

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISC.APPLICATION NO. 162 OF 2022
(ARISING OUT OF CIVIL SUIT NO. 105 OF 2011)
(ARISING FROM ADMINISTRATION CAUSE NO. 0111 OF 2011)

1.NKANZE NIGHT REBECCA JENIPHER
2.KAYANJA MARIA

} APPLICANTS

VERSUS

1.BYANSI FRED
2. BYOGERE HELLEN
3. BABIRYE LILLIAN

} RESPONDENTS

BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA
NTAMBI

RULING

Background

This Application is brought under Sections 98 and 64(e) of the Civil Procedure Act Cap 71 and O. 52 rules 1 & 3 of the Civil Procedure Rules S.I 71 - 1 and Section 33 of the Judicature Act, seeking for orders that: -

1. A declaratory order that the Respondents are in contempt of a Court decree in *HCCS No. 105 of 2011: Nkanze Night Rebecca Jennifer & Anor Vs Byansi Fred & 2 others.*
2. The Respondents be committed to Civil Prison for contempt of Court decree.
3. All tenants be ordered to deposit all rental fees and/or proceeds from the estate property to this Honourable Court until the estate property is dealt with in accordance with the Court decree.
4. The Respondents be ordered further to comply with all the contents of the Court decree as ordered in the suit.



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5. The Respondents be ordered to pay a sum of UGX. 200,000,000/= (Two Hundred Million Uganda Shillings only) as punitive/exemplary damages to compensate the Applicants.
6. The Respondents be fined a sum of UGX. 100,000,000/= (One Hundred Million Uganda Shillings Only) to be paid to this Honourable Court for Contempt of Court.
7. The Respondents to pay costs of this application.

The Application is supported by the affidavit of the Applicants which states the grounds of the application which are;

1. This Honourable Court passed a decree in *HCCS No. 105 of 2011: Nkanze Night Rebecca Jennifer & Anor Vs Byansi Fred & 2 others* with specific orders therein.
2. There is an existing lawful decree of this Honourable Court against the Respondents.
3. The Respondents have knowledge of the decree since they are parties to the suit from which the decree arises.
4. The Respondents have/had the ability to comply with the Court decree.
5. The Respondents have refused and or failed to comply with the Court decree.
6. That the Applicants continue to suffer damages due to the actions of the Respondents.
7. That it is in the interest of justice that this Application should be allowed if Courts are to guard their own orders.

8. Brief facts

This Honourable Court passed a judgement and decree in civil suit No. 105 of 2011; *Nkanze Night Rebecca Jennifer & Anor Vs Byansi Fred & 2 others* with several orders to be effected by the Respondents which the Respondents have intentionally and deliberately refused and/or failed to comply with.

The Respondents on the other hand contend that upon delivery of the judgement, the Applicants appealed to the Court of Appeal Vide Civil Appeal No. 182 of 2018 and applied for and were granted an order of stay of execution of the said judgment vide M.A No. 174 of 2018 which order has never been set aside or withdrawn. The Respondents further contend that the Applicants expressed intentions of withdrawing their appeal by a notice which was endorsed by both parties' lawyers which process has never been done. The Respondents contend that the 1st and 2nd Respondent were arrested on 18.3.2022 while leaving the meeting with the Administrator General, which meeting was aimed at steering


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forward the process of execution of the orders of Court when the Applicants fabricated charges against them.

Representation

The Applicant was represented by Counsel Bahu Reagan of Sanywa, Wabirwe & Co. Advocates while the 1st Respondent was represented by M/S Naita and Company Advocates while the 2nd and 3rd Respondents were represented by Counsel Wetaka Andrew of Wetaka, Bukenya & Kizito Advocates.

Issues

1. Whether the Respondents are in contempt of Court in respect of the decree issued under Civil Suit No. 105 of 2011.
2. What remedies are available to the parties?

Submissions

Counsel for the Applicants submitted that contempt is conduct that defies the authority or dignity of Court and that for contempt to be found, there must be existence of a lawful order, potential contemnor's knowledge of the order and potential contemnor's failure to comply, that is, disobedience of the order. Counsel relied on **Andrew Kilama Lajul Vs UDCA & 2 others M.A No. 324 of 2020**. Counsel submitted that both parties allude to the fact that the judgment exists and therefore there is no doubt that the Respondents have knowledge of the order. With regard to the Appeal that was lodged by the Applicants, it is the Applicants' submission that the Respondents erroneously believe that the Appeal has never been withdrawn. He further submitted that the appeal was withdrawn on the 16th March 2021 and filed in Court on the 17th March 2021 long before the instant Application was instituted on 22nd June 2022 and that the Respondent's advocates had endorsed the withdrawal of the Appeal on 17th March 2021. It is the Applicant's submission that with regard to the criminal charges lodged by the Applicants against the Respondents, there is no evidence that has been presented by the Respondents to demonstrate how the said process became a bar to the operationalization/implementation of the decision of the Court.

In reply, the 1st Respondent contends that he has complied with the Court decree and that in further compliance with the decree, he together with the other Respondents obtained letters of administration which included the Administrator General as the Co-administrator of the estate of the late Disan Magala. The 1st Respondent submitted that in compliance with the Court decree, an interim inventory was filed in Court on 14th June 2018 which was within 30 days of the decree as directed by Court. *HCCS No. 105 of 2011: Nkanze Night Rebecca Jennifer & Anor Vs Byansi Fred & 2 others* delivered on 18th May 2018. The 1st



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Respondent argued that he was only served with the Notice of Withdrawal of the Appeal on 1st April 2021 and during that period, the country was still under lockdown due to the Covid 19 pandemic and that on easing the lockdown in August 2021, he embarked on the process of execution of the Court orders by writing to the Administrator General which letter was received by the Administrator General on 24th August 2021. That following his letter, the Administrator General convened a meeting which was attended by the Applicants on 18th March 2022 but that the 1st Respondent was arrested immediately after this meeting on charges of forgery of the grant of the letters of administration. That although subsequent meetings were convened on 3rd May 2022 and 10th June 2022, there has not been much progress with regard to the execution of the court orders due to the unnecessary arrest of the 1st Respondent and the delaying tactics of the Applicants such as this Application.

The 2nd and 3rd Respondents contend that the Applicants obtained a stay of execution and the Administrator General as a co administrator takes center stage in the administration. That the Respondents have nothing much they can do until the criminal charges against them have been withdrawn by the Applicants.

Analysis

1. Issue 1. Whether the Respondents are in contempt of Court in respect of the decree under Civil Suit No. 105 of 2011.

Contempt of Court refers to any act which is calculated to embarrass, hinder or obstruct Court in the administration of justice, or which is calculated to lessen its authority or its dignity. It is committed by any person who does any act in a willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by the one who, **being under the Courts' authority as a party to a proceeding therein, willfully disobeys its lawful orders or fail to comply with an undertaking which he has been given.** (Emphasis mine) Refer to **Bagobedde Margret Vs Kabaseka Ruth Kasujja & 2 Others HCMA No. 0450 OF 2019 and Black's law Dictionary, 6th Edition)**

In **Hon. Sitenda Sebalu Vs Secretary General of the East African Community Ref. No. 8 of 2012**, it was clearly stated that, "... it is a civil contempt to refuse or neglect to do an act required by a judgement or order of the Court within the time specified in that judgement, or to disobey a judgement or order requiring a person to abstain from doing a specific act."



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A plethora of cases have explained the conditions necessary to prove contempt of court as;

1. Existence of a lawful order
 2. The Potential contemnor's knowledge of the order.
 3. The potential contemnor's failure to comply ie disobedience of the order.
- (Refer to Jack Erasmus Nsangiranabo Vs Col. Kaka Bagyenda & Attorney General Misc. Appln. No. 671 of 2019, Stanbic Bank (U) Ltd & Jacob Power Plant Ltd Vs Uganda Revenue Authority Misc. Appln. No. 24 of 2010, Bagobedde Margret Vs Kabaseka Ruth Kasujja & 2 Others (supra))**

The existence of the Court's decision in HCCS No. 105 of 2011: Nkanze Night Rebecca Jennifer & Anor Vs Byansi Fred & 2 others is not in issue since both parties refer to it in their pleadings and submissions.

Counsel for the Respondents argued that the Applicants appealed the judgement in HCCS No. 105 of 2011: Nkanze Night Rebecca Jennifer & Anor Vs Byansi Fred & 2 others and obtained a stay of execution of the decree vide Misc. Application No. 175 of 2018 and it is the reason why they have not yet executed the decree.

On the other hand, the Applicant contends that the appeal was withdrawn by filing a withdrawal which was endorsed by the Respondent's counsel and filed in Court.

Indeed, annexed to the Respondent's affidavit in reply, is a document marked as "RD" which was a Notice of Withdrawal of Civil Appeal No. 182 of 2018. I have looked at the Notice of Withdrawal and it can be discerned that the Notice of Withdrawal was signed by the respective counsel for both parties on 16th March, 2021 herein. The same has a Court of Appeal stamp indicating that it was filed in Court on 17th March 2021. The Respondents blow hot and cold when it comes to the issue as to whether the Appeal was withdrawn by the Applicants. On one hand they claim that the Appeal was never withdrawn and as a result they were constrained by the stay of execution and could not implement the Court decree. Contrary to this position, the Notice of Withdrawal was signed by Counsel for the Respondents, their legal representative and the Respondents clearly aver that it was after the Notice of Withdrawal had been signed that they moved the Administrator General to convene a meeting to determine how the estate of the deceased Disan Magala would be distributed. It is rather unconvincing that the Respondents made


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steps to move the Administrator General to execute the Court decree yet the Appeal had not been withdrawn.

Rule 94(3) of the Judicature (Court of Appeal Rules) Directions S. I 13-10 provides that;

“If all parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge in the appropriate registry the document or documents signifying the consent of the parties, and the appeal shall then be struck out of the list of pending appeals”.

I had the benefit of reaching out to the Court of Appeal in regard to the status of Civil Appeal No. 182 of 2018 whereof it was confirmed that the appeal was indeed withdrawn.

The withdrawal of Civil Appeal No. 182 of 2018 automatically lapsed the interim order for stay of execution since the stay of execution was premised on the existence of the Civil Appeal. The Respondents through their Counsel consented to the withdrawal thus there is no doubt they were aware of the withdrawal of the Civil Appeal and the consequence it had on the order of stay of execution. To buttress the Respondent’s knowledge of lapse of the stay of execution, on page 2 of the submissions of the 2nd and 3rd Respondent, Counsel for the Respondents noted that, “That on the 18th March, 2022 the 1st meeting was held at the Administrator General’s Office aimed at putting the orders of Court into effect”. This clearly indicates that the Respondents were aware that the Appeal had been withdrawn therefore their inaction to implement the Court decree cannot be imputed on the existence of the Order for Stay of execution.

In **Hon. Sitenda Sebalu Vs the Secretary General of the East African Community (Supra)**, the East African Court of Justice held that “The only way in which a litigant can obtain reprieve from obeying a court order before its discharge is by applying for and obtaining a stay. As long as the order is not stayed, and is not yet discharged, a litigant who elects to disobey it does so at the risk and pain of committing contempt of court”.

The import of the above is that once there is a stay of execution, the order pending execution is paused. In the instant case, the Civil Appeal on which the Order for stay of execution was premised, was withdrawn by consent of the parties. I have observed from the Court record that the Consent to withdraw the Appeal was filed on 17th March 2021 and was sealed by the Registrar of the Court of Appeal. Therefore, following the sealing of the


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withdrawal of appeal in March 2021, the Respondents were obliged to execute the decree in Civil Suit No. 105 of 2011.

I will now turn to the events that have taken place post March 2021. I summoned the Administrator General to ascertain the progress of the execution of the decree pursuant to the withdrawal of the Appeal in 2021 and also to ascertain the involvement of the Administrator General in the distribution of the estate since the Administrator had been appointed a Co-administrator in the Judgment in Civil Suit No. 105 of 2011. Mr. Henry Kuloba, a State Attorney from the Administrator General's Office appeared before me on 3rd May 2023. Henry informed Court that three meetings had been held at the Administrator General's Office at the request of the administrators and beneficiaries of the estate on 1st February 2022, 18th March 2022 and 3rd May 2022. Although a fourth meeting had been scheduled by the Administrator General to take place on 10th June 2022, the same did not take place.

I have observed that in the three meetings that took place, the Respondents were requested to file an inventory for the estate, conduct searches on the estate land which. Babirye Lillian and Byogero Hellen, the 2nd and 3rd Respondents who have kept some of the estate land titles were requested to deposit the same with the Administrator General. To date, none of these steps have been taken by the Respondents to the extent that the Administrator General has considered applying to Court to be excluded from the administration of this estate.

I find that the Respondents have created a smokescreen by filing documents which hardly speak to the Court decree and additionally attend meetings whose resolutions they hardly have any intentions of implementing.

I had the opportunity of interfacing with the Respondents on 26th April 2023. It was clear to the Court that Respondents believe they have a choice in implementing the Court decree according to their wishes. They have failed to comprehend and appreciate the seriousness and gravity of Court Orders.

I shall now turn to the interim inventory that was filed by the 1st Respondent on 14th June 2018 which he claims was in compliance with the Court decree. The Court decreed among others that Plot 8 Nizam Road, Jinja, Plot 14 Chandulal Patel Road Masese and Plot M56 at Walukuba shall all be immediately valued and sold. Regarding Plot 8 Nizam Road, Jinja, the interim inventory filed on 14th


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June 2018 does not indicate any progress in implementing the Court decree. It only goes as far as narrating to Court that Magala's family is still residing on the property and that the process of renewing the lease was undertaken in 2014 but that the title has not been obtained since September 2014 when Jinja District Land Board made a decision to renew the lease in respect of this property for 99 years. It informs Court that the other two administrators namely Nabirye Lillian and Hellen Magala Byogero opened a bank account in Centenary Bank and are answerable to any matters pertaining to this property. I am not persuaded that the Respondents made any effort to implement the Court decree with regard to Plot 8 Nizam Road, Jinja. There is no indication that any effort was being made to value the property and consequently sell it.

The 1st Respondent only informs Court that Plot 14 Chandulai Patel Road, Masese was left to Scovia Mukyala, his sickly sister and that the title for the property expired and was fraudulently leased to Musisi Kibugudhu and that court action will be sought to recover the property. I have regarded this information as futuristic devoid of any detail or evidence to prove when the title expired or as to when the fraudulent leasing of the property occurred to guide Court as to whether the administrators are taking steps to distribute the property. I am of the view that the 1st Respondent deliberately made such vague communication not to expose the laxity of the administrators in implementing the Court decree.

With regard to Plot M56 at Walukuba, apart from stating that the property is occupied by Byansi Magala Fred and that the same constitutes the late Disan Magala's matrimonial home, there is no mention of valuation of the property with a view of selling it as directed by Court. Although the 1st Respondent enumerates the rental income derived from this property, he does not indicate where this money is deposited and yet the Court decreed that any proceeds of rent from Plot 8 Nizam Road, Plot 14 Chandulai Patel Road Masese and Plot M56 at Walukuba that shall accrue between the date of judgement and the sale should be deposited with the office of the Administrator General in trust for all the beneficiaries and shall be distributed and shared among the beneficiaries equally.

As much as I agree that the Respondents were constrained from implementing the Court decree between 2nd July 2018 when the Applicants obtained a stay of execution and 17th March 2021 when the Appeal was withdrawn, I am not convinced that they have demonstrated sufficient evidence to prove that they are not in contempt of the Court order.



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It is my finding that the Respondents are in contempt of the Court order since they have failed to execute and comply with the same.

Issue 2. Remedies.

I have found that the Respondents are in contempt of the Court order and I hereby give the following orders;

1. The Respondents are herein given two months (2) from the date of this ruling to fully execute the decree in Civil Suit No. 105 of 2011 and to file a final inventory in respect of the estate.
2. The Respondents are further ordered to file an account for proceeds of rent from the estate properties from the date of the judgement in Civil Suit No. 105 of 2018 to date and to deposit the proceeds there of with the office of the Administrator General and to furnish Court with receipts of the deposits vide Administration Cause No. 105 of 2011. This should be done within 1 month from the date of this ruling failure of which the Respondents will be liable for contempt and without recourse to Court be committed to prison for a period of 6 months.
3. The Respondents shall pay a sum of UGX 50,000,000 (fifty million shillings) as punitive/ exemplary damages to the Applicants for frustrating the co-administrator namely the Administrator General from implementing the court order.
4. The Respondents shall pay a fine of UGX 50,000,000 (fifty million shillings) to this Honourable Court as a fine for being in contempt of the court order.
5. The Respondents shall bear the costs of this application.

I so order.



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HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA
JUDGE

Delivered on 1st September, 2023.