REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI CIVIL DIVISION

CIVIL APPEAL NO. E087 OF 2021

CENTURY MICROFINANCE BANK……. ……APPELLANT

VERSUS

ERIC KOMBE NDZAI……1ST RESPONDENT

THE HON. ATTORNEY GENERAL……2ND RESPONDENT

*(Being an Appeal from the Judgement and Decree of **Hon. P.N. Gesora, Chief Magistrate** delivered on 28th May, 2020 in Nairobi CMCC No. 4792 of 2018 Eric Kombe Ndzai v Attorney General & another).*

JUDGEMENT

1. This appeal was preferred by **Century Microfinance Bank** (hereinafter referred to as "the Appellant"), against the judgement and decree of **Hon. P.N. Gesora**, Chief Magistrate, delivered on 28th May, 2020 in *Nairobi CMCC No. 4792 of 2018 Eric Kombe Ndzai v Attorney General & another*.

2. In the matter before the lower court, the Appellant herein was the 2nd Defendant while the 1st and 2nd Respondents were the Plaintiff and the 1st Defendant respectively.

3. In the Plaint dated 15th May, 2018 and filed in the lower court 22nd May, 2018, the 1st Respondent sought the following reliefs jointly and severally against the Appellant and the 2nd Respondent:

a. **General damages for false imprisonment.**
b. **General damages for malicious prosecution.**
c. **General damages for assault.**
d. **Special damages of Ksh.154,200/-.**
e. **Exemplary damages for mistreatment and harassment.**
f. **Costs and interest from the time of filing suit until payment in full.**
g. **Any other relief that the court deems necessary.**

4. After hearing the matter, the trial court in its judgement delivered on 28th May, 2020 concluded that the 1st Respondent had proved his case and proceeded to allow the 1st Respondent's claim against the Appellant and the 2nd Respondent as follows:

General damages	**-**	**Ksh.2,500,000/-.**
General damages for assault	**-**	**Ksh. 200,000/-.**
Special damages	**-**	**Ksh. 4,200/-.**
Exemplary damages	**-**	**Ksh. 300,000/-.**

5. Being aggrieved with the judgement of the trial court, the Appellant presented the following grounds of appeal vide the Amended Memorandum of Appeal dated 15th June, 2022:

    1. **THAT the learned trial Magistrate erred in law and in fact by entering judgement in favour of the 1st Respondent when there was no evidence to prove that the arrest and prosecution of the 1st Respondent was malicious and without probable or reasonable cause.**

2. **THAT the learned trial Magistrate erred in law and in fact by failing to appreciate the fact that the failure to attend court for the hearing resulting in an acquittal under *Section 202* of the *Criminal Procedure Code* was not willful to justify malice.**

3. **THAT the learned trial Magistrate erred in law and in failing to consider the Appellant's counterclaim against the 1st Respondent and that it had lost the sum of Ksh.266,000/- in the transaction leading to the arrest and prosecution of the 1st Respondent.**

4. **THAT the learned trial Magistrate erred in law and in fact by failing to properly analyze the evidence on record, Appellant's submissions and find that the key ingredients of the tort of malicious prosecution had not been proved on the balance of probabilities.**

5. **THAT the learned trial Magistrate erred in law and in fact by failing to consider the evidence and submissions of the Appellant and critically analyze the same and accord it due weight to the extent that it was able to prove that the 1st Respondent misappropriated funds issued to him that culminated to him being prosecuted for the offence of stealing.**

6. **THAT the learned trial Magistrate erred in law and in fact by failing to give reasons why the Appellant's witness was not believable or why the documents produced in support of the Appellant's defence were not credible to justify probable cause.**

7. **THAT the learned trial Magistrate erred in law and in fact in holding the Appellant and the 2nd Respondent wholly liable for the tort of malicious prosecution which assumes that the Appellant was in charge of making the decision to investigate, prefer charges and prosecute the same which functions are all under the mandate of the 2nd Respondent.**

8. **THAT the learned trial Magistrate erred in law and in fact by awarding general damages for false imprisonment and malicious prosecution and assault against the Appellant, yet it was only a complainant.**

9. **THAT the learned trial Magistrate erred in law and in fact in awarding exemplary damages that were manifestly excessive and which were against the tenor, spirit and principle of awarding damages and incompatible with recently decided authorities.**

6. The Appellant proposed that the appeal be allowed with costs.

7. This being the first appellate court, I am required under *Section 78* of the *Civil Procedure Act* and as was espoused in the case of ***Selle v Associated Motor Boat Co. Ltd [1969] E.A. 123*** to reassess, reanalyze and reevaluate the evidence adduced in the Magistrate's Court and draw my conclusions while bearing in mind that I did not see or hear the witnesses when they testified.

8. In ***Selle***, **Sir Clement De Lestang** observed that:

> ***"This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.***
>
> ***However, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."***

9. Going to the evidence before the trial court, the 1st Respondent testified as PW1 and adopted the contents of his witness statement recorded on 30th April 2018 as his testimony in chief.

10. In his statement, the 1st Respondent stated that the trial court that he was an erstwhile employee of the Appellant and that sometimes in December, 2015, the Appellant questioned the 1st Respondent alleging that he had wrongly appropriated Ksh.82,810/- that belonged to his erstwhile employer, which he allegedly failed to remit to a service provider.

11. The Respondent told the trial court that on 7th January, 2016 he received a termination letter from his then employer dated 30th December, 2015. The Appellant held onto his dues as a result of which he sent a demand letter, which did not elicit any response.

12. The 1st Respondent told the trial court that he was arrested on 26th February, 2016 after police officers who were in the company of two employees of the Appellant forcefully gained ingress his house. The police officers assaulted him when he sought to know the reasons for his arrest and to see a warrant of arrest that they claimed that they had.

13. The 1st Respondent stated further that the police officers forcefully dragged him out of his house and bundled him into a car that was driven by one of the Appellant's employees to Tassia Police Station and later transferred to Embakasi Police Station and finally to Nairobi Central Police Station. With his lawyer's intervention, he was released on cash bail. All this time, he was not informed of the reason for his arrest.

14. The 1st Respondent told the trial court that on 27th February, 2016, he was treated at Mwatate Community Health Centre in Embakasi following the assault during his arrest. He later proceeded to Embakasi Police Station to report the assault

but the officers at the station declined to record his report and issue him with a P3 form.

15. In his further testimony before the trial court, the 1st Respondent stated that on 14th March, 2016, he received a phone call from the police and told to present himself before Milimani Chief Magistrate's Court for plea. As he was away in Malindi, he was unable to immediately present himself in court. His Advocate applied for deferral of the plea until 16th March, 2016, on which day he denied the charge of stealing by servant contrary to *Section 281* of the *Penal Code, Cap 63 Laws of Kenya* and was released on cash bail.

16. The 1st Respondent stated that during the trial that followed, the prosecution failed to present witnesses and his Advocate wrote to the Director of Public Prosecutions on the matter. The case was ultimately dismissed under *Section 202* of the *Criminal Procedure Code, Cap 75 Laws of Kenya* on 15th December, 2017.

17. The 1st Respondent termed his arrest and prosecution as malicious and stated that the same embarrassed him and his family and that he was as a result ridiculed by his neighbours. He stated that he was injured both physically and emotionally and had to pay an Advocate to represent him. He stated that his banking career also suffered as the Appellant has since then given his prospective employers a

negative reference. He stated that the Appellant never paid him his final dues.

18. The 1st Respondent produced the following documents in support of his case before the trial court:

- Judgement and proceedings in *Milimani CM's Criminal case No. 413 of 2016*.
- The 1st Respondent's statement.
- Demand letter dated 23rd January, 2018.
- Statutory notice dated 24th January, 2018 pursuant to *Section 13A* of the *Government Proceedings Act*.
- Letter of appointment dated 27th February, 2015.
- Promotion letter dated 29th April, 2015.
- Letter from Central Bank of Kenya dated 5th October, 2015.
- Termination letter dated 30th December, 2015.
- Letter from Sunnyland Technical Services dated 20th October, 2017.
- 1st Respondent's letter dated 7th March, 2016.
- 1st Respondent's letter of complaint to the Office of the Director of Public Prosecutions dated 4th April, 2016.
- Letter from the Office of the Director of Public Prosecutions to In Charge Prosecution dated 9th August, 2016.
- 1st Respondent's Advocate's letter to the Office of the Director of Public Prosecutions dated 5th July 2015.

- Office of the Director of Public Prosecution's letter to the 1st Respondent's Advocates dated 20th April, 2016.
- Copy of charge sheet.
- Letter to the Officer Commanding Station – Embakasi Police Station.
- Treatment notes from Mwatate Community Healthcare Centre.
- Medical report.
- Receipts.

19. Upon being cross examined, the 1st Respondent told the trial court that he was never informed about any report from the Central Bank of Kenya. He denied ever stealing from the Appellant and stated that the latter never gave him an opportunity to reconcile and submit his accounts but instead had him apprehended.

20. The Appellant called **Irene Maingi** as its witness. The witness testified before the lower court and adopted the contents of her statement as her testimony.

21. The Appellant's witness told the trial court that on 20th August, 2015, the 1st Respondent collected two cheques from the Appellant for Ksh.114,800/- and Ksh.185,200/- that were both payable to the 1st Respondent, which he was to use to pay to Elegant Hotel for services rendered by the Hotel to the Appellant during a workshop that was held at the hotel.

That the Appellant paid Ksh.10,000/- and Ksh.50,000/-, leaving a balance of Ksh.240,000/-.

22. The witness further stated in her statement that on 21st December, 2015, the 1st Respondent received Ksh.76,000/- from a client of the Appellant at Kamukunji Police Station out of which he remitted to the Appellant Ksh.50,000/- and withheld Ksh.26,000/-. That the Appellant made a report to Central Police Station against the 1st Respondent and that the latter was arrested.

23. The Appellant's witness stated that the prosecution of the 1st Appellant was made in good faith and that the Appellant, other than making the report to the police, did not participate in making the decision to arrest and prosecute the 1st Respondent.

24. The witness further stated that the Appellant was counter-claiming against the 1st Respondent Ksh.266,000/-, being the unaccounted Ksh.240,000/- plus the unremitted Ksh.26,000/.

25. Upon being cross examined, the witness told the trial court that the 1st Respondent was required to reconcile and account for the monies he had received but did not do so. She admitted that there was a letter authored by the 1st Respondent requesting to be granted access to the

Appellant's premises for purposes of reconciling the accounts.

26. The Appellant's witness produced the following documents in support of the Appellant's case:

- Cheque No. 2536 for Ksh.114,800/- issued to the 1st Respondent.
- Cheque No. 2554 for Ksh.185,200/- issued to the 1st Respondent.
- Statement of the Appellant.
- Demand letter for Ksh.82,810/- dated 21st January, 2016 from Elegant Hotel to the Appellant.
- Acknowledgement note by the 1st Respondent of receipt of Ksh.76,000/- from the Appellant's client.

27. The 2nd Respondent did not call any witness.

28. In the judgement rendered on 28th May, 2020, the learned trial Magistrate entered judgement in favour of the 1st Respondent and against the Appellant and the 2nd Respondent in the reliefs and terms aforestated.

29. Having considered the grounds in the memorandum of appeal, the submissions filed by the parties and the record in its entirety, I discern the issues for determination to be:

a. Whether the elements of the tort of malicious prosecution were established by the 1st Respondent and in the case before the trial court.

b. Whether the learned trial Magistrate reached proper findings on quantum.

c. Whether the Appellant proved its counterclaim to the required standard.

30. **Black's Law Dictionary, 9th Edition** defines the term malice as:

> **"the intent, without justification or excuse, to commit a wrongful act; the reckless disregard of the law or of a person's legal rights; ill will, wickedness of heart."**

31. The tort of malicious prosecution is an intentional tort in respect of which, if proved on a balance of probabilities, a party claiming would be entitled to redress in the form of damages and recovery of any losses incurred or expended during the malicious proceedings which follow.

32. The malicious proceedings must in the case have been initiated without any lawful reasonable and/or probable cause by the Defendant.

33. In the case of ***Silvia Kambura v George Kathurima Japhet & 2 others [2021] eKLR*** it was held that although it is within any person's rights to approach the courts and/or other quasi-judicial bodies to seek redress for wrongs committed against them, this right must be exercised within the confines and parameters of the law, for genuine and lawful reasons. If the right is exercised with other ulterior motives, this constitutes abuse of process, which is in itself a wrong and/or violation attracting a claim for damages for malicious prosecution.

34. The elements of the tort of malicious prosecution were laid down in the case of ***Murunga vs The Attorney General [1976-1980] KLR 1251*** where the court outlined them as follows:

i. That a prosecution was instituted by the defendant or by someone for whose acts he is responsible.

ii. That the prosecution terminated in the Plaintiff's favour.

iii. That the prosecution was instituted without reasonable and/or probable cause.

iv. That the prosecution was actuated by malice.

35. As was held in the case of ***Attorney General v Peter Kirimi Mbogo & another [2021] eKLR***, all the four

elements are conjunctively applicable and must therefore all be proved for a party to be successful in a claim for malicious prosecution.

36. On the first ingredient whether the prosecution was instituted by the Appellant or by someone for whose acts it is responsible, it is clear from the proceedings in the criminal case and the lower court matter that gives rise to the instant appeal that it is the Appellant that made the report to the police pursuant to which the 1st Respondent was prosecuted. The 1st Respondent produced a copy of the charge sheet in the criminal case in which the complainant was the Appellant. This fact was admitted before the trial court by the Appellant's own witness.

37. Regarding the second ingredient as to whether the prosecution terminated in the Appellant's favour, it is instructive from what the Appellant told the court in the civil matter that he was ultimately acquitted in the criminal matter under *Section 202* of the *Criminal Procedure Code,* when the Appellant and the prosecution failed to present witnesses. The trial court in the criminal matter rendered itself as follows in its ruling of 15th December, 2017:

> ***"This case has been coming up for hearing and since plea taken on 16th March, 2016 the prosecution case has not proceeded at all. On 11th October, 2016, the***

prosecution was present (Nyoro) informed court that only two witnesses would testify for prosecution. On 30th March, 2017, the State Counsel informed court that his senior Mr. Karuri had advised Cpl Muthoni to traced (sic) ***other witnesses statements. The court advised prosecution to consider withdrawal if investigations were incomplete, however on 23rd May, 2017, the prosecution*** (sic) ***informed court that he had been advised by his senior Mr. Karuri to proceed with the case as is and a hearing date was set. On 1st September, 2017, the prosecution was not ready as the police file had not been availed and no witness was present. Given that only two witnesses were indicate as scheduled to be called by prosecution, court directed both to attend today for closer*** (sic) ***of the prosecution case. Hearing was set for today, and today none of the two witnesses is present. Hence the prosecution's withdrawal application.***

Accused's objection is noted and considered. Withdrawal under Section 87(a) CPC requires leave of court. In the circumstances of this case, the court acquit (sic) ***the accused that it is not just to withdraw under the said provision.***

As prosecution's case ought to have been brought to court ready, for withdrawal much later of investigations were complete, (sic) ***court declines withdrawal as prayed.***

In the circumstances charges hereby are dismissed under Section 202 CPC. Accused is acquitted herein. Bail be refunded to the depositor"

38. The provision of law under which the 1st Respondent's prosecution was terminated is *Section 202* of the *Criminal Procedure Code,* which provides as follows:

> **"202. If, in a case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court shall thereupon acquit the accused, unless for some reason it thinks it proper to adjourn the hearing of the case until some other date, upon such terms as it thinks fit; in which event it may, pending the adjourned hearing, either admit the accused to bail or remand him to prison, or take security for his appearance as the court thinks fit."**

39. In brief, *Section 202* of the *Criminal Procedure Code* provides that where the complainant fails to appear in court, having been notified of the proceedings when the accused is present for hearing, the court shall acquit the accused unless there is sufficient reason to adjourn the matter. Pursuant to *Section 202* of the *Criminal Procedure Code,* the non-

appearance of the complainant, despite due notice, entitles the accused to an acquittal unless the court finds sufficient cause to adjourn the case. Noteworthy is the fact that from the proceedings of the criminal case, there was no single hearing date that the prosecution witnesses, particularly the complainant's (the Appellant's) employees were present in court.

40. As the Appellant did not provide any evidence to show that the finding of the court in the criminal case was successfully challenged, I can only hold that the Appellant and the prosecution were duly notified of the proceedings before the court in the criminal trial but failed, without reasonable cause to present witnesses to testify.

41. The 1st Respondent produced in the civil case the proceedings and ruling of the criminal trial. It is therefore clear from the ruling that the prosecution terminated in favour of the 1st Respondent.

42. The third ingredient is whether the prosecution of the Appellant was instituted without reasonable and/or probable cause. On this, I will borrow from the persuasive authority of the High Court in ***Silvia Kambura v George Kathurima Japhet & 2 others [2021] eKLR*** where the court stated thus:

"The real thrust of the Appeal is found in this and the next issue. In a determination of whether there was any probable and/or reasonable cause, the reasonable man's standard applies. In the case of <u>Hicks v Faulkner (1878) 8 Q.B.D 167 at 171,</u> Hawkins J held as follows with respect the meaning of reasonable and probable cause: -

> ***"An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."***

The test for whether a case was instituted with a reasonable and probable cause was also laid out by the Court of Appeal in <u>Kagane & others vs The Attorney General & Another [1969] EA 643</u>, where Rudd J held as follows: -

> ***"...the question as to whether there was reasonable and probable cause for the prosecution is primarily to be judged on the basis of an objective test. That is to say, to constitute reasonable and probable cause, the material within the knowledge of the prosecutor at the time he instituted the prosecution, whether that material consisted of facts discovered by the prosecutor or information which has come to him or***

both, must be such as to be capable of satisfying an ordinary reasonable prudent and cautious man to the extent of believing that the accused is probably guilty. If and so far as that material is based upon information, the information must be reasonably credible, such that an ordinary reasonable prudent and cautious man could honestly believe to be substantially true and to afford a reasonably strong basis for the prosecution."

In <u>Samson John Nderitu vs The Attorney General [2010] eKLR, Nambuye J</u> (as she then was) held as follows: -

"It is trite and this court, has judicial notice of the fact that before an accused person is taken to court, and arraigned in court for criminal prosecution, the prosecuting authority namely the police or whatever unit, whose functions fall under the office of the Defendant, <u>usually carry out investigations, record statements from potential witnesses, analyze the facts to determine if the facts disclose an offence before arraigning such a person in a court of law</u>."

43. From the foregoing therefore, the test lies on the factors, facts, circumstances and evidence that the Prosecution relied on in charging the 1st Respondent.

44. The 1st Respondent was in the criminal case charged with the offence of stealing by servant contrary to *Section 281* of the *Criminal Procedure Code*.

45. During the trial in the criminal case, the prosecution did not call any witness to testify and prove the charge against the 1st Respondent. From the ruling of the trial court in the criminal case (reproduced above), it is clear that no tenable reasons were presented as to why the prosecution, despite the many opportunities granted by the court, failed to present witnesses.

46. From the above, I am persuaded that there were no tenable reasons and/or grounds that were placed before the trial court in the criminal case warranting the 1st Respondent to be suspected to have committed the offence. I then hold that the prosecution was instituted without reasonable and probable cause, as there was no basis for the same.

47. With regard to the last ingredient, which is whether the prosecution was actuated by malice, as I have found that there was no reasonable and probable cause to institute the proceedings, the trial court properly inferred malice on the part of the Appellant and the 2nd Respondent, in the circumstances, considering the manner and reasons of the termination of the prosecution. I would agree with the learned trial Magistrate in the civil case that gave rise to this appeal that the termination of the criminal case under the above

provision presented the impression that the Appellant was not serious in pursuing the charges and that was therefore a clear case of malice on its part.

48. Having reached the above persuasion, that all the four ingredients were proved by the 1st Respondent on a balance of probabilities, I find that the trial magistrate reached the proper conclusion, that the 1st Respondent proved the tort of malicious prosecution against the Appellant and the 2nd Respondent to the required standards.

49. The second issue for this court to determine is whether the amount assessed and awarded as compensation to the 1st Respondent was in error and/or inordinately high or excessive.

50. Compensatory damages are awarded to a wronged party in exercise of the court's discretion. The principles upon which an appellate court can interfere with judicial discretion were laid down in the case of ***Price & another v Hidler [1996] KLR 95*** as follows:

> ***"The court will not interfere with the exercise of discretion by an inferior court unless its satisfied that its decision is clearly wrong, because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters it should have taken into consideration and in doing so arrived at a wrong decision."***

51. Further, in the case of ***Gitobu Imanyara & 2 others v Attorney General [2016] eKLR*** the Court of Appeal while discussing the principles upon which an appellate court may disturb an award of damages by an inferior court held that:

> ***"...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in Rook v Rairrie [1941] 1 All ER 297.***
>
> ***It was echoed with approval by this Court in Butt v Khan [1981] KLR 349 when it held as per Law, J.A that:***
>
> > ***"An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some***

material respect, and so arrived at a figure which was either inordinately high or low."

52. There is also the authority of ***Mbogo & Another v Shah [1969] EA 93***, where it was held, *inter alia*, that:

> ***"An appellate court will interfere if the exercise of the discretion is clearly wrong because the judge has misdirected himself or acted on matters which he should not have acted upon or failed to take into consideration matters which it should be taken into consideration and in doing so arrived at a wrong conclusion. It is trite law that an appellate court should not interfere with the exercise of the discretion of a judge unless satisfied that the judge in exercising his discretion has misdirected himself and has been clearly wrong in the exercise of the discretion and that as a result there has been injustice."***

53. In the present appeal, the Appellant merely stated that the awards in compensation that were made in favour of the Respondents were too high. The Appellant did not proffer and/or demonstrate to this court the ground that the exercise of the discretion by the trial court was clearly wrong or that the court misdirected itself or acted on matters which it should not have acted upon or failed to take into consideration matters which it should have considered and in doing so arrived at a wrong conclusion. There is therefore no basis upon which I can interfere with the discretion of the trial court.

54. In respect of the third issue, which is whether the Appellant proved the counterclaim against the Respondent on a balance of probabilities, I note from the judgement of the trial court that the learned trial Magistrate did not specifically address the Appellant's counterclaim, and fell into error thus.

55. However, the evidence available, as admitted by the Appellant's own witness upon cross examination before the trial court was that the 1st Respondent requested the Appellant for an opportunity to access the Appellant's premises and documents in order to reconcile the accounts of the monies that he had handled, which request the Appellant declined.

56. Recalling that the same witness stated that in the ordinary course of his duties the 1st Respondent was required to reconcile the accounts of the monies that he had handled, my view is that it would amount to doublespeak for the Appellant to deny the 1st Respondent an opportunity to reconcile the accounts yet proceed to claim for Ksh.266,000/- from him, on the allegation that the 1st Respondent received and did not account for the money.

57. For that reason, the appeal on the counterclaim lacks merits and fails.

58. Being of the foregoing persuasion, I find that the appeal herein lacks merit. I proceed to dismiss it with costs to the 1st Respondent. I make no order as to costs in respect of the 2nd Respondent as the Attorney General did not participate in the appeal.

DELIVERED (virtually), DATED & SIGNED this 4th November, 2025.

JOE M. OMIDO

JUDGE

FOR THE APPELLANT: **Ms. Alwanga** for **Ms. Odhiambo.**

FOR THE 1ST RESPONDENT: **Mr. Kang'ethe.**

FOR THE 2ND RESPONDENT: No appearance.

COURT ASSISTANTS: **Mr. Ngoge** & **Mr. Juma.**

Ms. Alwanga: I seek 30 days stay of execution.

Mr. Kang'ethe: We oppose the application. This is an appeal. There are no reasons for the court to grant stay.

Court: Stay of execution granted for 7 days to allow the Appellant to file a formal application for stay.

JOE M. OMIDO

JUDGE