



REPUBLIC OF KENYA



**Naado & 7 others v Shaban & 5 others (Civil Appeal E744 of 2023)
[2023] KEHC 21898 (KLR) (Civ) (11 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21898 (KLR)

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

CIVIL

CIVIL APPEAL E744 OF 2023

AN ONGERI, J

AUGUST 11, 2023

BETWEEN

HASSAN OLE NAADO 1ST APPELLANT
MUHNDHAR SHARIFF 2ND APPELLANT
ABDULLAHI SALAT 3RD APPELLANT
JUMA MUSA 4TH APPELLANT
DEGHO IMANI 5TH APPELLANT
KHAMIS MWAGUZO 6TH APPELLANT
KHAMIS OMAR 7TH APPELLANT
SUPREME COUNCIL OF KENYA MUSLIMS (SUPKEM) 8TH APPELLANT

AND

LATIFF NGIRATI SHABAN 1ST RESPONDENT
YUSUF NGOTHO ALI 2ND RESPONDENT
GULF AFRICAN BANK (KENYATTA AVENUE) 3RD RESPONDENT
KENYA COMMERCIAL BANK (BIASHARA) 4TH RESPONDENT
FIRST COMMUNITY BANK (BIASHARA STREET) 5TH RESPONDENT
REGISTRAR OF SOCIETIES 6TH RESPONDENT



RULING

FURTHER RULING

1. This court reached a determination in the ruling dated 11/08/2023 that the applicant/ appellants require to be heard before the trial court can make a determination as to whether the respondents are entitled to an interlocutory mandatory injunction.
2. I am guided by article 159 of *the Constitution* of Kenya which espouses all courts and tribunals to mete substantive justice between parties.
3. Having directed the trial court to hear the parties on merit, I notice that there is an error apparent on the face of the record in that this court has granted prayer 3 which is an order staying the proceedings of the trial court.
4. I appreciate the clarification sought by the learned counsel for the respondents on that issue.
5. In accordance with section 99 of the *Civil Procedure Act*, which empowers the court to move either suo moto or by application by a party to correct an error apparent on the face of the record, I vacate the order staying proceedings of the trial court.
6. I set aside the order granting prayer 3 and instead I grant prayers no. 5 and 6 of the application dated 7/8/2023.
7. For avoidance of doubt, this court is not saying that the interlocutory injunction is not merited, what this court is saying is that the appellants are to be accorded an opportunity to be heard (interpartes) before a determination as to whether the interlocutory mandatory injunction is merited should be made.
8. On the issue as to whether the appeal is spent, that is up to the applicants to decide whether they still want to pursue the same.
9. The respondents are granted leave to appeal to the court of Appeal if they are aggrieved by the order of this court.
10. The application dated 7/8/2023 is allowed in terms of prayers 5 and 6.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 11TH DAY OF AUGUST, 2023.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

