



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 375 OF 2013

SYMON NYAMU MUTHIGANI PLAINTIFF/RESPONDENT

VERSUS

CHARITY WANGUI MUNENE DEFENDANT/APPLICANT

RULING

I have before me an application filed under Certificate of urgency dated 15th December 2014 in which the defendant/applicant seeks the substantive order of stay of the proceedings herein pending the hearing and determination of an application seeking the revocation of grant in Kerugoya High Court Succession Cause No. 1014 of 2013 or until further orders of this Court.

The application is supported by the affidavit of the defendant/applicant and is based on the main grounds that the suit involves parcel of land No. MWERUA/KAGIO/18 which is currently in the names of the plaintiff/respondent which he obtained after petitioning for grant of letters of administration which was subsequently confirmed without involving the defendant/applicant or her deceased husband who have all along been in occupation of the land following an agreement between the defendant/respondent's deceased father and the plaintiff/applicant's husband.

The application is opposed and in his replying affidavit, the plaintiff/respondent has deponed, inter alia, that this application is meant to delay these proceedings and that the land subject of this suit has always been registered in the names of his late father.

Submissions have been filed by both sides and although Mr. Ndata informed the Court on 13th July 2015 that Mr. Gori for the plaintiff/respondent would not be filing any submissions, there are in fact submissions filed by both Mr. Gori for the plaintiff/respondent and Mr. Ndata for the defendant/applicant.

I have considered the application, the rival affidavits, the submissions by counsels and the case law cited therein. With regard to the case law cited, all I can say is that the case of **LUCY KIMANSA & OTHERS VS JOHN GICHURI H.C.C.C Application No. 495 of 2012 (NBI)** cited by the plaintiff/applicant was really a case for an application for stay pending appeal which is not the position in the matter before me as there are clear guidelines regarding when an order for stay pending appeal may be granted.

What is before me is an application for stay of this suit pending the determination of KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 1014 OF 2013. It is the defendant/applicant's case that the plaintiff/respondent filed this suit without disclosing the existence and/or pendency of the application in KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 1014 of 2013 which is challenging the grant through which the plaintiff/respondent obtained the title to the land subject of this suit. Looking at the pleadings herein, it cannot be true, as alleged by the defendant/applicant, that the plaintiff/respondent

filed this suit without disclosing the pendency of the summons for revocation of the grant in KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 1014 of 2013 (previously NYERI HIGH COURT SUCCESSION CAUSE NO. 560 of 2005) because, this suit was filed originally as KERUGOYA PMCC NO. 228 of 2010 on 7th July 2010 and thereafter on 28th July 2011 was filed as EMBU H.C.C.C No. 90 of 2011 before becoming KERUGOYA ELC Case No. 375 of 2013. The grant sought to be revoked was confirmed in NYERI H.C SUCCESSION CAUSE NO. 560 of 2005 on 16th November 2006 and the application seeking its revocation was filed on 18th November 2011 some fourteen (14) months after this suit was originally filed. So this suit was filed before the application in the Succession Cause.

Having said so, this application seeks the stay of these proceedings pending the determination of KERUGOYA SUCCESSION CAUSE NO. 1014 of 2013. There is no doubt that this Court has inherent powers under **Section 3A of the Civil Procedure Act** and also under the general rubric of its inherent jurisdiction. This was considered by the then Court of Appeal for East Africa in **HARNAM SINGH AND OTHERS VS MISTRI 1971 E.A 122** at page 125 where the Court, citing **JADVA KARSAN VS HARNAM SINGH BHOGAL 1953 20 E.A.C.A 74** stated:-

“There is no doubt that there is an inherent power to stay proceedings where the ends of justice so require”

That was in respect to the High Court but it is not in doubt that this Court enjoys similar powers and indeed **Section 13(7) of the Environment and Land Court Act** gives this Court powers ***“to make any order and grant any relief as the Court deems fit and just”***. In exercising this power, the Court will no doubt take into account the need to determine cases expeditiously, the status and history of the proceedings sought to be stayed, what prejudice will be occasioned to the other party and most importantly, the interests of justice.

Taking all that into account, it is clear from the record herein that the issue for determination in KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 1014 of 2013 is whether plaintiff/respondent was legally entitled to the land subject matter of this suit or whether the grant through which he inherited that land was wrongfully obtained and ought to be annulled. The judgment in the KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 1014 of 2013 will clearly have a bearing to this case and it is the defendant/applicant’s plea that this suit be stayed awaiting that judgment. In his submissions in opposition to this application, counsel for the plaintiff/respondent has stated that this application is an abuse of the Court process meant to delay this matter which is partly heard and that the plaintiff/respondent closed his case on 25th September 2014. That is not entirely correct because, although the trial herein proceeded ex-parte on 25th September 2014 when the plaintiff/respondent testified and closed his case, those proceedings were by consent set aside on 6th November 2014 and the Court ordered the trial to commence de novo. The plaintiff/respondent who was the only witness will therefore be re-called to testify. There is nothing to suggest that an order for stay will cause him any prejudice as at now he appears to be the only witness in his case.

On the need to expedite both this case and the SUCCESSION CAUSE NO. 1014 of 2013, this Court was not told at what stage the Succession Cause has reached. However, bearing in mind that the determination of the validity of the grant in the Succession Cause will be an issue in these proceedings, I find it prudent, and the interests of justice dictate, that I stay these proceedings pending the out-come of KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 1014 of 2013. In doing so, I take cognizance of the fact that **Section 6 of the Civil Procedure Act** requires the Court to stay proceedings where the matter in issue is directly and substantially in issue involving the same parties in another Court. That is clearly the case in this dispute and the one pending in the High Court. Both cases were filed not very long apart from each other and therefore the need to expedite both of them can be achieved without causing undue hardship on any of the parties.

In the circumstances, I find that the defendant/applicant’s application dated 15th December 2014 seeking a stay of these proceedings is well merited and is in the interest of justice and is not pursued for ulterior

motives and I grant it. However, I direct that the defendant/applicant do pursue the determination of KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 1014 of 2013 *with due diligence so that it is finalized at the earliest to avoid delaying this case any further.*

The application dated 15th December 2014 is accordingly allowed with costs being in the cause.

B.N. OLAO

JUDGE

17TH JULY, 2015

17/7/2015

Before

B.N. Olao – Judge

Gichia – CC

Mr. Ndana for Plaintiff – absent

Defendant – present in person

COURT: Ruling delivered in open Court this 17th day of July 2015 in open Court.

Counsels for parties absent but the defendant present.

B.N. OLAO

JUDGE

17TH JULY, 2015