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

MISC. APPLICATION NO. 2844 OF 2023
(ARISING FROM MISC. APPLICATION NO. 2391 OF 2023)
10 (ALL ARISING FROM CIVIL SUIT NO. 618 OF 2023)

1. WELMOND PLASTICS LIMITED
2. MATOYA MARORIA
3. ASWT INDUSTRIES (U) LIMITED ::::::::::::::::::::::::::: APPLICANTS

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VERSUS

1. SATHICK SAHUL HAMEED
(Suing through his Lawful Attorney
20 Adventistian Milka Singh)
2. ADVENTISTIAN MILKA SINGH ::::::::::::::::::::::::::: RESPONDENTS

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

RULING

25 Introduction

This application was brought by Notice of Motion under **Section 14 and 33 of the Judicature Act, Cap. 13, Section 3 and 98 of the Civil Procedure Act, Cap. 71 and Order 52 Rules 1 and 3 of the Civil Procedure Rules, SI No. 71-1** seeking orders that:

- 30 1. The Respondents be punished by detention in civil prison for disobeying this Honorable Court's Order dated 31st October, 2023.

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5 2. The Respondents be punished by paying punitive/exemplary damages or compensation to the Applicants to a tune of UGX 600,000,000/= (Uganda Shillings Six Hundred Million Only).

10 3. The Respondents be fined the sum of UGX 300,000,000/= (Uganda Shillings Three Hundred Million Only) for contempt of Court.

4. Costs of this applications be provided for.

Background

15 The background of this application is contained in the affidavit of Mr. Matoya Maroria, a director of the 3rd Applicant Company and the 2nd Applicant in the matter, well conversant with the facts of this matter, and is summarized below:

20 1. That on 25th October, 2023, this Honorable Court heard an application for a temporary mandatory injunction between the Applicants and the Respondents and subsequently issued a Ruling granting the same in favor of the Applicants.

25 2. That subsequently, on 31st October, 2023, an Order reflecting the orders granted by this Court was extracted by the Applicants' lawyers.

30 3. That the above Court Order directed the Respondents to unconditionally sign all the 3rd Applicant's Company documents as required by law in their role as director and company secretary of the 3rd Applicant until the disposal of Civil Suit No. 618 of 2023.

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5 4. That the Applicants forwarded to the Respondents the Company documents to wit a bank facility letter and board resolution for their signature but the Respondents have intentionally refused to sign the same despite numerous correspondences between the parties.

10 5. That as a result of the above contemptuous conduct by the Respondents, the 3rd Applicant Company has since closed some operations due to lack of working capital yet Court had given orders to prevent this.

15 6. That such blatant undermining of Court Orders amounts to contempt of Court which would warrant this Honorable Court to grant the orders sought herein.

20 7. That if Court does not hold the Respondents in contempt and grant the orders sought above, the Respondents shall definitely disobey the subsequent orders of Court and further undermine more directives of the Court.

25 In reply, the Respondents through Mr. Adventistian Milka Singh a director, shareholder and company secretary of the 3rd Applicant and the lawful Attorney of the 1st Respondent, opposed the application contending that:

30 1. The Ruling required the Respondents as director and company secretary to the 3rd Applicant Company, to only sign Company documents that are grounded and in accordance with the law.

2. The Respondents were ready and willing to sign the same had the 2nd Applicant shared with the 2nd Respondent, the 3rd Applicant's

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5 information about the Company finances and operations as per
the Court's Ruling.

10 3. The 2nd Respondent has via several emails requested for
information pertaining the Company finances and operations but
the 2nd Applicant has deliberately and/or negligently refused to
avail the same.

15 4. There is no deliberate ill will on the 2nd Respondent's part to sign
the Company documents but compliance to the issued Order has
been made futile by the actions of the 2nd Applicant.

20 5. The 1st Respondent has since revoked the power of attorney
granted to the 2nd Applicant for purposes of mortgaging or
remortgaging his property and therefore, the 2nd Respondent
cannot sign the facility letter which has the effect of mortgaging
or remortgaging the 1st Respondent's property.

Representation

25 The Applicants were represented by Learned Counsel Twalhat
Ssebumpenje of M/s OSH Advocates while the Respondents were
represented by Learned Counsel Raymond Ongom of M/s Gumtwerro & Co.
Advocates.

30 The parties were directed to file their submissions to which they complied,
for which I am grateful and the same have been considered by Court.

Issues for determination

1. Whether the Respondents are in contempt of a Court Order issued
by this Court vide Miscellaneous Application No. 2391 of 2023?

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5 2. What remedies are available to the parties?

Issue 1: Whether the Respondents are in contempt of a Court Order issued by this Court vide Miscellaneous Application No. 2391 of 2023?

Applicants' submissions

While relying on the case of **Stanbic Bank (U) Ltd & Anor Vs The**
10 **Commissioner General Uganda Revenue Authority HCMA No. 42 of 2010**, Counsel for the Applicants laid down the necessary grounds to prove contempt of Court and submitted that on 31st October, 2023, this Honorable Court vide Miscellaneous Application No. 2391 of 2023, issued an order of a temporary mandatory injunction against the Respondents
15 compelling them to sign all the 3rd Applicant Company's documents as required by law in their role as director and company secretary of the 3rd Applicant Company until the disposal of Civil Suit No. 618 of 2023.

That upon issuance of that Order, it was served upon the Respondents but when asked to comply with the same, the Respondents refused hence
20 intentionally disobeying the Court Order.

In conclusion, Counsel for the Applicants prayed that Court deters the Respondents from further disobeying the Court Orders by holding that they are in contempt of Court.

Respondents' submissions

25 Counsel for the Respondents referred to the case of **KCB Bank Limited Vs Formula Feeds Limited & 5 Others Miscellaneous Application No. 0681 of 2021**, wherein **Hon. Justice Stephen Mubiru**, held that,

*"To be found in contempt, there must be a clear and undoubted
phwé disobedience of a clear and unequivocal command. It must be*

5 *proven that the party accused: (i) knew the order existed, (ii) had the ability to comply with the order but violated it knowingly, and (iii) lacks just cause or no excuse for the violation.”*

Counsel further contended that as per Paragraph 10 of the 2nd Respondent’s affidavit in reply; to sign the said facility letter would have the effect of coercing the 2nd Respondent to be a guarantor in the 3rd Applicant Company thereby depriving the 2nd Respondent of the freedom of contract.

Counsel further contended that when the 2nd Respondent asked for the 2nd Applicant to avail him with the regular monthly management accounts and profit and loss account as Court had also directed – the 2nd Applicant through his Advocates purported to draft the 3rd Applicant’s “Special Resolution” without the input of the respective shareholders.

Counsel contended that the Applicants have failed to discharge the burden of proof cast; to establish whether the Respondents were intentional in defying the Court Order dated 31st October, 2023.

In rejoinder, Counsel for the Applicants submitted that in the proper wisdom of this Court, the Order of mandatory injunction was granted to the Applicants to ensure that the bank offer letter is signed and have the Company kept up and running. Counsel further contended that the Respondents have tried to create an ambiguity that in actual sense does not exist. Further, Counsel submitted that the Applicants demanded for audited financials of the Company and books of accounts among the long list of unreasonable demands and that the Respondents were well aware that these were reserved in determination of the main case by this Court and that this was a tactic to defy the Court Order.

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5 Analysis and Determination

I have considered the grounds of both parties as stated in the affidavit in support of the application, affidavit in reply, the law, the evidence and the submissions of Learned Counsel in arriving at this decision.

10 In the case of **Onen David & 2 Ors Vs Otto Ocan & 2 Ors Miscellaneous Application No. 131 of 2019**, Hon. Justice Stephen Mubiru defined contempt of Court to mean:

“... an act or omission tending to unlawfully and intentionally violate the dignity reputé or authority of a judicial body, or interfering in the administration of justice in a matter pending before it.”

15 It is the position of the law that the standard of proof in contempt proceedings must be higher than proof of probabilities and almost but not exactly beyond reasonable doubt (See: **Hon. Sitenda Sebalu Vs Secretary General of the East African Community Ref. No. 8 of 2012**).

20 **Hon. Justice Bashaija K. Andrew** in the case of **Erasmus Masiko Vs John Imaniraguha & 2 others Misc. Application No. 1481 of 2016** re-echoed the four essential ingredients to be demonstrated for one to be held in civil contempt of court and these are:-

- a) The existence of a lawful Court Order;
- b) The potential contemnor’s knowledge of the Order;
- 25 c) The potential contemnor’s ability to comply; and
- d) The potential contemnor’s failure to comply.

I shall now address the requisites of civil contempt in relation to the instant case.

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5 a) That there exists a lawful Court Order

In this case, as evidenced by the pleadings of the 2nd Applicant and 2nd Respondent, the existence of a Court Order dated 31st October, 2023 is undisputed as seen from paragraph 3 of the 2nd Applicant's affidavit in support of the application and paragraph 4 of the 2nd Respondent's
10 affidavit in reply. The same Order is attached as Annexure "B" to the application. The above Order was issued vide ***Miscellaneous Application No. 2391 of 2023***, which was an application for a temporary mandatory injunction.

Accordingly, this Court holds that a valid Order issued by this Court
15 exists.

b) That the potential contemnors had knowledge of the Order

It is a general principle that one cannot be held in contempt without knowledge of the Court Order in issue. (See: ***Jack Erasmus Nsangiranabo Vs Col. Kaka Bagyenda and Attorney General HCMA***
20 ***No. 671 of 2019***).

In a letter dated 12th November, 2023, among the documents marked as "R1" attached to the 2nd Respondent's affidavit in reply, addressed to the 2nd Applicant, the 2nd Respondent acknowledged the Court Order.

Therefore, the 2nd Respondent who is also the 1st Respondent's lawful
25 attorney, was aware of the existence of the Court Order. In the premises, Court finds that the Respondents had knowledge of the existence of the Order in issue.

I shall handle the last two ingredients concurrently.

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- 5 c) That the potential contemnors had the ability to comply with the Order and
d) That the potential contemnors failed to comply with the Order

In the case of ***Housing Finance Bank Ltd & Anor Vs Edward Musiisi***
10 ***C.A.C.A No. 158 of 2010*** the Court of Appeal held inter alia that:

“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, 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
15 Order.”

While, in the case of ***Richard Odoi Adome Vs Uganda Electricity Generation Company Ltd HCMA No. 1088 of 2022, Hon. Justice Stephen Mubiru*** held that for a potential contemnor to be held to have ability to comply but violated the order knowingly, the Applicant must
20 state exactly what the alleged contemnor has done or omitted to do which constitutes contempt of Court.

In the instant case, it is the submission of Counsel for the Applicants that the Respondents refused to sign the facility letter since according to them it did not form Company documents and also that the Respondents
25 frustrated a Company members’ meeting that was called for by the Applicants to discuss Company matters inclusive of the Court Order and its compliance.

The assertions by the 2nd Respondent in paragraphs 4 and 7 of his affidavit are supported by the letter addressed to the 2nd Applicant dated 12th

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5 November, 2023, among the documents marked “R1” attached to the 2nd Respondent’s affidavit, which inter alia reads as follows:

10 *“In the light of the directive, it is our prayer that you extend business transparency in the operations of ASWT Industries and sharing information about the company finances and operations with Mr. Sathick Sahul Hameed and Dr. Milka Singh both shareholders and a director and company secretary respectively.”*

In response, on 21st November, 2023, via email, adduced as annexure “I” attached to the 2nd Applicant’s affidavit in support of the application, the 2nd Applicant sent a resolution and requested the 2nd Respondent to sign
15 it. The 2nd Applicant further informed the 2nd Respondent that the information that he was requesting for was a subject of the main Court case and that thus the Respondents were not expected to demand that the same be a condition for signing the Company documents as ordered.

As per the Ruling delivered by Court on 25th October, 2023 marked
20 annexure “A” attached to the affidavit in support of the application, on page 8, Court held inter alia that:

25 *“The Applicants must on their hand recognize and treat the Respondents respectfully as director and company secretary in all respects and this extends to business transparency in the operations of the 3rd Applicant and sharing information about the company finances and operations with the Respondents in their capacity as director and company secretary.”*

As evidenced by paragraphs 4 and 7 of the 2nd Respondent’s affidavit in reply, the 2nd Respondent, who is also the lawful attorney to the 1st
30 Respondent, was willing to sign the documents so presented in compliance

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5 with the Court Order but was unable to because firstly, the Applicants
refused to share the 3rd Applicants Company finances and operations as
requested, which were supposed to help the Respondents in making their
informed decision when signing the documents that were required to be
signed, despite the Ruling of Court that the Applicants were to share the
10 3rd Applicant's financial information with the Respondents.

Secondly, the 2nd Respondent stated under paragraph 12 of his affidavit
in reply that he could not sign the facility letter since the 1st Respondent
had revoked the power of attorney that he had granted to the 2nd Applicant
for purposes of mortgaging or remortgaging his property.

15 Therefore, he could not sign the facility letter which had the effect of
mortgaging or remortgaging the 1st Respondent's properties.

The facility letter is attached to the 2nd Respondent's affidavit and marked
"R3". A close look at clause 7 of annexure "R3" discloses the securities and
indeed the 1st Respondent's properties form part of the existing and further
20 charges.

In the case of **KCB Bank Limited Vs Formula Feeds Ltd & 5 Ors (supra)**,
Hon. Justice Stephen Mubiru stated that a person who attempts with
reasonable diligence to comply with a Court Order should not be held in
contempt, except where such inability to comply with the Court Order is
25 attributable to that person's fault.

Given the fact that the relevant company documents have not been shared
with the Respondents despite the requests made by the Respondents;
shows that the 2nd Respondent who is also the 1st Respondent's lawful
attorney, attempted to comply with the Court Order to sign all the
30 necessary documents as required but was unable due to lack of the

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5 required supporting information on the Company finances and operations.
The case would have been different if the information requested for had
been provided by the Applicants and therefore the Respondents' cannot be
faulted for failing to sign the documents presented to them for signature.

10 In the circumstances, Court finds that the Respondents are not in
contempt of Court.

Issue 2: What remedies are available to the parties?

Having found in issue 1 above that the Respondents are not in contempt
of Court, the Applicants are therefore not entitled to the remedies sought
in this application.

15 In the premises, this Court makes the following orders:

1. The application is hereby dismissed.
2. Costs of this application shall be in the cause.

Dated, signed and delivered electronically this **27th** day of **February, 2024.**

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Patience T. E. Rubagumya

JUDGE

27/02/2024

8:45am

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