

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(CIVIL DIVISION)**

**MISCELLANEOUS APPLICATION NO. 843 OF 2021  
(Arising out of Miscellaneous Cause No 287 of 2021)**

**ATTORNEY GENERAL:.....APPLICANT**

**VERSUS**

**MALE MABIRIZI K KIWANUKA:.....RESPONDENT**

**BEFORE; HON. JUSTICE SSEKAANA MUSA**

**RULING**

This application was brought under Article 128(2), (3), Article 23(1)(a) of the constitution of the Republic of Uganda, Section 98 CPA, Section 117 and 107 (i) (d), (g) and (3) of Civil Procedure Act, Cap.79, Order 4rr 2(3), (5) and (9) of Civil Procedure Rules S.I. 71-1 seeking the following orders;

- 1. A declaration that the respondent is in contempt of Court.*
- 2. An Order that the Respondent be committed to Civil prison for contempt of Court.*
- 3. Any other order that this court deems fit and proper.*
- 4. The Respondent pays the Costs of this application.*

In support of the application, the applicant filed the main and supplementary affidavits setting out the grounds as follows:

1. The Respondent filed **Miscellaneous Cause No 287 of 2021(Male Mabirizi v Capital Market Authority(CMA))** challenging the decision of CMA to approve Initial Public Offering (IPO) of MTN (U) Ltd.
2. On 15<sup>th</sup> November, 2021, this Court delivered a Ruling on preliminary points of law which had been raised in the above application.
3. That following the delivery of the above said ruling, the Respondent has made contemptuous comments and utterances on his Twitter Handle **@MabiriziHKK** and on his face book page, **Uganda Peoples' interests** which are calculated to bring the then presiding Judge into contempt and to lower his judicial authority.
4. That the respondent's Twitter handle is **@MaleMabiriziHKK** and the facebook page is called is **Uganda People's Interests**.
5. That before and after the final determination of the suit, the respondent made/posted contemptuous comments on his Twitter handle **@MaleMabiriziHKK** and his facebook page **Uganda People's Interests** in respect to the court proceedings and rulings, and the person of the trial Judge-Hon Justice Phillip Odoki.
6. That while MC 287 of 2021 was still pending determination the respondent made a comment on his Twitter handle **@MaleMabiriziHKK** arguing the merits of the suit and suggesting that the trial judge should rule in his favour. On 24<sup>th</sup> November 2021 the respondent posted on his Twitter handle **@MaleMabirizi** the following captioned words: **People have rendered decision that @CmaUganda was wrong to approve @mtnug #MTNIPO....it's up to Judge ODOKI to rule either in line with**

Ugandans or a 'misnomer'. He attached to this post a personal picture/photograph of Justice Phillip Odoki.

7. That the respondent made further comments on his Twitter handle @MaleMabiriziHKK where he argued the merits of MC 287 of 2021 and suggested that the trial judge should rule in his favour. On 24<sup>th</sup> November 2021 the respondent on his twitter handle @MaleMabirizi the following captioned words; *"Don't mind about what he will write because People have rendered their decision that @CmaUganda was wrong to approve @mtnug #MTNIPO....it's up to Judge ODOKI to rule either in line with Ugandans or a 'misnomer' "MTN UGANDA LIMITED" which does not exist."* He attached to this post a picture of a certificate of Incorporation of MTN (Uganda) Limited.
8. That on 26<sup>th</sup> November 2021 the respondent posted on his twitter handle @MaleMabiriziHKK the following captioned words: *"NOTICE OF APPEAL filed challenging the ILLEGAL RULING by JUDGE PHILLIP ODOKI who failed to decide on legality of CmaUganda approval of @mtnug #MTNIPO SALE OF SHARES hiding in a technicality that I lack sufficient interest in "A PUBLIC OFFER"=SHAME ON HIM"* The respondent attached to this post a picture of his Notice of Appeal filed against the Ruling in MC 287 of 2021( of which I know that he served a copy of this Notice of Appeal on the applicant on 1<sup>st</sup> December 2021)
9. That on 26<sup>th</sup> November 2021 the respondent posted on his twitter handle @MaleMabirizi the following captioned words: *"@IsaacSsemakadde, we have applied 4 YRANSCRIBED PROCEEDINGS which will further humiliate JUDGE PHILLIP ODOKI: why did he WASTE OUR TIME FROM 3-7PM HEARING 5 ISSUES YET HE WAS 2 DECIDE 1? @CmaUganda conceded "MTN UGANDA LIMITED" is nowhere & he is silent on it."*he attached to

this a post of his letter requesting for certified proceedings and rulings in misc. Cause 287 of 2021.

10. That on 27<sup>th</sup> November 2021 the respondent posted on his Twitter handle @MaleMabirizi the following words: “ *The MAGICAL STICK that sent @CmaUganda, @mtnug #MTNIPO & their leaning judge in TATTERS MAKING THEM TO Concede that MTN UGANDA LIMITED” doesn't exist making Judge read something yesterday which he has hidden @IsaacSsemakadde OMUGGO GWAKOZE OMULIMU-BATAGALA*” The respondent attached to his post a picture of himself smiling and holding up a stick.
11. That on 28<sup>th</sup> November 2021 the respondent posted on his twitter handle @MAleMabiriziHKK the following words: “ He failed to avail a copy of what he was reading....but he has required to determine the legality of @CmaUganda approval of @mtnug #MTNIPO which he did not do but hide his face in a technicality that since I didn't buy illegal shares I had no interest 2sue...” The respondent attached to this post a picture of his Notice of Appeal filed in respect of ruling in MC 287 of 2021.
12. That on 29<sup>th</sup> November 2021 the respondent posted on his Twitter handle @MaleMabiriziHKK the following words: “ *Pure recalcitrance and inability to perform duties of a high office of the judge, hence incompetence and corruption in a case involving the richest telecommunication company”...We mean it. PHILLIP ODOKI @CmaUganda @mtnug ENNAKU Z'OMUBBI ZIBA 40 ZOKKA*” He attached to this post a picture of a letter he wrote to the Secretary Judicial Service Commission seeking the removal of Justice Phillip Odoki from office purportedly on grounds of ‘incompetence’ and ‘corruption’.

13. That on 29<sup>th</sup> November 2021 the Respondent posted on his Twitter handle@Male Mabirizi the following words: *“Appeal filed...u can’t proceed to listing in pendency of an appeal. The judge has been put under investigation for CORRUPTION & INCOMPETENCE rendering-his Ruling null and void: CAVEAT EMPTOR...”* He attached to this post a picture of a letter he wrote to the Secretary Judicial Service Commission seeking the removal of Justice Phillip Odoki from office purportedly on grounds of ‘incompetence’ and ‘corruption’.
14. That 29<sup>th</sup> November 2021 the Respondent posted on his Twitter handle@Male Mabirizi the following words: *“ That’s the “Pure recalcitrance and inability to perform the duties of a high office of a Judge, hence incompetence and corruption in a case involving the richest telecommunication company”* He attached to this post a picture of a letter he wrote to the Secretary Judicial Service Commission seeking the removal of Justice Phillip Odoki from office purportedly on grounds of ‘incompetence’ and ‘corruption’.
15. That on 30<sup>th</sup> November 2021 the respondent posted on his Twitter handle@MaleMabiriziHKK the following words: *“ See what this incompetent and corrupt judge PHILLIP ODOKI wrote: Mbu Citizen, who is the sovereign authority of Uganda empowered to combat abuse of public power does not have “any express or implied right to complain for the alleged unlawful act or omission.”* He attached a page from the court ruling in MC 287 of 2021.
16. That on 30<sup>th</sup> November 2021 the respondent posted on his Twitter handle@MaleMabiriziHKK the following words: *“ If you are ignorant ask. Read the cases I cited in that letter...What ODOKI did was not a judicial act, he acted on his own corruptly and he must be removed”* He attached to this post a picture of a letter he wrote to the

Secretary Judicial Service Commission seeking the removal of Justice Phillip Odoki from office.

17. That on 30<sup>th</sup> November 2021 the respondent posted on his Twitter handle @MaleMabiriziHKK the following words: *"@CmaUganda has been served with our latest evidence to justify our prayer for an INTERIM ORDER OF INJUNCTION AGAINST 6 DEC LISTING OF @mtnug shares on STOCK EXCHANGE. It's clear to them that their 'win' from INCOMPETENT 7 CORRUPT PHILLIP ODOKI is challenged"* He attached to his post a picture of his supplementary affidavit filed in Court Appeal Civil Application No. 375 of 2021.
18. That on 30<sup>th</sup> November 2021 the respondent posted on his Twitter handle @MaleMabiriziHKK the following words: *" The new evidence contains the CONCOCTED RULING by INCOMPETENT & CORRUPT PHILLIP ODOKI which took him 4 days to MIX-UP & PRESS STATEMENT BY @CmaUganda titled 'APPLICATION AGAINST @mtnug IPO DISMISSED, LISTING TO PROCEED" 2 prove threat of listing b4 hearing"* He attached to this post a picture of an affidavit affirmed by him dated 30<sup>th</sup> November 2021.
19. That on 30<sup>th</sup> November 2021 the respondent posted on his Twitter handle @MaleMabiriziHKK the following words: *" At this page, CORRUPT & INCOMPETENT PHILLIP ODOKI claims that we have no right to question illegality by a public body."*
20. That on 30<sup>th</sup> November 2021 the respondent posted on his Twitter handle @MaleMabiriziHKK the following words: *" This is beyond MALPRACTICE, ITS AGGRAVATED ROBBERY. In para 1 of my affidavit, I affirm & plead that I have sufficient interest but in para 37, he claims that I neither pleaded nor proved.. THIS IS THE CORRUPTION"*

21. That on 30<sup>th</sup> November 2021 the respondent posted on his Twitter handle @MaleMabiriziHKK the following words: “ *He is corrupt and incompetent*”. He attached to this a picture of his letter to Secretary Judicial Service Commission seeking removal of Justice Phillip Odoki from Office purportedly on grounds of ‘Incompetence’ and ‘Corruption’.
22. That on 1<sup>st</sup> December 2021 the respondent posted on his Twitter handle @MaleMabiriziHKK the following words: “ *CORRUPTION & INCOMPETENCE ARE BAD: May be he has his own Act bz S.98 of @CmaUganda Act envisages injunctions & MANDAMUS by any interested person*”
23. That on 1<sup>st</sup> December 2021 the respondent posted on his Twitter handle @MaleMabiriziHKK the following words: “ *Now that the NOTICE OF APPEAL HAS BEEN LODGED; SEALED BY COURT & SERVED UPON @CmaUganda & Attorney General Chambers, the APPEAL TUNES HAVE OFFICIALLY STARTED against the fake ruling of CORRUPT & INCOMPETENT PHILLIP ODOKI in case of @mtnug shares case*”
24. That on 2<sup>nd</sup> December 2021 the respondent posted on his Twitter handle @MaleMabiriziHKK the following words: “ *When we raised it in this affidavit, the CORRUPT and incompetent judge PHILLIP ODOKI struck out the evidence*”.
25. The respondent also posted the same information as herein listed on his facebook page-Uganda People’s Interests.

26. That on 20<sup>th</sup> November 2021, the respondent posted on his Facebook page Uganda People's Interests the following captioned words: "***PHILLIP ODOKI WEDDING: The Judge who refused to rule on the ILLEGALITY of MTN Uganda's # MTNIPO ending 2moro wedded Eng Juliet Nsiime in 2009 at All Saints b4 Bishop David Zac Niringiye with Col Muhoozi kainerugaba as BEST MAN. The wedding was attended by Amama Mbabazi who donated a bull, BENJAMIN ODOKI, father to groom spoke in presence of his Deputy Mukasa Kikonyogo. Of course, the best man performed his function of a best man. Then gender & Labour Minister also spoke...***" The respondent attached to this post a picture of Justice Phillip Odoki.

27. That on 22<sup>nd</sup> November 2021, the respondent posted on his Facebook page Uganda People's Interests the following captioned words: ***Fundraising via 0701881231/0779869880 is VITAL if we are to seriously challenge this rogue system. In challenging ILLEGAL Capital Markets Authority (Uganda) approval of MTN Uganda SALE OF SHARES in East African Court of Justice we printed 83 pages x 11 copies, bound & oaths commissioned, all with money.***

28. The orders sought are necessary to maintain the integrity and authority of the court and to deter further contemptuous remarks by the Respondent.

The Respondent filed a written affidavit in reply on 27<sup>th</sup> December, 2021, affirmed by himself stating that:

1. (Male Mabirizi) was the applicant in the **Miscellaneous Cause No 287 of 2021 Male. H. Mabirizi V Kiwanuka v. Capital Markets Authority** which was dismissed on 26<sup>th</sup> November, 2021 but had since filed a Notice of Appeal.
2. That on 26 November 2021, Ms. Patricia Mutesi, Assistant Commissioner in Ministry of Justice and Constitutional Affairs

informed Justice Philip Odoki who was set to deliver his decision in **Miscellaneous Cause No 287 of 2021** that she had filed **Miscellaneous Application No 843 of 2021**, which application he accessed the same day.

3. That on 29<sup>th</sup> November 2021, Male Mabirizi filed **Miscellaneous Application No 846 of 2021** to strike out **Miscellaneous Application NO 843 of 2021** because the Notice of motion was neither signed nor dated.
4. That he had now discovered that the Notice of Motion on file for **Miscellaneous Application No 843 of 2021** was dated 26 November, 2021 and signed by Mr. Hillary Ebila, a State Attorney.
5. That comparing the two sets of applications, it was clear that they had fraudulently been switched by the Respondent colluding with Court Staff who had removed the undated and unsigned page with a backdate and signed page. This also reduced the number from 6 to 4 without leave of Court.
6. That the fraud and collusion was intended to defeat **Miscellaneous Application No 846 of 2021** that was raised to strike out the Application.
7. That Mr. Hillary Ebila, a State Attorney, acted unprofessionally in tampering with the Notice of Motion fraudulently, which amounts to abuse of office.
8. That The Attorney General, the applicant who is a Client / Stranger, not being a party to the main Cause has no locus to file an interlocutory Application.

9. The Respondent further alleged that the Application does not disclose a reasonable cause of action against him because the applicant was not a party in **Misc. Cause No 287 of 2021** nor the Judge who is claimed to have been affected the alleged actions.
10. The Respondent further stated that the supporting and supplementary affidavit was incurably defective for containing hearsay since the deponent could not prove what was stated, how he obtained it and does not disclose his skills in Information Technology, which gave him competence to attribute the alleged online activity to the Respondent.
11. The Respondent further stated that the Application undermined the High Constitutional Principle of the sovereignty of the People in the Administration of Justice to the extent that it seeks to muzzle freedom of speech and expression on COURT processes.
12. The Respondent further alleged that Ms. Patricia Mutesi and Mr. Jimmy Oburu Odoi, who prepared the Notice of Motion, acted unprofessionally in instituting the Application.
13. That consequent upon the above stated unprofessional conduct, negligence, recklessness and abuse of office, it is fair that the two officers of Ministry of Justice and Constitutional Affairs pay the costs of this Application personally.

However, without prejudice to the above stated illegalities and irregularities which make this Application Incurably defective and incompetent, the Respondent responded to the affidavit as stated here in below:

1. **Paragraph 4-12** of main affidavit, and **paragraph 3-38 and 40-45** of supplementary affidavit which attribute ownership of [www.twitter.com](http://www.twitter.com) and [www.facebook.com](http://www.facebook.com) to him are denied while the twitter handle **@malemabiliziHKK** and Facebook page, **Uganda People's interests** are also denied as being owned ,managed ,administered and run by him .He alleges that what was posted was indeed posted but not by him but any other person.
2. That as a public figure, his images are all over the internet and the use of his image on a profile picture on *Twitter* or *Facebook* is not evidence of his ownership.
3. He further states that Court records, correspondences to and from Court and other public books involving him, are public documents and are available to all sundry and hence their use in online communications is not evidence of ownership, use and administration of the unknown internet properties or links from which the Applicant purportedly extracted the material issue.
4. That being public figure in Uganda who has led those opposed to **The Uganda Constitution (Amendment)Act, 2018** and those who are determined to fight for the return of Rule of Law in Uganda he has no control over people who generate their own internet properties and adverts in his name.
5. That as a Constitutionally set up office, the applicant ought to have gone an extra mile by using the established procedure of ascertaining the exact owner of the targeted internet properties.
6. That the remedy of Committal to Civil Prison which is designed to compel a positive action from a person, cannot be involved as a punishment.

7. That paragraph is of the main affidavit upon which contemptuous conduct of the Respondent is attributed does not grant an officer of Court locus to file an Application for contempt of court in a matter where he /she was not a party or where he/she was not instructed by the Judiciary.
8. Concluded by affirming his opposition to **Miscellaneous Application No 843 of 2021** and prayed for it to be struck out or dismissed with costs of being paid personally by Ms. Patricia Mutesi and Mr. Jimmy Oburu Odoi.

The Application was presented by *Ms. Patricia Mutesi-Assistant Commissioner* from Attorney General's chambers and the Respondent who was self-represented never appeared in court.

At the hearing of this Application parties, were directed to file written submissions on 22<sup>nd</sup> December 2021 but it is only the applicant who has filed their submissions belatedly but the respondent who filed never appeared in court for hearing was able to file an Affidavit in reply on 27<sup>th</sup> December 2021 but was not able or refused to file his submissions. I have read and considered the submissions of the applicant's submissions.

It bears emphasis to note that when the court made directions to file submissions, the applicant 8 applications on 23<sup>rd</sup> & 27<sup>th</sup> December 2021 and 20<sup>th</sup> January 2022 among which was Misc. Application 919 of 2021 to set aside directions to file submissions in this application. Since this court has determined all the 8 applications, it will now proceed to determine the application for contempt.

The Issues for determination are thus:

1. *Whether the applicant will locus to raise application.*
2. *Whether the Respondent is in contempt of Court?*
3. *What remedies are available to the Applicant?*

## Determination

### *Whether applicant has locus to raise this Application.*

The applicant's counsel submitted that there are several court decisions that have recognized the common law concept of contempt of court like in the case of Florence Drawaru vs Angumale Albino & Samuel Ondoma, Justice Mubiru cited several persuasive authorities from various jurisdictions as he expounded on the concept of contempt of court.

Justice Mubiru also expounded on the concept of a third party litigant who files a suit to bring to the attention of court acts of criminal contempt which are not committed in the face of the court. He stated thus;

*However, for contempt that is not committed in the face of the court, this kind of contempt is sui generis. It is usually initiated by a litigant who by motion brings to the attention of court conduct believed to be in contempt of court. All contempt proceedings are matters between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he or she may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. Since the contempt proceedings are not in the nature of criminal proceedings, it is open to the Court to cross-examine the contemnor and even if the contemnor is found to be guilty of contempt, the Court may accept apology and discharge the contemnor. This peculiar feature distinguishes contempt proceedings from criminal proceedings." (At page 5 of Ruling).*

See also the Judgment of Hon. Justice Ssekaana Musa in *Nsangiranabo v. Col Kaka Bagyenda and Anor (Civil Miscellaneous Application 671 of 2019)*.

Therefore whereas contempt proceedings are between the Court and alleged contemnor, the contemptuous acts can be brought to the attention of the Court by any person, including a person who is not a party to the court proceedings from which the contempt arose. We submit that the Attorney General has the requisite locus to bring this application, and indeed as the head of the Bar and an officer of Court, the Attorney General had a legal duty to bring the contemptuous remarks to the attention of Court.

### *Analysis*

In the case of *Uganda Super League v. Attorney General, Constitutional Application No 73 of 2013*, Justice Kiryabwire, citing Black's Law Dictionary 7<sup>th</sup> Edition defines *contempt of Court* as "conduct that defies the authority of dignity of court."

*Halsbury's Laws of England, Vol 9 Fourth Edition* classifies contempt of court into two categories:

*Criminal contempt* which is committed by word or acts that impact Administration of justice.

*Civil contempt* which arises when there is disobedience to judgement, orders or other Court processes and this involves.....

Osborne's *CONCISE Law Dictionary* as quoted in the cases of *Mutambo Wepukhulu v. Wasswa Balunywa and 2 Ors., Miss Application No 276/2012* and in the case of *Stanbic Bank (u) Ltd and Jacobson Uganda Power plant Co Ltd v. Commissioner General URA, Miscellaneous Application No 0042/2016*, aided court in observing that a party which

knows of a court order cannot be permitted to disobey it. In this case, Contempt of Court can only be raised by one of the private jury.

In *Miscellaneous Cause No 287 of 2021, (Male Mabirizi K Kiwanuka v. Capital Markets Authorities)* dismissed on 26 November, 2021 the Attorney General, was not a party as rightly observed by the respondent. However, the case of *Uganda Super League v. Attorney General(Supra)*, court noted that course of conduct which abuses and makes a mockery of the judicial process and which this extends its pernicious (harmful) influence beyond the parties to the action and affects the interest of the public in the administration of justice, is contempt of Court.

In this definition of contempt of Court is any conduct which abuses and makes a mockery of the judicial processes and which thus extends its pernicious influence Beyond the parties to the action, is contempt of Court. This is because the public has an interest and a ..... Stake in the effective and orderly administration of justice.

In the case of *Jack Erasmus Nsangiranabo v. Col Kaka Bagyenda and Anor, Miss App No 671 of 2019* Court held that there is a clear distinction between proceedings for contempt initiated by the Court on .... motion and those initiated as a Civil Contempt by the motion of a private litigant.

A proceeding of Civil contempt is regarded as a form of execution and enforcement of the order alleged to have been isolated to the detriment of a private party of a private party. A civil proceeding for contempt is a form of an appeal for execution or enforcement of a Courts' order for the benefit of a party. The right of a private party to move Court for Civil Contempt is therefore regarded as remedial and it is governed by the limits of the civil jurisdiction of Court.

In the instant case, *Miscellaneous Cause No 287 of 2021 vide; Male H. Mabirizi, K Kiwanuka v. Capital Markets Authorities*, the Attorney General was not a party to the suit. However, for contempt that is not committed in the face

of the Court this kind of contempt, as noted in the case of *Jack Erasmus Nsangiranabo v. Col. Kaka Bagyenda* (Supra) is *sui generis* unique and peculiar.

It is usually initiated by a litigant, who by Notice of Motion brings to the attention of Court, the conduct believed to be in contempt of Court. Herein is granted, the locus standi for Attorney General to initiate an Application, as a private litigant to preserve and safeguard the interest of the public in the due administration of justice and to protect the integrity of Court.

Therefore, the Attorney General as the head of the Bar has locus to raise an application for contempt.

***Whether the Respondent is in Contempt of Court?***

The applicant's counsel submitted that the respondent made contemptuous statements which they have categorized in four broad categories:

- 1. INTIMIDATING AND THREATENING STATEMENTS AGAINST JUSTICE ODOKI BEFORE DELIVERY OF HIS RULING.***
- 2. STATEMENTS ATTACKING THE RULING OF JUSTICE PHILLIP ODOKI IN M.C. 287 OF 2021.***
- 3. STATEMENTS IMPUTING IMPROPER MOTIVES FOR THE JUDGE'S JUDICIAL ACTS AND DECISIONS.***
- 4. RESPONDENT'S UNWARRANTED AND UNSUBSTANTIATED STATEMENTS ATTACKING THE CHARACTER AND COMPETENCE OF JUSTICE PHILLIP ODOKI.***

The applicant's counsel submitted that these posts/statements argued merits of the case and suggested a possible out of the case was a violation of the sub-judice rule and were intended to threaten and intimidate the

judge into making a ruling in favour of the Respondent and it intended further to portray that there was only one “correct decision’ and any other decision by the judge was unacceptable to ‘Ugandans’.

The applicant’s counsel also submitted that the Respondent made numerous posts attacking the ruling, which he referred to using derogatory words such as ‘illegal’, a ‘foreign typed script’, ‘concocted’ and ‘fake’.

That these statements tended to lower the authority of Justice Odoki and the High Court, by suggesting that a ruling was not valid or had no legal effect and that it should not be accorded any respect by the public. By attacking the authenticity of the ruling, the Respondent’s statements tended to undermine the confidence of the public in whether judicial decisions of Justice Odoki and the High Court can be relied on as valid and genuine, which would tend to prejudice the public interest in the administration of justice.

The applicant’s counsel submitted that the Respondents statements alleged improper motives on Justice Odoki for having reserved his ruling to be delivered on notice, and instead claimed that the Judge had ‘hidden the ruling’. He also accused the Judge of allegedly ‘hiding behind a technicality’ simply because he had made his ruling on one issue which disposed of the suit and thus did not address the other issues raised by the parties. The statements also suggested that the ruling was biased in favour of CMA and or MTN (Uganda) Limited.

These statements amounted to contempt in as far as they imputed wrong motives to the Judge’s judicial acts and decisions, and further that they tended to negatively affect the administration of justice by undermining the confidence of the public in the rulings of the said Judge and by extension the High Court. Specifically such statements would tend to create unwarranted doubt about the propriety of judges reserving their rulings to be made on notice, or making rulings on issues of law.

The Respondent went even further in imputing improper motives when he repeatedly attacked Justice Phillip Odoki as being 'incompetent' and 'corrupt', and even viciously accused him of 'malpractice' and 'aggravated robbery' simply on account of his making a ruling against him in M.C. 287 of 2021. The Respondent suggested that the Judge was biased in favour of CMA (Uganda) and MTN (U) Ltd and that their win was not merited. He accused the judge of 'concocting' and 'mixing -up' the ruling. That he had read a 'foreign typed script' which took him four days to 'mix-up'.

The Respondent also viciously castigated the Judge for having made the ruling, using words like "Shame on him" and stating that he intended to 'further humiliate him' by appealing against his ruling. The Respondent's attacks on Justice Phillip Odoki's character and competence as a judicial officer, were calculated to and tended to lower his judicial authority. The statements also tended to undermine the confidence of the public in the judicial decisions of Justice Phillip Odoki and by extension of the High Court, thereby prejudicing the administration of justice. As such they amounted to contempt of court.

The Respondent's statements in attacking the court's ruling and imputing wrong motives on the Judge for his judicial acts, amounted to contempt of court in as far as they were calculated to and tended to undermine the confidence of the public in the character and competence of Justice Phillip Odoki, and thereby negatively affected the public interest in the administration of justice.

### *Analysis*

The applicant set out several contemptuous statements against Justice Phillip Odoki in the affidavit of the Mr Oburu Odoi Jimmy with attachments of the specific posts from the respondent's twitter handle and facebook page: Uganda People's Interests.

The respondent in his defence filed an affidavit in reply contending that the application undermines high Constitutional principle of the sovereignty of the People in administration of justice to the extent that it seeks to muzzle freedom of speech and expressions on Court Processes. He contended that as public figure, his images are all over the internet and the use of his image or its likeness on a profile picture on Twitter and / or Facebook is not evidence of ownership, use and administration.

This court notes that the affidavit in reply was a mere evasive denial and never gave any specific response. The evidence on record is sufficient to prove that the both the twitter handle and facebook page-Uganda People's Interests both belong to the respondent-Male Mabirizi and his unique headed or coloured and well-designed paper with complaints to Judicial Service Commission and other agencies.

Therefore, the Respondent did not specifically deny Mr. Oburu's factual statements that he owns the said media accounts or that he made the contemptuous comments which were attributed to him. In *Misc. Cause No. 229 of 2018; RO/ 10224 Retired Lt. Ali Nangosha Kundu vs. AG, Hon. Justice Esta Nambayo* cited the case of **Prof Oloka Onyango 7 Others vs. AG; Constitutional Petition No. 6 of 2014**, in which the Constitutional Court held that “ *Where one has alleged a fact and a person against whom the fact is alleged does not deny, he is presumed to have accepted the fact.*”

This court agrees with the submissions of the applicants counsel in their analysis of the contemptuous conduct of the applicant and for brevity this court will not reproduce the same here.

Any behavior that is in opposition to or defiant of the court's authority is considered contempt. The actions and conduct of the applicant was an indirect contempt since it was committed outside the court room. Exponential growth in the use of online tools and [social media](#) has resulted

in new challenges for the justice system. This has resulted in different misuse in order to influence the court outcomes or attack and scandalize the courts by different losing litigants.

The authority to punish for contempt of court has always been exercised by the judiciary from times immemorial; essential to the execution of their powers and to the maintenance of their authority. The source of this power can be traced to the primary function of the Courts, which is to dispense and administer justice. The source of this power can be traced to the primary function of the Courts, which is to dispense and administer justice. See *Gilbert Ahnee v. Director of Public Prosecutions* [1999] 2 AC 294

A contempt of court is a matter which concerns the administration of justice and the dignity and authority of judicial tribunals. The law dealing with contempt of courts is for keeping the administration of justice pure and undefiled; and, jurisdiction in contempt is not a right of a party to be invoked for the redressal of its grievances.

It is well established that Rule of Law is a basic feature of the Constitution, and the Rule of Law is postulated in the Constitution in the sense of its supremacy. It entails *inter alia* the right to obtain judicial redress through administration of justice, which is the function of the Courts, and is imperative for the functioning of a civilised society. To administer justice in an undefiled manner, judiciary, as the guardian of Rule of Law, is entrusted with the extraordinary power to punish misconduct aimed at undermining its authority or bringing the institution into disrepute, whether outside or inside the courts.

The law for contempt, with power of imposing punishment, ensures respect for the courts in the eyes of the public by guaranteeing sanction against conduct which might assail the honour of the courts. Indeed, the courts must be able to discharge their functions without fear or favour. However, any insinuation to undermine the dignity of the Court under the garb of mere criticism is liable to be punished.

The respondent has contended that this application for contempt is intended to muzzle his freedom of speech and expression on court processes. I do not agree with this assertion, the freedom guaranteed by the Constitution should never be used to attack judicial officers in execution of the Constitutional mandate and their independence ought to be protected as provided under Article 128(2); No person or authority shall interfere with the courts or judicial officers in exercise of their judicial functions.

Freedom of speech and expression is regarded as the “lifeblood of democracy”; Article 29(1)(a) of the Constitution guarantees this freedom to every person in Uganda. This right, however, is not absolute, and is subject to certain qualifications i.e. reasonable restrictions on the grounds set out in Article 43. The Constitution, which has given its citizens right to freedom of speech and expression, has given certain powers to the Judiciary to guard against the misuse of the same, to prevent the right to freedom of speech and expression being so exercised that it damages the dignity of the Courts or interferes with the ‘administration of justice’.

In *Aswini Kumar Ghose & Anr. v. Arabinda Bose & Anr.*, AIR 1953 SC 75, the Supreme Court held that while fair and reasonable criticism of a judicial act in the interest of public good would not amount to contempt, it would be gross contempt to impute that Judges of the Court acted on extraneous considerations in deciding a case.

Any conduct attributing improper motive to a Judge or any scurrilous abuse to a Judge will amount to scandalising the court. Scurrilous abuse of a judge or court, or attacks on the personal character of a Judge, are punishable contempt. Punishment is inflicted to prevent mischief which undermines or impairs the authority of the court. That is why the court regards with particular seriousness the allegations of partiality or bias on the part of the Judge or a court.

The power to punish for contempt is not meant for giving protection to individual judges. On the contrary, it intends to inspire confidence *“in the sanctity and efficacy of the judiciary, though they do not and should not flow from the power to punish for contempt”*. Rather, such principles should lie on solid foundations of trust and confidence of the people – a reassurance to them that the judiciary is fearless and impartial.

A powerful judicial system is a condition precedent *sine que non* for a healthy democracy. If browbeating the court, flagrant violation of professional ethics and uncultured conduct is tolerated that would result in ultimate destruction of a system without which no democracy can survive. When there is deliberate attempt to scandalise the court, it shakes the confidence of the litigant public in the system, the damage is caused to the fair name of the judiciary. If a litigant or a lawyer is permitted to malign a Judge with a view to get a favourable order, administration of justice would become a casualty and the rule of law could receive a setback. The judge has to act without any fear thus no one can be allowed to terrorise or intimidate the judges with a view to secure orders of one's choice. In no civilised system of administration of justice, this can be permitted.

In *Rustom Cowasjee Cooper v. Union of India*, AIR 1970 SC 1318, the Constitution Bench of the Supreme Court observed:

*“We are constrained to say also that while fair and temperate criticism of this Court or any other Court even if strong, may be actionable, attributing improper motives, or tending to bring Judges or courts into hatred and contempt or obstructing directly or indirectly with the functioning of Courts is serious contempt of which notice must and will be taken. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant. Those who err in their criticism by indulging in vilification of the institution of Courts, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril.”*

Similarly, in *Advocate-general, State of Bihar v. Madhya Pradesh Khair Industries & Anr.*, AIR 1980 SC 946, the Supreme Court opined:

*“While we are conscious that every abuse of the process of the Court may not necessarily amount to Contempt of Court, abuse of the process of the Court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of Court. .... it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process ..... The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression “Contempt of Court” may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.” [Emphasis added]*

The respondent’s statements on his twitter handle @MaleMabiriziHKK and Facebook page *Uganda People’s Interests* were contemptuous and indeed an attack on the Judiciary and the person and character of Justice Phillip Odoki.

### *What remedies are available to the applicant?*

The applicant’s counsel submitted that the order sought for that the Respondent be committed to civil prison was made in error and is a typographical error. In practice courts have punished contempt of court with either imprisonment or a fine or both. An accused contemnor can also be discharged and his punishment may be remitted on condition that he makes an apology and it is found satisfactory to the court.

However as stated previously, contempt proceedings are between the Court and the alleged contemnor and therefore this application is not a suit between the AG and the Respondent. As such the court is not bound by

the orders sought by the Applicant in the Notice of Motion, but if it finds the Respondent acted in contempt of court it is at liberty to determine an appropriate sentence, whether by a custodial sentence or a monetary fine.

In determining the appropriate sanction, we urge the Court should consider that the objective of the offence of contempt of court proceedings is to protect the public interest or confidence in the due administration of justice. This is done by punishing acts or statements which tend to abuse or make a mockery of administration of justice, or which tend to lower the authority of individual Judges or the court.

The applicant's counsel urged the Court to issue such a sanction to the Respondent which reflects the gravity of the likely effect of his contemptuous statements on the administration of justice in Uganda. In light of the Respondent's repeated vicious public attacks on the character and competence of Hon. Justice Phillip Odoki, and their likely negative effect on the administration of justice, it is necessary that this court effectively sanctions him so as to maintain the authority of the court and to deter him from making such contemptuous remarks in the future.

She accordingly **prayed** that this Court makes the following orders;

- i. Declaration that the Respondent's statements were in contempt of court.
- ii. Order that the Respondent is sentenced to simple imprisonment of six months.
- iii. (In the alternative) Order that the Respondent pays a fine of USSh. 250,000,000/= (Two hundred and fifty million shillings).
- iv. Order that the Respondent pays the costs of this application.

## Analysis

In the case of **Brahma Prakash Sharma and Others vs The State Of Uttar Pradesh (1954 AIR 10, 1954 SCR 1169)** the court stated as follows;

*“ It admits of no dispute that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts. It would be only repeating what has been said so often by various judges that **the object of contempt proceedings is not to afford protection to judges, personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened.***

The power to punish for contempt is a rare species of judicial power which by the very nature calls for its exercise with great care and caution. Such power ought to be exercised only where “silence is no longer an option.”

These statements posts tended to lower the authority of Justice Odoki and the High Court, by suggesting that a ruling was not valid or had no legal effect and that it should not be accorded any respect by the public. By attacking the authenticity of the ruling, the Respondent’s statements tended to undermine the confidence of the public in whether judicial decisions of Justice Odoki and the High Court or judiciary can be relied on as valid and genuine, which would tend to prejudice the public interest in the administration of justice.

These statements amounted to contempt in as far as they imputed wrong motives to the Judge’s judicial acts and decisions, and further that they tended to negatively affect the administration of justice by undermining

the confidence of the public in the rulings of the said Judge and by extension the High Court.

This court cannot continue to be in a 'mute mode' as the authority of court is under attack. Such attacks on the judicial officers should be condemned in the strongest terms since they have become 'endangered species' by social media and usually cannot defend themselves against such attacks.

This application has succeeded and the court grants the following:

1. A Declaratory Order that the respondent's statements & posts on his twitter handle *@MaleMabiriziHKK* and facebook page; *Uganda People's Interests* were in contempt of court.
2. An Order that the Respondent pays a fine of *UShs. 300,000,000/=* (Three hundred million shillings only).
3. A strong **WARNING** issues to the respondent to stop attacking judicial officers in future.
4. The respondent should pay the applicant costs of this application.

*I so Order*

**SSEKAANA MUSA**  
**JUDGE**  
**27<sup>TH</sup> JANUARY 2022**