



**Republic v Mutunga & 3 others; Bandari Investment Company Ltd
(Interested Party); Chigamba & another (Ex parte) (Application
7 of 2017) [2025] KEHC 8565 (KLR) (12 June 2025) (Directions)**

Neutral citation: [2025] KEHC 8565 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
APPLICATION 7 OF 2017
J NGAAH, J
JUNE 12, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**HON. E. MUTUNGA, SENIOR RESIDENT MAGISTRATE,
MOMBASA 1ST RESPONDENT**

HON. ATTORNEY GENERAL 2ND RESPONDENT

**OFFICER COMMANDING POLICE DIVISION, KISAUNI MOMBASA 3RD
RESPONDENT**

**OFFICER COMMANDING STATION, KIEMBENI POLICE
STATION 4TH RESPONDENT**

AND

BANDARI INVESTMENT COMPANY LTD INTERESTED PARTY

AND

DALU CHIGAMBA EX PARTE

EPHRAIM KITSAO BAYA (DECEASED) EX PARTE



DIRECTIONS

1. By a motion dated 25 November 2024, the applicants have asked this Honourable Court mainly for the order that:

“The interested party's application dated Sept., 24, 2024 is struck-out with costs on the higher scale, and an order for payment of interest at 14 per centum on the costs ultimately taxed in these JR proceedings w.e.f 18.07.2017...”

2. The interested party's application dated September 24, 2024 to which reference has been made in the above prayer seeks orders which have been couched as follows:

“2. That honourable court be pleased to issue temporary stay of taxation of the Ex Parte Applicants' Party & Party Bill of Costs dated 7th June, 2018 which is now scheduled for mention on 3rd October, 2024 pending the hearing and determination of this application.

3. That the honourable court be pleased to grant a stay of taxation of the Bill of costs dated 7th June, 2018 pending hearing & determination of High Court Civil Case No E007 of 2024 Bandari Investments Company Limited v Egunza George Gaylord T/A George Egunza & Associates Advocates & another.

4. That honourable court do (sic) vary its Ruling delivered on 18th October, 2017 by setting aside the said ruling, the entire proceedings herein, the resultant taxation of ex parte Applicants' Party & Party Bill of Costs dated 7th June, 2018 and dismiss the instant JR Misc. Application No 7 of 2017 ex parte Applicants v Hon. E. Mutunga (SRM), AG, OCPD & OCS and the Interested Party (herein the "Applicant") for being nullity ab initio.”

3. On 21 January 2025 Ms. Mosiara, the learned counsel for the interested party, informed the court of the existence of the two applications and further submitted as follows:

“The interested party filed grounds of opposition to the application dated 24 November 2024. It also filed a preliminary objection. I urge the court to consider the preliminary objection first.”

4. Proceeding on the presumption that indeed a preliminary objection had been filed, the court scheduled the hearing of the preliminary objection on 10 March 2025.

5. On 10 March 2025, Ms. Vanani, the learned counsel for the interested party, informed the court that Ms. Mosiara, who apparently is seized of the interested party's brief, was unwell and, therefore, not ready to proceed.

6. Mr. Kimani, the learned counsel for the ex parte applicants informed the court that he had not been served with any preliminary objection but Ms. Vanani, insisted that the preliminary objection had been served. The learned counsel submitted that:

“The preliminary objection was served and Mr. Kimani has even responded by way of a list of authorities.”



7. The court, therefore, set for the hearing of the preliminary objection on 27 May 2025. On the material date, Ms. Mosiara purportedly argued the preliminary objection while Mr. Kimani opposed it.
8. When I retreated to write the ruling, I could not find the purported preliminary objection either on the court tracking system portal or in the physical court file. All I found were the interested party's grounds of opposition dated 14 January 2025 which on a quick perusal are the same grounds that were purportedly urged as the grounds for preliminary objection on 27 May 2025. For the avoidance of doubt, the grounds had been introduced as follows:

“Take notice that the Interested Party herein will oppose the Ex parte applicant's application by way of Notice of Motion dated 24th November 2024 and supported by the affidavit in support sworn by Stephen (a.k.a Suleiman) Macharia Kimani on the 24th day of November 2024, on the following grounds:”
9. I had taken the interested party's counsel at their word that indeed a preliminary objection existed. Although I could not locate it readily in the physical file at the time when it was purportedly urged, I assumed that it could be in the case tracking system portal where I could retrieve it when writing the ruling.
10. As we embrace technology and the paperless culture, I must confess that I find it more practical and less convenient in finding and referencing documents in a physical file than doing so on the case tracking system, particularly in the course of court proceedings. It is not uncommon for the system to be found to be slow, taking so much time to open, or being down completely, at such critical moments as when the court is conducting a hearing, whether of an application or a full trial.
11. This, in turn not only slows the hearing of a matter but it also makes it difficult to follow a litigant's case or argument whenever a reference is made to any pleading, evidence or other document that can only be accessed on the case tracking system portal. Going forward, it may be necessary for counsel, and litigants generally, to submit to court a hard copy version of the documents they file on the case tracking system portal not necessarily for the courts' ease of reference but as a back up measure against such unforeseen eventualities as a systems failure or breakdown which, no doubt, compromises effective hearing and disposal of cases.
12. Turning back to the case at hand, out of the high esteem with which I hold counsel, and being officers of this Honourable Court, it never occurred to me that the learned counsel for the interested party could effectively be sending me on a wild goose chase when they insisted that a preliminary objection had been filed when, in fact, it hadn't. The ultimate result of this infraction on the part of the counsel is that I ended up hearing a “preliminary objection” that never existed in the first place. This is regrettable.
13. Be that is it may, I direct that, if they have not done so, parties file and exchange written submissions on the interested party's application dated 24 September 2024 and the ex parte applicant's application dated 24 November 2025. Highlighting of submissions shall be on 9 July 2025. It is so ordered.

SIGNED, DATED AND POSTED ON CTS ON 12 JUNE 2025

NGAAH JAIRUS

JUDGE

