



Abdi v Boru (Civil Appeal E031 of 2023) [2023] KEHC 3812 (KLR) (26 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E031 OF 2023
EM MURIITHI, J
APRIL 26, 2023**

BETWEEN

ABDIKADIR ABDI APPELLANT

AND

KALTUMA ALI BORU RESPONDENT

RULING

1. By a Ruling of 23/2/2023 the Principal Kadhi Isiolo committed the appellant to civil jail for 6 months as follows:-

“13. Justice is a virtue that transcends all barriers; also trial it requires this court to ensure that the decree holder shall not be barred by dishonest and contumacious conduct of the Respondent from enjoying the fruit of its judgment. Hence in my considered view, Notice is allowed and the Respondent is and is hereby committed to jail for six (6) months.” (*sic*)

2. At Paragraph 6 of the Ruling, the court was aware that this was the second time the application for contempt and committal to civil jail was being made as it said:

“I inherited this matter from my brother Hon. Abdulhalim Athman who proceeded to transfer before which the court had committed the Respondent for six months to civil jail. Since I inherited this matter, I had ten (10) encounters with the Respondent vide the proceedings proving he is a habitual dishonest.”

3. The Applicant has appealed from the ruling of 23/2/2023 by a Memorandum of Appeal dated 3/3/2023 raising among other, the issues that the trial court erred in committing the appellant to civil jail for the 2nd time, and that Respondent who shared parental responsibility with the Applicant should not be provided for his poverty in his inability to clear arrears of child support accumulated while he was in prison on civil jail the first time.



4. By a Notice of Motion in the Appeal dated 3/3/2023, the Appellant has sought to be released pending hearing and determination of the application and the Appeal.
5. In response to the application, the Respondent herein filed a Replying Affidavit sworn on 20/3/2023, opposing the applicant's release before he paid the child maintenance dues ordered at 18,000/= per month from 11/3/2021 which had accumulated to 252,000/= and urged that the Applicant was a man of "means [who] engages in food stuff business with his mother and has five rental houses and a Landrover m/v which does business [and] spare part business and earns 50,000/=."
6. In an attempt to reconcile the parties, the court invited parents of the obviously youthful parents but was unsuccessful in resolving the dispute. The applicant's father stated that the Applicant has no property of his own and he was not willing to use his funds to meet the dues for his son, adding that the property listed in the Replying Affidavit of the Respondent was his and not his son's.
7. In a further Affidavit, the Applicant also denied owning the property listed in the Replying Affidavit and urged that her mother's business could not be considered his business, and corrected that order for maintenance was Ksh, 10,000/= for child upkeep per month and 8000/= for school fees termly.
8. Upon hearing the application, the court considers that there are serious questions to be presented and determined by this court on appeal, namely, whether the defaulting parent can be placed in civil jail custody for more than once in the event of continuing default; whether the maintenance dues could be imposed on the one parent of a child rather than both parents on shared responsibility; and whether the Applicant was in arrears of Ksh 252,000/= at the time of committal to civil jail for the 2nd time. See sections 42 and 43 of the [Civil Procedure Act](#).
9. The court further considers that the appeal should be heard on priority basis as the rights of a child are affected, and she continues to require daily maintenance from her parents, the Applicant being the judgment debtor.
10. However, on account of the arguable appeal with regard to the committal to civil jail for more than once in execution of a decree or order of court for payment of maintenance, the court shall direct that the applicant be released from custody pending the hearing and determination of the appeal.
11. The appeal shall be expedited to hearing within 30 days on priority basis in the interests of best welfare of the child. On account of the obvious inability or unwillingness of the parents to provide for the subject child, the court directs the Children's Officer, Meru/Isiolo to consider and file a report for possible placement of the child with foster parents.

Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF APRIL, 2023

EDWARD M. MURIITHI

JUDGE

Appearances:

Mrs. Nelima Advocate for Appellant.

Respondent in person.

