

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**MISCELLANEOUS CIVIL APPLICATION No. 0096 OF 2016**  
**(Arising from Misc Application No. 0009 of 2016 and Civil Suit No. 0007 of 2006)**

**FLORENCE DAWARU** ..... **APPLICANT**

**VERSUS**

**1. ANGUMALE ALBINO }**  
**2. SAMUEL ONDOMA }** ..... **RESPONDENTS**

**Before: Hon Justice Stephen Mubiru.**

**RULING**

This is an application for review and setting aside an order of the Registrar of this court by which he dismissed an application against the respondents for contempt of court. It is made under the provisions of Order 52 rules 1 and 2, and Order 46 rules 1 (b) and 4 of *The Civil Procedure Rules*, sections 64 (3) and 98 of *The Civil Procedure Act*. It seeks an order setting aside an order of the Registrar awarding costs to the respondent, a stay of taxation of the respondent's bill of costs and an award of the costs of the application.

It is supported by the affidavit of the applicant in which she depones briefly that she is the proprietor of land comprised in LRV 3110 Folio 25 plot 22 Okuti Lane in respect of which judgment was entered in her favour by the High Court on 20<sup>th</sup> October 2015, granting her vacant possession within thirty days of the judgment. The respondent having refused to hand over vacant possession, she on 22<sup>nd</sup> February 2016 filed an application intending that the respondents be found to be in contempt of court for their failure to comply with the decree. The Registrar heard the application and dismissed it with costs. The respondents have since then filed a bill of costs yet to be taxed. She contends that the award of costs and the impending taxation is erroneous since the Registrar lacked jurisdiction over an application for contempt of court.

In his affidavit in reply, the first respondent opposes the application. He avers instead that his tenant, the second defendant, vacated the building on 22<sup>nd</sup> October 2015. He himself vacated the

building on 15<sup>th</sup> August 2016 following clarification of the judgment by the trial Judge in his letter of 26<sup>th</sup> July 2016. The Registrar had jurisdiction to entertain the application for contempt of court and came to the right conclusion when he dismissed it with costs and therefore the resultant bill of costs ought to be taxed.

Submitting in support of the application, counsel for the applicant Mr. Abbas Bukenya argued that following the judgment of the court which decreed the disputed property to the applicant, she took possession and placed therein a tenant. However, the tenant vacated the property after being threatened by the first respondent and the applicant replaced the original tenant with a one Bosco. The said Bosco was again forced by the respondents to vacate the suit premises by threats where after the respondents regained possession of the premises. The applicant filed contempt of court proceedings. The application was heard by the Registrar who dismissed it, not for want of jurisdiction but for failure of the applicant to demonstrate that there was a contempt of court. The decision was erroneous since the Registrar had no jurisdiction over such proceedings. He cited *Attorney General and another v James Mark Kamoga and another, S.C. Civil Appeal No. 8 of 2004* which sets out the powers of the Registrar at p. 16. Review and contempt proceedings are not part of his powers. The decision therefore should be reviewed. The costs having been awarded out of an irregular exercise of jurisdiction, they arose out of an illegality. He prayed that the award of costs be set aside and the application be allowed with costs.

Submitting in response, counsel for the respondents Mr. Samuel Ondoma opposed the application. He contended that the applicant had not proved any of the three essential elements warranting a review; discovery of a new and important matter of evidence which after the exercise of diligence was not within the applicant's knowledge or could not be produced; mistake or error apparent on the face of the record, or any other sufficient reason. The applicant did not raise the objection at the hearing of the application by the Registrar. In any case, the Registrar had powers to entertain the application. The authority cited is distinguishable in that the issue there was whether a Judge can review a consent judgment entered into by the registrar. The court of appeal had observed that a Judge cannot review the order of the Registrar. The Supreme Court decided that a High Court Judge has power to review a decision of the Registrar. It was not about contempt proceedings and neither was it about execution of a decree. The

Registrar had the power under Order 50 rules 4 and 7 of The Civil Procedure Rules to hear the application. The prayed therefore that the application be dismissed with costs to the respondents.

The application pivots around the question whether the Registrar had jurisdiction to hear an application for contempt of court of the nature that was filed by the applicant. Contempt of court was defined by Lord Russel of Killowen, L.C.J. has laid down the law of Contempt in *R. v. Gray* [1900] 2 Q.B. 36 at 40 as follows: “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.” It therefore may be manifested by acts or utterances which; (i) scandalise or tend to scandalise, or lower or tend to lower the authority of any court; or (ii) prejudice, or interfere or tend to interfere with, the due course of any judicial proceeding; or (iii) Interfere or tend to interfere with, or obstruct or tends to obstruct, the administration of justice in any other manner. It encompasses acts calculated to hamper the due course of a judicial proceeding or the orderly administration of justice.

Any course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice, is contempt of court. The public have an interest and a vital stake in the effective and orderly administration of justice. The Court has the duty of protecting the interest of the public in the due administration of justice. The power to punish for contempt of court is a special jurisdiction which is inherent in all courts for the protection of the public interest in the proper administration of justice, for as Lord Atkin observed in *Andre Paul Terence Ambard Appeal No. 46 of 1935 v. The Attorney General of Trinidad and Tobago* (*Trinidad and Tobago*) [1936] 1 All ER 704, [1936] AC 322;

It may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of Justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression

“Contempt of Court” may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.

Every judicial officer presiding over court proceedings has the power to punish for contempt committed in the face of the court. This inherent power is intended to enable the Court preserve its decorum and maintain its dignity. Thus, when a contempt is committed in the face of the Court to scandalize or humiliate the Judicial officer, instant action may be necessary. Where a contemnor behaves rudely, improperly and arrogantly in the face of the Court by abusing, insulting, intimidating, threatening the judicial officer, if the judicial officer does not deal with such contempt with a strong hand, that may result in scandalizing the institution thereby lowering its dignity in the eyes of the public. The courts exist for the people. The courts cherish the faith reposed in them by people. To prevent erosion of that faith, contempt committed in the face of the court need a strict treatment.

This power has been recognised since the times immemorial. It is stated in *Halsbury's Laws of England* (3<sup>rd</sup> Edition vol. 8 at p. 5) that the power to fine and imprison for a contempt committed in the face of the Court is a necessary incidence to every Court of Justice. Lord Denning in *Morris v. The Crown Office*, [1970] 1 ALL ER 1079, said that the purpose of contempt proceedings is “effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.” Contempt in the face of the Court is a necessary incident to every Court of justice to fine and imprison and that of all the places where law and order must be maintained, it inheres in all courts. He has reiterated the same proposition in *Balogh v. Crown Court*, [1974] 3 ALL ER 283 that this power of summary punishment a necessary power and that it is given so as to maintain the dignity and authority of a Judge to ensure a fair trial and properly exercised, the power is of the utmost value and importance, which should not be curtailed. Such inherent power to punish for contempt is summary. It is not governed or limited by any rules of procedure excepting the principles of natural justice. Judicial officers face with contempt in the face of the court have to take the immediate action to maintain honour and dignity of the Court. Thus, there is no limit or fetters on the power of a judicial officer to hold any person guilty of contempt and to punish him or her instantaneously. It is contempt which the judicial officer can punish on his or her own motion. It is a unique power

vested in the courts so as to set the things right to maintain the decorum and dignity of the Court and uphold the supremacy of the law. The procedures and the punishments in a case of contempt committed in the face of the Court are summary in their very nature. As a judicial officer conducting court proceeding, a Registrar therefore has the inherent power to deal with contempt committed in the face of the court.

However, for contempt that is not committed in the face of the court, this kind of contempt is *sui generis*. It is usually initiated by a litigant who by motion brings to the attention of court conduct believed to be in contempt of court. All contempt proceedings are matters between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he or she may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. Since, the contempt proceedings are not in the nature of criminal proceedings, it is open to the Court to cross-examine the contemnor and even if the contemnor is found to be guilty of contempt, the Court may accept apology and discharge the contemnor. This peculiar feature distinguishes contempt proceedings from criminal proceedings.

There is a clear line of distinction between proceedings for contempt initiated by the Court on its own motion, and those initiated as civil contempt by the motion of a private litigant. A proceeding for civil contempt is regarded as a form of execution and enforcement of the order alleged to have been violated to the detriment of a private party. It is in the nature and form of appeal for execution or enforcement of the court's order, for the benefit of a party. The right of a private party to move the court for civil contempt is therefore regarded as remedial. Such proceedings are thus governed by the limits of the civil jurisdiction of court.

The High Court has unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law (see Article 139 (1) of *The Constitution of the Republic of Uganda, 1995*). However, Order 50 of *The Civil Procedure Rules* only confers auxiliary jurisdiction upon a Registrar of the Court. A Registrar has primary auxiliary Jurisdiction to deal only with those matters expressly prescribed by that Order and exercise powers ancillary or incidental thereto.

The jurisdiction exercised by a Registrar of the High Court is therefore purely auxiliary; it is neither original, nor appellate or revisional jurisdiction as that exercised by the Judge. Where jurisdiction is conferred by rules or a statute, it is limited to the extent prescribed under the statute or rules. However, once there is jurisdiction conferred to entertain certain matters, then all powers to make that jurisdiction effective must be implied to the authority unless expressly prohibited. Therefore, the powers and jurisdiction of a Registrar of the High Court are those which are expressed and conferred by Order 50 of *The Civil Procedure Rules* and also those which inhere in the exercise of that jurisdiction or are ancillary or those which sub-serve the exercise of that auxiliary jurisdiction. The incidental powers are those which are directly and immediately appropriate to the execution of the powers expressly granted and which exist only to enable the Registrar to carry out the purpose for which the auxiliary jurisdiction was conferred. They can only grant auxiliary reliefs of a more routine and formal nature, pending the determination of the substantive reliefs by the Judge.

The principle is that the nature and extent of incidental / ancillary power will depend upon the jurisdiction that is exercised. The incidental can never be one which is in the form of “prelude” to the main but it has to be of the nature of “sequel” of the main power. Civil contempt proceedings at the instance of a party to litigation seek relief of a substantive as opposed to a procedural nature for which Order 50 is designed. I therefore cannot read into the jurisdiction expressly conferred by Order 50 of *The Civil Procedure Rules* the power to punish for civil contempt, other than contempt in the face of the court. That power is neither incidental nor ancillary to the auxiliary jurisdiction of a Registrar

Order 46 rule 1 of The Civil procedure Rules empowers this court to review a decision where error is apparent on the face of the record. According to the decision in *Attorney General and another v James Mark Kamoga and another*, S.C. Civil Appeal No. 8 of 2004 the power extends to Orders of the Registrar. The case of *Nyamongo and Nyamongo Advocates v. Kago* [2001] 2 EA 173 defined it thus:

An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of

the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal.

Under Order 46 rules 1 and 8 of *The Civil Procedure Rules*, a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. That the Registrar exercised a jurisdiction not vested in him and thus reached an erroneous conclusion of law is a proper ground for review. Having found that this is an error apparent on the face of the record, the order dismissing the application for contempt of court is hereby set aside. Consequently the award of costs was erroneous and is hereby set aside. In the final result, the application is allowed with costs to the applicant.

The ruling has been delivered this 29<sup>th</sup> day of March 2017.

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Stephen Mubiru  
Judge  
29<sup>th</sup> March 2017.