



**GOO (Suing as Next Friend of LA - A minor) v Hui Commercial (Civil Appeal
140 of 2021) [2023] KEHC 23050 (KLR) (18 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 140 OF 2021
DKN MAGARE, J
SEPTEMBER 18, 2023**

BETWEEN

GOO (SUING AS NEXT FRIEND OF LA - A MINOR) APPELLANT

AND

HUI COMMERCIAL RESPONDENT

RULING

1. This is the ruling over the Respondent's/Applicant's Amended Notice of Motion application dated 11th August 2023 seeking stay of execution pending appeal to the Court of Appeal.
2. The application sought the following order: -
 - a. That this honorable court be pleased to order a stay of execution of the judgment delivered on 25th day of July 2023 by the High Court (The honorable Justice M.D Kizito) and all other consequential orders emanating therefrom pending the hearing and determination of the Appeal.
 - b. ...
3. The grounds relied are that unless the judgment and all other consequential orders emanating therefrom are stayed pending the hearing and determination of Appeal, the Appeal will be rendered nugatory. Further that applicant stated that they were likely to suffer a substantial loss if the judgment and orders and orders emanating therefrom are not stayed. It is their contention that the application has been made without undue delay and no prejudice for which an award of costs cannot compensate if at all.
4. The application is supported by Phillip Sadhi Mrima, who describes himself as a representative of the company served. He sets forth the award as against the Appellant as; -
 - a. 100% liability



- b. General damages of 1,500,000/=.
 - c. Special damages 23,400/=
 - d. Costs of the lower court to the Appellant
 - e. Costs of this Appeal of Kshs 135,000/=.
5. He does not say whether he has authority of the Applicant and whether he is an officer of the company and in what capacity he is filing the application. The application was hitherto filed as application for leave to Appeal. It was then amended without leave to an application for stay pending Appeal. This is after the court pointed out that leave is not required to appeal from a judgment and decree.
 6. The same was opposed by a Replying affidavit of the Appellant who stated that the application is a delaying tactic. He stated that in any case, if the court is inclined to allow the application, the Applicant should deposit a sum of Ksh 1,658,400/ = in a joint account.
 7. The Respondents is of the view that the Applicant fully participated and as such should allow them to enjoy the fruits of their judgment. I missed the point they were raising since the Applicant is entitled as of right to Appeal the judgment of this court to the court of Appeal.

Appellant's submissions

8. The applicant stated that they have met the condition for stay. They relied on the case of *RWW v EKW* Civil Suit No. 25 OF 2012 Nairobi [2019] eKLR, where my sister Justice Asenath Ongeru, LJ, considered the purpose of a stay of execution order pending appeal, in the following words:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
9. They state that a right of appeal is a constitutional right. They place reliance on the case of *James Wangalwa & Another Agnes Naliaka Cheseto* Miscellaneous Application 42 of 2011 [2012] eKLR, where my brother Justice F. Gikonyo, J, held that:

“The right of appeal is a constitutional right that actualizes the right to access to justice, protection and benefit of the law, whose essential substance, encapsulates that the appeal should not be rendered nugatory, for anything that renders the appeal nugatory impinges on the very right of appeal..

The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
10. It is their view that the Appellant/Respondent has not filed any affidavit of means or given any material to confirm his financial means or status and thereby demonstrate his ability to refund the decretal amount should the Appeal be in the Appellant's/Respondent's favor. Their view is that the



Applicant's means of income are unknown and presumably insufficient as they were not deposited in his replying affidavit dated 21st August 2023. They urged me to find that he is not a man of means.

11. The Applicant relied on the case of *G.N. Muema P/A (Sic) Mt View Maternity & Nursing Home V Miriam Bisbar & Another* Civil Appeal No 20 Of 2016 [2018] eKLR, where Justice J. Kamau, J considered the Respondent's ability to repay the decretal sum in case the appeal succeeded as there was no affidavit evidence by the respondent on record on the means by holding thus:-

“As can be seen hereinabove, there was no affidavit evidence by the Respondents on the court record. This therefore left the court in a quagmire especially as regards the ability of the Respondents to pay back the decretal sum in the event the Appellant was successful in his Appeal herein. In the absence of proof of their ability to pay back the said sum, this court was satisfied that the Appellant would suffer substantial loss. He had thus satisfied the first condition of being granted a stay of execution pending appeal.”

12. The applicant further buttressed their case with the decision of *Michael Ntouthi Mitheu v Abraham Kivondo Musau* Civil Appeal NO. E052 OF 2021 [2021] eKLR, Justice G V Odunga J, as then he was, posited as doth: -

“Accordingly, while appreciating that the Applicant did not sufficiently disclose his basis for believing that the Respondents would not refund the decretal sum, the Respondent did not even attempt to dislodge that contention, speculative as it was. One would have expected the Respondent to aver that he can pay the same even if paid over to her in the event that the appeal succeeds. Taking all relevant factors into account and in order not to render the intended appeal illusory while at the same time securing the interests of the successful plaintiff I grant a stay of execution of the decree herein...”

13. It is their considered submissions that the judgment was delivered on 25th July 2023, and the notice of appeal was filed on 1st August 2023. They state that there is no inordinate delay.
14. On the issue of security for the Appeal, it is the applicant's considered view that the same is discretionary. To them the couching of the provisions of order 42 rule 6(2) (b) of the CPR reveals that, it is not mandatory that the court the court orders the kind of security, the Applicant should give as may ultimately be binding on the applicant. This modeling of the law is to ensure the discretion of the court is not fettered.
15. They are supported by the Court of Appeal (Gicheru Ja, Chesoni & Cockar AgJJ A) in the case *Halai & another v Thornton & Turpin* (1963) Ltd [1990] eKLR held that:

“It is, however, worth noting that as to the court to which the appeal is preferred it is at liberty to consider the application made to it and make such order thereon as may, to it, seem just. Application for stay of execution is made to this court under rule 5(2)(b) of the Court of Appeal Rules and this court's discretion under that rule is unfettered. It is wide and while the court will take into account matters like substantial loss the applicant may suffer unless a stay is granted, provision of adequate security and expeditious filing of the application, this court is not prevented from granting stay of execution where no substantial loss is established and no security is forthcoming, if it seems just to the court for such order to be made upon application.

Indeed in the *Nation Newspaper Ltd v Mohinder Singh Kambo*, this court found that the applicant had not demonstrated that it would suffer a substantial or any loss unless execution



was stayed. But what the court did in that case was to consider the factors to be taken into account as we have said herein above. We are fortified in this line of thinking by the clear pronouncement by this court of the correct position when in *Consolidated Marine Contractors Ltd (formerly known as Diving Contractors Ltd) Divecon Ltd v Bernadette Nampijja & Anije Else Koehler* – Civil Application No NAI 93 of 1989 it said:

“..... in dealing with an application under rule 5(2)(b) the Court exercises original jurisdiction which it is accorded by the lodging of a Notice of Appeal in accordance with rule 74.”

16. This is based on the postulation that considering these harsh economic times and further that the Respondent / Applicant is a corporation running a business and it would thus be gravely harsh and a breach of its economic right and right to livelihood, to tie down the sum of Ksh 1,658,400/= in a bank account indefinitely as the length of time it will take to prosecute the appeal is not ascertainable.
17. The Applicant did not show to the court, who breached their economic rights. It is left to speculation whether it is the court or the Respondent. They urged me to allow the application.
18. The respondent filed a replying affidavit urging me to dismiss the application as the same is a delaying tactic. They urge me that if I am inclined to allow the application, then a sum of Ksh. 1,658,400 should be deposited in a joint interest earning account.
19. In their submissions, they address substantial loss from the stand point of the decision of *Everlyn Jebitok Keter v Henry Kiplagat Muge & 2 others* [2011] eKLR, where F. Azangalala J, as then he was stated as doth: -

“The applicant has not demonstrated that they have no means to refund the same if her appeal succeeds and the costs have been recovered. In *Kenya Shell Limited v Kariga* [1982 - 88] I KAR 1018 the following passage is found:-

“It is usually a good rule to see if O.41 r.4 (present Order 42 Rule 6) of the *Civil Procedure Rules* can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms is the corner stone of both jurisdictions for granting a stay.

That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money.”

20. The Respondent submitted that in this case the applicant has not shown how she stands to suffer unless stay is ordered. The Applicant has therefore not demonstrated that substantial loss may result to her unless the order of stay is made.
21. It is the respondent’s view that with regard to security none has been offered by the applicant. It is their case that without security there is no merit in the application for stay. In that respect Respondent relied on the decision of *Gianfranco Manenthi & another v Africa Merchant Assurance Company Ltd* [2019] eKLR, where Justice Reuben Nyakundi stated as doth:-

“Thirdly, the applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under order 42 rule 6(1) of



the Civil Procedure Rules, it is trite that the winner of litigation should not be denied the opportunity to execute the decree in order to enjoy the fruits of his judgment in case the appeal fails.

Further, order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favour. This is therefore to provide a situation for the court that if the appellant fails to succeed on appeal there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgement involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal ... Thus the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. Counsel for the applicant submitted that he is ready to provide a bank guarantee as security for due performance of the decree.”

22. The due performance in this case is that the court would order for the release of the deposited decretal amount to the Respondent in the appeal, if the appeal is unsuccessful. The case of Arun C Sharma v Ashana Raikundalia T/A Rairundalia & Co. Advocates, was said to be on point. In that case, Justice Gikonyo stated that:

“The purpose of the security needed under order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor..... Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.”

23. The Respondent’s view is that the order for security is sine qua non security. This is because the debt has cristalised in terms of the judgement sum. In the case of Ena Investment Limited v Benard Ochau Mose & 2 others [2022] eKLR, Justicer. Lagat-Korir, held as doth: -

“While this Court appreciates that the subject of the appeal is whether the decretal amount was paid or not and hence the unwillingness of the Applicant to deposit security for the outstanding judgment debt, at this interim stage, it will only limit itself to the preconditions for granting stay of execution where there exists a judgment legally entered in favour of one party against the other. Thus, it matters not at this stage whether they had paid the full amount or not, that is a matter for consideration at the appeal stage. It must satisfy the requirement for security.

24. They urged me to dismiss the application as it lacked merit as the Applicant has not met the requirements of order 42 rule 6 of the Civil Procedure Rules. They also prayed for costs for the dismissed application.

Analysis

25. The application herein seeks stay pending appeal to the court of Appeal. It is not the duty of the court to deal with the animus of the Applicant. This is because a party has a right to exhaust the judicial



system in pursuit of its right. I am aware this is a second appeal and the Appellant is entitled and has actually issued notice of Appeal.

26. Once the notice of appeal has been issued and it has neither been withdrawn nor struck out, then the court has jurisdiction to deal with stay. The effect of the foregoing is that this court has jurisdiction to deal with the order of stay pending appeal. The jurisdiction of the court to grant stay pending Appeal is circumscribed under order 42 rule 6., which provides as doth: -

“6. Stay in case of appeal [order 42, rule 6.]

- (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
 - (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.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

27. The filing of notice of appeal thus grants the court jurisdiction to deal with stay pending appeal. Though stay is a discretionary order it is a legal right and not an equitable remedy. In the circumstances the court looks at compliance with requisite rules for grant of stay. It is not given though whims or capriciously. The court must always satisfy itself on jurisdiction in all its facets. In the case of *Owners of*



the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, justice Nyarangi JA held as doth, with the concurrence of Kwach and Masime JJA: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

28. The Court, F. Muchemi in *Charles Mwangi Gitundu v Charles Wanjobi Watbuku* [2021] eKLR, while addressing the issue of stay stated as doth: -

“34. In *Patrick Kalaya Kulamba & Another vs Philip Kamosu and Roda Ndanu Philip (Deceased)* [2016] eKLR where Meoli J. held:-

“For the purpose of this case, the operational words are as underlined above. Thus, whether an application for stay pending appeal has been allowed or rejected in the lower court, the High Court “shall be at liberty....to consider” an application for stay made to it and to make any order it deems fit. The High Court in that capacity exercises what can be termed “original jurisdiction”. And from my reading of the rule, the jurisdiction is not dependent on whether or not a similar application had been made in the lower court, or the fate thereof....

So long as an appeal from the substantive decision of the lower court has been lodged, an application under order 42 rule 6(1) of the *Civil Procedure Rules* can be entertained afresh in the High Court. I believe that was part of the distinction that the Court of Appeal was making in the Githunguri Case concerning the court’s original jurisdiction vis-à-vis the appellate jurisdiction and the innovation behind rule 5 (2)(b) (as it is now). The foregoing has a bearing on the interpretation of order 42 rule 6(6) of the *Civil Procedure Rules* and in particular the highlighted phrased therein.

Similarly, the jurisdiction of the High Court in this case was invoked when the substantive appeal (itself a fresh pleading separate from the suit in the lower court) was filed. It is true that the application for stay of execution was allowed with conditions in the lower court. The wording in order 42 rule 6(1) however does not preclude the applicant from approaching this court as it has done.

I would venture to add that the wording of order 42 rule 6(1) of the *Civil Procedure Rules* effectively grants the same jurisdiction to this court as an appellate court as rule 5 (2)(b) does to the Court of Appeal: to entertain an application for stay whether or not the same has already been heard by the lower court and dismissed. The only salient difference is that in the case of the High Court the rule makes it clear that it matters not whether the earlier application for stay in the lower court has been allowed or rejected in the lower court. That is my reading of order 42 rule 6(1).



It suffices, in my opinion, in this case, in view of the nature of the application before me, that there is an existing substantive appeal against the judgment in the lower court. To insist in this case that the applicant must first file a separate appeal on the ruling of the lower court, apart from the judgment would in my view not only lead to confusing the duplication of proceedings in respect of the same matter but also cause delay. The provisions however must be applied under the guiding principles of article 159(2)(d) of the Constitution.”

29. Jurisdiction to grant stay of execution is original. It matters not whether there was earlier stay. The court of Appeal has similar original jurisdiction under rule 5(2) b of the court of appeal rules. In the case of, the court of appeal stated as doth, as quoted in the above case of Charles Mwangi Gitundu v Charles Wanjohi Wambuku [*supra*] –

“ 35. The Court of Appeal has expressed itself on the application of order 42 rule 6(1) of the Civil Procedure Rules in both its original and appellate jurisdictions in several decisions, while considering its own rule 5 (2)(b) which is essentially at pari materia with order 42 rule 6(1) of the Civil Procedure Rules.

37. Musinga JA observed on the same question in his judgment and stated:-

“The court is said to be exercising special independent original jurisdiction because on considering whether to grant or refuse an application for stay, it is not hearing an appeal from the High Court decision. It can grant orders of stay, irrespective of whether or not such an application has been made in the High Court.”

30. What we are dealing with is an original jurisdiction to grant stay. There are only 4 tests that the court will apply.

- a. There is an appeal filed. In the case of appeal to the court of appeal, a notice of appeal will suffice.
- b. There is substantial loss to be suffered if stay is not granted/appeal will be rendered nugatory
- c. There is security for due performance of the decree
- d. The applicant is deserving of the discretion of the court.

31. The court has no jurisdiction to issue stay unless there is an appeal. The notice of Appeal was filed as such the jurisdiction has been properly invoked.

32. I am satisfied that the applicant has filed a notice of Appeal and bespoken proceedings. The first limb has been met.

33. As regards to the substantial loss, the same arises in 2 aspects. The effects are irreversible or if it is a money decree, the same cannot be refunded once paid out. It is common ground that the financial wherewithal of the Respondent is unknown. The issue of his means are within his personal and special knowledge.



34. It is the respondent's duty to demonstrate that he can refund. Since his means are within his special knowledge. Under section 112, the Appellant had the burden of proof in respect to matters within their special knowledge. The said Section provides as doth: -

“ 112. Proof of special knowledge in civil proceedings in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

35. The respondent has not shown that he can refund. Consequently, I am satisfied that there is nothing to show that the respondent has an ability to refund. In his affidavit, he does not address the same issue.

36. On the other hand, the reason security for due performance of the decree is given, is the same reason the Respondent must demonstrate the ability to refund. It is equality of arms. Now that the appellant has doubts on whether the respondent can refund, the respondent equally has doubt as to whether the victory will be rendered pyrrhic if at the end of the day, the Appellant has not means to settle the decree. For them the test is not whether they can refund, but to provide security for due performance.

37. In this aspect the Appellant will stated they were not willing to provide security for due performance of the decree. The decree in this matter as at the time of making the application was Ksh. 1,658,400/= excluding interest. This is the security that needs to be produced. The court has no basis to issue stay pending appeal without security for due performance.

38. However, the Applicant has not offered security. The applicant's view is that it is unfair and in breach of economic rights for the money to lie idle for the duration of the Appeal. The court has no discretion in this matter to force a party to give security when they are not in a position to offer the same.

39. In the case of *HGE v SM* [2020] eKLR, Justice W Musyoka, stated as doth: -

“ 15. With regard to security for costs, the court in *Absalom Dova v Tarbo Transporters* [2013] eKLR, stated:

“The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his appeal which includes the prospects that the appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The court in balancing the two competing rights focuses on their reconciliation...”

40. Further, security must achieve due performance of the decree. It is not any other security. In the case of n *Mwaura Karuga t/a Limit Enterprises v Kenya Bus Services Ltd & 4 Others* [2015] eKLR, the court said as doth: -

“ ... the security must be one which shall achieve due performance of the decree which might ultimately be binding on the applicant. The rule does not, therefore, envisage just any security. The words “ultimately be binding’ are deliberately used and are useful here, for they refer to the entire decree as will be payable at the time the appeal is lost. That is the presumption of law here. Therefore, the ultimate decree envisaged under order 42 rule 6 (2) (b) of the *Civil Procedure Rules* includes costs and interest on the judgment sum unless the



latter two were not granted-which is seldom. The security to be given is measured on that yardstick.”

41. In this matter the Respondent has offered to receive lesser security. Who is to begrudge him. However, the Applicant did not offer security. Grant of provision security for due performance of the decree is sine qua non stay of execution. Without security there may not be stay execution.
42. On the aspect of being rendered nugatory, the same must be demonstrable by the applicant In the case of *National Transport and Safety Authority v Samper Tours Travel* [2022] eKLR, justice, C. Meoli stated as doth: -
 - “ 12. The decision of Platt Ag JA, in the Shell case, in my humble view sets out two different circumstances when substantial loss could arise, and therefore giving context to the 4th holding above. The Ag JA (as he then was) stated inter alia that:
 - “The appeal is to be taken against a judgment in which it was held that the present Respondents were entitled to claim damages...It is a money decree. An intended appeal does not operate as a stay. The application for stay made in the High Court failed because the gist of the conditions set out in order XLI rule 4 (now order 42 rule 6(2)) of the *Civil Procedure Rules* was not met. There was no evidence of substantial loss to the Applicants, either in the matter of paying the damages awarded which would cause difficulty to the Applicants itself, or because it would lose its money, if payment was made, since the Respondents would be unable to repay the decretal sum plus costs in two courts...”
43. Lastly, is the aspect of judicial discretion. This is a rider, in case the applicant has demonstrated that their conduct is not befitting the court’s discretion. This is where for example the application is made after undue delay or some other conducts, which is ordinality frowned upon by a court of equity. Equity always follows the law. The instant application has been made without undue delay.
44. Merit of the Appeal is not one of the conditions to be looked at for stay pending Appeal to the court of Appeal. This because the court granting stay has already dealt with merit.
45. Before I depart, it is important to point out an area of concern. This is the ability of parties to view their cases in a bird’s eye view. This case has what I can call hermaphroditic tendencies. During hearing, the defendant does not exist. During to the Application the time for applications, the applicant has representative. The representative does not indicate his capacity.
46. In the end I find that the Applicant has demonstrated that the Applicant may be a man of straw. They have however offered no security. They do not want security deposited. This is a court of law.] and not a court of whims. I am unable to issue orders for stay of execution without an offer for security.
47. In the circumstances, the fate of the application was sealed by the Applicant by failure to offer security for due performance of the Decree. I therefore dismiss the application for stay pending appeal with costs of Ksh. 25,000/=

Determination

48. The upshot of the foregoing is that I make the following orders: -



- a. Failure to provide security makes the application dated 11/08/2023 untenable. Consequently, it is dismissed with costs of Ksh 25,000/= to the Respondent.
- b. The costs be payable within 30 days.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 18TH DAY OF SEPTEMBER, 2023.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

Aroka for the Applicant

Mwakizozo Respondent

