



REPUBLIC OF KENYA



**In re Estate of Betty Wambui Radovan (Deceased) (Succession Cause  
2428 of 2006) [2025] KEHC 6432 (KLR) (Family) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6432 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2428 OF 2006  
PM NYAUNDI, J  
MAY 23, 2025**

**N THE MATTER OF THE ESTATE OF THE LATE BETTY WAMBUI RADOVAN**

**RULING**

1. Vide application dated 13<sup>th</sup> Day of December 2024, presented under Section 5(1) of the *Judicature Act* and Part 81.1 of the English Civil procedure Rules, 2020 & Part 81.1,2,2,2,5 & 7 thereof the applicants herein seek that Lemmy Hobson and Bruce Kamau Radovan be found to be in contempt of Court for failing to comply with orders of the Court arising from the judgment delivered on 26<sup>th</sup> January 2024.
2. Further that as a consequence of their Contempt of Court, they be sanctioned as provided for under the law with either serving a term of imprisonment not exceeding 6 months and / or a fine be paid by them. The Applicants further seek that the court direct the Police officer commanding Kilimani Police Division oversee the compliance of the orders of the Court.
3. It is stated that the failure to comply with the orders by the respondents constitutes a violation of the applicants right to access justice that is guaranteed under Article 48 of *the Constitution*. The Application is supported by the affidavit sworn by the 3<sup>rd</sup> applicant sworn on the 13<sup>th</sup> December 2024.
4. The Respondents have sworn an affidavit in reply sworn by Lemmy Hobson on 16<sup>th</sup> January 2025. The respondents aver that they were not present in court at the judgment, that they have since appealed against the judgment and they are awaiting the outcome of the appeal that they have filed in Court alongside the stay of execution application that is dated 27<sup>th</sup> February 2024.
5. The Applicants have sworn supplementary affidavit on 11<sup>th</sup> February 2025 with leave of the Court and presents ruling of the Court delivered on 20<sup>th</sup> January 2025 that shows there is no stay of execution granted by the Court of Appeal.
6. The Application was canvassed via written submissions.



7. The Applicant submits that there is judicial precedent that parties are obliged to obey court orders or suffer the Consequences and reference made to the decision on In re Estate of Jackson Guto Nyaboga (Deceased) [2023] KEHC 4138 (KLR)
8. The applicant submits the following issues for determination-
  1. Whether the Respondents are in contempt of court of this Court's ruling and orders rendered herein on 26<sup>th</sup> January 2024
  2. Whether the Applicants' Notice of Motion dated 13<sup>th</sup> December 2014 is merited
  3. What orders should issue in the circumstances obtaining
  4. Who should bear the costs of the motion
9. The applicant cites the decision in B vs Attorney General [2004] 1 KLR 431 along with Section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules. The Applicants also rely on the decision in Africa Management Communication International Ltd v Joseph Mathenge Mugo & Anor [2013] eKLR on the jurisdiction of the Court to punish contemnors for contempt.
10. The applicants submit that as Counsel for the respondents was present at the time the judgment was delivered the Court should be guided by the decision in Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR; Samuel M.N. Mweru & Others v National Land Commission & 2others [2020] eKLR and Republic vs Pauline Maisy Chesang & 4 Others [2019] eKLR and Teachers Service Commission v Kenya National Union of Teachers & 2 Others Industrial Court Petition No. 23 of 2013.
11. The applicant concludes submissions by citing the decision of the Court of Appeal in AB & Another v RB [2016] eKLR and the decisions in Trust Bank Limited vs Shanzu Villas Limited & 3 Others (2004) 2 KLR 299 and Wildlife Lodges Ltd v County Council of Narok & Another [2005] 2 EA 344 (HCK) for the submission that the respondents should not have the audience of the Court until they purge their contempt.
12. The respondent frames a single issue for determination; Whether the Administrator/ Applicant's application is merited?
13. First the respondent challenges the authority of the 3<sup>rd</sup> applicant to present the application on behalf of the Co Administrator and cites Order 1 rule 13 of the Civil Procedure Rules.
14. It is submitted further that the circumstances of this matter do not warrant the issuance of contempt orders. Firstly, it is denied that the respondents were served with the subject order. Further it is submitted that the acts of contempt have not been established and especially because the orders were self-executing. Further that there is a pending application before the Court of Appeal in which the respondent seeks stay of execution; Civil Appeal Application No. E090 of 2024 Lemmy Hobson & 2others vs Sylvia Mabussi & 2 Others.
15. The respondent in conclusion refers to the decision in Re Estate of William Cherop Murgor (Deceased) Probate & Administration 112 of 2022) (2023) KEHC 3977 (KLR) (28 April 2023) (Ruling) on evidence of service and Re Estate of Ismail Osman Adam (Deceased) (Succession Cause 121 of 1991) [2023] KEHC 2610 (KLR) (29<sup>th</sup> March 2023) Ruling) on the issue as to whether the order required the respondents to comply or whether it was self-executing.



## Analysis And Determination

16. Having considered the pleadings herein, the submissions filed and the authorities cited, I discern that the issues for determination are-
1. Whether the Notice of Motion dated 13<sup>th</sup> December 2024 is merited? i.e. whether the respondents are in contempt of the orders issued on 26<sup>th</sup> January 2024 and should therefore be compelled to purge the contempt?
  2. Who should pay costs of this Application?
17. In the Court of Appeal decision in Kenya National Union of Teachers & 2 others v Teachers Service Commission [2018] KECA 214 (KLR), the Court laid out the test to be applied by the Court in the determination of whether the threshold for citing an alleged contemnor for contempt of court has been satisfied.
1. The first test is the determination of the existence of the order(s) made by a court of competent jurisdiction and which was (were) allegedly transgressed.
  2. The Second test is the identification of the addressee(s) of the order allegedly transgressed
  3. The third test is the determination of whether the orders allegedly transgressed required the addressee (s) to do or refrain from doing something
  4. The fourth test deals with the determination of the address's knowledge of both the existence of the orders as well as the requirements in such orders as to what the address(s) should or should not do.
18. I will dispense with two preliminary issues before I proceed to the substance of the application. The first is the respondent's challenge to the application on the basis that the 3<sup>rd</sup> applicant does not have the authority to present this application. This amounts to clutching at straws. In Sammy Nyamweya & others v Kenya Premier League Ltd & others (2015) eKLR, the court observed that the power to punish for contempt of court has never been about protecting a judge's feelings, ego or dignity. It is to safeguard the rule of law and its supremacy. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. It is not about placating the applicant who moves the court by taking out the contempt proceedings. It is about assuring a party who walks through the justice door with a court order in his hands that the order will be obeyed by those to whom it is directed.
19. It follows therefore that given the gravity of the charge, the Court will proceed to hear and consider such an application and will not be derailed by technicalities raised as suggested by the respondents herein. The applicant is a party herein, that is not disputed and she in her own right is directly affected by the compliance or non-compliance of the order that is subject of this application.
20. The 2<sup>nd</sup> issue, is whether the proceedings that are pending in the Court of Appeal have a bearing on the proceedings before this Court. Order 42 Rule 6 of the Civil Procedure Rules states-
1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any



person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

- (2) No order for stay of execution shall be made under sub rule (1) unless—
    - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
    - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
  - (3) Notwithstanding anything contained in sub rule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
  - (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
  - (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
  - (6) Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
21. The above cited provision, is unambiguous and couched in mandatory terms. At the time of presenting this application, there is no stay of execution or proceedings that has issued from the Court of Appeal. It follows therefore that the application is rightly before the Court for determination.
22. I will now proceed to consider whether the application before me meets the four-fold test set out in the decision of Kenya National Union of Teachers & 2 others v Teachers Service Commission (Supra).
23. The orders were that-
1. The grant herein is revoked and fresh grant to issue to Jimmy Radovan, Linda Hobson, Lemmy Hobson And Bruce Kamau Radovan
  2. The Certificate of Confirmed Grant issued on the 11<sup>th</sup> March 2014 is accordingly cancelled
  3. The sale of any of the deceased's properties (betty wambui radovan) made pursuant to the Grant issued on 15<sup>th</sup> January 2007 and confirmed on 11<sup>th</sup> March 2014 be nullified, revoked and cancelled.
  4. The Chief Land registrar is directed to cancel any and all transfers of land parcel No. L.R. KJD/ Kaputiei-north/6744, L.R. NO. 1/637, NAIROBI in Kilimani, Nairobi County, and Taita Hills L.R. No. 176 1-10 (Kahaki) and the same to forthwith revert to, and restored in the name of Betty Wambui Radovan, (deceased)
  5. The Administrators to identify a valuer to value the assets of the Estate within 30 days and the said valuer to submit valuation report within 21 days. The fees of the valuer to be paid out of the Estate. In the event that the Administrators are unable to agree on a valuer the Counsel for the parties shall identify a valuer within 14 days and the valuer shall submit report within 30 days of Appointment. If the Counsel shall not agree then Counsel for the Applicants shall identify a valuer who shall submit report within 14 days of Appointment.



6. The Administrators to file summons for confirmation within 60 days. If the Administrators are unable to agree any one of them can file the summons of the Confirmation and those not in agreement to file affidavits of protest within 14 days of service.
  7. The Administrators to open a joint account within 14 days in which all the rental income from the property Kilimani/ L.R. NO.11637. Nairobi will be deposited effective 28<sup>th</sup> February 2024.
  8. With respect to order 7 above, in the event any of the parties fails to comply by signing the requisite documents, the Deputy Registrar Family Division to sign the same on their behalf
  9. The matter will be mentioned on 24<sup>th</sup> April 2024 before the Deputy Registrar to confirm compliance and take further directions
24. In the Notice of Motion, I am able to decipher the following as the actions of the respondents that the applicant urges to be in contempt of the orders of the Court-
1. At paragraph 5 of the affidavit it is submitted that the respondents have 'knowingly and wilfully disobeyed ALL of the orders of this Honourable Court'
  2. In paragraph 6, the respondents have 'in their unlawful actions of failure to comply with any aspect of the said orders'
  3. Paragraph 11, the respondents continue to collect rental income which they benefit themselves from ..."
  4. Paragraphs 18 and 19 of the affidavit, the respondents failed to respond to or act upon their letter dated 15<sup>th</sup> November 2024.
  5. Paragraph 27 refusal to open the joint account to receive the rental income
  6. Refusal to avail any statement of account or a single document to the applicants as joint administrators
25. In order for the charge of contempt of Court to stand the actions complained of, must result in the frustration of the orders of the Court and in particular be responsible for the aggrieved party not accessing the fruits of the judgment.
26. I have gone through the orders as issued on 26<sup>th</sup> January 2024, each of the orders was self-executing. The conduct of the respondents, especially given that they are represented by a senior advocate are to be frowned upon, however the Court anticipating that the relationship between the parties had deteriorated has made provision to ensure that the estate of the deceased is administered in accordance with the law.
27. A fresh grant has issued. The responsibility for annulment of the title if necessary, lies with the Registrar of lands (Order 4).
28. Order 5 was self-executing in the event that the respondent was not complying, the applicant is at liberty to source a valuer and recover the costs from the estate.
29. On the account that will receive rental income, again I directed that the applicants would approach the deputy registrar to open the account. It is not the submission of the applicants that they have opened an account and the respondents have obstructed the depositing of the rent in to the account. They are insisting that the respondent participate in the opening of the account.



30. Finally, the applicants as administrators are at liberty to present summons for confirmation of the grant. The assets that comprise the estate of the deceased are not in dispute. In the circumstances, I do find that the applicants have contributed to the stalemate herein by not taking advantage of the fact that the orders are self – executing.
31. The Applicants are aggrieved at the failure to provide accounts of the rental income, as this was not included in the order of 26<sup>th</sup> January 2024 it cannot be the subject of the contempt proceedings. They also take issue with the motive behind filing the application for leave to appeal out of time, stay of execution and the appeal. I am of the view that these issues will be properly canvassed before the Court of Appeal and not this Court.
32. Accordingly, the application is dismissed, each party will bear their own costs.

It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF MAY, 2025.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:

Harrison Kinyanjui Advocate for Administrator/Applicants of the Estate

Museve for Co. Administrators/Respondents

Fardosa Court Assistant

