Al Yusra Restaurant Limited v Kenya Conference of Catholic Bishops & another (Petition E317 of 2014) [2025] KEHC 7288 (KLR) (Constitutional and Human Rights) (15 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7288 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E317 OF 2014

AB MWAMUYE, J

MAY 15, 2025

BETWEEN

AL YUSRA RESTAURANT LIMITED ..... PETITIONER

AND

KENYA CONFERENCE OF CATHOLIC BISHOPS ..... 1ST RESPONDENT

KNIGHT FRANK KENYA LIMITED ..... 2ND RESPONDENT

RULING

1. This Ruling is on the 1st Respondent/Applicant's Notice of Motion dated 19th January 2024, brought in Petition No. 317 of 2014 – Al Yusra Restaurant Limited v Kenya Conference of Catholic Bishops & Another. The 1st Respondent/Applicant, Kenya Conference of Catholic Bishops (hereafter "the Applicant"), seeks orders to stay execution of a monetary decree and to quash warrants of attachment and sale issued against it on 1st December 2023. The application is premised on the claim that an earlier stay of execution granted on 28th February 2022 remains in force pending an intended appeal, and that the execution initiated by the Petitioner/Decree Holder (Al Yusra Restaurant Limited, hereafter "the Petitioner") is irregular or premature.

2. The Petitioner opposes the Notice of motion, contending that the previous stay lapsed upon the Applicant's failure to file a Record of Appeal within stipulated timelines, that no valid appeal is now pending, and that the execution was lawfully commenced. Both parties filed affidavits and written submissions, and highlighted relevant legal authorities.

Background.

3. Judgment in Petition No. 317 of 2014 was delivered on 16th December 2021 in favor of the Petitioner, resulting in a decree for a sum of Kshs. 1,822,425 plus accrued. On 22nd December 2021, the Petitioner sought to execute that decree, but the Applicant obtained a conditional stay of execution from this Court (H.I. Ong'udi, J) on 28th February 2022. The stay was expressly "pending the hearing of the intended appeal" and was subject to specific conditions:

    a. The Applicant was granted leave to appeal, with a requirement to lodge the appeal within 30 days;

    b. The Applicant was to pay Kshs. 450,000 to the Petitioner within 30 days; and

    c. Costs of that application were to abide the outcome of the appeal. It is not disputed that the Applicant complied with those initial conditions – it filed a Notice of Appeal on 21st March 2022 and paid the sum of Kshs. 450,000 to the Petitioner in partial satisfaction of the decree. This had the effect of staying execution at that time.

4. Thereafter, the matter moved to the Court of Appeal. The Applicant, having filed the Notice of Appeal, was required under the Court of Appeal Rules to institute the appeal by filing a Record of Appeal within the prescribed period. However, no Record of Appeal was filed within the default 60-day period or within any extended period until much later. As a result, on 12th April 2023 the Petitioner filed an application in the Court of Appeal (Civil Application No. E147 of 2023) to have the Notice of Appeal struck out or deemed withdrawn for want of prosecution. When that application came up for hearing on 18th October 2023 before H. Omondi, JA, the parties recorded a consent disposing of the matter.

5. The consent, which was adopted as an order of the Court of Appeal, provided in pertinent part that: (i) the Petitioner's application to strike out the appeal was marked as withdrawn; (ii) the Applicant (Kenya Conference of Catholic Bishops) would "file and serve its Record of Appeal within 30 days" from 18th October 2023, and "in default, the Notice of Appeal shall be deemed as withdrawn"; and (iii) costs of that application were awarded to the Petitioner. It is important to note that this consent order set a clear timeline, expiring on or about 17th November 2023, for the Applicant to perfect its appeal by lodging the Record of Appeal.

6. It is common ground that the Applicant did not file the Record of Appeal within the 30-day period set by the Court of Appeal's consent order. The Petitioner avers – and the Applicant has not convincingly refuted – that the Applicant eventually filed its Record of Appeal on 20th November 2023, which was outside the allowed time. No evidence has been presented to this court that the Applicant obtained any further leave or extension from the Court of Appeal to validate the late filing of the Record of Appeal. In fact, the Petitioner asserts that no such application for extension of time was ever made, and the Applicant has not demonstrated otherwise.

7. Following the lapse of the appeal timelines, the Petitioner moved again to enforce the decree. On 29th November 2023, the Petitioner's advocate filed a formal Application for Execution before the Deputy Registrar. In that application, the Petitioner disclosed the history: that a stay of execution had been granted on 28th February 2022 but had since "lapsed pursuant to the order of Hon. H. A. Omondi, JA issued in CA Appl E147/2023 – the Judgment Debtor having failed to file & serve the Record of Appeal within the timelines set by the Court.".

8. The Deputy Registrar, being satisfied that the stay was no longer in force and that part of the decree remained unsatisfied, issued warrants of attachment and sale against the Applicant's property on

1st December 2023. A proclamation of attachment of the Applicant's movables followed (initially a proclamation had been done in January 2022 during the first execution attempt).

9. Upon being faced with the renewed execution, the Applicant filed the present application on 19th January 2024 under certificate of urgency. In it, the Applicant seeks, inter alia: a stay of the execution commenced by the warrants of attachment dated 1st December 2023; a stay of the "Ruling and/or Order of the Deputy Registrar dated 29th March 2019"; and an order quashing the warrants of attachment and sale issued on 1st December 2023 (as well as quashing the earlier proclamation of 5th January 2022). The Applicant essentially asks this Court to halt the enforcement of the decree pending the hearing and determination of the "intended appeal," maintaining that it still has a viable appeal or at least an arguable one that should be allowed to proceed. The Petitioner's position, conversely, is that there is no pending appeal to speak of (the notice having been deemed withdrawn), that the previous stay lapsed automatically, and that the execution was perfectly lawful.

Issues for Determination.

10. Having reviewed the pleadings and submissions, the Court finds that the application raises the following key issues for determination:

    a. Whether the stay of execution granted on 28th February 2022 remains in force or has lapsed given the failure by the Applicant to file the Record of Appeal within the prescribed time, and consequently whether there is any valid or competent appeal presently pending before the Court of Appeal.

    b. Depending on the above, whether the execution proceedings undertaken by the Petitioner (including the warrants of attachment and sale issued on 1st December 2023) were lawfully and regularly issued, or whether they ought to be set aside/quashed due to the pendency of a stay or appeal.

    c. Whether the Applicant has met the conditions for grant of a stay of execution pending appeal under Order 42 Rule 6 of the Civil Procedure Rules 2010, including demonstrating substantial loss, timeliness of the application, and provision of security.

Analysis

a.Status of the Appeal and Validity of the February 2022 Stay

11. It is common ground that (Ong'udi, J) on 28th February 2022 granted the Applicant a stay of execution pending appeal. However, that stay was conditional – it was expressly tied to the filing of an appeal within a specified timeline and part-payment of the decree. The first question is whether that stay order remains in effect or whether it lapsed.

12. The Applicant's counsel argued that they did file the appeal (in form of a Record of Appeal) and thus the stay should still protect the Applicant until the appeal is heard. It was suggested that any questions as to the timing or propriety of the appeal filings are matters for the Court of Appeal, and that as far as the High Court is concerned, a Notice of Appeal was filed and an appeal is on foot. The Applicant points out that it complied with the initial conditions by lodging the Notice of Appeal and paying Kshs. 450,000, indicating its serious intention to appeal. In their view, the stay granted by the High Court was not expressly extinguished and should be deemed to continue since an appeal was eventually filed, albeit out of time. The Applicant effectively urges that the High Court should not consider the appeal as dead unless the Court of Appeal formally pronounces it so, and that in the meantime, to avoid rendering any future appeal nugatory, the stay of execution ought to remain in place (or be reinstated).

13. On the other hand, the Petitioner argues that there is no valid appeal pending to warrant any stay. The Petitioner's counsel highlighted the sequence of events in the Court of Appeal: the consent order of 18th October 2023 gave the Applicant a final chance to file the Record of Appeal within 30 days, failing which the Notice of Appeal would stand withdrawn ipso facto. The Applicant failed to meet that deadline (filing on 20th November 2023, several days late). By operation of the consent order – which is binding on the Applicant – the Notice of Appeal was automatically deemed withdrawn when the 30 days lapsed without compliance. The effect is as if the Notice of Appeal had been struck out. In law, a Notice of Appeal is what anchors an appeal to the Court of Appeal; if it is withdrawn or deemed withdrawn, there is no appeal in existence. The Petitioner emphasizes that the Applicant has neither obtained an extension of time nor any leave from the Court of Appeal to revive or admit the late Record of Appeal. In the absence of such leave, the record filed on 20th November 2023 is a nullity – it is "pegged on a non-existent Notice of Appeal". Accordingly, by the time the Petitioner initiated execution in late November 2023, there was no pending appeal and no active stay of execution.

14. The law is clear that a stay of execution pending appeal is not indefinite or in vacuo – it is granted in contemplation of a diligently prosecuted appeal. Where the foundation for the stay (the appeal) falls away, the stay cannot continue to subsist. In the present case, the High Court's stay order of 28th February 2022 was explicitly "pending the hearing of the intended appeal." It was therefore conditional on the Applicant actually lodging and pursuing that appeal within a reasonable time. Once the appeal was not perfected in time and the Notice of Appeal was deemed withdrawn by order of the Court of Appeal, there remained no "intended appeal" that was actively pending. I find that by the lapse of the 30-day timeline on or about 17th November 2023, the conditional stay order automatically lapsed alongside the Notice of Appeal. The stay had no life of its own thereafter. Indeed, the consent order in the Court of Appeal was self-executing – no further court order was required to formalize the withdrawal of the Notice of Appeal once default occurred.

15. The Court of Appeal's jurisprudence confirms that an appeal that is filed out of time without leave is incompetent unless and until the delay is condoned. In *Charles Karanja Kuru v Charles Githinji Muigwa, CA No. 71 of 2016*, the Court of Appeal faced a similar scenario and posed the question: "whether the appeal filed out of time ... could be deemed as being properly on record." The Court answered by noting "a plethora of authorities" holding that an appeal filed out of time can only be validated "once extension of time is granted." Absent such extension, the appeal is not properly on record and is for all intents and purposes a nullity. The Court of Appeal in that case affirmed that it has routinely deemed appeals as duly filed only where leave is sought and granted retrospectively, and it cited the Supreme Court's decision in Nicholas Kiptoo Arap Salat underscoring the importance of complying with timelines. Likewise, the High Court (Emukule, J) in Gerald M'Limbine v Joseph Kangangi [2009] eKLR clarified the procedure under Section 79G of the *Civil Procedure Act*: an intending appellant who wishes to file an appeal out of time must file the appeal and simultaneously seek the court's leave to admit it out of time. One cannot "first seek permission to admit a non-existent appeal out of the stipulated period" – to do so would be an abuse of process. In other words, an appeal does not exist in the eyes of the law until either it is filed in time or, if filed late, the court has exercised discretion to extend time and admit that appeal.

16. Applying these principles here, the Applicant's appeal was not filed within time, and no court has extended time or admitted the appeal out of time. Therefore, no valid appeal is currently pending before the Court of Appeal to be protected by a stay. The Notice of Appeal, having been deemed withdrawn, is as good as struck out. The belated Record of Appeal filed on 20th November 2023 has no legal standing absent a curing order from the appellate court. This Court cannot ignore that reality. It is true, as the Applicant argues, that the formal determination of the fate of the appeal lies with the Court

of Appeal. But in this case the Court of Appeal has, through the parties' consent, already provided the consequence of default: the appeal would be no more. There is no ambiguity on this point.

17. Accordingly, I conclude that the stay of execution granted on 28th February 2022 ceased to have effect once the Applicant failed to institute the appeal within the time allowed. From that point on, the decree holder (Petitioner) was entitled to pursue execution of the judgment. The Applicant's argument that the stay is somehow still in force cannot hold in light of the lapsed appeal. In sum, no appeal is pending and no stay is in place as of the time the impugned execution was levied.

b.Propriety of the Execution and Warrants of Attachment

18. Given the finding that the previous stay order had lapsed by November 2023, it follows that the execution initiated by the Petitioner was prima facie lawful. A decree holder is entitled to enjoy the fruits of its judgment, and once any stay is lifted or lapses, the decree becomes enforceable. On 1st December 2023 the Deputy Registrar issued warrants of attachment and sale against the Applicant's property in execution of the money. The Applicant seeks to have those warrants (and the prior proclamation) quashed, essentially on the basis that they were issued in breach of a subsisting stay or pending appeal. However, since we have found that no stay was subsisting at the time, the foundation of that challenge falls away.

19. The record shows that the Deputy Registrar was apprised of the status of the matter – the execution application explicitly noted that the earlier stay granted on 28th February 2022 had "since lapsed" due to the Court of Appeal order and the Applicant's non-compliance. The amount remaining due on the decree (after crediting the Kshs. 450,000 already paid by the Applicant) was specified, and the mode of execution was regular and as provided by law. There is no suggestion that the procedure under the Civil Procedure Rules for execution was not followed. Indeed, the Applicant's only real grievance with the execution is that it believes it should not have happened at all due to the appeal. Since that belief is unfounded in law as determined above, there is no irregularity in the execution to warrant the intervention of this court.

20. I note that the Applicant did not raise any other ground of irregularity – for instance, there was no claim that the warrants were issued for the wrong amount, or without a valid decree, or in violation of any statutory notice requirement. The sole basis was the existence of an appeal/stay, which we have found to be illusory. Therefore, the warrants of attachment dated 1st December 2023 were validly and properly issued. Any proclamation or steps taken by the auctioneer on the strength of those warrants (such as a notification of sale) were likewise lawful.

21. In these circumstances, there is no justification to "quash" the warrants. Quashing would imply there was something fundamentally unlawful about them, which is not the case here. The Petitioner was within its rights to enforce the judgment after the collapse of the stay. Equity aids the vigilant, not the indolent – the Applicant cannot sleep on its right to appeal and then expect the court to shield it indefinitely from execution.

22. That said, since the Applicant moved this court in January 2024 and presumably obtained interim orders, it is likely that the execution was paused pending this ruling. If so, the attached assets, if any, have not yet been sold. The question now becomes whether at this stage – despite the lack of a currently pending appeal – the court should exercise discretion to grant a stay on terms, effectively giving the Applicant another opportunity to prosecute an appeal, or whether the execution should be allowed to proceed forthwith.

c.Stay Pending Appeal – Whether the Legal Threshold is Met

23. Although strictly speaking there is no active appeal, the Applicant's Notice of Motion is framed as one for "stay of execution pending the hearing and determination of the intended appeal." In an abundance of fairness, and given that the Applicant could yet seek leave from the Court of Appeal to reinstate its appeal, I will consider whether the Applicant has satisfied the conditions for stay of execution under Order 42 Rule 6(2) of the Civil Procedure Rules. That rule provides that no order for stay shall be made 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 the decree or order as may ultimately be binding on the applicant has been given". These are the three well-known requirements: (1) substantial loss, (2) no undue delay, and (3) security. Even where these conditions are met, the grant of stay remains discretionary, to be exercised in a manner that balances the interests of both parties. The purpose of a stay is to preserve the subject matter so that an appellant's right of appeal is safeguarded, but this must be weighed against the successful party's right to enjoy the fruits of judgment and ensuring no party suffers prejudice that cannot be compensated by costs.

24. The cornerstone of the court's jurisdiction on stay pending appeal is whether the applicant stands to suffer substantial loss if execution proceeds and the appeal (or intended appeal) eventually succeeds. The Applicant submits that unless a stay is granted, the Petitioner will proceed with attachment and sale of the Applicant's property to satisfy the decree of about Kshs. 3.1 million. It is argued that such execution will cause the Applicant hardship and render any eventual appeal nugatory, particularly because the attached assets could be crucial to the Applicant's operations. Moreover, if the decretal sum is paid over to the Petitioner, the Applicant fears that it may be difficult to recover the money back in the event the appeal succeeds, given that the Petitioner is a private entity whose financial ability to refund is uncertain. In essence, the Applicant contends that the Petitioner might not be in a position to reimburse the substantial sum, which would amount to an irreparable loss.

25. The Petitioner, in opposition, contends that the Applicant has not demonstrated any special or substantial loss beyond the ordinary obligation to pay a debt. Counsel for the Petitioner cited James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, where Gikonyo J observed that the mere fact of facing execution is not by itself "substantial loss," since execution is a lawful process. Indeed, even if property is attached and sold in execution, that alone does not constitute substantial loss under Order 42 Rule 6 – the applicant must show "other factors" that would "irreparably affect or negate the very essential core of the applicant as the successful party in the appeal." In other words, the applicant must prove that if it satisfies the decree now, and later the appeal succeeds, the situation will be such that the applicant cannot be fully restituted. The Petitioner argues that the Applicant has not placed any evidence before the court regarding the Petitioner's financial standing or inability to refund. There is no averment, for instance, that the Petitioner is insolvent or that the business is moribund. Absent such proof, the court should treat the request as one for a typical money decree, where the normal rule is that repayment can be made and thus no irreparable loss occurs. The Petitioner points out that it is the Applicant, a well-resourced organization, who has enjoyed the benefit of a long delay in enforcement, while the Petitioner has been kept from its lawfully awarded funds for years.

26. I find merit in the Petitioner's submissions on this point. The burden is on the Applicant to substantiate what substantial loss it will suffer if it pays the remaining judgment sum (approximately Kshs. 2.65 million after crediting the Kshs. 450,000 already paid). Other than invoking the amount and speculating on the Petitioner's ability to refund, the Applicant has not provided any concrete evidence of the Petitioner's financial incapacity. It is not enough to merely assert that the decree-holder

is a "restaurant" and therefore might not refund; some material such as proof of insolvency or known financial distress should have been tabled. As was noted in Century Oil Trading Co. Ltd v Kenya Shell Ltd (Kimaru, J) and echoed in numerous decisions, "The court cannot shut its eyes where it appears the possibility is doubtful of the respondent refunding the decretal sum in the event the applicant is successful in his appeal." But conversely, the court also cannot assume such inability without evidence. In the absence of any specific demonstration that the Petitioner would be unable to repay, the court must conclude that the Applicant has not proved that it would suffer irreparable or substantial loss by satisfying the decree now. If the Applicant's intended appeal were to be revived and ultimately succeeded, the law would require the Petitioner to refund the sums paid, and the Petitioner being a going concern, there is no indication it would defiantly refuse or be unable to do so.

27. Moreover, the decree herein is a money decree. Generally, courts have held that execution of a money decree is less likely to render an appeal nugatory because money is fungible – the appellant can be repaid, with interest, if successful. This is unlike, say, an execution involving transfer of land or child custody, where restoration can be more complex. The Applicant in this case already paid part of the decretal amount (Kshs. 450,000) back in 2022 and presumably did so without crippling effect. The balance, while significant, is not shown to be unmanageable. Notably, the Applicant is an established institution and does not claim that paying the money would ruin it; its only qualm is the prospect of not getting reimbursed by the Petitioner. But again, that risk was not persuasively established. Therefore, I am not satisfied that the Applicant has demonstrated "substantial loss" as required by law. On this ground alone, the application for stay would falter, since substantial loss is "the cornerstone of... [the] jurisdiction" for stay.

28. The next consideration is whether the application was brought without unreasonable delay. In one sense, the Applicant did file the present application fairly promptly after the renewed execution. The warrants were issued on 1st December 2023, and the instant motion was filed on 19th January 2024 – roughly seven weeks later. Given the intervening holiday season, this short delay is not inordinate. The Petitioner has not specifically complained about the timing of this application; indeed, it was brought under certificate of urgency and appears to have been acted on by the court in due time. Thus, regarding the period from the execution to the filing of this motion, I find there was no unreasonable delay.

29. However, there is a broader context: the Applicant had been dilatory in prosecuting the appeal since 2022, which led to the situation it now finds itself in. While that delay is separate from the immediate question of delay in making the stay application (since a stay was already in place until it lapsed), it is a relevant background fact when considering the exercise of discretion. The Applicant's lack of diligence in filing the record of appeal (waiting over 1½ years and acting only when prompted by the Petitioner's motion to strike out) does cast doubt on the bona fides of its plea. Equity may refuse to assist a litigant who has by laxity let a favorable order lapse, only to rush in when the other side seeks to enforce their rights. Still, strictly on the metric of promptness in bringing this particular application, the Applicant acted with reasonable speed once execution commenced, so this condition is met.

30. The third requirement is that the applicant furnish security for the due performance of the decree. The rule mandates the applicant to give such security as the court may order, to guarantee that if the appeal fails, the decree holder will be paid the decretal amount without impediment. In the present case, the Applicant's prior compliance with the stay terms included payment of Kshs. 450,000 to the Petitioner. That payment is effectively partial satisfaction of the decree and also acted as security to some extent. However, a substantial balance remains unpaid. The Applicant's motion and supporting affidavit did not propose any additional security explicitly. The Applicant may have been relying on the fact that it had already paid a portion, or it believed the status quo (with the decree holder holding that sum

and the rest stayed) should continue. The Petitioner submits that the Applicant has not offered any meaningful security commensurate with the outstanding amount.

31. If this court were inclined to grant a further stay at this, it would certainly be necessary to order security for the remaining balance, such as depositing the sum in a joint interest-earning account or a bank guarantee for the decree amount. The absence of any volunteered security by the Applicant is a strike against the application, though not fatal by itself since the court could impose conditions. What is crucial is that the court's discretion to order stay can only be exercised if security is provided; it is not optional. In RWW v EKW [2019] eKLR, the High Court reiterated that a party seeking stay must be prepared to meet conditions, noting that the court should ensure no party suffers prejudice that cannot be compensated by costs. Here, the Petitioner has already been kept out of its money for a long time. If a stay were to be granted now, the interests of justice would demand that the Petitioner's recovery be secured beyond the already paid Kshs. 450,000.

32. In sum, analyzing the three prerequisites: the application was brought without undue delay, and the Applicant has partially complied with security by the earlier payment (though more would be needed). However, the Applicant fails on the most important limb – demonstrating substantial loss. Without proof of likely irreparable loss, a stay cannot be justified. The court must also keep in mind the overall balance of convenience. The decree is from 2021; we are in 2025. The Petitioner, as decree-holder, is entitled to enjoy the fruits of its judgment unless there is a compelling reason to delay that further. The Applicant's intended appeal challenges the judgment, but at this point the appeal's very existence is in doubt due to the Applicant's own procedural default. The interests of justice tilt in favor of allowing the Petitioner to realize the judgment, rather than prolonging the matter on a speculative chance that the Applicant might resurrect an appeal.

33. Moreover, this court cannot ignore that granting a stay now, in absence of a pending appeal, would effectively amount to an indefinite stay on a money decree, which is highly disfavoured. The Civil Procedure Rules do not condone such a situation – a stay is tied to a cognizable appellate process, not meant to be a tactic for a judgment-debtor to buy time or delay payment when no appeal is actively being pursued.

34. Therefore, on the merits of Order 42 Rule 6 criteria, the court would decline to grant a stay. James Wangalwa v Cheseto (supra) instructively reminds us that the "issue of substantial loss is the cornerstone" of the stay jurisdiction and that execution being imminent or even underway does not, by itself, warrant a stay. In this case, the Applicant has not convinced the court of any special circumstances that would justify denying the Petitioner the fruits of its successful litigation.

d.Appropriate Relief

35. Having found that the Applicant's appeal is not currently subsisting and that the legal threshold for stay has not been met, it follows that the Notice of Motion dated 19th January 2024 is devoid of merit. The logical result is to dismiss the application. The interim stay of execution (if any was granted at the ex parte stage) must be discharged. The Petitioner should be at liberty to proceed with execution to recover the remaining decretal sum. The warrants of attachment and sale issued on 1st December 2023 are valid, and the prayer to quash them is unwarranted and is declined.

Disposition

36. In light of the analysis above, this Court makes the following orders:

    a. The 1st Respondent/Applicant's Notice of Motion dated 19th January 2024 is hereby dismissed in its entirety.

b. The interim orders of stay of execution granted pending the determination of this application are vacated forthwith. The Petitioner/Decree Holder is at liberty to proceed with execution of the decree in Petition No. 317 of 2014 to recover the outstanding balance, in accordance with the law.

c. The warrants of attachment and sale issued on 1st December 2023 against the 1st Respondent/Applicant are confirmed as lawful; the prayer to quash the said warrants (and the related proclamation) is denied.

d. The costs of this application shall be borne by the 1st Respondent/Applicant. The Petitioner/Decree Holder is awarded the costs, to be assessed by the Deputy Registrar if not agreed.

e. For the avoidance of doubt, nothing in this ruling precludes the Applicant from pursuing any available remedies in the Court of Appeal concerning the appeal. However, in the absence of any further order from the Court of Appeal, the Petitioner is entitled to enjoy the fruits of its judgment without further delay.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 15TH DAY OF MAY 2025

BAHATI MWAMUYE

JUDGE

In the presence of:

Petitioner's Counsel – Ms Christine Githinji h/b Ms Kethi Kilonzo

1st& 2nd Respondents – Mr Terel

Court Assistant – Ms Neema