



Wanyonyi & another v Masoni & another; Muchai (Tenant) (Environment & Land Case 160 of 2017) [2023] KEELC 22375 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22375 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 160 OF 2017
EC CHERONO, J
DECEMBER 14, 2023**

BETWEEN

ASHON SIKOLIA WANYONYI 1ST APPLICANT

LUKA MAKOKHA WANYONYI 2ND APPLICANT

AND

SELINA NAMALWA MASONI 1ST DEFENDANT

BUNGOMA COUNTY GOVERNMENT 2ND DEFENDANT

AND

ALEXANDER MUCHAI TENANT

RULING

1. The application before me for determination is the Notice of Motion dated 14th July, 2023 in which the applicant seeks the following orders;
 - a. Spent
 - b. That it pleases this honourable court to order release of the rents deposited herein pursuant to the order dated 20th July 2018 to the legal administrator of the estate of Reuben Wanyonyi.
 - c. That the matter herein be and is hereby marked as fully settled and all future rents be handled by the administrators of the estate of Reuben Wanyonyi.
 - d. Costs be in the cause.
2. The application is anchored on the grounds that the issues in dispute in this matter were heard and determined with finality in Succession Cause No. 51 of 2005 in which the succession court ordered



for the removal of the two properties in issue herein from the list of 1st respondent's estate and consequently, the monies deposited with the court ought to be released to the applicants.

3. The application is further supported by the affidavit of the applicant sworn on 14th July 2023 and the annexures thereto.
4. The application is opposed by the 1st respondent who filed grounds of opposition dated 24th July, 2023. In her grounds, the 1st respondent averred that the application is based on a misconception of the directions issued by the succession court vide its orders made on 25th April, 2023. The 1st Respondent further contends that the current application is premature as the same cannot be heard before the court determines the ownership of Webuye Township Plot No. 74 and 75.
5. I have considered the said application, the supporting affidavit, the grounds of opposition by the respondent and the oral submissions by the parties; From the materials placed before me, I find that the issue that commends for determination in this application is whether the application has merit and whether the orders sought ought to be granted.
6. The brief background of the dispute before this Court is that this suit was commenced by a plaint filed simultaneously with a Notice of motion filed under a certificate of urgency seeking one substantive order for a Declaration and Injunction in terms of prayed as per paragraphs 8 and 9 of the plaint dated 11th December, 2017. In the Notice of Motion application, the plaintiff/applicant sought for a restriction order on the subject property i.e. Plot Webuye Municipality No. 74 also known as Webuye 7996/91 ('the suit land') and for status quo to be maintained. According to the plaintiffs/Applicants, they are claiming the suit property as the administrators of the estate of Reuben Wanyonyi whom they contend, is the beneficial owner of the suit property and that the 1st respondent has been trying to illegally acquire the property.
7. From the pleadings and proceedings on record, the plaintiffs/Applicants had also filed another application dated 16th January, 2018 seeking orders of injunction on grounds that the 1st respondent had caused the transfer of the suit land into her name and therefore sought for injunctive orders against her from alienating the same and for orders preserving the subject property until the suit is heard and determined. When the said application was placed before the Duty Judge for directions, the court issued a temporary injunction in the first instance against alienation of the suit land pending hearing and determination of the said application.
8. On 19th July 2018, this Hon. Court rendered itself on the application dated 11th December, 2017 by issuing the following orders;
 - a. An order of injunction is issued restraining the 1st respondent from alienating, disposing or transferring Webuye Municipality Plot No. 74 also known as Webuye Municipality 7996/91 pending determination of this suit.
 - b. The Deputy Registrar to visit the suit plot and serve notices to all the tenants thereon that w.e.f 1st August 2018 deposit and until further notice after this suit is finalized, all rent shall be deposited in this court on account for both the plaintiffs and the 1st defendant. The Court shall make further orders with regard to that rent after trial.
 - c. The parties to comply with the pre-trial directions so that this suit is heard and determined in the next twelve (12) months
 - d.



9. I note from the court record that there were other applications touching on the suit land filed and dealt with which I will not delve into for now.
10. Suffice to say that this Hon. Court has been informed of a dispute over the subject matter herein filed in Succession Cause No. 51 of 2005 in which the parties sought to have this dispute heard first as the determination of ownership of some of the properties under contestation may determine the properties available for distribution amongst the beneficiaries in the said Succession Cause. The Court is therefore informed that the dispute in the succession cause has since being determined thereby necessitating the orders sought in the present application.
11. On examination of the documents attached by the applicants and the 1st respondent, it is apparent that; the applicants herein filed Succession Cause No. 68 of 1997 In the matter of the estate of the late Reuben Wanyonyi and were issued with letters of administration. The 1st respondent herein also filed Succession Cause No. 51 of 2005 in the matter of the estate of the late Ben Masoni. The applicants and another filed summons for revocation of the grant of administration issued to the 1st Respondent and another in Succession Cause No. 51 of 2005 claiming that Plot No. 74 and Plot No. 75 ought to be excluded and removed from the list of assets of the estate of Ben Masoni (deceased) as Plot No. 74 forms part of the estate of Reuben Wanyonyi and was administered in Succession Cause no. 68 of 1997 while Plot no. 75 is registered in the name of Mary Goretti Nasimiyu Munoko, now deceased
12. The succession court determined the summons for revocation in Succession Cuse NO.51 of 2005 and gave orders for removal of Plot No.74 and 75 from the certificate of grant issued to the 1st respondent herein and the grant was amended to reflect the position. It is on the premises of that ruling that the applicants herein have filed the current application. The ruling of the succession court in part read;

“The report indicates that the documents transferring the plot are not available. This court lacks jurisdiction to interrogate the process used to assign the plots to the petitioners. The same can only be done by the Environment and Land Court. In my view until that is done the 2 plots cannot form part of the assets of the deceased property. Either party can move to the said court to establish ownership. Once that Is done they are at liberty to return to this court for distribution of the same if it is found that the 2 plots belong to Ben.”
13. From the foregoing, it is clear that the question of ownership of the 2 plots is highly contested and remains unresolved. It is for this reason the succession court directed that the issue of ownership in respect of the two plots be determined by the Environment and land court. The applicant’s application is therefore premature and/or misguided as this Honourable Court has to hear the parties and their witness to determine the bona fide owner of the two plots in contestation.
14. In the end, it is hereby ordered that;
 - a. The application dated 14th July,2023 lacks merit and the same is hereby dismissed.
 - b. All rent shall continue to be deposited in this court as earlier ordered on account of both the plaintiffs and the 1st defendant. The Court shall make further orders with regard to the rent after this case is heard and determined.
 - c. Costs shall be in the cause.
15. Orders accordingly.

DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 14TH DAY OF DECEMBER, 2023.



HON.E.C CHERONO

JUDGE

In the presence of:

1. Mr. Wanjala H/B Sichangi for the Applicants
2. Benjamin Barasa Wafula holder of POA
3. Okwaro C/A

