



Mbaka (Suing as the Legal Administrator of the Estate of the Late Margaret Njoki Mbaka alias Njoki Mbaka) v Bizer & another (Environment & Land Miscellaneous Case E014 of 2024) [2025] KEELC 4261 (KLR) (Environment and Land) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4261 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT & LAND MISCELLANEOUS CASE E014 OF 2024**

MC OUNDO, J

JUNE 5, 2025

BETWEEN

**STEPHEN MWAURA MBAKA APPLICANT
SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE
MARGARET NJOKI MBAKA ALIAS NJOKI MBAKA**

AND

**SUSAN WAMBUI BIZER 1ST RESPONDENT
KIAMBU NYAKINYUA FARMERS COMPANY LIMITED 2ND RESPONDENT**

RULING

1. Before me for determination are two Applications, the first one dated 27th September, 2024 and the second one is dated 7th February, 2025. For ease of reference, the parties herein shall be referred to as they appear herein.
2. The first Application dated 27th September, 2024, is a Notice of Motion Application brought by the Applicant pursuant to the provisions of Section 3A, 79G and 95 of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of law wherein the Applicant has sought for leave to appeal out of time against the judgment by Hon. Y.M Barasa of the 15th August, 2024 in ELC (sic) No. E028 of 2023, that ELC Appeal E015 of 2024; Stephen Mwaura Mbaka (Suing as Administrator of the Estate of Margaret Njoki Mbaka alias Njoki Mbaka v Susan Wambui Bizer & Kiambu Nyakinywa Farmers Company Ltd be deemed as duly filed and served.
3. The Application was supported by the grounds therein and a Supporting Affidavit of an even date sworn by Jane Theuri, an Advocate of the High Court of Kenya on behalf of the Applicant who



- deponed that vide a Judgement of 15th August 2024 in Naivasha ELC Case No. E028 of 2023 Applicant's case had been dismissed and therefore being aggrieved by the said decision, they had erroneously filed a Memorandum of Appeal in the High Court division being HCCA E106/2024, on the 13th September, 2024, as opposed to the Environment and Land Court division.
4. That pursuant to the said error they had proceeded to file a Notice to Withdraw the Memorandum of Appeal where by in seeking to regularize the error, by filing a fresh Memorandum of Appeal in the Environment and Land Court being ELC Appeal No. E015 of 2024 on the 26th September 2024, the timelines within which to file an appeal had lapsed.
 5. That the Applicant being aggrieved with the decision in the trial Court, is desirous of prosecuting the same on Appeal hence he should be granted leave to file his Appeal out of time so as to have the same determined on merit. That no prejudice will be occasioned to the Respondents.
 6. That the instant Application had been brought without delay and it was in the best interest of justice that it be allowed in the interest of the rules of natural justice.
 7. In response and opposition to the Applicant's Application, the 1st Respondent vide her Replying Affidavit dated 11th October, 2024 sworn by Susan Wambui Bizer, the 1st Respondent herein deponed that the Applicant's Application was misconceived, ill advised, devoid of any merit and an abuse of the court process.
 8. That whereas the Applicant's Advocate had deponed that an appeal had erroneously been filed at the High Court as HCCA/E106/2024 on 13th September 2024, the same had not been served upon her and/or her Advocates on record hence she was a total stranger to the same. That in any case, if indeed the Applicant's appeal had been filed in the wrong court, she should not be punished for the Applicant's Counsel's incompetence and/or oversight noting that she had been denied access to her property for the last 12 years.
 9. That indeed, Section 79G of the *Civil Procedure Act* expressly provides that an appeal from a subordinate court must be filed within 30 days of the order and/or decision, failure to which the Appellant must seek leave to appeal out of time.
 10. That whereas it was a maxim of equity that "he who comes to court must come with clean hands", the Applicant through their present Application was purporting to seek leave to file an appeal out of time subsequent to filing of the same. That further, the instant Application had been filed after the Applicant's Advocate had been served with the Respondents Notice of Preliminary Objection dated and filed in ELCLA/E015/2024 on 30th September 2024. That in any case, the Applicant through the present Application had failed to demonstrate to the court that he had a good and sufficient cause for his failure to file the appeal on time hence the Application lacked merit.
 11. She deponed that the Appellant was simply clutching at straws and trying to regularize his omission through the back door thus if the instant Application was allowed, she would greatly be prejudiced by denying her the rights to her property. She thus deponed that the Applicant's Application was mischievous, devoid of any merits hence the same should be dismissed with costs for being an abuse of the court process.
 12. In a rejoinder, the Applicant's Counsel deponed that the 1st Respondent's Replying Affidavit contained half-truths and misrepresentation intended to obtain favour from the court. That while it was true that they had served the 1st Respondent with a Memorandum of Appeal on 27th September, 2024, the same had been occasioned by an Application that had been served upon them on the same date for enforcement of the judgement dated 24th September 2024. That they had served the 1st



Respondent's Advocate with the said Memorandum of Appeal to notify them of the intended Appeal. That the failure to effect service upon them with the Memorandum of Appeal filed in HCCA E106 of 2024 was because they were waiting for directions before effecting service of both the order and the Memorandum.

13. That the mistakes of Counsel should not be visited on her client. That there had been a delay in filing the Application had been dated 27th September, 2024 had been caused by the delay in the e-filing platform for which the 1st Respondent could not conclude that they had only filed the instant Application upon receiving the Notices of Preliminary Objection unless they could confirm that the E-filing Platform did not have delay during that period. She thus prayed that her Application dated 27th September 2024 be allowed in the interest of justice.
14. The 2nd Respondent did not participate in the Applicant's Application.
15. The second Application dated 7th February, 2025 on the other hand is a Notice of Motion brought by the 2nd Respondent pursuant to the provisions of Article 159(2), Sections 1A, 1B, 3, 3A & 6 of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of law where it seeks stay of any further proceedings in the instant case pending the hearing and final determination of Nairobi High Court Judicial Review Case No. E267 of 2024: Republic v The Registrar of Companies, Ex parte George Muiru Kagunya & others.
16. The said Application was premised on the grounds therein and a Supporting Affidavit of an even date sworn by Counsel for the 2nd Respondent who deponed that that the 2nd Defendant/Applicant being a Limited Liability Company, had undergone an irregular change of its Directors which had resulted in filing of Nairobi High Court Judicial Review Case No. E267 of 2024 challenging the same.
17. That the High Court had granted leave to file the substantive motion in the Judicial Review case which leave had operated as a stay of the changes that had been made by the Registrar in the register of the Directors and CR 12 of the 2nd Defendant/Applicant, as well as stay of any functions and/or operations by the interested parties as Directors of the 2nd Defendant/Applicant, pending the hearing and determination of the substantive Notice of motion. That the outcome of the Judicial Review case would directly affect the 2nd Defendant/Applicant's participation in the present case.
18. That it was prudent therefore and in the interest of justice that the proceedings in the instant suit be stayed because the 2nd Respondent would be greatly prejudiced if the same proceeded before the Judicial Review case was determined and the issue of the Directorship addressed. That it was thus in the interest of justice that the orders sought herein were granted.
19. In response and in opposition to the Application, the Applicant vide his Replying Affidavit dated 27th February 2025 deponed that the said Application was irregular, misconceived, incompetent and baseless hence should not be heard by the court. That the pending appeal before the court had emanated from the judgement that had been delivered by Hon. Y.M Barasa to the effect that the 1st Respondent herein was the legal owner of the property known as Longonot/Kijabe Block 6/708.
20. That a company be was a separate legal entity from its Directors and shareholders and could sue or be sued on its own thus the 2nd Respondent having been sued as a company wherein neither of the Directors had been sued in their capacity as such, whether the Directorship had been changed or not, the predecessors should be able to continue with the running of the company. That his perusal of the Application for Judicial Review that had been attached by the 2nd Respondent in the instant Application had shown that there was no nexus between the said Application and the Appeal pending



before the court. That it was thus in the best interest of the parties herein that the 2nd Respondent's Application be dismissed with costs to the Appellants.

21. The 1st Respondent's response to the 2nd Respondent's Application through a Replying Affidavit dated 28th February, 2025 was that the said Application was misconceived, ill advised, devoid of any merit and an abuse of the court process. That the order that had been granted by the High Court at Nairobi in Judicial Review Case No. E267 of 2024 had no bearing whatsoever in the present matter since the same had actually been in favour of the 2nd Respondent officials who had actively participated both in the instant matter and in the lower court matter which had been determined on 15th August, 2024.
22. That in any event, the 2nd Respondent had been sued in its capacity as a Company which is a juristic person, a separate legal entity from its Directors and/or officials thus any wrangles amongst its officials should not affect any action by or against the Company. That no prejudice would be occasioned to the 2nd Respondent if the court proceeded to hear and determine the present Miscellaneous Application. She thus urged the Court to dismiss the 2nd Respondent's Application for being mischievous and unmeritorious.
23. Directions were issued for the disposal of both Applications through written submissions and whereas the Applicant and the 1st Respondent complied and filed their respective submissions with regard to the Application dated 27th September 2024, only the 2nd Respondent filed its submissions in support of its Application dated 7th February, 2025.
24. In support of his Application dated 27th September 2024, the Applicant vide his Submissions dated 24th March 2025 framed two (2) issues for determination as follows:
 - i. Whether the Applicant should be granted leave to file Appeal out of time.
 - ii. Whether the ELC Appeal E015 of 2025 should be deemed as properly served.
25. On the first issue for determination as to whether the Applicant should be granted leave to file Appeal out of time, reliance was placed on the provisions of Section 79G of the *Civil Procedure Act* and as well on the decisions in the case of *Diplack Kenya Limited vs. William Muthama Kitonyi* [2018] eKLR, *Nicholus Kiptoo Korir arap Salat v IEBC and 7 Others* [2014] eKLR and *Paul Musili Wambua v Attorney General & 2 Others* [2015] eKLR to submit that the Appeal had been filed eleven (11) days outside the time limited for filing an appeal for reasons that the Memorandum of Appeal had mistakenly been filed in the High Court as opposed to the Environment and Land Court on 13th September 2025, which was a, indication that the Appellant herein had all the intentions to file the appeal within the required timelines.
26. That the filing of the Appeal in the High Court had been an error on the part of the Applicant's Advocate hence the Applicant should not be punished for the same. Reliance was placed on the decisions in the case of *Belinda Mural & 9 Others v Amos Wainaina* [1978] where the court had cited the case of *Shah H. Bharmal & Brothers v Kumar* [1961] EA 679 and *Hamam Singh & Others v Mistri* [1971] EA 122.
27. While placing reliance in the decided case of *Stecol Corporation Limited v Susan Awuor Mudembe* [2021] eKLR Counsel submitted that eleven (11) days was not inordinate delay hence it could not be said that the current Application or the pending appeal was an afterthought. That further, the 1st Respondent had not demonstrated what prejudice would be suffered if the Applicant was granted leave to file an appeal out of time.



28. On the second issue for determination as to whether ELC Appeal E015 of 2025 should be deemed as properly served, reliance was placed on the decision in the case of *Gerald M'limbine v Joseph Kangangi* [2008] eKLR, *Ndungu Muhindi James & Another v Cecilia Wanjiku Waweru* [2020] eKLR, amongst others to submit that pursuant to the filing of ELC Appeal No. E015 of 2024 eleven (11) days out of time, he had now filed the instant Application to enlarge time to file the appeal and to deem the filed appeal as duly and properly filed.
29. It was his submission that an appeal that had been filed out of time could still be validated with leave to enlarge the said time. That ELC Appeal No. E015 of 2024 be deemed as filed and his Application be allowed.
30. In response, and in opposition, the 1st Respondent framed two (2) issues for determination as follows:
- i. Whether leave can be sought to file an appeal out of time subsequent to the actual filing of the Memorandum of Appeal.
 - ii. Who should bear the cost of the Application.
31. On the first issue for determination as to whether leave could be sought to file an appeal out of time subsequent to the actual filing of the Memorandum of Appeal, she founded her submissions on the provisions of Section 79G of the *Civil Procedure Act* to submit that the present Application had been brought before the court on 1st October 2024, almost 50 days after the delivery of the judgement by the lower court. That interestingly, the said Application had cunningly been filed before the court under a certificate of urgency as an afterthought upon objections having been raised by the Respondents. That indeed, the present Application, for all intent and purposes had sought to frustrate the Respondent's Notice of Preliminary Objection wherein directions had been issued.
32. She submitted that the Application before the court for consideration was an equitable one that sought that the court exercises its discretion to grant an equitable remedy. That further, he who seeks equity must do equity and must come with clean hands before court when seeking an equitable remedy as in the present suit. That unfortunately, the Applicant hands were greatly tainted and was void of doing any justice to the 1st Respondent. That indeed, the instant Application had been filed under the guise of certificate of urgency in an effort to sneak in the Appeal into the court through the back door.
33. She placed reliance in the Supreme Court's decision in the *Salat's* case (*supra*) to submit that the Applicant was clutching on straws by seeking leave to file an appeal out of time subsequent to filing of a Memorandum of Appeal which was an abuse of the court process that ought not be entertained by the court. Further reliance was placed in the Court of Appeal's decision in the case of *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR to submit that although the period of delay may not be inordinate, the Applicant had failed in tendering sufficient and plausible reasons and/or justification for the delay. That the 1st Respondent ought not be denied the fruits of her judgement due to the Appellant's Counsel's oversight. Reliance was placed in the decided case of *Seven L. General Trading Ltd & another v Karau* (Miscellaneous Application 42 of 2024) [2024] KEHC 3979 (KLR) (24 April 2024) (Ruling).
34. It was her submission that were the court to grant the Appellant the prayers sought, she would be greatly prejudiced and was bound to suffer substantial loss being that she had been denied access into the subject property from the year 2012 to date. It was thus her contention that the Application before the court was unmeritorious thus the same should be dismissed forthwith with costs which follow events.



35. In support of the second Application dated 7th February, 2025, the 2nd Respondent's submissions dated 6th March 2025 was based on four issues for determination being:
- i. Whether the Applicant has shown that their Application raises a substantial legal question with a reasonable prospect of success, not just a frivolous claim.
 - ii. Whether the Appellant has demonstrated that if the proceedings are not stayed, they will suffer significant harm that cannot be adequately compensated for later if the Judicial Review is successful.
 - iii. Whether the potential harm from allowing the proceedings to continue outweigh the harm to the Respondent if the stay is granted.
 - iv. Whether it is in the public interest to stay/pause the proceedings while the Judicial Review is ongoing.
36. On the first issue for determination, Counsel submitted that whereas the Applicant/Appellant in their Replying Affidavit dated 28th February 2025 had argued that the Judicial Review proceedings had no bearing on the issues in the instant matter as they pertained to internal governance dispute, the said Judicial Review case had raised a substantial legal question especially on the legal status of the 2nd Respondent, with a reasonable prospect of success hence it was not a frivolous claim. That its Application herein had proved a cause of action.
37. It placed reliance on the provisions of Sections 128, 129 and 130 of the Companies Act No. 17 of 2015 which requires private companies to have at least one Director as a natural person, to submit that there would be a misinterpretation of the said provisions because the 2nd Respondent had no natural person as its Director. That subsequently, if the present proceedings proceeded without the 2nd Respondent having a Director, then the same would be flawed with illegalities and in contravention to the provisions of Section 130 of the Companies Act No. 17 of 2015 which would result to penal sanctions. It was thus its submission that without a determination on who really were the Directors of the 2nd Respondent, the matter was not rightfully before court hence a stay of the proceedings herein should be granted.
38. On the second issue for determination as to whether the 2nd Respondent had demonstrated that they would suffer irreparable harm if the stay was not granted, it submitted that if the proceedings herein were not stayed, a determination would likely be made without any natural person to speak and act for the 2nd Respondent and its right to fair hearing would be undermined with the irreversible outcome since the court would have become functus officio thus condemning the 2nd Respondent unheard. That further, if the Judicial Review was successful and it was determined that the change of Directors had been unlawful, then this court would have acted in vain.
39. On the third issue for determination, the 2nd Defendant/Applicant submitted that the potential harm of allowing the proceedings to continue outweighed the harm to the Respondent if the stay was granted. That its right to fair hearing would be limited because at the moment, neither the previous nor the current Directors of the 2nd Defendant/Applicant were proper parties before the jurisdiction of the court. That the strict interpretation of the doctrine of Jurisdiction commenced with the proper parties before the court.
40. It was thus its submission that without any director whatsoever to speak and act on behalf of the 2nd Respondent, the court had no jurisdiction over the said 2nd Respondent. Reliance was placed in the decided case of Hamisi v Kutembela (Environment & Land Case 168 of 2017) [2023] KEELC 17305 (KLR) (10 May 2023) (Ruling) where it had been held that the presence of correct parties was essential



for a court to exercise Jurisdiction. Further reliance was placed in the decided case of Isaac Kinyanjui Muitherero v Jonathan Craig Buffey & 2 others; Wild Eye East Africa Limited (Affected Party) [2020] eKLR where it was held that a company was an artificial person and only acts through its members and Directors.

41. It was thus its submission that without any Director whatsoever to speak and act on behalf of the 2nd Defendant/Applicant, the court had no jurisdiction over the said 2nd Defendant. Reliance was placed in the decided case of Hamisi v Kutembela (Environment & Land Case 168 of 2017) [2023] KEELC 17305 (KLR) (10 May 2023) (Ruling) where it had been held that the presence of correct parties was essential for a court to exercise Jurisdiction. Further reliance was placed in the decided case of Isaac Kinyanjui Muitherero v Jonathan Craig Buffey & 2 others; Wild Eye East Africa Limited (Affected Party) [2020] eKLR where it had been held that a company was an artificial person and only acted through its members and Directors.
42. The 2nd Defendant/Applicant's submission was that it was in the interest of justice to stay/pause the instant proceedings while the Judicial Review was ongoing. That it was an artificial person and not a natural person to give defence witness testimony and to be cross-examined thus it could not act and speak by itself. That there was need to first determine its proper Directors before the court could delve into the present proceedings. That allowing the matter herein to proceed for hearing before the court while there was a pending Judicial Review case challenging the Directorship of the 2nd Defendant/Applicant would prejudice the 2nd Defendant as the rightful Directors would neither have acted nor spoken for it thus fettering its right to fair hearing. It thus submitted that it was in the interest of justice and fairness that the instant Application be granted as prayed and costs be awarded.

Determination.

43. Having heard submissions by both sides as well as having regard to the annexures filed herein, consequently the pending issue for determination is whether this court should grant the Applicant the orders sought for being;
 - i. Enlargement of time to enable her file her Appeal after the expiry of the statutory period.
 - ii. Stay of proceedings herein pending the outcome of Nairobi High Court Judicial Review Case No. E267 of 2024
44. On the first issue concerning the order of Leave to appeal out of time, Section 79G of the [Civil Procedure Act](#) which gives an appellate court discretion to extend time for filing an appeal from the subordinate Court to the High Court. (read Land and Environment Court) stipulates as follows;

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time. “
45. In the case of Nicholas Kiptoo Arap Korir Salat vs. The Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR the Supreme Court of Kenya court held that:

“ ... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the Applicant to explain the reasons for delay in making the application for extension and



whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the Applicant.

... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

- i. extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;
- ii. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
- iii. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
- iv. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
- v. whether there will be any prejudice suffered by the Respondent, if extension is granted;
- vi. whether the application has been brought without undue delay; and
- vii. whether in certain cases, like election petitions, public interest should be a consideration for extending time”

46. Has the Applicant fulfilled the above requirements so as to be granted leave to file his appeal out of time? The gist of the matter in question is that being dissatisfied with the Judgment delivered on the 15th August, 2024 in Naivasha CMCELC No. E028 of 2023, the Applicant’s Counsel erroneously filed a Memorandum of Appeal in the High Court being HCCA E106 of 2024, on the 13th September, 2024, as opposed to the Environment and Land Court. That having noted the error, they had filed a Notice to Withdraw the Memorandum of Appeal in the High Court and had filed a fresh Memorandum of Appeal in the Environment and Land Court being ELC Appeal No. E015 of 2024 on the 26th September 2024, by which time, the timelines within which to file an appeal had lapsed.

47. Anyara Emukule J in *Gerald M’limbine v Joseph Kangangi* [2009] eKLR interpreted the proviso to Section 79G of the *Civil Procedure Act* as follows;

“My understanding of the proviso to Section 79G is that an Applicant seeking an Appeal to be admitted out of time must in effect file such an Appeal and at the same time seek the Court’s leave to have such an Appeal admitted out of the statutory period of time. The provision does not mean that an intending appellant first seeks the Court’s permission to admit a nonexistent Appeal out of the statutory period. To do so would actually be an abuse of the Court’s process which under Section 79B says.....”

48. It is clear that for the provisions of Section 79G of the *Civil Procedure Act* to apply, an Applicant seeking an appeal to be admitted out of time must in effect file such an appeal, and at the same time seek the court’s leave to have appeal admitted out of the statutory period of time. The proviso does not mean that an intending appellant first seeks the court’s permission to admit a non-existent appeal out of the statutory period of time.



49. I have looked at the Applicants' Application plea for extension of time which was supported by the grounds embodied in the Application and the Supporting Affidavit of the applicant and I found no Memorandum of Appeal filed to this court save for the Memorandum of Appeal to the High Court. The Applicant ought to have annexed the draft intended Memorandum of appeal for the Court's perusal when making his application for extension of time. The extension of time being a creature of equity, one can only enjoy it if he acts equitably for he who seeks equity must do equity, it is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it. There being no competent Memorandum of Appeal in place, I find the Application has no merit as it seeks to file a non-existent appeal out of time. Application dated the 27th September 2014 is hereby struck out with costs.
50. On the second issue for determination, where the 2nd Respondent herein seeks for stay of proceedings in the instant suit, pending a determination of its Directors vide Nairobi High Court Judicial Review Case No. E267 of 2024: Republic v The Registrar of Companies, Exparte George Muiru Kagunya & others. It must be remembered that Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent. (see Kenya Wildlife Service v James Mutembei [2019] KEHC 10478 (KLR))
51. Ringera J (as he then was) when confronted by a similar Application in the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 held as follows:
- “As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order Appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended Appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the Application has been brought expeditiously” (emphasis added)
52. In this matter, the 2nd Respondent's position was that it being a Limited Liability Company, had undergone an irregular change of its Directors. That the outcome of the Judicial Review case would directly affect its participation in the present case in that it would determine on who its Directors were and whether it was or was not rightfully before court so as to delve into the present proceedings.
53. The Application was opposed by the Applicant on the basis that the said Application was irregular, misconceived, incompetent and baseless hence should not be heard by the court. That the pending appeal before the court had emanated from the judgement dated the 15th August 2024 in Naivasha ELC Case No. E028 of 2023 where the 1st Respondent herein had been declared as the legal owner of the property known as Longonot/Kijabe Block 6/708.
54. That the order that had been granted by the High Court at Nairobi in Judicial Review Case No. E267 of 2024 had no bearing whatsoever in the present matter since the same had actually been in favour of the 2nd Respondent's officials who had actively participated both in the instant matter and in the lower court matter which had been determined on 15th August, 2024.



55. The issue for determination herein is whether the current proceedings ought to be stayed pending determination of the Directorship of the 2nd Respondent.
56. The threshold for stay of proceedings was illustrated in the following passages in Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332;

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

57. The Supreme Court in *Githiga & 5 others v Kiru Tea Factory Company Limited* [2019] KESC 80 (KLR) held as follows:

“These facts lead us to agree with the Court of Appeal decision, that in order to conclusively determine the question of representation, we must first establish the bona fide directors of the respondent. Whereas the CR 12 points to the current directors of the respondent, the same is, in our view, inconclusive, owing to the disputed position awaiting resolution by the Companies Registry.

It is still more necessary to ascertain the respondent's bona fide directors; for yet more uncertainty arises from the fact that the respondent's board elections of 14th December 2017 had been annulled by the Appellate Court; and no less doubt comes from the fact that entirely different agencies had managed the appointment of Advocates' firms for the respondent.

The remit of the Registrar of Companies to ascertain the bona fide directors of the respondent is a lawful and legitimate one, bearing validity under the commercial laws at play; and this Court holds that such a critical public-office function is to be accorded the necessary leverage, in accordance with the law.’

58. The Supreme Court of Kenya in a line of cases in *Kiru Tea Factory*, which cases were riddled with disputes over Directorship and authority to sue/defend and which cases generated several rulings that where there was a genuine and serious dispute as to who constituted the legitimate board of Directors to act on behalf of the company, including in litigation, that until the issue of legitimate directorship is settled, the court may stay proceedings to prevent injustice or futile litigation.
59. A company is a legal entity, which acts through its Directors and therefore if there is a dispute on the legitimacy of its Directors, a fundamental question arises in respect of the authority to instruct lawyers, file pleadings, or even defend the company's interests. The company's interests in a land dispute could therefore be severely prejudiced if it is not properly represented by its legitimate management. The question of land proprietorship is thus intertwined with who controls the company. For instance, if



fraudulent Directors purport to transfer land, or if a faction of Directors is trying to assert control over the land by virtue of their (disputed) directorship, then resolving the directorship issue first becomes crucial.

60. It is therefore in this regard, that I hold that the proceedings in ELC Appeal No. E015 of 2024 be stayed pending a determination of the 2nd Respondent's bona fide Directors in the pending matter in Nairobi High Court Judicial Review Case No. E267 of 2024. I find thus merit in the 2nd Respondent's Application dated the 7th February, 2025 which is herein allowed with costs.

DATED AND DELIVERED AT NAIVASHA VIA TEAMS MICROSOFT THIS 5TH DAY OF JUNE 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE.

