



REPUBLIC OF KENYA



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

**In re Estate of Navinchandra Hijri Shah (Deceased) (Succession Cause  
2759 of 2002) [2022] KEHC 3377 (KLR) (Family) (27 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 3377 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**SUCCESSION CAUSE 2759 OF 2002**

**LA ACHODE, J**

**APRIL 27, 2022**

**IN THE MATTER OF THE ESTATE OF NAVINCHANDRA HIJRI SHAH  
(DECEASED)**

**ANUJA SHIRISH PANDIT .....**

**APPLICANT**

**-VERSUS-**

**MUKESH KUMAR HIJRI PUNJA SHAH..... 1ST**

**RESPONDENT**

**NEELAM SHAH..... 2ND**

**RESPONDENT**

**NIKHIL ASHVINDCHAND SHAH..... 3RD**

**RESPONDENT**

**DEVJI BHURA LADVA..... 4TH**

**RESPONDENT**

**ANDREW ODHIAMBO OGHUOGA..... 5TH**

**RESPONDENT**

**BERNARD OTIENO WAMUNGA..... 6TH**

**RESPONDENT**

**RULING**

1. The deceased herein died testate on 11/01/2000. He appointed the 1<sup>st</sup> Respondent and two others, as executors of his will. A grant of letters of administration was issued to the executors on 10/01/2003



and it was subsequently confirmed on 6<sup>th</sup> January 2004. Two executors have since died leaving 1<sup>st</sup> Respondent. The applicant has Power of Attorney for the benefit of Navya Saijul Shah a grand daughter and beneficiary of the deceased. On 25<sup>th</sup> February 2018, Navya Saijul Shah, then a minor, entered into a deed of agreement through the next friend Anuja Shirish Pandit, her mother with the trustees/Executors. The deed was adopted as the court order on 10<sup>th</sup> May 2018 in the following terms;

- i. The Trustees in concurrence with the beneficiaries of the estate pay Anuja Pandit the sum of kshs. 1,000,000/= immediately on execution of the deed.
  - ii. Immediately upon receiving the purchase price for the sale of LR No 209/96/26 (Ita Road), the Trustees pay Anuja Pandit the sum of kshs. 8,000,000/= within 30 days of completion of the sale.
  - iii. Immediately upon receiving the purchase price for the sale of the Parklands property, LR No. 209/80/4, mansionette 34, Parklands Court, the Trustees pay Anuja Pandit kshs. 3,500,000/=
  - iv. Commencing 1<sup>st</sup> July 2018, the Trustees pay Anuja Pandit kshs.100,000/= and continue paying kshs.100,000/= for every succeeding month every year as maintenance payments.
  - v. Trustees to authorize Diamond Trust Bank Ltd to submit monthly statements in respect of the trust account commencing from January 2018 onwards.
  - vi. Trustees provide Anuja Pandit and all other beneficiaries of the estate the audited accounts by 31<sup>st</sup> December 2018 for all the accounts relating to the estate.
  - vii. Anuja Pandit agreed to a reduction from the sum of kshs.22,000,000/= to kshs.15,000,000/= . The amount to be settled less kshs. 1,000,000; kshs. 3,500,000/=; kshs.8,000,000/= . Thus leaving an outstanding balance of kshs.2,500,000/=
  - viii. The trustees to give a current schedule of the market value of any such remaining assets of the estate.
  - ix. The Trustees to inform all the beneficiaries of any proposed sale of the remaining assets and seek permission of the beneficiaries before any agreement for sale is executed.
2. This ruling relates to the Application dated 18/03/2021 brought under certificate of urgency and predicated on Section 5 of the Judicature Act and all other enabling provisions of law. In it, the Applicant prays for orders that:
- a. Spent
  - b. Spent
  - c. The Respondents be committed to civil jail for six months and/or until further orders, for the attempted sale of LR 1870/1/79, Ring Road, Parklands (the Ring Road Property).
  - d. The Respondents be appropriately fined and their property in Kenya be attached until the full accounts are rendered.
  - e. The court do order the 1<sup>st</sup> Respondent to comply with the court order dated 10/05/2018.
  - f. Costs be provided.
3. The Application is premised on the grounds listed on the face of the application and the annexed affidavit of Anuja Pandit. The main grounds are that the Applicant and the 1<sup>st</sup> Respondent entered into a deed agreement on 25/02/2018, which was subsequently adopted as the order of the court on



- 10/05/2018. From the order, the 1<sup>st</sup> Respondent was required to provide audited accounts relating to the estate, pay Anuja Pandit (for the benefit of Navya Shah) the sum of kshs. 100,000/= and continue paying the sum of kshs. 100,000/= for every succeeding month every year as maintenance payment among other orders.
4. The Applicant states that in the year 2019 and 2020 the 1<sup>st</sup> Respondent provided handwritten unaudited accounts, which did not provide clarity on the management of the estate. That he also failed to pay the Applicant the sum of kshs. 100,000/= as agreed. It is also her case that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, without consulting the Applicant, sought offers to sell the Ring Road property and further engaged the services of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents as agents for purposes of the sale, contrary to the orders of the court. That the 1<sup>st</sup> Respondents advocate advised the Applicant that monies from the Ring Road property would not be divested to the Applicant contrary to the order.
  5. The Applicant deposes that the Respondents actions showed ill will and based on the past actions of the 1<sup>st</sup> Respondent disposing of LR 17/2016 (new Muthaiga) without consent, she is fearful that the events would recur with the remaining property. That the Respondents actions are contemptuous and they ought to be held liable.
  6. In response, 1<sup>st</sup> Respondent swore an affidavit on 16<sup>th</sup> April 2021 on his own behalf and on behalf of the 2<sup>nd</sup> Respondent. He avers that the application is premature and is an abuse of the court process. That the deed of agreement was fundamentally premised upon sale of agreeable estate properties and securing monies on behalf other estate's collective benefit, an ordinary condition precedent to eventual dissolution.
  7. He contends that it is impossible to make agreed payments to Navya Shah as the estate accounts do not have the monies and that the 1<sup>st</sup> Respondent is not to blame for the insufficiency. They stated the lack of monies in the estate account is as a result of lack of tenancy and failure to sale some properties.
  8. Mr. Mukesh denied that he failed to render accounts and asserted that he prepared the accounts and the Applicant did not show any indication of dissatisfaction with them. He also denied that he did not consult the Applicant about intending to sell the estate's Ring Road property. That he only sought offers for the purchase, which did not breach the enabling terms of the agreement dated 25.02.2018 under clause 11. It is his case that after receiving an offer dated 7<sup>th</sup> November 2020 for the intended purchase of "the Ring Road property" in the sum of Kshs. 380,000,000/=, the 1<sup>st</sup> Respondent instructed the 2<sup>nd</sup> respondent to inform the Applicant about the offer. That the Applicant refused to sign the letter insisting that the property on Ita Road had to be sold off first. Further that she continued to refuse subsequent offers for purchase of the Ring Road Property, causing the Respondents to stop pursuing any sale of the estate's capital assets.
  9. Mr. Mukesh avers that at no time had he indicated that the adult daughter would not be considered in the distribution of the sale proceeds from Ring Road property and that the Applicant misunderstood the 1<sup>st</sup> Respondent's Advocate. That he is willing to divest the proceeds to all the rightful beneficiaries but for the stubborn stance of the Applicant. He thus denies any breach of Court orders on the Respondents part, as no properties have been sold/concluded without the Applicant's knowledge or consent.
  10. The Application was canvassed by way of written submissions. The Applicant submitted that the 1<sup>st</sup> Respondent had full knowledge of the consent order dated 10/05/2018 and still willfully failed to comply with the deed. He urged the court to consider the principles espoused in the case of Bob Collymore & Another v Cyprian Nyakundi (2016) eKLR.



11. It was the Applicant's submission that due to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents knowledge of the terms of the deed, which have neither been varied nor discharged, the Respondents are in contempt of court. That the terms of the deed were that the trustees pay kshs. 100,000 to Anuja Pandit (for the benefit of Navya Saijul Shah) in addition to other maintenance, terms which have not been complied with. The Applicant further submitted that the 1<sup>st</sup> Respondent has provided handwritten unaudited accounts, which do not provide clarity on management of the estate. That the 1<sup>st</sup> Respondent engaged services of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents as estate agents to dispose of the Ring Road Property. In support of this assertion, the Applicant relied on the cases of *Johnson vs Grant* (1923) SC 789, *Milka Wangoi Kamau & Another vs Habby Misoga Lugadiru* (2014) eKLR, *Bell v Tuboy & Another* (2002) 3 All ER 975 and *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* (2005) 1 KLR 828.
12. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the deed of trust and its fulfillment was specifically premised and based upon sale of any agreeable estate properties and securing resultant monies. They also submitted that the Applicants permission was sought before the intended sale as well as before authorization of agents to facilitate the sale. That there was no breach of the partial consent because no sale took place due to the frustration of the sale by the Applicant.
13. The Respondents further submitted that the delay in the sale of the Ita Road estate property was occasioned by the Land Registry but that upon eventual sale of the Ita road property sometime in June 2021, the Applicant was paid her share of kshs. 8,000,000/=. It was also their submission that clause 11 of the deed, only requires the beneficiaries to be informed once or after a proposed sale has materialized. That the clause does not relate to any position taken leading up to the proposed sale. In support of their case, they relied on the following cases *Samuel Mweru & Others vs. National Land Commission & 2 Others* Misc Application No. 443 of 2017 and *St Mary's Academy vs. Grace Njeri & Another* (Civil Appeal No. 3 of 2020).
14. I have duly considered the pleadings, the evidence and the rival submissions brought before this court and it is my view that the main issue for determination is whether the Respondents are guilty of contempt of the orders of the court adopted on 10<sup>th</sup> May 2018 and if so what punishment should be meted against them.
15. Section 5 of the *Judicature Act* gives the High Court power to punish for contempt of court. It provides;

“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.”
16. The Court in the case of *Samuel M.N. Mweru & Others vs. National Land Commission & 2 Others* (2020) eKLR, while discussing elements to be proven in an application for contempt, noted as follows;

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated:-



"There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate."

17. In the case of *AG v Times Newspaper* (1974) AC 273, Lord Diplock said that;

"The remedy for contempt of court after it has been committed is punitive; it may involve imprisonment, yet it is summary; it is generally obtained on affidavit evidence and is not accompanied by the special safeguards in favour of the accused that are a feature of the trial of an ordinary criminal offence. Furthermore, it is a procedure which if instituted by one of the parties to litigation is open to abuse, the courts have therefore been vigilant to see that the procedure for committal is not lightly invoked in cases where, although a contempt has been committed, there is no serious likelihood that it has caused any harm to the interests of any of the parties to the litigation or to the public interest."

The burden of proof required to prove contempt of court should be beyond reasonable doubt. The Applicant therefore has to prove to this court that the Respondents willfully disobeyed the court orders cited above.

18. As to whether the respondents were aware of the Court Orders of 10/05/2018, the record shows that the orders were adopted from a deed of agreement. The deed was made on 25<sup>th</sup> February 2018 between the Applicant (on behalf of Navya Saijul Shah) on one part and Mukesh Kumar Hirji Punja Shah & Kanji Damji Pattni (Trustees) on the second part. It is not in dispute that the 1<sup>st</sup> Respondent was aware of the court order being one of the parties to the deed of agreement and that the terms of the order and its objects were clear. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents are not parties to the deed of agreement and subsequent court order. The Applicant has not demonstrated or brought any evidence on the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents knowledge of the terms of the court order. None of the said Respondents has made any reference to the court order. It is therefore unclear to this court that they were in fact aware of the order and its contents. What is clear to this court however is that the 1<sup>st</sup> Respondent was a party to and was aware of the court order dated 10/05/2018.

19. Having established that the 1<sup>st</sup> Respondent was aware of the court order and its terms, I will examine the next element, which is, whether the 1<sup>st</sup> Respondent acted in breach of the terms of the court order dated 10/05/2018.

20. On the issue of consent before a sale, it is the applicants case that the 1<sup>st</sup> Respondent sought to sell the Ring Road property without prior consent of the Applicant and further appointed the agents (2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents). Clause 11 of the order states;

"That the Administrators/Trustees shall inform all the beneficiaries of any proposed sale of the remaining assets and shall seek the permission of the beneficiaries before any agreement for sale is executed"



21. Records before the court, specifically copy of email dated 16/11/2020 indicate that the 1<sup>st</sup> Respondent notified the Applicant of the offers received for the sale of the Ring Road property. The 1<sup>st</sup> Respondent then went on to accept the offer for sale of the property. However no agreement for sale was drawn up between the potential buyer and the 1<sup>st</sup> Respondent. It is my understanding based on the above order that the 1<sup>st</sup> Respondent did not breach the terms of the agreement. He informed the Applicant and did not execute any sell because the Applicant failed to give her consent.
22. Secondly, it is the Applicant's case that the 1<sup>st</sup> Respondent failed to provide audited accounts relating to the estate. That he only provided a handwritten unaudited account, which did not provide clarity on the position of the estate. The Respondents denied the allegation and stated that the Applicant acknowledged receipt of the prepared accounts and did not raise any issue on them at the time, neither did she reject the contents thereto or call for clarification. It was his contention therefore that the Applicant had not established that the 1<sup>st</sup> Respondent is incapable of managing the affairs of the state.
23. Clause 6 of the deed of agreement provides as follows;

“That the Administrators/Trustees will provide Anuja Pandit and to all the beneficiaries of the estate the audited accounts by 31<sup>st</sup> December 2018 of all the accounts relating to the estate of the late NavinChandra Shah.”

This provision is indeed clear. The trustee, being the 1<sup>st</sup> Respondent in this case ought to provide to the beneficiaries of the estate audited accounts by the specific date. Black's Law Dictionary 2<sup>nd</sup> Edition defines audit as “a formal examination and verification of records, accounts, finances and/or compliance with a set of standards.” Practice dictates that an audit can only be carried out by qualified independent and impartial audit firm.

24. The Respondent seems to be confused as to what an audit actually is. He rendered accounts for the estate but the accounts were not subjected to audit as per the court order. The fact that the Applicant did not raise any complaint at the time of receiving such accounts does not vitiate her right to the orders given by this court. To this end, I agree with the Applicant, that to fulfill the orders of the court, the 1<sup>st</sup> Respondent ought to have provided her with audited accounts relating to the estate by 31<sup>st</sup> December 2018.
25. The Applicant also takes issue with the monthly payments owed to her as maintenance. It is her case that the 1<sup>st</sup> Respondent has never complied with the order. Clause 4 of the order required;

“That commencing from 1<sup>st</sup> July 2018, the Administrators/Trustees will pay Anuja Pandit (for the benefit of Navya Saijul Shah) the sum of Kenya shillings One hundred thousand (kshs.100,000/=); And Continue Paying the sum of Kenya shillings one hundred thousand (kshs.100,000) for every succeeding month every year as maintenance payments. The transfer to be sent by the 1<sup>st</sup> every month to the following account: Navya Saijul Shah, I&M bank, Spring Valley Branch, Account No. 03601605762010”

26. The Respondent denied any wrongdoing. He contended that the order was predicated on the sell of some estate assets, which did not happen. The order above relates to payment starting 1<sup>st</sup> July 2018 and makes no reference to any other qualification for the payments to be honoured. Considering the phrasing of the preceding orders, it is this Court's view that the monthly payment of kshs.100,000/= was not anchored on the sale of any property. Without prejudice to the foregoing, the court observes that if the position is that the payment was predicated on the sell of estate assets, then the payments should have began immediately upon the sale of the Ita Property. This was however not done.



27. In the premise, the Application dated 18<sup>th</sup> March 2021 succeeds in part. I find that the 1<sup>st</sup> Respondent had knowledge of the court order dated 10/05/2018. I am satisfied of the clarity of the terms of the order and that there has been willful disobedience on the part of the 1<sup>st</sup> Respondent with regard to some clauses and in particular clauses 4 and 6. The first respondent is therefore in contempt of court.
28. It is an established position that contempt of court rests on the power of court to uphold its dignity and process. It is imperative that court orders are obeyed and where an individual is enjoined by an order to perform; he has a duty to carry out that order. Failure to obey warrants punishment. The Court of Appeal in *Sbimmers Plaza Limited v National Bank of Kenya Limited* (2015) eKLR, upon finding that the Respondent guilty for contempt noted as follows;
- “The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy. We think we have said enough to send this important message across.”
29. In the interest of justice and considering that this is an old matter that needs to come to an end, I do hereby make the following orders to give the 1<sup>st</sup> Respondent the opportunity to purge the contempt of the orders of this court;
- i. The 1<sup>st</sup> Respondent is hereby ordered to provide the Applicant with audited accounts in relation to the estate within 60 days from the date hereof, failure to which a warrant of arrest will issue against the 1<sup>st</sup> Respondent.
  - ii. The 1<sup>st</sup> Respondent do and is hereby ordered to pay Anuja Pandit (for the benefit of Navya Saijul Shah) the sum of Kenya shillings four million five hundred thousand (kshs.4,500,000/=) being the sum of money owed to the Applicant since 1<sup>st</sup> July 2018 to date.
  - iii. The 1<sup>st</sup> Respondent shall pay the Applicant (for the benefit of Navya Saijul Shah) the sum of Kenya shillings one hundred thousand (kshs.100,000) for every succeeding month every year as maintenance payments to the agreed Account beginning 1<sup>st</sup> May 2022.
  - iv. The cost of this application shall be borne by the 1<sup>st</sup> Respondent.

**DATED SIGNED AND DELIVERED IN VIRTUAL COURT ON THIS 27<sup>th</sup> DAY OF APRIL 2022**

.....

**L.A. ACHODE**

**JUDGE**

In the presence of ..... Advocate for the Applicant

In the presence of ..... Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent

