



**In re Estate of Francis Thiaka Njagi alias Muriithi Thiaka (Deceased) (Miscellaneous Succession Cause 29 of 2005) [2024] KEHC 14407 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14407 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS SUCCESSION CAUSE 29 OF 2005  
LM NJUGUNA, J  
NOVEMBER 20, 2024  
IN THE MATTER OF THE ESTATE OF FRANCIS  
THIAKA NJAGI ALIAS MURIITHI THIAKA (DECEASED)**

**BETWEEN**

**ANN WATHUIYA NJAGI ..... PROTESTOR**

**AND**

**MARY KANINI MURIITHI ..... RESPONDENT**

**RULING**

1. The applicant filed a notice of motion dated 27<sup>th</sup> May 2024, which is supported by the grounds set out on its face and the facts deposed in the supporting affidavit thereof. The orders sought are as follows:
  1. Spent;
  2. That this honourable court be pleased to issue and order for stay of further proceedings in the matter pending hearing and determination of the application to be enjoined in Kerugoya ELC case numbers E034, E035 and E036 of 2021 regarding the subject matter herein;
  3. That this honourable court be pleased to issue an order maintaining status quo until determination of the substantive suits hereinbefore captioned; and
  4. That the costs of this application be provided for.
2. There is, on record, summons dated 20<sup>th</sup> June 2022 seeking revocation of the grant jointly issued to the respondent and Justine Ngugi Thiaka. This application was heard but before its determination, another summons dated 30<sup>th</sup> November 2023 was filed seeking joinder of 17 interested parties. The applicant therein, who are the 17 intended interested parties brought to the attention of the court that they have filed Kerugoya ELC case numbers E034, E035 and E036 of 2021 (hereinafter referred to as 'Kerugoya ELC cases') seeking adverse possession orders over the property forming the estate of the



- deceased. This application for joinder of interested parties was scheduled for hearing but before it was heard, the applicant herein filed the application before this court.
3. In the application before this court, the applicant has just learned that the deceased's property was unlawfully disposed off and distributed to various people through a consent in adverse possession order in Kerugoya ELC cases which were marred with gross misrepresentation of facts. That the respondent disposed of the land knowing that the applicant had moved this court for stay of proceedings. That the applicant is pursuing reversal of these orders so that the property reverts to the estate of the deceased.
  4. It was the applicant's averment that the deceased herein was awarded 17 acres out of the 35 acres of Property parcel number Mwea/Tebera/B3 but the respondent has sold the deceased's portion, thus disinheriting the beneficiaries. This is what prompted the applicant to file summons for revocation of the grant issued to the respondent, which summons was heard but is pending determination.
  5. She stated that the alleged purchasers arrested this court's judgment on the basis of the Kerugoya ELC cases which were eventually determined through consent orders and not on merit. That the respondent could not have sold land which she did not own and which belonged to the deceased herein, thus the Kerugoya ELC orders were issued in vain. She prayed that the court stays these succession proceedings to enable her to pursue reversal of the ELC orders which will revert the property to the estate of the deceased.
  6. The respondent filed a replying affidavit through which she deposed that the orders sought through the application should be canvassed in the Kerugoya ELC files and not herein. That the applicant has accused her of intermeddling but has failed to institute proceedings against her in that regard. That the application before this court is a non-starter since the suit property has already been transferred to third parties through an order of the court. She deposed that the applicant should pursue recourse through the Kerugoya ELC files if she is aggrieved with the findings therein. That the applicant has not demonstrated what prejudice she will suffer if the orders are not granted.
  7. From the court's record, the application of enjoining 17 interested parties was not heard and determined. However, the advocate for the interested parties misled the court into believing that the interested parties had already been enjoined. The court proceeded to allow the intended interested parties to file their reply and submissions. This is against the law and rules of procedure since the intended interested parties are not yet parties to these succession proceedings. Therefore, their replying affidavit and written submissions will not be considered for purposes of determination of the application dated 27<sup>th</sup> May 2024, given that their application for joinder dated 30<sup>th</sup> November 2023 is pending hearing and determination.
  8. The parties in the application did not file their written submissions.
  9. The issue for determination is whether the application has merit.
  10. Stay of proceedings is an equitable relief that is granted by a court through its discretion which is exercised judiciously. In considering whether or not to stay proceedings, a court should keep its focus on administration of justice. In the case of *Re Global Tours & Travel Ltd* HCWC No 43 of 2000 Ringera, J (as he then was) held that:

“...As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or



not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of case, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously...”

11. The applicant is seeking stay of proceedings in this succession cause to enable her to challenge the consent orders reached in the Kerugoya ELC cases where the estate of the deceased has been disposed of to third parties. The applicant is also the applicant in the summons for revocation of the grant, from which all these subsequent applications arise. In essence, she is seeking to stay her own proceedings, giving up her immediate right to have the summons for revocation determined, so that she can challenge the ELC findings. The court in the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR held that:

“...Stay of proceeding 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 right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent...”

12. The greatest test in considering stay of proceedings is whether justice will be served. I have taken the liberty of perusing the Kerugoya ELC files which were availed to this court. Hon. Mr. Justice J. Mutungi therein recorded consents in all the 3 files essentially determining the originating summons seeking adverse possession. These consents were adopted as orders of the court on 14<sup>th</sup> June 2023. The applicant has not demonstrated that she has filed any further pleadings in those cases neither can I see any on the record. This goes to say that the consent orders in the Kerugoya ELC cases are still valid, not having been set aside or reviewed.

13. It would be against the interest of justice to stay the proceedings herein for the applicant to challenge the consent orders in the Kerugoya ELC cases. This is not basis for such exceptional circumstances that would warrant granting stay of the proceedings herein. According to *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases. It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

14. The order of events would have made more sense if the applicant had already moved the Kerugoya ELC court for review or setting aside of the consent orders and then therein, seek stay of execution of these proceedings. Since the applicant has not demonstrated having done that, there is no basis for granting the orders prayed. That being said, I am of the view that the pending applications for joinder of interested parties and revocation of grant should be determined expeditiously, in the interest of justice.



15. In the end, I find that the application lacks merit and the same is hereby dismissed. There shall be no order as to costs.

16. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**L. NJUGUNA**

**JUDGE**

..... for the Protestor/Applicant

.....for the Respondent

