



**In re Estate of Thadeus Rawiyo Odongo (Deceased) (Succession Cause 430 of 2012) [2023] KEHC 1417 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1417 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
SUCCESSION CAUSE 430 OF 2012  
JN KAMAU, J  
FEBRUARY 28, 2023**

**IN THE MATTER OF THE ESTATE OF THADEUS RAWIYO ODONGO (DECEASED)  
IN THE MATTER OF AN APPLICATION FOR REVOCATION OF GRANT**

**BETWEEN**

**ANDREA ONYANGO RAWIYO ..... 1<sup>ST</sup> APPLICANT**

**MARCELUS ODONGO RAWIYO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**FABIAN OWINO OWINO ..... 1<sup>ST</sup> RESPONDENT**

**CHRISTOPHER OMONDI ONYANGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. In their Notice of Motion dated September 24, 2021 and filed on September 27, 2021, the Applicants herein sought an order for maintenance of *status quo* to issue against the Respondents and/or representatives to restrain them by themselves, their agents, servants and representatives from disposing of, transferring, alienating, wasting, selling or in any manner interfering with Land Parcel Number South Ugenya/Ambira/15 (hereinafter referred to as “the subject property”) and other parcels emanating therefrom being the asset of the Estate of the deceased except as may be ordered by the court pending the hearing and determination of the application for revocation of grant filed herein.
2. The said application was supported by an affidavit that was sworn by the 2<sup>nd</sup> Applicant herein on September 24, 2021 on his own behalf and on behalf of the 1<sup>st</sup> Applicant herein. He also swore a Further Affidavit on October 29, 2021. The same was filed on November 1, 2021.
3. The Applicants averred that they had filed an application for revocation of grant herein and the matter was referred to arbitration by this court but that the process was not fruitful as they failed to reach a



- consensus and the case was returned to court. They added that they had always followed the directions of the court and its procedures in preparation of the hearing of the said application.
4. They pointed out that on April 30, 2021, the 2<sup>nd</sup> Applicant received a letter from the Sub-County Land Surveyor informing him that there was a planned boundary identification exercise on the subject property on 14<sup>th</sup> May 2021 whereupon he instructed his Advocate to inform the said Sub-County Surveyor that the subject property and was a subject matter of a case before this court and thus request him to temporarily stop any exercise related to the deceased's estate.
  5. They pointed out that on May 6, 2021, they further instructed their Advocate to write a letter to the County Land Registrar requesting him to place a Restriction/encumbrance on the subject land but that on August 23, 2021, the 2<sup>nd</sup> Applicant learnt that the Sub-County Land Surveyor had planned another date for the process of boundary identification as a result of which he instructed their advocate to do a second letter to him informing him that the subject property was subject of the case herein.
  6. It was their case that despite fervent efforts to restrain the Respondents, their agents and/or assigns from interfering with the deceased's estate pending hearing of their application, the Respondents had persisted in their disregard for the rule of law by interfering with the deceased's estate. They asserted that they stood to suffer irreparable damage if the Respondents continued to interfere with the subject property.
  7. In the Further Affidavit, the Applicants averred that the subject property was subdivided into LR No Siaya/Ambira/3853, LR No LR No Siaya/Ambira/3854, LR No Siaya/Ambira/3855 and LR No Siaya/Ambira/3856.
  8. They added that LR No Siaya/Ambira/3854 was subsequently sub-divided into twelve (12) parcels of land being LR No Siaya/Ambira/3965, LR No Siaya/Ambira/3966, LR No Siaya/Ambira/3970, LR No Siaya/Ambira/3971, LR No Siaya/Ambira/3972, LR No Siaya/Ambira/3973, LR No Siaya/Ambira/3974, LR No Siaya/Ambira/3975, LR No Siaya/Ambira/3976, LR No Siaya/Ambira/3977, LR No Siaya/Ambira/3978 and LR No Siaya/Ambira/3979.
  9. They further explained that LR No Siaya/Ambira/3965 was partitioned into LR No Siaya/Ambira/4080 and LR No Siaya/Ambira/4081 and LR No Siaya/Ambira/4080 and that LR No Siaya/Ambira/4080 was subsequently partioned and gave rise to LR No Siaya/Ambira/4130 which was again sub-divided into LR No Siaya Ugenya/Ambira/4201 resulted from the sub-division of the original subject property. It was their contention that LR No Siaya/Ambira/4130 and LR No Siaya/Ambira/4201 which they had mentioned in their application dated 24<sup>th</sup> September 2021 emanated from the subject property herein. They thus urged this court to allow their application.
  10. In opposition to the said application, the 1<sup>st</sup> Respondent swore a Replying Affidavit on November 19, 2021 on his own behalf and that of the 2<sup>nd</sup> Respondent herein. The same was filed on November 22, 2021.
  11. The Respondents averred that the Applicants herein who were their uncles were the Petitioners in this cause were complicating the cause and were determined to disinherit them after the death of their fathers.
  12. He confirmed that the matter was referred to mediation and pointed out the failure to reach a settlement was due to the hardline position that had been taken by the Applicants since they stuck to their respective positions without ceding grounds as they had done during negotiations.
  13. They denied having invited a surveyor to the subject property or that they had appointed agents to act on their behalf and/ or the Applicants' claims of a restriction having been lodged against the land. They



asserted that they had not been registered owners of the deceased's estate for a long time and hence the alleged irreparable damage the Applicants had alluded to was unsubstantiated.

14. It was their case that the present application was laden with malafides since the Applicants who were the Petitioners herein were seeking to revoke the grant. They added that the Applicants were also seeking orders against persons who were not parties to the proceedings, a fact which they contended went against the rules of natural justice. They therefore urged this court to dismiss the present application with costs to them.
15. The Applicants' Written Submissions were dated April 22, 2022 and were filed on April 25, 2022 while those of the Respondents were dated May 27, 2022 and filed on May 31, 2022. The Ruling herein is based on the said Written Submissions which parties relied upon in their entirety.

### Legal Analysis

16. Both parties invoked the definition of the word, "*status quo*" from the Black's Law Dictionary which meant, "the situation as it exists" and relied on several cases among them the case of Republic vs National Environment Tribunal, Ex-parte Palm Homes Limited & another [2013]eKLR and TSS Spinning & Weaving; Company Ltd vs Nic Bank Limited & another [2020]eKLR where the common thread was that the essence of a *status quo* order was meant to preserve the subject matter as it existed as at the day of making the order.
17. The Applicants further relied on the case of Kenya Airline Pilots Association(KALPA) vs Co-operative Bank of Kenya Limited & another [2020] eKLR where it was held that by maintaining the *status quo*, the court strived to safeguard the situation so that the substratum of the subject matter of the dispute before it was not eroded or that one of the parties before it is not so negatively prejudiced that the *status quo* could not be restored therefore rendering its proposed decision nugatory.
18. They further contended that apart from preserving the substratum of the subject matter as aforesaid, an order of *status quo* was a case management strategy which helped in preventing prejudice between the parties in a matter that was pending the hearing and determination of the main suit as was held in the case of Texaco Ltd vs Mulberry Ltd [1972] 1 WLR 814.
19. They asserted that in matters concerning land as their case herein, *status quo* orders should always be issued for purposes of preserving the subject matter as was held by the Court of Appeal in the case Mugah vs Kungu [1988] KLR 748.
20. In explaining the nature of a *status quo* order and the manner in which it ought to be framed, they placed reliance on the case of Baobab Beach Resort as quoted by F. Tuiyot (sic) Saifudeen Abdullahi & 4 Others in Mombasa High Court Miscellaneous Civil Cause No 11 of 2012 (eKLR citation not given) where it was held that an order for *status quo* was different from an order of injunction both in terms of the principles for granting of the same and the practical effect of each in that while *status quo* order was simply an ancillary order for the preservation of the situation as it existed that did not depend of proof of a prima facie case, an injunction was a substantive equitable remedy granted after establishment of a right or at an interlocutory stage, a prima facie case amongst other considerations.
21. The further cited the case of Thugi River Estate Limited & Another vs National Bank of Kenya Limited & 3 Others [2015] eKLR where the court held that it was more appropriate to describe the state of affairs existing at the time of making an order clearly as opposed to merely granting an order of *status quo* without the description of the prevailing state of affairs.



22. They submitted that it was necessary that the subject property be preserved pending the determination of the issue in contention failure to which it would be eroded or radically changed. They added that their application dated 29<sup>th</sup> September 2021 was unopposed and ought to be granted entirely.
23. On their part, the Respondents submitted that the Applicants ought to have done due diligence in order to ascertain from whom the Sub-County Land Surveyor got instructions and that any issue therefore was to be directed to the said Sub-County Land Surveyor as they had not instructed anyone to do anything on the subject property. They termed the instant application as frivolous one and without merit intended to delay the objection proceedings.
24. They further submitted that the purpose of maintaining an order of *status quo* was to protect and preserve the subject matter from being interfered with by any party. They argued that there was nothing to be preserved because the subject land had already been subdivided into four (4) parcels of land being South Ugenya/Ambira/3853, South Ugenya/Ambira/3854, South Ugenya/Ambira/3855, South Ugenya/Ambira/3856 which parcels of land had been sub-divided into over twenty (20) parcels of land that were owned by different persons holding valid titles and possessing all rights and privileges appertaining thereto, which persons were not parties to this suit. It was their argument that the orders the Applicants herein had sought were therefore unenforceable.
25. The Court of Appeal explained the meaning of “*status quo*” in the case of *Shimmers Plaza Limited vs National Bank of Kenya Limited* [2015] eKLR as being the way things stood as at the time the order was to be made and could not relate to the past or future occurrences or events.
26. Notably, the Applicants herein sought for maintenance of *status quo* of the subject property and all other parcels emanating therefrom.
27. As the order for the maintenance of *status quo* means that things must remain as they are, it was evident from the affidavit evidence that was presented before this court that the subject property had since been sub-divided into many other parcels of land. It was not therefore in existence. The court could not therefore grant an order restraining the Respondents and/or their agents and/or representatives from disposing of, transferring, alienating, wasting, selling or in any manner interfering with a non – existent property.
28. Gong further, this court could not grant an order against third parties who were not parties to the present proceedings. Any order that is issued ought to be directed at a particular party. The specificity is critical to avoid ambiguity and clarity as to whom an order is being directed with a view to imposing sanctions in the event the said order is not complied with.
29. As was held in the case of *Shimmers Plaza Limited vs National Bank of Kenya Limited* (supra) and *Thugi River Estate Limited & Another vs National Bank of Kenya Limited & 3 Others* (supra), an order of *status quo* must be in respect of the matters as they exist at the time of granting an order. It is not an amorphous or blanket order. It must contain specifics and describe the actual state of a matter as it exists at the time the order is being sought and granted.
30. Consequently, an order of *status quo* could not be granted herein as the actual existence of the parcels of land was not within the knowledge of this court.
31. Whereas the sub-divided parcels of land no longer formed the deceased’s estate as matters stood, the court still had jurisdiction to hear and determine disputes relating to how a party came to own assets of a deceased person. The court could still interrogate the regularity or otherwise of such possession. It was for that reason that this court came to the firm conclusion that the Applicants’ Summons for Revocation or Annulment of Grant dated June 26, 2019 and filed on June 27, 2019 ought to be heard.



32. Notably, on December 7, 2020, this court directed the parties to file their respective Witness Statements cross-referenced to their indexed and paginated Bundle of Documents but before the aforesaid Summons for Revocation or Annulment of Grant could be listed for hearing, the Applicants filed the present application. The court directed that the same be heard and determined first as it had sought interlocutory orders pending the hearing and determination of the said Summons for Revocation or Annulment of Grant.
33. This court could not therefore allow the said Summons for Revocation or Annulment of Grant for being unopposed as the Applicants had contended and sought as the hearing of the same was shelved pending the hearing and determination of the present application.

### **Disposition**

34. For the foregoing reasons, the upshot of this court's decision was that the Applicants' Notice of Motion application dated September 24, 2021 and filed on September 27, 2021 was not merited and the same be and is hereby dismissed. Being a family matter, there will be no orders as to costs.
35. This court noted that this matter ought to be within the jurisdiction of High Court Siaya. In the circumstances foregoing, it is hereby directed that this file be and is hereby transferred to High Court Siaya and the same be placed before the Presiding Judge of that court on March 13, 2023 for further orders and/or directions.
36. Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 28<sup>TH</sup> DAY OF FEBRUARY 2023**

**J. KAMAU**

**JUDGE**

