

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 6 OF 2019

IN THE MATTER OF THE ESTATE OF IMELDA AKINYI OWAKO (DECEASED)

RULING

1. The application that I am tasked with determining is dated 15th October 2019. Directions were given on 22nd October 2019 for its disposal by way of written submissions, and there has been compliance.

2. The principal prayer in that application is No. 2. The three prayers sought in application are framed as follows:

“1. THAT this Application be certified urgent and service thereof be dispensed with in the first instance.

2. THAT the Honourable court be pleased to issue an order and order to staying the proceedings in Kakamega HCC No. 6 of 2019 pending hearing and determination of this suit.

3. THAT the cost of this Application be in the cause.”

3. The grounds on the face of the application state that the objector did not have *locus standi* to bring the suit, Kakamega HCCC No. 6 of 2019, on behalf of the estate of the deceased herein and the estate of the late Jonathan Owako Oyiejowi, that the said objector was an vexatious litigant, that the objector’s application had not substituted two deceased persons – Anthony Oburu Owako and Thomas Omondi Owako, that the objector’s application had not reinstated suit No. 453 of 2008 by way of a formal application, that the objector’s application had also not consolidated files 452 and 453 of 2008, that the objector’s advocate was conflicted, among other grounds.

4. The applicant avers, in his affidavit in support, that the objector’s application would gravely affect and waste the estates of the deceased herein and that of the late Jonathan Owako Oyiejowi. He avers to saving the estate from a public auction by the law firm of Otieno, Yogo, Ojuro & Company Advocates, who were representing the National Bank of Kenya in 2004, who, despite an injunction being in force, still transferred the property to a third party. He accuses the advocates of presenting fake cheques in court and procuring fake title deeds. He also makes various other allegations against the said advocates.

5. The party named as respondent in the application filed grounds of opposition objecting to the application.

6. Both sides have filed written submissions with respect to the application. I have perused through them and noted the arguments made therein.

7. The application, the Motion dated 15th October 2019, seeks only one principal prayer, the stay of the suit in Kakamega HCCC No. 6 of 2019. From the grounds and the affidavit in support, the applicant has not made any effort to draw the connection between the instant succession cause and the said suit. Pleadings from the said suit have not been attached to the affidavit in support, and, therefore, I am unable to draw the connection between them from what is pleaded in the Motion.

8. I called for the file in Kakamega HCCC No. 6 of 2019 for perusal. The file was availed. I established, from the file, that the suit in Kakamega HCCC No. 6 of 2019, formerly Kisumu HCCC No. 38 of 2009, is between the applicant herein, David Oscar Owako, and Chemelil Sugar Company Limited and seven others. It would appear that the court file in respect of the suit is in several volumes. The volume placed before me did not have a copy of the plaint and, therefore, I could not tell immediately what the suit is about.

9. However, what is clear is that I am not seized of Kakamega HCCC No. 6 of 2019, for I recused myself from the matter on 27th June 2019, and the matter is being handled by Njagi J. I am being invited to stay proceedings in a suit that is not before me. It has not been articulated clearly before me why the applicant would like the suit stayed, and it has not been demonstrated how proceeding with that suit would prejudice the estate herein or even the instant succession cause, Kakamega HCSC No. 6 of 2019. A suit ought not to be stayed just at the say so of a party, there is obligation on the party seeking stay to demonstrate that there is good reason for the stay sought.

10. What passes as the grounds or reasons for the stay sought have been summarized in paragraphs 3 and 4 of this ruling. The reasons or grounds turn around issues within Kakamega HCCC No. 6 of 2019. As I have said above, I am not seized of the suit in Kakamega HCCC No. 6 of 2019, and I cannot, therefore, examine whether that suit was validly initiated, or whether the applicant had salvaged a property from the auctioneer’s hammer, obtained orders that were disobeyed or disregarded, among others raised. These are matters that are before the court seized of the matters. I trust that the proper course of action should have been for the applicant to seek stay of proceedings in Kakamega HCCC No. 6 of 2019, through an application filed in Kakamega HCCC No. 6 of 2019 itself. That suit involves parties who are not party to Kakamega HCSC No. 6 of 2019, and who ought to be heard on a stay of proceedings application. They should not be dragged into the succession cause in which they are not survivors of the deceased nor persons directly beneficially entitled to the assets. They should be heard in the suit where they are parties already.

11. It is my finding that the application is not well founded and has been filed in the wrong forum, and, consequently, it is hereby dismissed

with costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF APRIL, 2020

W. MUSYOKA

JUDGE