



Joan Ludia Saka & 2 others v Pamela Getrude Otieno & 2 others (Environment & Land Case 25 of 2021) [2022] KEELC 3917 (KLR) (19 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3917 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE 25 OF 2021**

AY KOROSS, J

MAY 19, 2022

BETWEEN

JOAN LUDIA SAKA 1ST PLAINTIFF

DENNIS OCHIENG SAKA 2ND PLAINTIFF

JASSON WILFRED MUMBO SAKA 3RD PLAINTIFF

AND

PAMELA GETRUDE OTIENO 1ST DEFENDANT

HABAKUK ONYANGO ABOGNO 2ND DEFENDANT

**ESTATE OF ABUOR NYASEME ALIAS AGER NYASEME
(DECEASED) 3RD DEFENDANT**

RULING

1. This court concluded with the hearing of this suit on January 18, 2022, directed the parties to file written submissions; which they did and reserved the judgment for delivery today. However, the court now finds itself in the unfortunate position in which it has to deliver a ruling instead of a judgment.
2. The turn of events has been occasioned by two reasons which all relate to Kisumu Succession Cause no 148 of 1999 (In the matter of the Estate of Ager Nyaseme Abuor) Joan Ludia Saka & 2 Others vs Getrude Pamela Atieno & 2 Others which to a large extent involves the same parties in this suit and one way or the other may have a bearing on the outcome of this case.
3. One, in the course of the 2nd defendant tendering his oral evidence, he produced a copy of a court order allegedly issued by the probate court dated April 26, 2017. This order refers to Land Parcel Gem/Ramula/205 and not Land Parcel Gem/Ramula/206 [“suit property”] which is the subject of these proceedings. Similarly, the Ruling of the probate court dated November 7, 2016 that he produced refers to the suit property and not Land Parcel Gem/Ramula/205. As it is, this court is uncertain if



there was a typographical error in the said Order and it is paramount that the parties address the court on this particular issue.

4. Two, in my considered view, there is no correlation between the said Order and the ruling. While the said Order directed the 2nd defendant in this case to cede one acre of land from Land Parcel Gem/Ramula/205 to some of the plaintiffs in this case, the ruling on the other hand revoked the Summons for Confirmation of Grant in respect of the estate of Ager Nyaseme Abuor (deceased) and directed the 1st defendant to account for the proceeds of sale of the suit property. It would appear the orders that emanated from this ruling were never extracted.
5. In the circumstances and bearing in mind that this court has to carry out substantive justice in rendering its decision, I find that it is imperative that the entire court record and proceedings of the probate court be called for to this court and in exercise of its powers under sections 1A, 1B 1(a) and 3A of the Civil Procedure Act, I issue the following disposal orders–
 - a. That judgment in this matter be and is hereby arrested pending further directions of this court.
 - b. The parties do address the court on the order dated April 28, 2017 and issued in Kisumu Succession Cause no 148 of 1999 [In the matter of the Estate of Ager Nyaseme Abuor (deceased)]
 - c. That the entire proceedings and court records of Kisumu Succession Cause no 148 of 1999 [In the matter of the Estate of Ager Nyaseme Abuor (deceased)] be called for to this court.
 - d. That the matter be mentioned for directions on July 18, 2022.
 - e. That there shall be no orders as to costs.

It is so ordered.

Ruling delivered virtually.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 19TH DAY OF MAY 2022.

In the Presence of:

M/s Otieno for the plaintiff

N/A for defendant

Court assistant: Olivia Nyumba

HON A Y KOROSS

JUDGE

19/5/2022

