

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELCC NO E053 OF 2015**

**PIRY JOHNSTONE MUYE** .....  
**PLAINTIFF**

**VERSUS**

**SHARIF OMAR MOHAMED** .....  
**DEFENDANT**

**RULING**

1. The application dated 4<sup>th</sup> December 2025 seeks a stay of proceedings in this case pending the hearing and determination of the appeal against the decision of this court being the ruling dated 25<sup>th</sup> November 2025. In that ruling, the court considered an application dated 8<sup>th</sup> May 2025 seeking orders that the defendant's case be reopened and heard for the purpose of adducing documentary evidence, and that defendants' witnesses being called for further examination-in-chief, and for further cross-examination and re-examination respectively over the documentary evidence.
2. The application is opposed by the plaintiff through his replying affidavit dated 16<sup>th</sup> January 2026. The gist of that affidavit is that the plaintiff thinks that this is an extremely old matter filed in 2015, and that the defendant has been guilty of the delaying tactics which he has employed to defeat the conclusion of the matter contrary to the overriding objective of the law; that the plaintiff has complied with the court orders in the ruling dated 25<sup>th</sup> November 2025 and filed final submissions; that stay of proceedings will prejudice the plaintiff who has waited for justice for more than **10** years; that the case has left him old and frail; that the defendant has not been deprived of any rights to a hearing, and that he has indeed been given an opportunity to defend himself, and has already testified and closed his case; that there is no arguable appeal and the orders sought have not been justified, and finally, that all the grievances of the

defendant can be raised in one appeal at the end of the suit after judgment.

3. In its analysis contained in the ruling dated 25<sup>th</sup> November 2025 the court considered the conduct of the defendant and stated as follows:

*“12. This court has wide discretion to allow an application for additional evidence, or even to recall any party or any witness to give evidence or*

*for further examination. However, it finds that in the circumstances of this*

*case which is very old and in which the plaintiff closed his case 8 years ago on 30/10/2027, granting the present application would throw him back to reopening of his case which can not be a pleasant joke. It would*

*occasion him considerable prejudice in terms of delay.*

*13. It cannot be said that the defendant never knew what he needed to prove his case. His lethargy at getting his evidence was apparently informed by the idea that litigation is a game in which one can hide behind the technicality that his description by name has been wrongly given.*

*14. I agree with the plaintiff that if the defendant has now gotten some documents, the relevance to the present litigation of which this court can*

*not presently tell, those documents had been always there and were capable of, with the application of due diligence, being obtained. In any event the claims by the defendant lack any harmony: a title was issued to*

*him in 2017 while litigation over the titled land had already commenced in*

*2015, and the supporting documents were not available for him to include*

*in his court filings until 2025. Unfortunately for him, in view of the fact that it appears to this court that he had the opportunity of availing those*

*documents long ago but he never did so, it is now too late to even contemplate availing them.*

*15. In addition, the defendant can not validly claim that he was not given*

*time to look for those documents he now claims to have obtained. He ought to have obtained them while the plaintiff was struggling with the issue of whether he has sued the defendant by his rightful name, something which with the cooperation of the defendant, who knew that he*

*was the intended defendant, could have been resolved in a day by a consent. It is on occasions like these that the court is duty bound to*

*strictly uphold the principle interest reipublicae ut sit litium finis.  
16. The application dated 8/5/2025 is therefore dismissed with costs.”*

4. Considering the contents of that ruling, this court does not see any arguable appeal that he has. Besides, it is *still* not lost on this court that the defendant tormented the plaintiff by playing Jekyll and Hyde with his names even when his physical person was undoubtedly known to the plaintiff, and thus wasted considerable time which he would have utilized defending himself using his rightful name, even leading this court, avoiding the fray and sticking to the rules of evidence, to issue the following dicta at some point:

*“11. There was however nothing placed before me by the Plaintiff to demonstrate that the Applicant- Jaffer Shariff Omar is the same person as the Defendant named herein as Shariff Omar Mohamed. Indeed, from a perusal of the record, it was apparent that the Applicant is but a brother to the Defendant herein. That much is clear from a perusal of the Applicant’s Replying Affidavit filed herein on 22nd May 2018 in response to an application dated 5th March 2018 filed by the Plaintiff. At paragraph 5 of the said Replying Affidavit, the Applicant avers as follows: -*

*“5. That there is neither agency nor any other established legal relationship between Shariff Omar Mohamed and Jafar Shariff Omar as alleged or at all except that Shariff Omar Mohamed is my biological brother. (Annexed herein and marked “JSO - 2” is a copy of the Identity Card and Passport).”*

*12. As it were, I did not find anything from the Plaintiff refuting that statement by the Applicant. That position is indeed buttressed by the Defendant in his Replying Affidavit filed herein on 16th September 2020 from which it is clear the two are brothers engaged in their own legal tussles in another case filed in Nairobi. Having so clarified the position, the insistence by the Plaintiff that the Applicant and the Defendant are one and the same person without the production of any evidence to that effect is strange and certainly misleading. This Court refuses to take the Plaintiff seriously on that score.”*

5. Now this court perceives that he is even being sued with an *alias* -two names set out-for abundance of caution. This detour could clearly have been avoided from inception by an unequivocal self-identification. The

defendant denied breaching the court orders even when the plaintiff was very certain that he was the one developing on the suit land. If the applicant ever had any reputation as a litigant who is willing to pursue willingly the conclusion this case, he blighted it by use of such tactics. In the regional parlance, they have a famous adage with the words “*mbio za sakafuni*”, which loosely translated means there has to be a final end to anything. The following is what the court observed in respect of another recalcitrant defendant in *Watamu Men Fridays Limited v Attorney General & 4 others* [2026] KEELC 895 (KLR) *Media Neutral Citation* [2026] KEELC 895 (KLR):

*“36. While inordinate delay must be explained, there is no known cure in law for the past stained record of conduct of a party who wilfully obstructed justice in a matter; whatever acts and omissions are committed by such a party, as long as they have been adjudged as wilful hold fast to him like glue and tint every action that he subsequently takes. They influence an adverse perception of the motive behind such a party’s every act and exact from him a heavy toll of requirement of absolute proof of bona fides of otherwise ordinary day to day applications or steps in litigation.”*

6. In the light of the foregoing, it is the opinion of this court that if it indeed found that the defendant did not truly deserve the orders that he has sought in that application, stay of proceedings in the present matter should also not be issued.
7. This court must thus reject his ruse and take action that will end this dispute.
8. I therefore decline to grant a stay of proceedings as sought in prayer number 2 of the application dated 4<sup>th</sup> December 2025 and the said application is here by dismissed with costs to the plaintiff.

9. The timeline set in the ruling dated 25<sup>th</sup> November 2025 having long since expired, and the plaintiff having file submissions as ordered, **judgment** in this suit will be delivered on **30<sup>th</sup> June 2026**.

**Dated, signed and delivered at Malindi on this 12<sup>th</sup> day of March, 2026.**

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE,  
JUDGE, ELC, MALINDI.**