



REPUBLIC OF KENYA



Bikeri v Abdille (Civil Appeal E001 of 2022) [2022] KEHC 12089 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA**

CIVIL APPEAL E001 OF 2022

A ALI-ARONI, J

JULY 28, 2022

BETWEEN

ABDIRAHMAN AYUB BIKERI APPELLANT

AND

FARDOOSA RASHID ABDILLE RESPONDENT

RULING

1. The application subject of this ruling is dated May 9, 2022 and substantially seeks for one prayer That the Honourable Court be pleased to order the Appellant/Respondent be committed to civil jail for contempt of court orders issued on February 8, 2022 and subsequently on February 16, 2022.
2. The application is predicated on grounds that the court ordered the appellant/respondent Abdirahman Ayub Bikerito settle school fee for his three children and pay maintenance of Kshs. 10,000/- a month, as had been ordered by the trial court first before his matter in this court could be heard as he was in arrears. His is yet to comply and the children continue to suffer due to lack of school fees and they remain home.
3. In the affidavit in support of the Application dated May 9, 2022 the Applicant Fardoosa Rashid Abdille deposed that the children have remained at home since school fees has not been settled and that it is necessary that orders sought for are granted.
4. The Application was opposed by the respondent stating that he is unable to comply with the court order as he is sick and bedridden. Further that he has been diagnosed with kidney failure and has to attend to hemo dialysis since April 2021.
5. Further his net pay is Kshs.38,145/- which is to be shared amongst several of his children. And his other source of income a rental property is not in his control currently as it is being managed by his first wife.
6. His medical bill is being met by NHIF and he may not access his hospital sessions if jailed.



7. He deposed further that has been giving Kshs.15,000/- to the Applicant and has requested the children to be enrolled in public schools. It will not be in the best interest of the children if he is placed in jail.
8. The decree of the court was issued on 14th of December 2021 long before the Appellant was diagnosed with kidney problems as he alleges. This court required him to comply with the orders of the trial court in February 2021 also long before the respondent was diagnosed with the disease, dialysis, before this court could consider any stay or variation as the children were out of school.
9. It is not lost to the court that the issue of school fees and maintenance of the children was brought to court due to the Respondent's failure of taking up his moral and legal responsibility as a parent.
10. The appellant admits that apart from his monthly pay he has rental houses where he has additional income. He also states that his medical bill is catered for by NHIF. He has not detailed any reason in view of the court why he has been reluctant to take care of his children with the applicant. He did not avail either details of the income he receives from his rental houses neither can he use his first wife as a reason to neglect his children with the applicant.
11. The Appellant ought to know that court orders are not made in vain, secondly he should separate the differences he has with the Applicant from his children. Thirdly the court is mandated by law to treat the interest of the children as paramount.
12. Section 5(1) of the *Judicature Act* mandates as follows

“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 in England and that power shall extend to upholding the authority and dignity of subordinate courts.”
13. From the above reading of statute this court is clothed with the power to find one in contempt and to punish when its orders are disobeyed willfully as is in this case. The essence of the power donated to the court is to ensure the obedience of court orders as a means inter alia of preserving the rule of law and preserving the dignity and authority of court.
14. Court orders are not made in vain and must be obeyed for as long as they have not been discharged as in this instance. In an old English case of *Hadkinson v Hadkinson* [1952] 2 ALL ER 567 which has been variously adopted in this jurisdiction the court stated;

“It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void”.
15. In *Samuel M N Mwera & others v National Land Commission & 2 others* [2020] eKLR it was stated

“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.”
16. The Respondent in this matter is well aware of the clear terms of the order and has repeatedly refused and/or neglected to obey the same since 21st of December 2021, is using his ailment and hides behind his 1st wife to escape responsibility and continues to disobeying the court order with impunity, though he has income in excess of his salary,



17. Therefore, for reasons set above the court makes the following orders;

- i) The application dated 9th May 2022 by the Applicant seeking to have the court find the Appellant to be in contempt of court is hereby allowed.
- ii) The Respondent is hereby directed to purge the contempt by settling all fees arrears and outstanding maintenance within the next seven (7) days.
- iii) In default of compliance with Order (ii) above, the Respondent be committed to civil jail for three(3) months or until the contempt is purged.
- iv) Costs to the Applicant.

DATED, DELIVERED AND SIGNED IN GARISSA THIS 28TH DAY OF JULY, 2022

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ALI-ARONI

JUDGE

