

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**MISCELLANEOUS APPLICATION No. 709 OF 2018**  
**MISCELLANEOUS APPLICATION No. 540 OF 2018**  
**(ARISING FROM MISCELLANEOUS CAUSE No. 340 OF 2018)**  
**ASIIMWE NKAMUSHABA :::::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**1. MAKERERE UNIVERSITY**  
**2. CHARLES BARUGAHARE**  
**3. GORDON MUZANIRA** :::::::::::::::::::::::::::RESPONDENTS  
**4. ALFRED MASIKEYE NAMOAH**  
**5. MWEBE HENRY**  
**6. HUDSON MUSOKE**

**BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW**

**RULING:**

The Applicant herein brought this application against the six Respondents under the relevant enabling provisions of the law cited in the Notice of Motion seeking for;

***1. A declaration that Respondents continue to act in contempt of a court order by keeping the Applicant suspended, denying him access to the Makerere University Students'***

*Portal, refusing to register him for the upcoming examinations, refusing to facilitate his preparation and attendance of exams, officials disparaging and abusing the court and attacking, harassing and taunting the Applicant.*

10 *2. A declaration that the Respondents refusal to comply with the court order issued in Miscellaneous Application No. 540 of 2018 is contempt of court.*

*3. An order that the 2<sup>nd</sup> Respondent and others found in contempt be committed to civil prison until they take necessary steps to ensure that the court order in*  
15 *Miscellaneous Application No. 540 of 2018 is duly complied with.*

*4. An order for compensation of UGX 500,000,000/= (Uganda Shillings Five Hundred Million only) to be paid to the*  
20 *Applicant for contempt of court.*

*5. An order for a fine of UGX 200,000,000/= (Uganda Shillings Two Hundred Million only) for contempt of court.*

**6. An order of sequestration doth issue attaching all the Respondents' property for management till they pay to the Applicant the money ordered for contempt.**

10 **7. An order directing the Respondents to pay punitive, exemplary and general damages for the harm suffered by the Applicant as a result of the impugned contempt.**

**8. An order directing the Respondents to pay costs of this application.**

The grounds of the application are set out in detail in the affidavit  
15 in support thereto sworn by the Applicant, but are briefly that;

**1. The Respondents are disobeying court by intimidating the Applicant to succumb to their pressure and bow to their illegal acts of enforcing a suspension against him in breach of a court order.**

20 **2. There is a subsisting order issued by this Honourable Court on 17<sup>th</sup> October, 2018, vide Miscellaneous Application No. 540 of 2018 in the following terms:**

**a) a temporary injunction doth issue restraining the Respondents, their servants, agents or any other person**

*acting under them from continuing to enforce the decision to open – endedly (sic) suspend the Applicant from the University, subject him further disciplinary and criminal proceedings until the hearing of the Applicant’s main application for Judicial Review or until any further orders of this Honourable Court.*

*b) a temporarily injunction doth issue restraining the Respondents, their servants, agents or any other person acting under their authority from subjecting the Applicant to any disciplinary or criminal proceedings arising from the decision contained in the Respondents’ impugned letter dated 19<sup>th</sup> September 2018, Referenced MAK/ VC/1029/18 and ordering for allowing him access to the University, resumption and continuation of his Degree Studies until the hearing of the Applicant’s main application for judicial review or until any further orders of this Honourable Court.*

*c) Costs of this application shall abide the outcome of the main cause.*

**3. The 2<sup>nd</sup> Respondent is the officer charged with the duty to implement the orders of this Honourable Court on behalf of the 1<sup>st</sup> Respondent.**

**4. The 3<sup>rd</sup> Respondent who is the Personal Assistant of the Vice Chancellor has proactively obstructed and hindered the implementation of the court order, disparaged and attacked court and stopped the 1<sup>st</sup> Respondent's officials from registering the Applicant.**

**5. The 4<sup>th</sup> Respondent is the Academic Registrar of the 1<sup>st</sup> Respondent who is charged with the registration of students for exams and other examination affairs including the running of the Student Portal.**

**6. The 5<sup>th</sup> Respondent is the Director Legal Affairs charged with ensuring the implementation of court orders.**

**7. The 6<sup>th</sup> Respondent was present in court when the order was issued but thereafter conspired to block its implementation.**

**8. The Respondents have willfully defied the aforesaid court order despite the fact that it was duly and promptly served on them and brought to their knowledge.**

**9. The Respondents' conduct is contempt of a court order issued by this Honourable Court.**

**10. On account of the foregoing, it is just and equitable for this Honourable Court to appropriately punish the Respondents for contempt by payment of damages, a fine and compensation in order to purge the contempt complained of.**

**11. The Respondents be ordered to pay compensation of UGX 500,000,000/= (Uganda Shillings Five Hundred Million only) to the Applicant for contempt of court.**

**12. The Respondents be ordered to pay a fine of UGX 200,000,000/= (Uganda Shillings Two Hundred Million only) for contempt of court.**

**13. It is in the interest of promoting the rule of law that the Honourable Court grants all the reliefs hereby sought.**

The application is supported by the affidavit sworn by the Applicant. As far as is relevant, he deposes that he made an application for orders of temporary injunction to this court and obtained a court order on 17<sup>th</sup> October, 2018, vide *Miscellaneous Application No. 540 of 2018* whose terms are exactly as stated in Grounds 2 (a) (b) and

(c) above. The Applicant avers that the Respondents have refused and/or failed to comply with the court order by keeping him suspended and have denied him access to the Makerere University Students' Portal. Further, that the Respondents have refused to register him for the upcoming examinations which are (were) starting on Monday 19/11/2018, to facilitate his preparation and attendance of exams. Also, that the officials of the 1<sup>st</sup> Respondent led by the 3<sup>rd</sup> Respondent have disparaged and abused the court by saying that they do not respect court orders, attacked, harassed and taunted the Applicant that his going to court will not help him as they hold the power. That the Respondents are intimidating him to succumb to their pressure and bow to their illegal acts of enforcing suspension against him. That the 3<sup>rd</sup> Respondent has proactively obstructed and hindered the implementation of the court order, disparaged and attacked court and stopped the 1<sup>st</sup> Respondent's officials from registering the Applicant. That the 6<sup>th</sup> Respondent was present in court when the order was issued, but thereafter neglected and/or conspired to block its implementation. That the Respondents have defied the court order despite the fact

that it was duly and promptly brought to their knowledge. The Applicant thus seeks the remedies stated above.

The Respondents filed affidavits sworn by Charles Sentongo Deputy Academic Registrar and Charles Barugahare the University Secretary, respectively opposing the application. The gist of their depositions is that this application is incompetent in as far as it is brought against the 2<sup>nd</sup> – 6<sup>th</sup> Respondents who are not the implementing authorities of the 1<sup>st</sup> Respondent. Further, that this Application was filed on 16<sup>th</sup> of November 2018 for contempt of court orders against the Respondents for allegedly failing to lift the Applicant's suspension, when in fact the Applicant's suspension was lifted earlier on 30<sup>th</sup> October 2018. As proof they attached copy of the letter revoking the suspension as *Annexure "A"*. Further, that the Applicant is in fact back at the 1<sup>st</sup> Respondent University and is sitting his exams and enjoying all the rights and privileges enjoyed by all other students of the 1<sup>st</sup> Respondent University. That as such, this application has already been overtaken by events, is frivolous and vexatious and ought to be dismissed with costs as it is of no legal consequence and an abuse of due court process. Further, that



the reliefs which the Applicant is seeking cannot be granted because there is no live dispute between the parties. That courts do not decide cases for academic purposes because court orders must have practical effect and must be capable of enforcement.

10 The Applicant filed an affidavit in rejoinder basically stating matters of technicalities, that Charles Barugahare has no capacity to swear on behalf of the Respondents as he does not have their authority. That the 2<sup>nd</sup> Respondent being the University Secretary is directly the implementing authority and his denials of that fact are  
15 dishonest and show that he does not know his statutory duties. The Applicant denies that his suspension was lifted on 30<sup>th</sup> October, 2018 as he was never served with the letter to lift my suspension. He reiterated his earlier prayers.

At the hearing of this application the Applicant was represented by  
20 Dr. James Akampumuza, while the Respondents were represented by Ms. Esther Kiyangi. Both counsel made submissions which court taken into account in arriving at a decision in this ruling. The issues for determination are as follows;

***(1) Whether the Respondents jointly and /or severally acted in contempt of court.***

***(2) What are the remedies available to the parties?***

***Resolution of the issues:***

10 ***Issue No.1: Whether the Respondents jointly and /or severally acted in contempt of court.***

There is no statutory definition of the term “contempt of court” under the laws of Uganda. Several court decisions have, however, provided the elements that must exist for contempt of court to duly  
15 constituted. In ***Dr. Joseph Wasswa Matovu vs. Prof. Ddumba Ssentamu & 2 Others HCMA No. 499 of 2012***, the court held that contempt of court is premised on the elements of non-compliance and disobedience. That for contempt to exist, the complainant must prove four elements, that is to say;

20 (a) *The existence of a lawful order.*

(b) *The potential contemnor’s knowledge of the order.*

(c) *The potential contemnor’s failure to comply.*

It is also trite law that in cases of the alleged contempt, the breach of which the alleged contemnor is cited, must not only be precisely defined but also proved to the standard which is higher than a proof on a balance of probabilities, but not as high as proof beyond  
10 reasonable doubt. See: ***R. vs. Breamblevale [1969] 1 CH 128***).

Also in ***Housing Finance Bank Ltd & Another vs. Edward Musisi CAMA No. 158 of 2010***, the Court of Appeal held that a party who knows of an order regardless whether, in the view of that party the order is null or valid, regular or irregular, cannot be  
15 permitted to disobey it by reason of what that party regards that to be. 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, in such a lawful way as the law permits. Similarly in ***Amrit Goyal vs. Harichand Goyal & 3 Others CACA No. 109 of 2004***, it was held that;  
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***“A court order is a court order. It must be obeyed as ordered unless set aside or varied. It is not a mere technicality that can be ignored. If we allowed court orders to be ignored with impunity; this would destroy***

***the authority of judicial orders which is the heart of all judicial systems.”***

As these principles apply to facts of the instant application, it is not in dispute that there is a court order in existence; having been  
10 issued vide HCMA No. 540 of 2018. Appreciating the terms of the order is crucial in that it is then that it can be determined as to whether there was compliance or disobedience with the same. It is thus called for to reproduce the terms fully for ease of following. They are that;

15 ***a) A TEMPORARY INJUNCTION doth issue restraining the Respondents, their servants, agents or any other person acting under them from continuing to enforce him to further disciplinary and criminal proceedings against the Applicant until the hearing of the Applicants main application for Judicial Review or***  
20 ***until any further orders of this Honourable Court.***

***b) A TEMPORARY INJUNCTION doth issue restraining the Respondents, their servants, agents or any other person acting under their authority from subjecting***

***the Applicant to any disciplinary or criminal proceedings arising from the decision contained in the Respondent's impugned Letter dated 10<sup>th</sup> September, 2018, Referenced MAK/VC/1029/18 and ordering for allowing him access to the University resumption and continuation of his Degree Studies until the hearing of the Applicants main application for Judicial Review or until any further orders of this Honourable Court.***

***c) Costs of this application shall abide the outcome of the main cause.”***

The Applicant contends that the Respondents have disobeyed these terms of the order and has also set out the individual responsibility of each of the Respondents in the alleged disobedience, as can be discerned in paragraphs 3,4,5,6 and 7 of the grounds of the application. Dr. James Akampumuza, learned counsel for the Applicant, also submitted at great length in support of the Applicant's averments premised on the alleged respective stated disobedience of the terms of the court order by Respondents as set out in the grounds of the application.

For their part, the Respondents whose affidavit in reply are sworn by the University Secretary and the Deputy Academic Registrar of the 1<sup>st</sup> Respondent respectively, deny having acted in contempt of the said court order. In particular, Mr. Barugahare Charles the University Secretary, in paragraph 7 of the affidavit in reply states that on the 30<sup>th</sup> October 2018, the Applicant's suspension was revoked and lifted. He attaches copy of letter *Annexure "A"* dated 30/10/2018 signed by the Vice -Chancellor of the 1<sup>st</sup> Respondent University to that effect.

The reading of letter *Annexure "A"* reveals that the 1<sup>st</sup> Respondent made reference to yet another letter *Ref. MAK/UC/1029/18* of 10<sup>th</sup> September 2019, suspending the Applicant from the 1<sup>st</sup> Respondent University. It is that very decision communicated in that letter to suspend him that precipitated the Applicant to file the instant application on 16<sup>th</sup> November 2018 challenging the enforcement of the suspension and seeking that a temporary injunction be issued restraining the Respondents in their respective specified capacities from enforcing the impugned suspension.

It is also noted from the letter *Annexure "A"*; in the last paragraph, that the 1<sup>st</sup> Respondent revoked the suspension and reinstated the

Applicant as student of the 1<sup>st</sup> Respondent University. This decision  
revoking the Applicant's suspension was taken on 30<sup>th</sup> October  
2018, whereas the application to challenge the decision of the 1<sup>st</sup>  
Respondent as being in contempt of court orders was filed on 16<sup>th</sup>  
10 November 2018, after the decision lifting the suspension had  
already been taken. It invariably means that as at the date of filing  
the instant application, the court order in HCMA No. 540 of 2018  
which was issued on 19<sup>th</sup> October 2018; had been duly complied  
with by the Respondents' lifting of the Applicant's suspension. In  
15 the orders, the court had restrained Respondents from continuing  
to enforce the decision to "*open-endedly suspended the Applicant*"  
and "*to subject him to further disciplinary and criminal*  
*proceedings...*" Therefore, the revocation and or lifting of the  
Applicant's suspension by the 1<sup>st</sup> Respondent on 30<sup>th</sup> October 2018  
20 meant that the requirements and or terms of the court order issued  
in HCMA No. 540 of 2018 were overtaken by events. Most  
importantly, the impugned suspension was no longer in place.

In his affidavit in rejoinder, in paragraph 6, the Applicant contends  
that the suspension was never lifted on 30<sup>th</sup> October 2018 simply  
25 because he was never served with the letter revoking his

suspension. This view lacks merit. It is premised on mere technicality of not having been served with the letter *Annexure "A"* which in itself does not alter the fact that despite the non-service, a decision to lift the Applicant's suspension was taken by the 1<sup>st</sup> Respondent effective on 30<sup>th</sup> October 2018. As far as the suspension was concerned, it was no more and the Applicant was expected back at his studies at the 1<sup>st</sup> Respondent University effective on that date. The vigilance to pursue his right of reinstatement to the 1<sup>st</sup> Respondent University rested more with the Applicant than with the Respondents. The zeal with which the Applicant keenly pursued his application for reinstatement in court should have been applied in equal measure in ensuring that he found out in time that he was reinstated at the 1<sup>st</sup> Respondent University. It is thus not true that in spite of the letter lifting the suspension, the Respondents continue to be in contempt of the court order. The Respondents could not be in contempt of a court order that had long been overtaken by events.

Regarding the contention of the Applicant that he has never written an apology letter as required by the Respondent in the letter lifting his suspension, that too hold no weight at all, as it was neither a



term nor a condition of the court order in issue. Writing an apology would appear to be intrinsically part of the internal dynamics of how the 1<sup>st</sup> Respondent University operates in its management and administration of its affairs, which is not within the domain of court  
10 to interfere with at this stage.

Court finds the other depositions in the affidavit in rejoinder are largely an attempt to perpetuate litigation on an issue of suspension of the Applicant which was revoked by the 1<sup>st</sup> Respondents, and the revocation should have put an end to the matter. It would appear  
15 clearly that the issue of suspension of the Applicant had already become moot as at the time of filing this application and required no further litigation. Courts are enjoined not to determine cases merely for academic purposes. There must be live disputes between parties to be determined and there is none in the instant  
20 application. For the foregone reasons, the Respondents were not; and are not in contempt of court, or at all.

***Issue No. 2: What remedies are available to the parties?***

Having found that there is no live dispute as between the parties in this application to be determined; and having found that the

Respondents are not in contempt of the court order, this application lacks merit and it is dismissed with costs.

***BASHAIJA K. ANDREW***

***JUDGE***

***13/12/2019***