

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASINDI  
MISC APPLICATION NO. 0024 OF 2023  
(ARISING FROM MISCELLANEOUS APPLICATION NO. 0166 OF 2022)  
(ARISING FROM CIVIL SUIT NO. 0015 OF 2019)

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1. KYALIGONZA SYLVIA

2. BABYESIZA CONELIOUS

3. KYALIMPA GODFREY

10 (Administrators of the estate of the Late Tibamanya Johnson) ..... APPLICANTS

Versus

1. TEKEREZA HELLEN BARYAYANGA

15 2. BETTY RWAKAIJA

3. BIKURU ROBERT (Administrators of the Estate of the Late Birigenda Kaija Benjamin)

4. NSG NDUGARI SECURITY GROUP LTD ..... RESPONDENTS

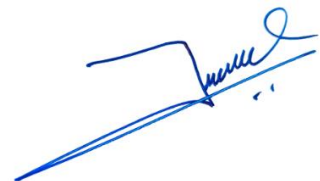
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BEFORE: Hon. Justice Isah Serunkuma

RULING

25 This application was brought under Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and Order 52, rule 1 and 2 of the Civil Procedure Rules S.I 71-1 seeking for orders that;

1. A warrant of arrest be issued against the respondents committing them to civil prison for six months for disobedience of lawful orders, for stay of execution and maintenance of status quo issued by this honorable court vide Miscellaneous Applications No. 0166 of 2022 and No. 0179 of 2022 all arising from Civil Suit No. 0015 of 2019.
2. The respondents pay exemplary /punitive damages or compensation to the tune of UGX 500,000,000/= (Uganda Shillings Five Million).
3. The respondents be fined UGX 500,000,000/= (Uganda Shillings Five Hundred Million) for contempt of court.
- 35 4. An order doth issue directing that the illegal and contemptuous status quo created by the respondent's forceful possession of the land by the barrel of the gun to be purged and for restoration of the status quo as directed by the court order by way of removal of the respondents and their tenants out of the contemptuous possession and withdrawal of the violent menacing private security guards.



5. Costs of the application be provided for.

## BACKGROUND

5 The applicants filed an application for stay of execution of the judgment and orders in Civil Suit No. 0015 of 2019. The application was heard and disposed of inter-party in favour of the applicants wherein court issued orders staying execution in Miscellaneous Applicant No. 0166 of 2022. In support of this application the applicants filed an affidavit sworn by Kyaligonza Sylvia on behalf of the other applicants on grounds that;

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1. The respondents are interfering with the suit land by cultivating, building a house, slashing, bringing new tenants and a private security company onto the suit land to guard their activities with an aim of evicting the applicants from the suit land. The specific contemptuous activities include;

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a) The respondents applied to procure a free hold tittle to the suit land hereby changing status quo.

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b) The 1<sup>st</sup> - 3<sup>rd</sup> respondents have hired out the land to various tenants to displace the applicants from their gardens by way of forceful cultivation.

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c) The 1<sup>st</sup> - 3<sup>rd</sup> respondents using a tractor under the supervision of the 4<sup>th</sup> respondent's guards have ploughed out the gardens of and furrow land of the applicants to prepare the same to plant their own crops in an act calculated to force and evict the applicants from the land.

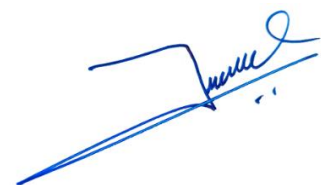
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d) The 1<sup>st</sup> - 3<sup>rd</sup> respondents have ploughed the cattle tracks used by the applicants to access cattle watering points and are blocking the applicants from accessing pasture on the land for grazing.

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e) The 1<sup>st</sup> - 3<sup>rd</sup> respondents have ploughed the pasture and grazing land for cattle leaving the applicants' animals without pasture and grazing land.

f) The 1<sup>st</sup> - 3<sup>rd</sup> respondents have hired the 4<sup>th</sup> respondent a private security company to provide security services while eviction of the applicants from their gardens goes on and to also guard the tenants, they put on the suit land. The guards use live bullets to chase away the applicants from the land they possessed at the time of the orders of this honorable court.



- g) That the respondents have constantly attacked and assaulted the applicants with an aim of chasing them off the suit land.
- 5 h) The respondents cut the applicant's cattle on the land to force them off the land.
- i) The 1<sup>st</sup> - 3<sup>rd</sup> respondents have commenced construction of a house on the area occupied by the applicants with an aim of evicting the applicants from the suit land.
- 10 2. That the respondents were in court when court granted the order for stay of execution which they have willfully and continuously disregarded without any reservation.
3. That the respondents were approached formally on the 12<sup>th</sup> day of April, 2023 to vacate the suit land, withdraw the security guards and further served with notices of court orders but they
- 15 neglected all of them.

The respondents opposed the application through an affidavit in reply sworn by Tekereza Hellen Baryayanga whose contents I will not reproduce here but will make referral to them whenever need arises.

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#### Issues for determination;

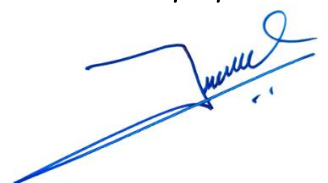
1. Whether the respondents are in contempt of court orders issued vide Miscellaneous Application No. 0166 of 2022 and Miscellaneous application No. 167 of 2022.
- 25 2. What remedies are available to the parties.

#### Resolution

I have considered the arguments of both parties in the written submissions which I will not reproduce here.

30 Hon Mubiru in the case of *Florence Dawuru Vs Angumale & Another; HCMA 96 observed that contempt of court is;*

35 *"Any course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of public in administration of justice. The power to punish for contempt of court is a special jurisdiction which is inherent in all courts for protection of the public interest in the proper*



*administration of justice, for as Lord Atkin observed in Andre Paul Terence Ambard Appeal No.46 of 1935 v The Attorney General of Trinidad and Tobago (Trinidad and Tobago [1936]1All ER, [1936]AC 322”*

5 The principles for an action of contempt of court orders were laid down in the case of *Brenda Nambi vs Raymond Lwanga; HCMA No. 0213 of 2017* as thus;

- a) Existence of a lawful order
- b) Potential contemnor ‘s knowledge of the order
- c) Potential contemnor’s knowledge to comply.

10 I am in agreement with the above principles and I will use the same in their order to make my finding

**Existence of a lawful order and potential contemnor’s knowledge of order.**

*Lord Chancellor Cotternham* in the case of *Chuck Vs Cremer (1846)1CooptempCott338; 47 ER 884 342-343 stated* that;

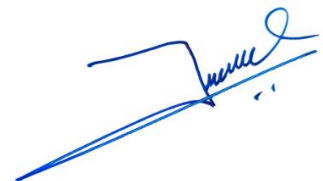
15 *“A party who knows of an order, whether null or void, regular or irregular, cannot be permitted to disobey it...it would be most dangerous to hold that the suitors, or their solicitors could themselves judge whether an order was null or void, whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such questions. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it might be discharged as long as it existed it must not be*  
20 *disobeyed.”*

25 From the submission of both parties and court record it is evident and not doubted as to the existence of court orders issued in regard to Miscellaneous Application No. 0166 and 0167 of 2022 for interim stay of execution, extension of interim stay of execution and final stay of execution pending appeal. Further that the orders were issued by court in the presence of both parties and their advocates. It is my finding therefore that there is a court order and that the respondents being the potential contemnors were aware of that it existed.

I will now proceed to the last principle of the potential Contemnor’s failure to comply, that is disobedience of the order.

30 The applicant alleges that the 1<sup>st</sup> - 3<sup>rd</sup> respondents have done various acts in contempt of the court order that was issued vide Miscellaneous Application No.0167 of 2022 which among others include;

- a) Applying for a free hold certificate of title to the suit land.



b) Hiring out the suit land to various tenants who have displaced the applicants by ploughing the gardens of the applicants to start up their own under the supervision of the 4<sup>th</sup> respondents who were hired to guard the respondents and their agents on the suit land.

5 While denying the said activities the respondents submitted that the application for the certificate for a free hold title to the suit land was applied for on the 5<sup>th</sup> day of December, 2022 and payment for the same paid thereafter way before the determination of Miscellaneous Application No. 0166 of 2022.

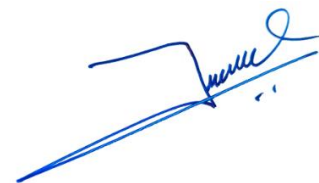
10 According to Annexure "D" of the affidavit in support of this Application, it is true that the application for conversion from customary to freehold tenure was made on the 5<sup>th</sup> day of December, 2022 before determination of Misc. Application No.0166 for interim stay of execution on 22<sup>nd</sup> December, 2022. However, in order to pursue the same application, the 1<sup>st</sup> - 3<sup>rd</sup> respondents went ahead to have the land inspected on the 9<sup>th</sup> day of February, 2023 and paid land inspection fees on the 22<sup>nd</sup> day of March, 2023. This act in its self alone amounts to contempt  
15 as its result brings about change from customary tenure to freehold tenure.

When a court orders that status quo should be maintained it simply means that not even the slightest act should be done in regard to the land, in other wards everything should be halted at the stage at which it stands at the time the order is made. As such any act whose result is likely or actually changes the status of the suit land whether physically or not however slight amounts to  
20 contempt as the same renders the court order useless.

Furthermore, the applicants allege that the respondents have gone ahead to hire out the land to tenants who have destroyed the farms and grazing land of the applicants and prepared the land to start their own farms. In the judgment to Civil Suit No. 0015 of 2019, the respondents were declared the rightful owners of the suit land. However, the applicants appealed against the said  
25 decision and further made an application for stay of execution. The essence of the application for stay of execution is to stop the successful party from enjoying the fruits of a court decision until the appeal is determined by the appellate court. Before such a time therefore the successful party is not allowed to enjoy any fruits of the court decision which has been appealed against.

From the circumstances as they are now the respondents cannot enjoy the rights of ownership as  
30 given by the trial court as the same has been stopped by a court order. As such none of the parties has powers to hire out any part of the suit land or even register themselves as owners of the suit property until the orders to stay execution have been set aside. And if any party persists to do anything in the alternative, then such a party should be held liable for contempt of court orders.

In *Housing Finance Bank Ltd and Anor Vs Edward Musisi 158/2010; Court of Appeal held that;*



*“A court of law never acts in vain and, as such issues touching on contempt of court take precedence over any other case of invocation of the jurisdiction of court”.*

In the instant case therefore, it is my finding that the 1<sup>st</sup> - 4<sup>th</sup> respondents are liable for the contemptuous actions of the court order.

5 **Issue No.2**

***What remedies are available to the parties?***

Regarding punishment for contempt, the *Halsbury’s laws of England, Contempt of court (Volume 24 (2019)) Procedure and Powers of court, at 92 observe that;*

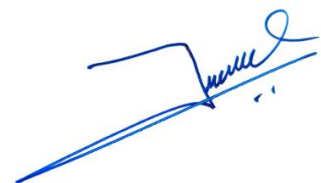
10 *“Civil contempt is punished by way of committal or by way sequestration. The effect of a writ of sequestration is to place, for a temporary period, the property of the contemnor into the hands of sequestrations, who manage the property and receive the rents and profits.*

*Civil contempt may also be punished by a fine, or an injunction may be granted against the contemnor”*

The applicant prayed for the following reliefs;

- 15 a) A warrant of arrest be issued against the respondents committing them to civil prison for six months for disobedience of lawful orders for stay of execution and maintenance of status quo issued by this Honorable court vide Miscellaneous Application No. 0166 of 2022 and 0179 of 2022 all arising from Civil Suit No. 0015 of 2019.
- 20 b) The respondents pay exemplary /punitive damages or compensation to the tune of UGX 500,000,000/= (Uganda shillings five million).
- c) The respondents be fined UGX 500,000,000/= (Uganda shillings five hundred million) for contempt of court.
- 25 d) An order doth issue directing that the illegal and contemptuous status quo created by the respondent’s forceful possession of the land by the barrel of the gun to be purged and for restoration of the status quo as directed by the court order by way of removal of the respondents and their tenants out of the contemptuous possession and withdrawal of the
- 30 violent menacing private security guards.

In *Attorney General versus Male Mabirizi Kiwanuka; HCMA NO. 0843 of 2021 Hon Justice Ssekaana Musa* observed that;



5            *“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 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”.*

Whereas there is no law on contempt of court save for decided cases, the High court is enjoined to exercise its jurisdiction in conformity with the common law and doctrines of equity whereby it's obliged to exercise its discretion with the principles of justice, equity and good conscience respectively. See; **S.14 (12)(b)(1) of the Judicature Act.**

10        In consideration of the above I make the following orders;

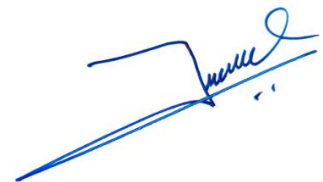
- 1) That the respondent immediately vacates all parts of the suit land which initially belonged to the applicants at the time of the determining Miscellaneous Application No. 0167 of 2022 including that which is occupied by tenants authorized by the respondents.
- 15        2) That no further action should be done in regards to any construction be it permanent or temporary by the respondents on the suit land.
- 3) The 1<sup>st</sup> - 3<sup>rd</sup> respondents are hereby committed to civil prison for a period of two months.
- 20        4) The 4<sup>th</sup> respondent immediately withdraws all its workmen from the suit land.
- 5) The 1<sup>st</sup> - 3<sup>rd</sup> respondents are forbidden from hiring any private security company to guard the suit land.

25        **6) Order for payment of a fine**

The applicants prayed that the respondents be ordered to pay a fine of UGX 500,000,000/= (Uganda Shillings Five Hundred Million) for contempt of court. This court recognizes that the purpose of a fine is to send out a message that court orders have to be complied with and obeyed and to indicate to contemnors that there are consequences for disobedience of court orders.

30        I however find that a fine of UGX 500,000,000/= is excessive. I would instead order a fine of UGX 10,000,000/= (Uganda shillings ten million) for the 1<sup>st</sup> - 3<sup>rd</sup> respondents and a fine of UGX 7,000,000/= for the 4<sup>th</sup> respondent; or in the alternative a three months imprisonment for the 1<sup>st</sup> - 3<sup>rd</sup> respondents and authorized manager of the 4<sup>th</sup> respondent. The fines go to revenue account of the judiciary.

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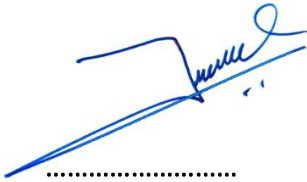
7) *Exemplary Damages*

I further order the 1<sup>st</sup> - 3<sup>rd</sup> respondents to pay a sum of UGX 3,000,000/= (Uganda shillings three million) each to the applicants or in the alternative committed to 3 months imprisonment in civil prison being their high handedness as their actions were intended to undermine the rule of law and administration of justice.

8. The applicant prayed for costs for this application. Since the applicant is the successful party, the application is allowed with costs.

I so Order.

10 Dated and delivered on this 13<sup>th</sup> day of October 2023.



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Isah Serunkuma

15 JUDGE

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