



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 794 OF 2013

ENGINEER MWALIMU KITHOME MUSAU.....CLAIMANT

VS

KENYA WATER INSTITUTE.....1ST RESPONDENT

GEORGE OCHILO MBOGO AYACKO.....2ND RESPONDENT

JUDGMENT

Introduction

1. Engineer Mwalimu Kithome Musau, the Claimant in this case worked as Director for Kenya Water Institute, the 1st Respondent herein. At the material time, the 2nd Respondent, George Ochilo Mbogo Ayacko was the Chairman of the 1st Respondent's Governing Council.
2. By his claim, the Claimant complains about his suspension and subsequent termination. The claim is documented by a Statement of Claim dated 24th May 2013 and amended on 19th November 2014.
3. The 1st and 2nd Respondents filed separate Memoranda of Response on 10th June 2013. The 2nd Respondent further filed a Response to the amended Statement of Claim on 26th November 2014.

The Claimant's Claim

4. The Claimant was appointed as Director of the 1st Respondent on a 3 year contract running from 1st December 2005 until 30th November 2008. Upon application to the 1st Respondent, the Claimant's contract was renewed for a further 3 years from 1st December 2008 until 30th November 2011. Upon further application, the contract was renewed for a period of 5 years to run from 1st December 2011 until 30th November 2016.
5. On 7th November 2012, at a meeting of the 1st Respondent's Governing Council, the 2nd Respondent tabled allegations made against the Claimant by employees of the 1st Respondent. The Governing Council resolved to constitute an *ad hoc* committee to investigate the allegations.
6. The 2nd Respondent subsequently wrote to the Efficiency Monitoring Unit (EMU) and the Ethics and Anti-Corruption Commission to investigate the Claimant.
7. The *ad hoc* committee concluded its investigations and presented its report at a meeting of the Governing Council held on 22nd December 2012. On 18th and 19th January 2013, the Governing Council considered the report of the *ad hoc* committee but did not make any resolution.
8. On 18th January 2013 as the Governing Council was considering the report of the *ad hoc* committee, the Office of the President, through the Secretary to the Cabinet and Head of Public Service issued a circular Ref No. OP/CAB.2/8A forbidding the nomination, appointment or dismissal of state or public officers during the transition period (between the first presidential elections under the Constitution of Kenya, 2010 and the date of assumption of office by the new President).
9. By letter dated 23rd March 2013 addressed to the Claimant and copied to the Ministry of Water and Irrigation, the Claimant was suspended from office.
10. On 25th March 2013, the Permanent Secretary, Ministry of Water and Irrigation wrote to the 2nd Respondent asking for the minutes of the

meeting of the Governing Council at which the resolution to suspend the Claimant had been passed and stating that the Claimant should remain in office until further directions from the Ministry.

11. The Claimant contends that the decision to suspend him was contrary to the Government Circular on appointments and dismissals and the continued suspension ignored the contents of the letter from the Ministry of Water and Irrigation dated 25th March 2013. The Claimant adds that no reasons were given in the suspension letter contrary to the provisions of Section 41 of the Employment Act, 2007 and Clause 3.17.3 of the 1st Respondent's Human Resources Policy Manual.

12. On 8th April 2013, purportedly on the Claimant's request, the 2nd Respondent commuted the Claimant's suspension to interdiction. On 13th May 2013, the Governing Council met and resolved that the Claimant's employment with the 1st Respondent be terminated.

13. The Claimant pleads that the decision by the Governing Council to terminate his employment was contrary to Section 41 of the Employment Act as he was not accorded an opportunity to appear and make representations before the Council. Further, the Respondents did not explain the reasons for the termination.

14. The Claimant goes on to state that despite the resolution to terminate his employment, the 1st Respondent neglected, refused and/or declined to issue the Claimant with a letter of termination. The Claimant therefore filed a Notice of Motion dated 28th February 2014 seeking orders to compel the 1st Respondent to issue the instrument of termination of employment.

15. On 25th July 2014, the Court directed the 1st Respondent to furnish the Claimant with the instrument of termination within 30 days. The Claimant avers that it was only after the order of the Court and upon demand by his Advocates on record, that the 1st Respondent issued him with letter of termination dated 21st August 2014 indicating that the Claimant's employment had been terminated effective 13th May 2013. The letter did not state the reasons for the termination.

16. The Claimant adds that he was not given notice of termination of his employment, contrary to Section 44(2) of the Employment Act.

17. The Claimant claims that the decision to suspend and interdict him and the subsequent decision to terminate his employment were malicious and in bad faith. He cites the following particulars of malice and bad faith:

- a) The decision to suspend him from office was reached in total disregard of and in contradiction to the resolution of the Governing Council on 18th and 19th January 2013 that the report of the *ad hoc* committee was not final;
- b) The decision to suspend him from office was reached in total disregard of the contents of the letter from the Ministry of Water and Irrigation dated 25th March 2013 advising that the Claimant should remain in office until further directions from the Ministry;
- c) The decision to terminate the Claimant's employment was reached when there were pending investigations by the Ethics and Anti-Corruption Commission on allegations against the Claimant;
- d) The decision to terminate the Claimant's employment was reached in total disregard of the Government Circular of 18th January 2013, on appointments and dismissals of state or public officers during the transition period (between the first presidential elections under the Constitution of Kenya, 2010 and the date of assumption of office by the new President); and
- e) The decision to terminate the Claimant's employment was reached without concurrence of the Ministry of Water and Irrigation.

18. The Claimant further pleads that he had a legitimate expectation that the 1st and 2nd Respondents would adhere to the directives contained in the Government Circular on appointments and dismissals, the contents of the letter from the Ministry of Water and Irrigation dated 25th March 2013 as well as the provisions of the Employment Act.

19. The Claimant also had a legitimate expectation that the 1st and 2nd Respondents would adhere to the terms of his employment contract and all applicable laws.

20. The Claimant's case is that his suspension, interdiction and subsequent termination were un-procedural, unfair and illegal. He adds that the termination was unfair within the meaning of Section 45 of the Employment Act.

21. The Claimant therefore seeks the following remedies:

- a) A declaration that the suspension letter dated 22nd March 2013 issued by the 2nd Respondent to the Claimant is null and void;
- b) A declaration that the interdiction letter dated 8th April 2013 issued by the 2nd Respondent to the Claimant is null and void;
- c) An order quashing the suspension letter dated 22nd March 2013, and any subsequent action taken by the 1st and 2nd Respondents or any party in reliance thereon;
- d) A declaration that the disciplinary process initiated by the 1st and 2nd Respondents against the Claimant and ending with the resolution to terminate the Claimant's employment is vitiated by procedural and substantive unfairness and is null and void;

e) An order of injunction restraining the 1st and 2nd Respondents from appointing any other person to the position of Director of the Kenya Water Institute for the remainder of the term of the Claimant's contract;

f) An order of injunction restraining the 1st and 2nd Respondents from in any way taking any measures or actions geared towards commencing, initiating or proceeding with or undertaking the process of appointment of any person as the Director of the Kenya Water Institute;

g) An order quashing the interdiction and/or suspension and the termination of the Claimant's employment as the Director of the 1st Respondent;

h) An order directing the 1st Respondent to reinstate the Claimant and to treat him in all respects as if his employment with the 1st Respondent had not been terminated;

i) In the alternative to reinstatement, an order directing the 1st Respondent to re-engage the Claimant in work or position comparable to that which the Claimant was employed prior to the termination of his employment, at the same wage, terms and conditions of employment;

j) In the alternative, monetary awards as hereunder:

i) Unpaid salary and allowances for the

remaining term of contract.....Kshs. 35,483,689.00

ii) Gratuity.....8,630,169.36

iii) 3 months' salary in lieu of notice.....1,734,001.47

iv) 12 months' salary in compensation.....6,936,005.88

v) Damages for unfair termination of employment

vi) An order directing the 1st Respondent to issue the Claimant with a certificate of service

vii) Costs plus interest

The 1st Respondent's Case

22. In its Memorandum of Response dated 7th June 2013 and filed in court on 10th June 2013, the 1st Respondent admits that the Claimant's employment contract was renewed for 5 years from 1st February 2011.

23. The 1st Respondent denies un-procedurally suspending, interdicting and/or terminating the Claimant and avers that the Respondents had supervisory and disciplinary responsibility over the Claimant. The 1st Respondent adds that under the Kenya Water Institute Act No 11 of 2001, the Respondents were mandated to take action against the Claimant, including suspension, interdiction and termination.

24. The 1st Respondent states that the Claimant has not rebutted the issues raised by the *ad hoc* committee and the Efficiency Monitoring Unit. With specific reference to the tabling of the report by the *ad hoc* committee before the Governing Council on 18th and 19th January 2013, the 1st Respondent states that in subsequent meetings held on 21st and 22nd March, 5th, 19th and 20th April 2013, additional evidence from the Claimant and other witnesses was taken.

25. The 1st Respondent contends that Government Circular OP/CAB.2/8A did not apply to it and even if it did, the Claimant could not hide under it while committing irregularities.

26. The 1st Respondent avers that the Claimant's suspension was in accordance with the Constitution of Kenya, the Leadership and Integrity Act as well as its Human Resources Manual. The 1st Respondent adds that the Claimant's suspension letter was copied to the Ministry of Water and Irrigation for information only and not to seek any direction or guidance as the 1st Respondent was governed by the Governing Council in accordance with Section 6(1) of the Kenya Water Institute Act. On issues of hiring and firing of staff, the Governing Council was the sole authority.

27. The 1st Respondent maintains that the Governing Council was the Claimant's appointing authority. The Council also had the power to dismiss him or to revoke his appointment. Moreover, the Claimant's employment contract stipulated the mode of termination.

28. The 1st Respondent states that the decision of the Governing Council was taken in accordance with the law and procedure; the Claimant having been informed of the charges against him, was required to step aside to pave way for investigations and was given a fair hearing before the decision to suspend him was arrived at.

29. The 1st Respondent pleads that the Claimant was duly informed of the allegations made against him and was given an opportunity to respond. In this regard, the Claimant appeared before the Governing Council on 22nd December 2012, 28th March 2013 and 5th April 2013.

30. The 1st Respondent further pleads that the decision to suspend the Claimant was reached after the *ad hoc* committee and EMU reports were considered and after some of the allegations were proved against him. On 5th April 2013, the Claimant pleaded that the punishment meted against him was very harsh and requested the Governing Council to commute the suspension to interdiction, which was done.

The 2nd Respondent's Case

31. In his Response to the amended Statement of Claim dated 25th November 2014 and filed in court on 26th November 2014, the 2nd Respondent denies that the Claimant was un-procedurally suspended, interdicted and unfairly dismissed.

32. The 2nd Respondent states that he acted in his official capacity as by law mandated. He adds that EMU and the Ethics and Anti-Corruption Commission are legal and independent entities mandated to monitor and/ or investigate the operation of the entire Government of Kenya and did not have to be set in motion by him or any other person.

33. The 2nd Respondent pleads that the report of the *ad hoc* committee was considered on 18th and 19th January 2013 and on other dates and thereafter the report together with a letter inviting the Claimant to attend a meeting of the Governing Council were sent to the Claimant. The Claimant attended and participated in several meetings and defended himself and after due deliberations and consideration by the Governing Council, a decision was made to terminate the Claimant's services.

34. It is the 2nd Respondent's case that the Claimant was accorded opportunity to be heard, call witnesses and submit documents in support of his defence. It was only when the Claimant became aware of the verdict after minutes of the meeting terminating his services were circulated that he rushed to court to challenge the process thus forestalling the process of termination which process was concluded when the injunctive prayers by the Claimant were disallowed.

35. The 2nd Respondent denies that circular Ref. No. OP/CAB.2/8A was applicable in this case.

36. The 2nd Respondent admits that a letter of suspension dated 22nd March 2013 was issued to the Claimant but denies that it was in regard to the resolution reached by the Governing Council on 18th and 19th January 2013. He states that the Claimant's suspension was a process that was preceded by the meeting of the Governing Council on 18th and 19th January 2013 and continued up to the Governing Council's resolution to dismiss the Claimant on 13th May 2013. The 2nd Respondent maintains that the Respondents were empowered to suspend and interdict the Claimant by the Code of Conduct.

37. According to the 2nd Respondent, the letter of suspension was copied to the Ministry of Water and Irrigation as a matter of information and practice not for any action by the Ministry. The 2nd Respondent admits receiving a letter from the Ministry but states that in a subsequent discussion with the Permanent Secretary and the Minister for Water and Irrigation, they disowned the letter as it had not been written by an authorized officer. They advised the Respondents to carry on with the process.

38. The 2nd Respondent denies the Claimant's averment that his suspension was in breach of the Employment Act or the 1st Respondent's Human Resources Policy Manual. The 1st Respondent adds that it was at the express request of the Claimant that the suspension be commuted to interdiction with the attendant benefits to the Claimant.

39. The 2nd Respondent states that proper reasons were advanced for the termination of the Claimant's employment and the Claimant was accorded prior opportunity to be heard.

40. The 2nd Respondent further states that the Respondents did not have to wait for the outcome of the investigations by the Ethics and Anti-Corruption Commission before concluding the disciplinary proceedings against the Claimant.

41. The 2nd Respondent counters the particulars of malice and bad faith set out in the amended Statement of Claim.

42. It is the 2nd Respondent's case that the Respondents had a duty under the law to hire, discipline, supervise, suspend, interdict and fire all employees of the 1st Respondent, including the Claimant.

43. The 2nd Respondent concludes that the suit as against him in person is malicious, ill-conceived and an abuse of the court process.

Findings and Determination

44. There are three (3) issues for determination in this case:

- a) Whether the termination of the Claimant's employment was lawful and fair;
- b) Whether the 2nd Respondent is properly joined in these proceedings;

c) Whether the Claimant is entitled to the remedies sought.

The Termination

45. The Claimant's employment was terminated by letter dated 21st August 2014 stating as follows:

"Dear Sir,

RE: TERMINATION OF SERVICE

Reference is made to the resolution of the 43rd KEWI Governing Council Meeting held on 13th May 2013 which resolved to terminate your services. This is therefore to inform you that your services were terminated with effect from 13th May 2013.

All your pending dues will be paid according to your appointment letter and after your successful hand over and clearance of any liabilities of the Institute.

I take this opportunity to thank you for the services you have rendered to this Institute during your working period and wish you all the best in future.

(Signed)

Dr. Leunita A. Sumba

Ag. Director-KEWI"

46. Prior to issuance of the termination letter, the Claimant had been put on suspension on 22nd March 2013 which was later commuted to interdiction by letter dated 8th April 2013. The suspension letter which was authored by the 2nd Respondent on plain paper, states as follows:

"Dear Sir

RE: SUSPENSION FROM OFFICE OF DIRECTOR, KEWI

The Governing Council of KEWI has resolved to suspend you from the office of the Director of KEWI with immediate effect until further notice.

The functions of the Director will be performed in an acting capacity by Dr. Leunita Asande Sumba to whom you are expected to hand over.

While on suspension, you are directed not to interfere directly or indirectly with the operations and activities of KEWI.

You are expected to provide a day and night telephone and physical address where you may be reached when required.

The GC will give further communication to you in due course.

Yours

(Signed)

Hon. Ochilo Ayacko

Chairman, KEWI GC"

47. A copy of the suspension letter was sent to the Ministry of Water and Irrigation and by its letter dated 25th March 2013, the Ministry asked for the minutes of the Governing Council at which the Claimant's suspension was discussed. The ministry also took issue with the fact that the allegations leading to the suspension had not been brought to the Claimant's attention for his response.

48. In ***Wilberforce Ojiambo Oundo v Regent Management Limited [2013] eKLR*** this Court held that ordinarily, suspension is not a disciplinary action but rather a neutral action requiring an employee to step aside to allow for unfettered investigations into allegations made against them. An employer may however be placed outside the application of this general rule either by statute or by its own internal procedures and policies. The latter would appear to have been the case with the 2nd Respondent because the Claimant's suspension embodied the adverse action of withholding of his monthly salary.

49. The Claimant's suspension was evidently a disciplinary action and the Court agrees with the Ministry of Water and Irrigation that the Claimant was entitled to be heard prior to the suspension. Moreover, the suspension letter itself did not disclose the reasons for suspension.

50. A subsequent letter dated 28th March 2018 states that the reasons for the Claimant's suspension were contained in the reports of the *ad hoc* committee and the Efficiency Monitoring Unit. Even if this were so neither of the reports contains any specific administrative charges against the Claimant. What is more, the EMU report was received by the 2nd Respondent on 21st March 2013, a day before the Claimant's suspension. Even with the best of intentions, there was no way the Claimant could respond to any allegations arising from the EMU report overnight. Overall, the Court could not tell whether the Claimant knew exactly why he had been suspended.

51. There was one more thing that was wrong with the suspension and it is this; the suspension letter did not provide any period for the suspension and from the evidence on record, from the date of suspension, the Claimant never went back to work. This situation was not mitigated by the commutation of the suspension to interdiction since in effect the Claimant was required to stay away from work. Significantly, the interdiction letter dated 8th April 2013 stated that the Claimant would remain under interdiction until determination of the disciplinary matter.

52. In *Teresia N. Peter v Kitui Teachers Savings and Credit Society Ltd [2014]eKLR* this Court stated the following:

“An employee on suspension remains innocent until proved otherwise. In addition such an employee has a legitimate expectation that they will be given an opportunity to respond to any adverse findings out of the investigations conducted by the employer. Suspension by its nature creates a fair amount of suspense for both the employee and the employer and should not therefore be unduly prolonged.”

53. The Claimant stayed on interdiction until the termination of his employment, communicated by letter dated 21st August 2014. The termination letter itself backdated the termination to 13th May 2013. I will come back to the termination letter. The point to make for now is that reckoning 22nd March 2013 as the effective date of the interdiction, the Claimant would have served interdiction for over one year. The Respondents did not offer any explanation as to why the Claimant was placed on interdiction for this long.

54. The picture that emerges is this; the Claimant was punished by way of suspension which was later commuted to interdiction without prior notice as to the charges facing him and without being afforded an opportunity to respond to those charges. More gravely, there was no evidence of any resolution by the Governing Council, sanctioning the Claimant's suspension.

55. With regard to the advice given by the Ministry of Water and Irrigation by letter dated 25th March 2013 that the Claimant should remain in office until further directions, the Respondent stated two things; first, that they were not bound by this advice and second, that the Minister and the Permanent Secretary in the Ministry had disowned the letter as having been authored by an unauthorized officer.

56. In taking this stance, the Respondents maintain that the Kenya Water Institute is an independent entity, not subject to the direction of the parent Ministry. The Respondents add that the Governing Council of the Institute had the full and sole mandate to deal with all employees, including the Claimant.

57. In the final submissions filed on behalf of the 2nd Respondent, reference was made to Section 8 of the Kenya Water Institute Act which gives power to the Governing Council to employ the Director of the Institute. Even assuming that the Institute and its Governing Council were absolutely independent of the parent Ministry, this did not give the Council the licence not to follow due process in handling the Claimant's case.

58. Again, the Court was unable to reconcile the position taken by the Respondents with regard to the role of the Ministry with letter dated 6th December 2011 from the Minister of Water and Irrigation approving the Claimant's re-appointment for a further term of five years. The letter from the Minister was in response to one dated 4th November 2011 from the 2nd Respondent seeking the approval. The Respondents did not explain to the Court what had changed within a period of less than two years.

59. At any rate, the advice from the Ministry of Water and Irrigation as contained in letter dated 25th March 2013 was based on procedural fairness requirements set out in law and the Governing Council was not at liberty to ignore it. That said, and in light of the foregoing, the Court finds and holds that the suspension and subsequent interdiction of the Claimant were unprocedural and unlawful.

60. I will now deal with the termination letter. The letter is dated 21st August 2014 but backdates the termination to 13th May 2013. A plain reading of this letter is that the decision to terminate the Claimant's employment was arrived at on 13th May 2013. In examining the termination for legality and fairness therefore, the Court will only examine processes undertaken prior to 13th May 2013.

61. At its meeting held on 18th and 19th January 2013, the Governing Council considered the report of the *ad hoc* committee appointed to investigate allegations made against the Claimant. At this meeting, the Governing Council took the view that the report of the *ad hoc* committee was not final.

62. On 28th March 2013, the 2nd Respondent wrote to the Claimant asking him to appear before the Governing Council on 11th April 2013 to defend himself against allegations contained in the *ad hoc* committee report as well as the report by the Efficiency Monitoring Unit.

63. It is important at this point to comment on the EMU report which generated a fair amount of disagreement between the parties. On his part, the Claimant accused the 2nd Respondent of unilaterally inviting EMU to conduct parallel investigations. The 2nd Respondent did not deny inviting EMU to conduct investigations but states that being an independent investigative agency, EMU did not have to be moved by him to conduct investigations in the Institute.

64. From the evidence on record, the termination of the Claimant's employment arose from investigations by the *ad hoc* committee and

EMU. The Court did not however find any single document prepared by the Governing Council, citing specific charges against the Claimant and requiring his response. Instead, the Governing Council appears to have delegated this duty to the *ad hoc* committee and EMU.

65. This begs two questions; first how was the Claimant expected to prepare to appear before the Governing Council without any specific charges being served upon him and second, on which charge(s) did the Governing Council indict the Claimant? No wonder neither the suspension letter nor the termination letter carried any reason for either action. The Respondents simply broached charges at large. If the Claimant was missed by one charge, he could not survive the next. This approach, in the nature of a fishing expedition, falls far short of the procedural fairness requirements of Section 41 of the Employment Act.

66. In *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology [2014] eKLR* this Court held that:

***“in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.*”**

67. I have spent a lot of time combing through the voluminous documents filed by the parties and did not find any single document issued by the Governing Council enumerating any administrative charges against the Claimant. The result is that the employer in this case failed to establish a valid reason for terminating the Claimant’s employment as required under Section 43 of the Employment Act. Furthermore, the action of backdating the termination by more than a year is tainted with illegality and amounts to an unfair labour practice.

Joiner of the 2nd Respondent

68. The 2nd Claimant who at the material time served as Chairman of the 1st Respondent’s Governing Council complains that he is improperly joined in these proceedings. He states that whatever action he took was in his official capacity and he cannot therefore be held personally liable.

69. In the final submissions filed on his behalf, reference was made to Section 6(4) of the Kenya Water Institute Act which states that:

(4) No member of the Council or staff of the Institute shall be personally liable for any act or default, done in good faith in the exercise or purported exercise of the functions of the Council.

70. In my view, the operating phrase in this provision is ‘good faith’. The Claimant’s case is that the 2nd Respondent set out on a personal vendetta against him. In principle, joiner of public officers acting in their official capacity is to be discouraged. However, where a public officer goes on a lone ranger mode and ignores advice to take corrective action then the corporate cover must be taken away (see *Paul Masinde Simidi v National Oil Corporation of Kenya & another [2015] eKLR*).

71. In effecting the Claimant’s suspension, the 2nd Respondent appears to have acted on his own. I say so because he failed to produce any resolution of the Governing Council sanctioning the suspension. Additionally, he ignored sound advice by the Ministry of Water and Irrigation. For these reasons, he must take personal responsibility for his actions.

Remedies

72. In light of the foregoing findings I award the Claimant ten (10) months’ salary in compensation for unlawful and unfair termination of employment. In arriving at this award, I have taken into account the Claimant’s length of service as well as the Respondents’ conduct in handling the Claimant’s case.

73. I further award the Claimant three (3) months’ salary in lieu of notice as per his contract of employment.

74. As the Claimant did not serve his full term, he is not entitled to gratuity. The Court found no basis for all the other prayers which therefore fail and are dismissed.

75. Ultimately, I enter judgment in favour of the Claimant and against the 1st and 2nd Respondents jointly and severally as follows:

a) 10 months’ salary in compensation.....	Kshs. 4,980,000
b) 3 months’ salary in lieu of notice.....	<u>1,494,000</u>
Total.....	6,474,000

76. This amount will attract interest at court rates from the date of delivery of this judgment until payment in full.

77. The Claimant is also entitled to a certificate of service plus costs of the case.

78. Orders accordingly.

DATED AND SIGNED AT MALINDI THIS 6TH DAY OF DECEMBER 2018

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Mr. Malonza for the Claimant

Mr. Motende for the 1st Respondent

Mr. Odhiambo for the 2nd Respondent