Co-operative Bank of Kenya Ltd v Karanja (Civil Appeal 73 of 2019) [2023] KEHC 21029 (KLR) (24 July 2023) (Judgment)

Neutral citation: [2023] KEHC 21029 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL APPEAL 73 OF 2019

HM NYAGA, J

JULY 24, 2023

BETWEEN

CO-OPERATIVE BANK OF KENYA LTD ..... APPELLANT

AND

JOSPHAT KAMAU KARANJA ..... RESPONDENT

JUDGMENT

Introduction

1. The Appellant Co-operative Bank of Kenya filed this appeal against the ruling of the Learned Magistrate (Hon. B. Mararo P.M.) delivered on April 3rd ,2019 in Nakuru Civil Suit No. 624 of 2018 on the following 3 grounds of appeal:

    1. That the Learned Magistrate erred in Law and fact in failing to direct his mind to the Legal and factual issues raised in the Application before him and that the same could not be determined in an interlocutory application without the benefit of hearing evidence from both parties and such evidence tested in cross-examination.

    2. That the Learned Magistrate erred in Law and fact and misdirected himself by failing to apply the principles for granting mandatory injunction and as a result arrived at a wrong decision.

    3. That the Learned Magistrate erred in Law and fact by proceeding to grant the Plaintiff costs of the suit at the interim stage before the main suit was heard and determined.

2. The appellant thus prayed for orders that: -

    a. The Lower Court ruling delivered on 3rd April,2019 together with all consequential orders therefrom be set aside.

b. The Respondent be condemned to pay costs of the application in the lower court and of this appeal.

c. Any other alternative relief that this Honourable Court may deem fit to grant.

Background of the Appeal

3. The Respondent filed a plaint dated 19th June 2018, seeking the following prayers;

   a. A declaration that the defendant has fraudulently, unprocedurally and illegally created an illegal over-draft on the Plaintiff's current Account No. xxxx and an the basis of the falsified and misleading debt the defendant has further compound the mess and damage on the plaintiff by sending a falsified and misleading indebtness letter and report to the Credit Reference Bureau both of which should be declared null and void.

   b. General and punitive damages for economic loss and reversal of the illegalities committed by the defendant and restoration of the plaintiff into his clean economic working condition with a view of accessing loan facility application with any bank or any financial institution.

   c. Costs of and incidental to this suit.

   d. Any other award this court deems fit to grant to avoid miscarriage of justice.

4. Contemporaneously with the Plaint, the respondent filed a Notice of Motion dated June 19,2018 in which he sought that pending the determination of the suit, the Appellant, its servants and/or agents be ordered to suspend the overdraft of Ksh. 1,110,622.31 and to withdraw its Report that it had submitted to the Credit Reference Bureau(CRB) with regard to him.

5. The Application was based on grounds inter alia, that the Respondent was suffering and would continue suffering for lack of getting any loan facilities from any bank or other financial institutions unless the illegal over-draft is suspended and the report to the CRB withdrawn or equally suspended and that the overdraft the Respondent was challenging against the Appellant was one of money and the Appellant did not stand to suffer in the event the Respondent failed in his bid.

6. The Application was supported by an affidavit of the Respondent sworn on 19th June,2018. He deposed that he holds an account No. xxxx with the Appellant's branch at Nakuru East Office.

7. That as a business man he has a Pay Bill No.553630 supplied to him by Safaricom Ltd and by which customers would deposit his credit or purchase price of goods and services to his above account.

8. He contended that for no apparent reasons the Appellant purported or faked withdrawals on 27th April,2018 indicating that the same had been done by him in a single day to the tune of Ksh. 1,035,056/- and then made a further withdrawal of Ksh. 94,385.70 on the 14th May,2018.

9. He deponed that prior to the above, on 30th April,2018, the Appellant had updated and forwarded to the CRB a report that falsely indicated that he owed it by way of an overdraft Ksh. 1,110,622.31 and proceeded to make a further update on 1st May,2018 falsely and incorrectly showing that he owed it a total sum of Ksh. 1,035,053.61.

10. He stated that consequently he had been substantively subjected to very serious economic gain inconvenience, prejudice and oppression as for instance on 7th June,2018 he got a loan facility approved for Ksh. 1,000,000/= with Equity Bank Limited but the said money could not be released to him due to the negative report to C.R.B made by the Defendant, its agents or employees.

11. He asserted that he had written, through his advocates, two comprehensive letters to the Appellant and personally on 12th May, 2018 asking it to reverse its illegal and irregular acts but it had failed to respond.

12. It was his deposition that the conduct of the Appellant was inconsistent with fair trading practices as well as the best standards of banking business and the same was as a result of professional negligence with regard to bank-customer relationship.

13. He therefore prayed that his application be allowed as his case was peculiar and quite unique.

14. Steve Macharia, the in charge of the Mobile Banking under the E-Channels Unit at the Respondent (now applellant) swore a Replying Affidavit in opposition to the Respondent's Application on 14th August, 2018.

15. He confirmed the Respondent holds the aforesaid account with the Appellant and that the Respondent also holds a Lipa na Mpesa Till Number that terminates in the said account. He added that the entire customers' payments were to be processed from a Pay Bill suspense Account number xxxx.

16. He stated that the Respondent's Lipa na Mpesa till started receiving irregular credits from a different till due to irregular entries occasioned by failure of customers to input the relevant account numbers when transacting via the Mpesa Pay bill belonging to the Respondent.

17. It was his further deposition that due to the fact that there were some transactions where the respondent's customers failed to indicate the account numbers as they were making the pay bill payments, the system treated the transactions as LNM (Lipa na Mpesa) Buy Goods and posted the same from Buy Goods suspense account Number xxxx.

18. He explained that during the normal reconciliations for the Lipa na Mpesa pay bill transactions were captured as not credited and were manually processed from the pay bill suspense account and that this led to the Respondent's account receiving double credits for one transaction. When the Appellant noticed this error it proceeded to reverse the erroneous entries which were proceeded as buy goods on diverse dated between 27th April and 14th May, 2018.

19. It was further averred that while the Respondent was receiving these double credits, he was actively withdrawing funds and utilising the same

20. He contended that the said reversal was done procedurally legally devoid of fraud and were merited as the double credits that would have unjustly enriched the Respondent.

21. He averred that the reference of the Respondent to the CRB was done without any falsehoods, in conformity with the law and in open banking procedure in the circumstances due to unsettled debt of Ksh. 1,110,622.31 created when the Respondent overdrew funds from his account.

22. He further deposed that the Appellant acted professionally and in routine banking procedure and performed its bank-customer duties and even its wider duties mandated upon it by the *Banking Act* and the Central Bank Prudential Guidelines by preventing the Respondent from utilizing wrongly obtained funds and referring the Respondent to the CRB.

23. He asserted that the bank has wider duties conferred upon it by the *Banking Act* and the prudential Guidelines to disclose information regarding a customer's financial affairs to another institution in this case the CRB if such information or disclosure was necessary in the course of normal business and that also the central bank prudential guidelines gives the bank the duty to do due diligence and to know its customer and its affairs as part of its enhanced due diligence measures. That these guidelines are not only for the protection of an individual customer but also to ensure the integrity of the entire banking

system and therefore referring the Respondent to CRB was not only done in good faith but was also done procedurally according to the law.

24. It was also his deposition that the economic prejudice, inconvenience and oppression alleged by the Respondent was not occasioned by the Appellant and that if at all the Respondent is in such a position, then it was as a result of his own making as he utilized funds not duly his, leading to the overdraft in his account and subsequent listing with the CRB.

25. The learned magistrate, in his ruling dated on 3rd April,2019, found the Application had merits and ordered the Appellant, its servants and/or agents to suspend the overdraft of Ksh. 1,110,622.31 and to withdraw its Report that it had submitted to the Credit Reference Bureau(CRB) with regard to the Respondent and also granted costs of the suit to the Respondent.

26. Being dissatisfied with the said ruling the appellant preferred the present appeal which was canvassed by way of written submissions.

27. The Appellant filed its submissions and supplementary submissions on 10th November,2023 and on 8th June,2023 respectively while the Respondent's submissions was filed on 28th September,2023. I will summarise them as hereunder.

The Appellants' Submissions

28. In regards to ground one of the memorandum of appeal, the Appellant posited that the Respondent's aforementioned application could not be determined at interlocutory stage and without the benefit of hearing evidence from both sides and such evidence tested in cross examination. To buttress his submissions reliance was placed on Court of Appeal case of Lucy Wangui Gachara vs Minudi Okemba Lore [2015] eKLR where the court interalia stated that;

> "...save in the clearest of cases, the right of the parties to a fair and proper hearing of their dispute, entailing calling and cross-examination of witnesses must not be sacrificed or substituted by a summary hearing."

29. In regards to ground two of the Memorandum of Appeal, the Appellant submitted that the trial court erred in granting mandatory injunction where there was nothing to justify the granting of the same and that there is no doubt in this case that the unsettled debt was created by the Respondent when he withdrew funds from his account. The Appellant thus contended that it would have been more apt if it was granted a chance to explain its case.

30. The Appellant referred this court to several decisions in further support of its submissions. These were;

    a. Shariff Abdi Hassan vs Nadhif Jama Adan [2006] eKLR where the court cited the case of Jaj Super Power Cash and Carry Ltd vs Nairobi City Council and two Others Civil Appeal No. 111 of 2002, where the court stated that the grant or refusal to grant interlocutory relief is in the discretion of the court seized of the matter and an appellate court would not normally interfere with such discretion unless if it is satisfied either that the lower court Judge had misdirected himself in some matter and as a result arrived at a wrong decision or that it is manifest from the case as a whole that the learned Judge was clearly wrong in the exercise of his discretion and that as a result there has been injustice.

    b. Mbogo and Another vs Shah [1968] EA 93 cited in the case of Joseph Kaloki t/a Royal Family Assembly vs Nancy Atieno Ouma [2020] eKLR where the court concurred with the above position.

c. Kenya Breweries Limited & another v Washington O. Okeyo [2002] eKLR which cited the case Locabail International Finance Ltd. vs Agroexport and others [1986] 1 ALL ER 901 where the test for grant of a mandatory injunction was set.

d. Kenya Power & Lighting Co Ltd vs Justice (Rtd) David M Rimita [2014] eKLR where the court held that a mandatory injunction cannot be granted except in plain and obvious clearest of cases and in exceptional and obvious cases where the facts are not disputed.

31. The Appellant also argued that by granting mandatory injunction to the Respondent, the Learned Magistrate curtailed its right to be heard which is provided for under Article 50(1) of *the Constitution*. In support of this proposition, the Appellant relied on the case of SM vs HGE [2019] eKLR that cited the case of Pinnacle Projects Limited vs Presbyterian Church of East Africa, Ngong Parish & another [2018] eKLR where the court held that in regards to right to fair hearing in civil cases stated the same includes: the right of access to a court, the right to be heard by a competent independent and impartial tribunal, the right to equality of arms, the right to adduce and challenge evidence, the right to legal representation, the right to be informed of the claim in advance before the suit is filed, the right to a public hearing, and the right to be heard within a reasonable time.

32. The appellant submitted that the learned magistrate erred in law and fact in granting a mandatory injunction to the respondent without giving it a chance to explain its case in regards to why it felt justified in reversing the entries it made that led to the overdraft. It contended that it was also not given an opportunity to rebut the evidence that would have been produced during the full hearing of the suit.

33. On costs, the appellant argued that the same ought not to have been issued before the main suit was heard. To buttress its submissions, it relied on Section 27 of the *Civil Procedure Act* and the cases of: -

a. Cecilia Karuru Ngayu vs. Barclays Bank of Kenya & Another [2016] eKLR where the court cited the case of Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review application No. 6 of 2014 that held that issue of costs is at the discretion of court and that the principle that 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.

b. Party of Independent Candidate of Kenya & another vs Mutula Kilonzo & 2 others [2013] eKLR where the court referred to the holding of Murray C J in the case of Levben Products vs Alexander Films (SA) (PTY)Ltd 1957 (4) SA 225 (SR) at 227 who stated that judicial discretion must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at and that the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.

Respondent's Submissions

34. The Respondent submitted that from the onset, it should be noted that the Appellant do not dispute that it owes obligations to him. He therefore urged this court to dismiss the appeal since the cornerstone of commercial transactions is the certainty that financial institutions have in realizing and recouping the amounts advanced in case of a default by a borrower.

35. The respondent further submitted that the *Civil Procedure Act* and Rules provides that no suit seeking declaratory orders or judgement shall be subjected to any form of attack under any circumstances.

36. He argued that the appellant albeit in passing has made reference to the CRB against him and as such it is unable to keep up with the correction of their system. He contended that the Appellant flatly declined to clear his name from CRB listing record which was occasioned by its negligence.

37. The Respondent submitted that it is now trite law that a dispute as to reference to the CRB against him does warrant a grant of an injunction. He relied on the case of Giella vs Cassman Brown [1973] EA 35 for this proposition.

38. The Respondent invited the court to be guided by the holding in Premier Food Industries Limited vs Ai-Mahra Limited [2006] eKLR where the court disagreed with the counsel for the defendant that injunctive orders sought at interlocutory stage disposed of the main suit for reasons that even if no prayer was sought the court still had jurisdiction in appropriate cases to issue orders prayed for in the suit at interlocutory stage.

39. The Respondent further made reference to the principles applicable in cases of mandatory injunctions as stated in the case of Locabail International Finance Ltd. vs Agroexport and others (supra)

40. On whether he established the minimum requirement for grant of an injunction, the respondent referred the court to the principles for grant of an injunction set out in Giela vs Cassman Brown(supra). He cited the case of Mrao Limited vs First American Bank of Kenya Ltd & 2 others [2003] KLR 125 on what constitutes a prima facie case and submitted that there is material before the court or special circumstances that point to the appellant's Negligence and thus he has satisfied the conditions for granting the orders sought.

41. He contended that he has successfully demonstrated that he holds the appellant responsible by virtue of the indisputable produced accounts and Mpesa statement. To this end, he relied on the holding in Amalo Company Limited vs Standard Chartered Bank (K) Limited Nairobi (Milimani) HCCC No. 571 of 2002 cited with authority in Samuel Munyao Nzioka vs Housing Finance Company of Kenya Limited [2017] eKLR where Mbaluto, J held that:

> " Where the defendant annexes to its affidavit statements of accounts, and there is no credible response from the plaintiff to counter the same, the Court is by virtue of the provisions of section 176 of the *Evidence Act* obliged to accept on a prima facie basis, the figures contained in the said statement of account as correct."

42. The respondent submitted that appellant should not be protected or given advantage by virtue of their refusal to make corrections on his part which they undertook. To buttress this position, he cited the case of Showind Industries Ltd vs Guardian Bank Ltd & another [2002] eKLR where Justice Ringera J as he then was stated that;

> " ... As I understand the law, an interlocutory mandatory injunction is granted very sparingly and only in exceptional circumstances such as where the applicant's case is very strong and straight forward. Moreover, as the remedy is an equitable one, it may be denied where it would be inequitable to grant the relief for the reason, for example, that the applicant's conduct does not meet the approval of a court of equity or his equity has been defeated by laches..."

Analysis & Determination

43. I have considered the appeal and the rival submissions. The grant or refusal of an injunction involves the exercise of judicial discretion. The circumstances in which this Court can interfere with the exercise

of judicial discretion by the lower court were articulated in the well-known case of Mbogo and Another vs. Shah [1968] EA 93 where the Court stated:

> "...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which is should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

44. Bearing that in mind, the main issue in this appeal is whether the trial court erred in granting a mandatory injunction at an interlocutory stage.

45. The test whether to grant a mandatory injunction or not, is contained in Vol. 24 Halsbury's Laws of England 4th Edn. Paragraph 948 which reads:

> "A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court things it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff ..... a mandatory injunction will be granted on an interlocutory application".

46. This principle was applied in Locabail International Finance Ltd. vs Agroexport and others [1986] 1 ALL ER 901 where the court stated that: -

> "A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction."

47. In the case of Magnate Ventures Limited vs Eng. Kenya Limited (2009) KLR it was held as follows:

> "A mandatory injunction need not be given at an interlocutory stage. It could be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it would not normally be granted. However, it would be granted if the case was;

(a) Clear and one which the court thought it ought to be decided at once or

(b) If the act done was a simple and summary one which could be easily remedied.

(c) Or if the defendant attempted to steal a march on the plaintiff."

48. The decision to grant a mandatory injunction at the interlocutory stage was a decision dependent on the discretion of the trial magistrate and each case had to be decided on the basis of its own peculiar facts and circumstances.

49. In granting the mandatory injunction, the Learned Magistrate was persuaded that there seems to be loophole in the Lipa na Mpesa facility where monies deposited by the Respondent's Customers would end up in different account to which he considered to be a system failure. He believed the Respondent should not be punished for what he considered a system failure and opined that the Appellant could recover the monies wrongly credited to the Respondent's account, if any, via other means after explaining the source of the problem. The Learned Magistrate also agreed with the Respondent that the relationship between him and the Appellant was one of Uberimae Fidie (utmost good faith) and that he relied on the Appellant in regards to the status of his account. The magistrate further believed this issue could not have been in court if the parties were more consultative and noted that before this matter was filed the Respondent had contacted the Appellant twice in an attempt to resolve the issue in vain.

50. From the onset, the following pertinent facts were not in dispute;

    a. That the Respondent is a registered owner of account no. xxxx domiciled at the Appellant's Nakuru Branch,

    b. Holds a Lipa na Mpesa till number that terminates in the said account and he has also a pay bill No. 553630;

    c. The purported erroneous entries which were processed as buy goods to the Respondent's Account was not occasioned by his customers;

    d. The appellant did not consult the Respondent about the issue before forwarding his name to CRB ;

    e. The respondent is a business man and cannot access loan from other facilities due to the negative report made by the Appellant to the CRB.

51. Given those uncontested facts and circumstances, I am unable to fault the Learned Magistrate for concluding as he did. The relationship between the appellant and the Respondent was one of utmost good faith. This is a doctrine which requires contracting parties to act honestly and not mislead or withhold critical information from each other. In Equity Bank of Kenya & Another vs Robert Chesang [2016] eKLR where it was held:

> " A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regard to operations with its contracts with its customers. The duty to exercise reasonable care and skill extends over the whole range of banking business within the contract with the customer. Thus the duty applies to interpreting, ascertaining and acting in accordance with the instructions of the customer.....The bank/customer relationship is based on utmost good faith. The bank is also under a contractual duty to diligently handle accounts of a customer, to ensure that funds- deposited on account are available when required by the customer. Any deviation from that understanding without justifiable reasons which should be communicated to the customer well in advance or immediately, the bank is in breach of a contract with the customer and is liable in damages."

52. The Appellant failed the test of utmost good faith (in latin *uberrimae fidei*) when it failed to apprise the Respondent about the status of his account, consult him on the issue at hand before it made a negative report to the CRB against the Respondent without his knowledge. Clearly the Respondent was prejudiced by the Appellant's aforesaid action.

53. This was a clear case of bank- customer relationship that could have been easily remedied had the Appellant engaged the Respondent. In addition, there were various ways as was rightly observed by the trial court in which the Appellant could recover the monies wrongly credited to the Respondent's Account.

54. The court in Kenya Breweries Limited & another vs. Washington O. Okeyo [2002] eKLR stated that a mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.

55. The Court also stated in Shariff Abdi Hassan vs. Nadhif Jama Adan [2006] eKLR that:

> " The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case."

56. In view of the foregoing, it is my opinion that there was no basis for declining to grant the mandatory injunction in respect to the reference to the CRB. The circumstances called for urgent intervention, to prevent the respondent from suffering economic ruin, and that order would not have prejudiced the appellant in any way.

57. At this stage, I am reluctant to go into the full merits of the case, but it is apparent that while the appellant stated that it rightfully referred the respondent to the CRB, it does not disclose, from the material filed in the trial court, that it acted as required by the CRB Rules. Regulation 25 (1) of the Credit Reference Bureau Regulations provides:

> " A credit information provider furnishing negative information to a Bureau regarding credit extended to a customer or arising from a product or service rendered to a customer shall, in writing or through electronic means, issue to the customer a notice of intention to submit the negative information within thirty days before submitting of the negative information to a Bureau or within such shorter period as the contract between the credit information provider and the customer may provide."
>
> Therefore, the mere debit entry on the respondent's account did not give the appellant a carte blanche to just refer the respondent to the CRB. In fact, the circumstances of the case called for even greater care before this was done. This was not a debt knowingly incurred by the respondent, but was a debit entry caused by the reversal of double credits in the respondents account. This was an issue that was correctly captured by the Learned Magistrate.

58. However, in granting the prayer to suspend the overdraft, I find that the Learned Magistrate acted in haste and without due consideration that in reality, the respondent's account benefitted from double credits which when reversed became a debit. Issuing the injunction at that stage, to suspend this debit entry was in my view erroneous. That issue ought to have awaited the outcome of the suit. I am therefore of the opinion that this portion of the appeal has to succeed.

59. On the issue of costs, the Appellant faulted the trial court for granting the same before the main suit.

60. Costs are at the discretion of the court, yet, follows the event. See the Halsbury's Laws of England; 4th Edition (Re-issue), {2010}, Vol.10. para 16

> " The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice"

61. The writing by Justice (Retired) - Kuloba Judicial Hints on Civil Procedure, 2nd Edition, (Nairobi) Law Africa) 2011, page 94 states that: -

> " Costs are {awarded at} the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise..."

62. The Respondent was successful in his application and the court in exercise of its discretion awarded him costs. There is no evidence that this discretion was exercised arbitrarily and I similarly do not find a basis of interfering with the trial's court's decision on this issue.

63. The mention of the word suit, to me, was a mere slip by the learned magistrate. I think that he meant the costs of the application. The suit was not yet determined so no costs on it were awardable at that stage. I therefore correct that error and replace the word "suit" with "application."

64. The upshot is that the Appeal is partly successful as set out above. The following orders are issued.

I hereby set aside the orders of the trial magistrate in respect to prayer (c) of the application dated 19th June 2018 only to the extent of the suspension of the over-draft of Kshs. 1,110,622.31. The orders as to the reference to the CRB shall remain as ordered by the court.

ii. The award of costs of the suit is set aside and is substituted with award of costs of the application.

iii. The lower court file is hereby remitted back to the said court for determination of the suit.

iv. Each party shall bear their own costs of this appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF JULY, 2023.

HESTON M. NYAGA

JUDGE

<u>In the presence of;</u>

C/A Jeniffer

Mr. Murimi for Kisilah – Appellant

N/A for L. Mwangi