



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC CASE NO. 342 OF 2018**

**SERAH NJERI MUTHONI.....1<sup>ST</sup> PLAINTIFF**

**PAUL GICHUHI MUTHONI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**CHARLES NJOROGE NGUGI.....1<sup>ST</sup> DEFENDANT**

**JACKSON MAHINDI GITONGA.....2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR (NAIROBI).....3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is a Ruling in respect of a notice of motion dated 22<sup>nd</sup> January 2019 in which the 1<sup>st</sup> Defendant/Applicant seeks the 1<sup>st</sup> Plaintiff/Respondent to be declared a vexatious and perjurious litigant who should be ordered to settle all outstanding costs due to the Applicant in regard to Nairobi High Court Succession Cause No.119 of 1993 before she is granted audience by this court. The Applicant also seeks costs of this application.

2. The 1<sup>st</sup> Respondent had filed an application for revocation of grant which had been given in High Court Succession Cause No. 119 of 1993 on the ground that the same had been given based on concealment of material facts. The 1<sup>st</sup> Respondent together with her siblings were laying a stake to LR No. Dagoretti/Riruta /340 as beneficiaries. The High Court dismissed the objection holding that the duty of the court was to distribute the estate of the deceased and not to determine who was entitled to ownership a task the court said was well suited to be handled by the Environment & Land Court.

3. It is pursuant to the Judgement of the High Court in the objection proceedings in succession cause No.119 of 1993, that the 1<sup>st</sup> Respondent and her brother moved to this Court and filed the present suit.

4. The Applicant contends that the 1<sup>st</sup> Respondent has not settled the costs in High Court Succession Cause No.119 of 1993 and that the 1<sup>st</sup> Respondent rushed to this Court to file the present suit after she lost in the succession cause. It is on this basis that the Applicant wants to have the 1<sup>st</sup> Respondent declared a vexatious and perjurious litigant who should be denied audience until she settles costs in the succession cause.

5. The 1<sup>st</sup> Respondent opposed the Applicant's application based on a replying affidavit sworn on 28<sup>th</sup> March 2019. The 1<sup>st</sup> Respondent contends that the Applicant's application is an abuse of the process of the Court, is frivolous and vexatious. She further contends that this application is solely brought to delay the finalization of this case and is brought in bad faith. The 1<sup>st</sup> Respondent states that this suit was filed following the Judgement in High Court Succession Cause No. 119 of 1993 in which the Judge stated that he could not deal with ownership claims over the property which was the subject of succession as the court did not have

jurisdiction to do so as that jurisdiction lay with the Environment and Land Court.

6. The parties agreed to dispose of the application by way of written submissions. I have considered the application by the Applicant, the opposition to the same by the 1<sup>st</sup> Respondent as well as the submissions by the parties. The issues which emerge for determination are firstly, whether the 1<sup>st</sup> Respondent is a vexatious and perjurious litigant and secondly, whether the 1<sup>st</sup> Respondent should be denied audience until she settles costs in High Court Succession Cause No.119 of 1993.

7. I have not seen anything to suggest that the 1<sup>st</sup> Respondent has been perjurious in pursuit of the objection proceedings or in filing this case. A vexatious litigant was defined in the case of **Attorney General Vs Meshack Ochieng T/a Mecko Enterprises (2019) eKLR** where the court quoted a decision in the case of **Camerado Insurance Agency Vs Superior Court of Sacramento County CV 52538 ( STOLZ) (1993)** in which it was stated that a vexatious litigant is a person who does any of the following:-

*“a) In the immediately preceding seven-year period has commenced, prosecuted or maintained in propria persona at least five litigations other than in a small claims court that have been;*

- *Finally determined adversely to the person or*
- *Unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing*

*b) After a litigation has been finally determined against the person, he/she repeatedly re-litigates or attempts to re-litigate in propria persona either:*

*i) The validity of the determination against the same defendant as to whom the litigation was finally determined or*

*ii) The cause of caution, claim or controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant*

*c) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery or engages in other tactics that are frivolous”.*

8. In the instant case, the 1<sup>st</sup> Respondent and her brother filed the current suit because the Judgment in the High Court succession cause clearly stated that the court had no jurisdiction to entertain the issue of ownership as that is a preserve of the Environment and Land Court. The 1<sup>st</sup> Respondent and her brother therefore filed this case properly before this court and they are therefore not vexatious litigants.

9. On the second issue, there is no basis upon which this court can deny audience to the 1<sup>st</sup> Respondent until she settles the costs in the succession cause. The 1<sup>st</sup> Respondent's objection proceedings were dismissed after a full hearing. she was ordered to pay costs. There is evidence that the 1<sup>st</sup> Respondents had proposed to liquidate the taxed costs by payment of kshs.10,000/=monthly. This proposal was made through her lawyers from Kituo Cha Sheria. There is no indication whether there was acceptance of that proposal or a counter offer given by the Applicant. This being the case and given the fact that the 1<sup>st</sup> Respondent is neither vexatious nor perjurious, there is no basis upon which the court can deny her audience until she pays costs in the succession cause.

10. The case of **Republic Vs Chairman Matungu Land Disputes Tribunal & 2 Others (2011) eKLR** which applied Order 25 Rule (4) of the Civil Procedure Rules to stay the suit cannot be applicable to this case as in my view Section 27 of the Civil Procedure Act cannot be said to be a kin to order 25 Rule (4) of the Civil Procedure Rules which deals with withdrawal, discontinuance and adjustment of suits. The objection proceedings were neither withdrawn, discontinued nor adjusted as to call the operation of Order 25 Rule (4) into place. The objection proceedings were dismissed after a full hearing and in my view, the Applicant can use other avenues to get costs and not through denial of audience before the court. I therefore find that the Applicant's application lacks merit. The same is dismissed with costs to the Plaintiffs/Respondents.

It is so ordered.

**Dated, Signed and Delivered at Nairobi on this 1<sup>st</sup> day of December 2020.**

**E.O.OBAGA**

**JUDGE**

In the virtual presence of:-

Mr Shikhu for Mr Khakula for Defendant

M/s Wangeci for Plaintiff

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**



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