



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**

**CAUSE NO. 133 (N) OF 2008**

*(Before Hon. Lady Justice Maureen Onyango)*

**APHONSE MWANGEMI MUNGA**

**PETER MUCHIRI MURIUNGI**

**MICHAEL ONYANGO OCHIENG**

**PETER N. MAKAU**

**CHIVATSI KATAMA**

**MARICOS NYAMWANGA OKONGO**

**STEPHEN NZIOKA KASINA**

**SHADRACK C. LEWA**

**BENEDICT ORWARU**

**NICHOLUS MUOKI**

**JAMES KINGELEL** (Suing on behalf and on behalf of 367

employees of African Safari Club Limited).....**CLAIMANTS**

**VERSUS**

**AFRICAN SAFARI CLUB LIMITED**.....**1<sup>ST</sup> RESPONDENT**

**SHEILA NKATHA MUTHEE**

**(As Administrator of the Estate of KARI JACOBS RUEDIN (Deceased))**..... **2<sup>ND</sup> RESPONDENT**

**ROLAND RUEDIN**.....**3<sup>RD</sup> RESPONDENT**

**HANSPETER RUEDIN**.....**4<sup>TH</sup> RESPONDENT**

**RULING 2**

Before me for determination is an application dated 27<sup>th</sup> June 2020. The Applicant who is Counsel for the claimants herein seeks the following orders –

- a) That this application be and is hereby heard on priority to any other Application hereof.

b) That Sheilla Nkatha Muthee, Roland Ruedin and Hanspeter Ruedin be and are hereby denied Court's audience until they pay to the Applicants a sum of Kshs.5,266,359/= being costs as certified by the Deputy Registrar on 8<sup>th</sup> December, 2016 in the **Court of Appeal No. 314 of 2014 (Nairobi)** arising from the orders of this Court.

c) That Sheilla Nkatha Muthee, Roland Ruedin and Hanspeter Ruedin be and are hereby ordered to forthwith pay to the Applicants a sum of Kshs.5,266,359/= being costs as certified by the Deputy Registrar on 8<sup>th</sup> December, 2016 in the **Court of Appeal No. 314 of 2014 (Nairobi)** arising from the orders of this Court.

d) That the costs of this application be paid personally by the Defendants.

The grounds in support of the application as set out on the face of the application are that –

- 1) This Application ought to be heard on priority basis.
- 2) The Respondents have not paid to the Applicants a sum of Kshs.5,266,359/- being costs as certified by the Deputy Registrar on 8<sup>th</sup> December, 2016, **Court of Appeal No, 314 of 2014 (Nairobi)** arising from the orders of this Court.
- 3) The Respondents have abused the Court process by filing multiple suits over the same subject matter and insulting and maliciously accusing the Judges and Advocates herein.
- 4) The 1<sup>st</sup> Respondent was ordered to pay costs in **C. A No, 314 of 2014 (Nairobi)** amounting to Kenya Shillings Five Million Two hundred thousand (5.2 Million) but she has failed and or neglected to do so.
- 5) The Succession Act, Cap. 160, provides that an Administrator must pay debts and thereafter distribute the residue of the estate. The Respondents are creditors of the estate hereof.
- 6) The decision of the Employment Labour Relations Court cannot be faulted because the judge is entitled to uphold justice, fairness and the rule of law to protect parties. The court of Appeal agreed with the decision of the Employment Labour Relations Court.
- 7) The Applicants are entitled to the fruits of the said judgment of the Court of Appeal.
- 8) The Costs of the said appeal ought to be executed hereof.

The application is further supported by the affidavit of HENRY KURAUKA, Counsel for the claimants in which he reiterates the grounds on the face of the application and attaches a copy of the ruling on taxation of costs in which it is pointed out that the Appellant (Respondent in this application) did not file submissions.

The Respondents replied to the application through the Replying Affidavit of SHEILA NKATHA MUTHEE, an advocate and partner in the law firm of Muthee Kihiko Soni Associates Advocates LLP who also depones that she is the Administrator of the Estate of Karl Jacobs Ruedin (deceased) having obtained letters of Administration confirmed on 16<sup>th</sup> May 2016. She states that the affidavit is sworn on her own behalf as the Administrator of the Estate and on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents who are sons and beneficiaries of the Estate and whose authority she has to swear the affidavit. She deposes that she has a right of audience before this court under Articles 25(c), 48 and 50(1) of the Constitution and that this court has no power to deny her audience. She accuses Counsel for the Applicant and unnamed Judge(s) of this court of lack of transparency, accountability, equity or integrity for selling property belonging to the estate worth Kshs.557 million. That Counsel was harassing the estate for Kshs.5 million without accounting for the Kshs.557 million.

SHEILA NKATHA MUTHEE filed a further affidavit on 29<sup>th</sup> in which she corrected a typographical error in her earlier affidavit.

### **Submissions**

The application was disposed of by way of written submissions.

In the Applicant's submissions, it is stated that the Court of Appeal dismissed the 1<sup>st</sup> Respondent's appeal in **C.A No. 314 of 2014 (Nairobi)** with costs assessed at Kshs.5.2 million which the 1<sup>st</sup> Respondent has failed to pay to date. That under the succession Act the Administrator is responsible to pay all debts before distributing the residue of the estate. That the Applicant is a creditor of the estate.

Counsel for the Applicant's submits that the court cannot be faulted for making a decision which in this instant was upheld by the Court of Appeal.

It is further submitted that the Respondents are in contempt and have abused court process, relying on the following cases –

**Gatharia K, Mutitika & 2 Others v Baharini Farm Ltd. [1985] KLR 227** where the court held –

*“It is quite clear on the authorities that anyone who, knowing of an injunction, or an order of stay, wilfully does something, or causes others to do something, to break the injunction or interfere with the stay, is liable to be committed for contempt... The reason is that by doing so he (or she) has conducted himself (or herself) so as to obstruct the course of justice and so has attempted to set the*

*order of the court at naught."*

**Kyoga Hauliers Limited v Long Distance Truck Drivers & Allied Workers Union [2015] eKLR** where it was held as follows:-

*"The power to deal with contempt of court is provided for under Section 5(1) of the Judicature Act, Section 63(c) of the Civil Procedure Act and Order 40 Rule 31 of the Civil Procedure Rules of importance in the determination of this issue is however Section 5(1) of the Judicature Act, since Section 63(c) of the Civil Procedure Act and Order 40 Rule 31 of the Civil Procedure Rules are concerned with disobedience of an order of temporary injunction and resultant consequences which are punishment in the form of imprisonment or attachment and sale of the contemnor's property."*

**North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi (2016) eKLR**, where Mativo J. stated as follows

*"writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as follows:-*

*"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 - (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."*

The Respondents further rely on **Section 5 of the Judicature Act Cap 8 Laws of Kenya** which provides:

**(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.**

**(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.**

They also rely on the decision in **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others (2014) eKLR** where the Court emphasised that the only statutory basis for contempt of court law in so far as the Court of Appeal and the High Court are concerned is Section 5 of the Judicature Act.

They further rely on the cases of **Econet Wireless Kenya Ltd v Minister For Information & Communication Of Kenya & Another [2005] 1 KLR 828; Refrigerator & Kitchen Utensils Ltd. v Gulabchand Popatlal Shah & Others Civil Application No. Nairobi 39 of 1990 in Wildlife Lodges Ltd v County Council Of Narok And Another (2005) 2 EA 344 (HCK); Mohamed Aktarkana v Attorney General Nairobi HCCP No, 544 of 2010 and Central Bank of Kenya & Another v Ratiljb Automobiles Limited & Others Civil Application No. Nai, 247 of 2006** where the Court held that judicial power in Kenya vests in the Courts and other tribunals established under the Constitution and that it is a fundamental tenet of the rule of law that court orders must be obeyed. That it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

For the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents it is submitted that they have a right to be heard under Article 24, 25(c), 40 and 50(1) of the Constitution. That the principle objective of this court under Section 3 of the Employment and Labour Relations Court Act is to facilitate the just, expeditious, efficient and proportionate resolution of disputes governed by the Act. That parties are enjoined to the principal objective.

That the court cannot give effect to the principal objective by refusing to hear a litigant. That the jurisdiction of the court is to hear and not to refuse to hear disputes.

The Respondents submit that Section 13 of the Employment and Labour Relations Court Act provides for enforcement of its judgments, awards, orders or decrees in accordance with the Rules made under the Civil Procedure Act. That under Rule 32 of the Employment and Labour Relations Court (Procedure) Rules on executions and warrants, orders and decrees are not referred to Judges for execution.

The Respondents submit that multiple ex parte orders were given and enforced in this suit against a person known to be dead and the dead person's property sold at 25% of its value. That prior to the sale movable assets valued at more than Kshs.137 million was disposed of in execution of the decree which to date has not been accounted for. That the instant application is intended to ensure that the Respondent's application to set aside those fraudulent orders was never heard.

It is submitted that the Claimants/Applicants have not denied that they have not accounted for the sale of the assets valued at more than Kshs.557 million yet they seek to stop the Respondents from being heard for costs of Kshs.5 million.

That their inability to pay costs is because the assets of the estate were fraudulently sold by the decree holder and does not constitute contempt.

## **Determination**

I have considered the application herein together with the affidavits in support of and in opposition thereof. I have further considered the submissions of parties.

I must agree with the Respondents that the application herein is misplaced as there is no demonstration that they are in contempt of any of this court's orders or that the application is an abuse of court process.

The applicants have not placed before the court any evidence of either contempt or abuse of court process by filing of a multiplicity of suits. Failure of a party to pay taxed costs does not constitute either contempt of court orders or abuse of court process.

It is evident from the application that the applicant is trying to block the Respondent's application dated 28<sup>th</sup> February 2020 from being heard.

**The application is thus made in bad faith. I find no merit in the application and dismiss it with costs.**

Before I sign off, I must comment on the tone of the Respondent's replying affidavit and submissions. It does not augur well for an officer of the court whom both Ms. Muthee and her Counsel are, to impute fraudulent intention on a sitting Judge of this court. If there is any issue a litigant has with any officer of this court at whatever level, they are well advised to take it up with the relevant authorities. Doing so in proceedings in which the accused officer has no opportunity to respond is to say the least, contemptuous of the court and amounts to contempt committed in the face of the court. It is disrespectful and brings the court into disrepute. Counsel must be courteous when addressing the court whether orally or in pleadings. The same courtesy must be extended to all officers of the court which includes Counsel appearing for the opposing side. The court therefore takes great exception at the averments of the 2<sup>nd</sup> Respondent and her Counsel.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 29<sup>TH</sup> DAY OF JANUARY 2021**

**MAUREEN ONYANGO**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**