



Kariuki & another (Administrator of the Estate of Gitau Karanja Wainaina also known as Kariuki Wainaina - Deceased) v Wahothi & 2 others (Environment & Land Case 1 of 2021) [2024] KEELC 4856 (KLR) (19 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4856 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 1 OF 2021**

**AE DENA, J
JUNE 19, 2024**

BETWEEN

**MWANGI KARIUKI 1ST PLAINTIFF
JOHN PETER KARANJA 2ND PLAINTIFF
ADMINISTRATOR OF THE ESTATE OF GITAU KARANJA WAINAINA ALSO
KNOWN AS KARIUKI WAINAINA - DECEASED**

AND

**KEZIAH WAMBUI WAHOTHI 1ST DEFENDANT
LAND REGISTRAR KWALE DISTRICT 2ND DEFENDANT
ATTORNEY GENERAL 3RD DEFENDANT**

RULING

1. The provisions of sections 3,3A & 63[e] of the *Civil Procedure Act* and all enabling provisions of the law form the legal basis of this application, the orders sought are as follows;
 1. Spent
 2. That pending the hearing of this application, this Honourable court be pleased to stay any further proceedings in this suit.
 3. That pending the hearing and final determination of the summons for revocation or annulment of grant dated 18th October 2019 lodged by the 1st Defendant/Applicant before the family division in P & A No 199 of 2010, seeking for revocation of grant issued to the Plaintiffs herein, this Honourable court be pleased to stay any further proceedings in this suit.
 4. That costs of this application be provided for.



2. The application is premised upon grounds set on its face and the supporting affidavit of Keziah Wambui Wahothi. The facts leading to the application as stated by the Applicant are that she became aware of the existence of letters of administration granted to the Plaintiffs on 6th April 2011 after the same was introduced by the Plaintiffs in their list of documents dated 29/11/2017. That her efforts to trace the said P& A cause have proved futile since then. The Applicant states that it was after the testimony of the 2nd Plaintiff in court that she learnt of her exclusion in the succession cause. That it is then that the Applicant instructed her elder son to file an application for opening of a skeleton file together with summons for revocation of grant.
3. It is averred that after location of the missing file, parties agreed to stay the proceedings in this matter and to proceed with summons for revocation of grant hence the instant application. The Applicant states that there is the danger of confusion in the event that this suit proceeds and contradicting findings are made. That it is in the interest of justice that the application be allowed.

Replying Affidavit

4. In opposing the application, the Plaintiffs filed a replying affidavit sworn by one Grace Wanjiru Njuguna. It is averred the instant suit was filed in 2011 where the Plaintiffs claimed for a declaration that Gitau Karanja is the bonafide proprietor of the suit parcel Kwale/Mwanasini/614 and that the title issued to the 1st Defendant was irregular and fraudulent. That the hearing of the suit proceeded and the 1st Defendant was all along aware that the Plaintiff held the letters of administration to the estate of the deceased Gitau Karanja.
5. It is denied that the succession suit file was missing as alleged by the 1st Defendant/Applicant. That there is no dispute that the suit property belonged to the deceased and what is in contest is the transfer and registration of the 1st Defendant as the owner of the same. At paragraph 11 of the affidavit, it is averred that the only issue in the succession file is non-inclusion of the 1st Defendant as a beneficiary and which will not determine the issue of the alleged illegal transfer of the suit property.
6. At paragraph 12 it is averred that the court needs to make a determination on whether the suit property shall revert to the name of the deceased before determination in the succession file as to who are the rightful beneficiaries. That the Defendant will not suffer any prejudice if judgment is entered in favour of the property reverting to the Plaintiff and a determination made thereafter in the succession suit. The court is urged to allow the application as prayed.

Supplementary Affidavit

7. The Applicant filed a supplementary affidavit in response to the averments raised in the affidavit opposing the application. In it, she reiterates her sentiments earlier made and states that it is not in dispute the suit property was earlier registered in the names of the deceased. The deponent avers that she was a wife to the deceased and other than the suit property, the deceased had other properties in central Kenya which she was not allowed to own or move into. That from the year 1978 when her husband passed on, the Plaintiff Grace Wanjiru came to the suit property in 2010 with police officers and arrested her on allegations of stealing the property.
8. The Applicant states that she did not have the intention of filing the summons for revocation but only did so after realising the Plaintiffs were coming after the suit property while they had not included her as a beneficiary in the Succession Cause. The Applicant states that pertinent issues are raised in the Succession Cause which ought to be resolved before the instant suit is determined hence the application for stay of the instant proceedings.



9. The application was dispensed off by way of written submissions. The 1st Defendant/Applicant's submissions were filed before court on 6/2/2024 while the Plaintiffs' submissions were filed before court on 28/2/2024. The court has perused the contents thereof and renders itself as follows;

Determination

10. From the pleadings on record, one undisputed fact arises, the same is that the deceased Gitau Karanja Wainainadied intestate. This simply means that he did not leave a will indicating the distribution of his estate. The law of succession comes in at this point as it provides guidance as to how an intestate estate ought to be governed and distributed. It is a fact that the beneficiaries to the estate of a deceased are the ones to benefit from such distribution subject to the findings of the court as guided by the beneficiaries and requisite evidence.
11. According to the pleadings in the present suit, Plaintiffs are the children to the deceased while the 1st Defendant is the only surviving wife to the deceased. The 1st Defendant states that she is entitled to be included in the Succession Cause filed with regard to the estate of the deceased which the Plaintiffs don't find it necessary. The born of contention between these two parties largely is the suit property Kwale/Mwanasini/614. The Plaintiffs allege that the property solely belonged to the deceased and its transfer to the 1st Defendant was illegal and is fraudulent. The 1st Defendant on the other hand states that the property rightfully belongs to her based on the fact that she was a wife to the deceased and has always been in occupation of the property from the time the deceased died. The 1st Defendant/Applicant now seeks that the proceedings herein be stayed pending determination of the succession cause.
12. The law on stay of proceedings is provided for in Section 6 of the *Civil Procedure Act* to the effect that where an issue is directly and substantially in issue in proceedings between the same parties, another court ought to stay its proceedings in respect of such suit. See *Timothy Kisina Kithokoi v Elijah Kitele & another [2022]* Eklr.
13. In the case of David Morton Silverstein vs. Atsango Chesoni [2002] eKLR, the Court of Appeal citing *Kenya Commercial Bank Ltd vs. Benjob Amalgamated Ltd & Another [1998]* e KLR held that it is not the law that a stay of proceedings cannot be granted but that each case depends on its own facts.
14. In the case of *Kenya Wildlife Service Vs James Mutembei (2019)* eKLR, Gikonyo J held that:
“Stay of proceedings 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 proceedings is high and stringent”.
15. Gikonyo J further quoted *Halsbury's Law of England, 4th Edition*. Vol. 37 page 330 and 332, that:
“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”
This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”



16. The chain of authorities above clearly demonstrates the seriousness and nature of the orders being sought by the Applicant. Stay of proceedings directly has an impact on the nature of the courts business which is the daily dispensation of justice in a timely and efficient manner. In dispensing justice, courts have a timeline within which matters ought to be heard and concluded in order to save time and resources. It is only under certain circumstances which I will term special, that a court can stay proceedings.
17. Is there any prejudice in this court proceeding with the determination of the above issue alongside the succession proceedings or revocation of grant. The court has considered the prayers sought in the Plaintiff. The same seek to revert the registration of the title into the name of the deceased and annulment of the title issued to the Applicant in the year 2008. The purpose of a succession cause is to determine who is a beneficiary to the said estate and ensure the distribution of the estate of the deceased, Distribution of the assets comes after the assets are fully identified. The suit property appears to be among the assets left behind by the deceased until it was registered in the name of the Plaintiff sometime in the year 2008 post the demise of the deceased. I gather from the proceedings that indeed it is listed as part of the assets for distribution. I foresee a legal hurdle in this regard in that the title being registered in the name of the Plaintiff the courts are enjoined to recognise the registered proprietor as the prima facie owner until it is proved that the same was obtained fraudulently (see sections 26 of the [Land Registration Act](#)). Therefore, the suit property cannot be treated as part of the estate as presented before the succession court. It is no wonder that the Plaintiffs filed these proceedings including the fact that jurisdiction to determine the legality of the registration lies with the Environment and Land Court by dint of the provisions of Section 13 of the [Environment and Land Court Act](#). I would not look at it as a ploy to wrestle the suit property from the Applicant. While the succession court will be stuck in this regard there is nothing stopping it from determining who the beneficiaries are since the distribution of the assets comes later. Further there is no way the court in the present suit will render itself on the legality of the transfer of the suit property to the 1st Defendant without having to consider the issue of beneficiaries and which it cannot pronounce itself for want of jurisdiction. This court takes the view that it is only after these findings that it can delve into the determination of the legality of the transfer to the 1st Defendant.
18. The court has also noted that the matter is under mediation which has not been refuted by the Plaintiffs. This dispute pits members of a family and reconciliation would be a preferred outcome. We must seek peace and pursue it and I think this is the foundation of the Article 159(2)(d) which enjoins courts to embrace alternative dispute resolution mechanism. To me if there is a positive resolution will mean the closing of the proceedings before me without going into the rigours of a hearing which could spur more friction our judicial system being an adversarial one. The mediation should be given a chance.
19. For the foregoing reasons I find it prudent to stay the proceedings herein pending the outcome of the succession cause and or the mediation.
20. The upshot is that the application dated 1/2/202 is hereby allowed in the following terms;
 1. That pending the hearing and final determination of the summons for revocation or annulment of grant dated 18th October 2019 lodged by the 1st Defendant/Applicant before the Family Division in P & A No 199 of 2010, seeking for revocation of grant issued to the Plaintiffs herein as well mediation which is ongoing this Honourable court be and is hereby pleased to stay any further proceedings in this suit.
 2. Each party to bear its own costs.



RULING DATED SIGNED AND DELIVERED THIS 19TH DAY OF JUNE 2024.

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A.E DENA

JUDGE

Ms. Mango for the Plaintiffs/Respondents

No appearance for the 1st Defendant/Applicant

No appearance for the 2nd Defendant/Applicant

Mr. Daniel Disii – Court Assistant

