



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Mwangi Njuguna (Deceased) (Succession Cause
174 of 2013) [2025] KEHC 5576 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION CAUSE 174 OF 2013
CW GITHUA, J
APRIL 29, 2025**

BETWEEN

GRACE NJOKI WANDERI APPLICANT

AND

TERESIA NJERI MWANGI RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 24th July 2023 filed by the applicant, Grace Njoki Wanderi seeking stay of proceedings initiated by the respondent, Teresiah Njeri Mwangi, the widow and administratrix of the Estate of the late Mwangi Njuguna seeking confirmation of the grant issued to her on 17th June, 2008. The applicant prays that the proceedings be stayed pending hearing and determination of Environment and Land Court Case No ELCLOC/ E001/2023.
2. The court record shows that this Succession Cause was initially filed at the High Court in Nyeri as Succession Cause No.769 of 2010 before it was transferred to this court and assigned a new registration number being Succession Cause No.174 of 2013.
3. A perusal of the court record further shows that when the respondent applied for confirmation of the aforesaid grant, the applicant filed a protest contesting distribution of the deceased's Estate as proposed by the respondent. In her affidavit of protest dated 2nd April 2009, the applicant averred that she was the deceased's sister in law and that she had a beneficial interest in one of the assets listed for distribution namely, Land LR No LOC.12/SUB-LOC 1/471 (the suit land) asserting that the deceased had been registered as owner of the suit land in trust for himself and his brother who was her deceased husband. She claimed that for this reason, she was entitled to have the suit land transmitted to her.
4. After hearing the protested summons, Hon. Sergon J, in a ruling delivered on 2nd August 2012 stayed confirmation of the grant for 90 days and directed the applicant to take out proceedings within the



- same period to determine her claim to the suit land based on trust under Order 37 Rule 1 of the Civil Procedure Rules.
5. From the material placed before this court, it is apparent that the applicant did not file the proceedings contemplated by Hon. Serгон J in the orders issued on 2nd August 2012. Instead, she filed an originating summons in the Environment and Land Court at Murang'a on 12th July 2023 about 11 years later, seeking to be registered as owner of the suit land by virtue of the doctrine of adverse possession. It is the applicant's case that she will suffer prejudice if the grant was confirmed before the ELC suit was concluded as this would affect her claim in the suit.
 6. The application was opposed by the respondent vide her replying affidavit sworn on 14th August 2023. She contested the application solely on grounds that the applicant had filed the proceedings in the ELC Court after an inordinate delay of 11 years. She invited the court to dismiss the application to allow confirmation of the grant to proceed to its logical conclusion.
 7. The application was canvassed by way of written submissions which both parties duly filed through their advocates on record which I have carefully considered. I have also read and thoroughly scrutinized the court record. Having done so, I find that the only issue arising for my determination is whether the applicant has demonstrated that she was deserving of the orders sought.
 8. It is important to state at this juncture that an order of stay of proceedings is an equitable remedy which is granted at the discretion of the court in the interest of justice. It is an established legal principle that the remedy should be granted sparingly and only in appropriate cases considering that it has the effect of interrupting a party's right to continue with the trial of his or her case on merit. In deciding whether or not to order stay of proceedings, the overarching consideration for the court is whether it was in the interest of justice to grant the order sought and if it was, on what terms.
 9. In *Lalita Devi Lalchand Galot v Mohan Galot* [2020] KECA 704 (KLR), the Court of Appeal cited with approval the decision of Ringera J (as he then was) in *Global Tours & Travels Limited Nairobi HC winding up Cause No 43 of 2000* in which the factors that should guide the exercise of the courts discretion in applications of this nature were enumerated. In considering whether it was in the interest of justice to grant an order of stay of proceedings, the court is required to weigh the pros and cons of granting or not granting the order as sought. Among other factors the court was supposed to consider was whether or not the application was filed expeditiously.
 10. In this case, the court record confirms that though the applicant was granted a 90 days window to take out proceedings to establish her claim to the suit land based on customary trust, she did not do so either within the time specified by the court or at all. Instead of filing a suit based on trust, she filed an originating summons in the Environment and Land Court being ELCL OS/E001/2023 11 years later which was anchored on the doctrine of adverse possession, a completely different cause of action from the one she had pleaded in her affidavit of protest.
 11. Even if the applicant had seen it fit to change her cause of action, if she was acting in good faith, she ought to have moved the ELC Court within the timelines issued by Serгон J and if for any reason she was unable to comply with the court order, she ought to have given an explanation for that failure either in her application or in her supporting affidavit. It is pertinent to note that the applicant did not give any reason for her failure to meet the timelines set by Serгон J and why she had to wait for 11 years to file her claim.
 12. The instant application was filed about a fortnight after the applicant filed her suit in the ELC Court which means that it was filed slightly over 11 years after the time this matter was last in this court. It is



my finding that the unexplained delay of about 11 years was not only prolonged but was also inordinate and inexcusable. It must be remembered that equity aids the vigilant and not the indolent.

13. Further and more fundamentally, my study of the documentation in the court file reveals that the grant whose confirmation was postponed by Serگون J was eventually confirmed and the deceased's Estate was fully distributed. I came across a certificate of confirmation of grant dated 23rd September 2016 showing that the grant was confirmed by Hon. Waweru J on 8th August 2016 and the suit land was transmitted to the applicant absolutely while land LR No LOC.12/SUB-LOC 1/465 was allocated to the respondent.
14. It is surprising that none of the parties made any reference to confirmation of the grant either in their pleadings or in their submissions. There is however evidence that the applicant was fully aware of the fact that the grant had been confirmed since she attached a copy of the aforesaid certificate of confirmation of grant to the supporting affidavit she swore in support of the summons dated 20th February 2023 which her learned counsel withdrew on 13th June 2023.
15. Despite knowledge of the above crucial and material fact, the applicant failed to disclose it to this court for reasons best known to herself. It is therefore safe to conclude that the applicant approached this court with unclean hands and is not deserving of exercise of the court's discretion in her favour. In any event, since the deceased's Estate has been fully distributed, this application has been overtaken by events since there are no proceedings pending which are capable of being stayed as sought.
16. For all the foregoing reasons, I find that the Notice of Motion dated 24th July, 2023 is devoid of any merit and it is hereby dismissed with costs to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 29TH APRIL 2025.

HON. C. W. GITHUA

JUDGE

In the presence of;

Ms. Murila for the Applicant

Mr. Mbuthia for the Respondent

Ms. Susan Waiganjo, Court Assistant

