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**THE REPUBLIC OF UGANDA**

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

**(COMMERCIAL DIVISION)**

**MISCELLANEOUS APPLICATION No. 0154 OF 2023**

**(ARISING FROM MISCELLANEOUS APPLICATION No. 1565 OF 2023)**

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**(ARISING FROM CIVIL SUIT No. 0388 OF 2022)**

**VEGOL LIMITED ..... APPLICANT**

**VERSUS**

**STANBIC BANK (U) LTD ..... RESPONDENT**

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**BEFORE: HON. LADY JUSTICE SUSAN ABINYO**

**RULING**

Introduction

20 This application was brought by Notice of Motion under section 98 of the Civil Procedure Act, Cap 71, and Order 2 Rules 1 and 2 of the Civil Procedure Rules S I 71-1, seeking for orders that:

- 1. The Respondent was in contempt of Court when they failed to honor the orders of this Court in Miscellaneous Application No.1565 of 2022.
- 2. The Respondent pays the Applicant the decretal sum of UGX 898,240,707 (Eight Hundred Ninety-Eight Million, Two Hundred Forty Thousand Seven Hundred Seven Shillings only), as directed by this honorable Court.
- 25 3. The Respondent pays punitive, aggravated, and general damages, and compensation to the tune of UGX 150,000,000(Uganda Shillings One Hundred Fifty Million only) to purge the contempt of the Garnishee order absolute.
- 30 4. The costs of this application be provided for.

5 Background

This application is supported by an affidavit of Virraj Anil Malde the Managing Director of the Applicant Company, deponed in paragraphs 1-14, and summarized as follows: -

10 That the Applicant Company filed High Court Civil Suit No. 0388 of 2022 against Sanjay Trading Co. Limited pursuant to which judgment was passed in favour of the Applicant Company, and it was decreed by Court that the said Sanjay Trading Co. Limited pays the sum of UGX 878,094,203 (Uganda Shillings Eight Hundred Seventy-Eight Million, Ninety Four Thousand Two Hundred Three only) plus interest of 2% per month and costs of the suit.

15 That owing to the nonpayment of the above sums decreed by Court, the Applicant filed Miscellaneous Application No. 1565 of 2022 against Sanjay Trading Co. Limited, and its Bankers Stanbic Bank (U) Limited (the Respondent), Equity Bank (U) Limited, Bank of Africa, and ABC Capital Bank, in which the Court issued  
20 a Garnishee Order nisi on 15<sup>th</sup> December, 2022, to attach the accounts of Sanjay Trading Co. Limited in the said Banks.

That the said order was made absolute on 22<sup>nd</sup> December, 2022, and that the Garnishee order absolute was served on the Respondent on the same day. That  
25 under the Garnishee order absolute, the Respondent was directed to pay the decretal amount, and costs of the suit in the sum of UGX 898,240,707 (Eight Hundred Ninety-Eight Million, Two Hundred Forty Thousand Seven Hundred Seven Shillings only), to the Bank Account of the Applicant's Lawyer. That however, to date the Respondent has failed, and or refused to fully comply with the said order  
30 of the Court.

That the Applicant has suffered great damage, and losses as a result of the Respondent's contemptuous conduct, since it has not been able to pay the decretal sum, and comply with the Court order.

35 That it is fair and equitable that the orders sought by the Applicant be granted against the Respondent, and that the order sought for is necessary for ensuring that the orders of this honorable Court are respected until they are stayed or set aside.

5 The Respondent opposed this application in an affidavit in reply, deponed in paragraphs 1-9 by Arnold Twine the Senior Legal Advisor to the Respondent Bank and summarized as below:

10 That although the Bank was represented by Ronald Tumusiime, he was mistaken as to the funds in the account of Sanjay Trading Co. Limited, since the account was insufficiently funded to answer the decree, as seen in the copy of the account statement attached and marked "SBULI".

That he has looked at the account of Sanjay Trading Co. Limited, and he knows that it does not have any money to satisfy the terms of the decree of this honorable Court dated 12<sup>th</sup> August, 2022.

15 That the Respondent is desirous of respecting the Court order, and has never been in contempt of any Court order on the basis that the account referred to herein above, was insufficiently funded to answer the decree.

20 That any representation that the debtor's account was sufficiently funded was erroneous, and a mistake of the Bank's Representative, and that the error or mistake should not be visited on the Respondent.

That this application be dismissed with costs.

25 In an affidavit in rejoinder, deposed in paragraphs 1-10, by Mr Viraaaj Anil Malde for the Applicant, he reiterated the earlier averments, and stated further that he has been reliably informed by his lawyers of M/S Okalang Law Chambers, which information he believes to be true that the Respondent was ably represented by its official a one Ronald Tumusiime, who gave evidence on behalf of the Respondent that the account of Sanjay Trading Co. Ltd was sufficiently funded to answer the decree, and on account of that evidence, the garnishees were discharged, and the decree nisi that was issued against them was lifted, and the Respondent was ordered by this Court to answer the decree.

35 That the Court ordered the Respondent to pay a sum of UGX 878,094,203 (Uganda Shillings Eight Hundred Seventy-Eight Million, Ninety-Four Thousand Two Hundred Three only) in Miscellaneous Application No. 1565 of 2022, and that the Respondent has continued to be in contempt of the Court order by refusing to pay the decretal sum and costs in Civil Suit No. 388 of 2022, to a tune of UGX 898,240,707(Eight Hundred Ninety-Eight Million, Two Hundred Forty Thousand Seven Hundred Seven Shillings only).

5 Representation

The Applicant was represented by Counsel Philip Kasimbi of M/S Okalang Law Chambers while the Respondent was represented by Arcadia Advocates. This Court directed Counsel for the parties herein, to file written submissions, which was complied with by Counsel for the Applicant however, Counsel for the Respondent  
10 did not file written submissions.

Issues for determination

1. Whether the Respondent is in contempt of Court in Miscellaneous Application No.1565 of 2022?
2. What remedies are available to the parties?

15 Decision

Issue No.1: Whether the Respondent is in contempt of Court in Miscellaneous Application No.1565 of 2022?

This Court has considered the evidence adduced by the parties in their supporting affidavits, and the submissions of Counsel for the Applicant, to find as follows:  
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Civil contempt refers to the failure to obey a court order that was issued for another party's benefit. **(See Black's Law Dictionary 10<sup>th</sup> Edition pg. 385)**

The Courts have decided in a plethora of cases that before any action can be found to amount to contempt of Court, the following elements have to be established: -  
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- (i) The existence of an order;
- (ii) The Potential contemnor's knowledge of the order;
- (iii) The Potential contemnor's failure to comply with the order; and  
30 (iv) That the non-compliance was wilful, and malafide.

**(See the Supreme Court decision in Professor Frederick E. Ssempebwa and Others Vs AG, SC Civil Application No. 05 of 2019, arising from Presidential Election Petition No.1 of 2016), and In The Matter of Contempt of Court Proceedings; Re: Ivan Samuel Ssebbaduka Vs The Chairman Electoral Commission and 3 Others, SC (Arising from Presidential Election Petition No. 01 of 2020), which gives a  
35 detailed background on the origin of the phrase "contempt of Court" , and the difference between Criminal, and Civil Contempt of Court)**

5 The object of contempt proceedings was well stated in ***Pheko, and others Vs Ekurhuleni Metropolitan Municipality (No.2) [2015] ZACC10***, cited with approval in Prof. Ssempebwa above, that is to impose a penalty that will vindicate the Court's honour, consequent upon the disregard of its previous order, as well as compel performance in accordance with the previous order.

10 (i) The existence of an order

In the instant case, I have looked at the attachments to the pleadings and Annexure "D" attached to the affidavit in support of the application as stated by Counsel for the Applicant, which is a Garnishee order absolute arising from Miscellaneous Application No. 1565 of 2022, in which the Learned Registrar made  
15 orders on 22<sup>nd</sup> December, 2022, that the Respondent pays to the Applicant UGX 898,240,707(Eight Hundred Ninety-Eight Million, Two Hundred Forty Thousand Seven Hundred Seven Shillings only), to satisfy the decretal sum and costs in Civil Suit No. 388 of 2022.

In addition, I find that it is not disputed by the Respondent that a Court order exists.

20 This issue is answered in the affirmative.

(ii) The potential contemnor's knowledge of the order

The Applicant stated under paragraph 6 of its affidavit in support of this application that on 22<sup>nd</sup> December,2022, the Court issued a garnishee order absolute as against the Respondent, wherein the Respondent was ordered to  
25 pay UGX 898,240,707(Eight Hundred Ninety-Eight Million, Two Hundred Forty Thousand Seven Hundred Seven Shillings only) to the Applicant Company; on the same date, the said garnishee order absolute was duly served upon the Respondent, who received, and stamped in the copy of the Garnishee Order Absolute attached, and marked Annexure "D" .

30 For the foregoing reason, this issue is therefore answered in the affirmative.

(iii) The potential contemnor's failure to comply with the order

In the case of ***Housing Finance Bank Limited and Anor Vs Edward Musisi, CA Miscellaneous Application No. 158 of 2010***, cited by Counsel for the Applicant,  
35 the Court held that:

"A party who knows of an order, regardless of whether, 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 the party regards the order to be. It is not for

5 the party to choose whether 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 that party's right to challenge the order in issue. This may be by way of Revision, Review or by Appeal. We hasten to add that it is the responsibility of and duty of the party concerned, in case that party  
10 for some genuine reason, finds compliance with the court order not possible, to appropriately move the court that issued the order and bring to the attention of the court the reasons for non-compliance..." [Emphasis is mine]

15 In the given circumstances of this case, the Respondent has neither paid the decretal sum of UGX 878,094,203 (Uganda Shillings Eight Hundred Seventy-Eight Million, Ninety-Four Thousand Two Hundred Three only) in Miscellaneous Application No. 1565 of 2022, to the Applicant nor applied to the Court that made the decree to either stay or set aside the said order; this in no doubt explains that the Respondent has failed to comply with the order.

20 I have taken into consideration the guidance in *Housing Finance Bank Limited and Anor Vs Edward Musisi* above, to find that the Respondent had the opportunity to move this court to set aside the order in a manner that it deemed necessary in the circumstance however, this was not the case here.

Accordingly, this Court finds this issue in favour of the Applicant.

25 (iv) That the non-compliance was wilful, and malafide.

In the case of ***Amrit Goyal Vs Harichand Goyal & 3 Others CA Civil Application No. 109 of 2004***, the Court stated that a Court Order is a Court order. It must be obeyed as ordered unless set aside or varied. It is not a mere technicality that can be ignored. If we allowed Court Orders to be ignored with impunity, this would  
30 destroy the authority of judicial orders which is the heart of all judicial systems..."

It is the Applicant's evidence under paragraph 5 of the affidavit in support of this application, that a one Ronald Tumusiime the Representative of the Respondent, confirmed to the Court that the Respondent had sufficient funds to satisfy the total decretal sum of UGX 898,240,707 (Eight Hundred Ninety-Eight Million, Two Hundred  
35 Forty Thousand Seven Hundred Seven Shillings only, and costs in Civil Suit No. 388 of 2022.

5 The Respondent averred under paragraph 6 of the affidavit in reply that it is desirous of respecting the court order, and has never been in contempt of the same although, the Respondent contended that the account of Sanjay Trading Co. Limited does not have any money to satisfy the terms of the decree.

10 It is my considered view that the inference that a party's noncompliance was wilful and malafide, may be drawn from the ability of the party to exercise control over the subject matter, and also when the party not only has actual knowledge but has knowledge of such other facts, as would in the circumstances show bad faith.

15 Accordingly, I find that the Respondent had the ability to know that it either had sufficient funds or not; the Respondent's denial of the fact that it had sufficient funds to satisfy the decree, that was the basis upon which the Learned Registrar made a Garnishee Order absolute, indicates that the Respondent's noncompliance was deliberate, and done with dishonesty.

I therefore find that the Respondent has indeed failed to comply with the order.

20 Consequently, this Court finds that the Respondent is in contempt of Court.

Issue No.2: What remedies are available to the parties?

25 Having found issue (1) above in the affirmative, this Court further finds that this application has merit, and the remedies sought for by the Applicant are available.

General damages are the direct natural or probable consequence of the wrongful act complained of, and includes damages for pain, suffering, inconvenience and anticipated future loss. **(See Storms Vs Hutchinson [1905] A.C 515)**

30 It is settled law that general damages are granted at the discretion of Court. **(See Crown Beverages Ltd Vs Sendu Edward S.C Civil Appeal No. 1 of 2005), and Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305)**

35 Following the guidance in **Uganda Commercial Bank Vs Kigozi(supra)** on the factors to be considered by the Courts when assessing the quantum of general damages which are as follows: - the value of the subject matter, the economic inconvenience that the Plaintiff may have been put through, and the nature and extent of the injury suffered.

5 Accordingly, this Court finds that the sum of UGX 50,000,000(Uganda Shillings Fifty Million only) in general damages will suffice, considering the loss, and inconvenience suffered by the Applicant.

In the result, this application is allowed and Court makes the following orders;

10 1. The Respondent is in contempt of Court, when they failed to honor the orders of this Court in Miscellaneous Application No.1565 of 2022.

2. The Respondent is directed to pay the Applicant the decretal sum of UGX 878,094,203 (Uganda Shillings Eight Hundred Seventy-Eight Million, Ninety-Four Thousand Two Hundred Three only).

15 3. The Respondent shall pay the Applicant general damages of UGX 50,000,000(Uganda Shillings Fifty Million only).

4. The Respondent shall pay costs of this application.

Delivered electronically this 26<sup>th</sup> day of September, 2023.



20 SUSAN ABINYO  
**JUDGE**  
**26/09/2023**

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