



**Juja Coffee Exporters Limited & 3 others v Bank of Africa Limited
& another; Adam & 2 others (Interested Parties) (Commercial Suit
57 of 2016) [2023] KEHC 2961 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
COMMERCIAL SUIT 57 OF 2016
DKN MAGARE, J
MARCH 16, 2023**

BETWEEN

**JUJA COFFEE EXPORTERS LIMITED 1ST PLAINTIFF
TSS TRANSPORTERS LIMITED 2ND PLAINTIFF
TSS INVESTMENT LIMITED 3RD PLAINTIFF
TAHIR SHEIKH SAID AHMED 4TH PLAINTIFF**

AND

**BANK OF AFRICA LIMITED 1ST DEFENDANT
KAAB INVESTMENT LIMITED 2ND DEFENDANT**

AND

**ABDULMAJID MOHAMED HAJI ADAM INTERESTED PARTY
SHAMI MOTORS LIMITED INTERESTED PARTY
IFI PARADISE PROPERTIES LIMITED INTERESTED PARTY**

RULING

1. This matter is for hearing. There is an application for stay pending appeal and leave to appeal. The leave to Appeal is granted. The Application for stay is belated. There have been various applications for stay in the matter. Something has to give. I therefore do not think that the same is made bona fides.
2. The issues raised have already been raised in the application for recusal. Therefore, only an application to the Court of Appeal and or order from that Court should stay this matter. I hereby dismiss that application in respect of stay of proceedings. I decline to grant the same.



3. The matter is listed for hearing and the defendant has also travelled to this Court from Nairobi for hearing. This matter is 7 years old. I am cognizant of the decision of the Court in Civil Appeal No 39 of 2018 and 106 of 2019.
4. There is no utility in staying the matter. Mr. Gikandi has confirmed before the Court today that this is his first appearance before me. I have no doubt in my mind that this Court has the mettle to hear and determine this matter.
5. I am guided by the court of Appeal in *Butt v Rent Restriction Tribunal* [1979] eKLR, where Justices, Madan, Miller and Potter JJA, stated succinctly as follows: -

“where judge is a judge whether he is newly appointed or an old fogey. The former has the benefit of his latest learning, the latter the advantage of experience. Both are men of honour and scholarly gentlemen. Both are conscientious and judicious individuals and imbued with reason. Both are dependable and do not make wild surmises. Both act upon consecrated principles. Both get a fair share of juristic spills. Both are jealously scrupulous and impartial. Both are 24 carat gold. Both act free from doubt, bias and prejudice. Both carry the conviction of correctness of their decision. Both speak no ill of any litigant. Both are torch bearers for stability of society. Both are strugglers for liberty. Neither should, however, become an advisor instead of an adjudicator.”
6. I have no doubt in my mind that any error, I may or can humanly matter can be corrected on appeal. I have no right to act on appeal from my own decision. The matter will therefore proceed for hearing immediately. Let the parties place their witnesses on the witness stand.
7. This is informed by Article 159 (2) of the *Constitution* which places on the Court to have decisions made and matters adjudicated without undue delay.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 16TH DAY OF MARCH, 2023.
EXTEMPORE, IN OPEN COURT.**

**HON. MR. JUSTICE DENNIS KIZITO MAGARE
JUDGE OF THE HIGH COURT, MOMBASA**

In the presence of:

Billy Kongere and Mr. Gikandi for the plaintiff

Mr. Prestone Wawire for the 1st Defendant

No appearance for the 2nd Defendant

Court Assistant – Firdaus Ndalu

