



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO.13 OF 2016

MARY CHELANGAT CHUMO.....PLAINTIFF

VERSUS

ELIZABETH CHEPKORIR NGENO.....DEFENDANT

RULING

Introduction

1. This Ruling is in respect of the Defendant/Applicant's Notice of Motion dated 18th February, 2019 seeking the following orders:
 - a) That this Honourable court be pleased to stay the proceedings in this case temporarily pending the final ruling in Kericho HC Succession Miscellaneous Application No. 64 of 2018 between the Plaintiff and Defendant herein.
 - b) That the cost of this application be provided for.
2. The application is supported by the Applicant's affidavit sworn on the 18th February, 2019. In the said affidavit the Applicant depones that L.R NO. KERICHO/LITEIN/1816 which is the suit property herein is a sub-division of L.R NO. KERICHO/LITEIN/263 which was registered in the name of the applicant's mother. The said sub-division was done pursuant to PM Succession Cause No. 83 of 2011 where the Applicant was left out as beneficiary. The Applicant further depones that she has filed an objection challenging the Grant in Kericho HC Miscellaneous Application No. 64 of 2018. In her Replying Affidavit to the Succession case which is annexed to the Applicant's supporting affidavit,
3. The Respondent acknowledged that the applicant is one of the deceased's daughters which means she is a lawful beneficiary of the estate of her deceased mother. She depones that even though the application in the High Court is pending, the parties who are closely related are likely to settle the matter out. She therefore argues that since the Succession matter will have a bearing on this suit, the suit herein ought to be stayed.
4. The application was opposed by the Respondent. According to the submissions by the Respondent's counsel the Respondent's Replying Affidavit was filed on 25th February, 2019. However, at the time of writing this ruling, it was not in the court file.
5. The application was canvassed by way of written submissions with oral highlights.
6. In his oral submissions, counsel for the Applicant argued that this suit and the Succession matter are related and intertwined as the suit property herein is a sub-division of land parcel no. KERICHO/LITEIN/263 which is the subject matter of the succession case. He submitted that the decision in the succession matter would have a tremendous bearing on this suit as this court may issue an eviction order in respect of a title which might be nullified by the High court in the succession case. It is his submission that in the circumstances, the suit should be stayed pending the outcome of the succession case which is pending for ruling.
7. In opposing the application, counsel for the Respondent argued that there is no good reason to stay the suit as the two suits are different; one being a succession case while the other one relates to ownership of the suit property. He submitted that the jurisdiction of the two courts are separate and distinct and this court ought to proceed with the suit relating to ownership as any further delay would be prejudicial to the Respondent. He cited the following authorities: **Kenya Wildlife Service v James Mutembei (2019) eKLR**, **Musimba Investments Ltd v Nokia Corporation (2019) eKLR** and **Diocese of Marsabit Registered Trustees v Technotrade Pavilion Ltd (2014) eKLR**

Issue for determination

8. The main issue for determination is whether the proceedings herein ought to be stayed pending the outcome of Kericho HC Miscellaneous Application No. 64 of 2018.

Analysis and Determination

9. In this suit the Plaintiff/Respondent who is the registered owner of land parcel no. KERICHO/LITEIN/1816 seeks an eviction order against the Defendant on the grounds that she has trespassed on the Plaintiff's land. In the said Plaintiff she does not disclose that the Plaintiff is related to her and is a beneficiary of the suit property which was part of the estate of the defendant's mother.

10. In the Defence filed by the Defendant she challenges the Plaintiff's title on the ground that it was obtained by fraud by concealing the fact that the defendant had a beneficial interest therein. The Defendant has filed an application vide Kericho HC Miscellaneous Application No. 64 of 2018 challenging the manner in which her late mother's estate was distributed. In the event that the Defendant succeeds in the Succession case, this suit would be dead in the water as the Plaintiff would have no claim against the Defendant.

11. I have considered the authorities cited by counsel for the Plaintiff/ Respondent and even though they relate to stay of proceedings, the facts of the said cases differ from the ones in the instant case. I am however guided by **Halsbury's Laws of England 4th Edition Vol 37** that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of substantive merits of his case and therefore the court's general practice is that a stay of proceedings should not be imposed unless beyond all reasonable doubt, the proceedings ought not to be allowed to continue.”

12. Having considered the pleadings, notice of motion and rival submissions and the applicable law I am persuaded that it would be prejudicial to proceed with this matter before the Succession case is determined. This is therefore one of the instances where it would be unreasonable to allow the proceedings to continue. I say so because as correctly submitted by Counsel for the Defendant's if the High Court determines that the Defendant is a beneficiary of her mother's estate, then the Plaintiff would have no cause of action against her. I have taken into consideration the fact that the matter in the High Court is pending for Ruling and therefore the delay is not likely to be so long as to prejudice the Respondent.

13. The upshot is that I find merit in the application and I allow it . The proceeding herein shall be stayed pending the hearing and determination of Kericho HC Miscellaneous Application No. 64 of 2018.

14. The costs of this application shall be in the cause.

Dated, signed and delivered at Kericho this 28th day of May, 2019.

.....

J.M ONYANGO

JUDGE

In the presence of:

1. Mr. Akinyi for the Defendant
2. Mr. Bii for the Plaintiff/Respondent
3. Court assistant – Rotich