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IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL APPEAL NO. 0006 OF 2023

(ARISING FROM MISCELLENEOUS APPLICATION NO. 24 OF 2022)

10

(ORIGINATING FROM CIVIL SUIT NO. 0027 OF 2020)

15

VERSUS

NYESIGIRE SARAH KIBIRIGI:.....RESPONDENT

20

RULING

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5 when he failed to evaluate the evidence on record and come to a conclusion that the Respondent was in contempt of a Court order there by occasioning a miscarriage of justice.

The Appeal is supported by the affidavit of the Appellant who therein expounds on the grounds of the appeal. The Respondent filed an affidavit in opposition to
10 the appeal to which the Appellant rejoined.

The Representation.

The Appellant was represented by Messrs. Paul Byaruhanga Advocates while the Respondent was represented by Messrs. Lawtons Advocates.

15 Counsel in this Appeal proceeded by way of written submissions.

Background.

The brief background to this appeal is that on the 19/01/2021 the Appellant vide **HCMA No. 0064** of 2020 applied for and obtained a temporary injunction
20 restraining the Respondent from blocking access to the suit property on plots 43 and 7 Block 2 land at Ndorwa comprising the Estate of the late Constante Kibirigi. The Respondent was further restrained from cutting trees and or planting more trees or crops on the suit property until the disposal of the main suit. On the 10/03/2022 the Appellant filed HCMA No. 0024 of 2022 seeking contempt of
25 Court orders against the Respondent on grounds that despite the existence of a lawful Court order the Respondent and her agents have adamantly refused to abide by the said order and this by erecting a gate at the entrance of the suit property.

5 The trial Deputy Registrar in his ruling delivered on the 15/02/2023 dismissed the application after finding that there is no proof that the Respondent is in contempt of Court orders issued.

Grounds of Appeal.

10 The Appellant's Counsel in his written submissions raised 4 grounds of Appeal as follows;

(a) That the Registrar erred in law and fact when he failed to evaluate the evidence on record and came to a conclusion that the Respondent was in contempt of a Court order there by occasioning a miscarriage of justice.

(b) That the Registrar erred in law and fact when he failed to evaluate the evidence on record and came to a conclusion that the Appellant still cannot access the suit land despite the Court order directing the Respondent to stop blocking access to the suit land there by occasioning a miscarriage of justice.

(c) That the Deputy Registrar erred in law and fact when he tried to interpret the injunction instead of the application of contempt of Court.

(d) That the Registrar erred in law and fact when he failed to determine that the Respondent's acts have directly denied the Appellant access to the suit land thereby disobeying the Court order and being in contempt of the same.

The duty of this Court is to reappraise the evidence on record and come up with its own conclusion.

5 **(See Active Automobile Spares Ltd versus Crane Bank and another SCCA No. 0021 of 2001.)**

Grounds 1, 2, 3 and 4.

Counsel jointly submitted on grounds 1, 2, and 4 but I will resolve all 4 grounds together as they are all interlinked.

10 It is the submission of Counsel for the Appellant that the Respondent is in contempt of the orders of the Court and that contempt of Court was defined in **Betty Kizito versus Dickson Nsubuga and another Supreme Court Civil application No. 0025 and 0026 of 2021** as

15 *“An offence consists in interfering with the administration of the law in impending and perverting the course of justice. It is not the dignity of Court which is offended – a petty and misleading view of the issues involved. It is the fundamental supremacy of the law which is challenged”*

In addition to the above decision on the ingredients Counsel relied on the case of **Sitenda Sebalu versus Secretary General of East African Community Ref. No. 0008 of 2012** with the same being laid out as:

- 1) There must be a lawful order
- 2) The potential contemnor’s knowledge of the order and
- 3) The potential contemnor’s failure to comply with the order.

25 It is the contention of Counsel for the Appellant that the trial Court acknowledged the existence of the lawful order and that the Respondent does not deny the existence of the same.

The issue in contention according to Counsel is whether the Respondent disobeyed the order. It is the argument of Counsel for the Appellant that the Court order issued restrained the Respondent from blocking access to the suit land and

5 that to date the Appellant cannot access the Suitland due to the Respondent's act of having a gate at the access route and locking the same. Counsel contends that the trial Court did not investigate this evidence as to why the Court order is not being obeyed but instead went ultra vires and attempted to interpret the Court order also whether it mentioned a gate or not.

10 According to Counsel this was erroneous and led to a wrong conclusion that there was no disobedience of the Court order and yet the purpose of the order was to have the Appellant access the suit land and the Respondent's act of leaving the gate in place or having it locked prevented the Appellant from enjoying the same. Counsel submits that this is deliberate civil contempt meant to pervert justice and
15 challenge the supremacy of the law.

Counsel for the Appellant dismissed the Respondent's reason that the Court order was not disobeyed through the allegation of an already existing gate stating that the same is false. It is the argument of Counsel that the issue of the gate is a distraction from the issue at hand as the Court in HCMA No. 64/2020 knew of
20 the existence of the gate, evaluated that evidence and still gave the order in issue. Counsel further submits that if the Respondent felt that the order was erroneous they should have applied to set it aside and that similarly if the trial Court felt that the order was erroneous it should have found a remedy for it but not to support the Respondent's disobedience of it.

25 Counsel also attacks the trial Registrar's attempt to interpret the Court order stating that the same went against the principles of natural justice. Counsel specifically makes reference to the Court stating that the order in HCMA No. 64/2020 did not make mention of a gate and that this selective interpretation leaves out the Court order's intention which was to restrain the Respondent from

5 blocking the access route to the Suitland and there by grant the Appellant access to the suit land until determination of the main suit.

The Appellant's Counsel therefore prays that this Court finds for the Appellant that the Respondent was in contempt of the orders of Court.

The Respondent's Counsel in is written Submissions raised a preliminary point of
10 law submitting that the instant Appeal was brought outside the statutory period and as such is barred by time. Counsel relied on order **50 rule 8 Civil Procedure Rules** that provides that any person aggrieved with any order of a Registrar may Appeal from the order to the High Court by motion of notice and that **under Section 79(1) (b) of the Civil Procedure Act** the said Appeal is to be lodged
15 within Seven days of the date of the order of the Registrar. It is therefore the submission of Counsel that the order appealed against was by the Deputy Registrar delivered on the 15th February, 2023 and that the period in which the appeal should have been filed lapsed on the 22nd February, 2023. While the instant appeal was filed on the 10th March, 2023 beyond the 7 days provided for under
20 the law. Counsel relying on the decision in **Birihariwe Eryeza versus Bright Tom Amooti Civil Appeal No. 0042 of 2022** invited this Court to dismiss the Appeal for being filed out of time.

Counsel without prejudice to the above submitted that the learned Deputy Registrar rightly evaluated the evidence presented by the Appellant and found no
25 signs of contempt.

According to Counsel, it is settled law that contempt of Court is a serious accusation where one alleging bears the burden to prove the alleged contempt beyond mere balance of probability. To this effect, Counsel relied on the decision in **Lukenge Hakeem Versus Hajati Namagembe & Others CACA No. 290/2020**.

5 It is the contention of Counsel that the standard requires that the evidence presented to Court demonstrates a clear abuse of an order of Court. It is the submission of the Respondent's Counsel that the nature of the complaint by the Appellant in the Application for contempt was that the Respondent constructed a permanent gate in contempt of an order of Court but that the learned trial Deputy
10 Registrar clearly observed that the gate was already in existence at the time the injunction was issued and that this was admitted by the Appellant himself. That the learned Deputy Registrar also noted that the other complaints like leaving the gate open or sharing a copy of the key were not captured in the order and that the Appellant was making a deliberate attempt to edit the order verbally.
15 It is therefore the Respondent's prayer that the instant Appeal be dismissed for lacking merit with costs to the Respondent.

The Appellant's Counsel in rejoinder submits that the time to be computed when an Appeal should be made is from the time the order or ruling from which the Appeal arises from is obtained and to this effect Counsel relies on the provisions
20 of **Section 79(2) of the Civil Procedure Act.**

According to Counsel, annexure "B" which is the order from which the instant Appeal arises is dated by the Registrar as 7th March 2023 and the ruling was received by the Applicant on the 3rd March, 2023.

It is therefore the argument of Counsel that the 7 days begin to get computed from
25 those dates and the Application having been filed on the 10th March, 2023 clearly puts it within the 7 days as mandated by the law and as such the Respondent's preliminary point of law is misplaced and misguided and should be dismissed by the Court.

Counsel thereafter reiterates his earlier submissions that the Appeal is allowed.

DETERMINATION

I will first dispose of the preliminary point of law in this matter.

Section 79(2) of the **Civil Procedure Act** provides that;

10 *“In computing the period of limitation prescribed by this Section, the time taken by the Court or the Registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.”*

The ruling in HCMA 0024/2022 was delivered by the learned Deputy Registrar on the 15th February, 2023

15 A typed copy of the same was accessed by the Appellants representative on the 3rd March, 2023 as per the copy on record. the instant Appeal was thereafter filed on the 10th March, 2023 which is 7 days after receipt of the same. The period from the 15th February, 2023 to 3rd March, 2023 is not in computation.

While **Section 79(1) (b) Civil Procedure Act** provides that;

20 *“(1) Except as otherwise specifically provided in any other law, every appeal shall be entered*

(b) Within seven days of the date of the order of a Registrar as the case may be appealed against”

25 It therefore follows that the Appellant having obtained the ruling on the 3rd March, 2023 and filed his Appeal on the 10th March, 2023, he was within the 7 days’ window provided for under the law.

The preliminary point of law shall therefore be overruled.

I will now turn to the gist of this Appeal.

5 The Appellant's Counsel rightly sets out the ingredients of contempt of Court that the Applicant had to prove before the trial Deputy Registrar as laid out in **Hon. Sitende Sebalu** Versus the **Secretary General** of the **East African Community (Supra)** as being;

- The existence of a lawful order
- 10 - The potential contemnor's knowledge of the order.
- The potential contemnor's ability to comply and
- The potential contemnor's failure to comply.

The standard of proof as laid out in the above case is higher than proof of probabilities and almost but not exactly beyond reasonable doubt.

15 I will for ease of reference reproduce the orders issued in HCMA No. 64/2020 that gave rise to the decision being appealed against before this Court.

The trial Court ordered as follows;

"1. The Respondent is hereby restrained from blocking access to the Suitland. That is plots 43 and 7 Block 2 land at Ndorwa comprising the Estate of the Late
20 *Constante*

2. The Respondent is further restrained from cutting trees and or planting more trees or crops on the said plots that is plot 43 and Block 2 till the hearing and disposal of the main suit."

It would appear from the Court record before the trial Deputy Registrar that the
25 first three considerations of the ingredients for contempt of Court orders were not contested by the Respondent who was the alleged contemnor and the only dispute was on whether the Respondent has failed to comply with the Court order which was the 4th ingredient for consideration.

5 I will reproduce part of the decision of the trial Deputy Registrar to place his decision into a proper context below;

“The gist of the complaint in this Application is that despite the Court order the Respondent has continued with further blockage of the access to the suit land by improving the gate. This means that the Applicant acknowledged existence of the
10 *gate but the issue is improving it (See Paragraph 6 of affidavit in support of notice of motion) Indeed photos indicate the temporary gate and permanent injunction but in the Court order there is no mention of the gate. There is no mention of leaving the gate temporary or improving it would be contempt if Court had stopped further construction of the gate but Court did not say so. In fact Court knew that*
15 *there was a gate because the Applicant stated it then in affidavit in rejoinder in Misc. App. No. 0064 of 2020 at Page II that the Respondent had constructed a permanent gate of bricks and metallic gate. I find no proof or evidence that the Respondent is in contempt of the Court order and so the Application is dismissed with costs ...”*

20 I have studied the record in HCMA No. 64 of 2020 that gives rise to the instant order in issue. The Applicant who is the instant Appellant in Paragraph 5 of his affidavit in support of the Application avers that;

“That sometime in the months of September and October 2020, the Respondent with no claim of right unlawfully cut off access to the plot 7 by erecting a fence
25 *and a gate. See Annexure ‘C’”*

The annexure ‘C’ made reference to the by the Applicant was a makeshift structure of a gate made of iron sheets and timber. A perusal of the Respondents affidavit in reply reveals that she avers to erecting the gate to control the thieves who were stealing her property.

5 It is therefore quite clear that at the time the order in HCMA 64/2020 was being issued there was already in place a barrier in form of a fence and gate put in place by the Respondent on the suit property.

The purpose of a temporary injunction it is trite law is to maintain the status quo and the status quo to be maintained on the 19th January, 2021 when the orders in
10 HCMA No. 64/2020 were issued was that the Respondent had cut off access to the suit property by erecting a fence and a gate. This was the status quo to be maintained. The Court did not issue any orders that can be interpreted as reversing this status quo.

The trial Deputy Registrar in his ruling rightly narrows down the issue before the
15 Court as being that the complaint was that despite the Court order the Respondent has continued with further blockage of the access to the suit land by improving the gate and this was under paragraph 6 of his affidavit in support of the Application.

The Respondent as already stated averred that the fence and gate were put up to
20 control thieves who were stealing her property.

The improvement made reference to by the Appellant according to the annexures was a move from a gate made of iron sheets and timber to a concrete and metallic gate. I do not see how this improvement alters the status quo that was to be maintained let alone how it could amount to an abuse of the Court order in issue.

25 I would agree with the trial Deputy Registrar that the order is silent on the gate remaining temporary or prohibiting the same being improved.

It is also imperative to note that the instant Appellant does not in his Application in HCMA No. 24/2022 before the Registrar make mention of the fact that the Respondent had prevented him from accessing the suit property. This in my view

5 would probably have been more actionable that the complaint of improving the gate.

Counsel's attack that the trial Deputy Registrar selectively interpreted the order in HCMA No. 24/2022 is unfounded.

10 In the final result the instant Appeal fails and the same is here by dismissed with costs.

Before me.

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.....
SAMUEL EMOKOR
JUDGE
28/02/2024