



**In re Estate of the Late Tabia Kilonzo alias Tabia Kamene Kilonzo (Deceased)
(Succession Cause 760 of 2011) [2025] KEHC 4323 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 760 OF 2011**

MW MUIGAI, J

MARCH 28, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE TABIA
KILONZO ALIAS TABIA KAMENE KILONZO (DECEASED)**

IN THE MATTER OF

**KILONZO LAWRENCE MORRIS WAMBUA 1ST ADMINISTRATOR
ANITA MWIKALI KILONZO 2ND ADMINISTRATOR
GRACE MUENI KILONZO 3RD ADMINISTRATOR
ELIZABETH MBENGE KILONZO 4TH ADMINISTRATOR**

JUDGMENT

Pleadings

1. On 12th September 2011 letters of administration on the Estate of Tabia Kilonzo Kamene alias Kamene Kilonzo who died on 16/6/2010 as per the death certificate No. 16XX04 was filed by Peter Kilonzo Kavila.

By a consent of the following:-

1. Morris Wambua Kilonzo - 224XXX71
 2. Anita Mikali Kilonzo -239XXX67
 3. Grace Mueni Kilonzo- 257XXX80
 4. Elizabeth Mbenge Kilonzo - 292XXX93
2. Letters of administration to the estate of the said deceased was granted to Peter Kilonzo Kavila.
A letter from the area Chief Reuben Ndambuki of Ukia Location P.O. Box X Okia dated 30th August, 2011 was filed confirming that the deceased died on 16th June 2010 at Kenyatta National Hospital.



Death certificate C/No. 16XX04 TSC No. 20XX39.

Next of Kin – Administrator to her estate is her Husband namely - Peter Kilonzo Kavila – ID 44XXX78.

List of Children

1. Morris Wambua Kilonzo - Male 28 years - Son
2. Anita Mikali Kilonzo -Female 25 years – Daughter
3. Grace Mueni Kilonzo – Female 23 years – Daughter
4. Elizabeth Mbenge Kilonzo - Female 19 years – Daughter

Affidavit in Support of Petition For Letters of Administration Intestate

3. Peter Kilonzo Kavila of PO Box 9XX3-0XX00 Nairobi jointly and severally made oath and stated as follows.

1. The full name full name of the deceased to whose estate the proceedings herein relate Tabia Kilonzo (also known as Tabia Kamene Kilonzo and we are the petitioner(s) named in the petition herein upon which I/we have endorsed my/our name(s) at the time of swearing this affidavit
2. The deceased died on the 16/6/2010 at Kenyatta Hospital as Teacher. as appears from the attached certificate (or photocopy of the certificate) of death (or other document) marked CNO.16XX04 upon which I/we have written my/our name(s) at the time of swearing hereof.
3. The deceased was at the date of her death domiciled in of residence was al Kenya and her last known place of residence was at Tasia Nairobi.
4. The deceased died intestate and left the following surviving her:
 - (a) Peter Kilonzo Kavila - Husband
 - (b) Morris Wambua Kilonzo- Son 28 Years
 - (c) Aneta Mwikali Kilonzo - Daughter 25 Years
 - (d) Grace Mueini Kilonzo - Daughter 23 Years
 - (e) Elizabeth Mbenge Kilonzo daughter 19 years 5. I am related to the deceased by reason of being her husband

4. The following is a full inventory of all the assets and liabilities by the deceased at the date of her death (including such assets if any) as have arisen or become known since that date.

Assets:

- (a). LR. Nairobi/Block 97/1174/004
- (b) LR. Tassia-11-97/0704/2155
- (c) Kiboko Settlement Scheme No. 964
- (d) Death Gratuity with TSC.
- (e) Vehicle Registration No, KAS 2X6Y S



Total estimated value Sh.One Million liabilities:

- a. Francisah Mutindi Ndonge – Kiboko Settlement Scheme No. 964
5. The facts herein deposed to are known to me/us of my/our personal knowledge.
6. The Petition for letters of administration intestate was gazette vide Gazette Notice of 14th October 2011
7. Grant of Letters of Administration of Letters of Administration Intestate Was issued on 9th day of December 2011 to Peter Kilonzo Kavila of P.O. Box 9XX3-0XX00, signed on 17th February 2013 at the High Court Machakos.
8. Summons for Confirmation of Grant was filed on 3rd April 2012 and on 2/10/2012 the grant was confirmed.

Certificat of Confirmation of a Grant was issued as follows;

9. On 18th May, 2012 a written Grant of representation to the estate of the late Tabia Kilonzo ‘alias Tabia Kamene Kilonzo issued to Peter Kilonzo Kavila
10. On 18/5/2012 been confirmed by the Court pursuant to the provisions of section 71(1) and (3) of the *Law of Succession Act.*

Scheme

Grant Confirmed as Follows:

Name Description of Property Share of Heirs

Peter Kilonzo - L.R. Nairobi/Block/971174/004 - To be given to the Petitioner

LR. No. Tassia-11-97/074/2155 - To be given to the Petitioner Kiboko Settlement Scheme No. 964-
To be given to Francisah Mutindi Ndonge-the Buyer

Death Gratuity with T.S.C. - To be given to the Petitioner

Peter Kilonzo - Vehicle Registration No. KAS 2X6Y- To be given to the Petitioner

11. On 23/7/2024 the Applicants filed another Summons for Confirmation for issuance of grant now to the 4 children of the deceased Tabia Kilonzo alias Tabia Kamene Kilonzo Their late mother and the Administrator Peter Kilonzo their now late father for distribution of LR Nairobi/Block/971174/004 & LR Nairobi/Block/971174/2150 and attached current statements and searches issued by NSSF which confirmed the properties were intact and in the names of the deceased Tabia Kilonzo.

Court Proceedings

12. A Certificate of Urgency Application filed on 5/4/2023, this Court ordered ALL Administrators & Beneficiaries to be served and could file responses collectively or individually and Suit Property LR Tassia-11-97/1172/2150 shall be preserved as part of deceased’s estate under Section 45 LSA
13. On 26/7/2023, despite service of the said application and Affidavit of Service filed, there was no response explanation or circumstances for the Court to consider and this Court granted the application of 5/4/2023 as it was unopposed. Lawrence Kilonzo, Maurice Wambua, Anita Mwikali & Elizabeth Mbenge Kilonzo were appointed Administrators under Section 66 LSA.
14. On 9/11/2023, the Applicants filed application of 16/10/2023 and Respondents filed Replying Affidavit on 8/11/2023 and this Court was informed that 2 properties were included; NBI Block



97/11/74/004 & Tassia 2 97/074 and there was a Will of the deceased attached, these properties did not belong to deceased herein but their father, administrator of this estate of their late mother. The Succession of their late father was subject of Succession Cause E015 of 2021 at Makueni High Court. The Applicants were granted time to file Supplementary Affidavit.

15. On 7/12/2023, Grace Kilonzo Mueni & Elizabeth Mbenge Kilonzo sought to be joined in the proceedings, though named in the letter of the chief, they were omitted in the certificate of confirmation of grant. The Court allowed parties to pursue Court annexed mediation.
16. On 8/2/2024, Counsel Mr Gataka applied to withdraw the 2 Applications 16/10/2023 & 18/10/2023/18/12/2023 and remain only with Application of 1/2/2024. The Application was granted.
17. On 27/6/2024, Mr Nzavi informed Court that the Will of deceased was of Peter Lukas Kavila Administrator of the estate of Tabia Kilonzo his late wife the estate herein. NBI Block 97/11/74/004 & Tassia 2 97/074 were assets that formed part of deceased 's estate herein. Distribution was on paper but it was not actually done. The beneficiaries were not called to Court to give consent. The estate is intact and the Applicants were issued with rectified grant.
18. The Court upon application and consent by Counsel on record issued directions that the 4 children to be Administrators, new grant to issue and to file Summons for Confirmation and assets of estate not to be sold or transferred.
19. The Summons for Confirmation of Grant was filed on 23/7/2024 but not all beneficiaries agreed and consented and hence Protests were filed.

Protesters Written Submissions

20. The 1st, 2nd and 3rd Administrators filed Summons for confirmation of grant dated 27 July 2024 and filed on the same day. In their Affidavit in support of summons for confirmation of grant sworn on 23 July 2024, the Applicants averred that the estate of the deceased currently consists of the following assets:
 - i. LR Nairobi/Block/971174/004; and
 - ii. LR Nairobi/Block/971174/2150
21. Further, the Applicants in the same affidavit proposed that the two properties be shared equally amongst the four administrators.
22. The 4th Administrator, on 29 July 2024 filed an Affidavit of Protest sworn on the same day protesting against the confirmation of the grant as per the summons for confirmation of grant filed by the Applicants.
23. The 4th Administrator challenged the summons for confirmation of grant on inter alia on the following grounds: That the properties listed in the Affidavit in support of Summons for confirmation of Grant are not available for distribution. That the Grant of Letters of Administration of the estate herein was initially issued to Peter Lukas Kilonzo Kavila who is their late father and confirmed on 18 May 2012. That 31st March, 2021, their father died after a period of illness. That before their father died, he had completed administration of LR Nairobi/Block 971174/004 by applying for the nuance of title in his name and paying the requisite fees. That having made the application for issuance of title in his name and paying the requisite fees, their father completed administration in relation to the said property and any delay in issuance of the title was solely on the part of the NSSF. That their late father bought certain properties and registered them in the name of her late mother and even her brother,



the 1 applicant herein. That she was informed by their late father before his death that Parcel of Land known as L.R Tassia-11-97/1172/2150 is one of the properties that he bought but registered in the name of their late mother. That Parcel of Land known as LR Tassia-11-97/1172/2150 having been bought by their late father should form part of their father's estate and not their mother's estate. That at the time of his death, their late father left a will dated 8 December, 2016 wherein he appointed his wife Ruth Mukethe Muia and the Protestor as the executors. That their late father, in his will dated 8 December, 2016 clearly stated his wishes as regards distribution of LR Nairobi/Block/971174/004 and L.R Tassia-II-97/1172/2150. That following the death of their father, the Protestor and her co-executor filed succession proceedings vide Makueni High Court Succession Cause No. E015 of 2021 which is still pending determination. That the said properties, LR Nairobi/Block/971174/004 and L.R Tassia-II-97/1172/2150 should be distributed as per their late father's will under Makueni High Court Succession Cause No. E015 of 2021 and not this succession cause. On 29 July 2024, this court directed that the protest be heard.

1st, 2nd, and 3rd Administrators/Applicants written submissions on the summons dated 23rd July 2024 for confirmation of grant.

24. The deceased, Tabia Kilonzo alias Tabia Kamene Kilonzo passed on, on 16 June 2010. She was survived by her now late Husband, Peter Lukas Kilonzo Kavila and their children; who are the parties to these proceedings, Kilonzo Lawrence Morris Wambua, Anita Mwikali Kilonzo, Grace Mueni Kilonzo and Elizabeth Mbenge Kilonzo. The deceased's now late Husband Peter Lukas Kilonzo Kavila was issued with a grant of letters of administration in respect of her estate and the same were confirmed by this honourable court and ratified on 2nd October 2012.
25. The said now deceased Administrator disposed off the deceased's assets listed in the Petition leaving Nairobi/Block/97/1174/004, which remains intact and still in the name of the deceased. It has also emerged that the deceased had another property, Nairobi/Block/97/1172/2150 that was/has not been part of the proceedings herein. The parties herein who are the sole surviving beneficiaries of the estate of the deceased and currently the Administrators of her estate agreed to onboard it to these proceedings. Therefore the parties are in agreement that the available assets of the distribution are the two:-
 - (a) Nairobi/Block/97/1174/004
 - (b) Nairobi.Block/97/1172/2150
26. The Applicants attached current copies of record/searches issued that the properties are still in the name of the deceased.
27. The 1st, 2nd and 3rd Administrators we urge the court to find that:-
 - (a) The two (2) properties, Nairobi/Block/97/1172/004 and Nairobi/Block/97/1172/2150 form part of the estate of the deceased and are available for distribution to the Administrators/beneficiaries.
 - (b) The same ought to be distributed equally amongst the Administrators who are the sole beneficiaries of the estate of the deceased.
 - (c) In view of (a) and (b) above you allow the Summons for Confirmation of grant that is dated 23rd July 2024 as prayed and
 - (d) Disallow the 4th Administrators' protest since she did not establish on a balance of probabilities that the building standing on the deceased's property Nairobi/Block 97/1172/2150 was funded by her late father.



Analysis & Determination

28. This Court considered pleadings and evidence on record and written submissions.
29. PW1 Kilonzo Lawrence Maurice Wambua stated that they are 4 children of Tabitha Kilonzo (deceased herein) Administrator their father and Husband to deceased Peter Lukas Kilonzo Kavila. The children are himself, Anita Mwikali Kilonzo Grace Mueni Kilonzo & Elizabeth Mbenge Kilonzo.
30. The assets that comprised of deceased's estate herein included LR Nairobi Block 97/1174/004 & LR Tassia-1197/0704/2155 Kiboko Settlement Scheme No 964 Death Gratuity with TSC & Vehicle Reg KAS 256 Y.
31. The Certificate of Confirmation of Grant ALL properties were bequeathed to the deceased's Husband.
32. The witness confirmed the 2 contentious properties listed above are registered in deceased's mother's name as per the searches. The 2 Properties are available for distribution and have commercial properties that draw rent between Ksh 250,000/- -Ksh 400,000/- a month which is collected by the Administrator's 3rd Wife/widow & Elizabeth Mbenge Kilonzo the Administrator's youngest daughter. As per the Administrator's (their late father) Will properties are bequeathed to 3rd Wife widow Ruth and Elizabeth Mbenge Kilonzo. The 3 children of the Administrator (their father and 1st wife now deceased) Lawrence Kilonzo Anita Mwikali Kilonzo & Grace Mueni Kilonzo are disinherited from their mother's estate as all properties were distributed to their father now deceased had been bequeathed to their father alone and they did consent to and they were they involved in the Succession proceedings.
33. With respect, the Administrator of their mother's estate; Tabitha Kilonzo's estate their father who is now deceased took all properties the estate of their mother to himself only; he used funds from his deceased wife's gratuity developed properties and then in a Will bequeathed all properties to 3rd Wife and widow and the last born Elizabeth Mbenge Kilonzo only to the exclusion of the older children. The Applicants herein have been outrightly disinherited through the Protestor & 3rd Wife.
34. The Protestor, Elizabeth Mbenge Kilonzo claimed in her testimony that LR Tassia/2197/472/2150 was not included in the list of assets of her late mother's estate and it did not belong to her and was not registered in her name. She then in the same breath confirms the property was registered in her late mother's name but was only land but not developed at the time. Their father, Administrator of mother deceased's estate developed the land and put up 37 Units & 11 shops and left the property in the name of 3rd wife who with herself are Executors of deceased's Will. She explained that siblings did not attend Confirmation of grant as they were far from Machakos in different parts of the country, but they did sign written consents to confirmation of grant. She asserted that the funds derived their mother's estate were used by their father to pay for their education; built a house for Lawrence paid her school fees at Catholic University and Kenya School of Law and for Grace Mueni to do her Masters at University of Nairobi. The fact that monies were expended for their benefit is not enough ground to disinherit the children of deceased mother estate.
35. The Petition and Certificate of Confirmation of Grant listed LR Tassia-1197/0704/2155 where is this property in the name of deceased mother? The Administrator Father was awarded the whole estate of their mother including the above property which he may have sold or transferred to his name or the same property obtained new number but strangely though slightly different numbers the property name suggests it is in the same area. If their father held onto LR Tassia-1197/0704/2155 then LR Tassia/2197/472/2150 that PW1 stated and proved through copies of searches is in their mother's name is available to them as family of deceased herein. The developments subsequently erected were by



their late father and similarly are entitled to a share as developments were on their mother's property. Clearly, their mother worked as a teacher for years and contributed to matrimonial property contrary to the Protestor's assertion that only their father purchased and registered the property in the mother's name.

36. The Protestor, is one of the beneficiaries of deceased's mother's estate with her other siblings and at the same time reading the Will of the deceased father Administrator of their late mother's estate, the Protestor is an equal benefactor with deceased's 3rd wife/widow of father's estate as Co- executor and beneficiary. How fair just and equitable is it for 1 child of the deceased mother and deceased father to inherit from both estates to the exclusion of other children? The Protestor's claim amounts to unjust enrichment.

37. The Protest includes the Proposal that the property Nairobi /Block /97/1172/2150 registered in Tabitha Kilonzo's name be valued and the land which is in her name is paid for and allocated to her children while the Executors of their father's Will solely collect rent from 37 Units & 11 shops developed on the property by their father. This Court under Law of Succession Act deals only with beneficial interest and not proprietary interest. The valuation herein is for sale transfer or subdivision of the said land without the developments which is impractical. The property is available for distribution to the beneficiaries; children of Tabitha Kilonzo and Ruth Mukuthe Muia.

38. The Will of the deceased Peter Luka Kilonzo Kavila of 8th December 2016 attached to Protestor's List of Documents relates to distribution of his estate and is subject of Makueni High Court Succession Cause No E015 of 2021. The Will is not applicable and/or relevant herein as the estate of Tabia Kilonzo is intestate as shown by Petition of letters of Administration of the Estate of the deceased intestate.

The Will of the deceased Peter Kilonzo Kavila was declared valid in the Proceedings & Ruling of Makueni High Court and it is to distribute the estate of Kavila not Tabia.

39. Of importance at paragraph 10 of the Ruling the Court found;

On the other hand , if indeed these properties belong to the 1st wife – the Applicants have filed a Succession cause with respect to their mother's estate and can pursue the issue there. Nothing stops them from raising the issue in that matter and having the Court determine which estate the properties belong to.

40. Contrary to the Protestor's claim that LR Nairobi/Block/971174/004 and Nairobi /Block 97/1172/2150 to be distributed according to the Will of deceased and not in this Succession Cause, yet Makueni High Court allowed properties of the siblings mother 1stwife of the deceased who wrote the Will to be determined in this Succession Cause, I find the 2 suit properties above, part and parcel of Tabia Kilonzo's estate which was distributed to Peter Kilonzo Kavila her Husband and this fact was not disclosed but concealed From Makueni High Court. Secondly, 1st 2nd & Administrators annexed copies of current searches issued by NSSF for both properties referred to above and copies attached to the List of documents.

41. The rights, obligations and interests of Administrators and Beneficiaries are emphasized in Re Estate Of David Kyuli Kaindi (Deceased), Succession Cause No. 3403 of 2005, it was pointed out that:

“(18) The most potent remedy in the hands of a beneficiary is that of calling personal representatives to account. Beneficiaries who are not personal representatives have no control over the estate. The property of the deceased does not vest in them. They have no power over it; neither do they have any obligations with respect to it. When aggrieved by the manner the estate is being run their remedy



lies in seeking accounts from the personal representatives, and, in extreme cases of maladministration and misconduct by the personal representatives, in applying for revocation of the grant.

- (19) The obligation to account is tied up with the fact that personal representatives are also trustees. They are defined as such in the *Trustee Act*, Cap 167, Laws of Kenya, at Section 2. This is so as property belonging to another vests in them in their capacity as personal representatives, and they hold the same for the benefit of others – beneficiaries, heirs, dependents, survivors, creditors, among others. They stand in a fiduciary position in relation to the property and the beneficiaries. As they hold the property for the benefit of others or on behalf of others – they stand to account to the persons for whose benefit or on whose behalf they hold the property. It is an equitable duty and a statutory obligation.”

Disposition

42.

1. The estate of deceased Tabia Kilonzo (Tabitha Kilonzo shall be distributed by virtue of Section 38 & 71 of LSA and guided by Art 27 of the *Constitution* of Kenya 2010.
2. The rent paid monthly from the property Nairobi/Block/97/1172/2150 shall be shared by 3rd Wife/widow of Administrator of the estate of Tabia Kilonzo now deceased Ruth Mukuthe Muia and children of Tabitha Kilonzo, Lawrence Morris Kilonzo, Anita Mwikali Kilonzo Grace Mueni Kilonzo & Elizabeth Mbenge Kilonzo
3. Nairobi/Block/97/1172/004 shall be distributed amongst the 4 children of the deceased Tabitha Kilonzo and Peter Kilonzo only.
4. The Protest is dismissed and Summons for Confirmation amended as above outlined and approved
5. Being a family matter no orders as to Costs.

JUDGMENT DELIVERED DATED & SIGNED IN OPEN COURT ON 28/3/2025 IN MACHAKOS HIGH COURT VIRTUALLY/PHYSICALLY.

M.W.MUIGAI

JUDGE

