



REPUBLIC OF KENYA



**In re Estate of Isaac Kiilu Kilova (Deceased) (Succession Cause  
40 of 2003) [2022] KEHC 10372 (KLR) (20 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10372 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 40 OF 2003**

**MW MUIGAI, J**

**JUNE 20, 2022**

**IN THE MATTER OF THE ESTATE OF ISAAC KIILU KILOVA (DECEASED)**

**BETWEEN**

**ANNASTACIA MWENDE KIILU ..... PETITIONER**

**AND**

**DAVID GATHUMBI ..... CONTEMNOR**

**AND**

**EAST AFRICAN PORTLAND CEMENT PLC .... INTENDED INTERESTED  
PARTY**

**RULING**

**Pleadings**

1. The deceased Isaac Kiilu died on 7/7/2002 as per the Death Certificate annexed to the Petition.
2. Anastacia Mwende Kiilu & Julius Kilovia filed Petition on 25/2/2003.
3. The beneficiaries of deceased's estate as listed in the Petition and Chief's letter of 31/01/2003 from Chief of Lumbwa Location Muumandu are;

Margaret Khakasa Kiilu- 1st widow

Alex Kilovia- son

Emily Nduku- daughter

Oscar Ndambuki –son

Morine Mutile- daughter



Anastacia (Anna) Mwendu Kiilu- 2nd widow

Mueni Kiilu-daughter

Eric Musembi Kiilu- son

Wambua Kiilu- son

4. The grant of letters of administration was granted on 18/9/2003.
5. By Chamber Summons filed on 14/3/2003, the 2<sup>nd</sup> widow sought orders to restrain the 1<sup>st</sup> widow from withdrawing monies in deceased's account No.xxxx at KCB Kitengela, all benefits of NSSF & shares held East African Portland Cement Co Ltd and accessing terminal benefits of the deceased to the exclusion of Petitioners until hearing and determination of the Succession Cause.
6. By an order by Hon. R.V. Wendoh LJ of 26<sup>th</sup> November 2004, the Court ordered that the sum of Ksh 2,445,914.00 held by East Africa Portland Cement Co Ltd on behalf of Kiilu Kilovia be released to the Public Trustee Machakos for safe custody awaiting administration and distribution of deceased's estate.
7. By an application by East African Portland Cement Co Ltd , the Interested party /Applicant , sought stay of execution of the Court order of 7/12/2004 against the Applicant until further orders of the Court and that the Applicant be joined as an Interested Party to the proceedings and granted leave to file Defense [ Replying Affidavit]. The orders issued by the Court on 7/12/2004 were/are against the Applicant who was/is not a party to the proceedings and ought to be set aside.
8. The Certificate of Confirmation of Grant of 5/12/2016 includes that the Terminal Benefits at East Africa Portland Cement Co. Ltd each to receive Ksh 1,639,646.50 forthwith less Ksh 22,500/-payable to the lawyer in each case. The dues at ICEA to be ascertained and in equal shares

#### **Petitioners/Applicants summons dated 28/06/2021**

9. The Petitioners/Applicants sought the following orders:-
  1. That the application be certified as urgent and service of the same be dispensed with at the 1<sup>st</sup> instance.
  2. That Notice to Show Cause to issue to the Respondent/Contemnor to show cause why he should not be committed to civil jail for a period of six (6) months for contempt of court orders issued on 5/12/2016.
  3. That the Respondent/Contemnor be committed to civil jail for a period of six (6) months for contempt of court orders issued on 5/12/2016.
  4. That the cost of this application be provided for.
10. In support of the Motion, the Petitioners jointly swore a supporting affidavit on even date wherein they have averred that the Certificate of Confirmation of Grant issued on 5<sup>th</sup> December, 2016 indicates that the deceased's dues owed by ICEA Lion Life Assurance, be ascertained and remitted to them in equal shares. According to the Petitioners, the Certificate of Confirmation of Grant was served upon ICEA Lion Group Contact Center through a letter dated 23<sup>rd</sup> November, 2020 through an email sent on 24<sup>th</sup> November, 2020 annexed and marked as "AMK 2A and 2B" respectively.



11. The Petitioners averred that the Contemnor wrote back to the Petitioners' advocates on 27<sup>th</sup> November, 2020 acknowledging receipt of the letter dated 23/11/2020 and the Court order as per the letter attached and marked as "AMK 3".
12. The Petitioners averred that on 30<sup>th</sup> November, 2020 the Contemnor's employer wrote back an email dated 30<sup>th</sup> November, 2020 attached and marked as "AMK 4" indicating that it had rerouted the matter to the Contemnor for further attention and in compliance with the court orders.
13. The Petitioners averred that it had come to their knowledge that the Contemnor had attempted to unlawfully and illegally to pay the benefits accruing thereto to the deceased's former employer, an act which violates the orders indicated in the Certificate of Confirmation of Grant.
14. In response to the Contemnor's intentions, the Petitioners averred that their advocates wrote a letter dated 25<sup>th</sup> March, 2021 attached and marked as "AMK 7" informing the Contemnors that his acts are unlawful and all the benefits ought to be paid directly to the Petitioners through their advocate but the Contemnor has been unwilling to settle the benefits as per the Court orders. According to the Petitioners, it has been 8 months and the benefits have not been paid hence in contempt of court orders.
15. The Petitioners averred that unless the orders sought are granted, the Contemnor shall continue to disregard the orders of this Court to the Petitioners detriment. On the advice of their advocate, the Petitioners assert that the Court orders and directions are never issued in vain hence necessary for this court to stamp authority in order to uphold its dignity.

#### **Replying affidavit sworn 26/11/2021**

16. In opposition to the Summons, the Respondent/Contemnor averred that the Summons ought to be dismissed as it is misguided and bad in law. He averred that the right party that ought to be sued is ICEA Lion Life Insurance Ltd since he is only employed as its Claims Manager who has since the claim of the deceased funds, diligently exercised his duties according to the policies of the company. According to the Contemnor, committing him to civil jail will occasion an injustice.
17. The Contemnor averred that since the issuance of the orders of 5<sup>th</sup> December, 2016, the insurance has exercised all its powers to release the funds to the deceased's employer but the claim remained pending waiting full documentation as per the policy provisions. Reference was made to the letter attached and marked as "DG-1". According to the Contemnor, it was until a fully executed claim form was forwarded to the insurance on 6<sup>th</sup> May, 2021 that the authority to issue a discharge form was granted. The Contemnor averred that East African Portland Cement was paid the deceased's benefits on 12<sup>th</sup> May, 2021 as per the Discharge Form attached and marked as "DG-3".
18. According to the Contemnor, the due process to transfer the funds of the deceased to his employer was undertaken in accordance with the policy hence the Petitioners cannot claim form him or his employer. According to the Contemnor, the Summons should be dismissed for lack of merit.

#### **Contemnor/Applicant notice of motion dated 18/10/2021**

19. The Contemnor/Applicant sought the following orders-
  1. That this application be certified as urgent and service of the same be dispensed with at the 1<sup>st</sup> instance.
  2. That execution proceedings against David Gathumbibe stayed and the application dated 28<sup>th</sup> June, 2021 be stayed pending the outcome of the application.



3. That the Order issued on 5<sup>th</sup> December, 2016 by Justice E. Ogola be set aside.
  4. That this Hon. Court to grant leave for East African Portland Cement Plcto be enjoined as a Third Party in this suit.
20. The Motion is supported by the affidavit of the Contemnor sworn on even date wherein he averred that he is employed by ICEA Lion Life Assurance Ltd as its Claims Manager. He averred that on 27<sup>th</sup> March, 2007, the company entered into a Group Life Insurance Policy with East African Portland Cement Company covering all its employees including the deceased herein through AoN Minet Insurance Brokers vide Policy Number xxxx which had commenced on 1<sup>st</sup> May, 1996 in the sum of Kshs. 1,200,000/- at the commencement date as per a copy of the policy annexed and marked as “DG-1”.
  21. He averred that after the Court order was issued by the Court on 5<sup>th</sup> December, 2016 for the funds to be released to the Petitioners advocates, M/s B. M Mungata & Company Advocates, it was not until 25<sup>th</sup> February, 2021 that an uncompleted form was presented to the Insurance Co. and returned for completion, signing and stamping by two East Africa Portland Cement Company officials vide a letter dated 21<sup>st</sup> April, 2021 and marked as “DG-6”. According to the Contemnor, a complete and executed claim form was returned to the Insurance Co. on 6<sup>th</sup> May, 2021 and the benefits were fully paid on 12<sup>th</sup> May, 2021 to the deceased employer.
  22. According to the Contemnor, Zamara Risk and Insurance Brokers Ltd acting in place of Minet Insurance Brokers Ltd was on 9<sup>th</sup> July, 2021 notified of the transfer of Kshs. 1,700,000/- to the deceased employer company in accordance with the policy. Reference was made to a copy of the Payment Remittance Advice attached and marked “DG-9”. According to the Contemnor, the Petitioners cannot claim from the Contemnor who has followed the due procedure of transferring the funds. The Contemnor averred that the Contemnor’s employer will be prejudiced since its duty was discharged as per the Policy agreement.

### **Replying affidavit sworn on 3/11/2021**

23. On the advice of their advocate, the Petitioners averred that the Contemnor does not have any right of audience since he has discontinued to disobey the court orders in respect of the Certificate of Confirmation of the Grant issued on 5<sup>th</sup> December, 2016. The Petitioners averred that it is important to note that the Contemnor has admitted that he was aware that this Court had issued an order directing that the Insurance Co. and the intended third party does release the funds to the Petitioners advocate. Reference was made to the court orders issued on 5/12/2016 marked as “AMK 2”.
24. According to the Petitioners, in flagrant breach and disobedience of the court orders, the Contemnor working for the Intended third party authorized the payment of Kshs. 1,750,000/- to the Intended third party and not their advocates on record. Reference was made to the Discharge Form and Remittance Advice marked as “AMK 3A and 3B”. The Petitioners averred that the remittance was done on 12<sup>th</sup> May, 2021 by the Contemnor despite being in receipt of the court order on 27<sup>th</sup> November, 2020 which had ordered where to remit the funds.
25. On the advice of their advocate, the Petitioners averred that an order of this Court supersedes any contract and neither the Petitioners nor any beneficiaries of the estate are privy to the terms of the contract as between the Intended third party and the Contemnor. According to the Petitioners, obeying the court order is not a matter of choice hence the Contemnor who has willfully disobeyed the court order cannot seek the court’s assistance.



26. The Petitioners asserted that the Contemnor's Motion should be disallowed and dismissed with costs. The Petitioners urged Court to hear and determine their Summons dated 28<sup>th</sup> June, 2021 seeking to cite the Contemnor in contempt of the court orders of 5<sup>th</sup> December, 2016 lest the court will itself be aiding an illegality thereby depriving the rightful beneficiaries of the estate the justice they deserve.

#### **Petitioners/Applicants submissions dated 25/11/2021**

27. On behalf of the Petitioners, it is submitted that the Contemnor is in continued flagrant and wilful disobedience of the court orders. It is submitted that the court should be guided by Section 5 of the Judicature Act since the Contempt Act, 2016 was nullified by the Court.

28. Reliance was placed on the case of OGM (Suing as the Father of KGW) vs. FG & Another [2020] eKLR where four elements to be satisfied were stipulated when court is faced with a contempt of Court application among them;

That the terms of the order (or injunction or undertaking) are clear unambiguous and are binding on the Defendant

29. It is submitted that there was no ambiguity on the Certificate of Confirmation of Grant hence the dues indicated thereto would have been directed to the Petitioners through their advocates and not any other individual. The other condition is;

That the Defendant has knowledge of or proper notice of the terms of the order

30. According to the Petitioners, it is not in dispute that the Contemnor had notice of the Certificate of Confirmation of Grant. It is submitted that the Certificate was served upon the Insurance Company through a letter dated 23<sup>rd</sup> November, 2020 and sent through an email on 24<sup>th</sup> November, 2020 while the Contemnor acknowledging receipt of the letter vide a letter dated 27<sup>th</sup> November, 2020. The Contemnor failed to comply with Confirmation of Grant.

#### **The Defendant has acted in breach of the Order**

31. It is submitted that the Contemnor disregarded the Court orders by paying the deceased's former employer the deceased's dues as per a letter annexed to the supporting affidavit and marked as "AMK 7".

#### **The Defendant's conduct is deliberate**

32. It is submitted that the Contemnor was well aware of the Court orders as per his letter dated 27<sup>th</sup> November, 2021 deliberately paid the deceased's benefits to a third party who is neither a beneficiary of the estate nor entitled to the same.

33. The Petitioners urged the court to be guided by the cases of Hon. Basil Criticos vs. AG & 8 Others (2012) eKLR and Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] KLR considered by the court in Sheila Cassat Issenberg & Another vs. Antony Macatha Kinyanjui [2021] eKLR and find that their Summons dated 28<sup>th</sup> June, 2021 has merit. They urged the Court to dismiss the Contemnor's Motion dated 18<sup>th</sup> October, 2021.



## Contemnor/Applicant's submissions dated 16/03/2022

### Summons dated 28/06/2021

34. On behalf of the Contemnor, it is submitted that he worked within the scope of work as a Claims Manager by releasing the funds to the deceased's former employer as per the Policy Agreement. According to the Contemnor, the Petitioners were never a party to the said policy but only as a beneficiary. According to the Contemnor, the company could not go against the terms of the said policy due to the legal implications thereafter and in any case the court orders were issued in 2016 long after the Insurance Co. had initiated the process of releasing the funds to the intended third party as per the policy agreement.
35. Reliance was placed on the case of *Alton House Limited & Another vs. Davis Nathaniel Chelogoi & 2 Others* [2018] eKLR where Gacheru J. while making reference to the case of *Toyota Kenya Limited vs. Joseph Ojiem*, Nairobi HCCC No. 1243/99 emphasized on the notion that "parties to a contract that they have entered into voluntarily are bound by its terms and conditions".
36. As to whether the Contemnor may be committed to civil jail, it is submitted that he should not since he has been wrongly sued as he only works as a Claims Manager and he has diligently exercised his duties according to the policies of the company. According to the Contemnor, the right party to be sued was the Insurance Co. as decisions of the company are made by various personnel in the company and the Legal Claims Department only comes in to execute those decisions.
37. According to the Contemnor, under Order 22 Rule 31 of the *Civil Procedure Rules*, the court is vested with discretionary power to permit the judgment debtor to show cause against detention in prison. It is submitted that Rule 34 provides that the Court may upon such terms as it thinks make an order disallowing the application for the arrest and detention of a judgment debtor or directing his release where it appears that the judgment debtor is unable, from any sufficient cause to pay the amount of the decree.
38. According to the Contemnor, committal to civil jail is unconstitutional and the mode of execution should be adopted as a last resort where other modes of execution have failed. It is submitted that the Petitioners have not exhausted all the other modes of execution before applying for committal to civil jail. Reliance was placed on paragraph 44 of the judgment of Majanja J. in *Beatrice Wanjiku & Another vs. AG & Another* [2012] eKLR; Nairobi Petition No. 190 of 2011. According to the Contemnor, committing him to civil jail will not serve the interest of the Petitioners and other beneficiaries of the estate.
39. According to the Contemnor, the Petitioners should pursue the former deceased's employer to get the funds which belong to the deceased released to them or any other beneficiary of the deceased's estate. The Contemnor urged the Court to decline the prayers sought in the Summons seeking to commit the Contemnor to civil jail for six months.

### Notice of Motion dated 18/10/2021

40. As to whether the execution proceedings against the Contemnor should be stayed, it is submitted that the proceedings should be stayed pursuant to Order 22 Rule 22(1) of the Civil Procedure Rules since he has demonstrated that he was wrongly sued and that the funds have been released to the deceased's former employer as per the Discharge Form marked as "DG-8" to that effect. Reliance was placed on the case of *Francis Ndabebwa Twala vs. Ben Nganyi* [2018] eKLR; Siaya Civil Appeal No.5 of 2017



where the Learned Judge made reference to the case of *Butt vs. Rent Restriction Tribunal*(1982) KLR on the discretion of court to stay execution or proceedings.

41. Regarding the Court orders of 5<sup>th</sup> December, 2016 issued by Hon. Ogola J., whether they should be set aside, it is submitted that the funds are not in custody of the Insurance Co. but the deceased's former employer. According to the Contemnor, the funds were released on 12<sup>th</sup> May, 2021 as per the Policy Agreement annexed as "DG-1."
42. According to the Contemnor, Order 12 Rule 7 of the Civil Procedure Rules, which confers the court with the discretion to set aside or vary judgment and any consequential decree or order upon such terms as are just. Reliance was placed on the case of *Sheila Wambui Muturi vs. Peter Macharia Muiru*[2021]eKLR; Nairobi Civil Appeal No. 102 of 2017 where Hon. Ong'udi J. made reference the case of *Patel vs. East Africa Cargo Handling Services Ltd*(1974) EA.
43. It is submitted that allowing the court orders as they are will greatly prejudice the Contemnor's employer as they have fully discharged their duty as per the Policy Agreement. According to the Contemnor, the issue that the funds were to be paid to the deceased's employer was never brought to the attention of Hon. Ogola J. and that is why he issued the same. According to the Contemnor, the Petitioners can still get the money from the Intended Third Party hence the need to vary the Court orders to reflect the terms of the Insurance Policy without prejudicing any of the parties in the policy.
44. Reliance was also placed on Article 159(2) (d) of *the Constitution* that justice should be administered without undue regard to procedural technicalities.
45. As to whether leave should be granted to the Intended Party to be joined in this suit, it is submitted that pursuant to Order 1 Rule 15 of the Civil Procedure Rules, the Defendant can seek a third party be joined. It is submitted that the money was released to the Intended Third Party who is therefore in a position to shed light as to the whereabouts of the deceased's funds and how the beneficiaries can access the same.
46. Reliance was also placed on the overriding objectives envisaged under Section 1A and 1B of the *Civil Procedure Act* as well as Section 3 of the same Act which vests the Court inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. The Contemnor urged the Court to allow his Motion since it has merit.

## Determination

47. I have considered the twin applications, affidavit in support and in opposition as well as the submissions and cases relied upon.
48. The issues that emerge for determination are;
  - 1<sup>st</sup> Application;

That Notice to Show Cause do issue to the Respondent/Contemnor to show cause why he should not be committed to civil jail for a period of six (6) months for contempt of court orders issued on 5/12/2016.
  - 2<sup>nd</sup> Application;

That this Hon. Court be pleased to grant leave for East African Portland Cement Plcto be enjoined as a Third Party in this suit.

That execution proceedings against David Gathumbibe stayed and the application dated 28<sup>th</sup> June, 2021 be stayed pending the outcome of the application.



That the Order issued on 5<sup>th</sup> December, 2016 by Justice E. Ogola be set aside.

### Contempt of court

49. Section 5 of the Judicature Act, Cap.8 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 that power shall extend to upholding the authority and dignity of subordinate courts.

50. *In Re Bramblevale* (1970) 1 Ch. 128 Lord Denning, affirmed what constitutes contempt when he stated as follows:

Contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honored phrase, it must be proved beyond all reasonable doubt.

51. In the case of Sam Nyamweya & Others –V- Kenya Premier League Ltd And Others [2015] eKLR) the Court stated that:-

“Contempt of Court is constituted by conduct that denotes wilful defiance of or disrespect towards the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”

52. Section 38 Civil Procedure Act provides for powers of the Court in execution as follows;

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons to be recorded in writing, is satisfied— .....

53. The Court of Appeal in Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR stated:-

“Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not.

The Courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and center. 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.”

54. In the case of Trusted Society of Human Rights Alliance vs. Cabinet Secretary for Devolution and Planning & 3 Others [2017] eKLR provides:

...There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard which in civil contempt cases the burden of proof is higher than a balance of probabilities required in civil cases and provides that:

- i. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;



- ii. the defendant had knowledge of or proper notice of the terms of the order;
  - iii. the defendant has acted in breach of the terms of the order; and
  - iv. the defendant's conduct was deliberate...
55. The Court shall apply the above legal provisions and case-law to resolve the issue at hand.
56. The Applicant for orders for contempt of Court through issuance of the NTSC deposed that the Contemnor is Life & Pensions Manager at/of ICEA Lion Life Assurance. The Certificate of Confirmation of grant issued on 5/12/2016 was served upon ICEA Lion Group Contact Centre and received response that it was rerouted to the Claims Manager/Contemnor for his further attention and compliance of Court orders.
57. This Court finds that the Certificate of Confirmation of Grant is governed by Section 55, 71 72 & 73 of LSA and relates specifically empowers the distribution of capital assets, significant pieces of property; land, homes, cars, stocks, bonds, money etc amongst the beneficiaries of the deceased's estate.
58. Whereas it is a valid, legal and regular order of the Court it is based on distribution of the assets that comprise of the estate of the deceased and are available for distribution.
59. In this Case, though the Certificate of urgency of 5/12/2016 is a valid order of the Court, but no specific order was issued to a specific person(s) to comply with a specific act(s). In fact the funds sought from ICEA Life Assurance in the Confirmed Grant are dues to be ascertained and then divided in equal shares to Administrators of the estate. It is not spelt out that ICEA is/are ordered to ascertain the dues and distribute in equal shares.
60. Court Orders are to be complied with, however, with respect to the Certificate of Confirmation of 5/12/2016, it does not refer to ICEA specifically and does not amount to a Court order directed at/ to ICEA because;
- a. ICEA/Claims /Legal Manager is not a party to these proceedings and leave was not sought to join the Contemnor vide Order 1 rule 3 & 15 CPR 2010.
  - b. It is not clear from the facts deposed who is the Contemnor, is it Zamara Risk and Insurance Brokers Ltd acting in place of Minet Insurance Brokers Ltd or ICEA Claims/Legal Manager?
  - c. The amount sought is not ascertained and therefore was not available for distribution.
  - d. As Administrators of deceased's estate the Applicants ought to have gathered and collected and ascertained first the assets that comprise of deceased's estate before listing the same for distribution under the confirmed grant.
  - e. The Administrators failed to disclose other beneficiaries of the estate of the deceased as outlined in the Petition and to obtain their written consents and the proposed mode of distribution before the grant was/is confirmed.
  - f. The Contemnor authorized payment of the deceased policy benefits to the deceased's former employer as per the Policy requirement.
61. For these reasons, the certificate of confirmation of grant is not legally a clear and unambiguous Court order directed at ICEA/Claims/Legal Manager. The Order though served to ICEA, is not capable of compliance or execution as ICEA is not party to the Succession proceedings. From these facts, ICEA has not willfully defied the Court order. The Court finds that the Applicant has not satisfactorily



proved beyond all reasonable doubt contempt of Court on the part of the Contemnor to warrant NTSC to issue . The application is denied.

### **Joinder of 3rd party**

62. In *Yafesi Walusimbi -vs- Attorney General of Uganda*(1959) EA 223, the Court was emphatic as hereunder;

In order to join a third party the subject between the third party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same.

63. Joinder of an interested party is governed by Order 1 Rule 10 (2) of the Civil Procedure Rules which states that:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

64. The application to join a 3<sup>rd</sup> party as envisaged under Order 1 Rule 15 CPR 2010 is not practical as there is no defendant in these proceedings. These are succession proceedings under LSA. The Court finds the appropriate application is to grant joining of an interested party, which is hereby granted.

### **Disposition**

1. The Contempt of Court and/or Notice to Show Cause 2<sup>nd</sup> Application is dismissed.
2. The Application for leave to join East African Portland Cement PLC as an interested Party in the proceedings is granted.
3. The execution proceedings against David Gathumbi are stayed
4. Each party to bear their own costs.

It is so ordered

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT MACHAKOS THIS 20TH DAY OF JUNE, 2022.**

**M.W. MUIGAI**

**JUDGE**

