



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MAKHANDIA, OUKO & MURGOR, JJ.A)

CIVIL APPEAL NO. 28 OF 2016

BETWEEN

OJSC POWER MACHINES LIMITED, TRANSCENTURY LIMITED,

**AND CIVICON LIMITED (CONSORTIUM)
.....APPELLANT**

AND

THE PUBLIC PROCUREMENT

**ADMINISTRATIVE REVIEW BOARD 1ST
RESPONDENT**

KENYA ELECTRICITY GENERATING

**COMPANY LIMITED (KENGEN) 2ND
RESPONDENT**

RENTCO EAST AFRICA LIMITED, LANTECH AFRICA LIMITED,

**TOSHIBA CORPORATION (CONSORTIUM) 3RD
RESPONDENT**

(An appeal from the Judgment and Decree of the Hon. Justice G.V. Odunga delivered in the High Court of Kenya at Nairobi on 19th January, 2016

in

High Court Civil Appl. No. 284 of 2015)

JUDGMENT OF THE COURT

OJSC Power Machines Limited, Transcentury Limited, and Civicon Limited, as a joint consortium was one of the five firms that responded to the 2nd respondent’s Request for Proposal for Tender No. KGN-GRD-09-2015 for Leasing of 50MW Wellheads Geothermal Power Generation Units at Olkaria

Geothermal Field on Build, Lease, Operate and Maintain Basis. The Request for Proposals provided for the evaluation of the bids in stages; for responsiveness, technical, commercial and financial. Only those firms with proven technology would be considered beyond the financial evaluation stage. Although the appellant's bid passed the first stage of evaluation, it was not lucky beyond that stage. The 3rd respondent's bid, having met the specifications was selected and the tender awarded to it. By a letter dated 16th July 2015, the 2nd respondent notified the appellant of its failed bid.

Following that decision, the appellant approached the 1st respondent with a Request for Review No. 38 of 2015 which was heard on merit and dismissed on 21st August 2015, in effect confirming the award of the tender to the 3rd respondent. Again, aggrieved, the appellant moved to the High Court by a judicial review motion on notice after being granted leave to challenge the decision of the 1st respondent.

As is usually the tradition in such applications, the court, **Mumbi Ngugi, J** before whom the application was placed, in granting leave, directed it to operate as a stay of execution. In the motion, the appellant applied for the issuance of an order of *certiorari* to quash the aforesaid decision of the 1st respondent, an order of prohibition to restrain the 2nd respondent from entering into any contract with the 3rd respondent over the tender in question and a *mandamus* to compel the 2nd respondent to enter into and execute a contract with the appellant.

The application was premised on the grounds that the technical evaluation of the proposals was not conducted in accordance with the law; that each bid ought to have been evaluated for all the scenarios and to be assigned a score pursuant to **Section 82 (5)** of the Public Procurement and Disposal Act, where, from the total score, the successful tender with the highest score would be determined by the 2nd respondent. The appellant argued that the 2nd respondent failed to demonstrate the scoring mechanism employed in the exercise or to give the final aggregated scores for each bidder to support its decision to award the tender to the 3rd respondent. In other words, it was the appellant's case that the 2nd respondent's decision-making process was flawed because it did not adhere to the terms of the tender; that the decision was made in violation of the law; and that though the issue was raised, the 1st respondent failed to make a determination on it.

According to the appellant, the 1st respondent acted unreasonably, irrationally, irregularly and illegally in failing to apply **section 82** of the Act to the facts in dispute; that the appellant was not subjected to a fair process contrary to **Articles 47** and **50** of the Constitution in the manner its bid was treated.

The appellant also challenged the qualification of the 3rd respondent, especially regarding the question of when it was incorporated in Kenya. It argued that the 3rd respondent was incorporated in Kenya on 6th June 2012 and was due to turn 3 years 18 days before the closing date for the Expression of Interest. For that reason, the appellant contended it could not be in a position to demonstrate "**Evidence of financial capability to lease the Wellheads-attach without the most recent three (3) year audited financial statements**"; that at the time of the present tender the 2nd respondent was well aware of this fact, as the 3rd respondent had previously with regard to another Expression of Interest submitted audited accounts only for years 2011/12, 2012/13, 2013/14 as at March of each year, a period shorter than 3 years, as the firm was incorporated on 6th June 2012.

Responding to these accusations, the 1st respondent denied that the issue of the 2nd respondent not assigning scores for both the technical and financial proposal was raised in the Request for Review. It maintained that it could not consider and determine an issue that was not before it. Nevertheless, in the 1st respondent's opinion, after considering the results of the tender, together with the evaluation, it found that the process had been carried out in accordance with the terms of the Request for Proposal, and determined that the 3rd respondent was properly selected, having proposed a net output of 58.42 MW as opposed to 50.55 MW proposed by the appellant. Based on this, the 1st respondent took into account the fact that the latter proposed output megawatt would amount to a colossal loss of public money and thereby violate the

constitutional principles set out in **Article 227** of the Constitution and in **Section 2** of the Public Procurement and Disposal Act 2005. On the revenue that would accrue based on the set parameters, it was found that the 3rd respondent would generate and guarantee the 2nd respondent a monthly revenue of USD 785,273.25 as against the appellant's USD 686,099.05. There would, in the circumstances, be no justification in interfering with the evaluation.

Finally, the 1st respondent stated in its decision that the combined technical and evaluation report that was presented to it showed that the figures on revenue was derived from several components which were worked out to minute detail by the evaluation committee of the 2nd respondent; and that, in making its decision, it considered the provisions of the Act, the Regulations, the tender documents and the facts presented before it by the parties and that no extraneous issues whatsoever were considered in its decision.

For its part, the 2nd respondent, in defence of the award, made it clear that the three objectives it set to achieve in the project, namely, to generate additional megawatts to meet the 5000 MW+ 40- Month challenge, to generate revenue and profit from the difference in the cost of leasing and the revenue from the electricity generated from the leased wellheads at the feed- in-Tariff of 8.8US Cents per KWHr and finally to recoup the cost of drilling the geothermal well from this revenue, were met by the 3rd respondent's proposal, which upon carrying out evaluation satisfied the requirements to clarify for technical performance. At the financial evaluation stage, that bid was rated the highest.

The 2nd respondent insisted that the complaint raised by the appellant before the High Court that the 3rd respondent ought to have been disqualified at the Expression of Interest stage was a never raised before the 1st respondent. It explained that the 3rd respondent is a consortium of three companies, namely: Rentco East Africa Limited, Lantech and Toshiba, and as a consortium it met the requirement set out in the tender; that the 1st respondent properly declined to determine the issue as it had not been raised in the Request for Review as required by Regulation 73 (2) of the Regulations.

The 2nd respondent denied the allegation that it introduced extraneous criteria by changing the evaluation criteria from the **"lowest cost"** to the one that represented the **"best commercial return"** to the 2nd respondent and maintained that there was no such change to the documents. It explained that the three original components of evaluation at the financial stage namely: availability factor, Output MW and low cost remained the criteria throughout. In any case, it was submitted, in its Request for Review, the appellant complained only of one aspect of evaluation; low cost while ignoring the other two components of the tender, hence the appellant's contention was without evidence and basis.

The 2nd respondent's case was that it provided all the bidders with the exact same geothermal resources from which they were expected to model the most efficient geothermal generation technology to yield the maximum net output (MW) with the highest availability. In view of the fact that the geothermal resource was the same and the tariff fixed in terms of the Feed-in Tariff (FiT) policy (fixed at 8.8 cents per KWh), the varying factors would guarantee Net Output in MW, availability factor and bidder's monthly rental fees. Following the strictures in the tender objectives as detailed above, the 2nd respondent was ready to accept a proposal with maximum revenue, relying on Clause 5.5 of the Request For Proposal which provided that: **"All Proposals that have passed technical evaluation will have their proposed output MW and availability factors compared with the monthly lease rentals. The bidder with the highest availability factor and output MW at the lowest cost will be the successful lessor."**

With the aid of this formula, the 2nd respondent considered various factors and upon evaluation of the three bids, the appellant's bid was found to be unresponsive.

As a consortium, the 2nd respondent added, the 3rd respondent met the requirement on financial capability by submitting audited accounts at the Expression of Interest stage; that it was previously disqualified from participating in a different tender because singly it did not meet the terms of that previous tender; and that there is a distinction between bidding singly and as part of a consortium.

The 3rd respondent on the other hand urged the court not to interfere with an evaluation exercise carried out by experts unless the evaluation was not carried out in accordance with the tender document or unless there were fundamental and glaring defects in the evaluation report; that in the case before the court the evaluation committee complied with **section 82** of the Public Procurement and Disposal Act and no defects had been pointed out in the evaluation report.

In his determination of the application, the learned Judge, guided by several authorities, set out the law on the jurisdiction of the High Court in judicial review proceedings and explained that traditionally such proceedings would be concerned with the decision-making process, not with the merits of the decision itself: that the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account irrelevant matters or did not take into account relevant matters; that in judicial review proceedings, the court should not act as an appellate court or purport substitute its own decision with that of the decision maker. See **Republic V Kenya Revenue Authority Ex parte Yaya Towers Limited** 2008 Misc. Appl. No. 285 of 2013.

Besides, the purpose of judicial review is to prevent statutory bodies from injuring the rights of citizens by either abusing their powers in the execution of their statutory duties and function or act outside of their jurisdiction.

On the substance of the application and on the grounds upon which it was premised, the learned Judge agreed with the 1st respondent that the issue of the disqualification of the 3rd respondent was not properly before it; that in conducting the evaluation of the tenders, the 2nd respondent complied with the provisions of **section 82** of the Act and there cannot be any justification for interfering with the decision in question. It was not one of those decisions that would be described as grossly unreasonable or outrageous in defiance of logic or acceptable moral standards as to meet the **Wednesbury** test of unreasonableness.

Regarding the evaluation of the bids and the accusation that the 2nd respondent introduced extraneous considerations which were not contained in the bid documents, the learned Judge held that the 1st respondent was, in the exercise of its wide powers of review, entitled to consider the legality and constitutionality of the decision made by the 2nd respondent and that on the facts of the case and from its assessment and construction of the tender documents, the learned Judge agreed that the three components of evaluation at the financial stage namely: availability factor, Output MW and low cost were considered; that from that consideration the appellant's bid was declared unresponsive while that of the 3rd respondent found to be most qualified and responsive; that that being a finding of fact based on the construction of the bid documents, the learned Judge was of the opinion that it could only be overturned on a merit review and not in judicial review proceedings.

Similarly, on the argument that the 3rd respondent was incorporated in Kenya on 6th June 2012, thus turned 3 years only 18 days to the closing date for the Expression of Interest, the learned Judge, upon perusal of the Request for Review found that it was not one of the grounds for the Request for Review and therefore it was never dealt with by the 1st respondent; that apart from the fact that the issue was not presented before the 1st respondent and could not be raised before him, the learned Judge held that there was no evidence that as a consortium, the 3rd respondent did not meet the necessary qualifications; and that in any case that discourse was outside the scope of judicial review application, but perhaps in an appeal.

Accordingly, the appellant's notice of motion dated 3rd September, 2015 was found to lack merit and dismissed with costs.

It is that dismissal that has precipitated this appeal. In its five grounds, which in our own estimation can be condensed to three, the appellant complained, first that the learned Judge failed to appreciate that **Section 82** was not complied with in the evaluation of the bids; that the 2nd respondent, contrary to that section did not assign scores for each proposal. Secondly, it was contended that the learned Judge ought

to have faulted the 1st respondent for failing to review the entire procurement process instead of restricting its review to only matters raised in the Request for Review and finally, that it was in error for the learned Judge to fail to find that the 3rd respondent did not qualify to be considered having been in existence from its incorporation for 18 days less than 3 years.

We have considered these grounds and the submissions presented both in writing and by oral highlights. The notice of motion presented before the High Court was brought pursuant to **section 8** of the Law Reform Act and **Order 53 Rules 3 and 4** of the Civil Procedure Rules. In the main, the application was for the grant of the three prerogative orders under **section 8** of Part V1 of the Law Reform Act, *certiorari*, *prohibition* and *mandamus*. Specifically, the appellant sought to quash the aforesaid decision of the 3rd respondent, prohibit the 2nd respondent from entering into any contract with the 3rd respondent over the tender in question and an order directed at the 2nd respondent to compel it to enter into contract with the appellant instead.

The parameters that define the application of these orders are well-established but for their importance and relevance to this appeal they bear restating. The law on the jurisdiction of the High Court to entertain judicial review proceedings are encapsulated in several decisions, some of which were cited before us while the learned Judge applied others in his judgment. The law, from these decisions is to the following effect;

That the purpose of judicial review is to ensure that a party receives fair treatment in the hands of public bodies; that it is the purpose of judicial review to ensure that the public body, after according fair treatment to a party, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court in a judicial review proceedings. Put another way, judicial review is concerned with the decision making process, not with the merits of the decision itself. In that regard, the court will concern itself with such issues as to whether the public body in making the decision being challenged had the jurisdiction, whether the persons affected by the decision were heard before the decision was made and whether in making the decision, the public body took into account irrelevant matters or did not take into account relevant matters.

Save for a limited scope, which we shall return to later, the court, considering a judicial review application, must never consider its role as appellate court and must avoid any temptation to go into the substance of the impugned decision itself or to ask questions, whether there was or there was no sufficient evidence to support the decision of the public body concerned. It is not for the court or individual judges to substitute their opinion for that of the public body constituted by law to decide the matter in question. See **Republic vs. Kenya Revenue Authority ex parte Yaya Towers Limited** (2008) Misc. Civil Appl. No. 374 of 2006. In judicial review proceedings, the mere fact that the public body's decision was based on insufficient evidence, or on misapplication of evidence, cannot be a ground for granting judicial review remedies. Whether that decision was right or not, the affected party ought to challenge it on appeal. In reaching its determination, it must, however, be recognized that a tribunal or statutory body or authority has jurisdiction to err and the mere fact that in the course of its inquiry it errs on the merits is not a ground for quashing the decision by way of judicial review as opposed to an appeal. It is only an appellate tribunal which is empowered and in fact enjoined in cases of the first appeal to re-evaluate the evidence presented at the first instance and arrive at its own decision on facts. Whereas a decision may properly be overturned on an appeal, it does not necessarily qualify as a candidate for judicial review. See East **African Railways Corp. vs. Anthony Sefu Dar-Es-Salaam** (1973) EA 327.

The courts will also interfere with the decision of a public body if it is outside the band of reasonableness. Because all forms of power must be controlled, only those exercised usefully and reasonably will be approved by court. **Professor William Wade and Christopher Forsyth** in a passage in their text, **Administrative Law**, 5th Edition at page 362, explain the principle thus;

“The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the

area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too lightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended.”

To justify interference with the decision of a public body, the court must be satisfied that that decision is so grossly unreasonable, so outrageous in defiance of logic or acceptable moral standards that no reasonable authority or body, addressing itself to the facts and the law would have arrived at it. See **Associated Provincial Picture Houses Ltd, V. Wednesbury Corporation** (1948)1 K.B. 223. This is what has come to be known as the **Wednesbury** principle in judicial review.

Finally, on the applicable principles, it is incumbent upon a party in a judicial review application who seeks the issuance of any of the orders to present proof of breach of any of the above criteria for that party to succeed in the claim.

See **Republic V. Kenya Revenue Authority Ex parte Yaya Towers Limited** (2008), (2008) Misc. Civil Appl. No. 374 of 2006, **Seventh Day Adventist**

Church (East Africa) Limited V. Permanent Secretary, Ministry of Nairobi Metropolitan Development & Another (2014) H.C.J.R No. 112 of 2011,

Republic vs. Kenya Revenue Authority & Another Ex-Parte Bear Africa (K) Limited Misc. Appl. No. 285 of 2013, **Republic vs. Commissioner of Customs Services Ex-parte Africa K-Link International Limited Nairobi HC Misc. JR No. 157 of 2012**, among others.

We bear all these strictures in mind as we consider this appeal. To satisfy them, it must be demonstrated that the 1st respondent breached the rules of natural justice; that it failed to do some particular thing that it was bound by law to do; and that it exercised a function or made a decision without or in excess of jurisdiction. We have also alluded to recent decisions to the effect that, though judicial review is only concerned with the decision-making process, to a limited extent, the court will inquire into to the merit of the decision.

Under **section 28** of the 2015 Act, the 1st respondent’s functions and powers include reviewing, hearing and determining, tendering and asset disposal disputes; and to perform any other function conferred on it by the Act, Regulations or any other written law. By **section 173**, the 1st respondent may, upon completing a review, annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including, the procurement or disposal proceedings in their entirety; give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings; substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings; order the payment of costs as between parties to the review in accordance with the scale as prescribed; and order termination of the procurement process and commencement of a new procurement process. See also **section 25** of the repealed Public Procurement and Disposal Act where it is directed that the Public Procurement Complaints, Review and Appeal Board established under the Exchequer and Audit (Public Procurement) Regulations, (L.N. 51/2001) would continue under the repealed Act as the Public Procurement Administrative Review Board.

There cannot be any doubt that those are indeed wide powers and in the context of this appeal, the 1st respondent had jurisdiction to entertain the appellant’s Request for Review. Again, the appellant has not complained that the 1st respondent determined the Request without being heard.

We understand the appellant’s grievance to be that the 1st respondent failed to take into account relevant factors in the evaluation exercise or that it failed to do what it was required to do by the law. Specifically, it was contended first, that, it did not assign a score for each proposal as required by **section 82** aforesaid;

that the evaluation criteria was changed from “**lowest cost**” to one that represented “**the best commercial return**” to the 2nd respondent. Secondly, that it considered the 3rd respondent’s bid when it was not qualified as it had not been in existence since incorporation for 3 years. **Section 82** provides for the manner of evaluation of proposals.

Under it:

“(1)the procuring entity shall examine the proposals received in accordance with the request for proposals.

(2) For each proposal, the procuring entity shall evaluate the technical proposal to determine if it is responsive and, if it is, the procuring entity shall assign a score to the technical proposal, in accordance with the procedures and criteria set out in the request for proposals.

(3) For each proposal that is determined, under subsection (2), to be responsive, the procuring entity shall evaluate and assign a score to the financial proposal, in accordance with the procedures and criteria set out in the request for proposals.

(4) If the request for proposals provides for additional methods of evaluation, the procuring entity shall conduct such methods in accordance with the procedures and criteria set out in the request for proposals.

(5) The successful proposal shall be the responsive proposal with the highest score determined by the procuring entity by combining, for each proposal, in accordance with the procedures and criteria set out in the request for proposals, the scores assigned to the technical and financial proposals under subsections (2) and (3) and the results of any additional methods of evaluation under subsection (4). (Our emphasis).

The successful proposal is determined by the highest score arrived at by the procuring entity combining the scores assigned to the technical and financial proposals and the results of any additional methods of evaluation that may be employed. We have highlighted above the portions of **section 82** to emphasize the fact that the aggregate score and the scores for individual factors are to be arrived at in accordance with the procedures and criteria set out in the request for proposals itself. Each procuring entity is left to determine the criteria in the Request for Proposal.

The tender had three components of evaluation at the financial stage set out in Clauses 5.0 and 5.5 of the Request For Proposal; availability factor, Output MW and low cost. This was in consonance with the objective of the project set out earlier in this judgment. Out of the three, the appellant seemed concerned over only one, the low cost. Because the 2nd respondent intended to go for the lease with maximum revenue generation, it also considered the following four parameters.

- (i) Bidders’ monthly rental fees in dollars (\$)
- (ii) Bidders guarantee output (MW)
- (iii) Capacity factor of 96%
- (iv) A feed in tariff of USD (\$) 8.8.

Based on these scenarios on technical compliance, the table below sets out how the three bidders performed at the financial stage of the evaluation. It specifically gives a comparison of the bidders guaranteed net output, availability factor against the bidder’s monthly rental fees.

Parameters East Africa Ltd,	Geothermal Development	TransCentury Ltd, Power	Rentco
--	-------------------------------	--------------------------------	---------------

	Associates	Machines & Civicon Ltd
Lantech & Toshiba		
1. Guaranteed output 58.42	53.47	50.55
MW		
2. Bidder's 95%	stated 99%	95%
Availability Factor		
3. Capacity 96%	Factor 96%	96%
(%)		
4. Monthly 2,323,563.00	Rental 2,771,170.66	2,628,610.00
Equipment Cost (USD)		
5. Amortized 47,574.27	68,739.77	107,715.00
Monthly Connection Cost		
6. Total 431,278.00	Monthly 2,818,744.93	2,697,349.72,
Cost		
7. Bidder's 0.06863	0.07198 0.06885	
Evaluated Tariff Rate per KWh		
8. KenGen 0.019	Balance 0.019	0.016
KWh (USD)		
9. Projected KenGen 785,273.25	600,166.52	686,099.05
Monthly Gain (USD)		

From this table, on the technical and financial analysis, there is no doubt that the proposal presented by the 3rd respondent had the highest output (MW), highest availability factor and tariff combination through

which the 2nd respondent would get the highest monthly revenue of USD 785,273.25.

The appellant's proposal, from the above analysis, on the other hand, had the lowest guaranteed output and the highest connection cost. As submitted by the 2nd respondent, awarding the contract to the appellant would translate to the 2nd respondent foregoing a net annual revenue of USD 1,190,090.40.

The 1st respondent also noted that the appellant did not give a breakdown of its proposed monthly revenue of \$ 822,038. Upon evaluation, however, the appellant's monthly projected revenue came to \$ 686,099.05.

From these scenarios, the 2nd respondent drew the conclusion that the difference between the appellant's guaranteed net output (50.5 MW) and the 3rd respondent's net guaranteed output (58.42 MW) was equivalent to 15% more than what the appellant offered; that if the tender was awarded to the appellant, then some 7.42 MW would have to be obtained through the expensive thermal power which would translate to a daily cost of \$ 37,610.50 equivalent to Kshs. 3,761,049.60, monthly cost of \$ 1,143,985.92 equivalent to Ksh.114,398,592.00 and annual cost of \$13,727,831.04 equivalent to Kshs. 1,372,783,104.00.

It follows that the provisions of Part 1 of Chapter Twelve of the Constitution on the principles of public finance, generally and specifically Article 227 of the Constitution and **section 2** of the Public Procurement and Disposals Act, which require procuring entities to *inter alia*, maximize economy and efficiency, would be considerably compromised if the tender was to be awarded to a firm that does not meet those conditions set by the 2nd respondent.

Our conclusion on this ground is that there is no substance in the complaint that **section 82** was not complied with or that the criteria for evaluation was changed. One would ask, what is the difference between "**lowest cost**" and "**the best commercial return**"? We think, in the circumstances, none.

To determine the second question regarding the complaint that the 3rd respondent was not qualified for having only been registered within a period of less than three years, we look at the requirements at the Expression of Interest stage. Interested firms were asked to provide; company profile, evidence of incorporation in the country of domicile, evidence of financial capacity to lease the wellheads, experience in designing, engineering, manufacturing and operating Geothermal Wellhead Power plants, "**or partnership with a company (s) with such experience**". For the requirement of evidence of financial capacity, the interested firms were asked to "**attach the most recent (sic) three (3) year audited financial statements**". And for experience where the interested firm is partnering with another firm with the requisite experience, the bidding firm was required to "**provide evidence of at least three (3) years similar completed projects for the last ten (10) years**". The fact that the 3rd respondent was to attain 3 year following its incorporation in 18 days before the closing date of Expression of Interest *per se* cannot be a ground to say it had not provided evidence of the most recent three (3) year audited financial statements.

After all, the evaluation committee was satisfied that this evidence had been supplied, the burden shifted to the appellant to prove that it had not. In any case, and of importance, is the fact that the 3rd respondent's proposal was made as a consortium of three companies. The 2nd respondent confirmed that the consortium as a whole met all the requirements. This ground similarly fails for lack of proof.

To conclude, we reiterate that, for the High Court to quash a decision of a public body, the court must be satisfied that the decision was made without or in excess of jurisdiction or in breach of the rules of natural justice or that the decision was so grossly unreasonable, so outrageous in defiance of logic or acceptable moral standards that no reasonable authority or body, addressing itself to the facts and the law would have arrived at it. See **Associated Provincial Picture Houses Ltd, V. Wednesbury Corporation** (supra). None of these can be said of the decision of the 1st respondent that was impugned before the High Court. We find no fault with the disposal by the learned Judge.

The appeal, for these reasons, is bereft of merit. It is accordingly dismissed with costs.

Dated at Nairobi this 28th day of July 2017.

ASIKE – MAKHANDIA

.....

JUDGE OF APPEAL

W. OUKO

.....

JUDGE OF APPEAL

A.K. MURGOR

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR