



**Mugacha v Mugacha (Environment & Land Case E076 of 2021)
[2022] KEELC 2944 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2944 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E076 OF 2021**

JG KEMEI, J

MAY 12, 2022

BETWEEN

STANLEY THAARA MUGACHA PLAINTIFF

AND

PETER KINUTHIA MUGACHA DEFENDANT

RULING

1. This ruling arises from the Notice of Motion dated the January 22, 2022 and filed on February 16, 2022 brought under section 3 (a) and 6 of the [Civil Procedure Act](#), article 40 and 159 of [the Constitution](#) of Kenya, 2010 and all enabling provisions of the law.
2. The applicant sought the singular order that the court be pleased to stay the suit pending the hearing and determination of the Summons for Revocation or annulment of grant dated the February 14, 2019 in Succession Cause No 76 of 2014 in the Estate of Nelly Wangui Mugacha.
3. The application is premised on the grounds annexed thereto and the Supporting Affidavit of the applicant sworn on January 22, 2022. He deponed that the suit land Kiambaa/kihara/6773 (suit land) is a subdivision of Kiambaa/kihara/2590 previously registered in the name of Nelly Wangui Mugacha, the deceased mother of the respondent. That the estate was succeeded vide Succession Cause No 76 of 2014 and a grant issued and confirmed on October 14, 2015.
4. Following the confirmation of grant aforesaid, Hannah Njoki Mugacha has filed Summons for Revocation of the said grant which proceedings are pending before the Succession Court in Kikuyu. That the success of the revocation of grant will put the validity of the suit land in question. Further that the non- joinder of Florence Gathoni Mugacha who is the sister of the plaintiff and a beneficiary of the suit property renders this suit fatal. That Florence Gathoni and the plaintiff are registered as trustees of the suit property in their capacity as administrators of the estate of Nelly Wangui Mugacha and the plaintiff has tried to shortchange the beneficiaries by claiming the suit land absolutely as the



beneficiaries continue to occupy the suit land. He urged the court to stay the proceedings pending the hearing and determination of the Summons for Revocation in the lower court.

5. Though on March 17, 2022 the parties elected to file written submissions none has filed any. The plaintiff failed to file Replying Affidavit nor written submissions in this regard the application is therefore unopposed.
6. The key issue is whether the application is merited.
7. In the case of *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No 43 of 2000 the court held that;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the *prima facie* merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”

8. Further the threshold for stay of proceedings in the in *Halsbury's Law of England*, 4th Edition. Vol 37 page 330 and 332, that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

9. I have carefully considered the reasons for stay which is that there are pending proceedings in the Succession Court with respect to the grant of succession involving the suit land now in the name of the Plaintiff. The claim of the plaintiff in this case is that of trespass.
10. I find that the application is merited. It is allowed with no orders as to costs.
11. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 12TH DAY OF MAY 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Gacheru for plaintiff/respondent

Ms Kibebo for defendant/applicant



