

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
MISC. APPLICATION NO. 117 OF 2020
(ARISING FROM MISC. CAUSE NO. 31 OF 2019)

KOBUTUGU EDISA APPLICANT

VERSUS

GEORGE IHORA MUSEVENI RESPONDENT

Before; Hon Lady Justice Victoria Nakintu Nkwanga Katamba

RULING

This application was brought under Section 14 (2) b) & 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Order 52 Rules 1 & 3 of the Civil Procedure Rules seeking orders that;

1. A declaration that the acts of the Respondent in refusing to comply with the Consent Order entered on the 28th day of January, 2020 in Misc. Cause No. 31 of 2019 is an act of contempt of court;
2. An order that the contemnor be committed to civil prison of the said contempt;
3. An order that the Respondent as contemnor be ordered to purge the said contempt immediately by;
 - (i) signing for subdivision and transfer forms in favour of the Applicant for 100 acres of land comprised in LRV 1033 Folio 10 Mawogola Block 157 Plots 2 & 5 at Kyagatambo in addition to the Applicant's homestead, banana plantation and graveyard thereon which is approximately 2 acres;
 - (ii) immediately harvests his pine trees from the land given to the Applicant;
 - (iii) jointly with the Applicant instructs and equally meets the costs of as surveyor to demarcate the 100 acres in addition to approx.. 2 acres;

4. an order that the contemnor/respondent be approximately published through imposition of a fine of Ugx. 30,000,000 and an order to pay punitive damages of Ugx. 50,000,000 as sanctions of the contempt of court;
5. costs of the application be provide for.

The grounds of the application as contained in the affidavit of the Applicant, Kobutugu Edisa are briefly that;

1. the respondent instituted Misc. Cause No. 31 OF 2019 against the Applicant seeking to withdraw the caveat lodged by the Applicant on the land in LRV 1033 Folio 10 Mawogola Block 157 Plots 2 & 5 at Kyagatambo;
2. the parties entered into a consent which was endorsed by court on the 28th day of January, 2020 and executed in full settlement of Misc. Cause No. 31 of 2019;
3. the consent judgment and order was for among other terms that the Respondent transfers the land in LRV 1033 Folio 10 Mawogola Block 157 Plots 2 & 5 at Kyagatambo to the Respondent;
4. the Respondent has deliberately disregarded the consent judgment by failing to fulfill the obligations arising out of the consent order;
5. the respondent is bound by law to comply with the orders of court and refusal to comply amounts to contempt of court;

I have carefully perused the record/file and established that this application was filed on the 17th day of September, 2020, and Counsel for the Applicant wrote a letter dated the 25th September, 2020 seeking for a hearing date. There is no affidavit of service to prove that the Respondents were served with the instant application.

Order 5 Rule 1 is clear as to the mandatory requirement of service of court process within 21 days. The effect of non-service is provided under Order 5 Rule 3(c) which provides that where summons are not served within 21 days, the suit shall be dismissed without notice.

In **Rashida Abdul Karim Hanali & Another –vs- Suleiman Adrisi Misc. Civil Application No. 009 of 2017**, Mubiru J. while dismissing a suit for non-service of summons within 21 days stated that; the use of the word shall in Order 5 makes it mandatory to comply and serve within 21 days.

Entertaining this application with no evidence of service will be prejudicial to the Respondent and this court will not condemn the Respondent unheard.

The application is therefore dismissed for non-service.

No order is made as to costs.

I so order.

Dated at Masaka this 22nd day of October, 2021

Signed;

A handwritten signature in blue ink, appearing to read 'Victoria Nkwanga', with a horizontal line underneath.

Victoria Nakintu Nkwanga Katamba

JUDGE