



In re Estate of Michael Gichuhi Muiru (Deceased) (Succession Cause 8 & 4 of 2019 (Consolidated)) [2023] KEHC 21607 (KLR) (18 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21607 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 8 & 4 OF 2019 (CONSOLIDATED)**

**A MSHILA, J
AUGUST 18, 2023**

BETWEEN

GRACE NJERI GICHUHI 1ST PETITIONER

GODFREY KIHUHA GICHUHI 2ND PETITIONER

AND

MOSES MUIRU GICHUHI 1ST RESPONDENT

JENNIFER MUTHONI GICHUHI 2ND RESPONDENT

MICHAEL GICHUHI WANJIKU 3RD RESPONDENT

RULING

1. Before court is an application by way of Notice of Motion filed on March 20, 2023 and brought under Sections 47, 50 and 70 of the [Law of Succession Act](#) and Rules 63 and 73 of the [Probate & Administration Rules](#) Cap 160 Laws of Kenya, Article 40 and 159 of the [Constitution](#) and all other enabling provisions of the law. The Applicants sought for orders :-
 - a. Spent
 - b. That pending the hearing and determination of this application interpartes, this Honourable court be pleased to declare that the actions of the 1st Respondent Moses Muiru Gichuhi of continuing to intermeddle with the estate of the deceased is a gross violation of this court orders, its illegal, criminal in conduct and amounts to contempt of among others orders of September 23, 2022 and is punishable by imprisonment for a period of six months.
 - c. That pending the hearing and determination of this suit, this Honourable court be pleased to declare that the actions of the 1st Respondent Moses Muiru Gichuhi of continuing to intermeddle with the estate of the deceased is a gross violation of this court orders, its illegal,



criminal in conduct and amounts to contempt of among others orders of September 23, 2022 and is punishable by imprisonment for a period of six months.

- d. That the Inspector General of Police in Kenya be and is hereby directed through the nearest Officer Commanding any police station near where any of the properties of the estate are situated to enforce the orders issued herein against the 1st Respondent Moses Muiru Gichuhi.
2. The application is premised on the grounds that the 1st respondent continues to disrespect and disregard the order of the court issued on September 23, 2022 directing him to stop intermeddling with the estate herein.
3. The application is supported by the affidavit of Godfrey Kihuha Gichuhi sworn on March 17, 2023. He deposed that the 1st respondent was served with the court order issued on September 23, 2022 stopping him from continuing to intermeddle with the deceased's estate herein. That in disregard of the said order, the 1st respondent has continued to cut and has cleared all the trees from the parcel of land in Nyahururu. That he also removed and sold cabros from the hotel promises at Karura. The 2nd applicant further deposed that the matter has since been reported at Kibiku Police Station albeit with no much help from the police. The 1st respondent was also accused of being violent. The court was urged to order the 1st respondent to account for the proceeds from the sale of trees and cabros and deposit the proceeds in the deceased's account at KCB bank or in court.
4. Moses Muiru Gichuhi filed his replying affidavit sworn on June 20, 2023 in opposition to the applicants' application. He deposed that the application is a delaying tactic by the applicant. He denied being served with the alleged court order. He also denied cutting down trees as alleged by the applicant as well as selling the cabro. He also accused the Applicant of intermeddling by failing to account for the rental income, hotels, restaurants, wines and spirits shops, slaughter houses among others. He urged the court to dismiss the application
5. The application was canvassed by way of exchange of written submission and highlighting; hereunder is a summary of the respective rival submissions.

Applicants' Submissions

6. Counsel for the Applicants filed submissions on July 5, 2023. He submitted that the court order was clear and unambiguous and the same was properly served upon the 1st Respondent hence the 1st Respondent was well aware of the court order of September 23, 2022. Reliance was placed in the case of *Shimmers Plaza Limited vs National Bank of Kenya Limited (2015)*. It was further submitted that the 1st Respondent had gone against the court order by cutting down trees and removing cabros from the deceased's estate. The 1st Respondent was accused of disobeying the court order deliberately as he failed to give a reasonable cause for disregarding the court order. Reliance was placed in the case of *Sheila Cassatt Issenberg & another vs Antony Machatba Kinyanjui (2021) eKLR*. The court was urged to hold the 1st Respondent in contempt and punish him by imprisonment for a period of 6 months. Reliance was placed on among other cases the case of *Econet Wireless Kenya Ltd Vs Minister for Information & Communication of Kenya & another (2005) eKLR*.

1ST Respondent's Submissions

7. The 1st Respondent submits that contempt of court is in the nature of criminal proceedings therefore, proof of a case against a contemnor is higher than that of a balance of probability. Reliance was placed on the case of *Katsuri Limited vs Kapurchand Depar Shah (2016) eKLR*. The Applicant was said to have failed to prove beyond reasonable doubt that the 1st respondent was guilty of contempt. The court



order as issued was said to not have a penal notice as such the application before court was said to be incompetent. The matter herein was said to be a succession cause where parties are siblings as such the power to commit for contempt should be exercised with great care and the same should be a last resort.

Issues For Determination

8. Having considered the Applicants' application the Replying affidavit by the Respondent in opposition to the same and the rival submissions, the only issue for determination is whether the 1st respondent is guilty of contempt.

Analysis

9. Section 5 of the [Judicature Act](#) confers jurisdiction on the superior courts to punish for contempt. The section provides that:

- (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.
- (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.

10. The [Halsbury's Laws of England \(4th Edition \(9th Re-Issue\), Pg 33, para 52.\)](#) defines civil contempt as follows;

' Disobedience to process is a civil contempt of court to refuse or neglect to do an act required by a judge or order of the court within the time specified in the judgment order requiring a person to abstain from doing a specified act, or to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction.'

11. The applicable standard of proof for contempt proceedings is above a balance of probabilities, given the criminal nature of contempt proceedings. See the case of [Mutitika vs Babarini Farm Ltd \[1985\] KLR 229, 234](#), where the Court of Appeal had this to say:

' In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi- criminal in nature.'

12. The main features of disobeying court are that the contemnor must be aware of the existence of the court order. There must be an existing court order capable of being disobeyed and lastly that breach thereof must be proved. Further the threshold required is not just on a balance of probabilities but the threshold that is required for contempt proceedings is that required in criminal proceedings that is beyond reasonable doubt. In [Milka Wangoi Kamau & another v Habby Misoga Lugadiru \(2014\) eKLR](#) it was held that:

' As much as civil contempt is an aspect of civil litigations it has got criminal implications/ inclinations and hence its threshold is not merely founded on balance of probability but at



times it must be proved beyond reasonable doubt. Therefore, the committal law is to the effect that the standard of proof required at committal proceedings is the criminal standard'

13. The 1st respondent herein is being accused of disobeying the court order given on September 23, 2022 restraining him from intermeddling with the deceased's estate herein. The applicant deposed that the 1st respondent was served with the court order on September 28, 2022 directing him to stop intermeddling with the estate of the deceased. That in utter disregard of the said order the 1st respondent proceeded to cut and sell all trees and that he also entered the hotel at Karura and removed the cabros which he sold.
14. A perusal of the court order which the 1st respondent is accused of disobeying shows clearly that the 1st respondent was restrained from intermeddling with the estate of the deceased and particularly from cutting down and selling trees at the properties of the deceased. The applicant also attached an affidavit of service sworn by Walter Motari indicating that the 1st respondent was indeed served on September 28, 2022 with the Notice of Motion dated September 22, 2022 plus the court order issued on September 23, 2022 as well as his advocate and the OCPD at Nyahururu West. Photographs of the cut down trees and the 1st respondent removing and ferrying the cabros were also attached by the applicant.
15. The 1st respondent denies personal service of the orders restraining him from intermeddling with the estate of the deceased and in particular cutting down trees. He denied cutting down the said trees as well as removing and selling the cabro blocks. The court find the same as mere denials. There is also evidence that the 1st respondent has been charged in a criminal court for contempt of court.
16. From the foregoing, this court is satisfied that the 1st respondent was properly served with the order of the court issued on September 23, 2022 restraining him from intermeddling with the estate of the deceased and in particular cutting down trees. The 1st respondent's acts of cutting down trees and further removing cabros from the Hotel at Karura were in disregard of the court order issued against him as such he is found to be guilty of contempt.
17. See the case of Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR where the court stated that:

' The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him'
18. The 1st Respondent is restrained from further intermeddling with the estate of the deceased in a bid to purge the contempt.

Findings And Determination

19. For the foregoing reasons this court makes the following findings and determination;
 - i. The application is found to have merit and it is hereby allowed;
 - ii. This court finds that the 1st Respondent had notice and knowledge of the court order; and finds the continued intermeddle with the estate of the deceased to be a gross violation of this



court orders, and the acts are found to be illegal, criminal in conduct and amount to contempt of the orders of September 23, 2022;

- iii. The 1st Respondent is hereby held to be personally liable for disobeying court orders;
- iv. The 1st Respondent is restrained from further intermeddling with the estate of the deceased in a bid to purge the contempt.
- v. Mention on October 30, 2023 for mitigation before sentencing.
- vi. The 1st Respondent shall bear the costs of the application;

It is so Ordered.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 18TH DAY OF AUGUST, 2023.

HON.A.MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Miss Tuwei -h/b for Kirimi for the Petitioners

Musyoka – for Executor/1st Respondent

Maina – for 2nd and 3rd Respondent

