

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
MISCELLANEOUS APPLICATION NO. 177 OF 2014
ARISING FROM HIGH COURT CIVIL SUIT 15/2009

NORAH NASSEJJE.....APPLICANT

VERSUS

- 1. TOMUSANGE AMON MUKASA**
- 2. CHRISTOPHER KANAABI**
- 3. KAFUKO NTUYO**
- 4. BAKOLE SIMON**
- 5. HANIFA KUNONAKU.....RESPONDENTS**

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This application was by notice of motion brought under section 33 of the Judicature Act cap 13, section 98 of the Civil Procedure Act, and Order 52 rules 1, 2 & 3 of the Civil Procedure Rules for orders that:-

- a) The respondents be arrested and committed to civil prison for disobedience of the consent judgement as being in contempt of court.
- b) In the alternative the respondents be made to pay the current value of the applicant's property comprised in Block 244 Plot 7757 at Kisugu Namuwongo as at the time of the eviction of the applicant and demolition of her house.
- c) Costs of this application be borne by the respondents.

The application is supported by the affidavit of Norah Nassejje the applicant which repeats the grounds of the application, averring that she was one of the plaintiffs in civil suit no. 15/2009 which was concluded by signing a consent judgement on the 6th day of september 2012. Under the said consent judgement, the applicant was given a plot at Kisugu Namuwongo known as Block 244 Plot 7757. In the same consent judgement, part of the land at Naluvule was bonded as security for legal fees for both counsel in the matter. That the respondents however, in total contempt of the said judgement, connived and deliberately misled the Deputy Registrar and caused him to issue illegal orders to attach the applicant's property at Kisugu Namuwongo known as Block 244 Plot 7757 to pay the 3rd and 4th respondents' taxed costs.

The applicant also avers that pursuant to the order, a warrant of attachment of immovable property was issued attaching the applicant's property which was subsequently sold to a one Hanifa Kubonaku who, with the assistance of the 3rd respondent, procured an eviction order and evicted the applicant's tenants. That the 4th respondent who was the applicant's lawyer had received U.Shs.3,100,000/= (three million one hundred thousand) as legal fees and U.Shs. 650,000/= (six hundred and fifty thousand) for preparation of the title to the suit property but he still acted in contempt of the consent judgement. This was despite the fact that all of the respondents were party to the consent judgement that gave the said property to the applicant and were all aware that the said property was no longer estate property but the applicant's property. The applicant further avers that she lost monthly rent of U.Shs. 860,000/= (eight hundred and sixty thousand) as a result of the eviction.

The 1st respondent, in his affidavit in reply states that he was granted letters of administration with the will annexed jointly with Christopher Kanaabi vide AC 919/2008 but Civil Suit 15/2009 was filed against them by some beneficiaries before they could distribute the estate. A consent judgement was subsequently entered into. That the consent judgement required both counsel and the parties to go to the suit land to identify its boundaries and after that the applicant as beneficiary was to pay the expense of obtaining a title to the said plot. That it was also agreed that part of the land at Naluvule was bonded as security for legal fees of both counsel to the suit. That as required by the consent judgement, both parties visited to identify boundaries for plot 7757 Block 244 on 29/09/2012. That the applicant however never paid her expenses as a result of which the plot remained as part of the estate.

The 1st respondent also avers that the legal fees for counsel remained unpaid upon which the said counsel applied to the Registrar of this court to have their bills taxed, which was done in the presence of all parties to the suit. Subsequently on the administrators' failing to pay the taxed bills, counsel had the file forwarded to the High Court Execution & Bailiffs Division where it was agreed that the suit land be disposed of to offset legal fees for both counsel and other debts. The 1st respondent contends that the sale of the suit land to recover lawyers' fees and other debts was on basis that the said land still remained part of the estate over which they still held powers as administrators, and that the applicant was given adequate time to transfer the property in her names but failed to do so.

The application will be determined along the following issues:-

1. Whether the respondents acted in contempt of the consent judgement of 06/09/2012.
2. What remedies are available to the parties?

Issue 1: Whether the respondents acted in contempt of the consent judgement of 06/09/2012.

Black's Law Dictionary 7th Edition page 313 defines contempt as disregard of or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by

disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or impair respect due to such a body.

In **The Procter & Gamble Company V Kyole James Mutisho & 2 Others HCT 00 CC 135/2012 Arising from CS 329/2011**, Kiryabwire J, as he then was, stated that if a party has a challenge with a court order, he should apply to have it set aside instead of disobeying it. In **Madhvani V Madhvani [1989] 1 KALR 100 (Civil Suit 774/88, Jinja)**, Bahigaine J, as she then was, observed that a court is always concerned that the order it issues is respected. Generally, in case of default, the court acts to enforce obedience of its orders. However, whether the contemner will be punished or compelled to purge his/her contempt will depend upon the precise circumstances which are in question.

In **Halsbury's Laws of England Vol 9(1) at paragraph 492**, it is stated that:-

“....civil contempt is punishable by way of committal or by way of sequestration. The effect of the writ of sequestration is to place, for a temporary period, the property of the contemnor into the hands of the sequestrators, who manage the property and receive rents and profits. Civil contempt may also be punished by a fine or an injunction may be granted against the contemnor...”

In the instant case, the consent judgement to civil suit 15/2009 **Mulumba Joseph Zizinga & 5 Others V Tomusange Amon Mukasa & Anor** partly stated as follows:-

1. *That both parties together with their counsel shall go to Kisugu Namuwongo to identify the boundary of the plot. Thereafter the beneficiary (Norah Nassejje) shall pay her expenses to obtain title to the said plot. This shall be done by 29/09/2012 at 10.00 am.*
2. *That the parties have agreed that part of the land in Naluvule has been bonded as security for legal fees for both counsel to the suit.*
3. *.....*
4. *That the administrators of the deceased's estate shall ensure that all beneficiaries shall obtain their respective titles as soon as possible upon payment of all costs of processing the same.*

The parties to the application do not, in their affidavit evidence, dispute the existence or wording of the said consent judgement. It is clear from clause 1 and 4 of the said consent judgement, annexed as **A** the applicant's supporting affidavit, that the administrators of the estate were to allocate or distribute to the applicant the land comprised in plot 7757 Block 244 on 29/09/2012 after identifying the boundaries for the said land, and after the applicant had paid her expenses to obtain title to the said plot by 29/09/2012 at 10.00 am.

The 1st respondent states in paragraph 6 of his affidavit in reply that while the visit to the suit land was conducted as required in the consent judgement, the applicant never paid her expenses. The 1st respondent attached a copy of an inventory filed by him vide the consent judgement in

Civil Suit No.15/2009, annexed as C to his affidavit in reply. It shows on page 1 that Norah Nassejje (applicant) had not fulfilled her financial obligations so as to get the title. The inventory was filed in this court on 16th April 2013.

The applicant does not show in her affidavit evidence that she fulfilled the condition required of her in the consent judgement, that is, paying her expenses to obtain title to the said plot by 29/09/2012 at 10.00 am, which would have in effect enabled the administrators of the estate to effect the transfer of the land to her. She averred in paragraph 11 of her supporting affidavit that her counsel in the matter, who is also the 4th respondent in this application, had received U.Shs.3,100,000/= (three million one hundred thousand) as legal fees and U.Shs. 650,000/= for preparation of the title to the suit property. The relevant receipts were not annexed to her affidavit, but were instead attached to her counsel's written submissions, which tantamounts to giving evidence from the Bar. There is nothing in her evidence however to show that the money was received by or paid to the administrators of the estate or their counsel to process the title as required in the consent judgement. I therefore agree with the respondents' counsel's submissions that the applicant has not shown court what steps she took to have the suitland demarcated and transferred to her as was required in the consent judgement.

The applicant's counsel submitted that failure to pay fees to cause a transfer of the land into the applicant's names did not in any way justify the respondents' variation of the court order. He also submitted in rejoinder that the respondents should instead have adopted the procedure of varying the consent judgement by procuring a court order to that effect.

In my considered opinion, I do not find that any court order was varied, for, if that was to be the position, which it is not, then the applicant's not fulfilling what was required of her in the consent judgement would also be taken to be a variation of the consent judgement. The consent judgement contained conditions to be observed by the parties. In particular, the administrators' transferring the suit land to the applicant was conditional on the applicant paying for the transfer expenses by a specified date which was not done by the applicant. This rendered the suit land to still be part and parcel of the undistributed estate, contrary to the applicant's counsel's submissions in rejoinder that the suit property had been distributed in the instant case. The suit property was yet to be transferred to the applicant on the terms agreed on in the consent judgement. In that sense it cannot be said to have been distributed.

There is no evidence adduced by the applicant to show that the applicant fulfilled the conditions required of her in the consent agreement. This, in effect, meant that the suit land still remained part of the undistributed estate. Section 180 of the Succession Act cap 162 vests all property of a deceased person in his or her legal representative, who in this case are the 1st and 2nd respondents. The adduced evidence shows that the orders for attachment and sale of the suit property for settlement of both counsel's taxed bills of costs were issued on 29th August 2013. By that time the applicant had not paid to the 1st respondent the money to effect transfers of the suit land to

herself, and the time within which she should have effected the said payments had expired by over a year.

The Succession Act imposes various duties on the deceased's legal representatives as administrators of estate, including paying legal expenses for judicial proceedings necessary for administering the estate out of the estate assets and paying off debts. This must be done within time limits since the Act requires inventories of the estate to be filed within six months of being granted probate or letters of administration, and final accounts of how the estate was administered within a year after the said grant, unless court orders otherwise. The Act stipulates various offences and penalties against administrators who fail to observe their duties under the Act.

In the foregoing circumstances, I do not find anything in the adduced evidence to hold the 1st 2nd or 3rd respondent as having done anything in contempt of the consent judgement.

Issue 1 is answered in the negative.

Issue 2: What remedies are available to the parties?

It is already a finding of this court that the respondents are not in contempt of any consent order issued in connection with HCCS 15/2009. To that extent I decline to grant the applicant the remedy of having the respondents committed to civil prison.

The applicant had however prayed, in the alternative, that the respondents be made to pay the current value of the applicant's property comprised in Block 244 Plot 7757 at Kisugu Namuwongo as at the time of the eviction of the applicant and demolition of her house.

The respondents, though they opposed this application, have not denied the applicant's interest as a beneficiary to the estate of her father, the late Justine Tamasange, or the existence of the consent judgement for that matter. The applicant's delay in fulfilling the conditions she agreed to in the consent judgement does not in any way disentitle or disinherit her from her late father's estate. This court is enjoined under section 33 of the Judicature Act to grant absolutely or on such terms and conditions it thinks just all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.

In the given circumstances, and in the interests of justice, the applicant's alternative prayer that the respondents be made to pay the current value of the applicant's property comprised in Block 244 Plot 7757 at Kisugu Namuwongo as at the time of the eviction of the applicant and demolition of her house is granted.

Each party will bear their own costs.

Dated at Kampala this 15th day of June 2015.

Percy Night Tuhaise.

Judge.