

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 0290 OF 2020**

**(Arising from Court of Appeal Civil Application No. 0311 of 2015;
itself arising from Court of Appeal Civil Appeal No. 0144 of 2015.)**

LUKENGE HAKEEM

(Administrator of the estate

of the Late Hajji Jaffer Sentamu):::::::::::::::::::::::::::::::::APPLICANT

VERSUS

1. HAJATI AJIRI NAMAGEMBE

2. KYAGULANYI YASIN

3. MUKASA MOSES

4. GUMISIRIZA JOSEPH (DECEASED)

5. ECEGA RICHARD

6. ADUPA SAM:::::::::::::::::::::::::::::::::RESPONDENTS

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA.

RULING OF THE COURT

This application came before me sitting as a Single Justice of this Court, and was brought pursuant to several provisions of the law referred to in the Notice of Motion, which I will not repeat herein except when it is relevant to do so. By the application, the applicant is seeking for two principal orders, viz: 1) an order holding each of the respondents in contempt of court for disobeying the order made by this Court in Civil Application No. 311 of 2015 and punishing them accordingly; and 2) an order of stay of proceedings commenced by some of the respondents in the High Court at Mbarara vide Civil Suit No. 33 of 2018. The applicant also seeks for additional orders which would flow from the grant of the orders referred to above, namely; a) an order of injunction to restrain the respondents from any further dealings on certain land the subject of the contempt proceedings; and b) an order that the costs of this application be provided for.

The grounds for the application have been briefly stated in the Notice of Motion, and are also set out in the applicant's affidavit in support of the application. The evidence in support of the application is contained in the applicant's affidavit in support; and further affidavits of Mr. Kayiira Issa and Mr. Kaddu Sentamu, respectively, deponed in support of the application. The competence of these affidavits has been, however, challenged by the respondents. The applicant also deponed several affidavits in rejoinder to those deponed by the respondents.

The 1st, 2nd, 3rd, 5th and 6th respondents opposed the application and each deponed an affidavit in opposition thereof. The 4th respondent died after the institution of the application and the application against him abated. The present application therefore proceeds only against the 1st, 2nd, 3rd, 5th and 6th respondents.

Background.

The background to this application as can be gathered from the pleadings is that the applicant is the administrator of the estate (the relevant estate) of the late Hajji Jaffer Sentamu (the deceased). When he died on 14th September, 1980, the deceased was survived by 6 widows and 48 children. The applicant as well as the 1st, 2nd and 3rd respondents and 4th respondent (now deceased) are some of the children of the deceased. Following the deceased's death, any amicable attempts at distributing his estate were and continue to be frustrated by various factors. For example, according to the applicant, on 25th March, 1982, with full knowledge that the deceased died intestate, the 2nd respondent fraudulently applied for probate and the same was granted to him on 2nd May, 1982 by a Magistrate Grade I at Mbarara. The grant was however subsequently set aside on 2nd December, 1990 by a Chief Magistrate at Mbarara.

It must be stated that according to the pleadings, on 7th June, 1989, the beneficiaries of the estate of the deceased convened a meeting, at which they agreed upon the distribution of the estate of the deceased. At that time, no person had been appointed as the administrator of the deceased's estate. However, the 1st respondent claimed in her affidavit that the distribution at



the mentioned meeting was allegedly recorded in a document known as the Kaberebere Declaration. It is not clear whether the beneficiaries agreed on which of them would apply for letters of administration in the meeting held in 1989. However, about 12 years later in 2001, the applicant applied for and was granted letters of administration for the estate of the deceased. The applicant claims that as the administrator of the estate of the deceased, he had, as at 23rd April, 2001 when he filed an inventory in the High Court, distributed about 97% of the estate to its lawful beneficiaries.

The present application is concerned with a piece of land described as Block 2 Plot 12, land at Rwakiruli in Isingiro District (the suit land) which forms part of the estate of the deceased. The applicant alleges that the suit land has not been distributed and is still under his control as the administrator of the deceased's estate. The applicant also claims that dealing with the suit land subsequent to its passing was prohibited by the order of this Court in Miscellaneous Application No. 311 of 2015, and that in dealing with the suit land, the respondents have acted in contempt of that Court order. The 1st, 2nd and 3rd respondents claim that the suit land was distributed to them under the Kaberebere Declaration and is therefore their property, which they can and have dealt with as they deem fit. The 5th respondent is a senior police officer, at the time the Regional Police Officer of Rwizi Region where the suit land is situated. He came to be involved with the affairs of the deceased's estate in the course of his duty. The 5th respondent claims that some members of the deceased's estate made a complaint to him about the applicant's mismanagement of the deceased estate, prompting him to intervene in order to avoid "insecurity in the area." The 6th respondent was the Officer in Charge of the local police station and he also got involved in the affairs of the deceased's affairs in the course of his duties following allegations by some members of the deceased's estate about the applicant's mismanagement of the estate.

From the time the applicant was appointed as the administrator of the deceased's estate, several disputes have arisen between him and some of the beneficiaries of the estate of the deceased. Several litigation has been

commenced by or against the applicant as the administrator of the estate of the deceased, notably; Civil Suit No. 162 of 2013 filed in the Family Division of the High Court, by which some of the beneficiaries of the deceased's estate were seeking, among other things, the revocation of the letters of administration of the estate of the deceased. The suit was struck out on a preliminary point to the effect that the reliefs sought in the suit were similar to those sought in two pending suits filed earlier, namely Originating Summons No. 14 of 2009 filed in the Family Division of the High Court and Civil Suit No. 251 of 2013 filed in the Land Division of the High Court, and was therefore an abuse of Court process. An appeal was lodged to this Court vide Civil Appeal No. 144 of 2015 against the order striking out Civil Suit No. 162 of 2013. An application was made vide Civil Application No. 311 of 2015 for an interim order of stay of execution pending determination of Civil Appeal No. 144 of 2015 and the order was granted by Kiryabwire, JA who ordered that "the status quo be maintained until further orders of this Court." It is that order, which the respondents are alleged to have acted in contempt of.

According to the applicant's affidavit in support, in 2018, some of the respondents filed a suit in the High Court at Mbarara, vide Civil Suit No. 33 of 2018 in which they sought, inter alia for orders revoking the letters of administration of the deceased's estate granted to the applicant. The applicant claims that the suit touches on matters which are substantially similar to those raised in Civil Appeal No. 144 of 2015, which is already pending before this Court. The applicant asks this Court to stay the proceedings in that suit in this application.

Representation.

At the hearing, Mr. Justine Semuyaba and Mr. Lamweno Nasser, both learned counsel jointly appeared for the applicant. Mr. Emmanuel Tumwebaze and Mr. Ben Muhumuza, both learned counsel jointly appeared for the 2nd and 3rd respondents. The 1st respondent was in Court but her counsel was absent. Neither the 5th nor the 6th respondent was present in Court. The Court, however, considered that the 5th and 6th respondents had

not been properly served and ordered fresh service of court process upon them.

The Court gave the parties a schedule for filing written submissions, after the fresh service had been made. The schedule was adhered to and the written submissions filed for the parties have been considered in this ruling.

Applicant's submissions.

Counsel for the applicant contended that all the respondents have acted in contempt of Court and ought to be punished. He cited the authority of **Stanbic Bank (U) Ltd vs. Jacobsen Uganda Power Plant Company, High Court Miscellaneous Application No. 0042 of 2010** where it was held that civil contempt occurs when there is disobedience of a judgment or order of Court involving private injury. Counsel also cited the authority of **Hon. Sitenda Sebalu vs. The Secretary General of the East African Community Reference No. 8 of 2012 (East African Court of Justice)** where it was held that four conditions must be proved for contempt of Court to be said to exist, namely; 1) the existence of a lawful order; 2) the potential contemnor's knowledge of the order; 3) the potential contemnor's ability to comply; and 4) the potential contemnor's failure to comply.

As to whether there was an existing court order in the present case, counsel made reference to the order of interim stay of execution passed by this Court vide Miscellaneous Application No. 311 of 2015 (the relevant order), which counsel contended was obtained by the 1st respondent on behalf of all the other respondents; and where this Court ordered that "the status quo be maintained until further orders of the Court." Counsel submitted that the said order has never been set aside or varied, a fact which is acknowledged by the respondents.

Counsel submitted that the respondents have full knowledge of the relevant order; hence satisfying the requirement that the potential contemnor must have had knowledge of the order. Counsel further submitted that the respondents as the potential contemnors had the ability to comply with the relevant order and this requirement too was satisfied.


As to whether the respondents as the potential contemnors have failed to comply with the relevant order, counsel submitted that they indeed have. Counsel contended that the respondents have acted with impunity in disregarding the Court's orders. The respondents, although beneficiaries of the estate of the Haji Jaffar Sentamu (the relevant estate) have no authority to distribute the assets in that estate, which is the responsibility of the applicant who is the administrator of the relevant estate. Counsel cited several authorities wherein it has been held to the effect that a party with knowledge of a Court order is not allowed to disobey it, including: **Hadkinson vs. Hadkinson [1952] 2 ALLER 567; Chuck vs. Cremer (1 Coop Temp Cott 342); Wildlife Lodges vs. Country Council of Narok and Another [2005] EA 344; and Kyaggwe Coffee Curing Estates Ltd vs. Emmanuel Lukwajju, Court of Appeal Civil Application No. 327 of 2014.** Counsel thus prayed Court to find that the respondents acted in contempt of the relevant order.

On the available remedies for the respondents' acts of contempt, counsel prayed that this Court makes an order for detention of the respondents in civil prison as was done in **Megha Industries (U) Ltd vs. Comform Uganda Limited, High Court Miscellaneous Application No. 21 of 2014; Monica Mirembe Kakooza vs. Kalinza Margret, High Court Miscellaneous Application No. 43 of 2013 and; Re Contempt of Dougherty 429, Michigan 81.** Counsel further contended that the applicant has suffered damages due to the respondent's acts of contempt, and is thus entitled to an award of exemplary damages on the principles set out in the authority of **Esso Standard (U) Ltd vs. Semu Amanu Opio, Supreme Court Civil Appeal No. 3 of 1993** citing the authority of **Cassell Co. Ltd vs. Broome [1972] 1 ALLER 801;** the exemplary damages will be aimed at punishing the respondents. According to counsel, in the present case, ordering each of the respondents to pay damages of 20,000,000/= totaling to Ug. Shs. 120,000,000/= will be sufficient as compensation for the harassment, disturbance and annoyance occasioned on him by the respondent's acts of contempt.

Counsel further prayed that this Court imposes a fine against the respondents for their alleged acts of contempt as was done by the High Court in the authority of **Stanbic Bank (U) Ltd and Another vs. The Commissioner General, URA, Miscellaneous Application No. 0042 of 2010** where the Court ordered the respondent who had committed acts of contempt of court to pay a fine of Ug. Shs. 100,000,000/= to the Registrar of the Court. In the instant case, counsel prayed that each respondent pays a fine of Ug. Shs. 20,000,000/= in order to purge the stated acts of contempt.

1st, 2nd, 3rd, 5th and 6th respondents' submissions.

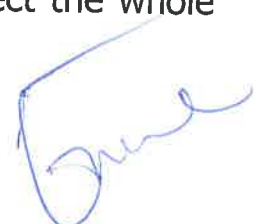
Counsel for the respondents contended that the present application amounts to abuse of court process and ought to be dismissed by this Court. He relied on the authority of **Attorney General and Another vs. James Mark Kamoga and Another, Supreme Court Civil Appeal No. 8 of 2004** where the Supreme Court making reference to the **Black's Law Dictionary, 6th Edition** held that abuse of legal process occurs when the party employs court process for some unlawful object, not the purpose which it is intended by law to effect; in other words, a perversion of it. Counsel contended that the present application is a perversion of the court process given that the relevant court order, which the applicant claims to have been disobeyed by the respondents concerns a separate piece of land (FHRV 1217 Folio 5 Plot 44 Block 10, land at Nyakajojo, Ntundu, Kikagate, Insigiro District) and not Plot 12 Block 2 land at Rwakiruli, the suit land. Counsel further submitted that in any case, the relevant order has been vacated and does not exist. Thus, in bringing the present application with knowledge of the above facts, and with knowledge that the application has no merit, the applicant and his counsel have embarked on court process for an unlawful purpose. The applicant's acts are intended to waste court's time and have dragged two police officers (the 5th and 6th respondents) who should be serving the nation into the present action. For the above reason counsel prayed that this Court finds that the present application amounts to abuse of Court process and dismisses it with costs to the respondents.



Further, counsel contended that the respective affidavits of Mr. Kaddu Ssentamu and Mr. Kayiira Issa deponed in support of the application (the impugned affidavits) are incompetent, and ought to be expunged from the Court record given that they were filed after the hearing of the application and without leave of the Court having been obtained. Citing the authority of **Mutembuli Yusuf vs. Nagwomu Moses and Another, Election Petition Appeal No. 43 of 2016 (Court of Appeal)**, counsel submitted that the general rule is that in any matter, pleadings must come to an end at some point after which additional pleadings may only be filed with leave of Court; a rule which has been offended by the filing of the impugned affidavits without obtaining leave. Counsel further submitted, without furnishing the court with any authority for the rule, that the impugned affidavits offend the rule which bars a non-party to an application from filing an affidavit in support thereof. For those reasons, counsel prayed this Court to have the impugned affidavits expunged from the court record with costs.

On the merits of the present application, counsel submitted that the application has no merit and is being used by the applicant to confuse court to believe that the relevant order concerns the suit land. Counsel reiterated that the relevant order with which the application is concerned relates to land comprised in FHRV 1217 folio 5 Plot 44 Block 10 land at Nyakayojo, Ntundu, Kikagata, Isingiro District and not land comprised in Plot 12 Block 2 land at Rwakiruli, Isingiro (the suit land) on which the applicant bases the contempt application. Further still, counsel contended that the relevant estate had been substantially distributed to the over 40 beneficiaries and as such the relevant order obtained in a suit obtained by only 3 of the said beneficiaries could not have been intended to cover the entire estate.

It was counsel's further contention that in passing the relevant order, this Court cannot have intended to issue an order affecting the entire estate without ascertaining the Court ascertaining its status. Counsel pointed out that the relevant Court order stated that "the status quo be maintained until further order of court." and submitted that not only was the relevant order ambiguous, but, having been issued in 2015, it could not affect the whole



estate which had been distributed earlier in 1989. Counsel cited the authority of **Angelina Lamunu Langoya vs. Olweny George William, High Court Miscellaneous Application No. 30 of 2019** wherein Mubiru, J. citing the Kenyan case of **Alken Connections Ltd vs. Safaricom Ltd, High Court Miscellaneous Application No. 450 of 2012** held that court will only punish a person for contempt of an order if the terms of the order are clear and unambiguous. The slightest ambiguity to the order can invalidate the standard of proof, which is the criminal standard. Counsel contended that if the relevant order was intended to affect the whole estate, it would be ambiguous and difficult to enforce and prayed that this Court does not enforce it in this contempt application. Counsel prayed that this Court finds that a reasonable person would believe that the relevant order related to the land at Kikagate, Insingiro and not to the other assets in the estate of the late Jaffer Sentamu like the suit land. Counsel also prayed that this Court considers the fact that the relevant order was vacated in a subsequent judgment of this Court in finding against the applicant.

In conclusion, counsel prayed that this Court dismisses the application with costs.

Applicant's submissions in rejoinder.

Counsel for the applicant submitted that contrary to counsel for the respondents' submissions, the impugned affidavits of Kayiira Issa and Kaddu Sentamu (the deponents) are competent for the following reasons. First, the deponents of the affidavits are beneficiaries of the estate of the deceased, who deserve audience in this matter which concerns the deceased's estate. Second, the deponents were parties to the suit in which the relevant order was granted have sufficient interest in the present matter. Third, the deponents, being parties to Civil Appeal No. 144 of 2015, are entitled to challenge the proceedings lodged by some of the respondents in the High Court of Uganda at Mbarara in Civil Suit No. 33 of 2018 the subject of the stay of proceedings application. Fourth, the deponents are competent to clarify the scope of the relevant order and finally, given that the present



application arises from Civil Application No. 311 of 2015 in which the relevant order was made, the forms part of the record of appeal in Civil Appeal No. 144 of 2015. This supports the deponents' involvement in this application given that they are parties to that appeal. Counsel invited the Court to find the deponent's affidavits are relevant to the application; and to maintain them on the record.

Further, counsel submitted that the relevant order concerned the entire estate of the deceased, including the suit land, contrary to the respondents' contention otherwise. Counsel contended that the scope of the relevant order could be discerned from the application from which it was made which concerned the whole of the deceased's estate as discernable from the Notice of Motion in Miscellaneous Application No. 311 of 2015 as well as the affidavits in support thereof. Counsel urged this Court to consider all the relevant matters and find that the relevant order was not ambiguous as contended by the respondents.

In all other respects, counsel reiterated the earlier submissions.

Resolution of the Application.

I have carefully studied the Court record comprising of the Notice of Motion application, the affidavits in support of the application, and the affidavits in reply to the application. I have also considered the submissions for both sides, the law and authorities cited in those submissions, as well as those not cited which are relevant to the determination of this application.

Before going into the merits of the application, I will first consider a crucial point of law not addressed by the parties to this application, viz: **that an application for stay of proceedings cannot be entertained before a Single Justice of this Court.** I note that a Single Justice of this Court has powers, in appropriate cases, to entertain applications brought before the Court. However, the powers of a Single Justice do not extend to entertaining an application for stay of proceedings, which can only be handled by the full Court. **(See Rule 53 (2) (b) of the Judicature (Court of Appeal Rules), Directions S.I 13-10).** Thus, the applicant's application for stay of the

proceedings allegedly commenced by some of the respondents in the High Court of Mbarara vide Civil Suit No. 33 of 2018, is improperly before this Court in the present proceedings. I cannot entertain it.

Contempt of Court.

The other component of the application is that the applicant wants this Court to find each of the 1st, 2nd, 3rd, 5th and 6th respondents in contempt of court for disobeying this Court's order made in Civil Application No. 311 of 2015, and to punish the said respondents accordingly.

The principles relating to contempt of court have been articulated in several authorities cited by the applicant, such as; **Re Ivan Samuel Sebaduka; Contempt Proceedings arising from Presidential Election Petition No. 01 of 2020 (Supreme Court of Uganda); Stanbic Bank (U) Ltd and Another vs. Commissioner General Uganda Revenue Authority, High Court Miscellaneous Application No. 0042 of 2010; Hon. Sitenda Sebalu vs. The Secretary General of the East African Community, Reference No. 8 of 2012 (East African Court of Justice)**. According to the **Halsbury's Laws of England Contempt of Court (Volume 9(1) (Reissue))1:**

"Contempt of court may be classified as either (1) criminal contempt, consisting of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced; or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgments, orders or other process of the court, and involving a private injury."

The distinction between civil and criminal contempt has been drawn on the grounds that criminal contempt of court has a "public element" to it while civil contempt of court does not. In **Poje v. Attorney General for British Columbia, [1953] 1 S.C.R. 516**, per Kellock, J. of the Supreme Court of Canada, it was stated that:

"In my opinion the statement in Oswald the 3rd edition at page 36 correctly distinguishes between civil and criminal contempts..."



"And generally the distinction between contempts criminal and not criminal seems to be that contempts which tend to bring the administration of justice into scorn or which tend to interfere with the due course of justice are criminal in their nature but that contempt in disregarding orders or judgments of Civil Court or in not doing something ordered to be done in cause is not criminal in its nature. In other words, where contempt involves public injury or offence it is criminal in its nature and the proper remedy is committal but where the contempt involves private injury only it is not criminal in its nature."

In Carey vs. Laiken [2015] 2 R.C.S 79, Cromwell, J. of the Supreme Court of Canada, stated that:

"The common law has developed to recognize two forms of contempt of court: criminal contempt and civil contempt. The distinction, which the parties to this appeal accept, rests on the element of public defiance accompanying criminal contempt: see, e.g., United Nurses, at p. 931; Poje v. Attorney General for British Columbia, [1953] 1 S.C.R. 516, at p. 522. With civil contempt, where there is no element of public defiance..."

In the **Re Sebaduka case (supra)**, the Supreme Court of Uganda, endorsed the approach referred to above, when it handled contempt proceedings, involving the contemnor committing acts which interfered with the administration of justice, such as making insulting comments to the Justices of the Supreme Court in the face of the Court, as criminal contempt. Applying the above approach to this case, I find that the contempt allegations made by the applicant against the 1st, 2nd, 3rd, 5th and 6th respondents are civil in nature. This in my view, is because the dispute between the parties is largely a private one between the parties and has no real public interest.

What constitutes civil contempt was discussed in the **Carey case (supra)**, where the Court endorsed the definition that "civil contempt consists of the intentional doing of an act which is in fact prohibited by the order" The Court further held that three elements must be proved before a finding of civil contempt can be made, namely:

"First, the order alleged to have been breached "must state clearly and unequivocally what should and should not be done"



Second, the party alleged to have breached the order must have had actual knowledge of it.

Third, the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels."

It must be stated that each of the elements of civil contempt must be proved to the standard applied in criminal cases, which is beyond reasonable doubt. I will therefore proceed to discuss the elements as they apply to the present application below.

The first element, is the requirement that the order which has allegedly been breached must state clearly and unequivocally, what should and should not be done. In the **Carey case (supra)**, it was held that "this requirement of clarity ensures that a party will not be found in contempt where an order is unclear". It was further held that "an order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning"

The relevant order in the present case is attached as "Annexure E" to the applicant's affidavit in support of the application and is expressed as follows:

"INTERIM ORDER

This matter coming up for final disposal on the 16th day of December, 2015, before the Hon. Mr. Justice Geoffrey Kiryabwire in the presence of both applicants, Mr. Obiro Ekirapa Isaac, Counsel for the applicants, Mr. Lumweno for the 1st respondent, Mr. I. Semuyaba for the 2nd respondent, and Mr. H. Anike for the 3rd respondent;

IT IS HEREBY ORDERED that:

1. The status quo be maintained until further orders of court.

2. Costs of this application be in the cause.

Dated at Kampala this 9th day of December, 2016."

As can be clearly seen, the language in which the relevant order was couched is ambiguous and lacking in clarity. The order merely stated that the parties must "maintain the status quo". What that status quo was, is not clear from

reading the relevant order. Perhaps, the answer may have been obtained on reading the ruling from which the order was extracted, but that ruling has not been presented to Court by the applicant. The applicant, claims that the "status quo" referred to in the relevant order concerned the entire estate of the deceased, including the suit land, and the order was meant to forbid any dealing in the said estate after it was passed. This position is not supported by the order itself, and the applicant wants this Court to rely on the Notice of Motion Application in Miscellaneous Application No. 311 of 2015, from which the order arose in order to give context to the relevant order. I reject the applicant's position. In my view, when construing an order for purposes of contempt proceedings, only the wording of the order may be considered. Thus, as was stated in the Carey case (*supra*), where the wording of an order "is missing an essential detail about where, when or to whom it applies", such an order can rightly be stated to be lacking in clarity. I accept the submissions of counsel for the respondent to the effect that the relevant order is ambiguous given that it does not specify what acts were forbidden by it and to what property of the deceased's estate it applied. The present application is mainly concerned with the suit land, described as Block 2 Plot 12, land at Rwakiruli in Isingiro District, which the applicant alleges to still be property of the deceased's estate. However, it cannot be stated from reading the relevant order, that it concerns the suit land at all.

All in all, in view of the above discussion, I find that the application does not satisfy the first element of civil contempt because the relevant order on which the application is based is ambiguous and lacking in clarity. Thus the respondents cannot be found in contempt of such an order. This finding renders it unnecessary to discuss the other elements of civil contempt. I would accordingly dismiss the applicant's application. The above analysis is sufficient to dispose of this application. Therefore, I express no opinion on the competence and/or legality of the respective affidavits of Kayiira Issa and Kaddu Sentamu deposed in support of the application. I also express no opinion on whether the present application is an abuse of court process as contended for the respondents.

A handwritten signature in dark ink, appearing to be a stylized 'B' followed by a flourish.

In the result, this application is dismissed with costs to the respondents.

It is so ordered.

Dated at Kampala this 8th day of Feb 2020.



Elizabeth Musoke

Justice of Appeal.