



REPUBLIC OF KENYA



**In re Estate of William Kamau Kamuyu (Deceased) (Succession Cause  
2561 of 2009) [2023] KEHC 24385 (KLR) (Family) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24385 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 2561 OF 2009**

**MA ODERO, J**

**OCTOBER 19, 2023**

**IN THE MATTER OF THE ESTATE OF WILLIAM KAMAU KAMUYU (DECEASED)**

**BETWEEN**

**VIRGINIA WANJIKU KAMUYU ..... BENEFICIARY**

**AND**

**JOSEPH KAREGA KAMAU ..... ADMINISTRATOR**

**RULING**

1. Before this Court for determination is the Notice of Motion dated November 18, 2021 by which the applicant Virginia Wanjiku Kamuyu seeks the following orders:-
  - “1. Spent.
  2. Joseph Karega Kamau be cited for contempt of court and be committed to civil jail and detained in prison for a term of 6 months or such period as the honourable court would deem just for contempt of the orders issued by this honourable court on November 22, 2018.
  3. This honourable court allows and so order that the Deputy Registrar of this Honourable court signs the summons for confirmation of grant in Succession Cause No. E308 of 2017 in place of Joseph Karega Kamau.
  4. The cost of this application be borne by Joseph Karega Kamau, individually.
2. The application was premised upon Order 40 Rule 3 and Order 51 Rule 1 of the *Civil Procedure Rules*, Section 5 (1) of the *Judicature Act*, Part 81.1. Rules 81.1 of the *English Civil Procedure Rules (Amendment No. 3) Rules* 2020 and Part 81.1, 2, 3, 4, 5, 6 and 7 thereof. Section 3A of the *Civil*



Procedure Act cap 21 Laws of Kenya and all other enabling provisions of law and was supported by the Affidavit of even date sworn by the applicant.

3. The respondent Joseph Karega Kamau opposed the application through the replying affidavit dated December 22, 2022. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated January 25, 2023 whilst the respondent relied upon his written submissions dated May 8, 2023.

## **Background**

4. This Succession Cause relates to the estate of the late William Kamau Kamuyu who died intestate on September 6, 2009.
5. The Deceased was survived by the following persons:
  - (i) Serah Njoki - Widow
  - (ii) Francis Kamuyu Kamau - Son
  - (iii) Joseph Karega Kamau - Son
6. Following the demise of the Deceased his widow and two (2) sons sought and obtained Grant of Letters of Administration Intestate which were issued to the three on November 10, 2010. Thereafter Serah Njoki (widow) and Francis Kamuyu Kamau (son) both passed away.
7. The applicant Virginia Wanjiku Kamuyu is the daughter-in-law to the Deceased in this matter as she is the wife to Francis Kamuyu Kamau (son to the Deceased). Upon the demise of her husband the applicant obtained a Grant of representation to his estate which Grant was issued to her on July 10, 2017. (Annexure VWK '2') to the supporting affidavit.
8. The applicant then filed a Notice of Motion dated September 7, 2018 seeking various orders as against the respondent. The applicant accused the respondent of withholding the share of her late husband to the estate of the Deceased thereby causing great suffering to her children who are in dire need of school fees.
9. Vide a Ruling delivered by Hon. Lady Justice Muigai the court made the following orders:-
  - “1. From the foregoing, I find that the respondent has not given a true account of rental proceeds realized from the said 2 properties; L.R. Dagoretti/Kangemi/328 and L.R. Dagoretti/Kangemi/330 in compliance with Section 83 e, f, and g of the Law of Succession Act cap 160. Despite filing accounts; the loan repayment schedules and discharge of the property(ies) are not filed. I order that the respondent files within 60 days and produce before this court a true account of funds realized from the said joint properties since he took over management of the estate of the deceased. Based on the accounts the rental income in arrears from L.R. Dagoretti/Kangemi/328 and L.R. Dagoretti/Kangemi/330 shall be determined to be paid. In default, what is due and owing shall be paid by the respondent to the applicant.”
10. The applicant avers that the respondent has failed to comply with the above orders and now seeks to have the respondent cited and punished for contempt.



11. On his part the respondent admits having knowledge of the court order. He denies having willfully disobeyed the orders of the court. He asserts that he did file accounts on January 17, 2019 as directed by the court and served the same upon the Advocate for the applicant.
12. The respondent further states that being aggrieved by the orders made by the court in the ruling of November 9, 2018 he did file an appeal to challenge the ruling which appeal is still pending determination in the Court of Appeal.
13. The respondent urges this court to dismiss this application in its entirety.

### **Analysis and Determination**

14. I have carefully considered the application before this court, the Reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the respondent is in contempt of the court orders which were issued on November 9, 2018.
15. The jurisdiction of this court to punish for contempt is found in section 5 of the *Judicature Act* which provides:-
  - “(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.
  - (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”
16. Thus in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, the obligation to obey court orders was well explicated thus:-

“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. 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 this 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.” [own emphasis]
17. In the premises, the elements that the respondent herein needed to prove are:-
  - a) that the Order of November 9, 2018 was clear, unambiguous and binding on the respondent;
  - b) that the applicant had proper notice or knowledge of the terms of that Order;
  - c) that the applicant has deliberately failed to obey the terms of the Order;(see *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR)



18. The standard of proof applicable in contempt applications, is above a balance of probabilities, given the criminal connotations of contempt proceedings. In *Gatharia K. Mutikika v Babarini Farm Ltd* [1985] KLR 227 the Court of Appeal stated as follows:-

“...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...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi- criminal in nature.” [own emphasis]

19. It is important that the court satisfy itself that the person being accused of disobeying courts orders had knowledge/notice of said court orders.

In *Oilfield Movers Ltd v Zabara Oil & Gas Limited* [2020] eKLR the court stated as follows:-

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of 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.....”

20. The orders which were made by the court on November 9, 2018 were in my view clear and unambiguous. The order directed the respondent to file within Sixty (60) days true accounts of his management of the estate.

21. It is also not in doubt that the respondent was aware of and had Notice of the said orders. In his replying affidavit dated December 2, 2022 the respondent at Paragraph 6 depones as follows:

“.... I acknowledge this honourable court gave an order on November 9, 2018, but is has not been substantiated how I have contravened the said court order and shall seek further and better particulars from the applicant.” [own emphasis]

22. Further in this same replying affidavit the respondent at Paragraph 10 states:-

“That contrary to the applicant’s allegation on paragraph 6 of the supporting affidavit I have never disputed knowledge of the court order given on November 9, 2018 or the Ruling thereof, against which I have filed an appeal, now before the Court of Appeal.” [own emphasis]

23. Therefore, from the respondent own averment it is clear that he had full notice and knowledge of the court orders in question.

24. The final consideration for a finding of contempt is whether it has been demonstrated that the respondent willfully disobeyed the said order.

25. The respondent categorically denies having disobeyed the court orders directing him to file accounts within Sixty (60) days. He asserts that he did, in compliance with the said court order, prepare, file and serve the requisite accounts on January 17, 2019. A copy of the said accounts appears as Annexure ‘JKK 1’ to the respondent’s replying affidavit. The Financial report is dated November 30, 2018 meaning that it was prepared within one (1) month of the Orders being made. The said Financial report bears a stamp indicating that it was served on January 17, 2019.



26. The only problem is that there does not appear to be any evidence that the said financial report was filed in court. Nevertheless, I find that there has been substantial compliance by the respondent of the orders directed at him. Certainly, it cannot be said that the respondent “willfully disobeyed’ the said order.
27. Accordingly, there exists prima facie evidence that the respondent did in fact comply with the orders of November 9, 2018.
28. Being aggrieved by the ruling delivered on November 9, 2018, the respondent as is his right filed an appeal dated November 12, 2018 against the same. The respondent also filed an application seeking to stay the orders which application was dismissed vide the ruling delivered by Hon. Justice Muchelule (as he then was) on February 23, 2021.
29. Notwithstanding the above I am satisfied that the respondent did substantially comply with the ruling of November 9, 2018. The fact that the accounts prepared by the respondent did not impress the applicant does not mean there was non-compliance.
30. Finally, I find no merit in this application. The Notice of Motion dated November 18, 2021 is hereby dismissed in its entirety. Cost to be met by the Applicant.

**DATED IN NAIROBI THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

