



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: KARANJA, ASIKE-MAKHANDIA & MURGOR, J.J.A.)

CIVIL APPEAL (APPLICATION) NO. 116 OF 2016

BETWEEN

MARVIN OPIYO AMBALA.....APPLICANT

NANCY AMBALA.....1ST INTENDED INTERESTED PARTY

AUMA AMBALA.....2ND INTENDED INTERESTED PARTY

AND

ODUOR HAWI AMBALA.....1ST RESPONDENT

OGOLA KODHEK AMBALA.....2ND RESPONDENT

(Being an application for contempt of the court arising from the judgment and order of the Court of Appeal at Kisumu (Githinji, Okwengu & J. Mohammed, J.J.A delivered on 26th April, 2018

in

Civil Appeal No. 116 of 2016)

RULING OF THE COURT

1. **Mr. Odhiambo Ambala** (applicant) appears in person in the Notice of Motion dated 30th December, 2020. He and the appellants and respondents in the Civil Appeal are all siblings and some of the beneficiaries in the Estate of Aggrey Otieno Ambala (deceased) who was their father; and who passed on, on 8th June, 1985. His estate has not been fully distributed to date and is still subject of litigation in our courts.

For purposes of this application, we shall eschew going into details of the said litigation and confine ourselves to the application before us.

2. In a judgment dated 29th June 2016, the High Court sitting at Kisumu (Chemitei, J.) revoked two previous grants of Letters of Administration and three previous court orders while at the same time he appointed three joint administrators of the deceased's estate; and also redistributed the estate. An appeal being Civil Appeal No. 116 of 2016 was filed before this Court challenging the said judgment. Upon hearing the appeal, the Court (Githinji, Okwengu & J. Mohammed, J.J.A.) rendered the judgment dated 26th April, 2018 setting aside the judgment of Chemitei, J. and making the following specific orders:-

“For the avoidance of doubt:

(a) The consent order of 3rd December, 2004 is restored, the grant dated 10th February, 2006 remains valid plus orders made on 2nd April, 2008 and 28th November, 2008.

(b) The cancellation of transfers of L.R Nos. 1160/286, 287 and 288 by the High Court is revoked. The Chief Land Registrar to restore entries relating to those three parcels of land and sub-divisions thereof on the register as of 29th June, 2016.

(c) All transactions relating to L.R No. 1160/286, 287 and 288 and the respective sub-divisions and assets after the date of the

judgment of the High Court – that is after 29th June, 2016 are revoked and entries thereof to be restored in (b) above.

(d) The cross appeal is allowed to the extent that the revocation of the transfer of L.R No. 1160/286 is set aside.

(e) ...”

3. One would have expected the matter to end there but two applications were filed by some beneficiaries seeking review and setting aside of the said judgment. Having heard both applications, this Court (Gatembu, Murgor & Sichale, JJ.A.) found the applications devoid of merit and dismissed them with orders that each party bears its own costs of the applications. The purport of that dismissal is that the judgment of this Court referred to earlier remains the final judgment in this matter.

4. According to the applicant, one **Farouk Asif Butt** and his wife **Hadija Asif Butt**, who were referred to as caveators in the judgment are in contempt of the judgment dated 26th April, 2018. He told the court that the two have moved to the Environment and Land Court (ELC) where they are relitigating the issues which have already been determined by this Court vide the judgment of 26th April, 2018. He says further that the two intended contemnors have continued to utilize the said properties in total disregard of court orders and all attempts to have them removed from the properties by the police have borne no fruits hence this application.

5. The two are said to have been served with this application but they have not filed any response and nor did they appear in court to explain their position. The applicant, therefore, entreats this Court to summon the two to show cause why they should not be held in contempt of the orders of this Court in respect to the judgment dated 26th April, 2018. The applicant also seeks an order that should the two named parties be found in contempt of this Courts order, then they should be committed to serve a jail term for a period not exceeding six months.

6. We have considered this application along with the history of this matter and the contents of the said judgment. Without saying much, we wish to express that contempt of court is a serious charge and a party found to be in contempt of court orders faces a serious risk of being deprived of his/her liberty. It is important therefore for a party to be given an opportunity to explain themselves or defend themselves before they can be cited for contempt.

7. In our view, the applicant has demonstrated sufficient cause to warrant the two intended contemnors to be summoned to appear before court to show cause why they should not be cited for contempt of court. This is more so in light of the fact that though served with this application, they did not deem it necessary to file a replying affidavit to explain their situation. For those reasons, we allow the applicant’s Notice of Motion and direct that **Farouk Asif Butt** and **Hadija Asif Butt** do appear before this Court on a date to be given by the Deputy Registrar on priority basis to show cause why they should not be found in contempt of court and be punished for the same in accordance to the law. We make no order as to costs in respect of this application.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF APRIL, 2021.

W. KARANJA

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JUDGE OF APPEAL

ASIKE - MAKHANDIA

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR