



REPUBLIC OF KENYA



**Devi Limited & another v Muthui (Land Case E034 of 2023)  
[2025] KEELC 5954 (KLR) (28 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5954 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E034 OF 2023  
CG MBOGO, J  
AUGUST 28, 2025**

**BETWEEN**

**DEVI LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**MILLICENT WAMBUI MUGI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DAVID MUTHUI ..... DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 23<sup>rd</sup> April 2025 filed by the plaintiffs/ applicants and it is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3, 3A 79G and 95 of the *Civil Procedure Act* seeking the following orders:-
  1. This honourable court be pleased to stay all further proceedings in this suit pending the hearing and determination of Milimani High Court Commercial Case No. E287 of 2025-Millicent Wambui Kebatta- Mugih Alias Millicent Wambui Kebatta v Gevi Limited & Registrar of Companies.
  2. This honourable court be pleased to grant such further or other orders as it may deem just and expedient in the circumstances of this case.
  3. The costs of this application be in the cause.
2. The application is premised on the grounds inter alia that the 2<sup>nd</sup> Plaintiff/applicant has instituted fresh proceedings in the Commercial and Tax division of the High Court in Milimani High Court Commercial Case No. E287 of 2025.
3. The application was supported by the affidavit the 2<sup>nd</sup> plaintiff/applicant sworn on even date. The 2<sup>nd</sup> plaintiff/applicant deposed that vide the commercial suit, she seeks a declaration that Patrick Kimani Kiarie and Henzlon Kamau Waithaka ceased being directors and shareholders of the 1<sup>st</sup> plaintiff/



- applicant. Further, that she has also sought rectification of the register of the 1<sup>st</sup> plaintiff which was necessitated by a rectification process conducted by the Registrar of Companies vide the letter dated 17<sup>th</sup> January, 2025.
4. The 2<sup>nd</sup> plaintiff/applicant deposed that it is of paramount importance that the issue of whether or not the said persons had ceased being directors and shareholders of the 1<sup>st</sup> plaintiff as at 22<sup>nd</sup> June, 1993 be determined first. She deposed that the commercial suit will assist this court effectually and conclusively adjudicate upon and determine all the issues involved in this suit. The 2<sup>nd</sup> plaintiff/applicant filed her supplementary affidavit sworn on 25<sup>th</sup> April, 2025 and annexed bundle of documents.
  5. The application was opposed vide the replying affidavit of the defendant/respondent sworn on 7<sup>th</sup> May, 2025. The defendant/respondent deposed that the 2<sup>nd</sup> plaintiff/applicant and her late husband sold the parcel of land known as LR. No. 2327/ 102 measuring 5 acres to the 1<sup>st</sup> plaintiff for valuable consideration. Further, that the 1<sup>st</sup> plaintiff subdivided the mother title into four portions including parcel no. 2327/174 which it sold to him. That upon payment of the full purchase price of KShs. 900,000/-, the 1<sup>st</sup> plaintiff transferred to him the suit property by indenture of conveyance dated 22<sup>nd</sup> June, 1993 and delivered vacant possession which he has maintained solely without interruption till the year 2022.
  6. The defendant/respondent deposed that the 1<sup>st</sup> plaintiff is barred by Section 7 of the Limitations of Actions Act from bringing this suit against him for recovery of the suit land for over 30 years. Further, that the present suit and the suit before the commercial division are an abuse of the court process for attempting to introduce a new cause of action. The issue of directors of the 1<sup>st</sup> plaintiff at the time it sold the suit properties was finally settled vide the ruling delivered on 29<sup>th</sup> February, 2024. He deposed that the averments by the 2<sup>nd</sup> plaintiff/applicant contradicts paragraphs 1, 7 and 12 of the plaint. Further, that the same was conceded in the further affidavit sworn on 27<sup>th</sup> September, 2023.
  7. He deposed that the 2<sup>nd</sup> plaintiff/applicant is barred from asserting that Mr. Kiarie and Mr. Waithaka were not Directors of the 1<sup>st</sup> plaintiff at the time it sold the suit property to him. He deposed that these allegations are an afterthought and have now been introduced in an attempt to resuscitate the suit and no sufficient evidence has been tendered by the plaintiffs' to support the claim that there was ever a change of the 1<sup>st</sup> plaintiff's directors. The defendant/respondent deposed that the 2<sup>nd</sup> plaintiff/applicant did not file the resolutions with the registrar of companies in order to give effect to the change of directors and as such, they have no effect in law.
  8. The 2<sup>nd</sup> plaintiff/applicant filed a further affidavit sworn on 6<sup>th</sup> June, 2023. She deposed that she became aware of the defendant's/respondent's claim in the year 2023 and that time had not run out. Further, that the registrar of companies has admitted that the records were tampered with which extended to the resolutions where Patrick Kimani Kiarie and Henzlon Kamau Waithaka ceased being directors. She deposed that the unequivocal tampering of the records came to their knowledge after they filed the present suit, and that the directorship of the 1<sup>st</sup> plaintiff is fundamental to the determination of the present suit. She deposed that the ruling delivered on 29<sup>th</sup> February, 2024 did not conclusively determine the lawful directors of the 1<sup>st</sup> plaintiff, and neither did it consider the resolution made on 5<sup>th</sup> September, 1992.
  9. The 2<sup>nd</sup> plaintiff/applicant deposed that the rectification process and the admission by the registrar of companies occurred after the ruling was delivered, and the circumstances this case has changed so much that necessitates the completion of the rectification process through the commercial suit.



10. The application was canvassed by way of written submissions. The defendant/respondent filed his written submissions dated 1<sup>st</sup> July, 2025 where he raised two issues for determination as follows:-
  - i. Whether the 1<sup>st</sup> applicant's claim is statute barred under Section 7 of the [Limitation of Actions Act](#); and
  - ii. Whether the plaintiffs/ applicants have demonstrated sufficient grounds to warrant a stay of proceedings pending the determination of HCCC No. E287 of 2025.
11. On the first issue, the defendant/respondent submitted that Section 7 of the Limitations of Actions Act imposes a statutory limitation on actions for the recovery of land and any suit filed outside the 12-year window period is irredeemably barred. That to the contrary, the defendant/respondent demonstrated good faith and transparency by paying the full purchase price. He submitted that he will be greatly prejudiced if the directorship is challenged owing to the fact that the directors are now deceased and are not able to answer to the question of whether they had capacity to transact.
12. On the second issue, the defendant/respondent submitted that the claims of the directorship of the 1<sup>st</sup> plaintiff/applicant are inconsistent with the pleadings and sworn statement on record. Further, that the plaintiffs/applicants are barred by the doctrine of estoppel from taking a position that contradicts their prior express representations. The defendant/respondent relied on the cases of Kenya Wildlife Service v James Mutembei [2019] eKLR, and Sarah Njeri Warigia v Stephen Maina & Another [2014] eKLR. While reiterating the contents of his replying affidavit, the defendant/respondent submitted that the plaintiffs/applicants have taken two irreconcilable positions on the status of the 1<sup>st</sup> plaintiff/applicant's directors, and now attempt to disown the directorship of the 1<sup>st</sup> plaintiff which is not only procedurally impermissible, but also offends the equitable doctrine of judicial estoppel. The defendant/respondent relied on the cases of Satya Bhama Gandhi v Director of Public Prosecutions & 3 others [2018] eKLR, and Triton Gas Station Limited & another v Kenya Commercial Bank Limited & 2 others [2015] eKLR.
13. The plaintiffs/applicants filed their written submissions dated 13<sup>th</sup> June, 2025. The same was strictly in regards to the notice of preliminary objection dated 7<sup>th</sup> May, 2025, and it is not for consideration in this application.
14. I have carefully analyzed and considered the application, the replies thereof and the written submissions filed by the defendant/respondent. The issue for determination is whether this court ought to stay proceedings in this matter pending the hearing and determination of Milimani High Court Commercial Case No. E287 of 2025-Millicent Wambui Kebatta- Mugih Alias Millicent Wambui Kebatta v Gevi Limited & Registrar of Companies.
15. Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 37 at p. 330 states:-

“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 proceedings, beyond 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 this case.”

16. As it can be observed, stay of proceedings is a radical remedy which is only granted in very exceptional circumstances. In the words of Ringera J, (as he then was) in *Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000)*:-

“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)

17. The plaintiffs/applicants instituted this suit in July, 2023 with a claim regarding the registration and interests on the property known as LR. No. 2327/174 by the defendant/respondent. They pleaded particulars of fraud and sought orders to that effect. Along the way, they sought for further information from the Business Registration Services on the directorship of the 1<sup>st</sup> plaintiff and in a letter dated 17<sup>th</sup> January, 2024 the registrar of companies communicated the position as per their records which it was stated that Patrick Kimani Kiarie and Henzlon Kamai Waithaka were the initial directors and shareholders of the company. According to the 2<sup>nd</sup> plaintiff/applicant, this position contradicts the records in her possession as per the annexures contained in her supporting affidavit which she argued that the said persons ceased being directors at the time the transfer of the suit property was taking place. She contended that it would be necessary to stay further proceedings so that the issue of directorship of the 1<sup>st</sup> plaintiff is determined.
18. The defendant/respondent on the other hand argued that the 2<sup>nd</sup> plaintiff/applicant’s averments contradicts the plaint, and the issue of directorship has already been settled. He deposed that the application is an abuse of the court process for the reason that no change of directors was ever filed with the registrar of companies.
19. Upon careful consideration and analysis of the issues raised, it is clear that the rival arguments in the application and the replying affidavit has brought to fore the status of the 1<sup>st</sup> plaintiff as at the time when the transaction of the suit property as well as the dealings of the mother title was taking place in the late 80s’ and the early 90’s. The letter from the registrar of companies dated 17<sup>th</sup> January, 2024 has triggered this new dimension of arguments which the plaintiffs/applicants perhaps may not have known. I say so because in the plaint, the plaintiffs/applicants narrate the history of the suit property and its management thereof which stemmed from the 1<sup>st</sup> plaintiff. As per the letters annexed to the supplementary affidavit with various dates between the year 1986 and 1995, there were dealings of the company, which have not been refuted by the defendant/respondent. These are issues which are not within the jurisdiction of this court and the same can only be determined by the court vested with the said jurisdiction.
20. Having said that, and bearing in mind that stay of proceedings can only be granted in exceptional circumstances, there is need to weigh the pros and cons of the same. In this case, what are the risks of staying the proceedings, and will there be an injustice on the opposing party? It is possible for a suit that



has been instituted to change form and substance within the period of litigation. This is attributed to a number of factors including, matters arising which would prompt the need for the court's intervention to ensure that parties ventilate their issues as they arise. The circumstances of this case in my view, permits such intervention. The dealings, operations and management of the 1<sup>st</sup> plaintiff are central to the determination of the dispute in this case. It would only be logical and fair for the same to be determined so that this court can settle the issue in dispute in this case. It would also serve no interest for this court to proceed with the suit, and thereafter revert to basics long after time has been spent.

21. More importantly, and I note is that from the record, there is an order of status quo in place. I see no prejudice that the defendant/respondent will suffer if the orders are granted. For this reason, I find merit in the notice of motion dated 23<sup>rd</sup> April, 2025 and it is hereby allowed as follows: -
- i. This court hereby stays all further proceedings in this suit pending the hearing and determination of Milimani High Court Commercial Case No. E287 of 2025-Millicent Wambui Kebatta- Mugih Alias Millicent Wambui Kebatta v Gevi Limited & Registrar of Companies.
  - ii. The plaintiff/applicant to expedite hearing and determination of the suit before the High Court.
  - iii. Costs of this application is assessed at Kshs.40,000/- to be paid to the defendant/respondent within 30 days from the date hereof.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY**

**THIS 28<sup>TH</sup> DAY OF AUGUST, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**28/08/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Geoffrey Kimotho for the Defendant

