



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT ELDORET

SUCCESSION CAUSE NO. 100 OF 2011

IN THE MATTER OF THE ESTATE OF THE LATE PETER MUREITHI MBUGUA(DECEASED).

JANE WANJIKU MUREITHI.....1ST PETITIONER

EUNICE NYAMWITHA MUREITHI.....2ND PETITIONER

VERSUS

ANNA WANJIRU MUREITHI.....1ST OBJECTOR

EUNICE NYAMWITHA WAWERU.....2ND OBJECTOR

JOHN MBUGUA WAWERU.....3RD OBJECTOR

JACINTA NYAMBURA MUTHEKI.....4TH OBJECTOR

PRISCILLA MARY WAMBUI MWAURA.....5TH OBJECTOR

RULING

1. The applicants filed this application under a notice of motion dated 14th May, 2019 seeking for orders that: -

a) The petitioners herein **Jane Mureithi Wanjiku, Eunice Nyamwitha Serah Wambui Mureithi, Allan Murwa Mwale and Daudi Peter Uge** be punished for contempt of court owing to their disobedience of the court orders made on 28/2/2019.

b) The petitioners together with **Serah Wambui Mureithi, Allan Murwa Mwale and Daudi Peter Uge** be cited and punished for contempt of court by committal to civil jail or attachment and sale of their moveable assets or both.

2. The application is premised on the grounds that the court issued orders that rent be collected and deposited in a joint interest earning account operated 1st and 2nd objector and the Registrar of the high court.

3. The named individuals have blatantly disobeyed the court orders despite being issued with a notice directing them to pay rent.

4. That attempts to have the petitioners comply with the court order have failed since they claim that the orders issued by the court are not specific.

5. In opposing the application, the 1st respondent filed a replying affidavit and the grounds that the said contempt of court proceedings have criminal implications hence its threshold is not merely founded on a balance of probabilities but must be proved beyond reasonable doubt which the applicants have failed to demonstrate.

6. That orders issued on 28/2/2019 order were never served to neither the respondents nor their advocates on record.

7. The genesis of this matter begins on 28/2/019 when the court issued orders directing **Mwanzo Agencies** to render accounts in writing within fourteen days. However, it is pointed out that the said **Mwanzo Agencies** ceased operating the year 2012.

8. That whereas the deceased left behind a number of properties, the orders do not specify which property the rent is to be collected from. That neither the 1st respondent nor the parties cited herein collect rent from the deceased's property, which incidentally is collected by **Pricilla Mary Wambui and Margaret Wanjiru** (the biological sisters of the deceased).

9. That she has her own property **Eldoret Municipality/Block 16(KAMUKUNJI/633** which the applicant through her advocate issued a notice directing that rent to be paid to her directly. The contention being that the said plot does not form part of the estate of the deceased and that the applicants cannot purport to enforce the orders of the court yet she has not even complied with the said orders.

10. The applicant submits that there is no dispute that the order was issued by the court and that the said order was duly served upon the petitioners. The only dispute is that the order does not stipulate what the petitioners were to do in compliance of the order.

11. The rent collected from the deceased's property was to be collected and deposited into an account to be operated by the 1st petitioner, 1st objector and the deputy registrar of the high court, yet the respondents continue to collect rent and have failed to surrender or avail the proceeds for deposit into a neutral account as directed by the court.

12. The contemptors through their conduct have prevented the objectors from collecting rent in adherence of the court order.

13. The respondents submit that **Section 5 of the Judicature Act** provides for the procedure for instituting contempt of court proceedings. Therefore, the Civil Procedure Act does not apply to the proceedings herein.

14. The respondents relied on the case of *Jihan Freighters Ltd vs Hardware and General Stores Ltd(2015)eKLR* where the court emphasized that to sustain committal for contempt of court, the order of court alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or refrain from doing.

15. The applicant extracted the order six months after it was issued and has not bothered to explain the delays. The terms of the contract were that the account be opened in 3 days from 28/9/2018 and the applicant has not demonstrated whether he notified the Deputy Registrar.

16. The order does not specify from which parcel of land the rent proceeds should be collected and be deposited to the joint interest earning account.

17. For contempt of court to succeed, the orders issued by the court should be clear and unambiguous. The respondent in her replying affidavit clearly stated land parcel **number Eldoret Municipality/block 16 (Kamukunji)/388** is being enjoyed by third parties, being the deceased's biological sister.

Issues for determination

8. The only issue that arises before this court for determination is whether the contempt of court proceedings against the respondents is merited or necessary bearing in mind the circumstance of this case. This calls for an examination of the procedure for instituting contempt of court proceedings.

9. In the case of **TEACHERS SERVICE COMMISSION v KENYA NATIONAL UNION OF TEACHERS & 2 others [2013] eKLR Ndolo J** observed that:

“38. 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.”

11. The reason why power is vested in courts to punish for contempt of court is but to safeguard the rule of law which is fundamental in the administration of justice.

12. The law of contempt has evolved over time in order to maintain the supremacy of the law and the respect for law and order. As it was in the time of Chief Justice McKean in 1778, so it is today that courts have a duty to ensure that citizens bend to the law and not vice versa.

13. The jurisdiction of the High Court and this Court to punish for contempt is by reference derived from to the jurisdiction of the High Court for Justice of England the applicable procedure is the English procedure i.e. **Order 52 RSC**) (see *National Hospital Insurance Fund Board of Management vs. Boya Rural Nursing Home Ltd*, Kisumu Civil Appeal No. 46 of 2005 (unreported).

14. The rules require that where the contempt is not committed in the face of the court, the applicant must first apply ex parte for leave to make application for committal and thereafter upon obtaining leave, make an application for committal by notice of motion.

15. In the case, the objectors have applied to have the 1st petitioner and two others committed to jail for disobeying the order of 28th February, 2020. The respondents on their part have challenged the application first on the basis that it has failed to demonstrate the required threshold in law before citing a party for contempt of court proceedings.

16. It is very important that such a person is shown to have had notice of the order and had the opportunity to obey the same but failed to do so.

17. In the instant case, it is unclear whether **Jane Wanjiku Mureithi, Eunice Nyamwitha, Serah wambui Mureithi, Allan Murwa Mwale and Daudi Peter Uge** had knowledge of the order. There is no proof the order was served since what is annexed to the applicants supporting affidavit is an order extracted six months after it was issued.

18. There is no indication as to whether the same was complied with as per the conditions given in the said order. In absence of such proof, I do not think that any good case has been made for their committal.

19. The standard of proof in matters of contempt of court is well settled. It must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt. See the case of **Mutitika Vs Baharini Farm Limited [1985] KLR 229**. This is because the charge of contempt of court is akin to a criminal offence.

20. A party may lose his liberty. In this case the alleged contemnors have stated that the annexed order is not specific on which property the rent is to be collected from since the deceased left behind various properties.

21. The explanation given by the Defendants for non-compliance thereof is that they think that the same was irregular. However, the sentiments of Romer LJ in **Hadkinson -v- Hadkinson (1952) P 285 at 288** that:

“It is 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” (Emphasis added)

22. Further, Lord Donaldson MR said in **Johnson -v- Walton (1990) 1 FLR350 at 352** stated: -

“It cannot be too clearly stated that, when an injunctive order is made or when an undertaking is given, it operates until it is revoked on appeal or by the court itself, and it has to be obeyed whether or not it should have been granted in the first place.” (Emphasis mine)

23. It cannot be overstated that, a party must comply with an order whatever he thinks of such an order. However, what is paramount is that such a party has knowledge of the terms of the order. In the present instance, such knowledge has not been proved, and the application must fail, and is dismissed with costs to the respondents.

Delivered, Signed and dated this 27th day of February 2020 at Eldoret

H. A. OMONDI

JUDGE