



**Gichuhi S.C & 2 others v Data Protection Commissioner; Mathenge  
& another (Interested Parties) (Judicial Review E028 of 2023)  
[2023] KEHC 18612 (KLR) (Judicial Review) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18612 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**JUDICIAL REVIEW  
JUDICIAL REVIEW E028 OF 2023**

**JM CHIGITI, J  
JUNE 16, 2023**

**BETWEEN**

**ALLEN WAIYAKI GICHUHI S.C ..... 1<sup>ST</sup> APPLICANT  
CHARLES WAMBUGU WAMAE ..... 2<sup>ND</sup> APPLICANT  
WAMAE & ALLEN ADVOCATES ..... 3<sup>RD</sup> APPLICANT**

**AND**

**DATA PROTECTION COMMISSIONER ..... RESPONDENT**

**AND**

**FLORENCE WAMUYU MATHENGE ..... INTERESTED PARTY  
AMBROSE NDUNGU WAIGWA ..... INTERESTED PARTY**

**RULING**

**Brief Background**

1. That this Court delivered its judgment on 12<sup>th</sup> May 2023. In its judgment, the Court ordered the Respondent to readmit the Applicant’s complaint and the complaint be decided within thirty 30 days.
2. The 1<sup>st</sup> Interested Party thereafter filed a Notice Motion dated 24<sup>th</sup> May, 2023 wherein she seeks the following orders;
  - a. Spent
  - b. Spent



- c. That this Honourable Court be pleased to order a stay of execution of its judgment delivered on 12th May 2023 pending appeal.
  - d. That cost be provided for.
3. On its part, the Office of the Data Commissioner/Applicant filed a Notice of Motion dated 26<sup>th</sup> May 2023 wherein it seeks the following orders;
  - a. Spent
  - b. Spent
  - c. Spent
  - d. This Honourable Court be pleased to stay execution of the judgment of the Court rendered on 12th May, 2023 and the decree thereof pending the hearing determination of the Applicant's appeal lodged at the court appeal.
  - e. In the alternative to prayers 3 and 4, this Honourable be pleased to suspend the 30-days period provided for completion of fresh investigation upon the readmission of the complaint pending the determination of the Appeal.
  - f. That the costs of this application be provided for.
4. In response to the above application, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a Replying Affidavit that was sworn by Charles Wambugu Wamae on 30<sup>th</sup> May 2023.
5. On its part, the 2<sup>nd</sup> Interested Party filed the Replying Affidavit of Ambrose Waigwa, sworn on 12<sup>th</sup> June 2023, wherein they support the Application. Pursuant to the courts directions the parties herein filed and exchanged written submissions.
6. The Respondent has since readmitted the Complaint and commenced with the investigations of the complaint contemporaneous. Acting in compliance with the Summons, all the parties and their advocates on record attended a session at the Respondent's offices on 8<sup>th</sup> June 2023, herein they articulated to the Respondent the substance of the complaint and addressed all questions raised therein. The last date for compliance is 17<sup>th</sup> June, 2023.

**The Interested Parties/Applicants Case:**

7. In a certificate of urgency dated 16<sup>th</sup> day of May 2023 the 1<sup>st</sup> Interested Party indicated that she intends to appeal the said judgment. The Notice of Appeal is dated 23<sup>rd</sup> May 2023 which is 11 days after the judgment.
8. The Interested Party/Applicant secured an appointment for a surgery on 19.5.23 as a result of which she informs the court that she is not in a position to participate in the investigations that the Court has ordered due to an anticipated medical surgery on 25<sup>th</sup> May 2023 that will render the 1st interested party unable to participate in the investigations.
9. It is her case that in order to protect the substratum of the appeal, a stay of execution is necessary and justifiable. She indicates that she is due to have a surgery on 25<sup>th</sup> May 2023 and it is anticipated that she will undergo two surgeries. She prays for an order of stay of execution of the Judgment delivered on 12<sup>th</sup> May 2023 for 45 days to allow her to recuperate from her surgery. It is her case that in the event that the complaint is readmitted, the 1st Interested Party will not be able to participate in the investigations by the Respondent.



10. The Respondent sent to the interested party a letter dated 24<sup>th</sup> May 2023 readmitting the complaint and she is aware of the existence of the complaint as re admitted.

**The Data Commission/Applicants case:**

11. The Data Commission/Applicant lodged a Notice of Appeal on 24<sup>th</sup> May, 2023 and subsequently filed a record of Appeal dated 29<sup>th</sup> May, 2023 in Nairobi Civil Appeal No. E377 of 2023 against the decision of this Honourable Court.
12. In the instant application before this court the Data Commission/Applicant seeking stay of execution of this Honourable Court's Judgment pending hearing and determination of the present application and the present appeal on the grounds that: -
  1. compliance with this Honourable Court's decision will occasion the Applicant substantial and irredeemable loss as it has been compelled to apply a new interpretation of data subject and personal data other than what is provided for in the Act. In that regard, it is likely to expend its resources to investigate and adjudicate the present complaint and numerous other complaints based on the varied interpretation should its appeal succeed;
  2. the Applicant moved to file the Application for stay without unreasonable delay and is keen on prosecuting it with a view of obtaining the orders sought as soon as possible to avert the looming crisis on its mandate under the Act;
  3. the Applicant's mandate under the Act has been hampered as it is at pains to comprehend this Honourable Court's interpretation of the whether persons under Article 260 of *the Constitution* can lodge complaints under the Act on their own right as data subjects or only on behalf of other data subjects; and
  4. the Applicant is ready and willing to abide by any order issued by this Honourable Court for security of costs.
13. The Applicant relies on the Court of Appeal in Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. Nairobi 15 of 1990 [1990] KLR 365 outlined the requirements for granting stay of execution sought in the present Application. It held that, whereas the Court of Appeal's power to grant a stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 41 rule 6 (as it then was) of the Civil Procedure Rules is fettered by three conditions. The Court stated: -

‘Thus, the Superior Court's discretion is fettered by three conditions.

Firstly, the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must, of course, be made without unreasonable delay’.
14. It is the Data Commission/Applicants submission that it has demonstrated sufficient cause for the orders for stay of execution. As demonstrated above, the Applicant is facing a tornado of complaints from all manner of legal entities, juristic person, incorporated and unincorporated persons who subject to this Court's Judgment, have found the locus to lodge complaints under the Act.
15. The Data Commission/Applicant is of the respectful view that while the Act contemplated natural persons as data subjects, the expansion of the scope of data subjects will haze the internationally



accepted standards and rationale for data privacy while unnecessarily overstressing the Applicant's mandate and resources. It is for this reason that Applicant has already lodged its record of Appeal in Nairobi Civil Appeal No. E377 of 2023 before the Court of Appeal and serve the same upon the parties herein.

## **2<sup>nd</sup> Interested Party's' case:**

16. In supporting the Application, the 2<sup>nd</sup> interested party submits that a decision on whether or not to grant stay of proceedings is discretionary and this Court has powers to stay proceedings pending an Appeal. An arguable appeal only needs to raise a single bona fide point worthy of consideration and need not be one that must necessarily succeed as was held in the case of *Co-operative Bank of Kenya Ltd Vs Banking Insurance of Finance Union (Kenya)* [2015] eKLR.
17. According to the 2<sup>nd</sup> interested party, the following points are arguable grounds of appeal, which will require an expanded bench of the Court of Appeal to interrogate:
  - a. The Judgment of the Court has expanded the definition of a data subject as provided in the Data Protection Act to include legal or juristic persons.
  - b. The entire scheme of the Act is based on the notion of a "data subject" who is "an identified or identifiable natural person who is the subject of personal data, "while "personal data" is defined as "any information relating to an identified or identifiable natural person."
  - c. By expanding the scope of the Act to include corporate and unincorporated bodies and other juristic persons, the Court has collapsed the entire philosophy of the Act and in effect rendered the entire statute to be unconstitutional.

## **Whether the appeal will be rendered nugatory if stay is not granted.**

18. The 2<sup>nd</sup> interested party further supports the contents of the application for the following reasons:
  - a. If the judgement is allowed to stand, the appeal may be rendered nugatory, as the ODPC will make its findings upon re-admission of the complaint, within 30 days.
  - b. There is no prejudice to be suffered by the parties if the judgement is stayed pending the Court of Appeal determination on the various questions of law raised.
  - c. Substantial loss may result to the applicant and the Interested Parties unless the order for stay is made.
19. The 2<sup>nd</sup> interested party argues that the principles guiding the grant of a stay of execution pending appeal are well settled under Order 42 rule 6(2) of the Civil Procedure Rules which provides:

“No order for stay of execution shall be made under subrule (1) unless—

  - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
20. Further to the above, stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in Sections 1A and 1B of the *Civil Procedure Act*, the Court is no longer limited to the foregoing provisions. The



courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the Civil Procedure Act or in the interpretation of any of its provisions.

21. 10. Section 1A(2) of the Civil Procedure Act provides that “the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect of the overriding objective” while under section 1B some of the aims of the said objectives are; “the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”
22. This court should grant a stay of proceedings pending appeal as the appeal would be rendered nugatory in the event it succeeded.

### **Whether the Applications have been brought timeously**

23. The Applications herein have been brought in less than 30 days from the delivery of judgement. Further, the applications were made before the ODPC readmitted the complaint afresh.

### **The Respondents case:**

24. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a Replying Affidavit that was sworn by Charles Wambugu Wamae on 30<sup>th</sup> May 2023 wherein they have pocked holes into the Applications.

### **Analysis And Determination:**

25. This Court delivered its judgment on 12<sup>th</sup> May 2023. In its judgment, the Court ordered the Respondent to readmit and complete investigations within 30 days. The complaint was forwarded on 17<sup>th</sup> May 2023. The 30 days window lapse on 17<sup>th</sup> June 2023 as confirmed by the Office of the Data Commission dated 24<sup>th</sup> May 2023.
26. In the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, the Supreme Court refined in the following terms: ii. Should Orders of Stay of Execution be granted? The question as to whether this Court has jurisdiction to grant inter-locutory orders in the nature of a stay of execution was long settled in *Board of Governors, Moi High School, Kabarak & Another v. Malcolm Bell*, SC Applications Nos. 12 and 13 of 2012, wherein the Court stated as follows (paragraph 33):

“It is clear to us that if interlocutory applications are excluded as a necessary step to preserve the subject-matter of an appeal, the Supreme Court’s capability to arrive at a just decision on the merits of an appeal, would be substantially diminished. Both the Constitution and the Supreme Court Act have granted the Court the appellate jurisdiction; and within that jurisdiction, the parties are at liberty to seek interlocutory reliefs, in a proper case.”
27. That leaves pending the main interlocutory matters: whether we should stay the hand of the Independent Electoral and Boundaries Commission, and the Speaker of Meru County Assembly, so they do not move to alter the state of affairs at the Meru County gubernatorial office, pending the hearing and determination of the applicant’s appeal.
28. These are issues to be resolved on the basis of recognizable concept. The domain of interlocutory orders is somewhat ruffled, being characterized by injunctions, orders of stay, conservatory orders and yet others. Injunctions, in a proper sense, belong to the sphere of civil claims, and are issued essentially on the basis of convenience as between the parties, and of balances of probabilities. The concept of “stay



orders” is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light.

29. “Conservatory orders” bear a more decided public-law connotation; for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.
30. The issue before us, therefore, is whether this is a proper case where the interlocutory reliefs sought by the applicant should be granted. The principles to be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:
- i. the appeal or intended appeal is arguable and not frivolous; and that unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.
  - ii. These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of *the Constitution* of Kenya, 2010, a third condition may be added, namely:
  - iii. that it is in the public interest that the order of stay be granted.
31. This third condition is dictated by the expanded scope of the Bill of Rights, and the public-spiritedness that run through *the Constitution*. This court is bound by the Supreme Courts judgments.
- Following issues fall for determination: -
1. Whether the Applicant had demonstrated sufficient cause for the grant of the orders sought;
  2. Whether substantial loss would ensue from a refusal to grant a stay; and
  3. Whether the Applicant has furnished security;
  4. Whether the Application has been made without undue delay; and
  5. Who should bear the costs of the Application.

**Whether the Applicant had demonstrated sufficient cause for the grant of the orders sought.**

32. The court has been reliably informed by the parties that the data commissioner has since initiated investigations in compliance with the court order. The matter is partly heard, and the Data Commissioner is almost completing its investigations. The 30 days lapsed on 11<sup>th</sup> June 2023. It is this courts view that in the event, the Office of the data commissioner completes its investigations, and renders a finding, the litigants have an avenue of Appealing should they so wish. No, Party is likely to suffer prejudice in the circumstances.
33. The Data Commissioner is statutory outfit that is funded by the taxpayers. There is need to ensure that the data commissioners’ carries out its investigations and functions as directed by this court without



hiccups, so as to ensure that public resources are not misused. Order 42 Rule 6 of the Civil Procedure Rules provides as follows;

- “(1) (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty. On application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (2) No order for stay of execution shall be made under sub rule (1) unless- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

#### **Whether substantial loss would ensue from a refusal to grant a stay**

34. Appreciating the need to comply with the court order that was time bound, the data commissioner on its part decided to initiate the investigations albeit late on June 2023. The Commissioner does not explain the delay in initiating its investigations. That said investigations are part heard. The Commissioner has not given any indications that it will face any challenges of completing the investigations in the 30 days. In the circumstances it is clear to me that the Commissioner has the capacity to complete its investigations within 30 days. However, in an interesting twist, the commissioner decided to lodge an Appeal to challenge the judgment. It is not clear to the court which of the two options the Data Commissioner would like to pursue.
35. The Applicant -Data Commissioner submitted that it has demonstrated sufficient cause for the orders for stay of execution. As demonstrated above, the Applicant is facing a tornado of complaints from all manner of legal entities, juristic person, incorporated and unincorporated persons who subject to this Court’s Judgment, have found the locus to lodge complaints under the Act.
36. The Applicant did not tender any evidence to show the court that a tornado of complaints from all manner of legal entities, juristic person, incorporated and unincorporated persons existed or at all. This court cannot grant orders on the basis of speculation. To do this would offend access to justice as guaranteed under *the Constitution* Article 48. This would shut out all the Persons that are contemplated under Article 260 including the same persons that the Applicant is referring to as when it refers to legal entities, juristic person, incorporated and unincorporated persons existed. There is nothing wrong with approaching a statutory authority in the quest to access justice. An argument that there is fear of the number of people who approach a statutory outfit to seek redress must never and cannot at any one time in a democratic society as Kenya be a reason demonstrated sufficient cause for the orders for stay of execution. An outfit like the Applicant that has been mandated to serve Kenyans must at all times leave its doors open to all persons. The court is not satisfied with this ill-advised ground and or fear since it is an argument that denies the tax payer access to justice.



37. Embracing this line of speculative bare argument and reasoning as a ground to justify the grant of stay of execution offends the fibre and fabric that weaves the objectives and principles that guide the Data Commissioners office. This argument is not in keeping with our National Values and Principles of Governance under Article 10 of *the Constitution* and in particular the rule of law and modern Democracy.
38. In any event, the Applicant has not demonstrated nor tendered evidence to show how much it costs to conduct one investigation so as to help this court understand what the process of investigations looks like. This would have helped the court understand the economic impact of the so called tornado. The Commission has not manifested any human resources and capacity challenges. It has in the contrary demonstrated its ability to deal with its mandate efficiently which it must be commended for.
39. The application for stay cannot be granted on the basis of speculation or unwarranted fear. The decision on whether or not to grant stay of proceedings pending an Appeal is discretionary. However, the discretion must be exercised judiciously. The foregoing analysis has been done within a judicious framework.
40. The court has perused and appreciated the grounds that the 1st interested Party/Applicant and The Data Commissioner /Applicant has highlighted in the Memorandum of Appeal dated 23<sup>rd</sup> May 2023 and 29<sup>th</sup> May 2023 respectively. Given that The Data Commissioner/Applicant readmitted the Complaint for hearing a fresh, this court is unable to appreciate what the findings of the Applicant will be. The Applicant did not furnish the court with the findings.

**Whether the Applicant has furnished security:**

41. The Court agrees with the OD Commissioner that the present suit is a judicial review proceeding that was filed in public interest against the Applicant which is a public body and I shall waive the requirement for security.

**Whether the Application has been made without undue delay:**

42. The interested Party/Applicant has moved this court very late in the day and she tenders no explanations for the delay. The Office of the Data Commissioner readmitted the Complaint on 17<sup>th</sup> May 2023. The interested party decided to secure an elective surgery appointment on 19<sup>th</sup> May 2023 after the data commissioner commenced the investigations. She attended the initial session of the investigations process.
43. A prudent litigant would have requested the data commissioner to take her evidence De Bene Esse before going into surgery very early in the day. She failed to avail that possibility to her own peril and she cannot now come to seek to stay the court order this late in the day. She has not tendered any evidence to demonstrate that the Data Commissioner refused to admit her evidence De Bene Esse.
44. This court cannot come to the aid of an indolent litigant. She was aware of the terms of the judgment and knew very well that time was running but decided to float around so to say and buy time. This is a case of a delay of ones' own justice and this court will not countenance such a lapse. This court is minded of balancing the scales of justice by ensuring that the Respondent is not prejudiced the lapse on the part of the Applicant. In any event she is already participating in the investigations process.



45. In *Martha Thairora Gikundi v Elizabeth Kananu & another* [2014] eKLR the learned judge stated as follows:

“As for taking the evidence of the plaintiff and defendant urgently to pre-empt its being lost in the event that they cease to live before the suit is heard and determined, I have the following to say: 1. De bene esse evidence is conditional, provisional and in anticipation of a future need. In certain cases, courts will embrace that evidence be taken outside the orthodox route to prevent its being lost through the demise of a party or prolonged absence of a party. 2. In Kenya, De bene esse evidence is embraced by Order 18, Rule 9 (1) which states: “where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after institution of the suit, take the evidence of such witness in the manner herein before provided.”

46. In the case of *M'Mucheke M'Muriangi v Phinehas Micheni Mucheke & Another* [2016] eKLR, the Court stated that “...the aim of the application is to hear de bene esse the evidence of the Plaintiff who is 87 years old and sickly. The Court finds that the application is meritorious.” In essence, the Court has to weigh the circumstances of each case. Not all cases qualify for the taking of evidence de bene esse. The party(ies) have to place sufficient material before the Court to warrant the grant of such an order. The purpose of the Court is to administer justice to all parties irrespective of “race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth” and the such like reasons as, as the law may provide, in addition to those stipulated under Article 27(4) of the 2010 Constitution regarding grounds of discrimination. But where it is shown that the exigencies of the case demand that a party is given preferential treatment, as long as it does not prejudice the interests and cases of the other parties, the Court should exercise its discretion and grant the Application. The danger of losing the evidence held by a party’s witness due to illness, death or other condition of impairment that is likely to result and deny the Court the opportunity to access the evidence is good and sufficient reason to base the grant of the order sought.

47. On its part, the Applicant/Office of the Data Commissioner lodged an Appeal on 24<sup>th</sup> May 2023 which is 12 days after the Judgment. This is notwithstanding the fact that the Applicant knew that it had only thirty days to complete the investigations. There was a delay on the part of the Applicant/ Office of the Data Commissioner. Section 27 of the *Civil Procedure Act* provides that:

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

48. The position of costs as above referred is settled in Kenya’s jurisprudence as articulated in various cases by Courts. For instance, in the case of *Republic v Rosemary Wairimu Munene, Ex parte Applicant Ihururu Dairy Farmers Co-operative Society Ltd*, Judicial Review No. 6 of 2014, which was cited with



approval in the case of Cecilia Karuru Ngayu v Barclays Bank of Kenya & another (2016) eKLR the Court held as follows with regard to costs:

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event...It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

49. The general rule is that costs follow the event and the successful party will be awarded costs unless the court for good reason orders otherwise.

This court directs each party to bear its costs.

**Disposition:**

50. In the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR, the Supreme Court made a finding that in order to succeed in an application for stay of execution the Appellants must demonstrate that:

- i. the appeal or intended appeal is arguable and not frivolous; and
- ii. that, unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.
- iii. it is in the public interest that the order of stay be granted a developed

51. The Applicants have not proven any of these conditions. The data Commissioner/Applicant is expected to deliver its finding on 17<sup>th</sup> June 2023. Having failed to persuade this court to grant the stay of execution order, it would be an exercise in futility for this court to suspend the 30-days period provided for completion of fresh investigation upon the readmission of the complaint pending the determination of the Appeal by the Office of the Data Commissioner as sought in the Application date 26<sup>th</sup> May 2023 and I so hold.

**Order:**

1. The Applications dated 24<sup>th</sup> May, 2023 and 26<sup>th</sup> May, 2023 lack merit and they are hereby dismissed.
2. Each party shall bear its costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JUNE 2023**

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**J. CHIGITI (SC)**

**JUDGE**

