

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

Miscellaneous Application 0387 of 2020

**[Arising from Miscellaneous Application No. 346 of 2020; Miscellaneous
Application No. 345 of 2020 and Miscellaneous Cause No. 166 of 2020]**

SIIKU MUZAMILAPPLICANT

VERSUS

- 1. FRED BAMWESIGYE [Ag. Director General of CAA]**
- 2. EFRANCE MUSIIMENTA MBAGAYA [Ag. Director Human
Resource & Administration]**
- 3. GILBERT OBWOR [Ag. Manager, Human Resource]**
- 4. KATUZEYO BOAZ [Commandant, Aviation Police]**
- 5. UGANDA CIVIL AVIATION AUTHORITYRESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an Application for Contempt of Court Orders against the Respondents herein vide Misc. Cause No. 166 of 2020. On the 29th June, 2020, the respondents constituted an organ known as EXCO, and held a secondary hearing against the applicant in his absence and thereafter purportedly made a decision to punish him by way of summary dismissal. The aforesaid decision was delivered to the applicant at his home on 3rd

July, 2020 by a letter from the director Human Resource and Administration dated 1st July, 2020.

That on the 14th July 2020, court issued an interim order staying implementation of the decision that purportedly summarily dismissed the applicant until the determination of the said application pursuant to Article 82.3 of the Collective Bargaining Agreement, revised December, 2013.

The Application was heard and disposed of inter-party in favor of the Applicant wherein the following orders were issued;

In the interim, this court stays the implementation of a punishment imposed on the employee (Applicant) pending the determination of the application for an interim order of injunction No. 346 of 2020 inter-parties in accordance with Article 82.3 of the Collective Bargaining Agreement.

The order above was to be complied with by Uganda Civil Aviation Authority through the Ag. Director of CAA and Ag. Director Human Resource. The said order was not complied with hence this application. The Applicant thus sought the following to be determined to support a finding for contempt;

- 1. Whether the Respondents are in Contempt of this Honorable Court's order of 14th July, 2020?*
- 2. The Respondents be condemned to a fine of Ugx. 500,000,000/= jointly and severally for contempt of Court.*
- 3. The Respondents compensate the applicant with Ugx. 500,000,000/= as general damages for the loss and suffering caused as a result of their Contempt of Court Orders.*
- 4. The Respondent be ordered to compensate the applicant with Ugx. 750,000,000/= as exemplary, punitive and aggravated damages for the imperiousness and /or impunity exhibited in the disobedience of Court orders.*

5. The 1st, 2nd and 3rd Respondents be condemned to Civil prison for Contempt of Court orders.

6. That the criminal charges of fraud under CRB 125/2020 at Aviation police, Entebbe International Airport or any other charges arising from the Respondents contemptuous conduct be quashed and set aside by this court.

7. That costs of this application be borne by the Respondents.

The Applicant filed an affidavit in support of the Application dated 22nd July, 2020. The Respondents filed their affidavits in reply on the 12th day of August, 2020.

The 5th Respondent in specific reply to the application stated in his affidavit in reply;

1. That the order given by court could not be complied with because;
 - (a) That pursuant to Article 82 of the Collective Bargaining Agreement(CBA), the Applicant had an option of appealing his summary dismissal to the 1st Respondent which would entitle him to stay implementation of his dismissal pursuant Article 82.3 of the CBA. The Applicant did not lodge any such appeal.
2. That on 10th July 2020, the Applicant filed an application seeking an interim order to restrain the 5th Respondent from implementing any disciplinary action taken against him until determination of the Temporary injunction Application vide Misc. Cause No. 345 of 2020.
3. That on the 14th July 2020, the court issued an order in the following terms;

“in the interim, this court stays implementation of a punishment imposed on the employee (Applicant) pending the determination of the application for an interim Order of

injunction No. 346 of 2020 inter-parties in accordance with Article 82.3 of the Collective Bargaining Agreement”

4. That by the date of the Order of 14th July 2020, the Applicant had ceased being an employee of the 5th Respondent for all intents and purposes and was no longer reporting to work. The status quo sought to be maintained by the said Order had therefore been overtaken by events;
5. That implementing the Court Order of 14th July 2020 by having the Applicant returning to work would result into altering the status quo which would defeat the spirit of granting an interim Order.

Counsel were directed to file written submissions, which I had the occasion of reading and consider in the determination of this application.

The Applicant was represented by *Mr. Rashid Kibuuka* and the Respondent represented by *Mr. Mathias Ssekatawa*

There are two issues arising that is;

1. *Whether the Respondents are in contempt of Court Order dated 14th July 2020?*
2. *What remedies are available to the Applicant?*

Submissions

The applicant’s counsel cited the case of **Ekau David v. Dr. Jane Ruth Aceng & 2 others, Misc Application No. 746 of 2018** wherein it was stated that the rationale of sanctions behind Contempt of court orders is;” *to safe guard the rule of Law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge...*”

Further the cited case laid down the following principles have to be established:-

- Existence of a lawful order
- Potential contemnor's knowledge of the order
- Potential contemnor's failure to comply, that is, disobedience of the order.

Counsel for the applicant submitted that it is not in dispute that this court issued an interim order on the 14th July 2020 and marked as Annexure "A" under paragraph 6 of the Applicant's affidavit in support of the application.

Counsel submitted that the Respondents knowledge of the lawful order and their disobedience of the same were confirmed by the failure to comply with the order and the agreed that implementing the Court Order of 14th July 2020 by having the Applicant returning to work would result into altering the status quo which would defeat the spirit of granting an interim Order.

Counsel further submitted that having confirmed the existence of the court order as per paragraph 6 of the Applicant's affidavit that, it was issued in the presence of the lawyers of the Respondents through a forwarding letter attached on the affidavit as Annexure B. The order was also extracted and served upon both said respondents.

Counsel further noted that the 1st, 2nd, and 3rd Respondents do not deny knowledge of the existence of a lawful order but rather an attempt to disobey court orders as per paragraph 8 and 9 of the 1st, 2nd, and 3rd Respondents affidavits. As for the 4th respondent, having known about the court order and acting as an enforcement machinery of the respondents, claims to having received a complaint on the same date of the 14th day of July 2020 according to paragraph 4 of his affidavit.

Counsel in his submission argued that the complaint regarding the applicant's involvement in a criminal matter of fraud or forgery is made to the 4th respondents on 14th July, 2020 when the applicant obtained the court order against the 1st and 5th respondents in the presence of their lawyers. Counsel noted that it is absurd to note that 4th respondents affidavits was

drawn by the same lawyers of the 1st, 2nd, 3rd, and 5th, respondents whose representation was in court on the day the interim order was issued.

Counsel brought to the knowledge of court that the 5th Respondent, Manager Legal Services under paragraph 10 and 11 of his affidavit, does not dispute knowledge of the existence of the court order rather explains the impracticability of it.

Counsel for the applicant cited the case of **Hadkinson v. Hadkinson [1952] All E.R. 567**, quoted in the case of **Kenya Tea grown association v. Francis Atwoki & 5 others [2012] eKLR**, court held that *"of what use are court orders if those to whom they are directed look at them with disdain?"*

Counsel further noted that the essence of willful disobedience of court is criminally punishable and also attracts civil sanctions in form of exemplary damages and fine as with in the case of **Clarke and others v. Chadburn & others [1985] 1 All E.R.(PC)211**

In remembrance, counsel notified court of the importance of complying with court orders as per the authorities decided in this court in lead as the case of **Stanbic Bank (U) Ltd v. the Commissioner, Uganda Revenue authority Misc. Application No. 0042 of 2020** and many others.

Counsel for the respondents cited the case of **Kasturilal Laroya v. Mityana Staple Cotton Co. Ltd [1958] E.A 194**, court held that *"in proceeding of this nature it is necessary to consider whether there has in fact, been such prejudice to the interests of the decree-holder, or such obstruction to the course of justice as to make committal for contempt the proper remedy.*

The judicial officer should be most careful to see the underlying case cannot be fairly prosecuted to a hearing unless the alleged contempt is first dealt with, i.e whether there is no other appropriate remedy by the applicant, and

The mere fact that there had been disobedience to an order of the court does not in itself amount to contempt; all circumstances of the case should be considered.

The order in issue sought to prevent an incident that had already happened as set out in paragraph 10 of the affidavit of UCCA in response to this application. This being the case, cannot be rightfully contended that the applicant's interests were prejudiced.

For the orders of quashing of the decision to summarily dismiss, the main suit fairly be tried before hearing the alleged contempt application and if disposed of in the applicant's, the court could order that the applicant be allowed to return to work and compensated for any alleged injury suffered, counsel then submitted that the main suit offers an appropriate remedy and renders the contempt application unnecessary.

A review of the totality of the facts in this case demonstrates that the respondents' actions do not amount to contempt of court. The status quo had changed prior to grant of the injunction order and an attempt to implement it by having the Applicant return to work would result in a positive order altering the status quo and defeating the spirit of granting injunction orders. He invited this Honorable court to find that the facts of the instant case do not amount to contempt.

Counsel for the respondent argued that the order of 14th July 2020 was not clear and unambiguous, citing **paragraph 472 of the Halsbury's Laws of England, Volume 9(1) at page 291** stating that *"...the Court will only punish as a contempt a breach on injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms, and that the breach of injunction has been proved beyond reasonable doubt"*

He further relied on the case of **Peace Isingoma v. MGS International (U) LTD (H.C.M.A – 0761 of 2006)** on whether court should make an order to reverse the state of occupation which existed and whereat the Respondent was in management; **Justice Lamech Mukasa** held that;

“...by the time this application came before me, a temporary injunction was no longer a remedy available to the applicant since the status quo had already been disturbed through the applicant being forced out of the station and the operation thereof handed over to a third party...in conclusion, I find that the applicant has already been forced out of the station and operation thereof granted to a third party. The status quo has already been disturbed. The applicants injury resulting from any forceful eviction or breach of the agreement is likely to be adequately compensated by damages... in the premises the application fails, and is dismissed with costs.”

Counsel alluded that just like in the Peace Isingoma case (supra) an injunction was no longer remedy available to the applicant since the status quo had already been disturbed through the applicant being denied access to UCAA premises, and invited court to dismiss the application on this basis alone.

Counsel for the respondent invited court to be persuaded by the reasoning of court in the cases of **Assimwe Nkamushaba v. Makerere University & 5 others; Misc. Application No. 709 & 540 of 2018 and Edith Nakandi v. Umar Katongole; HCMA No. 252 of 2017** that since there was no Court Order on the 29th June 2020 when the applicant was dismissed, the respondents were not in contempt of any court order.

Counsel also highlighted that the Applicant's arrest was in furtherance of an ongoing investigation of an offense of fraud contrary to section 113 of the Penal Code Act. The 4th Respondent had just cause and reasonable grounds to arrest of the applicant on grounds of fraud, thus cannot be reasonable cause to arrest the applicant and cannot be sustained that his arrest was an extension of the contempt of court and demonstration of “who has the power.”

Counsel prayed that the court finds that the respondents were not in contempt of court order, as alleged by the applicant

Analysis

Contempt of Court as per the **Black's Law dictionary 9th Edition** is defined as *"Conduct that defies the authority or dignity of a Court, because such conduct interferes with administration of justice if is punishable usually by fine or imprisonment"*

I will still emphasize my statement in the case of **Ekau David v. Dr. Jane Ruth Aceng & 2 others, Misc Application No. 746 of 2018** that the reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with the court order in his hands must be assured that the other order will be obeyed by those to whom it is directed.

This court further noted, that a court order is not a mere suggestion or an opinion or a point of view. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this court will not be the one to open that door. If one is dissatisfied with an order of court, the avenues for challenging it are also set out in the law and defiance is not an option or one of the ways to show discontent with a lawful court order.

Both counsel cited the case of **Kenya Tea grown association v. Francis Atwoki & 5 others [2012] eKLR**, in which court observed that; *"I need not cite authority for the proposition that it is high importance that orders of the courts should be obeyed, wilful disobedience to an order of court is punishable as a contempt of court, and feel no doubt that such disobedience may properly be described as being illegal... even if the defendants thought that the injunction was improperly obtained or too wide in its terms , that provides no excuse for disobeying it. The remedy is to vary or discharge it"*

It is in this regard that disobedience of court orders and or summons lead to anarchy and worth being punished.

I find that the respondents' justification for not complying with the order of this court by way of claiming ignorance of its existence and claims that it was already overtaken by events, is untenable, baseless and devoid of merit.

This Honourable court issued the order of 14th July 2020, however the respondent told court that the applicant had ceased being an employee of UCAA for all intents and purposes and was no longer reporting to work, thus UCAA was unable to stay imposition of the disciplinary punishment as ordered by court because punishment had already been implemented on 29th June 2020. The status quo sought to be maintained had already been overtaken by events. Their actions amounted to contempt of court.

The respondents cannot therefore hide behind the justification of non-existence of the order and claims that the order was already overtaken by events purges themselves of contempt. In **Housing Finance Bank Ltd & Another v. Edward Musisi (supra) at page 11**, court held that; *"the principal of law is that the whole purpose of litigation as a process of Judicial administration is lost if orders issued by court through its set judicial process, in the normal functioning of the courts; are not complied with in full by those targeted and/or called upon to give due compliance."*

As earlier on stated in the Ekau case, it would be futile for a court to issue orders that are not effective owing to the parties' disobedience of such orders; and yet the court continues to issue such other orders on top of those already issued but disobeyed.

The respondents were required to comply with the order of court that "in the interim, this court stays the implementation of a punishment imposed on the employee (Applicant) pending the determination of the application for an interim order of injunction No.346 of 2020 inter-parties in accordance with Article 82.3 of the Collection Bargaining Agreement. The said agreement barred any implementation of any punishment before the expiry of 15 days or until determination of the appeal. This implies that any

decision taken by the 5th respondent could not be implemented before the expiry of the 15 days and it is intended to facilitate an appeal process to an aggrieved party.

The respondents in an effort to justify their contempt purportedly lodged a complaint to police and caused the arrest of the applicant in order to restrain him from continuing to work or accessing his office. In addition, the respondents' further put notices of the applicant to be denied access after a few days. This highhanded nature of the respondents should be checked and public offices should never be run or managed like our private enterprises or homes. Public power is exercised on behalf of the people and any actions of the respondents that are clothed with blatant abuse of authority should be abhorred.

The respondent should have applied to court to review or vary its orders if at all they genuinely thought that the order was contrary to known principles of issuance of interim orders instead of trying to show 'might' to court. Court orders ought to be obeyed however 'stupid' until set aside or varied by court in order to preserve the authority of court. In absence of the law of contempt, court's role in setting the standards of justice would be severely compromised to the detriment of society it serves. See *Attorney-General v Times Newspapers Ltd [1974] AC 273*

Remedies

The Applicant prayed for general damages of a sum of 500,000,000/=, exemplary/punitive damages of sum 750,000,000/=. The Applicant also seeks that the criminal charges of fraud under CRB 125/2020 at Aviation Police Entebbe International Airport or any other charges arising from the respondents' contemptuous conduct be quashed and set aside by this court and in addition seeks that the respondents be fined 500,000,000/=.

The applicant was forcefully removed from office amidst protests by the applicant that there was a lawful order directing him to be in office. It is therefore appropriate in the circumstances of this case for the top officers directly responsible (*Acting Director General and Acting Director Human*

Resource and Administration) to be held directly accountable for flagrant disobedience of the court order. The 1st and 2nd Respondents are ordered to pay a fine since the disobedience was intentional and deliberate without any legal justification.

The 3rd and 4th respondents are cautioned against taking the instructions without applying their mind and abetting contemptuous conduct.

This court is obliged to give punitive sanctions to ensure that the 1st and 2nd respondents obliges to principles of rule of law and constitutionalism.

In the case of **Barbra Nambi v. Raymond Lwanga; Misc. Application No.213 of 2017**, as cited by counsel for the applicant, court held that: *"Court orders have to be obeyed and to indicate to contemnors that there are consequences for disobedience of court orders"*

In addition the purpose of the fine is to send a firm message to the Respondents and other would be contemnors that, court orders are not issued in vain and ought to be respected and obeyed as long as they remain in force as demonstrated in the case of **Stanbic Bank Ltd & Anor v. The commissioner General URA MA 42 of 2010**, where court imposed 100,000,000/= as sufficient punishment to purge the contempt in that matter.

The 1st and 2nd Respondent are each directed to pay Shs.15,000,000 as a fine.

The Applicant has been put to unnecessary embarrassment due to the highhanded conduct of the respondents. It is only fair that this court awards the applicant punitive damages of 10,000,000/= each from both 1st and 2nd respondent.

The application is allowed with costs.

I so order.

SSEKAANA MUSA

JUDGE

19th/04/2021