



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2859 OF 2012**

**IN THE MATTER OF THE ESTATE OF DANIEL MACHARIA ALIAS DANIEL**

**KAGO ALIAS KAGO MUKORE ALIAS DANIEL KAGO MUKORE (DECEASED)**

**GLADYS WAMBUI KAGO.....APPLICANT**

**VERSUS**

**MERCY NDATA KAGO.....RESPONDENT**

**RULING**

1. The deceased Daniel Macharia alias Daniel Kago alias Kago Mukore alias Daniel Kago Mukore died intestate on 27<sup>th</sup> September 2012. On 6<sup>th</sup> August 2012 a joint grant of letters of administration intestate was issued to Gladys Wambui Kago (the applicant) and Esther Wanjiku Kago. On 14<sup>th</sup> September 2017 an order was made by this court for the rents from tenants occupying the deceased's Githunguri/Kanjai/1439 be collected by the administrators and deposited into an account to be jointly opened and operated by them and the respondent Mercy Ndata Kago. Prior to the order the rent was being collected exclusively by the respondent.
2. On 18<sup>th</sup> December 2017 the applicant brought the present application asking that the respondent be cited for contempt and be punished for a period of 6 months for having disobeyed the order given on 14<sup>th</sup> September 2017. Her case was that despite the respondent having been aware of the order, and having been served with the same, she had failed to avail herself in the bank to sign account opening documents, and had instead continued to collect and spend the rent from the tenants in the premises. It was submitted on behalf of the applicant by her advocate that the actions of the respondent were in disobedience of the court order, were disrespectful of the court process, and were in contempt of the court order.
3. The application was served but did not elicit any response.
4. The ruling of 14<sup>th</sup> September 2017 was delivered in the presence of counsel for the respondent. It was deponed that the orders were extracted ("GW1") and, together with a forwarding letter ("GW2"), served on the respondent's advocates on 24<sup>th</sup> November 2017. No reason has been given why the respondent has not availed herself to open the joint account, and why she continues to collect and use rent that belongs to the estate and which should be protected until the estate has been shared. The responsibility to manage the estate belongs to the administrators, one of whom is the applicant.
5. The respondent had unqualified obligation to obey the order, which I find, she was aware of. She did not obey. The disobedience, I find, was wilful. The disobedience has undermined the authority of this court.
6. I am aware that contempt of court is quasi-criminal. It is an offence that may be punished by committal. The standard of proof is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt (**Mutitika and Others –v- Baharini Farm Limited 91982 – 88] 1KAR 863**). The applicant has met the standard in the application.
7. I find the respondent guilty of contempt of court. She is directed to appear on **11<sup>th</sup> March 2019** to show cause why she should not be punished in accordance with the law.

**DATED and SIGNED at NAIROBI this 5<sup>TH</sup> day of FEBRUARY 2019.**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 11<sup>TH</sup> day of FEBRUARY 2019.**

**ALI-ARONI**

**JUDGE**