



**In re Estate of Muthee (Deceased) (Probate & Administration
E124 of 2023) [2026] KEHC 2461 (KLR) (15 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 2461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PROBATE & ADMINISTRATION E124 OF 2023
DO CHEPKWONY, J
JANUARY 15, 2026**

IN THE MATTER OF THE ESTATE OF ANDREW WANYOIKE MUTHEE DECEASED

BETWEEN

**LUCY WANGECI MUTAHI (SUING AS THE ADMINISTRATRIX OF THE
ESTATE OF ANDREW MUTHEE WANYOIKE - DECEASED) APPLICANT**

AND

MARY MWENDE WANYOIKE RESPONDENT

RULING

1. In this cause, there are three applications pending determination: The first one is the Summons General dated 18th April, 2024 filed by the Applicant Lucy Wangeci, (hereinafter the Applicant) which has been opposed by the Replying Affidavit of Mary Mwendu Wanyoike (hereinafter the Respondent) sworn on 14th May, 2024 . The Application seeks orders of appointment of M/S Paragon Property Consultants Ltd as the sole property agents with the overall mandate of managing the residential block of flats in Kiamumbi/Mun Block 5 (Kiamumbi) 1688, it seeks injunctive orders on the property of the deceased being Kiamumbi/Mun Block 5 (Kiamumbi) 1688, an account on all rental income, usage of the funds from the income generated to utilized to pay for education and upkeep of the deceased's school going children. Pursuant to the court's directions issued on 29th April, 2024, the Applicant filed his submissions dated 10th June, 2024 whereas the Respondent filed hers dated 14th June, 2024.
2. Before the application could be determined, the Respondent, Mary Mwendu, filed a Notice of Motion application dated 22nd October, 2024 seeking injunctive orders on the deceased's property known as Kiamumbi/Mun Block 5 (Kiamumbi) 1688 and release of Motor Vehicle No. KBQ 230Q. It was opposed through a Replying Affidavit of Lucy Wangeci sworn on 5th November, 2024. The Applicant has filed written submissions dated 4th November, 2024.



3. The Respondent filed yet another Notice of Motion application dated 28th October 2024 urging the court to find the Applicant/Respondent to be in contempt of the court orders issued on 23rd October, 2024 and for her to be committed to civil jail for six (6) months. The Applicant has similarly filed her submissions dated 4th November, 2024.

Analysis and Determination

4. Vide directions issued on 15th November, 2024, the court ordered that the three (3) applications be heard and determined simultaneously. Upon reading through the three (3) applications, the court finds that the main issues for determination are as follows:-
 - a. Whether interlocutory injunction order should be issued in respect to Kiamumbi/Mun Block 5 (Kiamumbi) 1688.
 - b. Whether the Applicant/Respondent should be held in contempt of the orders issued on 23rd October, 2024.
 - c. Which orders should the court issue.

Whether interlocutory injunction order should be issued in respect to Kiamumbi/Mun Block 5 (Kiamumbi) 1688.

5. According to the Applicant, the Respondent intermeddled into the properties of the deceased and forcefully took possession of the residential block of flats erected on the parcel of land known as Kiamumbi/Mun Block 5 (Kiamumbi) 1688 and proceeded to unlawfully collect rental income from the same for her own exclusive use. Also, the Applicant has averred that the Respondent has taken custody of Motor Vehicle Registration Number KBQ 230Q Toyota Wish belonging to the Estate of the Deceased. It is the Applicant's case that the Respondent has been running the Estate of the Deceased in a rough and shoddy manner without due regard of the biological children of the Deceased who are the lawful dependents of the Deceased as he did not have any other children outside his marriage.
6. The Applicant holds that the Respondent alleges to have been married to the deceased as a second wife through customary law, a fact she has not proved to the required standard but is still not entitled to intermeddle with the Estate. The Applicant argues that granting her the injunctive reliefs will safeguard the Estate of the deceased from being wasted or the lawful beneficiaries from being disinherited.
7. In her application, the Respondent is also seeking injunctive orders over the suit parcel of land particularly the block of flats situated in Kiamumbi. It is the Respondent's argument that the Applicant dishonestly took out the Grant of Letters of Administration Intestate without obtaining her consent. The Respondent also argues that the deceased being a polygamous man, she has an equal right to the Estate as his spouse. That the actions of the Applicant in taking out fraudulent administration letters puts her and her minor daughter at risk as they stand to be evicted from their matrimonial home which would cause her irreparable damage that cannot be compensated by way of an award of damages. She holds that she has an arguable case with a high chance of succeeding, and the balance of convenience tilts in her favour.



8. The Court of Appeal in Nairobi in the case of Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR relied on the principles for interlocutory injunction that were established in the case of Giella v Cassman Brown & Co Ltd [1973] EA 358 and held as follows:-

“In an interlocutory injunction application, the Applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the Applicant is expected to surmount sequentially.”

9. On what constitutes a prima facie case, the Court of Appeal in the case of Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 Others [2003] KLR 125 considered the issue and held that:-

“In civil cases, a prima facie case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter”

10. For a prima facie case to be established it is important for a party to demonstrate whether there exists a right which has been infringed by the opposite party. In this case the Applicant has stated she is the wife of the deceased and together they had three (3) children. On the other hand, the Respondent claims that she is also a wife of the Deceased, having been married to him under Customary Law and they had one child who is a minor. The Applicant and Respondent both claim to have equal rights over the Estate of the deceased. While the Respondent holds that she and her daughter stand to be evicted from the suit premises, the Applicant holds that the Respondent is intermeddling with the Estate of the Deceased.
11. At this interlocutory stage, the court finds that it cannot determine some of issues such as whether the Applicant or the Respondent or both are the wives of the Deceased, and or who are the rightful beneficiaries of the Estate of the deceased as they are issues which can only be determined during trial upon consideration of available evidence. However, in the meantime, the court finds in order to safeguard the Deceased Estate, it would be prudent to issue interim injunctive reliefs to same the estate from wasting away. Of interest in the case is the block of flats in LR No. 1688 Block 5 Kiamumbi which has rental income whereby if no guidance is given, this income will be wasted away. In view of this, it is worth noting that the Applicant seeks the appointment of Paragon Property Consultants Ltd as the sole property agents with the overall mandate of managing the residential block of flats but the Respondent has not offered any agents for the management.
12. Having considered the reasons advances by either party in urging the respective applications, the court finds that given that both parties claim to have prima facie rights over the Estate of the Deceased given that they both claim to be wives of the Deceased which issue can only be determined during trial. Therefore, the Court proceeds to find that an interim injunction over LR No. 1688 Block 5 Kiamumbi ought to be granted for status quo to be maintained pending hearing and determination of the case.



Whether the Applicant/Respondent should be held in contempt of the orders issued on 23rd October, 2024.

13. According to the Respondent, she filed the application dated 22nd October, 2024 seeking orders of status quo over the parcel of land LR No. 1688 Block 5 Kiamumbi which orders the court granted on 23rd October, 2024 and were served upon the Applicant, Lucy Wangeci Mutahi via her Whatsapp Number 0725XXX655 on 25th October, 2024 but she disobeyed the court order. And, the next day at around 0930hrs, while in the company of 30 armed goons, the Applicant stormed the said property and caused a lot of damage including breaking the main house, carried household items, clothes, shopping, personal documents, cash in the amount of Kshs. 200,000/=, the main gate, the door and windows of the main house. That on 27th November, 2024, the Applicant again went back and cut off all the window grills and metallic doors, stole fifteen (15) bags of 50kg chicken feeds and 600 chicks, which incident was reported at Kiamumbi Police Station vide OB No. 23/26/10/2024. The Respondent avers that she has always pleaded with the Applicant to comply with the court order but in vain and as such, she continues to suffer irreparable loss which has prompted her to file the application dated 28th October, 2024 in which she has urged the court to grant the orders sought therein.
14. According to the Applicant, the court order obtained by the Respondent read that the orders of status quo were issued pending further directions of the court on 13th November, 2024. She contends that the status of the land is still the same as before and even after the orders were made, the property is still in the name of the Deceased. She also contends that the Respondent was not in occupation of the land and only wanted to occupy the same through the back door using the application. The Applicant denies the allegations of breaking, entry and theft of the subject land or any involvement in the same, which she holds that they amount to criminal acts which ought to be investigated to confirm their occurrence.
15. It is the Applicant's argument that the Respondent admitted to have only served the 1st Applicant with the court order and therefore on account of non-service, the contempt proceedings cannot apply to the 2nd Applicant. The Applicant has averred that the status quo is still being maintained and there is no evidence to show that she, together with 30 armed goons, damaged the alleged property. She argues that the Respondent has only provided faint photographs which show cracked walls, a dog, a person and two children but the same have not been accompanied by certificate of authentication, thus they are devoid of any probative value. The Applicant then contends that the application for contempt is baseless and constitutes abuse of court process given that it is not supported by clear evidence to demonstrate that there was intentional disobedience of a Court Order. In support of his argument, the Applicant has relied on the case of *Ndegwa v The Attorney General* [1983] eKLR and *Njuguna v D. T. Dobie & Company (Kenya) Ltd* [2001] 1 EA 72.
16. It is trite law that a Court Order unless it has been set aside, is binding, enforceable and ought to be complied with. In the case of *Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 Others* [2017]eKLR, the Court held thus:-

“A Court order is binding on the party against whom it is addressed and until set aside remains valid and is to be complied with. I shudder to think of the place of our judicial system if parties are left to freely decide what court orders to obey and which ones to ignore. Parties must realize that once they are brought to court they are subject to the jurisdiction of the Court.”



17. On 24th November, 2022, the Court issued express orders which were not issued in vain and thus ought to be obeyed. The Court of Appeal in the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, had the following to say with regard to contempt proceedings:-

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not.....

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy.”

18. Upon considering the circumstances of this case, the court needs to answer the question on whether there was disobedience of the court orders issued on 23rd October, 2024. This Court finds that other than the photographs and OB Number availed, there is no evidence adduced by the Respondent to show that indeed the Applicant disobeyed the Court Orders. Therefore, even if the court were to commit the Applicant into civil jail, this would be a punishment to the Applicant and would serve no purpose in the case. On this argument, the Court is guided by the decision of Kuloba, J in the case of *Mbugua v Mbugua* [1992] KLR 448 where the learned Judge expressed himself as follows: -

“The committal to civil jail will be an end in itself, serving no useful purpose. It will be for vindictiveness only; but civil justice is placatory, not retaliatory or revengeful. As Courts administering civil justice we do not sit here unleashing reprisals of vengeance to satisfy egoistic vendetta veneered with some court orders. Committal to civil jail is redressal, not merely punitive. In this case if the Court sends the defendant to jail for six months, the wrong will not have been redressed; her sojourn in jail will be punishment to her, but it will not enforce the order said to have been disobeyed.”

19. In conclusion, the Court finds that the Respondent has not proved her case for contempt against the Applicant to warrant the orders sought to be granted. However, to safeguard the Estate of the Deceased, it would be prudent for the court to order for the status quo to be maintained to allow for all issues raised by the parties herein to be heard and determined, and the Estate distributed.

20. In view of the findings, the following orders issue:-

- a. That an interim injunction do issue in respect of L.R No.1688 Block 5 Kiamumbi restraining the Applicant and Respondent and or their agents, servants, assignees from interfering, intermeddling and or dealing with the said parcel of land pending the hearing and determination of the case.
- b. The status quo orders to be maintained pending the hearing and determination of all the issues raised over the deceased's estate.
- c. There shall be no order as to costs.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 15TH DAY OF JANUARY , 2026.



D. O. CHEPKWONY

JUDGE

In the presence of:

Mrs. Ndungu holding brief for Mr. Mbiyu counsel for Applicant

Mr. Lokitano counsel for the Respondent

Court Assistant – Martin.

