



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT NYAHURURU**

**ELC CASE NO 243 OF 2017**

**(FORMERLY NAKURU ELC 31 OF 2016)**

**FREDRICK KAMAU KAMANDE.....PLAINTIFF/RESPONDENT**

**VERSUS**

**PETER MAINA NJOROGE.....DEFENDANT/APPLICANT**

**RULING**

1. Coming up before me for determination is an application dated the 15<sup>th</sup> May 2018 wherein the Applicant herein seeks substantive orders of stay of proceedings in the present suit pending the hearing and determination of Nakuru High Court Miscellaneous Succession Cause No. 41 of 2016.
2. The application is supported on the grounds on the face of it and a supporting affidavit of Peter Maina Njoroge, the applicant herein, sworn on the 17<sup>th</sup> May 2018.
3. The main issues upon which the Application is brought is that the suit involves parcel of land No. Nyandarua/Turasha/491 which is currently registered in the names of the Plaintiff/Respondent after petitioning for grant of letters of administration, and to which the Plaintiff/Respondent seeks to have the Applicant/Defendant herein evicted from.
4. That the grant has since been challenged vide Nakuru High Court Miscellaneous Succession Cause No. 41 of 2016 seeking revocation of the same and cancellation of the titles issued to the Plaintiff, which Cause is yet to be heard and determined, the outcome which will have a direct bearing on the titles held by the Plaintiff/Respondent and which title forms the basis of this suit.
5. The application is opposed by the Plaintiff/Respondent who in his replying affidavit, has deponed, inter alia, that he had filed the present suit after having had obtained letters of Administration of his late mother's estate in the Principal Magistrate's Court at Nyahururu in Succession Cause No. 2 of 2013. That this application was filed after the close of the Plaintiff's case and whilst awaiting the hearing of the Defence case. That it was therefore an afterthought which was meant to delay these proceedings. That the Applicant herein is not a party to the proceedings in the former Nakuru High Court Miscellaneous Succession Cause No. 41 of 2016 now Nyahururu Miscellaneous Succession Cause No. 1 of 2018 being In the mater of the Estate of the Late Ruth Mirigo Kamande, and therefore cannot lay claim to any interest in the Succession Cause.
6. That the outcome of the succession matter would not have any positive impact on the present matter because the Family Court has no jurisdiction to hear and determine matters on issues of ownership of land and occupation. That if any matter was to be stayed, it had to be the Succession Cause and not the present suit.
7. That the mere fact that the Plaintiff/Respondent bought the suit land from the Defendant/Applicant's deceased's mother and failed to clear the purchase price with the result that the land was not transferred, proved clearly that the Plaintiff was a trespasser on his mother's land and not the owner. That the issue of whether the sale was valid or void will still be determined by this court in which the estate of the deceased would be represented by an administrator.
8. I have considered the application and the rival affidavits by the parties herein. Briefly, the background to this application is that on 8<sup>th</sup> February, 2016, the Plaintiff/Respondent herein, having obtained letters of Administration to the estate of his deceased mother, filed suit in the Nakuru Environment and Land Court being No. 37 of 2016 wherein he sought eviction orders and a permanent injunction against the Defendant/Applicant herein restraining him from dealing with suit land No. Nyandarua/Turasha/491.
9. In his defence, the Defendant/Applicant contended that in the year 1992, he had bought 4 (four) acres of land from the Plaintiff/Respondent's deceased mother which parcel of land was to be excised from the original title No. Nyandarua/Turasha/33. That subsequently, the original land was subdivided into two, wherein his 3 and 1/2 acres of land fell on the suit land while 1/2 acre of land fell on

land parcel No. Nyandarua/Turasha/492. That he was therefore entitled to the transfer of these portions of land, into his name by the legal Administrator, the Plaintiff/Respondent herein

10. This matter proceeded to the hearing of the Plaintiff's case and while it was pending the hearing of the Defence case that the present Application, which seeks the stay of these proceedings pending the determination of Nakuru High Court Miscellaneous Succession Cause No. 41 of 2016 now Nyahururu Miscellaneous Succession Cause No. 1 of 2018, was filed.

11. That in the pendency of this matter, after the letters of Administration having been issued to the Plaintiff/Respondent, and he having been registered as the sole proprietor of the suit land, two of his sisters Damaris Wangari and Kagure Kamu have now challenged the said grant and have applied for its revocation and re-distribution of their deceased mother's estate afresh (as per the attached proceedings marked as PMM1) vide Nakuru High Court Miscellaneous Succession Cause No. 41 of 2016 now Nyahururu Miscellaneous Succession Cause No. 1 of 2018.

12. Taking all matters into account, it is clear from the record herein that the issue for determination in Nyahururu Miscellaneous Succession Cause No. 1 of 2018 is whether Plaintiff/Respondent was legally entitled to the land which is a subject matter of this suit, or whether the grant through which he inherited the same was wrongfully obtained and ought to be annulled.

13. Pursuant to the inherent powers of this Court under Section 3A of the Civil Procedure Act and further, pursuant to the provisions of Section 6 of the Civil Procedure Act which requires the Court to stay proceedings where the matter in issue is directly and substantially in issue involving the same parties in another Court, I find that since the determination of the validity of the grant in the Succession Cause will touch on the issue in these proceedings, it would be prudent, and the interests of justice dictate, that these proceedings be stayed pending the outcome of Nakuru High Court Miscellaneous Succession Cause No. 41 of 2016 now Nyahururu Miscellaneous Succession Cause No. 1 of 2018.

14. In a similar matter, in the case of **Symon Nyamu Muthigani v Charity Wangui Munene [2015] eKLR**, the court held as follows:

*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 outcome 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.*

15. For the above reasons, I find that the Application dated the 15<sup>th</sup> May 2018 is merited and is hereby upheld, with the upshot that the present suit is herein stayed pending the determination of Nakuru High Court Miscellaneous Succession Cause No. 41 of 2016 now Nyahururu Miscellaneous Succession Cause No. 1 of 2018.

16. Further orders are that the Plaintiff/Respondent shall pursue the determination of Nakuru High Court Miscellaneous Succession Cause No. 41 of 2016 now Nyahururu Miscellaneous Succession Cause No. 1 of 2018 to its finalization at the earliest.

17. Costs to the Defendant/Applicant.

**Dated and delivered at Nyahururu this 18<sup>th</sup> Day of March 2019.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**