



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 3270 OF 2003**

**IN THE ESTATE OF NJOKA WA KIORIAH**

CATHERINE GATHONI NJOKA.....1<sup>ST</sup> APPLICANT

KENNEDY KIORAH NJOKA.....2<sup>ND</sup> APPLICANT

**VERSUS**

ESTHER WAKIGONDI NJOKA.....1<sup>ST</sup> RESPONDENT

KIORIAH NJOKA.....2<sup>ND</sup> RESPONDENT

ANN WANGARI NJOKA.....3<sup>RD</sup> RESPONDENT

**RULING**

1. On the 9<sup>th</sup> of October, 2014 Kimaru J rendered a judgment in this matter and *inter alia* directed the Respondents Kioriah Njoka, Jane Wangeshi Njoka and Ann Wangari Njoka to submit for a DNA test alongside the Applicants in order to determine the paternity of the Applicants.
2. It is open that the Respondents have refused to submit to the DNA test as so ordered. They have said so, so has their counsel.
3. As a consequence of the Respondents refusal the applicants in the summons dated 9<sup>th</sup> August 2019 seek that the court do find the respondents guilty of contempt of court and in so finding the Court do proceed to punish them as it deems fit.
4. The application was opposed by way of an affidavit sworn by Jane Wangechi Njoka. She admits non-compliance with the order and states defiantly that she cannot do so unless her intended appeal is heard and determined.
5. On the 23<sup>rd</sup> of October, 2014 a notice of intention to appeal against the judgment of Kimaru J was filed. On the same day counsel for the respondents applied for typed proceedings and on 8<sup>th</sup> of February 2017 an application for stay was filed. The said application remains unprosecuted to date.
6. It is expected that once a court issues an order and/or direction party so affected will comply with such order or direction for as long as the order or directive has not been set aside, discharged, reviewed or a stay order has been made.
7. In the event of disobedience, the court is vested with the powers to punish for contempt of its orders:

Section 5 of the Judicature Act, 2016 provides as follows:

**“Every superior court shall have the powers to**

**a. Punish for contempt of court on the face of the court.**

**b. Punish for contempt of court and uphold the authority of subordinate court.”**

8. In the case of Justus Kariuki Mate versus Martin Wambora & Another Civil Application No. 8 of 2014, Nyeri the Court of Appeal quoted the case of Hadkinson vs Hadkinson (1952)2 ALL ER 211 as in their view the subject was well appreciated and articulated as follows:

**“It is plain and unqualified obligation of every person against, or in respect of whom, an order is made by 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. A party who knows of an order, whether null and void, regular, or irregular, cannot be permitted to disobey it.... It would be most dangerous to hold that the suitors and their solicitors could themselves judge whether an order was null and void, whether it is regular or irregular; that they should come to the court and not take it upon themselves to determine such a question, that the course of a party knowing of an order which was null and irregular and who might be affected by it is plain. He should apply to court that it may be discharged. As long as it existed, it must be obliged. Such being the nature of this obligation, two consequences will in general follow from its breach. The first is that anyone who disobeys an order of the court is in contempt of court and may be punished by committal or attachment or otherwise:” (emphasize added).**

9. The respondents have not sought to vary the order nor have it discharged; neither prosecuted their application for stay several years later. From the record it is evident that no serious attempt has been put in place in the preparation of the record of appeal yet the respondents openly and defiantly refuse to submit to a DNA test.

10. Orders of the court ought to be obeyed at all means in order to sustain, protect and safeguard administration of justice, to ensure law and order prevail and above all to have an orderly society, otherwise disobedience, disorder and anarchy will reign. Equally there is need to uphold the authority and dignity of the institution of the court by ensuring obedience to court orders.

11. In the circumstances therefore I am of the view that the application is merited. I find that the respondents have jointly and severally failed to obey the court order of the 9<sup>th</sup> of October, 2014 and are in contempt.

12. For the offence the respondents are hereby fined a sum of Kshs. 50,000 each, in addition they will each serve a jail term of 3 months unless the said contempt is purged.

13. Costs of the application to the Applicants.

**DATED, SIGNED and DELIVERED at NAIROBI this 19<sup>TH</sup> DAY OF DECEMBER, 2019.**

.....

**ALI-ARONI**

**JUDGE**