

**THE REPUBLIC OF UGANDA,**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISCELLANEOUS APPLICATION NO. 083 OF 2021**  
**(Arising from HCT – 01 – CV – MA – 051 – 2018)**  
**(Arising from Civil Appeal No. 010 of 2016)**  
**(Arising from Civil Suit No. 059 of 2008)**

**1. KARAMAGI STEPHEN GLEN**  
**2. RWABUHINGA MICHAEL ::: APPLICANTS**

**VERSUS**

**1. KAMBA JOHN**  
**2. KWESIGWA CHRISTOPHER ::: RESPONDENTS**  
**(Agent of Kamba John)**

**BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO**

**RULING**

This is an application by notice of motion brought under Section 98 of the Civil Procedure Act Cap 71, and Order 52 Rules 1&3 of the Civil Procedure Rules, for orders that;

- a) The Respondents be committed to 6 months in civil prison for contempt of a court order,
- b) The 1<sup>st</sup> respondent and his agents be ordered to stop further sell and construction on the suit land
- c) Costs of the application be provided for.

The application was supported by the affidavit of Karamagi Stephen Glen, the 1<sup>st</sup> applicant who among others states that the applicants secured an order for stay of execution vide Misc. application no. 051 of 2018. The said

order stayed the execution of this court's judgment and orders in Civil appeal no. 10 of 2016. The applicant states that the respondents have started parceling the suit land and bringing construction materials with the intention of constructing thereon. Further that the applicants reported the matter to Rugendabara police station but the respondents have not stopped their disobedient acts. It has also come to the applicant's knowledge that the respondents have sold plots of land from the suit land to Wakiwomya Monday, and Kagisa Abel in further disobedience of the court order for stay of execution.

The 1<sup>st</sup> Respondent filed an affidavit in reply sworn on 29<sup>th</sup> April 2022 and a supplementary affidavit in reply sworn on 2<sup>nd</sup> May 2022. In his reply, he admits the existence and knowledge of the order for stay of execution but denies ever parceling the suit land for sale. He also denies ever putting building materials on the land and that he has never been summoned with any case concerning the suit land at Rugendabara police station. He prays for the dismissal of the application with costs.

The 2<sup>nd</sup> respondent also opposed the application through his own affidavit and states that he is a caretaker of the suit land. That the 1<sup>st</sup> respondent has not parceled the land for sell, has not sold or transferred the suit land. Further that he is not a party to the litigation between the applicants and the 1<sup>st</sup> respondent and that he has been wrongly included in this application.

## **Background**

The 1<sup>st</sup> respondent was the successful party in Civil Suit No. 59 of 2008 in the Chief Magistrate's court of Kasese against the respondents. The respondents were declared to be trespassers on land located at Rugendabara in Kasese district. The respondents appealed to this court

vide Civil Appeal No. 10 of 2016 and the same was dismissed. The respondents secured an order for stay of execution vide Misc. application no. 051 of 2018 pending the determination of their application to be allowed to file an appeal to the court of appeal out of time. It is this order for stay of execution that the applicants accuse the respondents of violating as indicated in the affidavit in support.

### **Representation and hearing;**

The applicants are represented by Mr. Mooli Albert Sibuta of Waluku, Mooli & Co. Advocates, the respondents are jointly represented by Kaahwa, Kafuuzi, Bwiruka & Co. Advocates and Ngamije Law Consultants & Advocates. On the direction of this court, parties filled written submissions which have been considered in this ruling.

### **Consideration by court**

The application is based on the court's discretionary power to grant the orders sought as enshrined under **Section 98 of the Civil Procedure Act** Cap 71 which in essence confer discretion upon this court to grant orders to ensure that justice is done and to prohibit conduct that obstructs or has the potential to obstruct the smooth administration of justice.

The Applicants' counsel relied on the case of ***Megha Industries (U) Ltd Vs Comfoam Uganda Ltd HCMC No. 21 of 2014*** to define contempt of court as "*where there is a lawful court order and the potential contemnor is aware of the court order and failed to comply with the order*". From the definition, he submitted that there are four ingredients to prove in a case of contempt of court. They are that;

- a. There is an existence of a lawful court order,
- b. that the potential contemnor has knowledge of the order;

- c. That the potential contemnor has ability to comply; and
- d. The potential contemnor's failure to comply with or disobedience of the order.

Applicants' counsel further submitted that this court issued an order for stay of execution vide Misc. application no. 051 of 2018 which order was to the effect that the status quo on the suit land should be maintained. Relying on paragraphs 5, 6, 7 and 8 of the affidavit in support, counsel argued that the respondents has since started parceling the suit land, bringing in construction materials and have sold some plots on the suit land in disregard of the court order.

Counsel for the Respondents agreed with the authorities cited by counsel for the applicant on what needs to be proved for one to succeed on an application for contempt orders. He submitted that the 1<sup>st</sup> respondent doesn't contest the first three elements but maintains that the 1<sup>st</sup> respondent has not done anything in disobedience of the order for stay of execution. He notes that there is no evidence to show that the 1<sup>st</sup> respondent has parceled the land or sold any plot thereof.

Counsel for the respondent further argued that the purported sale agreement attached to the applicants' submissions is evidence from the bar, not translated into the language of court and that its contents are not legible.

With respect to the 2<sup>nd</sup> respondent, counsel for the respondents argued that the 2<sup>nd</sup> respondent is wrongly sued in this application, that the orders vide Misc. application no. 051 of 2018 were not made against him, he was not served with the same and that this application should be struck out with costs to the respondents.

Contempt of court is defined by **Black's Law Dictionary 10<sup>th</sup> Edition** on page 385 as follows;

*“The failure to obey a court order that was issued for another party’s benefit”*

For civil contempt the usual remedy is to confine the contemnor until he or she complies with the court order. The Supreme Court in Civil Application No. 05 of 2019 **Prof. Fredrick Ssempebwa & 2 Others Vs Attorney General of Uganda (supra)**, in the matter of an application for a declaration that the Attorney General is officially and personally in contempt of court orders in the matter of Presidential Election Petition No. 1 of 2016, cited with approval the definition of contempt in the South African Constitutional Court case of **Pheko & others Vs Ekurhuleni Metropolitan Municipality (No. 2) (2015) ZACCIO** as follows;

*“Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses: **wilful** disobedience and resistance to lawful court orders. This case deals with the latter, a failure or refusal to comply with an order of court. **Wilful** disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. The object of contempt proceedings is to impose a penalty that will vindicate the court’s honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order”.*

The Supreme Court found that the ingredients for one to prove contempt are as listed hereunder. It was further found that the ingredients ought to be proved beyond reasonable doubt. They are;

- a. That an order was issued by court
- b. That the order was brought to the attention/notice of the alleged contemnor
- c. That there was non-compliance with the order by the Respondent
- d. That the non-compliance was willful or mala fide.

The first two elements are not contested by the 1<sup>st</sup> respondent. What remains to be discussed with respect to the 1<sup>st</sup> respondent is whether there was non-compliance/disobedience on the part of the 1<sup>st</sup> respondent and if so, whether the said disobedience was wilful or mala fide. The actions that would amount to disobedience of the court order as brought forward by the applicants can be summarized as follows.

- i. That the respondents have started parceling the suit land. No evidence has been adduced by the applicants to substantiate this assertion.
- ii. That the respondents have started bringing construction materials on the suit land with the intention of constructing.

The applicants attached pictures of bricks and other construction materials. In response, the 1<sup>st</sup> respondent claimed that the said pictures were taken from elsewhere and not from the suit land. I am inclined to agree with the respondent's reply that pictures like these could be taken from elsewhere and there is no additional evidence to link them to the suit land. It would be erroneous for the court to just assume that they were taken from the suit land without proof.

- iii. That the applicants reported the matter at Rugendabara police station but the respondents did not heed.

Apart from merely stating it, there is no evidence to indicate that this report was actually filed at the said police station. No evidence of the police

reference number of the complaint. There is also no evidence to indicate that any of the respondents was actually summoned by the police over the alleged complaint.

- iv. That the respondent has sold plots on the suit land to Wakiwomya Monday, and Kagisa Abel.

Again, apart from stating it in the affidavit in support, there is no other evidence to substantiate the allegation. No sale agreement is provided, not even the evidence of anyone that could have been present when such sale was taking place. Counsel for the applicants purported to attach a copy of a land sale agreement to his submissions. With due respect to counsel for the applicants, he is not at liberty to turn himself into a witness and give evidence from the bar.

Even if the said agreement was something to go by, it makes no mention of the location of the plot sold. In addition, the purported sale was not to any of the persons mentioned in paragraph 7 of the affidavit in support as those to whom the 1<sup>st</sup> respondent sold the plot on the suit land. Further, the purported sale is made by the 2<sup>nd</sup> respondent who was not party to the various suits between the applicants and the 1<sup>st</sup> respondent.

I agree with the submissions of the respondents' counsel that the 2<sup>nd</sup> respondent was not party to Civil Suit No. 59 of 2008, Civil Appeal No. 10 of 2016 and Misc. application no. 051 of 2018, all between the applicants and the 1<sup>st</sup> respondent. There is no evidence that the applicants ever brought the court order to the 2<sup>nd</sup> respondent's attention. How can he then be held to have disobeyed an order that was neither addressed to him nor brought to his attention?

This application is wholly a waste of court's time. The applicants have not come anywhere near to proving that the order for stay of execution in Misc. application no. 051 of 2018 was wilfully disobeyed by the respondents.

In addition, the interim order for stay of execution whose disobedience is being complained about was issued by the registrar of this court on 17<sup>th</sup> April 2019. More than three years now, there is no substantive application for stay of execution and the applicants have not shown to have taken any steps with the view of prosecuting their application to be allowed to file an appeal out of time before the court of appeal. An interim stay of execution should not always be used as a permanent injunction. It should be used to protect the status quo for a specified period of time.

This application is therefore dismissed with costs to the respondents.

I so order

Dated at Fort Portal this 08<sup>th</sup> day of July 2022.



**Vincent Emmy Mugabo**

**Judge**

The Assistant Registrar will deliver the ruling to the parties



**Vincent Emmy Mugabo**

**Judge**

08<sup>th</sup> of July 2022.