



Dawat-E Hadiya (Kenya) Registered Trustees v Kaingu & 4 others (All sued in a representative capacity also, on behalf of other 104 persons in occupation of the petitioners parcel of Land) (Environment & Land Case 7 of 2021) [2025] KEELC 40 (KLR) (17 January 2025) (Ruling)

Neutral citation: [2025] KEELC 40 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 7 OF 2021
LL NAIKUNI, J
JANUARY 17, 2025
IN THE MATTER OF: ARTICLE 40 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF: THE LAND ACT AND LAND REGISTRATION ACT
AND
IN THE MATTER OF: PETITION
BETWEEN
DAWAT-E HADIYA (KENYA) REGISTERED TRUSTEES PLAINTIFF
AND
NASSARO KAINGU 1ST DEFENDANT
DANIEL KAINGU 2ND DEFENDANT
HASSAN KAINGU 3RD DEFENDANT
KAHINDI BAYA YAA 4TH DEFENDANT
JONATHAN SAFARI KITHI 5TH DEFENDANT
ALL SUED IN A REPRESENTATIVE CAPACITY ALSO, ON BEHALF OF
OTHER 104 PERSONS IN OCCUPATION OF THE PETITIONERS PARCEL OF
LAND



RULING

I. Introduction

1. The Notice of Motion application before this Honorable Court for its determination is the one dated September 17, 2024 filed by Daniel Kaingu, Nassoro Kaingu, Hassan Kaingu, Kahindi Baya Yaa and Jonathan Safari Kithi (All sued in a Representative capacity also, on behalf of other 104 persons in occupation of the Petitioners parcel of land), the Defendants/Applicants herein. It is brought under the provisions of Orders 42 Rule 6 & 51 Rule 1 of the Civil Procedure Rules of 2010 and Sections 1A, 1B, 3A & 75 of the Civil Procedure Act, Cap. 21, Laws of Kenya and all enabling provisions of law of Kenya.
2. Upon service of the Application Plaintiff/Respondent herein, Dawat – E – Hadiya (Kenya) Registered Trustees responded through filing of a Replying Affidavit sworn by Ouresh Zakir Lukmanii on 29th October, 2024.
3. For good order, it is instructive to note from the records that although this suit was initially commenced by way of a Constitutional Petition, but (but later on by consent of the parties was converted into a Plaint.

II. The Defendants/Applicants' case

4. The Defendant/Applicants' sought for the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That this Honourable Court be pleased to issue a stay of execution of the Judgment of the Court delivered herein on June 20, 2024 pending the hearing and determination of the appeal.
 - d. That costs of this Application be provided for.
5. The Defendant/Applicants' application was based on the grounds, testimonial facts and the averments founded in the 10 Paragraphed Supporting Affidavit of Hassan Mwinga Thoya c/o of the Chief Bombolulu and a resident of Moroto Village and the 4th Respondent/ Applicant herein; sworn and dated the same day as the application. It was together with two (2) annexures marked as "HMT - 1 and HMT - 2" annexed thereto. He deponed that:-
 - a. This Honourable Court delivered its Judgment herein on 20th June, 2024 allowing the Plaintiff's/Respondent's suit commenced against them by way of a Petition dated 12th February, 2020 which had sought for their eviction from the suit premises being Plot No. MN/I/1392, CR No. 1884 situate at Bombolulu within Mombasa County. Court was referred to the said Judgment in the court file.
 - b. Being aggrieved with the said Judgment, they instructed their advocates on record to prefer an appeal against it. The instructions were executed on the same day of the delivery of the Judgment through the filling of a Notice of Appeal dated 20th June, 2024. He appended in the affidavit a certified copy of the Notice of appeal dated 20th June, 2024 to the above effect marked as "HMT – 1".



- c. Upon being supplied with certified copies of the proceedings and the Judgment herein, they filed a Record of Appeal, including a Memorandum of Appeal in Civil Appeal No. E155 of 2024 (Mombasa), which was now awaiting case management directions by the Court of Appeal. He appended in the affidavit certified copies of the first page of the Record of Appeal dated 31st July, 2024, the Memorandum of Appeal dated 30th July, 2024 and the official Court receipt dated 1st August, 2024 for the filing of the Record and Memorandum of appeal to the above effect marked jointly as “HMT – 2”.
- d. Since they were granted a stay of execution for a period of 30 days only when the Judgment was delivered on 20th June, 2024 and directed to file a formal application for a further stay, pending the hearing and determination of the then intended appeal. They were now moving the court through this application for the said stay.
- e. They urgently required the said stay as they were ordered to be evicted from the suit premises in line with the provision of Section 152E of the Land Act, No. 6 of 2012, which provision of Law provides for eviction after a period of 3 months, a period that had since elapsed, hence the urgency of this matter.
- f. By the very nature of the present application and the orders sought for herein, this application was extremely urgent as execution may issue at any moment from now, rendering them not only homeless but also the filed appeal nugatory.
- g. No prejudice shall be suffered to the Plaintiff/Respondent herein if the sought for orders herein were granted but on their part and their families, they would suffer irreparable loss and damage if the orders sought for herein were not granted as they stand to lose their only known parcel of land or home and more so, the appeal might be rendered nugatory if the subject matter herein was not preserved, hence this application.
- h. The affidavit is in support of the application filed herein.

III. The responses by the Plaintiff/Respondent.

6. While opposing the application, the Petitioner/Respondent filed a 14 Paragraphed Replying Affidavit sworn by OURESH ZAKTR LUKMANII, one of the Trustees of the Plaintiff herein on 15th October, 2024 where he averred that:-
 - a. The said motion was incompetent, without any basis and as such ought to be struck out with costs the Plaintiff/Respondent.
 - b. The Plaintiff/Respondent had and still remained the registered absolute legal and beneficial owner of Mombasa. He annexed in the affidavit and produced as exhibit a true copy of the Certificate of Title Deed marked as “QZL – 1”.
 - c. The principles guiding the grant of a stay of execution pending appeal were well settled in law and had not been met by the Applicants.
 - d. The Application was an attempt by the Applicants to deny the Petitioner from enjoying the fruits of the Judgment delivered on 20th June 2024.
 - e. The Applicant had not demonstrated any loss, financial or otherwise, that it would suffer should this Honourable Court decline the invitation to stay the execution of its Judgment.



- f. The Plaintiff had been denied the use of its land owing to the Respondents' action of illegally, unlawfully and wrongfully inhabiting and occupying the Petitioner's Portion of land aforesaid is indeed a violation and infringement of the constitutional rights and interests of the Petitioner.
- g. The Respondents' action of illegally inhabiting and occupying the Plaintiff's portion of land aforementioned infringed and/or violated the constitutional rights and fundamental freedom of the Plaintiffs rights and interests over the subject land as enriched under the provision of Article 40 of *the Constitution*.
- h. The Plaintiff had a legal right to use and utilize-its property especially after this Honourable Court properly and correctly held that the occupation by the Applicant over the suit property was in self-wrongful and irregular/ illegal.
- i. This Honourable Court ought to decline the invitation by the Applicant to stay execution of the Judgment for there is no sufficient cause and or reason demonstrated by the Applicant to warrant this Honourable Court to exercise its discretion in granting the said orders.
- j. The Applicant would not suffer any prejudice if the Orders sought were not granted, and it was the Plaintiff/Respondent who would suffer prejudice as they have been deprived of its rights of access to justice in addition to the fact that it has been continuously deprived from its exclusive legal and equitable rights and interest over the parcel of land known as MN/I/1392, CR No.1884 therefore suffered and continued to suffer irreparable loss.
- k. The Applicant had not provided any security for satisfying the Decree as required by law and thus fell short of the principles for grant of stay of execution of the Judgment.
- l. The Applicants had not deposited in court any such security for the due performance of such decree or order as may ultimately be binding on the applicant nor have they shown their intention to do so.
- m. In the event this Court was persuaded to grant the orders of stay as sought, then this Honourable Court ought to order that a security for costs be deposited in a joint interest earning account pending the determination of the appeal.
- n. It was only fair that in the interest of justice that the Applicants be ordered to deposit security for costs of a sum of Kenya Shillings Seven Million (Kshs. 7,000,000/-) being the continued loss incurred by the Respondents pending the outcome of the appeal.
- o. What was deponed herein above was true to the best of the deponent's knowledge, information and belief save for what was deponed to on information the sources and grounds whereof had been disclosed.
- p. The Application of the Respondent's dated 17th September, 2024 was misconceived, bad in law and/ or was unsustainable and hence ought to be dismissed with costs to the above-named Plaintiff.
- q. The Plaintiff/Applicant were acting in bad faith, misusing the judicial process and seeking protection of this Honourable Court.

IV. Submissions

7. On 4th December, 2024 in the presence of all the parties, this Court directed that the Notice of Motion application dated 17th September, 2024 by the Respondents/Applicants herein be canvassed by way of



written submission. Unfortunately, by the time the Honorable Court was penning down this Ruling, it had not been able to access the filed written submissions from any of the parties herein. Pursuant to that the Honourable Court reserved 17th January, 2025 for the delivery of the ruling on its own merit accordingly.

V. Analysis and Determination

8. I have carefully read and considered the pleadings herein by both the Respondents/Applicants and the Plaintiff/Respondent, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.
9. In order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has three (3) framed issues for its determination. These are:-
 - a. What are the fundamental legal parameters for granting the orders of stay of execution pending an appeal.
 - b. Whether the Notice of Motion application dated 17th September, 2024 seeking to stay execution of the judgment and subsequent decree/Order issued on the 20th June, 2024 pending hearing and determination of the Appeal is merited?
 - c. Who will bear the Costs of Notice of Motion application dated 17th September, 2024.

Issue No. a). What are the fundamental legal parameters for granting the orders of stay of execution pending an appeal.

10. Under this sub – title the Court shall examine whether or not the Defendants/Applicants have made out a case for the grant of stay or execution pending appeal orders. The law concerning stay of execution pending Appeal is found in the provision of Order 42 Rule 6 of the Civil Procedure Rules which stipulates as follows:

“No Appeal or second Appeal shall operate as a stay of execution or proceedings under a decree or order Appealed from except in so far as the Court Appealed from may order but, the Court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court Appealed from, the Court to which such Appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court from whose decision the Appeal is preferred may apply to the appellate Court to have such order set aside.

- (2) No order for stay of execution shall be made under sub rule (1) unless—
 - (a) the Court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”

11. Stay of execution pending appeal is a discretionary power bestowed upon this court by the law. While at the very initial stage of developing Jurisprudence in this area, the Court of Appeal in the case of



“Butt –Versus- Rent Restriction Tribunal {1982} KLR 417” gave guidance on how a court should exercise the said 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.
 2. 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.
 3. 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.
 4. 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.
 5. 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.”
12. Further to the above, stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in the provision of Sections 1A and 1B of the *Civil Procedure Act*, Cap. 21 the Court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the provision of the *Civil Procedure Act*, Cap. 21 or in the interpretation of any of its provisions.
13. Further, the provision of Section 1A (2) of the *Civil Procedure Act*, Cap. 21 provides that:-
- “the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective”
- While the provision of under Section 1B some of the aims of the said objectives are:-
- “the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”
14. There are three conditions for granting of stay order pending Appeal under the provision of Order 42 Rule 6 (2) of the Civil Procedure Rules to which:-
- i. The Court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered;
 - ii. The application is brought without undue delay and



- iii. 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.
15. This Honourable Court finds issues for determination arising therein namely:
- i. Whether the Applicant has satisfactorily discharged the conditions warranting the grant of stay of execution of judgment pending Appeal.
 - ii. What orders this Court should make?
16. The purpose of stay of execution is to preserve the substratum of the case. In the case of “Consolidated Marine – Versus - Nampijja & Another, Civil App.No.93 of 1989 (Nairobi)”, the Court held that:-
- “The purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory”.
17. As such, for an applicant to move the court into exercising the said discretion in his favour, the applicant must satisfy the court that substantial loss may result to him unless the stay is granted, that the application has been made without undue delay and that the applicant has given security or is ready to give security for due performance of the decree.
18. As for the applicant having to suffer substantial loss, in the case of “Kenya Shell Limited – Versus - Benjamin Karuga Kigibu & Ruth Wairimu Karuga (1982-1988) KAR 1018” the Court of Appeal pronounced itself to the effect that:
- “It is usually a good rule to see if Order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the Applicant, it would be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay.”
19. The Court of Appeal in the case of “Mukuma – Versus - Abuoga (1988) KLR 645” where their Lordships stated that;
- “Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”
20. The Applicant has a burden to show the substantial loss they are likely to suffer if no stay is ordered. This is in recognition that both parties have rights; the Applicant to the Appeal which includes the prospects that the Appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The Court in balancing the two competing rights focuses on their reconciliation which is not a question of discrimination. {See the case of “Absalom Dora –Versus -Turbo Transporters (2013) (eKLR)”}.
21. As F. Gikonyo J stated in “Geoffery Muriungi & another – Versus - John Rukunga M’imonyo suing as Legal representative of the estate of Kinoti Simon Rukunga (Deceased) [2016] eKLR” and which wisdom I am persuaded with the holding:-
- “.....the undisputed purpose of stay pending appeal is to prevent a successful appellant from becoming a holder of a barren result for reason that he cannot realize the fruits of his success in the appeal. I always refer to that eventuality as “reducing the successful appellant into a pious explorer in the judicial process”. The said state of affairs is what is referred to as



“substantial loss” within the jurisprudence in the High Court, or “rendering the appeal nugatory” within the juridical precincts of the Court of Appeal: and that is the loss which is sought to be prevented by an order for stay of execution pending appeal...”

issue No. b). Whether the Notice of Motion application dated 17th September, 2024 seeking to stay execution of the judgment and subsequent decree/Order issued on the 20th June, 2024 pending hearing and determination of the Appeal is merited.

22. The Honourable Court under this sub – heading will now proceed to apply the above legal principles to the instant case. I reiterate that the Applicants herein filed an application dated 17th September, 2024 seeking stay of execution of the Judgment delivered by this Court at Mombasa on 20th June, 2024 pending the hearing and determination of the appeal in the Court of Appeal. The 30 days period granted by the trial court on 20th June, 2024 during the delivery of the aforesaid judgment was set to lapse on 20th July, 2024. Unless this application seeking stay of execution pending appeal is heard urgently and stay granted, the appeal herein shall be rendered nugatory thereby occasioning substantial loss and prejudice to the Respondents.
23. The Respondents urgently required the said stay as they were ordered to be evicted from the suit premises in line with Section 152E of the *Land Act*, No. 6 of 2012, which provision of Law provides for eviction after a period of 3 months, a period that has since elapsed, hence the urgency of this matter.
24. In determining whether sufficient cause has been shown, the court should be guided by the three pre-requisites provided under Order 42 Rule 6. Firstly, the application must be brought without undue delay; secondly, the court will satisfy itself that substantial loss may result to the Applicant unless stay of execution is granted; and thirdly such security as the court orders for the due performance of such decree or order as may ultimately be binding on them has been given by the Applicant. The Plaintiffs/Respondent on the other hand has argued that they remained the absolute legal and beneficial registered owner of the suit property. The principles guiding the grant of a stay of execution pending appeal are well settled in law and had not been met by the Applicants. Be that as it may, I find the reasons advanced by the Applicants to be sufficient for the grant of stay of execution pending appeal.
25. Regarding the pre-requisite in Order 42 Rule 6, that is substantial loss occurring to the Applicant, the court has already referred the consideration to be made in the case of “Kenya Shell Limited –Versus - Benjamin Karuga Kigibu & Ruth Wairimu (Supra)”. I find that the Applicants have proved that they will suffer substantially through the eviction from the suit land if the orders for stay of the execution are not granted as prayed.
26. The second issue to determine is where the application for stay of execution was made without inordinate delay. From the record, the Judgment being appealed against was delivered on 20th June, 2024, the Notice of Appeal filed the same day, the Record of Appeal dated 31st July, 2024, the Memorandum of Appeal dated 30th July, 2024 and the official Court receipt dated 1st August, 2024 and the application herein was filed on 17th September, 2024. This application was filed after about 2 months and 28 days after the Judgment. In as much as the application was made almost three months after the Judgment was delivered, the Applicants averred that the delay was occasioned by the supply of certified copies of the proceedings. In this Honourable Court’s opinion, the application was made timeously without any delay. Thus, I hold that application was made and filed expeditiously and without undue delay.
27. On the last condition as to provision of security, I find that Order 42 Rule 6 (2) (b) of the Civil Procedure Rules stipulate in mandatory terms that the third condition that a party needs to fulfil so as



to be granted the stay order pending Appeal is that (s)he must furnish security. I have noted that the Defendants/Applicants have made no provisions for security in their application. Further, be that as it may, I take note that the suit property was not equated monetarily.

28. However, this court can make appropriate orders which serve the interest of justice taking into account the fact that money depreciates unless it is kept in an interest earning account for the period of the appeal.
29. In the case of “Aron C. Sharma – Versus - Ashana Raikundalia T/A Rairundalia & Co. Advocates” the court held that:

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor ... Civil process is quite different because in civil process the judgment is like a debt hence the Applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.”

30. Stay of execution is exactly what it states. It is an order of the court barring a decree holder from enjoying the fruits of his Judgment pending the determination of some issue in contention. It matters not whether the issue in contention is the amount awarded in the Judgment debt, or liability or legality of the extracted warrants as in this case. Where a party seeks to stay execution, the Court must be guided by the parameters set out in Order 42 Rule 6. This Court observes that the appeal is based on ownership of the suit land, which agrees with the Applicants does not necessarily call for the security of cost.
31. The Court observed in “Gianfranco Manenthi & Another – Versus - Africa Merchant Assurance Company Ltd [2019] eKLR”, thus:-

“... the applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under order 42 rule 6(1) of the Civil Procedure Rules, it is trite that the winner of litigation should not be denied the opportunity to execute the degree in order to enjoy the fruits of his judgment in case the appeal fails.

Further, order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favour. This is therefore to provide a situation for the court that if the appellant fails to succeed on appeal there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgement involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal ... Thus the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. Counsel for the applicant



submitted that he is ready to provide a bank guarantee as security for due performance of the decree. (Underlining mine for emphasis)

32. As already demonstrated in “James Wangalwa & Another vs. Agnes Naliaka Cheseto (supra)” the three (3) conditions for granting stay of execution pending appeal must be met simultaneously. They are conjunctive and not disjunctive. It is my finding that the Applicants herein, though they brought this Application without undue delay and adequately demonstrated the substantial loss that they would suffer as stipulated by sub-rule 2b, they have not indicated how they plan to secure the costs. This can be remedied by the Court using its discretion to appoint a form of security of costs. Nonetheless, in order to preserve the suit land pending the outcome of the Appeal, the Defendants/Applicants will be directed to deposit some security in form of finances to be held by the Advocates for the parties herein.
33. The end result is that I will proceed to grant the order for stay of execution of the Judgment of this Court delivered on 20th June, 2024 pending the hearing and determination of Civil Appeal No. E155 of 2024 (Mombasa).

Issue No. c). Who will bear the Costs of Notice of Motion application dated 17th September, 2024.

34. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of Supreme Court “Jasbir Rai Singh – Versus - Tarchalan Singh” eKLR (2014) and Cecilia Karuru Ngayo – Versus – Barclays Bank of Kenya Limited, eKLR (2014).
35. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In this case, this Honourable Court has reserved its discretion in not awarding costs.

VI. Conclusion and Disposition.

36. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Ultimately in view of the foregoing detailed and expansive analysis to the application, this court arrives at the following decision and makes below order:-
 - a. That the Notice of Motion application dated September 17, 2024 be and is hereby found to have merit and hence allowed subject to the fulfilment of the Pre – Conditions stated herein.
 - b. That this Honourable Court do hereby issue an order to stay the execution of its decree arising from the Judgment of this Honorable Court delivered on 20th June, 2024 pending the hearing and determination of the appeal in the Court of Appeal.
 - c. That an order be made for the Plaintiffs/Applicants to deposit a sum of Kenya Shillings One Million Five Hundred Thousand (Kshs. 1, 500, 000.00/=) within the next fourty five (45) days from the date of the delivery of this Ruling into the Joint Escrow bank Account held in a reputable commercial institution in the names of the two (2) Law firm of Messrs. Kenga & Company Advocates and Khalid Salim & Company Advocates as security for the due performance of the Decree given to the Defendants/Respondents awaiting the outcome of the filed appeal.



- d. That failure to comply with the condition under Clause (c) above, the Notice of Motion dated September 17, 2024 application dated will automatically stand dismissed without any further reference to this Honourable Court whatsoever.
- e. That there shall be no orders as to costs.

It is ordered accordingly.

RULING DELIVERED THROUGH THE MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS17TH DAY OFJANUARY..... 2025.

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HON. MR. JUSTICE L. L. NAIKUNI
ENVIRONMENT AND LAND COURT AT
MOMBASA

Ruling delivered in the presence of:-

- a. M/s. Firdaus Mbula – the Court Assistant.
- b. M/s. Amina Advocate holding brief for Mr. Khalid Salim Advocate for the Plaintiff/Respondent.
- c. M/s. Chengo Advocate holding brief for Mr. Kenga Advocate for the Defendants/Applicants.

