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Kenya Branch

CASE LAW SUMMARY

MISCELLANEOUS APPLICATION E113 OF 2021 (CONSOLIDATED WITH ARB. E007 OF 2021)
DAR IMAN LIMITED V CLASICO BUILDERS (K) LIMITED

RULING DATE: 30TH JULY, 2021

FACTS

By an Agreement and Conditions of Contract for Building Works, the Joint Building Council, 1999 Edition ("the JBC") and an Addendum to Agreement and Condition of Building Contract dated 21st November 2012 ("the Addendum"), the Applicant contracted the Respondent to construct six residential houses and ancillary external works at Lower Kabete on Land Reference No. 8527/9, Farasi Lane . The Agreement stipulated that the Project was to cost KES. 185,061,574.00 and was to take 41 weeks with the date of practical completion being 1st August 2013 and the Respondent was expected to issue monthly completion certificates. The dispute arose when the Respondent claimed that despite having finalized and handed over the Project, the Applicant refused to pay the Project architect's Final Account Certificate of KES 16,103,520.00 plus interest of KES. 10,708,840.80 due. The JBC had an arbitral clause which stated that disputes were to be heard and determined by arbitration.

The matter was referred to arbitration and Christopher K. Kihara appointed as the sole arbitrator. The Final Award was published wherein the Applicant was ordered to pay the Respondent KES. 27,845,670.00 together with interest at the rate of 14% pa until payment in full.

The Applicant filed a Notice of Motion dated 16th February 2021 seeking orders to vary/set aside the Award or in the alternative, the court to refer the undetermined issues back to the Arbitrator for re-consideration and determination. The application was mainly premised on the fact that the Award dealt with disputes not contemplated by or not falling within the terms of the reference of the arbitration and that the Arbitrator went beyond the scope of the reference contemplated in the Agreement.

The Respondent on the other hand filed a replying affidavit sworn on 17th March 2021 and a Chamber Summons dated 23rd February 2021 seeking recognition and enforcement of the Award. Both parties filed and served their written submissions as instructed by the court.

ISSUES FOR DETERMINATION

1. Whether the Award ought to be set aside and/or varied?
2. Whether the Award ought to be recognized and enforced as a decree of the court?

RULE OF LAW

The Arbitration Act, Section 35
The Arbitration Act, Section 36

RULING

The Honourable Court dismissed the Applicant's Notice of Motion dated 16th February 2020 and allowed the Respondent's Chamber Summons dated 23rd February 2021 on terms that the Final Award published by Christopher K. Kihara together with the post-award clarifications and corrections dated 16th February 2021 be recognised as binding and leave granted to the Respondent to enforce it as a decree of the court. Lastly, the Respondent was ordered to bear the costs of both applications.

RATIONALE

In determining this matter, the court stated that whether the arbitrator was right or wrong in his approach on the issue is not within the province of the court hearing an application to set aside an award under section 35 of the Arbitration Act since it cannot intervene merely because it would have reached a different conclusion from the Arbitrator who ruled that the claim was properly before the tribunal. Further, since the Respondent's application for enforcement was not opposed on substantive grounds, the Court did not see any reason why the Respondent's application should not be allowed.

CASE RELEVANCE

For a party to succeed in showing that matters objected are outside the scope of the reference to arbitration, the application must show beyond doubt that the Arbitrator has gone on a frolic of his own to deal with matters not related to the subject matter of the dispute.

The Court cannot intervene in a matter simply because it would have reached a different conclusion.

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D.S. MAJANJA J.

MISC. APPLICATION NO. E113 OF 2021

CONSOLIDATED WITH

ARB. NO. E007 OF 2021

BETWEEN

DAR IMAN LIMITED.....APPLICANT

AND

CLASICO BUILDERS (K) LIMITED.....RESPONDENT

RULING

1. By an Agreement and Conditions of Contract for Building Works, the Joint Building Council, 1999 Edition ("the JBC") and an Addendum to Agreement and Condition of Building Contract dated 21st November 2012 ("the Addendum"), the Applicant contracted the Respondent to construct six residential houses and ancillary external works at Lower Kabete on Land Reference No. 8527/9, Farasi Lane ("the Project"). The Agreement stipulated that the Project was to cost KES. 185,061,574.00 and was to take a period of 41 weeks with the date of practical completion being 1st August 2013 and the Respondent was expected to issue monthly completion certificates.

2. A dispute arose when the Respondent claimed that despite having worked, finalized and handed over the Project, the Applicant refused and/or neglected to pay the Project architect's Final Account Certificate of KES 16,103,520.00 plus interest of KES. 10,708,840.80 due as at 30th July 2020. The JBC provided that disputes were to be heard and determined by way of arbitration. The reference to arbitration was determined by Christopher K. Kihara as the sole arbitrator ("the Arbitrator").

3. After hearing the parties' arguments to the dispute, the Arbitrator published the Final Award on 15th January 2021 ("the Award"). The Arbitrator ordered the Applicant to pay the Respondent KES. 27,845,670.00 together with interest at the rate of 14% pa until payment in full. The Arbitrator also dismissed the Applicant's counterclaim.

4. Being dissatisfied with the Award, the Applicant has filed the Notice of Motion dated 16th February 2021 made under **section 35** of the ***Arbitration Act, 1995*** ("the ***Arbitration Act***") seeking, inter alia, orders to vary and/or set aside the Award or in the alternative, the court refer the undetermined issues back to the Arbitrator for re-consideration and determination. The application is grounded on the facts set out in the face of the application and the affidavits of Davies Mulani, counsel for the Applicant, sworn on

16th February 2021 and 29th March 2021 respectively. The application is opposed by the Respondent through the replying affidavit of its employee, Daniel Otieno Oumo, sworn on 17th March 2021.

5. The Respondent has also filed the Chamber Summons dated 23rd February 2021 made, inter alia, under **section 36** of the ***Arbitration Act*** seeking recognition and enforcement of the Award together with its corrections as a decree of the court. The Chamber Summons is supported by the affidavit of Daniel Otieno Omuo, sworn on 4th March 2021.

6. The parties filed written submissions supporting their respective positions in the matter. The main issues for determination are whether the Award ought to be set aside and/or varied or whether it should be recognized and enforced as a decree of the court. It is common ground that the court's jurisdiction to set aside an arbitral award is circumscribed by **section 35** of the ***Arbitration Act*** which, at the part material to this application, provides as follows:

35 (1) Recourse to the High Court against an arbitral award may be made only by an application for setting aside the award under subsections (2) and (3).

(2) An arbitral award may be set aside by the High Court only if-

(a) the party making the application furnishes proof-

(i) that a party to the arbitration agreement was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, the laws of Kenya; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration or contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award which contains decisions on matters not referred to arbitration may be set aside; or

(v) ----------

(3) ---------- [Emphasis mine]

7. The Applicant's application is mainly premised on the fact that the Award dealt with disputes not contemplated by or not falling within the terms of the reference of the arbitration and that the Arbitrator went beyond the scope of the reference contemplated in the Agreement.

8. In considering whether or not an arbitral award deals with matters not contemplated or falling within the terms of the reference to arbitration, the Court of Appeal in ***Synergy Credit Limited v Cape Holdings Limited*** **NRB CA Civil Appeal No. 71 of 2016 [2020] eKLR** observed as follows:

In determining whether the arbitral tribunal has dealt with a dispute not contemplated or falling within the terms of the reference, or whether its award contains decisions on matters beyond the scope of the reference to arbitration, the arbitral clause or agreement is critical. Other relevant considerations, with-out in any way prescribing a closed catalogue, would include the subject matter, pleadings and submissions by the parties, as well as their conduct in the arbitration. Pleadings, however, must be considered with circumspection because, as the US Court of Appeals for the Ninth Circuit observed in ***Ministry of Defence of the Islamic Republic of Iran v. Gould, Inc. (supra),*** *the real issue in such an inquiry is whether the award has exceeded the scope of the arbitration agreement, not whether it has exceeded the parties' pleadings.*

9. The court in ***Kenya Tea Development Agency Ltd & 7 others v Savings Tea Brokers Limited*** **ML HC Misc. Application No. 129 of 2014 [2015] eKLR** also expressed the view that the jurisdiction of the arbitrator is tethered to the arbitration agreement, reference and the law. The express words used in the arbitration agreement or as interpreted with reference to the subject matter of the contract will determine whether the issues raised by an applicant are contemplated by the agreement or fall within the terms or scope of the reference to arbitration. Even where general, broad, generous and elastic words are used in an arbitration agreement or reference to arbitration, courts will still interpret them by reference to the subject matter of the contract.

10. In light of the principles I have set out above, I shall now turn to resolve the Applicant's application in accordance with the issues raised by the Applicant in its submissions. First, whether Arbitrator went beyond the terms of the JBC and the Addendum thereof. Second, whether the Arbitrator violated the rule against hearsay and lastly, whether the Applicant's counterclaim was *res judicata*. I shall deal with the first and third issue since these are closely connected.

11. The first issue relates to the dispute resolution clause in the JBC which I reproduce below for ease of reference as it is germane in determining the issues being raised by the Applicant:

45.0 SETTLEMENT OF DISPUTES

45.1 In case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or after the completion or abandonment of the Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of the The Architectural Association of

Kenya on the request of the applying party.

45.2 The arbitration may be on the construction of this contract or on any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any matter or thing left by this contract to the discretion of the Architect, or the withholding by the Architect of any certificate to which the Contractor may claim to be entitled or the measurement and valuation referred to in clause 34.0 of these conditions or the rights and liabilities of the parties subsequent to the termination of contract.

45.3 Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

45.4 Notwithstanding the issue of a notice as stated above the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties.

45.5 In any event, no arbitration shall commence earlier than ninety days after the service of the notice of a dispute or difference.

45.6 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the contract by either party:

45.6.1 The appointment of a replacement Architect, Quantity Surveyor or Engineer upon the said persons ceasing to act.

45.6.2 Whether or not the issue of an instruction by the Architect is empowered by these conditions.

45.6.3 Whether or not a certificate has been improperly withheld or is not in

accordance with these conditions.

45.6.4 Any dispute or difference arising in respect of war risks or war damage.

45.7 All other matters in dispute shall only be referred to arbitration after the practical completion or alleged practical completion of the Works, or abandonment of the Works, or termination or alleged termination of the contract, unless the Employer and the Contractor agree otherwise in writing.

45.8 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

45.9 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

45.10 The award of such Arbitrator shall be final and binding upon the parties.

12. It is common ground that the dispute between the parties was in relation to the final account raised by the Respondent and that this dispute was referred to the Arbitrator in accordance with **Clause 45.1** of the JBC. However, the Applicant claims that the Respondent contravened **Clause 45.3** of the JBC by failing to give the requisite notice in the manner contemplated by the JBC. It complained that the Arbitrator erred in holding that the Respondent's email dated 12th October 2015 constituted a *"notice of the occurrence of dispute or difference"* while ignoring the Respondent's letter dated 13th January 2020, which was issued beyond the 90-day period and which the Respondent maintained constituted the requisite notice under **Clause 45.3** as it sought to invoke the arbitration clause. The Applicant takes the position that the Arbitrator erred in failing to dismiss the Claim for being commenced over 4 ½ years after occurrence/discovery of the dispute and that this was beyond the terms of the JBC and the Addendum.

13. Since the JBC is a standard form agreement which has been subject to interpretation, the Applicant cited several decisions in relation thereto to support its position. In ***Kenya Airfreight Handing Limited (KAHL) v Model Builders & Civil Engineers (K) Ltd*** **ML HC Misc. Appl. No. 548 of 2016 (OS) [2017] eKLR** and ***Team Construction Limited v Carnation Properties Limited*** **ML HC Misc. Appl. No. 548 of 2019 [2019] eKLR** the court held under a JBC agreement, as a condition precedent to arbitration, the party aggrieved had to notify the other party that there existed a dispute which required resolution by arbitration. In addition, the Applicant cited ***Sonile Holdings Limited v Vinayak Builders Limited*** **ML HCCC No. 110 of 2019 (OS) [2020] eKLR** where the court held that a notice issued under **Clause 45.3** of the JBC ought to set out the dispute or events within 90 days of the occurrence of or discovery of each matter giving rise to the dispute. The Applicant therefore argues that in by failing to have regard to the provision of **Clause 45.3**, the Arbitrator went outside the scope of the reference.

14. The Respondent counters that there is no prescribed format for a notice under **Clause 45.3** and that the dispute arose the moment the demand for payment was sent and the Applicant ignored and/or failed to respond. It relies on the case of ***West Mount Investments Limited v Tridev Builders Company Limited Civil*** **Case No. 230 of 2016 [2017] eKLR,** to submit that there is no formal or prescribed format for the notice under **Clause 45.3** of the JBC. It further submits that the Court in that case held that a notice of a dispute can be made by simply having one party making a demand which is ignored or not honoured by the other party. The Respondent maintains that a dispute arose when Applicant failed to pay the Final Account Certificate within the time stipulated under the JBC and that the Arbitrator's findings appreciated the dispute occurred when the Respondent demanded for his payment, as the email that came from the Respondent was therefore a continuous process demanding the same thing, payment and that it wanted to know the status of its payments which it had demanded earlier on.

15. One of the issues framed by the Arbitrator was, *"Whether the Claimant has properly commenced these arbitration proceedings as per Clause 45.3 of the JBC."* The Arbitrator considered this issue extensively and came to the conclusion that the claim was properly before the tribunal. Since the issue arose and was determined by the Arbitrator, it cannot be said that the matter was outside the matters contemplated for resolution by the arbitral tribunal. Whether the arbitrator was right or wrong in his approach on this issue is not within the province of the court hearing an application to set aside an award under **section 35** of the ***Arbitration Act*** since it cannot intervene merely because it would have reached a different conclusion.

16. The Respondent submits that the Applicant waived its right to challenge the jurisdiction of the Arbitrator. Although the Applicant appeared to have misgivings about the appointment of the Arbitrator, it acquiesced to the Arbitrator's jurisdiction and the

Arbitrator ruled that he had jurisdiction. The Applicant elected to oppose the substance of the Respondent's claim. **Section 5** of the ***Arbitration Act*** provides that:

5. A party who knows that any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance with undue delay or, if a time limit is prescribed, with such period of time, is deemed to have waived the right to object.

17. The Applicant accepted the Arbitrator's jurisdiction by filing a counterclaim of KES. 53,031,813.00 on account of damages arising from poor and negligent workmanship by the Respondent. It therefore cannot therefore on one hand state that the Respondent could not proceed to determine the issue raised in the claim yet proceed to raise and agitate a counterclaim which was intimately connected to and tied with the claim for payment for work rendered.

18. It is worth noting that whether the Claimant took a preliminary step or complied with a condition precedent before proceeding to arbitration is a matter of jurisdiction which must be raised at the earliest stage. Under **section 17(3)** of the ***Arbitration Act***, *''A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of authority is raised during the arbitral proceedings.''* The arbitral tribunal may rule on such a plea and the party aggrieved may, within 30 days of the ruling, apply to the High Court to decide the matter. This position is buttressed by the fact that in all the cases cited by the Applicant; ***Kenya Airfreight Handing Limited (KAHL) v Model Builders & Civil Engineers (K) Ltd* (Supra)**, ***Team Construction Limited v Carnation Properties Limited* (Supra)** and ***Sonile Holdings Limited v Vinayak Builders Limited* (Supra)** and the case cited by the Respondent; ***West Mount Investments Limited v Tridev Builders Company Ltd* (Supra)** were all applications made under **section 17** of the ***Arbitration Act*** seeking to remove the arbitrator and or terminate the arbitration proceedings on account of lack of jurisdiction following non-compliance with the terms of **Clause 45.3** of the **JBC**.

19. I find and hold that the Arbitrator did not venture on a frolic of his own to determine issues outside the JBC and scope of the reference and that he framed the issues in relation to the Clauses of the JBC and proceeded to determine and resolve them by consideration of the law and evidence. As the court noted in ***Mahican Investments Limited & 3 Others v Giovanni Gaida & 80 Others* NRB Misc. Civil Appl. No. 792 of 2004 [2005] eKLR**, *"In order to succeed (in showing that the matters objected are outside the scope of the reference to arbitration) the application must show beyond doubt that the Arbitrator has gone on a frolic of his own to deal with matters not related to the subject matter of the dispute."* [Emphasis mine].

20. Turning to the issue of the Counterclaim, the Applicant submits that in dismissing the Counterclaim, the Arbitrator failed to consider its pleadings, oral and documentary evidence and erroneously held that the counterclaim was *res judicata* yet no previous proceedings over the same issues between the same parties have taken place. The Applicant submits that the parties admitted all evidence and dispensed with their makers during discovery and as such, it was beyond the Arbitrator's scope to hold that the maker of the non-contested evidence ought to have testified.

21. The Applicant also faults the Arbitrator for acting *ultra vires* by holding that the Counterclaim was made late contrary to **section 26** of the ***Arbitration Act*** and subsequent ***Rules*** which provides that a Respondent is entitled to file a statement of defence and counterclaim within 21 days of service of the Claim or such timeline as agreed during a preliminary meeting. It points out that under the *Order for Directions No.4* dated 11th September 2020, the Arbitrator granted the Respondent leave to file a response to the counterclaim and in its reply, the Respondent never pleaded the issue of late counterclaim by the Applicant. It therefore submits that the Arbitrator acted beyond the scope of the pleadings by the parties.

22. In response, the Respondent submits that the Arbitrator considered the pleadings of both parties and evidence provided before rendering the Award. The Respondent contends that the context in which the Arbitrator used the term *res judicata* to mean that the Applicant's Counterclaim had already determined by the existence of the Final Account issued on 17th September 2014 thus the use of the term by the Arbitrator was different from the legal and technical meaning. The Respondent maintains that the Arbitrator did not act beyond the scope of the pleadings by the parties by holding that the Counterclaim was raised late and that in any case, he considered it and concluded that the claim itself was not made within the contractually accepted time period for it to be valid and that fact was specifically pleaded by the Respondent.

23. The Arbitrator framed the following issue for resolution, *''Is the Respondent entitled to its counterclaim" If yes at what amount""* In considering this issue, Arbitrator held that under **Clause 34.22** of the JBC, the Final Certificate issued by the Architect is conclusive evidence that the works were done in compliance with the contract, unless the client has issued a request to concur

with the appointment of an arbitrator under **Clause 45** or the certificate is erroneous by reason of fraud, dishonesty or fraudulent concealment of any work, defect or omission or accidental inclusion or exclusion of any computation. In effect, the Arbitrator held that the Respondent made the Counterclaim on 28th March 2017 on works allegedly not done in accordance with the terms of the contract by the Applicant long after finalization of the Project. This is why the Arbitrator concluded that:

Consequently, the Tribunal is persuaded to find and hold that the any Claim(s) arising from these proceedings touching on any alleged failure to conform or not with the terms of this Contract is/are res judicata as the said Final Account Certificate issued on 17th September 2014 was conclusive evidence that the said works were carried out as per the Contract.

24. I therefore agree with the Respondent's submissions the use of the term *res judicata* must be seen in the context of the finding set out in the Award and not in the narrow technical term known under **section 6** of the ***Civil Procedure Act*** where a court or tribunal is barred from adjudicating on claims between the same parties that have already been determined by a court or tribunal of competent jurisdiction.

25. Finally, I have read the Award and it indicates that the Arbitrator framed the issues for determination after the parties failed to agree. He considered the claims, counterclaims, respective testimonies and submissions made to him. The Arbitrator largely considered whether the parties complied with of the Agreement; He determined whether the Applicant failed to settle the interim certificates within the stipulated times; whether the Applicant highlighted the alleged poor workmanship, sub-standard works and negligent works within the defects liability period; whether the project architect failed to prepare and deliver a schedule of defects not later than 30 days after the expiry of defects liability period; whether the Applicant failed to raise the counterclaim on time and unilaterally employed others to carry out the alleged audit report, which the project architects were responsible for; whether the Respondent failed to carry out the works as per the terms of the contract; whether the Respondent properly commenced these proceedings as per Clause 45.3 above; Whether the Respondent was aware the Applicant was carrying out an audit of the works; whether the Respondent was entitled to its claim and whether the Applicant was entitled to its counterclaim.

26. On the second issue, the Applicant contends that the Arbitrator wrongly and suo moto applied the principle of hearsay and declined to rely on written evidence submitted by the Applicant herein yet upheld and relied on the same evidence filed by the Respondent to find in its favour. The Applicant states that this is contrary to the rules of natural justice and connotes bias on the part of the Arbitrator against the Respondent. I have read the proceedings and do not find any reason to fault the manner in which the Arbitrator proceeded to resolve the reference. As I have stated, the Arbitrator applied his mind to the entirety of the evidence before him before coming to the conclusions I have set out elsewhere.

27. From the foregoing, I find that the Applicant's application to set aside the Award and refer its counter claim back to the Arbitrator for determination lacks merit.

28. The Respondent has filed an application for recognition and enforcement of the Award as a decree of the court. **Section 36** of the ***Arbitration Act*** confirms the binding nature of domestic arbitral awards and requires a party seeking enforcement of such awards to avail to the court either the original arbitral award and the original arbitration agreement or their certified copies. **Section 37** of the ***Arbitration Act*** sets out the grounds upon which this court can decline to recognize or to enforce an arbitral award. These grounds are similar to those that warrant the setting aside of arbitral award as provided under **Section 35(2)** of the ***Arbitration Act***. In essence, **section 37** of the ***Arbitration Act*** prohibits a court from recognizing or enforcing an award if the conditions stated therein are shown to be present (see ***Castle Investments Company Limited v Board of Governors – Our Lady of Mercy Girls Secondary school*** **NRB HC Misc.Application No. 780 of 2017 [2019] eKLR**).

29. The Respondent has annexed a certified copy of the Award as published together with corrections dated 16th February 2021. Both parties do not dispute the fact that the was an arbitration agreement and that an award was made by the Arbitrator. Since I have already dismissed the Applicant's application seeking to set aside the Award, and since the Respondent's application for enforcement is not opposed on substantive grounds, I do not see any reason why the Respondent's application should not be allowed.

30. Following the findings, I have made above, I make the following orders:

(a) The Applicant's Notice of Motion dated 16th February 2020 is dismissed.

(b) The Respondent's Chamber Summons dated 23rd February 2021 is allowed on terms that the Final Award published by Christopher K. Kihara and dated 15th January 2021 together with the post-award clarifications and corrections dated 16th February 2021 be and is hereby recognised as binding and leave is granted to the Respondent to enforce it as a decree of this court.

(c) The Respondent shall bear the costs of both applications.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JULY 2021.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

Mr Mulany instructed by MJD Associates Advocates for the Applicant.

Mr Malonza instructed by S. S. Malonza Advocates LLP for the Respondent.