



REPUBLIC OF KENYA



In re Estate of Christopher Oboka Opanga (Deceased) (Succession Cause 109 of 1995) [2022] KEHC 12725 (KLR) (26 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12725 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 109 OF 1995**

**FA OCHIENG, J
AUGUST 26, 2022**

**IN THE MATTER OF THE ESTATE OF CHRISTOPHER OBOKA OPANGA (DECEASED)
AND
IN THE MATTER OF AN APPLICATION FOR INJUNCTION ORDERS**

BETWEEN

FRANCO STEPHEN OPANGA APPLICANT

AND

DANIEL MILTON OPANGA RESPONDENT

RULING

The application before me is dated May 30, 2022. It is the application of the 2nd Administrator, Franco Stephen Opanga.

1. He sought an interlocutory injunction to restrain the Respondent, Daniel Milton Opanga from entering, alienating, disposing, managing or otherwise howsoever interfering with the operations and management of land parcel No. Kisumu/municipality/block 7/183 until the Summons for Revocation of the Grant dated October 25, 2021 is heard and determined.
2. The Applicant states that the parcel of land in issue had been owned jointly, by Paul Opanga and the Applicant.
3. Paul Opanga died on December 14, 2015, as reflected on the Certificate of Death exhibited by the Applicant.
4. Prior to the demise of Paul Opanga, he and the Applicant used to collect rent accruing from the suit property, and they shared the rents equally.



5. However, by a letter dated October 18, 2019, the Respondent's advocates, (Messrs N.E. Mogusu & Associates), warned the tenant, Crown Paints Limited, against paying rent into the account of the Applicant.
6. Upon receipt of the letter from the Respondent's advocates, the tenant informed the Applicant that it would withhold the rents until the courts issued a Confirmation of Grant.
7. It was the tenant's position that it is the Confirmation of Grant which would resolve the dispute regarding the identity of the proper beneficiary of the suit property.
8. The Applicant lodged a suit at the Environment and Land Court at Kisumu: being Franco Stephen Opanga vs Daniel Milton Opanga & Others, ELC No. E028 of 2020 (O.S.).
9. It was the Applicant's case herein that the tenant had continued to disregard his proprietorship of the suit property, by declining to pay further rents, owing to the threats which had been issued by the Respondent.
10. The Applicant told this Court that the suit property needs to be regularly maintained and/or serviced.
11. In his view, the required maintenance or service was being curtailed by the Respondent's interference with the management of the suit property.
12. The interference is in the nature of the letter dated October 18, 2019, through which the Respondent's advocates told the tenant not to pay rents to the Applicant.
13. As a consequence of the said interference, the Applicant submitted that the suit property would be wasted or damaged. He attributes the wastage to the decision by the tenant, to stop paying rent.
14. However, the Applicant conceded that pursuant to a Consent Order issued by the Environment and Land Court on August 9, 2021, the tenant remitted some payment to the parties herein.
15. Due to the failure by the tenant to remit rents, the Applicant submitted that the building would be rendered uninhabitable, forcing the tenants to vacate. In such an eventuality, the Applicant would (by his calculations), stand to suffer the loss of Kshs 4,000,000/= as revenue.
16. I note that the Applicant has indicated that the;

“..... commercial building generates an annual revenue of about Six Million Kenya Shillings (Kshs. 6,000,000/=”.
17. On a prima facie basis, that implies that whilst the suit property would be generating Kshs 6,000,000/=, the Applicant would be laying claim to only a portion of that sum, being Kshs 4,000,000/=.
18. The question that would need to be answered is why the Applicant, who now asserts that he was the sole proprietor of the suit property, would not be seeking to benefit from the whole rental sum.
19. I also note from the Consent Order which the parties recorded in the ELC No. E028 of 2020 (O.S.), that the Applicant received 75% of the rent which the tenant paid. Out of that rental sum, the Respondent herein received 10%, whilst 15% was to be held in court until the case was determined.
20. In the light of the terms of the said Consent Order, it would be premature for this Court to now give an order which would negate the terms of the consent, when the summons for revocation of the grant was still outstanding.



21. I further note that it was a term of the Consent Order that the tenants would, with effect from August 9, 2021, pay their respective rents into a Joint Account, which was to be held by the Advocates for the parties in the ELC case. The parties had even agreed that the rent be distributed on

“ the 75:10 per-cent ratio; the balance of 15% thereof being held in the said joint account until the suit herein is concluded.”
22. I hold the considered view that the consent order provided all the parties with an agreed safeguard for their respective legal interests.
23. If this Court were to now order that the rent be paid into the Applicant’s account, that would be tantamount to setting aside the consent order.
24. The Applicant cannot be allowed to set aside a consent order through an application filed in a suit which was separate from that in which the parties had signed a consent order.
25. In any event, this matter was already scheduled for a Mention before Hon. Lady Justice J. Kamau, on September 26, 2022. In the circumstances, the parties are likely to be able to find a decision on the application for revocation of the grant, in the relatively near future. Therefore, the possible losses (of which I find none), would not be substantial in any event.
26. In the result, the application dated May 30, 2022 lacks merit. It is dismissed with costs to the Respondent.

DATED, SIGNED AT DELIVERED AT KISUMU THIS 26TH DAY OF AUGUST 2022

FRED A. OCHIENG

JUDGE

