



In re Estate of Abdulaziz Ahmed (Deceased) (Succession Cause 2 of 2015) [2025] KEKC 7 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEKC 7 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT NAKURU
SUCCESSION CAUSE 2 OF 2015
IN NYABOGA, SRK
FEBRUARY 20, 2025
IN THE MATTER OF THE ESTATE OF ABDULAZIZ AHMED (DECEASED)**

BETWEEN

FAA APPLICANT

AND

FAA 1ST RESPONDENT

**SAMBURU COUNTY CHIEF OFFICER LANDS & PHYSICAL
PLANNING 2ND RESPONDENT**

RULING

1. This ruling arises from another ruling dated 21st August 2024 by the late Honorable Principal Kadhi, Abdulaziz T. Kunyuk, May Allah Almighty forgive and have mercy on him.
2. In the ruling, the Honorable Kadhi inter alia made the following orders:
 - a. That this court holds in abeyance the decision on contempt of court and gives the final opportunity to the Respondents to purge contempt of claims.
 - b. That failure of any of the parties to appear on the said hearing date the hearing shall proceed, notwithstanding their non- appearance.
3. The brief facts of the case are that the applicant herein, had filed a petition dated 29th January 2015 against the first respondent who is his brother, concerning the estate of the deceased herein who is their father.
4. This Honorable Court pronounced a judgment on 29th June 2015 and later a decree on 30th May 2016 and unsatisfied with the decision of the Court, the first respondent made several appeals before High Court to overturn the decision of the Kadhi’s Court but it seems all were unsuccessful.



5. In *Ahmed v Ahmed* (Miscellaneous Application E048 of 2022), H. K. Chemitei J, stated from paragraph 15 to 17 in regard to the 1st respondent herein that: “(15) The applicant made an application seeking to appeal on August 13, 2015 under miscellaneous application no 386 of 2015 which was not prosecuted. (16) Later the applicant made a similar application dated September 14, 2016 which was not prosecuted and it was as well dismissed. (17) The applicant made yet another application similar to this application dated February 22, 2018 vide Succession cause no 1 of 2018 which was dismissed by this court on July 10, 2019. (18) All the above chronology of cases and applications and the results were not controverted by the applicant”.
6. The applicant herein in this instant suit came back to this Court via an application under certificate of urgency dated 26th August 2022 and sought that:
- a. The Honorable Court be and is hereby pleased to order that the Land Registrar Samburu County to transfer the following parcels from Abdulaziz Ahmed (Deceased) to the following:
 - 1) Plot no Samburu / PORO A) 104
 - 2) Abamano plot No 258 and No 259
 - 3) Plot at Marti Trading Centre
 - 4) Plot No 27 Maralal Upperhill
To Feisal Abdulaziz Ahmed ID NO 13XXXXXXX on behalf of Abdallah Abdulaziz Ahmed
 - 5) Maralal Plot NO. 165(Town centre to Faiz Abdulaziz Ahmed on behalf of Zalfa Loumwa, Jaafar, Majid, Ahmed, Khalid and Shamim.
 - b. The Honorable Court be and is hereby pleased to order the Respondent Faiz Abdulaziz Ahmed to pay the Applicant (Feisal Abdulaziz Ahmed) the amount of Kenyan Shillings Two million six hundred and forty thousand seven hundred and forty four and eighty cents (Kshs 2,640,744.80/=) within six months from 26th August 2022.
 - c. The rental income for the plots that form part of the estate of the deceased be collected by the parties that have been awarded the said plots by the Honorable court from end of September 2022.
 - d. Each party to bear its own costs.
 1. The Honorable Senior Principal Kadhi, Juma Khamisi (retired) certified the application urgent and granted the above orders.
 2. It is as a result of the orders of 26th August 2022 above that the 1st respondent made an appeal, In *Ahmed v Ahmed* (Miscellaneous Application E048 of 2022) supra in which the Honorable Judge in paragraph 21 stated that: “In that regard this court has already pronounced itself when it dismissed similar applications alluded to above. In any case if the ruling of August 26, 2022 was a follow up of the original 2015 decision, then the best way if at all the court err in its interpretation of the distribution of the estate was to go back and seek a review of the same but not to file the current application.”
 3. The applicant herein through his counsel filed this instant application herein dated 30th November 2023 as contempt proceedings against the respondents for not obeying the orders of 26th August 2022.



4. No ruling was made by this Honorable Court until for the first time on the 21st August 2024 as a result of adjournments caused by non-appearance and changing of advocates on the side of the respondents.
5. The Honorable Kunyuk states in paragraph 24 of the 21st August 2024 ruling that: “The first Respondent has tactfully and on different occasions sought to “arrest” a ruling that a court wanted to deliver concerning the issue of contempt just a day before the delivery of the said rulings. The records show that Mr. Waziri brought an application under Certificate of Urgency dated 25th August 2022 to stay delivery of judgement slated for 26th August 2022. Similarly, when this court decided that it will deliver a ruling on contempt of court on 26th April 2024, the said Applicant through the same advocate made an application for stay of the delivery of the ruling. The Application was made interestingly on 25th April 2024. These are the gimmicks which cause delay of justice and lead to a clog in the system of administration of justice.”
6. In the above ruling, the Honorable Kadhi, Kunyuk held that the respondents be given a final opportunity in order for them to purge contempt of claims and thus all parties to set an appropriate hearing date for the Respondents to heard.
7. The matter came up before this Court on 3rd December 2024 to set a date for the respondents to show cause why they should not be cited for contempt for failing to obey the orders of this Court dated 26th August 2022.
8. The second respondent’s counsel, Mr. Odundo told the Court that there was a new chief of lands and physical planning and thus sought from the Court for more time to consult on the new order of the office in order to know how to actualize the directions of the of 21st August 2024. The hearing was set to 15th January 2025.
9. On the hearing date, the first respondent was unrepresented and was seeking for more time to find another advocate.
10. Mr. Odundo for the second respondent stated that they had filed an affidavit sworn by Mr. Lysson Lesileele samson, the new chief officer lands and physical planning, on 14th January 2025 and was unaware if the applicant had gone through it.
11. He further stated that they had opened their offices late and that is why they filed it late but the affidavit, he stated, gives an idea of what has been done in handling the matter but furthermore sought more time as the applicant was supposed to pay a certain fee for the process to proceed.
12. Matter was adjourned to 2:30 pm on the same day, 15th January 2025 for hearing of the 2nd respondent and directions on the status of the first applicant.
13. The second respondent who is the officer lands and physical planning testified on oath that he had issued the applicant with temporary allotment letter for plot No. 27 but for plot No. 258 and plot No. 259, he had not issued for reasons that he needed original allotment letter from the applicant.
14. Her further stated that the allotment letter issued to the applicant was signed by his predecessor before he assumed office.



15. During cross examination by the applicant's counsel on why they issued for plot No. 27 without original allotment letter while for plots No. 258 and 259 they put a condition of producing original allotment letter which the applicant does not have, the witness stated that he needed time to inquire from his predecessor how he had issued for plot No. 27 without receiving its original allotment letter.
16. The witness testified that they are very much willing to transfer the same but the applicant was the one who was contravening the basic requirements like KRA as indicated in his replying affidavit.
17. He went on to state that he assumed office in August 2024 and in that regard, he was not in office when the allocation letter was issued and furthermore, that he was not the one who requested the applicant to produce those documents in order to be issued with allotments letters for the two plots of land.
18. The witness stated that the court order to transfer the plots of land was directed to land registrar and not to his office.
19. He further stated that initially, the allotment letter was issued to the deceased and not to the applicant herein and that he cannot do transfer without seeing the original one.
20. During the hearing of the second respondent, the first applicant who was supposed to appear for directions concerning when he will purge contempt of court did not appear and the court fixed his hearing to 20th January 2025 in which he didn't appear and the Court further went forward to directing all parties to file their closing submissions and mention on the 30th January 2025 for fixing a date for ruling.

Determination:

27. In the initial ruling in this application, the late Honorable Kunyuk was about to hold that the respondents were guilty of contempt of court as a result of the chronology of their conduct throughout the history of this suit but, he decided to grant them a final opportunity so as to base his decision on certainty.
28. The first respondent never appeared to purge contempt nor did he file anything in response to this application but instead, he was seeking more time to seek an advocate so that he can defend himself. The second respondent had filed a notice of change of advocate two days before the hearing and he too through his counsel had started to seek for more time which I find exactly similar to what the late Honorable Kunyuk had referred to as "gimmicks which cause delay of justice and lead to a clog in the system of administration of justice."
29. The first respondent had tried on many occasions to make sure that this matter does not reach conclusion and as a result, this Court is satisfied that he has failed to utilize the last opportunity granted by the Honorable Court.
30. From the chronology of the conduct of the first respondent, it is clear that his intention is to frustrate the applicant by using unwarranted excuses for the Court not to make a determination and by further disobeying court orders which makes him guilty of contempt of court.
31. The second respondent is enjoined in this contempt proceeding for claims that he has failed to issue the applicant with allotment letters for the referred parcels of lands.



32. In his submission, the second respondent testified that he is willing to issue the applicant with the documents but the applicant is the one who as failed to adhere to directions from his predecessor who had required him to surrender the original allotment letters so as to be issued with new ones.
33. Asked why the applicant was issued with allotment letter for plot No. 27 without surrendering the original one, the second respondent stated that it was his predecessor who had issued it as he had not assumed that office then.
34. He further testified that he is willing to transfer the parcels of land to the applicant only that the applicant is in contravention of basic requirements like KRA as indicated by their letter to the applicant.
35. The second respondent stated that the allotment letters were initially issued to the deceased and not the applicant and transfer cannot be effected before seeing the original one.
36. The second respondent's submissions throughout the hearing implies that his office has the powers to transfer land and at the same time contends that the Court order was directed the Land Registrar.
37. The lands and physical planning office is established both at the national and county level by the *physical and land use planning act* which also provides for its functions. It may officially be known as the Physical and Land Use Planning office.
38. Though the parties herein seem to agree that the office can transfer land from a person to another, the act does not mention anywhere as that to be among its functions and in its long title, it states: "AN ACT of Parliament to make provision for the planning, use, regulation and development of land and for connected purposes." The office may transfer the use of land from an activity to another and I don't think it has powers to transfer or transmit proprietorship of land from an entity to another and instead, that power, the transmission of ownership, has been conferred to the land registry by the *Land Registration Act* Cap 300.
39. Section 65 of the *Land Registration Act* provides that: "If a person has become entitled to any land, a lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of an interested person supported by instruments of transfer or such evidence as the Registrar may require, register the person entitled, as the proprietor."
40. The order (a) among the orders issued by this Court on 22nd August 2022 was directed to the Land Registrar Samburu County and that is what it meant and instead not the Samburu County Chief Officer Lands and physical Planning. Even if the Chief Officer Lands and physical Planning had the powers to transfer ownership which I believe he does not, still the order would not be applicable upon him as it meant what it stated.
41. The fact that the applicant was issued with allotment letter for plot No. 27 Maralal Upper hill by the Chief Officer Lands and physical Planning, does not legally grant him ownership of the parcel of land as allotment letter is an indication that a person as just accepted an offer of a property which therein after can be used to facilitate transmission/transfer.
42. The fact that the Chief Officer Lands and physical Planning alleging that he is willing to do the transfer of the parcels of lands only that the applicant has not been cooperating is as I find, he is just trying to usurp the powers of the Land Registrar.
43. Though the second respondent cannot be cited for contempt, it is the finding of this Court that he has been colluding with the first respondent to frustrate the applicant.



44. I further find that since the applicant had the requisite instrument for transfer i.e., the court order, he should have made an application before the Land Registrar Samburu County instead of the Chief Officer Lands and physical Planning for the transfer of the parcels of land and thus, the second respondent cannot be cited for contempt.
45. For the first respondent, the Court is convinced that he has deliberately disobeyed its orders and thus the question which arises is what is the appropriate remedy for him?
46. First, the applicant and the first respondent are consanguine brothers professing the Muslim faith and thus, it is appropriate for the Court to address the concept of contempt of court from the Islamic perspective.
47. Among the Islamic Law authorities in regard to provision of contempt of court is the verse in the Holy Qur'aan which states: "O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination." Qur'aan, 4:59
48. It is an obligation upon a Muslim to obey those charged with authority and the offices they hold and among that are courts of law, after first obeying God Almighty and His Messenger (P.B.U.H.). The act of disobedience to the authorities is regarded as an evil and harm and a means to instability in a society and thus, one of the major Islamic jurisprudential legal maxims provides that "harm must be eliminated". In the instance case before us, the harm could be eliminated by the first respondent just obeying the orders of the Court which he has not only failed, but further tried to frustrate the proceedings of this Honorable Court in order to make sure that the harm exists.
49. If the first respondent believes that the Court made an error on its orders of 26th August 2022, he had all the right to make an application for review and correction before the Court but he has done nothing apart from using unwarranted tricks to evade justice.
50. It has been narrated that an Ansaari man, a resident of Madinah, had a dispute with Az-Zubair Ibn al Awwaam before the Messenger of Allah (P.B.U.H) about the Harrah Canals which were used for irrigating the date-palms. The Ansaari man had asked Az-Zubair saying, "Release the water to pass" but Az-Zubair refused to do so. The case was brought before the Messenger of Allah (P.B.U.H) who made a decision and said to Az-Zubair, "You Az-Zubair! Irrigate (your land) and then let the water pass to your neighbor." From that decision, the Ansaari got disappointed and said to the Messenger of Allah, (P.B.U.H.) "Is it because he (i.e., Az-Zubair) is your paternal aunt's son?" On that, the color of the face of Allah's Messenger (P.B.U.H) changed (because of the disobedience) and he said, "O Az-Zubair! Irrigate (your land) and then withhold the water till it reaches the walls between the pits round the trees." Sunan-Attirmidhy: 1363
51. The famous Imaam Almaawardy in explaining the above authority, stated that the statement by the Messenger (P.B.U.H.) i.e., "withhold the water till it reaches the walls between the pits round the trees." which is contrary to his previous statement i.e., "Irrigate and then let the water pass to your neighbor." Meant punishing the Ansaari for contempt by denying him or delaying a right he had already granted him. Almaawardy further mentions that a judge has the discretion to order for the contemnor to be whipped, confined or both. Adab Alqaadhy: 1:253
52. The first respondent has been represented in this suit by several advocates and thus he is aware and understands the contents of the orders dated 22nd August 2022 and as been accorded opportunity by the Court to defend himself but has been trying throughout to come up with excuses the last one being seeking more time to find a new advocate to represent him.



53. The first respondent has not only disobeyed the orders of this Honorable Court, but he has also disobeyed God Almighty and His Messenger (P.B.U.H.) who commanded mankind to obey authorities.
54. The *Judicature Act* grants the High Court and the Court of Appeal powers to punish for contempt which power further extends to subordinate court for purposes of upholding its authority and dignity. Section 5 (1) provides that: “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 such power shall extend to upholding the authority and dignity of subordinate courts.”
55. From the analyses and findings, this Court makes the following orders:
- a. The first respondent be and is hereby cited for contempt of court for disobedience of the court orders emanating from judgment dated 29th October 2015 and the ruling dated 22nd August 2022.
 - b. The first respondent be and is hereby committed to a civil jail for a period of six months.
 - c. That the second respondent shall pay the applicant the cost of this suit.

DATE, SIGNED, AND DELIVERED AT NAKURU THIS 20TH FEBRUARY 2025.

IDRIS N. NYABOGA

SENIOR RESIDENT KADHI

In the presence of:

Court assistant

