



**Gachie & another v Gachie (Succession Cause 145 of 2013)
[2024] KEHC 186 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 186 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 145 OF 2013
G MUTAI, J
JANUARY 19, 2024**

BETWEEN

DAVID WAIHAKA GACHIE 1ST APPLICANT

CHARLES WANARUA GACHIE 2ND APPLICANT

AND

EVAN WAMBUGU GACHIE RESPONDENT

RULING

1. The applicants herein moved this court vide Notice of Motion application dated 23rd November 2022 seeking to have the respondent punished for contempt of court. The said application was heard and determined by this honourable court. In the ruling delivered on 24th March 2023, the court found the respondent to be in contempt of the court's orders of 15th February and 18th May 2022 that ordered him to file statements of account and bank statements and also to produce receipts of the payments he alleged to have made to various parties. The respondent was ordered to appear before the court to show cause why he should not be committed to civil jail for six months for being in contempt.
2. When the matter came for hearing on 18th April 2023, Mrs Momanyi, learned counsel for the applicants, told the court that the suit amount of Kes.15,000,000/- should have been shared out to all the beneficiaries, with each of them getting Kes.1,000,000/-. As this was not done, Mrs Momanyi urged the Court to imprison the respondent should be imprisoned for being in contempt. In his own defence, the respondent, appearing in person, told the court that he had shared out Kes.9,000,000/-, inclusive of expenses, and only Kes.6,000,000/- remained in his account for distribution. The court, in its orders, directed the banks in whose accounts the estate funds were held to provide bank account statements in respect of KCB and Equity account, showing bank balances exceeding Kes.6,000,000/- and receipts, cheques, Mpesa statements, acknowledgement letters and other documentary evidence showing how Kes.9,000,000/- was distributed.



3. The matter then came up for hearing on 19th July 2023. In his evidence, the respondent told the court that he received Kes.15,000,000/- from Base Titanium as a trustee and an administrator of the estate of the deceased. He was given a deposit of Kes.1,000,000/-. From this, each beneficiary got Kes.100,000/-. He provided statements of the Equity Bank account as of 31st December 2021, which had a balance of Kes.53,7391.50. The KCB Bank Account, whose statement he also provided, had Kes.183,045.30 as of 4th December 2021. He stated that he received the money through the KCB Account.
4. He further testified that he couldn't tell where the money went. He admitted that the distribution was not equal. He further admitted that he couldn't prove expenditure nor account for the money.
5. In re-examination, the respondent told the court that he didn't know when he was appointed as an administrator. He incurred expenses relating to the management of property, payment of workers and transport of the beneficiaries. He stated that some of the expenses were incurred before the grant was issued and after.
6. The Respondent further testified that the beneficiaries had each received different amounts as he gave them money individually on need basis. He accused some of the beneficiaries of having mismanaged some of the estate properties which were under their control.
7. He told the court that the distribution is ongoing. There is a proposed distribution which had not been agreed on.
8. The court then directed the parties to file their written submissions in respect of the Notice to Show Cause. Subsequently, the applicants, through their advocates Messrs. LN Momanyi, filed their written submissions dated 11th September 2023. The respondent's counsel opted not to file submissions.
9. Counsel submitted that the respondent had not given sufficient reasons why he should not be committed to civil jail and thus should be found in contempt and be committed to civil jail. Counsel relied on the case of the Teachers Service Commission versus Kenya National Union of Teachers & 2 Others Petition No.23 Of 2013. In the said case, the court held that the reason courts punish for contempt of court is to safeguard the rule of law, which is fundamental in the administration of justice. Counsel urged the court to commit the respondent to civil jail.
10. I have considered the evidence and submissions made herein. In my view the sole issue requiring determination by this Court is whether the respondent should be committed to civil jail.
11. In dealing with why courts punish for contempt of court the court in the case of *Teachers Service Commission versus Kenya National Union of Teachers & 2 others* [2013] eKLR stated,

“The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it in any other way is to open the door to chaos and anarchy and this Court will not be the one to open that



door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

12. Further, the court in the case of *Benson Ogina Ogallo versus Samson Omuombo Odido* [2021] eKLR in dealing with contempt of court, cited the case of *B versus Attorney General* [2004] 1 KLR 431 where JB Ojwang, J (as he then was) where the court held that:-

“The Court does not, and ought not to be seen to make Orders in vain; otherwise, the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”

13. As stated earlier, this honourable court, in its ruling of 24th March 2023, found the respondent as being in contempt of court and gave him the opportunity to defend himself. However, when the matter came for hearing of the notice to show cause, the respondent was unable to give a detailed account of the money in his custody in respect of the estate of the deceased.
14. It would appear to this Court that the respondent misappropriated and embezzled funds that came to him as a trustee for all the other beneficiaries. I can see no other reason for his inability to account for the funds that came into his possession in a fiduciary capacity. Since the purchaser paid the money into a bank account, it should not have been difficult for the respondent to provide a detailed statement. The only conclusion that can be drawn is that his refusal is wilful. Wilful refusal to obey a court order is contemptuous of this Court. He declined to produce the statements despite being served with orders to that effect. This court will not issue orders in vain. Where there is wilful disobedience, the court will not hesitate to punish the contemnor. Not doing so will undermine the rule of law and the proper administration of justice.
15. The upshot of the foregoing is that it is my finding that the respondent wilfully disobeyed court orders. When given an opportunity to show cause why he should not be committed to civil jail, he failed to give a cogent explanation for his conduct.
16. In the circumstances, this court has no choice but to order that the respondent, Evan Wambugu Gachie, be committed to civil jail for six months for being in contempt of court.
17. Although the Family Court is often reluctant to issue orders on costs, it is the opinion of the court that the conduct of the respondent has been odious and deserves to be condemned. In the circumstances, I award the costs of this application to the applicants.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 19TH DAY OF JANUARY 2024 VIA MICROSOFT TEAMS

GREGORY MUTAI

JUDGE

In the presence of:

Mrs. Momanyi for the applicants;

No appearance for the respondent;

The respondent absent.

