The Republic of Uganda
In the High Court of Uganda Holden at Soroti
Misc. Application No. 01 of 2019
(Arising out of Civil Suit No. 0031 of 2007)

Ocen Kassim :: Applicant

VERSUS

1. Soroti District Land Board ::Respondents
2. Patrick Sseno t/a Chap Chap General Auctioneers and Court Bailiffs)

Before: Hon. Justice Dr. Henry Peter Adonyo

Ruling

1. Background:

This is an application by way of Notice of Motion under section 34 of the Judicature Act, Cap 13, section 64(e) and section 98 of the Civil Procedure Act, and Order 52 Rules 1 & 2 of the Civil Procedure Rules SI 71-1 for orders that;

a) A declaration that the respondents / contemnors were jointly and severally in contempt of court when they evicted the applicant or caused the applicant to be evicted from the suit property and destroyed part of the buildings and structures; the subject of stay of execution under Civil Miscellaneous Application No. 056 of 2017.

b) An order that the 2nd respondent / contemnor be detained in prison for being in contempt of court

c) An order directing the respondents to pay aggravated damages of UGX 100,000,000 to the applicant

d) An order directing the respondents to pay UGX 100,000,000 in compensation of the true value of the properties destroyed while acting in contempt of court

e) An order directing the respondents to jointly and severally pay fines of UGX 60,000,000 each for contempt of court orders

f) An order to sequester the contemnors / respondents' property until they are purged of the contempt.

g) The Costs of and incidental to this Application be provided for.

The grounds of the application are set in the application and affidavit deposed by Ocen Kassim. They include;

a) That the 1st applicant was granted an order for stay of execution by this honorable court vide Civil Miscellaneous Application No. 056 of 2017, staying the execution of the decree of the High Court in Civil Appeal No. 0031 of 2007, between the applicant and the 1st respondent.

b) That the said court order was granted in the presence of the advocate for the 1st respondent; Counsel Ewatu on 30th January 2018 after confirming with the Commissioner Land Registration that the applicant's title was intact.

c) That sometime in October 2018, the applicant realized that his proprietorship to the suit title was cancelled and the same backdated to 2016; inspite of the existence of the court order staying the same.

d) That the respondents on 24th October, 2018 connived and misled the Assistant Registrar of this Honourable court to issue a warrant to give vacant possession addressed to the 2nd respondent ordering him to effect the said order against the applicant without any court order authorizing the same and hence evicted the applicant.

e) That the same conduct was an illegality since there was a subsisting order of stay of execution in respect of the suit property, and the eviction was illegally done as no notice to show cause was served upon the applicant and the applicant only realized on 6th December 2018, when the 2nd respondent led a group of police officers to the suit property to enable him evict the applicant and his tenants from the suit property.

f) That the 1st and 2nd respondents at all times knew of the existence of the court order staying execution of the decree in Civil Suit No. 0031 of 2007 but chose to act in contempt thereof.

The application is supported by an affidavit deposed by Ocen Kassim, the applicant, which I have had the benefit to read through together with the reply thereto and the rejoinder whose contents I shall not reproduce for brevity unless it is pertinent in the resolution of the issues.

M/s Gumtwero and Company Advocates and later M/s Atyang Christine and Co. Advocates represented the Applicants whereas M/s Ewatu and Company Advocates represented the 1st respondent but the 2nd respondent was self-represented.

2. Resolution:

I have considered the arguments of the parties in the filed written submissions which I do not need to reproduce here but have been considered in resolution of the issues where necessary. The issues for resolution are

a) Whether the respondents are in contempt of court
b) What are the remedies available to the parties?

The 1st respondent in the affidavit of reply deposed on its behalf by Akello Catherine (the Secretary of the 1st respondent) indicated that it would raise a preliminary objection to the effect that the application be struck out, thus;

a) there is no affidavit in support of the application on record
b) the applicant swore instead of affirming, he being a moslem.
c) the certificate of title of the suit property in dispute was cancelled in 2016, hence the instant application is a non-starter and that the applicant has no locus.

I will deal with the preliminary objections in that order;

- There is no affidavit in support of the application on record:

Court observes that on perusal of the application before court, an affidavit in support deposed by Ocen Kassim the applicant and dated 4th January, 2019 is appended thereto. The Registrar then also endorsed that the application was lodged in the registry on 9th January, 2019. Furthermore, court observes that on perusal of the affidavit in reply of the 1st respondent deposed by the secretary of the 1st respondent – Akello Catherine, paragraph 3 of the same, she avers that with the help of lawyers, she had read and understood the applicant's application and supporting affidavit. It is also the finding of court that the 1st respondent in her affidavit in reply specifically responds to the averments of the applicant's affidavit in support of the application which confirms that the affidavit was attached to the application.

The 1st respondent also contends that the jurat on the affidavit in support is not compliant to the Illiterates Protection Act, Cap 78 to the extent that "Sam Engola" who translated the document did not indicate his name and address which is required by Section 2 of the Illiterates Protection Act.

Section 2 of the Illiterates Protection Act under the head of *verification of signature of illiterates*, provides that;

> **No person shall write the name of an illiterate by way of signature to any document unless such illiterate shall have first appended his or her mark to it; and any person who so writes the name of the illiterate shall also write on the document his or her own true and full name and address as witness, and his or her so doing shall imply a statement that he or she wrote the name of the illiterate by way of signature after the illiterate had appended**

his or her mark, and that he or she was instructed so to write by the illiterate and that prior to the illiterate appending his or her mark, the document was read over and explained to the illiterate.

This section provides that the person who wrote the name of the illiterate shall also write his true and full name and address; court observes that there is no indication that the applicant did not write his full name himself. Also, the 1st respondent at the hearing of the application did not present any evidence to that effect which to the court renders the allegations are speculative.

In effect therefore, because the 1st respondent admitted to the affidavit in support of the application by replying to it specifically and also court finding that it was on record, moreover also that the person who translated did not indicate that he wrote the name of the deponent but that he simply translated the contents of the application with the supporting affidavit, this preliminary objection is overruled to that extent.

- The applicant swore instead of affirming, he being a moslem:

The 1st respondent contended that the applicant's name is Ocen Kassim indicating that he is a moslem who should have affirmed and yet he swore. The 1st respondent averred that due to that the affidavit is inadmissible since it violated the Oaths Act Cap 19.

It is the finding of court that there is no averment as to the religion of the applicant/deponent and neither did the 1st respondent adduce any evidence in the submissions or otherwise to prove its allegations that the applicant is a muslim who swore instead of affirming. Section

Section 101 (1) (and 2) of the Evidence Act, Cap 6 provides that;

"whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person."

Therefore, in relation to the instant facts, the burden was incumbent on the 1st respondent pursuant to Section 101 of the Evidence Act, to prove that the applicant was a muslim who should have affirmed instead of swearing as alleged. This preliminary objection is over ruled to that extent.

- The certificate of title of the suit property in dispute was cancelled in 2016, hence the instant application is a non-starter and that the applicant has no locus:

On this, I would find that the application before court is of contempt of a court order staying execution. If court were to make a finding as to the propriety of the title or finding as to whether ownership of the land has a bearing on the locus to bring contempt of court proceedings, court would delve in an arena having no bearing on the instant application.

However, I hasten to add and to buttress the view of court that the instant application is of contemptuous acts, the case of ***Chuck v Cremer (1846) 1 Coop temp Cott 338; 47 ER 884*** established principle of our constitutional law that a court order must be obeyed unless and until it has been set aside or varied by the court (or, conceivably, overruled by legislation). The Lord Chancellor, Lord Cottenham, in set aside the attachment, stated at pp 342-343 that:

> ***"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it ... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed."***

This preliminary objection is also overruled.

Therefore, in light of the findings of court as aforesaid, the preliminary objections raised by the 1st respondent are over-ruled.

I will now procedure to the resolve the issues as adopted.

- Whether the respondents are in contempt of court?

The applicant noted that the application was brought under Section 34 of the Judicature Act, Cap 13, that provision relates to the High Court having the prerogative of issuing a writ of habeas corpus which is not the application before court.

Notwithstanding the above, the applicant also noted the following provisions of the law which are aptly reproduced here and are pertinent to the application before court.

Section 64(e) of the Civil Procedure Act, Cap 71 inter alia provides that;

> **"In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed make such other interlocutory orders as may appear to the court to be just and convenient."**

Section 98 of the Civil Procedure Act Cap 71 which provides for the inherent powers of court thus;

> **"...Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process."**

Briefly the facts are that the applicant was granted a stay of execution by this Honourable Court vide Miscellaneous Application No. 56 of 2017 staying execution of the decree of the High Court Civil Suit No. 0031 of 2007 between the applicant and the 1st respondent.

However, on 24th October, 2018, the court issued a warrant to give vacant possession addressed to the 2nd respondent who went ahead to effect it against the applicant by evicting him.

The applicant avers that this execution was done in pendency of a stay of execution which was contemptuous of the court order staying the execution. The 1st respondent contends that it was not party to the execution proceedings.
The 2nd respondent contends that he did not know of the court order staying execution of the decree at the time he applied for and evicted the occupants on plot 37 Gweri road, Soroti municipality.

Civil contempt occurs when the contemnor willfully disobeys a court order. Contempt of court as defined by Lord Russel of Killowen, L.C.J. in ***R. v. Gray [1900] 2 Q.B. 36 at 40*** *is;*

> ***"Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a Contempt of Court."***

It therefore may be manifested by acts or utterances which;

(i) scandalise or tend to scandalise, or lower or tend to lower the authority of any court; or
(ii) prejudice, or interfere or tend to interfere with, the due course of any judicial proceeding; or
(iii) Interfere or tend to interfere with, or obstruct or tends to obstruct, the administration of justice in any other manner.
(iv) It encompasses acts calculated to hamper the due course of a judicial proceeding or the orderly administration of justice.

The above excerpt is from the case of ***Florence Dawaru vs Angumale Albino and Anor HCMA 96 of 2016*** where Hon Stephen Mubiru went on to observe that contempt of court is:

> ***"Any course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The power to punish for contempt of court is a special jurisdiction which is inherent in all courts for the protection of the public interest in the proper***

administration of justice, for as Lord Atkin observed in Andre Paul Terence Ambard Appeal No. 46 of 1935 v. The Attorney General of Trinidad and Tobago (Trinidad and Tobago) [1936] 1 All ER 704, [1936] AC 322."

In ***Attorney General Vs Male Mabirizi E Kiwanuka HCMA No. 843 of 2021,*** Hon. Justice Ssekaana Musa observed that;

> ***A contempt of court is a matter which concerns the administration of justice and the dignity and authority of judicial tribunals. The law dealing with contempt of courts is for keeping the administration of justice pure and undefiled; and, jurisdiction in contempt is not a right of a party to be invoked for the redressal of its grievances.***

Counsel for the applicant submitted that in law, contempt of court consists of conduct which interferes with the administration of justice or impedes or perverts the course of justice. That civil contempt consists of a failure to comply with a judgement or undertaking of court or breach of an undertaking of court.

The law on contempt of court orders which is agreeable to either party as deduced from the submissions and which the court agrees to in resolution of the issues is from ***Brenda Nambi vs Raymond Lwanga Miscellaneous Application No. 213 of 2017*** where principles of an action to amount to contempt of court were pronounced which have to be established, thus;

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

Furthermore, **Lady Justice Flavia Ssenoga Anglin** in **Brenda Nambi vs Raymond Lwanga HCMA No. 213 of 2017** observed that,

> ***"Contempt of court consists of conduct which interferes with the administration of justice or impedes or perverts the course of justice..... Civil contempt consists of a failure to comply with a judgment or order of a court or breach of an undertaking of court."*** **– Osborne's Concise Law Dictionary, P. 102 A Thomson Company.**

Further in **Hadkinson v Hadkinson [1952] P. 285 (25 July 1952)**

> ***"Disregard of an order of the court is a matter of sufficient gravity, whatever the order may be."*** **–**

I am fortified with the principles established in **Brenda Nambi vs Raymond Lwanga HCMA No. 213** of **2017** and I will use the same in the order indicated in the making a finding as to whether or not there was contemptuous act of disobedience of a lawful court order by the respondents.

- Existence of a lawful court order:

Counsel for the applicant submitted that at paragraph 5 of the affidavit in support, a court order staying execution vide Miscellaneous Application No. 56 of 2017 was obtained by the applicant on 30th January, 2018 in the presence of counsel for the 1st respondent – Counsel Ewatu.

The 1st respondent in her affidavit in reply also acknowledges the existence of a court order staying execution in paragraph 8 of her affidavit in reply albeit she avers that it was lifted vide Miscellaneous Application No. 112 of 2018 on 19th October, 2018 upon the court learning that the title in the name of the applicant in respect to the suit land was cancelled in 2016.

The 2nd respondent contends that he was not a party to the Miscellaneous Application No. 56 of 2017 which resulted the court order of stay of execution.

Having looked at annexure "B" of the affidavit in support, I am satisfied that a court order staying execution and enforcement of the Decree and Judgement of the High Court in Land Claim No. 0031 of 2007 was made and it was to last until disposal of the applicant's appeal in the Court of Appeal.

The respondents whereas they contended, first that the stay of execution was lifted, did not provide any evidence to that effect specifically setting aside or varying the order of stay and secondly, the 2nd respondent indicating in his affidavit in reply and submissions that he acted for the 1st respondent who had knowledge of the court order as such the same is imputed on the 2nd respondent.

Therefore, it is the finding of court that the court order staying execution vide Miscellaneous Application No. 56 of 2017 was in existence during the pendency of the alleged contemptuous action.

- Potential contemnor knowledge of the Order:

Counsel for the applicant submitted that the respondents/contemnors had knowledge of the order of stay of execution under paragraph 5 of the affidavit in support. The applicant submits that the order was obtained in the presence of counsel for the 1st respondent, which illustrates that the respondents had knowledge of the order since the 2nd respondent acted for and to the benefit of the 1st respondent who was aware of the order.

Counsel for the applicant submitted that also paragraph 6 and 7 of the affidavit in reply sworn on behalf of the 1st respondent admits knowledge of the said court order.
The 1st respondent did not dispute lack of knowledge of the existence of the said order but only indicated that it was varied which has not been proved.

- Potential contemnor's failure to comply that is disobedience of order

Counsel for the applicant submitted that under the applicant's evidence in paragraphs 6,7,9 and 10 of his affidavit in support, the respondent's/ contemnors failed to comply with and disobeyed the order of stay of execution. The applicant submitted that inspite of the pendency of the order of stay of execution; the respondents evicted the applicant from the suit property on 6th December, 2018 and then caused the title of the applicant of plot 37 Gweri Road, Soroti Municipality to be cancelled and descended on the suit property and started tearing down the house thereon by removing the installations and roofs of which photographs are attached.

The applicant submitted that the respondents jointly and/or severally were in contempt of court for which he prayed that the 2nd respondent be detained in prison for being in contempt of court as seen in the evidence of the applicant in ground 4 of the application and paragraphs 9,10 and 11 of the affidavit in support.

The 1st respondent submitted that under paragraphs 27 and 28 of the affidavit in reply, vehemently denied being in contempt of any Court order as alleged by the applicant save that the applicant is being speculative, desperate and aiming at unjust enrichment. That the applicant has not furnished any evidence whatsoever in the affidavit in support nor in the rejoinder showing that the 1st respondent applied for execution, appeared when a Notice to show cause why execution should not issue, was called up for a hearing, and/or applied for a warrant of eviction.

The 1st respondent contended that she did not instruct anyone to carry out eviction as alleged by the applicant to which the 1st respondent prayed that court finds that she is not in contempt of a lawful court order.
The actions of the 2nd respondent was effecting the decree which was in favour of the 1st respondent.

The 2nd respondent contended that he was not a party to the proceedings of court in which the court order staying execution was allowed for the reason that he could not have known about the existence of an order staying execution of the main suit pending appeal. The 2nd respondent further averred that because he was not aware of the order of stay, reiterates the fact that he had no interest in the suit property and could not benefit in any way from the

execution which he carried out other than the fact that he undertook his duty as an officer of the court.

The 2nd respondent further contends that in his affidavit in reply in paragraphs 5,6 and 7, he deposed to the fact that he informed all the occupants who were later evicted of the impending eviction, a fact that the applicant did not rebut in his submissions. The 2nd respondent argues that the failure to present any arguments in opposition to any given set of facts, tantamount to an admission of the facts alleged. The 2nd respondent therein reiterated that the applicant has not proved the fact that the 2nd respondent was aware of the court order staying execution.

In reply to the 3rd ingredient, the 2nd respondent contends that the warrant to give vacant possession was issued by the court and given to him in his capacity as an officer of court envisaged under Section 46(2) of the Judicature Act -Cap 13 and not on his own behest or volition. The 2nd respondent averred that he was acting in his official capacity as a bailiff executing a warrant issued to him by court. The 2nd respondent cited the case of ***Kizza Walusimbi and 2 Ors vs Senyimba Charles and 3 Ors HCCS No. 248 of 2011*** where Justice J. Murangira at page 3 state that....

> ***" The 1st defendant as a bailiff of the court enjoys immunity from civil proceedings against him arising from his acts carried out in execution of the orders of the court.@***

The 2nd respondent contended that pursuant to his affidavit in reply at paragraphs 3 and 8 with annexures A and B, the 2nd respondent lawfully executed a validly issued court order and the same was witnessed by the 1st respondent's chairperson who signed on annex B – the report of execution as No. 13 Anyau John William – dated 7th December, 2018 (078246825).

The 2nd respondent further submitted that indeed after execution, on the 14th December, 2018 indeed the 1st respondent dutifully received the keys to plot 37, only confirming that the executed warrant was for the benefit of the 1st respondent.

The 2nd respondent averred that he did not disobey any lawful order of stay as alleged but instead he lawfully executed a warrant issued by the court to him as a bailiff and officer of the court.

The contemptuous conduct complained of is the disregard of a court order by carrying out an eviction in during the pendency of an order of a stay of execution.

Similarly, in ***Advocate-General, State of Bihar v. Madhya Pradesh Khair Industries & Anr., AIR 1980 SC 946,*** the Supreme Court of India opined that:

> ***"While we are conscious that every abuse of the process of the Court may not necessarily amount to Contempt of Court, abuse of the process of the Court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of Court. ..... it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process.***
>
> ***The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with."***

In ***Brenda Nambi vs Raymond Lwanga Miscellaneous Application No. 213 of 2017***, Justice Flavia Ssenoga Anglin while referring to counsel for the applicant's reliance on the cases of ***Mutambo Wepukhulu vs. Wasswa Balunywa and 2 Others Miscellenous Application 276/2012*** by Justice Eldad Mwangusya and ***Stanbic Bank (U) Ltd and Jacobson Uganda Power Plant Co. Ltd vs. The Commissioner General Uganda Revenue Authority Miscellenous Application 0042/2010*** from ***Civil Suit 0479/2010*** noted that both cases emphasize that

> ***"a party who knows of a court order cannot be permitted to disobey it."***

(Emphasis added).

The 1st respondent alleges that the stay of execution was varied by an order that dispossessed leading to the cancellation of his registration on the certificate of title of land comprised in Plot 37 LRV 2916 Folio 5 Gweri road dated 24th May, 2012. It is the finding of court that the said order did not vary or set aside the court order staying execution of the decree.

The 1st respondent contends that he did not instruct the 2nd respondent to carry out the eviction in pendency of a court order staying execution yet the 2nd respondent avers that he acted on the 1st respondent's instructions and also that the chairman of the 1st respondent signed on the report of execution. Therefore, the 1st respondent cannot pull itself aware from the contemptuous actions complained of.

Furthermore, in regard to the 2nd respondent's contention that he was not aware of the court order staying execution yet he was acting for the 1st respondent who participated in the process, the 2nd respondent as an officer of court ought to have known about the court order staying execution and should have respected it instead of disobeying it by carrying out an eviction.

In ***Halsbury's Laws of England: Contempt of Court (Volume 24 (2019)) on disobedience to process*** it is observed that;

> ***It is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order, or to disobey a judgment or order requiring a person to abstain from doing a specified act. It is also a civil contempt to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction.***

In **Borrie and Lowe: The Law of Contempt Fourth Edition (Part of the Butterworths Common Law Series) published: September 28, 2010, Publisher: LNUK at pages 123,124**, it is observed that;

> **Coercive orders made by the courts must be obeyed and undertakings formally given to the court must be honoured unless they are set aside. Furthermore, it is generally no defence that the order disobeyed or the undertaking breached should not have been made or accepted. The proper course to challenge an order or undertaking is to apply to have it set aside. As Romer LJ put it in Hadkinson v Hadkinson: 'It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.'**
> **This principle was reiterated by Lord Donaldson MR in Johnson v Walton:**
>
> **'It cannot be too clearly stated that, when an injunctive order is made or when an undertaking is given, it operates until it is revoked on appeal or by the court itself, and it has to be obeyed whether or not it should have been granted or accepted in the first place.' And, in Isaacs v Robertson , the Privy Council upheld a finding that the appellant was in contempt where he had breached an injunction of the High Court of St Vincent notwithstanding that the order ought not to have been made. In so ruling, the court rejected the contention that there was a distinction between 'void' orders which could be ignored with impunity and 'voidable' orders which may be enforced until they are set aside. Lord Diplock said**

that such contrasting concepts : 'are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either regular or irregular. If it is irregular it can be set aside by the court that made it upon application to the court; if it is regular it can only be set aside by an appellate court upon appeal if there is one to which an appeal lies.' It has been pointed out, however, that at common law there was some authority for the proposition that a journalist was not guilty of contempt for refusing to reveal his source if it was subsequently ruled that such a question was unnecessary.

In ***Housing Finance Bank Ltd and Another vs. Edward Musisi 158/2010 CA*** it was held that;

> ***"A court of law never acts in vain and, as such, issues touching on contempt of court take precedence over any other case of invocation of the jurisdiction of the court."***

In the instant case therefore, it is my finding that the 1st and 2nd respondent jointly and severally had prior knowledge of the court order staying execution which was in favour of the applicant but went ahead to willfully disobey it, a thing that formed the contemptuous act by their action of evict the applicant's tenants off the suit land.
Therefore, I find that the respondents are jointly and severally liable for the contemptuous action of the court order.
Without prejudice to the foregoing, it is worth noting by the court that the contempt was also noticed by the Chief Inspector of Courts then vide letter upon the complaint of the applicant.

- <u>What are the remedies available to the applicant?</u>

The applicant prayed for the following reliefs;

a) A declaration that the respondents / contemnors were jointly and severally in contempt of court when they evicted the applicant or caused the applicant to be evicted from the suit property and destroyed part of the buildings and structures; the subject of stay of execution under Civil Miscellaneous Application No. 056 of 2017.

b) An order that the 2nd respondent / contemnor be detained in prison for being in contempt of court

c) An order directing the respondents to pay aggravated damages of UGX 100,000,000 to the applicant

d) An order directing the respondents to pay UGX 100,000,000 in compensation of the true value of the properties destroyed while acting in contempt of court

e) An order directing the respondents to jointly and severally pay fines of UGX 60,000,000 each for contempt of court orders

f) An order to sequester the contemnors / respondents' property until they are purged of the contempt.

g) The Costs of and incidental to this Application be provided for.

Regarding remedies, punishments for contempt, the following authorities assert that;
In **Halsbury's Laws of England, Contempt of Court (Volume 24 (2019)) Procedure and Powers of Court, at 92**, observes that;

> ***Civil contempt of court is punishable by way of committal or by way of sequestration. The effect of a writ of sequestration is to place, for a temporary period, the property of the contemnor into the hands of sequestrations, who manage the property and receive the rents and profits.***
>
> ***Civil contempt may also be punished by a fine, or an injunction may be granted against the contemnor.***

Furthermore, in **Halsbury's Laws of England, Contempt of Court (Volume 24 (2019)) Procedure and Powers of Court, at 67**

> **In circumstances involving misconduct, civil contempt bears a two-fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the state, a penal or disciplinary jurisdiction to be exercised by the court in the public interest.**

In ***Attorney General vs Male Mabirizi E. Kiwanuka HCMA No. 843 of 2021***, Hon. Justice Ssekaana Musa observed that:

> ***"The law for contempt, with power of imposing punishment, ensures respect for the courts in the eyes of the public by guaranteeing sanction against conduct which might assail the honour of the courts. Indeed, the courts must be able to discharge their functions without fear or favour. However, any insinuation to undermine the dignity of the Court under the garb of mere criticism is liable to be punished."***

In **Borrie and Lowe: The Law of Contempt Fourth edition (Part of the Butterworths Common Law Series)** published: **September 28, 2010, Publisher: LNUK at pages 123,124**, it is observed that;

> **In many ways, this branch of contempt law exists to protect the private interests of litigants, and its prime function is coercive rather than punitive. As a US judge said in Hicks v Feiock: 'In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority to enter the initial court order, but it also is seeking to give effect to the law's purpose of modifying the contemnor's behaviour to conform to the terms required in the order'. However, the underlying object of this aspect of contempt law, is to protect the public interest, namely, that every court must have the means of enforcing its own orders. In this respect such proceedings act as the guardian of public interest and enforce the supremacy of the law. As one Canadian judge put it: 'To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn . . . If the remedies that the courts grant to correct . . . wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result in the destruction of our society.'**

Whereas there is no law on contempt of court apart from decided cases, the High Court is enjoined to

> ***"enjoined to exercise its jurisdiction in conformity with the Common Law and Doctrines of Equity... whereby it is obliged to exercise its discretion in conformity with the principles of justice, equity and good conscience respectively."* –**

See S.14 (2) (b) (1) and 14 (2) (c) of the Judicature Act.

Accordingly, arising from my findings above, I do make the following;

a) A declaration is hereby made that the 1st and 2nd respondents jointly and severally were in contempt of court when they evicted the applicant or caused the applicant to be evicted from the suit property and destroyed part of the buildings and structures which was the subject of stay of execution under Civil Miscellaneous Application No. 056 of 2017.

b) Aggravated damages;

The applicant prayed for an order directing the respondents to pay aggravated damages of UGX 100,000,000 to the applicant. This is so under paragraph 19 of the affidavit in support of the application.
I would order payment as aggravated damages of UGX 2,500,000 for each respondent being for their high handedness as their actions were intended to undermine the rule of law and administration of justice.

c) Compensation:

The applicant prayed for an order directing the respondents to pay UGX 100,000,000 in compensation of the true value of the properties destroyed while acting in contempt of court.

The applicant did not indicate to court which properties were destroyed and of what value. He averred that they were properties of his tenants and not his.

Under paragraph 17 of the affidavit in support of the application, the applicant prayed for damages for the resultant losses caused by the respondents to a tune of UGX 100,000,000.

However, apart from the photos attached to the affidavit in support that show the eviction, the applicant did not attach any evidence of the destructions or any professionally estimated value for which compensation would ensue.

In consideration of the photos filed in court, which is the only evidence with which this court can consider that indeed some property was destroyed, I make presumptive orders and direct that UGX 10,000,000/= as damages to be paid by the respondents in equal amounts be paid as such.

d) Contempt of Court order:

The applicant prayed for an order directing the respondents to jointly and severally pay fines of UGX 60,000,000 each for contempt of court order.

This court recognizes that the rationale behind a fine for contempt is to send out a firm message for;

> ***"Court orders have to be obeyed and to indicate to contemnors that there are consequences for disobedience of court orders."***

The sum of UGX 60,000,000 for each is excessive. I would find that an amount of UGX 2,500,000 or in the alternative a three months' imprisonment for officers of the 1st respondent and the respondent, respectively would suffice.

e) Sequester the contemnors / respondents' property:

The applicant prayed for an order to sequester the contemnors / respondents' property until they are purged of the contempt. That order is issued to last until the contemnors / respondents are purged of the contempt.

f) Costs:

The applicant prayed for Costs of and incidental to this Application to be provided for.

This is also allowed as the applicant is the successful party herein and there is no reason to show why he should not be granted such costs by virtue of section 27 of the Civil Procedure Act.

I so order accordingly.

.....

Hon. Justice Dr Henry Peter Adonyo

Judge

2nd November, 2022