



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 219 OF 2016 (OS)**

**SABINA JEPNG'ETICH AND PAUL MUTAI**

*[Suing as the Legal Administrators of the Estate of*

**WILLIAM KIMUTAI SOI**

*alias KIMUTAI SOI ARAP CHERUGUT].....PLAINTIFFS*

**VERSUS**

**REBECCA SOI.....1<sup>ST</sup> DEFENDANT**

**JOSEPH LANGAT.....2<sup>ND</sup> DEFENDANT**

**RULING**

**[NOTICE OF MOTION UNDER CERTIFICATE OF URGENCY DATED 4<sup>TH</sup> MAY, 2020]**

1. The Plaintiffs, vide the Motion dated the 21<sup>st</sup> April, 2020 under Certificate of Urgency dated the 4<sup>th</sup> May, 2020 and filed on the 11<sup>th</sup> May, 2020 seeks for stay of proceedings pending the hearing and determination of **Eldoret High Court Probate and Administration Cause No. 141 of 2019**. The application is based on the fifteen (15) grounds on its face marked (a) to (m) and supported by the affidavit sworn by **Sabina Japng'etich Soi** on the 21<sup>st</sup> April, 2020. It is the Plaintiff's case that her late husband, **William Kimutai Soi alias Kimutai Soi Arap Cherugut**, and his brothers had each been apportioned five (5) acres of land at the Kericho family land by their father **Kipsoi Arap Cherugut**. That in 1965, her father in law convened a family meeting and informed them that they sell the land in Kericho and buy a larger parcel in Nandi with the proceeds. That in 1967, they relocated to Nandi on the land measuring 31 acres purchased by the family at Kshs.10,100 from one **Kipsigei Arap Lasoi**. That the Plaintiff's family took over and developed 15.5acres of the land parcel Nandi/Kaboi/662. That her husband passed on in 1978, and in 1982 Chepkwony, her late husband's brother, brought some surveyors to the land. That in 2012, Chepkwony passed on and thereafter, his widow threatened to evict the Plaintiff's family from the land claiming it was registered in her late husband's name. That upon carrying out a Search, the Plaintiffs discovered Chepkwony, as the elder brother to her late husband, had been registered with the land. That the registration of the late Chepkwony with the land was in trust. That the Plaintiffs filed this suit, and later filed **Eldoret High Court Citation No. 109 of 2019**. That thereafter, the Defendants filed **Eldoret High Court Probate and Administration Cause No. 141 of 2019** in which the Plaintiffs filed objection proceedings which is pending determination. That as the Probate and Administration matter relates to the same subject matter as in this suit, it is just to stay the proceedings herein to avoid a situation where the two courts would come up with different orders over the same land.

2. The application is opposed by the Defendants through the replying affidavit sworn by **Rebecca Soi** on the 15<sup>th</sup> June, 2020. The Defendant's case is that the issue of inheritance over land parcel Nandi/Kaboi/662, that is registered in her late husband's name, will be determined through the Probate and Administration proceedings pending before the High Court. That the 31 acres land belonged exclusively to her late husband as his late brother's share was eight (8) acres and is separate. That the Plaintiffs' land is Nandi/Kaboi/665, and they have never used Nandi/Kaboi/662. That the application for stay should be dismissed with costs.

3. The learned Counsel for the Plaintiffs and Defendants filed their written submissions dated the 23<sup>rd</sup> September, 2020 and 14<sup>th</sup> September, 2020 respectively.

4. The following are the issues for the Court's determinations;

**(a) Whether the subject matter in this suit is the same as Eldoret High Court Probate and Administration Cause No. 141 of 2019.**

**(b) Whether the Plaintiffs have made a case for staying the proceedings in this matter to await the determination of the Probate**

*and Administration Cause.*

*(c) Who pays the costs in the application?*

5. The Court has carefully considered the grounds on the Motion, the affidavit evidence, the written submissions, the superior court's decisions cited therein, the record and come to the following findings;

(a) That this suit was commenced through the originating summons dated the 28<sup>th</sup> July 2016, and amended on the 11<sup>th</sup> April, 2018. That so far, the 1<sup>st</sup> Plaintiff and one Hillary Bett have testified as **PW1** and **PW2**. That the record confirms that a consent order was made on the 27<sup>th</sup> February, 2017 for among others, the County Land Registrar and Surveyor Nandi to ascertain the acreage and occupation of land parcels Nandi/Kaboi/662 and 665. That a report dated 8<sup>th</sup> May, 2017 was subsequently filed by the Nandi County Land Registrar.

(b) That it is not contested by the parties that during the pendency of this suit, the Plaintiffs filed Eldoret High Court Citation Cause No. 109 of 2019 and the Defendants in turn filed **Eldoret High Court Probate and Administration Cause No. 141 of 2019** that relate to the estate of the registered proprietor of Nandi/Kaboi/662, which is the suit property herein. That the Plaintiffs have filed objection proceedings in **Eldoret High Court Probate and Administration Cause No. 141 of 2019** and it is on that basis that they now seek for stay of proceedings in this suit to await the outcome of the succession cause. The Defendants have opposed the stay application primarily on the basis that the Plaintiffs are not entitled to benefit from Nandi/Kaboi/662, as they have their own land, Nandi/Kaboi/665, and that the issues raised in this suit cannot be determined by the Succession Court where **Eldoret High Court Probate and Administration Cause No. 141 of 2019** is pending.

(c) That while the Plaintiffs do not appear to have objected to the jurisdiction of this Court to determine the issues in this dispute, their position is that the succession court, and this Court may come up with different orders relating to the same land in dispute is not far-fetched. That should the Succession Court come up with a determination that suits the parties herein, then most of the issues in this suit, except the costs may somewhat be settled without further hearing. That should there be some substantive issues not settled through the Succession matter, then the parties will be at liberty to come back to this suit and canvass them. That it is the finding of this court that it is only fair and just to allow the parties deal with **Eldoret High Court Probate and Administration Cause No. 141 of 2019** to completion, to avoid the possibility of the two Courts issuing conflicting orders over the suit land.

(d) That the costs of the application be in the cause.

6. That the Court therefore finds merit in the Plaintiffs' Motion under Certificate of Urgency dated 4<sup>th</sup> May 2020, and orders that there be a stay of proceedings in this suit, pending hearing and determination of **Eldoret High Court Probate and Administration Cause No. 141 of 2019**. That the costs of the application be in the cause.

Orders accordingly.

**Delivered virtually and dated at Eldoret this 4<sup>th</sup> day of November, 2020.**

**S. M. KIBUNJA**

**JUDGE**

**In the presence of:**

Plaintiffs: Absent.

Defendants: Absent.

Counsel: M/s Isiaho for the Plaintiffs.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.