



In re Estate of Paul Mukui Wairire (Deceased) (Succession Cause 818 of 1993) [2024] KEHC 2856 (KLR) (Family) (21 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2856 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 818 OF 1993

HK CHEMITEI, J

MARCH 21, 2024

IN THE MATTER OF THE ESTATE OF PAUL MUKUI WAIRIRE (DECEASED)

BETWEEN

ESTATE OF THE LATE PHILIP MUNYOROKU MUKUI 1ST APPLICANT

ESTATE OF THE LATE MONICAH WANJIRU PAUL 2ND APPLICANT

AND

JAMES KIMATA MUKUI 1ST RESPONDENT

JOHN KAGO, PRIVATE SURVEYOR 2ND RESPONDENT

AND

MARY WANJIRU MUKUI INTERESTED PARTY

JOSEPH GITONGA MUKUI INTERESTED PARTY

DAVID MUKARU MUKUI INTERESTED PARTY

MARGARET WACEKE MWANGI INTERESTED PARTY

EUNICE IGENI MUKUI INTERESTED PARTY

DORCAS WANGUI NDERU INTERESTED PARTY

THE KIAMBU COUNTY LAND REGISTRAR INTERESTED PARTY

RULING

1. This ruling relates to the applications dated 9th June, 2023 and 12th June, 2023.



2. The application dated 9th June, 2023 was filed by Virginia Muthoni Munyoroku seeking for Orders That:
 - a. Spent.
 - b. This honorable court to punish and penalize the Respondent with an imprisonment for a period of not less than 6 months or a penalty be determined by the honorable court for disobeying, neglecting and/ or failing to comply with the court order and directions of the Hon Lady Justice Ali Aroni issued on 3rd February, 2022.
 - c. The Respondents are aware of the court ruling and order and that they have been served severally with the same but have refused, neglected and/ or declined to comply with the court decree.
 - d. The failure to comply with the court's decree is intentional and willful on the part of the Respondent.
 - e. The Respondents are duty bound to satisfy the decree but they have exhibited a deliberate intent to disobey the honorable court and its consequential orders.
 - f. This honorable court be pleased to issue any other order that it may deem just and expedient for the ends of justice.
 - g. Costs of this application be provided for by the Respondent at any rate.
3. The application is supported by affidavit sworn by Virginia Muthoni Munyoroku on 9th June, 2023 where she avers inter alia that this court issued a ruling and orders dated 3rd February, 2022 compelling the Respondents among other things to give acreage of the said properties.
4. She went on to state that the Respondents are aware of the court ruling and order and that they have been served severally with the same but have refused, neglected and or declined to comply with the court decree.
5. The application is opposed vide replying affidavit sworn by James Kimata Mukui (Administrator/ Respondent) on 3rd August, 2023 who avers inter alia that he is the administrator and beneficiary to the deceased's estate who died on 3rd August, 1989 after which letters of administration were issued to him on 24th August, 1993 and subsequently confirmed on 22nd November, 2017.
6. That prior to the deceased's death, he allocated and distributed his assets to his beneficiaries according to his wishes and showed each of them their allocated portions of his estate but he died intestate and all the sons and unmarried daughters were to inherit his estate in accordance with the law (as it then was) and this was considered in the confirmation of grant issued on 22nd November, 2016.
7. He deponed that he has complied with the court orders of 3rd February, 2022 vide his affidavit evidence sworn on 3rd May, 2023.
8. In paragraph 13 of this affidavit evidence has listed the following properties with their acreages: Ndarugu/ Karatu/ T116 – 0. 072 hectares (certificate of official search dated 3rd February, 2022 annexed). Ndarugu/ Karatu/ T117 – 0. 18 acres (certificate of official search dated 3rd February, 2022 annexed). Ndarugu/ Karatu/ T115 – 0. 19 acres (certificate of official search dated 3rd February, 2022 annexed). Ndarugu/ Karatu/ T105 – 0. 19 acres although certificate of official search not annexed). Ndarugu/ Karatu/ 469 – 0. 30 acres (certificate of official search dated 3rd February, 2022 annexed).



9. The application dated 12th June, 2023 was filed by Eunice Kigenji Mungai seeking for Orders That:
- (a) This honorable court be pleased to compel the Administrator/ respondent to produce to court within 14 days, a true account and comprehensive acreage report of properties of the Estate of the Deceased.
 - (b) This honorable court be pleased to compel the Administrator/ Respondent to deposit into court all the title documents with respect to all properties of the Estate of the Deceased being Ndarugu/ Karatu/ 583, Ndarugu/ Karatu/ 522, Ndarugu/ Karatu/ 619, Ndarugu/ Kamunyaka/ 221, Ndarugu/ Karatu/ T112, T115, T116, T117, T130 & T114, Ndarugu/ Karatu/ Plot No. 1 and Ndarugu/ Gachagare/ 341 which the Administrator is holding.
 - (c) In the alternative, the Administrator/ Respondent be cited for contempt for failure to comply with court's orders issued on 3rd February, 2022 and castigation be as this honorable court may direct.
 - (d) Costs of this application be met by the Administrator/ Respondent.
10. It is supported by affidavit her sworn affidavit dated 12th June, 2023 who avers inter alia that the Administrator/ Respondent has failed to provide the acreage report as per the court's ruling of 16th December, 2021 and order of 3rd February, 2022.
11. Further that the Administrator/ Respondent filed an affidavit sworn on 3rd May, 2023 stating that the estate was shared among specific beneficiaries as per the wishes of their father yet the succession matter was filed intestate. She said that not all dependants/ beneficiaries were considered during the distribution of the estate. It was the court's ruling that they are entitled- to inherit their father's estate.
12. She said that the Administrator/ Respondent has blatantly failed, refused and/ or neglected to provide the court with the acreage of the estate but opted to file an affidavit which does not disclose the acreage and was keen on denying them their share of the estate thus the delay and/ or avoidance to comply with the court's order issued on 3rd February, 2022.
13. The application is opposed by the Administrator/ Respondent vide grounds of opposition and replying affidavit, both dated 12th June, 2023.
14. The grounds of opposition are premised on the that; The applicant's application is res judicata in so far as the issue of the administrator complying with the orders as per the ruling delivered on 3rd February, 2023 is concerned on providing acreage; that the application is scandalous, frivolous a and vexatious and an abuse of the court process and the same ought to be dismissed forthwith.
15. In the replying affidavit aforementioned, the Administrator/ Respondent avers inter alia that the late Paul Mukui Wairire (Deceased) expressed his wishes that his married daughters could not inherit unless the elder brothers gave them property hence why they were not allocated any of his assets to the applicants since they were already married at the time and only provided for the unmarried daughters.
16. Further that the law of Kenya does not work retrospectively since the estate had been confirmed by the time of distribution. In addition, the assets have long been distributed to the beneficiaries as per the wishes of the deceased and some are occupied by third parties.
17. He went on to deponed that the deceased had divided his estate before the clan elders and provided for the said beneficiaries. The deceased never included Lucy Wanjiku Karanja and Eunice Kigenyi Mungai in the distribution of the estate where the applicants were well aware of his decision but they never challenged his decision.



18. He accused the applicants for being indolent as they slept on their rights for over 29 years and for which period they petitioned for letters of administration and the estate distributed among the beneficiaries as per the last wishes of the deceased.
19. Virginia Muthoni Munyoroku has filed submissions in support of the application dated 9th June, 2023. The submissions are dated 16th August, 2023 and has placed reliance has been placed on Sections 2 and 131 of the Penal Code on disregarding and failing to comply with court orders.
20. She also cited among others Econet Wireless Kenya Limited Versus Minister For Information And Communication Of Kenya Authority where it was held that:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld. The courts will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors.”
21. The Administrator/ Respondent has filed submissions in response to the applications dated 9th June, 2023 and 12th June, 2023. The submissions are both dated 25th September, 2023. Reliance has been placed on the following *Kristen Carla Burchell Vs Barry Grant Burchell*, Eastern Cape Division Case No. 364 Of 2005 where the Constitutional Court of South Africa stated, “Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. *The constitution* states that the rule of law and supremacy of *the constitution* are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals.”

Analysis And Determination

22. The ruling delivered by this court (Abida Aaroni J (as she was) on 16th December, 2021, at paragraphs 35 and 36, ordered as follows:
 - “35. Before making final orders on the claim by Lucy and Eunice and that of the Petitioner, the Petitioner is hereby directed to give acreages of the said properties as this information will enable the court determine the prayer for amendment and for the court to arrive at fair and just decision having found that Lucy and Eunice are entitled to inherit their father’s estate.
 36. As relates to the application dated 20/ 7/ 2021, the court will finalize the same when giving final orders on Lucy and Eunice’s application.”
23. I have carefully considered the applications, grounds of opposition, responses as well as the written submissions filed by the parties and address them as follows:
24. The issues for determination, as crafted by the Administrator/ Respondent are:
 - a. Whether the Administrator/ 1st Respondent should be cited for contempt for failing to honour the orders of the Honourable Court?
 - b. Whether the orders sought for by the Applicants should be granted?

Determination

25. At paragraph 27 of *Henry Musemate Murwa v Francis Owino*, Principal Secretary, Ministry of Public Service, Youth And Gender Affairs & another [2021] eKLR, Judge Maureen Onyango cited with



authority the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR where Mativo J. restated the test for establishing contempt in his decision and stated –

“

“40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove

- (i) the terms of the order
- (ii) Knowledge of these terms by the Respondent,
- (iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated: -

“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) that: -

- 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 the defendant’s conduct was deliberate...”

- 26. I find that the application dated 12th June, 2023 is, indeed res judicata, because the issues raised therein are the same issues raised in the application dated 9th June, 2023 and also the addressed in the ruling delivered on 16th December, 2021. The application also seeks that the Administrator/ respondent provides acreages for parcels of land that were not covered in the orders issued by the ruling delivered on 16th December, 2021.
- 27. On the question of contempt i do not find any evidence to suggest that the respondent failed to adhere to the orders given by the court. Despite asserting in his replying affidavit that he was not served I do not think that he failed to comply.
- 28. In my view I find that the Administrator/ Respondent has partially complied with the orders issued in the ruling delivered on 16th December, 2021. The ruling, at paragraph 34 listed the properties that required acreages to be provided by him. They are Ndarugu/ Karatu/ T116, Ndarugu/ Karatu/T117, Ndarugu/ Karatu/T115, Ndarugu/ Karatu/T105 and Ndarugu/ Karatu/469.
- 29. Through his affidavit evidence sworn on 3rd May, 2023, he provided the acreages and annexed certificates of official search all dated 3rd February, 2022 save for Ndarugu/ Karatu/T105 whose acreage has been submitted but with no backing evidence. The same was not controverted by the applicants.
- 30. The only parcel that lacked supporting evidence was Ndarugu/Karatu/105. Since there is a pending application dated 20th July 2021 as per the court’s ruling the same could as well be considered simultaneously.



31. In the premises and for the reasons stated above I find the two applications unmeritorious. The administrator is consequently directed to fix the application dated 20th July 2021 for determination as a matter of priority.

32. Each party shall bear own costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS

21ST DAY OF MARCH 2024.

H K CHEMITEI

JUDGE.

