



**Kano Kajulu Farmers Co-operative Society Limited v County Lands Registrar, Kisumu & another
(Environment & Land Case 46 of 2018) [2025] KEELC 389 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 389 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 46 OF 2018**

E ASATI, J

FEBRUARY 6, 2025

BETWEEN

KANO KAJULU FARMERS CO-OPERATIVE SOCIETY LIMITED APPLICANT

AND

COUNTY LANDS REGISTRAR, KISUMU 1ST DEFENDANT

MARY AKEYO OGENDO 2ND DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion application dated 6th March, 2024 brought by the Plaintiff/Applicant under the provisions of Order 42 Rule 4 of the Civil Procedure Rules. The application seeks for an order of stay of proceedings in this case pending hearing and determination of Kisumu HCC SUCCESSION CAUSE NO.98 OF 2013 and an order that the Applicant be granted leave to file and serve a further list of documents and to recall its witnesses for hearing.
2. The Applicant's case is that an application for revocation of grant through which the 2nd Defendant acquired the suit land had been filed in KSM HC SUCC. CAUSE NO.98 of 2013 and was due for determination. That the application has high chances of success and might revoke the Grant that the 2nd Defendant used to secure the title for the suit land thus revoking the 2nd Defendant's title over the suit land. That Kisumu High Court Succession Cause No.98 will be rendered nugatory if the Respondents proceed with the hearing of the present case.
3. That it is of utmost importance that leave be granted to the Plaintiff/Applicant to file further list of documents and recall its witnesses because the 2nd Defendant recently served the Plaintiff with a list of documents dated 13th February, 2024 after the Plaintiff had closed its case. The application was supported by the contents of the Supporting Affidavit sworn by Charles Ayula Owane on 6th March, 2024. To the Supporting Affidavit was annexed a copy of an application for revocation of Grant dated 29th November, 2022 under Certificate of Urgency in KSM H/C SUCCESSION 98 OF 2013.



4. The Applicant also filed a Further Affidavit sworn by Charles Ayula Owane on 10th July, 2024. He averred that the conflict herein was brought about by the 2nd Respondent who conducted succession to the estate of her father-in-law secretly while leaving out the real dependents who are higher in terms of degree of consanguinity. That the 2nd Respondent sub-divided and sold land whose title was acquired fraudulently.
5. The application was opposed by the 1st Respondent vide the Grounds of Opposition dated 30th May 2024 filed by the Principal Litigation Counsel, Attorney General Chambers. The case of the 1st Respondent is that the application has no merit and does not fall within the provisions of Order 42 Rule 4. That the application is an afterthought as the outcome of KISUMU HIGH COURT SUCCESSION NO.98 OF 2013 was well within the knowledge of the Applicant before the filing of the current suit.
6. That the Applicant has not demonstrated the nexus between the Grant sought to be revoked and its position being a legal entity and hence incapable of being an administrator of the estate. That the Applicant is guilty of inordinate delay in bringing the application and no explanation has been given for the delay.
7. The application was also opposed by the 2nd Respondent vide the Replying Affidavit sworn by MARY AKEYO OGENDO on 24th May, 2024. The case of the 2nd Respondent is that the application has been brought in bad faith with the intention of causing a conflict between the 2nd Respondent and her brother in-law knowing that her father -in-law gave each son his own parcel of land. That the application has been filed after much delay. That the Applicant's interest in the suit land is not dependent on the issue of succession purportedly to be addressed in KISUMU HIGH COURT SUCCESSION NO.98 OF 2013 since the orders made by the court will attach to the suit land regardless of the outcome of the succession matter.
8. It was submitted on behalf of the 1st Respondent that the Applicant is not diligent and deserving of the remedy sought. That from the record it is clear that the Applicant was aware of the existence of the succession cause before the suit was filed.
9. Counsel submitted further that the Applicant was aware of the Grant and proceeded to testify in this case. Counsel relied on the case of Kenya Wildlife Services -vs- James Mutembei (2019)eKLR where the court held that stay of proceedings should not be confused with stay of execution pending appeal. That stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. That the test for stay of proceedings is higher and stringent.
10. Counsel submitted that fairness on trial cannot allow a party to keep on searching and inventing evidence as the case goes on. That delay in bringing the application is unreasonable.
11. It was submitted on behalf of the 2nd Defendant that at the time of filing the suit, the Applicant was aware that the 2nd Defendant was the registered owner of the suit land pursuant to the Grant of Letters of Administration. That the Applicant has not given any reason why they waited for 6 years to bring the application for stay of proceedings.
12. That the Applicant's claim on the Originating Summons being a claim of adverse possession is a claim against the land and not ownership as held in the case of Githu -vs- Ndere (1984)eKLR 77 and that therefore it matters not if the suit was brought against the 2nd Defendant or the objector in the succession proceedings.



13. Counsel relied on the cases of Kenya Wildlife Services -vs- James Mutembei (2019) eKLR and Global Tours & Travel Limited Nairobi HC Winding Up Cause NO.43 of 2000 on principles applicable on an application for stay of proceedings.
14. Regarding the prayer by the Applicant to file further witness statements and documents, Counsel relied on the case of Mzee Wanjie & 93 Others -vs- Saikwa & Others (1982 – 88) 1KRA 462 and submitted that the nature of additional evidence the Applicant prays to be allowed to adduce has not been explained or attached to the application. Counsel urged the court to dismiss the application with costs.
15. I have considered the application, the grounds raised in opposition thereof and the submissions made.
16. The suit herein was commenced by way of Originating Summons dated 11th September, 2018 seeking ownership of the suit land on grounds of adverse possession. The court record shows that the case has proceeded to hearing, the Applicant/Plaintiff presented its evidence and closed its case on 20th September, 2023. The present application was brought in the pendency of the defence case.
17. The main ground of the application is that there is an application pending in the succession cause which application may result in the revocation of Grant that enabled the 2nd Defendant obtain title. A copy of the said application dated 29th November, 2022 drawn by Counsel acting for the Applicant herein was attached to the Supporting Affidavit. A submitted by the Defendant, it means that the Applicant was aware of the existence of the application in the Succession Cause at least since the year 2022 yet the Plaintiff proceeded to testify and close its case before making the application.
18. The ground for grant an order of stay of proceedings as held in the case of Kenya Wildlife Services -vs- James Mutembei (2019)eKLR where the court held that stay of proceedings should not be confused with stay of execution pending appeal. That stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. That the test for stay of proceedings is higher and stringent.
19. These conditions have not been demonstrated herein. The applicant's claim is based on adverse possession and no nexus has been established between its claim and the pending succession cause.
20. I find that the application lacks merit and hereby dismiss it with costs to the Respondents.
Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 6TH DAY OF FEBRUARY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Awuor S. for the Plaintiff /Applicant.

N/A for the 1st Defendant /Respondent

Mumma for the 2nd Defendant /Respondent

