



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC LAND APPEAL CASE NO. E025 OF 2024

M'MBOROTHI M'ACIURI1ST
APPELLANT

**TIGANIA EAST & WEST DISTRICT
LAND ADJUDICATION AND
SETTLEMENT OFFICER2ND**
APPELLANT

ATTORNEY GENERAL3RD
APPELLANT

=VERSUS=

**KARITHI JOHN (*Suing as the Administrator
of the estate of M'AMBURUKUA
M'MUKETHA - deceased*).....1ST**
RESPONDENT

M'ITARU M'NAITULI2ND
RESPONDENT

RULING

(EX-TEMPORE)

1. This appeal was initiated by **M/s M G Kaume & Company Advocates** on 9/4/2024 vide a memorandum of appeal dated 8/4/2024. The three designated appellants were: (i) M'Mborothi M'Aciuri; (ii) Tigania East and West District Land Adjudication and Settlement Officer; and (iii) the Hon Attorney General.
2. On 6/10/2025, **Ms Esther Wairimu**, a Senior State Counsel in the Attorney General's Office, informed the court that the District Land Adjudication and Settlement Officer and the Attorney General had been irregularly designated as appellants yet they were not privy to the appeal. After hearing all the parties on the issue, this court rendered a ruling dated 6/10/2025 in which it ordered the party who drew and filed the memorandum of appeal to amend it, to inter alia, remove the designation of the District Land Adjudication and Settlement Officer and the Attorney General as appellants. The initiator of the appeal was granted 90 days to comply with the order of the court. In default of compliance, the appeal was to stand struck out with costs.
3. There was no compliance with the order of the court. Consequently, when this appeal was listed for mention on 3/2/2026, the court noted that the appeal stood dismissed effective from 29/1/2026 when the 90-day period lapsed.
4. Prior to 3/2/2026, one Esther Mwonjaru brought an application dated 1/12/2025 seeking: (i) an order to the effect that Grace Chwaa M'Mborothi (deceased) be substituted by Esther Mwonjaru as the Legal Representative of the estate of the

deceased (sic); and (ii) an order granting her leave to amend the memorandum of appeal dated 8/4/2024.

5. The application has been canvassed today through brief oral submissions and now falls for determination in this ex-tempore ruling. The two issues that fall for determination in the ruling are: (i) Whether the criteria for granting leave for substitution of a deceased party has been met; and (ii) Whether the criteria for granting leave to amend pleadings has been satisfied. I will be brief in my analysis.
6. The applicant relied on two exhibits: (i) a death certificate relating to the late **Grace M'Mborothi**; and (ii) an unextracted succession order relating to the estate of the late **Grace M'Mborothi** and issued in **Tigania SPMC Miscellaneous Succession Cause No. E055/2025**. The unextracted succession order, which is said to be the grant giving Esther Mwonjaru the requisite locus standi relates to the estate of the late Grace M'Mborothi. It does not relate to the estate of the late M'Mborothi M'Aciuri who was the original appellant. Even if Esther had extracted the actual grant, which is ordinarily in form of a statutory form, I do not think the grant which relates to the estate of the late Grace M'Mborothi would give her the locus standi to be substituted as the administratrix of the estate of the late M'Mborothi M'Aciuri. The position in law is that, she ought to file an application in the succession cause relating to the estate of the late M'Mborothi M'Aciuri and obtain a grant in that succession cause, appointing her to replace **Grace M'Mborothi**. The grant which she is waving does not relate

to the estate of M'Mborothi M'Aciuri. As things stand, the application under consideration is fatally defective because the applicant has not exhibited a proper grant.

7. The court has considered the likely prejudice that may be occasioned to the estate of the late M'Aciuri if the second issue were to be considered on merits and the application were to be disposed on merits. As things stand, the application under consideration was brought by a stranger, a person who has not exhibited a grant relating to the estate of the late M'Aciuri. Taking the above into account, the court takes the view that the proper order to issue is one striking out the application dated 1/12/2025. The applicant, Esther Mwonjaru, shall bear costs of the said application. It is so ordered.

**DATED, SIGNED AND DELIVERED IN MERU THIS 16TH DAY
OF FEBRUARY, 2026.**

B M EBOSO (MR)

ELC JUDGE

In the presence of:

Mr Nyabuti for the Appellant.

Mr Carl Peters Mbabu for Karithi John and M'Itaru M"Naituli [the 1st and 2nd Respondents].

Ms E Wairimu for the District Land Adjudication and Settlement Officer and the Attorney General
Court Assistant – Mr E Tupet

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