



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO.576 OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE CECIL PETER OKUMU (DECEASED)

ROSELYNE ATIENO ORACHA.....PETITIONER/APPLICANT

VERSUS

ERIC OCHIENG ORACHA.....1ST RESPONDENT

VICTOR ODONGO ORACHA.....2ND RESPONDENT

R U L I N G

The Application

1. The administratrix has filed the application dated 29.03.2017 seeking amongst other orders that the proceeds of rent from Butso/2632 be retained in an account jointly in the names of the administratrix and the 2nd Respondent and that the objector be cited for contempt for disobeying court orders dated 28.09.2016.
2. The application is based on the grounds that the respondents are collecting rent to the exclusion of other beneficiaries and they have already benefited exclusively in the sum of Kshs.5,752,400/=. Further that there was a court order made on 28.09.2016 for sharing rent made in the presence of both parties which the respondents have failed to honour.
3. The application is also supported by the affidavit of the administratrix who reiterates the grounds herein above stated.

Response.

4. The application is opposed and there is a replying affidavit sworn by the 1st respondent with authority of the 2nd respondent. They claim that the whole petition as filed by the administratrix was fraudulent and bad in law and that there are different applications in the said petition that they have not responded to. They have also stated that there is also another different petition at Kisumu which has not been disclosed to this court. It is claimed that the administratrix has benefited herself by the grant in this case and the limited grant ad litem by collecting all the benefits of the deceased. It is their cry that the deceased's estate has been wasted by the administratrix and that the accounts brought and/or given to this court were false. They maintain that the little rent collected cannot be shared equally with the petitioner/administration.

Submissions

5. In this submissions on the application, counsel for the petitioner/Administratrix sought orders that the respondents be cited for contempt for disrespecting and disobeying the orders of this court made on 28.09.2016.

6. He adds that the respondents have not appealed against the said order and therefore they should purge the contempt or be committed to jail for 21 days.

7. On his part counsel for the respondent maintains that the respondents will not make any payments since the applicants have another cause in Kisumu and they have also not been cited.

Determination

8. Having carefully considered the application before court and the rival submissions by both counsel for the respective parties to this application and having also considered the applicable law as it is in Kenya, it is important to note that Section 5 of the Judicature Act Chapter 8 Laws of Kenya is the substantive law on contempt of court that confers this court with the power to punish for contempt of court.

9. The applicable procedural law on contempt is order 40 rules 3 (1) of the Civil Procedure Rules. Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law whether in Civil or Criminal proceeding.

10. In the case **of Board of Governors Moi High school Kabarak – vs- Malcolm Bell and another (S.c. Pet Nos 6 &7 of 2017**, the Supreme Court of Kenya described the power to punish for contempt as a power of the court to safeguard itself against contemptions or disruptive intrusion from elsewhere and identified the power as one of the indisputable attributes of the court's inherent power. The Supreme Court Stated that "Without that power, protection of citizens' rights and freedoms would be virtually impossible. Courts of law would be reduced to futile institutions spewing forth orders in vain"

11. From the arguments by the counsel for the respondent it is clear that the respondents have remained defiant to the orders of this court issued on the 28.09.2016. He remains categorical that the respondents will not make any payments.

12. The respondents have not however challenged the said orders of 28.9.2016 by appealing against them but only claim that there is another succession cause at Kisumu and maintain that they have not been cited. They have not denied knowledge of the said orders of the 28.09.2016 as they were present when the same were issued by this court.

13. It is trite law that once orders are granted the same must be obeyed unless appealed against. I have noted that the respondents never appealed the order but instead seem only to concentrate on apparent wrongs done by the administratrix in this whole saga.

14. In a nut shell, I find that indeed there was a valid court order issued by this court upon which a complaint of disobedience has been raised by the applicants. As stated by Romer L.J in Hadkinson – vs – Hadkinson [1952] All ER 567:

“ It is the plain and unqualified obligation of every person, against or in respect of , whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged.”

15. For the above reasons the respondents be and are hereby found guilty of having disobeyed the court order dated 28.9.2016 and are each liable to punishment of this Honourable court.

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 5th day of June 2017

RUTH N. SITATI

JUDGE

In the present of ;-

Mr. Ondieki .for appellant

Mr. Imbenzi for 1st respondent

.....for 2nd respondent

Mr. Polycap court Assistant