



**IN re Estate of Henry Wamiti Nganga (deceased) (Succession Cause  
1708 of 2005) [2022] KEHC 12860 (KLR) (Family) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12860 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1708 OF 2005  
MA ODERO, J  
AUGUST 5, 2022  
IN THE MATTER OF THE ESTATE OF HENRY WAMITI NGANGA (DECEASED)  
BETWEEN  
JACINTA NJERI NG'ANG'A ..... APPLICANT  
AND  
MIRIAM MUGURE WAMITI ..... RESPONDENT**

**RULING**

1. Before this court is the summons dated February 1, 2021 by which the applicant Jacinta Njeri Ng'ang'a seeks the following orders:-
  - “ 1. That the honourable court be pleased to stay the proceedings in this cause pending the hearing and full determination of Muranga High Court ELC no 11 of 2020 (OS) and Muranga SPM Civil Suit no 38 of 2002.
  2. The costs herein to be in the cause.”
2. The application was supported by the Affidavit of even date sworn by the applicant.
3. The respondent Miriam Mugure Wamiti opposed the application through her Replying Affidavit dated March 16, 2021. The application was canvassed by way of written submissions. The applicant filed the written submission dated May 5, 2022 whilst the respondent relied on her submissions dated March 1, 2022.



## Background

4. This succession cause relates to the estate of Henry Wamiti Ng'ang'a who died intestate on October 6, 2004. The deceased was survived by his widow Miriam Mugure Wamiti (the respondent herein) and five (5) children. The only asset left behind by the deceased was the parcel land known as LR no loc 2/GACHARAGE/670, (hereinafter 'the suit land).
5. Following the demise of the deceased a grant of letters of administration intestate was issued to the respondent (widow) on August 16, 2005. The grant was duly confirmed on April 26, 2006.
6. Thereafter vide a judgment delivered on June 10, 2008 by Hon Justice D A Onyancha (as he then was) cancelled the confirmed grant which had been issued to the respondent. A fresh grant was issued in which the sole asset, the suit land was to be distributed as follows:-6.0 acres to Jacinta Njeri Nganga (the applicant)1.5 acres to Jonathan King'ang'a1.5 acres to Miriam Mugure Wamiti (the respondent)
7. That was not the end of the matter. Hon Lady Justice Muigai delivered a judgment on May 31, 2016 setting aside the grant issued by Hon Justice D A Onyancha on June 10, 2008 and all consequential orders thereto. The honourable judge directed that a fresh summons for confirmation of grant be filed and that all beneficiaries were to agree on the mode of distribution of the estate.
8. The applicant herein is the widow of one Samuel Ng now deceased, (who was a brother to the deceased in this succession cause). She avers that the suit land originally belonged to the late uncle of the deceased. That the deceased was registered as proprietor of the suit land as trustee for the deceased, herself (as administratrix of the estate of her late husband) and Jonathan King'ang'a. She claims that litigation over the suit land had all along been proceeding in Muranga. She alleges that the respondent mischievously moved to file this Succession Cause in Nairobi purposely to avoid execution of a judgment delivered by the SPM Court in Muranga in Civil Case no 38 of 2002 in which the court directed that the suit land be distributed between the respondent herself and one Jonathan Kang'ang'a.
9. The applicant states that there is currently an ongoing suit before the Murang'a Environment and Land Court being suit no 11 of 2002 involving the same parties and touching on the same parcel of land. That said suit is currently part heard. She therefore prays that this succession cause be stayed pending the determination of the Environment and Land Court case.
10. In opposing the application to stay this succession cause the respondent asserts that land parcel no loc 2/Gacharage/670 is family land. The respondent confirms that the suit land was the subject of a dispute in the SPM's Court in Murang'a and concedes that vide a judgment delivered on August 22, 2008, the Magistrates court directed that the property be distributed between the families of the applicant, the respondent and one Jonathan King'ang'a.
11. The respondent states that in the year 2005 following the demise of deceased the suit land became the subject to this succession cause. The respondent then filed an application seeking to set aside the orders made by the court in Murang'a distributing the land. That vide a judgment delivered on May 31, 2015, Hon Justice Muigai allowed her application and made the following orders:-
  - “ 1. The grant of letters of Administration issued on June 10, 2008 by the honorable judge D A Onyancha is set aside and all consequential orders.
  2. A new summons for confirmation of grant application shall be filed after participation of all beneficiaries in distribution of the suit property L R no loc 2/Gacharage/670.



3. Any objector or aggrieved party may apply and file objection with alternative mode of destitution for the court to determine.
  4. Each party shall meet its own costs.”
12. The respondent further avers that an application made by the applicant to have this succession cause transferred to Muranga High Court was dismissed. She alleges that the Environment and Land Court suit in Murang’a was filed by the applicant after commencement of this succession cause and when the summons for confirmation of grant was pending for hearing. Therefore, according to the respondent this succession cause ought to take priority over the Environment and Land Court matter in Murang’a. That staying this succession cause would unfairly prejudice the estate and beneficiaries of the deceased. Accordingly, the respondent urges this court to dismiss in its entirety the application for stay.

### **Analysis and determination**

13. I have carefully considered this application, the affidavit filed in reply as well as the written submission filed by both parties. The only issue for determination is whether this succession cause ought to be stayed pending determination of Murang’a Environment and Land Court no 11 of 2020.
14. It is common ground that the dispute over the suit land has been ongoing in the courts in Murang’a since 2000. The position of the respondent is that since the High Court in Nairobi delivered a decision in this succession cause directing that the suit land be dealt with and distributed as an asset belonging to the estate of the deceased that decision ought to take priority over the Environment and Land Court suit, which was filed this succession cause.
15. On the other hand the applicant urges this court to stay the succession cause pending determination on the question of ownership of the suit land by the Murang’a Environment and Land Court.
16. Ringera J (as he then was) in the case of *Global Tours & Travels Limited: Nairobi HC Winding Up Cause no 43 of 2000* stated:-
- “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, 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” (own emphasis)
17. In determining an application for stay of proceedings the court must execute a delicate balancing act between the interests of the applicant who claims a state in the suit land on the one hand and the interests of the beneficiaries to the estate of the deceased on the other hand.
18. The duty of a probate court is to identify the assets comprising of the estate of a deceased person and to ensure that said assets are distributed to the rightful beneficiaries. *In re estate of Alice Mumbua (deceased)* [2017] eKLR the court stated as follows:-

“The *Law of Succession Act*, and the rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the



deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.”

19. It is manifest that the dispute in this matter involves the question of ‘ownership’ of the suit land. The respondent claims that the suit land is the property of the estate of the deceased and is available for distribution to the listed beneficiaries, whilst the applicant asserts that the Deceased held the suit land in trust for other family members including her late husband Samuel Nganga.
20. Matters relating to the ownership use and occupation of land have now under article 162 of the Constitution of Kenya 2010 been mandated to be determined by a specialized court being the Environment and Land Court (‘ELC’).
21. Section 13 of the Environment and Land Court Act provides for the jurisdiction of that court as follows:-
  13. Jurisdiction of the court
    - (1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
    - (2) In exercise of its jurisdiction under article 162(2)(b) of the Constitution, the court shall have power to hear and determine disputes——
      - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
      - (b) relating to compulsory acquisition of land;
      - (c) relating to land administration and management;
      - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
      - (e) any other dispute relating to environment and land. [rev 2012] no 19 of 2011 Environment and Land Court 9 [issue 1]
22. Therefore, the correct and proper forum before which the applicant ought to ventilate her claim to the suit land is the ELC. The Environment and Land Court is the only court exclusively mandated by law to determine the question of ‘ownership’ of the suit land.
23. In re estate of stone Kathubi Muinde (deceased) [2016] eKLR Hon Justice William Musyoka held that:-

“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the civil or commercial divisions of the High Court, or at the Environment and Land Court. If a decree is obtained



in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.” (own emphasis)

24. The estate of the deceased consists of one single asset being LR no loc 2/Gatharage/607. Had there been other assets then this court would have directed that succession proceed in respect of the undisputed assets. Given the fact that there exists in Murang’a Environment and Land Court a suit involving the same parties over the same parcel of land, this court is reluctant to proceed with this succession cause until the Environment and Land Court case is determined. To do otherwise would be to risk having conflicting decision from courts of concurrent and equal jurisdiction. Not to mention it being a waste of judicial time.
25. The respondent submits that the Environment and Land Court case in Murang’a is a non-starter because the applicant is not the registered owner of the suit land. That the title deed is still in the name of the Deceased Henry Wamiti Ng’ang’a. The applicant on the other hand submits that though Title in the suit land was registered in the name of the deceased, the deceased held the suit land ‘in trust’ for other family members. This is precisely the point which the Environment and Land Court is being called upon to determine.
26. Section 47 of the *Law of Succession Act* provides as follows: -

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
27. Likewise, rule 73 of the *Probate and Administration Rules* proves that: -

“73. Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
28. The judgment of the Murang’a Environment and Land Court will determine with finality what share of the suit land belong to the deceased and therefore what acreage is available for distribution. I find it is prudent to await determination of the Environment and Land Court in Muranga ELC no 11 of 2020 before proceeding with the distribution of this estate.
29. Finally. I do find merit in this application. I direct that this succession cause be and is hereby stayed pending determination of the Environment and Land Court case in Murang’a ELC no 11 of 2020.
30. This being a family matter each side shall meet its own costs.

**DATED IN NAIROBI THIS 5<sup>TH</sup> DAY OF AUGUST, 2022.**

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**MAUREEN A ODERO**

**JUDGE**

