



Opingo v Director, Civil Registration Services & another (Miscellaneous Civil Application 691 of 2019) [2022] KEHC 12563 (KLR) (Civ) (4 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12563 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION 691 OF 2019**

**JK SERGON, J
AUGUST 4, 2022**

BETWEEN

DAINA AMENYA OPINGO APPLICANT

AND

DIRECTOR, CIVIL REGISTRATION SERVICES 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. Before me for determination is the notice of motion dated December 14, 2021 brought by the applicant herein and supported by the grounds set out therein and the facts stated in the affidavit of the applicant, who sought for the following orders:
 - a) That the Director, Civil Registration Services (formerly Principal Registrar of Births and Deaths) and the Attorney General be joined as respondents in the matter.
 - b) That this honourable court be pleased to find that the 1st respondent is in contempt of court for disobeying and willfully disobeying the order of the court given on July 30, 2020.
 - c) That this court do issue summons to the Director, Civil Registration Services (formerly Principal Registrar of Births and Deaths) to attend court and show cause why contempt of court proceedings should not be taken against him/her for disobeying the said order.
 - d) That the respondents do pay the costs of the application.
2. The 1st and 2nd respondents opposed the Motion by putting in the replying affidavit sworn by Milkah Nyende, a Senior Civil Registrar of Births and Deaths, on February 2, 2022.
3. At the hearing thereof, the parties chose to rely on the averments made in their respective documents.



4. I have considered the grounds set out in the motion; and the facts deponed in the affidavits supporting and opposing the Motion respectively.
5. A brief background of the matter is that the applicant herein lodged the *ex parte* application dated October 28, 2019 and sought orders that Herbert Taitus Andalo (“the deceased”) be presumed dead and that the Principal Registrar of Births and Deaths do issue a death certificate in respect to the deceased.
6. The abovementioned application was placed before the court and upon considering the same, the court by way of the ruling delivered on July 30, 2020 allowed it as prayed.
7. The applicant has now approached this court under the premise that there has been non-compliance with the above ruling.
8. Returning to the instant motion, it is clear that two (2) main orders are being sought therein, which I shall address hereunder.
9. The first order has to do with joinder of the 1st and 2nd respondents as parties to the suit.
10. Upon my study of the record, I note that none of the parties elaborated on this subject in the motion. I however note that the Motion was brought under the provisions of order 1, rule 10(2) of the *Civil Procedure Rules, 2010* which stipulate the following on joinder of parties:

“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.”
11. Further to the foregoing, in the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR the court reasoned that:

“...the main purpose of joining parties is to enable the court to deal with matter brought before it and to avoid multiplicity of suits. It is a fundamental consideration that before a person can be joined as party, it must be established that the party has an interest in the case. In addition, it must be clearly demonstrated that the orders sought in the suit would directly and legally affect the party seeking to be enjoined.”
12. Upon my consideration of the background facts and material and the orders being sought in the instant motion; and in the absence of any opposing arguments, I am satisfied that it would be a proper exercise of my discretion to grant the order sought for joinder of the respondents to the matter.
13. In respect to the second order sought, that the 1st respondent herein be held in contempt of the court order of July 30, 2020 the applicant on her part states that following the abovesited order, her advocate took out a copy thereof and had it served upon the 1st respondent but that the latter declined to issue her with a death certificate.
14. The applicant states that as a result of non-compliance by the 1st respondent, she has been unable to obtain the proceeds of her insurance claim lodged with Jubilee Insurance Company Limited in respect to the deceased who was her husband.



15. It is the averment by the applicant that despite various requests for compliance on the part of the 1st respondent, the latter has not complied with the requisite court order and hence the need to enforce the same through contempt proceedings.
16. In retort, Milkah Nyende states on behalf of the respondents that the 1st respondent is awaiting the gazettment of rules to ensure the smooth operation of registration of presumed deaths under the [Births and Deaths Registration Act](#), cap 149 laws of Kenya (“the [Act](#)”) and that in the present instance, the 1st respondent had advised the applicant that a court order of presumption of death would serve the same purpose as a certificate of death.
17. The deponent further states that it would not be possible to capture all the required details pertaining to presumed deaths in a certificate of death and hence why a certificate of death cannot be issued in the present instance.
18. For all the foregoing reasons, the respondents urge this court not to find the 1st respondent to be in contempt of the court order made on July 30, 2020.
19. Section 5 of the [Judicature Act](#), cap 8 laws of Kenya is the paramount substantive law granting superior courts the power to punish for contempt. The section stipulates the following:
 - “(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....”
20. The term ‘contempt’ is defined in the [Black’s Law Dictionary](#) as follows:
 - “a disregard of, or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”
21. The guiding principles in determining whether there has been contempt of court orders, as expressed in [Pinnacle \(K\) Travel and Safaris Limited v Omar Faruk Osman & 5 others](#) [2017] eKLR and echoed in the case of [Samuel MN Mweru & others v National Land Commission & 2 others](#) [2020] eKLR are:
 - a) That the order was clear, unambiguous and binding on the defendant.
 - b) That the defendant had knowledge of or proper service of the terms of the order.
 - c) That the defendant acted in breach of the terms of the order.
 - d) That the defendant’s conduct was deliberate.
22. On the first principle above, it is not contested that the High Court *vide* the ruling delivered on July 30, 2020 granted the applicant an order directing the 1st respondent herein (formerly the Principal, Registrar of Births and Deaths) to issue a death certificate in respect to the deceased.
23. Concerning the second principle, upon my study of the record, it is apparent that the 1st respondent was at all material times made aware of the terms of the aforementioned ruling and order since the same was served upon it by the advocate for the applicant *vide* the letter dated December 18, 2020 and received on December 23, 2020.
24. In respect to the third and fourth principles, upon my study of the record, it is not in dispute that the 1st respondent has not complied with the order made under the abovementioned ruling.



25. In my view, whereas I have considered the explanation offered by the respondent's for the non-compliance, I am not convinced that the same is excusable in the circumstances, especially noting the previous judicial decisions wherein similar orders were issued against the 1st respondent or his/her counterparts.
26. To support my position above, I associate myself with the recent case of *In re Application for Presumption of Death of Nicholas Muema Munywoki* [2021] eKLR where the court upon granting an order of presumption of death, determined that:

“With regard to the prayer directed to the Registrar of Deaths section 17 of the *Births and Deaths Registration Act* under which the application was brought provides as follows:-

“Upon the death of any person the registration of whose death is compulsory, it shall be the duty of the nearest relatives of the deceased present at the death or in attendance during the last illness of the deceased, and, in default of such relatives, of every other relative of the deceased dwelling or being in the same registration area as the deceased, and, in default of such other relatives, of each person present at the death and of the occupier of the house in which to his knowledge the death took place, and, in default of the persons herein before in this section mentioned, of each inmate of such home, or of any person finding or taking charge of the body of such person or causing the body of such person to be buried or otherwise disposed of, to give notice within such time as may be prescribed to the registrar of the registration area in which the death took place.”

In my view, the declaration of presumption of death of the subject herein by this court means that the subject is dead by operation of law, and that the said death has to be registered by the Registrar as required by law. I will thus order the Registrar to register the death of the subject herein.”

27. In view of all the foregoing circumstances, I am convinced that the applicant is entitled to the prayers sought in the instant motion.
28. The outcome therefore is that the notice of motion dated December 14, 2021 succeeds and is hereby allowed as prayed, giving rise to the following orders:
- i. The Director, Civil Registration Services (formerly Principal Registrar of Births and Deaths) and the Attorney General be and are hereby joined as respondents in the matter.
 - ii. The 1st respondent is hereby found to be in contempt of the order of the court given on July 30, 2020.
 - iii. Summons be and are hereby issued to the Director, Civil Registration Services (formerly Principal Registrar of Births and Deaths) to attend court on September 20, 2022 and show cause why contempt of court proceedings should not be taken against him/her for disobeying the said order.
 - iv. The applicant shall have the costs of the application.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 4TH DAY OF AUGUST, 2022.

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JK SERGON



JUDGE

In the presence of:

..... for the applicant.

..... for the 1st and 2nd respondents.

