



REPUBLIC OF KENYA



**In re Estate of Wanja Anam Singh (Deceased) (Succession Cause
373 of 2005) [2023] KEHC 2539 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 373 OF 2005
TW CHERERE, J
MARCH 23, 2023**

BETWEEN

GURDIL SINGH HARNAM SINGH PETITIONER

AND

VICTOR AMAR KINOTI 1ST OBJECTOR

KIRPAL SINGH 2ND OBJECTOR

RULING

1. By judgment dated August 11, 2021, Otieno J distributed deceased's estate in of LR Ngusishi/settlement Scheme/78 measuring approximately 6.3 Hectares (estate property) to Gurdil Singh Harnam Singh (Petitioner).
2. Subsequently by summons dated November 1, 2021, Kirpal Singh (2nd Objector/Applicant) applied to vary the judgment dated August 11, 2021 but the summons was dismissed by a ruling dated January 18, 2023.
3. By summons dated February 22, 2023, supported by an affidavit sworn by Kirpal Singh (2nd Objector/Applicant) on February 22, 2023, Applicant has now moved the court seeking leave to appeal the judgment dated August 11, 2021 and status quo on LR Ngusishi/settlement Scheme/78 pending the hearing and determination of the intended appeal.
4. The summons is based mainly on the ground that he intends to appeal the judgment dated August 11, 2021.
5. By his replying affidavit sworn on March 9, 2023, Gurdil Singh Harnam Singh (Petitioner/Respondent) accuses the Applicant of filing this application too late in the day to further delay this cause that was filed over 19 years ago and urges the court to reject the application.



6. The 1st Objector stated orally before the court that he supports the 2nd Objector/ Applicant's application.
7. I have considered the summons in the light of the affidavits on record and submissions for the 2nd Objector/Applicant and the Petitioner/Respondent and I have deduced the issues for determination as follows:
 1. Whether leave to appeal ought to be granted
 2. Whether the Applicant is entitled to an order of status quo

Whether leave to appeal ought to be granted

8. I have considered the holding by the Court of Appeal in [*Rhoda Wairimu Karanja & Another V Mary Wangui Karanja & Another \[2014\] eKLR*](#) where it upheld the decision of the High Court that the right to appeal to the Court of Appeal, in succession matters, lies with leave. The same court in the case of [*Mugab v Kunga \(1988\) KLR*](#) stated that the practice of the court of appeal in the case of land which is a sensitive issue is that the parties should be allowed to come to the court to have the issues involved in their dispute determined by a court of last resort.
9. Article 50 (1) of the [*Constitution*](#) underscores the right to be heard and provides that:
 - (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
10. As this is a succession matter involving land, I am persuaded that the interest of justice would be better served if the 2nd Objector/Applicant is granted leave to appeal and the same is hence granted.

Whether an order of status quo ought to be granted

11. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint. In its negative form, however, an injunction may have the same effect as an order for status quo. (See Msa Misc Appln (JR) No 26 of 2010 The Chairman Business Premises Tribunal at Mombasa Exparte Baobab Beach Resort (Mbsa) Ltd (UR)).
12. A status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the impugned order. By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision. (See [*Kenya Airline Pilots Association \(KALPA\) v Co-operative Bank of Kenya Limited & another \[2020\] eKLR*](#)).
13. It has been 17 months since the impugned judgment was delivered. No explanation has been offered by the 2nd Objector/Applicant for delay in filing an appeal. Maintenance of status quo will no doubt prejudice the Petitioner/Respondent who is the successful party. An order of status quo however is not the only means by which the subject matter can be preserved.
14. From the foregoing, the summons dated February 22, 2023 is allowed in the following terms:
 1. Leave is granted to the 2nd Objector/Applicant to appeal the judgment dated August 11, 2021
 2. In order to preserve the subject matter, it is hereby ordered that the Petitioner/Respondent shall upon distribution of LR Ngusishi/settlement Scheme/78 to him take possession but



shall neither offer for sale, sell, dispose off, transfer, charge or deal with it in any adverse manner until the intended appeal is heard and determined or until any or further orders of the court.

3. Costs shall abide the outcome of the appeal.

Dated at Meru this 23rd DAY OF March 2023

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For 2nd Objector/Applicant - Mr Mwiti for Mutuma Gichuru &

For Interested Party - N/A for Kaberia Arimba & Co. Advocates

