



REPUBLIC OF KENYA



**In re Estate of the Late Oraya Kabaiko (Deceased) (Succession Cause
130 of 2008) [2025] KEHC 13269 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13269 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 130 OF 2008
RN NYAKUNDI, J
SEPTEMBER 29, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE IRAYA KABAIKO (DECEASED)

BETWEEN

**LUCY WANGUI KABAIKO 1ST APPLICANT
ALICE WANGUI KABAIKO 2ND APPLICANT**

AND

**JANE WANGARI KABAIKO 1ST RESPONDENT
JOSEPH WAINAINA KABAIKO 2ND RESPONDENT
GRACE WAMBUI KABAIKO 3RD RESPONDENT**

RULING

1. What is pending before this Court for determination is Summons for Account brought pursuant to section 83 (e) (g) of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules where the Applicants are seeking the following orders:
 - a. That this Honourable Court be pleased to find that the Respondents have failed to render a true and just account of the estate herein as directed by the Court on 28th October 2014.
 - b. That the Honourable court be pleased to purge the respondents for contempt as they have failed to comply with the court orders of 28th October 2014 that required them to file a full statement of the account of the estate prepared by a recognized Certified Public Accountant of Kenya within the sixty days of the Court decree.
 - c. That this Honourable Court be pleased to compel the Respondent to render a true, proper and comprehensive account of their administration of the Estate including funds received by and spent by themselves from the date of their appointment up to date.



- d. That costs of this application be met by the Respondents.
2. The Summons is made on the following grounds among others: -
 - a. The Court issued a judgement on the 28th October 2014 and decreed that the respondents were to render a true and just account of the estate. They shall file at their own costs before the Deputy Registrar of the Court a full statement of the account of the estate prepared by the recognized Certified Public Accountant of Kenya within the next sixty days of this decree.
 - b. The Respondents have failed to comply with the orders of court issued on the 28th day of October 2014.
 - c. The Respondent have failed to provide accounts of the estate as directed by the Court.
 - d. The Respondents have failed and/or neglected to account for income due to the estate during their time as administrators.
 - e. The Respondents have failed to comply with the orders dated 28th October 2014 as such they be cited in contempt.
 3. The Summons is supported by an affidavit dated 13th September 2024 sworn by Lucy Wangui Kabaiko, the 1st Applicant who deponed as follows;
 - a. That I am a daughter of the deceased herein.
 - b. That this Court issued a judgement wherein the Respondents were required to render a true and just account of the estate. They were to file at their own costs before the Deputy Registrar of the court a full statement of the account of Kenya within the next sixty days of the decree of the court. However, this has not been done to date.
 - c. That the respondents are aware of the decree by the court however they have not bothered to adhere to the same.
 - d. That due to the actions of the respondents have made it difficult for the estate herein to have direction.
 - e. That in the interests of justice the Respondents are compelled to comply with the court orders of 28th October 2014 and or they be purged for contempt of court.
 - f. That the respondents though reminded by the applicants to comply with the court order, they have remained adamant.
 - g. That the estate of my father is being wasted due to the conduct of the Respondents by failing to observe the court orders hence necessitating this application.

Response to the Summons

4. The application is opposed vide a Replying Affidavit dated 29th November sworn by the 1st Respondent who deponed as follows;
 - a. That as far as I am concerned, the application herein dated 13th September 2024 raises issues which the Honourable Court has already pronounced itself in and is therefore res judicata.
 - b. That I am aware that the Applicants herein have made several other applications which have been dismissed for raising issues that are res judicata. Attachment of the Ruling by Hon. Justice H.A. Omondi dated 22nd July 2019.



- c. That in the said Ruling the Hon. Justice H.A. Omondi stated that the Applicant's Affidavit was res judicata. The Application herein is similar to the previous ones.
 - d. That the application herein is a waste of the Honourable court's precious time and is a clear abuse of the court processes.
 - e. That I am informed by my Advocates on record which information I verily believe to be true and found in law that the Applicant's Advocates have come on record against the Rules of Practice.
 - f. That the Application herein is res judicata and should be therefore dismissed.
5. The Summons is also opposed by the Respondents vide Grounds of Opposition dated 29th November 2024 summarized as follows;
- a. The application dated 13th September 2024 is bad in law as it offends the provisions of Order 9 of the Civil Procedure Rules, Cap 21 Laws of Kenya.
 - b. The issues raised in the application are res judicata as courts of competent jurisdiction have made determination on the issues.
 - c. The Estate of the Late Iraya Kabaiko is without the administrators pursuant to the prayers of the applicant herein and the court cannot be asked to intermeddle with it.
 - d. The application is otherwise frivolous, vexatious, bad in law and a clear abuse of the court's processes.
6. The summons was canvassed by way of written Submissions.

Applicants Written Submissions

7. The Applicants filed written submissions dated 11th December 2024 in support of the application dated 13th September 2024 where the Learned Counsel on record Mr. Ouma listed one issue for determination as follows: Whether the Respondents should be purged for contempt of court. The learned counsel submitted that the law on contempt is well settled and that court orders are not made in vain and are meant to be complied with and if any reason a party has a difficulty in complying with court orders the Honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Counsel also submitted that once a court order is made in a suit the same is valid unless set aside on review or on appeal. Reference was made to the following cases; Econet Wireless Kenya Ltd Vs Minister for Information & Communication of Kenya & Another [2005] 1 KLR; Wildlife Lodges Ltd Vs County Council of Narok & Another [2005] 2 EA 344; Central Bank of Kenya & Another Vs Ratilal Automobiles Limited & Others Civil Application No 247 of 2006 and Awadh Vs Marumbu [2004] KLR 458.
8. The Learned Counsel also submitted that the Respondents were required by the decree of the court to comply by rendering a true and just account of the estate within sixty days of the decree of the court and the same was to be done before the Deputy Registrar of the court so as to enable the beneficiaries of the estate to appoint fresh administrators however the respondents have ignored the court orders and decided to sit back and see what court can do them which is absolutely demeaning. Reference was made to the case of Teachers Service Commission Vs Kenya National Union of Teachers & 2 Others, Petition No 23 of 2013 and Ojwang J (as then he was) in B Vs AG [2004] 1 KLR.
9. The learned counsel further submitted on Article 159(1) of *the Constitution* of Kenya on Judicial Authority and Article 10 of *the Constitution* of Kenya on National Values and Principles of Governance



and made reference to the case of Moses PN Njoroge & Others Vs Reverend Musa Njuguna & Another [2004]. Counsel moreover submitted that where it has been brought to the court's attention that its orders are being abrogated or abridged by brazen or subtle schemes and manoeuvres in the name of technical procedures, the court cannot turn a blind eye to the same and cited the case of Basil Criticos Vs AG & 4 Others [2012] eKLR, R Vs Minister of Medical Services (2010).

10. Counsel furthermore submitted that in the instant case, the respondents were represented by the firm of J.K. Bosek & Co Advocates when the judgement was delivered on 28th October 2014 and the respondent given sixty days to file a true and just account in court which to date they have not done and whereas they are still being represented by the said advocates as such they cannot claim to have not been aware of the decree of the court and in fact they were the administrators who took the whole funds from the estate thus it was a duty bound upon them to render a true and just account as decreed by the court which they have not done to date. Counsel cited the case of R Vs Minister of Medical Services; Gatimu Farmers Company Vs Geoffrey Kagiri Kimani & Others [2005] eKLR; Kenya Tourist Development Corporation Vs Kenya National Capital Corporation Limited & Another, Nairobi HCC No. 6776 of 1992.
11. It was the learned counsel's final submission that the order allegedly disobeyed was directing the respondents to render a true and just account of the estate they shall file at their own costs before the Deputy Registrar of the court a full statement of account of the estate prepared by a recognized Certified Public Accountant of Kenya within the next sixty days of this decree which though communicated to the respondent in 2014 they have failed to obey and comply and therefore the only alternative we have is this court to find the respondents in contempt and punish them and allow the application.

Analysis and Determination

12. Before I delve into the substantive merits of this application, I would like to give a brief litigation history of this succession cause. The following orders were given vide a judgement dated 28th October 2014 with regard to this succession cause by the then session Judge George Kimondo Kanyi J: -
 37. For all the foregoing reasons, and in the interests of justice, I finally order as follows-
 - a. That the grant of letters of administration issued by the Court to the three respondents and confirmed on 20th July 2009 be and is hereby revoked. A fresh grant shall be applied for by not more than four beneficiaries comprising of some of the applicants and respondents and representing the three houses of the deceased.
 - b. That the transfer of the property known as title number Eldoret Municipality Block 6/103 to the interested is upheld. Accordingly, the prayer for injunction to restrain dealings in the property or to forbid the Registrar of Lands at Eldoret from registering any further transfer is hereby dismissed.
 - c. That the prayer by Jane Wangari Kabaiko in the summons dated 19th July 2012 to be enjoined into the summons dated 2nd July 2012 is hereby dismissed.
 - d. That I order that account number 01700634162 held by the 1st respondent at I&M Bank and account number 015019045659 held by the 1st respondent at Equity Bank be and are hereby frozen until the respondents render a true and just account to the estate as particularized below or until further orders of the Court.



- e. That the respondents shall render a true and just account of the estate. They shall file, at their own cost, before the Deputy Registrar of the Court a full statement of the account of the estate prepared by a recognized Certified Public Accountant of Kenya within the next sixty days of this decree.
- f. That the respondents shall meet the costs of the interested party. However, as between the applicants and the respondents, and considering that this is a family dispute, there shall be no order on costs.

It is so ordered.

13. It is thus clauses (e) and (f) from the above orders that forms the substratum of this application. I have thus read and considered the application, affidavit in support and the replying affidavit and grounds of opposition. There is one issue of determination herein:

Whether the Respondents are guilty for contempt of the court orders issued on 28th October 2014.

14. Before I delve into the issue above, I take cognizance that the Respondents had the raised the issue of res judicata. The doctrine of res judicata bars courts from re-opening issues already litigated and conclusively determined. Its aim is to protect the principle of finality in litigation, prevent abuse of court process and safeguard judicial time. The doctrine of Res judicata is principally implicates that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.
15. The Respondents contention that the application is res judicata requires showing that the precise matter now before the Court was directly and substantially in issue in a former suit between the same parties and was heard and finally decided. The 28th October, 2014 judgment did decide that the Respondents were to render accounts and prescribed the manner and time for doing so. Res judicata does not, however, operate as a cloak permitting a party to disobey an order. A judgment that prescribes performance by a party does not immunize non-compliance from being the basis of subsequent contempt proceedings. The doctrine cannot be used to protect a party from the consequences of failing to obey an order of the same court. The Respondents have not shown that the requirement to account was discharged or that compliance has been rendered, they simply assert res judicata without providing evidence of compliance. I note that the Ruling by the session Judge Justice Omondi as then she was which the Respondents made reference to discussed a different substratum which arose from the orders of the court which were given in 2014. It did not by any means link to the substance of the application which is now before this court. The defence therefore fails at this stage.
16. Under Article 159 (2) (d) of *the Constitution* the court is obligated to dispense justice without undue regards to procedural technicalities. This court is further obligated by the provisions of Section 47 of the *Law of Succession Act* to entertain any application and determine any dispute under the *Law of Succession Act* and pronounce such decrees and make such orders therein as may be expedient. Under Rule 73 of the Probate and Administration Rules this court is empowered to invoke its inherent power and to make such orders as may be necessary for the ends of justice to meet. The Halsbury's Laws of England (4th Edition (9th Re-Issue), Pg. 33, para 52.) defines civil contempt as follows;

“...disobedience to process is a civil contempt of court to refuse or neglect to do an act required by a judge or order of the court within the time specified in the judgment order



requiring a person to abstain from doing a specified act, or to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction...”

17. The court in *Milka Wangoi Kamau & another v Habby Misoga Lugadiru* [2014] eKLR citing the case of *Ringera and 2 others vs. Muite and 10 Others HCC at Nairobi, Civil Suit No. 1330 of 1991*, the Learned Judge reiterated that the main salient features of disobeying court are:

- a. The contemnor must be aware of the existence of the court order.
- b. There must be an existing court order capable of being disobeyed.
- c. Breach thereof must be proved

18. Civil contempt proceedings, though rooted in civil law, also carry criminal consequences since they may result in the loss of a person’s liberty. For that reason, the evidence presented must be particularly cogent. While the general standard in civil cases is proof on a balance of probabilities, at the stage of committal the applicable threshold may rise to that of criminal cases proof beyond reasonable doubt. In *Milka Wangoi Kamau & another v Habby Misoga Lugadiru* [supra] it was held that:

“As much as civil contempt is an aspect of civil litigations it has got criminal implications/ inclinations and hence its threshold is not merely founded on balance of probability but at times it must be proved beyond reasonable doubt. Therefore, the committal law is to the effect that the standard of proof required at committal proceedings is the criminal standard”

19. The applicable standard of proof, is above a balance of probabilities, given the criminal connotations of contempt proceeding. In *Mutitika vs Baharini Farm Ltd* [1985] KLR 229, 234, the Court of Appeal made this clear thus:

“...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...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi- criminal in nature.”

20. On the evidence filed the Court finds as follows: that the Respondents were validly ordered on 28th October 2014 to render a true and just account prepared by a recognized Certified Public Accountant Kenya and to file same before the Deputy Registrar within sixty days. That order remains on the record. The Applicants have also averred and the Respondents have not credibly controverted that the ordered account has not been filed and that the Respondents have not complied with the express directions of the Court. The Applicants have therefore established a prima facie case of non-compliance.

21. The law is very clear that a party whom a court order is directed to by a competent court has no choice other than to first comply with the order even if to the party the order is irregular or before taking any step, if not sure of the import of the court order, the party is supposed to rush back to court and explain its difficulties in complying with the particular court order but not to disregard the order. In *Trusted Society of Human Rights Alliance Vs Cabinet Secretary for Devolution and Planning & 3 others* [2017] eKLR the court held as follows:

“The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people. A Court order



is binding on the party against whom it is addressed and until set aside remains valid and is to be complied with”

22. The law is very clear on the duties of Administrators appointed under section 66 as read with section 83 of the *Law of Succession Act*. Essentially, any Administrator who covenants to administer the estate of a deceased person is presumed to have taken oath to fulfill or to perform the following duties;

83. Duties of personal representatives

Personal representatives shall have the following duties—

- (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

23. It appears from the record that the Administrators of the intestate estate of the deceased herein appointed are not reading from the same screen in so far as the provisions of section 83 of the *Law of Succession Act* cited above are concerned. The Applicants have produced a sworn statement averring non-compliance with the 2014 order. The 2014 order required filing of a Certified Public Accountant Kenya-prepared statement within 60 days and freezing of specified bank accounts until compliance. The Respondents have not placed before the Court a filed account nor evidence that the



bank account freeze was lifted by Court order following compliance. On the material before the Court the Applicants have established a prima facie case of non-compliance.

24. In order to constitute a contempt of court for which any of the Administrators duly appointed by the court as petitioned within the procedural requirements of the law, there must be willful disobedience to do something which he or she has been ordered to do. Talk of contempt, nothing will be far from the truth as demonstrated by the Applicants in the instant application. This same circumstances can be better explained by the comparative jurisprudence in the case of AG Vs Times News Papers (1973) 3 ALL ER 45, the Court articulated the following principles that: -

“In any civilised society it is a function of Government to maintain courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligations towards one another individually and towards the state as representing the society as a whole. The provision of such a system for the administration of justice by courts of law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another. Contempt of Court is a generic term descriptive of the conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms.”

25. The Court of Appeal in *Abdi Satarhaji & Another v Omar Ahmed & Another* [2018] eKLR defined contempt in the following terms: -

“Contempt of court is constituted by conduct that denotes willful defiance of or disrepute 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 proceedings.” The court in emphasizing the need to obey court orders held as follows: -

“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. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

26. In *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR, the court stated that:

“The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him”

27. The jurisprudence above underscores that courts must remain alert to ensure no party to a suit evades responsibility after disobeying a decree or order duly brought to their attention. If litigants were permitted to disregard court orders at will, the administration of justice and the enforceability of judicial pronouncements would be undermined, as has been illustrated by the conduct of the Applicants in this Succession Cause. Ultimately, this touches on the integrity of and adherence to the law by all citizens, regardless of social standing. Moreover, Article 10 of *the Constitution* enshrines



national values and principles of governance which are binding on state organs, state officers, public officers, and all persons in the discharge of their duties or implementation of policies.

28. The decision in this matter indicates that the Respondents were validly ordered on 28th October 2014 to render a true and just account prepared by a recognized Certified Public Accountant, Kenya and to file same before the Deputy Registrar within sixty days. That order remains on the record as it has been more than 10 years since this Honourable Court ordered the respondents to do so. The Administrators are by law agents of the court in the administration of the estate by dint of the law. Therefore, any disobedience in executing the final decree of the court is punishable as contempt of court on the face of the record.
29. As a consequence, therefore: -
- a. A notice to show cause be and is hereby issued to the Respondents namely Jane Wangari Kabaiko, Joseph Wainaina Kabaiko and Grace Wambui Kabaiko to appear in court on the 6th of October 2025 to purge the contempt or be committed to jail for obstructing the course of justice.
 - b. A declaration be and is hereby made that the administration of this estate has since been in violation of section 76 of the *Law of Succession Act* and on the due date scheduled by this court, the administrators are put on notice as to why it would not be just, fair and proportionate to revoke the grant if a fresh one was ever issued following the decision by Kimondo J dated 28th October 2014.
 - c. That in the event there was non-compliance of the court orders on the appointment of new administrators under section 66 of the *Law of Succession Act*, any such aftermath proceedings shall be considered as voidable.
 - d. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 29TH SEPTEMBER 2025

.....

R. NYAKUNDI

JUDGE

