



Party of Democratic Unity v Manager of Kenya House Complex & 2 others (Environment and Land Appeal E001 of 2022) [2022] KEELC 3514 (KLR) (14 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3514 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E001 OF 2022**

**JO MBOYA, J
JULY 14, 2022**

BETWEEN

PARTY OF DEMOCRATIC UNITY APPELLANT

AND

THE MANAGER OF KENYA HOUSE COMPLEX 1ST RESPONDENT

RICHARD WANG'ONDU 2ND RESPONDENT

ICON AUCTIONEERS 3RD RESPONDENT

RULING

INTRODUCTION

1. Vide the Application dated the January 12, 2022, the Appellant/Applicant has sought for the following Orders;
 - a)Spent
 - b) This Honorable Court be pleased to grant an Order of Stay of Execution of the Ruling delivered by Honorable Gakuhi Chege, the Vice chairman of the Business Premises Rent Tribunal, on the December 14, 2021 and all consequential Orders arising there from pending the hearing and determination of this Application Inter-Partes.
 - c) This Honorable Court be pleased to grant an Order of stay of execution of the Ruling delivered by Honorable Gakuhi Chege, the Vice chairman of the Business Premises Rent Tribunal, on the December 14, 2021 and all consequential Orders arising there from pending the hearing and determination of the Appeal.
 - d) Cost of and incidental to the Application be cost in the Intended Appeal.



2. The subject Application is premised and/or anchored on the Grounds enumerated at the foot thereof and same is further supported by the Affidavit of one, namely, Isaiah Ndirangu, sworn on the January 12, 2022 as well as the Further Affidavit sworn on the March 12, 2022.
3. Upon being served with the subject Application, the 1st and 2nd Respondents' filed a Replying Affidavit sworn by one, namely, Richard Wang'ondy Makanga, on the February 2, 2022.

Depositions by the Parties:

a. Appellant's/applicant's Case:

4. Vide Supporting Affidavit sworn on the January 12, 2022 and the Further Affidavit sworn on March 12, 2022, one, Isaiah Ndirangu, herein after referred to as the Deponent, has averred that same is the chairman of the Appellant/Applicant party.
5. Besides, the Deponent has averred that the Appellant herein, is a Political Party with over 200,000 Members, whose original records and particulars are held at the Suit premises and the said records include copies of the identity cards and other information, which are sensitive and confidential.
6. On the other hand, the Deponent has further averred that the said confidential and sensitive information, are threatened with destruction and interference by Third Parties and such interference may prejudice the Appellant's participation in the forthcoming General Elections, unless the Orders sought herein are granted.
7. Further, the Deponent has also averred that the Vice chairman of the Business Premises Tribunal made and/or rendered a ruling vide tribunal case No. 260 of 2021, which Ruling favored the Respondents herein as against the Appellant's, as pertains to payment of outstanding rents in full, together with costs.
8. Nevertheless, the Deponent has averred that the order of the Vice Chairman of the Tribunal did not specify and/or disclose the total outstanding rents, if any, that was owing and outstanding. In this regard, the Deponent has contended that the Order of the Vice chairman was ambiguous.
9. Other than the foregoing, the Deponent has further averred that despite the contents of the impugned Ruling, the Appellant herein disputes the existence of any rent arrears and in any event, it was not possible to determine and/or ascertain the existence of any Rent arrears, in the absence of a Rent Book being provided by the Respondents.
10. At any rate, the Deponent has further averred that the Appellant herein is on the verge of being distrained upon on the basis of the alleged Outstanding rents, which were neither disclosed nor quantified vide the impugned Ruling of the Vice chairman of the Tribunal.
11. Besides, the Deponent has also averred that the Appellant is similarly disposed to the Evicted form the Suit premises, where its Members' sensitive and confidential Documents are kept.
12. On the other hand, the Deponent has further averred that even though the Appellant tendered and/or provided evidence that the offices of the Appellant were furnished by the Appellant and that the Appellant similarly repaired the offices after the construction of the premises, the Vice chairman of the Tribunal, failed to take into account the said Evidence and thereby arrived at an erroneous conclusion.
13. Be that as it may, the Deponent has further averred that the Appeal has since been filed and/or lodged before the Court is arguable and has overwhelming chances of success.



14. Other than the foregoing, the Deponent has averred that unless the Orders sought are granted, the Appellant herein shall be exposed to interference with her offices and that such interference, shall occasion due prejudice and Substantial loss, not compensable in Monetary terms.
15. Based on the foregoing, the Deponent on behalf of the Appellant has therefore implored the Honourable Court to grant the Reliefs sought at the foot of the subject Application.

b. Response by the Respondents'

16. The Respondents' herein filed a Replying Affidavit sworn by Richard Wang'ondy Makanga, on the February 2, 2022 and in respect of which, the Deponent averred that the Appellant herein has been a Tenant in the premises belonging to and owned by the 1st Respondent.
17. It has further been averred that at the onset, the contractual rents which were due and payable by the Appellant was the sum of Kshs.50, 000 Only, per month, but however, the rent was varied downwards and stood in the sum of Kshs.40,000 Only, per month.
18. Be that as it may, it was further averred that the Appellant herein paid rents intermittently and thereby accrued rent arrears, which amounted to Kshs.880, 000 only as at the March 11, 2021.
19. Besides, the Deponent averred that as a result of the outstanding rents, same proceeded to and instructed the 3rd Respondent to proceed and levy Distress against the Appellant, with a view to recovering the outstanding rent arrears.
20. Further, it was averred that pursuant to the instructions to and in favor of the 3rd Respondent, same proceeded to and served a proclamation notice upon the Appellant herein, as a precursor to the attachment of the Appellants' movable properties, towards realization of the outstanding rents.
21. On the other hand, the Deponent has averred that upon the issuance and service of the Proclamation notice, the Appellant herein filed and/or mounted a Reference before the Business Premise Tribunal, as well as an application for temporary injunction, the latter, which sought for injunctive Orders to avert the levying of Distress.
22. Besides, the Deponent averred that the Application and the Reference, were ordered and/or directed to be heard simultaneously and by way of written submissions and thereafter same were disposed of vide Ruling rendered on the December 14, 2021.
23. For clarity, the Deponent has averred that the Vice chairman of the Tribunal found and held that indeed the Appellant herein had accrued and was therefore in Rent arrears amounting to Kshs.850, 000 only, as at April 2021.
24. It was further averred that following the rendition and/or the delivery of the impugned Ruling, the Appellant herein was ordered and/or directed to pay and/or settle, inter alia, the entire outstanding rent within 30 days from the date of delivery of the Ruling.
25. Notwithstanding the foregoing, the Deponent has averred that the Appellant has failed to comply with the terms of the Ruling and hence same remains in arrears of rent, despite continued occupation and use of the Demised premises.
26. At any rate, the Deponent has averred that in so far as the Suit decree, relates to payments of rents, which is monetary in nature, the Appellant herein shall not suffer any Substantial loss or at all, if the Orders of stay of Execution, are not granted.



27. On the other hand, the Deponent has further averred that the Appellant herein has also not satisfied the requisite grounds, for the issuance of the Orders of stay of execution pending Appeal. Consequently, the Deponent contends that the subject Application is devoid of merits.
28. In the premises, the Deponent on behalf of the Respondents has therefore contended that the subject application is devoid of merits and thus sought for the dismissal of the said Application.

Submissions by the Parties:

29. The Appellant/Applicant herein filed written submissions dated the April 30, 2022 and in respect of which the Appellant addressed three pertinent issues;
30. First and foremost, Counsel for the Appellant submitted that the Appellant is a Political Party with over two hundred thousand members and that same is currently involved in the impending general election and/or electoral process.
31. Further, the Appellant's Counsel submitted that by virtue of being a Political Party, the Appellant holds various records belonging to her Members, including copied of identity cards and other sensitive information, which ought to be protected by the court. For clarity, counsel for the Appellant submitted that any actions and/or activity that may disturb the records held by the Appellant, may very well go to the root of the Appellant's enjoyment of the Constitutional Rights vide article 38 of *the Constitution* 2010.
32. In any event, Counsel for the Appellant further submitted that a failure to grant an order of stay of execution sought vide the Application herein shall deny and/or deprive the Members of the Appellant of their Right to express and/or partake of their political rights as contemplated under Article 38 of *the Constitution* 2010.
33. Based on the foregoing, Learned counsel for the Appellant has therefore contended that the Appellant shall be disposed to suffer substantial loss, being a loss not compensable in Monetary terms.
34. Secondly, the counsel for the Appellant has submitted that the subject application, was filed and/or lodged in court without unreasonable delay.
35. To this end, Learned counsel submitted that the impugned ruling and/or order was rendered on the December 14, 2021, yet the subject application was filed on the January 12, 2022. In this regard, it was thus submitted that the subject application was filed with due promptitude and timeously.
36. Thirdly, counsel for the Appellant has submitted that though the court is mandated to decree and/or order provision of such security as may ultimately be binding on the Applicant, however counsel has submitted that in respect of the subject matter, the only outstanding rent that was due and owing was the sum of Kshs.60, 000/= only, which the Appellant has since paid.
37. At any rate, Counsel for the Appellant has further submitted that the ruling of the Business Premises Rent Tribunal, rendered on the December 14, 2021 was ambiguous and did not speak to any amount on account of Outstanding rents.
38. In the premises, the Learned counsel for the Appellant therefore submitted that the court ought not to decree an order for provision of security, in respect of the subject matter.
39. On the other hand, counsel for the Appellant also submitted that the Appellant is a Political Party and therefore not a Business entity, whose purpose is to make money. Consequently, it was contended that by the nature of the Appellant, it would not be appropriate and/or expedient to decree the provision of Monetary Security.



40. In support of the foregoing submissions, the Appellant has cited and relied on, inter alia, *HGE versus SM* (2020)eKLR, *Kenya Power & Lighting Company Ltd versus Esther Wanjiru Wakobi* (2014)eKLR and *Stanley Kiplangat Rono & Another versus Wiliam Kiprotich Cherus* (2021)eKLR.

Submissions by the Respondents:

41. The Respondents filed their written submissions dated the May 12, 2022 and same raised two pertinent issues for determination;
42. Firstly, it was the Respondents' submissions that the Appellant herein had not controverted and/or contested the evidence of her indebtedness, on account of Rent arrears before the Business Premises Rent Tribunal.
43. In particular, Learned counsel for the Respondents referred to and highlighted paragraph 36 of the Ruling of the Business Premises Rent Tribunal, which clearly pointed out and/or underscored that the tenant, (now the Appellant/Applicant) had not challenged the Statement of Accounts which illustrated the extent of her indebtedness.
44. Based on the fact, that the Tribunal had found that the Appellant had accrued and/or accumulated Rent arrears, it was submitted by the Respondents' Counsel that the Appellant's conduct, does not entitle same to an Equitable remedy of stay of execution pending Appeal.
45. At any rate, Learned counsel for the Respondents further submitted that the issue before hand relates to recovery of monetary amounts, on account of rents and that the payment of such moneys, shall not occasion any Substantial loss or at to the Appellant.
46. Contrarily, Counsel for the Respondents has submitted that if the Appeal herein were to succeed, the Appellant would be able to recover the monies paid to and in favor of the 1st Respondent on account of (sic) the disputed rents.
47. Besides, the Counsel for the Respondents has also submitted that the Respondents herein and particularly, the 1st Respondent who is the Landlord, is seized of the requisite resources and capability of paying the amount in question, ultimately if the appeal succeeds.
48. Based on the foregoing, counsel for the Respondents has therefore underlined the fact that the Appellant herein has not established and/or laid before the Court any Evidence to warrant a finding that same shall be disposed to suffer Substantial loss.
49. Secondly, the Counsel for the Respondents has submitted that it was incumbent upon the Appellant to express and/or show her readiness and/or willingness to offer and/or provide security for the Due performance of the Decree that may ultimately ensue/arise.
50. However, Learned counsel for the Respondents has pointed out that the Appellant herein has not only failed to offer security, but same has argued contrary to and/ or against the provision of such security.
51. In the premises, Counsel for the Respondents has submitted that the Appellant herein has therefore not exhibited and/or displayed bona fides, in respect of the subject Application.
52. Finally, Counsel for the Respondent submitted that the grant or otherwise of an order of stay of Execution pending Appeal, is discretionary.
53. Consequently, Counsel for the Respondent has submitted that the circumstances underlining the subject dispute, essentially, the non-payment of Rents, are such that an order stay of Execution, ought not to be granted.



54. On their part, the Respondents has relied on inter-alia, *Sammy Some Kosgei versus GeoRge Jelei Boit* (2013)eKLR, *Everlyne Jebitok Keter versus Henry Kiplangat Muge & 2 others* (201)eKLR, *Robert Ngaruiya Chuth versus joseph Chege Ndungu* (2014)eKLR and *Charls Wabome versus Angela Wairimu Getbi* (2008)eKLR.

Issues for Determination:

55. Having reviewed the subject Application, the Supporting Affidavits and the Responses thereto; and having similarly, considered the submissions filed on behalf of the Parties, the following issues do arise and are thus germane for Determination;
- i. Whether the Appellant has established sufficient cause and/or basis in respect of the subject matter.
 - ii. Whether the subject Application was filed and/or lodged without undue delay.
 - iii. Whether Substantial loss shall arise and/or accrue, if the orders of stay Execution are not granted.
 - iv. What type and/or nature of security ought to be decreed, in the event the court grants the orders of stay of Execution.

ANalysis and Determination

Issue Number1 Whether the Appellant has established Sufficient cause and/or basis in respect of the subject matter.

56. In respect of the first issue herein, it is appropriate and worthy to note that the Appellant herein have since filed and/or lodged a Memorandum of Appeal against the ruling and/or decision of the tribunal rendered on the December 14, 2021.
57. It is also important to note that the Memorandum of Appeal under reference has raised and/or displayed various Grounds of Appeal, which on the face of it, espouse issues of facts and law, worthy of interrogation during the hearing and determination of the appeal.
58. Notwithstanding the foregoing, it is also imperative to appreciate that the Appellant herein had a right of appeal arising from and/or against the impugned ruling and/or decision. For clarity, the right of Appeal vests in favor of the Appellant by dint of section 15 of the *Landlord and Tenant (Shops, Hotel & Catering Establishment) Act* Chapter 301 Laws of Kenya.
59. In the premises, it is therefore my finding and holding that indeed there exists a sufficient cause and/or basis that has been laid by the Appellant vide the Memorandum of appeal which has since been lodged before the court and which, ex-facie, raises arguable Grounds of Appeal.

Issue Number2 - Whether the subject Application was filed and/or lodged without undue delay.

60. It is common ground that the impugned ruling and/or decision was rendered on the December 14, 2021.
61. On the other hand, upon the delivery of the impugned Ruling, the Appellant herein felt aggrieved and/or dissatisfied and therefore same mounted the Appeal as well as the subject application. For clarity, the subject Application was filed on the January 12, 2022.



62. Before resolving the issue as to whether or not the subject Application was filed without unreasonable delay or otherwise, it is important to appreciate that the duration between the December 21, 2021 to the January 13, 2022, falls within the exemption period, which ordinarily is not reckoned in the computation of time.
63. To vindicate the foregoing statement, it suffices to underscore the provisions of order 50 rule 4 of the Civil procedure Rules 2010, which provides as hereunder;
- When time does not run [order 50, rule 4.]
- Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act:
64. Taking into account the excluded/exemption duration, it is evident and/or apparent that the said Application was filed and/or lodged before the Honourable court within a reasonable period from the delivery of the impugned ruling, which is the subject of the orders of Stay herein.
65. In the premises, it is my finding and holding that the Application of Stay of execution pending the Hearing of the Appeal, was therefore filed and/or lodged without undue delay.
66. Put differently, the Application herein was filed timeously and with due promptitude and in this regard, the Appellant has exhibited due diligence and dispatch.

Issue Number 3 Whether Substantial loss shall arise and/or accrue, if the orders of stay execution are not granted.

67. It has hitherto been established and/or underscored that substantial loss, in its various/infinite perspectives, is the cornerstone to granting an order of stay of execution pending appeal. Contrarily, it has also been underlined that in the absence of proof of substantial loss, an order of stay of execution pending appeal ought not to be granted.
68. To underscore the foregoing principle, it is appropriate to restate and adopt the holding in the case of Kenya Shell Ltd v Benjamin Karuga Kiburu & Another (1986)eKLR, where the Court of Appeal held as hereunder;

‘If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone of both Jurisdictions for granting stay’,

69. Other than the foregoing decision, the centrality of Substantial loss in an Application for stay of execution pending appeal, was re-visited by the Court of Appeal in the case of Charles Wahome Gethi Versus Agenlla Wairimu Gethi Civil Application No. 302 of 2007 (2008)eKLR, where the court held as hereunder;

“.. It is not enough for the applicants to say that they live or reside on the suit land and that they will suffer substantial loss. The Applicants must go further and show the substantial loss that the applicants stand to suffer if the Respondent executes the decree in this suit against them.”



70. Based on the foregoing position of the law, it is ordinarily incumbent upon the Applicant, who seeks to be granted an order of stay of Execution pending Appeal to place before the Court evidence in the form of an affidavit to show that same shall be disposed to suffer Substantial loss.
71. To my mind, the Burden of proving and/or establishing Substantial loss, namely, the Evidential burden lies upon the Appellant, who must discharge same before the Respondent, if at all, is called upon to rebut and/or controvert the Evidence adduced.
72. Be that as it may, the Appellant herein merely contended that she is a Political Party, with approximately over two hundred thousand members and that a refusal to grant an order of stay, shall prejudice the Applicant and her members, in a manner that may interfere with the Applicant's enjoyment of her Political rights in terms of article 38 of *the Constitution* 2010.
73. On the other hand, the Appellant had also contended that by virtue of being a Political Party same holds records and/or documents on behalf of her Members, which are sensitive documents and if interfered with, the Appellant and her members would be immensely prejudiced.
74. In short, the Appellant herein contends that the Substantial Loss that will arise and/or accrue, will essentially relate to the interference with the Appellant and her members from exercising and/or enjoying the Constitutional Rights underlined vide article 38 of *the Constitution*, 2010.
75. Be that as it may, it is appropriate to point out and or state that the Appellant and her members are entitled to enjoy and/or partake of the Constitutional Rights in terms of article 38 of *the Constitution* 2010, without hindrance and/ or interference.
76. Further, it is also imperative to affirm that the Appellants rights under article 38 of *the Constitution* as read with article 81 thereof, are ordinarily exercised by the Members of the Appellant Political Party proceeding to their respective polling stations and voting, provided that such members are duly registered voters.
77. Nevertheless, it is worthy to point out that the subject dispute, is not geared towards, either invalidating and/or affecting the registration of the Appellant as a Political Party, so as to deny and/ or deprive her of the Constitutional Right to participate in the forthcoming General elections.
78. On the other hand, it is also common ground that the subject proceedings are not inclined to challenging the right to vote by the members of the Appellant herein, so as to warrant a contention that the Appellant's Members are likely to be dis-enfranchised, in any manner whatsoever and howsoever.
79. To my mind, the Appellant and her members, whether same be two hundred thousand or otherwise, are at liberty to participate in the forthcoming general election and exercise her/their political rights under article 38 of *the Constitution* 2010, without let and/or in hindrance.
80. Nevertheless, it suffices to observe and underscore that the subject dispute touches on and/or relates to recovery of her outstanding Rent arrears, which were ascertained and decreed by the Tribunal to be owing and payable in favor of the Respondent.
81. Consequently, the question to be determined before ascertaining whether a Substantial loss will accrue or otherwise; is whether the payments of the sum of Kshs.850, 000/= only, which was found due as at April 2021, will occasion any substantial loss, to the Appellant/Applicant.
82. To vindicate the occurrence of substantial loss, it was therefore incumbent upon the Appellant to show that the payment of the monies in question would ground her activities to a halt or conversely; that the Respondents will not be able to refund the decretal sum, in the event the appeal succeeds.



83. To my mind, the Appellant has not laid and/or established any evidence before the court to denote the likelihood of Substantial loss, occurring and/ or arising, in the event the Orders sought are not granted.
84. For the avoidance of doubt, no such deposition was contained in either the Supporting Affidavit or the Further Supporting affidavit, the latter which was sworn on the March 12, 2022.
85. Nevertheless, I must point out that the Respondents herein and more particularly, the 1st Respondent, by virtue of being the Landlord of the Appellant and many other tenants, a fact which was admitted by the Appellant, is seized of sufficient Resources and funds derivable from the Monthly rents accruing from the suit property.
86. In the premises, there is no gainsaying that the Respondents and in particular the 1st Respondent, shall be in a position to repay and or refund any such amounts of monies that may be found due and refundable, depending on the outcome of the Appeal.
87. Other than the foregoing, any monies that may be found due and payable to the Appellant, that is, in the event the appeal succeeds can also be treated as advance Rents and spread over future Months, subject to the Appellant remaining and/ or continuing as a Tenant in the suit premises.
88. In the circumstances, I come to the conclusion that the Appellant herein has not placed before the court any Evidence of Substantial loss, that may arise and/or accrue and that in the absence of such Evidence, no order of stay of execution pending Appeal can be granted.

Issue Number 4 What type and/or nature Security ought to be decreed, in the event the court grants the orders of stay of Execution sought.

89. The subject Application essentially, touched on and/or concerned the grant of an order of stay of execution pending the hearing and determination of the existing Appeal.
90. Being an Application for stay, one other pre-requisite condition that an Applicant must establish and/ or fulfil; is readiness and/or willingness to provide such security that the court may deem fit and/or expedient in the circumstance of the case.
91. Nevertheless, it is imperative to note that the provision of such security for the Due performance of the Decree, that may ultimately be binding on the Applicant upon the determination of the Appeal, is mandatorily provided for under the law.
92. Consequently, it is my considered view that the provision of security is peremptory and a matter of law and not one of Discretion.
93. On the other hand, what falls within the discretion of the Honourable court is the deliberation and/or calibration on the nature, type, scope and quantum of security, if at all, whether monetary or otherwise, to be decreed.
94. Based on the foregoing, it is therefore imperative to note that an Applicant, who is keen to partake of or benefit from the discretion of the Court on account of an order of stay of execution pending appeal, must therefore proffer readiness and/or willingness to provide such security in such manner as the Court may Decree.



95. To buttress the foregoing observation, I adopt and endorse the holding of the Court in the case of *Charles Wabome Gethi versus Angela Wairimu Gethi* [2008] eKLR, where the Court stated as hereunder;

“Lastly, the rules of procedure require that the Applicant must offer security as the court may order. On perusal of the application before Court, it is evident that the Defendant has not stated that he is willing and ready to give security subject to the directions of the court. Notably, however, this application is brought under order 22 rule 25 of the *Civil Procedure Rules*, which provides:

Where a suit is pending in any court against the holder of a decree of such court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

96. Notwithstanding the foregoing, it is also imperative to note that even in the exercise of discretion to determine the nature, type, scope and quantum of security to be offered, it is incumbent upon the court to note that the security decreed must be one that is able to ensure the Due performance of the decree which may ultimately ensue and be binding upon the Applicant, that is, in the event the appeal fails.

97. In the premises, the security must be one that is realizable and achievable, without further litigation or otherwise, upon the conclusion and/ or determination of the Appeal.

98. To this end, it suffices to adopt and endorse the holding of the Court in the case of *Gianfranco Manenthi & another vs. Africa Merchant Assurance Company Ltd* [2019] eKLR, where the court observed:

“... the Applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security.

In this regard, the security for due performance of the decree under order 42 rule 6(1) of the *Civil Procedure Rules*, it is trite that the winner of litigation should not be denied the opportunity to execute the decree in order to enjoy the fruits of his judgment in case the appeal fails.

Further, order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favour. This is therefore to provide a situation for the court that if the appellant fails to succeed on appeal there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgement involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal ... Thus the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. Counsel for the applicant submitted that he is ready to provide a bank guarantee as security for due performance of the decree.

99. Despite the express and explicit provisions of order 42 rule 6(2) of the *Civil Procedure Rules* 2010, which underlines the importance of the provisions of security, the Appellant herein was still courageous to contend that the Appellant being a Political Party ought not to be directed to provide security.



100. In my considered view, the Appellant herein is just one of the many litigants seeking to partake of and benefit from the mandate and discretion of the court.
101. Consequently, the Appellant, just like any other litigant, must be prepared to play within the four corners of the law and where the law underscores provision of security; then it behooves the Appellant to abide.
102. Suffice it to state and underline, that the provisions of article 27 (1) & (2) of *the Constitution* 2010, do not give preferential treatment to any Party, irrespective of her/his Social Economic or Political standing.
103. Based on the foregoing, if I had come to the conclusion that the Appellant was entitled to an Order of stay of Execution pending Appeal (which is not the case), then I would have been obliged to decree provision of security.
104. However, having found and held that the Appellant herein did not show and/or establish that same shall be disposed to suffer Substantial loss, the entire Application fails.

Final Disposition:

105. Having reviewed and addressed the issues that were deemed pertinent and worthy of determination, it is now worthy and appropriate to bring the subject discourse to a close.
106. In the premises, it is my finding and holding that the Application dated the January 12, 2022 is devoid and bereft of merits. Consequently, same be and is hereby Dismissed with costs to the Respondents.
107. On the other hand, the Orders of Interim stay of execution which was hitherto granted on the January 31, 2022 be and are hereby Discharged.
108. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF JULY 2022.

OGUTTU MBOYA,

JUDGE.

In the Presence of;

Kevin Court Assistant

Mr. George Gilbert, alongside Ms. Herine Kabita for the Appellant/Applicant.

Mr. Ndegwa for the Respondents.

