

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO. 0023 OF 2020
(ARISING FROM ADMINISTRATION CAUSE NO. 060 OF 2019)
(ARISING FROM HCT-CV-CS-NO.0030 OF 2019)**

1. ALLAN KAHUMUZA NYAKAANA

**(ADMINISTRATOR OF THE ESTATE OF THE
LATE LABAN MUKIIDDI ABOOKI NYAKAANA)**

2. GRACE NYAKAANA

..... APPLICANTS

3. DAVID NYAKAANA

4. JENNIFFER NYAKAANA

5. OBRA MARY NYAKAANA

VERSUS

ANNE MARY NYAKATO

..... RESPONDENT

**(ADMINISTRATOR OF THE ESTATE OF THE
LATE LABAN MUKIIDDI ABOOKI NYAKAANA)**

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

This application was filed by way of notice of motion under section 98 of the Civil Procedure Act Cap 71, Section 33 of the Judicature Act, Article 23 (1) (a), and 28(12) of the Constitution of the Republic of Uganda, and Order 52 Rules 1&3 of the Civil Procedure Rules, for orders that;

- a) The Respondent be arrested and committed to civil prison for contempt of a court order,
- b) The respondent be ordered to cease any further dealings with the estate of the late Laban Mukiiidi Abooki Nyakaana,

- c) The respondent be ordered to return two (2) cows or their monetary value and refund all sums of money obtained from the estate unlawfully after the order directing her to return the letters of administration, and
- d) Costs of the application be provided for.

The application was supported by the affidavit of Allan Kahumuza Nyakaana, the 1st applicant, which laid down the grounds for the application, to wit:

- (a) That the applicants filed civil suit No. 30 of 2019 before this honourable court and prayed for, inter alia, the revocation of letters of administration vide Administration Cause No. 1526 of 2018,
- (b) That before civil suit No. 30 of 2019 could be determined, they again filed Administration Cause No. 060 of 2019 for a citation order requiring the respondent to furnish this court with said letters of administration.
- (c) That on the 5th day of September 2019, a citation order was duly issued commanding the respondent to furnish this court with the letters of administration within 21 days from the date of service of the order to the respondent so that the Court can proceed with the revocation of the same in accordance with the law.
- (d) That on the 14th of October 2019, the citation order was duly served on the respondent.
- (e) That on the 25th day of October 2019, lawyers for the respondent wrote to the applicant describing the citation order as precipitous and premature.
- (f) That the respondent has not shown any signs of complying with the said order

(g) That the respondent continues to sell cows and collects money from the estate without their consent.

(h) That the conduct of the applicant amounts to contempt of court.

The respondent filed an affidavit in reply and opposed this application on the following grounds: -

- a) That the applicant did not undertake the execution of the said order
- b) That not all orders of the court must, as of necessity, result in contempt proceedings.
- c) That the current application seeks injunctive relief not contempt of court.

Background

The applicants, who are children of the late Laban Mukiidi Aboki Nyakaana, filed Civil Suit No. 30 of 2019 before this honourable court seeking for, inter alia, revocation of letters of administration issued vide Administration Cause No. 1526 of 2018 in the names of the first applicant and the respondent (also a daughter of the late Laban Mukiidi Abooki Nyakaana)

Before civil suit No. 30 of 2019 could be heard and determined, the applicants again filed Administration Cause No. 60 of 2019 before this court by way of a statement on oath which was sworn by the first applicant seeking this court to recall the Letters of Administration of the estate of the late Laban Mukiidi Abooki Nyakana on account that the co-administrator (the respondent herein) was mismanaging the estate.

On 5th September 2019, this court issued a citation order commanding the respondent to furnish it with the said letters of administration so that the court can proceed with the revocation of the same in accordance with

the law. The said citation order was duly served on the respondent on the 14th of October 2019, but the respondent did not comply with the order and continued dealing with the estate in a manner that the applicant did not consent to, hence this application.

Representation and hearing

The applicants were represented by Mr. Mugabi Geoffrey of M/S Acellam Collins & Co. Advocates while the respondent was represented by Mr. Mushanga David of M/S Mushanga & Associates. Counsel for the parties filed written submissions which have been considered in this ruling.

Issues

1. Whether the respondent is in contempt of the court order.
2. What remedies are available to the parties?

Resolving issues

Issue: Whether the respondent is in contempt of the court order

Counsel for the applicants submitted that evidence was led by way of an affidavit by the 1st applicant that a citation order was issued by this court on the 5th of September 2019 commanding the respondent to furnish the court with the letters of administration of the estate of the late Laban Mukkidi Abooki Nyakaana within 21 days from the service of the order to the respondent.

That on the 14th of October 2019, the said citation order was duly served on the respondent in person and acknowledged receipt of the same by appending her signature as evidenced by Annexure “A” to the affidavit in support of this application.

On the 25th of October 2019, counsel for the respondent made a reply to the citation order describing it as “precipitous, unnecessary and premature” and objected to the process of the revocation of the letters of administration.

Counsel for the applicants further submitted that it was not in contention that a valid court order subsisted. Counsel relied on the case of ***Hadkins Vs. Hadkins (1952) ALL ER*** where the court held that “*a party who knows of an order whether null or valid, regular or irregular cannot be permitted to disobey it..... as long as it existed.*” Counsel for the applicants also referred this court to the case of ***Hon. Sitenda Sebalu Vs. Secretary General of East African Community Ref. No. 8/12*** where it was held that “*a judgement of the court if undischarged must be followed.*”

Counsel for the applicants prayed that this court finds that the respondent is in contempt of court and be ordered to return the two (2) cows or their monetary value as well as the money she unlawfully obtained from the estate. Counsel further prayed that the respondent be committed to civil prison until she complies with the order.

In their submissions, counsel for the respondent agreed that there was a valid court order but the issue under contention was whether the respondent failed to comply with the said order. Counsel for the respondent argued that contempt is a matter of both law and fact and that a party that alleges contempt should adduce evidence of commensurate strength or point out instances of contempt, and that the standard of proof for contempt of court is higher than proof on balance of probabilities. Counsel for the respondent relied on the case of ***Lubwama Vs Swift Links and 3 others, MA 961 of 2013.***

Counsel for the respondent further submitted that the citation order did not have the effect of revoking the letters of administration and that the respondent still had powers to deal with the estate. Counsel for the respondent also submitted that this application arose out of personal vendetta and court out to address its mind on the real issues of controversy.

Analysis of Court

This application is based on the court's discretionary power under section 98 of the **Civil Procedure Act Cap 71** to grant the orders sought so that justice is done and to prohibit any person that obstructs or has the potential to obstruct the smooth administration of justice.

The Supreme Court of Uganda in the case of **Prof. Fredrick Ssempebwa & 2 Others Vs Attorney General of Uganda Civil App. No.05 of 2019** gave a detailed description of what amounts to contempt of court. In that case, the Supreme Court drew a distinction between criminal and civil contempt. Referring to **Black's Law Dictionary 10th Edition on page 385**, the Court defined criminal contempt as **"an act that obstructs justice or attacks the integrity of the court, the criminal contempt proceedings are punitive in nature."** The Supreme Court noted that this is an offence recognized under Article 28(12) of the Constitution of the Republic of Uganda and that for one to be convicted of criminal contempt of court, the case must be proven beyond reasonable doubt just like other criminal offences.

On the other hand, civil contempt was defined as **"the failure to obey a court order that was issued for another party's benefit. A civil contempt proceeding is coercive or remedial in nature. The usual**

sanction is to confine the contemnor until he complies with the court order.”

The application before this court is not in respect of criminal contempt but rather it is a civil application for civil contempt. Civil contempt proceedings are typically brought by a disgruntled litigant aiming to compel another litigant to comply with the previous order granted in its favour. The objective of contempt proceedings is to impose a penalty that will vindicate the court's honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order.

In the case of ***Prof. Ssempebwa (supra)***, the Supreme Court stated that civil contempt is well embedded in the Constitution of the Republic of Uganda under Article 126(1) under which judicial officers derive their judicial power. It therefore follows that when a court gives orders in the exercise of its judicial power, those orders must be respected, implemented, and take effect. Accordingly, nobody should interfere with court orders.

The Supreme Court in the case of ***Prof. Ssempebwa (supra)*** set out the elements of civil contempt that must be proved. These ingredients are:

- a. That an order was issued by court
- b. That the order was brought to the attention/notice of the alleged contemnor
- c. That there was non-compliance with the order by the Respondent
- d. That the non-compliance was willful or mala fide.

Accordingly, the first 3 elements must be proved on balance of probability and the 4th element must be proved beyond reasonable doubt. In the

instant application, the first two elements were conceded to by the respondent, and I therefore find that they have been proved.

The next element to determine, therefore, is whether there was non-compliance with the order by the respondent.

This court gave a citation order dated 5th September 2019 commanding the respondent to bring into this court letters of administration for the estate of the late Laban Mukiidi Abooki Nyakaana within 21 days from the date of service of the order for the court to proceed with the revocation of the same in accordance with the law. This order was duly served to the respondent on the 14th of October 2019. The respondent did not bring into court the said letters of administration despite being aware of the citation order.

In the premises, since the respondent has never furnished this court with said letters of administration, I find that the respondent did not comply with the citation order issued by this court on the 5th day of September 2019.

The next question to determine is whether the non-compliance was *willful* or *mala fide*.

This element must be proven to establish civil contempt of court. The test for proof of this element was set out by the Supreme Court of Uganda in the case of **Prof. Ssempebwa (supra)** citing with approval a South African case of **Kakie V CC11 systems (pty) Ltd [2006] SCA54 (RSA)** where court held thus:

“[9]The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed deliberately and mala fide. A

deliberate disregard is not enough since the non-complier may genuinely, albeit mistakenly, believe he or her is entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids infractions. Even a refusal to comply that is objectively unreasonable may be bona fide (so unreasonableness could be evidence of lack of good faith).

[10] These requirements – that the refusal to obey should be both willful and mala fide, and that the unreasonable non-compliance, provided it is bona fide does not constitute contempt – accord with the broader definition of the crime, of which the non-compliance with the civil orders is a manifestation. They show that the offence is committed not by mere disregard of the court order but by the deliberate and intentional violation of the court’s dignity, repute, or authority that this evinces. An honest belief that non-compliance is justified or proper is incompatible with the intent.”

The Supreme Court also cited another South African case of **Lourens V Premier of the Free State Province and Another 95260[2017] ZASCA 60** which applied the principles stated in the **Fakie case (supra)** and held thus:

“[12] it is now settled that the applicant must prove the requisite of contempt (the order, service of notice, non-compliance, willfulness and mala fides) beyond a reasonable doubt. But once these requisites have been proved, the respondent bears an evidential burden of

showing that non-compliance was not willful and mala fide. Disobedience of the civil order will constitute contempt only if the breach of the order was committed deliberately and mala fide. Unreasonable non-compliance provided that it is bona fide does not constitute contempt. And where, as is the case, an applicant approaches a court on notice of motion, a dispute of fact as to whether non-compliance was willful and mala fide falls to be determined on the respondent version; unless the court considers that the respondent's allegations do not raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on papers."

In this application, the respondent was ordered by this court to furnish it with the letters of administration that were in her custody. When the respondent was served with the order, she approached her lawyers for legal advice. The lawyers in their wisdom advised the respondent not to comply with the order. Instead, in their letter addressed to the lawyers of the applicants which was received on the 25th day of October 2019, the lawyers criticized the order and described it as "precipitous, unnecessary and premature." Such an act cannot be a mere innocent infraction.

I must state that contrary to the argument of counsel for the respondent, the citation order was self-executing once it was duly served on the respondent, and it did not require any execution proceedings.

In the case of ***Khabusi Building Contractors & Furniture Ltd Vs PPDA Misc. app. No 99 of 2015*** Justice Stephen Musota J (as he then was)

citing the case of ***Ambrit Goyale Vs. Aluchant Goyale & 3 others CA application no 109 of 2004*** held thus:

It matters not whether the order is null, void, irregular regular or lawful. The order cannot be permitted to be disobeyed. Any person who feels aggrieved by the order of the court must bring their grievances to the attention of the court and move the court to vary or set aside the same. Unless that is done, the person must comply with the court order.”

If the respondent was aggrieved by the citation order, she should have herself or her lawyers brought the grievance to the attention of the court and moved the court to vary or set aside the same. The respondent did not choose this path but rather decided to disobey the order and bashed it in abhorrent terms.

From the foregoing, am inclined to say that the acts of the respondent and her lawyers (as her agents in law) of not complying with the order were willful and mala fide.

As a result, I find the respondent in contempt of court.

Issue 2: What remedies are available to the parties?

It is imperative that the public understands the gravity of the contempt of court which is available principally for the enforcement of court orders. As it was enunciated by the Supreme Court in the case of ***Prof. Ssempebwa (supra)*** citing with approval, the South African case of ***Meadow Glen Homeowners Association Vs. City of Tshwane Metropolitan Municipality (767/2013 [2014] ZASCA 2019***, “***contempt of court is not an issue inter partes; it is an issue between the court***

and the party who has not complied with a mandatory order of the court.”

The Supreme Court stated that contempt of court has obvious implications for the effectiveness and legitimacy of the legal system and the legal arm of government. The Supreme Court further held forth that the jurisdiction of superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart at the very effectiveness and legitimacy of the judicial system. I am persuaded by this position.

The applicants’ counsel prayed to this honourable court to commit the respondent to civil prison for contempt of court, that the respondent be ordered to cease any further dealings with the estate of the late Laban Mukiidi Abooki Nyakaana, that the respondent be ordered to return two (2) cows or their monetary value, and costs of this application be provided for.

I note that under order 41 rule 2(3) this Court may order the committal of the respondent into civil prison for a period not exceeding six (6) months. Counsel for the applicants relied on the case of ***Jane Sempebwa and Another Vs Ndibalekera Magdalena Misc. App. No.224 of 2015*** which quoted the case ***Re Contempt of Daugherty 429, Michigan 81,97, (1987)*** where the court held that “***...in other jurisdictions, imprisonment for civil contempt is properly ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance was mandatory in character. A party in contempt of court stands to be committed until he complies with the order.***”

While I take into consideration the submissions of the counsel for the applicants, I am of the view that in conflicts between relatives, reconciliation should be promoted. Underscoring the importance of reconciliation Justice Ketrah Kitariisibwa Katunguka in the case of **Jane Sempwebwa (supra)** held thus: “... **this court is of the view that in conflicts between relatives, the orders of the court should as much as possible take into account the need to promote reconciliation inline with Article 126 of the constitution and subjecting a family member in a suit to serving time in prison when there is an alternative would not be a first considered or preferred option.**”

For this reason, the respondent shall not be committed to civil prison but her intentional disobedience and noncompliance with the court order should not go unpunished. In the case of **Housing Finance Bank Ltd Vs. Edward Musisi Misc. Application No. 158 of 2010**, Court held that “**the principle of law is that the whole purpose of litigation as a process of judicial administration is lost if orders by the court through the set judicial process, in the normal function of courts are not complied with in full by those targeted and/or called upon to give due compliance.... The order must be complied with in totality in all circumstances by the party concerned.**”

The respondent is therefore fined UGX 5,000,000 (Uganda shillings five million only) as a penalty for contempt of court and shall be deposited in court within one (1) month from the date of delivery of this ruling.

Counsel for the applicant also made a prayer that the respondent be ordered to cease any further dealing with the estate of the late Laban Mukiidi Abooki Nyakana; and that the respondent be ordered to return two (2) cows or their monetary value and all sums of money she obtained

from the estate unlawfully. The court declines to pronounce itself on these remedies. The Applicants should pursue the right procedures to obtain the same.

Regarding costs, it is a trite law that, generally, costs follow the event, and a successful party is awarded costs. This is in accordance with section 27 of the Civil Procedure Act. In the case of ***Kivumbi Paul Vs. Namugenyi Zulah Civil Revision No. 10 of 2014***, Hon Lady Justice Elizabeth Musoke JA citing ***Kiska Ltd Vs De Angelias [1969] EA 6***, noted that ***“A successful party can only be deprived of his costs when it is shown that his conduct either prior to or during the course of the suit has led to litigation, which, but for his own conduct might have been averted.”***

Had the respondent complied with the court order in ***Administration Cause No. 60 of 2019***, this litigation would have been averted. Therefore, the costs of this application are awarded to the applicants.

In summary, this application is allowed, and I make the following orders:

- a) The respondent is in contempt of court order in Administration Cause No. 60 of 2019
- b) The respondent is fined UGX 5,000,000 (Uganda shillings five million only) as a penalty for contempt of court and shall deposit the same in this court within one (1) month from the date of delivery of this ruling.
- c) The respondent is ordered to comply with the orders in Administration Cause No. 60 of 2019 within 21 days from the date of delivery of this ruling.

- d) In default of orders in either paragraph (b) or (c) above, the respondent shall be committed and detained in civil prison for a period of six (6) months.
- e) Costs of this application are awarded to the applicants.

I so order.

Dated at Fort Portal this 23rd day of October 2023



Vincent Emmy Mugabo
Judge