



Muumbo & another v Mwingi View Point Lodge Limited & 8 others (Environment and Land Case 10 of 2023) [2025] KEELC 7512 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7512 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 10 OF 2023
TW MURIGI, J
OCTOBER 24, 2025**

BETWEEN

ALEX MUNYASA MUUMBO 1ST PLAINTIFF

CAROLYNE KALUNDE MUUMBO 2ND PLAINTIFF

AND

MWINGI VIEW POINT LODGE LIMITED 1ST DEFENDANT

BEN MUNYASYA 2ND DEFENDANT

BILLY MBUVI MUUMBO 3RD DEFENDANT

MAUREEN RWACHI GERVAS 4TH DEFENDANT

TRUSTEES OF GETRUDES GARDEN HOSPITAL 5TH DEFENDANT

ADAB MAALIM MURSAL 6TH DEFENDANT

THE REGISTRAR OF COMPANIES 7TH DEFENDANT

THE REGISTRAR OF LANDS NAIROBI DISTRICT 8TH DEFENDANT

THE HON ATTORNEY GENERAL 9TH DEFENDANT

RULING

1. Before me for determination is the Notice of Motion dated 27th January 2025 brought under Order 1A, 1B and 3A of the [Civil Procedure Act](#) in which the 6th Defendant/Applicant seeks the following orders;
 - a. Spent.
 - b. That this Honourable court be pleased to stay proceedings in this matter pending hearing and determination of the Applicant's appeal against the ruling delivered on the 22nd day of October



2024, being Nairobi Court of Appeal Civil Appeal No.E1004 OF 2024 Adan Maalim Mursal v Alex Munyasa & others.

- c. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Adab Maalim Mursal, sworn on even date.

The Applicant's Case

3. The Applicant asserts that, along with his statement of defense, he filed a preliminary objection challenging the Plaintiffs' locus standi in initiating the suit, which was dismissed by a ruling issued on 22nd October, 2024. Being aggrieved, he filed a Notice of Appeal dated 28th October, 2024, and subsequently lodged Civil Appeal No. E1004 of 2024, Adan Maalim Mursal v. Alex Munyasya Mumbo & others. He maintains that he is interested in pursuing the appeal and has deposited security for costs.
4. He argued that the Plaintiffs lack the capacity to proceed with the case because they are not the legal representatives of Timothy Muumbo's estate or the shareholders of Mwingi View Point Lodge Limited or Mwingi View Point Company Limited.

The 3rd Defendant's Case

5. The 3rd Defendant filed a replying affidavit sworn on 20th February 2025 in support of the application. He informed the court of the ongoing proceedings in Succession Cause No. 1673 of 2015, in which the Plaintiffs filed an application dated 7th March 2024 seeking letters of administration ad litem to prosecute the instant suit.
6. He further averred that Justice Mande dismissed the application in a ruling delivered on 21st November 2024 and that the Plaintiffs have filed a notice of appeal challenging the said ruling. Additionally, he argued that this constitutes an admission by the Plaintiffs that they lack standing to prosecute this suit.
7. He argued that the pending appeal is jurisdictional because it involves the fundamental question of whether this court can override the *Companies Act* and adjudicate on matters related to a company, as well as the Plaintiffs' standing. He asserted that it would be prudent to await the appellate court's decision on this matter before proceeding further.

The Plaintiffs' Case

8. In opposing the application, the Plaintiffs filed a replying affidavit sworn by the 2nd Plaintiff on 16th February 2025. The deponent averred that the 6th Defendant has no appeal because he violated Rules 77(1) & (2) and 79(1) of the Court of Appeal Rules and therefore he would not suffer loss if the stay is not granted.
9. She further stated that the directions the Appellant is appealing against were issued for the hearing of the suit. She argued that the Appellant has the opportunity to present his defense, which mainly consists of denial. She asserts that the stay order was meant to silence the Plaintiffs. In conclusion, the Plaintiffs urged the court to allow the case to proceed to hearing so that each side can present its case.
10. In a further replying affidavit sworn on 12th March 2025, the 2nd Plaintiff averred that their status as objectors in Succession Cause No.1673 of 2015 shows that they have a stake in all properties forming the estate of their deceased father, Timothy Mwandi Muumbo.



11. She contended that the 3rd Defendant's replying affidavit should be expunged because he has not filed an application for stay of proceedings.
12. The application was canvassed by way of written submissions.

The 6th Defendant's Submissions

13. The 6th Defendant filed his submissions dated 28th February 2025.
14. On his behalf, Counsel submitted that the 6th Defendant has demonstrated the principles and conditions for the grant of stay of proceedings outlined in the case of William Odhiambo Ramogi & 2 others v the Hon. Attorney General & 3 others [2019] eKLR and in Order 42 Rule 6 of the Civil Procedure Rules.
15. Counsel reiterated that the 6th Defendant had filed Civil Appeal No.E001 of 2024, Adan Maalim Mursal v Alex Munyasya Muumbo & others. Consequently, the Plaintiff's reliance on Rules 77(1) & (2) and 79(1) of the Court of Appeal Rules is a misapprehension of the law, as those rules apply to proceedings before the Court of Appeal. To this end, reliance was placed on the case of Richard Chesome v Mix Wafula Simiti & another [2021] eKLR.
16. Counsel submitted that the Appellant has an arguable appeal which raises substantial questions of law and procedure that warrant full adjudication by the Court of Appeal. It was submitted that the grounds of appeal strike at the core of the case and raise fundamental issues of jurisdiction and locus standi and meet the threshold outlined in the case of Mbarak Said Ali & another v Sultan Palace Development [2021] eKLR.
17. Counsel relied on the case of Kenya Commercial Bank Limited v Nicholas Ombija [2009] eKLR to submit that the appeal will be rendered nugatory if the proceedings in the matter are allowed to continue. Counsel further submitted that the application was filed timeously, thus it is in the interest of justice that the orders sought are granted.

The 2nd And 3rd Defendants Submissions

18. The 2nd and 3rd Defendants filed their submissions dated 18th March 2025.
19. On their behalf, Counsel submitted that the intended appeal raises substantial questions regarding jurisdiction and locus standi. It was submitted that the ruling of Justice Mogeni is the subject of the two appeals, and if the appellate court finds that the Plaintiffs lack standing, the proceedings will be rendered a nullity. To this end, reliance was placed on the cases of Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 others [2013] eKLR, Wildlife Service v James Mutembei [2019] eKLR and Chris Munga N Bichage v Richard Nyagaka Tongi & 2 others [2013] eKLR.
20. Counsel submitted that the Appellant has met the threshold for stay of proceedings as they have an arguable appeal and that the application was filed timeously. Counsel argued that proceeding with this matter while the issue of jurisdiction and locus standi remain unresolved would constitute an abuse of court process and a gross miscarriage of justice.

The Plaintiffs Submissions

21. The Plaintiffs filed their submissions dated 19th March 2025.
22. On behalf of the Plaintiffs, Counsel submitted that the 6th Defendant has no appeal because he violated Rule 77(1) of the Court of Appeal Rules by serving a 'notice of appeal' which had not been filed with



the Deputy Registrar of the Superior Court. Counsel argued that since the Appellant had filed an appeal, he should have sought a stay in the Court of Appeal.

23. Regarding the 3rd Defendant's replying affidavit in support of the 6th Defendant's application, Counsel argued that there is no law that allows a party to support another's claim without being the claimant themselves or submitting their own prayers as a party.
24. To buttress their submissions, reliance was placed on the cases of Kenya Wildlife Services v James Mutumbe [2019] eKLR, Turbo Highway Eldoret ltd v James Mutembei [2019] eKLR, and William Odhiambo Ramogi and 2 others v the Honourable Attorney General & 3 others [2019] eKLR.

Analysis And Determination

25. Having considered the application, the respective affidavits and the rival submissions, the following issues fall for determination:-
 - a) Whether the 6th Defendant's appeal is valid.
 - b) Whether the 3rd Defendant's replying affidavit should be expunged from the record.
 - c) Whether the proceedings should be stayed.
26. On the first issue, the 6th Defendant claims to have filed Civil Appeal No. E1004 of 2024. While the Plaintiffs dispute the validity of the said appeal on the grounds that it violates the Court of Appeal Rules, this court is NOT the proper forum to settle the matter, as it falls within the jurisdiction of the Court of Appeal.
27. Regarding the second issue, the Plaintiffs urged the court to expunge the 3rd Defendant's replying affidavit filed in support of the 6th Defendant's replying affidavit, arguing that there is no rule permitting a party to support an application they have not filed.
28. Order 51 Rule 14 of the Civil Procedure Rules allows any Respondent to oppose any application by any party. In my opinion, the 3rd Defendant, being a Respondent in the application, is entitled to file a replying affidavit.
29. Regarding the third issue, the Court of Appeal in Paragon Electronics Ltd v Land Registrar & 2 others; Ngum & 2 others (Interested Parties) [2025] KECA 586 (KLR) set the threshold for the grant of stay of proceedings as follows:-

“.....Applicant must demonstrate existence of an arguable appeal, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory.....In addition....the Applicant must satisfy the Court that there are exceptional circumstances to warrant stay of proceedings because stay of proceedings is a serious and grave judicial intervention as it has the effect of delaying pending proceedings.”

30. Similarly, in Kenya Wildlife Service v James Mutembei [2019] eKLR, it was held that:-

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, the right to be heard without delay, and overall, the right to a fair trial. Therefore, the test for stay of proceedings is high and stringent. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases... Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be



manifestly groundless or in which there is no cause of action in law or equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed based on the pleading and the facts of the case.”

31. The court notes that the appeal involves issues of locus standi and jurisdiction, which are substantive and not trivial, making the 6th Defendant’s appeal arguable. Furthermore, if the case continues and the Court of Appeal later determines that the Plaintiffs lacked standing from the outset, it could invalidate the current proceedings, wasting judicial resources.
32. It is my considered view that the issues of locus standi and jurisdiction qualify as exceptional circumstances because, without jurisdiction, this court cannot proceed with the matter.
33. The upshot of the foregoing is that the application dated 27th January 2025 is merited and the same is hereby allowed as prayed.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF OCTOBER, 2025.

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HON. T. MURIGI

JUDGE

In The Presence Of: -

Ms Cherop holding brief for Ms Dave for the 3rd Respondent

Ms Njoroge holding brief for Mary Muigai for the Plaintiffs

Wamae holding brief for Githongori for the 2nd and 3rd Defendants

Nabende for the Interested Party

Tanui for the 6th Defendant

Ms Chelegat holding brief for Omwanza for the 6th Defendant

Ahmed – Court Assistant

