



REPUBLIC OF KENYA



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**Andabwa & 24 others v Registered Trustees, Teleposta Pension Scheme & another
(Appeal E46 of 2023) [2024] KEELC 1245 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1245 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
APPEAL E46 OF 2023
LL NAIKUNI, J
FEBRUARY 22, 2024**

BETWEEN

LYNETTE ANDABWA & 24 OTHERS APPELLANT

AND

**THE REGISTERED TRUSTEES, TELEPOSTA PENSION SCHEME 1ST
RESPONDENT**

LLYOD MASIKA LIMITED 2ND RESPONDENT

RULING

I. Introduction

1. The Notice of Motion Application before this Honourable Court for its for determination is dated 28th June 2023. It was filed by the Appellants/Applicants against the 1st and 2nd Respondents herein. The application was brought under the provision of Sections 1A, 3A of the *Civil Procedure Act*, Cap. 21 and Order 43 Rule 6 (1) and (4) of the Civil Procedure Rules, 2010.
2. Upon service of the application, the 1st and 2nd Respondents filed their Replying Affidavit accordingly. The Honourable Court shall be dealing with it in depth at a later stage of this Ruling.

II. The Appellants/Applicants case

3. The Appellants/Applicants herein sought for the following prayers:
 - a. Spent.
 - b. Spent.
 - c. That this honourable court be pleased to order of assessment of standard rent for each unit of the demised premises herein at Kshs 18,000/= excluding services (water and electricity) made



by the Rent Restriction Tribunal Mombasa in Rent Assessment Case No. 53 of 2015 made on the 9th June 2023 pending hearing and determination of the Appeal herein.

- d. That costs of this application be provided for.
4. The application is premised on the grounds, the testimonial facts and the averments made out under the 17 Paragraphed Supporting Affidavit of Grace Rehema Kisato the 13th Appellant herein together with four (4) annexures marked as “GRK – 1 to 4” annexed hereto. She averred as follows:-
- a. She was one of the Appellants/Applicants herein and residing in Unit A2 of the 1st Respondent’s Aga Khan Estate. She had the express permission of all the other Appellants/Applicants herein to swear this Affidavit on their behalf.
 - b. She and her family had been a Tenant and Resident of the 1st Respondent’s aforesaid premises for more than Thirteen (13) years having moved therein on the 1st January, 2010 and had faithfully been paying the rent thereto on the due dates which lately was pegged at a sum of Kenya Shillings Twelve Thousand Five Hundred Thousand (Kshs. 12,500.00/=) per month and which amount the Rent Restriction Tribunal allowed them to continue paying during the pendency of the determination Assessment of the Standard Rent in Rent Restriction Assessment Case Number 53 of 2015.
 - c. On the 9th June, 2023, the Chairman of the Rent Restriction Tribunal, in a Ruling delivered in the absence of all the parties, assessed the said standard rent at a sum of Kenya Shillings Eighteen Thousand (Kshs. 18,000.00/=) per unit (excluding services (water and electricity) up from a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=), which assessment was grossly excessive and unjustified. This was because for all the years the Deponent had been a Tenant herein, the Respondents had never made any repairs or renovations therein and the premises had always been in a very deplorable state other than the repairs done by the Tenants, the costs of which was never refunded.
 - d. She was aware the ruling on the assessment was to be done on the 30th May, 2023, but the same was not ready. She was informed by her Advocate that he was only called on phone by the personnel from the Tribunal’s Registry, Mombasa that the Ruling was ready way after the Tribunal had wound up its sitting at Mombasa. Annexed hereto and marked as “GRK - 1” was a copy of the said Ruling.
 - e. Their Advocate then called them for a meeting at his Chambers to confer with him on the ruling and its implication and they instructed him to lodge an Appeal to this Honourable Court which was done as evidenced by a copy of the Memorandum of Appeal and receipt in payment thereof hereto annexed and marked as “GRK - 2”.
 - f. She was further informed by their Advocate that he had requested the Honourable Court to furnish him with certified copies of the proceedings and Order made on the 9th June, 2023.
 - g. From the time when she and her family entered the demised premises herein, she had been faithfully paying the rent due to the 1st Respondent. Further, when she entered the premises herein, like all the other Tenants, she paid a two (2) months deposit to the 1st Respondent, through its then authorised Agent.
 - h. Despite of the foregoing, since the Chairman of the Tribunal had directed that the assessed Standard Rent take effect from the 1st July, 2023, the 1st Respondent, through its current Agent, Legend Management Limited, from between the 25th and 27th June, 2023 had been giving, to all the Tenants, letters dated the 23rd June, 2023 whereto they had attached a fresh



Tenancy Agreement and required them to the said Agreement and commit themselves to pay the rent of a sum of Kenya Shillings Eighteen Thousand (Kshs.18, 000.00/=) and that if they were not agreeable, then they should vacate and handover the premises on or before the 30th June, 2023. Annexed hereto and marked as “GRK - 3” and “GRK - 4” were copies of the said letters and the Tenancy Agreement respectively.

- i. Despite of the fact that the 1st Respondent received deposits from each of the Appellants/Applicants herein, the Tenancy Agreement attached hereto required them to pay the same, which as clearly an endeavour to illegally remove them from the demised premises.
- j. She was aware that some of her Co - Tenants took their respective premises which had been occupied by other Tenants and who left without settling the outstanding arrears. However, over the years, the 1st Respondent, by itself and its agents, had lumped up the said arrears to the incoming Tenants, which issue she understood was pending before a different Court for determination.
- k. From the actions taken by the 1st Respondent and its agent, Legend Management Limited, clearly there was a concerted and calculated plan to have the Appellants/Applicants removed and/or evicted from the demised premises, which have been our home, for some of a long time, and for more than thirty (30) years and thus they shall suffer substantial loss and damage, which could not be compensated by an award of damages.
- l. If the Respondents proceeded with the threatened actions, then the Application herein, together with the Appeal filed, would be rendered nugatory and consequently they shall suffer irreparable loss and damage.
- m. As a condition to the grant of stay of execution of the Orders of the Rent Restriction tribunal, they were willing to continue timeously paying the rent of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=) pending the hearing and determination of the Appeal herein and also abide by such conditions as this Honourable Court may require.
- n. She beseeched this Honourable Court to issue the Orders sought in the Application herein and specifically forthwith stay execution of the orders made on the 9th June, 2023 Assessment of the Standard Rent at the sum of a Kenya Shillings Eighteen Thousand (Kshs. 18,000.00/=) excluding services (water and electricity) up from Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=) pending ‘the inter partes’ herein of this Application and further pending the hearing and determination of the Appeal to this Honourable Court.
- o. She believed they had a very strong Appeal which raised serious triable issues with regard to the assessment of Standard Rent for the demised premises herein and thus it was important that this Honourable Court determines the Appeal herein. In the premises, there was urgent need to have this Application heard expeditiously and interim orders be orders issued.
- p. She swore this Affidavit in support of the Application herein seeking the orders therein enumerated.

III. The Replying Affidavit by the 1st and 2nd Respondents.

6. While opposing the Notice of Motion application dated 28th June, 2023 by the Appellants/Applicants herein, the 1st and 2nd Respondents filed a 21 Paragraphed Replying Affidavit sworn by Wilfreda Mwambao dated 13th July, 2023 together with seven (7) annexures marked as “WM – 1 to 7” annexed thereto. She averred as follows that:-



- a). She was an employee of the 1st Respondent and currently attached as a Property Officer. She had instructions from the 1st Respondent's Trustees to swear this Affidavit.
- b). The 2nd Respondent was the Managing Agent of the 1st Respondent and likewise, she had instructions to swear this Affidavit on their behalf.
- c). She had been shown to, read and understood the averments in the Affidavit sworn by Grace Rehema Kisato on 29th June, 2023 together with the annexures thereto, the application dated 28th June, 2023 and the Memorandum of Appeal.
- d). From the onset, she wished to bring to the Court's attention the following issues of great concern:
 - i). Despite of the Deponent having indicated at Paragraph 1 of her Affidavit that she had instructions from the 24 Co -Appellants to swear the Affidavit but she had not attached in evidence any written instructions from the named Appellants.
 - ii). The Law Firm Messrs. Tindika & Company Advocates had purported to file this Appeal without tendering in evidence of any written instructions from the named Appellants/Applicants.
 - iii). Subsequent to the delivery of the Ruling by the Tribunal, Serah Wasai Kiwinda the named 2nd Appellant and Judy Wangari Mungai, the named 7th Appellant, duly honoured the Order of the Tribunal and executed Tenancy Agreements to pay the new rent assessed by the Tribunal. She tendered in evidence as Exhibit "WM - 1" was a true copy (ies) of the duly signed Tenancy Agreement (s).
 - iv). It was clearly evident that the Deponent and the said Firm of Advocates had purported to institute an Appeal on behalf of Judy Wangari Mungai without her written consent and instructions and who had complied with the directive of the Tribunal. The Deponent urged the Honourable Court to strike out the Appeal and the application in so far as it was purported to have been instituted by named Appellants except the Deponent.
- e). She also wished to bring to the Court's attention that the suit premises were 40 Flats in number and accordingly 15 Tenants were not party to proceedings at the Tribunal and out of the said 15 Tenants, seven (7) had complied with the Order of the Tribunal by signing Tenancy Agreements for the new rent and who included:
 - (i) Susan Ochola -House No. B9 Block B
 - (ii) Fatma Salim Rashid -House No. E37 Block E
 - (iii) Jared Ndame -House no. E38 Block E
 - (iv) William Mjape -House No. E39 Block E
 - (v) David Yegon -House No. D30 Block D
 - (vi) Keller Tobias Muoko-House No. D31 Block D
 - (vii) Margaret Adhiambo-House No. D27 Block D

Annexed as Exhibit marked as "WM - 2" were true copies of the duly signed Tenancy Agreements.



- f). She also wished to bring to the Court's attention the following background of the matter:
- i). The matter for the reference at the Tribunal.
 - ii). The Tribunal acceded to the request of the Appellants/Applicants ND carried out independent assessment of standard rent and made a recommendation for assessment at a sum of Kenya Shillings Fifteen Thousand (Kshs. 15,000/-) per month excluding utilities and which Report was prepared in the year 2015. Annexed and marked as "WM - 3" was a true copy of the said assessment report.
 - iii). The Appellants never commissioned an assessment report of their own but the 1st Respondent engaged two (2) Firms of Valuers to carry out assessment and which concluded that the standard rent was a sum of Kenya Shillings Twenty Thousand (Kshs. 20,000/- and a sum of Kenya Shillings Twenty Three Thousand (Kshs. 23,000/-) respectively. Annexed and marked as "WM - 4" was a true copies of the said Valuation Reports.
 - (iv) The Tribunal directed parties to dispose the Reference through written Submissions which the Respondents complied but the Appellants never complied. Annexed and marked as "WM - 5" was a true copy of the Respondents Submissions.
- f). Clearly, the Appellants/Applicants never challenged or question the Tribunal's Valuation Report that assessed standard rent at a sum of Kenya Shillings Fifteen Thousand (Kshs. 15,000/-) in the year 2015 and which the Tribunal adjusted upwards by a marginal figure of a sum of Kenya Shillings Three (Kshs. 3,000/-) taking into account the duration that had lapsed and the assessments carried out by the Respondents. The Appellants could not now purport to question the assessment on an Appeal yet they raised no objection at the Tribunal.
- g). For the Appellants application to succeed they must demonstrate to the Court that they had an arguable Appeal with a possibility of success and further that the Appeal would be rendered nugatory if the orders sought was not granted.
- h). The Deponent in her Affidavit never denied that she had defaulted in payment of rent arrears and that her Co-Appellants had similarly defaulted.
- i). The Appellants/Applicants' Appeal was strictly limited to the Tribunal's findings on the reasonable standard rent yet the Appellants/Applicants never made any submissions to contest the report prepared by the Tribunal's Valuer or the Reports prepared by the Respondent's Valuers and consequently that based on that background alone the Appellants/Applicants had no arguable Appeal with a chance of success.
- j). Neither the Deponent nor her Co - Appellants had demonstrated in any manner how their Appeal would be rendered nugatory if the orders sought was not granted and more so if they were directed to pay the rent at the current assessed standard rent.
- k). She wished to bring to the Court's attention that each of the named Appellants/Applicants save for Judy Wangari Mungai and Serah Wasai Kiwinda had refused to sign Tenancy Agreements even prior to the Ruling of the Tribunal and their respective current rent arrears were as follows:
- i. Lynette Andabwa - Kshs.1,079,250.00;
 - ii. Zannah M. Kisaghi - Kshs.1,915,500.00;



- iii. Peterson Kamau Mutungi - Kshs.983,000.00;
- iv. Silas Mutheee Carmelo - Kshs. N/A
- v. Rosemary Adongo Orwa - Kshs. N/A
- vi. Amina Atiki - Kshs.196,500.00;
- vii. Devoter Okwach - Kshs.1,545,900.00;
- viii. Halima Kasi - Kshs.0.00
- ix. Dorothy Z, Tulieni - Kshs.6,500;
- x. Anisa Abdalla - Kshs.87,500.00;
- xi. Grace Kisato - Kshs.39,000.00;
- xii. Elizabeth Mghoi Mkoba - Kshs.(23,710.00)
- xiii. Rukia Hassan Nizamdin Kshs.932,000.00
- xiv. Hassan Abdile Kshs.1,256,000.00
- xv. Leonard Thairu Kshs.102,000.00
- xvi. Anisa Juma Kshs.N/A
- xvii. Judy Nyambura - Kshs.N/A
- xviii. Mohammed Bafundi - Kshs.231,500.00
- xix. Mary Marcus Oyier Kshs,350,500.00
- xx. Juma Baraza - Kshs.1,697,500.00
- xxi. Shem Charo Kiti - Kshs.454,500.00
- xxii. Margaret Wayua Mukeku - Kshs.266,500.00
- xxiii. Zeinab Salim - Kshs.271,500.00;

Annexed and marked as "WM - 6" were true copies of their rent statements.

- l). She further brought to the Court's attention that the suit premises were vested to the 1st Respondent by the Government of the Republic of Kenya to enable the 1st Respondent settle the pension liabilities of its members who was the former employees of Kenya Posts and Telecommunications Corporation (now defunct), Telkom (K) Limited and Postal Corporation of Kenya. Annexed and marked as "WM - 7" was a true copy of the Vesting Order.
- m). The 1st Respondent had a current membership of Approx. 7,500 people who solely rely on their pension from the 1st Respondent. She further brought to the Court's attention that the 1st Respondent was a closed pension scheme and relied on the rental income of the properties vested to it to pay its pensioners and accordingly the continued refusal by the Appellants/ Applicant to pay rent was heavily impacting negatively on the financial position of the 1st Respondent and is already struggling to settle its liabilities.



- n). Some of the named Appellants/Applicants earn pension from the 1st Respondent yet they continue to obtain Court Orders to bar the 1st Respondent from receiving market rental income from the premises they occupy.
- o). Contrary to the Deponent's averments in Paragraphs 2 and 7 of her Affidavit, she had demonstrated hereinbefore that she and her Co – Appellants/Applicants had refused to sign Tenancy Agreements and owe the 1st Respondent huge rent arrears. The Deponent and her Co – Appellants/Applicants wanted to occupy the suit premise on their own terms to the detriment of the 1st Respondent and its pensioners who had a legitimate expectation to receive their pension in time.
- p). In response to the averments made under Paragraphs B and 9 of the Deponent's Affidavit, the issues raised were irrelevant as the intended Appeal was limited to the assessment of standard rent.
- q). Contrary to the averments made out under Paragraph 10 of the Deponent's Affidavit, the Appellants/Applicants had not demonstrated that they were unable to get any alternative cheaper accommodation within a reasonable time and therefore the allegations that they would suffer loss and damage that could not be compensated by damages was baseless.
- r). The Deponent had not demonstrated in any manner how their Appeal would be rendered nugatory if the orders sought were not granted. It had not been alleged or demonstrated that the 1st Respondent would not be in a position to reimburse rent paid under the new standard rent rate if the Appeal was successful.
- s). The 1st Respondent vehemently opposed the offer to continue paying rent at the rate of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500/-) per month as security for the following reasons:
 - i). The Appellants/Applicants as demonstrated hereinbefore had refused to sign Tenancy Agreements and were already in default in payment under the old rate.
 - ii). The 1st Respondent was under an obligation to collect income to pay its members who included some of the Appellants/Applicants.
 - iii). The Appellants/Applicants had no arguable Appeal as they never contested the assessment of rent.
- t). For the foregoing reasons, the Respondents pray that the application be dismissed with costs.

IV. The Supplementary Affidavit by the Appellants/ Applicants

- 7. With the leave of Court, on 6th May, 2023 the Appellants/Applicants filed a Supplementary Affidavit sworn by GRACE REHEMA KISATO dated even date whereby she averred that:-
 - a. She once more introduced herself as she had done above. She then proceeded to profusely apologize to this Honourable Court for not filing the Affidavits herein and Submissions within a reasonable time. This had mainly been attributed to the fact that they were looking for some files which were being handled by their previous Advocate, the late Christine Kipsang, and that by the time they managed, so much time had been lost.



- b. The allegations by the Respondent that they had huge arrears was absolutely not factual. The issue of the alleged arrears, which had been lumped upon them by the Respondent, was not justified as alleged or at all.
- c. The initial Tenants in the premises herein, some of whom were still herein, were the employees of Kenya Posts and Telecommunication Corporation which later became Telkom Kenya Limited, and over the years, all the repairs had been done by the Tenants. In March, 2008, Telkom Kenya Limited appointed Cimco Limited as its agent and instructed the Tenants to pay the said Agent monthly rent of a sum of Kenya Shillings Eight Thousand Five Hundred (Kshs.8,500.00 as evidenced by statements of Dorothy Zawadi Tulieni and P. K. Mutungi, hereto. Annexed and marked as "GRK - 1".
- d. In the year 2010, the Respondent appointed another Agent, Llyod Masika Limited to take over from Gimco Limited, who immediately increased rent from Ka sum of Kenya Shillings Eight Thousand Five Hundred (Kshs. 8,500.00 to Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=) as evidenced by the new Agent's letter dated 23rd December, 2010 and Lease of even date hereto annexed and marked as "GRK - 2".
- e. Upon being notified of the new Agent and rent increment, they approached Messrs. Mogaka Omwenga & Mabeya, Advocates, who wrote the letter dated the 28th January, 2011 to the Respondent protesting the said rent increment. Annexed hereto and marked as "GRK - 3" was a copy of the said letter. However, despite of their protest, the Respondent continued charging of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00) in monthly rent.
- f. In June, 2012, the said Agent, Llyod Masika Limited, unilaterally and illegally increased rent again from a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=) to a sum of Kenya Shillings Eighteen Thousand Five Hundred (Kshs. 18,500.00/=) and introduced service charge of a sum of Kenya Shillings One Thousand Five Hundred (Kshs. 1,500.00/=) making a total of a sum of Kenya Shillings Twenty Thousand (Kshs.20,000.00/=) per month. Annexed hereto and marked as "GRK - 4" was the Statement of Elizabeth Mghoi Mkoba and draft Lease by the said Agent dated 28th May, 2012.
- g. They never signed the Lease which Llyod Masika Limited forwarded to them but it was the said agent who then started preparing Statements to the Tenants based on a sum of Kenya Shillings Twenty Thousand (Kshs. 20,000.00/=) monthly rent and came up with astronomical figures in their statements, and which amounted have been illegally and haphazardly stated by the subsequent Agents.
- h. In the year 2015, the Respondent again changed its Agent from Llyod Masika Limited to Tysons Limited, and hardly a year thereafter, brought in new Agent namely Landmark Realtors Limited continued to illegally charge rent a sum of a sum of Kenya Shillings Eighteen Thousand Five Hundred (Kshs. 18,500.00/=) as evidenced by the letters by the Respondent and new Agent (Landmark) dated 8th June, 2015 and 23rd May, 2016 hereto annexed and marked as "GRK - 5".
- i. All the purported increments by the Respondent by itself and its Agents were not accepted by us nor was any contractual Lease executed between the Respondent and the Appellants/ Applicant herein.



- j. The Deponent was aware that the only lawful Lease executed between them and the Respondent was in the year 2007 when the management of the premises was under Gimco limited. Despite this position, the Respondent continued charging them based on the illegally increased rent.
- k. Further to the foregoing and as could be discerned from the documents of Rukiya Hassan Nizamdin, despite having paid all arrears, the Respondent appointed Legend Management Limited, they started charging them rent of a sum of Kenya Shillings Twenty Thousand (Kshs. 20,000.00/=) despite the fact that rent due was a sum of Kenya Eight Thousand five hundred (Kshs. 8,500.00) then a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=) as explained herein below. Annexed hereto and marked as "GRK - 6" were copies of the said documents.
- l. Due to the haphazard and illegal and/or unjustified increments of rent by the Respondent, they had no option but to file a Rent Assessment Case, which is now the subject of the Appeal herein. Upon filing the Rent Restriction Assessment case, the Rent Tribunal ordered that we continue paying rent at the rate of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=) and not a sum of Kenya Shillings Twenty Thousand (Kshs. 20,000.00/=) which was what the Respondent was charging.
- m. Having filed the Rent Restriction Assessment Case, they retained Messrs. Valueconsult Limited to a Report on its professional view on the rent payable and by Report and Assessment of the Standard Rent dated 31st July, 2018, our Valuer indicated that the reasonable rent payable for each unit was a sum of Kenya Shillings Seven Thousand Five Hundred (Kshs. 7,500.00.00/=). Further, she invited this Honourable Court to peruse the said Report and appreciate that the Respondent had kept the premises in a deplorable state and had forced the Tenants to repair the premises at their own costs, and thus incurring additional expenses at the instance of the Respondent for failure to carry out its responsibilities. Annexed hereto and marked as "GRK - 7" was a copy of the said Report.
- n. In the premises, the alleged arrears by them and due to the Respondent was as a result of, inter alia, illegal increments and thus not justified as alleged or at all since they were a creation of the Respondent and had been doing so contrary to the Rent Restriction Tribunal.
- o. The Respondent, as the landlord, had never repaired the premises herein and every Tenant had been forced to carry out both internal and external repairs and thus incurred expenses thereof, which the Respondent had never been willing to refund. They had thus made commercial investments to the premises to put them into habitable state and thus need to retain the premises till the issues raised in the Appeal herein were resolved, where after, they would pay rent as determined.
- p. Though they made several attempts to have the alleged areas reconciled, the Respondent and its Agents were not co-operative.
- q. Due to the lack of agreement with the Respondent and its Agents with regard to the purported arrears of rent, they had no option but to file suit in the Rent Restriction Tribunal, being case No. 86 of 2019 as evidenced by some of the pleadings therein hereto annexed and as marked "GRK - 8".
- r. According to the record received from the Firm of Messrs. Christine Kipsang & Company, Advocates, the said matter lastly came up on the 27th April, 2022 when the same was Stood



Over Generally and thus the issues with regard to the arrears alleged were not only pending before a competent Court/Tribunal, but were still pending issues and thus it would be a gross miscarriage of justice on their part for the Respondent to raise and/or insisted on the same in these proceedings. Annexed hereto and marked as “GRK - 9” were copies of the Hearing Notice and the said Advocate’s Court attendance docket.

- s. The other cause of arrears was that some of the Tenants who came latter into the premises herein, and even given new leases, were later lumped with arrears of the previous tenants and the Respondent even refused to change the names of the units to the new Tenants as evidenced by the Affidavit of Bynito Shilungu Ben filed herewith.
- t. When they filed Rent Restriction Assessment Case Number 53 of 2015, the Honourable Tribunal, during the pendency thereof, orders that we should continue paying rent at the rate of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=) and not a sum of Kenya Shillings Twenty Thousand (Kshs. 20,000.00/-) which was what the Respondent and/or its agents were demanding for at that time.
- u. In the premises, the issue of the alleged rent arrears, which was the only plausible issue raised by the Respondent, was not justified and further, since it was pending before a competent Tribunal, could only be addressed and concluded by the Tribunal and thus could not be the basis for them to be denied their right in the Appeal and Application herein.
- v. Given the foregoing, it was only fair and just that an Order be made that pending the hearing and determination of the Appeal herein, they continue paying rent at a sum of Kenya Shillings Twelve (Kshs. 12,500.00/=). Thus, they beseeched this Honourable Court to grant the Orders of stay and allow them to retain the demised premises on condition that they continued paying rent monthly rent of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=) pending the hearing and determination of the Appeal herein.
- w. Conversely, the Respondent would not be prejudiced in any way if the Orders sought herein was granted, and in any event, if it would be successful, the amount due from any Tenant will be fully recoverable, yet if they were evicted from the premises, they would never recover the same.

V. Submissions

- 8. On 26th July, 2023, while all parties were present in Court directions were taken to the effect that the Notice of Motion application dated 28th June, 2023 be canvassed by way of written submissions. Pursuant to that all parties obliged and the Honourable Court reserved a date for rendering its Ruling on notice accordingly.

A. The Written Submission by the Appellants/Applicants

- 9. In support of the Notice of Motion dated the 28th June, 2023, the Learned Counsel for the Appellants/Applicants’ the Law firm of Messrs. Tindika & Company filed their brief written submissions dated 6th October, 2023. Mr. Tindika Advocate started by stating that the application was by the supporting and the Supplementary Affidavits of Grace Rehema Kisato And Ben Bynito both sworn on the 29th June, 2023 and the 6th October, 2023. In the said Application, the Appellants/Applicants sought for the afore stated orders.
- 10. The Learned Counsel submitted that there was no doubt that the relief of Stay pending Appeal was discretionary. However, the principles of Justice and Fairness were tantamount to any Order issued on this Application save for the pre-requisites for this Application for Stay of Execution. In outlining



their case, he averred that it was important to first establish the major considerations/conditions which may warrant an Application for Stay pending Appeal to be considered. They were clearly outlined the provision of under Order 42 Rule 6 of the Civil Procedure Rules, 2010. Based on this provision of the law, the Learned Counsel asserted that he could deduce four major pre-requisites being:-

- (a). The Applicant had filed an appeal;
- (b). The court was satisfied that substantial loss may result to the Applicant unless the order was made; and
- (c). That the application had been made without unreasonable delay; and
- (d). Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

11. The Learned Counsel while applying this test to the instant case submitted as follows:-

Firstly, the Appellants/Applicants had already preferred an appeal. He stated that following the Ruling delivered on the 9th June, 2023, by Chairman of the Rent Restriction Tribunal, the Appellants/Applicants filed a Memorandum of Appeal on the 30th June, 2023. The appeal herein, was against the said Ruling and Decision therein by the Tribunal. It followed then from the provision of Order 42 Rule 6 (4) that an appeal had been filed given the filing of the aforesaid Memorandum of Appeal.

12. Secondly, he posited that there was a substantial loss to occur to the Applicant if the Order for stay of execution was not made. He averred that the substantial loss was the paramount basis upon which a grant of Stay of Execution is usually premised and this had been restated in numerous cases as the deciding factor in Applications for Stay of Execution. Justice Gikonyo, F. in the case of:- “Antoine Ndiaye – Versus - African Virtual University [2015] eKLR while describing the essence of substantial loss quoted the work of Ogola J. in the case of “Tropical Commodity Suppliers Ltd that:-

“.....Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal...”

13. He held that the nature of showing that substantial loss would occur stemmed from the fact that the Applicants would be unfairly prejudiced if they would be the successful parties, in essence the goal of the Appeal would have been done away with and thus rendered nugatory. Justice Gikonyo went further to quote the case of:- Bungoma HC Misc Application No 42 of 2011 James Wangalwa & Another – Versus Agnes Naliaka Cheseto where it was stated that:-

“The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail...”

14. In the instant case, the Learned Counsel submitted that the Appellants/Applicants, vide the Affidavits of Grace Rehema Kisato And Affidavit Of Ben Bynito, had demonstrated that they had been Tenants in the demised premises for a very long time and had been paying the legally agreed rent to the Respondent and/or as directed by the Rent Tribunal. However, the Respondent had been illegally issuing them with Statements bearing figures which had never been agreed upon between the parties herein. Further, due to the Respondent's actions of not only charging illegal amounts and increasing rent illegally, unjustifiable and/or haphazardly, the Appellants/Applicants filed the Rent Restriction



Assessment Case No.53 of 2015, which was the subject of this Appeal, and during the proceedings thereof, they were ordered to continue paying rent at the rate of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=) per month. The Respondent never raised any issue in that regard nor allege the purported arrears as being stated. Thus it would be grossly unfair to raise and/or insist on the same in this Application.

15. Further to the foregoing and as stated in the Supplementary Affidavits the issue of the alleged arrears were live proceeding before a competent Tribunal, and pending thereat and thus could not be addressed by this Honourable Court, other than by way of an Appeal to this Honourable Court. However, following the Ruling by the Chairman of the Tribunal, which was being challenged herein, the Respondent had not only demanded payments at the rate of a sum of Kenya Shillings Eighteen Thousand (Kshs. 18,000.00/=) plus service charge of a sum of Kenya Shillings One Thousand Five Hundred (Kshs. 1,500.00/=). They also threatened the Appellants/Applicants with eviction therefrom should they not execute the Lease and make the payments demanded. Should the Respondent carry out the threatened actions, the Appellants/Applicants would suffer not only substantial but also irredeemable loss and damage because they would lose the premises which they had not only resided in as their homes but had also carried but extensive repairs thereto, which amount could not be recovered from the Respondent. In the premises, it was clear that substantial and even irredeemable loss would be occasioned to the Appellants/Applicants if execution herein was not stayed pending the hearing and determination of the Appeal. Additionally, the Learned Counsel contended that the execution sought herein was for the decree which was already the subject of the Appeal as aforesaid and thus if the same was not stayed, and the Appellants/Applicants eventually succeeded in the Appeal, the Appeal herein would be rendered nugatory.
16. Thirdly, the Learned Counsel informed the Court that this application been brought without undue delay. Indeed, given that the Ruling was delivered on the 9th June, 2023, and this Application, dated the 28th June, 2023, was filed on 30th June, 2023, the said application was filed without any delay at all.
17. Finally, the Learned Counsel submitted that Appellants/Applicants, through Grace Rehema Kisato, had stated that, as a condition for the grant of the stay of execution in these proceedings, they were willing to continue paying rent at the rate of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs. 12,500.00/=), which had been the position through out the proceedings before the Rent Restriction Tribunal. They had further stated that they were also willing to abide by such conditions as this Honourable Court may require. Thus, he urged this Honourable Court to find that the said undertaking would be sufficient security in this matter.
18. In conclusion, the Learned Counsel prayed that this Honourable Court finds merit in the Applicant's Application herein and in the grounds. He urged Court to allow the application and grant them the Orders they were praying for.

B. The Written Submission by the 1st and 2nd Respondents.

19. While opposing the Notice of Motion dated 28th June, 2023, the Learned Counsels for the 1st and 2nd Respondents the Law firm of Messrs. Kale Maina & Bundotich LLP filed an equally brief written Submissions dated 25th of July, 2023. Mr. Bundotich Advocate commenced his submissions by providing Court with a brief background of the matter. He stated that the Appellants/Applicants sought for the above stated orders. He stated that the 1st and 2nd Respondents opposed the application through the Replying Affidavit worn by Wilfreda Mwambao on 13th July, 2023 and the annexures thereto. As a background of this dispute, he asserted that the Appellants/Applicants approached the



- Rent Restriction Tribunal to assess the standard rent for the premises in which they were occupying and owned by the 1st Respondent and then managed by the 2nd Respondent.
20. The Tribunal appointed its own Valuer to assess standard rent and who did carry out the exercise. The Tribunal further directed the parties to file Submissions with regard to the Report from the Tribunal's Valuer so that the Court could proceed to make a determination and which directive the Respondents complied and even tendered valuation reports in support of their Submissions. On the other hand, the Appellants/Applicants never filed any Submissions or tendered a counter valuation report. In essence therefore what the Appellants/Appellants were now seeking to challenge the findings of the Tribunal on the applicable standard rent yet firstly they were the ones who moved the Tribunal and secondly, they never made any observations or written Submissions as directed by the Tribunal. In other words, the Appellants/Applicants never contested the independent assessment which the Tribunal carried out but now sought to challenge the assessment by way of an Appeal.
 21. The Learned Counsel stated that in a nutshell the application sought for stay of execution of the Order of the Tribunal pending the hearing and determination of the Appeal. To succeed, the Appellants/Applicants must demonstrate to the Court that they had an arguable Appeal which would be rendered nugatory if the orders of stay of execution were not granted. That they would be ready and willing to offer security in lieu of grant of the orders sought.
 22. On the first limb as to whether the Appellants/Applicants had an arguable Appeal, the Learned Counsel urged the Court to consider the detailed response in the Respondents' Replying Affidavit and also the fact that:
 - (i). The Appellants/Applicants were now seeking to appeal against a finding which they never made Submissions on at the Tribunal even after being afforded an opportunity to do so.
 - (ii). Further, while glancing 2 at the 7 grounds of Appeal, it would be noted that none of set out grounds in which the Tribunal could have arrived at a different verdict. Further, the Appellants/Applicants never stated what that they submitted as the fair standard rent.
 23. On the second limb as to whether the Appeal would be rendered nugatory of the orders sought were not granted. The Learned Counsel held that the order directed the Appellants/Applicants to pay rent at a sum of Kenya Shillings Eighteen Thousand (Kshs.18,000/-) from a sum of Kenya Shillings Twelve Thousand (Kshs. 12,000/-). The Appellants/Applicants never stated in any manner how the Appeal (even if it was arguable) would be rendered nugatory. He submitted that if the Appeal were to be successful and the Court re - assessed the standard rent or remits the matter for fresh assessment, any resultant overpayment could be recovered by the Appellants/Applicants from the subsequent rent they would be paying.
 24. On the third limb of security. The Learned Counsel contended that the Appellants/Applicants never stated what security they were willing to provide for their due performance of the orders of the Court. Again, in absence of security, the orders sought could not be granted.
 25. In the long run, therefore, the Learned Counsel urged the Honourable Court to dismiss the application by the Appellants/Applicants with costs.

V. Analysis and determination

26. I have keenly perused the filed pleadings and mainly the Notice of Motion application dated 28th June, 2023 by the Appellants/Applicants, the responses by the 1st and 2nd Respondents, the written submissions and the myriad of cited authorities by the parties herein, the provision of [the Constitution](#) of Kenya, 2010 and the statutes.



27. For the Honourable Court to reach an informed, just and fair decision on the subject matter, it has crafted the following three (3) issues for its determination. These are:-
- a. Whether the Notice of Motion application dated 28th June, 2023 by the Appellants/Applicants has any merit.
 - b. Whether the parties herein are entitled to the reliefs sought
 - c. Who will bear the costs of the application.

ISSUE No. a). Whether the Notice of Motion application dated 28th June, 2023 by the Appellants/Applicants has any merit.

28. Under this Sub – heading, the main substratum from the filed application is on whether to grant or not stay of execution from an order from the Tribunal pending the hearing and final determination of the filed appeal by this Court. As fully concurred by all the parties herein, the laws governing the issue of stay of execution is founded under the provision of Order 42, Rule 6 of the Civil Procedure Rules, 2010. It provides for a stay in case of an appeal thus:-

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2) No order for stay of execution shall be made under subrule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
 - (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
 - (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
 - (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
 - (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
29. I fully concur with the Learned Counsel for the Appellants/Applicants that this provision is discretionary. For the court to exercise its discretionary powers and grant a stay of execution, the applicants have to sufficiently satisfy the following conditions; that substantial loss may result to them



unless the order is made, the Application has been made without undue delay and security has been given by the Applicant. This legal position was set out at the very initial stages of building jurisprudence on this aspect in the Court of Appeal case of: “Butt – Versus - Rent Restriction Tribunal [1979] eKLR whereby the Court held:-

“If there is no other overwhelming hindrance, a stay ought to be granted so that an appeal, if successful, may not be nugatory. A stay which would otherwise be granted ought not to be refused because the judge considers that another, which in his opinion will be a better remedy, will become available to the applicant at the conclusion of the proceedings. It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church (No 2)* 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458: “I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”

30. Ideally, the first condition to be met is whether the application has been brought without unreasonable delay. This criterion has been met as there was no delay in filing the application and the memorandum of appeal. The said application before the court dated 28th June 2023 together with the Memorandum of appeal dated the same day were both filed on 30th June 2023 while the ruling of the tribunal was delivered on 9th June 2023.
31. The second criterion is whether the Applicant has demonstrated that they are bound to suffer substantial loss if orders of stay of execution are not granted. The question that follows is what comprises substantial loss. This position was expounded by Warsame J as he then was in the case of:- “*samvir Trustee Limited – Versus - Guardian Bank Limited* [2007] eKLR, where he held that:

“I agree that every party aggrieved with a decision of this court has a natural and undoubted right to seek the intervention of the Court of appeal. And as far as this matter is concerned, I do not think this court should put unnecessary hindrance to the enjoyment and exercise of that right by the defendant. In my understanding a stay would be granted unless there is overwhelming hindrance to the exercise of the discretionary powers of the court. I appreciate and understand that the court in considering whether to grant or refuse an application for stay is empowered to see whether there exist any special circumstances which can sway the discretion of the court in a particular manner. But the yardstick is for the court to balance or weigh the scales of justice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgement. It is a fundamental factor to bear in mind that, a successful party is prima facie entitled to the fruits of his judgement, hence the consequence of a Judgement is that it has defined the rights of a party with definitive conclusion. The Respondent is asserting that matured right against the Applicant/Defendant. It is my humble view that for the applicant to obtain a stay of execution, it must satisfy this court that substantial loss would result if no stay is granted. It is not enough to merely put forward allegations or assertion of substantial loss, there must be empirical or documentary evidence to support such contention. It means the court will not consider mere assertions of substantial loss on the face value but the court in exercising its discretion would be guided by adequate and appropriate evidence of substantial loss.”



32. Additionally, in the case of:- the Court of appeal case of:- “Kenya Shell Limited – Versus - Benjamin Karuga Kibiru & another [1986] eKLR, was of the view that:-

“It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money.”

33. On quick assessment, the Honourable Court holds that the Appellants/Applicants have partially endeavoured to satisfy the pre – conditions set out in law herein.

Issue No. b). Whether the parties herein are entitled to the reliefs sought

34. Under this Sub title, the Honourable Court will now proceed to apply the above stated legal principles to the instant case. From the filed pleadings and the surrounding facts and inferences adduced herein, the Appellants/Applicants herein have submitted that they have fully complied with the pre – requisite for being granted the orders for stay of execution as provided for by law. Their contention is that they applied to the rent tribunal for the assessment of standard rent on 30th November 2015. On 9th June 2023, the tribunal assessed and fixed the standard rent at a sum of Kenya Shillings Eighteen Thousand (Kshs 18,000/=) per unit exclusive of service charge (water and electricity) with effect from 1st July 2023. The Appellants/Applicants argued that the assessed standard rent of a sum of Kenya Shillings Eighteen Thousand (Kshs. 18,000/=) exclusive of service charges was grossly excessive and unjustifiable. They maintained that since the said ruling was delivered, the respondents have been issuing tenants new tenancy agreements and requiring them to commit towards paying the rent of a sum of Kenya Shillings Eighteen Thousand (Kshs. 18,000/=). The Appellants/Applicants further maintained that the 1st and 2nd Respondents stated that those tenants who were not in agreement with the terms and conditions pertaining to the new rent to vacate and handover the houses on or before 30th June 2023.

35. Essentially, the Appellants/Applicants have maintained that they have been tenants in the suit premises for a long time and have been comfortably paying monthly rent of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs 12,500/-) to the 1st respondent. They argued that despite of them paying rent, the 1st Respondent has never undertaken any renovations on the houses. On the contrary, that the costs of renovations and maintenance of the houses have been borne by the tenants. If the said evictions are carried out, the appellants stand to suffer substantial loss and damage as they have made their investments on the houses which are yet to be settled by the 1st Respondent. It was argued that the 1st and 2nd Respondents are using the ruling of the court as a means of evicting the Appellants/Applicants from the houses they have called home for years and have urged the court to restrain them from doing so.

36. From the evidence on record, the loss that would be suffered by the Appellants/Applicants would be eviction from the houses. Juxtapose, the Respondents have vehemently argued that the Appellant/Applicants have found themselves in this situation out of their own making for failing to comply with the directions granted by the Tribunal. Further, that they failed to fulfil the pre – requisite conditions set out in mandatory terms under the provisions of Order 42 Rule 6 of the Civil procedure Rules, 2010 for them to be considered for being granted the orders of stay of execution.



37. By and large, and without belaboring the point herein, I have keenly perused new tenancy agreements marked as “GRK – 3”, which were issued to the appellants by Legend Management Limited on behalf of the 1st Respondent. In the agreement, the tenants are not only demanded to pay the outstanding rent arrears on or before 30th June 2023 but to also pay rent of a sum of Kenya Shillings Eighteen Thousand (Kshs 18,000/-) exclusive of service charge on or before 5th July 2023. In addition, if the tenant did not accept the terms of the tenancy agreement they undertook to vacate the premises on or before 30th June 2023. These tenancy agreements are dated 23rd June 2023, meaning that the appellants only had less than a week to vacate if they are non-accepting of its terms. In my view that is rather draconian on part of the Respondents to expect the appellants to vacate houses they have called home for years within a week. It seems that they were hell bent on making them sign the new tenancy agreements without giving room for alternatives.
38. Though the ruling of the tribunal did not call for eviction, the 1st and 2nd Respondents will evict those Appellants who will not accept to pay the rent of a sum of Kenya Shillings Eighteen Thousand (Kshs 18,000/=) and clear their outstanding rent arrears as seen in the new tenancy agreements dated 23rd June 2023. The Appellants/Applicants are not in agreement with the decision of the tribunal, they are before this court seeking an appeal of the same, it is therefore fair and just to stay the said ruling in order not to render their appeal not nugatory. The court is therefore satisfied that the appellant has sufficiently demonstrated that substantial loss will be occasioned to them if the orders of stay pending appeal are not granted.
39. The third criterion is that the Appellant/Applicant must furnish security for the due performance of the ruling. This condition is meant to strike a balance between the interests of both the Appellants/Applicants and 1st and 2nd Respondents. The Appellants/Applicants seek to preserve the status quo pending the hearing of the appeal so that their Appeal is not rendered nugatory and the interest of the Respondents seeking to enjoy the fruits of their judgement. On their part, the Appellants/Applicants have offered to continue paying the initial rent of a sum of Kenya Shillings Twelve Thousand Five Hundred (12,500/-) as security for the due performance of the orders of the tribunal. On this aspect, I have decided to cite Gikonyo J in “Mwaura Karuga t/a Limit Enterprises – Versus - Kenya Bus Services Ltd & 4 others [2015] eKLR held that:-
- “First of all, the security must be one which shall achieve due performance of the decree which might ultimately be binding on the applicant. The rule does not, therefore, envisage just any security. The words ‘ultimately be binding’ are deliberately used and are useful here, for they refer to the entire decree as will be payable at the time the appeal is lost. That is the presumption of law here. Therefore, the ultimate decree envisaged under order 42 rule 6 (2) (b) of the Civil Procedure Rules includes costs and interest on the judgment sum unless the latter two were not granted-which is seldom. The security to be given is measured on that yardstick.”
40. Critically speaking, the payment of the initial rent of a sum of Kenya Shillings Twelve Thousand (Kshs 12,500/=) will not ensure the due performance of the orders of the tribunal. As a factual and an issue of common sense that that proposition will only exclusively benefit the Appellants/Applicants and by no means not provide sufficient security to the 1st and 2nd Respondents. That is not just nor fair at all to the Respondents. In saying so, I cite the decision of:- “Gianfranco Manenthi & another – Versus - Africa Merchant Assurance Company Ltd [2019] eKLR where the Court held thus:-
- “Thus the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that courts do not assist litigants to delay execution



of decrees through filing vexatious and frivolous appeals. In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. Counsel for the applicant submitted that he is ready to provide a bank guarantee as security for due performance of the decree. In this regard, I stand to be guided by the case of *Focin Motorcycle Co. Limited – Versus - Ann Wambui Wangui & another* [2018] eKLR, where it was stated that: _

“Where the applicant proposes to provide security as the Applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the security. The Applicant has offered to provide security and has therefore satisfied this ground for stay.”

41. Thus, I discern and emphasis here that security for costs ought to be seen as a debt already owed to the Respondents. At all costs they are entitled to enjoy the fruits of their judgement which is rental income of a sum of Kenya Shillings Eighteen Thousand (Kshs 18,000/=) a month exclusive of service charge. Supposedly, If the Appellants/Applicants are allowed to pay rent of a sum of Kenya Shillings Twelve Thousand Five Hundred (Kshs 12,500/=) by the court and their appeal fails, there will be no return to the status quo on the part of the Respondents to initiate execution. However, on the contrary, if the appeal succeeds the Appellants/Applicants can be allowed to offset any extra amounts that they would have paid to the 1st and 2nd Respondents are sent to future rent or settle any rent arrears they may have.

Issue No. c). Who will bear the costs of the application

42. It is now well established that the issue of costs is at court’s discretion. Costs mean the award that a party is awarded from the conclusion of a legal action or proceedings. The proviso of Section 27 (1) holds that costs follow events. By the events, it means the outcome of the legal action.
43. In the instant case, though the Applicant has been successful, the costs of the application shall be in the cause as the matter is still proceeding on whatsoever.

V. Conclusion and Disposition

44. Consequently, having caused an indepth analysis to the framed issues herein, the Honourable Court now make the following specific orders. These are:-
- a. That the Notice of Motion application dated 28th June, 2023 be and is hereby found to be meritorious and hence allowed subject to the fulfilment of the conditions set out herein below.
 - b. That there be an order of stay of execution of the ruling made on 9th June 2023 by the Rent Restriction Tribunal at Mombasa in Rent Restriction Assessment Case No. 53 of 2015 until the appeal herein is heard and determined.
 - c. That the Appellants/Applicants to pay a monthly rent of a sum of Kenya Shillings Fifteen Thousand (Kshs 15,000/=) per month exclusive of service charge until the appeal herein is heard and determined.
 - d. That any default in paying the monthly rent of a sum of Kenya Shillings Fifteen Thousand (Kshs 15,000/=) on or before the 5th of every month will automatically lapse this order of stay of execution



e. That Appellants/Applicants be and is hereby granted 30 days to have compiled, filed and served the Records of Appeal. There be a mention on 14th May, 2024 for purposes of taking directions on the expeditious disposal of the filed appeal pursuant to the provisions of Section 79B of the Civil Procedure Act, Cap. 21 and Orders 42 Rules 11, 13 and 16 of the Civil Procedure Rules, 2010.

f. That the costs of this application do abide the outcome of the appeal.

It Is So Ordered Accordingly

**RULING DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS AND SIGNED
AND DATED AT MOMBASA THIS 22ND DAY OF FEBRUARY 2024**

.....
HON. JUSTICE MR. L.L. NAIKUNI

**ENVIRONMENT & LAND COURT AT
MOMBASA**

Ruling delivered in the presence of:-

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. M/s. Obiri Advocate holding brief for Mr. Bundotich for the 1st & 2nd Respondents.
- c. No appearance for the Appellants/Applicants.

