



REPUBLIC OF KENYA



**Madey v Mayo & another (Civil Appeal E004 of 2023)  
[2023] KEHC 27368 (KLR) (28 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27368 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CIVIL APPEAL E004 OF 2023  
JN ONYIEGO, J  
DECEMBER 28, 2023**

**BETWEEN**

**HASSAN MAYOW MADEY ..... APPELLANT**

**AND**

**HAMIDA MAYO ..... 1<sup>ST</sup> RESPONDENT**

**ABDI BARE MAYO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Vide Succession Cause No. KCSUCC E033/2022, Hamidah Mayow and Abdi-Barre Mohamed petitioned for distribution of the estate of the late Gaba Mursal (deceased) which comprised of Plot No. 82 – Bulla Jamhuri. That the plot be declared the property of the deceased and therefore available for distribution among the beneficiaries. One Hassan Mayow was however named as the respondent.
2. It was averred that the 1<sup>st</sup> respondent is the applicant's sister and the 2<sup>nd</sup> respondent the applicant's half-brother. The crux of the matter before the Kadhi's court was for a declaratory order that the plot in question was the property of the estate of the deceased and therefore available for distribution to all beneficiaries. On the other hand, the applicant laid claim over the property being the absolute registered owner and the sole contributor towards its development.
3. After canvassing the hearing, the hon. Kadhi delivered his ruling on 14<sup>th</sup> April 2023 thus declaring that the plot comprised the estate of the deceased hence distributed the same amongst the beneficiaries according to Islamic Law. Aggrieved by the said decision, the applicant herein filed a memorandum of appeal on 18<sup>th</sup> April 2023 challenging the impugned decision on grounds that the dispute over land was a civil suit and not a succession case. At the same time, the appellant, filed an application seeking stay of execution pending the hearing and determination of the pending appeal.



4. Having considered the said application, the court granted stay of execution but directed that the rent payable in respect to the disputed property be deposited in an interest earning joint account to be opened in the parties' advocates' joint names.
5. Despite the said directive, the appellant chose to ignore the same thus necessitating filing of a notice of motion application dated 12<sup>th</sup> October 2023 by the applicants/respondents seeking orders to the effect that;
  - a. The honourable court be pleased to find Hassan Mayow Madev in contempt of the order of the honourable justice J.N. Onyiego in the high court at Garissa in high court civil appeal number E004 of 2023 issued on 11<sup>th</sup> August 2023.
  - b. The honourable court be pleased to order that the said Hassan Mayow Madey not be heard by the court until he purges the contempt by depositing the rent collected from plot No.82 in bulla Jamhuria for the months of August 2023 and September 2023 in joint advocates' account.
  - c. That the said Hassan mayow Madey be arrested and committed to prison for a term not exceeding six months
  - d. That this honourable court be pleased to issue such other or punitive orders in respect of the said contempt as may be necessary for the ends of justice to be met.
  - e. That the costs of this application be provided for.
6. The application herein is anchored on grounds set out on the face of it and averments contained in the affidavit in support sworn by the applicant on 12<sup>th</sup> October 2023. The applicant's application is a product of the alleged appellant's disobedience to this court's order of 11<sup>th</sup> August 2023 in which the appellant was granted stay of execution orders but at the same time directed to deposit rent accruing from the subject property to an account jointly held by both parties' advocates' account.
7. Despite service of the application, the appellant/respondent did not bother to file any response. When his advocate appeared before court, he expressed the position that his client had refused to give him instructions to respond to the application. On that note, counsel stated that his client had refused to cooperate hence left it for the court to decide.
8. On her part, M/sRoble counsel for the applicant basically adopted the particulars of the application and averments contained in the affidavit in support of the application thus urging the court to allow the same as prayed.
9. I have considered the application herein which is not opposed. The application is seeking the court to find the appellant guilty of contempt of the court order made on 11<sup>th</sup> August 2023. Although not opposed, this court has a duty to consider the same and make a determination on merit. It therefore does not follow that the application must succeed automatically simply because it is not opposed. See [\*Gideon Sitelu Konbellah v Julius Lekakeny Ole Sunkuli & 2 others\* \[2018\] eKLR](#)

“Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment,



which might render the application a non-starter. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court”.

10. There is no dispute that there is a court order in place directing the appellant/respondent on what to do. There is no dispute either that the appellant has been informed of the court order by his lawyer but he has chosen to ignore it without any justification. In fact, his lawyer sounded offended by his client’s behavior hence urged the court to proceed with the application and pronounce whatever orders it deems fit.
11. What is the objective of contempt proceedings. The purpose of contempt proceedings is to ensure that parties who deliberately disobey court orders are; firstly made to purge the contempt and honour the court order; secondly, apologize to the court and comply with the order in question and at thirdly, suffer punitive consequences which include; fine, imprisonment or denial of right of audience.
12. The overall objective of contempt proceedings is to ensure that court’s authority is not undermined, the rule of law is upheld at all times and that court orders are not issued in vain.
13. In the case of *Hadkinson Vs. Hadkinson* [1952] 2 ALL ER 562, the English Court of Appeal returned these categorical holdings;

“Held (per Somervell and Romer, L.JJ.), that it was the unqualified obligation of every person against, or in respect of whom, an order had been made by a court of competent jurisdiction, to obey it unless and until that order was discharged; that the mother in the present case had not brought herself within any of the exceptions to the general rule which debarred a person in contempt from being heard by the courts whose order he had disobeyed; and that she being in continuing contempt by retaining the infant out of the jurisdiction her appeal could not be heard until she had taken the first and essential step towards purging her contempt by returning the child within the jurisdiction.

Held Per Denning L.J, the fact that a party to a cause had disobeyed an order of the court was not of itself a bar to his being heard, but if his disobedience was such that, so long as it continued, it impeded the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it might make, then the court might in its discretion refuse to hear him until the impediment was removed. The present case was a good example of a case where the disobedience of the party impeded the course of justice.”

14. In the case of *Fred Matiang’i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others* [2018] eKLR the court of appeal had this to say against contemnors;

“In deserving cases, this Court has itself set its face firmly against granting contemnors audience until and unless they first purge their contempt and it shall continue to do so in such cases as evince a headstrong contumaciousness proceeding from a bold impunity, open defiance or cynical disregard for the authority of the Court and the integrity of the judicial system. Such pernicious conduct cannot be countenanced and those hell-bent on it will find neither help, nor refuge under a convenient and self-serving appeal to natural justice when their impudent conduct threatens the very foundation of the rule of law. While the right to fair hearing is sacrosanct and is one of the non-Derogable rights in Article 25 of the Constitution, we affirm with this Court in *A. B. & Another vs. R.B.* 2016 eKLR that there



may be instances where due to the risk of the rule of law being deliberately undermined, such right may be denied and the hearing of an application for stay denied until there is full compliance with the orders of the High Court. (See also- *Communications Commission of Kenya vs. Tetra Radio Ltd*, [2013] eKLR.

15. The appellant /respondent was duly notified of the existence of a lawful order; he was served; he has disobeyed the order and that the disobedience is deliberate. All the necessary elements which must be proved in contempt proceedings have been established. A litigant cannot be left to choose on which order to obey and which one not to obey. Court orders are sacrosanct and must be obeyed unless discharged.
16. The appellant cannot be left to freely choose to ignore the order. To maintain respect to the court's authority, the applicant must be called upon to account for his disobedience. Taking into account the circumstances surrounding this case, I am satisfied that the application is merited and the same is allowed with orders as follows;
  - a. The appellant herein is found to be in contempt of the court order issued on 11<sup>th</sup> August 2023;
  - b. That the appellant is given 14 days to purge the contempt and comply with the order in question in default, a warrant of arrest shall issue and an order to serve an imprisonment term to apply.
  - c. That further to order (b) above, in case of failure to purge the contempt and in addition to serving an imprisonment term, the appellant shall be denied the right of audience to the court.
  - d. That in the event of non-compliance, the respondents shall proceed to collect rent from the tenants in occupation of the subject premises and deposit the same in the account opened by the respective parties' advocates
  - e. That costs of this application are awarded to the applicants.
  - f. Mention on 8<sup>th</sup> February 2024 to confirm compliance

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF DECEMBER 2023**

**J. N. ONYIEGO**

**JUDGE**

