



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 33 OF 2020

(An appeal arising from the decision and order of the Hon. H. Wandere, Senior Principal Magistrate (SPM), in Kakamega CMCCC No. 100 of 2019, of 1st July 2020)

REV. JOSEPH OTONDO.....APPELLANT

VERSUS

GEDEON KIVISI AND 3 OTHERSRESPONDENTS

AND

REV. PATRICK LIHANDA AND 4 OTHERS.....INTERESTED PARTIES

RULING

1. The application for determination is the Motion, dated 3rd July 2020, where the applicant seeks, principally, stays of the order of 1st July 2020 and of the proceedings in Kakamega CMCCC No. 100 of 2019, pending the hearing and determination of the appeal or until further orders.

2. The grounds upon which the Motion is premised are on the face of the application. They may be summarized as stating:

(a) That it was irregular for a Senior Principal Magistrate to reverse orders made by a Chief Magistrate;

(b) That the Senior Principal Magistrate lacked jurisdiction to reverse the orders of a fellow magistrate, and more so those made by a Chief Magistrate;

(c) That there was abuse of office by the Senior Principal Magistrate;

(d) That the said orders were irregular as they were made at the *ex parte* stage, at a time when the matter already had a date for *inter partes* hearing;

(e) That the impugned orders had the effect of the reinstating orders that had been made earlier, by the same court, on 22nd June 2020, which had deployed the police to various church premises, which was, to the appellant, prejudicial to him and other church members;

(f) That the appellant feared that the Senior Principal Magistrate may make similar orders on 14th July 2020, when the application dated 24th June 2020 was due for hearing, which application had since been rendered useless by the orders made by the Senior Principal Magistrate;

(g) That the said orders would prejudice reconciliation efforts which are the subject of proceedings in Kakamega HCCPet No. 6 of 2018; and

(i) That the suit before the trial court in Kakamega CMCCC No. 100 of 2018 was being maintained parallel to the proceedings in Kakamega HCCPet No. 6 of 2018.

3. The factual background to the application is given in the affidavit that the appellant, Rev. Joseph Otondo, which he swore on 3rd July 2020. He avers that he had brought an application in Kakamega HCCPet No. 6 of 2018, seeking referral of the dispute to the church's internal dispute mechanism for resolution, and the suit in Kakamega CMCCC No. 100 of 2019 was among the cases that he intended to have

referred under that application. He avers that the respondents had filed an application in Kakamega CMCCC No. 100 of 2019, dated 22nd June 2020, through which they secured orders, on 22nd June 2020, which commanded the police to implement certain orders, and which they were abusing by having the interested parties evicted from church premises. He argues that historically such orders have been used to interfere with access to places of worship by church members. He avers that when he learnt of the making of the said orders, he filed an application, dated 22nd June 2020 seeking stay and setting aside of the orders. The matter was placed before the Chief Magistrate, Hon. B. Ochieng, who granted temporary orders and minuted the application for inter parties hearing on 14th July 2020, before the trial magistrate, Hon. H. Wandere, Senior Principal Magistrate. He avers further that he was shocked that after he had just filed his application, the respondents materialized from nowhere with their advocate, having filed a reply to his application and addressed the court in opposition to the application. He complains that the respondents appear to have set up a base at the court corridors, and decries the practice as an abuse of court process. He states that he has seen the order made on 1st July 2020 by Hon Wandere, which had set aside the order by Hon. Ochieng *ex parte*, on the basis of an application that the respondents had filed, dated 30th June 2020, and directed that the said application be heard on 14th July 2020. He states that his advocates had advised him that the purport of the orders of 1st July 2020 was to reverse the earlier orders by Hon. Ochieng. He accuses the Senior Principal Magistrate of assuming appellate jurisdiction over orders that had been made by the Chief Magistrate. He submits that his appeal seeks interpretation of the legality of the *ex parte* hearing. He has attached to his affidavit a copy of the Motion, dated 2nd June 2020, filed in Kakamega HCCPet. No. 6 of 2018, which is due for determination in a ruling to be delivered on 17th July 2020.

4. There is a response to the application, dated 3rd July, 2020, taking the form of a replying affidavit, sworn on some unknown date in July 2020, by Gedeon Kivisi, and filed herein on 6th July 2020. The deponent has detailed the various orders and rulings made and delivered by diverse courts with respect to suits on the subject matter. He avers that the respondents have never attempted to bar anyone from accessing church buildings for the purpose of worship. He states that the suit in Kakamega CMCCC No. 100 of 2019 was filed when the 1st interested party sought to exercise powers that he had already been stripped by the court. He challenges the status of the appellant, arguing that his purported position as District Overseer was not created legally, and had been conferred upon him at a time when the court had barred the first interested party from exercising any powers or authority. He has attached to his affidavit a bundle of the applications filed, and rulings delivered and orders made in the various matters that he refers to in the body of his affidavit.

5. There is yet another reply to the application, by one Elkana Salamba, who swore an affidavit on 6th July 2020. He claims to represent the 5th interested party, and accuses the appellant of being used by the first interested party to assist him disobey court orders. He states that the court had ordered a *status quo* on filing of further applications. He details what he characterizes as acts of thuggery by the first interested party, and of the orders that he obtained to stop them. He accuses the first interested party of disobeying court orders. He argues that the orders made by the Senior Principal Magistrate were only meant for the purpose of maintenance of law and order. He further states that the church's tribunal was dismantled by the first interested party in 2018, while he was still in office, leaving the church without an internal dispute machinery. He has attached to his affidavit the several orders made by and rulings delivered in the various suits that have been filed across the country on the matter of the church.

6. The respondents filed a notice of preliminary objection on 6th July 2020, of even date, raising three points of law, namely, that the application offends section 75 and Order 43(3) of the Civil Procedure Act, Cap 21, Laws of Kenya, that the said application offends section 7 of the Civil Procedure Act, and that the applicant had no locus to institute the appeal as he was neither a party to the appeal nor to the suit at the trial court.

7. The Motion, dated 3rd July, 2020, was initially placed before me on 3rd July 2020, and I ordered that the same be served, and be mentioned on 6th July 2020 for directions. Come 6th July 2020, I directed that the Motion, and the preliminary objection, be canvassed by way of written submissions, to be filed, for highlighting on 9th July 2020. On 9th July 2020, it transpired that only the appellant had filed written submissions. I allocated the matter the 17th of July 2020 as the date I would deliver a ruling on the Motion and the preliminary objection. The 5th respondent filed its submissions on 14th July 2020.

8. The appellant submits that its application for stay of execution and proceedings satisfies the requirements for grant of the stay sought. It is submitted that the said orders are made at the discretion of the court, so long as there is a valid appeal filed and pending. On the preliminary objection, it is submitted that the appellant was entitled as a matter of right to appeal against the orders made by the Senior Principal Magistrate, since one of the orders vacated was that which had made him a party to the suit. Quoting Articles 50 and 159 of the Constitution, he submits that subjecting an aggrieved party to the discretion of the court as to whether to lodge an appeal or not violated the Constitution, adding that going that way would be elevating procedure and technicality over substance.

9. On his part, the 5th respondent argues that the appellant lacked standing to institute the appeal, since he was not a party to the proceedings before the trial court, and specifically the particular proceedings that gave rise to the appeal. The decisions in *AN (suing through the Next Friend and Representative One) BMB vs. JBM* [2019] eKLR and *Julian Adoyo Ongunga & another vs. Francis Kiberenge Bondeva* [2016] eKLR, are cited to support that contention. It is submitted that the main and substantive orders made in the matter were of 4th February 2020, and the appellant was not party to the proceedings that gave rise to them. It is further submitted that the matters raised in the application and appeal were *res judicata*, to the extent that another appeal arose from the same lower court matter, seeking similar orders, which was dismissed, and it was ordered that that appeal be heard together with Kakamega HCCPet. No. 6 of 2018. It is submitted that the respondents filed the application dated 22nd June 2020, to enforce the orders of 4th February 2020, which application was allowed by the court *ex parte*, within the jurisdiction of the court. It was after that that the appellant was introduced into the suit, *ex parte*, after he filed an application seeking review of orders and transfer of the suit to the High Court to be heard together with Kakamega HCCPet. No. 7 of 2020. The respondents then filed an application, dated 30th June 2020, seeking the setting aside of the orders of 25th June 2020, and the court, on 1st July 2020, set aside the said orders, confirming that the appellant was not a party to the lower court proceedings. He cites the decision in *Zephyr Holdings Limited vs. Mimosa Plantations Limited & Jeremiah Matagaro & others as interested parties*. He concludes that the appeal was filed without leave of court, that an appeal against an *ex parte* order was not available, that the proceedings were *res judicata* in view of orders made in Kakamega HCCA No. 7 of 2020, that the appellant was not a party to the suit at the trial court as leave had not been sought for the joinder of the appellant, that the appellant has not demonstrated the loss he would suffer should the orders not be granted, and that the

appellant did not have right of audience. It is further submitted that the appellant had not demonstrated that he was a proper party before the court, his appeal was arguable in law, he would suffer substantial loss and the appeal would be rendered nugatory.

10. I took the liberty of calling for the trial court record in order to appreciate the nature of the proceedings before that court. The file was availed, and I perused it. The suit in Kakamega CMCCC No. 100 of 2019 was initiated by the persons named in the appeal as respondents, against the persons named in the appeal as interested parties, seeking to have them restrained, by way of permanent injunction from holding meetings at certain places and from transferring the respondents from their current stations, and to restrain the interested parties from acting as the general superintendent and overseers of the church. There was also a prayer that the interested parties be declared unfit to hold offices within the church.

11. A Motion, dated 30th April 2019, was filed simultaneously with the plaint, seeking relief along the lines of the prayers made in the plaint. The Motion was placed before the court on 30th April 2019, and orders were made in terms of the prayers sought, that is to say restraining the interested parties from holding meetings in the assemblies cited in the application, and from interfering with or summoning the respondents pending determination of the matter. There was also an order granting the first three respondents' power to lead the assemblies inclined to them. Another Motion was filed in the cause, on 8th May 2019, dated 6th May 2019, by the interested parties, seeking that the orders of 30th April 2019 be set aside, and that the suit be struck out. It was directed, on 14th May 2019, that the applications dated 30th April 2019 and 6th May 2019 be disposed of simultaneously, and the interim orders made on 30th April 2019 were vacated. The applications were canvassed by way of written submissions, and eventually, the court ruled, on 4th February 2020, giving power to the first three respondents to lead the assemblies inclined to them, ordering an injunction to restrain the interested parties from interfering with the respondents, and a permanent injunction to restrain the interested parties from carrying out the duties of general superintendent and overseers of the church. There was also a declaration that the interested parties were unfit to hold office.

12. In response to the ruling of 4th February 2020, the interested parties filed a Motion, on 13th February 2020, of even date, seeking stay of execution of the ruling pending hearing and determination of the application and of the appeal in Kakamega HCCA No. 7 of 2020. The said application was withdrawn on 3rd March 2020, on grounds that the interested parties had filed a similar application before the High Court.

13. On 22nd June 2020, an application, of even date, was lodged at the registry, by the respondents, seeking police assistance, for the enforcement or implementation of the orders of 4th February 2020, which they accused the interested parties of disobeying. The application was placed before the court on 22nd June 2020, and the orders sought were granted *ex-parte*. On 24th June 2020, the interested parties filed a Motion, of even date, seeking the joinder of the appellant as a party to the suit, stay of execution of the orders made on 22nd June 2020, review or recall or vacation or setting aside of the said orders, and that the trial court file be forwarded to the High Court as ordered in HCCA No. 7 of 2020 to be heard together with Kakamega HCCPet. No. 6 of 2018, or, in the alternative, that the application dated 22nd June 2020 abide the decision in Kakamega HCCPet. No. 6 of 2018 due for delivery on 17th July 2020. That application was placed before the trial court on 25th June 2020, and the court made the appellant a party to the suit and stayed execution of the orders made on 22nd June 2020. The said orders were made *ex parte*.

14. Reacting to the orders of 25th June 2020, the respondents filed the application dated 30th June 2020, seeking review and setting aside of the orders of 22nd June 2020, and police supervision of implementation of the orders of 4th February 2020. The said application was placed before the trial court on 1st July 2020, and the trial court vacated the orders of 25th June 2020, to pave way for the hearing of the applications dated 22nd June 2020, 24th June 2020 and 30th June 2020. The orders were made *ex parte*, and had the effect of undoing the joinder of the appellant as a party to the suit and lifted the stay of execution order regarding the orders of 22nd June 2020. It was the making of the *ex parte* orders of 1st July 2020 that prompted the filing of the instant appeal.

15. Preliminary points of law have been raised to the Motion dated 3rd July 2020. I shall deal with them first, before I advert to the Motion itself.

16. The first point is that the Motion offended section 75 and Order 43(3) of the Civil Procedure Act, to the extent that the appeal was filed without leave being first sought.

17. Section 75 provides as follows:

“(1) An appeal shall lie as of right from the following orders, and shall lie from any other order with leave of the court making such order or of the court to which appeal would lie if leave were granted -

(a) an order superseding an arbitration where an award has not been completed within the period allowed by the court;

(b) an order on an award stated in the form of a special case;

(c) an order modifying or correcting an award;

(d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;

(e) an order filing or refusing to file an award in an arbitration without intervention of the court;

(f) an order under section 64;

(g) an order under any of the provisions of this Act imposing a fine or directing the arrest or detention in prison of any person except where the arrest or detention is in execution of a decree;

(h) any order made under rules from which an appeal is expressly allowed by rules.

(2) No appeal shall lie from any order passed in appeal under this section.”

18. The respondents’ preliminary objection refers to Order 43(3) of the Civil Procedure Act. There is of course no such thing, the respondents must have been referring to Order 43 Rule 1(3) or Order 43 Rule 3 of the Civil Procedure Rules, which state as follows:

“1 (1) ...

(2) ...

(3) An application for leave to appeal under section 75 of the Act shall in the first instance be made to the court making the order sought to be appealed from, either orally at the time when the order is made, or within fourteen days from the date of such order.

(4) ...

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3. Nothing in this Order shall apply to any adjudication which, as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.”

19. The order appealed from, of 1st July 2020, emanated from an application for review of orders that the court had made earlier. It set aside some of the orders and gave directions. The question is, would a party who is aggrieved by the said orders have right to appeal against the same without the necessity of obtaining leave of court? I have carefully and closely perused through the provisions of section 75, and it would appear that most of the paragraphs in section 75(1) refer to orders made with respect to arbitral awards. However, 75(1) (h) is broader, for it provides for an appeal as of right from any order made under rules from which an appeal is expressly allowed by rules. Order 43 rule 1(1) operationalizes section 75(1) (h), and appeals from orders and rules where leave is not required, which include orders relating to joinder of parties and review of orders. Order 43 Rule 1(2) states that any other order, not listed in Rule 1(1), would lie with leave of court. The said provisions say as follows:

“1(1) An appeal shall lie as of right from the following Orders and rules under the provisions of section 75(1) (h) of the Act –

(a) Order 1 (parties to suits);

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...

(k) ...

(l) ...

(m) ...

(n) ...

(o) ...

(p) ...

(q) ...

(r) ...

(s) ...

(t) ...

(u) ...

(v) ...

(w) ...

(x) Order 45, rule 3 (application for review);

(y) ...

(z) ...

(aa) ...

2. An appeal shall lie with leave of the court from any other order made under these Rules.”

20. The order appealed from, made on 1st July 2020, was made on the basis of the application, dated 24th June 2020, which sought review of the orders made on 22nd June 2020. It was not premised on Order 45, but the procedure for seeking review is provided for under Order 45. The order of 1st July 2020 was, no doubt, made in exercise of the review powers, and, therefore, an appeal lay against it as a matter of right. The orders of 25th June 2020, that were reviewed by the order of 1st July 2020, were made on the basis of the application dated 24th June 2020, which was premised on Order 1, which provided for joinder of parties. In exercise of the power under Order 1, the court had joined or added the appellant as a party to the suit. Orders made under Order 1 are appealable as a matter of right. It would appear therefore that the appeal herein lay as a matter of right, and it was, therefore, not necessary for the appellant to obtain leave to file it.

21. The other preliminary point raised is that the application offends section 7 of the Civil Procedure Act, which states the *res judicata* rule. Section 7 states as follows:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

22. If I understood the objection well, the respondents appear to argue that the issues raised in the instant application are the same issues that were before me in Kakamega HCCA No. 7 of 2020, which arose from orders made in Kakamega CMCCC No. 100 of 2019, which is the same suit where the orders the subject of the instant appeal were made.

23. The appeal, in Kakamega HCCA No. 7 of 2020, was initiated by the parties named as interested parties in the instant appeal, with respect to the order made in Kakamega CMCCC No. 100 of 2019 on 4th February 2020. The said appeal had been filed simultaneously with a Motion, dated 7th February 2020, seeking stay of the orders made in Kakamega CMCCC No. 100 of 2019, on 4th February 2020 pending appeal. In a ruling dated 13th March 2020, I declined to allow the stay sought, and directed that the appeal in Kakamega HCCA No. 7 of 2020 be heard together with Kakamega HCCPet. No. 6 of 2018. The appellants in Kakamega HCCA No. 7 of 2020 thereafter filed a Motion dated 24th March 2020, where they sought injunctions against the respondents in the instant appeal, review of the orders made on 13th March 2020, stay of proceedings in all other suits save for Kakamega HCCPet. No. 6 of 2018, and the transfer of Kakamega HCCPet. No. 6 of 2018 to the High Court at Nairobi, with a view that thereafter the matter would be referred to the Chief Justice for formation of a five judge bench to determine the matter. I declined that application too.

24. I have considered the issues raised in the application before me as against the issues that arose in Kakamega HCCA No. 7 of 2020, and I am not persuaded that the two matters turned on the same issues. The appeal in HCCA No. 7 of 2020 arose from the orders made on 4th February 2020 in Kakamega CMCCC No. 100 of 2019, and the issues canvassed revolved around that, while the appeal herein is founded on orders made on 1st July 2020, and the issues raised revolved around that. It cannot, therefore, be said that the matters in issue in the two appeals, and the applications, are the same or are founded on similar facts. I am unable to find, therefore, that the application is *res judicata*.

25. The third objection on point of law is that the appellant lacked jurisdiction to institute the appeal, since he was not a party to the appeal nor to the suit before the trial court. I do not quite understand what the respondents mean when they say that the appellant was not a party to the appeal since the memorandum of appeal, on record, in this appeal, cause names Rev. Joseph Otondo as the appellant. It is his appeal. He initiated it. He is the appellant. So it cannot be said that he is not a party to the appeal when he is in fact the appellant. The appeal might be

incompetent for other reasons, but the fact of the matter is that it was initiated herein by Rev. Otondo, and that then makes him an appellant, and a party to his own appeal.

26. Was he a party to the suit at the trial court? My perusal of the record in Kakamega CMCCC No. 100 of 2019 reveals that an application, dated 24th June 2020, was lodged in that cause seeking the joinder of the appellant as a party in that suit. That application was placed before the magistrate on duty, under certificate of urgency, on 25th June 2020, and the plea for joinder was allowed *ex parte*, meaning that the appellant became a party to the suit on 25th June 2020. The respondents herein thereafter filed an application, dated 30th June 2020, seeking to have the orders of 25th June 2020 reviewed. That application was placed before the trial magistrate, other than the duty magistrate who granted the orders of 25th June 2020, under certificate of urgency, on 1st July 2020. The trial magistrate, *ex parte*, reviewed the orders of 25th June 2020, the effect of which review was to undo the joinder of the appellant as a party to the suit. That would mean that the appellant ceased to be a party to the suit as from 1st July 2020. I believe that it is on that basis that the respondents argue that he was not a party to the suit as at the time the appeal was being lodged.

27. To support their case the respondents have cited the decision in *AN (suing through the Next Friend and Representative One) BMB vs. JBM* (supra), where the original plaintiff was substituted by another person as such, who then proceeded to file a notice to withdraw the suit. The withdrawal was declined by the trial court, as the cause was in respect of a children's matter, in respect of which the court was bound to act in the best interests of the child. The trial court called for a report by a children's officer, and after one was submitted, it delivered a ruling on the matter of the welfare of the child. The appeal before the appellate court was lodged, not by the plaintiff on record, but by the original plaintiff, who had been substituted. A preliminary point was taken that the original plaintiff had no locus to file the appeal as he had ceased to be the plaintiff in the matter and was not a party to the matter as of the date when the trial court delivered the impugned ruling. The High Court upheld the objection, and ruled that the original plaintiff was not a party to the suit as at the date of the impugned ruling, and, therefore, there was no *locus standi* to bring the appeal. The other case cited turns on an ordinary suit and not appeal, and, therefore, it is not material to the objection before me.

28. Is *AN (suing through the Next Friend and Representative One) BMB vs. JBM* (supra) persuasive? I think not. It is distinguishable. In fact, it works in favour of the appellant herein. The appellant in that cause was not complaining about having been removed from the record, but rather was challenging the decision that the court had made after the party had ceased to be in the matter. The appellate court noted that that party ought to have challenged their removal from the record, since, after their removal, they were no longer a party to the suit, and had no locus to challenge any decision made after they had ceased to be party. In the instant cause, the appeal before me was initiated by the appellant, to challenge the orders of 1st July 2020 which had, *ex parte*, set aside the orders of 25th June 2020, which had made him a party to the suit in Kakamega CMCCC No. 100 of 2019. The orders of 1st July 2020 directly affected him since they unmade or undid the orders of 25th June 2020 which had joined or added him to the proceedings as an interested party. He had a right to challenge the orders on appeal since they adversely affected him. He had locus, therefore, to bring the appeal.

29. Turning to the Motion itself, it will be noted that the same seeks stay of the order of 1st July 2020 and stay of proceedings in Kakamega CMCCC No. 100 of 2019. Let me start by the prayer for stay of the said order. That order was in two parts. The one part set aside the orders of 25th June 2020, which had joined or added the appellant as a party, and had stayed the orders made on 22nd June 2020, with respect to police assistance. I do not understand what the appellant means by stay of the order of 1st July 2020. The law provides for stay of execution and stay of proceedings. It is not clear to me whether the appellant would like execution of the order of 1st July 2020 stayed or whether this is a roundabout way of seeking stay of the proceedings relating to the said order. The prayer is ambiguous. The nature of the order of 1st July 2020 is that it is incapable of being executed, since it merely meant that the appellant ceased to be a party to the suit and the orders on police assistance were vacated. Those are orders that are not capable of execution. There is, therefore, no execution to stay.

30. The second part of the order is with respect to the direction that some three applications, that were pending, be disposed of simultaneously on a date that the court allocated. Again, it is not clear to my mind the nature of stay sought with respect to this order. Let me reiterate that the law provides for stay of execution of an order and stay of proceedings. The order with respect to how the applications were to be disposed was not capable of execution in the manner envisaged in Order 22 of the Civil Procedure Rules. So there cannot be stay of execution of such an order. The only stay available with respect to such an order is of the proceedings.

31. With regard to stay of proceedings, I believe that the availability of stay will be dependent on whether there is a competent appeal before the court. If there is a competent appeal before the court, then it would be prudent to order stay of proceedings, for allowing the proceedings before the trial court to go on in the absence of a party who complains that he was removed as a party from the suit, without being afforded the benefit of a hearing, would be unjust. If, however, the appeal is incompetent, then it would follow that there would be no foundation for grant of stay of proceedings. Is there a valid appeal herein? I have here above found that the appeal before me is valid, whether it raises reasonable arguable points for determination is another issue altogether. That being the case, it follows that a case is made out for stay of proceedings in Kakamega CMCCC No. 100 of 2019, pending appeal.

32. I have closely perused through the record in Kakamega CMCCC No. 100 of 2019, paying particular attention to the pleadings, and I have the sense that the suit turns on the management of the Pentecostal Assemblies of God (K) and the legitimacy of the various parties as church officials. That is the subject matter of Kakamega HCCPet. No. 6 of 2018. All other suits that were pending in other courts across the country, on similar issues, were all transferred to the High Court at Kakamega, to be handled within Kakamega HCCPet. No. 6 of 2018. I see no reason why Kakamega CMCCC No. 100 of 2019 should be an exception. I accordingly order that Kakamega CMCCC No. 100 of 2019 be transferred to the High Court of Kenya at Kakamega, for consolidation with and determination within Kakamega HCCPet. No. 6 of 2018. This is an order that I should have made in Kakamega HCCA No. 7 of 2020, unfortunately I did not have the benefit of perusing the file in Kakamega CMCCC No. 100 of 2019, when I dealt with that matter. The effect of the transfer would be that the proceedings in Kakamega CMCCC No. 100 of 2019 stand stayed.

DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF JULY 2020

W. MUSYOKA

JUDGE