REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc. Appli. 1242 of 2005

RUTH K. WACHIRA T/A AMIGIRL BEAUTY PALOUR……..……..APPLICANT

AND

THE CHAIRMAN BUSINESS RENT TRIBUNAL ……..……. 1ST RESPONDENT

R U L I N G

By a Reference, dated 2nd July, 2004, the Applicant herein made a complaint pursuant to the provisions of Section 12 (4) of the Landlord and Tenant **(Shops, Hotels and catering Establishments)** Act (***Cap 301, Laws of Kenya***), on the ground that the Landlord had illegally increased the rent from Kshs.5,000/= to 40,000/= p.m. without proper notice and was threatening to evict her without following the required procedure and prayed for the necessary orders.

Section 12 (4) confers upon the Tribunal in addition to other powers under the Act, the Power to "***investigate any complaint relating to a controlled tenancy made to it by the Landlord or the tenant, and to make such orders thereon as it deems fit."***

The Tribunal conducted the investigation by way of a hearing between the parties and found that there was no basis for the complaint as the Applicant (**tenant)** had no Landlord and tenant relationship, and proceeded to dismiss the reference and advised the losing party **(the Applicant**) to appeal against the decision in accordance with the provisions of section 15(1) of the ***Landlord and Tenant (shops, Hotels and Catering Establishments***) Act, *(hereinafter referred to as "**the Act")***

The Applicant's then Advocates on record did heed the advice, and filed an appeal in this court, and simultaneously sought a stay of the Tribunal's Order dismissing the Reference. As there was no relief granted to the Respondent herein there was no order to stay and that application although later withdrawn by the Applicant's current Advocate's was superfluous, as the Tribunal had no jurisdiction to stay any order was also incompetent. Caught in this web of confusion, the Applicant's current Advocates also filed an application for judicial review, the subject of this Ruling and proceeded to withdraw H.C. Appeal No. 537 of 2005, presumably basing its decision to do so on the judgment of Simpson J. **(as he then was**) in the case of Re **HEBTULLA PROPERTEIS [1979] K.L.R. 96** where he held **inter alia** that the right of appeal to the High Court (conferred by Section 15 (1)) from an order or determination of a tribunal on a reference to it does not extend to an order of the tribunal made on a complaint, and that the jurisdiction of the tribunal to hear complaints under Section 12 (4) is restricted to minor matters.

On the above understanding of the Act, and judicial precedent thereon, the Applicant's current Advocates proceeded to seek and were granted leave to bring an application for an order of certiorari to quash the Tribunal's Order **(not the Court's**) Order in BPRT Number 20 of 2005, and an order of prohibition to

restrain the Interested Party from acting on the order of the Respondent dated 14-07-2005, dismissing the Applicant's reference.

Upon service of the Application, the Interested party immediately brought an application under a Certificate of Urgency, accompanied with a Notice of Motion dated 5-09-2005 challenging the grant of leave given to the Applicant to bring an application for judicial review, for orders aforesaid of Certiorari and Prohibition. This Ruling is therefore about that application.

The Interested Party's Case as narrated in the Affidavit of one **MALTI DEVI** sworn on 5-09-2005 is that the Applicant had filed a Reference against her, in BPRT NO. 20 of 2005, and before the Civil Division of the High Court in Civil Appeal No. 537 of 2005, and proceeded to yet file another application by way of judicial review without disclosing to the court the existence of the pending Civil Appeal No. 537 of 2005 on the same matter. This deponent also depones on advice of her counsel, that had the Applicant revealed to the court the existence of the Appeal, leave to bring the Application for Judicial review would not have been granted on 23-08-2005. For these reasons, the Applicant's application for leave and stay was unfounded, mischievous and clearly an abuse of the process of the court.

To the Interested Party's application, the Applicant responded through her Replying Affidavit sworn on 12-09-2005, and filed on 13-09-2005. Paragraph 8 and 9 of that Affidavit are material to this Ruling. They are as follows-

"**8.** THAT **Mrs King'oo Wanjau also informs me which information I believe to be true that the Ruling dated 14-07-2005 is based on the wrong interpretation of the law and its principles and therefore the same needs to be quashed as a matter a right."**

and

"**10**. THAT **Mrs Kingoo Wanjau also informs me that I have no other remedy in law save Judicial review orders and for that the leave granted for judicial Review Proceedings to be instituted was rightly granted."**

In their submissions, both Mr. Angima learned Counsel for the Respondent and Mrs King'oo – Wanjau relied upon the respective Affidavits of Malti Devi (***the Interested Party)*** and Ruth K. Wachira, ***(the Applicant).***

The Respondent's case was that orders for grant of leave and stay were obtained through wilful concealment and non disclosure of material and crucial facts by the Applicant (to which I have already referred to in the introductory paragraphs of this Ruling), that there had been a Reference to the BPRT ***(the Tribunal***) by the Applicant, the Applicant was unsuccessful, the Applicant filed an appeal, and filed an application before BPRT and while the appeal was pending also brought these proceedings for Judicial Review, and obtained leave and stay.

Counsel submitted that a party who comes to court ex-parte must exercise utmost good faith and make full disclosure of all matters pending before the court irrespective of whether the facts support or do not support the Applicant's case. A breach of such duty may result in the setting aside of such orders upon application by the Respondent or the Interested Party.

In the case of **ANDREW OUKO –VS- KENYA COMMERCIAL BANK LTD** (Milimani Commercial Courts H.C.C.C. No. 55 of 2000), Azangalala J. set aside an ex-parte injunction granted to the Applicant on the grounds of material non-disclosure because the applicants had at the ex-parte stage failed to disclose the existence of several other suits which they had previously instituted. The learned judge relied upon the English Case of **KING –VS- The General Commissioner for the Purposes of the Income Tax Acts for *the Districts of Kensington*** [1917] I.K.B. 486, Viscount Reading C.J. delivered himself thus-

"***Where an ex-parte application had been made to this court for a rule of nisi or other process if that***

court comes to the conclusion that the Affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the court as to the true facts, the court ought; for its own protection and to prevent an abuse of its process to refuse to proceed any further with the examination of the merits. This is a power inherent in the court but one which should only be used in cases which bring conviction to the mind of the court that it has been deceived.

Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the Applicant's affidavit, and everything will be heard that can be urged to influence the view of the court when it reads the Affidavit and knows the true facts. But if the results of this examination is to leave no doubt that the court has been deceived, then it will refuse to hear anything further from the application a proceeding which has only been set in motion by means of a misleading affidavit."

In the words of Lord Warrington L.J. in the same case,

"***The court will not allow a Plaintiff to obtain any advantage from an ex-parte injunction which he has improperly obtained."***

And Scrutton L.J. said –

"**The Court is supposed to know the law. But it knows nothing about facts and the applicant must state fully and fairly the facts and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action it has taken on the faith of imperfect statements**."

"***A Plaintiff applying for ex-parte orders ……..comes under a contract with the Court. If he fails to do that, and the court finds, when the other party applies to dissolve the injunction that any material fact has been suppressed or not properly bought forward, the Plaintiff is told that the court will not decide on the merits and that* as *he has broken faith with court the injunction must go"***

In the matter at hand, the Applicant cannot feign ignorance of the existence of either the Appeal or the application for stay before the Tribunal, however incompetent such an application may have been. In any event, a party previously represented by an Advocate is bound by the steps taken by such Advocate in the prosecution of his/her case. The Applicant would have covered such aspects as costs and fees for such Counsel in filing and prosecuting such applications. There was no evidence or other indication from the bar that either the Appeal or Application for Stay were made after instructions were terminated or withdrawn.

The withdrawal of the Appeal and the Application for Stay after the application for leave to bring judicial review applications and grant of such leave coupled with stay of any action by the Respondent clearly shows that the Applicant failed to disclose these matters to the court, and an applicant who fails to disclose to the court all matters material to the case, will not be permitted to enjoy the fruits or advantage of such non-disclosure. In the result therefore the order of stay granted on 23-08-2005 hereby vacated.

Adverting to the more complex and important issue of setting aside leave granted we need to examine the basis upon which such leave was granted. The threshold for grant of leave in judicial proceedings was laid down by the Court of Appeal in the case of ***NJENGA –VS- COMMISSIONER OF LANDS [2000] E.A. 184*** where it expressed itself thus at page 186 "***that the test whether leave should be granted is whether without examining the matter in depth, that there is an arguable case for granting leave."***

Traditionally, the Judicial Review court does not look at the merits of the case. Its province has been to look at the irrationality and impropriety of procedure and process.

Thus, irrationality and unreasonableness would play a major role, and the courts will continue to play their traditional role in judicial review and intervene in situations where authorities and persons act in bad faith (***mala fides),*** abuse power, fail to take into account relevant considerations in the decision making

process or where they take irrelevant considerations or act contrary to legitimate expectations.

Judicial review is a tool of justice. It would serve the needs of a growing society on a case by a case basis, and although the judicial review court will in appropriate cases quash a decision of a subordinate court or tribunal or other person acting in a quasi-judicial capacity where such decision is made without authority ***(lack of or excess jurisdiction***), the court of judicial review will not quash a decision of such authority because it was wrong. A subordinate court, tribunal or body invested with power or jurisdiction to determine a matter is also thereby able to make wrong decisions.

Indeed as observed by S.A. de Smith in his reliable book "**Constitutional and Administrative Law, 2nd Edition** at page 569-

" ……. ***But on matters lying within the area of jurisdiction (or going to the merits) the tribunal might be entitled to err on matters of law and fact and remain immune from the supervisory jurisdiction of the courts. The Superior Courts would set aside determinations embodying errors within jurisdiction only if-***

(i) the error was one of law and was apparent

on the face of the "*record*" **of the tribunal, in which case certiorari would issue to quash or**

(ii) a right of appeal was provided by statute,

jurisdiction to decide wrongly as well as rightly and a latent error of law within jurisdiction was beyond correction except on appeal. If every erroneous finding by an inferior tribunal were to be equated with an excess jurisdiction then members of tribunals might find themselves constantly being sued for damages on account of honest mistakes."

Lord Reid was of the same vein in the case of ***ANISMINIC LTD –VS- THE FOREIGN COMPENSATION COMMISSION AND*** **ANOTHER [1969] I ALL ER. 208** (in a way very few cases have done) when he said at page 213-

"***It has been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word*** "*jurisdiction*" ***has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry – But there are many cases where although the tribunal has jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as*** *much entitled to decide that question wrongly as it is entitled to decide that question rightly (underlining mine).*

If it is entitled to enter on the enquiry and does not do any of those things which I have mentioned in the course of these proceedings then its decision is equally valid whether it is right or wrong or subject only to the power of the court in certain circumstances to correct an error of law"

In this regard, S.A de Smith cites two examples to illustrate the point that a tribunal seized with jurisdiction is as much entitled to make a decision wrongly or as to make a right decision.

Firstly suppose there is no right of appeal from the decisions of a magistrate's court. Such a court convicts

a person of willful obstruction of the highway, giving no reason for its decision, in fact he is innocent. The decision is wrong but it is one within the jurisdiction of the court and cannot be challenged in judicial review. Take another case, the magistrate's court convicts a man of manslaughter, he is in fact guilty, but the Magistrates have no power to convict for that offence, the conviction will therefore be quashed by the High Court for want of jurisdiction on an application for certiorari.

Adverting to the matters in issue here, the Applicant's real case is that she has no other remedy except judicial review. The nature and scope of judicial review is to enquire and review, not the merits of the decision of the inferior court or tribunal, but the decision making process. As Lord Hailsham L.C. said in the case of ***Chief Magistrate of NorthWales Police –Vs- Evans*** [1982] 3 ALL ER. 141 at page 143-

It is important to remember in every case that the purpose of *(the remedy of judicial review)* ***is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question."***

So, a decision of an inferior court or a public authority will be quashed (by an order of certiorari made on an application for judicial review) where the court or authority acted without jurisdiction, or exceeded its jurisdiction or failed to comply with rules of natural justice where those rules are applicable or where there is an error of law on the face of the record or the decision is unreasonable in the **Wednesbury** sense.

The Court will not on an application for judicial review act as "**a court of appeal"** from the body concerned nor must the court interfere in any way, with the exercise of any power or discretion which has been conferred upon that body unless it has been exercised in such a way which is not within that body's jurisdiction, or the decision is **Wednesbury** unreasonable. As stated by Lord **Brightman in the Chief Constable of Northwales Police –Vs- Evans** (*supra)* at page 154,

"***The function of the court is to see that lawful authority is not abused by unfair treatment. If the court were to attempt itself the task entrusted to that authority by the law, the court would, under the guise of preventing the abuse of power, be guilty itself of usurping power."***

In the matter at hand therefore the Tribunal's power to make the necessary orders is derived from the provisions of Sections 12 (1) and (4) of the Act, which firstly empower the Tribunal in relation to its area of jurisdiction to do all things which is empowered or required to do by or under the provisions of the Act, and in addition to all such other powers under the Act, all the powers granted to the Tribunal under Section 12 (1) (a) (R) inclusive, other than criminal matters or offences under the Act (Section 12 (2)). Section 12 (4) says-

(4) ***In addition to any other powers specifically conferred on it by or under this Act, a tribunal may investigate any*** *complaint* ***(****underlining mine****), relating to a controlled tenancy made to it by the Landlord or tenant, and may make such order thereon as it deems fit."***

It is also necessary in considering the above provision to bring to bear two other important and relevant provisions of the Act, namely Section 2, which is the interpretation provision, and which defines the word a "***reference***" means "a reference to a ***Tribunal under Section 6 of this Act."*** Section 6 of the Act requires a receiving party of a notice given under Section 4 (5) of the Act, if he does not agree to comply with the tenancy notice (***whether to terminate the tenancy or obtain reassessment of the rent***) in relation to a controlled tenancy, to **refer** the matter to a tribunal, and when a reference is made, the tenancy notice will have no effect until the determination of the reference by the Tribunal.

The other provision to be brought to bear in this judgment is Section 15 of the Act which says-

"***15 (1) Any party to a reference aggrieved by any determination or order of a tribunal made therein may within thirty days after the date of such determination or order appeal to the High Court……."***

As already stated in the foregoing passages of this judgment, the Applicant's case is that there is no other

remedy available except judicial review. The avenue of an appeal is not available to her because there is no right of appeal in respect of a ***complaint*** preferred upon the Tribunal under Section 12 (4) of the Act. A right of appeal is only available in respect of a **reference** in terms of Section 15 (1) of the Act, and a reference is only in respect of a **tenancy notice** under Section 4 and 6 of the Act.

In support of these submissions Mrs King'oo Wanjau, learned Counsel for the Applicant cited the case of Re: ***HEBTULLA PROPERTIES*** *(supra)* in which Simpson J. **(*as he then was*)** held ***inter alia*** that (1) the right of appeal conferred to the High Court by Section 15 (1) from an order or determination of a tribunal on a reference to it does not extend to an order of the Tribunal made on a complaint and (ii) the jurisdiction of the Tribunal to hear complaints under Section 12 (4) is restricted to minor matters.

Simpson J. ***(as he then was)*** said in that case that he derived comfort from earlier decisions namely-

(1) PRITAM –Vs- RATILAL [1972] E.A. 560 **in which Madan J.** *(as he then was*) **held that Section 12 (4) did not entitle the Tribunal to make an order for eviction and envisaged complaints other than eviction such as a landlord turning off a common water tap, (or today, electricity switch);** and

(2) the case of **CHOITRAM –VS- MYSTERY MODEL HAIR SALOON (1972) E.A. 525** (in which the judgment as reported is wrongly attributed to Madan J.) but was in fact decided by Simpson J. where he said-

"***I am of the opinion however that the term*** *"complaint"* ***is intended only to cover complaints of a minor character. The term*** *"investigate"* ***does not necessarily imply a bearing. Such complaints would include complaints by the tenant of the turning off of water, obstruction of access and other acts of harassment by the landlord, calling for appropriate orders for their rectification or cessation but not including payment of compensation for any injury suffered."***

In ***MACHENJE -VS- KIBARABARA [1973***] E.A. 481, Sheridan J. said that he derived considerable assistance from the foregoing passage.

Chesoni J. ***(as he then was***) in the same case ***(Re Heptulla Properties Ltd)*** had this observation to make of Section 12 (4) at page 105-

"***Section 12 (4) must be read together with the rest of the Act, and, when this is done, it becomes apparent that the complaint must be about a matter the Tribunal has jurisdiction to deal with under the Act and that is why the complaint has to relate to a controlled tenancy. Whether Section 12 (4) is limited to minor complaints only I find it unnecessary to comment on it as this is not the issue before us. Suffice it to say that the Act uses the word*** *"any complaint"* ***and the only qualification is that it must be relating to a controlled tenancy."***

Chesoni J. (**as *he then was*)** went on to say that **the Choitram –Vs- Mystery Hair Saloon** case which was tried by Simpson J **(as he then was**) and wrongly attributed to Madan J. **(*as he then was***) and **Pritam –Vs- Rotilal** heard by Madan J. (**as he then was)** were cases where prohibition was the remedy and were decided on their own facts and for different remedies which cannot be married with an order of prohibition.

Although Chesoni J. ***(as he then was***) arrived at the same conclusion that the Tribunal had jurisdiction to order recovery of possession (conferred upon the Tribunal by Section 12 (1) (e) of the Act), it had no jurisdiction to make an order on the application of a tenant who had been forcibly dispossessed by his landlord, he reached that conclusion upon the correct construction of the said Section 12 (1) (e) which conferred upon the Tribunal power to make orders upon such terms and conditions as it thinks fit for the recovery of possession and payment of arrears and mesne profits, and that the phrase "***recovery of possession***" could only mean and which here meant "***recovery of possession by the landlord and not from the landlord***." I accept this ***ratio*** of the case, for recovery of possession, arrears of rent and mesne profits by attribution could only go to the landlord or owner of the premises and not the tenant.

That case (***HEPTULLA PROPERTIES)*** to my mind, cannot however be the basis for the propositions either that the Tribunal had no jurisdiction to determine the "***complaint"*** referred to it under Section 12 (4) or that it exceeded its jurisdiction or that there is no right of appeal in terms of section 15 (1) of the Act. I also do not accept that the expression "***complaint"*** as used in Section 12 (4) of the Act means or was intended to cover a complaint of a minor character or that the word "***investigate*** "does necessarily exclude a hearing. Perhaps the best form of investigation is to get all the parties together and hear them first hand rather than through correspondence **to** and **from** the parties without end.

In this matter, the ***complaint*** was not about minor acts such as turning off water taps or electricity early in the night. It was about non-acceptance of rent, the denial of the existence of landlord and tenant relationship. So the expression "***any complaint***" may include major complaints relating to a controlled tenancy. The tribunal was perfectly entitled to investigate by way of a hearing of the parties, and to make the orders it did. The case of ***Heptulla Properties*** and other cases cited therein are clearly distinguishable from the current one and are no guide in this matter.

Perhaps the notion that there is no right of reference to the Tribunal in respect of ***any complaint*** under Section 12 (4) is derived from the definition of the word "***reference"*** in Section 2 of the Act where "***reference"*** means- "***a reference to a Tribunal under Section 6 of the Act***." Reference under Section 6 of the Act relates specifically to a tenancy notice given under Section 4 (2) and (3) of the Act (either for termination of a tenancy, or reassessment of the rent of a controlled tenancy). If those cases be referred to as "***major***" complaints it does not diminish the power to make reference to the Tribunal under other Sections of the Act, including a determination or order arising from making a ***complaint*** under other Section 12 (4) of the Act provided that the complaint relates to a controlled tenancy for that is the only qualification to that right. It does not matter that "***any complaint"*** is said to be "***made"*** under Section 12 (4) whereas "***a notice***" to terminate the tenancy or reassess the rent is a "***reference"***. The result in either case is a determination and order by the Tribunal. Neither diminish the right of an aggrieved party to a "***reference***" or to "***a complaint***" by a determination and order therein of a Tribunal to appeal.

The right of appeal is in respect of any determination and order therein (***in respect of a reference or a complaint***) by the Tribunal under the Act. An aggrieved party from a determination and order from a complaint under Section 12 (4) of the Act is in my respectful view entitled to an appeal as much as a person aggrieved by a determination and order pursuant to a reference under Section 6 or other determination and order of the Tribunal under any of the powers conferred upon the Tribunal under Section 12 (1) (a) – (n) inclusive of the Act or any other provision of the Act conferring jurisdiction to the Tribunal to determine any matter thereunder. I therefore reject the Applicant's contention to the contrary.

Adverting therefore to the Respondent's application for orders to set aside the leave granted herein, I am clearly of the view that once leave is granted in a judicial review application, that order once acted upon becomes functus. The only remedy and proper procedure for an aggrieved Respondent, or Interested Party to follow is to have the motion heard and determined on its merits. If the leave granted is not acted upon within the prescribed period of 21 days under Order LIII, rule 3 (1), that leave would upon the expiration of the said period automatically lapse. Where however, an order or leave is stayed in the intervening period, and the order of stay is dissolved, an Applicant would be entitled to file its motion within the unexpired period of the said 21 days.

However where leave granted is acted upon by filing a substantive motion, and it was later shown by the Respondent that such leave was procured through non-disclosure of material facts, the court will exercise its inherent power and discretion and will set aside such leave on that ground alone. The determination of what is material is for the court or judge and not the applicant. No Applicant will be allowed to enjoy an advantage secured through such non-disclosure. Hence the order above to vacate the stay order made at page 9 of the judgement.

As to the prayer to vacate the stay of the judgment of the Tribunal in BPRT. Case No. 20 of 2005 and the proceedings therein, the answer is firstly that the applicant's reference having been dismissed by the Tribunal, there was no order to stay, and secondly as it was held by A.B. Shah, J. ***(as he then was)*** in the

case of ***CHRISTOPHER –VS- ATNTHONY MUCHORA (H.C.C.C. No. 106 of 1994***) the Tribunal has no power to order a stay pending appeal. That honour is only exercisable by the High Court. If however there is such order the same is, for avoidance of doubt, dissolved and vacated.

The Respondent also sought such other or further orders as it may deem fit and just and the costs of this application be provided for. Before determining this aspect of the Respondent's application, I wish to make a short comment on the origin of the Applicant's alleged "***controlled tenancy.***"

The Applicant was not according to the Respondents Supporting Affidavit sworn on 5-09-2005, (paragraph 5), the Respondent's tenant. The Applicant had been unlawfully installed into possession of the premises by persons who themselves had no title to the premises, and were as the Court found in H.C.C.C. No. 2031 of 2000 and H.C.C.C. No. 1344 of 2000, fraudsters who had fraudulently transferred the suit premises to themselves. A person who has no title to property cannot purport to transfer the same title or grant a lease. He has no right to do so, and the grantee of such premises receives no good title either. The Applicant was thus a trespasser upon the suit premises.

Having been appraised of this position, the Applicant chose to litigate, which the Applicant was perfectly entitled to do, and lost in the Tribunal and as far as this application is concerned has also lost.

It is not however entirely just that the Applicant should lose the means of livelihood completely. In the Supporting Affidavit of the Respondent's Application, there is attached thereto as part of the bundle to Exhibit RKW 5, an offer, by the Respondent's agents, Westley Consult, for a lease for a period of 5 years and 3 months at a rent of 15,000/= per month for the first year, and a negotiated rent for the subsequent years, with an offer of a break clause upon 3 months notice. I would commend this arrangement to the Applicant and the Applicant's counsel.

All in all, therefore the Respondents application succeeds, and since costs follow the event, I direct that the Applicant shall also bear the costs of these proceedings. There shall be orders accordingly.

Dated and delivered at Nairobi this 30th day of March, 2006.

ANYARA EMUKULE

JUDGE.