



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2548 OF 2000

IN THE MATTER OF THE ESTATE OF NDIYEINE OLE SIMEL - (DECEASED)

ENS.....1ST APPLICANT

FMS.....2ND APPLICANT

VERSUS

PAUL SALAU NTIYOINE.....1ST RESPONDENT

JEREMIAH SIRONET NTIYOINE.....2ND RESPONDENT

RULING

1. On 28th November 2018 this court found that the respondents were guilty of contempt of court. The 1st respondent had failed to give 10 acres of land to the 1st applicant and the 2nd respondent had failed to give 10 acres to the 2nd applicant. The respondents were administrators of the estate of their late father Ndiyeine Ole Simel who died in 1991. They were registered to each hold 10 acres in trust for the respective applicant who was then a minor. When the applicants became of age they sought the land but were not given. They came to court and got the trust terminated, and order given for them to surrender the land. Nothing happened.

2. The respondents were summoned to show cause why they could not be punished for the contempt. Each asked for 4 years to comply with the orders. Each asked to be given 4 years to give the land or to pay the equivalent of Kshs.34 million. It was not clear how the amount was calculated. Samuel is their uncle. He informed court that the family had sat and agreed that the applicants be each given ten (10) acres or Kshs.34 million to be paid at the rate of Kshs.8 million a year.

3. The applicants stated that they were not aware of the Kshs.34 million, and said that, in any case, they wanted land and not money.

4. It is clear that the respondents have not shown any cause why they should not be punished. It is clear that they do not want to give back the respective parcels of land they held in trust. One would have sympathised with the situation had they even offered to immediately give even a portion of what they held in trust, and the reminder to be given at a later date. To have failed to give what they held in trust when the applicants became of age and to continue to procrastinate in the manner they are doing, is completely unacceptable.

5. In **B.V. Attorney General [2004] IKLR 432**, it was observed that:

“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.”

6. Consequently, considering all the facts of this case, the relationship between the applicants and the respondents, and what was said in mitigation, I order that each respondent pays a fine of Ksh.100,000/= in default to serve 6 (six) months in jail.

7. The respondents have liberty to appeal within 14 days.

DATED and SIGNED at NAIROBI this 22nd day of FEBRUARY 2019.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 25TH day of FEBRUARY 2019.

ALI-ARONI

JUDGE