



In re Estate of the Late Jason Kiamba Kimbui (Deceased) (Succession Cause 16 of 2018) [2025] KEHC 2065 (KLR) (Family) (7 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 16 OF 2018
PM NYAUNDI, J
FEBRUARY 7, 2025
IN THE MATTER OF THE ESTATE OF THE LATE JASON KIAMBA KIMBUI (DECEASED)**

BETWEEN

MARY KIMBUI 1ST APPLICANT

WENDY KIMBUI 2ND APPLICANT

AND

**LOIC NYEGERA KIMBUI ALIAS LOIS NEGERA KIMBUI 1ST
ADMINISTRATRIX**

PAMELA KARAMBU KIMBUI 2ND ADMINISTRATRIX

RULING

1. The Application for determination is the Summons dated 12th October 2023 presented under Section 5 of the *Judicature Act*, Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules. The Applicant seeks the following orders-
 - a. That the administrators Loic Nyegera Kimbui Alias Lois Negera Kimbui And Pamela Karambu Kimbui do show cause as to why they should not be committed to Civil Jail for failing to comply with the Court orders given on 19th may 2013
 - b. That upon there being no cause shown, this honourable Court be pleased to find that the administrators Loic Nyegera Kimbui Alias Lois Negera Kimbui And Pamela Karambu Kimbui are in contempt of Court for failure to fully comply with the Court orders given on 19th May 2023.the Administrators be compelled to distribute the estate of the deceased as per the certificate of Confirmation of Grant issued on 23rd October 2018 and rectified on 30th June 2021



- c. That The Administrators Loic Nyegera Kimbui Alias Lois Negera Kimbui and Pamela Karambu Kimbui be committed to civil jail for a period not exceeding six (6) months for non-compliance of the Court orders given on 19th May 2023
 - d. That pending the hearing and determination of this Application, the Deputy Registrar be and is hereby authorized to execute all the Transfers in respect of the following properties and all other requisite documents incidental to the transfers in place of the Respondents herein in order to vest the said properties to the Applicants-
 - a. 3 acres on Ntima/Igoki/ 4101 in Kaaga Meru
 - b. Ngumo House No.251 on Nairobi Block 32/848
 - c. Leases relating to Apartment No. A1, A3, A5 and A9 situate on L.R. No. 4858/12
 - d. Ntima/Igoki/1910
 - e. That the Respondents be compelled to produce the Original Title relating to Ntima/Igoki/ 4101 within 7 days of the date of this Order.
 - f. That failure to comply with Order 5 above, the Respondents be compelled to report the said title as missing and follow the procedures laid out in the law on replacement of titles.
 - g. That the respective land registrars be and are hereby directed to dispense with the requirements for the Respondents' copies of national identity cards, PIN Certificates, Passport Photographs or any other requisite document necessary for purposes of effecting Order 4 above.
 - h. That this Honourable Court be pleased to issue any other or further order as it deems appropriate to ensure compliance with the Court Orders given on 19th May 2023.
 - i. That costs of this application be borne by the Respondents.
2. The Application is accompanied by the Supporting Affidavit of the Applicant sworn on 12th October 2023 and further affidavit sworn on 18th April 2024. The 2nd Respondent has sworn an affidavit in opposition dated 4th December 2023. The Court directed that the application be canvassed via written submissions and both parties have complied.

Summary Of The Applicant's Submissions

- 3. The Applicant Submits that the Respondents are in contempt and relies on the test set out in the case of Samuel M.N. Mweru & Others vs National Land Commission & 2 Others [2020] eKLR. It is submitted that the order was clear and the respondents have only partially complied with the order. It is submitted that failure to comply is deliberate and calculated to frustrate the Applicant.
- 4. The issues pending are
 - a. Execution of transfer documents to facilitate transfer documents to vest the following properties the rightful beneficiaries
 - a. 3 acres on Ntima/Igoki/ 4101 in Kaaga Meru
 - b. Ngumo House No.251 on Nairobi Block 32/848
 - c. Leases relating to Apartment No. A1, A3, A5 and A9 situate on L.R. No. 4858/12



- d. Ntima/Igoki/1910
 - b. Surrender of Title in respect of Ntima/Igoki/ 4101 in Kaaga Meru. The Applicant will not countenance the Respondents' response that the title cannot be found and that they have applied for a replacement.
 - c. Presentation of Audited accounts
5. The Applicant submits that the Respondents ought to be punished for non-compliance and reference made to the decision in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Anor* [2005] eKLR.

Respondent's Submissions

6. The respondent identifies 2 issues for determination
- a. Whether the Respondents should be held to be in contempt of Court orders
 - b. Whether the Respondents should be committed to civil jail if found to be in contempt of Court
7. On the 1st issue the Respondents submit that they have partially complied with the orders and then offer reasons on the pending issues. They aver that they have forwarded documents to facilitate transfer of all the assets except Ntima/ Igoki/4101 the title whereof cannot be traced. They suggest that there is no prejudice suffered as the Applicants are in occupation of the property.
8. It is further submitted that the Applicants are collecting the rental income from the apartments and Ntima/ Igoki/ 1910.
9. They have submitted accounts that albeit are not audited as the accounts of the subject properties are prepared by an independent limited liability company and they do not have access to those accounts.
10. It is the assertion that the failure to comply is not will full and in bad faith, reliance is placed on the decision in *Samwel M. N. Mweru & Others* (Supra).
11. On the 2nd Issue, it is urged that the Respondents should not be committed to civil jail and that it would be better given the relationship between the parties to have the matter be resolved via mediation. Reliance is placed on the decision in *Adhar Khalil & Muhayid Kali v Fatuma Hussein Hassan* [2022] eKLR which the court held that committal issues orders should be issued as a last resort and *Kamilinchui & 5 Others v Kimbui & Anor* (Miscellaneous Application E007 of 2023) [2024] KEELC (KLR) (17 January 2024) (Ruling) where it was emphasized that parties should be encouraged to embrace alternative Dispute resolution.

Analysis And Determination

12. On the application of the applicant herein this Court issued orders on 13th May 2023, requiring that the Administrators take steps to finalise the transmission of the Estate and specifically to ensure that the beneficiaries of the Estate of Dennis Kinoti Kimbui, the deceased herein have access to their share of the estate. From the pleadings and submissions on record it is evident that the parties were clear on their obligations under that order.
13. At the time of filing the current application, the Respondents had only partially complied. The Administrators have not provided audited accounts as directed. In *re Estate of the Late Mwaura Makuro* (Deceased) [2021] eKLR, Ogola J stated as follows



- [32.] The production of accounts is a key component of the administration process of a deceased person's estate. From the moment a grant is issued to a personal representative of a deceased person, the grant holder becomes responsible to the Court in the carrying out of the duties of administrator. Accounts are an accountability tool that will tell the Court whether the administrator has been faithful to the role entrusted to him or her. When an administrator fails to file accounts as required, questions as to the integrity of the process are bound to arise as in the present case. The law has empowered the Court on either of its own motion or on the application of any interested party in the estate, to order an administrator to produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.
14. I have considered the reasons given by the Administrators on the failure to provide the accounts of the rental income as directed, they do not absolve them from the statutory obligation under Section 83 of the *Law of Succession Act*.
 15. There is also the issue of executing documents and surrendering title. It is troubling that the Applicant has had to make this application. The reason given for delay in executing the document is that one of the Respondents had travelled abroad. The Respondents have adopted a casual attitude towards the compliance with the Court order. They will get it done, but on their terms. This is unacceptable.
 16. In *M'Mukira & Another v Magiri & Another* (Environment and Land Appeal E018 of 2024) [2024] KEELC 5736 (KLR) (31 July 2024) (Ruling) the Court stated as follows-
 - (14) In *Sammy Nyamweya & others v Kenya Premier League Ltd & others* (2015) eKLR, the court observed that the power to punish for contempt of court has never been about protecting a judge's feelings, ego or dignity.
 - (15) It is to safeguard the rule of law and its supremacy. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. It is not about placating the applicant who moves the court by taking out the contempt proceedings. It is about assuring a party who walks through the justice door with a court order in his hands that the order will be obeyed by those to whom it is directed.
 - [16] Further the court observed that a court order requiring compliance is not a mere suggestion or an opinion or a point of view. It is a command that is issued after much thought and with circumspection. The court said that an order must be complied with and it is in the interest of every person that it remains the case, otherwise, to see it any other way is to open the door of chaos and anarchy.
 17. The delay on the part of the Administrators means that the beneficiaries of Dennis Kinoti Kimbui are unable to benefit from the Estate of their deceased husband and father. I find that the Administrators are in contempt of the order of the Court.
 18. I do not agree with the Administrators that a party who is in contempt of a court order can avail themselves of the provisions of Article 159 of *the Constitution*. I agree with them however that committal should be a measure of last resort. Accordingly, I find that a fine will be appropriate in the present circumstances.
 19. Accordingly, these will be the final orders of the Court
 - a. The Administrators will purge the Contempt by paying a fine of Kshs 100,000 within 14 days from the date hereof



- b. The Administrators will execute the documents required to transmit the estate within 45 days
- c. Having found that the Administrators are either unable or unwilling to furnish this Court with the accounts as directed and given the limits of the mandate of this Court, I direct that the Applicant is at liberty to pursue the matter for reimbursement of any money they consider owing to the Estate of Dennis Kinoti Itumbi through a Court of Competent jurisdiction.
- d. The Applicant will have costs of this application assessed at Kshs. 30000 payable within 30 days.
- e. Mention on 5th May 2025 to confirm compliance

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF FEBRUARY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Noel Court Assistant

.....Advocates for the Applicant

.....Advocates for the Respondent

