



REPUBLIC OF KENYA



**Sheikh & 18 others v Elegant Holdings Limited & 6 others (Environment and Land Case E018 of 2023) [2026] KEELC 2558 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2558 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT AND LAND CASE E018 OF 2023**

**LL NAIKUNI, J**

**APRIL 30, 2026**

**BETWEEN**

**NAVEED MOHAMED SHEIKH ..... 1<sup>ST</sup> PLAINTIFF**  
**PETER MUSYOKI MGAU ..... 2<sup>ND</sup> PLAINTIFF**  
**SONIL HOLDINGS LIMITED ..... 3<sup>RD</sup> PLAINTIFF**  
**WILLIAM OWEKE AGINGU ..... 4<sup>TH</sup> PLAINTIFF**  
**NARGIS SEFUDDIN MOOSAJEE ..... 5<sup>TH</sup> PLAINTIFF**  
**SEIFUDDIN BADRUDIN JIVANJEE ..... 6<sup>TH</sup> PLAINTIFF**  
**FIRDOS DIN ..... 7<sup>TH</sup> PLAINTIFF**  
**TAMANA KHAN ..... 8<sup>TH</sup> PLAINTIFF**  
**DORCAS KISIERO ..... 9<sup>TH</sup> PLAINTIFF**  
**PETER ESTORP ..... 10<sup>TH</sup> PLAINTIFF**  
**KJELL ERIC LINTHO ..... 11<sup>TH</sup> PLAINTIFF**  
**MALKIT SINGH RIYAT ..... 12<sup>TH</sup> PLAINTIFF**  
**PAULINE KARIUKI ..... 13<sup>TH</sup> PLAINTIFF**  
**PETER NDENDEROH ..... 14<sup>TH</sup> PLAINTIFF**  
**SHEBEENA HABIBULLA HAMPOZ ..... 15<sup>TH</sup> PLAINTIFF**  
**FRANK KAMUNDE MWONGERA ..... 16<sup>TH</sup> PLAINTIFF**  
**JUDY MUTHONI MWAURA ..... 17<sup>TH</sup> PLAINTIFF**  
**MARY NDUTA KIMEMIA ..... 18<sup>TH</sup> PLAINTIFF**  
**MARGARET MBULWA NGAU ..... 19<sup>TH</sup> PLAINTIFF**



**AND**

ELEGANT HOLDINGS LIMITED .....	1 <sup>ST</sup> DEFENDANT
GROUP FIVE HOLDINGS LIMITED .....	2 <sup>ND</sup> DEFENDANT
GOLDEN FIVE HOLDINGS LIMITED .....	3 <sup>RD</sup> DEFENDANT
REGISTRAR OF TITLES, KWALE COUNTY .....	4 <sup>TH</sup> DEFENDANT
A. ALIBHAI & ASSOCIATES ADVOCATES .....	5 <sup>TH</sup> DEFENDANT
KIKORA LIMITED .....	6 <sup>TH</sup> DEFENDANT
J.M. RAMA (SUED AS THE REGISTRAR OF TITLES MOMBASA COUNTY) .....	7 <sup>TH</sup> DEFENDANT

**RULING**

**I. Introduction**

1. This Honourable Court is called upon to determine the Notice of Motion application dated 13<sup>th</sup> January 2026 filed by the Registrar of Titles, Kwale County and J.M. Rama (sued as the Registrar of Titles Mombasa County) the 4<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants, brought under the provisions of Section 21 (4), (5) of the *Government Proceedings Act*, Sections 1A, 3A and 63(e) of the *Civil Procedure Act*, Cap. 21. Order 42 Rule 6(1) and Order 51 Rule 1 of the Civil Procedure Rules 2010, wherein the Applicants seek stay of proceedings pending the hearing and determination of Civil Appeal No. E002 of 2026 before the Court of Appeal at Mombasa.
2. The Honourable Court is equally called upon to consider the Replying Affidavit dated 12<sup>th</sup> March, 2026 sworn by Peter Musyoki Ngau, the 2<sup>nd</sup> Plaintiff, on behalf of himself and other Plaintiffs, opposing the application for stay, together with the grounds of opposition filed by the 1<sup>st</sup>, 2<sup>nd</sup>, and 6<sup>th</sup> Defendants, and the written submissions exchanged by the parties.
3. Upon service of the application, the Plaintiffs opposed the same through the said replying affidavit, while the 1<sup>st</sup> Defendant filed grounds of opposition dated 30<sup>th</sup> March 2026, the 2<sup>nd</sup> Defendant filed a Replying Affidavit sworn by Sukhwinder Singh Chatthe on 20<sup>th</sup> January 2026, and the 6<sup>th</sup> Defendant filed Grounds of Opposition dated 2<sup>nd</sup> April 2026. Thereafter, the parties responded comprehensively by way of written submissions filed on record.
4. Therefore, this ruling therefore addresses the merits of the application for stay of proceedings, the responses thereto, and the applicable statutory provisions and judicial precedents guiding the Court in the exercise of its discretion.

**II. The case by the 4<sup>th</sup> and 7<sup>th</sup> Defendants**

5. The Applicants sought the following orders: -
  - a. Spent.
  - b. That there be a temporary stay of proceedings and the stay of the ruling of 27<sup>th</sup> October 2025 pending the hearing and determination of the Application herein.



- c. That there be a temporary stay of proceedings and the stay of ruling of the ruling of the Honourable Court of 27<sup>th</sup> October 2025 pending the hearing and determination of the Appeal filed by the Applicants.
  - d. That this Honorable Court do issue such further orders or directions that it may deem fit to grant in the interest of justice.
  - e. That the costs of this application be in the cause.
6. The application was premised on the grounds, facts and testimony on the face of the application and further supported by the 9 paragraphed annexed affidavit of J.M Rama, the Land Registrar in Kilifi County, the former Registrar of Titles of Mombasa County and the 7<sup>th</sup> Defendant herein. The Affiant averred that:-
- a. The trial Court, Hon. Justice L. L. Naikuni, delivered a ruling in this matter on 27<sup>th</sup> October 2025 in favor of the 2<sup>nd</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs on their Application dated 5<sup>th</sup> June 2025. The 4<sup>th</sup> and 7<sup>th</sup> Defendant/Applicants herein issued a Notice of Appeal which was filed in court and served upon the Plaintiffs.
  - b. He was aggrieved by the said decision of the Honourable Court, thus a notice of appeal was filed and an appeal was lodged against the said ruling of the Honourable Court.
  - c. The issue of joinder of parties to a suit was a very important matter and the same had to be sorted out before the matter proceeded further.
  - d. The 4<sup>th</sup> and 7<sup>th</sup> Defendants' Appeal raised substantial issues and should have been granted time to be heard and determined.
  - e. If the stay orders were not urgently granted then the intended Appeal by the Applicants would have been an exercise in futility.
  - f. Arising from those state of affairs, it was trite that the Application be determined urgently and the order staying the proceedings in the suit be granted pending the hearing of the Application and the intended Appeal.
  - g. He swore the Affidavit in support of the Application and prayed that the same be allowed in the interest of justice.

### **III. The Grounds of Opposition dated 16<sup>th</sup> January, 2026**

7. The Respondent raised the following grounds in opposition of the 4<sup>th</sup> and 7<sup>th</sup> Defendants' Notice of Motion application dated 13<sup>th</sup> January, 2026:-
  - a. The Application was misconceived and incompetent.
  - b. The Application was incurable defective as the same was brought under wrong provisions of the law.
  - c. The application was procedurally drawn in breach of the relevant rules.
  - d. The application was an abuse of the process of the Court and law.
  - e. The orders sought for herein could not be granted by the Court.



#### IV. The Replying Affidavit by the 2<sup>nd</sup> Defendant

8. The 2<sup>nd</sup> Defendant, responded to the Notice of Motion application dated 13<sup>th</sup> January, 2026, through a 11<sup>th</sup> paragraphed Replying affidavit sworn by Sukhwinder Singh Chatthe on 20<sup>th</sup> January, 2026, the director of the 2<sup>nd</sup> Defendant herein who averred as follows: -
- a. He had read and understood the Notice of Motion dated 13<sup>th</sup> January 2026 together with the Supporting Affidavit sworn by J. M. Rama on 13<sup>th</sup> January 2026 and, in opposing the said application, replied there as hereunder.
  - b. Having read and understood the application, and appreciating the nature and substance of the entire suit, the Affiant deposed that the application lacked merit and was geared at delaying the prosecution and determination of the suit given that:
    - i. The application as drawn and presented did not demonstrate sufficient cause to warrant granting an order of stay. The grounds upon which the application was premised did not contain even a single compelling reason to warrant grant of an order of stay.
    - ii. To the extent to which the application was brought under the provision of Order 42 Rule 6(1) of the Civil Procedure Rules 2010 which talks of “stay of execution,” the same was incurably defective and misconceived given that the orders issued by the Court on 27<sup>th</sup> October 2025 by which Mr. J. M. Rama was joined in the suit as a 7<sup>th</sup> Defendant had already been executed to their fullest, hence his participation as such.
    - iii. The 7<sup>th</sup> Defendant/Applicant did not stand to suffer any loss, prejudice and/or damage should the suit proceed with him participating as such.
    - iv. The Applicant had not provided any material or evidence in support of his allegation that the application ought to be heard on priority basis and/or dealt with under a certificate of urgency.
  - c. The Affiant stated that he knew of his own knowledge that the suit was fixed and scheduled for hearing on 4<sup>th</sup> May 2026 and that the Court had clearly indicated that it would not entertain any application for adjournment, hence the 7<sup>th</sup> Defendant/Applicant’s application was a scheme aimed at obtaining an adjournment through a backdoor.
  - d. The 2<sup>nd</sup> Defendant, who was the owner and proprietor of all that parcel of land known as L.R. No. 31283/3 and who had acquired the same by way of purchase as an innocent purchaser for valuable consideration in an overt market and without notice of defect of the Vendor’s title, stood to suffer irreparable loss and damage and could not resume and continue with the development she had started.
  - e. The 2<sup>nd</sup> Defendant/Respondent was incurring losses and damage by way of accruing interest on a loan facility obtained from a bank which was used in paying the purchase price and for the development of the suit property (L.R. No. 31283/3) and hence there should have been no stay of proceedings in the suit.
  - f. The 7<sup>th</sup> Defendant/Applicant did not stand to suffer any loss, damage and/or prejudice, was not suffering the same and would not suffer any should the suit proceed to hearing with his participation.



- g. The 7<sup>th</sup> Defendant/Applicant would have had a chance, during the hearing and by way of either evidence or cross-examination, to demonstrate that his being joined as a 7<sup>th</sup> Defendant was not merited and/or was erroneous as he alleged in his appeal to the Court of Appeal.
- h. He swore the affidavit in opposing the application dated 13<sup>th</sup> January 2026 by the Defendant/Applicant.

#### **V. The Replying Affidavit by the 2<sup>nd</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs**

- 9. The 2<sup>nd</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs responded to the Notice of Motion application dated 13<sup>th</sup> January, 2026 through a 47 Paragraphed Replying Affidavit sworn on 12<sup>th</sup> March, 2026 by Peter Musyoki Ngau, the 2<sup>nd</sup> Plaintiff herein who averred that:-
  - i. He had been duly authorized by the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs herein to swear this Affidavit on their behalf.
  - ii. He had read the Notice of Motion application dated 13<sup>th</sup> January, 2026 filed by State Counsel on behalf of the 4<sup>th</sup> and 7<sup>th</sup> Defendants and the Affiant objected to the prayers sought due to the following grounds:-
    - a. There were ongoing physically damages to the subject property which necessitate the Plaintiffs to seek the urgent intervention of the Court to issue interlocutory orders related to care and maintenance of the subject property, which if delayed are likely to cause the Plaintiffs severe irreparable harm and prejudice; and
    - b. The Applicants had not met the threshold for a stay in proceedings.
  - iii. The Affiant averred that the various Agreements to Lease apartments in the subject property LR. No. 31283 (previously LR. No. 12829) signed between the Plaintiffs and the 1<sup>st</sup> Defendant (herein after the 'Agreements to Lease') established a contractual duty requiring the 1<sup>st</sup> Defendant to constitute the 3<sup>rd</sup> Defendant as the management company empowered to oversee the common areas, collect service charges and use the same for maintenance of the subject property based on the provisions of the Agreements and the governing law, which was the *Sectional Properties Act*.
  - iv. The Affiant stated that the Further Amended Plaint of the 2<sup>nd</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 20<sup>th</sup> Plaintiffs dated 8<sup>th</sup> June, 2025 (herein the 'Further Amended Plaint') enumerated several issues as the subject matter of this suit. Among the issues are
    - (a) failure of the 1<sup>st</sup> Defendant to properly constitute the 3<sup>rd</sup> Defendant and transfer management responsibilities to the 3<sup>rd</sup> Defendant,
    - (c) failure of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to perform contractual responsibilities stipulated in the Agreements to Lease in regard to proper construction and maintenance of amenities in the subject property,
    - (d) negligence of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants in the construction and maintenance of the subject property and amenities therein and
    - (e) the physical degradation of the subject property due to actions and inactions of the Defendants . (See the Further Amended Plaint at paragraphs 18(A)(i) to (vi) which relate to breach of the Agreements of Lease including failure of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to maintain the suit property and failure to allot shares of the 3<sup>rd</sup> Defendant



to the Plaintiffs; paragraphs 18(c)(i) to (ii) which relate to the breach of the Sectional Properties Act by the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants and failure to register the revisionary interest of the Plaintiffs; and paragraphs 18(E)(i) to (vi), which relate to negligence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in construction and acts causing physical degradation of the property).

- v. The failure of the 1<sup>st</sup> and 5<sup>th</sup> Defendants to transfer management responsibilities to the 3<sup>rd</sup> Defendant, failure of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to maintain the subject property and negligence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had resulted in almost all amenities and structures in the subject property suffering rapid degradation as evidenced by photographs attached to the Plaintiffs List of Documents as document marked as “PMN – 103” at page 479, and marked as documents “PMN - 129 – 133” at page 554 to 567).
- vi. The degradation of the subject property has been worsened by the Defendants undertaking unauthorized construction and destruction of amenities in the subject property without consulting the Plaintiffs or obtaining construction approvals from the required government authorities.
- vii. The Plaintiffs filed previous Applications in this suit dated 8<sup>th</sup> March, 2023 and 29<sup>th</sup> May, 2023 seeking various orders against the Defendants inter alia the unauthorized construction which were determined by Lady Justice A. E. Dena in a ruling dated 19<sup>th</sup> October, 2023 and the following orders issued:

“ A temporary prohibitory injunction is hereby issued restraining the Defendants, their employees, agents, servants, assignees, successors in titles or otherwise from carrying out any sub division, transfer and/ or construction works on the properties LR No’s 31283/1, 31283/2 and 31283/3 pending the hearing and determination of this suit.”

(Annexed and marked as P1 is a copy of the Ruling dated 19<sup>th</sup> October, 2023)

- viii. Despite extensive outreach efforts by the Plaintiffs to engage the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to work cooperatively with them to develop a repair and maintenance plan for the subject property pending the determination of the main suit on its merits, they had been unable to reach any agreement with these Defendants.
- ix. During this time, the dilapidation of amenities and buildings had worsened .
- x. The dilapidated building have exposed the Plaintiffs to atrocious living conditions including the penetration of water and wind into the individual apartments, damaging interior furniture and chattels of the Plaintiffs, and exposing the Plaintiffs to illnesses causes by unwarranted exposure to green mold, algae, bacteria, viruses, insects and pests.
- xi. The 1<sup>st</sup> Defendant, while ignoring the poor state of the apartment leased apartments, which were located in building Blocks 1 to 4, entered into an undisclosed agreement with an unknown contractor and proceeded to carry out new construction in the hotel located in Block 5 without informing the Court despite the ruling issued 19<sup>th</sup> October, 2023.
- xii. In engaging in prohibited construction, the 1<sup>st</sup> Defendant acted in contempt of court orders issued 19<sup>th</sup> October, 2023.
- xiii. Sometime in or around early 12<sup>th</sup> January, 2026, the National Construction Authority (hereinafter referred as “NCA”) was alerted of the ongoing construction by the 1<sup>st</sup> Defendant



and the poor state of the building in the subject property and visited the suit property for inspection.

- xiv. The NCA inspection found that the physical state of the apartment blocks (Blocks 1 to 4) was so severe that the apartment blocks were uninhabitable.
- xv. Officers of NCA spray painted a large “X” and further annotated “inhabitable; Site Suspected; SN 225797 NCA; 12<sup>th</sup> January, 2026” on the X on a wall in the subject property using red paint to mark it as inhabitable. (Annexed and marked as “P2” was a photo of the sign).
- xvi. The NCA also issued a Suspension of Work Order under the provision of Section 23(2) of the National Construction Authority Act No. 41 of 2011 in regard to ongoing work being performed by the 1<sup>st</sup> Defendant on Block 5 and the gate house without proper authorizations. The Suspension of Work Order details that the 1<sup>st</sup> Defendant was non – compliant in regard to:-
  - i. NCA Compliant certificate.
  - ii. NCA registered contractor.
  - iii. NCA Accredited Skilled workers and site supervisors.
  - iv. Site board showing all approvals and the professional engaged.
  - v. Personal protective equipment.
  - vi. Hoarding, fencing and netting.
  - vii. Safety signs.

(Annexed and marked as “P – 3” was a copy of the Suspension of Work Order dated 21<sup>st</sup> January, 2026).

- xvii. The suspension of Work Order had the following comments:-

“ Renovations on Block 5 almost down;  
Roofing in Block A – 4 is in a dilapidated state;  
Work at gate house ongoing;  
Storm water leaking from 6<sup>th</sup> Floor to ground floor;  
No Approvals for ongoing water provided;  
The development is inhabitable (Photos attached in the report.  
Provide a Structural Integrity Report certified by your Engineer.”

(Annexed and Marked as “P – 4” were some of the photos of parts of the dilapidated state of the suit premise attached to the NCA Suspension of Work Order).

- xviii. The NCA Order was swerved on Joseph Kariuki, ID No. xxxxxxxx, an employee of the 1<sup>st</sup> Defendant on 12<sup>th</sup> January, 2026 who acknowledged receipt.
- xix. The 1<sup>st</sup> Defendant had ignored, disregarded or neglected the NCA Order and had failed to submit a Structural Integrity Report and a remediation plan done by an licensed engineer to the NCA.



- xx. The inaction of the 1<sup>st</sup> Defendant was in keeping with alleged negligence of the 1<sup>st</sup> Defendant pleaded in the Further Amended Plaint at paragraph 18 (E)(i) to (iv).
- xxi. The Plaintiffs were concerned that the negligence of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants would continue to cause them harm in regard to their investments, safety, health and wellbeing.
- xxii. Without an urgent structural integrity report and remediation plan various structures were likely to be further damaged and may collapse with a risk of human life and property loss adversely affecting the Plaintiffs.
- xxiii. It was apparent that the Plaintiffs needed to seek various Orders from this Court to meet the directives of the NCA in the letter dated 12<sup>th</sup> January, 2026 to submit a structural integrity plan and remediation plan.
- xxiv. Since the year 2019, the 1<sup>st</sup> Defendant without color of right, had purported to collect services charged from the Plaintiffs and other apartments owners.
- xxv. The Plaintiffs had protested the 1<sup>st</sup> Defendant invoicing of the apartment owners for service charges since:
- a. The 1<sup>st</sup> Defendant was not empowered by any of the Agreements to Lease signed with the Plaintiffs to collect service charges.
  - b. The 1<sup>st</sup> Defendant had refused to account for the service charges it had previously collected.
  - c. It was evident by the dilapidation of the subject property that the service charges were not being used for the intended purpose to maintain the subject property.
- xxvi. The Plaintiffs raised the issue of improper billing of service charges by the 1<sup>st</sup> Defendant in an earlier application filed by the Plaintiffs in this suit dated 8<sup>th</sup> March, 2023.
- xxvii. In the ruling dated 19<sup>th</sup> October, 2023, Lady Justice A. E. Dena directed that the issue of service charges be addressed in the main suit, stating as follows:
- “ 49. I have perused the lease agreements between the parties herein. Indeed, the leases include the provision on the amenities herein, which were to be used by the tenants/purchasers of the apartments. As intimated by the Plaintiffs applicants, the respondents are in the process of using up the land that would hold some of the amenities. One of the parcels is in the process of being transferred to another party. It has also been stated that the facilities and the apartments are not being maintained. Issues on the service charges in my view can only be determined once the parties have ventilated their cases as the same goes to the core of interpretation of the leases and this is not the appropriate forum. Accordingly, the respondent’s actions are bound to cause irreparable loss and harm that might not be rectified by an award of damages. The Applicants have demonstrated the second limb for the threshold of granting an injunction.”
- xxviii. The Plaintiffs were anxious to have the suit heard on its merits and were apprehensive of any further delay.



- xxix. Progress in setting the suit for trial had been delayed by the improper actions of the Defendants including but not limited to:-
- a. Improper attempts by the 1<sup>st</sup> Defendant to conceal key documents related to the government approved development plans, architectural/ building plans and documents related to the sub - divisions of the mother title; and
  - b. Discovery of further improper attempts of the 1<sup>st</sup> Defendant to subdivide plot LR. No. 31283/1 and transfer sections of the subject property to Kikora Ltd.
- xxx. These actions of the Defendants necessitated Applications filed by the 2<sup>nd</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs dated 5<sup>th</sup> June, 2025 seeking:
- a. An order mandating that the 1<sup>st</sup> Defendant revealed documents related to the approved building plans and sub - division of the mother title;
  - b. An order to enjoin Kikora Limited as the 6<sup>th</sup> Defendant
  - c. An order to join J.M. Rama as the 7<sup>th</sup> Defendant
  - d. An order to allow the Plaintiffs file the Further Amended Plaint dated 5<sup>th</sup> June, 2025.
- xxxi. A ruling of this Honourable Court issued by Justice L.L. Naikuni, dated 27<sup>th</sup> October, 2025 granted all the prayers in the Applications of the 2<sup>nd</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs dated 5<sup>th</sup> June, 2025 in regard to prayers sought.
- xxxii. In regard to the 1<sup>st</sup> Defendant producing various documents, the ruling of this Honourable Court dated 27<sup>th</sup> October, 2025 stated as follows:
- “94. The Plaintiffs seek production of: Approved building plans, architectural drawings, and environmental approvals; Topographical surveys and site maps; Financial records evidencing transfers to the 2<sup>nd</sup> and proposed 6<sup>th</sup> Defendants; Service charge accounts; A list of unsold apartments.
  95. These requests are not generalised “fishing expeditions.” They are tied to specific allegations in the Amended Plaint and to specific averments in the Defences. For example:
    - i. The 1<sup>st</sup> Defendant pleaded that it obtained all requisite approvals, yet failed to annex them.
    - ii. The Plaintiffs allege misrepresentation as to the location of amenities, which can only be tested against topographical surveys and site plans.
    - iii. The dispute over service charges cannot be resolved without accounting records.
  96. The 1<sup>st</sup> Defendant’s objection that some documents are public records is not a bar to discovery. The fact that a document may be obtainable from a public office does not relieve a party who relies on it from the duty to produce it if it is in their possession.



97. In conclusion to this Issue, the Plaintiffs have identified the documents with specificity, shown their materiality to the Issues in dispute and demonstrated that the documents were in the possession or control of the Defendants.
98. Accordingly, the Plaintiffs have met the threshold for discovery under the Civil Procedure Rules. I am satisfied that the Plaintiffs have met the legal threshold for discovery. The documents sought are specific, relevant, and material to the Issues in controversy. In line with the principles in “Oracle Productions Limited - Versus - Decapture Limited (Supra)”, “Concord Insurance Co. Limited – Versus - NIC Bank Ltd”, and “Oluoch – Versus - Charagu (Supra)”, I direct that the 1<sup>st</sup>, 2<sup>nd</sup>, and proposed 6<sup>th</sup> Defendants do produce the documents enumerated in the Motion within 21 days.”
- xxxiii. The 1<sup>st</sup> Defendant had failed to fully comply with the order of production of documents. The 1<sup>st</sup> Defendant filed a further list of documents dated 19<sup>th</sup> January, 2026 which omitted to account for the service charges.
- xxxiv. The Plaintiffs envision seeking further order that the 1<sup>st</sup> Defendant be found in contempt of Court orders for failing to account for the service charges which delayed setting this suit for trial.
- xxxv. They the Plaintiffs resided in fear that further dilapidation of the building which may exceed the threshold where repair was still feasible.
- xxxvi. They oppose the Application filed by the 4<sup>th</sup> and 7<sup>th</sup> Defendants seeking a stay in proceeding as they anticipated motions of the Plaintiffs in regard to obtaining a structural integrity report as mandated by the NCA and an approaches remediation plan for the subject property.
- xxxvii. The Plaintiffs believed that the window for opportunity to intervene was narrow and rapidly closing.
- xxxviii. The Plaintiffs were genuinely apprehensive the stay in proceeding requested by the 7<sup>th</sup> Defendant would cause them severe and irreversible harm as it would destroy the property to the extent that this suit would be meaningless.
- xxxix. The Affiant averred that the Applicants (the 4<sup>th</sup> and 7<sup>th</sup> Defendants) had not met the threshold to seek a court order staying proceedings in that:
- a. The mere fact that a matter in issue is pending before the Court of Appeal is not on its own grounds to stay proceedings in the High Court of Kenya.
  - b. The Applicants had not shown how the Court proceeding to hear this suit on its merits would prevent the Appeal.
  - c. The Applicants had a fair opportunity to raise the same issues in the Appeal in the current suit by filing statements of defence concurrent with the Appeal.
  - d. The Applicants had not shown risk of substantial loss that could not be compensated by an award of legal costs should the Applicant succeed in pending the Appeal.
  - e. That this Court had an obligation to hear matters to completion in the shortest time frame possible.



- f. If the Applicants do not succeed in the Appeal, the stay in proceeding would have occasioned the Plaintiff significant delay in hearing the case on merits.
- xl. As such there lacked clear evidence of necessity of the stay of proceedings.
- xli. The issues raised in their case were extremely urgent; delay was detrimental to all Plaintiffs with risks of severe irreparable loss. They prayed that the Court dismissed the Application with costs.

## VI. The Response by the 1<sup>st</sup> Defendant

10. The 1<sup>st</sup> Defendant, responded to the 4<sup>th</sup> and 7<sup>th</sup> Defendant's application dated 13<sup>th</sup> January, 2026 through a 6 paragraphed grounds of opposition dated 30<sup>th</sup> March, 2026 which was premised on the following grounds that: -
- a. the application was bad in law, made in bad faith and only intended to waste precious judicial time.
  - b. the applicant had not established any sufficient cause to warrant the courts discretion in staying proceedings pending appeal.
  - c. this matter was ripe for hearing, having been filed in the year 2023 yet it has never taken off for hearing. As such the parties herein would be highly prejudiced if a stay of proceedings is granted.
  - d. the applicants had failed to annex their memorandum of appeal setting forth their grounds of appeal and it is impossible for this court to the prima facie merits of the intended appeal.
  - e. the above notwithstanding, the application offends the provisions and objectives of the provision of Sections 1A and 1B of the Civil Procedure Act and Article 159 (2)(b) of the Constitution on expeditious disposal of cases.
  - f. the application was frivolous, vexatious, wholly unmerited and ought to be dismissed for being an abuse of the Court's process.

## VII. The response by the 6<sup>th</sup> Defendant

11. The 6<sup>th</sup> Defendant, responded to the 4<sup>th</sup> and 7<sup>th</sup> Defendant's application dated 13<sup>th</sup> January, 2026 through a 12 Paragraphed Grounds of Opposition dated 2<sup>nd</sup> April, 2026 which was premised on the following grounds:-
- a. The reliefs sought under prayers (2) & (3) of the Application did not lie as of course under the law; but they were only available and lie in equity, and a party approaching the Hon Court must demonstrate merit to warrant exercise of the Court's discretion, absent which such party is disentitled in law from the possible grant of such prayers.
  - b. Critically, the 6<sup>th</sup> Defendant conceded that the 4<sup>th</sup> and 7<sup>th</sup> Defendant are at liberty to appeal against the decision of the Hon Court issued on 27<sup>th</sup> October, 2025, as they so seek; however such liberty did not have a concomitant right to stay or encumber the subject proceedings.
  - c. Despite of the contents of Para 3 of the Affidavit of J.M Rama dated 13<sup>th</sup> January, 2026 indicating that:-, "I was aggrieved by the said decision of the Honourable Court, thus we filed a notice of appeal and have filed an appeal against the said ruling of the Honourable Court":



no such notice of appeal nor appeal (or even an appeal number) had been adduced in evidence in support of the said Application.

- d. In any event no such appeal had been served on the 6<sup>th</sup> Defendant, to date, if at all one had been filed. Worse still no draft grounds in support of the appeal (intended or filed) had been referenced and/or set-out in the instant subject application.
- e. Notwithstanding absence of proof of filing of any such appeal as alleged, any stay of these proceedings as sought, will occasion a greater injustice and/or prejudice to the 6<sup>th</sup> Defendant (and indeed other Defendants in this suit) who was presently encumbered from any dealing of its property in light of the injunctive Order from the Honourable Court.
- f. Conversely, the 4<sup>th</sup> and 7<sup>th</sup> Defendants would have an opportunity to defend themselves against the unmerited claims against them, and therefore no prejudice would be visited on them in disallowing their application for stay, and the suit ought to proceed as scheduled on 4<sup>th</sup> May, 2026.
- g. The 6<sup>th</sup> Defendant was apprehensive that the instant Application only serves to derail and delay the determination of a most straight forward and unmerited suit: indeed as evinced by the contractual documents the Plaintiffs whose apartments and ancillaries were situated on L.R. No. 31283/2, DID NOT HAVE any legitimate claim or lawful interest over the portion of land measuring approximately 4.6 acres from the larger sub - division of land parcel LR No 31283/1 (which ‘mother property’ measures 7.3 acres), which property was lawfully acquired by the 6<sup>th</sup> Defendant vide the sale agreement dated 23<sup>rd</sup> February 2023.
- h. Additionally, the 6<sup>th</sup> Defendant had since sighted the Replying Affidavit by the 2<sup>nd</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs, dated 12<sup>th</sup> March, 2026 and sworn by Mr Peter Musyoki Ngau, and observe as follows:
  - i. The said Affidavit unequivocally confirms that the real dispute before the Hon Court concerns contractual disputations on constitution and control of the management company, collection or remittance of service charge, and maintenance of the subject property. Any claim or interest over a portion of land measuring approximately 4.6 acres from the larger subdivision of land parcel LR No 31283/1, was but a red herring at best.
  - ii. Critically, the claim on non-maintenance and service charge was now debarred by Res Judicata as extended by the principle of estoppel, and forum appropriare: as confirmed at para 28 of the Replying Affidavit by the 2<sup>nd</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs, dated 12<sup>th</sup> March, 2026, this Court vide the Ruling by Hon lady Justice Dena of 19<sup>th</sup> October, 2023 already determined that, “It has also been stated that the facilities and the apartments are not being maintained. Issues on teh service charges in my view can only be determined once the parties have ventilated their cases as the same goes to the core of interpretation of the leases and this is not the appropriate forum.”
  - iii. The 2<sup>nd</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs were now actively engaged in approbation and reprobation, as they urge that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had jointly & severally failed to maintain, then urge that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants should not maintain: again they urged that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have sought to collect service charge to maintain, but then they should not collect service charge which would be needed to



maintain: they urged that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants should be ordered to maintain but also that they were seeking to maintain!!! Completely impermissible in law.

- iv. The 2<sup>nd</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs were seeking to relitigate the issues of their Application dated 5<sup>th</sup> June, 2025 already determined by this Hon Court vide the Ruling dated 27<sup>th</sup> October, 2025: which decision joined the 6<sup>th</sup> and 7<sup>th</sup> Defendants, and the disputations thereon will be adjudicated at trial – the 2<sup>nd</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs remain keen to revisit this spent application.
- v. Importantly, and without prejudice the 2<sup>nd</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs at Para 14, of their affidavit admitted that the notices from NCA on maintenance and the actual repair works by the 1<sup>st</sup> Defendant were ongoing on 12<sup>th</sup> January, 2026 – yet to date, as evinced at para 24 and 35, the 2<sup>nd</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs are still ‘envisioning’ seeking further orders from the Hon Court, evincing laches and undeserving of any orders from the Honourable Court.
- i. The much heralded legal right to be heard, as observed by the Court of Appeal the case of:- “Muchanga Investments Limited – Versus - Safaris Unlimited (Africa) Limited and 2 Others Civil Appeal No 25 of 2002 [2009] KLR 229” was qualified in law and the Court retained the right to fetter it in regulation of proceedings and balancing the rights and obligations of Parties before it. The finite judicial resources must be respected and optimally used by litigants appearing before Court.
- j. The 4<sup>th</sup> and 7<sup>th</sup> Defendants’ Motion dated 13<sup>th</sup> January, 2026, and the 2<sup>nd</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs’ Affidavit dated 12<sup>th</sup> March, 2026, had to date never been served despite the Orders of the Honourable Court.
- k. Equally despite the orders of the Hon Court none of the Parties, save for the 6<sup>th</sup> Defendant, had filed and served their trial bundles, and they prayed for an order requiring compliance and/ or a peremptory order on continued non-compliance, to obviate delays.
- l. The circumstances and premise of the 4<sup>th</sup> and 7<sup>th</sup> Defendants’ Motion dated 13<sup>th</sup> January, 2026, and the 2<sup>nd</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> and 20<sup>th</sup> Plaintiffs’ Affidavit dated 12<sup>th</sup> March, 2026 called for the Application to be dismissed with costs on a full indemnity basis. Equally it was warranted to issue an order debarring any further filings which would delay and derail the expeditious disposal of the Suit.

## VIII. Submissions

12. While the Parties were present in Court, they were directed to have the Notice of Motion Application dated 13<sup>th</sup> January, 2026 be disposed of by way of written submissions and all the parties complied. Pursuant to that, by the time of penning this Ruling, the Honourable Court was only able to access the Submissions by the 4<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants herein. However, despite of checking from the Judiciary CTS Portal and the ELC Registry, there was no submissions by all the parties.
13. The Honourable Court reserved 27<sup>th</sup> April, 2026 as the date for its delivery. Eventually, it was delivered on 30<sup>th</sup> April, 2026.

### A. The Written Submissions by the 4<sup>th</sup> and 7<sup>th</sup> Defendants/ Applicants

14. The 4<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants filed their written submissions through the Senior State Counsel for the Hon. Attorney General Chambers dated 20<sup>th</sup> April, 2026. Mr. Wagah Advocate submitted that



- before this Honourable Court is the Applicant's Notice of Motion Application elated 13<sup>th</sup> January 2026 whereupon the Applicant seeks stay pending the hearing of Civil Appeal Number E002 of 2026 before the Court of Appeal Mombasa.
15. On the brief facts, the Learned Counsel submitted that this Honourable court delivered a ruling on 27<sup>th</sup> October 2025, in favor of the 2<sup>nd</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> Plaintiff/Respondents on their Application dated 5<sup>th</sup> June 2025 for joinder of the 7<sup>th</sup> Defendant/Applicant. The Applicant herein has filed an Appeal No. E002 of 2026 before the Court of Appeal pending directions before the Deputy Registrar. The Applicants 4<sup>th</sup> and 7<sup>th</sup> Defendants having not been satisfied by the ruling of the Honourable court and preferred an appeal against the ruling of the court delivered on 27<sup>th</sup> October 2023, thus leading to the filing of this notice of motion for stay of proceedings pending the hearing and the Civil Appeal No. E002 of 2026.
  16. The Plaintiffs opposition to the Application filed via Replying Affidavit of Peter Musyoki Ngau dated 12<sup>th</sup> March 2026 could not stand, because the 7<sup>th</sup> Defendant never managed the suit property, thus her right should not be trampled in the actions not involving her. The issue of joinder is in the heart of litigation as a wrong joinder infringes on the rights of the 7<sup>th</sup> Defendant, who being joined to the proceedings in an individual capacity considering that the 4<sup>th</sup> Defendant was able to answer to all the issues raised in the proceedings. Thus, it would only be fair if the Application was allowed and a stay granted pending the hearing and determination of the Appeal at the court of Appeal.
  17. According to the Learned Counsel it was important for the court to note that proceeding with this suit would render the Appeal nugatory and an academic exercise which would be prejudicial to the 7<sup>th</sup> Defendant/Applicant herein.
  18. The Learned Counsel relied on the following two ( 2 ) issues for determination by the Honourable Court. Firstly, on whether it is warranted to stay the proceedings in ELC E018 OF 2023. The Learned Counsel averred that the orders and directions issued by the court while delivering its ruling in on 27<sup>th</sup> October, 2025 was adverse to the interests of the Applicants and the 7<sup>th</sup> Applicant whose actions was protected under provision of Section 14(5) of the *Land Registration Act*. Meanwhile, the 4<sup>th</sup> Defendant is able to answer to all the allegations raised in the Plaint.Proceeding with the suit without the hearing and the determination of the Pending Appeal will be an abuse of the court proceedings and a violation of the rights of the 7<sup>th</sup> Defendant. If stay will not be granted then the whole purpose of the appeal would be defeated as the 7<sup>th</sup> Defendant would be joined to this suit erroneously without being heard.
  19. The Applicants contend that the Replying Affidavit filed by the Plaintiff/Applicant was misplaced as it never appreciated that all the Applicant want was for stay of proceedings in this matter till the Appeal was heard and determined. Further continuance with this suit will mean that this Appeal, with a very high chance of success, would be rendered nugatory and a mere academic exercise, and in retrospect, the Plaintiff/Respondents would be at liberty to proceed with this case which erroneously targets the 7<sup>th</sup> Defendant on claims that can be clearly answered by the 4<sup>th</sup> Defendant, either way the Appeal filed would have no meaning to deliver justice if the stay sought by the Applicants was not granted.
  20. The provision of Article 159 (2) (d) (e) of *the Constitution* states that justice shall be administered without undue regard to procedural technicalities and that that the purposes of this constitution shall be protected and promoted. The provided of Section 63 (e) of the *Civil Procedure Act*, Cap. 21 gives this Honourable Court the power to make interlocutory orders as it seems appropriate;

The Court may -



- (b) make such other interlocutory orders as may appear to the court to be just and convenient.

21. The Applicants relied on the finding in the case of:- “Bethuel Muirui Benjamin -Versus - Development Bank of Kenya (2006) eKLR”, and “Housing Finance Company of Kenya – Versus - Sharok Kher Mohammed Ali Hirji & Anor [2015] eKLR” and state that the courts discretion in deciding whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles: whether the applicant has established that he/she has a prima facie arguable case; whether the application was filed expeditiously and whether the application has established sufficient cause to the satisfaction of the court that it is the interest of justice to grant the orders sought.
22. This Court was called upon to scrutinize the grounds of appeal enumerated in the Record of Appeal to rightfully consider that the Applicants had an arguable appeal, and they should be allowed to prosecute the intended appeal without the fear of execution hanging over their heads like the sword of Damocles. The court in the case of:- “Housing Finance Company of Kenya – Versus - Sharok Kher Mohamed Ali Hirji & another [2015] eKLR”:-

“The principles governing the exercise of the court’s jurisdiction under Order 42 rule 6(1) of our Civil Procedure are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the applicants must show that they have an arguable appeal: and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. We need only restate these principles from Reliance Bank Limited (In Liquidation) – Versus - Norlake Investments Limited - Civil Appl. No. Nai. 93/02 (UR), thus: -

“Hitherto, this Court has consistently maintained that for an application under Order 42 Rule 6 (1) to succeed, the Applicant must satisfy the court on two matters, namely:-

1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,
2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”

23. Thus the Applicants submitted that they had shown sufficient cause to the satisfaction of the court as to why they deserved an order of stay of proceedings. Furthermore, the Applicants had preferred this Application expeditiously, and that the intended appeal raised very arguable questions of the law and its application, including the issue of joinder, which was at the heart of these proceedings. The Applicants implore this Honourable Court to grant the orders sought. The Applicants deserved the prayers sought.
24. Secondly, on who should bear the costs of this Application. The Learned Counsel submitted that the Costs follow the event. That while allowing the Applicants’ application entirely, the Applicants implore this Honourable court that each party to bear their own costs as this is a public interest litigation.



## IX. Analysis and Determination

25. The Honourable Court carefully read and considered the pleadings, affidavits, grounds of opposition, and written submissions, the cited authorities filed by the 4<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants herein, together with the relevant provisions of *the Constitution* of Kenya, 2010 and statutes herein.
26. In order to arrive at an informed, Just, reasonable and Equitable decision, the Honourable Court framed the following five (5) issues for its determination: -
  - a. Whether the application for stay of proceedings dated 13<sup>th</sup> January 2026 is merited.
  - b. Whether the Plaintiffs have demonstrated urgency and irreparable harm sufficient to defeat the stay sought.
  - c. Whether the Applicants have met the threshold under the provision of Order 42 Rule 6(1) of the Civil Procedure Rules, 2010 for grant of stay.
  - d. Whether the competing interests of justice favour continuation of the suit or suspension pending appeal.
  - e. Who bears the costs of the application.

### Issue No. a). Whether the application for stay of proceedings dated 13<sup>th</sup> January 2026 is merited.

27. Under this sub-heading, whereby the main substratum of the matter is stay of proceedings/execution hereof. Hence, the Honourable Court will decipher on whether the application for stay of proceedings dated 13<sup>th</sup> January 2026 filed by the 4<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants meets the legal threshold for grant of such orders. The Parameters of Stay of proceedings pending appeal were discussed extensively in the case of:- “Kenya Wildlife Service – Versus - James Mutembei [2019] eKLR”. For coherence, the nature and import of the stay was described thus:

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent.”

28. On the other hand, Ringera J, as he then was, in the case of “Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000”, aptly captured the matters to be considered by the court in making its determination on stay of proceedings pending Appeal. He rendered himself as follows:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously” (emphasis added)



29. Notwithstanding the foregoing, the following passages in Halsbury's Law of England, 4<sup>th</sup> Edition. Vol. 37 page 330 and 332, are equally instructive: -

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue...This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

30. In view of the foregoing, it is imperative to note that a Party who seeks to accrue an order for stay of proceedings, pending an appeal, is obliged to place before the court exceptional circumstances, which may require that the proceedings before the trial court be stayed and/or suspended. In any event, it must also be noted that courts are enjoined to ensure that proceedings filed before them are heard and disposed of without undue delay. In this regard, it is imperative to take note of the provisions of Article 159 (2) (b) of [the Constitution](#) 2010, whose import and significance I have alluded to hereinbefore.

31. To buttress the observation alluded to in the preceding paragraph, I am minded to take guidance from the decision of the Court of appeal vide the decision in the case of:-

“Said Sweilem Gheithan Saanum – Versus - Commissioner of Lands (being sued through Attorney General) & 5 others [2015] eKLR”, where the court stated as hereunder;

“Justice shall not be delayed” is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to assist the court to ensure the timely and efficient disposal of cases. The principles which are reiterated by sections 1A and 1B of the [Civil Procedure Act](#) are intended to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The principle cannot therefore be a panacea which heals every sore in litigation, neither is it a licence to parties to ignore or contravene the law and rules of procedure.

32. The Applicants invoked the provision of Order 42 Rule 6(1) of the Civil Procedure Rules, 2010 and Section 63 (e) of the [Civil Procedure Act](#), Cap. 21 contending that they had filed a Notice of Appeal against the ruling delivered on 27<sup>th</sup> October 2025 which enjoined the 7<sup>th</sup> Defendant, and that proceeding with the matter would render the appeal nugatory. They argued that the issue of joinder was central to the litigation and that unless proceedings were stayed, the appeal would be reduced to a mere academic exercise. In support, they relied on authorities such as “Housing Finance Company of Kenya – Versus - Sharok Kher Mohamed Ali Hirji & Another [Supra]” and “Bethuel Muiruri Benjamin – Versus - Development Bank of Kenya [Supra]”, which establish that stay of proceedings may be granted where the intended appeal is arguable and where refusal of stay would render the appeal nugatory.
33. The Respondents, through the Replying Affidavit of Peter Musyoki Ngau and grounds of opposition filed by the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> Defendants, opposed the application. They contended that the Applicants had not demonstrated sufficient cause and that mere pendency of an appeal was not a ground for stay. They cited the provision of Article 159(2)(b) of [the Constitution](#) of Kenya, 2010, which requires



- that justice shall not be delayed, and Sections 1A and 1B of the *Civil Procedure Act*, Cap. 21 which emphasize the Overriding Objective of expeditious disposal of cases. They further submitted that the Applicants had not annexed a memorandum of appeal, had not demonstrated substantial loss, and had not offered security for costs as required under the provision of Order 42 Rule 6(2).
34. The Court notes that the principles governing stay of proceedings are well settled. In the case of “Reliance Bank Limited (In Liquidation) – Versus - Norlake Investments Ltd Civil Appl. No. Nai 93/02”, the Court of Appeal held that for stay to be granted, the Applicant must demonstrate both that the appeal is arguable and that refusal of stay would render the appeal nugatory. Similarly, in the case:- “Muchanga Investments Limited – Versus - Safaris Unlimited (Africa) Limited & 2 Others [2009] KLR 229”, the Court emphasized that judicial resources must be safeguarded against abuse of process and delay. The jurisprudence underscores that stay of proceedings is a draconian remedy, to be granted sparingly and only where the interests of justice demand.
  35. Applying these principles, the Honourable Court finds that while the Applicants have filed a Notice of Appeal, they have not demonstrated substantial loss that would result if the proceedings continue. The joinder of the 7<sup>th</sup> Defendant has already been executed, and his participation in the proceedings does not occasion irreparable harm. On the other hand, the Plaintiffs have demonstrated ongoing prejudice, including dilapidation of the property, contempt of court orders, and directives from the National Construction Authority declaring Blocks 1–4 uninhabitable. Delay in hearing the matter would expose them to further harm, undermine compliance with statutory directives, and render the suit nugatory.
  36. The Court is persuaded that the balance of convenience tilts in favour of allowing the suit to proceed. The Applicants’ right to appeal is preserved, but it cannot be exercised at the expense of the Plaintiffs’ right to a timely and effective remedy. As observed in “Giella – Versus - Cassman Brown [1973] EA 358”, where irreparable harm is demonstrated, the Court must lean towards protecting the party at risk of suffering such harm.
  37. Accordingly, the Court holds that the application for stay of proceedings dated 13<sup>th</sup> January 2026 is not merited. The Applicants have failed to meet the threshold under the provision of Order 42 Rule 6(1) of the Civil Procedure Rules, 2010 and Section 63(e) of the *Civil Procedure Act*, Cap. 21 and the balance of justice requires that the matter proceed to hearing on its merits as scheduled without further delay.

**Issue No. b). Whether the Plaintiffs have demonstrated urgency and irreparable harm sufficient to defeat the stay sought.**

38. Under this sub-heading, the Honourable Court will decipher on whether the Plaintiffs have established urgency and irreparable harm that outweighs the request for stay of proceedings dated 13<sup>th</sup> January 2026. The Plaintiffs, through the Replying Affidavit of Peter Musyoki Ngau sworn on 12<sup>th</sup> March 2026, deposed that the subject property had suffered rapid degradation due to the Defendants’ failure to maintain amenities, unauthorized construction, and contempt of court orders. They annexed photographs and referenced rulings of Lady Justice A. E. Dena (19<sup>th</sup> October 2023) and Justice L. L. Naikuni (27<sup>th</sup> October 2025), which had already restrained construction and mandated disclosure of documents. Despite these judicial pronouncements, the 1<sup>st</sup> Defendant continued construction in Block 5 and ignored directives of the National Construction Authority (NCA), which declared Blocks 1–4 uninhabitable and issued a Suspension of Work Order under the provision of Section 23 (2) of the *National Construction Authority Act* No. 41 of 2011.
39. Further, the Plaintiffs averred that dilapidated buildings exposed them to atrocious living conditions, including penetration of water and wind into apartments, damage to furniture, and exposure to mold,



algae, bacteria, viruses, insects and pests. They argued that delay in hearing the matter would exacerbate these conditions, risk collapse of structures, and render the suit nugatory. The affidavit also highlighted that the Plaintiffs' investments were at risk of permanent loss, and that the window for remedial intervention was rapidly closing.

40. The Court notes that the principles of urgency and irreparable harm are well established in “Giella – Versus - Cassman Brown & Co. Ltd [Supra]”, where it was held that a party seeking interlocutory relief must demonstrate a prima facie case, irreparable harm not compensable by damages, and that the balance of convenience favours them. Similarly, in the case of:- “Nguruman Limited – Versus - Jan Bonde Nielsen & 2 Others [2014] eKLR”, the Court of Appeal emphasized that irreparable harm must be actual, imminent, and not speculative. The jurisprudence underscores that courts must intervene where delay would render proceedings meaningless or expose parties to harm beyond monetary compensation.
41. Applying these principles, the Honourable Court finds that the Plaintiffs have demonstrated urgency and irreparable harm. The NCA's declaration that the property was uninhabitable, coupled with evidence of ongoing contempt of court orders and worsening dilapidation, shows that delay would expose the Plaintiffs to health risks, property loss, and potential collapse of structures. These harms cannot be adequately compensated by damages. The Plaintiffs' evidence was not speculative; it was supported by official inspection reports, photographs, and prior judicial rulings.
42. On the other hand, the Applicants have not shown that proceeding with the suit would occasion them irreparable harm. Their grievance relates to joinder, which can be ventilated both at trial and on appeal. Participation in proceedings does not amount to prejudice that outweighs the Plaintiffs' imminent risks. The balance of convenience therefore tilts in favour of the Plaintiffs, who face immediate and continuing prejudice if proceedings are stayed.
43. The Honourable Court holds that the Plaintiffs have sufficiently demonstrated urgency and irreparable harm. The stay sought by the 4<sup>th</sup> and 7<sup>th</sup> Defendants would defeat the very purpose of the suit and occasion severe prejudice to the Plaintiffs. Therefore, the application for stay cannot be sustained on this ground.

**Issue No. c). Whether the Applicants have met the threshold under the provision of Order 42 Rule 6(1) of the Civil Procedure Rules, 2010 for grant of stay**

44. Under this sub-heading, the Honourable Court will decipher on whether the Applicants satisfied the requirements set out in Order 42 Rule 6(1) of the Civil Procedure Rules, 2010 for the grant of stay of proceedings. The law is clear that stay of proceedings is a discretionary remedy, to be exercised judiciously and only where sufficient cause is shown. Order 42 Rule 6(1) provides that:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except so far as the court appealed from may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the court appealed from may for sufficient cause order stay of execution of such decree.”

45. This provision underscores that the mere filing of an appeal does not automatically halt proceedings. The applicant must go further and demonstrate “sufficient cause.” The jurisprudence of the Court of Appeal, particularly in the cases of:- “Housing Finance Company of Kenya – Versus - Sharok Kher Mohamed Ali Hirji & Another [Supra]” and “Reliance Bank Limited (In Liquidation) – Versus -



Norlake Investments Limited (Supra)”, has consistently maintained that for an application under Order 42 Rule 6 (1) to succeed, the applicant must satisfy two critical limbs:

- a. That the intended appeal is arguable and not frivolous; and
- b. That unless stay is granted, the appeal would be rendered nugatory

46. In addition, Order 42 Rule 6(2) imposes further requirements: the applicant must demonstrate substantial loss, file the application expeditiously, and provide security for costs. These cumulative conditions are designed to balance the right of appeal with the constitutional imperative of expeditious disposal of cases under the provision of Article 159(2)(b) of *the Constitution*.

47. In the present case, the Applicants relied on the fact that they had filed a Notice of Appeal against the ruling of 27<sup>th</sup> October 2025 which enjoined the 7<sup>th</sup> Defendant. They argued that proceeding with the matter would render the appeal nugatory. However, upon scrutiny, the Court has taken judicial notice to the following deficiencies:

- a. The Applicants did not annex a Memorandum of Appeal or draft Grounds of Appeal to demonstrate the arguability of the appeal. Further, there has been no orders of Stay of Proceedings/Execution of this Courts Orders issued by the Court of Appeal pursuant under the provision of Rule 5 ( 2 ( b ) of the Appellate Jurisdiction Rules. Without such material, the Court cannot assess whether the appeal raises bona fide questions of law or fact.
- b. The Applicants did not show what substantial loss they would suffer if proceedings continued. The joinder of the 7<sup>th</sup> Defendant had already been executed, and his participation in the proceedings does not occasion irreparable harm.
- c. The Applicants did not offer or propose any security for costs as required under Order 42 Rule 6(2). Security is a mandatory safeguard to protect the opposing party from prejudice.
- d. Although the application was filed promptly, it was not supported by material evidence of prejudice or loss.

48. On the other hand, the Plaintiffs demonstrated ongoing prejudice, including dilapidation of the property, contempt of court orders, and directives from the National Construction Authority declaring Blocks 1–4 uninhabitable. Delay in hearing the matter would expose them to further harm, undermine compliance with statutory directives, and potentially render the suit nugatory.

49. The Honourable Court is guided by the principle in the case of:- “Muchanga Investments Ltd – Versus - Safaris Unlimited (Africa) Ltd & 2 Others [Supra]”, that judicial resources must be safeguarded against abuse of process and delay. Stay of proceedings is a draconian remedy that should be granted sparingly and only where the interests of justice demand. The Court must balance the Applicants’ right to appeal with the Plaintiffs’ right to timely adjudication.

50. The Court finds that the Applicants have not met the threshold under the provision of Order 42 Rule 6 (1) of the Civil Procedure Rules, 2010. They failed to demonstrate an arguable appeal, substantial loss, or nugatory effect, and did not provide security for costs. Therefore, I reiterate that the balance of justice requires that the matter proceed to hearing on its merits without further delay.

**Issue No. d). Whether the competing interests of justice favour continuation of the suit or suspension pending appeal**

51. Under this sub–heading, the Honourable Court will decipher on whether the balance of justice tilts in favour of allowing the suit to proceed to hearing or suspending it pending the outcome of Civil



Appeal No. E002 of 2026. The Applicants contended that proceeding with the matter would render their appeal nugatory, particularly on the issue of joinder of the 7<sup>th</sup> Defendant. They submitted that the 4<sup>th</sup> Defendant was capable of answering all allegations raised, and that the joinder of the 7<sup>th</sup> Defendant infringed on her rights. They urged the Court to protect the right of appeal, emphasizing that unless proceedings were stayed, the appeal would be reduced to a mere academic exercise. In their view, the principle of fairness required that the appellate process be safeguarded from being overtaken by events in the trial court.

52. The Respondents, however, emphasized that the Plaintiffs were facing ongoing prejudice of a grave and immediate nature. They pointed to the dilapidation of the property, contempt of court orders, and the National Construction Authority's declaration that Blocks 1–4 were uninhabitable. They argued that suspension of proceedings would exacerbate these conditions, expose them to health risks, and render the suit meaningless. They invoked the provision of Article 159(2)(b) of *the Constitution*, which requires that justice shall not be delayed, and Sections 1A and 1B of the *Civil Procedure Act*, Cap. 21 which enshrine the Overriding Objective of expeditious disposal of cases. They stressed that the Plaintiffs' right to a timely remedy was not merely procedural but substantive, as delay would undermine their health, safety, and property interests.
53. The Court is guided by the principle in the case of:- "Muchanga Investments Limited – Versus - Safaris Unlimited (Africa) Limited & 2 Others [Supra]", where the Court of Appeal held that judicial resources must be safeguarded against abuse of process and delay. The Court must ensure that interlocutory applications are not used as tools for obstruction. Similarly, in "Giella – Versus - Cassman Brown "[Supra]", the Court underscored that where irreparable harm is demonstrated, the balance of convenience must favour the party at risk of suffering such harm. The jurisprudence makes clear that courts must weigh the competing interests of preserving the appellate process against the need to prevent ongoing harm in the trial court.
54. Applying these principles, the Honourable Court finds that the Applicants' grievance on joinder can be ventilated both at trial and on appeal. Their participation in proceedings does not occasion irreparable harm, as they retain the right to contest joinder and to pursue appellate remedies. On the other hand, the Plaintiffs have demonstrated ongoing prejudice that cannot be compensated by damages, including risk of collapse of structures, health hazards, and loss of investment. The evidence of the National Construction Authority, coupled with photographs and affidavits, shows that delay would worsen conditions and potentially render the suit nugatory.
55. The balance of justice therefore favours continuation of the suit. The Plaintiffs' right to timely adjudication and protection from ongoing harm outweighs the Applicants' interest in suspending proceedings. The appeal remains preserved, but it cannot be exercised at the expense of the Plaintiffs' urgent need for relief.
56. In the long run, the Honourable Court holds that the competing interests of justice favour continuation of the suit rather than suspension pending appeal. Thus, the application for stay is unmerited on this ground.

#### **Issue No.e) Who bears the costs of the application?**

57. Under this sub-heading, the Honourable Court will decipher on the question of costs arising from the application for stay of proceedings dated 13<sup>th</sup> January 2026. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the *Civil Procedure Act* Cap. 21 holds that Costs follow the events. By the event, it means outcome



or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR” and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR”, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR”, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

58. In the present matter, the Applicants sought stay of proceedings but failed to demonstrate sufficient cause under Order 42 Rule 6(1) of the Civil Procedure Rules. The Court has already found that the application was unmerited, that the Applicants did not establish substantial loss, and that the balance of justice favoured continuation of the suit. Consequently, the Respondents were compelled to file replying affidavits, grounds of opposition, and submissions to resist an application that lacked merit.
59. Applying the above principles, the Honourable Court finds no reason to depart from the general rule. The Applicants, having failed in their bid for stay, must bear the costs of the application. The Respondents, who successfully opposed the application, are entitled to be indemnified for the expense incurred.
60. The Honourable Court holds that the costs of the application dated 13<sup>th</sup> January 2026 shall be borne by the 4<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants.

#### **X. Conclusion and Disposition.**

61. Upon considering the Notice of Motion application dated 13<sup>th</sup> January 2026 by the 4<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants, the Replying Affidavit of Peter Musyoki Ngau dated 12<sup>th</sup> March 2026, the grounds of opposition filed by the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> Defendants, together with the submissions and authorities cited, the Honourable Court makes the following findings and orders:-
  - a. That the Notice of Motion application dated 13<sup>th</sup> January, 2026 seeking stay of proceedings pending Civil Appeal No. E002 of 2026 be and is found to lack merit and hence dismissed.
  - b. That the Plaintiffs have demonstrated urgency and irreparable harm sufficient to defeat the stay sought, particularly in light of the National Construction Authority’s findings and the continuing dilapidation of the suit property.
  - c. That the Applicants have failed to meet the threshold under Order 42 Rule 6 (1) of the Civil Procedure Rules, 2010 having not demonstrated substantial loss, arguable grounds of appeal, or offered security for costs.
  - d. That the competing interests of justice favour continuation of the suit to hearing on its merits rather than suspension pending appeal, as delay would occasion severe prejudice to the Plaintiffs.
  - e. That the costs of the application dated 13<sup>th</sup> January 2026 shall be borne by the 4<sup>th</sup> and 7<sup>th</sup> Defendants/Applicants.
  - f. That the matter shall proceed to hearing on the scheduled dates of 4<sup>th</sup> & 5<sup>th</sup> May, 2026, with parties directed to fully comply with all the Pre – Trial requirements and orders in accordance with the provision of Order 11 of the Civil Procedure Rules, 2010 previously issued by this Court.

It is so ordered accordingly.



**RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

.....

**HON. MR. JUSTICE L. L. NAIKUNI,  
ENVIRONMENT AND LAND COURT**

**AT**

**KWALE**

Ruling delivered in the presence of:

- a. Mr. Disii, the Court Assistant;
- b. Mr. Makadina Advocate holding brief for Mr. Oluga Advocate for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> & 18<sup>th</sup> Plaintiffs;
- c. Mr. Mwangi Kihira Advocate for the 2<sup>nd</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> & 20<sup>th</sup> Plaintiffs.
- d. M/s. Amal Advocate holding brief for M/s. Nafula Advocate for the 1<sup>st</sup> Defendant.
- e. Mr. Onsongo Advocates for the 2<sup>nd</sup> Defendant.
- f. Mr. Mola Advocate for the 5<sup>th</sup> Defendant.
- g. Mr. Lusi Advocate for the 6<sup>th</sup> Defendant; and
- h. No appearance for the 4<sup>th</sup> and 7<sup>th</sup> Defendants.

