



**Wodia v Kavedza (Miscellaneous Civil Application 3 of 2022)
[2022] KEHC 12150 (KLR) (25 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
MISCELLANEOUS CIVIL APPLICATION 3 OF 2022**

LK KIMARU, J

JULY 25, 2022

BETWEEN

JOHN SABIRI WODIA APPLICANT

AND

DIANA RACHEL KAVEDZA RESPONDENT

RULING

1. This is a protracted dispute which should have been resolved long time ago if the parties acted in good faith and without undue delay in the prosecution of their respective cases. As it is, the dispute has been festering in the law courts for nearly thirty years with no end in sight. The original litigants have since died leaving the successors with the burden of carrying on with the litigation torch. This court, upon reading the proceedings of the various files that touch on the land in dispute, formed the view that the only way the litigation regarding who is entitled to the suit parcel of land is to be determined, is to put the parties in a path that will lead to the resolution of the dispute once and for all.
2. The genesis of the whole saga was an agreement for sale of land which was entered between Beatrice Mwangusi Ngaira, (Beatrice) as the purchaser and Peter (also known as Petro) Sabiri, as the vendor in 1976. The agreement was for the purchase of a parcel of land known as Tongaren/Kamukuywa/424 (later registered as LR No. Bungoma/Kamokoiwa/424 (suit parcel of land) measuring 6.2 Hectares. According to the documents availed to court by the administratrix of the estate of Beatrice M Ngaira, the consent of the Land control board to the sale transaction was issued on October 27, 1976. The transfer was executed on September 30, 1976. It should be noted that at the time, the suit parcel of land was still registered in the name of the settlement fund trustees. As part of the consideration, Beatrice agreed to pay off the loan due in respect of the parcel of land to the settlement fund trustees. Receipts evidencing the payment were annexed to the affidavit sworn by the administratrix of the estate of Beatrice.



3. Upon completion of the payment of the loan, Beatrice was issued with the title deed in respect of the suit parcel of land on March 27, 1996. According to the administratrix, Beatrice took occupation of the suit parcel of land upon purchase of the same. As proof of this, she provided the court with a valuation report prepared by adomang valuers dated April 18, 2022 which sets out the various developments that have been undertaken on the suit parcel of land, including various residential houses erected by the children of Beatrice. According to the administratrix, the family of Beatrice have resided on the suit parcel of land without let or hindrance since they took occupation upon purchase of the same.
4. The pleadings filed in court however tell a different story. Peter (as Petro) Sabiri also known as Peter Siabiri Mabakhe, the original vendor died on April 23, 1982. Twelve years later, his son Andrew Kakai (Andrew) Siabiri filed succession cause No 10 of 1994 before the then principal magistrate's court at Kitale seeking to be granted letters of administration Intestate in respect of the estate of his father. Nothing was unusual with the application save that Andrew listed parcel No "Kamukuywa Scheme Plot 424 – 15 acres" as constituting part of his father's estate. From the proceedings of the court, it was clear that Andrew did not disclose to the court that the suit parcel of land had already been sold and transferred to Beatrice. On the October 7, 1997, Andrew sought, and was granted orders, *Ex parte*, deregistering Beatrice as the owner of the suit parcel of land and instead directed that Andrew be registered as the administrator of the estate of his father.
5. When Beatrice became aware of the adverse orders that had been issued against her in the succession cause, she petitioned the High Court and on July 21, 1998, R Nambuye J (as she then was) ordered the succession cause to be transferred to the High Court for hearing and final disposal, noting that the Principal Magistrate's Court did not have jurisdiction to hear the matter. Upon the transfer of the succession case to the High Court, the cause was renumbered as Kitale High Court Succession cause No 124 of 1998.
6. Meanwhile, having obtained the orders from the Principal Magistrate's Court, Andrew proceeded to the lands registry and had himself registered as the owner of the suit parcel of land. However on December 11, 2020, Chemitei J set aside the order directing that Beatrice be deregistered as the owner of the suit parcel of land and further directed that her name be restored as the owner of the same. Beatrice died in January 11, 2013. Her daughter Diana Rachel Kavedza obtained letters of administration to administer her estate. Chemitei J directed the parties to list the succession cause for hearing so that the issues in dispute court be determined by the court. As it were, the dispute is still pending determination by the court.
7. One would have thought that the twists and turn of this case would come to an end. That was not to be. Andrew died on December 25, 2004. His son John Sabiri Wodia petitioned the Bungoma Chief Magistrate's court in Succession cause No 144 of 2016 to be issued with a grant of letters of administration Intestate to administer the estate of his father. Again, like his father before him, he listed the suit parcel of land now renamed as Kimilili/Kamokoiwa/424 as an asset of the estate of the deceased. Again, the petitioner (John) did not disclose to the said court that the issue regarding who is entitled to the suit parcel of land had not been determined by the High Court since the suit was pending determination before this court.
8. Against, following the script of his father, John obtained a certificate of confirmation of grant indicating that the children of Andrew are entitled to inherit the suit parcel of land. Interestingly, instead of indicating the suit parcel of land consists of 15 ½ acres (6.2 hectares), he indicated the acreage to be 6.2 acres. The administratrix of Beatrice became aware of the proceedings and moved this court to grant the estate interim orders pending the hearing and determination of the succession dispute.



9. This court has given this background so that the basis of the interim orders that it will issue pending the hearing and determination of the succession cause is understood. For the proper order in determining the dispute which essentially touches on the ownership of the parcel of land known as LR No Bungoma/Kamokoiwa/424, all the proceedings in respect of Succession Causes No. 124 of 1998, in the Matter of the Estate of Peter Sabiri Mabakhe, Bungoma Chief Magistrate's court Succession case No 144 of 2016 (transferred to Kitale High Court) and renumbered Misc. Civil Application No E003 of 2022) are hereby consolidated and shall be heard together as one.
10. So that the substratum of the succession cause is not wasted, the order issued by the Bungoma Chief Magistrate's court on June 2, 2018 confirming the grant together with any consequential orders are hereby stayed pending the hearing and determination of the Succession dispute In Succession causes No 144 of 1998 as directed by Chemitei J.
11. John Sabiri Wodia, his agents, servants or family members are hereby restrained from entering the suit parcel of land (i.e. LR No Bungoma/Kamokoiwa/424) or interfering in any way with the same pending the hearing and determination of the succession dispute. The parties should fix the succession dispute for hearing at the registry in October 2022 so that the dispute can be heard and determined once and for all. The costs shall abide the out come of the succession dispute. It is so ordered.

DATED AT KITALE THIS 25TH DAY OF JULY 2022.

L. KIMARU

JUDGE

