



Karanja (Suing as a beneficiary and co-administrator of the Estate of the late Charles Karuga Koinange (Deceased)) v Ashford Muriuki Mugwuku t/a Ashford & Associates Advocates & another (Civil Suit 152 of 2017) [2022] KEHC 15734 (KLR) (Civ) (24 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15734 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL SUIT 152 OF 2017
JN MULWA, J
NOVEMBER 24, 2022

BETWEEN

ISABELLA WANJIKU KARANJA PLAINTIFF
SUING AS A BENEFICIARY AND CO-ADMINISTRATOR OF THE ESTATE OF
THE LATE CHARLES KARUGA KOINANGE (DECEASED)

AND

ASHFORD MURIUKI MUGWUKU T/A ASHFORD & ASSOCIATES
ADVOCATES 1ST RESPONDENT
SHEILA MURUGI MUGO T/A SHEILA MUGO & CO.
ADVOCATES 2ND RESPONDENT

RULING

1. The history of this matter is well known to the parties herein. Briefly however, the Applicant is one of the administrators of the Estate of the late Charles Karuga Koinange. The Respondent herein represented the Applicant and other Administrators in Succession Cause No. 998 of 2006 – In the Matter of the Estate of the late Charles Karuga Koinange. In the course of executing his instructions, he gained custody of various securities and documents relating to the Estate of the deceased including land titles, log books, share certificates among others. Vide an Originating Summons dated 10th July 2018, the Applicant herein sought for the release of the said securities and documents to her on behalf of the Estate of the deceased. The Respondent admitted having custody of the said securities and documents but declined to release them until his legal fees is settled.
2. In a judgment delivered on 14th November 2019, Mbogholi J. (as he then was) inter alia ordered the Respondent to present his fee note to the Administrators of the Estate jointly for payment and allowed



him to retain such securities as could be sufficient to discharge his fee note as and when the same is paid. Subsequently, the Applicant filed an application dated 27th February 2020 seeking for review of the Orders of 14th November 2019 and asking that the Respondent be cited for contempt of the said orders. The Contemnor herein came on record for the Respondent soon thereafter. It is not clear what became of the application dated 27th February 2020.

3. However, the Applicant filed another application dated 20th January 2021 seeking inter alia that the Respondent and her advocate, the Contemnor, do unconditionally release documents pertaining to LR 20920 (Grant No. 104360) and two (2) deed plan Nos. 196068 and 196071 to her advocates. The application was dismissed in a Ruling dated 27th July 2021 and delivered on 29th July 2021.
4. The Applicant has yet again approached this court vide an Amended Notice of Motion dated 11th April 2022 seeking the following Orders:
 1. That the Honourable court be pleased to issue summons to the contemnor Sheila Murugi Mugo t/a Sheila Mugo & Co. Advocates directing her to appear in court in person and show cause why she should not be held in contempt for failure to comply with the orders at the Honourable court issued on 27th July 2021.
 2. That the Contemnor Sheila Murugi Mugo T/a Sheila Mugo & Co. Advocates be cited for contempt of court and punished accordingly in regard to her failure to comply with the orders issued vide the orders made on 27th July 2021.
 3. That further and/or in the alternative to prayers (1) and (2) hereinabove, the contemnor be ordered to unconditionally and forthwith release to the plaintiff's Advocates (JM Njenga & Co. Advocates) the documents in issue namely: Original Title to LR No. 20920 (Grant No.104360) and two original deed plans Nos. 196068 and 196071.
 4. That the costs of this application be provided for.
 5. That the Honourable court be at liberty to issue such other or further orders as it shall deem appropriate in the circumstances.
5. The application is supported by the supporting and further affidavits of the Applicant's advocate Jeremy Njenga. He avers that the Contemnor is in deliberate and defiant contempt of the orders issued in the Ruling of 27th July 2021.
6. The application is opposed by way of a Replying Affidavit sworn by the Contemnor on 25th May 2022 and Grounds of Opposition dated 7th June 2022.
7. This court has considered the parties' respective affidavits, the Grounds of Opposition as well as the written submissions put in support and in opposition of the application.
8. In the Ruling of 27th June 2021, Mbogholi J. made the following orders:
 - a. The title documents pertaining to the titles known as No. LR 20920 (Grant No. 104360) and the two (2) deed plan Nos. 196068 and 196071 shall be deposited in a security/safe deposit to be held in the joint names of the parties' advocates with a reputable bank to be agreed upon between the parties within 45 days from today, pending full settlement of the legal fees of the respondent by the applicant.
 - b. In the circumstances of the Motion, a fair order on costs is that the respective parties shall bear their own costs."



9. None of the orders above were directed to the purported Contemnor in her personal capacity. It was up to the Applicant and the Respondent as the parties to the suit to ensure compliance with the order requiring the depositing of the title documents in a security/safe deposit to be held in the joint names of their advocates. However, the Applicant has not demonstrated that the Respondent's advocate hindered compliance with the order in any way whatsoever especially when the Respondent has clearly admitted that the documents are in his custody. The Applicant has also not provided any proof of attempts made to reach out to the Respondent to ensure compliance. Indeed and as held by Mboghli J. in the above Ruling, the advocate is merely acting in her professional capacity and thus cannot be held liable in her personal capacity. In the premises, the advocate cannot be summoned to court to explain non-compliance if she has no instructions in that regard from the Respondent. Neither can she be cited for contempt of the orders of 27th July 2021. Perhaps the Respondent may be the right person to respond to these accusations, in the circumstances.
10. As regards prayer 3 of the instant application, I find that the same cannot issue as it offends the doctrine of Res Judicata. In prayer (c) of the Applicant's application dated 20th January 2021, she prayed that the Respondent and her advocate, the purported Contemnor herein, do unconditionally release the same documents to her advocates. Mboghli J. pronounced himself accordingly on the said prayer in the Ruling of 27th July 2021. This court cannot revisit the same as the order was made by a court of competent and concurrent jurisdiction. Doing so is akin to sitting on appeal of this court's own orders which is against the law. In any event, it suffices to reiterate that the Respondent admitted to being in possession of the subject documents. In the premises, prayer (3) of the instant application also fails.
11. For the foregoing, the Applicant's application dated 11th April 2022 lacks merit and is hereby dismissed with costs to the Contemnor.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF NOVEMBER 2022.

J.N.MULWA

JUDGE.

