



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Joseph Maingi Muriithi (Deceased) (Succession Cause  
1212 of 1998) [2023] KEHC 23122 (KLR) (Family) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23122 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE 1212 OF 1998**  
**MA ODERO, J**  
**SEPTEMBER 29, 2023**  
**IN THE MATTER OF THE ESTATE OF JOSEPH MAINGI MURIITHI (DECEASED)**

**BETWEEN**

**BENSON RIITHO MURIITHI ..... APPLICANT**

**AND**

**REBECCA WANJIRU MURIITHI ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Notice of Motion dated 30<sup>th</sup> March 2023 by which the Applicant Benson Riitho Muriithi sought the following orders:-
  - “1. Spent.
  2. Spent.
  3. That this Honourable Court be pleased to set aside and/or give directions regarding the alleged contempt hearing against the Administrator/Applicant pursuant to its directions issued on the 1<sup>st</sup> of March 2023 and allow the applicant the opportunity to be heard.
  4. The costs of the applicant be provided for.”
2. The applicant was premised upon Rule 49 of the Probate & Administration Rules and the inherent power of the court. It was supported by Affidavit of even date sworn by the Applicant and by his Advocate Daniel M. Amalemba.



3. The Respondent Rebecca Wanjiru Muriithi who is a beneficiary to the estate opposed the application vide the Replying Affidavit dated 17<sup>th</sup> May 2023.
4. The matter was canvassed by way of oral submissions.

### **Background**

5. This Succession Cause relates to the Estate of Joseph Maingi Muriithi (herein after the Deceased) who died intestate on 5<sup>th</sup> November, 1995.
6. The Deceased was survived by the following persons:
  - i) David Wamae Muriithi - Son (now deceased)
  - ii) Benson Riitho Muriithi - Son
  - iii) Jane Hiuko - Daughter
  - iv) Norman Maina Muriithi - Son
  - v) Charles Mugambi Muriithi - Son
  - vi) Rebecca Wanjiru Muriithi - Daughter
7. The Respondent Rebecca Wanjiru Muriithi filed a Notice of Motion dated 21<sup>st</sup> July 2021 seeking the following orders:
  - “ 1. That the Respondent be and is hereby cited for contempt of disobedience of court orders issued on the 20<sup>th</sup> April 2021.
  2. That the Respondent be and is hereby ordered to attend court at the inter-parties hearing application or further orders of the court.
  3. That the Respondent be removed as an administrator and be ordered to account for all the assets of the estate and make good any losses.
  4. That an order for committal be and is hereby made against the Respondents agents/assigns to prison for a period of six (6) months.
  5. That this Honourable Court through the Deputy Registrar executes the completion/transfer documents on behalf of the Respondent who has declined to do so.
  6. That upon execution by the Deputy Registrar of this honourable court in order (5) above the same be deemed as sufficient instrument for completion/transfer documents.
  7. That the cost of this Applicant be borne by the Respondent.
8. On 15<sup>th</sup> July 2022 this court delivered a ruling where and gave orders that the Applicant do conclude the administration of the estate within Ninety (90) days and ensure that each beneficiary has transferred to them their share of the estate in accordance with the mode of distribution set out in the Certificate of Confirmed Grant dated 19<sup>th</sup> March 2019.
9. To date the Applicant has not concluded the administration of the estate. On 1<sup>st</sup> March 2023 Counsel for the Respondent/Beneficiary orally applied that the court cite the Applicant for contempt and deal



accordingly with the Administrator. The court directed that the parties address the issue of contempt on 24<sup>th</sup> March 2023. On 24<sup>th</sup> March 2023 counsel for the Applicant failed to appear in court. Since the date had been taken by consent the court proceeded to hear submissions from the other parties and gave a ruling date of 28<sup>th</sup> April 2023.

10. The Applicant then filed this Notice of Motion dated 30<sup>th</sup> March 2023 seeking to set aside the directions made by the court on 1<sup>st</sup> March 2023.
11. As stated earlier this application was vehemently opposed by the Respondent who submitted that despite the parties having entered into a consent on 30<sup>th</sup> October 2007 and despite the Applicant having been allowed several opportunities to distribute the estate he has consistently failed to do so. The Respondent prays that the court cite and punish the Applicant for contempt.

### **Analysis and Determination**

12. I have carefully considered the application made by the Applicant and the submissions of both parties. The only issue for determination is whether the Applicant is in contempt of court orders. As I pointed out in my ruling of 15<sup>th</sup> July 2022 this is an extremely old cause having commenced way back in the year 1998 – that is twenty - five (25) years ago. It is due to the laxity on the part of the Administrator that to date the estate remains undistributed.
13. On 15<sup>th</sup> July 2022 this court made orders directing the Applicant to conclude the distribution of the estate within Ninety (90) days. When the matter came upon 11<sup>th</sup> November 2022 to confirm compliance the Applicant claimed not to have been aware of the court ruling of 15<sup>th</sup> July 2012. The court granted the Applicant a further Sixty (60) days to finalise distribution of the estate.
14. Once again when the matter came up on 18<sup>th</sup> January 2023, the Applicant had still not complied and requested for a further Sixty (60) days to comply with the court's orders. The court granted the Applicant thirty (30) days to comply.
15. Still the Applicant failed to comply and on 1<sup>st</sup> March 2023 the Applicant through the Advocate again sought to be allowed more time to conclude distribution of the estate.
16. It is manifestly clear that the Applicant is either unable or unwilling to finalize the distribution of this estate. He has one excuse after another for his failure to comply with the court orders.
17. 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.”
18. Thus 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]

19. In the premises, the elements that the Respondent herein needed to prove are:-
- a) that the Order of 15<sup>th</sup> July 2021 was clear, unambiguous and binding on the respondent;
  - b) that the Applicant had proper notice or knowledge of the terms of that Order;
  - c) that the Applicant has deliberately failed to obey the terms of the Order;
- (see *Katsuri Limited v Kapurchand Devar Shah* [2016] eKLR)
20. 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.”
21. 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.....”
22. The orders directing the Applicant to conclude distribution of the estate were made on 15<sup>th</sup> July 2022. The Applicant claimed that he was not aware of said orders until much later.
23. I do note that on the date of delivery of the ruling neither the Applicant nor his advocate were in court. However by his own admission the Applicant did later become aware of the court orders and indeed by 11<sup>th</sup> November 2022 the Applicant was fully cognizant of the court’s ruling.
24. Despite becoming fully aware of the ruling/direction made by the court on 15<sup>th</sup> July 2022 and despite having knowledge of said orders the Applicant has still persistently failed to comply with the same.
25. The Applicant prays to have the court proceedings/direction of 24<sup>th</sup> March 2023 set aside. He argues that on that day the matter was not cause listed and that is the reason why neither he nor his advocate appeared in court to submit on the issue of contempt. The Applicant argues that as a result of his non-attendance he was denied an opportunity to be heard on this issue.
26. The record clearly indicates that when this matter came up on 1<sup>st</sup> March 2023 all parties were represented by Counsel. The court directed that the matter of contempt would be heard orally on 24<sup>th</sup>



March 2023. Mr. Amalemba who represents the Applicant was in court when these directions were given.

27. The date was taken by consent of all parties. It is therefore mischievous of the Applicant to claim that he was not given an opportunity to be heard when it was he who decided not to attend court on the hearing date which all parties had agreed upon. The excuse that the matter was not cause listed is not credible as Counsel for the Applicant ought to have logged into to the court session to enquire about the status of the matter.
28. I am satisfied that being fully aware and indeed having consented to the hearing date of 24<sup>th</sup> March 2023 the Applicant and his Advocate deliberately opted to absent themselves from the said hearing. They cannot now be heard to say that they were not allowed an opportunity to be heard.
29. I therefore find that no valid grounds have been advanced to warrant the setting aside of the court's orders of 1<sup>st</sup> March 2023 or the subsequent court proceedings of 24<sup>th</sup> March 2023.
30. As stated above it is clear to me that the Applicant being the Administrator is hell bent on delaying and/or circumventing distribution of the estate for reasons best known to himself. Each time the matter comes up he is ready with a string of never - ending excuses for his failure to finalize the distribution of the estate. The Applicant being fully aware of the orders/directions of the court has deliberately failed to comply with those orders. I find that the Applicant is indeed in contempt of the orders made by this court on 15<sup>th</sup> July 2022.
31. It is clear that the Applicant has totally failed in his duty to complete the administration of the estate despite having had more than ample time to act.
32. Section 83 of the [Law of Succession Act](#) Cap 160, Laws of Kenya provides inter alia that:

“ 83 Personal Representatives shall have the following duties:

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) Within Six months from the date of confirmation of the Grant or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.” [own emphasis]

33. It has been over twenty (20) years and the Applicant has not been able to complete the distribution of the estate. He has therefore failed in his duty as administrator.
34. Section 76 d (ii) of the [Law of Succession Act](#) allows a court to revoke a Grant in cases where the Administrator has failed “to proceed diligently with the administration of the estate.” This is precisely the situation that is pertaining in this case.



35. Section 47 of the Law of Succession Act vests court with wide discretion in granting protective powers for purposes of safeguarding the estate of a deceased person. It provides:-

“The High court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

36. Likewise, Rule 73 of the Probate and Administration Rules provides that:-

“73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of the justice or to prevent abuse of the process of the court.”

37. Given the age of this case in the interests of finality I find that the estate ought to be distributed in accordance with the Confirmed Grant dated 19<sup>th</sup> March 2019. If the Applicant refuses/declines to sign the relevant documentation then the Hon. Deputy Registrar is hereby authorized to sign the same on behalf of the Applicant/Administrator.

38. In the case of Tabitha Wangithi Muriuki v Watbiba Kimoo Succession Cause No. 372 of 2021 [2020] eKLR the court stated as follows:-

“By ordering the Deputy Registrar to sign, the court will only be ensuring that the judgement is complied with and will not be descending into the arena of conflict. The orders are necessary for the ends of justice and to ensure that a party reaps the fruits of judgement and prevent abuse for the court process. I therefore find that the application has merits.”

39. Finally, this court hereby makes the following orders:-

- (1) The Applicant Benson Riitho Muriithi is found to be in contempt of the court orders made on 15<sup>th</sup> July 2022.
- (2) The Applicant to pay a fine of Kshs.50,000 in default to serve thirty (30) days in Civil jail in order to purge that contempt.
- (3) The Applicant is directed to immediately execute all necessary transfer forms relating to the distribution of the estate of the late Joseph Maingi Muriithi.
- (4) If the Applicant fails to comply with (3) above within fourteen (14) days then the Hon. Deputy Registrar of the High Court is hereby authorized to execute on behalf of the Administrator all necessary transfer forms in relation to the distribution of the estate of the Deceased.
- (5) The Applicant will bear the cost for this application.

**DATED IN NAIROBI THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

