



**In re Estate of Sheldon Oyalo Mukhaye (Deceased) (Succession Cause 81 of 2017) [2025] KEHC 14023 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14023 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
SUCCESSION CAUSE 81 OF 2017  
LN MUTENDE, J  
OCTOBER 8, 2025**

**IN THE MATTER OF THE ESTATE OF SHELDON OYALO MUKHAYE (DECEASED)**

**BETWEEN**

**JULIUS OMBISI ..... 1<sup>ST</sup> APPLICANT  
ANDREW OKWAKO ..... 2<sup>ND</sup> APPLICANT  
WALTER OYALO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**LEAH NANGA ..... 1<sup>ST</sup> RESPONDENT  
NAOMI OYALO ..... 2<sup>ND</sup> RESPONDENT  
JAMES MUKHAYE OYALO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. On the 14<sup>th</sup> October, 2024, Ndung'u J granted orders thus;
  1. An interim order in terms of prayer 2 is allowed.
  2. The Respondents to file responses within 7 days,
  3. Mention on 23<sup>rd</sup> October, 2024 for directions.
2. Through general summons dated 9<sup>th</sup> January, 2025, the 1<sup>st</sup> and 3<sup>rd</sup> Applicants/Administrators seek the following orders;
  1. That the Respondents, Leah Nanga, Naomi Oyalo and James Muhyaye be cited for contempt of court of the order given on 14<sup>th</sup> October, 2024 and be committed to jail for six (6) months and/or they be condemned to pay fine and/or they be punished in any other manner that the court may deem fit and just.



2. That the costs of this application be paid by the Defendants
3. The application is supported by an affidavit deposed by the 1<sup>st</sup> and 3<sup>rd</sup> Applicants who depone that on 18<sup>th</sup> June, 2012 a grant of letters of administration was issued to the Administrators. In the judgment of 13<sup>th</sup> July, 2022, the court identified beneficiaries of the Estate and respective shares. That the court recognized 10 children of the deceased as the only beneficiaries of the Estate.
4. That on 3<sup>rd</sup> October, 2024, Josephine Ayuma died and there were plans by the Respondents to bury her remains on L.R. Bunyore/Emakunda/117 or any other parcel of land owned by the deceased's estate.
5. That a restraining order issued on 14<sup>th</sup> October, 2024, was served upon the Respondents on 15<sup>th</sup> October, 2024, and 22<sup>nd</sup> October, 2024, respectively; but, they proceeded to bury the remains of Josephine Ayuma on L.R. Bunyore/Emakunda/117.
6. That the action of the Respondents which was deliberate did lower the dignity and authority of the court and as such the only available option is to cite them for contempt and punish them accordingly.
7. In a reply thereto, the 3<sup>rd</sup> Respondent swore a replying affidavit where he avers that they were not served with the court order. That he Applicants attended the burial of Josephine Ayuma and even addressed the mourners present as children of the bereaved family and at no time did they indicate that they had a court order stopping the burial.
8. That the application is intended to delay the distribution of the Estate of the deceased despite the matter having been concluded on 13<sup>th</sup> January, 2023.
9. That the burial permit was issued by Nelson O. Siatikho the Assistant Chief on 19<sup>th</sup> October, 2024, who even attended the burial and addressed the mourners but did not mention anything about existence of the court order. And, that the court order was concealed from them by the 1<sup>st</sup> and 3<sup>rd</sup> Applicants with the intention of intimidating them from pursuing their rightful share and executing the application dated 15<sup>th</sup> August, 2024.
10. The 2<sup>nd</sup> Respondent swore an affidavit in response where she states that Josephine Ayuma was a mother to the three of them (Respondents) hence they are entitled to a share of L.R. No. Bunyore/Emakunda/117 as per the certificate of confirmation of grant dated 13<sup>th</sup> July, 2023. That their mother was buried on the portion of land she occupied since marriage (1966) just outside her boma as per the Luhya Customs and the application to stop her burial was made in bad faith.
11. That the 3<sup>rd</sup> Applicant's mother Karen Ayoma was equally buried on the same parcel of land outside her boma and none of the children of Sheldon Oyalo raised an objection.
12. The 2<sup>nd</sup> Administrator Andrew Okwako swore an affidavit in support of the Respondents. He denied having authorized learned counsel Nderitu Komu & Company Advocates to file the applications dated 1<sup>st</sup> October, 2024 and 9<sup>th</sup> January, 2025, respectively. He also denied having instructed a process server to serve the Respondents with the court order issued on 14<sup>th</sup> October, 2024.
13. That there was no attempt by the 1<sup>st</sup> and 3<sup>rd</sup> Applicants or the process server to stop the burial of Josephine Ayuma by service. That his purported signature on the supporting affidavit dated 7<sup>th</sup> October, 2024, is a forgery. He denied appearing before Joel K. Sigilai Advocate at Nyahururu to swear the affidavit as he was at Bunyore where he resides on the day of mourning of his departed mother. That he last travelled to Nyahururu in 2011 and he has never met Advocate Nderitu Komu whom he denied knowing. That he would not have stopped burial of his mother and the burial permit was issued by the Assistant Chief, Nelson who did not mention existence of a court order.



14. The application was disposed through written submissions. It is urged by the Applicants through learned counsel Mr. Nderitu Komu that it is not in dispute that Josephine Ayuma is not a beneficiary of the Estate of Sheldon Oyalo Mukhaye (deceased), the court having delivered a judgment identifying the beneficiaries of the Estate and their respective shares. That when Josephine Ayuma died on 3<sup>rd</sup> October, 2024, there were plans to bury her remains on L.R. Bunyore/Emakunda/117 or any other parcel of land owned by the deceased Estate thus necessitating the filing of the summons, the application dated 7<sup>th</sup> October, 2024, seeking injunction orders restraining the Respondents from burying the remains of Josephine Ayuma on the said land. That on 14<sup>th</sup> October, 2024, restraining orders were issued by the court which were served on the 2<sup>nd</sup> Respondent through her mobile No. 0725850196 a number she did not deny ownership.
15. That the 1<sup>st</sup> Respondent was served through his counsel and the Assistant Chief was also served with the orders. Therefore, the Respondents have deliberately and intentionally decided to lower the dignity and authority of the court. In this regard, reliance is placed on [\*Bryce Broadcast and Technologies \(K\) Ltd v Makotsi & Another\*](#) (Misc. Civil Application No. E032 of 2023) [2024] KEHC KLR (27 February, 2024) where the court cited [\*Koilel & 2 Others v Koilel & Another\*](#) (Civil Appeal E002 of 2021) [2022] KEHC 102288 (KLR) (30 June, 2022) judgment where the court discussed essential elements of contempt as follows;

“Judicial borrowing from contemporary jurisdiction: in order to succeed in civil contempt proceedings, the Applicant has to prove; (i) the terms of the order; (ii) Knowledge of these terms by the Respondent; and (iii) Failure by the Respondent to comply with the terms of the order (*Kristen Carla Burchell vs Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005).

I have considered the proceedings herein as well as the orders contained in the impugned ruling. The Court record is clear that on the March 30, 2021 when the orders were issued, there was appearance for both parties.

The jurisprudence now favors knowledge of the existence of Court orders as opposed to strict personal service. In the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR the Court of Appeal posed the question as to whether knowledge of a Court order or judgment by an Advocate of the alleged contemnor would be sufficient for purpose of contempt proceedings and answered the question in the affirmative stating: -“We hold the view that it does. This is more so in a case as this one where the Advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an Advocate appears in Court on instructions of a party, then it behooves him to report back to the client all that transpired in Court that has a bearing on the clients’ case...”

16. It is urged that the Respondents deliberately and intentionally decided to disobey the court order, despite being served. By proceeding to bury Josephine Ayuma on L.R. Bunyore/Emakunda/117 they are guilty of contempt. Also cited is [\*Republic v Mwaura & 12 Others; Obura & Another \(Ex-parte\)\*](#) (Application 126 of 2020) [2024] KEHC 44 (KLR) Judicial Review (15 January, 2024) (Ruling) where the court stated that;

“Disobedience of a court order or judgment is the foundation for contempt of court proceedings against the contemnor. It is, therefore, a necessary prerequisite that before one is held to be in contempt, it must be demonstrated that he was aware of the order or judgment he is alleged to be in contempt of. In other words, proof of service of the order or judgment



is necessary unless, for reasons to be stated, the court dispenses with service of the order or judgment on the alleged contemnor.”

17. It is submitted by learned counsel Mr. Waichungo that the process server was instructed to serve the 2<sup>nd</sup> Respondent and the Assistant Chief but not the 1<sup>st</sup> and 3<sup>rd</sup> Respondents and he did not make any attempt to serve them with the order. That the 2<sup>nd</sup> Respondent denies having been served and it's not explained where the process server got the telephone number from. And, that the 2<sup>nd</sup> Respondent was at home but the process served did not attempt to serve her physically.
18. That the 1<sup>st</sup> and 3<sup>rd</sup> Applicants concealed existence of the court order with the sole intent of filing the present application to harass and intimidate the Respondents from pursuing their share of the estate despite having been concluded on the 13<sup>th</sup> July, 2023.
19. That the purported screenshots in proof of service though not attached are not admissible for non-compliance with the mandatory requirement of Section 78A and 106B of the *Evidence Act* as stated in *Mwaganda v Mbugua* (Civil Case E004 of 2022) [2022] KEHC 17091 (KLR)
20. Arguing further that there was no proof of service, reliance was placed on *Kioni & 3 Others v National Disciplinary Committee of the Jubilee Party & 2 Others* (Civil Appeal E630 of 2023) (2024) KEHC 11409 (KLR) (CIV) (30 September, 2024) (Ruling) where the court held that;

“ 16. A careful review of the court orders of 13<sup>th</sup> July 2023 reveal that they did not expressly prohibit other qualified individuals within the Party's leadership structure, such as the Deputy Secretary General from performing necessary administrative functions aligned with their roles. The court orders focused on preserving the then existing leadership titles and designations for the period stated but did not state that the functions associated with these roles could not be delegated to or performed by other qualified persons where necessary. Indeed, the 2<sup>nd</sup> Respondent's letter dated 24<sup>th</sup> October 2023 and received by the Nairobi City Council Assembly on 20<sup>th</sup> November 2023, merely communicated the NEC's resolutions. Notably, the Applicants have not demonstrated how this action interfered with the leadership structure of the Jubilee Party or violated the court order. Additionally, they have not shown any provision in the Party's Constitution or regulations that prohibits or bars the 2<sup>nd</sup> Respondent from authoring letters or communicating on behalf of the Party when necessary in his capacity as a member of the NEC and Deputy Secretary General. Furthermore, the Applicants did not provide any evidence that the 1<sup>st</sup> Applicant had been removed as the Jubilee Party's Secretary General or that his authority was undermined by the 2<sup>nd</sup> Respondent's actions.

17. It is imperative to note that contempt proceedings are quasi criminal in nature and require a high standard of proof due to the serious consequences involved such as loss of liberty. Since the Applicants are the ones who alleged contempt of the court orders, the burden of proof lay on them to demonstrate that the 2<sup>nd</sup> Respondent's act of authoring the letter violated the court orders of 13<sup>th</sup> July 2023. Upon consideration, the court finds that the Applicants have failed to sufficiently demonstrate that the 3<sup>rd</sup> Respondent willfully and deliberately disobeyed the said court orders, or at all.



18. For the foregoing, the court finds no merit in the 1<sup>st</sup> to 3<sup>rd</sup> Appellants' Notice of Motion dated 21<sup>st</sup> November 2023. The same is dismissed with an order that each party bears their own costs.”
21. I have considered the summons, affidavits in support and opposition, annexures thereto and rival submissions. It is the duty of the Applicants who allege to demonstrate the fact of the Respondents having disobeyed the court order to ensure justice. Elements of contempt of court were stated in *Samuel M.N. Mweru & Others v National Land Commission & 2 Others* [2015] eKLR where it was held that;
- “It is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors.”
22. On the issue whether there was in existence of a court order which was lawful, clear and unambiguous. This is a succession cause where the parties were wrangling over distribution of the Estate. Through a judgment dated 13<sup>th</sup> July, 2023 the court identified the ten (10) children of the deceased as beneficiaries. They are:
1. James Mukhaye – (1<sup>st</sup> House)
  2. Joel Mukhaye (2<sup>nd</sup> House)
  3. Julius Ombisi
  4. Leah Nanga
  5. Naomi Oyalo (3<sup>rd</sup> House)
  6. Andrew Okwalo
  7. Edna Oyalo
  8. Harun Oyalo (4<sup>th</sup> House)
  9. Walter Oyalo
  10. Sheldon Mukhaye
23. On 7<sup>th</sup> October, 2024, the Applicants through the firm of Nderitu Komu & Co. Advocates sought issuance of a temporary injunction against the Respondents, members of their families and family members of Josephine Ayuma from burying her remains on L.R. Bunyore/Emakunda/117 or any other parcel of land owned by the deceased Estate. The basis being that since the certificate of confirmation was yet to be executed none of the beneficiaries could have a claim on the assets of the Estate.
24. At the outset an interim order was granted and the Respondents were granted time to file responses within 7 days. According to the order, a temporary injunction was issued as prayed where the Respondents were restrained from burying the remains of Josphine Ayuma on L.R. Bunyore/Emakunda/117 or any other parcel of land owned by the deceased's Estate. Therefore, there was an existence of a court order that was apparent and indeed clear. The remains of Josphine Ayuma were not to be buried on the Estate of the deceased.
25. This brings us to the issue whether the alleged contemnors were notified of the terms of the order. When the matter came up on 14<sup>th</sup> October, 2024 the 1<sup>st</sup> Respondent (Leah Nanga) and 2<sup>nd</sup> Respondent



(Naomi Oyalo) were indicated as having been in person while the 3<sup>rd</sup> Respondent (James Mukhaye Oyalo) was represented by learned counsel Martin Waichungo. The court order reads;

“ Court – An interim order in terms of prayer 2 is allowed. The Respondents to file responses within 7 days.

Mention on 23<sup>rd</sup> October, 2024, for directions.”

26. An order was subsequently extracted and signed by the Deputy Registrar of the High Court on 15/10/2024. An affidavit of service was filed by Bernard Mwangi King'ori a process server who avers that he served the 2<sup>nd</sup> Respondent, Naomi Oyalo by Whatsapp through her mobile No. 0725850196 with the court order. The 2<sup>nd</sup> Respondent denies having been served.
27. Order 5 Rule 22 c of the *Civil Procedure Rules* permits the use of service of court summons through mobile messaging but there are conditions attached. There is a requirement of a delivery receipt. To prove service, the process server did attach evidence of the delivery receipt indicating the message sent on 15<sup>th</sup> October, 2024 at 3.08pm had only a single tick showing that the message was sent to an individual named Naomi Oyalo. Double tick would have established it was delivered and preferably blue ticks would have confirmed the message accompanying the document was read.
28. Another requirement would have been for the document to be sent to the Respondent's most recently and actively used phone number. There was need to prove that the message actually reached Naomi, the intended recipient. Other than the number being indicated there was absolutely nothing to establish ownership of the number.
29. It is averred that the Assistant Chief Nelson was served with the order through Whatsapp mobile No. 0714XXXX21. There is a screenshot message with double ticks but being in black and white there is no proof they were in blue colour to prove the message was read.
30. However, there is a letter stated to be authored by Nelson Siatucho stating that Josephine Oyalo Ayuma was buried on 19<sup>th</sup> October, 2024 on land No. 117 East Bunyore Emakunda registered under Sheldon Oyalo Mukhaye, which “happened against a court order stopping the same”.
31. There was no service upon the 1<sup>st</sup> Respondent who acted in person when the matter came up on 14<sup>th</sup> October, 2024. For the 2<sup>nd</sup> Respondent, he was represented by learned counsel, Martin Waichungo and service was through his firm of advocates. There has been no repartee to the same hence knowledge of the same is not outrightly denied.
32. The next issue would be whether there was willful and intentional disobedience of the order. Circumstances of each case of contempt should be treated according to its own facts. Josephine was the mother of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as well as the purported 2<sup>nd</sup> Applicant, persons entitled to shares of LR No. Bunyore/ Emakunda/117. She was buried on a portion of land stated to have been occupied by herself since marriage in 1966.
33. The question would be what the impact of disobedience for those who fully understand the order would be. What would have been fair in the circumstances? Considering the allegation not denied that the 3<sup>rd</sup> Applicant's biological mother herein was equally buried on the same parcel of land outside her 'boma' it would not be prejudicial to inter the mortal remains on the portion the Respondents were entitled to.
34. From the foregoing, all elements of contempt of court must be strictly proved. Looking at the circumstances that prevailed, where it is stated that even the Applicants took part in the ceremony



honouring their departed step-mother, it's unlikely that there was deliberate disobedience. Due to the missing element, the contempt application fails, and, is dismissed.

35. Being family, each party to bear their own costs.

36. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF OCTOBER, 2025.**

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**L.N. MUTENDE**

**JUDGE**

