

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. E053 OF 2021
IN THE MATTER OF THE ESTATE OF DAVID MUTISYA
MAKUMBI(DECEASED)

**STELLAMARIS NDINDA NZIOKA,
LYDIA N. WAMBUA, AND
EUNICE NZILANI MUTISYA (Administrators of The Estate
of
David Mutisya Makumbi).....
APPLICANTS**

VERSUS

**MAPLE TREE PROPERTY COMPANY LIMITED.....
1ST RESPONDENT
DANIEL MUTUKU MUTISYA.....2ND
RESPONDENT
JOYCE KAMENE.....3RD
RESPONDENT
MARGARET YULA NZIOKI.....4TH
RESPONDENT
LEONARD MUTIE MUTISYA.....5TH
RESPONDENT**

AND

**ALICE MWIKALI MUTISYA (Administrator of The Estate
of
David Mutisya Makumbi).....1ST
INTERESTED PARTY
REGISTRAR OF LANDS MACHAKOS COUNTY.....2ND
INTERESTED PARTY**

RULING

1. The Applicants filed a Notice of Motion application dated 24th February 2025 seeking the following orders, that;

“ a. Spent

b. Spent

c. This Honourable Court be pleased to find the Respondents are in contempt of the orders of this Honourable Court dated 30th July 2024 and 18th August 2024.

d. This Honourable Court be pleased to commit the Respondents to civil jail for 6 months and/or imposes a fine and/or any other punishment under the law.

e. The cost of the application be provided for.

2. The application was opposed by the 1st Interested Party in her Replying affidavit and stated that she was the 1st wife of the deceased herein and property number LR No. 27253/43 was not transferred by the Deceased to her for free but was transferred to her long before he died. She deposed that she was aware that the said property was transferred to their son Daniel Mutuku Mutisya, the 2nd Respondent and his wife Anne Mutio Muthoka in the year 2009 after they paid Kshs. 700,000/= to the Deceased for it thus was not part of the estate of the Deceased herein. That property number LR No. 27253/44 was sold and transferred by the Deceased to Makumbi Investments Ltd in 2015, who in turn sub-divided it and transferred it to M/s Main Street Holdings Ltd in the year 2018 who are developing it and thus no longer exists. She contended that she was a co administrator and thus was not

intermeddling. Further, that she had not disobeyed any of the orders issued by this Court on 30th July, 2024 or 18th August, 2024.

3. The Applicant filed a supplementary affidavit wherein it was deposed by Paul Mucai Gitau that 1st Respondent is a limited company registered in Kenya on the 22nd December, 2023 under certificate of registration Number PVTRXUMX3Q6 and the 2nd, 3rd, 4th and 5th Respondents are shareholders and children of the 1st Interested Party and they were all served with the application.
4. The application was canvassed by way of written submissions.
5. The applicants filed submissions dated and supplementary submissions dated 22/07/2025 and while relying on the case of ***Sam Nyamweya & 3 Others v Kenya Premier League Ltd & 2 Others (2015) e KLR, Henry Musemate Murwa v Francis Owino, Principal Secretary, Ministry of Public Service, Youth and Gender Affairs & another [2021] Eklr and Republic v Kajiado County & 2 others Exparte Kilimanjaro Safari Club Limited [2019] eKLR***, It was submitted that the current application is anchored on a strong legal foundation and Section 5 of the Judicature Act is still in force, contrary to any belief that there is no law on which contempt of court can be punished. It was contended that the Respondents were aware of the Orders, the Orders were binding, and if there was an ambiguity on the orders of 18/8/

2024, then the onus was on the Respondents to return to court for clarification on their own orders.

6. Further, it was submitted that the Respondents, who are all siblings and children of the Alice Mwikali Mutisya be held to be trading and holding themselves out as; Maple Tree Developers Ltd, Maple Tree Property Company Ltd and M/S Maple Tree Holdings Ltd at various times of the suit and sanctions to apply accordingly.
7. The 1st and 2nd Respondent and the 1st Interested party filed joint submissions dated 28th April 2025 and supplementary submissions dated 18th July 2025 and submitted that there is no evidence of service as no Affidavit of Service of the orders has been annexed to the applicant's application dated 24th February 2025. Without evidence of service of the orders, the substratum of the application goes. With regard to parcel number LR 27253/44 the order was that it was to revert back to the Deceased's name but it is not indicated how this was to be done. No evidence has been shown how Maple Tree Developers has contravened the order. And being an artificial person, it is not capable of obeying or disobeying a Court Order.
8. While relying on the case of ***Samuel M. N. Mweru -vs- National Land Commission & 2 Others [2020] eKLR***, it was contended that there was no evidence that the orders issued and which had to be complied with were clear and

unambiguous, the Respondents were served with the said order and had knowledge of the terms and import of the said orders, including service of penal notice, the Respondents had acted in breach of the said orders and in which manner and that the Respondents' conduct was deliberate. That the Notice of Motion application by the Applicant's dated 29th July 2024 has three Respondents, namely: - i) Alice Mwikali Mutisya ii) Daniel Mutuku Mutisya iii) Maple Tree Developers Ltd and thus the orders of 30th July 2024 can only affect them yet in the current application, he has introduced new parties namely Joyce Kamene, Margaret Yula Nzioki, and Leonard Mutie Mutisya.

9. Further, that the application of 29th July, 2024, refers to the 1st Respondent herein as "Maple Tree Developers Ltd" while the current application is against "Maple Tree Property Company Ltd". Furthermore, the Directors of Maple Tree Developers Ltd are not known and the Applicant said he served one Peter Zhay, a Project Manager who is not a Director of Maple Tree Developers Ltd. He contended that the person served is the one who should be pursued.

Analysis and determination.

10. The court has considered the application, affidavits and submissions on record and the issue for determination is whether the Respondents are in contempt of the orders of this court rendered on 30th July 2024 and 18th August 2024.

11. The order dated 30th July 2024 directed as follows;

- “1. THAT, the Certificate of Urgency to be served to respondents**
- 2. THAT, the Respondents to file Responses and serve within the requisite period.**
- 3. THAT, the grant of letters of administration intestate issued on 29/9/2023 was for Administrators to comply with their duties prescribed under Section 82 & 83 LSA and not to distribute the estate and transfer to themselves properties without consents of beneficiaries and/or confirmation of grant c/s 55 & 71 LSA.**
- 4. The Property Land Parcel 27253/143 transferred to Alice Mwikali shall revert to deceased's name.**
- 5. The property Land parcel 272553/30 transferred to Daniel Mutuku Mutisya shall revert to deceased's name.**
- 6. The Property Land parcel 27253/44 where Maple Tree Developers demolished matrimonial home of Lydia M.Wambua to put up Urban Park shall revert to deceased's name and any further construction stop forthwith.**
- 7. Almond Private Investigators filed List of Purchasers 11 Purchasers of deceased's properties.**
- 8. All assets that comprise of the estate of David Mutisya Makumbi shall be preserved from intermeddling as required under Section 45 LSA pending Confirmation of grant**
- 9. The above orders shall be enforced by OCS Athi River Police Station.**
- 10. FMD on 7/10/2024.”**

12. The Order of 18th August 2024 directed as follows;

- “1. THAT, the matter is certified urgent to be heard & determined on priority basis after the**

- Court** **break.**
- 2. THAT, the Certificate of Urgency to be served to Respondents**
 - 3. THAT, the Respondents may file & serve response(s)**
 - 4. THAT, this Court's orders of 1/8/2024 shall be amended as proposed and outlined vide letter to DRMHC of 12/8/2024 with regard to Order paragraph 4,6,9 of the orders.**
 - 5. THAT, this Court has seen annexed copies of documents; Transfer of LR 27253/30 by deceased on 9/10/2009 to Daniel Mutuku Mutisya & Anne Muthoka. Also annexed is copy of Registration Certificate under Registration of Titles Act in the name of Daniel Mutuku Mutisya. Therefore, prima facie evidence, the said property LR 27253/30 is hived off the deceased's estate and any dispute on this property shall be in ELC.**
 - 6. THAT, the rest of contested properties shall revert to the name of the deceased pending hearing and determination of what comprises of deceased's estate or not.**
 - 7. THAT, this Court grants fair hearing as required by law Article 50 CoK 2010, Parties/Counsel to file and exchange Witness Statements & Lists of Documents through DR MHC**
 - 8. THAT, Interpartes hearing shall be on 24/9/2024 in Court 1,**
 - 9. The impugned properties shall remain preserved under Section 45 LSA status quo maintained until hearing & determination of the dispute.”**

13. The orders of 18th August 2025 were made in furtherance of orders made on 1st August 2025 and it is instructive that some of the orders made on 1st August were vacated.

14. The court made an amendment to the above order as follows;

“4. The Property Land Parcel 27253/43 transferred to Alice Mwikali shall revert to deceased's name

6. The Property Land parcel 27253/44 where Maple Tree Developers demolished matrimonial home of Lydia M.Wambua to put up Urban Park shall revert to deceased's name and any further construction stop forthwith. The property Land parcel 27253/30 transferred to Daniel Mutuku Mutisya shall revert to deceased's name

9.The above orders shall be enforced by OCS Athi River Police Station.”

15. The record shows that subsequently Muigai J perused the file and on her own motion made orders as follows;

“Machakos Citation Cause 41 of 2019 - Hon. G. V. Odunga granted restrain/preservation orders pending filing of petition in this matter.

(1) This is in the certificate of urgency filed on 22nd October 2022.

- Listing family of deceased attached chief's letter of 1st July 2021

Chief of Muthetheni location.

Alice Mwikali Mutisya 1st wife - 6 children

Lydia N. Wambua - 2nd wife - 2 children

Florence Nduku Mutisya - 3rd wife (deceased) - 2 children

Stellamaris Ndinda Nzioka - 4th wife - 1 child.

- 1st family entered into agreement with 8th,9th,10th & 11th Respondents Makumbi Developers limited, Makundi Investments limited, In design Makumbi limited Endeavours Limited.**
 - Without knowledge consent and/or approval of the rest of family of deceased intermeddled with LR No.7149/138.**
 - Mlolongo - 5 acres - proposing to build a housing estate.**
 - The supporting affidavit - filed on 28/08/2021 outlines land, bank A/C motor vehicles part of the estate 32 properties, 7 bank accounts, 3 motor vehicles/ tractor.**
 - Interim restraining order was granted by Hon. Dulu (Makueni High Court) vacation duty judge for 30 days.**
- (2) Petition for letters of Administration (attached). Petitioner being 2nd and 4th widow of deceased signed by their children and not the 1st wife/widow and children.**
- (3) On 4/11/2021 the applicants InDesign Makumbi Limited Endeavors Construction Limited filed a certificate of urgency seeking to set aside the interim orders of 13/10/2021 as the property was not in the name of the deceased at the time of his**

demise. That the said interim orders occasioned monetary/substantiate loss - Kshs.1.5 billion. The interim if not withdrawn the Respondents to provide security for costs at the same rate.

The parcel of land was transferred inter vivos by the deceased to the Applicant on 17/11/2015 and died on 13/08/2019 (Document shows registration was in in 2020) WHY? After deceased's death.

(4) Replying affidavit by ZHI RUI LIU - Directors of InDesign Makumbi limited.

(5) Further affidavit in response to the Replying affidavit of ZHI RUI LIU application of 15/11/2021 by deceased to the company of property LR 7149/138 and deceased reported to Machakos police station the loss of titles for portion LR No. 7149/150, 7149/149 and 7149/144 - police abstract -

Letter of demand of 14/09/2015 Webale B and Associates ELC NO. 210 of 2016 - Alice Mwikali Mutisya (1st wife) vs David Makumbi Mutisya (deceased) where a contract was entered.

(6) Replying affidavit by Alice Mwikali Mutisya filed on 1/12/2021.

a) LR No.7149/138 deceased sold to Makumbi Investment limited on 17/11/2015.

b) Davidson Mutisya

- Gloria Nzilani Mutisya

- Anastacia Nzisa

(Not children of the deceased)

c) Alice Mwikali Mutisya married in 1960

Lydia Wambua married in 1978

Florence Nduku Mutisya (deceased) married in 2006

Stellamaris Ndinda married in 2014

d) Most properties listed had been sold by deceased at the time

- Most properties listed were/are subject to the matrimonial property Act for the Applicant to be declared first owner of the properties as she contributed to requisition and development of the same.

-Masii Utithini/740 (slaughter house) brought in 1966 for deceased and David Kyuli Kaindi.

-The other wife/widow here concealed properties

i) Kibauni/Kitile/99

ii) Muputi/Kaani/788 - Stellamaris Ndinda

iii) Muputi/Kaani/478 - Stellamaris Ndinda

iv) Motor vehicle/tractor 4 vehicles 1 tractor

v) Wamunyu land - Florence Nduku Mutisya

vi) Kithimani 70 acres - Lydia N. Wambua

e) Applicant ran the business while deceased was ailing and still

does and income shared to date.

f) LR 7149/138 not intermeddling.

(7) Further affidavit by Applicant 4th wife/widow

(8) 2 applications - 12/10/2021 & 9/11/2021 - written submissions filed by parties/counsel.

(9)Petition by way of cross application for grant of letters of Administration filed on 3/2/2023.

- (10) Certificate of urgency filed on 27/07/2023 - Building Machakos Town Block 11/71- Sidian Bank limited tenant Agreement by CBK Attached copy of the letter by OP-Deputy County Commissioner 8/07/2021.**
- (11) Certificate of urgency filed 11/08/2023 - limited grant of colligenda bona to Alice Mwikali Mutisya to present estate of deceased.**
- (12) This court issued grant of letters of Administration 29/09/2023 on 29/09/2023 [which petition and gazette clause?].**
- (13) Certificate of urgency of 29/07/2024 - alleged issues -**
- 1st Respondent transferred LN 27253/43 Syokimau**
 - 2nd respondent transferred LN 27253/30 Syokimau**
 - 3rd Respondent demolished matrimonial home of Lydia N. Wambua on LR 27523/44 'Urber park'**
- LR27253/44, 27253/30 & 27253/43 be preserved and administered by law.**
- (14) Court order (vacation duty) 1/08/2024.**
- (15) Certificate of urgency filed on 15/08/2024 by 3 Administrators - 15/08/2024.**
- (16) Certificate of urgency 28/09/2024 - by Keyonzo and company advocates.**
- (17) HCF (OS) E015 of 2014 - Nbi High Court - transferred from Nairobi High Court to Machakos high court.**
- (18) Ruling of G. V. Odunga J of 18/10/2022 - HELD the court has jurisdiction to issue the injunction but not**

with respect with the property matter to proceed in ELC Application of 12/10/2021 struck out and 9/11/2021 settled.

Conclusion:

The matter has the following related cases;

- 1) Succession cause HCFP&A 53 of 2021**
- 2) Machakos citation 41 of 2019**
- 3) ELC 210 of 2016**
- 4) HCF(OS) 2015 of 2014 (NBI HCT transferred to MKS)**
- 5) MKS SUCC 102 of 2023 (CMs Court)**
- 6) OS 5/2024 (Not availed)**

Issues:

- 1. There is a dispute on appointment of administrators although this court vide Section 66 Law of succession Act appointed a representative for each family/house of the deceased.**
- 2. There are parallel court cases over the same subject matter and multiplicity of court orders.**
- 3. There are disputes on the:**
 - i) Beneficiaries of the estate of the deceased.**
 - ii) Assets that comprise of the estate of deceased.**
 - iii) Mode of distribution.**
- 4. The court record does not confirm which petition is relied upon or whether Amended Petition to be filed with relevant courts and gazette and issuance of grant to be confirmed. The administrators may amend the petition.**

ORDERS:

- 1) Ruling of Hon. G.V. Odunga (J) (as he then was) of 18/10/2022 shall remain in force until set aside varied or successfully appealed against. The Ruling is that matter regarding transfer of land fraudulent or otherwise is for ELC. Injunction granted.**
- 2) The Administrators shall amend petition and comply with gazette to regularize the Appointment of Administrators on 21/09/2023.**
- 3) The issues revolving fraudulent transfer of land will not be subject of these succession proceedings as per Ruling of 18/10/2022 but to be ventilated in ELC Court.**
- 4) The Succession Cause E053 of 2021 shall be the lead file, all others consolidated/withdrawn.**
- 5) The court shall retain court orders of 1/08/2024 paragraphs 1,2,3,6,8 & 9 all other orders are vacate in light of Ruling of 18/10/2022.**
- 6) The court shall retain court orders 1,2,3,7 & 9.**
- 7) All properties that comprise of the estate of the deceased shall remain preserved until hearing and determination of the matter, pending application and/or petition by Viva Voce evidence.**
- 8) The matter shall be heard by the Incoming judge as this court is proceeding on transfer.”**

16. It is clear from the above, that the property which was hived off from this succession cause is LR 27253/30. The same is to be litigated in the ELC. The order concerning the property to which these proceedings relate being 27253/143 and 272553/44 were not affected by the subsequent orders and

were to revert to the name of the deceased. They were also not to be intermeddled with.

17. Contempt was described in the case of **Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR**, where the court stated as follows: -

“Properly put, contempt is conduct that impairs the fair and efficient administration of justice. 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.”

18. In **Econet Wireless Kenya Limited vs Minister for Information & Communication of Kenya & Another (2005) eKLR**, the court pronounced itself as follows:-

“It is my view that due to the gravity with which the law and the court is deem any contempt of court or allegations thereof, the court usually under an obligation to deal with such contempt of court or investigate allegations that it has taken place. This is in particular where the alleged contemnor is a party in proceedings and is affected by the orders granted by the court. Where an application for committal for contempt

of court orders are made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious - a contemnor would have no right of audience in any court of law unless he is punished or he purges the contempt. So, the court is obliged to hear the application for committal first before any other matter. This is a general rule which must be applied strictly."

19. Further, in the case of **Hadkinson -V- Hadkinson 91952) 2 All E.R. 567**, At Page 575 Lord Denning made the following observation:-

"I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues it impedes the cause of justice by making it more difficult for the court to ascertain the truth or to enforce orders which it may make, then, the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.

.....

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. Lord Cottenham, L.C., said in Chuck -vs- Cremer (1) (1 Coop. temp.Cott 342):

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”

20. The first question is whether the Respondents were aware of the said orders. From the affidavit of service dated 20th September 2024, Mr. Peter Zhay was served with the order on behalf of Maple Tree Developers. According to the order of 18th August 2024, they were one of the parties affected by the order and it was therefore necessary to serve them. It is evident that the order was duly served because upon being served with the said order, Alice Mutisya director, filed an application to set aside the order. The Respondents are directors of the company affected by the proceedings and

in my view bringing in the issue of the name of the Company is a splitting of hairs. My predecessor Muigai, J orders left no doubt as to which parties were affected. Moreover, when the orders were issued on 31st July 2024, the Respondents were represented by Counsel and therefore I have no doubt in my mind that they were aware of the orders.

21. The orders were express, clear and straight forward on what was to be done but the Respondents have decided to proceed as if they do not exist. I must remind all the parties that court orders must be obeyed. It is not optional. This is a succession matter, and orders must be respected so as to preserve the estate in order that some beneficiaries are not disinherited. It is for that reason that the Respondents must be stopped from intermeddling with the estate and hence wasting it away before it is distributed. In the premises, I find them guilty of contempt of the orders issued by my predecessor.

22. The upshot is that the application is allowed and the respondents/ contemnors shall be liable to be sentenced for contempt.

Orders accordingly.

Ruling signed, dated and delivered virtually on this 14th day of November 2025.

E N MAINA

JUDGE

IN PRESENCE OF:

Ms Karongo for 3 beneficiaries

Mr. Keyonzo for Alice Mwikali & David Mutuku

C/A: Geoffrey

No other beneficiaries present

ORIGINAL