



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Succession Cause 3509 of 2004**

**IN THE MATTER OF THE ESTATE OF GABRIEL NZIOKA MUKITI (DECEASED)**

**RULING**

GABRIEL NZIOKA MUKITI who is the deceased in this cause left an estate which included inter alia the property, which is known as L.R. 82/1327 ('the subject property').

His widow JOSEPHINE MUMBE MWOLOLO ('Josephine') and his brother PETER MUSILA MUKITI ('Mukiti') obtained Letters to administer his grant on 24/2/2005.

The Grant to the two was confirmed on 26/3/2007, when it was ordered that Josephine do hold the subject property in trust for her three children.

It would appear that Josephine encountered problems thereafter and could not effect the transfer of the subject property in her name as ordered. She moved the court for appropriate orders and on 13/7/2007 this court recorded a consent order by virtue of which Mukiti was ordered to surrender all the properties forming part of the estate within 21 days thereof. The court also ordered that in default contempt proceedings be filed against him, for which purpose, it granted leave. The orders remain valid.

Mukiti has yet to comply with that order, and Josephine now seeks an order to commit him to civil jail for contempt of court.

There is no doubt that the order which Mukiti was required to comply with, which I need not reiterate was a consent order, and the relevant penal notice were served on him personally. In fact he concedes as much in his replying affidavit. It is evident that the order was clear and free of ambiguities.

Unfortunately, parties must comply with all orders of the court no matter how unpalatable they may be, and he can not be heard to say that he cannot be held to be in contempt mainly because his application of 24/1/2008 where he sought an order to set aside the order of 13/7/2007 has yet to be heard. An application to set aside can not and does not amount to an order of stay of execution unless it is stated so expressly. Mukiti ought to have complied within the stated period of 21 days and having failed to do so he acted in contempt of orders of this court for which I hold him liable.

I do note that the parties are related and would in the interest of justice order Mukiti to comply within the next 24 hours failure to which he stands to be committed to civil jail for three months.

The applicant shall have the costs of this application.

Dated and delivered at Nairobi this 21<sup>st</sup> day of October 2008.

**JEANNE GACHECHE**

**Judge**

Delivered in the presence of: