



REPUBLIC OF KENYA



Kasarani Mall Limited v UBA Kenya Bank Limited (Miscellaneous Reference Application E1123 of 2020) [2023] KEHC 20142 (KLR) (Commercial and Tax) (10 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20142 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

MISCELLANEOUS REFERENCE APPLICATION E1123 OF 2020

JWW MONG'ARE, J

JULY 10, 2023

BETWEEN

KASARANI MALL LIMITED APPLICANT

AND

UBA KENYA BANK LIMITED RESPONDENT

RULING

1. By an application dated December 9, 2022 the Applicant has moved this court seeking the following reliefs;
 - i. Spent
 - ii. That the Plaintiff be granted leave to Appeal to the Court of Appeal against the whole of the decision of the Hon. Lady Justice Winfrida A. Okwany given at Nairobi on December 8, 2022.
 - iii. That the costs of the Application be provided for.
2. The application is supported by the grounds set within it and the supporting affidavit of Paul Kibet Rop. The application is opposed and the Respondent's head of Legal and Company Secretary Micky Matheka filed a Replying Affidavit Sworn on 15/4/2023.

This being a reference, an appeal to the Court of Appeal can only be filed with the leave of this court. Paragraph 11(3) of the [Advocates Remuneration Order](#) states as follows;

“Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.”



3. I have considered the material placed before me by both parties. I note that the decision to be appealed against was rendered on December 8, 2022 and that on December 9, 2022 this application seeking leave to appeal was filed. I have further considered the objections filed herein by the Respondent. To my mind there shall be no prejudice visited upon the Defendants if the Applicant herein is allowed to proceed on Appeal in the Court of Appeal. Article 50 of the [Constitution of Kenya](#) on access to justice provides as follows;

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.

4. This application seeking to review or appeal the decision of this is court, in my view is merited. The Applicant is within its rights to move to the Court of Appeal if dissatisfied with the decision of this court as guaranteed by the [Constitution](#). I find and hold that the application has merit and the same is allowed. Each party to bear its own costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF JULY 2023

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J. W. W. MONG'ARE

JUDGE

In the Presence of:-

Ms. Wetunga for the Applicant.

Ms. Matata for the Respondent.

Sylvia- Court Assistant

