



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

E.L.C SUIT NO. 13 OF 2016

MARY CHELANGAT CHUMO.....PLAINTIFF

VERSUS

ELIZABETH CHEPKORIR NGENO.....DEFENDANT

RULING

1. The application for determination before me is a Notice of Motion expressed to be brought under Sections 1, 1A, 1B, 2,3,3A and 63 (e) of Civil Procedure Act (cap 21) and other enabling law. The applicant – **ELIZABETH CHEPKORIR NGENO** – is the defendant in the suit while the respondent – **MARY CHELANGAT CHUMO** – is the plaintiff. In the suit, the respondent has sued the applicant for trespass and illegal occupation of her land parcel **NO KERICHO/LITEIN/1816** and she would wish to see her evicted and restrained from interfering with it.

2. The applicant on her part claims entitlement to ownership. She avers that she was shortchanged during succession and excluded from being a beneficiary of the then larger parcel **KERICHO/LITEIN/263** owned by her late mother, from which parcel **NO KERICHO/LITEIN/1816** arose after subdivision. The applicant is challenging the succession cause. She is doing so vide Miscellaneous Application No. 16/2018 at the High Court here in Kericho and the application before me now seeks a stay of proceedings in this case pending the outcome of the application at the High Court.

3. In a more precise manner, the following are her prayers in this application:

a) That this honourable court be pleased to stay the proceedings in this case temporarily pending the final ruling in KERICHO High Court Succession Miscellaneous Application No. 64 of 2018 between the defendant and the plaintiff and another.

b) That costs herein be provided for.

4. The respondent responded to the application vide a replying affidavit dated 22nd February, 2019 which she filed in court on 25th February, 2019. She deposed that the respondent was offered a share in the original parcel of land but she declined to take it. She was said also to have been fully aware of the succession cause that she is now challenging.

5. The application was canvassed by way of written submissions. The applicant's submissions were filed on 4th December, 2019. She submitted, inter alia, that she and the respondent are close relatives; that parcel **NO 1816** arose from subdivision of the larger parcel **NO 263** then owned by her late mother; that she is a daughter while the respondent is a "widow" (through woman to woman marriage) of the original owner of parcel **NO 263**; that the Succession Cause **NO 83/2011, Sotik**, was filed behind her back; that she only got to know of the Succession Cause when she was served with eviction orders in this case itself; that this case and her application at the High Court are related; and that if the outcome of the application at the High Court is favourable to the applicant, this suit will come to an end as hearing it will become an exercise in futility.

6. The respondent's submissions were filed on 3rd December, 2019. The respondent read mischief in what the applicant is doing. This suit was said to have been heard without her and had reached execution stage. She then came to court pleading to be heard. But when she was allowed to be heard, she now comes yet again with an application seeking stay proceedings. The two matters can be heard independently, the respondent submitted.

7. It was submitted too that this case is about ownership and title to land while the matter at the High Court relates to succession. It was said that it is this court that has jurisdiction to decide on ownership and the court therefore should not await the decision of another court. The applicant was said to have a hidden agenda. According to the respondent, the applicant does not want this case to be heard. She was said to have no arguable case, has not filed the application expeditiously, and has not shown that it is in the interest of justice to get the prayers she is seeking.

8. I have considered the application, the response by the respondent, rival submissions, and the substance of the pleadings and proceedings in

the court file generally. When the application under consideration was filed, what was before the High Court was Miscellaneous Application No. 64 of 2018. That application concerned annulment or revocation of confirmed grant issued to the respondent by the lower court. The applicant sought stay of these proceedings pending determination of that application. The ruling on that application, and thus its determination, was delivered on 15th July, 2019. At the time it was delivered, this application was still pending. It is easy to see that this application became overtaken by events. And this is so because the ruling issued was the determination of the application at the High Court. When the ruling was issued the reason for the application before me now ceased to exist.

9. It is clear to me that when the High Court ruling was delivered, and possibly taking cue from the substance of that ruling, the applicant herein rushed to the lower court and filed another application there. The High Court application had already been dismissed. At the lower court, it is clear that the respondent's side raised a preliminary objection to the application filed there. That objection was upheld. The application filed there also hit a dead end.

10. It is apparent that the applicant went back to the High Court. An application for review was filed. It is significant to appreciate that it is not that application that was meant to be determined when this application was filed. In fact, when this application was filed, the application now pending before the High Court was non-existent. It is now plain that the applicant could not possibly file an application seeking stay of proceedings pending the outcome of an application that was not yet filed or foreseen. This is one serious weakness with this application. What it intended to achieve was overtaken by events. The applicant was wrong to assume that the application can cover other court processes that were not in existence. She now seems to seek stay pending hearing and determination for an application for review which came much later. The application was even non-existent. This is not acceptable in law.

11. But the court has other reasons for not favourably considering this application. This suit here was filed in 2016. It is already a backlog. The other court processes being pursued by the applicant are very recent. Yet she wants the case stayed so that what she is starting now can be handled first. In my view, that is not fair to the respondent. She has been in court for long. Staying her case means further delay. Besides, the applicant has so far conducted her court processes concerning the order she is seeking and concluded them without the order of stay she is now seeking. She can continue doing so.

12. I also perceive that at the core of the dispute between the applicant and the respondent is ownership of parcel NO 1816. It is clear to me that the High Court does not have jurisdiction to decide on an issue like that one. Why then should this court peg its proceedings on the outcome of other court processes elsewhere which will not conclusively determine the crucial issue for adjudication? In my view, the proper course open to the applicant is to pursue her matter in the High Court with all due diligence and/or dispatch so that if the outcome has a bearing on the suit herein, she can avail it here. The order sought will delay this case further and I refuse to grant it.

13. The upshot in light of the foregoing, is that the application here is one for dismissal. And I hereby dismiss it with costs.

Dated, signed and delivered at Kericho this 24th day of February, 2020.

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A. K. KANIARU

JUDGE