

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA
MISCELLANEOUS APPLICATION NO. 0005 OF 2020
(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 0064 OF 2019)
(ARISING OUT OF CIVIL SUIT NO. 0021 OF 2019)

DON DINO INSTITUTE FOR ORPHAN CARE LIMITED APPLICANT

VERSUS

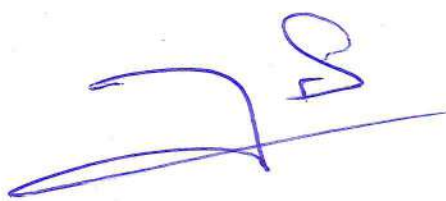
1. REV. FR. CASTO ADETI
2. ANGELO NDEMA
3. ISAAC INZIKU
4. ATIBUNI KENNEDY
5. APAMAKU DANIEL
6. THE REGISTERED TRUSTEES OF ARUA DIOCESE
7. CENTENARY BANK LIMITED
8. KCB BANK ARUA BRA
9. NCH RESPONDENTS

BEFORE: Hon Justice Isah Serunkuma.

RULING

This ruling is premised on an application originally brought by the applicant under Articles 128 (2) & (3), 50 (2), 28 (12), 23 (1) (a) of the Constitution of the Republic of Uganda, Sections 64 (c) & (e) and 98 of the Civil Procedure Act, Order 52 rules 1, & 3 of the Civil Procedure Rules for orders namely that;

- a) The 1st, 2nd, 3rd, 4th and 5th respondents be arrested and committed to civil prison for contempt of court.
- b) Court orders demolition of the building and structure constructed on the suit property by or on the directives of the respondents at the respondents' costs.
- c) The 7th and 8th respondents be ordered to avail to the applicant and this honorable court an up to date bank statements of Kizito Ediofe Orphans Primary School from December 22nd 2019 to date.
- d) The respondents be ordered jointly and severally to refund all the monies they withdrew from the bank accounts of St. Kizito Ediofe Orphans Primary School and used to construct the new building on the suit property.
- e) The respondents be ordered jointly and severally to pay Ugx 200,000,000/= in general damages to the applicant.



- f) The respondents be fined Ugx. 100,000,000/= jointly and severally as sanction for their contemptuous conduct.
- g) The 7th and 8th respondents be ordered to stop releasing any monies for any development on the suit land from the school bank account to the respondents except for the daily running of the school activities until the final disposal of the main suit.
- h) The respondents provide for costs of this application.

Background

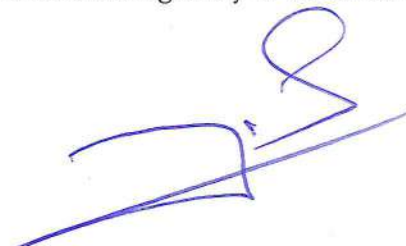
The applicant instituted a Civil Suit No. 0021 of 2019 against the registered trustees of Arua Diocese herein referred to as the 6th respondent for trespass, a permanent injunction, an order for compensation of the developments on the suit land, general damages, costs of the suit and interest. The applicant further filed an application vide HCMA No. 0065 of 2019 for an interim order against the 6th respondent.

In addition, the applicant filed another application for temporary injunction vide HCMA No. 0064 of 2019 against the 6th respondent to restrain them from interfering in the management of any projects or receive any proceeds therefrom or evict the applicant's managers and beneficiaries from the suit premises made up of St. Kizito Ediofe Orphan Primary School, St. Assumpta Health Centre III and Don Dino Orphanage. An order was granted on the 21st day of October 2019 to maintain the status quo and extracted on 5th December 2019. However, the order was not properly enforced thus causing the applicant to institute this application for the grant of the aforementioned orders.

In support of their motion, the applicant deposed an affidavit in support as well as a supplementary affidavit through two representatives namely;

Ms. Mary Assumpta Ginamia (a manager of the applicant) deposed as follows;

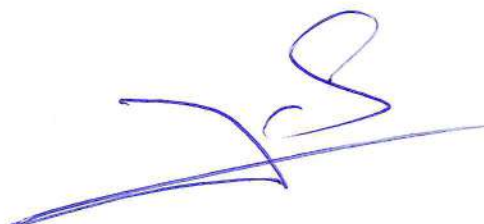
1. That a temporary injunction was issued by this court on the 21st day of October 2019 in the presence of the respondents' counsel ordering that the status quo be maintained on the suit property, measuring approximately 20 acres on which St. Kizito Ediofe Orphans primary school. (A copy of the order is marked **annexure "A"**).
2. That following the court injunction by this honorable court, in an act of contempt of court, the 1st & 3rd respondents, forged minutes of the school management committee wherein they replaced a one Mr. Victory Garia with the 5th respondent as a new signatory to the account of St. Kizito Ediofe Orphan Primary School.



3. That the 7th & 8th respondents have released and continue to release colossal sums of money to the 1st, 2nd, 3rd, 4th, & 5th respondents which are being used to erect a building/ structure on the suit land against the court order.
4. That the 1st, 3rd, & 5th respondents withdrew over Ugx. 188,234,247/= and they continue to withdraw more monies from centenary bank Arua branch and KCB Arua branch respectively in several installments for purposes of erecting a building block on the school compound. (Copies of bank statements are marked "B1" & "B2" respectively).
5. That the first five respondents have also changed the position of the school gate from eastern part of the school to the southern part of the school.

10 **Mr. Geria Victory** (coordinator of the activities of St. Ediofe Orphans Primary School & Chairman of parents teachers' association (PTA)) also deposed a supplementary affidavit that;

1. That in the year 2017, he was appointed by the board of directors of the applicant to coordinate the activities of the said school.
2. That on the 15th day of December 2017, he was elected by the PTA general assembly of the school to be chairperson.
3. That by virtue of his position, he automatically became a signatory to the school bank account numbers 202033717 also known as 3200118994 with Centenary Bank Arua branch and 2202511008 KCB Arua Branch.
4. That on the 23rd day of October 2019, the 4th respondent went to him with a Centenary Bank withdrawal slip in Nvara Senior Secondary School, asking for his signature to enable the respondents withdraw money from the bank amounting to Ugx. 40,394,068/=.
5. That he declined to sign the withdrawal slip having been briefed that the money was meant for the construction of a new school block and having been aware of the court order barring any change of the status quo on the suit land.
6. That on the 24th day of October 2019, the 1st and 3rd respondents forged minutes of the management committee in which he was removed as the chairman of the PTA and a signatory to the school accounts replacing him with the 5th respondent. (A copy of the minutes is marked **annexure "A"**).
7. That a few days later, he found a vehicle, lorry tipper UBD 768Q, blue in colour, bringing materials to the school compound and the construction of another school block had commenced under supervision of the 1st, 2nd, 3rd, 4th, & 5th respondents.

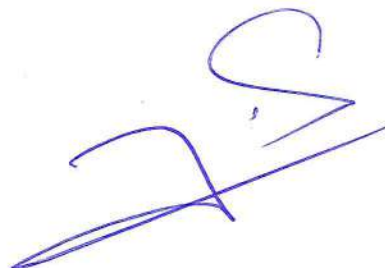


8. That the 3rd respondent later informed him that funds were withdrawn from the school bank accounts.
9. That on the 10th day of January 2020, the general meeting of PTA reinstated him as their Chairman but the 1st, 2nd, 3rd, 4th, & 5th respondents rejected his reinstatement as a signatory to the account to date.

In opposition, the 1st, 4th, 5th, 6th, & 8th respondents in their personal capacity and through their representatives respectively, filed affidavits in reply. I have perused the said affidavits in reply and noted that they contain the same content as shall be summarily noted hereunder save for the affidavit in reply deposited by the 8th respondent whose contents shall be specifically laid out herein.

1. That in reply to paragraph 2 of the affidavit in support, the works conducted on the suit property were commenced way before the court order was issued.
2. That in reply to paragraph 4 of the affidavit in support, the respondents did not forge any documents to change signatory but it was from an outcome of a meeting conducted and further Geria Victory who was a signatory decided to become non-compliant towards his duties even after being requested humbly to participate.
3. That in reply to paragraph 5 of the affidavit in support, the respondents deposed that the status quo was in respect to Don Dino Orphanage but not St. Kizito Ediofe Orphans primary school.
4. That in specific reply to paragraph 6 of the affidavit in support, the construction that has been put on the land is for the good of the children that study in the school.
5. That in reply to paragraphs 7 & 9 of the affidavit in support; the monies were withdrawn to carry out activities, which were for the good of the school.
6. That in specific reply to paragraph 11 of the affidavit in support, the 1st, 4th, 5th, & 6th respondents swore that they are not parties to Civil Suit No. 021 of 2019.
7. That in reply to paragraph 12 of the affidavit in support, the actions conducted by the respondents are lawful for the benefit of the children and the community that benefits from the services that are provided by the school.
8. That in reply to paragraph 13 of the affidavit in support, the respondents withdrew the monies for the activities that are for the good of the school and cannot in anyway be held responsible.

Umar Nassif Mubiru deponed an affidavit in reply in the capacity of a legal manager and representative capacity on behalf of the 8th respondent summarily stating as hereunder;



1. That the 8th respondent was not a party to the proceedings referred to in paragraph 2 of the affidavit in support of the motion and as such the applicant proceeded against a wrong party and the said application is frivolous, vexatious and an abuse of court process. (a copy of the court order is **marked "A"**).
- 5 2. That in specific reply to paragraphs 3 & 4 of the affidavit in support, the 8th respondent shall prove that the contents of the paragraphs are not within its concern and knowledge.
3. That in reply 5 of the affidavit in support of the motion, the 8th respondent shall prove that it was not an addressee nor a recipient of the said letter. (A copy of the claimed letter **marked "B"**).
- 10 4. That in response to paragraphs 6 of the affidavit in support, the 8th respondent shall prove that it has a duty to its customers among which is confidentiality and as a third party, the applicant has no locus to pry into or inquire about the bank's relations with any of its customers.
5. That in reply to paragraphs 7, 8, & 9 of the applicant's affidavit in support of the motion, the 8th respondent shall prove that the same are of no concern to its operations and are misconceived claims against it.
- 15 6. That in response to paragraph 10 of the affidavit in support, the applicant has not furnished court with any justifiable reasons for the 8th respondent to breach its duty of confidentiality to its clients.

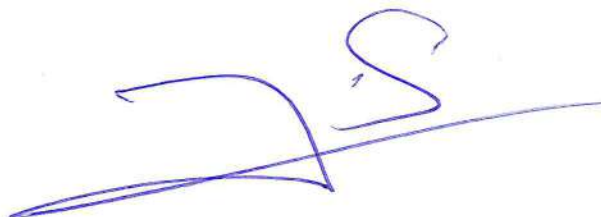
Representation & hearing

20 Counsel Samuel Ondoma of M/s Alaka & Co. Advocates and Counsel Kayongo of M/s Kayongo Jackson & Co. Advocates represented the applicant. Counsel Madira Jimmy of M/s Madira & Co. Advocates represented the respondents. Court granted parties leave to file written submissions in support of their respective claims for consideration in final determination of this application. However, the 3rd and 5th respondents did not file their written submissions.

Applicant's Submissions

In their submissions, counsel raised and argued 5 issues, discussed issues 1 & 2 jointly whereas 3 & 4 were dealt with independently. The issues raised include;

1. *Whether there was a court order*
2. *Whether the respondents were aware of the existence of the court order*
- 30 3. *Whether the respondents had the ability to obey the said court order*



4. *Whether the respondents committed contempt of the court order*

5. *Remedies available.*

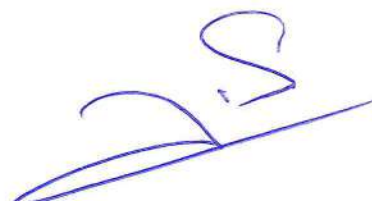
With reference to issues 1 and 2, counsel for the applicant submitted that Ms. Ginamia deposed that the 1st respondent held out to be the chairperson of the school management committee of St. Kizito Ediofe Orphans Primary School. That the 2nd respondent held out to be the Vice Chairman of the school management committee of the said school. That the 3rd respondent is the head teacher of the said school. That the 4th respondent is the deputy head teacher of the school and in charge of the procurement in the school. That the 5th respondent together with the 1st & 3rd respondents are the signatories to the bank accounts of the school held with Centenary Bank Arua branch (7th respondent) and KCB Bank Arua Branch (8th respondent). Counsel added that on the 21st day of October 2019, this honorable court, presided over by Hon Justice Oyuko Anthony Ojok issued a temporary injunction and ordered that the parties in the presence of all counsel for each respective party maintain the status quo on the suit property.

Counsel further stated that even after the order had been granted, the 6th respondent who is the employer of respondents 1-5 did not complain to this honorable court about any difficulty it encountered while complying with the order neither did it file any formal application in an attempt to alter the said order which is still in existence. In conclusion, counsel submitted that the 1st, 2nd, 3rd, 4th, 5th, & 6th respondents had constructive knowledge of the existence of the order since the same advocates who are in this matter were present when the order of injunction was being granted by the court.

20 *Whether the respondents committed contempt of the order*

Counsel relied on the affidavit deposed by Ms. Ginamia who stated that after the issuance of the court injunction by this court, the first 5 respondents held a meeting on the 24th day of October 2019 in which they replaced Mr. Geria Victory with the 5th respondent as a new signatory to the account of St. Kizito Ediofe Orphan Primary School. Counsel submitted that such an act of contempt altered the status quo that was in place at the time of issuance of the order of injunction thus paving the way for the withdrawal of colossal sums of money from the school bank account, which was later used to erect a school block on the suit land.

Counsel argued that whereas the order of injunction was not directed at the 7th & 8th respondents, they were both served with copies of the court order.



Counsel further stated that in the respective replies of the 1st, 2nd, 4th & 6th respondents, none ever denied being an agent of the 6th respondent or participating in the construction of the building block on the school compound, an act that constitutes contempt of court. In conclusion, counsel relied on the case of **Barbra Nambi Vs Raymond Lwanga; HCMA No. 0213 of 2017** where court held that;

5 *“A party who knows of an order, regardless of whether in view of that party, the order is null or void, regular or irregular cannot be permitted to disobey it by reason of what that party regards the order to be. It is not for that party to choose whether to comply with such order. The order must be complied with in totality in all circumstances by the party concerned subject to the party’s right to challenge the order in issue..... It is the responsibility of and duty of the party concerned, in case that party for some genuine reason finds compliance with the court order*
10 *not possible to appropriately move court issuing the order and bring to the attention of court the reasons for non-compliance”.*

Remedies available

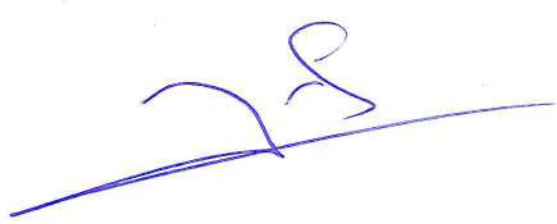
Counsel submitted that contempt of court could not be ignored because it goes back to the root of the very existence of and authority of this court in particular and the justice system as a whole. Counsel
15 relied on **Nambi Barbra** case (supra) where court cited the case of **Stanbic bank (U) Ltd & Anor Vs Commissioner General of URA** stating that; “Civil contempt is punishable by way of committal or sequestration..... civil contempt may also be punishable by a fine or an injunction. Counsel concluded by praying to this court to send a stern warning to other would-be culprits of the consequences of being in contempt of court.

20 ***1st, 2nd, 3rd, 4th, 5th & 6th joint submissions***

In their submissions, counsel for the respondents first raised 2 preliminary points of law in relation to the competency of the application before this honorable court.

Preliminary points of law

25 Firstly, counsel for the respondents argued that the applicant’s affidavits deposed by Mary Assumpta Ginamia and Geria Victory are defective by virtue of the fact that the said deponents lack the capacity to bring any action in the names of Don Dino Institute of Orphan Care Limited. Counsel added that there is no resolution of the board of directors leading to such an action against the respondents and as such, the pleadings before this court suffer from lack of focus. He further submitted that particularly the



pleadings as well as the submissions of the applicants are defective as they offend company law rules and procedure.

Counsel added that it is trite law under Table A, Article 80(1) of the Companies Act 2012 that clearly states that the business of the company shall be managed by the directors and may exercise all such powers of the company as are required to be exercised by the company subject to Table A, Article 80(1) of the companies Act 2012.

Counsel argued that based on the above laws, the purported applicants ought to have been duly appointed through powers of attorney to represent the company by the board of directors through a board resolution. However, counsel added that no certified board resolution and certified copies of powers of attorney were attached to the affidavits of the purported representatives of the applicant.

Premature proceedings

Counsel submitted that the application as well as the suit before this court is premature since as a rule, for a party to commence contempt of court proceedings required that the parties must have been the same parties in the prior determined main suit. Counsel further stated that according to the matter filed by Don Dino Institute for Orphanage Care Limited filed a suit vide High Court Civil Suit No. 0021 of 2019 and an application for a temporary injunction vide Miscellaneous Application No. 0064 of 2019 all against the registered trustees of Arua diocese the respondent. Counsel added that the 1st, 2nd, 3rd, 4th and 5th respondents have never been parties to either the main suit or the application for a temporary injunction and as such the said order therefrom are not binding to them.

Whether the 1st, 2nd, 3rd, 4th, 5th, & 6th respondents acted in contempt of court.

Counsel submitted that the application does not state any actions or omissions of contempt as alleged by the applicant. Counsel added that the order dated 21st October 2019 was clear with respect to maintenance of the status quo on the suit property by the parties; that the parties maintain peace if mediation fails but none of the alleged grounds warrants this a particular application. Counsel relied on case of *Asiimwe Nkamushaba Vs Makerere University; HCMA 0709/2018* cited with approval the case of *R Vs Breamblevale (1969) 1 CH 128* where it was held that; "It is also trite law that in cases of the alleged contempt, the breach of which the alleged contemnor is cited must not only be precisely defined but also proved to the standard which is higher than proof on the balance of probabilities, but not as proof beyond reasonable doubt".



Counsel further submitted that the applicant failed to prove their case as per the evidential burden under Section 101 of the Evidence Act.

5 Furthermore, counsel stated that appreciating the terms of the orders is crucial as to determine whether there was compliance or disobedience with the same. Counsel relied on paragraph 9 & 10 of the 4th respondent's affidavit in reply which stated that the constructions and withdrawals of the money are for the good cause of maintaining the learning institute. Counsel further argued that the withdrawals of money were in respect of St. Kizito Ediofe Orphans Primary School and not Don Dino Orphanage institute limited whose suit land is the status quo as stated in paragraph 6 of the 5th respondent's affidavit in reply.

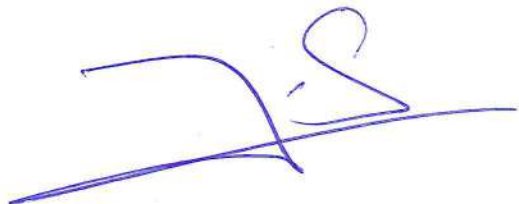
10 In conclusion, counsel submitted that the application in totality is an afterthought, façade to conceal some truth and that the applicant has not satisfied the enabling law in proving its case thus praying to this court for a dismissal of the same.

Submissions on behalf of the 8th respondent.

15 Counsel argued that not only was the 8th respondent not a party to the proceedings in Miscellaneous Application No. 0064 of 2019, the applicant did not take any steps to inform them of the order that was given by the honorable court thus it would be irrational for the applicant to expect compliance from the 8th respondent. Counsel further submitted that the 1st, 2nd, 3rd, 4th, & 5th respondents are customers of the bank and as such enjoy a customer-banker relationship with the 8th respondent that the applicant is not privy to. Counsel relied on **Stanbic Bank Uganda Ltd vs Uganda Crocs Limited; SCCA No. 20 004 of 2004** where it was stated that, "*Legal principles which govern the relationship between a bank and its customer are well settled. The duty of a bank is to act in accordance with the lawful requests of its customer in normal operation of its customer's account....*"

25 Counsel submitted that the 8th respondent acted in accordance with the lawful requests of its customer which were expected to be followed by the bank unless a court order existed compelling a banker not to honour its customer's mandate. Counsel added that no such order was addressed to the 8th respondent in relation to its customer's accounts hence it is evident that the applicant's case against the 8th respondent is frivolous, vexatious and an abuse of court process and prayed for a dismissal of the same with costs.

Court's analysis



I have carefully perused the submissions of all parties, which I have considered in determination of this application. However, I will first deal with the preliminary points of law raised by the respondents.

Preliminary points of law

It is trite law that preliminary objections if raised must be done at the outset of the trial before the merits of the trial are dealt with except that those objections so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of the court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing. (See: Order 6 rule 28 of the Civil Procedure Rules, **Mukisa Biscuit Manufacturing Ltd Vs West End Distributors Ltd [1969] EACA**).

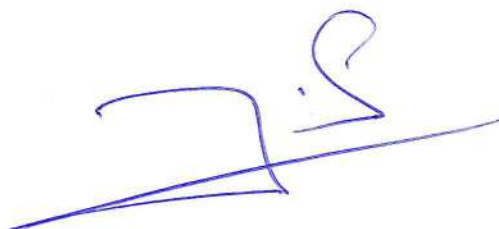
Both counsel for the respondents raised preliminary points of law, which I shall deal with independently.

Lack of capacity to lodge the application.

As per counsel for the respondent's submissions, both Mr. Geria Victory and Ms. Mary Assumpta Ginamia did not possess the capacity to depose the supplementary affidavit and affidavit in support of the motion respectively as well as lodge the application in this honorable court on behalf of the applicant because no proof was attached to indicate their positions with the applicant. Counsel also relied on Table "A", Articles 80(1), 81(1) & 95 of the Companies Act which summarily indicate which personnel has responsibility of running a corporation.

Order 29 rule 1 of the Civil Procedure Rules states that, *"In a suit by or against a corporation any pleading may be signed on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case"*.

In the instant case, Ms. Mary Assumpta Ginamia deposed the affidavit in support as the manager of the applicant and Mr. Geria Victory deposed the supplementary affidavit as the coordinator of the activities of St. Kizito Ediofe Orphans Primary School with the applicant and as the chairperson, Parent Teachers Association of the school. By virtue of holding the above said positions, Ms Mary Assumpta Ginamia and Geria Victory fall under the category of *"other principal officer"*. The term principal officer literally means a person who has been either appointed in the highest rank of a corporation or otherwise given that position I can rightly conclude that Ms. Mary Assumpta Ginamia and Geria Victory had powers to depose affidavits on behalf of the applicant.



Secondly, as far as lodging this application is concerned, Dino Institute brought this application before this court for Orphan Care Limited, which is a company, limited by guarantee. By virtue of its incorporation on the 17th day of December 2001, the applicant gained legal personality and as such can sue or be sued in its own capacity See; *Salomon Vs A. Salomon & Co. Ltd [1896] UKHL*.

5 In the result, this preliminary objection is overruled.

Premature proceedings

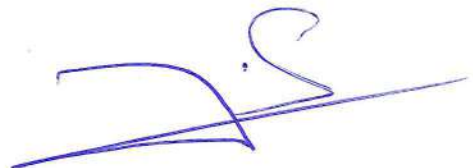
10 It was counsel for the respondent's argument that for a party to commence contempt of court proceedings, it required that the parties must have been the same parties in the prior determined main suit. It was argued by both counsel that 1st, 2nd, 3rd, 4th, 5th, & 8th respondents were not parties to HCMA No. 0064 of 2019 wherein the order to maintain the status quo was granted and as such claim that they were unlawfully made parties to the current application before this court.

15 Based on HCMA No. 0064 of 2019, the applicant prayed for an order of a temporary injunction to be issued against the respondent then (the Registered Trustees of Arua Diocese), its agents, employees, assignees, or any person deriving title or interest from dealing in any way with any of the properties or interfering in the management of any projects or receiving any proceeds therefrom or evicting the applicant's managers and beneficiaries from the suit premises including; St. Kizito Ediofe Orphan Primary School, St. Assumpta Health Centre III and Don Dino Orphanage.

20 It is trite law that he who acts through another acts himself hence, the question before this court is whether the 1st, 2nd, 3rd, 4th, 5th, & 8th respondents are agents or employees of the registered trustees of Arua Diocese or do they derive any title or interest as a result of dealing with any of the properties aforementioned above. An agent as per the black's law dictionary is defined to mean, *"One who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the latter, and to render an account of it"*.

25 The Halsbury's Laws of England vol. 1, 4th edition at page 4 states that, *"Whether the relation exists in any situations depends not on the precise terminology employed by the parties to describe their relationship but on the true nature of the agreement or circumstances of the relationship between the alleged principal and agent"*.

According to the affidavits in reply to this application, the 1st respondent stated under paragraph 1 that he is the Acting Vicar General and member of the registered trustees of the 6th respondent, the 4th



respondent stated under paragraph 2 that he is the head teacher of St. Kizito Ediofe Orphans Primary School situated on the land of the 6th respondent, the 5th respondent stated under paragraph 1 that he is a member of the 6th respondent and Mr. Umar Nassif Mubiru who deposed on behalf of the 8th respondent stated under paragraph 1 that he is its legal manager. By virtue of these positions, the 1st 4th 5th respondents can rightly be called agents of the 6th respondent and Mr., Umar Nassif Mubiru agent of the 8th respondent. Because of this relationship with the respondent in miscellaneous application No.0064 of 2019 the respondents can't claim that the order to maintain status quo was not addressed to them since they were not parties to said application and civil suit.

There is no standard rule or law, which requires that for a litigant to commence contempt of court proceedings, the contemnor must have been a party to the previous suit or application. Instead this would be premised on the circumstances of each case and consider the transaction or series of acts of each matter before the court. For there to be contempt of court, a single act/action is enough as long as it is aimed at changing orders of court.

In the instant case according to the affidavit in support of this application, the applicant states a number of actions by the respondents that alter the status quo as it was at the time determined in miscellaneous application no.0064 of 2019.

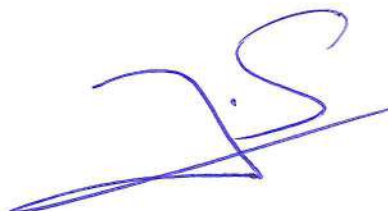
In that regard, I disagree with counsel for the respondents and state that the proceedings before this court are not premature in anyway against the respondents. This objection is also overruled.

Main application

I will therefore proceed and determine the main issue raised as argued by counsel stating; ***whether the respondents acted in contempt of the court order.***

The Halsbury's Laws of England 4th edition vol. 9 at page 3 defines contempt of court in particular civil contempt to be, "***consisting of acts of disobedience to the judgments, orders or other process of the court and involving a private injury. Although a civil contempt is essentially a wrong done to a person who is entitled to the benefit of the order or judgment, it also involves an obstruction of the fair administration of justice and may accordingly be punished in the same manner as a criminal contempt.***"

Position of the law;



Section 98 of the Civil procedure Rules gives the High Court unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the constitution or any other law.(see Article 139 (1) of the constitution of the Republic of Uganda).

5 In case of Jack Erasmus Nsangiranabo Vs Col. Kaka Bagyenda - The Director General Internal Security Organization & Anor; HCMA No. 0671 of 2019, the learned justice stated that, *“the position of the law is that for contempt of court to be found, the following principles have to be established: 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”.*

Existence of a lawful order.

10 According to the evidence on record on the 21st day of October 2019 in the presence of counsel for both sides this court made a ruling while determining Miscellaneous Application No .0064 of 2019 and briefly stated as thus;

“Since this is a matter of public interest, let it be adjourned to 9th December 2019, let the status quo be maintained...”

15 Subsequently an order against the registered trustees of Arua diocese (the respondent then) was extracted on the 5th day of December 2019. As such, there is no doubt that a lawful order existed.

Knowledge of the order

20 In the case of Jack Erasmus Nsangiranabo Vs Col. Kaka Bagyenda-The Director General Internal Security Organization & Anor (supra) it was stated that *“the general principle is that a person cannot be held in contempt of court without knowledge of the court order. A party who knows of an order whether in view of that party, the order is null or valid, regular or irregular cannot be permitted to disobey it by reason of what that party regards the order to be. It is not for the party to choose whether to comply with such order, the order must be complied with in totality.*

25 In the instant case, in their affidavits in reply to this application the 1st 2nd, 3rd, 4thand 5th respondents don’t deny having knowledge of the court order however they state that the construction works of the new school block had started way before the court order but no evidence was brought to this court to that extent.

While in the affidavit in support of this application Geria Victory states that, *“That on the 23rd day of October 2019, the 4th respondent went to him with a Centenary Bank withdrawal slip in Nvara Senior Secondary School,*



asking for his signature to enable the respondents withdraw money from the bank amounting to Ugx. 40,394,068/=. That he declined to sign the withdrawal slip having been briefed that the money was meant for the construction of a new school block and having been aware of the court order barring any change of status quo on the suit land.

5 That a few days later, he found a vehicle, lorry tipper UBD 768Q, blue in colour, bringing materials to the school compound and the construction of another school block had commenced under supervision of the 1st, 2nd, 3rd, 4th, & 5th respondent”

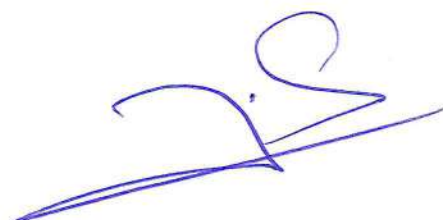
Based on the above evidence, it indicates to this court that the respondents save for the 8th respondent had knowledge of the order granted by the court by virtue of having been represented at the time of the grant by their advocates.

10 Regarding, the 8th respondent, evidence was adduced indicating that the said financial institution had not been served with any order to alert or notify it of the existing court order so as to enable it halt any services to the customer and as such did not have knowledge of the existence of the court order.

Failure to comply with the court order.

15 The applicant's intention of seeking for a temporary injunction was to bar the respondents from interfering in the management of any projects or receiving any proceeds therefrom or evicting the applicant's managers and beneficiaries from the suit premises including St. Kizito Ediofe Orphan Primary School, St. Assumpta Health Centre III and Don Dino Orphanage. Counsel for the 1st, 2nd, 3rd, 4th, 5th & 6th respondents denied the fact that the said respondents failed to comply with the court order and that the applicant had failed to adduce any evidence to that effect. Counsel further argued that the 20 constructions and withdrawals of the monies were for the good cause of maintaining the learning institute. Counsel also added that the said order was in respect of Don Dino Orphanage Institute Limited and not St. Kizito Ediofe Orphans Primary School, which I disagree with since the order, was not in any way specific.

25 In their evidence, counsel for the applicant stated the acts of contempt including; a meeting held on the 24th day of October 2019 in which they replaced Mr. Victory Geria who was a signatory to one of the accounts of the school with the 5th respondent. Counsel added that as such the respondents altered the status quo, which paved way for the withdrawal of colossal sums of money from the bank account to fund the construction of the building block on the school compound.



Status quo means the situation that currently exists. In the case of **Wasswa Biriggwa Sekyonda Vs Tumusiime Festus**; HCMA No. 1344 of 2020 with citation of **Jakisa & Others versus Kyambogo University**; HCMA No. 0549 of 2013 it was stated that, *“status quo denotes the existing state of affairs before a given point in time at which the acts complained of as affecting or likely to affect the existing state of things occurred”*.

As such anything regardless of intention however slight it may be that changes state of affairs as they are amounts to change in status quo. The respondents in their submissions argue that the construction was made for the good of the students. Even then, since it was done in the presence of a court order then it amounts to change in status quo regardless of purpose since it alters the position as was then.

Suffice to say, the evidence in relation to contempt of court adduced is sufficient to conclude that the respondents as noted above did not enforce the order of court. The court cannot hold the 8th respondent in contempt having not had the knowledge of the existing order.

In the result, the respondents failed to comply with the order of court and as such were in contempt of court save for the 8th respondent.

Remedies available.

The applicant prayed for several orders and this court is vested with inherent powers under section 98 of the CPA to grant such orders as may be necessary to meet the ends of justice. The prayers sought for include;

- a) The 1st, 2nd, 3rd, 4th and 5th respondents be arrested and committed to civil prison for contempt of court.
- b) The building and structure constructed on the suit property by or on the directives of the respondents be demolished at the respondents' costs.
- c) The 7th and 8th respondents be ordered to avail to the applicant and court an up to date bank statements of Kizito Ediofe Orphans Primary School from December 22nd 2019 to date.
- d) The respondents be ordered jointly and severally to refund all the monies they withdrew from the bank accounts of St. Kizito Ediofe Orphans Primary School and used to construct the new building on the suit property.

e) The respondents be ordered jointly and severally to pay Ugx 200,000,000/= in general damages to the applicant.

f) The respondents be fined Ugx. 100,000,000/= jointly and severally as sanction for their contemptuous conduct.

5 g) The 7th and 8th respondents be ordered to stop releasing any monies for any development on the suit land from the school bank account to the respondents except for the daily running of the school activities until the final disposal of the main suit.

h) Costs of the application be provided for.

10 The Halsbury laws of England state that civil contempt is punishable by way of committal to civil prison or by way of sequestration. It can also be punishable by way of fine or an injunction against the contemnor. (See also **Stanbic Bank (U) Ltd Vs Commissioner General Uganda Revenue Authority**). This court has already found that the 1st, 2nd, 3rd, 4th, 5th, & 6th respondents' acts amounted to contempt of court having refused to desist from interfering with the management of the properties already under the management of the applicant as noted above.

15 In the circumstances, I decline to order the arrest of the respondents, instead I order them to ensure that they don't temper with the management of the said properties until the main suit has been determined. Secondly, the building structure constructed on the directives of the respondents shall not be demolished, as it would cause a great loss to the properties.

20 This court further issues a declaratory order that the 7th & 8th respondents stop releasing any monies for development on the suit land from the school bank accounts to the respondents until final disposal of the civil suit.


The order to refund the monies withdrawn from the bank and used in construction of the new building shall not be issued since the intention of construction of the block was for the use of the students in the school.

25 In conclusion, regarding damages, no loss has been proved in terms of finances and as such, no damages shall be awarded in that regard. This application is allowed and each party shall bear its costs.

I so order.



Dated and Delivered this 31st day of March 2023.


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Isah Serunkuma

5 JUDGE