Mua Insurance (Kenya) Limited v Jalkarim Holdings Limited (Commercial Case E001 of 2025) [2026] KEHC 5042 (KLR) (27 March 2026) (Ruling)

Neutral citation: [2026] KEHC 5042 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MAKUENI

COMMERCIAL CASE E001 OF 2025

TM MATHEKA, J

MARCH 27, 2026

BETWEEN

MUA INSURANCE (KENYA) LIMITED .... PLAINTIFF

AND

JALKARIM HOLDINGS LIMITED .... DEFENDANT

RULING

1. The Application for determination is dated 28/05/2025 and was filed under certificate of urgency. It is brought under Sections 1A, 1B, 3A & 6 of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of the law. It seeks the following orders;

   a. Spent.

   b. Spent

   c. That the honorable Court be pleased to order a stay of the proceedings in Kilungu MCCC No. E148 of 2024; Dickson Kiprotich Barno -vs- Jalkarim Holdings Ltd and Kilungu MCCC No. 138 of 2024; Mathew Kioko -vs- Jalkarim Holdings Ltd on 12/04/2024 and any further or subsequent proceedings, independent or arising therefrom dealing with or raising similar issues pending the hearing and determination of the intended declaration suit.

   d. That the costs of this Application be provided for.

The Application

2. The Application is supported by the grounds on its face and the Affidavit of Lilian Simiyu sworn on the same day. She deponed that she is the Deputy Manager Legal Services of Mua Insurance (Kenya) Limited and conversant with the facts of this case hence competent and duly authorized to swear this affidavit.

3. That the Plaintiff and Defendant entered into a motor vehicle comprehensive policy in respect of motor vehicle registration number KBJ 479/ZG 5581 under policy number 487/20/08/HO as per the exhibited policy document (LS-1) and the same was effective from 01/07/2023 to 30/06/2024.

4. That, it was an express term of the insurance policy that the Plaintiff would indemnify the Defendant for any loss or damage to their motor vehicle and/or death, bodily injury or loss or damage to property of third parties arising out of the commercial use of motor vehicle registration number KBJ 479Y/ZG 5581(the motor vehicle) but did not cover passengers of the said motor vehicle.

5. That, on or about 17/01/2024, the motor vehicle was involved in a road traffic accident thereby allegedly occasioning the passengers therein, including Dickson Kiprotich Barno and Mathew Kioko Mutiso, bodily injuries.

6. That, the Plaintiff commissioned investigations to establish the occurrence of the accident and the investigations established that the motor vehicle was used to ferry passengers as opposed to commercial use that the policy had been issued. That the passengers in the motor vehicle have instituted suits against the Defendant as per the exhibited pleadings (LS-2).

7. That, consequently, the Plaintiff's action is for an order of declaration that it is not entitled to honor and/or pay any sums arising by way of claim against the said Defendant in the present suit or in any other suit erroneously believed to be covered under the aforesaid policy and or in favor of the named plaintiff. That, it is only fair and just that the lower court cases and all other proceedings in relation to this suit be stayed until the issue herein is heard and determined.

8. That, of her own knowledge, she knows that the Civil Procedure Rules clearly provide for a subsequent suit to be stayed until the determination of the suit that deals with substantial issues which directly affect the other suit. That, her honest belief is that the Defendant will not suffer any prejudice if this Application is allowed since costs follow the event and a successful party is entitled to enjoy the fruits of its judgment.

9. That, the Plaintiff does not intend to delay this matter and is ready to proceed with it at the earliest possible opportunity once the issues raised herein are determined.

The Response

10. The Application was opposed through the Replying Affidavit of Jackson Kibet Choge sworn on 02/07/2025 where he deponed that he has authority from the Defendant to swear the affidavit on its behalf hence competent to swear the affidavit. A copy of the authority is exhibited as JK-1.

11. He deponed that he has not instructed his authorized driver to use motor vehicle KBJ 479Y/ZG 5581 to carry unauthorized passengers. That, he is the Defendant in the Kilungu matters whose proceedings should not be stayed on grounds that, one Dickson Kiprotich Barno- the alleged Plaintiff in Kilungu MCC No. E148 of 2024-is his witness in both suits and has explicitly stated that he cannot blame the Defendant on the alleged accident and that he has not given instructions to anybody to institute any suit on his behalf. A copy of statement dated 26/06/2025 is exhibited as JK-2.

12. That, summons and plaints in both suits were served upon the Plaintiff on 20/01/2025 and receipt confirmed by stamping as per the exhibited copies (JK-3) and the Defendant has filed defence and witness statements in the trial court (JK-4). That, upon being served with summons and plaint in the Kilungu matters, the Plaintiff never raised any objection until 06/05/2025 hence the suit is time barred.

13. That, the Application is an afterthought, defective, bad in law, misuse of court and should be dismissed with costs.

14. The Application was canvassed through written submissions.

The Applicant's Submissions

15. It was submitted that failure to file the declaratory suit within 3 months after notice of the primary suit was neither deliberate nor inordinate. That, the Plaintiff received the pleadings in the lower court matters on or about 20/01/2025 and subsequently conducted investigations which were concluded on or about May 2025. That, the delay was occasioned by the need to establish material facts through proper investigations before approaching the court. That, the Plaintiff acted with reasonable diligence once the breach was established.

16. This court was urged to exercise its inherent jurisdiction under Article 159 (2)(d) of *the Constitution* and section 3A of the *Civil Procedure Act* to administer justice without undue regard to technicalities and to allow this matter to proceed on its merits.

Reliance was placed on Esther Wangari Kamau -vs- Kanuri Zakayo & Anor [2019] eKLR where the court (Mwongo J) stated;

> "The court's jurisdiction to enlarge time is extremely wide, and correctly so, in order to pre-empt the technicality of lateness from becoming the bedrock for denial of substantive justice. Thus, Article 159 of *the Constitution* comes to the aid of a late party with regard to ensuring substantive justice trumps procedural technicality. In addition, Order 51 Rule 6 of the Civil Procedure Rules enables the court to set conditions for enlargement of time and to require the applicant to pay the costs of such application."

17. With regard to the prayer for stay of execution, reference was made to Order 42 Rule 6(2) of the Civil Procedure Rules for the submission that if stay is not granted, the declaratory suit will be rendered nugatory and the Applicant will be condemned to settle the decretal sums arising from the lower court suits hence incurring substantial loss.

The Respondent's Submissions

18. The issues for determination were identified to be;

    a. Whether the Plaintiff/Applicant's Application is competent and properly before this Honourable Court.

    b. Whether the Plaintiff/Applicant has satisfied the requirements of Section 6 of the *Civil Procedure Act* for stay of proceedings.

    c. Whether the Plaintiff/Applicant will suffer prejudice if the Kilungu matters proceed.

    d. Whether the Application amounts to an abuse of the court process.

19. As to whether the Application is competent, it was submitted that Section 10(4) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 is couched in mandatory terms and creates strict timelines within which a declaratory suit must be filed. That, having been served with summons in the lower court matters on 20/01/2025, the declaratory suit was filed on 06/05/2025, well outside the three months required by law hence rendering the present application incompetent and fatally defective. Reliance was placed on Intra Africa Assurance Company Limited –vs– Simon N. Njoroge & Another [1997] eKLR where the Court of Appeal held that;

> " no sum shall be payable by an insurer ... if

(a) he has filed an action either before, or within three months after, the commencement of proceedings ...

and

(b) has obtained a declaration ..."

20. It was contended that Statutory timelines in Section 10(4) were deliberately enacted by Parliament to achieve certainty in insurance litigation and cannot be extended at whim. Reliance was placed on Raila Odinga -vs- IEBC & Others, Petition No. 5 of 2013 where the court stated;

> " ...*the Constitution* requires that justice be done without delay; that rules and timelines are not mere technicalities, but they are made with special and unique considerations and must be taken with seriousness and solemnity..."

21. It was submitted that the Plaintiff could not seek refuge in Article 159(2)(d) of *the Constitution* or Section 3A of the *Civil Procedure Act* to cure a clear statutory violation. That, substantial justice cannot override an express statutory requirement as to do so would amount to rewriting Section 10(4), which is outside the province of this Honourable Court.

22. Reliance was placed on Paul Wanjohi Mathenge -vs- Duncan Gichane Mathenge [2013] eKLR where the Court of Appeal stated that;

> " The discretion to extend time is indeed unfettered, but it has to be exercised judiciously and with regard to the statutory provisions. Where the law has set a specific time-frame, the court cannot, in exercise of discretion, extend such period so as to defeat the express requirements of statute."

23. It was submitted that where Parliament has fixed a definite period as in Section 10(4), discretion to enlarge time is ousted and to hold otherwise would render the strict three-month period superfluous and defeat the legislative intention. It was contended that the factual matrix also militates against the Applicant as it was served on 20/01/2025 but only acted after four months without seeking leave.

24. That, the Defendant had already filed defenses and witness statements in the lower court suits where one of the alleged Plaintiffs, Dickson Kiprotich Barno, has sworn that he never instructed anyone to sue the Defendant hence a demonstration that the present suit is an afterthought, brought too late and with the effect of unnecessarily delaying proceedings in the lower courts.

25. As to whether the Applicant has satisfied the requirements of section 6 of the *Civil Procedure Act* for stay of proceedings, it was submitted that the present matter does not meet the strict four-part test set in Kenya National Commission on Human Rights -vs- Attorney General; IEBC & 16 Others (2020) eKLR where the Supreme Court of Kenya stated;

> " The purpose of sub judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter... When two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit."

26. It was submitted that it is not enough for the Applicant to allege similarity but must demonstrate identity of parties, identity of subject matter and identity of reliefs sought. That, the claims in the Kilungu Court are by alleged passengers seeking damages for personal injuries arising from a road accident and the instant suit is a declaratory action against the insured, seeking to avoid liability under an insurance contract.

27. That, the subject matters are therefore distinct as one concerns tortious liability for personal injury and the other concerns contractual repudiation of an insurance policy. That, the mere fact that both arise from the same accident does not render them "directly and substantially the same" as contemplated under Section 6.

28. That, the parties are not the same as the Plaintiffs in the lower court as Dickson Kiprotich Barno and Mathew Kioko Mutiso, are not parties in the declaratory suit now before this Court. That, indeed, as deponed in the Respondent's affidavit, one of those very Plaintiffs, Mr. Barno, has expressly sworn that he never instructed the filing of any claim against the Defendant and cannot attribute blame to him. Reliance was placed on Kenya National Commission on Human Rights -vs- Attorney General (supra) were the Supreme Court stated that:

> " ...for Section 6 to apply there must be "more than one suit over the same subject matter; one suit instituted before the other; both pending before courts of competent jurisdiction; and lastly, the suits must be between the same parties or their representatives."

29. It was contended that the Applicant is seeking to stretch Section 6 beyond its purpose to shield itself from defending legitimate claims of injured parties by collapsing distinct causes of action into one. That, this would defeat, rather than advance, the ends of justice. That, the suits are neither parallel nor conflicting in nature; they are complementary, each pursuing its own cause of action before a court with proper jurisdiction. That, the plea of sub judice is therefore inapplicable and the prayer for stay of proceedings must collapse.

30. As to whether the Plaintiff will suffer prejudice if the Kilungu Matters proceed, it was submitted that the Plaintiff has failed to demonstrate any prejudice that will arise. That, the said suits are still at mention stage and no judgment has been delivered and the Plaintiff retains the right to fully participate and present its defence therein. That, allegations of prejudice are speculative, unsupported by evidence and cannot form a legitimate basis for invoking the discretionary jurisdiction of this Honourable Court. Reliance was placed on Kenya Shell Limited -vs- Kibiru Another [1986] eKLR where the Court of Appeal stated;

> " If there is no evidence of substantial loss to the Applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the Respondents should be kept out of their money."

31. It was submitted that it is the Respondent who stands to suffer real prejudice if the proceedings are stayed. That, Article 50 of *the Constitution* guarantees the right to a fair hearing while Article 159(2)(b) requires justice to be administered without delay. That, staying the Kilungu matters, which are properly instituted and already defended, would deny the Respondent the constitutional right to an expeditious trial and prolong litigation unnecessarily.

Reliance was placed on Ngwambu Ivita -vs- Akton Mutua Kyumbu (1984) KLR 441 where the court held;

> "The Defendant must however satisfy the court that he will be prejudiced. He must show that justice will not be done in the case due to the prolonged delay on the part of the Plaintiff before the court will exercise its discretion in his favour and dismiss the action for want of prosecution."

32. As to whether the Application amounts to an abuse of court process, it was submitted that the Applicant had the opportunity to pursue its remedies within the strict statutory timelines prescribed under Section 10(4) of the Insurance (Motor Vehicle Third Party Risks) Act, but instead slept on its rights only to resurface with the present application. That, this conduct is not only indolent but also amounts to forum shopping, a practice the courts have consistently frowned upon. That, abuse of process arises where proceedings are instituted for improper purposes or in a manner inconsistent with orderly and fair administration of justice. Reference was made to the Black's Law Dictionary, Sixth Edition (p. 990, 10–11) where abuse is defined as;

> "Everything, which is contrary to good order established by usage that is a complete departure from reasonable use. An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use."

33. That, by seeking to stop two live cases in Kilungu through a belated declaratory action, the Applicant is clearly using the court process in a manner contrary to its natural and intended use.

Reliance was placed on Jadesimi -vs- Okotie Eboh (1986) 1NWLR (Pt 16) 264 where the court stated;

> "The situations that may give rise to an abuse of court process are indeed inexhaustive, it involves situations where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party... abuse arises where there is multiplicity of actions, forum-shopping, or where a process is premised on recklessness."

34. Reliance was also placed on Benjoh Amalgamated Limited & Another -vs- Kenya Commercial Bank Limited [2014] eKLR where the Court of Appeal held that:

> "...equity aids the vigilant, not the indolent or delay defeats equities. A Court of equity refuses its aid to stale demands, where the claimant has slept upon his right and acquiesced for a great length of time."

35. Further reliance was placed on The Lindsay Petroleum Co. -vs- Hurd (1874) LR 5 PC 221 where the Privy Council observed that;

> "...lapse of time and delay are most material. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to waiver of it... or has placed the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted."

36. It was contended that the Applicant's delay of over four months is unconscionable and its present attempt to halt Kilungu proceedings is nothing but a stratagem to defeat the Respondent's right to a fair, expeditious trial.

37. I have carefully considered the Application, Response and rival submissions. The issue for determination, in my view, is

    a. Whether the Application is tenable?

Whether the Application is tenable?

38. The Plaintiff herein admits that it was served with the lower court claims on 20/01/2025 and that it filed the declaratory suit on 06/05/2025.

39. Section 10(4) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya (the Act) provides that;

> "No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it: (emphasis mine).
>
> Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within fourteen days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such action is so given shall be entitled, if he thinks fit, to be made a party thereto.

40. It is therefore clear that this declaratory suit should have been filed by 20/03/2025, a period of three months since the service of claims on 20/01/2025. However, the suit was filed on 06/05/2025 without leave of court and even in the current Application for stay of proceedings, the said prayer is absent but has been introduced in the submissions. It is trite that submissions are not pleadings and cannot be used to introduce substantive issues. In Daniel Toroitich Arap Moi -vs- Mwangi Stephen Muriithi & Anor [2014] KECA 642 (KLR), the Court of Appeal held that; "...Submissions are generally parties' marketing language".

41. Further, in Ngang'a & Another -vs- Owiti & Another (2008) 1KLR (EP) 749 the Court stated that;

> "As the practice has it and especially where counsel appears, a Court may hear final submissions from them. This, strictly speaking, is not part of the case, the absence of which may do prejudice to a party. A final submission is a way by which counsel or sometimes (enlightened) parties themselves, crystallize the substance of the case, the evidence and the law relating to that case. It is, as it were, a way by which the Court's focus is sought to be concentrated on the main aspects of the case which affect its outcome. Final submissions are not evidence. Final submissions may be heard or even dispensed with. But the main basis of a decision in a case, we can say are: the claim properly laid, evidence fully presented and the law applicable."

42. Consequently, there is no prayer for leave/extension of time for consideration by this court.

43. Order 51 Rule 6 of the Civil Procedure Rules cannot come to the aid of the Applicant as it provides that; 'The hearing of any Application may from time to time be adjourned upon such terms as the court thinks fit.'

44. Section 95 of the *Civil Procedure Act* is also not helpful as it provides that; 'Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period even though the period originally fixed or granted may have expired.' (emphasis mine). The section covers acts which are prescribed or allowed under the *Civil Procedure Act* yet the time frame in our case has been fixed by the Insurance (Motor Vehicle Third Party Risks) Act.

45. Further, it is my considered view that even Article 159(2)(d) cannot salvage the Application because failure to include a prayer for leave/extension of time goes to the root of the Application and is not a technicality. It has been held times without number that the said Article is not a panacea for all procedural ills. In Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others (2013) eKLR, the Court of Appeal declared that Article 159(2)(d) is not "a panacea, nay, a general whitewash, that cures and mends all ills, misdeeds and defaults of litigation."

46. Further, in Jaldesa Tuke Dabelo -vs- Independent Electoral & Boundaries Commission & Another [2015] eKLR, the Court of Appeal stated that Article 159 was neither aimed at conferring jurisdiction where none exists nor intended to derogate from express statutory procedures.

47. As for the argument of sub judice under section 6 of the *Civil Procedure Act*, I am in agreement with the Respondent that the Kilungu suits and the declaratory suit herein are not in issue directly and substantially. The two are distinct in that, the Kilungu suits are founded on tortious liability arising from an accident whereas the declaratory suit is based on a contractual indemnity dispute between an insurer and insured.

48. one of the Plaintiffs in the Kilungu suits – Dickson Kiprotich Barno- has clearly indicated in his witness statement that he is not blaming the owner of the motor vehicle (Jalkarim Holdings Ltd) in any way. On the face of it, the statement exonerates the Defendant from liability and by extension his insurer. In the circumstances therefore, I do not see the prejudice that will be suffered by the Insurer (Plaintiff herein) if the Kilungu suits proceed to their logical conclusion.

49. It is evident from the foregoing that the that the application before me seeks simply an order to stay the proceedings in Kilungu MCCC No. E148 of 2024; Dickson Kiprotich Barno -vs- Jalkarim Holdings Ltd and Kilungu MCCC No. 138 of 2024; Mathew Kioko -vs- Jalkarim Holdings Ltd on 12/04/2024 and any further or subsequent proceedings, an intended declaration suit.

50. I have clearly demonstrated that the application is untenable for having been filed outside statutory timelines. Specifically, the prayer to stay the proceedings in the two lower court matters, is denied.

The application is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY (CTS) THIS 27TH MARCH 2026

MUMBUA T MATHEKA

JUDGE

Signed by/for:

LADY JUSTICE MATHEKA, TERESIA MUMBUA

MAKUENI HIGH COURT