



Jiwa t/a Jiwa Properties & another v Jiwa & 2 others (Environment and Land Miscellaneous Application E038 of 2023) [2024] KEELC 861 (KLR) (20 February 2024) (Ruling)

Neutral citation: [2024] KEELC 861 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E038 OF 2023
LL NAIKUNI, J
FEBRUARY 20, 2024**

BETWEEN

YUSUF MN JIWA T/A JIWA PROPERTIES 1ST APPLICANT

YUSUF M.N.JIWA T/A JIWA PROPERTIES 2ND APPLICANT

AND

ROSEMIN NAZERALI JIWA 1ST RESPONDENT

AUN JIWA 2ND RESPONDENT

ROSEMIN NAZERALI JIWA & AUN JIWA 3RD RESPONDENT

RULING

I. Introduction

1. This ruling is in respect to Notice of Motion application dated 26th June, 2023 instituted by the Applicant herein, Yusuf M.N.Jiwa T/A Jiwa Properties for the determination by Honourable Court. The application was brought under the provision of Sections 1A, 1B, 3A, 63, 79G and 95 of the Civil Procedure Act, Cap. 21, Order 22 Rule 22, Order 42 Rule 6 & Order 50 Rule 6 Order 51 Rules 1 and 3 of the Civil Procedure Rules 2010.
2. Despite of the service of the applications having been effected onto the Respondents, there was no response elicited to the Application. Thus, the application was considered on its own merit whatsoever.

II. The Applicant's case

3. The Applicant sought for the following orders:-
 - a. Spent.
 - b. Spent.



- c. That this Honourable Court be pleased to enlarge time and grant leave to the Applicant to lodge a Memorandum of Appeal out of time against the judgment and decree entered against the Applicant in Business Premises Rent Tribunal Case No.151 of 2021 Rosemin Nazerali Jiwa & Aun Jiwa-versus-Yusuf M.N.Jiwa T/A Jiwa Properties delivered by the Tribunal on 20th May,2022 and its consequential orders thereto.
 - d. That this Honourable Court be pleased to stay execution of the Judgment and Decree delivered in Business Premises Rent Tribunal Case No.151 of 2021 Rosemin Nazerali Jiwa &Aun Jiwa-versus-Yusuf M.N.Jiwa T/A Jiwa Properties delivered by the Tribunal on 20th May,2022 and its consequential orders thereto pending the Hearing and determination of the intended Appeal.
 - e. That this Honourable Court be pleased to issue any other orders that it may deem fit, just and expedient in respect of Business Premises Rent Tribunal Case No. 151 of 2021Rosemin Nazerali Jiwa & Aun Jiwa-versus- Yusuf M.N. Jiwa T/A Jiwa Properties delivered by the Tribunal on 20th May, 2022 and its consequential orders in the interest of justice.
 - f. That the costs of this Application be provided for.
4. The application was premised on the grounds, testimonial facts and averments made out under the 11th Paragraphed Supporting Affidavit of -Yusuf M.n.jiwa sworn and dated 26th June, 2023 with two (2) annexures marked as ‘YJ1 – YJ2’ annexed thereto. The Applicant himself averred that:
- i. The Judgment was delivered at the Business Premises Rent Tribunal, in BPRT Case No.151 of 2021Rosemin Nazerali Jiwa & Aun Jiwa - Versus- Yusuf M.N. Jiwa T/A Jiwa Properties delivered by the Tribunal on 20th May, 2022.
 - ii. The Applicant being aggrieved by the said Judgment sought for a review of the said Judgment and obtained a stay of execution of the same pending hearing and determination of the application for review.
 - iii. Initially the ruling for review was fixed for 21st October, 2022 but the same was subsequently delivered on 28th October, 2022 in the absence of the Applicant’s advocates whereby the application was dismissed thereof. A copy of the said order was annexed in the affidavit and marked as “YJ – 1”.
 - iv. The Applicant’s advocates never noticed of the delivery of the ruling for review and the fact of its dismissal until 22nd May, 2023 when served with a copy of the orders of the Judgment delivered on 20th May, 2022.
 - v. The Applicant being aggrieved by the initial Judgment and the subsequent dismissal of his application for review now sought for leave to appeal out of time against the said Judgment and the ruling as the 30 days within which an appeal was to be filed had lapsed.
 - vi. The Applicant stood to suffer substantial loss and damage should the execution proceed as threatened as colossal sums was demanded of him backdated to year 2019.
 - vii. The Applicant’s intended appeal raised grave and fundamental issues both of fact and of the law as to justify the granting of the orders sought. A copy of the said Judgment in the said suit was annexed and marked as “YJ – 2” in the affidavit.
 - viii. The intended appeal had high chances of success



- ix. This application was not an afterthought and had been necessitated by matters solely outside the control of the Applicant.
- x. It was in the interest of justice that the Application be allowed.

III. Submissions

5. On 27th July, 2023 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 26th June, 2023 be disposed of by way of written submissions and all the parties complied. Pursuant to that all the parties obliged and on 19th October, 2023 a ruling date was reserved on Notice by Court accordingly.

A. The Written Submissions by the Applicant

6. While supporting the application dated 26th June, 2023, the Learned Counsel for the Applicant the Law firm of Messrs. Mburu Kariuki & Company Advocates filed their written submissions. The Learned Counsel commenced the submission by stating the from the said, the Applicant sought the following orders inter alia:
 - a). Stay of execution of Judgment and decree in BPRT Case No.151 of 2021 delivered on 20th May 2022 pending hearing and determination of the intended appeal.
 - b). Enlargement of time and/or leave to file appeal out of time from the said Judgment.
 - c). Any other order that it may deem fit, just and expedient in respect of BPRT Case No.151 of 2021.
7. The Learned Counsel stated that the brief facts to the case were that the Respondents/Land - lords, by virtue of being trustees of the suit property, filed a notice for increment of rent. Soon thereafter and before the Applicant could file any objection, the High Court pronounced its decision in Commercial High Court Case No.45 of 2014 (OS) ideally dissolving the trustee and consequently doing away with the Respondents' trusteeship and/or position as the Landlord, a fact that was well within the Respondents. All along the Applicants who were also beneficiaries of the trust had been under the impression that the Respondents were looking forward to execute the said High Court Judgment by collecting the assets of the trust, selling them and distributing them to the beneficiaries. To wit, the Applicant was looking forward to negotiate new rental terms with a new owner/purchaser /landlord of the suit property. To his surprise, the Respondents shunned the judgment of the High Court and continued to hold themselves as trustees and landlords of the demised premises.
8. The Respondents for more than two years failed to move Court on their notice until 20th May 2022 when they sought for the orders to be confirmed and that they apply from August 2019 when they became due. The Applicant was served with the Respondent's application in a very short notice and was denied the opportunity to file a reply, particularly to avail the High Court's Judgment which was necessary in the circumstance and which was not readily available and the matter was summarily determined. Nevertheless, the Applicants moved promptly to file an application for review maintaining that the failure to file an objection was as a result of the understanding that the notice filed before the tribunal was overtaken by events at the instance of the judgment in the said HCCC No. 45 of 2014 (OS) which has not been appealed against and there are no stay orders. Even at the point of the judgment, the Respondents' loci standi was in issue. The Applicant thus sought that the tribunal reviews its Judgment and find that delivered Judgment be overturned as the entire notice had been overtaken by events. In the alternative, if the tribunal was of the opinion that it was not bound by the Judgment of the High Court, then to set its Judgment aside and allow the Applicants who have all



along been guided or misguided by the implications of the High Court Judgment, to file their objection and have the matter dealt with conclusively. The ruling to the review was supposed to be delivered on 21st October 2022 but for some reasons, it was differed and a new date was not communicated to the Applicants.

9. The Applicant, through his advocates, had struggled to follow up with the ruling in vain until the latter were served with an order issued of 18th May 2023 on 26th May 2023 reiterating the Judgment delivered earlier. There was no indication that the tribunal ever considered the Applicant's application for review. The Applicant now sought to appeal from the Judgment and decree of the tribunal. The Respondents filed their opposition to the application raising four (4) issues:
10. Firstly, whether the option to pursue a review barred the Applicant from appealing. The Applicant submitted that the Civil Procedure Rules 2010 allowed for appeals from an order for review. Particularly Order 43 Rule(1)(x) provides:

“(1). An appeal shall lie as of right from the following Orders and rules under the provisions of Section 75(1)(h)of the Act-

(x) Order 45, rule 3 (application for review)”

Thus, it was the submissions by the Learned Counsel that the Applicant had every right to appeal from the said orders of the tribunal dismissing and/or ignoring his application for review.

11. Secondly, on whether or not there was an appeal from the Judgment of the High Court, the Applicant maintained that that Judgment had not been appealed against and neither had any orders staying their execution been issued. Although the Respondent on their part appeared to be alleging of an appeal, they had not put before Court any evidence by way of a Memorandum of Appeal or otherwise to demonstrate that there was a pending appeal in the matter.

The Counsel averred that it was a principle rule of law that whoever alleges must prove. Hence, the provision of Section 109 of the Evidence Act, Cap. 80 provides:-

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”

Thus, the Learned Counsel argued that the Respondent had not made any effort to discharge the burden of proving an existing appeal that was pending and as such their allegations were made in futility.

Thirdly, whether the delay in bringing this application was inordinate and if so, could justice be done notwithstanding? The Applicant averred that the Applicant had exercised due diligence in pursuing the ruling save for the fact that the same was not readily available. The Counsel urged this Honourable Court to take cognizance of the fact that even the Respondents took almost a year to find the ruling and even so, they could only recover the initial Judgment which they served on the Applicants on the 26th of May 2023. It was apparent that the delay in filing this application was not deliberate but was occasioned by the unavailability of the ruling in good time. The Counsel submitted that the delay was excusable and hence urged this Honourable Court to consider that despite that position, justice can still be done. It was worth noting that upon knowledge of the situation, the Applicant moved with speed to bring this application and avert more delays.



Nonetheless, it should be noted that the Respondent had not demonstrated or even stated that he would suffer any prejudice should the orders sought herein be granted.

12. Finally, whether the Applicant had high chances of success in the appeal. The Applicants submitted that they had a good appeal with high chances of success because the tribunal overlooked the High Court Judgment which otherwise:

- a). Showed that the proceedings before it had been overtaken by events;
- b). The Respondents had ceased to be landlord at the time of the Judgment.

Aside from the forgoing, the Applicants were denied a fair hearing as the procedure was summarily conducted.

13. In conclusion, the Learned Counsel averred that they had demonstrated that their application and intended appeal had merit. He prayed that, in the interests of justice, this Honorable Court allows their application.

IV. Analysis & Determination.

14. I have carefully read and considered the pleadings herein by the Applicant, the written submissions, the myriad of cases cited herein by parties, the relevant provisions of the Constitution of Kenya, 2010 and statutes.

15. In order to arrive at an informed, Just, equitable and reasonable decision, the Honorable Court has three (3) framed issues for its determination. These are:-

- a. Whether the Notice of Motion application dated 26th June, 2023 by the Applicant has any merit.
- b. Whether parties are entitled to the reliefs sought.
- c. Who bears the costs of the Application.

Issue No. a). Whether the Notice of Motion application dated 26th June, 2023 by the Applicant has any merit.

16. Under this broad Sub – heading the main substratum of the application is two - fold - whether the Court should grant orders for the enlargement of time to file an appeal out of time and stay of execution of the Judgment delivered by the Business Premises and rent Tribunal against the Applicant. The laws governing filing an appeal to this Court of decisions from the lower Courts are governed by the provision of Section 79G of the Civil Procedure Act, 2021. It provides that appeals originating from the subordinate court should be filed within thirty (30) days from the date of the decree or order appealed against. It is instructive to note that the other relevant provisions of the Law include Section 95 of the said Act which gives the court discretion to extend the time as it deems fit even if the time originally fixed has expired and Order 50 Rules 6 and 7 of the Civil procedure Rules, 2010. All these are discretionary orders to the Court on facts to facts basis as long as they are exercised judicially.

17. The provision of Section 79G provides as follows:-

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:



Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

18. While Section 95 provides thus: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

19. The principles to be considered in exercising the court’s discretion on whether or not to enlarge time to file appeal were set out in the case of “Leo Sila Mutiso – Versus - Rose Hellen Wangeri Mwangi Civil Appeal 255/ 1997”, the court, in considering the exercise of discretion to extend time, held as follows: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are first, the length of the delay. Secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

20. These principles were also reiterated in “First American Bank of Kenya Limited – Versus - Gulab P. Shah & Others HCC 2255/2000 [2002] IEA 65” as follows: -

- a. The explanation if any, for the delay;
- b. The merits of the contemplated action, whether the appeal is arguable;
- c. Whether or not the respondent can be adequately compensated in costs for any prejudice that may be suffered as a result of the exercise of discretion in favour of the Applicant.

21. I will therefore proceed to address each of the limbs outlined in the above-mentioned cases and establish whether the Applicant has satisfactorily met each of the said principles. With regard to the length of the delay and the explanation if any. The present Application was filed on the 26th June, 2023 after the trial court delivered its Judgment on the 20th May, 2022. The Applicant has also given an explanation of the 1 year, 1 month and 7 days delay since the delivery of the Judgment stating that the Applicant being aggrieved by the Judgment delivered in the case of:- Business Premises Rent Tribunal Case No.151 of 2021 Rosemin Nazerali Jiwa & Aun Jiwa -Versus- Yusuf M.N.Jiwa T/A Jiwa Properties delivered by the Tribunal on 20th May, 2022, sought a review of the said Judgment and obtained a stay of execution of the same pending hearing and determination of the application for review. Initially the ruling for review was fixed for 21st October 2022 but the same was subsequently delivered on 28th October 2022 in the absence of the Applicant’s advocates. The Applicant’s advocates did not have notice of the delivery of the ruling for review and the fact of its dismissal until 22nd May, 2023 when served with a copy of the orders of the Judgment delivered on 20th May, 2022.

22. In the case of “Mombasa County Government —Versus- Kenya Ferry Services & Anor (2019) eKLR”, where at paragraph 25 the Supreme Court held that:

25] Concerning extension of time, this Court has already set the guiding principles in the Nick Salat Case as follows:

“.....it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the



application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

“... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

1. extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;
2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
4. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents, if extension is granted;
6. whether the application has been brought without undue delay; and
7. whether in certain cases, like election petitions, public interest should be a consideration for extending time” [emphasis supplied]

23. Even though there is no maximum or minimum period of delay set by the law, anyone seeking this relief must satisfactorily explain the cause of the delay. See “Andrew Kiplagat Chemaringo – Versus - Paul Kipkorir Kibet [2018] EKLK”.
24. From the delivery of the Judgment to the filing of the instant Application is about 1 year, 1 month and 7 days delay. This in my view does not amount to inordinate delay further, the explanation given by the Applicant is sufficient and I therefore find that the Application was filed without undue delay.
25. On the issue of the chances of success of the intended Appeal. I am alive to the fact that in deciding an application of this nature, the court must be careful not to delve into the merits of the case at this stage. Having that in mind, I wish to state that the Applicant has argued that the intended appeal raises grave and fundamental issues both of fact and of the law as to justify the granting of the orders sought.
26. The third limb is on whether the Respondents can be adequately compensated in costs for any prejudice that may be suffered as a result of the exercise of discretion in favour of the Applicant. The answer is in the affirmative, I find that no prejudice will be caused to the Respondents that cannot be compensated by an award of costs if the Application is allowed.
27. The principles laid down by the Supreme Court in “Nicholas Kiptoo Korir Arap Salat – Versus - IEBC & 7 Others [2014] eKLK” are pertinent in this case; namely:

“(T)he underlying principles a court should consider in exercise of such discretion include:

1. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;



3. Whether the court should exercise the discretion to extend time, is a consideration to be made a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
5. whether there will be any prejudice suffered by the Respondent if the extension is granted;
6. Whether the application has been brought without undue delay.
7.”

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

28. Under this Sub – title, the Honourable Court has keenly considered the issues on the enlargement of time to institute the appeal to this Court. It needs not belabor the point as an elaborate analysis has already been undertaken from this ruling hereinabove. Therefore, guided by the already set out legal principles, the upshot of the foregoing is that the orders sought by the Applicant; for leave to file the Appeal out of time are merited and for that reason Prayer no. (3) in the Notice of Motion dated 26th June, 2023 should succeed. The only single danger I foresee on a serious issue of law, and this will come up when the Court gets to the re – evaluation and analysis of the evidence from the lower Court, is whether the Applicant is entitled to prefer an appeal while had already sought for the review of the Judgement as provided for under the provision of Section 80 of the Civil procedure Act, Cap. 21 and Order 45 of the Civil Procedure Rules, 2010 – a case of having a second bite of the cherry. Nonetheless, it was unfortunate that the Respondent who may have emphatically raised that issue of law with Court but they never participated in the proceedings. The Court will reserve the issue and cross the bridge when it gets to the river. Let the Applicant be forewarned in advance.
29. Further, on the issue of granting the orders of stay of execution. An application for stay invokes the discretionary powers of this court under Order 42 Rule 6 (1) of the Civil Procedure Rules, 2010 that empowers the court to stay execution, either of its judgement or that of a court whose decision is being appealed from, pending appeal. The conditions to be met before stay is granted are provided for under Rule 6(2) of Order 42 and states as follows:

“No order for stay of execution shall be made under sub rule (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.”
30. The Court of Appeal in “Butt – Versus - Rent Restriction Tribunal [1982] KLR 417” gave guidance on how a court should exercise discretion and held that:-
 - “1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.



2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge's discretion.
 3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
 4. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.
 5. The court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”
31. Substantial loss is a factual issue which must be raised in the supporting affidavit and further supported by evidence. The applicant has not demonstrated the substantial loss with any empirical documentary evidence he will suffer should the court disallow his prayer for stay. In the case of “Machira T/A Machira & Co. Advocates – Versus - East Africa Standard [2002] eKLR” Kuloba J. as he then was held that an applicant's ground for substantial loss must be specific and detailed as it is not enough merely stating that substantial loss will result or that if the appeal is successful it will be rendered nugatory. The Applicant contended that even if the rent review were to be found due, the end result of the Judgment in the case of “Business Premises Rent Tribunal Case No.151 of 2021 Rosemin Nazerali Jiwa & Aun Jiwa - Versus- Yusuf M.N. Jiwa T/A Jiwa Properties was a steep, unjustifiable and uneconomic increment of rent backdated 4 years denying the Honourable Court the opportunity of a substantial hearing before the same was rendered and he stands to suffer substantial loss and damage if the same is executed.
32. The provision of Order 42 Rule 6 requires the provision of security as a pre-condition for allowing a request to stay execution. The Applicant has not in any way indicated their willingness to pay security and has conveniently evaded that issue yet the application is also brought under Order 42 Rule 6 of the Civil Procedure Rules, 2010.

Issue No. c). Who bears the costs of the Notice of Motion application dated 26th June, 2023

33. It is now well established that the issue of costs is at the discretion of the Court. Costs mean the award granted to a party at the conclusion of any legal action or proceedings in litigation. The proviso of Section 27 of the Civil Procedure Act, Cap. 21 grants the High Court discretionary power in the award of costs which ordinarily follow the event unless the Court for good reasons orders otherwise. Section 27 (1) 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.”

34. A careful reading of Section 27 indicates that it is considered trite law that costs follow the cause/event, as described by Sir Dinshah Fardunji Mulla in his book *The Code of Civil Procedure*, 18th Edition, 2011 reprint 2012 at 540, is that costs must follow the event unless the court, for some good reasons, orders otherwise.

35. In the case of:- “Reid, Hewitt & Co v Joseph, AIR 1918 Cal 717 and Myres – Versus - Defries (1880) 5 Ex D 180”, the house of Lords noted that: -

“The expression ‘costs shall follow the event’ means that the party, who, on the whole, succeeds in the action gets the general costs of the action, but where the action involves separate issues, whether arising under different causes of action or under one cause of action, the word ‘event’ should be read distributive and the costs of any particular issue should go to the party who succeeds upon it.”

36.. In this particular case, the there shall be no costs to this application.

V. Conclusion

37. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus application, this court arrives at the following decision and makes below order:-

- a. That the Notice of Motion application dated 26th June, 2023 be and is hereby found to have merit hence allowed in the as follows:
 - i. Leave be and is hereby granted to the Applicant to file appeal out of time against the Judgment delivered in the case of:- “Business Premises Rent Tribunal Case No. 151 of 2021 Rosemin Nazerali Jiwa &A un Jiwa-versus-Yusuf M.N.Jiwa T/A Jiwa Properties.
 - ii). The Appellant granted 30 days leave to have fully compiled, filed and served the Records of Appeal from the BPRT.
 - iii). The execution of the Judgment/decree in the case of “Business Premises Rent Tribunal Case No. 151 of 2021 Rosemin Nazerali Jiwa &A un Jiwa - Versus- Yusuf M.N.Jiwa T/A Jiwa Properties be and is hereby stayed pending the hearing and determination of the appeal.
- b. That the Applicant shall deposit the decretal sum in an Escrow Interesting earning joint bank account to be held by the law firms of Messrs Mburu Kariuki & Company Advocates and Messrs. A. O Hamza & Company Advocates within the next sixty (60) days of the delivery of this Ruling hereof.
- c. That there be a mention on 17th April, 2024 for purposes of ascertaining compliance of these orders and taking directions on the Appeal pursuant to the provisions of Section 79B of the Civil procedure Rules, 2010 and Orders 42 Rules, 11, 13 and 16 of the Civil procedure Rules, 2010.



- d. That in default of complying with any of these the orders staying execution shall automatically lapse and the Respondents shall be at liberty to execute.
- e. That there shall be no orders as to Costs.

It is so ordered accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 20TH DAY OF FEBRUARY 2024.

.....

**HON. JUSTICE MR. L. L. NAIKUNI
ENVIRONMENT AND LAND COURT AT
MOMBASA**

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. No appearance for the Applicant.
- c. No appearance for the 1st Respondent.
- d. No appearance for the 2nd Respondent.

