

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
(FAMILY DIVISION)

SUCCESSION CAUSE NO 488 OF 2005

IN THE MATTER OF THE ESTATE OF ELIAS SHUMA MWAKIRETI
(DECEASED)

CHRISTINAH HANAH DALI SHUMA
APPLICANT

VERSUS

AUDREY ELIAS SHUMA
RESPONDENT

RULING

1. The deceased whose estate is the subject of these proceedings is Elisa Shuma Mwakireti. I shall hereafter refer to him as the “deceased” or the “decedent”. Mr Mwakireti died on 10th June 2005 at Aga Khan Hospital, Mombasa. He was 62 years old at the time of his demise. Before his death, he was the operations superintendent at the Kenya Petroleum Refineries Corporation.
2. Vide a petition for grant of letters of administration intestate dated **23rd November 2005**, and filed in this Court on **28th November 2025**, his widow, Ruth Sambo Shuma, sought the grant of representation in respect of the decedent’s estate. She listed the dependants of the deceased as herself, the widow; her sons, **Edward Henry Maganga** and **Lamech Victor Mwanyolo**; and her daughters, **Christine Hanah Dali Shuma, Priscilla Shali Shuma, and Audrey Elias Shuma.**

3. The petitioner listed the properties of the decedent, whose value was given as **Kes.5,000,000/-**, as being **Plot No 2351/VI/MN Mombasa, Plot No 1956/357 Voi, Plot No 1956/353 Voi, Plot No 1641 Vindo Multipurpose, Plot No Sisal Estate, Plot No Mbale/Mbale/1475 Wundanyi, Plot No Mbale /Mbale/1479 Wundanyi, Plot No 12 Mbale Iriwa Wundanyi, Title No Kwale/Majoreni/576**, motor vehicles registration numbers **KAB 097 M** and **KZT197** pickup. According to the petitioner, the deceased had no liabilities.
4. All the dependants signed the consent Form 38 of the P&A Forms for the petitioner to be the sole petitioner. The grant of letters of administration intestate was issued on 17th May 2006. The said grant was confirmed on 29th March 2010. The confirmed grant sets out an elaborate distribution schedule, the contents of which I shall not set out herein. The same was rectified on 11th January 2016 to include the name of **Priscilla Shali Shuma** as entitled to title No. Kwale/Majoreni/576, together with her siblings.
5. **Audrey Elias Shuma** filed a chamber summons application dated **15th September 2023**, vide which she sought to be appointed as an administrator of the estate of the decedent, in place of her mother, Ruth Sambo Shuma, who had since passed on. She also sought to have the certificate of confirmation of grant dated 11th January 2016 amended to include her as the sole heir/beneficiary of all the properties and assets granted to Ruth Sambo Shuma. She averred that allowing the application would enable her to distribute the estate.

She further averred that all the beneficiaries were in agreement with the said proposal.

6. Ms Audrey Elias Shuma attached a certificate of death dated 2nd May 2019 that shows that Ruth Sambo Shuma died on 25th April 2019 at Premier Hospital, Mombasa.
7. The said application was withdrawn on **6th November 2023**. Ms Audrey Shuma filed another application dated 10th November 2023, vide which she sought to be appointed as the sole administrator. She also applied to be a beneficial owner of the property/shares devolving to her late mother, Ruth Sambo Shuma, and, upon administration, share them equally with the rest of the beneficiaries.
8. The latter application was heard on **15th November 2023** by this Court. On the said date, **Edward Henry Maganga, Lamech Victor Mwanyolo, Priscilla Shali Shuma, and Audrey Elia Shuma** attended court and expressed their consent to their application. **Christinah Hanah Dali Shuma** was absent. I shall hereafter refer Ms **Christinah Hanah Dali Shuma** as “**Christinah**” or “**the applicant**”. The court allowed the application. The court order stated that, “**the application dated 15th September 2023 is hereby allowed as prayed.**”
9. The issuance of the rectified grant and the rectified certificate of confirmation of grant to Audrey Elias Shuma precipitated the filing of the summons for revocation and annulment of the grant dated 20th

February 2024, by **Christinah Hanah Dali Shuma**. Ms Christinah based her application on the alleged fact that she didn't consent to the appointment of Audrey Elias Shuma as the sole administrator of the estate, the latter's designation as the sole heir of their mother's portion of the estate, and also that she did not get any inheritance. The said application, however, was withdrawn by Ms Christinah's then advocates, Mr Apollo Muinde, on **18th April 2024**.

10. On **24th July 2024**, a similar application to that which had previously been withdrawn was filed by the firm of Messrs. **Muthami & Kaguta Advocates**. A further application was filed seeking revocation of the grant. The same is dated 7th November 2024.

11. As the application dated 24th July 2024 was filed under a certificate of urgency, this court considered the same *ex parte* and issued orders, among which was Order No. 3, which stated that: -

“That pending the hearing of the application interpartes status quo currently holding be maintained.”

The said order was issued on 25th July 2024. The matter was fixed for hearing on 17th September 2024.

12. On 17th September 2024, this court gave directions on the hearing of the application. The court made no mention of the status quo orders, and neither did it extend them

13. The court, during a mention on 21st January 2025, ordered that the matter would be heard in open court on **13th February 2025**. It is

consequent on the above direction that Ms Christinah Hanah Dali Shuma attended court on **13th February 2025**, having travelled all the way from Vancouver, British Columbia, Canada.

14. While the hearing was in progress, the applicant filed the application dated 29th June 2025, vide which she sought the following orders: -

- a. That this Honourable Court be pleased to cite and punish the Respondent, AUDREY ELIAS SHUMA, for contempt of court for willful disobedience of court orders issued on 25th July 2024 by the Honourable Mr Justice Gregory Mutai;
- b. That the Respondent, AUDREY ELIAS SHUMA, be committed to civil jail for a term not exceeding six (6) months, or such period as this Honourable Court shall deem fit and just, for deliberate disobedience of the status quo orders issued on 25th July 2024;
- c. That the Honourable Court be pleased to issue any further or other orders as may be just in the circumstances;
- d. That this Honourable Court be pleased to declare the sale and/or disposal of LR No. 2351/VI/MN Magongo as null and void ab initio for having been undertaken in contempt and violation of lawful court orders issued on 25th July 2024;
- e. That this Honourable Court be pleased to make further orders preserving the estate and allowing the succession cause to proceed to its logical conclusion in line with the pending applications before the court;

- f. That this Honourable Court be pleased to issue an order preserving all remaining assets of the estate of Elias Shuma Mwakireti (Deceased), pending the hearing and determination of the Summons for Revocation of Grant and this application;
 - g. That this Honourable Court be pleased to direct the Respondent, as the Administrator, within a reasonable time period, to file a comprehensive report and inventory of all existing assets and liabilities of the estate of the late Elias Shuma Mwakireti, to enable this Honourable Court to ascertain the true position on the ground and safeguard the estate from further intermeddling; and
 - h. That the costs of this application be provided for.
- 15.** It is evident from the chamber summons application, as is clear from the grounds on support thereof, that the applicant reckons that the status quo orders were to subsist pending "*hearing and determination of the said application.*" Christinah deposed that **LR No 2351/VI/MN** situated at Magongo was sold by the respondent without consulting other beneficiaries, and that she sent **Kes.6,337,066/-** to her without seeking her approval, and communicated casually through WhatsApp, stating that the sale had been concluded, and without previously providing a sale agreement or a valuation report.
- 16.** The application was opposed by the alleged contemnor, Audrey Elias Shuma. She filed a replying affidavit sworn on 18th July 2025, in which she deposed that **LR No. MN/VI/2351** was sold with the consent of four of the five beneficiaries, and the sale price was the

best available. She further deposed that before the sale, the property generated a monthly rent of **Kes.87,000/-**, which, when divided five ways, was insufficient. She contended that the sale process began before the issuance of the court order. The sale generated Kes 32,500,000/-, which was split five ways, resulting in Kes 6,337,066/- payable to the applicant after expenses were deducted.

17. Ms **Audrey Elias Shuma** deposed that the applicant was aware of the sale. She contended that it was impractical to reverse the sale. The sale, in her view, was in the best interest of the estate. She denied that she had been in contempt of court. Her contention was supported by the affidavit of **Lamech Victor Mwanyolo**.

18. The application was canvassed by way of written submissions. The applicant's submissions are dated 13th August 2025. The applicant identified three issues coming up for determination, *to wit*;

- a. Whether the respondent is in contempt of the court order dated 25th July 2024;
- b. Whether the respondent's advocate was guilty of aiding contempt of court and ought to be disqualified;
- c. Whether the sale of **LR No. 2351/VI/MN** should be nullified; and
- d. Whether further orders preserving the estate should be issued.

19. It was contended that the order was served and was within the knowledge of the contemnor. Reliance was placed on the case of **Koilel & 2 others v Koilel & another [2022] KEHC 10288 (KLR.**

Counsel for the applicant contended that the court shall not issue orders in vain.

20. It was urged that Mr Wafula aided and abetted the contempt and, for that reason, ought to be disqualified from appearing and representing any party in this cause. In support of the said contention, reliance was placed on the case of **Republic v Ahmed Abolfathi Mohamed & another [2019] eKLR**.
21. Counsel contended that since the sale took place in contempt of court, it should be declared null and void as against the estate and that appropriate orders ought to issue.
22. Lastly, it was urged that the respondent had shown a clear pattern of unilateralism and disregard of court authority. She submitted that, without further orders of this Court, she may proceed to dispose of the other assets. The court was asked to be firm and preserve the entire estate to prevent further mischief. In support of the said contention, reliance was placed on the case of **In re Estate of Rosemary Wanjiku Kinyanjui (Deceased) [2022] KEHC 10195 (KLR)**.
23. The submissions of the respondent are dated 2nd July 2025. In the said submissions, it was urged that the order lacked clarity. Counsel submitted that contempt requires that the terms of the order be clear and unambiguous. In support of the said contention, counsel

relied on the case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR)**.

24. Personal service was denied. Counsel submitted that although knowledge by the advocate could create a presumption of knowledge by the alleged contemnor, the holding in **Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] KEHC 5692 (KLR)** was to the effect that such knowledge could be rebutted. In this particular case, counsel blamed himself for not communicating the order to his client and thus sought to absolve her of the blame.

25. Counsel submitted that the alleged contemnor acted in good faith and with the consent of the majority of beneficiaries. It was urged that, contempt being quasi-criminal in nature, the court should exercise restraint and not punish good-faith error where deliberate defiance hadn't been shown.

26. It was also contended that the applicant acquiesced to the said sale. Further that the subject sale had been conducted and was irreversible. Lastly, counsel urged that the court should favour alternative dispute resolution over punishment.

27. In conclusion, it was urged that the application be dismissed.

28. I have considered the application and the response thereto, as well as the written submission of the parties. Issues for determination,

as I see them, are whether there was contempt of court and, if so, what orders should issue.

29. It is a common ground that the court issued an order on 25th July 2024. I have already set out verbatim Order No. 3, which gave rise to the application before the court. For emphasis, I shall reproduce the same below: -

“That pending hearing of the application interpartes status quo currently holding be maintained.”

30. Paragraph 2 of the said order directed the applicant to serve the respondent within three clear days for a hearing inter parte on 17th September 2024. On 17th September 2024, the court gave directions on how the application would be canvassed. Parties were directed to file written submissions. Mention was slated for 28th October 2024. Since there was a new counsel on record, the court directed that notice be issued.

31. The proceedings of 17th September 2024 do not state that the interim orders issued on 25th July 2024 were extended. What then is the fate of interim orders that were to subsist “**pending hearing of the application interpartes**”? Do they subsist until the matter is heard and determined? Or must they be extended from time to time? Put another way, is “pending hearing interpartes” the same as “*pending hearing and determination*”? In my view, this is not the case. If it were so, there would be no need for advocates to seek an extension of interim orders.

32. The question I posed above is important as the sale that birthed the contempt application, and which the applicant impugned, for not being, in her view, in the best interest of the estate, was transacted after 17th September 2024.

33. The elements that must exist for an applicant to succeed in civil contempt are fairly well understood. In **Koilel & 2 others v Koilel & another [2022] KEHC 10288 (KLR)**, Gikonyo J stated that: -

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).

34. In my view, it is clear that the respondent was aware of the orders made by this Court on 25th July 2024. The said orders were served on her counsel. Denial of knowledge is, in my view, nothing but weasel words, conjured up to save her from the possible consequences of her actions.

35. The foregoing notwithstanding, I note that the impugned sale took place after 17th September 2024. Given the wording of the order, I am not persuaded that a sale that took place thereafter was in contempt of court. But even if one assumes that the order was to remain in effect until the matter was heard and determined, as the

applicant stated, the order was vague and permitted different interpretations.

36. As was stated by the High Court, per J Mulwa, J, in the case, Kioni & 3 others v National Disciplinary Committee of the Jubilee Party & 2 others [2024] KEHC 11409 (KLR), contempt is quasi-criminal in nature and may lead to loss of liberty. Given the consequences, the court should exercise restraint. This is more so in a case like this between siblings. Punishing an alleged contemnor will not restore or repair relationships and will aggravate the situation further.

37. The upshot of the foregoing is that I am not persuaded that the application dated **29th June 2025** has merit; the same is dismissed. As this is a matter between siblings, I make no orders as to costs. Each party will therefore bear her own costs of the application.

38. Orders accordingly.

Dated and signed this 26th day of November 2025. Delivered virtually through **Microsoft TEAMS.**

Gregory Mutai
JUDGE

In the presence of:

Mr Wafula, for Audrey Elias Shuma;

Ms Elijah for the Priscilla Shali Shuma;

Ms Muthami and Mr Oyaro for the Christinah Hanah Dali Shuma; and
Arthur - Court Assistant.

Original