

IN THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ISIOLO
CIVIL APPEAL NO. E039 OF 2024

AMINA MOHAMED MUSA.....APPLICANT
VERSUS
HASSAN AHMED SHEIKH.....1ST RESPONDENT
CHIEF EXECUTIVE OFFICE, WAJIR
COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT
COUNTY SECRETARY, WAJIR COUNTY.....
.....3RD RESPONDENT

RULING

1. What is coming up for determination is the Respondent's Notice of Motion dated 14/10/2025 (hereinafter referred to as "The Applicant", for purposes of the present Application). It seeks orders as follows:
 - a). (*spent*)
 - b). *That this Honourable Court be pleased to order the immediate summons and arrest of Hassan Ahmed Sheikh, County secretary county Government of wajir ,and the Secretary/chief executive officer, county public service board, wajir county, the contemnors herein and be presented in court and cited and adjudged guilty for contempt of court, for breach of orders of the Honourable Court issued on 22nd May, 2025.*
 - c). *That this Honourable Court do make any such orders for purposes of enforcing the orders issued by this Court on 22nd May, 2025*
 - d). *That costs of and incidental to this application be provided for.*
 - e). *That the Honourable Court be pleased to grant such further and other relief as may be just and expedient.*

Background

2. A brief background to this matter is necessary. On 06/9/2024, the Isiolo Senior Resident Kadhi delivered Judgement in Divorce Cause No. E020/24 . Among the orders issued was one directed to the 2nd and 3rd respondents herein, to deduct

Kshs. 31,000 monthly from the Respondent's salary, and remit to the Applicant's Bank Account, to meet the cost of children's maintenance, accommodation, school and madrassa fees.

3. The Respondent was aggrieved by the judgement and filed the present Appeal. He also sought an order staying Hon. Kadhi's orders pending Appeal. On 30/9/2024, Justice Muriithi issued a temporary order of stay that was to last for seven (7) days. The interim orders were later extended on 9/10/2024 on condition that the 1st Respondent was to make a payment of Kshs.15,000 for maintenance.
4. The 1st Respondent was erratic in payment. Consequently, the Court discharged the interim order of stay and directed the 2nd and 3rd respondents to comply with the order on deduction as made by the Kadhis Court. There was no compliance and hence this Application for contempt.

The Application

5. The Application is supported by the grounds on the face of the Application, and the Affidavit of the Applicant. It is the Applicant's case that the 2nd and 3rd Respondents have failed to comply with the orders of the Kadhi's court made on 10/9/2024 and the order of this court made on 22/5/2025; that their disobedience has infringed on the rights of the children to education and general maintenance; that the disobedience also amounts to direct challenge of the authority of the Court. It is finally stated that the 2nd and 3rd Respondents should be punished to meet the ends of justice and safeguard the rule of law.
6. The Respondents despite being served, did not respond to the Application.

Determination

7. The law of contempt is founded on Section 5 of the Judicature Act. This is the prevailing position following the nullification of contempt of Court Act No. 46 of 2016. Section 5 of the Judicature Act provides as follows:

“ (a) 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 the subordinate courts.

(b)

8. The prevailing Law on contempt in England is Contempt of Court Act 1981 and Part 81 of the Civil Procedure (Amendment No. 2) Rules of 2012. It sets out the various forms of violations, and the principles that guide the courts by the court in the determination of contempt Applications.
9. The nature and rationale of the law of contempt has been the subject of many past decisions of the courts. The Court of Appeal in *A.B. & Another v R.B., Civil Application No. 4 of 2016 [2016] eKLR* as cited with approval in South Africa's decision in *Burchell v. Burchell Case No.364 of 2005* held: “Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively have the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”
10. In the case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] KEHC1767 (KLR)* Justice Ibrahim, while relying on the Court of Appeal decision in *Gulabchand Popatlal Shah & Another Civil Application No. 39 of 1990 (unreported)*, stated :It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors...

In *HADKINSON v. HADKINSON* (1952) 2 All E.R. 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 void.”

11. Finally in *B v Attorney General [2004] KEHC 2605 (KLR)* Justice Ojwang held: The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”
12. My understanding of the above decisions is that obedience of court orders, and the imperative need to punish for disobedience, is about an affirmation of the Rule of law, and the courts are possessed of the constitutional mandate to whip everyone to toe the path of the rule of law.
13. Before a court of law punishes for contempt, firstly the alleged contemnor must be given the right to be heard (See *Githiga & 5 others vs. Kiru Tea Factory Ltd [2023] KEJC 41 (KLR)*). Secondly, the order that is alleged to have been disobeyed must be served on the Respondent. In other words, it must be demonstrated that the Respondent has had notice of the terms of judgement or order. (See *Shimmers Plaza Ltd vs National Bank of Kenya Ltd (2015) KECA 945*)
14. On the right to be heard, there is on record an Affidavit of Service sworn on 31/10/2025 by Abdirahman Omar, a process server. I have perused the said Affidavit, and am satisfied that the present Application was served on all the Respondents. Physical service was effected on the 2nd Respondent while the 1st and 3rd Respondents were served via WhatsApp Mobile Application. On the day of the hearing, the 1st Respondent was present but the 2nd and 3rd Respondent were absent. However, what is the material is that all the Respondents were given a chance to be heard, but the two opted not, or failed to appear.

15. The Applicant must also demonstrate that the Respondent is aware of orders making the subject matter of the contempt proceedings as aforesaid. On record, again, is an Affidavit of Service sworn by Abdirahman Omar Abdille on 22/7/2025. He swore that he served this court's order dated 22/5/2025 on 22nd July 2025. Attached to that order is an Order to attach the salary of the 1st Respondent that had been issued by Hon. kadhi in Divorce Cause No. E020/2024 and directed at the 2nd Respondent, together with a notification on the Applicant's bank account particulars. Physical service was affected on the 2nd and 3rd Respondents. The Court is therefore satisfied that the 2nd and 3rd Respondents were fully aware of the orders they were required to comply with.
16. The Applicant's case is that the deduction on the 1st Respondent's salary has never been affected. Her testimony has not been controverted. I am therefore satisfied that the 2nd & 3rd Respondents are in contempt of the Court order issued by Hon. Kadhi on 10/9/2024 and the orders of this Court made on 20/5/2025.
17. On the case against the 1st Respondent, who was also the Respondent in the divorce cause, and the Appellant in the Appeal herein, the above stated orders were not directed at him, but his Employer. Consequently, he cannot be said to have treated the two orders with contempt.
18. Final orders:
- a). The 2nd and 3rd Respondents are hereby found guilty of contempt of court.
 - b). They are to appeal in court on 15/1/2026 to show cause why they should not be punished in accordance with the law.
 - c). The Deputy Registrar of the High Court to issue a Notice to Show Cause to the 2nd and 3rd Respondents to appear in Court on 15/1/2026 to show cause why they should not be arrested and committed to civil jail for failure to deduct the 1st Respondent's salary, in terms of the court orders as aforesaid.
 - d). Each party to meet their own costs.

Dated, signed and delivered, virtually, at Nairobi this 11th day of December 2025.

S. Chirchir

Judge

In the presence of :

Kashsane Gollo - Court Assistant

Ms Amina Mohamed - The Applicant

Mr. Hassan Ahmed - The 1st Respondent

Mr. Saka holding brief for Mr. Omwansa for the 2nd and 3rd Respondents.

ORIGINAL