



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1966 OF 2012**

**(CONSOLIDATED WITH SUCCESSION CAUSE NO. 942 OF 2012)**

**IN THE MATTER OF THE ESTATE OF SALIM HUSSEIN DUNGARWALLA (DECEASED)**

**NEELAM DUNGARWALLA.....APPLICANT**

**VERSUS**

**NEGAT SHAHIN ILAHI.....1<sup>ST</sup> RESPONDENT**

**ABDUL HAMID.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased Salim Hussein Dungarwalla died on 30<sup>th</sup> July 2011. On 29<sup>th</sup> August 2012 the respondents Negat Shahim Ilahi and Abdul Hamid filed petition for the grant of letters of administration intestate. The 1<sup>st</sup> respondent filed a supporting affidavit in which she stated that she was the deceased's widow and the 2<sup>nd</sup> respondent was the deceased's son. On the basis of that a grant was issued on 28<sup>th</sup> January 2013 and confirmed on 13<sup>th</sup> November 2013. This grant was on 18<sup>th</sup> January 2016 revoked. This followed the application by the applicant Neelam Dungarwalla seeking the revocation of the grant on the basis that the deceased had left a written Will in which she was the executrix; she had not been made aware of the petition; the 1<sup>st</sup> respondent was not the deceased's widow; and the 2<sup>nd</sup> respondent was not the deceased's son.

2. On 10<sup>th</sup> June 2016 the applicant filed the present application seeking leave to apply for an order for committal of the 1<sup>st</sup> respondent to civil jail for a period not exceeding 6 months for making a false statement under oath. It was alleged that in the affidavit in support of the application for revocation of the resealed grant of probate of written Will the 1<sup>st</sup> respondent had stated that she was married to the deceased on 28<sup>th</sup> June 1998 under Islamic Law, but that in **Adoption Cause No. 102 of 2006** she had on 5<sup>th</sup> July 2006 stated that she was single and did not intend to engage in any union that may lawfully become polygamous, and neither was she a homosexual.

3. The application was opposed. Both sides were represented and filed written submissions which I have considered.

4. Under **section 8** of the **Contempt of Court Act No. 46 of 2016** a party does not require leave of court to bring proceedings for civil contempt of court.

5. Under **section 4** of the **Act**, the contempt of court contemplated involves the –

**“wilful disobedience of any judgment, decree, order, or other process of court or wilful breach of an undertaking given to a court”**

OR

**“any act that is wilfully committed to interfere, obstruct or interrupt the due process of the administration of justice in relation to any court, or to lower the authority of a court, or to scandalise a judge, judicial officer in relation to any proceedings before the court .....**”

6. What is alleged in the application is perjury. Perjury is defined in **Black’s Law Dictionary, 9<sup>th</sup> Edition at page 1254** as –

**“The act or an instance of a person’s deliberate making material false or misleading statements while under oath.”**

Under **section 108(1) (a)** of the **Penal Code**, it is an offence of perjury to knowingly, in any judicial proceedings, swear a false statement or affidavit.

7. Perjury is not a criminal contempt as defined under **section 4(b)** of the **Contempt of Court Act**.

8. Consequently, I find the application incompetent and strike it out with costs.

**DATED and SIGNED at NAIROBI this 28<sup>TH</sup> JUNE 2017.**

**A. O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 29<sup>TH</sup> JUNE 2017.**

**W. MUSYOKA**

**JUDGE**