



In re Estate of Phyllis Wasuna Kamau alias Phyllis Wasuna (Deceased) (Succession Cause 25 of 2019) [2025] KEHC 4689 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
SUCCESSION CAUSE 25 OF 2019**

LN MUTENDE, J

APRIL 8, 2025

**IN THE MATTER OF THE ESTATE OF PHYLLIS WASUNA
KAMAU ALIAS PHYLLIS WASUNA (DECEASED)**

BETWEEN

ZIPPORAH NYAMBURA NJUGUNA APPLICANT

AND

EDWARD NJUGUNA NDUNG’U 1ST RESPONDENT

ANDREW GITAU NDUNGU 2ND RESPONDENT

ADMINISTRATOR OF THE ESTATE OF MICHEAL NDUNG’U NJUGUNA

RULING

1. Andrew Gitau Ndung’u and Edward Njuguna Ndung’u (Respondents/Applicants) Administrators of the estate of Michael Ndung’u Njuguna (deceased), the sons and beneficiaries of the Estate of Phyllis Wasuna Kamau alias Phyllis Wasuna (Deceased) and for ease of reference “the Applicants”.
2. Through an application dated 27th May 2024, they seek orders thus;
 1. Spent.
 2. That the Honourable Court be pleased to allow the firm of Ngugi Gathu & Co. Advocates to come on record for the Respondents.
 3. That a temporary injunction do issue restraining the Applicant by herself, family, servants, and/or whoever jointly and severally from whatsoever interfering with the status quo prevailing in L.R. No. Nyandarua/South Kinangop/12301 pending the hearing and determination of this application.



4. That the Applicant be committed to prison for a term not exceeding six months for being in contempt of court orders issued on 20th December, 2023.
5. That the costs of this application be provided for.
3. The Application is based on grounds per the affidavit deposited by Andrew Gitau Ndung'u that the court rendered a ruling on 20th December 2023, which ordered preservation of prevailing status quo pending hearing and determination of the appeal; despite having knowledge of the said orders, the Respondent (Zipporah Nyambura Njuguna) in blatant and utter disobedience of the said orders has fenced off the graveyard and ploughed out the Applicants' farm located within L.R. NO. Nyandarua/ South Kinangop/ 12301 thereby occasioning immense damages; and, that the court must stamp its authority to ensure compliance with its orders.
4. Zipporah Nyambura Njuguna, hereinafter the "Respondent", filed an affidavit in response where she deposes that she is advised by her advocate that the application as drawn and filed is incurably defective as it is brought under a form and provisions alien to the *Law of Succession Act*.
5. That the Applicants have deliberately concealed material facts from the court with the sole intention of misleading the court as they failed to disclose what status quo was at the time when ruling of 20th December, 2023 was delivered.
6. That the position pertaining to the status quo was by the judgment of the court delivered on 7th July, 2023 where the court found that Michael Ndung'u Njuguna was holding the suit land in trust for provision of the graveyard and other beneficiaries who had been left without any inheritance and directed him to sign transfer documents to have the land transferred in their favour and the court later delivered a ruling distributing the land among the beneficiaries including her.
7. That since Michael had leased out a bigger portion of the land to third parties at the time of the judgment of 7th July 2022, she entered the land and took possession of a portion of land measuring 1 $\frac{3}{4}$ of acres that was not in use or occupied awaiting actual subdivision and issuance of title deeds which included the graveyard of their loved ones and since she lives out of the county she instructed her son, Njuguna, to cause bushes around the graveyard to be cleared and also plough the remainder of the land for cultivation.
8. That they planted flowers on the graveyard and planted vegetables on the other portion that was tilled.
9. That her children had been cultivating the 1 $\frac{3}{4}$ acres portion even before the orders of 20th December 2023; and, have recently secured the place by planting fresh flowers on the graveyard and secured the same by fencing to prevent destruction.
10. That she continued to maintain the homestead and where the graveyard is located even during trial and the family house that was left by her mother for purposes of memories.
11. That none of the Applicants or deceased brother's children use or cultivate the land since the same is being cultivated by 3rd parties who are not family members; including Kevin Munango Nyongesa; Francis Waikinyi Waishaya; and, Lufas Muchemi Njuguna.
12. The Respondent denied having contravened court orders. That neither the Applicants nor their deceased father ever personally occupied the land since their home is in uplands, Limuru within Kiambu County.
13. Pursuant to directions taken, the Respondent opted to rely on the replying affidavit in disposal of the application.



14. The Applicants however filed submissions where it is argued that the Application hinges on proof of the elements of Civil contempt, namely: Terms of the order; knowledge of the terms of the orders; and violation of the terms of the order, as held in *Koilel & 2 Others v Koilel & Another (Civil Appeal E002 of 2021)* [2022] KEHC 10255 (KLR) (30th June, 2022) (Judgment).
15. That the Respondent had knowledge of the terms of the order. Her deposition confirmed the same and she was present when the orders were made and her advocate informed her of the same, which finds resonance in the holding in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR.
16. It is urged that the Applicants alleged that the Respondent ploughed out their farm in contravention of the court order for status quo to be maintained, while the Respondent alleged that she ploughed portions of the Applicants' interest. That the order of the court was made while she was already in occupation of the portions.
17. Further, it is urged that the Respondent had all along argued she had never occupied and or possessed any portion of land leading to the judgment rendered on 7th July, 2022 as well as subsequent rulings. That had the Respondent utilized the portions before the Applicants would have complained way before and the County Agricultural Officer would not have established the damage and prepared a report whose content the Respondent has not challenged.
18. I have duly considered the application, affidavits in support and opposition, annexures thereto and submissions by the Applicants' learned counsel.
19. First and foremost, I must point out that prayer 2 of the application is deemed to have been granted hence the firm of Ngugi Gathu & Co. Advocates is regularly on record.
20. The contempt of court herein is civil in nature and this court being a High Court is seized of jurisdiction. In *Samuel M.N. Mweru & Others v National Land Commission & 2 Others* [2025] eKLR. It was held that;

“It is an established principle of law that 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* 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.”

21. Guided by the authorities cited, it is deduced that elements of contempt of court include;

- a. Existence of the court orders which must be clear and unambiguous.
- b. Knowledge of the order which mean that the alleged contemnor was notified of the order through being served or was present when the order was made and had reasonable access to the order.
- c. There was the act of willful and intentional disobedience of the order.

22. It is therefore upon the Applicants to demonstrate existence of the elements afore stated. In consideration of the same, I do note that in exercising the judicial discretion of determining the matter, I am reminded that the approach vary depending on the circumstances of the case. This is a succession matter where parties are related and were encouraged by court to explore Alternative Dispute Resolution by amicably settling the matter but adopted firm and unyielding positions.

23. Looking at the court order that was in existence; at the outset there was a judgment of 7th July, 2022 where orders of the court were as follows;

- i. The deceased will stand unimpeached thus the application fails to the extent it challenges the will but revoked to the extent suit land is awarded Applicant, and other beneficiaries omitted plus the graveyard.
- ii. The court declares Michael Ndung'u Njuguna to be holding as a trustee L.R. No. Nyandarua/South Kinangop/12301 for the provisions of the graveyard and the beneficiaries including the Applicant left out without any inheritance and thus he will sign all relevant documents to effect transfer for the beneficiaries aforesaid and in default the Executive Officer of the court will sign same documents to effect transfers.
- iii. The Applicant to file an affidavit of proposed sharing of L.R. No. Nyandarua/South Kinangop/ 12301 between themselves and also the graveyard within 30 days from dates herein.
- iv. Parties to bear their costs.
- v. There be liberty to apply.

The Applicant was the instant Respondent.

24. This was followed by a judgment of 6th July, 2023 where the court ordered thus;

“ Additionally, I find that the rightful beneficiaries of the estate are;

- i. Zipporah Nyambura Njuguna
- ii. Michael Ndung'u Njuguna
- iii. Susan Ruguru Njuguna”



25. The ruling of 20th December, 2023 following the application dated 16th July, 2023 was for stay of a ruling of 13th July, 2023 pending the intended appeal. The court ordered thus;
- “The application dated 16th July 2023, is meritorious and is hereby allowed to preserve the prevailing status quo, with no orders as to costs.”
26. The application had sought an order that:
- “the Honourable court to stay execution of its ruling entered on 13th July 2023, pending hearing and determination of the intended appeal.”
27. The question to be pondered over is: What was the prevailing status quo?
28. The ruling o 13th July, 2023 is nonexistent. None of the parties have the ruling and the court record does not have the same. This would leave the court to revert to the order/ruling of 6th July, 2023 reflecting distribution of the estate among the three (3) beneficiaries. This of course is speculation. What it amounts to is the fact of the order of the court being ambiguous. The court cannot discern what the court meant by reference to an order that cannot be traced. There is hence the question whether the order existed and what it was intended to mean?
29. From the foregoing, this court finds that not all elements of contempt of court are demonstrated.
30. In the result, the application fails. The Applicants are advised to pursue the appeal.
31. For avoidance of doubt, I decline to grant orders sought.
32. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF APRIL, 2025.

.....

L.N. MUTENDE

JUDGE

HC SUCC 25 OF 2019 (RUL) Page 3 of 3

