



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 275 OF 2007

IN THE MATTER OF THE ESTATE OF NAOMI KABURA NGARUIYA - (DECEASED)

NJUGUNA NGARUIYA1ST APPLICANT

MARGARET KABURA NYAGA 2ND APPLICANT

VERSUS

MARGARET WARUIRU KIMANI.....RESPONDENT

RULING

1. It is the plain and unqualified obligation of every person against or in respect of whom an order is made by the court of competent jurisdiction to obey it until the order has been discharged (**Wildlife Lodges Ltd –v- County Council of Narok and Another [2005]2 E.A 344**). The uncompromising nature of the obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular, null or invalid (**Hadkinson –v- Hadkinson [1952] CA 258**).

2. It is the duty of the applicant seeking the order of contempt to prove that there has been willful disobedience of the order. The order complained of has to be clear. The breach for which the contemnor is cited must be precisely defined and proved to the standard which is higher than the proof on a balance of probability but not as high as proof beyond a reasonable doubt (**Mutitika & Others –v- Baharini Farm Limited [1982-88]IKAR 863**).

3. Recourse ought not to be a process of contempt in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt should be most jealously and carefully watched, and exercised with the greatest reluctance and anxiety on the part of the court to see whether there is no other mode which is open to the objection of arbitrariness, and which can be brought to bear upon the subject (**Moses F. N. Njoroge & Others –v- Rev. Musa Njuguna & Another, High Court No. 247”A” of 2004 at Nakuru**).

4. Lastly, it is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts are upheld at all times (**Refrigeration and Kitchen Utensils Ltd –v- G.P. Shah and Others, Court of Appeal Civil Application No. 39 of 1990**). The court has to deal firmly and decisively with those who disobey court orders.

5. The deceased Naomi Kabura Ngaruiya died intestate on 5th November 2006. The applicants Njuguna Ngaruiya and Margaret Kabura Nyaga are the administrators of her estate, having been appointed on 21st May 2010. They have a confirmed grant and are duty-bound to distribute the estate of the deceased in accordance with the certificate of confirmation issued on 20th April 2011. The respondent Margaret Waruiru Kimani is not a beneficiary of the estate of the deceased. The properties of the estate include motor vehicle Reg. No. KRL 715 Mazda and Plot No. 209/2389/63. The respondent was, prior to the applicants’ appointment, managing the estate, and collecting rent from Plot No. 209/2389/63. On 3rd February 2017 she was ordered to provide to the applicants full, true and accurate accounts of all the proceeds and rents collected from the estate since 5th December 2006 when the deceased died. She was also asked to hand over to the applicants all documents, titles, paper, and items of all the properties, including the motor vehicle and the plot. She has not done what the court ordered.

6. The respondent was legally bound to hand over the entire estate to the applicants once they were appointed as administrators. The specific orders the court issued on 3rd February 2017 were that she accounts to the applicants and she provides to them all the title documents to all the properties of the estate. The orders of 3rd February 2017 were issued in the presence of her counsel. The statements by the applicants

and the verifying affidavit by the 2nd applicant in support of the contempt application 25th March 2013 have annexed a respondents between the advocates of the applicants and those of the respondent in which the need to obey the orders issued of 3rd February 2017 was extensively discussed. It is common ground, therefore, that the respondent has always been aware of the orders in question.

7. The application dated 25th March 2019 seeks the respondent be found guilty of contempt of the court orders issued on 3rd February 2017 and be committed to civil jail for a period of six (6) months for the contempt.

8. The Respondent did not respond to the application, and therefore the evidence that she was aware of the orders and she has willfully disobeyed them was not challenged. She did not attend the hearing of the application, and neither did her advocate.

9. On the material before the court, and applying the principles of law to that material, I find that the respondent willfully disobeyed the clear and precise orders issued by the court on 3rd February 2017. I find her guilty of contempt of court order. I call upon her to personally appear in court on 29th July 2019 to show cause why she should not be punished as is required by the law.

DATED and DELIVERED at NAIROBI this 10TH day of JULY, 2019.

A.O. MUCHELULE

JUDGE