



REPUBLIC OF KENYA



KENYA LAW
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Green Planet Initiative 2050 Foundation v Earthbanc & 7 others (Commercial Case E004 of 2025) [2025] KEHC 13140 (KLR) (24 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
COMMERCIAL CASE E004 OF 2025
RN NYAKUNDI & DB NYAKUNDI, JJ
SEPTEMBER 24, 2025**

BETWEEN

GREEN PLANET INITIATIVE 2050 FOUNDATION PLAINTIFF

AND

**EARTHBANC 1ST DEFENDANT
EARTHBANC 2ND DEFENDANT
EARTHTREE COMPANY LIMITED 3RD DEFENDANT
EARTHTREE COMPANY LIMITED 4TH DEFENDANT
KHANNA RISHABH 5TH DEFENDANT
KHANNA RISHABH 6TH DEFENDANT
JOSEPH KARANJA MURATHI 7TH DEFENDANT
JOSEPH KARANJA MURATHI 8TH DEFENDANT**

RULING

1. The plaintiff moved this court by way of a plaint on 21st May 2025 against the defendant. Simultaneous with the plaint was a notice of motion dated 21st May 2025 in which the following orders were applied for;
 - a. Spent
 - b. Pending the hearing and determination of this suit, an interim injunction be issued restraining the 2nd Defendant, its agents or assigns, from presenting itself as the project implementer under the Regeneration of Kenya Project.



- c. The Defendants be restrained from accessing, managing or representing the project assets, goodwill, donor funds or contractual benefits formerly assigned to the Plaintiff.
 - d. Pending the hearing and determination of this Application, this Honorable Court be pleased to issue a preservation order restraining the 1st and 2nd Respondents, their agents, servants, employees or any other person acting on their behalf from withdrawing, transferring, expending or in any way dealing with the donor funds received or in their custody without the leave of this Honorable Court.
 - e. Pending the hearing and determination of this application, this Honorable Court be pleased to order the 1st and 2nd Respondents to deposit all donor funds in dispute into an escrow account to be jointly managed by the advocates for the parties or such other neutral custodian as the court may deem fit.
 - f. This Honorable Court be pleased to issue an interim injunction and/or conservatory orders restraining the Defendants conducting any actions that would result in the alienation or depletion of the disputed funds pending the hearing and determination of the petition.
 - g. The costs of this Application be provided for.
2. This court considered the notice of motion and pronounced itself as follows;
- a. That pending the hearing and determination of this suit all parties are restrained from taking any action that would dissipate, alienate or diminish the subject matter of this dispute.
 - b. The disputed donor funds shall be deposited into an interest-bearing escrow account with a reputable financial institution recognized by the Central Bank of Kenya to be jointly managed by the advocates for the parties, with withdrawals requiring mutual consent or leave of this Court.
 - c. That this order given on the interim basis is not meant to render the joint venture between the parties voidable.
 - d. The 2nd Defendant is restrained from representing itself as having exclusive authority over the Regeneration Kenya Project pending determination of the competing claims.
 - e. Both parties are restrained from taking any action that would render the eventual judgment of this Court nugatory or unenforceable.
 - f. This matter shall proceed for pre-trial hearing on 24.6.2025 given the substantial commercial interests at stake.
 - g. Costs of this application shall be in the cause.
3. This court did not stop there another application was filed for review which the court also determined on the merit with the following orders in situ;
- a. Order 50(b) of this Court's Ruling dated 13th June 2025 is hereby varied to read as follows:
 "The Defendants shall, within fourteen (14) days of this order, deposit the sum of Kenya Shillings Six Million Seven Hundred Thousand (Kshs. 6,700,000.00) into an interest-bearing escrow account with a reputable financial institution recognized by the Central Bank of Kenya, to be jointly managed by the advocates for the parties, with withdrawals requiring mutual consent or leave of this Court." Or in the alternative in a reputable financial institution with signatories from the Plaintiff/Applicant and the Respondents.



- b. All other orders contained in the Ruling of 13th June 2025 remain in full force and effect.
 - c. In the interest of expeditious disposal of this matter and to avoid further procedural disputes, the following strict case management directions are hereby issued.
 - d. That the suit so filed should be expedited for hearing as a fast track
 - e. That the Respondents have 5 days to file the necessary disclosures and pleadings touching on the main suit.
 - f. That a pre-trial conference under Order 11 of the CPR be held on the 1.8.2025.
 - g. The costs of this application to abide the outcome of the suit.
4. This orders issued by this court were meant to be complied with by both the plaintiff and the defendant. This same case docket was set to be heard on 16th September 2025 but due to circumstances beyond the plaintiff's legal counsel's control was adjourned to 23rd September 2025. Come the due day, the plaintiff was nowhere to take the witness stand and his legal counsel Mr. C. D. Nyamweya pleaded with the court to adjourn the matter to another date in the future. Simultaneously, the court allowed legal counsels for the defendant to make briefs oral submissions on the application for adjournment which no basis had been laid save for the reason that the plaintiff has not made contact with his legal counsel.
 5. This is a serious matter given the nature of the enthusiasm by the plaintiff from the very onset. This court is therefore placed in a position to rule for or against the application on adjournment. Decisions on refusing an adjournment are guided by the principle of procedural fairness, which requires an overall view of the case to ensure a fair trial for all parties and the speedy resolution of matters. Key guiding principles include assessing the impact of the refusal on fairness, the court's need for expedition, and whether the party seeking the adjournment has taken reasonable steps to avoid the need for the delay. Courts will refuse adjournments to prevent unnecessary delay and to uphold the integrity of the judicial process when a request is not justified or could lead to unfairness to other parties.
 6. The exercise of discretion by this court on matters of this nature is unfettered for the same is clothed within the constitutional imperatives under Article 50 as read with Section 1A, 1B, 3 and 3A of the Civil Procedure Act. The key determinants being;Procedural Fairness:The primary principle is whether a refusal of the adjournment will lead to an unfair trial for any party. This involves looking at the overall interests of justice, not just one party's interests.Expedition and Efficiency:Courts have an interest in getting trials on speedily and complying with their rules. Refusing an adjournment can serve the purpose of efficient case management and the prevention of backlogs.Justification for Adjournment:The party requesting the adjournment must demonstrate a legitimate need, such as an unforeseen event, and show they have taken all possible steps to cooperate and avoid delays.Balance of Interests:The court must consider the interests of the party requesting the adjournment, the opposing party, and the court itself.Merit of the Application:There is no mechanistic approach; the court considers the specific facts and circumstances of the case to determine if the request is justified.
 7. A state cannot be known as a state in its actual sense if it fails to fulfill its duties pertaining to the administration of justice (Chaudhry, 2012.). Justice is essential to maintaining public order, maintaining harmony and security, guaranteeing development and extraordinary governance, and authorizing the exercise of rights. An adjournment means to postpone the legal proceedings to a later date on reasonable or sufficient grounds. For the court to grant an adjournment it must fall within the spectrum of a reasonable ground and not to be granted at whim or randomly. There are cases as it is experienced in the administration of justice at various constitutional forums constituted under Article



50 (1) of the Constitution that an adjournment might be necessary and if not granted, it may result in injustice to the affected party. This is where the court is invited to exercise its judicial discretion upon looking into the matter completely and understanding it as a whole.

8. In evaluating the circumstances of this case, the plaintiff has failed to show a valid reason for a need of an adjournment given that the date of 23rd September 2025 was taken by consent. There is indeed lack of effort in the part of the plaintiff not to take reasonable steps to ensure the case was ready for trial. That blunder did not stop there. No advance notice was issued to the defendant or legal counsels that there would be a default of attendance hence impacting on the case processing. In my considered view granting an adjournment where sufficient cause has not been shown would be unfair to the defendant and likely to cause prejudice including escalating the costs in terms of resources of time and financials which no undertaking has been made by the plaintiff. In the persuasive case of *Tenaiz v London Borough of Wandsworth* the court took the view that;

“A litigant whose presence is needed for the fair trial of a case, but who is unable to be present through no fault of his own, will usually have to be granted an adjournment, however inconvenient it may be to the tribunal or court and to the other parties. That litigant’s right to a fair trial under Article 6 of the European Convention on Human Rights demands nothing less. But the tribunal or court is entitled to be satisfied that the inability of the litigant to be present is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment.”

9. In my judgment, the Plaintiff has not shown that he has appreciated the importance of the scheduling of dates by the court by making cooperative approaches to the other side meaning the defendants who also have a legitimate expectation that a hearing date unless there are new compelling reasons, it will proceed earnestly in a forum duly constituted under Art. 50(1) of the Constitution. In this case docket, unfortunately the court had prioritized two sets of hearing dates in the presence of learned counsels seized of the dispute on behalf of their clients. On this very day, it was not clear why the court and the defendants were not approached in good time that there would be some difficulty in meeting the trial date because something unforeseen had occurred. It is a constitutional imperative under the rubric of fair trial rights that the interest of justice requires an overall view when it comes to an application seeking an adjournment on a trial date which had been set and confirmed by the parties in advance. Such an application is not only about the defendants or the Plaintiffs’ interests, it is also about the interest of the court in its rules being complied with and getting trials to proceed fairly speedily and proportionately.

10. The Constitution in Art. 50(1) specifically states that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law among others in Art. 50 whose import is on fair trial rights and the principle of equality of arms, which is fundamental for an adversarial system of administration of justice adopted in our country. This is also what the law does stipulate in Art. 27, that every person is equal before the law and has the right to equal protection and equal benefit of the law. The equality of arms principle is concerned with substantive as well as procedural equality. Substantive equality denotes the equal treatment of the parties during the whole course of the proceedings, from a procedural standpoint, it is meant to secure enjoyment of the same procedural rights and guarantees. This must be what the Human Rights Committee in its general comment No. 32 on the right to equality before the courts and tribunals expressed that:

“the right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are



based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.”

11. Having carefully considered the totality of circumstances before this Court, I find that the Plaintiff has demonstrated a pattern of conduct inconsistent with the serious nature of commercial litigation and the respect owed to judicial processes. The Plaintiff initiated these proceedings with considerable urgency, seeking and obtaining substantial interim relief including the preservation of donor funds. This Court accommodated the Plaintiff's concerns by issuing comprehensive interim orders and establishing an expedited hearing schedule.
12. The Court cannot countenance a situation where a litigant seeks urgent interim relief, obtains favorable orders that effectively freeze substantial commercial assets, and then fails to prosecute the matter diligently. Such conduct not only prejudices the Defendants who remain bound by the interim orders but also undermines the integrity of the judicial process and wastes scarce judicial resources.
13. Consequently, the following orders shall abide:
 - a. The application for adjournment dated 23rd September 2025 is hereby denied.
 - b. This suit is hereby dismissed for want of prosecution pursuant to Order 17 Rule 3 of the Civil Procedure Rules for non-attendance of the star witness for the Plaintiff who had been notified through his counsel on the certainty of the hearing date.
 - c. Costs of this suit are awarded to the Defendants.
14. Orders accordingly.

Pursuant to Section 99 of the Civil Procedure Act, Order 13(b) has been corrected to replace "start witness" with "star witness" to reflect the intended meaning, this being a clerical correction of an accidental slip.

DATED, SIGNED AND DELIVERED THROUGH CTS AT ELDORET THIS 24TH DAY OF SEPTEMBER, 2025

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R. NYAKUNDI
JUDGE

