



REPUBLIC OF KENYA



**Samoei & another v Melly & 3 others (Environment & Land Case  
E020 of 2022) [2023] KEELC 20339 (KLR) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20339 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E020 OF 2022  
MN MWANYALE, J  
SEPTEMBER 25, 2023**

**BETWEEN**

**KIPKURGAT SAMOEI ..... 1<sup>ST</sup> PLAINTIFF**

**GRADSI KASOHA MASISA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOSEPH MELLY ..... 1<sup>ST</sup> DEFENDANT**

**JOSPHAT KIPKEMBOI BETT ..... 2<sup>ND</sup> DEFENDANT**

**HILLARY CHERUIYOT CHUMBA ..... 3<sup>RD</sup> DEFENDANT**

**BENJAMIN KIPTUM TOO ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling relates to the Notice of Motion application dated April 27, 2023 filed by Defendants / Applicants seeking the substantive order of stay of proceedings of this suit pending the outcome of Kaspabet CM Succession Cause No 144 of 2012 in respect of the Estate of Kangani Arap Sang Kayona.
2. The Application is based on grounds interalia that;
  - i) The parties herein are also parties before the Chief Magistrate's Court at Kapsabet in Succession Cause No 144 of 2012.
  - ii) The subject matter in dispute and for determination in both suits is land parcel No Nandi/Kapgangani/Kaimosi 2161-21167 subdivisions of Nandi Kapgangani/Kaimosi/946.
  - iii) The Grant and certificate of confirmation of Grant the basis of ownership by the Plaintiffs are subject of revocation proceedings before the Chief Magistrate's Court and the same is coming up for mention to fix a hearing date on 27/2/2023.



- iv) That is the proceeding pending before this Honourable Court are not stayed, it is likely to render conflicting decisions over the same subject matter in Kapsabet Succession Cause No 144 of 2012 in the matter of estate of Kangani Arap Kayona.
3. That a conflicting decision over the same subject matter would be detrimental to the administration of justice.
  4. The application is supported by the affidavit of Joseph Melly who reiterates the grounds cited above and has annexed interalia, the Grant of Letters of Administration in Kapsabet CMCC No 149/2012, as well as an Application dated 11/17/2020 which seeks to revoke the said Grant.
  5. In opposition to the Application is a replying affidavit by Kipkurgat Samoei who depones interalia, that the orders sought before the Chief Magistrate's Court are not similar to the orders sought before this Court.
  6. That the Magistrate's Court matter is technically concluded. That it is not possible for a superior court to render a conflicting decisions and law judgment with the Magistrate's Court.
  7. That the application is intended to influence the hearing and determination of the revocation application in the Succession Cause before the Magistrate's Court.
  8. Parties were directed to file written submissions on the applications and both sets of submissions were dully filed.
  9. It is the Applicant's submissions that the decision of the Chief Magistrate's Court in Kapsabet Succession Cause No 144/2012 in respect of this application for relocation of the Grant of Letters of Administration shall have a bearing in this suit. As it is through the said grant, now under challenge that the Plaintiff claims proprietary interest through transmission and disposed off Nandi/Kapkangani/Kaimosi/2164.
  10. The Applicant submit that the properties Nandi/Kapkangani Kaimosi 2161 -2167 are in issue before both courts and in support of the submissions have cited the decision in Global Tours and Travels Ltd Nairobi winding up cause No 43/2000. And urge the court to allow the application.
  11. The Respondent submit and cite Gardiner and Landsown 6<sup>th</sup> Edition Col. Pg 750 to the effect that "grave injustice might otherwise result or where justice might not by other means be attracted.....and the Court should hesitate to intervene especially having regard to the effect of such a procedure upon the continuity of proceedings in the Court below."
  12. The Respondent further cite the decision in Global Tours and Travel Ltd for the proposition that stay of proceedings should be issued as rare and exceptional remedy and the Applicant ought to demonstrate the exceptional circumstance to warrant a stay of proceedings in this suit.
  13. In the suit before this Court the Plaintiffs have pleaded to be the registered owner of Nandi/Kapkangani/2161 – 2164 at Paragraph 3 of the plaint and at Paragraph 14 of the same plaint confirms that Kapsabet Succession Cause No 144 of 2012 in respect of the Estate of Kangani Kayona- deceased is concluded. in the replying affidavit at paragraph 4, the Respondent depones that the case before the Magistrate's Court is technically concluded and at paragraph 6 the same deponent depones that this application is to influence the hearing and determination of the Succession Cause before the Magistrate's Court.
  14. The Applicant has exhibited the Grant of Letters of Administration issued in the Chief Magistrate's Court at Kapsabet Succession cause No 144 of 2012 and as well as a Certificate of Confirmation of



Grant which granted the whole of Nandi Kapkangani/Kaimosi/946 to the Plaintiff herein and has further exhibited summons for revocation of the Grant from the above it follows that there is pending before the Chief Magistrate's Court summons for revocation of the Grant issued in Kapsabet Chief's Magistrate's Succession Cause No 144 of 2012.

15. At paragraph 9 of the plaint, the Plaintiff has pleaded to have inherited the suit property from his father as of right and the said Estate is pleaded at paragraph 14 of the plaint to be the Estate of Kandani Kayona whose Grant is sought to be revoked before the Chief Magistrate's Court.
16. It follows therefrom that the basis of the Plaintiff's proprietorship being the Grant of letter of Administration issued in Kapsabet Succession Cause No 144/2012 is now under challenge before the Chief Magistrate's Court.
17. The issues before the Chief Magistrate's Court in relation to the revocation of the Grant thus have a direct bearing on the ownership by the Plaintiff and which ownership is challenged by the Defendants. That is in the Courts view an exceptional circumstance which requires to be decided in the Succession Cause first before this suit can be heard and thus finds merit in the application and grant a stay of proceedings in this suit pending the hearing and determination of Kapsabet Chief Magistrate's Succession Cause No 144/2012.
18. Costs in the cause.

**DATED AND DELIVERED AT KAPSABET THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**HON. M. N. MWANYALE,**

**JUDGE**

In the presence of

Mr. Choge for the Plaintiff/Respondent.

Mr. Serem for the Defendant/Applicant.

