



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

SUCCESSION CAUSE NO. 380 OF 2008

IN THE MATTER OF THE ESTATE OF HAJI MOHAMED (DECEASED)

RULING

ABDI SATAR HAJI

FATUMA MOHAMED

ASHA MOHAMEDAPPLICANTS

VERSUS

OMAR AHMED

ALI AHMED MOHAMED..... RESPONDENTS

RULING

1. Fatuma Mohamed the Applicant herein by her Application dated 3.11.17 seeks the following orders:

1. Spent;

3. THAT this Honourable Court be pleased to set aside the Orders made herein on 29th September, 2017 insofar as relate to Fatuma Mohamed and especially the Order convicting and/or condemning the said Fatuma Mohamed to civil jail for contempt of Court.

3. THAT there be an Order for costs.

2. The grounds upon which the Application is premised are contained the Applicant's Affidavit sworn on 4.11.17. The Applicant claims that she was not represented in the application for contempt and was never served with the Order of 12.2.16, the subject of the alleged contempt or the application therefor. The Applicant avers that she was condemned to civil jail in circumstances that do not accord with due process thus rendering the order unjust. The Applicant states that given an opportunity she is able to demonstrate that she had no control of nor dealt with the property the subject of the alleged contempt.

3. The Application is opposed. In a Replying Affidavit sworn on 24.10.17, Ali Ahmed Mohamed the 2nd Respondent on behalf of the Respondents averred that the Applicant was represented by the firm of Kariuki Gathuthi & Company Advocates who were duly served with the Order of 11.2.16 as indicated in the exhibited affidavit of service. The said order required the Applicant and Asha Mohamed to produce to Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith from 12.7.00 up to the date of the account within 60 days of the date of the order. The Applicant has to date failed to produce the accounts and continues to disregard the order of this Court. She is therefore undeserving of the equitable relief sought herein.

4. The Court has since become aware that Abdi Satar Haji Mohamed appealed against the Ruling of 29.9.17 in Civil Appeal No. 51 of 2018. In its Judgment of 8.11.18, the Court of Appeal rendered itself thus:

Based on the foregoing, we think we have said enough to demonstrate that the learned Judge did not exercise her discretion properly in issuing the orders dated 29th September, 2017. Consequently, we find that the appeal has merit and is hereby allowed to the extent that we set aside the ruling dated 29th September, 2017 and the orders issued thereunder in their

entirety and substitute the same with an order dismissing the application for contempt dated 21st September, 2016. Being a family matter, we make no orders as to costs.

5. In light of the Judgment of the Court of Appeal setting aside the Ruling of 29.9.17, the Application dated 3.11.17 has been overtaken by events. The Court is therefore not in a position to grant the orders sought. There shall be no order as to costs.

DATED, SIGNED and DELIVERED in MOMBASA this 18th January 2019

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **for the Respondents**

..... **Court Assistant**