

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARU

ELCLC NO 108 OF 2023

(Formerly Nyahururu E024 OF 2022)

SOUTHSHORE LOGISTICS LTD.....PLAINTIFF

VERSUS

MARY WANJIKU KANYOTU.....1ST

DEFENDANT

MARGARET NYAKINYUA MURIGU.....2ND

DEFENDANT

JANE GATHONI MURAYA.....3RD

DEFENDANT

LAND REGISTRAR NYANDARUA.....4TH

DEFENDANT

RULING:

Before me is an Application dated 6/1/2026 by the Plaintiff for orders that the Hearing of this case be stayed pending the hearing and determination of the intended Appeal by the Plaintiff/Applicant in the Court of Appeal. The grounds of the Appeal are stated on the face of the Application and in the Affidavit in support of the Application sworn on an even date by Daniel Machua Ndonga, the Director of the Plaintiff. The same are to the effect that a Ruling

was delivered on 11/12/2025 dismissing the Plaintiff's Application dated 6/5/2025 that sought the recusal of the trial Judge which Decision aggrieved the Applicant and the said Applicant intends to file an Appeal against the Decision where he believes he has an arguable Appeal and he sets the grounds of Appeal as:-

1. The Learned Trial Judge erred in law and in fact by holding that the Appellant's Application dated 6th May 2025 was not merited and dismissed it.
2. The Learned Trial Judge erred in law and in fact by holding that the Appellant's Application dated 6th May 2025 was supported by an Affidavit that contained hearsay averments, while as it the Affidavit contained fact that are contained on the court's record.
3. The Learned Trial Judge erred in law and in fact by failing to recuse himself while as he has made clear biased averments in court and made very prejudicial statements against the Appellant.
4. The Learned Trial Judge erred in Law and in fact by holding that the honourable court could sit outside its jurisdiction without formerly informing the parties and seeking leave of the honourable Chief Justice.
5. The Learned Trial Judge erred in Law and fact by failing to find that the Appellant had established that there was a clear manifestation of biasness and inappropriate conduct by the honourable judge.

He claims that the intended Appeal would be rendered nugatory if the proceedings in the matter are not stayed pending the intended Appeal.

He further said that the Plaintiff does not wish to litigate the matter before the current trial Judge because it is reasonably apprehensive that it will not get a fair hearing before him. It is therefore only just and fair to stay the proceedings pending the hearing and determination of the intended Appeal. He further contends that the Applicant will be highly prejudiced if this Application is not allowed, and this matter is concluded before its intended Appeal is heard and determined and that it is only fair that the Applicant's prayers herein are allowed as prayed.

He finally pleads that no party will be prejudiced if the Application is allowed but that the intended Appeal will be highly prejudiced if the Application is not allowed.

In the grounds of opposition dated 6/2/2026 on behalf of the 1st and 3rd Defendants, it is pleaded that the Plaintiff's Application is incompetent, defective and an abuse of the Court process for failure to annex/or exhibit the Notice of Appeal or any evidence demonstrating the existence of an intended Appeal.

There can be no intended Appeal without a Notice of Appeal being filed without which the Court cannot exercise its discretion in favour of the Applicant. They further urge that the Applicant is intent on delaying, obstructing and frustrating the fair and timely

determination of the suit contrary to the overriding objectives of the Court.

And finally that the parties herein will be greatly prejudiced since the Application's main intention is to delay the conclusion of this case.

The 2nd Defendant did not respond.

I asked the parties to file their submissions after which I retired to write this Ruling.

It is true there was an Application dated 6/5/2025 asking me to recuse myself from hearing this matter for reasons that I am biased and have been compromised with millions of Kenya shillings. A copy of a letter dated 15/4/2025 was attached to the said Application which was a complaint to the Judicial Service Commission. The court file was temporarily called for by the acting Registrar of the Judicial Service Commission on 2/5/2025, immediately before the Application for recusal was made but was returned to the station without any remarks just as it had been asked for without any reasons given.

The 1st and 3rd Defendants have raised the issue of there being no Notice of Appeal.

I am yet to receive a letter, a call or an invitation to either go to the criminal investigation offices to record a statement on my having received millions of Kenya shillings from one Mr. Ngirichi in order to

influence the outcome of this matter yet receiving a bribe is a criminal offence.

Secondly, it has been averred that nobody would be prejudiced if the orders sought in the Plaintiff's Application are granted. The 1st and 2nd Defendants are advanced in age. Both are over 80 years of age. It is important that this case proceeds during their lifetime or before they either lose their memories or become so weak to be able to participate in the proceedings of this case. This is the prejudice to be suffered if the Hearing of this case were to be delayed.

The Plaintiff is yet to file an Appeal for reasons he has not explained to the Court. The Applicant talks is being apprehensive and fears of being prejudiced should this suit proceed and the Appeal on the Ruling dated 11/12/2025 is heard and determined and the Decision of the Court of Appeal is to the effect that I disqualify myself. On the contrary, there would be no prejudice to the Plaintiff because the proceedings of this Court would be set aside and the matter heard de novo.

In the case of **GLOBAL TOURS & TRAVELS LIMITED** Nairobi **Winding up Cause No. 43 of 2000** Hon Justice **Aaron Ringera** (as he then was) held 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 for 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.” (own emphasis)

According to the authors of Halsbury’s Laws of England (4th Edition at page 137, paragraph 442 -

“The stay of proceedings is a serious grave and fundamental interruption in the right that a party has to conduct his litigation or the trial on the basis of substantive merits of his case and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.”

In **KENYA COMMERCIAL BANK LTD -VS- BENJOH**

AMALGAMATED & ANOTHER (Civil Appeal No. Nai.50 of 2001)

page 2, the Court of Appeal observed at page 2:-

“The onus of satisfying us on the second condition that unless a stay is granted the intended appeal would be rendered nugatory is also upon the applicant. In our view it has unfortunately failed to discharge this onus. We remind ourselves that each case depends on its own facts and we find it difficult to be persuaded that the appeal on the facts of the present case would be rendered nugatory if stay is not granted. The appeal may be heard and if successful, the proceedings in the

superior court would be determined in accordance herewith. The hearing in the superior court might have been unnecessary for what appropriate costs can be ordered but The Applicant seeks a stay of proceedings and where a party seeks to stop others from being heard, a higher standard of test is required if the proceedings are to be stopped. ***the appeal would not have been worthless.”***

We cannot say that there are circumstances beyond all reasonable doubt that proceedings in a Suit ought to be stayed because they cause no prejudice to the Applicant except perhaps on the issue of costs for which the Applicant can be compensated.

We cannot say in the circumstances that proceedings in respect of this Suit ought to be stayed since there is no question of the intended Appeal being rendered nugatory. This Application is hence disallowed with costs and this suit should proceed to full hearing without any further delay. This is the overriding objective of this Court and the Environment and Land Court Act calls upon all parties to ensure that they give the objective full support.

**Ruling dated, signed and delivered at Nyandarua this
22nd day of April 2026.**

**MUGO KAMAU
JUDGE**

In the presence of: -

Court AssistantSamson.

Plaintiff's Advocate.....Mr. Mungai H/B for Mr. Tumu.

1st & 3rd Defendants' Advocate..... Ms. Chebet'

2nd Defendant's AdvocateN/A.