



Kariuki & another v Nyotta & another (Environment and Land Appeal E127 of 2022) [2024] KEELC 1620 (KLR) (20 March 2024) (Judgment)

Neutral citation: [2024] KEELC 1620 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E127 OF 2022**

**EK WABWOTO, J
MARCH 20, 2024**

BETWEEN

DANIEL KIMANI KARIUKI 1ST APPELLANT

BEBADIS COMPANY LIMITED 2ND APPELLANT

AND

JASPAL NYOTTA 1ST RESPONDENT

SEDCO CONSULTANTS LIMITED 2ND RESPONDENT

(ppeal from part of the Ruling of the Chief Magistrate’s Court at Nairobi (The Hon. H.M. Nyaga Mr.) dated 24th day of May 2022 in Civil Suit No. 10717 of 2018)

JUDGMENT

1. The appeal herein, is against the ruling of the trial court (Hon. Mr. H.M. Nyaga, Chief Magistrate (as he then was) in Milimani Chief Magistrate Court Civil Suit No. 10717 of 2018) wherein the trial court issued the following orders in respect to the application dated 16th March 2022;
 1. That the firm of Kamau Chege and Kagunyi Advocates ceased to be in conduct of the matter on behalf of the Third Party on 15th February 2021 and are therefore not properly on record.
 2. That the pleadings filed by the firm of Kamau Chege and Kagunyi Advocates, being the amended defence dated 24th January 2022 purportedly on behalf of the Third Party are invalid and are expunged from the court records.
 3. That by dint of pecuniary jurisdiction, this court does not have jurisdiction to hear and try the counterclaim.
 4. That the defendant’s Counterclaim is struck out with cost.



5. That the parties' to bear their own cost.
2. Dissatisfied partly with the outcome, the Appellants filed this appeal through a Memorandum of Appeal dated 13th December 2022. The following are the grounds of Appeal as listed on the face of the Memorandum of Appeal;
 1. That the Learned Chief Magistrate grossly erred in law and in fact in striking out the 2nd Appellant's counterclaim suo moto, without giving the parties an opportunity to be heard on the issue;
 2. That the Learned Chief Magistrate erred and misdirected himself in holding that the 2nd Appellant's counterclaim was beyond the pecuniary jurisdiction of the Chief Magistrate's Court, notwithstanding the fact that the 2nd Appellant's counterclaim against the respondents is for Kshs. 14,650,000.
 3. That the Learned Chief Magistrate erred in law and gravely misdirected himself, in directing the 2nd Appellant to file the counterclaim as a separate suit in the High Court.
 4. That the learned Chief Magistrate erred in law and fact in directing the counterclaim, in excess of Kshs. 33,035,772, and exceeding the pecuniary jurisdiction of the magistrate court, be filed at High Court, and thereafter request for the file in CMCC 10717 of 2018 be transferred to the High Court in failing to appreciate that the issues raised in the counterclaim arise from the same fact as those alleged in the plaint.
 5. That the Learned Chief Magistrate erred in law in failing to apply and observe the principle of state decisis in relation to the decision of Court of Appeal in case of Onward Cargo System Company Limited versus Eveready East Africa Limited [2015], with respect to counterclaim exceeding the pecuniary jurisdiction of the Magistrate Court in terms of Section 7(1) (a) of the Magistrate's Court Act.
 6. That the Learned Chief Magistrate erred and misdirected himself in regards to the applicable law upon making a finding that the trial court lacked jurisdiction to try and determine the 1st Appellant's counterclaim owing to the pecuniary jurisdiction but at the same time proceeded to issue pre-trial directions on the suit together with the counterclaim.
 7. That the Learned Chief Magistrate erred and misdirected himself in mixing up, of which two counterclaim(s), by the 1st and 2nd Appellant, was beyond the pecuniary jurisdiction of the Magistrate court, in failing misapprehending the submissions as filed by the 1st and 2nd Appellant.
 3. On the basis of those grounds, the Appellants sought the following orders:-
 - a. That the appeal be allowed and the ruling and the order delivered on 24th May, 2022 striking out the 2nd Appellant's Counterclaim be set aside.
 - b. That the decision of the Learned Chief Magistrate be varied as follows:-
 - i. That an order be hereby issued that the 2nd Appellant Counter claim be reinstated.
 - ii. That an order be hereby issued that the 1st Appellant Counterclaim is beyond the pecuniary jurisdiction of the Chief Magistrate Court, thus Chief Magistrate Court lacks the prerequisite pecuniary jurisdiction to try and determine the suit CMCC 10717of 2018 together with the 1st Appellant Counterclaim.



- c. That if prayer (b) above is allowed, this Honourable Court be pleased to issue an order calling for the transfer of the suit CMCC No. 10717 of 2018 (Jaspal Nyotta and Sedco Consultants Limited versus Daniel Kimani Kariuki and Bebadis Company Limited) together with the counterclaim therein for trial and determination.
 - d. That in the interest of justice this Honourable Court do issue any other Orders it deems just, fair and for conclusive determination of this appeal before this Honourable Court.
 - e. That the costs of this appeal be provided for.
4. The Respondents contested the appeal and they filed a preliminary objection dated 20th June, 2023. The preliminary objection was premised on the following grounds: -
1. The Appeal raises issues that fall shot on the doctrine of “Res judicata” under Section 7 of the *Civil Procedure Act* as there are determinations made on similar issues on the same subject matter and between the same parties which was heard and determined conclusively before a court of competent jurisdiction in:-
 - i. ELC Miscellaneous Application E011 of 2022 Bebadis Ltd. versus Jaspal Nyolta and Sedco Consultants Limited by Hon. Lady Justice Mogeni vide Ruling issued on 23rd May, 2022 and in
 - ii. COACAPPL/E267/2022 Bebadis Ltd versus Jaspal Nyotta & Sedco Consultants Ltd vide Ruling issued on 14th October, 2022 by Hon. Lady Justice Abida Ali Aroni J.A.
 2. The entire Appeal and Memorandum of Appeal dated 13th December, 2022 herein, are thus incompetent, bad in law, misconceived and an abuse of the Honourable Court’s process.
 3. This Court thus lacks jurisdiction to entertain this matter, hear or determine the entire Appeal and Memorandum of Appeal and Memorandum of Appeal dated 13th December, 2022 and Notice of Motion Application dated 30th May, 2023 as brought against the Respondents since the Appellant herein which is an authority precedent before this court exercise its Appellate jurisdiction.
 4. The entire Appeal is benefit of the general principle that an issue which was not raised, argued and or pronounced upon by a trial court can’t be validly raised as a ground of appeal or as an issue for determination before the appellate court thus the issue of transfer of the suit in CMCC 10717 of 2018 having NOT been raised before the Lower Court, cannot thus apply in this Appeal as filed as it was not the subject of the impugned Ruling by Hon. H. Nyaga (CM) issued on 24th May, 2022.
 5. In whole, the Appeal and subsequent Application herein are inherently bad in law, vexatious and frivolous and the proceedings herein, are thus an abuse of the court process.
5. The appeal was canvassed by way of written submissions. The Appellants filed written submissions dated 24th July, 2023 while the Respondents filed written submissions dated 10th September, 2023.
6. The Appellants submitted on the following issues:-
- i. Whether the Notice of Preliminary Objection is merited.
 - ii. Whether the trial court fell into error and misdirected itself in failing to consider the pleadings, facts evidence and submissions with respect to whether it had jurisdiction over the suit.



- iii. Whether the Learned Chief Magistrate wrongly exercised his jurisdiction in striking out the 2nd Appellant counterclaim and directing it to be filed in the High Court.
7. The Appellants submitted that the preliminary objection is not merited for the reasons that for the court to determine whether or not the instant appeal is *res judicata*, the court will need to probe evidence and ascertain facts and as such the preliminary objection was not merited. Reliance was placed to the cases of *Mukisa Biscuit Manufacturing Co. Ltd versus West End Distributors Ltd. (1969) EA 696*, *Bashir Haji Abdulahi versus Adan Mohamed Noru & 3 Others (2004)Eklr*, *Srihari Hanumandas Totala versus Hemant Virthal Kamat [2021]INSC354*, *Kenneth Shitsugane Olembo versus County Government of Kakamega & Another [2021] eKLR*, *George Kamau Kimani & 4 Others versus County Government of Trans-Nzoia & Another [2014]eKLR* among others.
8. In respect to the issue of the transfer of the suit, it was submitted that the same was not an issue before the trial court and that the same also ought to be established through a substantive application.
9. The appellants contended that the trial Magistrate failed to consider the pleading affidavits, submissions and issues placed before court with respect to jurisdiction. It was argued that the trial court did not consider, evaluate or analyse the evidence and submissions placed before it. It was also argued that the trial court failed to recognize the issue of jurisdiction due to the 1st Appellant's counterclaim in excess of Kshs. 33,035,772. It was argued that the reason appropriated by the trial court for striking out the 2nd Appellant's counterclaim is sufficient evidence that the trial court neither considered or appreciated the 2nd Appellant's submissions and evidence before it. Reliance was placed on the following cases; *Kenya Medical Research Institute versus Samson Gwer & 8 Others [2019]eKLR* AND *Mbogo & Another versus Shah [1968]E.A*
10. While relying on Article 165(3) (e) of *the Constitution*, Section 78(2) of the *Civil Procedure Act* and Order 42 Rule 32 of the Civil Procedure Rules, it was argued that this court is clothed with requisite jurisdiction to perform same duties as the trial court and hence it can determine the question of jurisdiction. The case of *Oluoch Eric Gogo vs Universal Corporation Limited [2015] eKLR* was cited in support of this contention.
11. Relying further in the case of *Onward Cargo System Company Limited versus Eveready East Africa Limited [2015] eKLR*, it was argued that once the counterclaim was filed, then the Magistrate's court ceased to have jurisdiction over the suit. The Appellants urged this court to transfer this suit to this court for hearing and determination.
12. On whether the trial Magistrate exercised his jurisdiction correctly by striking out the suit, it was argued that the trial Magistrate proceeded to strike out the suit suo motto without according the 2nd Appellant an opportunity to be heard since the 2nd Appellant's counterclaim was for the sum of Kshs. 14,650,000 and the sum was not subject to deliberations in respect to the application dated 16th March, 2022. The Appellants reiterated that the 2nd Appellant's counter claim was properly before court and striking out the same was erroneous. The Appellants concluded their submissions by urging this court to reinstate the 2nd Appellant's counterclaim of Kshs. 14,650,000 and further transfer the suit to this court in view of the fact that the Appellants counterclaim of Kshs, 33,035,772 exceeds the jurisdiction of the subordinate court. The Court was also urged to dismiss the Respondents' preliminary objection dated 20th June, 2023.
13. The 2nd Appellant was also given an opportunity to highlight the appellant submissions and he reiterated that the suit before lower court should be transferred to this court since the trial court lacked jurisdiction once the counterclaim was filed.



The Respondents submissions

14. The Respondents submitted on the following issues while referring to Bebadis Company Limited as the 1st Appellant and Daniel Kimani Kariuki as the 2nd Appellant: -
- i. Whether the 1st Appellant's Appeal and prayers sought to transfer the suit in CMCC 10717 of 2018 raises issues that are contrary to the doctrine of Res-judicata.
 - ii. Whether the appeal introduces new fresh issues not canvassed before the Lower Court of forming the substance of the impugned Ruling.
 - iii. Whether the matters raised by the 2nd Appellant's appeal can be settled under the slip rule.
 - iv. Whether the appeal amounts to an abuse of the court process.
 - v. Whether the appeal is arguable.
15. It was submitted that the court can't transfer the suit before the lower court to this court since the same will amount to an abuse of the court process. It was also argued that the transfer of CMCC No. 10717 of 2018 to this court will offend the doctrine of res judicata and this court exercising appellate jurisdiction is devoid of jurisdiction to again adjudicate on an issue which was conclusively determined between the same parties by court of competent jurisdiction. It was further submitted that the issue of transfer of suit was an issue in ELC Miscellaneous Application E011 of 2022 Bebadis Limited versus Jaspal Nyotta and Sedco Consultants Limited and later in COA (APPL E267 of 2022 Bebadis Limited versus Jaspal Nyotta Jedco Consultant Limited. The issue of transfer was thereafter canvassed by the parties and formed the substratum of the ELC Courts ruling dated 23rd May, 2023 when the court dismissed the Appellant's application on the basis that the court could not in the exercise of its jurisdiction under Section 18 of the *Civil Procedure Act* purport to transfer a suit filed in a court lacking jurisdiction to a court without jurisdiction and thereafter to sanctify an otherwise incompetent suit. The Respondents also submitted that following the delivery of the Ruling before the ELC, the Appellants herein as was his right preferred an Appeal in COA (Appl/E267 of 2022 Bebadis Limited versus Jaspal Nyotta & Sedco Consultants Limited where the issue of transfer was again litigated upon and a decision rendered by Justice Ali-Aroni on 14th October, 2022 who dismissed the Appellants application and concurred with the ruling of the ELC Court to the effect that the Appellants mistake of filing a counterclaim in a court without jurisdiction is not a curable mistake and that the said intended appeal to the Court of Appeal was frivolous. It was also submitted that the issue of transfer of suit was never raised, canvassed and or formed part of the court's decision and as such, this court sitting on Appeal of the trial Court's ruling cannot entertain such an issue.
16. On whether the matters raised by the 2nd Appellant's appeal ought to be settled under the slip rule, it was argued that the 2nd Appellant's counterclaim dated 18th December 2021 was well within the trial court's jurisdiction and as such the trial court could not purport to strike the same. It was argued that the 2nd Appellant's counterclaim was a clerical and logical error on the face of the Ruling brought about by the 2nd Appellant filing the Defence and counterclaim both on his own behalf in the trial court and on behalf of the 1st Appellant Company.
17. It was further submitted that the issue of representation of the 1st Appellant and the filing of documents by the 2nd Appellant on its own behalf and on behalf of the 1st Appellant has brought a lot of confusion and further convoluted issues both at the trial court and now before this court. The interchanging of parties' designation has brought about the extraction of the order in a way that was not the purport of the Ruling issued on 24th May, 2022. It was stated that this confusion



that led in the court striking out the counterclaim of Kshs. 33,035,772. It was stated that the 1st Appellant's counterclaim dated 18th December, 2021 which was in excess of Kshs. 33,035,772 and not the counterclaim of Kshs. 14,650,000 which was within the Court's jurisdiction and in fact was already admitted by the court and the parties. It therefore, follows that the final order that was extracted striking out the 2nd Appellant's counterclaim of Kshs. 14,650,000 was an error on the face of the Ruling that can otherwise be corrected under the provisions of Section 99 of the *Civil Procedure Act* which embodies slip rule. Reliance was placed to the cases of Fredrick Otieno Outa versus Jared Odoyo Okello & 3 Others [2017] eKLR and Nguruman Limited versus Attorney General & Another[2021] eKLR.

18. On whether the appeal amounts to an abuse of the court process, it was submitted that the sole intention of the Appellants herein is to frustrate the Respondents and further cause delay in the prosecution of the case as filed before the Chief Magistrate Court by preferring an Appeal that is hopeless and devoid of merit. The suit having been filed in 2018 has never proceeded for trial due to the many applications by the Appellants seeking to stall the prosecution of the suit. Reliance was made to the cases of Muchanga Investments Limited versus Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR and Satya Bhana Gandhi versus Director of Public Prosecution & 3 Others [2018] eKLR.
19. Learned Counsel for the Respondent Mr. Otwal also highlighted the written submissions and urged the court to dismiss the appeal.
20. The Court has considered the record of Appeal. The Court has also considered the Appellants written submissions in this Appeal and the itemized grounds of appeal. In determining the issues raised in the Appeal this court is cognizant of its duty on a first appeal as set out in the case of *Selle & Another – Vs- Associated Motor Boat Co. Ltd & others (1968) EA 123* cited with approval in *China Z Hogxing Construction Company Ltd –Vs- Ann Akeru Sophia (2020) eKLR*.
21. The Court is of the view that the following are the key issues for determination by this court which can dispose the appeal. They are:-
 - i. Whether the Respondents preliminary objection is merited.
 - ii. Whether the trial court erred in law and fact in arriving at its decision.
 - iii. What are the appropriate reliefs to issue herein.

Issues No. I Whether the Respondents preliminary objection is merited.

22. The case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696* has been the watershed as to what constitutes preliminary objections. The Court of Appeal in *Nitin Properties Ltd v Singh Kalsi & another [1995] eKLR* also pellucidly captured the legal principle when it stated as follows:

“...A Preliminary Objection raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”
23. This statement of the law has been echoed time and again by the courts: see for example, *Oraro –v- Mbaja [2007] KLR 141*.



24. In Hassan Ali Joho & another -v- Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR the Supreme Court stated that:-
- “... a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.[emphasis added]
25. The Supreme Court again reconsidered the position of parties resorting to the use of preliminary objections and pronounced itself as follows in the case of Independent Electoral & Boundaries Commission –v- Jane Cheperenger & 2 Others [2015] eKLR.
- “The occasion to hear this matter accords us an opportunity to make certain observations regarding the recourse by litigants to preliminary objections. The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection —against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.” [emphasis added]
26. The Respondents’ Preliminary objection raises an objection to the effect that the appeal has some issues that are res judicata in view of the decisions made in application COA Application No. E267 of 2022 and application ELC Misc. No. E011 of 2022. The said preliminary objection did not attach these pleadings.
27. The doctrine of res judicata, is set out in Section 7 of the *Civil Procedure Act*. The doctrine ousts the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title.
28. A close reading of Section 7, reveals that for the bar of res judicata to be effectively raised and upheld, the party raising it must satisfy the doctrine’s five essential elements which are stipulated in conjunctive as opposed to disjunctive terms. The doctrine will apply only if it is proved that: -
- i. The suit or issue raised was directly and substantially in issue in the former suit.
 - ii. That the former suit was between the same party or parties under whom they or any of them claim.
 - iii. That those parties were litigating under the same title.
 - iv. That the issue in question was heard and finally determined in the former suit [emphasis added].
 - v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.
29. In the instant case, the court will be required to refer to the said pleadings and examine the same to establish whether the instant appeal is res judicata. It follows therefore, that existence of the case, the parties thereto and the issues determined by the court in that case, the parties thereto and the issues determined by the court in that case are all matters that need to be established through evidence. Generally, res judicata should be raised through a substantive application to which the pleadings and decision of the cases referred to are annexed. One cannot therefore raise aground of res judicata by was



of a preliminary objection to this end, the court agrees which the submissions made by the Appellant on that issue and as such the said Preliminary Objection raised by the Respondents to the effect that the appeal is res judicata is misplaced. As was stated in the Oraro vs Mbaja Case (supra), a preliminary objection must not be blurred with factual details liable to be contested. This court is also guided by the cases of Kenneth Shitsugane versus County Government of Kakamega & Another [2021] eKLR and George Kamau Kimani & 4 Others versus County Government of Trans-Nzoia & Another [2014]eKLR.

Issue No. II Whether the trial Court erred in law and in fact in arriving at its decision.

30. All the grounds of the memorandum of appeal as raised by the Appellants were to the effect that the Learned Magistrate erred in law and fact in arriving at his decision. The Appellants submitted that the trial Court did not analyse and refer to each of the parties' position in respect to jurisdiction and hence it misdirected itself. It was also submitted that the trial court lacked jurisdiction to hear the counterclaim of Kshs. 33,035,772 and that the trial court erred when it struck out the counterclaim of Kshs. 14,650,000. The Appellants thus urged this court on its own motion to withdraw the Chief Magistrate suit CMCC No. 10717 of 2018 together with the counterclaims and transfers it to this court.
31. The Respondents while submitting on this issue argued that the counterclaim filed in excess of jurisdiction of the Chief Magistrate's Court was struck out and an appeal on the same is akin to requiring this court to alter the jurisdiction of the Chief Magistrate's Court through some miraculous judicial craftsmanship. It was also submitted that the Appeal filed herein is merely meant to frustrate the hearing of the main suit before the trial Court.
32. It was submitted that the issue of Transfer of the suit CMCC 10717 of 2018 is res judicata. The Appellant herein filed a Miscellaneous Application E011 of 2022 Bebadis limited vs Jaspal Nyotta and Sedco Consultants Limited before the Environment and Land Court seeking a transfer of the file and a decision rendered on the said issue dismissing the said Application on grounds that the court under Section 18 of the *Civil Procedure Act* could not purport to transfer a suit filed in a court lacking jurisdiction to a court having jurisdiction and therefore to sanctify an otherwise incompetent suit.
33. The court was also informed that the Appellants preferred an Appeal of the ELC decision in COACAPPL/E267/2022 Bebadis Limited vs Jaspal Nyotta & Sedco Consultants where the Court of Appeal concurred with the reasoning of the ELC proceeded to dismiss the Appellants Application which was termed as frivolous. The doctrine of re-judicata therefore bars the Appellants from seeking a similar remedy from the courts even under the guise of appealing the Ruling issued by the Magistrate Court.
34. In respect to the transfer of the suit it was argued that an order for the transfer of the file can only be made in the High Court and not the Magistrate Court as per the provisions of Section 18 of the *Civil Procedure Act*. Therefore, the Magistrate court lacked jurisdiction to issue such an order. It was also contended by the Respondents that the intention of the trial court was to strike out the counterclaim filed by Bebadis Company Limited dated 18th December 2021 which was in excess of Kshs.33,035,772 and not the 2nd Appellant's Counterclaim of Ksh.14,650,000 and hence the striking out of the said counterclaim was a mere error which can be cured by the provisions of Section 99 of the *Civil Procedure Act* which embodies the slip note.
35. The court has perused the decision of the magistrate court dated 24th May 2022. Page 5 of the said Ruling states:-



“On the issue of jurisdiction relying on the defendant’s amended defence and counterclaim on 16th December 2021 and the third Party’s amended defence and Counterclaim on 18th December 2021 there is an excess of Kshs33,035,772 which according to Section 7(1)(a) of the Magistrate Court Act 2015 provides that:

“A Magistrate court shall have and exercise jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed.

- a. Twenty million Shillings where the court is presided over by a Chief Magistrate.

Therefore they dint of pecuniary jurisdiction, this court does not have jurisdiction to her or try the counterclaim. The defendant whilst knowing the pecuniary jurisdiction of this court filed a counter claim that he knew this court won’t entertain and in doing so he shot himself in the foot. I hereby strike out the counterclaim with costs”

36. Having considered the foregoing it is evident that the trial court did not err when it held that it did not have jurisdiction to hear and determine the counterclaim of Kshs.33,035,772 that was filed in the amended defence dated 18th December 2021. The only issue was the mix up of the parties which led to the decree referring to the counterclaim of Kshs.14,650,000/- as having been struck out instead of the Counterclaim of Kshs.33,035,772/-. As rightfully submitted by the Respondents this is an error that can be corrected by the same court under the provisions of Section 99 of the Civil Procedure Act since the same did not change the substance and ratio decidendi of the Learned Magistrate’s decision.
37. In respect to the issue of the transfer of the suit as was submitted by the Appellant, it is trite law that only this court can transfer a suit to a lower court and not vice versa. The counterclaim was filed in the court that did not have the pecuniary jurisdiction to hear and determine the issue and as such the prayer for transfer of the suit from the lower court to this court cannot be granted.

Issue No. III What are the appropriate reliefs to issue herein

38. The Appellants sought for various remedies as enumerated in the memorandum of Appeal. This court having addressed itself on the issues analysed aforementioned and having found that the trial court did not err in arriving at its decision, the reliefs sought are not for granting in line with the earlier pronouncements made by this court.
39. The upshot is that after careful review and analysis of all the grounds of appeal and entire record, it is the finding of this court that the appeal is devoid of merit and the same fails. The appeal is hereby dismissed.
40. On the issue of costs, costs are at the discretion of the court and in any event to a party who is successful. However, in this case, this court directs each party to bear own costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF MARCH, 2024.

E.K. WABWOTO

JUDGE

In the Virtual presence of

Mr. Daniel Kimani 1st Appellant appearing in person.



Mr. Otwal for the Respondents.
Court Assistant-Caroline Nafuna.

