



REPUBLIC OF KENYA



Chege & 2 others v Karanja (Sued as the Administrator of the Estate of Geoffrey Karanja - Deceased) & another (Environment & Land Case 146 of 2019) [2023] KEELC 16676 (KLR) (23 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16676 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ENVIRONMENT & LAND CASE 146 OF 2019

JG KEMEI, J

MARCH 23, 2023

**IN THE MATTER OF ORDER 37 RULE 1 OF THE CIVIL PROCEDURE RULES
AND SECTION 62 OF THE TRUSTEE ACT CAP 167 LAWAS OF KENYA**

AND

**IN THE MATTER OF THE LAND REGISTRATION ACT NO. 8 OF 2012 AND IN
THE MATTER OF LAND REFERENCE NO. MUGUGA/KANYARIRI/195**

BETWEEN

PETER CHEGE 1ST APPLICANT

AYUB KARANJA 2ND APPLICANT

NELSON WAWERU 3RD APPLICANT

AND

**MARY WAMBUI KARANJA (SUED AS THE ADMINISTRATOR OF THE
ESTATE OF GEOFFREY KARANJA - DECEASED) 1ST RESPONDENT**

THE LAND REGISTRAR, KIAMBU 2ND RESPONDENT

RULING

1. The application dated March 14, 2022 is filed by the Applicants / Respondents under Section 1A, 1B, 3A and 6 of the *Civil Procedure Act*. The Application seeks orders of stay of proceedings in this suit pending the hearing and determination of Succession Cause No 151 of 2017 at Kiambu High Court in the Estate of Fraciah Wanjiru Kariuki.
2. The application is based on the grounds annexed thereto which is Muguga/Kanyariri/195 the subject matter in the Succession Cause pending in Kiambu. Secondly, after the death of the Deceased in 2005



the Applicants in this Motion fraudulently transferred her share and other properties in 2017 after gazetting the title to the suit land as lost.

3. The application is supported by the Affidavit of Mary Wambui Karanja who deponed that the suit land is registered jointly in the name of Fraciah and her husband one Geoffrey Karanja both who died in the years 2005 and 2016 respectively. The suit land is part of the assets of Fraciah, Deceased in High Court Succession Cause No 151 of 2017. She also avers that she has raised a claim with respect to the whole parcel of land with respect to Succession Cause No 151 of 2016 on behalf of her late husband Geoffrey Karanja who had acquired shares from the 2nd Respondent who in turn had acquired the shares of Fraciah.
4. In addition she stated that the Applicants sold one of the assets in 2017 to a third party namely; Grace Njeri during the pendency of the Succession Cause aforesaid. This sale is alleged to be fraudulent given that the Gazette Notice was backdated to 2005.
5. Maintaining that the Applicants are aware of the Succession Cause its her case that the said Applicants failed to disclose the same to this Court.
6. The application is opposed by the 1st Applicant Peter Chege vide his Replying Affidavit sworn on April 7, 2022. He deponed that the Applicants in the originating Affidavit and Geoffrey Karanja (Deceased) are all sons of Evans Kariuki (Deceased).
7. The suit land initially belonged to their Deceased father and upon his death the land was bequeathed to his children and widow namely; Fraciah Wanjiru Kariuki. The Certificate of Title upon transmission was issued in the names of all the children of the Deceased and his widow hence the implied trust created therein. Since 1980 all the beneficiaries have continued to live and work on the land whose ownership is based on trust. Each of the sons of the Deceased is entitled to 0.1Ha whereas the widow was entitled to 0.16Ha.
8. Consequently Fraciah being the widow of the Deceased owned a portion 0.6Ha. of the suit land and never the whole hence the reason why the beneficiaries in the Originating Summons are seeking to dissolve the trust and each party to acquire their separate titles / shares.
9. The deponent further states that the dispute in the Succession Cause is in respect to 0.16Ha. of the suit land and not the entire portion. Secondly the issues in dispute in the Succession Cause are distinct and separate from the dispute in this suit. He urged the Court to dismiss the application for being unmeritorious.
10. On May 17, 2020 parties elected to canvass the application by way of written submissions.

The written submissions of the parties

11. The submissions of the 1st Respondent were filed by the firm of Muhuhu & Co. Advocates on October 31, 2022 while those of the 1st – 3rd Respondents / Applicants by the firm of Wahome & Co Advocates are dated October 4, 2022.
12. The Applicants submitted that Geoffrey Karanja (Deceased) was part owner of the undivided share of Muguga/Kanyariri/195 and Muguga/Kanyariri/T 440 and Nachu/Dasha/1237. Upon his death in 2005 Succession Cause No 34 of 2007 filed in Limuru was transferred and renamed Kiambu High Court No 151 of 2017. Pending the completion of Succession Cause the Respondents sold parcels 440 to Grace Njeri in 2017 leading to the filing of a suit in PMCC 274 of 2018 and PMCC 167 of 2017 Kikuyu as well as a protest in Succession Cause No 151 of 2017 by the purchaser which protest was dismissed.



13. The Applicant now alleges that one of the properties is trust property and should be heard separately. The Applicant submitted that the Respondents are avoiding justice by filing multiple suits, this case being the sixth involving the property of Fraciah who died in 2005. During the pendency of numerous cases in Court the Applicant sold two more parcels ie 440 and 1237. It is submitted that the actions of the Respondents are unfair, unjust and are exposing other beneficiaries to endless litigation at great expense in costs.
14. It was submitted that this matter concerns the property relating to Fraciah in part or in whole and the beneficiaries thereunder and therefore this suit is subjudice.
15. The Applicants submit that the suit land is not trust property and the Respondents are using the terminology of trust as a vehicle to allow them to dispose the property. It is also submitted that there will not be any prejudice that the Respondents should this suit be stayed pending the hearing and determination of the succession cause in Kiambu.
16. The Respondents on the other hand submitted that the suit is not subjudice on the grounds that the parties in this current suit and in the Succession Cause No 151 of 2017 in the Estate of Fraciah Wanjiru Kariuki are not similar. In particular the 2nd and 3rd Respondents as well as the 2nd Applicants are not parties to the Succession Cause and therefore the suit does not fall within the provisions of Section 6 of the *Civil Procedure Act*.
17. Secondly, the Respondents submit that the issues in this suit and those in the Succession Cause are materially different. The succession cause substantially concerns itself with Succession and Administration disputes while the present suit relates to a trust over the suit land and the subdivisions thereof. They opine that the determination of the Succession Cause will not determine nor conclude the issues of trust to finality in the instant suit.
18. The law governing the doctrines of subjudice is found in Section 6 of the *Civil Procedure Act* states as follows:-

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title.”
19. The current suit is filed by the Applicants namely Peter Chege, Ayub Karanja and Nelson Waweru against Mary Wambui Karanja (Suing as the Administrator of the Estate of Geoffrey Karanja (Deceased) and the Land Registrar Kiambu.
20. The suit land is Muguga/Kanyariri/195. In the main the Applicants in the Originating Summons seek the following orders:-
 - a. That the trust created by Evanson Kariuki Karanja (Deceased) for his children Geoffrey Karanja (Deceased), Peter Chege, Ayub Karanja, Nelson Waweru and widow Flesiah Wanjiru (Deceased) over Land Reference No Muguga/kanyariri/195 be determined.
 - b. That Land Reference No Muguga/kanyariri/195 be sub-divided according to the trust and Certificates of Title for the respective parces be issued to the respective beneficiaries and the Administrators of the Deceased beneficiaries.
 - c. That such other or further order as the Court deems fit in the interest of justice.
 - d. That the costs of this suit to abide the cause.



21. The 1st Respondent in her Replying Affidavit sworn on October 11, 2019 denied the Applicants claims and stated that she is the widow of Geoffrey Karanja who died in 2016. She went ahead and gave a long history of disputes surrounding the properties of the late Geoffrey Karanja and by extension Fraciah Wanjiru Kariuki.
22. It is not in dispute that the subject matter in this suit is similar to that in the Succession Cause either in part or whole.
23. It is also evident that the parties in the contests in both the Succession Cause and the instant suit are either related or claiming under the same title.
24. In the upshot it is my view that the application is merited, Consequently, the proceedings in ELC No 146 of 2019 be and are hereby stayed pending the hearing and determination of the Succession Cause No 151 of 2017 in the Estate of Fraciah Wanjiru Kariuki
25. In arriving at this decision the Court has interalia taken into consideration that Judicial time is a scarce resource and it is in the interest of justice and good order that the parties prosecute their claims in the Succession Court before the claims in this suit.
26. Final orders for disposal:-
 - a. The application dated 14/03/2022 is allowed.
 - b. The proceedings in ELC No 146 of 2019 are stayed pending the hearing and determination of the Succession Cause No 151 of 2019, Kiambu.
 - c. Each party to bear their own costs.
27. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 23RD DAY OF MARCH, 2023.

J G KEMEI

JUDGE

Delivered online in the presence of:

Ms. Gachogu HB Ambani for 1st, 2nd and 3rd Applicants

Mrs. Muhuhu for 1st Respondent

2nd Respondent – Absent

Court Assistants – Kevin/Lilian

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