



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Stephen Marigi Gathigi (Deceased) (Succession Cause
14 of 2020) [2024] KEHC 4705 (KLR) (3 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4705 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
SUCCESSION CAUSE 14 OF 2020
SN MUTUKU, J
APRIL 3, 2024**

BETWEEN

ELIZABETH MUMBI GATHIGI 1ST APPLICANT

ERIC SIRONIK GATHIGI 2ND APPLICANT

KEVIN SIRONIK MURAYA 3RD APPLICANT

AND

EDITH WAIRIMU MARIGI RESPONDENT

RULING

The Summons

1. The three Protestors/Applicants herein filed this Summons under Article 159 of the [Constitution](#), section 47 of the [Law of Succession Act](#), Rule 73 of the [Probate and Administration Rules](#), section 5 of the [Judicature Act](#) and all other enabling provisions of the law. They are seeking the following orders:
 - i. Spent.
 - ii. That this Honourable Court be pleased to punish the Administrator/Respondent Edith Wairimu Marigi for contempt of court for defying the court's order made on 1st February 2023.
 - iii. That the Administrator/Respondent Edith Wairimu Marigi be refused any further audience of the court until she purges her contempt and permits unhindered access and valuation of Kajiado/Olchoro-Onyore/143.
 - iv. That this Honourable Court be pleased to grant any other orders/directions as it may deem fit and proper in the circumstances of the case and in the interest of justice.
 - v. That the costs of this application be borne by the Administrator/Respondent.



2. The Summons is supported by the grounds found on the face of it and in the Supporting Affidavit sworn by Elizabeth Mumbi Gathigi on 3rd October 2023. The summarized grounds in support of the Summons are that this Honourable Court issued an order on 1st February 2023 directed at the Applicants in liaison with the Respondent for the valuation of the entire assets of the estate of the deceased.
3. The estate was valued by Humprey Karago t/a Ragos Valuers & Estate Agents except for property known as Kajiado/Olchoro-Onyore/143 measuring 10 acres and motor vehicles registration numbers KAC 886n and KCT 148R parked inside that property. The Respondent, in an act of defiance and utter disregard of the court order refused to grant access to the said property for purposes of valuation.
4. That the Respondent is aware of the said court order as it has been served on her and her legal counsel. That on 10th July 2023 this Honourable Court issued a subsequent order allowing police to provide security for the valuer but the Respondent refused to allow valuation of the property save for the two motor vehicles named above.

Replying Affidavit

5. The Summons is opposed by the Respondent through her Replying Affidavit dated 4th October 2023. She has deposed that the estate was valued by M/S Ragos Valuers & Estate Agents on 27th September, 2023 at 10.00am when the valuer arrived at her home situated at Kajiado/Olchoro-Onyore/143 accompanied by OCS Kiserian Police Station, 5 police officers, the area Chief and Assistant Chief, the 1st and 3rd Applicants and that the Respondent granted them access to the property where the property and the two motor vehicles named were valued.
6. The Respondent has deposed that she was surprised by the contents of paragraphs 5-8 of the Supporting Affidavit where it is alleged that the Respondent refused to grant access to the property for purposes of valuation. She attached photographs to support her statement that valuation took place. She stated that she complied with the court order and there is nothing else that was required of her as there was no legal impediment barring the valuer from valuing the property Kajiado/Olchoro-Onyore/143. She stated that the application is frivolous, vexatious and an abuse of the court process and ought to be dismissed with costs.
7. The 1st Applicant filed a Further Affidavit sworn on 22nd November 2023 in which she has reiterated the contents of the Supporting Affidavit sworn on 3rd October 2023 and stated that although the Respondent allowed the Valuer and the police access to her compound on 27th September 2023 she refused to allow the Valuer to tour the property and inspect the buildings on it claiming that the order of the court dated 10th July 2023 was not clear and referred only to the vehicles and therefore she is in contempt of the court and ought to be punished.
8. This court directed parties to file written submissions.

Applicants' Submissions

9. The Applicants' submissions are dated 15th December 2023. They have identified two issues for determination:
 - i. Whether the Respondent frustrated valuation of Kajiado/Olchoro-Onyore/143?
 - ii. Whether the Respondent is in contempt of court?



10. On the first issue it is submitted that the Valuer did not carry out valuation on Kajiado/Olchoro-Onyore/143 as ordered by the court as shown in the Valuers letter dated 3rd October 2023 attached to the Further Affidavit of the 1st Applicant as he was not allowed to tour the property and make a comprehensive report and that the Respondent failed to cooperate even when the order of the court obligated the valuation in liaison with the Respondent.
11. On the second issue it is submitted that the Applicants have satisfied the essentials enunciated in *Koilel & 2 others v. Koilel & another* (Civil Appeal E002 of 2021) (2022) KEHC 10288 (KLR) where the Court stated as follows:

“...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 and (iii) Failure by the Respondent to comply with the terms of the order.”
12. It was submitted that the Applicants have proved the failure by the Respondent to comply with the order of the court as far as it concerns valuation of Kajiado/Olchoro-Onyore/143 as shown in the letter of the Valuer. The Applicants cited Section 5(1) of the *Judicature Act* and section 3A of the *Civil Procedure Act* on the power of this court to punish for contempt of court and to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court respectively.
13. The Applicants also cited *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR where the Court stated as follows:

“A court without contempt of court power is not a court. The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority that a court that could not secure compliance with its own judgments and orders is a contradiction in terms, an “oxymoron”. Contempt power is something regarded as intrinsic to the notion of court; even obvious, I would say. In the common lawyer’s eye, the power of contempt “is inherent in courts, and automatically exists by its very nature.”
14. The Applicants urged that this court is clothed with the power to punish for contempt of court in order to maintain and preserve the authority of the court.

Respondent’s Submissions

15. The Respondent filed submissions dated 22nd December 2023. The Respondent relied on *Al-Kheir Muslim School Limited v Obuto Caleb Ombati* [2021] eKLR, and submitted on the following:

Whether the terms of the order were clear and unambiguous and were binding on the Respondent
16. The Respondent has submitted that the order of the Court was clear, and the Respondent complied with it; that she liaised with the Applicant and agreed on a date and time when valuation would take place as 27th September 2023 at 10.00am.

Whether the Respondent has acted in breach of the terms of the order and whether she had knowledge of or proper notice of the terms of the order
17. The Respondent has submitted that she obeyed the court order and allowed access to the Valuer for purposes of valuation; that there is pictorial evidence showing the presence of the Applicant witnessing valuation and that the Applicant is misleading the court when she stated that the vehicles were not valued yet the photographs shows the Valuer taking pictures of the vehicles. She has submitted that the Valuer was inside the compound yet claims not to have valued the land.



Whether the Respondent's conduct was deliberate

18. It is submitted that the Respondent liaised with the Applicant and agreed on the time and date of the valuation and therefore this aspect of the submissions is not applicable. She relied on *Al-Kbeir Muslim School Limited* case cited above and ELC No. 4 of 2019 *Mary Awino Kweyu v Lawrence Mmata Chore & another* [2022] eKLR to support her submissions that she did not disobey court orders and that the Applicant has not demonstrated willful disobedience of the court order.

Determination

19. In determining this matter, I will confine myself to the following issues:
- i. Whether the applicant has met the threshold for granting contempt of court orders.
 - ii. Whether the Respondent is in contempt of court.
20. As stated in Koilel case above, an applicant seeking contempt of court orders must demonstrate the following:
- i. the terms of the order,
 - ii. knowledge of these terms by the Respondent, and
 - iii. failure by the Respondent to comply with the terms of the order.
21. I have considered the application and the ground in support. I have considered the submissions of the parties. The proceedings in this Succession Cause are ongoing. The Petitioner, who is the Respondent, has testified and closed her case. Before the Applicants started adducing evidence, the issue of valuation came up through an oral application made by Mr. Ngeru, learned counsel for the Protestors/Applicants, on 1st February 2023. It became necessary to determine the issues raised before proceeding with the hearing.
22. This court allowed valuation to be conducted on the properties forming the estate in an order dated 1st February 2023 that the Protestor to proceed with the valuation of the Estate in liaison with the Petitioner.
23. On 10th July 2023 when the matter came up for mention to confirm compliance with that order, Mr. Ngeru informed the court that the valuation was incomplete because Kajiado/Olchoro-Onyore/143 and motor vehicles No. KAC 886N and KCT148R were not valued for reasons that the Petitioner resisted allowing the Valuer to proceed with the valuation. Counsel asked the court to order police to assist in the execution of the court order.
24. The Court authorized the OCS, Kiserian Police Station to offer security during the valuation exercise. The matter was fixed for mention on 5th October 2023 to confirm compliance with the court directions. In the meantime, the Protestors filed this application.
25. The position held by each party is clear. According to the Applicants, the Respondent has frustrated the valuation exercise and denied access to the land Kajiado/Olchoro-Onyore/143. The Valuer through his letter dated 3rd October 2023 stated that he visited the property on 27th September 2023 in company of the OCS Kiserian Police Station but were not accorded the opportunity to value the property and only managed to value the motor vehicles parked in the compound.
26. The Respondent maintains that she allowed the Valuer access to the property, and he valued it. She denied that she refused to facilitate the valuation claiming that the Valuer in presence of the police and



the Chief and Assistant Chief were allowed in the compound and valuation was conducted as shown in the photographs produced.

27. The order this court issued is addressed to the Respondent in liaison with the Petitioner. This order was issued in the presence of both parties and there is nothing ambiguous about it. It is a clear order. The court authorized the police to provide security during the exercise.
28. Although the Respondent claims to have allowed the valuer to conduct valuation, there is a letter from the valuer stating that he was allowed into the compound where the motor vehicles were parked, and he was able to value them but was not allowed to tour the land for the purposes of valuing the same.
29. I have read the valuation report in respect to that parcel Kajiado/Olchoro-Onyore/143. The Report shows the value of the property, as Kshs 75,000,000, and was based on the comparison method which takes into account what similar parcels of land within the neighbourhood are currently fetching in the open market. The Report shows that the valuer was denied access by the current occupants. The Respondent cannot claim that the valuer had access to the land unhindered, yet the valuer was not allowed to tour the land for purposes of valuation.
30. The standard of proof to be met in Contempt of Court proceedings is higher than proof on a balance of probabilities but lower than proof beyond reasonable doubt. In *Jihan Freighters Limited v Hardware & General Stores Limited* [2015] eKLR, the Court citing *Mutitika v. Baharini Farm Limited* [1985] KLR stated as follows:

“We must start by disposing of the disagreement between the parties on whether contempt of court is required to be proved beyond reasonable doubt. That issue was settled by this Court in *Mutitika v Baharini Farm* (1982-88) 1 KAR, 863 where the Court rejected the view expressed by Lord Denning in *In re Bramblevale Ltd* (1970) Ch 128, at 137, that contempt of court must be proved beyond reasonable doubt. The Court stated:

“With the greatest possible respect to that eminent English judge, that proof is much too high for an offence ‘of a criminal character’ and ipso facto, not a criminal offence properly so defined...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.”

31. The *Blacks Law Dictionary* 9th Edition defines contempt of court as:

“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”

32. It has been repeated and emphasized that court orders are not issued in vain. It is my belief that parties before this court expect justice from this court. Justice will come to them by way of court orders. It would be meaningless to seek justice and fail to obey orders of the very court you seek that justice from. Maintenance of the Rule of Law and order entails that the authority and dignity of the court are upheld at all times. The Court in *Republic v Ahmad Abolfathi Mohammed & another* [2018] eKLR had this to say on that issue:

“It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors... In *HADKINSON v. HADKINSON* (1952) 2 All E.R. 567, it was held that: It is the plain and unqualified obligation of every person against or in respect of whom



an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void."

33. The parcel of land Kajiado/Olchoro-Onyore/143 is part of the estate of the deceased and is subject to the on-going proceedings. It is covered by the order of this court and there is no reasonable excuse to deny the valuer access to the entire parcel of land for purposes of valuation.
34. My considered view, after careful evaluation of the grounds in support of the application and against the application is that I am satisfied that the Applicant has met the threshold for granting contempt of court orders. Further, I am satisfied that the Applicant has demonstrated that the Respondent is in contempt of court.
35. This court will give the Respondent an opportunity to purge the contempt of court by allowing the valuer to finalize the valuation of Kajiado/Olchoro-Onyore/143 at her own cost failing which this court will consider a befitting punishment for the contempt of court.
36. This exercise should be completed in the next 30 days from the date of this ruling.
37. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF APRIL 2024.

S. N. MUTUKU

JUDGE

