



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 760 OF 2013

PRISCILLAH MUTHONI NJAGI.....PLAINTIFF

(Substituted for MUGO NJAGI NDIGA)

VERSUS

JOHN MURIITHI KARIUKI.....DEFENDANT

(Substituted for JOHN KARIUKI NJAGI)

RULING

Land parcel No. BARAGWI/THUMAITA/1406 (the suit land) is also subject of **GICHUGU PRINCIPAL MAGISTRATE'S COURT SUCCESSION CAUSE No.441 of 2016** which is pending confirmation of grant.

The plaintiff filed this case on 17th August 2009 claiming that the defendant holds the suit land in trust for him and in the alternative, a declaration that the plaintiff has acquired the same through adverse possession and also that the proceedings before the Gichugu Land Disputes Tribunal and the Provincial Appeals Tribunal were incompetent and void ab initio as the said Tribunals had no jurisdiction to order sub-division of registered land.

Those averments are denied by the defendant who has pleaded inter alia, that the plaintiff is trying to wrestle the whole of the suit land from the defendant yet he (plaintiff) was only entitled to ½ acre.

I have before me the plaintiff's Notice of Motion dated 27th July 2017 seeking the following orders:

1. Spent.

2. That the Honourable Court be pleased to order stay of proceedings in GICHUGU PRINCIPAL MAGISTRATE'S COURT SUCCESSION CAUSE No. 441 of 2016 pending the hearing and determination of this suit.

3. That the Honourable Court be pleased to grant any further relief that it may deem necessary.

4. That the costs of this application be provided for.

The application is supported by the affidavit of **PRISCILLAH MUTHONI NJAGI** the plaintiff herein.

The gravamen of the application is that the defendant has filed at the **GICHUGU PRINCIPAL**

MAGISTRATE COURT SUCCESSION CASUE No. 441 of 2016 (the Succession Cause) where the suit land is the subject and where the defendant is distributing to her only ½ an acre yet she is entitled to the whole suit land measuring 3 acres. Therefore if this case and the Succession cause proceed, there will be two judgments contradicting each other.

In a replying affidavit, the defendant **JOHN MURIITHI KARIUKI** averred, inter alia, that it would be a travesty of justice to delay the conclusion of the Succession cause which involves other properties whose potential beneficiaries want to develop them. The other issue that the defendant has deponed to really touch on the merits or otherwise of the plaintiff's claim to the suit land which had been shared among the family members with the plaintiff getting 1½ acres only as a trustee and not on the basis of any trust. Those are issues that should await trail.

The application was canvassed by way of written submissions which have been filed both by **MS MAKWORO** advocate for the plaintiff and **MR. KAGIO** advocate for the defendant.

I have considered the application, the rival affidavits and the submissions by counsel.

As indicated above, what is sought in this application is a stay of the proceedings in the Succession cause pending at Gichugu Court. **Section 3A of the Civil Procedure Act** grants this Court wide powers to stay proceedings when the ends of justice so require. It reads:

“Nothing in this Act shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court”

Similarly, under **Section 13 of the Environment and Land Court Act**, this Court has a wide discretion ***“to make any order and grant any relief as the Court deems fit and just”***.

Clearly therefore, where the ends of justice so dictate or where it is fit and just and in order to prevent an abuse of the process of the Court, stay of proceedings may be granted. In doing so, the Court will take into account several factors one of which may be the possibility of the other suit pending in another Court being successful. It is common ground that the suit land is also the subject of the Succession cause and if the grant therein is confirmed and the plaintiff herein succeeds, then there will be two different judgments from two Courts on the same issue. Of course the grant in the Succession cause can be annulled but among the overriding objectives of the ***Civil Procedure Act*** is the efficient use of the available judicial and administrative resources. That will not be achieved if this suit and the Succession cause proceed simultaneously. I notice that this suit which was filed way back in 2009 originally at Embu has delayed due to various reasons including the substitution of the original deceased parties. The Succession cause on the other hand was only filed in 2016 and appears to be progressing much faster. Perhaps that will encourage the parties herein to expedite the trial of this suit. In my view, however, a proper basis has been laid for the stay of proceedings in the Succession cause because an injustice will be occasioned if the grant therein is confirmed before this suit is determined as the suit land will cease to exist. It is also not lost to this Court that the defendant recognizes the plaintiff's right but only to a portion of the suit land whereas the plaintiff seeks the whole land.

The up-shot of the above is that the plaintiff's Notice of Motion dated 27th July 2017 is allowed in the following terms:

1. There shall be a stay of proceedings in GICHUGU PRINCIPAL MAGISTRATE'S SUCCESSION CAUSE No. 441 of 2016 pending the hearing and determination of this suit.

2. As earlier ordered by this Court on 11th July 2017, let the parties appear before the Deputy Registrar for pre-trial so that this case is listed for hearing expeditiously. I further direct that the pre-trial be conducted on 14th December 2017.

3. Costs shall be in the cause.

B.N. OLAO

JUDGE

8TH DECEMBER, 2017

Ruling delivered, dated and signed in open Court this 8th day of December 2017 at Kerugoya

Mr. Kagio for Defendant present

Ms Makworo for Plaintiff absent

Mr. Gichia Court clerk present.

B.N. OLAO

JUDGE

8TH DECEMBER, 2017