

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[FAMILY DIVISION]
MISCELLANEOUS APPLICATION NO. 774 OF 2022
(ARISING FROM MISC. APPLICATION NO. 445 OF 2022)
(ARISING FROM CIVIL SUIT NO. 005 OF 2018)
(ALL ARISING FROM ADMINISTRATION CAUSE NO. 1461 OF
2017)

1.MUSOKE HENRY	} APPLICANTS
2.TAMALE GODFREY		
3.NALUGYA AIDA		
4.MABERESI KIGGUNDU		

VERSUS

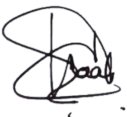
SAMSON SSALI RESPONDENT

RULING BEFORE: HON. LADY JUSTICE CELIA NAGAWA

1.0 Introduction

1.1 This Ruling relates to an application filed by Notice of Motion under Section 98 of the Civil Procedure Rules, Cap. 71 and Order 52 Rules 1,2 & 3 of the Civil Procedure Rules SI 71-1 against the Respondent seeking orders that;-

- a)The respondent be found to be in contempt of the court order dated 14th July, 2022 issued under Miscellaneous Application No. 445 of 2022.**
- b)The respondent be ordered to purge the contempt by immediately surrendering the three (3) Certificates of title**




belonging to the estate of the late Kibikyo Suleman to this Honorable Court.

- c)The respondent be further punished by imposition of a penalty as court may deem fit.**
- d)The respondent be ordered to pay UGX. 5,000,000/= as damages caused to the applicants.**
- e)An order doth issue against the respondent restraining him for any further dealings with the estate of the late Kibikyo Suleman.**
- f) The respondent being contemnor, in addition to the above, be committed to civil prison for a period of this Honorable Court deems fit.**
- g)Costs of this application be paid by the respondent.**
- h)Any other orders be given as this Honorable Court may deem fit.**

1.2 In support of this application, the 1st Applicant, Musoke Henry, filed an affidavit in support of the application dated 15th August, 2022 this was accompanied by an authorization to swear an affidavit on behalf of the 2nd and 3rd Applicants dated 15th August, 2022.

1.3 The Respondent, Ssali Samson filed an affidavit in reply dated 12th October, 2022.

1.4 The application was filed together with written submissions and in reply the respondent filed an affidavit in reply together with written submissions on 1st November, 2022. I have carefully perused the record, evaluated and considered all pleadings together with the written submissions of both counsel in determination of this application.



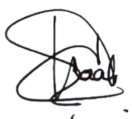
2.0 Representation

2.1 The application was presented by B Edward & Co. Advocates together with Counsel Alice Mwebaza while the affidavit in reply was filed by John F. Ssenogooba & Co. Advocates.

3.0. Applicants grounds for this application.

3.1 The grounds of this application are summarized in the Notice of Motion and also set out in an affidavit sworn in support of the application by Musoke Henry (one of the administrators of the estate of the late Kibikyo Suleman (hereinafter referred as “the deceased”). Briefly the grounds are that;

- a) On 14th July, 2022, this Honorable Court granted an order directing the respondent to surrender three (3) certificates of title belonging to the estate of deceased to this Honorable Court within a period of one month from the said date.
- b) The order was extracted and served on the respondent’s counsel and the respondent is aware of the existence of the said order of court.
- c) The respondent has not surrendered the three (3) certificates of title belonging to the estate of the deceased.
- d) The respondent’s acts of disobeying the court order are contemptuous to this Honorable Court.
- e) The orders sought in this application ought to reassert its authority over errant individuals like the respondent as regards its orders.
- f) The respondent having demonstrated ridicule to this Honorable Court and its orders and in so doing subjected the applicants to



inconvenience which ought to be punished by being committed to civil prison, pay general damages of UGX 5,000,000/- to the Applicants and a fine of UGX 5,000,000/-.

4.0 **The Respondent's Cases.**

4.1 The Respondent opposed the application in his affidavit in reply briefly stating as follows:

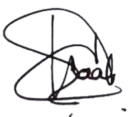
- a) The application is totally devoid of merit, an abuse of the legal process and its only aim is to satisfy the egotistical disposition of the applicants.
- b) When the order was made against the respondent, he applied for review of the judgment vide Miscellaneous Application No. 766 of 2022, applied for stay of execution vide Miscellaneous Application No. 764 of 2022 and applied for an interim stay of execution vide Miscellaneous Application No. 765 of 2022.
- c) The applicants have not come to court with clean hands for the following reasons; (i) fraud (only the 2nd and 3rd applicants signed the authority authorizing the 1st applicant to depone the affidavit in support of the motion); (ii) obstruction of justice (when court granted letters of administration on 29th April 2022, it set in place a process which can only be blocked by a proper legal process (plaint) and not by affidavit evidence); (iii) arresting has no place in administration; (iv) the estate has already been distributed and the beneficiaries have already received their land titles.
- d) The application talks of three land titles whose block and plot numbers are not mentioned and which are no longer in existence



making the application academic and not of relevance to the present situation of the estate.

4.2 The 1st applicant filed an affidavit in rejoinder wherein he among others stated that;

- a) The respondent in his affidavit in reply to Miscellaneous Application No. 445 of 2022 in which court directed the respondent to produce the 3 certificates of title in court, the respondent never mentioned that the titles had been subdivided or lodged in the land registry.
- b) The 1st, 2nd and 3rd Applicants have never signed transfer and mutation forms and a criminal case has since been reported against the respondent for forgery and uttering false documents at Kira Police Station vide SD REF 52/30/2022 and investigations are ongoing.
- c) No minutes of the alleged family meetings are attached to the respondent's affidavit in reply.
- d) When letters of administration were granted, the respondent chose to distribute the estate of the deceased as he so wished and even illegally caused subdivisions of the land.
- e) When the applicants detected the illegal and fraudulent moves by the respondent, they rushed to court to direct the respondent to produce the title in court for further guidance but the respondent has not done so.
- f) The respondent has given himself 6 certificates of title, gave his lawyers 4 acres of land comprised in Plots 1571, 1598 and 1644 and more 0.50 acres while some of the rightful beneficiaries of the



estate of the deceased are being evicted from the pieces of land which would be their shares of the estate.

e) The respondent has since sold off plots of land and money put to his personal gains.

5.0 Brief Background

5.1 The Applicants and Respondent are all administrators of the estate of the late Kibikyo Suleman through Letters of Administration granted by this Honorable Court on 28th April, 2022 vide HCT-00-FD-AC-1461-2017.

5.2 The Applicants filed Miscellaneous Application. No. 455 of 2022 in this Honorable Court seeking for an order directing the Respondent to surrender 3 certificates of title belonging to the estate of the deceased to this Honorable Court. The said order was issued by this Court on 14th July, 2022 directing the Respondent to surrender three (3) certificate of titles of the estate of the late Kibikyo Suleman to this Honorable Court within one month from 14th July, 2022 but the Respondent has not complied.

6.0 Issues for determination by Court.

There are two issues for court's determination namely;

- i. Whether the Respondent is in contempt of the court order issued vide Miscellaneous Application No. 445 of 2022?
- ii. What remedies are available to the Applicants?

6.1. Submissions for Counsel for the Applicant.

6.1.1. Counsel for the Applicant submitted that the Respondent should be held liable for contempt of a court order issued by this Court on 14th



July, 2022 directing him to surrender three (3) certificates of title to this Honorable Court within a period of one month (1) from the said date.

6.1.2. He submitted that the order was extracted and served upon the Respondent's counsel and by a letter dated 15th August, 2022 from the Respondent's lawyers it is interpreted that the said letter is intended to inform the Applicants of the Respondent's unwillingness to abide by this Court's Orders.

6.1.3. The applicants relied upon Section 98 of the Civil Procedure Act, Cap. 71 which gives this court inherent powers to make decisions which are pertinent to the ends of justice and cited the cases **Jack Erasmus Nsangiranabo vs. Col. Kaka Bagyenda- the Director General Internal Security Organisation and the Attorney General of Uganda, Miscellaneous Application. No. 671 of 2019; Semanda David & 2 Ors Versus No. K2011 Kahweebwa Geoffrey & Anor, Miscellaneous Application. No. 1625 of 2016 and Jane Sempebwa & Anor vs. Ndibalekera Magdalena Miscellaneous Application No. 176 of 2019** which lays out the following principles with regard to contempt of court for court to establish;

- i) Existence of a lawful order
- ii) Potential contemnor's knowledge of the order
- iii) Potential contemnor's failure to comply, that is, disobedience of the order.



6.2. Submissions of Counsel for the Respondent

- 6.2.1. Counsel for the Respondent submitted that the preliminary objections in the Respondent's affidavit in reply are not responded to which means that the Applicants concede to the same.
- 6.2.2. He further submitted that before the administrators of the estate of the deceased were selected, several meetings were held wherein it was agreed on how the land was to be distributed. A firm of surveyors, Kagomi Property Consultants studied the situation on ground, came up with a blue print and on 29th April 2022, the Applicants signed succession of death assurance of titles and mutation forms and are therefore estopped from denying the documents.
- 6.2.3. He also argued that when letters of administration/probate are issued, they create some sort of contract with the court and the beneficiaries.
- 6.2.4. Counsel for the Respondent also raised various objections to wit;
- i) The application which led to the grant of the order was a nullity, fundamentally defective and of no legal effect since it offended Order 1 Rule 12 (1) of the CPR.
 - ii) Mabelesi Kigundu (4th Applicant) never signed the authority for the 1st Applicant to depone an affidavit on his behalf.
 - iii) The Applicants cannot approbate and reprobate by denying the succession of death assurance of titles and mutation form they signed on 29th April 2022.



7.0. Determination of this Application

7.1. The term "contempt of court" has been defined in the case of **Re Ivan Samuel Ssebadduka, Contempt proceedings arising from Presidential Election Petition No.1 of 2020**, which quoted with approval the case of **Johnson vs. Grant SC 1923 SC 789 at 790** in which Lord President (Clyde) inter alia, explained it to mean:

".....An offence which consists in interfering with the administration of the law; in impeding and perverting the course of justice. It is not the dignity of court which is offended - a petty and misleading view of the issues involved- it is the fundamental supremacy of the law which is challenged."

7.1.1. The Court went on to quote the case of **Morris vs. Crown Office [1970] 1 ALL ER 1079 at 1087** where Salmon LJ stated that:

"The sole purpose of proceedings for contempt is to give our courts the power to effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented. This power to commit for what is inappropriately called "contempt of court" is sui generis and has from time immemorial reposed in the judge for the protection of the public."

7.1.2. Halsbury's Laws of England (Volume 9 (1) Reissue) 1 classified contempt into two; criminal contempt and contempt in procedure, otherwise known as civil contempt.



7.2. In this instant application, I will restrict myself to civil contempt which consists of disobedience to the judgment, orders or other process of court and involving a private injury.”

7.2.1. Section 98 of the Civil Procedure Act, Cap. 71 further enjoins this Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.

7.2.2. The power of court to determine matters of contempt is provided for under Article 28 (12) of the Constitution of the Republic of Uganda. The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice.

7.2.3. In determination of this application, the pre-conditions set out on contempt must be satisfied before a court can hold a respondent in contempt.

7.3. Existence of a lawful order.

7.3.1. The facts at hand show the existence of a lawful order issued on 14th July, 2022 vide Miscellaneous Application. No. 445 of 2022 (Arising out of Civil Suit No. 005 of 2018 and arising from Administration Cause No. 1461 of 2017) instructing the Respondent to surrender three certificates of title belonging to the estate of the late Kibikyo Suleman to this Honorable Court within one month from the date thereof and no costs awarded for the application since the parties are administrators of the estate.

7.4. Knowledge of the Order



7.4.1. The abovementioned order was issued in the presence of Mr. Sengooba John F., counsel for the Respondent.

7.4.2. Further, in a letter dated 15th August, 2023 referenced K/GEN/2022, Counsel for the Respondent informed Counsel for the Applicant as hereunder:

“We act for the above named respondent. By an order of court dated 14th July 2023 (annex “A”), our client was ordered to deposit 3 land titles in the name of his late father in court. Our client, though he never attended court, clearly understood the order. However, it seems your clients have adopted a holier than thou attitude and have done the following: -

- (i) Repeatedly rang him at odd hours informing him about the order.*
- (ii) Threatened to have him arrested by the police if he did not comply.*

...Furthermore, they should know that court has an elaborate procedure in which court orders are executed...Furthermore, we wish to inform you that our client was dissatisfied with the order. He has since filed the following applications: -

- (i) Misc. Appn. No. 766 of 2022 for review.*
- (ii) Misc. Appn. No. 764 of 2022 for stay of execution.*
- (iii) Misc. Appn. No. 765 of 2022 for an interim order of stay of execution...”*

7.4.3. The above letter confirms without doubt that the Respondent had knowledge of the order. Also having filed all the above mentioned applications for review, stay of execution, and interim stay of



execution, it is clear that the respondent was very much aware of the order

7.4.5. Similarly, under Paragraph 6 of his affidavit in reply, the respondent admits that he had knowledge of the order.

7.5. The contemnor's ability to comply.

7.5.1. The Respondent under paragraph 7 (iv) (b) of his affidavit in reply states that there is no way the land titles which have already been mutated (changed) can be deposited in court when at the time of the order they had already been deposited in the land registry.

7.5.2. Nothing stopped the Respondent from going to the land registry and retrieving the certificates of title for purposes of complying with the court order. He therefore had the ability to comply but simply chose not to comply.

7.5.3. Further, the Respondent has since lost the Applications for review, stay of execution and interim of stay of execution but has still refused to deposit the certificates of title in court as ordered.

7.6. The potential contemnor's failure to comply.

7.6.1. The Court order was issued on 14th July, 2022 by his Lordship Hon. David Matovu directing the respondent to surrender three (3) certificates of title belonging to the estate of the late Kibikyo Suleman to this Honorable Court within one month from the date therefore.

7.6.2. It is now over a year and the Respondent has not complied with the order of court. The Respondent has raised all sorts of excuses to wit;



when the order was made against him, he applied for review of the judgment vide Misc. Application. No. 766 of 2022, applied for stay of execution vide Misc. Application. No. 764 of 2022 and applied for an interim stay of execution vide Misc. Application. No. 765 of 2022; the applicants have not come to court with clean hands; the estate has already been distributed and the beneficiaries have already been given their land titles; the application talks of three land titles whose block and plot numbers are not mentioned and which are no longer in existence making the application academic and not of relevance to the present situation of the estate.

7.6.3. It is worth noting that the Respondent has lost all the above applications but has still not deposited the three certificates of title in court as ordered.

7.6.4. Also in paragraph 7 (iv) (b) of the Respondents affidavit in reply, he states that there is no way the land titles which have already been mutated (changed) can be deposited in court. He further states that the land titles at the time of the order had already been deposited in the land registry.

7.6.5. It is very clear from the above that the Respondent is aware of the specific three land titles he was supposed to deposit in this Honorable Court. Further the Respondent has not provided this Honorable Court with proof that he attempted to withdraw the certificates of title from the land registry to enable him comply with the court order or even provided any proof to show deposit of the land titles with the land registry.

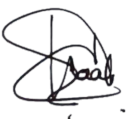


7.6.6. In the Supreme Court case of **Betty Kizito vs. Dickson Nsubuga & 6 Ors, Civil Application No.25 & 26 of 2021 (Arising from Civil Appeal No. 08 of 2018)**, it was stated that;

“The remedies granted by court to correct wrongs occasioned to the successful litigant need to be treated with the seriousness they deserve. Litigants cannot be permitted the discretion to choose which orders to comply with and how to comply with the said orders. To allow court orders to be disobeyed would be to stride the road towards lawlessness and the risk of derailing the rule of law. A stitch in time saves nine. This is so true regarding the rule of law. If violations of court orders continue to go unpunished, then we run the risk of reversing the gains we have made towards respecting the sanctity of court orders, indeed, is what amounts to contempt of court. We therefore agree that the respondents acted contemptuously not simply towards a court order but to court and the administration of justice in general.”

7.6.7. Similarly, in **T. N. Gadavarman Thiru Mulpad v Ashok Khot and Anor** [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and

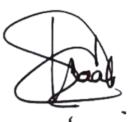


protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

7.6.8. As such, the Respondent has had knowledge of the existence of the court order issued in Miscellaneous Application No. 445 of 2022. The reason being and as rightly stated that he filed Miscellaneous Application No. 766 of 2022 on review of the judgment, he applied for stay of execution vide Misc. Application No. 764 of 2022 and also applied for an interim order vide Misc. Application No. 765 of 2022 among other applications on court record in reference to the matter. These applications are reflected under paragraph 6 (i) through (iii) of his affidavit in reply. Against that background the respondent has never complied with the court order and no sufficient reason has been given as to why he took that route of non-compliance with the court order.

7.6.9 The power to punish for contempt is an important and necessary power for protecting the cause of justice and the rule of law, and for protecting the authority of the court and the supremacy of the law. In the Scottish case of **STEWART ROBERTSON VS HER MAJESTY'S ADVOCATE, 2007 HCAC63, Lord Justice Clerk** stated that:

“ contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”



7.7.0 The learned Judge further stated that:

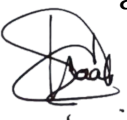
“The power of the court to punish for contempt is inherent in a system of administration of justice and that power is held by every judge.”

7.7.1 A Court order is about preserving and safeguarding the rule of law. It is about assuring a party who walks through the justice door with a court order in his hands that the order will be obeyed by those to whom it is directed.

7.7.2 The respondent seems to have been adamant in adherence with the court order. For the foregoing reasons, I find that the respondent is in contempt of the court order issued on 14th July, 2022 and he is therefore punishable. The respondent is hereby committed to civil prison for a period of six (6) months immediately.

8.0 Issue 2. What remedies are available to the parties?

8.1 The Applicants prayed for general damages. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the Respondent/defendant. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. General damages must be pleaded. In the case of **Assist (U) Ltd Versus Italian Asphalt & Haulage & Anor. HCCS 1291 of 1991**. Inconvenience was held to be a form of damage. The Respondent has already used the grant at the detriment of the applicants by selling some of the land, failing(ed) to distribute the estate of their late Kibikyo Suleman and apportioning himself 6 acres and his lawyers 4 acres of land at the expense of the beneficiaries, a



fact the respondent did not deny. I take cognizance of the actions of the respondent most especially the displayed arrogance despite the inconvenience suffered by the applicants. This would entitle the applicants to general damages as beneficiaries to the estate. I would in the circumstances award general damages in the sum of UGX. 20,000,000/=

9.0. Conclusion

9.1. Accordingly, this application succeeds. The application is hereby allowed with the following orders;

1. The Respondent is in contempt of a Court order issued on 14th July, 2022 vide Miscellaneous Application No. 445 of 2022.
2. The Respondent is committed to civil prison for 6 months for his contemptuous actions.
3. The Court Order issued in Miscellaneous Application. No. 445 of 2022 (Arising out of Civil Suit No. 005 of 2018 and arising from Administration Cause No. 1461 of 2017) is still in existence until fully implemented by the Respondent.
4. The applicants are awarded general damages in a sum of UGX. 20,000,000/=.
5. The respondent shall bear the costs of this application.

I so Order.

Dated, signed and delivered by email this 27th day of September, 2023.



**CELIA NAGAWA
JUDGE**