



REPUBLIC OF KENYA



KENYA LAW

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**South Sea Services Limited v Mutiso (Environment and Land Appeal
68 of 2021) [2022] KEELC 2409 (KLR) (9 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2409 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL 68 OF 2021**

LL NAIKUNI, J

MAY 9, 2022

BETWEEN

SOUTH SEA SERVICES LIMITED APPLICANT

AND

AMOS K. MUTISO RESPONDENT

RULING

I. Introduction

1. What is before this Honorable Court for its determination is the Notice of Motion application dated 23rd December, 2021 filed by the Appellant/applicant herein. It is brought under the dint of Sections 1A, 1B, 3 and 3A Order 40 Rule 7 of the *Civil Procedure Rule* 2010.

II.The Appellant/applicants Case.

2. The Appellant/Applicant through the said Notice of Motion application seeks for the following orders:-
 - (a) Spend;
 - (b) That this Honorable Court be pleased to grant stay of execution of orders and/or directions of Justice L. Naikuni on 14th December 2021 pending the hearing and determination of this application.
 - (c) That this Honorable Court be pleased to review and/or vary the orders issued by Justice L. Naikuni on 14th December, 2021 and provide that the Appellant/Applicant be allowed to deposit title document and/or logbook and/or any other forms of security as a suitable for cash in compliance with the conclusion given by court.
 - (d) That the costs of this applications be provided for.



- (e) That the court do grant such other relief as it may deem fit and just to grant.
3. The said Notice of Motion application is premised on the grounds facts testimonies and averments founded on the eleven (11) paragraphed supporting affidavit of Rama Hamisi Bindo sworn and dated 23rd December, 2021 and two (2) annexures marked as “RMB -1 & 2” annexed thereto. The Deponent stated that he was one of the Directors of the Applicant Company herein and was well conversant with the facts and with authority to swear this Affidavit. He stated that being dissatisfied with the ruling of the lower court CMCC No. 864 of 2021 Mombasa delivered on 8th October, 2021 the Applicant/Appellant opted to file an appeal against the said decision they were granted unconditional injunction by this Honorable Court on 14th October 2021.
- He held that since there a related file before this court between the same parties and the same subject matter ELC. No. 207 of 2021 they were to be mentioned on 7th December 2021 for directions in respect to consolidating the said files. He deponed that on 7th December, 2021 when the parties appeared before Court the Respondent was against the consolidation of the two (2) files and court offered to give directions on how the two were to proceed.
4. He stated that on 14th December, 2021 this Honorable Court granted certain directions to the effect that the Appellant/Applicant deposits a sum of Kenya Shillings Two Million and Thirty Two Thousand Three Hundred (Kshs. 2, 432,300/=) in a joint escrow bank account to be held by both he Advocates for the Appellant/Applicant and the Respondent within 30 days from the date of the said directions.
5. He deposed that the Appellant/Applicant is not in a financial position to raise that amount of money within 30 days as the same was colossal. He further deposed that the Applicant/Appellant was in the hospitality industry – hotels which had been largely affected by the global Corona/Covid-19 Pandemic and the Government restrictive conditions of regular hand washing, wearing face masks, keeping social distance, staying at home and closure of public business premises such as hotels, restaurants and bars and so forth. By all means, he deposed these were not directions were not friendly until there was resumption of full operations thereafter. He held that the Respondent would not be prejudiced if the orders sought were issued. He urged for the orders sought in the filed Notice of Motion application to be granted.

III. Respondents Replies

4. On 17th February, 2022, the Learned Counsel for the Respondents the Law firm of Messrs. Munyiya, Mutungi, Umara and Muzina Company Advocates filed a five (5) points grounds of opposition vehemently opposing the filed Notice of Motion application dated 23rd December, 2021 by the Applicant/Appellant herein.

In summary they raised the following objections:-

- a. The application was incurably defective having been brought under the wrong citations of the law being Order 40 Rule 7 of the Civil Procedure Rules 2010.
- b. The Application failed to meet the legal dictum on review, varying and/or setting aside court orders as envisaged under the provisions of Section 80 of the *Civil Procedure Act* and Order 45 of the *Civil Procedure Rules* 2010. It was an error that could not be cured by dint of Order 51 Rule 10 (2) of the *Civil Procedure Rules*, 2010. They held that the Appellant/Applicant violated the overriding objectives of Sections 1, 1B, 3 and 3A of the *Civil Procedure Act*, Cap. 21.



- c. The Appellant/Applicant had not met the conditions for stay of execution to warrant being granted the orders sought under the provision of Order 42 Rule 6 (2) of the *Civil Procedure Rules*, 2010. Hence, the Notice of Motion application should be dismissed with costs.

The Respondents also filed a list of authorities to back up their argument.

III.Submissions

5. On 16th February, 2021 parties were directed to appear in court to highlight and tender their oral submission of their filed pleadings on the subject matter.

A. The Appellant/Applicant Submissions

6. On 23rd February, 2022, M/s. Kyalo Advocate submitted essentially seeking the Courts intervention to review, vary and/or set aside its orders delivered on 14th December, 2021 in terms of the prayers sought from the filed application on twofold dimensions. Firstly, she further urged Court, in place of the liquid cash from the accumulated and outstanding rental arrears of a sum of Kenya Shillings Two Million (Kshs. 2, 000, 000.00) in the joint escrow account by both Advocates for the Appellant and the Respondent respectively and Secondly, to allow the Appellant/Applicant deposit an original Certificate of Title deed to a registration of Motor vehicle registration book (Log book) in court instead of the hard cash. Her contention was that the Appellant/Applicant was in dire financial constraints and was finding it difficult to access the said amount arising from myriad of circumstances. These included the Covid – 19 Pandemic, the existence of the prolonged family dispute among the duly appointed Legal Administration which prevented and made it impossible to be paying the rent regularly. The situation made it not possible to know where to make the rental deposit. She urged court to use its own discretion in the given circumstances. To buttress her argument she relied on the decision of “*John Kilat –Versus- The Nation Medial Group* eKLR 2006 where the court found the decretal amount the Appellant had been ordered to deposit to be large and hence considered other available and/or alternative means of security pending the hearing and determination of the appeal. She urged court to allow the said application.

B.The Respondent’s Submissions

7. Mr. Muniyithya Advocate for the Respondent commenced by submitting that the ruling delivered on 14th December, 2021 by this Honourable Court was graphically clear. He argued that it had stringent timelines and the direction on mode and means of depositing the cash of the outstanding rent by then being a sum of Kenya Shillings Two Million (Kshs. 2,000,000/=) in an escrow joint bank account to be held by the Advocates for the Appellant/Applicant and the Respondent respectively within a period of 30 days. Ideally, he stated that that period was by then long overdue and therefore the Notice of Motion application had already collapsed. Nonetheless, he opined in the event the Court was to tolerate the application, then it should find it an abuse of the due process and vexatious having been brought under the wrong citation and out of time. To buttress its argument, he relied on the following five (5) filed and served authorities. These were:- “*Hunker Trading Co. Limited –Versus- Elf Oil Kenya Ltd.*, 2010 eKLR, *National Bank of Kenya Limited – Versus - Ndungu Njau* (1997)eKLR *Lake Basin Development Authority – Versus - Joseph Ochieng* (2020) eKLR, *Okumo Constance & Another –Versus- Annab Moraa* 2020(eKLR, *Zacharia Okoth Obado –Versus- Edward Akongo Oyugi* (2014). The Honourable Court fully appreciated all the holdings and the legal ratio from the courts decisions and will be matching them to this instant case in due course of this ruling.
8. The Learned Counsel argued that the Notice Motion application did not meet the requirements founded under Section 80(1) of the *Civil Procedure Act* or Order 45(1) of the *Civil Procedure Rules* as



there was no error apparent on the face of record and/or any new discovery of new facts as envisaged by law. He underscored the fact that this was purely a Landlord - Tenant relationship. He stated that they had been attempting to levy distress on the accumulated and outstanding rental arrears by the Appellant/Applicant but without success as the motion got dismissed. He recounted that at least there was some relief when this court directed the Appellant/Applicant to make the cash deposit for a sum of Kenya Shillings Two Million (Kshs. 2, 000, 000). He argued that there could be no payment of rent through a certificate of title deed. As a solution, he proposed that either the Appellant/Applicant offers to pay/settle the accumulated rent through staggered monthly instalments until completion to be treated as a debt to be cleared within an agreed time plan or vacates the premises altogether. He emphasized that payment of rent was a legal requirement and which the Appellant/Applicant was not disputing the decretal amount. He noted that their only argument was that they were undergoing through such financial constraints. He prayed the Notice of Motion application to be dismissed with costs.

IV. Analysis And Determination

9. I have considered the pleadings before me which is basically the filed Notice of Motion application dated 23rd December, 2021 and the oral submissions ably made by the parties herein. The issue for determination is straight forward and single –

Whether the court can vary or review its orders delivered on 14th October, 2021 and the reasons for doing so, to allow the Appellant/Applicant substitute the security of costs for the accumulated rent from a cash sum of Kenya Shillings Two Million Four Hundred and Thirty (Kshs. 2,432, 000.00/=) as from the time of filing the suit before the lower Court to depositing a certificate of title deed or a motor vehicle registration book (log book).

10. This Honorable Court takes cognizance and indeed its on record that by the time of filing this application and the appeal the outstanding rental arrears had accumulated to a sum of Kenya Shillings Two Million Four Hundred and thirty Two Thousand Three Hundred (Kshs. 2, 432, 300.00). On 8th October, 2021 the lower court in CMCC No. 884 of 2021 delivered its ruling in favour of the Respondent. Being aggrieved by the decision, the Appellant/Applicant preferred an appeal being the appeal No. E68 of 2021 being one against the ruling. Subsequently, it also filed a suit the ELC No. 207 of 2021 over the same subject matter before this Honourable Court and which are all pending hearing and final determination. Indeed, in order to preserve the subject land while awaiting the determination of these matters, on 14th December, 2021 granted certain stringent directions with reference to said cases. For avoidance of doubt and taking that these Courts direction/orders apparently form the pith and substance of this application, I found it imperative to re – produce it here verbatim thus:-

1. In order to expedite these matters and for the sake of natural, Justice, equity and conscience, I now do proceed to grant the following directions.
 - a. That the directions provided in the ELC (O.S.) No. 207/2021 on 28th October, 2021 still stands. Save to add the Respondents are granted temporary injunction orders pending the hearing and final determination of the Originating Summons by way of *viva voce* Evidence.
 - b. That the Originating Summons to be fixed for hearing within the next 90 days from this date hereof on priority basis.



- c. That with regard to the Elc Appeal No. 68 of 2021 the application dated 13th October, 2021 be canvassed by way of written submissions as follows:-
 - i. The Appellant are granted 14 days leave to file and serve their written submissions.
 - ii. The Respondents are granted 14 days leave to file and serve written submissions thereafter.
- d. That the Appellant are directed to forthwith deposit a sum of Kenya Shillings Two Million (Kshs. 2,000,000/=) in an opened Joint Escrow Bank Account to be held in the names of the law firms of M/s. Marende Necheza & Company Advocates And M/s. Munyithya Mutungi Rimara & Musna & Company Advocates within the next 30 days from today without failure.
- e. That the stay of execution orders granted on 14th October, 2021 to remain in force until the application dated 13th October, 2021 is heard and determined.
- f. That in order to preserve the deceased's estate, the Land Registrar Mombasa is ordered and/or directed to register an Inhibition against all that property known as Land Reference No. Mombasa/ms/block 1/242 under the provisions of Section 68(1) (2) and 69 of the Land Registration Act of 2012 and Regulations 79(1)(2) and (3) of the Land Registration (General) Regulations 2017 within the next 30 days at the Costs of the Respondents – South Seas Services Limited.
- g. That failure to adhere with any of the above directions in default the following to happen:-
 - i. The application dated 13th October, 2021 by the Respondents will automatically stand dismissed and the execution of the Decree from the trial court in CMCC No. 864 of 2021 and Ruling of 8th October, 2021 to be effected accordingly.
 - ii. The Originating Summons will stand dismissed in favour of the Administrators to the Estate of the late Gabriel Mutiso Maanda.
- h. That these two matters though not consolidated as such, but unless otherwise stated and/or they ever get to be consolidate in the future, must be mentioned together as they involve the same parties and same subject only that they have been handled at different court's jurisdiction.
- i. That the matter to be mentioned on 16th February 2022 for compliance and further directions.



Ruling Delivered, Dated and Signed in Open Court This ...14THDay of ...December....., 2021.

Hon. Justice L.I. Naikuni

Judge

(ELC- Mombasa)’

11. Thus, from the above ruling and the instant application by the Appellant/Applicant, the only distinguishing aspect is on the review and/or varying of only one single issue from the said orders. It is not on the entire orders. This is with reference to the substitution of the cash payment with a Certificate of Title deed or a Motor Vehicle registration book (Log book). All said and done, the Applicant is very much within their legal right in seeking for the said relief though with due respects Courts have tended to guard their orders so jealously.
12. It is imperative that I spend a little bit of time on the substratum and the legal position regarding review, varying and setting aside of Court orders. This jurisprudence is founded under the Provisions of Order 40 Rule 7 if its an injunction order, Order 45 (1) (2) & (3) of the Civil Procedure Rules, 2010 and Section 80 (a) & (b) of the Civil Procedure Act, Cap. 21. Section 80 provides:

Section 80 provides:- any person who considers himself aggrieved:-

- a. By a Decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. By a decree or order from which no appeal is allowed by this Act, may apply for a review of Judgement to Court which passed the decree or made the Order and the Court may make such order thereto.

Order 45 (1). States as follows:- Any person considering himself aggrieved:-

- a. By a Decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. By a decree or order from which no appeal is allowed by this Act, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of Judgement to the Court which passed the decree or made the order without unreasonable delay”.

Order 40 (7) “Any Order for Injunction may be discharged, or varied or set aside by the Court on an application made thereto by any party dissatisfied with such order.

13. From the afore stated provisions, it is quite clear that the orders for review, varying or setting side Court orders are discretionary in nature. Thus, the unfettered discretion must be exercised judiciously, not capriciously and reasonably by the Honourable Court. To qualify for being granted the orders for review, varying and/or setting aside a Court order for the above provisions to be fulfilled, the following ingredients, jurisdiction and scope are required:-



- a. There should be a person who considers himself aggrieved by a Decree or order;
 - b. The Decree or Order from which an appeal is allowed but from which no appeal has been preferred;
 - c. A decree or order from which no appeal is allowed by this Act;
 - d. There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made; or
 - e. On account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree or order.
 - f. The review is by the Court which passed the decree or made the order without unreasonable delay.
14. The power of review is available only when there is an error apparent on the face of the record discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made. Indeed, this Court emphasizes that a review is not an appeal. The review must be confined to error apparent on the face of the record and re – appraisal of the entire evidence or how the Judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is permissible.

Discussing the scope of the review, the Supreme Court of India in the case of “*Ajit Kumar Rath – Versus – State of Orisa*, 9 Supreme Court Cases 596 at Page 608. had this to say:-

“The power can be exercised on application of a person on the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier; that is to say the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason”means a reason sufficiently analogous to those specified in the rule...”

15. In the case of “*Nyamongo & Nyamongo – Versus – Kogo*” (2001) EA 170 discussing what constitutes an error on the face of the record, the Court rendered itself as follows:-

“An error apparent on the face of the record cannot be defined or exhaustively, there being an element of definitiveness inherent in its very nature and it must be determined judicially on facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning on points where there may conceivably in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was possible. Mere error or wrong is certainly no ground for review though it may be one for appeal.....”



In the instant case, undoubtedly there exists the Landlord - Tenant relationship based on the lease agreement dated 31st October, 2019 for a lease term of five (5) years. Further, it is not in dispute that there has accumulated rent for some period and the Respondent has been trying to levying distress without much success. Be that as it may, it's even pleasing the Applicant/Appellant is not refusing to pay and/or settle the decretal sum but only requesting for a substitution of the security of costs.

It should be appreciated from the very onset, this proceedings are primarily concerned on the already outstanding and accumulated rental arrears upto the time of filing of the case before the lower court. From the pleadings and the submissions hereof, it appears the Applicant/Appellant had been diligently paying rent until the occurrence of certain unavoidable events and which now hindered this smooth remittance of rent. These included, the emergency of the global Corona/Covid - 19 Pandemic and the restrictive government directives placing stringent and severe restrictions onto their business. They argued and the Court concurs that hospitality industry where the Applicant/Appellant operates a hotel were severely affected. In addition, Court was informed of the prolonged family feud involving the duly appointed Legal Administrators which had jeopardized and interfered with the terms and conditions of the Lease Agreement making it difficult to know when and here to remit the rent and finally the Appellant claims that they had heavily invested onto the land by building permanent structures on it with the consent and knowledge of the Respondent and hence felt that should have been factored by the Respondent while making the demand for the settlement of the rent. These are extremely pertinent and cogent issues to be considered and not ignored in the face value.

16. In all fairness, the Court would like to tackle each one of them separately. Firstly, on the Corona/Covid – 19 pandemic. The relieve is that its now behind us. But while it hit the world it was lethal. In such unforeseen circumstances the principles founded on “*Force Majeure*” came to play. This is where the lease is allowed some grace period arising from such unforeseen circumstances for instance Covic-19 Pandemic. This interpretation on the “*Force Majeure*” is arguable as far as this court is concerned. According to the Black Law Dictionary, the concept of “*Force Majeure*” means “Law French “Superior Force” an event or effect that can be neither anticipated nor controlled. The term includes both acts of nature (e.g floods and hurricanes) and acts of people (e.g riots, strikes and wars)”.

In a contract such as the Lease Agreement in the instant case, its a common contractual provision in contracts which essentially allocates the risk of loss if performance becomes impossible or impracticable, especially as a result of an unforeseen or unenforceable circumstances or event or effect that parties could not have anticipated or controlled and that prevents someone from fulfilling a contract. They are irresistible computation or superior strength which frees both parties in a contract from liability or obligations when extraordinary events or circumstances beyond the control or the parties as state here do occur. Indeed, Court concurs that this situation drastically affected numerous business and may have hindered the smooth remittance of rent by the Appellant/Applicant.

17. Secondly, with regard to the family dispute. As its now very clear, this court takes Judicial Notice of the existence of a pending Appeal – CA. No. E68 of 2021 of the CMCC decision/Ruling of CMCC No. 884/2021 of 8th October, 2021 and through the Memorandum of Appeal dated 8th October, 2021 marked as “RHB – 3” and filed on 12th October, 2021. From it the Appellant/Applicant admits and brings to the attention of the court new facts that were not graphically clear before to the effect that though he was willing to pay the rent only that he had been waiting for the family feud between the Respondent and his sister being a beneficiary of the estate to be resolved. Ordinarily, such fights do



bring in confusion and which affect Land Lord Tenants lease agreement. It needs to be regularized and resolved in the shortest time possible.

Thirdly, as regards investment by the Appellant/Applicant on the suit premises. From the filed Memorandum of Appeal, the Applicant/Appellant claims, which so far has not been controverted by the Respondent, he has also already heavily invested onto the suit property by building such permanent structures worth over a sum of Kenya Shillings Fifteen Million (Kshs. 15,000,000/=). Be all standards, should this be factual, then its not by any means little sum. The Respondent ought to take all these facts into consideration while demanding for the payment of the rent.

18. Nonetheless, without wanting to prejudice the case, whether this are factual or not they need to be keenly and scientifically measured and assessed by this Honorable Court during the hearing of the filed appeal by the Appellant/Applicant and the other suits hereof. For all these reasons, the Appellant has argued that the cash amount of Kenya Shillings Two Million (Kshs. 2, 000, 000.00) as directed by this honourable Court as being far beyond their means taking all facts remaining constant of their heavy investment on the suit premises and the emergence of the Covid – 19 global pandemic which severely affected their hospitality business. But still all said and done, they have offered a Security of Costs in terms of Certificate of Title deed or a Motor Vehicle registration book (Log book) to be deposited and which if they become successful may be utilized to compensate the Respondent upon the hearing and final determination of the filed appeal. Juxtapose, the Respondent has emphasized that payment of rent is a legal requirement and the Appellant has not disputed being in arrears.

For this reason, though the court fully concurs with the Learned Counsel for the Respondent to the effect thought the Notice of Motion application may not necessarily founded on the proper citation of law, as there is no temporary injunction in place as such in this proceedings, to warrant citing the provision of Order 40 Rule 7 of the Civil Procedure Rules, 2010, but there is need for the appeal to be heard on merit pursuant to the provisions of Article 159 (1) and (2) of Constitution of Kenya. Furthermore, in the long run, the Appellant would have to pay the rent based on an agreed mutual and reconciled accounts between the Appellant/Applicant and the Respondent or to vacate the premises or offer to pay in installments all these based on the balance of probability, equity, conscience and natural justice, under the Provisions of Article 159(1) (2) of Constitution of Kenya, Section 3 (1) 13, 14, of ELC Act, Section 101 of the Land Registration Act No. 3 of 2012 and Sections 150 of the Land Act No.3 of 2012. Therefore, based on the above detailed analysis, I now proceed to grant the following orders with stringent timelines. These are:--

- a. That the Notice of Motion application dated 23rd December, 2021 by the Appellant/Applicant be and is hereby allowed in terms of:-
 - i. There be review and/or variation of the Orders of this Court granted on 14th December, 2021 strictly whereby the Appellant/Applicant to cause the substitution of the cash sum of Kenya Shillings Two Million (Kshs. 2, 000, 000.00) being rent arrears upto April, 2021 or there about with a valid Certificate of Title Deed.
 - ii. The Applicant to cause the security of a Certificate of Title Deed to be deposited in ELC Court Pending the hearing and final determination of the Appeal.
 - iii. There be conducted a recent official search of the certificate of title deed and free from any encumbrances within Seven (7) days.
 - iv. There be undertaken a recent valuation Report of the Land conducted by a qualified and a court Credited Land Valuer/Economist – to be attached to the title deed within the next Twenty One (21) days.



- b. That the Appellant and the Respondent to prepare a well balanced and reconciled books of inspected and audited accounts by competent Accountants by both parties and a report prepared to be furnished to this Honourable Court on or before the 15th July, 2022.
- c. That the Appellant be and is hereby granted leave of 30 days to ensure that the Records of Appeal is compiled, filed and served accordingly and there be a Mention of the matter on 27th June, 2022 for purposes of taking Court's direction of the hearing of the appeal pursuant to the provisions of Sections 79B & G of the *Civil Procedure Act*, Cap. 21 and Order 42 Rules 11 and 13 of the *Civil Procedure Rules*, 2010 without failure accordingly
- d. That all the directions made on 14th December, 2021 to still subsist and take effect with a simultaneous hearing of the Suit ELC (OS) Numbers 207 of 2021 and the Appeal No. 68 of 2021 to be on 15th July, 2022 and there be stay of execution of the ruling of the CMCC No. 884/2021 delivered on 8th October, 2021 pending the hearing and final determination of the filed before this Honorable Court hereof.
- e. That the costs of the Notice of Motion application to be in the cause.

It is so ordered accordingly.

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

HON. JUSTICE L.L. NAIKUNI (JUDGE)

ENVIRONMENT & LAND COURT

AT MOMBASA

In presence of:-

Mr. Wilson Rabongo, Court Assistant.

Mr. Ondieki holding brief for M/s. Kyalo Advocate for the Applicant/Appellant

Mr. Munyithya Advocate for the Respondent.

