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

Misc Crim Appli 414 of 2006

DR. WILLIAM MORURI NYAKIBA

ANCHOR MEDICAL CONSULTANTS LTD…….....……...APPLICANTS

- VERSUS -

THE CHIEF MAGISTRATE NAIROBI …….....…….1ST RESPONDENT

THE HON. THE ATTORNEY-GENERAL …….....…...2ND RESPODNENT

AAR. HEALTH SERVICES…….....……3RD RESPONDENT

RULING

A. ***SEARCH WARRANTS NOT BASED ON APPLICATION, AND ISSUED WITHOUT REASON? – APPLICATION, PRAYERS, DEPOSITIONS***

The applicants sought vacation hearing by their Chamber Summons dated and filed on 4th August, 2006, and their substantive application was by Notice of Motion of even date.

The application was brought by virtue of sections 362 and 364(1)(b) of the Criminal Procedure Code, and sections 70 and 72 of the Constitution of Kenya. The applicants were seeking orders as follows:

(a) that, this Court do call and examine the criminal proceedings in ***Miscellaneous Criminal Application No. 175 of 2006*** for the purpose of satisfying itself as to the correctness, legality and/or propriety of the finding or order of the Magistrate that warrants do issue pursuant to s. 118 of the Criminal Procedure Code, and/or the regularity of the proceedings of the subordinate court leading to the issuance of the warrants issued to one ***Shedrack Mangera Bundi***, No. 215484 Chief Inspector and investigator with the Economic Crime Unit of the Criminal Investigation Department, of and concerning the applicants;

(b) that, pending the hearing and determination of the instant application, the warrants issued by the learned Magistrate in Misc. Criminal Application No. 175 of 2006 be stayed and/or suspended;

(c) that, the Court be pleased to reverse the order issued by the Magistrate and vacate the warrants.

Grounds in support of the application are stated as follows:

(i) The warrants were obtained in violation of procedure, and of rules relating to fairness and to full and frank disclosure;

(ii) The affidavits sworn by ***Shedrack Mangera Bundi, David Gichamba Gichuhi*** and ***Benson Ngao Nzimi*** which led to the issuance of the warrants by the Magistrate, were not part of any application;

(iii) The warrants issued were a needless violation of the applicant's rights, as the purported criminal investigations were based on imagination, and the affidavits relied on were shallow, hollow and perjurious;

(iv) The material presented before the Magistrate's Court provided no proof of any allegation to warrant the issuance by a Court of law of the impugned warrants; and so the issuance of those warrants was an abuse of the process of the Court;

(v) The issuance of the warrants was a violation of the rights of the applicants in respect of a matter sounding purely in contract, as between the applicant and AAR Health services Limited which contract had sufficient clauses for the resolution of any disputes.

One of the applicants, ***Dr. William Nyakiba***, avers that he is a medical practitioner duly qualified and authorised to practice medicine in Kenya. He depones that on 8th April, 2002 he had entered into a franchise agreement with AAR Health Services Limited for the management and operation of a health centre located at Williamson House, 4th Ngong Avenue, Nairobi. (The text of the said agreement is annexed as WN1). It is deponed that AAR Health Services Limited has been happy with the services rendered under the agreement by the deponent together with one ***Dr. Kiboi***; and this appreciation led to AAR Health Services Limited asking him to open a similar facility in Thika, on the basis of the prevailing arrangements.

The deponent avers that on ***21st July, 2006*** officials of AAR Health Services Limited visited his Thika Road facility, and obtained from officers therein certain documents which were necessary for making certain verifications. Such documents, which were in considerable volumes, were taken but no acknowledgment recorded – for the reason that the deponent and his outfit assumed good faith on the part of AAR Health Services Limited. In the aftermath, payments by AAR Health Services Limited for services rendered, were delayed until ***1st August, 2006.***

In the meantime, however, officers of AAR Health Services Limited linked up with police officers for the purpose of conducting investigations at medical facilities run by the deponent. It was during the contretemps which followed, centring on documentations kept by the deponent's health facilities and the extent to which these were faithfully recorded, that the deponent came to learn that the issue had already been pursued to the point of obtaining warrants from the subordinate Court, for searches upon the deponent and his health facilities. These warrants had been issued on the basis of affidavits of (i) ***Shedrack Mangera Bundi***; (ii) ***David Gichamba Gichuhi***; and (iii) ***Benson Ngao Nzimi*** – all officers of AAR Health Services Limited.

It emerged that the three officers of AAR Health Services aforementioned had sworn affidavits in support of a request for a search warrant under s.118 of the Criminal Procedure Code; but the deponent averred that no application for such a purpose had been served upon him. The deponent believes to be true the advice received from his counsel, that the Court file showed no ***application*** which the three AAR Health Services Limited officers would have been supporting by their affidavits. The deponent also averred that neither ***David Gichamba Gichuhi*** nor ***Benson Ngao Nzimi*** had disclosed in his depositions that the applicants had already supplied the documents required by AAR Health Services Limited; or that the AAR Health Services Limited officials had sought with menaces to have the deponent execute a certain document – a "deed of guarantee and indemnity of a debt" (annexed as numbers WN4 and WN5).

Another affidavit is sworn by ***Dr. Florence Kiboi*** who deposes that she is the head doctor at Anchor Medical Consultants Limited, and that she has read the affidavit of ***Dr. William Nyakiba*** and is in agreement with the same.

To the application and supporting affidavits, ***David Gichamba Gichuhi*** swore and filed a replying

affidavit on 11th August, 2006 in which he deposes that he is the Head of Internal Audit with AAR Health Services Limited. The deponent denies that there ever was a franchise agreement between AAR Heath Services Limited and the applicant to operate a health centre at Williamson House – and that such an agreement existed only in respect of facilities at Thika Road and Buru Buru. It was deponed that the applicants had not complied with the terms of the franchise agreements – and that an audit on the Thika Road and Buru Buru health facilities had shown that "the applicants had been falsifying records and thereby committing a fraud against AAR", which fraud takes form in (i) "ghost patients"; (ii) forgeries on laboratory tests and drugs; (iii) tampering with the dispensing of drugs to patients. The deponent avers: "It is also possible that the applicants have been understating the royalty fees payable to AAR and also failing to pay the royalties due to AAR due to the fraud".

Such blameworthy conduct, it is deposed, "were discovered during a routine audit of the health centres done pursuant to article 7 of the Franchise Agreement which empowers AAR to inspect records and conduct an audit on the two health centres/clinics at any time unannounced."

The deponent avers that he had gone with Criminal Investigations Officers to the applicants' Thika Road Clinic on ***29th July, 2006*** for the purpose of inspecting the premises and the records, but their access was thwarted by the 1st applicant. It is averred that the said refusal of inspection access is what led Chief Inspector ***Shedrack Mangera Bundi*** to secure a search warrant by virtue of ss. 118 and 119 of the Criminal Procedure Code.

B. ***GRAVAMEN IS CONTRACTUAL AND UNRELATED TO CRIMINAL PROCESS; SEARCH WARRANTS WERE ISSUED OUTSIDE ANY PROCEEDINGS, AND WITHOUT AN APPLICATION; NO FACTUAL BASIS FOR ISSUING THE WARRANTS – SUBMISSIONS FOR THE APPLICANT***

Learned counsel ***Mr. Nyakundi*** for the applicant, ***Ms. Opati*** for the 1st and 2nd respondents, and ***Mr. Mwaura*** for the 3rd respondent appeared before me on 16th August, 2006.

Mr. Nyakundi set out by urging that s.362 of the Criminal Procedure Code reposed powers in the High Court to call up and examine proceedings conducted before a subordinate Court – for the purpose of ensuring that legality and propriety have been the mark of those proceedings; and by virtue of that provision counsel now urged that the subordinate Court proceedings in Misc. Criminal Application No. 175 of 2006 be revised – for being irregular and unlawful. It was urged that the subordinate Court had irregularly claimed to exercise jurisdiction under s.118 of the Criminal Procedure Code, and that there was no record of proceedings from that Court. The said s.118 of the Criminal Procedure Code relates to search warrants, and thus stipulates:

"***Where it is proved on oath to a Court or a Magistrate that anything upon, with or in respect of which an offence has been committed, or anything which is necessary for the conduct of an investigation into an offence, is, or is reasonably suspected to be, in any place, building, ship, aircraft, vehicle, box or receptacle, the Court or a Magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place, building, ship, aircraft, vehicle, box or receptacle (which shall be named or described in the warrant) for that thing and, if the thing be found, to seize it and take it before a Court having jurisdiction to be dealt with according to law."***

Learned Counsel ***Mr. Nyakundi*** urged that there was an onus of ***proof*** resting upon a person who seeks a search warrant; and that such proof was to be done in the context of some procedure; there has to be proof that an offence had been committed. To support this contention counsel relied on this Court's decision (***Osiemo, J***) in ***Vitu Limited v. The Chief Magistrate Nairobi & Two Others***, H.C. Misc. Criminal Application No. 475 of 2004 in which it was held:

"***It is therefore expected that when a police officer or any other investigator approaches the Court for a warrant, there must be reasonable suspicion of an offence being about to be committed or having been***

committed …"

Counsel relied on the ***Vitu Limited*** case to urge that "there must be a basis for issuing the warrants"; and he contended that "the affidavits [tendered before the Court issuing the warrants] fall far short of the standards that may be derived from the ***Vitu Limited*** case".

He urged that since the emerging complaint would have touched on franchise agreements, that is, on contract, the deponents before the learned Magistrate ought to have exhibited that agreement.

Mr. Nyakundi also urged that an investigating officer carries a quasi-judicial role, and so when Chief Inspector ***Shedrack Mangera Bundi*** swore an affidavit (dated and filed on 31st July, 2006) brought before the learned Magistrate, claiming that the 1st applicant herein was falsifying medical records and submitting the same to AAR Health Services Limited, he had taken leave of the quasi-judicial posture and was conducting himself as "a biased officer prone to come to hasty conclusions". In the words of counsel: "[The investigator] has records, invoices etc.; why were these not exhibited? It deals a fatal blow to the weight of the [depositions]." Counsel urged that ***Shedrack Mangera Bundi's*** affidavit "shows nothing, not even the initial audited report, and was no basis for the issuance of warrants in the Court below".

Mr. Nyakundi urged that the respondents' complaint did not sound in criminal law; "the matter is based on contract; the contract is self-sufficient; it deals with all cases of over-payment." He submitted that even had it been shown there was over-payment to the applicant, he would have had fifteen days within which to repay the same; and under the contract there had been no demand made upon the applicants – and were any complex issues to arise, then the matter would have to go to arbitration, under the franchise agreement. ***Mr. Nyakundi*** submitted that the police had no legitimate role in this matter and that they were "being introduced … to intimidate my client into signing contracts" – and the said contract was a deed of guarantee over debt which, counsel urged, his client was being forced to sign in the context of police intervention. The forced signing of such a document in the context of alleged fraud (which the applicant has denied committing), counsel urged, would amount to compounding a felony. ***Mr. Nyakundi*** submitted: "This is not a criminal matter. The position in contract is that my client is under obligation to retain the books of account. What the respondents call fraud is that they had paid my clients Kshs.1 million in two cheques, in the midst of these claims [of fraud]." And counsel queried: "In a criminal trial, even if they could find the basis for a charge, how could they still be making that payment?"

Learned counsel contended that it was improper for the Magistrate to issue a search warrant, because there was no application for the same – all there was, is an affidavit; he submitted that "[an] affidavit ***per se*** cannot facilitate the issuance of an order": and so, in counsel's submission, issue of the impugned warrant was misplaced, and it ought to be vacated. Counsel urged: "No affidavit can be construed as both the application and the evidence in support of the application".

As the foregoing point clearly touched on interpretation of the law, ***Mr. Nyakundi*** found it necessary to address issues emerging in a judicial review matter, ***Cargo Distributors Limited v. Director of Criminal Investigations Department***, H.C. Misc. Application No. 39 of 2006. That matter entailed a challenge to search warrants issued by a Magistrate under s. 180 of the Evidence Act (Cap. 80), and the challenge there had come by way of a judicial review cause under ***O. LIII*** of the Civil Procedure Act (Cap. 21). In that matter ***Nyamu, J*** thus ruled:

(i) "***On a prima facie view although these are proceedings concerning the alleged theft of containers a warrant under s. 180 of the Evidence Act does not have to be issued following proceedings and all the police officer is required [to do] to satisfy the Judge or Magistrate is that his inquiry is based on reasonable suspicion";***

(ii) "… ***it would be extremely dangerous to suggest that the issuance of warrants be pegged to a formal application in the existing Court proceedings …"***

The foregoing passages in the ***Cargo Distributors Limited*** ruling, learned counsel ***Mr. Nyakundi*** urged,

could not be raised in aid of the respondents' position: because the cause in that matter had been a ***judicial review*** one, whereas the cause in the instant matter is a ***revision*** one under ss.362 and 364(1)(b) of the Criminal Procedure Code. The more persuasive authority in the instant matter, counsel urged, was the ***Vitu Limited*** case (H.C. Misc. Criminal Application No. 475 of 2004) which, however, ***Mr. Justice Nyamu*** in ***Cargo Distributors Limited*** did not refer to.

Mr. Nyakundi contested the propriety of attaching hospital records to the replying affidavit of the respondents at this stage – because these had not featured at all before the learned Magistrate who issued the search warrants; therefore these hospital records would not have in the first place justified the issuance of those warrants.

C. *RECENT JUDICIAL REVIEW DECISION FAVOURS A LIBERAL GRANT OF SEARCH WARRANTS FOR CRIME DETECTION AND PREVENTION – SUBMISSIONS FOR 1ST AND 2ND RESPONDENTS*

Learned counsel ***Ms. Opati*** submitted that the most relevant authority for application in the instant application is ***Cargo Distributors Limited v. Director of Criminal Investigations Department***, H.C. Misc. Application No. 39 of 2006, even if it was concerned with a judicial review matter under ***O.LIII*** of the Civil Procedure Act rather than with a criminal revision under the Criminal Procedure Code. Her justification was that the ***Cargo Distributors*** case, insofar as it addressed the problems of crime detection, crime prevention and control, and the public interest in the prevention of crime, may be said to have "laid fertile ground for viewing the relevant issues". Learned counsel perceived the main principle in the ***Cargo Distributors*** case, so far as is material here, as that there need not be in progress ***formal proceedings,*** as a pre-condition for the issuance of search warrants by a Magistrate. My understanding of this contention is that, firstly, the Court issuing search warrants is not required to be already formally moved, in pursuance of running proceedings, before it has the capacity to issue search warrants; and secondly, that there need be no formal application filed and served ahead of ***inter partes*** hearing, as a condition for the issuance of search warrants.

Quite clearly, in my view, ***Nyamu, J***'s position in the ***Cargo Distributors*** cause is that there are ***public interest goals*** in the sphere of the administration of criminal justice which may very well justify issuance of search warrants outside the framework of an application, or without any formal proceedings being yet in place in respect of the mischief in issue.

In the ***Vitu Limited*** case (H.C. Misc. Criminal Application No. 475 of 2004) ***Osiemo, J,*** in a ***criminal revision*** matter, was dealing with a grievance relating to ***bankers' books***; and his interpretation of s.180(1) of the Evidence Act (cap. 80) was as follows:

"… **I find as a fact that section 180(1) [of the Evidence Act] does not make a proviso or give the manner in which the application to investigate … bankers' books shall be made … because it is basically envisaged that the warrant would be requested for *within the proceedings* and not outside the proceedings. This in my view is the simple reason why an application is not provided for under that section. [Specification of procedure for a formal application would only have been necessary] if the application is made outside …. Proceedings** …

The ***ratio decidendi*** of the High Court's decision in the ***Vitu Limited*** case, I think, is limited to warrants issued in respect of ***bankers' books*** – a clearly identifiable subject-area in the law of evidence; and in that regard ***Osiemo,J*** held: "… a warrant under section 180(1) is not available outside judicial proceedings and can only issue between the commencement of the proceedings and the judgment …" The fundamental principle underlying that holding, as I see it, is that any such bank-related documents as may have been recovered in the investigation process, are thereafter submitted and surrendered to the jurisdiction of the Court, to determine in the Court's orders the mode of their disposal.

Such, however, and as I believe to be the case, may not apply to searches affecting ***things other than bankers' books***; and I think it is under such possible exception that the impugned warrants herein fall – they do not relate to bankers' books. On that account, the reliance by the respondents on the judicial

review decision in ***Cargo Distributors Limited*** may, I think, also be inapposite, as that cause is concerned with bankers' books.

D. *NO SPECIAL FORMALITIES IN SEEKING SEARCH WARRANTS, REASONABLE SUSPICION OF CRIMINAL ACT IS ENOUGH; POLICE TO BE FREE IN CRIME-DETECTION – SUBMISSIONS FOR 3RD RESPONDENT*

Learned counsel ***Mr. Mwaura*** contested the submission by counsel for the applicant, that there ought to have been an ***application*** before the Magistrate who had issued the impugned search warrants. He cited s.118 of the Criminal Procedure Code, which thus provides (and with regard to the Court's power to issue search warrants):

"***Where it is proved on oath to a Court or a Magistrate that anything upon, with or in respect of which an offence has been committed … the Court or a Magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place …"***

The foregoing provision, learned counsel urged – and I think, with justification – has not prescribed any ***proceedings*** to be in progress, and has not stipulated that a ***formal application*** must first be lodged, before the Court or Magistrate comes to have the authority to issue a search warrant.

Mr. Mwaura urged that the impugned search warrants had been properly obtained, on the basis of sworn statements in the affidavits of three deponents. He urged that the said warrants bore the seal of the Chief Magistrate's Court; they were duly signed; they have been executed – and in these circumstances, the application had been overtaken. Counsel noted that the documents annexed to the replying affidavits herein were only discovered thanks to the execution of the warrants, for they had not been available to support the request for warrant in the first place; and from these new documents it had become clear that the applicants had been committing a crime through the "creation of ghost patients" admitted at their medical establishments; through forged laboratory tests; and through falsified records of dispensation of drugs – and so the 3rd respondent was being billed for services which did not exist. It was urged that, had the police gone through ordinary procedures to obtain such documents showing fraud, this would have undermined the process of crime detection. From the persuasive authority of the judicial review cause, ***Cargo Distributors Limited***, H.C. Misc. Application No. 39 of 2006 learned counsel submitted that the police must be allowed to conduct their crime-detection functions without impediment – as long as there is ***reasonable suspicion*** that a crime has been committed.

Learned counsel submitted that the warrants now impugned were in every respect proper, and had been rightly issued by the Magistrate's Court; in which event, s.382 of the Criminal Procedure Code should be upheld. That section thus provides:

"***Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice …"***

Learned counsel urged that it had not been shown that there had been a failure of justice in relation to the applicants – and accordingly the application should be dismissed.

E. FURTHER ANALYSIS, AND ORDERS

The two decisions cited in aid of divergent contentions by counsel, namely the ***Vitu Limited*** case rendered by my learned brother ***Osiemo,J*** and the ***Cargo Distributors Limited*** case given by my learned brother ***Nyamu, J,*** have in my perception been invoked improperly. Both of those decisions were essentially concerned with police investigations involving bankers' books – a special subject of the law of evidence to which Chapter VII (ss.176-181) of the Evidence Act (Cap. 80) is dedicated. The findings in the two cases thus cannot, without considerable qualifications, be applied in aid of either of the parties in

the instant matter. There is, however, in the ***Cargo Distributors*** case the general administration-of-justice policy statement that, subject to any regulatory laws in force, the police service must be recognised as enjoying full liberty in the efficient and faithful investigation and detection of crime, as a matter of public interest.

As the instant matter has nothing to do with bankers' books, it follows that it relates only to the sphere of crime-control in respect of which the police may act in a broad-based manner, by virtue of the Police Act (Cap. 84), which thus stipulates [s.14 (1)]:

"***The [Police] Force shall be employed in Kenya for the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders, and the enforcement of all laws and regulations with which it is charged."***

In the discharge of such functions, the enactment provides (s.19):

"***A police officer may lay any lawful complaint before a Magistrate and may apply for a summons, warrant, search warrant or such other legal process as may lawfully be issued against any person."***

It is clear to me that the police if they suspected the commission of a crime by the applicants, could quite properly have come before a Court or Magistrate for search warrants. In the words of ***Osiemo, J***. in ***Vitu Limited v. The Chief Magistrate Nairobi & 2 Others***, H.C. Misc. Criminal Application No. 475 of 2004:

"***Since Police duties are not judicial functions, then in the performance of [their] duties, it is anticipated that warrants or [summonses] may be required and for this reason Parliament in its wisdom enacted section 118 of the Criminal Procedure Code (Cap. 75) and section 19 of the Police Act (cap. 84).***

"Where during the investigations into an offence it is reasonably suspected that [evidentiary material] is in a particular place, the manner to apply for the warrant is provided for under section 118 of the Criminal Procedure Code …"

No doubt s.118 of the Criminal Procedure Code contemplates dutiful police investigations that lead to prosecution; for it stipulates that such evidentiary material as may be recovered from the place in respect of which the warrant has been issued, is to be ***placed before the Court*** – and it is the Court to determine the mode of disposal thereof.

Learned counsel ***Mr. Nyakundi***, for the applicant, raised before the Court no argument showing that the Police had not, in the instant matter, made an application before the Magistrate which led to the issuance of the search warrants. I would not consider the word "application" always to mean a formal, written application set for service upon interested parties. For the purpose of Police investigation of crime, an application made is likely in the first instance to be informal – and this, in the light of both s.19 of the Police Act and s.118 of the Criminal Procedure Code, only needs to be accompanied by a ***statement on oath***. Any evidentiary material retrieved on that basis is required under the law to be part of a responsible criminal-investigation process which links up with criminal prosecution.

From the content of the affidavits which had been laid before the Magistrate who issued the search warrants, and from the annexures filed with the replying affidavits in this application, I do not think it can be denied that a ***bona fide*** process of criminal investigation was taking place, and that the search warrants had been obtained for that purpose. There was in the circumstances, I would hold – and so hold in agreement with my brother ***Osiemo, J*** in the ***Vitu Limited*** case – "a basis for issuing warrants." It would not, I think, be required in those circumstances that there be, as claimed for the applicants, a "record of proceedings from the Magistrate's Court"; for the purpose of issuing such warrants is sensitive, and is inchoate in relation to the prosecution process; it is not at that stage a contested process which calls for responses from an affected party.

Learned counsel for the applicants attempted to canvass the point that the gravamen in this matter is, at its core, a civil rather than a criminal matter. The purpose in this line of submission, I think, was to show that activation of the criminal process all the way from the stage of police investigations and the attendant issuance of search warrants, was an abuse of the process of the Court. The argument hangs on two elements in the supporting affidavits: (i) the fact that the relationship between the applicants and the 3rd respondent had been regulated by a franchise agreement for service-delivery at two health facilities; and (ii) the fact that even as the criminal investigations have proceeded, representations had been made between those two parties regarding some documents to be signed (that is, a civil relationship).

It is a trite legal principle that prosecution for offences is a process with its own momentum, and cannot be circumvented by private agreements, or by general rules of estoppel. An "offence" is defined in the Penal Code (Cap. 63) (s.4) as "an act, attempt or omission punishable by law"; and the complaint which the 3rd respondent has recorded with the Police is that frauds and forgeries have been used to obtain funds from it. It has to be stated as a legal principle, that parties may not compromise affairs for their mutual benefit in derogation of the prescriptions of the ***criminal law***. This is because the purpose of the criminal law is to protect the ***public interest***, and it embodies overriding moral and related public norms which cannot be trumped by the private interests of individuals.

I would therefore reject the contention of counsel for the applicant, that the whole relationship between the applicants and the 3rd respondent is a privately-regulated matter, embodied in a "self-contained document", and for which the ultimate solution lies only in ***arbitration.***

My findings as set out in this ruling lead me to dismiss the applicants' Notice of Motion of 4th August, 2006. I make no order as to costs.

Orders accordingly.

DATED and DELIVERED at Nairobi this 18th day of September, 2006

J. B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Huka

For the Applicants: Mr. Nyakundi,

instructed by M/s Nyakundi & Co. Advocates

For 1st and 2nd Respondents: Ms. Opati,

instructed by the Hon. The Attorney-General

For 3rd Respondent: Mr. Mwaura,

instructed by M/s Mboya Wangong'u & Co. Advocates