



In re Estate of the Late Peter Muraya Chege (Deceased) (Succession Cause 57 of 2018) [2025] KEHC 776 (KLR) (4 February 2025) (Ruling)

Neutral citation: [2025] KEHC 776 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 57 OF 2018
HI ONG'UDI, J
FEBRUARY 4, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE PETER MURAYA CHEGE (DECEASED)

BETWEEN

**JOHN MUTHEE NGUNJIRI 1ST ADMINISTRATOR
JAMES MACHARIA CHEGE 2ND ADMINISTRATOR
JAMES MUGO MURAYA 3RD ADMINISTRATOR**

AND

**MARGARET WAIRIMU MURAYA 1ST OBJECTOR
SUSAN WANJA MURAYA 2ND OBJECTOR
JANE NYAMBURA 3RD OBJECTOR
SAMUEL GITHINJI MURAYA 4TH OBJECTOR
HANNAH NYOKABI 5TH OBJECTOR
MIRIAM MUTHONI MURAYA 6TH OBJECTOR
SIMON CHEGE MURAYA 7TH OBJECTOR
CHRISTINE WANJIRU MURAYA 8TH OBJECTOR
PAULINE WANGUI MUCHIRI 9TH OBJECTOR**

AND

**JOSEPH GATURO MURAYA BENEFICIARY
FRANCIS NGUMI MURAYA BENEFICIARY
JOHN KAMAU MURAYA BENEFICIARY
DANIEL MURIGA MURAYA BENEFICIARY**



ROSEMARY WAIRIMU MURAYA BENEFICIARY
MARY WANJA MURAYA BENEFICIARY

RULING

1. This ruling is in respect of two applications. The first one is dated 28th June, 2024 filed by the 1st objector while the second one is dated 25th September 2024 filed by the administrators.
2. The first application seeks the following orders;
 - i. Spent.
 - ii. That the 2nd and 3rd respondents herein, Joseph Gaturo Muraya and Francis Ngumi Muraya respectively, as well as the persons named Peter Muraya Gaturo and Lydia Muthoni be summoned before this Honourable Court to show cause why they should not be committed to civil jail for blatantly failing to comply with the orders issued by this honourable Court on 23rd April, 2024.
 - iii. That this honourable Court be pleased to issue an order to Safaricom PLC requiring production of M-Pesa statements for Till Number 61257] under the name Centre General Stores as well M-Pesa statement for Lydia Muthoni of phone number 0720 993570, Joseph Gaturo Muraya and Francis Ngumi Muraya of cell phone numbers 0722 145 998 and 0733 369 530 from the date of the demise of the deceased on 9th September, 2017.
 - iv. That upon grant of prayer (3) above, the Court does order Safaricom to be pleased to transfer all the monies that may be in that till to the administrators account as follows:

Name: Simon, Christine and James Joint Account Bank: Kcb bank A/C NO.:
13xxxxxx38.
 - v. That upon such transfer, this honourable Court be pleased to order closure of the said till number 612571 under the name Centre General Stores.
 - vi. That this honourable Court be pleased to order all tenants in the properties named LR NO. Nakuru Municipality Blocks 5/101 2206 (Lakeview) 696 (Flamingo), 2/230, 2/244, 5/132 13/321 and 234, 1/2205,13/219 6/56, 3/41 and Bahati Kabatini Block 1/10389 to pay rent to the appointed agent Pata Commercial Enterprises for remission to Court, failure to which they shall be deemed to be in arrears thus ripe for distress.
 - vii. That on failing to show necessary cause, the said contemnors, Joseph Gaturo Muraya and Francis Ngumi Muraya as well as Peter Muraya Gaturo and Lydia Muthoni be committed to civil jail for a period of six (6) months for contempt of this honourable court's orders of 23rd April, 2024.
 - viii. That the costs of this application be provided for.
3. The said application is premised on the grounds on its face as well as the affidavit of the 1st objector. She deponed that this Court, on 20th February, 2024 issued conservatory orders restraining the 1st to the 7th beneficiaries or any other person acting on their authority from collecting rent from properties known as; LR NO. Nakuru Municipality Blocks 5/101 2206 (Lakeview) 696 (Flamingo), 2/230, 2/244, 5/132 13/321 and 234, 1/2205,13/219 6/56, 3/41 and Bahati Kabatini Block 1/10389.



4. She further deponed that on 11th April, 2024 the court stayed proceedings in this matter limited to six (6) months after which the administrators would be at liberty to file for confirmation of grant. That on the 23rd April, 2024, the Court varied the initial directions of 20th February, 2024 and directed that the rent collected from the aforementioned properties be in the meantime deposited in court for purposes of accounting and preservation of the estate, which had effect from the 30th April, 2024.
5. That the 1st and 2nd beneficiaries and two other individuals had personally collected rent from tenants, in contempt of the court's order. That the rent had since been collected through the m-pesa till number 612571 under the name Centre General Stores. Further, that one Lydia Muthoni was also receiving rent payments from the tenants through her m-pesa number 0720 993 570.
6. She deponed that it was necessary that Safaricom PLC be ordered to produce the m-pesa statements detailing the m-pesa transactions for the said till as well as that of Lydia Muthoni from the date of the deceased's demise. Thus, it was necessary that the contemnors, namely the 1st and 2nd beneficiaries together with other two individuals be ordered to send (sic) all the monies found to have been received as rent from the properties in issue. She added that these individuals were in contempt and unless this Court intervenes, her co-applicant, Simon Chege Muraya and her entire household would suffer irreparable loss.
7. The 1st and 2nd beneficiaries filed a replying affidavit dated 30th September, 2024 sworn by the 1st beneficiary. He averred that the Court Order that they had been accused of violating needed to be availed together with evidence of service upon them. That they could not tell what they were directed to do or not to do.
8. The applicants filed a supplementary affidavit dated 22nd October 2024 sworn by the 1st objector on even date. She deponed that the contents of the respondents' replying affidavits were neither here nor there. That they were represented by their advocates on 23rd April 2024 when the court issued directions. Further, that the said directions were duly extracted, signed, sealed and served on all parties.
9. In the second application the 3rd administrator, 8th and 9th objectors are seeking for extension of stay of execution orders issued on 11th April 2024 in this cause, pending hearing and determination of COACA/E080/2024 together with the costs of the application.
10. The said application is premised on the grounds on its face as well as the affidavit of the 8th objector dated 25th September, 2024. She deponed that it is not possible to have the appeal disposed off within the six (6) months given by this court. That it would serve the interest of justice to extend the stay until the appeal is heard and determined.
11. She further deponed that they stood to suffer substantial loss if stay orders are not extended since the respondents would proceed with distribution of the estate upon expiry of the six (6) months. She added that the date of hearing of the appeal was not within their powers and it is in the interest of justice to allow their application.
12. The 1st and 2nd beneficiaries filed a replying affidavit dated 2nd October, 2024 sworn by the 1st objector. She averred that the application was malicious, baseless, bad in law, misplaced, inept, frivolous, malicious, vexatious and a gross abuse of this court's process. Further, that they had never been served with the memorandum of appeal and record of appeal by the applicants either personally or through his advocates on record.
13. She added that should the application be allowed, the contemnors would not only benefit from the indeterminate extension of stay of proceedings sought but the applicants would be emboldened in



their contemptuous activities which make a mockery of this court's authority and discretion. That they were undeserving of this court's discretion.

14. Both applications were disposed of by way of written submissions.

Applicants' (1st and 7th objectors) submissions to the application dated 28th June 2024.

15. The said submissions were filed by Elizabeth Wangari & company advocates and are dated 25th October, 2024. Counsel gave a summary of the application and a brief background of the case. Counsel identified five issues for determination.
16. The first issue is whether the applicants are entitled to an order requiring Safaricom PLC to produce M-pesa statements for till number 612571 under the name Centre General Stores as well as M-pesa statements for Lydia Muthoni, Joseph Gaturo and Francis Ngumi Muraya as prayed.
17. Counsel submitted in the affirmative and cited section 83 of the *Law of Succession Act* and several decisions among them *Re Estate of Moses Kirimi Mbogori Deceased* 2023 KEHC 408 (KLR), where E.M Muriithi, J held as follows regarding Section 47 of the *Law of Succession Act*

“With respect the court considers that the *Law of Succession Act* gives the high Court wide powers to protect the estate of a deceased person and it may make such orders as are appropriate in the circumstances of the case or the protection of the estate on application or on its own motion in matter it is seized of and the object is to ensure that the estate is preserved in the interests of the eventual beneficiaries and dependants of the deceased persons as may be adjudged by the court upon full hearing.”

18. The second issue is whether the applicants are entitled to an order for transfer of all monies that may be in the M-pesa till number 612571 to the administrators' joint account and closure of the said M-pesa till. Counsel equally submitted in the affirmative and cited the book titled *Law of Succession* (2006) by Musyoka W. J and the decision in *Re Estate of Reuben Walter Muvya Muiu (Deceased)* [2019] eKLR and *Keshavlal Bhoja v Tejalal Bhoja* [1967] EA 217.
19. The third issue is whether the applicants are entitled to an order requiring all tenants in the subject properties to pay rent to the appointed agent Pata Commercial Enterprises for remission to court, failure to which they shall be deemed to be in arrears thus ripe for distress. Counsel submitted in the affirmative and urged the court to invoke its inherent power with an aim of ensuring the estate is preserved in the interest of the beneficiaries and dependants of the deceased.
20. The fourth issue is whether the respondents should be committed to civil jail for a period of six 6 months for being in contempt of this court's orders of 23rd April 2024. Counsel submitted in the affirmative and cited several decisions on the threshold for proof of contempt of court
21. Lastly, counsel urged the court to exercise its discretion and award costs in favour of the applicants.

Applicants' (8th and 9th objector's) submissions to the application dated 25th September 2024

22. The said submissions were filed by Waiganjo & company advocates and are dated 19th November, 2024. Counsel submitted that the wording of their application seeking for extension of stay of execution orders was erroneous and that they were instead seeking for extension of stay of proceedings granted by court on 11th April 2024. He cited Article 159 (2) of the *Constitution* of Act, 2010, Section 47 of *Law of Succession Act* as well as Rule 73 of the Probate and Administrations Rules. He urged the court to allow the applicants to amend prayer (b) of the application dated 25th September 2024.



23. He submitted further that the orders sought by the applicants are discretionary. He placed reliance on the decision in *Gateway Insurance Company Ltd vs Avies Auto Sprays* [2011] eKLR which cited with approval several cases including the Indian case of *Periagami Asari v Illupur Penchayert Board* [AIR 1973 Mad 250] where the court held as follows on the issue of extension of orders:

“The principle that when the effect of the order granting time in the event of non-compliance has to operate automatically the court has no power to extend time as it becomes functus officio, will apply when the suit is finally disposed of. If the order is not final and the court retains control over it and seized of the matter, it will have power to extend time.” (Emphasis added)

24. He further submitted that it could not be said that no action was taken by the applicants since it was clear that the Rules of the Appellate Court are specific on the manner in which appeals before the said courts are to be conducted. He urged the court to take judicial notice of the efforts by the Court of Appeal to deal with the backlog of cases and the fact that older matters have higher priority as opposed to freshly filed matters.

25. He submitted that the if the orders sought by the applicants are not issued the appeal would be rendered nugatory to the detriment of the applicants’ right to be heard. He placed reliance on the decision in *Christopher Ndolo Mutuku & Another v CFC Stanbic Bank Limited* [2015] eKLR. He urged the court to allow the applicants’ application with the amendment submitted on under paragraphs 3 and 4 of their submissions. He added that the applicants were in support of the application dated 28th June 2024.

3rd administrator and 1st objector’s submissions to the application dated 25th September 2024.

26. The said submissions were filed by Elizabeth Wangari & company advocates and are dated 1st October, 2024. Counsel gave a brief background of the case, and identified two (2) issues for determination.

27. The first issue is whether the applicants are entitled to an order for extension of orders of stay of proceedings issued on 11th April 2024 until COACA/E80/2024 is heard and determined. Counsel submitted in the negative and added that the said orders had been pegged on the condition that the applicants do fast-track their appeal before the Court of Appeal. Counsel submitted further that the applicants had not demonstrated reasonable grounds for the court to exercise its discretion, on the same.

28. She placed reliance on several decisions among them *Rosco Kibara Mangaara v Deputy County Commissioner Tharaka South Subcounty & 2 Others; Paul Kirimi Kiria (Interested Party)* [2021] KEHC 1940 (KLR) where the court held as follows;

“It is well settled that whenever the court is invested with the discretion to do certain acts as mandated by the statute, the same has to be exercised judiciously and not in an arbitrary and capricious manner. The classic definition of discretion by Lord Mansfield in *R v Wilkers* [1770] 4 Burr 2527,2539 :98ER was that discretion when applied to courts of justice means sound discretion guided by Law. It must be governed by rule not by humor: it must not be arbitrary, vague and fanciful but legal and regular. Discretion vested in the court 1st dependent upon various circumstances which the court has to consider among them the need to do real and substantial justice to the parties to the suit. Discretion must be exercised In accordance with sound and reasonable judicial principles...”



29. On who should bear the costs, counsel cited Rule 69 of the [Probate and Administration Rules](#) and urged the court to issue costs in favour of the 3rd administrator and the 1st objector.

8th and 9th objectors', Peter Muraya Gaturo's & Lydia Muthoni's submissions to the application dated 28th June, 2024.

30. The said submissions were filed by Karanja Mbugua & company advocates and are dated 19th November, 2024. Counsel gave a summary of the application and urged the court to dismiss it with no orders as to costs. He cited the book titled Law of Succession (supra) at pages 246-247 and several decisions among them [Oilfield Movers Limited v Zahara Oil And Gas Limited](#) (Civil Case 054 Of 2019) [2020] KEHC 10196 (KLR) (Commercial and Tax) (5 October 2020) (Ruling) where the court held as follows;

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.”

Analysis and Determination

31. I have considered both applications, affidavits and rival submissions by the parties. In my view the issue for determination is whether both applications or either of them is merited.
32. I will first deal with the application dated 28th June 2024 where the applicants have sought for several orders. They argued that on the 23rd April, 2024, the Court varied the initial directions of 20th February, 2024, and directed that the rent collected from the aforementioned properties be in the meantime deposited in court for purposes of accounting and preservation of the estate effective from the 30th April, 2024. However, the 1st and 2nd beneficiaries and two other individuals had personally collected rent from tenants in contempt of the said court orders.
33. The respondents therein contend that the court orders they had been accused of violating needed to be availed in the application and evidence of service upon them. Further, that they were not able to tell what they were directed to do or not to do.
34. It is not in dispute that this court issued directions on 23rd April, 2024, in view of the orders of 11th April 2024 which had not been vacated or set aside. The court directed that the rent collected from the properties listed under paragraph 2 therein be deposited in court for the time being for purposes of accounting and preservation of the estate.
35. Contempt of court is that conduct or action that defies or disrespects the authority of the court. [Black's Law Dictionary](#) 9th Edition, defines contempt as:
- The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.
36. Additionally, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the [Judicature Act](#) confers jurisdiction on the superior courts to punish for contempt. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts.



Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.

37. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. (emphasis)”

38. Contempt of court is in the nature of criminal proceedings and therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicants must prove wilful and deliberate disobedience of the court order, if they were to succeed. This was aptly stated in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, That:

“A contempt of court is an offence of a criminal character. a man may be sent to prison. it must be proved satisfactorily.... it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. the standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. it is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.’

39. Further, due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order.
40. The applicants deposed that the respondents’ advocates were in court when the directions were issued. I have perused the application dated 28th June 2024 and the affidavit in support. There is no affidavit of service attached to that application and the proceedings indicate that only the advocate for the beneficiaries was present in court on that day. The supplementary affidavit by the applicants dated 22nd October 2024 does not also contain an affidavit of service of the orders/directions on the respondents.



The only evidence of communication of the court's orders/directions is a letter by the beneficiaries' advocate but the same has no stamp or signature indicating receipt by the respondents.

41. In addition, the applicants did not point out to any affidavit of service they may have filed to demonstrate that the respondents were served with the court directions. It is therefore clear that the respondents were never served with the said court directions neither were they aware of its terms for one to say they willfully and deliberately disobeyed it. For the respondents to be held in contempt, the applicants must demonstrate that there was wilful disobedience of the directions. Thus prayer 2 and 7 in the application must fail.
42. Regarding prayers 3, 4 and 5 the court was not supplied with any evidence in relation to the existence of the said Till number, holders of the said Till number and the monies collected through it. Therefore, without any such proof, issuing the orders sought would be an exercise in futility. In regard to prayer No. 7, this court had already issued orders as to how rent was to be collected. Now that the respondents know the orders/directions of 23rd April, 2024 the same must be complied with, with immediate effect.
43. I now move to the application dated 25th September 2024 seeking for extension of stay of execution orders issued on 11th April 2024 in this cause, pending the hearing and determination of COACA/E080/2024 together with the costs of the application. As rightly stated by Mr. Waiganjo this court issued an order staying proceedings and not execution as indicated in the application.
44. I find this error in the said application to be self-evident and does not require an elaborate argument to be established. Further, the said error does not make the entire application defective or prejudice the respondents since it can be heard on merits rather than letting the same be decided on procedural technicalities. The constitution in Article 159 (2) (d) of the *Constitution* stated that:

“in exercising judicial authority, the courts and tribunals shall be guided by the following principles(d) justice shall be administered without undue regard to procedural technicalities.”
45. Without doubt this court on 11th April 2024 issued conditional stay of proceedings orders limited to six (6) months after which the administrators were at liberty to file summons for confirmation. These orders were clear and therefore this court cannot proceed to issue any further orders on the same as it is functus officio. See *Raila Odinga & others v IEBC & 3 others* [2013] eKLR. However, since the applicants want a further stay of proceedings because of the Appeal filed in the Court of Appeal, they should move that court for the orders they are seeking. The applicant should also remember it is now nine (9) months since the ruling of 11th April, 2024.
46. The upshot is that the applications dated 28th June 2024 and 25th September 2024 lack merit and are hereby dismissed with no orders as to costs.
47. Orders accordingly

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 4TH DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

