



**Wafula (Derivatively on behalf of Trans Nzoia Investment Company Limited) v Walubengo & 6 others; Trans Nzoia Investment Company Limited (Affected Party) (Environment and Land Case 74 of 2019) [2025] KEELC 6032 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6032 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 74 OF 2019  
CK NZILI, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**PASCAL WAFULA ..... PLAINTIFF  
DERIVATIVELY ON BEHALF OF TRANS NZOIA INVESTMENT COMPANY  
LIMITED**

**AND**

**RONALD SAWENJA WALUBENGO ..... 1<sup>ST</sup> DEFENDANT  
PAUL SIMIYU WEKESA ..... 2<sup>ND</sup> DEFENDANT  
GEORGE IMBERA LUDISI ..... 3<sup>RD</sup> DEFENDANT  
KALORI ISOSO ..... 4<sup>TH</sup> DEFENDANT  
MUNDEBE INVESTMENT COMPANY LIMITED ..... 5<sup>TH</sup> DEFENDANT  
VIPUL RATILAL DODHIA ..... 6<sup>TH</sup> DEFENDANT  
CHERANGANI INVESTMENTS COMPANY LIMITED ..... 7<sup>TH</sup> DEFENDANT**

**AND**

**TRANS NZOIA INVESTMENT COMPANY LIMITED ..... AFFECTED PARTY**

**RULING**

1. The judgment of this court has attracted several post-judgment applications. The 1<sup>st</sup> application is dated 25/6/2025, which was brought by the 6<sup>th</sup> and 7<sup>th</sup> defendants, and was argued interpartes on 3/7/2025, and a ruling date was fixed for 17/9/2025. During the pendency of the ruling, after an



interpartes hearing on 3/7/2025, the said application was purportedly withdrawn through a notice of withdrawal dated 3/7/2025.

2. Even before the court endorsed the notice of withdrawal, the 6<sup>th</sup> and 7<sup>th</sup> defendants filed the 2<sup>nd</sup> application, a notice of motion dated, seeking leave by the firm of Jason Kimani & Co. Advocates to come on record for the 6<sup>th</sup> and 7<sup>th</sup> defendants, post-judgment. The court duly allowed the 2<sup>nd</sup> application on 3/7/2025.
3. The 3<sup>rd</sup> application filed by the 6<sup>th</sup> and 7<sup>th</sup> defendants after regularizing appearance under Order 9 Rule 9 of the Civil Procedure Rules, is the one dated 4/7/2025. Ideally, it is similar to the 1<sup>st</sup> application dated 25/6/2025.
4. The 4<sup>th</sup> application is the one dated 7/7/2025. It is brought by an intended interested party - M/s M-Oriental Bank Ltd. It seeks an order of stay of execution and joinder of the intended interested party to the suit, and for the reopening of the suit to participate in the suit.
5. The 5<sup>th</sup> application is dated 17/7/2025, brought by Alfred Juma Wanambisi and Mukasa Mwambu Muliro, who are not parties to the suit, seeking for inter alia; a temporary order of injunction barring and restraining an unnamed respondent from collecting rent, selling, transferring, leasing, or in any way dealing with the suit property, or interfering with the management, possession, or proprietary rights of the affected party.
6. That the court approves the appointment of Impact Medication Centre as the interim administrator of Trans Nzoia Investment pursuant to Section 780 of the *Companies Act* and to place the said administrator under court supervision to oversee the recovery, protection, and management of the affected party's assets, including the suit property, pending resolution of shareholders' disputes.
7. And finally, the court to approve and supervise the convening of an urgent Annual General Meeting of the affected party, by the legitimate shareholders, for purposes of electing the Board of Directors, ratifying past resolutions, and regularizing the governance of the company post-judgment.
8. The reasons are contained on the face of the application and in a joint supporting affidavit of Alfred Juma Wamambisi and Mukasa Mwambu Muliro, sworn on 23/7/2025. The deponents term themselves as the shareholders and interested parties seeking to protect the affected party's assets. They depose that whereas the judgment confirmed the suit land belongs to the affected party, it was fraudulently alienated by some directors of the company; that the plaintiff who had sued derivatively on behalf of the company was not awarded personal ownership or control of the suit property. The plaintiff was now together with his associates unlawfully collecting rent, managing the property and reportedly seeking to sell or transfer portions of the land without shareholders' authority or board resolutions, hence posing a grave danger or risk to the company assets, in contempt of the judgment.
9. Further, it is deposed that the unnamed respondents were falsely representing themselves as bona fide directors, relying on an outdated CR 12 issued in 2025, unlike the one issued in 2025, showing the current board structure. Annexed as 1(a), (b), (c), and (d) are the certificate of incorporation, CR 12 form, power of attorney, and a letter of appointment of Impact Mediation Centre as the administrator.
10. The applicants depose that the affected party is facing internal wrangles, unauthorized dealings, and mismanagement, which can only be resolved through neutral and supervised oversight.
11. The 6<sup>th</sup> application is dated 21/7/2025 by the 6<sup>th</sup> and 7<sup>th</sup> defendants. It seeks a stay of execution of the warrants of execution to remove tenants from the suit property. It is supported by an affidavit sworn by Manase Nyanga Njenga, attaching copies of the said warrants as annexure MNN-4. The reasons



are that the decree sought to be executed and the execution before taxation of a bill of costs offends the law. This application, however, does not form part of this ruling.

12. The 7<sup>th</sup> application is dated 23/7/2025. It has been filed by Alfred Juma Wanambisi and Mukasa Mwambu Muliro. It is almost word-for-word similar to the 5<sup>th</sup> application, save for the certificate of urgency. The court struck it out in limine, in view of a similar pending application.
13. Starting with the 1<sup>st</sup> and 3<sup>rd</sup> applications, the grounds are set out on the face of the two applications and in supporting and further affidavits sworn by Manasseh Nyaga Njenga on 25/6/2025, 2/7/2025, and 4/7/2025. Briefly, it is deposed that the deponent is a director of the 7<sup>th</sup> defendant, going by an authority to plead annexed as MNN-1. The annexure is not a board resolution authorizing him to represent the company. That notwithstanding, it is deposed that a notice of appeal has been filed and typed proceedings requested for as per annexure MNN 2(a) and (b).
14. The deponent deposes that the intended appeal has arguable grounds and would be rendered nugatory if the extracted decree is executed. The 6<sup>th</sup> and 7<sup>th</sup> defendants depose that all the occupants of the suit property have, by a letter dated 21/6/2025, been ordered by the plaintiff's counsel to execute new tenancy agreements before 30/6/2025; otherwise, they shall be deemed as trespassers. Annexed is the letter marked MNN-3.
15. The applicants depose that they have been on the suit land since 2011, having invested heavily in its development. If the same occurs, they will suffer substantial loss. The applicants deposes that their lawyers on record are properly before the court after consent was executed, annexed as MNN-4; otherwise, they were ready to offer security once a stay is granted to preserve the property.
16. The applicants depose that they have moved to court on time, and it is in the interest of justice to grant the reliefs sought. The applicants depose that though a decree has been extracted, the title deed has not been cancelled, it is still in possession of the suit property, leave to properly be on record was granted as per MNN-4(a) and (b), they have been on the suit land since 2002 where immense developments have been undertaken as per photographs attached as annexure MNN-5(a), (b) and (c).
17. Further, the applicants depose that the developments were undertaken through a financial facility where there is a subsisting charge over the suit property, which they service by way of rental income collected therein as per the certificate of title, certified copy of the green card, and bank statements attached as annexure MNN-6(a), (b), and (c).
18. The applicants depose that if a stay is not granted, the loan will not be serviced and the suit property will be exposed to public auction, causing them to suffer substantial loss that may not be compensated by way of damages. The applicants depose that, though the judgment ordered the transfer of the suit land to the affected party, there is a high likelihood that the suit property will change hands to third parties, hence, the substratum of the intended appeal will disappear, rendering the appeal nugatory.
19. The applicants depose that there are subsisting lease agreements between the 6<sup>th</sup> defendant's tenants in occupation of the suit premises, and if a stay is not granted, the 7<sup>th</sup> applicant will be subjected to litigation on breach of contract, causing them substantial loss. The leases are annexed as MNN-7.
20. Further, the applicants depose that out of over 100 tenants in occupation, the affected party has purportedly executed lease agreements with only 5 tenants purporting to take possession of the suit premises as per annexed copies marked MNN-8.
21. The applicants depose that the affected party has through its agents, servants or employees interfered with quiet possession by threatening tenants with immediate eviction if they refuse to sign lease agreements with the affected party as per annexure MNN-9(a) and (b), which are attempts of



- misleading the general public that it is the registered owner of the suit property, with a view of extorting money from them and purporting to execute lease agreements with them.
22. The applicants depose that the conduct of the affected party has caused panic and confusion among the tenants in occupation of the suit property, and if an order of injunction or stay is not granted, the tenants will suffer irreparable damage.
  23. The two applications have been opposed by a replying affidavit sworn on 4/7/2025 by Pascal Wafula. It is deposed that the 1<sup>st</sup> application was filed before the law firm now on record came on record by a notice of change of advocates dated 3/7/2025, based on a purported notice of appeal filed by the 6<sup>th</sup> and 7<sup>th</sup> defendants through a law firm that was improperly on record, hence the application is incurably defective and incompetent.
  24. The respondent deposes that the purported amended notice of appeal by itself is defective, incompetent, and lacks legal basis under Rule 86 of the Court of Appeal Rules. The respondent deposes that the applicants have not demonstrated sufficient cause and substantial loss to deserve the orders sought.
  25. The respondent deposes that rent from the suit premises is capable of being refunded by the affected party, since it has sufficient assets and means with which it can compensate the applicants, if they were to succeed on appeal. The respondent deposes that the affected party has already peacefully re-entered the suit premises and taken possession, and has effectively exercised control over the property by deploying servants, who have caused some of the occupants of the premises to execute lease agreements with it.
  26. The respondent deposes that the 6<sup>th</sup> and 7<sup>th</sup> defendants' applications are filed out of mere panic, as evidenced by the grossly misleading letters written from the applicants' advocates to the said occupiers, purporting to supersede the decree of the court annexed as PW1-(a) and (b).
  27. The respondent deposes that on 23/6/2025, he accompanied the chairman of the affected party's board of directors and some scores of shareholders of the affected party, to re-enter the premises peacefully, who toured all the shop stalls and offices, including that of the 7<sup>th</sup> defendant, during which Mr. Manasseh Nyaga Njenga instructed his son to agree with them on a date for a smooth handover.
  28. Further, the respondent deposes that majority of the occupants of the suit premises were happy that the affected party had allowed them the freedom to elect to become its tenants as per the notice attached as PW-2, especially the stalls occupiers who have no tenancy agreements but have been paying rent to the 7<sup>th</sup> defendant or Mr. Njenga, as per annexed receipts marked PW3-(a) and (b), in an attempt to evade payment of government taxes and or with a view to perpetuate tax fraud.
  29. The respondent deposes that the application for stay is meant to allow the 7<sup>th</sup> defendant and Mr. Njenga to continue collecting rent to repay the loan, yet they are no longer bona fide owners of the suit premises, capable of continuing to manage or control it.
  30. The respondent deposes that the tenants are happy to continue being tenants of the affected party; they had warmly welcomed the judgment and were in the process of sourcing money to pay as security deposits.
  31. The respondent deposes that many tenants between 23<sup>rd</sup> and 30<sup>th</sup> June, 2025, positively responded to the notice and assured compliance between 1<sup>st</sup> - 15<sup>th</sup> July, 2025, by signing the lease agreements and paying the deposits as per annexures marked PW-4 (a) – (h), respectively.



32. The respondent deposes that to grant a stay would allow the 7<sup>th</sup> defendant and Mr. Njenga to continue enriching themselves unjustly, at the expense of the affected party, yet most tenants have already become tenants of the affected party by executing lease agreements. The respondent deposes that the decree has already been registered on 3/7/2025, as per annexure PW-5, as a way of executing it.
33. Similarly, the respondent deposes that the contents of paragraph 9 of the supporting affidavit amount to perjury, given this earlier evidence of the deponent as DW4 on paragraph 28 of the judgment that he bought the shares on 7/7/2011 and on 30/11/2021 paid Kshs. 80,000,000/=, as per annexure marked PW-6.
34. The respondent deposes that neither the 6<sup>th</sup> defendant nor the 7<sup>th</sup> defendant ever made any constructions, developments, or improvements on the suit land; otherwise, annexures MNN-5(a), (b), (c), and (d) were misleading.
35. The respondent deposes that the existence of a legal charge is not a good reason to grant a stay of execution to enable the applicants to continue to reap income from the property to service the loan contrary to the judgment; otherwise, the 7<sup>th</sup> defendant should furnish fresh security for the loan with the M-Oriental Bank Ltd.
36. The respondent deposes that a board resolution authorizing Manasseh Nyaga Njenga to lodge the appeal or swear the supporting affidavit is lacking.
37. Again, the respondent deposes that the applicants and their advocates on record are guilty of forcible detainer of the suit property, for purporting to suspend the decree through illegal and misleading communication to the tenants, by letters dated 23/6/2025 and 3/7/2025, asserting ownership and the right to possess and collect rent.
38. Further, the respondent deposes that the shareholder members of the affected party have waited long for justice, and therefore, stay orders should not issue, more so when the orders sought have been overtaken by events as soon as tenants shifted to the affected party. The plaintiff/respondent deposes that the affected party should be accorded an opportunity to salvage its affairs concerning the suit property and to enjoy the fruits of its judgment.
39. The applicants rely on written submissions dated 2/7/2025 and 16/7/2025. Reliance is placed on Stanley Kagehe Kinyanjui -vs- Tony Keter Civil Appeal No. 31 of 2012, Mukuma -vs- Abuoga [1988] eKLR, Roman Gabevi Kerario -vs- Robert Nyaitoti Masero [2025] KEELC, William N. Anyenda -vs- Enoch Bulimo & Others [2024] KEELC, RWW -vs- EKW [2019] eKLR, James Wangalwa & another -vs- Agnes Naliaka Cheseto [2012] eKLR, Focin Motorcycle Co. Ltd -vs- Ann Wambui Wangui & Another [2018] eKLR.
40. The applicant submits that the notice of appeal is not defective, as a party on appeal is at liberty to change legal representation as held in Laban & Another -vs- Francis [2024] KEELC 4593 [KLR], Municipal Council of Kisumu -vs- Gulf Fabricators Ltd & Another Kisumu Civil Appl. No. E103 of 2023, Oscar Githinji Mburu -vs- Faith Githogo & Another Civil Appl. No. 60 of 2020, Kirima & Another -vs- Mungania [2025] KEHC 7223 KLR.
41. The respondent relies on written submissions dated 5/7/2025. It is submitted that the application meets the threshold for the grant of a stay of execution set under Order 42 of the Civil Procedure Rules, and as per principles set out in RWW -vs- EKW [2019] eKLR, Revelation Mission Centre -vs- African Church of Holy Spirit [2024] KEELC 1770 [KLR], Mukuma -vs- Abuoga [1988] KLR 645, Mutithirimbi -vs- Thimangu & Another [2023] KEELC 15745 [KLR], citing with approval Charles Wahome Gethi -vs- Angela Wairimu Gethi [2008] eKLR, Reliance Bank Ltd -vs- Nor Land



- Investments Ltd [2002] 1 EA 227, Stanley Kangethe Kinyanjui -vs- Tony Keter & Others Civil Appeal No. 31 of 2012, Murwithani & Others -vs- M'Ikiara & Another [2023] KEELC 17723 [KLR], Focin Motorcycle Co. Ltd -vs- Ann Wambui Wangui (supra).
42. On a temporary injunction, the respondent submits that they are entitled to the same. Reliance is placed on Ikiugu -vs- Mpaka [2024] KEELC 5738 [KLR].
  43. It is submitted that the execution of the decree took place as per PW3. The respondent submits that the initial application is incurably defective for non-compliance with Order 9 Rule 9 of the Civil Procedure Rules. The respondent submits that the 3<sup>rd</sup> application is also defective, for it relies on an amended notice of appeal dated 1/7/2025 and seeks to expand the reliefs to undo the lawful execution of the decree.
  44. The respondent submits that there is no annexed draft memorandum of appeal to demonstrate arguable grounds of appeal or merits. The plaintiff submits that the supporting affidavit by Manasseh Nyaga Njenga on 4/7/2025 misleading and incapable of sustaining the application since he is not a party to the proceedings, and he has no board resolutions or any formal instrument to show that the 7<sup>th</sup> defendant has authorised him to swear the affidavit on its behalf, hence lacking locus stand to speak on behalf of the 7<sup>th</sup> defendant.
  45. The plaintiff respondent that the affidavit is riddled with falsehood, it seeks to shield the deponent's personal interests and not those of the 6<sup>th</sup> and 7<sup>th</sup> defendants, it is full of perjury in view of his evidence on oath during the trial, and the deponent is estopped in law from reneging on his earlier evidence on oath.
  46. Further, the respondent submits that the purported further affidavit, sworn on 2/7/2025, to the now withdrawn application dated 25/6/2025, is an ingenious strategy to cure a defective motion, where he now says that he personally purchased the property through financing. The respondent submits that the annexure MNN-6, shows that the charge and the servicing bank statements are not in his name, but the 7<sup>th</sup> defendant's, therefore, the respondent submits that it is only a designated company official who can swear to the issues of the company and not the deponent, otherwise, the deponent is misleading the court to purport to allege that he has a personal obligation to the loan.
  47. The respondent submits that the deponent is purporting to appropriate corporate rights, which have been proved by him previously collecting rent, while at the same time using the corporate veil to cover personal enrichment, yet he has no capacity, authority, credibility, or truthfulness to represent the 6<sup>th</sup> and 7<sup>th</sup> defendants.
  48. The respondent submits that despite leave to come on record, the 3<sup>rd</sup> application dated 4/7/2025 remains defective, for it is based on a defective amended notice of appeal. Reliance is placed on Isuzu EA Ltd -vs- RAD & Others [2023] KEHC 20079 [KLR] and James N. Njogu -vs- Mwaniki Macharia [2020] eKLR.
  49. The respondent submits that the application does not meet the threshold for the grant of stay orders. Reliance is placed on James Wangalwa & another -vs- Agnes Naliaka Cheseto (supra) NIC Bank Ltd -vs- Aguinas Francis Wasike & Another [2006] eKLR, Chege -vs- Gachora Civil Appeal of 265 of 2023 KEHC [1994] KLR, Satyawati -vs- Rajinder Singh & Another [2013] 9 SCC 491, Samvir Trustee Ltd -vs- Guardian Bank Ltd [2007] eKLR, KCB Ltd -vs- Tamarind Meadows Ltd & Others [2016] eKLR, Arun C. Sharma -vs- Ashana Raikundalia [2014] eKLR, Njenga -vs- Njeri & Others Civil appeal No. E125 of 2020.



50. The plaintiff respondent that the applicants have not met the threshold to be granted a temporary injunction pending appeal as set out in *Giella -vs- Cassman Brown & Co. Ltd (supra)* and *Eric V.J. Makokha & Others -vs- Lawrence Sagini & Others [1994] eKLR*.
51. The respondent submits that the application dated 4/7/2025 is an abuse of the court process, seeking to revive and relitigate a withdrawn application dated 25/6/2025 without curing its procedural and evidential defects. Reliance is placed on *Nancy Musili -vs- Joyce Mbete Katisi [2018] eKLR* and *Muchanga Investments Ltd -vs- Safaris Unlimited Africa Ltd & Others [2009] KLR 229*.
52. Coming to the 4<sup>th</sup> application, the applicant relies on written submissions dated 15/7/2025. It is submitted that the intended interested party is a secured creditor who has a proprietary and legal interest that stands to be prejudiced by the judgment should it be executed. The intended interested party submits that, even though the 6<sup>th</sup> and 7<sup>th</sup> defendants filed a statement of defence dated 28/9/2023, it was not aware of the suit until it was served with a demand letter dated 3/7/2025, as a tenant of the suit premises.
53. The intended interested party submits that it has an identifiable stake, hence it is a key player in the suit. Reliance is placed on *Esther Awour Adero -vs- CS for Basic Education & Others [2021 eKLR, [the Constitution](#) of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, and Trusted Society of Human Rights Alliance -vs- Mumo Matemu & Others [2024] eKLR*.
54. On the stay of proceedings, the intended interested party submits that it stands to suffer substantial loss since Kshs. 49,728,688.67 remain unpaid. Reliance is placed on *Mukuma -vs- Abuoga (supra)*, *Turbo Highway Eldoret Ltd -vs- Muniu [2022] KEHC 10197 [KLR] (30<sup>th</sup> June 2022)*, *Christopher Ndolo Mutuku -vs- E.C.F. Stanbic Bank Ltd [2015] eKLR*, and *Jaber Mohsen Ali & Another -vs- Priscilla Boit & Another [2014] eKLR*.
55. On re-opening of the suit, the intended interested party submits that the right to fair trial and hearing under Articles 25 and 50 of [the Constitution](#) remains unlimited and non-derogable. Reliance is placed on *James Kanyiita Nderitu & another -vs- Marios Philotas Ghikas & Another [2016] KECA 470 [KLR]* and *Onyango Oloo -vs- Attorney General [1986-89] EA 456*.
56. The issues calling for my determination are:
  1. If the application for stay of execution dated 4/7/2025 is incompetent in view of an earlier one dated 25/6/2025, which the applicant purported to withdraw after it was argued and issued with a ruling date.
  2. If the applicant has a right to withdraw an application due for ruling and file a fresh one.
  3. Whether the application for joinder of the interested party post judgment has merit.
  4. Whether the 5<sup>th</sup> application is a nullity.
57. There is no dispute that the applicants approached this court for a stay of execution on 25/6/2025 through the 1<sup>st</sup> application. The said application was certified urgent on 26/6/2025, and parties were directed to appear for an interpartes hearing on 3/7/2025. Equally, parties were directed to file and exchange both replying affidavits and written submissions. The plaintiff/respondent filed a replying affidavit and written submissions dated 28/6/2025 and 1/7/2025, respectively, raising the competence



- of the application based on Order 9 Rule 9 of the Civil Procedure Rules. The said issues were argued at the interpartes hearing on 3/6/2025, and a ruling date was issued for 17/9/2025.
58. While aware of the pending ruling, the applicants filed a notice of withdrawal of the application dated 3/7/2025, and through the 2<sup>nd</sup> application sought leave to come on record through the firm of Jason Kimani & Co. Advocates. Eventually, the applicants proceeded to file a fresh application for stay of execution dated 4/7/2025. The respondent terms the said application as incompetent and lacking merit.
  59. In *Pentagon Communication Ltd -vs- National Land Commission Civil Appeal E035 of 2022 (2025) KECA 1304 [KLR] (18<sup>TH</sup> July 2025) (Judgment)*, the court cited *Hassan Ali Joho & Another -vs- Suleiman Said Shabal & Others [2014] eKLR*, that a preliminary objection constitutes of a point of law which has been pleaded or which arises by clear complication out of pleadings and which, if argued as a preliminary objection may dispose of the suit.
  60. The plaintiff/applicant terms the initial application incurably defective in view of Order 9 Rule 9 of the Civil Procedure Rules, and which cannot be cured by a subsequent leave, obtained, withdrawal of the same midstream, the pending ruling, and the filing of a subsequent one before the ruling is delivered, which he asks to be dismissed in limine.
  61. The 1<sup>st</sup> issue is whether the law firm now representing the 6<sup>th</sup> and 7<sup>th</sup> defendants ought to have first sought leave to come on record before filing any application for stay of execution. The other issue for determination is whether, by applying for leave after the preliminary objection was raised, seeking to withdraw the 1<sup>st</sup> application midstream, the ruling on the preliminary objection, and filing a similar application, was tantamount to moving the court to remedy an illegality.
  62. In *County Executive of Kisumu -vs- County Government of Kisumu & Others Civil Appl. No. 3 of 2016 [2017] KESC 16 [KLR] Civil Appl.* In 2017, the court stated that by filing an appeal out of time before seeking an extension of time and recognition of such an appeal, it was tantamount to clothing a court with jurisdiction it did not have.
  63. Locus standi means the right to appear or be heard in a court of law. See *Alfred Njau & Others -vs- City Council of Nairobi [1983] KECA 56 [KLR]*. Order 9 Rule 9 of the Civil Procedure Rules regulates the appearance of a new law firm post judgment. The rule envisages that a new law firm shall seek and obtain leave of court before coming on record. As at the filing of the initial application dated 25/6/2025, no leave had been sought formally or informally to come on record by the law firm of Jason Kimani & Co. Advocates.
  64. Other than filing a consent dated 23/6/2025 and the notice of change dated 23/6/2025, there is no indication whether the law firm had filed a formal application for leave, and or sought the court to endorse such a consent before the notice of change of advocates was filed together with the 1<sup>st</sup> application.
  65. In *Rutongot Farm Ltd -vs- Kenya Forest Service & Others Petition 2 of 2016 [2018] KESC 27 [KLR] (19<sup>th</sup> September 2018) (Ruling)*, the court cited *Kenya Section of the International Commission of Jurists -vs- Attorney General & Others [2013] eKLR*, that an abuse of the process of the court has to do with the motives behind the guilty party's actions, coupled with a perceived attempt to maneuver the court's jurisdiction in a manner incompatible with the goals of justice.
  66. The court said that the bottom line in a case of abuse of court process is that, it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak to be beyond redemption,



and that beyond that threshold, lies an unlimited range of conduct by a party that may more clearly point to an instance of abuse of court's process.

67. In this matter, the conduct of the 6<sup>th</sup> and 7<sup>th</sup> defendants to change advocates without seeking leave of court formally in the 1<sup>st</sup> application is what the court is asked to find as an abuse of the court process. It is only after the non-compliance with Order 9 Rule 9 of the Civil Procedure Rules was raised and a ruling reserved, that the 6<sup>th</sup> and 7<sup>th</sup> defendants sought to cure the anomaly, albeit late, by seeking leave of court, withdrawing the initial application while pending for ruling, and filing a fresh one to circumvent the due process of law and the cause of justice.
68. Nothing had stopped the 6<sup>th</sup> and 7<sup>th</sup> defendants, at the earliest opportunity possible, from conceding that the law firm of Jason Kimani & Co. Advocates was improperly on record, and to seek leave of court to regularize the same. Fair play is part of the administration of justice.
69. The attempt to circumvent the law and, at the same time, to cure the anomaly while there is a pending ruling after interpartes hearing does not augur very well with the cause of justice. The upshot is that I find the two applications by the 6<sup>th</sup> and 7<sup>th</sup> respondents incompetent. They are hereby struck out with costs.
70. As to joinder of the intended interested party, setting aside of the judgment, proceedings, and the resultant orders or decrees, the crux of the intended interested party's application is that it extended a loan to the 7<sup>th</sup> defendant, for Kshs. 130,000,000/=, who offered the suit premises as collateral, and that the implications of the judgment herein will be profound, especially after it was condemned unheard, contrary to the right to a fair hearing or trial.
71. It is trite law that the directors of a company have continuing powers and duties, such as the preparation of annual accounts, the auditing of those accounts, calling for statutory meetings of the shareholders, maintaining the share register, and lodging returns. See *Macharia & Another -vs- KCB & Others Appl. No. 2 of 2011 [2012] KESC 8 [KLR] (23<sup>rd</sup> October 2012) (Ruling)*.
72. Jurisdiction is everything. It flows from either *the Constitution* or statute. Without jurisdiction, a court has to put down its tools. See *Motor Vessel Lillian 'S' -vs- Caltex Oil (K) Ltd [1989] KLR 1*.
73. The intended interested party urges the court to find that it has a stake in the proceedings, hence should have been joined as a necessary participant in the suit in the first instance. The parameters to consider in joining as an interested party were discussed in *Muruatetu & Another -vs- Republic [2016] KESC 12 [KLR] (CIV) (28<sup>th</sup> January 2016) (Ruling)*. An interested party refers to one who will be affected by the decision of the court, either way, and who feels that his interest will not be well articulated unless he appears in the suit to champion his cause.
74. The court said that enjoinder is not a matter of right, but a discretionary power of the court to be exercised where the following elements have been met:
  1. The interest or stake must be set.
  2. It must be identifiable and proximate enough
  3. Prejudice to be suffered must be demonstrated.
  4. The prejudice must not be remote.
  5. The party must set out its case that it intends to make before the court once allowed to join the suit.



75. Litigation means a legal action for the enforcement of a right or the seeking of a remedy. The intended interested party states that its stake arose during the course of this suit, when the 7<sup>th</sup> defendant offered the suit premises as collateral, which now has an outstanding loan balance of Kshs. 49,728.688.67.
76. In *Co-operative Bank of (K) Ltd -vs- Patrick Kangethe Njuguna & Others* [2017] KLR, the court held that the creation of such a relationship has nothing to do with the use of land, as such a relationship is limited to ensuring that the chargee is assured of the repayment of the money it has advanced to the chargor. The court held that Section 12 of the *Environment and Land Court Act* ought to be understood in the context of, the court's dealing with disputes connected to 'use' of land, hence contracts of chargee and chargor fall outside the Environment and Land Court.
77. The intended interested party has rightly admitted that it advanced the loan during the subsistence of this suit. The onus under the doctrine of *lis pendens* was on the interested party to conduct due diligence, as well as the borrower to make full disclosure to the lender.
78. In *Cove Investments Ltd -vs- Rono & Others Civil Appeal Appl. E051 of 2025* [2025] KECA 1089 [KLR] (20<sup>th</sup> June 2025) (Ruling), the court said that the effect of the doctrine of *lis pendens* is that no person may remove outside the power of the court or deal with the subject property in accordance with the law to render the proceedings infructuous. The doctrine bars the transfer or alienation of property in dispute during the pendency of the suit without the court's authority; otherwise, it could defeat the very course of such proceedings. See *Mawji -vs- United States International University & Another* [1976] KLR 185.
79. Section 106 of the *Land Registration Act* preserves the rights and liabilities arising from the repealed Indian Transfer of Property Act as held in *Naftali Ruthi Kinyua -vs- Patrick Thuita Gachure & Another* [2015] eKLR. In *Cove Investments Ltd -vs- Rono* (supra), the court said that transfers of property in litigation during the pendency of the suit are not only void, but rather are subject to the outcome of the suit and that whoever receives the transfer even if it were not party to the original suit was bound by the decree or judgment, otherwise to state otherwise, would undermine judicial process and can lead to miscarriage of justice.
80. The borrower in this case has been a party to this suit since acquiring shares. The 6<sup>th</sup> and 7<sup>th</sup> defendants sold him the shares and have been parties to this suit right from its inception.
81. The two opted to deal with the suit property adversely while the suit was pending. Such behavior was a tactic to derail or obstruct the legitimate resolution of the case, essentially using the court's process for an improper purpose. As held in *Cove Investments Ltd -vs- Rono* (supra), courts are not powerless when it comes to dealing with such conduct by a person who comes before it. It is a power incidental and necessary to the exercise of substantive justice, where a party's conduct seeks to bring the administration of justice into disrepute or where the conduct pollutes the pure stream of justice.
82. The borrower testified before this court as DW4. He did not bring to the attention of the court that he had offered the subject property as security to the intended interested party. He did not plead in the alternative. He willfully did this to frustrate the judicial process. He did not seek the leave of the court to do so. By continuing with the court process without disclosing the status of the suit property, he was simply trying to manipulate the court into a situation where it could not fully and fairly resolve the issue before it or enforce its decree See *Hunter -vs- Chief Constable of the West Midland Police* [1982] AC 529 and *Kivindu & Another -vs- Musau & Others* [2020] KECA 1015 [KLR] (28<sup>th</sup> July 2023) (Judgment).



83. Courts have held that even if an interested party is joined, the primary issues for determination remain those of the principal parties. See *Communications Commission of Kenya & Others -vs- Royal Media Services and Mohamed Fugicha -vs- Methodist Church in Kenya (Suing Through its Registered Trustees) & 3 others* [2016] KECA 273 (KLR). The intended defence or claim by the intended interested party has not been annexed to the supporting affidavit. The alleged triable issue(s) for determination if the interested party is allowed to join the suit have not been disclosed. See *Patel -vs- East African Cargo Handling Services Ltd* (1974) E.A. 75.
84. The court, as indicated above, lacks jurisdiction to entertain the claim based purely on the lender and borrower relationship. The intended interested party and the borrower dealt with the suit property adversely from the 6<sup>th</sup> and 7<sup>th</sup> defendants during the pendency of the suit. They are bound by the doctrine of *lis pendens*.
85. The upshot is that I find the application for joinder, review, setting aside, and commencement of the suit *de novo* lacking merit. It is dismissed with no order as to costs.
86. As to the 5<sup>th</sup> application, it is filed by non-parties to the suit seeking this court also to exercise jurisdiction it does not possess on company law matters. The best forum for that is the High Court. The application is struck out with no order as to costs.
87. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025.**

In the presence of:

Court Assistant – Dennis

Kraido for respondents present

Nabwile for the interested party present

Miss Mukoya for the 3<sup>rd</sup> and 4<sup>th</sup> defendants present

Muhanda for the 1<sup>st</sup> and 5<sup>th</sup> defendants present

Miss Mwemeke for the 6<sup>th</sup> and 7<sup>th</sup> defendants present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

