



REPUBLIC OF KENYA



Owners of Motor Vessel “Dolphin Star” v ET Timbers PTE Limited (Civil Appeal (Application) E078 of 2021) [2023] KECA 437 (KLR) (14 April 2023) (Ruling)

Neutral citation: [2023] KECA 437 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E078 OF 2021
P NYAMWEYA, JW LESSIT & GV ODUNGA, JJA
APRIL 14, 2023

BETWEEN

THE OWNERS OF MOTOR VESSEL “DOLPHIN STAR” APPELLANT

AND

ET TIMBERS PTE LIMITED RESPONDENT

(Being an appeal from the Ruling and Orders of the High Court at Mombasa (Hon. Lady Justice Njoki Mwangi) made on 14th day of July 2021 in Mombasa High Court Admiralty Cause No. E003 of 2021)

RULING

1. This is an application made within an appeal, the appeal being Civil Appeal No E078 of 2021. The genesis of this appeal was on 4th April, 2021, the Respondents in the appeal commenced in rem proceedings being Mombasa High Court Admiralty Cause No. E003 of 2021 - [E.T. Timbers PTE Limited v The Owners of the Motor Vessel 'Dolphin Star'](#) against the Motor Vessel Dolphin Star (The Vessel) before the High Court and on the same day obtained a Warrant of Arrest. On 8th April 2021, the Appellants filed an Acknowledgement of Service dated 9th April, 2021 and disputed the High Court’s jurisdiction pursuant to Rule 11(2) of the English Civil Procedure Rules.
2. By an application dated 16th April 2021, the Appellants sought to set aside the said warrant of arrest and to strike out the Claim based on jurisdictional grounds. It was contended that the in rem action did not fall within the Court’s Admiralty jurisdiction and that the warrant of arrest was procured without disclosure of material facts hence an abuse of the court process. According to the Appellants, the owners of the said Vessel, Defang Shipping Company Limited, were not the carriers and had no contractual relationship with the Respondent for the carriage of its cargo hence the in rem proceedings the Vessel were improper and invalid.



3. The High Court, on 14th July, 2021 dismissed the application and upheld the Court's jurisdiction to hear and determine the Respondent's claim. On the same day, the High Court directed the Appellants to deposit the sum of USD\$ 3,000,000 as security for the release of the said Vessel from arrest and granted leave to the Respondent to amend, file and serve amended pleadings within 21 days.
4. Aggrieved by that decision the Appellants filed a Notice of Appeal date 23rd July, 2021 and lodged its appeal on 10th September, 2021. Simultaneously with the lodging of the Record of Appeal, the Appellants vide an application dated 10th September, 2021, sought for the stay of the proceedings pending before the High Court during the pendency of the said appeal based on the fact that by participating in the High Court proceedings, it would be submitting to the High Court jurisdiction. That application was dismissed on 17th December, 2022.
5. In the meantime, pursuant to the said ruling, the Respondent filed its Amended Claim on 4th August, 2021 but belatedly served it on the Appellants on 27th August, 2021. On 23rd August, 2021, the Respondent applied for default judgement which was similarly served on 27th August, 2021. Apart from responding to the said application, the Appellants, by an application dated 8th October, 2021, sought for striking out the Amended Claim on the ground inter alia that the Amended Claim was served out of time.
6. The Motion before us is dated 14th October, 2021 taken out by the Respondent herein in which the Respondent seeks that leave to appeal granted to the Appellants by the High Court on the 14th July 2021 be set aside and this Appeal and the Record of Appeal be struck out and/or dismissed.
7. According to the Respondents, it is apparent from its conduct that the Appellants' jurisdictional challenge having failed has now taken steps in the proceedings pending before the Superior Court and has thereby submitted to the Court's jurisdiction by its subsequent conduct and actions. It was therefore the Respondent's position that there are therefore now compelling reasons, quite apart from the fact that the Superior Court upheld its jurisdiction based on all the evidence placed before it on the jurisdictional challenge for the Appellants' Notice of Appeal, for the Record of Appeal and this Appeal to be struck out and/or dismissed.
8. According to the Respondents, the Appellants are unjustly abusing the process of the Courts for collateral purposes in order to improve its bargaining position when the evidence shows the Superior Court has jurisdiction. In support of this contention the Respondent referred to the correspondence and messages exchanged between the parties directly or through broker channels. It was averred that this abuse is manifest from the reliance by the Appellants upon the draft Bills of Lading as evidence of the contract of carriage between itself and Defang Shipping Company Limited, while persisting in asserting that it has no contractual relationship with the Respondent; the suppression by the Appellants of material evidence in the form of the signed non-negotiable Bills of Lading dated 4th March 2021 relating to the Respondent's cargo; the institution of arbitration proceedings in the U.K by the Appellants' agents, Starryway Trading and Shipping Company Limited and the subsequent unsuccessful Application for a Partial Final Award on Freight; and the deliberate refusal by the Appellants to release the signed and issued negotiable copies of the Bills of Lading dated 4th March 2021.
9. According to the Respondent, in attempting to surreptitiously unlawfully issue a Second set of Bills of Lading purporting Starryway Trading and Shipping Company Limited to be the carrier when, it is in fact not, the Appellants seek to lend credence to its jurisdictional challenge through fabricated documents purported to be issued long after the proceedings were commenced in a bid to avoid liability; and having itself relied on the draft Bill of Lading Terms and Conditions of Carriage in the



jurisdictional challenges, it is incongruous that the Appellants can now conceivably and candidly assert that these alleged Bills of Lading dated 19th August 2021 are the proper Bills of Lading and that these constitute evidence of the contractual relationship for carriage of the Respondent's goods between Starryway Trading and Shipping Company Limited and the Respondent.

10. In light of the foregoing and, particularly that the Appellants have, by their conduct taken steps in the proceedings before the High Court and filed affidavits in reply preferring defences on merit, it was the Respondent's position that the Respondent's Application for striking out of the Notice of Appeal and the Appeal itself ought to be allowed in the interests of fairness and justice. The Respondent lamented that it continues to suffer severe prejudice and harm by the delay and frustration of its Claim occasioned by the Appellant. According to the Respondent, already all the Letters of Credit issued by the buyers of the Cargo have expired and the buyers have refused to extend these or issue fresh ones.
11. On behalf of the Respondent, it was submitted that the Appellants filed this Appeal but did not take the appropriate steps recognized in law to protect its position in the proceedings before the High Court. Instead, the Appellants have taken substantive defences in defence to the Claimant's claim and its application for judgement in default of Acknowledgement of Service as is apparent from the Appellants' Replying Affidavit filed in the High Court proceedings.
12. In addition to this, on the 16th September 2021 and 1st, 8th and 12th October 2021, the Appellants sought the exercise of the High Court's discretion to defer the Respondent's aforesaid application to enable it pursue an application for stay of proceedings filed before this Court. However, on 8th October 2021, the Appellants filed an application to strike out the Claimant's Amended Statement of Claim filed in the High Court. It was therefore submitted that based on the foregoing, the Appellants have by their conduct clearly submitted to the jurisdiction of the Superior Court.
13. This submission was based on Part 61 of the [English Procedure Rules](#) which provide that an Acknowledgement of service must, within 14 days of service of the Claim Form, be filed in every Admiralty Claim in rem and in every other Admiralty Claim in personam unless liability is admitted.
14. In this case it was submitted that the Appellants filed the Acknowledgement of Claim and stated it intended to contest jurisdiction. Thereafter, the Appellants challenged jurisdiction of the Superior Court pursuant to the provisions of Part
11. That application having been dismissed, thus upholding the Court's jurisdiction, it was submitted that pursuant to Part 11 Rule 7 as read with Part 61, the Acknowledgement of Services ceased to have any effect and the Appellants was at liberty and required to file a further Acknowledgement of Service within 14 days if it intended to defend the Claim. However, the Appellants failed, refused and/or neglected to file an Acknowledgement of Service as required.
15. It was submitted that in those circumstances, and as the Appellants' application seeking stay of proceedings had been dismissed by this Court, the law and procedure required that an Appellants either seek a stay of proceedings or seek an extension of time to enter a fresh Acknowledgement of Service pending determination of the Appeal. This submission was based on *Deutsche Bank AG London Branch v Petromena ASA* [2015] EWCA Civ. 226 and *Conversant Wireless Licensing Sarl v Huawei Technologies Co. Ltd & Others* [2018] EWHC. Instead, the Appellants engaged in defending the claim on merits and taking steps in the proceedings consistent with its waiving the appeal on jurisdiction. Consequently, the Respondent's application for judgement in default of an Acknowledgement of Service, the Appellants' Application to strike out the Amended Claim Form, and the Respondent's application for Extension of time all proceeded to hearing before the Superior Court on the 28th April 2022.



16. It was submitted that the Appellants' position that it was proceeding with its application for striking out of the Amended Claim Form without prejudice to its Appeal; having taken steps in the proceedings before the Superior Court in obtaining relief from the Court to defer the Respondent's Application for default judgement; defending the said application on merit and applying to strike out the Amended Claim Form, are clear indication that the Appellants have, by their subsequent conduct following the decision of the 14th July 2021 and this Court's decision of 17th December 2021 taken steps in the proceedings thereby submitting to the Court's jurisdiction and, disentitling it to continue to purport that the Court has no jurisdiction. In this regard, the Respondent relied on *Kisumuwalla Oil Industries Limited v Pan Asiatic Commodities Pte Ltd & Another* [2] [1995 - 1998] EA 153.
17. The Respondent therefore urged this Court to allow the instant application and strike out the Appeal.
18. In response to the application, the Appellants insisted that they were still challenging the jurisdiction of the High Court. After setting out the background of the case, the Appellants averred that their appeal is purely based on law as regards entertainment of a matter that does not fall within the admiralty jurisdiction of the High Court; the grant of leave to amend the Respondent's pleadings in order to, post facto, clothe the Court with jurisdiction; and the grant of orders which were not the subject of the proceedings before the Court without hearing the parties on the same.
19. According to the Appellants, in so far as the issue of jurisdiction of the High Court remains undetermined this Court cannot grant the orders sought in the present application based on events subsequent to the ruling being appealed against. According to the Appellants, none of the matters alluded to by the Respondent constitute a step in the action or afford any defence to the Amended Claim. The Appellants explained that the filing of a fresh Acknowledgement of Service following the ruling dismissing the challenge to jurisdiction would have had the effect of submitting to the jurisdiction of the Court and hence the appeal based on jurisdiction futile. In this regard reliance was placed on *Deutsche Bank AG London Branch v Petromena ASA* [2015] EWCA Civ. 226. As it was entitled to do, the Appellants instead filed an application dated 10th September, 2021, seeking stay of proceedings before this Court. It was reiterated that the Appellants have consistently asserted their right of challenge to the Court's jurisdiction.
20. In the Appellants' view, requests to deferral cannot possibly amount to submission to jurisdiction. The Appellants therefore denied that by its conduct, it had submitted to the Court's jurisdiction thereby precluding it from pursuing its appeal. According to the Appellants, the matters raised by the Respondent involve a consideration on merits of the matters pending either before the High Court or before this Court in the appeal and there is no provision in law entitling the Respondent to have these matters either considered or determined at an intermediate stage prior to the hearing of the appeal.
21. It was disclosed that there are ongoing arbitration proceedings in London between Starryway and the Respondent in regard to the issuance of Bills of Lading hence the allegations made in respect thereof are irrelevant to the pending appeal. The Appellants asserted that no evidence was placed before this Court showing that the cargo has either deteriorated or stands to become firewood. Similarly, the correspondence referred to did not suggest that the Appellants had abandoned the cargo.
22. On behalf of the Appellants it was noted that the instant application advances two main grounds for seeking to strike out the appeal as being: that the Appellants omitted to protect its position in the appeal, following delivery of the High Court Ruling upholding its jurisdiction, by failing to file an Acknowledgement of Service; and that the Appellants, in response to the Respondent's Application for Judgment in the High Court dated 21.08.2021, has "taken defences" and "sought the exercise of the court's to enable it to pursue its stay application before this Honourable Court" and has thereby submitted to the High Court's jurisdiction.



23. According to the Appellants, their stay application dated 10th September, 2021 having been dismissed by this Court's Ruling dated 17th December, 2021, the Appellants were forced to defend themselves in the High Court proceedings, despite their jurisdictional objection raised in its Appeal.
24. It was submitted that on 29th July, 2022 the High Court struck out the Respondent's application for Judgment on grounds of the late service of its Amended Claim hence its application for Judgment were unprocedural. The Respondent was then ordered to restart the entire process by serving its Amended Claim afresh on the Appellant. It was therefore submitted that the effect of that ruling was to render the application wholly futile as the entire proceedings the Respondent alleges that the Appellants had jurisdictionally submitted to were struck out. According to the Appellants, the fact that the whole process had to be restarted means that whatever merits the application may have had when filed, the grounds on which it is premised are no longer valid or sustainable.
25. It was submitted that the allegation that the Appellants submitted to the jurisdiction of the ongoing High Court proceedings after the Appeal was filed was never raised in the High Court proceedings. It was submitted that this Court's jurisdiction as spelt out in Article 164(3) of the *Constitution* and Section 3(1) of the *Appellate Jurisdiction* Act is to hear and determine appeals from the High Court. In the absence of any prior determination by the High Court on the issue raised in the Application, it was submitted that this Court has no jurisdiction to entertain it for the simple reason that there is nothing lawfully or validly before it that can be determined.
26. According to the Appellants, the inherent powers of this Court under Sections 3, 3A and 3B of the *AIA* can only be exercised if this Court is properly seized of the matter as was held in *Nguruman Ltd v Shompole Group Ranch & Anor* [2014] eKLR. In any case, it was submitted that Rule 84 of this Court's Rules, which in any case is irrelevant and has not been invoked, requires that such an application be brought within 30 days of the filing and service of the Record of Appeal herein which has not been done.
27. It was further submitted that there is no basis for this Court to grant the application since the Appellants had, at every step following the High Court's Ruling of 14th July 2021, made it clear in all affidavits and submissions that its contentions were made without prejudice to its continued objection that the Court had no jurisdiction to entertain the proceedings. In the Appellants' view, the Appellants' challenges in the High Court were confined to jurisdictional matters and did not address the merits of the Claim. Nor did the Appellants take any step in the action.
28. According to the Appellants, there was no basis to file a second Acknowledgement of Service since to do so, after a jurisdictional challenge is dismissed, amounts to a submission to the jurisdiction of the Court as was held in *Deutsche Bank AG London Branch v Petromena ASA* [2015] EWCA Civ 226. In any case, it was submitted that the Court having upheld the Appellants' objection to the Amended Particulars of Claim as being improperly on the record, the proceedings the Appellants were said to have jurisdictionally submitted to were struck out and ordered to be recommenced. In the absence of a stay of those proceedings, the Appellants had had no choice but to participate in them to protect their position.
29. It was submitted that the test as to whether a party has submitted to the jurisdiction of the court is an objective one and takes into account the conduct of the party concerned. In support of its submissions, the Appellants relied on *Harada Ltd (trading as Chequepoint UK) v Turner* [2003] EWCA Civ 1695, *Global Multimedia International Ltd Media Services and Ors* [2006] EIZT-IC 3612 (Ch), *Winkler v Shamoon* [2016] ELVA-IC 217 (Ch) and *Re Dulle's Settlement (No.2)* [1951] Ch 842.



30. It was submitted that the rest of the arguments on "abuse of process" raised by the Respondent have no application or relevance to the Application since they are matters which are either relevant in the High Court proceedings or in the pending appeal. According to the Appellants, the Respondent is not entitled to have these matters either considered or determined at an intermediate stage prior to the hearing of the appeal.
31. This Court was therefore urged to dismiss the application with costs.

Analysis and Determination

32. We have considered the issues raised in this application.
33. In our considered view the issues that fall for determination in this appeal are broadly two: Firstly, is whether this Court has the jurisdiction to entertain the instant application; and secondly, whether in light of the conduct of the Appellants, it has submitted to the jurisdiction of the Court hence rendering its appeal untenable.
34. As regards the first issue, the Appellants' position is that this Court's jurisdiction as set out in Article 164(3) of the *Constitution* and Section 3(1) of the *Appellate Jurisdiction* Act is to hear and determine appeals from the High Court. Therefore, in the absence of any prior determination by the High Court on the issue raised in the Application, this Court has no jurisdiction to entertain the instant application for the simple reason that there is nothing lawfully or validly before it that can be determined.
35. Article 164(3) of the *Constitution* provides that the Court of Appeal has jurisdiction to hear appeals from the High Court and any other court or tribunal as prescribed by an Act of Parliament. Section 3(1) of the *Appellate Jurisdiction* Act on the other hand, provides that the Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court and any other Court or Tribunal prescribed by an Act of Parliament in cases in which an appeal lies to the Court of Appeal under law.
36. It is now trite law that this Court's jurisdiction arises only where an intention to lodge an appeal has been manifested by the filing of the Notice of Appeal or where there in fact exists an appeal. Before us is an application seeking to set aside the leave to appeal granted by the High Court and to strike out the appeal itself. The order granting leave was given by the High Court. We have not been informed that an application was made before that Court to set aside that order. No Notice of Appeal or an appeal has been filed before us challenging the said order. In those circumstances, to set aside the order granting an appeal would amount to us overturning the said decision when the same has not been properly challenged by filing a Notice of Appeal against it and subsequently filing an appeal.
37. In this application the Respondent has partly raised issues touching on the merits of the case. In an application such as this, the Court is not concerned with the merits of the case but with whether or not its process is being abused. Accordingly, we will refrain from dealing with the issues touching on the Bills of Lading.
38. It is agreed by both parties that Civil Appeal No. 78 of 2021 revolves around the jurisdiction of the High Court to entertain the in rem Admiralty proceedings. It is contended, which contention is not disputed, that following the dismissal of the Appellants' application to strike out the Claim on the ground that the Court had no jurisdiction, an application for stay of proceedings which was made before this Court was dismissed. In that event, the position would be as contemplated in Part 11 of the *English Civil Procedure Rules* which provide at paragraphs 7 and 8 that if, on an application challenging the court's jurisdiction the court does not make such a declaration, the earlier acknowledgment of service ceases to have effect and the defendant is then at liberty to file a further acknowledgment of service within 14 days or such other period as the court may direct. In that event, of course, he is to



be treated as having accepted that the court has jurisdiction to try the claim. This is the situation in which the Appellants find themselves.

39. In this case, it is however contended that the Appellants have, apart from filing an acknowledgement of service taken certain steps in the proceedings which, in the Respondent's view, amount to conduct incompatible with that of a party contesting or challenging the jurisdiction of the Court. It was submitted that the Appellants for instance, sought to have the proceedings before the High Court suspended during the pendency of its application before this Court. In our view, the mere fact that a party seeks to suspend further proceedings pending an appeal does not necessarily amount to taking step in the proceedings. A step in the proceedings, in our view, must one that is taken with a view to progressing the course of hearing. To that extent, we agree with the decision in *Harada Ltd (trading as Chequepoint UK) v Turner* [2003] EWCA Civ 1695 in which the Court of Appeal (Salmon Brown LJ) stated:-

“Harada had from first to last been urging and maintaining its objection to jurisdiction and, indeed, would only have been engaging in the merits hearing because the courts had forced it to do so in the teeth of all its objections. It seems to me nothing short of absurd to suggest that, having failed (before the Morison EAT and Mummery LJ) to stop the merits hearing being listed, and then failed again, once it was listed, to have it adjourned, Harada could conceivably have been held to have submitted to the jurisdiction and thereby abandoned its outstanding appeal against the earlier jurisdictional ruling had it, under continued protest, participated in the merits hearing.”

40. It is however contended that by applying to strike out the Amended Claim on the ground that the same was served out of time, the Appellants took a step in the proceedings and are thereby precluded from continuing to contend that the Court has no jurisdiction. With due respect we disagree with the position adopted by the Respondent. It is clear that throughout the proceedings, the Appellants' position was that they were challenging the jurisdiction of the Admiralty Court to entertain the proceedings. It is clear that the actions the Appellants took in the proceedings were all meant to safeguard its interest taking into consideration the peculiar circumstances it found itself in where its attempts to have the proceedings suspended had failed. They are however, confronted with an application for entry of judgement. The fact that they took the step of dismissing the Amended Claim cannot be said to be a step in furtherance of the proceedings. To the contrary, it was a step negating that course. The Appellants were left in a position where they could only oppose the steps taken in furtherance of the proceedings while at the same time avoiding to take steps such as Acknowledgement of Service which would automatically render their pending appeal untenable as they would be deemed to have submitted to the jurisdiction of the Court. In our view, that was exactly the position that Mance LJ had in mind in *Harada Ltd (trading as Chequepoint UK) v Turner* (supra) when he had this to say:-

“Here, Harada had raised and was at the time of the hearing before the Ryan tribunal in May 1999 still pursuing its challenge to the jurisdiction, by an appeal on grounds of bias and incorrectness against the decision of the Roose tribunal of 10 September 1998. In those circumstances, it could not possibly have constituted a submission to the jurisdiction for Harada to exercise its right of self-defence and to argue the merits before the Ryan Tribunal, in order to avoid a decision on the merits being given against it without hearing its side.”

41. The law is clear that a party who has consistently maintained the position that it is challenging the jurisdiction of the Court cannot be deemed to have waived that challenge unless he voluntarily and unequivocally waives the challenge. The test of whether there exist voluntariness in the action was laid



out in *Global Multimedia International Ltd Paramedia Services and Ors* [2006] EIZT-IC 3612 (Ch) where it was held that:

“Now a person voluntarily submits to the jurisdiction of the Court if he voluntarily recognizes, or has voluntarily recognized, that the Court has jurisdiction to hear and determine the claim which is the subject matter of the relevant proceedings. In particular, he makes a voluntary submission to the jurisdiction if he takes a step in the proceedings which in all the circumstances amounts to a recognition of the Court’s jurisdiction in respect of the claim which is the subject matter of those proceedings. The effect of a party’s submission to the jurisdiction is that he is precluded thereafter from objecting to the Court exercising its jurisdiction in respect of such claim. Whether any particular matter, for example an application to the Court, amounts to a voluntary submission to the jurisdiction must depend upon the circumstances of the Particular case.”

42. On whether applications for striking out the Claim and to set aside default judgement as well as a request for further and better particulars of the Claim amount to submission to the jurisdiction of the Court, in *Winkler v Shamoon* [2016] ELVA-IC 217 (Ch) the court, while holding that that the Defendants had not submitted to jurisdiction expressed itself as hereunder:-

“Furthermore, I do not accept that this question is answered by asking whether the defendant has done more than is required or is necessary in order to challenge jurisdiction. Rather, the Court must be satisfied that the defendant has unequivocally renounced his right to challenge the jurisdiction. There is no question of statutory submission in the present case. Therefore, the issue is whether there has been a waiver of the right to challenge jurisdiction (see *Deutsche Bank* (supra)). The relevant test for submission to the jurisdiction was set out by Lord Collins in *Rubin & Anor v Eurofinance SA and Ors* [2012] 3 WLR 1019:

“The general rule in the ordinary case in England is that the Party alleged to have submitted to the jurisdiction of the English Court must have “taken some step which is only necessary or only useful if’ an objection to jurisdiction “has actually been waived, or if the objection has never been entertained at all.

Applying these principles to the acts relied on by Mr Winkler, it is clear that none of them amount to a submission to the jurisdiction. In respect of the Procedural Strike Out Application, the Set Aside Application and the Request for Further Information, Mrs Angela Shamoon and Ms Alexandra Shamoon have consistently made clear that such steps were without Prejudice to their jurisdictional challenge. This is the very opposite of an unequivocal renunciation of such a challenge.”

43. Denning LJ in *Re Dulle's Settlement (No.2)* [1951] Ch 842 observed that:-

“I cannot see how anyone can fairly say that a man has voluntarily submitted to the jurisdiction of a court, when he has all the time been vigorously protesting that it has no jurisdiction.”

44. In our considered view, none of the actions taken by the Appellants can be construed to amount to submission to the jurisdiction of the Admiralty Court.
45. In summary, the order seeking the setting aside the leave granted to the Appellants by the High Court to file the Appeal is premature and not properly before us as such an application ought to have been made before the Court that granted leave. Without a Notice of Appeal before us challenging the leave



granted, we have no jurisdiction to deal with the matter. As we have found, the issue touching on the Bills of Lading belong to the realm of the trial court and cannot be the basis of an application seeking to strike out the appeal. As regards the conduct of the Appellants, we find that it does not amount to voluntary and unequivocal submission to the jurisdiction of the Admiralty Court. In any case, we find merit in the Appellants' contention that the Amended Claim having been struck out for failure to serve the same within the prescribed time, there was no Claim to which the Appellants could be deemed to have submitted jurisdiction to.

46. In the premises, we find no merit in the Notice of Motion dated 14th October, 2022 which we hereby dismiss with costs.

47. It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 14TH DAY OF APRIL 2023.

P. NYAMWEYA

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

