



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. E223 OF 2020

BISHOP JANE GATHONI KIRIMA.....1ST PLAINTIFF

MARGARET WANJIRU KIRIMA.....2ND PLAINTIFF

-VERSUS-

ANNE WANGARI KIRIMA & JAMES

NJUGUNA KIRIMA (Sued as TRUSTEES OF

THE KIRIMA TRUST).....RESPONDENT

AND

STEPHEN KAMAU KIRIMA..... 1ST INTERESTED PARTY

TERESIAH WAIRIMU KIRIMA..... 2ND INTERESTED PARTY

GRACE WARWATHIA KIRIMA 3RD INTERESTED PARTY

IRENE NJERI KIRIMA 4TH INTERESTED PARTY

ALICE NJERI KIRIMA..... 5TH INTERESTED PARTY

ESTATE OF

FREDRICK KAMAU KIRIMA.....6TH INTERESTED PARTY

ESTATE OF SAMUEL NDEI KIRIMA... 7TH INTERESTED PARTY

ESTATE OF ELIZABETH

WANJIKU KIRIMA 8TH INTERESTED PARTY

MARIA NJERI KIRIMA..... 9TH INTERESTED PARTY

WANJAU KIRIMA10TH INTERESTED PARTY

RUTH KIRIMA11TH INTERESTED PARTY

RULING

1) Anne Wangari Kirima and James Njuguna Kirima, the 1st and 2nd defendants respectively took out the motion dated 22nd November 2021 whereof they sought for this suit and all pending applications to be stayed pending the hearing and determination of Nairobi H.C. Succession Cause no. 1298 of 2011, in the matter of the Estate of Gerishon Kamau Kirima, deceased. The defendants filed the affidavit sworn by Anne Wangari Kirima in support of the motion.

- 2) Bishop Jane Gathoni Kirima and Margaret Wanjiru Kirima being the 1st and 2nd plaintiffs respectively and the Interested Parties namely: Stephen Kamau Kirima, Teresia Wairimu Kirima, Grace Warwathia Kirima, Irene Njeri Kirima, Alice Njeri Kirima, The Estate of Fredrick Kamau Kirima, The Estate of Samuel Ndei Kirima and the estate of Elizabeth Wanjiku Kirima being the 1st – 8th Interested Parties respectively opposed the defendants’ motion by filing grounds of opposition and replying affidavits.
- 3) When the motion came up for interpartes hearing, this court with the concurrence of learned counsels appearing in this matter directed the motion to be disposed of by written submissions.
- 4) I have considered the grounds stated on the motion plus the facts deponed in the rival affidavits. I have also considered the grounds of opposition and the rival written submissions together with the authorities cited by learned advocates.
- 5) It is the submission of Mr. Ahmednassir, Senior Counsel appearing for the defendants that the issues raised in the instant Originating Summons are substantially the same as those raised in Nairobi H. C. Succ. Cause no. 1298 of 201,1 hence this suit is res-subjudice. The learned senior counsel pointed out that the succession cause is still pending determination before the Family Division of the High Court.
- 6) It is further pointed out by the defendants’ advocate that in both the Succession Cause and the Originating Summons the parties are substantially the same. This court was urged to stay the Originating Summons to avoid a scenario where this court may embarrass itself by making conflicting decisions on similar issues.
- 7) Prof. Migai Akech, learned advocate appearing together with Mr. Ondieki for the 1st plaintiff opposed the motion stating that the Originating Summons is totally different from the succession cause. He pointed out that the beneficiaries in the summons are distinct from the beneficiaries in the succession cause.
- 8) This court was urged to find that the doctrine of res-subjudice does not apply to these proceedings. It is further argued that the Kirima Trust is a separate entity hence it cannot form part of the succession cause which has been pending for over 10 years.
- 9) Miss Apollot, learned advocate for the 2nd plaintiff, adopted the submissions of the 1st plaintiffs’ advocates to oppose the defendants’ motion. She stated that the issues raised in the succession cause are different from those obtaining in this case. The learned advocate pointed out that the succession cause has ignored and has not checked on the trusteeship of the current trustees of the Kirima Trust thus necessitating the filing of the instant Originating Summons.
- 10) Mr. Onduso, learned counsel for the 1st to 8th interested parties, too argued to oppose the motion by adopting the submissions made by the advocates for the plaintiffs. Mr. Onduso argued that this court should not stay this suit to enable it protect the trust properties awaiting the determination of the succession cause.
- 11) Mr. Kibanya, learned advocate for Maria Njeri Kirima, the 9th Interested party supported the defendants’ motion. The learned advocate pointed out that the trust is a subject of the succession cause hence it is an issue pending determination.
- 12) Having considered the material placed before this court plus the rival oral and written submissions, the main issue which this court has been called upon to determine is whether this suit is res-subjudice the succession cause pending before the Family Division. A cursory perusal of the instant Originating Summons shows that the plaintiffs are seeking for the following orders interalia:
- a) Declaration orders that the interests of the plaintiffs and beneficiaries under the Kirima Trust.
 - b) Replacement of the Trustees of the Kirima Trust
 - c) Declaration that the Trustees have contributed to wastage of the assets of the Kirima Trust.
 - d) Accounts of the Kirima Trust.
 - e) Determination of the offsprings of the settlor.
 - f) Dissolution of the Kirima Trust
 - g) Identification and safeguard of nine properties.
- 13) A cursory perusal of the proceedings and pleadings in the succession cause will reveal that in the summons for confirmation of grant filed in the succession cause, the issue of the assets of the Kirima Trust was put forward for determination. It is also apparent that in the succession cause the issue touching on the identification of the beneficiaries of the settlor’s estate was determined and or resolved.
- 14) It is also apparent from the succession cause that the issue as to whether the assets of the Kirima Trust comprise the assets of the settlor’s estates is one of the issues pending for determination.
- 15) It is also clearly pleaded in the succession cause, issues relating to the management of bank accounts for Kirima Trust prompting the court in the succession cause to direct the filing of bank statements of the Kirima Trust.

16) It is therefore clear that the issues raised in the instant Originating Summons are directly and substantially in issue in the succession cause. The parties involved are substantially the same.

17) In the end, I am convinced that the defendants' motion dated 22nd November 2021 is with merits. The same is allowed. Consequently, the instant Originating Summons and all pending application emanating therefrom are hereby stayed pending the hearing and determination of Nairobi, High Court Milimani Succession Cause no. 1298 of 2011, the Estate of Gerishon Kamau Kirima, Deceased.

18) A fair order on costs is that each party should bear their own costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2022.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent