



Kimani & another v Mwai & 3 others (Environment and Land Case 108 & 99 of 2024 (Consolidated)) [2025] KEELC 4456 (KLR) (Environment and Land) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4456 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE 108 & 99 OF 2024 (CONSOLIDATED)**

MC OUNDO, J

JUNE 12, 2025

BETWEEN

RACHEL WANJIRU KIMANI 1ST PLAINTIFF

**JAMES NGGI (SUING AS THE ADMINISTRATOR AND LEGAL
REPRESENTATIVE OF THE ESTATE OF THE LATE MURUGI MWAI**

KARIUKI - DECEASED) 2ND PLAINTIFF

AND

JOHN MWAI 1ST DEFENDANT

KIAMBU NYAKINYUA FARMERS COLTD 2ND DEFENDANT

THE LAND REGISTRAR, NAIVASHA 3RD DEFENDANT

THE HON ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. Before me for determination, is the 2nd Defendant's Application dated 24th January, 2025 which is what is. The 2nd Defendant/Applicant's Application brought pursuant to the provisions of Article 159(2), Sections 1A, 1B, 3, 3A & 6 of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules* 2010 and all other enabling provisions of law seeking to stay any further proceedings in the instant case pending the hearing and final determination of Nairobi High Court Judicial Review Case No. E267 of 2024: *Republic v The Registrar of Companies, Exparte George Muiru Kagunya & others*.
2. The said Application was premised on the grounds therein and a Supporting Affidavit of an even date sworn by Adoli David, an advocate of the High Court of Kenya on record for the 2nd Defendant/Applicant who deponed that the 2nd Defendant/Applicant being a limited liability company had



undergone an irregular change of its Directors which had resulted in filing of Nairobi High Court Judicial Review Case No. E267 of 2024 challenging the change of the said Directors.

3. That the leave granted by the High Court had granted to file the substantive motion in the Judicial Review case operated as a stay of the changes that had been made by the Respondent in the register of the Directors and CR 12 of the 2nd Defendant/Applicant, pending the hearing and determination of the substantive Notice of motion. That the said leave had also operated as stay of any functions and/or operations by the interested parties as Directors of the 2nd Defendant/Applicant pending the hearing and determination of the substantive Notice of Motion. That the substratum of the Judicial Review Case was the unlawful, unprocedural and illegal change in the register of the 2nd Defendant/Applicant, thus the outcome of the judicial review case had directly affected the 2nd Defendant/Applicant's participation in the present case.
4. He deponed that it was prudent and in the interest of justice that the instant suit be stayed from proceeding pending the hearing and determination of Nairobi High Court Judicial Review Case No. E267 of 2024 for substantive justice to be served since the 2nd Respondent would be greatly prejudiced if the same proceeded before the Judicial Review case was determined and the issue of the Directorship addressed. That it was thus in the interest of justice that the orders sought herein were granted.
5. In response and opposition to the 2nd Defendant's Application, the 2nd Plaintiff vide his Replying Affidavit dated 17th February 2025 sworn by James Ngigi Mwai, deponed that the said Application was misconceived, frivolous and an abuse of the court process as it had sought to delay the expeditious hearing and determination of the instant suit. That the issues raised in the said Judicial Review proceedings had no bearing on the issues in the instant matter since whereas they had pertained to internal governance disputes, the present matter had concerned distinct land and property rights.
6. That indeed, it was irrelevant in the instant suit who the Directors of the Applicant were since the present dispute was unrelated to the governance and management of the 2nd Defendant/Applicant as the same had concerned land and property rights, pertaining to Title No: Longonot/Kijabe Block 6/7X1. That any decision in the pending Judicial Review case could not unduly prejudice the rights and interests of any party herein.
7. That in any case, a stay should only be granted where the continued hearing of a matter would result in clear prejudice to a party. That the purported prejudice claimed by the Applicant had been speculative and unsupported by any material evidence hence it was doubtful that the Applicant herein would suffer any prejudice if the matter were to proceed.
8. That further, whereas the interim orders of stay should only be granted where there was a clear and imminent risk of irreparable harm, no such risk had been demonstrated by the Applicant hence the stay that had been sought was both unnecessary and contrary to the interest of justice. He thus deponed that the orders sought were untenable and would only serve to unjustly delay the 2nd Plaintiff/Respondent's right to justice and the final resolution of the suit hence it was in the interest of justice and fairness that the instant application be dismissed with costs.
9. In a rejoinder, the 2nd Defendant/Applicant vide its Further Affidavit dated 19th February 2025 sworn by its Counsel deponed that the 2nd Defendant's Application was neither misconceived, frivolous nor an abuse of the court process, but that it sought to have the 2nd Defendant's Directorship determined since a company acts and speaks through its Directors where at its Directorship had been challenged vide Judicial Review Case No. E267 of 2024. That the issues raised in the said judicial review case had a direct bearing on the issues in the instant matter, as they had pertained to the extent of corporate liability attached to shares in land and property rights.



10. That allowing the continued hearing of the present matter when there was a pending Judicial Review Case No. E267 of 2024 that was challenging the change of the 2nd Defendant/Applicant's Directors, would clearly prejudice the 2nd Defendant/Applicant as the rightful Directors would neither have acted nor spoken for the 2nd Defendant hence clogging and fettering the right to fair trial which was strictly a right that may not be limited in any way whatsoever.
11. That without the rightful Directors to act and speak for the 2nd Defendant, then there was a clear imminent risk of irreparable harm likely to be suffered by the 2nd Defendant hence it was in the interest of justice and fairness that the Application be granted as prayed and costs be in cause.
12. The 1st Plaintiff did not oppose the 2nd Defendant's Application while the 3rd and 4th Defendants/ Respondents did not participate in the same.
13. The Application dated 27th January, 2025 was disposed of by way of written submissions wherein the 2nd Defendant/Applicant vide its Submissions dated 19th February, 2025 summarized the factual background of the matter before framing its issues for determination as follows:
 - i. Whether the Applicant has shown that their Application raises a substantial legal question with a reasonable prospect of success, not just a frivolous claim.
 - ii. Whether the Appellant has demonstrated that if the proceedings are not stayed, they will suffer significant harm that cannot be adequately compensated for later if the judicial review is successful.
 - iii. Whether the potential harm from allowing the proceedings to continue outweigh the harm to the Respondent if the stay is granted.
 - iv. Whether it is in the public interest to stay/pause the proceedings while the Judicial review is ongoing.
14. On the first issue for determination, it submitted that the Judicial Review Case was not just a frivolous claim but had raised a substantial legal question with a reasonable prospect of success. That its Application herein had proved a cause of action and was bona fide.
15. It placed reliance on the provisions of Sections 128, 129 and 130 of the *Companies Act* No. 17 of 2015 which requires private companies to have at least one Director as a natural person, to submit that there would be a misinterpretation of the said provisions because the 2nd Respondent had no natural person as its Director. That subsequently, if the present proceedings proceeded without the 2nd Respondent having a Director, then the same would be flawed with illegalities and in contravention to the provisions of Section 130 of the *Companies Act* No. 17 of 2015 which would result to penal sanctions. Reliance was placed on the decision in the case of *Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties)* (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023) (Judgment).
16. It was thus its submission that without a determination on who really were the Directors of the 2nd Respondent, the matter was not rightfully before court hence a stay of the proceedings herein should be granted.
17. On the second issue for determination as to whether the 2nd Respondent had demonstrated that they would suffer irreparable harm if the stay was not granted, it submitted that if the proceedings herein were not stayed, a determination would likely be made without any natural person to speak and act for the 2nd Respondent and its right to fair hearing would be undermined with the irreversible outcome



since the court would have become functus officio thus condemning the 2nd Respondent unheard. That further, if the Judicial Review was successful and it was determined that the change of Directors had been unlawful, then this court would have acted in vain. Reliance was placed in the decided case of *Republic v National Land Commission & 2 others Ex Parte Archdiocese of Nairobi Kenya Registered Trustees (St. Joseph Mukasa Catholic Church Kabawa West)* [2018] KEHC 8941 (KLR) to submit that the law to be applied herein was audi alteram partem.

18. On the third issue for determination, the 2nd Defendant/Applicant submitted that the potential harm of allowing the proceedings to continue outweighed the harm to the Respondent if the stay was granted. That its right to fair hearing would be limited because at the moment, neither the previous nor the current Directors of the 2nd Defendant/Applicant were proper parties before the jurisdiction of the court. That the strict interpretation of the doctrine of Jurisdiction commenced with the proper parties before the court. Reliance was placed in the decided case of *Isaac Kinyanjui Muitherero v Jonathan Craig Buffey & 2 others; Wild Eye East Africa Limited (Affected Party)* [2020] eKLR where it had been held that a company was an artificial person and only acts through its members and Directors.
19. As to whether it was in the interest of justice to stay/pause the instant proceedings while the judicial review was ongoing, it submitted that it was evident that the 2nd Defendant/Applicant was an artificial person and not a natural person to give defence witness testimony and to be cross-examined thus it could not act and speak by itself hence the proceedings herein could not proceed. It reiterated the contents of its Further Affidavit on the need to first determine who the 2nd Defendant/Applicant's proper Directors were, to maintain that the judicial review proceedings that it had cited did and may operate as a basis to stay the present suit pending the hearing and determination of Judicial Review Case No. E267 of 2024 at Nairobi.
20. That allowing the matter herein to proceed for hearing before the court while there was a pending Judicial Review case challenging the Directorship of the 2nd Defendant/Applicant would clearly prejudice the 2nd Defendant as the rightful Directors would neither have acted nor spoken for it thus fettering its right to fair hearing. It was thus its submission that without the rightful Director to speak and act on behalf of the 2nd Respondent, then there was a clear and imminent risk of irreparable harm likely to be suffered by the said 2nd Defendant/Applicant. That it was in the interest of justice and fairness that the instant Application be granted as prayed and costs be awarded.
21. The 2nd Plaintiff/Respondent on the other hand vide his submissions dated 18th March 2025 framed his issues for determination as follows:
 - i. Whether the application for stay is merited or constituted an abuse of the court process.
 - ii. Whether the pending Judicial Review proceedings have any bearing on the issues in the instant suit.
 - iii. Whether the 2nd Defendant/Applicant stands to suffer any prejudice.
 - iv. Whether the balance of Convenience and Interest of Justice favour the dismissing of the Application.
22. On the first issue for determination as to whether the Application for stay was merited, he placed reliance on the provisions of Section 6 of the *Civil Procedure Act* to submit that the law only bars proceedings where the matters in issue were directly and substantially the same in both suits. That however, in the instant case, the matters in issue in the Judicial Review case and the instant case were vastly different and so were the parties. That subsequently, there was no legal justification for the 2nd Defendant/Applicant to request for a stay of proceedings and its attempt to link the two distinct



matters was a deliberate tactic to frustrate the expeditious determination of the instant suit. Reliance was placed in the decided case of *Ndabi v Kimotho & another* (Civil Appeal 16 of 2023) [2023] KEHC 17717 (KLR) (19 May 2023) to submit that a stay of proceedings should not be granted where it would cause unnecessary delay or prejudice to the opposing party.

23. On the second issue for determination as to whether the pending judicial review proceedings had any bearing on the instant suit, he maintained that the 2nd Defendant's internal governance wrangles did not affect its legal status as a company, which had remained a recognized corporate entity before the court. That subsequently, the outcome of the Judicial Review proceedings would not in any way alter the substantive property rights in question in the instant suit. He placed reliance in the decided case of *Stanley Thyaka Muindi v Matewa Agencies Ltd & 2 others* [2019] eKLR where the court had held that a Company was a separate entity from its Directors and shareholders and could sue and be sued on its own. It was thus his submissions that a company could sue or be sued regardless of internal Directorship disputes.
24. That the claim that the 2nd Defendant/Applicant had no Directors to testify did not hold any water since the company had acting Directors regardless of whether their position was contested or not and as such, any current/acting Director could testify on behalf of the company without affecting the proceedings. That further, would the 2nd Defendant require any former or disputed Director to appear as a witness, they could simply add them as a witness in the instant proceedings without the need for a stay of proceedings.
25. That the 2nd Defendant/Applicant stood to suffer no prejudice because in the instant case, the purported prejudice claimed by the Applicant was both speculative and unsupported by any material evidence hence it was doubtful that the Applicant herein would suffer prejudice were the matter to proceed. That no imminent risk of irreparable harm had been demonstrated by the Applicant hence the stay sought was both unnecessary and contrary to the interest of justice.
26. Lastly, that the provisions of Article 159 (2) (b) of the *Constitution* implored for expeditious disposal of cases and avoidance of unnecessary delays by the courts in dispensing justice. That subsequently, the continued delay in resolving the instant matter was prejudicial to the 2nd Plaintiff/Respondent who had a constitutional right to access justice without undue delay. That the balance of convenience thus favored the dismissal of the application and allowing the matter to proceed to full hearing and determination without further delays.

Determination.

27. I have considered the Application and submissions the authorities cited and the law, consequently the pending issue for determination is whether this court should grant the Applicant the orders sought for being;
 - i. Stay of proceedings herein pending the outcome of Nairobi High Court Judicial Review Case No. E267 of 2024.
28. The power to grant a stay of proceedings is inherent in the court's jurisdiction to ensure justice and prevent abuse of process. Whereas there might not be a specific rule for this exact scenario, Order 51 of the *Civil Procedure Rules* (Applications) and the general principles of discretion would guide in making such applications.
29. The Applicant herein seeks for stay of proceedings in the instant suit, pending a determination of its Directors vide Nairobi High Court Judicial Review Case No. E267 of 2024: *Republic v The Registrar of Companies, Ex parte George Muiru Kagunya & others*. It must be remembered that Stay of proceedings



is a grave judicial action which seriously interferes with the right of a litigant to conduct his/her/ their litigation. It impinges on the right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent. (see [Kenya Wildlife Service v James Mutembei](#) [2019] KEHC 10478 (KLR))

30. Ringera J (as he then was) when confronted by a similar Application in the case of *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No. 43 of 2000 held as follows:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order Appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended Appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the Application has been brought expeditiously” (emphasis added)

31. In this matter the Applicant’s position was that it being a Limited Liability Company, it had undergone an irregular change of its Directors. That the outcome of the Judicial Review case would directly affect its participation in the present case in that it would determine on who its Directors were and whether it was or was not rightfully before court, so as to delve into the present proceedings.
32. The Application was opposed by the 2nd Plaintiff/Respondent for being misconceived, frivolous and an abuse of the court process where it had sought to delay the expeditious hearing and determination of the instant suit. That the issues raised in the said Judicial Review proceedings had no bearing on the issues in the instant matter since whereas they had pertained to internal governance disputes whereas the present matter had concerned distinct land and property rights pertaining to Title No: Longonot/ Kijabe Block 6/7X1. That any decision in the pending Judicial Review case could not unduly prejudice the rights and interests of any party herein.
33. That the purported prejudice claimed by the Applicant had been speculative and unsupported by any material evidence hence it was doubtful that the Applicant herein would suffer any prejudice if the matter were to proceed. That interim orders of stay should only be granted where there was a clear and imminent risk of irreparable harm, where in this case none had been demonstrated. That the orders sought were untenable and would only serve to unjustly delay the 2nd Plaintiff/Respondent’s right to justice and the final resolution of the suit hence it was in the interest of justice and fairness that the instant application be dismissed with costs.
34. The issue for determination herein is whether or not, the current proceedings ought to be stayed pending determination of the Directorship of the 2nd Defendant/Applicant.
35. The threshold for stay of proceedings was illustrated in the following passages in [Halsbury’s Law of England](#), 4th Edition. Vol. 37 page 330 and 332;

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.



This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

36. The Supreme Court in *Githiga & 5 others v Kiru Tea Factory Company Limited* [2019] KESC 80 (KLR) held as follows:

“These facts lead us to agree with the Court of Appeal decision, that in order to conclusively determine the question of representation, we must first establish the bona fide directors of the respondent. Whereas the CR 12 points to the current directors of the respondent, the same is, in our view, inconclusive, owing to the disputed position awaiting resolution by the Companies Registry.

It is still more necessary to ascertain the respondent’s bona fide directors; for yet more uncertainty arises from the fact that the respondent’s board elections of 14th December 2017 had been annulled by the Appellate Court; and no less doubt comes from the fact that entirely different agencies had managed the appointment of Advocates’ firms for the respondent.

The remit of the Registrar of Companies to ascertain the bona fide directors of the respondent is a lawful and legitimate one, bearing validity under the commercial laws at play; and this Court holds that such a critical public-office function is to be accorded the necessary leverage, in accordance with the law.’

37. The Supreme Court of Kenya in a line of cases in *Kiru Tea Factory*, which cases were riddled with disputes over Directorship and authority to sue or defend generated several rulings that where there was a genuine and serious dispute as to who constitutes the legitimate board of Directors to act on behalf of the company, including in litigation, that until the issue of legitimate directorship is settled, the court may stay proceedings to prevent injustice or futile litigation.
38. A company is a legal entity, which acts through its Directors and therefore if there is a dispute on the legitimacy of its Directors, a fundamental question arises in respect of the authority to instruct lawyers, file pleadings, or even defend the company’s interests. The company’s interests in a land dispute could therefore be severely prejudiced if it is not properly represented by its legitimate management. The question of land proprietorship is thus intertwined with who controls the company. For instance, if fraudulent Directors purport to transfer land, or if a faction of Directors is trying to assert control over the land by virtue of their (disputed) directorship, then resolving the directorship issue first becomes crucial.
39. It is therefore in this regard, that I hold that the proceedings in the instant suit shall be stayed pending a determination of the 2nd Defendant/Applicant’s bona fide Directors in the pending matter in Nairobi High Court Judicial Review Case No. E267 of 2024: Republic v The Registrar of Companies, Ex parte George Muiru Kagunya & others. I find thus merit in the 2nd Defendant/Applicant’s Application dated the 24th January, 2025 which is herein allowed with costs.

DATED AND DELIVERED AT NAIVASHA VIA TEAMS MICROSOFT THIS 12TH DAY OF JUNE 2025.



M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

