

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS CAUSE NO. 01 OF 2014

OMONGOLE
RICHARD:.....APPLICANT

VERSUS

IMPERIAL BANK (U) LTD & 4
OTHERS:.....RESPON
DENTS

BEFORE THE HON. JUSTICE HENRY PETER ADONYO

RULING

1. Facts.

The Applicant instituted Civil Suit No. 583, seeking a declaration that the defendant is claiming an amount higher than due to it under the loan agreement of 6th September 2013 and that higher interest rate and penalty is being charged. He further seeks a declaration that the plaintiff does not owe the defendant the amount claimed by the defendants, a permanent injunction restraining the defendant, its agents, nominees or assignees from selling /

alienating the plaintiff's motor vehicle, general damages and costs of the suit.

In the meantime, the Applicant applied for a temporary injunction vide Miscellaneous Application No. 891 of 2013, for orders restraining the first respondent and /or its agents from selling/ alienating the said vehicle pending disposal of Miscellaneous Application No. 891 of 2013 and Civil Suit No. 583 of 2013. The order was granted and was to remain in force until 4th November 2013 or until further orders of court. The Applicant states that the said motor vehicle was sold on 25th November 2013 and hence this Miscellaneous Cause.

The Applicant's believes that the said motor vehicle was erroneously sold since the Interim order was still subsisting on the date it was sold and hence this notice of motion disputing the sale as unlawful and asking for the arrest and committal of the 2nd, 3rd, 4th and 5th Respondents, plus a 200,000,000/- fine to the Applicant. The Respondents argue that sale arose as a result of default on loan payments by the Applicant to the 1st Respondent upon which the 1st Respondent sold the vehicle to realize its security. The Respondent agree that prior to the sale, an interim order was entered on 22nd October 2013 restraining the Respondents from exercising the power of sale until 4th November 2013 or until further orders from court. The Respondent states that interim Order expired on 4th November 2014 upon the Applicant not having renewed it to

date with the consequent result that, the Respondents exercised their contractual duty and sold the said vehicle since they believed no legal impediment existed at the time of the sale. They oppose this application.

2. Issues.

1. Whether the Respondents acted in contempt of the Interim Court order by selling motor vehicle registration NO. UAQ 116T.
2. What remedies are available to the Applicant?

3. Resolution of this matter

a. Issue NO.1: Whether the Respondents acted in contempt of the Court Order by selling motor vehicle registration NO. UAQ 116T

On 22nd October 2013, this Honourable Court issued an Interim Order which stated in the terms as follows;

(a) An Interim Order doth issue against the respondents, their agents legal representatives, assignees or servants or any other person acting on their behalf restraining them from selling the said motor vehicle No. UAQ 116T until the disposal of the Misc. 891 of 2013 and Civil Suit No. 583 of 2013.

(b) That this order remains in force until 4th November 2013 or until further orders of Court.

(c) *Costs of the application be in the cause.*

The paragraph in contention in the above Orders is (b) and specifically the phrase **“until further orders of Court.”**

Paragraph 3 of the Applicant’s affidavit in support states that the applicant is the registered proprietor of the said motor vehicle UAQ 116T

Paragraphs 4 to 14 of the affidavit in support are to the effect that the applicant obtained a loan facility from the Respondents. The motor vehicle was used to secure the loan. The applicant is said to have fulfilled his loan obligations save for a time which the applicant faced some problems. The Applicant argues that the Respondents subsequently sent several demand notices and bank statements higher than what was due resulting into the Applicant getting confused as to how much was actually due. That the Applicant and the Respondents later entered into an oral agreement to re-schedule the loan payments at Shs: 6,000,000/= per month and the Applicant made 1st installment on 14th August 2013 but soon after the Respondents impounded the motor vehicle on 6th September 2013, prompting the applicant to enter into another agreement to pay Uganda Shillings 40,000,000/= within one and half months period which was to expire on the 22nd October 2013. But that in a sudden change of position, the Respondents advertised the said vehicle on 1st of October

2013 and threatened to sell it on 22nd October 2013 upon which the Applicant obtained an Interim Order

Further to his affidavit in support, the Applicant's affidavit rejoinder paragraphs 1 to 11 in reiterates that the respondents violated the court order issued on 22nd October 2013 which restrained sale of the said vehicle as the order was to be in force until 4th November 2013 or until further orders of court. It was the Applicant's contention that the Respondents gave an erroneous interpretation of the order "until further orders of court" to mean that the order had expired by 4th November 2013 and that Respondents argued that the applicant ought to have obtained further orders of court and that the Respondents then relying on that reverse interpretation of the interim order, sold the vehicle while the order was subsisting as the same was still valid *"until further orders of Court"*.

The Applicant further explains in paragraphs 16 to 19 what happened on 4th November 2013 where he states that the scheduled hearing of his Application did not take place following the death of one the justices of the courts of judicature whereupon the clerk of the court gave the parties a new date of 13th January 2014 and the counsels in an agreed as a fact that the order was still valid given the phrase **"until further Orders of Court"**. But that, however, in total disregard of the order and in contempt, the respondents sold the said vehicle to one of the people who

was present at the auction when the process was halted again in total contravention of the laws and procedures.

The Applicant argued that the generally accepted interpretation of the said phrase “**until further Orders of Court**” was that the order stood or action was stayed until court issues other orders to the contrary. That this was meant to take care of some uncertainties in case the order expired and the courts are not able to sit to extend for one reason or the other, the order would therefore remain in force “until further Orders of Court”.

He relied on the meaning given to the said expression “**until further orders of Court**” which was considered by Justice Hellen Obura in the case of **Kensington Africa Ltd versus Stanbic Bank (U) Ltd and Ors High Court Miscellaneous Application No. 824 of 2012** as staying further action on the matters pending disposal of the substantive application and the suit before court. He reiterated that in the said case of **Kensington Africa Ltd (supra)**, the applicant obtained an Interim Order staying inter alia the garnishee proceedings till the disposal of the main application *or until further orders of this Honourable Court* with Justice Hellen Obura interpreting the interim order as stopping further garnishee proceedings because garnishee proceedings were supposed to continue but for the interim order. He quotes the learned judge as having stated thus;“...by preserving the status quo, the 1st

respondent had no option but to keep the debut restrictions in place till further orders of court. In effect the interim order prohibited a further action being taken and there could only be contempt if any such further steps were taken”.

Referring the meaning attributed to the said quoted phrase to the instant matter, the Applicant submitted that the interim order was issued pending disposal of the main application for temporary injunction and the **Civil Suit No. 583 of 2013** before this court as the Order was to be in force until 4th of November 2013 or until further orders of court. Meaning that, the order was still valid as it was intended to stay sale of the motor vehicle pending disposal off **Miscellaneous Application No. 891 of 2013** and **Civil Suit No. 583 of 2013**. The Applicant concluded that by selling the vehicle, the Respondents acted in contempt of the said order and rendered **Miscellaneous Application No. 891** nugatory in total disregard to court’s authority.

The Applicant went on to define what contempt of court was and brought to his aid the definition in **Black’s Law Dictionary (7th Edition) at page 313** as;

“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, in its presence or so near thereto as to disturb the proceedings or to impair respect due to such a body.”

The Applicant additionally cited the authorities of **Protector and Gamble Company versus Kyobe and 2 others High Court Miscellaneous Application No. 135 of 2012** and quoted Honourable Justice Kiryabwire who while discussing contempt of court orders, of having cited the case of **Hadkinson versus Hadkinson (1952)2 All ER 567** where court held that; *“Disregard of an order of court is a matter of sufficient gravity, whatever the order may be”* and that Justice Kiryabwire further cited the case of **Chuck versus Cremer 1Coop Temp Cot 342** where it was held that;

“A party who knows of an order, whether null or valid regular or irregular, cannot be permitted to disobey it...it would be most dangerous to hold that suitors, or their solicitors, could themselves judge whether order was null or void - whether regular or irregular. That they should not come to the court and not take (it) upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular and who might be affected by it was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed...”

The Applicant therefore contended that on the basis of the above, the interim court orders issued on 22nd October 2013 was still in force at the time of sale of the said motor vehicle and it was not open to a party to disobey it whether it is null or void; regular or irregular that only way out to the respondents was to apply to court to set aside the order

which has never been set aside and was subsisting at the time of sale of the motor vehicle by the Respondents with the ancillary addition of until further orders of Court were issued. On the other hand, the Applicant argued that even if it had expired the option available to the Respondents who were aware that main application and the suit was pending were to go back to court initiate a fresh process other than disobeying the court orders. The Applicant then argued that the said action of sale was therefore a disregard, or disobedience of the orders which impairs respect to the Court that issued the order as it was trite that a court order remains in force unless it is set aside or expired as was expounded by my learned brother Bashaija J in the case of **Muriisa Nicolas versus Attorney General and 3 others (supra)**, where he reiterated that; *“for a party to challenge a court order that party must apply to have it set aside but not to disobey it even if the party does not agree with it for any reason. Failure to comply is contempt”*. The above principle, the Applicant adds, was also reiterated in the case of **Housing Finance Bank Ltd and Anor versus Edward Musisi Misc. Application No. 158 of 2010**, where it was held that;

“A party who knows of an order whatever in the view of that party the order is null or valid, regular or irregular cannot be permitted to disobey it by reason of what that party regards the order to be.”

It's not up to that party to choose whether to comply or not to comply with such an order. The order must be complied with in totality, in all circumstances by the party concerned, subject to the party's right to challenge the order in issue in such a lawful way as the permits".

The Applicant then went on to urge this court to find that the holding of the court in the case of **Housing Finance Bank Ltd (supra)**, was on all fours with the instant matter and hence the instant respondents should not be allowed to disobey the interim order on allegations they regarded it as expired or invalid without recourse to court. That the respondents had a duty to comply with the orders in totality whether the order is regular or irregular, which duty they breached.

The Applicant therefore urged this Honourable court to find that by selling the vehicle, the respondents were in contempt of the interim order prohibiting sale of the motor vehicle and by doing so rendered the main application for injunction nugatory and reduced the case to mere legal contest in total disobedience of Court Orders for which they should not be allowed to benefit from.

The Respondents on the other hand countered this argument and stated under paragraphs 4, 5,9,14 and 17 of the affidavit in reply to this Application that the interim order had long since expired on 4th November 2013 and that the court had not issued any further orders restraining sale of the said

vehicle and therefore deny acting in contempt of any court order.

The respondents argued that the interim order had expired and went ahead to sell the vehicle.

The Respondents asked this Honourable Court to beg the question as to whether the interim order in question which was issued on 22nd October 2013 by the Registrar in the following terms;

- (a) A temporary order doth issue against the respondents, their agents legal representative, assignees or servants restraining then from selling the plaintiff's motor vehicle no. UAQ 116T until the disposal of the Civil Suit No. 583 of 2013
- (b) That this order remains in force until 4th November 2013 or until further orders of court. , was still valid.

They went on to quote the decision where it was held that an interim order had a define lifespan as held in the case of the **Soroti Municipal Council Versus Pal Agencies (U) Ltd MA 326 of 2009** arising from **Civil Suit No. 221of 2008** where my learned sister Justice Hellen Obura quoted with approval the holding of Arach-Amoko, JA in **Hon. Anifa Bangirana Kawooya versus Attorney General & Another CA Miscellaneous Appeal No 46 of 2010**, that; *“an interim injunction is a discretionary order issued by court for a short time and usually to a particular date pending the determination of the main application”* .

The Respondents therefore argued that in the instant case, the interim order lapsed and or expired on the 4th of November, 2013 and consequently had no legal effect after that date. That the Applicant had adduced no evidence to show that an application had been made either formally or informally, orally or in writing by the Applicant to extend the life of the interim order as the Applicant took no step to renew the interim Order despite knowing that it had expired or lapsed on 4th November, 2013. And that, therefore, since the interim order was never extended either by an application to the court or by agreement of the parties, the interim order had lapsed, expired and as such had no legal effect.

The Respondent further relied on the maxim of equity that *“Equity aids the vigilant not those who slumber on their rights”* and intimated the Applicant who having appeared in court on 4th November, 2011, should have proceeded to the Registrar to seek further extension of the Interim Order to the alleged adjourned date of 13th January, 2014. That in this instant matter, once the Applicant noticed that the main application had not taken off on 4th November, 2013 it was his duty to procure another extension dates from Court of the Interim Order on the Respondent. The Respondents therefore submitted that in the absence of an extension of the Interim Order, the said order expired and was not in force and concluded that since there was no Interim Order in

force, there was no contempt of court. They cited the authority of decision in the High Court in **Stanbic Bank (U) Ltd & Jacobsen Uganda Power Plant Company Ltd versus The Commissioner General Uganda Revenue Authority** which espouses the general principle regarding respect for court orders was stated in **Chuck versus Cremer (1 Coop Tempt Cott 342)** cited in judgment of Romer, LJ in **Hadkinson versus Hadkinson** (above) that; *“a party who knows of an order, whether null or regular or irregular, cannot be permitted to disobey it...it would be most dangerous to hold that the suitors, could themselves judge or irregular. That they should come to the court and not take (it) upon themselves to determine such a question. That the course of a party knowing of an order, which was null and irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.”*

The Respondents then ask this honourable court not only to distinguish the above case from the instant matter but to dismiss this Application on the basis that since the said order had lapsed on the 4th November 2013, there was no order in existence at all and that the Respondents therefore did not disobey any court orders.

In resolving this matter, I take note of the fact that the applicant sought to rely on the authority of **Kensington Africa Ltd versus Stanbic Bank Ltd & 4 ORS. HCT -00-**

CC-MA-824-2012 for the proposition that there is a generally acceptable definition of the phrase “**until further orders**”. It is my belief that that the said phrase which is often used ought to be interpreted as per the peculiar circumstances of the case. The case cited and the present case are clearly distinguishable in that in the **Kensington case**, the order was worded to the effect that “*an Interim Order staying the garnishee proceedings, execution of the decree and orders of the High Court Commercial Division Civil Suit No. 367 of 2012 till disposal of the main application or until further orders of the Court.*” The wording in the present case was very different. They were as follows;

“ A temporary order doth issue against the respondents, their agents, legal representatives, assignees or servants restraining them from selling the plaintiff’s motor vehicle No. UAQ 116T until the disposal of the Civil Suit No. 583 of 2013 and that this order remains in force until 4th November 2013 or until further orders of court”.

The two orders therefore cannot be interpreted the same way since the intention of the Court in each of the matter appears different. While the intention of the Interim Order in the **Kensington case** appears to mean that that it was to remain in force until disposal of the suit or until Court made an order to the contrary the one in the instant matter must be read with special emphasis given to the second paragraph of the order stipulating clearly that “*...that this*

order remains in force until 4th November 2013 or until further orders of court...".

In my view, the insertion of the date onto the Order would imply that the order would remain in force until 4th November 2014 or until the court extended it.

It would appear to me that by inserting a definite date, the court clearly intended that the order would only subsist till that date and if it were to be extended then there would definitely to be another order of court to extend it.

It should be noted that the Courts has continuously frowned upon Interim Orders that last indefinitely and cause loss to the parties, hence the practice to put a date to an Interim Order. In the case Of **Grace Mooli versus Paul Mooli and Aida Munialo Civil Revision No. 9 of 2012**, Justice Stephen Musota stated that *"Interim Orders are in principal supposed to last a short, stated period so that the party to whom it is granted does not abuse court process by delaying to cause the other inter parties application to be heard expeditiously... the unlimited Interim Order is hereby set aside."*

I therefore find that Also the case of **Muriisa Nicholas versus Attorney General & Ors H.C.C.S 35 of 2012** can be distinguished from the present one since in that matter there was a valid court order in existence at the time whereas in the instant matter by virtue of **Grace Mooli's case (Supra)** there was none.

The Applicant sought to cling to a lifeless and nonexistent court order to the detriment of the Respondents. Court orders which have time frame are designed to ensure that parties do not abuse court process by filing and upon getting such interim orders indefinitely avoid having the main matter completed on merits to the detriment of the other party.

In the premises, having said so above, and having noted that no further steps had been taken to extend the interim order, I would find as a fact that there could be no possibility of the said order being in force on the date the sale was made since none was in force or in existence at the time and as such no contempt of the court order was manifested.

I do find so accordingly.

b. Issue 2. What remedies are available to the applicant?

Having resolved the above issue in the negative, I would find that the Applicant is not entitled to the orders and reliefs sought since he has not given any basis upon which the orders sought would apply to the present case.

4. Orders

I do therefore find no merit in this Application and dismiss it with costs against the Applicant.

This ruling is given at High court Commercial Division at Kampala, this 19th day of May 2014.

HENRY PETER ADONYO

JUDGE