

**IN THE COURT OF
APPEAL AT NAIROBI**

(CORAM: OKONG'O J.A (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. 78 OF

2020

BETWEEN

KAKUZI LIMITED.....APPELLANT/APPLICANT

AND

MAKUYU CLUB

(Suing through **JOEL WANYOIKE, IRUNGU**

NDIRANGU & S. K. KIRUBI).....RESPONDENT

*(An application for the settlement of the terms of the order from the ruling delivered on 4th July 2025 by **W. Karanja, P. Nyamweya & G. V. Odunga JJ.A.**)*

in

Civil Appeal (Application) No.78 of 2020)

RULING

1. Rule 36(1) and (2) of the Court of Appeal Rules 22 provides as follows;

“36. (1) Where a decision of the Court is given in a criminal application or appeal, the order shall be drawn up by the Registrar who, in drawing up the order, shall not be required to consult the parties or the parties’ advocates.

(2) Where a decision of the Court is given in a civil

application or appeal—

(a) any party may, within fourteen days from date of judgment or ruling, prepare a draft of the order and submit it for the approval of the other parties;

(b) the party to whom the draft has been submitted shall approve the same within seven days from the date of receipt of the draft order under paragraph (a);

(c) if all parties approve the draft, the order shall, unless the presiding judge otherwise directs, be in accordance with it;

(d) if the parties do not agree on the form of the order, or if there is non-compliance with paragraphs (a) and (b), the form of the order shall be determined by the Registrar in accordance with the decision of the Court:

Provided that if the parties are dissatisfied with the decision of the Registrar, the issue shall be settled by a single judge after giving all the parties an opportunity of being heard and the decision of judge shall be final.”

2. On 8th November 2024, the Court (***Gatembu Kairu, Lesiit & Ngenye-Macharia JJ.A.***) dismissed the appellant’s appeal against the decision of the Environment and Land Court at Thika delivered on 18th October 2019 in favour of the respondent in **ELC Suit No. 115 of 2017**. The appellant was dissatisfied with the Court's decision and intended to appeal it to the Supreme Court. The appellant filed an

application before

the Court dated 21st November 2024 seeking a certification that its intended appeal to the Supreme Court involved matters of general public importance and leave to appeal to the Supreme Court. The appellant also sought a stay of execution of the court's judgment pending the filing and determination of its intended appeal to the Supreme Court.

3. In a ruling delivered on 4th July 2025 by **W. Karanja, P. Nyamweya,** and **G. V. Odunga, JJ.A.,** the Court certified the appellant's intended appeal to the Supreme Court as raising matters of general public importance and granted leave to the appellant to appeal to the Supreme Court against the judgment of the Court delivered on 8th November 2024 in Civil Appeal No. 78 of 2020. The Court dismissed part of the application that sought a stay of execution and ordered each party to bear its own costs.
4. The appellant's advocates prepared a draft order and forwarded it to the respondent's advocates for approval on 14th July 2025. According to the respondent's advocates, they returned the draft order to the appellant's advocates on 15th July 2025, approved as amended. It appears that the

appellant's advocates

never considered the respondent's advocates' proposed amendments to the draft order. The appellant's advocates wrote to the Deputy Registrar of the court informing him that the respondent's advocates had not responded to the draft order sent to them for approval. On receipt of the letter from the appellant's advocates, the Deputy Registrar approved the order as drawn, issued and certified the same on 25th July 2025.

5. The respondent's advocates objected to the order as approved and certified by the Deputy Registrar and requested that the draft order, as amended, be placed before a single judge of this Court for settlement. The matter is before me pursuant to the proviso to Rule 36(2)(d) of the Court of Appeal Rules, 2022. The respondent filed submissions dated 23rd February 2026, while the appellant did not file submissions as directed by the court.
6. I have considered the respondent's submissions. I have perused the court's ruling delivered on 4th July 2025, and the order drafted by the appellant's advocates. I have also perused the amendment to the draft order proposed by the

respondent's advocates. I agree with the respondent that a Court order must reflect the court's decision and should not expand or vary it. I,

however, disagree with the respondent that the order, which was drafted by the appellant's advocates, expanded the issues certified by the Court as raising matters of general public importance, beyond the ruling of the Court. What I make out of the respondent's proposed amendment to the draft order is that the respondent is trying to insert in the draft order what, in its view, was the novel and substantial issue which the court had, in its ruling, identified as requiring the determination by the Supreme Court. In that endeavour, the respondent is trying to incorporate into the order, through the proposed amendment, the court's analysis of the issues that were raised during the hearing of the appellant's application. I am of the view that if the court wanted to summarise for the Supreme Court the issues that required the Supreme Court's determination, it would have done so expressly in the ruling. Having not done so, it is not for the respondent to lift the supposed issues from the court's ruling and make them part of the order of the Court.

7. It is my finding that the order as drafted by the appellant's advocates and approved and certified by the Deputy

Registrar of the court is in accordance with the ruling of the court

delivered on 4th July 2025. I therefore approve the order, save that the judgment of the Court (**Gatembu Kairu, Lesiit and Ngenye-Macharia JJ.A**) delivered on 8th November 2024 in respect of which leave to appeal was granted was delivered at Nairobi and not Mombasa as indicated in the impugned order. It is so ordered.

Dated and delivered at Nairobi on this 13th day of March 2026.

S. OKONG'O

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.