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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)**

**MISCELLANEOUS APPLICATION NO. 2633 OF 2023**

**(ARISING OUT OF MISC.APPLICATION NO.2352 OF 2023)**

10 **(ARISING OUT OF MISC. APPLICATION NO.2351 OF 2023)**

**(ARISING OUT OF CIVIL SUIT NO.1214 OF 2023)**

**LYDIA NAMAWEJJE ..... APPLICANT**

**VERSUS**

**EFC UGANDA LTD (MDI) .....RESPONDENT**

15

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

**RULING**

**Introduction**

20 This application was brought by way of Notice of Motion under Section 33 of the Judicature Act, Cap. 13, Sections 98 and 64 (c) and (e) of the Civil Procedure Act, Cap. 71 and Order 52 Rules 1 and 3 of the Civil Procedure Rules SI 71-1 seeking orders that:

- 25
1. The Respondent and or their Directors and Managing Director be held in contempt of Court.
  2. The contemnors be ordered to pay and compensate the Applicant with general damages of UGX 30,000,000/= (Uganda Shillings Thirty Million Only).

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5        3. The contemnors pay to the Applicant exemplary damages of UGX 10,000,000/= (Uganda Shillings Ten Million Only).

4. The contemnors pay punitive damages of UGX 10,000,000/= (Uganda Shillings Ten Million Only).

10       5. The Directors and Managers of the Respondent be committed to civil prison for six (6) months.

15       6. The property of the Respondent be attached and sold as may be directed by the Court.

7. The Contemnor be fined a sum of UGX 20,000,000/= (Uganda Shillings Twenty Million Only).

20       8. The Contemnors pay the costs of this application.

### Background

The background of the application is contained in the grounds of the application as detailed in the Applicant's affidavit in support and summarized below: -

25       1. That the Applicant has a pending Civil Suit in this Court against the Respondent.

30       2. That due to the peculiar and interesting circumstances of the main suit, the Applicant filed applications for a Temporary Injunction and an Interim Order.

3. That upon hearing the Interim Order application and the nature of the transaction the parties entered, the Court was pleased to grant an Order directing the Respondent to unconditionally with

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5 immediate effect release motor vehicle Isuzu Elf (P-NKR57E) Reg. No.  
UBM 559C to the Applicant.

4. That the Respondent who has always been aware of the Court Order,  
with impunity refused, defied and abused the Court Order.

10 5. That it is in the interest of justice that this application is granted.

In reply, the Respondent through Ms. Doreen Leku, the Acting Head Legal  
and Company Secretary deponed an affidavit opposing the application on  
15 grounds that:

1. The Applicant sued the Respondent vide Civil Suit No.1214 of 2023  
and subsequently filed Misc. Application No.2352 of 2023 for an  
Interim Order which was granted by this Court inter alia directing  
the Respondent to release the said vehicle to the Applicant.

20 2. The Respondent filed an Appeal on 30<sup>th</sup> October 2023 having been  
dissatisfied with the Ruling and the said Orders as per annexures  
“A” and “B”.

25 3. The Applicant served the Order upon the Respondent on 31<sup>st</sup> October  
2023 and the Applicant commenced administrative measures with  
the debt collection department to have the vehicle released since it  
was in possession of the bailiff, Kasozi Andrew T/A Lukumi & Kasozi  
Associates.

30 4. The said motor vehicle was parked at Melik parking along Gayaza  
Road and was available for release upon payment of parking fees.

35 5. On 7<sup>th</sup> November 2023, the Respondent's lawyers' M/s M. A. Kajubi  
& Co. Advocates wrote a letter to the Applicant through her lawyers'

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5 M/s Kintu, Twinomugisha & Co. Advocates to share a contact authorized to pick or make arrangements to collect the motor vehicle from the Respondent who replied that the same would be collected on 8<sup>th</sup> November 2023 as per annexures “C” and “D”.

10 6. On 8<sup>th</sup> November 2023, the deponent met the Applicant and Wamala Mohammad whom she informed about the parking fees to be paid and the Applicant agreed to the payments which were factored in her outstanding balance.

15 7. The deponent introduced the bailiff to the Applicant who informed her that the Applicant went and collected the said motor vehicle on 8<sup>th</sup> November 2023 from the parking garage after getting the release order witnessed by Wamala Mohammad as per annexure “E”.

20 8. The Respondent did not hide or refuse to release the vehicle in issue as ordered by the Court but complied with the same and handed over the vehicle to the Respondent.

25 9. The Order had no time frame to it and the Respondent released the vehicle in issue within reasonable time thus this application was filed in bad faith.

### Representation

The Applicant was represented by M/s Kintu, Twinomugisha & Co. Advocates while the Respondent was represented by M/s M.A. Kajubi &  
30 Co. Advocates.

Both parties were directed to file written submissions and the same have been taken into consideration in this Ruling.

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5 Issues for determination

1. Whether the Respondent is in contempt of Court Orders vide Misc. Application No.2352 of 2023?
2. What are the remedies available to the parties?

10 Applicant's submissions

Issue 1

Whether the Respondent is in contempt of Court Orders vide Misc. Application No.2352 of 2023?

- 15 In his submissions, Counsel defined contempt as per **Black's Law Dictionary 10<sup>th</sup> Edition, page 385** as failure to obey a Court Order that was issued for another party's benefit. He referred to the case of **Ssempebwa & Others Vs Attorney General [2019] 1 EA 546**, in which the Supreme Court of Uganda made a detailed exposition on contempt
- 20 principles and the ingredients which an Applicant must prove as discussed below:

i. That there was an order issued by the Court

- Referring to paragraph 6 of the affidavit in support of the application,
- 25 Counsel contended that this Court heard Misc. Application No.2352 of 2023 for interim relief and granted an Order directing the Respondent to unconditionally with immediate effect release the motor vehicle in issue.

ii. That the Order was brought to the notice of the alleged contemnor (Respondent).

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5 On the above ingredient, Counsel submitted that Counsel for the Respondent was present in Court when the Ruling was delivered. Counsel stated that the Applicant as per paragraphs 7 and 8 of the affidavit in support, extracted the Court Order and served the same on the Respondent but it was received under protest as an appeal had been  
10 preferred and that the Respondent refused to release the suit motor vehicle to the Applicant with immediate effect.

iii and iv. Whether there was non-compliance with the Order by the Respondent and whether the non-compliance was willful and  
15 malafide.

Counsel submitted that the Respondent was served with the Court Order however they refused to release the motor vehicle with immediate effect and that the Appeal that the Respondent was referring to was never served on the Applicant.

20 Respondent's submissions

Counsel for the Respondent submitted that the Respondent complied with the Court Order. He stated that the Order was served unto the Respondent on 31<sup>st</sup> October 2023 and it commenced administrative measures with the  
25 debt collection department to have the suit vehicle released since it was in possession of the bailiff, Kasozi Andrew T/A Lukumi & Kasozi Associates. He stated that the Respondent was only following its internal processes to facilitate the release of the vehicle.

Counsel further contended that at the time the Court Order was issued,  
30 the Respondent did not have possession of the vehicle. Counsel further argued that the Court Order had no time frame to it and that the

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5 Respondent released the said vehicle within reasonable time. Counsel submitted that the Application was filed in bad faith and that in the interest of justice the Application should be disallowed.

Counsel relied on the case of ***Milka Wangoi Kamau & Lydia Mmbone Amugune Vs Habby Misoga Lugadiru Succession Cause No. 284 of***  
10 ***2009***, where the High Court of Kenya ordered the release of a log book that was not in the possession of the Respondent as it had been deposited as security for a loan and was in custody of a creditor, in this case the word immediately was defined as ‘without delay’ in reference to the Oxford Advanced Learners Dictionary at page 749 and it was stated that:

15 *“the words without delay are now relative. They are relative to the extent that, unless the logbook is redeemed from the creditors, it cannot be released. In my humble opinion the Respondent is not in contempt of the said Court Order.”*

Counsel further submitted that the Respondent’s Directors and Managing  
20 Director who are not party to this application are being falsely accused of disobeying the Court Order which was never disobeyed, violated or abused but complied with in the circumstances. Counsel submitted that no evidence was adduced by the Applicant to show that the Respondent or its Directors or Legal Manager violated the said Court Order by giving  
25 directions to hinder or obstruct the same.

Counsel concluded by contending that the Applicant unjustifiably filed this application and prayed that the application be dismissed with costs to the Respondent.

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5 Analysis and determination

I have carefully considered the grounds of both parties as stated in the affidavit in support of the application and the affidavit in reply, the law, and the submissions of both Counsel to find as hereunder;

According to **Halsbury's Laws of England, 4<sup>th</sup> Edition page 284**  
10 **paragraph 458**; *it is a civil contempt of Court to refuse or neglect to do an act required by a judgment or order of the Court within the time specified in the judgment or order, to disobey a judgment or order requiring a person to abstain from doing a specified act.*

Contempt of Court has also been described in several cases in our  
15 jurisdiction like in the case of **Andrew Kilama Lajul Vs Uganda Coffee Development Authority & Ors Misc. Application No.324 of 2020** in which **Hon. Justice Ssekaana Musa** stated that:

“Contempt of Court often referred to simply as “contempt”, is the  
offence of being disobedient to or disrespectful toward a Court of  
20 law and its officers in the form of behaviour that opposes or defies the authority, justice and dignity of the Court.” See also **Onen David & 2 Ors Vs Otto Ocan & 2 Ors Miscellaneous Application No. 131 of 2019.**”

Court classified contempt in two categories; that is one being disrespectful  
25 to legal authorities in the Court room and the other willfully failing to obey a Court Order.

In the instant case, the Applicant is alleging failure to obey the Court Order by the Respondent.

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5 As laid out in the cases of ***Ssempebwa and Others Vs Attorney General (supra)*** and ***Hon. Sitenda Sebalu Vs Secretary General of the East African Community Ref. No.8 of 2012***, to prove contempt, the complainant must prove the following:

1. The existence of a lawful Order.
- 10 2. The potential contemnor's knowledge of the Order.
3. The potential contemnor's ability to comply.
4. the potential contemnor's failure to comply.

It was also stated in the case of ***Hon. Sitenda Sebalu Vs Secretary***  
15 ***General of the East African Community (supra)*** that the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, and almost, but not exactly, beyond reasonable doubt.

As to whether there was an existing lawful order and whether the Respondent had knowledge of the same, it is evident and undisputed that  
20 on 26<sup>th</sup> October 2023, **His Worship John Paul Edoku, Deputy Registrar**, granted Misc. Application No.2352 of 2023 in the presence of both Counsel for the Applicant and Respondent. The said Order directed among others the Respondent to release motor vehicle Isuzu ELF (P-NKR57E) Registration No. UBM 559C to the Applicant with immediate effect. The  
25 same was served upon the Respondent on 31<sup>st</sup> October 2023 as per the receipt stamp which indicated that it was received under protest as an appeal had been preferred.

Furthermore, paragraphs 7, 8 and 9 of the affidavit in reply show that there is an existing Order and that the Respondent had knowledge of the  
30 same. Accordingly, I find ingredients 1 and 2 undisputed as proved by the

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5 Applicant and the affidavit in reply hence there is an existing Court Order and the Respondent had knowledge of it.

Regarding whether the potential contemnors had the ability to comply with the Order and whether they failed to comply; the general principle is that a person cannot be held in contempt without knowledge of the Court Order  
10 as was held in the case of **Jack Erasmus Nsangiranabo Vs Col. Kaka Bagyenda & Attorney General HCMA 671/2019**.

In the case of **Hadkinson Vs Hadkinson [1952] 2 All ER 567, Romer LJ** relied on the case of **Church Vs Cremer (1 Coop Temp Cott 342)** and held that:

15 *“A party who knows of an order whether null or valid, regular or irregular, cannot be permitted to disobey it... as long as it existed.”*

The same was re-echoed in the case of **Housing Finance Bank Ltd & Anor Vs Edward Musisi C.A.C.A No. 158/2010** where the Court of Appeal held inter alia that a party who knows of an Order cannot be  
20 permitted to disobey it. The Order must be complied with in totality and in all circumstances.

In the case of **Andrew Kilama Lajul (supra), Hon. Justice Ssekaana Musa** while relying on the case of **Housing Finance Bank Ltd & Anor Vs**  
25 **Edward Musisi (supra)**, stated that:

*“The principle of law is that the whole purpose of litigation as a process of judicial administration is lost if orders by the Court through the set judicial process, in the normal functioning of the Courts are not complied with in full by those targeted and/ or*  
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5                   *called upon to give further due compliance. Further, it is not for that party to choose whether or not to comply with such Order.”*

He further stated that:

*“The Order must be complied with in totality in all circumstances by the party concerned, subject to the party’s right to challenge the*  
10                   *Order in issue in such a lawful way as the law permits.”*

I have read the Order in issue and under paragraph 2 thereof, it states that:

*“The motor vehicle ISUZU ELF (P-NKR57E) Registration Number UBM 559C be released to the applicant with immediate effect.”*

15   The said Order is dated 26<sup>th</sup> October 2023. According to paragraph 13 of the affidavit in reply, the vehicle in issue was released on 8<sup>th</sup> November 2023. This is also evidenced by the official release form with a stamp from the Respondent showing 8<sup>th</sup> November 2023. It was attached as annexure “E” to the affidavit in reply.

20   The Court Order in issue clearly stated that the motor vehicle was to be released with immediate effect. Taking into consideration the fact that the Order was granted on 26<sup>th</sup> October 2023 and the vehicle in issue released on 8<sup>th</sup> November 2023, the question is whether this then amounted to contempt of Court?

25   According to annexures “C” and “D” (correspondences between the Respondent and Applicant), the Respondent vide the letter dated 7<sup>th</sup> November 2023 requested for details of a contact to pick the vehicle. The Applicant on 8<sup>th</sup> November 2023, replied and provided the details and telephone contact of the person to pick the vehicle and indeed the vehicle  
30   was picked on that same day, 8<sup>th</sup> November 2023. Though the

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5 correspondences are unclear about the Respondent's earlier communication but as evidenced by annexure "C" it is proved that the Respondent and its officials made efforts to hand over the vehicle in issue as directed by Court.

10 I have also noted that the Applicant filed this application on 6<sup>th</sup> November 2023 and this was before the vehicle was released. However, the vehicle was released on 8<sup>th</sup> November 2023, after the Respondent wrote on 7<sup>th</sup> November 2023 requesting for the contacts of the person to hand over the vehicle to. In my humble view, it was important for the Respondent to ensure that the vehicle is handed over to the right person and thus the  
15 action of formally writing to the Applicant's lawyers seeking for contact details of the person to hand over the vehicle to was in order and reasonable in the circumstances.

Taking all the above into consideration, I find that the Respondent was not in contempt of Court. This application has therefore failed.

20 The costs of the application shall be in the cause.

Dated, signed and delivered electronically this **15<sup>th</sup>** day of **January, 2024.**



25 Patience T. E. Rubagumya

**JUDGE**

15/1/2024

8:05am