

ARISING FROM CIVIL SUIT NOS. 48 OF 2020, 22 OF 2021, 298 OF 2021, 75 OF 2019 AND MISCELLANEOUS APPLICATIONS NOS. 135 OF 2020, 023 OF 2021, 71 OF 2021 AND 591 OF 2021

VERSUS

1. MITYANA FARM GROUP ENTERPRISES LTD
alias LAKE WAMALA FARM LTD
2. ABID ALAM
3. THE ATTORNEY GENERAL
4. AZIZ HARTY
5. PHOEBE NAMULINDWA
6. OCHOM EDWARD
7. ERASMUS TWARUHUKA
8. ISMAIL NASIF RESPONDENTS

BEFORE: HON JUSTICE DR. FLAVIAN ZEJJA

RULING

The Applicant herein brought the instant application by way of Notice of Motion under **Sections 33 and 98** of the **Civil Procedure Act Cap 71, Order LII rules 1 and 3** of the **Civil Procedure Rules SI 71-1**, seeking for orders that:

1. The Respondents be held in contempt of court orders issued in Miscellaneous Applications No. 37 of 2021, No. 023 of 2021 and No. 133 of 2021 (All arising from Civil Suit No. 48 of 2020), Miscellaneous Application No. 71 of 2021 (Arising from Civil Suit No. 22 of 2021) and

Miscellaneous Application No. 591 of 2021 (Arising from Civil Suit No. 298 of 2021).

2. The 1st, 4th, 5th, 6th, 7th and 8th respondents be ordered to pay a fine UGX. 500,00,000/= each to the government of Uganda and general damages of UGX. 500,000,000/= each to the applicant for the contempt of court orders.
3. The 2nd respondent be ordered to pay a fine of UGX. 1,000,000,000/= to the Government of Uganda and general damages of UGX. 1,000,000,000/= to the applicant for the further and continuous contempt of court orders.
4. The 3rd respondent be ordered to pay general damages of UGX. 500,000,000/= to the applicant for the contempt of court orders.
5. If any of the 1st, 2nd, 4th, 5th, 6th, 7th or 8th respondents fails to pay the fine within fourteen days, such respondent should be committed to civil prison for six months.
6. The respondents be ordered to maintain the status quo of the suit land as previously determined by court in Miscellaneous Applications No. 135 of 2020, No. 37 of 2021, No. 023 of 2021 and No. 133 of 2021 (All arising from Civil Suit No. 48 of 2020), Miscellaneous Application No. 71 of 2021 (Arising from Civil Suit No. 22 of 2021) and Miscellaneous Application No. 591 of 2021 (Arising from Civil Suit No. 298 of 2021) and in particular the status quo to be clarified and maintained is that;
 - i) The applicant should not be evicted from the 3 and a half square miles which is part of land comprised in FRV HQT 130 Folio 7, Singo Block 308 Plot 143 at Lwamasanga- Bukompe and Singo Block 308 Plot 142 which the applicant has occupied since September 2020 till the disposal of the above suits.
 - ii) The applicant's farming activities on the said 3 and a half square miles including cultivation, opening and maintaining

water wells, dams and provision of all necessary equipment and/or infrastructure for cultivation, cows and workers on the suit land so occupied and the land occupied by the applicant's cattle should not be interfered with pending the disposal of the above suits.

- iii) Costs of this application be paid by the respondent.
- 7. Premised on the finding in 1 above, the Respondents be condemned to payment of a sum of UGX. 400,000,000 (Uganda Shillings Four hundred million) each to atone for the impugned contempt of court.
- 8. In the alternative to the relief sought in 2 above, the 1st and 2nd Respondents be committed to civil prison for a period not exceeding (6) six months to crack a whip against them for their egregious and wanton contempt of court.
- 9. Costs of the application be provided for

The grounds of the application are set out in the affidavit in support deponed by **Eria Mubiru**, the applicant's lawful attorney and operations chief officer but briefly that;

- 1. The applicant filed Civil Suit No. 48 of 2020 which is premised on it having interest in the suit land as purchasers who took over physical possession since September 2020 and started farming activities thereon and rearing cattle and goats.
- 2. That the High Court has issued several orders maintaining the status quo by allowing the applicant to continue in possession and use of the suit land but the 1st and 2nd respondents violated the said orders and attempted to evict the applicant and stop its workers from undertaking routine farm work like cultivation of pasture, fencing the



grazing area, construction of pasture, construction valley dams among others.

3. On the 20th December 2021 the High Court vide MA-133-2021 (Arising from MA-23-2021 AND CS-48-2021 found the 1st respondent guilty of contempt of orders issued in MA-23-2021 and was condemned to payment of UGX. 300,000,000/=.
4. That security apparatus working for the 1st and 2nd respondents blatantly disobeyed the said orders.
5. That in January 2022 all the parties were summoned to a meeting at the offices of the Inspector General of Police where the respondents' representatives insisted that farming activities on the applicant's land must be stopped "in compliance with court orders issued in **MA-71-2021**.
6. That in pursuance of the respondents' claims at the said meeting, the 7th respondent wrote to the Regional Police Commander Wamala Region ordering him to 'restore the status quo' which in effect meant stopping the applicant from utilizing the suit land as before and halting all the applicant's works on the land to provide water to their cattle and secure the land and armed with this letter, the police and representatives of the 1st, 2nd, 4th and 5th respondents in person descended on the suit land and stopped all the applicant's works.
7. That in further violation of existing court orders and in further efforts to change the status quo of the suit land to the disadvantage of the applicant, the respondents acting through the 7th respondent and other police officers have purported to carry put investigations on the 'status quo' of the suit land without involving the applicant and have come up with erroneous findings and decisions to the prejudice of the applicant.

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'C' shape with a horizontal line extending to the right.


8. That given the conduct of the respondents jointly and severally, there is imminent threat to permanently stop the applicant from utilizing the suit land including denying the applicant's cattle from accessing water and it is in the interests of justice for this Honorable Court to define the status quo in a detailed manner to prevent the respondents from continuing to interfere with the applicant's possession and use of the suit land.
9. That the Uganda Police Force as an agent of the 3rd respondent and acting in concert with the 4th, 5th, 6th, 7th and 8th respondents are likely to continue deliberately misinterpreting and misapplying the previous court orders issued over the same subject matter and intend to criminalize the dispute by causing arrests of the applicant's workers and hindering any activity on the applicant's farm under the cover of conducting criminal investigations and maintenance of the undefined status quo.
10. That it is in the interest of justice that court clarifies the status quo of the suit land as envisaged in all previous orders issued and this can only be achieved by allowing the orders sought herein.

The gist of the 1st and 2nd Respondents' affidavits in reply is that the 1st Respondent has never either knowingly and/or inadvertently violated any order of court that was brought to its attention through its legal counsel and that annexures C1, C4 and C5 attached to the affidavit in support of the application were issued against the Commissioner Land Registration, the Attorney General and other parties respectively who do not include the 1st Respondent. Thus, the 1st Respondent was neither required to do or refrain from doing anything by the said Order of court.

5 

The 7th Respondent deposed an affidavit in reply on behalf of the 3rd, 5th, 6th and 7th Respondents. The 5th Respondent is the Resident District Commissioner, the 6th Respondent is the Director Operations Uganda Police Force and the 7th Respondent is the Director Legal Services Uganda Police Force. The 7th Respondent basically stated that due to the conflicts that continued on the suit land after the parties continued to misinterpret the Court Orders, it necessitated creation of a buffer zone to ensure peace and security on the suit land. That the modalities of implementing the said buffer zone were discussed between the parties, lawyers and Government Officials in a meeting held on 12th April 2022, a report of the minutes arising therefrom was marked as annexure "B" attached to the 3rd, 5th, 6th and 7th affidavit in reply. Further, that although court ordered the status quo to be maintained, each party defines status quo differently which makes enforcement on the ground difficult.

The 4th Respondent who is also Plaintiff in Civil Suit No. 22 of 2021 and Applicant in Miscellaneous Application No. 71 of 2021 deposed an affidavit in reply whose gist is that by sale agreements dated 15th March 2019, 2nd September 2019 and a Memorandum of Understanding dated 15th July, 2020 he purchased 2 Miles of the suit land and lodged a caveat thereon. That despite the said caveat subsisting, the Applicant entered into a purchase agreement of the entire suit land measuring 1,078.9670 Hectares including the 2 square miles belonging to him. This prompted him to institute Civil Suit No. 22 of 2021 and MA 71 OF 2021 from which the order maintaining status quo arose. That in total disregard of the court order maintaining the status quo on the suit land, on 5th January 2022 or thereabout, the Applicant and a one Peninnah Busingye who were aware of the said court order with the help of their agents and police, embarked on grading and excavating the suit land and created valley tanks and /or

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a series of smaller, connected strokes.

dams thereby altering the status quo which prompted him to institute MA No. 30 of 2022 for contempt of court which is pending court's hearing and determination. As such he has never been in contempt of any court order. The 4th Respondent further deponed that the court order in MA No. 71 was not permissive of excavation, grading, fencing and construction and the application should as a result be dismissed.

The 8th Respondent also deponed an affidavit in reply. The gist of the 8th Respondent's affidavit in reply is that he is not aware of any orders of court that were issued against him personally requiring him to refrain from doing any act in his individual capacity.

In rejoinder, the Applicant reiterated its averments in the affidavit in support of the application and maintained that a new status quo was redefined by agreement of all parties at a meeting after which the police established a buffer zone separating the Applicant who was utilizing one portion for tree planting and cattle grazing inclusive of construction of water dams while the 1st Respondent was occupying the other portion for sugar cane growing.

Representation

During the hearing of this application the Applicant was jointly represented by M/S Kanduho & Co. Advocates, KBW Advocates and Katende, Sserunjogi & Co. Advocates.

The 1st Respondent was represented by Advocate Betunda Yusuf.

The 2nd and 8th Respondents were represented by M/s Arcadia Advocates.

A handwritten signature in blue ink, consisting of a large, stylized 'S' or 'J' shape followed by a series of horizontal strokes.

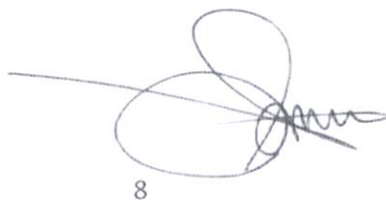
The 4th Respondent was represented by M/s Lukwago & Co. Advocates.

The 3rd, 5th, 6th and 7th Respondents filed an affidavit in reply but did not file written submissions.

PRELIMINARY POINTS OF LAW

Counsel for the 1st respondent submitted that for over a period of one year, HCMA No. 23, HCMA No. 36 of 2021 and HCMA-37-2021 all being interlocutory applications filed by the applicant have never been determined nor have they even ever been fixed for hearing by the court which is contrary to Order 50 rule 3 of the Civil Procedure (Amendment) Rules, 2019.

According to the 1st Respondent's affidavit in reply paragraphs 6 – 15, the Applicant filed H.C.M.A No. 135 of 2020 for an interim order and injunction which were granted by court. However, court set aside the said interim order and injunction vide H.C.M.A No. 175 of 2020. On 23rd February 2021, the applicant instituted H.C.M.A No. 22 of 2021 for review of the orders of court in H.C.M.A No. 175 of 2020. The Applicant also filed H.C.M.A No. 23 & 24 of 2021 arising from H.C.M.A No. 22 of 2021 respectively seeking for a temporary injunction and stay of execution of the Orders of Court in H.C.M.A No. 175 of 2020 pending the hearing and determination of HCMA No. 22 of 2021. That the said applications H.C.M.A No. 22 of 2021, H.C.M.A No. 23 of 2021 and H.C.M.A No. 24 have never been heard and /or determined. The same applies to H.C.M.A No. 37 of 2021 which was also an application for an interim order pending the determination of the main application for a temporary injunction vide H.C.M.A No. 36 of 2021.

A handwritten signature in blue ink, consisting of a large, stylized 'S' or 'L' shape followed by a series of loops and a horizontal line extending to the right.

However, annexures C1 and C2 attached to the affidavit in support of the application are Orders of court issued in Miscellaneous Applications Nos. 037 of 2021 arising from MA No. 036 of 2021 and Miscellaneous Application No. 023 of 2021 arising from MA No. 22 of 2021 respectively. It is therefore, not accurate that the two applications were not determined as alleged by the 1st Respondent.

It is undisputed that the order of court dated 4th March 2021 issued by the Hon. Justice Henrietta Wolayo having heard Counsel for all parties on the status quo of the suit land was issued in the following terms;

"No evictions shall be carried out against either of the parties to the disputed land until the hearing of the main suit on 1st June 2021"

This is the Order in default of which the 2nd Respondent herein was found in contempt vide H.CM.A No. 133 of 2021.

I am of the view that the applications which the 1st Respondent complains of not having been determined seek to create unnecessary multiplicities of proceedings which this court is enjoined to curtail. They seek for Orders which this court has already pronounced itself upon with regard to temporary injunctions and maintenance of status quo. Nonetheless if parties insist on hearing them, I direct that they seek a schedule from this Court, for filing relevant affidavits and written submissions in regard to the unheard applications, so that, this court can proceed to hear the main suit on its merits with immediate effect. This does not however, in any way affect the present application.

The 2nd preliminary point of law was raised by Counsel for the 4th respondent who submitted that Mubiru Eria who purports to be the lawful

A handwritten signature in black ink, consisting of a large, stylized loop followed by a series of smaller, more intricate strokes.

attorney of the Applicant as set out under paragraph 1 of the affidavit in support of the application attached powers of attorney which only gave him powers to act as chief of operations of the company and not authority to depone affidavits or represent the company in court matters. Additionally, that the powers of attorney were signed by only one person on behalf of the company without indicating the capacity under which he signed on behalf of the company which is contrary to its Articles of Association which clearly provide that the minimum number of directors shall be two. Further that the signature of the person who signed for the donor is not in latin character and the company seal was not affixed as well which is contrary to the mandatory requirements of Section 148 RTA.

On perusing annexure A2 attached to the affidavit in support of the application, I find that the said Power of Attorney appointed Mr. Eria Mubiru as Chief of Operations of the 1st Respondent Company. The said Power of Attorney states in clause 3;

"AND WINDRIVER LOGISTICS LIMITED, do hereby declare that anything that shall be done by the said Attorney in his capacity shall be as good, valid and effectual to all intents and purposes whatsoever as if the same had been signed, sealed and delivered or done by us in our corporate capacity and we hereby undertake from time to time and at all material times to ratify and /or confirm whatsoever our said Attorney shall lawfully do or cause to be done by virtue of this Power of Attorney"

The above Power of Attorney is general in nature to the extent that it covers swearing of affidavits. There is also no law that bars a single director of a company from signing a Power of Attorney as Donor on behalf of the Company. Section 148 of the Registration of Titles Act cited by Counsel for the 4th Respondent provides;

148. Signatures to be in Latin character

A handwritten signature in Latin character, consisting of a large, stylized 'S' or 'W' shape with a horizontal line extending to the right.

No instrument or power of attorney shall be deemed to be duly executed unless either—

(a) the signature of each party to it is in Latin character; or

(b) a transliteration into Latin character of the signature of any party whose signature is not in Latin character and the name of any party who has affixed a mark instead of signing his or her name are added to the instrument or power of attorney by or in the presence of the attesting witness at the time of execution, and beneath the signature or mark there is inserted a certificate in the form in the Eighteenth Schedule to this Act.

It is now a settled position that the provisions of section 148 of the Registration of Titles Act are mandatory and non-compliance makes the instrument defective. Katureebe JSC (as he then was) in the supreme court decision of **Fredrick J K Zabwe vs. Orient Bank & Ors S.C.C.A No. 4 of 2006** stated the rationale behind section 148 of the RTA thus:

"In my view, the rationale behind section 148 requiring a signature to be in latin character must be to make clear to everybody receiving that document that as to who the signatory is so that it can also be ascertained whether he had the authority or capacity to sign. When a witness attesting to a signature merely scribbles a signature without giving his name or capacity, how would the Registrar or anyone else ascertain that that witness had capacity to witness in terms of section 147 of the Registration of Titles Act?"

It is therefore imperative that the names of the person signing on behalf of the Company be stated or designation/capacity to sign on behalf of the company made known. In the current circumstances how can we know that the donor is a director of the Company with capacity to sign? Where the document has a company seal, it suffices but merely scribbling the name of the Company with no seal and in the absence of the name or



designation /capacity of the signatory is unacceptable. In this application I however notice that the copy of the powers of attorney provided to court and marked as annexure A2 attached to the affidavit in support of the application is an extracted certified copy from the Uganda Registration Services Bureau which gives me the confidence that by registering it and making it public, the Company (Windriver Logistics Ltd) owned this document as its own. With this fact, the question as to whether those who signed had the power to do so no longer arises. There is therefore, no doubt that the instrument was sanctioned by the Company.

In the premises, the 2nd preliminary objection fails. I will now turn to determine the application on its merits.

The Law applicable

It is now trite that for there to be contempt of court, the following principles have to be established;

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

See; Jack Erasmus Nsangiranabo vs. Col Kaka Bagenda & Anor Misc. Appl. No. 671 of 2019

In this application, the existence of a lawful order and the potential contemnor's knowledge of it is not in contestation. The dispute rotates around the interpretation and application of the Orders of court that have been variously issued maintaining the status quo.



Black's Law Dictionary, Butter Worths 9th Edn, defines Status Quo as a Latin word which means **"the situation as it exists"**

Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention.

By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it, is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the *status quo ante* cannot be restored thereby rendering nugatory its proposed decision.

The case of ***Thugi River Estate Limited & another Vs National Bank of Kenya Limited & 3 others [2015] e K.L.R*** set out the proper manner in which the court ought to frame a status quo order, especially where it is one that the court has originated thus:

'..... Ordinarily where it is the court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of the Counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.'

Regarding the dispute in this application, the 1st Respondent admitted in paragraph 14 of the 1st Respondent's affidavit in reply that the trial judge heard the parties on the issue of status quo before issuing an order restraining eviction of either party from the suit land. The status obtaining on the suit land at the time was that the Respondents were in occupation of the suit land on the one hand doing farming activities and M/s Wamala



Enterprises Ltd on the other end engaged in sugar cane growing. It is later that a buffer zone separating the warring parties for purposes of maintaining peace. In my view, the presence of security on the suit land was and still is necessary given that a person has previously been killed as a result of violence on the suit land.

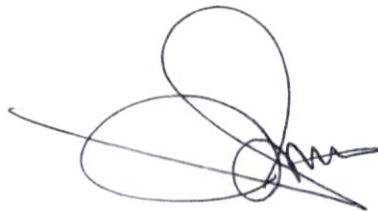
The Applicant just like the Respondents invited this court to clarify what the status quo on the suit land ought to be. It is not in dispute that the status quo pertaining at the time court variously issued the Orders maintaining the status quo was that the Applicant was carrying out farming. The only question that arises is whether farming activities extend to construction of valley dams to provide water for animals, tree planting and fencing off. I would like to consider the scope by looking at the balance of convenience. It has not been proved that the activities being undertaken by the Applicant are capable of fatally eroding the substratum to a point of no recovery or that the damage being caused cannot be remedied by an award of damages in the event that the Respondents are successful in the main suit. Otherwise, it makes no sense to have animals on the land with a restriction of doing activities such as construction of valley dams for provision of water. It is equally acceptable to fence for purposes of enabling the animals to stay confined within given parameters. These in my view are activities so intertwined with farming that one activity may not easily succeed without the other.

In the circumstances, let the Applicant continue in possession and utilization of the part of the suit land for farming such as crop growing, animal rearing and farming related activities such as construction of water dams, and fencing off the land they are currently occupying but not beyond the buffer

zone established by Uganda Police till the final determination of the main suit. The Applicant is however ordered not to interfere with the status of the suit land beyond farming and farming related activities stated in this application. In the event that the Applicant wishes to undertake any other farming related activity which is not expressly stated herein, let it first seek a court order sanctioning the same for purposes of maintaining peace and tranquility among the varying parties. Uganda Police should maintain the already existing buffer zone on the same arrangement as before.

Since it appears clearly from the pleadings that all parties found difficulties in interpreting the status quo and thus sought clarification from the court. Now that this court has provided clarification on the same, I decline to grant the prayers in regard to contempt of court orders. Let parties bear their own costs.

Dated this 15th day of August 2022

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by a series of loops and a horizontal line.

Flavian Zeija (PhD)

PRINCIPAL JUDGE