

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**FAMILY DIVISION**  
**PROBATE & ADMINISTRATION CAUSE NO. 2965 OF 2003**

***IN THE MATTER OF THE ESTATE OF JAMES GITAU NJUGUNA***  
***(DECEASED)***

**NJUGUNA BUILDERS PLUMBING  
& DRAINAGE CONTRACTORS ..... 1<sup>ST</sup> APPLICANT**  
**CHRISTINE MWIKALI MUTHOKA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**JANE WAIRIMU GITAU .....1<sup>ST</sup> RESPONDENT**  
**TABITHA NJERI GITAU .....2<sup>ND</sup> RESPONDENT**  
**PETER NJENGA GITAU .....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The administration of an intestate estate is traditionally a solemn, procedural, and statutory mechanism designed to identify, gather, preserve, and distribute the earthly acquisitions of the departed to their rightful dependents and beneficiaries. The primary objective is the equitable transmission of wealth across generations, guided by the Law of Succession Act. However, the proceedings in this Cause, pertaining to the Estate of the Deceased, have mutated from a conventional probate administration into a highly convoluted, adversarial corporate skirmish.

2. Before this Court for determination are two pivotal applications that strike at the very heart of this jurisdictional dichotomy, as well as the sanctity, authority, and coercive power of judicial pronouncements.
3. The first is Summons for Revocation or Annulment of Grant dated 9 April 2025 filed by the Applicants seeking to revoke the amended Grant issued to the Respondents herein on 8 April 2025 on the ground that the amended Grant was obtained fraudulently by the Respondents by making false statements and concealment from the Court of facts and information material to the case.
4. The second Application is Notice of Motion dated 15 July 2025 by the Applicants, seeking to cite the Respondents for contempt of court. The Applicants seek severe penal sanctions, primarily the committal of the Respondents to civil jail for a period of six months, and the imposition of punitive fines for the alleged wilful and deliberate disobedience of an order issued by this Court on 14 April 2025.
5. The 3<sup>rd</sup> Respondent filed Notice of Preliminary Objection dated 9 October 2025, raising fundamental, threshold questions of law. The objection primarily challenges the jurisdiction of this Court—sitting strictly as a Probate and Administration Court—to entertain, adjudicate, or issue orders regarding the internal shareholding, change of directorship, and debt recovery mechanisms of a distinct corporate entity, namely the 1<sup>st</sup> Applicant. Furthermore, the Preliminary Objection vigorously challenges the *locus standi* of the 2<sup>nd</sup> Applicant to institute or sustain these proceedings within a succession cause, arguing that she is neither a beneficiary, a dependent, nor an administrator of the Deceased's estate.
6. Pursuant to the procedural directions of this Court, and recognizing that a preliminary objection on jurisdiction has the potential to dispose of the entire

substantive application, both Applications were consolidated for hearing and determination. The parties elected to canvass the Applications through extensive written submissions, which have been duly filed, exchanged, and meticulously considered by this Court.

### **Background**

7. The Deceased passed away leaving behind various assets. Prominent among these assets was an equity stake in Njuguna Builders Plumbing and Drainage Contractors Limited, a private limited liability company incorporated on 13 August 1987 under the Companies Act.
8. A confirmed Grant of Letters of Administration in respect of the Deceased's estate was initially issued on 31 July 2006. For over a decade, the administration of the estate appeared relatively dormant and settled until subsequent external corporate events catalyzed a resurgence of intense litigation. The core of the current dispute revolves around the 1<sup>st</sup> Applicant company, which, according to the evidentiary record and submissions, is currently a creditor to the Government of Kenya following the successful conclusion of protracted arbitral proceedings.
9. To facilitate the financing, recovery, and administration of this outstanding and substantial arbitral award, the then-surviving directors of the 1<sup>st</sup> Applicant—the Late Damaris Wangari Gitau and the Late Patrick Karanja Gitau—convened a board meeting and passed a company resolution on 28 October 2018. Through this resolution, the company terminated its previous legal counsel and appointed the firm of Mutua Nyongesa Muthoka Advocates to pursue the recovery. Concurrently, the company executed an irrevocable Specific Power of Attorney appointing Christine Mwikali Muthoka, the 2<sup>nd</sup> Applicant, as the authorized agent of the company, specifically mandated to oversee the financing and recovery of the arbitral award.

10. The friction leading to the present Applications began when the Respondents sought to amend the Confirmed Grant of Letters of Administration that had been originally issued in 2006. *Vide* an application dated 8 January 2025, the Respondents jointly sought to amend the Grant to explicitly include themselves as administrators and to formally list the Deceased's 500 shares in the 1<sup>st</sup> Applicant company as part of the distributable estate, which had allegedly been omitted previously. On 8 April 2025, the Court issued an order allowing these amendments.
11. Shortly thereafter, a dispute arose regarding the implications of this amendment, prompting the filing of an Application that resulted in an order issued by the Hon. Justice Hilary Chemitei on 14 April 2025. The material terms of this order, which forms the genesis of the contempt proceedings, were as follows:

*THAT the application is certified urgent, let it be served and be mentioned before the DR on 23/4/25 for taking a suitable date.*

*THAT status quo as at 8/4/25 be maintained in the estate.*

12. This order was accompanied by a standard Penal Notice warning the parties of the severe penal consequences of disobedience or non-observance. The Applicants contend that this order was formally served upon the Respondents via their Advocates on record at the time. through email transmission on 15 April 2025 at 4:59 PM, and subsequently by physical service on 29 April 2025.
13. Despite the existence of this order mandating the maintenance of the *status quo* in the estate, a significant alteration was effected at the Companies Registry regarding the shareholding and directorship of the 1<sup>st</sup> Applicant. The

official records generated by the Business Registration Service (BRS) illustrate a stark metamorphosis in the company's corporate structure between July 2024 and July 2025.

14. As at 16 July 2024, the shareholding in the 1<sup>st</sup> Applicant was as follows:

- (i) Damaris Wangari Gitau – Director/Shareholder – 200 ordinary shares
- (ii) James Gitau Njuguna - Shareholder – 500 ordinary shares
- (iii) Joseph Maina – Director/Shareholder – 0 shares

15. On 15 July 2025, the shareholding was as follows:

- (i) Estate of Late James Gitau Njuguna – Shareholder – 500 ordinary shares
- (ii) Estate of Late Damaris Wanre Gitau – Shareholder – 200 ordinary shares
- (iii) Peter Njenga Gitau – Director/Shareholder – 300 ordinary shares

16. The latter CR12 explicitly lists the 3<sup>rd</sup> Respondent as the sole surviving Director and a new shareholder possessing 300 shares, bringing the total allotted share capital to 1,000 shares. The Applicants allege that this alteration, which they claim was executed on or about 16 May 2025, constitutes a brazen, fraudulent scheme designed to unilaterally circumvent the 14 April 2025 Court order. They argue that the 3<sup>rd</sup> Respondent hijacked the corporate vehicle to access the arbitral award funds, thereby intentionally defeating the 2<sup>nd</sup> Applicant's Power of Attorney and rendering the Court's *status quo* order nugatory.

17. The 3<sup>rd</sup> Respondent, conversely, vehemently maintains that he acted lawfully and strictly within his statutory mandate as the sole surviving director to update the company returns and reflect the current state of affairs. He

asserts that this act of corporate compliance is wholly disconnected from the probate jurisdiction of this Court and does not constitute intermeddling with the Deceased's estate.

### **The Applicants' Case**

18. The Applicants' case is primarily laid out in the Notice of Motion dated 15 July 2025, the Supporting Affidavit of Christine Muthoka sworn on 15 July 2025, her Supplementary Affidavit sworn on 22 September 2025, and the Applicants' Written Submissions dated 14 November 2025.
19. The Applicants submit that obedience to court orders is the fundamental cornerstone of the rule of law. They argue that the dignity, authority, and constitutional capacity of the courts to administer justice depend entirely upon the assurance that their orders will be enforced and obeyed by all citizens. Relying heavily on the Court of Appeal's pronouncements in ***Woburn Estate Limited v Margaret Bashforth eKLR***, the Applicants argue that the High Court possesses inherent jurisdiction under Section 5(1) of the Judicature Act (Cap 8) to punish any party who violates its orders, ensuring that the judicial process is not abused.
20. They further rely on the uncompromising principles established in ***Shimmers Plaza Limited v National Bank of Kenya Limited eKLR***, which adopted the English precedent of ***Hadkinson v Hadkinson (1952) ALL ER 567***. The Applicants emphasize the legal doctrine that it is the plain and unqualified obligation of every person against whom an order is made to obey it until that order is discharged. The obligation is absolute, extending even to instances where the person affected by the order believes it to be irregular, null, or void. As stated in ***Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & Another (Civil Application No. 39 of 1990)***, a party

cannot be permitted to judge for themselves whether an order is valid; they must obey it and apply to the court to have it discharged.

21. Factually, the Applicants contend that the Respondents, acting in collusion, sought to amend the Confirmed Grant to include themselves as administrators and to include the 500 shares. When the Court stayed the implementation of this amendment by ordering the maintenance of the *status quo* as of 8 April 2025, the Respondents allegedly bypassed the probate Court. The Applicants allege that the 3<sup>rd</sup> Respondent, fully aware of the stay order, approached the Registrar of Companies and effected illegal changes to the CR12, allocating himself 300 shares and registering the estate as a shareholder.
22. The Applicants dismiss the 3<sup>rd</sup> Respondent's defence of ignorance as a convoluted response and an attempt to insult the intelligence of this Honourable Court. They argue that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, who admit knowledge of the Order, colluded with the 3<sup>rd</sup> Respondent to effect these changes for their mutual benefit. Furthermore, the Applicants defend their *locus standi* by asserting that the Specific Power of Attorney was executed under Section 50 of the Companies Act, by the company as a separate legal entity, and, therefore, the death of the specific directors who signed it does not extinguish the company's agency.

### **The 3<sup>rd</sup> Respondent's Case (The Preliminary Objection)**

23. The 3<sup>rd</sup> Respondent's defence is anchored upon a Notice of Preliminary Objection dated 9 October 2025, a Replying Affidavit sworn on 5 September 2025 (referenced in submissions), and Written Submissions dated 14 January 2026.
24. The 3<sup>rd</sup> Respondent raises a formidable jurisdictional challenge. He contends that this Court, sitting as a Probate and Administration Court, lacks the

jurisdictional competence to entertain disputes regarding the internal affairs, shareholding, and directorship of the 1<sup>st</sup> Applicant. He argues that the Court's jurisdiction is strictly confined by the Law of Succession Act to the division and distribution of the Deceased's 500 shares to his legal beneficiaries. Any dispute regarding who the directors are, or the fate of the corporate debt owed by the Government of Kenya, falls squarely within the Commercial and Tax Division of the High Court, governed by the Companies Act.

25. To substantiate this argument, the 3<sup>rd</sup> Respondent relies on the Court of Appeal decision in ***Pacific Frontier Seas Ltd v Kyengo & another (Civil Appeal No. 32 of 2018) KECA 396 (KLR)***. He submits that the appellate Court conclusively determined that a succession Court cannot determine a dispute relating to the internal affairs of a company, and that beneficiaries of a deceased shareholder are only entitled to the shares, not the physical property or assets of the company. He asserts that jurisdictional challenges are pure points of law that must be resolved at the earliest opportunity, citing ***Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd KLR 1***.
26. Regarding the contempt application, the 3<sup>rd</sup> Respondent argues that the Applicants have failed to meet the rigorous standard of proof required for civil contempt, which is quasi-criminal in nature. Relying on ***Katsuri Ltd v Kapurchand Depar Shah eKLR***, he outlines the four essential elements of contempt, asserting that none have been proven. He states that the order of 14 April 2025 did not compel him to do or refrain from doing any specific act; it merely ordered the *status quo* in the estate. As a separate legal entity, the company's statutory filings are not part of the estate. Furthermore, he vehemently denies being served with the order, pointing out that the firm of N. Kinyanjui & Co. Advocates did not represent him, thereby nullifying the element of knowledge required for contempt.

27. Finally, the 3<sup>rd</sup> Respondent challenges the *locus standi* of the 2<sup>nd</sup> Applicant, arguing that her commercial Recovery Agreement and Power of Attorney do not grant her the right to institute proceedings in a succession cause, as she is not a beneficiary.

### **The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Case**

28. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed Replying Affidavits dated 31 July 2025 and Submissions dated 19 January 2026.
29. They fully associate themselves with the Preliminary Objection raised by the 3<sup>rd</sup> Respondent, agreeing that issues regarding the shareholding of the 1<sup>st</sup> Applicant are substantive commercial matters that require determination in commercial proceedings, not a succession cause. Regarding the contempt application, they admit knowledge of the 14 April 2025 order but categorically deny any involvement in the alteration of the company's CR12 records. They argue that the changes complained of relate solely to the 3<sup>rd</sup> Respondent, and that they cannot be held vicariously liable for his independent actions. They point out the anomaly in the Applicants' claim of service, confirming that N. Kinyanjui & Company Advocates never acted for the 3<sup>rd</sup> Respondent.

### **Analysis & Determination**

30. This Court frames the following four overarching issues for determination:
- (i) Whether the Preliminary Objection dated 9 October 2025 meets the legal threshold to be sustained as a pure point of law;
  - (ii) Whether this Court, sitting strictly in its Probate and Administration jurisdiction, possesses the requisite legal competence to adjudicate upon the internal directorship, shareholding alterations, and corporate debt recovery mechanisms of the 1<sup>st</sup> Applicant;

- (iii) Whether the 2<sup>nd</sup> Applicant possesses the requisite *locus standi* to institute and sustain proceedings within this Succession Cause based on a commercial Power of Attorney;
- (iv) Whether the Respondents are guilty of Contempt of Court regarding the Orders issued on 14 April 2025, and whether the Applicants have discharged the requisite standard of proof for committal to civil jail.

### The Validity and Threshold of the Preliminary Objection

31. The anatomy of a preliminary objection in Kenyan jurisprudence is rigidly defined and deeply entrenched. The *locus classicus* remains the authoritative pronouncement by Law, J.A. in the East African Court of Appeal decision of ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd EA 696***.
32. The Applicants forcefully contend that the 3<sup>rd</sup> Respondent's Preliminary Objection traverses deeply into contested factual territory, particularly regarding the validity of the corporate resolutions and the subsistence of the Power of Attorney. They argue that because facts must be ascertained, the Preliminary Objection is incurably defective.
33. While the Applicants are correct that certain grounds within the Preliminary Objection—specifically Grounds 4 and 5, alleging a lack of corporate resolution and a conflict of interest by the Applicants' Advocates, require the adduction of evidentiary proof and thus fail the strict ***Mukisa Biscuit*** test, this does not invalidate the entire objection. Grounds 1, 2, and 3 are of a fundamentally different, purely legal character.
34. Grounds 1, 2, and 3 challenge the subject-matter jurisdiction of this Court to entertain disputes over internal company matters and challenge the *locus standi* of the 2<sup>nd</sup> Applicant to participate in a succession cause. Jurisdiction is the absolute lifeblood of any judicial proceeding. As Nyarangi J.A. famously

and concisely articulated in ***Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd KLR 1:***

*"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction."*

35. A challenge to the Court's jurisdiction based on the inherent statutory limits of the Law of Succession Act vis-à-vis the Companies Act is a pure point of law. It can be fully argued and resolved on the assumption that all facts pleaded by the Applicants (i.e., that the company CR12 was indeed altered and that the Power of Attorney physically exists) are entirely true. If the Court lacks jurisdiction over the subject matter, the truth of the facts is irrelevant.
36. Therefore, I find and hold that the Preliminary Objection, specifically regarding the questions of jurisdiction and *locus standi*, is properly raised in law, meets the ***Mukisa Biscuit*** threshold, and demands immediate determination before any further inquiry into the contempt application.

#### Jurisdiction of the Succession Court over Corporate Affairs

37. The gravamen of the 3<sup>rd</sup> Respondent's Preliminary Objection is that the Applicants are improperly utilizing the Probate and Administration Court to wage a commercial war for the control of the 1<sup>st</sup> Applicant. This necessitates a profound examination of the structural boundaries of this Court's jurisdiction, specifically the impenetrable wall between probate law and corporate law.

38. The Law of Succession Act provides the exclusive statutory framework for the administration of deceased persons' estates in Kenya. The mandate of a probate court is circumscribed and specific: it is to facilitate the collection of the deceased's free property, the payment of estate debts, the identification of rightful dependents and beneficiaries, and the eventual, equitable distribution of the net estate.
39. When a person dies possessed of shares in a limited liability company, a critical legal distinction must be drawn. The asset that forms part of the deceased's estate is the chose in action represented by the shares themselves. The estate does not inherit the underlying physical assets, the bank accounts, or the management rights of the company. This is the bedrock principle of corporate personality established over a century ago in ***Salomon v Salomon & Co Ltd AC 22***, which recognizes a company as a distinct juristic person, completely separate and independent from its shareholders and directors.
40. Courts has consistently guarded this boundary to prevent probate courts from being dragged into commercial litigation. The Court of Appeal provided definitive, binding guidance on this exact intersection in the case of ***Pacific Frontier Seas Ltd v Kyengo & another (Civil Appeal 32 of 2018) KECA 396 (KLR)***. In that case, the High Court, sitting as a succession court, had attempted to distribute the physical land owned by a company in which the deceased was a shareholder, and had made sweeping orders regarding the directorship and shareholding of the company. The Court of Appeal decisively overturned this overreach, holding:

*"What the estate of a deceased shareholder is entitled to are only the shares of the deceased in the company, and not to the property of the company... Where there is no dispute on the shares held by the deceased in a company, the succession*

*court has the jurisdiction to decide whether they are available for distribution and how they should be distributed. When there is intermeddling and interference with the properties of the deceased, including shares, the court has jurisdiction to stop the intermeddling and to preserve the estate. However, when the dispute veers off to contestations on who are the company's shareholders, and directors, the extent and number of shares, the properties of the company, the filing of annual returns, occupation of the company's properties, liabilities of the company among others, those are issues for the company to be resolved under the legal framework provided by the Companies Act."*

41. This appellate precedent is unequivocal. A succession court is a court of distribution, not a boardroom umpire. The boundary is further fortified by the decision in ***In re Estate of Boniface Mutinda Kabaka (Deceased) (Succession Cause E185 of 2021) KEHC 12031 (KLR)***, where the Court emphatically stated that a widow could not utilize a limited Grant of administration to step into the shoes of the deceased to participate in the management of a company or access its bank accounts. The Court correctly noted:

*"Any Orders against a limited Company by persons who claim entitlement to shares in and directorship of the Company can only be properly brought within the framework of the Companies Act, in proceedings properly brought before a Commercial Court as opposed to a Probate Court."*

42. Similarly, in ***In the Matter of the Estate of Yakub Umardin Karimbux (Deceased) Succession Cause No. 2786 of 1997***, the Court dismissed an application seeking to reverse changes in the shareholding of a company,

holding that the probate court's mandate is solely to distribute the shares held by the deceased at the time of death, and any subsequent disputes regarding the manipulation of shareholding must be taken to another forum. The court further held in ***In re Estate of Jaswant Singh Boor Dhanjal (Deceased) KEHC 4912 (KLR)*** that while shares are distributable, company properties are not, and disputes over company registries do not constitute intermeddling under section 45 of the Law of Succession Act, but rather commercial disputes.

43. Furthermore, the procedural framework anticipates such conflicts. Where disputes arise regarding the identity of an estate, contested assets, or ownership that cannot be conveniently resolved within the probate process, Rule 41(3) of the Probate and Administration Rules directs that such specific assets be appropriated and set aside pending the determination of the dispute in a separate civil suit (usually via an Originating Summons under Order 37 of the Civil Procedure Rules). The probate court cannot usurp that civil, commercial jurisdiction to determine complex issues of corporate fraud or registry manipulation.
44. Applying this formidable wall of jurisprudence to the present case, the Deceased owned 500 shares in the 1<sup>st</sup> Applicant company. This Court's jurisdiction is strictly, narrowly confined to identifying those 500 shares, preserving them from intermeddling, and eventually transmitting them to his legal beneficiaries.
45. The Applicants' Notice of Motion for Contempt is entirely predicated on the 3<sup>rd</sup> Respondent's act of altering the CR12 at the Business Registration Service (BRS) to register himself as a director and allocate himself 300 shares. While the Applicants view this as a fraudulent circumvention of the succession process designed to steal a corporate debt, the act of updating a company registry, appointing directors, filing annual returns, and determining

the validity of corporate resolutions are exclusively matters of Company Law governed by the Companies Act, 2015.

46. If the 3<sup>rd</sup> Respondent has engaged in corporate fraud, illegal allotment of shares, or fraudulent misrepresentation to the Registrar of Companies, as alleged by the 2<sup>nd</sup> Applicant, the remedy lies in instituting a substantive suit in the Commercial and Tax Division of the High Court to rectify the company register pursuant to the provisions of the Companies Act, or by invoking the penal provisions of the law through the Directorate of Criminal Investigations. The Probate Court simply downs its tools when asked to police the Business Registration Service or adjudicate boardroom coups.
47. Therefore, I uphold the Preliminary Objection on this ground. I find and hold that this Court lacks the requisite subject-matter jurisdiction to adjudicate the disputes concerning the CR12 alterations, directorship, and internal management of the 1<sup>st</sup> Applicant.

Locus Standi of the 2<sup>nd</sup> Applicant

48. The 2<sup>nd</sup> Applicant brings these applications on the strength of a Specific Power of Attorney executed on 28 October 2018 by the then-directors of the 1<sup>st</sup> Applicant. The 3<sup>rd</sup> Respondent forcefully challenges her *locus standi*, arguing that she is a complete stranger to the estate of the Deceased.
49. The Applicants submit that under Section 50 of the Companies Act, 2015, a company may empower any person as its attorney to act on its behalf. They correctly argue that a company is an entity with perpetual succession, and therefore, an agency created by the company does not automatically terminate upon the death of the individual directors who affixed the company seal. The corporate principal survives, and thus, theoretically, the agency survives, unlike a standard power of attorney granted by a natural person which extinguishes upon death.

50. However, the validity of the Power of Attorney in commercial law is entirely distinct from the question of *locus standi* in succession law. *Locus standi* is a fundamental constitutional and procedural requirement. It requires a party to demonstrate a sufficient, direct connection to, and harm from, the law or action challenged to support that party's participation in the case.
51. In a Probate and Administration cause, the recognized actors who possess inherent standing are the legal personal representatives (administrators or executors), the dependents of the deceased, the rightful beneficiaries, the objectors claiming a share of the estate, and the proven creditors of the deceased.
52. The 2<sup>nd</sup> Applicant falls into none of these categories. She is an agent of the 1<sup>st</sup> Applicant company, tasked with recovering a corporate debt from the Government of Kenya. The debt is owed to the corporate entity, not to the estate of James Gitau Njuguna. As established exhaustively above, the company is a separate legal entity. Consequently, the 2<sup>nd</sup> Applicant possesses no proprietary, beneficial, or equitable interest whatsoever in the estate of the deceased. Her interest lies entirely in the corporate governance and asset recovery mechanisms of the company.
53. To grant the 2<sup>nd</sup> Applicant an audience in this succession cause to litigate corporate grievances against an administrator or beneficiary would be to permit an impermissible commingling of distinct legal regimes. As the Court of Appeal held in ***Pacific Frontier Seas Ltd (supra)***, disputes involving third parties who are neither survivors nor beneficiaries must be resolved outside the framework set out in the Law of Succession Act. The 2<sup>nd</sup> Applicant's dispute is a commercial agency dispute, not an inheritance dispute.

54. I, therefore, find that the 2<sup>nd</sup> Applicant lacks the requisite *locus standi* to seek orders, including committal for contempt, within this succession cause. This ground of the Preliminary Objection is equally upheld.

#### Contempt of Court Application and the Standard of Proof

55. Having determined that this Court lacks jurisdiction over the corporate dispute and that the 2<sup>nd</sup> Applicant lacks *locus standi*, the Notice of Motion dated 15 July 2025 must inevitably fail. The foundation upon which it rests has been struck out. However, considering the extreme gravity of an allegation of contempt of Court, the penal consequences sought, and the judicial necessity to fully address all substantive pleadings placed before me, I am compelled to analyse the merits of the contempt application independently.

56. Contempt of court is a profound affront to the administration of justice. It threatens the very foundation of the rule of law and the constitutional architecture of the state. Following the declaration of the Contempt of Court Act (No. 46 of 2016) as unconstitutional in ***Kenya Human Rights Commission v Attorney General & another eKLR***, the Court's jurisdiction to punish for contempt reverted to the inherent powers preserved under section 5(1) of the Judicature Act (Cap 8). This section grants the High Court the same power to punish for contempt as is possessed by the High Court of Justice in England.

57. The Applicants rely on the uncompromising principle established in ***Shimmers Plaza Limited v National Bank of Kenya Limited eKLR*** and ***Woburn Estate Limited v Margaret Bashforth eKLR***. Both cases quoted with approval the English locus classicus ***Hadkinson v Hadkinson (1952) ALL ER 567***, wherein Lord Romer L.J. stated:

*"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged."*

58. The jurisprudence is clear: the fact that an order may be deemed irregular, null, or even void by a party does not grant them the license to disobey it with impunity. A party must obey the order and apply to the court to have it set aside, as was firmly restated in ***Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & Another (Civil Application No. 39 of 1990)***. I am in total and absolute agreement with this foundational principle. The authority of the Court is non-negotiable.
59. However, citing a party for civil contempt is a quasi-criminal undertaking that imperils the fundamental liberty of the individual, carrying the real threat of incarceration in a civil jail.
60. Because a finding of contempt may result in the deprivation of liberty, the standard of proof is highly elevated above standard civil litigation. As enunciated by the Court of Appeal in the landmark case of ***Gatharia K. Mutikika v Baharini Farm Ltd KLR 227***, the standard of proof in contempt proceedings must be strict and consistent with the gravity of the charge. The Court held:
- "A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt."*
61. The burden lies squarely on the Applicant to strictly prove the contempt to this elevated standard. To operationalize this standard, the Court in ***Katsuri***

***Ltd v Kapurchand Depar Shah eKLR*** articulated four essential elements that must be proved to sustain a conviction for civil contempt:

- 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 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.

62. I shall now subject the Applicants' evidence to this stringent four-part test.

- (i) Clear and unambiguous terms binding on the contemnor

63. The order issued on 14 April 2025 reads, in its material part: "*THAT status quo as at 8/4/25 be maintained in the estate.*".

64. The Applicants argue that the 3<sup>rd</sup> Respondent breached this order by altering the 1<sup>st</sup> Applicant's CR12 at the Companies Registry on 16 May 2025. The critical legal question is whether an order directing the maintenance of the status quo in the estate unambiguously prohibits actions taken in the corporate registry of a distinct legal entity in which the estate merely holds shares.

65. As extensively analysed under the jurisdictional framework above, the estate and the company are legally separate entities. The estate comprises the 500 shares. The *status quo* in the estate means that those 500 shares cannot be sold, transferred, liquidated, or distributed to beneficiaries pending the hearing of the Application. However, updating the CR12 to reflect the estate as a shareholder is a corporate administrative act. The Court order did not injunct the operations of the 1<sup>st</sup> Applicant, nor did it specifically restrain Peter

Njenga Gitau from holding himself out as a director, filing annual returns, or conducting corporate business.

66. Where the terms of an injunction or stay are broad, generic, or susceptible to multiple interpretations—especially concerning third-party corporate entities that fall outside the direct statutory purview of probate administration—legal ambiguity arises. In quasi-criminal proceedings for committal, any ambiguity must be resolved in favour of the alleged contemnor. I find that the order of 14 April 2025 was not sufficiently clear, specific, and unambiguous to encompass the statutory filings of a separate corporate entity at the Business Registration Service.

(ii) Knowledge or proper notice of the order

67. The Applicants depone that the order was served via email on 15 April 2025 at 4:59 PM and physically on 29 April 2025 upon N. Kinyanjui & Company Advocates, who they claim represent all the Respondents. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents acknowledge their awareness of the order.

68. However, the 3<sup>rd</sup> Respondent vehemently denies service and knowledge. He asserts that N. Kinyanjui & Company Advocates never acted for him in this specific context, a fact corroborated by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and borne out by his subsequent representation by Gitonga Kamiti, Kairaria & Co. Advocates.

69. While actual knowledge of a court order can suffice to ground contempt even without formal personal service, such knowledge must be proved strictly. Personal service is generally preferred when penal consequences are sought, as noted by the Court of Appeal in ***Akber Abdullah Kassam Esmail v Equip Agencies Ltd.***

70. The Applicants rely entirely on proxy service upon a law firm whose representation of the specific contemnor is actively disputed and unsupported by a Notice of Appointment on record for the 3<sup>rd</sup> Respondent at that specific time. Furthermore, the email adduced as evidence of service shows transmission to a single address (nkinyanjui4@yahoo.com), but there is no incontrovertible proof that the 3<sup>rd</sup> Respondent was personally apprised of the penal consequences of the order prior to the alleged corporate alterations on 16 May 2025. The Applicants' reliance on a subsequent email dated 15 July 2025 to prove knowledge falls woefully short, as it post-dates the alleged contemptuous act by two months. The high threshold of proof requires more than inferential, disputed proxy knowledge.

(iii) Breach of the terms and deliberate conduct

71. Having failed to satisfy the first two mandatory elements, the Application for contempt collapses entirely.

72. Regarding the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, they cannot be cited for contempt as there is absolutely no evidence placing them at the Companies Registry or legally linking them to the execution of the CR12 changes. A party cannot be committed to civil jail for the independent, unilateral acts of a co-administrator or a third party. Contempt is a personal liability.

73. As for the 3<sup>rd</sup> Respondent, while his actions to alter the CR12 and install himself as a director while a succession dispute was raging may be legally aggressive, opportunistic, and potentially subject to severe challenge in the Commercial Division, the Applicants have failed to prove that updating corporate returns constituted a deliberate breach of an ambiguous probate order that lacked specific injunctive directions against the company.

74. Consequently, the Notice of Motion must fail. The Applicants are attempting to use the heavy, blunt instrument of contempt proceedings to intimidate a corporate rival and litigate a complex boardroom dispute, a strategy which this Court will not countenance.

75. Accordingly, I make the following orders:

- (i) The Notice of Preliminary Objection dated 9 October 2025 is hereby upheld.
- (ii) Consequently, the Summons for Revocation dated 9 April 2025 and Notice of Motion dated 15 July 2025 are hereby struck out and dismissed in their entirety.
- (iii) The Applicants shall bear the costs of the Applications.
- (iv) Leave to appeal is granted.

**DATED AND DELIVERED AT NAIROBI THIS 14 DAY OF MAY 2026**

**HELENE R. NAMISI  
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Court Assistant: Lucy Mwangi