



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Succession Cause 278 of 2008**

**IN THE MATTER OF THE ESTATE OF ALI BAKARI GATENDE .... DECEASED**

**ZUBEDA MATANDI TUNJE ..... 1<sup>ST</sup> APPLICANT**

**BAKARI ALI GATENDE ..... 2<sup>ND</sup> APPLICANT**

**=VERSUS=**

**TITUS KEITH WAMBUA (CHATU) ..... RESPONDENT**

**RULING**

This present application dated 26<sup>th</sup> September 2012 sought various prayers including that the Respondent be summoned to court to show cause why he should not be held in contempt of court orders. The Respondent did appear personally in court on 28<sup>th</sup> November 2012.

I have carefully perused the record of these proceedings. I note that on 1<sup>st</sup> July 2009 Hon. Justice Azangalala gave orders in favour of the Applicant in the absence of the Respondent. On 5<sup>th</sup> March 2010 the Respondent filed a Chamber Summons under Certificate of Urgency seeking to have the orders made by Justice Azangalala set aside on 23<sup>rd</sup> March 2010. The matter was before the Hon. Judge on 24<sup>th</sup> March 2010 when in the presence and with the agreement of both parties orders were given that the status quo be maintained. The status was only to prevail for 30 days from 24<sup>th</sup> March 2010 and was subject to the Respondent prosecuting his application to set aside the initial orders. The Respondent has taken no steps to prosecute the application to set aside. The position is that 30 days after the 24<sup>th</sup> March 2010 the orders of status quo lapsed and the situation reverted to what prevailed prior to 24<sup>th</sup> March 2010. In other words having not been set aside the orders of 1<sup>st</sup> July 2009 remain valid and enforceable.

I move now to consider whether this present application for contempt was properly served. Mr. Mutugi for Respondent told court that he was not served. Indeed there is no return of service indicating that Mr. Mutugi was served. The Respondent also claims that he was never served with the application. The proper procedure where a party wishes to have another cited for contempt is that the party to be so cited must be served personally. This clearly did not happen here. Although the Affidavit of Service filed on 11<sup>th</sup> October 2012 indicates that the Respondent was served personally on 4<sup>th</sup> October 2012, the order supposedly signed by the Respondent is actually signed by one Ken Macharia **on behalf of** the Respondent. We are not told what relationship this Ken Macharia had with the Respondent or whether he was authorised to receive service on his behalf. I am not satisfied that service was proper at all and for that reason I will not grant prayers (2) and (3) of the Application dated 26<sup>th</sup> September 2012.

Finally I find that the status quo orders made on 24<sup>th</sup> March 2010 lapsed 30 days. As such the orders made by Hon. Justice Azangalala on 1<sup>st</sup> July 2009 remain valid and enforceable.

**Dated and Delivered in Mombasa this 7<sup>th</sup> day of December 2012.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Mutugi for Respondent

Mr. Onjoro holding brief for Mr. Were for Applicant