



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 435 OF 2015

IN THE MATTER OF THE ESTATE OF

THE LATE OKODE OPONDO *a.k.a.* OKODO OPONDO

IN THE MATTER OF AN APPLICATION BY

JENNIFER AKUMU OWUOR, PAUL ODHIAMBO WERE

AND JARED OLIMA WERE

AND

IN THE MATTER OF AN OBJECTION BY MONICAH AKEYO ANGANYA

MONICA AKEYO ANGANYA.....1ST APPLICANT

FELIX ODHIAMBO ABUOR.....2ND APPLICANT

VERSUS

JENNIFER AKUMU OWUOR.....1ST RESPONDENT

PAUL ODHIAMBO WERE.....2ND RESPONDENT

JARED OLIMA WERE.....3RD RESPONDENT

RULING

The application dated 22nd February 2021 seeks the stay of these proceedings until such time that the Environment and Land Court, Kisumu will have heard and determined **ELC CASE NO. E26 OF 2020 (O.S)**.

1. The Applicants, **MONICAH AKEYO ANGANYA** and **FELIX ODHIAMBO ABUOR** contend that in the year 1987 they purchased a portion of land measuring approximately 3 acres. They said that the portion of land which they purchased was a part of **L.R. NO. KISUMU/KAJIMBO/354**.

2. It was the Applicants' case that since 1987, they had been in open and peaceful possession and occupation of the parcel of land which they had purchased.

3. Meanwhile, the Petitioners herein have included the property, **L.R. NO. KISUMU/KAJIMBO/354** in the list of assets constituting the Estate of **OKODE OPONDO**.

4. Having purchased the 3 acres from **SALINA AUMA**, who was the wife of the deceased, **OKODE OPONDO**, and having been in occupation of the said parcel of land since 1987, the Applicants asserted that they were the legitimate owners of the portion which they had purchased.

5. In the circumstances, the Applicants have taken the position that the parcel of land which they purchased cannot be distributed to the

beneficiaries of the Estate of Okode Opondo.

6. It is the Applicants' case that they had planted a total of 3,247 trees on the land in question, over the last 30 years.

7. Notwithstanding the alleged purchase of the parcel of land, and the occupation thereof, the title to the said property had not been transferred to the Applicants.

8. Therefore, in an endeavor to acquire title, the Applicants instituted proceedings before the Environment and Land Court.

9. In his Replying Affidavit, **JARED OLIMA WERE** (who is the 3rd Respondent herein) deponed that although Salina Ouma was the widow of Okodo Opondo, she never had had any lawful authority to sell any land belonging to the deceased.

10. According to the Respondents it was unbelievable that for a period of 16 years, from the date when they allegedly bought 3 acres from Salina, the Applicants never had the said land transferred to their name. The reference to the period of 16 years stems from the fact that Salina died in 2002, which was 16 years from the date when the Applicants had allegedly purchased the land from her.

11. Although the Respondents contend that the Applicants never raised any claim over the land, it is on record that the Applicants took over possession of the land and they planted trees thereon.

12. The Respondents appear to confirm that eucalyptus trees have been planted on a portion of the land. However, they dispute the Applicants' contention that it is they who planted the said trees.

13. It is clear to me that whilst the Respondents believe that the whole parcel of the land **L.R. NO. KISUMU/KAJIMBO/354** belonged to the deceased; the Applicants believe that they were the legitimate owners of 3 acres out of the said parcel of land.

14. If the whole parcel of land belonged to the deceased, the beneficiaries of the estate of Okode Opondo would be entitled to distribute it among themselves.

15. However, if a portion of the said parcel of land belonged to the Applicants, such portion would not constitute part of the free property which would be available for distribution to the beneficiaries.

16. I hold the considered view that if this Court proceeded with steps that would lead to the distribution of **L.R. NO. KISUMU/KAJIMBO/354**, before it had been determined whether or not the claim by the Applicants, in respect to a portion thereof, the whole parcel of land may be alienated before the issue of ownership had been resolved.

17. The question of ownership of land falls within the jurisdiction of the Environment and Land Court.

18. Although the Respondents held the view that the claim which the Applicants had lodged before the Environment and Land Court was frivolous, this Court has no locus to comment on the strengths or weaknesses over an issue in respect to which it lacks jurisdiction.

19. This Court cannot presume that the case before the Environment and Land Court will be determined in favour of the Respondents.

20. But even if it were to be assumed that the Applicants' claim before the Environment and Land Court was frivolous, it needs to first be determined so that all the parties would then know the extent of the property which constitutes the estate of Okode Opondo.

21. I am alive to the fact that legal proceedings are the forum at which parties canvass their respective legal rights. Therefore, when any party was exercising his right to canvass his claim, the Court ought to be very slow stay such proceedings.

22. In this case, the issue of ownership of the parcel of land is before this Court, and also before the Environment and Land Court. As it is the Environment and Land Court which has jurisdiction to determine issues about the ownership of land; and because distribution of the estate cannot be undertaken before the question of ownership is adjudicated upon, I find merit in the application for stay of these proceedings until the issue of ownership can be determined.

23. In respect to the costs of the application, I order that the same shall be in cause; so that the parties who ultimately succeed before the Environment and Land Court shall also get the costs of this application. I so order because whoever is adjudicated to be right in respect to the issue of ownership would thus have justified entitlement to the costs of this application.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 8TH DAY OF NOVEMBER 2021

FRED A. OCHIENG

JUDGE