

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL SUIT NO. 58 OF 2009**

**SYOMBUA MULE MUTAVA Alias**

**GLADYS SYOMBUA KILONZO**

**SALOME SYOMBUA MULE .....APPLICANT/DECREE  
HOLDER**

**VERSUS**

**THE CHAIRMAN, KATELEMBO ATHIANI MUVUTI  
FARMING & RANCHING COOPERATIVE SOCIETY  
LIMITED..... 1<sup>ST</sup>  
RESPONDENT**

**CHARLES A.K MULELA Alias**

**CHARLES ANDREW KILONZO MULELA ..... 2<sup>ND</sup>  
RESPONDENT**

**AND**

**REGISTRAR OF LANDS**

**MACHAKOS LANDS REGISTRY..... INTERESTED  
PARTY**

**RULING**

1. Before this court for determination is an application dated 6th May 2024 filed by the Decree Holder seeking;
  - i. Spent.
  - ii. Spent.

- iii. a vesting order directing the Deputy Registrar of the court to execute all relevant transfer document relating to all those properties known as Plot Nos. 3445, 3702 and 653 situated in Machakos town in favour of the applicant herein Gladys Syombua Kilonzo including but not limited to the original title document, Lands Consent to transfer and valid clearance certificates for rates and rents and vacant possession of the property.
- iv. Subject to Order Number 3 above, the court be pleased to issue an order directing the Registrar of Lands, Machakos Lands Registry to register all those properties known as Plot Nos. 3445, 3702 and 653 situated in Machakos Town in favor of the Applicant herein Gladys Syombua Kilonzo subject to payment of the relevant statutory dues.
- v. Subject to Order Number 3 above, the court be pleased to issue an order directing the Registrar of Lands, Machakos Lands Registry to issue the Applicant herein Gladys Syombua Kilonzo with the original certificates of Title for Plot Nos. 3445, 3702 and 653 conferring the said Applicant with valid title.
- vi. The Registrar of Lands, Machakos Lands Registry be and is hereby directed to cancel all other titles over Plot Nos. 3445, 3702 and 653 in compliance with the judgment of the Court of Appeal in Nairobi Civil Appeal

2 of 2015; Syombua Mule Mutava alias Gladys Syombua Kilonzo alias Salome Syombua Mule versus Charles A.K Mulela alias Charles Andrew Kilonzo Mulela.

vii. Costs of this application be provided for.

2. The application is premised on the grounds set out on its face and supported by the affidavit sworn by the Decree Holder. The crux of the application is that on 28<sup>th</sup> April 2017, the Court of Appeal issued a judgment in favour of the Applicant/Decree Holder to the effect that Plot Nos. 3445, 3702 and 653 held at Katelembo Athiani Muvuti Farming and Ranching Cooperative Society followed by an order on 11<sup>th</sup> December 2018. She averred that in an attempt to execute the order, the decree holder has on several occasions written to the Respondents to supply her with the ownership records, , show her the plots, demarcate boundaries and initiate transfers, she has not received possession or titles. She further states that on 23<sup>rd</sup> August 2023, upon visiting the 1<sup>st</sup> Respondent's offices in Machakos, she was directed to pay Kshs 70, 000/= for processing the Titles to Plots Nos. 3702 and 653. Despite making payments and receiving a receipt, she has not been issued with the titles to the said properties nor given any explanation. That it has now been 7 years since the judgment, yet she remains without title or possession. Further, she avers that save for outright and utter contempt

for the judgment and orders, no plausible reasons have been provided or exist for the Respondents' failure to give effect to the judgment of the court.

3. In opposition to the application, the 2<sup>nd</sup> Respondent filed a Replying Affidavit sworn on 21<sup>st</sup> March 2025. He deposes that the application is premature and lacks merit and that the grounds set out in the application do not warrant the grant of orders sought. He argues that the Court of Appeal only partially allowed the appeal. That the court of appeal framed three issues for determination that is, whether there was a valid marriage between himself and the decree holder, whether either party could claim ownership of property solely owned by the other and whether there was any joint business venture between the parties. He contends that the Court of Appeal answered all the foregoing questions in the negative but only granted the order for a permanent injunction to restrain him or any of his agents from entering upon and or evicting the decree holder from her home on Plot Nos 3702 and 653 or any other plot held in her name in Katelembo Athiani Muvuti Farmers Cooperative Society and a court order issued to that effect. He stated that it is not true that the Court of Appeal declared ownership of the plot numbers 3445, 3702 and 653 as there was no issue of ownership of the said property raised or adjudicated upon either in the High Court or the Court of Appeal and that the court held that neither party

can claim ownership of the property of another having found that there was no valid marriage between the two. He avers that once an injunction was issued, no further proceedings are required to give effect to it and that there are other legal avenues in law where there is breach of such an order and that the current application is certainly not one of the ways.

4. The 2<sup>nd</sup> respondent further avers that Plot number 653 is in the applicant's name and possession and that she even developed it. He contends that Plot number 3445 was never mentioned in the order issued on 11<sup>th</sup> December 2018, and remains his property. That he has always been in ownership of plot number 3445 and that therefore the applicant cannot claim what does not belong to her. Regarding Plot number 3702, he states that it was sold to Caleb Mutiso Mule on 20<sup>th</sup> June 2006 prior to the dispute, and that Caleb is the current registered owner. He argues that the 1<sup>st</sup> Respondent, the Chairman Katelembo Athiani Muputi Farming & Ranching Cooperative Society and Registrar of Lands and the purported Interested Party, Machakos Lands Registry are strangers to the case and that the applicant cannot introduce them as parties through this application. He avers further that the dispute both at the High Court and the Court of Appeal is between himself and the applicant/deed holder only. He urges the court to dismiss the application.

5. In response, the Applicant/deed holder filed a supplementary affidavit sworn on 4<sup>th</sup> April 2025. She asserts that the 2<sup>nd</sup> Respondent's Replying Affidavit is riddled with deliberate misinformation intended to mislead the Court. She maintains that the Court of Appeal judgment CoACA No. 2 of 2015: Syombua Mule Mutava alias Gladys Syombua Kilonzo alias Salome Syombua Mule v Charles A.K. Mulela alias Charles Andrew Kilonzo Mulela expressly determined ownership of Plots No's 653,3445 and 3702 in her favour and that the 2<sup>nd</sup> respondent has never appealed or sought review of that finding. . The Court of Appeal expressly determined at paragraph 41 of the judgment, that the said plots belong to the Applicant and that the 2<sup>nd</sup> Respondent has no legal claim over them, a finding the 2<sup>nd</sup> Respondent has never appealed against or sought to review. The Applicant avers that the assertions by the 2<sup>nd</sup> Respondent that ownership of the said plots was never determined are disingenuous, misleading and amount to an attempt to re-litigate matters already settled by a final and binding judgment. She further depones that the permanent injunction issued by the Court of Appeal restraining the 2<sup>nd</sup> Respondent from dealing with Plots Nos. 3702, 653 and any other plots held in her name was an unequivocal affirmation of her ownership not a variation of it. According to the Applicant, the judgment must be read holistically and not

selectively, and the reasoning and findings in the body of the judgment cannot be divorced from the final orders.

6. She avers that despite the clear declaration that Plot No. 3445 belongs to her, the 2<sup>nd</sup> Respondent has remained in possession of the same, illustrating the continued frustration she faces in obtaining possession and title to her properties. She contends that any challenge to the Court of Appeal's dispositive findings could only be made through an appeal or review, none of which was pursued by the 2<sup>nd</sup> Respondent, rendering his current claims improper and unlawful. The Applicant further states that letters annexed by the 2<sup>nd</sup> Respondent from the 1<sup>st</sup> Respondent cannot override or defeat a binding Court of Appeal judgment, and cannot confer ownership of Plot No. 3445 upon the 2<sup>nd</sup> Respondent. She clarifies that she does not dispute the merits of the Court of Appeal judgment but merely seeks its enforcement, including issuance of title documents and nullification of any illegally issued titles over her property.
7. She deposes that although she is in possession of Plot No. 653, she has been persistently frustrated by the 1<sup>st</sup> Respondent in her attempts to obtain title documents despite fulfilling all requirements and paying the requisite fees. She further avers that the purported sale and transfer of Plot No. 3702 by the 2<sup>nd</sup> Respondent was illegal, done without authority and in blatant contravention of the Court of Appeal judgment, noting that at the time of the alleged

transfer there existed correspondence from the 1<sup>st</sup> Respondent confirming her ownership of the plot. The Applicant maintains that her ownership rights cannot be extinguished through an illegal transaction carried out without her consent and in defiance of a court order and questions the authenticity of the alleged transfer documents which were not produced by their makers or verified land officials.

8. She asserts that the 1<sup>st</sup> Respondent and the Interested Party are proper and necessary parties to these proceedings, being custodians of the ownership records and having been duly served and that their non-participation cannot defeat her right to enforce the judgment. Finally, the Applicant avers that the application is meritorious, has been brought within the statutory limitation period for enforcement of judgments and seeks to enable her to realise the fruits of a valid and binding Court of Appeal judgment by obtaining title and possession of Plots Nos. 3445, 3702 and 653 lawfully awarded to her.
9. The court directed that the present application be heard and canvassed by written submissions. The Applicant's/Decree holder's submissions is dated 28<sup>th</sup> April 2025 and the 2<sup>nd</sup> Respondents' submissions is dated 23<sup>rd</sup> May 2025. The 1<sup>st</sup> Respondent did not participate in the prosecution or defending the present application.

### **Applicant's Submissions**

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10. The Applicants commenced their submissions with an introduction outlining that the Application dated 6<sup>th</sup> May 2024 arises directly from, and seeks enforcement of the judgment of the Court of Appeal in Civil Appeal No. 2 of 2015, which conclusively determined ownership of Plots Nos. 3445, 3702 and 653 in favour of the Applicant/Decree Holder. Counsel noted that while the 2<sup>nd</sup> Respondent filed a Replying Affidavit opposing the Application, the Interested Party took a neutral position and the 1<sup>st</sup> Respondent, despite proper service, failed to participate in the proceedings, demonstrating continued reluctance to facilitate implementation of the judgment.

11. Counsel submitted that the Application is properly before the Court and is not time-barred, having been filed well within the statutory twelve-year limitation period for enforcement of judgments under Sections 4(4) and 7 of the Limitation of Actions Act. It was emphasized that the Court of Appeal judgment was delivered on 28<sup>th</sup> April 2017 while the present Application was filed approximately seven years later, thereby vesting this Court with jurisdiction to entertain and determine the matter.

12. On the enabling provisions of the law, Counsel argued that Section 4(4) of the Appellate Jurisdiction Act empowers the High Court to execute judgments of the Court of Appeal as if they were its own while Section 98 of the Civil Procedure Act, together with Orders 22 Rules 48, 67 and 68

of the Civil Procedure Rules, grants the Court authority to issue vesting orders and to direct the Deputy Registrar to execute transfer and conveyancing documents where a party refuses or neglects to comply with a decree. The Applicant's placed reliance on the case of **Re Estate of Wilfred Munene Ngumi (Deceased) [2020] KEHC 1873 (KLR)**, the case of **Muyesi versus Boit & Another (Environment and Land Appeal 8 of 2014) [2024] KEELC 32 (KLR) (18 January 2024) (Ruling)**, the case of **Onchonga & 84 others versus Ndungu [2023] KEELC 20955 (KLR)**, the case of **Esther Wanjiku Gitagia versus Mwichokaniria Women Group (Sued through their officials) Leah Wambui Kariithi (Chairlady) & 5 others [2019] KEELC 4584 (KLR)**, the case of **Mwadime versus Mwakio [2025] KEELC 895 (KLR)** where courts have exercised such powers to prevent abuse of process and to ensure that successful litigants enjoy the fruits of their judgments.

13. Counsel further submitted that the ownership of Plots Nos. 3445, 3702 and 653 is no longer a live issue, having been conclusively settled by the Court of Appeal at paragraph 41 of its judgment, which expressly declared the Applicant as the owner and held that the 2<sup>nd</sup> Respondent has no valid claim over the said properties. The judgment has never been appealed against, reviewed, or set aside, and remains final and binding on all parties. Any attempt by the

2<sup>nd</sup> Respondent to dispute ownership at this stage was described as misleading and an impermissible attempt to re-litigate settled issues.

14. With respect to the alleged transfer of Plot No. 3702 to a third party, Counsel submitted that the 2<sup>nd</sup> Respondent lacked any legal capacity to sell or transfer the property, having no proprietary interest in it, and that the purported transaction and resultant title are nullities under the *nemo dat quod non habet* principle. It was further argued that the alleged transfer was carried out in blatant disregard of the Court of Appeal judgment and a permanent injunction restraining the 2<sup>nd</sup> Respondent from dealing with the Applicant's properties. The Applicant's ownership was also corroborated by correspondence from the 1<sup>st</sup> Respondent confirming her proprietorship and by the acceptance of fees for processing her titles, conduct inconsistent with any claim that she was not the rightful owner.

15. Counsel emphasized that the decree and permanent injunction issued by the Court of Appeal cannot be read in isolation from the body of the judgment and that the injunction was a direct consequence and affirmation of the Applicant's ownership, intended to protect her possession and proprietary rights. The Respondents' argument that the absence of an express transfer order negates ownership was characterized as misleading and tantamount to an indirect appeal against the judgment.

16. In conclusion, counsel submitted that for over seven years the Applicant has been denied title and full enjoyment of her properties due to the deliberate inaction and obstruction by the Respondents, notwithstanding a clear and unchallenged Court of Appeal judgment in her favour. Counsel submitted that litigation must come to an end, that court orders are not issued in vain and that this Court should exercise its statutory powers to enforce the judgment by granting the orders sought, thereby enabling the Applicant to finally realize the fruits of her judgment and secure title to Plots Nos. 3445, 3702 and 653.

### **2<sup>nd</sup> Respondent's submissions**

17. The 2<sup>nd</sup> Respondent's counsel commenced the 2<sup>nd</sup> Respondent's submissions with an introduction outlining that the Notice of Motion dated 6<sup>th</sup> May 2024 seeks execution and/or enforcement of a decree arising from the Court of Appeal judgment in Nairobi Civil Appeal No. 2 of 2015. Counsel submitted that although the Application is framed as one for enforcement, it is in substance an impermissible attempt by the Applicant to litigate issues of ownership, registration and cancellation of title which were neither determined by, nor flow from the Court of Appeal decree.

18. Counsel traced the litigation history, noting that the dispute originated from a 2009 suit in which the Applicant claimed

matrimonial and proprietary interests arising from an alleged marriage and joint business venture. Both the trial court and the Court of Appeal found that no marriage existed and that there was no matrimonial property to be shared. The only relief granted by the Court of Appeal was a permanent injunction restraining the Respondent from interfering with the Applicant's possession of her home on Plots Nos. 3702 and 653, or any other plot held in her name at the Society.

19. Counsel identified three issues for determination that is, whether the Court of Appeal made any declaratory rights conferring ownership to the plaintiff/applicant; whether Section 98 of the Civil procedure Act is applicable in this case in the absence of an order directing the execution of instruments and whether the court can order the cancellation of title held by a third party in the circumstances of this case
20. On the first issue, counsel submitted that the Court of Appeal did not make and was never invited to make, any declaratory orders conferring ownership of Plots Nos. 3445, 3702 and 653 upon the Applicant. Counsel argued that the injunction issued was a protective remedy, not a declaration of proprietary rights, and that the Court merely proceeded on the Applicant's own pleadings that the plots were already registered in her name. Consequently, the Applicant cannot now seek registration or confirmation of

ownership through the present application. Any claim of ownership, it was argued, would require proof through proper proceedings before the Environment and Land Court, which has exclusive jurisdiction over such disputes. The 1<sup>st</sup> Respondent relied on the case of **Wainaina versus Kiguru & Another (Environment & Land Court) Case E023 of 2021 [2024]**.

21. On the applicability of Section 98 of the Civil Procedure Act, Counsel submitted that the provision is inapplicable as the decree sought to be enforced does not direct the Respondent to execute any conveyance, transfer, or other instrument. In the absence of a specific order requiring execution of documents and in the absence of any neglect or refusal to comply with such an order, the statutory threshold for invoking Section 98 has not been met. Accordingly, the prayer seeking authorization for the Deputy Registrar to execute transfer documents was said to be legally untenable.

22. With respect to the prayer seeking cancellation of titles, counsel contended that the Court of Appeal decree contains no order directing cancellation or rectification of the register. It was further submitted that Plot No. 3702 had been sold and transferred to a third party, Caleb Mutiso Mule, long before the dispute escalated, and that the third party holds a valid title deed which is protected under Sections 26 and 80 of the Land Registration Act. While

placing reliance on **Section 26 of the Land registration Act, Section 80 (2) of the Land Registration Act** and the case of **Republic versus County Land Registrar Kakamega and 3 others (2024) KEELC 1094 (KLR)**, the 2<sup>nd</sup> Respondent's submitted that any challenge to such title on grounds of fraud or illegality, Counsel argued, must be mounted through a substantive suit and cannot be determined through an interlocutory application for execution.

23. In conclusion, counsel submitted that this court, sitting as an executing court, is bound to enforce the decree strictly as issued and lacks jurisdiction to interpret the judgment afresh or to grant additional orders not contained in the decree. Since the decree issued by the Court of Appeal is purely injunctive in nature, the Applicant's prayers for vesting orders, execution of transfer documents and cancellation of titles are incompatible with the decree and must fail. The court was therefore urged to dismiss the Application with costs to the 2<sup>nd</sup> Respondent.

### **Analysis and Determination**

24. I have carefully considered the application herein and the affidavits by parties and it is my view that the issues for determination are;

- a) **Whether this Court has jurisdiction, sitting as an executing court, to interpret and give effect to the Judgment and Decree of the Court of Appeal.**
- b) **Whether, upon a proper construction of the Court of Appeal judgment, ownership of Plots Nos. 3445, 3702 and 653 was conclusively determined in favour of the Applicant.**
- c) **Whether the orders sought in the present application fall within permissible execution and enforcement of the Court of Appeal judgment.**

**Whether this Court has jurisdiction, sitting as an executing court, to interpret and give effect to the Judgment and Decree of the Court of Appeal.**

25. There is no dispute that the Judgment of the Court of Appeal dated 28<sup>th</sup> April 2017 is final, has not been appealed against, reviewed, or set aside and remains binding upon all the parties herein. Equally uncontested is the principle that an executing court cannot go behind, vary, or add to a decree. However, it is equally settled that an executing court must interpret a judgment holistically in order to give effect to it, and is not confined to the bare wording of the extracted decree divorced from the body and reasoning of the judgment.

26. Under Section 4(4) of the Appellate Jurisdiction Act which provides that; **“any judgment of the Court of Appeal**

**given in exercise of its jurisdiction under this Act may be executed and enforced as if it were a judgment of the High Court.”** read together with Section 98 of the Civil Procedure Act and Order 22 of the Civil Procedure Rules, the High Court is expressly empowered to execute judgments of the Court of Appeal as though they were its own, and to make such consequential orders as may be necessary to ensure compliance where a party refuses or neglects to act.

27. The Court therefore finds that it has both jurisdiction and duty to examine the Court of Appeal judgment in its entirety, ascertain its true import and ensure that it is not rendered nugatory by technical obstruction, administrative inaction or deliberate non-compliance.

**Whether ownership of Plots Nos. 3445, 3702 and 653 was conclusively determined by the Court of Appeal**

28. This issue lies at the heart of the present dispute.

29. The 2<sup>nd</sup> Respondent has argued that the Court of Appeal merely issued a protective injunction, without making any declaration of ownership and that the Applicant must institute separate proceedings before the Environment and Land Court to establish proprietary rights. The Applicant, on the other hand, contends that ownership was expressly and conclusively determined by the Court of Appeal, particularly at paragraph 41 of its judgment.

30. This court has carefully read the Court of Appeal judgment as a whole. It is evident that the appellate court was not merely issuing interim or precautionary orders. Rather, after exhaustively analyzing the evidence, it made definitive findings on ownership.

31. At paragraph 41 of the judgment the court of appeal held that;

*“According to the respondent's evidence in chief, the residential house where the parties were living before their differences erupted is standing on plot numbers 3444 in Katelembo Athiani Muvuti Farmers and Ranching Co-operative Society Limited. That plot (including any developments thereon), being owned by the respondent, the appellant has no lawful claim over it whatsoever. Likewise, plots numbers 3702, 3445 and 653 are owned by the appellant. The respondent has no valid claim over the same. That also applied to the appellant's shares at Kyanzavi Farmers Company Limited Universal Traders Sacco and any other property that is registered in the appellant's name.”*

32. At paragraph 41 of the judgment, the Court of Appeal stated;

in unequivocal terms that:

- i. Plot No. 3444 belongs to the Respondent and the Applicant has no lawful claim over it; and

ii. Plots Nos. 3702, 3445 and 653 are owned by the Applicant and the Respondent has no valid claim over them.

33. These findings were not *obiter dicta*. They formed part of the court's final determination after rejecting the existence of marriage, rejecting claims to partnership property and delineating with precision what property belonged to whom. The court of appeal went further to affirm that neither party could claim any proprietary interest in property registered in the name of the other. The permanent injunction issued thereafter was therefore not the source of ownership but rather a consequence of an already determined proprietary right, intended to protect the Applicant's possession and enjoyment of property that the court had expressly found to belong to her.

34. The argument by the 2<sup>nd</sup> Respondent that ownership was never determined because no declaratory order appears in the extracted decree is in this court's view, overly formalistic and legally untenable. A decree cannot be read in isolation from the judgment from which it flows. To do so would defeat the substance of appellate adjudication and elevate form over justice.

35. Accordingly, this court finds that ownership of Plots Nos. 3445, 3702 and 653 was conclusive, final and binding.

**Whether the orders sought are for proper execution and enforcement of the Court of Appeal judgment**

36. The remaining question is whether the reliefs sought in the present application fall within permissible execution, or whether they amount to granting new substantive orders.

37. The Applicant seeks, inter alia, facilitative orders to actualize the Court of Appeal judgment, including vesting and execution of documents where compliance has been frustrated by refusal to comply and execute documents accordingly. From the material before Court, it is evident that despite the clarity of the Court of Appeal judgment, the Applicant has been unable, for several years, to fully enjoy the fruits of that judgment. The continued resistance, administrative non-cooperation, and alleged dealings with the subject properties are inconsistent with both the letter and spirit of the appellate decision.

38. Section 98 of the Civil Procedure Act provides that;

**“98. Execution of instruments by order of court**

**Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or**

**instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”**

39. The above section of the law empowers this court, where a party neglects or refuses to execute a document necessary to give effect to a decree, to direct that such act be done by an officer of the Court. This provision is not confined to cases where a decree expressly orders execution of documents; it applies where such execution is necessary to give effect to rights already declared by a court of competent jurisdiction.

40. The Court is therefore persuaded that the orders sought by the Applicant are not an attempt to re-litigate ownership, nor to obtain fresh declarations, but are incidental, facilitative, and consequential orders aimed at enforcing a final appellate judgment.

41. To decline enforcement on the basis advanced by the 2<sup>nd</sup> Respondent would be to sanction perpetual defiance of court orders and to render the Court of Appeal judgment illusory.

42. Accordingly, I allow prayer iii, iv, v and vi of the Applicant's application dated 6<sup>th</sup> May 2024 with costs to the Applicant. Orders accordingly.

Dated, signed and delivered at Machakos this 19<sup>th</sup> day of February, 2026

**RHODA RUTTO**

**JUDGE**

**In the presence of;**

.....Applicant

.....Respondent

Selina Court Assistant

