



**IN THE COURT OF APPEAL**

**AT MOMBASA**

**[CORAM: MUSINGA, KIAGE & SICHALE, J.J.A.]**

**CIVIL APPLICATION NO. E. 207 OF 2020**

**BETWEEN**

- KENYA PORTS AUTHORITY PENSION SCHEME.....1<sup>ST</sup> APPLICANT**
- ALBERT CHAUREMBO MUMBA.....2<sup>ND</sup> APPLICANT**
- ABDALLAH H. MWARUWA.....3<sup>RD</sup> APPLICANT**
- M.K. MURE.....4<sup>TH</sup> APPLICANT**
- MARY WAIRIMU NG'ANG'A..... 5<sup>TH</sup> APPLICANT**
- ALEX OLE-TEIPAN.....6<sup>TH</sup> APPLICANT**
- MARY OTIENDE.....7<sup>TH</sup> APPLICANT**
- MARGARET NYAGA.....8<sup>TH</sup> APPLICANT**

**MAJENGO KATANA (sued on their own behalf and on behalf of the  
Predecessors and/or successors in title in their capacities as the Registered  
Trustees of Kenya Ports Authority Pension Scheme.....9<sup>TH</sup> APPLICANT**

**AND**

**KINYUA MUYAA & CO. ADVOCATES.....RESPONDENT**

(Being an application for stay of execution pending the hearing and determination of an appeal

from the Ruling and order of the Employment & Labour Relations Court of Kenya

at Mombasa (James Rika, J) dated 17<sup>th</sup> July, 2020

**IN**

**ELRC Misc. Civil Application No. 13 of 2015)**

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**RULING OF THE COURT**

1. UPON perusing the Notice of Motion dated 20<sup>th</sup> July, 2020 by the applicant, Kenya Ports Authority Pension Scheme, brought under

**Rule 5(2)(b) of the Court of Appeal Rules**, where the applicant seeks an order of stay of execution of the ruling and orders made on **17<sup>th</sup> July, 2020** in Misc. Civil application No. 13 of 2015; **Kinyua Muyaa & Company Advocates, Kenya Ports Authority Pension Scheme & 8 others** pending the hearing and determination of the intended appeal against the ruling of **17<sup>th</sup> July, 2020**; and

2. **UPON** perusing the supporting affidavit of **Stephen Kyandih** sworn on **20<sup>th</sup> July, 2020** and the supplementary affidavit sworn on **21<sup>st</sup> September, 2020** by **Peter Mbuthia Gachuhi**; and

3. **UPON** perusing the replying affidavit sworn on **10<sup>th</sup> August, 2020** and the

*“further replying affidavit in reply”* sworn on **22<sup>nd</sup> September, 2020** both by **F. Kinyua Kamundi**, a partner in the firm of **Kinyua Muyaa & Co. Advocates** on behalf of the respondents; and

4. **UPON** perusing the applicant’s submissions where the applicant contends that it has an arguable appeal as it intends to challenge on appeal whether a judgment that has been set aside for being a nullity for want of jurisdiction can be a basis for assessing instruction fees between an advocate and a client; further that the applicant is apprehensive that, absent stay, the respondent will move to execute the impugned ruling of **17<sup>th</sup> July, 2020**; and

5. **UPON** perusing the respondent’s submissions in which it is submitted, *inter alia*, that the intended appeal is frivolous; and

6. **HAVING** considered the principles that guide this Court in the determination of Rule 5(2)(b) applications as set out in **Stanley Kang’ethe Kinyanjui vs. Tony Keter & 5 others [2013] eKLR** and noting that the applicant has demonstrated that it has an arguable appeal, that will be rendered nugatory, absent stay, we make the following orders:

(i) The Notice of Motion dated **20<sup>th</sup> July, 2020** is allowed.

(ii) Costs of the motion shall be in the intended appeal.

**Dated and Delivered at Nairobi this 4<sup>th</sup> Day of December, 2020.**

**D. K. MUSINGA**

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**JUDGE OF APPEAL**

**P.O. KIAGE**

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**JUDGE OF APPEAL**

**F. SICHALE**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**