



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Daniel Macharia Njoroge (Deceased) (Succession Cause  
1917 of 1996) [2025] KEHC 4173 (KLR) (Family) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4173 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 1917 OF 1996**

**HK CHEMITEI, J**

**APRIL 3, 2025**

**IN THE MATTER OF THE ESTATE OF DANIEL MACHARIA NJOROGE (DECEASED)**

**BETWEEN**

**JANE MWIHAKI NJOROGE ..... ADMINISTRATOR**

**AND**

**JOSEPH MBUGUA MACHARIA ..... 1<sup>ST</sup> CONTEMNOR**

**FRANCIS NDUNGU MACHARIA ..... 2<sup>ND</sup> CONTEMNOR**

**RULING**

1. This ruling relates to the summons dated 25<sup>th</sup> July 2023 filed by the Administrator/Applicant Jane Mwihaki Njoroge, seeking for Orders That:-
  - a. This Honorable Court be pleased to cite the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors/Administrators for contempt for willfully disobeying this Honorable Court's Order issued on 31<sup>st</sup> May, 2023.
  - b. The 1<sup>st</sup> and 2<sup>nd</sup> Contemnors/Administrators be detained in civil jail for a term not exceeding six (6) months for flagrantly disobeying court orders issued on 31<sup>st</sup> May, 2023.
  - c. This Honorable Court be pleased to issue such other or further punitive orders in respect of the said contempt as may be necessary for the ends of justice to be met.
  - d. The costs of an occasioned by this application be costs in the cause
2. The application is based on the grounds thereof and supported by affidavits sworn by Jane Mwihaki on 31<sup>st</sup> July, 2023 and 11<sup>th</sup> June, 2024 respectively.



3. She avers inter alia that she serves as the administrator of the estate, as confirmed by the grant of letters of administration dated 17<sup>th</sup> July 2012. She recalls filing an application before this Honorable Court on 27<sup>th</sup> May, 2023, requesting orders compelling the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors/Administrators to:-
- (i) Provide a full and accurate account of all rental income collected from 1<sup>st</sup> November, 2011 to the present from the following properties:
    - a) LR No. 209/2952 and LR No. 209/2952/2 on Luthuli Avenue, commonly known as Tawi Hotel.
    - b) LR No. 209/197/101 in Pangani, adjacent to Pangani Police Station, commonly known as Billton Hotel.
  - (ii) Direct that all rental income be deposited either with the court or in a joint interest-bearing account at a reputable bank in the names of all administrators.
- She confirms that this Honorable Court issued orders on 31<sup>st</sup> May, 2023 granting her application and specifically:-
- (i) Instructing the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors/Administrators to present full financial records of rental income from the aforementioned properties.
  - (ii) Ordering that all rental proceeds be deposited in a joint account or with the court.
  - (iii) Setting a strict deadline of thirty (30) days from the date of the order for compliance.
4. She highlights that the compliance period ended on 30<sup>th</sup> June, 2023, yet the Contemnors/Administrators have taken no steps to fulfill their obligations under the court order. She states that her legal representatives, Bryan Moturi & Associates, have made multiple attempts to ensure compliance by corresponding with the Contemnors' advocates, P.K. Mureithi & Co. Advocates. These efforts, documented in the annexed letters, have been ignored.
5. That due to continued non-compliance, she instructed her advocates to personally serve the court order on the Contemnors. The service was executed in Limuru Sub-County, as confirmed by the annexed affidavit of service. Despite this service, she affirms that:-
- (i) No financial records have been provided as required.
  - (ii) No rental income has been deposited as directed.
  - (iii) No justification or explanation has been offered for the failure to comply.
6. She emphasizes that this deliberate disobedience has severely hindered her ability to properly administer the estate and safeguard its assets, particularly:-
- (i) LR No. 209/2952 and LR No. 209/2952/2 on Luthuli Avenue.
  - (ii) LR No. 209/197/101 in Pangani.
7. She stresses that these rental records are essential for proper estate distribution. Furthermore, she contends that the Contemnors' continued non-compliance reflects their intent to solely benefit from the estate's rental income, violating their administrative duty under the Letters of Administration to provide accurate accounts. She also points out that the Contemnors do not dispute being served with or having knowledge of the Court Order issued on 5<sup>th</sup> February, 2016 (or alternatively 31<sup>st</sup> May, 2023). Lastly, she maintains that settlement negotiations cannot be used as an excuse for failing to obey Court Orders.



8. The application is opposed vide replying affidavit sworn by Joseph Mbugua Macharia and Francis Ndung'u on 15<sup>th</sup> February, 2024 where they aver inter alia that after reviewing the application and supporting affidavit, they strongly believe that the Applicant is either deliberately omitting crucial details or intentionally misleading the Court to wrongfully obtain orders while committing perjury. They categorically assert that neither they nor their legal representatives were ever served with the application dated 27<sup>th</sup> May, 2023 and suspect that no such application exists in the official court records, making paragraph 3 of the Applicant's affidavit false.
9. They went on to highlight what they consider evidence of the Applicant's dishonesty - her claim in paragraph 5 that orders allegedly sought on 27<sup>th</sup> May, 2023 (a Saturday) were granted on 31<sup>st</sup> May, 2023 (the following Wednesday). They note that the Applicant has attached an order issued on 5<sup>th</sup> February, 2016 from an application dated 27<sup>th</sup> May 2013, which they argue is a clear attempt to mislead the Court. Regarding the 5<sup>th</sup> February, 2016 orders obtained by the Applicant's current advocates on 31<sup>st</sup> May 2023, they affirm that they fully complied by submitting the required accounts to the Applicant's former advocates vide a letter dated 2<sup>nd</sup> February, 2017.
10. As proof, they cite an acknowledgment receipt from the Applicant's former legal representatives dated 4<sup>th</sup> July, 2017. They emphasize that these accounts were properly filed in court and official records confirm their full compliance in 2017.
11. Additionally, they point out that the Applicant and her former lawyers participated in a meeting at their advocates' offices on 25<sup>th</sup> July, 2017 to review these accounts and discuss the estate's distribution. They direct the Court's attention to records from proceedings on 21<sup>st</sup> October, 2017 before Hon. Justice Musyoka, which show ongoing negotiations regarding distribution methods, including an exchange of proposed schedules. They explain that they only proceeded to file formal Summons for Confirmation of Grant after these negotiations failed, to prevent the estate's dissipation.
12. They further assert that the current contempt application was only filed when the confirmation summons was ready for hearing, despite their compliance with the 2016 orders in 2017. They note that the Applicant's repeated pattern of being unprepared or absent from court proceedings. They reference the 21<sup>st</sup> April, 2021 hearing before Hon. Justice Stella Mutuku, where confirmation summons were scheduled following failed settlement efforts.
13. The Applicant has filed written submissions dated 26<sup>th</sup> June, 2024 placing reliance on the following among others:
  - a. *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR where the court stated as follows:-

“Section 5 of the Judicature Act states that 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 that power shall extend to upholding the authority and dignity of subordinate courts.”
  - b. *Basil Criticos v Attorney General & 8 others* (2012) eKLR where the learned Judge Lenaola J. Held that:

“...the law has changed and as it stands today knowledge supersedes, personal service.....where a party clearly acts and shows that he had knowledge of a Court



Order, the strict requirement that personal service must be proved is rendered unnecessary.”

- c. *Kenya Tea growers Association -v. Francis Atwoli & 5 Others*, Petition No. 64 of 2010 where Justice Lenaola also opined as follows

“...in the case before me, I am more satisfied that even at higher level of beyond reasonable doubt, when an individual has been served with and/or has knowledge of a court order but not only ignores it but in fact incites others to do the same, the threshold for contempt has been met. Francis Atwoli in fact went further to arrogate himself the decision to determine when the strike should end despite the fact that the court order had stopped it.....His contempt was obvious and his conduct and words can attract no other finding.”

14. The Respondents/Contemnors have not filed written submissions.

### **Analysis and Determination**

15. I have looked at the application, the responses thereto and the submissions filed and address them as follows:-

16. The issues for determination, as crafted by the Applicant are as follows:-

1. Whether the Contemnors/Administrators were aware of the Order issued by this Honourable Court on 5<sup>th</sup> February, 2016?
2. Whether the terms of the Order issued on 5<sup>th</sup> February, 2016 were clear?
3. Whether the Contemnor wilfully disobeyed the Court Order issued on 5<sup>th</sup> February, 2016.
4. Whether this Honourable Court has power to punish for contempt?

17. At paragraph 27 of *Henry Musemate Murwa v Francis Owino, Principal Secretary, Ministry of Public Service, Youth And Gender Affairs & another* [2021] eKLR, Judge Maureen Onyango cited with authority the case of *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR where Mativo J. restated the test for establishing contempt in his decision and stated –

“ 40. 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...”
1. *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR where the court of appeal stated as follows:

“Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt of proceedings?” We hold the view that it does. This is more so in a case such as this one where the advocate was in court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/ her to report back to the client all that transpired in court that has a bearing on the client’s case.

This is the position in other jurisdictions within and outside the commonwealth.

In addressing the issue whether services of a judgment or order on the solicitor for the Ministers is sufficient knowledge of the order on their part to found liability in contempt; the Supreme Court of Canada in *Bhatnager v Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217 at p. 226, LJ Sopinka, held that:

“In my opinion, a finding of knowledge on the part of the client may in some circumstances be inferred from the fact that the solicitor was informed. Indeed, in the ordinary case in which a party is involved in isolated pieces of litigation, the inference may readily be drawn. In the case of Minister’s crown who administer large departments and are involved in a multiplicity of proceedings, it would be extraordinary if orders were brought, routinely to their knowledge, in such a case there must be circumstances which reveal a special reason for bringing the order to the attention of the Minister.”

The court went on to state that, “On the cases, there can be no doubt that the common law has always required personal service or actual personal knowledge of a court order as pre – condition to liability in contempt... Knowledge is in most cases (including criminal cases) proved circumstantially, and in contempt cases inference of knowledge will always be available where facts capable



of supporting the inference are proved. (See *Avery v. Andrews* (1882) 51Lj Ch. 414)

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 26<sup>th</sup> 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.”

18. Looking at the overall grounds of proving contempt as explained in the above cited authorities this court is fully satisfied that the contemnors were served with the orders from this court as per the ruling of Musyoka J. There is no evidence that they attempted to comply with the same.
19. As a matter of fact, the argument that there were negotiations ongoing does not water down compliance. It would have been different if the Applicant acquiesced to the said negotiations or chose to go with it other than the orders of the court.
20. More importantly and assuming it was difficult to render the accounts what became of depositing the rental income in court or in a joint bank account? That did not need rocket science to obey. This court take it that the contemnors have continued to enjoy the rent before the ruling and after the ruling without any regard to the said orders.
21. I find that they deliberately disobeyed obvious orders issued on 5<sup>th</sup> February, 2016 and 31<sup>st</sup> May 2023. The evidence clearly demonstrates that they failed to fully comply with the court’s directives despite having proper notice and opportunity to do so.
22. To purge their contempt, I direct as hereunder:-
  - (a) They comply with the orders within 14 days from the date herein and in default they be committed to 30 days imprisonment without further reference.
  - (b) The matter be mentioned before the Deputy Registrar of this court within the next 14 days to confirm compliance.
  - (c) Costs of this application to the applicant.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 3<sup>RD</sup> DAY OF APRIL, 2025.**

**H K CHEMITEI**

**JUDGE**

