



**Kaigi & 4 others v Registrar of Societies; Mugo & 3 others (Interested Parties)
(Judicial Review E006 of 2024) [2025] KEHC 7788 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7788 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
JUDICIAL REVIEW E006 OF 2024
AK NDUNG’U, J
MAY 29, 2025**

BETWEEN

**PETER MWANGI KAIGI 1ST APPLICANT
LILIAN MUKETHA 2ND APPLICANT
JAMES MUKIRA 3RD APPLICANT
JAPHETH MURANGIRI 4TH APPLICANT
HILDA GAKII 5TH APPLICANT**

AND

REGISTRAR OF SOCIETIES RESPONDENT

AND

**PATRICK MUGO INTERESTED PARTY
DAVID KARIUKI INTERESTED PARTY
CECILIA NYOKABI INTERESTED PARTY
EUNICE WANJA INTERESTED PARTY**

RULING

1. The Applicants moved this court vide Chamber summons application dated 19/12/2024 seeking leave to institute judicial review proceedings for order of certiorari and mandamus against the Respondent herein. The Applicants also sought that the leave so granted do operate as stay. The leave sought was granted on 20/12/2024 and directions given that the question whether the leave was to apply as a stay was to be canvassed inter partes



2. The genesis of the matter is that the Applicants were elected as office bearers of Mount Kenya West Nanyuki Community Forest Association (hereinafter referred as Association) during the annual general meeting that was held on 21/05/2024. They filed notification of change of officials with the Respondent who made the changes and issued them with a certificate. The former officials lodged a complaint with the Respondent on 31/05/2024 and the Respondent affirmed that the elections were legal having been held in accordance with the Association Constitution.
3. The former officials lodged another complaint which was heard on 29/11/2024 and the Respondent on 19/12/2024 made a decision and nullified the election of the Applicants. The Applicants' contention is that the Respondent having handled the same dispute regarding the elections twice, made two contradicting decisions.
4. This ruling pertains to the Applicants' prayer for stay. The order sought is as follows;

That the leave so granted do operate as a stay of the decision of the Respondent dated 19/12/2024 that was delivered by the Senior State Counsel on behalf of the Respondent.
5. Essentially, what the Applicants are seeking is that the order for leave to apply for certiorari and mandamus do operate as stay of the Respondents' decision reverting the office bearers of the Association to the Interested Parties.
6. Parties filed written submissions. The Applicant's counsel submitted that the Applicants were duly elected by the members of the Association on 21/05/2024 but the former chairman being dissatisfied with the results of the election wrote to the Respondent stating that the elections were invalid. That the Respondent on 31/05/2024 affirmed that elections held on 21/05/2024 were held within the scope of the Association's constitution which decision has never being challenged in court. He argued that the Respondent could only change its decision through a court order from the High Court compelling it to change but the Respondent reversed the decision of 31/05/2024 without a court order thus infringing on the Applicant's rights to fair administrative process which actions are ultra vires to the provisions of Section 7(1)(a) of the *Fair Administrative Action Act*. Reliance was placed on the case of Taib A. Taib v Minister for Local Government & 3 others (2006) eKLR. He submitted that should the Respondent proceed with changing the list of officials, the application will be rendered nugatory until a decision is made in their favour. It is urged that a stay order be granted to preserve the results of the elections that were affirmed by the Respondent on 31/05/2024.
7. In opposing the application, counsel for the Respondent submitted that the Applicants' case does not meet the threshold required for leave to operate as stay as the Applicants have not demonstrated that they would suffer irreparable harm or the proceedings would be rendered nugatory if the Respondent's decision dated 19/12/2024 is not stayed as was held in R vs Richard Kerich & 5 Others (2013) eKLR. That the substratum of the matter is on the rightful officers of the society hence no party stands to suffer any irreparable harm at this stage regardless of the final outcome in the main suit. He submitted that the other consideration is whether the decision sought to be stayed has been fully implemented as was held in Jared Benson Kagwana v Attorney general HCCC No. 446 of 1995, Taib A. Taib vs Minister of Local Government (supra) among other cases that where the decision sought to be stayed is complete, the court cannot stay the same unless it is a continuing process in which the court considers the completeness or continuing nature of the implementation.
8. It is argued that the Applicant's suit does not meet this threshold as they are seeking to stay a decision that has been completed by the Respondent in its report dated 19/12/2019(sic) confirming the interested parties as the rightful officers of the society. He urged the court to be guided by Kwamboka v Leader of Majority Party of the Nairobi County Assembly (2016) eKLR where it was stated that



court ought to weigh the likely consequences of granting stay or not doing so and lean towards a determination which is unlikely to lean to undesirable outcome. He submitted that staying the decision of the Respondent will plunge the society into more uncertainty during the pendency of the suit.

9. The Interested Parties counsel submitted that proof of substantial loss is an important limb for grant of stay. That the Applicants are not members of the Association who were purportedly elected contrary to *the Constitution* of the Association and they filed notice of change of officials with the Respondent who confirmed them as office bearers. That the Applicants stands to suffer no irreparable harm since they are illegible for elections as the office bearers of the Association and they know nothing about the affairs of the Association since they are intruders. He submitted that the interested parties and members of the Association stand to suffer irreparable loss since the running of the Association will be thrown in a disarray. That the Applicants have not met the threshold as they have not demonstrated that they would suffer irreparable harm or that the proceeding would be rendered nugatory if Respondent's decision is not stayed. That issuing stay will plunge the society into more uncertainty during the pendency of the suit.

10. I have considered the rival arguments by the parties, the applicable law and case law cited. An order for stay suspends or stops the proceedings that are challenged by the application for judicial review. Its purpose is to preserve the status quo pending determination of the judicial review proceedings. Order 53 Rule 1(4) of the Civil Procedure Rules gives this court the discretion to order for stay in an application for leave for an order of prohibition or an order of certiorari. It states that;

“The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.”

11. The factors to consider when exercising this discretion has been discussed in numerous cases in our jurisdiction and relied by the parties herein. In the words of Maraga J. (as he then was) in *Taib A. Jaib v Minister of Local Government & 3 others* (supra);

“The purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made. It is not limited to judicial or quasi-judicial proceedings as some think. It also encompasses the administrative decision making process (if it has not yet been completed) being undertaken by a public body such as a local authority or minister, and the implementation of the decision of such body if it has been taken. A stay is only appropriate to restrain a public body from acting. It is however, not appropriate to compel a public body to act.”

12. In *Swift Energy Distributors Gas Limited v Energy and Petroleum Regulatory Authority & another; Abdi Ali Mohamed* (Interested Party) [2020] eKLR the court held that;

“From the above provision, it is clear that the decision whether or not to grant a stay pursuant to leave is exercise of judicial discretion which must be exercised judiciously. The key factor for consideration is whether or not the decision or action sought to be stayed has been fully



implemented. An order of stay can be granted where the decision has not been implemented or where the same is a continuing process. However, where the decision is complete the court cannot stay the same. The purpose of a stay is to preserve the status quo pending the final determination of the claim for judicial review. The guiding principles regarding the issue of stay were laid down in the case of R(H) –vs- Ashworth Special Hospital Authority [2003] 1 WLR 127 where Dyson L. J held as follows:...

The court further stated;

From the above decision it follows that where the action or decision is yet to be implemented a stay order can be granted as well as where the decision or action is a continuing process. However, if the implementation is complete then a discretion to order stay should be exercised sparingly and being guided by the need to dispose of the matter within a limited time frame.”

13. In *James Opiyo Wandayi v Kenya National Assembly & 2 others* [2016] eKLR, the court held that;

“The principles that guide the grant of an order that the leave do operate as stay of the proceedings in question have been crystallised over a period of time in this jurisdiction. Where, the decision sought to be quashed has been implemented leave ought not to operate as a stay since where a decision has been implemented stay is no longer efficacious as there may be nothing remaining to be stayed. It is only in cases where either the decision has not been implemented or where the same is in the course of implementation and its implementation has not come to an end that stay may be granted. See *George Philip M Wekulo vs. The Law Society of Kenya & Another* Kakamega HCMISCA No. 29 of 2005.”

14. Other factors to consider were enunciated in *Beatrice Kwamboka v Leader of Majority Party of the Nairobi County Assembly* [2016] eKLR where the Learned Judge put it thus:

“Apart from the foregoing the Court must also look at the likely effect of granting the stay to the proceedings in question. In other words, the Court ought to weigh the likely consequences of granting the stay or not doing so and lean towards a determination which is unlikely to lead to an undesirable outcome. What the Court ought to do when confronted with such circumstances is to consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing and see where the scales so justice lie considering the fact that it is the business of the Court, so far as possible to secure that any transitional motions before the Court do not render nugatory the ultimate end of justice. The Court in exercising discretion, should therefore always opt for the lower rather than the higher risk of injustice.”

15. What I understand the Courts to be saying is that where the action or decision is yet to be implemented, a stay order can be granted as well as where the decision or action is a continuing process. Stay may also include stay of the decision itself where the circumstances permit. However, that can only be resorted to in exceptional cases see *Swift Energy Distributors Gas Limited* (supra) and *Beatrice Kwamboka Case* (supra).

16. In the instant case, the Applicants seek stay of the Respondent’s decision dated 19/12/2024 reverting the office bearers of the Association to the Interested Parties. This implies that the decision has already been made thus, there is nothing to stay. In the words of Odunga J in *James Opiyo Wandayi Case* (supra), leave cannot operate as a stay where a decision has already been implemented as stay is no longer efficacious as there may be nothing remaining to be stayed.



17. Granted, this court cannot be oblivious to the harm ineligible or unelected leaders of a society may pose to it. In this case, the Respondent found it fit to revert the leadership of the Association to the former office bearers. This is the decision under challenge. With proper application of the law, the Respondent retains the power of overseeing Associations. In our case, whether this oversight was exercised legally will come to light in the fullness of time when the substantive motion is canvassed.
18. For now, a stay would not be efficacious and would only lead to more confusion and anarchy in the Association. The remedy lies in an expedited disposal of the matter and directions shall follow which would catalyze this.
19. The result is that the prayer to have the leave granted to operate as a stay is declined.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF MAY 2025.

A.K. NDUNG’U

JUDGE

