



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of John Gicheru Wambugu (Deceased) (Succession Cause
986 of 2010) [2025] KEHC 16943 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16943 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 986 OF 2010
DKN MAGARE, J
NOVEMBER 18, 2025**

IN THE MATTER OF THE ESTATE OF JOHN GICHERU WAMBUGU (DECEASED)

BETWEEN

LYDIAH WAMBUI GICHERU APPLICANT

AND

DAVID GITHII GICHERU 1ST RESPONDENT

ELIZABETH NYAWIRA GICHERU 2ND RESPONDENT

LUCY WANJIKU GICHERU 3RD RESPONDENT

RUTH WANGECHI GICHERU 4TH RESPONDENT

DORCAS NYAMBURA GICHERU 5TH RESPONDENT

JOSEPH KAHONO GICHERU 6TH RESPONDENT

RULING

1. This is a ruling on two Application by the Applicant. The summons General dated 16.2.2024 sought an injunction restraining the Respondents from dispossessing or interfering with the Applicant's quiet possession, occupation and use of LR No. Othaya/Ihuririo/418 pending the processing of titles as per certificate of conformation of grant. On the other hand, the Notice of Motion Application dated 2.5.2024 sought warrants of arrest against Elizabeth Nyawira Gicheru and Dorcas Nyambura Gicheru for violating the orders given by this court on 21.2.2024.
2. The first Application was opposed by the replying affidavit of Dorcas Nyambura Gicheru sworn on 17.4.2024 in material deposing that the Applicant was only entitled to 0.7 acres out of the parcel of land and she could not successfully claim the entire parcel and stop the other beneficiaries from claiming their shares. On the second application, by the replying affidavit sworn by the same Dorcas Nyawira Gicheru on 3.9.2024, it was materially deposed that the Applicant had refused to effect



transfer if the estate to the beneficiaries 8 years after the grant was confirmed Dorcas was not in contempt of the court orders as alleged.

3. Parties filed written submissions. The Applicant's submissions are dated 22 July 2024. She submitted that the Court should restrain the Respondents from dispossessing her of the estate. She contended that her consent was not obtained prior to the cutting of trees on the estate. According to her, she had established a prima facie case with a probability of success and relied on *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003) eKLR in support. She further argued that she would suffer irreparable harm unless the orders sought were granted, and that the balance of convenience tilted in her favour.
4. On the part of the Respondents, submissions dated 8 November 2024 were filed. They submitted that they had complied with all orders issued by the Court. They argued that there was no evidence of contempt, as they had consistently attended court and there was no willful intention to disobey the orders. Reliance was placed, among other authorities, on *Oilfield Movers Ltd v Zamara Oil & Gas Limited* (2020) eKLR.

Analysis

5. The respondents denied violating the court order issued on 21.2.2024 as alleged. Contempt of court is that conduct or action that defies or disrespects authority of court. Black's Law Dictionary 9th Edition, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

6. Properly put, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the [Judicature Act](#) confers jurisdiction on the superior courts to punish for contempt. The reason for which 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 such sanctions, there would be a serious threat to the rule of law and administration of justice.
7. However, for a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him. The application before court seeks to have the respondents cited contempt and to be committed to civil jail. Dealing with the question of contempt in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:

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 whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void. (emphasis)

8. Contempt of court is anarchical and strikes in the face of the rule of law and must be checked with the strongest terms deserved to preserve confidence in the administration of justice. In *T. N. Gadavarman*



Thiru Mulpad v Ashok Khot And Anor [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

9. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, that:

A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.

10. Given the gravity of the consequences that ordinarily flow from contempt proceedings, it is imperative that the order alleged to have been disobeyed be duly served, and that the person cited for contempt have personal knowledge of its terms.
11. The order dated 24.04.2024 was, an order preserving the estate. It did not compel the Respondents to perform, or refrain from performing, any specific act. Rather, it was an omnibus order for a temporary injunction intended to maintain the status quo. It bound the Applicant in the same manner as it bound the Respondents. In the circumstances, there is no indication of civil disobedience on the part of the Respondents, particularly as the alleged acts of disobedience were not proved.
12. In this regard, the Supreme Court of India held in *Indian Airports Employees Union v Ranjan Catterjee & Another* [AIR 1999 SC 880: 1999(2) SCC:537, that in order to amount to "civil



contempt” disobedience must be willful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents, it does not amount to willful disobedience.

13. The court suo moto appointed Dorcas Nyawira Gicheru and revoked the Applicant as administrator. Therefore, like the application seeking contempt, the application seeking an injunction to stop the Respondents from interfering with the estate of largely overtaken by the events. The court cannot give powers to an administrator and curtail her from exercising the powers at the same time. This amplifies the duty of personal representatives to complete the administration of the estate as required under Section 83 of the Law of Sucession Act as detailed below:

Personal representatives shall have the following duties—

- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

14. Taking into account the circumstances of this case and the material placed before the Court, I am not satisfied that the Applicant has proved her case to the required standard in respect of the two Applications. Consequently, the Applications dated 16.02.2024 and 02.05.2024 are dismissed.

15. In respect to costs, the same are discretionally. However, the discretion is not arbitrary. The Court of Appeal in the case of Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR) had this to say:

“It is our finding that the position in law if that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

16. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others, SC Petition No. 4 of 2012; [2014] eKLR, as follows:

18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.



22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.
17. The court finds that the applications were intended to obfuscate the real issues in controversy, thereby wasting the court's time and delaying the conclusion of the matter. Consequently, the applicant shall pay disbursements of Ksh. 4,000/= to the respondents for the two applications. The said sum shall be paid within 30 days, failing which execution may issue.

Determination

18. In the upshot I make the following orders:
- a. The Applications dated 16.2.2024 and 2.5.2024 are dismissed for lack of merit.
 - b. The applicant shall pay disbursements of Ksh. 10,000/= to the respondents for the two applications.
 - c. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 18TH DAY OF NOVEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

Represented by: -

Ms Macharia for the 2nd – 6th Respondents

No appearance for the 1st Respondent

Pro se Applicant

Court Assistant – Michael

