



REPUBLIC OF KENYA



**In re Estate of Joseph Maingi Muriithi (Deceased) (Succession Cause
1212 of 1998) [2024] KEHC 7614 (KLR) (Family) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7614 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 1212 OF 1998

HK CHEMITEI, J

JUNE 27, 2024

IN THE MATTER OF THE ESTATE OF JOSEPH MAINGI MURIITHI (DECEASED)

BETWEEN

BENSON RITHO MURIITHI APPLICANT

AND

REBECCA WANJIRU MURIITHI RESPONDENT

RULING

1. This ruling relates to the application dated 3rd November, 2023 filed by Benson Ritho Muriithi, the Applicant, seeking for Orders That:-
 - (a) Spent.
 - (b) Pending the hearing and determination of the application herewith inter – partes this Honourable Court be pleased to stay the ruling and orders issued herein by Lady Justice Maureen Odero on the 29th of September, 2023.
 - (c) This Honourable Court be pleased to review and/or set aside its Ruling and Orders issued on the 29th of July, 2023.
 - (d) The costs of the application be provided for.
2. The application is supported by affidavits sworn by Benson Ritho Muriithi on 3rd November, 2023 and 8th April, 2024 stating inter alia that he is the administrator of the deceased's estate and that on 15th July, 2022, Lady Justice Maureen Odero dismissed the contempt application dated 21st July 2021 filed by the Respondent against him and directed that he concludes the administration of the deceased's estate within 90 days from 15th July, 2022 and ensure that each beneficiary is transferred their share



of the estate in accordance with the mode of distribution set out in the certificate of confirmed grant dated 19th March, 2019.

3. He deponed that the ruling was delivered in his and his advocate's absence and it came to his attention on 11th November, 2022 when his advocates on record received a mention notice to confirm compliance with the ruling delivered on 15th July, 2022. Through his advocates he requested the Applicant's advocates to share a copy of the ruling and further communicated that he was working on the title conversion process for both Nyeri and Nairobi properties and that he would be addressing them separately on modalities of issuance of titles within 7 to 14 days.
4. Vide a letter dated 17th January, 2023, he informed the Applicant's advocate that he had instructed the firm of Mwikali & Associates Advocates (hereinafter "the firm") in Nyeri to process and issue titles in respect of the properties in Nyeri including Land Reference Nos. 7387/ 9 and 7387/ 10 and that the beneficiaries should provide the information and documents requested for by the firm vide letter dated 12th January, 2023. The said beneficiaries are yet to supply the information requested for by the firm.
5. He went on to state that he commissioned a surveyor to produce deed plans with respect to agricultural land in Nyeri known as Land Reference Number 7387/ 11 and they have been resubmitted with amendments for approval so as to allow for execution of transfer after the deed plans have been approved. His advocates on record kept the court informed of the progress and requested for time to complete the distribution.
6. On 24th March, 2023 when this matter came up for hearing there was no application for contempt that had been filed in respect of the ruling of 15th July, 2022 and the Respondent's advocates requested for a ruling date for the application dated 21st July, 2021 which had been dismissed on 15th July, 2022. He instructed his advocates on record to file an application dated 30th March, 2023 seeking to set aside the directions issued on 24th March, 2023 which was to come up for ruling.
7. He deponed that instead of delivering a ruling on the application dated 30th March, 2024, the court issued orders on contempt on 29th September, 2023 .
8. He is aggrieved by the ruling citing him for contempt yet no formal application for contempt had been filed and he had no opportunity to respond to the application for contempt and filed supporting documents thus condemned unheard.
9. He stated that the contempt orders issued on 29th September, 2023 directing the Deputy Registrar to execute transfer documents for the land that forms part of the deceased's estate conflicts with the partial decree in ELC No. 7 of 2012 where he is mandated to execute transfers to interested parties some of whom purchased their respective properties from the beneficiaries including Rebecca Wanjiru Muriithi. He is unable therefore to comply with the orders of this court to complete the administration process primarily because of the existence of injunctive relief obtained against him by various parties in ELC No. 7 of 2012 – *Benson Ritbo Muriithi v George Ngugi Karungo & Others* barring him from transferring properties constituting part of the estate to any party pending the hearing and determination of the said suit.
10. The application is opposed vide replying affidavit sworn by Rebecca Wanjiru on 7th March, 2024. She states, inter alia that the application dated 3rd November, 2023 is meant to delay compliance with the court's numerous directions and orders. It is the Applicant's trend she deponed not to appear in court when a decision is about to be made on anything pertaining to the deceased's estate.



11. That the estate should have been distributed over 25 years ago from when the grant was confirmed. The Applicant, however, refused to execute the necessary transfer documents compelling the Deputy Registrar to execute them.
12. That ELC No. 7 of 2012 – *Benson Ritbo Muriithi v George Ngugi Karungo & Others* was never brought to the court’s attention in 2012 and it was instituted to ensure that the deceased’s beneficiaries do not benefit from the estate. The Applicant’s advocate was informed via ruling notice dated 30th March, 2023 sent via email that the ruling was to be delivered on 28th April, 2023. The Applicant has not stated the issues to be reviewed or appealed.
13. The Applicant has filed submissions dated 8th April, 2024 placing reliance on the following among others;
 - a. In *Re Estate of Simoto Omwenje Isaka (Deceased)* [2020] eKLR where the court stated as follows:

“Order 45 provides for three circumstances under which an order for review can be made. To be successful, the Applicant must demonstrate to the court that there has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. A party may successfully apply for review, secondly, if he can demonstrate to the court that there has been some mistake or error apparent on the face of the record. The third ground for review is worded broadly; an application for review can be made for any other sufficient reason.”
 - b. *Muyodi v Industrial and Commercial Development Corporation & Another* (2006) where the court stated as follows:

“In *Nyamogo & Nyamogo v Kogo* (2001) EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be not two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal.”
14. The Respondent has filed submissions dated 12th March, 2024 relying on the following:
 - a) Section 34 (1) of the *Judicature Act* which provides, “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 of England, and that power shall extend to upholding the authority and dignity of subordinate courts.”
 - b. Section 36 of *HCOA* which provides as follows:

“ 36



- (1) A person who –
 - (a) Assaults, threatens, intimidates or willfully insults a judge, judicial officer or a witness, involved in a case during a sitting or attendance in court, or while the judge, judicial officer or witness is travelling to and from a court;
 - b. Willfully and without lawful excuse disobeys an order or directions of the court in the course of the hearing of a proceeding;
...
- (3) A person who commits an offence under subsection (1) shall, on conviction be liable to imprisonment for a term not exceeding five days, or to a fine not exceeding one hundred thousand shillings, or both.”

Analysis and Determination

15. I have gone through the application before this court, the responses and submissions filed by the parties and the authorities and address them as follows:
16. In *Eng Kenya Ltd v Magnate Ventures Ltd* [2009] eKLR the court stated as follows:-

“...This court is aware that contempt of court proceedings are quasi-criminal in nature and therefore all the procedural aspects of the application, including personal service on the alleged contemnor, must be complied with before the court can be said to have the requisite jurisdiction to punish for contempt of court. Cross J in the case of *Re B (JA) (an infant)* [1965] 2 All ER 168 held at page 171 as follows in regard to contempt of court proceedings:

“Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations. For example, it is provided that (6) there must be personal service of the motion on him even though he appears by solicitors, and that (7) the notice of motion must set out the grounds on which he is said to be in contempt; further (7) he must be served as well as with the motion with the affidavits which constitute the evidence in support of it. It is clear that if safeguards such as these have not been observed in any particular case, then the process is defective even though in the particular case no harm may have been done. For example, if the notice has not been personally served, the fact that the Respondent knows all about it, and indeed attends the hearing of the motion, makes no difference. In the same way, as is shown by *Taylor v Roe* (8), if the notice of motion does not give the grounds of the alleged contempt or the affidavits are not served at the same time as the notice of the motion, that is a fatal defect, even though the defendant gets to know everything before the motion comes on, and indeed answers the affidavits...”



17. The contempt application in the instant proceedings was made orally before Judge Maureen Odero on 1st March, 2023 in the presence of counsel for the Applicant and the Respondent. The parties counsel, by consent, agreed to canvass the issues of contempt on 24th March, 2023. On 24th March, 2023, the Applicant's counsel failed to attend court and the court proceeded to hear the Respondent's submissions on the contempt and proceeded to give a ruling date of 28th April, 2023.
18. I have anxiously read through the Applicant's lengthy affidavits in support of his application. It appears to me that although it appears that he failed to comply with the courts directives some other intervening circumstances seemed to have caused the delay.
19. There is for instance the ongoing matter at the Environment and Land Court, which upon perusal of the pleadings on record shows that it has 3 defendants and 107 Interested Parties who all have a claim to the 50 acres of land at Embakassi that form part of the deceased's estate. The Applicant herein subdivided the 50 acres in smaller portions and sold to the parties and also a portion of it was allocated to the Govt of Kenya. There are two consents on record – partial consent dated 4. 5. 2023 and consent dated 29. 5. 2024. There is a pending application dated 10th June, 2024 which is coming up for mention before Hon. Judge Ogutu Mboya on 11th July, 2024.
20. In light of the foregoing, it is evident that had the court been shown the level at which the Applicant had reached with the distribution of the estate and other legal hurdles which he ought to have surmounted I think it would not have issued the said orders. I find that this is a matter where the courts powers for review under Order 45 rule 1(b) of the Civil procedure rules come into play.
21. It appears also that while this ruling was pending the parties have reached some partial consents on the distribution of part of the estate. The same is contained in the consent filed in court and is dated 29th May 2024 and 24th February 2023.
22. The sum total of my findings is that the application is merited. The Applicant can still get a second chance. Obviously if he fails to undertake the execution and conclusion of the estate as he is mandated then the Respondent will be at liberty to bring contempt proceedings against him
23. For now, the application dated 3rd November 2023 is allowed in terms prayers three (3) thereof.
24. The Respondents shall have the costs of the application.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 27TH DAY OF JUNE 2024.

H K CHEMITEL.

JUDGE

