



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

PROBATE AND ADMINISTRATION CAUSE NO. 231 OF 2010

MIRIAM NJOKI WAWERU.....1ST PETITIONER

PETER KINYANJUI WAWERU..... 2ND PETITIONER

MARY WAMBUI GACHAHL.....3RD PETITIONER

VERSUS

ANNA WANJIRU MUREITHI.....1ST OBJECTOR

OBADIAH KARURU.....2ND OBJECTOR

DAVID GATHURU.....3RD OBJECTOR

JOHN WAWERU NJOGU.....4TH OBJECTOR

RULING

On **8/9/2020**, the petitioners through their Counsel on record filed summons dated **31st August, 2020** seeking the following orders;

1.spent

2. This Honorable Court be pleased to issue an Inhibition Order stopping Ann Wanjiru Mureithi, the ISt Objector herein either by herself, her agents or servants from constructing, continuing with construction or in any other manner dealing and or intermeddling with the Status Quo on land reference number **UASIN GISHU/KIMUMU/1364 and 1365** pending the hearing and determination of this application inter-partes and thereafter pending the conclusion of the Succession Cause herein.

3. That this Honorable Court in exercise of its inherent power do punish Ann Wanjiru Mureithi the 1st Objector herein for contravening the Court Orders issued on **28th October, 2015** pursuant to the Ruling delivered on **29th September, 2015** in that;

a) In blatant contravention and disregard of the Orders of Status Quo, Ann Wanjiru Mureithi the 1st Objector is inter-meddling with the Estate as she is currently constructing permanent structures on the suit properties namely; land parcel numbers **Uasin Gishu/Kimumu/1364 and 1365**.

b) In blatant contravention of **Clause 3** of the Court Order dated **28thOctober, 2015** the ISt Objector has refused or failed to file in court a full and true account of the rents collected over the three suit properties, **Uasin Gishu/Kimumu Settlement Scheme/1364, 1365 and Eldoret Municipality Block 16 (Kamukunji) 349** as ordered by this Honorable Court.

4. This Honorable Court in exercise of its inherent power to issue an Order henceforth stopping Ann Wanjiru Mureithi the ISt Objector from collecting rent over the three suit properties **Uasin Gishu/Kimumu /1364, 1365 and Eldoret Municipality Block 16(Kamukunji) 349** and instead the court do order that such rent be collected by the Petitioners who should then file in court a full and true statement of account of the rents collected.

5. That this Honorable Court be pleased to make such other/further orders as may be necessary for the ends of justice.

6. The costs of this application be borne by the 1st Objector.

The 1st objector opposed the application via a replying affidavit sworn on **6/10/2020** by herself. It was agreed that the application be canvassed by way of written submissions and parties have filed their respective submissions.

PETITIONERS' APPLICANTS' WRITTEN SUBMISSIONS

Counsel for the petitioner applicant in his submissions argued that in a Ruling delivered on **29/9/2015** by **Hon. Justice G.K Kimondo**, it was ordered *inter alia* as follows;

1. The **Status quo** obtaining in the estate as of today's date shall be preserved.
2. The 1st Objector shall render a full and true account of the rents collected over the three suit properties, **Uasin Gishu/Kimumu/1364, 1365 and Eldoret Municipality/Block 16(Kamukunji)349** by filing in court a suitable report under her hand or that of a registered accountant in court **within the next ninety (90) days of today's date**. Further reports shall be filed every year until the final determination of the objection proceedings or main petition

On the meaning of status *quo*, counsel relied on the **The Black's Law Dictionary which defines Status Quo as: *The existing state of things at any given time.***

He further relied on the case of; -

Machakos ELC Case No. 109 of 2018 B2 Yatta Ranching Co-operative Society Limited —vs- County Council of Kitui & 12 others [2020] eKLR at page 6 paragraph 36 where Hon. Justice O.A Angote held as follows;

"The meaning of the word "status quo" was clarified by the Court of Appeal in the case Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] eKLR as follows:

"Status quo" in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order. All it meant was that everything was to remain as it was as at the time that order was given. If there was any transaction of whatever nature that was going on in respect of the land in question, it had to freeze and await the discharging of the Court order. "

He submitted that in the **Ruling dated 29/9/2015** per the extracted court order attached to the supporting affidavit as annexure **PKW2** at **Clause 2** thereto the court ordered as follows:

".....The Status Quo obtaining in the estate as of today's date shall be preserved..."He therefore argues that based on the definition of status quo by the Black's Law Dictionary and the authorities cited above, the order for status quo meant that the existing state of the Estate as at the date of **Ruling on 29/9/2015** was to be preserved.

He further submits that in his supporting affidavit to the summons dated **31/8/2020**, the 1st Objector/Respondent herein is currently constructing permanent houses over the suit properties **LR Nos Uasin Gishu/Kimumu/1364 and 1365** in blatant contravention and disregard of the order of status quo subsisting herein and that in this regard the Applicant has attached a bundle of photographs as **annexure PKW3** showing that indeed there is ongoing construction over the suit premises.

That the 1st Objector/Respondent in her replying affidavit dated 14/9/ 2020 at **paragraph 11** states; -

That I reside on land reference Uasin Gishu/Kimumu/1364 and my house crumbled and I was left with no option other than to rebuild the residence (annexed are photographs on the deplorable state of the house which collapsed marked A WMI, 2 and 3)"

It is Counsel's submissions that the 1st Objector/Respondent has admitted on oath that she is indeed constructing permanent houses on the suit property and that the new permanent houses were not in existence as at 29/9/2015 when the order of status quo was issued.

Further that the 1st Objector/Respondent did not apply to the Court for variation or review of the order of status quo if indeed it is true that her house collapsed as she alleges and therefore the 1st Objector/Respondent is in contempt of the order of status quo dated **29/9 2015** since her act of constructing permanent houses on the suit premises will alter the status of the estate.

As to whether the 1st objector/respondent was aware of the court order dated 29/9/2015, counsel submitted that's at **paragraph 12 of her replying affidavit** dated **14/9/2020**, the 1st Objector/Respondent depones as follows;

"That I was not aware of the court order nor had copy been served on me. That the first time I became aware of the order was on 9/9/2020"

According to counsel, the above deposition is untrue for the following reasons;

- I. The Ruling dated **29/9/2015** was delivered in the presence of both advocates for the Petitioners and Objectors.

II. Pursuant to the Ruling, the 1st Objector indeed filed a Rental Statement of Account for the period between the years **2010 to 2015** in partial compliance with order **number 3**, (Annexure **PKW2**) confirms she was aware of the order.

He cited the case of **B2 Yatta Ranching Co-operative Society Limited**, where the court at **paragraph 37**, cited with approval the decision in **Shimmers Plaza Case** (supra) and stated as follows;

"The order of maintaining the status quo in respect to the suit property in all the three instances was granted by the court in the presence of the Defendants advocates. Indeed, the current jurisprudence only requires a party's advocate to be aware of the court order for the purposes of an Application for contempt. In the Shimmers Plaza case (supra), the Court of Appeal held as follows:

"On the other hand, however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra). Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos Vs Attorney General and 8 Others [2012] eKLR pronounced himself as follows:- the law has changed and as it stands today knowledge supersedes persona/ service where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that persona/ service must be proved is rendered unnecessary." This position has been affirmed by this Court in several other cases including the Wambora case (supra).

Counsel therefore reiterated that the 1st Objector/Respondent was aware of the existence of the order of status quo and her deposition that she was not aware amounts to perjury and as such she is guilty of the offence of willfully telling an untruth or making a misrepresentation under oath.

On failure to file yearly statement of rent account, he submitted that in its Ruling dated 29/9/2015 as per Clause 3 of annexure PKW2, the court ordered as follows;

"..The 1st Objector shall render a full and true account of the rents collected over the three suit properties Uasin Gishu/Kimumu/1364, 1365 and Eldoret Municipality Block 16 (Kamukunji) 349 by a suitable report under her hand or that of a registered accountant in court within the next ninety (90) days of today's date. Further reports shall be filed every year until the final determination of the objection proceedings or the main petition...."

His submission was further that the 1st Objector/Respondent filed purported Rent Account Statement for the years **2010 to 2015** only and did not file account reports for the years **2016, 2017, 2018, 2019 and 2020** and that her failure /default to comply with the court order constitutes contempt of court. He defined contempt of court as per **The Black's Law Dictionary (Ninth Edition)** which defines contempt of court as follows;

"Conduct that defies the authority or dignity of a court because such conduct interferes with the administration of justice. It is punishable usually by fine or imprisonment"

Counsel further relied on the case of **Teachers Service Commission -Vs- Kenya National Union of Teachers & 2 Others [2013] eKLR where Ndolo J. Observed That: -**

"38. The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. "

He also submitted that the reason why power is vested in Courts to punish for contempt of Court is to safeguard the Rule of Law which is fundamental in the administration of justice. It is the supremacy of the law and the ultimate administration of justice that is usually under challenge when contempt of court is committed. This is so because when the court issues orders, as it did herein, parties must be certain that the order will be obeyed by those to whom it is directed to.

He further relied on the case of **Kenya Tea Growers Association —vs- Francis Atwoli & 5 others eKLR where Lenaola J cited with approval the case of Clarke and others —vs- Chadburn & others (1985) IALL E.R (PC) 211 in which the court observed that: -**

"I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal...even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it. "

Further he cited the case of **Mutitika —vs- Baharini Farm Limited (1985) KLR** the court held that:

"anyone who, knowing of an injunction, or an order of stay willfully does something, or causes others to do something, to break the injunction or interfere with the stay is liable to be committed for contempt of court...(as the person has) set the order of the court at naught..." and has by his conduct obstructed the course of justice"

That in the case of **Econet Wireless Kenya Limited —vs- Minister for Information & Communication of Kenya & Another (2005), the court held that; -**

“it is a fundamental principle of the Rule of Law that court orders must be obeyed, The importance of this principle has been stated in many decisions in our courts and in particular the Court of Appeal.”

Further, Counsel submitted that to demonstrate the importance and seriousness with which the courts will deal with any conduct that may be deemed or found to be in contempt of court or prejudicial process, it is necessary to look at some decisions on the subject which he cited as follows; -

Hodkinson —vs- Hadkinson (1952) 2 All E.R 567 where it was held that:

It is plain and unqualified obligation of every person against or in respect of who an order is made by a court of contempt 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.

That the deposition by the 1st Objector/Respondent that her house had crumbled and she was left with no option other than to rebuild the residence are a mere cloak to mask the 1st Objector's unlawful acts and that she is purporting to look for a scapegoat" from the eyes of "responsibility" that bound her to fully obey the court order.

He further cited *Lord Donaldson MR in Johnson —vs- Walton (1990) 1 FLR350 at 352* where it was stated that:

"It cannot be too clearly stated that, when an injunctive order is made or when an undertaking is given, it operates until it is revoked on appeal or by the court itself, and it has to be obeyed whether or not it should have been granted in the first place. "

He concluded that a party must comply with an order whatever she/he thinks of such an order and that what is important is that such a party has knowledge of the terms of the order. He thus submitted that they have demonstrated that the 1st Objector is in contempt of the Court's order as she has admitted in her own affidavit that she is indeed constructing permanent houses on the suit properties.

Further that the Court record would confirm that she failed/defaulted to file yearly rent account from 2016 to 2020. As such the 1st Objector is in contempt of the court order and that the nature of the contempt herein seems to be well-calculated to steal a march of the other beneficiaries of the Estate as she continues to collect rent from the suit premises without accounting for the same both to court and to other beneficiaries.

He finally submitted that this court is vested with powers to enforce its orders and to punish a party who disobeys the same and that 1st Objector is by her own actions undeserving of any sympathy. That her disobedience/contempt of the court order dis-entitles her from continuing to collect rent from the three (3) suit premises. Further, this Court must stop her from continuing with the construction over the suit premises. That allowing her to continue with construction would erode the authority and dignity of the court hence her actions pose a serious challenge to the Rule of Law and administration of justice.

He submitted that their application has met the requisite standards of proof of contempt against the court order.

1ST OBJECTOR'S SUBMISSIONS.

Mr. Momanyi, Counsel for the 1st Objector submitted that an order of inhibition is meant to stop or inhibit dealings on a land register hence are inappropriate in the instant case.

That a similar application had been made seeking orders of injunction which the Honourable court disallowed and that the same can only be revisited on appeal or review and that since an application seeking review has not been filed, the application beforehand is incompetent and untenable.

On the issue of punishment for contempt of court he submitted as follows: -

1. The petitioners must proof that the objector was aware of the order; and that,
2. The order prohibited the objector from undertaking the developments she is currently undertaking

On the issue of contempt of court, he submitted that the order issued by the Honourable court was to have the *status quo* prevailing on the estate maintained and accounts be rendered and therefore it was incumbent upon the applicants to demonstrate that the order was served upon the objector or that she was in court when the said order was issued. That no such evidence has been availed and that in the absence of evidence of service of the order or the objector's presence when the ruling was delivered an application for contempt is totally untenable.

He further submitted that the Court ordered that the position obtaining on the estate be maintained and that the objector was in possession and use of the portion of the estate she is currently using. That what the objector is doing is to redo her residence which was destroyed by the heavy rains and that it would have been absurd if the Court were to declare that even if the houses in which the parties who are beneficiaries to the estate is crumbled no reconstruction or repairs can be undertaken.

His submission was also that it is the contention of the objector that besides not being aware of the court order she has not done anything in contravention of the court order.

He urged the court to dismiss the application dated 31 /8/2020 as it is unmerited.

ANALYSIS AND DETERMINATION

Having perused the application at hand and the response thereto as well as parties' submissions and supporting authorities thereto, **the following issues sprouts for determination:**

1. Whether the 1st objector is illegally intermeddling with the estate of the deceased by carrying out construction of permanent structures on the suit properties L.R Numbers *Uasin Gishu/Kimumu/1364 and 1365, and failed/defaulted to file yearly rent account from 2016 to 2020, hence contravening the Court's order issued on 29/9/2015, and hence punishable for contempt of the Court.*

2. Whether the petitioner/applicant is entitled to an order of inhibition against properties numbers *Uasin Gishu/Kimumu/1364, 1365 and Eldoret Municipality Block 16 (Kamukunji) 349*

ISSUE NO. 1: WHETHER THE 1ST OBJECTOR IS ILLEGALLY INTERMEDDLING WITH THE ESTATE OF THE DECEASED BY CARRYING OUT CONSTRUCTION OF PERMANENT STRUCTURES ON THE SUIT PROPERTIES L.R NUMBER UASIN GISHU/KIMUMU/1364, 1365 AND HAVE FAILED/DEFAULTED TO FILE ANNUAL RENT ACCOUNT FROM YEAR 2016 TO 2020, HENCE CONTRAVENING THE COURTS ORDER ON STATUS QUO AND HENCE PUNISHABLE FOR COURT CONTEMPT.

Counsel for the applicant submitted that the 1st objector was aware of the court order issued on 29/9/2015 which ordered parties to maintain *status quo* of the estate pending hearing and determination of the objection proceedings or the main petition and at the same time it urged the 1st objector to render accounts in court. The 1st objector's counsel avers that the 1st objector was not aware of the court order and therefore can't be punished for contempt of the said order.

In the case of *Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] eKLR*, the Court of Appeal defined "*status quo*" as follows:

"Status quo in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events... All it means was that everything was to remain as it was as at the time the order was given. If there was any transaction that was going on in respect of the land in question, it had to freeze and await the discharging of the court order."

The applicant has invited the court to punish the respondent for being in contempt of a court order on *status quo* and for failure to file in court statements of accounts as directed in the court order issued on 29/9/2015.

The law on contempt of court is provided for under the following provisions of **Section 5 (1) of the Judicature Act** which provides; -

"5. (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 that 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."

Similarly, in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others [2014] eKLR*, the court expressed itself as follows:-

"..... the only statutory basis of contempt of court law in so far as the Court of Appeal and the High Court are concerned is Section 5 of the Judicature Act. In addition. Section 63 (c) of the Civil Procedure Act provides that a disobedience of an order of temporary injunction will attract punishment in the form of imprisonment or attachment and sale of the contemnor's property...."

In my opinion and as per the above cited authority, what the 1st objector should have done if she felt the house was crumbling was to approach the Court by way of an application seeking review of the orders and of course giving reasons.

As to whether the 1st objector was aware of the existence of the court order, I am convinced that indeed she was aware. When the court delivered its ruling leading to the impugned order, the 1st objector's Counsel was present in Court. The first objector also partly complied with the Court's order when she filed rental statement of account for the period between the years 2010 to 2015, I agree with the petitioners' Counsel that presence of Counsel was sufficient. This position was stated in the case of;

James Muchina Wandutu Vs County Govt of Murang'a & 5 others [2019] eKLR, where it was stated as follows;

".....27. Knowledge of existence of a Court order is much more important than anything else. That is why the Court of Appeal in the case of Shimmers Plaza Limited (supra) stated; -

“Kenya’s growing jurisprudence right from the High Court has reiterated that knowledge of a Court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings, for instance, Lenaola J in the case of Basil Criticos v Attorney General and 8 Others [2012] eKLR, pronounced himself as follows:

‘...the law has changed and as it stands today knowledge supersedes personal service... where a party clearly acts and shows that he had knowledge of a Court order, the strict requirement that personal service must be proved is rendered unnecessary.’

Further in the Canadian case of *Bhatnager v Canada Minister of Employment and Immigration [1990]2 SCR.217*, the Canadian Supreme Court held that a finding of knowledge on the part of the client may in some circumstances be inferred from the fact that the solicitor was informed. The court thus held that; -

“.....29. Guided by the decision in Bhatnager above, it is the finding of the Court that since Counsel of the 1st Respondent was present in Court when the orders were issued, it can be presumed that its officers had constructive knowledge of the same.....”

The standard of proof in contempt of Court matters.

It should be noted that the standard of proof in contempt of court matters is slightly higher than the usual proof on the balance of probabilities. This position was stated in the case of;-

JGK -vs- FWK [2019] eKLR Gikonyo J made the following observations on the standard of proof required in contempt of Court proceedings;

“Be that as it may, the standard of proof in contempt matters is beyond the balance of probabilities. There is good reason for the high standard; the proceedings are quasi-criminal; penal sanctions are likely to be imposed and the liberty of the contemnor is at risk.” The same court cited with approval the decision in, *Katsuri Limited v Kapurchand [2016] eKLR*, where it was held:

“.....Although the proceedings are civil in nature, it is well established that an applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases, The fact that the liberty of the defendant could be affected means that the standard of prove is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant’s conduct was deliberate in the sense that he or she deliberately or willfully acted in a manner that breached the order.....”

In the case of *Ringera and 2 others vs. Muite and 10 Others HCC at Nairobi, Civil Suit No. 1330 of 1991*, the Honourable court shed light on the main salient features of disobeying court as follows: -

1. *The contemnor must be aware of the existence of the court order.*
2. *There must be an existing court order capable of being disobeyed.*
3. *Breach thereof must be proved.*

Again, the evidence brought forth before the court must be certain due to the risk of depriving the contemnor of his/her liberty....”

In the present case the contemnor has admittedly stated that she is going on with permanent buildings on the suit properties.

The applicant has also stated that the respondent has not filed accounts in court since the year 2015. This fact has not been rebutted by the respondents.

It is therefore vivid that the respondent is in contempt of a Court order emanating from a Court’s ruling delivered on 29/9/2015 hence liable to be punished for it in accordance with the law.

ISSUE NO 2. WHETHER THE PETITIONER/APPLICANT IS ENTITLED TO AN ORDER OF INHIBITION AGAINST THE SUIT PROPERTIES LR. NUMBERS PROPERTIES UASIN GISHU/KIMUMU/1364, 1365 AND ELDORET MUNICIPALITY BLOCK 16 (KAMUKUNJI) 349.

One of the prayers sought by the Applicants in the present application is that an order of Inhibition do issue stopping the ISt Objector either by herself, her agents or servants from constructing, continuing with construction or in any other manner dealing and or intermeddling with the Status Quo on land reference number **UASIN GISHU/KIMUMU/1364 and 1364** pending the hearing and determination of this application inter-parties and thereafter pending the conclusion of the Succession Cause herein.

The ruling of 28th October, 2015 serves the purpose of the second issue herein. The said ruling and subsequent orders are still in place and it will serve no meaning purpose revisiting the same.

In conclusion, having considered the application at hand, the annexures thereto, response to the application, parties' rival submissions as well as authorities thereto, I find that the application is merited and the same is allowed in the following terms;

1. The 1st Objector shall render a full and true account of the rents collected over the three suit properties, **Uasin Gishu/Kimumu/1364, 1365 and Eldoret Municipality/Block 16 (Kamukunji) 349** by filing in court a suitable report under her hand or that of a registered accountant for the years **2016,2017,2018,2019, and 2020, within the next sixty (60) days from the date of this ruling.**

2. The petitioners, shall within **sixty(60)** days propose names of two persons from the list of petitioners, who shall take over the collection of rent and the two shall render a full and true account of the rents collected over the three suit properties, **Uasin Gishu/Kimumu/1364, 1365 and Eldoret Municipality/Block 16(Kamukunji)349** by filing in Court a suitable report under their hand or that of a registered accountant filed every year from the **year 2020** until the final determination of the objection proceedings or main petition.

3. The 1st objector is guilty of contempt of Court for contravening the Court Orders issued on **28th October, 2015** pursuant to the Ruling delivered on **29th September, 2015** and I order that she pays a fine of **ksh.50,000/= in default to serve 3 months imprisonment. I will allow her one month in which to pay the said fine failure to which the imprisonment sentence will commence. Mention in Court on 14th of April when and where the 1st objector should be physically present.**

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 15th day of March, 2021.

In the presence of:-

Ms. Njuguna for the applicants

Mr. Momanyi for the objectors (absent)

Gladys - Court Assistant

Mr. Momanyi be notified.

S. M GITHINJI -JUDGE

15TH MARCH, 2021