



REPUBLIC OF KENYA



**In re Estate of Hezron Janira Alunga (Deceased) (Succession Appeal
3 of 2023) [2025] KEHC 5476 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5476 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION APPEAL 3 OF 2023
JN KAMAU, J
APRIL 29, 2025**

IN THE MATTER OF THE ESTATE OF HEZRON JANIRA ALUNGA (DECEASED)

BETWEEN

LENAH KAGEDI JANIRA APPELLANT

AND

NICHOLAS ALUNGA JANIRA RESPONDENT

RULING

Introduction

1. In her Notice of Motion dated 1st March 2024 and filed on 4th March 2024, the Appellant sought that the Respondent herein be held in contempt of the court orders of 24th October 2023 and that the Police be ordered to arrest his agents or servants for being in contempt of the said orders, that he be estopped and ordered not to evict her from her home and the property that she had lived in since birth, that he be stopped from threatening her, spraying poison in her compound, cutting her plantation and any other form of interference or transferring the properties to his name pending the determination of this appeal.
2. She swore an Affidavit in support of the said application on 1st March 2024. She averred that the Respondent had refused to obey the orders that this court issued on 24th October 2023. She stated that he had since then been frustrating and threatening her and had sent his house boy to spray a poisonous pesticide in her compound with the intention of killing her animals. She contended that she had reported the said two (2) incidences to Gambogi Police Station.
3. She added that on several occasions, the Respondent had cut her napier grass and other form of plantation just as a way to frustrate and intimidate her. She complained that he had been digging and destroying the homestead.



4. She pointed out that he transferred the land number Tiriki/Tigoi/2537, formerly Tiriki/Tigoi/980 and had since started collecting rent from plot number Tiriki/Tigoi/964 and utilising it.
5. She was apprehensive that if the prayers she had sought were not granted and him held accountable and stopped, then the appeal would be rendered nugatory. She urged this court to commit him to civil jail for disobeying the court orders as he would not comply with the said orders unless he was jailed. It was her contention that it was in the interest of justice and peace that the application be allowed.
6. In opposition to the said application, the Respondent swore a Replying Affidavit on 4th April 2024. The same was filed on 19th April 2024. He averred that he was the Administrator of the deceased's estate. He denied the contents of the Appellant's Notice of Motion and put her to strict proof.
7. He contended that while the court orders stated that she should not be evicted from the compound, it did not state that other family members were not allowed to access the land to take care of or harvest their crops. He asserted that she had not been evicted or threatened in any way.
8. He stated that the pesticide was sprayed along the border between where he had planted his crops and his deceased's brother's compound and that the same was not sprayed with an intention to kill her animals as she never used to rear animals at the said parcel of land.
9. He stated that the photo she tabled did not give the clear picture of what was on the ground as the house showed therein was an abandoned mud house which belonged to their deceased's brother and the same was sprayed in and along its borders next to the abandoned house to avert army worms.
10. He further stated that she lived in a brick house that was quite a distance from where the said mud house was. He was emphatic that she had not tabled any evidence showing that the substance was sprayed around the family house or that it was poisonous to animals.
11. He pointed out that when the incidents were reported to Gambogi Police Station, investigations were conducted and the worker was released upon establishing that the allegations that had been made were baseless. He averred that no case was lodged following the said reports. He added that in any case, OB numbers were evidence of a report made but not evidence of veracity of an allegation that had been made.
12. It was his contention that she had misinterpreted the Court Order dated 24th October 2024 to allude that all the parcels of land belonged to her and that no other beneficiary should plough on their allocated portions which was detrimental to other beneficiaries.
13. He pointed out that the napier grass and the bananas were not located in her compound but were within the portions that were allocated to Edith Vihenda and Majenta Odeso (beneficiaries). He added that the said portions had been demarcated by trenches seen in the photos that she had annexed while her portion only had trees and napier grass which had never been interfered with in any way.
14. He further averred that the Plot/Tiriki/Tigoi 964 was allocated to her, Edith Vihenda and Majenta Odeso in equal portions and that it had three (3) structures located on it which she had been collecting rent to the detriment of the other beneficiaries. He asserted that after Confirmation of Grant, the said Edith Vihenda Janira and Majenta Odeso instructed him to collect from two (2) of the said structures since each beneficiary was allocated one structure each. He pointed out that he only collected rent from the said two(2) structures but did not collect from her structure.
15. He further contended that her prayer for orders to stop the transfers had been overtaken by events as the execution of the Grant had already been done and the parcels of land already been transferred to the individual beneficiaries.



16. He asserted that therefore there was no imminent danger of her being evicted from the house located on that portion that was formerly the matrimonial home as there was a court order in place barring him from doing that. He denied having transferred the properties into his name leaving her with no inheritance and contended that the Certificate of Grant indicated that he was to hold the properties in trust pending sub-division.
17. He was emphatic that her application lacked merit, was frivolous, scandalous, vexatious and a waste of court's time and should be dismissed with costs.
18. The Appellant's Written Submissions were dated 3rd June 2024 and filed on 1st July 2024 while those of the Respondent were dated 22nd October 2024 and filed on 25th October 2024. The Ruling herein is based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

19. The Appellant placed reliance on several cases among them the cases of *J.I.K vs J. W*[2017]eKLR and *Hadkinson vs Hadkinson (1952) ALL ER 567* where the common thread was that court orders must be obeyed whether one agreed with them or not. She also relied on the case of *J.N.M vs A.W.K*[2012]eKLR where it was argued that the respondent therein was aware of the court order thus her actions were contemptuous.
20. She further cited the case of *Regine Butt vs Haroon Butt & Another*[2016]eKLR wherein referred to the case of *B vs Attorney General*[2004] 1 KLR 431 where it was held that the court did not, and ought not to be seen to make orders in vain, otherwise it would be exposed to ridicule and no agency of the constitutional order would then be left in place to serve as a guarantee for legality and for the rights of all people.
21. She also relied on the case of *Teacher's Service Commission vs Kenya National Union of Teachers & 2 Others Petition No 23 of 2013*(eKLR not given) where it was held that the reason why courts punished for contempt of court was to safeguard the rule of law which was fundamental in the administration of justice.
22. She submitted that the Respondent was aware of the aforesaid orders but had been frustrating, threatening her and destroying her property. She pointed out that she had furnished a photo showing one Paul Avwage Lodenyo spraying grass in her compound without care on the consequences of his actions. She urged the court not to take the issue lightly as a poisonous substance to animals could also be poisonous to human being and result to attempted murder. She added that she had also adduced evidence to show that the Respondent's servant cut down her napier grass and banana plantation.
23. She further contended that the Respondent had since transferred the land where she stayed and intended to forcefully evict her and that he had taken new titles for the properties of the deceased leaving her with no inheritance. She was categorical that the court order was clear that nobody should interfere with the peaceful enjoyment and occupation of the land parcel she occupied until further orders are issued, thus, the Respondent was in violation of the same and that he had not in his defence adduced any evidence to prove otherwise.
24. On his part, the Respondent reiterated his averments in his Replying Affidavit and argued that the Appellant's allegations were just but a witch-hunt scheme aimed at misleading this court. He averred that if the allegations were genuine, she should have tabled a report from the area chief confirming the same. He contended that she had not tendered sufficient evidence to prove the offence of contempt of court orders on a balance of probabilities.



25. He placed reliance on the case of *Rachael Wambura Ngondi vs Justa Mutitu Muriuki (Sued as the Personal Representative of the Estate of Henry Muriuki Kuviuva & 2 Others* [2021]eKLR where it was held that given the seriousness with which the court treated allegations of contempt, courts were hesitant to make findings that contempt had been proved.
26. He was emphatic that sufficient evidence had not been tabled to warrant him being held in contempt of the aforesaid court orders. In this regard, he cited the case of *Katsuri Limited vs Kapurchand Depar Shab* [2016]eKLR where in setting out the elements to be proved for a case of contempt of court, the court held that the applicant must prove to the required standard (in civil contempt cases which was higher than in criminal cases) that the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant, the defendant had knowledge of or proper notice of the terms of the order, he acted in breach of the terms of the order and his conduct was deliberate.
27. He invoked Section 27 of the *Civil Procedure Act* and relied on the case of *Haraf Traders Limited vs Narok County Government*[2022]eKLR quoted in the case of *Republic vs Rosemary Wairimu Munene, Ex-parte Applicant vs Ihururu Dairy Farmers Co-operative Society Limited* Judicial Review No 6 of 2024 where it was held that costs follow event. He urged this court to dismiss the Appellant’s application with costs to him to make good for the trouble taken to prosecute the numerous applications filed by the Appellant.
28. The orders this court issued on the 23rd October 2023 read as follows:-

“In view of the fact that transmission is on going and titles are likely to be issued next week as the Respondent’s Counsel indicated to the court, a status quo order be and is hereby granted to the effect that the Respondent and/or his agents and/or servants are not to interfere with the peaceable enjoyment and occupation of the parcel of land the Appellant is currently occupying until the aforementioned mention date and/or until further order and/or directions by the court.”
29. It had been stated in a long line of authorities that the reason why courts would punish for contempt was to safeguard the rule of law and to protect the dignity of the court. It was the obligation of every person, against, or in respect of, whom an order was made by a court of competent jurisdiction to obey it unless and until that order was discharged. The uncompromising nature of this obligation was shown by the fact that it extended even to cases where the person affected by an order believed it to be irregular or void.
30. A party who sought orders for contempt of a court order, had to bring an application that met the threshold which was that an applicant had to demonstrate the terms of the order in question, that the respondent had knowledge of those terms and the respondent wilfully disobeyed the terms of the order as was held in the case of *Samuel M. Mweru & Others vs National Land Commission & 2 Others* [2020] eKLR.
31. Upon proof of these requirements, the presence of wilfulness and bad faith on the part of the respondent would normally be inferred. However, the respondent could rebut this inference by contrary proof on a balance of probabilities.
32. A perusal of the Appellant’s annexures clearly showed someone spraying on the grass. There was also another photo showing a man cutting napier grass. Bananas had also been cut down. The Appellant annexed a copy of the Occurrence Book (OB) evidencing that she had reported the matter at Gambogi Police Station but there was no indication of the action that was taken.



33. As it was not clear why the police had not charged the Respondent with malicious damage to the Appellant's property, this court was reluctant to cite the Respondent for contempt. However, the fact that he had not been charged was not to say that he had not interfered with the Appellant's peaceable enjoyment of her property.
34. The Respondent therefore had proper notice of the orders and the terms thereof. He was required to completely keep off the Appellant's compound so as not to be seen to be disobeying the court order. He had confirmed that he was not trying to evict her as he was aware the court order. It was good that he continued taking that position pending the hearing and determination of the dispute herein.
35. It was, however, not clear in whose compound the cutting of bananas and napier grass and spraying had taken place. Although the Respondent denied the fact that the same was done on the Appellant's portion of land, he did not deny the fact that the spraying was done and the napier grass and bananas were cut down.
36. In spite of this, the Respondent proceeded to interfere with the Appellant's property.
37. The terms of the aforesaid order of 23rd October 2023 were clear and were issued in the presence of the Respondent's Advocate. The least he ought to have done was to come back to court and confirm that the Titles to the land parcels herein had been issued and he wished to proceed with his duties as an Administrator, demonstrating the difficulty faced in complying with the court order. The court would then have considered whether or not to vacate its orders of 23rd October 2023 or issue fresh orders. In the premises, this court found that the Respondent was guilty of wilfully disobeying the court orders of 23rd October 2023.
38. The powers and duties of a personal representative(s) or administratrix/administrator are well spelt under the provisions of Sections 82 and 83 of the *Law of Succession Act*. It was also true that a personal representative was in a fiduciary position in regard to the estate of a deceased person. As a trustee he or she was expected to act in the best interest of the estate all times. The Respondent was thus, expected to act in the best interest of the deceased's estate, in accordance to the law, to promote peace and harmony among beneficiaries.
39. In dealing with matters concerning families, the court must be mindful of the need to foster lasting family relations and endeavour to make decisions that would rebuild the broken relationships. As the parties litigate before this court, they are family members. After they leave the court, they shall remain family members.

Disposition

40. For the foregoing reasons, the upshot of this court's decision was that the Appellant's Notice of Motion Application dated 1st March 2024 and filed on 4th March 2024 was disallowed as the facts surrounding the exact location of interference were not clearly discernible from the affidavit evidence that was annexed herein. It is hereby directed as follows:-
 - a. That the Respondent be and is hereby warned against interfering with the peaceable enjoyment and occupation of the parcel of land the Appellant is currently occupying until final determination of this appeal failure to which this court will commence contempt of court proceedings.
 - b. That the orders that were issued on 23rd October 2023 be and are hereby extended pending the hearing and determination of the Appeal herein.



- c. That as the Appellant has since filed a Record of Appeal, it is hereby directed that this matter will be mentioned on 30th June 2025 for further orders and/or directions.
41. As this was a family matter, this court deviated from the general rule that costs follow events and hereby directs that each party will bear its own costs of the application herein.
42. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF APRIL 2025

J. KAMAU
JUDGE

