

**MISC. APPL. NO. 0450-19-BAGOBEDDE MARGRET VS KABASEKE RUTH KASUJJA & 2 ORS  
(RULING)**

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**(LAND DIVISION)**

**MISC. APPLICATION NO. 0450 OF 2019**

*(Arising from Civil Suit No. 67 of 2018)*

**BAGOBEDDE MARGRET.....APPLICANT**

**VERSUS**

**1. KABASEKA RUTH KASUJJA**

**2. ALEX NATIMBA KIYINGI**

**3. NALUMANSI KALULE BOSSA .....RESPONDENTS**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This application was brought by Chamber Summons under the provisions of section 98 of the Civil Procedure Act, Section 33 of the judicature Act and Order 41 rules 2(3) & Order 41 r9 the Civil Procedure Rules for the following orders;

- a) The Respondents be found guilty of breach of this Honorable Court's temporary injunction order dated 25<sup>th</sup> January 2019 issued against them.
- b) That the Respondents be ordered to pay a fine for acting in contempt of the order of this Court.

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- c) In the alternative, the Respondents be committed to civil prison for breach of the said Court order.

The facts from which the application emanates are contained in the affidavit in support of Bagobedde Margret the Applicant herein and briefly are that;-

- i. That the Applicant is the plaintiff in Civil Suit No. 67 of 2018 and that on or about the 25<sup>th</sup> January 2019, this Court made an order of a temporary injunction in her favour in M.A No. 141 of 2018 against the Respondent in respect of the suit land which order was made in the presence of both parties.
- ii. That despite the said Court order, the Respondents continued to construct on the suit land.

The Applicant attached the following pieces of evidence to support her averments; *a copy of a temporary injunction order as annexure A, photos buildings under construction as Annexure 'B' and a letter to the deputy Registrar Mpigi High Court as Annexure 'C'*.

In opposition to this application, the 2<sup>nd</sup> Respondent Alex Natimba Kiyingi through affidavit evidence averred that they have complied with the order and have not done any developments on the suit land, further that the building alleged by the Applicant do not belong to the Respondents and that there is no justification for condemning the Respondents to pay a fine or be committed to civil prison for mere allegations for acting in contempt of Court where no evidence has been led.

It was the Applicant's case in rejoinder through the affidavit of Luwalira Lauben that the construction in question is being constructed on the suit land with the knowledge and directions of the Respondents and that no one could build such a structure on the suit land without the knowledge or instructions of the occupants of the Respondents. That he went to the suit land on the 23<sup>rd</sup> February 2019 to ascertain whether construction of the house had stopped since Court had issued an order to the effect but he saw construction on going contrary to the Court directive

and he took photos of the house under construction which photos were annexed to the Applicant's affidavit in support.

According to the submissions of both Counsel, the following issues were raised for determination by this Court.

- a) Whether the Respondents are in contempt of the Court order
- b) What remedies are available to the parties

Resolution of the issues.

a). **whether the Respondents are in contempt of any Court order?**

Counsel for the Applicant submitted while relying on the case of *Sendege Senyondo & Co. Advocates versus The Bank Secretary Bank Of Uganda & Anor; M.A No.98 Of 2018* for the ingredients that must exist to establish contempt of a Court order to include;-

1. Existence of a lawful order.
2. The potential contemnor's knowledge of the order.
3. The potential contemnor's failure to comply or disobedience of the lawful order.

It was Counsel for the Applicant's submission that there exists a lawful order granted by the Honorable Court at Mpigi on the 25<sup>th</sup> January 2019 issued to both parties in their presence.

On ingredient 2 as to the potential contemnor's knowledge of the Court order, the Applicant's Counsel submits that the Respondents had knowledge of the order because it was made in their presence.

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And on ingredient 3, it was Counsel's submission that despite the order granted, that the Respondents have continued with construction and yet stopping construction was the reason the Applicant applied for the temporary injunction.

In the submissions of the Respondents, it is admitted that there exists a lawful order granted by Court however, that the Respondents have not abused the order. That the pictures attached by the Applicant on her application do not reflect the real suit property in issue, that the Applicant is merely misleading Court and delay the main suit to be heard and that there is no evidence being attached to show that the suit land is owned by the Respondents.

In rejoinder, Counsel for the Applicant contends that the suit land according to the order was to remain in possession of the Respondents and that the question of to whom the buildings that are constructed upon the land is relevant and that it is the duty of the Respondents to follow Court's order and ensure that the status quo is maintained for the benefit of all the parties.

Contempt of Court has been defined in **Black's Law Dictionary, 6<sup>th</sup> Edition**, as *"any act which is calculated to embarrass, hinder or obstruct Court in the administration of justice, or which is calculated to lessen its authority or its dignity. It is committed by any person who does any act in a willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by the one who, being under the Courts' authority as a party to a proceeding therein, willfully disobeys its lawful orders or fail to comply with an undertaking which he has been given"*.

**Halsbury's laws of England Vol. 9(1) at paragraph 492** defines Civil contempt as; - *"that punishable by way of committal or by sequestration"*.

In **Wildlife Lodges Ltd versus County Counsel of Narok & Anor (2005) 2 EA 344 HCK** cited with approval from the case of **Confirm Uganda Ltd versus Megha Industries (U) Misc. App No. 1084 of 2014**, it was noted that,

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*“a Court of law never acts in vain and such issues touching on contempt of Court take precedence over any other case of invocation of the jurisdiction of the Court”.*

Counsel for the Respondents contends that the buildings in question are not on the suit land and that the Respondents have not breached the said order but they complied with it by maintaining the *status-quo*.

In **Stanbic Bank (U) Ltd & Jacob Power Plant Ltd versus Uganda Revenue Authority Ma No. 24/2010**; Hon. Lady Justice Irene Mulyagonja gave the conditions necessary to prove contempt of a Court order as follows;-

- *Existence of a lawful order,*
- *The contemnors knowledge of that order,*
- *The potential contemnors’ failure to comply, i.e., disobedience.*

Once these conditions are breached in one way or another, such a party will be held liable for contempt of Court. In **Megha Industries (U) versus Conform Uganda Ltd** (*Supra*), it was held that;

*“...civil contempt may also be punished by a fine or an injunction granted against the contemnor”.*

The temporary injunction which is the gist of this application was issued on the 25<sup>th</sup> January 2019 with the following orders;-

- a. *The status quo be maintained till determination of the main suit or till further orders from Court, ie. the Respondents have been in possession and shall remain in possession and the Applicant shall not disturb their quite possession.*
- b. *The suit property shall be preserved by all parties, no sale, alienation, mortgage or change of interest to 3<sup>rd</sup> parties shall occur.*

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- c. *No further construction shall occur on the land by the parties nor their servants, employees, agents or people who claim interest through them.*
  
- d. *Costs to abide the outcome of the main suit.*
  
- e. *Parties shall ensure that they comply with the order together with their agents, servants, employees, workers or people who derive interest from them.*

According to the above order, 'clause C' required no further construction on the suit land. According to *annexure 'B'* attached to the Applicant's affidavit in support dated 27<sup>th</sup> August 2018 and *annexture 'B'* attached to the affidavit in reply dated 27<sup>th</sup> January 2019, 24<sup>th</sup> February 2019, and 23<sup>rd</sup> February 2019 respectively, is evidence of construction, two days after the order had been issued and by letter dated 28<sup>th</sup> February 2019 as *Annexture 'C'*, Counsel for the Applicant wrote to the Deputy Registrar informing Court about the breach of the Court order and sought Court's intervention in the matter.

Arising from the above, the Respondents vehemently agreed that the said photographs were for buildings which do not belong to them.

The Respondent argued that '*he who comes to equity must come with clean hands*'. This situation requires that evidence be produced to this Court to prove that the buildings belong to the Respondents. This argument places the Applicants word (photos) against the word of Respondents.

This Court would have visited the *locus* to ascertain the situation. However, this case is peculiar in that the case of the Plaintiff in paragraph 3 of the plaint is for declarations regarding ownership of several interests on the subject of the land.

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In visiting the *locus*, Court might find itself determining the final issues of the said interests prematurely which is not good for justice. Contempt of Court being both a criminal and civil sanctions, it is therefore the finding of this Court, that if the Respondents is denying the said constructions. It is the finding of this Court that on the balance of probability, there is no proof that construction took as alleged. Therefore the evidence before me does not prove who carried out the alleged action of construction.

However, the above finds and aware that this Court has unlimited jurisdiction under Section 98 of the Civil Procedure Act, to ensure that ends of justice are met, therefore orders the Applicant to submit the information and exhibits (photos) to the OC Police High Court; in charge of investigations to conduct an independent criminal inquiry as to who is responsible for the said construction. The inquiry should establish whether there is criminal liability as against any party and return a report to this Court, so that a sanction is meted out against the culprit.

This application partly succeeds in terms as above.

The Respondent is therefore ordered to cooperate with the police and further satisfy this Court that they are not criminally liable for the said construction.

If they do not do so and a report is filed by the investigating officer to that effect, this matter shall be revisited with a view to ensure that whoever is found at fault is duly sanctioned as per the law.

Costs abide the main cause.

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Henry I. Kawesa

**JUDGE**

30/08/2019

30/08/2019:

Mr. Simon Sebowa; Counsel for the Respondent.

2<sup>nd</sup> and 3<sup>rd</sup> Respondents in Court.

Applicant not in Court.

Dorothy; Clerk.

Counsel:

Matter for Ruling.

Court:

Ruling delivered in chambers in the presence of the above.

30/08/2019

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Henry I. Kawesa

**JUDGE**

DRAFT