Case Number:	Civil Appeal 145 of 2011
Date Delivered:	31 Jul 2012
Case Class:	Civil
Court:	Court of Appeal at Nairobi
Case Action:	Judgment
Judge:	Kalpana Hasmukhrai Rawal, Erastus Mwaniki Githinji, Martha Karambu Koome
Citation:	Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 others [2012] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	362 of 2010
Case Outcome:	Appeal Allowed
History County:	Nairobi
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GITHINJI, KOOME & RAWAL, JJ.A)

CIVIL APPEAL NO. 145 OF 2011

BETWEEN

KENYA PIPELINE COMPANY LIMITED ……..……..……..……..APPELLANT

AND

HYOSUNG EBARA COMPANY LIMITED ……..…..1ST RESPONDENT

THE PUBLIC PROCUREMENT

ADMINISTRATIVE REVIEW BOARD ……..……2ND RESPONDENT

FLOWSERVE B. V. NETHERLANDS ……..……3RD RESPONDENT

(An appeal from the Ruling and Orders of the High Court of Kenya at Nairobi, Milimani Law Courts (Musinga, J) dated 10th May, 2011

in

Misc. J. R. Application No. 362 of 2010

****

JUDGMENT OF THE COURT

- This is an appeal from the Ruling of the High Court (Musinga, J) delivered on 10th May 2011 granting orders of *certiorari* and *mandamus* to the first Respondent against the Appellant.

The appeal relates to procurement under the Public Procurement and Disposal Act – Act No. 3 of 2005.

- **The background to the appeal is briefly as follows**:-

The Appellant, Kenya Pipeline Company Limited (KPC) as a procuring entity advertised an open tender for supply, installation and commissioning of mainline pump sets Line I Third Pump in the local dailies on 21st and 22nd July 2010. The procurement was intended to enhance the appellant's capacity to pump petroleum products from the oil refinery in Mombasa to Nairobi and further on to Western Kenya. The bids closed and were opened on 23rd September 2010. The first Respondent Hyosung Ebara Company Limited and the third respondent Flowserve B. V. Netherlands were among the nine companies that submitted bids.

- By Regulation 10(2) of the Public Procurement and Disposal Regulations (Reg.) and Reg. 16(1) KPC was required to establish a Tender Committee and an Evaluation Committee respectively.

> The function of the tender committee as prescribed in Reg. 10(2) include reviewing, verifying and ascertaining that all procurement and disposal has been undertaken in accordance with Act, Regulations and the terms set out in the tender documents and also approving the selection of the successful tender.

The function of an evaluation committee is to carry out the technical and financial evaluation of the tender and may comprise a separate technical evaluation committee and a separate financial evaluation committee.

- By S.66 (2) of the Act, the responsive tenders are evaluated using only the procedures and criteria set out in the tender documents and not any other criteria. The tender evaluation undergoes three stages as stipulated in Reg. 47 and 50 namely; preliminary evaluation, technical evaluation and financial evaluation. The evaluation committee has power under Reg. 47 (2) to reject any tender which does not satisfy the threshold requirements, after the preliminary evaluation.

Further by Reg. 48 an evaluation committee is required to reject all tenders which are not responsive as stipulated in S.64 of the Act – that is to say, tenders which do not conform with the mandatory requirements in the tender documents.

After the financial evaluation process is completed the tender with the lowest evaluated price should be the successful tender (S. 66(4) as read with Reg. 50(3) and the procurement process is completed by execution of a contract for a procurement (S.68 and S.31).

5) In this case, the tender evaluation was carried out in the three stages, viz. preliminary technical and financial as stipulated by the law.

In respect of the preliminary evaluation one of the parameters was *"Manufacturers Authorization form duly filed"*.

All the nine bidders qualified for detailed technical evaluation. Although the first Respondent was among the four entities which qualified for financial evaluation, the evaluation committee noted thus:-

"*3. The Tender Committee is invited to note that Ebara Corporation has written a letter to KPC supposedly terminating their Joint Venture with M/s Hyosung Ebara of Korea for supply of the mainline model SPD V11M as per the attached letter dated 24th September, 2010 and received on 8th October, 2010. ……"*

6) The evaluation committee invited the tender committee to consider the new development. By a letter dated 26th October, 2010, KPC informed the 1st Respondent that its tender did not *"attain the minimum qualifying mark and will not proceed to the financial evaluation stage."* and asked the Respondent to collect its unopened financial Bid and Bid Bond.

7) By a letter dated the same day the 1st Respondent intimated that, the reason given was too brief and vague and requested for complete set of technical evaluation marks attained by it. By a letter dated 27th October, 2010 KPC replied thus:-

"*Please note that one of the mandatory requirements in the tender was a manufacturer's authorization letter. On 24th September 2010, we received a letter from Ebara Corporation advising KPC of termination of the Joint Venture with Hyosung Ebara Co. Ltd for the supply of mainline pump model SPD Viim (see*

attachment). Under the circumstances, this implies withdrawal of manufacturer's authorization to the bid. Please be advised accordingly."

8) The 1st respondent's advocates M/s Maluki Co. Advocates replied partly thus:-

"*We advise that the purported explanation that our client did not qualify with the mandatory requirements of a manufacturer's authorization letter is not tenable, acceptable or genuine for there is a mutual termination agreement between our client and Ebara Corporation dated 30th July 2010 which agreement clearly stipulates that that agreement has a grace period of 4 months after which the agreement will become effective. This is at 30th December 2010 and therefore cannot be cited as an excuse or impediment to a tender award or positive evaluation or consideration. A copy of the agreement is attached for your records ……"*

9) The 1st Respondent being aggrieved by the decision of the KPC filed a Request for Review – Application No. 60 of 2010 before the Public Procurement Administrative Review Board (Review Board) under section 93 (1) of the Act. The application was opposed by KPC and the 3rd Respondent. The Review Board heard the application on the merits and ultimately dismissed it on 29th November 2010.

10) Undeterred, the 1st Respondent filed a judicial review application – Misc. Application 362 of 2010 in the High Court on or about 14th December 2010 seeking both an order of *certiorari* to quash decision of the Review Board delivered on 29th November 2010 and an order of *mandamus* compelling KPC to tender afresh and process the tenders strictly in accordance with S.2 and 66 of the Act and Reg. 52

11) It is apparent from the Ruling of the High Court dated 18th February 2011 in the same application that before the Judicial Review application was heard the 3rd Respondent was declared the successful bidder and a contract for procurement was executed between the 3rd Respondent and KPC on 16th December, 2010. However on application by the 1st Respondent the High Court by a ruling dated 18th February, 2011 declared the contract invalid and stayed its implementation until the Judicial Review application was heard and determined. The latter application was heard on the merits and allowed on 10th May 2011 triggering the present appeal.

12) The judicial review application was based on the grounds stated in para. (K) of both the Notice of motion and of the statutory statement. They include acting in excess of jurisdiction by determination the issue of the competence of the Manufacturer's Authorization Letter which issue allegedly fell within the mandate of the Technical Evaluation Committee; exceeding its jurisdiction limited to determining whether or not the 1st Respondent's bid was subjected to a fair and transparent evaluation process; taking into account extraneous and irrelevant considerations relating to confidential communication from third parties regarding withdrawal of manufacturer's authorization; failing to take into consideration a relevant factor that the 1st Respondent was the manufacturer of the pump in question and thus did not require any authorization to offer its products in its bid; failing to ensure accountability and transparency in the tender process; breaching the law on confidentiality and failing to apply Reg.52.

13) It is apparent from the impugned Ruling of the High Court that the application for Judicial Review was allowed on the following grounds:-

- That KPC engaged in communications with Ebara Corporation a third party, during the tender processing exercise in a manner which was prejudicial to the 1st Respondent and in violation of S. 44(1) of the Act.

- By such communication, KPC failed to strictly adhere to the evaluation criteria as required by

section 66 of the Act.

- The 1st Respondent was not given an opportunity by the tender committee to comment on the letter from Ebara Corporation before making a decision to disqualify the 1st Respondent's bid in breach of rules of natural justice.

- The Review Board failed to consider whether the tender committee had complied with mandatory requirements of Reg. 11(2) and whether the tender committee after rejecting the recommendations of the evaluation committee made a report to the head of the KPC or its accounting officer.

- While non disclosure by the 1st Respondent of the mutual termination agreement was important and should have been brought to the attention of KPC the Review Board failed to appreciate that S.31 (5) of the Act empowering a procuring authority to disqualify a person for submitting false, inaccurate or, incomplete information only applies where both the technical and financial evaluations have been completed and the procuring entity is at the final stage of awarding the tender to the successful bidder.

- The issue whether or not the 1st Respondent had met the mandatory requirements fell within the mandate of the technical evaluation committee and the Review Board was not competent to determine it.

The High Court concluded that the Review Board took into consideration some irrelevant factors and disregarded relevant ones and further that 1st Respondent was not subjected to a fair and transparent evaluation process.

14) The appeal is essentially against those findings. In addition, the Appellant asserts that the learned Judge erred in law and in fact in failing to consider the enormity of the multi- billion project being undertaken by the Appellant meant to serve the public interest and balance it against the interest of an individual company which had admitted that it had not disclosed a material fact in its tender document.

15) It is necessary and expedient to first consider, albeit very briefly, the proceedings which precipitated the judicial review application.

The request for Review by the 1st Respondent was based on 21 grounds which accused the KPC of, among other things, basing its decision to disqualify the 1st Respondent on the basis of a letter from a third party, unfairly giving two contradictory and unjustified reasons for disqualification thereby indicating that the evaluation process lacked transparency and accountability; erroneously treating the letter from Ebara Corporation as a withdrawal of manufacturer's authorization when the authorization was valid and had not been withdrawn, and, lastly, acting dishonestly and fraudulently. The main reliefs sought by the 1st Respondent was annulment of the decision to award the tender; a prayer that the tender be awarded to it, and, thirdly, and in the alternative, the procuring entity be ordered to tender afresh and process the tenders in a fair and transparent manner.

16) The Review Board consolidated the 21 grounds of appeal stating that all the grounds related to the manner in which the evaluation process was carried out and whether the subsequent disqualification of the Applicant's (1st Respondent's) bid was done fairly and in accordance with the criteria set out in the tender documents.

The Review Board considered the submissions and the documents filed and made the following finding,

amongst others:-

- The 1st Respondent's disqualification was on the basis of the termination of the joint venture agreement between it and Ebara Corporation.

- When the 1st Respondent submitted its bid whose closing date was 23rd September 2010, it was already aware that it had entered into a mutual termination agreement on 30th July 2010.

- The 1st Respondent's bid included a part of the Joint Venture Agreement dated 8th November, 1994 and addendum dated 29th September 2002 and the licence issued pursuant to the agreement.

The failure to include the mutual termination agreement in its bid document was meant to mislead the procuring entity and the procuring entity had power under S. 31(5) of the Act to disqualify the 1st Respondent.

- That the 1st Respondent's submission at the hearing of the application that the joint venture agreement was not relevant as it was not quoting for a pump issued by Ebara Corporation was an afterthought for reasons, *inter alia,* that the Applicant had included the Joint Venture Agreement and the licence issued pursuant to it as part of the technical proposal which was to be used during evaluation process; and the Joint Venture Agreement according to the mutual termination agreement was to expire before the tender validity period.

- The fact that the procuring entity relied on the letter of 24th September 2010 does not mean the tender process was flawed as the 1st Respondent was notified about the letter and it confirmed through its advocates that the Joint Venture had been terminated by mutual agreement.

- That the 1st Respondent did not supply the Manufacturer's Authorization Letter which was a mandatory requirement under Clause 4 Section A of the tender documents as the purported letter of authorization was issued to M/s United Industrial Agencies Ltd as a duly appointed agent.

- The argument of the 1st Respondent that the manufacturer's authorization Form was not necessary as it was not providing a pump under Ebara Corporation licence but its own pump was not supported by the 1st respondents' tender documents and the 1st Respondent, if a manufacturer, did not include all relevant supporting documents to its tender bid to be considered in the preliminary and technical evaluation.

17) We now turn to consider the appeal. It is not necessary to reproduce all submissions made by the respective counsel in this appeal. Suffice to say that the submissions made by the respective counsel in this appeal on points of facts and on points of law relating to procurement are substantially the same submissions which were made before the Review Board and in the High Court and are a reflection of the grounds of Request for Review and the grounds for Judicial Review. It is necessary to indicate at the outset that the 2nd and 3rd Respondents support the present appeal.

18) Further, Mr. Ngatia learned counsel for the Appellant and Mr. Agwara learned counsel for the 1st Respondent have extensively referred to the case law particularly the law relating to judicial review. Again it is not necessary to refer to all the cases relied upon. It is sufficient to refer to a few pertinent principles.

19) In **Chief Constable v Evans** [1982] 3 ALL. ER 141, Lord Brightman said at page 154 para d:-

"*Judicial review is concerned not with the decision, but with the decision making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power".*

Further on at p. 155 para. C his Lordship while stressing that a court exercising judicial review jurisdiction does not sit on judgment on the correctness of the decision itself added:-

"*Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made".*

20) In **Council of Civil Service Unions Vs. Minister for Civil Service** [1984] 3 ALL ER 935 at p.950 para. j, Lord Diplock identified three of the grounds on which administrative action is subject to control by judicial review as illegality, irrationality, and procedural impropriety and said:-

"*By "illegality" as a ground for Judicial Review, I mean that the decision – maker must understand correctly the law that regulated his decision – making power and must give effect to it, ……*

*By "irrationality" I mean what can now be succinctly referred to as Wednesbury unreasonableness (see **Associated Provincial Picture House Ltd V Wednesbury Corp.** [1947] 2 ALL ER 680; [1948] 1K.B 223)."*

It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

"……..*I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by the administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failing does not involve any denial of natural justice.*

21) Moreover, where the proceedings are regular upon their face and the inferior tribunal has jurisdiction in the original narrow sense (that is, to say, it has power to adjudicate upon the dispute) and does not commit any of the errors which go to jurisdiction in the wider sense, the quashing order (*certiorari*) will not be ordinarily granted on the ground that its decision is considered to be wrong either because it misconceived a point of law or misconstrued a statute (except a misconstruction of a statute relating to its own jurisdiction) or that its decision is wrong in matters of fact or that it misdirects itself in some matter.

That principle was clearly enunciated by **Lord Reid** in **Anisminic Ltd Vs Foreign Compensation Commission [1969] 1 ALL ER 208 at p. 213, para H – 214 para A** where his Lordship said:-

"*It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is annuity. 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 in question. 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 inquiry 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 has no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued provisions giving it powers to act so that it failed to deal with the question remitted to it and decided some question which was 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 is 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 to decide rightly."

22) Lastly, it is important to appreciate that judicial review orders of *certiorari*, *mandamus* and *prohibition* are public law remedies and the court has the ultimate discretion to either grant or not to grant the remedies to the successful applicant. This principle is succinctly stated at **para 122 Halsbury's Laws** of **England 4th Edn Vol 1(1)** at **p. 270** thus:-

"*The court has an ultimate discretion whether to set aside decisions and may decline to do so in the public interest, notwithstanding that it holds and declares the decision to have been made unlawfully".*

In the authority of **R. V. Monopolies Commission Ex. P. Argyll PLC [1986] 1 WLR 763** referred to in that passage Sir John Donaldson M.R said at page 77 para D.

"*We are sitting as a public law court concerned to review an administrative decision; albeit one which has to be reached by the application of Judicial or quasi – judicial principles. We have to approach our duties with a proper awareness of the needs of public administration"*

and stated, that good public administration is concerned, among other things, with speed, particularly in financial matters, and requires a proper consideration of public interest.

There cannot be any doubt that there is overwhelming public interest in the public procurement and disposal by public entities under the Act. Indeed the Act states in the preamble that the procedures established under the Act are for efficient public procurement and that those procedures are intended to achieve the stipulated objections which include, to maximise economy and efficiency, to increase public confidence in those procedures and to facilitate the promotion of local industry and economic development. Although the Act predates the Kenya Constitution 2010, the objectives of the procedures established under the Act fulfill one of the national values and principle of governance under Article 10(2) (c) of the Constitution.

A consideration of the appropriate remedy to a successful applicant in a procurement dispute should of necessity take into account the wider public interest.

- In support of the appeal Mr. Ngatia submitted in paragraph 8.2 thus:

"*Unfortunately the High Court considered that it should review the dispute on merit. It is a merit review that was undertaken. Nowhere does the Superior Court fault the process that the Tribunal undertook to reach its decision. On the contrary the Superior Court went back to the tender process, the evaluation of the tenders and the decision on the tenders. By conducting a merit review of the dispute the Superior Court grossly erred".*

Mr. Ngatia further submitted in para. 8 that not only are the findings of the Superior Court erroneous but also, the adjudication was beyond the jurisdiction delineated by the scope of the judicial review.

Mr. Ombwayo the learned State Counsel for the 2nd Respondent made similar submissions. He contended that the decision of the procuring authority was not challenged, that the orders granted by the High Court could not be granted without quashing the decision of the procuring entity and that the High Court breached principles of judicial review.

In reply to submissions, Mr. Agwara learned counsel for the 1st Respondent submitted in para 51 of the written submissions that the Review Board as a statutory tribunal must comply with the provisions of the Act in arriving at its decision and where it fails to comply the High Court can review its decision.

- We have already set out the grounds on which the Request for Review was based and the decision of the Review Board on the numerous issues raised. It is plain that the Review Board considered all the complaints raised by the 1st Respondent both factual and legal and came to the conclusion that the tender committee properly disqualified the 1st Respondent's tender. The Review Board like the tender committee made a finding that the "Manufacturers Authorization letter" was a mandatory requirement under the tender documents; that the 1st Respondent's bid included a part of Joint Venture Agreement and the licence issued pursuant to the agreement and that the Joint Venture Agreement had been terminated as contained in the letter from Ebara Corporation which was in a joint venture with the 1st Respondent which fact was confirmed by a subsequent letter from the 1st respondent's advocates. The 1st Respondent's contention before the Review Board that it was not subjected to a fair tendering process as the tender committee relied on letter from a third party was rejected. Further, the Review Board was satisfied that the rules of natural justice were not breached as the 1st respondent was notified of the letter from Ebara Corporation and the 1st Respondent's advocates confirmed that the Joint Venture Agreement had been terminated as stated in the letter but contended that the mutual termination agreement had a grace period which had not expired. Lastly the Review Board made a finding that the 1st Respondent did not infact supply as manufacturer's authorization letter as the one relied on by the 1st Respondent was issued to a different entity and rejected the alternative contention that the manufacturer's authorization letter was not necessary.
- We have similarly set out the grounds of the Judicial Review application and the findings of the High Court. We have, in addition, considered the submissions made by the respective counsel in High Court. Upon analysis of the grounds of the judicial review application, the submissions of the 1st Respondent's counsel in support of the Judicial Review application, the replying submissions and the judgment of High Court, we have unhesitatingly come to the conclusion that the application for Judicial Review was for all intents and purposes an appeal from the decision of the Review Board. It was a Judicial Review application only in name but in essence it was an appeal against the findings of fact and law by the Review Board.
- That is why the High Court as Mr. Ngatia, correctly submitted, went back to the tender process, reconsidered the tender process and arrived at different findings both of fact and law from those of the Review Board. The Tender Committee and the Evaluation Committee are specialized committee which are better equipped than the High Court to determine whether or not the 1st Respondent's tender was responsive in all aspects in such highly technical and multi-million tender. Indeed, the regulations give both the evaluation committee and the tender committee exclusive power to reject a tender at various stages of the tender process in the circumstances specified by the Act and regulations.
- The High Court appreciated that the non-disclosure of the mutual termination agreement was important and should have been brought to the attention of the procuring entity but nevertheless held that the Review Board failed to appreciate that S.31(5) of the Act is qualified (as shown in para 13 (v) above).

Mr. Ngatia contends that the operation of S. 31(5) is not limited to the situation where both technical and

financial evaluations have been completed. S. 31 (5) of the Act referred to provides:-

"*The procuring entity may disqualify a person for submitting false inaccurate or incomplete information about his qualification."*

That section does not contain the qualification mentioned by the High Court. Indeed the words "procuring entity" in that sub-section includes the evaluation committee and tender committee established by a procuring entity which committees have power to reject non responsive tenders at various stages before the procurement process is completed.

It is apparent from function of the tender committee under Reg. 10 (2) and from Reg. 11(1) that it is the tender committee which superintends the procurement process and has power even to reject a submission by an evaluation committee.

The decision of the Review Board shows that the tender committee sat to ratify the minutes of the evaluation and that it is the tender committee which ultimately disqualified the 1st Respondents tender.

On analysis we hold that the High Court erred in law in holding that the procuring entity has power to disqualify a person for submitting false, inaccurate or, incomplete information only after both the technical and financial evaluation has been completed. On the contrary, the procuring entity through the evaluation and tender committee has power to invoke S.31 (5) of the Act at any stage of the procurement process.

- The Review Board is a specialized statutory tribunal established to deal with all complaints of breach of duty by the procuring entity. By Reg. 89, it has power to engage an expert to assist in the proceedings in which it feels that it lacks the necessary experience. S. 98 of the Act confers very wide powers on the Review Board. It is clear from the nature of powers given to the Review Board including annulling, anything done by the procurement entity and substituting its decision for that of the procuring entity that the administrative review envisaged by the Act is indeed an appeal. From its nature the Review Board is obviously better equipped than the High Court to handle disputes relating to breach of duty by procurement entity. It follows that its decision in matters within its jurisdiction should not be lightly interfered with.

Having regard to the wide powers of the Review Board we are satisfied that the High Court erred in holding that the Review Board was not competent to decide whether or not the 1st Respondent's tender had met the mandatory conditions. The issue whether or not the 1st Respondent's tender was rightly rejected as unresponsive was directly before the Review Board and the Board had jurisdiction to deal with it.

- In conclusion, it is manifest that the application for Judicial Review was not well founded. The 1st Respondent did not establish that the Review Board had acted without jurisdiction or in excess of jurisdiction or in breach of rules of natural justice or that the decision was irrational. The Judicial Review was not confined to the decision making process but rather with the correctness of the decision on matters of both law and fact. So long as the proceedings of the Review Board were regular and it had jurisdiction to adjudicate upon the matters raised in the Request for Review, it was as much entitled to decide those matters wrongly as it was to decide them rightly.

The High Court erred in essence in treating the judicial review application as an appeal and in granting judicial review orders on the grounds which were outside the scope of Judicial Review jurisdiction.

That being our view it is not necessary to decide whether or not the High Court exercised its discretion correctly in granting an order of mandamus.

In the result, we allow the appeal, set aside the Ruling of the High Court delivered on 10th May 2011 together with the Orders of Certiorari and Mandamus and substitute therefor an order dismissing the Judicial Review application dated 14th December 2010.

The 1st Respondent to pay the costs of this appeal and the costs of the Judicial Review application to the Appellant and to the 2nd and 3rd Respondents.

Dated and delivered at Nairobi this 31st day of July, 2012.

E. M. GITHINJI

……**...**

JUDGE OF APPEAL

M. K. KOOME

……**...**

JUDGE OF APPEAL

K.H. RAWAL

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR