



**THE REPUBLIC OF UGANDA**

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

**(COMMERCIAL COURT DIVISION)**

5                   **MISCELLANEOUS APPLICATION NUMBER 550 OF 2021**  
**(Arising from MA No. 493/2019 and CS No. 861 of 2018)**

**1. SCIENCE & BIOTECHNOLOGY**

**SUPPORT SYSTEMS LTD**

10           **2. ATUKUNDA CAROLYNN**

**3. AMUMPE ALLAN.....APPLICANTS**

**VS.**

**JUSTUS KARAMURA.....RESPONDENT**

**BEFORE HON. MR. JUSTICE RICHARD WEJULI WABWIRE**

15                   **RULING**

The Applicant brought this Application by Notice of Motion under Order 52 rule 1 and 2 of the CPR, SI 71-1 for orders that Civil Suit No. 861 of 2018 be

dismissed or struck off with costs. The Application was supported by the Affidavit of Atukunda Carolynn, the 2<sup>nd</sup> Applicant. The Applicant was  
20 represented by M/s Ntambirweki Kandeebe & Company Advocates who also filed written submissions.

The Respondent did not file an Affidavit in reply despite being duly served with the Application and the Applicant's submissions through his lawyers M/s KTA Advocates and Solicitors and M/s Byamugisha Gabriel & Company  
25 Advocates as deponed in the Affidavit of service deponed by Ageta Sophie Rodah a Court process server on 11<sup>th</sup> May 2022. Annexure A of the said Affidavit shows that M/s KTA Advocates and Solicitors received service of the Application on 13<sup>th</sup> August 2021. Annexure B of the said Affidavit shows that both M/s Byamugisha Gabriel & Company Advocates Solicitors and M/s  
30 KTA Advocates and Solicitors were duly served with the Applicant's written submissions.

And annexure C of the said Affidavit also shows that the said firms were also duly served with hearing notices in respect of the Application in question. However, despite all this, the Respondent neither replied to nor  
35 opposed the Application. In the case of **Massa vs. Acen (1973) HCB at page 339**, Ntabgoba J as he then was, held that where facts are averred in an Affidavit and are not rebutted, the presumption is that they have been

accepted. The Respondent does not rebut the contents or even file any Application to set aside the Court Orders.

40 The Applicant's Counsel submitted that the Respondent filed Civil Suit No. 861/2018 seeking for several Orders against the 1<sup>st</sup> to 4<sup>th</sup> Defendants. That on 15<sup>th</sup> /2/2019, this Court issued a temporary injunction against the Respondent in MA No. 597 of 2018 restraining the Respondent from interfering with the business of the Applicants. That the injunction was served  
45 on the Respondent on the 11<sup>th</sup> March, 2019. That the Respondent did not respect the Court Order and continued to interfere with the business of the Applicant hence MA No. 373/2019 in which the Respondent was found in contempt of Court in MA No. 597/2018 and MC No. 42/2018.

That the Respondent then filed MA No. 493/2019 in which he sought Orders  
50 that the Ruling in MA No. 323/2019 be set aside. That that Application was dismissed by this Court which further Ordered that the Applicant comply with the Court Orders in MA No. 323 of 2019 within 15 days from the date thereof and pay a further Ugshs. 5,000,000/ within the same 15 days, failure upon which he be committed to civil prison for a further period of one month,  
55 for the continued wilful contempt of the said orders. That the Respondent did not comply with this Order either.

In the case of **John Imaniraguha vs Commissioner General URA and the**

**AG, CP No. 37/2012**, the Constitutional Court citing the decision of Denning LJ in *Hadkinson vs Hadkinson* (1952) 2 AllER 567 held that;

60           *“A Court Order is a Court Order and must be obeyed unless it is discharged and/or stayed. That is a Court's Orders uncompromising nature. Failure to comply with a Court Order is Contempt of Court. It matters not that the said is appealed. Where such contempt exists, the Court in its discretion can refuse to give audience to the offender until*  
65           *he/she purges him or herself of it being an impediment to the course of Justice.”*

Annexure A to the Applicant's Application shows that this Court found the Respondent to be in contempt of its orders in MA No. 597/2018 and ordered them to pay punitive damages of Ugshs. 15,000,000/ within 15 days from the  
70           date of the ruling failure of which the Respondent was to be committed to civil prison for three months. In paragraph 6 of the Applicant's Affidavit in support, the 2<sup>nd</sup> Applicant averred that the Respondent refused to pay the fines as can be seen in annexure B. In annexure B, this Court further ordered the Respondent to comply with the Court's orders in MA No.  
75           373/2019 and further pay Ugshs. 5,000,000/ within 15 days from ruling date failure of which the Respondent be committed to civil prison for a further period of one month for the continued wilful contempt of the Court orders.

The Respondents conduct amounts to continued wilful contempt of this Court's orders, however, whereas he cannot be accorded any further  
80 audience before this Court until he purges himself of the contempt of Court, dismissal or striking out his suit is not an available remedy in the circumstances. Denial of audience as envisaged in the case of John Imaniraguha does not in my opinion imply disposal of the matter by dismissal or having it struck out, but rather that the contemnor will not be heard until  
85 he purges himself of the contempt of Court.

In the event, the Application fails and Costs shall abide the outcome of the Main suit.

However, considering the continued contravention of this Courts orders, whereas this Application fails, the Respondent is condemned to a further fine  
90 of shs 50,000,000/= payable within 15 days from the date hereof failure upon which, he is condemned to a further 3 months in prison for the continued will contempt of this Court's orders .

Delivered at Kampala this 24<sup>th</sup> day of June 2022.

95 Richard Wejuli Wabwire

**JUDGE**