



REPUBLIC OF KENYA



**In re Estate of John Peter Keguro (Deceased) (Succession Cause 554 of 1998)
[2023] KEHC 24453 (KLR) (Family) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 554 OF 1998
MA ODERO, J
OCTOBER 13, 2023**

BETWEEN

LEAH WARUGURU KEGURO APPLICANT

AND

ELIZABETH WANJIRU KEGURO RESPONDENT

RULING

1. Before this Court for determination is Summons dated 25th January 2023 by which the Respondent, Elizabeth Wanjiru Keguro seeks the following orders:-
 - “ 1. That this Honourable Court do issue orders for the Applicant herein be summoned to court to show cause why she should not be committed to civil jail for blatantly failing to comply with the orders of the court of 7th November 2019 which restrained her from trespassing, encroaching and interfering with the Applicant’s possession and enjoyment of property number Githunguri/kanjai/1269 pending further orders of the court.
 2. That the court do find and convict the Applicant for contempt and willful disobedience of court orders issued herein on 7th November 2019 by Hon. Ali-Aroni and order that she be detained in prison for six months and/duration until she purges the contempt.
 3. That the cost of this application be provided for.
2. The Application was premised upon Section 10 (1) & 3 of the *Magistrates Act* of Kenya 2015, Section 1A, 1B and 3 A and all other enabling provisions of the Law and was supported by the Affidavit of even date sworn by the Respondent.



3. The Applicant, Leah Waruguru Keguro opposed the application through her replying affidavit dated 2nd December 2022.
4. The application was canvassed by way of written submissions. The applicant filed written submissions dated 24th March 2023 whilst the Respondent relied on her written submission dated 13th March 2023.

Background

5. This Succession Cause relates to the Estate of John Peter Keguro (hereinafter ‘the Deceased’) who died intestate on 20th January 1998.
6. The Applicant and the Respondent herein are both widows of the Deceased. The two were issued with Grant of Letters of Administration intestate on 1st July 2013 which Grant was confirmed on 7th October 2013. On 5th March 2019, Honourable Justice Kimaru (as he was then) revoked the grant and ordered the parties to obtain a fresh grant.
7. The Respondent, Elizabeth Wanjiru Keguro filed a Notice of Motion dated 12th July 2018 against the Applicant seeking an order to restrain the Applicant, Leah Waruguru Kerugo by herself and/or agents from interfering, trespassing, harassing, intimidating, encroaching and or interfering with the Applicant’s possession of the property known as LR Githunguri/Kanjai/1269 (hereinafter the ‘suit property’) pending further orders of the court.
8. Vide the Ruling delivered on 7th November 2019, Honourable Lady Justice Ali Aroni (as she then was) made the following orders:-
 - “a) The Defendants/ Respondents are hereby restrained from trespassing, encroaching and interfering with the Applicant’s possession and enjoyment of property number Githunguri/Kanjai/1269 pending further orders of the court.
 - b) The Applicant and the 1st Respondent be issued with a fresh grant of representation as joint administrators of the estate herein. They will apply for confirmation of the grant within the next 45 days.
 - c) Costs in the cause.”
9. The Respondent’s case is that the Applicant has violated this court’s orders issued on 7th November 2019 restraining her from trespassing, encroaching and interfering with her possession and enjoyment of her property. The Respondent argues that the Applicant was aware of the order and that instead of complying with the said court order, the Respondent has trespassed onto the land, verbally abused the Respondent, encroaching on the land and cultivating, cutting trees and allowing third parties to trespass into the suit property through her instructions.
10. The Applicant has denied violating the court order as alleged. She has denied trespassing and cultivating on the Respondent’s land. She urged the court to dismiss the Respondent’s application.

Analysis and Determination

11. I have considered the pleadings filed herein and the revival written submissions by the parties. The issues for determination are:-
 - i) Whether the Applicant is guilty of contempt of court.



- ii) Whether she should be committed to civil jail in the event she is found guilty.
12. 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.”
13. The Court of Appeal in *Abdi Satarhaji & Another v Omar Ahmed & Another* [2018] eKLR defined contempt in the following terms: -
- “Contempt of court is constituted by conduct that denotes willful defiance of or disrepute towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law; whether in civil or criminal proceedings.”
14. The court in emphasizing the need to obey court orders held 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.”
15. Obedience of court orders ensures that the rule of law, good order and due administration of justice is maintained and that it is not optional. The Court of Appeal further in *Fred Matiang'i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government vs Miguna Miguna & 4 others* [2018] eKLR held that:-
- “no court should take lightly allegations of contempt of court. That when courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance.”
16. In order to make a finding of contempt it must be established that the applicant was aware or had knowledge of the orders subject of this application and that she has willfully disobeyed the said orders?
17. The applicable standard of proof, in contempt cases is above a balance of probabilities, given the criminal connotations of such cases. In *Gatharia K. Mutikika v Baharini Farm Ltd* [1985] KLR 227 the Court of Appeal made this clear thus:-
- “...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."

18. In the light of the gravity of the personal consequences that would ordinarily flow from a finding of contempt, the law requires proof that the order in question was brought to the attention of the alleged contemnor as proof that he/she had personal knowledge of said order.
19. In *Oilfield Movers Ltd vs Zahara Oil & Gas Limited* [2020] eKLR the court stated:-

“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 Respondent did not exhibit any affidavit of service to demonstrate that the Applicant had been served with the particular court order.
21. However, in her Reply the Applicant admitted having knowledge of the court order in question. Thus I find the Applicant did have personal knowledge of the said court order.
22. The Respondent claims that the Applicant has breached the said orders by encroaching into the suit land cultivating thereon and cutting down trees. She has annexed a set of photographs as proof of said encroachment.
23. Firstly, the photographs in themselves do not prove any breach of the court orders or encroachment onto the land by the Applicant. The photographs do not indicate who interfered with the properties in question. Indeed the only person depicted in those photographs is the Respondent herself.
24. Secondly there is no indication of any report having been made by the Respondent to any authorities e.g. local chief or to the Police of interference and/or encroachment by the Applicant.
25. All in all I find there exists no tangible evidence of deliberate and willful disobedience of the court orders by the Applicant. I find no merit in this application Accordingly the summons dated 25th January 2023 is dismissed in its entirety. Costs will be met by the Respondent.

DATED IN NAIROBI THIS 13TH DAY OF OCTOBER, 2023.

MAUREEN A. ODERO

JUDGE

