



**Ruo v Samwe & 2 others (Environment & Land Case
E023 of 2022) [2024] KEELC 4875 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4875 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE E023 OF 2022**

**A KANIARU, J
JUNE 11, 2024**

BETWEEN

MARY NYAMBURA RUO PLAINTIFF

AND

ESTHER NYAMBURA SAMWE 1ST DEFENDANT

BENJAMIN KAMAU MWANGI 2ND DEFENDANT

JOYAANN NJERU NJIRU 3RD DEFENDANT

RULING

1. Before me for determination is a Notice of Motion dated May 10, 2023 and filed on May 11, 2023. It is expressed to be brought under Sections 3, 3A and 6 of the *Civil Procedure Act* Cap 21, Section 3 of the *Environment and Land Court Act*, Article 159 of the *Constitution*, and all enabling laws. The Applicants are the 1st-3rd defendants – Esther Nyambura Samwel, Benjamin Kamau Mwangi & Joyaann Njeru Njiru - whereas the plaintiff – Mary Nyambura Ruo - is the respondent. The applicants were seeking three prayers but prayer (1) is now spent. What is left for determination are prayers (2) and (3) which are as follows:
 - a. That pending the hearing and decision of this land cause, this honourable court be pleased to stay its proceedings until succession cause no. 323 of 2017 at Runyenjes Law Courts involving the same parties touching on the same subject matter is concluded and determined.
 - b. That the costs of this application be in the cause.
2. The motion is premised on the grounds set out on its face and on the supporting affidavit sworn on May 10, 2023 by the applicants. The applicant's position is that the suit herein involves ownership of land parcels Kyeni/Mufu/6068 and 6174. That there are three applications filed at Runyenjes law courts vide succession cause 323 of 2017 by the applicants and another by the respondent. That two



of the applications seek the nullification of a grant issued in the said succession cause 323 of 2017 involving the suit lands herein and the other application is by the respondent who seeks to be joined as an interested party in the said cause. That the applications are pending hearing. That this court shall be placed in a conflicting situation when hearing and determining the matter herein since the same matter involving the suit property is being heard at Runyenjes law courts. That it is only fair and just to grant the orders sought to avoid unnecessary costs. That the respondent shall not be prejudiced if this court grants the prayers sought.

3. The respondent in response to the said application filed a replying affidavit dated June 14, 2023. She deposed that she is a bona fide purchaser of the suit lands through her daughter from the 1st applicant for the sum of Kshs. 1.2 million. That the 1st applicant has since failed to give her vacant possession of the suit lands. That the application ought to be dismissed with the contempt it deserves. That there is no prejudice that will be occasioned if this matter proceeds because the applicants are still in occupation of the said property. She went on to say that the applications referred to that are pending in Runyenjes law courts were coming up for ruling on June 15, 2023 and by the time the instant application would be determined, the same would have also been determined. She accused the applicants of wasting time in order to continue enjoying the suit property while they have received the full purchase price for the same. She urged that the instant application be dismissed and the suit to proceed to full hearing to avoid a miscarriage of justice.
4. The applicants with the leave of court filed a supplementary affidavit on November 22, 2023 jointly where they deposed that at the time of making the sale agreement on August 23, 2017, for the sale of the suit lands, the two parcels of land belonged to a deceased person and succession had not yet been finalized. That the respondent has no land as she claims because the two parcels of land were acquired fraudulently and illegally since the suit lands belonged to a deceased person during the making of the sale agreement. The sale transaction was therefore void and the titles registered in the name of the respondent ought to be cancelled and the same revert to the name of the deceased.
5. It was agreed that parties dispose the application by way of written submissions. The applicants' submissions were filed on February 26, 2024. The applicants' submissions were mainly based on arguments on the merits and demerits of the case. This is not surprising as the submissions were filed by the applicants in person. There is no need of reproducing the said arguments at this point as what this court has been called to determine at this point is whether the proceedings in this case ought to be stayed or not, which is what the court will exclusively deal with.
6. The respondent's submissions on the other hand are dated March 26, 2024. It is not clear as to which date that the same were filed. She submitted that the pending applications that the applicants were referring to came up for ruling on June 15, 2023 and the same were dismissed. That the court found it had no jurisdiction to entertain the said applications. That she is not a party to the proceedings at the Runyenjes suit and therefore the instant matter cannot be stayed awaiting the outcome of the proceedings in the lower court. That the application by the 3rd applicant is the one pending at the lower court and the same was coming up for hearing on March 28, 2024 and would have been determined by the time of conclusion of the application herein. That prejudice shall be caused to the respondent if this matter is stayed indefinitely. That the court cannot go into the merits and demerits of this matter at this point.
7. I have considered the application, the responses made to it, and the rival submissions of the parties. I find that the issue for determination is whether the proceedings in this suit ought to be stayed pending the hearing of Succession Cause No. 323 of 2017 in Runyenjes.



8. Deciding whether to grant a stay of proceedings is a discretionary exercise. As usual, this discretion must be exercised judiciously. The court must, among other factors, determine whether granting a stay is in the interest of justice. Each case must be evaluated based on its unique facts and circumstances. It should also be noted that a stay of proceedings is a serious judicial action that significantly interferes with a litigant's right to pursue their case and the fundamental right of access to justice. See [Kenya Wildlife Service v James Mutembei](#) [2019] eKLR.
9. The parties' arguments in the application before me have clearly highlighted their disagreement over the ownership of land parcels Kyeni/Mufu/6068 and 6174. These parcels are the subject of disputes in both the current case and the case at Runyenjes. The dispute at Runyenjes pertains to succession, where the applicants are attempting to nullify a grant that includes the respondent as a beneficiary of the contested lands. In the current case, the respondent seeks to have the applicants evicted from the property and demands vacant possession, claiming she purchased the property for value from the first applicant.
10. What remains to be answered is whether the suit herein has a bearing on the suit at Runyenjes. I do not see what bearing the succession cause has on this matter since whether the grant is nullified or not, that will have little or no effect on the respondent's title to the suit properties. Her registration as proprietor of the land was not made pursuant to the grant in issue but as a purchaser of the same. And as noted above, a stay of proceedings is a serious matter that significantly disrupts the smooth flow of litigation and threatens the right of access to justice. While the applicants are entitled to seek revocation of the grant it is important to remember that the two suits are distinct. The instant suit is concerned with whether the applicants should be evicted from the suit properties and whether they should give possession of the same whereas the suit in Runyenjes is a concluded matter where the applicants are seeking a reconsideration of the distribution their estate.
11. For this reason, I find that the notice of motion application dated May 10, 2023 has no merit and dismiss the same in its entirety.
12. The respondent shall have the costs of this application.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 11TH DAY OF JUNE, 2024.

In the presence of Ms. Mbaka for Plaintiff /Respondent and Defendants/Applicants in person.

Court Assistant - Leadys

A. KANIARU

JUDGE – ELC, EMBU

