



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 998 OF 2006

IN THE MATTER OF THE ESTATE OF CHARLES KARUGA KOINANGE (DECEASED)

ROSEMARY B. KOINANGE(suing as a legal representative of the late

Dr. Wilfred Koinange *and also in her own personal capacity*).....**1ST APPLICANT**

CKK ESTATES (1973) LTD.....**2ND APPLICANT**

SAMUEL KARUGA KOINANGE.....**3RD APPLICANT**

SUSAN NDUTA KOINANGE.....**4TH APPLICANT**

PETER WANDUGA KOINANGE.....**5TH APPLICANT**

MECOL LIMITED.....**6TH APPLICANT**

NGORONGO TEA FACTORY LIMITED.....**7TH APPLICANT**

VERSUS

ISABELLA WANJIKU KARANJA.....**1ST RESPONDENT**

PETER MBIYU KOINANGE.....**2ND RESPONDENT**

RULING

1. On 21st February 2019 the court delivered a ruling dismissing the chamber application dated 14th December 2018 and the preliminary objection dated 14th December 2019. The application dated 14th December 2018 was by the 2nd, 6th and 7th applicants seeking stay of proceedings and the determination of the issue that this court lacks the jurisdiction to make any determination on the issue of shares in CKK Estates (1973) Limited, Njorongo Tea Factory Limited and Mecol Limited on several grounds, including that:-

- a. the estate of the deceased does not own shares in the companies;
- b. the shares that the deceased owned in the companies were transferred, *intervivos*, by the deceased to Dr. Wilfred Karuga; and
- c. the shares in the companies were duly transferred and registered in the name of Dr. Wilfred Karuga and such transfer has since not been challenged nor set aside by the administrators of the estate of the deceased.

2. The preliminary objection relied on the grounds that the probate court lacks jurisdiction to distribute properties which were owned by a company; the probate court lacks jurisdiction to distribute any movable and immovable properties which are not registered in the name of the deceased; and the probate court lacks jurisdiction to distribute any shares in any company which are now registered in the name of the deceased.

3. The background of the case is that the deceased Charles Karuga Koinange died on 20th February 2004. His first wife Grace died living him with six sons and four daughters. His second wife Mary Njoki gave him a son and a daughter. He left a written Will dated 16th June 1999 which this court invalidated on 22nd January 2015. The Court of Appeal agreed with the invalidation. It asked this court to hear and determine the issue of shares held by the deceased in the limited liability companies. This case had reached the stage of the distribution of the estate when the foregoing applications were made.

4. Rosemary B. Koinange (the 1st applicant), Samuel Karuga Koinange (the 3rd applicant) and Peter Wandura Koinange (the 5th applicant) filed an application dated 7th March 2019, and CKK Estates (1973) Ltd (the 2nd applicant), Mecol Limited (6th applicant) and Ngorongo Tea Factory Ltd (7th applicant) filed an application dated 13th March 2019. Both applications sought leave to appeal against the ruling delivered on 21st February 2019, and the stay of further proceedings pending the hearing and determination of the intended appeal.

5. The applications were supported by the affidavits of the 1st and 3rd applicants. Their case was that the applicants were aggrieved by the ruling and sought to appeal. On 4th March 2019 they filed a Notice of Appeal dated 1st March 2019. They argue that the intended appeal raises grounds that merit consideration by the Court of Appeal. On the issue of stay, they stated that, if it is not granted, the applications for the confirmation of the grant shall be heard and the estate distributed. The distribution shall include the assets of the companies, and yet, in their view, this court has no jurisdiction to deal with such assets. To the credit of the applicants, the applications have been brought timeously.

6. The applications were opposed by the 1st respondent Isabella Wanjiku Karanja, 2nd respondent Peter Mbiyu Koinange, Mary Njoki, John Miringu Karuga, and the estate of Ernest Ngugi Karuga. According to them the issue sought to be challenged on appeal is *res judicata*, the same having been determined by the ruling of this court dated 22nd January 2015 and the decision of the Court of Appeal in **Civil Appeal No. 126 of 2016**. Their case is that any stay in the distribution of the estate would cause great injustice to the other beneficiaries. Further, they stated, there was no substantial loss to the applicants that their application had demonstrated.

7. The applicants seek to challenge the ruling of this court in the Court of Appeal. It is now trite that, given **Articles 48 and 164(3)** of the Constitution and **Section 47 of the Law of Succession Act (Cap. 160)**, the request for leave to appeal would not be denied (**Rhoda Wairimu Karanja & Another –v- Mary Wangui Karanja & Another [2014] eKLR**).

8. It is not for this court to discuss the merits of the intended appeal. That is for the Court of Appeal to deal with. I will therefore not deal with the arguments for and against the merits of the case of either side.

9. I have stated that the application was brought without unreasonable delay. What should engage the mind of the court is whether the applicants will suffer substantial loss if the application for stay of the proceeding is not granted. It is up to the court to grant or refuse stay of the proceedings. The general rule is that the court should exercise the discretion in such a way that if the intended appeal were to succeed, that success would not be rendered nugatory.

10. I consider that this dispute begun in 2006, following the death of the deceased on 20th February 2004. The dispute has remained unresolved for quite a long time. It is further considered that the hearing of the application for the confirmation of the grant had just begun (the first witness Isabella Wanjiru Karanja had just given evidence in chief and the cross-examination by the first counsel was on-going) when the issue of jurisdiction in relation to the shares in the limited liability companies was raised. This is what led to the application that resulted in the ruling delivered on 21st February 2019 that is sought to be challenged in the Court of Appeal. In my estimation, given the sworn affidavits and the likely number of witnesses, this is going to be a long-drawn hearing. Further, the estate has many beneficiaries and only a few are seeking to appeal. To stay the proceedings to allow for the determination of only one issue involving the limited liability companies, when the estate has other assets, would not be a just, proportionate and efficient way of dealing with the dispute in this case. I bear in mind that the earliest time the present case can be heard before this court is in December 2019.

11. In conclusion, I grant leave to appeal. The Notice of Appeal dated 1st March 2019 shall be deemed to have been filed with leave. However, I will not allow the request for the stay of the proceedings before this court. The parties can continue to take a hearing date for the matter.

12. This is a family dispute. I do not make any order as to costs.

DATED and DELIVERED at NAIROBI this 23RD day of JULY 2019

A.O. MUCHELULE

JUDGE