

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT Jinja**

**HCT-03-MA-CV- 0308-2022**

**(ARISING FROM MISCELLANEOUS APPLICATION NO. 226 OF 2022)**

**(ALSO ARISING FROM CIVIL SUIT NO, 067 OF 2020)**

**KYEYUNE KASSIM:.....APPLICANT**

**VERSUS**

**TROPICAL BANK LIMITED:.....RESPONDENT.**

***Application for Contempt of Court Orders***

***Held: Application Granted with orders set forth in this Ruling.***

**BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE**

**RULING**

This Ruling follows an Application filed by Notice of Motion under **Section 98 of the Civil Procedure Act Cap 71 (as amended) (CPA) and Order 52 rules 1 & 3 of Civil Procedure Rules SI 71-1 (as amended) (CPR)** seeking the following for the orders:-

1. A declaration that the respondent has acted in contempt of this court's orders issued on the 9<sup>th</sup> day of September 2022.
2. The respondent be compelled to obey court orders and appropriately punished by paying UGX 20,000,000 (Twenty million shillings only) as fine for contempt of court orders.
3. The respondent pays UGX 50,000,000/- (Fifty million shillings only) to the applicant as general damages to atone the injury and inconveniences occasioned to him.
4. That the respondent pays costs of this application.

This application is supported by the affidavit of Kyeyune Kassim, but briefly the grounds of this application are that:-

1. That this Honorable Court on the 9<sup>th</sup> day of September 2022 issued an order in **Misc. Application No. 226 of 2022** ordering the respondent to avail court with readable application forms for the loan or overdrafts signed by the applicant and his guarantors, disbursements and repayment schedules within 14 days from the date of issuance of the order.

2. That the respondent was served with the order on the 14<sup>th</sup> of September 2022 but to date the respondent has defied and or refused to comply with the said order.
3. That the respondent's action of refusing to comply with the order of court is a mockery of this court and the justice system
4. That it is the interest of justice and equity that this court grants the order.

**In reply, the Respondent** filed an affidavit in which he denied the above averments. The gist of his averments are that;

- a. The has read and understood the Applicant's application for a declaration that the Respondent is in contempt of court and the 1<sup>st</sup> Respondent opposes the same for lacking merit because the Order of the Court was fully complied with.
- b. That all allegations of fact contained in the Affidavit of the Applicant are denied, contested and challenged for being falsehoods.
- c. That whereas the Applicant's bank account was previously classified as written off pursuant to the Financial Institutions (Credit Clarification & Provisioning) Regulations, the same was removed from the said classification following the Orders of this Court.
- d. That upon receiving the court order, she had a tele-conversation with Counsel Twebaza Angella from the firm of advocates representing the Applicant and advised her to collect the documents from the Jinja Business branch of the Respondent Bank, and she believes that the documents were collected because the Applicant or his advocates did not make any follow up thereafter.
- e. That the documents which were collected are;
  - a. The credit facility application form dated 23<sup>rd</sup> June 2011
  - b. The Letter of recommendation from the LC chairman dated 2 June 2011
  - c. The Recommendation for KSL. Out-growers dated 24<sup>th</sup> June 2011.
  - d. The recommendation from Busoga Sugarcane Growers Association.
  - e. The KSIL Our-Growers Applicant's Field Description Form.
  - f. The Recommendation from Kaura Sugar Ltd dated 31<sup>st</sup> May 2011.
  - g. The Letter granting the temporary overdraft dated 17<sup>th</sup> July 2008.
  - h. The Credit facility Agreement dated 1<sup>st</sup> July 2011.
  - i. The Personal Guarantee executed by Ababuza Luka.
  - j. The Temporary overdraft facility letter dated 10<sup>th</sup> August 2011.
  - k. The Personal Guarantee executed by Mugabi Simon.
  - l. The application therefore lacks merit and should be dismissed with costs.

## **BRIEF FACTS**

The brief facts are that on the 25<sup>th</sup> November 2020 the Applicant commenced **HCCS No. 67 of 2020** disputing his indebtedness to the Respondent and challenging the freezing of his bank account. The respondent filed a written statement of defense and counterclaim confirms that the Applicant indeed accessed various facilities and it (the Respondent) sought to recover a sum of UGX. 132,333,995 from the Applicant. The Applicant subsequently filed **HCMA No. 226 of 2022** seeking to have his bank account unfrozen and the court issued the various Orders beyond those prayed for in the Application, including the Order to avail readable loan documents to the Court.

Subsequently, the Applicant commenced the current application alleging that the Respondent is in contempt of the court order by refusing remove his bank account from classification and further that the Respondent failed to avail readable copies of the loan application forms to the court.

## **REPRESENTATION**

When this matter came for hearing before me, the applicants were represented by learned counsel Mr. Esarait Robert of M/S Esarait & Co. Advocates, while the Respondent was represented by learned counsel Mr. Kyewalabye Denis of M/S Kaweesi & Partner Advocates.

## **THE LAW**

**Section 98 of the Civil Procedure Act** reads that:-

*“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 process of the court”.*

This section empowers the court to grant any orders in all cases in which it appears to the court to be just and convenient to do so to ensure that justice is not only done, but seen to be done.

Again, **Section 33 of the Judicature Act Cap 13** empowers this court to grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy are finally determined and all multiplicities of legal proceedings concerning any of those matters avoided. **See HC CA No. 07 of 2011 Kaahwa Stephen & Another vs Kalema Hannington** per Hon. Lady Justice Monica K. Mugenyi.

## RESOLUTION OF THE APPLICATION

It was submitted by learned counsel for the applicant that **Section 98 of the Civil Procedure Act, Cap 71** gives the High Court inherent powers to make decisions that are pertinent to the ends of justice.

That **Black's Law Dictionary 7<sup>th</sup> Edition pg. 313** defines **contempt of court** as “*a disregard of or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair respect due to such a body*”.

That contempt of court often referred to simply as "contempt is the offence of being disobedient to or disrespectful toward a court of law and its officers in the form of behavior that opposes or defies the authority, justice and dignity of the court. That important to note is that there are broadly two categories of contempt; one being disrespectful to legal authorities in the courtroom, or willfully failing to obey a court order.

That contempt of court has also been well described in the case of **Megha Industries Ltd vs, Conform Uganda Ltd HCMC NO. 21 of 2014** where the Judge held that contempt of court exists where there is a lawful court order and the potential contemnor must have been aware of the court order and failed to comply with the order.

### ISSUE 1: Whether the Respondent is in contempt of court?

Learned counsel for the respondent submitted that the position of the law is that for contempt of court to found, the following conditions must exist;

- a) A lawful order,
- b) The potential contemnor's knowledge of the order, and
- c) The potential contemnor's failure to comply i.e. Disobedience of the order (this was the position in **Hon. Sitenda Sebalu vs Secretary General of the East African Community No & of 2012**. That further in the case of **Hon. Sitenda Sebalu vs Secretary General of The East African Community No. 8 of 2012** It was held that the standard of proof in contempt proceedings must be higher than proof of probabilities and almost but not exactly beyond reasonable doubt. That first and foremost, they need to prove that there is a lawful order in existence against the Respondent. That in the instant case, an Order was issued by this honorable court on the 9<sup>th</sup> day of September 2022 vide **Miscellaneous Application No 226 of 2022**, compelling the Respondent to avail Court with readable Application forms for the loan

or overdrafts signed by the Applicant and the guarantors, disbursements and repayment schedules within 14 days from the date of issuance of the Order.

That this Order is on Court record and the Respondents do not dispute the same.

They cited the case of ***Hadkinson vs Hadkinson (1952] All ER, Romer LJ*** relied on the case of ***Church v Cremer (1 Coop Temp Cott 342)*** where it was held that; “a party who knows of an order is whether null or valid, regular or irregular, cannot be permitted to disobey it.as long as it existed”. That a lawful order existed against the Respondent. Secondly, that they have to prove that the potential contemnor's has knowledge of the order. That the Respondent was duly served with the Court Order on the 14<sup>th</sup> day of September 2022 and an affidavit of service is on court record as proof of the same. That the Respondent has knowledge of the existence of the Court Order against it. Lastly, that the Applicant must prove the potential contemnor's failure to comply i.e. disobedience of the order.

Further that in ***Kilama Lajul vs Uganda Coffee Development Authority & 2 Others (Civil Miscellaneous Application 324 of 2020) (2021] UGHCCD 18 (19 April 2021),*** Hon. Justice Sekaana stated that; “*normal functioning of the courts are not complied with in full by those targeted and/or called upon to give due compliance. Further, it is not for that party to choose whether or not to comply with such orders.*”

That the order must be complied with in totality in all circumstances by the party concerned, subject to the party's right to challenge the order in issue in such a lawful way as the law permits.

That it is the position of the position of the law that to disobey an order of court or offer no explanation for non-compliance to the issuing court, at any party's choice or wishes, on the basis that such an order is null or irregular, or is not acceptable or it's not pleasant to the party concerned is to commit contempt of court.

That in the instant Application the Applicant states in paragraph of the Affidavit in Support of his application that the Respondent defied and refused to comply with order.

Further, the Respondent stated under paragraph 7 of her affidavit in reply that the documents were collected, which is not true. That it's the Applicants submission that the Respondent should be held to be in contempt of Court since it has with no explanation not complied with the court Order issued on the 9<sup>th</sup> day of September 2022.

## **ISSUE 2: Whether the Applicant is entitled to the remedies sought?**

It was submitted for the applicants that in the case of ***Stanbic Bank (U) Ltd vs Commission General Uganda Revenue Authority***, it was held that: "*Civil contempt is punished by way of committal to civil prison or by way of fine or an Injunction against the contemnor*". That in the case of ***Margaret L.L Etuusa vs. Makerere University & 3 Others Miscellaneous Cause No. 181 of 2017*** and ***Miscellaneous Application No. 364 of 2017***, this honorable Court found the Respondents in contempt of Court and ordered them to pay general damages of UGX. 350,000,000 in all, a fine of UGX 20,000,000/=-and 10% interest for the Respondents arrogance in disobeying court orders.

That in the case of ***Geraldine Busuulwa Ssali vs. National Social Security Fund & 2 Others Miscellaneous Application No. 116 of 2016***, this honorable Court found the Respondents in contempt of Court and ordered them to pay compensation of UGX 200,000,000 for the Respondents arrogance in disobeying court orders. That in the case of ***Prof. Elsam Magara vs. Makerere University and Ors MA NO, 497 OF 2015*** Justice Margaret Oguli Oumo delivered a judgment in favor of Applicant and ordered the university to pay him Shillings 250,000,000 in general damages, Shillings 317.5M in exemplary damages and Shillings 50,000,000/- for reputational damage.

That as already submitted, the Respondent refused to comply with the court Order issued by this Honorable court, thus the Respondent should be held to be in contempt of court and pay a fine to the Applicant of UGX. 20,000,000 (Twenty Million Uganda Shillings, and General Damages of UGX. 50,000,000 (fifty Million Uganda shillings in that respect and costs of this suit.

**In reply**, it was submitted by learned counsel for the Respondent that this is not a matter where sanctions should be slapped onto the Respondent because the Court Order was complied with in substance. That the Court to hold that the purpose of the Court Order was met and there is absolutely no need to punish the Respondent for small glitches or oversights.

That the Applicant filed this Application under **Section 98 of the Civil Procedure Act and Order 52 Rules 1 & 2 of the Civil Procedure Rules** seeking a declaration that the Respondent is in contempt of Court and to be awarded damages. That the Respondent filed an Affidavit in Reply on the 1<sup>st</sup> December 2022 denying the alleged contempt. That the Court gave schedules for filing written submissions in this matter.

The Applicant was supposed to file and serve his submissions by the 1<sup>st</sup> March 2023 and the Respondent was supposed to file and service by the 15<sup>th</sup> March 2023, however, by 15<sup>th</sup> March 2023 the Applicants had not yet served the Respondent's counsel with submissions and this prompted the Respondent's Counsel to write to the Applicant's

counsel, requesting to be served with the submissions. That having been served late, they belatedly filed the Respondent's submissions in this matter.

Further, that they shall consider only one aspect of the law on contempt of Court, and that is whether the Respondent disobeyed the court order. That it will be noted that the Court Order arose out of an Interlocutory Application seeking an Interim a temporary injunction before the Deputy Registrar, seeking to remove the Applicant's bank account from classification, however, for purposes of preparing for the trial, that the Deputy Registrar made a further Order for production of documents thus was not the final order of the Court in as far the merits of the main suit are concerned.

That the purpose of ordering the Respondent to avail court documents was absolutely for purposes of disclosure or production of documents,

**The Order to remove the bank account from Classification:**

That this Order was complied with in paragraph 5 of the Affidavit in Reply, the Company Secretary of the Respondent testifies that the Applicant's bank account was removed from any classification. There is no any other evidence to rebut this evidence of the Respondent. That Classification is not tangible. It's just a change in the way a bank account is classified. That the Applicant's bank account was removed from "write off to "normal". There is no evidence to show that the same is still categories as "write off" The Applicant has not stated that he attempted to transact on his bank account and he failed. That therefore, the allegation that the Applicant's bank account is still classified is baseless and without merit.

**The Order to avail court with readable loan documentation:**

That whereas this order was framed in such a way that documents should be availed to the court, the actual purpose of ordering for the production of these documents was to enable the Applicant prepare for the prosecution of his case, the court record will show that the Applicant complained that the documents previously availed to him by the Respondent could not be read, thus, the court made an order that clear documents be availed. That these documents were availed to the Applicant's Counsel in paragraphs 6 and 7 of the Affidavit in Reply, the Company Secretary of the Respondent testifies that the documents which were ordered to be availed were availed the Applicant's advocates again, and there is no affidavit in rejoinder to rebut this piece of evidence.

That the Applicant has not complained that he or his counsel did not receive the documents; however, he is complaining that the court did not receive the documents. That the court did not need these documents at this stage of the proceedings. That the case has not yet been scheduled, no trial bundles were fled and no Witness Statements

have been filed, therefore, the case was at such an early stage for the court to require these documents. That it's only the Applicant who needed them for purposes of preparing his case and they were availed to him. That the availing of the documents to the Applicant instead of the Court did not cause any mischief or damage to the Applicant nonetheless, the documents have now been availed because they are attached to the Affidavit in Reply; and that now that the court has them, they do not see any contempt.

In conclusion, that the purpose of the Court Order was achieved. The Applicant received the document he does not deny it. His bank account was removed from classification and he also does not deny it. That he has not shown how he was affected by the failure to give the documents to the court and no damages should be awarded to him.

They therefore pray that this Application is dismissed with costs to the Respondent.

### **RESOLUTION OF THE APPLICATION**

I have carefully examined this application and the submissions of both sides as captured in this Ruling. I have also had the benefit of examining the record of the parent file out of which this application arises. I will therefore adopt the issues as raised by learned counsel for the respondent to be resolved in this application which are:-

1. Whether the Respondent is in contempt of court?
2. What remedies are available?

In order to resolve the above stated two issues, I have relied on **Black's Law Dictionary 6<sup>th</sup> Edn at page 319** which defines contempt of court is defined as:-

*“ Any act which is calculated to embarrass, hinder or obstruct Court in the administration of justice, or which is calculated to lessen its authority or its dignity committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the Court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he was given”.*

Again in **Osborne's Concise Law Dictionary at page 102**, it is defined as:-

*“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.”*

From the foregoing definition, it can be discerned that in order for one to be found in contempt of Court Orders, the following must be established:-



- a) The alleged contemnor must have calculated, or otherwise willfully done the alleged act;
- b) That the person must have been a party to the proceedings or is somewhat connected thereto;
- c) The person must have disobeyed or failed to comply with orders of Court.

The law on contempt of court was also well articulated in the often quoted case of **Megha Industries (U) Ltd vs Conform (U) Ltd** where court citing the **Sitenda Sebalu Case**.

I have analyzed the submissions of the applicant and examined the proceedings in **Miscellaneous Application No. 226 of 2022**. In the case of **Bashaija vs Electoral Commission & Anor Mbarara HCT EP No. 4/2011**, Justice Bamugemereire held that in order for the Respondent's noncompliance to amount to Contempt of Court, there must be proof of conscious willful disobedience of the orders of Court, with impunity.

The position of the law is that for contempt of court to be found, the following conditions must exist;

- i. a lawful order;
- ii. the potential contemnor's knowledge of the order; and
- iii. the potential contemnor's failure to comply i.e. disobedience of the order as per the case of **Stanbic Bank (U) Ltd & Jacobsen Power Plant Ltd vs. The Commissioner General Uganda Revenue Authority MA No. 42 of 2010**.

Relating the above to the facts before me, I have carefully examined the court order dated 9<sup>th</sup> of September 2022 in **Miscellaneous Application No. 226 of 2022** by this honorable court from which this application arises.

I have also studied clause (c) of the said court order reading as; *"That the respondent is ordered to avail court with readable application forms for the loan or over drafts signed by the applicant and his guarantors, disbursement and repayment schedules or any other relevant documents within 14 days from the date of this order."*

It is averred by the Applicant that the Respondent has refused to comply with the court order. It is not disputed that there is a court order vide **Miscellaneous Application No. 226 of 2022** was endorsed by the Deputy Registrar. There is no evidence on record at all that this court order has been set aside or appealed against and the record shows that the Respondent did not availed to this Honorable Court the readable application forms for the loan or over drafts signed by the applicant and his guarantors, disbursement and repayment schedules or any other relevant documents within 14 days as directed by this court, however, the respondent counsel has submitted that the purpose of the Court Order was achieved; and that the Applicant received the

document and he does not deny it. That his bank account was removed from classification and he has not shown how he was affected by the failure to give the documents to the court and no damages should be awarded to him.

The above submission clearly shows that the respondent has not done as directed by this Honorable Court in its order dated 9<sup>th</sup> of September 2022. As for the submissions by learned counsel for the Respondent that the documents were availed to the applicant's advocate later and the purpose of the order was achieved, I find this self-defeating given the fact that this order was clear and straight forward as to where the documents should be filed.

As to whether the Respondent disobeyed the Court Order, the undisputed facts before me prove that nothing has been done by the Respondent to fulfil their obligations in relation to the order. The position of the law is clear that unless vacated by another Court Order, an Order of Court remains valid even if the parties find it unreasonable or erroneous; parties are not at liberty to disobey such an order.

With no other evidence to the contrary, I therefore agree with the submissions of learned counsel for the Applicant and declare the Respondent a contemnor.

### ***What Remedies are available to the Parties?***

Having found as I have in the first issue, it is my finding and decision that the Respondent be and is hereby compelled to obey Court Orders in **Miscellaneous Application No. 226 of 2022** dated the 9<sup>th</sup> day of September 2022 within fourteen (14) days from the delivery of this Ruling and deposit the same in Court as was directed by Court in the Ruling.

It is also ordered that he should pay a fine of UGX 5,000,000 (Five million shillings only) as fine for contempt of Court Orders; and further UGX 10,000,000/- (Ten million shillings only) to the applicant as general damages to atone the injury and inconveniences occasioned to him.

Finally, under **section 27 (1) of the CPA**, it is now well established law that costs generally follow the event. See ***Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC)*** and ***Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35***. Indeed, in the case of ***Sutherland vs. Canada (Attorney General) 2008 BCCA 27*** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In the instant Application, the Applicant has succeeded in his claim, and I find no compelling and or justifiable reason to deny the respondent costs of the application. Accordingly, he is awarded full costs of this Application.

I SO ORDER

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**30/08/2023**

This Ruling shall be delivered by the Honorable Magistrate Grade 1 attached to the Chambers of the Senior Resident Judge Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**30/08/2023**