Gifted Hands School Limited v Mogul & another (Environment and Land Case Civil Suit 047 of 2022) [2022] KEELC 2770 (KLR) (7 July 2022) (Judgment)

Neutral citation: [2022] KEELC 2770 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND CASE CIVIL SUIT 047 OF 2022

JO MBOYA, J

JULY 7, 2022

BETWEEN

GIFTED HANDS SCHOOL LIMITED .... APPLICANT

AND

MOHAMED RAFFIQUE AND REHAN NABIL MOGUL .... 1ST RESPONDENT

PHILLIPS INTERNATIONAL AUCTIONEERS .... 2ND RESPONDENT

(...the ruling delivered on the June 16, 2022 and all consequential orders in BPRT Case No E242 of 2022 be stayed pending hearing and determination of this appeal.)

JUDGMENT

Background

1. Vide the notice of motionapplication dated June 21, 2022, the appellant/applicant approached the court seeking the following Reliefs:

    a. ....spent.

    b. That the ruling delivered on the June 16, 2022 and all consequential orders in BPRT Case No E242 of 2022 be stayed pending hearing and determination of this Application.

    c. That the ruling delivered on the June 16, 2022and all consequential orders in BPRT Case No E242 of 2022 be stayed pending hearing and determination of this appeal.

    d. Costs of the application to be in the cause.

2. The subjectapplication is premised on the grounds contained in the body thereof and same is supported by an affidavit by one, Tabitha Ogango Sungu, sworn on the June 21, 2022, and to which the deponent has attached three annextures.

3. Upon being served with the subject application, the respondents herein proceeded to and retained an advocate who filed and/or lodged a notice of appointment of advocate, but did not file any response to the subject application.

Depositions By The Parties:

Appellant's/Applicant's Case:

4. Vide supporting affidavit sworn on the June 21, 2022, one Tabitha Ogango Sungu has averred that same is a director of the appellant school and therefore same is authorized and/or mandated to swear the subject affidavit on behalf of the appellant/applicant.

5. Further, the deponent has averred that the appellant herein filed and/or lodged an application dated the March 15, 2022 seeking for injunctive orders against the respondents herein, before the Business Premises Rent Tribunal.

6. Besides, the deponent has averred that the application under reference was heard and disposed of vide ruling rendered on the June 16, 2022, whereupon same was dismissed by the tribunal.

7. The deponent has further averred that following the dismissal of the application dated the March 15, 2022, the appellant/applicAnt felt aggrieved and dissatisfied and same is therefore keen to file and/or mount an appeal against the said ruling and/or decision.

8. Nevertheless, the deponent has averred that the ruling under reference has occasioned grave injustice to the appellant/applicant and that the appellant is now disposed to suffer a miscarriage of justice.

9. Be that as it may, the deponent has further averred that the intended appeal, against the impugned ruling has overwhelming chances of success and hence, it is imperative and/or appropriate for this court to intervene and grant an order of stay of execution pending the hearing and determination of the intended appeal.

Response By The Respondents:

10. Though served with the application herein, the respondents neither filed a replying affidavit nor grounds of opposition to the subject application.

11. Suffice it to observe that the respondents' advocate on record, merely filed a notice of appointment of advocate in respect of the subject matter.

Submissions By The Parties:

(a). Appellant's/Applicant's submissions:

12. The appellant's advocates herein submitted that same had filed and/or lodged an application seeking for temporary injunction dated the March 15, 2022, before the Business Premises Rent Tribunal and that the said application was heard and thereafter dismissed vide ruling rendered on the June 16, 2022.

13. It was further submitted that the orders of temporary injunction, which were sought vide the application before the Business Premises Rent Tribunal were meant to avert and/or prohibit the levying of distress against the appellant/applicant.

14. Besides, the counsel for the appellant further submitted that the tribunal proceeded to and dismissed the appellant's reference and the application dated the March 15, 2022 pursuant to and under the provision of section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishment)*

Act, chapter 301 laws of Kenya and thereby exposing the appellant/applicant to extreme prejudice and injustice.

15. Other than the foregoing, counsel for the appellant submitted that the dismissal of the application dated the March 15, 2022 under the provisions of section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act,* chapter 301 Laws of Kenya, constitutes an order which is appealable as a matter of right.

16. In the premises, counsel for the appellant contended that the appeal (or the intended appeal) therefore has overwhelming chances of success.

17. Finally, counsel for the appellant further submitted that unless the orders of stay sought are granted, the respondents herein shall proceed and levy distress and thus the appellant shall suffer irreparable and substantial loss, not compensable in monetary terms.

18. Based on the foregoing, counsel for the appellant therefore implored the court to proceed and grant the orders sought.

(b). Respondents' Submissions

19. Though the respondents had not filed any response to the said application, same were at liberty to make submissions in opposition thereto, albeit on points of law only.

20. Pursuant to the foregoing, counsel for the respondents contended that what was before the Business Premises Rent Tribunal was a complaint/reference lodged pursuant to section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act*, chapter 301 laws of Kenya and hence the ruling and or order made by the tribunal is not appealable as of right.

21. Secondly, the counsel for the respondents submitted that a right of appeal only exists and/or accrues to a party in respect of a reference filed pursuant to section 6 of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act*, chapter 301 Laws of Kenya and not otherwise. In this regard, it was therefore submitted that the dispute before the tribunal having been mounted in line with section 12(4) of the *Act*, same is not therefore appealable at all.

22. Thirdly, it was submitted that to the extent that no right of appeal is provided for under the law, both the appeal herein as well as the application for stay of execution are not only premature, but same are misconceived and legally untenable.

23. In view of the foregoing, counsel for the respondents therefore submitted that the subject appeal as well as the application ought to be struck out for want of jurisdiction.

Issues for Determination:

24. Having reviewed the notice of motion application dated the June 21, 2022, the supporting affidavit thereto and having similarly evaluated the submissions ventilated on behalf of the parties, the following issues do arise and are thus germane for determination;

    i. Whether an appeal has been mounted before this honourable court to warrant an application for stay of execution pending the hearing and determination of (*sic*) the appeal.

    ii. Whether a ruling and/or decision of the Business Premises Rent Tribunal made pursuant to section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act,* chapter 301 laws of Kenya is appealable to this honourable court.

iii. Whether the appellant/applicant herein is entitled to an order of stay of execution either in the manner sought or at all.

Analysis And Determination

Issue Number 1: Whether an appeal has been mounted before this honourable court to warrant an application for stay of execution pending the hearing and determination of (sic) the appeal.

25. The appellant/applicant herein has filed the subject application and same seeks an order of stay of execution of the ruling rendered and/or delivered on the June 16, 2022 before the Business Premises Rent Tribunal.

26. Pursuant to the subject application, it was incumbent upon the appellant/applicant herein to show and/or exhibit that same has indeed filed and/or lodged a memorandum of appeal and that the application herein is premised and/or grounded on an existing appeal.

27. However, from the various grounds alluded to in the body of the application, as well as the Supporting affidavit, it is evident and/or apparent that no appeal has since been filed and/or lodged against the impugned ruling and/or decision of the tribunal.

28. Perhaps, it is imperative to reproduce various portions of the grounds and averments that are contained in the body of the application and which connotes that no appeal has since been filed.

29. For convenience, the pertinent grounds are as hereunder;

    i. Ground 3 of the certificate of urgency;

    > The appellant is aggrieved by the said ruling and intends to file an appeal against the same.

    ii. Ground 3 of the application;

    > That the appellant/applicant has been aggrieved by the ruling and intends to appeal.

    iii. Ground 4 of the supporting affidavit;

    > That I have been aggrieved by the ruling delivered on the June 16, 2022 and I intend to appeal against the said ruling.

    iv. Ground 6 of the supporting affidavit;

    > That the appeal that I intend to file is arguable and has high chance of success.

30. Other than the foregoing grounds, which suggest and/or otherwise confirmed that no memorandum of appeal has since been filed, the appellant/applicant has thereafter proceeded to and annexed a draft memorandum of appeal dated the June 21, 2022 to the application beforehand.

31. What is evident and/or apparent from the foregoing is that the appellant herein has not yet filed and/or lodged the requisite memorandum of appeal, denoting an appeal against the impugned ruling and/or decision of the tribunal.

32. To my mind, an appeal before this honourable court can only exists and/or come into existence upon the filing of the requisite memorandum of appeal and not by annexing a draft memorandum of appeal to an application for stay of execution, either in the manner done herein or at all.

33. In any event, it is imperative to note that the application for stay of execution pending the hearing and determination of an appeal can only be mounted on an existing appeal or a notice of appeal, the later, in the event that the appeal is being mounted to the Court of Appeal.

34. In the premises, it is my finding and holding that an application for stay of execution cannot precede and/or come before the memorandum of appeal, the later which would constitute the requisite foundation for the mounting of the former.

35. Suffice it to say, that the mounting of an application for stay of execution prior to the lodgment of the substantive of appeal, is tantamount to putting the cart before the horse. Clearly, such a situation is orthodox and thus legally untenable.

36. Notwithstanding the foregoing, the provision of order 42 rule 6 (1), (2), (3), (4) & (6) of the *Civil Procedure Rules* 2010 are pertinent. For clarity, the forgoing provisions are reproduced as hereunder;

> 6. Stay in case of appeal [order 42, rule 6.]
>
> (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
>
> (2) No order for stay of execution shall be made under subrule (1) unless—
>
> (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
>
> (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
>
> (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
>
> (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the rules of that court notice of appeal has been given.
>
> (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
>
> (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure

for instituting an appeal from a subordinate court or tribunal has been complied with.

37. From the foregoing provisions which I have enumerated and/or reproduced, there is no gainsaying that the existence of an Appeal or a Notice of Appeal is paramount and/or critical to the mounting of an application for stay of execution pending appeal.

38. Consequently, in the absence of a valid memorandum of appeal, mounted against the impugned ruling and/or decision, the subject application by and/or on behalf of the appellant has therefore been filed in vacuum.

39. In a nutshell, the orders sought cannot issue and/or be granted.

Issue Number 2; Whether A Ruling And/or Decision Of The Business Premises Rent Tribunal Made Pursuant To Section 12(4) Of The Landlord And Tenant (shops, Hotels And Catering Establishment) Act, Chapter 301 Laws Of Kenya Is Appealable To This Honourable Court.

40. It is common ground and or apparent that the decision of the tribunal that is sought to be appealed against and/or challenged before this Honourable Court was made pursuant to the provisions of section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act,* chapter 301 laws of Kenya.

41. Given that the impugned decision was made pursuant to section 12(4) of the *Act*, it imperative to interrogate whether an order, decision and/or ruling arising therefrom is appealable to this court either as of right or at all.

42. To appreciate whether there exists a right of appeal, ones needs to take into consideration the provisions of section 15 *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act*, chapter 301 laws of Kenya, which provides as hereunder;

15. Appeal to court:

(1) Any party to a reference aggrieved by any determination or order of a tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court:

Provided that the Environment and Land Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

(2) In hearing appeals under subsection (1) of this section the court shall have all the powers conferred on a tribunal by or under this Act, in addition to any other powers conferred on it by or under any written law.

(3) Deleted by Act No 2 of 1970, s 13.

(4) The Procedure in and relating to appeals in civil matters from subordinate courts to the Environment and Land Court shall govern appeals under this Act:

Provided that the decision of the Environment and Land Court on any appeal under this Act shall be final and shall not be subject to further appeal.

43. From the foregoing provision, it is apparent that a right of appeal only avails to a party to a reference and who is aggrieved by any determination or order of the tribunal made therein. For clarity, the

determination or order, which attracts a right of appeal must be one made in the reference and not otherwise.

44. To the extent that a right of appeal only avails to a party to a reference and not otherwise, it is therefore important to ascertain what then constitutes a reference under the provisions of the *Act*.

45. In the premises, it suffices to take cognizance of the provisions of section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act*, chapter 301 laws of Kenya defines a reference as hereunder;

> " Reference" means a reference to a tribunal under section 6 of this *Act*;

46. On the other hand, it is also appropriate to note that a reference under section 6 of the Act, would ensue and/or arise, once either a landlord or a tenant has issued and served the requisite statutory notices, whether for termination, alteration or otherwise, as stipulated and/or envisaged under the provisions of section 4 of the *Act*.

47. In view of the foregoing, my understanding of section 15 of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act*, chapter 301 laws of Kenya, is that the right of appeal is only available to parties to a reference, who are aggrieved by a determination or order arising therefrom and a reference is statutorily circumscribed vide section 2 of the *Act*.

48. From the foregoing, it is my finding and holding that an order made pursuant to section 12(4) of the *Act*, which essentially pertains to and/or concerns complaints to the tribunal are not appealable as of right to this honourable court.

49. In the premises, even assuming that a valid memorandum of appeal had been filed and/or lodged by and or on behalf of the appellant, i would still have found and held that such an appeal would be a nullity *ab initio*.

50. To underscore the fact that no right of appeal avails and/or obtains in respect of a decision made pursuant to section 12(4) of the Act, it is important to invoke and restate the holding of the court in the case of *Re-Heptulla Proberties Ltd* [1979] eKLR, where the court observed as hereunder;

> A party to a reference has a right of appeal to the High Court against any determination or order made therein, but the maker of a mere complaint has no such right. Mr Gautama argued that, in this context, "reference" must be given a wider meaning and must include a complaint; but in a provision conferring a right of appeal I have no doubt that word "reference" was used in its technical meaning as defined in section 2.
>
> For this view I derive some support from the wording of the appeal provisions before they were amended by Act No 2 of 1970. Appeal then lay to the Court of a Senior Resident Magistrate or Resident Magistrate, with a further and final appeal to the High Court. Section 15(1) then commenced, "any party aggrieved by the determination or order of a tribunal may within fourteen days appeal against the same ...".
>
> Subsections (1) and (4) of section 12 as quoted above have remained unchanged.
>
> Thus, until 1970, there was a right of appeal against an order made, not only on a reference, but also on a complaint. In inserting the words " to a reference" after the words "any party" and "made therein" after "tribunal" the Legislature must have had some object in mind; and that object could only have been to restrict the right of appeal to the High Court to determinations and orders made on a reference. The Legislature would not have removed the right of appeal to the High Court against orders made on a complaint if the term

"complaint" had been intended to include such matters as forcible dispossession by the landlord, an act which amounts to the tort of trespass.

51. Other than the ageless decision alluded to in the preceding paragraph, I must also point out that the Court of Appeal has also had an occasion to deal with or address the subject matter before hand, that is whether a right of appeal attaches to a complaint filed pursuant to section 12 (4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act*, chapter 301 laws of Kenya.

52. In this regard, the court is minded to refer to the decision in the case of *Gatanga General Store & 2 others v Githere* [1988] eKLR, where the Court of Appeal rendered herself as hereunder;

> 'It appears that there might be three sources of appeal. The primary source lies in section 15(1) of the Act. Any party to a reference aggrieved by a determination or order of a tribunal made in the reference may appeal to the High Court within the time stated. Hence this appeal concerns decisions on a reference.
>
> Such an appeal depends upon two steps, the giving of the tenancy notice by the landlord and the reference by the tenant to the tribunal against the landlord's notice. The landlord by himself cannot make a reference (Pritam v Ratilal & another, (1972) EA 560); that is for the tenant. If no reference is made then the landlord's notice takes effect under section 10 of the Act. So he does not need to appeal in that case. But on the appeal section 9 of the Act explains the determinations and orders which it may make; and the orders may be "further or other orders as it thinks appropriate." This explains the phraseology of section 15 – aggrieved by "any determination or order of a tribunal".
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> A second source of aggravation stems from a complaint under section 12(4) of the Act. This is not an easy concept to follow at every stage. Madan, J in Choitram v Mystery Model Hair Saloon, [1972] EA 525, (followed in Machenje v Kibarabara, [1973] EA 481) explained the scope of a complaint in these words:
>
>> "The powers given in section 12 (4) are expressly in addition to any other powers specifically conferred."
>
> I am of opinion however that the term "complaints" is intended to cover only complaints of a minor character.
>
>> "The term 'investigate' does not necessarily imply a hearing. Such complaints would include complaints by the tenant of turning off of water, obstruction of access, and other acts of harassment by the landlord calling for appropriate orders for their rectification or cessation, but not including payment of compensation for any injury suffered."
>
> It seems that the concept is that matters incidental to the protection of the tenancy given by the Act, especially security of tenure from dispossession and harassment may be dealt with at the level of minor complaints. Such complaints, having been entertained by the tribunal, and orders having been made, such orders have been held to be unappealable. Madan, J set out the history of the matter in Choitram's case at page 530 as follows:
>
>> "Prior to April 6, 1970, section 15 of the Act permitted an appeal to a senior resident magistrate and from there to the High Court on a question of law or mixed fact and law in terms which included appeals from decisions on complaints under section 12 (4).

> As amended appeals were restricted to determinations or orders made on a reference. This strengthens my view that proceedings under section 12(4) are intended for complaints of a minor nature only. If the legislature had considered that the tribunal had power under that provision to award large sums by way of compensation to a landlord for example … it would surely have continued the right of appeal."

There is no appeal from orders made under section 12 (4) of the Act, because that appeal was held to have been deleted.

Then there is the third source of appeals which is procedural. The present case comes under this heading. The statutory position is that the procedure in and relating to appeals in civil matters from subordinate courts to the High Court shall govern appeals under this Act. (Section 15(4)).

In hearing appeals under section 15, the court shall have all the powers conferred on a tribunal under the Act in addition to any other powers conferred on it by or under any written law. The Civil Procedure Act and Code would be such written law. Under the Magistrates' Courts Act the subordinate courts exercise civil powers and that would be under the Civil Procedure Act which regulates appeals from subordinate courts to the High Court. The definition of court in that Act includes the High Court and a subordinate court acting in the exercise of its civil jurisdiction.

53. Other than the foregoing decision by the Court of Appeal, I have also encountered the decision of Justice Visram, Judge (as he then was) in the case of *Silas Yimbo t/a Woodvale Associates v Eldomart Holdings Limited* [2008] eKLR, where the learned judge held as hereunder;

> On my part, I will stick to the conventional wisdom and hold that if the legislature had intended a right of appeal from decisions of the tribunal in respect of complaints made under section 12 (4) of the Act, it would have said so clearly and would not have amended the Act, as it did, in 1970.

54. To my mind, the foregoing corpus of case law, confirm and/or authenticate that no appeal lies as against an order of the tribunal made pursuant to the provision of section 12(4) of the Act and to this extent, this court would not be seized of jurisdiction to entertain an appeal, if any, is mounted against such a ruling and/or decision.

55. At any rate, the Jurisdiction of a court, for purposes of entertaining and/or adjudicate upon such an appeal, must be expressly provided for either in the *Constitution* or the parent statute and where no such jurisdiction is conferred, the court is bereft and/or devoid of jurisdiction. Consequently, the court must down it tools upon discovering that same is not seized of jurisdiction.

56. To fortify the foregoing observation, it is imperative to adopt and rely on the decision in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, where the Supreme Court observed as hereunder;

> (68) A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural

technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.

This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.

57. Pursuant to the foregoing, it is my considered view that this court is not seized of any adjudicatory power and/or authority to make any orders to and or in favor of the appellant/applicant save for an order for striking out.

Issue Number 3: Whether The Appellant/applicant Herein Is Entitled To An Order Of Stay Of Execution Either In The Manner Sought Or At All.

58. It is common ground that the application dated the March 15, 2022, was dismissed by the tribunal and hence no positive orders were made and/or rendered against the appellant/applicant.

59. Put differently, the dismissal of the application dated the March 15, 2022 constituted negative orders against the appellant/applicant.

60. To the extent that the orders which were rendered by the tribunal were in the negative, the question that begs the answer, is whether negative orders are capable of attracting an order of stay of Execution pending the hearing and determination of an appeal against such orders or otherwise.

61. To my mind, a negative order is incapable of execution and hence same cannot attract and/or accrue an order of stay of execution. Clearly, what is there in a negative order to warrant stay of execution.

62. Be that as it may, I beg to point out that the debate as to whether or not a negative order is capable of attracting a stay of execution was addressed, deliberated upon and settled vide the holding in the case of *Western College of Arts and Applied Sciences v EP Oranga & 3 others* [1976] eKLR, where the Court of Appeal stated as hereunder;

> " But what is here to be executed under that judgment, the subject of the intended appeal? The High Court has merely dismissed the suit with costs. An execution can only be in respect of costs .... The High Court has not ordered any of the parties to do anything, or to refrain from doing anything or to pay any sum. There is nothing arising out of the High Court judgment for this Court in any application for stay to enforce or to restrain by injunction".

63. It is important to note that the Jurisprudence emanating from the foregoing decision has been observed, adopted and variously applied to date.

64. For the avoidance of doubt, I beg to refer to and/or take cognizance to the later decision in the case of *Charles Barongo Nyakeri v County Government of Kisii & 4 others* [2020] eKLR, where the Court of Appeal stated as hereunder;

    12. 'The applicant's claim was dismissed by the ELRC. What followed was a negative decree that cannot be executed. The order of stay of execution of the trial court's judgment pending

hearing and determination of the intended appeal sought by the applicant cannot therefore be granted.'

65. Based on the foregoing, it must have become apparent that no order of stay can issue and/or be granted in respect of the ruling rendered on the June 16, 2022, which essentially dismissed the appellant's/ applicant's application for Injunctive reliefs.

Final Disposition:

66. Having dealt with and/or addressed the issues for determination which were outlined in the body of the ruling herein, it is now opportune and/or appropriate to make the requisite dispositive orders.

67. Consequently and in the premises, the court comes to the conclusion that the appeal herein (intended appeal), is not only premature, but same is misconceived and legally untenable to the extent that no right of appeal avails to and in favor of the appellants/applicant.

68. In a nutshell, the appeal herein (intended appeal), together with the application dated the June 21, 2022, be and are hereby struck out.

69. Costs of the appeal, as well as those of the application, be and are hereby awarded to the respondents.

70. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7 th DAY OF JULY 2022.

HON JUSTICE OGUTTU MBOYA

JUDGE

In the Presence of;

Kevin Court Assistant

Mr Muhatia Pala for the appellant/ applicant.

N/A for the respondents.