



Ali & another v Mwinyamiri & 3 others; Sohanpal (Interested Party) (Environment & Land Case 8 of 2021) [2022] KEELC 28 (KLR) (25 April 2022) (Ruling)

Neutral citation: [2022] KEELC 28 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 8 OF 2021**

AE DENA, J

APRIL 25, 2022

FORMERLY MSA NO. 13 OF 2017

BETWEEN

ASHA RAJAB ALI (SUING ON HER OWN BEHALF AND ON BEHALF OF THE ESTATE OF INDERJEET SINGH RATTAN SINGH) 1ST PLAINTIFF

RAMADHAN MOHAMMED MWASENGEZA 2ND PLAINTIFF

AND

HAMISI NDUNI MWINYAMIRI 1ST DEFENDANT

HAMADI MWINYAMIRI 2ND DEFENDANT

RAMA JUMA MWINYAMIRI 3RD DEFENDANT

HAMISI BUNGARI MWINYIMARI 4TH DEFENDANT

AND

SUKHIJIT KAUR SOHANPAL INTERESTED PARTY

RULING

Background

1. The Interested Party, Sukhijit Kaur Sohanpal filed a Notice of Motion application dated 11th January 2022 seeking orders that summons be issued by this court to Arjinderpal Singh Bamrah. He is to be summoned to be orally examined as to why he has failed to substitute the Deceased in the proceedings herein. The application is filed under the provisions of Order 16 Rule 1 of the [Civil Procedure Rules 2010](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#) Chapter 21 of the Laws of Kenya.



The application also seeks for an order staying any further proceedings in this suit pending the proper substitution of the late Inderjeet Singh Rattan Singh Sohandal ((herein referred to as original Plaintiff)). The application is supported by the affidavit sworn by the Interested Party.

2. The Applicant deposes that the original Plaintiff died on 10th May 2018 during the pendency of these proceedings. That in a meeting held on 15th May 2018 and attended by the Plaintiff and the Interested Party Ms. Lynnette Aketch Advocate disclosed that the original Plaintiff by his will dated 15th June 2016 had named one Arjinderpal Singh Bamrah the sole executor to his estate. It is also deposed that the 1st Plaintiff being aware of this fact proceeded to obtain a limited grant of letters of administration adlitem dated 20th June 2018 in Mombasa Chief Magistrate Succession Cause No. 183 of 2018. The purpose of the grant was to enable the 1st Plaintiff as personal representative of the original Plaintiff continue prosecuting this suit. It is alleged that the grant was procured through misrepresentations and or deliberate non-disclosure in her application for the said grant that she had never been a wife to the original Plaintiff and that the original Plaintiff did not die intestate. That the 1st Plaintiff was aware of the Petition for grant of probate of written will in Mombasa High Court Succession Cause No. 38 of 2018 in respect of the estate of the original Plaintiff filed by Arjinderpal Singh Bamrah where following her application dated 19th April 2021 the 1st Plaintiff was joined as an Interested Party. It is alleged that the 1st Plaintiff has attempted to dispose some of the assets of the deceased estate and it was feared that she would also dispose of the suit property herein in the event of a successful outcome of this suit to the prejudice of the estate herein and legitimate beneficiaries right to property.
3. The Applicant further states that the court in the Succession cause abovementioned vide an order dated 11th May 2020 directed preservation of the estate of the original Plaintiff and required the named executor in the will to take such necessary action to protect the estate including substitution of the original Plaintiff in pending suits. That the said Arjinderpal Singh Bamrah has failed to substitute the original Plaintiff as such in the instant suit. This court was urged to allow the application in the interests of justice.

The Plaintiff's Response

4. The application is opposed by the Plaintiff Asha Rajab who swore a replying affidavit on 31st January 2022 where she denies knowledge of the disclosure made by Lynnette Aketch Advocate and reiterate that she and the original Plaintiff lived as husband and wife until his demise. The Plaintiff deposed that she was the only legal representative to the original Plaintiff having been issued with the grant which was still subsisting. That this grant has never been challenged from the time it was issued neither had there been attempts to set it aside. The Plaintiff denied having disposed of the original Plaintiff estate. She averred that the application was an afterthought to serve the applicants selfish interest and that its import was asking this court to adjudicate on succession issues for which it lacked jurisdiction. The Plaintiff urged the court to dismiss the application for being misconceived, frivolous and an abuse of the court process.

Submissions

5. On 25th January 2022 I directed that the application herein be disposed of by way of written submissions within specified timelines. On 23rd March 2022 when the application came up for hearing none of the parties had filed their submissions. This court granted 7 days to the respondents to file their submissions upon service with the applicant's submissions. I directed parties to comply strictly with the timelines and set down the application for ruling on 25th April 2022. No submissions were



received by the time of writing this ruling. I will therefore proceed to determine the application with the responses filed.

Analysis and Determination

6. The main issue for determination is whether the orders sought should issue? I will first look at the issue of jurisdiction as regards the orders sought since it has been urged by the Plaintiff that this court is being asked to adjudicate on succession issues outside its jurisdiction. My understanding of this application is to issue summons to the said executor to show cause why they have not substituted the original Plaintiff in this suit as directed by the court in the Succession cause vide an order dated 11th May 2020. I have taken time to peruse the proceedings of this suit. The proceedings reveal that it is not in dispute that there are proceedings in Mombasa High Court Succession Cause No. 38 of 2018 in respect of the estate of the original Plaintiff. As early as 29th July 2020 Mr. Tindi for the Plaintiff and Mr. Kinuthia for the Interested Party informed the court that there were succession proceedings between their clients, that they had agreed to put this suit on hold. As at 25th November 2021 this court was informed that the proceedings were still pending. Mr. Kinuthia noted the delay in the succession cause and made an oral application for this court to summon Arjinderpal Singh Bamrah to show cause why they have not taken over this matter. The court directed that a formal application should be filed and heard inter parties for informed directions and also encouraged parties to explore consensus on the best way to progress the suit to full hearing. On 15th December 2021 Mr. Kinuthia reiterated on the need to summon Arjinderpal Singh Bamrah thus the application the subject of this ruling. This court was never informed of the alleged court directive or order issued on 11th May 2020, which court order appears to have been in existence since then. The said court order has not been placed before this court or any evidence to such effect. Getting into the issue however I fail to understand why these summonses are not being sought to be issued under the Mombasa High Court Succession Cause No. 38 of 2018 in respect of the estate of the original Plaintiff where in fact this court has been informed the 1st plaintiff is an Interested Party in the said proceedings. In my view Mombasa High Court Succession Cause No. 38 of 2018 is the correct platform to seek these orders.
7. The application also seeks for an order staying any further proceedings in this suit pending the proper substitution of the late Inderjeet Singh Rattan Singh Sohandal ((herein referred to as original Plaintiff)). It is the Defendants response that the suit property is not part of the estate of the original plaintiff (deceased). In paragraph 3 of the Plaint dated 24th January 2017 it is pleaded that the 1st Plaintiff transferred the land parcel No. Kwale/Ramisi Phase IIA/1821 to the 2nd Plaintiff in 2014 culminating to the issuance of title deed to the said 2nd Plaintiff. Clearly the suit properties having been transferred by the original plaintiff to the 2nd Defendant cannot be part of his estate. Indeed, one of the reliefs sought is that the 2nd Plaintiff be granted vacant possession of the suit property. How then can the Interested Party purport to be a beneficiary of a property that did not belong to her husband. If the reliefs sought are in favor of the 2nd Plaintiff how will this prejudice the applicant? I have also perused exhibit SK2 and I agree the suit property has not been included in the list of the properties forming part of the deceased estate. I'm therefore not convinced that the orders for stay of these proceedings should issue on the reasons fronted by the applicant.
8. The upshot of the foregoing is that I find that the Notice of Motion application dated 11th January 2022 is not merited and hereby dismiss it. Costs shall be in the cause.

DELIVERED AND DATED AT KWALE THIS 25TH DAY OF APRIL 2022

A.E. DENA

JUDGE



Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Tindi for the Plaintiffs

Mr. Nyange for the Defendant Respondent

Mr. Kinuthia for the Interested Party Applicant

Mr. Denis Mwakina- Court Assistant.

