



**Aloo v National Housing Corporation & 4 others (Petition E150 of 2025) [2025] KEELRC 3049 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3049 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E150 OF 2025  
MN NDUMA, J  
OCTOBER 30, 2025**

**BETWEEN**

**ERICK ODHIAMBO ALOO ..... PETITIONER**

**AND**

**NATIONAL HOUSING CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**QS DAVID NJUGUNA MATHU ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL HOUSING CORPORATION ..... 3<sup>RD</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF LANDS, PUBLIC WORKS, HOUSING  
URBAN DEVELOPMENT ..... 4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. A preliminary objection was raised in this matter by the 2<sup>nd</sup> and 4<sup>th</sup> Respondents that the Petitioner herein is guilty of material non-disclosure, which information if it had been disclosed to the court would not have granted the interim orders granted by Radido J. pursuant to notice of motion dated 1<sup>st</sup> August 2025.
2. The material not disclosed to the Judge is that the Petitioner filed on 30/7/2025 Petition No. E12 of 2025 in Kisumu. That notice of motion under certificate of urgency in that petition was placed before Gakeri J. at Kisumu and the Judge declined to grant the interim orders sought.
3. That the Judge gave directions that application be served, responded to and inter-parties hearing be on 3<sup>rd</sup> September 2025.



4. That the following day, being the 1<sup>st</sup> August 2025, the Petitioner filed this petition at Nairobi accompanied by a notice of motion application dated 1<sup>st</sup> August 2025. That the petition is against the same parties and raising same issues for determination.
5. That the notice of motion under certificate of urgency was placed before Radido J. at Nairobi on the 1<sup>st</sup> August 2025.
6. That the Applicant did not disclose that he had filed a similar suit at Kisumu which was placed before Gakeri J. on 30<sup>th</sup> July 2025, and Gakeri J. had declined to grant interim orders.
7. That subsequently, the Petitioner filed a notice of withdrawal in the Kisumu matter dated 1<sup>st</sup> August 2025 but was paid for on 7<sup>th</sup> August 2025.

That the above facts are common cause and not in dispute.

8. That secondly, the present petition has been overtaken by events as set out in the affidavit of the Respondents dated 23<sup>rd</sup> September 2025 in that the Board (3<sup>rd</sup> Respondent) made a resolution extending the contract of the 2<sup>nd</sup> Respondent on 10<sup>th</sup> September 2025. That the prayers sought in this petition is to have the contract entered into in 2023, declared null and void. That the decision of the Board made on 10<sup>th</sup> September 2015 has addressed the substratum of this petition. That the petition has thus become moot and it is not the business of the court to engage in academic matters. That the court should declare this matter to be moot and strike it out accordingly.
9. The court has considered the oral submissions of Mr. Karanja Advocate for the 2<sup>nd</sup> Respondent Mr. Ngatia for the 4<sup>th</sup> Respondent and Ms. Akuno for the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents.
10. The court has also considered submissions by Mr. Omanga for the Petitioner who vehemently denied the matter of non-disclosure stating that the interim orders issued by Radido J. on 1<sup>st</sup> August 2025, happened before the withdrawal of the suit at Kisumu. That there was no deliberate intention to deceive the court.
11. That the objection raised by the Respondents is not a pure point of law capable of determination in limine as same consist of contested facts and not within the meaning of a pure point of law as stated in the case of Mukisa Biscuit Manufacturing Co. Ltd versus West End and Systems Ltd [1969] EA 690.
12. That the counsel submitted that the petition filed in Kisumu was never served on any of the Respondents and so no prejudice was occasioned them by the subsequent filing of this petition at Nairobi and the grant of interim orders by Radido.
13. That the Kisumu petition was withdrawn due to jurisdictional impropriety since all the parties are based at Nairobi and not at Kisumu.
14. That this is a public interest litigation to protect the public and does not address personal interest. That without evidence being adduced, this matter cannot be determined. That the factual issues have to be determined first.
15. That it would be unjust to strike out the case. The petitioner cited the case of Osano versus Banja 2025 EKLK insisting that the preliminary objection is a factual battle best resolved when the petition is heard on the merit.
16. That the allegation of abuse of process has not been proved and cannot be so proved by way of submissions on a preliminary issue.



17. On the issue of mootness, the Petitioner submits that there is still unresolved question as to which contract is valid between the 2023 contract and the one extended on 10<sup>th</sup> September 2025. That until this issue is resolved, the substratum of the suit remains for determination by the court. That the submission by the Respondents that only the contract entered into in 2022 exists is a misrepresentation. That the 2023, contract was suspended by the interim orders of the court and was not voluntarily suspended by the Respondents.
18. That there is a cross-petition by the 2<sup>nd</sup> Respondent which also must be determined by the court. That the cross-petition is meant to affirm the contract of 2023. That two applications dated 15<sup>th</sup> August 2025 and 11<sup>th</sup> August 2025 were filed by the Respondents to affirm the 2023 contract.
19. That the illegality in the manner the Respondents have acted in respect of the said contracts subsist and is yet to be determined by the court. That the court should not allow an unlawful contract to subsist. That the preliminary objection be dismissed.

### **Determination**

20. The court has considered the decision in Mukisa Biscuit Manufacturing co. Ltd versus West End & Systems Ltd [1969] EA 690 where it was held that a preliminary objection is “A point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”
21. In this matter, the court is satisfied that the Petitioner initially filed KIS, ELRC Petition No. 12 of 2025 in Kisumu on 30<sup>th</sup> July 2025. That the petition was accompanied by a notice of motion under certificates of urgency which was placed for consideration exparte before Gakeri J. That it is common cause that Gakeri J. declined to grant interim orders sought by the Petitioner/ Applicant and gave directions for the hearing and determination of the application and petition inter-parties.
22. That the Petitioner on the 1<sup>st</sup> August 2025, filed this petition together with a notice of motion of the same date on a certificate of urgency. That the matter was placed before Radido J. who granted same interim orders that had been sought and not granted at Kisumu by Gakeri J.
23. It is manifestly clear that the Petitioner/Applicant did not disclose in this application and petition the fact of the filing of the Kisumu petition and the fact that on 30<sup>th</sup> July 2025, Gakeri J. had declined to grant interim orders sought.
24. It is also without doubt, the Petitioner/Applicant upon obtaining the interim orders at Nairobi proceeded to file a notice of withdrawal of that Kisumu matter dated 1<sup>st</sup> August 2025 and paid for on 7<sup>th</sup> August 2025.
25. In the case of Ahmed Musa Ismael versus Itumba ole Namorue and 4 others [2014] KECA 689 (KLR), the court of Appeal held that:-

“Deliberate concealment of material facts can only be seen as an attempt to mislead the court to steal a march on opposing parties. It also comprises an Applicant’s chances of obtaining a favourable exercise of this or any other court’s discretion. As this court stated in David Kamau Gakuru versus National Industrial Credit Bank Ltd (Civil Appeal No. 84 of 2001) an injunction being an equitable remedy cannot be granted to a party who has demonstrated openly by his conduct that he is undeserving of the equitable relief.”



26. Furthermore, in the case of Republic versus Business premises rent Tribunal, Interested Party John Mwangi Muturi and 3 others [2011] eKLR the High Court held that,

“For a party to fail to disclose material facts or to disclose them in such a way as to mislead the court as to the true facts, amounts to abuse of the court process and the court ought, for its own protection and to prevent an abuse of the process, to refuse to proceed any further with the examination of the merits.”

27. The court has also considered the case of Leah Nyambura Mburu versus Barclays Bank of Kenya Ltd [2012] eKLR in which the High court held that:-

“Again the court may be justified where there is evidence that the orders of injunction were obtained without disclosure of material facts or by distortion or deliberate misrepresentation of the facts. To obtain equitable orders of injunction by misleading the court would justify the court in setting aside the orders. In Devani versus Bhadresa and another [1072] EA 22 the East African Court of Appeal held that the learned judge was right in holding that he would never have granted the injunction had the appellant made a full and fair disclosure of the material facts at the time of granting the *ex parte* order of injunction and that the judge was entitled to set aside the injunction if satisfied that the status quo could be preserved without the injunction.”

28. Accordingly, the court is of the finding that the Petitioner/Applicant is guilty of material non-disclosure to the court upon filing this petition and the notice of motion under certificate of urgency dated 1<sup>st</sup> August 2025.

29. The court is satisfied that the court would not have granted the interim orders granted by Radido J. on 1<sup>st</sup> August 2025 had the Petitioner/Applicant disclosed all the facts to Radido J. especially that an exactly same application had been placed before Gakeri on 30<sup>th</sup> July 2025 and that the judge had declined to grant interim orders.

30. This court without hesitation sets aside the interim orders issued by Radido J. on 1<sup>st</sup> August 2025. Mootness.

31. On the issue of mootness, the court notes that there still exists disputed facts as to whether the resolution by the board on 10<sup>th</sup> September 2025, duly settled the matter. Attempts by the parties to record a consent failed which fact is indicative of existence of unresolved issue.

32. The court is guided by the Court of Appeal decision in the case of Ole Pere versus District Land Adjudication Officer, Narok South and 24 others [2025] KECA 113 (KLR) at paragraph 29 where the Court of Appeal outlined the test that mootness requires both the disappearance of a tangible dispute and a further discretionary assessments.

33. In the case of Daniel Kaminja versus County Government of Nairobi [2019] eKLR, at paragraph 47, the High Court opined that while courts generally decline jurisdiction over academic disputes exceptions arose where compelling constitutional issues require the formulation of guiding principles on where the matter is capable of repetition though same may have been resolved at the moment.

34. Accordingly, the court is not satisfied that this matter has been wholly rendered academic by the boards resolution of 10<sup>th</sup> September 2025 extending the contract of the 2<sup>nd</sup> Respondent.

This 2<sup>nd</sup> preliminary objection is thus dismissed.



35. In the end, the interim orders issued by the court on 1<sup>st</sup> August 2025 are set aside. Matter to be given direction on the disposal of the petition unless otherwise compromised.

**DATED AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Karanja for 2<sup>nd</sup> Respondent/Objector

Mr. Ngatia for 4<sup>th</sup> Respondent/Objector

Mr. Omenge for Petitioner/Applicant

Ms. Akuno for 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents

Mr. Kemboi – Court Assistant

