



**In re Estate of Marupia Ngombo (Deceased) (Succession Cause
70 of 2014) [2023] KEHC 22573 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 70 OF 2014
G MUTAI, J
SEPTEMBER 22, 2023
IN THE MATTER OF THE ESTATE OF MARUPIA NGOMBO (DECEASED)
KANZE KAZUNGU KARISA.....APPLICANT
VERSUS
NYALE MARUPIA NGOMBO.....1ST RESPONDENT
JESSICA NGOMBO MARUPIA.....2ND RESPONDENT**

RULING

Introduction

1. Before the court is a notice of motion application dated April 25, 2023. The same is expressed as being brought under sections, 1A, 1B and 38 of the *Civil Procedure Act*, 2010 and Rule 73 of the *Probate and Administration Rules*.
2. The applicant seeks 6 orders to wit
 1. Spent;
 2. That Jessica Ngombo Marupia and Nyale Marupia Ngombo be committed to jail for blatant breach of the court orders of September 23, 2020 and June 30, 2021;
 3. That alternatively for resisting and deliberately blocking the implementation of the orders of June 30, 2021 both Jessica Ngombo Marupia and Nyale Marupia Ngombo be detained in prison for a period of 30 days to allow the completion of the implementation of the orders of June 30, 2021;
 4. That the County Surveyor Kilifi to complete the resurveying of Plot Kilifi/Mtwapa/170 and the resultant plots to comply with the orders of June 30, 2021;



5. That the Officer Commanding Police Station to provide the County Surveyor executing his/her duties and Kanze Kazungu Karisa, Nyevu Kenga and Tabu Kenga while fencing their plots; and
 6. That due to the arrogance of both Jessica Ngombo Marupia and Nyale Marupia Ngombo the costs of these entire proceedings be paid by them.
3. The applicant relied on the affidavit she swore sworn on April 25, 2023.
 4. The application is opposed. The 1st and 2nd respondents each filed a replying affidavit. In the said affidavits the respondents denied knowledge of the court orders. They also denied knowledge of the survey work. 1st respondent claimed that contrary to what was alleged he signed the mutation form after the same was explained to him in detail. He annexed a copy of the mutation form as annexure “NMN 1”. He deposed that no affidavit of service evidencing service had been attached. In the circumstances he urged that I dismiss the application dated April 25, 2023 with costs.
 5. The applicant filed a supplementary affidavit sworn on July 17, 2023. In the said affidavit she deposed that the 2nd respondent is her sister-in-law being the wife of her deceased brother. She averred that the previous ruling of this court dealt with the provision of a graveyard. She argued that if the 2nd respondent was still interested in making a provision for a graveyard she could do so from her share of the estate. She accused the 2nd respondent of not cooperating with the surveyors, of using her children to destroy fences and of not paying her share of the costs of subdivision.
 6. On the July 26, 2023 the application was heard in open court. The 1st and 2nd respondents were in court Mr. Mutugi submitted that the matter has been fully heard. All the parties were allocated their specific shares which they are all aware of. He submitted that the 1st respondent got 4 acres of land. He processed the title of his portion of land and has since sold much of it. The husband of the 2nd respondent also got 4 acres. Despite issuance of court orders the 2nd respondent declined to sign the mutation forms and habitually absented herself whenever the land was due for subdivision. He accused the 2nd respondent of preventing the other beneficiaries from accessing their entitlements. The daughters got 1 acre each. One daughter renounced her share in the result that her portion was divided five ways with each person getting 1/5 of an acre. The daughters had been unable to fix the boundaries due to the actions of the 2nd respondent and her sons. Surveyors, despite being accompanied by police officers, were prevented from carrying out their work.
 7. Mr. Mutugi accused the respondents of wanton disobedience of court orders. He submitted that the issues raised by Jessica Marupia Ngombo had been determined by the court. He urged that at all instances when court orders were issued she was present and cannot now deny knowledge. Counsel stated that the 2nd respondent was unrepentant and that the court should take note of her insolence.
 8. Mr. Kai for the respondents expressed the party’s readiness to comply with the court orders. He stated that his client was ready to welcome a surveyor provided there was sufficient notice. In closing he submitted that the two respondents do not know their portions of land.
 9. It should be noted that sanctions imposed in contempt of court cases are necessary so as to protect the rule of law. M. Ibrahim, J (as he then was) in *Econet Wireless Kenya Ltd v Minister for Information and Communication of Kenya Authority* [2005]eKLR stated as follows:-

“it is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts is 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. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction to obey it unless and until the order is discharged. The uncompromising nature of the obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void”

10. The standard of proof applicable in such cases is higher than that required in an ordinary Civil case. Before a finding that there has been contempt of court is made there must be a demonstration of willful and deliberate disobedience of a court order.
11. The standard of proof is higher in contempt of court cases as the possible loss of an individual’s liberty is involved. In *Oilfield Movers Ltd v Zahara Oil & Gas Limited* [2020]eKLR the court stated that:-

“it is important however that the court satisfies itself beyond any shadow of doubt that the person alleged to be in contempt committed the act complained or with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty...”
12. I have perused the court file. I am persuaded that the respondents were served with the court orders adverted to in the Applicant’s application. They knew about the said orders. Notwithstanding their knowledge they declined to obey the said orders.
13. In my view their actions were willful and deliberate. The respondents were contemptuous of this court. It cannot be the case that the orders this court issued previously are not worth the papers they were written. I must uphold the dignity of the court.
14. Although they loudly protested their supposed contrition when they appeared before me, I am unable to believe their story. If indeed they now want the land to be subdivided they should show it by not being an impediment going forward.
15. The upshot of the foregoing is that the application before me has merit and I allow the same in terms of the orders I make below.

Disposition

16. I issue the following orders:-
 1. I find Nyale Marupia Ngombo and Jessica Ngombo Marupia to be in contempt of court;
 2. I order that the Nyale Marupia Ngombo and Jessica Ngombo Marupia appear before me on 6th October, 2023 in open court for purposes of mitigation;
 3. I order that the County surveyor, Kilifi County to complete the surveying of Plot No. Kilifi/ Mtwapa/170, and the resultant plots, to comply with the orders that this court made on June 30, 2021 within 30 days of the date thereof;
 4. I direct the Officer Commanding Mtwapa Police Station to provide security during the survey work; and
 5. The costs of this application shall be borne by Nyale Marupia Ngombo and Jessica Ngombo Marupia.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 22ND DAY OF SEPTEMBER 2023 VIA MICROSOFT TEAMS.



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GREGORY MUTAI

JUDGE

In the presence of: -

Mr. Mutugi for the Applicant;

Ms. Omollo for the 1st respondent;

Mr. Kai for the 2nd respondent; and

Mr. Arthur Ranyondo – court Assistant.

