Inonda & 4 others v County Government of Nairobi; Registrar of Lands Sued Through the Attorney General & 2 others (Interested Parties) (Environment & Land Case E156 of 2020) [2024] KEELC 4701 (KLR) (13 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4701 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE E156 OF 2020

JO MBOYA, J

JUNE 13, 2024

BETWEEN

PETER MANYUNYA INONDA ..... 1ST PLAINTIFF

PETJU ENTERPRISE LIMITED ..... 2ND PLAINTIFF

PAULINE MUMBI MWANGI ..... 3RD PLAINTIFF

FRANCIS MAINA GITERO ..... 4TH PLAINTIFF

RUTH NJERI NJAU ..... 5TH PLAINTIFF

AND

COUNTY GOVERNMENT OF NAIROBI ..... DEFENDANT

AND

THE REGISTRAR OF LANDS SUED THROUGH THE ATTORNEY GENERAL ..... INTERESTED PARTY

EMBAKASI RANCHING COMPANY LIMITED ..... INTERESTED PARTY

JOHN KAMANGU NYUMU ..... INTERESTED PARTY

RULING

1. The Defendant/Applicant has approached the court vide the Notice of Motion Application dated the 12th February 2024 and which is brought pursuant to th provisions of Section 7 of the *Appellate Jurisdiction Act*, Chapter 9 Laws of Kenya; and in respect of which the Applicant [the County Government of Nairobi] seeks the following reliefs;

i. THAT this matter be certified as urgent, and service be dispensed with in the first instance for purposes of granting prayer 2 herein.

ii. THAT there be and is hereby issued an order staying execution of the Judgment of this Court delivered by Hon. Justice Oguttu Mboya on 23rd September 2022 pending hearing and determination of this Application.

iii. THAT the Court be pleased to grant Leave to the Applicant to file a Notice of Appeal out of time against the Judgment in ELC Case No. E156 of 2020 delivered by Hon.Justice Oguttu Mboya on 23rd September 2022.

iv. THAT there be and is hereby issued an order of stay of execution of the Judgment entered and delivered in ELC Case No. E156 of 2020 delivered by Hon. Justice Oguttu Mboya on 23rd September 2022; pending the hearing and determination of the intended appeal.

v. THAT costs of this Application be provided for.

2. The subject application is anchored on various grounds which have been enumerated in the body thereof. Furthermore, the application beforehand is supported by the affidavit of one Christine Ireri, the acting County Attorney, County Government of Nairobi and which supporting affidavit is sworn on even date, namely, the 12th day of February 2024.

3. Upon being served with the application beforehand, the Plaintiffs/Respondents filed a Replying affidavit sworn by Namada Simoni, [Learned counsel for the Plaintiffs/Respondents] and which affidavit is sworn on the 26th February 2024. Notably, the Replying affidavit has highlighted various issues inter-alia that the subject application has not only been filed with undue and inordinate delay, but same also reeks of mala-fides.

4. First forward, the subject application was fixed for hearing on the 28th February 2024, but learned counsel for the Applicant failed to attend court and consequently, the application beforehand was dismissed for want of prosecution. Nevertheless, the Applicant thereafter filed another application dated the 4th March 2024 and wherein same [Applicant] sought to have the orders which were made on the 20th February 2024 to be reviewed and/or vacated.

5. Suffice it to point out that the application dated the 4th March 2024 was allowed and thus the orders made on the 28th February 2024 were reviewed and vacated. In this regard, the application dated the 12th February 2024 was reinstated for hearing and determination on merits.

6. Moreover, the advocates for the respective parties agreed to canvass and dispose of the application by way of written submissions. Consequently, the court proceeded to and circumscribed the timeline for the filing and exchange of written submissions.

7. Pursuant to the directions of the court, the Applicant herein filed written submissions dated the 15th April 2024; whereas the Plaintiffs/Respondents filed written submissions dated the 24th May 2024. For coherence, the written submissions form part of the record of the court.

Parties Submissions:

A. Applicant's Submissions:

8. The Applicant herein filed written submissions dated the 15th April 2024 and in respect of which same [Applicant] has adopted the grounds contained at the foot of the application as well as the averments in the body of the supporting affidavit.

9. Furthermore, learned counsel for the Applicant has thereafter raised and highlighted three [3] salient issues for consideration and determination by the Honourable Court.

10. Firstly, learned counsel for the Applicant has submitted that the honorable court is seized and possessed of the requisite jurisdiction to entertain the subject application and in particular, to grant the reliefs sought at the foot thereof.

11. Pertinently, learned counsel for the Applicant has contended that the mandate and jurisdiction of the court to extend time is donated by various provisions of the law inter-alia Section 7 of *Appellate Jurisdiction Act*, Chapter 9 Laws of Kenya as well as the provisions of Section 95 of the *Civil Procedure Act*.

12. Based on the foregoing, learned counsel for the Applicant has therefore contended that the court is clothed with the requisite jurisdiction to engage with the application beforehand and to allow same in the interests of justice.

13. Secondly, learned counsel for the Applicant has submitted that the Applicant has placed before the honorable court plausible and cogent reasons [explanation] pertaining to why the Notice of Appeal, which is sought to be filed, was not filed timeously and within the prescribed timelines.

14. As pertains to the reasons underpinning the failure to file the Notice of Appeal within the set timelines, learned counsel for the Applicant has contended that the failure in question was informed by the fact that the Applicant duly issued instructions, but the instructions under reference were never acted upon by the Applicant's erstwhile counsel. In this regard, it is contended that the failure is attributable to the mistake and/or in advertence on the part of the Applicant's erstwhile advocate.

15. Furthermore, learned counsel for the Applicant has submitted that further delay was also occasioned because of the 2022 general election and attendant transition into office by the new administration, which transition also occasioned loss of time.

16. Other than the foregoing, the other reason that has been adverted to is stated to be internal audit which was being undertaken by the new administration pertaining to and touching on the Legal Department of the Applicant herein.

17. In a nutshell, learned counsel for the Applicant has therefore contended that the sum total of the issues which have been highlighted and amplified in the preceding paragraphs contributed to the failure by the Applicant to file and serve the Notice of Appeal in good time.

18. Be that as it may, learned counsel for the Applicant has submitted that the failure by and on behalf of the Applicant's erstwhile [previous] counsel ought not to be visited upon the Applicant. For coherence, learned counsel for the Applicant has cited and relied on various decisions inter-alia Philip Keipto Chemwolo & Another v Augustine Kubende & Another [1986]eKLR, Edward Njane Ng'ang'a & Another v Damaris Wanjiku Kamau & Another [2016]eKLR, Moroo Polymers Ltd v Wilfred Kasyoki Willis [2019]eKLR and Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2014]eKLR, respectively.

19. Thirdly, learned counsel for the Applicant has submitted that the honorable court is seized of the requisite jurisdiction to grant the order of stay of execution pending the hearing and determination of the intended appeal. In this respect, learned counsel for the Applicant has cited and relied on the provisions of Order 42 Rule 6 of the Civil Procedure Rules, 2010.

20. Further and at any rate, learned counsel for the Applicant has submitted that the order of stay of execution pending the hearing and determination of the intended appeal would serve the interests

of justice and hence both parties shall be duly secured in terms of their interests pertaining to and concerning the dispute beforehand.

21. Other than the foregoing, learned counsel for the Applicant has submitted that an order of stay of execution should be granted unless there exists a hindrance which should negate the issuance of such an order. Instructively, learned counsel for the Applicant has cited and relied on Butt v Rent Restriction Tribunal [1979]eKLR and Margaret Wangithi Njuki v Bernard Waweru Kiburi & 2 Others [2020]eKLR.

22. Finally, learned counsel for the Applicant has implored the Honourable court to invoke the overriding objective [the Oxygen Principle] in terms of the provisions of Sections 1A and 1 B of the *Civil Procedure Act* , Chapter 21, Laws of Kenya; and thus to find and hold that the application beforehand is meritorious.

b. Respondents' Submissions:

23. The Respondents herein have filed written submissions dated the 24th May 2024 and in respect of which same [Respondents] have reiterated the contents of the Replying affidavit sworn on the 26th February 2024. Furthermore, the Respondents have thereafter ventured forward and highlighted three [3] pertinent issues for consideration.

24. First and foremost, learned counsel for the Respondents has submitted that the instant application has been made and mounted with undue and inordinate delay, which delay has neither been accounted for nor explained by the Applicant.

25. To start with, learned counsel for the Respondents has pointed out that the Judgment which is sought to be appealed against was rendered on the 23rd September 2022; and yet the current application was not filed until the 12th February 2024. Instructively, learned counsel has pointed out that the application has been filed after a duration of more than 18 months from the date of the delivery of the Judgment.

26. Be that as it may, Learned Counsel has pointed out that despite the duration of delay, the Applicant herein has adopted a perfunctory approach and same is content with alleging that the delay was occasion by the 2022 general election and the subsequent transition into office by the new administration. However, learned counsel has pointed out that the said allegation[s] smacks of mala-fides insofar as the Judgment of the court was indeed delivered long after the general election.

27. Secondly, learned counsel for the Respondents has pointed out that other than the delay attendant to the filing of the subject application, the Applicant herein was party to the orders of the court which were made on the 8th May 2023 and wherein the Applicant consented that same [Applicant] shall comply with and/or abide by the terms of the Judgment of the court.

28. Additionally, learned counsel for the Respondents has submitted that the orders of the court made on the 8th May 2023 [by consent of the parties] have neither been set aside nor varied. Consequently, counsel has invited the court to find and hold that the current application which is seeking extension of time to file and serve and Notice of appeal is therefore legally untenable on the face of the said consent orders.

29. Finally, learned counsel for the Respondents has submitted that following the delivery of the Judgment of the court, the Plaintiffs/Respondents proceeded to and commenced developments on their properties and such developments were undertaken based on the fact that their [Respondents'] rights flowing from the Judgment had accrued.

30. In addition, learned counsel has submitted that the grant of the current application [which has been filed with unreasonable and inordinate delay] shall occasion undue prejudice and grave injustice to the Respondents.

31. Further and in any event, learned counsel has added that the nature of hardship that is likely to arise, if the application were to be granted, would not be compensable in monetary terms.

32. In support of the foregoing submissions, learned counsel for the Respondents has cited and relied on inter-alia the holding in the case of Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet [2018]eKLR; Aviation Cargo Support Ltd v St. Mark Freight Services Ltd [2014]eKLR and Hammed Chege Gikera v John Maina Mburu & 2 Others [2021]eKLR, respectively.

33. Premised on the foregoing submissions, learned counsel for the Respondents has thus contended that the application beforehand is not only misconceived, but devoid of merits. In short, counsel for the Respondents has implored the court to dismiss same [application].

Issues For Determination:

34. Having appraised the Notice of Motion Application and the response thereto and upon consideration of the written submissions filed by and of behalf of the respective parties, the following issues crystalize [emerge] and are worthy of determination;

    i. Whether the Application beforehand has been mounted with unreasonable and with inordinate delay and if so; whether any plausible reasons have been tendered.

    ii. Whether the extension of time with a view to filing a Notice of Appeal either in the manner sought or at all, can issue on the face of the consent orders made on the 8th May 2023.

    iii. Whether the Applicant herein has established and demonstrated a basis for the grant of the orders of stay of Execution in accordance with Order 42 Rule 6 of the Civil Procedure Rules, 2010.

Analysis And Determination:

Issue Number 1 Whether the Application beforehand has been mounted with unreasonable and with inordinate delay and if so; whether any plausible reasons have been tendered.

35. The Defendant/Applicant herein was impleaded and sued by the Plaintiffs/Respondents' as pertains to ownership of various properties belonging to and registered in the names of the Plaintiffs herein. For clarity, the Plaintiffs' had contended that the Defendant/Applicant was interfering with their [Respondents] rights to and in respect of the suit properties.

36. Subsequently, the suit beforehand and which had been filed by the Plaintiff/Respondents was heard and determined vide Judgment rendered on the 23rd September 2022 and wherein the court found and held that the Plaintiffs/Respondents had proven their claim to the requisite standard. Instructively, the court proceeded to and entered Judgment in favor of the Plaintiffs/Respondents.

37. Suffice it to point out that the Judgment before the court [which was entered on the 23rd September 2022] was rendered with the knowledge of the advocates for all the parties, who were duly served by the Deputy Registrar of the court and hence same were aware of the delivery of the Judgment.

38. To my mind, if the 1st Defendant/Applicant herein was keen and desirous to file a Notice of Appeal, same [1st Defendant/Applicant] was obliged to do so within 14 days from the date of delivery of the impugned Judgment.

39. However, it is common ground that no Notice of appeal was ever filed and/or lodged by the 1st Defendant/Applicant and hence the reasons why the 1st Defendant/Applicant is before the court seeking for extension of time within which to file and serve the Notice of Appeal.

40. Be that as it may, it is evident that the application beforehand and wherein the Applicant is now seeking for extension of time has been made and filed after a duration of more 18 months from the date when the Judgment was delivered.

41. Arising from the foregoing, the question that does arise is whether or not the time taken prior to and before the filing of the application [18 months] is reasonable or otherwise.

42. To my mind, the duration [period of time] which has been taken by the Applicant herein prior to and or before the filing of the application beforehand is not only unreasonable, but same is extremely inordinate.

43. Wikipedia defines inordinate delay thus;

> Inordinate delay has been. defined to mean unusually or disproportionately large or excessive

44. Having found and held that the duration of time that was taken prior to and before the filing of the subject application is inordinate, the next question that merits discussion relates to whether the Applicant has tendered and placed before the court any plausible and cogent explanation for the delay.

45. To this end, the Applicant has proffered three [3] explanations with a view to justifying the delay and failure to file the Notice of appeal timeously and with due promptitude. Firstly, the Applicant contends that the failure to file the Notice of appeal was because of the mistake or inaction of the erstwhile counsel.

46. According to the Applicant same [Applicant] issued instructions to their previous counsel but the said erstwhile counsel failed to act upon the instructions. However, it is not lost on the court that the Applicant herein has neither exhibited nor attached a copy of the letter/correspondence, [if any] that was ever sent to [sic] her erstwhile advocates instructing same [erstwhile counsel] to file a Notice of appeal.

47. There is no gainsaying that the Applicant herein which is a body corporate by virtue of the provisions of *the Constitution* 2010; as read together with the County Government Act 2012, can only act through formal instructions and which must ordinarily be conveyed in writing.

48. Consequently and in the absence of any correspondence addressed to her [Applicant's erstwhile counsel], it is difficult to authenticate whether any instructions, if at all, were ever issued to the Applicant's erstwhile counsel.

49. Other than the foregoing, it is also not lost on the court that it behooves the Applicant as the party in the suit to act diligently and take proactive measures to ensure that her [Applicant's] instructions, if any, are duly complied with. In this regard, a party to a suit, the Applicant not excepted, cannot take a back seat in her own matter and thereafter be heard to cry wolf that her counsel did not act in accordance with her [Applicant's instructions].

50. To my mind, it is not enough for a litigant, the Applicant not excepted, to throw blame on her erstwhile counsel in a bid to partake of discretionary Jurisdiction whilst same [Applicant] is not demonstrating any diligence on her part.

51. To this end, I beg to adopt and reiterate the holding of the Court of Appeal in the case of Habo Agencies versus Wilfred Odhiambo Misingo [2015]eKLR, where the court stated and observed as hereunder;

> "It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel."

52. Likewise, the Court of Appeal in the case of Tana and Athi Rivers Development Authority versus Jeremiah Kimigho Mwakio & 3 others [2015] eKLR, had occasion to speak to circumstances where a litigant adopts a back seat and exhibits lack of diligence in pursuit of own case.

53. For coherence, the court stated and observed thus;

> While mere negligent mistake by counsel may be excusable, the situation is vastly different in cases where a litigant knowingly and wittingly condones such negligence or where the litigant himself exhibits a careless attitude (in Mwangi v Kariuki [1999] LLR 2632 (CAK)) Shah, JA. ruled that "mere inaction by counsel should only support a refusal to exercise discretion if coupled with a litigant's careless attitude." The import of this is that while the mistake of counsel is excusable, if it is accompanied by a litigant's carelessness and inactivity, then the refusal by court to exercise discretion in favour of such a party cannot be impugned.

54. Simply put, it does not lie in the mouth of the Applicant herein to merely blame her [Applicant's] erstwhile counsel without demonstrating that same [Applicant] made any efforts to follow up and ensure that her [Applicants] instructions, if any, were acted upon.

55. The second reason that has been adverted to and highlighted by the Applicant herein is a curious one. For clarity, the Applicant contends that the delay and/or failure to file the Notice of appeal was caused by the 2022 general elections and the attendant transition of the new administration in taking over office.

56. What I hear the Applicant to be contending is that with the 2022 elections there came a new Governor; and his team needed time to settle in office prior to issuance of [sic] instructions.

57. Two things do arise. Firstly, it is not lost on this court that the Applicant herein is a body corporate with perpetual succession and hence the change in administration arising from elections [whether 2022 elections or otherwise] does not impact upon her obligations touching on and concerning legal matters pending before courts of law.

58. In my humble view, the invocation of the 2022 elections and the timelines taken by the new administration to settle in office, is not only a misnomer but a scapegoat, which cannot pass the requisite legal scrutiny.

59. Secondly, it is imperative to point out that the Judgment which is sought to be appealed against was rendered and delivered long after the conclusion of the 2022 general elections, which were held on the 7th August 2022. Quite clearly, I do not see how an election which had long passed would [sic] become a basis for the failure by the Applicant to act in the accordance of the law.

60. In my humble view, it behooved the Applicant to place before the court some plausible, cogent and believable reasons. Notably, such a reason [explanation] must be one that can persuade the mind of a reasonable person and not one that leaves doubt in the mind of a reasonable person.

61. In this regard, I am afraid that the Applicant has neither tendered nor placed before the court any sufficient cause, comprising of a plausible and believable reasons or at all. Instructively, in the absence of sufficient cause, the Applicant herein cannot partake of and benefit from the Equitable discretion of the court.

62. Before departing from this issue, I beg to adopt and reiterate the holding in the case of Attorney General vs The Law Society of Kenya & Another Court of Appeal Civil Appeal No. 133 of 2011 [2013]eKLR, where Musinga JA,[now PCA] stated as hereunder;

> 28. "Sufficient cause" or "good cause" in law means:
>
> "…..the burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused". See BLACK'S LAW DICTIONARY, 9th Edition, page 251.
>
> Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge's mind. The explanation should not leave unexplained gaps in the sequence of events.

63. Flowing from the foregoing analysis, my answer to issue number one [1] is twofold. Firstly, the subject application has been mounted with unreasonable and inordinate delay.

64. Secondly, the delay beforehand has neither been accounted for nor sufficiently explained and in the absence of such explanation, the Applicant is disentitled from partaking of and benefiting from the Equitable discretion of the court. [See the holding of the court of appeal in the case of *Njoroge v Kimani (Civil Application Nai E049 of 2022*) [2022] KECA 1188 (KLR) (28 October 2022) (Ruling)].

Issue Number 2: Whether the extension of time with a view to filing a Notice of appeal either in the manner sought or at all; can issue on the face of the consent orders made on the 8th May 2023.

65. Other than the inordinate delay attendant to the filing of the subject application and which has been discussed in the preceding paragraphs, there is also the issue pertaining to the orders of the court which were issued by consent on the 8th May 2023.

66. Instructively, the Defendant/Applicant herein failed to comply with and/or adhere to the terms of the Judgment that had been passed by the court. Arising from the failure to abide by and or comply with the terms of the Judgment, the Plaintiffs/Respondents herein took out contempt proceedings and wherein same [Respondents] sought to have various officers of the Applicant herein committed to civil jail for contempt of court.

67. Confronted with the application dated the 24th April 2023, th Applicant herein through her duly constituted advocates entered into a consent whose terms are as hereunder;

> i. The amended Application dated the 24th April 2023 be and is hereby marked as settled/ compromised.
>
> ii. The 1st and 4th Defendants/Respondents and the 1st and 2nd contemnors do hereby agree and confirm their readiness to comply with the terms of the Judgment of the court issued on the 23rd September 2022 without default.

iii. That in the event of further disobedience/disregard of the court Decree/Judgment, the 1st and 4th Defendants/Respondents and the 1st and 2nd contemnors shall be duly deemed as cited and shall thereafter be brought to court for purposes of mitigation and conviction, if any.

iv. The costs of the Application be and are hereby awarded to the Plaintiffs/Applicants.

68. Notably, the terms of the consent order [details in terms of the preceding paragraph] have not been set aside and same remain on record. In this respect, I opine that the Applicant herein conceded to and acknowledged the Judgment which had been entered by the court.

69. Furthermore, it is my understanding of limb two of the consent entered into and recorded on the 8th May 2023 that the 1st Defendant/Applicant was confirming the terms of the Judgment and signaling her readiness and willingness to be bound by the terms of the Judgment under reference.

70. To the extent that the Applicant herein entered into the consent [details in terms of the preceding paragraph], I hold the view that the Applicant herein cannot now be heard to say that same is seeking extension of time to file a Notice of appeal for purposes of appealing against the terms of the Judgment which same has hitherto conceded, acknowledged and admitted.

71. In my humble view, the conduct of the Applicant herein as exhibited vide the current application constitutes approbation and reprobation by the Applicant, which conduct cannot be countenanced by a court of law.

72. To this end, it suffices to take cognizance of the holding in the case of Republic versus Institute of Certified Public Secretaries of Kenya Ex-parte Mundia Njeru Geteru (2010)eKLR, where the court stated and held thus;

> " It is obvious that Mundia is approbating and reprobating which is an unacceptable conduct. Such conduct was considered in Evans vs Bartlam (1973) 2 ALL ER 649 at page 652, where Lord Russel of Killowen said; The doctrine of approbation and reprobation requires for its foundation inconsistency of conduct, as where a man having accepted a benefit given him by a judgment cannot allege the invalidity of the judgment which conferred the benefit. Again in Banque De Moscou vs Kendersley (1950) ALL ER 549, Sir Evershed said of such conduct. This is an attitude of which I cannot approve, nor do I think in law the defendants are entitled to adopt it. They are, as the Scottish lawyers (frame it) approbating and reprobating or, in the more homely English phrase blowing hot and cold."

73. Consequently and in view of the foregoing analysis, my answer to issue number two [2] is that having conceded, acknowledged and admitted the terms of the Judgment under reference, the intended appeal for which leave to file Notice of appeal is sought, reeks of mala-fides and thus not legally tenable.

Issue Number 3 Whether the Applicant herein has established and demonstrated a basis for the grant of the orders of stay of Execution in accordance with Order 42 Rule 6 of the Civil Procedure Rules, 2010.

74. The Applicant herein has also sought for the grant of an order of stay of Execution pending the hearing and determination of the intended appeal. However, even though the Applicant is seeking for such an order, it is common ground that no Notice of appeal has since been filed or at all.

75. To the contrary and for good measure, the Applicant is also before this court seeking for leave to file a Notice of appeal out of time. Quite clearly, the common denominator is that there is no appeal upon which an order of stay can issue and/or be granted.

76. Suffice it to point out that an order of stay of execution pending appeal or intended appeal, can only issue if it is demonstrated that the Applicant has since filed a Notice of appeal and which for all intents and purposes is deemed to constitute an appeal. [See Order 42 Rule 6[4] of the Civil Procedure Rules, 2010].

77. On the other hand, it is the existence of the appeal or the Notice of appeal which would be taken into account and evaluated by the court in terms of ascertaining whether or not sufficient cause exists or otherwise. [See Order 42 Rules 6[2] of the Civil Procedure Rules, 2010].

78. To my mind, in the absence of an appeal or better still a Notice of appeal, no order of stay of Execution pending Appeal, can issue either in the manner sought or at all.

79. Put differently, it is the existence of an appeal or better still a Notice of appeal, which constitutes the legal foundation and/or fulcrum upon which an order of stay of execution can issue. In the absence of such an appeal or Notice of appeal, the request for an order of stay of execution would be mounted in vacuum.

80. In a nutshell, even if the Applicant herein had persuaded the court that the application for extension of time had been mounted without undue delay [which is not the case], the court would still not have granted an order of stay of execution pending the intended appeal in the absence of the requisite Notice of appeal.

81. In my humble view, the application beforehand and in particular, the limb thereof touching on and concerning stay of execution is premature, misconceived and otherwise legally untenable. [See Order 42 Rule 6[1] of the Civil Procedure Rules 2010].

Final Disposition:

82. Having analyzed and considered the thematic issues [which were highlighted in the body of the Ruling] it must have become crystal clear, nay evident, that the application beforehand is devoid of merits and bad in law.

83. In the premises, the application dated the 12th February 2024; be and is hereby dismissed with costs to the Plaintiffs/Respondents.

84. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13th DAY OF JUNE 2024

OGUTTU MBOYA,

JUDGE

In the presence of:

Bryan – Court assistant

Mr. Mutembei for the Defendant/Applicant.

Ms Omamo h/b for Mr. Namada for the Plaintiffs/Respondents.

N/A for the 2nd, 3rd and 4th Defendants/Respondents.