



**Mugure v Kea & 2 others (Environment and Land Case  
E036 of 2024) [2025] KEELC 5920 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5920 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE E036 OF 2024**

**EK MAKORI, J**

**JULY 24, 2025**

**BETWEEN**

**PENINAH MUGURE ..... PLAINTIFF**

**AND**

**NYEVU KAHINDI KEA ..... 1<sup>ST</sup> DEFENDANT**

**KEA KAHINDI ..... 2<sup>ND</sup> DEFENDANT**

**HARRISON TUVA NGUSHE ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The pending application dated April 7, 2025, requests a stay of proceedings until the hearing of the revocation of the grant in Succession Cause No. HCFP and A/64 2011 concerning the estate of Kahindi Konde Tuva (Deceased).
2. This will serve as the foundation for this court's decision, along with the associated costs of litigating it.
3. The court has meticulously reviewed the affidavits supporting the application and the responses opposing it. Written submissions from the learned counsels for the parties, which provided insightful and relevant laws and judicial precedents related to the issues at hand, have been carefully considered. The court appreciates the thoroughness of the legal arguments presented.
4. The cornerstone and foundational basis for this application is Section 6 of the [Civil Procedure Act](#), which pertains to the doctrine of sub judice, as the Applicant seeks to have the grant issued in Succession Cause No. HCFP and A/64 of 2011 revoked.
5. The Applicant argues that the current application for a stay of proceedings pending the hearing, determination, and final disposal of Succession Cause No. HCFP and A/64 of 2011, concerning the estate of Kahindi Konde Tuva (Deceased), is both necessary and compelling for several reasons. First, the issue in this suit directly and significantly overlaps with the matters in the aforementioned



succession cause pending before the High Court at Malindi, pursuant to the Chamber Summons filed on December 9, 2024, by the Plaintiff against the Defendants. This Chamber Summons requests the revocation of the Grant of Letters of Administration issued to the 3rd Defendant/Respondent on October 24, 2011, and confirmed on October 22, 2012.

6. The Defendants/Respondents are accused of misrepresenting facts to the Court by claiming that the Plaintiff/Applicant was deceased, when she is still alive, thus depriving her of her rights as a beneficiary of the estate. The estate concerns Land Title No. Gede/Mijomboni/100, which the Plaintiff/Applicant purchased directly from the deceased, Kahindi Konde Tuva, whose estate is subject to the succession proceedings. The Plaintiff/Applicant only learned of the Grant of Letters of Administration after being served with documents by the Defendants/Respondents, who are also the heirs and beneficiaries of the estate involved in the current proceedings.
7. The Applicant avers that unless this application is granted as requested, there is a genuine risk of conflicting decisions emerging from the two parallel proceedings. The Applicant submits that the issues in this case and the succession cause are closely interconnected, and resolving the latter—already at an advanced stage—may effectively resolve the issues in this matter.
8. The Applicant's citation of several authorities, which state that once a matter is pending revocation, a subsequent suit is stayed pending the outcome of the revocation proceedings to avoid conflicted decisions over the same subject matter, has been duly noted. The court reckons the legal precedents cited, including *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR, *Benson Mathu Wakaba and 2 Others v Doris Kigetu Maingi* [2022] eKLR, *Roseline Chepkerich v Priscila Jemutai Murei and 2 others* [2018].
9. It is the Applicant's submission that proceeding with this matter before the conclusion of the succession cause would preempt or undermine the jurisdiction of the probate court and potentially result in conflicting decisions.
10. The Respondent argues that the succession cause concluded with the confirmation of the grant on October 22, 2012. The Plaintiff's revocation application, filed 12 years later on December 9, 2024, is not a valid basis for invoking Section 6 of the *Civil Procedure Act*. See *Kenya National Commission on Human Rights v Attorney General and Others* [2020] eKLR.
11. The Respondent claims that the Plaintiff is listed as an alleged purchaser and therefore lacks any status comparable to the beneficiaries that would justify revoking the grant. See *In re Estate of Andrew Adhiambo Obonyo (Deceased)* [2022] KEHC 13343 (KLR)
12. Respondent argues that the land dispute concerns ownership, possession, and title under Article 162(2)(b) of the *Constitution* and Section 13 of the *Environment and Land Court Act*. The succession case involves estate distribution. The Plaintiff's 13-year silence, despite registering a caveat, indicates undue delay and abuse of process. See *In Re Estate of Jonathan Khakina (Deceased)* [2024] KEHC 11420.
13. The Respondent further states that the Plaintiff's application is supported by her advocate's affidavit, which contradicts established legal principles indicating that an advocate should not depone to disputed facts—see the decisions in *Karanja v Kenya Commercial Bank* [2002] 2 KLR and *Kitur and Another v Standard Chartered Bank and 2 Others* [2002] eKLR.
14. I agree with the counsel representing the respondent that, when looking at the current stay of proceedings application as a whole, the Plaintiff's application under Section 6 of the *Civil Procedure Act* lacks merit. It does not meet all necessary conditions: there is no ongoing pending suit, the parties



are different, the subject matters are different, and the application was filed in bad faith after an unreasonable delay of over 12 years.

15. Additionally, the supporting affidavit is deemed incompetent, and the Plaintiff has failed to demonstrate any prejudice that could arise from a concurrent or prior resolution of the land dispute.
16. Accordingly, the Plaintiff's application dated April 7, 2025, is hereby dismissed with costs awarded to the Defendants.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Omwancha for the Applicant

Ms. Mwangi for the Respondent

Happy: Court Assistant

