



Sum (Suing as the administrator of the Estate of Ernest Sum) v Samoei (Environment & Land Case E057 of 2022) [2023] KEELC 20250 (KLR) (27 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20250 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E057 OF 2022
JM ONYANGO, J
SEPTEMBER 27, 2023**

BETWEEN

VERONICA SUM (SUING AS THE ADMINISTRATOR OF THE ESTATE OF ERNEST SUM) PLAINTIFF

AND

JOEL SAMOEI DEFENDANT

RULING

1. Following the delivery of the ruling dated 13th March, 2023 where the court granted an injunction to restrain the Defendant from trespassing on LR No. 2226 (I.R 603) measuring 1,300 acres or any portion thereof or doing anything against the interest of the plaintiff pending the hearing and determination of the suit herein, the Defendant filed a Notice of Motion dated 20th April seeking a stay of the injunctive relief. He also sought orders that the injunction be set aside and the suit be stayed pending the hearing and determination of Eldoret HC P& A Cause No. 38 of 2018 to avoid issuance of conflicting orders over the suit land.
2. The application is anchored on the grounds that LR No. 2226 Moiben which is the suit land herein is the subject of Eldoret HC P& A Cause No. 38 of 2018 which is pending before the High Court. The Applicant maintains that the Plaintiff and her late husband Ernest Kipngetch Sum sold 100 acres of the suit land to one Celine George Poland on the 13th March, 1982 and wrote a letter dated 26th July, 1982 confirming the sale. It is further alleged that the Applicant is the Manager of Celine George Poland and he has been in occupation of the suit land since 1982.
3. In the Applicant's Supporting Affidavit, he avers that he is only a Manager of the 100 acre farm which Celine George Poland bought from the late Ernest Kipngetch Sum. He further alleges that Veronica Chepsat Sum who is the widow and administrator of the estate of Ernest Kipngetch Sum wrote a letter dated 26th July, 1982 to the District Commissioner, Uasin Gishu confirming that her and her husband agreed to sell 100 acres to Celine George Poland.



4. He avers that he has been living on the suit land since 1982 with the knowledge of the Plaintiff and her two daughters and he can therefore not be termed as a trespasser. That there is an application in Eldoret HC P& A Cause No. 38 of 2018 which seeks to bring on board all the beneficiaries of the estate of Ernest Kipngetchi Sum for purposes of distribution of the estate and Celine George Poland is one of the said beneficiaries through purchase. The ruling in respect of the said application was to be delivered on 26th May, 2023.
5. The Applicant deposes that even though there is a judgment in E.L.C Case No. 418 of 2012 dismissing Celine George Poland's claim over the suit property, she filed a Notice of Appeal in respect thereof. He contends that the orders issued herein are likely to conflict with the orders that the High court will issue in the succession matter and it is therefore necessary that the order of injunction issued herein be stayed.
6. The Respondent opposed the application through her Replying Affidavit sworn on 8th May, 2023 in which she deposed that the status of ownership of the suit property was determined by the court in Eldoret ELC Case No. 418 of 2012 *Celine George Poland v Veronica Sum (the Administratrix of the estate of Ernest Sum)* where the Plaintiffs claim to the land was dismissed. She further averred that the instant suit and *Succession Cause- Eldoret H.C P7A No. 38 of 2018* are separate and distinct and Celine George has not been joined to the suit. She denies that the courts are likely to issue conflicting orders in this suit and the succession cause.
7. The application was prosecuted through written submissions but only the Respondent filed his submissions. In the meantime the parties agreed that a copy of the ruling of the High Court in *Eldoret HC Succession Cause No. 38 of 2018* in which Celine George and other purchasers had sought to be joined to the suit be filed in this court.
8. In his submissions dated 19th May, 2023 learned counsel for the Respondent submitted that the Respondent is vested with a legitimate bundle of proprietary interests in the suit property which are threatened by the Defendant's unlawful actions. He contended that the pending succession matter is exclusive in scope from the instant suit and there is no duplication of issues. It was his submission that the Defendant/Applicant's application is misplaced, misconceived, and untenable in law as it purports to be based on a glaring anomaly.
9. Counsel contended that a stay of proceedings has far-reaching repercussions as it interferes with a party's right to conduct its litigation and it is therefore necessary that stringent safeguards be observed against arbitrary grant of such orders. The orders should only be granted in exceptional circumstances. He relied on the case of *Gervasio Mwithimbu v Peter Kirimi M'mukiira & Another* (2022) eKLR.
10. He submitted that the application for stay was devoid of merit as the Applicant had not demonstrated that he would suffer substantial loss if the order of stay is not granted nor had he brought the application without unreasonable delay. He added that the Applicant had not furnished security for the due performance of the injunction as may ultimately be binding upon him.
11. It was counsel's contention that the application was unfounded and that it was a scheme to deprive the Respondent from enjoying the fruits of the ruling that was delivered in her favour. He argued that granting the application would result in a miscarriage of justice. He relied on the case of *RWW v EKW* (2019) eKLR for the proposition that a successful litigant is entitled to the fruits of his judgment or of any decision of the court giving him success at any stage.



Analysis and Determination

12. The Applicant herein seeks a stay of the order of injunction issued on 13th March, 2023. The main ground upon which the application is based is that there is a pending ruling in [Eldoret HC Succession Cause No. 38 of 2018](#) in which Celine George Poland, the principal of the Defendant herein is likely to be joined in the Succession Cause as a beneficiary through purchase hence the outcome of the succession proceedings are likely to conflict with the orders of this court with regard to the ownership of the 100 acres of the land parcel known as LR No. 2226 currently registered in the name of Ernest Kimnetich Sum (Deceased).
13. It is common ground that on 26th May 2023, during the pendency of this application, the High Court delivered its ruling dismissing the application by Celine George and other purchasers who had applied to be joined in HC Succession Cause No. 38 of 2018 [In the Matter of the Estate of Christopher Kipchirchir Sum \(Deceased\) Kenneth Kiprop Sum v Veronica Sum & The Catholic Diocese Of Eldoret, Celine George Poland, Ambrose Kipkorir Bitok, Fiona Jerono Sum and Valerie Chelagat.](#) With specific reference to Celine George Poland’s interest to the suit property, the court pronounced itself as follows:

“Regarding Celine Geroge Poland’s claim over the parcel LR No. 2226 , the Objector has exhibited a judgment delivered in Environment and Land Court Case No. 418 of 2012 by Ombwayo J. It is clear that in that suit, Celine Geroge Poland sought an order that being a purchaser of a portion of the said parcel LR 2226 she was entitled to a share thereof. The suit was heard and determined after a full trial and was dismissed. A reading of the judgment reveals that the Court was not satisfied that the alleged purchase was proved. The authenticity of the judgment has not been challenged.

Since the claim raised herein is the same claim already canvassed and determined by the Environment and Land Court , it is clear that the issue of Celine George Poland’s entitlement to a share of the said property or lack thereof has already been canvassed and conclusively determined by a Court of a status equal to the High Court. This Court cannot purport to sit on appeal on the judgment or review it. Since the Defendant sued in that suit is the same objector herein, the issue is no doubt now res judicata and cannot be re-opened in this cause. In light of the said judgment, I agree with the Objector’s counsel that the said Celine Geroge Poland has failed to demonstrate that she has any proprietary interest in the parcel LR No. 2226 or the estate of the late Ernest Sum”

14. In view of the above ruling of the High Court it is clear that the Applicant has no basis for seeking a stay of the injunctive orders granted herein.
15. With regard to the Applicant’s assertion that the High Court and this court are likely to issue conflicting orders the courts have often made a distinction between what constitutes a succession matter and what constitutes a claim for ownership of land. In the case of [In the matter of the Estate of Stone Kakbuli Muinde \(Deceased\)](#) (2016) eKLR Musyoka J held as follows:

“With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.



Such claims to ownership of alleged estate property, as between the estate and a third party should be resolved through civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and Civil Procedure Rules . This could mean filing a suit at the Magistrate’s Courts or at the Civil or Commercial Division at the Environment and Land Court. If a decree is obtained in such a court in favour of eh claimant, then such a decree should be presented to the probate court in the succession cause so that the court can give effect to it.”

16. As correctly observed in the above case, issues of ownership of land fall within the mandate of the Environment and Land Court. In the present case, the Environment and Land Court has already pronounced itself with regard to the portion of land claimed by Celine George Poland and which is currently occupied by the Defendant. The issue of the courts issuing conflicting decisions therefore does not arise.
17. That being the position, the Defendant’s application for stay of the orders of injunction or stay of proceedings will serve no purpose other than to delay this suit. This is contrary to Article 159 2 (b) of the Constitution of Kenya which provides that justice should not be delayed. Under section 1A of the Civil Procedure Act parties and advocates have a duty to assist the court to further the overriding objective of the Act, which is to facilitate the just expeditious, proportionate and affordable resolution of disputes.
18. Additionally, I concur with the decision of Gervasio Mwithimbu v Peter Kirimi M’ukiira & Another (*supra*) that a stay of proceedings should only be granted in exceptional circumstances where there are valid grounds and sufficient cause. I am not persuaded that the applicant has demonstrated sufficient cause to stay the orders granted on 13th March, 2023 or the proceedings herein.
19. In the premises, I find no merit in the application and I dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 27TH DAY OF SEPTEMBER 2023.

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J.M ONYANGO

JUDGE

In the presence of;

1. Mr. Miyienda for the Defendant/Applicnat

2. Mr. Gichana for the Plaintiff/Respondent

Court Assistant: A. Oniala

