



REPUBLIC OF KENYA



Manyara & another v County Government of Marsabit & 2 others (Environment & Land Case 017 of 2021) [2022] KEELC 2933 (KLR) (16 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2933 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE 017 OF 2021**

PM NJOROGE, J

MAY 16, 2022

BETWEEN

DAVID KIMAITHA MANYARA 1ST PLAINTIFF

JUDITH KARIMI MANYARA 2ND PLAINTIFF

AND

COUNTY GOVERNMENT OF MARSABIT 1ST DEFENDANT

ZAINAB KUREWA 2ND DEFENDANT

ABDIKADIRDIR KUREWA 3RD DEFENDANT

RULING

1. This application is dated 17/6/2021 and seeks the following orders:
 1. That this honourable court be pleased to order stay of further proceedings in this suit, pending the hearing and determination of Meru High court Succession Case Number 96 of 1993.
 2. That costs of this application be in the cause.
2. The application is supported by the affidavit of Jane Mwendwa Kimathi sworn on 17/6/2021 and has the following grounds: -
 1. That the subject matter in this suit being Plot Number 11969/8 Marsabit Township forms part of Estate in Meru High court Succession Case Number 96 of 1993.
 2. That the plaintiffs herein are bonafide owners of the suitland herein being plot Number 11969/8 Marsabit Township by virtue of certificate of confirmation of Grant issued in Meru Court Succession Case Number 96 of 1993.
 3. That the material grant was revoked on 10/03/2021.



4. That the Meru Court Succession Case Number 96 of 1993 raises several serious issues of law whose outcome would have great bearing in this Suit as to the proprietorship of the Suitland.
 5. That it is in the interest of justice, fair and orderliness in Judicial practice that this suit be stayed pending the determination of the suit before the High court.
 6. That the respondent shall not suffer any prejudice or irreparable harm if the application is allowed.
3. The application was canvassed by way of Written Submissions.
 4. The applicants' advocate says that the subject matter in this case is the same subject matter being canvassed in Meru High Court Case Number 96 of 1993 in respect of the estate of Francis Manyara. For this reason, the application seeks a stay of proceedings pending determination of the Succession Case. It is proffered that the confirmation of grant dated 27/11/2013 was revoked by the Judge in Meru High Court Case No. 96 of 1993 on 10/3/2021. As a result, the subject matter reverted to the name of the deceased from proprietorship by the plaintiffs. For this reason, this application prays for a stay of proceedings pending determination of the Succession Cause.
 5. The application proffers the case of *Global Tours & Travels Limited*, Nairobi H. C Winding up Cause No. 43 of 2000 where the court held that the overriding consideration in the exercise of the courts discretion to stay or not to stay proceedings is if or if not there is predominance of the interest of justice. The application also proffers the case of *Josephat Kinyua Kajui Versus Stephen Kanyara M'Impwi* [2020] eKLR where the court opined as follows:

“Judicial Practice and Public Policy do not embrace the existence of parallel and multiple proceedings concerning the same subject matter.”
 6. The 1st respondent, the County Government of Marsabit did not file Written Submissions or respond to the application in any other manner.
 7. For the 2nd and 3rd respondents, it was submitted that since the Certificate of Grant upon which the plaintiffs predicated their case had been revoked, they had no capacity to move to represent the estate of a deceased person. They proffered the case of *Isaya Masira Momanyi Versus Daniel Omwayo & Another* [2017] eKLR where the Court held as follows:

“A party can therefore not commence a suit on behalf of the estate of a deceased person without letters of administration and thereof obtain the letters of administration in respect of a deceased persons estate. Such a suit is null and void ab initio and cannot be cured by a party by subsequently obtaining the letters of administration.”
 8. The respondents also argue that the plaintiffs have not attained the threshold for a stay of proceedings to be granted saying that the defendants are not parties to the Meru Succession Cause. They proffer Miscellaneous Application No. 394 of 2017 *Republic Versus Registrar of Societies Kenya & 2 others* [2017] eKLR where the court opined as follows:

“For the principle to apply, certain conditions precedent must be shown to exist. First, the matter in issue in the subsequent suit must also be directly and substantially in issue in the previously instituted suit; proceedings must be between the same parties or between parties under whom they or any of them claim, litigating under the same title; and such suit or



proceeding must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

9. I have carefully considered the issues that arise in this case. All the authorities proffered by the parties in support of their diametrically incongruent assertions are good authorities in their facts and circumstances. However, not all cases are congruent to a degree of Mathematical exactitude in their facts and Circumstances.
10. In this case, the applicants are not filing a suit on behalf of the estate of a deceased person. A Succession Cause already exists. Its determination will have consequences concerning ownership of the subject matter in this suit. Should this court proceed with this suit to its conclusion and the Succession Court decides otherwise, the result will put the Judiciary in a veritably invidious position. I do note that the respondents do not deny the existence of the Meru Succession Cause and they also do not deny that the suit land is one of the properties being contested in the Succession Cause.
11. Regarding the argument by the respondents that a stay cannot be granted because the respondents are not parties in the Succession Cause, I can only say the following. In succession cases only the claimant beneficiaries are parties. By any stretch of imagination, we cannot expect that the 1st defendant, the County Council of Marsabit, would have been parties in Meru High Court Succession Cause No. 96 of 1993, and ditto the 2nd and 3rd defendants. No doubt this application is sui generis. It cannot, therefore, be expected that the parties in this suit and in the succession cause could be the same.
12. To preserve the dignity of the Judiciary, to avoid conflicting parallel decisions and in the overriding and overarching interest of Justice, I find it necessary to stay the proceedings in this suit pending the hearing and determination of Meru High Court Succession Case No. 96 of 1993.
13. Orders accordingly
14. Costs shall be in the cause.

DELIVERED AT ISIOLO THIS 16TH DAY OF MAY, 2022 IN THE PRESENCE OF:

Court Assistant: Balozi.

Nyabuto present fir 2nd and 3rd Defendants

Nyabuto h/b John Behailu for the 1st Defendants

M/S Nyasani h/b Mwirigi

Kaburu for the Plaintiff.

Hon. Justice P. M. Njoroge

Judge

