



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 128 OF 2014

(BEFORE HON. LADY JUSTICE MAUREEN ONYANGO)

DICKSON OUMA OPIYOCLAIMANT

VERSUS

LAKE VICTORIA NORTH WATER SERVICES BOARD ..1ST RESPONDENT

PUBLIC SERVICE COMMISSION2ND RESPONDENT

R U L I N G

Dickson Ouma Opiyo filed this suit against the Respondents seeking several reliefs to preserve his employment with the 1st Respondent through his memorandum of claim filed on 9th June, 2014. At the same time he filed a notice of motion seeking the following orders:

- (1) That service of this application be dispensed with, the same be certified urgent and heard *ex parte* at the first instance.
- (2) That pending the inter-parties hearing of this application, this honourable court do issue a temporary injunction restraining the respondent/respondent from interfering, barring, stopping and/or inter meddling with the performance of the claimant's/applicant's work as the Water Service Provision Manager of Lake Victoria North Water Services Board.
- (3) That pending the hearing of the claimant's claim this honourable court do issue a temporary injunction restraining the respondent/respondent from interfering, barring, stopping and/or inter meddling with the performance of the claimant's/applicant's work as the Water Service Provision Manager of Lake Victoria North Water Services Board.
- (4) That pending the inter-parties hearing of this application, this honourable court do issue a temporary injunction restraining the respondent/respondent from advertising and filling up the position of the Water Service Provision Manager of Lake Victoria North Water Services Board.
- (5) That pending the hearing of the claimant's claim, this honourable court do issue a temporary injunction restraining the respondent/respondent from advertising and filling up the position and/or recruiting another Water Service Provision Manager from Lake Victoria North Water Services Board.
- (6) That the costs of this application be provided for.

The notice of motion is supported by the Applicant's affidavit sworn on 6th June 2014 and on the grounds

on the face of the application.

Upon filing the application, the appellant's counsel appeared before the Judge ex-parte on 17th June 2014 and was granted temporary injunction restraining the Respondents from advertising and filling up the position of water service provision manager of Lake Victoria North Water Services Board pending inter partes hearing and determination of the application.

The 1st Respondent Lake Victoria North Water Services Board opposes the application and filed a replying affidavit of Beatrice Sabana, the chairperson of the 1st Respondent's Board sworn on 27th June 2014.

The 2nd Respondent who was joined to this suit pursuant to an application by the 1st Respondent dated 29th October 2014 filed a replying affidavit of AVISA KIGUHI HAROLD on 31st March, 2015.

Both the applicant and the 1st Respondents filed supplementary/further affidavits on 31st July and 30th October 2014 respectively.

The applicant and 1st Respondent filed and exchanged written submissions while the 2nd Respondent opted not to file written submissions as the prayers sought in the application do not affect it.

Parties agreed to proceed with the application by way of written submissions.

Applicant's Case

The Applicant contends that he was employed by the 1st Respondent as Water Services Provision Manager following his application and subsequent competitive interview pursuant to an advertisement in the Daily Nation Newspaper of 6th June, 2012. His letter of appointment was issued on 22nd August 2012 and was signed by the then acting Chief Executive officer Eng. Claude Busieney. Prior to his appointment by the 1st Respondent the Claimant was an employee of the Ministry of Environment, Water and Natural Resources during which he was deployed at Ministry of Water, Nakuru District Planning and Design section from 1991 to 2004, Rift Valley Water Services Board, Community Development Department from 2004 to 2007, Ol'kalau Water and Sanitation Company as Managing Director from 2007 to 2010 and Rift Valley Water Services Board, Water Service Provision Department from 2011 to 1st October 2012 when he was released to join the employment of the 1st Respondent.

By letter dated 19th May 2014 the 1st Respondent wrote to the applicant revoking his appointment on grounds that the Ministry of Environment, Water and Natural Resources, under the State Department of Water had recalled and redeployed the applicant to Nakuru Sub-County Water Office. The letter of redeployment dated 15th May, 2014 was received through the Respondent's Chief Executive Officer on 19th May 2014 and forwarded to the applicant on the same day.

On 26th May 2014 the Principal Secretary, Ministry of Environment, Water and Natural Resource revoked the letter of redeployment to Nakuru Sub-County Water Office. In the same letter the Principal Secretary explained that the applicant was recruited by the 1st Respondent's Board competitively, and on the basis of the said recruitment the Ministry wrote to the Principal Administrative Secretary in the Directorate of Public Service Management seeking for transfer of the applicant's service to the 1st Respondent's Board.

The applicant states that the 1st Respondent went ahead and locked him out of his office hence the filing of his claim and the instant application.

The applicant submits that he has a prima facie case with high chances of success and therefore meets the thresh hold set in **Giella v Gassman Brown [1973] EA358**. He relies on the case of **Tom Luusa Munyasya & Another v County Government of Makueni and others [2014] eKLR** where the court stated that to avoid frustration of any orders that the court may grant to the claimants and to facilitate the just, expeditious and proper resolution of the dispute the preservation orders granted in the interim would

remain in force.

The applicant further relies on the decision of the court in the case of **Timothy Omollo & 79 others v Kakamega County Government & Another [2013] eKLR** where the court granted injunction against the Respondents restraining them from terminating the services of the claimants pending the determination of the case.

The applicant further submits that the action of the 1st Respondent would amount to unfair termination similar to the circumstances in the case of **Elizabeth Washeke & Others v Airtel (Cause No. 1972 of 2012)** and **Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] rKLR**.

The applicant urged the court to allow his application.

1st Respondent's Case

The 1st Respondent submitted that the applicant has not come to court with clean hands and is not deserving of the prayers sought in his application.

The 1st Respondent submits that the applicant's application is misleading and calculated to prevent the course of justice with the aim of enriching himself unjustly and contravening all lawful human resource practices.

The 1st Respondent submitted that the applicant's application for employment stated that his latest employment was with the Rift Valley Water Services Board in the Water Services Provision Department (2011 to date). That the applicant's curriculum vitae further stated that he last worked with the Ministry of Water between 1991 and 2004. The 1st Respondent submitted that the applicant's CV presented during the interview was different from the one presented by the applicant in his affidavit and the one currently in the 1st Respondent's records as the one presented during the interview did not contain information on the applicant's latest salary at the Ministry of Water or the issue of Rift Valley Water Services Board top up. The 1st Respondent further submits that at the interview the applicant did not disclose that he was an employee of the Ministry of Water and Irrigation.

It is the 1st Respondent's contention that although clause 15 of the applicant's contract of employment states that he cannot receive any reward, commission or profit, he had admitted under paragraph 13 of his supporting affidavit that he continued receiving salary from the then Ministry of Water in contravention of his letter of appointment as an employee of the Ministry. The 1st Respondent referred to the replying affidavit of **Avisa Kiguli Harold** in which it was confirmed that the Ministry was paying the applicant salary until 1st January 2015 when it learnt of the issues in dispute.

The 1st Respondent submits that it is a stranger to the applicant's contentions about de-linking and that the Public Service Code of Regulations Clause E.29, E.30 and E.31 relating to the release of officers for promotion in other Ministries or transfer to another ministry or other Public Service do not cover the applicant's circumstances. The 1st Respondent further contends that the Employment Act and other Labour Legislation do not contemplate a situation where an employee has two employers, and that the applicant who has been withdrawing two salaries is guilty of unclean hands.

The 1st Respondent submitted that the applicant was due for confirmation in February 2013 but was not confirmed because the 1st Respondent's board had by then not been constituted following the expiry of the term of the previous board, that the 1st Respondent's board was only constituted on 14th June 2013, that the confirmation of the applicant's employment came up at the board meeting held on 17th December, 2013 when the Board learnt that the applicant was an employee of the Ministry of Environment, Water and Natural Resources (now the state Department of Water) and that the applicant had successfully requested for salary top up that is not envisaged or contemplated in his letter of appointment.

The 1st Respondent submitted that the applicant having been on probation the 1st Respondent's Board

properly exercised its right to decline to confirm him. It submitted that the applicant is guilty of material non-disclosure and his application should be dismissed.

The 1st Respondent relied on the case of **John Njue Nyaga v Nicholas Njiru Nyaga & Another [2013] 7KLR** in which the Court of Appeal dismissed the suit and stated:-

"It is our considered view that one who comes to equity must come with clean hands and equity frowns upon secrecy and under hand dealings."

The 1st Respondent also relied on the case of **Dock Workers Union v Kenya Ports Authority [2015]eKLR** in which the court held:

"Justice and equity follow the law. The maxim that a person ought not to derive advantage from his own injurious behaviour cuts across all fields of law. There is a Latin Maxim in nearly all the areas of the law, expressing the view that a person ought not to derive advantage from his own wrong doing."

On the question whether the applicant is entitled to an order of injunction the 1st Respondent submitted that the applicant has not met the threshold in **Giella v Cassman Brown (supra)** and relied on the case of **Kenya Railways Corporation v Thomas M. Nguti & 6 others [2009]eKLR** in which the court restated the principles in **Giella**.

The 1st Respondent submitted that the applicant has not demonstrated that he has a prima facie case as he was still serving on probation having not been confirmed. Relying on the case of **Republic v National Water Conservation & Pipeline Corporation & 11 Others [2015]eKLR** in which the court stated:-

"It must be remembered that when it comes to management of state corporations, the buck stops with the Boards."

The 1st Respondent further relied on the case of **Alfred Kimungui v Bomas of Kenya [2013] eKLR** which the court stated:

"The Employment Act does not intend that Courts take away managerial prerogatives from employers. To give the interim order would have the effect of stifling the management prerogative in staff administration. It would mean the employer does not have any more say in the contract of employment it has authored. This would be contrary to the intention of the Employment Act, which seeks to merely protect the weaker of the bargaining partners, not deprive the employer the power to run its business altogether."

The 1st Respondent submitted that the applicant had been released back to the Ministry by letter dated 12th May, 2014 and the applicant was informed on 19th May, 2014.

On the issue of irreparable loss the 1st Respondent submitted that the applicant will not suffer irreparable damage as he is still legally employed by the Ministry. The 1st Respondent further submitted that damages would adequately compensate the applicant. The 1st Respondent relied on the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014]7KLR** where the Court of Appeal held that:-

"On the second factor, that the applicant must establish that he "might otherwise" suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the appellant to demonstrate"

The 1st Respondent submitted that the applicant had failed to show that he will suffer irreparable injury that cannot be adequately remedied by damages.

On balance of convenience the 1st Respondent submitted that the applicant had failed to prove any of the

grounds for the grant of injunction and relied on the case of **Mrao Limited v First American Bank of Kenya Limited & 2 others [2003] eKLR** where the court of appeal held that:

"The power of the court in an application for an interlocutory injunction is discretionary. Such discretion is judicial. And as is always the case judicial discretion has to be exercised on the basis of law and evidence."

On the issue of reinstatement the 1st Respondent submitted that it is an equitable relief envisaged under section 49(3) of the Employment Act which sets out at subsection 49(4) the conditions which the courts must consider before granting such order.

The 1st Respondent relied on this courts decision in **Dorothy Vivian Atieno Ogutu c/o Bruce Advocates v Mumias Sugar Company Limited [2015] eKLR** where the court stated

"It is my opinion that it would not be possible for the court to determine whether or not the applicant is entitled to reinstatement until all the evidence is taken and the court finds first, that she was unfairly terminated and secondly, that her circumstances are such that reinstatement would be the most appropriate remedy."

The 1st Respondent submitted that since the applicant's employment was not confirmed the remedy of reinstatement is not available to him.

The Respondent further relied on the case of **Wells Fargo Limited v Cyrus Kioko & 48 others [2015]eKLR** where the Court of Appeal citing the case of **Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014]eKLR** held that ;

"Reinstatement is not an automatic right of an employee; it is discretionary and each case has to be considered on its own merits; that traditionally, courts should not force parties in a personal relationship to continue in such relationship against the will of one of them when this can engender friction which is not healthy for business. Section 49 (4) of the Employment Act encompasses the elements of reasonableness and practicability before reinstatement is ordered."

The 1st Respondent concluded its submissions by referring the court to the case of **Joab Mehta Oudia v Coffee Development Board of Trustees [2014] eKLR** which it submits is on all fours similar to this case in which Justice Rika held that;

"5. There is prima facie evidence shown by the Respondent that the Claimant was under probation on the day of termination. He was employed on 13th December, 2012. He was placed under probation of 6 months, which lapsed in July 2013. This was extended by 3 months, in August 2013. There is prima facie evidence that the Claimant was under probation at the time of termination. The preliminary view of the Court is that section 42 (1) of the Employment Act 2007 applied to him, and he would not be entitled to the procedural guarantees he claims have been infringed.

6. Even if the Claimant was not under probation, it would be premature for he Court to have a position on whether the Respondent had substantive justification interminating the Claimant's contract of employment and whether this was done in accordance with fair procedure. The law on termination requires the employer to show valid reasons or reasons, and demonstrate fairness of procedure. At the time the application was argued, the Respondent had not even had a chance of responding to the Claim. It was extremely difficult for the Respondent to bring material within a short period to time, showing there is prima facie case justifying termination. The court must weigh the position of the employer carefully at the interlocutory state, because ultimately, it is the employer, not the employee who carries the greater responsibility in establishing whether there was a fair termination or not. In this case, the Respondent has shown a prima facie case that termination was under section 42 of the Employment Act 2007. This preliminary view can be altered after hearing the parties in full.

7. *The court reiterates its findings in the rulings cited by the Respondent in Industrial Court cause Number 620 of 2013 between Alfred Nyungu Kimungui v the Bomas of Kenya and Cause Number 1200 of 2012 between professor Gitile Naitule v. University Council Multimedia University College and Another. Reinstatement of an employee is ordinarily a substantive remedy, to be given after the full hearing of the parties. Instead of seeking interim reinstatement, the Claimant should seek to be heard in full, utilizing the accelerated hearing procedure that is available at the Industrial Court.*"

The 1st Respondent urged the court to dismiss the applicant's amended notice of motion dated 1st October 2014 with costs.

2nd Respondent's Case

As I have mentioned elsewhere in this ruling, the 2nd Respondent did not file any submissions. Ms. Langat for the 2nd Respondent stated that the prayers in the application do not affect the 2nd Respondent.

Determination

I have considered all the pleadings together with the documents filed by the parties. I have also considered the authorities cited and the written submissions.

The issues for determination are whether the applicant meets the threshold set in the case of **Giella v Cassman Brown Limited** to justify the granting of the orders sought in his application dated 6th June 2014 as amended on 1st October, 2014.

From the evidence before the court, the claimant was employed by the 1st Respondent by letter dated 22nd August, 2012. He signed the letter on 28th August, 2012 and was released by Rift Valley Water Services Board on 1st October 2012. The letter releasing the applicant was copied to the Permanent Secretary, Ministry of Water & Irrigation with comments "(For change of pay point)". It is apparent that the applicant reported for duty at the 1st Respondent's offices soon thereafter. On 25th October 2012, before he received his first salary from the 1st Respondent he wrote a letter requesting to be placed on top up salary. In his letter addressed to the Chief Executive Officer of the 1st Respondent, he attached a copy of his payslip. The letter reads as follows:-

Having been appointed to the post of Water Service Provision Manager, I request to be on top up salary as we wait for the delinking process from my previous employer, Ministry of Water and Irrigation

Attached please find copy of my Ministry of Water pay slip for ease of your reference. I request that the deductions in the pay slip to be continued in the new pay slip. These include HELB, Sacco contribution, insurance, loans repayment among others.

Please advise me accordingly so that I may not loose any amount of my pension or contravene any law.

Thank you in advance.

(Emphasis added)

The attached payslip is headed "Ministry of Water and Irrigation." Endorsed on the payslip by hand is the difference between the applicant's salary and allowances on the payslip paid by the Ministry of Water and Irrigation and the Salary and Allowances indicated in the applicant's letter of appointment.

The 1st Respondent has not alleged that it paid the applicant any amount higher than the difference between what he was offered by the 1st Respondent and that which he received from the Ministry of Water and Irrigation as indicated in his payslip from the Ministry.

This position is confirmed by a letter dated 23rd October 2013 from the Ministry of Environment, Water & Natural Resources addressed to the Chief Executive Officer of the 1st Respondent which is reproduced below;

Your letter Ref. No. LVNWSB/HQRS/CHR/VOL/1/29 dated 24th September, 2013 refers.

This is to confirm that Mr. Dickson Ouma Opiyo, Senior Superintendent Water Job Group 'K' is an employee of this Ministry and being paid salary by this Ministry and has not been formally delinked from this Ministry.

You may proceed and issue him with a formal letter of offer of appointment to enable us request the Ministry of Devolution and Planning and the Department of Public Service Management to transfer his services to your Board.

The letter was responding to a letter dated 24th September, 2013 from the 1st Respondent.

On 25th February 2014 the 1st Respondent wrote to the applicant to clarify his appointment status. The letter states as follows:-

This is in reference to the above subject.

The management has noted with concern the issues touching on the above subject matter. It's noted that you applied for a position of Water Service Provision Manager as a result of an advertisement which appeared on the daily papers. You went through an interview and accepted the offer via a letter signed on 28/08/2012. You were released from Rift Valley Water Service Board via letter RVWSB/HR/VOL 1/115 dated 1st October 2012. The fact remains that this position was advertised and if the Board was interested in secondment it could have done so without advertisement.

There is a letter in question dated 17th December 2013 from the Ministry to the Board stating that you are requesting to be delinked from the Ministry to the Board and indeed it has been confirmed that you are an employee of the ministry.

Hence, you are required to reply to this letter within 48 hours from the date of receiving this letter explaining why you didn't disclose your employment with the Ministry in your CV, during the interview and more so at the time of accepting the offer, instead you highlighted other conditions much later after accepting terms of employment with the Board.

In his response dated 26th February 2014 the applicant clarified the status of his employment as follows:-

I refer to your letter under reference LVNWSB/HQS/HRM/PNO 0066.1 dated 25th February 2014 on the above subject. I hereby give my response as follows:-

a) The position of Water Service Provision Manager was advertised in the local daily newspapers and I applied, was short-listed for the interview, went through an interview successfully, I was offered the position; I accepted the offer and signed the letter of offer on 28th August, 2012.

b) In my CV which I attached to my application letter, I clearly indicated my employment history, the salary I was earning from the Ministry of Water and Irrigation and the allowances that I was getting from Rift Valley Water Services Board that was a mandatory requirement in the advert.

c) During the interview, I gave the panel my history of work experiences and all the positions that I held. I indicated clearly that I was a Ministry of Water and Irrigation employee deployed to Rift Valley Water Services Board as per the transfer plan of 2005 that supported the testimonials I had attached.

d) After being offered employment, I wrote a letter dated 25th October 2012 to the Chief Executive Officer requesting for a top up salary and attached the ministry pay slips as we wait for the delinking process. The above was implemented by the board management.

e) The letter from the Ministry dated 17th December 2013, was confirming my employment status and my request for delinking.

I humbly request the Board management to help me finalize the delinking process as per the Ministry request letter

Enclosed please find copies of letters confirming my appointment status. Thank you in advance.

On 12th May 2014 the 1st Respondent wrote to the Principal Secretary, Ministry of Environment, Water and Natural Resources the following letter;

We refer to the above person and particularly, your letter dated 23rd October, 2013.

We note from your said letter that the above named person is a staff member of the Ministry. Accordingly, we hereby release him to the Ministry.

On 15th May 2014 the Principal Secretary Ministry of Environment, Water and Natural Resource wrote to the applicant recalling him from the 1st Respondent and redeploying him to his former station, Nakuru Sub-County Water Offices. However the Principal Secretary again wrote to the 1st Respondent revoking his letter of 15th May, 2014 and confirmed that the applicant was an employee of the 1st Respondent. The letter states as follows:

Further to this office's letter Ref.No.EST/1991037503/109 dated 26th May, 2014 on the above subject, enclosed herewith please find copies of letter of appointment of the officer Ref. No.LVNWSB/HQS/HRM/4/vol.11/15 dated 22nd August, 2012, signed by the officer on 28th August, 2012 to signify his acceptance and his letter dated 4th November, 2013 being his request to transfer his services to Lake Victoria North Water Services Board.

The Ministry has subsequently written to the Principal Administrative Secretary, Directorate of Public Service Management, Ministry of Devolution and Planning seeking approval for transfer of his services to your Board as provided for in section E of the Code of Regulations (COR) on terms and Conditions of Employment and specifically Sub-Section E 31 on transfers to and from the Civil Service.

In the circumstances therefore, the instructions to recall back the officer to the Ministry and specifically, Nakuru Sub-County, Water Office are hereby revoked and the officer remains an employee of Lake Victoria North Water Services Board as this office awaits response on transfer of his services to your Board from the Directorate of Public Service Management.

(Emphasis added)

The last employment position of the applicant is therefore as contained in the letter dated 27th May, 2014 being that the applicant is an employee of the 1st Respondent.

From the foregoing it is clear that the applicant did not receive two salaries from two different employers. He received only the salary stated in his letter of appointment but the same was partially paid by the Ministry and partially by the 1st Respondent who only paid the difference between the salary on the applicant's letter of appointment and that paid by the Ministry as approved by the 1st Respondent's CEO.

It is also evident that the applicant disclosed his employment status in his curriculum vitae when applying for the job with the 1st Respondent and upon reporting following his recruitment, and again disclosed his

status in his letter dated 25th October, 2012 attaching his payslip to enable the Respondent pay only the difference between the salary offered to him and that in the payslip. It is also evident that this position was disclosed, known and approved by the Ministry from where the applicant was employed as confirmed in the letter dated 27th May, 2014. It is important to point out here that the 1st Respondent falls under the same Ministry under which the applicant worked before being employed by the 1st Respondent.

I therefore find no substance in the 1st Respondent's allegation that the applicant came to court with unclean hands or that he withheld material information from the Board of the 1st Respondent.

It is not lost to me that **Ms. Beatrice Sabana** in both her affidavits sworn on 27th June and 29th October 2014 made depositions on matters which were not in her knowledge. It was the 1st Respondents position that the Board chaired by **Ms. Beatrice Sabana** was constituted on 14th June, 2013. She was therefore not part of the Board that interviewed the applicant in 2012 and therefore can not swear an affidavit alleging the applicant lied to the Board in which she did not sit.

I further find that the applicant is not an employee of the Ministry as the Ministry revoked his redeployment back to the Ministry by its letter dated 27th May, 2014 and by the same letter confirmed that the applicant was an employee of the 1st Respondent.

I also find that having been sent back to the 1st Respondent the letter of the 1st Respondent revoking the applicant's employment stands revoked. For this reason the issue of reinstatement does not arise as the applicant's employment by the 1st Respondent was never terminated to warrant reinstatement.

The 1st Respondent also contends that the applicant's employment was not confirmed and he remained on probation. The applicant's letter of appointment expressly provides that his probation was for 6 months and may be extended to one year or he may be confirmed upon satisfactory appraisal.

The 1st Respondent has not stated that the applicant was appraised and his performance found not to have been satisfactory. It has also not stated or produced any letter to show that the probationary employment of the applicant was extended beyond the 6 months stated in the letter of appointment. On the contrary the 1st Respondent's position is that the applicant was not confirmed because there was no board in place to confirm him.

The Board cannot turn around and say that because it was not there to confirm the applicant, it can validly refuse to confirm him. The Employment Act provides for probationary contracts at section 42 as follows:-

Termination of probationary contracts

(1) The provisions of section 41 shall not apply where a termination of employment terminates a probationary contract.

(2) A probationary period shall not be more than six months but it may be extended for a further period of not more than six months with the agreement of the employee.

(3) No employer shall employ an employee under a probationary contract for more than the aggregate period provided under subsection (2).

(4) A party to a contract for a probationary period may terminate the contract by giving not less than seven days' notice of termination of the contract, or by payment, by the employer to the employee, of seven days' wages in lieu of notice.

From the foregoing, it follows that the applicant's contract stood confirmed by operation of the law and by virtue of his letter of appointment upon the expiry of his probationary employment of 6 months when the same was not extended or terminated.

As I have already stated above, the applicant's job was preserved by the orders of this court of 17th June 2014. His job was also preserved by the letter from the Principal Secretary, Ministry of Environment, Water and Natural Resource dated 27th May 2014 which categorically declared that "**the officer remains an employee of Lake Victoria North Services Board.**"

For these reasons, the application succeeds and I order that the 1st Respondent gives access to the applicant to resume his duties as Water Service Provision Manager of Lake Victoria North Services Board pending the hearing and determination of this claim.

The costs of this application shall be in the cause.

Dated, Signed and Delivered this 2nd day of March, 2016

MAUREEN ONYANGO

JUDGE