



REPUBLIC OF KENYA



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**In re Estate of Jaswant Singh Boor Singh Dhanjal (Deceased) (Succession Cause 20 of 2006) [2025] KEHC 5658 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5658 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 20 OF 2006**

**G MUTAI, J**

**APRIL 24, 2025**

**IN THE MATTER OF THE ESTATE OF JASWANT  
SINGH BOOR SINGH DHANJAL (DECEASED)**

**BETWEEN**

**JOGINDER SINGH DHANJAL ..... RESPONDENT**

**AND**

**DALJIT SINGH DHANJAL ..... RESPONDENT**

**AND**

**NIRMAL SINGH DHANJAL ..... INTERESTED PARTY**

**SUKHWANT KAUR DHANJAL KUNDI ..... INTERESTED PARTY**

**DHANJAL BROTHERS LTD ..... INTERESTED PARTY**

**RULING**

1. This succession cause has been the subject of heated, lengthy and convoluted litigation. It is no wonder that, despite being filed in 2006, 19 years ago, the estate is nowhere near being fully distributed. At this point in time, the full extent of the estate has not been fully established either.
2. On 31<sup>st</sup> October 2018, this court (per M Thande, J) issued a terse decision whose wording I shall reproduce below verbatim. The learned Judge stated as follows: -

“I have heard the submissions by counsel. I note that from the two positions, i.e. Joginder, Sukhwant and Surjeet, and Joginder and Sukhwant, the names that appear in both positions are Joginder and Sukhwant. In the circumstance and in the interest of moving forward I revoke the grant issued to Joginder Singh Dhanjal and do hereby appoint Joginder Singh Dhanjal and Sukhwant Kaur Kundi as joint administrators of the estate of Jaswant Singh



Boor Singh Dhanjal. The administrators shall both file a summons for confirmation of the grant within 30 days, i.e. by 1<sup>st</sup> December 2018. The administrators shall collect the estate, and I do direct Daljit Singh Dhanjal to hand over all documents relating to the estate to the administrators. Mr Kadima is to facilitate the exercise. Summons for confirmation shall be heard on 17<sup>th</sup> December 2018.”

3. The foregoing decision was delivered in open court. The following counsels were present during the delivery of the ruling: Mr Kadima, holding brief for Mr Wasuna, for Mr Daljit Singh Dhanjal, Mr Oloo, holding brief for Ms Kipsang, for Sukhwant Kaur Dhanjal Kundi, Ms Wanjiku for Surjit Dhanjal, Mr Khalid for Mr Jaspal Singh Dhanjal and Mr Maloba for Joginder Singh Dhanjal.
4. It is contended that there was no compliance with the orders issued by this Court. Thus, through a Notice of Motion dated 31<sup>st</sup> October 2019 and filed on the same date, the 2<sup>nd</sup> Administrator, Sukhwant Kaur Dhanjal Kundi, sought the following orders:-
  - a. Spent;
  - b. That this honourable court be pleased to find the respondent herein, Mr Daljit Singh Dhanjal, in contempt of the order of the honourable Lady Justice M Thande dated 31<sup>st</sup> October 2018 in this matter;
  - c. That this honourable court be pleased to commit the said Mr Daljit Singh Dhanjal to civil jail for a period not exceeding six months or any such period as may be directed by the honourable court, for disobeying the orders of the honourable Lady Justice M Thande dated 31<sup>st</sup> October 2018 in this matter;
  - d. That this court be pleased to issue such other or further orders in respect of the said contempt as may be necessary for the ends of justice to be met; and
  - e. That costs be in the cause.
5. The grounds upon which the application was brought were that the grant that Daljit had previously obtained had been revoked, and a new grant had been issued to Joginder and Sukhwant. Daljit was required to restore the properties previously belonging to the estate, but which had been transferred to other parties, back to the estate. However, he failed to do so, necessitating the filing of the application.
6. It was urged that Daljit was aware of the court's orders as he and his advocates were present when they were issued.
7. It was urged that other parties would be emboldened to disobey court orders unless the orders sought vide the said application were issued. It was therefore in the interest of justice that the orders sought be granted and executed in the manner prayed in the application.
8. Mr Daljit Singh Dhanjal opposed the application. In his affidavit sworn on 12<sup>th</sup> February 2020, he deposed that he was appointed as an administrator with the consent of his siblings and that he also left in similar circumstances, through a revocation done by consent.
9. Mr Daljit denied that he had declined to hand over documents in his possession and averred that what these documents were had not been disclosed. He averred that the administrators had collected the estate since the estate was confirmed on 11th June 2019.
10. The application was canvassed through both oral and written submissions. The submissions of the applicant are dated 14<sup>th</sup> May 2020. Her counsel, Ms Christine Kipsang, urged that the grant was revoked on 31<sup>st</sup> October 2018. Upon revocation, the respondent was required to hand over all



- documents relating to the estate to the new administrators. Although the orders were clear and within his knowledge, he had failed to heed the court's orders.
11. The applicant's counsel submitted that the contempt application was intended as an enforcement action and that Daljit should be held personally to be in contempt of court.
  12. It was urged that the court orders were issued in the presence of all the parties, including the respondent. The orders of the court were extracted and served on all the parties. The orders were valid and regular and hadn't been set aside.
  13. Counsel stated that under Sections 45 and 47 of the *Law of Succession Act*, the Family Court could punish a contemnor, to protect the estate from all, including him, to uphold the court's dignity and to protect and preserve the rule of law.
  14. It was submitted that despite the fact that the *Contempt of Court Act* was declared as unconstitutional, the court could still punish a party for disobedience of its orders on the basis that Section 5 of the *Judicature Act* and Section 36 of the *High Court Organization and Administration Act* were still in force. Counsel relied on the case of *Kiru Tea Factory Company Ltd v Stephen Maina Gitbiga & 14 others* [2019] eKLR.
  15. Counsel for the applicant submitted that the respondent had admitted holding documents relating to the estate, particularly 1125 shares in Dhanjal Brothers Ltd, in total defiance of this honourable court's order.
  16. The advocate for the 2<sup>nd</sup> administrator/applicant thus urged that the application be allowed as prayed.
  17. The submissions of the respondent are dated 10<sup>th</sup> August 2020. The respondent identified four issues as coming up for determination, to wit:-
    - a. Whether the application was fatally and incurably defective;
    - b. Whether the applicant has met the set standard of proof for contempt of court;
  18. It was urged that the *Contempt of Court Act* was declared unconstitutional by the court in *Kenya Human Rights Commission vs Attorney General & another* [2018] eKLR. By anchoring the application on an Act of Parliament declared unconstitutional, the court's jurisdiction had not been properly invoked. Reliance was placed in the holding of the Supreme Court of Kenya in *Hermanus Phillipus Steyn vs Giovanni Gnechi Ruscone* [2013] eKLR "that it is trite law that a court of law has to be moved under the correct provision of the law."
  19. Given the declaration of the *Contempt of Court Act* as being unconstitutional, it was submitted that the application ought to have been filed under Section 5 of the *Judicial Act*, which empowers the courts to punish for contempt of court as is for the time possessed by the High Court of Justice in England.
  20. It was urged that the applicant, by moving the court under the provision of law declared invalid, rendered the application incompetent.
  21. Regarding the merit of the application, it was urged that the respondent's counsel forwarded all the documents to the administrators, and it was on that basis that a summons for confirmation of the grant was filed, and the grant was subsequently confirmed.
  22. Counsel urged that it hadn't been shown that the respondent had yet provided any documents. Counsel asked what documents had yet to be produced and remarked that the application was devoid of an answer to the question.



23. Counsel for the respondent submitted that the documents to be supplied by the respondent had not been identified and that he had indicated that he had fully complied.
24. It was thus urged that the application be dismissed with costs to the respondent.
25. The applicant did file an application seeking to amend the application under consideration. For reasons that shall become clear, I will not consider the latter application nor the related question raised during the hearing of whether a substantive application can be considered simultaneously with the application to amend it to cure some presumed defect.
26. Does the application have merit? Is it one that should be allowed? What orders should be issued in the circumstances of this matter?
27. It is necessary that I revisit the decision that gave birth to the application before me. I must consider what Daljit was required to do, vis-à-vis what he did, to see if he disobeyed court orders.
28. In her ruling of 31<sup>st</sup> October 2018, M Thande, J states as follows;
- “I do direct Daljit Singh Dhanjal to hand over all documents relating to the estate to the administrators. Mr Kadima to facilitate this exercise. Summons for confirmation shall be heard on 17<sup>th</sup> December 2018.”
29. As I have already stated, the administrators appointed by the court on the said date were Joginder and Sukhwant as joint administrators of the subject estate.
30. It is the contention of the 2<sup>nd</sup> interested party that there hasn't been compliance with the court's orders. The alleged contemnor, on the other hand, denies that he has disobeyed court orders.
31. Section 5 (1) of the *Judicature Act* confers the jurisdiction to punish for contempt of court on this court. It provides that:-
- “(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.”
32. Courts punish contemnors to uphold the dignity and authority of the court, ensure compliance with the directions of the court, observance and respect of the due process of law, preserve an effective and impartial system of justice and maintain the public confidence in the administration of justice by the courts.
33. In the case of *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] KEHC 9233 (KLR), Mativo, J, as he then was, laid down the factors which must be proved to exist for an alleged contemnor to be held in contempt of court. He stated as follows: -
- “40. It is an established principle of law that<sup>1</sup> in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive



of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*<sup>[47]</sup> who succinctly stated:-

"There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate."

34. There is no doubt that the terms of the order issued by the court were known to the alleged contemnor. He was represented in court on the said date by Mr Francis Kadima, who held brief for Mr Wasuna, his advocate. Daljit was, in fact, present in court on the said date.
35. Under the terms of the directions/ orders of the court, he was to hand over all the documents or title in his possession to Mr Kadima for onward transmission. The contention, in my view, is what documents were in Daljit's possession and what was handed over. This, in my view, is the crux of the matter.
36. Daljit Singh Dhanjal contends that he has complied with the orders of the court. The applicant, Sukhwant, contends, on the other hand, that he hasn't. The exact compliance status is not something the court is able to establish at this point; the documents to be supplied by Mr Daljit were not set out in the order that this court issued on 31<sup>st</sup> October 2018. For example, I note that the status of the Kwale properties, identified as Title Nos. Kwale/Complex/Tiwi 116, 138 and 287 are contested; the alleged contemnor avers that he has restored them to the estate.
37. Mr Daljit Singh Dhanjal produced a document he called a statement of production, dated 20<sup>th</sup> June 2024, through which he, in essence, claimed to have fully complied with the court's orders.
38. Flowing from the uncertainty of the status of compliance, I am not convinced that it would be safe to hold Daljit in contempt of court at this point. Given the serious consequences that flow from the contempt proceedings, to wit, the imposition of fines and imprisonment, it is essential to establish willful and deliberate conduct on the part of the alleged contemnor.
39. I agree with counsel for Mr Daljit Singh Dhanjal that the applicant needed to show that Dhanjal had the custody of the titles. Thus, in my view, the holding in [\*Abdi Satarbaji & another v Omar Ahmed & another\*](#) [2018] KECA 204 (KLR) is apt. The Court of Appeal in the said matter stated that:-

"(26) Secondly, with regard to production of the title documents which were alleged to be in his possession, the 1<sup>st</sup> appellant deposed that since his return from Canada in the year 2009, he did not have any of the title documents. In our view, this amounted to an explanation by the 1<sup>st</sup> appellant as to why he could not comply with that limb of the orders. At the very least, the learned Judge should have given the 1<sup>st</sup> appellant and the respondents an opportunity to



address the court further on the whereabouts of the title. It is not clear to us whether it was established that the titles were in the 1<sup>st</sup> appellant's custody. As matters stood, the evidence before the Judge was not sufficient to establish willful disobedience by the 1<sup>st</sup> appellant to the required standard as succinctly discussed by this Court in *Mutitika v Baharini Farm Limited* [1985] KLR 229:

“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...”

40. In the circumstances, I find and hold that the Notice of Motion dated 31<sup>st</sup> October 2018 is without merit. I dismiss the same with no orders as to costs.
41. In order to bring this long standing matter to a close I grant Daljit Singh Dhanjal, a further 45 days period to prepare and file a full and accurate inventory of the assets and liabilities of the estate as at the time of his appointment as an administrator and also as at the time of his removal. He will also prepare and file statements of account of the estate for the period he administered it and account for all the incomes that accrued. With the said reports filed, it will be possible to audit his compliance with the decision of M Thande, J, and the Court will therefore be able to guide the process of the distribution of the estate appropriately, to conclude the succession proceedings.
42. The matter shall be mentioned on 7<sup>th</sup> July 2025 to ascertain compliance and for further directions.
43. As this is a succession cause between close family members, the parties shall bear their own costs.
44. Orders accordingly

**DATED AND SIGNED IN MOMBASA THIS 24<sup>TH</sup> DAY OF APRIL 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Busieka, holding brief for Mr Oloo, for the 2<sup>nd</sup> Administrator/Applicant;

Ms Essajee, holding brief for Mr Khagram, who acts together with Mr Kagunza and Mr Kibunja, for Joginder Singh Dhanjal;

Dr Aoko, and Mr Githara, for Nirmal Singh Dhanjal;

Mr Amadi, holding brief for Mr Kadima, for Dhanjal Brothers Ltd;

Ms Wanjiku, for Daljit Singh Dhanjal and Surjit Singh Dhanjal; and

Arthur – Court Assistant.

