



In re Estate of Kimitei Chirchir alias Kimitei Arap Chirchir (Deceased) (Succession Cause 29 of 2016) [2025] KEHC 2833 (KLR) (12 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2833 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 29 OF 2016
JK NG'ARNG'AR, J
MARCH 12, 2025**

**IN THE MATTER OF THE ESTATE OF KIMITEI CHIRCHIR
ALIAS KIMITEI ARAP CHIRCHIR (DECEASED)**

BETWEEN

CHARLES KOSKEI APPLICANT

AND

ELIZABETH CHIRCHIR 1ST RESPONDENT

ALICE CHEPKOSGEI KENDUIWO 2ND RESPONDENT

ESTHER MOSONI 3RD RESPONDENT

PAUL KIPRONO MITEI 4TH RESPONDENT

PAUL KERING 5TH RESPONDENT

RULING

1. The Applicant, Charles Koskei filed the present Application dated 23rd September 2024 where he sought the following orders:-
 - I. Spent.
 - II. That this Honourable Court be pleased to grant leave to the Applicant to institute contempt of court proceedings against Paul Kering.
 - III. That this Honourable Court be pleased to find that Paul Kering is in contempt of the order of 5th March 2023.
 - IV. That the Respondent do and hereby show cause why he should not be committed to civil jail.



- V. That an order of committal to be made against Paul Kering, the beneficiary/Respondent to prison for a period of six months in that they have disobeyed the order made herein by this Honourable Court on 6th December 2023 maintaining that status quo before destructions occasioned by the 5th Respondent pending the gearing of both Applications dated 23rd November 2023 and the Protest received in court on 22nd July 2022.
- VI. That costs of this Application be provided for.
2. The Application was brought under section 5 of the Judicature Act, sections 3, 3A, 63 of the *Civil Procedure Act* and Article 159 (2) (d) of the *Constitution* of Kenya. It was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of Charles Koskei sworn on 23rd November 2024.

The Applicant's Case

3. The Applicant stated that this court issued an order on 6th December 2023 maintaining the status quo on the suit land (KERICHO/KAPSIMBIRI/588) pending the hearing of the Application dated 23rd November 2023. That his advocates extracted the said order and served the 5th Respondent. The Applicant further stated that the 5th Respondent has blatantly disobeyed this court's orders by destroying the Applicant's trees on the suit land and by further tilled about 0.4 acres of the Applicant's portion. That the 5th Respondent had also invaded a semi-permanent shop on the suit land and destroyed its door.
4. It was the Applicant's case that the 5th Respondent should be committed to civil jail.
5. Through his submissions dated 3rd February 2025, the Applicant submitted that in the event of a disobedience of a court order, this court had power to detain the contemnor for a period not exceeding six months. He relied on Order 40 Rule 3 of the *Civil Procedure Rules, Econet Wireless Kenya Limited v Minister for Information & Communication of Kenya & another* (2005) eKLR and *T.N Gadavarman Thiru Mulpad v Ashok Khot & Anor* [2006] 5 SCC.
6. It was the Applicant's submission that this court did not issue the orders dated 6th December 2023 in vain and the same ought to be honoured.

Response

7. The 5th Respondent filed a Replying Affidavit dated 4th November 2024. He stated that he did not disobey the court order dated 6th December 2023 and further denied destroying the Applicant's properties.
8. It was the 5th Respondent's case that the court order dated 6th December 2023 was an ex-parte order and having obtained the same, the Applicant failed to serve him the said order. It was his further case that the Application was defective because it failed to fully set out the grounds upon which the Application relied upon.
9. The 5th Respondent did not file his written submissions to the present Application.
10. I have gone through and considered the Notice of Motion Application dated 23rd September 2024, the Replying Affidavit dated 4th November 2024 and the Applicant's written submissions dated 3rd February 2025. The only issue for my determination was whether the 5th Respondent was in contempt of court.



11. For the purpose of the present Application, section 27 (b) of the [Contempt of Court Act](#) provides:-

A person who wilfully and without lawful excuse disobeys an order or directions of a superior or subordinate court in the course of the hearing of a proceeding commits an offence.

12. The punishment for an offence of contempt of court was provided under section 28 of the [Contempt of Court Act](#) which provides:-

- (1) Save as otherwise expressly provided in this Act or in any other written law, a person who is convicted of contempt of court is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.
- (2) Without prejudice to subsection (1), the court may order that the accused person be detained in police custody until the rising of the court.
- (3) A court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.
- (4) Subject to subsection (1), the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.
- (5) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in subsection (1) for any contempt either in respect of that court or of a court subordinate to it.
- (6) Notwithstanding anything contained in this section, where a person is found guilty of civil contempt, the court may if it considers that the fine will not meet the ends of justice and that imprisonment is necessary direct that the person be detained in civil jail for such period not exceeding six months as the court may deem fit.

13. The Supreme Court of Kenya in [Githiga & 5 others v Kiru Tea Factory Company Ltd](#) [2023] KESC 41 (KLR) held:-

“Courts possess the inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court.....

..... In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor’s culpability.

This was the position taken by this court in *Republic v Ahmad Abolfathi Mohammed & another SC Criminal Application No 2 of 2018* [2018] eKLR where we stated:

“It is, therefore, evident that not only do contemnors demean the integrity and authority of courts, but they also deride the rule of law. This must not be allowed to happen. We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of court is well established. In the



case of *Mutitika v Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

Accordingly, article 50(2) of the *Constitution* on the right to a fair trial imposes a duty on the court to guarantee the parties to contempt proceedings procedural justice by evaluating the evidence brought forth by all parties. We note that, while there exists no fixed content to the duty to afford procedural fairness, the fairness of procedure depends on the nature of the matters in issue and that would constitute a reasonable opportunity for parties to present their cases in any given circumstance. Procedural fairness in the administration of justice involves the fair hearing rule and the rule against bias. The fair hearing rules require a decision maker to inter alia afford a person an opportunity to be heard before making any decision affecting his/her interests.

Likewise, procedural fairness in decision-making requires courts not to deprive any person of their right without due process of the law, a fundamental precept that implies that the right of a person affected by any adverse decision or action is present before a tribunal that pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense, to be heard by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved.....” (Emphasis mine)

14. On the issue of an Applicant seeking leave of the court before instituting a contempt of court Application, the Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] KECA 945 (KLR) held:-

“Before we conclude, we would like to state that contrary to the averment by the respondent herein that the application is bad in law for lack of leave to institute contempt of court proceedings, under the new *Civil Procedure Rules of England* (2012) which as stated earlier still apply in respect of contempt of court proceedings in this country, leave of the court before institution of an application such as this is no longer necessary.....”

15. As guided by *Githiga & 5 others v Kiru Tea Factory Company Ltd* (*supra*) above, in an Application of this nature, the court had to ensure that the contemnor was aware of the contempt Application against him and appropriate steps were taken to ensure that he (contemnor) could properly defend himself. In the present case, the 5th Respondent stated that he was not personally served the contempt Application.
16. I have gone through the record and I have noted that on 22nd October 2024, counsel for the Applicant, Ms. Kosgei sought directions for the hearing of the contempt Application dated 23rd September 2024. Counsel for the Respondents, Mr. Sang was present in court. The court issued directions that the contempt Application would be heard by way of written submissions and that the 5th Respondent was to file his Replying Affidavit within 7 days.



17. The 5th Respondent filed his Replying Affidavit dated 4th November 2024 in which in paragraph 2 of the Affidavit, he stated:-

“That the Applicant’s application dated 23rd September 2024 has been read over and explained to me and I now wish to respond to it as hereunder”
18. From the above, it is clear to me that the 5th Respondent was served with the contempt Application. He may not have been served personally, but he was made aware of the same by his advocate who read the same and explained the contents to him and he filed his response. To claim that he was not personally served was an afterthought by the 5th Respondent. I therefore reject his assertion that he was not personally served with the contempt Application.
19. The Applicant had to discharge his burden in proving that the 5th Respondent was disobeying the court order dated 6th December 2023. For clarity, the said order directed the 5th Respondent/administrator/beneficiaries to maintain status quo that was existed prior to the destruction done by the 5th Respondent on land registration number KERICHO/KAPSIMBIRI/588 pending the hearing and determination of the Applicant’s Protest dated 22nd July 2022.
20. It was the Applicant’s case that the 5th Respondent violated the above order by destroying trees on the subject land and by causing destruction on a semi-permanent house also in the subject land. The Applicant attached pictures as “CK 3” as evidence of the destruction. I have looked at the pictures and they showed cut trees and a door less semi-permanent house.
21. The Applicant further attached a Letter from the Chief and an Assessment Report as “CK 4a” and “CK 4b” respectively. I have looked at the exhibits and I have noted that there were two letters from the Applicant’s local Chief dated 25th December 2023 and 16th September 2024 which both indicated that the Applicant’s trees were destroyed by the 5th Respondent. Further, the Assessment Report (CK 4b) indicated that the value of the Applicant’s destroyed trees was Kshs 16,654/=. The Assessment Report was addressed to Merigi Police Post in response to O.B Number 12/1812/2023.
22. The Applicant also attached copies of the Occurrence Book as “CK 2-14”. I have looked at the said exhibits and they have no probative value. I say so because the exhibits only contain the O.B numbers and no further details. Other exhibits simply contain the stamp of Merigi police Station with no further details as to the issue reported. I therefore discard the O.B exhibits.
23. In his defence, the 5th Respondent merely denied cutting down the trees. His defence of not being personally served has already been rejected by this court. The 5th Respondent’s defence in total was a mere denial.
24. Flowing from the above, I am satisfied that the 5th Respondent cut trees and damaged the door to the semi-permanent house in the suit land. The local Chief’s letters which both indicated that the 5th Respondent cut the Applicant’s trees were dated 25th December 2023 and 16th September 2024. This indicated that the trees were cut after this court’s order dated 6th December 2023. Additionally, the Assessment Report indicated that the matter had been reported to Merigi Police Station and the Report was in response to the report made under O.B Number 12/18/12/2023. This also indicated that the report on the destruction of the Applicant’s trees was made on 18th December 2023 which was after this court’s order dated 6th December 2023.
25. The sum total of the above is that the 5th Respondent was in violation of this court’s order dated 6th December 2023 which had directed him to maintain status quo on the suit land pending the hearing



and determination of the Protest dated 22nd July 2022. The Court of Appeal in *Shimmers Plaza Limited (supra)* held:-

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:-

“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”.

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy.....”

26. In the end, it is my finding that the 5th Respondent was in contempt of this court by defying its order dated 6th December 2023. I will reserve the sentence until the contemnor (5th Respondent) is heard on mitigation.

Orders accordingly

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 12TH DAY OF MARCH, 2025.

.....

HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence M/s Kosgei for the Applicant, Kenduiwo holding brief for C. Koech for the Respondents and Siele/Susan (Court Assistants).

