



In re Estate of the Late John Konchellah (Deceased) (Succession Cause 314 of 1994) [2024] KEHC 7438 (KLR) (Family) (20 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7438 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 314 OF 1994

HK CHEMITEI, J

JUNE 20, 2024

IN THE MATTER OF THE ESTATE OF THE LATE JOHN KONCHELLAH (DECEASED)

BETWEEN

ERICK KOHELLAH 1ST RESPONDENT

PATRICK KONCHELLAH 2ND RESPONDENT

AND

TASUR LEINA EMMANUEL APPLICANT

AND

LEINA MORINTAT RESPONDENT

AND

MARIAM RAJAB OBJECTOR

RULING

1. The Applicant has filed two sets of applications which are more less similar in nature. The 1st application dated 31st July 2023 prays for the following orders:
 - (a) That there be an order of stay of execution of the ruling delivered on the 21st July 2023 pending the hearing and determination of the intended appeal.
2. The second application is dated 1st September 2023 seeking the following prayers: -
 - (b) That the court grants leave to the applicant to file a Notice of Appeal against the ruling delivered on 21st July 2023 herein.



- (c) That the time be extended for admitting a Notice of Appeal dated 1st September 2023 against the ruling of the high court delivered on 21st July 2023 herein.
- (d) That the annexed draft Notice of Appeal dated 1st September 2023 annexed to the affidavit in support of this application be deemed as properly filed and served upon payment of the requisite fee.
- (e) That the said leave do operate as stay of all execution.
3. The Applicant has also asked for costs to be provided for.
4. Both applications are based on the sworn affidavit of the applicant Tasur Leina Emmanuel dated the same date.
5. It is clear that paragraph (d) of the second application indirectly resolves the issue of stay of execution prayed for in the first application. I shall therefore proceed to consider the second application.
6. In his supporting affidavits of the two applications the Applicant wishes to appeal against the ruling of this court dated 21st July 2023 which cancelled all titles in respect to parcels numbers Transmara / Oloiborsoito/682, 683, 684 and 685. The applicant deponed that he was not able to file his application within the requisite statutory time because after the ruling he engaged ADR mechanism with the Respondents and other family members. The said exercise did not bear much fruit hence the filing of the appeal.
7. He further deponed that the delay was also compounded by the change of lawyers. He stated therefore that he believed he has a strong an arguable appeal and if the orders are not granted his Kshs70 million investment on the suit properties shall cause him to suffer irreparable loss.
8. He further in his supplementary affidavit deponed that the limited letters of administration which the Respondent had were suspended by the court at Kilgoris and its consequences meant that she had no locus standi in the matter.
9. The Respondent on her part agreed with the findings of this court that the rectification of the grant was done by unqualified persons and the court was right in cancelling the titles. She had no sympathy with the Applicant who colluded with some third parties to perpetuate an illegality in the estate.
10. She stated that any orders of stay shall cause the estate further delay and consequently an irreparable harm and the court should therefore dismiss the application and allow the estate to be distributed among its rightful beneficiaries.
11. The court directed the parties to file written submissions which they have complied. Each of the said submissions gravitate around the issues raised in the rival affidavits.
12. What is not in contention as found by this court is that the rectified grant was done by unqualified person or persons who did not have locus standi. This is an issue to be taken up on appeal.
13. Secondly on the above cancelled titles the applicant was already in occupation having built a petrol station as well as a supermarket among others. This fact was not controverted by the Respondent.
14. Thirdly it appears that the limited grant issued to the Respondent by the lower court has since been temporarily suspended. The order attached however is temporary and as at the time of writing this ruling it appears the Respondent had no locus standi on matters the estate herein.
15. What then is the net effect of not allowing the application? Was the delay in bringing this application inordinate?



16. Looking at the reasons advanced by the applicant I doubt whether the reasons are spurious as suggested by the applicant. It's probable that having realised the ruling of the court which went against him, he applicant may have decided to mitigate his potential losses. There is no evidence nonetheless.
17. The delay however is not inordinate considering the issues raised. It may not be efficacious to deny him an opportunity at the Court of Appeal. This is buttressed by the fact that he had been on site for many years without presumably let or hindrance by the larger deceased beneficiaries, whether rightful or not.
18. Taking the grounds raised under Order 42 rule (6), (2) of the *Civil Procedure rules* I find that should the application be denied then the applicant may suffer loss and damage which the deceased estate may be incapable of compensating.
19. This is a case where the circumstances are such that the parties have to await the outcome of the intended appeal. There is no evidence that the Respondent and for that matter the estate stands to suffer an immediate loss.
20. Needless to state that the estate could still be administered less the three properties mentioned above. The orders of cancellation in my understanding did not affect the rest of the expansive estate.
21. In the premises this court directs as hereunder: -
 - (a) Leave is hereby granted to the Applicant to file an appeal to the Court of Appeal.
 - (b) The Applicant is hereby granted leave to file his Notice of Appeal and serve it within 14 days from the date herein.
 - (c) Let there be stay of execution of the ruling of this court dated 21st July 2023 only in respect to titles numbers Transmaara/Oloiborsoito/682,683,684 and 685 pending the hearing and determination of the intended appeal.
 - (d) For avoidance of doubt the stay in (c) above does not touch the rest of the deceased estate and or beneficiaries herein.
 - (e) In default of prayers (b) above the Respondents may proceed to execute the orders dated 21st July 2023.
 - (f) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 20TH DAY OF JUNE 2024.

H K CHEMITEI

JUDGE

