

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KWALE
ELCC CASE NO. E018 OF 2023

1. NAVEED MOHAMED SHEIKH
2. PETER MUSYOKI NGAU
3. SONIL HOLDINGS LIMITED
4. WILLIAM OWEKE AGINGU
5. NARGIS SEIFUDDIN MOOSAJEE
6. SEIFUFUDDIN BADRUDIN JIVANJEE
7. FIRDOS DIN
8. AMANA KHAN
9. DORCAS KISIERO
10. PETER ESTORP
11. KJELL ERIC LINTHO
12. SISSEL MARGARE LINTHO
13. MALKIT SINGH RIYAT
14. PAULINE KARIUKI
15. PETER NDENDEROH
16. SHABEENA HABIBULLA HAMPOZ
17. FRANK KAMUNDE MWONGERA
18. JUDY MUTHONI MWAURA
19. MARY NDUTA KIMEMIA
20. MARGARET MBULWA NGAU

PLAINTIFFS

- VERSUS -

1. ELEGANT HOLDINGS LIMITED

2. GROUP FIVE HOLDINGS LIMITED

3. GOLDEN SAND RESORT PLC

4. REGISTRAR OF TITLES, MOMBASA COUNTY

**5. A. ALIBHAI & ASSOCIATES
ADVOCATES.....DEFENDANT
S**

6. KIKORA LIMITED.....PROPOSED 6TH DEFENDANT

**7. J.M. RAMA (*Sued as the REGISTRAR OF TITLES MOMBASA
COUNTY*)PROPOSED 7TH
DEFENDANT**

RULING

I. Introduction

1. On 30th April, 2026, during the Micro - Soft Teams Virtual call over at 9.00am, the Honourable Court indicated that it was ready to delivery a Ruling in relation to a Notice of Motion application dated 13th January, 2026 filed by the 4th and 7th Defendants herein. It allocated 1030am as the time to deliver it. However, prior doing so at 10.45am, Mr. Makidina Advocate holding brief for Mr. Oluga Advocate for the 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 13th, 14th, 15th, 16th, 17th, 18th & 19th Plaintiffs, was on his feet and thus moved Court through an oral application seeking to arrest the delivery of impuged Ruling.
2. Primarily, the said Counsel made the application based on the reasons to be adduced herein below. Arising from the brief submissions by the Applicant, while Mr.

Mwangi Kihira Advocate for the 2nd, 9th, 10th, 11th, 12th & 20th Plaintiffs and M/s. Amil Advocate holding brief for M/s. Nafula Advocate for the 1st Defendant had no objection, the oral application was vigorously opposed by Mr. Onsongo Advocates, Mr. Mola Advocate for the 5th Defendant and Mr. Lusi Advocate for the 6th Defendant respectively.

3. Resultantly, the Honourable Court was compelled to delivered this short Ruling before to one that was coming up today for delivery despite of it being ready. That is the main substance and pith of this Ruling hereof.

II. The Applicant's case

4. As indicated above, Mr. Makadina Advocate applied orally to have the Ruling arrested for two (2) fold - broad reasons as following:-

Firstly that the Plaintiffs whom they represent had initially not been served with the application dated 13th January, 2026 by the 4th and 7th Defendants/Applicants herein.

Secondly, though they later on got the pleadings on 21st April, 2026, they needed to have gotten firm instructions from their clients on how to responded or handle it altogether. He averred that, to proceed without instruction would tantamount to a travesty of

justice and breach of the doctrine to fair hearing contrary to provision of Article 25 (c) of Constitution of Kenya, 2010.

III. The Responses by the Respondents.

5. As a quicker rejoinder, the Learned Counsels vigorously objected the application under the following grounds:-

Firstly, the matter already had a hearing dates - 4th and 5th May 2026 taken by the consensus of all parties;

Secondly, the excuse on non service was baseless and a mere smoke screen. Despite of not being served physically, they would have accessed the application from the Judiciary Case Tracking System. Furthermore, although Applicants admitted having been served, they never gave any reasons as to whether they would be opposing or supporting it.

Thirdly, the Applicants never graphically imparted what did it entail to get instruction from their clients and how long would that take.

Finally, the Applicant were not acting in good fault as they had appeared before court on several occasions whereby the delivery of the Ruling had been deferred, yet the Applicants never indicated their intention to have it arrested. The arresting of the

delivery of the Ruling would adversely affect the expectations hearing of the case.

In the event the court was inclined in granting the orders sought, the Applicant should be condemned to pray costs for the adjournment to the hearing of the main case.

IV. Analysis and Determination

6. The Honourable Court has critically assessed the oral application to arrest the delivery of the Ruling which is ready and the vehement objections raised herein by some of the Counsel as already stated herein
7. In order to arrive at a fair, Equitable and reasonable final decision on the contested issue, I have considered the only single issue for its determination - whether the oral application to arrest the delivery of the Ruling is meritorious or not.
8. Nonetheless, before the Honourable Court cause an indepth analysis of the issue presented by the Applicants case, it is imperative it extrapolates on the brief facts of the matter. Briefly and for clarity sake, I wish to state as follows. Initially, there was an application to have M/s. J. RAMA the Registrar of Titles, Mombasa be joined as a Defendant in this matter. On 27th October, 2025, this Court made a Ruling whereby it directed that the said Registrar of Title, Mombasa be joined as the 7th Defendant into the main suit based on a detailed reasoning tendered thereof.

9. Being aggrieved by the said decision, the 7th Defendant moved court under Certificate of Urgency and filing of a Notice of Motion application dated 13th January, 2016 vide sought for the following orders: -

a) That there be a temporary stay of the proceedings and Rulings of 27th October, 2025 pending the hearing and determination of the application

b) That there be a temporary stay of the proceedings and Rulings of 27th October, 2025 pending the hearing and determination of the appeal.

10. Indeed, from the filed pleadings, the 7th Defendant/Applicant informed this Court that it had already preferred an appeal before the Court of Appeal sitting at Mombasa being "**Civil Appeal No. E002 of 2026**" - whereby she wished to have her struck out from the proceedings. She also sought for stay of these proceedings pending the hearing and final determination of the afore - stated Appeal.

11. On 19th March, 2026, when the parties appeared before this Court, it granted them direction on canvassing the said application dated 13th January, 2026 by written submissions. It reserved 24th April, 2026 to deliver its Ruling as there was already slated two (2) hearing dates - 4th and 5th May, 2026.

12. However, on 24th April, 2026, taking that the Ruling was not ready and in the given urgent circumstances to expeditiously hear and dispose off this case as

slatted for 4th & 5th May, 2026 as dictated under the provisions of Article 159 (1) (2) of the Constitution of Kenya, 2010 - Legal maxim of **“Justice Delayed, is Justice Denied”** and Sections 3 of the Environment & Land Act, No. 19 of 2011 of the laws of Kenya, the Honourable Court offered in its own words to **“burning the midnight oil”** by deferring it to 30th April, 2026. Hence, come the said 30th April, 2026, the Honourable Court to its true colours during the Microsoft Teams informed the parties that it was ready for delivery of the said Ruling.

13. Critically speaking, I now wish to graphically analyse the framed issue as follows. Firstly, to begin with, I would like to address myself to the Scope, nature and meaning of the legal term **“to Arrest Judgement/Ruling”** according to the Black Law Dictionary is thus:-

“The staying of a Judgement after its entry especially a Court’s refusal to render or enforce a Judgement because of defect apparent from the recordat Common law, Courts have the power to arrest Judgement for intrinsic causes appearing on the record, as when the verdict differs materially from the pleadings or when the case alleged in the pleadings is legally insufficient.....”

14. Secondly, I fully concur to the argument that the timing by the Applicants towards making the oral application was misplaced, misinformed and clearly an after thought. Evidently, the Applicant have had

ample time to have formally or orally moved this Court over the same subject issue but they only opted to wait until the 11th hour. Its not the first time the matter was being placed the Court for deliberations.

15. Thirdly, on the issue of service and obtaining instruction from their client. Indeed, its agreeable that Court documents are now easily accessible from the well established and popular Judiciary CTS Portal. The Applicants never explored that open and obvious opportunity. Furthermore, they have admitted they already got the documents but still took no tangible steps had been taken from them accessing the documents. In as much as the court concur that indeed obtaining instruction from client was important but how long does it take to do that.
16. The doctrine fair hearing is enshrined under provision Articles 25 (2) and 50 (1) and (2) of the Constitution of Kenya 2010. Like a sword, I concur it cuts across including the Defendants herein. In the interest of justice there should be a balance for all parties.
17. By and large and with all due respect to the parties herein, from the depicted clear demeanor by the Plaintiffs, this Honourable Court now keeps on wondering in the wilderness, this being a Plaintiffs case, as to the reasons why is it that it is the Plaintiffs who do not seem to be anymore willing and ready to prosecute their case after instituting it altogether. On

the contrary, it's some of the Defendants who seem extremely enthusiastic, ready and willing to expeditiously dispose off the case. Anyway, the wonders of this World will never end!!.

18. Finally, I have noted that the Counsels objecting the application who have pressed that should the court inclined to allow the application, they be awarded costs for the anticipated adjournment of the matter slatted for 4th & 5th May, 2026. On this aspect, I would rather not say anything at this juncture as its rather premature depending on the final outcome of the Ruling I am about to deliver.

V. Conclusion & disposition

19. Ultimately, having caused an indepth analysis of the issues at hand, I am the strong view that the instant oral application is not only baseless, unmeritorius but unfounded and hence I proceed to dismiss it. For avoidance of any doubt, the Honourable Court sees no tangible nor pragmatic reason not to proceed on in delivering the Ruling as scheduled whatsoever.

IT IS SO ORDERED ACCORDINGLY

RULING DELIVERED THROUGH MICRO - SOFT TEAMS VIRTUAL MEANS DATED AND SIGNED AT

**KWALE ON THIS30THDAY OFAPRIL,
2026**

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

AT

KWALE.

Ruling delivered in the presence of:

- a) Mr. Daniel Disii, the Court Assistant.
- b) Mr. Makidina Advocate holding brief for Mr. Oluga Advocate for the 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 13th, 14th, 15th, 16th, 17th, 18th & 19th Plaintiffs.
- c) Mr. Mwangi Kihira Advocate for the 2nd, 9th, 10th, 11th, 12th & 20th Plaintiffs.
- d) M/s. Amil Advocate holding brief for M/s. Nafula Advocate for the 1st Defendant.
- e) Mr. Onsongo Advocate for the 2nd Defendant.
- f) Mr. Mola Advocate for the 5th Defendant.
- g) Mr. Lusi Advocate for the 6th Defendant.
- h) No appearance for the 4th & 7th Defendants.