



In re Estate of the Late James Kimarta Ruto (Deceased) (Probate & Administration 311 of 2013) [2024] KEHC 16404 (KLR) (24 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 311 OF 2013
RN NYAKUNDI, J
DECEMBER 24, 2024**

BETWEEN

ISAAC K MARTA 1ST PETITIONER

HENRY K SANG 2ND PETITIONER

AND

JAIRUS K RUTO 1ST OBJECTOR

ISAAC K. KEMBOI 2ND OBJECTOR

RULING

1. This Court on 20th day of September 2024, having heard the parties to the Succession Cause Interpartes, pronounced itself as follows;
 - a. Any two children of the deceased listed as the beneficiaries do avail themselves at the Government Chemist together with the 2nd objector to give samples for the sibling DNA test within 21 days from the date of this order and the costs shall be borne by the 2nd Objector.
 - b. The 2nd Objector shall avail the instruments used for registration of his birth at the Registrar of Births and Deaths, for this court’s scrutiny.
 - c. The 2nd Objector is hereby directed to deposit in court all title documents in his possession belonging to the estate of the deceased within 21 days, failure to which he shall be held in contempt and after a period of 21 days, the Land Registrar, Uasin Gishu County shall be at liberty to cancel the title documents on grounds of misplacement, particularly for the two parcels of land known as Tulwet/tulwet Block 7 (terige) 25 and Lessos Settlement Scheme/347.
 - d. The costs of the suit shall be borne by the estate.



- e. Status Conference on 4.11.2024
2. Unfortunately, for reasons which are not very clear from the parties at as 4th November 2024, no steps had been taken to comply with the court orders. During the status conference, no sufficient cause was shown as to the reluctance of either parties to give effect to the court orders in this long outstanding succession cause initiated in our probate registry way back in 2013. In Kenya, disobedience of court orders is a problem that has developed into a repeating phenomenon and curated culture. As for this specific case, the resolution of the outstanding issues on identification of the heirs or beneficiaries under section 29 of the *Law of Succession Act* will remain a mirage if the DNA profile as ordered by this court is not carried out within the period specified.
 3. For clarity purposes, disobedience of a court order is an act or behaviour that violates the court’s ruling on a particular issue. The Learned Author in Black’s Law Dictionary defines a Court Order as a written instruction or directive by a Court or Judge upon the issues being canvassed on the merits of the interlocutory application or the substantive suit touching on the cause of action. As for this specific case, the contempt of court as now set in since the expiry of the timeline defined in the ruling and that behaviour can only be described as intended to undermine the legitimacy of the Court and the administration of justice.
 4. In *Pheko and Others Vs Ekurhuleni Metropolitan Municipality* [2015] ZACC 10, on this same subject the neighbouring court in the Republic of Zambia held that;

“The rule of law, a foundational value of *the Constitution*, requires that the dignity and authority of the courts to be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As *the Constitution* commands, orders and decisions issued by a Court bind all persons to whom and organs of state to which they apply. Disobedience to court would render the judicial authority a mere mockery.... the effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.”
 5. Based on the above observations, it is presumed that the Objectors claim on dependency remains moot and the Petitioners shall be at liberty to administer the estate and have it transmitted to the already recognized legitimate heirs to the estate of the deceased. In adherence to this guidelines, a final status conference be held on 24th January 2025 as I view this disobedience of the above court orders on submitting the DNA samples to the Government Analyst as a deliberate act of subversion of the law and the administration of justice.

DATED AND DELIVERED THROUGH CTS AT ELDORET THIS 24TH DAY OF DECEMBER 2024

.....
R. NYAKUNDI
JUDGE

