



REPUBLIC OF KENYA



**Nanga Kihoto (Naivasha) Limited v Kariuki & 2 others (Insolvency Cause E018 of 2023)
[2025] KEHC 7225 (KLR) (Commercial and Tax) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E018 OF 2023**

PM MULWA, J

MAY 22, 2025

BETWEEN

NANGA KIHOTO (NAIVASHA) LIMITED APPLICANT

AND

KAMAU KARIUKI 1ST RESPONDENT

HARUN KIMANI 2ND RESPONDENT

DANIEL MWANGI KANGETHE 3RD RESPONDENT

RULING

1. Before me is a notice of motion dated 14th August 2024 brought pursuant to provisions of Section 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act* (Cap 21) and Order 40 rule 7, Order 51 rules 1 and 15 of the *Civil Procedure Rules* and Section 427 (3 and 4) of the *Insolvency Act* 2015.
2. The application seeks orders to vacate or set aside the inhibition orders issued on 3rd May 2024 and that the Petition No. E018 of 2023 be struck out.
3. The grounds for the application were set out on the face of the motion.
4. In response, a replying affidavit by Pharis Mburu Ngugi sworn on 31st October 2024 was filed.
5. The petitioners filed a further affidavit sworn on 4th February 2025.
6. I have considered the application, the affidavit filed in opposition, the submissions filed by the rival parties, the law and case law relied on.



7. Order 40 rule 7 of the *Civil Procedure Rules* provides:
- “An order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”
8. It is trite that in setting aside orders, the court must be satisfied of one of two things, namely, either that the respondent was not properly served with summons or that the respondent failed to appear in court at the hearing due to sufficient cause. (See – *Philip Ongom, Capt v Catherine Nyero Owota* - Civil Appeal No. 14 of 2001 [2003] UGSC 16 (20 March 2003).
9. In the instant application, the applicants have argued that the orders should be set aside as they were not served with the application dated 10th April 2024.
10. A party’s right to be heard is a constitutional right. Courts in the interest of justice must ensure that a party’s right to a fair trial, which emanates from the principle of natural justice, is always protected. The Court of Appeal in *Babs Security Services Ltd v Mwarua Yawa Nzao & 19 others* [2019] eKLR cited with approval the case by the Supreme Court of India, *Sangram Singh v Election Tribunal, Kotah*, AIR 1955 SC 664, at 711 where it was held as follows:
- “[T]here must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”
11. From the record before me, and upon perusal of the same, no affidavit of service has been filed by the applicant/petitioners to establish process of service in compliance with applicable law. I therefore find that the applicant herein was not served with the application dated 10th April 2024.
12. Turning to the prayer to strike out the Petition, I note that courts have taken the position that they will not strike out pleadings except where there is a clear case of abuse of the court process. In *Brahmbhatt v Dynamics Engineering* (1986) KLR 133, the Court of Appeal expressed the view that:
- “In an application to strike out a winding up petition, the Court should consider whether on evidence, it is plain and obvious case for striking out and whether the petition was bound to fail.”
13. In the present case, I have considered the grounds raised by the applicant. At this interlocutory stage, it is not possible to determine the issues raised by the applicant as such a decision can only be made upon hearing the merits of the petition. My finding is that the court ought to act cautiously and to consider all the facts of the case which can only be done by giving a chance to the petitioners to litigate and ventilate their case.
14. Thus, I am not satisfied that the applicant has made out a case for the striking out of the petition.
15. To close, this court exists to serve substantive justice for all parties to a dispute before it. Both parties deserve justice and their legitimate expectation is that they will each be allowed a proper opportunity to advance their respective cases upon the merits of the matter. This is the fundamental principle of natural justice. (See – *Wachira Karani v Bildad Wachira* Civil Suit No. 101 of 2011 [2016] eKLR.
16. Based on the foregoing, and in the interest of justice, the application dated 14th August 2024 partly succeeds as follows;



- i. The orders of this court made on 18th April 2024 are hereby set aside.
- ii. Interim orders for inhibition be and are hereby issued to land parcels LR no 5658/1 and No. 10423/2 belonging Nanga Kihoto (Naivasha) Limited pending the hearing and determination of the application dated 10th April 2024.
- iii. Leave is granted to the applicant to respond to the application dated 10th April 2024 within 7 days.
- iv. Costs shall be in the cause.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF MAY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Wainaina for Petitioner

Mr. Njanja for Applicant/Company

Mr. Mukunya, Mr. Muchiri & Mr. Mwangi for Interested Parties

Court Assistant: Carlos

