



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

ENVIRONMENT AND LAND COURT

ELC NO. 88 OF 2015

ISIAAH OMONDI ODHIAMBO.....PLAINTIFF/APPLICANT

= VERSUS =

ANGELINE ANYANGO AKINYI.....1ST DEFENDANT/RESPONDENT

JOTHAN GODFREY MULAMBA.....2ND DEFENDANT/RESPONDENT

MILTON H. A. OKELLO.....3RD DEFENDANT/RESPONDENT

R U L I N G

1. The application before me for determination is a Motion on Notice dated 22/1/2018. The Applicant – **ISIAAH OMONDI ODHIAMBO** – is the Plaintiff herein while the Respondents – **ANGELINE ANYANGO AKINYI, JOTHAN GODFREY MULAMBA** and **MILTON H. A. OKELLO** – are the Defendants. The Applicant is praying for the following:

(a) That there be a stay of hearing of this case and/or proceedings herein pending the hearing and determination of the objection dated 10/7/2015 or any other in BUSIA HC SUCC CAUSE No. 295/2012.

(b) That costs be provided for.

2. The application is anchored on grounds, *inter alia*, that the Respondents acquired the subject matter, meaning land parcels L.R. MARACHI/BUMALA/2744, 2745, and 2746, on transmission in Busia HC PA&A No. 295/2012 where there is already an objection pending to revoke the grant herein. The Respondents titles are being challenged in the succession matter. This suit is itself also a challenge to the same titles. The applicant apprehends that conflicting decisions might arise if the two matters proceed. The objection in the succession cause was filed earlier by the same Applicant. He therefore wants this suit stayed to await the outcome of the objection.

3. It appears clear that the 1st Respondent is now deceased. She has not been substituted in this case. Instead, the Applicant withdrew the suit against her on 19/6/2018. The 2nd & 3rd Respondents responded to the application vide a replying affidavit filed on 5/2/2018. According to these two Respondents, the application is brought in bad faith. It was deposed *inter alia*, that there appears to be collusion in this matter to defeat the ends of justice as the Applicant has caused his brother to substitute the deceased Respondent in the succession matter. The Applicant was also accused of not explaining why he has not prosecuted his objection in the succession cause since he filed it in 2015.

4. The application was canvassed by way of written submissions. The Applicant's submissions were filed on 20/3/2019. It appears clear that the Applicant is of the view that what he is seeking in the succession matter by way of an objection will achieve the same result he seeks to get in this matter. He also fears that there can be conflicting decisions.

5. The 2nd and 3rd Respondents submissions were filed on 5/4/2019. The Applicant was accused of bringing his application belatedly. Had it been brought earlier, the two respondents believe it would have been merited. According to the two Respondents, the Applicant has two options viz: withdraw this suit and give costs to the Respondents or to withdraw the objection in the succession matter.

6. I have had a look at the suit as filed. The cumulative thrust of the applicant's suit is that there was fraud in the manner in which the succession matter was filed and prosecuted. It is not clear to me however how the Applicant decided that the alleged fraud could be ventilated in this matter itself instead of the succession matter where it was said to have arisen.

7. Both sides are however agreed that there is an objection pending in the succession matter. It appears clear that the objection was filed earlier than this case. To me, the more appropriate thing to do in the circumstances is to allow the objection to be handled first. I consider that

whatever prejudice the Respondents may suffer due to continued pendency of this suit before the objection is decided can properly be compensated by way of costs.

8. The upshot, is that I allow the application herein in terms of prayer (a). As regards the prayer of costs (prayer (b)), my view is that the Applicant's approach to the issue at hand is exposing the Respondents to needless expense. The Applicant is therefore condemned to pay the costs of this application.

Dated, signed and delivered at Busia this 10th day of September, 2019.

A. K. KANIARU

JUDGE

In the Presence of:

Applicant: Absent

1st Respondent: Absent

2nd Respondent: Absent

3rd Respondent: Absent

Counsel for the Applicant: Present

Counsel for the Respondents: Present

CA: Nelson Odame