

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO. 602 OF 2018

NAMBASI NELSON LUDAMBISA:.....APPLICANT

VERSUS

KHAN INVESTMENTS LTD:.....RESPONDENT

RULING

BEFORE HON. JUSTICE SSEKAANA MUSA

The applicant filed Misc. Application No. 543 of 2018 arising out of Civil Suit No. 374/2018 seeking for orders that motor vehicle Mitsubishi Fuso Truck Dumper Reg. No. UBB 332U be attached before judgment as security for the appearance of the respondent and fulfillment of the decree in the main suit as well as costs of the application in the cause.

The application was heard before the Assistant Registrar H/W JOY BAHINGUZA KABAGYE who ordered that the motor vehicle be impounded and parked at the Applicant's business premises for three weeks that is up to 18th October 2018 until the parties agree on the schedule of payment of the outstanding balance of the purchase price.

The applicant however informed this court during the hearing of this application that the respondent had sold off the motor vehicle in question.

These allegations were not rebutted by counsel for the respondent neither did the respondent prove that the vehicle was in its custody. The court was further informed by counsel for the applicant that the vehicle was in the hands of a third party.

In light of this evidence, the respondent with prior knowledge of the existing order delivered by the Assistant Registrar disobeyed the court order and sold off the motor vehicle which amounts contempt of court.

Contempt of court consists of conduct which interferes with the administration of justice or impedes or perverts the course of justice.....

Civil contempt consists of a failure to comply with a judgment or order of a court or breach of an undertaking of court. (*See; Osborne's Concise Law Dictionary, P. 102 A Thomson Company.*)

According to the case of *Nambi v Lwanga (MISCELLANEOUS APPLICATION NO. 213 OF 2017) [2017]*, before any action can be found to amount to contempt of court, the following principles have to be established:-

- Existence of a lawful order.
- Potential contemnor's knowledge of the order.
- Potential contemnor's failure to comply, that is, disobedience of the order.

In this case, the respondent was well aware of the existence of the court order to impound and park the vehicle at respondent's business premises until the parties agreed on the schedule of payment of the outstanding balance of the purchase price but blatantly disobeyed the said order. There is no justification whatsoever for the disobedience of the court order by the respondent and yet he was the one who obtained the said court order.

The court in **Housing Finance Bank Ltd & Another vs. Edward Musisi Miscellenous Application 158/2010 CA** held that:

“A party who knows of an order, regardless of whether, in view of that party, the order is null or valid, regular or irregular cannot be permitted to disobey it by reason of what that party regards the order to be. It is not for that party to choose whether or not to comply with such order. The order must be complied with in totality, in all circumstances by the party concerned subject to the party's right to challenge the order in issue..... It is the responsibility of and duty of the party concerned, in case that party for some genuine reason finds compliance with the court order not possible, to appropriately move court issuing the order and bring to the attention of the court the reasons for non-compliance.

The respondent therefore ought to have informed court if there was any reasons as to why it wouldn't continue to comply with the orders of court.

In the Matter of Collins Odumba [2016] eKLR, the Employment & Labour Relations Court of Kenya at Kericho extensively discussed the contempt of court. D. K. N. MARETE held that:

“The law and practice on contempt of court has come out clearly that the essence of contempt proceedings is not to assuage the feelings of the judge or install the dignity of the court. Far from this, it is intended to safeguard the supremacy of the law. In the authority of Johnson vs Grant, 1923 SC 789 at 790 Lord President Clyde stated that;

“...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”

The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.

In the result, I find the respondent in contempt of court and impose a fine **twenty million Uganda shillings (UGX 20.000.000)** as a sanction for his contemptuous conduct and the same must be deposited in court within 45 days.

The motor vehicle should be returned by the respondent to court or it should be impounded and placed under court's custody until final determination of the main suit.

This application is allowed with costs

I so order.

SSEKAANA MUSA

JUDGE

28th June 2019