



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mary Rose Wairimu Dames alias Mary Wairimu Dames (Deceased)
(Succession Cause 85 of 2019) [2025] KEHC 7845 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 85 OF 2019**

A MSHILA, J

MAY 30, 2025

**IN THE MATTER OF THE ESTATE OF MARY ROSE WAIRIMU
DAMES ALIAS MARY WAIRIMU DAMES (DECEASED)**

RULING

1. By an application dated 9th August, 2021 and amended on 12th November, 2021, the respondents herein are accused by the applicants of disobeying the Consent dated 10th August, 2020 and adopted as an order of the court on 28th October, 2020.
2. By a Ruling delivered on 22nd September, 2022, in respect of the above named application, the court directed the respondents to individually file a detailed account of all acts undertaken in the estate noting how the said acts conform to the consent dated 10/8/2020 and the partial confirmed grant dated 28/10/2020. The applicants were granted leave to respond to the accounts filed by the respondents.
3. Upon the Respondents filing the accounts as directed by the court, the court delivered a ruling dated 23rd February, 2023, where it directed that there is need for viva voce evidence to enable the court deliver a conclusive ruling with regard to the application dated 9th August, 2021 and amended on 12th November, 2021.
4. Subsequently, the Respondents filed their Grounds of Opposition, replying affidavit by the 1st and 2nd Respondent as well as supporting affidavits by the 3rd and 4th Respondents.
5. To dispose the application, parties opted to rely on their affidavits as well as their written submissions.

Applicants' Submissions

6. The Applicants submit that misjoinder of parties does not invalidate the summons as alleged by the Respondents as the same has been rectified by the amended summons. Section 45 of the *Law of Succession Act* was said to apply to the 2nd, 3rd and 4th Respondents as third parties but not the 1st Respondent as the executrix. It was also submitted that invocation of provisions of the Contempt Act is neither fatal nor does it invalidate the application herein. Reliance was placed on among other cases the case of *Republic vs Kajiado County & 2 others exparte Kilimanjaro Safari Club Limited* (2019)



eKLR. With regard to contempt, the Applicants submit that the terms of the Order breached were clear and unambiguous. Reliance was placed on among others the case of *Commercial Bank of Africa Limited vs Isaac Kamau Ndirangu* (1992) eKLR. The Applicants submit that the court order was binding on all the Respondents as their conducts affected the court order as issued. Reliance was placed on among other cases the case of *Organic for Orphans International & 3 others vs Boaz Oduor Ogollab & 2 others* (2021) eKLR. The court order was said to have been recorded in the presence of both the 1st and the 2nd Respondent as such they are deemed to have had knowledge of or proper notice as well as the 3rd and the 4th Respondents who were duly served. Reliance was placed in the case of *Oilfields Movers Limited vs Zabara Oil and Gas Limited* (2020) eKLR. Lastly, through the letter dated 21/6/2021, it was submitted that the 1st and the 2nd Respondent disobeyed the terms of the court order as well as the 3rd and 4th Respondents who were said to have aided the 1st Respondent in disobeying the court order. Reliance was placed on among other cases the case of *Kenya Tea Growers Association vs Francis Atwoli & 5 others* (2012) eKLR. The Respondents conduct was said to be deliberate as it was contrary to the court order as such the court was urged to grant the orders sought. Reliance was placed in the case of *Sheila Cassatt Isenberg & another vs Antony Machatha Kinyanjui* (2021) eKLR.

Respondents' Submissions

7. The Respondents submit that prayers 13, 14, 15 & 16 for contempt of court show total disregard of the basic rule of practice over a special procedure an Applicant should invoke. It was submitted that the Applicants should have personally served the alleged contemnors with the specific court order. The 1st Executor was said to have furnished all eight (8) beneficiaries on 5th July, 2021, with a full statement of income & expenditure of the balance of Kshs.107,000,000/= million which accounted for every single coin after clearing all the outstanding debt. It was submitted that only 15% of the grant is remaining to be fully implemented by the estate's advocates and the majority of the beneficiaries. Further, it was submitted that the amended summons are overtaken by events as against the 2nd Respondent as it was done in malicious disregard of the applicable statutory laws. The court was urged to dismiss the Applicants' amended application.

Issues for Determination

8. Having considered the application and the written submissions, the main issues for determination is whether the Respondents are in contempt of the orders of the court.

Analysis

9. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt. The section provides that:
 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.



10. The *Halsbury's Laws of England* (4th Edition (9th Re-Issue), Pg. 33, para 52.) defines civil contempt as follows;

“...disobedience to process is a civil contempt of court to refuse or neglect to do an act required by a judge or order of the court within the time specified in the judgment order requiring a person to abstain from doing a specified act, or to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction...”

11. The applicable standard of proof for contempt proceedings is above a balance of probabilities, given the criminal nature of contempt proceedings. Refer to the case of *Mutitika vs Babarini Farm Ltd* [1985] KLR 229, 234, where the Court of Appeal had this to say:

“...In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi- criminal in nature.”

12. The main features of disobeying court are that the contemnor must be aware of the existence of the court order. There must be an existing court order capable of being disobeyed and lastly that breach thereof must be proved. Further the threshold required is not just on a balance of probabilities but the threshold that is required for contempt proceedings is that required in criminal proceedings that is beyond reasonable doubt. In *Milka Wangoi Kamau & another v Habby Misoga Lugadiru* (2014) eKLR it was held that:

“As much as civil contempt is an aspect of civil litigations it has got criminal implications/ inclinations and hence its threshold is not merely founded on balance of probability but at times it must be proved beyond reasonable doubt. Therefore, the committal law is to the effect that the standard of proof required at committal proceedings is the criminal standard”

13. The Applicants herein urge the Court to hold the Respondents herein in contempt of the orders of the court which they are alleged to have disobeyed. The said orders are said to be clear, and that they were delivered in the presence of the Respondents who were also served as such the Respondents’ conduct was said to be deliberate.

14. The Respondents contend that the Applicants’ summons have been overtaken by events as the advocates together with majority of the beneficiaries have implemented the grant and only 15% of the grant is pending implementation. A full statement of income & expenditure of the balance of Kshs.107,000,000/= million which accounted for every single coin after clearing all the outstanding debt was said to have been furnished to all the beneficiaries.

15. Be that as it may, this Court takes notes that the instructing client was the deceased herein as such the advocate’s enjoy advocate-client privilege hence they cannot be held in contempt as they were simply executing their client’s instructions.

Findings and Conclusion

16. For the foregoing reasons this Court makes the following findings and conclusions;



- i. This Court finds that the contempt orders sought against the Respondent have been frustrated by privileged communication and also overtaken by events due to the demise of the main instructing client who cannot be summoned for cross-examination.
- ii. Application disallowed.
- iii. Each party to bear their own costs.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 30TH DAY OF MAY, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Ngugi Kariuki – for Applicants

Gitau Mwara – for the Respondents

