



**In re Estate of Wanduma Njeri (Deceased) (Succession Cause  
2470 of 2015) [2024] KEHC 9238 (KLR) (Family) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9238 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2470 OF 2015  
HK CHEMITEI, J  
JULY 18, 2024  
IN THE MATTER OF THE ESTATE OF WANDUMA NJERI (DECEASED)**

**BETWEEN**

**DIANA NJERI ..... 1<sup>ST</sup> APPLICANT**

**RICKY MAJABA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**STELLA WANJIRU ..... RESPONDENT**

**RULING**

1. This ruling relates to the undated application that was filed on 23<sup>rd</sup> January, 2024 by the Applicants, Ricky Majaba and Diana Njeri seeking for orders that:-
  - (a) Spent.
  - (b) Pending the hearing and determination of this application, the Applicants be afforded police assistance in enforcing the order dated 31<sup>st</sup> July, 2018, through the OCS Dandora Police Station.
  - (c) The Respondent, Stella Wanjiru, be committed to civil jail for a period to be determined by court for willful disobedience of court orders issued on 31<sup>st</sup> July, 2018.
  - (d) The costs of this application be borne by the Respondent.
2. The application is supported by undated affidavit sworn by Ricky Majaba. He avers, inter alia that he is an applicant in the application for revocation of grant dated 6<sup>th</sup> July, 2018. A consent order entered on 31<sup>st</sup> July, 2018 prohibited the Respondent and all persons claiming through her not to enter property Plot Number 4735 (hereinafter, “the suit property”).



3. They deponed that the Respondent through persons claiming through her, broke into the suit property on 12<sup>th</sup> January, 2024 and demolished the last standing structure that had been erected thereon and on 22<sup>nd</sup> January, 2024 they went back and started sinking holes and trenches on the suit property. The said persons took building materials to the suit property on 23<sup>rd</sup> January, 2024 and deposited them at the gate in preparation to start construction.
4. The application is opposed vide replying affidavit sworn by Stella Wanjiru on 23<sup>rd</sup> April, 2024. She avers *inter alia* that she was not personally served with the court order. The suit property was disposed off vide sale agreement dated 11<sup>th</sup> April, 2018 and she does not reside on it. That the Applicants have failed to prosecute their application for revocation of grant filed on 10<sup>th</sup> May, 2018.
5. She said that she was the only surviving child of the deceased and she disposed off the property before the court order was issued and is therefore not in contempt of any court orders. She prays that the instant application be dismissed with costs.
6. The Applicants have filed undated written submissions placing reliance *inter alia* [Shimmers Plaza Limited v National Bank of Kenya Limited](#) [2015] eKLR where the court cited, with authority, the case of *Hardkinson v Hardkinson* [1952] ALL ER 567 where the court stated as follows:

“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 even void. Lord Cottenham, L. C., said in *Chick v Cremer* (1) (1 Coop. temp. Cott 342):

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.

The notice of the order is satisfied if the person or his agent can be said to either have been present when the judgment or order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, ‘otherwise’ would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgment and/ or order. This would definitely include a situation where a person is represented in court by counsel. Once the applicant has proved notice, the Respondent bears an evidential burden in relation to willfulness and mala fides disobedience. This court in the Wambora case (*supra*) affirmed the application of these requirements. Further the court therein while posing the question whether knowledge of a court order or judgment by an advocate of the alleged contemnor would be sufficient for purpose of contempt proceedings and answered the question in the affirmative stating:

We hold the view that it does. This is more so in a case 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 to report back to the client all that transpired in court that has a bearing on the clients' case..."

1. *Cecil Miller v. Jackson Njeru and Another* (2017) eKLR where the court cited the book titled, "Contempt in Modern New Zealand," where the guiding principles for contempt of court were established as follows:

- "(a) the terms of the order or injunction or undertaking were clear and unambiguous and were binding on the defendants.
- (b) the defendant has knowledge of or proper notice of the terms of the order.
- (c) the defendant has acted in breach of terms of the order and;
- (d) the defendant's conduct was deliberate."

7. The Respondent has not filed written submissions.

### **Analysis and Determination**

8. I have gone through the undated application that was filed on 23<sup>rd</sup> January, 2024, the responses thereto and the submissions filed by the Applicants. I have also perused the consent order dated 31<sup>st</sup> July 2018 which was endorsed by all the parties herein.
9. That consent order was entered by the parties under the premise that the suit property was still available for litigation. There was no evidence that the same had been sold or disposed in any way by the Respondent. As a matter of fact, the Respondent never mentioned to the court that she had sold the same by 11<sup>th</sup> April 2018.
10. If that was the case, why did she enter into the above cited consent without disclosing to the applicant or at least the court. In my view i find that she acted in utmost bad faith by failing to disclose this crucial information.
11. At the same time, she cannot feign ignorance of the consent order. The same was signed by her advocate and to date there has never been any effort to set it aside or review. Her counsel on record is still active and he has not sworn any affidavit to suggest that he had no authority or at all.
12. The sum total of my finding is that she cannot run away from her motive of defeating the order. The said order was very clear in preserving the property pending the final determination of the cause. If the applicant has delayed in prosecuting it, then it was incumbent upon her to apply for setting aside the consent or fixing this matter for hearing.
13. I find the Respondent in contempt of the court order by virtue of her acquiescence. She knew the condition of the property, namely, that, three months into entering the consent she had sold it to one Anthony Mwangi Maina. She failed to disclose to the court. The court believing that the parties were acting in good faith proceeded to enter into the consent preserving the property pending final determination of the proceedings.



14. It would have been excusable if she had disclosed to the court the obtaining position at the time of the consent. She cannot simply depose that she was not bound by the terms of the consent yet she failed to disclose to the court. She has come to this court with unclean hands. She cannot be allowed to benefit.
15. For whatever is worth the property ought to be protected. The alleged purchaser cannot be allowed to waste the estate just because of some “collusion” with the Respondent. Although she may have sold the property lawfully by virtue of having a confirmed grant, she cannot use it to waste the estate in any manner and contrary to the consent order.
16. In the premises and falling short of punishing her for contempt, i find the best way is to stop her or any other third party from intermeddling with the estate pending the determination of the cause. The consent order still stands and it must apply to “third parties “as indicated therein.
17. It is ordered that:-
  - (a) The Respondent her agents and or servants including the said Anthony Mwangi Maina, his servants and or agents are hereby stopped from accessing the suit parcel namely Plot No 4735 Dandora Phase II or carrying out any development therein pending the hearing and determination of this cause and in particular in compliance with the consent order dated 31<sup>st</sup> July 2018.
  - (b) The officer in charge (OCS) Dandora police station is hereby directed to enforce the order dated 31<sup>st</sup> July 2018.
  - (c) This cause be fixed for hearing forthwith.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 18<sup>TH</sup> DAY OF JULY 2024.**

**H K CHEMITEI**

**JUDGE**

