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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MAKINDYE
(FAMILY DIVISION)

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MISCELLANEOUS APPLICATION NO. 1431 OF 2023
(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 525 OF 2022)
(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 005 OF 2020)
(ARISING OUT OF CIVIL SUIT NO. 28 OF 2012)

15 NAKABUGO ALLEN MANGADALENE APPLICANT

VERSUS

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1. NJAKASI ERIMAN }
2. VINCENT SEGAWA } RESPONDENTS

Before: HON. LADY JUSTICE DR. CHRISTINE A. ECHOOKIT

RULING

25 **BACKGROUND:**

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This application is brought under Order 52 rule 1 & 3 of the Civil Procedure Rules, Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act, and Articles 128(2) and 23(1)(a) of the Constitution for orders that; a declaration be made that the Respondents are in contempt of court when they illegally and forcefully evicted the Applicant from the suit kibanja yet this court had stayed execution of the orders arising from Revision Application No. 05 of 2020 and Civil Suit No. 28 of 2012; the third parties/agents of the Respondents vacate the said kibanja; the Applicant re-possesses the suit kibanja which she was in possession of before her forceful and illegal eviction; the Respondents be committed to civil prison for contempt of court; and costs be provided for.

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The application is supported by the affidavit of Nakabugo Allen Mangadalene the Applicant. The 1st Respondent swore an affidavit in reply on his own behalf and on behalf of the 2nd Respondent. The Applicant filed an affidavit in rejoinder.

5 **HEARING AND REPRESENTATION:**

The Applicant was represented by Counsel Lubogo Andrew Daniel while the Respondents were represented by counsel Ekirapa Isaac Obiro. The Applicant and the 2nd Respondent were in court at the hearing of the application.

10 **ISSUES FOR THE DETERMINATION OF COURT:**

1. Whether there was contempt of Court by the Respondents in relation to orders arising from Revision Application No. 05 of 2020 and Civil Suit No. 28 of 2012.
2. Whether the Applicant is entitled to any remedies.

15 **DETERMINATION OF THE ISSUES BY COURT:**

Issue 1: Whether there was contempt of Court by the Respondents in relation to orders arising from Revision Application No. 05 of 2020 and Civil Suit No. 28 of 2012.

Contempt of Court has to do with a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language, to the extent of disturbing the proceedings or impairing respect due to such body. It is conduct that defies the authority or dignity of a court because such conduct interferes with the administration of justice. Counsel for the applicant cited the case of Uganda Super League vs Attorney General, Constitutional Application No. 73 of 2013 in which Justice Kiryabwire defined contempt by reference to the definition in Black's Law Dictionary 7th Edition. Counsel went on to state that every judicial officer presiding over court proceedings has the power to punish for contempt.

I find it useful to note the following on matters of contempt. Before any action can be found to amount to contempt of court, the following principles have to be established;

- a) Existence of a lawful order
- b) Potential contemnor's knowledge of the order

5 c) Potential contemnor's failure to comply that is disobedience of the order.

(Babra Nambi Vs Raymond Lwanga H.C.M.A No. 213 of 2017, arising out of HCT EMA No. 1897 of 2016, arising from Land Division Civil Appeal No. 18 of 2012 arising from Makindye Civil Suit No. 32 of 2008).

10 I have carefully considered the application, its affidavit in support and attachments thereto, as well as the affidavits in reply of the 1st Respondent and the affidavit in rejoinder by the Applicant.

15 The facts of the case are that the Respondents and a one Tereza Nakigude instituted a suit vide H.C.C.S No. 28 of 2012 in the Chief Magistrates' Court of Wakiso at Wakiso. The Applicant and one other person were the Defendants in that suit. I have had the opportunity to peruse the original mother file of this suit. The suit was for a permanent injunction restraining the Defendants, their agents, servants, and/or workmen from trespassing on, selling, alienating, building on or in any way dealing with a kibanja at Ganda, Wakiso District measuring approximately 3.20 acres belonging to the estate of Kirimabanja Semeo Kibwami; 20 and a declaration that the 1st Defendant (also the Applicant in this matter) is the administrator of the estate of the late Muyingo Lawrence Salongo of which she is the only one entitled to a share not exceeding one acre from the estate of the late Kirimubanja Semeo Kibwami. Judgement was made on the 15th of July 2017 by the trial magistrate His Worship Kirya Martins who found that the suit kibanja belonged to the estate of the late Tereza Nakigude 25 who died during the hearing of the suit.

On 15th September 2020 the Applicant Nakabugo Allen Mangadalene filed Revision Application No. 05 of 2020 ex parte, seeking a revision of the order of the learned trial magistrate on the ground that he was not clothed with jurisdiction when he entertained the 30 matter; that he exercised jurisdiction with material irregularity which occasioned an injustice to the Applicant; and that he entered judgement in favour of a deceased person which was

5 wrong and a nullity. The Learned Hon. Justice Dr. Joseph Mulangira dismissed the Revision Application in his ruling of 4th August 2021.

10 The Applicant filed Miscellaneous Application No. 525 of 2022 arising from Revision Application No. 05 of 2020 against the Respondents including Tereza Nakigudde, seeking review and setting aside of the ruling in Revision Application No. 05 of 2020 and stay of execution of the order arising from that application. The grounds of the application were that the Hon. Justice Dr. Joseph Mulangira omitted to consider the issue that the trial magistrate lacked pecuniary jurisdiction to try Civil Suit No. 28 of 2012; and that the learned judge omitted to consider that the trial magistrate entered judgement in favour of a dead person, thereby
15 occasioning a miscarriage of justice.

On the issue regarding judgement in favour of a dead person, the learned Hon. Justice Celia Nagawa found in her ruling of 27th January 2023 in Miscellaneous Application No. 525 of 2022, that the learned Hon. Justice Dr. Mulangira was right in deciding that the judgement of
20 the learned trial magistrate in Civil Suit No. 28 of 2012 was not a nullity. The deceased had already given her testimony and the plaintiff's case had been closed. Then the person died and judgement was given thereafter. In respect to review, the Hon. Justice Celia Nagawa found that there was an error apparent on the face of the record where the learned trial magistrate failed to adhere to the pecuniary jurisdiction of the magistrate's court. Accordingly,
25 the learned Justice Celia Nagawa reviewed and set aside the ruling and orders of the Hon. Justice Dr. Mulangira in Revision Application No. 005 of 2020. The learned judge also stayed execution of the orders arising from Revision Application No. 005 of 2020 and Civil Suit No. 28 of 2012.

30 It is important at this point to keep in mind that the instant application is for contempt of a court order. It is not an application for review, because the review was done under

5 Miscellaneous Application No. 525 of 2022; neither is it an appeal. The question therefore is whether the Respondents were in contempt of the order by the Hon. Justice Celia Nagawa.

10 In the instant application, the Applicant swore an affidavit in support of her application with ground briefly that; the Respondents together with unknown persons evicted her and other beneficiaries from the suit kibanja yet this court had stayed execution of the orders arising from Revision Application No. 05 of 2020 and Civil Suit No. 28 of 2012; and that the said kibanja formed part of her late father's share which she and other beneficiaries had occupied; that the Respondent has let out the said kibanja to third parties who are doing business thereon and have prevented access by the Applicant.

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20 The 1st Respondent's affidavit in reply is to the effect that the Applicant has never been in possession of the suit land and no eviction has ever been carried out against her as alleged; that the Respondents and their predecessors have always been in possession of the suit land from time immemorial; that during the trial in Civil Suit No. 28 of 2012, the trial magistrate visited the locus and found buildings and gardens therein which the court in its judgement found to belong to the late Nakigudde Tereza; that tenants have been renting the suit land since 2020 long before the ruling in Miscellaneous Application No. 525 of 2023 was delivered on the 27th of January 2023; that the said ruling did not decide on ownership of the suit land but rather set aside the orders in Civil Suit No. 28 of 2012; that the Applicant's attempts to enter the suit land amounts to criminal trespass; and that the Respondents are not in contempt of any court order.

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30 The Applicant's affidavit in rejoinder is to the effect that the suit kibanja belonged to her late father who had constructed a house wherein they used to stay and on which kibanja he was buried; that the 1st Respondent's son Kibalama Simon was appointed heir to the said father of the Applicant and was given 100ft x 50ft of the deceased's kibanja; that the Applicant was appointed an administrator of her late father's estate and filed an inventory in respect thereof

5 after distributing the said estate; that the 1st Respondent served her with a forged court order;
that the 1st Respondent together with the late Tereza Nakigudde and Vincent Segawa sued
her at the Chief Magistrates Court of Wakiso vide Civil Suit No. 0028 of 2012 for trespassing
on her late father's kibanja measuring approximately 3.20 acres, claiming that the said kibanja
belonged to the estate of the late Kirimubanja Semeo Kibwani and that court should make a
10 declaration that she the Applicant is only entitled to a share not exceeding one acre; that the
1st Respondent and the said Tereza Nakigudde attempted to open up a file No. 3100 of 2011
(SIMEO KIBWAMI) but when the Administrator General called a meeting on 18th of January
2012 they never went to give evidence of ownership of the suit land up to-date; and that the
Respondent demolished her father's house without a court order, leaving only the store on
15 the suit kibanja.

It is apparent to me that the parties are erroneously using the instant application to argue their
side of the case afresh, which should not be the case. While the learned Justice Nagawa
ruled that it was wrong for the learned trial magistrate not to consider that he did not have the
20 pecuniary jurisdiction to try the civil suit, she did not go ahead to find whether the kibanja
belonged to the deceased or to the Applicant's father. Instead, she simply confirmed that it
was right to have considered the evidence of the deceased in the judgement of the learned
trial magistrate because the person before her death had given that evidence and the case
had been closed.

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What then was set aside and what execution was stayed by the ruling of the Hon. Justice
Nagawa? In my view, what was set aside is the judgement in Civil Suit No. 28 of 2012 where
the trial magistrate His Worship Kirya Martins had found that the suit kibanja belonged to the
estate of the late Tereza Nakigude who died during the hearing of the suit. The second aspect
30 that was set aside was the finding by the Hon. Justice Dr. Mulangira in Revision Application
No. 005 of 2020 that the learned trial magistrate had pecuniary jurisdiction to decide on the

5 matter in the Civil Suit. It is precisely the orders related to these 2 aspects whose execution was stayed.

10 It is also my considered opinion that setting aside the findings of the magistrate as was done by the learned Justice Nagawa did not lead to an inference that there was a finding that instead the kibanja belonged to the Applicant. To make such a summation is to stretch the order of the learned Justice Nagawa beyond its intended purpose and indeed beyond imagination. The stay of execution of the orders arising from Revision Application No. 05 of 2020 and Civil Suit No. 28 of 2012 were in respect to any purportedly assertion that the suit land belonged to the late Nakigudde. It did not mean that court had accordingly decided in 15 any other person's favour. Far be it. It is trite law that whoever alleges a fact must prove it. Since the Applicant alleged ownership of the suit kibanja, she ought to have proved it. She cannot simply impute onto the court order that it was to prevent the evicted of herself and other beneficiaries from the suit kibanja by the Respondents working with unknown persons.

20 Be that as it may, the question that would be asked next is; where does the order of Justice Nagawa leave the parties in the suit kibanja? And this takes me to my observation above that the instant application is neither a review nor an appeal. Prudence would require that the aggrieved party appeals against the decision of the learned Hon. Justice Dr. Joseph Mulangira, considering the Revision Application was unsuccessful. Otherwise, to attempt to 25 address the issues raised by the parties in the instant application is tantamount to stretching the scope of the application beyond what is allowable by law. Suffice it to say at this point that I am extremely reluctant to impute or to infer into the ruling of the Hon Justice Nagawa what the said ruling obviously did not intend to.

30 When this application first came up for hearing in this court on 19th day of December 2023, the Applicant requested court to visit the locus. This application was granted and this court visited locus on the 19th day of January 2024 during which time I observed that it was apparent

5 that no new structures had been constructed therein for at least the last one year. The structures seemed to have been on the suit land for longer than the one-year period. What was evident were the constant claims by either party that the kibanja did not belong to the other side. In view of the order of the Hon. Justice Nagawa staying execution of the orders in Civil Suit No. 28 of 2017 and Revision Application No. 005 of 2020, it can only be said that
10 there is an impasse that could only have been resolved by way of an appeal, the parties having exhausted the remedies of revision and review already.

Issue 2: Whether the applicant is entitled to any remedies.

The applicant in her application has listed a host of remedies prayed for.

15 I am aware that civil contempt is punishable by way of committal to civil prison, sequestration, a fine or injunction. Due to my finding on issue 1 above, however, I do not find that the Applicant has satisfied this court that the Respondents are guilty of contempt in the sense envisaged when the order is strictly interpreted. As I mentioned earlier in my ruling, it was not the intention of the ruling of Justice Nagawa to declare who the rightful owner of the kibanja
20 is, and she did not by any means try to do so. Hence, the Applicant's allegation that the Respondents illegally and forcefully evicted her from the suit kibanja is simply just that – an allegation until proved, just as the elements of illegality and forceful eviction and those regarding vacant possession need proof. It follows, therefore, that the orders for vacant possession and re-possession of the suit kibanja cannot issue in the circumstances of
25 Miscellaneous Application No. 1431 of 2023.

In the premises, in pursuant of Section 98 of the Civil Procedure Act and Section 14(2)(a) and Section 33 of the Judicature Act, I make the following orders;

- a) The application hereby fails.
- 30 b) That notwithstanding, the stay of execution shall be read within the construct of the ruling of the learned Hon. Justice Celia Nagawa.

- 5 c) The aggrieved party has a right to appeal, pending stay of execution of the order of the learned Hon. Justice Dr. Joseph Mulangira and the learned trial Magistrate His Worship Kirya Martins.
- d) The rest of the orders sought by the Applicant are denied and are accordingly dismissed.

10 I so order.

Delivered at Kampala this 31st day of January 2024.


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15 **Dr. Christine A. Echokit**
Judge.

Right of appeal explained.