



**Ng'ang'a v Chamdalla (Environment & Land Case 96 of 2020)
[2024] KEELC 117 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 117 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 96 OF 2020
EO OBAGA, J
JANUARY 25, 2024**

BETWEEN

PETER KHIKA NG'ANG'A PLAINTIFF

AND

AMOS KIMELI CHAMDALLA DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 20.11.2023 in which the Defendant/Applicant is seeking stay of proceedings of this case pending the hearing and determination of Nakuru High Court Succession Cause No. 569 of 2012.
2. The subject matter in this suit is LR. No. Uasin Gishu/Kondoo Scheme/347 (suit property) measuring 3.1 hectares which is registered in the name of the Plaintiff/Respondent. The suit property initially belonged to Nduta Kahiga who is the mother to the Respondent. Upon the demise of the Respondent's mother, the Respondent obtained grant of letters of administration and had the suit property registered in his name by way of transmission.
3. The Respondent had a brother called Joseph Kamau Ng'ang'a who died on 22.6.2015. The said brother of the Respondent left behind his widow who had children. The widow and her children were utilizing half of the suit property whereas the Respondent was utilizing the remaining half.
4. During the succession process, the Respondent did not disclose that he had a brother who left behind a widow and children. When the widow got to know about her exclusion from the succession of her mother-in-law's Estate, she filed objection proceedings seeking to nullify the confirmed grant in favour of the Respondent.
5. The Applicant now argues that it will be better to have these proceedings herein stayed pending the outcome of the succession cause as the outcome will have a great impact on the present case. The



Applicant further argues that the stay will avoid the possibility of having two conflicting judgements from two different courts over the same subject matter.

6. The Applicant's application has been opposed by the Respondent based on a replying affidavit sworn on 27.11.2023. The Respondent contends that the sale of part of the suit property to the Applicant's father occurred on 18.8.2012 before his late brother died and that this was in itself illegal and contrary to section 356 of the *Law of Succession Act*. He states that his late brother died on 22.6.2015; that letters of administration in respect of their mother's Estate were issued on 4.4.2015 and the same were confirmed on 15.9.2015 after the death of his brother.
7. The Respondent states that the application for revocation of grant had not been served upon him and that he saw it for the first time when his Advocate showed him the annexures to the Applicant's application. He states that even if the grant was to be nullified, the position will remain that the sale was illegal and the court cannot sanctify the same. He contends that even if the brother's widow was entitled to the Estate of his mother, she had no right to sell the land to the Applicant's father.
8. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties herein. The only issue for determination herein is whether the Applicant has made out a case for stay of these proceedings. I notice that summons for revocation of grant were filed on 17/11/2023 in Nakuru HCC Succession Cause No. 259 of 2012. There is no contention that the Applicant in the said application is a widow to the Respondent's late brother Joseph Kamau Ng'ang'a. There is also no contention that the widow and her children have been and are still utilizing half of the suit property.
9. The issue which will be determined before the succession cause is whether the widow of the late Joseph Kamau Ng'ang'a who sold 1 ½ acres to the Applicant's father is entitled to a share of the Estate of Nduta Kahiga. If the verdict is in the positive, then it will have a significant impact on this case as the Respondent will have no cause of action against the Applicant. This is notwithstanding the fact that as at the time Mary Waceke Kamau sold part of the suit property to the Applicant's father, she had no capacity to do so.
10. I therefore find that this is a clear case where the proceedings herein should be stayed pending the hearing and determination of objection proceedings in Nakuru HC Succession Cause No. 569 of 2012. The upshot of this is that the Notice of motion dated 20.11.2023 is allowed in its entirety.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 25TH DAY OF JANUARY, 2024.

E. OBAGA

JUDGE

In the virtual presence of;

M/s Lelei for Defendant/Applicant.

Court Assistant – Brian

E. OBAGA

JUDGE

25TH JANUARY, 2024

