



REPUBLIC OF KENYA



**Chuba & another v Chumba & another (Succession Cause 436 of 2004)
[2022] KEHC 14400 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 14400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 436 OF 2004
JN ONYIEGO, J
SEPTEMBER 23, 2022**

BETWEEN

**CKC 1ST APPLICANT
CC (MINOR SUING THROUGH THEIR MOTHER AND NEXT FRIEND)
JWN 2ND APPLICANT**

AND

**AISHA NIFUSI CHUBA 1ST RESPONDENT
ALI CHUMBA 2ND RESPONDENT**

RULING

1. By a notice of motion dated May 13, 2022, the applicants herein CKC and CC (minor) suing through their mother and next friend moved this court pursuant to section 5 (1) of the [Judicature Act](#) Cap 8 Laws of Kenya and sections 1A, 1B and 63 of the [Civil Procedure Act](#) seeking;
 - a. Spent;
 - b. That pending the hearing and determination of this application a notice to show cause be issued against the respondents, to show cause why they should not be prosecuted for contempt of the court orders issued on January 31, 2022
 - c. That the respondents be held in contempt of the court orders issued on January 31, 2022 for failure to transfer the respective entitlements of CKC and CC (minor) in the estate of Chuba Bakari Hamisi.
 - d. That the costs of this application be provided for.
2. The application is based on the grounds set out on the face of it and further amplified by the content contained in the affidavit in support sworn by JWN on May 13, 2022 in which she averred that the



respondents had deliberately disobeyed the court orders made on January 31, 2022. That despite having been served with the ruling giving rise to the subject orders, they have ignored and or disobeyed the same by failing to transfer the respective entitlements or share of the estate to CKC and CC (minor) in the estate of CBH. That the respondents have not filed any appeal nor obtained any stay orders against the ruling delivered on January 31, 2011.

3. She urged the court to penalize the respondents for the dignity of the court to be restored.
4. Despite service of the said application upon the respondents, there was no response filed. The application was therefore argued *ex parte* as there was no response nor appearance on the respondent's part.
5. Mr Mwanzia appearing for the applicant merely adopted the content contained in the affidavit in support of the application. He contended that the court should find the respondents culpable of contempt of the court orders.
6. I have considered the application herein, affidavit in support and oral submissions by counsel for the applicant. The only issue for determination is whether the respondents are in contempt of the court order issued on January 31, 2022. This court's jurisdiction has been summoned pursuant to section 5 of the *Judicature Act* which empowers the court to entertain applications to punish for contempt.
7. Although the application is not opposed, the applicant is under obligation to prove on a *prima facie* basis that she indeed deserves the orders sought. The fact that an application is not opposed is not a guarantee that such application must automatically succeed. The applicant is bound to discharge his or her obligation by proving the prayers sought to the required degree. See *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* (2018) e KLR where the Supreme court held that;

“Be that as it may, as a court of law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a matter of course grant the sought orders. It behooves the court to be satisfied that *prima facie*, with no objection, the application is meritorious and the prayers may be granted”
8. In the instant case, there is no dispute that this court delivered its ruling on January 31, 2022 making certain directions for implementation by the respondents. From the materials attached to the affidavit in support of the application more practically annexure JWN2 and JWN 4 being letters by the respondent's lawyers acknowledging that they were aware of the court orders and that they had preferred an appeal, there is no doubt that the respondents were made aware of the existence of the subject orders. The questions beginning for answers are whether the respondents were/are aware of the court order; that the order is clear and unambiguous and; whether they have deliberately disobeyed the same.
9. It is trite law that court orders are sacrosanct and that until discharged, they must be obeyed. See *Hadkinson v Hadkinson* (1952) 2 ALL ER. 562 where the England court of appeal held as follows;

“as (per Somervell and Romer (JJ), that it was the unqualified obligation of every person against, or in respect of whom, an order has been made by the court of competent jurisdiction, to obey it unless and until that order was discharged...”



10. Similarly, in the case of *Matiang'i the Cabinet Secretary of Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others* (2018) e KLR the court of appeal had this wisdom to share;

“ where courts issue orders, they do so not as suggestions or pleas to persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance...”

11. In this case, the respondents were aware of the orders in force and its terms. They do not deny knowledge of the same. All that the court is supposed to be satisfied with is whether;

- a. The respondents were or are aware of the orders in question
- b. That the terms of the orders were clear and unambiguous;
- c. That the orders have been disobeyed; and
- d. The disobedience was deliberate

12. In the circumstances of this case, the applicant has established the existence of the above ingredients as observed in the case of *Katsur Limited v Kapurchand depur Shah* HCC 25/13. See also *Mutitika v Baharini farm Ltd* (1985) KLR where the court held;

“ anyone who, knowing of an injunction , or an order of stay, willfully does something, or causes others to do something, to break the injunction or interfere with the stay, is liable to be committed for contempt of court as such person has by his conduct obstructed justice”

13. The objective of contempt proceedings is to check against flagrant disobedience of court orders so as to preserve and maintain the integrity and dignity of the court. This position was succinctly held in the case of *Commercial Bank of Africa v Ndirangu* (1990-1994) EA 69 where the court observed that, flagrant disobedience of court orders if allowed to go unchecked will result in the onset of erosion of judicial authority.

14. Taking into account the totality of the background and circumstances under which the subject orders were issued, it is apparent that the respondents have deliberately chosen to ignore the court orders.

15. In the absence of any stay order setting aside the orders, the respondents have no choice but to obey the orders. I am satisfied that the application is merited and therefore allowed to the extent that the respondents are guilty of contempt of court orders and therefore directed to appear before this court to show cause why they should not be punished for the said contempt. Mention on October 12, 2022. Costs of the application be awarded to the applicants.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 23RD DAY OF SEPTEMBER, 2022.

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J. N. ONYIEGO

JUDGE

