



West Kenya Sugar Company Limited v Shikuku t/a Eshikoni Auctioneers (Miscellaneous Application E047 of 2023) [2024] KEHC 803 (KLR) (2 February 2024) (Ruling)

Neutral citation: [2024] KEHC 803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS APPLICATION E047 OF 2023
WM MUSYOKA, J
FEBRUARY 2, 2024**

BETWEEN

WEST KENYA SUGAR COMPANY LIMITED APPLICANT

AND

KENNEDY SHIKUKU T/A ESHIKONI AUCTIONEERS RESPONDENT

RULING

1. The application that I am called upon to determine is dated 25th October 2023. It seeks stay of execution of taxed costs in favour of the respondent, time for filing and serving a reference on that taxation be extended, and such other orders as may be appropriate. The grounds upon which the orders are sought are set out on the face of the application, and the facts deposed in the supporting affidavit, sworn on 25th October 2023, by Eunice Owuor. A bill by the respondent was taxed on 10th August 2022, at an amount which the applicant argues is exorbitant, being Kshs. 660,930.00, against a decretal amount of Kshs. 322,400.00. The ruling on the taxation was apparently done just a day after the general elections. It is averred that the Advocate for the applicant waited in vain to be admitted to the taxation session. It is further averred that the applicant applied, on 30th August 2023, to have the taxation set aside, but the ruling was deferred several times. It is averred that the time for filing a reference has lapsed. It is argued that the delay in moving the court was not inordinate, and was regrettable.
2. Attached to the affidavit, sworn in support of the application, is a bundle of documents. There is a certificate of costs, dated 10th August 2022; a copy of the application, dated 30th August 2022; the decree, dated 6th October 2021, and certificate of stated costs, dated 16th November 2021, in Busia CMCCC No. E37 of 2020; the warrant of sale of property in execution of decree for money, dated 16th November 2021; the fee note from the respondent, dated 24th October 2023; the proclamation, by the respondent, dated 24th October 2023, the warrant of sale of property in execution of decree for money, dated 27th September 2023; the certificate of costs, dated 10th August 2022, and warrant of attachment of movable property in execution of decree for money, dated 27th September 2023.



3. The respondent reacted to the application, by an affidavit sworn on 6th November 2023. He avers that he was assigned warrants to execute in Busia CMCCC No. E37 of 2020. He then entered into a consent with the applicant, to file a bill of costs for taxation. He filed a bill, with written submissions, which was fixed for taxation on 10th August 2022, and he served the documents on the applicant. The applicant did not attend court on 10th August 2022, and the bill was taxed. The applicant obtained stay of execution of the taxed costs, and he was forced to seek review of the said order. That application was allowed, vide a ruling delivered on 6th September 2023. He asserts that the applicant should have appealed against the orders made in that ruling within 7 days, but he did not, and he is guilty of delay. He states that the delay in question is for 1½ years.
4. The respondent has attached several documents to his affidavit. There is the order of 8th December 2021; his bill of costs, dated 24th May 2022; his written submissions, dated 24th May 2022, filed in Busia CMCCC No. E37 of 2020; the affidavit of service, dated 28th July 2022; the order of 14th September 2022; the application filed in Busia CMCCC No. E37 of 2020, on 21st August 2022; his application, dated 19th October 2022; the order made in Busia CMCCC No. E37 of 2020, dated 14th September 2022; the certificate of costs, dated 10th August 2022; the written submissions, dated 7th December 2022, filed in Busia CMCCC No. E37 of 2020; decisions in Bungoma HCCA No. 71 of 2007 Eunice Nafula Tembe vs. Multiple Hauliers (EA) Ltd and others, Francis Kabaa vs. Nancy Wambui & another [1990] eKLR (Omolo, Akiwumi & Pall, JJA), among others; a replying affidavit by the Advocate for the respondent, filed in Busia CMCCC No. E37 of 2020; and the ruling delivered on 6th September 2023.
5. The application herein was placed before me, on 26th October 2023, under certificate of urgency. I granted temporary relief, by way of stay of execution. I gave directions on 9th November 2023, for canvassing of the said application, by way of written submissions. Both sides have filed written submissions.
6. The submissions by the applicant turn on 2 issues: whether the High Court can grant leave for filing of a formal reference out of time, and whether the court should allow substantive justice over procedural technicalities. Articles 165 of *the Constitution* is cited, for the proposition that this court has unlimited jurisdiction; and Article 159 on justice being delivered without undue regard to procedural technicalities of procedure, in order to protect and promote the purposes of *the Constitution*. Zacharia Okoth Obado vs. Edward Akong'o Oyugi & others [2014] eKLR (Ibrahim & Njoki, SCJJ) is cited in support. Rule 55 of the Auctioneer's Rules, 2017, is cited, on the proposition that the appeal from a taxation by a magistrate or deputy registrar is to a Judge, and ought to be filed within 7 days. It is submitted that leave is sought, given that 7 days expired. County Executive of Kisumu vs. County Government of Kisumu & 8 others [2017] eKLR (Ibrahim & Wanjala, SCJJ) is cited, on the law and principles relating to extension of time. It is submitted that the matter was still active at the trial court, hence no appeal was filed as a result.
7. On his part, the respondent has submitted on 4 grounds: whether the application has merit, whether sufficient grounds have been established, whether the possibility of substantial loss has been demonstrated, and whether stay orders can be made with respect to costs. Madison Insurance Co Ltd vs. Desterion Inya Omari [2021] eKLR (Maina, J) is cited with respect to the argument that the delay in bringing the application was inordinate. Flamingo Towers Ltd & another vs. Homeland Media Group Ltd [2021] eKLR (Mogeni, J) is cited, to support the argument that the applicant had not attached a draft memorandum of appeal to its application, to demonstrate that there is an arguable case for presentation before the High Court. Francis Kabaa vs. Nancy Wambui & another [1990] eKLR (Omolo, Akiwumi & Pall, JJA) is cited, for the point that stay cannot be granted with respect to costs.



8. By an order made on 13th December 2023, I called for the file in Busia CMCCC No. E037 of 2020, for perusal. Article 165(7) of *the Constitution* enables me to call for such records. The file was availed, and I perused it. The impugned proceedings were conducted before Hon. PA Olengo, Senior Principal Magistrate. An ex parte judgement was entered in that case against the applicant, for Kshs. 211,000.00, on 6th October 2021. A decree was formally extracted, dated 6th October 2021, which reflected the principal amount of Kshs. 211,000.00, and accrued interest of Kshs. 51,195.00. Costs were assessed at Kshs. 58,245.00, and there is a certificate of stated costs, to that effect, dated 16th November 2021. Warrants of attachment were issued to the respondent, dated 16th November 2021, to recover a sum of Kshs. 322,440.00. The respondent proclaimed vehicles, valued at Kshs. 10,600,000.00, to satisfy a decree of Kshs. 322,440.00 and auctioneer's costs of Kshs. 191,915.04. A proclamation, dated 24th November 2021, was generated, and so was a fee note of even date. The applicant then filed a Motion, dated 24th November 2021, and a replica, dated 2nd December 2021, both seeking stay of execution, the lifting of the proclamation and leave to defend. Interim relief was granted, pending inter partes hearing. Those 2 applications were resolved by consent on 8th December 2021, where the ex parte judgment and the decree were set aside, throwaway costs were to be paid to the plaintiff, the proclamation was lifted, and the respondent was to file a bill for taxation. The respondent filed his bill on 24th June 2022. The same was fixed for taxation on 10th August 2022, and notice to that effect was served, on 6th July 2022. On 10th August 2022, the respondent's bill was assessed as drawn, in the presence of an Advocate for the respondent, and in the absence of a representative for the applicant, and a certificate of costs was duly drawn, dated 10th August 2022, and issued on 15th August 2022. The applicant then filed a Motion, dated 30th August 2022, for stay of execution of the taxed costs, re-assessment of the costs and any other order. The Motion of 30th August 2022 was allowed on 14th September 2022, in the presence of an Advocate for the applicant, and in the absence of the respondent or his representative. The respondent then filed his Motion, dated 19th October 2022, seeking review or setting aside or the orders made on 14th September 2022. That application was argued by way of written submissions, based on directions that were given on a date that is not reflected in the record, but which were to be received on 14th December 2022. On 14th December 2022, the ruling on that application was reserved for 10th March 2023. It was not delivered on 10th March 2023, but there are minutes on the record, of 17th April 2023, fixing the ruling for delivery on 26th April 2023. The record is silent on what transpired on 26th April 2023. There is a typed ruling, indicating that the said ruling was eventually delivered on 6th September 2023, in the absence of both parties, allowing the application, whose effect was to set aside the orders that had been made on 14th September 2022, vacating the assessment of costs, and ordering a re-assessment.
9. For avoidance of doubt, I shall recite Article 165(6)(7) of *the Constitution*, which states:



165. High Court	
(1)	...
(2)	...
(3)	...
(4)	...
(5)	...
(6)	The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
(7)	For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

10. Should I grant leave to the applicant to file a reference out of time? The applicant seeks leave to file a reference. However, Rule 55 of the Auctioneers Rules, 1997, provides for an appeal, and questions have been raised, in other proceedings, as to whether reference and appeal can be used interchangeably. See *Sinohydro Corporation Limited vs. Samson Itonde Tumbo t/a Dominion Yards Auctioneers* [2021] eKLR (F. Ochieng, J) and *Musoni Kenya Limited & another vs. Arnold Ombonya Okutoyi t/a Dimonde Agencies and Auctioneers* [2023] KEHC 20518 (KLR) (Kemei, J). The Motion before me is premised on Rule 55(4)(5) of the Auctioneers Rules, 1997, and I understand the applicant to be asking for leave to file the pleading contemplated in that provision, which is an appeal.
11. I note that Rule 55 of the Auctioneers Rules, 1997, provides for an appeal to the High Court, to be filed within 7 days. The said provision does not provide for extension of time to file the contemplated appeal, should the 7 days lapse. However, that rule cannot possibly be cast in stone. There is inherent power, saved by sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21, Laws of Kenya, and Article 165(3) of *the Constitution* grants the High Court unlimited original jurisdiction in civil matters. In the exercise of the jurisdiction granted by these provisions, this court can quite properly extend the time for filing such an appeal, for the ends of justice to be met, and to prevent abuse of the court process. See *Margaret Anindo t/a Igare Auctioneers vs. Harambee Sacco Society Limited & Another* [2010] eKLR (Koome, J).
12. I believe that there is a case for grant of the leave sought.



13. Firstly, because the trial court did not assess the respondent's bill of costs at all. Declaring that a bill of costs is assessed or taxed as drawn, because the other party is not in attendance, or because there is no indication, on the record, that the bill is opposed, does not amount to an assessment or a taxation. Taxation or assessment of costs is about exercise of discretion. Discretion is exercised by the court judicially and judiciously, in terms of the taxing officer or magistrate going through the items, and evaluating whether the said items are drawn to scale or not. Vipul Premchand Haria vs. Kilonzo & Co Advocates [2020] eKLR (Karanja, Kiage & Sichale, JJA) discussed what exercise of discretion, in the context of assessment or taxation of costs, entails. The appeal, in Vipul Premchand Haria vs. Kilonzo & Co Advocates [2020] eKLR (Karanja, Kiage & Sichale, JJA), had arisen from a taxation at the High Court, where the taxing officer had allowed a bill of costs as drawn. It was stated that:

“... taxation, much as it lies in the taxing officer's discretion, is governed by clear principles. In other words, the discretion is a judicial one to be judicially and judiciously exercised. It is not to be exercised whimsically or capriciously in accordance with personal inclination. And the matters the taxing officer takes into consideration should be apparent from the reasons that she gives for her decision. It is those reasons that give an indication whether or not the discretion reposed in the taxing officer was properly exercised.”

14. The principle should not be that a bill for assessment or taxation ought to be allowed as drawn, where the party against whom it is drawn fails to attend court at the taxation or fails to raise objection to it. There should be no presumption that, since the opposing side has not attended the taxation hearing, or has not raised any objection, the bill for taxation must have been drawn to scale, and has no anomalies. An evaluation must still be done. In the circumstances, there would be a failure to properly exercise discretion where a taxing officer, registrar or magistrate purports to assess or tax a bill of costs as drawn, without any effort of going through the individual items to confirm whether or not they comply with the law relating to taxation. A bill would only be assessed or taxed as drawn, where the taxing officer is satisfied, upon a scrupulous scrutiny of, rather than a casual or peremptory scanning over, the items, that all the items are drawn to scale, and that everything else about the bill is in proper order. Even then, it would still be prudent to reserve the matter for ruling, and to deliver a reasoned ruling, for that is the only way to demonstrate that discretion was properly exercised. The taxing officer has to lay a basis for, or to give a context to, the conclusion that the bill ought to be allowed as drawn. The fact that the applicant herein had notice of the taxation hearing, but did not attend court on the due date, was no excuse to purport to “tax” or “assess” the bill as drawn, the duty to exercise discretion judiciously still remained, that is the duty to scrutinise the bill and apply the mind judicially to it, and to come out with a reasoned ruling on it, even if the taxing officer, in the ruling, eventually concludes that the bill is wholly drawn to scale, and allows it as drawn.

15. The court, in Labh Singh Harman Singh Limited vs. Attorney General of the Republic of Kenya & 2 others [2016] eKLR (Ogola, J), had occasion to address the issue, where it was stated, and I take the liberty to quote the relevant portion of that decision in extenso, that:

“7. A taxation is a process whereby the Taxing Officer interrogates the values charged on every aspect of an item, and where necessary, makes remarks on how the final sum is arrived at. A taxation is meant to be a fair, frank and just process regardless of whether or not all the parties are in attendance. Even if a party is not in attendance, it should be clear to that party how the final sum was arrived at. I have looked at what transpired in court on 4th June, 2015 when the said Bill was taxed. On that day Mr. Musau, holding brief for Mr. Ario for the applicant, and in the absence of the respondent, informed the court that the



said Bill of Costs was unopposed and he submitted that the same be allowed as prayed.

8. In response the Taxing Officer stated as follows;

“The Bill of Costs dated 24th April, 2015 is hereby allowed as prayed. The same having been duly served on the firm of Okongo Wandago Advocates on 26th May, 2015. It is unopposed. I hereby allow the same as prayed”

9. I am not saying that the learned Taxing Officer could not summarily allow the application. What I am saying is that a taxation is a process. Whether it is opposed or not, and whether the respondent is in court or not, the Taxing Officer is obligated to consider each and every item, and to tax each item separately by ensuring it is taxed per scale. The absence of a respondent to a taxing process does not mean that the applicant can get its Bill taxed as drawn without any comment from the Taxing Master. Indeed, the reason why the Taxing Master is normally required to give reasons for arriving at a particular sum is based on the expectation that the Taxing Master interrogated the Bill of Costs, and weighed each against the scale, and stated her finding. I have looked at the Bill of Costs under reference. There is neither a mark nor a remark. The Taxing Master does not show the scale used to arriving at the sum of Shs. 1,564,155=. It can only be inferred that the Bill of Costs was drawn to perfection. However, perfection is hardly the case in contested matters. In fact in this particular instance, the parties have not even agreed on the value of the subject matter. There is also no indication from the court record that the Taxing Master called the original file being Machakos High Court Petition No. 201 of 2010 to guide the Taxing Master on the value of the subject matter.

10. Mr. Agina for the respondent submitted that the grounds put forth by the applicant for setting aside a taxation do not apply in this case, and that the absence of a counsel, or non attendance by counsel to taxation is no ground for setting the same aside. However, non attendance to any judicial proceedings is a good ground to set aside proceedings if the non attendance is justified. Be that as it may, the finding of this court is that taxation did not take place. The Taxing Master merely allowed the Bill of Costs as taxed without interrogating any one of the 41 items in the Bill. Given that the sum involved is a lot, justice would demand that the Taxing Officer provided a basis for arriving at the taxed sum, and even showing that the Taxing Master tried to evaluate the value of the subject matter from the record rather than from what the Taxing Master was told in the Bill ... prudence demanded due interrogation of the various items, so that even if one party is not present during taxation, they can see that actual taxation took place and that acceptable reasons were provided for the product of taxation.”

16. Similar sentiments were expressed in *Njeri vs. Mathenge* (Civil Appeal 5 of 2017) [2022] KEHC 14977 (KLR) (JN Njagi, J), that “In taxing the bill, the taxing officer stated that the applicant had failed to file their objection to the bill and that the same was drawn to scale. The Taxing Officer therefore allowed the bill as drawn. Whether the applicant had made a response to the bill or not it was the duty of the taxing officer to satisfy herself that the bill was drawn to scale.” In *Jumuia Hotel vs Stephen Ndanyi &*



Juliana Chausiku Osogo (Suing as the legal representatives of the Estate of Catherine Atemo Ndanyi - Deceased) & another [2022] KEHC 12742 (KLR) (F. Ochieng, J), it was said “ ... even when the bill of costs was not opposed, it is imperative that the taxing officer verifies matters such as whether or not the applicant attended court on the dates cited in the bill; whether or not the disbursements claimed were backed with receipts; and whether or not the trial court had awarded costs of a particular application or a particular attendance, to the applicant.” See also Joe N Mwanthi & Company Advocates vs. David Kihono Waweru [2017 eKLR (Mbogholi Msagha, J) and Stephen N Gikera t/a Gikera and Vadgama Advocates vs. James M Gatome [2020] eKLR (Jaden, J).

17. Secondly, the decree, in respect of which the respondent’s costs arose, was for a Kshs. 322,440.00, and the respondent’s costs were taxed at Kshs. 660,930.00. Questions ought to have arisen as to how the respondent became entitled to auctioneer’s fees or costs which were double the decretal amount stated in the decree and certificate of stated costs, in circumstances where he had merely proclaimed the goods, and nothing more, for the proclamation had been lifted, by consent of the principal parties. Questions ought to also have arisen as to why the respondent had to attach assets worth Kshs. 10,600,000.00, according to his proclamation, dated 24th November 2021, and Kshs. 15,600,000.00, according to his bill of costs, dated 24th May 2022, to recover Kshs. 322,440.00. These are anomalies that ought to have raised red flags, and which ought to have assaulted the mind of the taxing officer or magistrate, if an effort, at exercising discretion, in assessing the bill that was before him, was ever made. The circumstance, reflected in the above figures, would suggest that there was something fundamentally amiss with the bill as drawn, and that circumstance should have been interrogated by the taxing officer, and, if convinced that all was well, nevertheless, give reasons or justifications for accepting the said figures, before the bill was allowed as drawn.
18. Thirdly, I am persuaded that the application for leave was filed without unreasonable or inordinate delay. The purported assessment was done on 10th August 2022, and the applicant moved the same court on 31st August 2022, to have the purported assessment set aside, and for a re-assessment to be done. That order was granted on 14th September 2022, by the same court, and there should have been a re-assessment. The respondent then moved the court, on 19th October 2022, to have the order of 14th September 2022, allowing the re-assessment of costs, vacated. The application by the respondent was, initially, to be ruled on on 10th March 2023, but that ruling was not forthcoming until 6th September 2023, when it was delivered, in the absence of the parties. The application herein was filed on 26th October 2023. As there was active litigation in Busia CMCCC No. E37 of 2020, over the costs, and orders had been made, some of which favoured the applicant, and the bill of costs was due for re-assessment, time did not begin to run from 10th August 2022, but from 6th September 2023, when the ruling vacating the orders for re-assessment of the costs was delivered. That ruling had been outstanding since March 2023, and it was eventually delivered 6 months later, in the absence of the parties. Was there notice to the parties, of the delivery of the ruling, scheduled for 6th September 2023? I have scrupulously perused through the original trial court records, and I have seen no proof or evidence of that. Did the respondent notify the applicant of the orders, made in the ruling of 6th September 2023, before he proclaimed afresh? There is no evidence of that, from the record before me. Even in cases of this nature, there should be adherence to fair trial principles, where parties should only take precipitate action, against their opponents, upon due notice being given. There is no justice in moving with stealth. The proclamation, which gave rise to these proceedings, is dated 24th October 2023. It would be quite safe to conclude that that was the date when the applicant became aware of the orders made in the ruling of 6th September 2023. The applicant then moved the court on 26th October 2023, 2 days later. The application before me was, therefore, filed timeously, and meets the test in *Madison Insurance Co Ltd vs. Desterion Inya Omari* [2021] eKLR (Maina, J).



19. Flamingo Towers Ltd & another vs. Homeland Media Group Ltd [2021] eKLR (Mogeni, J) has been cited, for the point that the applicant has not exhibited a draft memorandum of appeal, to show that it has arguable points to place before the High Court, by way of a reference. The decision, in Flamingo Towers Ltd & another vs. Homeland Media Group Ltd [2021] eKLR (Mogeni, J), was by a court of equal status with the High Court, and, therefore, of a court of concurrent jurisdiction. For that reason, the decision does not bind me, but it should be of persuasive value. It was founded on Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 others [2014] eKLR (Ibrahim & Wanjala, SCJJ), which turned on proceedings before the Supreme Court, governed by the *Supreme Court Act*, No. 7 of 2011, and the Supreme Court Rules, 2011. The High Court does not apply the same rules of procedure as the Court of Appeal and the Supreme Court, and decisions of those 2 superior courts, founded exclusively on their own rules of procedure, cannot possibly be binding on the High Court, unless they lay down a general principle. Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 others [2014] eKLR (Ibrahim & Wanjala, SCJJ) did not lay down a general principle, on how all superior courts are to handle applications for leave to file appeals or related process out of time, but discussed the process before that court, the Supreme Court, based on the specific law applicable to proceedings of that nature before that court. The same can be said of County Executive of Kisumu vs. County Government of Kisumu & 8 others [2017] eKLR (Ibrahim & Wanjala, SCJJ).
20. There are many ways of establishing whether or not a party would have an arguable case on appeal, or related process, in the absence of a draft memorandum of appeal. One is by perusal of material exhibited in an affidavit in support, such as rulings, orders, judgements, decrees and other court papers. Unlike the Court of Appeal and the Supreme Court, the High Court is in a unique position, in that regard. It can access the original trial court records, of the primary court, which, in the case of an appeal to the High Court, are required to be availed to the appellate court, by Order 42 rule 13(4) of the Civil Procedure Rules, which provision has no equivalent in the Court of Appeal Rules and the Supreme Court Rules. In the other cases, the High Court can call for the original trial court records, in exercise of the power under Article 165(7) of *the Constitution*. From a perusal of the original trial court records, the High Court can quite properly evaluate whether or not there would be an arguable appeal from an impugned order, ruling, decree or judgement of the trial court. I called for the original trial court records, they were availed, and I have perused them. I am satisfied, from what I have seen from that record, that an appeal to the High Court would be arguable, and would stand good chances of success, for the reasons that I have discussed in the preceding paragraphs of this ruling.
21. Francis Kabaa vs. Nancy Wambui & another [1990] eKLR (Omolo, Akiwumi & Pall, JJA) has been cited, for the point that a stay order is not available with respect to costs. With respect, I entertain very serious misgivings about relying on Francis Kabaa vs. Nancy Wambui & another [1990] eKLR (Omolo, Akiwumi & Pall, JJA), which is a 1-page-1-paragraph-8-line ruling, which, in my view, does not lay down a principle, but expresses an opinion about stay of orders on costs. There was no narration of the facts of the application that was before the court, there was no analysis of facts, and no recitation of the applicable law, to found basis for the laying down of a principle or rule of law. In any case, the applicant herein is not challenging the award of costs to the respondent. The applicant, in the compromise of 8th December 2021, had conceded to pay the respondent's costs, subject to the same being taxed or assessed. The issue is not whether the applicant should pay costs or not. The objection is about the manner in which the trial court handled the process of assessment or taxation of the costs. It has not been demonstrated that Francis Kabaa vs. Nancy Wambui & another [1990] eKLR (Omolo, Akiwumi & Pall, JJA) addressed a similar situation. It would not be just to make the applicant pay costs whose process of assessment it is challenging.



22. In the upshot, I allow the Motion herein, dated 25th October 2023, in terms that I hereby enlarge time, for the applicant to file an appeal, as contemplated under Rule 55 of the Auctioneers Rules, 1997, against the assessment or taxation of the respondent's bill of costs on 10th August 2022. The extension given is for 14 days. The interim stay orders, granted on 26th October 2023, shall remain in force, until further orders of the court. Each party shall bear its own costs. It is so ordered.

DATED AND SIGNED IN CHAMBERS, AND DELIVERED BY EMAIL, AT BUSIA THIS 2ND DAY OF FEBRUARY 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Otieno, instructed by O&M Law LLP, Advocates for the applicant.

Ms. Nabalindo, instructed by DK Nabalindo & Company, Advocates for the respondent.

