



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NYERI

PETITION NUMBER 116 OF 2013.

**IN THE MATTER OF ARTICLES 10, 20,21,22, 23, 73, 75, 232, 235, 258 AND 259 OF THE
CONSTITUTION OF KENYA, 2010.**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 27, 28, 41, 47 AND 50 OF THE CONSTITUTION.**

AND

IN THE MATTER OF COUNTY GOVERNMENT ACT, 2012 (ACT NO. 17 OF 2012)

AND

**IN THE MATTER OF SECTION 3, 4, 7, 8, 9, AND 10 OF THE PUBLIC APPOINTMENTS
(PARLIAMENTARY APPROVAL) ACT, ACT NO. 33 OF 2011 LAWS OF KENYA.**

AND

**IN THE MATTER OF THE PURPORTED REVOCATION OF THE ENGAGEMENT OF THE
PETITIONER TO AND/OR REMOVAL OF THE PETITIONER FROM THE OFFICE OF THE
CHAIRMAN OF EMBU COUNTY PUBLIC SERVICE BOARD.**

BETWEEN

MUNDIA NJERU GETERIA..... PETITIONER

VS

EMBU COUNTY GOVERNMENT..... 1ST RESPONDENT/APPLICANT

HIS EXCELLENCY;

THE GOVERNOR, EMBU COUNTY..... 2ND RESPONDENT/APPLICANT

THE COUNTY PUBLIC SERVICE BOARD,

EMBU COUNTY.....3RD RESPONDENT/APPLICANT.

HONOURABLE THE ATTORNEY GENERAL.....4TH RESPONDENT

AND

THE TRANSITIONAL AUTHORITY.....INTERESTED PARTY

RULING

1. By a Notice of Motion dated 24th January, 2014 brought under section 4(2) of the Industrial Court Act, 2011, Order 42(6) of the Civil Procedure Rules, the applicant sought from this Court, orders among others, that its judgment and orders made on 19th December, 2013 be stayed pending the hearing and determination of the intended appeal against the said judgment.
2. The application was based on the grounds that:
 - a) the respondent had by a letter dated 17th January, 2014 indicated his intention to take over the office of the Chairman Embu County Public Service Board.
 - b) If the take over happened it would greatly erode the object of the appeal and considering the sensitivity of the office as the head of recruitment of human resources, the ramifications may be too drastic and irreparable.
 - c) the respondent had already commenced the process of appeal against the judgment and it would be only fair and just to await its determination hence the dire need for a stay order.
 - d) in the interest of justice and fairness the respondent ought to be restrained from implementing the judgment herein until the appeal is heard and determined.
3. These grounds were elaborated upon by the affidavit of Margaret Lorna Karuiki sworn on 24th February, 2014 in support of the application.
4. When the Motion finally came up for hearing on 6th March, 2014, Mr. Njoroge for the applicants reiterated the prayers in the Motion and the depositions in the affidavits of Margaret Lorna Karuiki. He submitted that the applicants were willing to abide by any conditions that may be set by the Court before a stay order can be granted. According to Counsel, the applicant was in the process of filing an appeal against the judgment of the Court yet the respondent has evinced the intention to resume duties pursuant to the order of the Court. Mr. Njoroge further submitted that the applicant had an arguable appeal hence it was a proper case to grant a stay order.
5. Regarding the issue of delay in filing the Notice of Appeal, Mr. Njoroge submitted that the judgment was delivered on 19th December, 2013 and the Notice of Appeal filed on 8th January, 2014 and the instant application filed on 24th January, 2014 therefore there was no delay at all.
6. In response to the authorities relied on by the respondent in opposing the application, Mr. Njoroge submitted that the cases of **Delta Connection Limited v. Delta Airlines Incorporated Civil Appl. No. 70 of 2009** (hereinafter referred to as the Delta case in this ruling) and **Consolidated Bank of Kenya & 2 others v. USAFI Limited Civil Applic. Number 195 of 2005** (hereinafter referred to as the Consolidated Bank's case in this ruling), were not applicable to the matter before the Court since these two cases were premised on rule 5(2)(b) of the Court of Appeal Rules. According to Counsel, his application was brought under Order 42(6) of the Civil Procedure Rules. He further contended that the Delta and Consolidated Bank cases were on stay of injunction and not stay of execution which was the gravamen of his application before the Court. According to Mr. Njoroge, the Court ought as a proper guide rely on the cases of **Peter Samoei v. Isaac Ruto ELC No. 1 of 2012** (hereinafter referred to as the Samoei's case in this ruling) and **Transport Workers Union Kenya v. African Safari Diani Adventure IC No. 21 of 2013**(hereinafter referred to as the Transport Worker's case in this ruling) . According to Counsel, Samoei's case compares rule 5(2)(b) of the Court of Appeal Rules and Order 42(6) of the Civil Procedure Rules and sets down the considerations by the Court in either cases. He further

submitted that a stay application must show a high chance of success of the appeal but this was only applicable to applications under rule 5(2)(b) of the Court of Appeal Rules. He proffered the position adopted by my brother Justice Radido in the Transport Workers' case which states that only arguable point is required. Mr. Njoroge concluded his submissions on this point by urging the Court to make what he described as a “balancing act” to safeguard the status quo.

7. Concerning the issue of jurisdiction, Mr. Njoroge sought reliance on the case of **The Board of Governors, Moi High School, Kabarak v. Malcom Bell & Another. Supreme Court Petition No. 6 & 7** (hereinafter referred to as the Kabarak case in this ruling) and submitted that jurisdiction flows from the Constitution or legislation.
8. Mr. Kibe Mungai in opposing the application submitted that the application was filed under the wrong provisions of the law. According to Counsel, the decision of the Court was based on the enforcement of fundamental rights under the Constitution (articles 20-23) and by extension article 165 of the Constitution. The rules made under L.N Number 117 of 28th June, 2013 referred to as “Mutunga Rules” were the applicable rules in the case. Under these rules, stay is dealt with under rule 32. According to Mr. Kibe, no reference was made to these rules. The applicants instead chose to bring the application under sections 4(2) and 12 of the Industrial Court Act yet those sections do not deal with procedure.
9. Mr Kibe further submitted that there must be an appeal before an application for stay can be brought and the Notice of Appeal is sufficient. According to Counsel rule 75 of the Court of Appeal Rules provides for the procedure of appeal while rule 77 of the same rules provide for service of the Notice of Appeal which must be served within 7 days of filing irrespective of the confusion. Mr. Kibe submitted that the alleged Notice of Appeal has not been served on the respondent even after the error complained of was rectified. For this reason, Counsel submitted that unless that Notice of Appeal has been filed and served, there was no appeal hence no application for stay can be brought.
10. Regarding the orders of the Court sought to be stayed, Mr. Kibe submitted that the same were incapable of being stayed since the order of certiorari quashed the decision of the County Assembly and hence can only be set aside and not stayed. He further submitted that the order for injunction issued by the Court can only be set aside and this remedy could only be granted by the Court of Appeal and not the Court which gave those orders at the first instance.
11. Counsel submitted further that the subject matter was such that for the County Government to succeed in the application, it had to show that it would suffer substantial loss or prejudice. According to Mr. Kibe, nothing had been shown by the applicants to that effect. He argued that the Constitution had to be adhered to in removing the respondent and that the County Government was not humstrung by the order of the Court. According to him, the judgment merely upheld the rule of law and that the County Government was free to make a valid decision. It was Mr. Kibe's contention that the Court did not take away the power of the County Government to constitutionally remove the respondent from office hence an order for stay was not necessary. He further submitted that the Court merely upheld the need for proper working of devolution and to stay the Court's order would amount to abetting an illegality.
12. Regarding Order 42(6) of the Civil Procedure Rules, Mr. Kibe submitted that this did not apply in the case before the Court. Further, the authorities relied on by the applicant were irrelevant since they misapprehended the order of the Court. According to him, no substantial loss that would occur to the applicant if orders sought are not granted, had been demonstrated. He concluded by urging the Court to dismiss the application.
13. In brief response to Mr. Kibe's submissions, Mr. Njoroge maintained that the application was brought under the correct provisions of the law. In any event technicality would only apply if the Court was sitting as a Constitutional and Judicial Review Court since it is only then that the Mutunga Rules would apply. He further argued that under article 159(2)(b) of the Constitution,

technicality cannot override the merits of an application.

14. Concerning the issue of Notice of Appeal, Counsel submitted that the issue had been adequately addressed by the further affidavit of Margaret Lorna Kariuki and further that rule 75 of the Court of Appeal has been complied with since there is a Notice of Appeal in writing and the same has been served as per rule 77 of the Court of Appeal Rules. Regarding stay, he submitted that the Court can order a stay in the case and that the applicant was seeking a stay of the entire judgment of the Court.

15. Although not raised in his initial submissions, Mr. Njoroge contended that there was a conflict between article 251 of the Constitution and section 58 of the County Government Act on the procedure to be adopted in the removal of Chairs of County Public Service Boards hence he sought the intervention of the Court to resolve the conflict.

16. The main issue to be determined by this Court concern the applicable principles in an application for stay pending appeal and whether the applicant has met the threshold to merit grant of stay order pending appeal. As a corollary but of jurisprudential significance will be the issue of whether the application invoked the correct procedural provisions of the law hence properly before the Court or it ought to have been brought under “Mutunga Rules.” Finally the Court will deal with the issue whether there is conflict between section 58 of the County Government Act and article 251 of the Constitution as regards procedure for removal of Chairs of the County Public Service Boards.

17. Order 42 Rule 6(2) of the Civil Procedure Rules provide as follows:

“No order for stay of execution shall be made...unless-

a) the Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

b) such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

18. Section 4 of the Industrial Court Act provides:

4. (1) In pursuance of Article 162(2)(a) of the Constitution, there is established the Industrial Court for the purpose of settling employment and industrial relations disputes and the furtherance, securing and maintenance of good employment and labour relations in Kenya.

(2) The Court shall be a superior court of record with the status of the High Court.

19. Section 12 of the Industrial Court Act provides:

“The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

(a) disputes relating to or arising out of employment between an employer and an employee;

(b) disputes between an employer and a trade union;

(c) disputes between an employers’ organisation and a trade unions organisation;

- (d) disputes between trade unions;
- (e) disputes between employer organizations;
- (f) disputes between an employers' organisation and a trade union;
- (g) disputes between a trade union and a member thereof;
- (h) disputes between an employer's organisation or a federation and a member thereof;
- (i) disputes concerning the registration and election of trade union officials; and
- (j) disputes relating to the registration and enforcement of collective agreements.

(2) An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer's organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose.

(3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders—

- (i) interim preservation orders including injunctions in cases of urgency;
- (ii) a prohibitory order;
- (iii) an order for specific performance;
- (iv) a declaratory order;
- (v) an award of compensation in any circumstances contemplated under this Act or any written law;
- (vi) an award of damages in any circumstances contemplated under this Act or any written law;
- (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
- (viii) any other appropriate relief as the Court may deem fit to grant.

(4) In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.

20. I have deliberately reproduced the relevant sections of the law which the applicant relied on while bringing the instant application in order to put them in the context of the nature and scope of the petition which was before the Court and whose determination the applicant intends to appeal against. To begin, the petition was essentially commenced as a Constitutional petition. It unassumably invoked those articles of the Constitution that deal with fundamental rights, leadership and integrity. It therefore did not come as a surprise that it was initially placed before the High Court for determination and later transferred to the Industrial Court for hearing and disposal after the High Court (Ong'udi J) became of the opinion that it was a dispute relating to an employment relationship.

21. Going by the wording and tenor of Order 42(6) of the Civil Procedure Rules, it would seem to me

- that it is concerned with ordinary civil disputes. Order 42(6) makes it clear that no order for stay of execution shall be made unless the Court is satisfied that substantial loss may result to the applicant and that such security as the Court orders for the due performance of such decree or as may be ultimately be binding on the applicant.
22. Whereas there may be cases concerning breach of fundamental rights where the conditions set by this Order may be met by the applicant as a precondition for granting stay of execution pending appeal, it becomes problematic evaluating the nature and extent of a suitable security that an applicant may offer where such applicant intends to appeal against an order decreeing that an action or inaction by such applicant is a violation of a fundamental right protected by the Constitution. It is for this reason that vide Legal Notice No. 117 of June, 2013, the Chief Justice made “The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules. These rules are an acknowledgement and response to the unique nature of claims brought for the purposes of protection of fundamental rights and freedoms enshrined in the Constitution. Unlike Order 42(6), Rule 32 of the “Mutunga Rules does not require an applicant for stay pending appeal to furnish any suitable security as a precondition to granting stay. It leaves the Court issuing such an order with the discretion to do so in the form and manner it deems fit. To this extent, the Court agrees with submissions by Counsel for the respondent that Order 42(6) was improperly invoked and that the correct rules of procedure to be invoked ought to have been the “Mutunga Rules.”
23. Regarding section 4(2) and 12 of the Industrial Court Act, the Court observes that section 4(1) establishes the Court pursuant to article 162(2) of the Constitution and states its purpose as that of settling employment and industrial relations disputes and the furtherance, securing and maintenance of good employment and labour relations in Kenya and subsection (2) states that the Court shall have the same status as the High Court. Section 12 on the other hand sets the scope of jurisdiction of the Court. It states that the Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of the Industrial Court Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including disputes relating to or arising out of employment between an employer and an employee.
24. Whereas article 162(2) donates the Court a broader jurisdiction over employment and labour relations disputes, the use of the preposition “including” under section 12 of the Industrial Court Act, gives the meaning that the listing is not exhaustive but a mere illustration of labour relations disputes the Court has jurisdiction over.
25. From the foregoing it is evidently clear that these provisions of the Act merely establish the Court and attempt to unbundle the scope of its jurisdiction. They are not rule creating sections. The rules of procedure under the Act are made pursuant to section 27. These rules however only apply with regard to ordinary disputes over which the Court has jurisdiction by virtue of the Industrial Court Act but do not extend to Constitutional petitions concerning labour relations disputes brought under article 41 of the Constitution. The correct rules of procedure are “The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules. From the foregoing it would seem that the applicant's application is not properly before the Court. But is this fatal to the substance of the application?
26. Article 22(3) under which “The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules are made provides that the rules shall satisfy the criteria that formalities relating to proceedings including commencement of proceedings are kept to the minimum and that the Court shall if necessary, entertain the proceedings on the basis of informal documentation. Further article 159(2)(d) provides that in exercising judicial authority, the Courts and tribunals shall be guided among others by the principle that justice shall be administered without undue regard to procedural technicalities.
27. This Court in case of **Simon Wachira Kagiri v. The County Assembly of Nyeri & 2 Others**

Petition No. 7 of 2013 has held with regard to the above Constitutional provisions as follows:

“...The operative words are “**undue regard**”, which means technicality still has a place in the administration of justice by the Courts. Litigation must be structured and orderly for the Court to effectively adjudicate the dispute before it. Rules of procedure therefore define the manner and extent to which parties to litigation should engage”.

28. The Court of Appeal in the case of **Mumo Matemu v. Trusted Society of Human Rights Alliance [2013] eKLR** has also stated as follows:

“...the principle in Anarita Karimi Njeru case underscores the importance of defining the dispute to be decided by the Court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act and section 3A and 3B of the Appellate Jurisdiction Act. Procedure is also the hand maiden of just determination of cases...”

29. When confronted with a question of procedural lapse or misstep, the proper consideration by the Court ought to be the nature or gravity of the lapse and if its excusal would occasion the party affected prejudice or injustice.

30. The applicants herein were the respondents during the hearing of the petition. They confronted it as a Constitutional petition and responded to it as such. Further, in the instant application before the Court, save for the citation of the sections of the Industrial Court Act and the Civil Procedure Rules, the applicants recite the the petition as was filed by the respondent. Furthermore, save for omitting to state that the application was brought under the “Mutunga Rules”, the orders sought by the applicant are akin to those that can be sought under rule 32 of the Mutunga Rules. This far and whereas procedure remains a critical element of litigation, no prejudice has been occasioned to the respondent by the applicant's procedural misstep. Besides the Mutunga Rules being newly promulgated, there is reasonable possibility that many a practioner are still not familiar with them. Further, the jurisdiction of the Industrial Court over constitutional petitions is new and uncertainty over which rules of procedure should apply is not surprsing. This is therefore an excusable misstep in respect of which the Court will properly invoke the provisions of article 159(2)(d) and entertain the application on merit.

31. I now turn to the issue of whether an Appeal has been filed in order for the Court to be siezed with jurisdiction to grant a stay pending Appeal. The Court agrees with Counsel for the respondent that under the Court of Appeal rules, the filing of an appeal is evidenced by a Notice of Appeal filed under rule 75 and served under Rule 77 of the Court of Appeal Rules. According to Mr. Mungai Notice of Appeal not having been filed and served as required by the rules, the application ought not to be entertained. Mr. Njoroge on the other hand maintained that the Notice of Appeal was filed on time and has been served by the Court on the respondent. In the further affidavit of Margaret Lorna Karuiki, she depones that the Notice of Appeal was lodged on 8th January, 2014 and left in the Court file since there was an error on the date the Judgment was delivered that needed to be corrected. She further stated that the service of the Notice of Appeal was subsequently done by the Court through registered post after the correction of the mistake on the date of judgment. According to the deponent therefore, the mistake was not the applicants' hence they should not be penalised.

32. The Court has reviewed the file and has found that it is true that the Judgment was erroneously noted as delivered on 19th September, 2013 instead of 19th December, 2013. This therefore was a mistake on the part of the Court and any delay occasioned in the correction thereof and its consequences cannot be visited on the applicant.

33. The Court now turns to the main issue whether this is a case in which the Court can exercise its discretion to grant a stay of execution pending appeal. In order to determine this issue it is useful

to recap the orders of the Court contained in the Judgment delivered on 19th December, 2013. The Court stated as follows:

a) Therefore having found that the purported removal of the petitioner contravened, in terms of reasons for removal, article 251(1) of the Constitution, this Court declares such removal null and void and proceeds to issue an order of certiorari to quash the resolution of the County Assembly passed on 4th September, 2013 rescinding its earlier decision appointing the petitioner as the Chair of the Embu County Government.

b) The Court further issues an order of certiorari to quash the decision of the 2nd respondent rescinding the appointment of the petitioner as the Chair of the Embu County Government contained in the letter dated 5th September, 2013.

c) The Court will also issue an order of injunction restraining the 1st, 2nd and 3rd respondent's, their servants, agents or otherwise howsoever from removing from office as the Chair of the Embu County Public Service Board, the petitioner by any other manner howsoever or grounds that contravene article 251(1) of the Constitution.

34. To the above findings, the applicant has faulted the Court in the main, as follows:

a) The Court erred in law and in fact in failing to appreciate that article 251 of the Kenya Constitution, 2010 was not applicable to the respondent since the County Public Service Board is not a Commission.

b) The Court failed to appreciate the apparent conflict or inconsistency of section 58 of the County Government Act and article 251 of the Constitution.

c. The Court failed to determine the vital issue of absconding duty by the respondent yet it was an act of gross misconduct where summary dismissal was permissible in law.

d) The Court failed to appreciate, consider and apply the detrimental implications of the doctrine of specific performance in employment contracts.

e) the Court erred in issuing the special remedy of the writ of certiorari against the appellant without leave first having been sought.

f) The Court erred in appreciating that the respondent was adamant in demanding a higher remuneration than the statutory dictates set by the Salary and Remuneration Commission.

1. As observed earlier in this judgment, the applicable rules in dealing with Constitutional petitions and related matters are "The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules. Under rule 32(2), the Court is clothed with power to issue stay orders as it deems fit. Unlike Order 42(6) of the Civil Procedure Rules which sets conditions required to be satisfied before an order of stay can be made, rule 32(2) leaves it to the discretion of the Court to make the order it deems fit in such an application. This position is akin to rule 5(2)(b) of the Court of Appeal Rules.

2. Whereas the Court has a wider discretion under rule 32(2) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, this discretion is guided by the general principles and tests that have been applied by this Court and other superior courts in considering an application for stay. Which is that, an order of stay will be granted if the applicants shows not only that the intended appeal is arguable but also that the success of the intended appeal would be rendered nugatory if the judgment or order appealed from is not stayed. **Butt v. The Rent Restriction Tribunal Civ. Appeal No. Nai. 6 of 1979** adds another test which is not commonly mentioned though has been silently applied, which is that, the application will be granted where special circumstances of the case so requires.

3. As set out above, the applicant has raised several grounds of appeal which ex facie are arguable but going by the principles and tests which the Court has applied over the years in applications of this nature, arguability alone is not enough. The applicant must go further and demonstrate that the success of the intended appeal would be rendered nugatory if the judgment or order appealed from is not stayed. Where the Court may be in doubt as the two tests, the application may be granted based on the special circumstances of the case (*what I would call "the Butt test"*) Arguability of an appeal is an unruly dog which must be circumscribed by the nugatory test since everything and anything can be arguable.
4. The gravamen of the judgment which the applicant intends to appeal against was that the Court found that the purported removal of the petitioner contravened, in terms of reasons for removal, article 251(1) of the Constitution and proceeded declare that removal void to that extent. The Court further issued an order of injunction restraining the 1st, 2nd and 3rd respondent's, their servants, agents or otherwise howsoever from removing from office as the Chair of the Embu County Public Service Board, the petitioner by any other manner howsoever or grounds that contravene article 251(1) of the Constitution.
5. Looking at the Judgment of the Court which the applicants intend to fault on appeal I am of the view that this Court did not shackle the applicant in any way in handling their dispute with the petitioner. What the Court did based on the preponderance of evidence and submissions, was to declare that the process of removal of the petitioner adopted by the applicants did not adhere to the Constitution and the County Government Act. In other words nothing contained in the judgment stopped the applicant's from taking cue from the Court and embarking on a removal process that adhered to the law and the Constitution. That being the case, the Court is not persuaded that the applicant has met the required threshold to warrant an order of stay from this Court. The order of stay is therefore refused.
6. Counsel for the applicant asked me to resolve the apparent conflict between article 251 of the Constitution and section 58 of the County Government Act. The Court had occasion to consider this issue in the judgment intended to be appealed against and rendered itself as follows:

“...The next question to be dealt with at this stage is whether the disputed removal of the petitioner as the chair of 3rd respondent violated the constitutional and statutory provisions and procedure. That is to say: did the disputed removal comply with the provisions of section 58(5) of the County Government Act in terms of grounds and procedure?

Section 58(5) provides that the members of the Board may be removed from office on grounds set out for the removal of members of a constitutional commission under article 251(1) of the Constitution; and by a vote of not less than 75% of all the members of the County Assembly....article 251. (1) provides that a member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office **only** for a serious violation of the Constitution or any other law, including a contravention of Chapter Six; gross misconduct, whether in the performance of the member's or office holder's functions or otherwise; physical or mental incapacity to perform the functions of office; incompetence; or bankruptcy.
7. The Court is therefore of the view that it adequately addressed the issue and is still of the opinion that there is no conflict and further I must be circumspect in declaring provisions of a statute in conflict with the Constitution unless in obvious and clear cases. Ambiguity of language or lack of clarity alone do not render a provision of a statute in conflict with the Constitution especially if the ambiguity or lack of clarity may be cleared by reading in or out the words that would help clear the ambiguity or bring more clarity. I may be wrong on this but the applicant has an opportunity to take up the issue with the appellate court.
8. It is so ordered.

Dated and delivered at Nyeri this 27th day of March, 2014.

ABUODHA NELSON. J.

JUDGE

Delivered in open Court in the presence of Mr. Njoroge for the Applicant and Ms. Mbinjire for the Respondent

ABUODHA NELSON J.

JUDGE