

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

SUCCESSION CAUSE NO.18 OF 2007

IN THE MATTER OF THE ESTATE OF THE LATE KIPLANGAT MAINA (DECEASED)

GEOFFREY KIPKORIR.....PETITIONER/APPLICANT

VERSUS

VIOLA MAINA.....RESPONDENT

RULING

1. The Application coming for consideration in this ruling is dated 14/05/2019 seeking for orders that the Respondent **VIOLA MAINA** be committed to civil jail for a period not exceeding six (6) months for disobeying courts issued on 05/04/2019. The court orders issued on the said date was to the effect that the status quo of the parcels of land, to which the parties to this application are beneficiaries, be maintained.
2. The Application is based on the grounds on the face of it and supported by the Affidavit of the Applicant **GEOFFREY KIPKORIR CHERUIYOT** in which he has stated that the order was served upon the Respondent but she has continued to interfere with the said land.
3. The Respondent **VIOLA CHEBET** filed a Replying Affidavit dated 19/11/2019 in which she denied the averments in the Supporting Affidavit. She further stated that the orders issued by the court was not clear, and that the order did not clearly state what was or was not expected of her in her dealings with the parcels of land.
4. The parties filed submissions which I have duly considered. I find that it is not clear how the Respondent has disobeyed orders issued on 05/04/2019 since there is no evidence annexed showing which beneficiary has been evicted from the estate. The supreme court in Criminal Application No. 2 of 2018, observed that *“the standard of proof in cases of contempt of Court is well established. In the case of Mutitika v. Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that: “In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt..The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”*
5. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order. The applicant has therefore failed to establish how the respondent willfully and deliberately failed to obey court orders.
6. The Application contains generalized allegations that the Respondent has interfered with the estate but no prove has been availed to court.
7. This matter needs to be expedited in order to settle the dispute between the parties.
8. I find that the Application dated 14/05/2019 lacks in merit and I accordingly dismiss it.
9. The parties are directed to appear in court within 30 days for purposes of taking directions.

Delivered, signed and dated at Kericho this 29th day of January 2021.

A. N. ONGERI

JUDGE