



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 742 OF 2008
IN THE MATTER THE ESTATE OF DAVID NJENGA NGACHA
(DECEASED)

MARTIN NGACHA NJENGA
APPLICANT/OBJECTOR

VERSUS

CATHERINE NJOKI NJENGA 1ST
RESPONDENT

MARY NYAMBURA NJENGA 2ND
RESPONDENT

TABITHA WAIRIMU NJENGA 3RD
RESPONDENT

RACHAEL HETA NJENGA 4TH
RESPONDENT

RULING

1. This ruling relates to the application dated **15th August, 2023** filed by the Applicant David Njenga Ngacha; seeking for **ORDERS THAT:**

1. ***Spent.***

2. **This honourable court does issue an order directing the contemnors, Catherine Njoki Njenga and Mary Nyambura Njenga, to appear before it on a date to be appointed to show cause for their continued disobedience of court orders.**
 3. **The honourable court be pleased to issue an order for committal to civil jail of the contemnors, Catherine Njoki Njenga and Mary Nyambura Njenga and their agents at the estate for 6 months, or, in the alternative, be fined Kshs. 10, 000, 000 for their blatant disregard of the court orders issued on 7th October, 2022.**
 4. **The honourable court be and is hereby pleased, pending the hearing of this application there be an order of temporary injunction, restraining the Respondents, Catherine Njoki Njenga and Mary Nyambura Njenga, from further dealing with the estate of the deceased and from further humiliating the Applicant, Martin Ngacha Njenga.**
 5. **Notice to show cause (N. T. S. C.) be issued against the Respondents for failure to comply with the order given on 7th October, 2022.**
 6. **The costs of this application be provided for.**
2. The application is based on the grounds thereof and supported by affidavit sworn by Martin Ngacha Njenga on **15th August, 2023** who avers that he is an equal beneficiary of the deceased's estate and was an objector in

the judgment delivered on **7th October, 2022**, in which the Court issued the following orders:

*“ (a) The grant of letters of administration and the certificate of confirmation of grant issued to the Administrators, namely the 1st and 2nd Respondents, on **19th December, 2012** and subsequently rectified on **10th March, 2014**, were revoked; (b) the Administrators were directed, within sixty (**60**) days from the date of the judgment, to file a full inventory of the estate together with complete and accurate accounts of their administration from **19th December, 2012** to the date thereof; (c) prayer **2** of the summons dated **18th March, 2022** seeking cancellation of transfers was held in abeyance pending compliance with the filing of the inventory and accounts as ordered above; (d) the Objector and/or any other beneficiary was granted liberty to apply for letters of administration to the estate of the deceased; and (e) no order as to costs was made, the matter being a family dispute. ”*

3. The said orders were duly served upon the contemnors for compliance. However, despite being fully aware of the existence of the Court’s orders, the contemnors have willfully and deliberately failed and/or refused to comply. To date, they have not filed accurate accounts of their administration as directed by this Honourable Court. Instead, they have continued to intermeddle with the estate, including collecting rent and dividends from various entities. The contemnors should therefore be summoned to show

cause why appropriate legal sanctions should not be imposed upon them in their capacity as former administrators.

4. The Applicant faces a real risk of being deprived of his rightful inheritance due to the continued unlawful actions of the Respondents and/or contemnors. It is thus imperative for this Court to intervene by citing and punishing the contemnors for their persistent contempt, so as to prevent further mischief, uphold the authority and dignity of the Court and ensure compliance with its lawful orders.
5. The application is opposed vide notice of preliminary objection dated **18th September, 2023** and replying affidavit sworn by Catherine Njoki Njenga on **16th April, 2025**.
6. The notice of preliminary objection is based on the grounds that the evidence relied upon to demonstrate alleged service of the court order and penal notice upon the Respondents, as contained in the affidavit sworn by the Applicant/Objector, constitutes electronic evidence. The Applicant/Objector has failed to produce the certificate of production of electronic evidence required under **Section 106B** of the Evidence Act, rendering the said evidence inadmissible.
7. Consequently, the application has been presented in blatant disregard of the law, amounts to an abuse of the court process, and is not amenable to adjudication by this Honourable Court. The application is therefore incurably

defective, bad in law and ought to be dismissed with costs to the Respondents.

8. Catherine avers *inter alia* that she is an Administrator of the deceased's estate and acknowledges the Court's orders of **7th October, 2022** revoking the grant. She denies willful disobedience of those orders, explaining that efforts have been made to compile the required inventory and accounts and that any delays were unintentional and attributable to logistical challenges in an old estate.
9. She maintains her continued commitment to full compliance with the Court's directives. She states that the collection of rent and dividends was undertaken transparently and solely to preserve the estate's financial stability and she is willing to provide records to account for the same.
10. She disputes the allegation that the Applicant risks losing his inheritance, asserting that the estate has been managed prudently to safeguard all beneficiaries' interests and contends that there is therefore no basis for contempt proceedings.
11. She acknowledges the sale of two estate properties, **Komothai/Kibichoi/830** and **Plot No. 441 (Mwiki Company Limited)**; and explains that the proceeds were used for the education of the Applicant, who was a minor at the time, other siblings and for the purchase of land known as **Ndalani/Mavoloni Block 1/1143** for the Applicant. She asserts that this property does not form part of the deceased's estate, was acquired specifically for the

Applicant and has been held in trust for him pending transfer upon attaining majority.

12. She further states that the estate shares remain undistributed in the deceased's name, with dividends largely uncollected, save for one share subject to pending litigation. She indicates that certain shares, including those at Kenya Commercial Bank, are held in trust for the Applicant and remain accessible to him. She expresses willingness to pursue mediation and amicable settlement and prays that the contempt application be dismissed, having acted in good faith and in the best interests of all beneficiaries.
13. The Applicant has filed written submissions dated 29th September, 2025 placing reliance among others on the following:
 - a. **Shimmers Plaza Limited v National Bank of Kenya Limited (Civil Appeal 33 of 2012) (20150 KECA 945** where it was stated as follows: ***"It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty... The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and center. 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.”

- b. **Basil Criticos vs Attorney General and 8 Others [2012] eKLR** where it was pronounced as follows: “... ***the law has changed and as it stands today knowledge supersedes personal service... where a party clearly acts and shows that he had knowledge of a court order; the strict requirement that personal service must be proved is rendered unnecessary.”***

14. The Respondent has filed written submissions placing reliance on the following:

- a. **Econet Wireless Kenya Ltd v Minister for Information & Communications of Kenya & another [2005] KLR 828** where it was stated as follows: “***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.***
- b. **Gatharia K. Mutikika vs Baharini Farm Ltd** where it was held as follows: ***“The courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined. A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved... It must be higher than proof on a balance of probabilities. Almost, but not exactly, beyond reasonable doubt.”***
- c. **Peter K. Yego & Others vs Pauline Nekesa Kode** where the court held that ***it must be proved that one has actually disobeyed the court in order before one is cited for contempt.***
- d. **Re Breamblevale Ltd [1969] 3All ER 1062** where it was stated as follows: ***“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time - honoured phrase, it must be proved beyond reasonable doubt.”***
- e. **Devram Manji Daltani vs Dabda [1949] 16 EACA 35** where it was held that ***a successful litigant can only***

be deprived of his costs where his conduct has led to litigation, which might have been averted.

ANALYSIS AND DETERMINATION

15. I have carefully read the application, the responses as well as the submissions and the issues for determination as crafted by the parties are as follows:

- a. Whether the Respondents were aware of the court order to provide a full inventory of the estate as well as full and accurate accounts of their administration of the estate?
- b. Whether the Respondents' actions constitute contempt of court?
- c. Whether the Respondents are in contempt of the court orders of 7th October, 2022?
- d. Who bears the cost of this application?

16. 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**

d) the defendant's conduct was deliberate...

17. **In re Estate of Matayo Dawas (Deceased) [2022] eKLR**, Njagi J stated as follows:

“...The conditions to be met before an interlocutory injunction can be granted are as was expounded in *Giella v Cassman Brown Co. Ltd* 1973 E.A. 358 that; “First, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.”

18. The application turns on two closely related issues: whether the Respondents were properly served with, or had knowledge of, the court orders issued on **7th October, 2022** together with the penal notice; and whether their conduct thereafter amounts to willful disobedience sufficient to attract sanctions for contempt and the grant of interim injunctive relief.

19. Contempt proceedings are quasi-criminal in nature and require a high standard of proof. The Applicant must establish the existence of a clear and binding court order, proper service or demonstrated knowledge of the order and its penal consequences and deliberate non-compliance.

20. While the terms of the order are unambiguous, the Respondents have raised a preliminary objection challenging the admissibility of the alleged proof of service on the basis that it constitutes electronic evidence unsupported by a certificate under **Section 106B** of the Evidence Act.
21. A perusal of the affidavit of service on record sworn on 2nd February, 2023 shows that the judgment dated 7th October, 2022 was served upon Mary Nyambura Njenga, the second Respondent, in person at her place of work, The Kenya School of Government at Embu. Further, Catherine Njoki Njenga, the 1st Respondent and one of the administrators, in her replying affidavit, confirms knowledge of the orders of the court of 7th October, 2022.
22. To this end, I do not find merit in the allegation of failure to file a certificate of production of electronic evidence, since the service was personal and the knowledge of the order is not denied.
23. Consequently, I do not find any merit in the preliminary objection and I disallow the same.
24. On the substantive issues, the Respondents' explanation does not fully answer the allegation of non-compliance. Once the grant was revoked, any continued administration of the estate, including the collection of rent or dividends, is *prima facie* unlawful unless sanctioned by the Court or supported by a fresh grant. Although the Respondents contend that such actions were undertaken to preserve the estate, this does not address the failure to comply with the express

order to file an inventory and accurate accounts within the prescribed period.

25. The admitted sale of estate assets and the alleged application of proceeds to education expenses and acquisition of property purportedly for the Applicant raise questions of accountability that can only be resolved through proper accounting.
26. Considering the responses herein and the judgement of this court I think the Respondents have willingly refused to comply with the same. The reasons given are too pedestrian to be believed. The judgment was delivered on 7th October 2022 and granted sixty days from then to provide full inventory of the estate.
27. It is now going to almost four years without any evidence of compliance. They have not sought any extension but have instead out of their own volition and without any valid orders of the court disposed some of the properties and purchased some property for the Applicant. Of course, it sounds magnanimous but without directives from this court it is called intermeddling with the estate.
28. More importantly the court having revoked the orders of 19th December 2012 meant that the Respondents have no capacity to deal with the estate outside the orders and directives of this court.
29. Reading wholesomely the said judgement I think that the court wanted to get a proper feel of the estate noting that much might have happened with the revoked grant and

therefore issuing a fresh grant without knowing the condition of the estate might have been prejudicial

30. For the above reasons I do not think the Respondents can hide from their willful disobedience of the judgment. It is not upon them to choose what to do and what not to do. Plainly they are in contempt

31. Nonetheless this court shall grant them an opportunity to purge their contempt by doing what they ought to have done more than three years ago.

32. **In allowing the application I order that:**

(a) Within 21 days from the date herein the Respondents shall comply with the orders and judgement of this court dated 7th October 2022 and in default they shall each be committed to six months imprisonment without further reference to this court and the Inspector General of police through the nearest police station shall execute these orders.

(b) The matter shall be mentioned before the Deputy Registrar of this court to confirm compliance within the next 21 days.

(c) Costs of this application to the Applicant

**Dated signed and delivered via video link at Nairobi
this
16th day of April, 2026.**

H K CHEMITEI
JUDGE