

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

**MISCELLANEOUS APPLICATION No. 739 OF 2016**  
*(Arising From Misc. Application No. 260 of 2013)*  
*(Arising From Civil Suit No. 194 of 2013)*

**ESTHER KISAAKYE :::::::::::::::::::::::::::::: APPLICANT/PLAINTIFF**

*Versus*

**SARAH KADAMA :::::::::::::::::::::::::::::: RESPONDENT/DEFENDANT**

**BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA**

**RULING:**

This is an application for orders that the respondent is in contempt of temporary injunction issued in Miscellaneous Application No. 260 of 2013 restraining her from causing further publication of defamatory articles against the applicant. The application is brought under **Order 41 rule 3 of the Civil Procedure Rules**.

The grounds of the application are stated in the application and the affidavits in support. In summary they are that a court order for temporary injunction was on the 20<sup>th</sup> March 2014 issued by consent of the parties restraining the respondent from further publication of defamatory articles. That on the 20<sup>th</sup> June 2014 the respondent in violation of the order wrote a defamatory letter to the Judicial Service Commission. That on the 4<sup>th</sup> April 2016 judgment in the High Court Land Division was passed in favour of the applicant and the respondent caused the Bukedde News Paper to publish a story quoting her saying that the applicant had stolen her husband which is a defamatory remark. That on 14<sup>th</sup> May 2016 an article was published in the Monitor News

Paper wherein the respondent narrated her ordeal with the applicant's husband and how she lost her supposed marital home to her husband's new and legal wife. That the respondent has blatantly violated the temporary injunction so if court does not grant this application the contempt will continue.

The applicant filed an affidavit in support of the application dated 17<sup>th</sup> August 2016. The respondent filed an affidavit in reply dated 2<sup>nd</sup> November 2016. The applicant filed an affidavit in rejoinder dated 25<sup>th</sup> November 2016.

Mr. Stanley Kawalya appeared for the applicant and Alex Kabayo appeared for the respondent. Counsel for the applicant sought to cross-examine the respondent on her affidavit in reply and this court allowed him to do so.

In cross-examination the respondent denied writing Annexure 'A' because although the signature may look like her signature, she did not write it. That she thinks Annexure 'A' is a forged document. That she has never reported to Police about the alleged forgery of her signature. She also stated that she has never been interviewed by any media houses.

Respective counsel made oral submissions.

Counsel for the applicant submitted that this is an application to find the respondent in contempt of the temporary injunction issued by this court with the consent of both parties. That pursuant to several attached articles to the affidavit in support it is clearly proved that the respondent in Annexure 'A' authored the document which violated the temporary injunction. That therefore the applicant prays that the court be pleased to find the respondent to be in contempt of a court order and give such remedies as it deems fit to stop the violation.

Counsel for the respondent submitted in reply that the respondent opposes the application. For this submission, counsel relied on the affidavit in reply. That therefore the respondent denies being in contempt of any court order. Further counsel submitted that the respondent did not author any complaint in Annexure “A” or invite any journalist. That the authors of the documents in the various articles are clearly indicated in the applicant’s affidavit in support of the application as per Annexure “D”, “E” and “F”. That the articles and publications in Annexure “D” is published in Bukedde News Paper and “F” is published or authored by Juliet Kigongo and the other is published by Monitor News Paper.

That none of these publishers or authors were sued or brought to court to tell the court where they got the information they published. That all this coupled with the respondent’s denial in their affidavit and in the cross-examination casts probable doubt on the averments of the applicant in her affidavit in support or in rejoinder. That the applicant was given notice of respondent’s denial and it should have been proved by expert evidence that the signature on the documents was signed by the respondent.

Lastly learned counsel for the respondent submitted that incarceration is a remedy of last resort for flagrant contempt. Further that the affidavits on record and cross-examination have failed to prove the disobedience on the part of the respondent either directly or by implication. That failure to show disobedience renders it unnecessary to grant the remedies sought. Counsel then prayed that the application be found misconceived and be dismissed with costs.

In rejoinder learned counsel for the applicant submits that the articles in Annexure “B” to “F” are not authored by respondent. She only authored Annexure “A”. She was interviewed for Annexure “B” to “F”. That Annexure “D” to the application quotes the respondent saying applicant snatched her husband. That in the Monitor Article she is in a night gown which shows that she provided the photo to the News Paper. That the respondent was interviewed in violation

of the court order. That therefore she should be held in contempt. And be restrained from further defaming the applicant.

I have considered the application, the law applicable, affidavits and submissions of the parties.

According to *Halsbury's Laws of England, 4<sup>th</sup> Edition*

***“it is a civil contempt to refuse or neglect to do an act required by a judgment or order of the court within the time specified in that judgment, or to disobey a judgment or order requiring a person to abstain from doing a specific act.”***

Further, according to case law, it is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until it is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. See: *Hadkinson Vs Hadkinson [1952] ALL ER 567.*

In *LC Chuck and Cremier [1896] ER 885,* it was held that a party who knows of an order whether null or void, regular or irregular cannot be permitted to disobey it. That it would be dangerous to hold that the suitors or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That the course of a party knowing of an order which is null or irregular and who might be affected by it is plain. He should apply to the Court that it might be discharged. But as long as it exists, it must be obeyed.

It follows from the above authorities that the position of the law is clear; as long as court orders are not discharged, they are valid since they are valid, they should be obeyed. That being the

case, the only way in which a litigant can obtain reprieve from obeying a court order before its discharge is by applying for and obtaining stay. As long as the order is not stayed, and is not yet discharged, then a litigant who elects to disobey it does so at the risk and pain of committing contempt of court.

To prove contempt, the complainant must prove the four elements of contempt, namely:

- 1) The existence of a lawful order;
- 2) The potential contemnor's knowledge of the order;
- 3) The potential contemnor's ability to comply; and
- 4) The potential contemnor's failure to comply.

See **Hon. Sitenda Sebalu Vs Secretary General of the East African Community Ref. No. 8/2012.**

The standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, and almost, but not exactly, beyond reasonable doubt. The jurisdiction to commit for contempt should be carefully exercised with the greatest reluctance and anxiety on the part of the court to see whether there is no other mode which can be brought to bear on the contemnor.

See: **Mutikika Vs Baharini Farm Ltd [1985] KLR 227.**

In this case there was a court order in the form of a temporary injunction. The respondent was aware of the order because it was issued upon consent of the parties. The respondent has full capacity to obey the court order since all it required her to do is to refrain from causing further publication of defamatory articles against the applicant. The issue in this case is whether the applicant has failed to comply with this court order.

There is no direct evidence to prove that the respondent caused the publications of the stories about the applicant. However, the circumstantial evidence in this case irresistibly points to the fact that the respondent had something to do with the publications in the several News Papers. The first is that the news papers had access to very personal photographs of the respondent wearing a night gown in her sitting room. She even posed for a photograph right at the house which she claims is her house. This beyond doubt shows that she allowed to be interviewed on the matter and caused the publishing houses and the news papers to publish the articles/stories. I therefore find that the respondent acted in contempt of court order.

Having found the respondent to be in contempt of a court order and since the evidence in this case was circumstantial evidence, I find that a caution is a proper order.

This application therefore succeeds with the following orders:

1. The respondent is therefore cautioned not to cause any further publication of defamatory statements against the applicant.
2. The respondent shall pay the applicant costs of this application.

I so order.

**Stephen Musota**  
**J U D G E**

**23.01.2017.**