

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISCELLENEOUS APPLICATION NO. 551 OF 2021**  
**ARISING FROM CIVIL SUIT NO. 295 OF 2015**

**OLIVE KIGONGO:..... APPLICANT**

**VERSUS**

**COMMISSIONER, LAND REGISTRATION :..... RESPONDENT**

**Before: Lady Justice Alexandra Nkonge Rugadya**

**RULING:**

**Background:**

The applicant filed this application seeking among other orders that the respondent be held in contempt of court order issued on the 27<sup>th</sup> April, 2017 in **Civil Suit No. 295 of 2015**; be arrested and detained in civil prison for contempt of court and pay the applicant general damages in the sum of **Ugx 200,000,000/=**; pay general damages; a fine of **Ugx 100,000,000/=** to court; and costs of this application.

The application is supported by the affidavit in support deposed by Mrs. Olive Kigongo who avers that **Civil Suit No. 295 of 2015** was filed against her seeking orders that her continued stay in the suit premises was unlawful; an order for vacant possession; general damages; interest on any pecuniary award and costs of the suit.

She in turn filed a counterclaim seeking among others, an order that the respondent registers the suit property in her names jointly with those of the plaintiff/counter defendant, as tenants in common, in equal shares. The decision was returned in her favour.

Despite however to the several requests made by her to the office of the commissioner, land registration as reflected in the several correspondences, the respondent has still refused to comply with the decree dated 27<sup>th</sup> April, 2017 which according to her was still valid and effective.

That the respondent's refusal to effect the orders of court were in blatant contempt of court which had prevented her from enjoying the fruits of the judgment, thus also making a mockery of the justice system.



The respondent filed a reply through Mr. Bigiira Johnson, a Principal Registrar of titles who admitted that the office was served with a decree arising from: **Civil Suit No. 295 of 2015: Haji Musa Kigongo vs Olive Kigongo.**

5 That the respondent who had not been a party to that suit was directed to register the suit property comprised in: **LRV 2175 Folio 13, Plot 29 Kololo Hill Drive, Kampala.** The office had embarked on the process but could not complete it because the owner's certificate was not availed by the applicant, despite their request made to her through her lawyers.

Their reply to the respondent was that the duplicate certificate was in the custody of Haji Musa Kigongo whom the respondent has since contacted to avail the same, but who has not yet responded.

10 That upon a party's failure to avail the duplicate certificate of title the office is required to take the course of action as provided under **sections 70 and 74 of the Registration of the Titles (RTA) Act**, but the applicant has not applied for a special certificate of title as required under **section 70 of the RTA.**

15 That it is only proper that this court compels the person with custody of the Duplicate Certificate to avail the same to the Land Office for purposes of implementing and/or registering the decree. The respondent did not file any submissions but the applicant represented by **M/s KBW Advocates** did file submissions.

**Issues for Determination.**

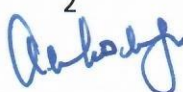
The issues for court's determination were:

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1. ***Whether the respondent's actions of declining and/or neglecting to register the applicant on the suit land as a tenant in common amount to contempt of the court.***
  2. ***What remedies available in the circumstances***

**The law regarding contempt.**

25 The order of court which is the subject of this application is dated 27<sup>th</sup> April, 2017: **vide Civil Suit No. 295 of 2015.** It states:

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- a) ***It is declared that the defendant/counterclaimant is a co-owner of the land comprised in plot No. 29 Kololo Hill Drive Kampala, due to the interest established under the doctrine of proprietary estoppel;***
  - b) ***An order that the commissioner, land registration registers the suit property in the names of plaintiff/counter defendant defendant/counter claimant as tenants in common in equal shares***

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c) .....

Counsel for the applicant in his submissions referred to the case of **Stanbic Bank (U) Ltd and Jacobsen Uganda Power Plant Company Ltd Vs Commissioner General Uganda Revenue Authority (Misc. Appl. No. 0042 of 2010)** where the court citing **Halsbury's Laws of England Vol. 9(1) Edition 4** stated that civil contempt occurs when there is disobedience of judgment orders.

A complainant must prove four key elements: the existence of a lawful order; the potential contemnor's knowledge of the order; the potential contemnor's ability to comply; and the potential contemnor's failure to comply. (**Hon. Sitenda Sebalu vs The Secretary General of the East African Community: The East African Court of Justice art Arusha: Ref: No.8 of 2012, (Pg 21).**)

It was counsel's submission that all the above elements exist in the present application. I would now align the above elements with the evidence presented in this application

**Evidence in support of application.**

**The existence of a lawful order; and: the Potential contemnor's knowledge of the order.**

Counsel argued that there was uncontroverted evidence on record to prove the existence of a lawful decree in respect of **Civil Suit No. 295 of 2015**, issued by the court (family division) on 27<sup>th</sup> April, 2017, wherein the respondent was ordered to register the suit property in the names of the applicant and one Hajji Musa Kigongo, as tenants in common. He submitted correctly, that these orders have never been set aside or varied, nor have they been stayed.

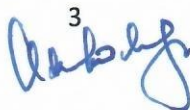
Furthermore, that the evidence on record shows that the respondent had full knowledge of the decree as the same was served on 11<sup>th</sup> July, 2017. However that it was not until the 6<sup>th</sup> August 2020, 3 years later that the respondent had written back. (**Refer to: Annexure C and D of the affidavit in support).**

The respondent in his affidavit in reply indeed admitted in *paragraphs 4, 5, 6* that they received the decree and thereafter embarked on the process of execution which they could not complete because the owner's certificate was not availed by the applicant.

Under those circumstances, it is therefore correct to say that the respondent was made aware of the existence of an undischarged order.

**The potential contemnor ability to comply/failure to comply.**

Counsel contended that the respondent did not only fail to comply with the court's orders in **HCCS No. 295 of 2015** but also acted with impunity to blatantly disobey the same. That up till now has

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never registered the suit property in the joint names of Hajji Kigongo Musa and Olive Kigongo as tenants in common in equal shares, as decreed by court.

The said claims were however refuted by the respondent who maintained that the process of execution which they had embarked on had been delayed by the fact that they had not been availed with the certificate of title for the necessary action.

That they had written to the applicant's lawyers asking them to avail the office with a copy of the duplicate certificate. The lawyers however wrote back informing them that the title was in the possession/custody of Haji Musa Kigongo. That the respondent had thereupon written requesting him to avail the title but had received no response.

The office of the respondent indeed has powers under **Section 73 of the Registration of Titles Act, Cap 230** to direct any person in possession of land title to deliver it to the Land Office when necessary or required in respect of any transfer, for cancellation or rectification, or do any such thing as may have been ordered under a decree of court.

The commissioner/respondent is required to write to the judgment debtor and/or the proprietor of the land or the person having possession, custody or control of any such title to send it to the office of titles within a period named in the requisition, but not less than 7 days from that date for such appropriate action to be taken, as the case may demand.

It was the applicant's contention that the office never bothered to evoke those powers to request Hajji Musa Kigongo in whose possession the title was, to deliver the same for purposes of effecting the decree. The letter to Hajji Musa Kigongo was however not attached. It is therefore more likely than not that it was never written or if it was it was never sent to him.

Under **section 74**, if after that request is made and the person refuses or neglects to comply with it, or if the commissioner/registrar receives no reply from that person, he/she may proceed *mutatis mutandis*, in accordance with **section 70** of the same Act.

The Land office then issues a special certificate of title, as normally done in instances where the duplicate is lost, destroyed or becomes so obliterated as to become useless.

The applicant in this case complained that the respondent had the ability to comply with the order applying those powers, and there was nothing hindering it from doing so. I could not agree more that indeed the respondent holds the special powers to deal with this matter. The powers which are exercisable without any recourse to this court were reinforced under **section 91 of the Land Act, Cap.227**.

The section stipulates that where a certificate of title is *illegally or wrongfully retained* the office has the powers, to give notice of not less than 21 one days of the intention to take appropriate action to

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any party likely to be affected; is mandated to conduct a hearing, giving the interested party an opportunity to be heard as per the rules of natural justice; and communicate the decision in writing to the parties, which may result in cancellation, correction or delivery to the proper party.

**Section 91 (3)** of that same Act specifically states:

- 5           ***If a person holding a certificate of title..... fails or refuses to produce it to the commissioner within a reasonable time, the commissioner shall dispense with the production of it and amend the registry copy and where necessary issue a special certificate of title to the lawful owner.***

10           What is available on record is a letter by the respondent's Johnson Bigiira addressed to **M/S Kwesigabo, Bamwine & Co. Advocates** (then counsel for the applicant), requesting for the certificate of title.

This letter dated 6<sup>th</sup> August, 2020 (**Annexure D'**) was a response to that of counsel, dated on 11<sup>th</sup> July, 2017, requesting the respondent to execute the decree of court.

15           **Annexure E** is a letter addressed to the respondent requesting the office to issue a special certificate of title, relying on their powers under the cited sections of the law. **Annexure F** is another of the counsel's letter dated 1<sup>st</sup> February, 2021, a reminder to them to comply with the order of court, passed three years earlier.

20           There is nothing however on record to prove that a letter as alluded to by the respondent had been written to Haji Musa Kigongo to request him to avail the title in his possession, thus making it more likely than not that the letter to that effect was never written.

It is therefore the conclusion of this court that Hajji Musa Kigongo, currently registered as the proprietor of the land comprised in **plot No. 29 Kololo Hill Drive Kampala**, who however was not made party to this application, was therefore never notified by the respondent as required by any of the laws as cited above, for the purpose of effecting the said orders.

25           In the premises, it is correct to say that the respondent had both the mandate and ability, but only made a half-hearted attempt, and ended up failing, to execute the decree passed **vide Civil Suit No. 295 of 2015**.

**Remedies available in the circumstances.**

***a). Arrest and detention of the Respondent.***

30           Counsel referred to the decision made in **Monica Mirembe Mukooza Vs Kainza Margaret (Misc. Applic. No. 43 of 2013)** that where a party is held in contempt and is not apologetic to court, that suffices to have the contemnor detained in civil prison.

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That in the instant case, the respondent had acted with impunity and this is a suitable case for detention of the contemnor.

The applicant's primary interest as I understand it, is not to have the respondent committed to prison as such but to explain to court in the first place why, with all its powers and despite the fact that several reminders were made, the respondent did not follow the straight forward procedures as laid out in the laws, to ensure the execution of the decree; and why it took four years after the decree had been passed before the half-hearted attempt was made, moreover belatedly by the respondent to execute the decree.

It is with that primary interest in mind that this court will exercise restraint before issuing the order for civil prison and instead therefore make use of the provisions of **section 177 of the RTA, Cap. 230**, which states:

*Upon recovery of any land, estate or interest by any proceedings from the person registered as proprietor thereof, the High Court may in any case in which the proceedings is not herein expressly barred, direct the registrar to cancel any certificate of title or instrument...and substitute such certificate of title or entry as the circumstances of the case require, and the registrar shall give effect to such order.*

I accordingly direct as follows:

**(1) the Commissioner, Land Registration shall exercise the powers under section 177 of the RTA, after notification is made to the proprietor of plot No. 29 Kololo Hill Drive Kampala, (the suit land) of the intended action.**

**(2) Upon failure to receive any response from the proprietor within three weeks of writing to him, the commissioner shall substitute such certificate of title or entry as the circumstances of the case may require, for the purpose of giving effect to the decree.**

**(3) Should the Commissioner, Land Registration fail to act in compliance with the orders of this court within 45 days after the delivery of this ruling, it is then that the warrant of arrest shall issue against the holder of that office for civil prison for a period of six months.**

**General damages:**

General damages are awarded at court's discretion. Those that the law presumes to arise from direct, natural or probable consequences of the act complained of by the victim. These follow the ordinary course or relate to all other terms of damages whether pecuniary or none pecuniary, future loss as



well as damages for paid loss and suffering. **See; Uganda Commercial Bank Vs Deo Kigozi [2002] EA 293.**

5 **Black's Law Dictionary 9th Edn at page 445** defines damages as the sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong. It is trite law that damages are the direct probable consequence of the act complained of. **(Ref: Storms versus Hutchison (1905) AC 515.**

In the case of **Assist (U) Ltd. versus Italian Asphalt and Haulage & Anor, HCCS No. 1291 of 1999 at 35** it was held that the consequences could be loss of profit, physical, inconvenience, mental distress, pain and suffering.

10 In the present case, it is the applicant's contention that the respondents' actions have not only been in contempt of court but have also caused an inordinate delay of five (5) years without the applicant being registered as proprietor of the suit property and as such, the applicant has been denied all rights that accrue to a registered proprietor. I could not agree more.

15 The applicant therefore claimed an amount of **Ugx 200,000,000/=** as general damages. The applicant ought to have done more however to give a breakdown of the figures than just presenting a block figure without any substantiation.

In my view a figure of **Ug x 60,000,000/=** should be sufficient as an award of general damages on account of the respondent's failure to execute the orders despite the special powers it enjoys under the laws.

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**Alexandra Nkonge Rugadya**

**Judge**

**17<sup>th</sup> February, 2022**

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