delivered on 23rd July 2013 on the grounds that it raised a constitutional point and that the appellant should therefore have sought recourse to the High Court. In the same ruling, the court ordered that the criminal trial would proceed.

7. On 5th September 2013 the appellant filed the constitutional petition before the High Court seeking the prayers to which we have already referred with a view to quashing or terminating the criminal proceedings. In dismissing that petition in its judgment the subject of this appeal delivered on 31st July 2015 the High Court held, among other things, that the petition was founded on the wrong premise that the prosecution was being undertaken by KACC when in fact it was by the Attorney General and that even if the prosecution was by KACC, it had the mandate to do so. Aggrieved, the appellant lodged this appeal.

The appeal and submissions by counsel

8. Although the appellant's memorandum of appeal contains 15 grounds of appeal, the essence of her complaints is that the Judge should have upheld her claim that her prosecution in Criminal Case No. 13 of 2009 violated the provisions of Section 35 of the ACECA to the extent that prior approval of the Attorney General was not sought and obtained by KACC.

9. Expounding on the grounds of appeal, learned counsel for the appellant Mr. B. Millimo, in his written and oral submissions, urged that the appellant's arrest, detention and charge were not preceded by investigations or an investigation report submitted to the Attorney General as required under Section 35 of the ACECA; that KACC should have made a recommendation for the prosecution of the appellant to the Attorney General, who in turn should have granted approval for the appellant to be arrested, detained and charged with the offence; that as that was not done, the appellant's constitutional rights were violated and the learned Judge should therefore have upheld the appellant's constitutional petition and should have quashed the criminal proceedings against her.

10. According to counsel, the approval of the Attorney General was a mandatory prerequisite to the prosecution of the appellant; and that upon KACC submitting its investigation report to Attorney General, it became *functus officio*. Counsel submitted that the power to "charge" conferred on KACC under Section 32 of the ACECA Act merely empowered KACC to draw a charge sheet which would then form part of the investigation report for transmission to the Attorney General but did not confer the power on KACC to prosecute. In support, counsel relied on the decisions of this Court in Nicholas Muriuki Kangangi vs. AG 2011] eKLR and Esther Theuri Waruiru & another vs. R [2011] eKLR. Furthermore, counsel argued, the learned Judge was duty bound, under the doctrine of *stare decisis*, "to obey and respect" those binding decisions of this Court.

11. Counsel faulted the Judge for interpreting Section 32 of the ACECA in isolation and without reference to Sections 7 and 35 of the same Act. Counsel also urged that the learned Judge misconstrued Section 23 of the ACECA as conferring prosecution powers on KACC when in fact that provision dealt with investigations and no more. Counsel stressed that the role of KACC was "*just to investigate*" and thereafter to forward its report with recommendations to the Attorney General whose mandate it was to act upon such recommendations.

12. Counsel further submitted that the Judge erred in applying the Constitution of Kenya, 2010 retrospectively to the criminal proceedings that were instituted prior to the Constitution coming into force; that at the time when the appellant was arrested, detained and charged with the offences, the Constitution had not come into force; that changes in the law brought about by the Constitution of Kenya, 2010 could not affect, to the prejudice of the appellant, proceedings that had been commenced prior thereto. In support of the proposition that new law should not have retroactive application, counsel referred to decisions of this Court in David Macharia Njoroge vs. R [2011] eKLR and Paul Posh Aborwa vs IEBC & 2 others [2014] eKLR; that in invoking Articles 157(6)(b), 157(9) and 157(12) of the Constitution in his interpretation of Sections 32 and 35 of the ACECA Act to support his holding that KACC had prosecutorial powers, the learned Judge thereby retroactively applied the law to the detriment of the appellant.

13. It was further submitted by counsel for the appellant that by considering the alleged delay on the part of the appellant to present his petition before the High Court, and in considering also the alleged *mala fides* on the part of the appellant in having applied for hearing *de novo* before the Magistrates' court, the Judge thereby considered extraneous factors and manifested bias against the appellant. Counsel urged that the Judge failed to appreciate that there is no time limit for enforcement of constitutional rights; that the right to seek a hearing *de novo* under Section 200 of the Criminal Procedure Code is an integral part of the right to a fair hearing under Article 50(2) of the Constitution.

14. Counsel concluded by urging that the Judge should have allowed the appellant's petition and awarded and assessed damages in favour of the appellant for violation of her constitutional rights.
15. Although served with notice of hearing, there was no appearance at the hearing of the appeal for the 1st and 2nd respondents. The 2nd respondent did however file written submissions in opposition to the appeal but none were filed for the 1st respondent.
16. In its written submissions in opposition to the appeal, the 2nd respondent submitted that the appellant's complaint that the Judge erred in applying the Constitution of Kenya, 2010 retrospectively to her prejudice is baseless; and that in the petition before the High Court, it was the appellant who invoked the jurisdiction of the court, and sought relief, under the Constitution of Kenya 2010 and the court was therefore bound to adjudicate the matter on that basis.
17. As to the contention that the approval of the Attorney General to prosecute was not obtained, it was pointed out that the appellant was charged by the officer in charge, Kiambu Police Station under delegated prosecutorial powers under Section 85 of the Criminal Procedure Code; that Section 19 of the repealed Police Act also empowered police officers to lay formal complaint against a suspect; that the officer in charge, Kiambu Police Station was within his powers to institute the charge against the appellant and that KACC officers only served as investigators and as witnesses. It was also submitted that KACC investigators did forward the inquiry file to the Hon. Attorney General for directions on prosecution and that approval to the prosecution was indeed given.
18. With regard to the complaint that the trial court ignored the doctrine of *stare decisis* in failing to follow decision of this Court in Nicholas Muriuki Kangangi vs. AG (above) and Esther Theuri Waruiru & another vs. R (above) it was submitted that the Judge properly distinguished the circumstances of this case from those cases; and that those decisions were made *per incuriam* that consideration was not had to Section 32 of the ACECA.
19. For the 3rd respondent, learned counsel Ms. F. Ng'ethe in opposing the appeal adopted her written submissions which she highlighted. She urged that the appellant was arrested on 21st August 2009; took a plea on 7th September 2009; and on 23rd November 2009, KACC forwarded its investigation file and report to the Attorney General, who on 14th December 2009 concurred with the recommendation of KACC that the case against the appellant should proceed subject to amendments to the charge sheet; that the charge sheet was amended and the appellant took a fresh plea on the new charges after which the trial proceeded and the prosecution closed its case on 7th July 2011; that in those circumstances, the learned Judge correctly found that there was no violation of the provisions of Section 35 of the ACECA.
20. Counsel further submitted that there is no merit in the appellant's complaint that the Judge erred in applying the Constitution of Kenya 2010 retrospectively. In that regard, counsel pointed out that the appellant's constitutional petition before the High Court was presented under the provisions of the Constitution of Kenya 2010 and that, that is the basis upon which the matter was adjudicated and the Judge correctly interpreted the law.
21. Counsel went on to say that the claims of bias levelled by the appellant against the Judge are baseless and unfounded and are aimed at maligning the Judge.
22. Finally, regarding the claim that the Judge did not heed the doctrine of precedent and that he failed to follow the binding decisions of this Court in Nicholas Muriuki Kangangi vs. AG (above) and Esther Theuri Waruiru & another vs. R (above) it was submitted that the Judge was entitled to distinguish the same and to consider the provisions of Section 35 of ACECA in the context of other provisions of the law including Sections 23 and 32 of ACECA as well as the constitutional provisions.

Analysis and determination

23. We have considered the appeal and submissions by counsel. To begin with, counsel for the appellant appears to have proceeded on the basis that the ACECA is repealed, which is not the case. The correct position is that under Article 79 of the Constitution of Kenya, 2010, Parliament was required to enact legislation to establish an independent and anti-corruption commission. Parliament did so by enacting the Ethics and Anti-Corruption Commission Act which received presidential assent on 27th August 2011 and commenced on 5th September 2011. Under Section 36 of that Act, the Kenya Anti-Corruption Commission (KACC) was substituted with the Ethics and Anti-Corruption Commission (EACC) while under Section 37, the ACECA was amended by repealing Part III thereof under which the KACC had been established and its functions spelt out. Consequently, the provisions of Section 23, 32 and 35 of the ACECA with which the lower court was concerned were not affected by the enactment of the Ethics and Anti-Corruption Commission Act.

24. That said, the issues for determination in this appeal are:

- (a) whether the Judge erred in refusing to uphold the appellant's contention that her prosecution violated Section 35 of the ACECA;
- (b) Whether the Judge erred in applying the Constitution of Kenya, 2010 to the matter;
- (c) Whether the Judge erred in refusing to follow the decisions of this Court;
- (d) Whether the Judge erred in taking into account the conduct the appellant;
- (e) Whether the Judge ought to have awarded damages as prayed.

25. We begin with the question whether the Judge erred in refusing to uphold the appellant's contention that her prosecution violated

Section 35 of the ACECA. As already indicated, it is the appellant's contention that under that provision, KACC should have submitted an investigation report to the Attorney General prior to her arrest, detention and charge; that the Attorney General should have given consent to the prosecution but that this was not done; and that KACC undertook her prosecution without a mandate to do so.

26. Section 35 of the ACECA Act is titled "investigation report" and provides that:

"(1) Following an investigation the Commission shall report to the Director of Public Prosecutions on the results of the investigation.

(2) The Commission's report shall include any recommendation the Commission may have that a person be prosecuted for corruption or economic crime."

27. The question whether the KACC, and for that matter its successor EACC had/have the power to prosecute is settled. That question arose in the case of Nicholas Muriuki Kangangi vs. AG [2011] eKLR to which we were referred. In that case (in which the judgment of this Court in that case was delivered on 29th July 2011) it was held that the statutory functions of KACC did not include prosecution; that under Section 7, the mandate of KACC was to investigate any matter that in its opinion raises suspicion that conduct constituting corruption or economic crime has occurred or about to occur; that after investigations are complete, the KACC should report to the Attorney General and such report may include a recommendation that a person be prosecuted for corruption or economic crime; and that the Attorney General could reject a recommendation by the KACC that a person be prosecuted for corruption or economic crime.

28. In reaching the conclusion that KACC did not have power to prosecute the Court, in that case, stated:

"What clearly emerges from these provisions is that KACC must report its investigations to the Attorney-General and in the report it may recommend the prosecution of a person for corruption or economic crime. The Attorney-General may, in turn, either accept or reject the recommendation to prosecute and the only check on the power of the Attorney-General to accept or reject KACC's recommendation to prosecute lies in the National Assembly."

29. Instructively, however, having found that the proper procedure was not followed in that case, the Court declined the invitation to acquit the appellant. The court stated:

"We can straight-away say that we cannot acquit the appellant on the charges he is facing in the Magistrate's court. The merits of those charges have never been a matter before this Court or the courts below. What we have agreed with the appellant is that the process which was used to bring the charges before the Magistrate was faulty as not being in conformity with the provisions of the Act. Accordingly under prayer (d) in the memorandum of appeal, we order that the three charges before the Magistrate's court be forthwith terminated, the charges not having been brought to court in accordance with the Act. The termination, however, does not prevent KACC from complying with the provisions of the Act and reinstating the charges should it be deemed necessary. We repeat that we have rejected the appellant's prayer that he be acquitted on the charges."

30. In Esther Theuri Waruiru & Another vs. Republic [2011] eKLR, also a judgment of this Court delivered on 9th December 2011, the Court stated that:

"We pause there to consider how KACC was expected to handle complaints made to it or investigations carried out by them of alleged acts of bribery or economic crimes. The Anti-Corruption and Economic Crimes Act, (Act No. 3 of 2003) mandated KACC to investigate the commission of crimes under the Act. Its officers did not have any prosecutorial powers, and therefore, by section 35 (1) of the Act it was required to report to the Attorney-General on the results of its investigations." [Emphasis added]

31. In the latter case the Court went on to say that in view of the provisions of Section 35(1) of the ACECA the power of the investigating officer was limited to conducting investigations and making recommendations to the Attorney General, on among other things, the prosecution of the persons or persons under investigation.

32. The Court also considered the effect of the apparent non-compliance with Section 35 of the ACECA in light of "the law as it stood on 12th October, 2005". The relevant law as it stood then was the Prevention of Corruption Act, Cap 65 of the Laws of Kenya which has since been repealed. Section 12 of the Prevention of Corruption Act, provided that:

"12. A prosecution for an offence under this Act shall not be instituted except by or with the written consent of the Attorney-General."

33. The proviso thereto provided that a person could be arrested for any offence under the Act, but the prosecution could not be proceeded with before the Attorney General gave his written consent. The power to direct and control all prosecutions was reposed on the Attorney General and the consent of the Attorney-General was required for all prosecutions under the Prevention of Corruption Act, Cap 65 of the Laws of Kenya. The Court observed:

"As at the time when the Prevention of Corruption Act was in operation the Attorney General had overall control of criminal prosecutions. He could sanction a prosecution, he could take over a prosecution which had been undertaken by any other authority, and he could terminate any such prosecution. It is the Attorney General, as a general rule, who would know what the public policy on any given prosecution is, and whether or not the prosecution would or would not be for the public good."

34. The Court went on to express the opinion that, that power:

“Appears to have been retained when the Anti-Corruption and Economic Crimes Act was enacted. The powers of KACC to prosecute any person or group of persons was subject to direction of the Attorney-General, hence the requirement under section 35 of the Act, that a report of any investigation be made to the Attorney General with certain recommendations. Compliance with section 35, above, is not optional. It is obligatory, for reasons which we have endeavoured to give.”

35. There is therefore ample authority for the proposition advanced by the appellant that the power to prosecute under the ACECA resided with the Attorney General (and now with the Director of Public Prosecutions).

36. There is then the question whether the prosecution of the appellant in the case giving rise to this proceeding is a prosecution by EACC or by its predecessor KACC? Although the appellant asserts that the charge sheet initiating the criminal proceedings was “*drawn and presented jointly and severally*” by KACC and the Officer in charge, Kiambu Police Station, that assertion is not borne out by the record. The “*Kenya Police Charge Sheet*” is exhibited at page 22 of the record of appeal and bears the signature, on the face of it, of the Officer in Charge, Kiambu Police Station. In the body of the charge sheet, the complainant is indicated as “*Republic of Kenya through KACC.*”

37. Although KACC is vested with the power under Section 32 of the ACECA Act “*to arrest any person for and charge them with an offence, and to detain*”, we do not construe the reference in the charge sheet to the complainant as “*Republic of Kenya through KACC*” to mean that the charge against the appellant is by KACC. We are fully in agreement with the learned Judge of the High Court when he stated in his judgment that:

“It is clear from the foregoing facts that at no point did KACC ever institute or prosecute the criminal charges; the charges were drawn and filed by the Attorney General or at his behest and he or the Director of Public Prosecutions or their agent or agents subsequently conducted the trial on behalf of the state.”

38. In effect, the appellant’s petition before the lower court and by the same token this appeal, are founded on the wrong premise that her prosecution is by EACC.

39. As to whether an investigation report was submitted to the Attorney General in this case in accordance with Section 35 of the ACECA Act, Edward Wafula Makunja, a Senior Prosecution counsel with the office of the DPP deposed in his replying affidavit in opposition to the appellant’s constitutional petition before the High Court that after investigations, the file was submitted to the Attorney General “*for his recommendations and approval*” after which the Attorney General “*gave the requisite consent on 14th December 2009*”.

40. Rosecallen Githinji, and investigator with EACC deposed in her replying affidavit that following the arrest of the appellant on 21st August 2009, she was arraigned before the Anti-Corruption Court at Nyeri on 27th August 2009 charged with two counts of soliciting for and receiving of a benefit; that the plea was deferred to 7th September 2009; that the investigating officer compiled the case file and forwarded it to the legal department for onward transmission to the Attorney General; that the file was forwarded to the Attorney General on 23rd November 2009 pursuant to Section 35 of the ACECA and that the Attorney General “gave consent to proceed with the case” in his letter dated 14th December 2009 subject to amendments to the charge sheet. In her further affidavit Rosecallen Githinji deposed that the prosecution before the Anti-Corruption Court at Nyeri was led by the Chief Inspector Ogotu, a duly appointed Police Prosecutor and that at no time did KACC conduct the prosecution in that case.

41. It is clear from the foregoing that when the appellant was first arraigned before the Anti-Corruption Court at Nyeri on 27th August 2009, the investigation report had not, by that time, been submitted to the Attorney General. Subsequently however, that was done after which the Attorney General directed that the charge sheet be amended upon which the appellant took a fresh plea on 13th May 2010 and thereafter the trial commenced. In that regard, whereas under Section 12 of the repealed Prevention of Corruption Act prosecution for an offence under that Act could not be instituted “*except by or with the written consent of the Attorney General*”, that Act also provided that where a person has been arrested without such consent, no further or other proceedings was to be taken until that consent was obtained. No such or equivalent provisions were made in the ACECA. We are therefore in agreement with the trial court when it contrasted the provisions of Section 12 of the repealed Prevention of Corruption Act with the provisions of Section 35 of ACECA thus:

“ The legislature was fairly categorical here that a prosecution under the Prevention of Corruption Act Chapter 65 must be preceded by a written consent from the Attorney General; its intention was quite clear from the outset leaving no doubt that any prosecution without the written consent from the Attorney General would have been fatal. There is no such express provision in the Anti- Corruption Act (sic).”

42. There is therefore no merit in the complaint by the appellant that the learned Judge should have quashed the prosecution on the basis of alleged non-compliance with Section 35 of ACECA.

43. As to the complaint that the Judge erred in applying the Constitution of Kenya, 2010, the appellant’s constitutional petition before the lower court was based wholly on alleged violations of the appellant’s “fundamental constitutional rights” under Articles 27, 47 and 50 of the Constitution of Kenya 2010 and remedies were also sought under that Constitution. As submitted by the 2nd respondent, the learned Judge in the judgment addressed himself to the grounds raised by the appellant. On the part of the third respondent it was submitted, correctly in our view, that the appellant filed her constitutional petition alleging breaches of the provisions of the constitution of Kenya 2010 and that it is the same constitution that the court used in determining the petition. There is no merit in this complaint.

44. There remains the questions whether the Judge erred in refusing to follow the decisions of this Court and whether the Judge erred in taking into account the conduct of the appellant. Undoubtedly, the principle of judicial precedent, *stare decisis*, plays an important role in our legal system. In *Jasbir Singh Rai & 3 others vs. Tarlochan Singh Rai Estate & 4 others [2013] eKLR*, the Supreme Court cited with approval a passage in Benjamin Cardozo’s *The Nature of the Judicial Process* to the effect that adherence to precedent should be the rule and

not the exception and that “*as a matter of consistent practice, the decisions of the higher courts are to be maintained as precedent; and the foundation laid by such courts is in principle to be sustained.*” That court did however acknowledge that there are circumstances which may dictate departure from previous decisions.

45. In *Kiriri Cotton Co. vs. Ranchhodass Devani [1958] EA 239* the court held that whilst the principle of *stare decisis* is followed by the Court of Appeal, the court is not bound to follow a decision of its own if that decision was given *per incuriam*. In that case the court cited with approval a decision of the Court of Appeal of England in the case of *Morell vs. Wakeling (8) [1955]1 All. E. R 708* in which Sir Raymond Evershed M.R stated that as a general rule the only cases in which decisions should be held to have been given *per incuriam* are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or some authority binding on the court concerned.

46. In the present case, the Judge observed that in the two decisions of this Court that were cited to him, Section 35 of the Anti- Corruption and Economic Crimes Act was interpreted without reference to two other provisions in the Act and without regard to two constitutional provisions and the Judge was therefore of the view that the decisions of this court were distinguishable. Whether this Court would have reached a different conclusion in *Nicholas Muriuki Kangangi vs. AG* (above) and *Esther Theuri Waruiru & another vs. R* (above) had reference been made to Section 23 of the ACECA is a different matter. We do not, however, construe the decision of the lower court as purporting to have overruled this Court.

47. Lastly, it was submitted by counsel for the appellant during the oral highlight of the submissions that the learned Judge was biased against the appellant having been a former employee of EACC. However, this matter was neither raised before the trial Judge and nor is it contained in the memorandum of appeal and it is therefore not a matter on the basis of which, under Rule 104(a) of the Rules of the Court, the appellant can agitate for the

48. The upshot of the foregoing is that the appellant's appeal is devoid of merit and is accordingly dismissed with costs to the 2nd and 3rd respondents.

Orders accordingly.

Dated and Delivered at Nairobi this 20th day of December, 2018.

P. N. WAKI

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is

The true copy of the original.

DEPUTY REGISTRAR