

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT JINJA**  
**MISCELLANEOUS CAUSE No. 039 OF 2017**

MPAGI PETER KASULE                   =====                   APPLICANT

VERSUS

WILSON SENGONZI                    }  
DAN OUNDO                            }  
HARUNA GOLLOBA                    }                   =====                   DEFENDANTS

**BEFORE HON. JUSTICE MICHAEL ELUBU**

**RULING**

The Applicant, **MPAGI PETER KASULE**, filed this application under SC.33 and 39(1) and (2) of *The Judicature Act*, Sections 64(e) and 98 of *The Civil Procedure Act, Order 52* rules 1, 2 and 3 of *The Civil Procedure Rules S.I. 71 – 1*.

There are three Respondents namely: **WILSON SENGONZI, DAN OUNDO and HARUNA GOLOOBA**.

The Applicant prays for orders that;

- i) The Respondents be jointly and severally found in contempt of court for disobeying a court order issued by The High Court on 18<sup>th</sup> December 2016.
- ii) That the Respondent jointly and severally be punished by detention in Civil Prison and or be fined the sum of Uganda shillings Two Hundred million only (Ug. 200,000,000/=) for contempt of the said order.
- iii) That the costs of this application be provided for.

The grounds for the application are that the applicant filed for an order of contempt of the order of this court issued on the 15<sup>th</sup> of December 2016 in which it was directed that the status quo be maintained in respect of the suit land; that the Respondent have deliberately effected transfer of the suit land to that parties in order to defeat the ends of justice; that the Respondents breach of the court order is reckless and intentional.

The background to this application is that the applicant filed for a Temporary Injunction in M.A. No. 525/2016, praying for orders restraining among others, William Sengonzi, from dealing with or subdividing the suit land comprised in Kyagwe Block 101 Plot 60 and Kyagwe Block 4495 until final disposal of Civil Suit No. 212/15; it was prayed further that the Commissioner Land Registration be restrained from transferring and registering further entries and sub divisions on the suit land until final disposal of the main suit.

The first Respondent deposed in his affidavit in reply that the court order on which this application is premised is defective and in any event this applicant was himself guilty of contempt of court having failed to make the Administrator General a party to this application despite an order of the court directing that they should always be a party.

He goes on to say that the court order did not mention a specific plot number against which the court order could be registered in the land registry. That the suit land as described was long before the order was issued subdivided and registered in the names of third parties who are not party to this application. The subdivision

was effected on 1/12/16 object the court order was made on the 15th December 2016.

It is also stated that the order is made against one William Sengozi whereas the 1<sup>st</sup> Respondent's name is Wilson Sengozi.

That he cannot be held in contempt of an order made against William Sengozi which is not his name.

That the 1<sup>st</sup> Respondent presented transfers for Registration and yet these alleged transfers, it is submitted, are not attached.

It is however stated, that as already described above, the land had been sub-divided and new plot numbers issued.

The 2<sup>nd</sup> Respondent denies being in contempt of the court order, because the land in issue had been subdivided on the 1<sup>st</sup> of December 2016 and at the time the subdivision was made there was no encumbrance on the land.

He also states that the order mentions Sengozi William whereas the registered name is Wilson Sengozi.

The 2<sup>nd</sup> Respondent avers that the applicant did not pay the requisite registration fees for the order to be lodged in the land registry at Mukono and had not done so by 6<sup>th</sup> of January 2017. The 2<sup>nd</sup> Respondent averred that he was transferred from Mukono land Registry to the Kampala Capital City Authority and Registry on the 21<sup>st</sup> of December 2016 and did not effect any transfers on any plot created out of

Kyagwe Block 101 Plot 4495. In any case, by the time the order was registered on 20/2/2017 he had been transferred.

It is submitted for the 2<sup>nd</sup> Respondent that, as stated earlier, that by the time the order was served the transfers had already been effected and were therefore not registered by the 2<sup>nd</sup> Respondent.

The 3<sup>rd</sup> Respondent opposes the application. He avers that he was not the Registrar of Titles at the time the order was issued as he assumed office on transfer from Kampala, on the 1<sup>st</sup> of January 2017. His dealings on the land commenced on the 21<sup>st</sup> of February 2017 following a complaint regarding Plot 4495. He found on perusal of the file, that the land was subdivided on 17<sup>th</sup> of August 2016 and the subdivision registered on the 1<sup>st</sup> December 2016.

Then upon receipt of the court order, the Commissioner Land Registration directed that a caveat be lodged on plots created out of Plot 4495 namely Plot 5882 to Plot 5968. The said caveat was accordingly registered on the Certificate of Title.

The submission on behalf of the 3<sup>rd</sup> Respondent is that he did not wilfully disobey the order of the court. Like the others the land is said to have been subdivided by the time the order was issued and that the 3<sup>rd</sup> Respondent took the initiative to have a caveat lodged on the suit land on receipt of the court order. Otherwise the subdivisions were done before the 3<sup>rd</sup> Respondent was transferred to Mukono.

It is countered that there is no evidence shown that the 3<sup>rd</sup> Respondent entertained any application for Land Registration of the suit land or issued any Title.

Turning now to the merits of this application, and as against the background laid out above, this court on the 15th December 2016 issued an order. Paragraph 2, on which this applications turns, is couched in the following terms:

*“The status quo on the suit land be maintained until final disposal of the application for Temporary Injunction”*

The issue therefore is whether, on the facts of the application here, any of the Respondents flouted this order.

It was agreed on the 15th December 2016 that the status quo be maintained. To my mind that was the status quo obtaining on the 15th December 2016.

The complaint here is that following this courts direction to maintain the status quo, the 1<sup>st</sup> Respondent went on to present for Registration, transfer instruments which were then effected by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

This court was not furnished with any of the said transfers complained about.

PKM4 is said to be the proof of the above allegations. The attached Certificates of Title are unequivocal. On the 16<sup>th</sup> January 2017 a transfer was effected by Sengozi Wilson to our Byabashaija Benjamin and Canogura Tonny. On the 19<sup>th</sup> of January 2017 by Wilson Sengozi to Atwine Alison. It is however stated by the 3<sup>rd</sup> Respondent, which evidence, has not been rebutted that subdivision of Plot 4495 had earlier been effected on 17<sup>th</sup> of August 2016 and registered on 11st of December 2016.

In this case, where the applicant has not furnished the transfers and the respondents state the transfers were registered on the 1/12/2016, the court is faced with a grave unresolved contradiction yet the Certificates of Title show registration to be done between 16.1.2017 and 6.2.2017. That said, the applicant does not appear to have paid land registration fees for the court order until 20.2.2017.

It is not clear to do this court who the registrars who made the said entries are. Their names are not given or indicated in evidence. One cannot conclusively say therefore, whether 2<sup>nd</sup> and 3<sup>rd</sup> respondents are the registrars shown on the certificates of title.

That wilful disobedience to a court order can, in certain circumstances, be punished by committal to prison is undoubtedly true (see **Kasturilal Laroya v Mityana Staple Cotton Co Ltd and another [1958] 1 EA 194**).

The burden on the applicant was to show, on a balance of probability, that the respondents had wilfully disobeyed the court order by clearly illustrating what role each of them had played in furtherance of that defiance.

In light of the above I am not able to make a finding owing to the contradictions above.

Additionally, a caveat has been entered on the disputable Certificates of Title by the Commissioner Land Registration. In this way no further activity can be effected through his office.

It was raised in the submissions that the Respondents are constructing on the land. The Applicant did not raise this compliant anywhere in his application. It would be

improper for this court to make a finding on a matter for which the pleadings are silent and the Respondent were not given opportunity to rebut. The Principle is that a party is bound by his pleadings.

In sum, I find that the allegations of contempt of this Courts order have not been properly substantiated or proved on a balance of probability.

In the result I dismiss the application with costs.



A handwritten signature in blue ink, appearing to read 'ME', is positioned above a horizontal dotted line.

**MICHAEL ELUBU**

**JUDGE**

**31/08/2017**