



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Miscellaneous Civil Application No. 30 of 2019

In the matter between

ANGELINA LAMUNU LANGOYA **APPLICANT**

VERSUS

OLWENY GEORGE WILLIAM **RESPONDENT**

Heard: 23 April 2019.

Delivered: 30 May 2019.

Civil Procedure — Contempt of court — Non-compliance with injunction — Whether a litigant cited for contempt should be sanctioned—the court will not ordinarily impose sanctions for contempt where there is a mere technical violation

RULING

STEPHEN MUBIRU, J.

Introduction:

[1] This is an application under section 98 of *The Civil Procedure Act* seeking an order holding the respondent in contempt of court. It is contended by the applicant that the respondent has wilfully disobeyed a temporary injunction order dated 19th February, 2019 by way of completing and occupying buildings that were incomplete at the time the injunction was granted, thus necessitating sanctions, including detention of the respondent and payment of a fine in the sum of shs. 20,000,000/= The respondent had before the issuance of that injunction, encroached onto the applicant's compound and constructed houses thereon whose completion and occupation the injunction sought to prevent, pending the

disposal of the suit. The respondent has since completed and occupied one of the houses, for which reason he ought to be held in contempt.

[2] In his affidavit in reply, the respondent denied having wilfully disobeyed the temporary injunction order as alleged. He contended instead that he continues to maintain the status quo by occupying only those houses that were complete at the time of the injunction. Instead it is the applicant that has put up new structures on the land since the issuance of that order. The application is brought in bad faith and ought to be dismissed with costs.

[3] The background to the application is that there is a suit pending before this court between the parties to this application, by which the respondent seeks declaratory orders of ownership of the land in dispute, an order of vacant possession, an award of general damages for trespass to land and the costs of the suit. His claim is that during or around 1972, he and his father the late Enoci Oweka acquired the approximately 2224 acres of land in dispute situate at Pama village, Okol Parish, Madi Opei sub-county in Lamwo District for livestock keeping. They jointly occupied and utilised the land until the demise of his father in 1975 whereupon the respondent took charge. The brother of the respondent, a one Timothy Langoya, died in 2009 whereupon his widow, the applicant, was granted letters of administration to his estate. It is on basis of that grant that the applicant has since then laid claim to the land in dispute as belonging to her to the extent of initiating a process of acquisition of a lease thereon, hence the suit.

[4] The applicant's defence is that her late husband Timothy Langoya was the rightful owner of 1,800 acres of land situate at Pama village, Okol Parish, Madi Opei sub-county in Lamwo District. The deceased acquired it as vacant virgin land in the 1960's and secured its registration under the name of "Ametmet Enterprises" in 1974, a process the applicant attempted to complete and formalise upon the demise of her husband. She and her other family members have been in occupation of that land since the 1970s, save for the period of

insurgency. It is the deceased who at one time requested the respondent to act as caretaker of the land. The respondent has never owned that land but only started to lay claim to it during or around the year 2015 as land that belonged to his late father, yet the land which belonged to his late father is located at Dokgwenyu village, Okol Parish, Madi Opei sub-county in Lamwo District. She therefore prayed that the suit be dismissed.

- [5] Pending the hearing and determination of that suit, the parties chose to preserve the status quo by way of a temporary injunction dated 19th February, 2019 which was issued by consent. It was mutually agreed and stipulated in that order that each of the parties was to retain occupation and use of that part of the land which each of them currently occupied. The two incomplete structures located within the applicant's compound were to remain in that state until final disposal of the suit.

Submissions in support of the application;

- [6] In his submissions, counsel for the applicant argued that there exists a lawful order of court dated 19th February, 2019 which the respondent was fully aware of yet he deliberately chose to disobey it. One of the conditions of that order was that The two incomplete structures located within the applicant's compound were to remain in that state until final disposal of the suit yet the respondent has since the issuance of that order gone ahead to complete and occupy the two structures. This conduct justifies committal of the respondent to civil imprisonment and payment of the fine sought.

Submissions opposing the application;

- [7] In response, counsel for the respondent argued that there is no affidavit of service on record to show that the terms of the temporary injunction order were brought to the attention of the respondent. The fact that it was issued by consent

is not a substitute for the requirement of notice. The application does not disclose the particulars of violation since acts constituting the alleged disobedience and the dates on which they occurred are not disclosed. The reliefs sought are not justified since the alleged acts of disobedience are not repetitive and no loss or damage has been occasioned to the applicant. Other than inflame animosity between the parties in what is for all intents and purposes a family dispute over land, the court ought to set down the suit for hearing and determination. They prayed that the application be dismissed with costs to the respondent.

General considerations for exercise of the power to sanction contempt;

[8] "Contempt of court" is a generic expression descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes (see *A. G v. Times Newspapers Ltd.* [1974] A.C. 273 at 307). In law, contempt of court is defined as an act or omission tending to "unlawfully and intentionally violate the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it" (see *Principles of Criminal Law* 1 ed (Juta, Cape Town 1991) at 627; *R v. Almon*(1765) 97 ER 94 at 100; *Ahnee and others v. Director of Public Prosecutions* [1999] 2 WLR 1305 (PC) and *R v. Metropolitan Police Commissioner, Ex parte Blackburn (No 2)* [1968] 2 All ER 319 (CA). The recognition given to contempt is not to protect the tender and hurt feelings of the judge, rather it is to protect public confidence in the administration of justice, without which the standard of conduct of all those who may have business before the courts is likely to be weakened, if not destroyed.

[9] Conduct is calculated to prejudice the due administration of justice if there is a real risk, as opposed to a remote possibility, that prejudice will result. Contempt of court may thus take many forms; it may be committed by person's action or inaction. Wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court or the

publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) or any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or prejudices or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, will constitute contempt of court.

[10] The more common acts which interfere with the course of justice are: interference with persons having duties to discharge in a court of justice; interference with parties to an action; interference with witnesses; abuse of the court's process; and reprisal. Disobedience of an injunctive order that has the effect of alteration or destruction of evidence introduced, or likely to be introduced in the judicial proceedings; or with intent to mislead, fabricate anything intending it to be used as evidence in existing or proposed judicial proceedings. It may also take the form of conduct directed at a judicial officer in his or her official capacity that has the tendency to scandalise, intimidate or improperly influence the decision of the judicial officer, or undermining the authority of the court. Contempt of court also occurs when an individual intentionally and demonstrably disobeys a court order. To constitute contempt of this nature, the act or omission which contravenes the court order must have been intentional but not necessarily deliberately contumacious. It is well established that it is no answer to say that the act was not contumacious in the sense that, in doing it, there was not direct intention to disobey the order. The requirement of intention excludes only casual or accidental acts.

[11] The purpose of a civil action for contempt is to ensure the respondent's compliance for the benefit of the applicant. Such action must show;- (i) that there was a clear and unambiguous court order. It must state clearly and unequivocally what should and should not be done. This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if,

for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.; (ii) that the respondent clearly disobeyed a court order without justifiable reason. He or she must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the wilful blindness doctrine; and (iii) that the alleged contemnor need not have deliberately and wilfully disobeyed the court order. The party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

- [12] The absence of contumacy (wilful disobedience or deliberate defiance) is a mitigating factor but not a defence or an exculpatory circumstance. To be found in contempt, it must be proven that the party accused: knew the order existed, had the ability to comply with the order but violated it knowingly, and lacks just cause or excuse for the violation. Civil contempt is a strict liability violation; all that must be proved is that the order was served on the respondent, and that a prohibited action (or a failure to carry out an order) occurred. Once the applicant has proved noncompliance with the court's order, by showing the existence of the order and the respondent's noncompliance, the burden then shifts, and the potential contemnor must prove inability to comply or justifiable cause.

The distinction between civil and criminal contempt;

- [13] Civil contempt does not require that the contemnor intend to interfere with the administration of justice. As a result, lack of intent to not obey an order of the court is not a defence. All that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is, in fact, in breach of a clear order of which the alleged contemnor has notice. Intent or lack thereof goes to the penalty to be imposed following a finding of contempt, not to the finding of contempt itself. Civil contempt sanctions are said to be coercive in

nature. Their purpose is remedial, and for the benefit of the complainant, as distinguished from criminal contempt sentences which are punitive in nature. If the court determines that contempt was committed, it will usually give the offending party an opportunity to make up for the infraction contingent on the contemnor's willingness to purge himself or herself, impose a fine, penalise the contemnor in costs, or even impose a custodial punishment for serious or habitual violators. While a party to the proceedings can commit a civil contempt, criminal contempt is committed if an order is breached by a "stranger to the litigation."

- [14] Criminal contempt goes a step further, and requires proof that the accused intended to interfere with or impede the administration of justice especially if it occurs in circumstances where the conduct amounts to public defiance, involves a public injury and this calls into play a penal or disciplinary jurisdiction to deal with criminal contempt (see *Phonographic Performance Ltd. v. Amusement Caterers (Peckham) Ltd.* [1964] Ch. 195). The principal theoretical basis of the distinction is that disobedience to the process and orders of the court in civil proceedings is said to be a civil wrong, a matter between party and party, enforcement being for the private benefit or interest of the party seeking enforcement, whereas impeding the administration of justice is a public wrong.
- [15] Criminal contempts "all share a common characteristic: they involve an interference with the due administration of justice either in a particular case or more generally as a continuing process" (see *Attorney-General v. Leveller Magazine Ltd.*, [1979] A.C. 440, at p. 449). A secondary basis for the distinction is that the main purpose of sanctions for disobedience in civil proceedings is coercive rather than punitive. The other postulated distinction is that whereas civil contempt is constituted by a wilful act or omission, where "wilful" connotes "purposefully" and "clear intention to flout," criminal contempt, is constituted by "interference" or "tending to interfere with" the due course of any judicial

proceeding or "interference" or "tending to interfere with" or "obstructing" or "tending to obstruct" the administration of justice.

[16] The principal theoretical basis of the distinction is that disobedience to the process and orders of the court in civil proceedings is said to be a civil wrong, a matter between party and party, enforcement being for the private benefit or interest of the party seeking enforcement, whereas impeding the administration of justice is a public wrong. A secondary basis for the distinction is that the main purpose of sanctions for disobedience in civil proceedings is coercive rather than punitive. That notwithstanding, views have been expressed that although "contempts have sometimes been classified criminal and civil contempt.....at any rate today, this is an unhelpful and almost meaningless classification" (see *Jennison v. Baker* [1972] 2QB 52 at 61). The distinction between civil and criminal contempt is of diminishing importance in modern times.

[17] The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. "The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope" (see *Advocate General, State of Bihar v. Madhya Pradesh Khair Industries*, (1980) AIR 946). However, it is a discretionary power. If courts were to find contempt too easily, "a court's outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect" (see *Carey v. Laiken*, 2015 SCC 17. A). The court's contempt power should be used cautiously and with great restraint. It is an enforcement power of last, rather than first, resort.

The standard of proof required;

- [18] It has been held by this court before that contempt of court must be proved to the standard which is higher than proof on a balance of probabilities (see *Edith Nakandi v. Musa Katongole, H. C. Misc. Application No. 252 of 2018* and *Gatharia K. Mutitika and two others v. Baharini Farm Ltd. [1985] KLR 227*). Yet in other jurisdictions, the position is that the criminal standard of proof applies in contempt proceedings (see for example *In Re Bramblevale Ltd. [1970] 1 Ch. 28 at 137*; *Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd [2015] HCA 21* and *OB v. Director of the Serious Fraud Office [2012] 3 All ER 999 at [26]*). It has been held that even in civil contempt, the standard of proof required is the same as that in criminal contempt; namely, proof beyond reasonable doubt. The reason for this is self-evident. As Lord Denning M.R. said in *In Re Bramblevale Ltd. [1970] 1 Ch. 28 at 137*; "a contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time honoured phrase, it must be proved beyond reasonable doubt." Disobedience of a temporary restraining order issued for the purpose of maintaining existing conditions, pending the determination of the court's jurisdiction, is punishable as criminal contempt where the issue is not frivolous, but substantial.
- [19] Furthermore, conduct involved in disobedience of a court order can amount to both civil and criminal contempt, and the same acts may justify a court in resorting to coercive and punitive measures, which may be imposed in a single proceeding. Moreover, a fine may be imposed for civil contempt when the contempt consists of wilful disobedience to a court order in the sense that the disobedience is not casual, accidental or unintentional. Although the court has powers to enforce mandatory orders and decrees by coercive means, the imposition of non-compensatory contempt fines for the violation of any injunction will require proceedings akin to a criminal trial. These are considerable powers, resort to which imposes a heavy responsibility upon a court confronted with a

determined challenge to its authority. Considering further the diminishing importance in modern times of the distinction between civil and criminal contempt, this court therefore holds the view that all contempts should be punished as if they are quasi-criminal in character. In absence of binding authority, I have for the foregoing reasons decided to apply the criminal standard of proof as the more appropriate standard applicable to this case.

First issue; Whether there exists a clear and unambiguous court order.

[20] The first requirement in proceedings for contempt of court is for the applicant to prove the existence of a clear and unambiguous court order. The order must be clear and unambiguous so that it is easily understood by all. The order should not be unclear or vague. The language and expressions used must be free of ambiguity or vagueness. Its scope must be specifically and explicitly stated so as not to lead to confusion or be open to various interpretations. The Court will only punish for disobedience of an injunction if satisfied that the terms of the injunction are clear and unambiguous. The slightest ambiguity to the order can invalidate an application for committal as ambiguity can in turn lead to the standard of proof, which is the criminal standard, not being attained especially on affidavit evidence.

[21] A person should know with complete precision what it is they are required to do or abstain from doing . The order should therefore be as definite, clear and precise in its terms as possible, so that there may be no reason or excuse for misunderstanding or disobeying it. It should plainly indicate to the respondent all of the acts which he or she is restrained from doing, without calling on him or her to make inferences about which persons may well differ (see *Alken Connections Limited v. Safaricom Limited and 2 others, Nairobi Miscellaneous Application 450 of 2012 [2013] eKLR*).

[22] In the instant case, it is common ground between the parties that a temporary injunction order was issued by consent on 19th February, 2019. I have perused the terms of the order and have found them to be free of ambiguity. The language and expressions used are clear and unambiguous so that the order is easily understood by all. The relevant part of the order specifically and explicitly states that; "the status quo of the suit land be maintained the two incomplete structures within the same compound with the respondent yet to be completed and occupied by the applicant remain so till hearing and disposal of civil suit No. 03 of 2018." This statement cannot lead to confusion and is not open to various interpretations. The existence of a clear and unambiguous court order has therefore been proved beyond reasonable doubt.

Second issue; Whether the respondent had actual notice or knowledge of that order.

[23] The law is that no order requiring a person to do or abstain from doing any act may be enforced by contempt unless a copy of the order has been served personally on him or her (see *Hon. Sitenda Sebalu v. Secretary General of the East African Community Ref No. 8 of 2012 (EACJ)* and *Stanbic Bank (U) Ltd and another v. Commissioner General Uganda Revenue Authority H.C. Misc. Application No. 42 of 2010*); and there must be prominently displayed on the front of the copy of an order served a warning to the person on whom the copy is served that disobedience to the order would-be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible (see *Republic v. Commissioner of Lands and 12 others, Ex Parte James Kiniya Gachira alias James Kiniya Gachiri, Nairobi HCMA No 149 of 2002* and *Jacob Zedekiah Ochino and another v. George Aura Okombo and 4 others, [1989] KLR 165*). The order must have been personally served upon the respondent against whom sanctions for contempt of court are sought to be enforced.

- [24] Although ordinarily it is the court registry that is required to communicate orders of court where they are required to be implemented, the onus to communicate an order of court is on the counsel or the party in whose favour the order was passed by way of obtaining a certified copy of the order passed by the court. Service by the registry is essentially in the nature of a formal communication, if for any reason the same has not been communicated by the successful party. In the instant case, there is no proof of service of this order upon the respondent by either the applicant or the registry. However, being a consent order, its communication to the respondent can be inferred from circumstances.
- [25] A consent order is in the nature of an order of court the terms of which have been contractually entered into by parties to the litigation. The terms of settlement are proposed to the Court and are adopted by the Court as terms of an order of the court. It is in the nature of a contract which has received judicial sanction (see *Siebe Gorman & Co Ltd v. Pneupac Ltd.*, [1982] 1 All ER 377 (at 380) and *Chandless-Chandless v. Nicholson*, [1942] 2 KB 321 (at 324)). Accordingly, a consent order can only be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of the material matters by legally competent persons. *Prima facie*, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court. Consequently, a court cannot interfere with a consent order except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.
- [26] Although it is not a judicial determination on the merits of the application but only an agreement elevated to an order by consent, even if it is in the terms consented to by the parties, it is not a decision of the parties but is a decision of the Court. The basis for the order being the parties' agreement, not a judge's determination, it is fair and reasonable in the circumstances for the court to

impute knowledge of its terms on both parties. The record of proceedings on that day indicates that the respondent and his counsel were in court before the Deputy Registrar of this Court when she reduced the terms of the consent to writing. The formal Order was later extracted by the parties and sealed by court.

- [27] That order was made with the consent of the parties, each of whom was legally represented. Unless the order was obtained by fraud or collusion, or by an agreement contrary to the policy of the court, which has not been advanced as a reason in this case, none of the parties can turn round and claim not to have had knowledge of its existence or its terms. To hold otherwise would be an absurd outcome. It has therefore been proved beyond reasonable doubt that the respondent had actual notice or knowledge of that order.

Third issue; Whether there was an intentional failure to act or an act in contravention of that order committed by the respondent.

- [28] A contempt of court is not a wrong done to another party to the litigation. It is an affront to the rule of law itself and to the court. The applicant must state exactly what the alleged contemnor has done or omitted to do which constitutes a contempt of court with sufficient particularity to enable the respondent meet the accusation. Where committal is sought for breach of an injunction, it must be made clear what the respondent is alleged to have done and that constitutes a wilful (rather than casual, accidental or unintentional) breach of an order or undertaking by which a person is bound and of which the person has notice (see *Australasian Meat Industry Employees Union v. Mudginberri Station Pty Ltd* (1986) 161 CLR 98; 60 ALJR 608; 66 ALR 577). The test to be applied in determining whether or not the conduct constitutes a contempt of court is the tendency of that conduct to obstruct the administration of justice. There is no need of proof of actual obstruction resulting from an act, but only the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty.

- [29] A deliberate commission or omission that is in breach of the court's order will constitute wilful disobedience of the order unless it is casual, accidental or unintentional. It is trite that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings (see *Wild Life Lodges Ltd v. County Council of Narok and another* [2005] 2 EA 344). Although an intentional act or omission that is, in fact, in breach of a clear order of which the alleged contemnor has notice is enough to establish a contempt of court, casual, accidental or unintentional acts of disobedience under circumstances which negate any suggestion of contumacy, should ordinarily not render the contemnor liable to punishment. A party acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should not be liable to a contempt proceeding. But when an act or omission in breach of a court order is done or made consciously, voluntarily and unaffected by any mistake i.e. not casually, or accidentally or unintentionally, it is immaterial that the breach was committed in reliance on a third party's advice, even legal advice.
- [30] The applicant advanced affidavit evidence to the effect that since the passing of that order, the respondent has completed and occupied the two incomplete structures within the same compound with the applicant, acts which had been restrained by that order. Structures that were yet to be completed and occupied by the applicant and had to remain so until the hearing and disposal of the suit, have now been completed and occupied, thus altering the *status quo* that the order sought to preserve. In his response, the respondent did not categorically dispute, discredit or disprove that evidence. *Prima facie* the respondent engaged in that conduct consciously, voluntarily and unaffected by any mistake.
- [31] It is therefore plain that the respondent's non-compliance with the interlocutory injunction was wilful and not casual, accidental or unintentional. Lack of intent to not obey the order is not a defence. All that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in

breach of a clear order of which the alleged contemnor has notice. Intent or lack thereof only goes to the penalty to be imposed following a finding of contempt, not to the finding of contempt itself. The evidence having established beyond reasonable doubt that the respondent's conduct was wilful and deliberate. The respondent's conduct therefore is held to be in contempt of court.

Fourth issue; Whether the circumstance of the case require any measures to be taken against the respondent.

[32] It is trite that 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. 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. There are ample precedents where courts have taken strong measures in order to coerce compliance with an order of the court. In the case of an individual contemnor, a fine may be imposed (see *Doyle v. London Guarantee Co*, [1894] 1 Q.B. 244); or he or she may be imprisoned until the contempt is purged. The committal to prison is of a conditional nature, remaining in force until the contempt comes to an end or further order is made. As soon as the contempt is purged, the offender is entitled to release *ex debito justitiae* (see *In re Freston*, (1887) 13 App. Cas. 20). When court is satisfied that the respondent's non-compliance with the interlocutory injunction was wilful and not casual, accidental or unintentional, the respondents then opens himself or herself up to such measures as are in the court's discretion, whether punitive or coercive, which would best deal with the contempt.

[33] That notwithstanding, the power of punishing for contempt should be used sparingly and only in serious cases or where court is compelled to punish by

reason of persistent and obstinate defiance and interference of the contemnor or if the conduct will prejudice the trial (see *Shamdasani v. King Emperor* [1945] A.C. 264; *Weston v. Courts Administrator of the Central Criminal Court* [1976] 2 All E.R. 875; [1976] 3 W.L.R. 103, and *Izoura v. R* [1953] 1 All E.R. 827, [1953] A.C. 327; [1953] 2 W.L.R. 700). A case is serious where the contemnor acts intentionally, with the purpose of either bringing the court into scorn, disrepute or by interfering with the administration or course of justice or where the conduct will prejudice the trial.

[34] Punishment for contempt serves two functions: (a) enforcement of the process and orders of the court, disobedience to which has been described as "civil contempt"; and (b) punishment of other acts which impede the administration of justice, such as obstructing proceedings in court while it is sitting or publishing comments on a pending case, which have both been described as "criminal contempt." The relevant factors to take into account when punishing for contempt include the following: whether the applicant has been prejudiced by the contempt, and whether the prejudice is capable of remedy; the extent to which the contemnor has acted under pressure or was placed in breach by reason of the conduct of others; whether the breach of the order was deliberate or unintentional; the degree of culpability; whether the contemnor appreciated the seriousness of the breach; whether the contemnor has cooperated or apologised; whether the contemnor has admitted his or her contempt and has entered the equivalent of a guilty plea. By analogy with sentencing in criminal cases, the earlier the admission is made, the more credit the contemnor is entitled to be given; the contemnor's previous good character and antecedents; and any personal mitigation advanced on his or her behalf.

[35] According to some authorities, criminal, but not civil, contempt could be punished by the imposition of a fine. More recent decisions indicate that a fine may be imposed when the contempt consists of wilful disobedience to a court order in the sense that the disobedience is not casual, accidental or unintentional. The

correctness of this approach is, of course, a critical issue in this application. This is a case where under ordinary circumstances the actions of the respondent would justify resort to both punitive and coercive measures.

[36] That notwithstanding, I have given my anxious thought to the peculiar facts of this case. It is my considered view that the underlying rationale of every exercise of the contempt power is to uphold and protect the effective administration of justice. Although the primary purpose in committing a respondent who disobeys an injunction is to enforce the injunction for the benefit of the applicant, another purpose is to protect the effective administration of justice by demonstrating that the court's orders will be enforced. The court though should be careful to keep away from ultra sensitiveness by exercising circumspection and judicial restraint. I am of the considered view that even greater restraint in resorting to the contempt power must be exercised during the trial period. Sanctions should be imposed only as an option of last resort when it is necessary to vindicate the court's authority, to prevent obstructions of justice or in order to guarantee a fair trial.

[37] In the instant case, although the respondent's conduct is a violation of the interlocutory injunction, it has not been proved beyond reasonable doubt that it was calculated to hamper the due course of the judicial proceeding or the orderly administration of justice. Much as the question is not so much about the intention of the contemnor engaging in conduct calculated to interfere with the administration of justice, the respondent's conduct has not been shown to constitute a substantial interference with the due course of justice in this particular case. It has neither undermined the authority of the court nor has it interfered with or likely to interfere with the court's ability to try the case justly. It is not of a nature that has a tendency to prejudice the fair trial of this case since in its visit to the *locus in quo*, the court is capable of distinguishing recent construction from pre-suit developments on the land.

[38] The respondent's conduct in this context is in essence a technical violation and the court will not ordinarily impose sanctions for contempt where there is a mere technical violation. On the other hand, given the fact that the underlying dispute over the land is between members of the same extended family, imposing sanctions even before the trial begins will most likely inflame passions and also runs the danger of prejudging the merits of the suit.

Order :

[39] I am inclined on these facts not to impose any sanctions, but only issue a caution to the respondent warning him that any future act of contempt may not be easily go unpunished. In the final result, the application is dismissed. The costs of the application are to abide the result of the suit.

Stephen Mubiru
Resident Judge, Gulu

Appearances:

For the applicant : Mr. Douglas Odyek.

For the respondent : Mr. Kenneth Engoru and Mr. Kinyera David.