



**Muthinga & another (Suing as the Administrators and Legal Representatives of the Estate of the Late Wanjiru Muthinga - Deceased) v Pekay Enterprises Limited & 3 others (Environment & Land Case E011 of 2024) [2025] KEELC 4260 (KLR) (Environment and Land) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4260 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**  
**ENVIRONMENT AND LAND**  
**ENVIRONMENT & LAND CASE E011 OF 2024**

**MC OUNDO, J**

**JUNE 5, 2025**

**BETWEEN**

**SAMUEL NGUGI MUTHINGA ..... 1<sup>ST</sup> PLAINTIFF**

**DANIKARI MBURU MUTHINGA ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE ADMINISTRATORS AND LEGAL REPRESENTATIVES OF  
THE ESTATE OF THE LATE WANJIRU MUTHINGA - DECEASED**

**AND**

**PEKAY ENTERPRISES LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**KIAMBU NYAKINYUA FARMERS CO. LTD ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR, NAIVASHA ..... 3<sup>RD</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before me for determination is the 2<sup>nd</sup> Defendant/Applicant's Application dated the 27<sup>th</sup> January 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 wherein it seeks for 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*.
2. The said Application was premised on the grounds therein and a Supporting Affidavit of an even date sworn Counsel for the 2<sup>nd</sup> Defendant/Applicant who deponed that the 2<sup>nd</sup> 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 2<sup>nd</sup> Defendant/Applicant, as well as stay of any functions and/or operations by the interested parties as Directors of the 2<sup>nd</sup> 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 2<sup>nd</sup> Defendant/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 2<sup>nd</sup> 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 2<sup>nd</sup> Defendant's Application, the Plaintiffs vide their Replying Affidavit dated 24<sup>th</sup> February 2025 sworn by Samuel Ngugi Muthinga, the 1<sup>st</sup> Plaintiff herein deponed that the said Application was misconceived, frivolous and an abuse of the court process as it had sought to delay the expeditious hearing and determination of the instant suit. That the issues raised in the said Judicial Review proceedings had no bearing on the issues in the instant matter because they pertained to internal governance and management of the 2<sup>nd</sup> Defendant/Applicant, whereas the present matter concerned distinct land and property rights, particularly the ownership and possession of Title No: Longonot/Kijabe Block 6/780.
6. That the internal leadership wrangles of the 2<sup>nd</sup> Defendant/Applicant did not in any way prejudice the hearing of the instant matter because the 2<sup>nd</sup> Defendant/Applicant remained a legal entity capable of representation. That in any case, the issues on which any Directors would testify to, were a matter of fact and record, as the said Directors would not be appearing in their personal capacity but as representatives of the company, as such, any current/acting Director could sign Affidavits/Witness Statements and/or testify on behalf of the company without affecting the proceedings.
7. That indeed, ownership documentation concerning the ownership of Title No: Longonot/Kijabe Block 6/780 had been first issued in the year 1982, way before the current or disputed Directors had taken office hence none of them could fully testify on the same of their own personal knowledge. That further, if the 2<sup>nd</sup> Defendant required any former or disputed Director to appear as a witness, they could simply add them as witness in the proceedings herein without the need of staying the same.
8. He deponed that the Judicial Review proceedings did not, and cannot, operate as a basis to stay the present suit as the matters that had been raised therein were distinct from the issues before the court thus any decision in the pending Judicial Review could not unduly prejudice the rights and interest of any party herein.
9. That in any case, staying a matter could only be granted where the continued hearing of a matter would result in clear prejudice to a party and/or where there was a clear and imminent risk of irreparable harm, in the instant case, the purported prejudice claimed by the Applicant was both speculative and unsupported by any material evidence hence it was doubtful that the Applicant herein would suffer any prejudice if the matter were to proceed. That allowing the present matter to proceed did not violate any legal or procedural rules, and it was in the interest of justice that the instant suit be determined expeditiously without unnecessary delay and as such, that the instant application be dismissed with costs.



10. Whereas the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents did not oppose the Application, the 1<sup>st</sup> Defendant did not participate.
11. The Application was disposed of by way of written submissions wherein the 2<sup>nd</sup> Defendant/Applicant vide its Submissions dated 6<sup>th</sup> March, 2025 summarized the factual background of the matter before framing 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 Applicant 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.
12. On the first issue for determination, it submitted that the said Judicial Review case raised a substantial legal question especially on the legal status of the 2<sup>nd</sup> Defendant/Applicant. That the provisions of Sections 128, 129 and 130 of the Companies Act No. 17 of 2015 required private companies to have at least one Director as a natural person and therefore there would be a misinterpretation of the said provisions since the 2<sup>nd</sup> Defendant/Applicant had no natural person as its Director.
13. That subsequently, were the present proceedings proceed without a Director to the 2<sup>nd</sup> Defendant/Applicant, then the proceedings would be flawed with illegalities. That the failure by the 2<sup>nd</sup> Defendant/Applicant to comply with the directions under the companies Act would result in penal sanctions. That without a determination on who the Directors of the 2<sup>nd</sup> Defendant/Applicant were, the Applicant was not rightfully before court hence a stay of the proceedings herein should be granted.
14. On the second issue for determination as to whether the 2<sup>nd</sup> Defendant/Applicant had demonstrated that they would suffer irreparable harm if the stay was not granted, it submitted that were the proceedings not stayed, a determination would likely be made without any natural person to speak and act for the 2<sup>nd</sup> Defendant/Applicant and hence its right to fair hearing would be undermined with the irreversible outcome because the court would become *functus officio* thus condemning the 2<sup>nd</sup> Defendant/Applicant unheard. That further, should the Judicial Review succeed by determining that the change of Directors had been unlawful, this court would have acted in vain.
15. On the third issue for determination, the 2<sup>nd</sup> 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 2<sup>nd</sup> 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.
16. It was thus its submission that without any Director whatsoever to speak and act on behalf of the 2<sup>nd</sup> Defendant/Applicant, the court had no jurisdiction over the said 2<sup>nd</sup> 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.

17. The 2<sup>nd</sup> 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 2<sup>nd</sup> Defendant/Applicant would prejudice the 2<sup>nd</sup> 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.
18. In opposition of the Application, the Plaintiff's vide their submissions dated 18<sup>th</sup> March 2025 framed their issues for determination as follows:
  - i. Whether the application for stay is merited or constitutes an abuse of the court process.
  - ii. Whether the pending Judicial Review proceedings have any bearing on the issues in the instant suit.
  - iii. Whether the 2<sup>nd</sup> Defendant/Applicant stands to suffer any prejudice.
  - iv. Whether the balance of Convenience and Interest of Justice favour the dismissal of the Application.
19. On the first issue for determination as to whether the Application for stay was merited, the Plaintiffs placed reliance on the provisions of Section 6 of the *Civil Procedure Act* to submit that the law only bars proceedings where the matters in issue were directly and substantially the same in both suits. That the matters in the instant case were different in issue with the matters in the Judicial Review case where the parties were also different. That subsequently, there was no legal justification for the 2<sup>nd</sup> Defendant/Applicant to request for a stay of proceedings. That its attempt to link the two distinct matters was a deliberate tactic to frustrate the expeditious determination of the instant suit. Reliance was placed in the decided case of *Ndabi v Kimotho & another* (Civil Appeal 16 of 2023) [2023] KEHC 17717 (KLR) (19 May 2023) to submit that a stay of proceedings should not be granted where it would cause unnecessary delay or prejudice to the opposing party.
20. On the second issue for determination as to whether the pending Judicial Review proceedings had any bearing on the instant suit, they maintained that the 2<sup>nd</sup> Defendant's internal governance wrangles did not affect its legal status as a company, which had remained a recognized corporate entity before the court. That subsequently, the outcome of the Judicial Review proceedings would not in any way alter the substantive proprietary rights in question in the instant suit. They placed reliance in the decided case of *Stanley Thyaka Muindi v Matewa Agencies Ltd & 2 others* [2019] eKLR to submit that a company could sue or be sued regardless of internal Directorship disputes hence the 2<sup>nd</sup> Defendant/Applicant's argument that the suit could not proceed until the Directorship issue had been resolved was legally untenable.
21. That further, the claim that the 2<sup>nd</sup> Defendant/Applicant had no Directors to testify did not hold any water since the company had acting Directors regardless of whether their position was contested or not. That in any event, the Directors would not be appearing in their personal capacity but as representatives of the company, and as such, any current/acting Director could testify on behalf of



the company without affecting the proceedings. That further, if the 2<sup>nd</sup> Defendant had required any former or disputed Director to appear as a witness, they could simply add them as a witness in the instant proceedings without the need to stay the proceedings.

22. As to whether the 2<sup>nd</sup> Defendant/Applicant stood to suffer any prejudice, the purported prejudice claimed by the Applicant was both speculative and unsupported by any material evidence thus it was doubtful that the Applicant herein would suffer any prejudice if the matter were to proceed. That risk of irreparable harm had been demonstrated by the Applicant hence the stay that had been sought was both unnecessary and contrary to the interest of justice.
23. That the provisions of Article 159 (2) (b) of the [Constitution](#) were clear that the expeditious disposal of cases required the courts to avoid unnecessary delays in dispensing justice. That subsequently, the continued delay in resolving the instant matter prejudices the Plaintiff/Respondent who had a constitutional right to access justice without undue delay. That the balance of convenience thus favored the dismissal of the application and allowing the matter to proceed.

### **Determination.**

24. I have considered the Application and submissions the authorities cited and the law, consequently the pending issue for determination is whether this court should grant the Applicant the orders sought for being;
  - i. Stay of proceedings herein pending the outcome of Nairobi High Court Judicial Review Case No. E267 of 2024.
25. The power to grant a stay of proceedings is inherent in the court's jurisdiction to ensure justice and prevent abuse of process. Whereas there might not be a specific rule for this exact scenario, Order 51 of the [Civil Procedure Rules](#) (Applications) and the general principles of discretion would guide in making such applications.
26. The Applicant 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, Ex parte 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))
27. 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)



28. In this matter the Applicant's position was that the 2<sup>nd</sup> Defendant/Applicant being a Limited Liability Company, had undergone an irregular change of its Directors. That the outcome of the Judicial Review case would directly affect the 2<sup>nd</sup> Defendant/Applicant's participation in the present case in that it would determine on who the Directors of the 2<sup>nd</sup> Defendant/Applicant were and whether the Applicant was or was not rightfully before court so as to delve into the present proceedings.
29. The Application was opposed by the Plaintiff for reason that the 2<sup>nd</sup> Defendant's internal governance wrangles did not affect its legal status as a company, which had remained a recognized corporate entity before the court. That a company could sue or be sued regardless of internal Directorship disputes. That the company had acting Directors regardless of whether their position was contested or not and who would not be appearing in their personal capacity but as representatives of the company without affecting the proceedings and therefore the outcome of the Judicial Review proceedings would not in any way alter the substantive proprietary rights in question in the instant suit. That in any case, if the 2<sup>nd</sup> Defendant required any former or disputed Director to appear as a witness, they could simply add them as a witness in the instant proceedings without the need to stay the proceedings.
30. The issue for determination hearing is whether the current proceedings ought to be stayed pending determination of the Directorship of the 2<sup>nd</sup> Defendant/Applicant.
31. 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.”

32. 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 14<sup>th</sup> 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.’

33. 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.
34. 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.
35. It is therefore in this regard, that I hold that the proceedings in the instant suit be stayed pending a determination of the 2<sup>nd</sup> Defendant/Applicant'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, Exparte George Muiru Kagunya & others*. I find thus merit in the 2<sup>nd</sup> Defendant/Applicant's Application dated the 27<sup>th</sup> January 2025 which is herein allowed with costs.

**DATED AND DELIVERED AT NAIVASHA VIA TEAMS MICROSOFT THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

