

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

HCT-00-CV-MA-0116-2016

*(Arising from Misc. Applications No.96 and 97 of 2016 and
Miscellaneous Cause No. 32 of 2016)*

MRS. GERALDINE BUSUULWA SSALI :::::::::::::::::::: APPLICANT

- VERSUS -

- 1. NATIONAL SOCIAL SECURITY FUND**
- 2. PATRICK BYABAKAMA KABERENGE :::::::::::::: RESPONDENTS**
- 3. RICHARD BYARUGABA**

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING:

This is an application for a declaration that the respondents are in contempt of Court Orders in **MA 97 of 2016, Geraldine Busuulwa Ssali Vs National Social Security Fund and Others,** and a prayer for UGX 1,000,000,000/= as compensation. The application is brought by way of a Notice of Motion under S. 33 of the Judicature Act, S. 98 of the Civil Procedure Act and Order 52 rules 1,2 and 3 of the Civil Procedure Rules.

The grounds of the application as set out in the application and supporting affidavit are that the respondents were served with a court order on the 15th March 2015 at about 10.30 am. That the

order has not yet been vacated, reversed or otherwise quashed by a higher court of law. That the respondents have since then refused to obey the orders of court and have continued to deny the applicant access to her office despite the court order maintaining the status quo. That the respondents have further issued press statements saying they have blocked the applicant's official e-mail and fuel card and that the actions of the respondents are in bad faith only intended to abuse court process and bring actions of court into disrepute. Finally that the contempt has been repetitive with impunity and is still continuing to date. Therefore it is in the interest of justice that this application be granted if courts are to guard their own orders.

The respondents opposed the application in three affidavits in reply. The 1st affidavit is by one Richard Wejuli Wabwire the 1st respondent's Corporation Secretary dated 13th April 2016, the 2nd is sworn by the 2nd respondent himself dated 13th April 2016 and the 3rd is sworn by the 3rd respondent himself dated 13th April 2016.

At the hearing of this application the applicant was represented by M/s Prof. Ssempebwa Fredrick together with Bikala Rogers and Rashid Semambo while the respondents were represented by M/s Segawa and Tumusingize.

The brief background to this application is that in 2014, the applicant was re-appointed Deputy Managing Director of the 1st respondent fund by the appointing authority who is the Minister responsible for Social Security Fund, the Minister of Finance, Planning and Economic Development. She took maternity leave and on her return was directed to go on forced leave by the 2nd respondent, the Chairman of the Board of Directors.

However, the applicant rejected the directive to go on forced leave on grounds that she did not need it because she had just returned from maternity leave. Having rejected the leave offer, the Chairman of the Board wrote a letter suspending her from her job allegedly on grounds of lack of respect for her superiors. This suspension came on 14th March 2016 the same day on which an interim order was granted by this court and served on the respondents on 15th March 2016. The

applicant then filed an application for Judicial Review of the decision making process adopted by the respondents which is still pending in court. She also filed an application for a temporary injunction and interim injunction both of which were granted. The applicant claims that the respondents did not comply with the orders of the court in the interim injunction and therefore were in contempt of court hence this application.

In his submissions Mr. Rashid Semambo learned counsel for applicants submitted that the law on contempt was well established in the case of ***Mega Industries (U) Ltd Vs Comfoam Uganda Ltd*** where court citing the ***Sitenda Sebalu Case*** ruled that for contempt of court to exist, there must be a lawful court order and the potential contemnor must have been aware of the court order and failed to comply with the order or disobeyed the same. That in the instant case, it is clear that the application for the interim order was heard interpartes on 14th March 2016 and a ruling was delivered thereafter. That at the hearing the respondents made mention of the board disciplinary proceedings which this court in the ruling faulted and allowed the interim injunction and issued an order stopping any attempts to push the applicant out of office and suspending her pending the hearing of the substantive application on 4th April 2016. That the applicant attempted to enter office and it is beyond dispute that she was blocked on the orders of the respondents following the board resolution purportedly suspending her from duty. That there is conflicting evidence as to what time the board meeting took place because in the main application for Judicial Review the 2nd respondent stated that it was held at 9.00a.m. Whereas in his affidavit in reply to the application for an interim injunction he states that it was held at 8.00a.m. That, therefore, all the actions of the respondent were an attempt to frustrate any further proceedings that were arising from the dispute.

Learned counsel for the applicant relied on the case of ***Wildlife Lodges Ltd Vs County Council of Narok & Anor 2005 EA 344*** where it was held that a court does not act in vain and as such issues touching contempt of court take precedence over any other case or invocation of jurisdiction of court.

Learned counsel for the applicant further submitted that this court in its ruling on the temporary injunction application in MA 96 of 2016 commented and said that the application actions were an attempt to justify their suspicious conduct but had failed miserably. That even a corporation may be held in contempt as per the case of **Stanbic Bank Limited & Anor Vs The Commissioner General URA MA 42 of 2010.**

That the continued refusal of the respondents to comply with the decision of court in MA 97 of 2016 amounts to contempt of court especially since they adopted further parallel sinister actions under the guise of a board meeting and purported to suspend the applicant in contravention of the law. Learned counsel prayed that this court sets a precedent and finds that there can be contempt of court by managers in their individual capacity who hide behind the veil of the 1st respondent and that this must be condemned and will help eliminate impunity by the individuals who in the end will not suffer but cause loss to the tax payers.

Learned counsel also prayed that this court be pleased to order that the respondents having acted in contempt should pay a fine of 1,000,000,000/= but especially the 2nd and 3rd respondents. That the applicant also be compensated and be allowed to enjoy the fruits of judgment from this court and costs of the application be granted.

On behalf of the respondents Mr. Tumusingize learned counsel for the respondents opposed the application. He submitted that the purpose of an injunction is to preserve the status quo. That it was on 15th March 2016 at 10.00a.m. when the order was served on the respondents.

Further that it is not disputed that at the time a board meeting had already taken place on 14th where a decision to suspend the applicant was made. That there is no contradiction in the affidavit of the 2nd respondent and that the order allegedly disobeyed is Annexure RWW1 to the affidavit of Wabwire and specifically restrained the enforcement of the order in the letter of 9th

March 2016 and that is the order that was served and extracted by counsel for the applicant. That the ruling was never served on the respondents does not bear the aspect of suspension and that is not the fault of the respondents. That it is not proper for the applicants to make reference to the ruling which does not conform to the order served.

Mr. Tumusingize further submitted that the order could not cover the decision of the board and it was speculative of the Deputy Registrar as matters of the board were not before him. That the Deputy Registrar in his ruling for the interim injunction was under a misapprehension that the suspension letter was not served yet in paragraph 6 (F) of the affidavit of Wabwire it is indicated that at 1.00 pm the suspension letter was dispatched to the applicant's residence communicating the decision of the board yet MA 96 of 2016 commenced at 4.00p.m. Therefore, the claim that the order was served at 10.00 am is a falsehood. That the status quo that was maintained is that earlier a board meeting was convened to suspend the applicant, so there is no way the respondent would have been in contempt of an order of court which was served after the event.

Mr. Tumusingize further submitted that the *Comfoam case* referred to by learned counsel for the applicant is distinguishable from the instant case because in that case there was an order stopping the manufacture of mattresses with the Mark of another company and they failed to comply. But in this case the order came after the event. That even the *Stanbic Bank case* was after the injunction when URA threatened the Managing Director with imprisonment unlike in this case. Learned counsel also relied on the case of *Kensington Africa Ltd Vs Stanbic Bank (U) Ltd and 3 Ors* where a garnishee order nisi was issued which later became absolute and was served on the Bank but the Bank could not reverse it. Contempt proceedings were brought against the Bank and it was held that the Bank could not reverse the status quo.

That a meeting was held and the resolution was passed and after that the court order was served after it had been overtaken by events. That one cannot comply with an order which has been

overtaken by events. That the issues concerning the fuel card, media statements and motor vehicle are post board meeting and resolution. That the application be rejected with costs.

In rejoinder Mr. Semambo learned counsel for the applicant submitted that the majority of arguments by the respondents were criticizing the ruling of the learned Deputy Registrar in MA 97 of 2016 in an attempt to fault him on how he made the order but this is not the proper forum for such arguments.

That if the respondents want to challenge the orders of court they should either appeal or apply to vary the order or review the decision of the Registrar. That all parties must comply with the ruling of the court both in its spirit and its entire detail, so any mistakes in the order cannot be used as a basis for defiance of valid court proceedings.

Regarding the procedure for extracting a court order, learned counsel submitted that the unilateral extraction of a court order does not nullify it nor does it give rise to defiance or refusal to comply therewith. He cited the case of *Lukwago Elias Vs AG & 3 Ors* where the learned judge cited with approval the case of *Crane Trace Ltd Vs Makerere Properties Ltd* and submitted that in this case the contempt arises out of proceedings interpartes whereas the respondents argue that by the time the order was served the board meeting had sat suspending the applicant. That such argument cannot hold because the respondents were party to the proceedings and were for all intents and purposes under obligation to ensure compliance and avoid any defiance.

I have thoroughly considered this application, the affidavits and submissions by respective counsel. It is trite law that interim injunctions are equitable remedies intended to mitigate the harshness of common law. This court is not only a court of law but is also a court of justice to curtail the suffering of citizens under the law. It is in this spirit that courts came in to apply

equity to mitigate the untold difficulty and unfairness of common law caused to the people. The rules and maxims of equity are firmly rooted in our law and are part of the Judicature Act S. 14 (2) thereof.

Now, what is equity? Equity refers to whatever is just and whatever is right in all human relationships and transactions. It is the power to meet the moral standards of justice in a particular case by a Judicial body possessing the discretion to mitigate the rigid application of strict rules in order to adopt the Judicial relief to the peculiar circumstances of a case without antagonizing the law itself. See *Mc Clintock Handbook of the Principles of Equity 1948.*

It is a well established maxim of equity that equity will not suffer a wrong to be without a remedy which means that where common law does not recognize or enforce a right or fails to provide a remedy, equity steps in or intervenes to provide a suitable remedy under the circumstances. A person whose right is being infringed has a right to enforce the infringed right through any actions before a court because courts are keepers of the conscience of the community in regard to absolute enforcement of the law: *Ashogbon Vs Oduntan (1935) 12 N.L.R. 7.*

In a nutshell, equity is not part of the law, but a moral virtue which qualifies, moderates, and reforms the rigor, hardness and edge of the law and is a universal truth. It does also assist the law, where it is defective and weak in the constitution (which is the life of the law), and defends the law from crafty evasions, delusions and mere subtleties, invented and contrived to evade and elude the (common) law, whereby those who have undoubted right are made remediless. And thus is the office of equity to protect and support the (common) Law from shifts and contrivances against Justice of the law. Equity therefore does not destroy the law, nor create it, but assists it. *Dudley Vs Dudley (1705) Prec, Ch. 241 at 242.*

I entirely agree with the principles of law I have stated above. It was in the spirit of those principles that the registrar granted the application in MA 97 of 2016. Therefore the decision by the learned registrar is a valid ruling since it remained unchallenged.

From the evidence adduced by both parties and the respective submissions, I am more inclined towards the submissions by learned counsel for the applicant.

In this case, the respondents seem to have lost their conscience to the extent that they could not allow the court process to be completed. The thrust of the respondents' reply to this application is that since the board resolution to suspend the applicant was passed before the ruling or hearing of the application for the interim injunction then they were not under obligation to maintain the status quo.

It is a fact however that by the time of the alleged board meeting the respondents knew that there were pending proceedings against them with clear prayers as contained in the ruling and order of the Deputy Registrar.

I must say that the respondents and counsel for the respondents are not being very helpful to this whole court process given the way they are advancing their case. The arguments they make suggest that they are out to push an agenda which they have not been courteous enough to disclose to this court.

All through this case court has already experienced the same heat of antagonism and legal maneuvers that the applicant is facing in NSSF because while proceedings for the application or the interim injunction had been fixed for hearing on 14th March 2016, the Board of NSSF sat in a meeting earlier that day and resolved that the applicant be suspended.

All this was done in total disregard to the proceedings in court and was intended to undermine and fail the court process. That is why learned counsel for the respondents was happy to submit before the learned Registrar that the main cause, the main application and application for the interim injunction had been overtaken by events. This cannot be condoned by this court.

When this application came up for hearing learned counsel for the respondents made another interesting but sad argument that proceedings in court do not operate as an injunction and therefore even if the NSSF was aware of the case it was under no obligation to give court a chance to look into the matter and therefore the board was free to pass the resolution that could potentially undermine court process. Counsel for the respondents were under professional obligation to discourage their clients from taking any steps that would undermine court process since there seems to have been no urgency in the decision they intended to pass through.

Clearly both the respondents and their counsel did not care at all about the norms of justice.

It is very disappointing that the NSSF with arguably the best Managers could act in such a way as to undermine the due process of the law, a process in which they were fully participating in with the help of counsel of their choice. All these maneuvers and actions are highly suspected.

I will therefore find that the respondents' case and arguments are without merit, or an element of justice and principles of equity and I am inclined to disagree with them.

I am in agreement with the submissions by learned counsel for the applicant that the law on contempt of court was well articulated in the often quoted case of **Megha Industries (U) Ltd Vs Conform (U) Ltd** where court citing the ***Sitenda Sebalu Case*** ruled that for contempt of court to

exist there must be a lawful court order, and the potential contemnor must have been aware of the court order and failed to comply with the order or disobeyed the court order.

I will however add that a party who takes deliberate steps to undermine the court process by deliberately altering the status quo when he/she is aware of an ongoing court process and is participating therein and is aware of the prayers being sought in the proceedings, should be held in contempt of court.

In this application, it is an undisputed fact that the respondents were well represented at the hearing of MA 97 of 2016.

It is also an undisputed fact that at the same hearing issues relating suspension of the applicant and the alleged emergency board meeting came up and the deputy Registrar made comments on them. See: Annexure B pages 3-4 attached to the affidavit in support of the application).

It is also undisputed fact that there was a ruling and a court order arising out of that ruling. In his concluding remarks in te ruling, the learned Deputy Registrar ordered thus:

“Let therefore an interim order issue to restrain the respondents and her agents, principals and officers under her from effecting the decisions of the 2nd respondent of pushing her out of her office and suspending her, pending the hearing of the substantive application on 4th April 2016,”

This order is self explanatory and the extracted order should be read together with the Ruling which was attended by the parties. This has been the practice since the two documents supplement each other.

Therefore the first two elements for contempt of court have been established.

The other issue for consideration is whether the respondents disobeyed the court orders. The court order was as stated in the Ruling of the Deputy Registrar and it basically required the respondents to refrain from implementing any of their decisions pushing out or suspending the applicant from work. The reason why the respondents say they are not in contempt of court order is because the order served on them was not in the same wording as the Ruling. That the order only related to the 9th March 2016 letter regarding the forced leave and had nothing on suspension.

This argument cannot stand because the Ruling was received in court with the respondents' representatives and counsel in court. Any omissions in the order ought to have been raised by counsel for the respondents as officers of court since it is incumbent on them to disclose that which is adverse to them. The omission should not have been taken advantage of.

From the evidence on record and submissions, the respondents have effectively implemented the suspension by pushing the applicant out of office and denying her access to the office. They have even withdrawn her entitlements as Deputy Managing Director despite the court Ruling and orders. I find this action contemptuous.

In the submissions by learned counsel for the applicant he prayed that this court makes a precedent and finds that there can be contempt of court by Managers in their individual capacity who hide behind the veil of their company.

It is trite law that if a body corporate is involved in litigation a director or manager could be personally liable in the following circumstances:

1. For costs the court has discretion to make orders for costs against directors personally in certain situations if it deems fit;
2. For contempt of court, a director or Manager could be in contempt of court and risks a fine or imprisonment if he fails to:
 - (a) Preserve documents which are relevant to a court case;
 - (b) Ensure that the company obeys court orders; or
 - (c) Make a false statement in a witness statement without honestly believing it to be true.

The primary purpose of contempt power is to preserve the effectiveness and sustenance of the power of the courts. **People Vs Kurz 35 Mich App. 643, 656 (1971).**

For the reasons I have outlined herein, I will find merit in this application. It is accordingly allowed. I will declare 1st, 2nd and 3rd respondents are in contempt of court orders.

In its pleadings and submissions the applicant prayed for compensation for the loss and suffering caused as a result of the contempt by the respondents as well as a fine of UGX 1bn/= jointly and severally imposed on the respondents. I believe the compensation envisaged here is in terms of general damages.

The award of general damages is within the discretion of court. They are awarded to compensate someone for the none monetary aspects of the harm suffered. They compensate physical and emotional pain and enjoyment of life.

In the case of *Stanbic Bank Ltd & Anor Vs The Commissioner General URA MA 42 of 2010.* Court imposed a fine of 100m/= as sufficient punishment to purge the contempt in that matter. However court declined to award punitive damages.

In *Mega Industries (U) Ltd Vs Comfoam Uganda Ltd MC 21 of 2014* court awarded Exemplary damages of Shs.300,000,000/- to the Applicant Company with payment of interest at court rate from date of this ruling till payment in full. The court handed down a penalty of UGX 100,000,000/- for contempt of court orders in Civil Suit 269/2011 which was to be deposited in court.

In the circumstances of this case, I will award the applicant general damages of UGX 200,000,000/=. In addition the respondents shall pay a fine of UGX 50,000,000/= for contempt of court orders to be deposited in court.

The general damages will carry interest at court rate from the date of this ruling till payment in full. The applicant shall get the costs of this application. The decretal sum shall be chargeable on the respondents jointly and severally.

I so order.

Stephen Musota

J U D G E
31.05.2016