



**Imperial Bank Limited (Under the Statutory Receivership of the Receiver Manager)
v W E Tilley (Muthaiga) Limited & 19 others (Commercial Case 522 of 2015)
[2023] KEHC 24008 (KLR) (Commercial and Tax) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24008 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 522 OF 2015**

**DAS MAJANJA, J
OCTOBER 19, 2023**

BETWEEN

**IMPERIAL BANK LIMITED (UNDER THE STATUTORY RECEIVERSHIP OF
THE RECEIVER MANAGER) PLAINTIFF**

AND

W E TILLEY (MUTHAIGA) LIMITED 1ST DEFENDANT
PRIMECATCH (EXPORTS) LIMITED 2ND DEFENDANT
MARA FISH PACKERS LIMITED 3RD DEFENDANT
J FISH KENYA LIMITED 4TH DEFENDANT
VICTORIAN DELIGHT LIMITED 5TH DEFENDANT
RUBY RED LIMITED 6TH DEFENDANT
VALUE PAK FOODS LIMITED 7TH DEFENDANT
FROM EDEN LIMITED 8TH DEFENDANT
AQUALITE LIMITED 9TH DEFENDANT
ZULFIKAR HAIDERALI JESSA 10TH DEFENDANT
NASIR HAIDERALI JESSA 11TH DEFENDANT
NARGIS JESSA 12TH DEFENDANT
NADIR AZIZALI JESSA 13TH DEFENDANT
FIROZ JESSA 14TH DEFENDANT
SALIM JESSA 15TH DEFENDANT



IRFAN SHAMSHADIN JESSA	16 TH DEFENDANT
NASHIV HAIDERALI JESSA	17 TH DEFENDANT
MARMO E GRANITO MINES (T) LIMITED	18 TH DEFENDANT
MARMO MARBLE (U) LIMITED	19 TH DEFENDANT
FISHWAYS UGANDA LIMITED	20 TH DEFENDANT

RULING

Introduction And Background

1. Before the court for determination is the 1st, 9th and 14th defendants' ("the defendants") notice of motion dated 28.07.2021 made under sections 1A, 1B and 22(a) of the *Civil Procedure Act*, order 11 rule 3(2)(d) and order 51 rule 1 of the *Civil Procedure Rules, 2010* and article 35 (b) and article 159 of the *Constitution* seeking the following orders:

1. Spent
2. That the Plaintiff do produce on oath the duly executed account opening forms and signing mandate for the following accounts:
 - a. Bmohamed- xxx5
 - b. Jignesh R Shah- xxx
 - c. M. Khan- xxx
 - d. Ali Shah-xxx
 - e. Barkat Khan-xxx
 - f. W.e. Tilley-xxx2A
 - g. W.e.tilley-xxx2A
 - h. W.e.tilley-xxx3A
 - i. We Tilley - xxx4A
 - j. We Tilley - xxx5A
 - k. We Tilley - xxx6A
 - l. We Tilley - xxx7A
 - m. W E Tilley - xxx8A
 - n. We Tilley - xxx9A
 - o. We Tilley - xxx10A
 - p. We Tilley - xxx11A
 - q. We Tilley-xxx1A



- r. We Tilley - xxx6A
- s. We Tilley - xxx7A
- t. We Tilley- xxx05A
- u. We Tilley - xxx6A
- v. We Tilley - xxx7A
- w. We Tilley- xxx4A
- x. We Tilley - xxx5A
- y. We Tilley-0038201A
- z. We Tilley - 003CLL34012
 - aa. We Tilley - xxx06
 - ab. We Tilley - xxx05
 - ac. We Tilley - xxx04
 - ad. W E Tilley - 003CLL10001
 - ae. We Tilley - xxx01
 - af. We Tilley - 003CLL40001
 - ag. We Tilley - xxx03
 - ah. We Tilley - 003CLL40004
 - ai. We Tilley - xxx01
 - aj. Wetilley - 003CLL\00001
 - ak. W E Tilley - xxx0004
 - al. W Etilley - xxx0003
 - am. We Tilley - xxx01
 - an. We Tilley - xxx001
 - ao. We Tilley - xxx00001
 - ap. We Tilley - xxx01
 - aq. We Tilley - xxx1
 - ar. We Tilley - xxx2
 - as. We Tilley - xxx1
 - at. We Tilley - xxx01
 - au. We Tilley - xxx2
 - av. We Tilley - xxx1



- aw. We Tilley - xxx001
- ax. We Tilley - xxx002
- ay. W Etilley - xxx0001
- az. We Tilley - xxx003
- ba. We Tilley - xxx1
- bb. We Tilley - xxx002
- bc. We Tilley - xxx003
- bd. We Tilley - xxx1
- be. We Tilley - xxx1
- bf. We Tilley - xxx01
- bg. We Tilley - xxx1
- bh. Primecatch (exports) Limited
- bi. Mara Fish Packers Limited
- bj. J Fish Kenya Limited
- bk. Victorian Delight Limited
- bl. Ruby Red Limited
- bm. Value Pak Foods Limited
- bn. From Eden Limited
- bo. Aqualite Limited
- bp. Zulfikar Haiderali Jessa
- bq. Nasir Haiderali Jessa
- br. Nargis Jessa
- bs. Nadir Azizali Jessa
- bt. Firoz Jessa
- bu. Salim Jessa
- bv. Irfan Shamshadin Jessa
- bw. Nashiv Haiderali Jessa
- bx. Marmo E Granito Mines (t) Limited
- by. Marmo Marble (u) Limited
- bz. Fishways Uganda Limited



3. That the Plaintiff do produce on oath complete statements of account from inception to 30th November 2015 together with the signing mandate for the following accounts:
- a. Akiyda Ltd - 10xxx
 - b. Export Trading Company Ltd - 100xx
 - c. Vegpro Ltd- 10xx
 - d. Winterfresh Ltd- 10xx
 - e. Platinum Homes Ltd - 100xx
 - f. Atul R Shah – 10xx
 - g. Islington Ltd- 1xxx
 - h. Overseas Forex Bureau - 10xx
 - i. Collxtreme Ltd- xxx00
 - j. Mini Bakers (Nbi) Ltd- 010xx
 - k. Kenblest Ltd - 10xx
 - l. Metro Petroleum Ltd- 01xxx
 - m. Storm Apparel Ltd – 1xx
 - n. Gulam Saleh – 71xxx
 - o. Metro Petroleum - Lra - 1xxx
 - p. Abc Pharmacy - 10xxx
 - q. Kaburu's Lra - xxx
 - r. Jade Petroleum Ltd - 7xxx
 - s. Mc Neel Millers Ltd – xxx
 - t. Mc Neel Millers Ltd R/ AC - xxx
 - u. Kenblest Ltd – 0xxx
 - v. Raj Harakrishna Devani – xxx
 - w. Karim Jamal - 00xxx
 - x. Bharat R Patel & Umang K Patel - 73xxx
 - y. Adra International Ltd - 76xxx
 - z. Paddington Holdings Ltd – 01xxx
 - aa. Pandil Trading Ltd - 73xxx
 - ab. Surgipharm Ltd
 - ac. Airwings Ltd



4. That the Plaintiff do produce on oath complete statements of account from inception to 30th November 2015 for the following:

- a. W.e. Tilley-xxx22A
- b. W.e. Tilley-xxx2A
- c. W.e. Tilley-xxx3A
- d. We Tilley - xxx4A
- e. We Tilley - xxx5A
- f. We Tilley - xxx006A
- g. We Tilley - xxx7A
- h. We Tilley - xxx408A
- i. We Tilley - xxx9A
- j. We Tilley-xxx010A
- k. We Tilley - xxx11A
- l. We Tilley - xxx1A
- m. We Tilley - xxx6A
- n. We Tilley - xxx27A
- o. We Tilley - xxx5A
- p. We Tilley - xxx06A
- q. We Tilley - xxx7A
- r. We Tilley - xxx4A
- s. We Tilley - xxx5A
- t. We Tilley - xxx1A
- u. We Tilley - 00xxx
- v. We Tilley- 00xxx
- w. We Tilley - xxx5
- x. We Tilley - xxx4
- y. We Tilley - xxx01
- z. We Tilley - xxx01
- aa. We Tilley - xxx0001
- ab. We Tilley - xxx03
- ac. We Tilley - xxx004
- ad. We Tilley - xxx001



- ae. We Tilley - xxx01
- af. We Tilley - xxx004
- ag. We Tilley - xxx03
- ah. We Tilley - xxx001
- ai. We Tilley - xxx001
- aj. We Tilley - xxx0001
- ak. We Tilley - xxx001
- al. We Tilley - xxx1
- am. We Tilley - xxx002
- an. We Tilley - xxx001
- ao. We Tilley - xxx001
- ap. We Tilley - xxx002
- aq. We Tilley - xxx0001
- ar. We Tilley - xxx001
- as. We Tilley - xxx0002
- at. We Tilley - xxx001
- au. We Tilley - xxx003
- av. We Tilley - xxx001
- aw. We Tilley - xxx102
- ax. We Tilley - xxx3
- ay. We Tilley - xxx001
- az. We Tilley - xxx001
- ba. We Tilley - xxx01
- bb. We Tilley - xxx001
- bc. Primecatch (exports) Limited
- bd. Mara Fish Packers Limited
- be. Fish Kenya Limited
- bf. Victorian Delight Limited
- bg. Ruby Red Limited
- bh. Value Pak Foods Limited
- bi. From Eden Limited



- bj. Aqualite Limited
- bk. Zulfikar Haiderali Jessa
- bl. Nasir Haiderali Jessa
- bm. Nargis Jessa
- bn. Nadir Azizali Jessa
- bo. Firoz Jessa
- bp. Salim Jessa
- bq. Irfan Shamshadin Jessa
- br. Nashiv Haiderali Jessa
- bs. Marmo E Granito Mines (t) Limited
- bt. Marmo Marble (u) Limited
- bu. Fishways Uganda Limited

5. That the Plaintiff do produce on oath a complete statement of account of the Plaintiff's Nostro Account number 372 with CitiBank N.A New York from January 2002 to November 30, 2015.
6. That the Plaintiff do produce on oath all its audited accounts and financial statements for the year 2002 to 2015 all inclusive.
7. That the plaintiff do produce on oath Central Bank of Kenya's Supervision, Regulatory and Inspection reports for Imperial Bank from 2002 to 2016 all inclusive.
8. The defendant be at liberty to inspect and peruse the documents sought to be produced.
9. All further proceedings in this matter be stayed.
10. Any other orders as this Court may deem fit to grant.
11. Costs of this Application be provided for.

2. The application is supported by the grounds on its face and the affidavits by James Gitau Singh and Payal Paresh Dave, advocates in conduct of this matter on behalf of the Defendants, sworn on July 28, 2021 and May 2, 2023. It is opposed by the plaintiff through the replying affidavit of Andrew Rutto, the Deputy Director Liquidation of the Kenya Deposit Insurance Corporation, sworn on December 16, 2022. The parties have also filed written submissions to supplement their arguments.

The Application

3. The defendants aver that on October 15, 2020, the Plaintiff's advocates served on the defendants' advocates a list of documents comprising of over 40,000 exhibits. That the defendants' expert witness has gone through the Plaintiff's bundle and has raised queries which can only be responded to upon production of documents which are in the plaintiff's possession and are related to the matters in question between the plaintiff and the defendants.



4. The defendants contend that the documents sought are relevant and necessary for the proper determination of the issues and that they are unable to properly proceed to trial without the said documents. That these documents have a high evidential value with respect to ascertaining the sums of money advanced to the defendants, if at all and they will allow the court and parties to resolve the dispute efficiently.

The Plaintiff's Reply

5. The plaintiff opposes the application on the ground that the defendants have not met the threshold for grant of such an application. It contends the application cannot be granted since the Plaintiff has provided all the relevant documents.
6. As regards specific documents, the Plaintiff states that it does not have custody of the account opening forms and signing mandate listed under (a) to (ggg), (iii), (lll), (sss), (ttt), (yyy), and (zzz) and that the duly executed account opening forms and signing mandates in respect of (hhh)-Primecatch (Exports) Limited, (mmm)-Value Pak Foods Limited, (nnn)-From Eden Limited, and (xxx)-Marmo E Granito Mines (T) Limited have been annexed. That the accounts in respect of J Fish Kenya Limited, Victorian Delight Limited, Aqualite Limited, Zulfikar Haiderali Jessa, Nasir Haiderali Jessa, Nargis Jessa, Salim Jessa, Irfan Shamshadin Jessa, and Nashiv Haiderali Jessa were never opened with the Plaintiff and it cannot produce their account opening forms and signing mandates.
7. The plaintiff further states that the statements of account and signing mandates sought at Prayer 3 of the application cannot be produced since they contain third party information and that the statements of account sought at Prayer 4 of the application, have been annexed save for the accounts of J Fish Kenya Limited, Victorian Delight Limited, Aqualite Limited, Nasir Haiderali Jessa, Firoz Jessa, Salim Jessa, Irfan Shamshadin Jessa, Nashiv Haiderali Jessa which were never opened with the Plaintiff.
8. The Plaintiff states that it cannot produce the statement of account of the Plaintiff's Nostro Account number xxx with Citi Bank N.A New York from January 2002 to 30th November 2015 as sought in Prayer No. 5 as it contains confidential information.
9. The Plaintiff has annexed audited accounts and financial statements from the year 2002 to 2014 sought at Prayer 6 of the application but it states that those for the year 2015 will not be produced since the Plaintiff was undergoing receivership at that time. The Plaintiff declines to produce the Central Bank of Kenya's Supervision, Regulatory and Inspection Reports sought at Prayer No. 7 of the application as it states the same contain confidential information.
10. On Prayer No. 8, the Plaintiff avers that the Defendants will be at liberty to inspect and peruse the category of documents that the Plaintiff will be filing as the same will be duly served upon them. However, that the Defendants will not inspect the category of documents that the Plaintiff shall not be filing since they contain third party information.

The Defendants' Response

11. In response to the Plaintiff's reply, the Defendants state that the Plaintiff cannot claim privilege against disclosure on the ground that the documents sought at Prayers 3, 5 and 7 of the application are confidential and/or contain third party information as the confidential nature of a document is not in and of itself a ground of privilege. They urge the court to compel the release of such information notwithstanding any allegation of confidentiality upon various grounds.
12. First, that the Defendants have an underlying right under article 35(b) of the *Constitution* to access the information that is being held by the Plaintiff. Second, that the documents cited for production



in Prayers 3, 5 and 7 of the application are crucial to the Defendants' defence and are necessary for the protection of their fundamental rights and freedoms. Third, that the unilateral and narrow approach adopted by the Plaintiff has deprived the proceedings of any semblance of a fair, reasonable and lawful process. Fourth, that the documents cited for production in Prayers 3, 5 and 7 of the application have been referenced by the Plaintiff in its pleadings with a view of strengthening its case and fifth, that it is a basic tenet of the law that should a party disclose the existence of a document to the other party then the other party has as a general rule, the right to inspect it. Thus, the Defendants aver that it is therefore in the interests of justice that the documents sought in Prayers 3, 5 and 7 of the application be granted.

13. In response to the Plaintiff's assertion that the documents sought for production under prayer 6 of the application will not be produced as the Plaintiff was undergoing receivership, the Defendants contend that it is trite law that the Receivers of a company have an equitable and legal duty to answer to a company under Receivership for the conduct of its affairs as well as to keep or cause full accounts. That in light of the foregoing, the Plaintiff has the power to summon the production of the aforesaid documents sought for discovery and is under a duty to assist the court in the facilitation of the overriding objective enshrined under sections 1A and 3A of the *Civil Procedure Act*.
14. The Defendants state that had the Plaintiff been keen on conducting a fair, balanced and transparent process it would have endeavoured to procure the necessary documents from the Receiver of the Plaintiff. The Defendants lament that they have been placed at a disadvantage in these proceedings by being expected to defend themselves without the benefit of relevant information and documents and that in keeping with the principle of equality of arms, it is only right that the audited and financial statements for the year 2015 which are sought for production under prayer 6 should be placed at their disposal.
15. Based on the foregoing, the Defendants assert that they stand to suffer substantial irreparable loss unless the Court orders release of the documents requested which the Plaintiff has blatantly and without any justification, refused to produce.
16. The Defendants urge that it is the Plaintiff who has instituted the case against the them, and naturally, it is the Plaintiff who bears the burden of proof to prove its claim against the Defendants and that the Plaintiff's failure to produce the documents serves to show that the suit against the Defendants has been brought in bad faith and that the suit is defective and should be dismissed. That this is an affront to the Defendants' right to access to information held by another person or party, and a breach of their right to a fair trial.
17. The Defendants present that the Court has discretion to order the Plaintiff to produce the documents as requested in the application and that the Defendants are well within their rights to seek the documents from the Plaintiff. They reiterate that the Plaintiff will not suffer any prejudice or hardships if the documents being sought are produced but the Defendants on the other hand, will suffer injustice if the documents they seek are not produced. For these reasons, they reiterate that it is only fair and just that the application be allowed as prayed.

Analysis and Determination

18. The substance of the Defendants' application is for discovery of certain documents which it contends are in the power and possession of the Plaintiff. The court's power to issue orders of discovery and the like is provided for under section 22(a) of the *Civil Procedure Act* as follows:

Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—



- a. make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

19. The aforementioned provision grants the court wide discretionary powers in an application for discovery, inspection and production of documents. In *Concord Insurance Co. Ltd v NIC Bank Ltd* [2013] eKLR the court outlined the general principles governing discovery as follows:

“According to *Black’s Law Dictionary*, 7th Edition, discovery is defined as;

“The disclosure by the defendant of facts, titles, documents, or other things which are in his exclusive knowledge or possession, and which are necessary to the party seeking the discovery as a part of a cause or action pending or to be brought in another court, or as evidence of his rights or title in such proceeding”. (Underlining mine).

It follows that in an application for discovery, a party has to ensure that the documents sought are “necessary” to the cause of action before or pending trial before the Court. It has to be a disclosure of relevant facts to the matters in issue. According to *Halsbury’s Laws of England*, Volume 13 para 1, the learned authors detail;

“The function of the discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to see before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation.”

5. Discovery is therefore limited solely to the matter in contention. The Court, in exercise of its discretion to issue such orders as to discovery, will be guided by the relevance of the documents that the applicant seeks, in relation to the pleadings. The authors in *Halsbury’s* (*supra*) at para 38 write:

“Relevance must be tested by the pleadings and particulars and when particulars have been served which limit a particular issue then discovery on that issue is limited to the matter raised in the particulars.”

20. In their prayers that I have reproduced above, the Defendants have sought various statements of accounts, audited accounts and financial statements and; supervisory, regulatory and inspection reports from the Central Bank of Kenya. The Plaintiff has annexed the account opening forms and signing mandate for the accounts listed in Prayer No.2 of the application as “hhh” - Primecatch (exports) Limited, “mmm” - Value Pak Foods Limited , “nnn” - From Eden Limited And “xxx” - Marmo E Granito Mines (t) Limited. It stated that it did not have the custody of the account opening forms and signing mandates of other listed accounts whereas others were never opened with the Plaintiff. Since the Defendants do not dispute or challenge the Plaintiff’s production of the aforementioned documents and that it does not have custody of the said account opening forms and signing mandates and that some of the said accounts were never opened, it follows that Prayer No. 2 is partly spent and cannot be granted.

21. In Prayer 3, the defendants have also sought for the plaintiff to produce the statements of accounts and signing mandates for the accounts listed therein. As has been stated above, the court is required



- to test the relevance of the documents sought by marrying them to the pleadings and issues at hand. In this regard, the defendants submit that they are being accused of creating a fictitious account, the “Hanscombe Account” to conceal fraudulent transactions but that the Statements of Account regarding the Hanscombe Account, however show various transactions relating to other accounts held by other customers of the Plaintiff and that the Defendants cannot be sued for transactions that were done through the Hanscombe Account to other accounts not belonging to the Defendants. That it is therefore important for the Plaintiff to produce the statements of accounts and signing mandates for the accounts listed in Prayer 3 of the application.
22. The Plaintiff declined to produce these statements of account for the reason that they contain third party information. Indeed, no purpose will be served if information regarding third parties, who have no interest in this suit, are produced by the Plaintiff. If at all the information in the statements in the Hanscombe Account do not reveal any wrongdoing on the Defendants’ part this will be the end of the matter and the court would rule as such. The Court does not require third party information to make such a determination as this suit is limited to the material before it and the Plaintiff will bear the burden of proving its case.
23. I also hold and accept that ordering the disclosure of information of accounts belonging to third parties without demonstrating *prima facie* grounds of wrongdoing in relation to the defendants, would be a violation of their rights to privacy and a breach of the plaintiff’s duty to not divulge information about its customers to third parties (see *Charles Onyango Anguka & Cleophas Obonyo t/a Jopiju Electrical & General Works v Equity Bank Limited; Elisha Ochieng Ombere t/a Jupiju Electrical Services Contractor (Third Party)* ML HCCC No. 578 of 2009 [2020] eKLR). Prayer 3 is therefore dismissed.
24. With regard to Prayer No. 4, the Plaintiff annexed statements of various accounts save for the accounts related to Fish Kenya Limited, Victorian Delight Limited, Aqualite Limited, Nasir Haiderali Jessa, Firoz Jessa, Salim Jessa, Irfan Shamshadin Jessa and Nashiv Haiderali Jessa. It averred that these accounts were never opened with the Plaintiff. The defendants do not deny this averment and as such, Prayer No. 4 is thus spent.
25. In Prayer No.5, the defendants seek the disclosure and production of statements of account of the Plaintiff’s Nostro Account number xxx with CitiBank N.A New York from January 2002 to November 30, 2015. The defendants submit that these statements would assist the Court to come to a just conclusion when determining the alleged fraudulent transactions said to have been perpetrated by the 1st defendant through its USD Account, as pleaded by the Plaintiff in its Plaint. The Plaintiff declines to produce these statements by stating that they contain confidential information and it submits that the defendants do not set out succinctly, or at all, what it is about the said account that relates to their defence, how it relates to them and/or their accounts held with the plaintiff and that neither have they set out how its absence is prejudicial to them. As has been admitted by the defendants themselves, one of the subjects for determination is the transactions that went about in the 1st Defendant’s USD Account. The transactions in the plaintiff’s Nostro account do not fall for determination herein and the defendants have not alleged any *prima facie* wrongdoing to enable the court make a disclosure or production order. Even without information on the Plaintiff’s Nostro account, the court can still make a determination on whether there were fraudulent dealings with the 1st Defendant’s USD account, based on the material that has been placed before the court by the Plaintiff. Prayer 5 therefore fails.
26. In respect of Prayer 6, the Defendants sought audited accounts and financial statements for the year 2002 to 2015 all inclusive. The Plaintiff produced statements for the years 2002 to 2014 and stated that the one for 2015 could not be produced since the Plaintiff was undergoing receivership at that time. However, the defendants insist that this information can still be sought and obtained by the Plaintiff



from the Receiver. With this averment, the defendants admit that the Plaintiff is not in possession of the audited accounts and financial statements for the year 2015. Whether this statement is available with the plaintiff's receiver is a question for the receiver and not the plaintiff. What is clear is that the plaintiff cannot be compelled to produce a document it does not have (see *Rafiki Microfinance Bank Ltd v Zenith Pharmaceuticals Ltd* ML Misc. Civil Application No. 607 of 2014 [2016] eKLR). Prayer No. 6 also fails.

27. The same goes for Prayer No.7 that seeks the Central Bank of Kenya's Supervision, Regulatory and Inspection reports for the Plaintiff from 2002 to 2016 all inclusive. The Plaintiff submits that it does not have custody of this document which is prepared by the CBK and is a completely separate and independent entity from the Plaintiff. I therefore agree that the Plaintiff cannot be compelled to produce a document that is not in its custody or possession (see *Imperial Bank Kenya Limited (Under Receivership) v Janco Investments Limited & 10 others* ML HCCC No. 523 of 2015 [2019] eKLR)

Disposition

28. For the reasons that I have set out above, I dismiss the defendants' application dated July 28, 2021. The defendants shall bear the costs of this application.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF OCTOBER 2023.

D. S. MAJANJA

JUDGE

