



REPUBLIC OF KENYA



Kithinji v Embakasi Ranching Company Limited & 4 others (Land Case E485 of 2024) [2025] KEELC 5995 (KLR) (10 September 2025) (Ruling)

Neutral citation: [2025] KEELC 5995 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E485 OF 2024
CG MBOGO, J
SEPTEMBER 10, 2025**

BETWEEN

REV WILLIAM GEOFFREY KITHINJI PLAINTIFF

AND

EMBAKASI RANCHING COMPANY LIMITED 1ST DEFENDANT

DAVID MWANGI WANDERI 2ND DEFENDANT

GABRIEL GITONGA 3RD DEFENDANT

JOHN KUREMA WANG'OMBE 4TH DEFENDANT

CHIEF LAND REGISTRAR 5TH DEFENDANT

RULING

1. Before me is the notice of motion dated 5th March, 2025 filed by the 1st defendant/applicant, and it is expressed to be brought under Section 3A of the *Civil Procedure Act* seeking the following orders:-
 - a. All the pleadings filed by M/s Bare Musa Advocates on behalf of the 1st defendant/ applicant be struck out.
 - b. The costs of this application be provided for.
2. The application is premised on the grounds inter alia that the firm of Bare Musa Advocates has filed pleadings on its behalf under the instructions of the board of directors whom the 2nd and 3rd defendants represent.
3. The application is supported by the affidavit Walter Kigera Waireri, the director of the 1st defendant/ applicant sworn on even date. The 1st defendant/applicant deposed that there is a dispute as to its directorship that is pending hearing and determination in HCCC No. E096 of 2019, and that the 2nd to 15th defendants in that suit who are the 2nd and 3rd defendants herein were stopped by the court



from assuming office and transacting business by an order of the court issued on 30th July, 2019. The 1st defendant/ applicant deposed that the directors lawfully in office pursuant to the orders are those in the CR-12 issued on 25th March, 2019, and that by instructing the firm of Bare Musa Advocates, the 2nd and 3rd defendants have deliberately acted in contempt of the said orders. It was deposed that the firm of Bare Musa Advocates are irregularly on record for the 1st defendant/applicant in this matter for want of proper instructions.

4. The application was opposed by the replying affidavit of the 3rd defendant sworn on 10th March, 2025. The 3rd defendant deposed that he is a director of the 1st defendant/applicant vide an election held on 13th April, 2019. He deposed that the CR12 dated 25th March, 2019 and 5th July, 2019 were overtaken by events by the time the order dated 30th July, 2019 were issued as the registrar had approved the results of the elections held on 13th April, 2019 and issued a CR 12 dated 20th July, 2019. He deposed that when the impugned orders dated 30th July, 2019 were issued, the 2nd and 3rd defendants were already in the CR12 and hence they are legally in office.
5. The 3rd defendant further deposed that the correct and logical interpretation of the order is when the court referred to as directors, it simply meant the ones in the CR12 dated 20th July, 2019. He deposed that the impugned order being referred to herein is not binding to this court, and this court has the leeway to analyse and interpret all the pleadings and evidence placed before it. It was further deposed that by misrepresenting themselves as the directors of the 1st defendant/applicant, they are desperately attempting to conceal their illegal activities which has led innocent Kenyans to buying land from individuals with no capacity to transfer land.
6. The 1st defendant/applicant filed a further affidavit in response thereto sworn on 5th June, 2025. The 1st defendant/applicant deposed that the orders to maintain status quo issued on 30th July, 2019 were clarified by the court at length, and that by purporting to act as directors with fiduciary capacity to instruct advocates to act on its behalf, the same is in contempt of the said orders.
7. The application was canvassed by way of written submissions. The 1st defendant/applicant filed its written submissions dated 5th June, 2025. The 1st defendant/respondent submitted that even though the 2nd and 3rd defendants were registered as directors on 5th July, 2019, they were restrained by the order of the court in HCCC No. E096 of 2019. It was submitted that the orders to maintain the status quo clarified to mean that the directors then in office to remain in office and those in the CR12 of 5th July, 2019 were effectively restrained from assuming office until the matter is heard and determined. That by striking out the defence filed by the 2nd and 3rd defendants/respondents, this court will be giving effect to the orders dated 30th July, 2019 which are still in force and it will also be protecting the dignity of this court from being undermined.
8. The 1st to 3rd defendants/respondents filed their written submissions dated 10th June, 2025 where they raised five issues for determination as listed below: -
 - i. Whether the 2nd and 3rd defendants are the bonafide directors of the 1st defendant company.
 - ii. Whether the firm of Bare Musa Advocates is properly on record for the 1st to 3rd defendants.
 - iii. Whether the plaintiff's application is competent, merited or discloses any legal cause of action.
 - iv. Whether the firm of Ngata Kamau & Co. Advocates is validly on record for Embakasi Ranching Co. Ltd.
 - v. Whether the purported deponent is a legitimate director of the 1st defendant.



9. On the first and second issues, the 1st to 3rd defendants submitted that the 2nd and 3rd defendants are legitimate directors of the 1st respondent. They submitted that the rulings of Justices Njoki Mwangi, Grace Nzioka and Lucy Mbugua emanate from courts of concurrent jurisdiction, which does not create a binding precedent on courts of the same rank as a legal principle. They further submitted that a law firm cannot purport to act on behalf of a company unless it has been validly appointed by duly authorized directors. They submitted that the firm of Ngata Kamau & Co. Advocates lack any lawful basis to represent the 1st defendant in these proceedings. The 1st to 3rd defendants relied on the cases of *Githiga & 4 Others v Kiru Factory Co. Ltd* (Application 12 of 2019) [2020] eKLR, *Communication Workers Union of Kenya v Safaricom PLC & another* [2022] eKLR, *Attorney General & 2 others v Ndiir & 79 Others* (2022) KESC 8 (KLR) and *Pharmaceuticals v Nairobi Veterinary Centre Ltd. Nairobi (Milimani) HCCC No. 391 of 2000*.
10. On legitimacy of the CR12, the 1st to 3rd defendants submitted that the 2nd and 3rd defendants are duly elected directors of the company. They relied on the cases of *Republic v Registrar of Companies & Another Ex-parte Githunguri Ranching Company Ltd* [2014] eKLR, and *Multichoice Kenya Ltd v Wananchi Group Kenya Ltd & 2 Others* [2020] eKLR.
11. On misinterpretation of court orders, the 1st to 3rd defendants submitted that the phrase directors in office could only have meant the persons captured in the latest CR12 as at the date i.e. 2nd and 3rd defendants. They submitted that the reliance on an earlier CR12 is moot. To further buttress on this issue, the 1st to 3rd defendants relied on the cases of *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd & Another* [2001] eKLR, *Republic v Public Procurement Administrative Review Board & 2 Others Ex Parte Migori County Government* [2020] eKLR, and *In the Matter of Blue Bird Aviation Ltd (Winding Up Cause No. 12 of 2017)* [2021] eKLR.
12. The 1st to 3rd defendants further submitted that no evidence has been produced to show that the 2nd and 3rd defendants have been removed from office. They submitted that the application is devoid of merit and should be dismissed with costs.
13. I have considered the application, the replies thereof and the written submissions filed by the respective parties. I am of the view that the issue for determination is whether the application has merit.
14. The 1st defendant/applicant contends that pursuant to the orders issued on 30th July, 2019 by Justice Grace Nzioka, the 2nd and 3rd defendants were barred from assuming office pending the determination of the suit in HCCC No. E096 of 2019. The 1st defendant/applicant argued that as a result, the firm of Bare Musa Advocates are irregularly on record for the 1st defendant/applicant in this matter for want of proper instructions. On the other hand, the 3rd defendant vehemently argued that this court ought to interpret the orders to mean that by the CR12 dated 20th July, 2019, and together with the 2nd and 4th defendants, they are rightly in office and can perform duties on behalf of the 1st defendant/applicant. He urged the court to ignore the orders issued by the court as it is not bound by the findings of the high court and instead find that the firm of Bare Musa to be properly on record.
15. It goes without saying that the issues of directorship of the 1st defendant/applicant are not within the jurisdiction of this court and therefore, this court would not be drawn to find as such. A look at the issues for determination raised by the 3rd defendant is clearly drafted to hood wink this court to determine issues which are ripe before the High Court and pending determination. Order 10 of the orders granted on 31st July, 2019 was to the effect that status quo on the ground being that the directors in the office remain in the office and the ones indicated on the CR12 form as directors remain as such. As I have understood this order, there are two sets of directors for the 1st defendant/applicant. Those in office performing duties and functions on behalf of the company and those who are in the CR12



that are yet to assume duties. It appears that by the CR12 provided by the 3rd defendant, he is among those who are yet to perform duties and assume office of the 1st defendant/applicant.

16. More importantly, the orders to that effect is clear and there is no need for this court to interpret otherwise as incorrectly argued by the 3rd defendant. These orders are in force and it has not been shown that it has been set aside. Similar issues concerning the directorship of the 1st defendant/ applicant have been made observed in Embakasi Ranching Company Ltd v Registrar of Companies & 14 others [2022] KEHC 15003 (KLR) and Embakasi Ranching Company Limited v Registrar of Companies & 14 others [2024] KEHC 7480 (KLR).
17. For this reason, and based on the orders which are in force the 2nd and 3rd defendants have no capacity to transact business on behalf of the 1st defendant/applicant. I find merit in the notice of motion dated 5th March, 2025 and I grant the following orders:-
 - i. All the pleadings filed by M/s Bare Musa Advocates on behalf of the 1st defendant/applicant are hereby struck out.
 - ii. The 1st defendant/applicant is awarded the costs of this application to be provided for by the 2nd and 3rd defendants.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 10TH DAY OF SEPTEMBER, 2025.

HON. MBOGO C.G.

JUDGE

10/09/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Muema holding brief for Mrs. Kimani for the Plaintiff

Ms. Irungu holding brief for Mr. Ngata Kamau for the Defendant

Ms. Munola for the 4th Defendant

