



REPUBLIC OF KENYA



KENYA LAW
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Kilonzo v Katiku (Civil Case 460 of 1998) [2025] KEHC 1447 (KLR) (21 January 2025) (Ruling)

Neutral citation: [2025] KEHC 1447 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS**

CIVIL CASE 460 OF 1998

FR OLEL, J

JANUARY 21, 2025

BETWEEN

JOYCE MUKULU KILONZO PLAINTIFF

AND

BERNARD KILONZO KATIKU DEFENDANT

RULING

A. Introduction

1. The Application for determination, before this court is a Notice of Motion application dated 016.06.2023 brought pursuant to the provisions of Article 159 of the *constitution* of Kenya 2010, Section 1A, 1B, 3A of the *Civil Procedure Act*, Order 51 (1) of the Civil Procedure Rules, Section 73, 78 of the lands Registration Act and all other enabling provisions of law and seeks for the following orders;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That the Honourable court be pleased to suspend and/or lift the cautions and/or restrictions registered against all those properties known as Machakos Town Block 11/429, Machakos/Kiandani/2312, Machakos/Kiandani/2128, Machakos/Kiandani/344 and Masii/Muthini/219.
 - e. That this Honourable court be pleased to enter judgment in the proceedings herein in terms of the judgment dated and delivered on 17th April 2023, in Machakos High Court Succession cause No 391 of 2015. In the Matter of the Estate of Bernard Kilonzo Katiku in so far as the same touches on the interests of the applicant herein with regard to Machakos Town block 11/429, Machakos/Kiandani/2312, Machakos/Kiandani/2128, Machakos/Kiandani/344 and Masii/Muthini/219



- f. That upon granting prayers (4) and (5) hereinabove, this Honorable court be pleased to mark the file as closed.
- g. That costs of this Application be provided for.

B. The Pleadings

2. The Application is supported by the grounds stated on the face of the said Application and the Supporting Affidavit/further of one Joyce Mukulu Kilonzo dated 16th June 2023 and 27.09.2023, where she deponed that the cause of action herein related to land parcel numbers Machakos Town block 11/429, Machakos/Kiandani/2312, Machakos/Kiandani/2128, Machakos/Kiandani/344 and Masii/Muthini/219, (hereinafter referred to as the suit property) and that she had instituted this suit with a view of stopping the defendant herein and her deceased husband from selling and/or disposing off the suit property as the same were family/matrimonial property.
3. To protect her interest pending determination of this matter, she had lodged restrictions/cautions with regard to all the suit properties, but during the pendency of this suit, her husband unfortunately met his demise and the suit properties in contention became the subject of distribution of his estate under Machakos High court Succession cause No 391 of 2015- In the Matter of the Estate of Bernard Kilonzo Katiku, which cause had been heard a the estate distributed as per the judgment issued in the said cause dated 28th April 2023 and subsequent certificate of confirmation of grant issued dated 16th May 2023.
4. She further averred that she was under obligation to distribute the Estate within a period of six (6) months from the date of confirmation of the grant and therefore believed that it was in the interest of justice that the caution/restriction be lifted to enable her complete the distribution process. She also urged the court to adopt the judgment entered in the succession cause and have this file marked as closed.
5. This application was opposed by the defendant/respondent through her Replying affidavit and Supplementary Affidavit dated 19.09.2023 and 06.11.2023. she deponed that the deceased herein was her husband and was the co administrator of the estate together with the plaintiff/Applicant. Though the succession cause had been finalized, she had filed an application dated 12.10.2023 to review certain aspects of the said judgment, which Application was yet to be determined and therefore it would be imprudent to grant the orders sought herein. She also confirmed that upon demise of their husband, she had applied to be substituted in these proceedings and her Application had bene allowed by the court. She therefore had locus to respond to the issues raised in the Application

C. Analysis & Determination

10. I have carefully considered the Application, its Supporting and further Affidavit, the Respondent's Replying Affidavit and supplementary Affidavit. The only issue which arise for determination is whether this court should lift the caution/ restriction placed on the suit parcels by the Applicant and further whether to enter judgment in these proceedings in terms of the judgment delivered on 17th April 2023 in Machakos High court Succession cause No 391 of 2015, In the Matter of the Estate of Bernard Kilonzo Katiku.
10. Based on the pleadings filed, especially considering the prayers sought in the Amended plaint filed herein, it is not in doubt that the dispute herein relates to the distribution of matrimonial property as between the plaintiff and her late husband, Bernard Kilonzo Katiku (deceased). It is also not in dispute that all the suit properties were registered under the deceased name and when he passed on, both parties herein were appointed joint administrators of his estate, and issues regarding the distribution of the



deceased estate were determined in Machakos High court Succession cause No 391 of 2015, In the Matter of the Estate of Bernard Kilonzo Katiku.

11. The court's understanding of this matter based on the pleadings filed herein, is that the issues raised in this suit have been overtaken by events and it is no longer tenable to sustain it, as all the properties in dispute were registered under the names of the deceased, and the only forum where they can be distributed is the Succession cause already filed and determined to wit Machakos High court Succession cause No 391 of 2015, In the Matter of the Estate of Bernard Kilonzo Katiku.
10. The "oxygen principles" provide that there should be efficient disposal of the business of the Court, efficient use of the available judicial and administrative resources, and timely disposal of the proceedings, at a cost affordable by the respective parties. It is no longer tenable to sustain this suit or any orders made herein as the only way to change/transfer ownership of the suit properties is through transfer by transmission based on the distribution model confirmed by the succession court. The parties are so advised.

Disposition

10. Considering all relevant factors, I do find that the Application dated June 16, 2023 is partially merited and do order as follows;
 - a. That the caution/ restriction place on Machakos Town block 11/429, Machakos/Kiandani/2312, Machakos/Kiandani/2128, Machakos/Kiandani/344 and Masii/Muthini/219 be and are hereby lifted.
 - b. This suit is marked as withdrawn with no orders as to costs since the cause of Action herein has been overtaken by events.
 - (c) The respondent is at liberty to move the court in Machakos High Court Succession Cause No 391 of 2015, In the Matter of the Estate of Bernard Kilonzo Katiku, to protect her interest in the suit property as she deems fit.
10. It is so ordered.

READ, SIGNED AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 21ST DAY OF JANUARY, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 21ST DAY OF JANUARY, 2025.

In the presence of:-

No appearance for Plaintiff

No appearance for Defendant

I Jabo Court Assistant

