



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 83 OF 2006 CONSOLIDATED WITH
HCFP&A NO. E1345 OF 2020
IN THE MATTER THE ESTATE OF CHARLES KARIUKI
GACHERU (DECEASED)

STEPHEN NJOROGE KARIUKI 1ST
APPLICANT

JOHN KIHICO KARIUKI 2ND
APPLICANT

MARTHA WAITHIRA GACHERU 3RD
APPLICANT

SIMON WAWERU KARIUKI 4TH
APPLICANT

BENSON RAINI KARIUKI 5TH
APPLICANT

SAMUEL NJENGA KARIUKI 6TH
APPLICANT

VERSUS

JAMES GICHUHI KARIUKI 1ST
RESPONDENT

ELIZABETH MURUGI KARIUKI 2ND
RESPONDENT

RULING

1. This ruling relates to the application dated **28th April, 2020** filed by the Applicants, Stephen Njoroge Kariuki, John Kihiko Kariuki, Martha Waithera Gacheru, Simon Waweru Kariuki and Samuel Njenga Kariuki; seeking for **ORDERS THAT:**
 1. ***Spent.***
 2. **This honourable court do issue warrant of arrest and commit the 1st respondent to civil jail for defying/ contempt the court order given by Hon. Lady Justice Mrs. W.M. Muigai on 5th December, 2018 and issued on 18th February, 2020 and in particular order 2 of the said order.**
 3. **The costs of this application be provided for.**
2. The application is based on the grounds thereof and the supporting affidavits sworn by Stephen Njoroge Kariuki on **28th April, 2020** and **8th November, 2023**.
3. He avers *inter alia* that he swears the affidavit with the authority of the other Applicants and that the dispute arises from the estate of their late father Charles Kariuki Gacheru, whose only asset was land parcel number **Muguga/Gitaru/1833**. He explains that the distribution of the estate was conclusively determined by Hon. Lady Justice M.W. Muigai on **31st March, 2016**, with Plot D specifically identified and confirmed, following the Respondents'

surveyor's report, as the family burial site and formally allocated on **5th December, 2018** together with orders restraining any interference.

4. He avers that despite service and knowledge of these orders, the 1st Respondent persistently disobeyed them by cultivating the burial site, as shown by photographic evidence, and failed to comply even after the orders were presented to the OCS Kingeero Police Station for enforcement. He further notes that an attempt by the 1st respondent to stay the said orders was dismissed by Hon. Lady Justice Aroni on **7th November, 2019**.
5. He emphasizes that his application dated **28th April, 2020** is meritorious and seeks only the enforcement and execution of existing court orders, particularly those issued on **18th February, 2020**, and not any fresh reliefs and that the respondent has failed to substantiate allegations raised in opposition, instead making repetitive and baseless accusations.
6. The application is opposed vide replying affidavit sworn by James Gichuhi Kariuki on **22nd February, 2021** who avers *inter alia* that he opposes the applications dated **28th April, 2020** and **25th November, 2020**, which he terms as baseless and devoid of merit.
7. He contends that the 1st Applicant has previously filed similar unsuccessful applications in the same matter. He asserts that all parties are children of the deceased and that none has superior rights over the estate or the family graves. He

denies disobeying any court orders or being in contempt, maintaining that the court allocated Plot D for the benefit of all beneficiaries and authorized the administrators to ensure shared access, use and maintenance.

8. He further avers that no beneficiary has been denied access to Plot D and dismisses allegations that he cultivated on graves as malicious and driven by ulterior motives. He states that complaints of trespass were reported to Kingeero Police Station, investigated and found to be unfounded, a fact known to the Applicant. He adds that persistent accusations by the 1st Applicant have hampered the Administrators' ability to implement court-directed subdivision, as surveyors have been unable to access the land. He concludes by urging the court to dismiss the applications with costs.
9. The parties have not filed written submissions.

ANALYSIS AND DETERMINATION:

10. I have read the application before this court, the responses thereto and the rival submissions.
11. At paragraph 27 of **Henry Musemate Murwa v Francis Owino, Principal Secretary, Ministry of Public Service, Youth and Gender Affairs & another [2021] eKLR**, Judge Maureen Onyango cited with authority the case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** where Mativo J. restated the test for establishing contempt in his decision and stated –

“40. It is an established principle of law that 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,

(iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated: -

"There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -

a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;

- b) the defendant had knowledge of or proper notice of the terms of the order;**
- c) the defendant has acted in breach of the terms of the order; and the defendant's conduct was deliberate..."**

12. The application is, in substance, a contempt motion seeking committal of the 1st Respondent for alleged disobedience of Order 2 of the court's orders made on **5th December, 2018** and issued on **18th February, 2020**, restraining interference with Plot D on **Muguga/Gitaru/1833**, which is said to be the family burial site.
13. The Applicants' case is that Plot D was conclusively identified and set aside for burial purposes after confirmation of the Respondents' surveyor's report and that the 1st respondent, despite service and knowledge, has continued to cultivate and interfere with the burial site, supported by photographic evidence and the fact that a stay application was dismissed on **7th November, 2019**. There is on record, an image of plantation on a parcel of land. It is not clear on which parcel of land the plantation is.
14. The 1st Respondent's denies disobedience, maintains no beneficiary has been denied access and asserts that Plot D was allocated for the benefit of all beneficiaries with administrators mandated to manage access and maintenance. He further argues that the accusations are malicious, were investigated by police and found untrue and

that the 1st Applicant's repeated accusations have impeded the Administrators' mandate and survey work.

15. The wording of Order No. 2 is, ***“THAT Parcel D in the Administrator's and Objector's proposal is allocated to all beneficiaries as the Family Cemetery as already some family members are buried there. The administrators shall hold the said family cemetery on behalf of all beneficiaries; to ensure maintenance, access and use by all beneficiaries.”***
16. There is no evidence in my view that the Applicant has been denied any access to the burial site. My understanding of the orders of the court cited above set aside parcel number D as a cemetery. A cemetery is a burial site in the ordinary sense and any of the Interested Parties can access it at any time for whatever reasons.
17. It is not a place of residence for the living. In this regard I do not know how some agricultural activities are undertaken therein and by who. If the parties would wish to undertake any other activity and in particular cultivation or any other chores therein other than burial then they ought to deal with order number 2 above including setting it aside if need be.
18. **For now, I do not find any merit in the application. I do not find any reason to suggest interference by the Respondents.**
19. **The application is dismissed with no order as to costs.**
Dated signed and delivered at Nairobi via video link
this

29th day of January 2026.

**H K CHEMITEI
JUDGE**