



**REPUBLIC OF KENYA**

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

**ELC NO. 63 OF 2017**

**ROSELINE CHEPKERICH.....PLAINTIFF/RESPONDENT**

**AND**

**PRISCILA JEMUTAI MUREL.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**ESTHER CHEPKWONY.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**ROMANUS KIPROP SAINA.....3<sup>RD</sup> DEFENDANT/APPLICANT**

**RULING**

This ruling is in respect of an application dated 22<sup>nd</sup> November 2017 brought by way of notice of motion by the 1<sup>st</sup> and 2<sup>nd</sup> defendants for orders:

- a) THAT the proceedings in this suit be stayed pending the hearing and determination of the summons for revocation of grant in Eldoret High Court (Succession Cause No. 200 of 2012).
- b) THAT in the meantime the status quo ante be maintained, that is to say the Plaintiff to remain in possession of Soy/Kapsang Block 7 (Ziwa) /78 measuring approximately 4.7 acres, the Defendant to remain in possession of Soy/Kapsang Block 7 (Ziwa)/93 measuring approximately 18.8 acres and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to remain in possession of Soy/Kapsang Block 7 (Ziwa) /79 measuring approximately 1.88acres pending the hearing and determination of the revocation proceedings in Eldoret High Court Succession Cause No. 200 of 2012 and/or until further orders of this COURT.
- c) THAT the costs be provided for.

Counsel agreed to canvass the application by way of written submissions which were filed. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendant gave a background to the case that the Plaintiff herein filed this suit as the Legal Representative of the Estate of Christine Jepkoech Murei deceased praying for permanent injunctive orders against the Defendants jointly and severally from interfering with the suit property. He submitted that the Plaintiff and the Defendants are siblings as they are children of Samuel Murei and Christine Jepkoech Murei who are both deceased. The late Samuel Murei died in the early 1990s and was survived by seven (7) widows and a number of children.

Counsel further submitted that Christine Jepkoech Murei - deceased being the 1<sup>st</sup> wife of the deceased was given approximately 32 (thirty two) acres of land which comprised of two portions, one portion measuring approximately 12 acres and the other measuring approximately 20 acres. He stated that Christine Jepkoech Murei — deceased, was blessed with 5 (Five) children, 4 daughters and 1 son as follows:

Roseline Chepkerich Plaintiff

Priscila Jemutai Murei 1<sup>st</sup> Defendant

Esther Chepkwony 2<sup>nd</sup> Defendant

Romanus Kiprop — 3<sup>rd</sup> Defendant

Sally Jebotip — Deceased.

It was Counsel's submission that upon being apportioned the said land measuring, approximately 32 acres, the family sat and decided to share the land in the interim. That the Plaintiff and Sally Jebotip deceased decided to subdivide the portion measuring approximately 12

acres that was reserved for the daughters into 3 portions and one portion measuring approximately 5 acres was registered in the name Sally Jebotip deceased. This is property known as Soy/Kapsang (Ziwa) Block 7/77 which the son of Sally Jebotip deceased is in occupation of.

He further stated that another portion measuring approximately 5 acres was registered in the name of Roseline Chepkerich the Plaintiff herein. The other portion measuring approximately 12 acres was registered in the name of Christine Jepkoech Murei —

Deceased. This is the property known as Soy/Kapsang (Ziwa) Block 7/79. The intention was that this property would devolve to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants considering that they had not been provided for out of the family property in the initial distribution.

Counsel referred to a meeting by the area Chief Kipsomba Location Mr. Daniel Busienei in which village elders, family members and the residents of Cheplelaibei were present where it was resolved as follows (see minutes of the meeting held on 9 April 2016):

"That the 2 acres which belonged to their late mother Christine Jepkoech Murei be divided between the Complainant Mrs Priscila Jemutai Murei (1<sup>st</sup> Defendant) 1 acre and her married sister Mrs Esther J. Chepkwony (2<sup>nd</sup> Defendant) 1 acre.

It was Counsel's submission that following that resolution the 1<sup>st</sup> and 2<sup>nd</sup> Defendants moved in to take possession of the suit property prompting the Plaintiff to file this suit. He stated that the Plaintiff signed the said minutes of the resolution which is an indication that she accepted the decision arrived at in the said meeting. He submitted that the Plaintiff must therefore be estopped from renegeing on the said decision.

Counsel further submitted that parcel No. Soy/Kapsang (Ziwa) Block 7/79 is the property that is now in dispute and that the plaintiff using a purported will instituted succession proceedings in Eldoret High Court Succession Cause No.200 of 2012 without notifying the other would be beneficiaries as required.

Counsel further submitted that the Plaintiff's locus standi obtains from the grant and should the grant be revoked then the Plaintiff would lack the locus to continue prosecuting the case as that would mean that she had no powers to institute the suit in the first place. He further submitted that should the Court give audience to the plaintiff and the Grant issued to her is subsequently revoked, then the Court will have allowed a party who has no locus to abuse the process of the Court.

Counsel cited the case of Symon Nyamu Muthigani v Charity Wangui Munene [2015] eKLR in determining a similar application stated thus:

"Taking all that into account, it is clear from the record herein that the issue for determination in KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 1014 of 2013 is whether plaintiff/respondent was legally entitled to the land subject matter of this suit or whether the grant through which he inherited that land was wrongfully obtained and ought to be annulled. The judgment in the KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 1014 of 2013 will clearly have a bearing to this case and it is the defendant/applicant's plea that this suit be stayed awaiting that judgment."

It was Counsel's submission that the defendants have already demonstrated above that the Plaintiff is adequately provided for out of the family property as she is occupying land parcel no Soy/ Kapsang (Ziwa) Block 7/78 which measures approximately 5 acres. He relied on the threshold for grant of temporary injunctions as laid down in the Giella Casman Brown Case and submitted that the applicants have established a prima facie case that they are entitled to inherit the property. Counsel prayed that this suit be stayed pending the hearing of summons for revocation of grant in Eldoret High Court Succession Cause No. 200 of 2012.

### **PLAINTIFF'S SUBMISSIONS**

Counsel for the plaintiff respondent opposed the application and listed issues for determination as follows

- a) Whether or not the defendants are entitled to the prayers sought by pleading parcels that are not subject matter of the suit.
- b) Whether or not the defendants are misleading this Honorable Court by stating that they are in possession of the suit parcel Soy/Kapsang Block 7 (Ziwa)179

Counsel submitted that the suit parcel herein is Soy/Kapsang Block 7 (Ziwa)179 and not the parcels stated in the defendants application Soy/Kapsang Block 7 (Ziwa)/78 and Soy/Kapsang Block 7 (Ziwa)/93 and as such the defendants are misleading the honorable Court by stating that status quo be maintained on parcels of land that are not the subject matter of the suit.

Counsel submitted that the letters of administration were issued in 2013 and the same went through all the required stages without any objection lodged. It's only in 2017 when the defendant filed an application to revoke the said grant which is an afterthought. He stated that the defendants are misleading the court by stating that they are in possession of the suit parcel Soy/Kapsang Block 7 (Ziwa)/79. It was Counsel's submission that the status quo at the moment is that the plaintiff is in possession of the said suit land.

Counsel finally submitted that the instant application is an abuse of the court process where the defendants are misleading the court by lying that they are in possession of the suit land of which it is plaintiff who is in possession. He cited the case of Re Butali Sugar Mills Ltd, Kisumu HCJR no. 17 of 2010 where Karanja,J, stated that parties and their respective counsels should ensure that all necessary steps are taken to safeguard the integrity of the Judiciary and to avoid actions likely to abuse the court process. It is their duty to uphold the rule of law and not to mislead the court.

Counsel urged the court to find that the defendant's application dated 22<sup>nd</sup> November,2017 is an abuse of the court process and the order of

stay of proceedings should only be granted by letting the plaintiff to continue being in possession of the suit parcel pending hearing and determination of the succession cause no. 200 of 2012 and the instant case.

### **Analysis and Determination**

This application seeks for stay of proceedings pending the hearing and determination of summons for revocation of grant in Eldoret High Court Succession Cause No. 200 of 2012. It also seeks for an order of status quo to be maintained pending the hearing and determination of

the cause. The issue for determination is whether or not to grant a stay of the proceedings pending the hearing of the summons for revocation of grant in Succession Cause No 200 of 2012.

Stay of proceedings pending the hearing and determination of a matter is to serve the purpose of averting a situation where different courts give conflicting orders in respect of the same subject matter. The other purpose is to preserve the substratum of the suit so as not to give orders in vain when the subject matter has changed or ceased to exist.

In the current case the defendants have filed summons for revocation of grant in the High court involving the same parties and the same subject matter. The defendants pray that the proceedings in this suit be stayed and the status quo be maintained. Both the plaintiff and the defendants are agreeable that the status quo be maintained but what they differ on is what is the current status quo.

The applicant herein has annexed summons for revocation of the grant dated 20<sup>th</sup> September 2017 which has not yet been heard and determined. As far as the court is concerned, the summons remains an application which has not yet been heard and as such the plaintiff is still the legal administrator of the estate as per the grant. The court cannot be swayed by the affidavit sworn by the applicant on the grounds under which she is seeking to revoke the grant. Those grounds are meant for the Succession Court who will determine whether they have merit or not. I will therefore not look at the reasons for the revocation.

From the evidence on record and the admission of both parties that there ought to be a stay of proceedings with a maintenance of status quo, upon reading the pleadings and the submissions of counsel, I order in the interest of justice and for the preservation of the substratum of this case that there be a stay of these proceedings pending the hearing and determination of the summons for revocation of grant dated 20<sup>th</sup> September 2017.

I further make an order that the status quo be maintained being that the plaintiff is in occupation of the suit land pending the finalization of the summons for revocation of grant in Eldoret Succession Cause No 200 of 2012.

Dated and delivered at Eldoret this 14<sup>th</sup> day of March 2018.

**M. A ODENY**

**JUDGE**

Ruling read in open court in the presence of Mr. Sambu holding brief for Mr. Kamau and in the absence of Plaintiff's Advocate.

Koeh: Court Assistant.