

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1914 OF 2008

IN THE MATTER OF THE ESTATE OF SYLVESTER CHARLES WAFULA (DECEASED)

RULING

1. On 4th August 2015, the applicant, Rose Wafula, lodged two applications in court under certificate of urgency. Both are dated 3rd August 2015. The Motion seeks leave for the applicant to apply for an order for committal of Mary Odenton Wafula for contempt of court. The Chamber Summons sought that the Notice of Motion dated 4th August 2015 be heard during the court vacation.

2. The matter was placed before the Duty Judge, Achode J., on 13th August 2015. The application was certified urgent, it was to be served and thereafter heard *inter partes* on a date to be obtained at the registry. On 15th February 2016, the Motion was placed before me and urged. I allowed it, by granting the leave sought and directing that the substantive application for committal to civil jail be filed within 21 days.

3. I have carefully perused my record. I have not been able to trace any substantive Motion for contempt of court. It would appear that the applicant, upon obtaining leave on 15th February 2016 to bring the substantive application, did not comply with the direction. There is therefore no substantive application to have the respondent cited for contempt of court. All there is the application for leave to make such an application, which application was disposed of on 15th February 2016.

4. When the matter came upon for hearing on 26th October 2016, counsel for the applicant stated that it was the main application for revocation of grant which was up for hearing. Counsel for the respondent on his part said that he was only ready for the contempt application, given that the notice for the hearing did not indicate which of the two was up for hearing. When the court concurred with counsel for the respondent that there was no indication as to which of the two applications was coming up for hearing, the advocates for both sides agreed to have the contempt application disposed by way of written submissions to be filed within given timelines. The applicant filed her submissions, but the respondent did not file any.

5. However, as there is no Motion before me seeking committal of the respondent to jail for contempt of court, there cannot be any basis for me to make orders in that regard. What is on record is an application for leave to bring such a Motion. No such Motion was ever filed. I cannot find for the applicant and against the respondent on the basis of an application for leave, which has, in any event, been disposed of. There is nothing for me to determine, or to dismiss, or to strike out or disallow. It is unfortunate that counsel for the applicant was not candid enough to let the court know that there was no substantive Motion, leaving me to plough through the record while she knew that there was no application for determination. I need not say more.

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE