



Osmond & 2 others (Suing as Administrators of the Estate of Keith Howard Osmond) v Banita Sisal Estates Limited (Civil Suit E077 of 2020) [2025] KEHC 15010 (KLR) (Civ) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT E077 OF 2020

JN MULWA, J

OCTOBER 23, 2025

BETWEEN

**SUZANNE OSMOND 1ST PLAINTIFF
GERALD OSMOND 2ND PLAINTIFF
PATRICIA HEATHER HAYES 3RD PLAINTIFF
SUING AS ADMINISTRATORS OF THE ESTATE OF KEITH HOWARD
OSMOND**

AND

BANITA SISAL ESTATES LIMITED DEFENDANT

RULING

1. The Defendant by its Application dated 15/05/2025 brought under Sections 1A(3), 1B, 3A and 63 of the *Civil Procedure Act* and Section 3(1) of the *Judicature Act*; and Order 51 Rule 1 of the Civil Procedure Rules seeks order:-
 - a. That the Honourable court do review, vacate and/or set aside orders given on 13/02/2025 and the plaintiff's application dated 3/07/2024 be dismissed with costs, and the funds held in A/C No. 2051xxxxx at Absa Bank Kenya PLC (Absa Plaza) be released to the Defendant Advocates (M/S T. O. K'Opere & Co.) forthwith.
 - b. That the plaintiffs and their Advocates be punished by this court for perjury, which amounts to contempt of court for misleading the court.
 - c. The costs of the application be paid by the plaintiffs to the defendant.



2. In support of the application, a supporting affidavit sworn by Tom. O. K'Opere Advocate for the Defendant/Applicant is filed alongside grounds stated at the face of the application.
3. The Applicant posits that the impugned orders were made upon the affidavit of Susanne Osmond sworn on 3/07/2024 that the Plaintiffs' Advocate had already deposited the entire decretal sum of Kshs. 3268,540.61 in a fixed Escrow Account opened with Absa Bank PLC on 6/05/2025 and funds deposited on 15/05/2024 in the account stated;
 1. That in allowing the plaintiffs' application dated 3/07/2024 granted orders that Tom O. K'opere Advocate should execute the Account activation forms with Absa Bank failing which the Deputy Registrar was to execute the forms on behalf of T. O K'opere & Co. Advocates upon noncompliance.
 2. By an email dated 20/02/25, Absa Bank indicated that the amount held in the Account was Kshs.3,265,084/= and not the decretal sum of Kshs.3,268,540/= and issued a Statement dated 25/02/25 showing that the amount was Kshs.3,265,084/= in the name of Coulson And Kurgat Advocates and not Coulson Harney & T.o. K'opere & Co. Advocates.
 3. The Defendant's Advocates immediately raised the Issue with the Plaintiffs' Advocates by a letter dated 04/03/25 and similarly wrote to the Court requesting for a Mention date before the Judge for appropriate Directions.
 4. The Plaintiffs' Advocates responded by an email dated 05/03/25 and a letter dated 13/03/25 indicating that the Correct Account was A/C No. 205xxxx and attached a Statement but the figure shown on the Statement was Kshs.3,265,084/= and not the Decretal Sum of Kshs.3,268,540.61.
 5. The Defendant's Advocates was shocked to receive subsequent email communication from Absa Bank dated 09/05/25 and 14/05/25 that the A/C No. 2051xxxxx was a Current Account requiring the Plaintiff's Advocates to fund the Account to cover for the a0pplicable Ledger charges contrary to the Ruling and Orders of the Hon. Lady Justice C. Meoli given on 31/01/24 and the subsequent Ruling and Orders given on 13/02/25.
 6. The Defendant's Advocates wrote to the Plaintiffs' Advocate on 15/05/25 after realizing that the Plaintiffs' had misled the Court into giving the Ruling and Orders of 13/02/25, which amounts to Perjury and Contempt of Court.
 7. From Inception, the Plaintiffs and their Advocates have been playing games with the Court and the Defendant's Advocates after failing to comply with the Orders of the Hon. Lady Justice C. Meoli given on 31/01/24 until May 2024 before filing the Application dated 03/07/24 which resulted in the Ruling and Orders given on 13/02/25 out of Deception and Perjury.
4. In opposition to the application, the Plaintiffs filed a replying affidavit sworn by Cecil Lazaro Kuyo, a partner in the firm of Conlson Harney LLP, Advocates for the Plaintiffs, essentially denying the accusations labelled against them , and further denying any act of perjury committed by the law firm; in the depositions as hereunder:-
 - i. Immediately following the delivery of the Ruling, we wrote to the Defendant's advocates through our letter dated 19th February 2025 attaching the instructions to transfer the funds held in the joint names of parties in account number 2051158205 to be signed by the Defendant's advocates. Annexed hereto at pages 1 to 2 of the exhibit marked CLK-1 is a copy of the letter dated 19th February 2025 from us to T.O. K'Opere & Company Advocates



- ii. As we waited for the Defendant advocates' response to our letter and noting the then fast approaching court's 14-day deadline for executing the instruction forms, we issued another letter dated 21st February 2025 attaching the same instructions, which were now partially executed by Bowmans to fix the funds into a fixed deposit account. Annexed hereto at pages 3 to 4 of the exhibit marked CLK-1 is a copy our letter dated 21st February 2025 addressed to T.O. K'Opere & Company Advocates
- iii. The Court's orders from the Ruling were explicit and clear. The Defendant's advocate was compelled by this Honourable Court to execute the instructions to fix the decretal sum into a fixed deposit account, which the Defendant's advocates had previously failed to do.
- iv. We eventually received back the executed instructions form on 24th February 2025 from T.O. K'Opere & Company Advocates to us. We thereafter moved quickly and had the decretal sum fixed in a fixed deposit account at Absa Bank Kenya PLC being Account No. 2051xxxxx under the joint names of Coulson Hamey LLP and M/s T. O. K'Opere & Company Advocates. In accordance with banking practice, the fixed deposit account had an underlying current account from which the decretal sums were applied towards the fixed deposit account. Annexed hereto at pages 5 to 9 of the exhibit marked CLK-1 is a copy of the statement of account for Account No. 2051xxxxx held jointly between the parties' advocates at the Absa Bank Kenya PLC.
- v. It therefore came as a surprise to us when the Defendant's advocates issued us with correspondence alleging that we had lied and/or committed perjury. We duly issued a response to the Defendant's advocates to clear this obvious misunderstanding of simple banking practice. Annexed hereto at pages 10 to 41 of the exhibit marked CLK-1 are the correspondence exchanged between the parties' advocates.
- vi. I wish to state as an officer of this Honourable Court that no deception, perjury or contempt has been shown by the Plaintiffs' advocates in supposed disregard of the Ruling as is alleged by the Defendant's advocates in the Application. As the exhibits contained in this affidavit bear out, the terms of the Ruling have been complied with and the decretal sum fixed in an interest earning joint account as ordered by Court. The parties will, from time to time, need to fund the current account that is linked to the fixed deposit account.
- vii. As is explained in the letters from us of 13th March 2025 and 21st May 2025, the shortfall in the decretal sum held in the fixed account in the amount of KES 3,456 is in relation to accrued bank charges for the amounts held in the current account that is linked to the fixed deposit account. These bank charges would not have accrued in the account had the Defendant's advocates executed the fixing instructions way back in May 2024 when the instructions were first shared with them.
- viii. The Plaintiff undertakes to top up the shortfall in the decretal sum currently held in the fixed deposit account in the sum of KES 3,456 together with any further charges that will be accrued on the current account that is linked to the fixed deposit account until the hearing and determination of the Plaintiff's intended appeal.
- ix. I am further aware that the delays caused by the Defendant's advocates in executing the fixed deposit account have denied both parties interest on the amounts fixed from the time that the funds were available on 15th May 2024 to the time when the funds were eventually fixed in the fixed deposit account on 27th February 2025. Annexed hereto at pages 42 to 45 of the exhibit marked CLK-1 is a copy of an email dated 27th February 2025 from Hellen Sikuku of Absa Bank Kenya PLC to the Plaintiffs and Defendants' advocates.



5. In rejoinder, the Applicant filed a supplementary affidavit sworn on 16/06/2025 in which the Advocate Tom O. K'Opere reiterates his averments in the supporting affidavit adding that the account opened by the Respondent was a current account from which they purportedly transferred to the fixed Deposit Escrow account a sum less than that was ordered by the court;
6. Further positing that no explanation is offered for the non-compliance with the court orders, including earlier orders of Meoli J. dated 31/01/2024, therefore reiterated that the Respondent Advocates misled the court without any justification to obtain orders of 13/02/2025 that he seeks to be set aside and funds in the account be released to the client forthwith.
7. The Defendant filed submissions in support of the motion dated 15/05/2025. I have not sighted any submissions by the Plaintiff. I have carefully considered the parties affidavit for and in opposition of the motion.

Analysis and Determination

8. In the orders of this court dated 13/02/2025, the court relied purely on the material placed before the court. It is evident that an account in joint names of advocates for the parties was opened at Absa Bank Kenya PLC and an account No. 2051xxxxx opened and by a consent letter dated 21/02/2025 the bank directed to transfer the funds therein Kshs. 3,265,084.00 placed in a fixed deposit account at interest rate of 9.60% for one year. In the court's view, the above having been done within 11 days of the court order was excusable so that the 2nd arm of the court order of 13/02/2025 could not be executed.
9. The court also notes that the account opening forms cited from the letter dated 4/03/2025 from the Deponent's Advocates to the Plaintiff's Advocates shows that the account opening forms were executed by the Defendant's Advocates on 18/02/2025. Further it is noted that the fixed joint Escrow Account in the Advocates names was created with a sum of Kshs. 3,268,540/= on 15/05/2024 by RTGS as stated in the account statements annexed as exhibit in the Plaintiff's replying affidavit. Further, it is evident that the said account was opened on 6/05/2024.
10. The shortfall of the decretal sum by a sum of Kshs. 3,456/- is well explained as due to normal banking charges at paragraph 8 of the replying affidavit – on the current Account that was linked to the fixed deposit account, which is a normal banking practice and procedure.
11. The Plaintiff admitted that the delay in the opening and depositing of the decretal sum caused the shortfall, which they are ready and willing to top up.
12. The court has perused the numerous letters exchanged between the two law firms in respect of the subject matter before the court particularly letters dated 18/02/2025, 19/02/2025, 21/02/2025 wherein the Plaintiff's showed their redress to deposit or transfer the decretal sum into the fixed deposit account which was eventually done on 15/05/2024. I agree with the Applicant (Defendant) that the Plaintiff's complied and deposited the decretal sum into the joint account out of time as granted by the order of Meoli J. dated 31/01/2024.
13. Granted, it was clearly un-procedural but this court's orders, upon the motion dated 3/07/2024 dated 13/02/2025 allowed the Plaintiff to deposit the decretal sum within a set period of time, which they did. By the said orders, the Plaintiff's were allowed more time to do what they ought to have done. The said orders have not been set aside or vacated.
14. The bottom line therefore is that in my view, despite the delay in depositing the decretal sum in a fixed joint account, it was eventually done, with both parties being denied interest from the fixed deposit account that could have accrued for the period of delay. The Plaintiff's conceded in their replying



affidavit being 15/05/2024 when the funds were available for deposit on 27/02/2025 when it was eventually transferred to the fixed deposit account.

15. The court notes that the deposit was to earn interest at 19.6% for the one-year period. The delay and loss in interest for the period ought to be borne by the Plaintiffs and/or their Advocates but at the conclusion of the Appeal, subject to the appeal being unsuccessful.
16. On whether the Plaintiffs and or/their Advocates committed actions of perjury and therefore liable to be cited for contempt of court in their motion dated 3/07/2024 that gave rise to the impugned court orders dated 13/02/2025 the court finds it difficult to hold the Plaintiffs liable. This is so because, the explanations given by the Plaintiffs in their replying affidavit has persuaded me to find otherwise; the main issue being the delay in depositing the decretal sum in the fixed escrow account within the period set out in court orders of Meoli J dated 31/01/2024, which delay has been rectified and the funds deposited to the escrow account.
17. Contempt of court is constituted by conduct that denotes willful defiance of/or disrespect 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 as held in the case of Robertson V. Her Majesty's Advocate, 2007, HCAC 63, and cited Sam Nyamweya (President) Robert Asembo (Vice president) Michael Esakwa (secretary general) officials of the Football Kenya Federation vs. Kenya Premier League Limited & 2 Others [2015] eKLR.
18. Contempt of court is an offence of a quasi-criminal nature and conviction has grave consequences. To that end therefore, the standard of proof of contempt proceedings must be higher than proof on a balance of probabilities.
19. The court in Re Maria Annie Davies [1889] 21 QBD 236 & 237 observed that the "Court in exercising its authority and jurisdiction of committing a party for contempt though being arbitrary and unlimited should be most and carefully watched and exercised, with the greatest reluctance and anxiety on the party for the judge to see that there is not other mode in dealing with persons brought before him....."
20. The above case was cited by the Court of Appeal in the case of Mutitika v. Baharini Farm Ltd; Civil Applications in Nai. 24 of 1986.
21. As to the matter of perjury labelled against the Plaintiffs and their Advocates, upon interrogation of the same, and more particularly the elements that constitute perjury as held in the case of James Mulinge v. Freight Wings & 3 Others [2016] eKLR being Knowingly giving false testimony touching on any matter which is material to any question then pending in the proceedings or intended to be raised in that proceeding; I cannot come to a finding that indeed the Plaintiffs Advocates knowingly and or otherwise gave false testimony in their application dated 3/07/2024.

Circumstances leading to the application upon which the alleged perjury was committed in my view, has been explained, and where it was necessary, like the delay in opening the joint escrow fixed deposit account explained; and amends offered.

The court has viewed and perused the bank statements in respect of the matter before the court, they do not lie. The action dates of each action in regard to the bank account are well tabulated.

22. For the foregoing, I find no reason to hold the Plaintiffs and or their Advocates guilty of perjury, more so, as to what is before the court is affidavit evidence only, in an interlocutory stage of the proceedings.
23. At the end, I find no sufficient proof of perjury and/or contempt of court orders to the required standard of proof. The following orders shall therefore issue:-



- a. The funds held in the joint fixed escrow account in the parties advocates names at Absa Bank Kenya PLC (Absa Plaza) (account no. provided) shall remain so held pending hearing and determination of the plaintiffs appeal or upon a court order being issued in regard to release of the same.
- b. The Plaintiffs shall deposit the shortfall of Kshs. 3,456/- in the fixed deposit account (above stated) within 30 days of this ruling
- c. The lost interest that ought to have accrued from the funds not deposited in the interest earning account by the Plaintiffs for the period 15/05/2024 to 27/02/2025 (to be prorated) shall be borne by the Plaintiffs at the conclusion of the Plaintiffs pending Appeal.
- d. Costs of the application shall be borne by the Plaintiffs to the Defendant.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 23RD DAY OF OCTOBER 2025.

JANET MULWA

JUDGE

