Dahir & 4 others v Maalim & another (Miscellaneous Civil Application E006 of 2022) [2025] KEELC 5799 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5799 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ISIOLO

MISCELLANEOUS CIVIL APPLICATION E006 OF 2022

JO MBOYA, J

JULY 31, 2025

BETWEEN

FATUMA DAHIR ..... 1ST APPLICANT

JARO BORU ..... 2ND APPLICANT

YUSUF HUKA ..... 3RD APPLICANT

NUNOW SABTO HIRSI ..... 4TH APPLICANT

SARAH IGE ..... 5TH APPLICANT

AND

ABDI SALAAT MAALIM ..... 1ST RESPONDENT

ISIOLO CENTRAL FARMERS COOPERATIVE SOCIETY LTD .... 2ND RESPONDENT

RULING

1. What is before me is the Notice of Motion Application dated 14th July 2025; and wherein the Applicants herein [who were found guilty of contempt and committed to serve 3 months imprisonment] have sought the following reliefs;

    i. That this application be certified urgent and the same be heard Ex-parte in the first instance.

    ii. That the Honourable court be pleased to release each of the applicants herein from prison in the respective prisons they are held pursuant to the orders for committal to jail for contempt in this matter, under lenient bail or bond terms pending the inter-partes hearing of this application or until further orders of court.

    iii. That the Honourable court be pleased to discharge the orders for committal to jail for contempt in this matter entered against the applicants herein.

iv. That the Honourable court be pleased to grant any other order(s) in the interests of justice.

v. That costs of this Application be in the cause.

2. The Application is premised on various grounds which have been highlighted in the body of the application. In addition, the application is supported by the affidavit of Fatuma Dahir [the 1st applicant] sworn on even date, namely; the 14th July 2025.

3. The 1st respondent [who is primarily the applicant in respect of the subject matter] filed a replying affidavit sworn on 18th July 2025 and wherein the 1st respondent has contended that the subject application constitutes an abuse of the due process of the court and thus same ought to be dismissed. Furthermore, the 1st respondent has also averred that the goods which the applicant is now contending that same are ready to return were seized from the 1st respondent more than 4 years ago and hence the state of the said goods is not capable of being ascertained. Moreover, the 1st respondent has also averred that the application before the court essentially constitutes an invitation to this court to sit on appeal on its own orders.

4. The 2nd respondent [Isiolo Central Farmers Cooperative Society Ltd] did not file any response to the application.

5. The application beforehand came up for hearing on 30th July 2025; and whereupon the advocates for the parties covenanted to canvass and dispose of the application by way of oral submissions. To this end, the court issued directions and the application proceeded vide oral submissions.

6. The learned counsel for the applicants [contemnors] adopted the grounds contained in the body of the application and thereafter reiterated the contents of the supporting affidavit sworn on 14th July 2025, together with the annexures thereto.

7. Furthermore, learned counsel for the applicants has highlighted three [3] legal issues namely; that the court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject application by dint of the provisions of rule 81.1 of the Rules of the Supreme Court of England; that the applicants have returned [are ready to return] the goods which were seized from the 1st respondent and thus the foundation of the committal proceedings has dissipated; and that the court ought to exercise its discretion taking into account that the contempt has since been purged.

8. Learned counsel for the 1st respondent adopted and relied on the contents of the replying affidavit sworn on 18th July 2025 and thereafter invited the court to find and hold that same [court] is not seized of the requisite jurisdiction to entertain and adjudicate upon the subject application. Furthermore, it has been contended that the contemnors herein have not purged the contempt and thus the prayer for discharge of the committal orders ought not to be issued.

9. During the pendency of the ruling, learned counsel for the contemnors proceeded to and filed written submissions dated 30th July 2025 and wherein same [learned counsel] has reiterated the submissions that were made orally before the court. Moreover, learned counsel has cited and referenced various decisions, including the decision in the case of Republic vs the County Government of Meru & 5 others (2025) KEELC 1211; Republic vs Cabinet Secretary Ministry of Lands and another; Magodu (2022) KEELC; Janet Nyadiko vs National Social Security Fund bond and 6 others 2012 eKLR, respectively.

10. I have had the occasion to peruse the written submissions filed on behalf of the contemnors and the authorities cited. Furthermore, I have also taken into account the oral submissions that were highlighted before the court. Having taken into account the foregoing, I come to the conclusion that

the determination of the subject application turns on three key issues, namely; whether this court is seized of the requisite jurisdiction to grant the orders sought; whether the contemnors are deserving of the discretion of the court and whether the application constitutes an abuse of the due process of the court.

11. Regarding the first issue, namely; whether this court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject application, it is instructive to recall and reiterate that the committal proceedings followed the findings of the court that the applicants [now contemnors] were guilty of contempt. Furthermore, it is not lost on me that after the finding that the applicants were guilty of contempt same [applicants] were afforded an opportunity to attend court and show cause why same should not be punished.

12. Moreover, it is worthy to highlight that the applicants [now contemnors] indeed attended court and offered their mitigation, whereupon the applicants undertook to return the confiscated items within 30 days from the 3rd of April 2025. Besides, the applicants herein, through their advocate on record, conceded that in default to return the confiscated goods, same shall be amenable to imprisonment for 3 months.

13. I beg to underscore that the applicants herein, together with the 2nd respondent, failed to abide by and comply with the terms of the undertaking. In the premises, the default clause at the foot of clause no. 6 of the orders made on 3rd April 2024 took effect and the applicants were indeed committed to imprisonment.

14. It was appropriate to highlight the background hereinbefore to appreciate the fact that the committal proceedings are intertwined with the findings of contempt. Furthermore, upon making the orders of committal, the court becomes functus officio and hence any party aggrieved can only prefer an appeal.

15. Be that as it may, the applicants are now before this court seeking that this court may be pleased to discharge the committal orders and to release the applicants from imprisonment. What I hear the applicants to be seeking is to the effect that I should revisit my orders and set same aside. Technically, the applicants are inviting me to re-engage with the question of committal and by side wind to upset the committal orders.

16. I am afraid that the invitation at the foot of the current application amounts to a disguised appeal. To this end, I find and hold that this court is divested of jurisdiction to revisit the committal orders; and without jurisdiction, this court is obliged to down its tools. Furthermore, I wish to add that the provisions of section 29 of the *Environment and Land Court Act* [2011], which donates the power to punish for contempt, do not provide a window to this court to re-visit the committal proceedings for as long as the decision on contempt remains in situ.

17. With regard to the second issue as to whether the contemnors are deserving of the discretion of the court. The facts underpinning the subject matter are well captured at the foot of the ruling of this court rendered on 2nd April 2025 and wherein the court reviewed various orders that had been made pertaining to the return and or restoration of the seized goods. Moreover, it is worthy to highlight that the seized goods have been withheld from the 1st respondent for more than 4 years.

18. On the other hand, it is also important to highlight that the applicants herein and the 2nd respondent had previously undertaken to return the goods. However, despite the undertakings, same failed to comply. In my humble view, the conduct of the applicants is one that does not meet the equitable threshold.

19. Without belabouring the point, I beg to state and underscore that the applicants herein do not deserve the exercise of equitable discretion of the court. For good measure, the conduct of the applicants is one that must not be countenanced in the eyes of Equity.

20. Regarding the third issue, it is important to highlight that the question of purging the contempt was one of the issues that was addressed at the foot of the orders made by the court on the 3rd April 2025. Furthermore, there is no gainsaying that the applicants herein were afforded 30 days within which to purge the contempt by returning the confiscated [seized] goods. However, the applicants failed to oblige. In any event, it is worth recalling that the applicants did not make any efforts even after the lapse of the 30 days period.

21. Simply put, the issue pertaining to purging of the contempt is an issue that was duly considered and addressed by this court. It then means that the said issue cannot now be re-deployed by the applicants to circumvent and or defeat lawful committal to imprisonment.

22. To my mind, the invocation of the issue/ground of purging of the contempt is a ploy by the applicants to invite the court to revisit the proceedings of 3rd April 2025. Such an invitation amounts to abusing the court process. [See the decision of the Supreme Court in the case of Rutongot Farm Ltd vs Kenya Forest Services (2018) eKLR, wherein the concept of abuse of the due process of the court was highlighted and expounded].

23. From the foregoing, I am afraid that the application beforehand is not only premature and misconceived; but same is also legally untenable. In this regard, the application lends itself to dismissal.

Final Disposition

24. For the reasons that have been highlighted in the body of the ruling herein, it must have become crystal clear that the application beforehand constitutes an abuse of the due process of the court. To this end, the application must suffer dismissal.

25. Consequently, and in the premises, the final orders of the court are as hereunder;

    I. The Application dated 14th July 2025 be and hereby dismissed.

    II. Costs of the Application be and are hereby awarded to the 1st Respondent

    III. Costs in terms of clause [II] hereof shall be agreed upon and in default, same to be taxed in the conventional way.

26. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 31ST DAY OF JULY 2025.

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein- Court Assistant.

Mr. Kaumbi holding brief for Mr. E. Kimathi for the Applicants [contemnors]

Mr. Benjamin Ondari for the 1st Respondent

No appearance for the 2nd respondent