



REPUBLIC OF KENYA



KENYA LAW
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**Abdi v Adan & another (Civil Appeal E010 of 2024)
[2025] KEHC 13199 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13199 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CIVIL APPEAL E010 OF 2024
FR OLEL, J
SEPTEMBER 24, 2025**

BETWEEN

AHMED RASHID ABDI APPELLANT

AND

ALINUR ABDI ADAN 1ST RESPONDENT

HALIMA ABDULLAHI 2ND RESPONDENT

RULING

A. Introduction

1. The application before the court for determination is the Notice of Motion application dated 6th May, 2025, filed by the Appellant/Applicant under provisions of Article 48 and 159(a) & (b) of the Constitution of Kenya, 2010, Section 4(2), 5, 24, 27(b), 28(i) of the Contempt of court Act, Section 3A of the Civil procedure Act, and seeks for several orders, namely;
 - a. Spent
 - b. That the respondents do show cause, why she should not be detained in civil jail for a period of six months for blatantly disobeying the court order issued on the 6th February, 2025.
 - c. That the court do find the Respondent in contempt of the court order issued on the 6th February, 2025.
 - d. That the respondent be convicted for contempt of the court order issued on the 6th February 2025.
 - e. That, in the alternative, the respondent be ordered to open a bank account in the joint names of the two advocates' law firms on record within a period of two weeks.



- f. That the respondent be ordered to deposit all rental income she has been collecting from the tenants in the subject property plot No 125, Moyale from 12th March, 2021 or from the date of delivery of the judgment by Hon A.D.Wako (Principal Kadhi-Moyale law courts) on 3rd January, 2023 in KCSUCC/E015/2020 or from any period the court shall direct.
 - g. Any further orders as this court will deem fit to grant.
 - h. That the costs of this Application be provided for.
2. The said Application was supported by the grounds stated on the face of the said application and the Supporting affidavit of the Applicant dated 06.05.2025. He deponed that the Principal Kadhi-Moyale vide a judgment delivered on 3rd January, 2023, in KCSUCC/E015/2020 had directed the respondent to avail figures to the court of rent proceeds collected from Plot 125, Moyale (hereinafter referred to as the suit property) from the date of commencement of the said suit until the date of judgment, and henceforth the said rents be collect and deposited in a joint account held in their joint names.
 3. Not satisfied with the said judgment, he had filed this Appeal and simultaneously applied for stay of execution of the primary decree, which application, upon hearing on merit, was dismissed by this court vide its ruling dated 06.02.2025. The applicant noted that this court, too, had reiterated that both parties should comply with the judgment issued by the Kadhi court, in respect of opening a joint account, where rents collected would be deposited.
 4. The applicant further averred that, despite all his best efforts to ensure that the joint account was opened and operationalized, the respondent's had deliberately refused to cooperate, to the loss of other beneficiaries entitled to benefit from the estate. Their conduct was deliberate, willful and calculated to lower the dignity and authority of this court thus the respondent deserved to be punished for being in contempt of the orders earlier issued.
 5. In response, both respondents filed similar replying affidavits dated 23.06.2025 and insisted that they were not in contempt of the court orders issued by the Principal Kadhi and/or this court. The applicant had misconstrued the said order and wanted them to open a joint account under their advocate's name, yet the court order had specified that it was the parties to open a joint account under their individual names, and that was the point of departure, leading to the obtaining disagreement.
 6. They further faulted the applicant for rushing to court to file this contempt application, prematurely, for the reasons stated above, and affirmed that they had not willfully disobeyed any court order. To the contrary, they had to act in a prudent manner considering the best interest of the young beneficiaries of the estate, who were schooling and needed primary care/maintenance.
 7. The Appellant had not served upon them any demand or communication through official channels, which was mandatory before an individual could be cited for contempt, nor had the applicant met the standards of proof in contempt proceedings, which had to be higher than proof on a balance of probabilities.
 8. The respondent also urged the court to take judicial notice of the fact that the power to punish for contempt was discretionary and should be used sparingly. In the present Appeal, the applicant too had come to court with unclean hands since he had also refused to account for rent proceeds from plot 86 Zone C Isolo, an estate property, where he was collecting rent and utilizing to the exclusion of the respondents, in direct contravention of the Principal Kadhi court's ruling, which had directed otherwise.



9. The respondent thus urged this court to find that the application, under consideration, lacked merit and proceed to dismiss the same.

B. Determination

10. I have considered all the pleadings and submissions filed and find that the only issue up for determination is whether this court should punish the respondents for being in contempt of the court orders made on 6th February, 2025.
11. The Supreme court in *Githiga & 5 others v Kiru Tea Factory Company Ltd (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023) (Judgment)*, discussed different aspects of contempt and rendered itself as follows;

“Due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flow from these proceedings, courts are required to adhere to the principles of natural justice, procedural fairness, and the right to a fair hearing. This is because, in contempt proceedings, the liberty of the subject is usually at stake; therefore, if a party alleges breaches of his fundamental rights and freedoms as envisaged under the Constitution, albeit, at the Court of Appeal, this court cannot afford to shut its eyes to such serious legal issues that call for settling as the apex court.”

12. The court in the same citation further held that;

“Courts possess the inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court. We note that the Contempt of Court Act having been declared unconstitutional in *Kenya Human Rights Commission v Attorney General & Another [2018] eKLR* on November 9, 2018 the instructive provision remains section 5(1) of the Judicature Act which grants the High Court and the Court of Appeal the power to punish for contempt. It provides:(1) 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.

58. In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable, in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings, being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor’s culpability.

59. This was the position taken by this court in *Republic v Ahmad Abolfathi Mohammed & another SC Criminal Application No 2 of 2018 [2018] eKLR* where we stated:

“It is, therefore, evident that not only do contemnors demean the integrity and authority of courts, but they also deride the rule of law. This must not be allowed to happen. We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of court is well established. In the case of *Mutitika*



v Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

60. Accordingly, article 50(2) of the *Constitution* on the right to a fair trial imposes a duty on the court to guarantee the parties to contempt proceedings procedural justice by evaluating the evidence brought forth by all parties. We note that, while there exists no fixed content to the duty to afford procedural fairness, the fairness of procedure depends on the nature of the matters in issue and that would constitute a reasonable opportunity for parties to present their cases in any given circumstance. Procedural fairness in the administration of justice involves the fair hearing rule and the rule against bias. The fair hearing rules require a decision maker to inter alia afford a person an opportunity to be heard before making any decision affecting his/her interests.
61. Likewise, procedural fairness in decision-making requires courts not to deprive any person of their right without due process of the law, a fundamental precept that implies that the right of a person affected by any adverse decision or action is present before a tribunal that pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense, to be heard by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved.
62. Accordingly, the doctrine of due process encompasses the right to be treated fairly, efficiently, and effectively in the administration of justice. This court acknowledged that due process is a fundamental pillar of the rule of law under the *Constitution* that should be observed by all courts in the administration of Justice in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others SC Petition No 23 of 2014 [2015] eKLR* where we stated: “[97] All courts must consider the principles and values of the rule of law, participation of the people, equity, inclusiveness, equality, human rights, transparency, and accountability. This is because the four corners of due process of the law, specifically the right to be heard and the right to a fair hearing, require that both parties be heard if an issue is raised before the court in order to accord the court the opportunity to pronounce itself on the issue.”
63. Similarly, the United States Supreme Court in *Goldberg v Kelly*, 397 US 254, 267 (1970) emphasized that the fundamental requisite of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.
64. From the foregoing, courts are required to adhere to the principles of procedural fairness and due process in the administration of justice.



13. The above succinct excerpt from the Supreme Court case of Githiga & 5 others v Kiru Tea Factory Company Ltd (Supra) correctly captures the position in law and process undertaken when considering contempt applications filed by the parties before the trial court.
14. The primary decision made to deposit rent in a joint account was made by the Principal Kadhi -Moyale through his ruling dated 02.08.2024, in Kadhi Succession Cause No E015 of 2024, and that is the court, where this application should have been filed.
15. The ruling dated 06.02.2025 made by this court related to the applicant's prayer for stay of execution of the primary judgment, which application was declined, and even though this court directed the parties to comply with the Principal Kadhi's orders, the said orders were made as "obiter dictum" and not based on the substratum of the application determined.
16. In short, the applicant has moved the wrong court for the determination of his contempt application, and his application therefore lacks merit and is dismissed with costs to the Respondents.

It is so Ordered.

READ, SIGNED, AND DELIVERED AT MARSABIT ON THIS 24TH DAY OF SEPTEMBER 2025.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 24th day of SEPTEMBER, 2025.

In the presence of: -

Mr. Yusuf Appellant

Miss Wanjiku Respondent

Jarso Court Assistant

