



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT VIHIGA**

**SUCCESSION CAUSE NO. 97 OF 2001**

**FORMERLY KAKAMEGA NO. 816 OF 2015**

**IN THE MATTER OF THE ESTATE OF PILA MUSA ANGANYA (DECEASED)**

**RULING**

1. The application for determination is the Motion dated 16<sup>th</sup> March 2021, which seeks to have a number of individuals cited for contempt of court. Some sought to be cited are not parties to this suit, such as the Chief of Tongoi Location and the OCPD Luanda.
2. The application is brought under Order 40 Rule 3(1) of the Civil Procedure Rules, yet the jurisdiction to try for contempt *ex facie* is as per the provisions of the Judicature Act, Cap 8, Laws of Kenya, which adopts the procedure of the High Court of England. The Motion before me is not founded on that procedure, which envisages proceedings very similar to those for judicial review.
3. Secondly, contempt proceedings are a quasi-criminal. Contempt of court is criminal conduct, and the sanctions for it are penal, imprisonment or payment of a fine. The principles that govern liability for it are akin to those prescribed for criminal matters. The standard of proof is higher than in ordinary civil cases. Due process must be followed, inclusive of scrupulous compliance with the procedure prescribed. A person cannot be subject to criminal sanctions where the process of trial is defective or violates the due process or fair trial hearing principles.
4. I am not persuaded that the pleadings before me are adequate for trial of the persons mentioned in them for contempt of court. Let the applicant go back to the drawing board and bring proper contempt proceedings against the persons he alleges have disobeyed court orders. Let due process be followed to the letter.
5. I gave directions on 30<sup>th</sup> July 2020, on how this matter should be handled so that we can get closure. Let the pending review application be disposed of first. The parties should give priority to that. These other applications will only make matters worse, delay the process further, and inflame the already fragile relations between the parties further. I shall henceforth not entertain any other application, apart from the pending review application.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2021**

**W MUSYOKA**

**JUDGE**