



**Mwai v Mwai (Environment & Land Case E003 of 2022)  
[2023] KEELC 15798 (KLR) (21 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15798 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT & LAND CASE E003 OF 2022  
AK BOR, J  
FEBRUARY 21, 2023**

**BETWEEN**

**LAWRENCE KARAI MWAI ALIAS LAWRENCE KARAI MWAI ..... PLAINTIFF**

**AND**

**CHRISTOPHER MURIUKI MWAI ALIAS CHRISTOPHER PETER KINYA  
MWAI ..... DEFENDANT**

**RULING**

1. Through the application dated 14/3/2022, the plaintiff sought stay of execution of the judgment which was to be delivered on 30/3/2022 in Nanyuki High Court Succession Cause No. 42 of 2016 pending hearing and disposal of the suit he has filed before this court. The application was supported by the Plaintiff's affidavit in which he averred that he was opposed to his mother's land being given to strangers. He raised a myriad other issue some of which relate to Kagumo Teachers Training College which are not relevant to the application. The plaintiff and defendant are brothers.
2. The defendant filed what he titled a defence in which he stated that his name was Christopher Peter Kinyua Mwai and not Christopher Muriuki Mwai while the Plaintiff's name was Lawrence Karai Mwai and not Lawrence Kinyua Mwai. He gave further details regarding their late mother and her sickness leading up to her burial. He alluded to his late mother's will being read. He also referred to other disputes between him and the plaintiff, which have been heard and determined by other courts. He referred to the issue of how their two mothers jointly paid for the land after their father died.
3. Parties filed submissions on the application dated 14/3/2022 which the court has considered. The plaintiff's submissions addressed other issues dealing with names and academic certificates. There were also allegations of theft of documents said to have been reported to the Nanyuki Police Station. He urged the court to hear his application and stated that he was applying for the Kenya Gazette to be revoked together with the letters of administration granted on 23/7/2018. He gave details of the sons of the late Peter Lawrence Kinyua as well as the dependants of the late mother, Margaret Muchiri.



4. The defendant submitted that the plaintiff does not respect decisions of the court unless they were not made in his favour. He pointed out that Succession Cause No. 42 of 2018 was pending confirmation and that the Plaintiff filed this case to scuttle the conclusion of that succession case. He argued that the Plaintiff had not advanced reasons why this court should discontinue the proceedings in the succession cause. He emphasised that the issue of his education, baptism, names and identity cards had nothing to do with the succession cause.
5. Further, he contended that the plaintiff ought to have filed an objection in the succession matter stating why he did not wish to have it confirmed. He submitted that the land in dispute was jointly registered between their two mothers and it was not only him and the Plaintiff who were entitled to benefit from the estate of their own mother. He contended that this court lacked jurisdiction to determine this case and added that the succession cause was the only avenue to settle this case. He maintained that the plaintiff did not want the estate to be distributed and for each beneficiary to get their share and yet their advanced age did not favour them. He urged the court to dismiss this case and direct that the succession case proceed while referring to the *Law of Succession Act*.
6. When this matter came up before this court on 21/3/2022, this court observed that the Plaintiff raised issues which formed the subject matter of the succession cause and directed that the file be placed before the Presiding Judge of the High Court. The file was placed before the Honourable Mr. Justice Hatari Waweru who briefed this court and delivered a ruling 30/3/2022 clarifying that the issue which arose in the succession cause was whether the parcel of land said to comprise the estate of the late Margaret Muchiru Mwai, that is Laikipia/Nanyuki/S.Timau Block (Ethi) was solely owned by the deceased only or it was jointly owned with her co-wife the late Wamaitha Mwai. He indicated that there were two different certified copies of the register of land issued by the same land registry reflecting the two positions. The Judge observed that the issue of whether the parcel of land was solely owned by the deceased in the succession cause or jointly with her co-wife could only be resolved by the Environment and Land Court. The Judge indicated that the High Court would deal with an appropriate application to stay the succession proceedings pending determination of the ELC suit once such application was filed in the succession cause.
7. The issue for determination is whether the court should grant order sought in the application dated 14/3/2022. Being a court of concurrent jurisdiction, this court does not have power to stay the succession proceedings before the High Court. The proper course is for the application to be made in the succession cause.
8. The plaintiff is directed to file the application for stay before the High Court.
9. Parties are directed to file the aspect of the claim regarding ownership of land reference number Laikipia/Nanyuki/ S. Timau before this court for determination by the Environment and Land Court in accordance with its jurisdiction under the law while bearing in mind that the jurisdiction to hear the succession dispute and determine the persons beneficially entitled to the estate of the late Margaret Muchiru Mwai as well as the shares the beneficiaries would be entitled to lies with the High Court and not this court.

Each party will bear its costs.

**DELIVERED VIRTUALLY AT NANYUKI THIS 21<sup>ST</sup> DAY OF FEBRUARY 2023.**

**K. BOR**

**JUDGE**

In the presence of: -



Lawrence Kinyua Mwai- the Plaintiff

Christopher Kinyua Mwai- the Defendant

Ms. Stella Gakii - Court Assistant

