



Mbaka (Suing as the Legal Administrator of the Estate of the Late Margaret Njoki Mbaka alias Njoki Mbaka) v Kiambu Nyakinyua Farmers Company Limited & another (Environment and Land Appeal E015 of 2024) [2025] KEELC 4277 (KLR) (Environment and Land) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4277 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E015 OF 2024

MC OUNDO, J

JUNE 5, 2025

BETWEEN

STEPHEN MWAURA MBAKA (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE MARGARET NJOKI MBAKA ALIAS NJOKI MBAKA) APPELLANT

AND

KIAMBU NYAKINYUA FARMERS COMPANY LIMITED 1ST RESPONDENT

SUSAN WAMBUI BIZER 2ND RESPONDENT

RULING

1. What is before me for determination is a Notice of Motion Application by the 2nd Respondent/Applicant dated 7th February, 2025 brought 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 in which it has sought that there be 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, Exparte George Muiru Kagunya & others.
2. The said Application was premised on the grounds therein and a Supporting Affidavit of an even date sworn Counsel for the 2nd Respondent/Applicant who deponed 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.
3. 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 Respondent/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 Respondent/Applicant's participation in the present case.

4. 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.
5. In response and in opposition to the Application, the appellant 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.
6. 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 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 Appellant.
7. 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.
8. 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.
9. Directions were taken for the disposal of the Application by way of written submissions wherein the 2nd Respondent/Applicant vide its Submissions dated 6th March, 2025 framed its issues for determination as follows:
 - 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
 17. The 1st Respondent vide its Submissions dated the 2nd April 2025 framed two issues for determination:
 - i. Whether then Applicant has passed the test for Stay of proceedings in the appellate Court.
 - ii. Who should bear the costs of this Application.
 18. When the first issue for determination the 1st Respondent submitted that since the test for stay of proceedings in a trial court was high, Then it went without saying that the test for stay of proceedings in appellate court after a case had been heard and determined by a trial court would be much higher and more stringent. Reliance was placed on the decision in a persuasive case in Kenya Wildlife Services vs James Mutembei [2019] eKLR to submit that Although the appeal failed by the appellant was manifestly groundless with no cause of action in law and inequity, the grounds upon which the Applicant had premised his application was shaky and lacked fit upon which to stand.
 19. While basing their submissions on the decision in the case of Global Tours & Travels Limited Nairobi High Court Winding up Cause No. 43 of 2000, the 1st Respondent submitted that there would be no need at an appellate stage to invite a neutral person to make statements and/or speak as the issues for the courts consideration were purely on points of law. The purported wrangles at the Applicant's Company would therefore not affect the matter before the court for determination.
 20. That the orders granted in the Nairobi High Court Judicial Review No. 267 of 2024 had no bearing on the present matter and therefore the application was devoid of merit and an abuse of the court process. That allowing the application therefore would be tantamount to a waste of precious and scarce judicial time.
 21. That the Applicant had failed and/or neglected to demonstrate what loss if any it stood to suffer were the court to proceed with the hearing and determination of the matter before it. That instead, the 1st Respondent would be greatly prejudiced and was bound to suffer substantial loss noting that she had been denied access into the suit property since the year 2012 to date. That the application should be dismissed with costs as it was trite law that costs follow events.

Determination.

22. In his Application dated the 7th February 2025, 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. The application has been opposed by the first respondent to the effect that it had no bearing to the decision delivered by the trial court. The purported wrangles at the Applicant's Company would therefore not affect the matter before the court for determination. that there would be no need at an appellate stage to invite a neutral person to make statements and/or speak as the issues for the courts



consideration were purely on points of law and lastly that the Applicant unlike the 1st Respondent stood to suffer loss if the application was allowed.

23. 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))
24. 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)

25. 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.
26. The issue for determination hearing is whether any current proceedings ought to be stayed pending determination of the Directorship of the 2nd Respondent.
27. 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.”



28. 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.’

29. 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 generated several rulings that where there was a genuine and serious dispute as to who constitutes 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.
30. 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.
31. It is therefore in this regard, that I hold that the proceedings herein 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: *Republic v The Registrar of Companies, Ex parte George Muiru Kagunya & others*. I find thus merit in the 2nd Respondent’s Application dated the 7th February, 2025 which is herein allowed with costs at lower scale since the same was undefended.

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

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE.

