



**Kampala International University v Housing Finance Company Limited (Civil Application E343 of 2021) [2021] KECA 113 (KLR) (22 October 2021) (Order)**

Neutral citation: [2021] KECA 113 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E343 OF 2021  
RN NAMBUYE, MSA MAKHANDIA & A MBOGHOLI-MSAGHA, JJA  
OCTOBER 22, 2021**

**BETWEEN**

**KAMPALA INTERNATIONAL UNIVERSITY ..... APPLICANT**

**AND**

**HOUSING FINANCE COMPANY LIMITED ..... RESPONDENT**

*(An application for leave to appeal against the ruling and order of the High Court of Kenya (M. W. Muigai, J.) dated 16th September, 2021 in Milimani HC Misc. Cause No. 564 of 2019)*

**ORDER**

1. The matter came before us today for hearing of the notice of motion dated 29th September, 2021.
2. When called out, learned counsel, Mr. Aurelio Rebello assisted by learned counsel Mr. Wilfred Nyamu appeared for the applicant while senior counsel Mr. John Ohagah appeared for the respondent. The application was fully canvassed via Go-To-Meeting platform due to the prevailing Covid-19 pandemic challenges through rival pleadings, written submissions and legal authorities orally highlighted in the presence of learned senior and counsel for the respective parties herein.
3. At the conclusion of the lengthy oral highlighting, the matter was reserved for ruling on 17th December, 2021.
4. It was during the members of the bench routine conference over the matter that it transpired that a member of the bench, the Hon. Mr. Justice A. Mboghli Msagha, Judge of Appeal had at one time been represented in litigation by an advocate from the firm of advocates currently on record for the respondent. The late discovery which is highly regrettable and members of the bench profusely apologize both to senior and learned counsel for the respective parties herein as same was neither careless, deliberate or meant to derail the course of justice herein. It arose from circumstances beyond the control of the member of the bench concerned. It was only after going through the record sent to the learned Judge electronically on the previous night and which the learned Judge only managed to



plough through after the matter had been adjourned for conferencing by the bench before which the same had been canvassed a practice not uncommon in the court. The learned Judge therefore recused himself from proceeding further in the matter.

In the result and for reasons explained above, we make orders as follows:

- 1) The hearing of the application conducted today the 18th day of October, 2021 together with the attendant date reserved for delivery of the ruling on 17th December, 2021 be and are hereby recalled and set aside.
- 2) The notice of motion dated 29th September, 2021 is restored “ante” and directed to be relisted afresh before another bench excluding all the members of this bench.
- 3) We direct that in view of the nature of issues involved herein coupled with the concerns raised by learned counsel for the applicant, the registrar of the court is directed to cause the matter to be relisted for hearing and disposal preferably before end of October, 2021.
- 4) The costs for today in the cause.

**MADE AT NAIROBI THIS 22ND DAY OF OCTOBER, 2021.**

**R. N. NAMBUYE**

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**JUDGE OF APPEAL**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**A. M. MBOGHOLI**

.....

**JUDGE OF APPEAL**

**I certify that this is a**

**True copy of the original**

**Signed**

**DEPUTY REGISTRAR**

