



Karanja v Kariuki; Karanja (Interested Party) (Environment and Land Miscellaneous Application E002 of 2023) [2023] KEELC 17168 (KLR) (4 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17168 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E002 OF 2023**

E ASATI, J

MAY 4, 2023

BETWEEN

LAWRENCE KARIUKI KARANJA APPLICANT

AND

LAWRENCE KAGAI KARIUKI RESPONDENT

AND

JAMES KARIUKI KARANJA INTERESTED PARTY

RULING

1. This matter was originated as a Miscellaneous Application *vide* the Notice of Motion dated January 29, 2023 stated to be brought pursuant to the provisions of Section 3 of the *Judiciary Act*, Rules 3(1) and (2) of the *High Court Practice and Procedure Rules* and Sections 1A and 3A of the *Civil Procedure Act*.
2. The application was opposed *vide* the Respondent's Grounds of Opposition dated February 6, 2023. The Interested Party replied to the application *vide* his Replying Affidavit sworn on March 2, 2023 essentially supporting the case of the Applicant.
3. The application seeks for orders that;
 - a. That this application be certified as urgent and the service be dispensed with in the first instance.
 - b. That there be a stay of proceedings in Kisumu ELC case No 621 of 2015, pending the hearing and determination of this application
 - c. That upon issuance of orders 2 above, the pleadings and the proceedings filed on March 20, 2017 and after March, 20 in Kisumu ELC Case No 621 of 2015 be declared illegal, null and



void by this Honourable court and consequently the said pleadings and their proceedings be struck out with costs to the Applicant.

- d. That the orders issued on March 20, 2017 and after March 20, 2017 in ELC Case No 621 of 2015 be reviewed and vacated/set aside by this Honourable court.
 - e. That the Honourable court be pleased to declare the transfer of the pleadings and proceedings of Kisumu High Court Civil Case No 143 of 2012 from High Court Civil Registry to ELC in case file No 621/2015 as illegal, null and void and consequently, this Honourable Court be pleased to reinstate the High Court Civil Case No 143/2012 file and refer it back to the High Court (Civil) for disposal.
 - f. That the Deputy Registrar of this Court be directed by this Honourable Court to sign the transfer form and consent form to affect the transfer of property known as Kisumu Manyatta 'A' 4397 from the names of Lawrence Kagai Kariuki to the name of Lawrence Kariuki Karanja.
 - g. That the Honourable court was pleased to direct the Kisumu East Land Registrar to transfer the property known as Kisumu Manyatta 'A' 4397 from the names of Lawrence Kagai Kariuki to the name of Lawrence Kariuki Karanja.
 - h. That the cost of this application be provided for.
4. I have considered the Notice of Motion, the Grounds of Opposition, the Replying Affidavit by the Interested Party and the submissions filed. From the application, it is clear that the orders sought are in respect of proceedings and decisions in existing court cases namely case No Kisumu ELC '621 of 2015 and Kisumu Hccc No 143 Of 2012 And Decided Cases Namely Nakuru Hc Succ Cause No 236 of 1994. Counsel for the respondent submitted that issues relating to land parcel No Kisumu/Manyatta "a /4397 were conclusively decided in Nakuru HC Succ Cause No 236 of 1994. The orders sought range from stay, striking out, review of proceedings and transfer of cases from one court to another. The application further seeks for transfer and registration of land parcel No Kisumu/manyatta "A"/4397 in the applicant's favour. No reason has been given why the application was not filed in the existing files. The prayers in the application can only be determined in the existing suit or substantive suits. See *Joseph Kibwogen vs William C Kisera* [2013] eKLR
- 5 For these reasons, I find that the application is improperly before this court. I strike out the application with costs to the Respondent.
- 7 Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 4TH DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen Court Assistant.

No appearance for the Applicant

Onsongo Advocate for the Respondent

Interested Party present in person.

