

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2642 OF 2003

IN THE ESTATE OF ERNEST KERRY KOMO-(DECEASED)

RULING

1. The Motion dated 25th April 2012 seeks the citation of the respondent for contempt of court. It is premised on Order 40 of Rule 3 of the Civil Procedure Rules.

2. The foundation of the application are the orders made on 16th December 2011 by Njagi J directing the respondent to render accounts and to deposit a title deed in court within a specified period of time. The complaint is that although the order was duly served on the respondent, she has failed to comply with it, hence the instant application.

3. Order 40 of the Civil Procedure Rules provides for interlocutory injunctions. Under Rule 3 the court which has made injunctive orders has jurisdiction to punish any person who is found to have flouted the injunctive orders.

4. The orders made by Njagi J. on 16th December 2011 were not grounded on Order 40 of the Civil Procedure Rules, but rather on *Section 83* of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. The jurisdiction granted under Order 40 Rule 3 of the Civil Procedure Rules to punish for contempt of injunctive orders is therefore not available in this case.

5. The jurisdiction to punish for contempt that the applicant ought to have invoked is that granted by *Section 5* of the Judicature Act which provides as follows:-

“5(1). The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice of England and that power shall extend to upholding the authority and dignity of subordinates courts.”

6. The procedure to be followed is that set out in Orders 45 and 53 of the Supreme Court of England Rules. Under Order 45 rule 5 of the Supreme Court Rules the application for contempt should be preceded by an application for leave. The application for leave is *ex parte* and it takes the form of a Chamber Summons supported by a statutory statement and a verifying affidavit. Once leave is granted the substantive application should be filed within 21 days, taking the form of a Notice of Motion.

7. I note that that has not been the case here. Leave to bring contempt proceedings was not sought and obtained. The purported contempt proceedings are therefore incompetent. The Notice of Motion dated 25th April 2012 is hereby struck out for being incompetent.

8. Since this matter touches on disobedience of court orders, I direct that the matter be mentioned after 30 days for further orders and directions. The Deputy Registrar is hereby directed to issue the requisite notices on all the parties for attendance before me on a date to be given at the delivery of this ruling.

9. There will be no order for costs.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE