



**In re Estate of samuel Waigi Miohe (Deceased) (Civil Appeal
53 of 2019) [2024] KEHC 6370 (KLR) (30 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 6370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 53 OF 2019**

A MSHILA, J

MAY 30, 2024

**IN THE MATTER OF THE ESTATE OF SAMUEL WAIGI MIOHE
(DECEASED)**

BETWEEN

MARGARET WAMBUI WAIGI APPLICANT

AND

DANIEL NGIGE WAIGI 1ST RESPONDENT

JOHN MUNGAI WAIGI 2ND RESPONDENT

LEAH MWIHAKI WAIGI 3RD RESPONDENT

SENTENCE

1. *Vide* a determination of this Honourable Court delivered on the 1st December, 2023 the 1st respondent was found guilty of contempt of the court orders of 14/12/2022 and 6/01/2023; his counsel was invited on the 14/03/2024 to make a plea in mitigation before sentencing;
2. Mr. Olaka counsel for the 1st respondent submitted that his client respects the court Rulings and that court orders are binding and should be taken seriously. That his client regrets the events and prays that the court listens to his plea for it to exercise its discretion and also exercise mercy.
3. In considering his right Counsel submitted article 50 (f) gives the 1st respondent a right to fair hearing and to the fairest and least severe punishment.
4. He contended that the 1st respondent was a family man with one (1) wife and six (6) children; two (2) children were minors aged 14 years and 11 years and were still in school one being in Form 2 and the other in Grade 6; They were all dependent on him especially the minors. That a custodial sentence would tear the family apart. Counsel submitted that his client was now a broken man.



5. Counsel for the 1st respondent relied on the case of *Antony Wabome v Parminder Siambi and others* [2016] eKLR. Where the contemnor was fined Kes 10,000/- further submitted that the 1st respondent was extremely remorseful and pleaded for a fine as opposed to a 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.
6. In his response Mr. Lerionka for the applicant submitted that the 1st respondent be found in contempt as he has disregarded many court orders. The 1st respondent was said to feel a sense of entitlement and that he deliberately chooses to disregard court orders and had threatened the applicant and destroyed property. The matter of malicious damage to property was reported to Githiga Police Station *vide* OB No.21/04/02/2024 court was urged to issue a firm sentence as the 1st Respondent will not cease from committing other contemptuous acts;
7. The 1st respondent had threatened the applicant after the orders were granted and had uttered the words to the effect “I will destroy everythingyou secure other court orders....I will still do as I please”
8. The 1st Respondent was not in the least remorseful nor was there any indication of purging his contempt. The 1st Respondent was urged to demolish any construction or that he reimburse to the estate what he had destroyed.
9. Mr Ndungu for the 3rd respondent submitted that his client associated himself with the submissions of the applicant and stated that the 1st Respondent was not remorseful and ought to be committed to civil jail; that the house that had been built contemptuously be demolished.

Issue For Determination

10. After hearing the 1st respondents Counsel in mitigation and the responses this court has framed only one issue for determination; whether the 1st Respondent is deserving of a fine, or a custodial or a non-custodial sentence.

Analysis

11. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case;
12. This Court has taken into consideration the aggravating circumstances in the commission of the contempt offence in that the 1st Respondent repeatedly ignored court orders and proceeded to maliciously encroach and uproot mature cash crops, cut down trees and sank a bore-hole which acts amounted to wasting and changing the nature of the assets of the estate.
13. There are no mitigating factors to be taken into consideration by this court as the 1st Respondent even though he had apologized for his actions he did not directly express his remorse,
14. 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.
15. 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.
16. Having regard to the fact that the parties herein are siblings albeit from four (4) different houses understandably there exists a lot of acrimony which is normal and expected; though the 1st Respondent



stated that he was apologetic but his demeanour did not convey this nor did he directly express his remorse and did not understand that he needed to purge his contempt.

17. From the words uttered to the effect “I will destroy everythingyou secure other court orders....I will still do as I please” it is clear that the 1st Respondent is not respectful of court orders and if given a fine or non-custodial sentence and will not likely or hence forth desist from such unbecoming conduct; this court is satisfied that the 1st Respondent is not deserving of leniency; this court finds that the appropriate sentence for the 1st Respondent is a custodial sentence of two (2) months; during this period should the 1st Respondent purge the acts that may constitute contempt the custodial sentence shall be converted to a non-custodial sentence for the remainder of the term imposed.

Findings & Determinations

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

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 30TH DAY OF MAY, 2024.

HON. A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Mr. Olaka – for the 1st Respondent

Mr. Lerionka – for the Applicant

N/A – for the 3rd Respondent

