



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC APPEAL NO. 24 OF 2019**

**TALENGO NKOLIAI & ROBISON NKOLIAI**

**(suing as the legal rep of the estate of**

**LETUK OLE NKOLIAI.....APPELLANTS**

**-VERSUS-**

**SAMUEL TAISWA OLOLPARAKI.....1<sup>ST</sup> RESPONDENT**

**SIMON LEPARAKWO PARAKI.....2<sup>ND</sup> RESPONDENT**

**MICHAEL OLOINYEIYE PARAKI.....3<sup>RD</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR.....4<sup>TH</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**RULING**

Before this court is a Notice of Motion Application dated 31/10/2019 brought under Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3A and 6 of the Civil Procedure Act seeking the following orders:-

1. Spent
2. Spent
3. That this honourable court be pleased to stay proceedings in Kilgoris Magistrate's Court Environment and Land Case No. 59 of 2018 pending hearing and final determination of this application.
4. That this honourable court be pleased to stay proceedings in Kilgoris Magistrate's court Environment and Land Case No. 59 of 2018 pending hearing and final determination of Nyeri Civil Appeal No. 200 of 2019.
5. That the costs of this application be provided for

The application is premised on the grounds that the trial court did not give the applicant a chance to be heard on their application dated 26/8/2019. That the 1<sup>st</sup> defendant/respondent secretly filed succession proceedings in this court without involving all members of the deceased estate and as such the outcome of the appeal case mentioned herein will directly affect this matter and that it is prudent to avoid a situation where two parallel decisions may be made by the courts. The application is supported by the affidavit of the Taleng'o Nkoliai sworn on 31/10/2019 in which avers that he instated a plaint dated 5/6/2013 after learning that the 1<sup>st</sup> to the 4<sup>th</sup> defendants had illegally transferred his late father's land to themselves. That he also learnt that the 1<sup>st</sup> to 4<sup>th</sup> defendants had secretly commenced succession proceedings without involving all members of the family. He further avers that he filed Narok Misc Appl No. 9 of 2018 seeking revocation of grant and the same was dismissed. That he has since filed a record of appeal and the appeal in Nyeri as Nyeri Civil Appeal 200 of 2019. He further made an application for stay of proceedings but the same was dismissed vide ruling dated 27/8/2019. It is the Applicant's contention that the appeal has high chances of success and that there is a clear nexus between the case herein and appeal. That no party will suffer prejudice if the application is allowed. The applicant has attached a copy of the notice of motion dated 9/5/2018 filed as Misc Appl No. 9 of 2018, copy of delivered ruling by Justice M. Bwonwonga in Succession Cause no. 9 of 2018, a copy of Notice of appeal dated 11/2/2019 in Misc Cause No. 9 of 2018, copy of memorandum of appeal dated 25/7/2019 being an appeal of the ruling of the High Court in Narok, and a copy of the Memorandum of appeal dated 26/9/2019 arising from the ruling of Honourable D.K. Matutu delivered on

27/8/2019.

The Application is opposed by the Replying Affidavit of Michael Oloinyeiye Paraki sworn on 11/9/2019 in which he contends that the applicant has since the institution of plaint dated 5/6/2013 engaged in delaying tactics to have the matter heard and determined. The respondent has outlined the chronological events leading to the filing of appeal in Nyeri Civil Appeal No. 200 of 2019. The respondent contends that the applicant should have filed for stay of proceedings at the Narok High Court. In summary, the respondent has outlined the frustrations, delays and injustice meted out on them by the applicant in a bid to deny them justice including re-appointment of the firm of Leina and company advocates who immediately after re-appointment, filed a notice dated 26/8/2019 seeking stay of proceedings pending the hearing and determination of the appeal in the court of appeal despite court's directions dated 9/7/2019 barring any further interlocutory applications. The respondent avers that justice is a double-edged sword and must be applied equally to all parties. That in any case Narok Misc Appl No. 9 of 2018 and Nyeri Civil Appeal No. 200 of 2019 touch on succession matters which are outside the jurisdiction of the Environment and Land Court. Finally, that this court was duped into issuing the orders as it lacks jurisdiction and that the application itself lacks merit and the same should be dismissed. The respondent has annexed a copy of the typed proceedings in Succession Cause No. 9 of 2018, copy of the ruling delivered on 29/1/2019 by Justice Bwonwonga in succession cause No. 9 of 2018, copy of Notice of Appeal dated 11/2/2019, copy of memorandum of appeal lodged on 26/7/2019, copy of notice of application dated 8/7/2019 filed by the applicants herein, copy of replying affidavit dated 10/7/2019, copy of notice of change of advocates dated 8/7/2019, copy or order issued by the Principal Magistrate in Kilgoris dated 8/7/2019, copy of Notice of change of advocates dated 26/8/2019. Notice of motion application dated 26/8/2019 seeking the trial court to stay proceedings pending hearing and determination of Nyeri Civil Appeal No. 200 of 2019.

I have read and analysed the application, replying affidavit and the submissions filed by both parties. The issue for determination is whether this court is entitled to stay of proceedings in Kilgoris ELC No. 59 of 2018 pending the hearing and final determination of Nyeri Civil Appeal No. 200 of 2019.

Section 6 of the Civil Procedure Act expressly provides that no court shall proceed with the trial of any suit or proceedings in which the matter in issue is also **directly and substantially** in issue in a previously instituted suit or proceedings **between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceedings is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.**

the term 'sub-judice' is defined in Black's Law Dictionary 9<sup>th</sup> Edition as "before the court or judge for determination." The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decision over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; **there is more than one suit over the same subject matter that one suit was instated before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.**

In ELC No. 59 of 2018 the parties are as follows:

**TALENG'O NKOLIAI & ROBINSON LEMISO.....PLAINTIFFS**

**-VERSUS-**

**SAMWEL TAISWA OLOLPARAKI.....1<sup>ST</sup> DEFENDANT**

**SIMON LEPARAKWO.....2<sup>ND</sup> DEFENDANT**

**MICHAEL OLOINYEIYE.....3<sup>RD</sup> DEFENDANT**

**KIRAMATISHO ENOLDO PALAKI.....4<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR TRANS MARA.....5<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT**

**In Misc Appl Succ No. 9 of 2018 in the matter**

**of the estate of the late letuk Olenkoliai (deceased), the parties are:-**

**TALENG'O NKOLIAI & ROBINSON LEMISO.....PLAINTIFFS**

**-VERSUS-**

**SAMWEL TAISWA OLOLPARAKI.....1<sup>ST</sup> DEFENDANT**

**SIMON LEPARAKWO.....2<sup>ND</sup> DEFENDANT**

**MICHAEL OLOINYEIYE.....3<sup>RD</sup> DEFENDANT**

**KIRAMATISHO ENOLDO PALAKI.....4<sup>TH</sup> DEFENDANT**

**In Elc Appeal No. 24 of 2019 the parties are as follows:-**

**TALENG'O NKOLIAI & ROBINSON NKOLIAI.....APPELLANTS**

**(suing as the legal rep of the**

**estate of Letuk Ole Nkoilai)**

**-VERSUS-**

**SAMWEL TAISWA OLOLPARAKI.....1<sup>ST</sup> RESPONDENT**

**SIMON LEPARAKWO PARAKI.....2<sup>ND</sup> RESPONDENT**

**MICHAEL OLOINYEIYE PARAKI.....3<sup>RD</sup> DEFENDANT**

**KIRAMATISHO ENOLDO PARAKI.....4<sup>TH</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR.....5<sup>TH</sup> RESPONDENT**

It is clear from the above the parties in the above listed matters are similar in ELC No. 59 of 2018 and Elc Appeal No. 24 of 2019. The assertion by the applicants that there is a nexus between Kilgoris Magistrate's Court Elc No. 39 of 2018 and Nyeri Civil Appeal No. 200 of 2019 is far-fetched. The initial suit touches on the dispute relating to land whereas, the later addresses issues pertaining to succession of the deceased's estate. Clearly and in my humble view, these are two separate issues which will have separate and distinct outcomes. I therefore see no nexus between the two matters.

The upshot of the above is that the application dated 31/10/2019 lacks merit and the same is dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KILGORIS ON THIS 27<sup>TH</sup> DAY OF JULY, 2021.**

**Mohamed N. Kullow**

**Judge**

**27/7/2021**

In the presence of:

CA:Chuma

N/A for parties and advocates