Kenya Hospital Association t/a The Nairobi Hospital & another v Onyambu & 2 others (Civil Application E449 of 2025) [2025] KECA 1653 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KECA 1653 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPLICATION E449 OF 2025

PO KIAGE, J MOHAMMED & WK KORIR, JJA

OCTOBER 9, 2025

BETWEEN

THE KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI HOSPITAL ..... 1ST APPLICANT

THE BOARD OF MANAGEMENT KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI HOSPITAL ..... 2ND APPLICANT

AND

DR BARCLEY ONYAMBU ..... 1ST RESPONDENT

THE CHIEF EXECUTIVE OFFICER KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI HOSPITAL ..... 2ND RESPONDENT

COMPANY SECRETARY KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI HOSPITAL ..... 3RD RESPONDENT

(Being an application for stay of execution and stay of proceedings pending the determination of an intended appeal arising from the ruling of the High Court at Nairobi (Prof. N. Sifuna, J.) dated 9th July 2025 in Milimani Civil Case No. E173 of 2025)

RULING

1. Before us is a notice of motion application dated 24th July 2025 filed by the firm of Okubasu & Munene Advocates for the applicants. In the motion, the applicants seek to stay the proceedings and all orders issued in Milimani Civil Case No. E173 of 2025 - The Kenya Hospital Association T/A the Nairobi Hospital & Another v The Chief Executive Officer, Kenya Hospital Association & 2 Others. The application is premised on the grounds on its face as well as the averments of Samson Mbuthia Kinyanjui in the supporting affidavit sworn on 24th July 2025.

2. The applicants' case is that on 3rd July 2025, Sifuna, J. of the High Court, issued an interim conservatory order restraining the respondents from convening or continuing with any retreats and/or Board meetings, including one scheduled for 3rd to 4th July 2025. According to the applicants, the order had disrupted the hospital's operations and governance, as the Board is crucial for urgent administrative decisions. Faced with this challenge, they proceeded to file a notice of change of advocates dated 7th July 2025, as well as a notice of withdrawal of the suit dated 8th July 2025. However, on 9th July 2025, the learned Judge delivered a ruling striking out the two notices. It is the applicants' averment that they have filed an appeal against the decision, which, in their view, is arguable as it seeks answers on the authority of a body corporate, the right of legal representation of a body corporate, and whether a suit can be sustained despite a notice of withdrawal. Consequently, they seek to stay the proceedings before the High Court pending the hearing and determination of their intended appeal.

3. The 1st respondent supported the application through an affidavit sworn on 3rd September 2025 by the holder of that office, Mr. Felix Osano. Mr. Osano averred that he was apprehensive that his freedom could be curtailed for allegedly contravening court orders by attending the Board meeting of 3rd July 2025, which he did not. Further, that there are ongoing contempt proceedings, and those proceedings should await the determination of the questions raised in the intended appeal. Mr. Osano deposed that his advocates had counseled him that the applicants' intended appeal was arguable and that, unless the orders sought are granted, the appeal is likely to be rendered nugatory.

4. On his part, Mr. Gilbert Nyamweya, the holder of the office of the 2nd respondent, supported the application through an affidavit sworn on 4th September 2025. In summary, he averred that the orders of the learned Judge should be stayed as they denied the applicants the rights to be represented by counsel of their choice and to be heard. He deposed that the law firm of Ashitiva Advocates LLP instituted the suit in the High Court without instructions, authority, or resolution of the applicants. Mr. Nyamweya averred that when he virtually attended the court session on 9th July 2025, he observed that the learned Judge was partial and had a fixed mind on the matter. According to him, the question of the applicants' legal representation was a preliminary and germane issue that the High Court ought to have clarified by confirming that instructions came from the actual plaintiffs or their duly authorized representative(s). Mr. Nyamweya averred that whenever a dispute arises over legal representation, the court should either stop proceedings, direct the parties to resolve the issue, or determine the matter based on the evidence. He faulted the learned Judge, deposing that instead of acting as an arbiter, he summarily struck out all documents filed by the law firm of Okubasu & Munene Advocates without due regard for the evidence, terming the decision as irrational. He concluded by averring that since the dispute regarding the applicants' representation in the High Court remains contested and unresolved, the orders sought should be granted to allow for proper resolution of the conundrum.

5. In opposition to the application, the firm of Ashitiva Advocates LLP filed a replying affidavit sworn by Dr. Job Obwaka on 11th September 2025. Therein, the deponent averred that he was an employee of the 1st applicant and a member of the 2nd applicant. He opposed the motion on the preliminary ground that it was premised on a defective notice of appeal, and that an application seeking to strike out of the notice of appeal was pending hearing before the Court. Turning to the substance of the application, Dr Obwaka averred that the respondents acted in violation of an express court order by appointing the firm of Okubasu & Munene Advocates to act for the applicants. He deposed that no legal recourse, and not even an order of stay, was available to the respondents in respect of acts arising from disobedience of court orders. He maintained that the intended appeal is not arguable as the applicants have no intention of challenging the impugned ruling of the High Court, and that the present application is misleading and has been filed without instructions from the applicants. On the nugatory aspect, Dr. Obwaka averred that should the intended appeal succeed, it will not be rendered nugatory as the applicants will

properly instruct advocates of their choice. Further, that the injunctive relief was, in any event, directed at the respondents and not the applicants.

6. When this matter came up for hearing, the representation of the applicants was evidently contentious. Learned counsel Dr. Duncan Okubasu, whose firm had filed the application, appeared for the applicants in support of the motion, while learned counsel Mr. James Ochieng Oduol, instructed by Ashitiva Advocates LLP, led learned counsel Mr. Petra Mwaura and learned counsel Mr. George Kingori for the applicants in opposition to the motion. Senior Counsel Mr. Kiragu Kimani and learned counsel Mr. Victor Omwebu, respectively, appeared for the 1st respondent and the 2nd respondent. For the 3rd respondent, learned counsel, Dr. Ken Nyaundi, and Mr. Peter Wanyama were present. Counsel for the parties relied on the already filed written submissions with brief oral highlights in the plenary.

7. For the applicants in support of the motion, learned counsel Dr. Okubasu relied on submissions dated 4th August 2025. He commenced by citing Trust Bank Ltd & Another v Investec Bank Ltd & 3 Others [2000] eKLR to appreciate that for orders of stay to issue, an applicant must satisfy the dual limbs of arguability of the appeal and the risk of the appeal being rendered nugatory. Counsel referred to Cabinet Secretary, Ministry of Health v Aura & 13 Others [2024] KECA 1195 (KLR) to highlight the principle that an arguable appeal is not one that must necessarily succeed, although it should not be frivolous. Asserting that the appeal is arguable, counsel pointed to the arguable points in the annexed draft memorandum of appeal as the authority of a corporate body to institute a suit, the right to legal representation by a body corporate, and whether a body corporate can be injuncted from holding a meeting to appoint counsel.

8. Turning to the nugatory aspect, Dr. Okubasu argued that if the stay is not granted, the appeal will be rendered nugatory as continuing the proceedings will cause irreparable harm, making a successful appeal of little practical benefit to the applicants. Counsel emphasized that it would be prejudicial to the applicants to allow the matter before the High Court to proceed without resolving the dispute over the applicants' legal representation and the question as to whether there was proper authority to initiate the suit. Counsel argued that absent stay, the intended appeal may amount to a waste of judicial resources and an academic exercise.

9. Dr. Okubasu submitted that the hospital depends significantly on a functional Board for governance and management and that the conservative orders issued by the High Court have not only paralyzed the hospital's governance but also crippled its capacity to make timely operational decisions. According to counsel, the continued extension of the interim orders impairs the hospital's ability to address urgent operational needs. He argued that if the proceedings continue, irreversible reputational harm could occur to the applicants, rendering a successful appeal nugatory. Counsel maintained that should the hearing before the High Court continue, any later reversal or nullification would provide no practical benefit.

10. Finally, Dr. Okubasu urged that issuing stay pending the hearing and determination of the intended appeal would not prejudice the respondents in any way. He cited Reliance Bank Ltd v Norlake Investments Ltd [2005] E.A. 227 to buttress the arguments and urged that the orders sought be granted.

11. Supporting the application, Mr. Kiragu Kimani, Senior Counsel, relying on submissions dated 12th September 2025, referred to Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others [2013] KECA 378 (KLR) to urge that a single bona fide ground of appeal suffices to render an appeal arguable. According to counsel, the grounds enumerated by the applicants disclose an arguable appeal.

12. Relying on the principle enunciated in Caltex Oil (Kenya) Ltd v Evanson Njiiri Wanjihia [2009] KECA 93 (KLR) that in considering whether an appeal is likely to be rendered nugatory the Court must consider the circumstances of each case, Senior Counsel urged us to consider the peculiar circumstances of this case and find that the intended appeal is likely to be rendered nugatory should the order sought not be granted.

13. Learned Senior Counsel further submitted that the determination of the question of legal representation, which is the subject of the intended appeal, has the possibility of determining the suit before the High Court, and an order of stay of proceedings is thus merited to ensure effective use of the limited judicial resource. Reliance was placed on Meta Platforms, Inc. & Another v Motaung & Another; Kenya National Human Rights Equality Commission & 9 Others (Interested Parties) [2023] KECA 996 (KLR) for the proposition that where an appeal arising from an interlocutory application would dispose of the suit, an order of stay of proceedings in the trial court is deserved.

14. Pointing out that the contempt proceedings in respect of the impugned ruling are ongoing at the High Court, Mr. Kimani, Senior Counsel, referred to Double Clean Ltd & 4 Others v Jambo Holdings Ltd & 2 Others [2016] KECA 420 (KLR) to urge that committing a person to prison before an appeal is determined renders the appeal nugatory. Further, that the prejudice suffered cannot be undone, were the appeal to succeed. Senior Counsel urged that the proceedings are prejudicial to his client and that the injunctive orders in place continue to frustrate the operations of the hospital. Consequently, counsel urged that the orders sought be granted.

15. In support of the motion, learned counsel Mr. Omwebu for the 2nd respondent relied on submissions dated 12th September 2025. Counsel urged that the question of representation of the applicants by counsel was germane and ought to be determined before the suit proceeds. According to counsel, the appeal is arguable because the learned Judge failed to comply with the requirement that whenever a dispute arises as to who is the proper legal counsel of a party, the court ought to stop the proceedings and first determine the question of representation. Regarding the nugatory aspect of the application, counsel's submissions aligned with those of Dr. Okubasu and Senior Counsel Kiragu Kimani.

16. Dr. Ken Nyaundi, for the 3rd respondent, relying on the submissions dated 12th September 2025, urged that the intended appeal was arguable as the learned Judge's holding contravened the cab rank rule, thus denying the applicants an opportunity to appoint a legal representative of their choice. Regarding the nugatory aspect, counsel urged that unless the order of stay is granted, the High Court will proceed to hear the contested suit, with the possibility of issuing further orders prejudicial to the applicants. Counsel submitted that a continuation of the hearing is likely to subject the applicants to irreversible consequences, including being cited for contempt and a complete standstill of the operations of the hospital. It was thus counsel's position that the interests of justice demand that the proceedings be stayed.

17. On his part, learned counsel Mr. Ochieng Oduol relied on submissions dated 15th September 2025 to agitate the applicants' case in opposition to the motion. Counsel started by submitting that the Court lacks jurisdiction to entertain the application due to lack of a proper notice of appeal on record. He relied on Kanja v Kiarie & Another [2023] KECA 943 (KLR) to submit that a defective notice of appeal strips the Court of jurisdiction, and Law Society of Kenya v Centre for Human Rights and Democracy & 12 Others [2014] KESC 29 (KLR) to contend that failure to serve a notice of appeal within statutory timelines renders it incurably defective. Counsel argued that since the notice of appeal is defective as it was not served within the seven days provided by rule 79(1) of the Court of Appeal Rules, the Court is thereby without jurisdiction to entertain the instant motion.

18. As to whether the application is merited, counsel urged that the Court should not abrogate itself the duty of a trial court by interrogating the validity of resolutions made by the 2nd applicant and which, according to him, had not been delved into by the High Court. Mr. Ochieng Oduol further submitted that the notices quashed in the impugned ruling arose from a meeting held in disobedience of a court order, hence a stay order should not be issued in respect of an act subverting the rule of law. In that regard, counsel relied on Fred Matiang'i v Miguna Miguna & 4 Others [2018] KECA 789 (KLR) to submit that court orders are binding and not optional, and Macfoy v United Africa Co. Ltd [1961] 3 All ER 1169 was referenced to urge that since the

orders sought emanated from a contemptuous act, there is no basis for granting the orders sought. Counsel also cited Hadkinson v Hadkinson [1952] 2 All ER 567 and Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya [2005] eKLR to assert that a contemnor has no right of audience until the contempt is purged because a contemnor should not benefit from the contempt.

19. Urging that the intended appeal will not be rendered nugatory should it eventually succeed, Mr. Ochieng Oduol contended that the applicants have not demonstrated the irreversible harm to be suffered should the orders sought be declined. According to counsel, should the appeal succeed, Order 9 Rule 5 of the Civil Procedure Rules allows the filing of a proper notice of change of advocates. Citing Article 1(b) of the Articles of Association, counsel argued that the operations of the 1st applicant were not halted as the 1st applicant is run by the management committee and not the Board. It was, therefore, the plea of Ashitiva Advocates LLP that the application be dismissed.

20. We have considered the pleadings, the written and oral submissions, and the law. Despite the different views held by those supporting the application and the side opposing it, counsel for the parties were, as expected, in agreement on the principles that guide the consideration of an application under rule 5(2)(b) of the Court of Appeal Rules. It needs no gainsaying that for an applicant to succeed, he or she must have at least filed a notice of appeal, as it is that notice which opens the doors of this Court for a party to seek the discretionary orders of stay of execution, injunction, or stay of further proceedings. Thereafter, the applicant must then demonstrate that the intended appeal or appeal is arguable and would be rendered nugatory absent the order beseeched. The two conditions are conjunctive, meaning that both should be satisfied. In Peter Gathecha Gachiri v Attorney General [2015] eKLR, the Court discussed the twin principles and their rationale as follows:

> " Rule 5(2)(b) of the Rules of this Court on which the application is premised confers on us independent discretionary jurisdiction exercisable in accordance with the twin principles, namely, that the appeal must be shown to be arguable and, in addition, that the appeal, if successful, shall be rendered nugatory if stay is not granted. These principles have been developed by the court as a guide in the exercise of its discretionary power in determining an application premised on Rule 5(2)(b). The rationale in these principles is intended to balance two parallel propositions; first, that a successful litigant should not be deprived of the fruits of a judgment in his favour without just cause and; secondly that a litigant who is aggrieved by a decision must not be deprived of the right to challenge it in the next higher court (see Butt v Rent Restriction Tribunal [1982] KLR 417. See also Kenya Shell Ltd v Kibiru & Another [1986] KLR 410.
>
> It is imperative for an applicant seeking an order under Rule 5(2)(b) to satisfy the Court on both principles. An applicant must show that the appeal is not frivolous and is arguable. It is now settled that an applicant need not demonstrate a plethora of arguable points. It is

sufficient even if there be a solitary arguable point. An applicant must further show that the appeal, if successful, will be rendered futile if stay is not granted."

21. Additionally, this being an application seeking stay of proceedings, we are alive to the views expressed by the Court in Katangi Developers Limited v Prafula Enterprises Limited & Another [2018] eKLR, thus:

> " As noted in Halsbury's Laws of England 4th edition volume 37 at paragraph 330:
>
> the stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and, therefore, the Courts general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue"."

22. The factors to be considered when the Court is faced with an application for stay of proceedings were summarized in Meta Platforms, Inc. & Another v Motaung & another; Kenya National Human Rights Equality Commission & 9 others (Interested Parties) (supra) as follows:

> " In our view, the following considerations, though not exhaustive, are relevant, bearing in mind the fact that the peculiar facts and circumstances of the case must always be considered.
>
> a. A stay of proceedings can be granted only if there is a pending appeal, which is, prima facie, valid in law.
>
> b. The appeal, which forms the basis of an application for stay of proceeding, must be competent and arguable on its merits. Where an appeal is frivolous, vexatious or an abuse of court process, an appellate court will decline jurisdiction to entertain the application.
>
> c. Where the interlocutory appeal following an application for stay of proceedings will finally dispose of the case or put an end to the proceedings in the lower court, stay of proceedings would be granted.
>
> d. Where the res will be destroyed, damaged or annihilated before the matter is disposed of, an appellate court will grant stay.
>
> e. The Court of Appeal would be reluctant to grant an application for stay of proceedings if it would cause greater hardship than if the application were refused.
>
> f. A stay of proceedings will be granted where to do otherwise will tend to render any order of the appellate court nugatory."

23. We are alive to the foregoing principles and fully associate with them. They will therefore form the basis for the determination of the application at hand. Before we consider the substance of the application, we must address the contestation by learned counsel Mr. Ochieng Oduol that the application is unfounded because there is no proper notice of appeal on record. According to counsel, service of the notice of appeal outside the seven days provided in rule 79(1) of the Court of Appeal Rules rendered it defective, and we therefore lack jurisdiction to entertain the motion. In our view, what is required by rule 5(2)(b) is the lodging of a notice of appeal in accordance with rule 77 of the Court's Rules. In dealing with an application under rule 5(2)(b), the Court is not enjoined to venture into the validity or otherwise of a notice of appeal unless from the face of it the notice is outrightly defective. That,

however, is not the case in the present application as the grounds challenging the notice of appeal would require consideration of the evidence of the parties before a decision is made on the validity of the notice. That explains why Mr. Ochieng Oduol has filed an application seeking to strike out the notice of appeal. It is only upon the hearing of the application that the propriety of the notice of appeal can be determined. In the circumstances, we do not wish to deviate from the dual limbs undergirding an application under rule 5(2)(b). We, therefore, reject the attempt to terminate the motion at this stage.

24. Our conclusion hereinabove is fortified by the holding of the Court in National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another [2006] KECA 333 (KLR), thus:

> " The validity or otherwise of a notice of appeal is to be determined in accordance with the provisions of Rule 80 (current Rule 86) under which a notice of appeal can be struck out. We do not see any reason for determining the validity or otherwise of a notice of appeal when an application under Rule 5 (2) (b) is being considered."

25. It is therefore our finding that the notice of appeal on record is sufficient for the purposes of considering the application before us on its merits. We have already observed that an applicant must show that the appeal is not frivolous but arguable. As was stated in Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others (supra), the existence of a single arguable point is sufficient for the affirmation that an appeal is arguable. We have read through the proceedings of 9th July 2025 and the resulting ruling. We note that the learned Judge invalidated the board resolution appointing the firm of Okubasu & Munene Advocates to act for the applicants and the notice to withdraw the suit. In essence, the learned Judge affirmed the firm of Ashitiva Advocates LLP as advocates for the applicants. In the exhibited memorandum of appeal, the applicants raise 7 grounds touching on the authority to sue on behalf of the 1st applicant and the 1st applicant's powers to appoint an advocate to act on its behalf. They also challenge the learned Judge's finding on disobedience of court orders. Considering the issues raised, we agree with the applicants that the intended appeal is arguable.

26. Turning to the question as to whether the intended appeal would be rendered nugatory should further proceedings in the High Court not be stayed, we note that in the impugned ruling, the learned Judge not only rejected the documents filed by the firm of Okubasu & Munene Advocates but also found that the appointment of the law firm was done in disobedience of the court order issued on 3rd July 2025. The ruling essentially dismissed the resolution appointing Okubasu & Munene Advocates to act for the applicants and the resolution to withdraw the suit in its entirety. It would follow that without an order staying the proceedings, the applicants and respondents risk citation for contempt and possible conviction. In this regard, we associate with the holding of the Court in Double Clean Limited & 4 Others v Jambo Holdings Ltd & 2 Others (supra) that the continuation of contempt proceedings would render the intended appeal nugatory. In that case, the Court held that:

> " The directors of the applicants and John Mugo Njeru have been found to be in contempt of the said interim orders of injunction and are due to be sentenced. The applicants' fear that they may be committed to prison in the circumstances, is not an idle one. We are alive to the fact that whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed, if allowed to happen, is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved."

27. The nugatory question does not end there. Central to the intended appeal is the question of the power to sue and to appoint an advocate. Determining these issues will essentially chart the course of the suit before the High Court. If the appeal were to succeed, without the proceedings being stayed, the suit would have continued against the intention of the applicants. Such an eventuality will prejudice

the applicants as they will be locked out of proceedings that directly affect them. We do not envisage any amount of compensation that will abridge the consequences of such an eventuality. There is also no doubt that were the intended appeal to succeed, that would mark the end of the suit before the High Court, as the notice withdrawing the suit will be reactivated. The need for an order of stay of proceedings in the circumstances resonates with the holding of the Court in Meta Platforms, Inc & Another v Motaung & Another; Kenya National Human Rights Equality Commission & 9 Others (Interested Parties) (supra) that if a successful appeal will put an end to the proceedings in the trial court, prudence dictates that the proceedings be stayed.

28. Is there any hardship that the parties will suffer should the proceedings be stayed? We think not. Considering the circumstances of this matter, perhaps the only prejudice is the delay in finalizing the impugned suit before the High Court. It is noted that in determining the application, the Court is called upon to consider all the circumstances of the case. In doing so, we find that the applicants' right to legal representation is at stake and should not be sacrificed at the altar of efficiency. Additionally, allowing the suit to proceed when the authority to institute it or terminate it is in question does not amount to proper use of the limited judicial resources. If the appeal were to fail, the suit at the High Court would still proceed to hearing. On the other hand, were the appeal to succeed, the parties would have engaged in futile and expensive litigation. To avoid such a possibility, an order staying the proceedings is warranted.

29. In the circumstances, we are satisfied that the application for stay of further proceedings is merited.

30. Before we conclude, we must address the scope of our order. In the motion, one of the prayers is for stay of "all orders" issued in Milimani Civil Case No. E173 of 2025 - The Kenya Hospital Association T/A the Nairobi Hospital & Another v The Chief Executive Officer, Kenya Hospital Association & 2 Others. In our view, such a blanket order is not issuable by this Court. The Court cannot stay an order which is not the subject of an appeal and whose terms are unknown. As has already been stated, the jurisdiction of the Court under rule 5(2)(b) is anchored on a notice of appeal. Further, one of the conditions to be met before any order is granted is the existence of an arguable appeal. It follows then that the Court cannot issue an order staying decisions not appealed against and for which no intention to appeal against has been expressed. Consequently, the only order we will issue is in respect of the ruling dated 9th July 2025, of which a notice of appeal has been filed.

31. In partially allowing the application, we wish to draw the attention of parties to the wisdom of the Supreme Court in Board of Governors, Moi High School, Kabarak & Another v Bell & 2 Others [2013] KESC 12 (KLR), thus:

> "Interlocutory reliefs, in this respect, may be apposite by ensuring that the appeal is not rendered nugatory: and this not only serves the cause of fairness in dispute settlement, but also ensures that the ultimate decision of the Court bears the intended constitutional authority."

32. Consequently, we partially allow the motion dated 24th July 2025 on the following terms:

    a. An order is hereby issued staying the execution of the orders and decree emanating from the ruling of Prof. N. Sifuna, J of 9th July 2025 in Milimani Civil Case No. E173 of 2025 the Kenya Hospital Association T/A the Nairobi Hospital & Another v The Chief Executive Officer, Kenya Hospital Association & 2 Others, pending the hearing and determination of the intended appeal;

b. An order is hereby issued staying any further proceedings in Milimani Civil Case No. E173 of 2025, the Kenya Hospital Association T/A the Nairobi Hospital & Another v The Chief Executive Officer, Kenya Hospital Association & 2 others, pending the hearing and determination of Nairobi Civil Appeal No. E571 of 2025 between the parties; and

c. Costs shall abide, and be in accordance with, the order on costs in the main appeal.

33. Given the necessity of restoring order at The Nairobi Hospital, and having been informed by Dr. Okubasu during the hearing of the Motion that Civil Appeal No. E751 of 2025 has been filed, we issue directions for the expediting of the appeal as follows:

a. Okubasu & Munene Advocates shall file and serve submissions on the appeal within 7 days from the date of this ruling; and

b. At the expiry of 7 days, the respondents and Ashitiva Advocates LLP to file and serve their submissions within 7 days.

34. Similarly, we issue directions on the Notice of Motion dated 26th August 2025 filed by Ashitiva Advocates LLP seeking to strike out the Notice of Appeal dated 22nd July 2025 filed by Okubasu & Munene Advocates as follows:

a. The respondents to file and serve their responses to the application within 7 days from the date of this ruling;

b. At the expiry of 7 days, Ashitiva Advocates LLP to file and serve submissions within 7 days; and

c. Thereafter, the respondents to file and serve submissions within 7 days.

35. Guided by the timelines in the above directions, the Registrar of the Court is directed to fix both the appeal and the Notice of Motion for contemporaneous hearing within the current term of the Court.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER 2025.

P. O. KIAGE

JUDGE OF APPEAL

.....

JAMILA MOHAMMED

JUDGE OF APPEAL

.....

W. KORIR

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR