



**Mayenga & 2 others v Khamis & another (Environment and Land Appeal E024 of 2024) [2024] KEELC 7407 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7407 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND APPEAL E024 OF 2024  
LL NAIKUNI, J  
NOVEMBER 11, 2024**

**BETWEEN**

**MAXIMILLAH MAYENGA ..... 1<sup>ST</sup> APPELLANT  
SAMUEL GICHUHI KIBANDI ..... 2<sup>ND</sup> APPELLANT  
THOMAS MWAI NDALO ..... 3<sup>RD</sup> APPELLANT**

**AND**

**SALIM ABEID KHAMIS ..... 1<sup>ST</sup> RESPONDENT  
RACHEL NDANUI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**I. Introduction**

1. This Honorable Court is tasked to determine the Notice of Motion application dated 24<sup>th</sup> June, 2024 by Maximillah Mayenga, Samuel Gichuhi Kibandi and Thomas Mwai Ndalo the Appellants/ Applicants herein. It was brought under the dint of the provision of Article 159 of *the Constitution* of Kenya 2010 Order 42 Rule 6 of the Civil Procedure Rules 2010, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21 and all other enabling provisions of the Law and the Inherent Jurisdiction of the Court.
2. Upon service of the application to the 1<sup>st</sup> & 2<sup>nd</sup> Respondents herein while opposing the application filed a 14 Paragraphed Replying Affidavit dated 23<sup>rd</sup> August, 2024 and which the Court shall be dealing with indepth later on in this Ruling.

**II. The Appellants/ Applicants' case**

3. The Appellants/ Applicants sought for the following orders: -



- a. Spent.
  - b. Spent.
  - c. That pending the hearing and determination of the appeal, order of stay of execution be issued to stay the execution of the warrants of eviction dated 13<sup>th</sup> June, 2024.
  - d. That costs of the application be provided for.
4. The application herein was premised on the grounds, testimonial facts and averments made out under the 10 paragraphed Supporting Affidavit of –Thomas Mwai Ndalo, 3<sup>rd</sup> Appellant herein sworn and dated the same day with the application with four (4) annexure marked as “TMN 1 to 4”. The 3<sup>rd</sup> Appellant/ Applicant averred that:
- a. Vide a Ruling dated 10<sup>th</sup> May, 2024 but delivered on 17<sup>th</sup> May, 2024, the trial court dismissed the Appellants application dated 22<sup>nd</sup> September, 2023 sought to set aside warrants of eviction signed against the Appellants. He annexed in the affidavit a copy of the Ruling and order which was marked as annexure “TMN -1”.
  - b. The Appellants were aggrieved by the whole of that decision and had already filed the current appeal and requested for certified proceedings to enable them file the Record of Appeal. He annexed in the affidavit a copy of the Memorandum of Appeal and marked the same as annexure “TMN-2”.
  - c. As a result of the said Ruling, the 1<sup>st</sup> Respondent had already obtained fresh warrants of eviction dated 13<sup>th</sup> June, 2024 against the Appellants yet the Appellants were not parties in the suit as the decree was issued against the 2<sup>nd</sup> Respondent who was the only Defendant in the suit. He annexed in the affidavit a copy of the warrant and mark the same as annexure “TMN - 3”.
  - d. The subject warrants were with respect to properties which were the subject matter in “Malindi Environment and Land Court ELC Case No.53 of 2018 (OS); Jackson Mwangome Ngome & 4 others (All suing on behalf of themselves and the other members of Moonlight Self Help Group) – Versus - Robin Staurt Macdonald & 55 others”. The said suit is with regard to the Land Parcel Nos: 313/2, 313/3, 336, 337, 464, 473,494, 495,1090-1099,1598,1600-1627, 1881-1883, 547, 500-506,1035,1036, 3015-3074, 5318-5375/III/MN [and all Subdivisions created from 313(2), 313(3)/III/MN the Mother Titles]. (see page 1 paragraph 2of the Ruling).
  - e. Through a Ruling delivered on 11<sup>th</sup> November, 2022 by Hon. Justice M. A Odeny, the Court held as follows, “I have perused the Plaintiff’s application and affidavit in support thereon. I am not satisfied that there are any special circumstances to grant a mandatory injunction at this stage. That notwithstanding, it is not disputed at this stage that the Plaintiffs are residents on the suit properties; their claim is for adverse possession. This being a land matter, it is prudent therefore that the status quo be maintained pending the hearing and determination of this suit on merits”. He annexed in the affidavit a copy of the ruling and marked the same as annexure “TMN - 4”.
  - f. It was therefore necessary that this application be certified as urgent and interim orders of stay be issued to stay the execution of the warrants of eviction dated 13<sup>th</sup> June, 2024.
  - g. The Court was under a duty to preserve the substratum of a pending appeal so that an appeal if successful is not rendered nugatory. He had an undoubted right of appeal which right ought to be protected by this Court.



- h. In view of the above, it was in the interest of justice that the orders sought herein be allowed. He was ready to comply with the orders that the court will make in respect of the stay herein.

### III. The responses by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

5. While opposing the application, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a 14 Paragraphed Replying Affidavit. It was dated 23<sup>rd</sup> August, 2024 and sworn by SALIM ABEID KHAMIS together with two (2) annexures marked as “SA – 1 & 2” annexed hereto. He averred as follows:-
- a. He was the 1<sup>st</sup> Respondent herein and well versed with the facts of the matter hence competent to swear the affidavit.
  - b. He was aware of the filed application which he noted its contents and wished to respond accordingly.
  - c. The primary matter herein was his case against the Appellants/Applicants and a Judgement had been entered in his favour as per the copy of the Decree marked as “SA – 1” herein.
  - d. Neither the Decree nor the dispositive order on the suit property were subject of the current appeal.
  - e. On the contrary, the Appellants/Applicants were only challenging the interlocutory order.
  - f. The Appellants/Applicants could not access reprieve from this Court yet they were not parties to the substantive suit in the subordinate Court.
  - g. The warrants issued on 13<sup>th</sup> June, 2024 were legal and valid, the warrant were not executable as part of the legal process of satisfying a Decree of the Court.
  - h. The consequence of the preceding, the Appellants/Applicants had other options and remedies in law in the event that the warrants issued by the subordinate Court were fully executed.
  - i. The Appellants/Applicants had no cause of action against the Respondents and that there were no grounds disclosed for granting the orders of stay of execution.
  - j. The matter of ELC (Malindi) No. 53 of 2018 was different from this matter and any claim by the Appellants/Applicants had not been disclosed in this case and no orders were obtained to consolidate the cases. There was no close nexus between these two cases.

### IV. Submissions

6. On 19<sup>th</sup> September, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 24<sup>th</sup> June, 2024 be disposed of by way of written submissions. Unfortunately, by the time of penning down this ruling the Court had not as yet accessed the written Submissions by the parties and thus proceeded to deliver the ruling on its own merit. It reserved the ruling for on 4<sup>th</sup> November, 2024 accordingly.

### V. Analysis & Determination.

7. I have carefully read and considered the pleadings herein by the Appellants/Applicants, the myriad of cases cited herein by parties, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.
8. In order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has three (3) framed issues for its determination. These are:-



- a. Whether the Notice of Motion application dated 24<sup>th</sup> June, 2024 seeking a stay of execution of the warrants of eviction dated 13<sup>th</sup> June, 2024 pending the hearing and determination of the Appeal filed herein is merited?
- b. Whether the parties herein were entitled to the reliefs sought.
- c. Who will bear the Costs of Notice of Motion application dated 24<sup>th</sup> June, 2024.

**Issue No. a). Whether the Notice of Motion application dated 24<sup>th</sup> June, 2024 seeking a stay of execution of the warrants of eviction dated 13<sup>th</sup> June, 2024 pending the hearing and determination of the Appeal filed herein is merited**

9. Under this Sub – title, the main gist of the matter is on whether or not to grant Stay of Execution of the warrants of eviction dated 13<sup>th</sup> June, 2024. The law concerning stay of execution pending Appeal is found in the provision of Order 42 Rule 6 of the Civil Procedure Rules which stipulates as follows:

“No Appeal or second Appeal shall operate as a stay of execution or proceedings under a decree or order Appealed from except in so far as the Court Appealed from may order but, the Court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court Appealed from, the Court to which such Appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court from whose decision the Appeal is preferred may apply to the appellate Court to have such order set aside.

- (2) No order for stay of execution shall be made under sub rule (1) unless—
  - (a) the Court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.

10. It is trite law that stay of execution pending appeal is a discretionary power bestowed upon this court by the law. In the initial stages of building Jurisprudence around this legal aspect, the Court of Appeal in the case of “Butt –Versus- Rent Restriction Tribunal {1982} KLR 417” gave guidance on how a court should exercise the said discretion and held that:

- “ 1. The power of the Court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the Judge’s discretion.
3. A Judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.



4. The Court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.
5. The Court in exercising its powers under Order XLI rule 4 (2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”
11. Further to the above, stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in Sections 1A and 1B of the *Civil Procedure Act*, the Court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the *Civil Procedure Act* or in the interpretation of any of its provisions.
12. The provision of Section 1A(2) of the *Civil Procedure Act* provides that “the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective” while under section 1B some of the aims of the said objectives are; “the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”
13. The purpose of stay of execution is to preserve the subject matter in dispute while balancing the interests of the parties and considering the circumstances of the case. The Court of Appeal in “RWW – Versus - EKW (2019) eKLR” addressed itself on this as hereunder:-

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

  9. Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

(See also Court of Appeal of Uganda in Mugenyi & Co. Advocates vs. National Insurance Corporation [Civil Appeal No. 13 of 1984]).
14. The Court of Appeal in “Vishram Ravji Halai – Versus - Thornton & Turpin Civil Application No. Nairobi 15 of 1990 [1990] KLR 365”, outlined the requirements for granting stay of execution pending appeal. It held that, whereas the Court of Appeal’s power to grant a stay pending appeal is unfettered, the High Court’s jurisdiction to do so under Order 41 rule 6 (as it then was) of the Civil Procedure Rules is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security.
15. I find issues for determination arising therein namely:



- i. Whether the Applicant has satisfactorily discharged the conditions warranting the grant of stay of execution of order pending Appeal.
  - ii. What orders this Court should make
16. As such, for an applicant to move the court into exercising the said discretion in his favour, the applicant must satisfy the court that substantial loss may result to him unless the stay is granted, that the application has been made without undue delay and that the applicant has given security or is ready to give security for due performance of the decree.
  17. As for the applicant having to suffer substantial loss, in the case of “Kenya Shell Limited – Versus - Benjamin Karuga Kigibu & Ruth Wairimu Karuga (1982-1988) KAR 1018” the Court of Appeal pronounced itself to the effect that:
 

“It is usually a good rule to see if Order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the Applicant, it would be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay.”
  18. The Court of Appeal in the case of “Mukuma – Versus - Abuoga (1988) KLR 645” where their Lordships stated that;
 

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”
  19. The Applicant has a burden to show the substantial loss they are likely to suffer if no stay is ordered. This is in recognition that both parties have rights; the Applicant to the Appeal which includes the prospects that the Appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The Court in balancing the two competing rights focuses on their reconciliation which is not a question of discrimination. {See the case of “Absalom Dora –Versus -Turbo Transporters (2013) (eKLR)”}.
  20. As F. Gikonyo J stated in “Geoffery Muriungi & another – Versus - John Rukunga M’imonyo suing as Legal representative of the estate of Kinoti Simon Rukunga (Deceased) [2016] eKLR” and which wisdom I am persuaded with; -
 

“...the undisputed purpose of stay pending appeal is to prevent a successful appellant from becoming a holder of a barren result for reason that he cannot realize the fruits of his success in the appeal. I always refer to that eventuality as “reducing the successful appellant into a pious explorer in the judicial process”. The said state of affairs is what is referred to as “substantial loss” within the jurisprudence in the High Court, or “rendering the appeal nugatory” within the juridical precincts of the Court of Appeal: and that is the loss which is sought to be prevented by an order for stay of execution pending appeal...”

**Issue No. b). Whether the parties herein were entitled to the reliefs sought**

21. Under this sub heading, the Honourable Court now wishes to apply the above legal principles to the instant case. The first requirement is that the intended appeal must be arguable. A cursory look at the Memorandum of Appeal shows that the grounds raised therein are triable. This first ground is therefore met. The essence of considering whether the appeal raises triable issues is to avoid the same being rendered nugatory should the decision of the appellate court overturn that of the trial court.



22. The second aspect is to consider whether the Application before Court had been filed without undue delay. I noted that the order for dismissal of the Application by the Appellant to set aside the warrants of eviction signed against the Appellants was dated 17<sup>th</sup> May, 2024. As a result of the said Ruling, the 1<sup>st</sup> Respondent has already obtained fresh warrants of eviction dated 13<sup>th</sup> June, 2024 against the Appellants yet the Appellants were not parties in the suit as the decree was issued against the 2<sup>nd</sup> Respondent who was the only Defendant in the suit. This application was filed on 24<sup>th</sup> June, 2024. Thus, there is no undue delay.
23. Thirdly, this Court must determine whether not granting the order will occasion substantial loss to the Applicant. Substantial loss was explained in the case of “James Wangalwa & Another – Versus - Agnes Naliaka Cheseto [2012] eKLR”, that: -
- “No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
24. In determining whether sufficient cause has been shown, the court should be guided by the three pre-requisites provided under Order 42 Rule 6. Firstly, the application must be brought without undue delay; secondly, the court will satisfy itself that substantial loss may result to the Applicants unless stay of execution is granted; and thirdly such security as the court orders for the due performance of such decree or order as may ultimately be binding on them has been given by the Applicant.
25. Regarding the pre-requisite conditions evolving from the law is on substantial loss occurring to the Appellants. From the surrounding facts and inferences of the instant case, I am strongly persuaded that indeed, the Applicants have proved that it will suffer substantially if the orders for stay of the execution are not granted as prayed. For that reason, the application should succeed.
26. It is my considered view that if this Court were to deny the Applicants the order for stay of execution, it would place them at a more prejudicial position than the Respondents. While it is unfortunate that the Respondents have had to wait for long to enjoy the fruits of their judgment, the Applicants have adequately demonstrated that they are likely to suffer loss should their properties be attached and sold off. I am satisfied that the Applicants have adequately demonstrated that they would suffer substantial loss.
27. On the last condition as to provision of security, I find that Order 42 Rule 6 (2) (b) of the Civil Procedure Rules stipulate in mandatory terms that the third condition that a party needs to fulfil so as to be granted the stay order pending Appeal is that (s)he must furnish security. Has made no provisions for security in his application.
28. This provision of the law notwithstanding from the face value, this court is not bound by the type of security offered by an applicant. It can make appropriate orders which serve the interest of justice taking into account the fact that money depreciates unless it is kept in an interest earning account for the period of the appeal.



29. In saying so I seek refuge from the case of “Aron C. Sharma – Versus - Ashana Raikundalia T/A Rairundalia & Co. Advocates” the court held that:

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor ... Civil process is quite different because in civil process the judgment is like a debt hence the Applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.”

30. Therefore, in the interest of justice and fairness, it behooved the Applicant herein to furnish security as stipulated by the law. Stay of execution is exactly what it states. It matters not whether the issue in contention is the amount awarded in the ruling/ order, or liability or legality of the extracted warrants as in this case. Where a party seeks to stay execution, the Court must be guided by the parameters set out in Order 42 Rule 6.

31. The Court observed in “Gianfranco Manenthi & Another – Versus - Africa Merchant Assurance Company Ltd [2019] eKLR”, thus: -

... the applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under order 42 rule 6(1) of the Civil Procedure Rules, it is trite that the winner of litigation should not be denied the opportunity to execute the decree in order to enjoy the fruits of his judgment in case the appeal fails.

Further, order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favour. This is therefore to provide a situation for the court that if the appellant fails to succeed on appeal there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgement involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal ... Thus the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. Counsel for the applicant submitted that he is ready to provide a bank guarantee as security for due performance of the decree. (Underlining mine for emphasis)

32. As already demonstrated in “James Wangalwa & Another vs. Agnes Naliaka Cheseto (supra)” the three (3) conditions for granting stay of execution pending appeal must be met simultaneously. In the result, I grant the order for stay of execution on condition that the Applicants shall furnish security being the title documents of the Land Parcel Nos: 313/2, 313/3, 336, 337, 464, 473, 494, 495,1090-1099,1598,1600-1627, 1881-1883, 547, 500-506,1035,1036, 3015-3074, 5318-5375/III/MN [and all Subdivisions created from 313(2), 313(3)/III/MN the Mother Titles Within The Next



Thirty (30) days to the custody of the court from the delivery of this Ruling pending the hearing and determination of the appeal.

**Issue No. c). Who will bear the Costs of Notice of Motion application dated 24<sup>th</sup> June, 2024.**

33. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of Supreme Court “Jasbir Rai Singh – Versus - Tarchalan Singh (2014) eKLR” and Cecilia Karuru Ngayo – Versus – Barclays Bank of Kenya Limited, (2014) eKLR”.
34. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR”, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In this case, this Honourable Court has reserved its discretion in not awarding costs.

**VI. Conclusion & Disposition**

35. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Ultimately in view of the foregoing detailed and expansive analysis to the application, this court arrives at the following decision and makes the following orders below:-
- a. That the Notice of Motion application dated 24<sup>th</sup> June, 2024 be and is hereby found to have merit and hence allowed subject to the fulfilment of the Pre – Conditions stated herein.
  - b. That this Honourable Court pleased to grant a stay of execution of the warrants of eviction dated 13<sup>th</sup> June, 2024 pending the hearing and determination of the Appeal filed herein.
  - c. That an order made that the Appellants/ Applicants to deposit title documents of the Land Parcel Nos: 313/2, 313/3, 336, 337, 464, 473, 494, 495,1090-1099,1598,1600-1627, 1881-1883, 547, 500-506,1035,1036, 3015-3074, 5318-5375/III/MN [and all Sub - divisions created from 313(2), 313(3)/III/MN the Mother Titles Within The Next Thirty (30) days to the custody of this Honourable Court from the delivery of this Ruling pending the hearing and determination of the appeal.
  - d. That failure to adhere with the condition under Clause (c) herein above of this Ruling the Notice of Motion application dated 24<sup>th</sup> June, 2024 shall automatically stand dismissed thereof and execution of the warrants of execution dated 13<sup>th</sup> June, 2024 shall ensue procedurally as provided for by law.
  - e. That Appellants/Applicants directed to compile and serve the Records of Appeal upon the Respondents within the next 45 days of the delivery of this Ruling.
  - f. That there be a mention on 23<sup>rd</sup> January, 2025 for purposes of admitting the appeal and taking directions on how to dispose off the said appeal pursuant to the Provision s of Section 79B of the *Civil Procedure Act*, Cap. 21 and Order 42 Rules, 11, 13 and 16 of the Civil Procedure Rules, 2010.
  - g. That there shall be no orders as to costs.
- It is so ordered accordingly.



**RULING DELIEVERED THROUGH THE MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS .....11<sup>TH</sup> DAY OFNOVEMBER 2024.**

.....

**HON. MR. JUSTICE L. L. NAIKUNI,  
ENVIRONMENT AND LAND COURT AT  
MOMBASA**

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. M/s. Gatimo Advocate holding brief for Mr. Mwanzia Advocate for the Appellants/ Applicants.
- c. Mr. Malombo Advocate for the Respondents.

