

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC. APPLICATION NO. 58 OF 2022

(ARISING FROM M.A NO. 42 OF 2022)

5 **(ARISING FROM HCCS NO. 26 OF 2022)**

(ARISING FROM HCCS NO. 014 OF 2022)

FRANK MWEBESA

(SUING THROUGH HIS LAWFUL

ATTORNEY BYLON MUGARURA) ::::::::::::::::::::::::::: APPLICANT

10 **VERSUS**

HELENA BWAMBALE ::::::::::::::::::::::::::: RESPONDENT

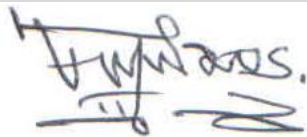
**(AS AN ADMINISTRATOR OF THE ESTATE OF THE LATE
BWAMBALE CHRISTOPHER)**

BEFORE: HON. JUSTICE VINCENT WAGONA

15 **RULING**

The Applicant brought this application under Section 98 of the Civil Procedure Rules and Order 50 rule 1 and 2 of the Civil Procedure Rules for order that;

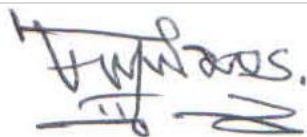
- 1. The Respondent is in contempt of court orders granted by this Court on 7th May 2015.**



2. That the order being sought in High Court M.A No. 042 of 2022 be disallowed as a result of the contempt.
3. The Respondent pays a fine for willful and deliberate disobedience of the Court orders in HCCS No. 001 of 2015.
- 5 4. The Respondent pays exemplary damages for willful and deliberate disobedience of the court orders in HCCS No. 001 of 2015.
5. The Respondent should be committed to civil prison as a result of the contempt.
6. The Respondent pays the costs of the Application.

10 The grounds in support of the application are contained in the affidavit of Mugarura Bylon, the Applicant's holder of powers of attorney thus:

1. That the Respondent being a member of the company, she was at all material times in court and aware of the decision and orders of Court. That the Applicant was placed in possession by virtue of the orders of court.
- 15 2. That well aware of the order of the High Court in HCCS No. 001 of 2015 and the pending appeal in the Court of Appeal, the Respondent willfully and forcefully tried on several occasions to re-enter part of the suit land and plants crops thereon.
3. That the Applicant has been utilizing his land since it was decreed to him but
20 the respondent has in violation of the orders of court destroyed crops planted by the Applicant forcing the Applicant to file a fresh suit against the Respondent in HCCS No. 014 of 2022, Frank Mwebesa Vs. Hellen Bwambale.
4. That the Respondent's acts are acts of contempt of court and a deliberate
25 attempt at establishing an illegal and contemptuous status quo and that this



court has no jurisdiction to entertain the Applicant's Application until she purges herself of contempt. That the Orders in HCCS No. 001 of 2015 were to the effect that the Applicant takes possession of the suit land and he indeed took possession thus the Respondent's claim that she is in possession
5 of the suit land is in violation of the orders of this court.

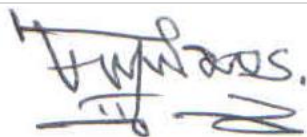
5. That the Respondent has continued to deliberately disobey the said court orders and therefore does not come to court with clean hands. That the Respondent's contempt has impeded the course of justice as she has no respect for legal process. That the Respondent's contempt makes it
10 impossible for the Applicant to enforce any further court orders that would arise through the process of court.

6. That it is in the interests of justice that court grants the orders prayed for to purge the said contempt pending the disposal of the main suit and other applications there from.

15 The application was opposed by the Respondent who contended:

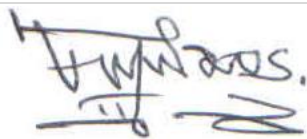
1. That Misc. Application No. 58 of 2022 was against her as the administrator of the estate of the late Bwambale Christopher, her late husband. That the Applicant was decreed as being entitled to take possession of 22 acres of land comprised in LHRV 1227 Folio 17 at Kamiba Muhokya pursuant to a
20 consent judgment in HCCS No. 001 of 2015; Frank Mwebesa Vs. Western Uganda Importers and Distillers Ltd and the said consent was still in dispute.

2. That the Applicant was ordered to take 22 acres per the agreements of 23rd July 2003 and 3rd December 2003 being part of land comprised in LHRV 1227, Folio 17, land at Kamaiba Muhokya, Kasese measuring approximately
25 209.6 hectares. That the land sold to the Applicant as described in the sales

A handwritten signature in black ink, appearing to read 'J. Mwebesa', is written over a horizontal line. Below the signature, there are some illegible scribbles and a small mark.

agreement of 23rd July 2003 constituted 15 acres whose neighbors were, Muhasi Kyakora to the South West.

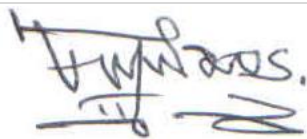
3. That for the second agreement dated 3rd December 2003 which covers 7 acres, the same was separated with land of Mr. Amos Kambere and Muhasa Kyakora to South, South west with land for the late Christopher Bwambale, Mr. Simeho Baferubusa in the South West and Mr. Yofesi Masereka to the East and Erisa Kisabu in the North. That the descriptions in the agreement only indicate that the land purchased by the Applicant borders with land of the late Bwambale Christopher and it's not indicated anywhere that the land the Applicant bought included that which belonged to the Respondent's late husband.
4. That the Respondent and the late husband never sold any land to the Applicant and by the time of the alleged purchase, the Respondent had been allocated the land in dispute. It was contended that at all material times the Respondent has been in use of the land in dispute and that the Applicant has never been in use of the same. That the Respondent's act of using the suit land which forms part of the estate does not constitute contempt and she was not aware of any order where the land in dispute was allocated to the Applicant and thus entitled to possession thereof.
5. That the Respondent and her late husband were not parties to HCCS No. 001 of 2015 which the Applicant filed against Western Importers and Distributors Limited. That the decision that Applicant got against the company did not affect her land and the late husband to which she is the administrator and the allocation of the suit land to the Respondent and the late husband pre-dates the suit filed by the Applicant. That she was not in



contempt of the orders issued by the High Court in HCCS No. 001 of 2015. That the Application is misconceived and thus should be dismissed on that account.

In rejoinder, it was further averred by the Applicant's donee of powers of attorney:

- 5 1. That the Applicant was the successful litigant in HCCS No. 01 of 2015 in Frank Mwebesa Vs, Western Uganda Importers Limited. That the Applicant's land was properly demarcated since he was put into vacant possession by a court bailiff. It was contended that at all material times the Respondent was aware that the dispute in HCCS No. 1 of 2014 was resolved
10 in favor of the Applicant.
2. That during the hearing of HCMA No. 022 of 2017, the Respondent herein was present as confirmed by the affidavit of Musede John. That it is not true that the Respondent was not aware of the judgment and proceedings before the High Court and Court of Appeal. That a search was done in the registry
15 and it was confirmed that the suit land is still registered in the names of Western Uganda Importers and Distributors Ltd and such division or demarcations of the suit land are unregistered and are in further contempt of orders of court.
3. That the Applicant is aware that the suit land amounting to 22 acres was
20 clearly identified, demarcated and fenced and the Respondent's claim and forceful entry is intended to frustrate the orders issued by court and the pending appeal. That the land belongs to west importers and Distributors Ltd and not the estate of Christopher Bwambale. That the Respondent was not a party in HCCS No. 1 of 2015 but at all material times she attended court
25 proceedings as a member of the Respondent's company and therefore aware

A handwritten signature in black ink, appearing to read 'J. Mwebesa', is written over a horizontal line. The signature is somewhat stylized and includes a horizontal stroke below the main text.

of the existence of the court orders in respect of the suit land. That the Respondent's actions are in clear contempt of the orders of this court.

Representation:

5 Learned Counsel *Micheal Akampulira* of M/s Akampulira & Partners Advocates and Legal Consultants represented the Applicants while *Mr. Tusasirwe Benson* of M/s Tusasirwe & Co. Advocates assisted by *Mishele Godfrey* of M/s Bagyenda & Co. Advocates represented the Respondents. A schedule to file submissions was issued by court and both parties complied.

Issues:

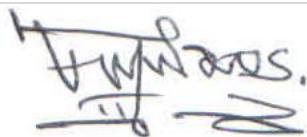
- 10
1. Whether this Application is proper before this Court.
 2. Whether the Respondent is in contempt of court orders granted by this Court on 7th May 2015.
 3. What remedies are available to the Applicant.

Submissions:

15 *Applicant's submissions:*

It was submitted for the Applicant that in the case of *Nambi Vs. Raymond Lwanga HCMA No. 213 of 2017* it was stated that before any action can be found to amount to contempt of court, the following principles have to be established:

- 20
- (a) Existence of a lawful order.
 - (b) Potential knowledge of the order
 - (c) Potential contemnors failure to comply with the orders of court.

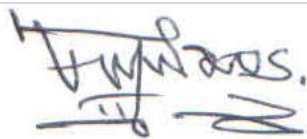


That with regard to the first principle, it is not in doubt that court issued an order granting possession to the Applicant on the 7th May 2015 as stated in paragraph 3 of the affidavit in support of the Application. That the Respondent made an application to set aside the consent vide M.A No. 091 of 2016 which application
5 was dismissed. Thus the said order has never been set aside.

That the respondent being a member of the Respondent's company was fully aware of orders issued in HCCS No. 001 of 2015 and M/A No. 091 of 2016. That the Respondent was in court and filed an affidavit in M.A No. 91 of 2016 in the proceedings giving raise to the said orders of court. That she was as such fully
10 aware of the order. That the Respondent is making attempts to take over land which was decreed to the Applicant is contempt of an order issued by court. It was contended that this is an abuse of Court process and amounts to contempt.

It was submitted that with regard to remedies, as stated in *Ekau David Vs. Dr. Jane Ruth Aceng and 2 others, M.A No. 746 of 2019*, court is obliged to give
15 punitive sanctions to ensure that the Respondent obliges to the principles of rule of law and constitutionalism. That the Applicant therefore seeks exemplary damages for willful disobedience of the court orders and should be committed to prison to compel her to act in accordance with the orders of this Court. It was submitted that that this court has powers to order a fine to be paid by the Respondent and to order
20 imprisonment of the Respondent.

That due to the deliberate and willful disobedience of court orders leading to damage of the Applicant's crops and trees, this is a proper case where court should exercise its discretion to order compensation to the tune of UGX 100,000,000/= and imprisonment of up to 6 months to compel the contemnor to act in accordance

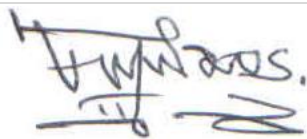


with the law and the orders of court. The Applicant also prayed for costs of the suit.

Respondent's Submissions:

5 Counsel for the Respondent first raised a point of law as to the competence of the Application. Counsel submitted that the current application that is Misc. Appn No. 58 of 2022 is unsustainable. That it claims to arise from M.A No. 42 of 2022 and HCCS No. 22 of 2022 and HCCS No. 14 of 2022. That the order that the Applicant alleges was disobeyed does not arise from any of the applications and suits indicated in the motion. It was submitted that the Application would ordinarily
10 arise from HCCS No. 001 of 2015 where the orders were issued. That no order was issued in HCCS No. 42 of 2022 and 14 of 2022 which required obedience from the Respondent and HCCS No. 26 of 2022 is not known to the Respondent.

That it is clear that the Applicant seeks to hold the Respondent in contempt of orders of court to which she was not a party. That this court has no business
15 inquiring into HCCS No. 1 of 2015 from where the orders alleged to have been disobeyed arose from. That in Civil Suit No. 14 of 2022, the Applicant sought an order to find the Respondent in contempt of an order issued by court. That this is contained in paragraph 7 and 8 of the plaint and the Respondent denied such allegations, it therefore means court shall try that issue and pronounce itself over
20 the same as to whether or not the defendant in that suit is in contempt. That to ask court to determine this issue, amounts to court determining the substance of the suit before a hearing. That this Application is an abuse of court process and should be rejected.

A handwritten signature in black ink, appearing to read 'S. M. S.', is written over a horizontal line. The signature is somewhat stylized and includes a flourish at the end.

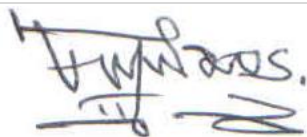
Without prejudice to the point of law, Learned Counsel for the Respondent submitted that the grounds for Civil Contempt were laid down by the supreme court in *Prof. Fredrick E. Ssempebwa & 2 others Vs. Attorney General, SCCA No. 5 of 2019* to include;

- 5 (a) That an order was issued by court.
- (b) That the order was served on or brought to the attention of the alleged contemnor.
- (c) That there was non-compliance with the order by the Respondent.
- (d) That the Non Compliance was mal-fide.

10 That these ground must be proved beyond reasonable doubt considering that the consequences of being found in contempt mirrors those of being found guilty in a criminal case.

Existence of a lawful order:

It was submitted for the Respondent that the order the Applicant alleges to have
15 been disobeyed was made on 7th May 2015 in HCCS No. 001 of 2015. However, no such order was attached to the Application. That further the wording of the order did not impose an obligation upon the Respondent since it was an order directing the Applicant to take possession of 22 acres out of the 209 hectares held by Western Uganda Importers and Distributors. That the second term in the
20 consent was directing the defendant to execute transfer forms in favour of the plaintiff and also directed Kasese District Staff Surveyor to survey off the pieces of land amount to 22 acres from land comprised in LHRV 1227. That there is no evidence that the 22 acres were surveyed off by the District Staff Surveyor and the Applicant seeks to hold the Respondent in contempt of land not known. That there

A handwritten signature in black ink, appearing to read 'S. M. M.', is written over a horizontal line. The signature is somewhat stylized and includes a vertical line to its right.

“Necessity of personal service: As a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the required to do or abstain from doing the act in question”

5 Learned Counsel argued that there is a requirement for personal service of the order. That in this case, there is no proof that the Respondent was served with the order and or directed to act otherwise. That as such this ground was not proved by the Applicant.

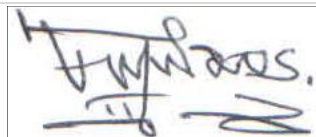
Disobedience of a lawful order:

10 It was submitted that the Respondent could not disobey an order that was not addressed to her or served upon her. That she is simply a stranger to the order and as such she cannot be held to have disobeyed the order which she had no knowledge of.

Willful and mala-fide Disobedience:

15 It was submitted that the disobedience must be deliberate and must be malafide. That this was explained by the Supreme Court in ***Prof. Ssempebwa*** (Supra) citing the decision of ***Fakie Vs. CCII Systems (pty) Ltd (2006) SCA 54 of South Africa*** thus;

20 *“The test for when disobedience of Civil order constitutes contempt has come to be stated as whether the breach was committed ‘deliberately and mala-fide. A deliberate disregard is not enough since the non-complier may genuinely albeit mistakenly believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids*

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to be 'S. M. M.' with a flourish underneath.

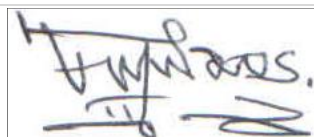
infraction. Even a refusal to comply that is objectively unreasonable may be bonafide (though unreasonableness could be evidence lack of good faith)”.

5 *“These requirements that the refusal to obey should be both willful and mala fide, and that unreasonable noncompliance, provided it is bonafide, does not constitute contempt – accord with the broader definition of the crime, of which noncompliance with the Civil Orders is a manifestation. They show that the offense is committed not by mere disregard of the court order but the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or*
10 *proper is incompatible with that intent.”*

That court further noted that: *“Unreasonable noncompliance provided that it is bona-fide does not constitute contempt”*. Counsel argued that the Respondent has been under the firm, honest and reasonable belief that the land she is occupying is hers and forms part of the estate of the late husband. She maintains that she has not
15 gone beyond the known boundaries of the land she formerly used and as such she was acting under a bona-fide claim of right. That she responded to the summons to file a defense by the Applicant and included a counter claim seeking ownership of the land in dispute. Learned Counsel submitted that contempt did not arise and asked court to have the case dismissed with costs.

20 ***Applicant’s submissions in rejoinder:***

In rejoinder counsel for the Applicant contended that there exists an order of Court in HCCS No. 001 of 2015 and the existence of the same is not denied by the Respondent. That therefore this ground is not contested. He also contended that the Respondent had knowledge of the order of court. That the Respondent participated

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and appears to be "J. W. Jones".

in the proceedings in HCCS No. 001 of 2015 and as such she had full knowledge of the order.

For the third ground, counsel submitted that the Respondent disobeyed the order of court. That the Respondent chose to ignore or disobey the court orders in HCCS
5 No. 001 of 2015 by entering the suit land which she knew had been decreed to the Applicant. That the Respondent was duty bound to respect the order even where she was not a party to it. That as such this ground was proved.

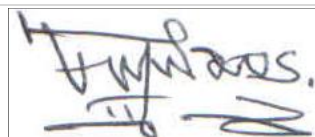
Learned counsel also argued that the acts of the Respondent were deliberate because she was aware that the suit land had been decreed to the Applicant and
10 decided to invade the same with a gang of people well knowing that the suit land belonged to the Applicant. It was contended that the disobedience was willful and intended to circumvent the orders of court.

Counsel thus prayed that the Application is allowed with a heavy fine of UGX 300,000,000/= or in default imprisonment for six months and an injunction be
15 issued restraining her from further disobedience of the orders in HCCS No. 001 of 2015 and entering the suit land in violation of the orders of court.

DECISION:

Whether this application is proper before court:

Contempt of court is not an issue between the parties, but rather an issue between
20 the court and the party who has not complied with a mandatory order of court. Contempt of court has obvious implications for the effectiveness and legitimacy of the legal system and the judicial arm of government. There is thus a public interest element in each and every case in which it is alleged that a party has willfully and

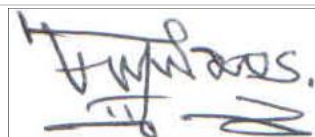
A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and appears to be 'J. M. M.' followed by a flourish.

in bad faith ignored or otherwise failed to comply with a court order. (See *Harry Jonathan Ciliba Vs. Mamatsie Emily, S.A Case No. 3460 of 2021*).

In *Pheko v Ekurhuleni City 2015 (5) SA 600 (CC) (Pheko II)* at para 28, it was observed thus:

5 *“The rule of law, a foundational value of the Constitution, requires that*
the dignity and authority of the courts be upheld. This is crucial, as the
capacity of the courts to carry out their functions depends upon it. As the
Constitution commands, orders and decisions issued by a court bind all
10 *persons to whom and organs of state to which they apply, and no person or*
organ of state may interfere, in any manner, with the functioning of the
courts. It follows from this that disobedience towards court orders or
decisions risks rendering our courts impotent and judicial authority a
mere mockery. The effectiveness of court orders or decisions is
substantially determined by the assurance that they will be enforced.
15 *Courts have the power to ensure that their decisions or orders are*
complied with by all and sundry, including organs of state. In doing so,
courts are not only giving effect to the rights of the successful litigant but
also and more importantly, by acting as guardians of the Constitution,
asserting their authority in the public interest. It is thus unsurprising that
20 *courts may, as is the position in this case, raise the issue of civil contempt*
of their own accord.” (Emphasis added)

Contempt proceedings are intended to protect the integrity of courts and raise an awakening call to the whole public to respect orders of court. They are geared towards the courts of law re-affirming their authority to issue orders which must be

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to be 'H. J. ...' followed by a surname.

respected and or complied with by all persons and authorities. If the general public is allowed to choose when and which order of court to respect, then the courts will lose their constitutional mandate of ensuring that the decisions made and the orders issued are respected and will in due course lose public confidence. Therefore, 5 contempt proceedings in essence are between the court and the contemnor.

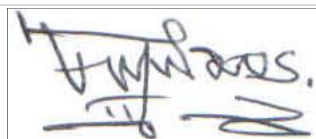
The complainant in contempt proceedings merely brings the contempt to the attention of court and it's the duty of court to investigate such complaint and punish whoever attempts to disrespect its orders. Even where there is no complainant but the issue of contempt is brought to the attention of court, court can 10 on its own motion commence contempt proceedings against such contemnor to protect its orders and maintain public confidence in the orders issued by court that they will be complied with.

It is thus my view that it matters not the manner in which the complaint is brought to the attention of court and the party who brings such complaint. The court's 15 inherent duty is to investigate such disobedience and act as it finds appropriate.

I thus find that the preliminary objection raised by the Respondent as to the manner in which the application was filed has no merit and it is overruled.

Issue two: Whether the Respondent is in contempt of court orders granted by this Court on 7th May 2015?

20 Contempt of court connotes the willful disregard or disobedience of the orders issued by court. It encompasses any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity. Contempt is committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to be 'J. W. P. S.' followed by a flourish.

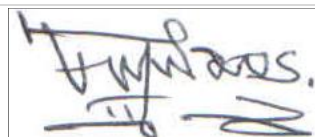
the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given. (See *Kajumba Proscovia Vs. Sedrack Mwesige & 25 Others, Misc. Application No. 094 of 2022*).

5 The main import of the doctrine of contempt of court is to ensure that the orders of court are respected and to protect the sanctity of the institution that issues such orders by seeing to it that the orders issued are put into effect. This was elaborately brought out by **Romer J** in *Hadkinson v Hadkinson [1952] All ER*, where he relied on the case of *Church v Cremer (1 Coop Temp Cott 342)* where it was held
10 thus; "*A party who knows of an order whether null or valid, regular or irregular, cannot be permitted to disobey it. . . as long as it existed*". (See also *Kajumba Proscovia Supra*).

In *Carey vs. Laiken [2015] 2 R.C.S 79* which position was cited with approval by the Court of Appeal in *Lukenge Hakim Vs. Hajjat Ajiri Namagembe and 5
15 others, Court of Appeal Civil Application No. 0290 of 2020 arising from Civil Appeal No. 0311 of 2015*, the Hon. Lady Justice Elizabeth Musoke observed that three elements must be proved before a finding of civil contempt can be made, namely:

20 "*First, the order alleged to have been breached "must state clearly and unequivocally what should and should not be done"*

Second, the party alleged to have breached the order must have had actual knowledge of it.

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and appears to be 'H. M. M.' followed by a flourish.

Third, the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels."

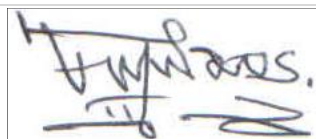
She went on to state thus:

5 *"It must be stated that each of the elements of civil contempt must be proved to the standard applied in criminal cases, which is beyond reasonable doubt. I will therefore proceed to discuss the elements as they apply to the present application below."*

10 In *Hon. Sitenda Sebalu Vs. The Secretary General of the East African Community, in Reference No. 8 of 2012*, The East African Court of Justice laid down the grounds to prove in an action for contempt to include;

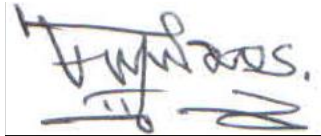
1. *Existence of a lawful order;*
2. *The Potential Contemnor's knowledge of the Order;*
3. *The potential contemnors ability to comply;*
- 15 4. *The potential contemnors failure to comply."*

20 In this case there must be the existence of a lawful order and the order alleged to have been breached "must state clearly and unequivocally what should and should not be done. I have carefully considered the submissions of Counsel Akampulira for the Applicant and the affidavit in support of the Application as well as the one in rejoinder. There is no clarity to the court as to the order that the Applicant alleges was disobeyed by the Respondent. The order alleged to have been

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and appears to be 'J. M. M. M.' followed by a flourish.

disobeyed was not attached to the application. Thus the content thereof remained unclear as to what the Respondent was restrained from doing or what he was directed to do which he disobeyed. The preceding grounds are paged on the existence of a lawful order which is clear and unequivocal stating what the parties
5 are restrained from doing or what they were meant to do that they defaulted upon to constitute contempt. Therefore, the Applicant failed to prove his claim to the required standard and the same fails. Since the Applicant has failed to prove his application to the required standard, it is hereby dismissed with costs awarded to the Respondent. It is so ordered.

10



Vincent Wagona

High Court Judge / Fort-portal

24.02.2023

