IN THE COURT OF

APPEAL AT

NAIROBI

(CORAM: KIAGE, JAMILA MOHAMMED & ODUNGA,

JJ.A.) CIVIL APPEAL NO. E836 OF 2024

BETWEEN

CYTONN INVESTMENT PARTNERS SIXTEEN LLP.....1ST APPELLANT CYTONN INVESTMENT MANAGEMENT PLC.....2ND APPELLANT

AND

THE OFFICIAL RECEIVER.....RESPONDENT

(An Appeal from the Rulings and Orders of the High Court at Nairobi (F. Mugambi,

J) delivered on the 26th July 2024

in

Insolvency Petition No. E063 of 2021)

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JUDGMENT OF THE COURT

1. This appeal arises the ruling of the learned Judge (***F. Mugambi, J.***) delivered on 26th July 2024. The said ruling arose from the respondent's application dated 19th June 2024 in which the Official Receiver sought to have Cytonn Investment Management PLC (CIM) evicted from the properties known as **L.R. Number 2/85** (Originally 2/44/2), **L.R. Number 2/86** (Originally 2/44/3) and **L.R. Number 2/87** (Originally 2/44/4), (altogether

the Kilimani properties). The respondent also sought to repossess these properties with the assistance of the OCS Kilimani Police Station and the Commandant, Security of Government Buildings. It was further sought that the OCS, Kilimani Police Station, appears before the court to report on the progress of repossession and that officers be appointed by the court to safeguard the property until such a time as execution shall be undertaken.

2. The applications were based on the grounds that a liquidation order was issued by the High Court on 6th January 2023 against Cytonn High Yields Solutions (CHYS) and that subsequently, the court issued vesting orders on 30th November 2023 and authorized the Official Receiver to value the Kilimani property with a view to selling the same to recoup the creditors' investments; that the Official Receiver then took over and secured the property on 22nd December 2023; that the appellants filed an appeal against the said vesting orders and when the matter came before this Court on 27th December 2023, the

matter was not heard but this Court issued directions that the

status quo be maintained pending the proper constitution of the bench and the determination of the matter; and that as at the time of the issuance of the directions by the Court, the Official Receiver was in possession of the Kilimani property.

3. It was, however, contended: that on 18th June 2024 unknown persons claiming to be from the appellants, assaulted and forcibly detained and thereafter removed the security guards that had been hired by the Official Receiver from the premises, took over the property and locked them out; that the representatives of the Official Receiver were denied access to the property and had since been unable to repossess the property; that it came to the attention of the Official Receiver that the Directors of Cytonn Management PLC had since put up signage intending to lease the Kilimani property.

4. In response to the application, the appellants raised a preliminary objection challenging the jurisdiction of the court arguing that the court with jurisdiction to hear and determine an application for eviction as sought by the Official Receiver

was the

Environment and Land Court [the ELC]; and that before eviction, a 3 month eviction notice must be issued to the occupiers of private land.

5. CHYS, on its part, while denying the issuance of any status quo orders by this Court, urged that the court should hold its horses and allow this Court to make its determination. It argued that in any case, with the preservation orders in place, the Kilimani property cannot be sold or transferred. The application was similarly opposed by Valerina Jiwa and 289 other creditors who filed Grounds of Opposition urging the court to dismiss the application on the grounds that it was a delaying tactic. They contended that the court lacked the jurisdiction to entertain the dispute before it and that, in any case, the application had been rendered moot by the preservation orders already in place.

6. In the ruling the subject matter of this appeal, the learned Judge identified the issue for determination as:

i. Whether the court has jurisdiction to hear and determine the application before the

court; and

ii. Whether the Official Receiver was deserving of the orders sought.

7. On the issue of jurisdiction, the learned Judge was of the view that the nature of the proceedings before the court was one of those that are often referred to as *"mixed grill"* cases that involve a variety of jurisdictional issues that typically span across multiple courts. Citing ***Suzanne Achieng Butler & 4 Others V Redhill Heights Investments Limited & Another, [2016] eKLR*** and ***Peter Mutisya Musembi & Another V National Bank of Kenya Limited, [2015] eKLR*** which referred to ***Dean Patty V Commonwealth Bank of Australia, (2000) FCA 1072***, the learned Judge formed the view that in such cases, the court with jurisdiction over the pre-dominant issue also has the authority to decide other related matters that arise during the proceedings. Referring to ***Section 13*** of the ***Environment and Land Court Act*** *(the ELC Act),* the learned Judge, while recognising that under section 13(2) of the ***ELC Act*** the ELC has jurisdiction to issue eviction orders, noted that the impugned vesting order arose from a liquidation order earlier issued by the court and that pursuant to ***Sections 2 and 421*** of the

Insolvency Act (the Act), the Court that is clothed with the

jurisdiction to deal with insolvency matters is the High Court. The learned Judge further appreciated that the ordinary course of a liquidation process mandates a liquidator to preserve, realize, manage and dispose of the assets of a company in liquidation and that this may include attaching and seizing land belonging to a company, as part of the assets of the liquidated company, in a case such as the present one. It was noted that the Act comprehensively addresses the process of administration of estates within the confines of liquidation, notwithstanding that part of such assets are immovable land. The learned Judge was satisfied that it is the Insolvency Court that is vested with jurisdiction to supervise the Official Receiver in his duties under the Act and that the fact that the application involved a land matter incidental to the liquidation process did not divest the court of jurisdiction. She dismissed the Notice of Preliminary Objection.

8. On whether the Official Receiver was deserving of the orders sought, the learned Judge referred to the chronology of

events

following the issuance of the liquidation order against CHYS on

6th January 2023 when the Official Receiver was appointed as liquidator and the issuance of the vesting orders vide a ruling dated 30th November 2023. The learned Judge found that the Official Receiver took over the Kilimani property following the vesting orders on 22nd December 2023. Based on the transcript of the proceedings of this Court in Civil Application No. E615/2023 on 27th December 2023, the learned Judge found that at the point of filing the appeal in ***E615 of 2023,*** the Official Receiver was already in possession of the Kilimani property and formed the view that everything that had transpired as at 11:33am on 27th December 2023 ought to have been left as they were and no further action was to be taken thereafter, in terms of executing the vesting orders. According to the learned Judge, this Court did not reverse the actions already taken regarding the Kilimani properties but only halted any future actions, meaning that the status of the properties as it was at the time this Court issued its directions should be restored. According to the learned Judge, this meant that possession of the properties should revert to its

prior state, pending any further directions by

this Court. It was her view that the issue of lack of valid notices before the takeover by the Official Receiver was a matter to be canvassed substantively in the proceedings challenging the vesting orders while the legality of the actions by the Official Receiver as well as allegations of vandalism and destruction, being a contested matter, could only be determined upon presentation of proper evidence. Accordingly, the learned Judge allowed the application in the following terms:

i. ***Pending the hearing and determination of the matter, the Directors of Cytonn Investment Management PLC, their CEO, Edwin Dande and their agents, employees, servants and assignees herein be and are hereby ordered to immediately evacuate and/or be evicted from the parcels of land known as L. R. Number 2/85 (Originally 2/44/2), L. R. Number 2/86 (Originally 2/44/3) and L. R. Number 2/87 (Originally 2/44/4).***
ii. ***Pending the hearing and determination of the matter, it is hereby ordered that L. R. Number 2/85 (Originally 2/44/2), L. R. Number 2/86 (Originally 2/44/3) and L. R. Number 2/87 (Originally 2/44/4) shall be guarded by officers appointed by the Official Receiver to safeguard the property until such a time as further execution can be undertaken or pending further directions.***

iii. The OCS Kilimani Police Station is hereby ordered to provide police escort to the Official Receiver for the purpose of peace and order during the process of repossession of L. R.

Number 2/85 (Originally 2/44/2), L. R. Number 2/86 (Originally 2/44/3) and L. R. Number 2/87 (Originally 2/44/4)

iv. The OCS Kilimani Police station shall appear before the court on 31st July 2024, to state the progress of the repossession.

v. The costs of this Application be in the cause.

9. It is these orders that provoked this appeal which is based on the grounds that the learned Judge erred: in issuing the orders after finding that the Environment and Land Court has jurisdiction under ***Section 13(2)*** of the ***ELC Act*** to issue eviction orders; when she held that the case before her was a mixed grill case clothing her with jurisdiction to hear and determine the application.; when she stated that no further orders were issued by the Court of Appeal when in fact the orders were presented before the court for consideration; when she found that the Court of Appeal's orders were to the effect that the possession of LR No. 2/86 and LR No. 2/87 was to revert to the Official Receiver yet it was not in possession on the date of making the orders of 27th December 2024; when she directed the issue of illegal possession by the Official Receiver to be addressed at the Court of Appeal on vesting orders; when she misapplied the case of ***Suzanne***

Achieng Butler v Redhill Heights Investments Limited & Another [2016] eKLR and ***Peter Mutisya Musembi & Another v National Bank of Kenya Limited [2015] eKLR***; when she failed to determine that the orders sought in the Notice of Motion dated 26th June 2024 were moot on the basis that they were sought in the interim; when she arbitrarily issued interim eviction orders to the Official Receiver without following the process enunciated by the law; when she held that the stay of execution orders by the Court of Appeal connoted that the property be restored and revert to its previous state pending further directions by the Court of Appeal but went on to issue eviction orders; when she stated that the allegation of vandalism and the question of legality of the Official Receiver's actions ought to be determined upon presentation of proper evidence yet the evidence of vandalism, theft and illegal occupation had already been tabled before her; when she usurped the jurisdiction of the Environment and Land Court.

10. When the appeal came before us for plenary hearing on 30th

April

2025, learned senior counsel, ***Mr Paul Muite,*** appeared with ***Ms***

Koile for the appellants while learned counsel, ***Mr Emmanuel Bitta***, appeared with ***Ms Mugo*** for the respondent. Counsel informed us that they had filed their written submissions which they relied on entirely.

11. On behalf of the appellants, it was submitted: that ***Article 165(5)*** of the ***Constitution*** expressly ousts the jurisdiction of the High Court in matters falling within the jurisdiction of the courts contemplated in ***Article 162(2);*** that ***Article 162(2)*** provides for the establishment of courts with the same status as the High Court, including the Environment and Land Court (ELC), which has exclusive jurisdiction over disputes relating to the environment and use and occupation of land; that ***Section 13*** of the ***Environment and Land Court Act*** provides that the ELC has original and appellate jurisdiction over environment and land matters; that, on the authority of the Supreme Court decision in ***Republic v Karisa Chengo & 2 Others (2017) eKLR,*** the High Court cannot purport to exercise jurisdiction over matters that fall within the mandate of the Environment and

Land Court; and that this jurisdictional boundary is clear and must be strictly adhered to.

12. The appellants further contended: that through judicial innovation and craft, the trial court erroneously granted itself jurisdiction by relying on the so-called "mixed grill" cases doctrine as enunciated in ***Suzanne Achieng Butler & 4 Others v Redhill Heights Investments Limited and Another*** (supra) in which the court observed that in instances where multiple legal issues arise across different jurisdictional boundaries, a court that is properly seized of the matter may assume jurisdiction to prevent fragmentation of litigation; that such reasoning is fundamentally flawed in the present case because, while it is undisputed that the High Court has jurisdiction to supervise the liquidation process under the ***Insolvency Act***, it is also undisputed that the appellants herein, Cytonn Investment Partners Sixteen LLP, the registered owner of the Kilimani property, and Cytonn Investments Management PLC, which was in occupation of the said property, are solvent entities, which are not subject to

liquidation proceedings and or liquidation orders;

that the trial court's assertion of jurisdiction on the premise that it is sitting as an insolvency court is therefore legally untenable and is not based on any factual basis to support a finding that the case involved insolvent companies, hence leading to a manifest misdirection of the law; that given that the appellants are solvent entities against whom eviction orders were being sought, the appropriate court is the Environment and Land Court, as the court with original jurisdiction to hear and determine matters relating to land under ***Article 162(2)(b)*** of the ***Constitution*** and the ***Environment and Land Court Act;*** and that in light of the foregoing, it is evident that the trial court acted ultra vires by assuming jurisdiction over a matter beyond its mandate, consequently, its decision is not merely erroneous but also amounts to an illegality.

13. The appellants further submitted: that based on ***Musembi & 13 others v Moi Educational Centre Co. Ltd & 3 others [2021] KESC 50 (KLR),*** eviction must strictly comply with statutory provisions to ensure fairness, procedural regularity

and the protection of fundamental rights; that ***Section 152B*** of the ***Land***

Act, No. 6 of 2012 provides that the person purporting to evict an unlawful occupant must serve a written notice of not less than three months upon the unlawful occupant before the intended eviction can be carried out; that the essence of this provision is to afford the affected parties an opportunity to either vacate the property voluntarily or challenge the eviction process within the confines of the law; that ***Section 152G*** outlines the mandatory procedures to be observed during eviction and even where a vesting order has been issued, compliance with these procedures is couched in mandatory terms and language; that the learned Judge failed to ensure compliance with these procedural safeguards before issuing the interim eviction orders; that the appellants were in possession of the Kilimani property until 22nd December 2023 when, without notice or warning, the Official Receiver unlawfully and forcefully evicted the proprietors of the land and Cytonn staff from the property; and that as the Official Receiver neglected to issue an eviction notice to the appellants as required under ***Section 152E*** of the ***Land Act,***

in line with the holding in the case of ***Sabai & 4 others v District Land***

***Adjudication & Settlement Office, Trans- nzoia & 11 others* [2022] KEELC 4874 (KLR)**, the absence of such compliance renders the eviction of the appellants legally untenable.

14. Setting out the sequence of events before this Court on 27th December 2023, the appellants submitted: that the effect of these orders was unequivocal - no further execution of the High Court's ruling was to take place; that at the time, no formal eviction of the appellants had occurred and the appellants were still in possession of the property; that as a result, the appellants were lawfully entitled to be in occupation of the Kilimani property pending further directions from the Court of Appeal; that based on ***Law Society of Kenya vs Attorney General & Another* (Petition 4 of 2019) [2019] KESC 16 (KLR)(Civ) (3 December 2019) (Judgement),** a lower court cannot overturn or reinterpret the decision of this Court and on the basis of hierarchy of courts, the trial court was duty-bound to down its tools and refrain from entertaining any application seeking to re-

evaluate or circumvent those orders; that the trial court should have dismissed the Official Receiver's applications in so far as they sought to vary

the stay orders and enforce the vesting orders despite the subsisting stay; and that, furthermore, since the application for stay of the vesting orders was pending before the Court of Appeal, in COACAPPL E590 of 2023, in which interim stay orders had been issued, the Official Receiver, being dissatisfied with those orders, was required to challenge them before the Court of Appeal rather than approaching the trial court in an apparent bid to circumvent the appellate process.

15. According to the appellant, in balancing the rights and interests of the parties, particularly when issuing interim orders pending the final determination of a dispute, courts must err on the side of caution. The law does not envisage the issuance of interim orders that effectively dispose of a matter in finality without a substantive hearing. Interim orders, by their very nature, are meant to preserve the status quo and should not result in irreparable prejudice to any party. In the present case, the Official Receiver, sought the eviction and/or evacuation of the appellants from the Kilimani property under the guise of interim relief. The learned Judge

granted the order sought without due

consideration of the established legal principle that interim orders must not result in the complete disposal of the rights of the parties before a full hearing on the merits. Such an order, in effect, permanently deprived the appellants of their constitutional and proprietary rights without the benefit of a substantive determination. To the appellants, the issuance of an eviction order as an interim relief, without allowing the appellants to prosecute their matters fully contravenes the right to a fair hearing and additionally violates Article 40 of the Constitution of Kenya which guarantees the right to property and protection from arbitrary deprivation of property. By granting orders that led to the eviction of the appellants, it was contended, the learned Judge effectively determined the dispute prematurely in a manner that was procedurally irregular.

16. In light of the foregoing, the appellants prayed that this Court corrects the injustice occasioned by the impugned ruling by allowing the appeal and granting the orders sought.

17. On behalf of the respondent, it was submitted: that, pursuant to

Section 423(1) if the Act, the trial court and not the ELC had

the jurisdiction to determine the matter since insolvency matters are commercial in nature; that the petition was filed by the appellants vide the application dated 23rd September 2021; that the issue of jurisdiction had never been raised since the filing of the matter; that jurisdictional issues ought to be raised at the earliest opportunity and having actively participated in the proceedings, the appellants were estopped from contesting the issue of jurisdiction; that jurisdiction of the trial court is also established under the doctrine of predominant issue and that while the issues touched on possession of the Kilimani property, the predominant issue was enforcement of a debt owed to CHYS; that the Kilimani property was owned by the 1st appellant and therefore vesting it with the liquidation was intended to facilitate the realisation of the 1st appellant's debt to CHYS; that any matters arising in the course of the liquidation of CHYS, including vesting of the Kilimani property ought to be determined by the trial court since the predominant issue was the liquidation proceedings as was held by this Court in ***Bank of Africa Limited &***

[2024] KECA 410 and ***Mathew Namusei Chahasi v Cooperative Bank Limited & Another [2021] eKLR***.

18. It was further submitted: that appellants have not demonstrated any change in circumstances or identified any error or omission that would justify a departure from the existing order; that the lifting of the vesting orders would open the floodgates to dissipation, alienation or encumbrance of the Kilimani property; that to discharge the orders would directly contravene the core insolvency principle of maximising the pool of assets available for distribution to creditors and would undermine the orderly management of the insolvent estate and create a real risk of irreversible diversion of value away from the creditors and would pave way for the promoters of CHYS to unjustifiably benefit from the assets that, by law and equity, should have been distributed to the creditors; that the appellants have not satisfied the legal threshold for setting aside judicial orders made on merit.

19. It was further submitted: that when the liquidator received the handover documents from the administrator of CHYS and CPN,

the promoters had the opportunity to prove that the properties of the SPVs including the Kilimani property were not bought using the investors' money which they did not do; that during the hearing of the application for vesting in the liquidator, the Kilimani Property there was submission by the promoters controverting the liquidator's submissions that the assets registered in the names of the SPVs were bought using funds from CHYS and CPN; that through the documents submitted by the appellant, there was a clear link of CHYS and CPN entitlements to the properties registered under the SPVs.

20. We have considered the submissions above. In our view the issues for our determination are: whether the trial court had the jurisdiction to deal with the matter; whether the procedural safeguards for evidence were adhered to; and what was intended by this Court's order.

21. On the issue of jurisdiction, this Court in ***Pumwani Riyadha Mosque Committee & another v Gikomba Business Centre Limited*** ***[2025] KECA 1257 (KLR)*** appreciated that:

> ***"The intertwining jurisdiction between the High Court under Article 165 of the Constitution and the specialized courts under Article 162 of the Constitution remains a live controversy within our jurisprudential sphere."***

22. It is clear that the proceedings before the High Court were initiated as insolvency proceedings. The vesting order of the Kilimani property was made pursuant to the provisions of the ***Insolvency Act*** under which the Court with the jurisdiction to deal with insolvency maters is the High Court. The orders of eviction were made consequent upon the vesting orders. Such consequential orders, in our view, cannot be the basis upon which the issue of jurisdiction would be determined since they were not the predominant issues in dispute in the insolvency proceedings. That the principle applies when determining a court's jurisdiction was appreciated by this Court in ***Pumwani Riyadha Mosque Committee & another v Gikomba Business Centre Limited*** ***(supra)*** where it stated that:

> ***"Although counsel for the appellants appeared to suggest that the learned Judge erred in using the "predominant test"***

principle to determine that he had jurisdiction to deal with the dispute between the parties, we find counsel's submission to be without merit for it was in <u>Co-operative Bank of</u>

Kenya Limited vs. Patrick Kangethe Njuguna ***(supra) that the Court applied the principle of the "dominant issue" to aid judges of the High Court and the specialized courts in determining whether a matter fell within a particular court's jurisdiction or that of any of the other courts of equal jurisdiction. The "dominant issue" principle or the "predominant test" principle as referred to by the learned Judge is therefore a recognized principle and the learned Judge cannot be faulted for invoking it."***

23. The predominant test was applied by this Court in ***Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others [2017] KECA 79 (KLR)***, where the Court expressed itself as hereunder:

> ***"To the appellant, the charge was an instrument granting an interest in the land, hence jurisdiction in the matter lay with the ELC. However, under Section 2 of the said Act, an instrument is a writing or enactment which creates or affects legal or equitable rights and liabilities. For the purposes of this suit, that instrument was the charge. However, it bears repeating that the cause of action herein was never the charge (instrument) but the amounts due and owing thereunder. Neither the charge instrument nor the creation of an enforceable interest thereunder, were disputed. The main questions to be determined were the tabulation of the sums owing and whether statutory notices had issued prior to the attempted statutory sale. Furthermore, the jurisdiction of the ELC to deal with disputes***

relating to contracts under Section 13 of the ELC Act ought to be understood within

the context of the court's jurisdiction to deal with disputes connected to 'use' of land as discussed herein above. Such contracts, in our view, ought to be incidental to the 'use' of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court. In Paramount Bank Limited vs. Vaqvi Syed Qamara & another [2017] eKLR, this Court while discussing the jurisdiction of the Employment and Labour Relations Court over a claim of malicious prosecution expressed itself thus,

> ***'The origin of the dispute between the 1st respondent and the appellant was presented as a dispute arising from an employee/employer relationship, where the appellant accused the 1st respondent of theft followed by a criminal charge of stealing by servant. This was further followed by suspension and finally summary dismissal. There cannot therefore be any doubt that, in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation, which flowed directly from the dismissal, was equally within the jurisdiction of the court. In the exercise of its powers under Section 12 of the Employment and Labour Relations Court Act, the court could entertain the dispute in all its aspects and award damages appropriately.'***

By parity of reasoning, the dominant issue in this case was the settlement of amounts owing from the respondents to the appellant on account of a contractual relationship of a banker and lender. While exclusive, the jurisdiction of the ELC is limited to the areas

specified under Article 162 of the Constitution, Section 13 of the ELC Act and Section 150 of the Land Act; none of which concern the determination of accounting

> ***questions. Consequently, this dispute does not fall within any of the areas envisioned by the said provisions. On the other hand, the jurisdiction of the High Court over accounting matters is without doubt."***

24. We therefore find that the trial court had the jurisdiction to deal with the matter before it.

25. On the issue whether the procedural safeguards for evidence were adhered to, the appellants, based on ***Musembi & 13 others v Moi Educational Centre Co. Ltd & 3 others (supra)***, ***Sabai & 4 others v District Land Adjudication & Settlement Office, Trans- nzoia & 11 others (supra)***, ***Section 152B, 152G*** **and 152E** of the ***Land Act, No. 6 of 2012*** and contended that the person purporting to evict an unlawful occupant must serve a written notice of not less than three months upon the unlawful occupant before the intended eviction can be carried out, which was never done. Section 152E of the ***Land Act*** provides that:

> ***If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than***

three months before the date of the intended eviction.

26. We must point out that what is before us is an appeal challenging the decision made by the learned Judge. It is not a suit challenging the eviction of the appellants. Section 152E aforesaid deals with situations where the eviction is intended to be undertaken by the owner of land. Although the issue of non- service of the notices was raised before the learned Judge, it is clear that the learned Judge did not deal with it. In the ruling, the learned Judge expressed herself as hereunder:

> ***"It is clear that at the point of filing the appeal in HCCA E615 of 2023, the Official Receiver was already in possession of the Kilimani property. This is confirmed by the submissions made before the Court of Appeal by Ms. Mugo appearing for the Official Receiver… The issue of lack of valid notices before the takeover by the Official Receiver in my view is a matter to be canvassed substantively in the proceedings challenging the vesting orders. The legality of the actions by the Official Receiver as well as allegations of vandalism and destruction are all contested and can only be determined upon presentation of proper evidence. None of these allegations warrants the disobedience of the orders issued on 27/12/2023."***

27. According to the learned Judge, the court was being called upon to enforce the orders of this Court of 27th December 2023 which directed that the status quo be maintained. That being the position, we find that the issue of the notice under section 152E did not arise since the same does not apply to situations where the court is implementing its orders which have allegedly been disobeyed by a party. If every time a person disobeys a court order by entering upon a land where he has been removed in execution of a court order, a three months' notice would be required, court proceedings and orders would become a circus.

28. As regards the last issue of the intention of this Court's order of 27th December, 2023, it is clear from the ruling that the Court directed that pending the hearing date, there be "no further execution of the Ruling/Order of the High Court dated 30th November 2023 delivered in Insolvency Petition No. E063 of 2021". In the ruling the learned Judge stated that:

> ***"My interpretation of the Court of Appeal's directions upon hearing the parties was that everything that had transpired as at 11:33am***

on 27/12/2023 ought to have been left as was and no

further action was to be taken thereafter, in terms of executing the vesting orders."

29. We find no reason to fault the learned Judge since that was the order that this Court gave.

30. Accordingly, we find no merit in this appeal which we dismiss with costs to the respondent.

31. It is so ordered.

Dated and delivered at Nairobi this 21st day of November 2025.

P. O. KIAGE

.....
JUDGE OF APPEAL

JAMILA

MOHAMMED

.....
JUDGE OF APPEAL

G. V. ODUNGA

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY

REGISTRAR.