



**Dodha v Wafula (Derivatively on behalf of Transzoia Investment Company Limited)
& 6 others; Trans-Nzoia Investments Company Limited (Affected Party) (Civil
Application E061 of 2025) [2025] KECA 2172 (KLR) (10 December 2025) (Reasons)**

Neutral citation: [2025] KECA 2172 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E061 OF 2025
MA WARSAME, JM MATIVO & PM GACHOKA, JJA
DECEMBER 10, 2025**

BETWEEN

VIPUL RATILAL DODHA APPLICANT

AND

**PASCAL WAFULA (DERIVATIVELY ON BEHALF OF TRANSNZOIA
INVESTMENT COMPANY LIMITED) 1ST RESPONDENT
RONALD SAWENJA WALUBENGO 2ND RESPONDENT
PAUL SIMUYU WEKESA 3RD RESPONDENT
GEORGE IMBERALUDISI 4TH RESPONDENT
KALORI ISOSO 5TH RESPONDENT
MUDEBE INVESTMENT CO LIMITED 6TH RESPONDENT
CHERANGANI INVESTMENTS COMPANY LIMITED 7TH RESPONDENT**

AND

TRANS-NZOIA INVESTMENTS COMPANY LIMITED AFFECTED PARTY

*(Being an application for stay of execution and/or implementation
of the decree of the Environment and Land Court of Kenya at Kitale
(C. K. Nzili, J.) dated 18th June, 2025 in ELC No. 74 OF 2019)*

REASONS

1. On 26th November 2025, we dismissed the applicant’s application dated 22nd September 2025 and reserved our reasons pursuant to Rule 34 (7) of the Court of Appeal Rules, 2022 to be rendered within



14 days. The application is brought under Articles 159 of *the Constitution* and Rule 5 (2) (b) of the Court of Appeal Rules, 2022. It is premised on the grounds listed on the face of the application. The application is supported by the supporting affidavit and a supplementary both sworn by Vipul Ratilal Dodhia (the applicant) on 22nd September 2025 and 14th November 2025 respectively.

2. A brief factual background is necessary in order to properly contextualize the application and our reasons for dismissing the application. The 1st respondent pursuant to leave granted on 1st October 2020 instituted a derivative suit on behalf of Trans Nzoia Investment Company Limited (the affected party) vide amended plaint dated 21st September 2023 seeking, inter alia, that Trans Nzoia Investment Company Limited to be declared as the owner of Land Parcel No. Kitale Municipality Block 4/494 measuring 0.6256 Ha (the suit property) popularly known as Kitale Hotel. The 1st respondent also sought a declaration that the transfer of the suit property on 17th April 2006 to the 6th respondent was fraudulent, null and void and a declaration that the subsequent transfer of the suit property to 7th respondent on 4th September 2002 was unlawful, null and void and as a result the 6th and 7th respondents do hand over vacant possession of the suit property and in default eviction orders to issue.
3. The suit was vehemently opposed by the 2nd respondent vide statement of defence dated 14th January 2024. The 4th and 5th respondents opposed the suit vide statement of defence dated 2nd November 2020 urging that they initially intended to subdivide the suit property and lease it out to generate more revenue but their intentions were abused behind their backs and they were not involved in the dealings complained about. The applicant and the 7th respondent also opposed the suit vide their amended statement of defence dated 28th September 2023 terming the suit as incompetent in law and an abuse of the Court process and maintained that the 7th respondent herein was an innocent purchaser for value without notice of the alleged defect in title and the reliefs sought by the 1st respondent could not obtain in law and are not for the benefit of shareholders but for personal benefits of the 1st respondent. The suit against the 3rd respondent was withdrawn by an order made on 3rd February 2020.
4. After considering the respective parties' case, the trial judge found that the 1st respondent had proved to the required standard that the 2nd to 5th respondents failed to exercise due care and hold their fiduciary duty to the 1st respondent and Trans Nzoia Investment Company Limited and that the 2nd respondent failed to disclose to Trans Nzoia Investment Company Limited and its shareholders how much was paid as rental income for 16 years. In the end, the learned judge allowed the 1st respondent's suit and issued the following reliefs: (a) declaration that the Company is the-rightful owner of Land Parcel No. Kitale Municipality Block 4/494, popularly known as Kitale Hotel measuring 0.6256 Ha; (b) declaration that the transfer on 17th April 1996 of the Land Parcel No. Kitale Municipality Block 4/494, to the 5th defendant was fraudulent, null and void; (c) declaration that the sale and transfer on 4th September 2002 of the Land Parcel No. Kitale Municipality Block 4/494 to the 7th defendant was unlawful, null and void; (d) declaration that the 7th defendant holds Land Parcel No. Kitale Municipality Block 4/494, in trust for the affected party; (e) an order that the 7th defendant do transfer Land Parcel No. Kitale Municipality Block 4/494 to the affected party; and
 - (f) an order that the 6th and 7th defendants do hand over vacant possession of all the premises comprised in Land Parcel Kitale Municipality Block 4/494, in default the 6th and 7th defendant, their agents, associates and workers be evicted from the premises, in line with the law. Aggrieved by the said judgment, the applicant lodged a notice of appeal dated 23rd June 2025 and instituted this appeal against the said judgement together with this instant motion.
5. The applicant now seeks the following orders from this Court: (a) an injunction to preserve the subject matter of the appeal lodged before this Court pending the hearing and determination of the appeal



to restrain the respondents, their agents, servants and/or assigns from executing the Court's decree; and, (b) stay of execution and/or further of the Environment and Land Court decree issued on 18th June 2025 and/or any action in that regard pending the hearing and determination of the appeal to this Court.

6. The applicant's case was grounded on the grounds contained in his draft memorandum of appeal marked - "VRD 4". The substance of his case is that his intended appeal raises serious and weighty legal issues for determination by this Court. Among the grounds cited is that the learned judge erred in law and fact in failing to hold that the suit is statute barred and offends the provisions of the Limitation of Actions Act.
7. The applicant also maintained that unless this Court grants the orders sought, the appeal to this Court risks being rendered nugatory and he stood to suffer substantial loss that cannot be monetarily compensated.
8. The application was opposed by the 1st and 8th respondents vide replying affidavit sworn on 10th November 2025 by Pascal Wafula who is the 1st respondent. He averred that the intended appeal was frivolous and not arguable because the grounds it is predicated on are an afterthought because:
 - (a) the applicant sought similar orders in Civil Application No. E063 of 2025, Vipul Ratilal Dodhia & Cherangani Investment Company Limited which had already gone through case management;
 - (b): the issue regarding the suit before the superior court being statute barred was determined at the leave stage when the 1st respondent sought to continue the derivative suit;
 - (c) the applicant never appealed against the ruling that held that the claim was not statute barred;
 - (d) the applicant's preliminary objection dated 18th January 2022 was dismissed and the appellant never preferred an appeal;
 - (e) the applicant has approached the Court with unclean hands since they exchanged the ownership of the suit property pendente lite and secretly charged the suit property in favour of M-Oriental Bank Limited to secure a personal loan of Kshs. 130,000,000/= granted to the now sole director of the 7th respondent one Manase Nyaga Njenga all done contrary to the doctrine of lis pendens;
 - (f) it will be a mockery of justice if the 8th respondent is denied the right to enjoy the fruits of the judgment as the 7th respondent is put back to continue collecting rentals for the benefit of its director;
 - (g) the applicant has failed to demonstrate how his intended appeal shall be rendered nugatory if the decree is fully executed and the 8th respondent remains in possession and control and collecting rental income of the business premises while the suit property is registered in its name.
9. The 4th and 5th respondents opposed the application vide replying affidavit sworn on 5th November 2025 by George Imbera Ludisi who is the 4th respondent. He deponed that: (a) the intended appeal is frivolous, since the applicant has approached this Court with unclean hands since he has admitted to willful non-compliance with a valid subsisting court order; (b) the applicant has not demonstrated how the intended appeal would be rendered nugatory should the prayers sought not issue since the subject matter is immovable property. Therefore, should the intended appeal succeed, it would easily



- be reinstated back to the 7th respondent. (c) the 8th respondent is more capable of compensating any financial loss suffered by the applicant in the event the intended appeal is a success.
10. The 2nd, 3rd, 6 and 7th respondents did not file any papers in these proceedings.
 11. When the matter came up for hearing before us on 26th November 2025, learned counsel, Ms. Chebet was present for the applicant, Mr. Kraido appeared for the 1st and 8th respondents, Ms. Muhanda appeared for the 2nd and 6th respondents, and Ms. Mukoya was present for the 4th and 5th respondents.
 12. Regarding the issue of whether the applicant's intended appeal was arguable, the applicant relied on the grounds raised in his draft memorandum of appeal and submitted that, this Court ought to be allowed to enable him ventilate his appeal.
 13. On whether the intended appeal would be rendered nugatory if the orders sought are not granted, the applicant maintained that bad precedence would be set since the decision of 18th June 2025 will have already been executed to his detriment.
 14. Mr. Kraido in opposing the application reiterated the contents of the 1st and 8th respondent's replying affidavit sworn on 10th November 2025 and maintained that the intended appeal would not be rendered nugatory since the 8th respondent had no intention of disposing of the suit property any time sooner, except to use it for revenue for its members.
 15. At the time of writing these reasons for our determination, there were no submission on record by Ms. Mukoya and Ms. Muhanda.
 16. We have considered the application and the grounds urged by both parties in support of their respective positions. To succeed in an application for stay of execution, an applicant must satisfy the following twin conjunctive principles under Rule 5 (2) (b) of this Court's Rules: the appeal is arguable; and would be rendered nugatory if stay is not granted. (See In Chris Munga N. Bichage vs. Richard Nyagaka Tongi, Independent Electoral & Boundaries Commission & Robert K. Ngeny [2013] KECA 141 (KLR))
 17. In satisfaction of the first prerequisite, we note that based on the grounds set out in the draft memorandum of appeal it is contended that the learned judge erred in failing to hold that the suit is statute barred and offends the provisions of the *Limitation of Actions Act*. Bearing in mind that an arguable appeal is not one that will necessarily succeed, we are not prepared to say that it is frivolous.
 18. Turning to the second prerequisite, which is the nugatory aspect; that is, whether the appeal, if successful, would be rendered nugatory in the event we decline to grant the orders sought and the intended appeal succeeds, we are guided by the sentiments of this Court in Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 others [2013] eKLR this Court stated that:
 - ix). The term "nugatory" has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling
 - x). Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved."
 19. From the impugned judgment annexed to the application before us, and having looked at the orders issued in the suit reproduced earlier, coupled with the arguments before this Court, we have not been persuaded by the applicant that the appeal will be rendered nugatory if stay is not granted. This is because the applicant is in essence inviting us to reverse the orders of the trial court at this interlocutory



stage of the proceedings. If allowed to stand, the appeal would in actuality, be determined substantively without hearing both sides on the issues raised in the appeal.

20. A cursory look at the issues and the judgment shows that nothing will be rendered nugatory, as whatever action is taken by the 8th respondent is reversible if the appeal succeeds since Mr. Kraido has indicated that the 8th respondent has no intention of disposing the suit property. We, therefore, agree with the 1st, 4th, 5th and 8th respondents that the applicant has not satisfied the second prerequisite of the twin principles. We say so cognizant of the fact that in exercising our discretionary jurisdiction the bigger picture we should focus on is to preserve the ends of justice which includes letting a deservedly winning party enjoy the fruits of their judgment. In view of the above, we have come to the inescapable conclusion that the notice of motion dated 22nd September 2025 lacks merit. It is hereby dismissed with costs to the 1st, 4th, 5th and 8th respondents.

DATED AND DELIVERED AT NAKURU THIS 10TH DAY OF DECEMBER, 2025.

M. WARSAME

..... **JUDGE OF APPEAL**

J. MATIVO

..... **JUDGE OF APPEAL**

M. GACHOKA C.Arb, FCI Arb.

..... **JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR.

