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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO.708 OF 2023

**(ARISING FROM CONSOLIDATED SUITS HCCS NO.718 OF 2020 AND
HCCS NO.706 OF 2020)**

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ONETI VINCENT..... APPLICANT

VERSUS

1. BALENGERA DAN

2. WASIRWA EMMY..... RESPONDENTS

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BEFORE: HON. LADY JUSTICE PATIENCE T.E. RUBAGUMYA

RULING

Introduction

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This application was brought under the provisions of Sections 14(2)(b) and 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Order 52 Rules 1 and 3 of the Civil Procedure Rules SI 71-1, for orders that;

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1. A declaration that the acts of the Respondents of grading the suit land contrary to the orders of this Court vide temporary injunction orders issued by the Court on the 10th of December 2020 and 6th of April 2022 in Misc. Application No.717 of 2020 and Misc. Cause No.255 of 2021 are in contempt of Court.

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2. An order that the contemnor/ Respondents be appropriately punished through the imposition of a fine of UGX 600,000,000 (Uganda Shillings Six Hundred Million Only) and an order to pay punitive damages of UGX 100,000,000 (Uganda Shillings One Hundred Million Only) as a sanction for contempt of Court.

5 3. An order that the Respondents be arrested, detained and committed to civil prison.

4. Any other and further orders this Court may deem necessary and expedient in the interest of justice in the circumstances of this case.

10 5. Costs of this application be provided for.

Background

The application is supported by an affidavit of Mr. Oneti Vincent the Applicant herein, and summarized below:

15 i. That on the 14th of September 2020, he filed a suit through his lawyers' M/s Tumusiime, Kabega & Co. Advocates, HCCS No.718 of 2020 against several other parties including the Respondents herein for several declaratory orders.

20 ii. That the 1st Respondent has to date never filed a defense while the 2nd Respondent filed his defense in the matter.

25 iii. That on the 10th of December 2020 the Applicant secured a conditional temporary injunction vide Misc. Application No. 717 of 2020.

30 iv. That on the 6th of April 2022, the said conditional temporary injunction was set aside and substituted with an unconditional temporary injunction order vide Misc. Cause No.255 of 2021 that prohibited the Respondents from dealing in any way with the suit land until the hearing and final determination of HCCS No.718 of 2020.

35 v. That the Respondents are fully aware of the temporary injunction orders.

vi. That the Respondents have since ignored the said orders of injunctions and proceeded to grade and deal with the suit land contrary to the orders of this Court.

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- 5 vii. The Respondents are duty bound by law to comply with the orders
of this Court without question and the Respondents'
failure/refusal to comply with the said orders is outrageous,
disrespectful to the Court, arbitrary, wanton and amounts to
contempt of Court.
- 10 viii. That unless the Respondents are punished for the contempt of
Court they will continue in contempt and in violation of the law
and the Court orders will be in vain.
- 15 ix. That the contemptuous actions of the Respondents are
punishable by way of a fine, award of damages and committal to
civil prison.

In reply, only the 2nd Respondent filed an affidavit contending that;

- 20 i. He has been advised by his lawyers, that this application is
misconceived, frivolous and vexatious, barred in law, an abuse of
Court process and the same ought to be dismissed with costs.
- 25 ii. This application is brought in bad faith and as an afterthought
intended to misdirect and misguide this Honorable Court with a
danger of occasioning great injustice to him.
- 30 iii. The two suits have never been brought together before a single Judge
for further management and directions of the Court.
- 35 iv. At the time the Applicant secured the said conditional temporary
injunction, he was in actual and physical possession of the suit land.
- v. By the time the Court set aside the temporary injunction, he had
already graded the suit land to which he is the registered proprietor
by virtue of being the bona fide purchaser for value since 2017 with
structures on the said suit land.

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- 5 vi. He has never disobeyed the said Court order and the evidence attached is of photos that were taken before the grant of the said temporary injunction.
- 10 vii. The allegations therein are baseless as this application is brought as an afterthought being brought approximately after two years of the alleged action.
- 15 viii. He has respected the said Court orders and has maintained the status quo as at the time the Court issued the same. That it was actually the Applicant who threatened to forcefully evict him from the suit land and the matter was reported to the RDC Office and Police.
- 20 ix. That the Applicant brings this application to cover up his ill motives and illegal actions of attempting to use force to evict him from the suit land when he was aware of the said Court order(s).
- 25 x. He has been advised by his lawyers that the Applicant shall not suffer any injustice, irreparable damage, and/or loss nor will he be prejudiced in any way, should Court dismiss the application with costs as it is a wastage of Court's time.

Representation

30 The Applicant was represented by Learned Counsel Ronald Oine of **M/s Tumusiime, Kabega & Co. Advocates** and the 2nd Respondent was represented by **M/s MBS Advocates**. The 1st Respondent was not represented.

35 I would like to further state that the 1st Respondent did not file an affidavit in reply. Furthermore, at the hearing on 19th September 2023, neither the Respondents nor their Counsel appeared in Court despite being served with the Notice of Motion which indicated the hearing date. An affidavit of service deponed by Mr. Musisi Stephen dated 14th July 2023 is on Court record stating that the lawyers representing the Respondents were duly served.

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Counsel for the Applicant prayed that the hearing of the application proceeds exparte. I allowed the Applicant to proceed exparte since it was proved to my satisfaction that the Respondents were served with the hearing notice for the proceedings through their lawyers but no one appeared for them and no explanation was furnished to Court.

Issues for determination

1. Whether the Respondents are in contempt of Court?
2. Whether the Applicant is entitled to any remedies?

Resolution

Issue 1

Whether the Respondents are in contempt of Court?

Counsel for the Applicant filed written submissions which are on record and have been taken into consideration in this Ruling.

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In ***Sempebwa and others Vs Attorney General (2019) 1 EA 546***, the Supreme Court of Uganda considered in detail the principles of contempt. Court drew a distinction between civil and criminal contempt. Referring to **Black's Law Dictionary, 10th Edition, page 385**, Court stated that criminal contempt is;

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"an act that obstructs justice or attacks the integrity of the Court, the criminal contempt proceedings are punitive in nature".

Regarding civil contempt, Court adverted to **Black's Law Dictionary (supra)** where it is defined as;

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"the failure to obey a Court order that was issued for another party's benefit. A civil contempt proceeding is coercive or remedial in nature. The usual sanction is to confine the contemnor until he complies with the Court order".

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Hon. Justice Stephen Mubiru in the case of ***Onen David & 2 Ors Vs. Otto Ocan & 2 Ors Miscellaneous Application No. 131 of 2019*** which was relied on by Counsel for the Applicant, also defined contempt of Court as;



5 “an act or omission tending to unlawfully and intentionally violate the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it.” **See also Halsbury’s Laws of England 4th Edition, page 284 paragraph 458.**

10 The primary but not exclusive purpose of the Court’s contempt powers is to ensure that its orders are fulfilled. Another is to punish conduct in defiance of its orders (**see *Munib Masri Vs. Consolidated Contractors International Company SAL, Consolidated Contractors (Oil and Gas) Company SAL [2011] EWHC 2579 (Comm).***

15 Contempt designed solely to punish the violation of a Court order is considered criminal contempt and deserves all the procedural safeguards accorded to a criminal proceeding. On the other hand, contempt that is coercive or remedial in nature is civil contempt.

20 Civil contempt violates the rights of civil litigants in a purely private capacity. Here, coercive imprisonment, fines, or monetary indemnity serve to repair the private damage caused by disobedience to a Court order.

25 Compensatory contempt is a money award for one party when another party has injured him or her by violating an injunction. Civil contempt benefits a party directly while criminal contempt is the state’s method of punishing a recalcitrant without benefiting opposing litigants directly. The goal of compensatory contempt is to indemnify the party directly for the harm the contemnor caused by breaching the injunction.

30 In instances where the primary purpose is to preserve the Court’s authority and to punish for disobedience of its orders, the contempt is criminal. Where the primary purpose is to provide a remedy for an injured party and to coerce compliance with an order, the contempt is civil.

35 Criminal contempt is used to punish a person for violating a Court order or expressing disrespect for the Court. Civil contempt, on the other hand, is intended to make someone obey a Court order.

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5 Learned Counsel for the Applicant in his submissions relied on the case of **Housing Finance Bank and another Vs. Musisi C.A. Civil Application No. 158 of 2010** where the Court of Appeal held that;

10 *“The principle of law is that the whole purpose of litigation as a process of judicial administration is lost if orders issued by Court through the set judicial process in the normal functioning of Courts, are not complied with in full by those targeted and/or called upon to give due compliance. A party who knows of an order, regardless of whether, in the view of that party, the order is null or void, regular or irregular,*
15 *cannot be permitted to disobey it, by reason of what that party regards the order to be. It is not for the party to choose whether or not to comply with such order”.*

20 Given the above, this Court will focus on determination of whether there was civil contempt by the Respondents, which falls within the ambit of the issues at hand as opposed to criminal contempt.

In view of the above, for one to be held in civil contempt, the following requisites must be proved:

- 25 a) That an order was issued by Court.
b) That the order was served or brought to the notice of the alleged contemnor (Respondent).
c) That there was non-compliance with the order by the Respondent.
d) That the non-compliance was willful and mala fide.

30 In the case of **Betty Kizito Vs. Dickson Nsubuga & 6 Others, Civil Application Nos. 25 and 26 of 2021**, the Supreme Court considered local and foreign persuasive authorities on contempt principles and further expounded on the ingredients of contempt as below;

35 With regard to the ingredient of existence of a valid order, Court observed that the order must be obeyed in totality, and that a party who chooses to disobey the order without good reason risks being held in contempt.

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5 In contempt, the alleged contemnor must have intentionally done that act that the order prohibits, or intentionally failed to do the act that the order compels.

I am bound by the wisdom of the Supreme Court as expressed in the above judgement. I will now address the requisites of civil contempt in relation
10 to the instant case.

(a) **That an order was issued by Court**

The first requirement in proceedings for contempt of Court is for the Applicant to prove the existence of a clear and unambiguous Court order. The order must be clear and unambiguous so that it is easily understood
15 by all. The language and expressions used must be free of ambiguity or vagueness. Its scope must be specifically and explicitly stated so as not to lead to confusion or be open to various interpretations.

The Court will only punish for disobedience of an injunction if satisfied
20 that the terms of the injunction are clear and unambiguous. The slightest ambiguity to the order can invalidate an application for committal as ambiguity can in turn lead to the standard of proof, which is the criminal standard, not being attained especially on affidavit evidence.

25 A person should know with complete precision what it is they are required to do or abstain from doing. The order should therefore be as definite, clear and precise in its terms as possible, so that there may be no reason or excuse for misunderstanding or disobeying it. It should plainly indicate to the Respondent all of the acts which he or she is restrained from doing.

30 In the instant case, as evidenced by the pleadings of the Applicant and the 2nd Respondent, the existence of the orders is undisputed as seen from paragraph 8 of the 2nd Respondent's affidavit in reply where he acknowledges the existence of the said orders. The orders are attached as
35 annexures "**F**" and "**G**" to the application.

The above orders result from Misc. App. No. 717 of 2020 granted on the 10th of December 2020 which was set aside upon its review and an unconditional temporary injunction order granted vide Misc. Cause. No. 255 of 2021 on the 6th of April 2022 by Hon. Justice Duncan Gaswaga.



5 The above orders prohibit the parties from interfering with the Applicant's quiet possession and certificate of title to the suit land until the final determination of HCCS No. 718 of 2020, or until otherwise ordered.

Accordingly, on this point I hold that a valid order exists and was issued by Court.

10 **(b) That the order was served or brought to the notice of the alleged contemnors (Respondents)**

The law is that no order requiring a person to do or abstain from doing any act may be enforced by contempt unless a copy of the order has been served personally on him or her (see *Hon. Sitenda Sebalu Vs. Secretary General of the East African Community Ref No. 8 of 2012 (EACJ)* and *Stanbic Bank (U) Ltd and another Vs. Commissioner General, Uganda Revenue Authority H.C. Misc. Application No. 42 of 2010*); and there must be prominently displayed on the front of the copy of an order served a warning to the person on whom the copy is served that disobedience to
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20 the order would be a contempt of Court punishable by imprisonment.

With prohibitory orders, the requirement of service will be dispensed with where the person concerned in fact has notice of the order. An order requiring a person to abstain from doing an act may be enforced
25 notwithstanding that service of a copy of the order has not been effected if the Court is satisfied that pending such service, the person against whom it is sought to enforce the order had notice of it either by being present when the order was made, or by being notified of the terms of the order, whether by telephone or otherwise (see *Davy International Ltd Vs. Tazzyman [1997] 1 WLR 1256; Nicholls v. Nicholls [1997] 1 WLR 314 at 326, and Bell Vs. Tuohy [2002] 1 WLR 2703 at [47]*).
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It is the submission of the Applicant's Learned Counsel that the 1st Respondent conceded to the orders in Misc. Cause No. 255 of 2021 and as
35 such was aware of the Court's order. That the 2nd Respondent by his own affidavit in reply clearly indicates that he was aware of the temporary injunction order.

In the instant case, both Respondents were parties to Misc. App. No. 717 of 2020 and Misc. Cause No. 255 of 2021 wherein the lawful Court orders



5 were issued and thus they had knowledge of the matter against them and the orders issued.

The 2nd Respondent states in paragraph 9 of the affidavit in reply that;

10 *“In reply to paragraph 8 of the affidavit in support of the application, I state that by the time the Court set aside the temporary injunction, I had already graded the suit land to which I am the registered proprietor by virtue of being bonafide purchaser for value since 2017 with structures on the said suit land”.*

The 2nd Respondent was thus aware of the existence of the Court order as stated in paragraph 9 of the affidavit in reply.

15 On the 6th of April 2022, an unconditional temporary injunction order was granted against the Respondents. This order was later served on the Respondents as stated in a letter dated 28th of April, 2022, from M/s Tumusiime, Kabega & Co. Advocates. Accordingly, the Respondents had knowledge of the orders in dispute.

20 I therefore find that the Respondents had notice of the orders of Court.

(c) That there was non-compliance with the order by the Respondents

25 The general principle is that a person cannot be held in contempt without knowledge of the Court order. However, in ***Housing Finance Bank Ltd & Anor Vs Edward Musisi C.A.C.A No. 158/2010*** which Counsel for the Applicant relied on, the Court of Appeal held inter alia that a party who knows of an order cannot be permitted to disobey it. The order must be complied with in totality and in all circumstances.

30 A contempt of Court is not a wrong done to another party to the litigation. It is an affront to the rule of law itself and to the Court. The Applicant must state exactly what the alleged contemnor has done or omitted to do which constitutes a contempt of Court.

35 As earlier resolved, both Respondents had knowledge of the orders issued against them vide Misc. App No. 717 of 2020 and Misc. Cause No. 255 of 2021.



5 The Applicant stated in paragraph 10 of the affidavit in support of the Notice of Motion as follows:

10 *“that the Respondents have since ignored the said orders of injunction and proceeded to grade and deal with the suit land contrary to the orders of this Court. Copies of the photographs taken of the graded suit land are annexure H, I, J hereto and the letter applying for a credit from a financial institution attached hereto and marked J(i)”.*

15 It is the submission of Learned Counsel for the Applicant that the 2nd Respondent admitted to having graded the suit land and intends to use it as collateral for a loan facility. As already stated above, the 2nd Respondent does not deny grading the suit land but rather contends under paragraph 9 of his affidavit in reply that he did it before the orders in issue were granted.

20 The 2nd Respondent however did not adduce any evidence to support this assertion nor did he attach evidence showing the state of the land at the time the orders were issued by Court. The Applicant on the other hand produced photographs of the graded land, with containers on the suit land. The 2nd Respondent's conduct therefore is held to be in contempt of Court on account of the evidence produced of the graded land and pledging to use the suit land as collateral for a loan facility.

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d) That the non-compliance was willful and mala fide

30 A deliberate commission or omission that is in breach of the Court's order will constitute willful disobedience of the order unless it is casual, accidental or unintentional. It is trite that an order issued by a Court with jurisdiction over the subject matter must be obeyed by the parties until it is reversed by orderly and proper proceedings. (**see *Wild Life Lodges Ltd Vs. County Council of Narok and another [2005] 2 EA 344***).

35 A party acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should not be liable to a contempt proceeding. But when an act or omission in breach of a Court order is done or made consciously, voluntarily and unaffected by any mistake i.e. not casually, or accidentally

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5 or unintentionally, it is immaterial that the breach was committed in reliance on a third party's advice.

In the case of **Serefaco Consultants Ltd Vs Euro [2007] UGCA 1(12 December 2007)**, the Court while referring to the case of **H. G Gandesha and Another Vs. G. J. Lutaaya SC. Civil Application No.14 of 1989** stated that;

15 *"It is settled law that if the applicant supports his application by affidavit or other evidence and the respondent does not reply by affidavit or otherwise, and the supporting evidence is credible in itself, the facts stand unchallenged."*

The Applicant herein advanced affidavit evidence to the effect that the 2nd Respondent applied for a loan facility vide the letter dated 4th May 2023 to AHA Finance Company pledging to use the suit land as collateral (see annexure J (i)). A reading of the affidavit in reply shows that the 2nd Respondent was silent about the aforementioned letter. The 2nd Respondent did not adduce any evidence to explain his actions nor did he deny the contents of that letter. This in my view amounts to an admission and points to willful conduct on the part of the 2nd Respondent.

In regard to the 1st Respondent, no evidence has been presented by the Applicant to show that the 1st Respondent violated the orders in issue. The Applicant did not provide any evidence of any specific action taken by the 1st Respondent that would point to contempt.

Furthermore, the 2nd Respondent in paragraphs 8 and 9 states that he is in actual possession of the suit land and does not make reference to the 1st Respondent.

Accordingly, in the absence of any specific evidence relating to the 1st Respondent, I do not hold him in contempt and this application fails to that extent in respect to the 1st Respondent.

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5 **Issue 2**

Whether the Applicant is entitled to any remedies?

The Applicant inter alia sought for a declaration that the acts of the Respondents of grading the suit land contrary to the orders of this Court vide temporary injunction orders are in contempt of Court.

10 The Applicant further prayed that the contemnor/Respondents be punished through the imposition of a fine of UGX 600,000,000 (Uganda Shillings Six Hundred Million Only) and an order to pay punitive damages of UGX 100,000,000 (Uganda Shillings One Hundred Million Only) as sanction for contempt of Court.

15 In the instant case, having found the 2nd Respondent in contempt of Court, I need to determine the remedies available.

The relevant factors to take into account when punishing for contempt include the following:

20 Whether the Applicant has been prejudiced by the contempt, and whether the prejudice is capable of remedy; the extent to which the contemnor has acted under pressure or was placed in breach by reason of the conduct of others; whether the breach of the order was deliberate or unintentional; the degree of culpability; whether the contemnor appreciated the
25 seriousness of the breach and whether the contemnor has cooperated or apologised.

According to the case of **Wilkes Vs. Woods (1964) (98ER 489)**, punitive damages are designed not only as a satisfaction to the injured person but
30 likewise as a punishment to the guilty, to deter them from any such proceedings for the future.

On the other hand, the purpose of a fine is to send a firm message to the Respondent and other would be contemnors that, Court orders are not issued in vain and ought to be respected and obeyed as long as they
35 remain in force.

The goal of criminal intent penalties is punitive while that of civil contempt sanctions is to ensure compliance with the Court order. I find that the

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5 prayer by the Applicant for imposition of a fine of UGX 600,000,000
(Uganda Shillings Six Hundred Million Only) and an order to pay punitive
damages of UGX 100,000,000 (Uganda Shillings One Hundred Million
Only) is excessive and unjustified. In addition, the Applicant has not
proved any loss he has suffered or great inconvenience to warrant an
10 award of punitive damages.

Accordingly, I impose a fine of UGX 5,000,000 (Uganda Shillings Five
Million Only) against the 2nd Respondent for the said contempt. The
application has failed against the 1st Respondent and therefore the
remedies are granted against the 2nd Respondent.

15 As to whether the 2nd Respondent should be arrested, detained, and
committed to civil prison, I will consider the purpose of civil imprisonment.

In the case of **Stanbic Bank (U) Ltd Vs Commissioner General, Uganda
Revenue Authority** (supra); Court cited **Halsbury's Laws of England
Volume 9 (1) paragraph 492** in which it was held in **Re-contempt of
20 Dougherty 492, Michigan 81,97 (1987)**, that;

*"imprisonment for civil contempt is properly ordered where the Defendant
has refused to do an affirmative act required by the provision of an order
which, either in form or substance was mandatory in character." The order
in such a case is not a punishment but is coercive to compel him to act in
25 accordance with the order of Court".*

Finally, as to whether costs should be granted, **Section 27(2) of the Civil
Procedure Act** provides that costs of any cause follow the event unless
otherwise ordered by Court.

In the circumstances, this application has partially succeeded and is
30 granted with the following orders:

1. The 2nd Respondent's act of grading the suit land contrary to the
orders of this Court vide temporary injunction orders issued by
Court on the 10th of December 2020 and 6th of April 2022 vide Misc.
Application No.717 of 2020 and Misc. Cause No.255 of 2021
35 respectively and pledging to use the suit land as collateral for a loan
facility is in contempt of Court.

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5 2. The 2nd Respondent is to pay a fine of UGX. 5,000,000/= (Uganda Shillings Five Million Only) for contempt of Court within ten (10) days of this order, failure of which he is to be arrested and serve a term of imprisonment of two (2) months.

10 3. The costs of the application are to abide the result of the suit.

I so order.

Dated, signed and delivered electronically this **6th** day of **October, 2023.**

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Patience T. E. Rubagumya

JUDGE

6/10/2023

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