



**THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

CORAM: KIRYABWIRE, JA; MUGENYI, JA AND KASULE, AG. JA

CIVIL APPEAL NO. 190 OF 2015

BETWEEN

JINGO LIVINGSTONE MUKASA APPELLANT

AND

HOPE RWAGUMA RESPONDENT

**(Appeal from the Judgment of the High Court of Uganda at Kampala (Bashaija, J) in
Civil Suit No. 508 of 2012)**

RULING OF THE COURT

A. Introduction

1. Hope Rwaguma ('the Respondent'), the Administrator of the estate of the late Dr. B. E. Rwaguma, instituted **Civil Suit No. 508 of 2012** against Livingstone Jingo Mukasa ('the Appellant'), also Administrator of the estate of the late Yowana Mukasa in the High Court of Uganda. The Respondent *inter alia* sought the cancellation of the certificate of title in respect of land comprised in Plot 31 Block 543 at Mengo, Busiro claiming to have been a bona fide occupant thereon through her predecessors in title since 1959. The High Court agreed with her, declared her owner of the suit land by adverse possession and bona fide occupancy, and ordered the cancellation of the title and transfer of ownership of the suit land to her.
2. Dissatisfied with the trial court's decision, the Appellant lodged the present Appeal proffering the following grounds of appeal:
 - I. The Trial Judge erred in law and fact when he failed to determine which particular land in terms of Block and Plot William Lwanga sold to Dr. Rwaguma on 15th June 1996 from whom the Respondent/ Plaintiff derives title.
 - II. The Trial Judge erred in law and fact when he failed to evaluate evidence on record and found adverse possession for the Respondent/ Plaintiff on Plot 31 Block 543 Mengo, Busiro against the Appellant/ Defendant.
 - III. (*Repetition of the preceding ground of appeal*).
 - IV. The Trial Judge erred in law and fact when he held that the Appellant's ownership of land at Plot 31 Block 543 Mengo, Busiro had extinguished.
 - V. The learned Trial Judge erred in law and fact in failing to find that the Plaintiff/ Respondent did not have any interest in the land owned by the Appellant/ Defendant.

- VI. The learned Trial Judge erred in law and fact when he wrongly concluded that the Respondent/ Plaintiff is a bona fide occupant of the land of which the Appellant/ Defendant is the registered proprietor, whereas not.
- VII. The learned Trial Judge erred in law and fact when he failed to find that the Respondent/ Plaintiff trespassed on land owned by the Appellant/ Defendant.
3. At the hearing of the Appeal, the Appellant objected to a supplementary Record of appeal lodged with the Court on 25th February 2021. In response, the Respondent intimated that the supplementary record was necessary for purposes of illustrating the Appellant's disobedience of the trial court's decretal orders. The parties were thereupon directed to formally address the Court on the question of contempt of court vide written submissions.
4. The Appellant was represented at the hearing by Mssrs. Alex Candia, Saviour Akuku, David Wandera Oundo and Dennis Kakeeto, while Mr. Julius Muhuruzi appeared for the Respondent.

B. Contempt of Court

5. Learned Counsel for the Respondent relayed the facts giving rise to the contempt of court allegation as follows. On 17th May 2013, by consent of the parties, a temporary injunction was granted restraining the Respondent from selling or transferring the land comprised in Busiro Plot 31 Blocks 543 and 544 until the determination of **Civil Suit No. 508 of 2012**. Having emerged unsuccessful in that case, the Appellant sought and secured an interim stay of execution of the orders arising therefrom pending the determination of the substantive application, **Miscellaneous Application No. 1821 of 2015**. The substantive application was subsequently withdrawn but the Respondent's efforts to execute the decree arising from **Civil Suit No. 508 of 2012** were thwarted by the Commissioner Land Registration. By an *ex parte* order dated 2nd July 2019, the Commissioner was adjudged to be in contempt of the court orders issued in **Civil Suit No. 508 of 2012** and condemned to a six-month detention in civil prison. However, the execution of that order was stayed by yet another *ex parte* order by the same court the very next day, 3rd July 2019. In September 2019, B. K. Wava Property Consultants Ltd filed **Miscellaneous Application No. 1432 of 2019** seeking a review of the judgment and decree in **Civil Suit No. 508 of**



2012 on account of having in July 2012 purchased land curved out of the suit land in contention therein.

6. Counsel thus contends that while the present Appeal was still pending determination, the Appellant sub-divided the entire suit land, then sold and transferred part of it thereby causing the land described as Busiro Plot 31 Block 543 to disappear from the Land Register in disobedience of a lawful court order. Reference was made to the case of Active Automobile Spare Ltd v. Crane Bank Ltd & Another (2009) 1 EA 1 where the Supreme Court, citing with approval Scott v. Brown Doering-MC No. 1 & Co. (1892) 2 QD 724 at 728 held:

No court ought to enforce an illegal contract or allow itself to be made an instrument of enforcing obligations alleged to raise out of a contract or transaction which is illegal if the illegality is duly brought to the notice of the Court. And if the (party) invoking the aid of the Court is himself implicated in the illegality. It matters not whether the Defendant has pleaded the illegality or whether he has not. If the evidence by the plaintiff proves the illegality the Court ought not to assist him.

7. Learned Counsel drew inspiration from the definition of contempt of court in Osborne's Concise Law Dictionary as 'conduct which interferes with administration of justice or impedes or perverts the cause of justice civil contempt consists of failure to comply with the judgment or order of a court or breach of an undertaking of the court.' That definition was supplemented by the more detailed elucidation of the concept in Jennison v. Baker (1972) 1 All ER 997 at 1001, 1002 as follows (per Salmon LJ):

Contempt of Court is an unfortunate and misleading phrase. It suggests that it exists to protect the dignity of judges. Nothing could be further from the truth. The power exists to ensure that justice shall be done. And solely to this end it prohibits acts and words tending to obstruct the administration of justice. The public at large, no less than the individual litigant have an interest, and a very real interest in justice being effectively administered. Unless it is so administered, the rights, and indeed the liberty of the individual will perish. Contempt of court may take many forms. It may consist of what is somewhat archaically called contempt in



the face of the court, eg disrupting proceedings of court session or by improperly refusing to answer questions when giving evidence. It may, in criminal cases, consist of prejudicing a fair trial by publishing material likely to influence a jury. It may as in the present case consist of refusing to obey an order of the court.

8. With the benefit of the foregoing case law, it is the contention that the evidence on record supports a finding that, despite full knowledge of the orders of the trial court in this matter, the Appellant transferred and registered part of the disputed land to a third party on or about 3rd December 2018.

9. In terms of the effect of the Appellant's contemptuous conduct on his Appeal, learned Counsel referred the Court to the Florida District Appeal Court case of **Morris v. Rabbara, 145 SO. 2d 265, 267** where it was observed to be contrary to the principles of justice 'to permit one who has flouted the orders of the court to demand judicial assistance.' Reference was also made to the more authoritative decision of this Court in **Housing Finance Bank Ltd & Another v. Edward Musisi, Miscellaneous Application No. 158 of 2010**, where it was held:

A party in contempt of court by disobeying existing court orders cannot be heard in a different, but related cause or motion unless and until such a person has purged himself or herself of the contempt.

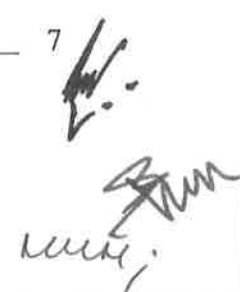
10. On his part, learned Counsel for the Appellant took issue with the Respondent for filing her written submissions on 10th March and not 9th March 2021 as had been directed by the Court. He made reference to the case of **Goyal v. Goyal & Others, Court of Appeal Civil Appeal No. 109 of 2004** where the failure to deposit security for costs within a stipulated time was considered contempt of its orders. In addition, on the authority of **Geoffrey Odongo & Others v. Francis Atoke, Court of Appeal Civil Appeal No. 127 of 2015**, it was argued that the contempt of court allegation should have been raised in the trial court. Reference was made to the principle of *stare decisis* espoused in **Attorney General v. Uganda Law Society, Supreme Court Constitutional Appeal No. 1 of 2006** to buttress the argument that this Court is bound by its earlier decision. In that case it was observed:

To permit one panel of the Court of Appeal to overturn a precedent set by another panel on such pretext as in the instant case would lead to the antithesis of the doctrine of *stare decisis* and would be a recipe for uncertainty, instability and unpredictability of the law that courts have the responsibility to interpret and apply.

11. In any event, it is proposed that contempt of court has not been established as against the Appellant. It is argued that the only sale in respect of the disputed property ensued on 5th July 2012, well before the delivery of judgment in **Civil Suit No. 508 of 2012**. That sale is alleged to have been in respect of the entire suit land, the contention being that there was no sub-division of the land prior to its sale, neither was proof furnished of the Appellant authorizing any such sub-division. In like vein, the transfer form on the court record was contested for supposedly having no date of execution contrary to section 92 of the Registration of Titles Act (RTA) and form 1 of the Seventh Schedule thereto. Similarly contested is the form in respect of an application to transfer land for being unsigned, bearing the name *Gingo Livingstone* rather than the Appellant's name – Jingo Livingstone and being improperly dated.
12. Learned Counsel for the Appellant strongly objected to the admission of the supplementary record of appeal on the court record given that it is barred by Rules 87(1) and 90(1), (4) and (5) of this Court's Rules of Procedure, which restrict the supplementary record of appeal to documents placed before the High Court sitting in exercise of its original jurisdiction. Secondly, it is opined that in so far as **Miscellaneous Application No. 1432 of 2019** is the subject of an impending Appeal, pre-empting that Appeal would render it nugatory contrary to Articles 28(1), 44(c), 126(1) and 134 of the Constitution. Finally, it is argued, the supplementary record of appeal was filed after the Appellant had filed his written submissions in this Appeal thus denying him the benefit of referring to it therein.
13. Learned Counsel for the Respondent responded to the foregoing submissions by way of reply to the Appellant's objection to the supplementary record of appeal, as well as rejoinder to the contempt of court allegation. With regard to the objection to the supplementary record of appeal, Rule 90(3) of this Court's Rules of Procedure was invoked to propose that the option available to an appellant to file a supplementary record

of proceedings '*at any time*' was similarly available to a respondent that sought to file a supplementary record. In any case, it was opined, the present Appellant had the opportunity to address any matters raised in the supplementary record in its submissions in rejoinder or by recourse to supplementary submissions with the leave of court. The Respondent having purportedly filed the supplementary record to bring to the Court's attention the Appellant's supposed disobedience of the trial court's orders, the Court was urged to follow the principle advanced in **Bhatia v. Crane Bank (2014) 1 EA 154** (Uganda Court of Appeal) that '**an illegality once brought to the attention of the court overrides all matters including pleadings**', and admit the documentary evidence on record as proof of the illegality.

14. In rejoinder to the Appellant's submissions on the contempt of court allegation, learned Counsel for the Respondent reiterated his prayer for the present Appeal not to be entertained by the Court on account of the Appellant's contemptuous conduct. It is further proposed that the Appellant's contemptuous conduct is two-pronged – first, being in contempt of the trial court's orders and, secondly, frustrating the Appeal by putting the subject matter thereof out of the Court's reach in contempt of its appellate jurisdiction. Furthermore, learned Counsel for the Respondent pointed out that throughout the lower court's proceedings no mention was made of the suit property having been sold, the Appellant preferring to defend a suit in which he supposedly had no interest in the property in dispute. In his estimation, this would suggest that the purported sale agreement of 5th July 2021 had been back-dated to defeat the Respondent's interest in the suit land.
15. In a brief and final rejoinder to the issue of the supplementary record of appeal, learned Counsel for the Appellant maintained that the Appellant's submissions that were filed after 9th March 2021 are invalid for having been filed without the leave of court, rendering the absence of submissions tantamount to absence of that party from the day's proceedings under Rule 100 of the Court's Rules of Procedure. It is proposed that **Bhatia v. Crane Bank** (supra) is irrelevant to the matter under consideration presently, Rule 87(1) of the Court's Rules being explicitly clear on the documents that may constitute a record of appeal before the Court.
16. We carefully considered the parties' elaborate submissions in the foregoing preliminary matters. What started off as a simple objection to the filing of a supplementary record of

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appeal ultimately raised serious connotations of contempt of court that cannot be ignored. Hence the Court's direction to the parties to formally address it on that subject. The Court's direction is grounded in the inherent power granted it under Rule 2(2) of the Judicature (Court of Appeal) Rules ('the Court's Rules of Procedure') as follows:

Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court ... to make such orders as may be necessary for attaining the ends of justice or to prevent the abuse of the process of (the) court.

17. To avert the abuse of court process, courts may stay pending proceedings to address incidences of abuse that have been brought to their attention. This is the thrust of the following decision in **R vs. Horseferry Road Magistrates Ex Parte Bennet (1994) 1 AC 42**, as cited with approval by this Court in **Besigye & Others v. Attorney General (2010) 2 EA 65 at 89**:

The court, in order to protect its own processes from being degraded and misused, must have the power to stay proceedings which have come before it and have only been made possible by acts which offend the court's conscience as being contrary to the rule of law. Those acts by proving a morally unacceptable foundation for the exercise of the jurisdiction over the suspect taint the proposed trial and, if tolerated will mean that court process has been abused.

18. By its decision above, the Court sought to address itself to the question of the Appellant's allegedly contemptuous conduct prior to exercising its appellate jurisdiction in determination of the Appeal pending between the parties. It would certainly be a mockery of justice were this Court to sit in determination of an appeal the subject matter of which has already been disposed of, as is the contention presently.

19. Against that background, the Court's consideration of the supplementary Record of Appeal that was filed on 25th February 2021 is not so much about the admission of the said supplementary record on the Record of Appeal as it is an interrogation of its evidential worth for purposes of the contempt of court allegations raised by the Respondent. There seems to be no dispute by either party as to its inapplicability to the pending Appeal, the

Respondent having stated quite categorically in submissions in reply that the supplementary record was lodged to bring the underlying anomaly to the attention of the Court. To that extent, therefore, the so-called supplementary record of appeal is in fact documentary evidence in support of the contempt of court allegation and shall be interrogated on that basis.

20. With regard to the purported invalidity of the Respondent's written submissions on account of having been filed a day late, it will suffice to observe that courts approach the non-adherence to the directions they give parties on a case-by-case basis with appropriate regard for the circumstances of each case. This discretion is derived from Rule 5 of the Court's Rules of Procedure, which mandates the Court to, for sufficient reason, extend the time limited by any decision of the court upon. In the case of **F. L. Kaderbhai & Another vs. Shamsherali M. Zaver Virji & Others, Supreme Court Civil Application No. 20 of 2008**, restating the decision of the same court in **Boney M. Katatumba vs. Waheed Karim, Civil Application No. 27 of 2007**, what would amount to sufficient reason was held to fall within courts' '*unfettered discretion*'. We are unable, therefore, to abide the Appellant's proposition that the Supreme Court's discretionary decision with regard to the late filing of pleadings in the case of **Robert Kyagulanyi Ssentamu v. Yoweri Kaguta Museveni & Others, Supreme Court Civil Application No. 4 of 2021** is of generic application to all instances of late filing of court documents.
21. In the instant case, it was undoubtedly disingenuous of the Respondent to treat the Court's directions so discourteously. However, in order to address the more perilous implications to the administration of justice that would accrue from the alleged disobedience of a court's decretal orders; the Court, in relying upon the present parties' respective submissions, has elected to exercise its discretion by accommodating submissions that were filed out of time. It thus by necessary implication extends the time within which all submissions should have been filed in this matter.
22. We now revert to the question of contempt of court, commencing the Court's interrogation thereof by addressing the point of law raised by learned Counsel for the Appellant on the issue having been raised in the wrong court. In **Geoffrey Odongo & Others v. Francis Atoke** (supra), to which the Court was referred, it was held:

Ordinarily a court should enforce its own orders and, therefore, contempt of court proceedings ought to be before the same court that issued the orders. This issue sought to be raised in the court that has to entertain the contempt of court proceedings and that is the court that issued the orders alleged to have been violated.

23. In that case, the court relied upon the decision in Raymond Ayebazibwe v. Barclays Bank Uganda Limited & Others, Misc. Application No. 283 of 2012, where interlocutory orders by a registrar had been violated by a litigant. The trial court thus held (per Madrama, J as he then was):

There are different kinds of contempt proceedings. There are contempt proceedings that are triable by the court which issues the order and there are those triable as an offence by a court with jurisdiction. Ordinarily a court should enforce its own orders even if it means trying someone for contempt of its orders.

24. We are in general agreement with the foregoing position of the law is so far as it espouses the position that might pertain where a court the orders of which are alleged to have been contravened is not *functus officio*. In the instant case, although the trial court had rendered itself fully in Civil Suit No. 508 of 2012 and was to that extent *functus officio*; an opportunity did subsequently present itself vide an application for review of the trial court's judgment¹ where the Appellant's alleged flouting of the trial court's decretal orders could have been, but was not, raised. However, would such a litigant be estopped from raising the same issue in an appellate court to which the alleged contemnor now seeks judicial redress?

25. We find apposite direction from the very essence of the notion of contempt of court. In its most generic sense, as captured by the Osborne's Law Dictionary (to which the Court was referred by learned Counsel for the Respondent) contempt of court may be deduced from any conduct '**which interferes with the administration of justice or impedes or perverts the cause of justice.**' 'Civil contempt', which is narrowly construed to entail the

¹ Miscellaneous Application No. 1432 of 2019.

willful and mala fide disobedience of a court order, has been espoused in *Halsbury's Laws of England* as follows:

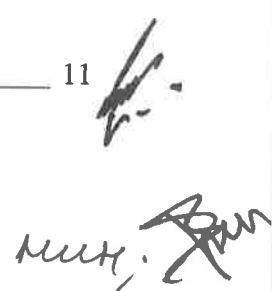
Civil contempt bears a two-fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the court in the public interest.²

26. To that extent, whereas the first component of civil contempt might very well be addressed by the court the orders of which have been flouted as proposed in **Geoffrey Odongo & Others v. Francis Atoke** (*supra*), not so with the latter one. The immeasurable ramifications to respect for the rule of law posed by litigants' disrespect for lawful orders would inevitably necessitate 'a **penal or disciplinary jurisdiction to be exercised by the court in the public interest.**'³ Such penal or disciplinary jurisdiction would not be restricted to the trial court but can also be exercised by an appellate court. Thus, as shall be propounded in more detail later in this judgment, in the renowned case of **Hadkinson v. Hadkinson (1952) 2 All ER 567** the Court of Appeal of England did entertain and pronounce itself on an appellant's disobedience of the trial court's order.

27. In any event, as quite persuasively argued by learned Counsel for the Respondent, the apparent disregard for the trial court's orders is only one of the instances of contempt of court before the Court presently. We understood him to postulate that the second incidence of contempt of court would arise from the implications of the Appellant's impugned conduct on the Appeal before the Court. It is argued that by disposing of the subject matter of the Appeal, the Appellant obstructs the course of appellate justice in this matter, which would most certainly be tantamount to contempt of court. See **Jennison v. Baker** (*supra*). We agree. It seems to us that to the extent that the impugned actions trample roughshod over the dictates of due process, they do invoke the penal and/ or disciplinary jurisdiction of this Court to preserve the sanctity of judicial process in the public


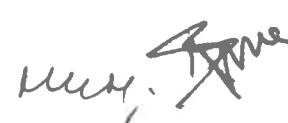
² 5th Edition, LexisNexis Butterworth, Durban, 2008, Vol. 22, para. 57 at 67.

³ *Ibid.*

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interest. We are satisfied, therefore, that the contempt of court allegations raised in this matter are properly before this Court.

28. We now turn to the specific contempt of court allegations before the Court. The material on record is that the Appellant executed a sale agreement in respect of 30 of the 49.4 acres that constitute the disputed property on 5th July 2012, sought vacant possession thereof from the Respondent on 4th October 2012 and the plaint in **Civil Suit No. 508 of 2012** was lodged in the High Court on 25th October 2012. This would suggest that by the time that suit was filed part of the land in contention therein had already been sold to B. K Wava Property Consultants Ltd, contrary to the suggestion by learned Counsel for the Appellant that the entire suit property had been sold prior to the institution of **Civil Suit No. 508 of 2012**. The material on record does also disprove the proposition that there was no subdivision of the suit land. The application for review of the trial court's judgment explicitly states in paragraph 4 of the grounds thereof that sub-division of the suit property was undertaken by B. K Wava Property Consultants Ltd.
29. Meanwhile, paragraphs 4 – 6 of Edward Geoffrey Bukonya's affidavit in support of the application for review attest to B. K Wava Property Consultants Ltd having conducted a search in respect of the suit property that revealed no legal encumbrance on its title; physically visited the land where its 30 acres were to be carved and found it free of occupants and developments, and paid the requisite stamp duty whereupon the acquired land was registered in its name. According to paragraph 7 of the same affidavit, it was after the land had been divided into the purchaser's name that it subdivided the land into smaller plots.
30. It will suffice to point out here that the parcel of land in reference in paragraph 4 of the affidavit having been acquired on 5th July 2012, the trial court's decree of 23rd June 2015 could not have been reflected on the title to the suit property as an encumbrance. It is also noteworthy that the affidavit evidence above makes no reference to the dates when the actions alluded to therein were undertaken. Indicative time lines thereof are to be found in Charles Ateenyi Kyozaire Tibaijuka's affidavit in reply. Paragraphs 18 and 19 of that affidavit attest to the Appellant having colluded with the office of the Commissioner for Land Registration to subdivide the suit property into plots 508, 509, 510 and 511, three of which (508, 509 and 510) were subsequently transferred to B. K Wava Property

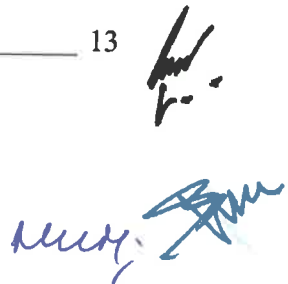



Consultants Ltd. Reference in that regard was made to an Area Schedule form in respect of the suit land, an Application for Consent Transfer form and a Transfer form that were attached to the affidavit as Annexures J, K1 and K2.

31. For purposes of the contempt of court allegations before the Court, the foregoing affidavit evidence establishes that the Appellant applied to transfer plots 508, 509 and 510 (as carved out of Plot 31 Block 543) to B. K Wava Property Consultants Ltd, pursuant to which application a property valuation was made in the sum of Ushs. 45,000,000/= on or about the 19th October 2018. The transfer of the property was subsequently effected by the Appellant and lodged for registration on 1st November 2018. It is abundantly clear that the Appellant was very well aware of the trial court's orders of 23rd June 2015 when he undertook the transfer of plots 508, 509 and 510 to B. K Wava Property Consultants Ltd. Perhaps more importantly, having himself lodged the present Appeal in October 2015, he was aware that the land he was tinkering with was the subject of an Appeal before this Court. His purported right to deal in any way with that land having been impeached by the trial court, the Appellant was legally obliged to halt any dealings therein until that right had been restored by the appellate court. Given his failure to do so, we are satisfied that civil contempt has been established against him.

32. We now turn to the sanctions available against him in the circumstances. It will suffice to note that there is no statutory legislation in Uganda (principal or subsidiary) that directly addresses the question of contempt of court. Recourse is therefore made to the common law and doctrines of equity as far as applicable. A review of the case law is instructive. In Morris v. Rabara (supra) the Florida District Court of Appeal took the view that when an appellant has been adjudged in contempt of a lower court for violating its order in the cause appealed from, then the appellate court *may* (in exercise of its judicial discretion) dismiss the appeal without considering the merits of the decision of the court below. It was held:

This court will not be required, at the instance of the appellant, to determine the correctness of the action of the lower court, while the appellant, in defiance of the court, willfully refused, without just cause, to abide by the trial court's order. It is contrary to the principles of justice



to permit one who has flaunted the orders of the court to demand judicial assistance.

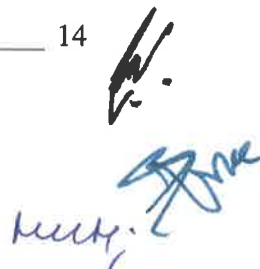
33. That case underscores the contradiction between parties' constitutional right of appeal and the courts' power to impose sanctions for contempt so that the judicial system is not rendered irrelevant on account of disrespect for and disobedience of its court orders. That position was similarly followed by the majority in the latter case of **National Union of Marine Cooks & Stewards v. Arnold** 348 U.S. 37 (1954). The US (United States) Supreme Court observed that '**where the subject matter of litigation has been removed or has removed itself from the jurisdiction of a state court in violation of the court's orders, this Court has upheld a dismissal of the offending litigant's appeal.**' However, Justice Black and Justice Douglas, dissenting from the majority view, declined to dismiss the appeal on the premise that that the right to appeal is one that should not be interfered with when there are alternative methods of punishing for contempt of court.

34. In the UK (United Kingdom), the leading authority on the rights of contemnors to be heard is **Hadkinson v. Hadkinson (1952) 2 All ER 567**. In that case a wife that had been granted custody of a child on condition that she did not take him out of jurisdiction, did take him away, but sought to appeal against the order. The majority decision of the Court of Appeal was that, subject to certain exceptions, there is a general rule that a contemnor will not be heard until he has purged his contempt. However, Lord Denning in the minority position and unwittingly echoing the minority decision in the **National Union of Marine Cooks & Stewards** case above, observed:

It is a strong thing for a court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy. It is a step which a court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing his compliance.

35. His lordship then held:

I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not in itself a bar to his being heard, but if his



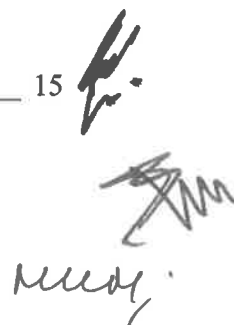
disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good cause is shown why it should not be removed.

36. The same position was subsequently adopted by the House of Lords in X Ltd v. Morgan-Grampian Ltd (1991) 1 AC 1. In Uganda, the majority position in Hadkinson v. Hadkinson (supra) was applied by this Court in Housing Finance Bank Ltd & Another v. Edward Musisi (supra) as follows:

A party in contempt of court by disobeying existing court orders cannot be heard in a different, but related cause or motion unless and until such a person has purged himself or herself of the contempt.

37. On our part, we find no difficulty in reconciling the divergent positions in the Hadkinson v. Hadkinson case. It is indeed in the public interest and in furtherance of public policy as encapsulated in Uganda's national laws and international obligations that the Judiciary would embrace the responsibility articulated in R vs. Horseferry Road Magistrates Ex Parte Bennet (supra) to refuse to countenance behavior that threatens the rule of law. These are indeed grave considerations that, in the absence of other effective means of securing the contemnor's compliance, would warrant the refusal by a court to hear a party in such civil contempt as impedes the course of justice unless and until such party has purged himself or herself of the contempt.

38. The contemptuous acts in issue in the instant case are an undisputable affront to the rule of law and due process that the Court cannot ignore. They typify and bring into purview the equitable maxim that '*he who comes to equity must come with clean hands.*' The obviation of the Appellant's right of appeal would ordinarily be the Court's sanction of last resort, primary recourse being made to such other coercive sanctions as would engender compliance with the flouted orders. However, there are scarcely any other feasible options at the Court's disposal, the Appellant having sub-divided and transferred part of the suit property to a third party that has since been registered as the proprietor thereof.



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39. Consequently, the subject matter of this Appeal having been removed from the Court's purview at the instance of the Appellant and in blatant violation of the trial court's orders, we would defer to the compelling reasoning of the US Supreme Court in **National Union of Marine Cooks & Stewards v. Arnold** (supra). It would be antithetical to the rule of law and an endorsement of the flagrant abuse of court process were this Court to entertain an Appeal by an Appellant that has been adjudged for disobedience of lawful court orders that are the subject of appeal.

C. Conclusion

40. We find the Court left with but one course of action to salvage the sanctity of the judicial process, that is, to dismiss the Appeal filed by the contemnor. In the result, this Appeal is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated and delivered at Kampala this 19th day of July, 2021.



Hon. Justice Geoffrey Kiryabwire
JUSTICE OF APPEAL



Hon. Lady Justice Monica K. Mugenyi
JUSTICE OF APPEAL



Hon. Justice Remmy Kasule 19th July 2021
AG. JUSTICE OF APPEAL