



Kiilu v Chador Auctioneers & 2 others (Environment and Land Appeal E043 of 2023) [2023] KEELC 21940 (KLR) (27 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21940 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E043 OF 2023**

**JO MBOYA, J
NOVEMBER 27, 2023**

BETWEEN

JENNIFER MUMBI KIILU APPLICANT

AND

CHADOR AUCTIONEERS 1ST RESPONDENT

KENSTATE VALUERS LIMITED 2ND RESPONDENT

**THE BOARD OF TRUSTEES, TELEPOSTA PENSION
SCHEME 3RD RESPONDENT**

RULING

Introduction and Background

1. The Appellant/Applicant herein filed and/or mounted the Original Proceedings vide MCELC Case No. E430 of 2023; (Jennifer Mumbi vs Chador Auctioneers and Others) and wherein same sought for various reliefs as against the Respondents herein, who were the Defendants in the said case.
2. Contemporaneous with the filing of the suit, the Appellant/Applicant herein also filed a Notice of Motion Application dated the 11th October 2023; and wherein same sought for the following reliefs; [verbatim]
 - a.Spent.
 - b.Spent.
 - c. The Honorable Court be pleased to (sic) Permanently restrain the Respondents by themselves and/or their agents from proclaiming, attaching and/or selling the Applicant’s household goods as made and listed in the Proclamation of movable properties dated on the 6th October 2023, namely; Coffee Table, TV Stand, TV Set, Sofa Set, Microwave, Fridge and any such



similar items belonging to the Applicant purportedly under the *Distress for Rent Act*, Chapter 293 Laws of Kenya.

- d. Costs of the Application be provided for.
3. Suffice it to point out that the said Application, which was filed and mounted before the Chief Magistrate's court was heard and disposed of vide a Ruling rendered on the 30th October 2023; and wherein the Learned Principal Magistrate found and held inter-alia, that an order of (sic) Permanent injunction, like the one which is being sought for by the Applicant herein could not be issued and/or be granted, at the interlocutory stage.
 4. Having found and held that an order of (sic) Permanent injunction, which essentially, is what the Applicant had sought for, could not be granted; the Learned Principal Magistrate proceeded to and dismissed the Application dated the 11th October 2023.
 5. Following the delivery of the said Ruling, the Appellant/Applicant herein (sic) felt aggrieved and thus proceeded to and filed the current Appeal; and in respect of which same now seeks to impugn the Ruling and order rendered by the Learned Principal Magistrate.
 6. Simultaneously with the Appeal, the Appellant/Applicant has filed the Application dated the 11th November 2023; and in respect of which same has sought for the following reliefs;
 - i.Spent
 - ii. Pending the hearing and determination of the instant Application, the Honorable Court be pleased to grant an Interim order of stay of proceedings in the case known as Milimani MCELC Case No. E430 of 2023 (Jennifer Mumbi vs Chador Auctioneers).
 - iii. Pending the hearing and determination of the Applicant/Appellant's appeal, the Honorable Court be pleased to grant and order of stay of proceedings in the case known as Milimani MCELC Case No. E430 of 2023 (Jennifer Mumbi vs Chador Auctioneers
 - iv. The Honorable Court be pleased to set aside the ruling and/or the order given by Hon. S. A Opande PM, in Milimani MCELC Case No. E430 of 2023 (Jennifer Mumbi vs Chador Auctioneers).
 - v. Consequent to prayer (iv) being granted, the given Ruling made and delivered on the 30th October 2023; and the orders issues thereto by the Honorable Court in the case of MCELC Case No. E430 of 2023 (Jennifer Mumbi v Chador Auctioneers), be reviewed, suspended, varied and/or set aside.
 - vi. This Honorable Court be pleased to grant Conservatory orders for the preservation of the Applicant's/Appellant's property pending hearing and determination of MCELC Case No. E430 of 2023 (Jennifer Mumbi vs Chador Auctioneers).
 - vii. The Honorable Court be pleased to grant such further and/or other orders as the court may deem fit and expedient.
 - viii. Costs of the Application be provided for.



7. Notably, the instant Application is premised and anchored on various grounds which have been enumerated in the body of the Application. Furthermore, the Application is supported by the Supporting affidavit sworn on the 11th November 2023; and a Supplementary Affidavit sworn on the 15th November 2023, both of which have been sworn by the Appellant/Applicant.
8. Upon being served with the Application beforehand, the Respondents herein filed Grounds of opposition dated the 22nd November 2023; and in respect of which same has averred, inter-alia, that the Application beforehand is not only misconceived, but same is equally legally untenable.
9. Further and in addition, the Respondents have also contended that the reliefs sought at the foot of the current Application are substantive reliefs, which can only be granted, if at all, upon the hearing and determination of the substantive Appeal and not otherwise.
10. Be that as it may, the Application beforehand came up for hearing on the 23rd November 2023; when the advocate for the respective Parties agreed to canvass and dispose of the Application by way of oral submissions.
11. Consequently and in this regard, the Application was therefore canvassed and ventilated in the manner agreed upon.

The Parties' Submissions:

a. Applicant's Submissions:

12. The Appellant/ Applicant herein adopted and reiterated the various grounds contained at the foot of the Application, as well as the averments alluded to in the Supporting affidavit and the Supplementary affidavit, respectively.
13. Furthermore, Learned counsel for the Applicant thereafter isolated, raised and highlighted four [4] pertinent issues for consideration by the Honourable court.
14. Firstly, Learned counsel for the Applicant has submitted that the Appellant/Applicant herein had filed the Original suit before the Chief Magistrate's court and thereafter lodged an Application for interim orders, pending the hearing and determination of the suit.
15. However, Learned counsel for the Applicant contended that despite placing before the Trial Magistrate plausible, credible and cogent reasons to warrant the grant of the orders sought, the Trial Magistrate declined to grant the orders sought, albeit without lawful basis.
16. Secondly, Learned counsel for the Applicant has submitted that arising from the ruling of the trial magistrate, the Applicant herein felt aggrieved and dissatisfied and thereafter proceeded to and lodged the current Appeal.
17. Additionally, Learned counsel for the Applicant has submitted that the Appeal beforehand, raises pertinent grounds and same therefore has overwhelming chances of success.
18. Thirdly, Learned counsel for the Applicant has submitted that even though it is the Applicant who filed the suit in the Chief Magistrate's court, the Applicant herein is desirous to have the said suit stayed pending the hearing and determination of this Appeal, so as to avert a scenario where the Appeal herein is rendered nugatory/ academic.
19. Lastly, Learned counsel for the Applicant has submitted that the Applicant herein is disposed to suffer Substantial loss, in the event that the Honourable court fails to grant the Conservatory orders, that have been sought for at the foot of the current Application.



20. In a nutshell, Learned counsel for the Applicant has therefore implored the Honourable court to find and hold that the Applicant has been able to establish and/or demonstrate that the instant Application is meritorious and thus ought to be granted.

b. Respondents' Submissions:

21. The Respondents herein adopted and reiterated the grounds contained at the foot of the Grounds of opposition dated the 22nd November 2023; and thereafter highlighted and amplified four [4] pertinent issues for consideration by the Honourable court.
22. First and foremost, Learned counsel for the Respondents has submitted that the Applicant herein had sought for an order of Permanent injunction, albeit at the foot of an interlocutory application, before the Chief Magistrate's court. Instructively, Learned counsel for the Respondents has contended that an order of (sic) Permanent injunction could not have been issued and that the Learned magistrate was right in dismissing the Application filed by the Applicant herein.
23. Arising from the foregoing, Learned counsel for the Respondents has thus submitted that the appeal beforehand, which essentially challenges the ruling of the Learned Principal Magistrate, is therefore misconceived and does not raise any arguable ground(s) or at all..
24. Secondly, Learned counsel for the Respondents has submitted that the various reliefs and/or orders that have been sought for at the foot of the current Application are substantive orders, which cannot issue and/or be granted on the basis of an interlocutory application.
25. Furthermore, Learned counsel for the Respondents has submitted that the question of setting aside, reviewing and/or vacating the Ruling and order of the Learned magistrate are orders which can only be granted, [if at all], upon the hearing and determination of the appeal and not otherwise.
26. Thirdly, Learned counsel for the Respondents has submitted that though the Applicant herein is seeking for orders of stay of proceedings pending the hearing and determination of the Appeal, same has however neither established nor demonstrated the requisite basis to warrant the grant of such an order.
27. In the absence of the requisite basis for the grant of such an order, Learned counsel for the Respondent has submitted that the orders sought by and at the instance of the Applicant cannot therefore be granted.
28. Lastly, Learned counsel for the Respondents has submitted that the Applicant herein has neither established nor demonstrated that Substantial loss, if at all, is likely to accrue, if the orders sought are not granted.
29. Further and in any event, Learned counsel for the Respondents has submitted that it was incumbent upon the Applicant to lay before the court sufficient cause and/or basis to warrant the grant of the orders of stay of proceedings and conservatory order; but which the Applicant has failed to prove.
30. Based on the foregoing submissions, Learned counsel for the Respondents has thus invited the court to find and hold that the Application beforehand is not only misconceived, but same is legally untenable; and otherwise, amounts to an abuse of the Due process of the Honourable court.



Issues For Determination:

31. Having reviewed the Application beforehand and the Response thereto; and upon taking into consideration the oral submissions on behalf of the Parties, the following issues do emerge and are thus worthy of determination;
 - i. Whether the Applicant herein has established and demonstrated sufficient basis/cause to warrant the grant of the orders of stay of proceedings or at all.
 - ii. Whether the various reliefs and/or orders sought at the foot of the current Application can be granted, if at all, at an Interlocutory stage.
 - iii. Whether the Applicant is entitled to a Conservatory order either as sought or at all.

Analysis And Determination

Issue Number 1 Whether the Applicant herein has established and demonstrated Sufficient basis/ cause to warrant the grant of the orders of stay of proceedings or at all.

32. Before venturing to address and resolve the issue hereinbefore mentioned, it is instructive to observe and point out that it is the Applicant herein who approached the Chief Magistrate's court and filed the Original proceedings/suit, wherein same sought for a plethora of Reliefs.
33. Having filed the original suit before the Chief Magistrate's court, one would have expected the Applicant herein to be at the forefront of fast tracking the hearing and eventual disposal of the suit, one way or the other, with a view to attaining the substantive determination of the issues in dispute.
34. Nevertheless, it is the same Applicant, who move the Chief Magistrate's court and sought a plethora of reliefs, who has since moved this Honourable court and is now seeking for, inter-alia, orders of stay of proceedings.
35. Owing to the fact that the Applicant is seeking for orders of stay of proceedings, it was/is therefore incumbent upon the Applicant to demonstrate that same has a sufficient cause and/or basis, to warrant the grant of the orders of stay of proceedings.
36. To this end, what comes to mind, as part of an endeavor to demonstrate the existence of a sufficient cause, is whether the Applicant has filed and/or mounted an Appeal, which no doubt, provides the foundation upon which the Application for stay of proceedings is anchored. [See Order 42 Rule 6(1) of the Civil Procedure Rules, 2010].
37. Secondly, other than the demonstration that an appeal has since been filed, it behooves the Applicant to venture forward and demonstrate that the Appeal that has been filed raises pertinent and arguable grounds of Appeal, which on the face of it , can attract investigation by the court during the hearing of the said appeal.
38. Simply put, it is not enough that some semblance of an Appeal has been fled against the Ruling/ decision of the Surbordinate Court.
39. At this juncture, it is imperative that the court does venture forward and endeavor to discern whether the appeal that has been placed before this court is indeed (sic) arguable or otherwise. For good measure, it is where there is an arguable appeal that this Honourable court would then be able to address the question of sufficient cause.



40. Notably, the Applicant herein filed an application before the Chief Magistrate's court and same sought an order of Permanent injunction, albeit on the basis of an interlocutory application.
41. Confronted with the application for Permanent injunction, albeit at an interlocutory stage, the Learned Principal Magistrate found and held that such an order cannot be issued at an interlocutory stage. Consequently, the Learned Principal Magistrate proceeded to and dismissed the application and thereby provoking the instant appeal.
42. To my mind, the Ruling of the Learned Principal Magistrate, which found and held that a Permanent injunction could not issue at an interlocutory stage, was succinct, correct and principally sound.
43. Having found and held that the ruling by the Learned Principal Magistrate was ex-facie correct and sound, the question that does arise and which merits interrogation is whether the Appeal against the ruling beforehand, has and/ or stands any remote chance of success, to warrant constituting a Sufficient cause.
44. In my humble view, there are a legion of case law and/or decided decisions which underscore that an order of Permanent injunction cannot issue and/or be granted at an interlocutory stage. Further and in any event, there is no gainsaying that an order of Permanent injunction effectively determines and/ or disposes of all the issue in dispute.
45. Consequently and to the extent that an order of Permanent injunction would ordinarily dispose of all the issues in dispute, same therefore cannot issue and/or be granted at an interlocutory stage.
46. To buttress the foregoing position, it suffices to adopt, re-state and reiterate the holding in the case of Kenya Power & Lighting Company Ltd v Sherrif Molana Habib [2018]eKLR, where the court stated and held thus;

“A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.

9. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.”

47. Back to the question of sufficient cause. Having found and held that the Appeal beforehand does not ex-facie, raise any arguable ground, taking into account the established position of the law as pertains to the grant of Permanent injunction, can it now be said that there is sufficient cause?
48. In my humble, albeit considered view, it was incumbent upon the Applicant herein, to demonstrate the existence of (sic) some arguable appeal. However, taking into account what has been alluded to hereinbefore, there is certainly, no arguable Appeal that has been placed before the Honourable Court, or at all.



49. Consequently and in the circumstances, there is no gainsaying that the Applicant herein has neither established nor met the threshold question and/or issue, which was necessary and/or critical, prior to or before being capable of pursuing an Order of Stay of Proceedings.
50. Suffice it to point out that sufficient cause denotes, inter-alia, good cause, reason and a genuine case, upon which the court of law is called upon to calibrate on, in determining the rights of the Parties. Instructively, an appeal which is ex-facie not arguable, does not amount to such a cause.
51. To underscore the meaning, import and tenor of what constitutes sufficient cause, it is appropriate to take cognizance of the holding in the case of *Bildad Wachira v Wachira* [2016]eKLR, where the Court held and stated as hereunder;

“It's important for me to mention that in the above case, the court defined what constitutes sufficient cause and in this respect the following paragraph is highly relevant to the issues before me:-

“Once the defendant satisfies the court on either, the court is under duty to grant the application and make the order setting aside the ex parte decree, subject to any conditions the court may deem fit. However, what constitutes 'sufficient cause' to prevent a defendant from appearing in Court, and what would be 'fit conditions' for the court to impose when granting such an order, necessarily depend on the circumstances of each case.

Although it is an elementary principle of our legal system, that a litigant who is represented by an advocate, is bound by the acts and omissions of the advocate in the course of the representation, in applying that principle, courts must exercise care to avoid abuse of the system and or unjust or ridiculous results. A litigant ought not to bear the consequences of the advocates default, unless the litigant is privy to the default, or the default results from failure, on the part of the litigant, to give the advocate due instructions”

The applicant is required to satisfy to the court that he had a good and sufficient cause. What does the term "sufficient cause" mean.? The Court of Appeal of Tanzania in the case of *The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others*[9] discussing what constitutes sufficient cause had this to say:-

“It is difficult to attempt to define the meaning of the words 'sufficient cause'. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant” (Emphasis added)

In *Daphene Parry vs Murray Alexander Carson*[10] the court had the following to say:-

“Though the court should no 'doubt' give a liberal interpretation to the words 'sufficient cause,' its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy,”(Emphasis added)

52. Secondly, it is also not lost on this Honourable court that an order of stay of proceedings is a grave order, taking into account that such an order will culminate into the suspension of further proceedings in the suit which is the subject of such stay.
53. Furthermore, it is also imperative to underscore that the issuance of an order of stay of proceedings has the net effect of delaying the expeditious hearing and disposal of the suit beforehand. Consequently



and given its effects on the administration of Justice, it is an order that somehow impacts on the Fundamental rights and constitutional dictates underpinned by Article 152(2)(b) of *the Constitution* 2010.

54. Arising from the foregoing observations, an order of stay of proceedings, [like the one sought by the Applicant herein], can thus only issue sparingly and with necessary circumspection.
55. Simply put, an order of stay of proceedings does not issue for the mere asking at the instance of the Applicant. Invariably, such an Applicant must satisfy certain conditions and if not, then the Orders of Stay of Proceedings, shall not avail.
56. To buttress the legal position attendant to the grant of an order of stay of proceedings, it suffices to re-state and reiterate the ratio decidendi in the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR, where the court held as hereunder;

“Therefore the test for stay of proceeding is high and stringent. See Ringera J in the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000* persuasively stated thus;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously” (emphasis added)

57. Furthermore, the stringent conditions to be established prior to and or before an Applicant can partake of an order of stay of proceedings, were also elaborated upon in *Halsbury’s Law of England*, 4th Edition. Vol. 37 page 330 and 332, where the Learned authors stated as follows;

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

58. Based on the foregoing, my answer to issue number one [1] is twofold. Firstly, the appeal which the Applicant has placed before the court is ex-facie not arguable, taking into account the established



position of the law as pertains to whether or not an order of Permanent injunction, can issue at an interlocutory stage.

59. Secondly, I have also come to the conclusion that the Applicant herein has neither established nor demonstrated sufficient cause, which is a critical ingredient and threshold issue, prior to and before procuring a favorable order of stay of proceedings.

Issue Number 2

Whether the various Reliefs and/or orders sought at the foot of the current Application can be granted, if at all, at an interlocutory stage.

60. Other than seeking for the orders of stay of proceedings pending the hearing and determination of the instant appeal, the Applicant herein has ventured forward and sought for a plethora of reliefs, inter-alia, reviewing, variation and setting aside of the Ruling by the Learned Principal Magistrate.
61. Remarkably, it is worthy to underscore that the orders for setting aside and variation of the ruling of the Learned Principal Magistrate are being sought for in an interlocutory application and not otherwise.
62. Consequently and in this regard, the question that does arise and which the court must grapple with is; whether a court entertaining and interlocutory application, [like the one beforehand], can set aside and/or review the ruling which is the subject of Appeal.
63. To my mind, the question of review of the ruling and/or orders of the Magistrate, if at all, falls within the Jurisdiction of the magistrate. In this respect, if what was being sought was an order of review, [then no doubt], same ought to have been sought for before the Chief Magistrate Court. See order 45 of the Civil Procedure rules, 2010.
64. On the other hand, the question of setting aside of the ruling and/or order of the Magistrate, which is the subject of appeal, can only be gone into and granted, (if at all), during the hearing of the Substantive appeal and not otherwise.
65. Despite the foregoing, the Applicant and her Learned counsel has approached the court and sought that this court be pleased to set aside and vary the ruling, albeit, at an interlocutory stage.
66. I beg to state that just as an order of Permanent injunction could not have been issued in favor of the Applicant, at an interlocutory stage, the order for setting aside and variation of the ruling, can also not be issued at this interlocutory stage, during the pendency of the Appeal.
67. Consequently and in view of the foregoing, it is evident and apparent that the Applicant and her counsel are actually seeking to procure and obtain orders which the court is not seized of the requisite Jurisdiction to grant at the interlocutory stage.
68. To surmise, I find and hold that prayers 4 and 5 of the Application beforehand, [which are substantive in nature], are misconceived and otherwise legally untenable.

Issue Number 3

Whether the Applicant is entitled to a Conservatory Order; either as sought or at all.

69. The Applicant herein has also approached the Honourable court and sought to be granted a Conservatory order, allegedly to preserve and conserve the status of the movable properties, which are the subject of distress for rent.



70. Instructively, it is important to observe that the properties which are the subject of the current application and by extension the appeal, are indeed movable property which have known monetary values.
71. Consequently and in the premises, there is no gainsaying that in the event of the Applicant proving her case before the Chief Magistrate's Court, no doubt, the value of the movable properties in dispute, can be reckoned and computed in monetary terms.
72. Other than the foregoing, it is also worth reiterating that insofar as the movable properties have a monetary value, then upon computation and ascertainment of same, the ascertained value can be very well be paid and/or refunded by, inter-alia, the 2nd and 3rd Respondents.
73. Nevertheless and in my humble view, a Conservatory order can and does issue in special and peculiar circumstances; and more particularly, where the loss, if any, to be suffered, is immeasurable and substantial, so much so that same is neither measurable in monetary terms nor compensable.
74. Be that as it may and as pertains to the issues beforehand, I have pointed out that the loss, if at all, that the Applicant may suffer (which in any event is remote), can be atoned for and indemnified in monetary terms.
75. Simply put, the Applicant herein has similarly neither espoused nor demonstrated the foundation upon which a Conservatory order ought and should issue. Consequently and in this regard, the Applicant is not entitled to a Conservatory Order.
76. Before departing from this issue, it is appropriate to remember that a Conservatory order, in any event, is an order that avails and issues in Public Law disputes, as opposed to Private Law disputes, like the one beforehand.
77. In this respect, it suffices to reiterate and re-emphasize the dictum of the Supreme Court of Kenya, in the case of *Gitarau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014], where the court held as hereunder;
 - (86) "Conservatory orders" bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as "the prospects of irreparable harm" occurring during the pendency of a case; or "high probability of success" in the supplicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.
78. Similarly and without belaboring the point, I come to the conclusion that the Applicant herein is also not deserving of the grant of Conservatory orders, either in the manner sought or at all.
79. Further and in any event, it is worth repeating that a Conservatory order cannot issue in such kind of a dispute, bearing in mind the import and tenor thereof.



Final Disposition:

80. Arising from the discourse, [details in terms of the preceding paragraphs], there is no gainsaying that the Application by and at the instance of the Applicant herein, is not only misconceived, but similarly, same is Legally untenable.
81. In a nutshell, the Application beforehand, namely, the Application dated the 11th November 2023; is devoid and bereft of merits and same be and is hereby Dismissed with costs to the Respondents.
82. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF NOVEMBER 2023.

OGUTTU MBOYA,

JUDGE.

In the Presence of:

Benson - Court Assistant.

Mr. Nyakeriga for the Appellant/Applicant..

Mr. Peter Muuo for the Respondents

