



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NAMBUYE, KARANJA & OKWENGU J.J.A.)

CIVIL APPLICATION NO. 42 OF 2019

BETWEEN

VEHICLE AND EQUIPMENT LEASING LIMITED.....APPLICANT

AND

COMMERCIAL BANK OF AFRICA LIMITED.....RESPONDENT

*(Being an application for injunction pending the hearing and determination of an intended appeal arising from the ruling and orders of the High Court of Kenya (F. Tuiyot, J.) dated 25th January, 2019*

*in*

*Milimani Commercial Court Civil Suit No. 390 of 2018)*

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ORDER OF THE COURT

Before us is a Notice of Motion dated 7th February, 2019 seeking a litany of prayers which we find no need to reproduce in view of the final orders we intend to make herein in the disposal of the said application. It has been supported by grounds on its body and a supporting affidavit of **Susan Muthoni** together with annexures thereto. It has been opposed by a replying affidavit sworn by **Jacob Owuor Ogola** on 22nd March, 2019 together with annexures thereto.

The application was placed before us on 16th March, 2020 for hearing. It was supposed to be canvassed virtually through rival pleadings in the absence of advocates for the respective parties and without oral highlighting. It was however not canvassed on merit because the registry drew our attention to two communications emanating from offices of advocates on record for the respective parties, apparently in response to the Deputy Registrar's hearing notice served electronically on Advocates on record for the respective parties on Mon, Mar. 1, 2021 at 6.32pm inviting the said advocates to file written submissions in readiness for the hearing of the application and according to specification indicated therein.

The earlier one in time is that emanating from **Mbaya, Agnes** on behalf of **Fraser** and **Kenneth** sent to the Deputy Registrar of the Court on 19th February, 2021, 16.29. The gist of the communication is that there is a substantive appeal namely Civil Appeal No. 102 of 2019 filed and served and had in fact even been scheduled for hearing on 22nd September, 2020 but taken out as the date was not convenient to the Court. Further that the substantive hearing of the matter in the High Court from which both the pending appeal and the application under consideration emanated from had in fact proceeded and was fully heard and concluded on 5th November, 2020. Thereafter the matter was reserved for submission directed to be filed by 25th March, 2021, with a mention date on 12th May, 2021 to give a date for judgment.

In light of the above, the advocates view is that the application has been overtaken by events. In the same communication, the advocate for applicant requested the advocate for the opposite party to confirm if they can mark the application as overtaken by events.

In response, **Muraguri & Muraguri Advocates** in their communication to the Deputy Registrar of the Court via email of 10th March, 2021, confirm that Civil Appeal No. 102 of 2019 is still alive and the respective parties therein have already filed written submissions awaiting a date for hearing and requested for the appeal to be heard instead of the application.

In light of the above:

**1. We are satisfied that the application herein has been overtaken by events. In the absence of a request by applicant to have**

it marked as withdrawn, we invoke the inherent power of the Court enshrined in Rule 1(2) of the Court's Rules to mark the application as withdrawn under Rule 52 of the Court's Rules.

2. Costs of the application in appeal No. 102 of 2019.

Made at NAIROBI this 23rd day of April, 2021.

R. N. NAMBUYE

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JUDGE OF APPEAL

W. KARANJA

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JUDGE OF APPEAL

HANNAH OKWENGU

.....

JUDGE OF APPEAL

*I certify that this is a true*

*copy of the original.*

*Signed*

**DEPUTY REGISTRAR**