



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 2320 of 2006

IN THE MATTER OF THE ESTATE OF EMILIA MUCHORA -(DECEASED)

RULING

The application dated 19th January 2013 seeks the committal to civil jail of Joel Kimani Kariuki. It is premised on **Section 3A** of the Civil Procedure Rules.

The party against whom these orders are sought, John Kimani Kariuki, was not party to the proceedings where the orders he is said to have disobeyed were made on 8th January 2013 in respect of the application dated 7th January 2013. The respondents in that application were Hannah Njoki Kariuki and Margaret Nyaruiru. There is nothing to show that the order of 8th January 2013 applied to and bound Joel Kimani Kariuki. The applicant has made no effort to demonstrate to the court that indeed that order of 8th January 2013 applied to or was intended to apply to the so called **“Added Party”**.

There is also the matter of the procedure followed here in effort to have Joel Kimani Kariuki punished for contempt of court. The procedure to be followed to punish for civil contempt is governed by Orders 45 and 52 of the Rules of the Supreme Court of England. It entails seeking leave to commence contempt proceedings and upon leave being granted filing a substantive Motion to prosecute the contemnor. This has not been done here. The applicant has come under **Section 3A** of the Civil Procedure Rules. Civil contempt of the sort that Joel Kimani Kariuki is accused of cannot be punished through **Section 3A** of the Civil Procedure Act or the inherent powers of the court.

On the whole I find that the application dated 19th January 2013 is not merited and I dismiss it with costs.

I have noted that the applicant has in the recent past filed several applications on various issues. I have perused the record, and noted that the estate in question has been distributed. Decisions are on record to the effect that the applicant is not entitled to the land in question. She has not filed appeals against those decisions, and the position on record remains that the land in question does not belong to her. She is advised to move out to avoid exposing herself to unnecessary costs and inconvenience. Alternatively, she should challenge the decisions at the Court of Appeal. The multiple applications she is filing here are not going to help her at all. I hope this will be the last this court will hear from her in this cause.

DATED, SIGNED and DELIVERED at NAIROBI this 6th DAY OF FEBRUARY, 2013.

W. Musyoka

Judge

Parties in person

IN THE MATTER OF THE ESTATE OF EMILIA MUCHORA -(DECEASED)

RULING

Josephine Wanjeri Kimani moved this court by a Notice of Motion dated 7th January 2013 asking that restraining orders to be issued against the respondents alleging that the respondents had entered her land and committed acts of waste on the land. The said acts were alleged to have been committed on 3rd January 2013. She made reports at Tigoni Police Station but the police allegedly did not act on her report.

The application is opposed and there is replying affidavit filed by one of the respondents, Margaret Nyaruiru Njau. The respondents position is that they did not commit the alleged acts of waste. They give the background that land in question does not even belong to the 2nd applicant following a succession cause which awarded the land to other persons. The 2nd applicant is accused of unreasonably holding on to the land when she ought to be moving out.

Before I venture to consider the merits of the subject application it is important for me to determine whether I have jurisdiction to make the orders sought. The application is by way of Notice of Motion, premised on Order XLIX rule 5 and Order L rule 1 of the Civil Procedure Rules and **Section 79G** of the Civil Procedure Act.

Proceedings in succession causes are not governed by the Civil Procedure Act and Rules. The only provisions of the Civil Procedure Act and Rules that apply to succession matters are those set out in Rule 63 of the Probate and Administration Rules. The Law of Succession Act and the Probate and Administration Rules are a complete code of substance and procedure on probate and succession matters. The Law of Succession Act provides special jurisdiction so far as succession matters are concerned and it is complete with its own procedural rules and forms.

The process that the 2nd applicant has initiated in this cause through the Notice of Motion dated 7th January 2013 is alien to probate and succession practice. The form of the Motion is not allowed, as Rule 59 of the Probate and Administration Rules is clear on the form that applications in succession causes ought to take. The provisions under which it is premised have not been applied to probate practice by Rule 63 of the Probate and Administration Rules. In a word, this court has no jurisdiction to entertain the application for the orders sought. The jurisdiction of a probate court is limited to the matters set out in the Law of Succession Act and the Probate and Administration Rules.

There is no jurisdiction to entertain applications that fall outside ambit of the Law of Succession Act and to grant or make orders that are also outside the ambit of the said legislation. The application before me is therefore clearly incompetent and I dismiss it with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 6th DAY OF FEBRUARY, 2013.

W. Musyoka

Judge

Parties in person.