



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: G.B.M. KARIUKI, MAKHANDIA, OUKO, KIAGE, M'INOTI, J.

MOHAMMED & ODEK, J.J.A.)

CIVIL APPLICATION NO. NAI 6 OF 2016

BETWEEN

JUSTICE PHILIP K. TUNOI.....1ST APPLICANT/APPELLANT

JUSTICE DAVID A. ONYANCHA.....2ND APPLICANT/APPELLANT

AND

THE JUDICIAL SERVICE COMMISSION.....1ST RESPONDENT

THE JUDICIARY.....2ND RESPONDENT

(An Application seeking that Hon. Mr. Justice G.B.M. Kariuki and Hon. Mr. Justice Makhandia do recuse themselves from the hearing in an appeal from the Judgment and Decree of the High Court of Kenya at Nairobi, (Mwongo, Korir, Meoli, Ong'undi & Kariuki, JJ.) delivered on 11th November , 2015

in

CIVIL APPEAL NO.6 OF 2016)

RULING OF THE COURT

BACKGROUND

1. In their application by notice of motion dated 12th February 2016 which has elicited this ruling, the applicants, the Hon. Mr. Justice Philip K. Tunoi and the Hon Mr. Justice David A. Onyancha seek the recusal of the Presiding Judge, the Hon. Mr. Justice G. B. M. Kariuki, and the Hon. Mr. Justice Milton Asike Makhandia from hearing the appeal herein.

2. Both appellants are represented by learned Senior Counsel Mr. P. Nowrojee and learned counsel Mr. F. Ngatia.

3. The 1st respondent is the Judicial Service Commission (“**the JSC**”) and the 2nd respondent is the Secretary to the JSC (“**Secretary to the JSC**”). Both respondents are represented by learned Senior Counsel Mr. P. Muite and learned counsel Mr. M. Issa.
4. The 1st applicant is a Judge of the Supreme Court of Kenya while the 2nd applicant was a judge of the High Court before he retired from the Bench early this year.
5. Prior to, and for a little while after the promulgation of the Constitution on 27th August 2010, the 1st applicant was a Judge of this Court having been appointed under the repealed Constitution. He was appointed to the Supreme Court in 2011 after it was established under Article 163(1).
6. The 2nd applicant was also appointed a Judge of the High Court prior to the promulgation of the Constitution and remained in office until he retired.
7. Under the repealed constitution, the retirement age for the High Court and the Court of Appeal Judges was 74 years as provided in Section 9 of **The Judicature Act**, Cap 9, but after the new Constitution came into force the retirement age for all Judges of the Superior Courts was placed at 70 years under Article 167(1) of the Constitution. However, the transitional provisions in Schedule Six of the Constitution stipulate that a person who immediately before the effective date as defined in the Constitution held or was acting in an office established by the former constitution shall on the effective date continue to hold or act in that office under the new Constitution for the unexpired period, if any, of the term of the person.
8. When the applicants attained the age of 70 years, they were given notice of retirement from office by the JSC, which is established under Article 171 and is charged under Article 172 of the Constitution with the role of administration of justice in Kenya.
9. Neither of the applicants complied with the JSC directive. Instead, they instituted a petition **No.244 of 2015** in the High Court in which they sought various orders and declarations including a relief to continue serving as Judges up to the age of 74 years. Their petition did not fully succeed and the High Court (**Mwongo, Korir, Ong’undi, Meoli, and C. Kariuki, JJ**) in its judgment delivered on 11th December 2015 held that the retirement age of all Judges of the Superior Courts whether appointed before or after the promulgation of the Constitution is 70 years. It is against that judgment that both applicants lodged this appeal.

APPLICATION

10. This bench was constituted to hear this appeal by the President of this Court on 8th February 2016 as evidenced by the latter’s order of that date. The appeal came up before us on 12th February 2016 when **Mr. P. Nowrojee** with **Mr. F. Ngatia** expressed dismay at a report appearing in the **Daily Nation** of that day in which it was reported that the 1st applicant could opt to withdraw his appeal instead of facing a tribunal which has subsequently been appointed to investigate allegations of corruption against him. Mr. Nowrojee addressed us at length on this report, yet it was not the gravamen of the application.
11. On account of the newspaper report, Mr. Nowrojee sought and obtained a short adjournment to take instructions from the 1st applicant on how to proceed in light of the publication whose source he attributed to the Judiciary and asserted that the Judiciary was coercing the 1st applicant to resign. When the Court later reconvened at 11.00 a.m., Mr. Nowrojee told the Court that he had been instructed to lodge a written application which would involve the 1st applicant’s request for recusal of some of the members of this bench. Mr. Nowrojee also alluded to what he referred to as acceleration of the proceedings by the Chief Justice, the High Court, and this Court culminating in his view to the said **Daily Nation** report. Mr. Ngatia undertook to have the written application for recusal of the Presiding Judge lodged and served by 3.00 p.m. if the adjournment was granted.
12. The application for adjournment was vigorously opposed by Mr. Muite who saw it as a gimmick to

delay the hearing of the appeal. As of 13th January 2016, said Mr. Muite, counsel for the applicants knew the identities of the members of the bench including the Presiding Judge and no objection was taken to his hearing the appeal. He wondered why the applicant was bringing up the matter of recusal of the Judge at the last minute.

13. We granted the adjournment sought by the applicants nonetheless, following which they lodged the **notice of motion** dated 12th February 2016 seeking the orders alluded to earlier.

14. The motion was predicated on the grounds that –

“(1) The Presiding Judge, the Hon. Mr. Justice G.B.M. Kariuki, was convicted of contempt of court and fined Kshs.500,000/= in the Court of Appeal by a Bench including the Hon. Mr. Justice Tunoi, the First Appellant;

2. The Judge of Appeal, the Hon. Mr. Justice Makhandia regularly frequents Karen County Club, Karen, in the company of, inter alia, Prof. Githu Muigai, the Attorney General and other judicial officers.

3. The Attorney General as a member of JSC has held an extremely partisan position regarding this matter and has regularly discussed this matter with, inter alia, Justice Makhandia.

4. That the Appellants have apprehension, on reasonable grounds, that neither of the two (2) Judges of Appeal will render a fair hearing and/or determination of this appeal. For instance, when the issue of the conviction and sentence was raised in Court by counsel, Justice G.B.M. Kariuki could recall the year and the time distinctly.

5. That it is just and necessary that both Judges of Appeal do recuse themselves.

6. All the matters in the Supporting Affidavit hereto, and matters in the Record of Appeal herein.”

15. The affidavit in support of the motion sworn by the 1st applicant averred in paragraphs 3, 4, 5, 7 and 8 as follows in relation to the prayer for recusal of the Presiding Judge:

3. That I recall that in the year 1994, I was part of the bench of the Court of Appeal that heard Criminal Application Nos. Nai 4 & 5 of 1994, Republic –Vs- Makali & 3 Others, whereat Justice G.B.M. Kariuki was named as a 4th respondent. At that time, Justice G.B.M. Kariuki was an advocate in private practice. The other members of the bench were Justice Cockar and Justice Omolo.

4. That upon hearing the application, the court found G.B.M. Kariuki (as he then was) guilty of contempt of Court. The final orders made were; “the 4th Respondent, G.B.M. Kariuki is a lawyer and an officer of this Court. It is his duty to treat the Court with proper respect even if he may be in disagreement with a decision of the Court. He ought to have known better than the other respondents. Accordingly, for his contempt of this court, he shall be committed to prison for six (6) months, but the committal warrant will lie with the registrar of the Court for seven (7) days during which he shall comply with the following conditions:

a. Pay a fine of Shs.500,000/=

b. Make a written apology to this Court in terms acceptable to it and at his expense, publish the same in all the three national newspapers, namely “The Daily Nation”, “The Standard” and “The Kenya Times” and also in “The People.”

If both of these conditions are met within the stated period, the order of committal to prison shall

stand discharged without any further order of the court.

5. That a finding of guilty and conviction for contempt of court together with a substantial monetary fine is a major dent on one's character.

6. That I am informed by my counsel on record and verily believe the same to be true that the Presiding Judge never informed counsel of the matters afore-deposed.

7. That I am apprehensive, on reasonable grounds, that the Presiding Judge, due to the matters afore-deposed will not be impartial.”

16. The gist of the affidavit in support of the motion is that the Presiding Judge will not be impartial to the applicant in the appeal in view of the conviction and fine meted out to him in the contempt case by the bench which the 1st applicant was a member of.

17. The averments in paragraphs 8, 9, 10 and 11 in the 1st applicant's affidavit relate to the prayer for recusal of the Hon. Mr. Justice Makhandia from hearing the appeal.

18. A similar application seeking an order for The Hon. Mr. Justice Makhandia to recuse himself was filed and heard by this bench on 19th February 2016 in Civil Appeal No.1 of 2016 (Hon. Lady Justice Kalpana H. Rawal v. JSC & 4 Others. **Appeal No.1 of 2016** springs from the same judgment of the High Court as this appeal.

19. We have dealt separately with the application for recusal of the Hon. Mr. Justice Makhandia in Application No.1 of 2016.

20. What emerges from the application is that in 1994 judgment was given by this Court in consolidated Criminal Application Nos. 4 and 5 of 1994 (**Republic versus David Makali & 3 Others**) which we shall refer to as the judgment in **“the People case.”** Both Mr. Nowrojee and Dr. J. Khaminwa, learned senior counsel for the Kituo Cha Sheria, the 2nd *Amicus Curiae*, in Civil Appeal No. 1 of 2016 participated in the People case.

21. The judgment in the People case which has been annexed to the application shows that the Presiding Judge was convicted and fined for contempt of Court. It shows that the Presiding Judge wrote an article (which was not published by the People Daily) in which he commented on the interference by the then President of Kenya with the Judiciary and in particular with court decisions relating to litigation by Nairobi University lectures; that the lecturers had applied to this Court to “stay” execution of the refusal by the High Court to grant them an injunction to restrain the University from evicting them from their subsidized housing; and that during the pendency of the ruling the then President, Daniel T. Arap Moi, publicly spoke against the registration of the lecturers' Union for a second time.

22. The Article by the Presiding Judge in which he contended that the President was interfering with the independence of the Judiciary termed the court decision that ensued as **“judicial lynching and blackmail tailored to meet the political expediency of the Executive.”** These thirteen words are the ones that were lifted by reporter David Makali, the 1st respondent in The People case, from the article by the Presiding Judge and were incorporated in his article which was published by the People Daily. In his judgment, Cockar JA, as he then was stated –

“Mr. G. B. M. Kariuki the lawyer who represented Mr. Matiba in the bid to unseat Moi, terms the court's ruling “judicial lynching and blackmail tailored to meet the political expedience of the Executive... the facts that emerge are that the 4th respondent (G.B.M. Kariuki) was Mr. Matiba's advocate in the latter's election petition against His Excellency The President. His election petition was struck off by the Court of Appeal. The Article discloses that the 4th respondent (G.B.M. Kariuki) was aggrieved – justifiably or not is not an issue here. But his being aggrieved, and I want to emphasize this, would not be quite contrary to a natural

reaction of an advocate. The significance, however is that the newspaper “The People” is, according to the affidavit of the 2nd respondent, closely linked and associated with the said Mr. Matiba. The People newspaper was launched by the said Mr. Matiba whose advocate the 4th respondent (G.B.M. Kariuki) was. That is some evidence of close association between the 4th respondent (G.B.M. Kariuki) and the People (newspaper)...

... I have no hesitation in coming to the conclusion that the 4th respondent (G.B.M. Kariuki) sent or caused his article to be sent to the People Newspaper for publication. The fact that the whole of the 4th respondent’s (G.B.M. Kariuki’s) article was not published is not of any concern to the question of transmission...

I am satisfied that it is an irresistible inference from proved facts before us that it was the 4th respondent (G.B.M. Kariuki) who had caused his article to be sent to the People Newspaper and that it was his intention for it to be published...”

23. The matters deposed on oath and relied on in the application are -

1. That the presiding Judge never informed counsel of the judgment in the People case

2. That as the Presiding Judge was convicted and fined for contempt in the People case by a Bench that included the 1st applicant, he may not be impartial and consequently the 1st applicant is apprehensive, on reasonable grounds, on account of this.

HEARING OF THE APPLICATION

24. When the application came up for hearing on 15th February 2016, **Mr. Nowrojee** urged us to grant the orders prayed for because there was a perception that there will be bias on the part of the Presiding Judge. He cited the provisions of the Constitution, especially Articles 50(1) and 25(c) relating to fair hearing. He emphasized that it does not matter that bias does not exist because the issue here is not whether the Judge will be biased, but rather whether a perception of bias could arise. The fact that the contempt case took place twenty two years ago was immaterial. It was Mr. Nowrojee’s submission that unconscious bias could arise where a Judge and a litigant had a history which is not forgotten; that if there is a perception of bias a Judge must disqualify himself from hearing the matter; that the principle in the decision in the case of **Tumaini v. Republic [1972] EA LR 441** is that a Judge must disqualify himself or herself if there is real likelihood of bias; that it is not the mind of the Judge which is considered, rather, it is the impression given to reasonable people; that bias can be discerned where a Judge has a relationship with a party who has interest in the case; that the principles enunciated in the House of Lords decision in **Attorney General v. Times Newspapers [1947] 2 WLR 273** support the 1st applicant’s case as the latter cannot expect a fair hearing; and that Article 50(1) of the Constitution guarantees fair hearing.

25. In reply, **Mr. Muite** pointed out, rightly so in our view, that Mr. Nowrojee had submitted at length on the Daily Nation report and not on recusal of the Presiding Judge.

26. Mr. Muite further submitted that a party has no legal right to ask for the recusal of a Judge willy-nilly; that recusal is a matter of discretion by the Judge concerned; that the test for recusal is what right thinking members of the public think on the matter in question; that the practice in our courts has seen Judges recusing themselves from hearing matters where they feel they may not appear to be fair; that in **Gharib v. Naaman [1999] 2 EA 88**, shows that Judges recuse from hearing cases where they feel their impartiality would be called into question, but this is not to say application for recusal ought not to be made; that as regards the contempt case against the Presiding Judge, no reasonable member of the public in Kenya would think that there would be no fairness in the appeal on account of the 22 year old contempt of court case; that the conviction and fine of the Presiding Judge would be seen as a heroic act and a badge of honour towards the second liberation; that there is no evidence of bias or its likelihood; that the 1st applicant is seeking to scuttle the hearing of the appeal to buy time to serve in the Judiciary for the

remaining two years; that the conduct of the applicant right from the High Court has been to procrastinate the hearing; that the affidavit in support of the motion by the 1st applicant is bad in law as it does not disclose the source of information; that the **Daily Nation** report has been invoked so as to scuttle the hearing of the appeal; that delay in and non-hearing of the appeal will bring the court into disrepute.

27. On his part, **Mr. M. Issa** submitted that Nation Media Group was not joined in the application hence no orders could issue against it; that the issue of the retirement age of Judges of the Superior Courts which is the subject of determination in the appeal herein is not personal to the applicants; that as per the decision in **R.F.S. V. J.D.S.** [2013] eKLR there must be facts and factors that render a litigant's apprehensions reasonable and mere feelings are not enough.

28. In his brief reply, Mr. Nowrojee contended that there can be no estoppel against the law and if unfair trial is alleged, it is legitimate to raise it. He pointed out that the respondents have not filed a replying affidavit. He indicated that the 1st applicant is ready to proceed with the hearing of the appeal.

29. We have duly considered the notice of motion, the depositions on which it is predicated, the rival submissions of counsel and the authorities cited.

30. The issue we have to decide in this ruling is whether the 1st applicant's notice of motion dated 12th February 2016 has placed before us material which may lead a fair-minded and informed observer to conclude that there is possibility that the Presiding Judge shall be biased or which may give rise to want of impartiality and impede fair hearing of the appeal. It appears from perusal of the judgment in The People case that the fear of the 1st applicant seems to be that the Presiding Judge might be vindictive or take it out on him on account of the conviction and fine meted out to him by the bench that included the 1st applicant 22 years ago. Is there evidence to this effect?

31. Paragraph 7 of the 1st applicant's affidavit states that the 1st applicant is "apprehensive, on reasonable grounds, that the Presiding Judge will not be impartial." He expresses fear that the Presiding Judge will not be impartial. "Impartial" is defined by **Black's Law Dictionary**, Ninth Edn, as "unbiased"; "disinterested". The 1st applicant is alleging that the Presiding Judge will be biased. "Apprehension" is defined by the same dictionary in this context as "perception", "fear;" "anxiety". It is plain that the 1st applicant is alluding to apparent bias. By long tradition, the rule has been that justice must not only be done, but it must also manifestly and undoubtedly be seen to be done. In short, there must be impartiality. At the core of this maxim is the need to inspire and maintain public confidence in the administration of justice and to obviate not only the appearance of unfairness but also the risk of unfairness.

32. Article 50(1) of our Constitution enshrines the right of every person to have a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. This right cannot be limited or abridged. Article 25 categorically states that the right to a fair hearing is one of the fundamental rights that cannot be limited. Articles 50(1) and 25 (c) stipulate –

"50. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body."

"25. Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited –

c. the right to a fair trial; and ..."

DETERMINATION

33. On the facts before us, it is patent that the allegation of bias is predicated on the conviction and fine in the People case without more. Mr. Nowrojee did not allude to any allegation or evidence that the

Presiding Judge has cause to retaliate against the 1st applicant. We have no doubt that had he shown such evidence, the Presiding Judge would have stepped out of this appeal. We observe that The People case was determined 22 years ago. Since its determination, the 1st applicant has remained in the Judiciary while the Presiding Judge spent half that period at the Bar and the other half has been on the Bench and there is no evidence that while at the Bar or on the Bench there has been anything suggesting or manifesting itself into a likelihood of bias or retaliation or vindictiveness on the part of the Presiding Judge which would give rise to want of impartiality on his part against the 1st applicant.

The 1st applicant as a Judge in this court then was discharging his judicial duties and it is not obvious that he and the other Judges on the bench did not mete out the conviction and fine otherwise than was as required by law.

34. Would the circumstances in this case which are said to give rise to want of impartiality or alleged bias or likelihood of bias lead a fair minded and informed observer knowing the facts in The People case to conclude that there is likelihood of bias or apparent bias?

35. The 1st applicant avers in paragraph 7 of the affidavit as follows -

7. “That I am apprehensive, on reasonable grounds, that the Presiding Judge, due to matters afore-deposed, will not be impartial (in the appeal).”

36. First, the “reasonable grounds” alluded to by the 1st applicant have not been stated and are not discernible in the said averment or in the application. The 1st applicant further avers in the paragraph that his apprehension is also due to the matters “afore-deposed.” Such afore-deposed matters relate only to the conviction and sentence meted out in The People case. The issue is whether there is evidence that the conviction and fine will, *ipso facto*, give rise to apprehension that the Presiding Judge will not be impartial. In **Tumaini v. R. (supra)** Mwakasendo J held, rightly in our view, that **“in considering the possibility of bias, it is not the mind of the Judge which is considered but the impression given to reasonable people.”**

37. As regards the averment by the 1st applicant that the Presiding Judge distinctly remembers the year and fine meted to him in the people case, it was not shown by Mr. Nowrojee that ability to remember well what happened in the past is evidence of bitterness; nor that it is not symptomatic of one’s mental ability to recall past events. Nothing turns on it not least because vengeance and vindictiveness are not shown to be either the cause for good memory or the ability to recollect nor is recollection of such experience or events in life shown to manifest itself in a desire to retaliate or to take vengeance.

38. With regard to the allegation that the presiding judge “never informed the applicant’s counsel” of The People case, the matter was brought to the attention of the Court by the 1st applicant’s counsel initially in his oral submissions before us on 12th February 2016 and subsequently by the 1st applicant in the notice of motion. It seems to us that The People case which was within the knowledge of the learned Senior Counsel, Mr. Nowrojee, did not appear to be of relevance to the appeal prior to 15th February 2016, and at any rate Mr. Nowrojee was aware of it hence the Presiding Judge’s ostensible decision not to call attention to it.

39. The House of Lords held in **R v. Gough [1993] AC 646** that the test to be applied in all cases of apparent bias was the same, whether being applied by the Judge during the trial or by the Court of Appeal when considering the matter on appeal, namely whether in all the circumstances of the case, there appeared to be a real danger of bias, concerning the member of the tribunal in question so that justice required that the decision should not stand.

40. The test in **R v. Gough** was subsequently adjusted by the House of Lords in **Porter v. Magill [2002] 1 All ER 465** when the House of Lords opined that the words “a real danger” in the test served no useful purpose and accordingly held that –

“[T]he question is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”

41. In determining the existence or otherwise of bias, the test to be applied is that of a fair-minded and informed observer who will adopt a balanced approach and will neither be complacent nor be unduly sensitive or suspicious in determining whether or not there is a real possibility of bias.

42. In **Taylor v. Lawrence** [2003] QB 528 at page 548, in which an application was made to reopen an appeal on the ground that the Judge was biased, the Judge having instructed the plaintiffs’ solicitors many years previously the House of Lords in the judgment of Lord Woolf CJ reiterated:

“... we believe the modest adjustment in R V. Gough is called for which makes it plain that it is, in effect, no different from the test applied in most of the commonwealth and in Scotland.”

“The Court must first ascertain all the circumstances which have a bearing on the suggestion that the Judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased.”

43. In the instant case, is bias discernible from the material before the Court in the eyes of a right thinking or reasonable person or fair-minded and informed person or observer? In the instant case, would a fair minded and informed observer think that the presiding judge would, 22 years after the conviction in the People case, be biased against the 1st applicant when the facts reveal that the issue for determination in the appeal rests squarely on the interpretation of the law and the Constitution as regards retirement age of all judges of the Superior Courts who were appointed prior to the date of promulgation? Quite plainly, the decision on retirement age of Judges will not be personal to the 1st applicant.

44. The facts of this case would not in our view, on the authority of **Porter v. Magill** (supra) lead a fair-minded and informed observer to conclude that there is real possibility that the Presiding Judge will be biased. It was not shown that circumstances exist that are likely to show that a real possibility exists that the Presiding Judge’s integrity or impartiality might reasonably be questioned.

45. In The People case, this Court expressed itself as follows in relation to the application for disqualification of the members of the bench.

“How should Judges treat the subject of disqualification when raised before them?”

...when the courts in this country are faced with such proceedings as these, it is necessary to consider whether there is a reasonable ground for assuming the possibility of bias and whether it is likely to produce in the minds of the public at large a reasonable doubt about the fairness of the administration of justice. The test is objective and the facts constituting bias must be specifically alleged and established.

46. We take cognizance that the right to fair hearing is embedded in our constitution which emphasizes that justice must be done to all without delay or undue regard to procedural technicalities. The Constitution has vested in the courts judicial authority and mandate and has expressly stated that the right to fair hearing cannot be limited or abridged. It is absolute.

47. The **Judicial Service Code of Conduct and Ethics** made by the Judicial Service Commission pursuant to Section 5(1) of the **Public Officer Ethics Act**, 2003 contains general rules of conduct and ethics to be observed by judicial officers so as to maintain the integrity and independence of the judicial service. Rule 10(1) of the Code of Conduct requires Judges of the Superior Courts as public officers to carry out their duties in accordance with the law. In carrying out their duties, they are required not to violate the rights and freedoms of any person under Part V of the Constitution.

48. Specifically, under Rule 5 of the Code, a judicial officer is required to disqualify himself or herself in proceedings where his/her impartiality might reasonably be questioned including but not limited to instances in which he has a personal bias or prejudice concerning a party or his advocate or personal knowledge of facts in the proceedings before him. These rules are intended to ensure maintenance by judicial officers of integrity and independence of the judicial service.

49. If in The People case, in light of the circumstances obtaining in it, there were no grounds for recusal of the members of the bench, the present application is a far cry from what the law requires to be established to arrive at a finding of existence of possibility of bias. It is our finding that the application lacks merit as there is no evidence of circumstances that would give rise to prejudice or jaundiced view on the part of the Presiding Judge.

50. In conclusion and applying the test in **Porter v. Magill [2002] (supra)**, no fair-minded and informed observer, having considered the facts, would conclude that there is a possibility that the Presiding Judge or this Court will not be impartial or fair or will be biased. In the result, we dismiss the notice of motion dated 15th February, 2016 with costs to the respondents.

Dated and delivered this 11th day of March, 2016.

G.B.M. KARIUKI SC

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JUDGE OF APPEAL

M. ASIKE MAKHANDIA

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JUDGE OF APPEAL

W. OUKO

.....

JUDGE OF APPEAL

P. O. KIAGE

.....

JUDGE OF APPEAL

K. M'INOTI

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

J. OTIENO-ODEK (Prof.)

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR