



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CORAM: NAMBUYE, KOOME & KIAGE J.J.A.)**

**KISUMU CIVIL APPEAL (APPLICATION) NO. 142 OF 2018**

**BETWEEN**

**KENYA ELECTRICITY TRANSMISSION**

**COMPANY LIMITED (KETRACO).....APPELLANT/APPLICANT**

**AND**

**GEORGE NGWENA OBONYO.....1ST RESPONDENT**

**PETER CHIENG' OPIYO.....2ND RESPONDENT**

*(Being an application for stay of proceedings as against the decision of the*

*Environment and Land Court (Hon. S. M. Kibunja, J.) dated 2nd May 2018*

in

**Kisumu ELC Suit No. 334 of 2016)**

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**RULING OF THE COURT**

1. **UPON** perusing the Notice of Motion dated 21st November 2019 by the appellant/applicant brought under **Article 159** and **164(3)** of the Constitution of Kenya, **sections 3A** and **3B** of the Appellate Jurisdiction Act Cap 9 Laws of Kenya (L.O.K), **Rules 1(2), 5(2)(b)** of the Court of Appeal Rules and all other enabling provisions of the law, seeking an order that pending hearing and determination of the appeal in **Civil Appeal No. 142 of 2018** between **Kenya Electricity Transmission Company Limited (KETRACO)** and **George Ngwena Obonyo** and **Peter Ochieng Opiyo** before this Court, a stay of the proceedings in **Kisumu Chief Magistrate's Court CMELC No. 252 of 2018** between **George Ngwena Obonyo** and **Peter Ochieng Opiyo vs. Kenya Electricity Transmission Company Limited (KETRACO)**; an order that this Court be pleased to make such further and or other orders as it may deem just, fair, reasonable and appropriate in the circumstances to expedite the hearing of Civil Appeal No. 142 of 2018 between **Kenya Electricity Transmission Company Limited (KETRACO)** and **George Ngwena Obonyo** and **Peter Ochieng Opiyo** in order for the ends of justice to be met; an order that costs of and incidental to this application do abide the outcome of the said appeal.

2. **UPON** perusing the grounds in the body of the application and the affidavit of **Samuel Kerubo**, the senior legal officer of the applicant herein sworn on 21st November 2019 in support of the application together with annexures thereto; and

3. **UPON** noting that the application is not opposed; and

4. **HAVING** considered the principles that guide the Court in the exercise of its mandate under the constitutional and statutory provisions of law and the Rules of this Court cited by the applicant for accessing the reliefs sought as variously enunciated by this Court and the Supreme Court of Kenya in **Jaldesa Tuke Dabelo vs. IEBC & Another [2015] eKLR**; **Raila Odinga and 5 Others vs. IEBC & 3 Others [2013] eKLR**; **Patricia Cherotich Sawe vs. IEBC & 4 Others [2015]eKLR** among numerous others for the invocation and application of the non-technicality principle in **Article 159(2)(d)** of the Constitution; the cases of **Equity Bank Limited vs. West Link Mbo Limited [2013]eKLR**; **Kenya Power & Lighting Company Limited versus Benzene Holdings Limited t/a Wycy Paints [2016] eKLR**; and **Board of Governors, Moi High School, Kabarak & Another vs. Malcolm Bell [2013]eKLR**; among others on the parameters governing the invocation and

application of the inherent power of the Court enshrined in **rule 1(2)** of the rules of this Court; the case of **City Chemist (NBI) Mohamed Kasabuli suing for and on behalf of the Estate of Halima Wamukoya Kasabuli vs. Orient Commercial Bank Limited [2008]eKLR** and **Kariuki Network Limited & Another vs. Daly & Figgis Advocates [2009]eKLR** on the parameters for the invocation and application of the overriding objective principle enshrined in **sections 3A and 3B** of the **Appellate Jurisdiction Act**; the case of **Stanley Kang'ethe Kinyanjui vs. Tony Ketter & Others [2013]eKLR** on the principles that guide this Court in the determination of **rule 5(2)(b)** applications which in our view is the substantive provision for accessing the substantive relief sought in the application under consideration; the case of **Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] KLR 1** for the principle that jurisdiction is everything and without it a court of law has no mandate dealing with a matter and has to down tools the moment it dawns on it that it has no jurisdiction; the case of **Kamau Macharia & Another vs. Kenya Commercial Bank & 2 Others [2012]eKLR** for the proposition that a Court's jurisdiction flows from the Constitution or legislation or both; the case of **Titus Mwinzi Kitaka & 5 Others vs. The District Commissioner Mbeere & 3 Others [2020]eKLR** for the proposition that there is nothing in the constitutional mandate of a court of law that would permit such a court of law to go against clear provisions of the law; **section 3** of the **Appellate Jurisdiction Act**, Cap 9 of the Laws of Kenya and **Article 164(3)** of the Kenya Constitution 2010 both on the mandate of the Court, all of which we fully adopt; and

5. **HAVING** applied the above cumulative thresholds and their respective principles of law to the applicant's application, we find the same incompetent for want of jurisdiction in this Court to stay an order of a Magistrate's Court; and

6. **HAVING** arrived at the above conclusion on the application, we make orders as follows:

(i) **The applicant's application dated 21st November 2019 is accordingly struck out for want of jurisdiction.**

(ii) **There will be no order for costs as the application was undefended.**

*Dated and Delivered at Nairobi this 4th day of December, 2020.*

**R. N. NAMBUYE**

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**JUDGE OF APPEAL**

**M. K. KOOME**

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**JUDGE OF APPEAL**

**P. O. KIAGE**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**