



Kiarri & another ((Suing as Legal Representatives and Administrators of the Estate of Waithira K Kiarri (Deceased)) v Gachungei & 19 others (Environment and Land Case Civil Suit 386 of 2016) [2022] KEELC 2813 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEELC 2813 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 386 OF 2016**

**JA MOGENI, J
JUNE 23, 2022**

BETWEEN

**REGINA WAIRIMU KIARII 1ST PLAINTIFF
& RAHAB WAIRIMU MUKORA 2ND PLAINTIFF
(Suing as Legal Representatives and Administrators of the
Estate of Waithira K Kiarri (Deceased))**

AND

SUSAN WANJIRU GACHUNGEEI & 19 OTHERS DEFENDANT

RULING

1. The 19th and 20th defendant/applicant by a notice of motion application dated 16/02/2022 seeks orders that: -
 - a) Spent
 - b) That the Honourable court be pleased to stay any further proceedings in this matter pending the hearing and determination of the application dated 2/12/2021 that seeks to annul and/or set aside the letters of administration Ad Litem issued to Regina Wairimu Kiarri and Rahab Wairimu Mukora, on 18/11/2015.
2. The application is premised on inter alia the following grounds set out on the face of the application and supported by the affidavit of James Thendu Gitau:
 - i. That this Honorable Court issued limited grant Letters of Administration Ad Litem to Reginal Wairimu Kiarri and Rahab Wairimu Mukora of P.O. Box 419 Kilimoni on 18/11/2015, the said letters were signed by Hon. Lady Justice R.E Ougo, Judge of the High Court of KENYA



- ii. That the said letters were issued pursuant to the letter purportedly issued by a Chief on 9/12/2016.
- iii. That the said letter by a purported chief that was not signed and/or stamped was addressed to the Principal Magistrate Thika Law Courts
- iv. That the said chief's letter indicated that the deceased was survived by the following relatives:-
 1. Regina Wairimu Kiarri
 2. Micheal Mukora Kiarri
 3. Susan Wajuru Gachungei
 4. Francis Kiarri Ngugi
 5. John Gachungui
3. That it is not therefore understandable how the name of one Rahab Wairimu Mukora, appears on the limited grant of letters of administration ad litem
4. That there is a clear manifestation of fraud on the part of Regina Wairimu Kiarri and Rahab Wairimu Mukora, as such the letters ad litem ought to be annulled and/or set aside

Application

5. By the application of James Thendu Gitau filed by the advocate for the 19th and 20th defendants, the applicant sought to stay proceedings in this suit pending hearing and determination of Probate and Administration Cause No. 2448 of 2015 at Nairobi Family Division filed by the 1st defendant Susan Wanjiru Gachungei. The foundation of the Defendants' application was that this Honorable Court issued limited grant of Letters of Administration Ad Litem to Regina Wairimu Kiarri and Rahab Wairimu Mukora on November 18, 2015. The issuance of the limited grant was made in respect of the estate of Waithira Kiarri deceased who the defendants list her relatives to be Regina Wairimu Kiarri, Micheal Mukora Kiarri, Susan Wanjiru Gachungei, Francis Kiarri Ngugi and John Gachungui. The 19th and 20th defendants contend that they are now aware how Rahab Wairimu Mukora is listed on the limited grant of letters of administration ad litem since her name is not in the chief's letter that listed the relatives of the deceased Waithira Kiarri.
6. That Susan Wanjiru Gachungei 1st defendant has instituted a suit in the Probate and Administration Cause No. 2448 of 2015 Family Division which was to be heard on 28/02/2022. The Applicants stated that the court had issued limited grant of Letters of Administration Ad Litem to both Regina Wairimu Kiarri and Rahab Wairimu Mukora of P.O. Box 419 Kilimoni on 18/11/2015 which letters were signed by Hon. Lady Justice R.E Ogo.
7. The applicant, James Thendu Gitau contends that the inclusion of Rahab Wairimu Mukora on the limited grant of letters of administration ad Litem has been done fraudulently. He therefore seeks to have the letters Ad Litem annulled.

Response

8. This application is opposed and the plaintiff/respondent, Regina Wairimu Kiarri, swore a replying affidavit on February 17, 2022, and averred that 1st defendant Susan Wanjiru Gachungei being a wife to the son of the deceased Waithira Kiarri, John Gachungei (deceased) meddled with the property of



the deceased Waithira Kiarri without obtaining the necessary grant of letters from the Court. That she subdivided the estate of the deceased and transferred the same to third parties.

9. That the instant suit is to preserve the estate of the deceased and recover the deceased estate namely Plot No. Ruiru Kiu Block 2(Githunguri) 2755 and Githunguri Constituency Ranching Plot No. 001552 share certificate No. 3372 transferred fraudulently by the 1st defendant to third parties.
10. That the applicant James Thendu Gitau and the 1st defendant meddled with the estate of Waithira Kiarri, deceased, without legal authority. She attached a copy of the green card to show the transactions that were undertaken in 2011 vesting the land to the Applicant, Waithira Kiarri died on 22/01/1998 and the letters of grant of administration ad litem were issued on 18/11/2015. Further that the application for stay of proceedings is misplaced and is an abuse of court process with no merit.

Analysis and Determination

11. I have perused the submissions of the applicant filed on 9/03/2022 and the replying affidavit of the plaintiff/respondent filed on 17/02/2022 and submissions dated 26/03/2022. The stay of proceedings is a serious judicial action which seriously interferes with the conduct of litigation. It is common ground that an order for stay of proceedings is a discretion of the trial court.
12. My reading of the application and the submissions filed and the response to the application I note that there are only two issues that I need to address and these are following are the legal and factual issues that commend to me for determination:
 - (a) Whether this Court should stay the proceedings herein pending determination of the application dated 2/12/2021.
 - (b) Who bears the costs of this Application?

Whether this Court should stay the proceedings herein pending determination of the application dated 2/12/2021

13. Professor Adrian Zukerman in his book *Zukerman on Civil Procedure: Principles of Practice* (2nd Ed., Sweet & Maxwell 2006) at page 533 paragraph 13.16 writes that a court has a wide ranging jurisdiction to stay proceedings. It is that facility and jurisdiction of bringing proceedings to a halt whilst keeping open the possibility of their revival at a later stage that the Defendant herein sought to invite through the application filed and dated 16/02/2022.
14. Briefly, Mr. Ngani advocating for the plaintiff/respondent in his response stated that the plaintiff petitioned for letters of administration on 28/10/2015. That the plaintiff/respondent filed ELC 383 of 2016 to preserve the estate of the deceased Waithira Kiarri after noticing that the applicant and the 1st defendant had colluded and transferred the estate of the deceased without letters of administration. That the letter of the chief which the applicant states was obtained fraudulently is duly filed in the Court file for Succession Cause No 2648 of 2015.
15. Prof Kiama Wangai for the applicant was brief in his submissions to the effect that the 1st defendant's name was not included in the consent filed for the grant of letters ad litem for 25/10/2015 and that the subject property Plot No. Ruiru Kiu Block 2(Githunguri) 2755 and Githunguri Constituency Ranching Plot No. 001552 share certificate No. 3372 were transferred to the 1st defendant by the deceased Waithira Kiarri before her demise.
16. From the outset, it was clear to me and it still is that the instant dispute before the court is not a controversy about the legality or otherwise of the Limited Grant Letter of Administration Ad Litem



of the suit property. These are the proceedings in the High Court in Probate and Administration Cause No. 2648 of 2015. Before this court is a simple question of whether it would be a proper case management strategy to stay the instant suit to await the determination of an application dated 2/12/2021 which seeks to annul the letters granted to the plaintiff on November 18, 2015. I will not arrogate myself the duty or burden of determining the issues that are in the application since these are matters before another court.

17. It was noted by the plaintiff/respondent that the applicant was not a party in the Probate and Administration Cause No. 2648 of 2015. Further that the instant suit is about preservation of the estate of the deceased, the suit is a part-heard. The applicant has alleged fraud on the part of the plaintiff/respondent. Again the law is clear on this that if one alleges fraud it must be proved and this can only be adduced during the hearing of the suit.
18. The general principles which guide our courts whenever they are invited to exercise jurisdiction to stay proceedings are best summarized in *Halsbury's Law of England, 4th Edition*, Vol 37 at pages 330 and 332 as follows:

“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 proceedings beyond all reasonable doubt ought not to be allowed to continue.”
19. Staying proceeding is a matter of discretion. The Court indeed has powers to stay any matter for purposes of advancing the expedient course of justice and this is well anchored on the provisions of Section 3A of the *Civil Procedure Act*. The principles to be considered in application for stay of proceedings were well espoused in the case of *In Re Global Tours and Travels Ltd : Winding Up Cause No.43 of 2000* which was cited with approval by ON Makau J in the other case of *Abdiaziz Sheikh Maad & 3 others v Governor, Mandera County & 2 others* Petition 21 of 2020 [2021] eKLR. The considerations include whether it is in the interests of justice to do so and if it is so, on what terms it should be granted, bearing in mind the need for expeditious disposal of the matter.
20. Having considered the application and the submissions tendered by the advocates for the applicant on 9/03/2022 and advocate for the plaintiff dated 26/03/2022, I do not think that the applicant has laid a proper basis for an order of stay of proceedings in the circumstances of this case. First, the applicant is seeking to annul the Limited Grant of Letters of Administration Ad Litem which was granted in November 2015. This is a matter to be dealt with by the High Court in the Probate and Administration division. I note that the letters were granted 7 years ago which begs the question of where the applicant was all this time. Again this is not a succession court and I will leave it to the court with jurisdiction over the matter to determine this.
21. Secondly, the applicant has not demonstrated that he has a legal interest in the suit property that would form the basis of the stay order that he seeks. In my view, the fact that the plaintiff [who was granted limited] sued him and made him a defendant to this suit is not a sufficient ground for the court to grant an order of stay of proceedings, moreso when the 1st defendant on whose behalf the applicant seems to be speaking for and is a critical party to the suit and has not sought a stay of proceedings.
22. The totality of the foregoing is that the applicant has not satisfied the court that there is a proper basis for staying the proceedings in this suit. Consequently, the applicant’s notice of motion dated February 16, 2022 is rejected for lack of merit.



22. It would in the circumstances occasion the plaintiff unnecessary prejudice if the instant suit is stayed. The plaintiff has no control over the proceedings in the application filed. The court where the application is filed knows not about the plaintiff or any reliefs she may be entitled to. Proportionate justice would consequently demand that once a party is before the court his complaint is adjudicated upon unless there is an alternate forum where the same may be adjudicated.
23. The jurisdiction to order stay of proceedings is not to be confined to instances expressly mentioned by statute or rules. The Jurisdiction must be exercised where the court is of the view that there is abuse of the process of court. It can also be exercised where it is deemed right and just to stay the proceeding like where a party fails to comply with court directions in relation to ordinary case management.
24. In my view, the instant suit does no amount to an abuse of any process. I did not and still do not believe that it would be right and just to stay the proceedings in this suit. The prejudice to be occasioned to the Plaintiff by such stay far outweighs the hardship the applicant would suffer by the continued prosecution of this suit.
25. I was inclined to and did find that the application lacks merit and for the above stated reasons the inclination is that I now dismiss the application.

b) Who bears the cost of the application

The costs of dismissed application will certainly follow the cause will be awarded to the plaintiff. I therefore make the following orders:

- a) The notice of motion application dated February 16, 2022 is dismissed
- b) Cost of this application is awarded to the plaintiff
- c) The court shall make further directions during the delivery of the ruling on the resumption of hearing of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE 2022.

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MOGENI J

JUDGE

In the presence of:-

.....Plaintiffs

.....1st Defendant

.....2nd Defendant

.....3rd to 18th Defendant

.....19th to 20th Defendant

