



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CORAM: F. MUGAMBI, J**  
**CIVIL SUIT. NO. 475 OF 2013**

**BETWEEN**  
**NEWTON KAGIRA MUKUHA .....**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**CHARLES MUKUHA**

*(Being sued in his capacity as Administrator of the Estate of*

*Simon Gashwe Mukuha (Deceased)) ... 1<sup>ST</sup> DEFENDANT/  
RESPONDENT*

**DAVID KIMANI .....** 2<sup>ND</sup>  
**DEFENDANT/RESPONDENT**

**RULING**

**Background and introduction**

1. This Ruling addresses several applications arising from a protracted dispute among siblings concerning the management and control of Naivas Limited, a family-owned business. In order to provide clarity and direction, I will first consider the

application dated 2<sup>nd</sup> April 2025, as its determination has the potential to influence the outcome of the other pending applications.

2. By this application, the defendants seek to have the plaintiff's suit struck out on the grounds that it is statute-barred, legally untenable, and amounts to an abuse of the court process. In the alternative, they pray for a stay of proceedings in the present suit pending the hearing and determination of **Civil Appeal No. 204 of 2016** and **Civil Appeal No. 116 of 2017**.
3. The application is founded on the argument that, through an amended plaint dated 9<sup>th</sup> September 2014, the plaintiff seeks a substantive declaration of ownership of shares in Naivas Limited. The defendants contend that this issue is res judicata and further emphasize that Naivas Limited is not a party to the proceedings before this Court. They also point out that there are pending appeals challenging the Ruling delivered on 31<sup>st</sup> October 2014 in **Simon Gashwe Mukuha V Newton Kagira Mukuha, [2014] eKLR**, where this Court (Emukule J, as he then was) held at **paragraph 52** that the plaintiff had no legal or equitable interest

in Naivas Limited. The defendants additionally rely on the Ruling delivered on 6<sup>th</sup> October 2016 (A.K. Ndungu J), which similarly addressed the plaintiff's alleged interest in Naivas Limited.

4. The application is opposed by way of a Replying Affidavit sworn by NEWTON KAGIRA MUKUHA on 30<sup>th</sup> May 2025. The plaintiff contends that the defendants have not presented a Memorandum of Appeal to prove to this Court that the appeals (**CA No. 204 of 2016** and **CA No. 116 of 2017**) are related to the present suit. I note that in a previous decision of this Court, the plaintiff in fact sought to rely on the very same assertion, of the relationship between the matters before this Court and the Court of Appeal, a point that was dismissed by this Court in its Ruling of 8<sup>th</sup> March 2024 for lack of supporting evidence. This Court noted that:

***“The onus is upon the applicant to illustrate to this court beyond reasonable doubt that proceedings in this matter ought to be halted pending the determination of the two cases as averred. For proceedings to be***

***stayed in a matter where there is another matter that has been filed in a different court, the applicant should have demonstrated to this Court how the outcomes in the other matters have a direct bearing on the matter sought to be stayed. The applicant has not done so.”***

5. The defendants, in support of their prayer for a stay of these proceedings have now annexed a Ruling delivered in **Civil Appeal No. 204 of 2016** on 21<sup>st</sup> March 2025 in which the plaintiff was granted leave to file their amended Record of Appeal upon revival of that appeal. This Ruling was not made available to this Court at the time it rendered it's finding in the Ruling of 8<sup>th</sup> March 2024.
6. I have read the ruling of the Court of Appeal. There is express reference to the bearing of the appeal on the earlier findings of this Court (Emukule J and Ndungu J), where the central issue was the plaintiff's alleged interest in Naivas Limited. In light

of this, I am unable to agree with the plaintiff's contention that the issues raised in the present suit are purely commercial in nature and wholly independent of the question of inheritance in the estate of the late Peter Mukuha Kago. On the contrary, the plaintiff's right to advance any claim in respect of Naivas Limited in a commercial proceeding is inextricably tied to his ability to establish a proprietary interest in the company. That issue is squarely before the Court of Appeal.

7. In any event, as I have already observed, it was the plaintiff himself who previously relied on the very same submission regarding the effect of the Court of Appeal's decision on these proceedings. Having invoked that position in aid of his case, he cannot now be permitted to turn around and disown it when it no longer serves his purpose.

### **Disposition**

8. For these reasons the application dated 2<sup>nd</sup> April 2025 succeeds to the extent that a stay of proceedings in the present suit is hereby granted. All further proceedings, hearings, or actions in this

matter shall remain suspended pending the hearing and determination of the appeals currently before the Court of Appeal, namely **Nakuru Civil Appeal No 25 of 2016 (CA No. 204 of 2016) *Newton Kagira Mukuha V Simon Gashwe Mukuha*** and **Nakuru Civil Appeal No 47 of 2017 (CA No 116 of 2017) *Newton Kagira Mukuha V Simon Gashwe Mukuha***. The costs of this application shall await the outcome of the appeal.

**DATED, SIGNED AND DELIVERED IN NAIROBI  
THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**F. MUGAMBI  
JUDGE**

**Delivered in presence of:**

Newton Kagira in person  
Court Assistant: Lillian