



In re Estate of Teriki Tapkigen Rokocho (Deceased) (Succession Cause 304 of 2007) [2024] KEHC 15036 (KLR) (29 November 2024) (Ruling)

Neutral citation: [2024] KEHC 15036 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 304 OF 2007
JRA WANANDA, J
NOVEMBER 29, 2024**

BETWEEN

KOBILU CHEPKIYENG 1ST PETITIONER

ESTHER KIPSAT 2ND PETITIONER

AND

ESTHER KABON ROKOCHO 1ST OBJECTOR

WILSON KIPRONO ROKOCHO 2ND OBJECTOR

RULING

1. The Application before the Court for determination is the Objectors’ Notice of Motion dated 24/10/2023 and filed through Messrs Z.K. Yego Law Offices Advocates. It seeks orders as follows:
 - i. [.....] spent
 - ii. That there be a stay of hearing and/or further proceedings pending the hearing and determination of the Objectors’ Application for amendment of Grant in Nairobi High Court P & A Cause Number 313 of 1978; In the matter of the estate of the late Rokocho Bartore.
 - iii. Such other orders be made as are just and expedient in the interest of justice.
 - iv. Costs of this Application be in the Cause.
2. The grounds of the Application are as set out on the face thereof and it is supported by the Affidavit sworn by the 2nd Objector, Esther Kabon Rokocho.
3. In the Affidavit, the 2nd Objector deponed that she is a widow of the late Rokocho Bartore and has lodged Summons for Amendment of Grant in the said Nairobi High Court Probate & Administration Cause No. 313 of 1978 as there was an error in the distribution of the estate of the deceased, that the formula for distribution presented by the Public Trustee was firstly strange as it deviated from



the mode adopted by the family of the deceased, and that secondly, it was erroneous because the purported share to beneficiaries exceeds the possible 100%. She deponed further that she is an elderly woman and she did not receive any formal education thus she was not able to read the contents of the Certificate of Confirmation of Grant dated 6/08/1993 and assumed that the Public Trustee had followed the minutes of family meetings. She contended that the Certificate of Title for land parcel Soy/Soy Block 4/Kongasis/6 indicates the proprietor as the late Teriki Rokocho as trustee for Wilson Rokocho, that the said land parcel being the subject of these proceedings, and being part of the assets erroneously distributed in the said Nairobi Succession Cause, it is in the interest of justice that a stay of proceedings do issue until the Summons for Amendment filed in the Nairobi Succession Cause is heard and determined.

Respondent's Replying Affidavit

4. The Application is opposed vide the lengthy Replying Affidavit running up to 32 paragraphs sworn jointly by the 1st and 2nd Petitioners and filed on 7/12/2023 through Messrs Kogo Kimutai & Co. Advocates. They deponed that the late Rokocho Bartore is their father and their mother is Teriki Rokocho, whose estate these proceedings relate to, that their late mother was the 1st wife and the 1st Objector, Esther Kabon Rokocho, was the 2nd wife and who was married in the 1960s and gave birth to 6 children, including the 2nd Objector. They contended further that their father owned and resided in the parcel of land known as Mosop/Lelbonet/109 and that in 1969, their father and mother, together, purchased the said land parcel Soy/Soy/Block 4 (Kongasis)/6 to which their father relocated their mother upon marrying the 1st Objector who then occupied the said land parcel Mosop/Lelbonet/109, and that each of the two parcels was subsequently registered in the respective name of the widow occupying it.
5. They deponed further that their mother was issued with a Title Deed in 1996 in her personal capacity which she held until her death in 2003 without any issue being raised by anyone, that they filed this Succession Cause seeking to succeed their mother's estate as heirs but the process has been unnecessarily delayed by Applications filed by the Objectors who wish to disinherit them solely on the basis that they are women and are married and that the 2nd Objector testified on 27/06/2016 when he was stood down because of time constraints but has never proceeded further to date. They also deponed that they were never notified of the Nairobi Succession Cause, that they do not understand how the Public Trustee came into the matter without the involvement of the entire family, that from the Objector's subsequent conduct, it can be deduced that the Nairobi Succession Cause was a scheme by the 2nd house to dispossess them of their inheritance and that they highly doubt the alleged thumb print of their mother in some of the documents presented in the Nairobi Succession Cause.
6. According to the Petitioners, they have not been formally joined as parties to that Cause and hence the same is not binding on them, that the distribution formula arranged therein is equally strange to them as they were not involved and that the meeting of 26/03/1988 referred to by the Objectors was a political meeting headed by an Assistant Chief and had nothing to do with the Petitioner's family. They pointed out that the purported attendees having appended their signatures on different dates, there are serious doubts as to whether the meeting ever took place, that although the names of their mother and the co-wife are listed as attendees, the two did not signify their presence by way of thumbprints or otherwise hence their attendance cannot be vouched for and that even their step-brothers and sisters were not in attendance. They averred further that the question of "the boy, Wilson Kiprono" (2nd Objector) having been given out to their mother is conspicuously prominent in the minutes thus betraying the intentions of the meeting, that the minutes, purported as their father's last wishes, were actually decisions of the elders alleged to have been in the meeting. They deponed further that going



by the Objector's own assertions, by the year 1988, the date of the alleged meeting, the 2nd Objector was 22 years old hence an adult and his reference as a "boy" cannot therefore be justified, that by 1993, he would have been 27 years old and thus there was no basis for their mother to hold her land in trust for him.

7. They poked further holes in the alleged minutes of the meeting and deponed that the 2nd Objector is the engine behind all these proceedings on behalf of the 2nd house while hiding behind her mother (1st Objector) who is illiterate. They contended further that their mother became blind around 1986 and for her to have attended the meeting, she would have had to be accompanied by the Petitioners or their representatives. They then denied that the 2nd Objector was given out to their mother by their father in his lifetime, and claimed that he never lived with their mother and that he only leased part of the land from their mother for maize farming before imposing himself upon her death. They then pointed out that the question of their father having expressed his wish that their mother holds the land parcel Soy/ Soy Block 4 (Kingasis)/6 in trust for the 2nd Objector is a figment of the Objectors' imagination noting that the Title Deed for the land parcel indicates that the Register thereof was opened in 1995, 33 years after their father's death. They pointed out further inconsistencies on the allegation of the land parcel being held in trust and deponed further that in any event, as soon as the issue of the Title Deed being held in trust came to their attention, they sought and obtained conservatory orders on September 2015 by consent of all parties.
8. They deponed further that the schedule to the Certificate of Confirmation of Grant only shows percentages of the property to be inherited, that it is surprising who in particular originated these percentages as the Objectors are now distancing themselves from the same, that the original Court file in the Nairobi Cause cannot be traced and that the Application for reconstruction was never dealt with and hence the purported confirmation cannot be verified. They averred further that the Public Trustee left out their names from the and the same Grant cannot therefore be relied upon, that the 2nd Objector had filed a suit, namely, Eldoret High Court Civil Case No. 109 of 2009 (O.S.) in which he sought to be registered as proprietor of the land parcel herein by way of adverse possession, which case has since been dismissed for want of prosecution, that the instant Application is made with a view to avoiding the legal process taking its full course, and that the Objectors wish to use the Nairobi Cause which is ambiguous, as well as old and outdated customs to deny the Petitioners their entitlement.
9. They deponed further that the Objectors filed similar Applications seeking to striking out and/or stay the proceedings herein which Applications were both dismissed by Hon. Omondi J (as she then was), that upon such dismissal, the Objectors filed an Appeal in which they again sought stay of proceedings which Application was also dismissed, that the Petitioners then filed Summons for issuance of Grant of Letters of Administration which was however opposed by the Objectors but which was allowed by Hon. Ogola J, who in allowing the same, directed the Objectors to file their claim at the Environment & Land Court and that as such, this Application is Res Judicata. The Petitioner averred further that although the Petitioners were not involved in the Nairobi Succession Cause, the end result was as per the wishes of their father and it would not serve the cause of justice to interfere with the same, that the instant Application has also been brought after a long unexplained delay since it is 30 years since the date of the confirmation of the Grant that was confirmed, and that the Petitioners are aged 88 and 81 years hence any further delay is highly detrimental to them.

Hearing of the Application

10. The Application was canvassed by way of written Submissions. The Objectors filed their Submissions on 18/10/2023 while the Petitioners filed theirs on 7/12/2023.



Objectors' Submissions

11. The Objectors' Counsel recounted the matters set out in the Supporting Affidavit and submitted that the land parcel Soy/Soy Block 4/Kongasis/6, the subject of this Succession Cause being part of the assets erroneously distributed in the Nairobi Succession Cause, and in which the Summons for Rectification of Grant is pending determination, it is only prudent that matters of the estate of the late Rokoncho Bartore be concluded before that of his 1st wife, Teriki Rokocho, is then distributed. He submitted that the assets that form part of the estate were inherited by the estate herein by virtue of the Nairobi Succession Cause which is now under challenge, that if the Court in the Nairobi Succession Cause finds that the Certificate of Confirmation of grant issued therein in 1993 which divested the sole asset in this instant Cause was erroneous and ought to be rectified, that determination will substantially change the assets of the estate of the estate herein, and that therefore if this instant Cause is allowed to go on alongside the Nairobi Cause, orders issued herein may be issued in vain.
12. He argued that stay of proceedings should be ordered so that when this Court is distributing the assets, it is sure that they are free properties of the estate, that the issue of who is a beneficiary of the estate shall come out clearly in the Nairobi Cause thus helping this Court to arrive at a meritorious decision. According to him, the parties have been living in their respective portions as from 1972 when the late Rokocho Bartore died and that as such, no prejudice will be occasioned on any party if stay of proceedings is granted. He cited the case of *Re Estate of the late Manguu Kyululi (Deceased)* [2022] eKLR.

Petitioners' Submissions

13. Counsel for the Petitioners also recounted the background of this matter as already set out and reiterated that the instant Application is Res Judicata since the matters herein have been conclusively dealt with in the decisions of Hon. Omondi (as she then was) and Hon. Ogola J, and also by the Court of Appeal, that the issues raised in the said Applications are the same as those in this instant Application. According to Counsel, the instant Application is another desperate attempt at delaying the conclusion of this matter, that the deceased passed on in the year 2003, 20 years ago and this Cause was instituted 16 years ago in the year 2007, and that the Objectors have used all available avenues to stall its determination. Counsel contended that the Nairobi Cause relates to a different estate, that it was not conclusive as it omitted other beneficiaries of the estate, and that nowhere in the Certificate of Confirmation of Grant issued therein is there any indication of a trust in favour of anyone. Counsel also reiterated that the original of the Nairobi Cause cannot be traced and that as such that Court will not be in a position to conclusively rule on the issues raised herein. The rest of the matters submitted upon are repetitions of the depositions already made in in the Replying Affidavit and for this reason, I will not recount the same. Counsel then prayed for dismissal of the Application with costs.

Determination

14. The issue that arises for determination herein is “whether the proceedings herein should be stayed pending the hearing and determination of the Objectors' Application for Rectification of the Grant issued in Nairobi High Court P & A Cause Number 313 of 1978”.
15. When determining an Application seeking stay of proceedings, the Court is required to exercise its discretion but after due consideration of the merits of the case and the likely effect on the ends of justice. Needless to state, exercise of discretion must be grounded on judicious principles. On this issue, Hon.



Justice Ringera J in *Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000* held as follows:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is so, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

16. The requirement for the Court to judiciously exercise its discretion when considering an Application to stay proceedings was reiterated by Hon. F. Gikonyo J in the case of *Christopher Ndolo Mutuku & Another vs CFC Stanbic Bank Limited (2015) eKLR* in which he stated as follows:

“..... what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice...”

17. Similarly, *Halsbury’s Law of England, 4th Edition, Vol. 37 page 330 and 332* gives guidelines on the threshold to be met in Applications for stay of proceedings as follows:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

18. Further, in the case of *Kenya Wildlife Services v Jane Mutembi (2019) eKLR*, again, Hon. Justice F. Gikonyo held that:

“stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall right to fair trial. Therefore, the test for stay of proceedings is high and stringent.”

19. In line with the foregoing guidelines, it is generally agreed that in an Application for grant of stay of proceedings, the matters that the Court must satisfy itself on are the following:



- a. That the applicant has established a prima facie arguable case;
 - b. That the application was filed expeditiously; and
 - c. That the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.
20. On whether there is an “arguable case”, it is clear that since this matter was filed in the year 2007, the Objectors have consistently attempted to have it terminated or suspended for the reason of the existence of the said Nairobi High Court Succession Cause No. 313 of 1978. First, there was an Application by the Objectors seeking to strike out this Cause on the ground that there is a confirmed Grant in the said Nairobi High Court Succession Cause No. 313 of 1978. This Application was dismissed by Hon. Omondi J (as she then was) on 10/07/2019 upon which the Objectors sought to Appeal. In the intervening period, the Objectors filed an Application before this High Court seeking stay of proceedings pending Appeal. This Application, too, was dismissed by Hon. Omondi J (as she then was) on 10/07/2019. Undeterred, the Objectors filed another Application before the Court of Appeal, namely, Nairobi Court of Appeal Civil Application No. E059 of 2020, seeking stay of these proceedings. This Application equally collapsed when it was held that the Application was a non-starter in the absence of proof that the Objectors had obtained leave to Appeal. Not litigants to give up easily, it appears that the Objectors returned to this High Court and regularized matters by obtaining leave to Appeal. They thereafter returned to the Court of Appeal with a fresh Application seeking stay of these proceedings, namely Eldoret Court of Appeal Civil Application No. E112 of 2021. This Application was heard on merit and once more, was dismissed on 11/02/2022. In the Judgment, the Court of Appeal held as follows:

“An application such as is before us seeks the exercise of the Court’s discretion. The principles upon which we exercise such discretion are well-settled. First, the applicant must persuade the Court that he has an arguable appeal, meaning one that raises a bona fide point worthy of judicial consideration, though it need not be one that must necessarily succeed. The applicant must also show that if the stay sought is not granted, the appeal will be rendered nugatory or trifling and of no effect, serving no purpose, by reason of the apprehended harm or loss having been suffered in the interim. It behoves an applicant to satisfy the Court on both limbs. See *Reliance Bank Limited -vs- Norlake Investments Limited* [2002] 1 EA 227.

Regarding arguability of the appeal, we have considered the grounds of appeal as outlined in the memorandum of appeal, and it seems the main issue of contention is the learned Judge’s failure to hold that the suit land in the succession proceedings was held by the deceased in trust for the 2nd applicant, was not part of the deceased’s estate. We think this being a core issue, it will fall for determination by the learned Judge upon the hearing of the matter substantively on its merits. It is obvious that the learned judge properly exercised her discretion in allowing the parties to ventilate their case as opposed to striking it out as she had been moved to. The intended appeal does not show how the learned Judge wrongly exercised her discretion.

As the applicants have failed to persuade us on the arguability of the intended appeal, we need not trouble ourselves on whether it would be rendered nugatory. Moreover, we note that the proceedings that the applicants sought to stay were scheduled for 4th October, 2021, meaning that, this application has been overtaken by events.”

21. After the dust settled and this matter cleared to proceed, the Petitioners, on one part, and the Objectors, on the other, each applied to be appointed the Administrators of the estate. In simultaneously



determining the two Applications, Hon. Ogola J, by his Ruling of 18/07/2022, ruled in favour of the Petitioners and appointed them as the Administrators. Regarding the Objectors' Application, the Judge held as follows:

17. The 2nd objector's claim is that he lived with the deceased and that the deceased held parcel of land No Soy/Soy Block 4 (Kongasi) 6 in his trust. By virtue of the aforementioned the 2nd objector seeks to be appointed as an administrator of the estate of the deceased. It is worth noting that issues touching on land ownership can only be dealt with by the Environment and Land Court as provided by article 162 (2)(b) of *the Constitution*, and section 13(1) and (2) of the Environmental and Land Court Act. The 2nd objector's claim over the subject land can therefore only be dealt with by the Environment and Land Court and not this court.
22. Having considered the above chronology and the decisions above, both by the High Court and by the Court of Appeal, I am persuaded that the issue of stay of these proceedings is a matter that has to a large extent, already been determined previously. Although the grounds upon which the Objectors have now returned to Court are different, what is sought to be achieved is still the same. Both this Court and the Court of Appeal having previously declined to grant orders of stay of proceedings, it will, in my view, amount to re-opening matters already determined and which practice this Court cannot permit. It is also not lost on me that Hon. Ogola J, in his Ruling of 18/07/2022 stated or commented that the Objectors' claims should be filed at the Environment & Land Court.
23. In light of the above, I am not satisfied that the Objectors have established an arguable case to necessitate an order of stay of the proceedings herein.
24. On whether the Application has been brought expeditiously, I observe that the Grant that the Objectors wish to have rectified in the said Nairobi High Court Succession Cause No. 313 of 1978 and which intention forms the basis of this Application for stay of proceedings, was confirmed therein on 6/08/1993, 31 years ago. While I should refrain from delving too much into that Application as it is still pending before the Nairobi High Court, my observation is that the Objectors have not sufficiently explained this delay. This Cause, too, having been filed in the year 2007, it is now 17 years later. My perusal of the file shows that no meaningful progress has been made in the matter basically because of the successive Applications filed continuously by the Objectors.
25. The Petitioners have also alleged that the original file in the said Nairobi Succession Cause has been lost and that the same has never been reconstructed. The Petitioners have also stated that the 2nd Objector had filed a suit, namely, Eldoret High Court Civil Case No. 109 of 2009 (O.S.) in which he sought to be registered as proprietor of the land parcel herein by way of adverse possession, and which case has since been dismissed for want of prosecution. Both these allegations have not been denied by the Objectors.
26. Considering the above circumstances, allowing the prayer for stay of proceedings will only perpetuate the already long delay endured in the determination of this matter and will clearly not serve the interest of justice.
27. In view of the findings above, the next question of whether the Applicants have "established sufficient cause to the satisfaction of the Court that it is in the interest of justice to grant the orders sought" should not arise. It is evident that no such sufficient cause has been demonstrated. In any event, even if the Court in the said Nairobi High Court Succession Cause No. 313 of 1978 were to allow the Objector's Summons for Rectification of Grant, it does not mean that this Court cannot be moved to implement the rectified Grant. Even after finalizing this matter, this Court still reserves the power, if and when appropriately moved, to review the Grant and align the distribution of the estate accordingly. Allowing this Cause to proceed will not therefore in any way irredeemably prejudice the Objectors.



Final Orders

28. In the end, I order as follows:

- i. The Objectors' Notice of Motion dated 24/03/2023 is hereby dismissed with costs to the Petitioners.
- ii. The parties shall now take directions on the expeditious hearing and disposal of this matter.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 29TH DAY OF NOVEMBER 2024

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of

Ms. Chebet h/b for Yego for Applicants

Ms. Kogo for Petitioners

Court Assistant: Brian Kimathi

