



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

IN THE MATTER OF THE ESTATE OF MLA (DECEASED)

SUCCESSION CAUSE NO. 1577 OF 2006

PMB.....APPLICANT

-VERSUS-

OAO.....RESPONDENT

R U L I N G

1. In the case of **Justus Kariuki Mate versus Martin Wambora & Another Civil Application No. 8 of 2014, Nyeri** the Court of Appeal in appreciating that the issue of disobedience of a court order is core to the administration of justice and the maintenance of the rule of law quoted an English authority **Hadkinson vs Hadkinson (1952)2 ALL ER 211** as in their view the said issue was well appreciated and articulated in the said case as follows:

“It is the 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 know 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 was plain. He should apply to court that it may be discharged. As long as it existed, it must be obeyed. 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...”

2. The powerful statement above quoted gives a clear perspective of how court orders are to be handled. I will consider the application dated 18th of October, 2018 bearing in mind the above.

3. Following a ruling of this court (Musyoka J) of a probable need to have a DNA test in order to ascertain the paternity of the Applicant, she moved the court on the 17th of July, 2018 seeking for a sibling DNA test with one OAO who was opposed to her inclusion as a beneficiary of the estate. On the 4th of October 2018 this court allowed the application and directed that the Applicant and the Respondent do avail themselves at Lancet Laboratory in Nairobi for purpose of conducting a sibling DNA test at a date to be agreed upon but not later than 10 days from the date of the order.

4. From the averments of the Applicant and the affidavit of service on record there is evidence that the Respondent was served with the court order but failed to avail himself for the DNA test.

5. The action of failing to comply with the order of the court precipitated the current application where the Applicant seeks for the following orders: -

(a) That the Applicant be granted leave to pursue contempt of court proceedings against the Respondent for wilful disobedience of the court orders of Hon. Lady Justice Ali-Aroni issued on 5th day of October, 2018.

(b) That the court do find that the Respondent herein is in contempt of court orders issued on the 5th day of October, 2018 and the said Respondent be held liable to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding six months or to both.

(c) That without prejudice to prayer (b) above the court do order that the Respondent be detained in police custody until the rising of the court or compliance with the court orders issued herein and costs of the application be borne by the Respondent.

6. The application is premised on grounds that the court order was served upon the Respondent at his office situated at Electricity House, Nkrumah road Mombasa on the 8th of October, 2018, and on the 17th of October 2018 via two of his known email addresses.

7. An affidavit of service sworn by Titus Kitetu of post office Box 35250-00100 Nairobi indicates that the current application was served upon the Respondent yet no response was filed.

8. The above statements of service of the court order and the application remain unchallenged and I accordingly do find that the Respondent having knowledge of the court order wilfully and knowingly neglected and/ or refused to obey the orders issued by this court on the 5th of October 2018.

9. **Section 5 of Act No. 46 of 2016** provides as follows:

“5. Every superior court shall have the power to

(a) Punish for contempt of court on the face of the court.

(b) Punish for contempt of court and

(c) Uphold the dignity and authority of subordinate court”.

10. Based on the above, the application dated the 18th of October, 2018 succeeds. The Respondent is found to be in contempt of the court order of 5th of October 2018 and deserves to be punished for the said contempt. Consequently, it is ordered that the said OAO shall pay a fine of Kenya Shillings Two Hundred Thousand to this Honourable Court and secondly, he shall be arrested and detained in custody until he complies with the said order.

11. The Officer in Charge Mombasa Central Police Station do effect the arrest.

DATED, SIGNED and DELIVERED at NAIROBI this 29th DAY OF November, 2018.

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ALI-ARONI

JUDGE