



REPUBLIC OF KENYA



**In re Estate of Priscilla Muthoni Njora alias Priscilah Muthoni Njora (Deceased)  
(Succession Cause 19 of 2019) [2023] KEHC 21307 (KLR) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21307 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
SUCCESSION CAUSE 19 OF 2019  
SM GITHINJI, J  
JULY 17, 2023**

**BETWEEN**

**CHRISTOPHER WAWERU NJORA ..... PETITIONER**

**AND**

**MIRIAM JEROP CHUMO ..... OBJECTOR**

**RULING**

1. The petitioner moved this court on September 20, 2022 by way of a notice of motion dated September 19, 2022, under section 1A, 1B and 3A of the [Civil Procedure Act](#). The petitioner seeks the following orders;
  - i. Spent.
  - ii. That the honourable court be pleased to issue an order of status quo in this matter.
  - iii. That the status quo issued herein to operate as a stay of any further proceedings pending the hearing and determination of the ELC Case No. 87 of 2021 between the parties the subject of this succession.
  - iv. That costs for this application be provided for.
2. The basis for this application is the grounds enumerated on the face of it and the supporting affidavit sworn by the petitioner on the even date. Briefly, the petitioner's case is that he was issued with a grant of letters of administration in respect of the estate of Priscilla Muthoni Njora. However, before the same could be confirmed, the objector filed an objection on grounds *inter alia* that prior to the deceased's demise, she had purchased the subject land of these proceedings, Kilifi/Mbaraka Chembe/221 from the deceased. The petitioner added that the subject land is the subject of another suit between the parties herein in Malindi ELC No 87 of 2021.



In response, the objector swore a replying affidavit on October 14, 2022 stating that the present proceedings had been suspended awaiting the outcome of the DCI and ODPP enquiry, which reports had been finalized absolving her from any criminal culpability. The objector deposed that the applicant has approached the court with soiled hands and has failed to disclose material facts hence not entitled to the orders sought.

3. The application was canvassed by way of written submission which I have perused. The sole issue for determination is whether these succession proceedings should be stayed pending the determination of ELC No 87 of 2021.

It must be noted that this being a probate and administration court, its jurisdiction is purely to determine the assets of the deceased, identify the rightful beneficiaries of the estate, ascertain their respective shares and distribute the estate accordingly. This was stated *In re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR 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.”

4. Questions on ownership of property, particularly land, is a preserve of the Environment and Land Court as per article 162(2) of the *Constitution* of Kenya and Environment and *Land Act*. In the present case, it is undisputed that the suit land is subject in Malindi ELC 87 of 2021, between the same parties herein. It is also clear that the dispute in that court is ownership over the suit land. That question has also arisen before confirmation of grant herein and in my view, raises bona fide issues worthy of trial. However, this court does not have jurisdiction to try the question of ownership. The Environment and Land Court does. Accordingly, I hereby find that it is in the interest of justice that these succession proceedings are stayed pending the determination of the dispute before the Environment and Land Court.

The application therefore succeeds; costs be in the cause.

Mention on December 5, 2023.

**RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 17TH DAY OF JULY, 2023.**

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**S.M. GITHINJI**

**JUDGE**

**In the absence of the parties; -**

Martha Njora present (Her status in the case could not be established). She has appeared virtually.

