

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CIVIL CAUSE NO. 22 OF 2011.

SHADRACK WAINAINA. ::::::::::::::::::::::::::::::::::::::: PLAINTIFF.

VERSUS

GEORGE KIMNONJI MUTHOI ::::::::::::::::::::::::::::::::::::::: DEFENDANT.

R U L I N G.

1. The applicant filed a notice of motion dated 22/7/2013 in which he seeks stay of proceedings in this case pending the hearing and determination of an application he filed in Kitale High Court Succession Case No. 246 of 2004 where he is seeking revocation of grant issued to the plaintiff herein.
2. The respondent in this case is seeking to evict the applicant from LR No. Kakamega/Sango/2792 (suit land). The suit land was registered in the name of the respondent by way of transmission vide Succession Cause No. 246 of 2004. The applicant contends that the suit land is family land and that the registration of the same in the name of the respondent was obtained fraudulently after the respondent omitted other beneficiaries.
3. It is not clear from the pleadings the relationship between the applicant and the respondent on the one part and the relationship between the applicant and the late Esther Kagoiri Muthui on the other part. However, be that as it may, the fact remains that the applicant herein had filed an application seeking to revoke the grant issued to the respondent in Succession Cause No. 246 of 2004. The details will come out in that Succession Cause.
4. The respondent has opposed the applicant's application based on a replying affidavit sworn and filed in court on 30/7/2013. The respondent contends that the applicant has failed to prosecute his application in the Succession Cause and that he has not given any reasons why he has not prosecuted his application.
5. I have considered the applicant's application as well as the objection to the same by the respondent. There is no doubt that the applicant had filed summons seeking to revoke the grant issued to the respondent in Succession Cause No. 246 of 2004. This application is pending. It is the Succession Cause which resulted in the respondent being registered as owner of the suit land. The applicant contends that the suit land is family land and that he has been living on the same since 1967. On the other hand the respondent contends that the applicant moved on to the suit land in the year 2010. Since there is a pending application seeking to annul the grant issued to the respondent, it is fair that the proceedings in this case be stayed pending the hearing and determination of the pending application in Succession Cause No. 246 of 2004.
6. I find that the applicant's application has merits. I allow the same with the result that the proceedings in this case are hereby stayed pending the hearing and determination of the summons for revocation of grant in Succession Cause No. 246 of 2004.

Costs shall be in the cause.

It is so ordered.

[Dated, signed and delivered at Kitale on this 1st day of July, 2014.]

E.O. OBAGA.

JUDGE.

In the presence of Mr. Ingosi for defendant and Mr. Karani for M/s. Arunga for plaintiff. Court Clerk – Kassachoon.

E.O. OBAGA.

JUDGE.

1/7/2014.