



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 175 OF 2014

1. AGNES WAGUNGA E. JABU

2. DEBORA BABY BUKI (SUING ON BEHALF OF

**THE ESTATE OF THE LATE CHARLES BUKI
MOSES)PLAINTIFFS**

VERSUS

1. PETER KIVOLONZIDEFENDANTS

2. FATUMA BUKI MOSES

3. JANE NGALE FUKWE

4. THE LAND REGISTRAR, KILIFI

RULING

1. This is an application dated 9th November 2016 brought under Sections 1A,1B and 3A of the Civil Procedure Act. It makes the following prayers.

(a) THAT there be a stay of proceedings herein pending the hearing and determination of Succession Cause No. 378/2013, specifically the application dated 14th January 2016.

(b) THAT the costs of this application be provided for.

2. The Application is supported by the annexed affidavit of Fatuma Buki Moses, the 2nd Defendant/Applicant herein sworn on 9th November 2016. The main grounds upon which the application is premised as I understood it may be summarized as follows:

(i) That the suit property Kilifi/Kijipwa /202 initially belonged to the late Charles Buki Moses who passed away on 8th June 2000.

(ii) After his death, the 2nd and 3rd Defendants filed Mombasa High Court Succession Cause No. 404 of 2010 and obtained letters of administration of the estate on 28th July 2011.

(iii) Acting in their capacity as administrators of the estate, the 2nd and 3rd Defendants entered into a Sale Agreement with the 1st Defendant on or about 30th September 2011 and sold and transferred the suit property to the 1st Defendant.

(iv) Sometimes in the year 2013, the 1st and 2nd Plaintiffs herein filed Mombasa High Court Succession Cause No. 378/2013 in which they caused the court into granting to them letters of administration of the Estate of the late Charles Buki Moses.

(v) Acting on the newly issued Letters of Administration, the Plaintiffs filed the suit herein alleging that the 2nd and 3rd Defendants have colluded with the Land Registrar, Kilifi (the 4th Defendant) to fraudulently transfer the suit property to the 1st Defendant.

(vi) As at the time they filed Mombasa High Court Succession Cause No. 378 of 2013, the Plaintiffs had omitted to include the 2nd and 3rd Defendants as beneficiaries of the estate. The Plaintiffs have since filed an application dated 14th January 2016 in the Mombasa Cause seeking that the 2nd and 3rd Defendants be added as beneficiaries of the estate.

(vii) The 2nd and 3rd Defendants on learning of the application moved to the Mombasa court on 8th April 2016 and filed a Replying Affidavit in opposition to the Application dated 14th January 2016 on the grounds that they are the only lawful administrators of the estate as the 1st Plaintiff was not a wife of, and the 2nd Plaintiff is not a daughter to the late Charles Buki Moses as purported by the Plaintiffs/Respondents.

(viii) The Mombasa High Court is currently proceeding to dispose of the application dated 14th January 2016 by way of viva voce evidence and one of the major issues to be decided in the matter is whether indeed the 1st and 2nd Plaintiffs herein were the wife and daughter respectively of the late Charles Buki Moses. That determination will have a bearing on whether or not the Plaintiffs had capacity to file this suit and hence the prayer for stay of the proceedings herein.

3. The Plaintiffs on their part oppose any stay of the proceedings herein. Vide a Replying Affidavit sworn by the 1st Plaintiff Agnes Wuganga E. Jabu on 30th January 2017, the Plaintiffs aver that this application is merely engineered to delay the hearing and determination of this suit which is now three years old. While admitting that there are ongoing proceedings, at the High Court family Division in Mombasa in regard to the beneficiaries of the estate, it is the Plaintiffs case that the proceedings in the Succession Cause have no bearing on this suit as the court in the Mombasa case will only determine and rule on who are the proper beneficiaries of the estate of the late Charles Buki Moses.

4. It is further the Plaintiffs case that they have been granted letters of administration of the estate of the deceased by virtue of which they have authority to file this suit to preserve any property which forms part of the estate. The suit herein seeks to determine whether or not the sale of the suit property to the 1st Defendant was fraudulent and if so, whether the title should revert to the deceased's estate. The determination of this case will not therefore in their view affect the Succession Cause and hence this application should be dismissed to allow the case to proceed to a full hearing.

5. The principles guiding when a court can order a stay of proceedings in one suit pending proceedings in another are somewhat unclear. However, Section 6 of the Civil Procedure Act provides as follows: -

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

6. In *Harman Singh and others -vs- Mistvi (1971) 6A 122*, it was held by the court of Appeal for Eastern Africa that the High Court has jurisdiction to order a stay in any suit *for sufficient reason*. Earlier on in *Motokov -vs- Auto Garage Ltd and Others (1970) EA 249*, the court stated that stay of suits would be ordinarily be granted if there is *substantial risk that the tribunals seized of the suits are likely to reach conflicting conclusions on the facts*. It was emphasized that the possibility of conflicting conclusions of facts being reached by different tribunals is a legitimate factor to be taken into consideration in deciding whether a stay should be granted or not. This would be the case where both suits proceed to hearing simultaneously. To avoid such an eventuality, it would be prudent to stay one suit, to allow the other to be heard first.

7. When I look at the proceedings before me, it is pertinent that the Plaintiffs herein have brought the present suit against the defendants on the basis of the powers inhering upon them as the Administrators of the Estate of the late Charles Buki Moses. In the absence of the grant confirming them as Administrators of the Estate issued to them on 1st April 2014, the Plaintiffs would have had no locus filing this suit to preserve the estate of the deceased.

8. The question as to whether or not the Plaintiffs are lawful administrators of the estate is currently the subject of the proceedings in the said Mombasa High Court Succession Cause No. 378 of 2013. The 2nd and 3rd Defendants herein are said to have sold and transferred the Suitland to the 1st Defendant on the purport that they are also lawful administrators of the estate. The plaintiffs challenge of the sale revolves around the fact that the 2nd and 3rd Defendants did not have a good title to the land and could not therefore have transferred the same to the 1st Defendant unless by way of fraud.

9. In my view, the determination of the dispute, and more particularly the determination of the application dated 14th January 2016 in the Mombasa High Court Succession Cause No. 378 of 2013 will have a great bearing on the eventual determination and disposal of this matter. I think the fact that the application is currently being disposed of *viva voce* by the Court in Mombasa is reason sufficient to warrant a stay of these proceedings. Accordingly, I allow the application dated 9th November 2016. The costs shall be in the cause.

Dated, signed and delivered in Malindi on 21st day of April 2017.

J.O. OLOLA

JUDGE