

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 1053 OF 2015

5 **(ARISING FROM MISC. APPLICATION NO 1401 OF 2014)**

(ARISING OUT OF HIGH COURT CIVIL SUIT NO. 0701 OF 1996)

RAMNICKLAL RANCHIHODDAS POPAT:.....APPLICANT

VERSUS

1. ATTORNEY GENERAL

10 **2. HON. FRED RUHINDI**

**3. MINISTER OF LANDS, HOUSING &
URBAN DEVELOPMENT**

4. HON. DAUDI MIGEREKO

5. THE SECRETARY TO THE TREASURY

15 **6. KEITH MUHAKANIZI**

**7. DIRECTOR GENERAL EXTERNAL SECURITY
ORGANISATION:..... RESPONDENTS**

BEFORE: HON. JUSTICE BASHAIJA K. ANDREW

RULING

20 *RAMNICKLAL RANCHIHODDAS POPAT (hereinafter referred to as the “Applicant”)*
brought this application seeking for orders that all the Respondents and each of them
individually be cited for contempt of court, and that appropriate orders be issued. Further,

that the Respondents pay costs of this application. The application is supported by the affidavit of Jagdish J. Popat, the Attorney of the Applicant.

25 The Respondents were served with hearing notices. They duly acknowledged receipt of the same according to the proof of service attached to the affidavit of service sworn by one KAMUREMERE GEORGE the Court Process Server who effected the service. However, the Respondents neither filed affidavits in reply nor appeared in court for the hearing either by themselves or their duly appointed representatives. Court thus
30 proceeded to hear and determine the application *ex parte* under **Order 9 r.10 of the Civil Procedure Rules.**

Background:

35 The facts of the application, which are also restated in the affidavit of the Applicant, show that the Applicant litigated with the Government of Uganda, through the Attorney General over property comprised in Plot 12 Army Avenue –Kampala (*herein after referred to as the “suit property”*). The suit property was and still is occupied by the External Security Organization headed by the 7th Respondent who is the agent of the 1st
40 Respondent represented in the person of the 2nd Respondent.

After protracted litigation spurning over sixteen years the Court, on the 25th October 2013, entered judgment in favour of the Applicant. It was ordered, inter alia, that the suit property be handed over to the Applicant and that the 1st Respondent pays mesne profits

of US\$ 8,131,890 resulting from the illegal occupation of the suit premises by the 7th
45 Respondent, as well as costs of the suit. The mesne profits attracted interest at court rate
from the date of judgment until payment in full. A decree to that effect was duly
extracted. Both the judgment and a decree were on 11th November, 2013, served on the
Attorney General who was expressly requested to comply, according to *Annexure JP4* of
the Applicant's affidavit in support of the motion, but all was in vain.

50 On the 17th February, 2014, another letter was served on the Attorney General again
requesting for payment. The letter even quoted extracts of the judgment where the court
had criticized a conduct of the officials of the defendant in causing loss by delays and
refusal to hand over property which duly belongs to the Applicant. The Respondents still
did not oblige the Court orders.

55 On 19th August, 2014, yet another letter with a copy of certificate of order against the
Government attached was written by the Applicant's lawyers to the Secretary to Treasury
demanding payment. The same was copied to the Attorney General requiring that the
Respondents comply with the Certificate of Order. Again there was no response either
60 from the Attorney General or from the Secretary to the Treasury or indeed from the
Director External Security Organization that occupies the suit property.

The Applicant then filed in Court an application for a prerogative writ of mandamus
against the Respondents. He sought the court to compel the Respondent to comply with
its orders and perform the decree. On 10th April, 2015, the Court granted the application
with the prerogative writ of mandamus which was again duly served on the 1st
65 Respondent whose office the 2nd Respondent occupies. It was also served on the 5th

Respondent the Secretary to the Treasury in the person of the 6th Respondent. Also served
was the office of the President of Uganda and the Director General of the External
Security Organization, the 7th Respondent which is in occupation of the suit property. The
writ required the Respondents to comply with the terms of the order and perform the
70 decree as it is also their statutory duty to do so. To date there has been no response.

Instead of complying, the 3rd Respondent the Minister for Lands, in person of the 4th
Respondent Hon. Daudi Migereko, issued a Statutory Instrument compulsorily acquiring
the suit property. The same was advertised in the Uganda Gazette of 28th September,
2015. It is upon this background that the Applicant filed this application seeking the
75 orders already stated above.

Submissions:

Mr. Didas Nkurunziza, Counsel for the Applicant, premised his submissions primarily on
the facts in the above background. He submitted that it is absolutely clear that none of the
Respondents intends to obey the orders, judgment and decree of this court. Counsel
80 submitted that such conduct amounts to contempt of court particularly given that it is
more than two years since the judgment was rendered and not a single effort to comply
has been made.

Counsel further submitted that a court order is a court order, and that unless set aside,
discharged or stayed, it has to be complied with. Counsel relied for this argument on the
85 case of *Muriisa vs. Nicholas & Attorney General, HCMC No. 035 of 2012*, whose
holding is in line with the case of *Mehga Industries (U) Ltd vs. Conform (U) Ltd,*
HCMC No. 21 of 2014; Behangana Domaro vs. Attorney General Constitutional

Petition No.53 of 2010, Amrit Goyal vs. Harichand Goyal & 3 Others CA Civ. Application No. 109 of 2004, among others.

90 Counsel also cited the Court of Appeal of Kenya case in *Commercial Bank of Africa vs. Nderangu [1990 – 1991] EA 69*; and *Republic vs. National Land Commission & Treasures Ltd Ex parte Krystalline Salt Ltd [2015] KLR 23*; all of which are to the effect that a court order is a court order it must be obeyed and any action done in disobedience of a court order is invalid.

95 Mr. Nkurunziza also noted that the attempt by the 3rd Respondent in the person of the 4th Respondent Hon. Daudi Mugereko to compulsorily acquire the property is invalid. Counsel fortified this proposition with the East African Court of Justice case in *Hon. Sitenda Sebalu vs. Secretary General of the East African Community, Reference No 1 of 2010 and Taxation Reference No.1 Of 2011*; and *Uganda National Roads Authority vs. Irumba Asumani & Another, Constitutional Appeal No. 02 of 2014*; and *Advocates for National Resources Governance and Development & 2 Others vs. Attorney General & Another, Const. Petition No.40 of 2013*. In all these cases the courts laid down the correct interpretation of the *Land Acquisition Act* to the effect that the Government cannot compulsorily acquire property without first compensating the owner before taking
100 possession whether physical or legal.
105

Mr. Nkurunziza also submitted that in the instant case, the Government of Uganda has been in illegal possession of the property since the judgment of court in October, 2013, and dating back to the time when the Applicant obtained a certificate of repossession. Counsel argued that the failure to comply with the judgment and decree, and the attempt

110 to circumvent them by an illegal purported acquisition; all amount to contempt of court.
Counsel prayed that all the Respondents and each of them individually be cited and
ordered to comply on the pain of punishment by this court.

Mr. Nkurunziza further submitted that the costs of this application be awarded to the
Applicant who has been forced by the Respondents to come to court to protect the
115 judgment and his property. Counsel noted that the Government of Uganda it should be
the first to obey the decisions of court and to assist in their implementation.

Principles of the Law applicable.

The term “contempt of court” hardly has any statutory definition assigned to it in Uganda
even in those particular legislations where the term appears. However, courts have
120 consciously adopted and relied on other authoritative material on the subject to give
meaning as to what they consider to be or to amount to contempt of court. In ***Muriisa vs.
Nicholas & Attorney General (supra)*** this court adopted and applied the definition under
Black’s law Dictionary (7th Ed) at p.313, which defines “contempt” as;

125 ***“...a 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 to impair
respect due to such a body.”***

Similar stance was adopted ***The Proctor & Gamble Co. vs. Kyole James Mutisho & 2
O’rs, HCMA No. 135 of 2012***, in which Kiryabwire J, (as he then was) quoted with
130 approval the case of ***Jennison vs. Baker (1972)1 ALL ER 997*** (at pages 1001 -1002)
where the forms of contempt were elucidated upon. Salmon LJ held that there are many

forms of contempt but which may be broadly classified as criminal or civil contempt. Further, in *Stanbic Bank (U) Ltd, & Jacobsen Power Plant Ltd vs. Uganda Revenue Authority, HCMA No. 42 of 2010*, Mulyagonja J, held that criminal contempt is where
135 **Section 107** of the **Penal Code Act** is involved, while civil contempt is a common law misdemeanor to be applied by virtue of **Section 14 (2) (b) and (c)** of the **Judicature Act (Cap 13)**.

Noteworthy also is that “contempt of court” exists to ensure that justice shall be done and solely to prohibit acts, conduct, and words to obstruct the smooth administration of
140 justice.

In *Stanbic Bank (U) Ltd. & Jacobsen Power Plant Ltd. case (supra)* which cited with approval Salmon LJ in *Jennison vs. Baker_case (supra)*, Mulyagonja J, went on to underscore the importance of complying with court orders; and further quoted Romer LJ; in the case of *Hadkinson vs. Hadkinson (1952) ALL ER 567* that;

145 **“Disregard of an order of court is a matter of sufficient concern, whatever the order may be...”**

Romer L.J, himself had relied on the case of *Church vs. Cremer (1 Coop Temp Cott 342)* where it was held that;

150 **“A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it...It would be most dangerous to hold that suitors or their solicitors, could themselves judge whether the order was null or void – whether regular or irregular. That they should not come to the court and take (it) upon themselves to determine such question. That a course of a party knowing of an order, which was null**

155 *or irregular and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed...”*

From the above authorities, it is plainly clear that for a party to challenge a court order, the party only must apply to have it set aside but not to disobey it, even if the party does not agree with it for any reason.

The following are the issues for determination;

- 160
1. *Whether the Respondents have acted and or conducted themselves in contempt of court orders.*
 2. *Whether the compulsory acquisition of the suit property by Government through the 3rd Respondent in the person of the 4th Respondent is lawful and or effective.*
 - 165 3. *What are the remedies available to the parties?*

Resolution of issues.

Issue No.1: Whether the Respondents have acted and or conducted themselves in contempt of court orders.

170 The Applicant herein swore an affidavit in support of this application. There was no affidavit in reply from any of the Respondents. It is trite law that where facts are sworn to in an affidavit and these are not denied or rebutted by the opposite party, the presumption is that such facts are accepted. See. *Massa vs. Achen [1978] HCB 297.*

Also to note in the instant application is there has been in existence the initial court order and decree since 22nd October, 2008, under which the Applicant is entitled, inter alia, to vacant possession of suit premises in LRV 205 Folio 7 Plot 12 Army Avenue (formerly Mackinon Road) Kampala. The terms of the order are replicated in a decree dated 25th October, 2013. The order and decree invariably required the 7th Respondent to hand over vacant possession, which the 7th Respondent has not done up to now besides not assigning any reasons whatsoever for the non compliance.

Similarly, the 1st Respondent in the person of the 2nd Respondent who was at all material times directly involved as a party to the proceedings in the suit was duly served with the Certificate of Order as required under the law requiring him to comply by paying the sums due and owing therein. He too never complied with the requirements under the order or assigned any reason whatsoever for his non compliance.

On 19th August, 2014, the 5th Respondent who is in the person of 6th Respondent was also served with the Certificate of Order to pay the sums due and owing as indicated in the order earlier issued. Again there was no compliance with no reasons were assigned.

To my mind, the totality of this pattern of the Respondents' conduct and behaviour of inaction and failure and /or refusal to comply with the court orders without assigning any reason whatsoever falls nothing short of contempt of court. It is purely wanton disobedience and adamant refusal to do and or to perform that which they are required under the court orders to do and that which it is their statutory duty to perform. Equally, the Respondents' failure to assign any reason whatsoever for their non compliance can only mean one thing: intransigence and deliberate disobedience of the court orders on

195 their part. It is plain impunity. I find that the Respondents have acted, behaved and conducted themselves in contempt of court. Issue No.1 is answered in the affirmative.

The Court of Appeal of Uganda has come out very strongly, in ***Housing Finance Bank Ltd. & Another vs. Edward Musisi CAMA No.158 of 2010***, on the issue of non compliance with court orders by litigants/parties. It was held that a party who knows or is
200 made aware of an order of court whether 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 an order. The order has to be complied with in totality, in all circumstances by the party concerned, subject to that party's right to challenge the order in issue, in such a lawful way as the law permits. This
205 may by way of revision, review or by appeal. See: ***Chuck vs. Cremer (1 Corp Jemp 342)***.

The Court further held that it is the responsibility 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 the court issuing the order and bring to the attention of court the reasons for non compliance. This is to ensure that the court issuing the order not only
210 must not be held in contempt, but must not whatever the circumstances, appear to be held in contempt by any litigant.

Otherwise to disobey an order of court, or offer no explanation for non compliance to the issuing court, at any party's choice or whims, on the basis that such an order is null and irregular, or is not acceptable or is not pleasant to the party concerned, is to commit
215 contempt of court. A court of law never acts in vain, as such; issues touching contempt of court take precedence over any other case of invocation of the jurisdiction of the court.

See: *Wildlife Lodges Limited vs. County Council Of Narok And Another*; [2005] 2 EA 344 (HCK).

220 I cannot add more but only that I am bound by the decision of the Court of Appeal. I find the action (or rather lack of it) by the Respondents in this case very unfortunate and a sad commentary on the Respondents' conduct of Government duties and responsibilities which they are by Constitution and statute duty bound to do. See: *Oil Seeds vs. Chris Kassami HC MA No.136 of 2008*.

225 In that regard I only do better to quote from the judgment in the main suit in *Civil Suit No. 70 of 1996* where Kwesiga J, at page 9 expressed similar strong views that;

230 *“This case as a whole has presented a situation that depicts both the Ministry of Justice [Attorney General’s Chamber] and the Minister in-charge of security as insensitive to the facts that their actions and omissions would end up in a loss to this country as a whole. Exhibit P.5 which contained the computation of the mesne profits of US\$ 7,794,930 appears not to have bothered them since they ignored Mr. Nkurunziza’s plea that they act to mitigate the loss of the much-required financial resources that would go for compensation for the illegal occupancy of the suit property. The advocate’s letter dated 30th June, 2008 reads in part;*

235 *‘.. the amount due to our client will continue to grow for so long as the Government of Uganda continues to illegally occupy our client’s property. The only way of mitigating this continued accrual will be for vacant possession of the property.’”*

It must be emphasized that this application being one for citing and sanctioning the Respondents for contempt of court, this court would not only stop at expressing concern,

240 but also to invoke the appropriate sanctions at its disposal to express its displeasure with the Respondents' disobedience of its orders.

Issue No.2: Whether the compulsory acquisition of the suit property by Government through the 3rd represented in the person of the 4th Respondent is lawful and or effective.

245 The 3rd Respondent the Minister for Lands, in person of the 4th Respondent Hon. Daudi Migereko, issued ***Statutory Instrument No.59 of 2015, The Land Acquisition (Leasehold Register Volume 205, Folio 7, Land at Kyadondo, Plot No.12 Army Avenue, Kampala) Instrument, 2015.***

250 The Minister, on behalf the Government, purported to compulsorily acquire the suit property. This was after advertising the same in the *Uganda Gazette* of 28th September, 2015. ***Section3 of the Land Acquisition Act*** under which the Minister purported to acquire the suit property provides as follows;

“3. Declaration that land is needed for public purpose.

255 ***(1) Whenever the Minister is satisfied that any land is required by the Government for a public purpose, he or she may, by statutory instrument, make a declaration to that effect.”***

260 Even assuming that the Minister fully complied with the procedure of compulsory acquisition under the Act, there is no evidence to suggest he did, provisions of ***Section3 (supra)*** must be read subject to stipulations ***Article 26(2) of the Constitution*** that lay down conditions precedent to the compulsory acquisition of private property as in the instant case. It provides as follows;

“(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied—

(a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and

265 (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for—

(i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and

270 (ii) a right of access to a court of law by any person who has an interest or right over the property.” (Emphasis added).

The Supreme Court of Uganda in the case of *Uganda National Roads Authority vs. Irumba Asumani & Another (supra)* laid down a correct interpretation of *Section 3* the *Land Acquisition Act (supra)* and held that the Government cannot compulsorily acquire property without first compensating the owner before taking possession whether physical or legal. Similar position was re-echoed in *Hon. Sitenda Sebalu vs. Secretary General of the East African Community (supra)* and in *Advocates for National Resources Governance and Development & 2 Others vs. Attorney General & Another (supra)*.

280 Applying the Constitutional and legal principles above to the facts of the instant application, clearly the purported compulsory acquisition of the suit property by Government through the 3rd Represented by 4th Respondent was unlawful and hence ineffective. It is invalid.

Issue No 3: What are the remedies available to the parties?

The first remedy for the Applicant is to allow this application. Furthermore, as found above, the Respondents' failure to comply with the orders of court is contempt of court.

285 In the case of civil contempt, the effect is succinctly expounded upon in *Halsbury's Laws of England Vol. 9(1) at paragraph 492* 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 sequestrators, who manage the property and receive rents and profits. Civil contempt may also be punishable by a fine or an injunction may be granted against the contemnor...”

290

I would hasten to add that the above reflects just a few of the options in the sanctions available to court. More “weapons of choice” may be invoked as the occasion demands. It is therefore declared and ordered as follows;

295

1. The contemnors; the 1st Respondent represented in the person of the 2nd Respondent Hon. Fred Ruhindi, and the 5th Respondent in the person of the 6th Respondent Mr.Keith Muhakanizi, and the 7th Respondent; all acted and/ or conducted themselves in a manner in contempt of court.

300

2. The contemnors; the 1st Respondent represented in the person of the 2nd Respondent Hon. Fred Ruhindi, and the 5th Respondent in the person of the 6th Respondent Mr.Keith Muhakanizi, are given a period of 30 days from the date of this ruling and order to purge themselves by fully paying to the Applicant the sums due and owing under the Certificate of Order.

305

3. *The contemnor; the 7th Respondent purges himself / herself of the contempt and gives vacant possession of the suit premises in the terms of the court order.*

310

4. *The failure by all the contemnors to purge themselves of the scourge of contempt within the time given by complying as ordered, the Applicant is directed to promptly move court formally, in any case by letter, for orders that the said contemnors each in person be summoned to show cause why he should not be arrested and committed to civil prison.*

5. *The compulsory acquisition of the suit premises by the Government through the 3rd Respondent in the person of the 4th Respondent Hon. Daudi Migereko, is illegal, null and void.*

6. *The Applicant is awarded costs of this application.*

315

BASHAIJA K. ANDREW

JUDGE

02/12/2015