

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 932 of 2012

IN THE MATTER OF THE ESTATE OF FRANCIS MUNGAI NJIRAINI -(DECEASED)

RULING

The application dated 25th July 2012 seeks leave to commence contempt proceedings against the 2nd respondent.

The procedure for obtaining leave is set out in Order 52 rule 2 of the Rules of the Supreme Court of England. The application must be made *ex parte* to a judge in chambers, and must be supported by a statement setting out the time and description of the applicant, the name, description and address of the person sought to be committed and grounds on which committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on. I note that no statement was filed in this case and there is therefore no affidavit verifying the facts relied on.

The gist of contempt proceedings is disobedience of a court order. For the purpose of determining whether to grant leave or not, the order allegedly disobeyed must be identified, and evidence provided to demonstrate that the person against whom committal is sought was aware of the order. Evidence must also be provided of the alleged acts of disobedience. In this case there is evidence that an order which it is alleged that the 2nd respondent has breached was made on 23rd May 2012. However, there is no proof that the same was personally served on him. There is also no proof that the same was endorsed with a penal notice as required by the law.

I am of the view that the application dated 25th January 2012 does not meet the standard required for an application for leave to commence contempt proceedings. I will therefore dismiss the same with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 10th DAY OF May, 2013.

W. M. MUSYOKA

JUDGE