



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kisai & 2 others (Suing on their Behalf and on Behalf of 443 Members of the Olongonot Community) v Kiambu Nyakinyua Farmers Company Limited & 2 others; Kiwaka General Merchants Limited & 28 others (Interested Parties) (Environment & Land Case 11 of 2024) [2025] KEELC 4961 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4961 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT & LAND CASE 11 OF 2024**

**MC OUNDO, J**

**JULY 3, 2025**

**BETWEEN**

**DANIEL LEMASHISHA KISAI ..... 1<sup>ST</sup> PLAINTIFF**

**MURE PARSITAU SAYO ..... 2<sup>ND</sup> PLAINTIFF**

**MOSES JONGA OLE KIPISHIAN ..... 3<sup>RD</sup> PLAINTIFF**

**SUING ON THEIR BEHALF AND ON BEHALF OF 443 MEMBERS OF THE  
OLONGONOT COMMUNITY**

**AND**

**KIAMBU NYAKINYUA FARMERS COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR NAIVASHA ..... 2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**KIWAKA GENERAL MERCHANTS LIMITED ..... INTERESTED PARTY**

**VALLERIE ZOLA ANYANGO ..... INTERESTED PARTY**

**CHRISTOPHER KANAI KAMAU ..... INTERESTED PARTY**

**TRACY YVONNE AKOTH RADO ..... INTERESTED PARTY**

**LUCY GATHONI ALIAS LUCY FRANCIS GATHONI**

**MWITURIA ..... INTERESTED PARTY**

**MARGARET WANJIRU MWANGI ALIAS MARGARET**

**MWANGI ..... INTERESTED PARTY**



MUTHONI MIIRI ALIAS PAULINE MUTHONI KATAMPOI .... INTERESTED PARTY

NJERI KIRUMBA ALIAS LUCY NJERUI KIRUMBA ALIAS LUCY NJERI MWAURA ..... INTERESTED PARTY

MARY WANDIA KARIUKI ..... INTERESTED PARTY

LUCY WAMBUI NG'ANG'A ..... INTERESTED PARTY

NJOKI NDURIMU ALIAS JOSPHINE NJOKI NGURIMU .... INTERESTED PARTY

WANGUI KAMAU ALIAS ALICE WANGOI MAHIHU ..... INTERESTED PARTY

WANGUI NDUNGU ALIAS JOYCE WANGUI KIMOTHO .... INTERESTED PARTY

WAITHIRA PETER ALIAS BENADETTE WAITHIRA PETER .... INTERESTED PARTY

WAITHIRA MUIGAI ALIAS JESCAH WAITHIRA MUIGAI .... INTERESTED PARTY

NDUTA NGUGI ALIAS LOISE NDUTA NGUGI REPRESENTED BY NGUGI KAHURA ..... INTERESTED PARTY

WANJIRU NJOROGE ALIAS BENADETTE WANJIRU MWITURIA ..... INTERESTED PARTY

WAMBUI NGURIMU ALIAS DAMARIS WAMBUI NGURIMU ALIAS DAMARIS WAMBUI KABE ..... INTERESTED PARTY

WAMBUI KAMAU ALIAS LUCY WAMBUI KAMAU ..... INTERESTED PARTY

PATRICIA JONAH KAMAU ..... INTERESTED PARTY

INYAMBURA LUCU ALIAS DA CARALINE NYAMBURA .... INTERESTED PARTY

WANJITU KIMANI ALIAS GRACE WANJIRU KIMANI . INTERESTED PARTY

WAMBUI KABIRU ALIAS SUSAN WANJIRU NDEKEI ... INTERESTED PARTY

WANJIKU KARIMA ALIAS HANNAH WANJIKU KARIMU .... INTERESTED PARTY

WACHEKE NJOROGE ALIAS MARTHA WACHEKE NJOROGE . INTERESTED PARTY

NJERI NJOROGE ALIAS MARGARET NJETI NJOROGE .... INTERESTED PARTY

LUCY WANGUI NJERU ..... INTERESTED PARTY

RAHAB NJERI ALIAS HELLEN NJERI MATA ..... INTERESTED PARTY

MARIA KARIMI ALIAS MARIA KARIMI GATHU ..... INTERESTED PARTY



## RULING

1. Coming up for determination, is a Notice of Motion Application dated 27<sup>th</sup> January, 2025 by the 1<sup>st</sup> Defendant/Application 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 seeking to stay 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 by their Counsel who deponed that the 1<sup>st</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 change of the said Directors.
3. That the leave that had been granted by the High Court for the filing of the substantive motion in the Judicial Review case operated as a stay of the changes that had been made by the Respondent in the register of the Directors and CR 12 of the 1<sup>st</sup> Defendant/Applicant, pending the hearing and determination of the substantive Notice of motion. That the said leave had also operated as stay of any functions and/or operations by the interested parties as Directors of the 1<sup>st</sup> Defendant/Applicant, pending the hearing and determination of the substantive Notice of Motion. That the substratum of the Judicial Review Case was the unlawful, unprocedural and illegal change in the register of the 2<sup>nd</sup> Defendant/Applicant, thus the outcome of the judicial review case had directly affected the 1<sup>st</sup> Defendant/Applicant's participation in the present case.
4. He deponed that it was prudent and in the interest of justice that the instant suit be stayed from proceeding pending the hearing and determination of Nairobi High Court Judicial Review Case No. E267 of 2024 for substantive justice to be served since the 1<sup>st</sup> Defendant/Applicant 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 opposition to the 1<sup>st</sup> Defendant's Application, the Plaintiffs/1<sup>st</sup> Respondent vide their Replying Affidavit dated 26<sup>th</sup> February 2025 sworn by Saitoti Ole Suwakei, the current Chairman of the elders of the Maasai Olongonot Community deponed that the instant suit that had been filed in the year 2001, had prolonged due to internal leadership disputes within the 1<sup>st</sup> Defendant/Applicant's factions. That indeed, there had been series of applications with respect to disgruntled members of the 1<sup>st</sup> Defendant/Applicant which had acknowledged the existence of the said internal conflicts, yet the 1<sup>st</sup> Defendant/Applicant had taken no steps to resolve them.
6. That the legal issue that had been raised in Nairobi High Court Judicial Review Case No. E267 of 2024: Republic v The Registrar of Companies, Exparte George Muiru Kagunya & others pertained solely to internal leadership/Directorship of the 1<sup>st</sup> Defendant/Applicant hence it would not interfere with the proceedings herein. That the issues to be determined in the said Judicial Review proceedings were distinctively separate from the matters in the instant suit and that in any event, the orders that would ensue would not directly impact the proceedings in the present case. That the Applicant had thus failed to demonstrate that a stay of proceedings was necessary in the interests of justice.



7. That granting a stay of proceedings would cause a serious, grave and fundamental interference with the Plaintiff/1<sup>st</sup> Respondent's right to expeditious litigation and therefore the Application should be dismissed.
8. The Interested Parties did not oppose the 1<sup>st</sup> Defendant's Application while the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents did not participate in the same.
9. The Application was disposed of by way of written submissions wherein the 1<sup>st</sup> Defendant/Applicant vide its Submissions dated 6<sup>th</sup> May, 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 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, it submitted that although the Plaintiff at Paragraph 4 of their Replying Affidavit dated 26<sup>th</sup> February, 2025 had argued that the judicial review proceedings had no bearing on the issues in the current matter yet the same had raised a substantial legal question especially on the legal status of the 1<sup>st</sup> Defendant/Applicant with a reasonable prospect of success and therefore it was not just a frivolous claim. That the Application had a cause of action based on true and accurate facts.
11. It was thus their submission that the Application was one which a reasonable person could properly treat as bonafide and contented hence the other Respondents had chosen not to oppose the same.
12. That the Legal Question arising out of their Application was whether there would be a misinterpretation of Sections 128, 129 and 130 of the *Companies Act* No. 17 of 2015 which required private companies to have at least one Director as a natural person. That in the present case, the 1<sup>st</sup> Defendant/Applicant had no natural person as its Director. That subsequently, if the present proceedings proceeded without the said 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 in addition to persistent default. Reliance was placed on the decision in the case of *Nicholas v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023)* [2023] KESC 113 (KLR) (28 December 2023) (Judgment), where it was held that it is an express provision of the laws of Companies that a Director be a natural person and not otherwise.
13. That the other substantial legal question would be whether the 1<sup>st</sup> Defendant/Applicant could purport to act on its own behalf without any lawful human Director? The answer being in the negative, without a determination on who really were the Directors of the Applicant, then it followed that the Applicant was not rightfully before court hence a stay of current proceedings in the instant matter should be granted.



14. On the second issue for determination as to whether the 1<sup>st</sup> Defendant/Applicant had demonstrated that they would suffer irreparable harm if the stay was not granted, it submitted that were the proceedings herein not stayed, a determination would likely be made without any natural person to speak and act for the 1<sup>st</sup> Defendant/Applicant hence its right to fair hearing would be undermined with the irreversible outcome since the court would have become functus officio thus condemning the 1<sup>st</sup> Defendant/Applicant unheard which was contrary to the doctrine of “Audi Alteram Partem” that is, without hearing the adverse party which was a violation of the Bill of Rights.
15. That on the other hand, 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. Reliance was placed in the decided case of Republic v National Land Commission & 2 others Ex Parte Archdiocese of Nairobi Kenya Registered Trustees (St. Joseph Mukasa Catholic Church Kahawa West) [2018] KEHC 8941 (KLR) where it was held that a company in court must be witnessed by a human being, to submit that the law to be applied herein was fair hearing.
16. On the third issue for determination, the 1<sup>st</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 1<sup>st</sup> Defendant/Applicant were proper parties before the jurisdiction of the court.
17. That the strict interpretation of the doctrine of Jurisdiction commenced with the proper parties before the court. 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 acts through its members and Directors. Further 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 the court had stated that the presence of correct parties was essential for a court to exercise Jurisdiction. Reliance was also placed on the decided case of Isaac Kinyanjui Muitherero vs. Jonathan Craig Buffey & 2 others; Wild Eye East Africa Ltd (Affected Party) (2020) Civil Case 117 of 2019 eKLR to submit that potential harm to the Applicant outweighed the harm to the Plaintiffs.
18. As to whether it was in the public interest to stay/pause the instant proceedings while the judicial review was ongoing, it submitted that since it was evident that the 1<sup>st</sup> Defendant/Applicant 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 and therefore the proceedings herein could not proceed.
19. 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 1<sup>st</sup> Defendant/Applicant would clearly prejudice the 1<sup>st</sup> Defendant as the rightful Directors would neither have acted nor spoken for it thus fettering its right to fair hearing. It was its submission that without the rightful Director to speak and act on behalf of the 1<sup>st</sup> Defendant/Respondent, then there was a clear and imminent risk of irreparable harm likely to be suffered by the said 1<sup>st</sup> Defendant/Applicant. That it was thus in the interest of justice and fairness that the instant Application be granted as prayed and costs be awarded.
20. The Plaintiffs/1<sup>st</sup> Respondent in opposition of the Application, framed one issue for determination vide their submissions dated 2<sup>nd</sup> May 2025 to wit; whether the Applicant had demonstrated sufficient grounds to warrant a stay of proceedings.
21. They placed reliance on the decisions in the case of Kenya Power and Lighting Co. Ltd v Esther Wanjiru Wokabi (2014) eKLR and Kenya Wildlife Service v James Mutembei (2019) eKLR Civil



Appeal 40 of 2018 to submit that stay of proceedings was a serious fundamental interruption in the right that a party has to conduct his litigation hence the same should be granted sparingly and only in exceptional circumstances. It was their submission that the Applicant herein had failed to demonstrate how the pending Judicial Review proceedings would directly impact the substantive issues in the present matter. That indeed, the issues that had been raised in the Judicial Review proceedings did not touch on the subject matter in the instant suit being land ownership and historical rights involving the Olongonot Community.

22. That the instant suit which was filed close to 22 years ago, had been held in abeyance for over 15 years following a decision to prioritize Nakuru ELC 85 of 2017 that had been filed by the Applicant (formerly Nairobi ELC 85 of 2014) a case which was subsequently dismissed for want of prosecution. That since then, several interlocutory applications filed by members of the Applicant, had served only to frustrate and delay the progress of hearing the instant suit. That the Applicant had been aware of the leadership wrangles, yet it had failed to take any meaningful steps to resolve the same but had instead allowed its internal governance challenges to fester and was now seeking to use those unresolved issues to halt the present proceedings. They thus submitted that it was both imprudent and unjust for a party to ignore its internal governance lapses, actively litigate with knowledge of those issues, and then seek a stay on the basis of matters it had long been aware of but failed to address. That subsequently, the Applicant could not now use unresolved internal disputes as a basis to hinder the Plaintiffs/1<sup>st</sup> Respondents' right to be heard.
23. That the continued filing of such applications severely prejudiced their right to access justice and the court should guard against abuse of process and delay tactics aimed at frustrating the substantive hearing. They placed reliance on the provisions of Article 159(2) of *the Constitution* to submit that justice should not be delayed.
24. In conclusion, they submitted that the Applicant's application had failed to demonstrate that a stay of proceedings was necessary in the interests of justice and sought that it be dismissed to pave way for the present matter to proceed to hearing on its merits.

#### **Determination.**

25. I have considered the Application herein, the response in opposition, the submissions, the authorities cited and the applicable law.
26. 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.
27. 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, 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))



28. 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”

29. In this matter the Applicant’s position was that the 1<sup>st</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 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.
30. The Application was opposed by the Plaintiff for reason that the instant suit that had been filed in the year 2001, and had prolonged due to internal leadership disputes within the 1<sup>st</sup> Defendant/Applicant’s factions wherein the 1<sup>st</sup> Defendant/Applicant had taken no steps to resolve them.
31. That the legal issue that had been raised in Nairobi High Court Judicial Review Case pertained solely to internal leadership/Directorship of the 1<sup>st</sup> Defendant/Applicant for which the Applicant had failed to demonstrate how it would interfere with the proceedings herein, the issues to be determined in the said Judicial Review proceedings being distinctively separate from the matters in the instant suit and wherein the outcome would not directly impact on the proceedings in the present case. That granting a stay of proceedings would cause a serious, grave and fundamental interference with the Plaintiff/1<sup>st</sup> Respondent’s right to expeditious litigation and therefore the Application should be dismissed.
32. Consequently, the pending issue for determination is whether this court should grant the Applicant the orders sought for and whether the current proceedings ought to be stayed pending determination of the Directorship of the 1<sup>st</sup> Defendant/Applicant.
33. 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.”

34. 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.’

35. 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.
36. 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.
37. It is therefore in this regard, that I hold that the proceedings in the instant suit be stayed pending a determination of the 1<sup>st</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, Ex parte George Muiru Kagunya & others*. I find thus merit in the 1<sup>st</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 3<sup>RD</sup> DAY OF JULY 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

