



REPUBLIC OF KENYA



Waweru v Estate of the Late Keziah Wamaitha Waweru & another (Environment & Land Case E096 of 2021) [2022] KEELC 3298 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3298 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E096 OF 2021**

JG KEMEI, J

MAY 26, 2022

BETWEEN

STANLEY MUNGAI WAWERU PLAINTIFF

AND

THE ESTATE OF THE LATE KEZIAH WAMAITHA

WAWERU 1ST DEFENDANT

SUSAN NYAMBURA NUNGI 2ND DEFENDANT

RULING

1. This ruling is with respect to the Notice of motion dated the 3/9/2021 filed by the applicant seeking orders That;
 - a. Spent
 - b. Spent
 - c. The Court to grant a stay of execution of the orders issued in Milimani Misc Application No 8 of 2016 in Stanly Waweru Mungai Vs Susan Nyambura Nungi confirming the grant of letters of administration intestate of the 1st Defendant herein pending the hearing and determination of this application.
 - d. The Court to grant a stay of execution of the orders issued in Milimani Misc Application No 8 of 2016 in Stanly Waweru Mungai Vs Susan Nyambura Nungi confirming the grant of letters of administration intestate of the 1st Defendant herein pending the hearing and determination of this matter.
 - e. Costs of the application.



2. The Application is based on the grounds thereat which are reiterated in the Supporting Affidavit of even date of Stanley Mungai Waweru, the Applicant. He deponed that his late father, David Waweru Wanuma owned land parcel Karai/Karai/237 whose title was charged to Business Finance Company for a loan facility in 1984. That there was default in repaying the loan prompting the Applicant to help his late father to stop an imminent public auction of the land. That the land was subdivided into Karai/Karai/818 and Karai/Karai/819 with parcel 819 being sold to settle the loan facility.
3. The Applicant further averred his late father transferred 2.0 acres in parcel 818 to him though the Land Control Board consent for that subdivision was never registered and that the Applicant took immediate possession thereof. That his sister, the 2nd Defendant fraudulently transferred parcel 818's title deed to their late mother, the 1st Defendant to his detriment. That the 2nd Defendant obtained a Grant of Letters of Administration in Misc. App. No. 8 of 2016 which was confirmed on 7/7/2021. It is this Grant that the Applicant swore that he stands to suffer substantial harm should further subdivision be effected by the 2nd Defendant on its strength. Lastly the Applicant deponed that he is now in possession of new evidence showing that his late father was ailing from Parkinson's disease and thus lacked mental capacity to transfer parcel 818 to the 1st Defendant's name. Copies of a letter dated 20/5/1987, consent dated 28/6/1984 and medical reports dated 13/7/2021 were annexed as SMW1-SMW3.
4. The Application is opposed vide the 2nd Defendant's Replying Affidavit dated 22/11/2021. Terming the Application as bad in law and a feeble attempt to appeal against Misc. App. No. 8 of 2016 Estate of Keziah Wamaitha Waweru and Nbi ELC 614 of 2009, the 2nd Defendant pleaded sub judice and annexed Court Orders, Rulings and confirmed Grant as SNN 2 – SNN4. She challenged the alleged 1987 consent that it could not be obtained whilst the land was already charged. That this Court cannot grant any stay of execution against the impugned Grant as prayed.
5. On 23/11/2021, directions were taken to canvass the Application by way of written submissions. Only the 2nd Defendant filed submissions dated 10/1/2022 through the firm of Kahuthu & Kahuthu Advocates. Despite being granted 3 days to do so on 26/5/2022 none was filed. It was submitted that the application is an abuse of the Court process and indeed res judicata. That Nbi ELC 614 of 2009 and Misc App No. 8 of 2016 were concluded and no appeal has been preferred. That litigation must come to an end and thus urged the Court to dismiss the Application and suit.
6. The main issue for determination is whether this Application is merited.
7. The Applicant craves for stay of execution of the Orders issued in Milimani Misc. Application no. 8 of 2016 - Stanley Waweru Mungai vs. Susan Nyambura Nungi. The Applicant did not attach the said orders. However it is clear that the impugned orders were issued in succession proceedings in respect of the estate of Keziah Wamaitha Waweru as deponed by the 2nd Defendant. The Applicant did not controvert the 2nd Defendant's averments.
8. Does this Court have jurisdiction to entertain the instant Application? The answer is found in Article 162 of [the Constitution](#) of Kenya has established the ELC as a Court of equal status with the High Court but definitely not the High Court. The jurisdiction of this Court flows from Article 162(2)(b) of Constitution of Kenya that;

“(2) Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to—

(b) the environment and the use and occupation of, and title to, land.”



9. Further Section 13 (2) of *Environment and Land Court Act* provides;

“(2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land.”

10. The Supreme Court in the case of *Republic v Karisa Chengo & 2 others* [2017] eKLR while affirming the Court of Appeal decision that inter alia held that though the High Court, the ELRC, and the ELC are Courts of equal status, they are different Courts standing in their distinct autonomies, each exercising a special dedicated jurisdiction observed that;

“(52)

In addition to the above, we note that pursuant to Article 162(3) of *the Constitution*, Parliament enacted the *Environment and Land Court Act* and the Employment and Labour Relations Act and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of *the Constitution* and these Acts of Parliament, it is clear that a special cadre of Courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal’s decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”

11. The proceedings being sought to be stayed are in the province of family or probate Court which clearly this Court has no jurisdiction. Such applications are best made in the family division as the Court is seized with the jurisdiction and the facts of the case.

12. In the upshot the application is unmerited. The same is struck out in its entirety.

13. The parties being related, I order each to meet their costs.

14. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 26TH DAY OF MAY 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;



Plaintiff/Applicant – Present online but not audible to the Court

Kahuthu for 1st and 2nd Defendant/Respondent

Court Assistant - Phyllis

