



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: G.B.M. KARIUKI, AZANGALALA & J. MOHAMMED, JJ.A)

CIVIL APPLICATION SUP. NO. 5 OF 2014

BETWEEN

THE KENYA CIVIL AVIATION AUTHORITY..... APPLICANT

AND

AFRICAN COMMUTER SERVICE.....RESPONDENT

(An application for leave to appeal to the Supreme Court of Kenya from the Judgment and Decree of the Court of Appeal at Nairobi delivered by the Honourable Karanja, Musinga & M'Inoti, JJ.A delivered on 7th February, 2014

in

CA NO. 311 OF 2009

RULING OF THE COURT

This is an application by the **Kenya Civil Aviation Authority** (hereinafter “the applicant”) for two main reliefs namely, that a certificate under Article 163(4)(b) of the Constitution does issue on the basis that its proposed appeal to the Supreme Court against the judgment and orders of this court (Karanja, Musinga & M’Inoti, JJ.A) dated 7th February, 2014 raises questions of general public interest and importance, and that the Court does issue an order staying execution of the aforesaid judgment and orders.

The application is by Notice of Motion which also invoked section 15 of the Supreme Court Act, 2011, sections 3A and 3B of the Appellate Jurisdiction Act, Rule 5(2)(b) and Rule 42 of this Court’s Rules. In support of the Motion on Notice, the applicant filed an affidavit of Judith Ngethe, the Applicant’s Corporation Secretary sworn on 27th May, 2014. It is deponed, as far as is relevant, that the following matters are of general public interest and importance:

1. **The extent of the powers of delegation contemplated by Section 5B of the Civil Aviation Act (hereinafter “the Act”);**
2. **What are the consequences of non-compliance with the statutory form of delegation?**

3. **Whether or not the decision to suspend the respondent's Air Operator's Certificate ("AOC") was in the public interest;**
4. **Whether or not the respondent's AOC expired during the pendency of its suspension.**
5. **Whether or not the Judicial Review Jurisdiction should have been invoked as a strategy to mitigate damages.**

It was further deponed that the above issues affect not only the applicant but also other operators of the air space in Kenya and the general public who consume or are affected by their services. According to the deponent, the intended appeal is aimed at allowing the applicant discharge its functions of controlling and regulating civil aviation in Kenya as mandated by the Act and if the appeal is not allowed the applicant's operations to ensure safety of the aviation industry would greatly be compromised. It is further deponed that the issues raised affect statutory bodies which have oversight duties and obligations in numerous sectors and industries and will rise again and again and therefore transcend the applicant's interest. It was also deponed that the decision intended to be challenged has created uncertainty and confusion as to whether consequential damages can be awarded for periods of time longer than those prescribed by operation of the law which issue, according to the deponent, concern all suits for damages and has a significant bearing on the public interest. It is further averred that the sum involved is colossal and has to be paid from the public purse.

Concerning the prayer for stay of execution, it is deponed that unless the same is ordered, execution will proceed with the result that the intended appeal even if it eventually succeeds, the success will be rendered nugatory.

The Notice of Motion was opposed on points of law argued by learned Senior Counsel, Mr. Ahmednasir, for the respondent.

Learned Counsel for the applicant Mr. Gatonye, in support of the Motion on Notice, adopted and expounded on the stand-point taken by the applicant in the supporting affidavit and the written submissions he had previously filed. After disposing of preliminary issues of jurisdiction and principles applicable, learned counsel was of the view that the following issues involved matters of general public interest and importance.

1. **Regulations of a critical state corporation namely Civil Aviation Authority and civil aviation generally.**
2. **The regulations affected many members of the public since the regulations regulate the licensing and operation of air craft, which necessarily in turn involve commercial interests and the transport industry.**
3. **The extent of the power of delegation donated in Section 5B of the Act**
4. **The colossal sum involved which sum if undisturbed will be paid from public funds.**

It was Mr. Gatonye's submission that the issues identified are substantial and transcend the immediate interests of the parties to the dispute and will arise again and again unless authoritatively settled by the Supreme Court. In learned counsel's view, the issues to be canvassed are of great public importance since without delegation, government and state corporations' operations would be greatly impeded or hampered.

With regard to stay of execution, Mr. Gatonye posited that in the event certification is granted, we should order a stay of execution pending the hearing and determination of the intended appeal. In learned counsel's view, unless there is such stay, the success of the intended appeal will be rendered nugatory as the respondent may not be in a position to refund the decretal amount in the event the intended appeal succeeds. In that event, according to counsel, the applicant stands to suffer irreparable loss and will be

unduly handicapped in the performance of its statutory mandate.

Senior Counsel (SC) Ahmednasir, for the respondent, in opposing the Notice of Motion, identified as relevant only one issue of law alleged namely, the delegation contemplated in Section 5B of the Act.

In learned counsel's view, the issue of how delegation should be conveyed under the said section is plain and requires no further elucidation by the Supreme Court. Learned counsel discerned nothing profound in law about the manner of conveying delegation under the said section. He maintained that only cardinal issues of law of jurisprudential moment should claim the time of the Supreme Court and no such issue had been raised by the applicant. SC also contended that the issues raised by the applicant were not of public interest and/or importance especially as the issues had never arisen before. It was also learned counsel's submission that the amount of the judgment cannot be a consideration in determining certification as the amount payable inevitably followed the unlawful exercise of power. In learned counsel's view, the amount payable, *per se*, does not constitute public interest nor can it be described as a profound legal issue requiring interrogation by the Supreme Court.

Whereas SC Ahmednasir conceded that this court indeed has jurisdiction to grant certification, he was emphatic that such certification cannot be granted as a matter of course but only on the basis of principles as set out in the case of ***Hermanus Phillipus Steyn v Giovanni Gnechi – Ruscone [2013] eKLR***. Learned Senior Counsel maintained that the applicant had not demonstrated those principles and the requirements for certification set out in Article 163(4)(b) of the Constitution.

On the prayer for stay of execution, learned counsel contended that this Court has no jurisdiction to stay execution of its judgments and orders, especially since the applicant has no automatic right of appeal as is the case here. Learned counsel, in the premises, urged us to dismiss the Notice of Motion in its entirety.

We have anxiously considered the application, the affidavit in support thereof, the submissions of learned counsel, the authorities cited and the law. The respondent conceded the jurisdiction of this Court to grant the certificate sought by the applicant. Such concession, of course, does not bind us if the same is erroneously made particularly on a legal point as one of jurisdiction. We are however, in no doubt that Article 163(4)(b) of the Constitution clothes this Court with jurisdiction to certify matters as being of general public importance to warrant the

Supreme Court's interrogation. The sub-article provides:-

4. Appeals shall lie from the Court of Appeal to the Supreme Court –

a.

b. ***in any other case in which the Supreme Court, or Court of Appeal certifies that a matter of general public importance is involved,***

(underlining ours) And Rule 30(2) of the Supreme Court Rules reads:

“Where an appeal lies only with leave or on certificate that a point of law of general public importance is involved, it shall be necessary to obtain such leave or certificate before lodging the notice of appeal”

So, Article 163(4)(b) requires us to determine whether the intended appeal to the Supreme Court raises a matter or matters of general public importance and if we are so satisfied, to issue the requisite certificate. The onus to satisfy us that such matter or matters of general public importance indeed exist rests on the applicant. The Constitution does not define what a “*matter of general public importance*” is nor does the Supreme Court Act nor rules made thereunder. We dare say however, that the omission to define the said phrase may have been deliberate given that matters of general public importance may be limited in time and scope depending on varying circumstances over a period of time. However, in the ***Hermanus Phillipus Steyn Case*** (*supra*), the Supreme Court set out seven (7) principles which are to guide the Court

in determining whether a question of general public importance is demonstrated by the intended appellant. As those principles are crucial for our determination of issues raised herein, we reproduce them below in full:

- i. *for a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case and has a significant bearing on the public interest;*
- ii. *where the matter in respect of which certification is sought raises a point of law the intending appellant must demonstrate that such a point is a substantial one, the determination of which will have a significant bearing on the public interest;*
- iii. *such question or questions of law must have arisen in the Court or Courts before, and must have been the subject of judicial determination;*
- iv. *where the application for certification has been occasioned by a state of uncertainty in the law, arising from contradictory precedents, the Supreme Court may either resolve the uncertainty, as it may determine, or refer the matter to the Court of Appeal for its determination.*
- v. *mere apprehension of miscarriage of justice, a matter most apt for resolution in the lower superior courts, is not a proper basis for granting certification for an appeal to the Supreme Court; the matter to be certified for appeal in the Supreme Court, must fall within the terms of Article 163(4)(b) of the Constitution;*
- vi. *the intending applicant has an obligation to identify and concisely set out the specific elements of “general public importance” which he or she attributes to the matter for which certification is sought;*
- vii. *determinations of facts in contests between parties are not, by themselves a basis for granting certification for an appeal before the Supreme Court.”*

As we stated in the case of *Muiri Coffee Estate v Kenya Commercial Bank Ltd & Another [2014] eKLR*, only one question of general public importance need be demonstrated for certification to be granted.

In the application before us the applicant has identified the following issues as demonstrating elements of general public importance.

- i. *What is the extent of the powers of delegation contemplated by Section 5B of the Civil Aviation Act?*
- ii. *In the light of the government procedures and governance of state corporations, would not the question of delegation as stated above arise again and again unless the same is authoritatively settled by the supreme Court?*
- iii. *To what extent should be the general effect of non-compliance with form of communication of delegation of powers prescribed by delegation on the substance of the decision so communicated?*
- iv. *Is it in the public interest that such a colossal amount of tax payers' money should be lost for lack of written delegation where the statute appears to have merely been prescribing the mode of delegation?*
- v. *Was it not in the public interest that the Respondent's AOC was suspended taking into*

account the overriding safety of the users of aviation services and the general public likely to be affected by non-compliance of the Air Navigation Regulation?

- vi. ***Doesn't the holding by the Court of Appeal that the Respondent's AOC could be frozen once it was suspended amounts to an amendment of the law or regulations? The said holding fails to acknowledge that such an AOC is by operation of law, only valid for a certain period of time and such period can only be extended by an application made to the regulator in accordance with the law.***

We ask ourselves whether the above questions which the applicant identified in its submissions before us qualify as raising matters of general public importance. In the *Hermanus Phillipus Steyn case* (supra) the Superior Court stated as follows on what would constitute a matter of “*general public importance*”:

“In litigating on matters of “General public importance” an understanding of what amounts to „public? or „public interest? is necessary. “Public is thus defined: concerning all members of the community; relating to or concerning people as a whole, or all members of a community, of state; relating to or involving government and governments agencies; rather than private corporations or industry; belonging to the community as a whole, and administered through its representatives in government.”

To determine whether the applicant’s Notice of Motion raises a matter or matters of general public importance, some background of the case will suffice. The respondent, African Commuter Services Ltd., before instituting the suit in the High Court, had seven (7) aircrafts which it operated, in its aviation business on an Air Operator’s Certificate (AOC) issued by the applicant which also granted it the necessary Air Service Licence (ASL). Under the said AOC and ASL, the respondent could carry out all air transport business: passenger haulage, freight services, air charters etc. The respondent did also hire and lease out air craft. On 24th January, 2003, one of its aircrafts christened 5Y – EMJ had an accident as it took off from Busia Airstrip where it had earlier transported a homecoming team hosted by the then Vice President at his home. The accident claimed three lives and other passengers received injuries of varying degrees. The accident set in motion a flurry of activities from the respondent’s chief officers and the applicant’s officials. Jibril, the respondent’s Managing Director, flew into Kisumu to co-ordinate rescue operations. While in Kisumu, his Nairobi office received a fax message that the respondent’s Air Operator’s certificate had been suspended pending further investigations. The suspension affected the respondent’s entire fleet of seven aircrafts and not the accident aircraft alone.

The respondent’s appeal for reinstatement of the AOC elicited no positive response and its later request for a non-objection letter to enable its pilots continue engaging in their profession was declined. In February, 2003, the applicant in response to a letter from the respondent, wrote to the latter informing it that the suspension of its AOC was pursuant to Regulation 57(1) of the Kenya Air Navigation Regulations and that the suspension was provisional pending further investigations.

Through M/s Ibrahim Isaack and Co. Advocates, the respondent addressed a letter of demand to the applicant. In that letter it sought unconditional reinstatement of its AOC and admission of liability for what it described an unlawful, illegal and arbitrary suspension of its AOC. A final demand letter before action was served upon the applicant in August, 2003 failing which the action in the High Court was filed.

The gist of the respondent’s claim, which was by way of plaint, was that the suspension of its AOC by the applicant was illegal, irregular, premature, arbitrary, capricious, unreasonable, oppressive and an unmitigated abuse and misuse of power. The respondent particularized its claim which the applicant denied in its written statement defence. The dispute was eventually heard by Nambuye J, as she then was, who substantially allowed the respondent’s special damage claim including the element of consequential loss of Kshs.608,533,224.00. The learned Judge also awarded a sum of Kshs.10,000,000/= as aggravated, exemplary and punitive damages in addition to revenue and capital losses which the learned Judge found to have been specifically pleaded and strictly proved. The total award came to quite a tidy sum.

The applicant appealed to this Court (W. Karanja, D.K. Musinga & K. M'Inoti JJA) which interfered with the amount awarded by the High Court under consequential loss, reducing the figure awarded by the High Court of Kshs.608,533,224.00 to Kshs.50,000,000/=. Both courts treated that claim as a special damage claim, characteristics of which, in our view, have long been conclusively settled and require no further input of the Supreme Court.

On the issue of delegation the learned Judges said:

“Section 5 B(1) of the Civil Aviation Act provides as follows:-

“The Director General may from time to time, in writing, either generally or particularly delegate to any person all or any of the powers exercised by him under any written law, but not including this power of delegation (emphasis supplied)”

The above provision is explicit and needs no elaboration. The delegation has to be in writing. The discretion implied by the use of the word

“may” is only in the decision to delegate which in our view must be in writing. In this case, the Director General did not delegate in writing as by law required. In his testimony before the trial court, at page 172 of the record of appeal, Mr. Kuto stated,

“I instructed him (Nyikal) and he issued instructions on my behalf and I am accountable. I delegated that communication that the licence be suspended. I have the powers to delegate in writing. In this particular case there was no opportunity to delegate because delegation has to be in writing” (emphasis supplied)”

The issue of the delegation contemplated by Section 5 B Civil Aviation Act has not been seriously challenged by the second appellant. We find, like the learned Judge of the High Court did in her judgment, that the cancellation [suspension] of the AOC was “unprocedural” for lack of proper delegation of power by the Director General to Mr. Nyakal.”

In the end the learned Judges found the delegation “invalid, unlawful and ultravires”.

The applicant is aggrieved by those findings hence this application for certification that various points of general public importance are involved in its intended appeal to the Supreme Court. The extent of the powers of delegation contemplated by Section 5 B of the Civil Aviation Act is claimed to be one such matter of general public importance. The provisions of that section have been reproduced above. We again reproduce those provisions herein below to put the applicant’s claim in perspective.

“5 B (1) The Director General may from time to time in writing, either generally or particularly delegate to any person all or any of the powers exercisable by him under any written law, but not including this power to delegate.”

Of relevance to this application is regulation 57(1) of the Air Navigation Regulations, which provides:

“57(1)The Director may, where he considers it to be in the public interest suspend provisionally (pending further investigations) any certificate, licence, approval, permission, exemption or other document issued or granted under these Regulations

(2) The Director may, upon the completion of an investigation which has shown sufficient ground to his satisfaction to be in the public interest, revoke, suspend or vary any certificate, licence, approval permission, exemption or other document issued or granted under these regulations.

There is no gainsaying that these provisions are plain, clear and unambiguous. They show in no uncertain

terms that the Director of the applicant had authority to initially provisionally suspend any certificate or licence, among other documents, pending further investigations where he considers it in the public interest. And upon completion of investigations he has authority to revoke, suspend or vary any certificate or licence, among other documents, issued under the regulations in the event he is satisfied that there is sufficient ground to do so and it is in the public interest.

He may exercise that authority personally or may delegate it under the provisions of Section 5 B of the Civil Aviation Act, aforesaid. The injunction is that the delegating has to be in writing. The provisions of Section 5 B are also plain and unambiguous and as the learned judges of this court found, *“they require no elaboration.”* With respect, it is difficult to discern any controversy let alone substantial issue raised by their interpretation or implementation. There is also no uncertainty surrounding the status of those provisions.

Learned counsel for the applicant contended that delegation is a frequent mode of operation when government or state corporations perform their properly assigned roles and that the decision of the learned Judges of this Court may negatively impact upon those operations. Save for that general statement, learned counsel did not specify how government operations and or performance of other state corporations would be negatively affected. In our view, the government and state corporations operate under the Constitution and a variety of statutes and regulations made thereunder. The statutes and regulations are specific to them. In our view, the learned Judges’ findings on the issue of delegation were specific and limited to the language employed in the Civil Aviation Act and the regulations made there under. The learned Judges did not purport to lay down a principle of general application as learned counsel for the applicant seemed to contend. There is, in our view, no point of law or indeed any point which goes beyond the facts of the case, the learned Judges were grappling with. There is in the premises nothing which transcends the facts of that case.

Our above analysis shows that the applicant has not demonstrated that there is an issue of general public importance in the intended appeal. As already observed, public interest, although not susceptible of precise definition, has certain characteristics which are inherent in the term itself. As stated in ***R(Corner House Research) -v- Director of SFO [2008] 4 All ER 927*** *“it must mean something of importance to the public as a whole rather than just to a private individual.”* The Black’s

Law Dictionary defines public interest as:

“the general welfare of the public that warrants recognition and protection, something in which the public as a whole has stakes, especially that justifies Government regulation”

The Supreme Court in the ***Hermanus Phillipus Steyn*** case (supra) defined “public” as follows:-

“Concerning all member of the community, relating to or concerning people as a whole; or all members of a community; of the state; relating to or involving government and governmental agencies; rather than private corporations or industry; belonging to the community as a whole, and administered through its representatives in government, e.g. public land.”

We accept that the applicant is a government agency which regulates aviation. However, that feature *per se* is not sufficient for purposes of certification. It is the intended issue on appeal which must be important to the public. It is not enough that it may be important to the government agency. The issue must go beyond the government agency where the government agency, as here, is a party. The scope of the powers of delegation contemplated by Section 5B of the Civil Aviation Act is not, in our view, such a point as those provisions are clear beyond peradventure as already discussed above. For the same reasons we do not find it as an issue of general public importance the extent of the effect of non-compliance with the form of communication of the delegation of powers prescribed by legislation since, in our view, the effect of such non-compliance will turn on the facts of each case. In the case before the High Court the learned Judge found:

“

- b. ***Those engaged in Civil Aviation industry can seek to enforce their rights against the managers where there is a complaint that action taken by the manager is not proper, a process the plaintiff is undertaking herein.***”

Ultimately the learned Judge found that the suspension of the respondent’s AOC was invalid in that there was no proper delegation of power with the result that the respondent could not operate thereby incurring losses for which the applicant was liable. A simple relationship, regulated by statute and regulations which relationship has the usual characteristics of obligation or duty owed to one party on the one hand and that obligation or duty breached by another consequently entitling the party injured to seek remedy which the court in this case allowed, in part.

The learned Judges of this Court, on the same issue, agreed with the High Court. They held:

“the cancellation of AOC was “unprocedural” for lack of proper delegation of power by the Director General to Mr. Nyikal

This was a very delicate situation whereby by a stroke of the pen the respondent’s entire aviation business was to be grounded to an abrupt halt. It called for more serious consideration and strict compliance with the relevant laws and regulations. It definitely needed much more than an improperly addressed handwritten missive dispatched by way of fax in the middle of the night and signed by a person who had clearly no authority to do so for lack of proper delegation.”

With what result? The Judge answered as follows:

“A statutory discretion cannot be properly exercised in unreasonable manner, i.e in a way no sensible authority with a proper appreciation of its responsibilities would act. A duty of care even where not expressly imposed by statute can be implied depending on the circumstances of each case and the nature of the duty the public body is supposed to perform. If the act to be performed is likely to cause harm to some other persons and such harm or damage is foreseeable, then the public body is enjoined to carry out that task in a manner that is reasonable and which will cause unnecessary harm or damage to the others. In other words, such a public body owes a duty of care to those who are likely to be affected by its actions”

So, is there any doubt as to the effect of non-compliance with the form of communication of the delegation of powers prescribed by legislation given the circumstances the learned Judges were faced with? None at all. We have already discussed the relevant provisions of the relevant legislation and found no room for doubt. The intended appeal does not raise an issue where the law requires clarification. Both Courts found that delegation was unlawful because it did not meet the requirements of the clear provisions of the law and the judgments of the two courts were consequential to those findings.

Both courts also dismissed the issue of whether it was in the public interest to suspend the respondent’s AOC and found that it was not. The three Judges of this Court whose decision is intended to be challenged in the Supreme Court stated:

“In the matter before us, what pertained to the accident traversed the general public? Was it public safety? We have not been told so. Was the continued operation of the respondent’s aircrafts a threat to public safety? Had the respondent’s aircraft been involved in several accidents before, then we would agree that public interest would come into play. There was no such claim here. Indeed, the real cause of the accident had not even been established by the time the respondent’s

AOC was suspended. It is our view that there was no issue of public interest involved to

cause the total grounding of the respondent's entire aviation business and the likelihood of all those who were dependant on the same. We say the entire business because even Mr. Kuto admitted in his evidence before the trial court that:

“It is obvious that by suspending the air operating certificate I would be grounding all his aircrafts. It was obvious that the suspension would, cripple the plaintiff's business with immediate effect as much as that was not the intention of my suspension.”

The learned Judges ultimately concluded as follows:

“.....we are of the view that there was no issue of public interest involved in this matter.....Indeed, we find that in view of Mr. Kuto's admission that he was aware of the consequences of the suspension in question, it is clear that the discretion was exercised capriciously, unreasonably and in bad faith”.

We agree. The suspension of the respondent's AOC which had the effect of grounding the entire fleet of aircrafts of the respondent when only one of them was involved in the accident and even so suspending the AOC before preliminary investigations had been commenced, could not have been in the public interest as the learned Judges of this Court found. We do not think that that is an issue which qualifies for certification.

The learned Judges also dealt with the conclusion of Mr. Kuto that once a licence is suspended it is put in obedience which meant that time was frozen until suspension was lifted. It is significant that Mr. Kuto was at the time of the trial the Director General and Chief Executive Officer of the applicant. Given that standpoint taken by the applicant's Chief Executive, we are unable to appreciate the contention now made that the decision of the three Judges on the results of the suspension amounts to amending the law with regard to AOC. In *Hermanus Phillipus Steyn -v- Giovanni Gneccchi – Ruscone (supra)*, the Supreme Court provided the following guiding principle where an alleged point of law is raised:

“(ii) Where the matter in respect of which certification is sought raises a point of law, the intending appellant must demonstrate that such point is a substantial one, the determination of which will have a significant bearing on the public interest.”

And in *Peter Oduor Ngoge v Hon. Francis Ole Kaparo and Five Others [Sup CT. Pet. No. 2 of 2012]*, the same apex court stated:

“In the interpretation of any law touching on the Supreme Court's appellate jurisdiction, the guiding principle is to be that the chain of courts in the constitutional set up, running up to the Court of Appeal, have the professional competence, and proper safety designs, to resolve all matters turning on the technical complicity of the law; and only cardinal issues of law or of jurisprudential moment, will deserve the further input of the Supreme Court.”

Given the above authoritative findings of the Supreme Court, and which findings have binding effect on this Court, we cannot describe the point of law raised by the applicant as being “a substantial one the determination of which will have significant bearing on the public interest” The issue is also not “a cardinal” one nor is it of

“jurisprudential moment.”

In our view the applicant is toying with the process or to put it in the words of learned Senior Counsel for the respondent, the applicant is

“playing a lottery”. It wants to have a third bite at the cherry. It hopes that in the event certification is granted an opportunity will be opened to once again escape payment of the decretal amount which we accept is not a small sum. But the amount of the judgment per se cannot, in our view, be a basis for

granting certification. It is apt to quote the epithet in vogue that “choices have consequences.”

The upshot of our above consideration is that we find no merit in this application. We decline to certify the same for further appeal to the Supreme Court.

Being of that view we express no opinion on the prayer of the applicant for stay of execution, as in our view, stay is dependent on certification.

We dismiss the application with costs to the respondent.

Before penning off, we are impelled to express our hope that as the dust settles down, the genre of voluminous assemblage of material in an application for certification as we have witnessed herein will become unnecessary. We say so, because such a practice will in effect not be different from the prosecution of the appeal itself and will involve the parties in exactly the same expense as in canvassing the appeal itself which will in effect defeat the overriding objective of the Appellate Jurisdiction Act as codified in section 3A and 3B thereof. In other words, we should discourage the hearing of the appeal before this court twice over.

DATED AND DELIVERED AT NAIROBI THIS 29th DAY OF 2015

G.B.M. KARIUKI

.....

JUDGE OF APPEAL

F. AZANGALALA

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

I certify that this is a true

Copy of the original

DEPUTY REGISTRAR