

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ELC LAND APPEAL NO E037 OF 2024**

**ANNIE WAMUYU WAMBUGU (SUING AS THE ADMINISTRATOR OF  
THE ESTATE OF JOSEPH W. MUNDIA) .....APPELLANT/APPLICANT**

**VERSUS**

**SOLOMON. K. RUGUT.....1<sup>ST</sup> RESPONDENT**  
**DISTRICT LAND REGISTRAR, NAKURU.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Appellant/Applicant’s Notice of Motion application dated 29<sup>th</sup> July, 2025, seeking the following orders:
  - a) *Spent*
  - b) ***THAT this honorable court be pleased to issue orders extending time for that ANNIE WAMUYU WAMBUGU being the administrator AD LITEM of the Estate of Joseph W. Mundia (DECEASED) to substitute the appellant in this appeal. (sic)***
  - c) *Spent*
  - d) *Spent*
  - e) ***THAT there be a stay of proceedings in Molo Magistrates Court, CMELC E081 OF 2023 that is before the HON. SAMUEL K. MUTAI-SPM, Court 2, pending the hearing and determination of the appeal filed herein.***
  - f) ***The costs of this application abide the outcome of the appeal.***

2. The application was supported by the annexed affidavit of Annie Wamuyu Wambugu, the Appellant/Applicant, sworn on 29<sup>th</sup> July, 2025, where she deponed that the deceased Joseph W. Mundia is the registered owner of the suit property NAKURU/OLENGURUONE/AMALO 332. She further deponed that the deceased instituted Nakuru HCC 158B of 2025 against the Respondent, which was decided in his favour on 15<sup>th</sup> March, 2013.
3. The Applicant deponed that subsequently in 2023, the 1<sup>st</sup> Respondent filed a similar suit in Molo (CMELC E081 OF 2023) over the same subject matter NAKURU/OLENGURUONE/AMALO 332, where she filed a preliminary objection in the lower court which was dismissed vide a ruling dated 27<sup>th</sup> June, 2024.
4. It was her disposition that she had filed an appeal against the decision in the lower court and is pursuing contempt proceedings in HCC 158B OF 2005. The Applicant stated that the appeal raises substantial and arguable issues with a high probability of success, and if a stay is not granted, the appeal will be rendered nugatory.
5. Solomon K. Rugut, the 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on 18<sup>th</sup> November, 2025, and deponed that the limited grant *ad litem* in the Applicant's supporting affidavit is fatal and incurable as it was exclusively issued to Willy Maina. He stated that the judgment in Nakuru HCCC No 158 B of 2025, does not operate as a perpetual shield against lawsuits founded on new and subsequent causes of action.

6. The Respondent further deponed that the suit in Molo CMELCE E081 of 2023 is not re-litigation of the 2005 suit, and that the Applicant has failed to meet the requisite threshold for stay of proceedings.

### **APPLICANT'S SUBMISSIONS**

7. Counsel for the Applicant filed submissions dated 7<sup>th</sup> November, 2025, and identified the issue for determination as whether this Honourable Court should stay proceedings in Molo CMELC No E081 of 2023 pending the determination of the appeal. Counsel submitted that the appeal raises serious questions of *res judicata* and jurisdiction.
8. Mr. Maina further submitted that there is a risk of conflicting judgments and the continued proceedings in Molo CM ELC threaten to render the High Court HCCC No 158B/2005 nugatory. Counsel relied on Section 7 of the Civil Procedure Act, Order 42 Rule 6 (1) & (2) of the Civil Procedure Rules and the cases of **Butt vs Rent Restriction Tribunal [1982] KLR 417**, **Nguruman Ltd vs Shompole Group Ranch & Others [2014] eKLR**, **Kenya Commercial Bank Ltd vs Benjoh Amalgamated Ltd & Another [2017] eKLR**, **John Florence Maritime Services Ltd & Another vs Cabinet Secretary for Transport & Infrastructure & 3 others [2015] eKLR** and **Patrick Kariuki vs Joseph Wanjohi [2021] eKLR** and urged the court to allow the application as prayed.

### **1<sup>ST</sup> RESPONDENT'S SUBMISSIONS**

9. Counsel for the 1<sup>st</sup> Respondent filed submissions dated 18<sup>th</sup> November, 2025, and submitted that Annie Wamuyu Wambugu is not a grantee and every pleading and affidavit she has sworn and signed in the purported capacity of an administrator is a legal nullity, and relied on the case of **Francis Mwangi Thuo & Another vs James Njuguna Thuo [2019] eKLR**.
10. Counsel further submitted that the Applicant's appeal is not arguable, hence the stay of proceedings should not be granted. Counsel submitted that the suit in Molo CMELC EO81 of 2023 is founded on a fresh, distinct and subsequent cause of action and relied on the cases of **Francis Mwangi Thuo & another vs James Njuguna Thuo [2019] eKLR**, **Co-operative Bank of Kenya Ltd vs Banking Insurance & Finance Union (Kenya) [2019] eKLR** and **John Florence Maritime Services Ltd & Another vs Cabinet Secretary for Transport & 3 others [2021] eKLR**.
11. According to counsel, the appeal will not be rendered nugatory and the balance of convenience heavily favours the 1<sup>st</sup> Respondent. Further that the Applicant lacks the *locus standi* to prosecute the application, hence should be dismissed with costs.

### **ANALYSIS AND DETERMINATION**

12. The issues for determination are whether this court should extend the time for ANNIE WAMUYU WAMBUGU to substitute the Appellant

and whether the Applicant has met the threshold for stay of proceedings orders.

13. The Applicant submitted that she has an arguable appeal and if a stay of proceedings is not granted, the Appeal will be rendered nugatory. I notice that the Appeal is against the ruling on a preliminary objection on the ground that the suit is *res judicata*. The main suit has not yet been heard. The court may not deal with the Appeal at this interlocutory stage but the Applicant must establish that she has an arguable appeal, which is mandatory in applications for stay of execution and stay of proceedings pending appeal.
14. I notice that there is already a red flag that has been raised by the 1<sup>st</sup> Respondent on the *locus standi* of the Applicant. The Applicant seeks extension of time to substitute the Deceased Joseph Mundia, and she describes herself as the administrator of the estate. From the attached documents to the supporting affidavit, sworn on 29<sup>th</sup> July 2025, it shows that the Limited Grant *Ad litem*, was exclusively issued to Willy Maina who is her advocate. I have not seen any other document indicating that the Applicant is an administrator of the estate of the late Joseph Mundia.
15. The Applicant should have jumped this hurdle first to enable her to have the capacity to file the current application. All is not lost as she can still regularize her capacity by getting the necessary authority vide Succession Cause noting that the husband died while the suit was pending determination in the lower court. However, filing this application without capacity, is a no.

16. In the case of **Alfred Njau –versus- City Council of Nairobi (1983) KLR 625**, the court defined *locus standi* as follows:

*“Locus standi literally means a place of standing and refers to the right to appear or to be heard in court. To say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”*

17. In the case of **Hawo Shanko v Mohamed Uta Shanko [2018] eKLR** the court while addressing the failure to obtain a grant prior to filing a suit observed that:

*“..... The general consensus is that a party lacks the Locus standi to file a suit before obtaining a grant limited for that purpose. This legal position is quite reasonable in that if the Plaintiff or Applicant has not been formally authorized by the Court by way of a grant limited for that purpose, then it will be difficult to control the flow of Court cases by those entitled to benefit from the estate. If each beneficiary is allowed to file a suit touching on a deceased’s estate without first obtaining a limited grant, then several suits will be filed by the beneficiaries. It is the Limited grant which gives the plaintiff the locus to stand before the Court and argue the case. It does not matter whether the suit involves a claim of intermeddling of the estate or the preservation of the*

*same. One has to first obtain a limited grant that will give him/her the authority to file the suit.....*

18. The court further stated that:

*“...if any relationship with the deceased does exist whether son, daughter, wife, widow is not sufficient. That relationship does not give the locus standi to any relative to obtain suit before obtaining limited grants. One's relationship to the deceased does not clothe such a party with the locus standi. It is the Limited Grant which does”*

19. The lack of capacity to institute this application, also affects the Appeal in its entirety. The Appeal as it is, cannot stand without the capacity, it is hollow and therefore a shell that cannot survive. It follows that both the application and the Appeal are hereby struck out with each party bearing their own costs.

20. Parties still have a recourse in the lower court upon the hearing and determination of the suit where they can raise the issue of *res judicata* during the hearing. The application and the Appeal having been struck out, there is no need to deal with the issue as to whether the Applicant has met the threshold for the grant of a stay of proceedings or not.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 2<sup>ND</sup> DAY OF DECEMBER 2025.**

**M. A. ODENY**

**JUDGE**