



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL APPEAL NO. 14 OF 2020

(From the original decision and order of Hon. D. Alego of 9th April 2020 in Kakamega CMC Misc. Criminal Application No. 13 of 2020)

HEAD OF CONSERVANCY, KAKAMEGA ECOSYSTEM REGION.....APPELLANT

VERSUS

JOEL MADAHANA.....1ST RESPONDENT

OFFICER IN CHARGE, KAKAMEGA POLICE STATION.....2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT

RULING

1. The application that I am called upon to determine is the Motion dated 15th April 2020. It seeks the principal prayer that there be stay of the orders made on 9th April 2020 in Kakamega CMC Misc. Criminal Application No. 61 of 2020, and all consequential orders, pending the final determination of the appeal herein.

2. The factual background to the application is set out in the grounds listed on the face of the application, as well as in the facts deposed in the affidavit in support. The affidavit in support is sworn by Patricia Mumbi, an officer with the Kenya Forest Service, Kakamega office. She states that the proceedings relate to a motor vehicle registration mark and number KBF 174V, a Mitsubishi Fuso lorry, which had been intercepted while ferrying charcoal along the Mumias-Kakamega Road, in the Nabongo area. It had two occupants, a driver and a turn boy. The lorry and the persons controlling it were escorted to the offices of the Kenya Forest Service, but the lorry driver escaped, while the turn boy, Alex Barasa, was arrested. He was taken to the Kakamega Police Station, and from thence to court on 9th April 2020. Plea was not taken, as it was deferred to 3rd June 2020. The person named in these proceedings as the 1st respondent, Joel Madahana, filed Kakamega CMC Misc. Criminal Application No. 61 of 2020, seeking to have the motor vehicle and the charcoal released to him, on grounds that they both belonged to him. The said orders were granted, according to the deponent, *ex parte*, without affording an opportunity to the Kenya Forest Service to be heard. It is averred that the orders were illegal to the extent that the Kenya Forest Service was not given an opportunity to be heard, and as the vehicle and charcoal were exhibits that were yet to be produced in court. It is argued that the decision to release the motor vehicle and the charcoal could only be made upon the criminal case being heard and not prior to that. It is contended that the intended appeal has merit.

3. The application is opposed by the 1st respondent, through his replying affidavit, sworn on 22nd April 2020. The first issue he raises is that these proceedings are criminal in nature, and the appeal ought to have been brought at the instance of the Director of Public Prosecutions, suggesting that the manner the appeal has been initiated by the appellant, through a private advocate, would mean that the same is a private prosecution. The second issue raised is that the 1st respondent is a licensed dealer in charcoal harvested from his farms. After the government declared a moratorium on issuance of licenses for dealing in charcoal, he moved to court, in Eldoret ELC Misc. Application No. 9 of 2018, and obtained orders that allowed him to continue moving charcoal. He states that the Conservator of Forests and the Kenya Forest Service moved to have the said orders set aside, and their application was still pending and was due for hearing on 28th May 2020. He accuses the appellant of trying to circumvent the said order. He contends that the impounding of his vehicle and its load of charcoal was in contravention of the said order. When his turn boy was presented in court, the issue of the orders, in Eldoret ELC Misc. Application No. 9 of 2018, was raised, leading the court to defer plea to 3rd June 2020, to await outcome of Eldoret ELC Misc. Application No. 9 of 2018. He further avers that when his application in Kakamega CMC Misc. Criminal Application No. 61 of 2020 came up for hearing the prosecution conceded to it, to allow the release of the motor vehicle and the charcoal. He asserts that the orders were not granted *ex parte*. When he extracted the formal order, he avers, he attempted to serve it on at the offices of the appellant, but police officers were called to chase him away. He further avers that he obtained an order on 14th April 2020, for police assistance to ensure compliance with the order of 9th April 2020. He avers that when the second order was served on the police, the OCS, Kakamega, called the officers of the appellant, who assured him that they would release

the vehicle and its load, but they never did. He asserts that the continued holding of his vehicle by the appellant was unlawful in view of the court orders referred to above. He asserts that since the photographs of the vehicle and the charcoal were taken there would be no prejudice if the vehicle and charcoal were released to him.

4. The 1st respondent has attached several documents to his affidavit. There is a copy of a Motion in Eldoret ELC Misc. Application No. 9 of 2018, dated 17th April 2018, seeking an order to allow him to transport charcoal from his farms in Eldoret and Kitale before the moratorium on 28th February 2018. There is a copy of an order that was issued in Eldoret ELC Misc. Application No. 9 of 2018, on 14th May 2018, allowing the 1st respondent to transport charcoal harvested from his farms in Eldoret and Kitale before the moratorium of 28th February 2018. There are copies of permits issued on divers dates in 2010, 2012, 2015 and 2018, authorizing the 1st respondent to deal in transport of charcoal. There is copy of a Motion, dated 20th September 2019, in Eldoret ELC Misc. Application No. 9 of 2018, seeking stay, review and setting aside of the order made in that cause on 14th May 2018. There is also copy of the order made in Kakamega CMC Misc. Criminal Application No. 61 of 2020, on 9th April 2020 for the release of the vehicle and the charcoal, pending the hearing and disposal of Eldoret ELC Misc. Application No. 9 of 2018. There is also the Motion, dated 14th April 2020, seeking police assistance for the execution of the orders of 9th April 2020, and a copy of the order of 14th April 2020, which authorized the OCS Kakamega to execute the said order.

5. The reply elicited a response from the appellant, through an affidavit sworn on 6th May 2020, by Patricia Mumbi Mwangi. She avers that it was not true that the 1st respondent was a licensed charcoal dealer, since all commercial charcoal dealers are supposed to be issued with a licence, which the 1st respondent did not have. She asserts that the vehicle in question was intercepted with carrying charcoal, and the crew did not produce a certificate of origin of the charcoal consignment, nor a charcoal movement permit issued by the Chief Conservator of Forests, Kenya Forest Service. She repeats her previous averment that the driver of the lorry ran away, and so they arrested and charged the turn boy. He was presented in court, but no plea was taken. Although the deponent of the affidavit refers to an attached charge sheet, none was annexed in the copy of the affidavit in the court file. She further avers that the appellant was unaware of the suit in Eldoret ELC Misc. Application No. 9 of 2018. She avers that the release of the motor vehicle and charcoal to the 1st respondent before the same are produced at the trial as exhibits would defeat the criminal case. She denies that officers from her office ever solicited bribes for release of the vehicle and charcoal.

6. The matter was initially placed before me, under certificate of urgency, on 16th April 2020. I certified it, and granted temporary conservatory orders in terms of prayer 2 of the Motion. On 30th April 2020, I directed that the Motion be disposed of by way of written submissions. There has been compliance with the directions, since the appellant, the 1st respondent and the 3rd respondent did file their respective written submissions.

7. In its written submissions, the appellant principally argues that it has an arguable appeal, on grounds that the trial court granted final orders at the *ex parte* stage, before granting the appellant an opportunity to be heard, and that the subject vehicle and its load were meant to be exhibits to be produced in criminal proceedings, and the release of the motor vehicle put it beyond the reach of the appellant. The decision in *DPP vs. Marias Pakine Tenkewa t/a Naresho Bar Restaurant* [2018] eKLR, is cited in support. It is further submitted that the 1st respondent was a stranger to the criminal matter pending before the trial court, since he was not one of the accused persons. It is further submitted that the subject vehicle and charcoal were liable to forfeiture under section 68(1) of the Forest Conservation and Management Act. The 1st respondent is accused of stealing a match over the appellant by having the vehicle and the charcoal ordered released to him ahead of the prosecution. On whether the 1st respondent could bring criminal or quasi-criminal proceedings, it is submitted that section 7 of the Forest Conservation and Management Act, establishes the Kenya Forest Service as a body corporate, capable of suing and being sued. It is asserted that it was the 1st respondent who brought the appellant into Kakamega CMC Misc. Criminal Application No. 61 of 2020, and the appeal herein was a logical development from the proceedings conducted in that matter.

8. On his part, the 1st respondent argues that the appeal was not properly before the court as the appellant could not bring the proceedings without the consent of the Director of Public Prosecutions. He has cited sections 88(1)(2) and 348A of the Criminal Procedure Code, Cap 75, Laws of Kenya, and Article 157 of the Constitution of Kenya, to support that contention. The decisions in *Chege Njoroge vs. Henry Karanja & another* [1982] eKLR and *Isaac Oluochhier vs. Stephen Kalonzo Musyoka & 218 others* [2013] eKLR have also been cited. It is further submitted that the appellant was not deserving of the orders that it seeks as it was guilty of non-disclosure and misrepresentation, specifically regarding the existence and pendency of the proceedings in Eldoret ELC Misc. Application No. 9 of 2018, and the orders made in the matter. It is argued that due to the non-disclosure he was not entitled to conservatory orders, and he cites *BAO Investments & Office Management Services Ltd vs. Housing Finance Co. Kenya Ltd* [2006] eKLR. It is further submitted that the appellant was guilty of disobeying court orders and should be denied audience for there has been disobedience of the orders made in Eldoret ELC Misc. Application No. 9 of 2018 and Kakamega CMC Misc. Criminal Application No. 61 of 2020. He cites *Wildlife Lodges Limited vs. County Council of Narok & another* [2005] EA 344, to support that proposition. Finally, it is submitted that the High Court ought not exercise jurisdiction in the matter in view of the fact that the Environment and Land Court already has jurisdiction over the dispute through Eldoret ELC Misc. Application No. 9 of 2018, and he cites *Joseph Ndirangu Waweru t/a Mooreland Mercantile & Co. % another vs. City Council of Nairobi* [2015] eKLR.

9. The 3rd respondent, on his part, submits that there exists an order, dated 4th May 2018, which allows the 1st respondent to transport charcoal, and which has not been set aside. Secondly, it is submitted that charges are yet to be brought against the 1st respondent's turn boy due to the pendency of Eldoret ELC Misc. Application No. 9 of 2018 and Kakamega CMC Misc. Criminal Application No. 61 of 2020. It is finally submitted that the 3rd respondent, as prosecutor, did not oppose nor appeal against the orders made in Kakamega CMC Misc. Criminal Application No. 61 of 2020 for release of the vehicle and charcoal, on condition that photographs were taken by scenes of crime personnel. The court is urged to dismiss the application.

10. The application that I am called upon to determine arises from events that happened in two other matters, Kakamega CMCCRC No. 472 of 2020 and Kakamega CMC Misc. Criminal Case No. 61 of 2020. For me to effectually deal with the issues at hand, I called for the files in respect of the two causes. I did so in exercise of the power conferred upon the High Court by Article 165(6)(7) of the Constitution, under which the High Court is vested with supervisory power over subordinate courts, and in exercise of which power it may call for records of the subordinate court for perusal, after which it may make orders or give directions, as may be appropriate. The two files were availed and I have

perused through them.

11. For avoidance of doubt, Article 165(6)(7) of the Constitution states as follows:

“165. (1) There is established the High Court ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

12. The file in Kakamega CMCCRC No. 472 of 2020 is where the 1st respondent’s turn boy was charged with the offence of being in unlawful possession of charcoal, contrary to section 67(1)(e), as read with section 68(1), of the Forest Conservation and Management Act, 2016. The charge sheet was drawn by the Kenya Police, and the accused was arraigned in court on 9th April 2020, before Hon. D. Alego, Senior Principal Magistrate. The record of 9th April 2020 reads as follows:

“DATE: 9/04/2020

MAGISTRATE: D. Alego SPM

PROSECUTOR/STATE COUNSEL: Otuke

COURT CLERK: Sagala

ACCUSED: Present

Kagunza for accused:

I wish to object to the plea before court. There is a pending suit before the high court before Eld Environ Court Misc 9/2018 and parties are Joel Madahana –vrs D. forest services. There is an order in his favour which order has not been stayed or set aside. The accd is the turn-boy of the applicant. The charges before court is vague as it does not aver what the offence is. The turn-boy is just being used in this matter and as such an abuse to the justice system.

Pros – we have received a letter dated 7.4.2020 from defence counsel in relation to the charges herein and also Misc. appln. 9/2018. Pros has taken judicial notice of the said court order dated 14.5.2018. The prosecution seeks to review charges and pray that plea be differed to 3.6.2020 on the ground that court order dated 14.5.2018 as we await for further mention. I have a copy of the defence. I pray the cash bail remains as the court cash bail

Counsel. I reiterate the earlier submission.

Ct. Mn. 5.6.2020 for plea taking if at all thereafter the verdict of the high court E&L Court. Cash bail 10,000 for accd.

Signed

9/4/2020”

13. Kakamega CMC Misc. Criminal Application No. 61 of 2020 is where the application was lodged by the 1st respondent, against the appellant and the 2nd and 3rd respondents, seeking release of motor lorry registration mark and number KBP 174V and the charcoal. The Motion, dated 9th April 2020, was placed before Hon. D. Alego, Senior Principal Magistrate, on even date. The record captures the events of that day as follows:

“DATE: 9/4/2020

MAGISTRATE: D. Alego SPM

PROSECUTOR/STATE COUNSEL: Otuke

COURT CLERK: Sagala

Kagunza for the applicant. I have my appln dated 9.4.2020. This matter is sub judice. We have a date with the judge on 28.5.2020. I thus pray that there is a valid order which does not stay this matter. No charges are being preferred against the applicant so nothing should warrant his properties to be taken away from him. The charcoal & m/v can have photos be taken by the scene of crime personnel. The m/v is on loan & a source of livelihood for the applicant.

Pros. I have been served with the appln. I do not oppose the appln. The m/v and charcoal can be released to the applicant. There is a stay order by a superior court which has not been stayed. The m/v & charcoal can be photographed. in the interest of justice. The threshold to charge should not be pursued as s. 177 C.P.C. The I.O can take photographs.

Ct. appln herein allowed as prayed. Photos to be taken by the scenes of crime personnel. Mn 3/6/2020

Signed

9/4/2020”

14. From the record in the two matters, both cases came up on the same date before the same judicial officer. Both sides were represented by counsel, and, therefore, contrary to what the appellant pleaded, the orders in both cases were not made *ex parte*. The prosecution conceded to the applications by the advocate who appeared for the 1st respondent and the turn boy. For all practical purposes, the said orders were made by consent or with the consensus of both sides. It cannot, therefore, be argued that they were illegal or unlawful or made without hearing both sides.

15. I note, from Kakamega CMCCRC No. 472 of 2020, that the criminal charges against the turn boy had been brought at the instance of the 3rd respondent, as prosecutor. The prosecution counsel, who appeared on behalf of the 3rd respondent, confirmed to having been served with the order in Eldoret ELC Misc. Application No. 9 of 2018, and it was him who applied for the deferral of the plea, so that he could review the charges. The same prosecution counsel appeared in Kakamega CMC Misc. Criminal Application No. 61 of 2020, for the respondents in the application. He did not oppose release of the motor vehicle and the charcoal to the 1st respondent. He conceded that the orders, in Eldoret ELC Misc. Application No. 9 of 2018, were still in force, and proposed that the two items be released after pictures were taken of them by scenes of crime personnel.

16. The proceedings before Hon. Alego, SPM, in Kakamega CMCCRC No. 472 of 2020, were criminal in nature. The prosecution was not mounted by the appellant, or, put differently, the appellant was not the prosecutor of the charges. The prosecution was by the 3rd respondent, and the decisions on how to proceed with the matter rested with the 3rd respondent, in accordance with the Constitution and the Criminal Procedure Code. The charge in Kakamega CMCCRC No. 472 of 2020 was being prosecuted by the 3rd respondent on behalf of the appellant, who was the complainant, in terms of having initiated the complaint with the police, after arresting the turn boy. Whatever decisions the 3rd respondent, as the prosecutor, made, with respect to that matter, bound the appellant.

17. The proceedings in Kakamega CMC Misc. Criminal Application No. 61 of 2020 were not altogether criminal in nature, they were quasi-criminal since they arose directly from the charges in Kakamega CMCCRC No. 472 of 2020. The two cases were related to the extent that they touched on the same items, the lorry and the charcoal. Since Kakamega CMC Misc. Criminal Application No. 61 of 2020 arose from Kakamega CMCCRC No. 472 of 2020, the respondents named in Kakamega CMC Misc. Criminal Application No. 61 of 2020 were the complainant in Kakamega CMCCRC No. 472 of 2020, the prosecutor in the same cause and the head of the police station through which the charges were initiated in court. Since the appellant was represented in Kakamega CMCCRC No. 472 of 2020 by the 3rd respondent, it followed that in Kakamega CMC Misc. Criminal Application No. 61 of 2020 the appellant was represented by an officer from the 3rd respondent, who appeared for all the persons named in that cause as respondents. It cannot be the case, then, that the appellant was not represented in Kakamega CMC Misc. Criminal Application No. 61 of 2020, and that what transpired in court on 9th April 2020 was done *ex parte*. The 3rd respondent appeared for the appellant in the proceedings, and consented to the making of the orders of 9th April 2018, for the release of the vehicle and the charcoal. It cannot also be argued that the order should not have been made before the application was heard on its merit, the parties reached a consensus for release of the lorry and the charcoal, and, therefore, there was absolutely no need at all for the hearing of the application so that it could be disposed of on its merits. Why would a court insist on hearing an application on its merits when the same has been compromised by consent of the parties?

18. From the documents placed on record, on behalf of the appellant, through the affidavits of one of its officers, it is averred that the appellant was unaware of the pendency of Eldoret ELC Misc. Application No. 9 of 2018, and, therefore, of the orders made in that matter. Yet, in Eldoret ELC Misc. Application No. 9 of 2018, the appellant, meaning the Kenya Forest Service, for that is what the appellant truly represents, is named as the respondent, and is represented in that cause by the same advocate, who appears for it in this matter, and the said advocate has filed an application in the said cause seeking the setting aside of the order that authorized the 1st respondent to transport charcoal. It is, therefore, something of a contradiction, for an officer of the appellant, to swear affidavits in this cause, drawn by the same advocate, pleading ignorance of Eldoret ELC Misc. Application No. 9 of 2018 and the orders made in it. Secondly, the appellant was represented in court on 9th April 2020, in Kakamega CMCCRC No. 472 of 2020 and Kakamega CMC Misc. Criminal Case No. 61 of 2020, by an officer from the 3rd respondent, who conceded that Eldoret ELC Misc. Application No. 9 of 2018, and the orders made in it, had been brought to his knowledge, and who proceeded to make decisions on how those matters proceeded based on that knowledge. It cannot be the case, then, that when the instant proceedings were being commenced, on 15th April 2020, the appellant was not aware of Eldoret ELC Misc. Application No. 9 of 2018, and the orders made in it. I am satisfied that the appellant was aware of Eldoret ELC Misc. Application No. 9 of 2018, and the orders made in it, and was obliged to disclose the same to this court, in much the same way that the existence of that cause was disclosed in Kakamega CMCCRC No. 472 of 2020 and Kakamega CMC Misc. Criminal Case No. 61 of 2020. I am persuaded, therefore,

that the appellant did not approach this court with clean hands, on 15th April 2020.

19. What emerges, from the affidavits sworn on behalf of the appellant, is that the appellant is in active disagreement with the 3rd respondent, who is prosecuting, on its behalf, the charges brought in Kakamega CMCCRC No. 472 of 2020. The appellant clearly does not agree with the approach that the 3rd respondent has taken in that cause. What the appellant is engaged in what is known as brinkmanship with the 3rd respondent. It should be made clear that criminal prosecutions are brought at the behest of the 3rd respondent. The reference to complainant, in the Criminal Procedure Code, invariably, means the 3rd respondent or the prosecutor. It is the initiator of the charge or complaint before the court, that is the prosecutor, who manages and controls the prosecution of the case. He is the one who makes decisions with regard to whether to ask for adjournments or deferrals or withdrawals or terminations of the charges, and decisions on who to call as witnesses, the number of witnesses to be called, the documents to be presented, and the like. The court deals with the prosecutor as the initiator of the charge or complaint before the court, but not with the initiator of the complaint at the police station, who remains a mere witness for the prosecution. The appellant was a complainant with respect to the complaint made at the police station, but not with respect to the complaint before the court. The court was, therefore, not obliged to seek the views of the appellant in this case, since it was not the initiator of the charges that were in court. There was a prosecuting counsel, who was managing the prosecution, and who conceded to whatever the 1st respondent had asked for. The parties before the court were in agreement on how the matter was to be handled, and there was no basis whatsoever for the court to give orders inconsistent with the wishes of the said parties.

20. The appellant argues that the lorry and the charcoal are supposed to be exhibits that were to be produced at the trial, and the same would be placed beyond its reach should they be released to the 1st respondent. Let me repeat that the prosecutor of the charge, in Kakamega CMCCRC No. 472 of 2020, is the 3rd respondent. Its officers, who manage these prosecutions or criminal cases, are Advocates of the High Court of Kenya. They know the law, and are aware of the legal position that the appellant has advanced in the affidavits filed on its behalf. One such officer is the prosecution counsel who appeared in court on 9th April 2020, before Hon Alego. The said prosecution counsel was equipped, or armed, with that legal knowledge, when he conceded to the lorry and the charcoal being released to the 1st respondent. The appellant should have squared out the issue with the 3rd respondent before the said prosecution counsel made those concessions in court.

21. One other thing that the appellant has raised is that the 1st respondent was not a licensed charcoal dealer, as he has no licence from the appellant. It could be true that he has no such licence, and it could also be true that such a licence is required from the appellant in terms of the relevant law. However, the position in this case, as I understand it, is that the 1st respondent has a court order, obtained in Eldoret ELC Misc. Application No. 9 of 2018, and has been conducting business on the strength of the said court order. What that means is that whether he is required to obtain a licence to handle charcoal is beside the point, so long as he has a court order that authorizes him to transport or deal in charcoal. If he does not have a licence from the appellant, as may be required by the relevant statute, then the court order that he is holding is his licence.

22. I can sense some of measure indignation on the part of the appellant, that the 1st respondent is able to operate without a licence, or on the basis of a court order instead of a licence. It would also appear that the appellant is unhappy with that court order. Let me state here that once a court of law makes an order, the said order must be obeyed or complied with. A court order is a command from the court, to be obeyed or respected or acceded to by those that are bound by it. It is not a suggestion or a proposition or an idea. It matters not that a party does not agree with it or feels that the order is wrong or erroneous or even made without jurisdiction. Any party who is aggrieved, for whatever reason, by an order made by a court of law, has the liberty to apply to have it reviewed or revised or altered or set aside or vacated or annulled or invalidated. For as long as the order remains intact or in force, the same would be valid, and available for compliance with. It cannot be ignored or wished away.

23. The prosecution counsel, from the office of the 3rd respondent, who appeared in Kakamega CMCCRC No. 472 of 2020 and Kakamega CMC Misc. Criminal Case No. 61 of 2020, and made the concessions, that I have referred to above, was, no doubt, well aware of or alive to the position that I have stated above, about respecting court orders, and was, therefore, careful that prosecution of Kakamega CMCCRC No. 472 of 2020 did not violate the order in Eldoret ELC Misc. Application No. 9 of 2018. If the appellant cannot live with the order in Eldoret ELC Misc. Application No. 9 of 2018, then the option open to it is to move the court, in Eldoret ELC Misc. Application No. 9 of 2018, for review or setting aside or annulment or invalidation of that order, if good grounds or reasons exist for the same. I understand the appellant has an application pending, in Eldoret ELC Misc. Application No. 9 of 2018, for doing exactly that. It is my understanding that it was on account of the pendency of that application that the court, in Kakamega CMCCRC No. 472 of 2020 and Kakamega CMC Misc. Criminal Case No. 61 of 2020, made the orders that it did make, with the concurrence of the parties, on 9th April 2020, to await the final outcome of that application. The appellant should prosecute that application to its logical conclusion. The other option, available to the appellant, would be to challenge that order on appeal at the Court of Appeal. It should be made very clear, however, that conducting business as if the order in Eldoret ELC Misc. Application No. 9 of 2018 does not exist is not an option available to the appellant.

24. The 1st respondent has raised issue with respect to the competence of the instant appeal. The matter for me to determine now is the Motion for conservatory orders. I shall confine myself to just that. The issue as to the competence, or otherwise, of the appeal is a matter that I shall leave for canvassing at the hearing of the main appeal.

25. In the end, I find that there is no merit in the Motion, dated 15th April 2020. I, accordingly, dismiss the said Motion, and discharge the interim orders that were granted on 16th April 2020. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 12TH DAY OF JUNE, 2020

W. MUSYOKA

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic, and in light of the directions issued by His Lordship, the Chief Justice, on 15th March 2020, this ruling/judgment has been delivered to the parties online with their consent. They have waived compliance with Order 21 rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159 (2) (d) of the Constitution which requires the court to eschew technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 18 of the Civil Procedure Act, Cap 21, Laws of Kenya, which impose on this court the duty to use, inter alia, suitable technology to enhance the overriding objective, which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

W. MUSYOKA

JUDGE