



Compact Freight System Limited v Director of Public Prosecution & 2 others; Multiserve Oasis Company Limited (Affected Party) (Petition 49 of 2021) [2024] KEHC 2602 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2602 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
PETITION 49 OF 2021**

OA SEWE, J

MARCH 14, 2024

**IN THE MATTER OF ARTICLES 10, 22, 23, 27, 28, 35, 40,
48, 50, 157 & 244 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER ARTICLES 14 AND 15 OF THE INTERNATIONAL
COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

AND

**IN THE MATTER OF THE FAILURE BY THE OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS TO TAKE ANY ACTION ON A REPORT OF A CRIME HAVING BEEN
COMMITTED BY THE AFFECTED PARTY; MULTISERVE OASIS COMPANY LIMITED
VIDE INQUIRY NO. 1 OF 2021 AND VIOLATION AND BREACH OF OTHER APPLICABLE
CONSTITUTIONAL PROVISIONS OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

COMPACT FREIGHT SYSTEM LIMITED PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

**DISTRICT CRIMINAL INVESTIGATIONS OFFICER KILINDINI PORT
POLICE, MOMBASA 2ND RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

AND

MULTISERVE OASIS COMPANY LIMITED AFFECTED PARTY



RULING

1. The Notice of Motion dated 25th January 2023 is expressed to be brought under Sections 1A, 1B and 63(e) of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya and Order 22 Rule 22 of the Civil Procedure Rules, 2010. It was filed by the Petitioner, Compact Freight System Limited, for the following orders:
 - (a) Spent
 - (b) Spent
 - (c) An order of stay of execution be issued to stay the execution of the judgment given on 28th February 2020 against the petitioner and in favour of the affected party, Multiserve Oasis Company Limited, in Mombasa High Court Civil Suit No. 252 of 2010: Multiserve Oasis Company Limited v Kenya Ports Authority and Compact Freight System Limited pending the hearing and determination of the Petition.
 - (d) The petitioner be granted leave to make a further amendment to the Amended Petition.
 - (e) Such other or further orders and/or directions be made as the Court shall deem just in the circumstances.
 - (f) The costs of the application be in the cause.
2. The application was premised on the grounds that the petitioner is duly gazetted as a Container Freight Station; and therefore serves as a Customs Area with regard to any goods nominated by the Kenya Ports Authority for storage, pending clearance and removal by the importers. The petitioner further deposed that, sometimes in July 2009, Kenya Ports Authority entrusted it with Container No. PCIU8230479 alleged to be containing assorted goods imported from China by the affected party, Multiserve Oasis Co. Ltd. It further averred that while the container was en route to the petitioner's warehouse in Miritini, it was stolen, broken into and part of the goods alleged stuffed therein stolen. The container was subsequently recovered but the affected party claimed that most of the goods had been removed. Consequently, the affected party filed the lower court suit and obtained judgment on 28th February 2020 against the petitioner.
3. The petitioner further deposed that, being dissatisfied with the judgment, it instructed its Advocates now on record to replace the firm of Ndegwa Muthama & Katisya Associates, Advocates which had acted for it before the Court of Appeal in Civil Appeal No. 1 of 2020. It averred that initially, it sought orders compelling the 1st and 2nd respondents to act on the report of fraud, but that its appeal was dismissed, leaving it with the burden of judgment in the colossal amount of over Kshs. 60 million. Thus, the petitioner asserted that it is only fair and just for it to be allowed to further amend its Amended Petition in light of the circumstances arising from the dismissal of the appeal.
4. The aforementioned grounds were explicated in the petitioner's Supporting Affidavit, sworn by its General Manager, Peter Ng'ang'a. At paragraph 7 thereof, the petitioner deposed that, in the course of preparing the Record of Appeal that was filed in the Court of Appeal against the judgment of the High Court, their Advocate, Mr. Gikandi, noticed and notified the petitioner that a number of documents produced by the affected party, and which were relied on by the court in entering the impugned judgment, were fraudulent documents. Accordingly, the petitioner reported the matter to the Port Police and Urban Police Stations for investigations.



5. The petitioner further deposed, at paragraph 10 and 11 of the Supporting Affidavit that, among the grounds raised in its appeal, namely, Civil Appeal No. E001 of 2021: Compact Freight Systems Limited v Multiserve Oasis Company Limited & Kenya Ports Authority, was the issue of fraud, as that was the earliest opportune time for it to plead fraud. That the appeal was dismissed was also adverted to at paragraph 12 of the petitioner's Supporting Affidavit. Thus, the petitioner asserted that, given the dismissal of its appeal, it has become necessary to make a further amendment to the Petition in terms of the draft Further Amended Petition annexed to the Supporting Affidavit as Annexure "PN-1".
6. In the premises, the petitioner deposed that unless the orders sought are granted, execution will proceed, thereby bringing to a halt all its operations, yet it has in its custody third parties' imported goods, entrusted to it by Kenya Ports Authority. The petitioner added that the execution of the judgment before the hearing and determination of the Petition would further render the Petition nugatory thereby occasioning it irreparable loss and damage. It therefore prayed that the reliefs sought herein be granted.
7. On behalf of the 2nd and 3rd respondents, the DCI Kilindini Port Police, Mombasa and the Attorney General, Grounds of Opposition were filed herein on 27th February 2023 by Ms. Nimwaka Kiti. Counsel prayed for the dismissal of the application on the following grounds:
 - (a) The application offends Order 22 Rule 22 of the Civil Procedure Rules which the petitioner has relied upon.
 - (b) The applicant has not sufficiently demonstrated how the outcome of the appeal has necessitated the amendment of the Petition, since the issues raised by the petitioner in the appeal are the same ones already raised in the Amended Petition dated 15th October 2021.
 - (c) The petitioner's appeal was dismissed because it did not raise the issue of fraud before the trial court.
 - (d) The 2nd and 3rd respondents were not parties to the civil suit and the appeal arising therefrom, and therefore cannot be blamed for the decision of the Court of Appeal.
 - (e) The application is tainted with malice and bad faith as no report of fraud was made to the 2nd respondent during the pendency of the civil case.
 - (f) The application has been made after unreasonable delay;
 - (g) The petitioner is guilty of forum shopping
 - (h) The application is a delaying tactic, made in bad faith and is therefore misconceived, incompetent and an abuse of the process of the Court.
8. The affected party filed a Replying Affidavit, sworn on 15th March 2023, likewise contending that the application is misconceived, incompetent and an abuse of the process of the Court; and therefore ought to be dismissed with costs. It added that the petitioner proposes to raise new facts aimed at altering the cause of action in a previously concluded matter, contrary to Order 2 Rule 6(1) of the Civil Procedure Rules. The affected party also adverted to the legitimate expectation that litigation ought to come to an end once a final determination is made, and added that the proposed amendment will not enable the Court determine the real question in controversy, but are rather aimed at defeating the judgment passed in Civil Appeal No. E001 of 2021 and High Court Civil Case No. 252 of 2010.



9. It was further deposed on behalf of the affected party that it is a stranger to the alleged correspondence evidencing fraud; and that the allegations are an afterthought, merely aimed at scuttling the lawful judgment of the Court, which judgment has not been set aside.
10. The application was canvassed by way of written submissions, pursuant to the directions given herein 26th January 2023. In the petitioner's written submissions, filed on 23rd February 2023, it reiterated its stance that it has raised very strong grounds in its application in support of the orders sought therein. The petitioner's counsel relied on Order 8 Rule 3(1) and the cases of *Eastern Bakery v Castelino* [1958] 1 EA 461 (CAK) and *E A R & H A & Thierstein* [1968] 1 EA 354 to support the proposition that amendments sought before hearing ought to be freely allowed if no prejudice will be occasioned thereby to the opposite party.
11. Counsel for the petitioner reiterated the factual basis of the application and highlighted the fact that, on discovering the fraud, it promptly made a report to the DCI's office at Port Police Station on 21st January 2021 vide OB No. 61/21/01/2021; and that although the Police were satisfied, upon investigations of the allegations, that there were sufficient grounds to warrant prosecution, the 1st respondent declined to initiate the prosecution. The petitioner accordingly prayed that it be given an opportunity to further amend its Amended Petition to incorporate the new cause of action.
12. To buttress its prayer for stay pending the hearing and determination of the Petition, the petitioner relied on *Kampala International University v Housing Finance Company Limited (Application)* 34 (E035 of 2022) [2023] KESC 5 (KLR (27 January 2023) (Ruling) and *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR to underscore its submission that there is real danger of it suffering irreparable harm unless stay of execution is granted.
13. On behalf of the 2nd and 3rd respondents, Ms. Kiti relied on her written submissions dated 15th March 2023. She argued that, whereas the Court has the discretion to allow amendment of pleadings at any stage of the proceedings, such discretion must be exercised judicially. She made reference to *Institute of Social Accountability v Parliament of Kenya & 3 Others* [2014] eKLR and *Joseph Ochieng & 2 Others v First National Bank of Chicago, Civil Appeal No. 149 of 1991* as to the applicable principles. Counsel urged the Court to take into consideration that there is a judgment in place that was affirmed by the Court of Appeal. In her view, no useful purpose would be served by the proposed amendment, seeing as it seeks to change the action into one of a substantially different character. Counsel further pointed out that the instant Petition is at its tail-end, the parties having closed their respective cases and filed their written submissions. Hence, the respondents urged for the dismissal of the application.
14. In the affected party's written submissions dated 15th March 2023, two issues were proposed for determination by Mr. Lakicha, namely:
 - (a) Whether the petitioner has a right to further amend the Petition in the manner pleaded and
 - (b) Whether the petitioner's application for stay of execution is merited in the face of the concluded appeal, Civil Appeal No. E001 of 2021.
15. According to the affected party, the proposed amendments will not enable the Court determine the real question in controversy but are merely aimed at defeating the suit in High Court Civil Case No. 252 of 2020; and therefore ought to be rejected, especially given the inordinate delay. Reliance was placed on *Rubina Ahmed & 3 others v Guardian Bank Limited (sued in its capacity as a successor in title to First National Finance Bank Limited)* [2019] eKLR, *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] eKLR, and *Eastern Bakery v Castelino* [1958] EA 46, among others, in support of this argument.



16. On whether the application for stay is merited, the affected party urged the Court to bear in mind the overriding objective and the need for an end to litigation. Reliance was placed on *Henry Sakwa Maloba v Bonface Rapando Tsabuko* [2020] eKLR and *New Wide Garments EPZ (K) Ltd v Ruth Kanini Kioko* [2019] eKLR to buttress the submission that the affected party ought to be allowed to enjoy the fruit of its judgment.
17. I have given careful consideration to the application, the responses thereto as well as the written submissions filed on behalf of the parties. The two issues emerging for determination are:
 - (a) Whether, in the circumstances, an order of stay of execution ought to issue herein to stay execution of the judgment and decree passed in High Court Civil Case No. 252 of 2010 pending the hearing and determination of this Petition.
 - (b) Whether the petitioner has made out a good case for the issuance of leave to further amend their Petition.

A. On stay of execution of the judgment dated 28th February 2020 delivered in Mombasa HCCC No. 252 of 2010: Multiserve Oasis Company Limited v Kenya Ports Authority and Compact Freight System Limited:

18. The petitioner has sought an order of stay of execution of the judgment dated 28th February 2020 issued in Mombasa HCCC No. 252 of 2010: Multiserve Oasis Company Limited v Kenya Ports Authority and Compact Freight System Limited pending the hearing and determination of this Petition. The background facts are largely not in dispute. They are that the disputants herein are also parties in Mombasa HCCC No. 252 of 2020 (hereinafter, “the civil matter”). That matter has been heard to conclusion and judgment recorded in favour of the affected party. Here is what the court had to say in conclusion in the civil matter:
 58. Accordingly, I find and hold that the 2nd Defendant is liable for the loss of container no. PCIU 8230479. Consequently, keeping in line with Clause 7.1(b) of the Licence Agreement dated 1.12.2008 Judgment is hereby entered for the plaintiff against the 2nd defendant as follows-
 - (i) US\$ 214,803. Being the value of 153 bales imported assorted garments that went missing.
 - (ii) US\$ 4300 being the cost of accommodation
 - (iii) Kshs. 92,560/= as air ticket to china
 - (iv) Interest at Court rates from the date of filing this suit until payment in full; and
 - (v) Costs of the suit.
19. Being aggrieved by the decision, the petitioner appealed to the Court of Appeal in Mombasa Civil Appeal No. E001 of 2021: Compact Freight Systems Limited v Multiserve Oasis Company Limited & Another (the appeal). The appeal was likewise heard and determined and a copy of the judgment dated 2nd December 2022 was annexed by the petitioner to its application and marked Annexure PN 14. The petitioner’s appeal was dismissed with costs to the respondents. By that time, the petitioner had already filed the instant Petition and had it amended by an order of the Court. The Amended Petition was filed on 15th October 2021, the effect whereof was essentially to bring on board the 2nd and 3rd respondents.
20. The petitioner now contends that, as its counsel was preparing the Record of Appeal, it discovered elements of fraud which it needs to incorporate in its Petition. In particular, the Petitioner contended,



at paragraphs 11 and 13 of the Supporting Affidavit that in its judgment in the civil case, the court relied on fraudulent documents; and that upon the dismissal of the appeal, it has become necessary to raise the issue of fraud in this Petition, hence the application for further amendment of the Petition.

21. Bearing in mind all the facts aforesaid, the pertinent question to pose is whether an order of stay of execution can issue herein in respect of the judgment of a court of concurrent jurisdiction in a separate suit. The answer to that question is to be found in Section 34 of the *Civil Procedure Act*, which provides:

- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
- (2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
- (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.

22. Thus, it is plain from the aforesaid provision that all questions that arise in connection with a suit in which a decree has been passed can only be raised before the court that made the said decision and not in a separate suit. The Court of Appeal underscored this position in the case *Kenya Hotel Properties Limited v Willesden Investments Limited & Kenya Revenue Authority* [2018] eKLR, thus:

40. In effect therefore, the reason the Judge declined to grant the orders that had been sought by the appellant was not on the basis that a prima facie case had not been made out, but on account of his finding, that the application was an abuse of the process of the court. We are unable to fault the Judge for reaching that conclusion. Prior to instituting Petition No. 13 of 2011 on the basis of which the appellant made the application to stay execution of the decree in HCCC 367 of 2000, the appellant had previously endeavored, though unsuccessfully, to have that decree stayed in that suit and in subsequent proceedings on appeal to this Court.

41. In the application before the High Court dated 31st January 2011 giving rise to the impugned ruling, one of the reliefs that the appellant had sought was “a conservatory order, by way of stay of execution of the decree in Milimani HCCC No. 367 of 2000 *Willesden Investments Limited vs Kenya Hotel Properties Limited*” pending the hearing and determination of the appeal. In effect, the appellant was seeking, in a different suit, to stay execution of a decree issued by the High Court in another suit. The approach taken by the appellant in seeking to stay execution of a decree obtained in one suit, namely HCCC No. 367 of 2000, by instituting a different action, Petition No 13 of 2011, and seeking the orders of stay of the decree in HCCC No. 367 of 2000 under that action goes against Section 34(1) of the *Civil Procedure Act*, Cap 21....”

23. In the premises, I have no hesitation in holding that the prayer for stay of execution is misconceived and utterly untenable. That is an application that can only be properly made in the civil matter, if at all. Moreover, Order 22 Rule 22 of the Civil Procedure Rules which the petitioner relied on is inapplicable to the facts, as no such decree has been sent to this Court for execution.



B. On whether the Petitioner can be granted leave to further amend their Petition:

24. The Petitioner has sought leave to further amend their Petition to include the issue of fraud. Its assertion is that the documents evidencing fraud were only discovered when the petitioner was preparing its Record of Appeal. In a sense therefore, the petitioner blamed the respondents for the dismissal of its appeal on account of their inaction on its complaint.
25. There is no gainsaying that the Court has the discretion to allow an application for amendment of a Petition if sufficient cause has been shown to warrant the exercise of such discretion. Hence, in the case of *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] eKLR, the applicable principles were expounded thus:

..The law on amendment of pleading in terms of section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from *Bullen and Leake & Jacob's Precedents of Pleading* - 12th Edition, in the case of *Joseph Ochieng & 2 others vs. First National Bank of Chicago*, Civil Appeal No. 149 of 1991 as follows:-

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts...”

26. Similarly, in *JMK v MWM & another* [2015] eKLR, the Court of Appeal restated its stance thus:

...This Court adopted the same approach in *Central Kenya LTD. V. Trust Bank & 4 others*, CA No. 222 of 1998, when it affirmed that the guiding principle in amendment of pleadings and joinder of parties is that:

“all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”

We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court...”



27. The object of such amendments was aptly captured in *Institute For Social Accountability & Another v Parliament Of Kenya & 3 others* [2014] eKLR, thus:

...The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings...”

28. Whereas the principles aforesated are generally applicable to constitutional petitions, it has to be borne in mind that a key provision of *the Constitution* is Article 159(2)(d) that mandates the courts to administer justice without undue regard to procedural technicalities. I therefore agree entirely with the position espoused by Hon. Musyoka, J. in *Francis Angueyah Ominde & another v Vihiga County Executive Committee Members Finance Economic Planning and 3 others; Controller of Budget and 10 others (Interested Parties)* [2021] eKLR that:

...the constitutional petitions are governed and regulated by *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013, so far as procedures and processes are concerned. They are not subject to the Civil Procedure Rules, which governs processes that are brought under the *Civil Procedure Act*, Cap 21, Laws of Kenya. So far as procedure is concerned, *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013 *the Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013, captures the spirit of Article 159(2)(d) of *the Constitution*, which is an injunction against constitutional proceedings being hostage to technicalities of procedure, and which enjoins courts to protect and promote the principles of *the Constitution*. The focus is trained on substance rather than process. *The Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013 are more flexible compared with the provisions of the Civil Procedure Rules...”

29. Accordingly, Rule 18 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 simply provides that a party may amend their pleadings at any stage of the proceedings with the leave of court. Hence, it is with the aforementioned rule in mind that I now approach the issue as to whether or not to allow the proposed amendment. I note from the draft Further Amended Petition that the further amendments sought to be introduced are paragraphs 17-22, 23 (ii), (iii), (iv), (v) and the prayers (ii), (iii), (iv), (v). The petitioner has thereby averred in connection with the alleged failure by the respondents to act on its complaint of fraud and how it perceives that to be an affront to its constitutional rights.
30. In the submission of the 2nd and 3rd respondents, the petitioner has not sufficiently demonstrated how the outcome of the appeal matter has necessitated the amendment of the Petition, while the affected party stated that the amendments introduced by the petitioner are aimed at altering the cause of action in a matter that has already been concluded; and that the said amendments will not assist the court to determine the real issue in controversy, but is rather aimed at defeating the decision of the appellate court. The affected party also contended that it will be prejudiced if the Petition is amended as proposed; which prejudice cannot be compensated by costs. Further, the affected party indicated that issues sought to be added have already been determined on appeal and this court lacks the jurisdiction to re-open causes of action that have already been determined by the Court of Appeal.



31. Since Rule 18 provides for amendment at any stage of the proceedings, there is no justification for denying the petitioner the opportunity to refine its pleadings and bring out the real issues in controversy for effectual determination. In the same vein, it cannot be said that the petitioner is guilty of laches or that the proposed amendment will have the effect of changing the complexion of the suit. I say so because it is now trite that there is no time limit when it comes to violation of constitutional rights. Hence, in *Chief Land Registrar & 4 Others vs. Nathan Tirop Koech & 4 Others* [2018] eKLR, for instance, the Court of Appeal held thus after reviewing the relevant case law:

Guided and convinced of the sound jurisprudence that there is no time limit for filing a constitutional petition, we find the ground that the trial judge erred in failing to dismiss the Petition on account of delay, acquiescence and laches has no merit. Unless expressly stated in *the Constitution*, the period of limitation in the *Limitation of Actions Act* do not apply to violation of rights and freedoms guaranteed in *the Constitution*. The law concerning limitation of actions cannot be used to shield the State or any person from claims of enforcement of fundamental rights and freedoms protected under the Bill of Rights. (See *Dominic Arony Amolo vs. Attorney General Nairobi HC Misc. Civil Case No. 1184 of 2003 (O.S) (2010) eKLR*; *Otieno Mak'Onyango vs. Attorney General & another Nairobi HCCC No. 845 of 2003*). In our view, subject to the limitations of Article 24 of the 2010 Constitution, fundamental rights and freedoms cannot be tied to the shackles of *Limitation of Actions Act*. However, each case is to be decided on its own merits....”

32. I am further convinced that no prejudice will be suffered by the respondents for which costs will not suffice as a remedy granted that they will have an opportunity to amend their responses as well as adduce evidence in support thereof. Indeed, in *Eastern Bakery v Castelino* [1958] EA 461 it was held that:

...amendment to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs.”

33. And, as aptly pointed out by Apaloo, JA in *Philip Chemwolo v Augustine Kubende* [1985] KLR 492, the duty of the Court is to do justice to the parties and not to punish them for their mistakes or omissions. The Learned Judge expressed his viewpoint thus:

I think the broad equity approach to this matter, is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The Court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline.”

34. In the result, I find merit in the petitioner’s application dated 25th January 2023 in respect of the prayer for leave to further amend the Petition. The same is hereby allowed and orders granted as prayed in the following terms:

- (a) That leave be and is hereby granted to the petitioner to further amend its Petition in terms of the draft Further Amended Petition annexed to the Supporting Affidavit herein.
- (b) That the Further Amended Petition be filed and served within 14 days from the date hereof; with corresponding leave to the respondents to amend their responses, if need be, within 14 days from the date of service of the Further Amended Petition.



(c) The prayer for stay of execution of the judgment and decree passed in Mombasa HCCC No. 252 of 2010: Multiserve Oasis Company Limited v Kenya Ports Authority and Compact Freight System Limited is hereby declined.

(d) That the costs of the application to be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 14TH DAY OF MARCH
2024**

OLGA SEWE

JUDGE

