

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC CASE NO. E054 OF 2020**

**VICTOR OWUOR AYOKI &  
ROSELYNE AKOTH AYOKI**  
**(The Co-Administrators of the Estate of the  
Late Wycliffe Adonijah Onyango(deceased).....**  
**.....PLAINTIFFS**

**-VERSUS-**

**MULTI-STAGE INVESTMENT LTD.....1<sup>ST</sup>**  
**DEFENDANT**  
**FRANCIS NYAGA NJERU.....2<sup>ND</sup>**  
**DEFENDANT**  
**CHIEF LAND REGISTRAR.....3<sup>RD</sup>**  
**DEFENDANT**

**AND IN THE SUIT BY WAY OF COUNTERCLAIM**

**MULTI-STAGE INVESTMENT LIMITED .....  
PLAINTIFF**

**-VERSUS-**

**VICTOR OWUOR AYOKI &  
ROSELYNE AKOTH AYOKI**  
**(The Co-Administrators of the Estate of the  
Late Wycliffe Adonijah Onyango (Deceased).....1<sup>ST</sup>**  
**DEFENDANT**  
**FRANCIS NYAGA NJERU.....2<sup>ND</sup>**  
**DEFENDANT/APPLICANT**  
**JUDY MUTHONI NGUGI.....3<sup>RD</sup>**  
**DEFENDANT**  
**MICHAEL OSUNDWA SAKWA.....4<sup>TH</sup>**  
**DEFENDANT**  
**FIRST COMMUNITY BANK.....5<sup>TH</sup>**  
**DEFENDANT**  
**REGISTRAR OF TITLES.....6<sup>TH</sup>**  
**DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 6<sup>th</sup> March, 2025 filed by the 2<sup>nd</sup> defendant/applicant in the counterclaim, and it is expressed to be brought under the provisions of **Sections 1A,1B, 3A and 63** of the **Civil Procedure Act, Order 2 Rule 13, Order 7 Rule 17, Order 10 Rule 11** and **Order 51 Rule 15** of the **Civil Procedure Rules**, and **Articles 25 and 50** of the **Constitution of Kenya**, seeking the following orders:-

- a. *Spent.*
- b. *That pending the hearing and determination of this application and the main suit, further proceedings in this matter be stayed.*
- c. *That this honourable court set aside the orders issued on 11/6/2024.*
- d. *That this honourable court be pleased to strike out/ and or expunge the 6<sup>th</sup> and 7<sup>th</sup> defendants in the counterclaim further list of witnesses dated 8/12/2023.*
- e. *That this honourable court be pleased to strike out/and or expunge the witness statement of Chief Inspector of Police (CIP) Jackson Guyo dated 29/11/2023.*

***f. That this honourable court be pleased strike out/expunge the 6<sup>th</sup> and 7<sup>th</sup> Defendant's Supplementary List and Bundle of Documents dated 8/12/2023.***

***g. That the costs of this application be in the cause.***

2. The application is premised on the grounds appearing on its face together with the supporting affidavit sworn by Francis Nyaga Njeru, the 2<sup>nd</sup> defendant/applicant of even date.
3. The 2<sup>nd</sup> defendant/applicant deposed that when the matter came up for mention on 11/6/2024 before Hon. Justice Oscar Angote, the 7<sup>th</sup> defendant/respondent intimated to the court that they needed to file supplementary documents. He deposed that the 7<sup>th</sup> defendant/respondent did not seek leave and there was no application whatsoever, and hence he was not accorded an opportunity to respond to any application. The 2<sup>nd</sup> defendant/applicant further deposed that the 7<sup>th</sup> defendant/respondent served the supplementary documents on 9/12/2024 following the directions of the court.
4. He contended that Hon. Justice Oscar Angote did not accord the parties an opportunity to respond to the 7<sup>th</sup>

defendant's/respondent's application to file supplementary documents which prejudiced his right to a fair trial. The 2<sup>nd</sup> defendant/ applicant further deposed that whereas the matter was scheduled for hearing on 10/12/2024, the 7<sup>th</sup> defendant/respondent's supplementary documents which consist of over 700 pages were served on 9/12/2024.

5. The 2<sup>nd</sup> defendant/ applicant deposed that on 3/12/2024, he discovered a strange record of proceedings on the Judiciary Case Tracking System (CTS) indicating that an application dated 4/12/2023 was allowed by Hon. Justice Oscar Angote a position which was vehemently opposed. He deposed that the said application was dismissed by Hon. Lady Justice L. Mbugua. Further, that the 6<sup>th</sup> and 7<sup>th</sup> Defendants'/ respondents additional pleadings served on 9/12/2024 are illegal as they failed to comply with orders issued by the court on 13/2/2023. He contended that he would be gravely prejudiced if the further pleadings are not expunged from the record.
6. In opposition thereto, the 7<sup>th</sup> defendant/respondent filed grounds of opposition dated 16<sup>th</sup> May, 2025 on its behalf and on behalf of the 6<sup>th</sup> defendant/ respondent. The 7<sup>th</sup> defendant/respondent deposed that the application is barred by the doctrine of laches as the 2<sup>nd</sup> defendant/applicant had not accounted for the delay in

respect of the application dated 4/12/2023 that was allowed by Hon. Justice Oscar Angote on 11/6/2024. Further, that the threshold for striking out the 6<sup>th</sup> and 7<sup>th</sup> defendants'/respondents' further list of witnesses, witness statement and supplementary bundle of documents had not been met in accordance with the provisions of **Order 2 Rule 15** of the **Civil Procedure Rules**.

7. The 7<sup>th</sup> defendant/respondent deposed that all the parties were present on 11/6/2024 when Hon. Justice Oscar Angote granted leave to the Attorney General to file the impugned documents. It was deposed that the instant application is unprocedural, an abuse of the court process, and that it should be dismissed with costs.
8. Mr. Henry Omino, the learned counsel for the 1<sup>st</sup> defendant/respondent in the counterclaim filed his replying affidavit sworn on 19<sup>th</sup> May, 2025. He deposed that all the documents that were filed by the 7<sup>th</sup> defendant/respondent were duly filed with the leave of court. That no objection was raised to the granting of the orders and that more than eight months have lapsed to the making of the present application. It was further contended that no appeal or application for review has ever been filed by any of the parties herein.

9. The learned counsel denied the allegation that the application dated 4<sup>th</sup> December, 2023 was dismissed by Hon. Lady Justice L. Mbugua noting that the court record did not reflect the same. Again, it was noted that the 2<sup>nd</sup> defendant/applicant had failed to demonstrate what prejudice he stands to suffer if the impugned documents are admitted at the hearing since the parties will have an opportunity to produce rebuttal documents or witnesses.
10. The 1<sup>st</sup> defendant/respondent also filed grounds of opposition dated 19<sup>th</sup> May, 2025. They contended that the court is *functus officio* in respect of the leave granted by Hon. Justice Oscar Angote to the 7<sup>th</sup> Defendant. It was further contended that the application is tantamount to asking the court to sit on appeal over the decision of a fellow judge of concurrent jurisdiction.
11. The 2<sup>nd</sup> defendant/applicant reiterated the averments made in support of his application through a supplementary affidavit sworn by himself on 3<sup>rd</sup> October, 2025.
12. The application was canvassed by way of written submissions. The 2<sup>nd</sup> defendant/applicant filed his written submissions dated 6<sup>th</sup> October, 2025. The 2<sup>nd</sup> defendant/applicant submitted that by

allowing the 7<sup>th</sup> defendant/applicant to file the supplementary documents after the close of pre-trial and without notice to the other parties, the court undermined the principle of finality of pleadings. Further, that the other parties were prejudiced having already prepared their cases on the basis of the record as it stood at the close of pre-trial.

**13.** The 2<sup>nd</sup> defendant/applicant submitted that the 7<sup>th</sup> defendant's/respondent's supplementary documents are irregular having been filed pursuant to a dismissed application dated 4/12/2023. Urging the court to allow the application with costs, the 2<sup>nd</sup> defendant/applicant submitted that the court should expunge the said documents from the record in order to preserve the sanctity of due process and the right to a fair hearing.

**14.** Reliance was placed on the following authorities to buttress the Applicant's submissions:-

**1) *Telkom Kenya Limited v John Ochanda & 996 others [2014] eKLR.***

**2) *Raila Odinga v Independent Electoral and Boundaries Commission & 3 others [2013] eKLR.***

**3) *Lubullellah & Associates Advocates v N K Brothers Limited [2014] eKLR***

- 15.** The 1<sup>st</sup> defendant/respondent filed their written submissions dated 17<sup>th</sup> November, 2025. They reiterated that no objection was raised by either of the parties on 11<sup>th</sup> June, 2024 before Hon. Justice O. Angote when the 7<sup>th</sup> defendant/respondent was directed to file and serve additional documents. They submitted that the court was *functus officio* in respect of the orders of 11<sup>th</sup> June, 2024 in as far as no appeal or application for review of the orders had been made.
- 16.** They further submitted that asking the court to disturb the order of a judge of concurrent jurisdiction would be tantamount to sitting on appeal against the impugned decision which is procedurally incorrect. Further, that an eight-month delay in making the application herein was unreasonable adding that the same was not explained.
- 17.** The 1<sup>st</sup> defendant/respondent submitted that the additional documents which the 7<sup>th</sup> defendant/respondent was allowed to file are crucial to the just determination of the case, and that the parties shall have their chance to challenge the documents and cross-examine witnesses noting that the plaintiff was stood down shortly after the formal hearing had commenced.

**18.** I have carefully analysed and considered the application, the respective replies and the rival submissions. The issues for determination are as follows:-

*a) Whether this court has jurisdiction to set aside the court's directions issued on 11/6/2024; and*

*b) Whether the 6<sup>th</sup> and 7<sup>th</sup> Defendants' additional bundle of documents, witness statement and list of witnesses should be expunged from the record.*

**19.** The record indeed shows that on 11<sup>th</sup> June, 2024, the parties herein appeared before Hon. Justice Angote when the learned counsel for the 7<sup>th</sup> defendant/respondent made an oral application in respect of the bundle of documents dated 8<sup>th</sup> December, 2023. Directions were subsequently issued for service on the respective parties and the documents were duly admitted into the court record.

**20.** Essentially, the 2<sup>nd</sup> defendant/applicant herein is urging the court to reverse the decision of a judge of concurrent jurisdiction on the admission of evidence to the record. This court cannot countenance such a position as it does not wield supervisory or appellate jurisdiction against a court of equal status.

**21.** In the case of **Peter Nganga Muiruri v Credit Bank Limited & 2 others [2008] eKLR**, the Court of Appeal observed as follows:-

***“It would be a usurpation of power to push forward such an approach and whatever decision which emanates from a court regarding itself as a Constitutional Court with powers of review over decisions of Judges of concurrent or superior jurisdiction such decision is at best a nullity.”***

**22.** A similar position was held by the same court in **Bellevue Development Company Ltd v Francis Gikonyo & 7 others [2018] eKLR** where Kiage, JA. expressed himself on the issue of jurisdiction as follows:

***“I have no difficulty upholding the learned Judge's holding that as a judge of the High Court he had no jurisdiction to enquire into or review the propriety of the decisions of the judges, who were of concurrent jurisdiction as himself. In our system of courts, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each other. No judge of the High Court can superintend over fellow judges of that court or of the superior courts of equal status. That much is plain common sense... This position is so well established that it would be a strange aberration for a judge to embark on what is essentially an examination of the judicial conduct and pronouncements of judges of the same status as himself, a task that is left to courts and judges of higher status in the hierarchy, by way of appeals.”***

23. Again, in the case of **Wambui v Wambui** [2024] KECA 474 (KLR), the Court of Appeal aptly held as follows:-

*“The question in the appeal is not an issue of discretion, but whether Muchelule J. had jurisdiction in the circumstances of the case to overturn the Ruling of Musyoka, J. If Muchelule J. had no jurisdiction to upset the earlier decision, it does not matter how appealing the reasons for his intervention. In our view, a court of equal and concurrent jurisdiction cannot overrule or overturn another, because it believes the earlier court did not consider material and pertinent issues.*

*Simply put, Muchelule, J. had no power and authority to purport to interfere with the earlier decision of Musyoka, J no matter what the court thinks or believes. If such a scenario is allowed, parties and their advocates will move from one court to another in a bid to achieve a desired goal or result. And of course, and indeed, this court will stamp out or sanction an abuse of the court process and an endless litigation circle. In our view, such a route will endanger the administration of justice, in particular courts of equal and concurrent jurisdiction competing in upsetting one another, resulting in disharmony and bad blood between judicial officers.”*

24. In view of the foregoing decisions by the Court of Appeal, it is the finding of this court that it has no jurisdiction to set aside the orders by Hon. Justice Angote of 11<sup>th</sup> June, 2024. Equally so, and say if there is reason to, the delay in filing the instant application has not been explained.
25. Having found as much in regards to the first issue, it is manifestly clear that this court cannot expunge the impugned documents as sought by the 2<sup>nd</sup> defendant/applicant as any alternate finding would indeed be a nullity. In the interest of justice and in all fairness, the 2<sup>nd</sup> defendant/applicant will have leave to file any additional documents if need to be.
26. In the circumstances, the application herein is devoid of any merit, and it is hereby dismissed. Costs to be in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.  
JUDGE  
11/12/2025.**

***In the presence of:***

*Mr. Benson Agunga - Court assistant*

*Mr. Owino for the 1<sup>st</sup> Defendant in the main suit and the Plaintiff in the counter-claim*

*Ms. Anyango Opiyo for the Defendant/Applicant in the main suit and the 2<sup>nd</sup> Defendant and the 5<sup>th</sup> Defendant in the counter-claim*

*Mr. Allan Kamau for the 3<sup>rd</sup> Defendant in the main suit, the 6<sup>th</sup> Defendant and 7<sup>th</sup> Defendant in the counter-claim*

ORIGINAL