



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**SUCCESSION CAUSE NO. 19 OF 2014**

**RE ESTATE OF NAHASHON NDUATI GACHUI (DECEASED)**

**BENSON NGUGI.....APPLICANT**

**VERSUS**

**REBECCA NJERI.....RESPONDENT**

**RULING**

1. The applicant prays that the order of the High Court maintaining the *status quo* or staying proceedings in the lower court be vacated. There is also a prayer for dismissal of the cause for want of prosecution.
2. There are separate summons dated 28<sup>th</sup> July 2021 and 28<sup>th</sup> September 2021 seeking those reliefs. As observed by the court in on 28<sup>th</sup> September 2021, the latter motion was clearly an abuse of court process.
3. The applicant contends that the respondent, who is in control of the estate, has not prosecuted the succession cause in this court since 2014; and, that she is abusing the order to “intimidate or oppress” other heirs. Furthermore, the order was never served and the respondent has not moved to set aside the decree of the lower court at Kandara made on 15<sup>th</sup> December 2020. Those matters are detailed at length in the annexed affidavit of Benson Ngugi.
4. The respondent filed a reply on 16<sup>th</sup> November 2021. The objections are three-pronged: Firstly, that the parallel proceedings in Kandara Succession Cause 45 of 2019 are irregular as they relate to the same estate; secondly, that the delay in prosecuting this cause at the High Court is neither lengthy nor deliberate; and, lastly, that the allegations that she has leased a portion of the estate are untrue.
5. On 26<sup>th</sup> January 2022, I heard further arguments from the learned counsel for both parties.
6. The prayer to vacate the order of stay must fail for two main reasons. Firstly, the applicant does not contest that the proceedings in the lower court in Kandara Succession Cause 45 of 2019 relate to the same estate. On the face of it, they were lodged well after the succession cause at the High Court. Having parallel proceedings is not only irregular but may embarrass one of the courts. It is on that basis that the High Court stayed the proceedings in the subordinate court.
7. Secondly, the lower court proceeded to deliver its judgment on 15<sup>th</sup> December 2020 notwithstanding the order staying the proceedings made on 18<sup>th</sup> November 2020. The applicant avers that the order of stay was not served. When the parties appeared before me earlier on 2<sup>nd</sup> February 2021, the respondent’s daughter alleged that service was effected on 26<sup>th</sup> November 2020. A letter addressed to the lower court attaching the order is displayed. Obviously, one of the parties is not telling the truth.
8. I will now turn to the prayer for dismissal. I agree with the applicant that there has been laches in prosecuting the succession cause at the High Court. The record shows that the citation was fixed for directions on 3<sup>rd</sup> October 2016. The petitioner was advised to pay for gazette fees. There was then delay occasioned by an interlocutory motion dated 12<sup>th</sup> February 2020. The latter was fixed for hearing on 28<sup>th</sup> July 2020 and 10<sup>th</sup> November 2020 but the court was not in session. There were then two new summons by the applicant dated 28<sup>th</sup> July 2020 and 28<sup>th</sup> September 2021.
9. Since that date, the disputants have appeared interparties before the High Court on 2<sup>nd</sup> February 2021, 26<sup>th</sup> April 2021, 29<sup>th</sup> July 2021, and 26<sup>th</sup> January 2022 when the instant summons was heard. Granted that history, I cannot blame the respondent wholly for the delays. The prayer for dismissal of the cause for want of prosecution is disallowed.
10. Lastly, this is a succession cause. The disputants are close family members. I am also alive to the *overriding objective* to do justice to all the parties. See **Article 159** of the **Constitution** as read together with Rule 73 of the **Probate and Administration Rules**. I will accordingly

grant early dates for this cause.

11. In the end the applicant's summons dated 28<sup>th</sup> July 2021 and 28<sup>th</sup> September 2021 lack merit and are dismissed with no order on costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 10TH DAY OF FEBRUARY 2022.**

**KANYI KIMONDO**

**JUDGE**

**RULING READ IN OPEN COURT IN THE PRESENCE OF:**

**MRS. NDUNG'U HOLDING BRIEF FOR MR. MBUGUA FOR THE APPLICANT.**

**MR. MUNENE HOLDING BRIEF FOR MR. MUGO FOR THE RESPONDENT.**

**MS. SUSAN WAIGANJO, COURT ASSISTANT.**