**Royal Sian Limited v Cove Investments Limited & 5 others (Civil Appeal (Application) E189 of 2024) [2025] KECA 1090 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1090 (KLR)

**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL AT NAKURU**

**CIVIL APPEAL (APPLICATION) E189 OF 2024**

**JM MATIVO, PM GACHOKA & GV ODUNGA, JJA**

**JUNE 20, 2025**

**BETWEEN**

**ROYAL SIAN LIMITED ..... APPLICANT**

**AND**

**COVE INVESTMENTS LIMITED ..... 1ST RESPONDENT**

**JOSEPH RONO LANGAT (SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF MATHIAS KIMNYOLE LANGAT ) ..... 2ND RESPONDENT**

**THE ATTORNEY GENERAL ..... 3RD RESPONDENT**

**THE LAND REGISTRAR, NAKURU COUNTY ..... 4TH RESPONDENT**

**JOSHUA CHELELGO KULEI ..... 5TH RESPONDENT**

**KENNEDY KIPRUTO KULEI ..... 6TH RESPONDENT**

***(An application to strike out a notice of appeal from the ruling and order of the Environment and Land Court of Kenya at Nakuru (M. A. Odeny, J.) delivered on 15th October 2024 in Constitution Petition No. 360 of 2017 Consolidated with Civil (Appeal) Applications Nos. E002 of 2025 & E007 of 2025)***

**RULING**

1. When the parties appeared before us on 19th May 2025, there were 5 related applications namely: E051 OF 2022; E109 of 2024; E189 of 2024; E002 of 2025 and E007 of 2025. By consent of the parties, Civil Application No. E109 of 2024 was withdrawn. Civil Applications E189 of 2024, E002 of 2025 and E 007 of 2025 were consolidated. It was further agreed that Civil Application E051 of 2022 would be heard concurrently but separately. This narration is necessary as all the applications, the subject of this ruling, are related and arise from the same judgement. It is also important to mention that in another

application, that is E103 of 2024, the Court ordered on 18th December 2024, that the status quo be maintained pending the hearing of the appeals which are the subject of these applications.

2. In light of the many applications, and for clarity, the reference to the parties shall be as follows: Cove Investments Ltd, applicant; Royal Sian Ltd, 1St respondent; Johana Kiprotich Langat & Joseph Rono Langat (legal representatives of the estate of Mathias Kimnyole Langat), 2nd respondents; Attorney General. 3rd respondent; Land Registrar, Nakuru County, 4th Respondent; Joshua Chelelgo Kulei, 5th respondent; and Kennedy Kipruto Kulei, 6th respondent.

3. To put the dispute in context, it is necessary for us to give an abridged background. The central character in this dispute is one Mathias Kimnyole Langat, now deceased. His estate is represented by Johana Kiprotich Rono and Joseph Rono Langat, the legal representatives. It is common ground that he was the registered owner of a parcel of land known as L.R. No. Nakuru/Ol'ongai Phase 11/34, measuring 47.5 hectares, situated in Menengai/Ol'ongai. This property was sold to the applicant, Cove Investment Ltd and the 1st respondent, Royal Sian Ltd on separate dates and in circumstances that have put the two in a vicious legal tussle and which will certainly end in tears for one of them.

4. As already stated, this dispute concerns the ownership of a parcel of land known as L.R. No. Nakuru/Ol'ongai Phase 11/34, situated in Menengai/Ol'ongai, together with all the buildings and improvements erected thereon. It is common ground that the applicant, through its company secretary, entered into a sale agreement dated 1st December 1999 with the deceased, for the purchase of the suit land at an agreed consideration of Kshs.16,758,425.50. It was a term of the agreement that the agreed completion date was 31st December 1999. According to special condition No. 6 of the said agreement, the deceased was to grant vacant possession of the property to the applicant within 15 days of payment of the agreed deposit. Special condition No. 11 provided that the deceased was to provide the applicant with all the consents and necessary documents for completion of the transfer 15 days before the completion date.

5. It is common ground that the applicant paid a total sum of Kshs.15,976,000.00 to the deceased. However, the deceased never applied for a consent before the land control board to transfer the land. Instead, he filed Nakuru HCCC No. 158 of 2005 seeking vacant possession on the basis that the land control board consent had not been obtained within the prescribed time set out in the *Land Control Act*.

6. On its part, the applicant filed Nairobi High Court Civil Suit No. 588 of 2006 (OS) seeking leave to apply for consent from land control board out of time. Vide a ruling delivered on 26th June 2006, Osiemo J. ordered that the issue of consent be determined in Nakuru HCCC No. 158 of 2005. Eventually, Nakuru HCCC No. 158 of 2005 was dismissed on 24th May 2013 for want of prosecution.

7. It is also common ground that the applicant was in occupation of the suit property but occupation was interrupted by the invasion of the 1st and 2nd respondents. This prompted the applicant to institute constitutional petition number 360 of 2017 at the Environment and Land Court (ELC) Nakuru dated 22nd September 2017. The petition was subsequently amended on 25th September 2019 seeking the following reliefs:

    a. leave to apply for consent of the land control board under section 8 of the *Land Control Act* on grounds inter alia that the parties had in their sale agreement agreed that the vendor would obtain the said consent;

    b. the Deputy Registrar of the Court be mandated to execute any necessary forms and transfer instruments necessary for obtaining the said consent;

c. a declaration that the 1st and 2nd respondents held LR. NO. NAKURU/OL'ONGAI PHASE 11/34 in trust for the applicant herein and the 1st and 2nd respondents be directed to formally transfer the suit property and execute the transfer documents within 14 days failing which the Deputy Registrar of this court be authorized to execute the transfer documents in favour of the applicant and the Land Registrar, Nakuru to forthwith cancel the title issued in the name of the 1st and 2nd respondents and to re-issue a new title in the name of the applicant;

d. compensation for the loss and damage as set out at paragraph 4.5.4.

8. Alternatively, the applicant prayed for:

a. a declaration that Section 6 of the *Land Control Act* in as far as it invalidates controlled land transactions where land control board consent has not been obtained not more than six months after agreement for sale has been executed is unconstitutional null and void and that such consent may be obtained at any time before the transfer is registered on the grounds that Section 8(1) of the *Land Control Act* in declaring that dealing in a controlled transaction is null and void unless consent is obtained within six months of the making of the agreement for the controlled transaction action:

i. does not comport with any rationale legitimate purpose of the *Land Control Act*;

ii. is unconscionable, harsh and unreasonable;

iii. amounts to an unjust enrichment in favour of one party against the other;

iv. unnecessarily interferes with the constitutional rights of citizens to own and deal in property as envisaged in Article 40 of *the Constitution*;

v. is against the public policy of Kenya.

b. Any other or further order that this Honourable court may deem fit to grant.

c. Costs.

9. The petition was opposed vide replying affidavit sworn on 19th April 2018 by Johana Kiprotich Rono (the 1st respondent). He was resolute that the transaction was void for want of the land control board consent and that the applicant's continued possession of the suit property was a criminal act since its recourse lay in claiming the refund of the purchase price paid.

10. The petition was heard by way of viva voce evidence and submissions. Vide his judgment delivered on 18th May 2021, Ohungo J. was satisfied that equitable doctrines of constructive trust and proprietary estoppel were applicable. Resultantly, the applicant was entitled to a declaration that the appellants held the suit property in trust for the applicant and that an order for extension of time to apply for the consent of the Land Control Board Consent should issue. The learned judge was emphatic that the deceased, having sold the suit property to the applicant, and having received almost the entire purchase price and having put the applicant in possession for about 21 years, the 1st and 2nd respondents had an equitable duty to complete the transaction. Consequently, the learned judge ordered:

"(a) the applicant herein to deposit KShs. 782,425 being balance of the purchase price due to the 1st and 2nd respondents within 21 days from the date of delivery of the judgment;

b. time within which the parties were to obtain consent of the Land Control Board be extended by 6 months from the date of the delivery of the judgment;

c. the 1st and 2nd respondents to execute all necessary forms and transfer instruments necessary for obtaining the said consent within 30 days from the date of delivery of the judgment. In default, the Deputy Registrar of the court to execute the said documents on behalf of the 1st and 2nd respondents;

d. a declaration issued that the 1st and 2nd respondents held the said land in trust for the applicant;

e. the 1st and 2nd respondents to formally transfer the land to the applicant and to execute the transfer document within 30 days from the date of delivery of the judgment. In default, the Deputy Registrar of the court to execute the transfer document;

f. upon transfer being registered in favour of the applicant and issuance of title in its name, the sum of KShs. 782,425 referred to under order number (a) above be released to the 1st and 2nd respondents;

g. costs of the petition awarded to the applicant herein to be borne by the 1st and 2nd respondents."

11. To enforce the judgement, the applicant applied and was granted orders on 15th October 2024 by Odeny, J. directing the 1st respondent to surrender the original certificate of lease for cancellation by the Land Registrar, Nakuru and for the issuance of a new title in favour of the applicant. Aggrieved by that ruling, the 1st and 2nd respondents filed notices of appeal and the record of appeal that are now the subject of the applications for striking out.

12. At the hearing of the applications on 19th May 2025, Mr. Kairaria learned counsel appeared for the applicant and the 1st, 2nd, 4th, 5th and 6th respondents were represented by learned counsel Prof Ojienda, SC. The Attorney General for the 3rd respondent was not present though duly served with a hearing notice. The parties relied on their rival written submissions together with the bundle of authorities that were orally highlighted. We shall not rehash the submissions at this stage but shall consider them when addressing the issues.

13. Against this background, we shall now sequentially set out each application:

**a. Civil Appeal (Application) No. E189 Of 2024**

14. In this application dated 7th February 2025, the applicant prays that Civil Appeal No. 189 of 2024 be struck out with costs. It is supported by the grounds on the face of the application and the affidavit of Kenneth Kiplagat, the applicant's Company Secretary, sworn on 7th February 2025. The main ground is that the record of appeal was not served within 7 days as required by the Rules of this Court. It is asserted that on 30th January 2025, its advocates were served with a supplementary record of appeal yet they had not previously been served with a record of appeal. It is averred that the record of appeal was served on 31st January 2025. The applicant further stated that the notice of appeal was also not served on time in accordance with the Rules. Finally, the applicant states that the letter to the Court, requesting for proceedings, was not copied to it and therefore, the respondents cannot rely on the proviso to Rule 82(1) of the 2010 Rules (now 2022 Rules) for purposes of computation of time.

15. The 1st respondent filed a replying affidavit sworn on 14th February 2025 by its legal secretary Trophimus Kiplimo. The depositions espoused in the affidavit can be summarized as follows: that the notice of appeal was filed on 28th October 2024; that while it started preparing the record of appeal, it

had not received the proceedings by 22nd November 2024, that it wrote a reminder on 11th December 2024; that on 13th December 2024, it decided to file a partial record relying on the ruling dated 15th October 2024 posted in the Kenya Law website; that it only got wind of the fact that the proceedings were ready on 22nd January 2025 and after obtaining the certificate of delay, it filed the supplementary record of appeal on 29th January 2025; that time stopped running on 11th December 2024; that the applicant cannot now raise the issues of the non-service of the notice of appeal as it was represented by counsel on 18th December 2024 during the hearing of Civil Application No. 103 of 2024 and since it did not raise the jurisdictional issue having acquiesced to the same, it is too late in the day to raise the present application; and the Court should in the interest of justice exercise its discretion in its favour and order a full hearing of the appeal.

**b. Civil Appeal (Application) No. E002 Of 2025**

16. In this application dated 7th January 2025, the applicant prays that the notice of appeal dated 28th October 2025 by the 1st respondent be struck out. It is supported by the ground on the face of the application and the supporting affidavit of Kenneth Kiplagat sworn on 16th January 2025. It is averred that the notice of appeal was served on 17th December 2024, well outside the time stipulated by the Rules. It is further stated that the notice of appeal was not served on all persons directly affected by the appeal.

17. In response, the 1st respondent filed an undated replying affidavit sworn by Trophimus Kiplimo. It states that under rule 82 (1) of the Rules of this Court, a second notice of appeal should be treated as a notice of address and thus, there is no requirement of complying with rule 79. The main argument is that the 2nd respondent had filed a notice of appeal on 28th October 2024, and that since it was the first in time, the notice by the 1st respondent can only be deemed as a notice of address. Consequently, this application is misconceived.

18. The applicant, through its company secretary, Kenneth Kiplagat filed a further affidavit sworn on 14th February 2025. It raised three main issues as follows: the 1st respondent had tacitly conceded that it did not serve the notice of appeal; that reliance on rule 82 would only be helpful if what is called the first notice of appeal was served in accordance with the Rules and that indeed there was no service of the said notice of appeal as the email address given by the process server in his affidavit of service is wrong. In any event, the 1st respondent relied on its notice of appeal in the record of appeal and in Civil Application No. 103 of 2024 seeking stay of execution. It cannot run away from that fact now.

**c. Civil Appeal (Application) No. E007 of 2025**

19. In the application dated 7th February 2025, the applicant prays that the Notice of Motion dated 22nd October 2024, filed by the 2nd applicant, be struck out. It is supported by the ground on the face of it and the affidavit of Kenneth Kiplagat sworn on 7th February 2025. The main ground is that the notice of appeal was not served on the applicant and that it only became aware of it when it was served with a replying affidavit sworn on 4th February 2025 in response to Civil Application No. E002 of 2025. The applicant also states that the notice of appeal was first brought to its attention when it perused through a bundle of documents accompanying an application by the 2nd respondent in Civil Application No.109 of 2024. In addition, the fact that the notice of appeal was not sent to and received at its email address, that is gkk@gkkavocates.com, is confirmed by the forwarding message that the 2nd respondent exhibited at page 498 in the 2nd respondent's supplementary affidavit filed in Civil Application No. 109 of 2024. The applicant averred that the email reveals that the notice of appeal was not sent to gkk@ggkadvocates.com but to gkk@gkkadvocate.com. It further stated that the ruling

appealed from was delivered on 15th October 2025 and therefore, it should have been filed by 29th October 2024 and served by 29th October 2024. Even if it is assumed the documents were served on 16th January 2025, including the notice of appeal, they were served way out of time. Finally, the applicant states that the 60 days for filing the record of appeal ran up to 16th December 2024. By that time, the 2nd applicant had not filed an appeal. In the circumstances, no appeal lies and that the notice of appeal should be struck out.

20. In response, Johana Kiprotich Rono filed an affidavit sworn on 17th March 2025 on his behalf and on behalf of his co- administrator. It was his position that the notice of appeal was filed on time and served through two email addresses namely, ggk@gkkadvocate.com and gkk@yahoo.com. In support of this position, he annexed an affidavit of service sworn by Onyango Henry Obonyo, sworn 23rd January 2025. He further stated that though the applicant had denied receipt of the notice of appeal through the first email address, it did not deny receipt of the notice through the second email address. In addition, it stated that the application is defective in any event as it was not filed within 30 days of service in accordance with rule 86 of the Rules of this Court.

21. In answer to the assertion that no appeal was filed within 60 days in accordance with the Rules, the 2nd respondent states that it applied for typed proceedings on 10th December 2024. Thus time stopped running in accordance with the Rules. It stated that they were notified that the proceedings were ready on 22nd January 2025 and promptly filed the record of appeal on 29th January 2025 that was served on 30th January 2025.

22. We have carefully read the applications and considered the submissions of the parties. We have painstakingly set out the assertions of the parties in detail as the applications will succeed or fail depending on who is telling the truth. Luckily for everyone, the rules provide a good barometer for testing the truth. It is clear to us that the following issues arise for determination: was the record of appeal filed and served in accordance with the Rules; was the supplementary record of appeal filed and served in accordance with the Rules; was the notice of appeal by the 1st respondent filed and served in accordance with the timelines set out in the Rules or should it be treated as a second notice of appeal; and was the notice of appeal by the 2nd respondent filed and served in accordance with the Rules. If these questions are answered in the affirmative, the applications will certainly fail. If answered conversely, the respondents will be left clinging on whether the Court will exercise its discretion in their favour.

23. The first issue for determination is whether the 1st respondent served the record of appeal. The applicant states that it was never served with the record of appeal and that it only became aware of the appeal when it was served with a supplementary record of appeal on 30th January 2025. This is a straightforward issue that calls for a straightforward answer. We will let the 1st respondent speak for itself. In an evasive affidavit, Trophimus Kiplimo states as follows:

> "...the appellant filed the notice of appeal on 28th October 2024.....subsequently, the appellant commenced the preparation of the memorandum and record of appeal, which preparation included a request for typed proceedings from the trial Court."

24. Significantly, the 1st respondent does not state when it served the record of appeal and did not indicate the date of the letter requesting proceedings. Importantly, no copy was attached to the affidavit. The 1st respondent states that it continued to pursue the proceedings and wrote a letter on 11th December

2024. It was notified on 22nd January 2025 that the proceedings were ready. It subsequently filed the supplementary record of appeal on 29th January 2025. It states in the affidavit:

> "...time stopped running on 11th December 2024 for purposes of filing the record of appeal and the supplementary record of appeal. Therefore, the appellant needed not seek leave to file the supplementary record of appeal."

25. This argument is fallacious and misleading to say the least. We say so because Rule 84(2) of this Court's Rules clearly states that a letter requesting for proceedings must be lodged within 30 days from the date of the impugned decision and should be copied to the other party. The impugned ruling was delivered on 28th October 2024. It behoved the 1st respondent to make the written request on or before 28th November 2024. By its own admission, it is relying on a letter annexed as 'TK2' that was not copied to the applicant. It is not even a reminder as alleged. It was stated as follows:

> "...kindly and urgently furnish us with typed proceedings in the matter herein and certified copies of the ruling and order delivered by Honourable M.A. Odeny on 15th October 2025."

26. The letter was enviably written outside the stipulated timelines and was not copied on the applicant. The argument that time stopped running for purposes of filing of the record of appeal is not correct. Therefore, the attempt by the 1st respondent to clasp on rule 94 on the filing of the supplementary record is an exercise in futility as no appeal was filed and served in accordance with the Rules in the first place.

27. Finally, on that issue, the 1st respondent raises another curious argument: it states that when the parties appeared before this Court (differently constituted), the applicant did not raise the issue of the defectiveness of notice of appeal and in the circumstances, acquiesced its right to have the notice of appeal not considered as part of the record. It argues that the applicant did not raise the jurisdictional issue and cannot be raised now.

    This, in our view, is just a desperate attempt to clutch on straws. As the 1st respondent states, the Court in that application only issued an order for status quo pending the hearing of the appeal and the pending applications. That cannot be deemed as an antidote for the defects in the record of appeal or non-compliance with the Rules. We have said enough to show that the record of appeal was not filed or served within the timelines set out in the Rules of the Court and the filing of the supplementary record did not cure the defects.

28. The next twin questions to be answered is whether the notices of the appeal filed on 28th October 2024 were served within time. Having held that the appeal is for striking out, we would have stopped here but the respondents have another line of argument. The 1st respondent states that its notice of appeal should be treated as a notice of address in accordance with rule 82(1). As stated by the applicant, the 1st respondent relied on its notice of appeal dated 28th October 2024 annexed together with its memorandum of appeal and application for stay of execution in Civil Application No. 103 of 2024. For avoidance of doubt, we shall examine that line of argument as the two notices, admitted by the 1st respondent, were filed on the same day, that is, 28th October 2025. Which one ought to be deemed as the first in time? The notice of appeal dated 22nd October 2024, filed by the 2nd applicant, was filed on 28th October 2024. It is also subject to the application for striking out for non-service within the stipulated timelines. The applicant was emphatic that the notice was not served to its email that had been provided to the Court which is gkk@ggkadvocates.com.

29. Again, this should be a straightforward question for the 2nd respondent to answer. In doing so, it filed Johanna Kiprotich Rono's affidavit sworn on 17th March 2025. It states that whereas the applicant has

denied receipt of the notice of appeal sent to the email address gkk@ggkadvocate.com, it has not denied receipt of the email sent through its alternative email address of gkk@yahoo.com.

30. We note that annexed to the said affidavit as annexure 'JKR1' is an affidavit of service sworn by Onyango Henry Obonyo. The process server depones that he served the notice of appeal through the email of gkk@gkkadvocates.com. However, we have looked at the annexed attachment and it shows clearly that the notice was sent to gkk@gkkadvocate.com, which even the respondents admit does not belong to the applicant. However, and more importantly, the applicant states that its email address, used for communication purposes to the Court and the respondents, is gkk@ggkadvocates.com and has denied that the email address gkk@yahoo.com belongs to it. It has indicated and there is nothing to controvert that assertion that it had provided its email address to the Court.

31. We have carefully analysed the arguments by the parties and it is clear that the 2nd respondent did not serve its notice of appeal on the applicant as it used the wrong email address and there is no evidence that the second email belonged to the applicant. In the premises, we need not even consider the argument by the applicant that the 2nd respondent, having not requested proceedings within the 30 days provided by rule 82, is already out of time in filing the record of appeal.

32. In conclusion our answer to the questions that we framed is that the 1st respondent did not file and serve the record of appeal within the stipulated times; the 1st respondent did not request for typed proceedings within 30 days as stipulated by rule 82; the letter written on 11th December 2024 was lodged outside the timelines and was not even copied to the applicant; time did not stop running as argued by the applicant; having not filed and served the memorandum of appeal within time, the subsequent supplementary record of appeal was improperly filed; the notice of appeal by the 1st respondent was not served at all; the notices of appeal by the 1st and 2nd respondent were both filed on 28th October 2024 and there is no basis to hold that the notice of appeal by the 1st respondent should be treated as a notice of address; and in any event, the notice of appeal by the 2nd respondent was also not served as it was sent to the wrong address.

33. As earlier stated, the respondents, probably aware that the notices of appeal, the record of appeal and supplementary record of appeal were standing on quicksand, implored the Court to exercise its discretion and allow the appeals to proceed to a full hearing. In the submissions, the 1st respondent makes a big cry:

> " ...that this Court is clothed with discretion to either allow the hearing of the appeals or not where procedural questions are raised, if it is demonstrated that the memorandum of appeal raises important questions of law and fact."

34. The issues raised by the applicant, in our view, are not procedural questions as stated by the respondents. They are jurisdictional questions that cannot be wished away. This Court has stated time and again that the jurisdiction of the Court can only be properly invoked by filing and serving a notice of appeal. The cry that we exercise our discretion in favour of the respondents is not tenable. Undeniably, courts derive their power from *the Constitution* and the statutes that regulate them. In addition to the powers courts enjoy in terms of statute, a court always has additional powers to regulate its own process in the interests of justice. This power is described as an exercise of inherent jurisdiction. Freedman, CJ., in the Canadian court decision in Montreal Trust Co vs. Churchill Forrest Industries

(Manitoba) Ltd 1972 21 DLR (3d) 75 at 81 quoting I H Jacob, Current Legal Problems (1970) p 51 defined 'inherent jurisdiction as:

> "... the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of the law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them..."

35. Is this a proper case to exercise such discretion? We do not think so. The rules of the Court are enacted for a purpose, that is to facilitate the proper administration of justice. This Court in Telkom Kenya Limited vs. John Ochanda (Suing On His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited) [2014] KECA 600 (KLR) laid emphasis on the importance of parties complying with rules of procedure when it held as follows:

36. In conclusion, it is our finding that the consolidated applications are merited. Accordingly, we allow them with the consequence that the record and memorandum of appeal and the two notices of appeal are hereby struck out. For avoidance of doubt, the orders of stay granted in Civil Application No. 103 of 2024 stand vacated. The applicant shall have the costs of the 3 consolidated applications. Orders accordingly.

**DATED AND DELIVERED AT NAKURU THIS 20TH DAY OF JUNE 2025.**

**J. MATIVO**

**.....**

**JUDGE OF APPEAL**

**M. GACHOKA C. Arb, FCIArb.**

**.....**

**JUDGE OF APPEAL**

**G. V. ODUNGA**

**.....**

**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**