

The applicant was the successful party in Miscellaneous Cause No. 20 of 2018 in which this court on the 25/2/2019 found the respondents in contempt of court and ordered that the 1st respondent's board and its members are in contempt of the Staffs Appeals Tribunal orders and this is an illegality which has to be checked by this court. It also granted an order of mandamus against the 1st respondent's appointment Board to comply with the statutory duty and implement the orders of the staff Appeal Tribunal and consider the Appointment of the applicant to the rank of senior lecturer within 30 days from the date of delivery of the ruling. It also directed the Appointments Board to determine the application with an open mind and make an informed decision that is not shrouded with vindictiveness of the applicant for challenging their dilatory

conduct in handling her application and granted the application costs. The 30 days however expired on the 25/3/2019 without the respondents appointing the applicant as ordered. No explanation was ever offered to court for not complying and no application was made to court to seek extension of the period ordered nor to appeal or review the court order. The respondents willfully disobeyed the orders and instead went into doing things to undermine the orders, including referring the matter to other organs and refused to effect the above orders as directed by the tribunal and left them to lapse to the prejudice of the applicant. She alleges that the respondents kept themselves in contempt of court and aggravated the applicant's anguish and trauma. The applicant suffered financial loss, loss of income owing to the respondents' bad faith of contempt of court.

The respondents filed their affidavit in reply wherein they argued that they complied with the court orders and therefore the applicant was not entitled to the reliefs sought.

The applicant was represented by Dr. James Akampamuza whereas the respondents were represented by Mr. Hudson Musoke.

The parties proposed the following issues for determination by this court.

The Applicant:

1. Whether the respondents contemnors who failed to comply with the court orders that had found them in unpurged contempt of court should not be held in contempt of court.
2. Whether the applicant is not entitled to the remedies set out in the notice of motion.

For the respondents:

1. Whether the respondents are in contempt of court orders dated 25th February 2019.
2. Remedies if any.

Court proposed the following issues for determination:

1. *Whether the respondents are in contempt of court order dated 25th February 2019.*
2. *What remedies are available to the parties?*

The parties were ordered to file written submissions; the parties accordingly filed the same.

Both parties' submissions were considered by this court.

Preliminary Points of Law:

The applicant raised preliminary points of law where she stated that the 2nd and 4th respondents having failed to make any reply to the application admitted the suit and judgement in default should be entered against them.

It was also submitted that uncontroverted evidence of contempt was led by the applicant in the affidavit in support and rejoinder and that this was reinforced by the shocking admissions of the respondent thought their affidavits in reply and annexures thereof. Counsel stated that the subsistence of a court order was not controverted but admitted by the respondents. He stated that the respondents while aware of the court order never took any steps to give it effect. Counsel submitted that the multiple admissions are clear and unambiguous and state

what is being admitted justifying a judgement on admission to be entered against the respondents for contempt. In making this argument, counsel relied on Excellent Assorted Manufacturers Ltd V Uganda National Roads Authority High Court Civil Suit No. 165 of 2015 whereof he prayed that court enters judgement on admission in respect of the respondents' contempt of the order.

The respondents submitted that the affidavit in reply sworn by the 3rd respondent was sworn as a defense on behalf of all the respondents as clearly stated in paragraph 1 of the affidavit. It is therefore a misconception to allege that the 2nd and 3rd respondent did not oppose this application. The respondents further denied ever admitting to contempt of the court as the gist of the respondents defense is what transpired.

Ruling:

The applicant raised preliminary points of law as to several admissions made by the respondents as to having been in know of the court order. I however don't see how this is an admission as the respondent went further to discuss and explain this in the affidavit in reply as a defence thus denying the allegations.

In respect of the 2nd and 3rd respondent not swearing an affidavit in reply to the application, the respondents clarified on the said affidavit sworn being one for all defendants. The respondents' are all sued in collective capacity as the Appointments board of Makerere University. An affidavit sworn on behalf of the entire board would suffice and this would not render the application unopposed. Since in execution of their work as the appointments board they act collectively and not individually in order to create personal liability.

In addition, whenever a party is added to an application and he or she does not swear an affidavit in reply, it does not necessarily mean the application is not opposed per se. But it means on the facts presented it is unrebutted and the person named therein can properly oppose the application on points of law and equally based on the facts presented in the affidavit of the applicant. If a party intends to oppose an application basing on points of law, such a person need not depose an affidavit based on law since an affidavit is confined to evidence only and not law. See *Odongokara v Kamada* [1968] EA 210:[1971] HCB 156

These points are therefore overruled with costs and I shall determine the application on its merits.

DETERMINATION OF ISSUES

Issue 1

Whether the respondents are in contempt of the court order dated 25th February 2019 .

Counsel for the applicant submitted that the ingredients for contempt of court are that; i) there must subsistence of a court order, (ii) the contemnors must be aware of its subsistence and (iii) the contemnors must act in disobedience of the order.

In respect of subsistence of the court order, counsel submitted that the respondents had knowledge of the existence of the court order and to which they admitted. He stated that the respondents were ordered by this court on the 25/2/2019 where granted orders of mandamus against the respondents to comply with the statutory duty and implement orders of the staff appeals tribunal by considering the appointment of the applicant to be the rank of senior lecturer

within 30 days from the date of delivery of the ruling. Court ordered that Appointments board to determine the application with an open mind and make an informed decision that is not shrouded with vindictiveness of the applicant for challenging their dilatory conduct in handling her application.

Counsel submitted that the applicant proved that the respondents had knowledge of the subsistence of the court order, the same having been admitted by the respondents.

In respect of disobedience of the court order, the applicant submitted that the respondents were asked to purge its contempt by sitting and appointing the applicant with a free mind and not victimizing her for challenging their actions and communicate the appointment and its terms within 30 days. Counsel stated that the respondents decided to disobey the order by willfully refusing to appoint the applicant within the period ordered. Counsel therefore invited court to answer this issue in the affirmative and find that the respondents acted in contempt of the court orders given.

Counsel for the respondents submitted that the order referred to arose from the ruling of this court on the 25th February 2019 where court ordered that the appointments Board consider the application of the applicant within 30 days. Counsel argued that this meant that the board had to convene, and consider the application by the 27th March 2019 since February was a month of 28 days. It was stated by Mr. Andrew Abunyang, the secretary of the Appointments board in his affidavit in reply that he accordingly communicated the decision in respect of the applicant's application by letter dated 26th March 2019. This was followed up by

the respondent's counsel with communication with counsel for the applicant and court by letter dated 28th March 2019.

He therefore submitted that the respondents complied with the orders of court within the time set in the order in issue.

Counsel further submitted that the applicant brought this application against the respondent on the 9th April 2019 and served it on counsel for the respondents on the 26th April 2019 long after the appointments board had considered and concluded her matter. The applicant had also written an acceptance letter on the 23rd April 2019. He therefore stated that the application served no purpose other than to keep the respondent university in endless litigation.

Counsel therefore submitted that the respondents were not in contempt of the court order and prayed that this issue be answered in the negative.

Counsel for the applicant in rejoinder, reiterated his earlier submissions where he stated that the respondents failed to comply and admit acting in contempt as they were not at liberty to defy court orders.

Determination:

I have considered both counsel's submissions in respect of this issue.

Court in **Stanbic Bank (U) Ltd & Anor v The Commissioner General, URA MA 42 of 2010** defined contempt of court as stated in **Halsbury's laws of England, Vol 9 (1) 4th Edition** as follows;

'Contempt of court can be classified as either criminal contempt, consisting of words or acts which impede or interfere with the administration of justice or which create substantial risk that the course of justice will be seriously impeded or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to judgment, orders or other process of court and involving in private injury'.

The primary purpose of contempt of court proceedings is to preserve the effectiveness and sustain the power of the court and the secondary purpose is to protect and enforce the party's rights by compelling obedience to court orders and judgments. Civil contempt proceedings are appropriate where the court is able to restore the status quo.

Civil Contempt Proceedings are only important when the respondent is in active contempt and there is an action or things that he can be required or coerced to do.

If the Contempt consists in refusal of a party to do something which he is ordered to do for the benefit and advantage of the opposite party; the process is civil, and he stands to be committed until he complies with the order. The order in such a case is not a punishment but is coercive to compel him to act in accordance with the order of court.

Failure to comply with a mandatory or prohibiting order or injunction, or an undertaking given to the court, is punishable as contempt of court. However, in a case where a public authority fails to comply with a court in judicial review, a mere finding of contempt rather than a penalty may suffice to mark the gravity of the situation. See *M v Home Office* [1994] 1 A.C 377

In the instant case however, the respondents are not in any contempt of the order as they considered the applicant's application as ordered by court and she was duly appointed to the post of Senior Lecturer and later brought the same to the attention of court and the applicant through her lawyer.

Therefore, once the University Appointments Board had complied with the court order, then this application became unnecessary and the applicant should never have pursued the same.

I therefore find that the respondents are not in contempt of any court order as alleged by the applicant and the latter is not entitled to any remedies sought in respect of damages.

It is important to note that applications for contempt are for enforcement of the court orders issued by court and are not a way of seeking colossal sums of money to enrich the applicants and their advocates. Indeed, the applicant is only entitled to damages if at all he/she shows that she has suffered any damage as a result of the failure to heed to the court order. Any award made in contempt of the court should and goes to public coffers and it is not intended to enrich the litigants.

This application is therefore dismissed with costs.

I so order.

SSEKAANA MUSA

JUDGE

14th April 2020