



REPUBLIC OF KENYA



**Nechesa v Lusiji & another (Environment and Land Case E004 of 2024)
[2025] KEELC 6050 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6050 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND CASE E004 OF 2024**

E ASATI, J

SEPTEMBER 18, 2025

BETWEEN

ELIZABETH PAMELA NECHESA PLAINTIFF

AND

MARTHA KHAVERE LUSIJI 1ST DEFENDANT

ALEX KHAVERI LUSICHI 2ND DEFENDANT

RULING

1. The application before court for determination is the Notice of Motion dated 10th March 2025 expressed to be brought pursuant to the provisions of Order 42 Rule 6 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the *Civil Procedure Act*.
2. The application sought for an order that pending the hearing and determination of the Summons for Revocation and annulment of Grant in Hamisi PMC Succ. Cause No. 13 of 2015 there be stay of the suit. The application also sought for an order that the costs of the application be in the cause.
3. The grounds upon which the application was brought are that the suit land was transmitted to the plaintiff vide Hamisi PMC Succ. Cause No. 13 of 2015. That there is a pending summons for revocation of Grant issued to the plaintiff herein. That the outcome of the said summons for revocation of Grant will directly affect the suit unless it is stayed.
4. The application was supported by the contents of the Supporting Affidavit sworn by the Defendant/ applicant on 10th March 2025. The applicant stated in the Supporting Affidavit that she is the first widow while the plaintiff is the 4th widow of one Samwel Lusichi Amakanga deceased, and the 2nd defendant is the first-born son of the deceased.



5. That the suit land was part of the estate of the deceased and constitutes her matrimonial home. That the plaintiff acquired the suit land by way of transmission pursuant to a Certificate of Confirmation of Grant issued in Hamisi, PMC Succ Cause No. 13 of 2015.
6. That the beneficiaries of the estate of the deceased have petitioned for revocation and/or annulment of the said Grant and reversal of the properties back to the name of the deceased including the suit property. That in the event that the said Summons for revocation of Grant is allowed the title herein would revert to the deceased therefore directly affect the suit herein and the plaintiff's legal capacity to maintain the suit.
7. To the Supporting Affidavit were attached Grant of Letters of Administration dated 8th June 2025 issued by the SRM's Court at Hamisi in Succ Cause No. 13 of 2015 in respect of the estate of Samuel Lusichi Amakanga. The Grant was issued to the plaintiff herein.
8. The application was opposed vide the Replying Affidavit sworn by the plaintiff /respondent on 21st May 2025. The plaintiff deposed that the defendants are not party to the Summons for Revocation and/or annulment of Grant and that the objector in the Succession cause is not a party in this suit.
9. That the 1st Defendant owns L.R No. Tiriki/Serem/5 where her matrimonial home is located. That the 2nd Defendant is a son of the 1st Defendant. That before confirmation of the Grant in Succ Cause No. 13 of 2015 (Hamisi) the deceased's family deliberated through a number of meetings on how to distribute the estate of the deceased. That the applicants' main intention is to stay these proceedings as they continue occupying and using her land to her disadvantage. That due process was followed in obtaining and in the confirmation of Administration Intestate in respect of the estate of the deceased and that the applicant was aware of the proceedings.
10. To the Replying Affidavit was attached Certificate of Confirmation of Grant dated 28th February 2017, an order in Kakamega ELC Case No. 194 of 2017 dated 14th December 2017 between the plaintiff herein and one Rosalia Italia where the defendant was given 3 months to vacate the suit land herein and in default an eviction order to issue, minutes dated 13/12/2014, Notice of Motion dated 12th February 2018 in Kakamega HC Succ Cause No. 316 of 2015, proceedings in Hamisi PMC Succ Cause No. 13 of 2015.
11. The application was heard by way of oral submissions. I have considered the application, the opposition thereto and the submissions made.
12. The considerations in an application of this nature as held in Global Tours and Travels Limited – Nairobi H.C Winding up Cause No. 43 of 2000 are the need for expeditious disposal of cases, the prima facie merits of the intended action, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.
13. In the present case, the application is based on the grounds that there is an application in the Succession cause seeking to revoke and/or annual the Grant of Letters of Administration granted to the plaintiff and revert the land to the deceased.
14. It is not denied that the suit land was part of the estate of the deceased and that it was registered in favour of the plaintiff pursuant to a transmission on the basis of the Grant whose revocation and/or annulment is being sought in the succession cause. It is also not denied that all the parties in this suit were members of the family and beneficiaries to the estate of the deceased.
15. Whether the Grant was obtained in a lawful way will be a matter for determination by the Probate and Administration court in the summons for revocation and/or annulment of the Grant. While the



plaintiff is entitled to expeditious disposal of the suit, given the special history /circumstances of this case, I find that the application is merited.

16. It will be futile for the hearing of the suit to proceed only for the title to be cancelled and the land reverted to the estate of the deceased, should the summons for revocation of the grant succeed. On the other hand less prejudice will be occasioned by an order of stay of proceedings pending determination of the summons for revocation and/or annulment of Grant. The court therefore finds that the application has merit and hereby allows it as follows:
 - a. An order of stay of the proceedings herein is hereby granted pending hearing and determination of the Summons for revocation and/or annulment of Grant in Hamisi PM Succ Cause No. 13 of 2015.
 - b. Costs of the application to abide the outcome of the suit.
19. The applicants are hereby directed to fast track the disposal of the Summons for Revocation of Grant application and are hereby directed to furnish this court with the status/progress report of the application on 15/10/2025 when this matter shall be mentioned for further directions.

Orders accordingly.

RULING DATED AND SIGNED AT VIHIGA AND DELIVERED VIRTUALLY THIS 18TH DAY OF SEPTEMBER 2025.

**E. ASATI,
JUDGE.**

In the presence of:

Ajevi- Court Assistant.

Plaintiff/respondent present in person

N/A for the Respondents.

