



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO. 313 OF 2011

IN THE MATTER OF THE ESTATE OF: CHARLES BWIRE KUNGURU.....DECEASED

BETWEEN

FRANCISCA ANYANGO OMOJONG.....PETITIONER/APPLICANT

AND

ROSELINE ANYEMBERESPONDENT

PATRICK OUMA KOKONYA 1ST INTERESTED PARTY

STEPHEN WANDERA OPILI2ND INTERESTED PARTY

RULING

1. The petitioner/applicant moved the court by way of Notice of Motion dated 20th February 2019. She is seeking the following orders:
 - a. That there be a stay of proceedings in this cause pending the hearing and determination of Busia High Court Environmental and Land Court case No. 89 of 2018.
 - b. That costs be provided for.
2. The application is premised on the following grounds:
 - a. That case No. Busia HC Environment and Land court case no.89 of 2018 over Land parcel LR.No. Bukhayo/Bugengi/1355 and 1356 and same parties is pending.
 - b. That the issues raised in this cause will be conclusively dealt with in the ELC.
 - c. That there is a likelihood of conflicting orders in this cause and the EL.C case no.89 of 2018.
 - d. That the reliefs sought meets ends of justice.
3. The application was opposed on the following grounds:
 - a. That the said application is frivolous lacks merit and is a total abuse of court process.
 - b. That the applicant's application is an afterthought and cannot be entertained at this stage.
 - c. That this court has powers to determine all issues and disputes regarding matters that falls under family division which this matter lies hence the Honourable court cannot stay the proceedings herein but to proceed and give determination.
 - d. That staying this proceedings, shall be viewed as the court transferring/donating its powers/jurisdiction to another court.

4. After hearing both parties, the following facts have emerged:

i. That the issue of title in respect of Land parcels LR.No.Bukhayo/Bugengi/1355 and 1356 are so intertwined and unless the issue is determined, the proceedings in this case will be an exercise in futility.

ii. That the dispute is before the court that has jurisdiction to determine the dispute.

5. I am therefore satisfied that the application has merits. The application is therefore allowed.

6. Each party will meet own costs.

DELIVERED and SIGNED at BUSIA this 25th day of March, 2020

KIARIE WAWERU KIARIE

JUDGE