



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 995 OF 1991

IN THE MATTER OF THE ESTATE OF MOHAMED TAYEBALI (DECEASED)

JOOZER MOHAMED TAYEBALI.....PETITIONER

-VERSUS-

JALAL MOHAMED TAYEBALI.....RESPONDENT

RULING

1. The deceased Mohamed Tayebali died intestate on 20th August 1991. His family comprised his late widow Rubab Mohamed Tayebali and the following children:-

- a) Mustafa Tayebali (deceased);
- b) Nafisa Mohamed Tayebali (deceased);
- c) Amartul Zahra;
- d) Joozer Tayebali (the applicant);
- e) Dilshad Onali Zavery;
- f) Anis Mohamed Tayebali; and
- g) Jalal Mohamed Tayebali (the respondent)

2. His estate comprised:-

- a) Plot No. 26 at Mambrui Port Malindi;
- b) Fakhri Stores Limited-Tubman Road;
- c) Bank accounts at Barclays, Pan African Bank, National Bank of Kenya Delphis Bank, Standard, Standard Bank and Biashara Bank;
- d) vehicles KAA 952D, KAD 136U, and KAG 452L;
- e) Gold and other personal effects;
- f) Life Insurance Policies with Norwich Union & South British; and
- g) Grinding Machine with moulds.

3. The contentions property in LR No. 209/7/2 in Parklands in Nairobi. It has 32 flats on rent. The applicant's case was that it was the deceased's property that forms part of his estate. According to the respondent the property was on 8th August 1991 bought for Kshs.7,000,000/= from the deceased by Dar-Ul-Hayat Enterprises Limited. The company's shareholders were himself, the deceased, the parties' mother and subsequently, the respondent, and his wife Arifa Adnan Mohamed Tayebali.

4. On 3rd August 1999 Mustafa and the applicant petitioned this court for letters of administration *ad colligenda bona* which were issued on 17th August 1999.

5. Following applications dated 23rd January 2017, 20th February 2019 and 27th June 2019 by the applicant against the respondent, on 6th March 2020 Justice Asenath Ongeru delivered a ruling whose paragraphs 17 to 20 were as follows: -

“17. In the meantime, the rent from the suit property to be deposited in court until this matter is heard and determined.

18. The applicant to continue staying in the house No. 2F until his case is heard and determined.

19. The respondent is also restrained from dealing with the suit property in any way until this case is heard and determined.

20. The parties are also directed to file witness statements before the next mention date to enable this court to expedite this case.”

6. The present application dated 1st July 2021 by the applicant sought that the respondent be committed to civil jail for a period of six months for the disobedience of the order that were given in the ruling of 6th March 2020. There is no dispute that the respondent was aware of the orders, as he participated in the application leading to them. The orders were subsequently extracted and served.

7. The only order that the respondent complied with was the one asking the parties to file witness statements. The other orders, that the rent from the property LR 209/7/2 Parklands in Nairobi should be deposited into court until the matter is heard and determined; that the applicant continues staying in House No. 2F until the case is heard and determined; and that the respondent be restrained from dealing with the property in any way until this case is heard and determined, are the ones that the applicant swore that the respondent has blatantly disobeyed and that is why he asked that the be found to be in contempt and be punished. The response by the respondent was that this property was not part of the estate of the deceased.

8. It is trite that once orders are given by a court of law they are binding on the party against whom they are addressed, until they are set aside or reviewed (**Samuel M.N. Mweru & Others –v- Nation Land Commission and 2 Others [2020]eKLR**). The orders in question were neither reviewed nor set aside. If the respondent found it difficult or impossible to obey the orders he was required to seek stay as he sought to review them, or sought to challenge them on appeal. He did not do any of these.

9. When the court gave the orders, it acknowledged in the ruling that there was a dispute over the property – the applicant saying it belonged to the estate of the deceased and the respondent saying that the deceased had sold the property to the company. This is what the court observed in paragraph 14 of the ruling –

“14. I find that the transfer of the assets of the deceased to a company owned by the respondent and his wife is suspicious and the said issue should be determined by *viva voce* evidence.”

10. The orders were intended to protect the property and its rent, and to keep the applicant in the property, until the suit was heard and determined. The respondent did not have power to choose whether or not to obey the orders, whatever he thought of them. He had a plain and unqualified obligation to obey the orders, once issued against him. (**Econet Wireless Kenya –v- Minister for Information and Communication of Kenya & Another [2005]IKLR 828**). Obedience of court orders is important for the maintenance of the rule of law, and to ensure that there is continued confidence and dignity in courts and its processes.

11. As to whether the applicant has discharged the onerous duty to prove contempt against the respondent, I have indicated that the respondent was aware of the orders. He did not obey them because he did not agree with them. I have indicated that he had no choice in the matter, whether he thought the orders were irregular or void. There was an uncompromising obligation to obey them (**Wildlife Lodges Ltd – v- County Council of Narok & Another [2005]2 EA 344**).

12. Given the facts of the case, I find that his actions of disobedience were blatant and deliberate. I find him guilty of contempt of court orders issued on 6th March 2020. I ask him to personally appear on 7th December 2021 to show cause why he should not be punished as sought in the application.

13. Costs of the application shall be borne by the respondent.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF NOVEMBER 2021.

A.O. MUCHELULE

JUDGE