



Kapeen (Suing as the legal administrator Of The Estate Of John Lemuta Naiguran (Deceased)) v Asanyo & 2 others; Nkoimo (Interested Party) (Environment & Land Case E007 of 2022) [2023] KEELC 22240 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELC 22240 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E007 OF 2022
EM WASHE, J
NOVEMBER 30, 2023**

BETWEEN

**VINCENT KANTET KAPEEN PLAINTIFF
SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF JOHN
LEMUTA NAIGURAN (DECEASED)**

AND

**GEOFFREY MAKANA ASANYO 1ST DEFENDANT
INTONA INVESTMENTS LIMITED 2ND DEFENDANT
DISTRICT LAND REGISTRAR, TRANSMARA 3RD DEFENDANT**

AND

ANGELINE N NKOIMO INTERESTED PARTY

RULING

1. The Intended Interested Party (hereinafter referred to as “the Applicant”) filed a Notice of Motion dated 24th October 2023 (hereinafter referred to as “the present application”) seeking for the following Orders; -
 - a. That the Application be certified urgent and heard ex-parte in the first instance.
 - b. That pending inter-parte hearing of this Application, this Honourable Court be pleased to arrest the judgement scheduled for the 26th of October 2023.
 - c. That the intended interested party/Applicant herein be granted leave to join the suit as an interested party.



- d. That this Honourable Court be pleased to stay the proceedings in this suit pending the hearing and determination of the Appeal at the Court of Appeal in Nakuru.
 - e. That the costs of this Application be provided for.
2. The Applicant adduced various grounds in support of the prayers in the body of the present Application as well as the supporting affidavit sworn on the 24th of October 2023 which can be summarised as follows;-
 - i. This Honourable Court is scheduled to deliver its judgement in this proceeding on the 26th of October 2023.
 - ii. The judgement to be delivered in this suit relates to the property known as L.R.No.Narok/Transmara/intona/5 (hereinafter referred to as “the suit property”) which is also the subject issue in the proceedings known as Kilgoris ELC Case No.005 of 2022.
 - iii. In the proceedings known as Kilgoris ELC Case No.005 of 2022, the Applicant was seeking a legal interest over the said suit property against the Respondents herein.
 - iv. Unfortunately, this Honourable Court dismissed the said suit known as Kilgoris ELC Case No. 005 OF 2022 on the 6th October 2022 thereby resulting to the filing of an Appeal known as Nakuru Civil Application No.E018 of 2023 between Angeline.n. Nkoimo -versus- Geoffrey Makana Asanyo & 4 Others (hereinafter referred to as “the Court of Appeal proceedings”).
 - v. In the Court of Appeal proceedings, the Applicant herein was granted a Temporary injunction prohibiting the interference of the suit property pending the hearing and determination of the substantive Appeal on the 6th of October 2023.
 - vi. Based on the Ruling delivered on the 6th of October 2023 in the Appellate Court, the Applicant is now seeking this Honourable Court to arrest its pending judgement until the substantive Appeal is heard and determined.
 - vii. Further to that, the Applicant is seeking to be joined in this proceeding on the basis that she has ownership rights over the suit property and therefore should be heard and/or participate in this proceeding before it pronounces itself through a judgement.
 - viii. The Applicant is also seeking for this Honourable Court to stay any further proceedings including the pronouncement of the pending judgement until the substantive Appeal against the ruling pronounced in Kilgoris ELC Case No.e005 Of 2022 is heard and determined.
 3. The present Application was duly served on the Respondents who opposed the same by filing Replying Affidavits.
 4. The Plaintiff filed their Replying Affidavit on the 1st of November 2023 and outlined the following grounds in opposition to the present Application.
 - i. The Applicant herein had no justifiable interest in this proceeding which is before this Honourable Court.
 - ii. The Applicant’s Appeal emanates from the proceedings known as Kilgoris Elc Case No.E005 of 2022 whose cause of action and reliefs were distinct from the cause of action and reliefs under consideration in the present suit.
 - iii. The Applicant despite being aware of both proceedings known as Kilgoris ELC Case No.E005 of 2022 and Kilgoris ELC Case No.E007 of 2022 never filed any application for consolidation



or stay of this suit during the hearing until very late in the day when judgement is about to be pronounced.

- iv. The Orders issued on the 6th October 2023 by the Appellate Court do not in any way conflict with the Orders under consideration in the judgement pending before this Honourable Court to warrant either an arrest of the same or stay of proceedings herein.
 - v. The Orders issued on the 6th October 2023 which were injunctive in nature was to preserve the status quo of the suit property and did not in any way give directions on the present suit pending judgement.
 - vi. The Orders issued on the 6th of October 2023 by the Appellant Court are self-executing and therefore the interest of the Applicant is well protected without being interfered with the outcome of the judgement pending before this Honourable Court.
5. The 1st and 2nd Defendants/Respondents also opposed the present Application through a Replying Affidavit dated 31st October 2023 for the following reasons; -
- i. Indeed the 1st and 2nd Respondents/Respondents admitted that the applicant had instituted a suit known as Kilgoris ELC Case No.E005 of 2023 against the Respondents in this application.
 - ii. However, the said suit known as Kilgoris ELC Case No. E005 of 2023 was struck out through a Ruling dated 19th December 2022.
 - iii. The Applicant being aggrieved by the Ruling pronounced on the 19th of December 2022 in the proceedings known as Kilgoris ELC Case No.e005 OF 2023 filed an Application known as Nakuru Civil Application No.E018 of 2023.
 - iv. The Court of Appeal in determining the Applicant's application known Nakuru Civil Application No.E018 of 2023 directed that the suit property their be maintained and/or not be interfered with in any way during the pendency of the intended Appeal in their ruling dated 6th October 2023.
 - v. However, the said Court of Appeal Orders issued on 6th October 2023, were not orders staying the present suit for being heard and determined.
 - vi. Further to that, the 1st and 2nd Defendants/Respondents stated that the Applicant never sought for any stay orders in the Court of Appeal despite such provisions being available in law.
 - vii. Consequently therefore, the 1st and 2nd Defendants/Respondents were of the view that the proceedings known as Kilgoris ELC Case No.E005 of 2022 which are before the Court of Appeal have no conflict in mandate or jurisdiction with the present suit.
 - viii. In addition to the above, the 1st and 2nd Defendant/Respondents were of the view that the orders issued by the Court of Appeal on the 6th of October 2023 were meant to preserve the suit property and can not be interpreted as stay of proceedings order.
 - ix. In other words, the 1st and 2nd Defendants/Respondents reiterated that this Honourable Court has the appropriate statutory jurisdiction and should proceed and determined the matter before it.
 - x. The 1st and 2nd Defendant/Respondent concluded their Replying Affidavit by stating that even if the Applicant was successful in the Appeal before the Court of Appeal, the only possible outcome would be to reinstate the proceedings known as Kilgoris ELC Case No. E005 OF 2022 for purposes of a hearing but will not in any way affect the issues in this proceeding.



6. The parties were then directed to submit on the present application which they did on the 07/11/2023.
7. The Honourable Court has indeed perused the present Application, the Replying Affidavits by the Respondents as well as the oral submissions all parties and identify the following issues for determination.

Issue no. 1- has the applicant satisfied the threshold of being granted an order to arrest the intended judgement of this suit?

Issue no. 2- has the applicant satisfied the threshold of being granted an order of stay pending appeal?

Issue no. 3- has the applicant satisfied the threshold of being granted an order of joinder in this suit?

Issue No.4- Who Bears The Cost of this Application?

8. The issues for determination having been outlined hereinabove, the same will Now be discussed herein below;-

Issue No. 1- has the applicant satisfied the threshold of being granted an order to arrest the intended judgement of this suit?

9. The first prayer that the Applicant has sought for is the arrest of the judgement scheduled for the 26th of October 2023 in this suit.
10. However, the Applicant did not cite the statutory provisions of the Civil Procedure Rules, 2010 or any other legal provision upon which this Honourable Court would invoke its powers to consider the said prayer.
11. Be as it may, during the oral submissions by the Applicant, the basis of seeking of this prayer was that pursuant to the Court of Appeal judgement pronounced on the 6th of October 2023, the determination of this suit would directly contradict the orders of the Court of Appeal and render the Appeal therein nugatory.
12. It was therefore the Applicant's submission that this Honourable Court should desist and/or withhold any judgement in this suit until the hearing and determination of the Appeal before the Court of Appeal.
13. The Respondents on the other hand were of the view that this suit was distinct and separate from the one which the Applicant has instituting an appeal.
14. Consequently therefore, this Honourable Court was not in conflict and/or its judgement would not affect the Applicant's rights even if the Appeal was heard and determined in her favour.
15. To begin with, it is important that when a party is seeking for a prayer, the relevant provision of the statute or the supreme law of the Country giving the Judicial officer such powers should be cited for clarity.
16. Unfortunately, in this present Application, the Applicant did not cite the provision that she relies upon in seeking for the prayer to arrest this Honourable Court's judgement.
17. The only provisions that this Honourable Court can imagine the Applicant wanted to rely upon and which have been cited could be Section 1A,1B and 3A of the [Civil Procedure Act](#), Cap 21.



18. If this is the case, then Section 3 A requires that such a prayer must be considered with a view of expediting the wheels of justice and prevent abuse of the Court process.
19. In this present Application, the pronouncement of the judgement in this suit would be for the purposes of meeting the ends of justice and not an abuse of the Court process.
20. The judgement which was slated for the 26th of October 2023 was meant to determine a dispute between the Plaintiff/Respondent and the 1st and 2nd Defendants/Respondents which was filed on the 5th October 2020 and should have been completed within 365 days which have since passed.
21. The arrest of the intended judgement slated 26th of October 2023 can not therefore qualify to be for purposes of expediting justice or preventing an abuse of the Court process as jurisdiction of this Honourable Court has not been challenged.

Issue No. 2-has the Applicant Satisfied the Threshold of Being Granted an Order of Stay Pending Appeal?

22. The second issue for determination is whether the Applicant has satisfied the requirements of a stay order pending Appeal.
23. The Applicant's view is that based on the Ruling pronounced on the 6th of October 2023 by the Court of Appeal in Nakuru, this Honourable Court should stay any further proceedings including the judgement slated for the 26th of October 2023 until the said Appeal is heard and determined.
24. According to the Applicant, any further proceedings including with pronouncement of the Judgement slated for the 26th of October 2023 would result in the interference of the suit property which is the subject of the Appeal before the Court of Appeal.
25. The Applicant is apprehensive that if the judgement slated for the 26th of October 2023 is pronounced, there is a likelihood that the suit property will be interfered and render the entire Appeal nugatory which is prejudicial to both the Appeal and the Applicants legal rights on the suit property.
26. The Respondents dispute the Applicants position by stating that the proceedings before the Court of Appeal which have given raise to the Ruling dated 6th October 2023 emanate from Kilgoris ELC Case No. E005 of 2023 and not this particular suit.
27. In other words, the Respondents are of the view that the proceedings known as Kilgoris ELC Case No. E005 of 2023 and the present suit have separate and distinct remedies and/or reliefs which can not be conflicted by the pronouncement of the judgement slated for the 26th of October 2023.
28. The Respondents have further stated that the judgement slated for the 26th of October 2023 would not in any way prejudice the Applicant's rights to proceed with the proceedings known as Kilgoris ELC Case No.E005 of 2023 if she is successful in the Appeal before the Court of Appeal because her reliefs are different from those in the present suit.
29. Once again, this Applicant did not provide the statutory provisions upon which this prayer should be anchored upon.
30. However, a simple perusal of the present Application creates the view that the Applicant has approached this Honourable Court for an order of stay pending the hearing and determination of the proceedings before the Court of Appeal sitting in Nakuru.
31. An order for stay pending the hearing and determination of an Appeal is provided under Order 42 Rule 6 of the Civil Procedure Rules, 2010 which has not been invoked by the Applicant herein.



32. In the Applicant's submission before this court, the Applicant was of the considered opinion that the proceedings in this suit should be stayed as any further action would render the Appeal nugatory and prejudice her legal rights.
33. First and foremost, it is important to clarify that this suit has not been determined by way of a judgement to give raise to a decree that can be appealed against to the Court of Appeal.
34. Consequently therefore, the provisions of Order 42 Rule 6 of the Civil procedure Rules, 2010 can not apply in the present Applicant.
35. That being the case, this Honourable Court is not certain which provision of the Civil Procedure Rules, 2010 that the Applicant intended to rely upon to be granted this prayer.
36. In the case of Kenya Wildlife Service-versus- James Mutembei (2019) eKLR, the Honourable judge;
 "Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent"
37. Clearly, based on the observation of the Honourable Judge in the above cited authority, the Applicant was under a duty to place sufficient evidence before this Honourable Court as to why no further proceedings should be undertaken to conclude this suit.
38. Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332, that:
 "The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue."
 This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases."
 It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case".
39. So far, the Applicant has not demonstrated to this Honourable court how the determinations of the issues between the Plaintiff and the Defendants herein would interfere with the Appeal emanating from Kilgoris ELC Case No.E005 of 2022 or her rights to prosecute the said suit if reinstated would be hindered.



40. The Court of Appeal in the proceedings known as Civil Application No. E018 of 2023 and to which the Ruling dated 6th October 2023 was pronounced gave the Applicant the following Order;-
- “An injunction be and is hereby issued to restrain the Respondents from selling, alienating and/or interfering in any way whatsoever with parcel No. Narok/Transmara/intona/5 pending the hearing and determination of the Appeal.”
41. The interpretation of this Orders by the Court of Appeal issued on the 6th of October 2023 is that both the ownership records and/or occupation and/or possession should be maintained and/or preserved in the same manner until the hearing and determination of the Appeal.
42. In essence therefore, even if this Honourable Court was to proceed and pronounce its judgement relating the ownership of the suit property between the parties herein, the Applicant’s Appeal and/or cause of action in Kilgoris ELC Case No.E005 of 2022 would still survive because no action can be taken at the Lands Registry or on the ground.
43. The mere allegation that the Appeal before the Court of Appeal would be rendered nugatory and her legal rights infringed is not sufficient without proper evidence and/or grounds being placed before this Honourable Court.
44. Further to the above, the Applicant either intentionally and/or unintentionally omitted to seek any orders of stay of proceedings against this suit.
45. The net effect of this omission is that the Court of Appeal did not issue any orders staying the proceedings and/or pronouncement of the judgement and should not purport to imply such directions the ruling of 6th of October 2023.
46. To this end, this Honourable Court does not find any good reasons as to why the proceedings in this suit should be stayed as prayed and therefore declines to issue such an order.

Issue No. 3- has the Applicant Satisfied the Threshold of Being Granted an Order of Joinder in this Suit?

47. The next issue relates to the Applicant’s prayer for joinder in this suit.
48. The Applicant in paragraph 15 of the Supporting Affidavit sworn on the 24th of October 2023 alleges that she has a legal interest capable of being interfered with by the outcome of the present Application.
49. The Applicant however did not however demonstrate or give any details of the legal interest she would be pursuing in this suit.
50. The pleadings regarding this suit relate to allegations of fraud perpetrated by the 1st Defendants against the Plaintiff in terms of registration of the suit property.
51. In other words, this suit is a dispute between two partners and/or purchasers who both alleged to have purchased the suit property from the Applicant’s late husband but the Land Registrar recorded the name of only one of them instead of both.
52. This Honourable Court takes cognizance that the Applicant had instituted the proceedings known as Kilgoris ELC Case No.E005 of 2022 seeking to re-establish the Vendor’s ownership rights over the original property known as L.R.No.Narok/transmara/intona/3 which sub-divided to create the suit property alleged purchased by the parties in this suit.



53. Unfortunately, this Honourable Court based on its ruling dated 19th December 2022 struck out the said suit because the Applicant's cause of action was declared time barred.
54. It is this Ruling dated 19th December 2022 that the Applicant is now challenging before the Court of Appeal.
55. However, the substantive Appeal against the Ruling dated 19th December 2022 before the Court of Appeal has not determined in favour of the Applicant and/or the Ruling pronounced on the 19th December 2022 set-aside.
56. Legally therefore, the declaration that the Applicant's claim against the parties in this suit is time barred still subsists and no legal interest in the suit property exists to warrant a joinder in this suit.
57. The only time the Applicant's legal interest in this suit will be re-established is when the Court of Appeal upholds the Appeal before it and sets-aside the Ruling pronounced on the 19th of December 2022 in the proceedings known as Kilgoris ELC Case No. E005 of 2022.
58. In essence therefore, this prayer in the Honourable Court's view is pre-mature before the determination of the Appeal challenging the Ruling pronounced on the 19th of December 2022 and can not be granted at this stage.

Issue No.4- Who Bears the Cost of this Application?

59. The last issue for determination is who should bear the costs of the present Application.
60. The Applicant in the present Application has not succeeded in any of the prayers sought for and therefore costs follow the event.
61. The Applicant should bear the costs of the application.

Conclusion.

62. In conclusion therefore, this Honourable Court hereby makes the following Orders in determination of the Notice of Motion Application dated 24th of October 2023;-
 - a. The notice of motion application dated 24th of October 2023 be and is hereby dismissed.
 - b. The applicant shall bear the costs of the said application.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 30TH NOVEMBER 2023.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: MR. NGENO

ADVOCATE FOR THE APPLICANT: MS. NJIHIA

ADVOCATE FOR THE RESPONDENTS: MS. MUIRURI

MS. MKIRA

