REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

CIVIL APPEAL NO. E027 OF 2022

EAST AFRICA INSTITUTE
OF CEERTIFIED STUDIES……
APPELLANT

VERSUS

KASTURI SELECTION LIMITED ……
RESPONDENT

JUDGEMENT

1. This Judgement arises from the Ruling and Order of Andayi W. Francis, Chief Magistrate (*as he then was*) dated 8.6.2022 in Nyeri CMCC No. E297 of 2021.
2. The Ruling arose from the two Applications filed by the Appellant. In the first Application dated 28.10.2021, the Appellant sought for an order that the dispute be referred to Arbitration.
3. The said Application was supported by the affidavit of Daniel Macharia and was also premised on the grounds stated in material thus:
    (a) The parties entered into a lease agreement dated 1.1.2020.

(b) Clause 6 of the lease required any dispute between the parties to be referred for determination through arbitration.

(c) A dispute had arisen and the matter ought to have been referred to arbitration.

4. In the second application dated 24.11.2021, the Appellant sought a stay of execution of the interlocutory judgment and decree on the grounds that the Appellant be given an opportunity to defend the suit and the Application dated 28.1.2021 raised triable issues. There was also an interlocutory prayer for a stay of execution to allow the appellant to file a defence.

5. The Respondent opposed the Applications by way of a preliminary objection and grounds of opposition. It was contended that the Appellant sought to defend the suit and at the same time refer it to arbitration contrary to Section 6(1) of the Arbitration Act. The Respondent also argued that the Arbitration Clause was inoperative as it was terminated by the parties.

6. The lower court considered the two Applications and dismissed them with costs. Aggrieved, the Appellant lodged the amended memorandum of appeal dated 8.6.2023 by which the following grounds of appeal were materially asserted:

(a) The learned magistrate erred in law and fact by declining to refer the dispute to arbitration when

there was an arbitration clause in the lease that any dispute between the parties would be referred to arbitration.

(b) The learned magistrate erred in law and fact by nit finding that he had no jurisdiction to hear the dispute when there was clause referring the dispute to Arbitration.

(c) The learned magistrate erred in law and fact in holding that there was no dispute to refer to arbitration when the Appellant had not filed a defence.

(d) The learned magistrate erred in law and fact by declining to set aside default judgement

Submissions

7. The Appellant filed submissions dated 17.3.2025. It was submitted that the lower court erred in its finding that there was no dispute to refer to arbitration. The Appellant referred to clause 6 of the parties' lease agreement.
8. It was also submitted that, apart from the claim for rent arrears, there was also a claim for *mesne profits*. The issue of the extent of occupation after termination of the lease, it was submitted, ought to have been referred to arbitration. The Appellant relied on Section 6 of the Arbitration Act and testified that the matter ought not to have proceeded in court after the objection on jurisdiction was raised.

9. It was also submitted that there was no notice of entry of judgment as required under Order 22 Rule 6 of the Civil Procedure Rules, and the execution was irregular.

10. The Appellant also submitted that the motor vehicle should be released from the auctioneers to the Appellant.

11. The Respondents also filed submissions dated 11.7.2025. It was submitted to the Respondent that there was no dispute regarding rent arrears and that the Appellant was willing to settle it.

12. On mesne profits, the Respondent submitted that the Appellant had made an admission for the rent arrears and continued occupation after termination of the lease.

13. In asserting no dispute, the Respondent relied on Section 6 of the Arbitration Act and also cited UAP Provincial Insurance Co. Limited v Michael John Beckett CACA No. 56 of 2007.

Analysis

14. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and

hearing their evidence first hand. In the case of *Mbogo and Another vs. Shah [1968] EA 93* where the Court stated:

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

15. The Court is to bear in in mind that it had neither seen nor heard the witnesses. It is the trial court that has observed the demeanor and truthfulness of those witnesses. However, documents still speak for themselves. The observation of documents is the same as the lower court as parties cannot read into those documents matters extrinsic to them. In the case of **Peters vs Sunday Post Limited [1958] EA 424**, court therein rendered itself as follows:-

> **"It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses…But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion…"**

16. However, where there was no viva voce evidence, then this court retains the same powers as the lower court. In the case

of *Sugut v Jemutai & 3 others (Civil Appeal 110 of 2018) [2023] KECA 202 (KLR) (17 February 2023) (Judgment) Neutral citation: [2023*] KECA 202 (KLR Kiage JA stated as doth: -

> "I have carefully considered those rival submissions by counsel in light of the record and the bundles of authorities placed before us. I have done so mindful of our role as a first appellate court to proceed by way of re-hearing and to subject the entire evidence to a fresh and exhaustive re-evaluation so as to arrive at our own independent conclusions. See Rule 29(1) of the Court of Appeal Rules 2010; Selle Vs Associated Motor Boat Co [1968] EA 123). I do accord due respect to the factual findings of the trial court out of an appreciation that it had the advantage, which we do not, of having seen and heard the witnesses as they testified. I am, however, not bound to accept any such findings if it appears that the judge failed to take any particular circumstance into account or they were based on no evidence or were otherwise plainly wrong. I note from the record before us that the learned Judge may not have been in a fully advantageous position in that regard having taken up the case when it was already half-way heard. Her conclusions on the evidence and findings of fact were therefore from a reading of what was recorded by the previous judge."

17. Though not raised, the court has to deal with the question of jurisdiction in this matter. In the case of **Samuel Kamau**

Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, the supreme court stated as doth: -

> "This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission **(Applicant), Constitutional Application Number 2 of 2011.** Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."

18. The court will therefore assume jurisdiction where it has and eschew where it does not have. Arbitration is a matter for the High Court as provided, while the question of rent arrears may lie elsewhere. However, in a case of this nature, arbitration is the overarching and predominant issue for determination. In the case of *Baadi & others v Attorney General & 7 others; National Land Commission & 2 others (Interested Parties); Global Initiative for Economic, Social and Cultural Rights & another (Amicus Curiae) [2018] KEHC 5397 (KLR)*, a four-judge bench of the high court [P Nyamweya, JM Ngugi, BT Jaden & JM Mativo, JJ, as they

then were] addressed the question of the predominant issue as follows:

> “105. Subsequent to the above decisions, our Courts have identified the correct approach to determine the appropriate superior Court to hear such hybrid cases. The Courts have resolved the issue by inquiring what the most substantial question or issue presented in the controversy is. For example in ***Suzanne Butler & 4 Others v Redhill Investments & Another*** the Court stated the test in the following words:
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> > "When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works.
> >
> > The Court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse.
> >
> > Ordinarily, the pleadings give the Court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the

predominant purpose of the contract. This test accords with what other Courts have done and therefore lends predictability to the issue."

19. In the case of *Butler & 4 others v Redhill Heights Investments Limited & another [2016] KEHC 1313 (KLR)* the court, JOEL NGUGI j AS he then was, stated as follows: -

> *Happily, this is the approach taken by our Courts to the question. In this regard, I can do no better than quote Justice Abuodha of the Employment and Labour Relations Court, who, faced with a "mixed grill case" delivered this jurisprudential gem:*
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> *The objection rekindles the debate on what a Court should do in mixed grill cases. Would an employee who during the tenure of his employment borrowed money or took a mortgage predicated on the employment relationship upon contesting termination of his services split his claim among the various Court? This Court in the case of Peter Mutisya Musembi & another v. National Bank of Kenya (2014) eKLR borrowing from the Australian cases of Dean Patty v. Commonwealth Bank of Australia 2000 FCA 1072 and Philip Morris Inc. v. Adam P. Brown Male Fashions Ltd (1981) 148 CLR became of the view that the argument that this Court and indeed other Courts of concurrent jurisdiction properly siezed of a matter cannot adjudicate upon*

consequential or factual question which on the face of it appear to be within the exclusive jurisdiction of another Court in the same judicial tier would unreasonably emasculate and whittle down the inherent power of a Court of law to do justice without undue regard to technicalities.

23. When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the **Pre-dominant Purpose Test***: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works.*

20. The question in the court below was predominantly a question of section 6(1) of the Arbitration Act. The court below and this court thus have jurisdiction.
21. The issue is whether the lower court erred in declining to refer the matter to arbitration. The application of Article 159(2) (c) of the Constitution as read with Section 6(1) of the Arbitration Act, is to the effect that where parties to a contract consensually agree on arbitration as their dispute resolution mechanism, the courts have no business entertaining such matters and are instead obliged to give effect to that arbitral agreement.

22. However, as the Respondent herein elected to come to court and the Appellant sought to invoke the arbitration agreement, the Appellant was obligated to do so not later than the time of entering appearance.

23. The Appellant raised the issue of Arbitration after a default judgment had been entered. The mere fact that an arbitration clause exists does not automatically oust the jurisdiction of the court, as a party who wishes to refer a matter filed in court to arbitration must comply with the conditions set out in section 6 of the Arbitration Act, which provides as follows:

> 6 (1) A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay of proceedings is sought, stay the proceedings and refer the parties to arbitration unless it finds—
> (a)that the arbitration agreement is null and void, inoperative or incapable of being performed; or
> (b)that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.

24. In this case, the Appellant filed a notice of appointment of advocates and a chamber summons application seeking to refer the dispute to arbitration. It was the common position of the parties that, prior to the lower court suit, they had

terminated the lease through the Appellant's letter dated 18.12.2020.

25. If the lease had been mutually determined, what then was the Respondent seeking to achieve in the lower court? The Appellant terminated the lease by its letter dated 18.12.2020. By its letter dated 21.12.2020, the Respondent accepted the termination of the lease on the condition that the Appellant pays the rent due and owing of Ksh. 4,122,000/= and Ksh. 1,374, 000/= being 3 months' notice rent, within 14 days. It would appear that the Appellant did not comply, and the Respondent filed the suit in the lower court. In **Eunice Soko Mlagui v Suresh Parmar & 4 others** (2017) eKLR, the Court of Appeal stated as follows:

> "After 2009, the provision still requires a party to apply for referral of the dispute to arbitration at the time of entering appearance or before acknowledging the claim in question. In our mind, filing a defence constitutes an acknowledgement of a claim within the meaning of the provision. Be that as it may, to the extent that, after amendment, Section 6(1) still requires a party to apply for referral of the dispute to arbitration at the time of entering appearance, the pre 2009 decisions of our courts on the application of section 6(1) are still good law to that extent. In *Charles Njogu Lofty v Bedouin Enterprises Ltd*, CA No 253 of 2003, this court considered section 6(1) and held that even if the conditions set out in paragraphs (a) and (b) are satisfied, the court

> would still be entitled to reject an application for stay of proceedings and referral thereof to arbitration if the application to do so is not made at the time of entering appearance or is made after filing of the defense."

26. Worth noting, too, is that there was no dispute declared between the parties. Upon termination of the lease, the Respondent issued a letter demanding its dues. The Appellant did not respond or impute a dispute on the amount claimed.

27. There was also no material placed before the lower court or this court to demonstrate that the Appellant had declared a dispute and made an attempt to resolve it as between the Appellant and the Respondent by amicable negotiation or, after two months of deadlock, by referral to arbitration as anticipated under clause 6 of the lease dated 1.1.2020.

28. The said lease required two months of failed amicable negotiation, which the Appellant did not procure. As a result, there was no basis to allege a dispute, and the lower court was correct in finding that no dispute was to be referred to arbitration. In any event, it was not the Appellant's case in the lower court that the portion of the claim relating to mesne profits was what amounted to a dispute, as now appears in the submissions to this court, and it was as such not proper for the Appellant to fault the lower court on an issue that was not available for determination.

29. On leave to defend the suit, the Appellant could not approbate and reprobate. The Appellant clearly sought to stay proceedings and refer the matter to arbitration. There was no substantive prayer in the Notice of Motion dated 24.11.2021 seeking leave to file a defence, and it was not proper to fault the learned magistrate. The doctrine of 'approbation and reprobation' has been elucidated in Halsbury's Laws of England, 4th Edn, Volume 16, at page 1012, paragraph 1507 thus:

> ***"The principle that a person may not approbate and reprobate expresses two propositions: (1) that the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile, and (2) that he will not be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent."***

30. The Appellant herein seeking to rely on the existence of an arbitration clause as a defence could not be allowed to use it to circumvent a statutory requirement under section 6 of the Arbitration Act, much as it could not use arbitration to evade meeting its undisputed obligation following termination of the lease. I am persuaded by the illustrious dictum in the English

case of **Halki Shipping Corporation v Sopex Oils Ltd (1997) 3 ALL ER 755**, in which shipowners applied for summary judgment against charterers in respect of their claim for liquidated damages for demurrage. There was an arbitration agreement between the parties and the charterers applied to stay those proceedings pending reference to arbitration. The issue in that case was whether there was a dispute within the meaning of the arbitration clause. Lord Swinton Thomas LJ stated as doth:

> "…To a large extent as a matter of policy to ensure that English law provided a speedy remedy by way of Order 14 proceedings for claimants who made out a plain case for recovery, and to prevent debtors who had no defence to the claim using arbitration as a delaying tactic, the words "not in fact any dispute" as opposed to "no dispute" have from time to time been interpreted by the courts as meaning "no genuine dispute," "no real dispute," "a case to which there is no defence," "there is no arguable defence", and later a case to which there is no answer as a matter of law or as a matter of fact, that is to say that the sum claimed "is indisputably due." The approach of the courts has on occasions been similar to that adopted by them in Order 14 proceedings in cases where there is no arbitration clause.
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> In recent times, this exception to the mandatory stay has been regarded as the opposite side of the coin to the jurisdiction of the court under R.S.C., Ord. 14, to give summary judgment in favour of

the plaintiff where the defendant has no arguable defence.

31. Therefore, there was no dispute to go to arbitration, and the lower court correctly applied the dictum in **UAP Provincial Insurance Company Ltd v Michael John Beckett [2013] KECA 205 (KLR**) as follows:

> It is clear from this provision that the enquiry that the court undertakes and is required to undertake under section 6(1)(b) of the Arbitration Act is to ascertain whether there is a dispute between the parties and if so, whether such dispute is with regard to matters agreed to be referred to arbitration. In other words, if as a result of that enquiry the court comes to the conclusion that there is indeed a dispute and that such dispute is one that is within the scope of the arbitration agreement, then the court refers the dispute to arbitration as the agreed forum for resolution of that dispute. If, on the other hand, the court comes to the conclusion that the dispute is not within the scope of the arbitration agreement, then the correct forum for resolution of the dispute is the court.

32. The inquiry by the court with regard to the question whether there is a dispute for reference to arbitration, extends, by reason of Section 6(1)(b), to the question whether there is in fact, a dispute. It is within the province of the court, when dealing with an application for stay of proceedings under section 6 of the Arbitration Act, to undertake an evaluation of the merits or demerits of the dispute. In dealing

with the application for stay of proceedings and the question whether there was a dispute for reference to arbitration, Mutungi J. was therefore within the ambit of section 6(1)(b) to express himself on the merit or demerit of the dispute. Indeed, in dealing with a Section 6 application, the court is enjoined to form an opinion on the merits or otherwise of the dispute.

33. The Court of Appeal, sitting in Malindi [Makhandia, Ouko & M'Inoti, JJ.A] in the case of James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [2016] KECA 470 (KLR), posited as follows regarding setting aside regular judgment:

> We shall first address the ground of appeal that faults the learned judge for setting aside the default judgment and consequential orders in the circumstances of the case. From the outset, it cannot be gainsaid that a distinction has always existed between a default judgment that is regularly entered and one, which is irregularly entered. In a regular default judgment, the defendant will have been duly served with summons to enter appearance, but for one reason or another, he had failed to enter appearance or to file defence, resulting in default judgment. Such a defendant is entitled, under Order 10 rule 11 of the Civil Procedure Rules, to move the court to set aside the default judgment and to grant him leave to defend the suit. In such a scenario, the court has unfettered discretion in determining whether or not to set aside the default judgment, and will take into account such factors as the reason for the failure of the defendant to file his memorandum of appearance or defence, as the case may be; the

length of time that has elapsed since the default judgment was entered; whether the intended defence raises triable issues; the respective prejudice each party is likely to suffer; whether on the whole it is in the interest of justice to set aside the default judgment, among other. See Mbogo & Another v. Shah (supra), Patel v. E.A. Cargo Handling Services Ltd (1975) EA 75, Chemwolo & Another v. Kubende [1986] KLR 492 and CMC Holdings v. Nzioki [2004] 1 KLR 173).

34. The Court of Appeal, also addressed the question of a regular judgment in the **James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [supra]** as follows:

> In an irregular default judgment, on the other hand, judgment will have been entered against a defendant who has not been served or properly served with summons to enter appearance. In such a situation, the default judgment is set aside ex debito justitiae, as a matter of right. The court does not even have to be moved by a party once it comes to its notice that the judgment is irregular; it can set aside the default judgment on its own motion. In addition, the court will not venture into considerations of whether the intended defence raises triable issue or whether there has been inordinate delay in applying to set aside the irregular judgment. The reason why such judgment is set aside as of right, and not as a matter of discretion, is because the party against whom it is entered has been condemned without notice of the allegations against him or an opportunity to be heard in response to those allegations. The right to be heard before an adverse decision is taken against a

person is fundamental and permeates our entire justice system. (See Onyango Oloo v. Attorney General [1986-1989] EA 456). The Supreme Court of India forcefully underlined the importance of the right to be heard as follows in Sangram Singh v. Election Tribunal, Koteh, AIR 1955 SC 664, at 711:

"[T]here must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them."

The approach of the courts where an irregular default judgment has been entered is demonstrated the following cases. In Frigonken Ltd v. Value Pak Food Ltd, HCCC NO. 424 of 2010, the High Court expressed itself thus:

"If there is no proper or any service of summons to enter appearance to the suit, the resulting default judgment is an irregular judgment liable to be set aside by the court ex debito justitiae. Such a judgment is not set a side in the exercise of discretion but as a matter of judicial duty in order to uphold the integrity of the judicial process."

Earlier in Kabutha v. Mucheru, HCCC No. 82 of 2002 (Nakuru) Musinga, J. (as he then was) had expressed the principle thus:

> "[W]ith respect to the trial magistrate, she had no discretion to exercise in the circumstances of the case since there was no service at all and as earlier said, the default judgment had to be set aside as a matter of right. Discretion would have arisen if service was proper and there had been for example delay in entering appearance. Where there is no service of summons to enter appearance, an applicant does not have to show that he has an arguable defence so as to persuade the court to set aside an ex parte judgment. In such circumstances, the court is under a duty to remedy the situation and uphold the integrity of the judicial process.

35. In this case, the entry judgment was regular. The appellant had a duty, therefore, to satisfy the court below as follows:

    a. the failure of the defendant to file his memorandum of appearance or defence,
    b. he length of time that has elapsed since the default judgment was entered;
    c. whether the intended defence raises triable issues;
    d. the respective prejudice each party is likely to suffer;
    e. whether on the whole it is in the interest of justice to set aside the default judgment.

36. The nature of the dispute and the amount of arrears are agreed. what then is available for the court to hear. The court is satisfied that the appellant did not show that they have a triable issue for determination.

37. All in all, the appeal lacks merit and is accordingly dismissed. This leaves the issue of costs, which is governed by

Section 27 of the Civil Procedure Act, which provides as follows:

> **(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.**
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> **(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.**

38. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR**) had this to say:

> "It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold

costs either partially or wholly from a successful party for good cause to be shown.

39. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR), as follows:

> 18. It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation
>
> 22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the

circumstances merit an award of costs to the Applicant.

40. A sum of Ksh 145,000/= will suffice in the circumstances.

Determination

41. The upshot of the foregoing is that I make orders as follows:

(a) The appeal is dismissed.

(b) The Respondent shall have costs assessed at Ksh. 145,000/=.

(c) 30 days stay of execution.

(d) The file is closed.

DELIVERED, DATED, and **SIGNED** at **NYERI** on this **16th** day of **February, 2026**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Okello for the Appellant

No appearance for the Respondent

Court Assistant - Michael