



REPUBLIC OF KENYA



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**In re Estate of Kipkosgei Lagat (Probate & Administration  
376 of 2014) [2025] KEHC 4301 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4301 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 376 OF 2014**

**JRA WANANDA, J**

**APRIL 4, 2025**

**IN THE MATTER OF THE ESTATE OF KIPKOSGEI LAGAT**

**BETWEEN**

**ESTHER CHELAGAT KOSGEI ..... 1<sup>ST</sup> ADMINISTRATOR**

**RICHARD KIPNGETICH SITIENEI ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**PAUL K LIMO ..... OBJECTOR**

**RULING**

1. The background of this matter was captured in my Ruling dated 15/12/2023 as follows:

- “1. The late Kipkosgei Lagat (deceased) died on 16/11/2006 and left behind a widow (1<sup>st</sup> Administrator) and 5 children, among them the 2<sup>nd</sup> Administrator. On 8/10/2014, the Administrators filed the Petition herein seeking grant of Letters of Administration over the estate. The Grant was then given on 22/01/2015 and was subsequently confirmed on 12/07/2019. Among the 3 properties distributed was land parcel No. Kapseret/Kapsaret/ Block 4 (Lemok “A”) 9 which was distributed among 4 beneficiaries.
2. However, by his Application dated 5/11/2021, the Objector, claiming a purchaser’s interest emerged and objected to the distribution of the said land parcel No. Kapseret/Kapsaret/Block 4 (Lemok “A”)9. He sought that the distribution be reversed through annulment and revocation of the Grant and the subsequent confirmation thereof. Along the way, the parties by consent, agreed to maintain the “status quo” pending hearing and determination of the Application. This consent was duly adopted by the Court.”



2. The Application now before Court is the Objector's Summons dated 27/02/2024. The same is filed through Messrs Isiaho Sawe & Co. Advocates and seeks orders in the following terms:
  - i. [.....] Spent
  - ii. That there be stay of proceedings and/or further proceedings in this Cause pending the hearing and determination of Eldoret Environment and Land Court Case No. 2 of 2024.
  - iii. That this Court do issue any such further orders as it may deem expedient in the circumstances.
3. The Application is supported by the Affidavit sworn by the Objector. In the Affidavit, he deponed that he filed an Objection in this Cause claiming 1.5 acres comprised in LR No. Kapseret/Kapseret Block 4 (Lemok "A")/9 which he purchased from the deceased in the year 1984, that being a claim on adverse possession, his Advocate has advised him to move the appropriate Court for determination on the issue and he has since instituted Eldoret Environment and Land Court (ELC) Case No. 2 of 2024 at the ELC, being the Court with the requisite jurisdiction to hear and determine the issue on adverse possession as the agreement entered between the deceased and himself has been rendered null and void by operation of law, and that in the foregoing, the ownership of the aforesaid portion of land is therefore a subject in both this Cause and in the ELC case which cases are both pending. He deponed further that the determination of ownership of the suit parcel of land in the ELC case will have a ripple effect on these proceedings, that there is likelihood of the two Courts issuing divergent orders should the matters be allowed to proceed concurrently and hence rendering issuance of stay orders in these proceedings necessary. He urged that the issue of ownership of the suit land in the ELC case may conclusively determine the pending Objection proceedings hence preventing duplication of proceedings, that there is need to stay proceedings herein to await the conclusion of the ELC case. According to him, it is in the interest of justice and fairness that the proceedings herein be stayed to prevent the two Courts from embarrassing each other, and that no prejudice will be suffered by the Administrators should this Application be allowed as they too will be afforded a hearing before the ELC.
4. The Application is opposed by the 2<sup>nd</sup> Administrator on the basis of his Replying Affidavit filed on 29/10/2024, through Messrs Cherono J & Co. Advocates. In the Affidavit, he deponed that he is opposed to the Application because this matter was filed in the year 2014 and if the same cannot be heard to conclusion as it should, thus putting the estate on hold pending determination of a new case will be not fair to the beneficiaries of the estate. He urged that since the Objector has filed another case in the ELC over the same subject matter, then it is only fair for this Cause to be marked as closed with costs to the Administrators or alternatively, hear it to its conclusion. He deponed further that the Objector's claim in this Cause is that he bought land from the 2<sup>nd</sup> Administrator's late father while the claim in the ELC is for adverse possession.
5. He urged further that the Objector was granted orders of status quo in this Cause pending the hearing and determination of the case, that if stay of proceedings is allowed in this Cause, the Administrators and other beneficiaries will suffer great prejudice because the estate will be held hostage for an indefinite period. that this Cause preceded the ELC case thus it is in the interest of justice that it should be given priority over the ELC matter. According to him, the institution of the ELC case was an afterthought and the Objector is gambling with both cases.

### **Hearing of the Application**

6. The Application was canvassed by way of written Submissions. The Objector filed his Submissions on 2/04/2024 while the Petitioners filed theirs on 24/04/2024.



## Objector's Submissions

7. The Objectors' Counsel submitted that the pertinent issue for determination is whether this Court has jurisdiction to hear and determine land ownership dispute. Regarding this issue of jurisdiction, she cited the case of Owners of Motor Vessel "Lilian S" Vs. Caltex Oil Kenya Ltd [1989] KLR and submitted that if this Court finds that it lacks jurisdiction, then there is no point of going to the merits of the Objection proceedings and the same can be held in abeyance to await the determination of the Originating Summons. She urged that a Court's jurisdiction flows from either the Constitution or legislation or both and cited the Supreme Court case of Samuel Kamau Macharia V KCB & 2 Others, Civil Application No. 2 of 2011. She also cited Article 165(3) and Article 165(5) of the Constitution of Kenya, 2010 and submitted that pursuant to Article 162(2) of the Constitution, the Environment and Land Court Act was enacted and Section 13 thereof confers jurisdiction to the Environment and Land Court (ELC). Counsel also cited Rule 41 (2) of the Probate and Administration Rules and also the case of Priscilla Ndubi and Zipporah Mutiga Vs Gerishon Gatobu Mbui, Meru Succession Cause No. 720 of 2013. She urged that pursuant to Article 165(5), this Court lacks jurisdiction in matters to do with the use and occupation of and title to land and it is apparent that when a dispute regarding ownership in respect of the property of a deceased arises, the Court can set aside the share in dispute to await the outcome of the resolution of the dispute from the Court with jurisdiction, and that once the ownership of the suit property is ascertained by the ELC, the Probate Court may proceed to distribute the property to the rightful dependants, and that a claim on trust must be taken to the right forum being the ELC. According to Counsel, the issue cannot be resolved by this Court sitting as a Probate Court, and that the mandate of this Court is primarily to distribute the estate of the deceased as opposed to determination of ownership of land.

## Administrators' Submissions

8. Counsel for the Administrators, on her part, submitted that the Objector has failed to demonstrate how he will suffer substantial loss if the proceedings are not stayed and that the Objector has the chance to seek any relief that he may deem fit from the ELC, that the Objector filed his Objection in the year 2021 and the matter has been in Court since then and the decision to seek stay of proceedings has been brought more than 2 years after the Objection was filed which delay amounts to inordinate delay. She cited Order 42 Rule 6(2) of the Civil Procedure Rules and Section 1B of the Civil Procedure Act. She also cited the case of Kenya Wildlife Service v James Mutembei [2019] eKLR, the case of Global Tours & Travels Limited, Nairobi High Court Winding Up Cause No. 43 of 2000 (UR) and also the case of Mocha Hotel Limited v Kwanza Estates Limited (Environment & Land Case 14 of 2022) [2023] KEELC 18407 (KLR).

## Determination

9. The issue that arises for determination herein is "whether the proceedings herein should be stayed pending the hearing and determination of the suit filed by the Objector, namely, Eldoret Environment and Land Court Case No. 2 of 2024 (OS)".
10. It should be recalled that this Cause was long concluded when the Grant issued herein was confirmed on 12/07/2019 and the estate distributed. What is pending before this Court is the Objector's subsequent Summons dated 5/11/2021 (filed 2 years after confirmation of the Grant), seeking revocation and/or annulment of the Grant. It is therefore debatable whether there are even any proceedings still in existence to stay in the first place. It is true that by the consent recorded by the parties herein on 29/11/2021, the parties agreed that the "status quo" subsisting on the ground and on the register of the said parcel of land be maintained pending the hearing and determination



of the Objection proceedings. However, the parties have not addressed the fate of these orders if the “proceedings” are not stayed. The parties have also not submitted on whether the Objection is still viable or still subsists despite the filing of the new action at the ELC. It is also my view that it could have been of more benefit to the Objector if he sought an order of stay of execution, rather than stay of proceedings.

11. Be that as it may, at the moment, the orders of “status quo” seems to mean that the no changes in the register of the said property should be effected, and also there should be no interference with the prevailing situation on the ground. Such acts currently prohibited would no doubt therefore include dealings such as transfer, charge, sub-division and such other similar actions on the register, and also carrying out of developments on the land. Interfering with the Objector’s possession and occupation of the land would also inevitably be prohibited.

1. In my Ruling dated 15/12/2023 already referred to hereinabove, I made the following observations and orders:

“41. In conclusion, the grievances raised by the Objector in his Application dated 5/11/2021, being ownership claims brought as an alleged purchaser of land comprising part of the estate and brought subsequent to confirmation of the grant and final distribution of the estate, I wish to urge the Objector and his Counsel to carefully consider whether the same are matters that can be properly canvassed and determined in this Succession Cause or whether the same ought to be placed before the Environment & Lands Court.

Final Orders

In the premises, the Notice of Motion dated 5/12/2022 only succeeds partially. Accordingly, I issue the following orders:

.....

iv) The parties shall now take directions on the fate of and/or disposal of the substantive Application dated 5/11/2021 save that upon hearing the parties, the Court shall first give directions on whether, as regards the said Application, the parties should address the Court on the question of jurisdiction, choice of forum and whether or not this Succession Court is functus officio”.

13. I believe that the instant Application is a consequence of the above observations made in my Ruling.

14. It is true that the mandate of a Probate and Administration Court is to determine the assets of the deceased, identify the rightful beneficiaries of the estate, ascertain their respective shares and finally, distribute the estate accordingly. This has been restated in a plethora of decisions including for instance, the case of re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR, in which W. Musyoka J held that:

“The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and



preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.”

15. Questions on ownership of property are therefore outside the jurisdiction of this Court. This is a preserve of the Environment and Land Court (ELC) as well established under Article 165 (2)(b) of *the Constitution* of Kenya, 2010 and Section 13 of the *Environment and Land Court Act*, 2011. Accordingly, in my view, the Objector has taken the right step in placing the questions surrounding the ownership of parcel of the land known as L.R. No. Kapseret/Kapsaret Block 4 (Lemok “A”)/9 to the ELC.
16. Returning to the Application seeking stay of proceedings, when determining an Application seeking stay of proceedings, the Court is required to exercise its discretion but after due consideration of the merits of the case and the likely effect on the ends of justice. Needless to state, exercise of discretion must be grounded on judicious principles. On this issue, Hon. Justice Ringera J in *Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000* held as follows:

“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 justice ..... the 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.”
17. The requirement for the Court to judiciously exercise its discretion when considering an Application to stay proceedings was reiterated by Hon. F. Gikonyo J in the case of *Christopher Ndolo Mutuku & Another vs CFC Stanbic Bank Limited (2015) eKLR* in which he stated as follows:

“..... what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice .....
18. In line with the foregoing guidelines, it is generally agreed that in an Application for grant of stay of proceedings, the matters that the Court must satisfy itself on are (a) that the applicant has established a prima facie arguable case; (b) that the Application was filed expeditiously; and (c) that the Applicant has established sufficient cause to the satisfaction of the Court that it is in the interest of justice to grant the orders sought.
19. On whether there is an arguable case that deserves to be adjudicated before the ELC, I may reiterate that the Objector’s claim in the Objection pending herein is that he purchased 1.5 acres of the said parcel of land L.R. No. Kapseret/Kapsaret Block 4 (Lemok “A”)/9 from the deceased in the year 1984, and that the deceased died before effecting transfer thereof in favour of the Objector. He thus contended that the proceedings in this Cause were conducted without his knowledge and that his interest was therefore unfairly excluded during the distribution of the estate. It is for these reasons that he has sought the annulment and/or revocation of the Grant. However, his case before the ELC seems to have mutated from the one herein since the case at the ELC is for adverse possession (as per the Originating Summons



exhibited). He wants the ELC to declare that he has obtained title over 1.5 acres comprised in the said parcel of land by way of adverse possession having been in open and uninterrupted possession and use of the land since the year 1984. The Objector's claims before the two Courts are therefore based on different and/or distinct causes of action.

20. On whether the Application has been brought expeditiously, I observe that my said Ruling was delivered on 15/12/2023, the Objector then filed the ELC suit on 27/02/2024 and filed the instant Application on 28/02/2024. It is therefore clear that the Objector having filed the ELC suit, moved with speed to file the Application seeking stay of these proceedings. There was therefore no inordinate delay in bringing the Application.
21. To determine the Application, I need to interrogate whether the Objector has demonstrated sufficient cause to the Court's satisfaction that granting the orders of stay of proceedings aligns with the interest of justice. In answering this question, I may state that it is clear that the outcome of the ELC suit is likely to conclusively resolve the matter of the ownership of the said property and thus shape the fate of its distribution.
22. As aforesaid, the substantive proceedings in this Cause were concluded when the Grant was confirmed on 12/07/2019 and the prayer for stay of proceedings can only be about suspending the hearing of the Objection Application, which in any case, it is also not clear whether it still survives despite the filing of the new adverse possession suit before the ELC.
23. For the reason that it is not clear whether the Objector still wishes to prosecute the Objection and also whether prosecution of the Objection is, in any event, still a viable venture now that the Objector has filed a suit at the ELC seeking a declaration of adverse possession over the same property, I will defer the final determination of the Application herein to allow the parties to first address the Court on the said issues.

#### **Final Directions**

24. In the premises, the final determination of the Objector's Summons dated 27/02/2024 is deferred to give the parties the opportunity to address the Court on the following issues:
  - i. Whether the Objector's said Summons for Revocation of Grant in respect to the property known as LR No. Kapseret/Kapseret Block 4 (Lemok "A"/9) is still maintainable in light of the new suit that the Objector has now filed at the Environment & Land Court, namely, Eldoret ELC Case No. 2 of 2024 (OS), seeking a declaration of adverse possession in respect to the same property.
  - ii. Whether there are still any "proceedings" in this Cause capable of being stayed, the Grant herein having been confirmed on 12/07/2019 and the estate, including the said parcel of land, distributed.
  - iii. The parties shall now take directions on canvassing of the above issues.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 4<sup>TH</sup> DAY OF APRIL 2025**

.....

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

Ms. Isiaho for the Objector



Ms. Cheronno for the Petitioners

Court Assistant: Brian Kimathi

