



Kenya Wildlife Services v Shihua Industry Alliance Co. Limited & 4 others (Environment and Land Appeal 23 of 2019) [2022] KEELC 3202 (KLR) (9 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3202 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL 23 OF 2019**

LL NAIKUNI, J

MAY 9, 2022

BETWEEN

KENYA WILDLIFE SERVICES APPELLANT

AND

SHIHUA INDUSTRY ALLIANCE CO. LIMITED 1ST RESPONDENT

COUNTY CONSERVATOR 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 4TH RESPONDENT

KENYA REVENUE AUTHORITY 5TH RESPONDENT

RULING

I. Preliminaries

1. Before this Honorable court for its determination is the Notice of Motion application dated 27th January, 2022 by the 1st Respondent/Applicant. It is brought by the dint of the Provisions of Order 50 Rule 1 of the *Civil Procedure Rules* 2010, Sections 1, 1A, 3A, 63 (c) of the *Civil Procedure Act* Cap 21 of the Laws of Kenya and Section 5 of the *Judicature Act*, Cap. 8.

II. The 1st Respondent's case

2. The 1st Respondent has moved this Honorable Court seeking for the following orders:-
 - (a) Spend
 - (b) That the Honorable court be pleased to order the Appellant/Respondent Kenya Wildlife service to issue such permit/export clearance to the satisfaction of being the local CITES managers in satisfaction of International standards for purposes of trans-shipment of the



consignment subject matter in these proceedings pending the hearing of this application Inter-parties.

- (c) That the Honorable Court be pleased to order the Appellant/Respondent to unhinge all such objections /embargoes/encumbrances on the consignment scheduled for trans-shipment and being the subject matter of these proceedings and in tandem with the orders issued by the Honorable Court as to full compliance thereof.
 - (d) That in conjunction with prayer No. 2 above and in tandem with the order issued by the Honorable court aforementioned the court be pleased to order that upon verification of the contents of the said containers by the Honorable Court, Cross - stuffing to fresh containers at a designated Area reserved for the same, due process including but not limited to supervision and release thereof in accordance with and in lawful compliance, for purposes of transshipment to the designated Destination as duly ordered by the Honorable Court.
 - (e) That the Honorable Court be pleased to make such further orders in the interest of justice.
 - (f) That the costs of this application be provided for.
3. The aforesaid Notice of Motion application is premised on the testimonies, facts, grounds and averments contained in the ten (10 Paragraphed Supporting Affidavit of one Salama Mbauro sworn affidavit and seven (7) annexures marked as “SM - 1 to 7” annexed hereto.
- She deponed being a female adult of sound mind and undertaking residing at Bamburi within the County of Mombasa. She averred being well versed with the facts of this case on behalf of the 1st Respondent/Applicant. She stated being in possession of a court order given on 7th day of October, 2020 to the effect that the Learned Magistrate was within the law in making an order for the release of the seized consignment and/or goods to the 1st Respondent/Applicant having taken into consideration the effective date of the listing of the consignment to appendix II of “the Convention on the Illicit Trade Endangered Species” (hereinafter referred to as “The CITES”) and/or on account of the availed requisite permit. According to her and based on the advise from her Advocates on record, the appeal preferred by the Appellant before this Honourable Court being aggrieved by that ruling of the lower court lacked merit and hence it ought to be dismissed with costs to the 1st Respondent to be borne by the Appellant – the KWS as the order was unchallenged whatsoever. She deposed that and further based on the legal advise granted from her Advocates on record, the orders of the Honourable Court were never issued in vain, a vacuum in ambiguity and/or otherwise unenforceable but to be obeyed.
4. She argued that this court had already extensively pronounced itself on the issue of the illegal seizure of goods subtraction of these proceedings from the Sub-ordinate court running all the way through this Honorable Court through its elaborate and comprehensive Judgement which have never been set aside nor vacated whereby the illegal seizure of the consignment has been declared null and void.
5. She informed court that on 29th November, 2021, the Appellant and in essence all the Multi agencies magnanimously and unconditionally released the impugned goods to the 1st Respondent vide the occurrence book entry No. OB/37/29/11/2021 at the Port Police Station. Additionally, she informed court that the Appellant had indicated that due to these proceedings and having exhausted all other avenues indeed the merchandise ought to be transhipped to its designation as the 1st Respondent/Applicant had originally intended.

She deposed that the Honorable Court did pronounce itself *vide* an order issued on the 10th July, 2020 as regards the issuance of such certificates permits and all other requisite documentation to facilitate



the safe passage and voyage of the impugned goods, which was informed by the finding that ab-nitio the seizure of the said goods was an illegality.

6. She averred that the said impugned goods had not been classified under Appendix III of CITES regulations. Thus, it was imperative and of utmost importance that the CITES permit be issued so as to ensure the said orders of the trans-shipment was duly complied with and completed. Moreover, she opined that due to the fact that the impugned goods were scheduled for trans-shipment and had been illegally detained at the behest of the Appellant among other Multi Agencies, the responsibilities of providing these permits and clearance documents for the transshipment laid squarely on the lap of the Appellant who arrogated and imposed, ‘ultra vires’ upon themselves the illegal seizure.
7. She indicated that she had the shipping orders of the said goods scheduled to depart from the Kilidini Harbour/Port of Mombasa yet the shipping company had re-negated on its contractual obligations and hence there was need to make the prayer for the ship and cross stuff the goods to other containers so as to procure the further shipping order. She held that any further delay would imply continue levying of substantial loss in form of demurrage charges threatening to overshadow the value thereof and would lead to immense loss completely unable to reap the fruits of a protracted court battle for over seven (7) years done the line though the ruling of the lower Court of 27th November, 2018 and the Judgment delivered on 14th August, 2019 to the favor of the 1st Respondent/Applicant whatsoever. She urged Court to consider and allow the prayers sought in this application with costs.

III. The Replying Affidavit by the Appellant.

8. On 3rd February, 2022 the Appellant filed a nine (9) Paragraphed Replying Affidavit sworn by one Benta Musima and dated same date, together with annexures annexed thereto. The Deponent deposed that she was the Legal Officer to the Appellant and hence fully was conversant with the matter hereof as depicted out in the application dated 27th January, 2022 by the Appellant and which they strongly opposed thereof for the following grounds stated hereof.

She deposed that the request by the 1st Respondent/Applicant for issuance of Permit/export clearance under CITES was an after thought made in bad faith for the following reasons:-

- i. In their inbound cargo manifest bill of lading and customs declaration appearing at Pages 28 to 36 of the Supplementary Record of Appeal filed by their Advocates on 29th April, 2019, they described their consignment as being ordinary woods mis – declaration of their cargo which was a crime.
- ii. The Provisions of CITES did not apply to ordinary wood.
- iii. All along this proceedings the 1st Respondent had taken the position that the consignment never formed part of the endangered species classified under CITES at the time of its seizure and hence CITES was not applicable to this case – a fact which the trial Magistrate court agreed with the Appellant in its decision delivered on 27th November, 2018 and upheld by this court in its Judgment of 14th August, 2019 since the consignment was not covered as CITES at the time of seizure and the Applicants documents showed the consignment was ordinary wood, the Appellant would not be expected to issue any CITES permit/Certificate.
- iv. The Applicant had also maintained that the consignment was on transshipment to Hon Kong and in their own admission from their submission filed on 29th April, 2019 that the CITES was not applicable to the suit consignment which were seized during transshipment.



- v. That Article VII of CITES provides that the Provisions of Article III, IV, and V of CITES (on permit and Certificates) shall not apply to the transit or transshipment of specimens through or in a territory of a party while the specimens remain in Custom Control.

Therefore the Deponent argued that for the 1st Respondent/Applicant to be asking Court to compel the Appellant to issue permits/Certificate under CITES whereas their documents and court decision held that the consignment were not covered under CITES and Article VII of CITES ruled out the applicability of Articles III, IV and V of CITES to this consignment was to command the Appellant to act outside the law.

9. With regard to the alleged objections/embargo/encumbrances the Deponent averred that the Appellant never specified which of these hindrances had been placed on the consignment by the Appellant. However, she held that the Appellant was aware that on 20th January, 2022 the United Nations Secretariat on CITES issued an advisory to parties and they annexed that communication for the ease of reference by this Court.

VI. The 1st Respondent Supplementary Affidavit.

10. On 10th February, 2022 the 1st Respondent sought leave of court to have a 7 paragraphed Supplementary Affidavit dated 9th February, 2022 and filed the same date by one Salama Mbauro being a response to the contents of the Replying Affidavit of the Appellant dated 3rd February, 2022 be admitted as part of the record. The request was granted save of which there was a consent of the parties to have the contents of Paragraph 4 of the said Supplementary Affidavit be expunged from the records. Pursuant to that, the said contents of Paragraph 4 of the Supplementary Affidavit which the Appellant supposedly perceived to be exceedingly injurious to the reputation, fame, name and image of the Appellant stood expunged from the record of this Court thereof.
11. The deponent categorically denied all the averments made out by the Appellants in her Replying Affidavit dated 3rd February, 2022. She asserted that they were never privy to any meeting either sanctioned by the Honorable Court and/or not sanctioned by the court to discuss issues of the nature pending in court as the same would be breaching the rule or doctrine of was *Sub - Judice*. She held that the court had already pronounced itself on the issues herein and therefore neither a meeting nor a baraza could usurp the powers bestowed upon the Honorable Court. She contended that in particular perspective there was no consent on record on the averments that the parties had agreed that there was no need for a CITES permit thus ought to naturally follow the release of the goods from the custody of the Appellant.

V. The Submissions.

12. On 16th February, 2022 all the parties present for the Appellant and the 1st Respondent were accorded some brief opportunity to orally make their submission and the Honorable Court reserved time to make its ruling.

13 At this very juncture, this Court feels obliged to take this particular opportunity to highly commend the Learned Counsels, Mr. Mugambi Advocate for the Appellant, Mr. Egunza Advocate for the 1st Respondent, M/s Waswa Advocate for the 2nd and 3rd Respondent and Mr. Nyagah Advocate for the 5th Respondent for the decorum, diligence, resilience, aptitude, well researched and articulate submissions throughout this proceedings.



A. The 1st Respondent's Submissions

14. Mr. Egunza Advocate for the 1st Respondent and the Applicant herein to the Notice of Motion Application dated 27th January, 2022 submitted that the point by the Appellant to the effect that the consignment were ordinary woods and hence an afterthought by the 1st Respondent and were not dealt with CITES was taking the matter lightly. He emphasized that the orders of this court made on 10th July, 2020 fully addressed this issue. He averred that whether or not the transshipment of the Cargo from the Country of designation to Mombasa Port had a permit was well answered as the judgment of the Lower Court delivered on 27th November, 2019 and this court delivered on 14th August, 2019. The Learned Counsel relying on the decision of this court whereby it pronounced that the consignment being held to be henceforth released were Rosewood and not ordinary wood as depicted by the Appellant. Thus, he argued that the consignment being Rosewood, they fell under CITES and the 1st Respondent was entitled to permit for safe delivery to the place of its next designation.
15. From the year 2004 the 1st Respondent had the said permit from the Country of origin but which upon irregular and illegal seizure by the Appellant the permit was invalidated by the said Appellant. Thus, the Learned Counsel argued that it was for this very reason that it was them who were obligated by law to provide a CITES permit or any authorization for the satisfaction of the CITES certification in the given circumstances.

The Learned Counsel further argued that under the provision of Articles VI and VII of the CITES did not apply here as there was already a Judgment in existence and a valid Court Order which had never been challenged. It was their submission having submitted before this court the provisions of International Law became invalid.

B. The Appellant's Oral Submissions

16. Mr. Mugambi Advocate for the Appellant while opposing the application submitted the way the prayers were drafted in the said Notice of Motion application by the 1st Respondent/Applicant were in such a way to declare the matter merely as Otiose or an academic affair. On this point he relied on the decision of '*Southern Credit Banking Cooperation Limited v Charles Wachira Ngunda* (eKLR) Milimani 2000'. He emphasized that these consignment goods were on transit and/or transshipment from a different Country Madagascar to Hong Kong. The Learned Counsel contention was that they did not emanate from the Republic of Kenya. He averred that the Appellant only seized them as they were declared illegal cargo. The Learned Counsel held that the 1st Respondent/Applicant took the position that the Bill of Lading he Cargo was on transit and were mere ordinary wood. For these very reason, he argued, CITES was not applicable to them. He held that this was a position well supported by the Judgment by Justice Anne Omollo delivered on 14th August, 2020.
17. The Learned Counsel referred court to several Provisions of CITES under Articles VI and VIII where the Certificate and permits were issued. Clearly for goods which were on transit no such permit were issued. He held that there was a major distinction on the terms "Certificate" and "Export Permit".

"A Certificate" was required and issued when the specimen was being brought and/or introduced from another designation Article (6) – "Export Permit" was only issued by the Country of the export of goods. In this case Kenya was not the Country of export as these goods were only passing through from another country – (Madagascar) to another (Hong Kong). The Learned Counsel held that the prayer No. 3 of the Notice of Motion application by the 1st Respondent on alleged embargo restriction and/or encumbrance placed by the



Appellant to its goods was misplaced and/or misleading as no such evidence was rereleased to that effect and hence the court should completely disregard that submission.

18. In conclusion the Learned Counsel held that from the entire record the 1st Respondent/Applicant appeared suspicious of the consignment being seized again off sea as they kept on changing their mind in their prayers a clear afterthought as they were now praying for CITES permits which had not been the case there before.

This being an appeal he urged parties to confine themselves to issues which emerged and were before the lower court and not introduce new issues. As far as he was concerned, clearly the issue of CITES Permits was never raised at all. He urged court to disregard the Notice of Motion application by the 1st Respondent by dismissing it with costs.

VI. Analysis and Determination

19. I have read through all the pleadings and considered the oral and written submissions, the cited authorities and the relevant provisions of the law with regard to the subject matter raised in the Notice of Motion application dated 27th January, 2022 by the 1st Respondent/Applicant.

In order to arrive at an informed, just and fair decision, I have framed the following salient issues for determination. These are:-

- a. What are the prerequisite terms and condition for consideration for a permit and/or certificate under CITES?
- b. Whether the 1st Respondent is entitled to be granted the permit Certificate under CITES by the Appellant?
- c. Who will bear the costs of the Notice of Motion application dated 27th January, 2022 by the 1st Respondent/Applicant?

ISSUE NO. (A) What are the prerequisite terms and condition for consideration for a permit and/or certificate under CITES?

Brief Facts:-

20. Before embarking on the analysis to the issues framed hereof, the Honorable Court feels it imperative to extrapolate on the brief facts to the case first and foremost.

From the pleadings indicates that on 19th May, 2014, a vessel, MV-Kota Hapas docked at Mombasa Port, the Republic of Kenya, berth 4 - 5 at 17.36 hrs. It contained 37 containers of rosewood for transshipment from Madagascar to Hong Kong, China. By this time Kenya Wildlife Services (KWS) had received information of these goods alleged to be illegal rosewood. The containers were verified by Multi-Agency group consisting of Kenya Wildlife Services, Director of Criminal Investigation office (DCI), Kenya Revenue Authority (KRA), the Kenya Port Authorities (KPA) and a representation of the involved shipping line – Pacific International Lines (PIL). It was found that all the 37 containers to be containing what was believed to be “Malagey rosewood *Dalbergia Spp*”. The documents accompanying the goods included a Certificate of origin issued by the Madagascar Ministry of Forestry and Environment certifying that a consignment of 7,100 pieces of wood. Accordingly no CITES permits were produced because the position of the consignor, clearing agent and the consignee was that the shipment consisted of ordinary wood. Upon conducting investigations the goods were detained which compelled the 1st Respondent to move court before the lower court and upon hearing on 29th November, 2018 ordered that the goods to be released to the 1st Respondent being dissatisfied the



Appellant lodged an appeal before this court and upon hearing it on 14th August, 2019 this court rendered its judgment in favour of the 1st Respondent. Despite all this it has taken such a long period and a further protracted court battle to actually release the goods. It was until the 29th November, 2021 vide the occurrence book entry No. OB/37/29/11/2021 that the DCIO at the Port Police Station Kilindini Mombasa actually released the goods to the 1st Respondent and let to the current issue of the issuance of the CITES Permit Certificate to enable the 1st Respondent have safe transit of the goods to Hong Kong or which Country of designation. The 1st Respondent insists that though CITES permits and certificates are issued by a country of origin from where the goods emanated from and indeed they already had it, but it has now expired arising from the illegal and irregular seizure of the goods by KWS. In the given circumstances, it's the Appellant to take the full responsibility to ensure the 1st Respondent was placed back to the seat it was on before the seizure by being facilitated to transship the consignment without any difficulties. That responsibility lied squarely on the door step of the Appellant. That is the pith and substance of the instant application before this Court for its determination. That is adequate on facts.

21. Now turning to the issues under the Sub-heading. It is important to fully appreciate the concept of the convention on International Trade in Endangered Species herein after referred to as "The CITES". This is an international agreement between governments to ensure that international trade in specimen of wild animals and plants does not threaten the survival of the species. It was drafted as a result of a resolution adopted in the year 1963 at a meeting of members of IUCN (The World Conservation Union). The examples of the endangered species include such animals as tigers, elephants and plants and products derived from them including food products, exotic leather goods, wooden musical instruments, timber, tourist curios and medicines. Because the trade in wild animals and plants crosses borders between countries the effort to regulate it requires international cooperation to safeguard certain species from over exploitation. The CITES was conceived in the spirit of such cooperation – it contains twenty five (25) Articles of great importance to the instant case would be Article I on definition, Article II the fundamental principles, Article III to V on regulations of trade in specimens of species included in Appendix I to III and Article VI on permits and Certificates and Article VIII exemptions and other special provisions relating to trade.

Article I – Definition

22. For purposes of CITES and instance case I have felt it needful to pick a few terminologies for case of definition by CITES these are:-

“Species” means any species, subspecies, or geographically separate population

“Specimen” means:

- (i) any animal or plant, whether alive or dead.
- (iii) in the case of plant for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof and for species included in Appendices II and III any readily recognizable part or derivative thereof specified in appendices II and III in relation to the species.

“Trade” means export, re-export, import and introduction from the sea;



Article VI- Permits and Certificates:

23. Permits and certificates granted under the provisions of Articles III, IV, and V shall be in accordance with the provisions of this Article.

An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from the date on which it was granted.

A separate permit or certificate shall be required for each consignment of specimens.

ISSUE No. (b) Whether the 1st Respondent is entitled to be granted the permit Certificate under CITES by the Appellant?

24. The issue of whether the impugned consignment by the 1st Respondent formed part of the endangered is Court should not be re – inventing the wheel. It is not a case of reviewing or varying or setting aside its orders. Nay far from it. This Court noted that the species as at the time of preparing the Bill of lading was adequately tackled by the Judgment of this court delivered on 14th August, 2020. The Honorable Court held that the magistrate noted that the Bill of Lading as per the documents presented by the Applicant were authorized by the Republic of Madagascar and dated 1st April, 2014 whereas the seizure of the cargo was done on May, 2014, the species confirmed by the National Museum of Kenya on 2nd March, 2018 to belong to the genus *Dalbergia* (rose wood) which is protected under appendix II of CITES; that before seizure, the species was still under Appendix III of the CITES. The Magistrate held that the species was only classified under CITES Appendix II on 4th October, 2017 thus requiring the 1st Respondent/Applicant to show the permits for any authorization for re-shipment from Kenya to Hong Kong.

25. CITES was operationalized on 1st July, 1975 on 22nd June 1979. From the records, Kenya became a signatory to the convention. Before 24th September, 2016, the Rosewood species was categorized under Appendix III of CITES. It was only moved to Appendix II following the 17th Conference of parties (CAP) held between 24th September to 4th October 2016 in South Africa Johannesburg.

The application under Appendix II was operationized on 2nd January, 2017. The Flora and Fauna listed under Appendix II include - “Species not necessary threatened by extinction but in which trade must be controlled in order to avoid utilization incompatible with their survival”.

Having stated all this, this Honorable Court held thus:-

Paragraph 8 “The consignment did not fall under the category of species under Appendix II at the time it was confiscated on May, 2014. Further even if the Appellant felt they belonged to the species under Appendix II (Which is not true) the 1st Respondent was only expected to show that she had the requisite permit for the transshipment as trade on flora and fauna under Appendix II was not completely banned “... I find there was not contrary evidence provided by the Appellant to contradict the 1st Respondent’s documents thus the Learned Magistrate was within the law in making an order for the release of the seized goods to the 1st Respondent having taken into consideration the effective date of the listing of the consignment to Appendix II of CITES....”

26. Based on the above findings, I must fully concur with the 1st Respondent that from the very start it was never their intentions to have the impugned goods to stay or remain in the territory of the Republic of Kenya. They were on transshipment from Madagascar to another country – Hong Kong before the Appellant seized them on allegation that they were illegal. I find it rather disturbing that right



from the time of the seizure and the supposedly conducting intensive investigations and other related action points undertaken by the Multi-agency group to include the KWS, KRA and DCI which is now close to over seven (7) years down the line, there has been no empirical evidence to show charging and conviction of the 1st Respondent in a criminal court of law. The only court action evidence is the civil proceedings initiated by the 1st Respondent at the lower court and the appeal preferred by the Appellant all called firefighting mechanism to the legal prolonged conundrum.

27. The Dalbergia SSP was endorsed to be endangered and classified as such under CITES on 4th October, 2017 there it was under Appendix III. Under the above role of the customs then was to require permit which was produced to allow the goods transshipment. By the time of entry to Kenya the Cargo was classified as Appendix II which allows the state party to seize the cargo from any onward transshipment. Thus right from the onset the seizure of the goods by the Appellant was wrongful and illegal as already demonstrated and tested by this court in its judgment and rulings. Arising from these acts of omission and commission perpetrated by the Appellant, the 1st Respondent was subjected to untoward anguish, frustrations, trauma and anguish without forgetting to mention the colossal amount of financial expenses it has incurred in form of demurrage charges at the port among others at the behest of the Appellant.
28. Furthermore, this Court while conducting the site visit on 21st January, 2022 it took judicial notice and its on record all the State agencies initially involved in this matter had agreed for the goods to be released to the 1st Respondent in consonance with the dictum of the Judgement and ruling of this Honourable Court. Indeed, vide an occurrence book number OB/37/29/11/2021 the DCIO Kilidini harbour did actually release the consignment to the 1st Respondent and hence fully exonerating themselves from the matter. In the given circumstances, this Court has been wondering what is this interest that the Appellant still harbours with the 1st Respondent. The Court would wish to guide the Appellant by borrowing the scriptural verse from Exodus 9:13 where Prophet Moses told unto the Egyptian Pharaoh who had been hardening his heart from releasing the Israelites from slave captivity with the words – “Then the Lord said to Moses “Go in to Pharaoh, and say to him, “Thus says the Lord, the God of Hebrews, “Let my people Go, so that they may serve me, their Lord”. And I say unto you, the Appellant, “You made the bed, lay on it”. As a piece of free advice, get yourself out of all this mess created by yourself over seven (7) years ago by facilitating the legal and smooth exist and transshipment of the 37 Containers/Consignment to the intended original designation by the 1st Respondent.
29. It is therefore incumbent upon the state agency in this case the Kenya Wildlife Services to be mandated to now issue all the requisite necessary authorization documents in form of Certificate or permits for the satisfaction of the CITES permit to make good for the wrongful deeds and ensure that the 37 containers and/or consignment which they illegally impounded are ferried to the designation issue the requisite permit.

ISSUE (C) Who will bear the costs of the Notice of Motion application dated 27th January, 2022 by the 1st Respondent/Applicant?

30. The *Black Law Dictionary* defines “Cost” to mean, “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.

It is trite law that the provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. In the case of “*Reids Hewett & Company v Joseph* AIR 1918 cal. 717 & *Myres v Defries* (1880) 5 Ex. D. 180, the House of the Lords noted:-

“The expression “Costs shall follow the events” means that the party who, on the whole succeeds in the action gets the general costs of the action, but where the action involves



separate issues, whether arising under different causes of action or under one cause of action, the word 'event' should be read distributive and the costs of any particular issue should go to the party who succeeds upon it.....”

31. From this provisions of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in the instant case is the 1st Respondent/Applicant has had to suffer all these years by having their goods illegally detained by the Appellant should succeed in being issued with authentic and legitimate authorization documents to the satisfaction of CITES permits/ Certificate and transshipment to a designation desirous of the 1st Respondent to be allowed to have safe transshipment of the 37 containers of the Rosewood from Kenya to Hong Kong by KWS. The KWS must bear the costs accordingly.

VI. Conclusion and Disposition

32. In the long run and upon causing the indepth analysis of all the framed issues, I now do hereby make this following orders.
- a. That the Notice of Motion Application dated 27th January, 2022 by the 1st Respondent be and is hereby allowed for being meritorious with costs.
 - b. That an order that the Appellant - the Kenya Wildlife Service (KWS) be and is hereby authorized to ensure the issuance of such Permit and/or export clearance documents/ certificates and/or diplomatic authorization by such authorized statutory body to the satisfaction of CITES for purposes of transshipment of the consignment held and seized belonging to the 1st Respondent within the next Three (3) days from the date of this ruling without fail.
 - c. That an order be and is hereby made restraining and/or preventing any person, officers, agency and/or institution from causing and/or placing any objections, embargoes, restrictions and/or encumbrances onto the consignment scheduled and from the trans-shipment to the designation as had been originally intended by the 1st Respondent.
 - d. That there be a Site Visit on 20th May, 2022 at the Kenya Ports Authority at Kilindini harbour of the Thirty Seven (37) Containers of the Consignments to be organised and led by all the following Multi Agencies including the Kenya Wildlife Services, Kenya Revenue Authority, Kenya Ports Authority and the Kenya Police at the Kilidini Police Station (both the DCIO & OCS).
 - e. That an order be and is hereby granted tandem with the other directions issued herein there be a verification of the contents of all the said Thirty Seven (37) containers by the Honorable Court, Cross - stuffing to fresh containers at a designated Area reserved for the same, due process including but not limited to supervision and release thereof in accordance with and in lawful compliance in the presence of the Court (through the Judge or the Deputy Registrar), for purposes of transshipment to the designated Destination as duly ordered by the Honorable Court.
 - f. That the Appellant – Kenya Wildlife Service (KWS) to bear the costs of this Notice of Motion application to the 1st Respondent.
 - g. That failure to comply with and/or be in breach with any of the above cited directions and orders to automatically cause the Director of the Kenya Wildlife Services in person be committed to civil jail for a reasonable period for being in contempt of the Court orders hereof.



RULING READ, SIGNED AND DELIVERED AT IN COURT THIS 9TH DAY OF MAY 2022.

HON. JUSTICE L. L. NAIKUNI (JUDGE)

ENVIRONMENT AND LAND COURT

MOMBASA

In the presence of:

Mr. Wilson Rabongo, Court Assistant.

Mr. Mugambi Advocate for the Appellant.

Mr. Egunza Advocate for the 1st Respondent.

Non Appearance for the 2nd Respondent.

Mrs. Waswa Advocate for the 3rd Respondent.

Non Appearance for the 4th Respondent.

Non Appearance for the 5th Respondent.

