



**In re Estate of Michael Mutiso Sila (Deceased) (Succession Cause E008 of 2023) [2025] KEHC 13701 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE E008 OF 2023**

**EN MAINA, J**

**SEPTEMBER 25, 2025**

**IN THE MATTER OF THE ESTATE OF MICHAEL MUTISO SILA(DECEASED)**

**BETWEEN**

**BLANCHE NZISA MUTISO ..... 1<sup>ST</sup> APPLICANT**

**WILLIAM SILA MUTISO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MACKENZIE MUTISO SILA ..... 1<sup>ST</sup> RESPONDENT**

**ALEX NDAMBUKI MUTISO ..... 2<sup>ND</sup> RESPONDENT**

**LANCASTER MUTUNE MUTISO ..... 3<sup>RD</sup> RESPONDENT**

**WASHINGTON SILA MUTISO ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before this court is an application by way of the Notice of Motion dated 2<sup>nd</sup> December 2024. The same seeks the committal of the respondents to civil jail for a period of six months for contempt of court orders issued on 10<sup>th</sup> may 2024 and 7<sup>th</sup> November 2024.
2. The application is supported by the Affidavit of the 2<sup>nd</sup> Applicant sworn on 2<sup>nd</sup> December 2024 wherein he deposes that the application has been brought before court on grounds that the Respondents are in contravention of the court orders which restrained them from intermeddling with the estate, evicting and denying any of the beneficiaries of the estate access to the estate. He deposes further, that the respondents have denied the Applicants access to their house and destroyed a coffee plantation belonging to the 1<sup>st</sup> Applicant and that the Respondents will continue to intermeddle with the estate and deprive the other beneficiaries of their rightful share.



3. The application was opposed through a replying affidavit sworn by the 1<sup>st</sup> Respondent on 24<sup>th</sup> February, 2025. The 1<sup>st</sup> Respondent deposes that he was not in contravention of the court orders and that on the contrary it is the Applicants who were trespassing into the coffee plantation planted on parcel No Machakos/Kiandani/913 where the deceased lived with his late 1<sup>st</sup> wife. That the 2<sup>nd</sup> Applicant had already moved out of the alleged home and built a home in Kangundo where he has lived for over 20 years. He deposes further, that he is law abiding and respects court orders. He urged this court to dismiss the application.

### **Submissions**

4. The application was canvassed by way of written submissions with Counsel for the Applicants arguing that the Respondents have deliberately refused to comply with the orders of the court hence in contempt. Counsel placed reliance on the case of Econet Wireless Kenya Limited vs Minister for Information and Communication of Kenya authority [2005] eKLR and the case of Sheila Cassat Issenberg & Another vs Anthony Machatha Kinyanjui [2021] e KLR
5. In response, Counsel for the Respondents, stated that there was no proof of the disobedience of the court orders by the 1<sup>st</sup> Respondent or any of the Respondents hence contempt was not proved. Reliance was made to the case of Teachers Service Commission v Kenya National Union of Teachers & 2 Others [2013] KEELRC 656 (KLR) and the case of Samuel M. N. Mweru& others vs National Land Commission & 2 Others [2020] e KLR.

### **Determination and Analysis**

6. This court has considered the application, the responses thereto, the rival submissions, the cases cited and the law. It has also perused the court record so as to bring itself to speed with the orders in issue.
7. On 10<sup>th</sup> May 2024, this court (Muigai J) made orders for maintenance of the status quo; each beneficiary was to have access to their houses which were on the property subject of the succession cause and that included the grandson of the deceased. The Administrators of the estate were also restrained from intermeddling with the estate whether by chasing or evicting the beneficiaries or destroying the coffee farm. The restraining orders were to persist pending the hearing and determination of the summons for confirmation of grant. The Applicant allege that the Respondents have willfully and intentionally failed to obey the above orders as they have deliberately denied them access to the farm and homes in property Machakos/Kiandani/913 and that the actions by the respondents amount to intermeddling with the deceased Estate and their actions are detrimental to the rest of the beneficiaries of the estate. The 1<sup>st</sup> Respondent however accuses the 1<sup>st</sup> Applicant of trying to dispose the property of the deceased totaling 22 acres which sale was overturned by court in ELC case No 164 of 2009.
8. It is not in dispute that the 1<sup>st</sup> and the 2<sup>nd</sup> applicant are the 2<sup>nd</sup> wife to the deceased and the grandson to the deceased respectively. It is not disputed that the 2<sup>nd</sup> Applicant resides on a part of property Machakos/Kiandani/913. It would therefore be a violation of the orders of the court to deny either him or the 2<sup>nd</sup> Applicant access to their homes and the same would also apply to any attempt to destroy their coffee farm.
9. Contempt occurs where there is a disregard of or disobedience to the orders of court.



10. In the case of Econet wireless Kenya Limited Vs minister for information & Communication of Kenya & Another [2005] KEHC 1767 (KLR), which was relied upon by the applicants and the 1<sup>st</sup> respondent, the court stated as follows;

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by the 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 void.”

11. Similarly in the case of Teachers Service Commission v Kenya National Union of Teachers & 2 others ( supra ) Ndolo J observed;

“The reasons 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 safeguard the rule of law”

12. Again, in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR) the Court stated that

“ 35. 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. Article 159(1) of *the Constitution* provides that judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under *the Constitution*. Under Article 10(1) of *the Constitution* the national values and principles of governance in the Article bind all State organs, State officers, public officers and all persons whenever any of them (a) applies or interprets *the Constitution*; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions. Under clause (2) (a) of the same Article the national values and principles of governance include the Rule of Law.

36. It is a crime unlawfully and intentionally to disobey a court order.<sup>[35]</sup> This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court.<sup>[36]</sup> The offence has in general terms received a constitutional ‘stamp of approval,’<sup>[37]</sup> since the Rule of Law – a founding value of *the Constitution* – ‘requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained.’<sup>[38]</sup>

37. In the hands of a private party, the application for committal for contempt is a peculiar amalgam,<sup>[39]</sup> for it is a civil proceeding that invokes a criminal sanction or its threat. And while the litigant seeking enforcement has a manifest private interest in securing compliance, the court grants enforcement also because of



the broader public interest in obedience to its orders, since disregard sullies the authority of the courts and detracts from the rule of law.....”

38. Once the court order has been communicated to the person(s) against whom they have been made those persons are required to obey them. In this case the parties were duly notified of the orders through their respective Counsel. None of them claim not to have been made aware of the orders and clearly none came back to request for them to be reviewed and or vacated. The Applicants produced an affidavit sworn by the deputy OCS Machakos Police Station where he deposes that on 16<sup>th</sup> November 2024, together with his colleague PC Barnabus Kyalo, proceeded to the property in issue to implement that part of the order which required the Applicants have access to their homes but the Respondents would hear none of it to the extent that they assaulted the 1<sup>st</sup> Applicant. The OCS is an independent party who has no interest in the estate as to give falsehoods to this court. The picture he has painted in his affidavit is of a people who have no respect for the orders of the court and who have no intention of observing the same.

13. Applying the principles discussed in the cases cited above, to the facts of this case, I am persuaded that the Applicants have demonstrated that the Respondents willfully failed, refused and or neglected to obey the court order. In the premises I find the Respondents guilty of being in contempt of court. It is so ordered.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**E. N. MAINA**

**JUDGE**

In presence of:

Miss Ngulukyo for the Administrator/Applicant.

Mrs Oduor for the 1<sup>st</sup> Respondent.

Ms Wanjira for Ngugi for the Protestor.

