



**Okumu v Agricultural Development Corporation & 7 others; National Land Commission & another (Interested Parties) (Environment and Land Case E011 of 2023) [2025] KEELC 5789 (KLR) (1 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5789 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E011 OF 2023**

**A OMBWAYO, J  
AUGUST 1, 2025**

**BETWEEN**

**JUMA OKUMU ..... PETITIONER**

**AND**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**PATRICK MUTINDA MULINGE AND JAMES MUTUA MULINGE (SUED AS THE ADMINISTRATORS OF THE ESTATE OF GENERAL JACKSON MULINGE) ..... 4<sup>TH</sup> RESPONDENT**

**CHEMUSIAN FARM LIMITED ..... 5<sup>TH</sup> RESPONDENT**

**SIAN ENTERPRISES LIMITED ..... 6<sup>TH</sup> RESPONDENT**

**MOHAMED HAJI MOHAMED ..... 7<sup>TH</sup> RESPONDENT**

**JOSHUA KULEI ..... 8<sup>TH</sup> RESPONDENT**

**AND**

**THE NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**THE CHIEF GOVERNMENT VALUER ..... INTERESTED PARTY**

**RULING**

1. Juma Okumu (hereinafter referred to as the applicant) has come to court seeking orders that pending the hearing and determination of the appeal against the ruling delivered by Hon. Justice Anthony



Ombwayo on 10<sup>th</sup> July, 2025, an order be issued suspending and or staying further proceedings in Nakuru Environment and Land Court Petition No. E011 of 2024 Juma Okumu v Joshua Kulei and others including delivery of judgment. The costs of this application abide the outcome of the appeal herein. The application is based on grounds that vide a ruling dated 10<sup>th</sup> July, 2025, this Court dismissed the Proposed 6<sup>th</sup> Defendant's application dated 12<sup>th</sup> March, 2025 seeking for the recusal of Hon. Justice Anthony O. Ombwayo. The dismissal of the application for the recusal of Hon. Justice Anthony O. Ombwayo was despite the Applicant tendering credible evidence that demonstrates a reasonable apprehension of bias, impartiality and gross judicial misconduct on the part of the Honorable Judge and availing credible evidence implicating Hon. Justice Anthony O. Ombwayo of close and inappropriate contact with the litigants, their advocates and/or their agents, including evidence of improper financial dealings and soliciting for bribes from the aforementioned litigants as documented in the letter dated 30<sup>th</sup> April 2025 and other credible evidentiary material that casts serious doubts on the Honorable Judge's integrity and impartiality that are cardinal in the administration of justice.

2. The Applicant is aggrieved by the ruling of 10<sup>th</sup> July, 2025, and has lodged a Notice of Appeal dated 16<sup>th</sup> July, 2025 with a view to challenging the Honorable Judge's refusal to recuse, and to vindicate the principles of fair trial and judicial integrity. The Applicant has also lodged JSC Petition No. 49 of 2025 for the removal of Hon. Justice Anthony O. Ombwayo before the Judicial Service Commission, further emphasizing the seriousness and urgency of the complaint.
3. The issues raised by the Applicant transcend private interest, as they bespeak the constitutional guarantee of a fair trial under Article 50(1) of *the Constitution*. This is because the issues raised concern the impartial hearing and determination of a dispute that touches on Land Reference Number 13287/99, which is public land. The Applicant is aggrieved by the ruling of 10<sup>th</sup> July, 2025, and has filed a notice of appeal dated 16<sup>th</sup> July, 2025 with a view to challenging the refusal to recuse, and to vindicate the principles of fair trial and judicial integrity. The Appeal instituted by the Applicant has high chances of success and is predicated on a number of grounds.
4. The applicant contends that the Learned Judge erred in law and fact in failing to appreciate that the Applicant had placed before the Court credible, specific and corroborated evidence which, objectively considered, gave rise to a reasonable apprehension of bias and impartiality that is sufficient to warrant recusal.
5. Moreover, that the Learned Judge misapprehended the applicable test for judicial bias, and wrongly focused on the absence of proof of actual bias, rather than applying the proper test of whether a fair-minded and informed observer would reasonably apprehend bias.
6. The Learned Judge erred fact and in law by dismissing the recusal application despite acknowledging the serious nature of the allegations, including those relating to improper contact, financial transactions, and ethical violations, which had been raised both in affidavit evidence and a letter dated 30<sup>th</sup> April 2025.
7. That vide a ruling dated 10<sup>th</sup> July, 2025, this Court dismissed the Proposed 6<sup>th</sup> Defendant's application dated 12<sup>th</sup> March, 2025 seeking for the recusal of Hon. Justice Anthony O. Ombwayo.
8. The ruling of 10<sup>th</sup> July, 2025 was despite the applicant tendering credible evidence that demonstrates a reasonable apprehension of bias, gross judicial misconduct, and incompetence on the part of the Honorable Judge. The applicant claims to have availed credible evidence implicating Hon. Justice Anthony O Ombwayo of close and inappropriate contact with the litigants, their advocates and/or



their agents, including evidence of improper financial dealings and soliciting for bribes as documented in the letter dated 30<sup>th</sup> April 2025 and other credible evidentiary material.

9. The issues that he raised transcend private interest, as they bespeak the constitutional guarantee of a fair trial under Article 50(1) of *the Constitution*. This is because the issues concern the impartial hearing and determination of a dispute that touches on illegal acquisition of public land, being Land Reference Number 13287/99 that is purportedly registered in the names of the Plaintiffs and the 4<sup>th</sup> Defendant.
10. He is aggrieved by the ruling of 10<sup>th</sup> July, 2025, and has filed a notice of appeal dated 16<sup>th</sup> July, 2025 with a view to challenging the refusal to recuse, and to vindicate the principles of fair trial and judicial integrity. He also lodged JSC Petition No. 49 of 2025 for the removal of Hon. Justice Anthony O. Ombwayo before the Judicial Service Commission, further emphasizing the seriousness and urgency of the complaint.
11. The Appeal that he has filed has high chances of success and is predicated on a number of grounds including the Learned Judge erred in law and fact in failing to appreciate that the Applicant had placed before the Court credible, specific and corroborated evidence which, objectively considered, gave rise to a reasonable apprehension of bias, which is sufficient to warrant recusal. Moreover, that the the Learned Judge misapprehended the applicable test for judicial bias, and wrongly focused on the absence of proof of actual bias, rather than applying the proper test of whether a fair-minded and informed observer would reasonably apprehend bias. The Learned Judge erred fact and in law by dismissing the recusal application despite acknowledging the serious nature of the allegations, including those relating to improper contact, financial transactions, and ethical violations, which had been raised both in affidavit evidence and a letter dated 30<sup>th</sup> April 2025.
12. The Learned Judge erred in failing to give due weight to the affidavit by Plaintiffs on 6<sup>th</sup> May, 2025, which confirmed that the allegations against the Judge were credible, troubling, and had eroded the Plaintiffs' own confidence in the impartiality of the Court. The applicant claims to have high probability of success which shall be rendered nugatory if an order of stay is not issued and will be grossly prejudiced if the matter were to proceed in the form in which it is now. The court is under a duty to preserve the subject matter of the appeal irrespective of whether in the court's view that the appeal is devoid of merit. I stand on that right and plead with the court to uphold the law.
13. Unless any further proceedings in the instant suit are immediately stayed, the Court shall proceed to adjudicate and even give a final judgement over a matter where its impartiality is seriously contested and actively under investigations thereby compromising the integrity of the Court process, undermining public confidence in the rule of law, and rendering any intended appeal and or oversight process nugatory. This application has made been promptly, in utmost good faith, and in pursuit of the public confidence in the rule of law, the fair administration of justice, and public interest.

#### **5<sup>th</sup> 6<sup>th</sup> And 8<sup>th</sup> Respondents' Reply**

14. The 5<sup>th</sup> 6<sup>th</sup> and 8<sup>th</sup> respondents through the affidavit of Evans Langat opposes the application wherein he states that the Application seeks to invoke the discretion of this Honorable Court to stay proceedings which are at the final stage, pending hearing and determination an Appeal that is otherwise not arguable. The same is a non-starter and should be dismissed with costs. He is aware that an order of stay of proceedings is a discretionary order that ought only to be made in the interest of justice, upon the court weighing the advantages and disadvantages of allowing the same and strikes a balance between the parties and the prejudice that they stand to suffer as well as the scarcity of judicial resources and the need to expeditiously determine cases. The Applicant, in an application dated 12<sup>th</sup> March 2025



sought orders that the Honorable Judge recuse himself from handling the suit on account of alleged bias in favor of both the Plaintiffs and Defendants herein.

15. The respondents state the Applicant filed a Further Supplementary Affidavit dated 6<sup>th</sup> May 2025 alleging that the Honorable Judge has had unholy dealings with the parties to the suit starting as far back as 21<sup>st</sup> June 2023 when he supposedly called one of the litigants and demanded for Kshs. 300,000.00 which was paid to a supposed agent Mr. Kariuki and further disbursed to one Violet Mumia and Omutanyi Ester, alleged relatives of the Judge. At the hearing of the Application dated 12<sup>th</sup> March 2025, the Applicant's counsel went to great lengths to attempt to explain that the M-pesa messages were sufficient demonstration of bias. Nothing would have been easier than obtaining an Affidavit from the said Mr. Kariuki, who the applicant allegedly obtained a statement from, to speak to the alleged communications between himself and the Judge and the transmission of orders.
16. The Applicant's grievance begun when the Court, in a Ruling delivered on 6<sup>th</sup> February 2025 in ELC Petition No. EOII of 2024, Juma Okumu versus The Agricultural Development Corporation and Others, declining the invitation to direct that the Petition be dispensed off through viva voce hearing and that the EACC be enjoined. The Application dated 12<sup>th</sup> March 2025 was therefore made by a disgruntled party who ought to have appealed the offending Ruling instead of seeking recusal of the judge on flimsy and unsubstantiated claims of bias.
17. This Honorable Court, in its Ruling dated 10<sup>th</sup> July 2025 dismissed the Application dated 12<sup>th</sup> March 2025 on grounds that the Applicant had failed to demonstrate, through cogent evidence, that the Judge is in fact biased and would not determine the Petition impartially.
18. That this Honorable Court, in determining the present Application ought to consider whether the Applicant has set out an arguable appeal and that he has satisfied the court that it is in the interest of justice that the court allow the Application. The Applicant has demonstrated neither requirement. The applicant's grounds of appeal revolve around the notion that the court erroneously interpreted the test for recusal in requiring proof of actual bias and in failing to find that the evidence tendered was sufficient,
19. That where a judge is called on to recuse himself, there is need to establish substantial evidence and it is important to show a direct link between the associations and the judge's ability to adjudicate fairly.
20. The Applicant swore an affidavit and produced Mpesa statements belonging to one Kairuki, Esther, and Violet. Neither of these persons swore affidavits owning the said statements nor at the very least, attest to the fact that they had dealings with the judge,
21. Further, the said Mr. Kariuki who allegedly effected the orders to receive and disburse the Kshs.300,000.00 is not shown to have any direct link with the Judge in so far as the "bribe" is concerned. Having failed to demonstrate such link, the Application dated 12<sup>th</sup> March 2025 could suffer no other fate other than dismissal. This Honorable Court was well within the law in making its determination. The Applicant does not have an arguable appeal.
22. This Honorable Court is called upon to balance the interests of the parties and place them on equal footing, noting that the overriding objective aims at facilitating the just, expeditious, proportionate and affordable resolution of disputes.
23. The Applicant herein seeks to stay proceedings pending hearing and determination of the Appeal. The Respondents on the other hand have been subjected to public accusations, which accusations are false and continue to expend resources over a matter that they not only attended court judiciously for the hearing thereof/ but also complied with all the orders of the court.



24. The court itself spent precious judicial resources and time to ensure that the suit was heard expeditiously and without undue delay. To stay the proceedings on the whims of a busy body is the very definition of injustice.
25. The interest of justice lies in favor of proceeding with the case. *The Constitution* allows parties to exhaust their right to fair hearing by exhausting all the available Appeals, which shall be open to the Applicant, in the event that the same is dismissed. The Application dated 17<sup>th</sup> July 2025 is only an attempt to delay justice on account of an appeal that goes against the established test in so far as recusal same is for nothing but dismissal with costs.

### **Rival Submissions**

26. Mr Felix Keaton Learned counsel for the Applicant submits that the principles for the grant of an order of stay of proceedings are well settled. In Meru Civil Appeal 40 of 2018 Kenya Wildlife service -versus- Mutembei (2019) eLR, the Court cited with approval the decision in Re Global Tours & Travel Limited (Nairobi) Winding up Cause No. 43 of 2000 where the Court held thus: -
- "As I understand the law whether or not I 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 to order a stay of proceedings. And if it is, on what terms it should be granted-In deciding whether to order a stay, a court should essential 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 or whether it is an arguable one. The scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.... "
27. The Applicant in light of the foregoing submits that the application dated 17<sup>th</sup> July, 2025 should be granted as the intended appeal is arguable and not frivolous. The Applicant has filed a notice of appeal dated 16<sup>th</sup> July, 2025 challenging the ruling dated 10<sup>th</sup> July, 2025. In the body of the application dated 17<sup>th</sup> July, 2025, the Applicant has enumerated several grounds that he relies on to challenge the decision of this Court. These grounds include that the learned judge erred in fact and in law in failing to appreciate that the applicant had placed before the Court credible evidence which considered gave rise to a reasonable apprehension of bias and impartiality that is sufficient to warrant recusal. Further, that the Learned Judge misapprehended the applicable test for judicial bias.
28. The Applicant submits that he has raised several points worthy of consideration by the Court of Appeal, that include the question of whether the Court erred in fact and in law by misapprehending the test for recusal by a judicial officer, The intended appeal is thus arguable, and the Applicant has satisfied the first threshold for the grant of the orders of stay sought,
29. The applicant argues that the application dated 17<sup>th</sup> July, 2025 should be granted as it is in the interest of justice. The Applicant further submits that it is in the Interest of justice that the stay of proceedings should be granted for several reasons. Firstly, unless the proceedings herein are stayed, the Intended appeal challenging the impartiality of the presiding Judge will be rendered nugatory. This is because the Judge proceed to adjudicate and even give a final judgment in a matter where his impartiality is seriously contested and actively under investigation, thereby irreparably tainting the process and undermining the authority of the judiciary. This damage is irreversible. For this proposition, the Applicant relies



on the decision in Niazsons (K) Ltd. vs. China Road & Bridge Corporation (Kenya) 120011 e 1<LR, Onyango-Otieno, J (as he then was) held that:-

“Where the appeal may have very serious effects on the entire case so that if stay of proceedings is not granted the result of the appeal may well render the orders made nugatory and render the exercise futile, stay...should be granted.”

30. Secondly, judicial time is a scarce and valuable resource that must not be expended on proceedings which are liable to be set aside on appeal or rendered academic.

31. The applicant relies on the case of Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others [2009]1eKLR, where the Court of Appeal rendered itself as follows:-

“Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice.”

32. The applicants argue that in the instant case, the Court should grant an order of stay of proceedings, as the intended appeal involves the question on the integrity and impartiality of the Judge and if it succeeds, the entire proceedings shall be set aside and rendered academic. Judicial time once improperly used cannot be recovered, and the Court should grant a stay of proceedings.

33. Thirdly, the Applicant has a constitutional and statutory right of appeal under Section 16 of the *Environment and Land Court Act*, Article 50 of *the Constitution*, and Article 48 of *the Constitution*. If the proceedings are allowed to continue to judgment, that right will not only be undermined, but effectively lost as the appellate process will have been overtaken by events, and the appeal rendered merely academic.

34. The applicant argues that the instant suit revolves around the illegal and irregular purported acquisition of public property that touches on constitutional values of accountability, transparency, and the proper management of public resources. At the center of the dispute is the question of the impartiality of the presiding judge, who is alleged to be acting in cahoots with land grabbers and is spiritedly supported by the 1<sup>st</sup> and 4<sup>th</sup> Defendants. The issues raised by the Applicants are thus not mere private grievances, but rather, issues which question the credibility and integrity of the judicial process in cases involving public property. Given the public cause and *the constitution* issues involved, it is thus in the public interest that the proceedings be halted pending the resolution of these allegations, so as to preserve institution integrity and prevent a miscarriage of justice.

35. For this proposition, reliance is placed on Mukunya Mugo A & another v Elizabeth Mugure Mukunva [2020] KEELC 1961 (KLR), where Kimei J. while recognizing that even though an application for recusal was unmerited, substantive justice demands that he recuses himself, or in the alternative stays the proceedings pending the ongoing investigations into the issues raised by the Applicant where the Court itself may even be called as a witness. The Court therein held as follows:

“19, It is the conclusion of the Court that no fair minded and reasonable observer would conclude based on the decisions of the Court in ELC 111 of 2017 that the Judge was biased towards the Applicant Notwithstanding my holding in para 19 above, I find that substantive justice would be met by my recusal in view of the ongoing investigations into certain matters alluded to by the Applicant, with the probability of the Court being called as a witness, so that this suit may proceed expeditiously before another Court. The alternative would have been to remand the case until' the finalization of the investigations



and or any prosecution. if any, that may arise. This cause of action would be undesirable because it will delay the hearing and finalization of this case. For the reasons given in para 20, I therefore grant the application and recuse myself from the case."

36. Reliance is also placed on *Munya v Kithinii & 2 others* (supra), where the Supreme Court held that where disputes attain an element of public interest where the decision that will be delivered will affect not only the interests of the parties, but also the public. The Supreme Court while granting the stay further held that: -

"Bearing in mind the nature of the competing claims, against the background of the public cause. we have focused our perception on the public interest, and the concept of good governance, that runs in tandem with the conscientious deployment of the scarce resources drawn from the public. Proper husbandry over public monetary and other resources, we take judicial notice, is a major challenge to all active institutions and processes of governance: and the Courts, by their established attribute of line-drawing, must ever have an interest in contributing to the safeguarding of such resources."

37. In this case, the Court having refused to recuse itself, it is in public interest that the Court exercises the only alternative remaining by issuing a stay of proceedings pending the finalization of the processes both before the Court of Appeal and the Judicial Service Commission.
38. In view of the foregoing, the Applicant respectfully urges this Honorable Court to grant the orders sought in the application dated 17<sup>th</sup> July, 2025 as the application is merited.

### **Respondents' Submissions**

39. Professor Tom Ojienda, (SC) learned counsel for the 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> respondents submits that the application dated 17<sup>th</sup> July 2025 seeks orders that this Honorable Court be pleased to stay proceedings which are at the final stage, pending hearing and determination of the Appeal against the Ruling dated 10<sup>th</sup> July 2025, in which this Honorable Court declined the invitation to recuse itself from hearing the Petition. The Application lacks merit from the outset as it does not demonstrate that the Applicant has an arguable Appeal and that the circumstances prevailing is sufficient to invoke the discretion of the court. Senior Counsel relies on the treatise Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 37 at p. 330 and emphasize the factors to be considered in an application seeking stay of proceedings. It states inter alia that:

"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."

40. The Applicant sought recusal of the Judge on the basis that alleged bias in favor of both the Plaintiffs and Defendants in ELC Suit No. E033 of 2023, Omar Mohamed Omar and Another versus Joshua



Kule and Others starting as far back as 21<sup>st</sup> June 2023 when he supposedly called one of the litigants and demanded for Kshs.300,000.00 which was paid to a supposed agent named Mr. Kariuki and further disbursed to one Violet Mumia and Omutanyi Ester, alleged relatives of the Judge. Subsequently, in a Ruling dated 10<sup>th</sup> July 2025 dismissed the Application on account of no cogent evidence not being provided linking the Judge to the named parties or the transactions alleged to have happened. It is against this Ruling that the Applicant seeks to Appeal.

41. The court in *Ndabi v Kimotho & another (Civil Appeal 16 of 2023)* [2023] KEHC 17717 (KLR) (19 May 2023) (Ruling) upon looking through the jurisprudence on the question of stay pending appeal noted that the test from the above authorities is one that sets out the following parameters for a Courts exercise in discretion, in deciding whether or not to grant a stay of proceedings as sought in this application:
  - a. Whether the Applicant has established that he/she has a prima facie arguable case; and
  - b. Whether the Applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.
42. Whether the Applicant has an arguable appeal can be gleaned from the grounds of Appeal he intends to advance. Particularly, the Applicant takes issue with the fact that the learned judge relied on a different test other than reasonable apprehension of bias in finding that there was no cogent proof of bias demonstrated to warrant his recusal. It is trite that when considering the question of bias, the test that applies is that of a reasonable person. In order to prove an allegation of bias against a reasonable person, mere apprehension of said bias is not sufficient to meet the burden of proof. A successful Applicant must tender cogent proof to the court to cement the allegation of bias.
43. This was stated by Chitembwe J. in the case of *Nathan Obwana v Robert Bisakaya Wanyera & 2 others* [2013] KEHC 647 (KLR) where he held that: "I do find that there has been no proof of bias. The apprehension by the applicant that he will not get justice in this court is a normal apprehension whereby each party who has a matter in court is apprehensive as to the decision the court would make. The court may find in his or her favour and that uncertainty makes parties to be apprehensive. If a party interprets his apprehension and conclude that the court would be biased then that is taking the wrong dimension unless allegations of bias are proved by facts. The aspect of judging encompasses the unpredictability of the decision. If that aspect is missing then parties will be able to make their own predictions and make conclusion as to how the court is likely to decide a matter."
44. The respondent further rely on the case of *Republic of South Africa and others v. South African Rugby Football Union and others*, 1999(4) SA 147 (CC), CCT 16/98 cited with approval by the Supreme Court in the case of *Kibisu v Republic* [2018] KESC 34 (KLR) where the Constitutional Court held that: "It follows from the foregoing that the correct approach to this application for the recusal of members of this Court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case that is a mind open to persuasion by the evidence and the submissions of counsel."
45. The respondents submit that the implication of the aforementioned decisions is that any allegation of bias must be proved on a factual basis with cogent and convincing evidence in order for the presumption of impartiality to be rebutted by and would be successful Applicant. The applicant herein in providing his evidence in support of the allegation of bias swore an affidavit wherein he produced Mpesa statements belonging to one Kariuki, Esther and Violet. Instructively, neither of these persons swore affidavits owning the said statements or admitting to the fact they had dealings with the Honorable judge.



46. Furthermore, one Mr. Kariuki who allegedly effected the orders to receive and disburse the said amount being, Kshs. 300,000.00, the alleged bribe, was not shown to have any direct link with the Judge.
47. It is our case therefore to this esteemed court that the Applicant herein failed, miserably so, to establish a direct link between any would be associations of the Judge and his ability to adjudicate fairly. The allegations by the Applicant constitute mere conjecture at best and thus this Honorable Court made a sound legal determination in its determination. The applicant does not therefore have an arguable appeal. It is trite that before this Honorable Court can grant stay of proceedings, an Applicant needs to establish sufficient cause that it is in the interest of justice to grant the orders sought, to the satisfaction of the court.
48. Courts can issue stay of proceedings in exceptional circumstances, that is where a constitutional right may be infringed on or where it might prejudice the interest of justice. Even then, the Court must take into consideration the overriding objective, which aims at facilitating the just, expeditious, proportionate and affordable resolution of disputes, and balance the interests of parties to the suit.
49. The principles that govern stay of execution were laid down in the case of William Odhiambo Ramogi & 3 others v Attorney General & 6 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR cited with approval in Mbiti & another v Thome & another (Civil Appeal E010 of 2024) [2024] KEHC 5441 (KLR) (20 May 2024) (Ruling) where the court stated: "A scan of our decisional law reveals that our Courts have established the following principles for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher Court.: a. First, there must be an appeal pending before the higher Court b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay."
50. In the upshot, the respondents submit that an order for stay of execution is a discretionary power of the court that is to be exercised judiciously and sparingly taking into account whether it is in the interest of justice to grant the same.
51. This court has spent precious judicial resources and time to ensure that the suit was heard expeditiously and without undue delay. To stay proceedings for a party that has never taken part in the proceedings would be the very definition of injustice.
52. Further, the Respondents have been subject to false public accusations and continue to expend resources for the determination of a matter wherein they have diligently attended court judiciously for the hearing and complied with all the orders of the court.
53. It is therefore their humble submission that the interest of justice lies in favor of dismissing the application. Should any party be dissatisfied with the same, then they have the constitutional right to Appeal. The Application dated 17<sup>th</sup> July 2025 is an attempt by the Applicants to delay justice on



account of an appeal that goes against the legal test in so far as recusal applications are concerned. The respondents urge this Honourable Court to dismiss the Application with costs to the Respondents'.

### Determination

54. On whether the court should stay proceedings in this matter, this court observes that the proceedings are at the tail end and were stopped by the applicant who sought to be enjoined in the matter and prayed that the court recuses itself. This court would not prefer to sit the judge on its' own appeal. However, considering that the issue of bias was raised by the appellant, I do find that it is necessary to have a casual glance at the facts of the case. The applicant applied that this court recuses itself due to some mpesa transactions between some identified individuals. It was claimed that this court was involved in the transactions that happened many months before the cases were filed and involved Mr Juma Okumus associate Known Mr Kariuki but none of the persons involved in the transactions have deponed affidavits. Court proceedings should be taken seriously and any allegation of bribing a judge should not be taken casually by mere allegations. The allegations were made without availing cogent evidence. Some wild allegations were made of the court receiving 50 million from the parties without any evidence of the same. These are the facts that the applicant intends to present to the Court of Appeal and the fact that they have lodged a petition against the judge. This court finds that though the applicants have preferred an appeal in the court of appeal their accusation of bias was never substantiated before me. Moreover, as held by this court, I have a duty to sit and make determinations. Courts should stand firm against blackmail and bullying and protect every litigant against individuals who would be determined to derail justice.
55. The legal considerations in an application for stay of proceedings have been enunciated in a host of judicial decisions which I need not re-invent, Daniel Walter Rasugu Nbi Hccc No 15 of 2006 ; Global Tours & Travel Limited; Nairobi HC Winding Up Cause No.43 of 2000; and Kenya Power & Lighting Company Limited vs. Esther Wanjiru Wokabi [2014] eKLR. The guiding legal principles gathered from these cases may be summarized as follows:-
- a. The decision 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.
  - b. 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.
  - c. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order.
  - d. 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.
56. The applicant has unfettered right of appeal which it has sought to exercise. But that right has to be balanced against the right of the Plaintiff to equal treatment in law and to have his case determined without unreasonable delay.
57. That constitutional desire demands that proceedings should not be hindered without just and sufficient cause. That position of the law is informed by the principle of justice in Article 159 of *the Constitution* which expresses the now commonly principle of law known as the overriding objective of the law; that cases should be disposed of in a just, proportionate, expeditious and affordable manner.



58. The law on stay of proceedings pending appeal will be concerned with the sole question of whether it is in the interest of justice to order a stay of proceedings. And in deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. It will also consider 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. Weighing the above factors, I do exercise my discretion by declining to grant the stay of proceedings pending hearing and determination of appeal. The upshot of the above is that the application is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 1<sup>ST</sup> DAY OF AUGUST 2025.**

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**A.O.OMBWAYO**  
**JUDGE**

