



REPUBLIC OF KENYA



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In re Estate of the Late Loice Wangari Kamau (Deceased) (Succession Cause 327 of 2012) [2024] KEHC 14068 (KLR) (12 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14068 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 327 OF 2012
HI ONG'UDI, J
NOVEMBER 12, 2024
IN THE MATTER OF THE ESTATE OF THE
LATE LOICE WANGARI KAMAU - (DECEASED)**

BETWEEN

NYAMBURA WANGAI WANJOHI APPLICANT

AND

MARY WANJIKU MWANGI RESPONDENT

RULING

1. This is the summons dated 2nd April, 2024. It's filed under Rules 49 & 73 of the P & A Rules and seeks the following orders:
 - i. Spent
 - ii. That the Honourable court be pleased to declare that the orders issued on 14th July, 2022 have since lapsed and hence inconsequential.
 - iii. That the Honourable court be pleased to life, vary and or vacate the prohibition order lodged against title no. Bahati/Kabatini Block 1/358
 - iv. That the Honourable court be pleased to issue any other necessary directions.
 - v. That cost of the application be provided for.
2. The application is premised on the grounds on its face plus the affidavit of Nyambura Wangai Wanjohi (applicant) sworn on 2nd April, 2024. Her case is that she is a co-administrator and a beneficiary of the deceased's estate as daughter of the deceased. She deponed that the Judgment delivered on 28th October, 2021, has been frustrated by the respondent. That following the delivery of Judgment the respondent filed an application for stay of execution dated 22nd February, 2022 which was decided vide



the ruling delivered on 14th July, 2022. In the ruling the respondent was granted a conditional stay of execution which was to lapse within 365 days, with an option of extending any period through the Court of Appeal.

3. She further averred that the respondent placed a prohibition on the suit parcel of land and has to date not complied with the orders issued on 14th July, 2022. She was apprehensive that the respondent is wasting the deceased's estate and may waste the estate further since they are already in the process of disposing of properties belonging to the deceased. She annexed a copy of a certificate of official search (NWW 11) showing the prohibition on land parcel No. Bahati/Kabatini Block 1/358.
4. The respondent filed a replying affidavit sworn on 2nd August, 2024. She deponed that she filed an Appeal against the judgment (MWM 1) delivered on 28th October, 2021. The Appeal is Nakuru Court of Appeal No. E030 of 2022. She annexed the Notice of Appeal (MWM 2) and the 1st page of the Record of Appeal which she was filed (MWM 3).
5. She deponed that if the application is allowed it will be prejudicial and adverse to her interest in the suit property and it will render the appeal redundant. She contends that following the registration of the Appeal, the Court of Appeal will issue her with a date for one or two things, before the hearing. She admits having registered a prohibition order against the suit property to preserve it and her interest in it. She added that she had filed a Misc. Application No. E043 of 2024 at Nakuru Court of Appeal but has yet to get a hearing date due to the backlog in the said court.
6. She thus depones that it would be prudent to await the outcome of the Appeal because if this court finds that the application has merit, the Appeal will be rendered nugatory and she will suffer irreparable harm that cannot be compensated by damages.
7. The application was canvassed by way of written submissions.

The applicant's submissions

8. These were filed by Munene, Chege & Co. Advocates and are dated 20th September, 2024. Counsel referred to the orders issued by Ngugi J (as he then was) in his ruling of 14th July, 2022 and submitted that the time given had lapsed. Further that the respondent has never moved the Court of Appeal for an extension of time, and so cannot continue to enjoy the status quo at the expense of the deceased's estate.
9. On whether the court should lift, vary and or vacate the prohibition order lodged against title No. Bahati/Kabatini Block 1/358 counsel referred to the cases of:
 - i. Grace Wambui Njambuya V John Waweru Wamai [2019] eKLR
 - ii. Peter Kariuki Njeru V Erastus Gilbert Kimani & another [2022] eKLR and Order 42 Rule 6 of the Civil Procedure Rules. He thus submitted that the prayer No. (iii) should be granted.

The respondent's submissions

10. The same were filed by Mirugi Kariuki & Co advocates and are dated 6th August, 2024. Counsel submitted that the issue of ownership is contested and it goes to the heart of the suit. He contends that the respondent has done its part in as far as the appeal is concerned. It was for the Court of Appeal to give directions and a date for hearing. It's the applicant's argument that if the suit property is dispossessed it cannot be adequately compensated by damages. Similarly, that, if the orders of 14th July, 2022 are set aside it shall result in substantial loss and prejudice against the respondent.



11. Referring to the cases of:
 - i. Benl Development Ltd V First Community Bank Limited [2021] eKLR
 - ii. St. Patricks Hill School Ltd V Bank of Africa Kenya Ltd [2018] eKLR, counsel urged the court to consider the Court of Appeal's nature of practice and the challenges thereon, and the pre-requisites of lifting of and or varying a judgment or court order. Further that if the application is allowed the Appeal shall be rendered nugatory which will be pre-judicial to the respondent.
12. Counsel further contended that an understanding of the ruling reveals that this court is functus officio and therefore lacks jurisdiction to entertain the application. The reason being that the court in its ruling declared that if any issue arose the same should be ventilated in the Court of Appeal.
13. Finally, counsel submitted that the Court of Appeal having its own registry calendar, diary and its own rules and procedure, the respondent should be given the opportunity to be heard at the appropriate time.

Analysis and determination

14. As I prepared to work on the determination herein I was promoted to check on the status of Nakuru Court of Appeal Civil Application No. E043 of 2024 and I thank God I did so. None of the parties had informed this court of the status of the said application and even the Appeal. The following is the order extracted vide Nakuru Court of Appeal Civil Application No. E043 of 2024.

"UPON this application being called out for hearing this morning, Ms. Karungu, learned counsel appeared for the applicant and Ms. Ochieng, learned counsel appeared for the respondent.

We direct the notice of motion dated 22nd April 2024 be and hereby compromised in the following terms:

1. The status quo currently obtaining shall be maintained pending the hearing and determination of the appeal. No. E030 of 2022.
 2. The appellant to file their submissions within the next 15 days and the respondent to file their submissions within 15 days of service by the appellant.
 3. The appeal shall be listed for hearing on a priority basis.
 4. There will be no orders as to costs in respect to this application.
15. The above being the position, I find that the application dated 2nd April, 2024 has been overtaken by events. The same has therefore become moot with no order as to costs.
 16. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 12TH DAY OF NOVEMBER, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

