



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Parvatiben Virji Shah (Deceased) (Succession Cause 2243 'B' of 1995) [2023] KEHC 21825 (KLR) (Family) (4 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2243 'B' OF 1995
MA ODERO, J
AUGUST 4, 2023**

BETWEEN

VIMAL JAYANTILAL SHAH 1ST APPLICANT

DEEPTI VIMAL SHAH 2ND APPLICANT

AND

PRADEEP VIRJI SHAH RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated August 11, 2021 by which the applicants Vimal Jayantilal Shah and Deepti Vimal Shah seeks the following orders:-

- “1. Spent.
2. That this honourable court do find, hold and declare that Pradeep Virji Shah Respondent herein is in contempt of court for disobeying the court order made on January 30, 2015.
3. That this honourable court be pleased to order that Pradeep Virji Shah be committed to civil jail for such period as this honourable court may deem fit and for the attachment of his properties for disobeying/defying the court orders made on January 30, 2015.
4. That this honourable court be pleased to order that Pradeep Virji Shah should not be heard by this court until he purges the contempt.
5. That this honourable court do grant such orders as it shall deem fit under the circumstances of this case.



6. That the costs of this application be awarded to the applicants in any event be provided for.
2. The application which was premised upon section 5 of the *Judicature Act*, cap 8, Law of Kenya sections 63 (c) (e) and 1A, 1B and 3A of the *Civil Procedure Act* cap 21 Laws of Kenya and all other powers and enabling provisions of the law was supported by the affidavit of even date as well as a supplementary affidavit dated October 26, 2022 both sworn by the 1st applicant.
3. The respondent Pradeep Virji Shah opposed the application through his replying affidavit dated March 24, 2023.
4. The application was canvassed by way of written submissions. The applicant filed the written submissions dated October 26, 2022 whilst the Respondent relied upon his written submissions dated November 14, 2022.

Background

5. This Succession Cause relates to the Estate of Parvatiben Virji Shah (hereinafter ‘the Deceased’) who died testate on January 31, 1995. The Deceased left behind a written Will dated February 9, 1987 in which she detailed the manner in which she wished her estate be distributed
6. The Deceased was survived by the following persons:
 - i) Jayantilal Virji Shah- son (deceased).
 - ii) Pranalal Virji Shah –son (deceased)
 - iii) Ramniklal Virji Shah- son
 - iv) Dalichand Virji Shah-son (deceased)
 - v) Kantilal Virji Shah-son (deceased)
 - vi) Ashok Virji Shah-son (deceased)
 - vii) Pradeep Virji Shah- son
7. In her written will, the Deceased stated that not less than four of her sons shall be executors of her will. Pranalal Virji Shah, Kantilal Virji Shah, Ashok Virji Shah and Pradeep Virji Shah were jointly issued with Grant of Probate of Written Will on March 12, 1995. Pradeep Virji Shah is the only surviving executor. A Certificate of Confirmation of Grant was issued on April 11, 1997 and later amended on May 22, 2013.
8. The applicants filed an Application against the respondent dated September 3, 2013 seeking the following orders:-
 - i) All rental income, accruing to the Estate of the deceased, be forthwith deposited in an interest earning account in the names of the advocates then on record with no withdrawals whatsoever, pending settlement of accounts pursuant to the Consent Order issued on July 23, 2008; and
 - ii) The Certificate of Confirmation of Grant rectified on the May 22, 2013 be revoked or nullified.
9. After hearing the application, on January 30, 2015, the court issued the following orders:-
 - i) The rectified Certificate of Confirmation of Grant dated May 22, 2013 be and is hereby cancelled;



- ii) A fresh rectified Certificate of Confirmation shall be drafted and issued in conformity with the consent orders of July 23, 2008 and May 22, 2013;
 - iii) The Executor, Pradeep Virji Shah shall restore all the funds he withdrew from Safari Business Account Number XXXX, Standard Chartered Bank, Ukay Centre Branch Nairobi, to the said account within 7 days.
10. The applicants state that the ruling of the court was delivered in the presence of counsel for the Respondent and that as such the Respondent had Notice of the orders made by the court.
 11. The applicants contend that the respondent has blatantly and deliberately disobeyed the court orders of January 30, 2015 directing that he refund the funds withdrawn from the Safari Business Account held at Standard Chartered Bank be refunded.
 12. The applicants state that they have corresponded severally with the respondent's Advocate seeking to have him comply with the court's orders to no avail. The applicants now urge this court to cite the respondent for contempt and to issue an appropriate punishment.
 13. The respondent opposed the application. He denied disobeying the court order and insisted that he had not been served with the said orders.
 14. The respondent goes on to accuse the applicants of unlawfully intermeddling with the estate of the Deceased and frustrating his efforts to distribute the estate. The respondent urges the court to dismiss this application in its entirety.

Analysis and Determination

15. I have carefully considered the application before this court the reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the respondent is in contempt of court orders.
16. The jurisdiction of this court to punish for contempt is found in section 5 of the *Judicature Act* which provides:-
 - “(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 such 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.”
17. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, the obligation to obey court orders was well explicated thus:-

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it



extends even to cases where the person affected by the order believes it to be irregular or void." [own emphasis]

18. In the premises, the elements that the applicants herein needed to prove are:-
 - a) that the Order of January 30, 2015 was clear, unambiguous and binding on the respondent;
 - b) that the respondent had proper notice or knowledge of the terms of that Order;
 - c) that the Respondent has deliberately failed to obey the terms of the Order;
(see *Katsuri Limited v Kapurchand Depar Shab* [2016] eKLR)
19. The standard of proof applicable in contempt applications, is above a balance of probabilities, given the criminal connotations of contempt proceedings. In *Gatharia K. Mutikika v Baharini Farm Ltd* [1985] KLR 227 the Court of Appeal stated as follows:-

“...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.”
20. It is important that the court satisfy itself that the person being accused of disobeying courts orders had knowledge/notice of said court orders.
In *Oilfield Movers Ltd vs- Zabara Oil & Gas Limited* [2020] eKLR the court stated as follows:-

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.....”
21. The orders in question were made on January 30, 2015. A look at the court record reveals that on that date Counsel for the respondent a Mr. Abidha holding brief for Mr. Ouma was present in court when the Ruling was read. An Advocate is for all intent and purposes the agent/representative of his client in court. Once the Advocate is made aware of the court’s orders the respondent cannot claim to be ignorant of said orders.
22. The respondent claims that he was not served with the orders of the court. He did not need to be served given that his legal representative was in court when the orders were made. At no time does the respondent deny having knowledge of the existence of the made orders on January 30, 2015.
23. Instead of addressing the issue of his contempt the respondent goes off on a tangent and begins to accuse the applicant of intermeddling. These are mere diversionary tactics.
24. I find that the orders made by the court on January 30, 2015 were clear and unambiguous. The orders were made in the presence of the Respondent’s legal representative thus the Respondent is deemed to have had notice of the said orders.
25. It is not in doubt that the respondent has failed to adhere to the court’s orders. indeed nowhere does the respondent claim to have complied with said orders.
26. I am satisfied that there has been shown to have been willful disobedience of the court’s orders on the part on the respondent.



27. Court it is said do not make orders in vain. A person to whom a court order is directed is obliged to obey said orders whether he agrees with them or not.
28. Finally, I find that the respondent is in contempt of the court orders made on January 30, 2015. I direct that the respondent pay a fine of Kshs.50,000 (Kenya Shillings Fifty Thousand only) to purge his contempt or in default he will serve three (3) months in Civil jail. The Respondent will meet the costs of this application.

DATED IN NAIROBI THIS 4TH DAY OF AUGUST, 2023.

MAUREEN A. ODERO

JUDGE

