



**JES v PAS (Originating Summons 11 of 2020)
[2023] KEHC 19179 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 19179 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ORIGINATING SUMMONS 11 OF 2020**

**G MUTAI, J
MAY 31, 2023**

BETWEEN

JES APPLICANT

AND

PAS RESPONDENT

JUDGMENT

1. The Applicant and the Respondent were previously husband and wife. Their marriage was dissolved on 29th July 2021 vide a decree nisi of divorce issued on 23rd August 2021. The said decree was made absolute on 24th August 2021.
2. The Applicant filed the instant cause on 18th June 2020. I will set out the 9 prayers below for clarity. They are that: -
 1. The honourable court be pleased to issue a declaration that the property here below mentioned and registered in the name of the Applicant and the Respondent is owned solely by the Applicant by virtue of the Applicant having acquired and developed the property solely with his own funds without the Respondent having contributed for the said property: -
 - a. Title No. Kilifi/Mtwapa/xxxx;
 2. The honourable court be pleased to order that the above stated property was acquired solely by the Applicant without any contribution from the Respondent;
 3. An order do issue declaring that the joint ownership of Title No. Kilifi/Mtwapa/xxxx be severed and that a title be issued to the Applicant retaining sole ownership of the said property;
 4. If the Court does find that the Respondent contributed to the acquisition of Title No. Kilifi/Mtwapa/xxxx (which is denied) this Court be pleased to order the division of the said property



and the apportionment of the same between the Applicant and the Respondent in respect of their specific contribution to the said property;

5. In the event that the Respondent has a share in Title No. Kilifi/Mtwapa/xxxx the Applicant be allowed to buy the Respondent's share, if any, of the said property;
 6. The honourable court be pleased to order that the Respondent executes all documents, where necessary, to transfer to the Applicant her portion, and in the absence, or in default the same be executed by the Deputy Registrar, Lands Registrar or Registrar of Titles, or in the alternative the aforesaid matrimonial properties be valued by a qualified and reputable valuer, and the Applicant be granted the first option to buy out the Respondent;
 7. The costs of transferring the aforesaid properties and paying the surveyor and any other attendant costs be borne by the Applicant and the Respondent equally;
 8. The honourable court be pleased to grant any other or further relief as may be just in the circumstances; and
 9. The Respondent be condemned to pay costs of this summons.
3. The Applicant grounded his Originating Summons on the following averments: -
1. He and the Respondent got married on 4th March 2016;
 2. The suit property was acquired on 11th April 2019 during coverture. The Applicant directly and solely financed the acquisition and development of the suit property;
 3. The Applicant had filed for divorce;
 4. Having solely financed the purchase and development of the property he was seeking to have the title severed to reflect that the Applicant was the sole owner of Title No. Kilifi/Mtwapa/xxxx.
4. The originating summons was supported by an affidavit in which he set out the facts of the case, as he saw them. In the said affidavit he deposed that he is a United States citizen, then employed by the American Military since 23rd October 1976. He averred that he used his own funds to purchase Title No. Kilifi/Mtwapa/xxxx for Kes.1,500,000.00 from a Mr. Patrick Kennedy Mutuku Nzau a Kenyan citizen who is resident in Germany with properties in Mtwapa. In support of his assertion, he produced a copy of the title deed and evidence of payment. The Applicant stated that the Respondent had never held any gainful employment. He claimed that the small business he had opened for her at Mavueni in Mombasa, with his own funds, collapsed even after he injected over US Dollars 6,000 to enable her to operate it. It was reiterated that the Respondent never contributed towards the purchase of the suit property. He provided evidence of the relevant remittances. Also provided was a copy of the transfer document in which the transferees were indicated to be PAS and JES.
5. The Originating Summons was opposed. The Respondent filed a Replying Affidavit on 4th May 2022 in which she deposed that the Applicant was a foreign citizen who worked outside Kenya at all material times. She stated in the said affidavit that she searched for a property, where they could have a matrimonial home and identified Title No. Kilifi/Mtwapa/xxxx. Upon agreement with the Applicant, she deposed, she instructed an advocate to act for them in the transfer. Throughout all this time the Applicant was not within Kenya. She claimed that she was "solely and exclusively involved in the search, identification, negotiation and completion of the entire process of acquisition of the property since the Applicant was based out of the Country". The Respondent averred that Title No Kilifi/Mtwapa/xxxx was not the only property they bought. She accused the Applicant of having failed to disclose that



Title No. Kilifi/Mtwapa/xxxx, which was acquired at the same time, and whose transaction was still pending, was also a matrimonial property. In her view latter property ought to have formed part of the matrimonial properties “available for distribution between myself and the Applicant”.

6. The Respondent stated that when the Applicant retired he came to Kenya where he fell ill shortly thereafter. She claimed that during his illness the Applicant was her charge; she supported him fully using the proceeds of a business she run prior and during the course of the marriage. As a result of her focus on caregiving, the Respondent stated, they were unable to conclude the transfer of Title No Kilifi/Mtwapa/xxxx. She denied that her business [Particulars withheld] MPESA & SHOP was funded solely by the Applicant. It was funded she said, by both of them. The said business closed down after a substantial part of the capital and all of the profits were used in the course of the acquisition of the suit property. The Respondent claimed that she took loans from microfinance institutions not only to facilitate the transactions but also to run the family business.
7. The Respondent sought 50% share of the matrimonial properties. In her pleading, she expressed a willingness to accept to be bought out by the Applicant as she was not comfortable living in cross proximity with him. She accused him of having stalked him and also of harassing members of her family. She annexed copies of the sale agreement of the two properties.
8. In a Supplementary Affidavit filed on 13th June, 2022 the Applicant reiterated his contention that he had solely paid for the suit property. He itemized the payments as follows: -
 1. Kes.1,085,000.00 was made by way of internal bank transfer from his account to that of the vendor Patrick Kennedy Mutuku Nzau in March 2019;
 2. Kes.200,000.00 on 20th April, 2019;
 3. Euros 1854/51; and
 4. Balance through World Remit and one payment via a German account.
9. The Applicant accused the Respondent of holding on to his personal effects, which he stated were of very great sentimental value to him without a just cause and of refusing to release them.
These he itemized as being: -
 1. Work tools whose value he estimated at US Dollars 6,000.00;
 2. Fishing gear worth US Dollars 5,000.00;
 3. Clothes, jewelry watches, bracelets, furniture, 60-inch TV, stove worth Kes.40,000.00 washing machine worth Kes.40,000.00, bed and mattress worth Kes.100,000.00, pictures, stereo system worth Kes.60,000.00; and
 4. Military equipment and suitcases.
He estimated the above items as being worth Kes.1,500,000.00. He averred that he had tried to prevail on the Respondent to return all these items to him but that he had failed to do so.
10. This matter was heard on 27th October 2020. On the said date the Applicant testified and was cross-examined. Thereafter the hearing was adjourned to 26th January 2023 when the Respondent testified and was cross-examined. The court directed that parties exchange Written Submissions, with the Applicant being given 14 days to do so. The Respondent was given 14 days leave to file her submissions upon being served. The matter was mentioned before me on 13th February and also on 27th March



2023. On the latter of these two mentions, I reserved my judgment for 28th April, 2023. The Court most sincerely apologizes to the parties for the delay in delivering the judgment.

Evidence of the Applicant

11. The Applicant's case has already been set out in the introduction. Mr. JES adopted his witness statement and produced the documents in his List and Bundle of Documents. He testified that he married the Respondent on 4th March 2016 in Mombasa. They lived together whenever he was in Kenya. He testified that he was in Kenya on 4 occasions as evidenced by his passport entry stamps. It was the Applicant's case that their marriage irretrievably broke down when he was forced out of the matrimonial home by the Respondent. The result of this was that he filed a petition for divorce at the Chief Magistrate's Court, which was granted. The grounds upon which the divorce was sought was cruelty, denial of conjugal rights, lack of communication, mistrust and long periods of separation.
12. The Applicant testified that they had a joint business in 2017. He didn't know how the said business performed as he hadn't been involved in it. The business had been closed at the time he testified. He further testified that he bought Title No. Kilifi/Mtwapa/xxxx with his own money. The Respondent did not make any contribution towards its purchase. He testified that the title to the said property was with the Respondent. Regarding Title No. Kilifi/Mtwapa/xxxx he testified that the same was in the name of a limited liability company, MinolaTimes Ltd, and was not therefore a matrimonial property.
13. On cross-examination he stated that although Title No. Kilifi/Mtwapa/xxxx was in their names he wanted it to be in his own name only as the Respondent did not make any contribution. He denied that the Respondent had an interest in Title No. Kilifi/Mtwapa/xxxx. He admitted that at the time Title No. Kilifi/Mtwapa/xxxx was registered he was in Germany. He insisted that he had lawyers who oversaw the transfer and that the Respondent did nothing in the course of the entire process and that she is therefore not entitled to any share of the said property.
14. The marriages between the Applicant and the Respondent had no issues

Evidence of the Respondent

15. It was the evidence of the Respondent that she had her own business that generated income that sustained her. She testified that she owned a salon. It was her testimony that upon getting married the Applicant and the Respondent started a joint business called Jimpritas Mpesa and Shop and that part of the capital of the said business was contributed by the Applicant which she used to buy a freezer for soda and a fridge both of which the Respondent sold after the marriage failed.
16. She testified that she is the one who looked for the two properties as he was working in Germany. At that time, they lived in Maweni. She was the one who took care of the house when he was away and nursed him to good healthy when he fell ill.
17. She admitted that they had no issues together as the Applicant was unable to sire children with her. Although she claimed to have had a salon she had no proof of its existence or of its income. She further admitted that the Applicant facilitated her to open an Mpesa Shop which she sold after they separated. The Applicant had been sending her money from Germany which was for her upkeep. The Applicant would visit Kenya once or thrice a year. Respondent testified that they separated in 2018. She denied having thrown him out of the house and averred that it was the Applicant who declined to pick up his items in the result that his personal effects were destroyed.
18. The Respondent was not aware when the transfer of Title No. Kilifi/Mtwapa/xxxx was done or when exactly the same was bought. She couldn't remember how much she contributed. He accused



the Applicant of being violent and cruel. She testified that she was still residing in the house the matrimonial home.

Issues for Determination

19. Both parties agree, in the main, in their submissions that the following are issues that this Court is called upon to determine: -
 1. Whether the suit properties Title No Kilifi/Mtwapa/xxxx and Kilif/Mtwapa/xxxx are matrimonial properties;
 2. Whether the suit properties were acquired through the sole contribution of the Applicant or joint efforts of the Applicant and the Respondent;
 3. Whether the Title No Kilifi/Mtwapa/xxxx registered in the name of Minola Times Ltd is a matrimonial property and thus available for distribution; and
 4. Who should pay the costs of the or the proceedings?

Submissions of the Applicant

20. The Applicant submitted that only Title No. Kilifi/Mtwapa/xxxx could be considered a matrimonial property. In his view Title No. Kilifi/Mtwapa/xxxx was purchased after cohabitation had ended and in any event is in the name of a company in which the Respondent has no shares.
21. Mr. Simon's counsel submitted that there is no evidence of contribution by the Respondent. The Court was referred to section 2 of the *Matrimonial Property Act*, No. 49 of 2013 which defines the contribution to include domestic work and management of the matrimonial home, childcare, companionship, management of family business or property and farm work. It was submitted that there was ample evidence of payment on the part of the Applicant by way of bank transfers. This Court was referred to the case of CACA NO 559 of 2019; ENK versus MNNN, and HCCC No. E001 of 2021; EKTM versus ECC for the proposition that each spouse in a marriage is entitled to a share of the matrimonial property(ies) in proportion to their contribution.
22. The Applicant contended that Title No. Kilifi/Mtwapa/xxxx is not a matrimonial property as it is registered in the name of a company called Minola Times Ltd. It was also his contention that in respect of this property, the Respondent paid nothing towards its purchase as the whole purchase price of Kes.1,500,000.00 was paid by the Applicant. This Court was referred to the case of Nyeri CACA No. 33 of 2014; PWK versus JKG, Nairobi CACA No. 61 of 2019; AKK versus PKW and Supreme Court Petition No. 11 of 2020; Joseph Ombogi Ogentoto versus Martha Ogentoto for the proposition that it is not.
23. The Applicant made no submissions regarding costs. It was thus left to the Court to make its own determination on the said issue.

Submissions of the Respondent

24. The Respondent submitted that the two properties are matrimonial properties. This Court was referred to the case of TMW versus FMC [2018]eKLR for the proposition that property acquired during coverture is matrimonial property unless it was otherwise agreed. Regarding Title No. Kilifi/Mtwapa/xxxx this Court was referred to the case of FS versus EZ [2016] eKLR in support of the contention that the name in which a property is registered is not determinative in distribution of matrimonial property. The Respondent also relied on MO versus AOW [2017]eKLR.



25. The Respondent submitted that although the Respondent didn't tender documentary evidence of payment the Applicant admitted that she had made non-monetary contribution through running the family business. I was referred to the case of EKTM versus ECC [2021] eKLR and FS versus EZ [2016] eKLR.
26. Relying on the case of FS versus EZ [2016] eKLR the Respondent submitted that the matrimonial property be divided equally between the Applicant and the Respondent. She submitted that she was not averse to being bought out at market rates by the Applicant.
27. On the issue of costs, the Respondents prayed that costs be granted to her

The Applicable Law

28. It is important that I set out the relevant provisions of *the Constitution* of Kenya, 2010 and the law as these shall determine the decision that I shall make.
29. Article 45(3) of *the Constitution* of Kenya 2010 provides that
“parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage”.
30. Section 6 and 7 of the *Matrimonial Property Act*, Act No 49 of 2013 provide that:-
“6.
 - (1) For the purposes of this Act, matrimonial property means—
 - (a) the matrimonial home or homes;
 - (b) household goods and effects in the matrimonial home or homes; or
 - (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
 - (2) Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.
 - (3) Despite subsection (1), the parties to an intended marriage may enter into an agreement before their marriage to determine their property rights.
 - (4) A party to an agreement made under subsection (3) may apply to the Court to set aside the agreement and the Court may set aside the agreement if it determines that the agreement was influenced by fraud, coercion or is manifestly unjust.
7. Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.”



31. Section 14 of the said Act provides that: -

“Where matrimonial property is acquired during marriage— (a) in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and (b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.”

Analysis of the Facts and the Law

32. I will look at each of the issues that the parties have identified in turns as I make my determination.

Are Title Nos. Kilifi/Mtwapa/xxxx and Kilifi/Mtwapa/xxxx Matrimonial Properties?

33. The Applicant and the Respondent got married in Mombasa on 4th March 2016. The two properties were acquired in 2019. The first property is jointly registered. The latter is in the name of a company Minola Times Ltd. The Respondent has no shares in the said company.

34. The Applicant and the Respondent’s marriage was dissolved on 29th July 2021. I have seen a copy of the decree nisi and the certificate making decree nisi absolute. It is thus clear that Title No. Kilifi/Mtwapa/xxxx was acquired during coverture. Having been acquired during the subsistence of the marriage is the said property a matrimonial property at law?

35. In TMW versus FMC [2018] eKLR the Court said as follows:-

“Firstly, I shall determine whether the suit property falls in the category of matrimonial property. Turning the provisions of the *Matrimonial Property Act*, Section 6 of the *Matrimonial Property Act*, 2013 defines a matrimonial property to include the matrimonial home or homes, any household goods in the home or homes or any other property jointly owned and acquired during the subsistence of the marriage. Basically for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property. In the instant case, the marriage between parties herein commenced 1993 and was officiated through Kikuyu Customary Law in 2001. The property in question was acquired in 2010 and the same was acquired during the subsistence of the marriage between the parties herein. There is also evidence that the suit property was acquired for purposes of building a family home. As a result, there is no doubt whatsoever that the suit property including the Juja farm forms part of matrimonial property as far as the parties herein are concerned.”

36. The property, having been intended as the matrimonial home of the Applicant and the Respondent it is my view that it is indeed a matrimonial property.

37. Regarding Title No. Kilifi/Mtwapa/xxxx the Court notes that it was acquired after the parties separated. The said property is registered in the name of a limited liability company. The Respondent is not a shareholder in the said company. The evidence which was produced by the Applicant shows that it was purchased solely by the Applicant with no contribution by the Respondent at a time when they were no longer living together. Although Title No. Kilifi/Mtwapa/xxxx abuts Title No. Kilifi/Mtwapa/xxxx the matrimonial home is not erected on the former. That being the case I find and hold that Title No. Kilifi/Mtwapa/xxxx is not a matrimonial property.

What contribution did the Applicant and the Respondent make towards the acquisition of the said property?



38. The Applicant was able to show that he made the following payments during the hearing: -
1. Kes.1,085,000.00 was made by way of internal bank transfer from his account to that of the vendor Patrick Kennedy Mutuku Nzau in March 2019;
 2. Kes.200,000.00 on 20th April, 2019;
 3. Euros 1854/51; and
 4. Balance through World Remit and one payment via a German account.

These payments are all exhibited in the Applicant's List of Documents. The Applicant was able to show the payments he made to the lawyer who acted for them in the course of the transaction.

39. The Respondent submitted that she made monetary and non-monetary contribution towards the acquisition of the subject properties. She however failed to back up her testimony with documentary evidence of the monetary contribution she alleges to have made. I note that it is not always easy for couples to produce receipts as no spouse, in a loving relationship contemplates a time when documentary evidence may be necessary, and thus keeps them for that rainy day. That said the kind of documents she could have produced were those that could be availed by third parties had the Respondent been sufficiently diligent. If it is true that she got a loan from a microfinance institution, as she alleges she did, couldn't she have produced, at the very least, evidence that a loan was granted to her at the material time? If she used the proceeds of her business to contribute towards the purchase couldn't she have produced the business accounts?
40. The Respondent did not produce any evidence of any communication between her and the Vendor. It does appear to the Court that the Vendor only dealt with the Applicant. The inescapable conclusion that this Court draws is that all the monetary contribution towards the purchase of Title No. Kilifi/Mtwapa/xxxx was made by the Applicant.
41. The Applicant demonstrated with documentary evidence that apart from paying for the cost of purchase of the property he paid for the legal fees and other outgoings. The Respondent had no evidence of having made any payment at all.
42. The Respondent admitted that the Applicant maintained her and that she started a business whose capital was provided in part by the Applicant. She appears to have run down the business and had to sell it in the end. When the relationship ended she kicked out the Applicant from the matrimonial home and neglected his personal effects to such an extent that they may have been destroyed.
43. The Applicant avers that the Respondent was not in gainful employment during the marriage. This is not altogether correct, the family business she ran would have given some her income that would have gone some way towards settling some of the family bills.
44. The Applicant was based in Germany. The Respondent took care of the Kenyan home and ran their joint business. Although they did not have children the Respondent most certainly provided companionship to the Applicant every time he came to Kenya. The Applicant in all likelihood identified Kenya as his retirement home at the urging of the Respondent who is a Kenyan.
45. Marriages are relationships of trust. Spouses do not keep records in contemplation of the day when they shall be able to use them in matrimonial proceedings. Unravelling contributions made by the parties is therefore exceedingly difficult. It is not a scientific venture that can yield mathematically accurate results. Rather it may be said to be an art. Courts exercise discretion based on their own understanding of what is fair and just in the particular circumstances.



46. The Supreme Court in *Joseph Ombogi Ongentoto versus Martha Bosibori Ogentoto* [2023]eKLR stated, in agreeing with what Tuiyott J (as he then was) said in *UMM versus IMM* [2014]eKLR stated as follows:-

“we find the above opinion and findings persuasive and it is our finding that the stated equity under Article 45(3) means that the Courts are to ensure that at the dissolution of a marriage, each party to a marriage gets a fair share of the matrimonial property based on their contribution. This is best done by considering the respective contribution of each party to ensure no party is unfairly denied what they deserve as well as ensuring that no party is unfairly given more than what he or she contributed”.

47. I am bound by the above decision. I must therefore try my best to establish what each party herein contributed. As I do so I acknowledge that the Applicant made monetary contribution while the contribution of the Respondent was non-monetary contribution. My view is based on the definitions or contribution in section 2 of the *Matrimonial Property Act* which is that: -

“... monetary and non-monetary contribution and includes

- a. domestic work and management of the matrimonial home;
- b. child care;
- c. companionship;
- d. management of family business or property; and
- e. farm work”

48. “Family business” is defined as “any business which

- a. Is run for the benefit of the family by both spouses or either spouses; and
- b. Generates income or other resources wholly or part of which are for the benefit of the family”

49. The Court in *AWM versus JGK* [2021] eKLR held that

“in respect of non-monetary contribution, I take the view that the Applicant made her contribution in the manner defined under section 2 or the *Matrimonial Property Act*. I have considered the argument by the Respondent that the Applicant had domestic workers and did not do household chores. However, a mother’s contribution to a home cannot be quantified in monetary terms. Even where there is domestic help in most cases it is the duty of the mother to ensure that the home runs smoothly and that all the needs of the children and the husband are catered for. Even where she is gainfully employed as claimed in this matter, her duties once she gets home do not end until all is well at home. This is what the Applicant is claiming. She also provided companionship to the Respondent. The Respondent argues that companionship does not constitute a contribution towards matrimonial property. Section 2 of the *Matrimonial Property Act* defines the contribution to include companionship”.

50. I agree wholeheartedly with the holding above. Thus in this case not only must I consider what each contributed monetarily. I must also bear in mind non-monetary contribution.



What share is the Applicant entitled to?

51. In this case the Applicant bore the greater burden. He negotiated for property with the vendor as evidenced by the text messages he exchanged with him. He made all the payments as evidenced by the bundle of documents. The Respondent made no monetary contribution. As the spouse based in Kenya she ran their family business and provided him with companionship every time he was in Kenya. She took care of him when he was taken ill and nursed him to good health. In the view of this court all these are non-monetary contribution that the Respondent should be given credit for. I therefore find and hold that the Applicant is entitled to 70% of Title No. Kilifi/Mtwapa/xxxx. The Respondent shall have 30% on the basis of her non-monetary contribution.
52. In her testimony the Respondent admitted that she neglected the Applicant's personal effects and that these were thereby destroyed. From the evidence that was tendered the Court is convinced that attempts to retrieve these personal effects was interpreted as stalking. It is fair and just in the view of this court that the said effects be returned to the Applicant in their present state as they would appear to have a great sentimental value to him.

Who should bear costs of the Originating Summons?

53. Costs ordinarily follow the event in civil matters. Given the nature of this matter however I am not persuaded that an award of costs would be an appropriate remedy. Each party shall therefore bear own costs.

Disposition

54. I have found that the Title No. Kilifi/Mtwapa/xxxx is a matrimonial property I have found that most of the monetary contribution was made by the Applicant. The contribution of the Respondent was non-monetary. In regard to Title No. Kilifi/Mtwapa/xxxx I have found that the same is not matrimonial property. It is also my finding that the Applicant lost certain personal items which he estimated at having had a value of Kes.1,500,000.00. In the premises I make the following orders: -
 1. I declare that Title No. Kilifi/Mtwapa/xxxx is a matrimonial property. I further declare that the said property is held by the Applicant and the Respondent in 70:30 ratio respectively;
 2. I declare that Title No. Kilifi/Mtwapa/xxxx is not a matrimonial property as the same belongs to a limited liability company called Minola Times Ltd;
 3. I order that Title No Kilifi/Mtwapa/xxxx be valued within 60 days from the date of this judgment. The Applicant shall pay the Respondent an amount of money equivalent to 30% of its value, being her share;
 4. Upon the payment of the Respondent as ordered above the Respondent shall execute the transfer documents. In the event that she fails to do so the Deputy Registrar of this Court shall do so on her behalf;
 5. I order the Respondent to return to the Applicant his personal items, to wit work tools, fishing gear, Clothes, jewelry watches, bracelets, furniture, 60-inch TV, stove, washing machine, bed and mattress, pictures, stereo system; and military equipment and suitcases within 30 days of this judgment failing which their value will be taken into account when refund under paragraph 3 above is being made; and
 6. Each party shall bear own costs.



Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 31ST DAY OF MAY 2023 AT MOMBASA VIA MICROSOFT TEAMS.

.....

GREGORY MUTAI

JUDGE

In the presence of:-

Ms. Okata for the Applicant

Mr. Isaac Onyango for the Respondent

Ms. Winnie Migot – Court Assistant

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