



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

FAMILY DIVISION MILIMANI LAW COURTS

MISCELLANEOUS CAUSE NO. 106 OF 2017

IN THE MATTER OF M M

AND

IN THE MATTER OF MENTAL HEALTH ACT,

CHAPTER 248 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE RIGHTS OLDER MEMBERS SOCIETY

UNDER ARTICLE 57 OF THE CONSTITUTION

RULING

1. Now before the Court for Ruling is the Petitioner's Application dated 3rd October 2017 with an Amended Notice of Motion dated and filed on 27th November 2017. The Application by Notice of Motion is brought under Section 4(2), 8 and 27(a) and (h) of the Contempt of Court Act, 2016 and Order 51 Rules 1-3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

2. The Applicants are the Petitioners in the Miscellaneous Application that initiated this litigation. They are the daughters of M M the elderly person who is the subject of the Application. The Respondents are three family members. The First Respondent, a C M M is the widow of the eldest brother. The Second and Third Respondents are brothers of the Petitioners and the sons of the subject. They all live in close proximity to the subject's home in Meru. The Petition sought orders for the care of the "Subject" while he was unwell.

3. The Main Application was brought by a Petition filed on 3rd August 2017. The Matter was heard ex parte in the first instance and the Court made the following Orders:

1. ***THAT*** the Subject shall reside within the 2nd Petitioner J K M at Ongata Rongai until further Order upon hearing the application.

2. ***THAT*** the 2nd Petitioner be and is hereby appointed interim manager and guardian to the Subject. The 2nd Petitioner is reminded of her duty to the Subject and duty to the Court to account.

3. ***THAT*** all income that is due to the Subject, howsoever earned shall be paid into Court. That includes but is not limited to rental income from the properties in Mombasa and Maua or whatsoever situate namely:

a. Mombasa/BlockXVIII/[...]

b. Commercial building at Maua jointly owned with J B

c. A residential house let to a tenant in Maua town

d. Two shops at Kangeta Shopping Centre

e. Miraa Plantation

f. The Tea Plantation

g. Muringene Property jointly owned by Mr. M M and Mr. J B

h. M M restaurant jointly owned by Mr. M M and Mr. J B

4. **THAT** the Interim Guardian shall submit to the Court an account of the sums of money that are necessary for the maintenance of the subject before any sums are paid out.

5. **THAT** save as aforesaid all the members of the family namely:

(1) A N K,

(2) the widow of the Late E M,

(3) J K M,

(4) J M,

(5) E M and

(6) M M and

each of them are forbidden from securing and or leasing and or howsoever dissipating the assets and income of the Subject without the express leave of this Court.

6. **THAT** Penal Notice be attached to paragraphs 3 and 5 of this Order.

7. **THAT** this Order to be served personally on all family members and J B.

8. **THAT** to List for hearing on 3rd October, 2017. Guardian and physicians to attend such hearing to be listed before **any Judge of the Division**.

4. The Petitioner/Applicants are now seeking enforcement of those Orders. The Orders were to be personally served. Given the attendance of all the affected adult members of the family in Court, it is fair to assume that the Order was served. In addition there is the Affidavit of Service of the Process server. The Applicants seek the following Orders:

1. **THAT** this Honourable Court be pleased to declare and hold that after the 3rd Respondent was, on 15th August, 2017 served with the order made by this Honourable Court on 7th August, 2017, he committed the contempt of court taking the form of intimidating the 2nd Petitioner/Applicant, a witness in this suit so that she does not give evidence in support of this petition.

2. **THAT** this Honourable Court be pleased to declare and hold that after the 3rd Respondent was, on 15th August, 2017 served with the order made by this Honourable Court on 7th August, 2017, e committed the contempt of court of intimidating the 2nd Petitioner, a witness in this suit so that she does not give evidence in support of this petition by:

i. Declaring that he was to kill her;

ii. Requesting/ordering the 2nd Petitioner/Applicant to wait for him to fetch from his house the knife with which he was to kill her.

3. **THAT** this Honourable Court be pleased to declare and hold that after the Respondents were, on 15th August, 2017 served with the order made by this Honourable Court on 7th August, 2017, they committed the contempt of court intimidating Mr. J B, a witness in this suit so that he does not give evidence in support of this petition by:

a. threatening him on or about 9th September, 2017 that they would kill him if he did not support their case;

b. visiting him at his home on 27th and 28th September, 2017 and commanding him to accompany them to the office of their advocates Ngunjiri Michael and Company Advocates to make an affidavit designed to pervert the course of justice in this case through the notice of motion dated 28th September, 2017.

4. **THAT** this Honourable Court be pleased to declare and hold that having been served with/having been aware of the orders made by this Honourable Court on 7th August, 2017, forbidding the respondents from receiving the subjects income howsoever and/or using and/or howsoever dissipating the assets listed in order number 3 without the express leave of this court, C M M, J M and M M, the Respondents herein, have disobeyed those orders and hence are in civil contempt of court.

5. **THAT** the said C M M, J M and M M be each committed to civil jail for a period of 6 months or any other period or any other sanction as this court may deem fit and appropriate.

5b) **THAT** the 1st Respondent do deposit in court forthwith the following:

i) the rent received from the subject's property at Kangeta Shopping Centre, subject's Maua Town Plot No. [...] and the subject's Mombasa premises; Kshs.304,141 proceeds of sale of the subject's tea.

5c) **THAT** J M and M M do deposit in court forthwith the proceeds of sale of miraa received in August and September, 2017 from the subject's miraa plantation.

5d) **THAT** the 3rd Respondent do deposit in court the title deed in respect of Njia/Kiegoi/[...].

5e) **THAT** this Honourable Court be pleased to cancel the certificate of title in respect of Njia/Kiegoi/[...] issued to the 3rd Respondent on 26th September, 2017.

5f) **THAT** this Honourable Court be pleased to enjoin Mrs. K M as the 4th Respondent.

5g) **THAT** this Honourable Court be pleased to declare and hold that being aware of the contents of the orders made herein on 7th August, 2017, 3rd and 4th October, 2017 Mrs. K M has committed the contempt of court of intimidating Mr. E M, a witness in this suit so that he does not give evidence in support of this petition and the application dated 2nd October, 2017 by threatening him on or about 14th November, 2017 that she, the 2nd and 3rd Respondents would harm the said E M if they were committed to jail for contempt of court as a result of his giving evidence in this petition.

6. **THAT** the costs of this application be provided for:

5. The Applicants rely on the grounds set out on the face of the Application. They are:

i) The Petitioner/Applicants have established that the lives of their and those of other witnesses including E M, are in danger and that the petition and this application for contempt of court cannot be heard before the safety of the petitioners is secured.

ii) The applicants have also established that since 15th August, 2017, the Respondents have committed contempts of court taking the forms of intimidating the petitioners and receiving income from the properties of the subject in disobedience of the order made herein on 7th August, 2017.

iii) The respondents have greatly interfered with the administration of justice and undermined the authority of this Honourable Court.

iv) This is a case to which Lord **Langdale in Littler v Thomson (1839) 2 Beav 129, 131** applies; he said, "**If witnesses are deterred from coming forward to the aid of legal proceedings, it will be impossible that justice can be administered.....it would be better that the doors of the court of justice were at once closed**".

v) On 15th August, 2017 the orders made herein were served on the 2nd Respondent and immediately thereafter he became emotional and said that he would either kill the 2nd Petitioner/Applicant or be killed by her; he started banging the bonnet of the car which the 2nd Petitioner/Applicant was using thereby forcing her to flee from her own home to avoid being hurt.

vi) Upon leaving home that day, the 2nd Petitioner/Applicant's mother telephoned her using a mobile phone and asked her to take care as the 3rd Respondent might follow her up to Nairobi where she stays and kill her.

vii) Between 18th August, 2017 and 21st August, 2017 the Respondents in disobedience of the order made herein, sold the subjects miraa growing on his miraa plantation and were paid over Kshs. 100,000.

viii) On all other occasions when the time for the sale of miraa has come to the 2nd and 3rd Respondents have sold it and converted the proceeds of sale to their use.

ix) Since 15th August, 2017, the 1st Respondent has in disobedience of the order of the court served on her on 15th August, 2017 collected and converted to her use rent from the subject's Mombasa property and also the rent paid by tenants occupying the subject's properties at Kangeta.

x) Sometime on or before 9th September, 2017, the respondents visited the home of Mr. Julius Bariu, a witness in this suit and threatened his life following which he swore an affidavit retracting what he had told the petitioners regarding the subject, his health, his investments and why he had summoned the 1st petitioner from Sweden to come and rescue the subject.

xi) The witnesses in this petition are the Petitioners and Mr. E M.

xii) *The lives of the said Petitioner/Applicants and Mr. E M, witnesses of the contempts of court committed by the respondents are in danger and the contempt of court application cannot be heard when the respondents are free to prevent justice from being done.*

xiii) *The respondents, who do not have their own independent means of livelihood but that which has been provided by their father, the subject herein, have set out to deprive him of the income from his properties, thereby virtually creating a situation where he must die slowly.*

xiv) *This Honourable Court has inherent jurisdiction to grant the orders made herein as demonstrated by **Balogh-v-the Crown Court at St. Albans 1974**)3 All. E. Reports Page. 283) and also by virtue of Article 57 of the Constitution and Section 4(2) of the Contempt of Court Act, 2016.*

xv) *Unless the orders sought are granted, the Respondents will kill the Petitioner/Applicants and their brother EM the witnesses in this petition and defeat the object of this suit altogether.*

xvi) *The notice of motion herein dated 28th September, 2017 is designed to pervert the course of justice.*

6. The Application is said to be supported by the Affidavits sworn by, **J K M, N M** and **E M M** on 7th September, 2017 and **A N K** sworn on 2nd October, 2017 respectively, and also further affidavits of **A N K, J K M, E M M** the above provisions of the law and other rounds and reasons to be adduced at the hearing hereof.

7. As will be noted from the First Order, the Court had intended to hear the matter inter partes on 3rd October 2017. On that date the persons named as Respondents had not filed any response to the Application. Instead they filed a new Application under a Certificate of Urgency seeking orders that they be enjoined to the proceedings together with T K M who is the Wife of the Subject and Mother of the Petitioners etc. That Application seems to have been listed for Hearing on 3rd October 2017. The Certificate of Urgency makes interesting reading. It is signed by the Advocate representing the Respondent/Alleged Contemnors. In that Certificate Mr Michael Ngunjiri Advocate, puts forward a version of events that can be summarised thus:

(1) In June 2017, the Petitioners “wrongfully took” M M (“the Subject”) away from his wife, T K and since then they have “withheld him from his said wife and they have denied her access to him”.

(2) The First Petitioner lives in Sweden and the Second Petitioner lives in Nairobi.

(3) The Subject is being kept in a rented house. It is not specified where that house is alleged to be situated. It is further alleged that there is “a stranger” living with the subject contrary to his wife’s wishes. The innuendo in that statement is clear but unsubstantiated.

(4) The Petitioners cannot meet the Subjects basic needs and it is alleged that “he risks going without basic needs which he has a wife and children who are ready, willing and capable of providing all his needs

(5) The Subject’s wife who is said to be 76 years old is alleged to be suffering immense mental torture and anguish as a result of being “wrongfully denied custody and access to her husband by the Petitioners”.

(6) The Petitioners are alleged to be only interested in the Subject’s property.

8. The Respondents’ Application was filed on 29th September 2017. It was brought by a Notice of Motion brought under **Articles 22, 23, 27, 40, 45 and 159 of the Constitution of Kenya, Rules 3, 5 and 8 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice & Procedure Rules 2013 Section 29 of the Mental Health Act Cap 248 Laws of Kenya and all enabling provisions of the Law.**

9. In summary the Applicants to this Second Application are seeking orders that they be joined as Respondents/Interested Parties and that the Court set aside or review its orders issued on 7th August 2017 and then the Petitioners be ordered to “hand over” the Subject to his wife pending hearing and determination of the Application and thereafter hearing and determination of the Petition. They would also like the Matter to be transferred to the High Court at Meru. Prayer 7 is particularly interesting because it seeks an order that the “Court be pleased to issue an order directing that the status quo on all the properties concerned as it existed prior to 07/08/2017 be reverted to and maintained until this Petition is heard and determined”. From that prayer it is abundantly clear where the focus and priorities of that application lie.

10. By the date of the inter partes hearing (3rd October 2018), the Applicant’s to the Second Application had not filed any response to the Petition notwithstanding that it was served on them. I will come to evidence of service later. The sequence of applications means that the Court has to make a choice between hearing the Contempt Application or the Second Application which seeks joinder and reversal of earlier Court orders.

11. The guidance available to the Court on making the choice is clear and unequivocal. The issue has come up before the Courts in **Misc App 1640 of 2003 Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya and Another [2005] and High Court Civil Case 664 of 2005 Kalyaso Farmers Co-operative Society vs Samwel Kipkemoi Langat and 6 Others**. Those decisions laid down the requirement/rule that where contempt is alleged, the Court must deal with that issue before any other. The analysis was that it is akin to a decision on jurisdiction. In this case the allegations of contempt are made forcefully in the pleadings, affidavits and submissions. Further, it is submitted by Counsel for the Petitioners that the contempt committed here is an interference with the administration of justice.. He relied on maintaining the authority of the Court and the safety and security of the Petitioners and their witnesses. When the Applications

came before the Court, Mr Ngunjiri requested specific directions on which Application would be heard first. The Court ordered that the Contempt Application would be heard first, in keeping with the Authorities.

12. Prior to this Court hearing the Matter on 3 October 2017, the Alleged Contemnors' applications had been dealt with by the Court differently constituted. I understand that gave rise to concern. Those orders have not been extracted. However, on 29th September 2017, this Court did order the arrest of the First and Second Respondents to the initial application for committal made on 7th September 2017. It seems the warrant was never issued. Nevertheless the matter proceeded and the Court reiterated time and again that the Application for committal for contempt would be heard first.

13. The allegations of contempt are set out at great length in the Supporting Affidavits. Unfortunately, they are presented in a format that is both repetitive and difficult to follow because the layout as pleadings rather than evidence. Therefore, it is necessary to analyse the Affidavits to distill what are the allegations of contempt. There appear to be several types or general allegations of contempt, namely; intimidation of witnesses and consequent interference with the administration of justice. Secondly, specific breaches of specific orders namely interfering with the property belonging to the Subject and his right to access the income from those properties and also transferring the property into their own names. In addition there is interference with the privacy of the subject by publishing details of the case.

14. The Court began to hear the matter on 3rd October 2017. The record shows that the alleged contemnors and their Advocates arrived for the hearing after the appointed time. In other words they were late, thereby causing delay.

15. The Petitioners as their starting point, assert that each of the alleged contemnors were served with a copy of the Orders that they are alleged to have breached. To that end they rely on the evidence of the Process Server, Mr Nixon Muhatia Manasi and the Second Petitioner. The process server gave oral evidence to the Court on 3rd October 2017. The process server told the Court he served the following persons:

(1) T K at her home. He explained the Order to her in Swahili. She said she was already aware of the order. He indicated the person he was referring to in Court. T K confirmed her identity when she sought to address the Court on the issue of what monies she would receive.

(2) E M

(3) J M at around 530 in the afternoon. The Process server indicated the person to whom he was referring. He said he had a conversation with him when J M said that the family needed to discuss the matter further. He declined to append his signature to the documents.

(4) C M, the Widow of E M (1st born son) was served in her home (Afft para 12). She was indicated as sitting in Court next to her Mother in Law. Her son convinced her to take the Court documents.

(5) K wife of M M. She is said to have accepted the documents and then after speaking to her husband sought to resile from that position saying she was frightened of her husband because he was violent and could kill her. She has even resiled from that.

(6) M M arrived at his Mother's house subsequently. He is said to have attempted to tear up the documents. That suggests they were in his possession. He is reported to have made threatening remarks to the Second Petitioner including that he felt the need to fetch a panga to deal with her. That incident was reported to the Kangeta Police Post. It was given an Occurrence Book (OB) No. 29/15/8/2017.

16. The Process Server was cross-examined by Mr Ngunjiri. The cross-examination gave him an opportunity to repeat his evidence. He confirmed that he served J M at his home. Something which Justus denies.

17. At the end of the days proceedings on 3rd October 2017, the Court adjourned the matter to the following day and made the following Order inter alia that:

“2. The Respondents whether by themselves or through anyone else are forbidden from the following:

(1) Threatening or inflicting violence on any other member of the family

(2) Causing any other member of the family to be in fear of violence or repercussions relating to this Petition

(3) Breaching any Order of this Court relating to this matter

(4) Causing or suggesting that anyone else should breach Court orders

(5) Suggest to any other member of the Family that the matter should not be in Court.

3. If anyone is found to have breached the above orders they will be sent to prison for up to six months following a summary procedure”.

The Order was translated into KiMeru for the family members in Court and they confirmed that they understood the Order.

18. On 4th October 2017 the matter continued. The Court asked Mr Ngunjiri what his clients were thinking after the previous day's hearing in particular since the principal concern of the Court is the care of their Father. Mr Ngunjiri said, the his "*clients do not wish to interfere with the arrangement. They respected the Petitioners . They do not wish to threaten them and the clients say they are not interfering with the Petitioners and they will not do so*". The Court heard oral evidence from the Second Petitioner and she confirmed that the following persons were served:

(1) T

(2) C

(3) J M

(4) M M

(5) E.

In relation to J now claiming that he had not been served because he was out plucking miraa, the Second Petitioner states that is a lie. She confirmed that Justus was served, she relied on a photograph she took. That was objected to by Counsel for the Respondent/alleged contemnors. She also confirmed that M M had threatened her. She told the Court as a consequence of the threats she felt afraid and did not stay in the family home that night.

19. The Court heard the matter over several days. During the Course of the Hearing Sections 3, 4, 7, 8 and 27 of the Contempt of Court Act were read out in part and referred to by Section, for the understanding of all members of the family who were present in Court. Those Sections provide:

"3. The objectives of this Act are to uphold the dignity and authority of the court; ensure compliance with the directions of court; ensure the observance and respect of due process of law; preserve an effective and impartial system of justice; and maintain public confidence in the administration

4. (1) *Civil contempt includes-*

(a) Civil contempt which means willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court.

(b) Criminal contempt which means the publication whether by words, spoken or written, by signs visible representation, or otherwise, of any matters or the doing of any other act which interferes or tends to interfere with, the due course of any judicial proceedings; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice..."

7. (1) *An offence of contempt of court shall be tried summarily and the court shall keep a record of the proceedings.*

(2) Without prejudice to subsection (1), the Chief Justice may make rules of procedure to regulate proceedings and the process to try an offence of contempt of court in the superior and subordinate courts, including— transfer of proceedings from a subordinate court to a superior court; proceedings in camera and prohibition of publication of proceedings; and appeals and limitation for appeals.

(3) Notwithstanding subsection (1), any proceedings to try an offence of contempt of court provided for under any other written law shall not take away the right of any person to a fair trial and fair administrative action in accordance with Articles 47 and 50 of the Constitution.

8. *Proceedings for criminal contempt of court shall not be instituted except by or with the consent of the Director*

27. *A person who—*

assaults, threatens, intimidates, or willfully insults a judge or judicial officer or a witness, during a sitting or attendance in a court, or in going to or returning from the court; willfully and without lawful excuse disobeys an order or directions of a superior or subordinate court in the course of the hearing of a proceeding; within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being heard or taken; having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended refuses to be sworn or to make an affirmation, or, having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such causes an obstruction or disturbance in the course of a judicial proceeding; while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority taken; publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; forcibly retakes possession of land from any person who has recently obtained possession by an order of court; or commits any other act of intentional

disrespect to any judicial proceedings, or to any person before whom such proceeding is being heard or taken, commits an offence ...”

20. The Grounds the Petitioners rely on to establish contempt are:

- (1) The Alleged Contemnors are interfering with the Administration of Justice by intimidating and threatening witnesses
- (2) The Alleged Contemnors are encouraging other people to breach Court Orders
- (3) The Alleged Contemnors are in direct breach of Court Orders in particular in relation to interfering with assets, income and property belonging to the Subject by collecting rent and harvesting and selling miraa.

21. The Respondent’s position stated at the end of proceedings on 4th October was in marked contrast to what was said by Counsel that morning. Mr Ngunjiri felt that the Court deciding to hear the Application for committal of civil contempt was a deviation of an earlier direction to hear the “contempt application” first. He also accepted that the Court had powers to punish contempt. He also said that the Mother (T) was challenging the interim orders and she wants the subject returned to her care. Mr Ngunjiri said that she was elderly and frightened of her daughters. She says she does not speak or understand Swahili. Mr Ngunjiri confirmed that his clients did understand the Court orders and that in relation to previous orders (1) the Mombasa property had been transferred out of the name of the subject; (2) the Respondents have no other source of income, suggesting they will continue to harvest the Subject’s miraa and that “*Ladies do not pick Miraa. They cannot understand.*”

22. On 27th November 2017 when the matter was to proceed, a Reporter from KBC set up his equipment with a view to film the proceedings. It was clear that there had been no consultation on the matter. In the circumstances, and the sensitivities of this case, permission to film a private family matter was refused.

23. The facts and matters relied on by the Petitioners in support of their claim that the Respondents are in contempt of court are:

- (1) In relation to C: She has been receiving rent from properties belonging to the Subject in particular the property in Mombasa and Maua Town. (insert details). These allegations are admitted and the justification is that the properties were transferred to Ezekiel. There is not evidence to show that a legitimate transfer was made by the Subject.
- (2) J M: Harvested and sold miraa and tea belonging to the subject and threatened witnesses
- (3) M M – harvested and sold mira and tea belonging to the subject. Threatened the Petitioners and their witnesses and potential witnesses.
- (4) K M – threatened witnesses in form of E, suggested to others that they should not obey Court orders. Discussed the dispute on a radio programme in a way that the court proceedings should be seen in a negative light.

24. The Respondent’s first response/defence is they were not personally served. In this case, the alleged contemnors have attended court and instructed Advocates. The Process Server gave evidence and was cross-examined. The cross-examination only served to confirm that the alleged contemnors were served with the Court Orders. Their interaction which the Court process demonstrates they are fully aware of the terms of the Court orders made and continued. They even went to the extent of Counsel informing the Court on the morning of 4th October 2017 that they would comply with the orders because they respected the Court (in the generic sense). In the circumstances the authority that applies is in the case of **Basil Criticos v The Attorney General & 8 Others (2012) eKLR** where Lenaola, J held *inter alia* that;

“The law has changed and as it stands today knowledge supersedes personal service. Where a party clearly acts and shows that they had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary.”

25. The Applicant/Petitioners have also demonstrated a prima facie case that the alleged contemnors have breached various parts of the Court Orders. The Alleged contemnors have answered those allegations in part. However, they have chosen to focus their energies in attempting to bring a separate application of their own rather than responding to the issues already on the file by reason of the Petition.

26. In relation to the allegations that they have harvested tea and Miraa belonging to their Father, the Subject, the first claim was an assertion of entitlement, in other words that they had no other income and it belonged to their Father. The position that Justus and M M are now taking is that they are harvesting their own parts of the land. Previously they did not assert ownership. In relation to C M M, she admits receiving and/or demanding rent in contravention to the Court order. She claims that she is entitled by reason of her husband’s ownership and subsequent death. She has produced no evidence that the Subject willingly and knowingly transferred any property to her husband. Nor has she demonstrated that she holds letters of administration for the estate of her deceased husband.

27. The Petitioner/Applicants urge the Court not to hear from the Respondent/Alleged contemnors until they have either purged their contempt and/or been punished. There are numerous reasons for that approach. It is a fundamental principle that orders of the Court must be obeyed. Until they are set aside or varied they stand. It should be born in mind that the Orders made were interim orders. The Respondent/Alleged contemnors decided that they would not engage in that process and did not find it fit to file responses until much later(27th November 2017). The Respondent/alleged contemnors have in their own words stated that they do not agree with the Court order. They have also been shown to and demonstrated that they have no regard for orders of the Court and will breach them at will – of their own admissions. The Petitioners assert that the breaches of the Court Orders are being repeated and continued.

28. In the circumstances, the Petitioners have demonstrated a prima facie case that the Respondents named above are in breach of specific court orders and also that they are in contempt of court for interfering with the administration of justice.

29. That allegation applies specifically to K who following the Hearing of 3rd and 4th October 2017 held a women's meeting in her kiosk and after reading the Orders of 3rd and 4th October 2017 stated words to the effect that M has brought warrants of arrest for M and M. "*If they are arrested, we shall retaliate*". This was said in the hearing of E M. In addition J M's wife refers to E as "Raila". It is alleged that those statements were made knowing they were false with the intention of whipping up sentiment within the community to make it unpleasant and/or intimidating the Petitioners and their witnesses.

30. The Petitioners also name a fourth alleged contemnor namely A M who is a cousin of the Parties but has taken sides against the Petitioners. He is said to have attended Court and in particular on 3rd October 2017 and is advising the Respondents. He is also alleged to have participated in the obstruction of access to the Subject's Miraa Plantations. In that respect it is alleged that he is in breach of the order and also interfering with the administration of justice. The Petitioners rely on the speech of Romer LJ in *Hadkinson v Hadkinson* where he says "it is the plain and unqualified obligation of every person against or in respect of whom an order has been 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.". That is squarely on point with this dispute and the obligation is clear. The Court is further satisfied that those of the alleged contemnors who were not served personally have ample and sufficient knowledge of the terms of the Court Orders of 7th August 2017 and 3rd and 4th October 2017 and that is demonstrated by their ability and willingness to discuss their terms with the community in person and in the media. The Orders had penal notices attached which were read out and translated in open Court.

31. By reason of the aforesaid oral evidence and Affidavits, the Petitioners have established prima facie that the Alleged Contemnors have committed several and numerous acts of contempt of court. Section 7 of the *Contempt of Court Act 2016* provides for a summary procedure. Nevertheless this Court has resolved that given the quasi-criminal nature of contempt of court proceedings, in particular relating to any penalty, it is in the interests of justice for the alleged contemnors to be given a right to be heard. It is therefore ordered and directed that:

(1) All and each of the alleged contemnors be brought before the Court to show cause why they should not be committed for contempt.

(2) The OCS for Kangeta and the OCPD for Meru are ordered and directed to forthwith arrest:

(a) T K M

(b) C M M

(c) J M M

(d) P K I

(e) M M

(f) K E I

(g) A M

(h) Tenants of Mombasa/Block XVIII[...]

(i) Managing Director of [particulars withheld] occupying Commercial property in Muau town jointly owned by J B And hold each of them in custody to be produced to this Court at the earliest opportunity.

(3) The alleged contemnors shall remain in custody until the matter is heard.

(4) The Most Senior Officer in the Office of the DPP shall appoint a Prosecutor to attend Court at the Hearing of the Show Cause. This order is occasioned by the DPP's failure to consider the file for criminal contempt as ordered on 27th November 2017.

(5) The Office of the DPP to report to the Court the status and progress of any proceedings that have arisen from OB Ref 29/15/08/2017

(6) The Petitioners to cause to be filed one single list setting out the perpetrator, date place of contempt that is being relied upon

(7) Costs of the Committal Application are reserved.

(8) The Petitioners to file in Court a search of all and each one of the pieces of real property owned by M M as at 1st January 2016

(9) In relation to prayer 5 it is ordered that each Respondent/alleged contemnor do account to the Court for all sums of money

received from the Subjects property/properties.

(10) Interim Orders to continue to the next hearing. This is deemed necessary for the protection of a vulnerable member of our society.

Order accordingly,

FARAH S. M. AMIN

JUDGE

Dated, Delivered and Signed on this the 8th March 2018.

In the Presence of:

Court Assistant: Patrick Mwangi

Petitioner/Applicants: Mr Gibson Kamau Kuria SC

Respondent/Alleged Contemnors: Mr Mwaniki holding brief for Mr Ngunjiri