



**In re Estate of Njebiu Samuel Nthigai (Deceased) (Miscellaneous Succession Cause E021 of 2022) [2023] KEHC 2601 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2601 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS SUCCESSION CAUSE E021 OF 2022**

**LW GITARI, J  
MARCH 16, 2023**

**BETWEEN**

**NJERI SAMUEL NTHIGAI ..... APPLICANT**

**AND**

**BEATRICE NJEBIU (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE NJEBIU SAMUEL NTHIGAI) ..... RESPONDENT**

**RULING**

1. Before this court is the summons application dated November 7, 2022 and filed on November 14, 2022. It seeks in the main prayer that the proceedings in Chuka Succession Cause No E327 of 2021 be stayed pending the hearing and determination of Chuka ELC No E021 of 2022.
2. The application is premised on the grounds on the face of it and is supported by the affidavit sworn by the Applicant on November 7, 2022. The Applicant deposes that the deceased herein was his brother and that the deceased was holding a share of 1 acre of land Parcel No Karingani/Ndagani/10050 (the “suit land”) in trust for him and his sisters. He further deposes that he has instituted an ELC case in Chuka ELC E021 of 2021 claiming a trust in the suit land, which matter is still pending hearing and determination. According to the Applicant, the suit land will not be available for distribution to its rightful beneficiaries in the event that the Chuka Succession Cause No E327 of 2021 is heard and determined before Chuka ELC No E021 of 2022.
3. The application is opposed by the Respondent vide a Replying Affidavit sworn on December 19, 2022. She deposes that the Applicant is not an heir of the deceased’s estate. That further, the Applicant does not have the *locus standi* to file Chuka ELC E021 of 2021 and as such, a legitimate succession cause cannot be granted on account of a suit that is incompetently before a court. According to the Respondent, this application is an abuse of the court process or at best, it is an attempt by the Applicant to forum shop.



4. The application is expressed to have been brought under the provisions of Section 48 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules*.
5. I have considered the issues raised by the parties in the present application. The application is in respect to the estate of the late Njebiu Samuel Nthigai (deceased) and the Applicant's claim is that the suit land is trust land. He avers that unless the instant application is allowed, the Applicant will be disinherited.
6. 'It is trite that he who alleges must prove. A succession cause in respect of the deceased's estate was instituted under Succession Cause No E327 of 2021 in Chuka Chief Magistrate's Court by the Respondent herein who was appointed as the administratrix as she is the deceased's widow. The Applicant is a protestor in the said succession cause. The protest by the Applicant the main succession cause has not been heard and determined. Bearing in mind that the suit land is the only property comprising the estate of the deceased, it is my view that the family of the deceased will be denied justice if the proceedings in Succession Cause No E327 of 2021 are halted as their beneficial interest over the subject estate would be unduly delayed.
7. In addition, instituting separate proceedings over the same estate for the sole purpose of halting the main succession cause and await the hearing and determination of the ELC Case is in my view an abuse of the Court process. The Applicant herein has an opportunity to establish his claim in his protest in the main cause.
8. Stay of proceedings is a grave judicial action which affects the right of a litigant in his pursuit for justice. In the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR, Justice Gikonyo held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, right to be heard without delay and over all, right to fair trial. Therefore the test for stay of proceedings is high and stringent.”
9. The granting of stay of proceedings is an exercise of judicial discretion. It is trite that the exercise of discretion must be done judiciously. The court has to consider all the facts and exercise the discretion to halt the proceeding only where it is serving the interests of justice. See Ringera J in *Global Tours and Travels Limited* Nairobi H C Winding up Cause No 43/2000 where he stated-

“In deciding whether to order a stay the court should essentially weigh the pros and cons of 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 appeals in the sense of whether it will probably succeed or not but whether it is an arguable one scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”
10. These authorities have laid down the principle that stay of proceedings is a grave matter which the court should only entertain in most deserving cases and where it is necessary to issue such order in the interest of justice. The grant or denial of order of stay of proceedings will largely depend on the circumstances of each case.
11. In this case, the applicant has filed a protest in the succession cause which in itself will affect the expeditious disposal of that matter. Even before the court can determine his protest, he has moved to the ELC Court over the same subject matter. As if that is not bad enough, he has hopped in this court. It exposes the applicant as a litigant who is bent to derail the course of justice at the expense of wasting



precious judicial time and interfering with the expeditious disposal of the matter. It is clear that his claim can be determined in the protest which he has filed in the succession cause and there is no good cause why the hearing of his own protest should be stayed. In *Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 Others* [2009] eKLR the Court of Appeal stated:-

“Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of Justice.”

I find that it is not in the interest of justice for this court to interfere with proceedings before the trial court. I find that this application lacks merits and is dismissed.

**Dated, signed and delivered at Chuka this 16<sup>th</sup> day of March 2023.**

**L W GITARI**

**JUDGE**

