Rafiki Limited v Moscone; Nativi & another (Interested Parties) (Environment and Land Appeal E025 of 2023) [2025] KEELC 4373 (KLR) (4 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4373 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT AND LAND APPEAL E025 OF 2023

EK MAKORI, J

JUNE 4, 2025

BETWEEN

RAFIKI LIMITED .... APPELLANT

AND

MARIA GRAZIA MOSCONE .... RESPONDENT

AND

MASSIMO NATIVI .... INTERESTED PARTY

DANIELE LOCOCO .... INTERESTED PARTY

(Being an appeal from the ruling of the Honorable James Ongondo, SPM, dated and delivered at Malindi on April 25, 2023, in Chief Magistrate's ELC Case No. 236 of 2022)

JUDGMENT

1. There are four appeals (E22, E23, E24, E25) for 2023 stemming from a ruling by Honorable James Ong'ondo, Senior Principal Magistrate, on April 25, 2023, in Malindi Chief Magistrate's Environment and Land Case Nos. 236 and 237 of 2022.

2. The four appeals mentioned earlier—ELC Appeal Nos. E22 and E24 of 2023 have identical parties and grounds, as do ELC Appeal Nos. E23 and E25 of 2023, detailed below:

   The grounds of appeal and the reliefs sought in ELC Appeal Nos - E 22 of 2023 and E24 of 2023:

   i. The Learned Magistrate entirely misconstrued the proviso to Section 3(3)(b) of the *Law of Contract Act*, subsequently arriving at an erroneous conclusion.

   ii. It is widely acknowledged by all parties involved that the contract and the lease are established between the Interested Party in the capacity of Vendor/Lessor and the Respondent serving as Purchaser/Lessee. The Honorable Magistrate committed an error in both law and fact by

suggesting the existence of a resulting, implied, or constructive trust between the Respondent and the Appellants.

iii. The Learned Magistrate erred in law and fact by failing to recognize that the Appellants were neither the Vendors nor the Lessors under the agreement and the lease.

iv. The Learned Magistrate erred in law and fact by enlarging and purporting to amend Section 3(3) of the *Law of Contract Act* to include the payment and receipt of consideration as a third element necessary for a suit based on a contract for the disposition of an interest in land.

v. The Learned Magistrate made an error in both law and fact by establishing a non-existent trust that the Respondent did not plead and by deciding the Appellants' application based on that unpleaded issue.

vi. The Learned Magistrate erred in both law and fact by deciding the application based on material not presented to him.

vii. The Learned Magistrate erred in law and fact by considering irrelevant and extraneous factors and failing to consider relevant and material ones.

viii. The Learned Magistrate erred in law and fact by failing to consider the provisions of Section 38(1) of the *Land Act*, 2012.

ix. The Learned Magistrate erred both in law and in fact by failing to consider the meaning of the words "party," "disposition," "transfer," and "sign," as well as the phrase "interest in land," as defined in Section 3(6) of the *Law of Contract Act*, thus arriving at an erroneous decision.

x. The Learned Magistrate made an error in both law and fact by neglecting to consider the Appellants' List & Bundle of Authorities.

xi. The Learned Magistrate erred in law and fact by failing to consider the Appellants' written submissions, despite his claim that he did.

xii. The Learned Magistrate erred in both law and fact by dedicating less than a quarter page of the Ruling to the serious application before him, resulting in a superficial decision that did not address all the issues identified for his determination.

xiii. The appeals aim to completely annul the ruling issued on April 25, 2023, and to grant the Appellant's Notice of Motion applications dated October 11, 2022. The suit filed by the Respondents against the Appellants ought to be dismissed with associated costs, and the Respondents are to bear the costs of these applications.

The grounds of appeal and reliefs sought in ELC Appeal Nos. 23 and E25 of 2023:

i. The Learned Magistrate completely misunderstood the meaning and effect of Section 6(1) of The *Arbitration Act* No. 4 of 1995, leading to an incorrect decision.

ii. The Learned Magistrate erred in law and in fact by failing to consider the provisions of Section 10 of the *Arbitration Act* No. 4 of 1995, which states that no court shall intervene in matters governed by that statute.

iii. The Learned Magistrate erred in both law and fact by failing to consider the Court's duty under the overriding objective to facilitate a just, expeditious, proportionate, and affordable resolution of civil disputes.

iv. The Learned Magistrate erred in law and in fact by prejudging and predetermining the issue of whether the agreement is null and void, inoperative, or incapable of performance without hearing the parties, in violation of Articles 25(c) and 50(1) of *the Constitution*.

v. The Learned Magistrate erred both in law and in fact by failing to recognize that the arbitration clause is included in the lease rather than in the agreement.

vi. The Learned Magistrate erred in both law and fact by failing to recognize that the Respondent took vacant and quiet possession of the suit premises under the terms of the lease containing the arbitration clause.

vii. The Learned Magistrate erred in law and fact by failing to recognize that an arbitrator appointed under Clause 5(2) of the Lease has the jurisdiction and authority to determine whether the lease is valid or null and void.

viii. The Learned Magistrate erred in both law and fact by failing to consider and apply the provisions of Articles 50(1) and 159(2)(c) of *the Constitution* to the dispute before him, and to hold that an arbitrator would possess the power and jurisdiction to determine all issues in contention.

ix. The learned magistrate erred in law and in fact by dismissing the appellant's application.

3. The appeals seek a grant and the total dismissal of the Magistrate's ruling issued on April 25, 2023. The Appellant's Notice of Motion dated October 11, 2022, ought to be allowed, and the two suits should be stayed until the resolution of the arbitration. Additionally, the Respondents are to bear the costs incurred.

4. Given that the trial court issued a single comprehensive ruling on the issues presented in the Lower Court, and recognizing the ability to succinctly summarize the matters at hand, I believe that a one-time judgment is the most appropriate course of action under the circumstances.

5. At the direction of the court, the appeals were reviewed through written submissions. This court acknowledges the submissions made by Mr. Kinyua on behalf of the Appellants and Mr. Kamakia on behalf of the Respondents.

6. The role of this court at this juncture, while handling an appeal arising from interlocutory proceedings, is to reassess the materials and averments submitted to the Lower Court and reach an independent determination. In the case of Okeno v Republic [1972] EA 32 at 36, the East African Court of Appeal outlined the duties of the court during an initial appeal as follows:

> " An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya v. R., [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (Shantilal M. Ruwala v. R., [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see Peters v. Sunday Post, [1958] E. A. 424."

Issues to be determined in ELC Appeal Nos. E22 of 2023 and E24 of 2023

7. In the matter of Massimo Nativi and Daniele Lo Coco, Appellants in Civil Appeal Nos. E22 and E24 of 2023, they assert that they are not parties to the contracts and leases that form the Respondents' cause of action. Thus, it is contended that Malindi Chief Magistrate ELC Case Nos. 236 and 237 of 2022 should be dismissed against them, and they should bear costs.

8. Mr. Kinyua, representing the Appellants, contends that in their pleadings in Malindi CM ELC Nos. 236 of 2022 and 237 of 2022, Maria Grazia Moscone (236 of 2022) and Fiorenzo & Rossy Tettamanti (237 of 2022), the Plaintiffs seek a declaration affirming that the contracts and leases at issue are null, void, and unclear, in addition to requesting reimbursement of the purchase price, costs incurred in the acquisition of their respective villas, as well as damages and related expenses.

9. He argues that the Appellants in these two appeals, Massimo Nativi and Daniele Lo Coco, have no privity of contract with the Respondents. The Appellants cannot sue the Respondents to enforce the contract and the lease, and for the same reason, the Appellants are not liable under those contracts and cannot be sued alongside Rafiki Limited. This is established law that does not require any authority.

10. He further asserts that for a contract to be valid, there must exist both an offer and acceptance. There is no offer and acceptance present between Massimo Nativi and Daniele Lo Coco, who are identified as vendors or lessors, and the Respondents, designated as purchasers or lessees. As evidenced by the Respondent's Lists and Bundles of Documents, the suits are predicated on contracts and leases involving Rafiki Limited as the Vendor or Lessor and the corresponding Plaintiffs as Purchasers or Lessees. Massimo Nativi and Daniele Lo Coco do not hold any status in relation to those contracts and leases. Consequently, they were justified in having their names removed from those suits.

11. Conversely, Mr. Kamakia, representing the Respondents, asserts that under Order 1, Rule 6 of the Civil Procedure Rules, the Respondent is allowed to join any party considered appropriate or liable for a contract, including parties affected by promissory notes or bills of exchange.

12. In the case brought against the Appellants, the Respondents included the 1st and 2nd Appellants in these proceedings because of their positions as Directors of the Interested Party. As Directors, they are responsible for managing the company's affairs and making decisions on its behalf. It is argued that the Appellants are necessary parties to the proceedings initiated against them in the Lower Court and, therefore, should remain as parties to the suit.

13. Counsel further asserts that the authority to remove a party from a lawsuit should be exercised with caution. This court must evaluate whether there is a prima facie case against the 1st and 2nd Appellants. The Respondents contend that the presence of the 1st and 2nd Appellants would contribute to the Court's ability to reach a fair determination in the case filed in the lower court by the Respondent against the Appellants and the Interested Party, since they are Directors of the Company – see Ukwala Supermarket v Jaideep Shah & another [2022] eKLR and Aster Holdings Limited v City Council of Nairobi & 4 others [2019] eKLR.

14. In this case, the 1st and 2nd Appellants, who are foreign citizens, actively participated in the illicit and fraudulent sale of a freehold property. Furthermore, they executed the Agreement of Sale on behalf of the Interested Party, thereby confirming their status as essential parties in this case.

15. Counsel contends that the Respondents have articulated significant claims against the Appellants and the Interested Party. To ascertain whether the 1st and 2nd Appellants defrauded the Respondent, the court is mandated to conduct a comprehensive examination to determine whether the Respondents possess a valid case against the Appellants by evaluating the available evidence.

16. Counsel believes that dismissing the suit against the Appellants without the court first assessing the evidence presented by the Respondents would be premature, as sufficient evidence can only be introduced during the trial. The Respondents contend that the merits and demerits of the claims against the Appellants cannot be summarily adjudicated through the application submitted by the Appellants in the lower court. Therefore, dismissing the Appellants would not only be unjust but also inequitable to the Respondent. Refer to Madan, J.A. in the matter of DT Dobie and Company (K) Ltd v Joseph Mbaria Muchina & Another (1982) KLR 1.

17. In his ruling dated 25th April 2023 the trial court had this to say on the issue striking out the appellants from the proceedings before him:

> "The second application dated 12th October 2022 seeks to have the names of the second and third defendant struck out because the parties are not the parties to the agreement between the 1st defendant and the plaintiffs. Further that section 3(3) of the Law of Contract expressly bars the court from hearing and determining matters in the absence of written agreement executed by parties.I respectfully disagree with the defendant's proposition that the court cannot hear and determine the suit for reasons stated herein. The defendants have not challenged or denied that the plaintiff's assertion that they paid the money to the defendants
>
> The assertion in my view brings the matter to the proviso at section 3(3)(b) to the effect that the act of receiving the money might have created a resulting trust, implied or constructive trust between plaintiffs and the defendants which will become clear at the trial."

18. The application submitted to the trial court did not seek to dismiss the entirety of the suit; instead, it aimed to remove the Appellants from the proceedings, as they were not parties to the contract of sale in question.

19. I concur with Mr. Kinyua on behalf of the Appellants that the learned Magistrate erred by introducing extraneous elements as outlined in Section 3(3) of the *Law of Contract Act*, thereby importing a resulting, implied, or constructive trust. It was unnecessary to invoke a trust in circumstances where the contract existed solely between Rafiki Limited and the respective Plaintiffs. Moreover, the Appellants had relied on the provisions outlined in the *Land Act*, 2012, and the *Land Registration Act*, 2012; however, the learned Magistrate failed to take these provisions into account. Any purported trust cannot supersede statutory provisions. Similarly, common law cannot be applied to circumvent the mandates established in written law.

20. The authorities cited by the Respondent regarding the piercing of the corporate veil may be invoked at the execution stage of the trial, contingent upon demonstrating that the Directors utilized the company as a vehicle for fraudulent activities. Furthermore, the DT Dobie Case (supra) pertains to striking out suits rather than the (mis)joinder of parties.

21. Consequently, the legal actions against Massimo Nativi and Daniele Lo Coco are incompetent under Section 38(1) of the *Land Act*, 2012, Section 36(1) in conjunction with Sections 44 and 45 of the *Land Registration Act*, 2012, and Section 3(3) of the *Law of Contract Act*. The prevailing interpretation of the law within these statutes indicates that no contractual relationship exists between the Appellants and the Respondents. Therefore, the learned Magistrate lacked jurisdiction over the Appellants and cannot assert jurisdiction upon himself by introducing purported trusts.

22. The Respondents were aware that the Appellants serve as directors of Rafiki Limited, as evidenced by their List & Bundle of Documents, which includes the CR 12 (found on page 20 of the Record in Civil

Appeal No. E22 of 2023 and page 22 of the Record in Civil Appeal No. E024, of 2023). Consequently, the Respondents understood that any funds disbursed to the Appellants were received in their official capacity as Directors. Furthermore, Rafiki Limited has not lodged any complaints regarding the receipt of these funds.

23. The primary request within the Plaintiffs' plaint is for a declaration that the contracts and leases are null and void, which encompasses the purchase price, acquisition costs, interest, nominal damages, and general damages. None of these requests can be pursued against the Appellants, as they were not parties to the contracts and leases.

24. The contracts and the leases cannot be amended after execution to designate the Appellants as Vendors or Lessors, as such an alteration would significantly contravene the provisions of the *Land Act* of 2012, the *Land Registration Act* of 2012, and the *Law of Contract Act*. The Appellants cannot be parties to contracts for which they cannot execute.

25. Consequently, the appeals will succeed in the manner that I shall articulate in the final orders presented below.

Issues in ELC Appeal Nos. E23 and E25 of 2023.

The ELC appeal Nos. E23 of 2023 and E25 of 2023 have been submitted by Rafiki Limited, addressing three specific issues, namely:

a. Whether there is a formal agreement between Rafiki Limited, acting as Vendor/Lessor, and the parties Maria Grazia Moscone, Fiorenzo Girola, and Rossy Tettamanti, acting as Lessees, to submit any disputes to arbitration;

b. Whether Rafiki Limited is entitled to a stay of proceedings pending arbitration in accordance with the arbitration clause.

c. Who is responsible for the costs incurred by Rafiki Limited in Civil Appeal Nos. 23 and 25 of 2023, and its applications dated October 11, 2022, in Malindi CM ELC Nos. 236 and 237 of 2022?

26. Mr. Kinyua, representing the Appellants, states that in ELC Appeal No. E23 of 2023, the lease agreement between Rafiki Limited (Lessor) and Fiorenzo Girola and Rossy Tettamanti (Lessees) for Villa No. 4B can be found on pages 39-53 of the record. The lease between Rafiki Limited and Maria Grazia Moscone for Villa No. 4A appears on page 40 of the Record of Appeal in ELC Appeal No. E25 of 2023. Clause 5.2 in both leases specifies that all disputes regarding the lease's construction or application, or any clause or stipulation, must be submitted to a single arbitrator.

27. Counsel asserts that it is clear the Leases include an agreement to submit all disputes to arbitration. The arbitrator will have the authority to determine the alleged causes of action in the two suits.

28. Counsel asserts that the arbitrator shall exercise jurisdiction to adjudicate all disputes within the two lawsuits, including claims asserting that the leases are null and void, as well as considerations pertaining to the refund of the purchase price and acquisition costs. The arbitration clause comprehensively encompasses all potential disputes. When parties consent to arbitration, they do not nullify the jurisdiction of the Court; rather, they defer its execution.

29. Counsel submits that referring the dispute to arbitration allows the parties to the lease to retain access to justice and a fair trial. Under Article 50(1) of *the Constitution*, every individual is entitled to have disputes resolved in a fair public hearing before a court or an independent tribunal. The parties have consented to resolve disputes through a sole arbitrator. No allegations suggest that the

appointed arbitrator will lack independence and impartiality. After the arbitrator renders an award, Rafiki Limited, Maria Grazia Moscone, Fiorenzo Girola, or Rossy Tettamanti may return to the Magistrate's Court for recognition and enforcement, resolving suits in accordance with the award and concluding the files.

30. The application for a stay of proceedings was submitted pursuant to Section 6(1) of the *Arbitration Act*. In their submissions, the Respondents mistakenly assert that Rafiki Limited has taken a step in the proceedings. This is untrue; Rafiki Limited has only filed the Memorandum of Appearance and the application for a stay pending arbitration. That application is solely based on the existence of the arbitration clause. Rafiki Limited has neither filed any Defense nor sought to strike out the suits against it.

31. Counsel asserts that the Respondents are conflating the applications by Rafiki Limited for a stay of proceedings in both suits with those by Massimo Nativi and Daniele Lo Coco to strike out the suits against them. Massimo Nativi and Daniele Lo Coco did not seek a stay of proceedings pending arbitration, as they are not parties to the leases containing the arbitration agreement.

32. Mr. Kamakia, representing the Respondents, argues that the Appellant's decision to rely solely on one clause of the Lease regarding Arbitration, while disregarding the clause in the Contract that states the validity of the Agreement is contingent upon the transfer and registration of the Lease, is entirely absurd. Therefore, the Respondents claim that the Arbitration clause is invalid and respectfully request that this Court declare the arbitration clause null and void, inoperative, and incapable of being performed.

33. Counsel asserts that the Applicants are seeking a stay to refer this matter to arbitration. It is important to note, however, that the need for a stay of proceedings arises only when the parties have a valid arbitration referral clause or agreement. When the validity of an arbitration clause is challenged, the court should strive to determine its validity before staying the proceedings; see Niazsons (K) Ltd v China Road & Bridge Corporation Kenya [2001] eKLR, Esmailiji v Mistry Shamji Lalji & Co [1980] eKLR, and County Government of Kirinyaga v African Banking Corporation Ltd [2020] eKLR.

34. Counsel asserts that Section 6(1)(a) of the *Arbitration Act* empowers the court to refuse to grant a stay of proceedings in cases where the arbitration agreement is null and void, inoperative, or incapable of being performed. The rationale behind this provision is that granting a stay without a valid arbitration agreement would unjustly compel the claimant to seek redress outside a court setting, as they would be denied the opportunity to enforce the arbitration agreement.

35. In this case, counsel contends that the arbitration clause is invalid. Therefore, granting this appeal, along with the application from the Appellant and Interested parties dated October 11, 2022, would be inequitable and unjust to the Respondents.

36. Counsel further asserts that it is crucial to acknowledge that the Appellants initiated actions in the litigation by submitting an application dated October 12, 2022, which was officially filed on October 25, 2022, seeking to exclude the 1st and 2nd Interested Parties from the action brought by the Respondents. By submitting this application, the Appellant has effectively waived their right to invoke and rely upon the arbitration clause entirely.

37. In addressing this issue, the esteemed Magistrate articulated:

> " S6(1) of the *Arbitration Act* No.4 of 1995 provides that a court before which proceedings are brought in a matter which is subject of an arbitration agreement shall. If a party so applies not later than the time when the party enters appearance or files any pleadings or takes any

other step in the proceedings, stay the proceedings and refer the parties to arbitration unless it finds the agreement is null and void, imperative or incapable of being performed.

In this case, the plaintiff has sought court order declaring that the contract entered herein between the parties in the lease were null and void.

The Act provides that thre will not be stay of proceedings if the court finds that the arbitration agreement is null and void (S. 6(1)(a).

The court ought to consider whether the agreement is null and void, which is the mandate of the court.

I therefore find that the application dated 11th October 2022 has no merit in so far as the plaintiff has sought the court declaration that the agreement is null and void, the same is dismissed with costs."

38. I concur with Mr. Kinyua, representing the Appellants, that nowhere in the ruling being appealed did the learned Magistrate determine that the lease is null and void. The precise words he employed are:

> "The Court ought to consider whether the agreement is null and void which the mandate of the Court (sic). I therefore find the application dated 11.10.2022 has no merit insofar as the Plaintiff has sought the Court declaration (sic) that the agreement is null and void. The same is dismissed with costs."

39. The esteemed Magistrate concluded that the matter remained unresolved, despite acknowledging that he ought to have determined whether the agreement was null and void. Clause 5(2) of the Lease agreement stipulated that:

> "All disputes and questions which shall arise between the parties hereto touching this lease or the construction or application thereof or any clause or thing herein contained or to the rights or liabilities of any party under this Lease shall be referred to the decision of a single arbitrator to be appointed in accordance with the provisions of the *Arbitration Act*...."

40. The esteemed Magistrate misapprehended Section 6(a) of the *Arbitration Act*, which stipulates that the Court must stay proceedings and refer the parties to arbitration unless it ascertains that the Arbitration Agreement is null and void, inoperative, or incapable of being performed. Furthermore, the esteemed Magistrate did not issue any such determination whatsoever. Moreover, the Appellant having disclosed that the arbitration clause existed, there is nothing on record to demonstrate that an arbitrator will not resolve the issues raised by the Respondent through a single arbitrator as stipulated in Clause 5(2) of the Lease.

41. In the case of UAP Provincial Insurance Company Ltd v Michael John Becket [2013] eKLR, the Court of Appeal, while addressing the inquiry that the court should undertake before the referral of a matter to arbitration, held as follows:

> "In our view, the issue with which Mutungi, J was concerned when dealing with the application under section 6 of the *Arbitration Act* was whether or not the arbitration clause would be enforced and whether the matter was one for reference to arbitration. Section 6 of the Arbitration (sic) provides an enforcement mechanism to a party who wishes to compel an initiator of legal proceedings with respect to a matter that is the subject of an arbitration agreement to refer the dispute to arbitration. Section 6 of the *Arbitration Act* under which UAP's application for stay of proceedings was presented provides in the

> relevant part:.....................It is clear from this provision that the enquiry that the court undertakes and is required to undertake under section 6(1) (b) of the *Arbitration Act* is to ascertain whether there is a dispute between the parties and if so, whether such dispute is with regard to matters agreed to be referred to arbitration….The inquiry by the court with regard to the question whether there is a dispute for reference to arbitration extends, by reason of Section 6 (1) (b), to the question whether there is, in fact, a dispute. In our view, it is within the province of the court, when dealing with an application for stay of proceedings under section 6 of the *Arbitration Act*, to undertake an evaluation of the merits or demerits of the dispute…"

42. The decision to refrain from staying proceedings and to refer the parties to arbitration is based on the Respondent's request for a declaration that the agreement is null and void. The learned Magistrate based his determination on the Respondents' pleadings for such a declaration. Nevertheless, the Magistrate appeared to overlook the fact that the Respondents were, and continue to be, in possession of the Villas pursuant to those leases. By relying on the Respondents' assertion that the agreement is null and void without making the necessary determination as stipulated under Section 6(1) of the *Arbitration Act*, the learned Magistrate, in the absence of a finding regarding the validity of the contracts and leases, had no discretion in the matter and should have stayed the proceedings.

43. Section 10 of the *Arbitration Act* states that, except as specified, no court shall interfere in matters governed by the Act. The court's role in arbitration includes staying proceedings pending arbitration, granting interim measures under Section 7, handling challenges in arbitrations, terminating mandates, and seeking recourse in the High Court under Section 35 against arbitral awards. Hearing disputes subject to arbitration would violate the Act and be null and void under Section 10.

44. The Respondents oppose these appeals, arguing that Rafiki Limited took steps in the proceedings. This is incorrect; Rafiki Limited neither filed a defense, nor applied to strike out the suit, nor challenged the merits of the suit.

45. As a result, the appeals will succeed in the manner proposed below.

46. Consequently, in light of the preceding discussions, these shall constitute the court's final orders pertaining to the four appeals:

    In ELC Appeal Nos. 22 of 2023 and E24 of 2023:

    a. The appeals are granted to the extent that the Ruling dated April 25, 2022, is hereby set aside in its entirety, that the Appellant's Notice of Motion applications dated October 11, 2022, be and are hereby allowed as prayed.

    b. The Respondents' suits against the Appellants in the Lower Court are hereby struck out with costs, along with an order that the Respondents bear the costs.

       In ELC Appeal Nos. 23 of 2023 and E25 of 2023:

       a. The reliefs sought in these appeals are allowed to the extent that the Ruling delivered by the learned Magistrate on April 25, 2023, is hereby set aside in its entirety. The Appellant's Notice of Motion application dated October 11, 2022, is hereby granted as requested.

       b. The two suits pending in the Lower Court are stayed pending the referral and conclusion of arbitration, with costs to be borne by the Respondents.

DATED, SIGNED, AND DELIVERED ELECTRONICALLY IN MALINDI ON THIS 4TH DAY OF JUNE, 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Muyaa for the Appellants

Happy: Court Assistant

In the absence of:

Mr. Kamakia for the Respondents