



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**PETITION NO. 16 OF 2013**

**THE TRUSTEES OF TELPOSTA**

**PENSION SCHEME ..... CLAIMANT**

**VERSUS**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**RETIREMENT BENEFITS AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**MACKENZIE MOULDING MOGERE ..... 1<sup>ST</sup> INTERESTED PARTY**

**JOHNSON MURIGI NDORIA ..... 2<sup>ND</sup> INTERESTED PARTY**

**TELCOM (K) LIMITED ..... 3<sup>RD</sup> INTERESTED PARTY**

**POSTA SACCO PENSION SCHEME ..... 4<sup>TH</sup> INTERESTED PARTY**

M/S Baabu for Petitioner

M/S Kungu for 1<sup>st</sup> Respondent

Mr. Ohaga for 2<sup>nd</sup> Respondent

Mr. Odera for 1<sup>st</sup> & 2<sup>nd</sup> Interested Party

M/S Mate for 3<sup>rd</sup> interested Party

Mr. Maluti for 4<sup>th</sup> Interested Party

**JUDGMENT**

**1. Background**

The Petitioner is The Trustees of Telposta SACCO Pension Scheme.

The Petitioner is aggrieved by the decision of the 2<sup>nd</sup> Respondent, Retirement benefits Authority to

award Management Staff of the 3<sup>rd</sup> Interested Party Telkom (K) Limited, a pension Package calculated on the basis of **Consolidated Salary** (that includes:

Basic salary, house allowance, car allowance, leave allowance utilities allowance and entertainment allowance), instead of calculating the pension as provided in the Trust Deed using the **basic salary**.

2. The consolidated package to management staff was introduced via a circular dated 8<sup>th</sup> May 2000 and titled "*Review of terms and conditions of service of management of staff*" by Telkom (K) Limited.

3. It is common cause that the Trust Deed on which the pension package is premised was not reviewed to accommodate the reviewed consolidated salary.

It is however, in dispute whether the management staff did contribute a higher monthly instalment to the pension fund in terms of the revised salary.

4. It is also not in dispute that employees of Telkom (K) Limited who are also members of the pension scheme were not awarded the higher consolidated package so that only management staff enjoy the same.

#### 5. **Dispute**

Mr. Mackenzie Moulding Mogere, the 1<sup>st</sup> Interested Party and Mr. Johnson Murigu Ndoria the 2<sup>nd</sup> Interested Party (both management staff) attained retirement age and were awarded pension by the 4<sup>th</sup> Respondents, POSTA SACCO PENSION SCHEME calculated on the basis of basic salary.

6. Aggrieved by that decision the two filed appeals to the Retirement Benefits Authority, the 2<sup>nd</sup> Respondent herein.

The 2<sup>nd</sup> Respondent held in Appeal No. 2 of 2009 and Appeal No. 3 of 2009 filed by the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties respectively that it was erroneous for the 4<sup>th</sup> Interested Party to apply the basic pay in calculating the pension payable to the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties and directed the 4<sup>th</sup> Interested Party to recalculate the Appellants' pension based on the full salary earned at the date of retirement.

7. From the aforesaid decision, the Petitioner appealed against the said decisions vide the appeals **in HCCA No. 141 of 2012** and **HCCA No. 435 of 2012** which appeals were dismissed ostensibly on the basis that there was no right of appeal from the decisions of the 2<sup>nd</sup> Respondent.

#### 8. **Petition**

The petition dated 24<sup>th</sup> April 2013 was filed on a certificate of urgency at the High Court, being Petition No. 224 of 2013.

The nub of the petition as may be discerned from the background is that the petitioners are aggrieved by the decision of the 2<sup>nd</sup> Respondent to direct recalculation of the pension due to the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties on the basis of consolidated salary for the period between 1<sup>st</sup> July, 2002 and 22<sup>nd</sup> July 2003.

9. The Petitioners are aggrieved by the decision of the High Court in NRB HCCA Nos. 141 of 2012 and NRB HCCA 425 of 2012 in which the Court found that the High Court has no jurisdiction to entertain the Appeals in view of the lack of an express legal provision for appeal under the Retirement Benefits Act, Cap 197.

10. On 25<sup>th</sup> April 2013, the High Court issued Interim orders, staying the execution of the judgment of the Retirement Benefits Appeal Tribunal in Civil Appeals No. 2 and 3 of 2009 pending the hearing and determination of this petition.

Hon. Majanja J. further transferred this matter to the Industrial Court, it being an Employment and Labour Relations matter.

11. The Petitioner has pleaded that, the effect of the decision by the 2<sup>nd</sup> Respondent, Retirement Benefits Authority is to compel the Petitioner and by extension the 4<sup>th</sup> Interested Party to settle judgments that are manifestly wrong in factual evidence and unlawful and whose eventual consequences would be a liability of over Kshs.607.05 million to some class of pensioners while denying the others retirement benefits.

12. That the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties would be unjustly enriched by a double payment as they continue to earn their monthly pensions after they retired and were also refunded by their employer, the 3<sup>rd</sup> Interested Party, Telkom Kenya Limited extra contributions (which had never been forwarded to the petitioner) deducted from them when their salaries were consolidated.

13. The Petition is supported by an Affidavit of K. Rotich, the Scheme Administrator / Trust Secretary of the Petitioner herein who is responsible for the day to day running of the scheme.

14. The deponent states that, he is advised by the scheme advocates on record which advise he heeds that the entire of the **Retirement Benefits Act, Cap 197, Laws of Kenya** does not provide for any appellate procedure to a person who is aggrieved by the decision of the Retirement benefits Appeals Tribunal.

15. The Act is particularly silent on the Right of an Appeal to the High Court. The **Retirement Benefits Act 197**, under **Section 49(1)** contains provisions that equate and give powers to the Retirement Benefits Appeals Tribunal similar to a subordinate Court like many other tribunals but then also under **Section 49(4)** and **50(2)** has provisions that appears to give the Retirement Benefits Appeals Tribunal the status of High Court which is inconsistent, illegal, unconstitutional and an express contravention of **Article 169(1)(d)** of The Constitution of Kenya 2010.

16. The Petitioner further alleges that, by allowing recalculation of the pension using the consolidated pay, which only applied to a few senior management employees would be discriminatory to the other former employees and pensioners whose benefits have always been based on a basic salary as defined by the Trust Deed and Rules of the Scheme.

The consequences of this are dire to the entire membership of this pension scheme as the scheme would close operations and is likely to be wound up.

17. Furthermore, the pension scheme is a closed fund for the purpose of paying out benefits. It has no pension contributions from the employer and the liabilities are in respect of Pension Benefits for employees who left service on or before 30<sup>th</sup> November 2007.

18. The Petitioner further submits that, faced with the wrong, irrational and illegal decision of the Retirement Benefits Appeals Tribunal and by the said threatened action by the 2<sup>nd</sup> Respondent, the Petitioner has no avenue for any legal redress at all, except by way of this Constitutional Petition.

19. That in **NRB Industrial Court Case No. 254 of 2010: Joseph Kipkorir Tanui –versus- Telkom Kenya Limited**, the Court rightly held that the retirement package was to be calculated on the basis of the basic pay and not the consolidated pay.

20. Reason wherefore the Petitioner prays for orders that;

- a. a declaration do issue that in so far as the **Retirement Benefits Act, Cap 197** is silent as to whether a Party aggrieved by the decision of Retirement Benefits Appeals Tribunal can appeal or seek review in the High Court, is unconstitutional.
- b. a declaration do issue that in so far as **Retirement Benefits Act, Cap 197** under **Sections 49(4) and**

**50(2)** or any other section purports to give the Retirement Benefits Appeals Tribunal the status of a High Court is unconstitutional.

- c. a declaration do issue that in so far as Retirement Benefits Appeals Tribunal decisions purported to direct the recalculation of the retirement Benefits for the Interested Parties and other Parties using a consolidated salary instead of a basic salary is a blatant breach of **Articles 19, 20 and 21** of the Constitution in respect of social economic rights and is discriminatory.
- d. an order do issue allowing the High Court to hear and determine appeals emanating from decisions of Retirement Benefits Appeals Tribunal.

21. The petition is further supported by the Affidavit of Lawrence Karanja, the Petitioner's Legal Officer in which is outlined a detailed genesis of the Teleposta Pension Scheme and the imminent consequence of a grossly wrong computation of pension to the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.

22. The deponent states that the petition raises serious constitutional issues and invites the Court to resolve the matter in favour of the Petitioner so as to safeguard the interest of many members of the scheme and stop unjust enrichment by the 1<sup>st</sup> and 2<sup>nd</sup> Interested Party.

### 23. **Responses to the Petition**

The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties filed a statement of grounds of opposition dated 15<sup>th</sup> July 2013 on 16<sup>th</sup> July 2013.

24. The Gravamen of the opposition may be summarized as follows;

- i. The Petitioner has concealed existence of High Court Judicial Review case No. 331 of 2012 filed on 12<sup>th</sup> September 2012, where the matter in issue (legality of judgment of the Retirement Benefits Appeals Tribunal Appeals No. 2 & 3 of 2009) is directly and substantially in issue in this petition. In this regard, **Section 6** of the **Civil Procedure Act** does not allow this Court to hear this petition since the Judicial Review case is still pending in which the Petitioner and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are parties.
- ii. That **Article 165(6)** of the Constitution of Kenya gives the Petitioner the avenue for redress and it had already seized the opportunity to exploit it (*corpediem*). That with the concealment and non-disclosure of the material facts, the petition is rendered non-justiciable and unfit for judicial resolution.
- iii. That no breach of fundamental rights of the Petitioners are disclosed in this petition.
- iv. That though the Retirement Benefits Act is silent on appeals to the High Court rightly, **Section 65(1)(b)** of the Civil Procedure Act provides that an appeal lies to the High Court from any original decree of a subordinate Court. A decision from the Tribunal is not an original decree but it is an appellate decision. Therefore no appeal to the High Court would be valid from the Tribunal.
- v. That **Section 49** does not equate the Tribunal to the High Court. **Section 49(4)** only gives the Tribunal power to direct that cost be paid in accordance with any scale prescribed for suits in the High Court or to award specific sums as costs.

**Section 52** of the **Act**, also does not purport to bestow the Tribunal the status of the High Court but merely provides that before the Chief Justice makes rules governing the procedure of making appeals to the Tribunal the procedure to be followed would be that found in the Civil Procedure Act dealing with Appeals.

- vi. That **Industrial Court Cause No. 254 of 2010** is distinguishable from the Tribunal's decisions on facts and therefore is inapplicable and irrelevant in that Mr. Tanui's pensionable salary never changed from Kshs.48,480/= for the entire pensionable period unlike in the cases of Interested Parties.
- vii. That on 1<sup>st</sup> July 2002, the employer of the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties established a Scheme of Service which introduced a new pensionable salary from which 7.5% statutory pension

contribution was deducted by the employer to the Pension Benefits. The Interested Parties served in this new regime until they retired from service.

viii. That upon retirement, the Interested Parties expected their respective pension benefits to be calculated as provided for in **Rule 10(c)** of Trust Deed Rules, which reads;

*“A member who retires on his normal pension date shall receive a pension equal to 1/480<sup>th</sup> of his final pensionable salary for each complete month of Pensionable Service.”*

ix. That the Petitioner failed to compute the Interested Parties pension benefits in compliance with the provisions of the Trust Deed and Rules on the grounds that the sponsor had reversed the new pensionable salary retrospectively starting from 1<sup>st</sup> July 2002 by a letter dated 22 July 2003.

This is what informed the dispute which landed on appeal at the Retirement Benefits Appeals Tribunal. The Tribunal upheld the appeals and ordered the Petitioner to recalculate their pension benefits on the basis of the full pensionable salary they were earning before retirement and pay their arrears.

x. The High Court has already determined the issue in **HCCA No. 141 of 2012** holding that it has no jurisdiction to entertain appeals from the decision of the Tribunal.

That **Article 165(3)(e)** of the Constitution of Kenya 2010 commands that the High Courts appellate jurisdiction is to be conferred through Legislation. That the law cannot be changed except by Parliament (*Lex sine Parlamento Mutari non potest*).

xi. That the Petitioner has no basis to advance the cause of over 100 retirees who it purports will seek similar recalculation if this case does not succeed.

xii. That the allegation that the retirees and the Interested Parties had already been refunded their excess Pension Contribution is denied by the Interested Parties and the Tribunal considered the factual issue before finding in favour of the Interested Parties.

xiii. That there is no evidence at all that Pensioners will lose their pension if the judgments are left to prevail.

The 2<sup>nd</sup> Respondent who is the regulator and supervisor of the Petitioner is fully aware of its financial status and has directed the Petitioner to comply with Tribunal's orders.

xiv. That no member of the scheme has raised the issue of discrimination. The Petitioner is not a Trade Union to usurp the representative mantle for the junior workers. The junior workers have not complained. They have not filed any constitutional petition nor judicial review nor suit nor complaint as of now.

25. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties therefore submit that the Petition is an abuse of process and same be dismissed with costs.

26. The 4<sup>th</sup> Interested party, Postal Corporation of Kenya Staff Pension Scheme filed an opposing Affidavit sworn to by Deborah J. Limo the Administrator to the 4<sup>th</sup> Interested Party.

The 4<sup>th</sup> Interested Party fully associates itself with the submissions by the Petitioner and the Court need not repeat the averments contained in her Affidavit.

In view of the foregoing, the issues for determination by this Court are;

- a. whether the provisions of **Section 49(4) and 50(2)** of the **Act** are unconstitutional;
- b. whether the 2<sup>nd</sup> Respondent's decision was unlawful and or unconstitutional; and
- c. what remedy, if any, is available to the Petitioner.

## 27. The Law

The Hon. attorney General is the 1<sup>st</sup> Respondent in this matter and filed grounds of opposition dated 20<sup>th</sup> May 2013 and written submissions dated 8<sup>th</sup> June 2014.

The 1<sup>st</sup> Respondent cites the Decision of Justice David Onyancha to assert the position that **Section 47** of the Retirement Benefits Authority established under section 3 thereof is an Appeals Tribunal with jurisdiction equivalent to that of the High Court in all matters appealed to it under **Section 46** of the **Act** as follows;

*“It is my view and finding very clear, therefore, that the Retirement Benefits Appeals Tribunal established under **Section 47** of the **Retirement Benefits Act, Cap 197** of the Laws of Kenya is an Appeals Tribunal endowed with appellate jurisdiction equivalent with that of the High Court in all matters appealed to it under **Section 46** of the **Act**.”*

The 1<sup>st</sup> Respondent submits that he is in agreement with this decision and prayers (a) and (b) in the Petition cannot be granted.

The 1<sup>st</sup> Respondent further submits that whether the policies pursued under **Sections 49(4)** and **50(2)** of the **Act**, are proper or not is a matter within the province of the Legislature but not the Courts.

The 1<sup>st</sup> Respondent cited the case of **Mount Kenya Bottlers limited & 3 others –vs- Attorney General and others, Nairobi Petition No. 72 of 2011 [2012]eKLR** to the effect:

*“Declaring a statute as unconstitutional, needless to say is a serious issue with deep-seated ramifications and the Court should not be overly enthusiastic in pronouncing so unless clear grounds known in law have been clearly established.”* The position is supportive of the submissions by 2<sup>nd</sup> Respondent and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.

28. The 3<sup>rd</sup> Interested Party in its submissions wholly associates itself with the submissions by the Petitioner to the effect that the provisions of the **Retirement Benefits Act No. 3 of 1997** are unconstitutional in so far as the Act is silent as to whether a party aggrieved by the decision of the Retirement Benefits Appeals Tribunal can appeal or seek review in the High Court.

29. Secondly, the Petitioner and 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties submit that **Sections 49(4)** and **50(2)** or any other Section that purports to give the Tribunal the status of a High Court is unconstitutional.

30. Thirdly, the Petitioner and the 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties submit that in so far as the Tribunal purported to direct the recalculation of the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties retirement benefits using the consolidated salary instead of the basic salary as prescribed in the Petitioner’s Trust deed and Rules is a breach of **Article 19, 20** and **21** of the Constitution.

31. At this point the Court notes that the Petitioner expressly craves for the protection of its rights and fundamental freedoms under **Article 2, 19, 20(1) & (2), 3(b) 21, 22, 23(1) & (3), 25(c)** and **69(1)(d)** of the **Constitution of Kenya 2010** and prays this Court to correct the errors made by the Appeals Tribunal and the Legislator in the enactment of **Sections 49(4)** and **50(2)** of the **Act**.

32. The 3<sup>rd</sup> Interested Party cites the decision in **Tom Kusienya & 7 others –v- Kenya Railways corporation and 2 others, [2013]eKLR** where Lady Justice Mumbi Ngugi recognized the possibility of appealing against the decision of the Tribunal and held that:

*“According to its long title, the Retirement benefits Authority (RBA) Act is, An Act of Parliament to establish a Retirement benefits Authority for the regulation, supervision and promotion of retirement benefits schemes, the development of the retirement benefits Sector and for connected purposes. In my*

view, the purpose of the Act as a whole and the specific disputes resolution provisions would be best served by reading the word 'may' [with reference to Section 48 on appeals to the Tribunal] as an imperative term that requires that the appeal mechanism of the Tribunal is exhausted before recourse can be had to the High Court.”

33. The Interested Party further submits that the only recourse to the High Court is Judicial Review since the Act is silent on the Right of Appeal.

The remedy of judicial review is only concerned with the decision making process and not the merits of the decision.

It was therefore submitted for the 3<sup>rd</sup> Interested Party that an Act that sets to curtail the scope of the challenge of the Tribunal’s decision to only interrogating the decision making process and not the decision itself is unconstitutional and the Court should so find.

34. There is consensus that the decision of the Tribunal is open to Judicial Review.

This being the case, the Court is not persuaded that the policy behind the Act is unconstitutional.

Instead, establishment of a specialized appellate Tribunal to bring to finality expeditiously disputes arising from the Sector appear to the Court to be reasonable and based on sound foundation.

The existence of a Judicial Review application at the High Court has not been contested by the Petitioner.

It is disingenuous for the Petitioner to fail to disclose that fact to the Court and to that extent, the Petitioner bears dirty hand.

35. That notwithstanding, the Court finds that a party aggrieved by a decision of the Appeals Tribunal has recourse to the High Court and the Industrial Court by way of a Judicial Review application and the provisions of **Section 49(4)** and **50(2)** of the **Act** are not unconstitutional as alleged by the Petitioner or at all.

36. **Issue No. b**

Whether the Decision of the Appeals Tribunal (2<sup>nd</sup> Respondent) was unlawful and / or unconstitutional.

**Article 47(1)** of the Constitution provides;

*“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”*

This provision forms the basis for constitutional review by the High Court and Courts of equal status as established under **Article 162(2)** of the **Constitution**.

37. The Court has already found that notwithstanding that the Retirement benefits Authority RBA Act is silent on the issue of review or Appeal of the decisions of the Tribunal, the High Court and by extension this Court has jurisdiction to entertain judicial review applications by fact of its supervisory jurisdiction under **Article 165(6)** as read with **Article 162(2)** and **165(5)** of the Constitution.

38. In this regard, the review application brought to the Court may be the traditional one based on the common law and the relevant statutes or a Constitutional review founded under the relevant provisions of the Constitution.

39. An Application for Constitutional review where violation of Constitutional rights and freedoms is alleged is commenced by way of a petition as in this case under **Articles 22** invoking the remedies provided under **Article 23**.

It is the Court's considered view that the decision of the Tribunal must meet the rationality standard set by the Constitution under **Article 47**, and pass equality and protection of the law test as provided under **Article 27** of the Constitution.

40. The basis of the pension due to the members of the Teleposta Pension Scheme is the Trust Deed dated 1<sup>st</sup> July 1997 and The Rules of Telposta Pension Scheme attached to the Replying Affidavit of Mr. Lawrence Karanja, the legal officer of the Telkom (K) Limited.

41. **Clause 9(a)** of the Trust Deed provides that a member shall contribute an amount equal to 7.5% of his pensionable salary.

**Rule 1** of Telposta Pension Scheme provides;

*"Pensionable Salary"* shall mean a member's annual **Basic Salary**.

The same Rule defines *"Basic Salary"* as follows:

*"shall mean a member's basic rate of pay as determined by the employer but shall not include housing allowance, entertainment allowance, cost of living allowance, special remuneration for performing special duties or acting in a vacant office, Locomotion subsistence allowance, gratuity fee, honorarium or bonus of any kind, overtime payment or any other emolument whatsoever."*

42. It is not in dispute that members of the Teleposta Pension Scheme cut across the various staff cadre of Telkom (K) Limited. That these staff include management and non-management staff.

It is also common cause that a circular by the Telkom (K) Limited dated 8<sup>th</sup> May 2000 reviewed the terms and conditions of service for management staff only and introduced a consolidated pay package that included Basic Salary, House Allowance, car allowance, leave allowance, utilities allowance and entertainment allowance.

43. The said circular at page 8 **Clause 13** titled Pension Contributions reads;

*"All permanent employees shall continue to contribute seven and a half per cent (7.5%) of their basic salary towards the pension scheme as will be reflected in the payslip."*

In other words the circular re-affirmed the position that appertains in the Trust deed and the Scheme Rules.

44. It is common cause that the Trust Deed nor its Rules were amended with respect to the definition of pensionable salary and the term 'consolidated' salary introduced in the circular of 8<sup>th</sup> May 2000 is foreign to the Trust Deed and the Pension Scheme Rules.

45. The question now arises as to whether the Tribunal acted in a reasonable, lawful and procedurally fair manner in disregarding the provisions of the Trust Deed and The Rules of Telposta Pension Scheme in reviewing the pension award to the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties on the basis of their 'basic salary' and went ahead to make a far much higher pension award based on 'consolidated salary.'

46. It is the Petitioner, The Trustees of Telposta Pension Schemes who have the sole mandate under **Clause 15**, with the approval of the employer, in this case, Telkom (K) Limited (3<sup>rd</sup>

Interested Party) and the Commissioner of Income Tax, to amend, revoke or modify by deed any of the provisions of the deed.

No such amendment ever took place.

47. It is the Court's considered view that, by awarding a pension, much higher than that provided in the founding documents aforesaid, the retirement Benefits Authority did not act lawfully, reasonably and in terms of a fair procedure contrary to Article 47(1) of the Constitution.

48. The Court finds that it has been demonstrated that the Petitioner did not receive extra contributions from the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties based on consolidated salary to warrant a review of the pension payable to them.

49. The Tribunal exercised powers it did not have and its decision was tainted with illegality and the same was discriminatory to all those retirees whose pension had been calculated and paid out in terms of the Trust Deed and Scheme Rules.

50. The Court also finds that the Petitioner's right to protection of the law was infringed by the unlawful, unreasonable and procedurally unfair decision by the 2<sup>nd</sup> Respondent contrary to **Article 27** of the Constitution.

51. To this end, the Court declares that in so far as Retirement Benefits Appeals Tribunal decisions purported to direct for the recalculation of the Retirement Benefits for the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties and other parties using a consolidated salary instead of a basic salary, is disproportionate to their pension contribution and therefore unlawful, unreasonable and in violation of the Trust Deed and the Rules of the Telposta Pension Scheme.

52. The rest of the prayers by the Petitioner are declined except that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are jointly and severally held liable to pay costs of the Petition.

**Dated and Delivered at Nairobi this 21<sup>st</sup> day of November 2014**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**