



REPUBLIC OF KENYA



KENYA LAW
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**Kuria v Murang'a County Contractors Association (Civil Appeal
11 of 2023) [2025] KEHC 1845 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 11 OF 2023
FN MUCHEMI, J
FEBRUARY 13, 2025**

BETWEEN

FRASHIAH KURIA APPELLANT

AND

MURANG'A COUNTY CONTRACTORS ASSOCIATION RESPONDENT

*(Being an Appeal from the Ruling of Hon. D. Milimu (RM) delivered
on 12th July 2022 in Thika CM Succession Cause No. 127 of 2020)*

JUDGMENT

Brief facts

1. This appeal arises from the ruling of Resident Magistrate in CM Succession Cause No. 127 of 2020 whereby the trial court stayed proceedings in the said suit until criminal investigations relating to L.R. NO. LOC 20/Gikindu/kambirwa/703 are concluded and until criminal and civil suits related thereto are instituted, heard and determined.
2. Dissatisfied with the said ruling the appellant lodged this appeal citing 6 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in entertaining an application for stay of the succession proceedings when the applicant was a total stranger to the estate of the deceased.
 - b. The learned trial magistrate erred in law and in fact in staying the succession cause when there was no evidence that any of the beneficiaries to the estate of the deceased was involved in the alleged fraud.
 - c. The learned trial magistrate erred in law and in fact by not giving any time limit to the suspension but making the stay indefinite.



3. Parties disposed of the appeal by way of written submissions.

The Appellant's Submissions

4. The appellant submits that the trial magistrate made a general order despite the estate of the deceased comprising of other assets apart from LR No. LOC 20/Gakindu/kambirwa/703 namely LOC 1/Mukarara/95, Thika Municipality Block 17/609, Loc 1/mugumoini/142, Centum shares and Safaricom shares. In doing so, the trial magistrate stopped all the other properties belonging to the deceased and the beneficiaries cannot proceed with succession process of the undisputed properties in order to benefit from the estate.
5. The appellant further submits that the order is indefinite, until unknown criminal and civil cases are investigated, filed and determined. The appellant argues that the said order is unfair as there is no timeline for the stay and the beneficiaries are being held indefinitely to succeed the properties of their mother because strangers have fraudulently sold the suit property to unsuspecting third parties yet the beneficiaries were not involved.
6. The appellant submits that the trial magistrate is protecting the respondent who was involved in the fraud to deny the beneficiaries of the suit property. The appellant further submits that that the respondent is a total stranger to the estate of the deceased and has no locus standi to interfere with the deceased's estate. The appellant argues that since the respondent has instituted a criminal case against those who defrauded them in Murang'a Law Courts, they should let the matter of fraud be dealt with there and should not be brought to the instant succession cause.

The Respondent's Submissions

7. The respondent submits that overturning the trial court's ruling rendered on 12th July 2022 would interfere with the proceedings in Murang'a Criminal Case No. E272 of 2024 Republic vs Lawrence Njau to which the appellant is a key witness. The respondent argues that the said Lawrence Njau Gitau perpetrated fraud while working in cahoots with senior officers at the Murang'a Land Registry and Land Control Board. The respondent further states that the criminal suit is scheduled for further hearing on 10th December 2024. The respondent argues that they have sufficient reason to believe that the beneficiaries to the instant estate enabled the fraud in relation to the suit property.
8. The respondent relies on the case of Central Bank of Kenya & Another vs Ratilal Automobiles Limited & Others Civil Application No. Nai 247 of 2006 and submits that if the trial court confirms the grant, its orders will be incapable of application since the Murang'a Lands office is implicated in the fraud and hence any efforts to proceed with transmission will fail.
9. The respondent further relies on the cases of Amir Lodges Ltd & Another vs Mohammed Omar Sharrif & Another [2022] eKLR and Kuria & 3 Others vs AG (2002) 2 KLR and submits that where there is an existence of concurrent civil and criminal proceedings based on the same facts, the usual practice is to stay the civil proceedings until the criminal proceedings have been adjudicated upon.
10. The respondent relies on the case of Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000) and submits that this is an exceptional case where stay of proceedings should be granted in the best interests of justice. The appellant is still in use of their property hence there will be no prejudice suffered by himself if they wait a little longer for the matters to be concluded.

Issue for determination

11. The main issue for determination is whether the appeal has merit.



The Law

12. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

13. In *Gitobu Imanyara & 2 Others vs Attorney General* [2016] eKLR the Court of Appeal stated that:-

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

14. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-

- a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
- b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
- c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

Whether the appeal has merit.

15. The appellant argues that the stay of proceedings in Succession Cause No. 127 of 2020 is unfair and unjust as it is indefinite and has prevented the beneficiaries of the estate from benefiting from the estate of the deceased.

16. From the record, the deceased died on 18th August 2017 and the appellant together with one Dennis Mwangi Kibunja applied for grant of letters of administration vide Thika CM Succession Cause No. 127 of 2020. The appellant and her co-administrator are the daughter in law and grandson of the deceased respectively. They listed the surviving dependents of the deceased as themselves and Owen Chege Kibunja, the deceased’s grandson and further listed the assets of the estate as comprising of:-

- a. LOC 1/Mukarara/95
- b. LOC 20/Kambirwa/703
- c. Thika Municipality Block 17/606
- d. Thika Municipality Block 17/609
- e. Plot SS/85



- f. LOC.1/Mugumoini/142
 - g. Centum Investment Company PLC -550 Shares
 - h. Safaricom PLC – 900 shares
17. The trial court issued the grant of letters of administration to the appellant and her co-administrator, Dennis Mwangi Kibunja on 13th January 2021. The administrators applied for confirmation of grant vide summons dated 21st February 2021 to which the respondent filed an objection and filed their application dated 15th March 2022 seeking for orders of stay of proceedings in the trial suit as LR. No. LOC 20/Gikindu/kambiriwa/703 is the subject of investigations based on fraud perpetrated by one Lawrence Njau Gitau.
18. It is trite law that whether or not to issue an order for stay of proceedings is a matter of the court's discretion exercised after due consideration of the merits of the case and the likely effect on the ends of justice. The exercise of that discretion should be premised on conscientious and judicious decision based on defined principles which were expounded by Ringera J in *Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000*:-
- “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 justicethe sole question is whether it is in the interest of justice to order a stay of proceedings and if it is so, 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.”
19. Similarly the threshold for stay of proceedings has been illuminated in the passages 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 proceedings 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.
- It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”
20. I have further perused the trial record and noted that the respondent did not demonstrate that they have a prima facie case. The respondent argues that they entered into a sale agreement with one Lawrence Njau Gitau who worked in cahoots with senior officers at Murang'a Lands Registry and Land Control



Board. The respondent further argues that the beneficiaries enabled the fraud in respect of the suit property. Notably, the said Lawrence Njau Gitau has not been listed as a beneficiary to the instant estate. Furthermore, from the appellant's affidavit, the beneficiaries of estate of the deceased do not know of the said Lawrence Njau Gitau. In fact the appellant swore an affidavit and stated that the said Lawrence Njau Gitau is a stranger to her and the beneficiaries of the estate. Furthermore, although the respondent alleges that the beneficiaries of the estate are part of the fraudulent transaction, they have not produced any ounce of evidence to support their contentions. That notwithstanding, the respondent is not a beneficiary or a dependent of the deceased. Furthermore, the respondent has instituted a criminal case against Lawrence Njau Murang'a Criminal Case No. E272 of 2024 Republic vs Lawrence Njau and not against any of the administrators or the beneficiaries.

21. The respondent does not claim any part of the estate of the deceased, not even a portion of the land LR. LOC 20/Gakindu/kambirwa/703. It is accepted by the respondent that he was conned by one Lawrence Njau Gitau to buy land that did not belong to the said vendor. As such, the respondent did not lay any basis before the Magistrate of being granted the orders of stay of proceedings. Even assuming that the pending criminal case of fraud succeeds against the accused therein, the estate of the deceased remain intact and the inheritance rights of the respondents remain unaffected. The respondent is a stranger in the succession cause and ought not to interfere with the succession process. His claim only lay against Lawrence Njau Gitau and not against any of the beneficiaries. As such, the order granted by the Magistrate which has delayed the Succession Cause for close to three (3) years had no legal or evidential basis.
22. It is also noted that the proceedings before the Magistrate were very clear that the respondent adduced no evidence of fraud against any of the beneficiaries. The allegations of fraud were not substantiated at all. This is supported by the fact that none of the beneficiaries was charged in the Criminal Case before Muranga Magistrate Court which case seems to have been registered after the impugned orders were granted.
23. It is noted that the Magistrate did not only give a blanket order but a speculative one that at an unknown time criminal and civil proceedings were to be filed. An indefinite order is likely to cause injustice to the parties affected by it. In this case, there was not an iota of evidence that the beneficiaries in this cause were involved in the fraud.
24. It is my considered view that the trial magistrate erred in fact and in law in staying the proceedings in Succession Cause No. 127 of 2020 in respect of LR No. LOC 20/Gakindu/kambirwa/703 indefinitely and without any justification.
25. Consequently, I find this appeal merited and it is hereby allowed.
26. The ruling of Hon. Milimu delivered on 12th July 2022 is hereby set aside.
27. The appellant shall have the costs of the suit.

It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF FEBRUARY 2025.

F. MUCHEMI

JUDGE

