

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELC PETITION NO. E002 OF 2022

JOHN KIBUTI MUGO-----

1ST PETITIONER

MICHAEL MURIITHI NYAGA-----

2ND PETITIONER

**(suing as beneficiaries and administrators of the estate
GATEMBU KARUMBI-Deceased)**

VERSUS

PETER NJUE MUGO-----

1ST RESPONDENT

DEPUTY COUNTY COMMISSIONER,

MBEERE NORTH-----

2ND RESPONDENT

DIRECTOR OF LAND ADJUDICATION &

SETTLEMENT-----

3RD RESPONDENT

CHIEF LAND REGISTRAR-----

4TH RESPONDENT

DISTRICT LAND REGISTRAR SIAKAGO-----5TH

RESPONDENT

ATTORNEY GENERAL-----

6TH RESPONDENT

OPINION OF THE COURT

This matter was placed before the Court pursuant to a reference by the Deputy Registrar seeking the Court's opinion on whether the Petitioners, who instituted the Petition as beneficiaries and administrators of the estate of Gatembu Karumi (deceased), are liable to committal to civil jail in their personal capacity in execution of a decree for costs.

The background to the matter is that a Notice of Preliminary Objection dated 20th March 2023 was raised by the 2nd, 3rd, 4th, 5th and 6th Respondents challenging the Petition. The said objection was agreed to be canvassed by way of written submissions and in a ruling delivered by this Court on 9th October 2024, the Preliminary Objection was upheld and the Petition was dismissed with costs to the Respondents and the Interested Parties. Following the said ruling, the Respondents have now commenced execution proceedings for recovery of costs and have issued a Notice to show cause why the Petitioners cannot be committed to civil jail. The Deputy Registrar has consequently referred the issue to this Court for guidance.

The question for determination is whether the Petitioners, who sued as beneficiaries and administrators of the estate of a deceased person, can be committed to civil jail in their personal capacity for costs awarded against them.

It is not in dispute that the Petitioners brought the proceedings in a representative capacity as administrators and beneficiaries of the estate of Gatembu Karumbi (deceased). Under Section 79 of the Law of Succession Act, the property of a deceased person vests in the personal representatives who hold the same in trust for the beneficiaries of the estate. A personal representative who institutes proceedings in that capacity does so on behalf of the estate and not for personal benefit. Consequently, liabilities arising from bona fide litigation undertaken in that representative capacity ordinarily attach to the estate and not to the administrators personally.

While costs follow the event, the liability to pay such costs must be considered in light of the capacity in which the litigants participated in the proceedings. Where parties sue or are sued in a representative capacity, courts have consistently held that any order for costs, unless expressly stated otherwise, is recoverable from the estate or trust represented, and not from the personal resources of the representatives. Personal liability only arises where the court expressly orders that costs be borne personally, or where there is evidence of bad faith, misconduct, abuse of the court process, or improper handling of estate assets.

In the present case, the order of this Court merely stated that the Petition was dismissed with costs to the Respondents and the Interested Parties. The Court did not direct that the Petitioners

would bear the said costs personally. Further, there is no material placed before the Court demonstrating that the Petitioners acted in bad faith, abused the court process, or engaged in conduct warranting personal sanction.

Committal to civil jail is a mode of execution directed at a judgment debtor personally. It presupposes that the decretal sum is owed by the judgment debtor in his or her individual capacity and that the debtor has the means but has failed or refused to satisfy the decree. Where the liability is attributable to an estate, the proper course is execution against the assets of the estate, if any, and not against the personal liberty of the administrators. Deprivation of liberty through civil jail is a drastic measure and must be exercised cautiously and only where personal liability is clearly established.

In the circumstances of this case, the Court finds that the Petitioners acted in a representative capacity as administrators and beneficiaries of the estate of Gatembu Karumbi (deceased). The order for costs did not impose personal liability upon them. Accordingly, execution by way of committal to civil jail in their personal capacity would be improper. The Respondents are at liberty to pursue execution, if any, against the assets of the estate in accordance with the law.

Opinion

The Petitioners, having sued in their representative capacity as beneficiaries and administrators of the estate of Gatembu Karumbi (deceased), are **not liable to committal to civil jail in their personal capacity** for payment of the taxed costs. Execution, if any, should be directed against the estate of the deceased.

It is so opined.

DATED, SIGNED AND DELIVERED AT EMBU THIS 16TH DAY OF APRIL, 2026.

**HON. E.C CHERONO
ELC JUDGE**

In the presence of;

1. Mr. Njeru Wa Njeru for the Petitioners.
2. Mr. Kiongo for the 2nd to 6th Respondents
3. M/S Mwinja H/B Mr. Njeru Ithiga for the 1st Interested party
4. Diana Kemboi C/A