



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 433 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE M'KUURA MUKINDIA ALIAS KUURA

S/O MUKINDIA ALIAS M'KUURA M'MUKINDIA (DECEASED)

LAWRENCE KABURIA.....APPLICANT

VERSUS

JACOB MWORIA G KUURA.....RESPONDENT

RULING

1. Before the Court is an application dated 1st September 2020. The application seeks to stay another matter, Meru ELC Case No. 35 of 2019 until all the proceedings in this matter are concluded. The Applicant claims that he intends to prosecute his application dated 8th July 2019 seeking revocation of grant and with a view of having the Court apportion to him property namely EXLEWA/SETTLEMENT SCHEME/232. This very property is the subject of Meru ELC Case No. 35 of 2019 in which the Plaintiff therein seeks to evict the Applicant. The Applicant's case is that while the issue of ownership is pending for determination, no such eviction matter should be allowed to proceed.

The Applicant's Case

2. The Application is premised on the facts as set out on the face of it as well as on the facts as deposed in the Applicant's supporting affidavit and his further supporting affidavit sworn on 10th March 2021. The Applicant also filed submissions dated 10th March 2021.

3. The Applicant's case is that there is a pending case, namely Meru ELC Case No. 35 of 2019 where the Plaintiff therein seeks to evict him from EXLEWA/SETTLEMENT SCHEME/232 which case was coming up for hearing on 10th September 2020 and that the said Plaintiff got the subject property in the distribution of the estate herein.

4. The Applicant also states that there is a pending application dated 8th July 2019 by which he seeks revocation of grant and that if he is successful in his application for revocation of grant, he will suffer irreparably as he will be evicted from his own rightful land if ELC 35 of 2019 is allowed to proceed while the instant matter is ongoing so as to determine the issue of ownership.

5. He urges that allowing ELC 35 of 2019 to proceed while he has a claim for ownership is akin to condemning him unheard and that his application for revocation has overwhelming chances of success as the subject property was given to him by the deceased and he has developed thereon and lives thereon with his family and that he ought to be given a chance to be heard.

6. He urges that since the ownership of the suit property will be affected by the outcome of the succession herein, it is necessary that the Judgment of the lower Court evicting him from the suit be stayed.

7. In response to the Respondent's assertion that a similar application had been filed in the very Meru ELCC No. 35 of 2019, he urges that whilst that is true, the lower Court declined to grant the prayers sought and urged that the High Court has jurisdiction to grant stay orders in the succession cause. He urges that the matter is not *res judicata*.

8. He urges that the circumstance have changed a great deal as his application for revocation of grant dated 8th July 2019, which had been dismissed has been reinstated by consent of both parties and as such, the Applicants case cannot be judged as at the time, the Magistrate declined to stay the proceedings as the same had been dismissed for non-attendance then. He urges that there was no need to lodge any appeal when the lower Court declined a similar application. He relies on the case of *HC ELC 375 of 2013 Keruoga Symon Nyamu Muthigani v Charity Wangui Munene, Harnam Singh & Others v Mistr 1971 E.A 122 at pg 125* where the other case of *Jadva Karsan v Harnam Singh Bhogal 1953 20 E.A CA at pg 74* and finally, on the case of *ELC Nyahururu No. 243 of 2017*.

Respondent's Case

9. The Respondent opposed the application vide his replying affidavit sworn on 30th September 2020. He also filed his submissions dated 15th March 2021. He opposes the application on grounds that the Applicant has not disclosed to the Court that he, the Respondent is not a party to Meru ELC Case No. 35 of 2019; that the Applicant has not disclosed that he filed a similar application in Meru ELC Case No. 35 of 2019 which was heard and disallowed, hence the instant application being one that offends the provisions of Section 7 of the Civil Procedure Act. He further urges that the Applicant is yet to file an objection/protest as the application before the Court is one seeking leave to file an objection out of time and the same was dismissed by the Court on 10th February 2020 and consequently, the Applicant has no capacity as at now, to apply for stay of the proceedings in Meru ELC Case No. 35 of 2019.

10. He urges that in any event, the Applicant is a stranger to the Estate of the deceased as he is not a family member, dependent and/or beneficiary hence has no locus to claim to apply for revocation of grant. He urges that staying Meru ELC Case No. 35 of 2019 would not serve any purpose as the Applicant has not been allowed to file a protest.

11. He also urges that the Applicant's application is far-fetched, misleading and has no chances of success as the same is defective and it offends the provisions of Section 30 of the Law of Succession Act.

Issue for Determination

12. There is only one issue for determination which is on whether or not to stay the proceedings in Meru ELC Case No. 35 of 2019 pending hearing and determination of the instant proceedings.

Determination

13. Staying proceeding is a matter of discretion. The Court indeed has powers to stay any matter for purposes of advancing the expedient course of justice and this is well anchored on the provisions of Section 3A of the Civil Procedure Act. The principles to be considered in application for stay of proceedings were well espoused in the case of ***In Re Global Tours and Travels Ltd : Winding Up Cause No.43 of 2000*** which was cited with approval by O. N. Makau J in the other case of ***Abdiaziz Sheikh Maad & 3 others v Governor, Mandera County & 2 others Petition 21 of 2020 [2021] eKLR***. The considerations include whether it is in the interests of justice to do so and if it is so, on what terms it should be granted, bearing in mind the need for expeditious disposal of the matter.

14. It is not in dispute that the subject property of the eviction case in ELC Case No. 35 of 2019 is one of the properties that is the subject of the instant succession cause. This notwithstanding, this Court observes that the matter sought to be stayed, ELC Case No. 35 of 2019 is an environment and land matter. Although the Respondent did not bring this point up in his response, this Court observes that the jurisdiction of this Court is limited in that it cannot stay matters which are the province of the Environment and Land Court. Although it is the Chief Magistrate's Court that is hearing the matter, i.e ELC Case No. 35 of 2019, it does so under the jurisdiction of an environment and land court, the same way it hears certain employment and labour relations matters. This is however not the case for the High Court. Article 165 (5) (b) expressly ousts the jurisdiction of the High Court to hear or make determinations over environment and land matters. It provides as follows: -

The High Court shall not have jurisdiction in respect of matters-

- a) Reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or***
- b) Falling within the jurisdiction of the courts contemplated in Article 162 (2).***

15. Article 162 is the provision that establishes the employment and labour relations court and the environment and land court, both of which are of the same status as the High Court. Even though the ELC Case in issue herein was filed at the Chief Magistrate's Court, the Chief Magistrate's Court entertains the matter in its capacity as an environment and land court. The High Court however cannot assume jurisdiction over an environment and land matter let alone to make an order that is intended to directly affect an environment and land matter because that is the domain of a specialized court, namely the Environment and Land Court which is of the same status as the High Court.

16. This issue was dealt with extensively by this Court in the case of ***Republic v Chief Land Registrar & Another, JR ELC No. 11 of 2010 [2019] eKLR***, where Mativo J held as follows: -

“16. Even with that clear-cut jurisdictional demarcation on paper, sometimes matters camouflaged in what may on the surface appear to be a serious constitutional issues or Judicial Review applications or other matters falling in other High Court divisions may, on a closer scrutiny reveal otherwise- that the germane of the application is actually a labour dispute or land issue falling squarely in the forbidden sphere of the specialized courts! Such is the nature of the application before me. A boundary dispute or enforcing an order relating to a boundary dispute falls squarely in the forbidden sphere of the specialized courts, namely, the Environment and Labour Court. The drafters of the Constitution were very clear on the limits of this court's jurisdiction and the jurisdiction of the courts of equal status.”

17. Having perused the Plaintiff in the ELC matter, this Court observes that the Plaintiff therein founds his claim on ownership acquired following the confirmation of grant issued on 23rd September 2014 in the present succession matter. The said grant is the very same one which the Applicant herein seeks to have revoked by his Application dated 8th July 2019. The Court appreciates that there is a common factor in the matters to this extent and that the orders issued in the succession matter may affect the ELC case. This notwithstanding, this Court is bound by the rules of procedure and it will thus not make any orders where it lacks jurisdiction to do so. See the case of ***Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR***.

18. Having found that the Court is divested of jurisdiction to make the orders sought, this Court will not belabor any further on the merits of the application. The furthest this Court can go is to order for an expedited hearing of the matter. Parties agreed by consent to have the application dated 8th July 2019 seeking revocation of grant which had been dismissed for non-attendance to be reinstated. This consent is the one dated 9th December 2020 which had the effect of allowing the application dated 13th May 2020 and thereby reinstatement of the application 8th July 2019. This Court will thus order that the said application be fixed for hearing on priority basis.

ORDERS

19. Accordingly, for the reasons set out above, this Court makes the following orders: -

- i) The Applicant's application dated 15th September 2020 is dismissed.*
- ii) Parties to fix a hearing date for the application dated 8th July 2019 on priority basis.*

Order accordingly.

DATED AND DELIVERED ON THIS 24TH DAY OF JUNE, 2021.

EDWARD M. MURIITHI

JUDGE

Appearances

M/S Mutembei & Kimathi Advocates for the Applicant

M/S Kaberia Arimbi & Co. Advocates for the Respondent