



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 403 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE JOHN GICHUHI (DECEASED)

RULING

The applicant has brought Summons dated 23rd December 2021 brought under **Rule 49 of the P & A Rules**

1) Spent

2) Pending the hearing and determination of this application, this Honourable Court be pleased to stay the proceedings in this case in so far as they touch on all that parcel of land known as LR. No. 1024 Mirera Suswa Southern Naivasha Municipality.

3) Pending the hearing and determination of the Notice of Motion Application dated 12th December 2020 and filed in Nakuru High Court Civil Suit No. 113 of 1997 (OS), this Honourable Court be pleased to stay the proceedings in this case in so far as they touch on all that parcel of land known as LR. No. 1024 Mirera Suswa Southern Naivasha Municipality.

4) Pending the issuance of an Order or decree in terms of the consent agreement dated 12th October 1999 by the Nakuru High Court in Civil Suit No. 113 of 1997(OS), this Honourable Court be pleased to stay the proceedings in this case in so far as they touch on all that parcel of land known as LR. No. 1024 Mirera Suswa Southern Naivasha Municipality.

5) Costs be awarded to the applicants.

The application is supported by the affidavit of Mary Wanjiku Magara and Esther Wanjiku Muhiu sworn on 23rd December 2020.

They annexed an agreement of sale between them and the deceased dated 8th December 1989, consent agreement dated 12th October 1999 between the applicant's representatives and the deceased, the Ruling of this court (*A. K. Ndung'u J*) of 12th June 2019, and the application under Certificate of Urgency in HCC 113 of 1997 (Originating Summons) between the applicants herein and the administrators of the estate of the deceased dated 15th December 2020.

The gist of the application is that the applicants purchased the property LR 1024 Mirera Suswa Southern Naivasha Municipality in 1989. That a dispute arose thereafter leading to the filing of HCC 113 of 1997, which according to them was compromised vide the consent agreement dated 12th October 1999.

That this court by its Ruling on 12th June 2019 directed the applicants to pursue the decree in HCC 113 of 1997.

The application is opposed by the affidavit of the three (3) administrators sworn on 25th January 2021.

The main ground for opposition is that this court has already ruled on the issue as to whether LR 1024 Mirera Suswa Southern Naivasha Municipality should form part of the proceedings herein; that there are three (3) Rulings, of 30th March 2017, 12th June 2019 and 9th April 2020 where the court has rendered itself on the issue and therefore the court is *functus officio*; that the matter is *res judicata* and the only recourse available to the applicants is an appeal. That in any event, the consent upon which the applicants are laying capital, was found to be a forgery.

Parties proceeded to file Written Submissions through their respective counsel, Walker Kontos for applicants, dated 26th February 2021 and Murimi Ndumia, Mbogo & Muchela & Co. Advocates for the respondents dated 22nd February 2021.

The applicant's position is that this application seeking stay of proceedings and the application in HCC 113 of 1997 seeking a decree are

pursuant to the directions of this court in the Ruling rendered on the 12th June 2019. They argue that unless there is stay in this matter there is real danger in there being conflicting decisions in HCC 113 of 1997 in this matter.

In their submissions the applicants cite from my Ruling delivered on 9th April 2020 in which I cite from their affidavit, where they claim that the HCC 113 of 1997 was concluded. In that Ruling I have not made any determination that the HCC 113 of 1997 was concluded through the consent dated 12th October 1999.

In that Ruling I also took the view that the Ruling of 12th June 2019 gave the applicant options, but the applicants have proceeded to file several applications seeking among others similar orders, and on the same set of facts, in HCC 113 of 1997, and this matter as well, hence creating the dangerous circumstances out of which conflicting orders could issue.

It is on that basis that I hold the view that having found in HCC 113 of 1997 that there was no evidence of the existence of a decree or a consent order compromising the issue of the alleged sale of the property LR 1024 Mirera Suswa Southern Naivasha Municipality, and also that the applicants did not establish that there was a consent or consent order to warrant the issuance of a decree this application becomes untenable.

This application is struck out with no orders as to costs.

DATED and DELIVERED via EMAIL this 31ST day of MAY, 2021.

MUMBUA T. MATHEKA

JUDGE

Court Assistant Edna

Walker Kontos Advocates for the applicants

Murimi Ndumia Mbago & Muchela Advocates for the Respondents