



Nyamai v Nyamai (Environment & Planning Miscellaneous Application E002 of 2023) [2024] KEELC 13753 (KLR) (10 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13753 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & PLANNING MISCELLANEOUS APPLICATION E002 OF 2023
NA MATHEKA, J
DECEMBER 10, 2024

BETWEEN

DANIEL KATUMO NYAMAI PLAINTIFF

AND

ANN NDINDA NYAMAI DEFENDANT

RULING

1. The application is dated 24th July 2024 and is brought under Order 51 rules 1 and 6 of the Civil Procedure rules and section 1A, 24 and 3A of the [Civil Procedure Act](#) seeking the following orders;
 1. That this matter be Certified as urgent and be heard in the first instant.
 2. That this Honourable Court be pleased to stay the proceedings of this suit pending hearing and determination of a review application in HCC Succession Cause No. 107 Of 2009 in the matter the Estate of Onesmus Nyamai Kyengo (Deceased) - Daniel Ratumo Nyamai versus Anna Ndinda Nyamai.
 3. That the costs of this application be provided for.
2. It is grounded on Supporting Affidavit sworn by Anna Ndinda Nyamai and grounds that the Applicant has found new evidence and have applied to the succession court to have the grant of letters of administration issued to the Respondent revoked. That the said application is pending in court for hearing and determination. That the proceedings of this case will jeopardize the outcome of the view case. That there is need to stay the proceedings and hearing of this Court until the succession review is heard and determined.
3. The Plaintiff/Respondent states that this Application is res judicata by dint of the fact that the Applicant made an objection to the grant being confirmed and by the Ruling of the Court dated 14th July, 2023 it was declined, annexed the ruling and mark it as "DKN 1" That the Application



does not explain the anomaly in the Succession Cause No. 107 of 2009 on evidence which has been discovered in relation to the authenticity of the Will alleged to be fraudulent and which was not within her knowledge or could not be produced at the time when the decree was passed or order made or mistake or error apparent on the face of the record or any other sufficient cause. That since, the matter to which the new and important matter relates is in the High Court Succession cause No. 107 of 2009 and is a Superior to this Court it will be an act of insubordination for this Honourable Court to order stay of this proceedings. The perking order and procedure would entail filing the Application in the High Court and not this Court. That saying that the grant of probate was obtained fraudulently is a fallacy as no such order or proof has been given.

4. I have carefully considered the instant application, replying affidavit and submissions by the parties. The application for stay of proceedings in this matter pending the hearing and determination of pending hearing and determination of a review application in HCC Succession Cause No. 107 Of 2009 in the matter the Estate of Onesmus Nyamai Kyengo (Deceased) - Daniel Ratumo Nyamai versus Anna Ndinda Nyamai. Stay of proceedings for whatever reason 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 very strict. In the case of Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 the court stated that;

"As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those 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 the sense of not 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"

5. Stay of proceedings has been discussed in the following passages in 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."

6. In the instant case the applicant states that found new evidence and have applied to the succession court to have the grant of letters of administration issued to the Respondent revoked. Respondent states that this Application is res judicata by dint of the fact that the Applicant made an objection to the grant being confirmed and by the Ruling of the Court dated 14th July, 2023 it was declined.
7. It is my finding that it would be unfair for the Applicants to be granted a stay of proceedings for several reasons. Firstly, this court is of equal status to the High Court and its jurisdiction inter alia is one of title and use of land. Secondly, that this court has no jurisdiction in succession matters and any pending



applications in that court will not bar this court from proceeding with the matter. Thirdly, that the provisions of Article 159(2)(a)(b)(c) and (d) of the Constitution of Kenya as read with Sections 1A and 1B of the *Civil Procedure Act*, Cap 21 enjoin this court to foster and facilitate the overriding objective of the Act to render justice to parties in all Civil Proceedings in a just, expeditious, proportionate and affordable cost to parties. In the instant case, it is my considered opinion that it would not be in the interest of justice to exercise the court's discretion and grant stay of proceedings as the same will only serve the purpose of delaying the matter. I find that the application is not merited and I dismiss it with costs.

8. It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 10TH DAY OF DECEMBER 2024.

N.A. MATHEKA

JUDGE

