Royal Sian Limited & 2 others v Cove Investments Limited & 11 others (Civil Application E064, E065 & E066 of 2025 (Consolidated)) [2025] KECA 1386 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KECA 1386 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CIVIL APPLICATION E064, E065 & E066 OF 2025 (CONSOLIDATED)

JM MATIVO, JA

JULY 29, 2025

BETWEEN

ROYAL SIAN LIMITED ..... APPLICANT

AND

COVE INVESTMENTS LIMITED ..... 1ST RESPONDENT

JOHANA KIPROTICH RONO & JOSEPH RONO LANG'AT (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

AS CONSOLIDATED WITH

CIVIL APPLICATION E065 OF 2025

BETWEEN

JOHANA KIPROTICH RONO ..... 1ST APPLICANT

JOSEPH RONO LANGAT (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MATHIAS KIMNYOLE LANGAT ..... 2ND APPLICANT

AND

COVE INVESTMENT LIMITED ..... 1ST RESPONDENT

ROYAL SIAN LIMITED ..... 2ND RESPONDENT

ATTORNEY GENERAL ..... 3RD RESPONDENT

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

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

KENNEDY KIPRUTO KULEI ..... 6TH RESPONDENT

AS CONSOLIDATED WITH

CIVIL APPLICATION E066 OF 2025

BETWEEN

ROYAL SIAN LIMITED ..... APPLICANT

AND

COVE INVESTMENTS LIMITED ..... 1ST RESPONDENT

RONO LANG'AT (SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF MATHIAS KIMNYOLE LANGAT) ..... 2ND RESPONDENT

THE ATTORNEY GENERA ..... 3RD RESPONDENT

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

JOSHUA CHELELGO KULEI ..... 5TH RESPONDENT

KENNEDY KIPRUTO KULEI ..... 6TH RESPONDENT

(Being an application for leave to file a fresh notice of appeal against the ruling and orders of the Environment and Land Court of Kenya at Nakuru (M. A. Odeny, J.) dated 15th October 2024 in ELC Petition No. 360 of 2017)

RULING

1. This ruling on the question of urgency addresses three related applications, namely, Civil Application Nos. NAK E064 OF 2025, NAK E065 of 2025 and NAK E066 of 2025. When the applications came up for hearing before me today, i.e. 29th July 2025, with the concurrence of learned counsel for both parties, it was agreed that the Court will write one ruling. Learned counsel for the respondent Mr. Kairaria raised a preliminary issue seeking to know whether the applicant's counsel had moved the Court properly by way of a letter seeking a hearing on the question of urgency in accordance to rule 49 (5) of this Court's rules. However, after hearing both parties, I clarified that there was a written request to the Court by the applicant's counsel to be granted a hearing date for the applications but when the request was brought to the Court's attention, the Court directed that the matter be listed for hearing and determination of the question or urgency in accordance with rule 49 (5), hence, today's hearing date.

2. The three applications, which are all dated 25th June 2025 were placed before me for certification on 26th June 2025. However, upon considering the reasons offered in support of their urgency, I declined to certify them and instead directed that the applications be allocated dates in accordance with the Court's diary. Perhaps I should clarify that this Court strictly follows the first in first out policy in

allocating dates unless where matters are certified as urgent. Pursuant to rule 49 (5) of the Court of Appeal Rules, 2022, the applications are now before me inter partes for hearing both parties on the question of urgency.

3. In his bid to persuade this Court that the applications are urgent, Prof. Ojienda, Senior Counsel for the applicants submitted that this Court (Mativo, Gachoka & Odunga JJ.A.) dismissed the applicants' three appeals without hearing the parties on merit. He stressed that the applicant, Royal Sian Ltd was not a party before the trial court, therefore, it was not heard. Further, the said applicant has been in occupation of the suit land since 17th

   July 2017, and that it is a bona fide purchaser for value. Counsel argued that the said applicant risks being evicted from the land, therefore, there will be substantial injustice if it is evicted without a hearing. He also alluded to the risk of execution and imminent cancellation of its title without being heard. Further, if eviction takes place, the appeal will be rendered nugatory. Counsel also underscored that the subject matter is land valued over Kshs. 200 million and urged this Court to find that the applications are urgent.

4. The respondents' counsel Mr. Kairaria opposed the application.

   It was his submission that the grounds cited by the applicant are not contained in any affidavit but are being adduced from the bar. He maintained that due process was followed, and that the applicants conducted themselves in a manner that defeats justice. Counsel maintained that Royal Sian Limited was aware about the case since 2020 when it tried to interfere with the respondent's possession of the land. Counsel also referred to written correspondence showing that the said company was fully aware about the case and the nature of the dispute before the trial court which was that Royal Sian Ltd claimed that the land was theirs, not that it had purchased as was being urged before this Court. Counsel urged this Court to find that no material was placed before this Court to show that the matter is urgent to merit the applicant to jump the queue. It is his position that the applications do not satisfy the legal standard.

5. An urgent application is one which does not follow the normal process because the applicant cannot afford to wait to ask a court for help. Therefore, a certificate of urgency means a certificate issued by a court stating that a particular case is urgent and must be heard and determined expeditiously. Undeniably, not all matters can be heard in the ordinary course; the prejudice, damage or suffering of parties may be such that the matter requires urgent or even immediate attention. An applicant seeking to have a matter certified as urgent approaches the Court in a rather unique way which bypasses the queue. In Jared Okello vs. Charles Otieno Opiyo & 3 Others, *CA No. 151 of 2017*, this Court stated:

   > "Certifying a matter urgent means that the same is to be set down for hearing and determination immediately. It gets priority over other matters, even though they were filed earlier in time and the parties have been waiting patiently for their turn. Before a matter can be allowed to jump the queue, it must be shown to deserve priority hearing. That approach is deliberate and dictated by the principles and values of fairness to all litigants and case management considerations, to the end that deserving applications filed first in time, are not relegated to the periphery while later applications of equal or less urgency get fast-tracked and given preferential treatment."

6. In Heritage Insurance Company Limited vs. Christopher Onyango, Civil Application No. NAI 110 of 2016 this Court held:

   > " The practice of this Court is to hear such motions on a "first-come-first heard" basis, the rationale being obviously to treat parties who come to this Court with a measure of equality.

Rule 47 comes in to assist those who are able to demonstrate that there is imminent danger of execution and a delay cannot be allowed at all. It is a safety valve, designed in the nature of a fast lane of traffic in congested city which lane is reserved for ambulances, fire engines and such. So a party who succeeds in showing imminent danger of execution is permitted by Rule 47 to use that lane to jump the queue and be ahead of lined-up traffic".

7. In an application of this nature, an applicant must first convince the Court that the application is urgent, so that the Court will grant him condonation for not following the queue and permit him to enroll their application on the urgent roll for immediate hearing. However, urgency must be judged against the background of rule 49 (1) (2) of the Court of Appeal Rules, 2022 which provides:

> " 49. Urgent applications
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> 1. An application which the applicant desires to set down for hearing as a matter of urgency shall be accompanied by a certificate of urgency signed by the applicant or the applicant's advocate, supported by affidavit setting forth the matters upon which the applicant relies as showing that his or her application should be heard without delay.
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> 2. The application under sub-rule (1), certificate and supporting affidavit shall be placed before a single judge, who shall peruse it, and the application shall not be set down for hearing as a matter of urgency unless the judge certifies that it is urgent.

8. In Bryan Yongo vs. Jigisha P. Jani & 2 Others [2018] eKLR, M'inoti, J.A held:

> " For an application to be certified urgent, the applicant must satisfy the Court that there are circumstances in the application showing that if it is not heard promptly, both the application and the intended appeal may be rendered nugatory. (See Railways & Allied Workers Union vs. Rift Valley Railways Workers Union, CA No. Nai. 29 of 2015 and New Kenya Co-operative Creameries Ltd vs. Olga Ouma Adede, CA No. Nai. 316 of 2014."

9. It is natural to see harm as the equivalent of urgency, since without harm or some threat there would never be a need to bring an urgent application. However, the notions of harm and a lack of substantial redress in due course should be kept separate, and the test for urgency should not be obscured by a confusion between the two. The foregoing position was best elucidated in East Rock Trading 7 (Pty) Ltd & Ano. vs. Eagle Valley Granite (Pty) Ltd [2011] ZAGPJHC 196, a judgment rendered by the South Gauteng High Court, South Africa that deserves to be the locus classicus on the general principles of urgency. The court succinctly set out the test for urgency as follows:

> " ... An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the Court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.
>
> It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief.

It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case."

10. As the above jurisprudence shows, the test for urgency begins and ends with whether the applicant can obtain substantial redress in due course. It means that a matter will be urgent if the applicant can demonstrate, with facts, that he requires immediate assistance from the Court, and that if his application is not heard earlier than it would be in due course, any order that he might later be granted will by then no longer be capable of providing him with the legal protection he requires. Accordingly, harm does not found urgency. Rather, harm is a mere precondition to urgency. Where no harm has, is, or will be suffered, no application may be brought, since there would be no reason for a court to hear the matter. However, where harm is present, an application to address the harm will not necessarily be urgent. It will only be urgent if the applicant cannot obtain redress for that harm in due course. Thus, harm is an antecedent for urgency, but urgency is not a consequence of harm. From the foregoing statements, the criterion for judging urgency should be clear. This absolute requirement was echoed in the simplest of terms in Mogalakwena Local Municipality vs. Provincial Executive Council, Limpopo and Others [2014] ZAGPPHC 400:

> " It seems to me that when urgency is in issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent."

11. It is important to underscore that an urgent application is an extraordinary remedy where a party seeks to gain an advantage over other litigants by jumping the queue. This indulgency can only be granted by a judge after considering all the relevant factors and concluding that the matter cannot wait. The Court is required to carefully study the application, the certificate of urgency and the affidavit in support of the urgency and formulate an opinion regarding the urgency of the matter. Principally, the applicant carries a heavy duty of demonstrating the urgency and why he should be allowed to jump the queue. The reasons offered in support of the urgency basically aid the Court to satisfy itself that the application is urgent, and they cannot be a substitution to the discretion of the Court, which must be exercised judicially and upon consideration of the positions taken by both parties and the tests for determining urgency.

12. The question before me narrows itself to whether the applications before have presented a case to be allowed to jump the queue and get priority hearing. A matter will be urgent if the applicant can demonstrate, with facts, that he requires immediate assistance from the Court, and that if his application is not heard earlier than it would be in due course, any order that he might later be granted will by then no longer be capable of providing him with the legal protection he requires. I am not persuaded that the applicant has met this threshold. Therefore, I find that the applicants have failed to satisfy the tests established in the decisions cited above to unlock this Court's discretion. In conclusion, it is my finding that the applicants in the three applications have not satisfied this Court that they should be permitted to jump the queue.

DATED AND DELIVERED AT NAKURU THIS 29TH DAY OF JULY, 2025.

J. MATIVO

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR.