



**Kasyoka & 4 others v Mueni (Civil Appeal E103 of 2025)
[2025] KEHC 13827 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E103 OF 2025
EN MAINA, J
SEPTEMBER 25, 2025**

BETWEEN

**ZIPPORAH KASIVA KASYOKA 1ST APPELLANT
STEPHEN KALULUI KASYOKA 2ND APPELLANT
EUNICE WANZA KASYOKA 3RD APPELLANT
JACKSON MUTUKU KASYOKA 4TH APPELLANT
MUTIE KASYOKA 5TH APPELLANT**

AND

ANITA LEONIDA MUENI RESPONDENT

RULING

1. This ruling relates to the Applicant’s Notice of Motion dated 28th April 2025 which seeks that the following orders do issue pending the hearing and determination of this appeal that;
 - a. A preservative order restraining the Respondent either by herself and or by her agents or servants, and any other person acting on her behalf, including the District Surveyor, Machakos and the Land Registrar, Machakos and all officers under them, from intermeddling with the free property of Paul Kasyoka Kalului, deceased, namely Plot No Masinga/Kangode/2114 by entering and subdividing the same, excising any portion of and or transferring and registering the same, and issuing a title deed thereof to respondent in implementation of the ruling and orders of 17/4/2025 in Kithimani MC SUCC. MISC. NO E012 of 2024
 - b. A preservation order restraining the Respondent either by herself and or by her agents or servants from any interference, or intermeddling with the estate and free property of Paul Kasyoka Kalului, the deceased in the said citation cause, namely plot no Masinga/Kangode/2114 of which no grant of representation has issued, by restraining her from taking,



entering, taking possession, sub dividing, alienating, transferring or in any other manner undertaking any subdivisions or developments thereon.

- c). There be a stay of execution and/or implementation of the lower court ruling/orders of 17/4/2025.
 - d. A conservatory order do issue staying any further proceedings in Kithimani MC SUCC. MISC. NO E012 of 2024 and in particular staying any applications pending or before the said court or other proceedings intended to carry into execution or implementation the orders of 17/4/2025 by the subdivision, excision or transfer of any portion out of plot no Masinga/Kadonge/2114.
 - e. Any other order that may be just and expedient in the best interest of the protection and preservation of the interests of the estate of the deceased Paul Kasyoka Kalului , his beneficiaries , and as shall prevent abuse of the process of the court.
 - f. That the costs of this application be provided for.
2. The application was opposed through a replying affidavit sworn on 29th August 2025, by Anita Leonida Mueni, the Respondent, where she deposes that the ruling of the court below delivered on 29th August 2024, remains in force as the same has never been challenged; that the ruling directed that a succession cause be filed strictly within 45 days; that 45 days after the said ruling, an application dated 29th January 2025 and the court delivered a ruling on the same on 17th April 2025. She denied intermeddling with the estate and contended that she was complying with the court order and that the court below was left with no alternative but to proceed as it did in view of the fact that the party with the documents pertaining to the estate had refused to file the petition; that to-date no succession cause has been filed.
 3. In a supplementary affidavit sworn on 29th May 2025, the 1st Applicant deponed that weighty and contested matters calling for draconian orders as to the distribution of the estate or the respective shares of competing and hostile interests and claims of different beneficiaries must be left to a disputation process in a substantive succession cause under the *Law of Succession Act*, or a suit at the Environment and Land Court, including dealings or transactions like disposal, transfer, or subdivision thereof; that the effect of the application dated 29th January 2025 and the orders issued amounted to intermeddling with the free property of their deceased father in the absence of a grant. She stated that her mother had filed a succession cause.
 4. The 1st Appellant/ Applicant also filed a further supplementary affidavit dated 10th June 2025.
Learned Counsel for the parties agreed to canvass the application by way of written submissions. The submissions were duly received.
 5. The Applicants submitted that the impugned ruling left no room for recourse to the same court in the event that a succession cause was not filed or room for complaint for none compliance as it left it open for anyone to file the cause after the 45 days, with no penal consequences against any party. Counsel stated that in the absence of a confirmed grant, the lower court's orders are without jurisdiction, invalid, null and void for being contrary to express statutory provisions and they amount to unlawful court induced, encouraged and facilitated criminal intermeddling with the free property of the deceased Paul Kasyoka Kalului. That even the Respondent, accepted and admitted in her written submissions, that a citation is not the proper forum for seeking orders in contested and weighty matters, like contested interests or shares of alleged beneficiaries, and abandoned her claim to the alleged gift inter-vivos as she made no submissions thereon.



6. Counsel for the Applicants relied on the cases of *Morris Mwiti Mburungu vs Dennis Kimanthi M'Mburungu* [2016] eKLR, *Macfoy Vs United Africa Co. Ltd* [1961] 3 ALL E. R 1169, *Bhaijee & another v Nondi & another (Civil Appeal 139 of 2019)* [2022] KECA 119 (KLR), *Suleiman Said Shabhal v Independent Electoral & Boundaries Commission & 3 others* [2014] Eklr, *Estate of Ndotu Kyoyo- Machakos High Court Succession Cause NO. 66 of 2013*, *Philip Kiptoo Maiyo & another v Teresia Chebichii Ruto and The Land Registrar, Uasin Gishu County, High Court Succession Cause No. E150 of 2023-Eldoret*, [20241 KEHC (9227 [KLR].
7. Counsel asserted that the import of the orders of 17th April 2025, if not set aside, is that, they promote the intermeddling with the estate of the deceased contrary to law. Counsel submitted that this court has the power to serve the ends of justice and for the preservation of estates of deceased persons from intermeddling, even that sanctioned by unlawful lower court orders. In support of this submission, reference was made to the case of *Jackson Bett & 11 others v Gidion Kibitok & others*, High Court of Kenya, Eldoret, Succession Cause No. 53 of 2020
8. For the Respondent, it was submitted that the law of succession equally provides the hierarchy of persons who can apply for administration of the estate of a deceased person and it was against the persons in that hierarchy that the citation was made. Counsel for the Respondent submitted that the Respondent is a daughter in law of the deceased and that upon citing the Applicants and serving them, they failed to comply with the court order and hence there is no need to disturb the orders of the learned magistrate. The court was urged to order the Appellants to take out letters of administration of the estate of Paul Kasyoka Kalului forthwith.

Analysis and determination

9. This court has considered the application, the grounds on its face, the affidavits, in support and in opposition, the submissions of the parties and the law and clearly what the Applicants call upon this court to determine is the validity of the orders of the learned magistrate; whether the same amount to allowing the Respondent to intermeddle with the estate of the deceased and whether therefore they should be set aside. In my understanding, setting aside the orders will preserve the estate.
10. The impugned orders were issued pursuant to a citation which the Respondent brought against the other beneficiaries of her father in laws estate who she considered to be in priority to herself. When they failed to petition for the grant as directed by the court, she applied for an injunction to restrain them from evicting her from the property and the court allowed the application. In my view the Respondents having failed to comply with the order of the learned magistrate, and the Applicant apprehending a violation of her right to a share of the estate, she was entitled to protection by the court. I do not agree with the submission of Counsel for the Respondent, that the learned magistrate was condoning intermeddling with the estate. Be that as it may the estate of the deceased must be preserved so as to protect the interests of the beneficiaries and so that at the end of the succession cause, there is property left to distribute. I find that an order for the preservation of the estate property is therefore necessary.
11. For that reason, I am inclined to issue a temporary injunction restraining the Respondent either by herself and or by her agents or servants , and any other person acting on her behalf, including the District Surveyor, Machakos and the Land Registrar ,Machakos and all officers under them, from intermeddling with the free property of Paul Kasyoka Kalului, deceased, namely Plot No Masinga/Kangode/2114 by entering and subdividing the same, excising any portion of and or transferring and registering the same, and issuing a title deed thereof to Respondent in implementation of the ruling and orders of 17/4/2025 in Kithimani MC SUCC. MISC. NO E012 of 2024 pending the hearing and determination of this appeal.



12. The above order is however not to say that the Respondents are at liberty to evict the Applicant from the material property should that be the place of her abode.
13. As regards the appeal this court directs that the Record of Appeal shall be filed and served within 60 days.
14. This being a family matter, each party shall bear their own costs.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 25TH DAY OF SEPTEMBER 2025.

E N MAINA

JUDGE

IN PRESENCE OF:

Mr. Mbithi, Advocate for the Appellants/Applicants.

Mr. Nyamweya Advocate for the Respondent.

Geoffrey Court Assistant/Interpreter.

