



**Ijirimani v Ekunusut (Environment & Land Case 131 of 2017)
[2023] KEELC 17705 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 17705 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 131 OF 2017
BN OLAO, J
JANUARY 31, 2023**

BETWEEN

CHRISTOPHER OKWII IJIRIMANI PLAINTIFF

AND

ALFRED SOKONI EKUNUSUT DEFENDANT

RULING

1. What calls for my determination is the defendant's Notice of Motion dated October 14, 2022 seeking the following prayers:
 - a. That pending the hearing and final determination of the objection proceedings filed in Busia High Court Succession Cause No. 240 of 2012, this matter be stayed.
 - b. That costs of this application be in the cause.
2. The Application is premised on the provisions of sections 1A, 1B, 3A and 6 of the *Civil Procedure Act* as well as Order 51 of the *Civil Procedure Rules* and supported by the affidavit of Alfred Sokoni Ekirusut the defendant herein.
3. The gravamen of the application is that the title of Christopher Okwii Ijirimani (the plaintiff herein) with respect to the land parcel No Bukhayo/Lupida/182 (the suit land) was obtained following a succession process that was fraudulent. The defendant has therefore filed for the revocation of the Grant obtained in the aforesaid succession proceedings and should his application succeed, the plaintiff's title to the suit land will be nullified. That application was still pending as at the time this application was filed and was due for hearing on December 1, 2022. It is therefore in the interest of justice that this suit be stayed until the application for revocation of the Grant is heard and concluded.
4. Annexed to the application are the following documents:



1. The application for revocation of the confirmed Grant issued to Margaret Ajilit In Busia High Court Succession Cause No. 247 of 2012.
2. Defence filed herein on January 4, 2022.
5. When the application was placed before me on November 17, 2022, I directed that it be canvassed by way of written submissions. The defendant was to serve the application and submissions within 7 days while the plaintiff wanted to have 7 days from the date of service to respond. The matter would then be mentioned on January 31, 2023 to confirm compliance and take a date for ruling. However, only the defendant filed submissions. The plaintiff who is acting in person did not file any response to the application although he filed his submissions on November 18, 2022. The application is therefore not opposed.
6. Before I delve into the merits of the application, I must make one observation with regard to the pleadings herein.
7. The record shows that I issued directions on the application on November 17, 2022 and one day later on November 18, 2022, even before he had been served with the submissions by the defendant, the plaintiff had already filed his submissions although he forgot to file his response. Even the defendant who, unlike the plaintiff, is represented by counsel, did not file his submissions until 11 days later on November 28, 2022. While the court appreciates that proceedings must be expedited, my scrutiny of the submissions by the plaintiff and indeed other pleading herein lead to the irresistible conclusion that they were drafted by an officer at this court's Registry who did a hurried job in not filing the most important document being the replying affidavit. If the plaintiff paid for those services, he should demand for a refund of his fees. Most importantly, the Deputy Registrar should sensitize the officers in the registry about the need to desist from such practices which can land them in unnecessary problems.
8. I have considered the application and as it is not opposed, the plaintiff's submissions dated November 18, 2022 have no legs to stand on. They were filed in vacuo.
9. The above notwithstanding, I have considered the application on its merits. The defendant seeks the main remedy that this suit be stayed pending the hearing and determination of an application in Busia High Court Succession Cause No 240 of 2012 which seeks the revocation of the Grant issued to one Margaret Ajiliti through which she acquired the suit land by transmission and thereafter sold it to the plaintiff.
10. Section 6 of the *Civil Procedure Act* provides that:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

The above provides for the sub-judice rule which is defined in *Black's Law Dictionary* 10th Edition As: “Before the court or Judge for determination.”



In *Kenya National Commission On Human Rights v Attorney General, Independent Electoral & Boundaries Commission & 16 others* 2020 eKLR, The Supreme Court stated the rationale of the rule thus:

“The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of Courts, with competent jurisdiction, issuing conflicting decisions over the same matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

11. It is clear from the plaintiff’s plaint dated July 11, 2017 that he seeks to evict the defendant from the suit land on the basis that the defendant has trespassed thereon. The basis of the plaintiff’s claim to ownership of the suit land is pleaded in paragraph 3 of the plaint as follows:

“The plaintiff avers that he is the sole proprietor and registered owner of L.r No Bukhayo/Lupida/182 got by way of transmission after succession from the widow his late husband Busuru Kinusutu – Deceased.”

The widow being referred to above is Margaret Ajiliti. And among the documents filed by the plaintiff in support of his case is the Confirmed grant issued to Margaret Ajilit Odionyi in respect to the Estate of Busuru Kinusutu on November 30, 2016. The Confirmed Grant lists Christopher Okwi Injiriman, the plaintiff herein, as the sole heir of the land parcel NO Bukhayo/Lupida/82 which must be an error because the other document filed is a copy of the title deed to the land parcel No Bukhayo/Lupida/182. Therefore, the reference to land parcel No Bukhayo/Lupida/82 in the Confirmed Grant must be a typographical error and the same was meant to read Bukhayo/Lupida/182 which is the suit land herein.

12. It follows from the above that the Grant through which the plaintiff obtained the title to the suit land is under a challenge in Busia High Court Succession Cause No 247 of 2012. Yet that Grant is the foundation upon which the plaintiff’s title to the suit land is premised as is now clear from paragraph 3 of the plaint which I have cited above. Clearly, the decision in the Succession Cause will have a significant bearing in these proceedings. Should the plaintiff succeed in this suit and the Grant in Busia High Court Succession Cause No 247 of 2012 is subsequently revoked, the result will be that the plaintiff will have acquired the title to the suit land through an unlawful process. That will be rather untidy. If on the other hand the application to revoke the Grant is dismissed, the plaintiff will have the comfort of knowing that at least he did not obtain his title from an intermeddler. The bottom line really is that the ownership of the suit land is central in both proceedings and both courts must guard against issuing conflicting decisions over the same subject matter. This will protect the integrity of the courts system and enhance public confidence in the judicial process. It is also instructive to note that Busia High Court Succession Cause No 247 of 2012 was filed earlier some 5 years before this suit



was filed. I am therefore guided by the decision in *Kenya National Commission On Human Rights v Attorney General & others* 2020 eKLR (*supra*) that:

“..... the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit.”

15. I was confronted with a not too dissimilar case in *Symon Nyamu Muthigani v Charity Wangui Munene* Kerugoya Elc Case No 375 of 2013 [2015 eKLR] where the same subject matter was alive both before me and in succession proceedings in the High Court. I stated the following while granting a stay of the proceedings before my court:

“However, bearing in mind that the determination of the validity of the grant in the Succession Cause will be an issue in these proceedings, I find it prudent and the interest of justice dictate, that I stay these proceedings pending the out-come of Kerugoya High Court Succession Cause No 1014 of 2013. In doing so, I take cognizance of the fact that section 6 of the *Civil Procedure Act* requires the court to stay proceedings where the matter in issue is directly and substantially an issue involving the same parties in another court.”

I must take the same path in this case.

13. Having considered the defendant’s Notice of Motion dated October 14, 2022, I am persuaded that it is meritorious and is for allowing. I therefore make the following disposal orders:
1. This suit is hereby stayed pending the hearing and determination of Busia High Court Succession Cause No 247 of 2012.
 2. The defendant who is the Objector in those succession proceedings shall ensure that they are expedited.
 3. Costs in the cause.

BOAZ N. OLAO

JUDGE

31ST JANUARY 2023

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT ON THIS 31ST DAY OF JANUARY 2023.

Mr. Omeri for Ms Maloba for defendant present

Plaintiff in person absent.

BOAZ N. OLAO

JUDGE

31ST JANUARY 2023

