

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E077 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

ABDI **AHMED**
ADAN.....PETITIONER

VS

MINISTRY OF INTERIOR AND

NATIONAL ADMINISTRATION.....1ST
RESPONDENT

THE CEC FINANCE,

THE HONOURABLE ATTORNEY GENERAL.....2ND
RESPONDENT

THE OFFICE OF THE COUNTY

COMMISSIONER, WAJIR.....3RD
RESPONDENT

THE OFFICE OF THE SUB-COUNTY

COMMISIONER, WAJIR.....4TH
RESPONDENT

JIBRIL ADAN ABDIKARIM.....5TH
RESPONDENT

RULING

1 The Petitioner filed a Notice of Motion dated 17th December 2025 seeking orders: -

1. *Spent.*

2. *Summons do issue to Abdulrahman H. Hemed being the Representative of 3rd Respondent to appear in court and show cause why he should not be committed to civil jail for contempt of court for a period of six months.*
3. *Upon his failure to appear in court or show cause, the Honourable Court be pleased to find Abdulrahman H. Hemed being the Representative of 3rd Respondent in contempt of court orders issued on 23rd September 2025 arising from the Petitioner's Application dated 28th April 2025.*
4. *Pending the hearing and determination of this application, this Honourable Court be pleased to suspend and/or stay the implementation of the appointment letter dated 15th December 2025 issued to Jibril Adan Abdikarim.*
5. *A declaration be and is hereby issued that the issuance of the appointment letter dated 15th December 2025 to Jibril Adan Abdikarim is illegal, null and void ab initio, having been issued in direct violation of the Judgement of this Honourable Court delivered on 23rd September 2025.*
6. *A declaration be and is hereby issued that the Respondents, their officers and/or agents are in contempt of court for willful disobedience of the Judgement of this Honourable Court arising from the Petitioner's Application dated 28th April 2025.*
7. *An order be issued compelling the Respondents to fully comply with the judgment of this Honourable Court forthwith.*

8. *The cost of the application be provided for.*

Petitioner'/Applicant's Case

- 2 The Applicant avers that this Court delivered its Judgement on 23rd September 2025 arising from his application dated 28th April 2025, wherein the Court declared unlawful and dismissed the appointment of Jibril Adan Abdikarim, the 5th Respondent herein, on the ground that he did not meet the mandatory statutory age requirement.
- 3 He avers that following delivery of the Judgement, the 5th Respondent lodged a Notice of Appeal and subsequently filed Civil Application No. E 582 of 2025 before the Court of Appeal.
- 4 It is the Applicant's case that the filing of an appeal does not operate as a stay of execution. There has been no stay of the Judgement granted either by this Court or by the Court of Appeal.
- 5 The Applicant avers that despite being fully aware of the Judgement and in the absence of any stay orders, the 3rd Respondent proceeded to issue an appointment letter dated 15th December 2025 appointing the same unqualified person, Jibril Adan Abdikarim, to the position of Assistant Chief II for Hadado South Sub Location.
- 6 The Applicant contends that the 3rd Respondent's actions are deliberate, willful and contumacious, calculated to defy, undermine and render the said judgment nugatory.

- 7 He avers that the Respondents were at all material times aware of the Judgement and that their conduct amounts to open and blatant disobedience of a lawful court decision.
- 8 The Applicant avers that the impugned appointment is illegal, null and *void ab initio*, having been made in direct contravention of a subsisting court judgement and applicable statutory provisions.
- 9 It is the Applicant's case that unless this Court intervenes urgently, the continued non-compliance by the Respondents will undermine the authority and dignity of the Court, encourage impunity and lawlessness, occasion grave injustice to him, and erode public confidence in the administration of justice.
- 10 He avers that the application is brought in good faith and is not intended to obstruct the pending appeal, but solely to enforce obedience to a valid and binding Judgement. He therefore avers THAT it is just, fair and in the interest of justice that the Court grants the orders sought.

5th Respondent's Case

- 11 In opposition to the application, the 5th Respondent filed a replying affidavit dated 12th January 2026.
- 12 The 5th Respondent avers that the present Application is a gross abuse of the court process, strategically filed to harass him and frustrate his constitutional right of appeal against the Judgment delivered on 23rd September 2025.

- 13 He avers that immediately following delivery of the said Judgment, he expressed his dissatisfaction by lodging a Notice of Appeal and subsequently filing *COACAPPL/E582/2025: Jibril Adan Abdikarim vs Abdi Ahmed Adan & Cabinet Secretary Interior and Coordination of National Government & 3 Others*, which is coming up for Ruling on 24th April 2026, and the main appeal being *COACA/E996/2025: Jibril Adan Abdikarim vs Abdi Ahmed Adan & Cabinet Secretary Interior and Coordination of National Government & 3 Others*.
- 14 The 5th Respondent avers that the purported letter dated 15th December 2025 produced by the Applicant, constitutes inadmissible hearsay evidence from an unverifiable source. The Applicant has failed to lay a proper foundation for the documents, as they are neither authored by him nor do they originate from verified official custody.
- 15 It is the 5th Respondent's submission that the substantive issues concerning his appointment and the validity of the recruitment process are now squarely before the Court of Appeal, rendering the present matter *sub judice*.
- 16 The 5th Respondent avers that a contempt of court application cannot be used as a shortcut to bypass the appellate process or to force execution of a judgment whose validity is under challenge before a superior court.

- 17 The 5th Respondent avers that the application is a thinly veiled delay tactic intended to distract this Court and the parties from the primary appellate proceedings currently pending.
- 18 He further avers that the application is procedurally and fatally defective, as the Applicant has failed to extract, seal and personally serve upon him a formal Decree or Order endorsed with a Penal Notice, which he states is a mandatory legal prerequisite for contempt proceedings.
- 19 The 5th Respondent avers that in the absence of a properly served order containing a Penal Notice, there can be no wilful disobedience, and consequently the present application is premature and legally incompetent.
- 20 He asserts that the initiation of contempt proceedings while being fully aware of pending Civil Application No. E582 of 2025 and Civil Appeal No. E966 of 2025 filed on 11th November 2025 amounts to a *mala fide* attempt to frustrate the appellate process and intimidate him into abandoning his pursuit of justice before the superior court.
- 21 The 5th Respondent avers that the instant application is not a legitimate pursuit of legal relief but a dilatory tactic designed to delay and complicate final determination of the substantive issues before the Court of Appeal.
- 22 He avers that this court cannot properly exercise its quasi-criminal contempt jurisdiction on the basis of documents whose authenticity and source are uncertain, as this would

violate the basic rules of evidence and his right to a fair hearing.

- 23 It is the 5th Respondent's case THAT the Application is baseless, unmerited, incompetent, misconceived, fictitious and a waste of the Court's time, and that in the interest of justice it ought to be dismissed and struck out with costs to allow the Court of Appeal to determine the substantive legality of the Judgment of 23rd September 2025.

Petitioner/Applicant's Submissions

- 24 The Applicant submitted on three issues: whether or not 3rd Respondent is in contempt of the orders of this Court; whether the instant application is bad in law having been instituted without prior leave of Court; and who bears the costs of this application.
- 25 The Applicant submitted that contempt is defined by the Black's Law Dictionary (14) as contempt is a disregard if, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.
- 26 The Applicant submitted that the law is settled that in order to succeed in civil contempt proceedings, an applicant must prove: the terms of the order; knowledge of those terms by the Respondent; and failure by the

Respondent to comply with the terms. Once these elements are proved, wilfulness and bad faith are normally inferred, subject to rebuttal by the Respondent on a balance of probabilities.

- 27 He further submitted that the Court must interrogate whether the breach was “deliberate and mala fide,” noting that mere deliberate disregard is insufficient where a party genuinely believes, albeit mistakenly, that he is entitled to act in the impugned manner.
- 28 The Applicant submitted that a court order is binding on the party against whom it is addressed and until set aside remain valid and is to be complied with. It is therefore the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors 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.
- 29 He cited the Supreme Court decision in ***Republic v Ahmad Abolfathi Mohammed & another [2019] eKLR***, where the Court held: *“There is no doubt that an act in contempt of the Court constitutes an affront to judicial authority; and the Court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the Court’s authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the Court; and thirdly, to safeguard its processes for assuring compliance,*

so as to sustain the rule of law and the administration of justice.”

- 30 The Applicant submitted that this Court delivered a judgment declaring the appointment of the 5th Respondent as Assistant Chief II of Hadado Sub Location in Ademasajida Division *null and void*, and ordered fresh recruitment in compliance with the law and requisite qualifications. He argues that the order was clear, unequivocal, plain and unambiguous, and did not require further interpretation as to its import or meaning.
- 31 He cited ***Republic v Attorney General & another Exparte Mike Maina Kamau [2020] eKLR*** wherein the the Court cited with approval the Supreme Court of Canada in Supreme Court of Canada in ***Carey v Laiken, 2015 SCC 17***, which set out three elements of civil contempt: (i) The order must state clearly and unequivocally what should and should not be done; (ii) The alleged contemnor must have actual knowledge of the order; (iii) The alleged contemnor must have intentionally done the prohibited act or intentionally failed to do the compelled act. Additionally, ***Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR***, where Justice Mativo quoted with approval the learned authors of the book; Contempt in Modern New Zealand, outlining four elements: The terms of the order must be clear and binding; The defendant must have knowledge or proper notice; The defendant must have acted in breach; The conduct must be deliberate.

- 32 On knowledge or proper notice, the Applicant submitted that the decision of this Court is well within the knowledge the Contemnor and as such, he is bound by the orders of this Court. Upon the delivery of the judgement, the 5th Respondent proceed to lodge an appeal via a stay application in COACAPPL/E582 OF 2025 and filed a memorandum of appeal in NAIROBI COACA/E996 OF 2025 against the judgement delivered on 23rd September 2025. No stay orders were granted on the application by the 5th Respondent which is awaiting ruling on 24th April 2026.
- 33 The Applicant submitted that there is a presumption that when an advocate appears in Court on instructions of a party, it is imperative for him to report back to the client all that transpired in Court that has a bearing on the client's case. This presumption is in line with the dicta of the Canadian Supreme Court in the case of ***Bhatnager v Canada (Minister of Employment and Immigration)***, where it was held that a finding of knowledge on the part of the client may be inferred from the fact that the solicitor was informed.
- 34 On deliberate and mala fide breach, the Applicant submitted that it is an established principle of law that in order to succeed in contempt proceedings, the Applicant has to prove failure by the Respondent to comply with the terms of the order. The Contemnors, despite knowledge of the subsisting judgment and in the absence of any stay orders, the 3rd Respondent issued an appointment letter dated 15th December 2025 reappointing the same unqualified person to the position of Assistant Chief II for Hadado South Sub Location.

- 35 He submitted that the Respondents' action was deliberate, wilful, contumacious and calculated to defy, undermine and render nugatory the judgment arising from the application dated 28th April 2025. He asserts that he demonstrated through the attachment of the notice of appointment of the 5th Respondent together with photographs of the 5th Respondent in Chief uniforms and receiving the appointment letter from the 3rd Respondent. The terms of the order were clear and unambiguous.
- 36 It was submitted that the Respondent's conduct clearly establishes disobedience of the court order in question. The 3rd Respondent from the appointment letter and the 5th Respondent by accepting the letter of appointment knew that their actions would attract sanction from the court but continued to do so with the ceremony despite being warned to operate within the confines of the judgement delivered herein, the Respondents undoubtedly failed to do so.
- 37 The Respondent submitted that the order in question is coined in plain and clear terms and does not call for further explanation as to its import, purport and meaning. There is no ambiguity in the order in question that could have made compliance difficult.
- 38 It is the Respondent's submission that it is trite law that an appeal does not operate as a stay of execution. Order 42 rule 6 of the Civil Procedure Rules states that No appeal or second appeal shall operate as a stay of execution or

proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order.

- 39 On whether the order is binding, the Respondent submitted that obedience of Court orders is not optional, rather mandatory and a person does not choose whether to obey or not. Therefore, this Court should not fold its hands in helplessness and watch as orders are disobeyed with impunity. The dignity and authority of the Court must be protected.
- 40 The Applicant further submitted that he has successfully proved to the satisfaction of this Court that conditions spelt out in the case of **Carey v Laiken (Supra)**. Thus, this Court can only be seen to stamp and reaffirm its threatened authority and uphold its integrity, sanctity of its processes secure and to ensure that its process and decisions/orders are not rendered in vain by granting the orders sought herein.
- 41 On the second issue, the Applicant submitted that the Contempt of Court Act, 2016 was declared unconstitutional in **Kenya Human Rights Commission v Attorney General; Law Society of Kenya (Interested Party) [2018] KEHC 9656 (KLR)**, wherein the court declared that Sections 30, and 35 of the impugned contempt of court Act No 46 of 2010 are inconsistent with the constitution and are therefore null void; and that the entire contempt of court Act No 46 of 2016 is invalid for lack of public participation as required by Articles 10 and

118(b) of the constitution and encroaches on the independence of the Judiciary.

42 He submitted that the procedure governing the institution of contempt proceedings and the law applicable thereto is as expressed in Rule 81 of the English Civil Procedure Rules and Section 5 of the Kenyan Judicature Act.

43 The Applicant submitted that whereas prior to the amendment of the English Civil Procedure Rules a party could not institute contempt proceedings without obtaining leave, the requirement for leave was vacated by an amendment to the English Civil Procedure Rules following the implementation of the famous Lord Woolf's "Access to Justice Report, 1996". He placed reliance in the Court of Appeal in ***Christine Wangari Chege -versus- Elizabeth Wanjiru Evans & Others [2014] eKLR*** in which the court pointed out that leave, now called "permission" is not required where committal proceedings relate to a breach of a judgement, order, or undertaking.

44 It is the Applicant's submission that he is not any under obligation to seek leave before instituting the instant application following the developments in jurisprudence on contempt proceedings.

45 On costs, the Applicant submitted that the Contemnor should be condemned to bear the costs of the application.

46 I have examined all the averments and submissions of the parties herein. The applicant contends that the respondents are guilty of disobeying the orders of his

court issued on 23rd September 2025 arising from the petitioner's application dated 28th April 2025.

- 47 In the orders of the court dated 23/9/2025 the appointment of the 5th respondent as Assistant Chief II of Hadado Sub County in Adema Sajida division was declared null and void. The petitioners contend that contrary to this order, the respondent proceeded to issue an appointment letter to the 5th respondent as Assistant Chief II on 15^h December 2025.
- 48 The respondents have not denied issuing the appointment letter to the 5th respondent despite the existence of the order of the court declaring the appointment null and void. The respondents only contention is that they are dissatisfied with the judgment and order of court of 23rd September 2025 and have filed an appeal before the Court of Appeal and so the substantive issues concerning the appointment and validity of the recruitment process are before the Court of Appeal and rendering the present matter *sub judice*.
- 49 The respondents also aver that they were never served with formal decree or orders on the order issue. Having considered all these averments, I refer to case law which states that knowledge of a court order supersedes personal service. The judgment in this matter was delivered on 23rd September 2025 in the presence of the counsel for the 5th respondent Athuok & Okoth for the respondents. The 5th respondent was thus well aware of the order declaring his appointment null and void.

- 50 In **Shimmers Plaza Ltd vs National Bank of Kenya Ltd (2015)** the Court of Appeal held that “the *law has changed and as it stands today knowledge supersedes personal service*”. In this case the court committed a respondent to jail despite no formal service because the banks counsel was present when the order was made.
- 51 It is apparent that the respondents had knowledge of the orders of this court but still chose to ignore it. It is also true that the notice of appeal was filed in September 2025 and the appointment letter issued in December 2025 still showing knowledge of the court order.
- 52 Whereas the respondents aver that this court cannot handle this matter due to the doctrine of *sub judice* there is actually no law or order that would bar this court from proceeding with this application. From the chronology of events after the judgment on 23/9/2025 to the December 2025, it is apparent that the respondents deliberately and continuously disobeyed this courts orders and is therefore in contempt of court for which I convict the 4th respondent and in particular Abdulrahman H. Hemed who authored the appointment letter as the 5th respondent herein personally. Costs in this petition.

Dated, Signed and Delivered Virtually at Nairobi this 11th Day of March, 2026.

HELLEN WASILWA

JUDGE