

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
MISCELLANEOUS APPLICATION NO. 0177 OF 2022
IN THE MATTER OF CONTEMPT OF COURT AND OR CITATION FOR CONTEMPT OF COURT
5 AND
IN THE MATTER OF CONSENT JUDGEMENT DATED 8THJUNE 2015 IN MISCELLANEOUS APPLICATION NO. 0008
OF 2015
ARISING FROM MASINDI HCCS NO. 0002 OF 2015
MRS. BESISIRA MBABAZI AMINA APPLICANT/PLAINTIFF
10 VERSUS
1. PRINCESS KABAKUMBA LABWONI MASIKO
2. MASINDI DISTRICT LAND BOARD..... RESPONDENTS/DEFENDANTS

Before: Hon Justice Isah Serunkuma.

RULING

This application is brought under Section 14(2)(b) & 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Order 52, rules 1 & 3 of the Civil Procedure Rules for the following orders;

- a) A declaration that the act of the respondents in dealing with plot 45, Masindi port road (formerly LRV 472 Folio 25) contrary to the court order dated 8th June 2015 vesting ownership of the same in the joint names of the applicant and the late ILYAS BESISIRA KISOKE is an act of contempt of court.
- b) A declaration that the act of the respondents processing a certificate of title in respect of Plot 45, Masindi Port Road (formerly LRV 472 Folio 25) is an act meant to dispossess the applicant of the joint ownership of the said land/property already decreed by the court order dated 8th June 2015.
- c) A declaration that the act of dispossessing and acquiring title for plot 45 Masindi port road (formerly LRV 472 Folio 25) by the 1st contemnor by registering the same

in her names is illegal, unlawful and in contempt of court contrary to the court's judgement of 8th June 2015.

- d) Consequent to (a), (b) & (c) hereof, the 1st contemnor be ordered to purge the contempt by ceasing and desisting to deal with plot 45, Masindi port road as her property.
- e) The 1st contemnor be appropriately punished by way of payment of a fine as a sanction for contemptuous conduct.
- f) Costs of this application
- g) Any other and further orders the honourable court may deem necessary and expedient in the interest of justice and protection of the rule of law.

The applicant also laid out the grounds in support of this application as per her affidavit in support stating that;

1. That the applicant is the surviving widow of the late Ilyas Besisira Kisoke having got married on the 27th day of September 1986. ***(A copy of the marriage certificate is marked "A").***
2. That the late Ilyas Besisira Kisoke and the applicant were joint owners of property comprised in Plot 45 Masindi Port Road Masindi Municipality, Masindi district. (a copy of the certificate of title is marked "B")
3. That the applicant filed a suit against the late Ilyas Besisira Kisoke and M & C Stationers Ltd for recovery of rental arrears and declaration for separately sharing the rental income from the property comprised in plot 45, Masindi port road in two equal shares, among other orders.
4. That a consent judgement was recorded including such terms as hereunder;

i) That the applicant Ms. Amina Besisira shall receive her share of the rental income from the property comprised in plot 45 Masindi Port Road Masindi Municipality, Masindi District amounting to Ugx. 4,000,000/= (four million Uganda shillings only) every 6 six months (Bi-annually) effective June 2015.

ii) That the next collection shall commence in September 2015 and the entitlement for the applicant for the months of June, July and August 2015 amounting to Ugx. 2,000,000/= (two million Uganda shillings only) shall be offset from the 1st respondent's share in September 2015.

5 *iii) That the applicant Ms. Amina Besisira and the 1st respondent Mr. Ilyas Besisira Isoke shall collect their respective share in (i) above from the tenants and the subsisting tenancy agreements are varied accordingly.*

10 *iv) That the applicant Ms. Amina Besisira and the 1st respondent Mr. Ilyas Besisira Isoke shall contribute equally to the costs of maintenance of the property on plot 45 Masindi port road.*

v) Each party shall bear its own costs in Miscellaneous Application No. 0008 of 2015, Civil Suits 001 & 002 of 2015. (A copy of the consent judgment is marked "C").

15 5. That the contemnor fraudulently, illegally and with full knowledge of the existence of the court judgement conspired, connived and colluded with the late Besisira Isoke Ilyas to defeat and bypass the terms of the consent and destroy it substratum as hereunder;

20 i) The 1st contemnor purported to buy the suit property from the late Besisira Isoke Ilyas who was a joint owner and proprietor of the suit property with the applicant. *(Copy of the agreement marked "D")*

25 ii) The 1st contemnor being a powerful political figure in Masindi as former member of parliament, cabinet minister and member of the ruling party would use her position to bulldoze the 2nd contemnor to process the renewal of the lease in her names and acquire a certificate of title to the applicant's exclusion.

iii) The late Basisira Isoke Ilyas well knowing that he was a joint and co-owner of the suit property and in the applicant's, exclusion purported to handover the suit property to the 1st contemnor.

5 6. That the acts of the 1st contemnor were done with the full knowledge and understanding that the applicant was disabled, incapacitated and helpless in a wheel chair having suffered a stroke.

7. That as per the advice of the applicant's lawyers, the agreement to sell land owned jointly was solely signed by the deceased to the applicant's exclusion as co-owner was illegal and a nullity.

10 8. That the suit property is valued at over one billion shillings but was purportedly sold at Ugx. 120,000,000/= which is gross undervalue.

9. That as per the advice of the applicant's lawyers, the sale of the suit property required the signatures of both the late Ilyas Basisira Kisoke and the applicant as joint owners and accordingly a sale by the deceased was arbitrary and illegal as one
15 owner lacked capacity to sell joint property.

10. That as per the advice of the applicant's lawyers, the substratum of the Consent Judgement was knowingly and intentionally destroyed by the 1st contemnor in connivance and collusion with the late Basisira Kisoke Ilyas to render the Consent Judgement nugatory and useless.

20 11. That as per the advice of the applicant's lawyers, the sale transaction of the property land is illegal, void and a nullity as the late Basisira Kisoke Ilyas had no or any capacity to sell alone but jointly with the applicant.

12. That as per the advice of the applicant's lawyers, the 1st contemnor connived with the late Basisira Ilyas Kisoke to disobey the court order and acquired the suit
25 property without the applicant's involvement and as conspirator, needs to be appropriately punished to serve as an appropriate and adequate punishment for the contemnor for contempt of court.

13. That it is in the interest of justice that court grants this application.

In response, the 1st respondent filed an affidavit in reply stating thus;

1. That as per the advice of the Applicant's lawyers, the application is barred by time, it is defective and it is brought in bad faith to subject the respondent to irreparable loss and damage as such it is misconceived and should be dismissed with costs on the preliminary objection.

2. In response to paragraph 2-15, the 1st respondent's states that;

a) That the 1st respondent was contacted by the late Ilyas Kisoke Basisira requesting her to buy his property comprised in Vol. 472, Folio 25, Plot 45, situate on Masindi Port Road, Masindi Municipality. That the 1st respondent was shown the certificate of title in the names of Esmail M Ebrahimji, the powers of attorney by Esmail. M. Ebrahimji authorizing Mr. Rashid H Balya to sell his property on his behalf, a confirmation by Mr. Rashid H Balya that he indeed sold the said property to Ilyas Isoke Basisira, a copy of the lease agreement, a letter from the departed Asians property custodian board and other documents pertaining to the ownership of the land.

b) That the 1st respondent confirmed from the Ministry of Lands that the said property was registered in the names of Esmail. M. Ebrahimji and had not been transferred in the names of Ilyas Isoke Basisira.

c) That the 1st respondent inquired from the manager Cross International Microfinance Ltd a tenant and confirmed that Ilyas Isoke Basisira was their land lord.

d) That the 1st respondent bought the property herein described above and executed the first sale agreement with the late Ilyas Kisoke Basisira on the 21st day of March 2020 and acknowledgement of the balance on the 15th day of April 2021. *(Both agreement and Acknowledgement are marked "A" & "B").*

e) That after payment of the total consideration of Ugx. 330,000,000/= (Uganda shillings three hundred thirty million only) in accordance with the agreement, the late Ilyas Basisira Isoke handed over the documents referred to in paragraph 5(a) to the 1st respondent. *(Copies of the documents mentioned herein are marked "C", "D", "E", "F" & "G" respectively).*

f) That around the 15th day of April 2021, the late Ilyas Kisoke Besisira physically handed over possession of the property; introduced the 1st respondent to the LC1 Chairperson of the area, Mr. Pascal Musaba, to all tenants, to the town clerk of Masindi and even wrote letters introducing the 1st respondent to the
5 respective persons mentioned. *(Copies of the abovementioned letters is marked “H”, “I”, “J”, & “K”).*

g) That the 1st respondent followed due process in acquisition of the property in issue.

3. In response to paragraph 2, the 1st respondent contended that the late Ilyas Isoke
10 Besisira introduced Amina Muhammad as his spouse by the time of execution of the land sale agreement and the acknowledgement.

4. In response to paragraph 5, the 1st respondent contended that the certificate of title has never been in the names of the applicant.

5. In response to paragraphs 4 & 5, that the said consent court order does not make
15 declarations to the ownership of the property in the dispute and it was never agreed that the property was owned jointly by the applicant and the late Ilyas Besisira.
(Copy of the consent judgement is marked “C”).

6. In response to paragraph 6 & 7 that the 1st respondent has never been a party to the said cases or to the consent judgement and never been served with the same
20 until the 9th day of January 2023 upon receiving summons in Miscellaneous Application No. 0177 of 2022 to which the consent judgement was attached.

7. That by the time the 1st respondent was served with Misc. Application No. 0177 of 2022, she had already bought the property in issue and it had been handed over to her and been in possession of the same since 2021.

8. That it will be unjust for this court to hold that the 1st respondent has ever been in
25 contempt of the court order which has never been brought to her attention.

9. That in response to paragraphs 6 & 7, the 1st respondent contended;

a) That she has never personally known the applicant or her personal health issues and the same should not be used to victimize her interest in the property in
30 issue.

b) That possession of the property in issue was handed to her in 2021 by the late Ilyas Isoke Besisira and she directed the tenants to vacate her premises to pave way for the renovation. **(Copy of one of the letters marked “N”)**.

c) That during the lifetime of the late Ilyas Besisira, the applicant knew that she bought and was in possession of the property but did not institute any claim or protest in any way the acquisition of the property in issue.

d) That the applicant filed this application after the death of the late Ilyas Besisira to fraudulently and illegally claim her property.

10. That the applicant has never been a joint owner of the property in issue with the late Ilyas Besisira.

11. That as per the advice of the 1st respondent’s lawyers, the order alleged to have been breached must have stated clearly and unequivocally what should and what should not be done and must have known the existence of the order which is not the case in the matter before this court.

12. That this application is filed in bad faith and an abuse of court process and it is in the interest of justice that it be dismissed with costs.

In further response to the applicant’s application, the 2nd respondent deposed an affidavit in reply through Kisakye Ruth (Secretary of the 2nd respondent) and states;

1. That it is true that the 1st respondent applied to the 2nd respondent for acquisition of a land title.

2. That when the 2nd respondent received the letter from the applicant requesting to halt the process of acquiring a title, the 2nd respondent immediately halted the process awaiting for the decision of this court.

Representation and hearing

The applicant is represented by Counsel Muhammad Mbabazi of M/s Nyanzi, Kiboneka & Mbabazi Advocates, the 1st respondent is represented by Counsel Kasozi Ronald of M/S Nabukenya, Mularira & Co. Advocates and the 2nd respondent is represented by Counsel Simon Kasangaki of M/s Kasangaki & Co. Advocates. At the hearing, counsel for the

applicant as well as that of the 1st respondent cross examined the 1st respondent and the applicant based on their affidavits. The evidence adduced at cross examination is considered herein. Further all parties were directed to file their written submissions and the same have been considered.

5 *Applicant's submissions*

Counsel made his submissions based on two issues and hereunder;

Whether the respondents acted in contempt of the court order in Miscellaneous Application No. 007 of 2018

Counsel defined contempt as per the Black's Law Dictionary, 7th edition to mean conduct
10 that defies the authority of court. Counsel relied on the case of *Stanbic Bank (U) Ltd and Jacobsen Power Plant Ltd Vs The Commissioner General Uganda Revenue Authority; HCMA No. 0042 of 2010* where it was held that, *"For court to determine whether there was contempt, there must be existence of a lawful order, the potential contemnor's knowledge of the order and the potential contemnor's failure to comply (disobedience of*
15 *the court order)"*.

Counsel further relied on the case of *Morris Vs Crown Office [1970] 1 ALL ER 7079* at 10B7 where Salmon LJ stated that, *"The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented...."*

20 *Existence of a lawful order*

Counsel submitted that in Civil Suit No. 001 & 002 of 2015, this court entered a consent judgement on the 08th day of June 2015 entitling the applicant to her share of the rental income from the property comprised in Plot 45 Masindi port road, Masindi Municipality, Masindi District. Counsel added that the order exists and has never been set aside. Counsel
25 submitted that where a valid court order exists, it must be obeyed in totality.

The potential contemnor's knowledge of the order

Counsel submitted that common law leans towards the requirement of personal service or actual knowledge of the existence of the court order. Counsel stated that in some instances, knowledge of the court order may be inferred even in cases of willful blindness. Counsel submitted that on the 13th October 2021, the applicant wrote to Masindi district land board
5 objecting to the transfer of her property on plot 45 port road Masindi, communicated her sickness and attached the consent decree to her letter. Counsel added that this brought the respondents to the attention of the order which was already in existence before the sale. Counsel further submitted that the 1st respondent breached the same when she conducted and continued to conduct themselves in contempt of the same purporting to have bought
10 the same from the late Ilyas Isoke Besisira who was a party to the consent judgement and processing a renewal of the lease in the 1st respondent's name through the 2nd respondent.

Counsel further submitted that during cross examination, the 1st respondent clearly stated that the consent judgement lapsed and that she was served with the court order through her lawyer Muhammed Mbabazi indicating that the respondents were aware of the
15 existence of the court order which was breached. Counsel relied on paragraph 6 of the applicant's affidavit in support of the motion and submitted that by the 1st respondent's alleged purchase agreement, she violated the court order when she executed a memorandum of the sale without the consent of the applicant to assume full exclusive rights to possess the suit land which belonged to the applicant and her late husband at the
20 time of the alleged sale as joint tenants. Counsel added that during cross examination, the 1st respondent expressed knowledge of the existence of the consent order also showed that she was not willing to comply with the same.

Counsel further submitted that the said consent judgement order is still in existence and has not been varied or set aside. Counsel further submitted that it is clear that the acts and
25 omissions of the respondents are willful and were planned to block the applicant's rights that were granted in a valid court order. Counsel added that their conduct displayed a lack of good faith and failure to take reasonable steps to comply with the order. Counsel further stated that the 1st respondent tacitly stated in court that she would not be willing to comply with the court order.

Counsel further submitted that the existence of the court case and the court orders relating to ownership of the suit land are facts that the 1st respondent was and or ought to have been reasonably aware of if she carried out any due diligence. Counsel argued that the 1st respondent made it worse and carried her contempt in court during cross examination
5 when she stated that she was not willing to comply with the court order which according to her did not concern her.

Counsel added that even if it were to be held that the 1st respondent was not aware of the court order, the fact that in court she stated that she was not willing to comply with the court order, she is in contempt of it and continues to conduct herself in violation of the
10 court order. Counsel prayed that this court finds that the respondents acted contemptuously not simply towards a court order but to court and the administration of justice in general by failing or refusing or neglecting to comply with the court orders.

With regard to serving the summons (application) out of time, counsel submitted that the 1st respondent's counsel submission is erroneous and misleading. Counsel further submitted
15 that the summons was endorsed on the 6th December 2022 and the 21 days would elapse on the 27th day of December 2022 which fell within the excluded days. Counsel added that the time for service therefore ended on the 19th day of January 2023 excluding 24th December 2022 & 15th January 2023 which under the rules are not reckoned in computation. Counsel submitted that the objection therefore has no merit and should be
20 overruled.

What remedies are available.

Counsel relied on the Halsbury Laws of England Vol.9(1) paragraph 492 where it is stated that;

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

25

Counsel submitted that it is not in dispute that the 1st contemnor has continued to disobey a lawful consent judgement which was entered into by this honourable court on the 8th June 2015 and the 1st contemnor applied to the 2nd contemnor for a land title to the suit land processed and or transferred to her name. Counsel argued that this is in utter violation
5 of the court order issued in rem and amounts to contempt of court.

Counsel relied on section 64(c) of the Civil Procedure Act which provides that in order to prevent the ends of justice from being defeated, the court may, if it is so prescribed, grant a temporary injunction and in case of disobedience commit the person guilty of it to prison and order that his /her property be attached and sold. Counsel submitted that the actions
10 of the respondents were aimed at permanently depriving the applicant of her land and exposing her to irreparable damages and as a result the applicant has been caused physiological stress, anxiety and anguish.

Counsel submitted that for such reasons, the applicant proposes as compensation a sum Ugx. 200,000,000/= for actions of contempt by the respondents and Ugx.
15 100,000,000/= being a fine for contempt of court. Counsel added that the 2nd respondent in their submission admitted the existence of the court order and expressed willingness to purge by stopping the titling process and comply with the court order. Counsel stated that the issue that remains is the 1st respondent who obstinately and obdurately has been defying and continues to defy the court order. In conclusion, counsel prayed that this court grants
20 the application with the orders aforementioned and the compensation monies as prayed for.

Respondents submissions.

Counsel for the 1st respondent first raised a preliminary objection to the fact that this honourable court directed the applicant to file and serve her submissions by the 20th day
25 of April 2023 and the respondent to file by 4th May 2023 but the applicant failed and served the 1st respondent by 3rd May 2023.

With the main application, counsel for the 1st respondent based her submissions on three issues as discussed hereunder;

Whether the respondents are in contempt of Court Orders in Misc. Application No. 008 of 2015 and Civil Suit No. 002 of 2015.

Counsel submitted that the 1st respondent has never been in contempt of any court order since she has never been in the know of the said court order neither had she ever been served with the said court order. Counsel added that the said court order was served together with the application for contempt. Counsel relied on the case of ***Lukenge Vs Hajjat Ajiri Namagembe; Civil Application No. 0290 of 2020*** where contempt of court was defined to consist of intentional doing of an act which is in fact prohibited by the order..... The learned justice further laid out the elements that must be proved beyond reasonable standard. The said elements were discussed by counsel for the 1st respondent as hereunder;

a) The order alleged to have been breached must state clearly and unequivocally what should and what should not be done.

Counsel relied on the foregoing case of ***Lukenge case (supra)*** and paragraphs (a), (b) & (c) of the applicant's notice of motion that alleged that the respondents' acts were in contempt of the court order dated 8th June 2015. Counsel submitted that the consent judgement dated 8th day of June 2015 has never vested the ownership of the suit premises in the joint names of the applicant and the late Ilyas Basisira neither has it ever granted the orders stated in the application. Counsel argued that the order is missing essential details as it is ambiguous and lacking in clarity. Counsel further argued that throughout the entire application and the affidavit in support of the notice of motion, the applicant does not state the acts done by the respondents that are prohibited by the consent judgement dated 8th day of June 2015 hence the first element is not proved.

b) The party allegedly in breach must have intentionally done the act that the order prohibits or must have intentionally failed to do the act the order compels...

Counsel submitted that paragraph 9 of the affidavit in reply of the 1st respondent confirmed that she was not a party to the said judgement and she was served on the 9th day of February 2023 with Misc. Application No. 0177 of 2022 and the consent judgement was

attached. Counsel further submitted that a close examination of the order has no act that prohibits or an act that the 1st respondent has failed to do so thus failing to prove the second element.

5 *c) The party alleged to have breached the order must have had actual knowledge of it.*

Counsel submitted that the applicant had no knowledge of the existence of the said consent judgement until she was served on the 9th day of February 2023 with Miscellaneous Application No. 0177 of 2022. Counsel further submitted that during cross examination, the applicant testified that the 1st respondent was served by her lawyer with the said
10 consent judgement but no evidence to that effect was adduced by the applicant a position which is not undisputed.

d) The potential contemnor's ability to comply with the court order as an element that must be proved for contempt to exist.

Counsel submitted that the 1st respondent bought the property from the late Ilyas Besisira and paid a consideration of *Shs. 120,000,000/= (Uganda shillings one hundred twenty million only)* executed the agreements and all the documents to the suit property were
15 handed over to her by the late Ilyas Kisoke Besisira. Counsel added that the 1st respondent was also introduced to several local authorities including the LC1 Chairperson, the tenants, the Town Clerk of Masindi Municipal Council and to the Secretary District Land Board.

20 *Whether the Application is properly before court*

Counsel submitted that the instant application is incompetent and or illegally before this court since the application was served out of time contrary to provisions of Order 49 rule 2 of the Civil Procedure Rules which provides that all notices and documents required by the Act to be given or served on any person shall be served in the manner provided for
25 the service of summons. Counsel added that Order 5 rule 1 (2) of the civil procedure rules provides that service of summons issued under sub rule 1 of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on an

application to the court made within 15 days after expiration of 21 days showing sufficient reason for the extension.

Counsel submitted that this application was filed on the 24th day of November 2022, it was endorsed by the court on the 6th day of December 2022 and it was served on the 1st respondent on 9th January 2023 approximately 40 days from the date of issue. There is no application for extension of time to serve the said application and thus ought to be dismissed.

In conclusion, counsel submitted that the provisions of Order 49 rule 2 read together with the provisions of Order 5 rule 1, 2 & 3 of the Civil Procedure Rules are mandatory and not mere directory, whose violation or non-compliance cannot be cured by court as the framers did not only use the term “shall” but went ahead and gave consequence for non-compliance under Order 5 rule 3 of the civil procedure rules; calling for a dismissal of the suit without notice.

Counsel added that there is no order on court record granting extension of time within which the applicant can effect service of this application. Counsel prayed that this application is dismissed with costs to the respondent for violation or non-compliance with the law.

With regard to remedies available, counsel relied on Section 27 of the Civil Procedure Act which is to the effect that costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

Court's analysis

Before I delve into the merits of this application, I will handle the preliminary objection raised by the counsel for the 1st respondent in relation to the competency of this application before this court. Counsel for the 1st respondent argued that the application with its accompanying documents was served out of time as per Order 49 rule 1 and Order 5 rule 1(2) of the Civil Procedure Rules. In rebuttal, counsel for the applicant submitted that the

service of the pleadings was well within time given the period between 24th December to 15th January which is to be reckoned. Order 5 rule 1 (2) provides that;

“Service of summons issued under sub rule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty-one days, showing sufficient reasons for the extension.”

The application beforehand was filed in this court on the 25th day of November 2022 and the same was endorsed by the then Assistant registrar on the 6th day of December 2022. the 1st respondent was served on the 9th day of January 2023 as per the affidavit of service filed in this court on the 23rd day of January 2023. In computation of the 21 days according to Order 5 rule 1 (2) takes effect from the date of issue which in this case is the date of endorsement by the registrar which was the 6th day of December 2022. Furthermore, parties should also take note of the provisions under Order 51 rule 4 of the Civil Procedure Rules which states;

“4. Time expiring between 24th December and 15th January.

Unless otherwise directed by the court, the period between the 24th day of December in any year and the 15th day of January in the year following, both days inclusive, shall not be reckoned in the computation of the time appointed or allowed by these Rules for amending, delivering or filing any pleading or for doing any other act; except that this rule shall not apply to any application for an interim injunction, or to any business classified by the registrar or by a magistrate’s court as urgent.”

Therefore, the computation of the 21 days within which service of the current pleadings were set to expire was on the 20th day of January 2023. This computation is a clear indication that the 1st respondent having been served on the 9th day of January 2023, the service was within the time as prescribed by the law and thus this preliminary objection fails.

Consideration of the merits of the Application

I have carefully perused and considered the pleadings of both parties, written submissions, the law considered as well as the relevant authorities applied therein. The question to be dealt with is; *Whether the respondent's actions amounted to contempt of court order granted vide Miscellaneous Application No. 008 of 2015 arising from Civil Suit No. 002 of 2015.*

Contempt of court is defined under the Black's Law Dictionary 8th edition to mean, *"Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable, usually by fine or imprisonment".*

In the case of *Hon. Sitenda Sebalu and the Secretary General of the East African Community, East African Court of Justice Reference No. 8 of 2012*, it was held that,

"According to Halsbury's Laws of England, (supra): "it is a civil contempt to refuse or neglect to do an act required by a judgment or order of the court within the time specified in that judgment, or to disobey a judgment or order requiring a person to abstain from doing a specific act."

In the same case, the standard of proof in contempt proceedings was set; that it must be higher than proof on the balance of probabilities, and almost, but not exactly, beyond reasonable doubt. In applying the standard of proof to the main question raised herein, court has to give considerations to the grounds as were discussed in the case of *Hon Sitenda case (supra)* and the same shall form the sub issues of this matter hereunder;

1. Existence of a lawful order

For an applicant to plead contempt of court, there must be in existence a lawful order issued by a competent court. According to the applicant as per paragraph 4-5 of the affidavit in support of the motion, there exists a court order in form of a consent judgement, the respondents are claimed to be in contempt of dated 8th day of June 2015 wherein it was stated that;

“CONSENT JUDGEMENT

IT IS HEREBY AGREED by the consent of the parties hereto that judgement in Miscellaneous Application No. 008 of 2015 and Civil Suit No. 002 of 2015 and Civil Suit No. 001 of 2015 be entered on the following terms:

1. That the applicant Ms. Amina Besisira shall receive her share of the rental income from the property comprised in plot 45 Masindi port road Masindi municipality Masindi district amounting to Ugx 4,000,000/= (four million Uganda shillings only) every 6 months (biannually) effective June 2015.

2. That the next collection shall commence in September 2015 and the entitlement for the applicant for the months of June, July and August 2015 amounting to Ugx 2,000,000/= (two million Uganda shillings) shall be offset from the 1st respondent 's share in September 2015.

3. That the applicant Ms. Amina Besisira and the 1st respondent Mr. Besisira Kisoke Ilyas shall collect their respective shares in (1) above from the tenants and the subsisting tenancy agreements are varied accordingly.

4. That the applicant Ms. Amina Besisira and the 1st respondent Mr. Besisira Kisoke Ilyas shall contribute to the maintenance of the property on plot 45 Masindi port road.

5. Each party shall bear his or her own costs in Miscellaneous Application No. 008 of 2015.

Dated at Masindi this 8th day of June 2015”

A consent judgement is defined by the Black’s Law Dictionary to mean, “A settlement that becomes a court judgment when the judge sanctions it. In effect, it is merely a contract acknowledged in open court and ordered to be recorded, but it binds the parties as fully as other judgments.”

Whereas the 1st respondent during cross examination stated that, *“The consent Judgement lapsed with the death of the late Ilyas Kisoke”*, I would say not. A judgement survives the death of a party to it and instead forms part of his or her estate and can be executed by the administrators. Therefore, there indeed exists a lawful court order.

5 ***2. Potential contemnor’s knowledge of the order***

3. Failure to comply with the court order

In contempt proceedings, it is crucial for the complainant to ascertain that the contemnor had knowledge of the order. It is already noted as per Miscellaneous Application No. 008 of 2015 and Civil Suit No. 002 of 2015 that the respondents were not parties. However,
10 it does not bar a person to have knowledge of existence of such court order and its contents such as purchasers of immovable property as in this case. In paragraph 6 of the affidavit in support of the application, it is stated that the 1st contemnor or respondent fraudulently, illegally and with full knowledge of the existence of the court judgement conspired, connived and colluded with the late Ilyas Kisoke Besisira to defeat the terms of the Consent
15 Judgement. In other words that the 1st respondent had knowledge of the consent judgement but went ahead to purchase the suit property. However, the 1st respondent in paragraph 9 of her affidavit in reply, stated that she had knowledge of the consent judgement on the 9th day of January 2023.

In addition, Counsel for the applicant submitted that on the 13th day of October 2021, a
20 letter was written to Masindi District Land Board objecting to the transfer of the applicant’s property on plot 45 port road Masindi. A copy of the said letter has not been produced before court to ascertain the averments of counsel for the applicant however, the 2nd respondent confirmed the same in paragraph 3-4 of their affidavit in reply where it was confirmed that the 1st respondent applied to the 2nd respondent for acquisition of a land
25 title but upon receipt of the letter from the applicant requesting to halt the process, it was halted awaiting the outcome of this court.

From the above, it is not in dispute that both respondents had knowledge of the consent judgement however, the question that arises is at what point, having had the knowledge

of the consent judgement does the 1st respondent be in contempt of court. In other words, whether there was failure to comply with the court order by the respondents.

According to the applicant, in her affidavit in support paragraphs 6 - 13 indicates that the 1st respondent had knowledge of the consent judgement before the sale of the suit property and as such the sale agreements executed are illegal and void. The applicant further informed court during cross examination that the 1st respondent was served with the court order by Counsel Muhammad Mbabazi of M/S Nyanzi, Kiboneka, Mbabazi & Co. Advocates but could not tell the date.

In response, the 1st respondent testified in paragraph 5(g)- 6 of the affidavit in reply that she followed due process in acquisition of the property in issue and that the late Ilyas Kisoke Basisira introduced Amina Muhammad as his spouse who also appended her signature at the time of execution of the land sale agreements.

The 1st respondent further stated in paragraph 9 & 11 of the affidavit in reply that she had knowledge of the consent judgement on the 9th day of January 2023 having been served with Miscellaneous Application No. 0177 of 2022. However, that by that time, the 1st respondent had already bought the suit property and that possession had been handed over to her since 2021.

During cross examination, the 1st respondent stated: *“I am aware of the consent between Ilyas Kisoke and the applicant. Since the court order was not directed to me, it does not concern me. Under paragraph 8 of the affidavit, I admit there was this consent. The consent does not declare ownership. It was not addressed to me..... The consent lapsed with the death of Ilyas Kisoke.....”*

From the adduced evidence, it is already noted that knowledge of the court order is not in dispute. What is in dispute is the failure to comply with the order.

This brings in the timelines the respondents had knowledge of the order. With regard to the 2nd respondent, having been notified of the existence of the consent judgement halted

the process of acquiring the title to the 1st respondent. The 1st respondent had knowledge of the court order on the 9th day of January 2023 when she was served with summons.

In my view, knowledge of the consent judgement was obtained by both respondents after the execution of the sale agreements to the suit property. During the purchase, execution
5 of the sale agreements and taking possession of the same, the 1st respondent could not have been in contempt having not obtained any information suggesting the existence of the consent judgement involving the applicant.

With regard to the fact that the applicant co-owned the property at hand with the late Ilyas Kisoke Besisira is a different issue which requires this court to delve into determining
10 ownership of the property. However, for purposes of administering justice, a literal interpretation of the consent judgement should be adopted. The orders in the consent judgement were clear. They were only directed to receipt of the rental income derived from the suit property in equal shares and so is the cost of maintenance of the suit property. There is no evidence that has been adduced to suggest that there was co-ownership of the
15 property between the applicant and the late Ilyas Besisira Kisoke. Henceforth, with the literal interpretation of the consent judgment, the 1st respondent is in contempt of the consent judgement only as far as the rental income and maintenance costs of the suit property are concerned as at 9th day of January 2023 to date.

Remedies available

20 Section 98 of the Civil Procedure Act empowers this court with inherent jurisdiction to grant such orders as may be necessary to meet the ends of justice. The Halsbury laws of England state that *Civil contempt is punishable by way of committal to civil prison or by way of Sequestration. It can also be punishable by way of fine or an injunction against the contemnor.*

25 The applicant sought for several prayers as discussed including;

- a) A declaration that the act of the respondents in dealing with plot 45, Masindi port road (formerly LRV 472 Folio 25) contrary to the court order dated 8th June 2015

vesting ownership of the same in the joint names of the applicant and the late ILYAS BESISIRA KISOKE is an act of contempt of court.

- 5 b) A declaration that the act of the respondents processing a certificate of title in respect of plot 45, Masindi port road (formerly LRV 472 Folio 25) is an act meant to dispossess the applicant of the joint ownership of the said land or property already decreed by the Court Order dated 8th June 2015.
- 10 c) A declaration that the act of dispossessing and acquiring title for plot 45 Masindi port road (formerly LRV 472 Folio 25) by the 1st contemnor by registering the same in her names is illegal, unlawful and in contempt of court contrary to the court's judgement of 8th June 2015.
- d) Consequent to (a), (b) & (c) hereof, the 1st contemnor be ordered to purge the contempt by ceasing and desisting from dealing with plot 45, Masindi port road as her property.

15 It is already held above by this court that the 1st respondent is in contempt of the consent judgement only as far as the rental income and maintenance costs of the suit property are concerned as at 9th day of January 2023 to date. It is also already noted in the court's analysis of the evidence adduced by the parties, that there is no sufficient evidence adduced in relation to proving the joint ownership between the late Ilyas Besisira Kisoke and the applicant.

20 Furthermore, the consent judgement is clear as to what terms were set therein to relate only to receipt of rental income and costs of maintenance. Therefore, the above declarations are hereby not awarded. However, the 1st contemnor is ordered to purge or cease the contempt which 9th day of January 2023 by desisting from dealing with plot 45, Masindi port road as her property in relation to the terms set out in the consent judgement.

25

- e) The 1st contemnor be ordered to pay a fine as a sanction for contemptuous conduct.
- f) Any other and further orders the honourable court may deem necessary and expedient in the interest of justice and protection of the rule of law.

With regard to a fine against the 1st respondent, court orders the 1st respondent to pay a fine of Ushs 17,000,000 (Seven million shillings) for the contemptuous conduct against a court order, in default, to serve 3 months imprisonment.

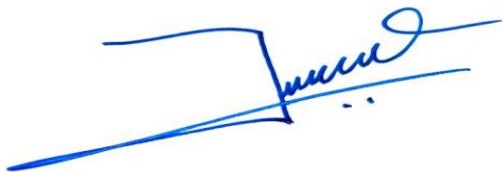
5 With regard to payment of a compensation to the applicant, the 1st respondent is ordered to pay the applicant a compensation of **Ushs 33,000,000/** as estimated value for the rent lost by the applicant since 9th January 2023.

The 1st respondent is also ordered to uphold the terms of the consent judgement delivered on the 8th day of June 2015 and which she has contempered on since 9th January 2023 unless otherwise ordered.

10 This application is allowed with costs to the applicant to be met solely by the 1st respondent.

I so order.

Dated and delivered on this 22nd day of December 2023.



15 Isah Serunkuma
JUDGE