

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[FAMILY DIVISION]
MISCELLANEOUS APPLICATION NO.1198 OF 2023
(ARISING FROM EXECUTION MISC. APPLN NO.08 OF 2023)
(ARISING FROM DIVORCE CAUSE NO.068 OF 2019)
JULIET KICONCO :.....: APPLICANT

VERSUS

- 1. GEOFFREY MUCUNGUZI**
2. KITATA IBRAHIM
3. SP LORIKA EMMY:.....RESPONDENTS

RULING: BEFORE HON. LADY JUSTICE CELIA NAGAWA

1.0 Introduction.

1.1 This ruling relates to an application brought by Notice of Motion under Section 33 of the Judicature Act, Cap.13, Section 98 of the Civil Procedure Act, Cap.71 and Order 52 Rules 1 and 3 of the Civil Procedure Rules S.I. 71-1 seeking for orders that;

- a) The Respondents jointly and or severally be found in contempt of the warrant of attachment order dated 21st August, 2023 issued in EMA No. 068 of 2023.
- b) An order that the Respondents be arrested, pay a fine and detained in civil prison for being in contempt of a lawful court order/disobeying a lawful court order.

- c) In the alternative, an order that the Respondents pay a fine of UGX 30,000,000/- (Uganda Shillings Thirty Million only) for being in contempt of a lawful court order/disobeying a lawful court order.
- d) The Respondents being contemnors, in addition to the above, be committed to civil prison for a period this Honorable Court deems fit.
- e) Costs of the Application be provided for.

1.2 The grounds of the application are set out in the Notice of Motion and in an affidavit in support thereof deposed by Juliet Kiconco, the Applicant and briefly are that; On 21st August, 2023, the Applicant was issued with a warrant of attachment to attach 150 herds of cattle found hidden in any place belonging to Geoffrey Mucunguzi, 1st Respondent. The warrant of attachment was to expire on 21st September 2023. The Order was extracted and served on the 1st Respondent who was aware of the existence of the Order. During the course of attachment of the cattle, the 1st Respondent resisted the execution by making an alarm and labelling the Applicant and court bailiffs as thieves attracting a crowd. The 1st Respondent became violent and drew out a spear with the intention of spearing the Applicant and threatening to kill her. The 2nd Respondent in his capacity as the Local Council V chairman (LCV) of Lwengo District with the help of the 1st Respondent stayed, obstructed and resisted the execution. The 3rd Respondent in his capacity as the District Police Commander (DPC) and working with the

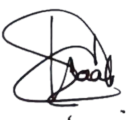


1st Respondent who alerted him to hide the cattle which were the subject of attachment also disobeyed the Court Order even after it was cleared by the Regional Police Commander (RPC) by giving contrary orders to work against it.

- 1.4 The 1st Respondent opposed the Application through an Affidavit in Reply in which he briefly stated that; The 150 herds of cattle do not belong to him as alleged and the true owner is Medius Matambala (his mother) who has filed objector proceedings before this Honorable Court pending determination. The 1st Respondent was not privy to the ex-parte Judgment and Decree affecting his entire family which terms are unconscionable and oppressive in nature. The 1st Respondent filed Civil Applications for stay of execution and extension of time within which to Appeal which are pending before the Court of Appeal. The Application is tainted with lies and falsehoods intended to mislead Court. The allegations are baseless, not backed up with cogent evidence and the mode of execution was marred with violence from the Applicant and her agents. The 1st Respondent was assaulted severely during the execution which compelled him to file a criminal case of assault before police. There is a pending application for setting aside the said Judgment and Decree pending before this Honorable Court, plus several other Civil Applications No.1090, 1089 and 1088 for stay of execution and extension of time within which to Appeal before the Court of Appeal.



- 1.5 The 2nd Respondent, the Chairperson LCV Lwengo District also opposed the Application through an Affidavit in Reply in which he briefly stated that; he had no knowledge of the Court Order since the Court Order had never been served upon him or his office. He never staged any obstruction to the execution. The execution was halted by the Deputy Inspector General of Police. The Applicant through her bailiff having proceeded to do execution at 4:00 a.m. compounded by the failure to inform the authorities, is responsible for the fracas that led to the failure of the execution.
- 1.6 The 3rd Respondent, the DPC Lwengo District also opposed the Application through an Affidavit in Reply in which he briefly stated that; the Order was handled by the Field Force Unit (FFU) of Naguru under the command of SP Mukiibi Karim. He was neither an overseer nor present at the scene and came to learn about the information regarding the execution through a review of his routine reports. The Applicant has not demonstrated any evidence to prove his presence in defeating the execution of the Court Order.
- 1.7 The Applicant filed an Affidavit in rejoinder to the 3rd respondent's affidavit in reply wherein she among others stated that; the 3rd respondent disobeyed the Court Order even after it being cleared by Regional Police Commander (RPC) by giving orders to work against the execution. He had a close working relationship with the 1st respondent who alerted him to hide the cattle which was the subject of attachment. On 13th August




2023, the 3rd respondent was suspended from duty to pave way for smooth disciplinary inquiries.

- 1.8 The Applicant also filed an Affidavit in rejoinder to the 2nd respondent's affidavit in reply wherein she among others stated that; the 2nd respondent with the help of the 1st respondent staged more obstruction and resistance for the execution to ensue. In a letter dated 25th September, 2023, the 2nd respondent challenged the said court order for attachment and sell of 195 heads of cattle in a letter addressed to the Honorable Minister of Security. The attempted execution incident was reported in the New Vision newspaper on 8th September, 2023, wherein the 2nd respondent criticized the police from Naguru for flouting the operation procedure to attach the cows without notifying the local councils, regional police and district security committee. The 2nd respondent blocked the execution of the court order using his office as the LCV of Lwengo and the New Vision papers.

2.0 Representation.

- 2.1 The Applicant was represented by Hashim Mugisha and Isaac Nicholas Aisu of Tumusiime, Irumba & Co. Advocates, the 1st Respondent was represented by Patrick Waiswa of Waiswa & Co. Advocates, the 2nd Respondent was represented by Musa Kabega of Kabega, Bogezi & Bukenya Advocates and the 3rd Respondent was represented by Emmanuel Wamimbi of E. Wamimbi Advocates and Solicitors.



3.0 Issue for court's determination.

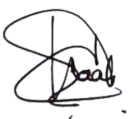
1. Whether the Respondents are in contempt of the Court Order/Warrant of Attachment and if so whether the Respondents ought to be castigated for the said contempt by way of committal to a civil prison and ordered to pay a fine?
2. What remedies are available to the parties?

4.0 Written Submissions.

- 4.1 The Applicant filed in Court her written submissions in resolution of this Application on 4th September, 2023. The 1st Respondent filed in Court his written submissions on 13th October 2023 and the 2nd and 3rd Respondents made oral submissions on 24th October 2023.
- 4.2 I have considered the submissions of all parties and perused the pleadings on court record in the determination of this matter.

5.0 Chronology of events

- 5.1 On 26th April, 2019, the Applicant filed Divorce Cause No.068 of 2019 against the 1st respondent. Judgment was delivered on 15th December, 2022.
- 5.2 On 16th March, 2020, the 1st Respondent filed Miscellaneous Application. No. 148 of 2020 seeking to be allowed to file a reply to the Petition and for the matter to be heard inter parties. The Application was allowed on 14th October, 2020.



- 5.3 On 14th February, 2023 the Applicant filed EMA No. 008 of 2023 which was allowed and concluded on 7th July, 2023.
- 5.4 On 24th February, 2023, the Applicant filed Miscellaneous Application. No. 179 of 2023 seeking an exparte order to be made for the partial execution of the decree nisi by way of attachment and preservation of 150 herds of cattle from the respondent before the decree nisi becomes a decree absolute. The Application was abandoned by the Applicant on 13th April, 2023. The applicant opted for a Decree Absolute.
- 5.5 On 3rd August, 2023, the Applicant filed Miscellaneous Application. No. 890 of 2023 seeking for a certificate of urgency permitting the execution of the warrant of attachment, sale and delivery of the suit cattle to the Applicant. The Application was dismissed on 4th August, 2023.
- 5.6 On 15th August, 2023, the 1st Respondent filed Miscellaneous Application. No. 955 of 2023 seeking for the extension of time within which to appeal the Judgment and Decree of the Court. The Application was dismissed on 28th September, 2023 for want of prosecution under Order 9 rule 22 of the Civil Procedure Rules S.I. 71-1.
- 5.7 On 21st August, 2023, the 1st respondent filed Miscellaneous Application. No. 977 of 2023 seeking for an order of interim stay of execution pending determination



of the main application for stay of execution. This Application was withdrawn on 5th September, 2023.

- 5.8 On 21st August 2023, the 1st respondent filed Miscellaneous Application No. 976 of 2023 seeking for an order of stay of execution pending determination of Miscellaneous Application. No. 955 of 2023. This Application was withdrawn on 5th September, 2023.
- 5.9 On 25th August 2023, Medius Kemirembe (mother to the 1st Respondent) filed objector proceedings vide Miscellaneous Application. No. 998 of 2023. This Application was withdrawn under Order 25 rule 1 of the Civil Procedure Rules S.I. 71-1.
- 5.10 On 25th August 2023, Medius Kemirembe (mother to the 1st respondent) filed an interim order for stay of execution (objector proceedings) vide Miscellaneous Application. No.999 of 2023. This Application was withdrawn on 5th September, 2023 under Order 25 rule 1 of the Civil Procedure Rules S.I. 71-1.
- 5.11 On 25th August 2023, Medius Kemirembe (mother to the 1st respondent) filed Miscellaneous Application. No. 1005 of 2023 seeking for the release of 195 heads of cattle from attachment.
- 5.12 On 22nd September, 2023, the 1st respondent filed Miscellaneous Application No.148 of 2023 seeking to review and set aside Divorce Cause No.068 of 2019. Ruling delivered.



5.13 On 4th October, 2023, the Applicant filed Miscellaneous Application. No. 1198 of 2023 seeking that the 1st respondent among other respondents be held in contempt of a Court Order.

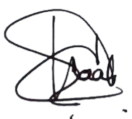
6.0 Determination of Application.

6.1 Issue 1: Whether the Respondents are in contempt of the Court Order/Warrant of Attachment and if so whether the Respondents ought to be castigated for the said contempt by way of committal to a civil prison and ordered to pay a fine?

6.1.1 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 Versus 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."

6.1.2 The Court went on to quote the case of **Morris Versus Crown Office [1970] 1 ALL ER 7079 at 10B7** where Salmon LJ stated that:



"The sole purpose of proceedings for contempt is to give our courts the power to effectively 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."

6.1.3 **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.

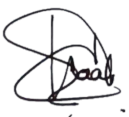
In this instant application, I will restrict myself to civil contempt which consists of disobedience to the judgment, orders or other processes of court and involving a private injury.

6.1.4 The power of court to determine matters of contempt is provided for under **Article 28 (12) of the 1995 Constitution of the Republic of Uganda.**

6.1.5 The court's rationale to punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice.

6.1.6 **Section 98 of the Civil Procedure Act, Cap.71** 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.

6.1.7 The case of **Sitenda Sebalu Versus The Secretary General of the East African Community, Ref. No. 8 of 2012 (East African Court of Justice)** cited with approval in the Supreme Court case of **Betty Kizito Versus Dickson Nsubuga & 6 Ors,**



Civil Application No. 25 & 26 of 2021 (Arising from Civil Appeal No. 08 of 2018) set out the pre-conditions that must be satisfied before a court can hold a respondent in contempt and these are:

- (i) The existence of a lawful Order.
- (ii) Knowledge of the Order
- (iii) The contemnor's ability to comply.
- (iv) The potential contemnor's failure to comply.

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

7.0 Existence of a lawful order.

7.1 The facts at hand show the existence of a lawful court order/warrant of attachment and sale issued by the Deputy Registrar of this Honorable Court on 21st August, 2023 vide **Execution Miscellaneous Application No.08 of 2023 (Arising out of Civil Suit No.068 of 2019)**. The warrant of attachment is instructing the Court Bailiff, Kirunda Moses of Spear Link Auctioneers to attach 150 (One Hundred and Fifty) herds of cattle found hidden in any place belonging to the Judgment Debtor (1st Respondent) and hand over the same to the Petitioner and to attach 45 (forty-five) herds of cattle to recover UGX 30,000,000/- (Uganda Shillings Thirty Million only) as alimony unless Geoffrey Mucunguzi (the 1st respondent) pays the above together with costs of the attachment.



7.2 The warrant of attachment was to be returned on or before 21st September, 2023 with an endorsement certifying the day on which and the manner in which it had been executed or why it was not executed.

8.0 Knowledge of the Order.

8.1 1st Respondent

8.1.1 The Applicant stated in paragraph 3 of her affidavit in support of the Application that the court order was extracted and served on the respondents who were all aware of its existence. In response thereto, the 1st respondent in paragraph 6 of his affidavit in reply simply stated that the application is tainted with lies and falsehoods intended to mislead this Honorable Court.

8.1.2 **Order 6 rule 10 of the Civil Procedure Rules, S.I 71-1** provides that when a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or she must not do so evasively, but answer the point of substance.

8.1.3 It follows therefore, that a defense must reply to the contents of the claim in a specific manner wherein the responses made should be intelligible, clear, and precise, linked to the claim by the plaintiff and should give an answer to an allegation by the claimant. A general or evasive denial renders the defense incurably defective and liable to be struck out.

8.1.4 In the case of **MHK Engineering Services (U) Ltd Versus Macdowell Limited, Miscellaneous Application. No. 825 of**



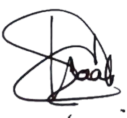
2018, Hon. Justice Boniface Wamala cited a passage from Odgers Principles of Pleading and Practice, 22nd Edition, at page 136, which provides useful guidance on the test for evasive defences and general denial. The principle is laid down as follows:

“It is not sufficient for a defendant in his defence to deny generally the allegations in the statement of claim ... Each party must traverse specifically each allegation of fact, which he does not intend to admit. The party pleading must make it clear how much of his opponent’s case he disputes.”

8.1.5 In the instant case, the 1st Respondent made an evasive denial of the averment made by the Applicant that the court order was extracted and served upon him and that he was aware of its existence. He stated as hereunder;

6. *“THAT in specific reply to paragraphs 3, 4, 5 and 6 of the application the same is tainted with lies and falsehoods, intended to mislead this Honorable Court.”*

1.1 8.1.6 This offends the provisions of Order 6 rule 10 of the Civil Procedure Rules, S.I. 71-1 which leaves me with no doubt that the 1st respondent had knowledge of the court order/warrant of attachment. In addition it is on the court record that the 1st respondent was served and he filed an affidavit in reply on 31st March, 2020 following Miscellaneous Application No. 148 of 2020 filed in this court on 16th March, 2020 by the 1st Respondent seeking orders; that the Order to



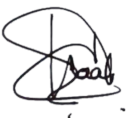
hear the matter exparte be set aside, the applicant be allowed to file a Reply to the Petition, the matter be heard inter parties and costs of this application. This is all on Court record. The said application was allowed and the 1st Respondent was able to file a reply to the petition. Secondly, his lawyer was served and he had knowledge to attend court but chose to state on the hearing notice, that there being a “Registrars and Magistrates’ conference on the said hearing date, he shall not make appearance”. All in all, the 1st respondent was fully aware of the court proceedings and at all times he was effectively served.

8.2 **2nd Respondent**

8.2.1 The 2nd Respondent in paragraphs 4, 5, 13, 15, and 19 of his affidavit in reply stated that no order or warrant of attachment whatsoever in the matter had ever been served upon him personally or even through his office as the Chairman LCV of Lwengo District.

8.2.2 During cross examination, the 2nd Respondent denied knowing about the Court Order and stated that at the time of the attempted execution, he was at Kyazanga Town Council in Mweru LC1 at his home.

8.2.3 While being cross examined, the Applicant also informed Court that prior to 4th September, 2023, she had not met the 2nd Respondent nor been to his office over the matter and had not served him with the warrant of attachment. The Applicant further stated that when she proceeded to attach the cows, the



2nd Respondent was not present but only appeared later with the 1st Respondent when the 100 plus people had already gathered at the site to stop the execution.

8.2.4 **Section 103 of the Evidence Act, Cap. 6** provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

8.2.5 The Applicant has not proved to this Honorable Court that the Court Order was brought to the attention of the 2nd Respondent either prior or during the execution. I therefore find that the 2nd Respondent had no knowledge of the Court Order/Warrant of Attachment.

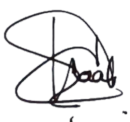
8.3 **3rd Respondent**

8.3.1 The 3rd Respondent did not contest in his affidavit in reply the allegation made by the Applicant in paragraph 3 of her affidavit in support of the application that the court order was served on the respondents who were aware of its existence.

8.3.2 Also, during cross examination, the 2nd Respondent confirmed that he learnt of the Court Order in around August 2023 when it was brought to him by the Court Bailiff, Kirunda Moses.

8.3.3 I therefore find that the 3rd respondent had knowledge of the court order/warrant of attachment.

9.0 **The contemnors' ability to comply.**



9.1 1st Respondent

9.1.1 The Applicant stated in paragraphs 4 and 5 of her affidavit in support of the Application that during the course of the attachment of the cattle, the 1st Respondent resisted the execution by making an alarm and labelling the Applicant and court bailiffs as thieves which attracted a crowd. The 1st Respondent also became violent and drew out a spear with the intention of spearing the Applicant and threatening to kill her.

9.1.2 In paragraph 6 of his affidavit in reply, the 1st respondent made a general denial of the Applicants assertions wherein he stated that the said paragraphs are tainted with lies and falsehoods intended to mislead Court.

9.1.3 The Court Bailiff, Mr. Moses Kirunda informed Court in his return of warrant dated 5th September, 2023 that they engaged the crowd that came to the scene following the 1st Respondent's alarm and explained to them that the execution was for a lawful court order. However, despite their explanation, the 1st Respondent became violent and drew out a spear with the intention of spearing the Applicant and threatening to kill her.

9.1.4 Being cognizant of the warrant of execution/court order, the 1st respondent possessed the opportunity to legally contest it in court. However, he opted to impede the execution of the lawful court order by creating chaos during the process, denouncing the court bailiffs as thieves. Moreover, he had the capacity to disperse the gathering that assembled in response to his alarm,



clarifying to them that the court bailiff and the Field Force Unit (FFU) Naguru team were acting in accordance with a legitimate court order.

9.1.5I therefore find that the 1st respondent had the ability to comply but chose to disrupt the execution.

9.2 2nd Respondent.

9.2.1 Since it was found that the 2nd Respondent was not aware of the court order and only appeared at the scene of the execution when the 100 plus people had already gathered to stop the execution, I find that the 2nd respondent lacked the capacity to comply with the court order/warrant of attachment.

9.3 3rd Respondent

9.3.1 The 3rd respondent informed Court under paragraph 3 (h) of his affidavit in reply that as opposed to the routine handling of court orders, this particular court order was not handled by him but by the Field Force Unit of Naguru under the command of SP Mukiibi Karim. He further stated that during the execution of the court order on 4th September, 2023, he was neither present at the scene nor an overseer of the execution.

9.3.2 However, during cross examination, the 3rd respondent contradicted himself and stated that he helped the Bailiff, Kirunda Moses to execute the court order. He went ahead to lay out the guidelines he followed to support the execution wherein he stated that he established the facts of the ownership of the cattle and found that the cattle existed but that the land where



the cattle was grazing was not in the names of the 1st respondent and the cows were not head tagged. He then informed his superiors and advised that a better method of execution be used.

9.3.3 From the foregoing, I find that the 3rd Respondent had the ability to comply with the court order since he had knowledge of the court order, the same having been brought to his attention as the District Police Commander of Lwengo District and he had established that the cattle to be attached existed.

10.0 The potential contemnor's failure to comply.

10.1 1st Respondent

10.1.1 In the preceding events, it has been established that the 1st Respondent having knowledge of the court order, impeded the execution of a lawful court order by raising a false alarm and unjustly labeling the Applicant, court bailiff, and their team as thieves. This act not only attracted a crowd but escalated into violence, with the 1st Respondent brandishing a spear with apparent intent to harm the Applicant. Consequently, this obstruction resulted in the failure of the execution, leading to the court bailiff returning the unexecuted warrant of attachment to the court on 5th September, 2023.

10.1.2 I therefore find that the 1st respondent failed to comply with the court order.

10.2 2nd Respondent




10.2.1 Since it was found that the 2nd respondent was not aware of the court and had no ability to comply with the court order, I find that there was no failure on the part of the 2nd Respondent to comply with the court order.

10.3 **3rd Respondent**

10.3.1 During cross-examination, the 3rd Respondent revealed to court that, upon investigation, he verified the existence of the cattle but determined that the land where the cattle grazed was not registered in the names of the 1st Respondent. Additionally, he observed that the cows had no head tags and he reported these findings to his superiors and recommended the adoption of a more suitable execution method. This disclosure unmistakably indicates his disagreement with the court order and hence his non-compliance with it.

10.3.2 In the case of **Barbra Nambi Versus Raymond Lwanga, HCT EMA No.213 of 2017**, Lady Justice Flavia Senoga Anglin **cited with approval the case Housing Finance Bank Ltd & Another Versus Edward Musisi Miscellaneous Application 158 of 2010 CA** which was relied upon in the case of **Mutambo Wepukhulu Versus Wasswa Balumywa & 2 Others, Miscellaneous Application 276/2012** in which it was stated that;

“A party who knows of an order, regardless of 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 that party to choose whether or not 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 not possible, to appropriately move court issuing the order and bring to the attention of the court the reasons for non-compliance."

10.3.3 Further, in the Supreme Court case of **Betty Kizito Versus 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, this 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."



10.3.4 Also, in **T. N. Gadavarman Thiru Mulpad Versus 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.”

10.3.5 The 1st and 3rd Respondents confirmed having knowledge of the existence of the court order/warrant of attachment issued by this Honorable Court on 21st August ,2023 which was served upon them by the court bailiff in August 2023. That notwithstanding, they chose to obstruct the execution of a lawful court order instead of taking their discrepancies to court to adjudicate on their disagreement with regard to the court order.

10.3.6 The authority to impose penalties for contempt is a vital and indispensable power crucial for safeguarding the integrity of



justice and upholding the rule of law. It serves as a protective measure for the court's authority and the supremacy of the law.

10.3.7 In the Scottish case of **Stewart Robertson Versus Her Majesty's Advocate, 2007 HCAC 63**, 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.”

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.”

10.3.8 A court order is fundamentally about preserving and safeguarding the rule of law. It assures a party entering the realm of justice with a court order in hand that the directive will be duly obeyed by those to whom it is directed. It is a cornerstone of legal assurance and the commitment to upholding the principles of justice.

10.3.9 The 1st and 3rd Respondents disobeyed a lawful court order. For the foregoing reasons, I find that the 1st and 3rd Respondents are in contempt of the court order/warrant of attachment issued on 21st August, 2023 vide **Execution Miscellaneous Application No.08 of 2023 (Arising out of Civil Suit No.068 of 2019** and are therefore punishable.



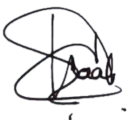
10.3.10 The Applicant prayed that the Respondents be arrested and detained in civil prison for being in contempt of a lawful court order. In the alternative, the Applicant prayed that the Respondents pay a fine of UGX 30,000,000/- (Uganda Shillings Thirty Million only) for being in contempt of a lawful court order.

10.3.11 Civil contempt is punishable by way of committal or by way of sequestration. It may also be punishable by a fine, or an injunction against the contemnor.” See the case of ***Stanbic Bank (U) Ltd and Another Versus Commissioner General Uganda Revenue Authority (Supra)***.

10.3.12 In ***Re Contempt of Dougherty 429, Michigan 81, 97 and (1987)***, it was stated that;

“Imprisonment for civil contempt is properly ordered where the Defendant has refused to do an affirmative act by the provisions of an order, which either in form or substance was mandatory in character.”

Further that ***“if the contempt consists in refusal of a party to do something which he is ordered to do for the benefit and advantage of the opposite party.... The Contemnor stands to be committed until he complies with the order. The order in such a case is not a punishment but is coercive to compel the Contemnor to act in accordance with the order of court.”***



10.3.13 This court has already found that, the 1st and 3rd Respondents refused to obey the orders of court as clearly stipulated in the warrant of attachment issued by this Honorable Court on 21st August, 2023 vide ***Execution Miscellaneous Application No.08 of 2023 (Arising out of Civil Suit No.068 of 2019)***. The orders were mandatory in character and would have been for the benefit of the Applicant.

10.3.14 While I find that committal to civil prison of the 1st Respondent would be appropriate to compel the 1st Respondent to act in accordance with the court order/warrant of attachment, committal shall not be appropriate for the 3rd respondent. I will warn the 3rd Respondent to deter from such actions in his line of duty and not to engage in business that does not concern him but to act professionally while conducting his work. I am also aware that he was suspended from his office though later recalled. I have chosen a warning because internally the 3rd Respondent was disciplined by his employers as per the record.

11.0 Issue 2: What remedies are available to the parties?

11.1 On the issue of costs, the general rule is that costs follow the event unless there is good reason for court not awarding costs which must be stated. I am also cognizant that in all matters of costs, courts exercise discretion and this must be done judiciously. **See the case of Uganda Development Bank**



**Versus Muganga Construction Company & 2 Others [1981]
HCB 35.**

11.2 In the matter before me, the Applicant added the 2nd respondent as a party to the Application on grounds that 2nd respondent surfaced at the scene of the execution together with the 1st respondent and it was after the phone call he made to the Deputy Inspector General of Police that the execution was completely halted. The Applicant therefore had all reason to believe that the 1st respondent had been enlightened about the subsisting court order if not prior to the execution then on his way to the scene of the execution and or when he got to the scene of the execution and during his communication with the Deputy Inspector General of Police and with the Court bailiff and his team from Field Force Unit.

11.2 I am also cognizant of the fact that in contempt proceedings there are only two parties, the court and contemnor. See the case of **Betty Kizito Versus Dickson Nsubuga & 6 Ors, Civil Application No.25 & 26 of 2021 (Arising from Civil Appeal No. 08 of 2018)** wherein it was held that:

“The nature of proceedings of civil contempt though initiated by a litigant who brings the alleged conduct believed to be in contempt to the attention of court in this case the application is between the Court on one side and the alleged contemnor. The applicant or litigant who brings the alleged conduct to the attention of court does not become a party to the proceedings, he/she merely assists court by furnishing information about the alleged contempt.”



In the premises, I have shall not make any order as to costs.

12.0 **Conclusion**

12.1 Accordingly, this application succeeds as against the 1st and 3rd respondents. The application is hereby allowed with the following orders;

1. The 1st and 3rd Respondents are in contempt of the court order issued by the Deputy Registrar on 21st August, 2023 vide **Execution Miscellaneous Application No.08 of 2023 (Arising out of Civil Suit No.068 of 2019).**
2. The 1st Respondent shall be committed to civil prison for six (6) months for his contemptuous actions.
3. The 3rd respondent is warned against unprofessional conduct during his line of duty.
4. No order as to costs.

I so Order.

Dated, signed and delivered via email this 12th day of March, 2024.



CELIA NAGAWA
AG. JUDGE