



**In re Estate of Kipkosgei Lagat (Deceased) (Succession Cause
E376 of 2014) [2023] KEHC 26471 (KLR) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E376 OF 2014
JRA WANANDA, J
DECEMBER 15, 2023
IN THE MATTER OF THE ESTATE OF KIPKOSGEI LAGAT (DECEASED)**

BETWEEN

ESTHER CHELAGAT KOSGEI 1ST ADMINISTRATOR

RICHARD KIPNGETICH SITIENEI 2ND ADMINISTRATOR

AND

PAUL K. LIMO OBJECTOR

RULING

1. The late Kipkosgei Lagat (deceased) died on 16/11/2006 and left behind a widow (1st Administrator) and 5 children, among them the 2nd Administrator. On 8/10/2014, the Administrators filed the Petition herein seeking grant of Letters of Administration over the estate. The Grant was then given on 22/01/2015 and was subsequently confirmed on 12/07/2019. Among the 3 properties distributed was land parcel No. Kapsaret/Kapsaret/ Block 4 (Lemok "A") 9 which was distributed among 4 beneficiaries.
2. However, by his Application dated 5/11/2021, the Objector, claiming a purchaser's interest emerged and objected to the distribution of the said land parcel No. Kapsaret/Kapsaret/ Block 4 (Lemok "A") 9. He sought that the distribution be reversed through annulment and revocation of the Grant and the subsequent confirmation thereof. Along the way, the parties by consent, agreed to maintain the "status quo" pending hearing and determination of the Application. This consent was duly adopted by the Court.
3. Before the Court now is the Administrators' Application (Notice of Motion) dated 5/12/2022. In a rather long thread, the same seeks orders as follows:
 - i. The matter be certified urgent and that the same be heard ex parte in the first instance



- ii. This Honourable Court be pleased to issue an order of temporary injunction restraining the Objector herein, whether by himself or his servants or agents or otherwise from continuing with his construction on land parcel no. Kapsaret/Kapsaret/ Block 4 (Lemok "A") 9 pending the hearing and determination of this Application inter partes.
 - iii. The Honourable be pleased to grant leave to the Administrators to file contempt of Court proceedings against the Objector herein.
 - iv. Upon granting of order 3 herein, this Honourable Court be pleased to find the Objector herein in contempt of the Court's order for status quo issued on 29/1/2021 by this Honourable Court.
 - v. Upon issuance of order 4 above, this Honourable Court be pleased to issue an order directing the Objector herein, to demolish the construction put up by the Objector on land parcel Kapsaret/Kapsaret/ Block 4 (Lemok "A") 9, in the alternative, the Court do allow the Administrators herein to demolish the Objector's construction.
 - vi. Further upon issuance of order 4 above, an order of committal to be made against the Objector, his servants, agents and/or persons claiming under him to prison for such as this Honourable Court may deem fit and just in that the Objector by himself, his servants, agents and/or persons claiming under him have disobeyed the orders of this Honourable Court issued on 29/01/2022.
 - vii. In the alternative to prayer 6 above above, the Honourable Court be pleased to order the Respondents herein to pay a fine of Kshs 200,000/- or such other fine as the Court may deem fit.
 - viii. This Honourable Court do order that the Objector should not be heard in any other Court in the Republic of Kenya in any matter against the administrators herein until the Objector herein purges the contempt.
 - ix. This Honourable Court be pleased to preserve the order of this Honourable Court issued on 29/01/2021.
4. The Application is filed through Messrs Cheron J & Co. Advocates and is expressed to be brought under Section 5(1) of the Judicature Act, Article 165 of the Constitution and the Applicable Rules of the Supreme Court of England, Section 1A, 1B, 3, 3A, 63(a) of the Civil Procedure Act, Order 51 rule 1 and 4 of the Civil Procedure Rules and "all other enabling provisions of the law". It is premised on the grounds set out thereon and the contents of the Supporting Affidavit sworn by the 2nd Administrator, Richard Kipngetich Sitienei.
 5. In the Affidavit, the 2nd Administrator deponed that the Objector filed the Application dated 5/11/2021 seeking that "status quo" subsisting on the ground on land parcel number Kapsaret/ Kapsaret Block 4 (Lemok "A") 9 be maintained pending the hearing and determination of the Objection, the Court on 29/11/2021 issued such orders, on 25/11/2022 the Objector began constructing a permanent structure on the parcel of land in total disregard of the said Court orders issued in his favour, the case herein is yet to be determined, the Objector's contemptuous breach of this Court's orders undermines the integrity of the Court, it is necessary for the Objector to be found in contempt of Court in order to preserve the dignity of the Court and to ensure future compliance with Court orders.



Response

6. The Application was opposed by the Objector vide his Replying Affidavit filed on 24/03/2023 through Messrs Isiaho Sawe & Co. Advocates. He deponed that it was his understanding that the “status quo” orders were on occupation and utilization of the portions each party was utilizing before he filed the Application having occupied and utilized the suit portion from the year 1984, he was of the belief that the “status quo” orders which he was seeking were based on his occupation and utilization of the parcel of land, he began to put up a structure which he wishes to be used by his worker when the Administrators intimated their intention of secretly selling the parcel of land during the pendency of the suit and that it would therefore be unfair for him to be cited for contempt for circumstances occasioned by the Administrators.
7. He deponed further that he did not communicate the issue of the construction to his Counsel innocently believing the same to have been covered by the “status quo” orders in force, having been accordingly advised by his Counsel, he is ready and willing to stop any further construction but he urges the Court to warn the Administrators against their intended adverse dealing with the parcel of land pending the hearing and determination of the Objection, he also requests the Court to fix the matter for hearing on priority basis, in the foregoing contempt proceedings cannot be enforceable against him because the “status quo” orders are not specific on construction, he is law abiding citizen and having been advised by his Counsel to halt the construction, he endeavours to abide, he sincerely apologizes for undertaking the construction based on his ignorance of the true meaning of the orders, and that the Petitioners have not utilized the suit land since 1984 hence they do not stand to suffer any prejudice should the structure remain.

Administrators’ Further Affidavit

8. The Administrators filed a Further Affidavit on 17/05/2023 again sworn by the 2nd Administrator. He deponed that a “status quo” order is meant to preserve the subject matter as it existed as at the day of making the order, which is about a Court of law maintaining the prevailing situation of the subject matter of the dispute or the state of affairs as they existed, at the time the Court made the Order the Objector had not constructed the house, it is dishonest for the Objector to allege that he understood the “status quo” orders to be on occupation and utilization of the portions when he is the one who moved the Court to issue the orders, when constructing the Objector knew that he had no right to do so because he came to Court for purposes of establishing his right, if any, over the suit land, it is not true that the Objector has been in occupation since the year 1984 because by the year 1984 they were still residing on the suit land and the Objector has never been in occupation thereof, the allegations that the Administrators intimated an intention to secretly sell the land are false, the Objector cannot cite ignorance when he has an Advocate on record, the objector already completed the construction before this Application could be heard and determined, and that the Objector cannot allege that the orders were not specific on construction yet it is him who sought for the same.

Hearing of the Application

9. The Application was canvassed by way of written submissions. Pursuant to directions given, the Administrators filed their Submissions on 17/05/2023 while the Objector filed on 2/10/2023.

Administrators’ Submissions

10. Counsel for the Administrators basically reiterated the matters already set out in their Affidavits. For the meaning of an order for “status quo”, she cited the cases of *Bakari Shaban Gakere vs Mwana Idd*



Guchu & 3 Others [2022] eKLR and also *Fatuma Abdi Jillo vs Kuro Lengesen & Another* [2021] eKLR. For authority that knowledge of the order can be imputed against the Objector, Counsel cited the case of *Koilel & 2 Others vs Koilel & Another* Civil Appeal No. E002 of 2021 [2022] KEHC 10288 (KLR). On the need for the Court not be seen to make orders in vain and be exposed to ridicule, she cited the case of *Republic vs County Government of Kitui ex parte Fairplan Systems Limited* [2002] eKLR.

11. In conclusion, Counsel submitted that the Objector was well aware that the Court had issued orders and he has confirmed that he began the construction after issuance of the orders. She therefore prayed that the Objector be found to be in contempt of Court.

Objector's Submissions

12. Counsel for the Objector submitted that the “status quo” has not been explained and/or substantiated to enable the Court evaluate whether the same indeed been breached. On the definition of “contempt of Court”, she cited the *Black's Law Dictionary* (9th Edition) and submitted that the term can be defined as “a deliberate act intended to lessen the authority or dignity of a Court, embarrass, hinder or obstruct the administration of justice or disobey a Court's lawful order”. On the nature of “contempt of Court”, she cited *Robertson vrs Her Majesty's Advocates*, 2007 HCAC63.
13. Counsel then contended that the Objector, while lodging his objection sought injunctive orders to issue to preserve the substratum of the Objection proceedings, it is not disputed that at that material time, the Respondent was in possession of the subject portion of land, it is that Application that was compromised by the consent of the parties on 29/11/2021 to the effect that the “status quo” be maintained, it is the Objector's position that his understanding of the “status quo” was with regard to his possession, use and/or utilization and the entries in the register of the affected parcel of land pending the Objection proceedings, it is the Objector's case that he took possession of the land parcel in the year 1984 during the lifetime of the deceased and has been in use thereof to date, it is on this basis that he understood the “status quo” orders to mean retaining the said use/utilization, it is the Objector's case that he began to put up a structure which he intended to be used by his worker after the Administrators' intimated their intention to secretly sell the land during the pendency of the suit, it would be unfair for him to be cited for contempt for circumstances occasioned by the Administrators. She cited the case of *Samuel M.N. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR and added that having been accordingly advised by his Counsel, he is ready and willing to stop any further construction as long as the Administrators are warned against their intended adverse dealing with the portion of land.
14. Counsel submitted further that, from the foregoing, the sole issue that crystallizes for determination is whether the “status quo” orders are specific and/or well explained, it is an established principle of law that in order to succeed in civil contempt proceedings, the Applicant has to prove the terms of the order, knowledge of these terms by the Respondent, and failure by the Respondent to comply with the terms thereof. She further submitted that upon proof of these requirements, the presence of wilfulness and bad faith on the part of the Respondent would be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. She cited the book, “*Contempt in Modern New Zealand*”.
15. It was Counsel's contention that the Administrators have failed miserably to demonstrate and/or prove the above elements. She argued further that a high standard of proof applies whenever committal of a person to prison for contempt is sought, wilful disregard of the Court order has not been established beyond reasonable doubt, and that accidental or unintentional disobedience is not sufficient to justify one to be held guilty. She also cited two more cases which she referred to as Shimmers Plaza Ltd and Martin Wambora.



Analysis & Determination

16. Upon considering the record, including the Affidavits and Submissions presented, it is evident that the major issue that arises for determination herein is “whether the Objector is in contempt of the consent Court orders adopted herein on 29/11/2022”
17. Contempt of Court is that conduct or action that defies or disrespects authority of Court. *Black’s Law Dictionary* 9th Edition defines contempt as follows:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.
18. Regarding the Contempt of Court law in Kenya, on 9/11/2018, Mwita J, in *Kenya Human Rights Commission vs. Attorney General & Another* [2018] eKLR, declared the entire *Contempt of Court Act* No. 46 of 2016 to be invalid for lack of public participation as required by Articles 10 and 118(b) of the *Constitution* and that the said Act, as enacted, encroached upon the independence of the Judiciary.
19. Before enactment of the now invalidated Contempt of Act, Section 5 of the *Judicature Act*, Cap 8, Laws of Kenya was the only statutory basis with respect to the procedure for institution of contempt of Court proceedings. That Section provides as follows:
 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.
20. As it is therefore, there is no specific statute that governs contempt of Court in Kenya. A party seeking recourse for contempt of Court proceeding would therefore have to fall back to the provisions of Section 3 of the *Judicature Act* which provides as follows:

“The jurisdiction of the Supreme Court, the Court of Appeal, the High Court, the Environment and Land Court, the Employment and Labour Relations Court and of all subordinate courts shall be exercised in conformity with—

 - a) the *Constitution*
 - b) subject thereto, all other written laws, including the Acts of Parliament of the United Kingdom cited in Part I of the Schedule to this Act, modified in accordance with Part II of that Schedule
 - c) subject thereto and so far as those written laws do not extend or apply, the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12th August, 1897, and the procedure and practice observed in courts of justice in England at that date

Provided that the said common law, doctrines of equity and statutes of general application shall apply so far only as the circumstances of Kenya and its



inhabitants permit and subject to such qualifications as those circumstances may render necessary.”

21. It is therefore generally agreed that in Kenya the law that governs contempt of Court proceedings is the English law applicable in England at the time the alleged contempt is committed. Section 5 of the *Judicature Act* imposes a duty on the High Court, the Court of Appeal and law practitioners to ascertain the applicable law of contempt in the High Court of Justice in England, at the time the Application is brought.
22. Previously in Kenya, in general, in all circumstances, one had to obtain prior leave of the Court before instituting contempt proceedings. It is now however generally agreed, on the strength of the Court of Appeal decision made in the case of *Christine Wangari Gachege Vs Elizabeth Wanjiru Evans & 11 Others* (2014) eKLR that leave is not required where contempt proceedings relate to Judgment, order or undertaking as in the instant case. Bearing the foregoing in mind, prayer No. 3 of the Application herein is superfluous and unnecessary.
23. Contempt of Court is in the nature of criminal proceedings and therefore, proof of a case against a contemnor is higher than that of balance of probability. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and it must be clearly demonstrated that the person cited for contempt should have had personal knowledge of that order.
24. In order to find a person guilty of contempt there must be proof of wilful and intentional disobedience of a Court order. In *Mabinderjit Singh Bitta – vs Union of India & Others* 1A No. 10 of 2010 the Supreme Court of India stated as follows: -

“In exercise of its contempt jurisdiction the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.
25. Knowledge of the existence of a Court order is a question of fact and for a person to be found guilty of contempt, he must be aware of the terms of the order. That is, he must know what the order required him or her to do or not to do but wilfully and deliberately still disobeyed it. In *Katsuri Limited v Kapurchand Depor Shah* [2016] eKLR, citing *Kristen Carla Burchell v Barry Grant Burchell* (Eastern Cape Division Case No 364 of 2005), it was stated as follows:

“in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove

 - (i) the terms of the order, knowledge of the terms by the respondent, failure by the respondent to comply with the terms of the order.”
26. Coming back to the Application before Court, the Objector is accused by the Administrators of commencing constructions on the parcel of land known as L.R. No. Kasperet/Kapsaret Block 4 (Lemok “A”) when a Court order given on 29/11/2021 prohibiting the same is in force. On his part, the Objector alleges that the order, not being express, he misunderstood its import. The question of knowledge of the Court order is therefore not contested. In any event, the Objector cannot allege ignorance since the order was issued as a result of his own Application.
27. The events leading to the above scenario is that the Objector had on 8/11/2021, by his Summons dated 5/11/2021 approached the Court and filed Objection proceedings herein. His claim was that he purchased 1.5 acres comprised in the said parcel of land known as L.R. No. Kasperet/Kapsaret Block



4 (Lemok “A”) from the deceased in the year 1984, and that the deceased died before effecting transfer of the portion in favour of the Objector. He alleged that the proceedings in this Succession Cause, including the issuance of the Grant and confirmation thereof were conducted without his knowledge. His contention is therefore that his interest was unfairly excluded during the distribution of the estate as pertains to the said parcel of land. He therefore sought annulment and/or revocation of the Grant and the confirmation thereof.

28. In the same Summons, among other prayers, the Objector also sought interim orders as follows:

“That status quo subsisting both on the ground and the register of as L.R. No. Kapsaret/Kapsaret Block 4 (Lemok “A”) be maintained pending the hearing and determination of the Objection proceedings and/or further orders/directions of this Court.”

29. This order of “status quo” was eventually adopted by the parties on 29/11/2021 by consent before Ogola J and accordingly recorded as an order of the Court.

30. In his explanation, the Objector deponed that his understanding of the “status quo” orders was that it related only to occupation and utilization of the portions each party was occupying or utilizing before he filed the Application, having occupied and utilized the subject portion since the year 1984. He claimed that it is on this basis that he began to put up a house which he wishes to be used by his worker. He claimed further that before he began building, the Petitioners had intimated their intention to secretly sell the parcel of land during the pendency of the suit. It is not however clear whether he is claiming that this alleged intimation is what informed his decision to construct. What then is the meaning of an order to maintain the “status quo”?

31. In case of *Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] eKLR, Odunga J (as he then was) stated as follows:

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs Status quo must therefore be interpreted with respect to existing factual scenario...”

32. And in the case of *Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another* [2020] eKLR, Mabeya J described the phrase in the following terms:

By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

33. Applying the above principles, upon carefully studying the record, I easily conclude that what was meant by the “status quo” order was that none of the parties was to carry out or effect any change of circumstances that would materially alter, change or vary the prevailing state of affairs relating to the said parcel of land. The obvious alterations that come to mind are actions that would give or bestow upon third parties an interest or claim over the parcel of land. These actions would logically include for instance sale of the land or transfer thereof to a third party. Others would include charging, mortgaging or in any other way offering the parcel of land as security or collateral for a debt or loan. Other alterations that would logically be prohibited are those relating to changes that would ordinarily require to be made at the government offices dealing with registration of lands. These would include



actions such as sub-division, change of ownership or registration of charges and/or mortgages. The question now is whether construction of permanent structures, in the manner done by the Objector on the suit property, would also amount to carrying out a material change.

34. Considering the circumstances of the matters raised by the Objector in his Application, particularly the fact that he is claiming a portion of a parcel of land - L.R. No. Kapseret/Kapsaret Block 4 (Lemok "A") - that has already been fully distributed in this Cause in 4 portions, I have no hesitation in concluding that the construction of a permanent structure on the suit property is or was clearly in breach of the orders requiring maintenance of the "status quo". This, the Objector has already admitted in his Replying Affidavit. He says that he realized his folly upon being served with the present Application and upon the effect of the Court orders being interpreted and explained to him by his Advocate.
35. The next question now is whether, in carrying out the constructions, the Objector "knowingly", "wilfully" and/or "deliberately" breached or disobeyed the Court orders and therefore whether he should be cited for contempt of Court.
36. In view of the explanations given by the Objector, I am prepared to accept that he was under the honest, but obviously erroneous, belief that the "status quo" orders did not extend to also prohibiting him from erecting constructions on the parcel of land. Of course, he is solely to blame, if as he alleges, he did not first consult his Counsel prior to commencing the constructions. I am certain that Counsel was fully aware of the interpretation of the orders. If, however, as we are made to believe, Counsel was not consulted, then so be it, there is no material before the Court to justify any condemnation upon her.
37. For the foregoing reasons, this Court is not satisfied that there is sufficient justification or material before the Court to find the Objector to be in contempt of Court. I also take cognisance of the fact that the Objector has graciously and swiftly apologized for his said acts. I therefore give the Objector the benefit of doubt.
38. In reaching the above conclusion, I also take cognisance of the reality that contempt proceedings are quasi – criminal in nature as the liberty of a person is at stake. The standard is therefore higher than in civil Proceedings where proof is on a balance of probabilities, but not beyond reasonable doubt as is required under criminal Proceedings. This principle was reiterated in the case *Gatharia K. Mutikika -v- Babarini Farm Ltd* (1985) KLR 227 where the Court of Appeal stated as follows:

"We agree with Mr. Khaminwa's submissions in this respect. 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. Winn LJ on page 1064 was in our view right in saying that the guilt has to be proved "with such strictness of proof ... as is consistent with the gravity of the charge ..."

The principle propounded in *Re Maria Annie Davies* [1889] 21 QBD 236, and 239, that

"Recourse ought not to be had to process of contempt in aid of a civil remedy where there is any other method of doing justice. The observations of the later Master of the Rolls in the case of *Re Clement* seem much in point:

'It seems to me that this jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is not other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject. I



say that a judge should be most careful to see that the cause cannot be mode of dealing with persons brought before him.

On accusations of contempt should be adopted. I have myself had on many occasions to consider this jurisdiction, and I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found. Probably that will be discovered after consideration to be the true measure of the exercise of the jurisdiction" must be born in mind."

39. Similarly, in the case of *Katsuri Ltd -v- Kapurchand Depar Shali* (2016) eKLR, Mativo J (as he then was), while commenting on the nature of committal to jail for contempt of Court, stated as follows:

"Although the proceedings are civil in nature, it is well established that an applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases, The fact that the liberty of the defendant could be affected means that the standard of proof is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant's conduct was deliberate in the sense that he or she deliberately or wilfully acted in a manner that breached the order.

The prayer sought is for committal for contempt. The power to commit for contempt is one to be exercised with great care. An order committing a person to prison for contempt is to be adopted only as a last resort."

40. However, before I pen off, I note the Administrators' allegations that the Objector has since completed the construction. However, the Administrators have not gone further to disclose whether this completion was made before or after the Application herein had already been served upon the Objector. It is therefore not clear whether the Objector continued with the constructions even after being served with the Application. The photographs exhibited by the Administrators only indicate that the walls had been partially constructed. On his part, the Objector has deponed that having been accordingly advised by his Counsel who also advised him to halt the construction, he is ready and willing to stop any further construction. My understanding of this statement by the Objector is that the construction is not yet complete. The position on the ground is therefore not certain to the Court. The outcome of this Application might have been different had it been demonstrated that even after being served with the Application, and despite no fresh Court orders having been issued, the Objector still ignored the same and defiantly continued to construct.
41. In conclusion, the grievances raised by the Objector in his Application dated 5/11/2021, being ownership claims brought as an alleged purchaser of land comprising part of the estate and brought subsequent to confirmation of the grant and final distribution of the estate, I wish to urge the Objector and his Counsel to carefully consider whether the same are matters that can be properly canvassed and determined in this Succession Cause or whether the same ought to be placed before the Environment & Lands Court.

Final Orders

42. In the premises, the Notice of Motion dated 5/12/2022 only succeeds partially. Accordingly, I issue the following orders:
- i. An order of injunction is hereby issued restraining the Objector, whether by himself or his servants or agents or otherwise, from initiating or commencing any new or continuing with any further construction of any permanent structure on the land parcel No. Kapsaret/Kapsaret/



Block 4 (Lemok “A”) 9 pending the hearing and determination of his Application dated 5/11/2021.

- ii. The rest of the prayers made in the Application are declined.
- iii. The impugned structure and/or house constructed by the Objector on the said parcel of land shall be allowed to remain in situ for now but its continued future existence shall depend on the directions that shall be given after final determination of the Objector’s ownership claims over the said parcel of land.
- iv. The parties shall now take directions on the fate of and/or disposal of the substantive Application dated 5/11/2021 save that upon hearing the parties, the Court shall first give directions on whether, as regards the said Application, the parties should address the Court on the question of jurisdiction, choice of forum and whether or not this Succession Court is functus officio.
- v. The Objector’s conduct being the cause of this Application, the Objector shall bear the costs hereof.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 15TH DAY OF DECEMBER 2023

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WANANDA J.R. ANURO

JUDGE

