



**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)**

**ELIZABETH NAISOI SOIKAN.....1<sup>ST</sup> APPLICANT**

**FRIDAH MELLAU SOIKAN.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**PAUL SALAU NTIYOINE.....1<sup>ST</sup> RESPONDENT**

**JEREMIAH SIRONET NTIYOINE.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 28<sup>th</sup> November 2018 this court found the respondents guilty of contempt of court orders. The orders were that the 1<sup>st</sup> respondent immediately transfers 10 acres to the 1<sup>st</sup> applicant and the 2<sup>nd</sup> respondent immediately transfers 10 acres to the 2<sup>nd</sup> applicant. These are parcels each respondent was registered to hold in trust for the respective applicant. When the trust was terminated the respondents failed to effect the transfer.

2. By way of show cause, the respondents say they can make available only 10 acres; that 6 acres was sold by the applicants' father before he died. That leaves 4 acres. They stated that all the beneficiaries of the deceased Ndiyeine Ole Simel had agreed that they sell the 4 acres and the proceeds used to develop some rental property to be utilised by all, including the applicants who had so far received Kshs.4.5 million.

3. It is notable that what the respondents are saying is what they have said since 2016 when this matter came up. Their claims have already been discounted.

4. Mr Kabira for the respondents asked the court to indulge his clients, to consider that they educated the applicants and that to ensure that family harmony is enhanced. I have considered these.

5. However, it is a sad and unfortunate affair for the respondents to fail to give the applicants what they undertook to do as trustees. They were in a fiduciary relationship which they abused. It is a serious matter when a party refuses to obey a court order. The purpose of the law of contempt is to protect the machinery of justice and the interests of the public. Judicial authority is exercised through judgments, rulings, orders and decrees. This authority is not only for the parties involved in a particular case but also for the entire public. Public confidence in court processes is enhanced, and the rule of law preserved, when court orders are respected and obeyed.

6. I direct that each respondent shall pay Kshs.200,000/= (Two Hundred Thousand Shillings) in default 6 months in jail.

7. This punishment does not take away the respondents' liability to each give 10 acres of land as ordered before.

8. Each respondent has the right to appeal within 28 days.

**DATED and DELIVERED at NAIROBI this 29<sup>TH</sup> APRIL 2019.**

**A.O. MUCHELULE**

**JUDGE**