

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

MISC. APPLICATION NO. 1347 OF 2017

[ARISING FROM MISC. APPLICATION NO. 270 OF 2013)

CIVIL SUIT NO. 27 OF 2013

- 1. MIREMBE SOLOME**
- 2. EFULAIMU MWESIGWA:.....:APPLICANTS**
(A person of unsound mind through a next of kin Mirembe Solome)

VERSUS

- 1. KATO RASHID**
- 2. KUGAMBWA EDWARD**
- 3. SEMPIGA GODFREY**
- 4. MWESIGWA SAM**
- 5. MUBIRU EDWARD:.....:RESPONDENTS**
- 6. KYABAGU PAUL**
- 7. COMMISSIONER FOR LAND REGISTRATION**

Before: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application is for contempt of the Court order issued on the 8th day of April 2015 granting a temporary injunction restraining the Respondents, their agents or any other person deriving authority from them from interfering with the suit property, effecting transfer or subdivisions *inter alia* on Block 415 Plot 22 before the determination of Civil Suit No. 27 of 2013. The application is by way of Notice of Motion and is supported by the affidavit of Mirembe Solome.

The application is opposed by the 1st, 2nd, 3rd, 4th and 6th Respondents vide affidavits in reply of Mawanda Paul, Sempiga Godfrey and rejoinders thereto.

I have also read and internalized the submissions by both parties in support and in opposition. The gist of this application is that the Applicants obtained from Court a temporary injunction

on 8th April 2015, restraining the Respondents from dealing with Block 415 Plot 22, in terms as described therein. This order was a follow-up on another interim order of the same Court issued on the 22nd day of February 2013, pending the determination of the injunctive order.

The Applicant has now moved Court by this application that the Respondents have defied the Court order by subdividing the land and also constructing buildings thereon, a fact which the Respondents deny.

The 1st to 4th Respondents argue that no actual actions distinctive to each party have been proved against each of them. They argue that the attached photographed houses do belong to them. They further argue that the attached search statements show that the registration happened on 24th November 2015 at 4.45 pm, yet the injunctive order was issued on the 8th day of April 2015. They argue that there is no proof of contempt against them.

For the 6th Respondent, it was argued that the Applicants have failed to point at any particular violation committed by each Respondent. The 6th Respondent also attacks the reliance on the order of 8th April 2015 to fault transfers conducted earlier on, on the 24th day of November 2014. They also argue that the attached photographs do not clearly show which plot or Respondents they relate to.

In rejoinder, the Applicant argued that the photographs are a reference to the recent activities going on the property. They show that the orders of 8th April 2015 were premised on an earlier interim order issued on 22nd February 2013 hence the activities done on the land after 22nd day of February 2013 were all done in contempt of the Court orders.

Counsel for the Respondents further by leave of Court observed that the Court should expunge the references to the interim order in the affidavits in rejoinder since it was a new matter. Counsel for the Applicant explained that this reference was done to rebutt denials earlier on deponed by the affidavits in reply that they knew nothing about the temporary injunction.

I have answered the issues framed as herebelow;

1. Whether there was contempt of Court orders by the Respondents

The duty to prove contempt is on he who alleges. (*Section 101, 102 and 105 of the Evidence Act*). This evidence must be cogent. In the case before me, there is evidence that the Court issued the injunction on the 8th day of April 2015, restraining the Defendants; their agents or any person acting under their authority or deriving title from them, from effecting any transfer on the certificate of title in respect of land comprised in Block 418, Plot 22 and all sub divisions arising therefrom or otherwise interfering with the said property until the determination of Civil Suit No. 27 of 2013. This order was duly served on the Respondents. I also note from the pleadings that this order arose from Civil Suit No. 27 of 2011 and is listed as Misc. application No. 1347.

A reading of Civil Suit No. 27 of 2013 shows that the Civil Suit No. 27 of 2011 was first called for the hearing of an interim order on the 22nd day of February 2013, which was heard and granted; pending the final disposal of the main application.

The evidence before this Court vide the affidavit of Mirembe Solome and annexures is that the *status quo* has been altered by subdivisions and constructions thereon. The arguments raised by the Respondents that it is not possible to apportion blame among the Respondents, and that the activities were done before the injunctive orders, are not tenable in my view. This is because notice of the entire transactions that brought these parties to Court began running against the Respondents from the day the matter got registered in Court and Court process served. It is my holding that an interim application arises from a main suit. Any interim order issued on that file (suit) affects the entire *status quo* and sets the legal rights of the parties on notice of its orders and implications.

In this case, the interim order was specifically titled Misc. Application No. 71/2013-(arising from Misc. Application No. 70 of 2013), (arising from Civil Suit No. 27 of 2013). This application set in motion the process of the injunctive reliefs in the interim pending the hearing of the main application; Misc. Application No. 70 of 2013 arising out of Civil Suit No. 27 of 2013. This application was granted on 20th March 2015 by Hon. Lady Justice Monica Mugenyi. The application maintained the *status quo* until the determination of Civil

Suit No. 27 of 2013. The orders given in this injunction are the same as those under the interim relief issued, pending the hearing of Misc. Application No. 70 of 2013.

I have gone at length to enumerate the nexus between interim applications, temporary orders, and the final orders of Court issued under the head suit. Once a party seeks an interim relief under a head suit pending the determination of the main application, that order runs in conjunction with the further orders of the Court in the main trial.

It terminates only upon the date as indicated therein by the issue of a Judicial official. Unless it is over turned, varied by the Court which issued it, or a superior order, it remains a valid Court order. Orders therefore issued in the interim have the same force of law as any other Court orders. There is then no evidence to convince me that the Respondents were not aware that Court had ordered them not to alter the *status quo* by subdivision, sale, alienation etc.... (as per the court order of 22nd February 2013).

It was therefore contemptuous of this High Court which was hearing the entire Civil Suit No. 27/2011, under which the order was premised, pending its further action, to go against the order and subdivide the land, and continue to construct thereon. It is immaterial to argue that by the 8th of April 2015, when the temporary injunction was issued, the subdivisions had been done.

When Court handles cases, they begin a legal process – (journey) and all actions thereon are taken as a single spine. They affect each other. Once court issued the order to stop in Misc. Application No. 71/2013; pending the hearing of Misc. application No. 70/2013 – these orders were issued regarding the same transaction, and aimed at stopping the same mischief.

It is to dwell in technicalities therefore to bring up the type of argument by the Respondents that the interim relief was a matter of 2013. I do not accept that argument as it goes against the rule of substantive justice envisaged under Article 126 (2) (e) of the Constitution.

I have been satisfied that the evidence before me shows that though the Respondents were aware of the order of Court, they acted in contempt of the same; yet like in trespass, contempt

is a continuous mischief, (being a disobedience). This contempt began running from the date they failed to maintain the *status quo* as ordered by Court; pending the hearing of the application which gave rise to the orders of 20th March 2015; the subject of this application; and which order they are still found to be in continuous contempt. This is because they are constructing thereon and have not denied the existence of the subdivisions, and the buildings.

I therefore agree with Counsel for the Applicants that the Respondents are in contempt of the Court order.

2 **Remedies:**

The Applicant prayed for remedies arising from the contempt.

In **Housing Finance Bank versus Speedway Auctioneers versus Edward Musisi; Misc. Application No.158/2010 (CA)**, it is stated that;

‘it is trite that a party who knows of an order, regardless of whether in view of the party, the order is null or valid, regular or irregular, cannot be permitted to disobey it’.

Also in **Church versus Cremer (1 Coop Temp Colt 342)**, it was held that;

‘a party who knows of an order whether in his view, its null or valid, regular or irregular cannot be permitted to disobey it.... once it is in existence, it cannot be disobeyed....’

This action of disobedience is actionable and Punishable.

According to **Halisbury’s Laws of England Vol. 9 (1) paragraph 492**; it 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 rent and profits. Civil contempt may also be punishable by a fine or an injunction, may be granted against the contemnor”

Also in **Re Supply of Ready Mixed Concrete (No.2) (1995) I ALL ER 135 at page 155, Lord Nolan** observed that;

“ the party in whose favour an order has been made is entitled to have it enforced and also the effective administration of justice normally requires some penalty for disobedience to an order of a Court if the disobedience is more than casual or accidental and unintentional”

The fact that the Respondents knew of this order, but have ignored it and have substantially altered the *status quo* of the subject matter, I do find that the Applicant is entitled to the enforcement of sanctions against the Respondents as a punishment for disobedience.

In this case there was an intention by this Court to maintain the *status quo*, but the Respondents have not heeded. I do not think if they are put in a Civil Prison, it would have the required effect of forcing obedience. That remedy is therefore denied.

However this Court will follow the reasoning in **Stanbic Bank (U) Ltd & Jacobson Uganda Power Plant Co. Ltd. versus Commissioner General URA (MA No. 0042/2010 (arising from Civil Suit No. 0479/2010)**, and condemn the Respondents to payment of a fine for disobeying this order in the terms of shs. 15,000,000/- (*fifteen millions only*) to be contributed and to be paid in equal instalments by each of the Defendants/Respondents to the Government of Uganda. The payment will be made to the account of the Registrar High Court.

The Court hereby also orders the restitution of the *status quo* to the original state in which it had been before the subdivisions at the time of passing the original interim order of 22nd February 2013; by the Respondents taking steps to rectify the certificate accordingly.

The Respondents should immediately halt any further constructions on the land as ordered till completion of the suit.

The Applicant is granted costs of this application.

I so order.

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Henry I. Kawesa

JUDGE

1/2/2018.

1/2/2018

Mr. Awori Agnes on behalf of Kalule for the Applicants.

He has lost a relative.

Applicants absent.

Respondents absent.

Court: Ruling communicated to parties in attendance.

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Henry I. Kawesa

JUDGE

1/2/2018