



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**SUCCESSION CAUSE NO. 194 OF 2017**

**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH KILONZO MUSYOKI (DECEASED)**

**PIUS MUTETI KILONZO.....PETITIONER/RESPONDENT**

**-VERSUS-**

**JONES MUKITI KILONZO.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**JOSHUA NDAKA KILONZO.....2<sup>ND</sup> OBJECTOR/APPLICANT**

**RULING**

1. Before me is an application filed by way of Summons brought by Jones Mukiti Kilonzo and Joshua Ndaka Kilonzo (the objectors) under section 47 of the Law of Succession Act and seeks the following orders –

**1) (Spent)**

**2) That the court do issue grant of letters of administration *ad litem* to JONES MUKITI KILONZO and JOSHUA NDAKA KILONZO limited to filing a suit before the Environment and Land Court for cancellation of titles resulting from the illegal subdivision of MAKUENI/UNOA/256 which initially belonged to JOSEPH KILONZO MUSYOKA the deceased in this estate.**

**3) That there be a stay of proceedings in this succession cause pending the hearing and determination of the intended suit before the Environment and Land Court.**

**4) That costs of the application be borne by the respondent.**

2. The application has grounds on the face of the Summons that the land belonged to the deceased but the petitioner/respondent secretly petitioned for grant of letters of administration *ad litem* and obtained confirmed grant but upon application by the applicants on 11/10/2018 Justice Kariuki directed parties to file fresh mode of distribution. That though the respondent filed a fresh mode of distribution, the subject land in dispute not being in the name of the deceased herein, the applicants intend to challenge the existing titles in the Environment and Land Court to revert the land to the estate, thus the filing of the present application.

3. The application was filed with a supporting affidavit sworn on 22<sup>nd</sup> June 2020 by one of the applicants, in which it was deponed that the respondent initially omitted to disclose the names of the applicants in the application for letters of administration, and that therefore the confirmed grant of letters of administration was revoked by the court in a ruling delivered on 11/10/2018, thus the reason for the present application and the prayers sought herein.

4. I do not see any replying affidavit or other response filed to oppose the application. However, the application was canvassed between the applicants and respondent through filing of written submissions. I note also that, though at one point I was asked to allow some interested parties to participate and I gave an opportunity for that, none of the alleged interested parties file any documents, and infact their advocate Andrew Makundi & company advocates on 13/6/2021 filed a notice to withdraw from acting.

5. On their part, the applicants filed their written submissions in September 2020 through counsel M/s B.M Mungata & company, and the petitioner filed their submissions in February 2021 through counsel M/s Paul Kisongoa & company advocates. I have perused and considered the submissions filed on both sides.

6. I note that the petitioner's counsel emphasized technicalities in the submissions, that is that parcel Makueni/Unoa/256 was already

distributed and transferred to purchasers and beneficiaries who had already sold the same, and further that this application did not comply with the legal requirements under Rule 36 form 47 of the Law of Succession Act (cap.160), and was thus fatally defective.

7. It is not in dispute that the subject land initially belonged to the deceased. It is not in dispute that the subject land Makueni/Unoa/256 was, under a confirmed grant issued on 6/10/2000, distributed by the court wholly to Pius M. Kilonzo the petitioner/respondent.

8. It is also not in dispute that by a ruling of this court delivered on 4<sup>th</sup> October 2018, the court found that there were two houses in the polygamous family of the deceased, and ordered that a fresh grant be issued to two beneficiaries one from each of the two houses, and that fresh mode of distribution of assets be proposed to court.

9. The applicants now claim that the mode of distribution proposed by the petitioner does not contain the subject land asset, and thus they want the land asset to be part of the estate of the deceased before the matter proceeds further, thus the reason for filing the application herein for issuance of letters of administration ad litem to pursue the matter in the Environment and Land Court.

10. Indeed, this court has powers to issue letters of administration ad litem. In my view however, such orders can only be issued when there are no substantive orders issued for appointment of administrators in an estate. In my view the court cannot grant of letters of administration ad litem parallel to issuing main letters of administration as such an act will merely cause confusion in an existing administration cause.

11. In addition, the court herein has already issued orders for appointment of new administrators in the ruling delivered on 4<sup>th</sup> October 2018 and directed under paragraph 41(2) as follows – **41(2.) The letters of administration shall be granted to two beneficiaries nominated by the two houses to represent the house they come from within 21 days.**

12. Having not been told that the above court order has been complied with or vacated, in my view, the applicants herein can only move this court for enforcement of the above court orders and propose themselves to be appointed administrators, and once the court appoints them as administrators, then they will be at liberty to sue whoever they want to sue in respect of assets of the estate, and at that time, apply for any appropriate stay or other orders either in that suit or in the present succession cause. They cannot come to court to be appointed administrators ad litem.

13. I thus decline to grant the prayers sought in the application, and order that this matter will be mentioned on a date which I will hereby fix, for this court to appoint the administrators from each of the two of the houses and thereafter, any of them will be at liberty to take or commence proceedings in relation to any matter that is relevant to this succession cause and the assets thereto.

14. Costs will be in the cause.

**DELIVERED, SIGNED & DATED THIS 4TH DAY OF APRIL, 2022, IN OPEN COURT AT MAKUENI.**

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**GEORGE DULU**

**JUDGE**