



REPUBLIC OF KENYA



**In re Estate of Gilbert Chisenga (Deceased) (Civil Appeal E137 of 2022)
[2023] KEHC 24486 (KLR) (26 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E137 OF 2022
SM GITHINJI, J
OCTOBER 26, 2023
IN THE MATTER OF THE ESTATE OF GILBERT CHISENGA
(DECEASED)**

BETWEEN

KWEKE CHARO MWANDONDO APPELLANT

AND

JANE GILBERT CHISENGA 1ST RESPONDENT

SICKLA KITI MWACHIRU 2ND RESPONDENT

JOYCE MASIKA MWACHIRU 3RD RESPONDENT

*(Being an Appeal from the Ruling of Hon G.O.Kimanga – SRM at Kilifi
made on 6th December, 2022 in Kilifi Succession Cause No.E083 of 2021)*

JUDGMENT

Hon. Justice S. M. Githinji

Mr Mwangunya Advocate for the Appellant

Mr Mwandilo Advocate for the Respondent

1. This appeal arises from the ruling delivered by Hon. G.O Kimanga-SRM in Kilifi Succession Cause No. E083 of 2021 delivered on 6th December 2022 which ruling gave orders directing Kilifi Lands registrar register a restriction against the property known as Tezo/Roka/135.
2. Dissatisfied with the ruling, the appellant lodged this appeal on the following grounds;
 1. That the trial magistrate erred in law and fact by allowing the application dated 11th November 2021 and 12th November 2021.



2. That the trial magistrate erred in law and fact by failing to find that a succession court has no jurisdiction to deal with the ownership disputes in land matters.
3. That the trial magistrate erred in law and fact by issuing orders of restriction against a title whose registered owner is deceased and not the applicant.
4. That the trial magistrate erred in law and fact by issuing orders despite operation of section 4 (4) of the [Limitations of actions act](#) which rendered the entire dispute time barred.
5. That the trial magistrate erred in law and fact by issuing orders of restriction in a vacuum in so far as the same being till further orders of the court.
6. That the trial magistrate erred in law and fact by failing to appreciate the appellant/plaintiff's written submissions.

Disposition

3. I have reviewed the trial court's record. I note that the respondents herein filed a notice of motion in the lower court dated 11th May 2022 seeking injunctive orders and a restriction be placed on the suit property. Orders in respect of this application were issued by the trial court on 6th December 2022. The appellant herein seeks an appeal in respect of the said orders. In her memorandum of appeal, she cites that the trial court erred in law and fact by allowing the application dated 11th November 2021 and 12th November 2021. From the material placed before me there is no existence of the referenced applications specifically dated 11th November 2021 and 12th November 2021. It is the duty of the appellant to bring to the court's attention the proper applications and pursuant orders they wish to be addressed on. In the circumstances I am unable to determine which application gave rise to the orders that the appellant appealed against. The upshot is that the appeal fails for want of merit and the same is hereby dismissed with costs.

JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 26TH DAY OF OCTOBER, 2023.

S.M. GITHINJI

JUDGE

In the Presence of; -

Ms Katana holding brief for Mwangunya for the Appellant

Mr Mwandiro is for the Respondent (absent)

