



**Republic v Chief Land Registrar & 2 others; Mbinda & another (Interested Parties); Fadli Construction & Transport Ltd (Exparte Applicant) (Application E116 of 2024) [2025] KEHC 8305 (KLR) (Civ) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8305 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**APPLICATION E116 OF 2024**

**JM CHIGITI, J**

**JUNE 12, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR S.C NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**THE PS MINISTRY OF LANDS ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**ALIDAN MAITHYA MBINDA ..... INTERESTED PARTY**

**JOHN MUTERU GATHUTHI KABIRU ..... INTERESTED PARTY**

**AND**

**FADLI CONSTRUCTION & TRANSPORT LTD ..... EXPARTE APPLICANT**

**RULING**

1. The application before this Court is the Interested Party’s Notice of Motion dated 12<sup>th</sup> September 2024 brought under Article 159 (2) (b) & (d) of *the Constitution* of Kenya 2010, Order 17 rule 2 (4), 53 rule 3, 51 rule 1 of the Civil Procedure Rules (2010), Section 1A, JB and 3A of the *Civil Procedure Act*, CAP21. It seeks the following orders:

1. That this application be certified as urgent.



2. That this Honourable Court dismisses the present suit for want of compliance with the orders issued on 4.06.2024, 28. 11.2024 and 13.02.2025.
3. That costs of this application and the costs of this suit be borne by the Ex-Parte Applicant.
2. It the Applicant's case that on 4.06.2024 this Honourable Court, granted the Ex parte applicant leave to seek judicial review reliefs with directions that it files its substantive motion within 14 days and directions for the filing or replies were given including submissions and a mention on 17.07.2024 to fix a judgment date.
3. The Substantive motion was due for filing and service on 18.06.2024 but was not filed.
4. The Interested Parties subsequently filed a replying Affidavit after which they were served with an application to amend the substantive motion and statement of facts and the verifying Affidavit dated 24.07.2024.
5. This Honorable court heard the application and delivered its ruling on 28.11.2024 allowing the application. The Ex-Parte Applicant was granted fourteen (14) days to file the amended pleadings. Further directions were issued on the filing of replies and submissions.
6. It is argued that the Ex-Parte Applicant failed to comply with these directions and sought more time to comply and this Honourable Court exercised its discretion and allowed the Ex-parte Applicant fourteen (14) more days to file
7. According to the Applicant, as at the date of filing the instant application, with sixty-nine (69) days having lapsed the Ex- Parte Applicant is yet to file it's substantive notice of motion while continues to enjoy the stay orders issued on 4.06.2024 which orders stalled an administrative process intended to cancel an illegal and fraudulent title.
8. The Applicant/Interested Parties posit that the fragrant non-compliance has occasioned unwarranted delay and subjected the Applicants to unnecessary costs, anxiety, and prejudice.
9. It is their submission that it is trite that court orders are not issued in vain. Parties are bound to obey them. Non-compliance undermines the authority of the court and offends the ends of justice.
10. It is contended that where a party responsible is required to comply with the orders of the court but fails to do so, sufficient reasons for the lack of compliance should be given and failure to do so, the proceedings should be terminated for want of compliance notwithstanding the overriding objectives under Article 159 of *the Constitution*.
15. Reliance is placed in the case of Republic v Cabinet Secretary, Information Communication & Technology & Another Exparte Celestine Okuta & Others [2016] Justice Odunga in dealing with a similar case, stated as follows

“...In my view Court orders are serious decisions that can only be excused based on material placed before the Court and cannot be ignored on the ground that they are technicalities. In my view the law is that technicalities of procedure ought not to automatically lead to termination of proceedings and that the Court must have the power to save the same where material exist before the Court to justify non-compliance. However, where there is none and where in fact the applicant adopts an incorrect position of the law to justify his inaction, such omission cannot be excused”



11. Reliance is also placed in the case of *Governors Ballon Safaris Ltd v Skyskip Company Limited & another Civil case No. 461 of 2008* and *Reuben Nzuve Mwangangi v Mukene Musau & another* [2022] eKLR.

**The Ex-Parte Applicant's case;**

12. The Ex- Parte applicant in response to the Applicants/Interested Parties Notice of Motion 23<sup>rd</sup> April, 2025 filed a Replying Affidavit by Adan Gure Disow sworn on 28<sup>th</sup> April, 2025 who argues that pursuant to being granted of leave to amend the substantive motion and file a supplementary affidavit, he was hospitalized at the Nairobi South Hospital and later referred to BLK Max Hospital in New Delhi, India after which he travelled on 15<sup>th</sup> January 2025 and returned on 23<sup>rd</sup> April 2025.
13. It is his case that his counsel updated him on the progress of the instant suit including informing him of being in breach of this Court's directions.
14. He informs the court that he was also made aware of the instant application seeking to have the matter dismissed.
15. It is further his case that since he has now complied with the court's directions the instant application has been overtaken by events and the exParte Applicant is serious in prosecuting its case as it risks losing its ownership over the revoked titles through collusion between the Interested parties and the Respondent.
16. It is posted that the Interested parties are not suffering any prejudice as the Ex-parte Applicant's certificates of Titles have been revoked vide illegal Gazette Notice Vol.CXXVI No.81 No. 7126 dated 7<sup>th</sup> June 2024.
17. It is the Ex- Parte applicant's case that it is interest of justice that the Application dated 23rd April 2025 be dismissed and the directions for disposal of the amended substantive Motion be issued by this Honourable Court.
18. It is their submission that the jurisdiction to strike out pleadings being a discretionary one, must at all times be exercised sparingly.
19. They place reliance in the case of *Yaya Towers Limited v Trade Bank Limited (In Liquidation)* [2000] eKLR and *Co-operative Merchant Bank Ltd. v George Fredrick Wekesa (Civil Appeal No. 54 of 1999)* where the Court of Appeal held that;  

“Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant's defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent's action or which is otherwise an abuse of the process of the court”
20. Reliance is also placed in *D.T. Dobie & Company Limited v Joseph Mbaria Muchina & Another* [1980] eKLR, and *Uchumi Supermarkets Limited & another v Sidhi Investments Limited* [2019] eKLR, where the Court of Appeal emphasized that:

“The striking out of a pleading, has time and time again been described as draconian and an order of last resort. A court will therefore only resort to it, in its discretion, where it has properly addressed itself on the principles enumerated under Order VI Rule 13(1) (b) and



(d) of the Civil Procedure Rules (now repealed), and is satisfied upon assessment of the material before it that any of the grounds enumerated exists or do not exist”

**Analysis and determination;**

21. Upon perusing the Application, the supporting Affidavit, the Response and supporting documents, the rival submissions and authorities cited by counsel the following are the issues for determination;
  - i. Whether or not the applicant has made out the case for the grant of the order sought.
  - ii. Who shall bear the costs?

**Whether or not the applicant has made out the case for the grant of the order sought.**

22. The Exparte Applicant was aware that this court issued directions which he admits he did not comply with.
23. The Applicants case is that pursuant to being granted leave to amend the substantive motion and file a supplementary affidavit, he was hospitalized at the Nairobi South Hospital and later referred to BLK Max Hospital in New Delhi, India after which he travelled on 15<sup>th</sup> January 2025 and returned on 23<sup>rd</sup> April 2025.
24. He argues that his counsel on record updated him on the progress of the instant suit including informing him of being in breach of this Honourable Court’s directions.
25. According to him, given that he has now complied with the court’s directions the instant application has been overtaken by events. It is clear from the exparte Applicants case that his advocate constantly kept him updated on the breach of the court orders.
26. The court was not informed of the foregoing state of affairs. The other parties in the suit were also left in the dark.
27. In the case of *Okoit & 3 others v Cabinet Secretary for the National Treasury and Planning & 10 others (Application E029 of 2023)* [2023] KESC 69 (KLR) (8 September 2023) it was held that;

“...taking all the above matters into account, we must state that, this court has on several instances underscored the importance of compliance with its orders, rules and practice directions. With regard to filing and service of documents within the requisite time, the court has in a long line of decisions stressed that it will not countenance breaches of timelines set by the rules or by the court, and affirmed the general constitutional principle that justice shall not be delayed. See *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others*, SC Petition No 5 of 2016; [2018] eKLR and *Kenya Railways Corporation & 2 others v Okoit & 3 others*, SC Petition (Application) No 13 of 2020 & Petition 18 of 2020 (Consolidated); [2022] KESC 68 (KLR). It goes without saying that compliance with court orders goes to the root of the rule of law as well as the dignity of any court.”
28. In *Duale MaryAnGurre v Amina Mohamed Mahamed & Another* [2014] eKLR the court held that “litigation does not belong to the advocate but to the client”.
29. In *Nicholas Kiptoo Korir Salat v Independent Electoral and Boundaries Commission & 6 Others* [2013] eKLR the court highlighted the need to respect rules and timelines.



30. In the instant suit, the Exparte applicant simply ignored the court's direction to its peril offending the dignity of the court.

**Determination;**

31. It is this court's finding and I so hold that the application has merit.

**Order;**

1. The application is allowed.
2. This suit is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS DAY 12<sup>TH</sup> OF JUNE, 2025.**

.....

**J.M. CHIGITI (SC)**

**JUDGE**

