



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO.2292 OF 2016

PAUL NYADEWO ONYANGO CLAIMANT

VERSUS

THE PARLIAMENTARY SERVICE COMMISSION 1ST RESPONDENT

CLERK OF THE SENATE/SECRETARY OF

THE PARLIAMENTARY SERVICE COMMISSION 2ND RESPONDENT

RULING

1. The Claimant by application and Notice of Motion filed on 10th november, 2016 and brought under the provisions of section 12(2) & (3) of the Employment and Labour Relations Court Act, section 87 of the Employment Act and Rule 16 of the Industrial Court (Procedure) Rules, 2010 [the Employment and Labour Relations Court (Procedure) Rules, 2016], and seeking for orders that;

1. ...

2. *Spent;*

3. *The Court be pleased to confirm the order of temporary injunction, restraining the Respondents and/or, 2nd Respondent and/or his officers or, duly authorised agents in that behalf from implementing or effecting or rolling out or putting up into practice, the decision of the 1st Respondent of 19th October 2016, pending the hearing and determination of the claim/suit herein.*

4. *That in the alternative and without prejudice to the generality of No.s (2) and (3) supra, this Court be pleased to order a stay of the implementation or effectation or roll-out or putting into practice the 1st respondent's decision of 19.10.2016, pending the hearing and determination of the claim/suit herein.*

5. *That further and/or in addition to or pursuant to prayers 2, 3, and/or 4 herein, this Court be pleased to make an order as against the 1st Respondent to the effect that the 1st Respondent do retain or maintain or keep the claimant's name and other attendant details, in or on the 1st respondent's payroll and/or muster roll, together with such attendant or necessary monthly salary, benefits or privileges or other remuneration as its employee, pending the hearing and determination of the claim/suit herein.*

6. *Costs be borne by the respondent.*

2. The application is supported by the annexed affidavit of the Claimant and on the grounds that he was an employee of the Respondent until 19th October, 2016 serving the 1st Respondent as the Deputy Director Finance and Accounting. In October, 2016 the Claimant was notified by the 2nd Respondent of the 1st respondent's decision to retire him in the interests of the service. The Claimant was surprised when he received the letter dated 31st May, 2016 that the 1st Respondent had resolved to commence proceedings to retire him in the interest of the service pursuant to Regulation 36 of the Parliamentary Service Commission Regulations, 2002 (Regulations). This resolution and decision was contrary to section 17(1) and (3) of the Parliamentary Service Act and Regulation 32 and 36 of the regulations.

3. Further ground sin support of the application are that the 1st Respondent enabling legislation and Regulations do not provide for an appeal against the 1st respondnetn decision to retire the Claimant in the interest of the service. And on this account, the claimant's employment and career has been dealt a severe blow and shuts him out of any possibility of a fair and impartial hearing on his dispute with the 1st respondent. The decision of the 1st Respondent vide letter of 19th octobr, 2016 is a case of unfair termination and unlawful termination and or redundancy and or summary dismissal of the Claimant under the guise of retirement in the interest of service.

4. The decision of the 1st Respondent is without basis on the grounds that it is punitive, unfair and unprocedural and negates the rule soft natural justice and amounts to hounding the Claimant out of office without any justifiable cause. Such a decision negates the provisions of article 41 of the constitution and section 41 of the Employment Act as there are no reasons for the said unfair termination by retirement of the claimant. At the time of the 1st respondent's decision of 19th October, 2016 there was no reason justifying the retirement. The Claimant had been appointed to act in the capacity of acting Deputy Director, Finance and Accounting in November, 2015 only for the 2nd Respondent to recommend to the 1st Respondent that the Claimant be retired in the interest of the service 6 months after this appointment.

5. The Claimant had entered into serious financial arrangement that affect his social economic welfare based on the 1st respondent's assurance and the laid down legal regime that his retirement age would in all circumstances be 60 years. The decision to thus retire the Claimant by a recommendation of the 2nd Respondent to the 1st Respondent is premised on a long outstanding vendetta between the 2nd Respondent and the claimant. The 1st Respondent relied on allegations against the Claimant which allegations had previously been addressed and disposed of in favour of the Claimant pursuant to disciplinary proceedings. The 2nd Respondent had threatened the Claimant that he would be hounded out of office and the decision to retire him was therefore self-serving.

6. The Claimant was not summoned to appear before any disciplinary committee to defend himself against the decision to retire him and the allegations giving rise to the retirement were never investigated or proved. The right to fair administrative action and fair labour practice have been grossly violated by the Respondents when they took into account extraneous, irrelevant and a manipulated process of the 2nd Respondent instead of putting into regard the law and due process before terminating the claimant's employment.

7. In his Supporting Affidavit and Further Affidavit, the Claimant avers that he is aged 47 years upon employment by the 1st respondent, he was confirmed on 1st September, 2004 and served in the department of Finance and Accounting and rose through the ranks to Director Finance and Accounting. He served diligently until the unfair termination that is without reason or justification as the retirement from service due to public interest and reasons set out in the letter of 19th October, 2016 are laden with falsehoods and based on matters and allegations addressed by the 1st Respondent through a disciplinary process in 2010, 2013 to 2014 and 2015.

On 17th January, 2011 the clerk of the national assembly wrote to the Claimant with regard to allegation of dereliction of duty which allegations were addressed and settled by the 1st

respondent;

By memo of 4th December, 2013 the Director General wrote to the Claimant with regard to absence from duty which matter was addressed and settled; and

On 30th November, 2015 the Director General wrote to the Claimant on alleged absence from duty which matter was addressed and settled.

8. The Claimant avers that these incidents form a history of sustained harassment and intimidation on unfounded disciplinary measures meant to hound him out of office. He was never summoned to attend before any disciplinary committee of the 1st Respondent for hearing or show cause to retire in the interest of service. The Claimant was not accorded a hearing or chance to call witnesses before the Respondents decided to retire him and this was in breach of his right to fair administrative action.

9. The Claimant made arrangements for leave with his immediate supervisor but the director general Mr Clement Nyandiere and despite giving an explanation to the 2nd Respondent on the reason for the claimant's absence from duty on 23rd November to 2nd December, 2015, the supervisor was put under pressure of the 2nd Respondent to set in motion a conspiracy towards hounding him out of office.

10. The Claimant also avers that the 1st Respondent communicated its decision to retire the Claimant 21 days after the same was made and such was without notice or chance to give a defence. Regulation 36 of the Regulations was not followed, which Regulation should only be relied upon where there is no other provision available to deal with the case at hand. The Claimant was therefore accused of breaching the Regulations but was not given time to give his defence and no investigation had been conducted prior to the Respondents taking the decision to retire him in the interest of service. Such retirement is meant to subject the Claimant into financial hardship as he will not be able to educate his children, service his house mortgage and various financial obligations including loans and insurance policies. The Claimant relied on his salary to meet his financial obligations.

11. The Claimant further avers that he is entitled to the interlocutory orders as there exist a *lacuna* in the Regulations on how a retirement cases such as in his should be addressed by the respondents. The process leading to his retirement was skewed and laden with shortfalls that did not comply with the law and the Regulations of the respondent.

12. In response, the Respondents filed the **Replying Affidavit of Jeremiah Nyengenyne**, an Advocate of the High Court of Kenya and the 2nd Respondent herein with authority from the 1st Respondent to reply. He avers that upon the employment of the Claimant as Senior Finance Officer, PSC 5 from 1st September, 2004 he rose through the ranks. The Claimant had a record of misconduct;

On 15th December, 2010 the Senior Clerk of the National Assembly Mr Owino Omollo directed that the Claimant be issued with a show cause letter for abandoning duty;

The human resource department issued the Claimant with a show cause letter of 17th January, 2011;

13. Mr Nyengenyne also avers that on 12th October, 2012 following the death of the Director of Finance and accounting, the Claimant was appointed to the position upon a competitive process and as the next most senior ranking officer in the department to take over the position. As Director of Finance and Accounting, the Claimant was absent from duty without permission and the director general issued him with a show cause why disciplinary action should not be taken against him dated 4th December, 2013. The Claimant made a reply by letter dated 6th December, 2013 and the matter was considered by the Staff Advisory Committee, the Board of Senior Management and the Parliamentary Service Commission Committee on Staff Welfare and each of the 3 organs made recommendations on the matter on 16th January, 2014. The Parliamentary Service Commission resolved that the Claimant be severely

reprimanded and demoted a scale lower, Deputy Director Finance and Accounting and an amount equivalent to the days he was absent be deducted from his salary. The decision of the Parliamentary Service Commission was served upon the Claimant on 20th January, 2014.

14. On 31st January, 2014 the Claimant was issued with a severe reprimand and a warning concerning the conduct of his duties and by letter dated 5th February, 2014 the Claimant was apologetic for his actions and undertook to carry out his duties with diligence.

15. The Claimant applied for a review of the decision to demote him to a lower rank which was declined for the reasons that the Claimant had not supplied any good reason to warrant a review. Such decision was issued to the Claimant vide letter dated 11th September, 2014.

16. On 18th November, 2015 the Claimant was appointed Acting Director, Finance and Accounting Services, and soon thereafter on 30th November, 2015 the Claimant failed to report for duty and the director general issued him with a memo of equal date. The Claimant replied to the show cause on 4th December, 2015.

17. Mr Nyengenyé also avers that, the Claimant as the Director, Finance and Accounting Services was in charge of very sensitive department and his failure to attend duty adversely affected the department and the functioning of parliament in general.

18. Mr Nyengenyé also deposes that on 18th January, 2016 the Claimant was required to attend a meeting with the deponent and the Secretary to the Parliamentary Service Commission to discuss matters relating to the Directorate of Finance and Accounting but he failed to attend despite the secretary calling him and remind him of the meeting. The Claimant then called angrily informing the deponent that he would not attend the meeting as directed and a show cause letter was issued on the same day. The Claimant replied by memo of 19th January, 2016 and on 18th February, 2016 the Parliamentary Service Commission resolved to commence disciplinary proceedings against the Claimant who proceeded on leave pending the outcome of the same.

19. On 10th May, 2016 the Parliamentary Service Commission resolved that the claimant's appointment as acting Director of Finance and Accounting be terminated and proceedings commenced to retire him in the interest of the service. Pursuant to the resolution of the Parliamentary Service Commission on 31st May, 2016 the Claimant was issued with a show cause notice why he should not be retired in the interests of the service on the grounds of abandoning duty; absence from duty from 2nd to 4th December, 2013; absence from duty without permission; and disobedience of instructions/directions, rude and insubordination. The Claimant replied on 9th June, 2016.

20. The Parliamentary Service Commission referred the claimant's case to the Staff Disciplinary Committee to consider the allegations against him for violation of Regulations 25(c) and 26(a). The committee invited witnesses including the claimant, director general Mr Clement Nyandiere and Mr Nyengenyé where the Claimant was able to give his defence. The report of the SAC was submitted to the Board of Management which considered the matter on 30th August, 2016 and of its members, Mr Nyengenyé, Mr Justin Bundi the Clerk of the National Assembly, Mr Nyandiere and Dr George Wakar the acting Director Finance and Accounting recused self from the committee. The board resolved that the Claimant had been given a chance to improve on his performance without success; there was no other department or directorate he could be redeployed; it was in the interests of the parliamentary service for the Claimant to leave the service; and that the interests of the service had to be put into account. The matter was then referred to the Parliamentary Service Commission Committee on Staff Welfare which adopted and agreed with the findings and submitted the matter to the full commission.

21. Mr Nyengenyé also avers that on 23rd September, 2016 the Parliamentary Service Commission resolved that the Claimant be retired in the interest of the service for violation of Regulations 25(c) and 26(a). The Claimant was informed of this decision on 19th October, 2016 and taking effect on equal date.

The decision of the Respondents was arrived at upon extensive investigations and the matter going before various committees and to the full commission for consideration. The claimant's poor record and his letters of apology speak for themselves and there is no malice on the part of the 2nd Respondent as alleged the commission and the Respondents are served by over a thousand employees with the Claimant being among the many. There is no motive to pick on the claimant.

22. That the 1st Respondent has a constitutional responsibility to ensure that parliament is provided with services and facilities to ensure the efficient and effective functioning. The Claimant by his conduct in his duties was preventing the 1st Respondent from providing effective and efficient services with regard to annual budgeting process and payment of salaries, goods and services that would enable the Respondents are effective. The Claimant was in breach of article 127(6) (a) of the constitution by hindering the Respondents in their duties due to his misconduct.

23. Mr Nyengenyenge further avers that on the orders sought by the claimant, such cannot issue as the same have been overtaken by events. Following the decision taken on 19th October, 2016 there is now a substantive Director of Finance and Accounting, Mr Samuel Obudo and not possible to reinstate the Claimant back to his position. The Claimant can be compensated by way of damages if his claim is found to have merit and will therefore not be prejudiced.

Submissions

24. Both parties filed written submissions and an oral highlight.

25. The Claimant submit that under article 127 of the constitution, the Parliamentary Service Commission Act, there is a code of conduct at section 5 of the Act and values that are to guide the respondents. The powers delegated to the Respondent should be exercised within the law and the values of the constitution. Under section 17 the provisions of retirement and resignation of employees, the retirement age is 60 years and the 1st Respondent can re-engage an employee who has retired as such age and be put on contract of service. The Respondents cannot then prescribe the manner and reasons for retirement outside the law.

26. Regulation 16 deals with compulsory retirement on an employee reaching retirement age and the Claimant had not reached such age. Retirement can also due to ill-health but the Claimant did not meet such a condition. One can be terminated under Regulation 18 due to abolition of office which was not the case for the claimant. However Regulation 20(b) (ii) makes provision for the retirement of an employee in the interests of service in line with Regulation 36 but there are legal antecedents that the Respondents must satisfy before invoking the regulation. The Respondents must demonstrate what disciplinary measures had been taken before application of Regulation 36. In this case the Respondents did not comply with the provisions of sections 40, 41, 44, 45, 47 and 49 of the Employment Act.

27. The Claimant also submit that the principles in **Giella versus Cassman Brown [1973] EA** apply in his case as he has a good case with high chances of success to warrant the issuance of the orders sought. He will suffer irreparable injury and that the balance of convenience favours him.

28. That the circumstances of this case are exceptional to warrant the grant of interlocutory orders of reinstating the Claimant or in the alternative having his salaries restored pending the hearing of his case. The irregularities of the Respondents are of a serious nature which sufficiently warrants the grant of the interim orders.

29. Section 12(3) of the Employment and Labour Relations Court Act gives the Court jurisdiction to grant interim orders as set out in the application of the Claimant herein. The motion and claim raise substantive issues of a serious nature and with the tests in cited cases and noting the unlawful and unfair acts of the respondents; the only remedy in the interim is the grant of the application as prayed.

30. The Claimant has also relied on the following cases **American Cyanamid versus Ethicon limited (1975) RPC**; **West London Mental Health versus Chhabra (2013) UKSC80**; **Sheelkumar Jain**

versus New India Assurance Co. Ltd, Supreme Court Reports (2011) S.C.R; Kenya Airways Ltd versus Kenya Airline Pilots Association [2015] eKLR.

31. The Respondent submits that the effect of the orders sought by the Claimant would effectively be to reinstate him to the position held before termination. Reinstatement is a substantive remedy that should only issue as a final order as held in **Alfred Nyungu Kimungui versus Bomas of Kenya [2013] eKLR**. The Respondents have a good case to justify the termination of the Claimant by retirement in the interests of the service and upon hearing the Claimant and defence the Court has power under section 49 of the Employment Act to order for reinstatement.

32. In this case the balance of convenience favours the Respondent as to reinstate the Claimant in the interim would mean potentially crippling the operations of the Respondents as held in **Well Fargo Limited versus Cyrus Kioko & 48 Others [2015] eKLR**. The position previously held by the Claimant is sensitive and supports major functions of the Respondents and has since been filled by a substantive office holder. The Court should not enter the work place and take over the employer prerogative and run its affairs as held in **Joab Mehta Oudia versus Coffee Development Board of Trustees [2014] eKLR**. The Respondent has a constitutional responsibility and the conduct of the Claimant was found to hold back on the work of the respondents. To take him back would create a challenge to the efficient and effective running of the operations.

33. The Respondents have relied on the following cases – **Co-operative Bank of Kenya Limited versus BIFU [2015] eKLR; Indris Aden Mukhtar & 2 Others versus County Government of Garissa & Another [2016] eKLR**.

Determination

34. The Claimant moved the Court on 11th November, 2016 seeking urgent orders in the interim for a stay of the decision of the Respondent in **implementing or effecting or rolling out or putting into practice the decision of 19th October, 2016** and also that the claimant's name be retained or maintained or kept on the pay roll so that he can receive the necessary monthly salary, benefits or privileges or other remuneration.

35. No interim orders were issued as the Court in the first instance directed that the Respondents be served and the application be heard.

36. By allowing the orders sought, the stopping of taking effect of the decision of Respondents on 19th October, 2016 would in essence mean that the retirement of the Claimant in the interest of the service is reversed and that he is restored back at work and his salaries and benefits are to be paid.

37. The questions that the Court has to address then crystallise to the following;

Whether the Court should restrain the Respondents from impending or effecting the decision of 19th October, 2016?

whether the Court should order the 1st Respondent to retain and maintain the claimant's name on its payroll?

38. It is common cause that by letter dated 16th October, 2016 the Claimant was terminated from the 1st Respondent service for the reason of retirement in the interest of the service for abandoning duty; absence from duty without permission; disobedience of instruction/directions; and for being rude and insubordinate behaviour. That the Respondents had taken the decision to retire the Claimant in the interests of the service on account of the position he held as Director, Finance and Accounting Services being of great responsibility and that required a diligent and highly competent officer; that the Respondents were concerned with the claimant's previous offences including absenteeism and defiance of instructions from supervisors; that the Claimant was rude to the management; that the Claimant reported

to work under the influence of alcohol; the Claimant was causal to his duties; and that the Respondents had noted that the Claimant was not taking his work seriously. That for these reasons the Claimant had been taken before the Staff Disciplinary Committee, he made his presentations and a decision was reached as set out above.

39. The Claimant is therefore seeking for the orders in his Motion largely for the reasons that the 1st respondent's enabling legislation and Regulations do not make provision for the right of appeal against the decision to retire him in the interest of the service; he was not given a hearing or the investigations report leading to his retirement and that the decision taken has dealt a severe blow to his career and it shuts out any possibility of the 1st Respondent giving him a fair hearing.

40. The position that the Court should not enter in the work place to interfere with the employer's prerogative to manage the workplace and the reliance on the case of **Joab Mehta Oudia versus Coffee Development Board of Trustees**, cited above, but where there is a direct affront on justice and it is apparent to the Court that the internal procedures and proceedings undertaken by an employer are all targeted at arriving at a screwed decision against the employee and that the matters gone into by the employer are purely a sham so as to hound the employee out of his employment, the Court must interrogate and order as appropriate.

41. The Court will therefore intervene and interrogate the internal procedures adopted by the employer in addressing any case of misconduct to establish if the same is fair and or procedural and that the rules of fairness were applied. Such must correspond to the complaint lodged with the Court by a party inviting the Court this far or where in the opinion of the court, it is found necessary and appropriate to enter the work place and establish the questioned issue. In doing so, the Court cannot be said to be interfering with internal operations or the prerogatives of the employer to manage its business and workforce. The basis of any Court intervention must be found in the law. As we held in **CMC Aviation Limited versus Captain Mohammed Noor [Civil Appeal No. 199 of 2013] (UR)**:

Unfair termination involves breach of statutory law. Where there is a fair reason for terminating an employee's service but the employer does it in a procedure that does not conform with the provisions of a statute that still amounts to unfair termination. On the other hand, wrongful dismissal involves breach of employment contract, like where an employer dismisses an employee without notice or without the right amount of notice contrary to the employment contract

42. To therefore establish whether there was an unfair practice or procedure, the Court must interrogate internal practices and procedures of the employer. Where the employer fails to follow statute and its own internal policy and procedures, the Court has to make a finding pursuant to the provisions of section 41, 43, 45 and 47 of the Employment Act.

43. On the substantive issues set out above, Section 12(3)(vii) of the Employment and Labour Relations Court Act gives the Court power to issue orders provides;

(vii) an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law; or

45. On the order for reinstatement, even where the constitutive Act for the Court gives the power to order for the same, the Court must take into account the circumstances of each individual case and also rely on the attendant provisions of section 49 (3) and (4) of the Employment Act and Rule 17(10) of the Employment and Labour Relations Court (Procedure) Rules, 2016 (Court Rules) and putting into account that the order of reinstatement requires specific performance and should only issue in the rarest of cases.

46. Rule 10 of the Court Rules Provides;

(10) Notwithstanding anything contained in this Rule, the Court shall not grant an ex parte order that reinstates into employment an employee whose services have been terminated.

47. Therefore in the case of **Patrick Omusula Lupere versus Petro Oil Kenya Limited [2014] eKLR**; the Court held;

On the remedies sought, where he is seeking reinstatement, this is a specific performance remedy that is only granted in the rarest of cases.

48. The above position is reiterated by the Court in the case of **Stephen Ongoya versus Nairobi Academy (H) Limited [2014] eKLR**;

The claim for reinstatement is subject to various conditions as outlined under section 49 of the Employment Act. This is a provision for specific performance which should only be granted in the rarest of cases

49. The only exceptions lie in various decided cases by the court. In the case of **Ahmed Aden Hire versus Natiff Jama & Garissa County Government, Petition No.121 of 2016**, the Court in analysing the question of whether to issue and order of reinstatement in the interim, took into account the findings in the case of **Alfred Nyungu**, cited above and held that;

*The rationale is that the order of reinstatement is a specific performance order with finality. To issue such an order in the interim is essentially to deny the other party a chance to their defence unless there exceptional circumstances that the Court is appraised of to warrant the grant of the same in the interim. In **Alfred Nyungu Kimungui versus Bomas of Kenya [2013] eKLR**; though the decision was made on 28th May 2013 before the new Rules of procedure came into force on 5th August 2016, the context is not lost where the Court held that;*

The Employment Act 2007 places the burden of justifying termination decision, and showing the fairness of procedure, on the employer. In rare cases where interim reinstatement may be granted, the termination must be shown to be patently unfair, that even the ultimate remedies of compensation or reinstatement with back wages, would not have redressed the injury suffered by the employee in the pendency of the full hearing. Certain forms of termination grounds, the kind that result in automatically unfair termination such as pregnancy, race, gender or religious discrimination, may warrant the rare exercise of the Court's discretion in issue of interim reinstatement. This is more so particularly under the new liberal Constitution of Kenya, which frees the hands of the Courts in administration of justice. [Emphasis added]

50. Has the Claimant then established the exceptional factors to warrant the grant of an order for specific performance?

51. The claimant's case is that his case stands out as he has no recourse to an appeal as such is not provided for under the Respondents Regulations and that in any event he will not get a fair hearing as the process leading to his termination was shrouded with malice and intended to hound him out of office. That his career will suffer on the basis that he has been retired in the interest of service on unsubstantiated grounds. That he has financial obligations to meet by the nature of his employment with the respondents, he has a mortgage to pay and school fees to pay for his children as well as insurance policies that he has to pay for. That he will suffer irreparable damage if the orders sought are not allowed.

52. The remedy of reinstatement or re-engagement is available under section 49 of the Employment Act upon the Court hearing both parties on the merits of each case. Such remedies are available to put back an employee in a position that he ought to have been and remained so as to effectively address any unfair labour practice. The Claimant has since, with the leave of the Court put in his Amended Memorandum of Claim setting out a claim for terminal benefits under clause 22 and in the alternative made a case of redundancy and due claims under clause 23 and claims arising from alleged unfair treatment and termination set out under paragraphs 24 and 25 of the Memorandum of Claim. These are the remedies set out in support of the prayers in the main orders under paragraphs (i) to (xi).

53. I find the Respondents have set out a chronology of events leading to the show cause notice issued to the Claimant before he was retired and dated 31st may, 2016 and to which the Claimant replied by letter dated 9th june, 2016. With this notification and response the Claimant cannot be found to state that he was unaware and was not given reasons for his retirement. Whether such reasons are valid, fair or reasonable or genuine for purposes of terminating his employment with the 1st Respondent that is a matter the Court can only go into at a full hearing. To make determination without giving the Claimant and the Respondent a chance to interrogate each other's case would be to deny justice either way.

54. Without going into the merits of any of the claims as set out in the Amended Memorandum of Claim, where the Court makes a finding in favour of the claimant, each and every prayer will be gone into in addressing any violation(s) of his legal rights and procedural requirements attendant to his employment with the respondents.

Putting into account the analysis above and the findings thereon and the current circumstances of the Claimant, the orders sought in the application dated 9th November, 2016 shall not issue at this instance save to certify the matter ripe for hearing on priority basis. As the parties have been able to exchange their pleadings, hearing directions can issue instantly. Costs shall be in the cause.

Dated and delivered in open Court at Nairobi this 9th day of February, 2017.

M. MBARU

JUDGE

In the presence of:

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