REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(Coram: A.C. Mrima, J.)

CONSTITUTIONAL PETITION NO. 101 OF 2020

ROBERT URI DABALY JIMMA.....PETITIONER

-VERSUS-

1. KENYA SCHOOL OF LAW

2. KENYA NATIONAL QUALIFICATIONS AUTHORITY.....RESPONDENTS

RULING NO. 1

Introduction:

1. By a Notice of Motion dated 17th March, 2021, the 2nd Respondent herein, Kenya National Qualifications Authority (hereinafter referred to as '***the Applicant'*** or '***the 2nd Respondent'***), seeks several reliefs pursuant to the judgment of this Court rendered on 25th February, 2021.

2. The application is supported by the 1st Respondent and is vehemently opposed by the Petitioner.

The Parties' positions and submissions:

3. The application seeks the following orders: -

> *1. THAT the instant application be certified as urgent, its service be dispensed with in the first instance and the same be heard exparte in the first instance*
>
> *2. THAT pending the hearing and determination of this application, there be a temporary stay of execution of the judgment and decree of this Honourable Court delivered on 25/2/2021.*
>
> *3. THAT pending the hearing and determination of this 24 Respondent's intended Appeal, there be a temporary stay of execution of the judgment and decree of this Honourable Court delivered on 25/2/2021.*
>
> *4. THAT the Notice of Appeal filed on 16/3/2021 be deemed to be properly filed.*
>
> *5. THAT in the alternative, leave be granted to the 2nd Respondent to file and serve its Notice of Appeal and Record of Appeal out of time.*
>
> *6. The costs of this Application be provided for.*
>
> *7. Any other and further relief that this honourable court may deem fit and just to grant in the circumstances.*

4. The application is supported by the Affidavit sworn by *Dr. Juma Mukhwana* on 17th March, 2021, written submissions and a List of Authorities.

5. The Applicant was aggrieved by the judgment of the Court in this matter. It filed a Notice of Appeal and also wrote to the Deputy Registrar of this Honourable Court seeking certified copies of typed proceedings, a certified copy of the judgment and a copy of the Decree.

6. The 2nd Respondent posits that it was supposed to have filed its Notice of Appeal within 14 days from the date when the judgment of the Court was delivered, that is, on or before 11th March, 2021, but instead the Notice of Appeal was filed and served on 16th March, 2021.

7. The 2nd Respondent holds that the Notice of Appeal was filed a paltry 5 days out of time. As such, the delay in filing was not inordinate, neither was it intentional nor contumelious. On the contrary, the delay in filing the Notice of Appeal was inadvertent, explainable and excusable.

8. The reason for filing the Notice of Appeal out of time was given to be that the 2nd Respondent was moving its physical location from Uchumi House in Nairobi's Central Business District to Westlands. It thus overlooked to mail the instruction letter instructing its Advocates to appeal against the judgment of the Court on time.

9. The Applicant submitted that it ought to be granted leave to appeal out of time as it has satisfied the test for the grant of such leave as discussed by the Court of Appeal in *Kenya Commercial Bank Limited -vs- Kenya Planters Co-operative Union 2010 eKLR*.

10. On whether a stay of execution of the judgement ought to issue, the Applicant submitted that for such an application to succeed an Applicant has to satisfy the following test: -

a. The filed appeal is arguable;

b. The Applicant is likely to suffer substantial loss unless the order is made. Differently put, they must demonstrate that the appeal will be rendered nugatory if the stay is not granted;

c. The application was made without unreasonable delay; and

d. They have given or are willing to give such security as the Court may order for the due performance of the decree which may ultimately be binding on it.

11. Referring to the draft Memorandum of Appeal marked as annexture DJM6, the Applicant argues that the appeal raises arguable points which cannot be described as being frivolous. It contends that an arguable appeal needs only raise a single bona-fide point worthy of consideration by the appellate Court.

12. The 2nd Respondent contends that the Petitioner has commenced the process of execution of the judgment. To that end, the Petitioner has extracted the decree and has by a letter dated 11th March, 2021 wrote to the 1st Respondent lodging his application for admission to the 1st Respondent for the academic year 2021. The Applicant, therefore, decries that it will suffer substantial loss unless the order of stay is made in that its appeal will be rendered nugatory and a mere academic exercise if the stay order is not granted. This is because in the absence of stay orders, there is an eminent risk of the Petitioner joining the 1st Respondent yet he is not qualified.

13. It is submitted that it is thus prudent to stay the judgment awaiting the outcome of the appeal. The Applicant further submitted that the Petitioner will not suffer any prejudice whatsoever if the 2nd Respondent is granted leave to appeal out of time and a stay as well since the Petitioner can always join the 1st Respondent if he is successful at the Court of Appeal.

14. It is further submitted that the application has been made without unreasonable delay. On security, the Applicant submits that the orders made as against the 2nd Respondent were merely declaratory orders and an order of Certiorari hence the 2nd Respondent cannot be compelled to furnish security for the due performance of the decree which may ultimately be binding on it. It is asserted that furnishing of security for costs is appropriate majorly for money decrees. The Applicant argues that it will be an irreversible error if the Petitioner is allowed to join the 1st Respondent and the Court of Appeal finds that he was not qualified. The Court is urged to allow the 2nd Respondent's Notice of Motion as prayed.

15. The 1st Respondent supports the application. It filed a Replying Affidavit sworn by one *Fredrick Muhia,* the Academic Services Manager, on 7th April, 2021.

16. The 1st Respondent deponed that it was aggrieved by the decision delivered on 25th February 2021 and has since filed a Notice of Appeal within the stipulated time. It also formally requested the Deputy Registrar to supply it with typed proceedings and certified copy of the order/decree.

17. On the aspect of substantial loss, the 1st Respondent deponed that since the Petitioner is at liberty to execute for admission to the Advocates Training Programme, there is imminent danger of execution against the Respondents.

18. The 1st Respondent further deponed that it was in the process of preparing an application for orders of stay before the Court of Appeal when the Applicant served its application. As a result, the 1st Respondent abandoned the intended application to the Court of Appeal and joined the Applicant in this application in the interest of expediency and efficient use of the Courts' time and resources.

19. It is further deponed that the 1st Respondent is apprehensive that any execution may render the appeal nugatory as it will have been

overtaken by events and that the appeal raises serious questions of law and fact for the appellate Court's consideration and determination. The 1st Respondent believes that the intended appeal has high chances of success as set out in the draft Memorandum of Appeal.

20. It is also deponed that the 1st Respondent is apprehensive that unless the execution process is stayed the Petitioner might execute the decree and the 1st Respondent, a public funded entity, with a duty to prepared qualified candidate to take the bar examination and be prudent and responsible in its duty to uphold standards of the ATP, stands to suffer substantial loss as it may be forced to admit an unqualified student to the Advocates Training Programme which would cause irreparable harm to the legal profession and would not be able to reverse the harm in the event of a successful appeal. It further pleads that the grant of orders for stay is in the public interest to protect the quality, standards, and professionalism of the legal profession in Kenya.

21. In the end, the 1st Respondent wholly supported the application.

22. The application is opposed by the Petitioner. The Petitioner filed a Replying Affidavit sworn by one *Dondo Joseph*, Counsel for the Petitioner, on 8th April, 2021.

23. The Petitioner describes the application as unfounded and a non-starter as there are no orders on execution issued against the 2nd Respondent, hence, there is therefore nothing to stay.

24. The Petitioner deponed that judgment was delivered by this Honourable Court on 25th February, 2021, the Petitioner was found to be qualified to join the 1st Respondent's Advocates Training Programme. As a consequence, an order of mandamus was issued directing the 1st Respondent to, without delay whatsoever, consider the Petitioner's application to join the School in compliance with the judgment.

25. The above notwithstanding, the Respondents have been found to have infringed the Petitioner's rights and fundamental freedoms guaranteed under Articles 27, 28, 43 and 47 of the Constitution.

26. The Petitioner sees the instant application as yet another attempt by the 2nd Respondent to deny the Petitioner his rights as envisaged by the Constitution. The 2nd Respondent, in essence, is trying to stay execution of a constitutional right.

27. It is deponed that there is no sufficient cause to grant an order for stay of execution as no orders pertaining to execution were issued against the 2nd Respondent.

28. According to the Petitioner, the Respondents do not stand to suffer any loss whatsoever if stay of execution of the decree is not granted as no such evidence of loss has been produced. The Respondents have not discharged their duty to prove the nature of loss that they are likely to suffer should an order of stay be denied.

29. There is an averment that on the contrary, it is the Petitioner who stands to suffer substantial and irreparable loss as it has been two years since the Petitioner graduated yet he has not been able to get admission to the 1st Respondent's programme due to the Respondents blatant infringement of his rights.

30. The Petitioner deponed that he has invested a substantial amount of money in his education to this point and it is rather frustrating that the Respondents are hellbent in limiting his progression in life by seeking a stay of execution of constitutional rights. It is, therefore, very evident that should this Honourable Court stay execution of the Decree, the only party that stands to suffer substantial loss is the Petitioner.

31. The Petitioner also deponed that on a balanced scale, an order for stay of execution weighed against the right of the Petitioner to enjoy the fruits of the judgment, tilts the scale in favour of the Petitioner hence there is no just cause for depriving the Petitioner his rights.

32. The 1st Respondent is also guilty of not furnished this Court with security for costs for an order of stay of execution to issue, it is further deponed.

33. The Petitioner argued that if the orders of stay were to be granted, this Honourable Court will be leaving the Petitioner at the whims of the Respondents prosecution of their intended appeals whose duration for determination is not known. In any event, and as has been admitted by the 2nd Respondent, the Notice of Appeal has been made outside the stipulated period of time and has only come as an afterthought by dint of the Petitioner applying for admission to the 1st Respondent. The 2nd Respondent's Notice of Appeal is thus not properly on record and ought to be struck out.

34. The Petitioner is apprehensive that the Respondents are engaging this Honourable Court in a dot and ditto exercise. The Court, in giving effect to the overriding objective, to wit; 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, ought to dismiss this instant application with costs to the Petitioner.

Issues for Determination:

35. From the record, I discern the following issues for determination: -

(i) Whether leave be granted to deem the Notice of Appeal dated 16th March, 2021 as properly and timeously filed.

(ii) Whether the judgment of this Court be stayed pending the determination of the intended appeal.

(iii) Disposition.

36. I will deal with the above issues in seriatim.

(a) Whether leave be granted to deem the Notice of Appeal dated 16th March, 2021 as properly and timeously filed:

37. There has been a legal debate on whether the High Court has the jurisdiction to extend time to lodge a Notice of Appeal out of time.

38. Those in support of the position that the High Court lacks that jurisdiction rely on **Rule 4** of the **Court of Appeal Rules** and some decisions. Rule 4 provides as follows: -

> ***The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or a superior count, for the doing of any act authorized or required by the Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.***

39. In one of its decisions, the High Court in *Nakuru Miscellaneous Civil Application No. 172 of 2004 Simon Towett Maritim v Jotham Muiruri Kibaru (2004) eKLR upheld the above decision and declined jurisdiction to extend time.*

40. The proponents of the position that the High Court is seized of the requisite jurisdiction find refuge in **Section 7** of the **Appellate Jurisdiction Act**, Cap. 9 of the Laws of Kenya. The provision states that: -

> ***Power of High Court to extend time***
>
> ***The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:***
>
> ***Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.***

41. This legal controversy seems to have been settled, at least by the Court of Appeal. In ***Kenya Airports Authority & Another vs Timothy Nduvi Mutungi,*** *Court of Appeal, Civil Application No. NAI 165 of 2013 (UR 113/2013) (2014) eKLR***, an application for extension of time to lodge a Notice of Appeal was filed in the High Court and the High Court declined jurisdiction. The party filed a like application before the Court of Appeal and Githinji JA, had the following to say on the issue: -**

> ***The application of 10th December, 2012*** *[the application for extension of time to lodge Notice of Appeal out of time], was properly made in the High Court as High Court has power to extend time for giving notice of intention to appeal pursuant to Rule 7 of the Court of Appeal Rules (sic) [clearly meant Section 7 of the Appellate Jurisdiction Act] which provides: - [Section 7 of the Appellate Jurisdiction Act set down] … Since the application for extension of time for lodging a notice of appeal made in the High Court was competent and which the High Court should have determined…*

42. There is also **Rule 41** of the Court of Appeal Rules which shades some light on this issue. The Rule provides as follows: -

> *41. Application to superior Court*
>
> *The Court may in its discretion entertain an application for stay of execution, injunction, stay of further proceedings or extension of time for the doing of any act authorized or required by these Rules, notwithstanding the fact that no application has been made in the first instance to the superior court.*

43. The import of Rule 41 is that an application for stay of execution, injunction, stay of further proceedings or extension of time may be competently filed and determined before a superior Court.

44. It can, therefore, be certainly stated that the High Court (and any other superior Court) has jurisdiction to deal with applications for stay of execution, injunction, stay of further proceedings or extension of time. The application under consideration is, hence, rightly before this Court.

45. I will now deal with the merits of the application.

46. The principles which guide Courts in applications for extension of time were discussed in great length by the Court of Appeal in ***Stanley Kahoro Mwangi & 2 others v. Kanyamwi Trading Company Limited*** **(2015) eKLR.** Although the discussion centered on Rule 4 of the Court of Appeal Rules [on extension of time], the principles enunciated therein apply in equal measure to like applications before this Court. The Court of Appeal expressed itself as follows**: -**

> ***The principles guiding the court on an application for extension of time premised upon*** *Rule 4 of the Rules* ***are well settled and there are several authorities on it. The principles are to the effect that the powers of the court in deciding such an application are discretionary and unfettered. It is, therefore, upon an applicant under this rule to explain to the satisfaction of the Court that he is entitled to the discretion being exercised in his favour.***

The parameters for the exercise of such discretion are clear. *See MUTISO V MWANGI, CIVIL APPLN NO. NAI 255 OF 1997 (UR), MWANGI V KENYA AIRWAYS LTD, {2003} KLR 486 and FAKIR MOHAMMED V JOSEPH MUGAMBI & 2 OTHERS, CIVIL APPLN NO. NAI 332 OF 2004 (unreported) where* ***this court rendered itself thus:***

The exercise of this Court's discretion under Rule 4 *has followed a well-beaten path since the structure of "sufficient reason" was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance- are all relevant but not exhaustive factors.*

The matters to be considered are not exhaustive and each case may very well raise matters that are not in other cases for consideration. In *MWANGI V KENYA AIRWAYS LTD, [supra],* ***the court having set out matters which a single judge should take into account when exercising the discretion under*** *Rule 4****, held:***

The list of factors a court would take into account in deciding whether or not to grant an extension of time is not exhaustive. Rule 4 of the Court of Appeal Rules (Cap. 9 sub-leg) gives the single judge unfettered discretion and so long as the discretion is exercised judicially, a judge would be perfectly entitled to consider any other factor outside those listed so long as the factor is relevant to the issue being considered. *……*

It is upon the applicant to place sufficient material before the court which would explain why there was delay in filing the Memorandum and Record of Appeal. The Court has to balance the competing interests of the applicant with those of the respondent. This was well stated in the case *M/S PORTREITZ MATERNITY V JAMES KARANGA KABIA, CIVIL APPEAL NO. 63 OF 1997* ***where the Court stated:***

That right of appeal must be balanced against an equally weighty right, that of the Plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the Plaintiff of that right.

A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercised. There have been numerous judicial pronouncements on this precise point. Aganyanya, JA in *MONICA MALEL & ANOR V R, ELDORET CIVIL APPLN NO. NAI 246 OF 2008****, stated:***

When a reason is proposed to show why there was a delay in filing an appeal it must be specific and not based on guess work as counsel for the applicants appears to show … the applicants are not quite sure of why the delay in filing the notice of appeal within the prescribed period occurred, which amounts to saying that no valid reason has been offered for such delay.

It should not be supposed that the discretion is entirely unfettered as *Lord Romilly MR* ***explained in HAYWOOD V COPE, (1858) 25 BEAV 140:***

… the discretion of the Court must be exercised according to fixed and settled rules; you cannot exercise a discretion by merely considering what, as between the parties, would be fair to be done; what one person may consider fair, another person may consider very unfair; you must have some settled rule and principle upon which to determine how that discretion is to be exercised. So the person who seeks an equitable remedy must be prepared to act equitably, and the court may oblige him to do so.

47. Returning to the case at hand, the delay in timeously lodging the Notice of Appeal was a period of 5 days. The Applicant attempted an explanation for the delay. It was as a result of its physical relocation of the offices.

48. The Petitioner did not oppose this limb of the application. That notwithstanding, this Court is duty bound to ascertain whether the application satisfies the criteria discussed above. In the event the application falls short of the expected bar, that application must fail.

49. Having considered the reason for the delay among several other factors as directed in the ***Stanley Kahoro Mwangi & 2 others v. Kanyamwi Trading Company Limited*** **case (supra), I am satisfied that the delay is well explained and the failure to comply with the set timelines is excusable in the circumstances of this matter.**

50. In the end, the Notice of Appeal dated on 16th March, 2021 is hereby deemed to be properly on record.

(b) Whether the judgment of this Court be stayed pending the determination of the intended appeal:

51. As stated, the application is supported by the 1st Respondent and diametrically opposed by the Petitioner. Although the 1st Respondent deponed that it was intent on filing a like application before the Court of Appeal, but for the current application, the obtaining position is that the 1st Respondent has not filed an application to stay the execution before this Court or before any other Court. In other words, the 1st Respondent is riding on the back of the 2nd Respondent's application, so to say.

52. Be that as it may, the factors for consideration in stay applications are provided for under **Order 42 Rule 6** of the Civil Procedure Rules, 2010. The Rule states as follows: -

Stay in case of appeal.

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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 sub rule (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.

53. There is no doubt that the Applicant has lodged a Notice of Appeal.

54. Will the 2nd Respondent, therefore, suffer any substantial loss if the execution is not stayed? The term *'substantial loss'* has been discussed in various jurisdictions. In ***Sewankambo Dickson Vs. Ziwa Abby HCT-00-CC MA 0178 of 2005*** it was held that: -

. . .*substantial loss is a qualitative concept. It refers to any loss, great or small, that is real worth or value, as distinguished from a loss without value or loss that is merely nominal...insistence on a policy or practice that mandates security, for the entire decretal amount is likely to stifle possible appeals –especially in a Commercial Court, such as ours, where the underlying transactions typically tend to lead to colossal decretal amounts.*

55. Closer home, the Court of Appeal in ***Kenya Shell Limited vs. Kibiru*** [1986] KLR 410 had an occasion to deal with the issue, *albeit* in respect to a monetary decree. **Platt, Ag. JA** (as he then was) at page 416 expressed himself as follows: -

It is usually a good rule to see if Order XLI Rule 4 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.

Gichuhi, Ag. JA (as he then was) at page 417 stated thus: -

It is not sufficient by merely stating that the sum of Shs 20,380.00 is a lot of money and the applicant would suffer loss if the money is paid. What sort of loss would this be? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgement. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement." (See also the holding by Odunga J. in *Socfinac Company Limited V Nelphat Kimotho Muturi*, supra.)

56. In the High Court, **Musinga, J** (as he then was) in ***Daniel Chebutul Rotich & 2 Others v Emirates Airlines*** **Civil Case No. 368 of 2001** held as follows: -

...'substantial loss' is a relative term and more often than not can be assessed by the totality of the consequences which an applicant is likely to suffer if stay of execution is not granted and that applicant is therefore forced to pay the decretal sum.

57. Still in the High Court, in ***James Wangalwa & Another vs. Agnes Naliaka Cheseto*** [2012] eKLR the Court held that: -

No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. 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.

58. In sum, substantial loss depends on the facts of a case. A Court ought to consider the totality of all facts and weigh the rival positions. On one hand, there is always the successful party whose rights have been vindicated and who ought to enjoy the fruits of the decision. On the other hand, there is the other party who is aggrieved by the decision and seeks to exercise his/her/its right to appeal. It is on the basis of the consideration of that balance that a Court is to ascertain whether substantial loss will arise. Needless to say, the loss must be substantial or real as opposed to an illusory one.

59. In the case at hand, this Court rendered the following orders in its judgment delivered on 25th February, 2021: -

(a) This Court has jurisdiction over the Petition subject of this judgment.

(b) A declaration hereby issue that the Petitioner's rights and fundamental freedoms guaranteed under Articles 27, 28, 43 and 47 of the Constitution and the law were jointly and variously infringed by the Respondents.

(c) An order of Certiorari hereby issues to remove into this Court and quash the decisions contained in the 1st Respondent's letter dated 13th January, 2020 and the 2nd Respondent's letter dated 8th October, 2019.

(d) An order of Mandamus hereby issues directing the 1st Respondent herein, the Kenya School of Law, to, without any delay whatsoever, consider the Petitioner's application to join the School and in compliance with this judgment.

(e) The 1st Respondent shall bear the costs of the Petition.

60. From the judgment, it is clear that the orders of *Mandamus* and costs were directed upon the 1st Respondent and, therefore, do not concern the Applicant. The orders touching on the Applicant are the declarations and a *certiorari.*

61. The 2nd Respondent contends that it will suffer loss as the Petitioner is likely to be admitted into the Advocates Training Programme whereas he is unqualified.

62. This Court directed the 1st Respondent to consider the Petitioner's application to join the School. The Court did not order the 1st Respondent to admit the Petitioner into the programme. There is no evidence that the 1st Respondent has so far considered the Petitioner's application and allowed it. The 2nd Respondent's application is tantamount to putting the cart before the horse. The application is not based on verified facts, but is speculative and at its best, premature.

63. This Court is not satisfied that the Applicant has demonstrated any loss at all. The prayer fails.

64. Given that there is no loss which the Applicant stands to suffer, the application falls short of the requirements of Order 42 Rule 6 of the Civil Procedure Rules, 2010 and is for rejection.

(c) <u>Disposition:</u>

65. Based on the foregoing discussion, the following final orders of this Court hereby issue: -

(a) The Notice of Appeal dated on 16th March, 2021 filed by the 2nd Respondent herein, Kenya National Qualifications Authority, is hereby deemed to be properly on record.

(b) The prayer for a stay of execution of the judgment is hereby dismissed.

(c) As the Notice of Motion dated 17th March, 2021 has partly succeeded, each party shall bear its own costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2021.

A. C. MRIMA

<u>JUDGE</u>

<u>Ruling No. 1 virtually delivered in the presence of:</u>

Mr. Dondo, Counsel for the Petitioner.

Miss Pauline Mbusio, Counsel for the 1st Respondent.

Mr. Mukua, Counsel for the 2nd Respondent/Applicant.

Elizabeth Wanjohi – Court Assistant.