



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO. 481 OF 2015**

**IN THE MATTER OF THE ESTATE OF KILONZO MUASA KISELI alias KILONZO MUASA  
(DECEASED)**

**WAMBUA KILONZO MUASA.....PETITIONER**

**VERSUS**

**PAUL NGIMA NDONYE.....RESPONDENT**

**RULING**

**The Application**

The Petitioner herein petitioned for letters of administration with respect to the estate of the deceased Kilonzo Muasa Kiseli alias Kilonzo Muasa (hereinafter referred to as “the Deceased”), jointly with one Joseph Muasa Kilonzo. He subsequently filed an application by way of summons dated 10<sup>th</sup> May 2016 pursuant to sections 45(1) and 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. He is seeking orders in the said summons that the Respondent, namely Paul Ngima Ndongye, be restrained from intermeddling and/or interfering with Title Number MWALA/MANGO /I 190 which is part of the deceased's estate hereof.

The Petitioner in his supporting affidavit sworn on 10th May 2016 and filed in court on the same date, averred that the deceased is registered as one of the absolute proprietors of title number MWALA/MANGO /190 which forms part of the deceased’s estate, and he annexed a copy of the certificate of official search for the said parcel of land. Further, that the Respondent who is not a member of the deceased’s family has unlawfully entered into the said parcel of land, and has started committing acts of wanton destruction thereon by cultivating thereon and cutting down trees. The Petitioner contended that his crops including mango plants have been destroyed by the Respondent, and that the Respondents’ acts are in violation of the provisions of the Law of Succession Act, and that he should be restrained from intermeddling with the estate of the deceased.

The Petitioner’s Advocates, L.N Ngolya and Company Advocates, reiterated the above facts in submissions filed in Court dated 2<sup>nd</sup> June 2016, and submitted that since the Court has inherent powers under section 47 of the Law of Succession Act to grant preservation orders and is already seized of the subject matter of the deceased’s estate, it should grant the orders sought to protect the estate from interference by the Respondent.

**The Response**

The Respondent thereupon filed a replying affidavit sworn on 24th May 2016 in opposition to the

application. In addition, one Kasui Muasya also filed a replying affidavit he swore on 6th June 2016 in response to the summons. The Respondent stated that he purchased the suit property on the 4th January 2016 from one Kasyui Muasya, in the presence of 20 witnesses comprised of his family members as well as the Respondent's family members. He annexed a copy of the sale agreement.

Further, that said Kasyui Muasya is a beneficiary of the estate of the deceased and entitled to the subject matter herein together with all its proceeds, a fact that is well known to the Petitioner. The Respondent further averred that he has already filed a suit at the Environment and Land Court in Nairobi seeking for transfer and /or compensation in regards to the aforesaid transaction, and he annexed copies of the pleadings filed in the said suit.

Kasyui Muasya on his part averred that the suit property is co-owned by Kithuma Muasa, Kilonzo Muasa, Muoki Muasa, and himself, and that each one of the beneficiaries has a quarter share of the suit property which is 13.4 Ha. He annexed a copy of the official search of the said property. Further, that he lawfully and willingly sold and disposed of his quarter share of the 13.4 Ha to the Respondent herein on 4th January 2016.

### **The Issues and Determination**

I have read and carefully considered the pleadings and submissions made herein. The issue to be decided is whether the orders for preservation of the estate sought herein are available to the Petitioner. The sections of the law relied on by the Petitioner is firstly, section 47 of the Law of Succession Act, which gives this court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders therein as may meet the ends of justice. The Petitioner wants this Court using this law to stop the Respondents from intermeddling with the estate of the deceased.

I note in this regard that section 45 of the Law of Succession Act which was also relied upon by the Petitioner is the operative law when seeking to stop intermeddling with a deceased's estate and provides that other than instances expressly authorized by the Act, or by any other written law, or by a grant of representation under the Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

In the instant case, the Respondent has averred that he was sold the subject land by one of the co-owners of the land, which co-owner Kasyui Muasya has filed an affidavit confirming this fact. In addition the Respondent provided a copy of the sale agreement.

Both the Petitioner and Respondent annexed copies of the certificate of official search with respect to MWALA/MANGO /190, which shows that indeed the said parcel of land is registered in the name of four proprietors in common in equal shares, including the deceased, and Kasyui Muasya. Therefore it is the legal position that it is not the entire parcel of land that is available for inheritance by the beneficiaries of the deceased, and the Respondent has a beneficial interest in the said property as a result of the purchase of a portion thereof from one of the common proprietors. The Respondent is thus not an intermeddler.

Arising from the foregoing, I decline to grant the orders sought in the Petitioner's Summons dated 10<sup>th</sup> May 2016, and the same is dismissed with costs to the Respondent.

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 19<sup>th</sup> day of September 2016.

**P. NYAMWEYA**

**JUDGE**