



**Pacific Frontier Seas Limited v Kyengo & another (Civil Appeal
32 of 2018) [2021] KECA 53 (KLR) (8 October 2021) (Order)**

Neutral citation: [2021] KECA 53 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MALINDI
CIVIL APPEAL 32 OF 2018
DK MUSINGA, SG KAIRU & AK MURGOR, JJA
OCTOBER 8, 2021**

BETWEEN

PACIFIC FRONTIER SEAS LIMITED APPELLANT

AND

JANE MUTULU KYENGO 1ST RESPONDENT

OKAPI ESTATE LIMITED 2ND RESPONDENT

*(An appeal against the Judgment and Decree of the High Court of Kenya at Malindi,
(Chitembwe, J.) delivered on 18th May, 2018 in Succession Cause No. 97 of 2015)*

ORDER

1. This appeal was heard at Mombasa on 30th October 2019 and the judgment was scheduled to be delivered on 27th February 2020.
2. Before the delivery date, the judges who heard the appeal were all transferred to Nairobi. In the process of movement of files from Mombasa to Nairobi, Musinga, J.A. who presided over the bench and was tasked with the responsibility of drafting the judgment for consideration by justices Gatembu Kairu, J.A. and Agnes Murgor, J.A. inadvertently misplaced the file and that occasioned delay in the preparation of the judgment.
3. The judgment was eventually prepared and was scheduled for delivery on 24th September 2021. However, on 12th September 2021 an article was published in the “Sunday Nation” newspaper which discussed the High Court decision that gave rise to the appeal. It was claimed, inter alia, that there are video and audio recordings of a High Court judge discussing how to compromise members of this bench and how to terminate or influence the outcome of the appeal.



4. In the circumstances, we are of the considered view that the decision of the court, whichever way it goes, shall be misconstrued as having been influenced by the unnamed High Court judge, for and on behalf of one of the parties to the appeal.

5. Consequently, we hereby recuse ourselves from this appeal. The appeal shall be heard a fresh on the basis of priority before another bench.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF OCTOBER, 2021.

D.K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

A.K. MURGOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

