



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 82 OF 2015

IN THE MATTER OF THE ESTATE OF M'TUERANDU MBURUGU ALIAS M'TUERANDU MBURUGU (DECEASED)

ESTHER KARIMI.....PETITIONER/APPLICANT

-VS-

SILAS MBUI.....OBJECTOR/RESPONDENT

RULING

1. This ruling relates to the summons dated 17th July 2018 where the applicant seeks among other orders to commit the respondent to civil jail court contempt of court.

2. The grounds upon which the Summons is grounded are contained in the body of the application as well as the supporting affidavit of Esther Karimi Mbui sworn on 17th July 2018. These are that the respondent, who is the Applicant's biological father, ignored to obey the court orders dated 19th March 2018 as he is always causing her to suffer through his threats. That says that the court will take him nowhere and he will continue chasing and harassing her with her brother Samson. That in effect, the respondent has flouted the court's orders with impunity and if such act is allowed to persist, the court shall be taken for granted.

3. The application was opposed vide the replying affidavit of Silas Mbui sworn on 2nd October 2018. He deponed that her daughter is giving false information as he has never by himself, agents and or servants interfered with the applicant's quiet possession of IGOJI/KIANGUA/701 as per the court orders. That neither has his son Samson Muriuki Mbui. He prays that the court considers his old age and dismisses the application for he could not have given the applicant IGOKI/KIANGUA/3118 from IGOJI/KIANGUA/701 for him to take it into his own use.

4. *Section 4 of the Contempt of Court Act No. 46 of 2016* defines contempt of court as:

“(1) Contempt of court includes —

(a) civil contempt which means willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court;

(b) criminal contempt which means the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which —

(i) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court;

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice.

(2) In any case not relating to civil or criminal proceedings as contemplated under subsection (1), an act that is willfully committed to interfere, obstruct or interrupt the due process of the administration of justice in relation to any court, or to lower the authority of a court, or to scandalize a judge, judicial officer in relation to any proceedings before the court, on any other manner constitutes contempt of court.”

5. Courts punish contempt of court to safeguard the rule of law which facilitates the administration of justice. Failure to do so will bring about disorder and lawlessness. In *Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR* Ndolo J held:-

“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. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

6. It is trite law that the standard of proof in contempt of court is higher than that of civil causes but lower than the standard of beyond reasonable doubt in criminal proceedings. See Mutiika v Baharini Farm Ltd[1985] eKLR

“In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof.”

7. On 19th March, 2018 the court ordered that the objector, his agents and or servants including Samson Muriuki were restrained from interfering with the petitioner’s quiet possession of the portion occupied by the petitioner on the property known as IGOJI/KIANGUA/701 until this cause is determined. The applicant has asserted that the objector has violated this order and should be committed to civil jail.

8. The objector has denied these allegations. At the hearing of the application, the applicant changed tune and told the court that the person who had breached the court order was her brother Samson Kariuki and not the applicant. There was no order sought against the said Samson Kariuki. Neither did the applicant state that the said Samson Kariuki was acting at the behest or instance of the objector. In view of the foregoing, the applicant has failed to show that the alleged breach of the subject order was by the objector or at his instance. The applicant herself admitted that it was her brother Samson Kariuki and not the objector who was in contempt.

9. Since there was no averment or proof that Samson Kariuki was acting at the behest or instance of the objector, the application is unmeritorious and it is hereby dismissed.

10. I will not make any orders as to costs as this is a family matter.

DATED and DELIVERED at Meru this 1st day of November, 2018.

A. MABEYA

JUDGE