



In re Estate of Michael Gichuhi Muiro (Deceased) (Succession Cause 8 & 4 of 2019 (Consolidated)) [2024] KEHC 3596 (KLR) (26 January 2024) (Ruling)

Neutral citation: [2024] KEHC 3596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 8 & 4 OF 2019 (CONSOLIDATED)**

**A MSHILA, J
JANUARY 26, 2024**

BETWEEN

GRACE NJERI GICHUHI 1ST PETITIONER

GODFREY KIHUHA GICHUHI 2ND PETITIONER

AND

MOSES MUIRU GICHUHI 1ST RESPONDENT

JENNIFER MUTHONI GICHUHI 2ND RESPONDENT

MICHAEL GICHUHI WANJIKU 3RD RESPONDENT

RULING

1. Vide a determination of this Honourable Court delivered on the 18th day of August, 2023 the 1st Respondent was found guilty of contempt of the court orders of 23rd September, 2022; his counsel was invited on the 30th October, 2023 to make pleas in mitigation before sentencing;
2. Mr. Musyoka Counsel for the 1st respondent submits that court orders should be taken seriously and that this is the first time they are participating in contempt proceedings. That his client failed to consult him and that his client did not know the consequences of inter-meddling. He contended that his client was desperate as he needed funds. That his client should have sought a court order so as to remove the cabros. It was submitted that ignorance is no defence but it is a mitigating factor.
3. Counsel for the 1st Respondent submitted that the 1st Respondent was extremely remorseful and pleaded for a pardon or a lenient sentence or a non-custodial sentence; The court was also urged to grant justice with mercy by pardoning the 1st respondent as he will not repeat and that he has learnt his lessons.
4. In his response Mr. Kirimi for the Petitioner submitted that the 1st Respondent be found to be in contempt as he has disregarded many court orders and that this was the third contempt application



to be filed. The 1st respondent was said to feel a sense of entitlement and that he deliberately chooses to disregard. The court was urged to issue a firm sentence as the 1st respondent will not cease from committing contemptuous acts as he benefits from selling the trees. The 1st respondent was urged to reimburse to the estate what he had taken away. It was submitted that ignorance of the law is no defence and that in any case, the 1st respondent is not remorseful.

Analysis

5. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case;
6. This Court has taken into consideration the aggravating circumstances in the commission of the contempt offence in that the 1st Respondent repeatedly cut down trees which could not be restored which acts amounted to wasting of the value and assets of the estate.
7. The mitigating factor taken into consideration by this Court are that the 1st Respondent has expressed his remorse and states that he is a first offender.
8. The applicable law that governs contempt of court is set out at Section 5 of the [Judicature Act](#) which empowers this Court to mete a punishment for contempt of court so as to uphold the authority and dignity of the court.
9. The offence of contempt of court is punishable by a fine, imprisonment, confiscation of assets or any other punishment that the court may find to be suitable in the circumstances of the case. If the contemnor admits the contempt and wishes to apologize to the court this would have the likelihood of reducing the seriousness of any punishment imposable by the court.
10. Having regard to the fact that the parties herein are siblings and the 1st Respondents plea in mitigation that he is truly remorseful and shall hence forth desist from such unbecoming conduct; this Court is satisfied that this being a family matter the 1st Respondent is deserving of leniency; this Court finds that the appropriate sentence for the 1st Respondent is a suspended sentence of two (2) months; during this period the 1st Respondent is hereby cautioned against committing any acts that may constitute intermeddling with the estate of the deceased; in the event of breach during this period the non-custodial sentence shall be vacated and the 1st Respondent shall serve the custodial sentence for the remainder of the term.

Findings & Determinations

11. For the foregoing reasons this Court makes the following findings and determinations;
 - i. A non-custodial sentence of two (2) months imprisonment is found to be an appropriate sentence for the 1st Respondent.
 - ii. In the event of breach during this period the non-custodial sentence shall be vacated and the 1st Respondent shall serve a custodial sentence for the remainder of the term.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 26TH DAY OF JANUARY, 2024.

HON. A. MSHILA

JUDGE

In the presence of;



Mourice – Court Assistant

Kirimi – for Petitioners (4/2019)

For Respondents (8/2019)

Musyoka and Karanu – for Executor (8/2019)

Mathenge – h/b for Maina for 2nd Respondent and 3rd Respondent (4/2019)

