



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CIVIL APPEAL NO. 20 OF 2019**

**CONCELIA ONDIEKI.....APPELLANT/APPLICANT**

**VERSUS**

**GRACE ACHIENG OTIENO.....1<sup>ST</sup> RESPONDENT**

**WYCLIFFE OTIENO.....2<sup>ND</sup> RESPONDENT**

**RULING**

**[Stay of execution pending appeal in an application for mandatory injunction to exhume remains of the deceased]**

1. Vide a Notice of Motion dated 3<sup>rd</sup> June, 2019 and filed under Certificate of Urgency, the appellant/applicant **Concelia Ondiek** seeks from this court orders:

**1. Spent;**

**2. Spent;**

**3. That the remains of the deceased Beatrice Apondi Otieno be exhumed from the Parcel Applicant's private cemetery and the same be preserved at the Same Day Classmate Private Morgue Seg, pending the hearing and determination of this application;**

**4. An order of injunction to restrain the Defendants/Respondents either in person or through their children, sisters, brothers, in-law, church members or any other party from trespassing on the said parcel of land pending hearing and final determination of this application (sic);**

**5. That the OCS Ukwala Police Station and the Assistant Chief, Sifuyo East Sub-Location to provide Security and ensure compliance of this order; and**

**6. That costs of this application be provided for.**

2. The Notice of motion is premised on the grounds that:

**1. an order was made on 27<sup>th</sup> May, 2019;**

**2. the applicant's right to a fair hearing has been infringed;**

**3. the burial of the deceased on the applicant's parcel of land is highly prejudiced as the deceased is a stranger to the applicant; and**

**4. it is therefore in the interest of justice that the orders sought be granted.**

3. The said application is supported by the affidavit sworn by Concelia **Ondiek** on 31<sup>st</sup> May, 2019.

4. The gravamen of the appellant/applicant's application is that on 23<sup>rd</sup> May 2019, the Hon Ong'ondo ,Principal Magistrate, Siaya, did grant an injunction restraining the Respondents herein from interring the body of the deceased Beatrice Apondi Otieno on Parcel No Ugenya/Sifuyo/555 and that on 27<sup>th</sup> May, 2019, the said court set aside/vacated the said injunction order which paved way for the Respondents, without the consent and or participation of the applicant, to inter the remains of the deceased Beatrice Apondi Otieno on the applicant's land on the night of 27<sup>th</sup> May, 2019.
5. According to the applicant, the interment of the deceased on her parcel of land is prejudicial to her as the deceased is a total stranger to her and that it is against her late husband's will. .
6. The applicant deposes that at all material times to these proceedings, the deceased Beatrice Apondi Otieno was married to one Richard Kobare which union was blessed with two children aged 18 and 16 years respectively and that the said Richard Kobare is still alive hence the deceased ought to have been buried at her husband (Kobare's) home in accordance with the Luo Customary law and not at the applicant's home.
7. In her further deposition, the applicant claims that the respondents buried the deceased Beatrice Apondi Otieno on the applicant's land claiming that the deceased was betrothed to Solomon Ondieki a resident of the United States of America yet the latter is lawfully married to one Carrie Mae Hughes of the USA. She therefore asserted that the said Solomon Ondiek could not be engaged to the deceased.
8. Annexed to the affidavit of the applicant are: pages 1, 7, 8 and 9 of the Will of the late Arch Bishop Stephen S.A.O. Ondiek dated 28<sup>th</sup> November, 1994; death Certificate for Arch Bishop Ondiek Oluoch; a photocopy of marriage certificate between Solomon T. Ondiek and Carrie Mae Hughes dated 7<sup>th</sup> March, 2012 showing that a marriage between the two was solemnized in the Pennsylvania; and an identification document for Carrie Mae Hughes.
9. The application was opposed by the Respondents who filed a lengthy affidavit sworn by the second respondent Weyclife Otieno on 7<sup>th</sup> June, 2019.
10. The gist of his affidavit is that he is the son in law to the appellant herein and that he is the brother to the deceased Beatrice Apondi, and the son to the 1<sup>st</sup> Respondent Grace Achieng Otieno.
11. The deponent denies the allegation by the appellant that the deceased Beatrice Apondi was a stranger to her and maintained that the appellant knew the deceased very well as her daughter in law and that that is why the deceased was buried by the brothers of Solomon Ondiek who was married to Beatrice Apondi. He maintained that the burial of the late Beatrice Apondi was organized by the family of the late Arch Bishop Stephen Ondiek and not the Respondents herein. He contended that the applicant had continued to conceal material facts from the court by attaching only a portion of the Will of the late Arch Bishop Ondiek.
12. On the prayers sought, 1<sup>st</sup> respondent contended that the application is incurably incompetent and defective and that it does not meet the threshold for grant of the orders sought namely, a temporary injunction pending appeal.
13. The respondents contended that the application by the applicant/appellant is overtaken by events as the deceased was buried in accordance with the court orders issued by the Hon Ong'ondo Principal Magistrate on 27<sup>th</sup> May 2019. Further, it was deposed that the deceased was buried at the family cemetery on Parcel No. North Ugenya/Sifuyo/638 where other deceased wives of the sons of the late Arch Bishop Stephen Ondiek were buried and not on the appellant's private cemetery as alleged.
14. On the prayer for injunction, it was contended in deposition that the same is not available as the deceased was buried on family land belonging to all wives and children of the deceased Arch Bishop Stephen Ondiek and not on private property of the appellant.
15. It was further contended that the appellant had initially obtained orders from the trial court on 23<sup>rd</sup> May 2019 based on non-disclosure of material facts and that based on that the court vacated its orders. Further, the respondents deposed that in any event, there was no affidavit to authenticate or prove that Carrie Mae Hughes was married to Solomon Ondiek and that even if that were to be the case, there was no proof of what marriage was contracted or that the said Solomon Ondiek was in any way estopped from contracting a marriage after getting married to Beatrice Apondi the deceased.
16. Furthermore, it was deposed that the said Solomon was not a party to the proceedings in the lower court and that neither had he opposed the burial of the late Beatrice Apondi on the property in question.
17. The deponent also contended that none of the parcels of land claimed by the appellant belongs to her as her private property as the annexed Will shows that the properties belong to all the wives and children of the late Arch Bishop Stephen Ondiek.
18. It was further deposed that the appellant had not demonstrated substantial loss that she will suffer if stay is not granted.
19. On the claim for exhumation of the body of the deceased Beatrice Apondi Otieno it was deposed that, that would be against the public interest and that such order can only issue where it was absolutely essential in the administration of justice. Further, that such an order for exhumation would cause unnecessary hardship to the family and settle scores. The respondents urged the court to respect and maintain respect for the dead and avoid unwarranted intrusion.
20. It was also deposed that if the body is exhumed, there will be nothing left in the suit for determination as the prayers sought in the notice of motion are similar to those in the appeal hence the suit will have been summarily determined at this stage if this court was to grant the orders sought.

21. He contended that the late Beatrice Apondi was married to Solomon Ondiek in accordance with Luo Customary law and that dowry was paid. In addition, he contended that the appellant was all along aware of burial preparations for the late Beatrice Apondi and failed to participate or make any financial contributions hence her claim is only intended to cause agony and financial hardship to the respondents if the body was to be exhumed and preserved at a morgue.

22. On allegations that the appellant's right to fair hearing was infringed, the respondents averred that the matter before the trial court was heard and determined on merit as the appellant was served with the hearing notice hence the claim is unsustainable.

23. He also deposed that the manner in which the order sought would be complied with is not sufficiently indicated. He urged the court to dismiss the appellant's application with costs.

24. The appellant/applicant filed another supporting affidavit sworn by Julius Alfred Ojwang' Ndenga and filed on 10<sup>th</sup> June 2019 deposing that he was a priest of Legio Maria Church in St Teresa Sisinga village, Sifuyo East Sub-Location until 2014 but was currently a primary school teacher at Bukhoba Primary School in Uranga. The deponent stated that the cemetery in question belongs to the family of the late Arch Bishop Stephen Ondiek and not St Teresa Legio Maria Church and that it is still private and not a public cemetery.

25. He further deposed that in 2012, he presided over the burial of the Late Sister Margaret Atieno Ondiek in the same cemetery as per the Will of the late Arch Bishop. He denied ever witnessing the burial of any other outsider in that particular cemetery during his tenure as a Legio Maria Priest.

26. He averred that Regulations governing the Church require that in case of any burial within the Church Compound, then the priest in charge must be consulted and authority sought.

27. The parties' respective advocates canvassed the notice of motion orally and adopted the depositions by their respective clients. They also filed authorities for the court's consideration. The oral submissions reiterated what was deposed in the affidavits and therefore I do not find it necessary to reproduce them here as I have reproduced those depositions above.

## **DETERMINATION**

28. I have considered the appellant/ applicant's Notice of Motion, Supporting affidavits, submissions and authorities cited. I have given equal consideration to the Respondents' depositions and oral submission as supported by the list of authorities relied on.

29. In my humble view, the main issue for determination is whether the appellant/applicant is entitled to the orders staying the orders of 27<sup>th</sup> May 2019 and whether this court should issue a mandatory injunctive order for exhumation of the body of the deceased Beatrice Apondi Otieno pending the hearing and determination of this appeal (not *application*) as erroneously referred to by the applicant).

30. This application invokes the discretionary powers of the court which discretionary powers must be exercised judiciously. It is however brought under Order 12 Rule 7 of the Civil Procedure Rules which has nothing to do with injunctions or stay pending appeal. That provision concerns setting aside of judgment where the judgment has been entered or the suit has been dismissed. I will however assume that the application being in an appeal, is brought under Order 42 Rule 6 of the Civil Procedure Rules, which deals with stay pending appeal and Order 40 of the Civil Procedure Rules dealing with injunctions.

31. Order 42 Rule 6(1) of the Civil Procedure Rules, 2010 empowers this court to stay execution, either of its judgement or that of a court whose decision is being appealed from, pending appeal. The conditions to be met before stay is granted as provided by the Rule 6(2) are:

**“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.”**

32. The Court of Appeal in **Butt v Rent Restriction Tribunal [1982] KLR 417** guided on how a court should exercise discretion and held that:

**“1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge's discretion. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.**

**The court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”**

33. The above cited case captures the applicable principles in deciding whether or not to grant a stay of execution pending appeal.

**34. On substantial loss**, it is the respondents who contended that the family of the deceased incurred costs, time and expenses in planning and conducting the burial of the deceased Beatrice Apondi Otieno, and that all along the Appellant/Applicant herein was aware of those preparations but elected not to participate or support them financially. The applicant has not stated what substantial loss she will suffer if stay is not issued, granted that the deceased was buried pursuant to the order of the court. In addition, although the appellant stated that the deceased was buried on Parcel No. Ugenya/Sifuyo/555 which is a private property and private cemetery, the respondents contended that the deceased was buried on parcel No North Ugenya/Sifuyo/638 which is the family cemetery for the family members of the late Arch Bishop Ondiek. The appellant did not controvert this contention.

35. I have also perused the trial court record and order of 23<sup>rd</sup> May 2019 and I do not find anywhere where the Parcel of land cited in this application were referred to even in the initial interim orders issued in favour of the applicant, which orders were later vacated on 27<sup>th</sup> May, 2019.

36. Further, it was contended by the respondents that the burial preparations and ceremony were very elaborate and were carried out in accordance with the Luo customs and undoing all that with no guarantee that the appeal herein will succeed will make the Applicants and the large community to suffer colossal expenses in terms of mortuary expenses, the cost of maintaining the mourners including the agony of a protracted litigation which has a possibility of finding that there was marriage between the deceased Beatrice Apondi Otieno and Solomon Ondiek.

37. The respondents have deposed that the loss suffered and to be suffered is substantial and that therefore the deceased's body should not be exhumed until the appeal is heard and determined. They also claim that the appellant undertook to shoulder the expenses should she lose the suit in the lower court but that she is non-committal and does not undertake to shoulder all the resultant expenses and costs once the appeal is dismissed.

38. I have considered the rival submissions on this point. I have not found any undertaking by the appellant that she undertakes to shoulder the monetary expenses involved in exhuming the body of the deceased and accordingly preserving it, should her appeal not be successful. I find that should the deceased's body be exhumed, it is the respondents who shall suffer the agony of the exhumation of the body of the deceased with a possibility of burying her again in the same place, in the event that the suit or this appeal is unsuccessful.

39. The trial record is clear that the respondents buried the deceased's body after obtaining a court order in proceedings which were heard *inter partes* and not *ex parte*. If that was not the case, then this court does not understand why the appellant did not seek audience with the trial court to be heard first before approaching this court.

40. Albeit the deceased was allegedly buried at night, the respondents have demonstrated by way of affidavit evidence that the loss and suffering likely to be occasioned if the exhumation of the body of the deceased is ordered, is substantial and beyond quantification in financial terms.

41. However, had the respondents acted in disobedience of a court order there would be no loss of any kind in making orders to ensure that the orders of a court are fully respected and obeyed. There can never be any loss in upholding the rule of law.

**42. On delay**, the order appealed against was made on 27<sup>th</sup> May 2019 and this appeal and application were filed on 7<sup>th</sup> June 2019 and as earlier stated, the appeal and this application were made after the deceased had been buried. The appellant should have approached this court the same day that the impugned order was made by the trial court. Albeit the appeal was filed on 3<sup>rd</sup> June 2019 and the application for stay filed on 7<sup>th</sup> June 2019, and whereas the delay is not inordinate, the applicant should have anticipated that the deceased was likely to be buried expeditiously upon the earlier orders being set aside. Furthermore, although this court has jurisdiction to hear and determine an application for stay pending appeal, nothing stopped the appellant from seeking orders of stay from the trial court expeditiously before approaching this court. The trial court too has jurisdiction to grant stay orders pending appeal Accordingly, I find that the application was not filed expeditiously. It was overtaken by events of burying the deceased.

**43. On security for the due performance of decree or order appealed against**, the appellant has not offered any guarantee that should she lose the appeal, she is ready to meet the costs of exhumation and preservation of the body of the deceased Beatrice Apondi Otieno. She has not given any undertakings and therefore this disentitles her of the orders sought before this court, in a pending appeal.

44. Having dispensed with the main principles applicable in applications for stay of execution of decree or order appealed against in the High Court, it is now appropriate to address the issue of whether orders of interlocutory mandatory injunction as sought lie in this case.

45. I have perused copy of plaint as filed by the appellant in the lower court and the main prayer sought was that of a permanent injunction to restrain the respondents from burying the deceased' body at the place and date that had not been approved by the appellant. The appellant also asked for assistance of the law enforcement agents to enforce the order.

46. The stay sought in this application is that of an injunction of a mandatory nature seeking to exhume the body of the deceased Beatrice Apondi Otieno.

47. Considerations for granting of interlocutory mandatory injunctions were well stated in **Kenya Breweries Ltd & Another v Washington O. Okeyo[2002] eKLR** thus:

**“The test whether to grant a mandatory injunction or not is correctly stated in Vol.24 Halsbury’s Laws of England 4<sup>th</sup> Edition paragraph 948 which reads:**

**‘A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiffs ... a mandatory injunction will be granted on an interlocutory application.’”**

48. The Court of Appeal in the **Kenya Breweries Ltd & Another v Washington O. Okeyo** [supra] was citing with approval the often cited English decision in **Locabail International Finance Ltd vs Agro-export and others (1986) 1 ALLER 901** where it was stated:

**“A mandatory injunction ought not to be granted on an interlocutory application in the absence or special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly be granted, that being a different and higher standard than was required for a prohibitory injunction.”**

49. In **Nation Media Group & 2 others vs John Harun Mwau [2014] eKLR** the Court of Appeal stated:

**“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances ... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrated. As we have stated, a temporary injunction can only be granted in exceptional and in the clearest of cases.”**

50. The principles of law espoused in the above decisions is that a court considering an application for interlocutory mandatory injunction must be satisfied that there are not only special and exceptional circumstances, but also that the case is clear and strong.

51. Examining the appellant/applicant’s case, as exhibited from the grounds of appeal, the notice of motion and the supporting affidavit, and upon consideration of all the materials presented in respect of the Notice of Motion, the question is whether ***a mandatory injunction should issue to compel the Respondents to exhume the body of the deceased Beatrice Apondi Otieno from Land parcel number Ugenya/Sifuyo/555.***

52. I must however observe in reiteration that from the orders issued by the trial court pursuant to the application made by the appellant herein, there is no mention of the specific parcel of land for burial of the deceased. The appellant simply claimed that she would be prejudiced if a total stranger is buried in her home against the Will of her late husband Arch Bishop Stephen Ondiek. She did not even mention the name of the “total stranger.” As correctly submitted by the respondents’ counsel, the appellant’s annexed Will is not complete. She only selected a few parts and pages of the Will of the late Arch Bishop Stephen Oluoch Ondiek which smacks of dishonesty.

53. An injunction being a discretionary relief, a party seeking such remedy must act in good faith and disclose all material facts before the court and not to hand pick that which she believes to be beneficial to her, while keeping away from the court material facts.

54. Although the appellant claims that the deceased was interred in her family’s private cemetery, and that she is the custodian of the said cemetery, she did not attempt to annex any evidence to demonstrate that the burial of the deceased was contrary to the orders made on 27<sup>th</sup> May 2019. Her advocate simply submitted so, which submission does not amount to evidence.

55. The appellant also raised issues of whether the deceased was married to Solomon Ondiek which issue can only be determined after the trial of the suit and not at the interlocutory stage since the man, Solomon Ondiek, who is said to be alive and who is alleged to be the husband of the deceased Beatrice Apondi Otieno is not a party to these proceedings.

56. On whether the deceased bore any right to be buried at the appellant/applicant’s family’s private cemetery whose custodian is the appellant, this question is linked to the issue of whether the deceased was married to Solomon Ondiek and can only be determined at the full trial of the suit.

57. On whether the Will of the Arch Bishop Stephen Ondiek provides for the deceased to be buried at the burial site, as I have stated earlier, the appellant annexed only a few pages of the Will. She also claimed that the deceased was buried on Parcel No Ugenya / Sifuyo/ 555, which claim was controverted by the Respondents who deposed that the deceased was buried on Parcel No. North Ugenya / Sifuyo/638. In the absence of any other evidence to the contrary, the Respondent’s contention carries the day, as the appellant did not dispute the respondent’s contention. That being the case, this court cannot order for exhumation of a body from Parcel No Ugenya / Sifuyo/ 638 when the appellant claims that the body subject of the suit and this appeal is interred on Parcel No. Ugenya / Sifuyo/ 555. In **Ougo & another vs. Otieno [1987] KLR 364**, it was held:

**“The general principle is that where there are serious conflict of facts, the trial court should maintain the status quo until the dispute has been decided at the trial.”**

58. Moreover, the question of interpretation of that Will of Arch Bishop Stephen Oluoch Ondiek not being before this court for determination, I decline to address it.

59. In **Eliud Kingwara Adawo v Philip Achieng John & another [2015] eKLR** the court stated persuasively:

**“Due to the foregoing, I am not inclined to make an order for the exhumation of the body of the deceased at this stage. Although, I have found that the burial of the deceased on the suit property was carried out illegally, I would for the reasons that I have given above defer the order for exhumation until the hearing and determination of this suit when final orders would be made with respect to the rights of the parties over the suit property. The remainder of the body of the deceased on the suit property would in no way prejudice the plaintiff’s claim or rights herein. On the other hand, if the body was to be exhumed and it turns out after the trial that the plaintiff has no right over the suit property, the body of the deceased would have been disturbed unnecessarily and may have to undergo a second burial ceremony on the suit property. I am not satisfied that there are very compelling reasons that would justify the exhumation of the body of the deceased from the suit property at this stage. I have said enough to show that an order for the exhumation of the body of the deceased from the suit property is not for granting in the present application.”**

60. Back to the question of conditions to be met before a court of law can grant an injunction and especially a mandatory injunction, the court will not grant a mandatory injunction if the damage feared by the plaintiff is trivial, or where the detriment that the mandatory injunction would inflict is disproportionate to the benefit it would confer. Thus, save in the clearest of cases, the right of the parties to a fair and proper hearing of their dispute, entailing calling and cross-examination of witnesses must not be sacrificed or substituted by a summary hearing.

61. In **SHEPHERD HOMES LTD V. SANDAHM [1971] 1 CH. 34**, Megarry, J. stated:

**“[I]t is plain that in most circumstances a mandatory injunction is likely, other things being equal, to be more drastic in its effects than a prohibitory injunction. At the trial of the action, the court will, of course grant such injunctions as the justice of the case requires; but at the interlocutory stage, when the final result of the case cannot be known and the court has to do the best it can, I think the case has to be unusually strong and clear before a mandatory injunction will be granted, even if it is sought in order to enforce a contractual obligation....**

**[O]n motion, as contrasted with the trial, the court is far more reluctant to grant a mandatory injunction than it would be to grant a comparable prohibitory injunction. In a normal case the court must, inter alia, feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted; and this is a higher standard than is required for a prohibitory injunction.”**

62. Among the special circumstances that may justify the grant of a mandatory injunction at interlocutory stage is **where the injunction involves a simple act that could be easily reversed or remedied should the court find otherwise after trial; the defendant has accelerated the development that the plaintiff seeks to retrain, with the intention of defeating the plaintiff’s claim or where the defendant is otherwise bent on stealing a match on the plaintiff.**

63. On the whole, the appellant must satisfy this court that her application for stay not only meets the threshold in Order 42 Rule 6 of the Civil Procedure Rules, but that she is entitled to the mandatory injunctive orders sought and that she has met the conditions for grant of mandatory injunction of exhuming the body of the deceased Beatrice Apondi Otieno.

64. An order for exhumation of the remains of a deceased person is a drastic and unpleasant order, grant of which should only be made in special, unique and compelling circumstances. This is so because, exhumation is offensive to cultural and religious beliefs and practices, and it may cause public outrage.

65. There is therefore a burden on the person seeking the order to persuade the court that the right circumstances exist for grant of the order. In determining whether to grant the order or not, the court must weigh the interests of the appellant/applicant as against those of the deceased and her family. It is only where the rights of the applicant outweigh or override those of the deceased’s family that exhumation orders can be granted. The appellant/applicant in the instant application has not demonstrated that her case is clear and so strong or that there are special circumstances warranting grant of a mandatory injunction.

66. For the foregoing reasons, and from my analysis of the material placed before this court, I am not satisfied that the appellant has established that her appeal has overwhelming chances of success to warrant grant of an order of stay in the form of interlocutory mandatory injunction. I am also not convinced that the appellant would suffer irreparable harm unless the orders sought are granted. I am of the view that justice would be better served if the prevailing status quo is maintained pending the hearing of the main appeal.

67. Accordingly, the appellant/applicant’s application dated 3<sup>rd</sup> June, 2019 is declined and dismissed. Costs of the application shall be in the cause and in the appeal.

**Dated, Signed and Delivered in open court at Siaya this 1<sup>st</sup> Day of July 2019**

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Mr. Ojwang Advocate for the appellant/applicant

Mr. Oduor Advocate for the Respondents

CA: Brenda and Modestar