



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**SUCCESSION CAUSE NO. 78 OF 2012**

**IN THE MATTER OF THE ESTATE OF OJIAMBO ODONGO (DECEASED)**

**AND**

**CHRISPINUS OJIAMBO ODONGO.....PETITIONER/RESPONDENT**

**VERSUS**

**PAUL OPIYO SUMBA.....OBJECTOR/APPLICANT**

**RULING**

1. This is a determination of Paul Opiyo Sumba's application dated 23<sup>rd</sup> May, 2016 in which he seeks leave to move to the Environment & Land Court (E&L Court) as directed by this Court on 29<sup>th</sup> September, 2015. The Applicant also seeks stay of the confirmation of grant made on 12<sup>th</sup> May, 2016. In essence the Applicant seeks a re-instatement of orders of the stay initially granted by my brother Hon Justice F. Tuiyott on 29<sup>th</sup> September, 2015.

2. The orders issued on 29<sup>th</sup> September, 2015 were as follows:

**“Court: After discussion with parties it is agreed as follows:**

**(1) This matter is stayed pending the Protestor pursuing his claim before an E&L Court.**

**(2) Either party to be at liberty to apply for discharge of these orders at the expiry of 90 days.”**

3. On 15<sup>th</sup> March 2016, the advocate for the Petitioner moved the Court for discharge of the orders granted on 29<sup>th</sup> September, 2015. My brother Judge having satisfied himself that service of the application had been properly effected allowed the application. The cause was thereafter set for confirmation on 12<sup>th</sup> May, 2016 and the confirmation of the grant was indeed made on the said date.

4. The Objector now seeks to have the stay orders re-instated on the ground that he instructed counsel to pursue the suit on his behalf in the E&L Court, albeit the same was not done to his detriment. His contention is that he acted within the time limit set by the Court and he should not be penalized for the inaction of his advocate.

5. From the affidavit in support by the application, it is clear that the Applicant was aware that the instant

suit was scheduled for hearing on 12<sup>th</sup> May, 2016. It is his case that in the process of trying to locate his counsel outside the courtroom on the material day, the matter was called out and confirmation done in his absence. Further, that his advocate promised him that he would seek stay of the confirmation but had failed to do so.

6. His contention is that if stay of confirmation of grant is not granted to him, it will interfere with his claim over LR Bunyala/Bulemia/253.

7. This is a succession court and as such its mandate is to determine the rights of beneficiaries to a deceased's person's estate. At this stage, the dispute before this Court is not a succession dispute but a matter that is well within the realm of the E&L Court. The Applicant was given ample time by my predecessor and if he thought he had a good claim he should have moved with speed and instructed another advocate to act on his behalf when he noted some laxity on the part of the counsel he had instructed.

8. The Applicant has not shown good cause why the confirmation should be stayed. In any case, all is not lost on the part of the Applicant because if he still thinks he has an enforceable claim he should seek redress before the E&L Court. He can still preserve the suit property in the E&L Court.

9. In **Nelson P.Karugumi v Josephine WakeraWamboka [2015] ekLR**, R. K. Limo, J correctly observed that:

**“A succession court is not the right forum for land disputes particularly when the disputes involve 3<sup>rd</sup> parties and beneficiaries or administrators such as the current situation. Where a person has a claim over a property forming the estate but has no right as a dependant the right course is to take the claim in a separate cause or suit against the administrator/administratrix before a court with requisite jurisdiction to determine the claim. The Constitution under Article 162(2)(b) established special courts in Kenya referred to as Environment and Land Courts and are mandated under the law (Section 13(2) of Environment and Land Courts Act) to *inter alia* deal with disputes over use and ownership of land.”**

I agree with the learned Judge that where a person who is not a beneficiary is making a disputed claim over land belonging to a deceased person, such a claim should be taken to the E&L Court which is the Court recognized by the Constitution as the arbiter of land disputes.

10. The Applicant has a better and viable remedy rather than staying orders herein without even showing that he has made any move to agitate his claim before the proper forum.

11. The application herein is one for dismissal and the same is dismissed in its entirety with costs to Petitioner/Respondent.

Dated, signed and delivered at Busia this 18<sup>th</sup> day of August, 2016

**W. KORIR,**

**JUDGE OF THE HIGH COURT**