



**Ahmed & 4 others v Nur (Environment and Land Appeal
E035 of 2024) [2025] KEELC 3410 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL E035 OF 2024**

**JO OLOLA, J
APRIL 30, 2025**

BETWEEN

**ISSACH AHMED 1ST APPELLANT
ABDITAJIR ABDI 2ND APPELLANT
HASSAN ADAN HASSAN 3RD APPELLANT
SOFIA NOOR 4TH APPELLANT
SOMIA KASSIM 5TH APPELLANT**

AND

ISMAIL SHEIKH NUR RESPONDENT

RULING

1. By a Notice of Motion dated 13th January, 2025, the Appellants herein pray for orders:
 1. Spent
 2. That the Defendant/Respondent either by themselves, their servants and/or agents be directed by a temporary injunction to immediately open the padlock and or remove the (same);
 3. That upon a citation for the contempt the contemnor Ismail Sheikh Nur and Abdul Razak or any one of them be detained in any G.K. Prison in Mombasa or any other prison or rehabilitation facility for a period of 6 months or for such period and on such terms as the court may determine;
 4. That the Defendant/Respondents namely Ismail Sheikh Nur and the Advocate on record namely Abdul Razak be jointly found to be in contempt of Court for the breach of this Honorable Court order issued on 31st December, 2024; and



5. That the costs of this application be provided for.
2. The Application is grounded on an Affidavit sworn by Hassan Adan Hassan (the 3rd Appellant) and is premised on the grounds:
 - i. That the Respondent and his Advocate were served with an order of this Honorable Court issued on 31st December, 2024;
 - ii. That this court issued an order of stay of execution pending the hearing of an application dated 24th December, 2024;
 - iii. That in total disregard of the Court Order, the Respondent and his Advocate moved to the Applicant's shop and forcefully removed him and handed him over to Police Officers from Central Police Station in Mombasa; and
 - iv. That the Appellant was arrested and arraigned in court on 6th January, 2025
3. In his Replying Affidavit sworn on 10th February, 2025, Ismail Shiekh Nur (the Respondent) denies the accusation made against him and his Advocate. The Respondent asserts that by the time the application dated 24th December 2024 was filed, the Appellants had long been evicted from the suit premises.
4. The Respondent avers that in the ex-parte order dated 27th December, 2024, the court only issued a stay of its Ruling dated 11th December, 2024 but never issued any orders of stay of the Ruling by the Business Premises Tribunal dated 22nd August, 2024.
5. The Respondent further avers that neither himself nor his Advocates were served with the said Court Orders and the present application is only meant to waste judicial time and resources.
6. I have carefully premised and considered the application as well as the response thereto. I have similarly considered the submissions placed before me by the Learned Advocates representing the parties herein.
7. By his application before the Court, the 3rd Appellant prays for an order that the Respondent be directed by a temporary injunction to immediately open a padlock and/or remove the same from the demised premises. It is also his prayer that the Respondent and his Advocate on record be jointly found to be in contempt of court for the breach of this court's order issued on 31st December, 2024 and that they be imprisoned for the said contempt for a period of six (6) months or such period as the court may determine for the said contempt.
8. It is the Applicant's case that this court made an order of stay of execution which was served upon the Respondent and his Advocate and that in total disregard of the same, the Respondent and his said Advocate proceeded to the Applicant's shop and forcefully removed him therefrom and handed him to Police Officers who arrested him and arraigned him in court on 6th January, 2025.
9. The Respondent denies those accusations. It is the Respondent's case that by the time the Applicant obtained the said orders, he had long been evicted from the suit premises. It is further the Respondent's case that neither himself nor his Advocate on record were served with the said Court Orders and it is therefore misleading on the part of the Applicant to state that they are in contempt of the same.
10. As it were, contempt of Court is conduct or action that defies or disrespects the authority of the Court. In that regard, Section 5 of the *Judicature Act* confers jurisdiction on the Superior Courts to punish for contempt. Additionally, Section 29 of the *Environment and Land Court Act* confers jurisdiction upon this court to punish a party found to be in disobedience or breach of its orders.



11. As the Court of Appeal held in *Econet Wireless Kenya Limited –vs- Minister for Information and Communication of Kenya & Another* (2005) eKLR:

“.....It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proven contemnors.

In *Hadkinson –vs- Hadkinson* (1952) 2 All ER 567, it was held that: “it is the plain and unqualified obligation of every person against or in respect of whom an order is made by a 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.”

12. Given the consequences of a party being found in contempt of Court, it is settled that there are essentially four elements that must be proved to make the case for Civil contempt. The applicant must prove to the required standard (which is higher than that in Civil cases) that:-
- a. The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the Respondent;
 - b. The Respondent had knowledge of or proper notice of the terms of the order;
 - c. The Respondent has acted in breach of the terms of the order; and
 - d. The Respondent’s conduct was deliberate
13. In the matter before me, the Applicant accused the Respondent and his Advocate by the name Abdul Razak of acting in contempt of the orders issued herein on 31st December, 2024. From a perusal of the record herein, those orders were issued ex-parte by the Honorable Justice L. Naikuni who was then seized of the matter following a Chamber Summons application dated 24th December, 2024 brought under Certificate of Urgency by the Applicant
14. Having considered the application on 27th December, 2024 the Learned Judge proceeded to issue orders extracted as follows:
- a. That the Chamber Summons application dated 24th December, 2024 be and is hereby certified as urgent and to be heard during the High Court Vacation hereof;
 - b. That the 3rd Appellant/Applicant directed to serve the Respondents herein with the application and all the pleadings and file proof of service under the provision of Order 5 Rule 15 of the Civil Procedure Rules, 2010.
 - c. That upon effecting service, the Respondents granted 14 days leave to file and serve their Replies accordingly;
 - d. That there shall be “Inter Partes” hearing on 4th February, 2025 before the ELC No.3; and
 - e. That in the meantime, there be stay of execution against the Ruling and the Decree of this Honourable Court delivered on 11th December, 2024 until 4th February, 2025. Nonetheless, the Honourable Court shall be at liberty to review these orders then depending on any emerging facts.”



15. While the Applicant asserts that the said orders were served upon the Respondents and his Advocate, the said Abdul Razak, I was unable to find any evidence of such direct service. For starters, the Law Firm on record for the Respondent is shown in the pleadings filed herein as Abdirazak and Company Advocates. There was nothing placed before the Court to explain the connection between the said Abdul Razak said to have been served by the Applicant to the Law Firm named Abdirazak & Company Advocates.
16. Secondly, in support of the contention that the Respondent and his Advocate were served with the orders, the Applicant has annexed to his Supporting Affidavit an Affidavit of Service Sworn by one Mutai Caleb on 3rd January, 2025. At Paragraph 3 of the said Affidavit, the Process Server depones as follows:
 - “ 3. That on 2nd January, 2025 at 2.06 P.M. I served the firm of Abdirazak & Company Advocates through (a) WhatsApp number given to me by Mr. Hassan Adan Hassan the Applicant belonging to Mr. Abdulla Mohamednur Abdi Advocate who is an associate in the said firm being 0722569583 and he received and read as shown by show of grey ticks that I hereby attach WhatsApp extract that I hereby attach (sic) and I return to this honorable Court as duly served.”
17. Again there was nothing by way of evidence placed before the court to demonstrate how the Process Server and/or the Applicant knew that the said Mr. Abdulla Mohamednur Abdi was an associate at the law firm and that the WhatsApp number belonged to him. Arising from the foregoing I was not persuaded that the Respondent herein had at 3.30 P.M. on the said 2nd day of January, 2025 been served with and made aware of the orders that had been issued by the court on 31st December, 2024.
18. Even assuming that I was wrong in that conclusion, I was unable to see how the Respondent could be accused of going against the orders of the Court. I say so because from a perusal of the record herein, the Applicant had appealed against a Ruling delivered by the Business Premises Rent Tribunal issued on 22nd August, 2024. That Ruling had allowed the Respondent herein to evict the Applicant from the suit premises.
19. Aggrieved by the said Ruling, the Applicant moved to this court on Appeal and sought a stay of execution of the Ruling by the Tribunal. Having heard the application for stay, the Honorable Justice L. Naikuni in a ruling delivered on 11th December, 2024 rendered himself as follows:
 - a. That the Notice of Motion application dated 24th September, 2024 and the subsequent Appeal herein are struck out for being unprocedural.
 - b. That the Stay of Execution of the Ruling/Orders issued by the Hon. Gakuhi Chege on 22nd August, 2024 pending the hearing and determination in the interim issued to the Appellants/ Applicants are hereby vacated.
 - c. That the Respondent shall have the costs of the Notice of Motion Application dated 24th September, 2024.
20. Having read the orders issued on 31st December, 2024, I was unable to see how the same could be construed to have stayed the eviction orders issued earlier by the Business Premises Rent Tribunal.
21. It follows that I am not persuaded that there was any merit in the Motion dated 13th January, 2025. The same is dismissed with costs to the Respondents.



**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT
MOMBASA THIS 30TH DAY OF APRIL, 2025**

.....

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Omwenga Advocate for the Appellant
- c. Mr. Kimanzi holding brief for Abdirizak Advocate for the Respondents

