



REPUBLIC OF KENYA



**Lucia v Kaberia & another (Civil Appeal E061 of 2024)
[2025] KEHC 1992 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1992 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E061 OF 2024
EM MURIITHI, J
FEBRUARY 6, 2025**

BETWEEN

BABAS LUCIA APPELLANT

AND

CECILIA MATHEKA KABERIA 1ST RESPONDENT

LAWRENCE KINYUA MWAMBIA 2ND RESPONDENT

RULING

1. By a Notice of Motion under certificate of urgency dated 13th June, 2024 pursuant to Order 42 Rule 6 of the Civil Procedure Rules, Rules 73 and 63 (1) of the Probate and Administration Rules and Section 47 of the *Law of Succession Act*, the Appellant seeks that:
 1. Spent
 2. Spent
 3. The court do grant orders of temporary injunction restraining the respondents either through themselves, agents, servants or anybody acting at their behest from evicting Appellant and her family from parcel Nos. Ithima/antuambui/7694 And Ithima/antuambui/7695 pending the hearing and determination of this appeal.
 4. Pending the hearing and determination of this application the court do issue inhibition orders against parcels no Ithima/antuambui/7694 and 7695.
 5. Pending the hearing and determination of this appeal the court do issue inhibition orders against parcels no Ithima/antuambui/7694 And Ithima/antuambui/7695.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Babas Lucia, the Appellant herein, sworn on even date. She avers that she and



her husband, the deceased herein lived on land parcel Nos. ITHIMA/ANTUAMBUI/7694 and 7695 (hereinafter referred to as the suit properties). After the death of her husband, she learnt with utter shock and disbelief that the 1st Respondent, a purported wife to the deceased had filed Maua Succession Cause No. E175/2021, culminating into transfer of the suit properties to the 2nd Respondent. She unsuccessfully applied for revocation of the grant and has since preferred an appeal against the said dismissal of her application for revocation of the grant. Her family and she have resided on the suit properties for over 40 years, and they will suffer substantial loss and irreparable damage if they are evicted therefrom. She also prays for inhibition orders against the suit properties to preserve them, pending the determination of the appeal, which has high chances of success.

3. The Appellant swore a supplementary affidavit on 20/9/2024 in support of her application.
4. The Respondents did not respond to the application.
5. The Appellant cites *Giella v Cassman Brown (1973) EA 358* and *Patricia Njeri & 3 Others v National Museum of Kenya (2004) eKLR*, on the principles that guide courts in granting temporary injunction. She urges that she has a prima facie case having established that she was a wife to the deceased, and thus she will suffer irreparable damage if she is evicted from the suit properties. According to her, the appeal is not frivolous as it has high chances of success, and the balance of convenience tilts in her favour.
6. The 1st Respondent did not file any submissions.
7. The 2nd Respondent accuses the Appellant of lacking locus standi to file the application, because she is not an administrator of the estate, and relies on *Edema and 2 Others v Edema and 5 others (2022) eKLR*. He urges the court to dismiss the application with costs as grant of the orders sought would amount to intermeddling with the estate.

Analysis and determination

8. It was disclosed in the impugned ruling of 28/3/2024 that the 1st Respondent had since died, thus justifying her subsequent inaction in this matter.
9. The 2nd Respondent's submissions are predominantly centered on the Appellant's lack of locus standi to file the application.
10. While the significance of having locus standi to institute any proceedings cannot be gainsaid, a cursory look at the Appellant's memorandum of appeal reveals that the intended appeal is substantially pegged on whether she was a wife to the deceased, and thus a dependant and/or beneficiary to the estate. This court must therefore exercise extreme caution to preserve the substratum of the appeal by ensuring that the appeal is not disposed of at this interlocutory stage. Put differently, the Appellant's locus standi or lack of it is an issue for determination in the appeal, and not at this interlocutory stage.
11. On the merits, the application is predicated on Order 42 Rule 6 (6) of the Civil Procedure Rules which grants jurisdiction to the High Court in cases of application for injunction pending appeal from a subordinate court as follows:

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
12. The object of an application for an injunction pending appeal is to demonstrate that the intended appeal if successful, for which reasons an arguable case must be shown, would be rendered nugatory,



because the injury or loss in the meantime would be irreparable or unremediable, if the injunction or stay pending appeal is not granted.

13. It is urged that the Appellant is a wife to the deceased who has resided on the suit properties for over 40 years.
14. The court finds that the Appellant has demonstrated that she will suffer irreparable loss of being evicted from the suit properties thus rendering her homeless and destitute.
15. This court equally finds that the Appellant has further demonstrated that her intended appeal, which is undeniably arguable, will be rendered nugatory if the orders sought are denied.

Orders

16. Accordingly, for the reasons set out above, this court finds that the application dated 13/6/2024 is merited and it is allowed in terms of prayer 3 and 5 thereof as follows:
 1. A temporary injunction is hereby issued restraining the Respondents either by themselves, agents, servants or anybody acting at their behest from evicting Appellant and her family from parcel Nos. Ithima/antuambui/7694 and Ithima/antuambui/7695 pending the hearing and determination of this appeal.
 2. An order of inhibition is hereby issued against parcels Nos. Ithima/antuambui/7694 and Ithima/antuambui/7695 pending the hearing and determination of the appeal.
 3. The costs of the application shall abide the outcome of the appeal.

Orders accordingly.

DATED AND DELIVERED THIS 6TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. K. Muriuki for Appellant.

Mr. Ngunjiri for Respondents

