



**Ethics & Anti- Corruption Commission v Osoro (Miscellaneous Application E044 & E002 of 2023 (Consolidated)) [2023] KEHC 21658 (KLR) (14 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21658 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
MISCELLANEOUS APPLICATION E044 & E002 OF 2023 (CONSOLIDATED)**

**PN GICHOHI, J  
AUGUST 14, 2023**

**BETWEEN**  
**ETHICS & ANTI- CORRUPTION COMMISSION ..... APPLICANT**  
**AND**  
**ALPHANUS MOKAYA OSORO ..... RESPONDENT**

**RULING**

1. The summary background of this matter is that Ethics & Anti- Corruption Commission (herein referred to as the Applicant) filed against Alphanus Mokaya Osoro (herein referred to as the Respondent) High Court Kisii Misc. Application No. E002 of 2023 and No. E 044 of 2023 dated 16<sup>th</sup> January 2023 and 10<sup>th</sup> February 2023 respectively whereby the Applicant obtained prohibition orders in the two files.
2. In regard to Misc. Application No. E002 of 2023, the Court issued order dated 20<sup>th</sup> January 2023 prohibiting the Respondent, his agents, servants or any other persons from withdrawing, transferring, granting as security, offering as collateral, disposing or in any other way (howsoever described) dealing with Kshs. 29,554,540.00 held in Sacco Account Membership Number 0110919 at Stima Sacco Society Limited and Kshs. 7,000,000.00 held in Sacco Account Member Number 0018603 at Ukulima Sacco Society limited in the name of Alphanus Mokaya Osoro.
3. In Misc. Application No. E 044 of 2023 the Court issued orders dated 10<sup>th</sup> February 2023:
  1. Prohibiting the Respondent, his agents, servants or any other persons from exiting from the Sacco and withdrawing, transferring, granting as security, offering as collateral, setting off, disposing or in any other way (howsoever described) dealing with shares, dividends, savings held in the Accounts Sacco Member Number 30638 held in Waumini Sacco Society Limited holding a balance of Kshs. 13,490,683.43 .00 in the name of Alphanus Mokaya Osoro.



2. Prohibiting the Respondent, his agents, servants or any other persons from exiting from the Sacco and withdrawing, transferring, granting as security, offering as collateral, setting-off against, disposing or in any other way (howsoever described) dealing with shares, dividends, savings held in the Accounts for Sacco Member Number 008473 held in Safaricom Sacco Society Limited in the name of Alphanus Mokaya Osoro.
3. Upon being served, the Respondent filed a Notice of Motion dated 22<sup>nd</sup> February 2023 on each of the two files seeking orders that:
  1. The Prohibition Orders issued therein be set aside and/or discharged.
  2. In alternative, the said Prohibition Orders issued therein be varied on such terms as this Court would consider just in the circumstances of the case.
  3. The Costs of this Application be provided for.
4. The Applicant herein opposed the application and after hearing both parties and considering the submissions filed therein, this Court discharged the two orders vide its consolidated ruling dated on 19<sup>th</sup> day of July, 2023. Each party was ordered to bear his own costs.
5. Aggrieved by that ruling, the Applicant moved this Court by way of a Notice of Motion dated 24<sup>th</sup> July 2023 under Order 42 Rule 6 of the Civil Procedure Rules 2010 and all other enabling provisions of the law and brought under a certificate of urgency seeking orders:
  1. Spent.
  2. That pending hearing and determination of this application interpartes this Honourable Court be pleased to stay the execution of the ruling and order delivered on 19<sup>th</sup> July 2023.
  3. That this Honourable Court be pleased to stay execution of its ruling delivered on 19<sup>th</sup> July 2023 and all consequential orders therein pending the hearing and determination of the relevant appeal filed in Court of Appeal.
  4. That the costs of this application be provided for.
6. The grounds on the face of that application are:
  - a. That the High Court delivered a ruling on 19<sup>th</sup> July, 2023 discharging the preservation orders granted in Kisii High Court Misc. Application No. E002 of 2023 as consolidated with Kisii High Court Misc. Application No. E044 OF 2023.
  - b. That the Applicant intends to appeal against the entire ruling and order of the High Court and has since filed a Notice of Appeal dated 20<sup>th</sup> July 2023
  - c. That the Applicant has an arguable appeal with high chances of success against the ruling and order of High Court and the same will be rendered nugatory unless this application is granted.
  - d. That the Applicant's investigations are and any ensuing asset forfeiture suit are likely to be thwarted if stay of execution is not allowed by this Honourable Court.
  - e. That the Application has been brought without unreasonable delay.
  - f. That the instant application is not likely to cause any prejudice to the Respondent hence it is in the interest of justice and fairness that the application be allowed.



7. That application is supported by the affidavit sworn on 24<sup>th</sup> July 2023 by David Naibei Sangula in his capacity as the Applicant's forensic investigator South Nyanza Regional Office, Kisii. While reiterating the grounds on the face of the application, he deponed that Ms Wairimu Kamau who is the counsel on record had filed a Notice of Appeal to Court of Appeal and dated 20<sup>th</sup> July 2023.
8. While complaining of delay in being supplied with a copy of this Court's ruling and order from the registry and annexing two letters (DNS- 4) including letter of complaint, he deponed that Ms Wairimu Kamau had already prepared an application for stay of execution under Rule 5 (2 ) (b) of the [Court of Appeal rules](#) and drafted a Memorandum of Appeal showing grounds of appeal the Applicant intended to rely on but was unable to file due the failure of the registry to provide them with ruling and /or order of 19<sup>th</sup> July, 2023.
9. He deponed that the investigation is yet to be concluded and by virtue of the discharge of the preservation orders , the Applicant has no opportunity to seek for extension of the preservation orders to facilitate the conclusion of investigations. He therefore deponed that as a result of the discharged of the preservation orders, the assets sought to be preserved by the Applicant pending the conclusion of the investigations are likely to be disposed off thus rendering further investigation and any intended assets forfeiture suit nugatory.
10. Further, he deponed that the Respondent has every intention of dealing with the assets in the four Saccos as he has already served an extracted order on the four Saccos as at 24<sup>th</sup> July 2023 and hence without the stay of execution, he will be able to deal with the assets the subject of this investigation. He therefore deponed that failure to grant stay of execution will result in the substratum of the intended appeal being spent rendering the appeal moot and merely an academic exercise. He urged the Court to exercise its discretion and allow the application.
11. On being served with this application, the Respondent filed a Preliminary Objection dated 26<sup>th</sup> July 2023. He urged the court to strike out the Notice of Motion dated 24<sup>th</sup> July 2023 with costs to the Respondent on the grounds that :
  1. Section 56 of the of the [Anti- Corruption and Economic Crimes Act](#) No. 3 of 2023 is the substantive and procedural law which governs the proceedings herein for the grant and setting aside of prohibition orders.
  2. By a Ruling delivered on 19 July 2023 herein after hearing all the parties, this Honourable Court in accordance with Section 56 (4) and (5) of the [Anti-Corruption and Economic Crimes Act](#) No. 3 of 2023 unconditionally discharged the prohibition orders issued on 20 January 2023 and 10 February 2023 freezing the Respondent's Sacco Accounts.
  3. There is no provision under Section 56 of the [Anti-Corruption and Economic Crimes Act](#) No. 3 of 2023, or any other law that permits or endows this Court with jurisdiction to stay the execution of the Ruling and Order delivered herein on 19 July 2023.
  4. The Orders issued by this Court on 19 July 2023 were for the discharge of the earlier issued prohibition orders of 20 January 2023 and 10 February 2023 and therefore, stay orders cannot issue because this Court lacks the jurisdiction to stay a negative order (where the Court has not ordered any of the parties to perform any task as was held by the Court of Appeal [Western College of Arts and Applied Sciences v EP Oranga & 3 Others](#) [1976] eKLR.
  5. The Application filed herewith is an abuse of process, the Applicant herein having simultaneously filed at the Court of Appeal in Kisumu Civil Application No. E088 of 2023



a similar application seeking identical orders as those sought herein, which may embarrass the administration of justice.

## Submissions

12. Parties agreed to canvas this application by way of written submissions and they complied by filing the same on 1<sup>st</sup> August 2023. In their submissions dated 31<sup>st</sup> July 2023, the Applicant relied on the case of *Industrial & Commercial Development Corporation v Reuben Arap Simtwo & 20 others* [2017] eKLR and submitted that that strictly speaking, what the Respondent has raised is not a preliminary objection .
13. Further, the Applicant submitted that the [Anti-Corruption and Economic Crimes Act](#) is a substantive law and the same is enforced through the application of procedural laws including the [Civil Procedure Act](#), the [Civil Procedure Rules](#) and the [Evidence Act](#) amongst others, hence it is not correct for Respondent to assert that the court lacks jurisdiction to entertain the application for stay of execution just because the same is not specifically provided for under Section 56 of the [Anti-Corruption and Economic Crimes Act](#) yet the Civil Procedure provides for such an application under Order 42 Rule 6.
14. Terming as inaccurate the Respondent's assertion that the order of 19<sup>th</sup> July, 2023 is a negative order, counsel for the Applicant urged the Court to distinguish the case of [Western College of Arts and Applied Sciences v. EP Oranga & 3 others](#) [1976] eKLR from this case on the grounds that the discharge of preservation orders is not the same as dismissal orders which is what the courts have termed to be negative orders. Counsel submitted that in a dismissal order, there is nothing for the parties to do unlike in the instant case where the Respondent is being allowed to access his Sacco accounts and monies held therein which were the subject of preservation orders.
15. While citing the case of [James Juma Muchemi and Partners v Barclays Bank of Kenya Ltd](#) [2011] eKLR and Court of Appeal Case [Butt v Rent Restriction Tribunal](#) (1982) KLR 417, counsel urged the Court to apply the Erinford Principles and exercise its discretion and grant stay of execution. She further submitted that the Application for stay of execution file in Kisumu Court of Appeal Application No. E088 of 2023 *EACC v Alphanus Mokaya Osoro* was withdrawn by the Applicant. Lastly, counsel urged the Court to dismiss the Preliminary Objection with costs to the Applicant.
16. On their part, counsel for the Respondent filed their submissions dated 1<sup>st</sup> August 2023 and while emphasising the Preliminary Objection, counsel submitted that in accordance with Section 56 (4) and (5) of the [ACECA](#), this Court unconditionally discharged the prohibition orders issued on 20<sup>th</sup> January 2023 and 10<sup>th</sup> February 2023 freezing the Respondent's Sacco Accounts. Counsel submitted that in this application, the Applicant is seeking stay of execution pending hearing and determination of the relevant appeal pending in the Court of Appeal. He therefore submitted that Section 56 of [ACECA](#) being the substantive law which governs the proceedings herein, there is no provision, and indeed no law, which permits the Applicant to seek to stay or suspend a decision of the High Court that discharged or varied an order prohibiting the transfer or disposal of or other dealing with property under Section 56 (4) and (5) of the [ACECA](#).
17. Further , counsel submitted that this Court lacks jurisdiction to grant order of stay as the Applicant had no right of appeal, had not sought leave to appeal and neither was the Applicant granted leave to appeal against this Courts decision handed down on 19<sup>th</sup> July 2023.
18. Arguing that a right of appeal is conferred by statute, counsel submitted that it has not been disputed that neither Section 56 or any other provision of [ACECA](#), confers any right of appeal to the Applicant in respect of a decision made under Section 56 (4) and (5) of the [ACECA](#). Further, counsel submitted that even if parties were to apply the procedural law under the [Civil Procedure Act](#) and [Rules](#), then there



was no leave granted under Section 75 of the [Civil Procedure Act](#) and Order 43 Rule (1) and (2) of the [Civil Procedure \(Amendment\) Rules](#), 2020.

19. On that issue, counsel relied on the case of [Serephen Nyasani Menge v Rispah Onsase](#) [2018] eKLR and submitted that in the absence of a right of appeal to the Court of Appeal, or evidence of leave to appeal to the Court of Appeal, this Court would naturally lack the requisite jurisdiction to grant the order for stay of execution pending appeal because the Court of Appeal would have no jurisdiction to hear and determine an appeal against the decision of this Court made under Section 56 (4) and (5) of [ACECA](#) and no such appeal would lie to the Court of Appeal anyway.
20. On the issue that this Court has no jurisdiction to stay a negative order, counsel submitted that by discharging the earlier prohibition orders, this Court did not direct the parties to do something or refrain from doing anything and therefore, stay orders cannot issue because this Court issued a negative order which did not direct the parties to do anything or refrain from doing something. Counsel therefore submitted that the order issued by this Court is not an order capable of being stayed because there is nothing that the Applicant has lost and there is nothing for the parties to execute.
21. While citing the case of [Catherine Njeri Maranga v. Serah Chege & Another](#) [2017] eKLR, counsel submitted that the discharge of the earlier orders simply means that the Applicant stays in the situation it was in before coming to court and therefore the issues of substantial loss that it is likely to suffer and an appeal being rendered nugatory do not arise.
22. Counsel submitted that indeed, this Court lacks the requisite jurisdiction to stay a negative order such as the one which was issued in this case on 19<sup>th</sup> July 2023 discharging the earlier issued prohibition orders of 20<sup>th</sup> January 2023 and 10 February 2023.
23. On the issue that the Applicant's application is an abuse of Court process, counsel submitted that it is not in dispute that the Applicant filed the present application simultaneously with an application in the Court of Appeal being Kisumu Civil Application No. Nai E088 of 2023 which is a similar application seeking identical orders as those herein and therefore an abuse of court process. Counsel therefore urged the Court to dismiss the Applicant's application with costs to the Respondent.
24. During mention for compliance with the directions on 2<sup>nd</sup> August 2023, Ms Wairimu for the Applicant urged the Court to strike out paragraphs 9 to 16 of the Respondents Submissions on the Preliminary Objection on the grounds that the Respondent had introduced the issue of right of appeal which was not in the Preliminary Objection.
25. Mr. Akhaabi for the Respondent opposed the striking out of the said paragraphs arguing that the application before this Court is for stay pending the intended appeal. He submitted that in those paragraphs, the Respondent was saying that if there is no right of appeal, there can be no stay pending appeal and that is a legal issue.
26. Ms Wairimu maintained that the directions by this Court were clear that parties were to file submissions on the Preliminary Objection and therefore, if the Respondent intended to talk about anything else outside the Preliminary Objection, then the same should be struck out as the Respondent ought to have stuck to the Preliminary Objection.
27. The Court directed that the issues raised on the said paragraphs in the Respondent's submissions in regard to the Preliminary Objection will be included in the Ruling herein.



## Determination

28. After considering the Preliminary Objection, the submissions by the parties and the authorities cited therein, the issues that arise for determination are:
1. Whether the Respondent's Preliminary Objection dated 26<sup>th</sup> July 2023 is strictly a Preliminary Objection.
  2. Whether paragraphs 9 to 16 of the Respondent's Submissions dated 1<sup>st</sup> August 2023 should be struck out.
29. To start with a Preliminary Objection has to fall within the definition given in the case of *Mukhisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 where Law, J stated at page 700:
- “So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded or which arise by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to jurisdiction of the court or a plea of limitation, or a submission that parties are bound by the contract giving rise to the suit to refer the suit to arbitration”. [Emphasis added]
30. What is clear is that a Preliminary Objection should be one that is capable of disposing the matter before the Court. At page 701 of the *Mukhisa Biscuit case*, Sir Charles Newbold stated:
- “A preliminary objection is what used to be demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion.”
31. In his Preliminary Objection filed herein, one of the grounds raised by the Respondent is that there is no provision under Section 56 of the *Anti-Corruption and Economic Crimes Act* or any other law that permits or endows this Court with jurisdiction to stay the execution of the Ruling and Order delivered herein on 19<sup>th</sup> July 2023. That is a clear point of law raised early by the Respondent and has therefore not been introduced in his submissions to warrant striking out as alleged by counsel for the Applicant. Indeed, on the face of the Application herein, the Applicant has moved this Court under Order 42 Rule 6 of the *Civil Procedure Rules* not under *Anti-Corruption and Economic Crimes Act*, apparently acknowledging that there is no provision for stay of the Orders made by this Court under *ACECA*.
32. In her submissions, counsel sated that
- “the *Anti-Corruption and Economic Crimes Act* is a substantive law and the same is enforced through the application of procedural laws including the *Civil Procedure Act*, the *Civil Procedure Rules*, the *Evidence Act* amongst others hence it is not correct to assert that the court lacks jurisdiction to entertain the application for stay of execution because the same is not specifically provided for under Section 56 of the *Anti-Corruption and Economic Crimes Act* yet the *Civil Procedure* provides for such an application under Order 42 Rule 6.”
33. There is no doubt that the issue raised by the Respondent is on jurisdiction of this court to hear and determine the application for stay of execution of a ruling by this Court discharging the Prohibition Orders under Section 56 of the *Anti-Corruption and Economic Crimes Act*. In the celebrated case of



Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR , the court had this to say about jurisdiction:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.” [Emphasis added]

34. Order 42 rule 6 of the Civil Procedure Rules provides that:

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (2) No order for stay of execution shall be made under subrule (1) unless—
  - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with. [Emphasis mine]

35. There is no dispute or doubt that the Applicant had filed a Notice of Appeal and an Appeal to Court of Appeal in Kisumu. This is because other than saying in its application before this Court that it had filed a Notice of Appeal, the Applicant also stated that it is seeking

“stay of execution of the ruling and all consequential orders pending the hearing and determination of the relevant appeal pending in the Court of Appeal.”



36. There is further no dispute or doubt that no leave to appeal was sought by the Applicant before this Court after the ruling was delivered. The orders granted by this Court on 19<sup>th</sup> July 2023 are not orders where there is an automatic right of appeal. Right of appeal is conferred by statute and having moved this Court under Order 42 of the Civil Procedure Rules, then an appeal would be subject to Order 43 of the Civil Procedure Rules which provides that:

- (1) An appeal shall lie as of right from the following Orders and rules under the provisions of section 75(1)(h) of the Act—
  - (a) Order 1 (parties to suits);
  - (b) Order 2 (pleadings generally);
  - (c) Order 3 (frame and institution of suit);
  - (d) Order 4, rule 9 (return of plaint);
  - (e) Order 7, rule 12 (exclusion of counterclaim);
  - (f) Order 8 (amendment of pleadings);
  - (g) Order 10, rule 11 (setting aside judgment in default of appearance).
  - (h) Order 12, rule 7 (setting aside judgment or dismissal for non-attendance);
  - (i) Order 15, rules 10, 12 and 18 (sanctions against witnesses and parties in certain cases);
  - (j) Order 19 (affidavits);
  - (k) Order 22, rules 25, 57, 61(3) and 73 (orders in execution);
  - (l) Order 23, rule 7 (trial of claim of third person in attachment of debts);
  - (m) Order 24, rules 5, 6 and 7 (legal representatives);
  - (n) Order 25, rule 5 (compromise of a suit);
  - (o) Order 26, rules 1 and 5(2) (security for costs);
  - (p) Order 27, rules 3 and 10 (payment into court and tender);
  - (q) Order 28, rule 4 (orders in proceedings against the Government);
  - (r) Order 34 (interpleader);
  - (s) Order 36, rules 5, 7 and 10 (summary procedure);
  - (t) Order 39, rules 2, 4 and 6 (furnishing security);
  - (u) Order 40, rules 1, 2, 3,7 and 11 (temporary injunctions);
  - (v) Order 41, rules 1 and 4 (receivers);
  - (w) Order 42, rules 3, 14, 21, 23 and 35 (appeals);
  - (x) Order 45, rule 3 (application for review);
  - (y) Order 50, rule 6 (enlargement of time);
  - (z) Order 52, rules 4, 5, 6 and 7 (advocates);



- (aa) Order 53 (judicial review orders).
- (2) An appeal shall lie with the leave of the court from any other order made under these Rules.
- (3) An application for leave to appeal under section 75 of the Act shall in the first instance be made to the court making the order sought to be appealed from, either orally at the time when the order is made, or within fourteen days from the date of such order.
- (4) Save where otherwise expressly provided in this rule, “order” includes both an order granting the relief applied for and an order refusing such relief. [Emphasis added]
37. For clarity, Section 75 of the *Civil Procedure Act* provides:
- (1) An appeal shall lie as of right from the following orders, and shall also lie from any other order with the leave of the court making such order or of the court to which an appeal would lie if leave were granted—
- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the court;
- (b) an order on an award stated in the form of a special case;
- (c) an order modifying or correcting an award;
- (d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
- (e) an order filing or refusing to file an award in an arbitration without the intervention of the court;
- (f) an order under section 64;
- (g) an order under any of the provisions of this Act imposing a fine or directing the arrest or detention in prison of any person except where the arrest or detention is in execution of a decree;
- (h) any order made under rules from which an appeal is expressly allowed by rules.
- (2) No appeal shall lie from any order passed in appeal under this section.
38. From the foregoing, it means that it was mandatory for the Applicant to seek leave of this Court before filing the Notice of Appeal and the Appeal before the Court of Appeal. If such appeal was filed in the Court of Appeal Kisumu, then it was done without leave and that is fatal.
39. The Applicant does not deny having filed Kisumu Court of Appeal Application No. E088 of 2023 being *EACC v Alphanus Mokaya Osoro* seeking stay of execution. Counsel for the Applicant states in paragraph 5 of the Applicant’s written submissions that the said application before the Court of Appeal has been withdrawn. There is no mention of that withdrawal in the Application dated 24<sup>th</sup> July 2023 and there is nothing before this Court to support that line of submissions. That statement only goes to show the incompetence of concurrent filing two similar applications before the two superior Courts which in the eyes of the law amounts to an abuse of court process. Nevertheless, the withdrawal or otherwise of that application is not an issue with major effect on the issue before this Court.
40. This Court is alive to the *Erinford* Principles as laid down in *Erinford Properties v Cheshire County Council* (1974) 2 ALL ER 448 as often applied by Kenyan Courts including in the High Court case of *James Juma Muchemi and Partners Limited v Barclays Bank of Kenya Ltd* [2011] eKLR while granting



injunctions so as not to render the appeal nugatory, the same does not aid the Applicant in this case. The facts in *James Juma Muchemi* and Court of Appeal Case *Butt (supra)* are different from the facts in the matter before this Court. The orders made by this Court on 19<sup>th</sup> July 2023 were unconditional and hence final in the manner issued. They were not in the alternative and there was nothing pending at all.

41. The net effect is that by unconditionally discharging the Prohibition Orders on 19<sup>th</sup> July 2023, the Applicant and the Respondent herein reverted to the position they were in before the *ex parte* orders issued by High Court under Section 56 of *ACECA*.
42. From the foregoing, the Court makes the following orders:
  1. The Respondent's Preliminary Objection dated 26<sup>th</sup> July 2023 merited and therefore upheld.
  2. The Applicant's application dated 24<sup>th</sup> July 2023 be and is hereby struck out.
  3. Each party is directed to bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISII THIS 14<sup>TH</sup> DAY OF AUGUST, 2023.**

**PATRICIA GICHOHI**

**JUDGE**

**In the presence of:**

Ms Wairimu for the Applicant

Ms Soire and Mr. Akhaabi for the Respondent

Kevin Isindu, Court Assistant

