

KENYA / JUDGMENT

Kilongosi v Kilongosi & 4 others [2025] KEHC 10575 (KLR)

[2025] KEHC 10575 (KLR)

COURT

High Court

BEFORE

RC Rutto

CASE / FILE NUMBER

Civil Suit E025 of 2024

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

Kilongosi v Kilongosi & 4 others (Civil Suit E025 of 2024) [2025] KEHC 10575 (KLR) (17 July 2025)
(Ruling)

Neutral citation:

[2025] KEHC 10575 (KLR)

Republic of Kenya

In the High Court at Machakos

Civil Suit E025 of 2024

RC Rutto, J

July 17, 2025

Between

Magdalene Serah Kilongosi

Plaintiff

and

Mwania Kilongosi

1st Defendant

Mbatha Muli

2nd Defendant

Muendo Monthe

3rd Defendant

County Public Health Officer, Machakos

4th Defendant

The Hon Attorney General

5th Defendant

Ruling

1. In her Notice of Motion dated 16th October 2024, the plaintiff/applicant invoked Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules, and Section 146 of the Public Health Act. She sought the following reliefs: a. Spent; b. ... Spent; c. That an order to issue that the 1st, 2nd and 3rd defendants are intermeddlers and contemptuous to the court orders issued by the Honorable Court on 17th November 2016; d. That pending the hearing and determination of the main suit, the Honorable Court be pleased to issue an order of temporary injunction restraining/prohibiting the 2nd and 3rd defendants their agents, servants, employees and or accomplices from entering and carrying out any activity on land parcel Muthetheni/Utithini/217; e. That an order to issue to the 3rd defendant/respondent to issue a certificate of exhumation of the remains of the late Mueni Muendo (deceased) which were forcibly interred on land parcel Muthetheni/Utithini/217 on 28th August 2024.
2. The application is supported by both the grounds on its face and the applicant's affidavit sworn on 16th October 2024. The applicant states that she is the daughter of the late Kilongosi Kisangi, who passed away on 16th February 2012. She obtained letters of administration ad litem dated 24th October 2024. She contends that on 17th April 1985, her father sold her three acres of land, which she paid for. Despite her requests, her brothers, the late Mutuku Kiongosi and the 1st respondent refused to excise her portion and instead sold the land to the 2nd respondent.
3. The applicant also states that she initiated Citation Cause No. 907 of 2013, seeking to compel her brothers to take out letters of administration and include her as both a beneficiary and a creditor of the estate. While those proceedings were still pending, the land was sold to the 2nd respondent. Consequently, on 17th November 2015, the court issued restraining orders against the 1st respondent from disposing of the land and the 2nd respondent from taking possession of the suit land as the same amounted to intermeddling.

4. She deponed that on 27th June 2018, the court ordered that joint letter of administration be petitioned by the applicant and the 1st respondent. The applicant, however, alleges that all three defendants have frustrated the process with the intent to defraud her of her rightful claim. She also claims that despite existing court orders, they proceeded to bury the 3rd respondent's wife on the disputed land an act she considers contemptuous. For those reasons, the applicant prayed that the application be allowed.
5. The 1st respondent, on behalf of himself and the 2nd and 3rd respondents, opposed the application through an affidavit sworn on 5th November 2024. He argued that the acting of obtaining a special grant in favor of the estate of their father was an abuse of the process of the court since there was the ongoing succession proceedings in HCFP&A No. E064 of 2024; In the matter of the Estate of Kilongosi Kisangi Mutio.
6. He stated that the family had lived harmoniously for years with each beneficiary occupying designated portions of the land. He claimed to have resided on five acres, buried his children there without objection, and alleged that the applicant's portion had already been sold by their father to Kioko Mbolonzi in 2006, entitling her to a refund rather than a land claim.
7. He maintained that the applicant would suffer no irreparable harm, as she resides in Kindaruma with her family. He also denied any intermeddling, stating he was merely enjoying his inheritance, and argued that the current application was overtaken by events, given the pending succession cause. He asserted the dispute concerns land ownership, and as such, this court lacked jurisdiction, labeling the application as baseless and misleading. He prayed for its dismissal with costs.
8. In addition to the replying affidavit, the respondents raised a preliminary objection citing three grounds: firstly, that the plaintiff suit is time barred having been brought outside the statutory limitation of 12 years in view of section 7 and 10 of the Limitation of Actions Act; secondly, that this court has no jurisdiction to entertain the current suit because it is a land dispute within the purview of section 13 of the Environmental and Land Court Act which clothes the Environment and Land Court with original and appellate jurisdiction to hear and determine the dispute and thirdly the suit has been filed in disregard of Article 162(2)b of the Constitution which demarcates the jurisdiction of the Environment and Land Court and in disregard to HCFP&A E064 of 2024 in the Estate of Kilongosi Kisangi Mutio Kilongosi Mutio.
9. The application was argued through written submissions dated 7th March 2025. The applicant framed the following three issues for determination: first whether a contemnor has any audience before the court; secondly whether the grounds of the preliminary objection raised have met the threshold for the court to strike out the plaintiff suit and thirdly whether the court has jurisdiction to hear and determine this plaintiff suit.

10. On the issue of whether the alleged contemnors should be granted audience before the court, the applicant submitted that two existing court orders, issued on 12th November 2015 and 20th June 2018 and directed against the 1st and 2nd defendants, and by extension, apply to the 3rd defendant. These orders remain in force and have not been discharged. It was argued that the 1st and 2nd defendants have persistently defied these orders and further enlisted the cooperation of the 3rd defendant. The applicant submitted that the court should deny audience to the alleged contemnors until such a time as they comply with existing court directives. To support this submission, reliance was placed on *Republic v County Chief Officer & Economic Planning Nairobi City County Ex Parte Stanley Muturi and Wildlife Lodges Ltd v County Council of Narok and Another* (2005) 2EA 344 (HCK).
11. Regarding the preliminary objection, the applicant argued that it does not raise pure points of law capable of being determined without delving into facts. Specifically, the Limitation of Actions Act, under Sections 7 and 10, was said to be inapplicable in this matter, as the suit pertains to the preservation of the estate of the late Kilongosi Kisangi Mutio, where the applicant is both a beneficiary and creditor. It was further submitted that there was no reasonable cause established to justify striking out the suit under Order 2 Rule 15 of the Civil Procedure Rules, and various authorities were cited in support of this position.
12. On jurisdiction, the applicant submitted that this is a sui generis matter involving the dual capacity of the plaintiff as a beneficiary and purchaser for value in the estate of the deceased. She approached the court seeking both the preservation of the estate and protection of her individual interest therein. Reference was made to Sections 45 and 86 of the Law of Succession Act and Rule 7(1) of the Probate and Administration Rules. The applicant urged the court to prevent further intermeddling by the defendants.
13. The applicant additionally stated she is not privy to Succession Cause HCFP&A E064 of 2024, arguing that it violates a consent order previously granted by the court that directed both the applicant and respondent to jointly petition for letters of administration. She maintained that the current suit falls squarely within the domain of Probate and Administration, and is therefore appropriately before the Family Division, not the Environment and Land Court (ELC). As such, she submitted that the preliminary objection should be dismissed.
14. The 1st, 2nd, and 3rd defendants/respondents filed undated submissions, framing the issue for determination as whether the preliminary objection meets the legal threshold for striking out the plaintiff's suit.
15. They argued that the suit is time-barred, having been filed after 12 years, thus violating statutory provisions under Sections 7 and 10 of the Limitation of Actions Act. Additionally, they claimed that the court lacked jurisdiction to entertain the matter under Section 13 of the Environment and Land Court Act, since the dispute revolves around the use, occupation, and title to land a domain reserved for the Environment and Land Court under Article 162 of the Constitution. Reference was made to the case of *Re Estate of Joseph Mutiso Kithome (Deceased)* (2019) eKLR, among others, to reinforce this argument.

16. Further, the respondents submitted that the applicant disregarded ongoing proceedings in Machakos Succession Cause HCFP&A E064 of 2024, which involves the same parties and remains pending. They contended that the current suit is sub judice, and therefore urged the court to down its tools and strike out the suit.
17. Before addressing the merits of the applicant's motion, it is imperative to address the issue of jurisdiction. The jurisdiction of a court is foundational without it, no matter how compelling a case may appear, the court is divested of authority to entertain it. As observed in various precedents, jurisdiction is everything; and without it a court must down its tools.
18. The applicant states that she has filed the suit in her dual capacity as a beneficiary and creditor of her late father's estate. Her claim stems from a sale of three acres of land allegedly made to her by her deceased father during his lifetime. The applicant contends that despite this purchase, the 1st and 2nd respondents sold the land to a third party and failed to honoring her interest. Additionally, she seeks orders restraining further dealings on land parcel Muthetheni/Utithini/217, as well as the exhumation of the 3rd defendant's spouse, who was allegedly buried on the suit property in contravention of court orders.
19. From the record, it is evident that the dispute has a long history. The applicant-initiated Citation Cause No. 907 of 2013 to compel the 1st respondent and her late brother to take out letters of administration for their father's estate. Furthermore, it is undisputed that Succession Cause HCFP&A No. E064 of 2024 is currently active, involving the same estate and the same parties. Therefore, the matters raised in the present application are not only intertwined with the pending succession proceedings, but are best addressed within that framework. It is unclear why the applicant failed to seek the orders she now seeks within the context of the succession proceedings, especially since a succession cause had already been filed.
20. The applicant also claims to have purchased land from her late father, thus she seeks to enforce proprietary rights arising from that transaction. However, the issue of land ownership and title falls squarely under the jurisdiction of the Environment and Land Court, as provided under Section 13 of the Environment and Land Court Act and Article 162(2)(b) of the Constitution. This court, sitting in the Family Division, lacks the jurisdiction to determine disputes concerning ownership, use, and occupation of land. The reliefs sought—particularly the injunction and exhumation orders—inevitably touch on property rights and land use, further underscoring the jurisdictional limitation.
21. Having considered the pleadings, affidavits, and submissions from both parties, it is my finding that the suit is procedurally flawed, jurisdictionally unsustainable, and substantively inchoate, given the existence of ongoing succession proceedings capable of addressing the applicant's grievances. Accordingly, I hereby strike out the suit for want of jurisdiction. However, mindful that this is a family dispute, I make no order as to costs. File ClosedIt is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF JULY, 2025. RHODA
RUTTOJUDGEIn the presence of;.....for
Plaintiff.....for DefendantSelina Court Assistant

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/10575/eng@2025-07-17>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/kilongosi-v-kilongosi-4-others-2025-kehc-10575-klr-unknown-topic-high-court-2025>

Prepared on 14 October 2026 · Esheria