



Lusambo (Suing on His Behalf and on Behalf of the Estate of Jamila Mpemba alias Jeanette Von Rohr) v Mohammed & another (Environment & Land Case 25 of 2023) [2025] KEELC 331 (KLR) (4 February 2025) (Ruling)

Neutral citation: [2025] KEELC 331 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 25 OF 2023
FM NJOROGE, J
FEBRUARY 4, 2025**

BETWEEN

KENZO HUGUES NDAYA LUSAMBO ALIAS IDDI NDAYA LUSAMBO (SUING ON HIS BEHALF AND ON BEHALF OF THE ESTATE OF JAMILA MPEMBA ALIAS JEANETTE VON ROHR) PLAINTIFF

AND

NASSIR OMAR MOHAMMED 1ST DEFENDANT

MPEMBA OMAR MPEMBA 2ND DEFENDANT

RULING

The Application

1. The defendant filed a Notice of Motion dated 31st May, 2024 pursuant to Article 59 (1) (d) of *the Constitution* of Kenya, 2010, Section 1, 1A and 3A of the *Civil Procedure Act*, Cap 21, Order 51 of the Civil Procedure Rules in which it sought the following orders:
 1.Spent;
 2. That this Honourable Court be pleased to stay any further proceedings in this suit pending the hearing and determination of this application;
 3. That this Honourable Court be pleased to stay any further proceedings in this suit pending the hearing and determination of Mombasa High Court Family and Probate Case Number 80 of 2004 in the matter of the Estate of Jamila Mpemba;
 4. That the cost of this application be in the cause.



2. The application which is supported by the plaintiff's sworn affidavit dated 31/5/2023, is based on the grounds that the suit property in the present case is the subject of contention and the sole asset in the estate of one Jamila Mpemba in Mombasa high court family & probate case no 80 of 2004 where the applicant herein has sought revocation of the grant issued to the 1st defendant. The applicant depones in his supporting affidavit that he stands to suffer irreparably if the present suit proceeds concurrently with the Mombasa case.

Defendant's Response.

3. The defendants filed a replying affidavit dated 8/7/2024 sworn by the 2nd defendant in which they set out the following grounds of opposition to the application:
 - a. That the deponent acknowledges that the 1st defendant and Jamila were married in the 1980s and held the suit property as their matrimonial home till her demise in 2004;
 - b. The 1st defendant acquired a Grant of letters of administration to her estate in 2005 in Msa HC Succession Cause No 80 of 2004;
 - c. That the certificate of confirmation of grant was implemented and the property transferred to the 1st defendant who sold the same to the 2nd defendant; that under section 93(1) of the Law of Succession Act the transaction can not be reversed.
 - d. That it is futile to stay the present suit as the estate of Jamila has not been joined to the suit;

Determination.

4. The application before this court raises only one issues: whether the proceedings before this court should be stayed.
5. The person who is the administrator of the estate of Jamila has been joined in this suit though he has not been described as such. It is the plaintiff who has described himself as bringing the action on behalf of the estate. I have seen that he has a grant issued in respect of that estate by the court at Mombasa in Mombasa High Court Succession Cause No 19 of 2013. He has also applied for the revocation of the grant issued to the 1st defendant in an application filed in Mombasa High Court Succession Cause No 80 of 2004.
6. I find that prima facie the plaintiff has capacity to bring the action, though it is irregular to have two grants issued to two different persons in respect of the estate of one deceased person. However, that abnormal situation is the same one that necessitates the stay sought herein pending a determination by the succession court as to which grant is valid, which determination will enable further progress in this matter.
7. In the circumstances proceeding with the hearing in the present case will only muddle up issues considerably.
8. The upshot is that the application dated 31/5/2024 is hereby allowed as prayed in prayers no 3 and 4 thereof.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 4TH DAY OF FEBRUARY 2025.

MWANGI NJOROGE

JUDGE, ELC MALINDI.

