



In re Estate of Andear Mayke Mwangi (Deceased) (Succession Cause E395 of 2020) [2025] KEHC 308 (KLR) (Family) (23 January 2025) (Ruling)

Neutral citation: [2025] KEHC 308 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E395 OF 2020
HK CHEMITEI, J
JANUARY 23, 2025
IN THE MATTER OF THE ESTATE OF ANDEAR MAYKE MWANGI (DECEASED)**

BETWEEN

CHARLES EMEDO APPLICANT

AND

MWANANCHI CREDIT LIMITED RESPONDENT

RULING

1. This ruling relates to the application dated 5th June, 2024 filed by the Applicant, Charles Emedo, seeking for Orders that:-
 - (a) Spent.
 - (b) An order be issued and directed to the Directorate of Criminal Investigation or their agents herein represented by the state to impound motor vehicle known as Range Rover Chassis Number Salga2JE6FA205366 to the Kilimani Police Station to be held pending the determination of this suit.
 - (c) An order be issued and directed to the Inspector General Police or their agents herein represented by the state to impound motor vehicle known as Range Rover Chassis Number Salga2JE6FA205366 to the Kilimani Police Station to be held pending the determination of this suit.
 - (d) An order be issued to the National Transport and Safety Authority (NTSA) to cease and nullify the transfer of Range Rover Chassis Number Salga2JE6FA205366 pending the determination of this suit.



- (e) An order be issued to the Kenya Revenue Authority through Customs and Border Control that the motor vehicle known as Range Rover Chassis Number Salga2JE6FA205366 be not allowed out of this Honourable Court's jurisdiction pending the determination of this suit.
 - (f) An order be issued and directed to the National Transport and Safety Authority or their agents herein represented by the state to produce before this Honourable Court documentations for the transfer of Range Rover Chassis Number Salga2JE6FA205366 to the current registered owner of the said motor vehicle.
 - (g) An order be issued and directed to before this Honourable Court declaring the actions of the Respondent are in Contempt of Court Order issued on 5th November, 2020 giving condition that the Range Rover Chassis Number Salga2JE6FA205366 Not to dispose off by way of sale or otherwise to any third party pending the taking of accounts of monies owed to them by the Plaintiff on whose behalf it had paid the import duty for the monies owed to them by the Plaintiff on whose behalf it had paid the import duty for the said motor vehicle the current registered owner of the said motor vehicle.
 - (h) Any other Orders that this Honourable Court deems fit in the dispense of Justice in accordance to *the Constitution* of Kenya 2010.
2. The application is supported by affidavit sworn by Charles Emedo on 5th June, 2024. He avers inter alia that he and the deceased were married and lived together as husband and wife with their three issues until her demise.
 3. That Hon. D. O. Mbeja issued a court order in Milimani Commercial Court Civil Suit No. 438 of 2019 to wit,
 - “1. That motor vehicle a Range Rover Chassis Number Salga2JE6FA205366 being held at the Kenya Revenue Authority Inland Container Depot at Embakasi, Nairobi be released to the Defendant to the satisfaction of the Kenya Revenue Authority.
 2. That upon release of the motor vehicle the Range Rover Chassis Number Salga2JE6FA205366, the Defendant to hold the said vehicle and not to dispose it off by way of sale or otherwise to any third party pending the taking of accounts monies owed to them by the Plaintiff on whose behalf it had paid the import duty for the said vehicle.”
 4. The said vehicle is part of matrimonial property under the deceased's estate. As of NTSA Motor Vehicle Copy of Records dated 17th June, 2021, the vehicle was registered in the names of Joseph Karanja Wamugi, believed to be a third party causing it to be susceptible to wear and tear. The Respondent obtained the orders of 5th November, 2020 in order to facilitate the transfer of the vehicle to a third party, contrary to the court order. As far as he was concerned, he and his wife owed him no money.
 5. The application is opposed vide grounds of opposition filed by the Respondent and based on the grounds:-
 1. The orders sought are outside the mandate and jurisdiction of this court.
 2. This honourable court has not been moved appropriately contrary to Rule 59(1) of the Probate and Administration Rules.



3. The application seeks adverse orders against institutions and/or persons not party to the proceedings.
4. The 3rd party the Applicant in whose names the subject motor vehicle is said to be registered is not a party to the proceedings.
5. The application is speculative and full of conjecture.
6. The Applicant has filed written submissions, with respect to the instant application, dated 25th October, 2024 and 12th November, 2024; placing reliance among others on Fred Matiang'i v Miguna [2018] eKLR where the court held that willful disobedience of court orders is a direct affront to the administration of justice. The court must ensure that its orders are respected and obeyed to preserve the integrity of the judicial process.
7. The Respondent has filed written submissions, with respect to the instant application, dated 31st October, 2024.

Analysis and Determination

8. I have gone through the application, the responses thereto and the rival submissions carefully.
9. What is not in dispute is that the subject vehicle is being contested by the Applicant and the Respondent at the lower court. The other parties in this matter are one Joseph Karanja Wamugi, KRA and NTSA.
10. These persons and or entities are not part of this suit or the application. How then can the court issue orders against them yet they have not been made a party?
11. More significantly is the fact that the suit namely No 438 of 2019 at the Milimani Commercial Court in my view is sufficient to sort out any proceedings concerning the subject matter. It is the one that issued the orders and if there is any breach of the same then it is best placed to deal with it.
12. This court is purely a Succession Court. The issues before it is sui generis. The element of the vehicle in my view comes in on the question of succession and not disputed ownership. This court cannot for example delve into any criminal or commercial aspect of the issue in question.
13. The trial courts orders to the extent that they are still valid stands and this court cannot countermand. It can still go ahead and deal with any disobedience of the same.
14. In the premises I find the grounds of opposition by the Respondent sound and reasonable. The best place for the Applicant to agitate the contempt proceedings is the same Commercial Court and not this court. In any case those orders were not issued by this court.
15. This reasoning in my view answers the application dated 21st November 2022. The said application asked this court to issue orders preserving the suit motor vehicle as well as directing the OCS of the nearest police station to ensure compliance.
16. This court cannot issue such orders for now for the reasons stated above. Let the Applicant approach the said Commercial Court for further orders if necessary and if there is any suspected criminal culpability the right forums are available.
17. The applications dated 21st November 2022 and 5th June 2024 are therefore dismissed with no orders as to costs.



DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 23RD DAY OF JANUARY 2025.

H K CHEMITEI

JUDGE

