



**Prichani v Prichani & another (Environment & Land Case
069 of 2009) [2025] KEELC 3385 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3385 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 069 OF 2009**

EC CHERONO, J

APRIL 24, 2025

BETWEEN

JOSECK SIMIYU PRICHANI PLAINTIFF

AND

SAMSON WENANI PRICHANI 1ST DEFENDANT

ISAAC WEKESA PRICHANI 2ND DEFENDANT

RULING

1. Before me for determination is the Notice of Motion application dated 29/11/2024 and brought under Orders 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders: -
 - a. Spent
 - b. Spent
 - c. That a stay of proceedings in the substantive suit herein be granted, pending the hearing and determination of the application for review dated 09/10/2024 and filed on 28/10/2024 in Bungoma High Court Succession Case No. 448 of 2009.
 - d. That the costs of this application be provided for.
2. The application is premised on the grounds on its face supported by the affidavit of the Applicant sworn on even date. In his supporting affidavit, the Applicant deposed that he filed an application for Review in Bungoma High Court Succession Case No. 448 of 2009 on 09/10/2024, arguing that new evidence has surfaced which would impact the rightful distribution of the suit parcel of land. He argued that the succession court had previously issued a grant allocating the suit parcel of land to Julius Wepfukulu Saratuki, and that the outcome of the review is directly relevant to the present case, as it aims to determine the true owner and proper distribution of the land. Additionally, he contends that if the application is not granted, there is a risk of simultaneous proceedings and conflicting judgments



between this court and the succession court. He argued that the review has a strong chance of success and that allowing the application is in the interest of justice.

3. The Respondents filed a replying affidavit in opposition to the application sworn by the 1st Respondent on 18/11/2024 where he deposed that the Applicant filed a similar application dated 05/09/2011 which was allowed by consent of the parties and the succession cause was subsequently stayed. That the succession case was heard and determined vide a judgment delivered on 03/03/2020 which judgment was not appealed against to date. It was further argued that the defendant (Julius Wepukulu Saratuki) died and by dint of his will, the Respondents were appointed as the executors. That the Applicant filed for revocation and annulment of the grant issued to them dated 06/09/2023 which application is still pending in Kimilili. They argued that the current application is an academic exercise as Bungoma HC Succession Cause No. 448 of 2009 has since been concluded.
4. When the said application came for directions, the parties agreed to have the same canvassed by way of written submissions.
5. The Applicants filed their submissions dated 05/02/2025 and argued that the present application was not identical to the initial application as it has come to light that the administrator was engaged in fraudulent activities. Reliance was placed inter alia in the case of High Court at Mombasa Constitution and Human Rights Division-Constitution Petition No. 159 of 2018 William Odhiambo Ramogi & 2 Others vs. Attorney General and 8 Others, Nairobi Winding up Cause No. 43 of 2000. It was submitted that the succession court proceedings take precedence, more so, in determining the revocation of a grant because the subject matter in both suits is the suit land only. It was argued that the application for review was filed promptly, soon after the alleged fraud was discovered.
6. The Respondents filed submission dated 28/02/2025 where they argued that the suit land is registered in the name of Julius Wepukulu Saratuki(deceased) whose estate they represent. That the applicant has filed a revocation of the grant issued to them for the above mentioned estate in the Kimilili Succession Cause No. E005 of 2023.They urged the court to dismiss the application. Reliance was placed in the case of Kenya Wildlife Service v James Mutebei [2019] eKLR and Southfolk Investment Limited v Esquire Investments 7 5 Others [2024] KEELC 687 KLR.

Legal Analysis And Decision

7. I have considered the application, the replying affidavit, supplementary affidavit and the written submissions filed by both parties as well as the authorities cited. In my view, the singular issue for determination is whether the Applicant has established sufficient grounds to warrant this court grant the orders for stay of proceedings pending the hearing and determination of the application for review in Bungoma High Court Succession Cause 448 of 2009 dated 09/10/2024.
8. To be honest, this court is at a loss as to what the applicant is seeking for in this application. First, the application brought under Order 42 Rule 6 CPR which deals with stay of execution in case of appeal but in the body of the application, it deals with review. On the issue of being brought under the wrong provision, the same can be overlooked and the court can turn a blind eye and assume that it is a typographical error.
9. An order for Stay of proceeding is a matter of discretion. This Court has inherent powers to stay any proceedings in any case provided sufficient reasons are given for purposes of advancing the expedient course of justice and this is well anchored under the provisions of Section 3A of the *Civil Procedure Act*. The principles to be considered in an application for stay of proceedings were well espoused in the case of In Re Global Tours and Travels Ltd: Winding Up Cause No.43 of 2000 which was cited with approval by O. N. Makau J in the other case of Abdiaziz Sheikh Maad & 3 others v Governor,



Mandera County & 2 others Petition 21 of 2020 [2021] eKLR. The considerations include whether it is in the interests of justice to do so and if it is so, on what terms it should be granted, bearing in mind the need for expeditious disposal of the matter. In exercising this inherent power, the Court will no doubt take into account the need to determine cases expeditiously, the status and history of the proceedings sought to be stayed, the prejudice, if any, the order will occasion the opposite party and most importantly, the interests of justice.

10. It is not in dispute that in this case, the Applicant's argument is that he is entitled to 16.7 acres of land forming part of land parcel no. Kimilili/Kamukuywa/409. The said land was the subject of succession cause in Bungoma H.C Succession Cause No. 448 of 2009 where judgment was delivered on 03/03/2020 and Julius Wephukulu Saratuki subsequently registered as the owner of the suit land. It is important to note that no appeal has ever been preferred against the said judgment. It is also not in dispute that the said Julius Wephukulu Saratuki died and the Respondents herein were appointed through a will as administrators of his estate. It is also not in dispute that the Applicant herein has filed an application for revocation of the grant issued to the Respondents for the estate of Julius Wephukulu Saratuki (deceased) and the same is pending before Kimilili Court.
11. Taking all that into account, it is clear from the record herein that the issue for determination in the application before the succession court is whether Julius Wephukulu Saratuki obtained letters of administration therein fraudulently and therefore, his subsequent registration as proprietor of the suit land by way of transmission was lawful or whether the grant ought to be annulled. Bearing in mind the determination of the validity of the grant issued in the Succession Cause will be a key issue in these proceedings—particularly because the Respondents are being sued in their capacity as representatives of the estate of Julius Wephukulu Saratuki who was appointed as the administrator in Bungoma H.C. Succession Cause No. 448 of 2009, the Applicant's request for revocation of the grant becomes directly relevant to this case.
12. In view of the matters aforesaid, find it prudent and the interests of justice dictate that I grant the orders sought pending the out-come of Bungoma H.C Succession Cause No. 448 of 2009. In doing so, I take cognizance of the fact that Section 6 of the *Civil Procedure Act* requires the Court to stay proceedings where the matter in issue is directly and substantially in issue involving the same parties in another Court. That is clearly the case in this dispute and the one pending in the High Court. I also take note that this matter was filed in the year 2009 and therefore, there is need to expedite its conclusion without causing undue hardship on any of the parties.
13. In the final analysis, I find that the Defendant/Applicant's application dated 29/11/2024 seeking a stay of these proceedings is merited. However, I direct that the applicant do pursue the determination of Bungoma H.C Succession Cause No. 448 of 2009 with due diligence so that it is finalized at the earliest to avoid delaying this case any further.
14. The application dated 29/11/2024 is accordingly allowed with costs being in the cause.

DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 24TH DAY OF APRIL, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Muyala H/B Mr. Murunga for the defendant.

Plaintiff-present



Bett C/A.

