

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

ELC APPEAL NO. 40 OF 2019.

WYCLIFFE SIKUKU WALUSAKA.....APPELLANT

VERSUS

PHILIP KAITA WEKESA.....RESPONDENT

29th June 2020

Coram: B. N. Olao JUDGE

(in chambers)

R U L I N G

Upon perusal of the Appellant's Notice of Motion dated 22nd June 2020 and filed herein on 24th June 2020 seeking a stay of execution of the Judgment and decree in **BUNGOMA CMCC NO 418 OF 2017** pending appeal, I notice that the Memorandum of Appeal annexed thereto and dated 14th November 2019 is not signed.

Order 42 Rule 6 of the Civil Procedure Rules on which the Notice of Motion is predicated requires that before an application such as this one is considered, the procedure for instituting an appeal from a Subordinate Court will have been complied with. **Order 42 Rule 1(1) of the Civil Procedure Rules** states that: -

“Every appeal to the High Court shall be in the form of a Memorandum of Appeal signed in the same manner as a pleading.”

Since the Memorandum of Appeal is not signed, it has no validity in law. It cannot therefore be the basis upon which the Notice of Motion dated 22nd June 2020 can properly be founded.

I do not consider that lapse to be a mere technicality which can be cured by **Article 159(2)(d) of the Constitution** since it impacts on the jurisdiction of this Court to determine not only the application but even the appeal itself. I shall however not dismiss the application. I will only strike it out to enable the Applicant regularize his pleadings.

The Notice of Motion dated 22nd June 2020 is accordingly struck out.

Boaz N. Olao.

J U D G E

29th June 2020.

Ruling dated, signed and delivered at BUNGOMA this 29th day of June 2020 through electronic mail in view of the guidelines following the COVID – 19 pandemic.

Boaz N. Olao.

J U D G E

29th June 2020.