



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS - FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2605 OF 2001**

**IN THE MATTER OF THE ESTATE OF STEPHEN MBUGUA  
MURIHIA (DECEASED)**

**IN THE MATTER OF THE LAST WILL AND TESTAMENT OF  
STEPHEN MBUGUA MURIHIA**

**1. JOSEPH MBACIA MBUGUA**

**2. LEAH WARUCHU MIRACHO**

**3. ESTHER**

**MIRACHO.....APPLICANTS**

**WANJIRU**

**-VERSUS-**

**1. MBICHI MBOROKI**

**2. NANCY WAMBUI**

**3. MASTERWAYS PROPERTIES LIMITED**

**4. WAIHUMBU MBUGUA**

**ALIAS**

**MEJA**

**MBUGUA.....RESPONDENTS**

**RULING**

1. This ruling determines **two applications** pending before the Court in this long running succession cause.
2. The first application is the Chamber Summons dated 28th January 2025, filed by Waihumbu Mbugua alias Meja Mbugua, seeking orders:

**a) Spent**

Ruling

Succession Cause No. 2605 Of 2001

b) That pending the hearing and determination of this application inter parties, there be stay of Order C (ii) of the court's ruling delivered on 20/12/2024 and all the consequential orders therefrom.

c) That in the alternative to prayer b above the Honourable Court be pleased to order that pending the hearing and determination of this application inter parties, the applicant and all the beneficiaries do continue to receive their monthly maintenance.

d) That leave be granted to the applicant to file an appeal to the Court of Appeal and that the Notice of Appeal dated 27/01/2025 and filed on the same date be deemed as properly filed.

e) That there be a stay of execution of order c (ii) of court's ruling delivered on 20/12/2024 pending the hearing and determination of the applicant's intended appeal.

f) That in the alternative to prayer (d) the Honorable court be pleased to direct that all the beneficiaries including the applicant to continue receiving maintenance from the estate pending the hearing and determination of the intended appeal.

g) That costs of this application be in the cause.

3. The application is premised on the grounds that the applicant, who represents the second house, is aggrieved by the Court's interpretation of **Clause 30 of the deceased's will**, and that

## Ruling

Succession Cause No. 2605 Of 2001

the effect of the ruling is the cessation of monthly maintenance and medical benefits that beneficiaries have enjoyed for over two decades.

4. The applicant contends that the ruling created ambiguity regarding the nature of the trustees' handover to grandchildren upon attaining the age of forty years, the timing of vesting of interests, and the continuation of maintenance to the widows and children of the deceased.
5. The application is supported by the affidavit of Waihumbu Mbugua alias Meja Mbugua and was heard *inter partes*.

### **Issues for Determination:**

- a) Whether the applicant has satisfied the threshold for grant of stay of execution pending appeal;
- b) Whether leave to appeal should be granted;
- c) Whether interim orders on maintenance are warranted pending the intended appeal.

### **Determination**

6. The principles governing stay of execution pending appeal are well settled. An applicant must demonstrate that the appeal is arguable, that the appeal would be rendered nugatory if stay is not granted, and that the application has been brought without undue delay. See ***Butt v Rent Restriction Tribunal [1982] KLR 417 and Halai & Another v Thornton & Turpin (1963) Ltd [1990] KLR 365.***

7. The Court has considered the impugned ruling of 20th December 2024, the grounds raised, and the submissions by the parties. The guiding principle in the interpretation of a will is to ascertain and give effect to the **intention of the testator**, as expressed in the words of the will itself. The Court must construe the will as a whole, giving the language used its ordinary meaning, unless such interpretation would lead to absurdity or defeat the testator's clear intention. See ***In re Estate of G K K (Deceased)* [2017] eKLR**.
8. Clause 30 of the deceased's will is explicit and unequivocal. The testator directed that the commercial properties listed therein shall not be sold during the lifetime of the widows of his immediate family of his children, but shall instead be held in trust by the trustees for the grandchildren until they attain the age of forty (40) years.
9. The clause further vests in the trustees absolute discretion to invest, raise funds, retain income, and apply such income as they deem fit. The language employed by the testator deliberately limits the beneficiaries' entitlement to maintenance and income to what the trustees, in the exercise of their discretion, consider appropriate, and does not create an automatic or perpetual right to monthly maintenance.
10. The Court is not persuaded that the ruling delivered on 20th December 2024 introduced ambiguity or departed from the intention of the testator. On the contrary, the ruling gave effect to Clause 30 by recognising that upon the occurrence of the conditions set by the testator, particularly the attainment of the

Ruling

Succession Cause No. 2605 Of 2001

age of forty years by the grandchildren, the trustees' obligations shift in accordance with the trust structure established under the will.

11. The applicant's contention that the cessation of monthly maintenance and medical benefits renders the intended appeal nugatory is not supported by the terms of the will. The will does not guarantee indefinite maintenance to the widows or children of the deceased, nor does it subordinate the trust in favour of the grandchildren to the continued payment of monthly benefits beyond what the trustees, in their discretion, deem necessary.
12. The Court further finds that the applicant has failed to demonstrate that the intended appeal raises arguable issues warranting a stay of execution. Disagreement with the Court's interpretation of a will, without more, does not meet the threshold for grant of stay pending appeal. See *Butt v Rent Restriction Tribunal* [1982] KLR 417.
13. To grant the orders sought would amount to re-writing the will of the deceased and substituting the Court's discretion for that of the testator, which the law does not permit.
14. In the circumstances, the Court finds that the application dated 28th January 2025 is without merit
15. The second application is the summons dated 15th October 2025 brought by the Executors of the estate of the late STEPHEN MBUGUA MURIHIA (deceased) seeking the following orders:

a) **Spent.**

- b) That the Court be pleased to order that the Executors be allowed to transfer **LR No. Ruiru/Kiu Block 7/71** to the beneficiary **Susan Nyakibia Mbugua** without the production of the original title deed.
  - c) That the Land Registrar, Ruiru Land Office, be ordered to transfer **LR No. Ruiru/Kiu Block 7/71** to the beneficiary **Susan Nyakibia Mbugua** without requiring the production of the original title deed in the name of the deceased **Stephen Mbugua Murihia** during registration of the transmission.
  - d) That the costs of the application be in the cause.
16. The application is premised on the grounds set out on its face and is supported by the affidavit of Denis Mbichi Mboroki, sworn in support thereof.
17. The deponent avers that the deceased Stephen Mbugua Murihia died testate, and that under his valid will, the property known as LR No. Ruiru/Kiu Block 7/71 was bequeathed to his widow, Susan Nyakibia Mbugua. A copy of the confirmed grant has been annexed.
18. It is further deposed that the Executors have made efforts to transmit the said parcel of land to the beneficiary but have been unable to do so due to the inability to trace the original title deed. The beneficiary reported the loss to the police and an abstract has been annexed to the affidavit.
19. The deponent states that upon seeking assistance from the Ruiru Land Registry, the Land Registrar advised that the Executors obtain a court order within this succession cause

dispensing with the production of the original title deed during the registration of the transmission. Copies of the handwritten advice and a copy of the title deed were annexed.

### **Issue for Determination**

20. The sole issue for determination is whether this Court should dispense with the production of the original title deed and authorize the transmission of LR No. Ruiru/Kiu Block 7/71 to the beneficiary.

### **Analysis and Determination**

21. This Court has considered the application, the supporting affidavit, and the annexures thereto.

22. Under **section 47 of the Law of Succession Act**, this Court has jurisdiction to entertain any application and determine any dispute under the Act. Further, **Rule 73 of the Probate and Administration Rules** preserves the inherent powers of the Court to make such orders as may be necessary for the ends of justice.

23. The Court notes that the grant in this matter has already been confirmed, and there is no dispute as to the identity of the beneficiary or the property bequeathed under the will. The Executors have demonstrated that the original title deed has been lost and that the loss was duly reported to the police. There is no evidence before the Court suggesting fraud, concealment, or any competing claim over the suit property.

24. Section **33(5)** and **34** of the **Land Registration Act, 2012** empower the Land Registrar to register instruments and

Ruling

Succession Cause No. 2605 Of 2001

transmissions pursuant to a court order, and the courts have consistently held that where a title deed is lost, and satisfactory evidence is placed before the court, an order dispensing with its production may issue.

25. In **Re Estate of Gathoni Njoroge (Deceased) [2015] eKLR**, the Court held that once a grant has been confirmed and the beneficiary is undisputed, the court may issue appropriate orders to facilitate transmission of property where administrative hurdles, such as loss of title documents, would otherwise defeat the intention of the deceased. Similarly, in **Re Estate of M'Ngarithi M'Miriti (Deceased) [2017] eKLR**, the Court observed that succession proceedings should not be frustrated by procedural technicalities where the justice of the case is clear.

26. This Court is satisfied that the application is merited and that granting the orders sought will give effect to the intention of the deceased as expressed in his will, while safeguarding the integrity of the land registration process.

27. Accordingly, the Court makes the following orders:

**Application dated 28th January 2025**

28. The Chamber Summons dated 28th January 2025 is hereby **dismissed in its entirety**.

29. There shall be **no stay of execution** of the orders issued on 20th December 2024.

30. Leave to appeal is **declined**.

Ruling

Succession Cause No. 2605 Of 2001

31. The trustees shall continue to administer the estate strictly in accordance with the terms of the will, particularly Clause 30 thereof.

**Application dated 15<sup>th</sup> October 2025**

32. The Executors are hereby authorised to transfer **LR No. Ruiru/Kiu Block 7/71** to **Susan Nyakibia Mbugua** without the production of the original title deed.

33. The Land Registrar, Ruiru Land Office, is hereby directed to register the transmission of **LR No. Ruiru/Kiu Block 7/71** to **Susan Nyakibia Mbugua** without requiring the original title deed in the name of the deceased **Stephen Mbugua Murihia**.

34. The Executors are hereby authorized to transfer **LR No. Ruiru/Kiu Block 7/71** to the beneficiary **Susan Nyakibia Mbugua** without the production of the original title deed.

35. The costs of both of the applications shall be in the cause.

**It is so ordered.**

**DATED AND DELIVERED at NAIROBI this 3<sup>rd</sup> Day of FEBRUARY 2026**

.....  
**E. K. OGOLA**  
**JUDGE**

**In the Presence of;**

Mr. Makori..... for the  
Applicant

M/s Kature.....for the  
Beneficiary

Gisiele.....  
Court Assistant

ORIGINAL