In re Estate of Gerald Musau Kilili (Deceased) (Succession Appeal E003 of 2023) [2025] KEHC 15189 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15189 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

SUCCESSION APPEAL E003 OF 2023

RC RUTTO, J

OCTOBER 23, 2025

IN THE MATTER OF THE ESTATE OF GERALD MUSAU KILILI (DECEASED)

BETWEEN

JACQUILINE MWENDE KAMWANZA ..... APPELLANT

AND

PHILIP MULEI KILILI ..... 1ST RESPONDENT

ANDREW KILILI MULWA ..... 2ND RESPONDENT

BRENDA MASISTA MULINDI ..... 3RD RESPONDENT

RULING

1. By Notice of Motion dated 10th April 2025, the appellant invoked the provisions of sections 1A, 1B and 3A of the *Civil Procedure Act*, order 40 rule 3 of the Civil Procedure Rules and sections 3, 4 (1) (a), 5, 28 and 34 of the *Contempt of Court Act*, seeking the following orders:

    1. That summons be issued against the respondents to appear before the court and show cause why they should not be committed to civil jail for such term as the court may deem just;

    2. That the respondents be cited for contempt of court and be committed to civil jail for a term of six (6) months until they comply with the orders of this Honourable Court issued on 17th January 2025;

    3. That the respondents purge their contempt by depositing all the rental proceeds collected from property known as L.R. No. 13767/118 Nairobi in court;

    4. Any other orders this Honourable Court deems fit;

    5. That the costs of this application be provided for.

2. The application is based on the grounds set out in its face and supported by the appellant/applicant's supporting affidavit. The facts giving rise to the application are that, by ruling dated 17th January 2024, the appellant's Notice of Motion dated 24th January 2023 was allowed. The court directed the parties to open a joint reputable bank account, held in the names of their respective counsel for the deposit of rental income from the property known as Nairobi L.R. No. 13767/118. The ruling was delivered in the presence of both parties' counsel.

3. In compliance with the court's directive, the appellant's counsel obtained bank account opening forms from Equity Bank. He completed his portion of the forms and forwarded them to the respondent's counsel along with the resolution to open a joint account, vide a letter dated 28th February 2024. The documents were physically delivered upon the respondents' advocates on 6th March 2024 who acknowledged receipt by signing and stamping on the forwarding letter. A follow up reminder was sent via email on 20th March 2024.

4. On 18th March 2025, when the matter came up in court, the appellant's advocate raised the issue of non-compliance by the respondents. The court granted the respondents 14 days to comply. However, on 25th March 2025, the appellant received a letter from the respondents' counsel requesting the bank account opening forms, despite the fact that they had already been sent on 6th March 2024. The appellant stated that this request was bizarre and evasive.

5. The appellant urged this court to allow the application for the following reasons: court orders must be obeyed to uphold the rule of law; court orders are not issued in vain; the respondents had failed to submit their portion of the bank application forms and were deliberately evading compliance; the terms of the orders granted were unambiguous; it was fair and in the interest of justice that the orders sought be granted; and if the application is not allowed, the appellant and her children stood to be denied their rightful share of the deceased's estate.

6. The application is opposed. The respondents filed a joint replying affidavit sworn by the 1st respondent on 22nd April 2025. They urged the court to dismiss the application frivolous, scandalous and vexatious, arguing that their advocates had written to the appellant's counsel on 25th March 2025 requesting the bank application forms but the request was declined.

7. The respondent further claimed that the property had been neglected and was not properly maintained, and therefore no rent had been collected. They stated that they only entered into a tenancy agreement on 8th April 2025 with Scolastica Mwende Mausya after undertaking renovations. As such they argued that they were not in contempt, as no rent had been received prior to April 2025. They conceded that they would deposit rent from the month of April 2025 onwards and prayed that the application be dismissed.

8. In response, the appellant file a further affidavit sworn on 30th April 2025. She disputed the respondent's claims, asserting that they had been collecting rental income from the property for their own benefit. She urged that the respondents' explanation was an afterthought, as they had never communicated any challenges or predicament since the ruling was delivered on 17th January 2024. Moreover, the respondents had not sought to appeal or review the court's orders.

9. The appellant also contended that the tenancy agreement dated 8th April 2025 was fraudulent. She urged that no personal representative had been appointed by the court, and therefore the respondents action amounted to intermeddling with the estate. She further noted that Fransica Mweu, named as the landlord in the agreement was a stranger to the proceedings and lacked the capacity to act on behalf of the estate. She prayed that the application be allowed.

10. The application was canvassed by way of written submissions. The appellant filed her submissions dated 9th June 2025 summarizing the application and supporting affidavits. She argued that the respondents had violated the court orders dated 17th January 2024. She cited several decisions in support of that argument. She emphasized that the terms of the court's order were determinate and not open to alternative interpretation and that the respondent had not disputed those terms.

11. The appellant submitted that the respondents had full knowledge and proper notice of the terms of the court order. Despite the strict timeless issued on 25th March 2025, the respondents are yet to comply. She argued that the respondents' conduct whether by action or inaction was deliberate, and therefore the orders sought to be granted.

12. The respondents filed written submissions dated 2nd October 2025. Citing several decisions, they contended that they were not in contempt, as there was no willful or deliberate disobedience of the court's order. They reiterated the contents of their replying affidavit urging the court to dismiss the application on the basis that their failure to comply was circumstantial rather than deliberate.

13. I have considered the application, the supporting and opposing affidavits and annexures there to. The applicant seeks contempt orders arising from the ruling of this court dated 17th January 2024. Specifically prayer (b) of that ruling directed parties as follows:

> " That a preservatory order be and is hereby issued directing all rents collected from property known as L.R. No. 13767/118 be deposited directly/digitally in a joint account held in the names of both advocates herein at a reputable commercial bank."

14. Section 5 of the *Judicature Act* grants this court powers to punish for contempt of court. The appellant argued that the respondents were in breach of the court's orders because as it stood, no joint bank account had been opened. She stated that she had sent the bank application forms to the respondents on 28th February 2024, 6th March 2024 and again on 24th March 2024, but received no response on their end. That even after the court gave further orders on 18th March 2025, the respondents remained defiant. She further alleged that the respondents were in contempt for collecting rent proceeds and using them for their own benefit.

15. In response, the respondents claimed that the property was dilapidated, and unfit for tenancy, and therefore no rental income had been generated. They admitted that they would begin depositing rent from April 2025, asserting that no rent had been collected prior to that date. They denied any willful disobedience, stating that they had requested for the bank forms on 25th March 2025 but their request was ignored.

16. It is un dispute that this court issued orders on 17th January 2024 directing the parties to open a joint bank account at a reputable commercial bank. The purpose of the bank account was to preserve the rental income collected from property known as L.R. No. 13767/118. It is also clear that the orders were never varied or set aside. Furthermore, on 18th March 2025, the court granted the respondents 14 days to comply. As of now, no joint account has been opened in the joint names of the counsel and no rent has been deposited since the issuance of the orders that is 17th January 2024. The question then is were the respondents in contempt?

17. The legal threshold for contempt proceedings was articulated in the case of Koilel & 2 others vs Koilel and another [2022] KEHC 10288 (KLR). To succeed in civil contempt proceedings, the applicant must demonstrate three elements conjunctively; the terms of the order, the respondent's knowledge of those terms and failure by the respondent(s) to comply with the terms of the orders.

18. In this case, the respondents do not deny having knowledge of the orders. The appellant pointed out that both counsels were present when the ruling of 17th January 2024 was delivered a position confirmed by the Court record. Thus, the respondents were fully aware. The Court of Appeal in Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] KECA 945 (KLR) held as follows regarding knowledge of a party's counsel and this court is bound by that decision:

> "Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such 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 behoves him/her to report back to the client all that transpired in court that has a bearing on the client's case.
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> This is the position in other jurisdictions within and outside the commonwealth.
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> In addressing the issue whether service of a judgment or order on the solicitor for the Ministers is sufficient knowledge of the order on their part to found liability in contempt; the Supreme Court of Canada in Bhatnager v. Canada (Minister of Employment and Immigration), [1990] 2 S.C.R. 217 at p. 226, LJ Sopinka, held that: -
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> "In my opinion, a finding of knowledge on the part of the client may in some circumstances be inferred from the fact that the solicitor was informed. Indeed, in the ordinary case in which a party is involved in isolated pieces of litigation, the inference may readily be drawn. In the case of Minister's of the Crown who administer large departments and are involved in a multiplicity of proceedings, it would be extraordinary if orders were brought, routinely to their knowledge, in such a case there must be circumstances which reveal a special reason for bringing the order to the attention of the Minister." (Emphasis by underline.

The Court went on to state that;

> "On the cases, there can be no doubt that the common law has always required personal service or actual personal knowledge of a court order as a pre-condition to liability in contempt....Knowledge is in most cases (including criminal cases) proved circumstantially, and in contempt cases inference of knowledge will always be available where facts capable of supporting the inference are proved.(See Avery v. Andrews(1882) 51LJ Ch. 414) (Emphasis by underline)
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> In United States v. Revie 834 F.2d 1198, 1203 (5th Cir. 1987) the court held that the defendant had adequate notice of a show cause order because his attorney was on notice. Therefore, a client may be similarly "served" with a court's order by his attorney's communication of its contents and this communication is presumed if the attorney has knowledge of the order."

19. It is therefore evident that the respondents were aware of the court's order. This court also notes that the appellant furnished the respondents with bank application forms through a forwarding letter dated 28th February 2024. The forms were physically delivered on 6th March 2024 and the respondents acknowledged receipt by signing and stamping the letter. That fact of receiving the letter physically and the emails were not disputed.

20. Additionally, the appellant sent a reminder on 20th March 2024. Yet it was not until 25th March 2025 over a year later, that the respondents emailed the appellant, requesting the same forms. Instead of forwarding the already signed forms or proposing an alternative bank, they asked for the appellant to resend the forms. As rightly pointed out by the appellant, it the respondent were genuinely intent on complying, they could have taken action, submitted forms from another reputable bank or simply returned the previously received forms. Their conduct suggests lack of candor and a deliberate disregard for the court's orders.

21. It is evident that the respondents were not genuinely interested in complying with the court orders. They have offered no credible explanation for their failure to open the joint account to deposit the rental proceeds as directed. Instead, they claimed that no rental income was received between January 2024 and March 2025. However, they provide no evidence to support these assertions. I am not persuaded by that argument.

22. It has been held by the Courts that unless and until a Court order is discharged, it ought to be obeyed. Indeed, the Court of Appeal in Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others, Civil Application No. Nairobi 247 of 2006 held that it was a fundamental tenet of the rule of law that Court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

23. In conclusion, I find that the respondents were fully aware of the court order contained in the ruling delivered in their presence on 17th January 2024. They wilfully and deliberately failed to comply with the orders issued therein.

24. Accordingly, I make the following orders;

    a. The 1st 2nd and 3rd respondents hereby are found to be in contempt of the court orders issue on 17th January 2024

    b. The 1st 2nd and 3rd respondent are to be committed to civil jail for a period of 30 days, suspended for 14 days to allow them to purge the contempt by fully complying with the orders issued

    c. Costs of this application is awarded to the appellant.

    It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 23RD DAY OF OCTOber 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant