



**In re Estate of Daniel Kibuki Kamonye alias Daniel Kifuku Kamonya  
alias Kifuku alias Kifuku Kamonye [Deceased] (Succession Cause  
314 of 2006) [2022] KEHC 15739 (KLR) (25 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15739 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 314 OF 2006  
TM MATHEKA, J  
NOVEMBER 25, 2022**

**IN THE MATTER OF THE ESTATE OF THE LATE DANIEL KIBUKI KAMONYE ALIAS  
DANIEL KIFUKU KAMONYA ALIAS KIFUKU ALIAS KIFUKU KAMONYE [DECEASED]**

**BETWEEN**

**TERESIAH WANGUI MALUKI ..... 1<sup>ST</sup> APPLICANT  
MARGARET NJERI KIBUKU ..... 2<sup>ND</sup> APPLICANT  
SUSAN WANGARI KIBUKU ..... 3<sup>RD</sup> APPLICANT  
CECILIA WANGECI DANIEL ..... 4<sup>TH</sup> APPLICANT  
LUCY WANJIKU KIBUKU ..... 5<sup>TH</sup> APPLICANT  
JECINTAH WAIRIMU KIBUKU ..... 6<sup>TH</sup> APPLICANT  
ROSE NYAMBURA KIBUKU ..... 7<sup>TH</sup> APPLICANT**

**AND**

**ESTHER WANJIRU KIBUKU ..... ADMINISTRATRIX**

**AND**

**JOSEPH KAMAU KIBUKU ..... 1<sup>ST</sup> ADMINISTRATOR  
GRACE WAMBUI KIBUKU ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. The 6<sup>th</sup> Applicant Jecintah Wairimu Kibuku vide summons dated 15<sup>th</sup> October, 2021 brought under Section 47 of the [Law of Succession Act](#) and Rule 73 of the [Probate and Administration Rules](#) seeks for the following orders: -



1. Spent
  2. This Honorable Court be pleased to cite Esther Wanjiru Kibuku, Joseph Kamau Kibuku & Grace Wambui Kibuku for contempt for defiance of the orders issued by this Honorable Court on 31<sup>st</sup> May, 2021.
  3. That in any event, until the full compliance by the respondents with the terms of the order of the court dated 31<sup>st</sup> May, 2021, the Honorable be pleased to deny the respondents herein any and or all audience and produced a full and accurate inventory of the assets and liabilities of the estate
  4. That the costs of this application be provided for and borne by the Respondent.
2. The grounds for the application are on its face and in the supporting affidavit sworn by Jecinta Wairimu Kibuku on 15<sup>th</sup> October, 2021. She deposed that she is the current administrator of the estate of her late father having been appointed by the court on its own motion in its decision dated 31<sup>st</sup> May, 2021.
  3. She averred that she was appointed as an administrator of the estate herein due to the fact that the Respondents had neglected and or failed for a long time to administer the estate and or render accounts thereof to court as by law required and instead had embarked on a systemic transfer of some vital assets of the estate to their own names in attempts to deny the rest of the beneficiaries an equal and fair share of the estate.
  4. It was her averment that she had filed an application on the 3<sup>rd</sup> of February, 2020 seeking to revoke the grant of letters of administration made on 7<sup>th</sup> August, 2006 and confirmed jointly to the respondents on 18<sup>th</sup> January, 2010 and the Respondents to be directed to produce before the Honorable court, within 60 days, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.
  5. She deposed that the Honorable court granted the orders sought above on the 31<sup>st</sup> May, 2021 and that despite due service of the said orders and letters from her advocate requesting for audited accounts upon the respondents they have failed to produce to the court full and accurate inventories of their deceased's estate contrary to the provisions of Section 76 and 83 of the *Law of Succession Act*.
  6. It was her deposition that her hands are tied as the previous administrators/respondents herein are reluctant to facilitate the process of change of administrators because they still continue to act as the estate's administrators contrary to the orders issued by this Honorable court.
  7. She contended that the process of change of administrators is further frustrated by the fact that the respondents have transferred some of the deceased's properties to their own names which makes it difficult for the court to include as part of their father's estate and further denies the rest of the beneficiaries an equal and fair share of the estate.
  8. She deposed that unless this Honorable court intervenes, the respondents will continue to subject the estate to wastage, plunder and conversion to their personal beliefs and that she has reliable learnt that the respondents utilized the now revoked grant to surreptitiously transfer most of the estate assets to their names and that explains their reluctance to comply because of fear of exposure of the level and extent of their mischief.
  9. The application is opposed.



10. Joseph Kamau Kibuku swore a replying affidavit on 11<sup>th</sup> November, 2021 on his behalf and on behalf of his co-respondents. He deposed that it is not true they are in contempt of court or that they do not intend to comply with the orders issued by the court on 31<sup>st</sup> May, 2021.
11. He denied the entire averments by the Applicant and in addition stated that the applicant is aware they initiated a process of preparing accounts for the period required by the court and they have already filed the accounts in court and served the applicant with a copy of the same.
12. He averred that they also required the applicant to pay the costs incurred while compiling the accounts but she refused to meet the said costs.
13. It was his deposition that the Applicant is refusing to acknowledge that title number Nakuru Municipality Block 10/29 is owned in common between himself and his late father and he has filed an application on that issue that is currently pending for determination before the court.
14. He prayed that the instant Application be dismissed with costs.

### **Submissions.**

#### **The applicant's submissions.**

15. The Applicant filed her submissions on 7<sup>th</sup> March, 2022.
16. She submitted on the following issues;
  1. Whether the respondents are in contempt of court orders issued on 31<sup>st</sup> May, 2021.
  2. Whether the respondents should be denied audience of this court until the full compliance with the order issued on the 31<sup>st</sup> May, 2021.
17. On Whether the respondents are in contempt of court orders issued on 31<sup>st</sup> May, 2021 the Applicant citing *Samuel M.N. Mweru & others v National Land Commission & 2 others* [2020] eKLR submitted that a party who seeks contempt orders must bring his or her application within the threshold required. In that case the court restated the elements that an applicant must prove in contempt proceedings from the book *Contempt in Modern New Zealand* as follows:

“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 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 orders; and
  - d. The defendant's conduct was deliberate.
18. The Applicant submitted that the respondents are in contempt of court orders issued on 31<sup>st</sup> May, 2021 requiring them to furnish the court within 60 days of the aforementioned order, a full inventory of the assets and liabilities of the estate and an accurate account of all dealings therewith from the date of their appointment as administrators up to the date of the account. It was submitted that the order was unequivocal, unambiguous and literal.



19. The applicant submitted that the respondents were aware of the impugned order and she cited the case of *Abdi Satarbaji & another v Omar Ahmed & another* [2018] eKLR where the court opined that:

“The issue of service is integral in contempt proceedings as it connotes the knowledge and/or notice of the order in issue by the person served. Willful disobedience of a court order cannot be imputed against a party who has no knowledge of the order in question. Perhaps that is why this Court in the *Shimmers Plaza Limited case* rendered itself as follows:

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.”

20. The applicant further submitted that for the respondents to be held in contempt of court there must be a demonstration that there was willful disobedience of the order. For this proposition reliance was placed on *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR which cited the Supreme Court of India in *Indian Airports Employees Union v Ranjan Catterjee & Another* [AIR 1999 SC 880: 1999(2) SCC: 537 where the court held that: - “In order to amount to “civil contempt” disobedience must be willful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents, it does not amount to willful disobedience.” & *Mabinderjit Singh Bitta v Union of India & others* 1 A NO. 10 of 2010 (13<sup>th</sup> October, 2011): where it was stated that: -

“In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful 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.”

21. It was the applicant’s position that the respondents have willfully, deliberately, flagrantly and arrogantly breached the terms of the order herein as there is no inventory of assets and liabilities of the estate of the deceased and an account of the dealings of the estate of the deceased on record.

22. The Applicant also accused the Respondents of failing to hand over to her the certificates of title and lease belonging to the deceased and all the bank statements for the estate accounts they operated while they were administrators to enable her to administer the estate.

23. The applicant stated that the respondents herein are still collecting rent or deposits from the deceased’s estate and continue to operate the bank accounts of the estate which acts are contemptuous to the order issued on 31<sup>st</sup> May, 2021 and amounts to intermeddling which is criminal offence pursuant to Section 45 of the *Law of Succession Act*.

24. The Applicant argued that the so called inventory, income and expenditure and financial statements furnished by the respondents herein and filed on the 1<sup>st</sup> November 2021 and 15<sup>th</sup> November 2021 respectively are only audited accounts which are scanty and self-serving since the accounts that this Honorable Court required to be furnished in its order is a complete history of all subsequent transactions done by the erstwhile administrators. She further argued that as per the *Black’s Law Dictionary* 2<sup>nd</sup> Edition an inventory is a detailed list of articles of property, a list or schedule of property, containing a designation or description of each specific article; an itemized list of various



articles constituting a collection, estate, stock in trade etc. with their estimated or actual values. in law, the term is particularly applied to such a list made by an executor, administrator, or assignee in bankruptcy and submitted that from the foregoing the filed documents christened as inventory income and expenditure and financial statements does not contain an inventory of the assets and liabilities of the deceased.

25. She stated that the respondents conduct is contemptuous to the order issued on 31<sup>st</sup> May, 2021 as they have refused, failed and ignored her request to surrender the original title deeds and bank statements of the estate and continue to hold the same in their custody despite the knowledge that their roles as administrators were revoked.
26. On Whether the respondents should be denied audience of this court until the full compliance with the order issued on the 31st May, 2021 the applicant submitted that the respondent should not be granted audience until full compliance with the order issued on 31<sup>st</sup> May, 2021.

### **Submissions by the Respondents.**

27. The Respondents filed their submissions on 23<sup>rd</sup> March, 2022.
28. The respondents argued that the principles that guide a court of law in determining if an application of contempt is merited were set out in the case of [\*Republic v Attorney General & another Ex Parte Mike Maina Kamau\*](#) [2020] eKLR as follows: -

To succeed in the instant application, the applicant must prove<sup>[75]</sup>

- (i) the terms of the order,
- (ii) Knowledge of the 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.<sup>[76]</sup> A comprehensive exposition of elements of civil contempt is discussed in [\*Contempt in Modern New Zealand\*](#)<sup>[77]</sup> as follows:-

"... The applicant must prove to the required standard 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.



29. The Respondents cited *Woburn Estate Limited v. Margaret Bashforth* [2016] eKLR where the Court of Appeal stated that: -

“...We bear in mind the often-cited passage attributed to Lord Denning in *Bramblevale Ltd* [1970] 1 CH128 at page 137 that: -

A contempt of court is an offence of criminal character. A man may be sent to prison for it. It must be satisfactorily proved showing that when the man was asked about it, he told lies. There must be some further evidence to incriminate him...”

30. On the standard of proof in contempt proceedings, the Respondents relied on the case of *JGK v F WK* [2019] eKLR where the court held: -

“..... 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 willfully acted in a manner that breached the order.....”

31. The respondents submitted that the accounts of the estate were filed after the applicant filed the present application, the same have not been challenged and as such the prayer to have this court deny them audience has been overtaken by events.

32. The respondents argued that the only issue is whether the delay in complying with the orders was deliberate and/or there was willful disobedience of the court orders. They submitted in the negative and contended that there is no evidence before this court to show that they in all fairness did not want to comply with the orders.

33. That a look at annexure marked as J.K.K. 1 is proof that accounts filed on 1<sup>st</sup> November, 2021 for the period of 1<sup>st</sup> January,2010 to 31<sup>st</sup> May,2021 had been prepared as early as 23<sup>rd</sup> July,2021 but the same could not be filed due to failure by the Applicant to meet the costs for the account. They also submitted that concerning the accounts filed on 15<sup>th</sup> November,2021 it is evident the same were prepared and received on 12<sup>th</sup> November 2021 and it is not true therefore that they willfully failed to comply with the orders of this court.

34. They submitted that they complied with the orders of the court although not within the stipulated time as they filed an inventory which provides for the list of the property, description of each property, estimated value for each property and the income received from each of the listed assets.

35. The respondents argued that even if the court was to find that the accounts were not accurate, then the recourse would not be to punish the respondents by sending them to civil jail but rather direct that a proper account be filed. To support this position reliance was placed on reasoning of Achode J (as she then was) *In re Estate of Gitere Kabura (Deceased)* [2019] eKLR where the court made the following findings: -

“...  
17. I find that, the applicants have not discharged their legal duty to prove beyond reasonable doubt that the conduct complained of constitutes contempt of Court by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. However, I would have found the 1<sup>st</sup> and 2<sup>nd</sup> respondents guilty of contempt of court if they had failed totally to account



as ordered. They did take steps to give an account of the estate. However, as indicated above that account is not adequate in certain respects. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are therefore granted thirty (30) days to address the issues raised within the meaning of Section 83(h) of the *Law of Succession Act...*”

36. The Respondents urged the court to dismiss the application with costs.

### **Analysis & Determination.**

37. The only issue for determination is whether the respondents are in contempt of the court order given on 31<sup>st</sup> May, 2021. The key order was made as follows;

i. The respondents, within 60 days hereof to render an account as per Section 76(d) of the *Law of Succession Act* as read with section 83(h) which states; to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.

38. S. 76 (d) (iii) of the *Law of Succession Act* provides one of the grounds upon which a grant can be revoked as the failure:

to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particulars

39. S. 83(e) of the *Law of Succession Act* creates the statutory duty for a legal representative to;

within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

40. S. 83(g) of the *Law of Succession Act* provides another duty;

within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

41. S. 83(h) of the *Law of Succession Act*, another duty;

to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

42. *Black's Law Dictionary* 9<sup>th</sup> Edition, defines contempt inter alia as:

... Conduct that defies the authority or dignity of a court or legislature... [which] interferes with the administration of justice.



43. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:

It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. (emphasis added)

44. To this I add the words of the Supreme Court of India in *T. N. Gadavarman Thiru Mulpad v Ashok Kbot and Anor* [2006] 5 SCC:

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law... it is ... the central pillar of the democratic State. If the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

45. The words of the learned judges succinctly capture the reason why court orders must be obeyed. The people of Kenya have under our Constitutional dispensation donated certain powers to the courts. It is in the exercise of those powers that courts issue orders. Courts are also empowered to punish for the disobedience of their orders. Compliance with and obedience of orders of the courts are a thread of life to our democracy and the rule of law. Otherwise it is the law of the jungle. That is not something the courts can condone.
46. The order for accounts is clear and unequivocal. At no time did the Respondents deny knowledge of the order. Neither have they complained that it was unclear or confusing. They have been administrators of the estate and are expected to be aware of their legal obligations under the *Law of Succession Act*. They knew exactly what was expected of them six months after the confirmation of the grant. They did nothing. They have had to be prompted by court through the applicant, who was appointed by court in the exercise of the court's powers to safeguard the estate of the deceased. They cannot be heard otherwise. It is my view that to that end the first two elements of contempt have been established.
47. Being aware of the clear orders of this court, have the respondents complied?
48. The respondents have clearly not complied with the order. They have treated the order of this court as though it was a request made to them by the Applicant. This is evident from the attitude expressed through letters written to the counsel for the applicant regarding the compliance yet the order clearly stated they were to provide the accounts to the court.
49. I have perused the record and seen what the respondents have filed in the attempt to comply. I would agree with the applicant. The respondents have thrown at the court what appears to be an audit report.



It does not bear the narrative required by the statutory provisions of the Law of Succession Act which is to include the assets and liabilities of the estate, and all the transactions that the administrators have carried out with respect to the entire estate. The account required by law is not just about an audited account. It is about the administrators reporting on their fiduciary duty with respect to the estate. It is not something to be taken lightly. It is a heavy duty that has penal consequences as per s. 95. of the Law of Succession Act which states offences by personal representatives

- (1) Any personal representative who, as regards the estate in respect of which representation has been granted to him-
  - (a) willfully or recklessly neglects to get in any asset forming part of the estate, misapplies any such asset, or subjects any such asset to loss or damage; or
  - (b) willfully fails to produce to the court any such inventory or account as is required by the provisions of paragraphs (e) and (g) of section 83; or
  - (c) willfully or recklessly produces any such inventory or account which is false in any material particular; or
  - (d) knowing or having reason to believe that the estate will prove to be insolvent, continues to administer it without petitioning for administration thereof in bankruptcy, shall be guilty of an offence, and shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment

50. These provisions are not in the law in vain. It is therefore necessary for the respondents to bear in mind that being an administrator of any estate whether it is your father's or your spouse's is a legal duty that carries fiduciary responsibilities and must be taken with the seriousness it deserves.
51. The report filed is titled Inventory, income and expenditure and other financial statements. It has no supporting documents, nothing, hence there are just figures without any supporting evidence. That is obviously unacceptable. What is required is more than a report. It is an account. The manner in which it is presented makes it difficult for the court to tell what happened to the estate and whether the administrators were true to their mandate. They have had the grant for more than 10 years and must explain themselves candidly.
52. First the list of assets as set out in the certificate of confirmation of grant is 43 (forty-three). An explanation as to what they did with each asset would amount to an account. The certificate of confirmation did not distribute the estate. What they give appears to be a distribution of some kind. That needs to be explained in their account.
53. As I have indicated herein above the respondents have not complied with the orders of this court.
54. In addition, and to frustrate the efforts of the administrator to carry out her work, they have deliberately refused to release her the original title documents for the estate. They instead wrote a letter sending to her copies of the documents. They are no longer the legal representatives of the estate of the deceased and have no reason to hold onto the said documents. To this end their counsel has the duty to explain to them the meaning of section 79 of the Law of Succession Act: It states;
  79. Property of deceased to vest in personal representative The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.



55. What then?

- i. I find and hold that the application for contempt has merit.
- ii. Taking into consideration the nature of the matter the respondents will get another opportunity to make right their wrong. They have to list each and every asset in the Certificate of Confirmation of grant dated 18<sup>th</sup> January 2010 and account for it from that time to date.
- iii. An order be and is hereby directed to the respondents to, within 45 days from the date hereof to file in court and serve upon the applicants, the account as required by law.
- iv. In default, the respondents will be in contempt and this court will deal with them in accordance with the law.
- v. This being a family matter, each party should bear their own costs.

56. Orders accordingly

**DATED SIGNED AND DELIVERED VIA EMAIL THIS 25<sup>TH</sup> NOVEMBER 2022.**

**MUMBUA T MATHEKA J**

**CA JENNIFER**

FOR THE APPLICANT.

SHETH & WATHIGO ADVOCATES

FOR THE RESPONDENTS

WAIGANJO & CO ADVOCATES

