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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT GULU**

**MISCELLANEOUS APPLICATION NO. 003 OF 2024**

**ARISING FROM MISC. APPLICATION NO. 22 OF 2022**

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**ARISING FROM MISC. APPLICATION NO. 08 OF 2022**

**(ARISING FROM CIVIL SUIT NO. 07 OF 2014)**

**WATWERO ENTERPRISES LTD:.....APPLICANT**

12

**VERSUS**

**GULU DISTRICT LOCAL GOVERNMENT:.....RESPONDENT**

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**BEFORE: HON. MR. JUSTICE GEORGE OKELLO**

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**RULING**

**Background**

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The Applicant sought to move this court to hold the Respondent in contempt of the interim order of the Deputy Registrar (D.R) of this Court. That order was issued on 24 March, 2022 against the Respondent in Misc. Application No. 22 of 2022. The D.R of Court restrained the Respondent, its agents, servants, and anyone claiming under it, from completing three class room (blocks) at St. Martin Lukome Primary School (in Bungatira Sub County), pending the disposal of Misc. Application No. 08 of 2022 for a temporary injunction. However, the temporary injunction application was never pursued but was withdrawn before this court on 12 March,

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*Hudson*

- 4 2024. The Applicant indicated that, that Application had been overtaken by the events. I think it is those events which I shall state shortly, which have given rise to the contempt proceedings.
- 8 The brief facts which are agreed on by the parties in their hand-written joint scheduling memorandum in the head suit, as giving rise to their dispute are as follows;
- 12 The Applicant was contracted by the Respondent to construct some class room blocks which would house staff room, office, and store. She was also to construct stances drainable latrines. The agreed consideration was Ugx 305, 907, 525. All three certificates for the executed works were fully paid
- 16 by the Respondent. The Respondent, however, terminated the contract vide a letter issued on 13 May, 2013, hence the head suit.

In the head suit, the Applicant prays for a declaration that the Respondent

20 (Defendant) breached the contract. She also prays for recovery of lost earnings, retained amount, compensation for the plant and equipment, interest, general damages, and costs of the suit. In its Written Statement of Defence, the Respondent agree there was a contract for works. She,

24 however, avers, and this is contentious, that, the Applicant breached the contract by not completing the works within the agreed schedule, hence the contract termination on 13 May, 2013. The Respondent

4 counterclaimed, contending, the Applicant (Plaintiff/ Defendant to the  
Counterclaim) breached some fundamental terms of the contract. She thus  
seeks a declaration that the Applicant breached the contract, and prays to  
be awarded damages, interest, and costs of the counterclaim. She also  
8 prays that the head suit lodged by the Plaintiff be dismissed with costs.

The parties agreed on three issues for court determination, namely;  
whether there was breach of contract and if so, by which party? Whether  
12 the Defendant was justified in terminating the contract? And what  
remedies are available to the parties?

The record of court in the head suit shows that, the parties appeared before  
16 Mubiru, J., on 17 October, 2018 and adopted their joint scheduling  
memorandum. The case was then fixed for hearing on 08 November, 2018,  
during which the Applicant's Managing Director, Mr. Nyeko Wilfred (who  
is conducting the Applicant's case without the services of counsel),  
20 testified. The matter was adjourned to 23 April, 2019 for further hearing.  
The Applicant's second witness testified, and the Plaintiff closed its case.  
The matter was fixed for Defence but the Judge was transferred before he  
could conclude the matter. The suit then first came up before me on 27  
24 February, 2023, and has had adjournments for the reasons noted on  
record. The Defence hearing is presently fixed for 08 May, 2024 at  
10:00Am. While the Defence hearing is pending, the present Application



4 for contempt of the interim order was lodged at the registry of this court  
on 07 February, 2024. Apart from seeking that the Respondent be held in  
contempt of the interim order of 24 March, 2022, the Applicant prays for  
exemplary damages of Ugx 300,000,000, a fine of Ugx 100,000,000, and  
8 costs of the Application.

Mr. Nyeko Wilfred (the M.D) makes factual deposition on which he anchors  
the Application. The Application is brought under the provisions of section  
12 98 of the Civil Procedure Act Cap 71, and Order 52 rules 1 and 3 of the  
Civil Procedure Rules, S.I 71-1. He gives a prefatory, most of which are  
already detailed in my introductory part of this Ruling.

16 Mr. Nyeko states that, the order of the learned D.R, given in Misc.  
Application No. 22 of 2022, was issued pending the disposal of Misc.  
Application No. 08 of 2022 for temporary injunction. As noted, the  
Application for a temporary injunction has since been withdrawn. The  
20 present Application does not address whether or not the withdrawal of that  
application affects the present proceedings in any way. The withdrawal  
happened before me on 12 March, 2024, after lodgment of this matter in  
February, 2024.

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The Applicant's grievances are that, the Respondent went ahead and  
completed the class room blocks despite the interim order restraining it.

4 The Applicant claims that, the value of unpaid works and materials at the project site is one of the main issues to be resolved in the main suit. She thus argues, by the Respondent completing the class room blocks before the disposal of the head suit, it will make it very difficult for the Applicant  
8 to prove the value of unpaid works at the time of the contract termination and other facts, and will also distort the Applicant's defence to the counterclaim.

12 Pausing for the moment, these are interesting averments, because, the alleged adverse impact of the project's completion by the Respondent is coming at a time when the Applicant has already closed her case. Be that as it may, the Respondent, for no reason, did not bother to appear for the  
16 hearing of this Application. Its known counsel on record in the head suit, Mr. Walter Okidi Ladwar, was served with the court process (Notice of Motion) on 21 February, 2024, for the scheduled hearing of 12 March, 2024, but did not appear. No official of the Respondent attended court  
20 either.

### **Issues**

The application raises three important issues for court resolution, namely;

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1. Whether the Application for contempt is proper before court?
  2. If so, whether the Respondent is in contempt of court?
  3. Whether the Applicant is entitled to any reliefs?

4     **Determination**

The Applicant addressed court orally and also filed written submissions on 18 March, 2024, a day to the delivery of this Ruling. The written arguments of course were not sanctioned by court as no leave was sought before its lodgment. However, court has perused it, and finds nothing significantly different from the oral address made. I consider the issues in turn.

12    **The propriety of the contempt action**

Before I resolve the issue of propriety of the present action, I will set out the relevant laws and principles of contempt on which I will base to determine the application.

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The law of Contempt have been stated in various decisions of courts. I will in most part, defer to the decisions of the Supreme Court plus a few others from the High Court and the Court of Appeal. In any case, most of the principles are re-stated.

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In ***Ssempebwa and others Vs. Attorney General, [2019] 1 EA 546***, the Supreme Court of Uganda did quite an interesting exposition of the principles of contempt. It drew a distinction between civil and criminal contempt. While referencing Blacks Law Dictionary, 10<sup>th</sup> Ed., page 385, the apex Court opined that, criminal contempt is an act that obstructs

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4 justice or attacks the integrity of the court. Criminal contempt proceedings  
are thus punitive in nature. The Court noted that, criminal contempt is  
recognized under article 28 (12) of the Constitution of Uganda, 1995.  
Regarding civil contempt, the Supreme Court further, while quoting from  
8 Blacks Law Dictionary (*supra*), defined civil contempt 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  
12 order."***

See also: Osborne's Law Dictionary on the definition of civil contempt  
which is in similar terms as Blacks Law Dictionary. The classification of  
contempt is also found in Halsbury's Laws of England, (Volume 9 (1)  
16 (Reissue) at paragraph 402. Elsewhere, Lord Russell of Killowen, L.C.J  
defined contempt of court. The exposition by the Law Lord has since been  
followed in this territory, with deference. Thus, in ***R Vs. Gray [1900] 2  
Q.B, 36 at p.40***, Lord Russell stated:

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

24 Contempt may, therefore, be manifested by acts or utterances which  
scandalize or tend to scandalize, or lower or tend to lower the authority of

4 any court; or prejudice or interfere or tend to interfere with the due course  
of any judicial proceeding; or interfere or tend to interfere with or obstruct  
or tends to obstruct the administration of justice in any manner. Contempt  
thus encompasses acts calculated to hamper the due course of a judicial  
8 proceeding or the orderly administration of justice. Therefore, any course  
of conduct which abuses and makes a mockery of the judicial process and  
which extends its pernicious influence beyond the parties to the action  
and affects the interest of the public in the administration of justice, is  
12 contempt of court. The court, therefore, has a duty to protect the public  
interest in the due administration of justice. The public interest is real and  
abiding. Its stake is vital. If justice is not properly administered, there is  
peril of all rights and liberties. Therefore, power is reposed in the courts to  
16 cite anyone who disobeys court orders, for contempt, not to protect the  
court's dignity per se, but to protect and vindicate the right of the public  
in the proper administration of justice. It should be recalled that the due  
administration of justice should not be prevented, prejudiced, obstructed  
20 or interfered with. See: ***Florence Dawaru Vs. Angumale Albino &  
Samuel Ondoma, Misc. Civil Application No. 0096 of 2016.*** The High  
Court decision was approved by the supreme court which found it  
persuasive in ***Betty Kizito Vs. Dickson Nsubuga & 6 others, Civil  
24 Application Nos. 25 and 26 of 2021.***

Hutoo



4 The object of contempt proceedings is thus to impose a penalty that will  
vindicate not only the court's honour, consequent upon the disregard of  
its previous order, but also to compel performance in accordance with the  
previous order. It should not be forgotten that Lord Denning underscored  
8 the same principle in the case of ***Morris Vs. the Crown Office [1970] 1***  
***ALL ER 1079*** when he said, "***the purpose of contempt proceedings is***  
***to protect the rights of the public by ensuring that the***  
***administration of justice shall not be obstructed or prevented.***"

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I should also perhaps note that, under common law which applies to  
Uganda by virtue of section 14 (2) (b) (i) of the Judicature Act Cap.13,  
contempt has been classified into four categories, namely, civil and  
16 criminal, *in facie curiae* (before a court) or *ex facie curiae* (outside of a  
court). According to decided cases, contempt outside court can be  
commenced by parties, or by a court acting on its own accord (*sua spontu*),  
or by public prosecutors. So, civil contempt is contempt outside court and  
20 relates to where there is disobedience of a court order. Civil contempt can  
also lead to criminal prosecution and punitive sanctions may issue. A  
contemnor may, however, avoid the imposition of a sentence by complying  
with the coercive order. At the origin of the crime being denounced via  
24 contempt action, is the crime of disrespecting the court order, and  
ultimately the rule of law. See: ***Ssempebwa case*** (*supra*).

4 Civil contempt action can also be anchored on article 128 (2) of the  
Constitution, 1995, which requires that court orders be respected,  
implemented and should take effect, and nobody should interfere with the  
court. Respect of court orders is a matter of sufficient gravity. It goes to  
8 the root of administration of justice as it builds public confidence in the  
judicial system and the rule of law. Courts derive their powers from the  
people under article 126 (1) of the Constitution of Uganda, 1995, thus  
judicial exercise of power should be in the name of the people, and in  
12 conformity with the law, values, norms and aspirations of the people. In  
the context of court orders, it means court orders must be obeyed at all  
times by the people who gave courts their powers to exercise on their  
behalf. Judicial orders should, therefore, not be given in vain. Civil  
16 Contempt thus serves the object of empowering courts to inter alia, enforce  
court orders and punish those that wilfully and unlawfully disobey it.

In the Ssempebwa case (*supra*), the Supreme Court proceeded to set down  
20 the ingredients of civil contempt which an applicant must prove in order  
to succeed, namely; the order; service or notice thereof; non-compliance;  
and proof of willfulness and *malafide* on the part of the person being cited  
for contempt beyond reasonable doubt. Thus, once an Applicant proves  
24 the first three requisites of civil contempt which burden ought to be  
discharged on the balance of probability, the respondent will bear the  
evidential burden in relation to willfulness and *malafides*. If the

4 respondent fails to advance evidence that establishes a reasonable doubt  
as to whether non-compliance was wilful and *malafide*, contempt would  
have been established beyond reasonable doubt. A declaratory and other  
appropriate remedies may then be available to a civil applicant, on proof,  
8 on a balance of probabilities. Thus in summary, for one to be held in civil  
contempt of court, the following requisites must be proved;

- i) That an order was issued by court;
- 12 ii) That the order was served or brought to the notice of the alleged  
contemnor (respondent);
- iii) That there was non-compliance with the order by the respondent;
- iv) That the non-compliance was wilful and *malafide*.

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As opined, the first three elements must be proved on the balance of  
probability while the fourth ingredient must be proved beyond reasonable  
doubt. In the case of ***Betty Kizito Vs. Dickson Nsubuga & 6 others,***  
20 ***Civil Application Nos. 25 and 26 of 2021 (supra)***, the Supreme Court  
considered local and foreign persuasive authorities on contempt  
principles, and further expounded on the ingredients of contempt as  
follows;

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With regard to the ingredient of existence of a valid order, the court stated  
that, the order must be obeyed in totality and a party who chooses to



4 disobey the order without good reason risks being held in contempt. The  
Supreme Court emphasized that the court order must state clearly and  
unequivocally what should and what should not be done as Court will be  
reluctant to punish or condemn an alleged contemnor for an order whose  
8 terms are unclear and ambiguous. As regards the element of an alleged  
contemnor having had actual knowledge of the court order, it was opined  
that common law leans towards the requirement of personal service or  
actual knowledge of existence of the court order. Thus in some instances,  
12 knowledge of the court order may be inferred even in cases of wilful  
blindness. In contempt, the alleged contemnor must have intentionally  
done that act that the order prohibits, or intentionally failed to do the act  
that the order compels.

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In conclusion, on the conditions to be satisfied for civil contempt, there is  
need for proof beyond reasonable doubt of the alleged contemnor's  
deliberate conduct that has the consequence of disobeying the court order  
20 in issue. An applicant is, however, not required to prove that the alleged  
contemnor intended to bring court into disrepute. Where the breach of the  
court order is unintentional and accidental, then court may exercise  
discretion to impose no penalty. It should also be noted that, even where  
24 an applicant satisfies all the requirements of civil contempt, a court may  
still decline to make a finding of contempt, where the alleged contemnor  
shows that he/she acted in good faith and was taking reasonable steps

4 towards compliance with the order. The remedy of contempt is, therefore,  
a remedy of last resort, and should be used with great restraint. Thus in  
the dictum of the Supreme court of Canada in the case of **Carey Vs.**  
**Laiken, 2015 SCC 17**, which our apex court found persuasive in the case  
8 of **Betty Kizito Vs. Dickson Nsubuga & 6 others (supra)**, the Canadian  
court stated quite lucidly, thus:

12 ***“If contempt is found too easily, a court’s outrage might be treated***  
***as just so much bluster that might ultimately cheapen the role and***  
***authority of the very judicial power it seeks to protect. As this Court***  
***has affirmed, contempt of court can not be reduced to a mere means***  
***of enforcing judgments.”***

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Turning to the present action, since the matter relates to the alleged  
disobedience of an interim order issued by the Deputy Registrar, the  
question that arises is whether it is proper for this court to hear and  
20 determine the application or the matter ought to have been heard by the  
Deputy Registrar of this court. The answer seems to lie in the precedent of  
this court in **Florence Dawaru Vs. Angumale Albino & Samuel**  
**Ondoma, Misc. Civil Application No. 0096 of 2016 (supra)**. There, it  
24 was posited that a Deputy Registrar lacks power to hear an application for  
civil contempt as its jurisdiction under Order 50 of the CPR does not  
extend to hearing such application but the power is reposed in the Judge.

4 It was noted, the Deputy Registrar retains the power to cite anyone for  
contempt committed in *facie curiae* (before a court). I think whereas  
ordinarily a court should enforce its own orders even if it means trying  
someone for the contempt of its orders, such jurisdiction is not reposed in  
8 the registrar.

Therefore, contempt ex facie curiae which is sui generis and is usually  
commenced by a litigant, is only heard by a Judge. That said, it was also  
12 held that, all contempt actions are matters for the alleged contemnor and  
court. Thus the person moving court only brings to court's attention the  
facts supporting the claim. See: ***Betty Kizito Vs. Dickson Nsubuga & 6  
others (supra).***

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In light of the foregoing, I find that the application is properly before me  
on jurisdictional ground since it relates to civil contempt alleged to have  
been committed outside court (ex facie curiae) and it involves the alleged  
20 disobedience of the interim order of the learned D.R.

Still under the issue of competence of the action, the instant contempt  
application is being pursued at a stage in the action when a lot has  
24 happened, which court cannot ignore. First, the interim order was made  
dependent on the Application for a temporary injunction which was never  
pursued but has since been withdrawn before the contempt action was



4 commenced. Of course no convincing reason was given why the Applicant  
felt so comfortable with the interim order. It should be recalled, that order  
stopped the Respondent from completing the constriction project, I think,  
to the chagrin of the Respondent. Pupils of the school for whom (I take  
8 judicial notice) the class room blocks were meant, stood to lose out on  
quality education by the nature of the interim order which was made to  
subsist forever. The stalled project had also toilet facilities which was to  
be constructed and thus the damage the interim order potentially posed,  
12 in my view, needs no brainer. On the facts, given that the construction  
contract had been terminated by the Respondent, and the Applicant  
having sued for damages, interest and costs, as well as a declaration that  
the Respondent's contract termination was in breach thereof, it was  
16 pointless for the learned D.R to issue the interim order when there was no  
claim for a permanent injunction in the head suit and it appears there was  
nothing urgent to be restrained, and which if not stopped, would have  
rendered the substantive application useless. I think the comfort created  
20 by the interim order brought a sense of reluctance in the Applicant and its  
M.D to pursue the substantive application.

In paragraph 11 of his affidavit, the Applicant's M.D deposes that, he  
24 discovered on 10 May, 2023 that, the Respondent handed the project site  
to a new contractor on 01 November, 2022. This court notes that, that was  
after about seven months and one week of issuance of the interim order.

4 The Applicant's M.D further deposes that, on 12 April, 2023, as he was  
moving along a road proximate to the project site, he saw that the plasters  
and renderings of the class room blocks had been removed, and the beam  
fillings had been removed, and the walls reduced to wall plate level. He  
8 attaches photographs, to buttress his deposition. Thus, on 10 May, 2023  
when the M.D visited the project site, he found works going on. He was  
informed by persons there, that the project had been handed over to a new  
construction company. On 29 January, 2024, the Applicant's M.D visited  
12 the site again and found that the three classroom blocks at St. Martin  
Lukome Primary School had been completed (by the new contractor). He  
attaches photographs of well-painted buildings, to support his deposition.  
The Applicant then launched the present contempt application, nine days  
16 later, after his last discovery.

In my respectful opinion, it unclear why the learned D.R stopped the  
Respondent from hiring another contractor to complete the classroom  
20 blocks when the services of the Applicant had been terminated and she  
was suing, not to be reinstated, but for special and general damages,  
interests, and costs. In my considered view, the order was unnecessary.  
Be that as it may, the Respondent is, however, not shown to have  
24 questioned the interim order, and indeed, complied with it for some  
considerable period. This was expected, because, a court order must be  
complied with in totality, even if a party does not agree with it. See: the



majority view in ***Leads Insurance Limited Vs. the Attorney General and Director of Public Prosecutions, Const. Petition No. 05 of 2017.***

Second, as noted, it is not clear why the Applicant did not pursue the substantive application for a temporary injunction for court to gauge

whether a restraining order against the Respondent was, in the circumstances, still necessary. As said, it appears she was comfortable with the state of affairs. The Respondent thus appears to have taken upon itself to move on with the project, after a lull of seven months, without first

having the interim order set aside, either by way of an appeal or otherwise.

In my opinion, whereas persons targeted by a court order, however, irregular, must comply with it, and whereas acts of non-compliance may attract dire consequences (see: ***Amrit Goyal Vs. Harichand Goyal & 2***

***Others, Court of Appeal Civil Application No. 109 of 2004***) on the facts

and the circumstances of this matter, and on the authority of the *Ssempebwa* case (*supra*), I find that the acts of the Respondent was not wilful and malafide. The Respondent needed to complete the public project

for the bigger public good. The Respondent of course should have gone back to the very court and explained why it felt the continued obedience of the interim order was no longer possible. That is the route commended at least by the courts. See the Court of Appeal case of ***Housing Finance***

***Bank Ltd & another Vs. Edward Musisi, Misc. Application No. 158 of 2010.***

*Hutoo*



4 Having therefore considered all the circumstances of this case, I am of the  
conscious mind that the present contempt proceedings was unnecessary  
and at best an afterthought. There was at any rate, no willful and malafide  
disobedience of the interim order. Therefore, the Application is refused and  
8 is hereby dismissed with no order as to costs.

Delivered, dated and signed in court this 19<sup>th</sup> March, 2024.

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*H. Okello 19/03/2024*  
**George Okello**  
**JUDGE**

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Ruling read in Open Court

19<sup>th</sup> March, 2024

20 **Attendance**

Ms. Prossy Akello, holding brief for Mr. Amuru Shaffi, for the  
Respondent.

Mr. Wilfred Nyeko, Managing Director of the Applicant, in court.

24 No official of the Respondent in court.

Mr. Ochan Stephen, Court clerk

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*H. Okello 19/03/2024*  
**George Okello**  
**JUDGE**