In re Estate of Kimaru Arap Sosio (Deceased) (Succession Cause 311 of 2012) [2025] KEHC 12980 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12980 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 311 OF 2012

JRA WANANDA, J

SEPTEMBER 19, 2025

IN THE MATTER OF THE ESTATE OF KIMARU ARAP SOSIO (DECEASED)

BETWEEN

ROSALLY JEPKORIR CHEBOI ..... PETITIONER

AND

WILLIAM KIBET KWAMBAI ..... 1ST RESPONDENT

ERICK NGETICH KWAMBAI ..... 2ND RESPONDENT

AND

WILSON MITEI ..... CAVEATOR

BARNABAS MITEI CHEMWOLO ..... CAVEATOR

THOMAS KIPROTICH KIMITEI ..... CAVEATOR

RULING

1. The Application the subject of this Ruling is the latest in a long list of successive Applications filed by the parties over the years since this matter commenced in 2012. The instant one is dated 28/05/2021, and basically seeks a finding of contempt of Court.

2. As I have observed in many of these Succession matters, the more I handle them, the more I get convinced that parties and their Advocates, for some reason, are never keen to resolve these disputes but wish to keep them in Court endlessly. I have always wondered why the parties seem so averse to resolving the disputes once and for all, which they have themselves brought to Court for resolution, yet some of these issues are not even complicated. I am yet to obtain the answer. In this matter, as in many of these Succession cases, at every turn, as if in some co-ordinated musical orchestra routine, some party or parties commit acts that infuriates the opposite side causing them to counter by filing interlocutory Applications. Strangely, all the parties then seem very eager to canvass the Applications

for the longest time, instead of pushing for the main trial that will resolve all matters arising once and for all. The worst part is that these endless acts of commission and/or commission and the resultant Applications do nothing significant rather that convoluting the proceedings, and stalling or delaying the progress of the cases and resolution. The irony is that despite all these, everybody out there will, as usual, instead, be heard blaming the Court for delays in resolving cases.

3. Back to the matter at hand, it has had a chequered history as shall be demonstrated by the chronology of events captured herein.

4. The deceased, Kimaru arap Sosio, died on 19/08/1980 aged 62 years old. On 1/10/2012, Kiprotich Maru John and Rosally Jepkorir Cheboi, through Messrs Kigen & Co. Advocates, describing themselves as son and daughter of the deceased, petitioned the Court for Grant of Letters of Administration Intestate. In the Petition, they listed 17 children of the deceased as his survivors and/or beneficiaries. Listed as the only property comprising the estate was the parcel of land described as Lelan/Kaptalamwa/1119 measuring 50.8 Hectares (herein after referred to as "the suit property"). The Grant was then issued to the Petitioners on 12/10/2012 and on 31/05/2013, the Petitioners applied for Confirmation of the Grant.

5. As the Summons for Confirmation of the Grant was in the course of being canvassed, on 22/11/2019, two beneficiaries listed therein, and claiming to be sons of one Kwambai Chemwolo, namely, William Kibet Kwambai and Erick Ngetich Kwambai, through Messrs Joseph C. K. Cheptarus & Co. Advocates, filed the Summons dated 18/11/2019, alleging intermeddling by third parties. They claimed that their father, the said Kwambai Chemwolo and their uncle, Kimitei Chemwolo, had, jointly, purchased a portion of 20 acres of the suit property from the deceased herein, and part of which the Applicants have been occupying, but which interest was now being threatened by some third parties who were trespassing into thereunto.

6. Further, on 13/12/2019, 3 other persons, claiming to be sons of the said Kimitei Chemwolo, namely, Wilson Mitei, Barnabas Mitei Chemwolo, and Thomas Kiprotich Kimitei, through Messrs C. F. Otieno & Co. Advocates, filed the Caveat dated 13/12/2019, protesting that they were unjustly left out of in the list of beneficiaries despite their late father and their said uncle, Kwambai Chemwolo, having jointly purchased 20 acres of the suit property as aforesaid.

7. By this time, the 1st Petitioner, Kiprotich Maru John had died.

8. On 16/12/2019, Hon. Justice Githinji J issued an order of injunction restraining the third parties alleged in the Summons filed by the said William Kibet Kwambai and Erick Ngetich Kwambai, through Joesph C.K. Cheptarus & Co., from intermeddling, interfering or trespassing into the portions of the suit property alleged to be occupied by the Applicants and the status quo of the 17 beneficiaries/dependents, in as far as occupation, possession and use of the portions by the beneficiaries are concerned be maintained and protected from third parties.

9. On 4/09/2020, the Caveators, Wilson Mitei, Barnabas Mitei Chemwolo, and Thomas Kiprotich Kimitei, through their Advocates, Messrs C. F. Otieno & Co., filed the Summons dated 31/08/2020, seeking revocation of the Grant, and pending determination of the Summons, a stay of intended eviction of the Caveators from the suit property. In support of the Summons, the Caveators cited the same reasons they had raised in the Caveat. Pending the hearing of the Application, by the orders issued by Hon. O. Sewe on 4/09/2020, an interim stay of eviction or injunction was granted as prayed, which order was extended on 9/09/2020 by Hon. Justice Githinji J, who further directed the beneficiaries to stop encroaching into areas where they do not reside, and again on 30/09/2020 and further, again, on 21/12/2020 when he directed the OCS Kapcherop Police Station to ensure the interim orders were complied with to ensure peace on the ground.

10. On 19/03/2021, the said, William Kibet Kwambai and Erick Ngetich Kwambai, through Messrs Joseph C. K. Cheptarus & Co., filed the Summons dated 19/03/20219, seeking lifting of the said interim orders to with a view to following the earlier Court orders issued on 16/12/2019 and 18/12/2019 in their favour against third parties, and which was still in force

11. Before the two earlier Applications could be heard, on 28/05/2021, the Caveators, Wilson Mitei, Barnabas Mitei Chemwolo, and Thomas Kiprotich Kimitei, through their Advocates, C. F. Otieno & Co., filed yet another Application, the instant one, dated 28/05/2021, this time seeking orders as follows:

    i. ..... [spent]

    ii. That the beneficiaries/Respondents Application dated 19.03.2021 be stayed pending compliance with the Court orders issued on 04/09/2020, issued on 11/09/2020, 10/09/2020 issued 10/09/2020 issued 21.12.2020 & 21.12.2020 & 21.12.2020 issued 21.12.2020.

    iii. That the beneficiaries/Respondents be and are hereby ordered to attend Court in person at the hearing of the Application.

    iv. That the beneficiaries/Respondents be committed and/or detained in prison for such term as the Court may determine for disobedience and/or breach of the Court orders issued 04/09/2020 issued 11/09/2020, 09/09/2020 issued 10/09/2020, 30.11.2020 issued 21.12.2020 & 21.12.2020 & 21.12.2020 issued 21.12.2020 should they fail to purge the contempt.

    v. That this Honourable Court do also order that such property of the beneficiaries/ Respondents as the Court may deem fit be attached for such period as the Honourable Court may deem just for the disobedience and/or breach of the Court's Orders issued on 04/09/2020, issued 11/09/2020, 09/09/2020, 09/09/2020 issued 10.09.2020, 30.11.2020 issued 21.12.2020 & 21.12.2020 issued 21.12.2020.

    vi. That costs of this Summons be provided for.

    vii. Any other or further relief that this Honourable Court shall deem just and expedient to grant.

12. The grounds of the Application are as set out on the face thereof, and it is supported by the Affidavit sworn jointly by the 3 Caveators. In the Affidavit, they deponed that the order granted on 4/09/2020 was extended on the several dates mentioned and when they served it upon the police to ensure compliance, the police stated that they were not expressly mentioned in the order, thus prompting the Caveators to return to Court for that endorsement which the Court then gave on 21/12/2020. They deponed that although the Respondents were served with the orders, and also had the knowledge thereof as is evidenced by their said Application dated 19/03/2021, they chose to disregard them and forcefully evicted the Caveators from their portion of land on 18/12/2020. According to them, the Respondents pre-empted the Caveators' intention of filing this contempt of Court Application by filing their own said Application dated 19/03/2021 in which they clearly admit being served by the village elders and the police, the Assistant Chief, the Chief, the Assistant County Commissioner, the Deputy County Commissioner, the OCPD Kapsowar and OCS Kapcherop, and also admit knowledge of the orders. They deponed further that the Respondents' said Application also reveals a fact which was yet to be confirmed, namely, that by their letter dated 1/12/2020 to the County Commissioner, they have actually sold off the entire land in dispute, which sale took place before this Court confirmed the Grant, which act amounts to fraudulent and gross intermeddling with the estate of the deceased as they had no locus standi to sell the same. They further stated that they have

always been in occupation until the Respondents and their goons descended on them and forcefully evicted them on 18/12/2020, fenced off the land and planted tomatoes in total disregard of the Court orders as evidenced by the village elders' letter dated 27/05/2021, and also sealed the gate to the Caveators' portion which was opened by the security team as is shown by the exhibited photographs, and fenced off 3 acres. According to the Caveators, the Respondents' disobedience of the Court orders has everything to do with the illegal sale of the land as the purchasers are bound to demand back their money, and who in the Respondents' Application are camouflaged and referred to throughout as "our own people".

13. In opposition to the Application, the Respondents, through their Advocates, Messrs Joseph C.K Cheptarus & Co., filed the Replying Affidavit sworn on 28/06/2021 by the 1st Respondent, William Kibet Kwambai. In the Affidavit, he deponed that the suit land was sub-divided among and settled by the 17 beneficiaries pursuant to and in accordance with the Leland Location's Chief's letter dated 13/09/2012, minutes dated 15/06/2011, and survey sketch or development plan made by a Government Surveyor. He deponed further that the Division Assistant County Commissioner wrote a letter dated 20/02/2029 to the County Land Registrar over the dispute after the Respondent's fence was destroyed by one Philemon Kipchumba who proceeded to build a house and plant crops thereon. He stated that by the Sale Agreement dated 10/11/2014, they sold their 20 acres portion to one Eraston Kibiwot Kibowen and John Cheruiyot Kaibai, that the institution of this Cause, the Letters of Administration and the Confirmation proceedings herein were all based on the said letter dated 15/06/2011, and the Surveyor's sketch or development plan. According to him, the Caveator's problem is only with the Respondents' share and not with the other 15 beneficiaries named in the Chief's letter dated 13/09/2012, and the Petitioners also have no problem with the Caveators. He reiterated that they (Respondents) are sons to Kwambai Chemwolo who is a liability of the estate herein, and who gave them 20 acres, which he (their father) had purchased. He added that there is a Report made to the police about the malicious damage of property by the Caveators and there are also demand letters on the issue. He then stated that they were not served with the orders in issue, and reiterated that the earlier orders given on 16/12/2019 and 18/12/2019 were in their (Respondents') favour and have not been set aside. He also denied that they had knowledge of the orders said to have been disobeyed, or that their Application dated 19/03/2021 is evidence of their knowledge thereof. In the end, he denied that the Respondents' committed the acts of contempt alleged in the Caveators' Application.

14. The Caveators then filed the Supplementary Affidavit jointly sworn by them on 11/08/2021 in which they deponed that they are strangers to the Respondents' averment of supposed sub-division of the suit property and contended that in any event, if any such sub-division took place, then the same would not have been legally conducted since this Succession Cause is still ongoing and the Chief had no mandate to authorize the alleged sub-division. They also pointed out that the minutes exhibited by the Respondents refers to a parcel of land measuring 30.8 Hectares, and not 50 Hectares which is the measurement for the suit property herein, that the alleged mutations/survey sketch or development plans are not signed, and the Land Certificate also does not disclose when the title was issued. They also deponed that the Agreement for Sale exhibited is evidence enough of an illegal sale of land of a deceased person and amounts to intermeddling.

15. They also averred that the Court orders obtained by the Respondents earlier were stayed but are still in force, that the Respondents have been threatening the Petitioner, and that if the Respondents are claiming a share due to their late father, then they should be in possession of Letters of Administration. They also denied the allegation of causing malicious damage to the Respondents' property, and also questioned the authenticity of a Replying Affidavit previously filed herein alluding to some admissions

allegedly made by the Petitioner. The rest of the maters deponed are repetitions which I find no reason to again recount.

16. Upon application by Mr. C.F. Otieno, Counsel for the Caveators, the 1st Respondent, William Kibet Kwambai was summoned for cross-examination on his Replying Affidavit above which he underwent on 29/10/2024 and 17/02/2025.

17. Under cross-examination on 29/10/2024, the 1st Respondent agreed that he had sworn the Affidavit on his own behalf and also on behalf of the 2nd Respondent. He then only acknowledged being aware of the Court order dated 16/12/2020 issued by Hon. Justice Githinji which barred trespassing by third parties into the suit land. He however denied any knowledge of the order dated 4/09/2020 issued by Hon. Justice O. Sewe staying eviction of the Caveators, or the furthers orders dated 9/09/2020, 30/11/2020 or 21/12/2020 issued by Hon. Justice Githinji. When referred to the Application dated 19/05/2020 filed by his Counsel seeking to set aside the same orders he was denying knowledge of, he denied knowledge of any such Application. When however shown a copy of the Application, he conceded that they filed the same. He however still reiterated that they were never served with the orders. When shown the Return of Service indicating that both he and the 2nd Respondent were served with the orders, he agreed that he has not asked to cross-examine the Process Server. He also agreed that there was a time when the police went to the suit land, on or about 18/12/2020. At this juncture, the 1st Respondent was stood down due to time constraints.

18. When he returned on 17/02/2025, the 1st Respondent, when shown the letter dated 1/12/2020, agreed that they wrote the letter to the County Commissioner to complain about invasion of their land by strangers and the arrest of "his people", and further agreed that in the letter, he referred to a fence that he had erected. He stated that he only saw copies of the orders in his Advocate's office on the same 1/12/2020, and by which time, the said letter dated 1/12/2020 had not been written. He however conceded that in his Replying Affidavit, he stated that he had erected the fence much later on 18/12/2020. Regarding the order of 16/12/2020 staying eviction of the Caveators, he termed it as not accurate because, according to him, the persons (Caveators) being protected by the order were not on the land. He also denied any knowledge that the police wanted to arrest him.

19. In re-examination by his Counsel, Mr. Cheptarus, he stated that he lives in Eldoret and it is "his people" who live in the suit land. He still insisted that he was never served with the orders in issue herein and only learnt of them on 1/12/2020 when he visited his Advocates' office. The rest of the matters he was re-examined on have little to do with the Application for contempt, and there is no need to recite them. However, about the fencing referred to in his Replying Affidavit, he insisted that he had not yet known of the orders by the time that he erected the fencing and, in the end, he denied that he had disobeyed any orders of the Court.

20. The parties then filed written Submissions. The Caveators filed the Submissions dated 12/06/2025 while the Respondents' is dated 19/06/2025. On his part, Mr. Osewe Atieno, Counsel for the Petitioner, informed the Court that, as the Application does not affect his client, apart from not filing any Response to the Application, he would also not be filing any Submissions.

Caveators' Submissions

21. In his Submissions, Mr. C.F. Otieno, recited the contents of the Application and the respective Affidavits, and also the cross-examination of the 1st Respondent. and also pointed out that the 1st Respondent, in his letter dated 1/12/2020 revealed, among others, arrests made in the suit land pursuant to a complaint lodged by the Caveators, and also made reference to the order dated 9/09/2020. He also pointed out that although the Respondent alleged that the Court orders only

became known to him on 1/12/2020, he still proceeded to fence off the land much later on 18/12/2020. Counsel then made a comparative analysis of what, in matters of contempt of Court, he referred to as the "old approach", in which the emphasis was on "personal service", and the "new approach" which emphasis on "knowledge of the order". He cited several authorities in respect to each "approach".

Respondents' Submissions

22. In response, Mr. Cheptarus, filed the unnecessarily very lengthy 23 page-Submissions. What is curious however is that page 1-13 of the Submissions is again, an long, but unnecessary, recital of the entire history of proceedings of this case, complete with long reproduction of all Applications filed since inception, word-for word prayers made therein, Affidavits and all other pleadings filed in this case, including a long recital of all the exhibits attached to each and every Application. The Application before Court being only for contempt of Court, in my view, this nature of Submissions should be discouraged as it only convolutes the proceedings and unnecessarily adds to the Judge's workload without adding any value to the matter at hand. Submissions should be confined to what they are supposed to be, brief demonstration of application of the law to the facts, not reproduction of what is already on record.

23. Be that as it may, Counsel also cited Section 5(1) of the *Judicature Act* and Order 40 Rule 3 of the Civil Procedure Rules, and submitted that no disobedience has been disclosed as there was no service upon the Respondents. He also cited Order 22 Rule 28 of the Civil Procedure Rules, and also the case of Katsuri Ltd vs KapurchandDepar Shah [2016] eKLR. On the standard of proof in contempt of Court Applications, he cited the case of Mutitika vs Baharini Farm Ltd [1985] KLR. He then further cited another long list of authorities restating the usual principles applicable when dealing with Applications for a finding of contempt of Court, which I find no reason to reproduce.

Determination

24. The issue that arises for determination herein is evidently "whether the Respondents disobeyed the various Court orders issued herein between 4/09/2020 and 21/12/2020, and therefore, whether they should be cited and punished for contempt of Court".

25. "Contempt of Court" is described as that conduct or action that defies or disrespects authority of the Court. Black's Law Dictionary 9th Edition defines "contempt" as follows:

> " The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

26. That an order of the Court must be obeyed as a matter of course cannot be in doubt, and this has been restated in a long line of case law. An example is the Court case of Refrigeration and Kitchen Utensils Ltd. –vs- Gulabchand Popatlal Shah & Another, -Civil Application No. 39 of 1990, in which the Court of Appeal stated as follows:

> " ... It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times."

27. The Court of Appeal, also in the case of Shimmers Plaza Limited v National Bank of Kenya Limited (Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (Civ) (18 February 2015) (Ruling), guided as follows:

> "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 26th 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. We think we have said enough to send this important message across."

28. Contempt proceedings are quasi – criminal in nature as the liberty of a person is at stake. The standard is therefore higher than the one in civil proceedings where proof is on a balance of probabilities, but not beyond reasonable doubt as is required in criminal proceedings. This principle was reiterated by the Court of Appeal in the case Gatharia K. Mutikika –v- Baharini Farm Ltd (1985) KLR 227 in which the Court stated as follows:

> "We agree with Mr. Khaminwa's submissions in this respect. 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. ..... Winn LJ on page 1064 was in our view right in saying that the guilt has to be proved:
>
> > " with such strictness of proof ... as is consistent with the gravity of the charge ..."

The principle propounded in Re Maria Annie Davies [1889] 21 QBD 236, and 239, that:

> "Recourse ought not to be had to process of contempt in aid of a civil remedy where there is any other method of doing justice. The observations of the later Master of the Rolls in the case of Re Clement seem much in point: 'It seems to me that this jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is not other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject. I say that a judge should be most careful to see that the cause cannot be mode of dealing with persons brought before him on accusations of contempt should be adopted. I have myself had on many occasions to consider this jurisdiction, and I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be

found. Probably that will be discovered after consideration to be the true measure of the exercise of the jurisdiction"

29. Regarding the Contempt of Court law in Kenya, on 9/11/2018, Mwita J, in the case of Kenya Human Rights Commission vs. Attorney General & Another [2018] eKLR, declared the entire *Contempt of Court Act* No. 46 of 2016 to be invalid for lack of public participation as required under Articles 10 and 118(b) of *the Constitution*, and found that the Act, as enacted, encroached upon the independence of the Judiciary.

30. Before enactment of the now invalidated Contempt of Act 2016, Section 5 of the *Judicature Act*, Cap 8, was the only statutory basis governing the procedure for institution and handling of contempt of Court proceedings. That said Section 5 was however repealed by the Contempt of Act 2016, which as aforesaid, was itself subsequently invalidated. Section 5(1) had provided as follows:

> " 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."

31. It is however now generally accepted, and there are several Court pronouncements to that effect, that since the Contempt of Act 2016 was itself later declared invalid, the consequential effect in law is that the Act did not consequently assume any legal effect, and therefore could not have repealed Section 5 of the *Judicature Act*, which Section therefore continues to fully apply as before. In any event, the High Court would still be within its powers in still assuming jurisdiction over matters of contempt of Court, even in the absence of a substantive statute addressing the issue, as it will be doing so in exercise of its inherent jurisdiction granted by Section 3A of the *Civil Procedure Act* which obligates the Courts to grant such orders that "meet the ends of justice" and "avoid abuse of the process of Court". There cannot therefore be any lacuna in respect to the enforcement of Court orders and the High Court has the responsibility for the maintenance of the rule of law, and there cannot be a gap in the application of the rule of law (see for instance, the decision of Nyamweya J (as she then was) in the case of Republic v Kajiado County & 2 others Exparte Kilimanjaro Safari Club Limited [2019] eKLR).

32. As aforesaid, it is not in dispute that the sole asset forming the estate of the deceased herein is the parcel of land known as Lelan/Kaptalamwa/119 measuring approximately 50.8 Hectares (about 125.5 acres). Out of that acreage, 20 acres is claimed jointly by the Caveators and the Respondents, being allegedly a portion purchased jointly by their respective fathers (brothers) from the deceased, during his lifetime.

33. The Caveators and the Respondents both claim to be, and to have always been, in occupation of the said 20 acres portion. I gather that the Petitioner (and by extension, the family of the deceased) seem to only recognize the claim by the Caveators, and seem to disown the claim by the Respondents. However, even between the Caveators and the Respondents, there seems to be a dispute as regards apportionment of the 20 acres as between themselves, and the extent of boundaries. According to the Caveators, the Respondents have encroached into their portion. The above is therefore what forms the background to the preservatory orders issued herein and which the Respondents are accused of having disobeyed.

34. As already stated therefore, Hon. Justice O. Sewe, on 4/09/2020, issued the order premised, inter alia, as follows:

> " 2. There be a stay of eviction of the 1st, 2nd & 3rd Objectors applicants (sic) as well as their families, servants and/or agents from L.R. No. Lelan/

Kaptalamwa/119 pending further orders by the duty Judge on 9th September 2020 (09.09.2020)"

35. On 9/9/2020, Hon. Justice S. M. Githinji, ordered, inter alia, as follows:

> " 1. The interim orders be and are extended
>
> 2. The beneficiaries do stop encroaching in areas where they do not reside.
>
> 3. They are to respect the order of status quo.
>
> 4. Petitioner and beneficiaries given 14 days leave to respond.
>
> 5. Mention on 07.10.2020 for further orders."

36. On 30/11/2020, Hon. Justice S. M. Githinji, further ordered, inter alia, as follows:

> " 1. .....
>
> 2. Orders granted on 09/09/2020 meanwhile be observed (interim orders extended).
>
> 3. Mention for directions on 31.10.2021."

37. On 21/12/2020, Hon. Justice S. M. Githinji, ordered that:

> " 1. The OCS Kapcherop Police Station to ensure the interim orders are complied with to ensure peace on the ground"

38. According to the Caveators, the Respondents breached the said orders because on 18/12/2020, they used brute force to evict the Caveators and took over the portion of the suit land on which the Caveators reside and occupy. The Caveators have urged further that, to date, the Respondents have refused to give up possession of the portion, approximately 3 acres. The Respondents had, on their part, filed the separate Application dated 19/03/2020 seeking the setting aside of the above orders. That separate Application is still pending for hearing, but the Caveators argue that the same was simply filed to pre-empt the Caveator's impending Application seeking a finding of contempt of Court, the instant one eventually filed on 19/05/2020. The Caveators have also pointed out that the Respondents, in that separate Application, have revealed that they allegedly sold the entire 20 acres, which according to the Caveators, is itself an act of intermeddling as the estate herein is yet to be distributed.

39. On their part, the Respondents are emphatic that they were never served with the said orders, and claim to have only learnt of the same when the 1st Respondent visited their Advocate's office on 1/12/2020. They thus argue before 1/12/2020 they were not aware of the orders.

40. In this case, it is not disputed that there is no express proof that the Respondents were served with the orders in issue herein as there is no Affidavit of Service filed to prove any such service. The one on record was filed on 23/10/2023 and is for service of a subsequent order dated 2/11/2023, a date long after the filing of this Application, and therefore not relevant to the matters at hand. Although there are allegations that the Respondents were served through the local Administration and the police, these allegations have not been proved since the persons alleged to have so served have not themselves sworn any Affidavits to that effect, and secondly, not being Court recognized or authorized process servers, the legal validity of service effected by them, if at all, would also stand debatable.

41. Contempt of Court being in the nature of criminal proceedings and the standard of proof being higher than that of balance of probability, and due to the gravity of consequences that may flow from contempt proceedings, it must be demonstrated that the person cited had personal knowledge of that order. For one to be found to be guilty of contempt therefore, there must be proof of wilful and intentional disobedience of the order. In Mahinderjit Singh Bitta – vs Union of India & Others 1A No. 10 of 2010 the Supreme Court of India stated as follows:

> " In exercise of its contempt jurisdiction the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.

42. Knowledge is a question of fact and for a person to be found guilty of contempt, he must be aware of the terms of the order. That is, he must know what the order required him or her to do, or not to do, but still wilfully and deliberately disobeyed it. This principle was reiterated in the case of Katsuri Limited v Kapurchand Depor Shah [2016] eKLR, citing the South African High Court case of Kristen Carla Burchell v Barry Grant Burchell (Eastern Cape Division Case No 364 of 2005), in the following terms:

> " in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) knowledge of the terms by the respondent, (iii) failure by the respondent to comply with the terms of the order."

43. In the circumstances, although express proof of service has not been demonstrated, the Respondents would still not be "off the hook" if it can be demonstrated that they were at all times aware of the order.

44. The Respondents having also revealed that they learnt on 1/12/2020, there is also the angle that their Advocate, Mr. Cheptarus, must have therefore been aware of the orders much earlier. The Advocate himself not having disclosed when he became aware of the order, the presumption is that he became aware of the orders immediately they were issued. I note from the record that although Mr. Cheptarus was not in Court on 9/09/2020 when the orders made earlier on 4/09/2020 were extended, Mr. Kandie, appearing for the Petitioner, held his brief on 7/10/2020, and Mr. Cheptarus himself was present in Court on 30/11/2020 when the issue of the said orders was extensively canvassed. Even assuming that he was not aware earlier, he is presumed to have at least learnt of the same on 7/11/2020 when Mr. Kandie held his brief.

45. In case of Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR, Odunga J (as he then was) stated as follows:

> " When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs ..... Status quo must therefore be interpreted with respect to existing factual scenario..."

46. And in the case of Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR, Mabeya J described the phrase in the following terms:

> " By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed

or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision."

47. Having found as such, does the Respondents' actions of erecting a fence and taking over the portion of land occupied by the Caveators amount to an act of contempt of Court? In other words, does the omission amount to "an act or state of despising" or "conduct that defies the authority or dignity of a court" in the manner described in the Black's Law Dictionary 9th Edition (supra)? Again, in other words, did the Respondents "knowingly", "wilfully" and/or "deliberately" breach or disobey the Court orders?

48. The debate whether it is the "knowledge of an order" or "service of the order" that forms the basis for a finding of contempt of Court was discussed by the Court of Appeal, in the case of Shimmers Plaza Limited v National Bank of Kenya (supra), in which the Court stated as follows:

> " We now revisit the issue of service. Was there service of the order said to have been disobeyed on the respondent? There is no dispute that no formal order was extracted and personally served on the respondent and an affidavit of service filed to that effect.
>
> .....
>
> On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra).
>
> Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos Vs Attorney General and 8 Others [2012] eKLR pronounced himself as follows:-
>
> > " ...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"
>
> This position has been affirmed by this Court in several other cases including the Wambora case (supra).
>
> .....
>
> Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt 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 service 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 of the 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." (Emphasis by underline)

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 a 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) (Emphasis by underline)
>
> In United States v. Revie 834 F.2d 1198, 1203 (5th Cir. 1987) the court held that the defendant had adequate notice of a show cause order because his attorney was on notice. Therefore, a client may be similarly "served" with a court's order by his attorney's communication of its contents and this communication is presumed if the attorney has knowledge of the order.
>
> As stated earlier, in the matter before us, when the appeal came up for hearing, the respondent was ably represented by Mr Rachuonyo who opposed the appeal. Mr Rachuonyo was still in court when the appeal was concluded and final orders given by the Court. The Court reserved the appeal for judgment and ordered that the parties maintain the status quo pending delivery of the judgment.

49. In this case, although as aforesaid, the Respondents have denied being served with the orders issued on 4/09/20209, 9/09/2020, 6/10/2020 and 21/12/2020, and thus claimed not to have been aware of the same, it is not disputed that their Advocate authored the letter dated 1/12/2019 in which he expressly referred to the same orders. As also aforesaid, when pressed, in cross-examination, about this fact, the 1st Respondent alleged that they only learnt of the orders on that 1/12/2019 when the 1st Respondent visited their Advocate's office, and whom they then instructed, on the same date, to author the said letter.

50. As also already stated above, although the orders dated 4/04/2020 and 9/09/2020 were, in my understanding, issued ex parte in the first instance, the record reveals that on 7/10/2020, the Respondents' Advocate, Mr. Cheptarus, was represented in Court by another Advocate whom he sent to hold his brief. On that date, the Applications that gave rise to the orders dated 4/09/2020 and 9/09/2020 came up for inter partes hearing during which directions were given thereon. In the absence of any evidence of the Advocate's earlier knowledge of the orders, this date of 7/10/2020 would thus be presumed to be, at the least, the earliest date that the Advocate become aware of the orders.

51. Having found as above, it may also be recalled that the Caveators' grievance is that, according to them, in breach of the orders in issue, the Respondents erected a fence on 18/12/2020 and are

cultivating on 3 acres on the portion of land occupied by the Caveators despite the presence of a clearly marked boundary. The Respondents also complain that the Respondents have by the said letter dated 1/12/2020 revealed that they sold off the entire 20 acres in the year 2014 to third parties who, together with the Respondents, are fighting the Caveators on their portion of land. I have perused the letter dated 1/12/2020 from the Caveators' Advocate, Mr. Cheptarus and verified that what the Caveators have alleged is true.

52. The Respondents' Replying Affidavit also does not deny the committing of the acts attributed to the Respondents on 18/12/2020. It in fact appears to unapologetically justify the acts. Further, there is on record the letter dated 27/05/2021 from the village local Administration addressed to this Deputy Registrar of this Court, which also confirms that the Respondents indeed committed the acts alleged, on 18/12/2020. It, inter alia, revealing the following:

> "……
>
> However, on 18th December 2020 the sons of the late Kwambai Chemwolo led by William Kwambai and others unknown people around 15 sealed all gates leading to the portion of the late Kimitei Chemwolo. They also evicted their family members till 29th January 2021 when a team led by the Deputy County Commissioner visited the farm and ordered all gates opened. They also ordered a fence they erected in December 2020 be brought down.
>
> To date, the fence is still there where the family of the late Kwambai Chemwolo and the person Eraston Kipbowen have trespassed and planted potatoes about three acres n the land belonging to Kimitei Chemwolo. ……"

53. From the above, it is clear that indeed, on 18/12/2020, with full knowledge of the existing Court orders, in blatant breach thereof, the Respondents still proceeded to forcefully take over the portions of land occupied by the Caveators, evicted them and their families therefrom, and blocked them from accessing the portion by sealing all gates, and also by erecting a fence. The Court of Appeal, in the said case of Shimmers Plaza Limited v National Bank of Kenya (supra), in frowning upon commission of actions that defy orders made by a Court of law, observed as follows:

> "From what transpired later as can be seen from the notice of motion before us, the respondent through its managing director Mr, Munir in total disregard of the Court order went ahead and transferred the suit property to a third party on 15th October which was during the pendency of the status quo order. His defence as contained in his replying affidavit is that the sale agreement was entered into on 20th September before the orders of status quo were issued and that the Bank was obligated to honour it. According to Ms Mc' Asila who appeared for the respondent herein, there was "an element" of ambiguity in the said order. She could not nonetheless explain which part of the order was ambiguous or misunderstood. It is in the circumstances important to define what status quo means and what it meant for purposes of this appeal. We are apt to mention however, that when that order was made, none of the parties in Court sought any clarification from us as to what the status quo entailed. The presumption therefore must be that everybody knew the meaning and import of that order. "Status quo" in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order. All it meant was that everything was to remain as it was as at the time that order was given. If there was any transaction of whatever nature that was going on in respect of the land in question, it had to freeze and await the discharging

of the Court order. The agreement of sale may have been signed prior to that date, but once the court ordered maintenance of status quo, everything else had to wait. We credit Mr Rachuonyo to have understood that and that is why he did not seek an explanation or clarification from the Court as to the extent of the order in question. Indeed, even Ms Mc' Asila while on the one hand was saying that the order had some element of ambiguity, could not on the other hand say what that ambiguity was. Mr Rachuonyo should have properly advised his client to hold his horses and not rush to transfer the property to a third party before judgment was delivered. It is our view that there was nothing ambiguous about the said order and it should have been complied with. Given the outcome of the appeal, the respondent would not have lost anything by the compliance. And, even if the appeal had gone the other way, and notwithstanding whatever loses the respondent would have incurred' once the order of status quo was made, it just had to be obeyed.

Was the respondent in contempt of Court? Did Mr Munir, on behalf of National Bank of Kenya have a duty to comply with the court order?

It cannot be gainsaid that the duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice.

.....

The above pronouncements of law ring true now as they did over sixty years ago when they were made in Hadkinson's case. Unfortunately what we have now is persons both ordinary mortals and persons in authority treating Court orders with unbridled contempt with blatant impunity.

Was the respondent one such person? Unfortunately the answer to this question is in the affirmative. The order was made in presence of counsel for the respondent who as stated earlier must be presumed to have informed the respondent of the same. He went ahead and transferred the property before the due date of the judgment seemingly impatient to have this matter concluded once and for all. He acted in clear contempt of this Court. Government institutions, State officers, banks, and all and sundry are enjoined by law to comply with Court orders. We must deprecate in the strongest terms possible the worrying trend in this country where court orders are treated with tremendous contempt by persons and institutions which think wrongly of course, that they are above the law.

.....

In this case, we find the respondent Mr Munir Sheikh Ahmed, the managing director and chief executive officer of the respondent, and on its behalf, in contempt of the court order dated 26th September 2013."

54. In the instant case, the subject orders were interim in nature, and read cumulatively, directed that awaiting further directions of the Court, there be no eviction of the Caveators from the suit land, the Respondents stop encroaching into areas where they do not reside and to respect the status quo. With full knowledge of these orders, the Respondents disobeyed the orders and carried out actions performing exactly what the Court orders expressly directed not to be done. There can be no other interpretation to the Respondents' actions, apart from knowingly and deliberately disobeying Court orders.

55. Before I pen-off, it is to be recalled that the Caveators have not hidden the fact that they purportedly sub-divided and sold the suit land to third parties in the year 2014. As correctly urged by Mr. C. F.

Otieno, Counsel for the Caveators, such sub-division and sale, if any, is clearly an act of intermeddling as the estate herein is yet to be distributed. Those transactions are void ab initio insofar as they concern the property of a deceased person entered into before the Grant of Letters of Administration has been confirmed, the estate distributed and properties transmitted to beneficiaries,

56. What the Respondents and the purported "purchasers" committed, by such acts of purporting to transact on property owned by the deceased, clearly amounts to the offence "intermeddling" with the estate of a deceased person, which is prohibited under Section 45 of the *Law of Succession Act*. In respect thereto, Gikonyo J in the case of Re Estate of M'Ngarithi M'Miriti [2017] eKLR, described "intermeddling" in the following terms:

> " Whereas there is no specific definition provided by the Act for the term "intermeddling", it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person."

57. There is also the decision of R. Nyakundi J, in the case of In re Estate of the Late Chemase Ego (Deceased) (Succession Cause 116 of 2000) [2025] KEHC 527 (KLR) (27 January 2025) (Ruling), the decision of W. Musyoka J, in the case of In re Estate Jamin Inyanda Kadambi (deceased) (2021) eKLR , and also the decision of Gikonyo J in the case of In re Estate of M'Ajogi M'Ikiugu (Deceased) [2017] eKLR.

58. The purported sales by the Respondents having been conducted before confirmation of the grant herein were and still are clearly void ab initio by operation of Section 82(b)(ii) of the *Law of Succession Act*. The Respondents appear to also forget that they are not even the Administrators of the estate herein in the first place, and therefore, the estate had not even been vested in them. By virtue of Section 79, only the Court appointed Administrator is in a position to exercise the powers set out in Section 82, which in some instances, may include power to sell estate assets if permitted by the Court. Sale of the assets of estate property without a grant of representation is disallowed under Section 45 and attracts criminal sanctions as it amounts to the offence of intermeddling. It cannot therefore be an issue of any debate that the purported sub-division or sale by the Respondents, if any, was unlawful, null and void and above all, an illegality. The so-called "purchasers, if at all they exist, are therefore not recognized under the law, and are therefore also put on notice of this eventuality.

Final Orders

59. The upshot of the above is that I allow the Caveators' Summons dated 13/05/2025 in the following terms, at this stage:

    i. The Respondents are found to be in contempt of the Court orders dated 4/09/2020, 9/09/2020 and 30/11/2020.

ii. A date shall be fixed when the Caveators shall attend Court for mitigation before a date is set for sentencing.

iii. On the dates that shall be fixed for mitigation and for sentencing, the Respondents shall personally attend Court.

iv. In the meantime, the Respondents are granted ten (10) days to purge or undo their contempt (including granting possession of the subject portion back to the Caveators, allow the Caveators full access, and remove fencing). Compliance with this order or lack thereof may be considered at the time of sentencing.

v. The Caveators are awarded costs of the Application, to be borne by the Respondents.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 19TH DAY OF SEPTEMBER 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms. Kipseii for the Administrators-Applicants

Mr. Kipkurui for the Objector

Court Assistant: Brian Kimathi