



REPUBLIC OF KENYA



KENYA LAW
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**Serem & 3 others v Kosgei (Environment & Land Case
E002 of 2024) [2024] KEELC 4152 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4152 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E002 OF 2024**

MN MWANYALE, J

MAY 16, 2024

BETWEEN

**SALINA SEREM 1ST APPLICANT
MAGDALINE JEMESUNDE SEREM 2ND APPLICANT
GEOFFREY KIMAIYO 3RD APPLICANT
MUSA KIPCHIRCHIR 4TH APPLICANT**

AND

REBECCA JEROTICH KOSGEI RESPONDENT

RULING

1. Before Court for determination is the application dated 29/2/2024 which primarily seeks orders of; -
 - i. Spent
 - ii. Spent
 - iii. Stay of proceedings in Kapsabet Chief Magistrate Court environment and Land Case No. E066/2022 pending hearing and determination of the Appeal and/or pending the hearing and determination of Eldoret Succession Cause No. 83/2020 in the matter of estate of Kipserem Arap Kiptiony whichever comes first.
 - iv. That the Honourable Court be pleased to call for Kapsabet Chief Magistrate Court Environment and Land Case No. ELC No. E 066/2022.
2. The gravamen of the application as can be garnered from the grounds thereof as well as the affidavit in support, is that despite the existence of an application of stay of proceedings having been filed in Kapsabet CM E & L E006/2002 pending outcome of a succession cause No. 83/2020 pending before



the High Court Eldoret, the Trial Court without determining the said application had sought to proceed with the hearing of the main suit.

3. In opposition to the application, a replying affidavit by Rebecca Jerotich Kosgei, was filed in which she deposes that;
 - i. the Applicants have been frustrating the hearing of her matter at the Chief Magistrate's Court by employing delaying tactics at every instance and that the pending matter before the succession Court had been dismissed for want of prosecution and non-attendance hence they could be no basis for seeking a stay of proceedings.
 - i. the summons for revocation of grant having been dismissed they could be no possible conflict between the Chief Magistrate's decision and the High Court decisions.
 - ii. that they are no sufficient reasons for ordering of stay of proceedings and the Applicant ought to present the arguable appeal which would render their appeal nugatory unless stay is ordered, and that substantial loss would suffer if stay is not granted.
 - i. that an Appellate Court would not interfere with the exercise of the discretion of a judicial officer unless it is satisfied that he had misdirected himself in some matter thus arriving at the wrong decision.
4. The Respondent exhibited before Court a copy of the order dated 23/11/2023 issued in Eldoret Succession Cause No. 83/2020 on 23/11/2023.
5. The Applicant sought and was granted leave to file a supplementary affidavit. Despite acknowledging that the summons for revocation had been dismissed for non-attendance and want of prosecution, the Applicant did not exhibit in the supplementary affidavit a copy of her application for reinstatement of the said application which he had indicated in the supporting affidavit to be scheduled for hearing on 6th May 2024.
6. The Court directed parties to file and exchange written submission on the application.
7. I have considered the application the affidavits in support and in opposition, as well as the submissions by learned Counsel and I frame the issues for determination as follows?
 - i. Whether the application is merited
 - ii. What reliefs ought to issue?
 - iii. Who bears the costs of the application?
8. The principles for grant of stay of proceedings as stated in the case of Global Tours & Travels Limited Nairobi HCC winding up cause No. 43/2000, which were set out as follows; -

“As I understand the law, whether or not to grant a stay of proceedings or on a decree or order appealed from is matter of judicial discretion to be exercised in the interest of justice, the sole question is whether it is the interest of justice to order for stay of proceeding and it if it is, on what terms it should be granted. In deciding whether the order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order, and in consider these matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in he sense of not whether it will probably succeed or not but whether it will probably succeed or not but whether it



is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.....”

9. The above shall guide the Court in determining this application. The Applicant placing reliance on order 42 rule 6 of the Civil Procedure Rules argues that the application was filed timeously and substantial loss will occur cites article 50 (i) of *the Constitution*, as well as the decisions in Philip Chemwolo & Another vs Augustine Kubene, as well as the Supreme Court decision in Muya vs Tribunal appointed to investigate the conduct of Justice Martin Mati Muya Judge of the High Court of Kenya.
10. The Applicant has also cited Kapsabet ELC Case No. E020/2022 where a stay of proceedings was issued pending revocation proceedings before the Chief Magistrates Court at Kapsabet.
11. The Respondent submits placing reliance on Global Tours and Travels Limited, that the Applicant has not met the threshold of the application.
12. It was incumbent upon the Applicant to show by way of an affidavit, a copy of the application for reinstatement. The Applicant did not do so in her supplementary affidavit.
13. The Court took upon itself to find from the CTS whether indeed Eldoret Succession Cause No. 83/2020 Estate of Kipserem arap Kitiony has been finalized by way of a dismissal which both parties agree on.
14. The Court found that the matter was before Court on 16/3/2024 and will come up on 29/5/2024 for compliance and a ruling reserved for 18/10/2024.
15. As the matter is slated for a ruling it must be thus deemed to be alive and since the same seeks revocation of the grant that gave rise to the proprietary interest sought to be enforced by the pending suit at the Chief Magistrates Court, in that regard, there is an exceptional circumstance warranting the intervention of this Court and the Court finds that the Applicant has met the threshold for grant of stay of proceedings.
16. The Court shall now consider whether despite meeting the threshold for grant of stay of proceedings, whether the application is merited.
17. The prayers sought in the application have been set out at paragraph 1 of this ruling. The Applicant seeks stay of proceedings pending appeal or pending outcome of Eldoret Succession Cause No. E83/2020 Estate of Kipserem arap Kiptiony.
18. The Plaintiff in matter before the Chief Magistrates Court obtained ownership of the suit property through transmissions.
19. The Grant giving rise to the ownership is now under challenge by way of revocation proceedings which are alive before the Succession Court. There is indeed a possibility of the revocation application being granted or denied after the same is reinstated.
20. It makes for good order that the outcome of the said revocation proceedings be known before the suit is heard and determined and there is therefore merit in seeking for a stay of proceedings as has been sought by the Applicant.
21. I wish to add that Counsels have a duty as officers of Court to be truthful to the Court and disclose all material facts. In the instant application both Counsels agreed that the summons for revocation application had been dismissed. Whilst the Applicant argued that he had applied for reinstatement he did not exhibit the said application, the Respondent Counsel having been served with



the reinstatement application ought then to have informed Court of the true status of the summons for revocation, having been dismissed but there was a reinstatement application pending before Court. That way would not have gone into the CTS to ascertain the position.

22. Having found the application meets the threshold and is merited the same is allowed in terms that; that there shall be a stay of proceedings in Kapsabet Chief Magistrates Court Environment and Land Case No. ELC No. E066/2022 pending determination of Eldoret Succession Cause No. 83/2020 in the Estate of Kipserem Arap Kiptiony.
23. There shall be no orders as to costs.

RULING, DELIVERED AND DATED AT KAPSABET THIS 16TH DAY OF MAY 2024.

HON. M. N. MWANYALE,

JUDGE.

In the presence of; -

1. Ms. Mabalau for the Applicant
2. Ms. Kesi for the Respondent

