



**Njogu v Maina & another (Succession Cause 2381 of 2008)  
[2024] KEHC 1999 (KLR) (Family) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1999 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2381 OF 2008  
SN RIECHI, J  
FEBRUARY 28, 2024**

**BETWEEN**

**LILIAN WAMBUI NJOGU ..... APPLICANT**

**AND**

**PETER NJOGU MAINA ..... 1<sup>ST</sup> CONTEMNOR**

**MICHAEL NJOGU WACHIURI ..... 2<sup>ND</sup> CONTEMNOR**

**RULING**

1. This a ruling on application dated 6th July 2021 filed by the applicant/appellant seeking the following orders: -
  1. That this court be pleased to issue summons to the following persons to show cause why they should not be punished for contempt:
    - a. Peter Njogu Maina
    - b. Solomon Angutsa,ceo Police Sacco
  2. That the persons whose names appear in 2 above be committed to civil jail for a period of six months for contempt of court;
  3. That a declaration be made that the persons whose names appear in 2 above that they are not fie to hold any public office within the Republic of Kenya.
  4. That this court be pleased to award costs of this application to the applicant.
2. The application is premised on the grounds on face of it and the supporting affidavit of Lilian Wambui Njogu filed on the even date.



3. The respondent opposed the application. The respondents / contemnors opposed the application and the 1<sup>st</sup> contemnor Peter Njogu Maina filed a replying affidavit dated 13<sup>th</sup> December 2021 and Solomon Angusta the 3<sup>rd</sup> contemnor also filed a replying affidavit dated 7<sup>th</sup> March 2022. The applicant also filed a supplementary affidavit dated 17<sup>th</sup> April 2023.
4. This application was canvassed by way of written submission. The applicant filed written submissions dated 17<sup>th</sup> April 2023 whilst the 1<sup>st</sup> respondent filed written submissions dated 18<sup>th</sup> May 2023 and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed written submissions dated 29<sup>th</sup> May 2023.
5. The applicant's case is the respondents have defied/vowed not to implement the orders/judgement of this court issued by Hon.Muigai and decree dated 28<sup>th</sup> August,2020.

That the court ordered inter alia that;

“

1. That this court hereby grants the application filed on 16<sup>th</sup> December 2015 and confirms Interim/Temporary Orders of 17<sup>th</sup> December 2015 as follows:
2. That conservatory orders are hereby granted restraining the Kenya Police Sacco Society Limited, Peter Njogu Maina, Michael Njogu Wachiuri & Gachie Abija Waithaka from interfering and/or transferring the Deceased's Plots 197,198 phase 2 Kitengela Site Service Scheme until the Estate of the Deceased is distributed to all beneficiaries and/or legal sale(s) or transfer by the Administrator of the Estate(Emphasis MINE)
3. That the sale transaction/transfer between Gachie Abija Waithaka and Michael Njogu Wachiuri is hereby resinded,cancelled and revoked and Gachie Abija Waithaka is ordered to refund part of purchase price paid to him by and to Michael Njogu Wachiuri.
4. That the Registrar of Lands,Kajiado County is hereby ordered to revoke and/or cancel any transfer pursuant to the revoked and cancelled sale of plot 197 and 198 Phase 2 Kitengela Site Service Scheme between Gachie Abija Waithaka and Michael Njogu Wachiuri.....”
6. The applicant stated that both the applicant and respondent are aware of the existing orders and they have vowed to frustrate the efforts of the applicant/administrator on administering the estate of the deceased.
7. The applicant stated further that the respondents have alleged that this court issued stay of its orders on the 29<sup>th</sup> April 2019. She stated that she has never been served with the purported stay orders.
8. The applicant stated that the conduct of the contemnors has expressly sought to undermine judicial authority and that it is in the interest of justice that this instant application be allowed.
9. The 1<sup>st</sup> respondents' case is that he is shocked that the applicant who is his former wife have filed allegations against him when the actions complained of do not relate to him. He states that he is aware the court issued a decree on 28<sup>th</sup> August 2020 and he has fully complied with the same.
10. The 1<sup>st</sup> respondent states that the 2<sup>nd</sup> respondent filed an appeal against the said orders that were issued by the court but he is not aware if any orders obtained by the 2<sup>nd</sup> respondent as he has not taken any part in the appeal.
11. The 3<sup>rd</sup> respondent in his response states that he is the Chief Executive Officer of Police Sacco. He states that he has never been a party to any proceedings herein. The 3<sup>rd</sup> respondent states that he has been informed by his advocate that they received a letter from the firm Waruhiu K Owade &



Nganga Advocates on 1<sup>st</sup> February,2021 informing them of the appeal over the Superior Court's Judgement in the matter which Appeal is pending hearing and determination. He attached copies of the correspondences SOA1, Advocates letters and reply as SOA2 and SOA3 respectively, Notice of appeal as SOA4 and Directions by the Court of Appeal as "SOA5" in support.

12. The 3<sup>rd</sup> respondent states that accordingly, the court of appeal has set down the matter for hearing and issued parties with hearing directions. He attached a copy of directions of the court of appeal as SOA5 in support. The 3<sup>rd</sup> respondent states further that he was never served with court order and or decree by the applicant. He states that it is in the interest of justice that the parties pursue the appeal least the outcome of the appeal be rendered nugatory.
13. In the submissions the parties reiterated the averments in their respective submissions and do not need to reproduce the same. I have carefully analyzed and considered the submissions and case law in support.
14. 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..."
15. In the case of *Ringera and 2 others v Muite and 10 Others* HCC at Nairobi, Civil Suit No. 1330 of 1991, the Learned Judge reiterated that the main salient features of disobeying court are: The contemnor must be aware of the existence of the court order. There must be an existing court order capable of being disobeyed. Breach thereof must be proved
16. The civil contempt matters have civil inclination but also have clear criminal implications and therefore the evidence brought forth before the court must be so strong due to the risk of depriving the contemnor of his/her liberty. The applicable standard of proof, is above a balance of probabilities, given the criminal connotations of contempt proceeding. In *Mutitika vs Babarini Farm Ltd* [1985] KLR 229, 234, the Court of Appeal made this clear thus:

...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."
17. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt. That 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.



18. To demonstrate that the respondents were in contempt, the Applicant deposed that the respondents have defied/vowed not to implement the orders/judgement of this court issued by Hon.Muigai and decree dated 28<sup>th</sup> August,2020.
19. That the court ordered ; “ That conservatory orders are hereby granted restraining the Kenya Police Sacco Society Limited,Peter Njogu Maina,Michael Njogu Wachiuri & Gachie Abija Waithaka from interfering and/or transferring the Deceased’s Plots 197,198 phase 2 Kitengela Site Service Scheme until the Estate of the Deceased is distributed to all beneficiaries and/or legal sale(s) or transfer by the Administrator of the Estate;
20. That the sale transaction/transfer between Gachie Abija Waithaka and Michael Njogu Wachiuri is hereby resinded,cancelled and revoked and Gachie Abija Waithaka is ordered to refund part of purchase price paid to him by and to Michael Njogu Wachiuri;
21. That the Registrar of Lands,Kajiado County is hereby ordered tp revoke and/or cancel any transfer pursuant to the revoked and cancelled sale of plot 197 and 198 Phase 2 Kitengela Site Service Scheme between Gachie Abija Waithaka and Michael Njogu Wachiuri.....”
22. The applicant submitted that the respondents are aware of the existing orders and they have vowed to frustrate the efforts of the applicant/administrator on administering the estate of the deceased. The applicant submitted further that the respondents have alleged that this court issued stay of its orders on the 29th April 2019. The applicant submitted that she has never been served with the purported stay orders. the Applicant annexed the copy of the Decree marked as ‘LWN1’.
23. I have perused the court file and indeed there is a court order to that effect was issued on 28<sup>th</sup> August 2020. I have further perusal the record, It my finding that there is a ruling delivered on 13<sup>th</sup> May 2019 by Honourable Justice A.O.Muchelule following an application dated 22<sup>nd</sup> January 2019 filed by 2<sup>nd</sup> Respondent Michael Njogu Wachiuri seeking execution of judgement be stayed pending the hearing and determination the appeal. The said ruling orders as follows and I quote;  

“.....Consequently, I allow the application for stay, but this will be for 90days to allow the applicant to revisit the issue at the Court of Appeal. That is the court will consider, among other things, whether the applicant has an arguable appeal.”
24. From the foregoing, I find that stay of execution was issued for a period of 90 days, however the respondents have not produced an affidavit of service to show that the said order was served upon the applicant.
25. I have also analyzed the response by the respondent and the 3<sup>rd</sup> respondent in his replying affidavit he has deposed that there is an appeal pending before the court of appeal. The 3<sup>rd</sup> respondent deposed that he has been informed by his advocate that they received a letter from the firm Waruhiu K Owade & Nganga Advocates on 1<sup>st</sup> February,2021 informing them of the appeal over the Superior Court’s Judgement in the matter which Appeal is pending hearing and determination. He attached copies of the correspondences SOA1, Advocates letters and reply as SOA2 and SOA3 respectively, Notice of appeal as SOA4 and Directions by the Court of Appeal as “SOA5” in support. The 3<sup>rd</sup> respondent also states that accordingly, the court of appeal has set down the matter for hearing and issued parties with hearing directions. He attached a copy of directions of the court of appeal as SOA5 in support.
26. In my view, from the analysis; it is apparent that the Applicant has not met the salient ingredients in proving the act of contempt against the respondents.



27. However, this court note that the stay orders for the judgement was for 90 days. The respondent filed there notice of appeal on 20<sup>th</sup> December 2018 and to date the appeal is still pending, this is unreasonable delay been occasioned by the respondents. I therefore direct that the respondents' expedient the hearing of the appeal to be concluded within 60 days from date herein failure to which the applicant is at liberty to apply.
28. In the result, it is my finding that the Applicant's application dated 6<sup>th</sup> July 2021 lacks merit. Thus, the court makes the following orders;
- i. The application is hereby dismissed.
  - ii. Each party to bear his/her own costs.

**DATED AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY 2024**

.....

**S.N. RIECHI**

**HIGH COURT JUDGE**

