



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION NO. 1158 OF 2013
IN THE MATTER OF THE ESTATE OF RICHARD YEOVA KAVIVYA (DECEASED)
ROBERT KAVIVYA YEOVA..... APPLICANT
VERSUS
JOYCE MWENDE YEOVA.....RESPONDENT
RULING

1. Robert Kavivya Yeova, the Applicant herein filed an application dated 27.3.19 seeking the following orders against the Respondent Joyce Mwende Yeova:

1. Spent
2. The Contemnor be cited for contempt of Court for the orders granted on 14.12.18.
3. That the court do grant an order that the Contemnor be committed to civil jail for such term as the court deems fit.
4. That the court grants an order that the Contemnor pays a fine of two hundred thousand Kenya shillings (Kshs. 200,000).
5. That the Contemnor be summoned by the honourable court to explain why she has acted in contempt of the orders granted by this court on 14.12.18.
6. That the court do direct the Deputy Registrar Family Division to open an account for the estate of the deceased and that all income from the estate of the deceased be paid forthwith in this account, pending the hearing and determination of this application.
7. That this court do order the Contemnor to furnish estate accounts to the Applicant and this honourable court from 2012 to date.
8. That the Contemnor be ordered to produce all bank statements for the following accounts held by the deceased:
 - a. Standard Chartered Bank Account No. x-xxx-xxxx-xxxx;
 - b. Barclays Bank Account No.xxx-xxx-xxxx;
 - c. Co-operative Bank Account No. xxx-xxx-xxx-xxx-xx;
 - d. Family Bank Account No. xxxx.
9. That the court be pleased to grant any further orders.
10. That costs of the application be awarded to the Applicant.

2. The Application is supported by the Applicant's affidavit sworn on 27.3.19.

3. The orders of the Court emanated from an application dated 31.3.14 by the Applicant seeking that the Respondent accounts for the proceeds of the estate of the deceased; that she deposits all title documents and log books; that the parties open a joint account for the proceeds of the estate; that the Court appoints an estate agent to manage the estate's rental properties.

4. By its judgment of 14.12.18, the Court directed *inter alia* that:

- i. the Respondent does within 45 days, render a full account of her dealings with the assets of the estate from 2012 to date;
- ii. that the parties' respective advocates jointly appoint an agent to collect rental proceeds from the estate properties and avail the net proceeds to the beneficiaries and in default, the deputy Registrar of this Court to do so;
- iii. that title documents of the estate properties be deposited in a safe deposit box with a bank;
- iv. that the administrators file list of assets and liabilities and certified copies of title documents;
- v. that summons for confirmation be filed by the administrators jointly or severally within 90 days.

5. It is these orders that the Applicant has accused the Respondent of failing to comply with. The Applicant claimed that the Respondent has failed to within 45 days, give account of all her dealings with the estate of the deceased from 2012 to date. Being aware of the orders of 14.12.18, the Respondent filed notice of appeal on 19.12.18 against the said judgment, yet she has failed to comply. The Applicant further averred that the Respondent rebuffed his efforts to have a meeting with the Respondent with a view to discussing the fling of the summons for confirmation of grant, nominating a bank in which all documents of title for the estate properties would be deposited and appointment of an estate agent. To the Applicant, the Respondent's intention is to defeat the orders of the Court and her conduct is an affront to the dignity of the Court.

6. The Application is opposed by the Respondent by his replying affidavit sworn on 24.5.19. The Respondent averred that she did not know that she was required to file accounts in 45 days as only part of the judgment was read by the Court on 14.12.18. She filed a notice of appeal on 19.12.18. She claims that after applying for certified copies of the judgment and orders on 8.1.19, her advocate was only able to obtain a copy of the same in February, when the time ordered had already expired. The Respondent further averred that since the demise of the deceased, she has been utilising the proceeds of rent from his 2 properties in Kayole Plots B2-121 and B2-122 for school fees and living expenses for their 6 children and maintaining the properties. The Respondent further claimed that following the demise of the deceased, most tenants vacated the premises thereby reducing the income. She attributed the filing of the Application and prayers for her to be fined KShs. 200,000/= and committed to civil jail to the Applicant's malice, ill will and hatred towards her, yet she took care of him as a toddler.

7. Parties filed their written submissions which I have duly considered. The issues for determination is whether the Respondent is in contempt of the orders of 14.12.18 and if so, what punishment should be meted against her.

8. The jurisdiction of this Court to punish for contempt is found in Section 5 of the Judicature Act which provides

(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 such power shall extend to upholding the authority and dignity of subordinate courts.

9. A party who seeks orders of contempt must bring his application within the threshold required. In the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR Mativo, J. restated what an applicant was required to prove in contempt proceedings as follows:

It is an established principle of law that^[45] in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these 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.^[46] Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*^[47] who succinctly stated:-

"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 cases 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 order; and**
- (d) the defendant's conduct was deliberate.**

10. A party against whom contempt orders are sought must be aware of the orders. The Respondent was aware of the Court orders of 14.12.18. The record shows that the learned Judge stated "*Judgment read over and explained to the parties on 14.12.2018*". The the terms

of the order and its objects were very clear and the Respondent had proper notice of the same. Indeed, the Respondent filed a notice of appeal 5 days later on 19.12.18. A party will only appeal against orders by which the party is aggrieved and a party cannot be aggrieved by orders of which the party is not aware. Accordingly, the Respondent's plea of ignorance of the orders and only became aware of the same in February of a year she does not state, rings hollow and is not persuasive. In any event, the Respondent has not demonstrated that she filed accounts after becoming aware of the orders in February. It is clear to the Court that the Respondent deliberately failed to comply with the terms of the order of 14.12.18.

11. It has been stated in a long line of authorities that the reason why Courts will punish for contempt is to safeguard the rule of law and the administration of justice and to protect the dignity of the Court. The purpose is also to assure a party in favour of whom an order is made that that order will be obeyed. Court orders are not made in vain and must be obeyed by all. A party who fails to obey Court orders willingly and exposes the Court to ridicule, must be made to obey them.

12. In the case of B vs. Attorney General [2004] 1 KLR 431 Ojwang, J (as he then was) stated:

The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.

13. And in Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR Ndolo, J. rendered herself thus:

The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

14. And in Hadkinson v. Hadkinson [1952] 2 ALL E.R. 567 ROMER L.J thus:

It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void.

15. The subject orders were made by this Court which is of competent jurisdiction. The orders have not been appealed against, set aside or discharged and thus remain in force. **No stay of execution has been granted by this or any other Court.** The Respondent was accordingly under an unqualified obligation to obey the same. This obligation extends even if the Respondent was unhappy with the Court order. The fact that she had to maintain the properties and pay school fees for her minor children is not a reason to disobey the lawful orders of this Court.

16. In her somewhat feeble attempt to be exonerated, the Respondent stated that she did not comply with the orders as she only became aware of the same when the complete judgement was availed in late February. She however conveniently omits to state the year. Notably, the Respondent filed a notice of appeal on 19.12.18, just 5 days after judgment was delivered. The question that begs is, what exactly did she intend to appeal against if, as she says, she was unaware of the orders? This explanation therefore falls flat on its face. I therefore find that the Respondent knowingly and willfully disobeyed the orders of this Court issued on 14.12.18 and hereby cite her for contempt of court.

17. In the result, I make the following orders:

- a. For being in contempt of the orders of this Court of 14.12.18, the Respondent, Joyce Mwende Yeova shall pay a fine of Kshs. 200,000/= and in default the Respondent shall be committed to civil jail for 30 days.
- b. The Administrators shall file bank statements for all the deceased's bank accounts by 16.7.21.
- c. The Administrators or either of them shall file summons for confirmation of grant by 16.7.21. In default, the grant issued herein shall be revoked.
- d. Mention on 19.7.21 to confirm compliance and for directions.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 25TH DAY OF JUNE, 2021.

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... for the Respondents

..... Court Assistant