**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT VOI**

**ELCLA NO. E004 OF 2026**

***(Formerly Mombasa ELCLA No. E012 of 2023)***

**JOHN MWASI NGALA ……..**

**……..APPELLANT**

**=VERSUS=**

**VALENTINE GOMBE MWACHOFI……..**

**RESPONDENT**

**RULING**

1. Before this Court is the Appellant's Notice of Motion dated 5th February 2026 supported by affidavits sworn by the Appellant on 5th February 2026 and 17th March 2026 together with the supporting affidavit of **Lucas Leeroy Nguta** sworn on 17th March 2026. The application is brought pursuant to **Order 42 Rule 6 of the Civil Procedure Rules, 2010 and Sections 1A, 1B, 3 and 3A of the Civil Procedure Act Cap 21.**
2. The Appellant seeks the following principal reliefs; a stay of the warrants of arrest and all execution proceedings issued pursuant to **Voi CMCC No. 155 of 2015** and review,

setting aside and/or vacation of the orders issued by this Court differently constituted on 15th March 2024.

3. The application is premised on the grounds that the lower court issued warrants of arrest against the Appellant on 11th January 2026 and the appellant can be arrested any time, the appellant has discovered that circumstances exist which strongly suggest that the Respondent has been in collusion with the Appellant's previous advocate to prevent the appellant from prosecuting the previous cause which was dismissed and substantial and irreparable loss will be suffered if stay is not granted.
4. The application is opposed by the Respondent through the replying affidavit of Mr. **Onesmus Mwinzi** Advocate sworn on 23rd March 2026.
5. The Appellant’s case as distilled from his two affidavits and the supporting affidavit of **Lucas Leeroy Nguta,** rests on a narrative of procedural unfairness, alleged collusion by advocates, and personal circumstances that prevented him from vigorously defending his interest in **Plot No. 57 (measuring 2.5 acres).** He avers that together with the Respondent they received allocation letters dated 27th

January 2018 from Voi Development Company Limited in respect of portions carved out of an original 5 acre parcel. He claims to have extensively developed his portion, while the Respondent's portion remains vacant and undeveloped.

6. Central to the Appellant's grievance is the consent judgment recorded on 8th February 2016, whereby he agreed to pay the Respondent fair compensation for the portion he had occupied and developed. He states that the Respondent accepted the proposal but a subsequent meeting to agree on the actual price was sabotaged by her. When the consent was later set aside by the lower court and the matter directed to proceed to full hearing, the Appellant encountered difficulties with his then advocate, **Juma Nyaga & Co. Advocates,** whom he described as incapable of representing him at that time. He thereafter engaged **Mr. Mwazighe Advocate** on the recommendation of a mutual friend.
7. The Appellant further deposes that **Mr. Mwazighe** informed him that the earlier appellate proceedings of **Msa ELCA Case No. E012 of 2023** were "fictitious" and not in

the court system, and advised him to accept the Respondent's claim. He alleges collusion between **Mr. Mwazighe** and the Respondent's advocate, **Mr. Mwinzi,** on the basis that the **Mr. Mwazighe** had previously been an associate of **Mr. Mwinzi** an association that was never disclosed to him. As a layman who was working outside the country at the material time returning only in late September 2023, he contended that he should not be penalised for failing to attend court or pursue the appeal and stay application diligently. He maintains that the two lower court rulings of 13th April 2023 (setting aside the consent) and 11th May 2023 (denying him the right to join Voi Development Limited and amend pleadings) were delivered in his absence, thereby denying him a fair hearing.

8. In support, **Lucas Leeroy Nguta** deposes that in September 2023 he was requested by the Appellant to collect the court file from Mr. Ngala and seek fresh legal representation. He accompanied the Appellant to Mr. Mwazighe's office. The Appellant therefore urges the Court to find that these circumstances constitute new and

important matter warranting review of the 15th March 2024 orders and justify a stay of the warrants of arrest issued on 11th January 2026, lest he suffer irreparable loss through arrest and loss of his developed property.

9. The Respondent, through the replying affidavit of her advocate **Mr. Onesmus Mwinzi sworn on 23rd March 2026**, takes a firm position that the present application is procedurally incompetent and an abuse of the court process. She contends that **Lucas Leeroy Nguta** is a complete stranger to the proceedings and therefore lacked locus to swear an affidavit in support of the application unless the same was being exhibited. More fundamentally, she avers that no appeal has ever been filed or was pending before this Court. What was determined on 15th March 2024 was merely an application for leave to file an appeal out of time, which was dismissed after the Appellant failed to attend court.

10. The Respondent emphasises that the application now before the Court seeks, in effect, to reinstate and re-litigate a matter that was conclusively dismissed more than two years earlier. She points out that the Appellant

filed the earlier application in person, and therefore cannot now shift blame onto advocates. The Respondent submits that allowing the application would open the floodgates to endless collateral challenges against final orders, contrary to the principles of finality of litigation and the overriding objective under Sections 1A and 1B of the CPA.

11. The Court has carefully considered the application, the supporting and replying affidavits, the annextures thereto, and the oral submissions by **Learned Counsel Mr. Juma Olela** for the Appellant and **Learned Counsel Mr. Onesmus Mwinzi** for the Respondent. The Court frames the following issues for determination;

***i) Whether the instant application is competent and properly before this Court.***

***ii) Whether the Appellant has established sufficient grounds for review and/or vacation of the orders of 15th March 2024.***

***iii) Whether the Appellant has satisfied the conditions for grant of stay of the warrants of arrest and execution proceedings under Order 42 Rule 6 CPR.***

***iv) What orders should issue as to costs.***

12. This court shall now address the said issues sequentially.

13. The Court must first determine whether the application is properly before it, having regard to jurisdiction, the doctrine of abuse of process, and the inordinate delay. The Respondent forcefully argues that no appeal was ever filed; only an application for leave to file an appeal out of time was dismissed on 15th March 2024. The Appellant, invoking Sections 3A, 1A and 1B of the CPA, contends that the Court's inherent jurisdiction and the overriding objective permit it to entertain the present motion to prevent miscarriage of justice.

14. The law is unequivocal: once an application for extension of time to appeal is dismissed, a subsequent application seeking substantially the same reliefs after a prolonged period is incompetent and amounts to an abuse of the court process. This position was authoritatively stated by the Supreme Court in **Republic v Karisa Chengo & 2 others [2017] eKLR,** where the Court underscored that the finality of judicial decisions is a

cornerstone of the administration of justice and that litigants cannot be permitted to engage in serial litigation through collateral attacks. The Court of Appeal echoed this in **Route 3 Company Limited & another v Nairobi City County & another (Civil Appeal (Application) 188 of 2019) [2025] KECA 315 (KLR),** holding that reinstatement of dismissed applications long after the event is only permissible in the most exceptional circumstances, none of which are disclosed here.

15. Similarly, in the case of **Iderus v Hussein & 10 others (Environment & Land Case No. E1180 of 2025) [2025] KEELC 1180 (KLR),** the Court dismissed a similar attempt to revive a dismissed leave application, describing it as "a blatant abuse calculated to frustrate the Respondent and prolong litigation indefinitely." Applying these authorities to the facts, the Appellant's own timeline is telling: the order dismissing the leave application was delivered on 15th March 2024; the Appellant claims awareness of the alleged collusion by late 2023; yet the present motion was filed only on 5th February 2026 nearly two years later. No satisfactory explanation has been

offered for this delay, save for the Appellant's status as a layman working abroad. Such personal circumstances, while sympathetic, do not override the statutory timelines or the need for procedural certainty.

16. Assuming, without conceding, that the application were competent, the Appellant must satisfy the stringent criteria for review under **Section 80 of the CPA read together with Order 45 Rule 1 of the CPR.** These grounds are exhaustive: (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced at the time the order was made; (ii) some mistake or error apparent on the face of the record; or (iii) any other sufficient reason. The application must further be brought without unreasonable delay.

17. The Appellant's primary ground is the alleged collusion between Mr. Mwazighe and the Respondent's advocate, Mr. Mwinzi. He also relies on his absence from the country during the delivery of the lower court rulings in April and May 2023, his lay status, and the supporting evidence of Lucas Leeroy Nguta. A careful scrutiny reveals

that these do not meet the threshold. First, the alleged collusion is founded on nothing more than prior professional association between the two advocates. Courts have repeatedly held that bare assertions of fraud or collusion, unsupported by cogent documentary or circumstantial evidence, are insufficient to vitiate court orders. See **Hirani v Kasam [1952] 19 EACA 131 (Court of Appeal for Eastern Africa), approved by the Court of Appeal in Flora Wasike v Destimo Wamboko [1982–88] 1 KAR 266, and more recently in Atogo v Wamboye & 6 others (Civil Appeal 53 of 2019) [2025] KECA 327 (KLR).** No correspondence, meeting minutes or any documentary evidence have been furnished to this court to prove any conspiracy.

18. Second, several courts have consistently held that cases belong to the litigants and not to their advocates. **A perusal of the court record herein shows that the Appellant failed to attend court on four occasions being on 2nd October 2023, 16th November 2023, 30th January 2024 and 15th March 2024 when finally, the dismissal orders were issued.**

19. It is noteworthy that a litigant bears the primary and personal duty to attend court, monitor the progress of his matter, instruct his advocate properly, and follow up diligently on all procedural steps. The Appellant cannot seek to shift blame onto his former advocates for any alleged lapses or for his own failure to appear. This principle is particularly apposite where, as here, the Appellant was not a passive party but an active participant who personally filed the application for leave to appeal out of time on 18th September 2023.

20. That application was filed well after the full operationalisation of the Judiciary's e-filing system across Kenyan courts. The e-filing system, officially launched on 1st July 2020, has revolutionised the administration of justice in Kenya by promoting efficiency, transparency, accountability and greater access to justice. It eliminates the need for physical filing of documents, reduces delays associated with manual processes, minimises opportunities for loss or tampering of court files, and enables real-time tracking of cases from anywhere in the world. Parties and their advocates receive instant, automated notifications of

every step in the proceedings including hearing dates, rulings, delivery of judgments and any other activity through the integrated Case Tracking System (CTS) via email and/or SMS alerts sent directly to the contact details provided by the litigant at the time of filing. This digital platform ensures that no party can legitimately claim ignorance of court processes once they have registered on the system.

21. The role of litigants in this digital environment is therefore heightened and non-delegable. Every litigant has an active duty to provide accurate and up-to-date contact information, to regularly log into the CTS portal or check notifications, and to take personal responsibility for monitoring the progress of their case. Reliance on an advocate does not absolve a litigant of this fundamental obligation; the suit belongs to the client, and the client must exercise vigilance to protect his or her rights.

22. This court in several other cases has emphatically underscored this duty of personal vigilance by litigants in the digital era. In **Kahoro v Gitahi (Environment &**

**Land Case 3 of 2023) [2024] KEELC 6843 (KLR) (18 October 2024),** it was held that;

> ***"….in this era of e-filing that was officially launched by the Judiciary on 1st July 2020 the e-filing court systems usually sends parties automated notifications either emails or Short Message Services (SMS) notifying parties of upcoming court dates and any changes in the schedule. Through the said platform parties also receive instant notification of any activities or updates on the Case Tracking System (CTS) in respect to their cases. Parties have always been urged time without number to embrace the said technology." The Court further observed that "in the case of litigation, the suit belongs to the client and the client has an obligation to do follow up and ensure that she attends court."***

This position had also been applied in the cases of **Maina v J.K. Horeria t/a Horeria & Company & another (Environment & Land Case 1928 of 2007) [2023]**

**KEELC 16919 (KLR) (23 March 2023) (Ruling) and Afyare Enterprises Company Ltd v Mugambi & 2 others; Mugambi (Interested Party) (Environment & Land Case 1626 of 2016) [2023] KEELC 17892 (KLR) (25 May 2023) (Ruling).**

23. The Appellant's absence abroad and his claim of being a layman do not qualify as "new and important matter" under Order 45. He was represented at various stages and personally filed the leave application. The alleged discovery of the fictitious nature of the earlier proceedings occurred in September 2023, yet no steps were taken until February 2026. This delay is unreasonable and fatal, as held in **National Bank of Kenya v Ndung'u Njau (Civil Appeal No. 211 of 1996) and by the Environment and Land Court in Board of Directors New Victory School & 7 others v Ndegwa [2025] KEELC 699 (KLR),** where a delay exceeding one year was deemed sufficient to dismiss a review application. The doctrine of laches and acquiescence further bars the Appellant from seeking review after such inordinate and unexplained delay.

24. Additionally, the Appellant's assertion that the earlier ELCA proceedings were "fictitious" remains bare and unsupported by any official certification from the court registry confirming that the matter was never registered or heard.

25. Third, Lucas Leeroy Nguta's affidavit is admissible in that it speaks to facts within his personal knowledge (collection of the file and attendance at the advocate's office). However, it merely corroborates the Appellant's narrative without introducing independent probative material capable of altering the 15th March 2024 decision. There is no error apparent on the face of the record, nor any other sufficient reason within the meaning of the rule.

26. The Appellant's own delay in acting after September 2023 when he allegedly discovered the issues undermines the urgency he now seeks to invoke. His affidavits, while detailed on personal hardship, do not demonstrate that the alleged collusion or advocate lapses were unknown to him at the time the 15th March 2024 orders were issued or that they could not have been raised earlier with due diligence.

The prayer for review, setting aside or vacation of the orders issued on 15th March 2024 cannot be issued.

27. The Appellant seeks stay under **Order 42 Rule 6(1) and (2) Civil Procedure Rules.** The rule is clear: no order for stay shall issue unless the Court is satisfied that (a) substantial loss may result to the applicant unless the stay is granted; (b) the application was brought without unreasonable delay; and (c) such security as the Court may order is furnished. Judicial interpretation has crystallised these into four cumulative conditions: (i) an arguable appeal or review; (ii) substantial loss; (iii) absence of unreasonable delay; and (iv) balance of convenience favouring the applicant. See **National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another [2006] eKLR; Vishram Ravji Halai v Thornton & Turpin (Civil Application No. Nai. 15 of 1990) [1990] KLR 365; and recent ELC authorities such as Nthiga v Stower (Environment and Land Case 933 of 2002) [2025] KEELC 8094 (KLR) and Muliango & 2 others v Andai (Environment and Land Case) [2025] KEELC 5129 (KLR).**

28. The Appellant fails at the first hurdle: having found no arguable review, there is no foundation for stay. Even if arguendo the review were arguable, the risk of arrest and potential loss of developed property, while constituting substantial loss, must be balanced against the Respondent's decade-long deprivation of the fruits of the 2015 decree. The warrants were issued on 11th January 2026 and the application filed within a month, but the overarching delay since 2023 renders the overall application untimely. No security whatsoever has been offered. The balance of convenience tilts decisively in favour of the Respondent, who has waited patiently while the Appellant pursued multiple unsuccessful procedural manoeuvres. Stay is accordingly refused.

29. On costs, costs ordinarily follow the event as a general rule under **Section 27 of the Civil Procedure Act.** However, having regard to the peculiar circumstances of this matter, the Court exercises its discretion to depart from the general rule. Each party shall therefore bear its own costs of this application.

30. The Appellant has failed to demonstrate any competent or meritorious basis upon which the orders of 15th March 2024 can be reviewed or set aside, nor has he satisfied the strict conditions for stay of execution proceedings.

31. In the end, the application dated 5th February 2026 is dismissed. Each party to bear own costs.

**Dated, Signed and Delivered Virtually at Voi this 31st day of March, 2026.**

**E. K. WABWOTO**
**JUDGE**

**In the presence of: -**

**Mr. Juma for the Appellant.**

**N/A for the Respondent.**

**Court Assistants: Mary Ngoira and David Ngoosa.**