



Kabaru (Suing as the Legal Administrator of the Estate of Peter Kabaru Muiruri) v Maria (Environment & Land Case E137 of 2021) [2024] KEELC 949 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEELC 949 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E137 OF 2021**

**JG KEMEI, J
FEBRUARY 22, 2024**

BETWEEN

JANE WAMBUI KABARU (Suing as the Legal Administrator of the Estate of Peter Kabaru Muiruri) PLAINTIFF

AND

PETER KABARU MARIA DEFENDANT

RULING

1. The subject of the Ruling is the Application dated the 11/9/23 brought by the Defendant/Applicant seeking the following orders;
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That the suit be stayed pending the hearing and determination of Nbi HCCC Succession Cause No 2046 of 2009 on the issue of the confirmation of grant upon which the suit land is premised.
 - e. Costs of the Application.

2. The Application is supported by the grounds annexed thereto and the Supporting Affidavit of the Applicant sworn on the 11/9/2023. The Applicant averred that both the Applicant and the Respondent are parties in two suits being NBI Succ Cause No 2046 of 2009 and BPRT No E739 of 2021. That the suit property in issue in this suit is the same in the two suits. That if the current suit is heard and determined before the succession suits an irreparable injustice will be occasioned to the Applicant and for that reason argues that justice will be served if the current suit is stayed pending the conclusion of the Succession Cause aforesated. That the succession suits shall be rendered nugatory



if the current suit is not stayed. In addition that if the Application is allowed, duplicity of suits shall be eliminated. Inter alia that stay of proceedings will not change the substance of the suit and that the Respondent stands to suffer no prejudice if stay is allowed.

3. The Applicant further stated that the Respondent served him with an Application dated the 25/8/23 seeking to be allowed to dispose of the property which action he contends are malicious and intended to defeat the ends of justice.
4. In resisting the Application, the Respondent filed a Replying Affidavit deponed on the 2/10/23 stating that she is the administrator of the estate of her late husband Peter Kabaru Muiruri. That she has premised her suit on the declaratory orders as the co- owner and joint landlord of the suit land as her late husband was a co-owner of the suit land with the Applicant. That the Applicant has locked her out of the premises despite the grant issued by the probate Court to her husband which interest devolved to her upon his death. The Respondent argues that the prayer staying the proceedings is an abuse of the process of the Court that is intended to undermine the judicial authority of the Court.
5. With respect to the grant dated the 1/7/2022 the Respondent stated that the said grant does not in any way relate to the suit property and further that the same relates to an estate whose representatives are neither parties to this suit nor the properties do form part of the subject matter before this Court. That rectification of grant was effected in Thika plot No 4953/IV/34 and not the suit property.
6. With respect to PK4 – The Application in HCCC No 2046 OF 2009 Nbi, the Respondent admits having filed the Application seeking orders of substitution of her late husband with her name as the administrator of the estate of John Muiruri (deceased). That her late husband was one of the beneficiaries of the estate of John Muiruri, his deceased father. That her late husband was allocated 50% share of the suit land as shown in the confirmed grant dated the 6/9/2016. That the orders sought in the succession cause for substitution are not prejudicial at all to the Applicant and will not interfere with the proceedings of this Court. That the Application in the probate Court does not touch on the issues surrounding ownership of the suit land.
7. The Applicant submitted that this Court has inherent jurisdiction to stay the proceedings pursuant to Section 3A of the *Civil Procedure Act*. That nothing limits the Court from granting the said orders.
8. In urging the Court to exercise its discretion to grant the orders, the Applicant relied on the decision in Stephen Wekati Mayukawa Vs. Kenol Kobil Limited (2019)eKLR where the Court stated as follows:-

“ This jurisdiction [to stay proceedings] is meant to avoid a waste of valuable judicial time: prevent the Court from duplication of efforts and prevent multiplicity of suits ... In such Applications the Court aims at ensuring that the object of the Application is not rendered nugatory and that substantial loss and irreparable harm is not suffered by the Applicant once the Plaintiff proceeds with the suit ... the decision whether or not to grant stay of proceedings being discretionary ...”
9. It was submitted that the Applicant has established sufficient cause for the Court to grant the orders. The Applicant has premised his argument on the provisions of Section 6 of the *Civil Procedure Act* which state 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.”

10. The Applicant implored the Court to grant the orders given that the subject matter of the suit is at the risk of being sold by the Respondent before the Succession Cause is finalized. In addition that allowing the suit to proceed for hearing will lead to two Courts arriving at conflicting decisions. That the property is registered in the name of John Muiruri Kabaruru and therefore is subject of the Succession Cause.
11. In response the Respondent submitted that the gist of her case in this suit is declaratory orders of ownership arising from a successful probate process. That the Applicant has failed to present any arguable Application before the Court and urged the Court to dismiss it.
12. Further the Respondent contends that the proceedings in the Probate Court relate to the estate of a deceased person whose administrators are not parties to this suit. That the administrators of the estate of John Muiruri Kaburu are not parties to this suit and as such no grounds have been laid to support granting the orders sought. That the grant in the estate of John Muiruri Kabaruru was rectified on 1/7/2022 which grant did not include the suit property.
13. The Respondent admitted having filed an Application in the Probate Court seeking substitution of the name of her deceased husband with hers and that the question of substitution of an administrator perse cannot be the basis of any dispute in ownership of the suit land since the ownership of the land was vested to her by the grant of 2016.

Analysis and determination

14. The key issue is whether the Application is merited.
15. Stay of proceedings is basically the postponement, halting or suspension of Court proceedings by the Court.
16. It is imperative to address the background of the suit before the Court. The parties before Court are related. The Plaintiff is the sister-in-law of the Defendant. The Plaintiff has brought the suit as the legal administrator of the estate of Peter Kabaruru Muiruri who was the brother of the Defendant/Applicant. Peter Kabaruru Muiruri, deceased and the Applicant were/are sons of the late John Muiruri Kabaruru, deceased.
17. It is not disputed that the estate of John Muiruri Kabaruru was succeeded pursuant to the Certificate of Confirmation of Grant issued on 6/9/2011. This grant was rectified on 26/2/2016 and later on 1/7/2022. In the confirmed grant the suit land devolved to Peter Kabaruru Muiruri to the extent of 50% and the remainder 50% went to other beneficiaries, the Applicant (included) to share equally.
18. The Court notes that vide the rectified grant issued on 1/7/2022 Peter Kabaruru Njeri deceased was appointed one of the 2 administrators of the estate of John Muiruri Kabaruru. The other one being Jacinta Wambui Kabaruru.
19. Following the death of Peter Kabaruru on 20/11/2009 the Plaintiff/Respondent was appointed the legal representative of his estate. The suit property being 50% share that had been distributed to her late husband was vested to her as a sole beneficiary. See the Certificate of Confirmation of Grant issued on 23/7/2021.
20. In this suit the Plaintiff/Respondent filed suit against the Defendant/Applicant on 19/11/2021 seeking the following orders:-



- a. This Honourable Court do issue a mandatory injunction compelling the Defendant to furnish the books of accounts, bank statements and all records relating to the proceeds generated from the businesses situate on property registered as Thika Plot No. 4953/68/4 as from September 2011 to date.
 - b. This Honourable Court directs that the Defendant do account to the Plaintiff an amount totaling to half of the proceeds generated from the business premises registered as Thika Plot No. 4953/68/4 generated from February 2016 to date.
 - c. This Honourable Court directs that half of the proceeds generated from the businesses situate on property registered as Thika Plot No. 4953/68/4 be deposited directed with the Plaintiff.
 - d. This Honourable Court issues a declaration that the Plaintiff herein is a co-owner and joint landlord of property registered as Thika Plot No. 4953/68/4 with right to access the property and have all powers of a co-owner and a landlord thereto.
 - e. The Honourable Court do issue and order for a survey and subdivision of the property registered as Thika Plot No. 4953/68/4 as per the terms of the Certificate of Confirmation of Grant dated 6th September 2011 and rectified on 24th February 2016.
 - f. General damages against the Defendant.
 - g. Interests on damages and costs.
 - h. Any other or further reliefs that this Honourable Court may deem just to grant.
21. The Applicant responded by filing a Preliminary Objection on the grounds that the matter was basically a Succession Cause and this Court was devoid of jurisdiction. In its Ruling dated 2/8/2023 this Court pronounced itself on the Preliminary Objection and held that the jurisdiction of the Court was properly invoked. The Preliminary Objection was dismissed.
 22. The Applicant filed a Statement of Defence and averred that he was appointed a co-administrator to the estate of John Muiruri Kabaru on 1/7/2022 and that the cause of action relates to a succession matter.
 23. Back to the issue at hand this Court is guided by the decision of Global Tours & Travels Limited Nairobi HC Winding Up Cause No. 43 of 2000 where the Court stated as follows:-

“... Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent ...”
 24. It is trite that stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not be allowed to continue.
 25. It is also trite that stay of proceedings is a discretionary remedy and the Court is called upon to examine each case depending on the facts placed before it. And being discretionary, the relief must not be granted on capricious reasons.
 26. Having analyzed the Application and all the material placed before me the Court makes the following findings:-
 - a. The estate of John Muiruri and Peter Kaburu have been successfully succeeded.



- b. The Respondent is the beneficial owner of 50% of the suit land.
 - c. The Application by the Respondent pending before the Probate Court HCCC No. 2046 of 2009 seeks leave to be appointed a co-administrator of the estate of John Muiruri.
 - d. No evidence has been placed before the Court to show that the orders of Confirmation of Grant in the estate of John Muiruri and that of Peter Muiruri have been appealed, set aside and or vacated.
 - e. The matter before this Court relates to ownership of the suit land calling on the Defendant to account to the beneficiary (Respondent) on the proceeds of rental income arising from the suit land from February 2016 to date.
 - f. There is no evidence placed before the Court to show how the Application in the Probate Court will affect the suit before this Court.
 - g. The Application before the Probate Court was filed by the Respondent, if any stay orders were merited, the same ought to have been brought by the Respondent and not the Applicant.
 - h. This Court has not been persuaded given the above reasons that the two Courts are likely to arrive at conflicting decisions given their different mandates.
 - i. The Applicant failed to place before this Court any pleadings with respect to BPRT No. E739 of 2021. In the absence thereof the Court will not render itself on the same.
27. For the above reasons the Notice of Motion dated 11/9/2023 be and is hereby dismissed with costs to the Respondent.
28. Orders accordingly.

DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 22ND DAY OF FEBRUARY, 2024.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Nyamu HB Gachau for Plaintiff

Jepkemboi HB Odera for Defendant

Court Assistants – Phyllis/Oliver

