

5 **THE REPUBLIC OF UGANDA**

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

**CIVIL APPLICATION NO.477 OF 2022**

*(Arising out of Misc. Civil Application No 93 of 2021)*

*(Arising out of Misc. Civil Application No. 82 of 2021)*

10 *(Arising out of Civil Appeal No. 74 of 2021)*

*(Arising out of Misc. Civil Application No. 167 of 2021)*

*(Arising from Civil Suit No.46 of 2010)*

**MICHEAL MUKHONO.....APPLICANT**

15 **VERSUS**

- 1. ALICE KIMONO KIMASWA
- 2. WORDPAID CREDIT FINANCE (U) LIMITED
- 3. KAKUMA GEOFFREY
- 4. KITALE RICHARD
- 20 5. MBALE DISTRICT LAND BOARD/MBALE CITY LAND BOARD
- 6. MATAYA RICHARD
- 7. NAMAROME MARY
- 8. BISAGAYA APOLLO
- 9. ASP KIIZA NESTERIO
- 25 10. SGT GODFREY O TIM
- 11. AKORIMOR
- 12. SABINA
- 13. EQUITY BANK UGANDA LIMITED
- 30 14. COMMISIONER LAND REGISTRATION.....RESPONDENTS

**RULING BY GASHIRABAKE CHRISTOPHER JA**

**(SINGLE JUSTICE)**

**BACKGROUND**

35 The Applicant filed **Civil Appeal No. 74 of 2021** on **16<sup>th</sup> March, 2021**. He subsequently applied and secured an interim order maintaining the status quo in the suit land vide **Civil Application No.93 of 2021**. The application was to stay Orders made in High Court **Miscellaneous Application No. 167 of 2020** and **High Court Civil Suit No.46 of 2010**. The court stated that;

40 “In the result, I allow the interim application for stay of execution of the Decree and Orders of the High Court in Miscellaneous Application No.167 of 2020 and Civil Suit No.46 of 2010. It is accordingly so ordered.

45 The stay shall remain operative for the next three (3) months from the date of delivery of this Ruling, within which period the Registrar of this Court and all the parties to this Application are to take steps, as a matter of urgency, to fix Civil Application No.82 of 2021 and or Civil Appeal No.74 of 2021, for hearing and due determination. Should the three (3) months of interim stay expire before the substantive application and or the appeal is determined, then this court will be free to make appropriate orders in the case”

50 It is the Applicant’s averment that the Respondents have jointly and severally flouted the above Court Order, hence this application for contempt. This application was brought under **Sections 64(a), (c) and (e) and 98 CPA Cap 71, Section 33 and 39(2) Judicature Act Cap.13 Articles 26(1) and (2), 27(2), 28(12), 50(1), 126(1) and 126(2), and 128 of the Constitution of Uganda and**  
55 **Rules 2(2) and 43(1) of the Judicature (Court of Appeal Rules) Directions, SI 13-10.**

The grounds of the application are expounded in the supporting affidavit and a comprehensive affidavit in rejoinder deponed by **WAKIUNA FREDRICK GEORGE** holder of a Power of Attorney for the Applicant **Micheal Mukhono**.  
60 There are 14 Respondents who have opposed the application and some of whom raised preliminary points of law that will be considered in this application.

### **Representations**

The Applicant was represented by Mr. Enoth Mugabi. The 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> Respondents are represented by Mr. Henry Kisalu. Mr. Daniel  
65 Okalebo represented the 13<sup>th</sup> Respondent. Ms. Stella Maris Lunyoro held brief for Ssefu Wesigye Counsel for the 5<sup>th</sup> Respondent. Mr. Soita Jessy held brief for Andrew Wetaka Counsel for 5<sup>th</sup> and 14<sup>th</sup> Respondent.

### **Submissions of counsel for the Applicant.**

70 Counsel submitted that for a Respondent to be held in contempt of Court the Applicant must prove that there was;

1. *The existence of a lawful order.*
2. *The potential contemnor’s knowledge of the order*
3. *The potential contemnor’s failure to comply to the orders.*

75 Regarding the first issue that on the 23<sup>rd</sup> July 2021 this court delivered a final ruling in Civil Application No. 93 of 2021 granting an interim Order to maintain the status quo of the suit land Plot 9.

On whether the contemnor had notification of the Order, Counsel submitted that all Respondents' received notification of the Order vide annexure A3 to the Notice of Motion. The 1<sup>st</sup> Respondent under paragraph 18 and 19 admits that she is aware of Orders vide Civil Application No.93 of 2021.

Counsel for the Applicant submitted that the 2<sup>nd</sup> Respondent was aware of the Order since Kisaalu Advocates participated in and prosecuted Civil Application No.93 of 2021 on behalf of the 1<sup>st</sup> Respondent. Counsel further averred that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents were physically present and participated in the impugned evictions of the Applicant. He argued that the 4<sup>th</sup> Respondent is a member of Kisaalu Advocates. Counsel further argued that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 9<sup>th</sup> Respondents have constructive notice of the orders from Kisaalu Advocates.

Counsel also averred that the 6<sup>th</sup> Respondent was served with demand Notice / Notice of an intended Action and he participated in the impugned evictions of the Applicant. Then the 7<sup>th</sup> Respondent is a daughter of the 1<sup>st</sup> Respondent and by this reason she had Notice of the Orders. She was also present and participated in the eviction of the Applicant together with the 8<sup>th</sup> Respondent.

The 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Respondents received service of the current application on the 06<sup>th</sup> June 2022 through Police Legal Advisor on Human Rights Elgon. They received notification of the Order vide A3

On whether the Respondents had ability to comply, counsel for the Applicant submitted that, the actions undertaken by the Respondents jointly or severally commencing 14<sup>th</sup> May 2021 to the 23<sup>rd</sup> April 2022 are in contempt of the Court Orders as articulated by the Applicant in the affidavit in support at paragraph (6) and (37) and the comprehensive affidavit in Rejoinder.

### **Preliminary Objections**

Before arguing the application the Respondents raised three preliminary objections;

- a. The instant application emanates from an expired court order.
- b. The application is supported by an incurably defective affidavit.
- c. That the application does not raise any cause of action against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 13<sup>th</sup> Respondents.

### **Expired Order.**

Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondent submitted that the Order was to remain in force or operative for a period of three (3) months from the date

of delivery of the ruling of court and further observation depicts that the Applicant was to take necessary steps as a matter of urgency to fix **Civil Application No 82 of 2021 and / or Civil Appeal No. 74 of 2021**, for hearing and due determination. The order further states that should the three (3) months of interim stay expire before the substantive application or the appeal is determined, then this court will be free to make appropriate orders in the case.

Counsel for the Respondents submitted that the instant application is premised on an order that has since lost validity in law and therefore the Applicant cannot commence proceedings for contempt of court from an expired court order. Counsel prayed that this court finds the same.

**Defective Affidavit**

On this preliminary point of law, counsel for the Respondents submitted that Mr. Wakiuna Fredrick George has no locus to depone to the said affidavit as the holder of the Power of Attorney. The donor who is the Applicant did not clarify which particular suit the intended donee intended to represent.

**Non- Disclosure of Cause of Action**

Counsel for the Respondent further submitted that the application does not disclose a cause of action against the other Respondents other than the 1<sup>st</sup> Respondent. Counsel further argued that there is a misjoinder of the other Respondents because they were not parties to **Miscellaneous Application No.93 of 2021** from which the instant application arises. Counsel cited **Auto Garage and others Ltd vs. Motokov 1971 E.A 514 and Jeraj Sharif vs. Chotai Fancy [1960] EA 374**

**Court's Analysis**

I have looked at the Notice of Motion, affidavits and the submissions of the parties. The Respondents raised three preliminary points of law. The Applicant did not exercise her right of rejoinder.

The first objection is that the application arises from an expired court order. Evidence was led as stated above that the challenged ruling had a life span of 3 months, the ruling provides thus;

The stay shall remain operative **for the next three (3) months** from the date of delivery of this Ruling, within which period the Registrar of this Court and all the parties to this Application are to take steps, as a matter of urgency, to fix Civil Application No.82 of 2021 and or Civil Appeal No.74 of 2021, for hearing and due determination. Should the three (3) months of interim stay expire before the substantive application and or the appeal is determined, then this court will be free to make appropriate orders in the case”

The said Ruling was delivered on the 6<sup>th</sup> May 2021, 3 months are ordinarily 90 working days, this means the ruling was in force up to 10<sup>th</sup> September 2021. The Court Order was instructive as regards to time. The ruling implored the parties to take steps as a matter of urgency to fix Civil Application No.82 of 2021 and Civil Appeal No.74 of 2021. Court stated that if the interim order expires before the substantive order or appeal is heard then this court would make any appropriate orders.

According to the evidence on record, the parties did not take any further steps to fix the substantive application or appeal as required by the Order, neither was there an extension for the interim order of execution. It is therefore evident that the Order that was made vide Miscellaneous Application 93 of 2021 expired three months from the time the ruling was delivered. This was 10 September 2021.

I also agree with the submissions of the Respondents that the order that was extracted had different terms from those made in the Ruling (*Supra*) made on the 06<sup>th</sup> May 2021. This meant that the Order expired before it was extracted since it was in force until 07<sup>th</sup> June 2021 and it was extracted on 12<sup>th</sup> July 2021. The Order stated that;

“Both parties are to main the status quo as regards the subject matter of the litigation between them until the 7<sup>th</sup> June 2021 or until further orders of this Court are made.”

Further observation of this court is that the actions complained of took effect before the order was made. Foristance the 2<sup>nd</sup> Respondent was registered on the certificate of title of the suit land on 22 April 2021 whereas the court order was made on the 06<sup>th</sup> May 2021. There’s no way the 2<sup>nd</sup> Respondent could be condemned when there was no existing lawful order of court.

I therefore uphold this preliminary objection.

The second objection was in regard to a defective affidavit accompanying the Application. **Fredrick J.K. Zaabwe vs. Orient Bank Ltd Civil Appeal No. 04/2006**, the Supreme Court held that;

“A power of Attorney must be construed strictly”

The Power of Attorney challenged provides that;

“The Republic of Uganda

In the matter of property Comprised in Plot 9, Paliisa Road Mbale

And

In the matter of payment & Receipt demanding for rent arrears, suing and distress of Eviction of Defaulting Tenants and related matters.

And

In the matter of a Power of Attorney by Micheal Mukhono, Alias Pastor Musaayi to Wakiuna Fredrick George;

1. To appear and attend court on my behalf in the above or related suits.
2. To receive court summons or process on behalf of donor.
3. To enter into agreement, settlements consent or any other process in the above or related suits or matter.
4. To at all times do the above functions strict consultations with Board of Directors of Mt.Elgon Believers Baptist Independent Mission and church with the advice of my lawyers and myself.
5. To do all other things that are necessary or incidental to the above for the purpose of collection or during for rent.

In **Midland Bank Limited vs. Reckitt [1893] A.C 170** at 177 court held that,

“ in instances where there is need to determine whether an act was done in excess of authority conferred under a power of Attorney, then construction of the whole instrument is to be restricted to the four corners of the instrument”

I agree that the said Power of Attorney did not in any way specify the suit in which donor intended the donee to represent him. The head note should have specifically made reference to the particulars of the case before this court. Considering the position in **Midland Bank Limited (Supra)** the strict interpretation of the above Power of Attorney shows that the Power of Attorney was so generic in nature impossible to implement by this court. It is therefore my finding that the Mr. Wakiuna Fredrick George did not have proper authority to share an affidavit on behalf of the Applicant.

Preliminary Objection upheld

On the issue of disclosure of cause action, **Civil Application No.93 of 2021** was between **Micheal Mukhono vs. Alice Kimono Kimaswa**. Other than the 1<sup>st</sup> Respondent, the other Respondents were not party to the said application. The court made orders to the “parties” and not any third party.

I therefore find that the Applicant failed to establish a cause of Action against the other Respondents who were strangers to the application.

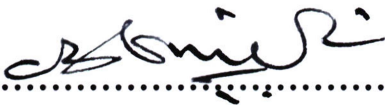
This preliminary objection is upheld.

In Conclusion, for an action of contempt of court to stand the Applicant must prove that there was a lawful order that has been violated by the Respondents. In this

220 case the order that is said to have been violated was issued after the execution had been concluded but also it had a life span that expired before the institution of this suit. I therefore find that this Application has no merit.

I accordingly dismiss the application. Each party shall bear their own costs.

225 Dated at Kampala this.....19<sup>th</sup>..... day of .....July.....2022

  
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230 C. GASHIRABAKE  
JUSTICE OF APPEAL