



**Gitata v Gitata & 4 others (Miscellaneous Civil Case
E065 of 2020) [2025] KEHC 9796 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9796 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CIVIL CASE E065 OF 2020**

MA ODERO, J

JULY 4, 2025

BETWEEN

PHABIOUS MURIITHI GITATA APPLICANT

AND

MACHARIA GITATA 1ST RESPONDENT

EUNICE WANJIRA GITATA 2ND RESPONDENT

LAWRENCE MWANGI 3RD RESPONDENT

SALOME MIRIGO KABUTHA 4TH RESPONDENT

GLADYS WACHUKA GITATA 5TH RESPONDENT

RULING

1. Before this Court for determination is the Notice of Motion dated 28th October 2024 by which the Applicant Phabious Gitata seeks the following orders:-

- “ 1. That the Court be pleased to cite the Respondents for contempt.
2. That the Court be pleased to cite the Manager of Equity Bank and the Manager of KCB Mukurweini Branch for contempt of Court orders.
3. That the Honourable Court be pleased to give further directions and/or orders as it may deem fit to grant.
4. That costs be provided for.”

2. The application was supported by the affidavit of even date sworn by the Applicant.



3. The 4th Respondent Salome Mirigo Kabuthi filed a Replying Affidavit dated 8th November 2024 opposing the Application. The 1st Intended Respondent being the Manager Equity Bank Mukurweini Branch filed Grounds of opposition dated 18th November 2024.
4. The application was canvassed by way of written submissions. The Applicant filed written submissions dated 17th March 2025 whilst the Respondent relied upon their written submissions dated 10th March 2025.

Background

5. This matter revolves around the guardianship of one James Gitata Kaara (hereinafter ‘the Subject’) who is the father to both the Applicant and the Respondents. Vide Orders made on 24th April 2023, Hon. Lubia Senior Resident Magistrate appointed the Applicant as the legal guardian for the subject. The court further granted to the Applicant access to the subjects bank accounts to withdraw an amount not exceeding of upto Kshs. 30,000 per month to cater for the upkeep and medical expenses for the subject.
6. The Applicant further averred that on 25th April 2024 and 30th May 2024 the trial court gave orders granting access to the accounts of the subject held at Equity Bank and KCB Bank Mukurweini Branches. The Applicant complains that the Managers of the said Banks have declined to grant him access to the subjects accounts as ordered by the Court.
7. The Applicant further claims that the Respondents have abducted the subject and are confining him at an unknown location. As such the Applicant prays that the Respondents and the Bank Managers be cited and punished for contempt.
8. The 4th Respondent in her Replying Affidavit states that the present suit was closed after a similar case No. 099 of 2022 was filed at the Baricho Law Courts. That the issues being raised by the Applicant are without merit as the court in Baricho vide a ruling delivered on 18th October 2023 granted guardianship of the subject jointly to the Applicant and the 4th Respondent. That the same court ordered that the Bank Accounts of the subject be frozen. Finally the 4th Respondent avers that this application is motivated by the personal greed of the Applicant and his desire to access the funds held in the subject’s bank accounts.
9. The intended Interested party being Priscilla Ndegwa the Manager Equity Bank in her reply explained that the bank accounts in question were opened as joint accounts held in the names of the Applicant, the subject, the 1st, 3rd and 4th Respondents. That the Applicant sought to gain access to the said accounts without the authorization and/or involvement of the other account holders.
10. The Bank Manager stated that on several occasions the Applicant went to the bank causing fracas in his attempt to access the funds in the joint accounts and as a result the Bank after notifying the account holders closed the Accounts. A cheque was drawn up for the balance in said accounts which cheque the Bank is still holding for collection. That the Bank is ready and willing to deposit said balance in court if so ordered.

Analysis And Determination

11. I have considered this application as well as the replies filed thereto and the written submissions filed by the parties. The Applicant is seeking to have the Respondents cited and punished for contempt. In order to establish a case for contempt of Court the following four (4) elements must be established.

(1) The Existence of a court order directed at the Respondent.



- (2) The terms of said court order must be clear and unambiguous.
 - (3) That the Defendant had been personally served with the order and thus had knowledge of its existence.
 - (4) That the Defendants deliberately acted in breach of said court order.
12. The standard of proof required in contempt cases is higher than on a balance of probability but lower than beyond reasonable doubt. In the case of *Gatharia K. Mutikika -vs- Baharini Farm Limited* [1985] KLR the Court stated that:-
- “A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily it must be higher than proof on a balance of probabilities almost but not exactly beyond reasonable doubt.”
13. The first question to be addressed is whether there were court orders in existence which the Respondents had deliberately failed/declined to comply with.
14. At the outset I wish to point out that the two Bank Managers were not named as parties to this matter. At no time did the Applicant seek orders to enjoin the two.
15. Be that as it may the Applicants complaint is that the court orders issued on 25th April 2023 in Nyeri CMCC MISC No. 025 of 2020 and the orders issued on 30th May 2023 in Nyeri CMCC MISC No. E016 of 2023 have not been complied with.
16. The orders made in CMCC MISC E025 of 2020 were to the effect that the Applicant was made the Guardian of the subject and further that the Applicant be granted access to the subjects bank account to enable withdraw upto Kshs. 30,000 monthly.
17. The orders in MISC NO. E016/2023 were to the effect that the Applicant was to be made a joint account holder in the four bank accounts for purposes of facilitating the upkeep and medical care for the subject.
18. The orders in MISC E025 of 2020 read as follows;-
- “ 1. That the court having been satisfied initially that Phabious Muriithi Gitata was the custodian of the said James Gitata Kaara and the court having granted him guardianship, he shall remain guardian to the said James pending filing of a proper suit.
 2. That withdrawal from the accounts of James Gitata Kaara shall be limited to a sum of Kshs. 30,000 in total per month pending the filing of the proper suit.
 3. That Phabious Muriithi Gitata shall render accounts to the family members as and when required upon reasonable Notice.
19. Likewise the orders made in MISC E016 of 2023 read as follows:-
- “
- “ 1. That the Applicant is hereby added as a joint holder in the four stated accounts and is allowed to withdraw funds from any of these accounts KCB Account Number XXXXXXXXXXXX in the name of James Gitata Kaara, KCB joint Account Number XXXXXXXXXXXX in the name of James Gitata Kaara,



jointly with others.- Equity Bank Account Number XXXXXXXXXXXXXXXX
in the name of James Gitaka Kaara.- Equity Bank Joint Account Number
XXXXXXXXXXXXXXXXXX in the name of James Gitaka Kaara with others;
For purposes of settling the medical expenses at Outspan Hospital where the subject is
admitted pending the filing of a proper suit” [Own emphasis]

19. The above orders were in my view both clear and unambiguous.
However these orders were not blanket orders expected to last in perpetuity. The said orders were limited and were to expire upon the filing of the main suit. In other words these were temporary orders and were made to provide for the guardianship and provision of medical care to the subject on an interim basis. The said orders contemplated the filing of a proper suit.
19. As it transpires the main suit was in fact filed being Baricho PMCC NO. E099 of 2023. Upon the filing of this suit in Baricho all the temporary orders made in E025 of 2020 and E016 of 2023 automatically lapsed and no longer had any effect. One cannot be accused of failing to obey an order which has lapsed.
19. In the main suit filed at the Baricho Law Courts, the trial court made the 4th Respondent joint guardian with the Applicant. Further vide a ruling delivered on 18th October 2023, the Court granted sole custody of the subject to the 4th Respondent. More importantly the court in Baricho did not make any orders regarding access to bank accounts.
19. Therefore as things stand the ruling of 18th October 2023 ousted all the orders made in this Miscellaneous file. The Applicant is flogging a dead horse. There are no orders in existence which either the Respondent or the bank can be held to have disobeyed.
19. The applicant is accusing the Respondents of failing to obey court orders. The question is whether the Applicant himself has obeyed orders directed at him. The orders made on 25th April 2023 in Miscellaneous E025 of 2020 included an order that the Applicant Phabious Muriithi Gitata render accounts ‘to the family member(s)’ of his usage of funds from the subject’s account.
19. There is a loud silence from the Applicant regarding whether he has complied with this order. This is a case of seeing the speck in your neighbour’s eye and failing to notice the log in your own eye.
19. In my view this application is frivolous, malicious and amounts to an abuse of the court process. In order to provide clarity and in view of the existence of the main suit being Baricho PMCC No. E099 of 2023 and in order to avoid conflicting decisions this file Nyeri MISC E065 of 2021 is now Closed. Henceforth all matters relating to the subject shall be canvassed in Baricho E099 of 2023. Further any party seeking orders in respect of funds held in the Bank Accounts to make the relevant application in Baricho E099 of 2023.
19. Finally this application is found to have no merit whatsoever. The same is hereby dismissed in its entirety. Costs will be met by the Applicant.

DATED IN NYERI THIS 4TH DAY OF JULY 2025.

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MAUREEN A. ODERO

JUDGE

