



REPUBLIC OF KENYA



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**Wadhwa (As Legal Representative of the Estate of Deshpal Omprakash  
Wadhwa) v Mohamed & 4 others (Civil Appeal 33 & 148 of 2019  
(Consolidated)) [2022] KECA 25 (KLR) (21 January 2022) (Judgment)**

Neutral citation: [2022] KECA 25 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MALINDI  
CIVIL APPEAL 33 & 148 OF 2019 (CONSOLIDATED)  
SG KAIRU, P NYAMWEYA & JW LESSIT, JJA  
JANUARY 21, 2022**

**BETWEEN**

**DESHPAL OMPRAKASH WADHWA (AS LEGAL REPRESENTATIVE OF THE  
ESTATE OF DESHPAL OMPRAKASH WADHWA) ..... APPELLANT**

**AND**

**HABIB ABU MOHAMED ..... 1<sup>ST</sup> RESPONDENT  
ABDALLA MWARINGA MAYE ..... 2<sup>ND</sup> RESPONDENT  
IBRAHIM MUKHTAR ABASHEIKH ..... 3<sup>RD</sup> RESPONDENT  
TAUHIDA TAHIR SHEIKH ..... 4<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

*(Being an Appeal from part of the Ruling and Orders of the Environment  
and Land Court (Hon. Justice J.O. Olola) given at Malindi on the 5th  
February, 2019 and 15th October 2019 in ELC Case No. 51 of 2012)*

## **JUDGMENT**

1. These two appeals, Civil Appeal No. 33 of 2019 and Civil Appeal No. 148 of 2019 were consolidated by way of an order issued by this Court on 24th April, 2020, with the Civil Appeal No 33 of 2019 made the lead file.
2. The background to the case is that the deceased Deshpal Omprakash Wadhwa sued the Respondents in the Environment and Land Court at Malindi Civil Suit 51 of 2012 for the recovery of Kilifi/ Jimba/ 441 that he was the registered proprietor of and which the Respondents were stated to have trespassed on; that the deceased sought the cancellation of titles Kilifi/Jimba/ 1382 and 1383 that were excised from the Plot 441 by the 1st Respondent and unlawfully sold and transferred to the 3rd and 4th



Respondents. The Respondents defended themselves with the 1st Respondent averring that he was the lawful proprietor of the suit land and the 3rd and 4th Respondents averring that they were innocent purchasers for value.

3. The deceased died in 2014 and the Appellant was granted letters of administration ad litem; he was made party to the suit vide order of the Environment and Land Court (ELC) issued on 7th July, 2014. The record shows that the hearing proceeded de novo before Hon Justice J.O. Olola on 9th October, 2018 after transfer of Justice Angote, The Appellant testified as PW1 and a Land Registrar as PW2. After PW2 testified on 5th February, 2019, the Appellant's case was closed; it was ordered that the additional documents filed by the Appellant on 31st January, 2019 be expunged and leave was granted for the defence to proceed with its case.
4. The Appellant was dissatisfied with the decision rendered on 5th February, 2019 and filed a Notice of Appeal in Civil Appeal 33 of 2019 on 20th February, 2019. The Memorandum of Appeal set out 10 grounds of dissatisfaction with the decision of the ELC Court. Counsel for the Appellant challenged the Learned Judge for considering the application for leave to file additional documents was an application for adjournment when no such application was made; for considering that the suit was a 2012 matter therefore there was no sufficient reason to explain why the additional evidence was not filed earlier; for expunging the appellant's additional documents on the basis of an oral application presented before the court; for denying the appellant an adjournment; for failing to leave the appellant's case open; for failing to exercise discretion judiciously by taking into account irrelevant matters and for shutting out crucial evidence of fraud. Counsel for the Appellant prayed that the order of the Environment and Land Court expunging the Appellant's additional documents be set aside and the said documents be admitted; and that the decision closing the Appellant's case be set aside and that the Appellant's case be set for further hearing.
5. The Appellant's counsel in an attempt to remedy the dismissal approached the ELC vide a Notice of Motion dated 6th March, 2019 and sought that the Appellant be granted leave to file additional documents; that the Appellant's case that had been closed be reopened and that the Appellant be granted leave to recall the Land Registrar, Kilifi who had testified as PW 2. The application was based on the grounds that there was new evidence that was discovered that would assist the Appellant's case hence it ought to be included and the material witness recalled so as to tender the said evidence.
6. The Respondents opposed the application on grounds it was not available having been made after the close of the Appellant's case and that the application was a delaying tactic in a suit that has been in the court for 7 years.
7. The hearing of the application was fixed for the 15th October, 2019 after several failed attempts to hear it. There were other applications also fixed for hearing on the same date. These were the application dated 26th March, 2019 filed by the 1st Respondent seeking that he acts in person; the application dated 5th August, 2019 where the 5th Respondent sought that the evidence of Mary Ndale Kai be taken de bene esse in view of her advanced age.
8. In the intervening period the Appellant filed a second application dated 16th September, 2019 where he sought that the hearing of the application dated 5th August, 2019 be stayed so that Mary Ndale Kai undergo medical re-examination at the Appellant's cost.
9. On 18th September, 2019, the matter went for mention before the learned trial judge where he directed that the Appellant's application dated 16th September, 2019 be served for hearing on the 19th September 2019, alongside the 5th Respondent's application dated 5th August 2019.



10. On the 19th September, 2019 the learned Judge made an order directing that

“Both the 5th Respondent’s application and the Appellant’s are hereby dispensed with by the court in the interest of justice. This matter shall proceed for defence hearing on 21st November, 2019.”
11. On the 15th October, 2019 the Appellant’s application dated 6th wrote date set for the hearing of the March 2019, the learned Judge

“On the 19th September, 2019 this court had dispensed with all applications herein in the interest of justice to pave way for the hearing on 21st November, 2019.

All applications thereby remain and stand dispensed with. This matter shall proceed for Defence hearing on 21st November 2019”
12. The Appellant was dissatisfied with part of the decision made on the 15th October 2019 and filed a Notice of Appeal in Civil Appeal 148 of 2019 on 24th October, 2019. The memorandum of appeal set out 5 grounds of dissatisfaction with the decision of the ELC. Counsel for the Appellant faulted the learned judge for summarily making an order on the 15th October 2019 dispensing with all applications including the Notice of Motion dated 6th March 2019 without such power to do so under the Civil Procedure Rules and the law; for misdirecting himself when he failed to take into consideration that the Notion of Motion dated 6th March 2019 was not one of the applications coming up for hearing on the 19th September, 2019 and which he had dispensed with summarily on that date; that by so doing the learned Judge dismissed the Appellant’s application without hearing it on merits thus denying the Appellant right to a fair trial; that the learned judge failed to exercise his discretion judiciously and failed to take into account matters which ought to have been considered.
13. The Appellant prays for orders that the impugned order of the ELC dispensing with the Appellant’s application dated 6th March, 2019 be set aside; that the application be allowed under the *Appellate Jurisdiction Act* in terms of prayers 4, 5, 6, 7, 8 and 9, or that the application be ordered to be heard by another Judge.
14. The parties filed their respective submissions and list of authorities. The appeal was canvassed virtually Mr. Mohamed Karega appearing for the Appellant, Mr. Kangere appearing for the 3rd and 4th Respondents and holding brief for Matuu for the 1st and 2nd Respondents. The 5th Respondent, the Attorney General was not represented at this appeal despite service of the hearing notice upon its counsel Ms. Muyuli. The 5th Respondent has not participated at the trial before the ELC.
15. We have considered the background to this matter, the submissions by counsel appearing for the parties and the authorities they relied upon. Having done so we are of the view that the main issues for determination are whether the learned trial Judge exercised his discretion in accordance to the justice of the case. That is to say, whether the Appellant proved, one, discovery of new and important evidence or matter, and two, which after the exercise of due diligence was not within her knowledge, or could not be produced by her at the time the order was made. Lastly what orders we should issue on the consolidated appeals.
16. The Appellant contends that at the core of the suit in the trial before the ELC is the determination of the genuine owner of the suit property, that the Appellant did not personally acquire the suit property but was substituted as an administrator before the case commenced de novo, and being a case exclusively or largely dependent on documentary evidence some of which were in the custody of the



- 5th Respondent who was not participating at the trial, necessitated the filing of additional documents, the subject matter of this appeal.
17. The Appellant contends that the learned Judge misdirected himself as to the nature of the application made before him on the 5th February 2019 by finding that it was an application for adjournment and so made a ruling declining the same and further expunged the additional documents and list of document on grounds they were filed without leave, yet it was leave which had in fact been sought. The Appellant relied on the case of *Joginder Auto Service Ltd v Mohammed Shaffique & Another* [2001] eKLR for the proposition that the learned judge wrongly expunged the additional documents since the custodian of the records (the 5th Respondent) had failed to do so, and because they were necessary for the just determination of the suit, the appellant was deserving of an opportunity to file them.
  18. The Appellant relied on the case of *NSG VS SCG* [2014] eKLR for the proposition that a party to a suit had a right to produce all the documents he intends to rely on at the trial and that there would be no prejudice if the court allowed the party objecting to the additional documents to re-open their testimony in chief to enable them comment on the said documents and also granted an opportunity to interrogate the said documents during cross-examination. The Appellant also relied on the case of *Raindrops Limited VS County Government of Kilifi* [2020] eKLR for the proposition that a court can still order the re-opening of the Plaintiffs case and recalling of a witness after the defence case has commenced. The court was reminded of its powers under Rule 31 of the Rules of this Court as well as Section 3(2) of the *Appellate Jurisdiction Act* to reverse the orders of the superior court or remit the proceedings back to the superior court or to order a new trial.
  19. In response, Mr. Kangere highlighted submissions filed on behalf of the 1st and 2nd Respondents and also those filed on behalf of the 3rd and 4th Respondents. Learned counsel cited the provisions of Order 11 of the *Civil Procedure Rules* and argued that the Appellant had the opportunity to file their documents and that their belated ambush of the Respondents with new documents would prejudice the Respondents. Mr. Kangere argued that the orders made by the learned Justice Olola were proper and in line with the law therefore the appeal ought not to be allowed for it is meant to delay and subvert justice.
  20. Mr. Kangere placed reliance on the case of *Rubina Ahmed & 3 Others v Guardian Bank Ltd & 3 Others* (2019) eKLR argued that the learned judge did not err in striking the appellant's list and bundle of documents dated 30th January, 2019 because the Judge considered that the suit was filed in 2012 and that the Appellant must have been aware of the evidence he intended to rely on back then. Counsel cited the case of *Hannah Wairimu Ngethe VS Francis Mungai Ng'ang'a & another* [2018] eKLR urged that even though the learned Judge did not say so expressly, he considered the fact the Appellant had not said that she had come upon new and important evidence which even with exercise of due diligence was not within her knowledge.
  21. Regarding whether the learned trial Judge erred in his orders of 15th October, 2019 Mr. Kangere argued that by 19th September, 2019 there were numerous applications pending and that the trial Judge was rightly minded to get rid of the applications in favour of hearing the case. Counsel cited *Kenya Power & Lighting Company Ltd VS Karuri Hotels Ltd & another* [2002] eKLR and submitted that there was no notice of appeal against the orders issued on 19th September, 2019 and therefore this court had no jurisdiction to entertain any arguments challenging the decisions made on that date. He relied on the case of *Alex Muchira Mwangi VS Jade Mugure Mwaura* [2017] eKLR for the proposition that since this court could not upset the orders of 19th September, 2019 of what use would it be to upset the order of 15th October, 2019?



22. Regarding the issue of reopening the case, counsel cited the case of *Manchester Outfitters Limited v Pravin Galot & 4 Others* (2020) eKLR and argued that the Appellant's case was rightly closed as the Appellant had no other witnesses after PW 2 had testified and that the court was mindful of the age of the case and the unavailability of witnesses.
23. It was further argued that the main suit in the Environment and Land Court is yet to be determined therefore the Appellate court should not be seen to be usurping the original jurisdiction of the Environment and Land Court. Mr. Kangere relied on the case of *Christopher Kanai Kamu & 4 Others v Kenya Forest Services & 4 Others* (2018) eKLR, and urged that the court rightly considered the age of the matter and risk of unavailability of witnesses in bypassing all the applications in favour of hearing of the main suit. It was proposed that because the application dated 6th March, 2019 was not heard on merit in the Environment and Land Court, the same should be remitted back to that court for hearing.
24. In rejoinder, Mr. Karega urged that the order of 19th September related to two applications. The Court was referred to Rule 84 of the Court of Appeal Rules on striking out a notice of appeal and it was argued that there is no application before this court for the striking out of any notice of appeal.
25. This being a first appeal this court's role as the first appellate court was succinctly set out in the case of *Selle & Another v Associated Motor Boat Co. Ltd. & others* (1968) EA 123 where it was stated that;

“this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally”

26. In *Peters vs. Sunday Post Limited* [1958] EA 424, the Court of Appeal for Eastern Africa, stated that:

“Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or has plainly gone wrong, the appellate court will not hesitate so to decide.”

27. Section 3 (2) of the *Appellate Jurisdiction Act* provides thus:

“3. Jurisdiction of Court of Appeal

- (1) ....
- (2) For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred by this Act, the Court of Appeal shall have, in addition to any other power, authority and jurisdiction conferred by this Act, the power, authority and jurisdiction vested in the High Court.”



28. Rule 31 of the Court of Appeal Rules, 2010 provides for the general powers of this court as follows:

“ 31. General powers of the Court

On any appeal the Court shall have power, so far as its jurisdiction permits, to confirm, reverse or vary the decision of the superior court, or to remit the proceedings to the superior court with such directions as may be appropriate, or to order a new trial, and to make any necessary incidental or consequential orders, including orders as to costs.”

29. There is contention whether the Appellant’s Notice of Appeal challenged the correct order of the court. The Respondents argued that she should have appealed against the order of 19th September, 2019 stating that that was when the order dispensing with the Appellant’s application dated 6th March 2019 was made.

30. We do not wish to belabour this point because we have already set out the facts of the case. Two facts are abundantly clear that firstly, on the 19th September, 2019 when the court dispensed with the hearing of unspecified applications filed by the 5th Respondent and the Appellant, what was coming up before the court, as per the order of 18th September 2019 inter alia, was the application of the 5th Respondent dated 5th August 2019 for hearing, the Appellant’s application dated 16th September, 2019 for directions and hearing, both which were related, and the 1st and 2nd Respondents application dated 26th March 2019 for purposes of confirming compliance with filing of submissions.

31. Secondly, the hearing date for the Appellant’s application dated 6th March, 2019 was fixed by consent by all the parties (except the 5th Respondent) for 15th October 2019, much earlier than September. Indeed, on the date set for the hearing, all the parties appeared before the trial court ready to proceed. That means that when the learned made the order of 19th September, 2019, that order could not have applied to the Appellant’s application of 6th March, 2019. We are clear therefore that the correct order the Appellant should have challenged was the one made on 15th October, 2019, and thus Notice of Appeal cites the correct order.

32. The next issue to determine is whether the learned trial Judge exercised his discretion in accordance with the law. The order of the court dated 5th February, 2019 was, in respect of the Appellant’s oral application for, inter alia, leave to be allowed to file additional list and bundle of exhibits and to deem as duly filed the documents filed in court on 31st January 2019. The Appellant’s submission was that the learned Judge misapprehended the application made before him and therefore did not address the Appellant’s application on the additional documents.

33. We have looked at the proceedings of 5th February 2019. Mr. Karega for the Appellant addressed the court thus:

“ I however have an application to make. We filed an additional list and bundle of documents on 31st January, 2019. I therefore pray for leave to be allowed to file the additional list and bundle of documents and for what has been filed to be deemed to be properly on record.”

34. The learned trial Judge, after hearing responses from the counsels to the other parties made the following order:

“ Court: I have considered the application for adjournment and the responses thereto. This case was filed way back in the year 2012. The Plaintiff must have been aware of his case and the evidence he intended to rely on back then.



The matter went for pre-trial and was certified ready for trial last year. The Plaintiff commenced his testimony before this court on 9th October, 2018 and filing of additional documents herein without the leave of the court on 31st January 2019 is clearly an abuse of the court process and meant to ambush the opponents. This court has an obligation to ensure just, proportionate and efficient determination of disputes before it. In the circumstances of this case I do not find any sufficient reason why the additional documents were not filed in good time and why the same were filed without leave of the court.”

35. The record speaks for itself. The learned trial Judge treated Mr. Karega’s application for leave to deem the additional documents filed in court three days before the date of hearing as an application for adjournment, which it was not. For such an application, what should have weighed the mind of the court is whether the Appellant had proved that she had no knowledge of the evidence or could not have been able to produce it before then, even in exercise of due diligence. We find that the learned trial Judge mistook the application made before him, and in any event, he did not consider the factors relevant to be proved for an application of that nature, and thus fell into error.
36. In regard to the application dated 6th March 2019, filed soon after the oral application was declined, the situation is worse. It has been admitted by the Respondent’s that the Appellant’s application was dispensed with on 15th October, 2019. At the time, as indicated earlier, the learned Judge, with due respect to him, fell into two errors. The first one is declaring that the said application had been dispensed with on the 19th September, 2019 which it had not. The second error was making an adverse order against a party without hearing them.
37. The court has a duty to dispense justice in compliance to known legal norms. The right of access to justice under Article 48 of the Constitution cannot be emphasised enough. This means that the court should serve as an enabler not inhibitor of access to justice. The right to be heard, and in a fair and public hearing before a court is a fundamental right. This right is found under Article 50(1) of the [Constitution](#) which provides:
- “ 50(1). Fair hearing
- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”
38. Having considered the happenings in the ELC surrounding the two orders and the events that took place in that court on both occasions, we have no doubt in our minds that the Appellant’s applications were not properly considered or considered at all.
39. We must deal with another matter, whether the order we shall make in this appeal can be defeated merely by fact the case proceeded to defence hearing, or on account of the case having been concluded.
40. In the case of [Samuel Kiti Lewa Vs Housing Finance Co. Of Kenya Ltd](#) [2015] eKLR Kasango, J. cited a Uganda High Court, Commercial Division in the case of *Simba Telecom – V-Karubanga & Anor* (2014) UGHC 98 which had occasion to consider an application to re-open the case for purpose of submitting fresh evidence. That court referred to an Australian case *Smith –versus- New South Wales* [1992] HCA 36; [1992] 176 CLR 256 where it was held:

“ If an application is made to reopen on the basis that new or additional evidence is available, it will be relevant, at that stage, to enquire why the evidence was not called at the hearing. If there was a deliberate decision not recorded, ordinarily that will tell decisively against



the application. But assuming that that hurdle is passed, different considerations may apply depending upon whether the case is simply one in which the hearing is complete, or one which reasons for the judgment have been delivered. In the latter situations the appeal rules relating to fresh evidence may provide a useful guide as to the manner in which the discretion to reopen should be exercised.”

41. The Ugandan Court in the case *Simba Telecom (supra)* held thus:

“I agree with the holding in the case of *Smith Versus South Wales Bar Association* [1992] 176 CLR 256, where it was held that the question of whether additional evidence should be taken at the trial is considered separately from the question of whether the case should be reopened. Consequently, even after the case has been reopened, the court retains its discretionary powers whether to admit any piece of evidence or not.”

42. The power to recall allow adduction of additional evidence and to recall a witness(es) is provided under Section 146 (4) of the *Evidence Act* and under Rule 29 (1) of the Court of Appeal Rules. Section 146 (7) of the *Evidence Act* provides:

“(4) The court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively.”

43. While Rule 29 (1) of this court’s rules provides as follows:

“29(1) On any appeal from a decision of a superior court acting in the exercise of its original jurisdiction, the court shall have power -

- (a) to re-appraise the evidence and to draw inferences of fact; and
- (b) in its discretion, for sufficient reason, to take additional evidence or to direct that additional evidence be taken by the trial court or by a commissioner.”

44. This Court differently constituted had occasion to consider an application under Rule 29 (1) of this Court’s Rules. In *Joginder Auto Service Ltd Vs Mohammed Shaffique & another* [2001] eKLR where the court held:

“But this Court and other courts in different common law jurisdictions have, over the years, enunciated principles to guide the courts in applications for leave to adduce additional evidence. There is for instance the case of *Mzee Wanjie & 93 Others v. Saikwa & Others* (1982-88) 1 KAR.462, which was applied in *Edgar Ogechi & 12 Others v. University of Eastern Africa, Baraton, (Civil Appeal (Application) 130 of 1997)* (unreported). There is also the old case of *Karmali Mohamed & Another v. Z. H. Lakhani & Company* [1958] EA.567. In summary these and several other cases decide that the power of the court and more particularly this Court, to receive further evidence is discretionary...”

45. Most significantly and more recently, the Supreme Court laid down the governing principles on allowing additional evidence in appellate courts in Kenya in *Petition 7 Of 2018* consolidated with



“[79] Taking into account the practice of various jurisdictions outlined above, which are of persuasive value, the elaborate submissions by counsel, our own experience in electoral litigation disputes and the law, we conclude that we can, in exceptional circumstances and on a case by case basis, exercise our discretion and call for and allow additional evidence to be adduced before us. We therefore lay down the governing principles on allowing additional evidence in appellate courts in Kenya as follows:

- (a) the additional evidence must be directly relevant to the matter before the court and be in the interest of justice;
- (b) it must be such that, if given, it would influence or impact upon the result of the verdict, although it need not be decisive;
- (c) it is shown that it could not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of the suit or petition by the party seeking to adduce the additional evidence;
- (d) Where the additional evidence sought to be adduced removes any vagueness or doubt over the case and has a direct bearing on the main issue in the suit;
- (e) the evidence must be credible in the sense that it is capable of belief;
- (f) the additional evidence must not be so voluminous making it difficult or impossible for the other party to respond effectively;
- (g) whether a party would reasonably have been aware of and procured the further evidence in the course of trial is an essential consideration to ensure fairness and due process;
- (h) where the additional evidence discloses a strong prima facie case of willful deception of the Court;
- (i) The Court must be satisfied that the additional evidence is not utilized for the purpose of removing lacunae and filling gaps in evidence. The Court must find the further evidence needful.
- (J) A party who has been unsuccessful at the trial must not seek to adduce additional evidence to, make a fresh case in appeal, fill up omissions or patch up the weak points in his/her case.
- (k) The court will consider the proportionality and prejudice of allowing the additional evidence. This requires the court to assess the balance between the significance of the additional evidence, on the one hand, and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other.”

46. From the cited law and cases, it is clear that courts have power to allow adduction of additional evidence, even at the appeal stage. The Evidence Act stipulates that the court may in all cases permit



recalling of witnesses. It is therefore not too late for the high court and courts of equal status to allow such an application, if in exercise of its discretion it is judicious to do so, even where the case has been concluded but before judgment.

47. We are in agreement that this appeal should be allowed. In the result we find the orders that commend themselves to us are as follows:

- 1) That the Environment and Land Court order by Olola, J. dated 5<sup>th</sup> February, 2019 declining the Appellant's oral application for leave to file additional list and bundle of documents, and the same court's order of 15<sup>th</sup> October, 2019 dispensing with the hearing of the Appellant's Notice of Motion dated 6<sup>th</sup> March 2019 be and are hereby set aside.
- 2) That the application dated 6<sup>th</sup> March, 2019 be and is hereby sent back to the ELC Environment and Land Court for hearing and determination on merit before any other Judge except Olola, J.\*\*

**DATED AND DELIVERED AT MOMBASA THIS 21<sup>ST</sup> DAY OF JANUARY 2022.**

**S. GATEMBU KAIRU (FCIArb)**

.....

**JUDGE OF APPEAL**

**P. NYAMWEYA**

.....

**JUDGE OF APPEAL**

**J. LESIIT**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

