



REPUBLIC OF KENYA



In re Estate of Mona Ingegard Bjorklund (Deceased) (Succession Cause E3549 of 2022) [2024] KEHC 3096 (KLR) (Family) (15 February 2024) (Ruling)

Neutral citation: [2024] KEHC 3096 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E3549 OF 2022
HK CHEMITEI, J
FEBRUARY 15, 2024
IN THE MATTER OF THE ESTATE OF MONA INGEGARD BJORKLUND (DECEASED)**

RULING

1. This ruling relates to the application dated 29th March, 2023 filed by the Applicant, Vincent Muhati Loveridge seeks for Orders that:
 - a. Spent.
 - b. This Honourable Court do and hereby commit the self – styled Objector Alex Nyachonga Apoko to civil jail for a maximum of six (6) months for deliberately and willfully refusing and/ or continuous to disobey flaunt or circumvent this Honourable Court’s order issued on 13th March, 2023 maintaining the status quo as at the period.
 - c. This Honourable Court to and do hereby issue a Court Order senestration directed to the so self-styled Objector Alex Nyachonga Apoko to sequestrate such real personal property of the Objector if he has any for continuing flagrantly disobedience of this Honourable Court’s Order issued on 13th March, 2023 in the presence of the Objector Alex Nyanchoga Apoko and that the said Objector be summoned and attend court to show cause why he should not be committed to civil jail for six (6) months based on several ground on the summons and photos annexed to the supporting affidavit.
 - d. The OCPD from Gigiri Police and/ or OCS from Runda Police Stations do provide security during the arrest of Alex Nyanchoga Apoko.
 - e. Costs of this application be awarded to the Petitioner/ Interim Administrator.
2. The application is opposed vide replying affidavit sworn by Alex Nyachonga Apoko, the Objector, on 15th June, 2023.



3. The applicant and respondents have filed written submissions dated 16th July, 2023 and 14th August, 2023 respectively.
4. There is another application dated 16th August, 2023 and filed by Jimmy Sausi, Vincent Muhati Loveridge’s Advocate, highlighting further damaging activities on the deceased’s subject property as at 12th August, 2023. No directions have been issued on this application and neither has it been responded to.

Background:

5. This matter relates to the Estate of Mona Ingegard Bjorklund (hereinafter “the deceased”) who died on 6th June, 2017. There is a contested will on record.
6. There is an order issued by this Honourable Court on 3rd March, 2023 whose prayer 4 states, “That in the meantime the Status Quo in respect of all estate property to be maintained;” which forms the basis of the application dated 29th March, 2023.

Analysis and Determination:

Analysis:

7. I have carefully considered the application, the response as well as the written submissions filed by the parties and address them as follows:
8. The issues for determination, as crafted by the Objectors, are as follows:
 - a. Can contested facts be introduced in the submissions?
 - b. Whether the Petitioner’s narratives of alleged contempt of court is contrived and self-contradictory.
 - c. Whether the photographs adduced to show alleged demolition are genuine and admissible under the Evidence Act.
 - d. Has the Petitioner met the burden of proof in contempt proceedings?
9. 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 the defendant's conduct was deliberate..."

Determination:

10. I find that the Applicant has met the threshold for contempt of court proceedings thus rendering the Objector in contempt of the Orders issued by this Honourable Court on 3rd March, 2023.
11. The Objector has not denied knowledge of the court order issued by this Honourable Court on 3rd March, 2023 and neither has he alleged its ambiguity.
12. The contradictions pointed out by the Objector in his written submissions are largely technicalities with respect to timings and estimated number of the goons conducting the damage to the subject property. The dates of the said actions are consistent with those stated by the Applicant.
13. The Objector has not responded to the application dated 16th August, 2023 despite it adversely mentioning him in furtherance of the actions complained of in the application dated 29th March, 2023.
14. The contested facts that the Objector alleges to have been introduced by the Applicant in his submissions do not bear much weight with regards to the substratum of the application dated 29th March, 2023.
15. In view of the above willful disobedience of the court orders the application is allowed as follows:
 - a) The Objector is hereby found in contempt of the said orders and is directed to appear before court within the next 14 days to show cause why he should not be punished.
 - b) Matter fixed for mention on 29/2/24.
 - c) Costs to the applicant.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 15TH DAY OF FEBRUARY, 2024.

H K CHEMITEI.

JUDGE.

