



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC NO. 652 OF 2014**

**(Formerly NYERI HCCC 4 OF 2008)**

**MATHENGE NGATIA NGARI (*Suing for himself and on behalf of***

***his deceased brothers represented by their wives*)..... PLAINTIFF/DECEASED**

**-VERSUS-**

**CHRISTOPHER WANGOMBE NGATIA.....DEFENDANT/DECEASED**

**MARY WANGUI WAIGI..... APPLICANT**

**RULING**

1. By the Notice of Motion dated 23<sup>rd</sup> March, 2021, Jecinta Njeri Wang'ombe (*the Defendant*) prays for an order that there be a stay of proceedings herein pending the hearing and determination of Nyeri ELC Case No. 642 of 2014; Mary Wangui Waigi -vs- Jecinta Njeri Wang'ombe

2. The application which is supported by an affidavit sworn by the Defendant is premised on the grounds that:

*(i) One of the beneficiaries of the deceased Plaintiff has already filed summons for revocation of the Limited grant issued to the Plaintiff;*

*(ii) Great injustice may occur should the case herein proceed to hearing before the application is heard and determined as the outcome of the application for revocation of the grant will definitely affect the proceedings in this case; and*

*(iii) If the hearing of this case proceeds, the application would be rendered nugatory.*

3. Mary Wangui Waigi (the Plaintiff) is opposed to the application. In her Replying Affidavit sworn on 29<sup>th</sup> April, 2021 as filed herein on 30<sup>th</sup> April, 2021 she avers that she is the legal representative of the estate of Mathenge Ngatia Ngari who had initially instituted this suit and further that the beneficiaries of the said estate have no objection to her proceeding with the suit herein.

4. The Plaintiff avers that the summons for revocation of the Limited Grant are misconceived and baseless and asserts that this is an old matter which ought to be finalized at the earliest possible time.

5. I have perused and considered the application as well as the responses thereto. I have similarly considered the written submissions as placed before the court by the Learned Advocates acting for both parties.

6. The Defendant herein has urged the court to stay these present proceedings pending the hearing and determination of an application for revocation of a grant filed in Nyahururu CMCC No. 3 of 2019; In the matter of the Estate of Mathenge Ngatia Ngari (Deceased).

7. As was stated in **Kenya Wildlife Service –vs- James Mutembei (2019) eKLR:**

**“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 pleadings and the facts of the case.”**

8. In the matter before me, it is apparent that the suit was initially instituted by one Mathenge Ngatia Ngari against Christopher Wang’ombe Ngatia as Nyeri HCCC No. 4 of 2008. As fate would have it, both the original Plaintiff and the original Defendant have since died and in their stead the current Plaintiff/Respondent and the Defendant/Applicant were brought in as their respective legal representative.
9. It was also apparent that when the original Plaintiff passed away on 22<sup>nd</sup> March, 2017, the current Plaintiff/Respondent moved to court through Nyahururu Chief Magistrates Probate and Administration Cause No. 3 of 2019 wherein she was issued with a Limited Grant of Letters of Administration *Ad Litem* for purposes of pursuing this suit on 22<sup>nd</sup> January, 2019.
10. Subsequently, and by an application dated 14<sup>th</sup> June, 2019, the Plaintiff/Respondent sought the revival of the suit herein which had by then abated as well as the substitution of the current parties. The Defendant/Applicant opposed the said application. In a Ruling delivered herein on 5<sup>th</sup> March, 2020, by the Honourable Lady Justice M. C. Oundo, the Plaintiff’s application was allowed and the parties were granted time to amend their pleadings.
11. By the current application, the Defendant contends that some members of the original Plaintiff’s family were unaware of the proceedings leading to the issuance of the Limited Grant *Ad Litem* to the Plaintiff and that those family members did not consent to these proceedings and have since filed an application for the revocation of the Limited Grant.
12. I have had occasion to look at the pleadings herein and it is evident that the original Plaintiff had filed this suit on his own behalf and on behalf of his brothers who were then deceased. In the event of his demise, I did not find anything that could stop those he represented herein from proceedings with the case on their own.
13. As one such party, the current Plaintiff moved the court as appropriate and obtained the grant before proceeding with this case. That Limited Grant remains in existence to-date and unless and until the same is revoked and/or annulled for whatever reason, the same remains valid and binding.
14. In the circumstances herein, I am not persuaded that there is any basis for a stay of the proceedings herein. The application dated 23<sup>rd</sup> March, 2021 is accordingly dismissed with costs to the Plaintiff/Respondent.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 16TH DAY OF DECEMBER, 2021.**

In the presence of:

Ms Gichama for the Plaintiff/Respondent

Ms Nyakio for the Defendant/Applicant

Court assistant – Wario

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**J. O. OLOLA**

**JUDGE**