



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ &P, Mwilu; DCJ & VP, Wanjala, Njoki, Lenaola & Ouko, SCJJ)

PETITION (APPLICATION) NO. E033 OF 2023

— BETWEEN —

HARCHARAN SINGH SEHMI..... 1ST APPELLANT/DECREE HOLDER

JASWARANA SEHMI..... 2ND APPELLANT/DECREE HOLDER

—AND—

TARABANA COMPANY LTD..1ST RESPONDENT/ JUDGMENT DEBTOR

ROSPATECH LIMITED..... 2ND RESPONDENT

CHIEF LAND REGISTRAR, NAIROBI.....3RD RESPONDENT

NATIONAL LAND COMMISSION.....4TH RESPONDENT

INSPECTOR GENERAL OF POLICE..... 5TH RESPONDENT

ATTORNEY GENERAL.....6TH RESPONDENT

*(Being an application for enlargement of time to comply with the directions of
this Honourable Court in the Judgment delivered on 11th April 2025)*

Representation:

Ms. Ndirangu and Mr. Mumu for the appellants

(Igeria & Ngugi Advocates)

Mr. Charles Kiri Thube, acting in person for the 1st respondent

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 29th September 2025 and filed on 2nd October 2025, seeking an extension of the six-month demolition period for structures on L.R. No. 209/2759/9 (the suit property) to nine months; additional time for the 1st respondent to remove goods and materials from the suit property within the same nine-month period; and that the costs of the application be in the cause; and

[2] UPON EXAMINING the grounds on the face of the application, the supporting and further affidavits both sworn by Charles Kiri Thube on 29th September 2025 and 16th October 2025 respectively, as well as the further submissions dated 16th October 2025, wherein, on the basis of Section 3A of the Supreme Court Act, the 1st respondent urges the Court to grant an enlargement of time to enable him comply with the Orders issued by this Court on 11th April 2025; explains that he is the sole director of the 1st respondent and that prior to the delivery of the Court's Judgment on 11th April 2025, he was diagnosed with renal failure, which has hindered his ability to comply with the Court's orders; seeks an additional three months to comply and contends that granting such an extension will not prejudice the appellants/decreed holders; and

[3] UPON CONSIDERING the appellants' Grounds of Objection and submissions, both dated 9th October 2025, as well as the replying affidavit sworn by the 1st appellant on 23rd October 2025, contending that: this Court lacks Jurisdiction to hear and determine the instant application having become *functus officio*, upon delivery of its judgment on 11th April 2025; Section 23A of the Supreme Court Rules, cited by the 1st respondent, only permits stay of proceedings or execution of decisions from the Court of Appeal, not of the Supreme Court's own judgments, as affirmed in ***Non- Governmental Organizations Coordination Board Vs EG & 5 others*** [2023] KESC 78 (KLR); the

application is frivolous, defective, grossly incompetent and constitutes an abuse of the process of the Court (citing *Njihia Vs Kimani & another* [2015] KESC 19 (KLR), in support thereof); the application improperly invokes the provisions of the Civil Procedure Act and Rules, which do not apply to this Court; the applicant has failed to comply with Rule 18(5) of the Supreme Court Rules concerning the filing and service of a Notice of change of representation; and

[4] FURTHER CONSIDERING the appellants' submissions to the effect that: the 1st respondent has not offered a credible explanation for its failure to comply with the Court's orders, since the ill health of a single director, cannot be equated with the incapacity of a corporate entity as a whole; the application was filed after an inordinate and unjustified delay; granting the orders sought would deprive them of the timely enjoyment of the fruits of the Judgment; and

[5] NOTING that by its Judgment delivered on 11th April 2025, this Court directed the 1st respondent to remove and demolish the structures and developments erected by the 1st respondent on the suit property within six months from the date of the Judgment, under the supervision of the 5th respondent; and

[6] GUIDED by the decision in *Odinga Vs Independent Electoral & Boundaries Commission & 3 others* [2013] KESC 8 (KLR), in which this Court referred to the case of *Jersey Evening Post Limited Vs A Thani* [2002] JLR 542 at pg 550 wherein it was stated that:

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded,

the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available.”

[7] **REAFFIRMING** the Court’s pronouncement in ***Shollei Vs Judicial Service Commission & another*** [2023] KESC 8 (KLR), to the effect that once the Supreme Court has conclusively determined a matter, it becomes *functus officio* and lacks jurisdiction to entertain any subsequent application seeking enlargement of time or variation of the directions issued; and

[8] **HAVING CONSIDERED** the totality of the pleadings, affidavits, and rival arguments by the parties on both sides, **WE OPINE** as follows:

- i. This Court conclusively determined the issues in this matter vide its judgment delivered on 11th April 2025 and is therefore, *functus officio*.
- ii. The Court’s judgment brought the matter to a final close, and the parties remain bound by the orders issued therein, which require strict compliance.
- iii. Ultimately, this Court lacks jurisdiction to extend the timeline granted to the 1st respondent for compliance with its judgment delivered on 11th April 2025.

[9] **ACCORDINGLY**, we make the following orders:

- (i) ***The Notice of Motion dated 29th September 2025 and filed on 2nd October 2025 is hereby dismissed.***
- (ii) ***There shall be no orders as to costs.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 30th Day of January, 2026.

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M. K. KOOME
CHIEF JUSTICE & PRESIDENT OF
THE SUPREME COURT

.....
P. M. MWILU
DEPUTY CHIEF JUSTICE &
VICE PRESIDENT
OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA