

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1923 OF 2021

(Arising from Originating Summons No.05 of 2020)

NALONGO ESTATES

LIMITED:.....APPLICANT

VERSUS

1. DOROTHY KISAKA

2. KAMPALA CAPITAL CITY

AUTHORITY:.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya.

RULING.

Introduction:

The applicant brought under **Articles 128 (2), (3), 50 (2), 28 (12) & 23 (1) (a) of the Constitution of the Republic of Uganda, 1995, Sections 14 & 33 of the Judicature Act Cap.13, Section 98 of the Civil Procedure Act Cap.71 and Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1** seeking orders that:

- 1. Dorothy Kisaka, the 1st respondent be arrested and committed to Civil prison for contempt of court orders;**
- 2. A writ of sequestration doth issue appointing a sequestrator and attaching the salaries and properties of the 1st respondent for the sequestrator's management;**
- 3. The 1st & 2nd respondents be fined Ushs.500,000,000/= (Uganda Shillings five hundred million only) as a sanction for their contemptuous act;**
- 4. Costs of the application be provided for.**



Grounds of the application:

The grounds of this application are contained in the affidavit in support of Ms. Sarah Kizito, the applicant's managing Director wherein she stated *inter alia* that the applicant filed **Originating Summons No.05 of 2020** against the 2nd respondent for purposes of execution of the memorandum of understanding dated 19th May, 2020 between the applicant and the 2nd respondent, in respect of property comprised in **LRV 4211 Folio 14 plot 96A-100A, Kitante Road (Yusuf Lule Road) LRV Folio 15 plot 5 Park Lane & LRV 2825 Folio 1 plot 34E-38E Jinja road** vis- a- vis the implementation of the Kampala Flyover Project.

That on 11th January, 2021 this court ordered the 2nd respondent to immediately extend the applicant's lease in respect of property comprised in **LRV 4211 Folio 15 Plot 5 Park Lane**. That in its final judgement delivered on 16th June, 2021, court ordered the 2nd respondent to grant the applicant full term leases in respect of the properties comprised in **LRV 4211 Folio 14 Plot 96A-100A Kitante Road (Yusuf Lule Road) & LRV 2825 Folio 1 Plot 34E-38E Jinja Road** and that the process of finalizing extension of the lease terms in respect of the same to be immediately completed pursuant to the Memorandum of association.

That the 1st & 2nd respondents have however since not only disobeyed, but have also refused to implement the court directives despite the fact that they were personally served with the court orders and their servants/agents being present during the issuance of the same.

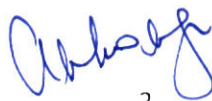
Further, that the respondents' actions are a mockery of this court and that it is in the interest of justice that the orders sought herein be granted to preserve the respect and dignity of this court to deter the abuse and non-compliance of court orders.

Response by the respondents:

The respondents opposed the application through a joint affidavit in reply deposed by Ms. Dorothy Kisaka, the 1st respondent who is the 2nd respondent's Executive Director & Accounting officer.

She deposed that she was informed by one Caleb Mugisha, the 2nd respondent's Acting Director Legal Affairs that on 16th June, 2021 this court made orders in respect of **Originating Summons No.05 of 2020** in order to achieve the most cost effective and efficient way of ensuring the smooth implementation of the Kampala Flyover Project, in co-existence with the applicant's rights.

That the said project is being implemented by the Uganda National Roads Authority (UNRA), the 2nd defendant in **Originating Summons No.05 of 2020** and the responsibility to survey and curve off land for the said projects as ordered by court solely lies with the Uganda National Roads Authority.



That any compensation due for the project affected land is to be provided by the Uganda National Roads Authority, which is yet to provide a survey report to the 2nd respondent, and as such the respondents are not yet in position to determine the property which is not affected by the Kampala Flyover Project.

- 5 Furthermore, that one of the orders in **Originating Summons No.05 of 2020** was that the renewal and extension of the applicant's leases for the affected plots is contingent upon the implementing agencies determining the necessary space required for the project and that the respondents remain committed to the process of granting the leases.

- 10 In addition, that the applicant who has not been injuriously affected by delay in finalizing the survey and compensation for the land affected by the Kampala Flyover Project remains in possession of the suit land and given the nature and orders issued, any failure by the respondents to abide by the terms of the MOU as interpreted by court only gives rise to breach of contract and not contempt of court.

- 15 Further, that the purpose of the orders of court in **Originating Summons No.05 of 2020** was to guide the process of achieving the most cost effective and efficient way of ensuring the smooth implementation of the Kampala Flyover project in co-existence with the plaintiff's rights under the MOU.

Accordingly, that it is in the interest of justice and equity that court exercises its inherent power and discretion to dismiss the instant application with costs to the respondents.

- 20 The applicant did not file an affidavit in rejoinder to the respondents' averments as set out in their joint affidavit in reply.

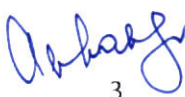
Representation:

- 25 The applicant was represented by **M/s Muwema & Co. Advocates** while the respondents were jointly represented by the **Kampala Capital City Authority Directorate of Legal Affairs.**

Issues.

As directed by this court, the parties filed written submissions which I have had the occasion of reading. In carefully considering the contents thereof, the issues identified for determination are:

- 30 **1. Whether the respondents are in contempt of court orders issued Vide Originating Summons No.05 of 2020;**
- 2. What Remedies are available to the Applicant?**



Resolution of issues.

According to the **Black's Law Dictionary 9th Edition**, contempt of court is defined to include an act of despising and/or conduct that defies the authority or dignity of a court, interfering with the administration of justice.

- 5 Thus any course of conduct which abuses and makes a mockery of the judicial process and affecting the interest of the public in the administration of justice is considered to be contempt of court.

It is now settled law that before any action can be found to amount to contempt of court it must be established that there is a lawful court order and the potential contemnor must have
10 been aware of the court order and failed to comply with the order. (See: **Megha Industries Ltd vs. Conform Uganda Ltd HCMC NO. 21 of 2014.**)

In the present case, it is not in dispute that there is in existence a lawful court order and that the respondents certainly knew and were aware of the same as admitted in their joint written statement of defence. What remains to be determined however is whether or not the
15 respondents failed to comply with the orders of this court.

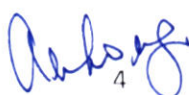
In the case of **Mutambo Wepukhulu vs. Wasswa Balunywa and 2 Others Miscellaneous Application 276/2012** it was stated that a party who knows of an order, regardless of whether, in view of that party, the order is null or valid, regular or irregular cannot be permitted to disobey it by reason of what that party regards the order to be.

- 20 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.

The application before court seeks to have the respondents cited for contempt of this court's order delivered on 16th day of June, 2021; for the 1st respondent be arrested and committed
25 to prison for contempt of contempt; a writ of sequestration appointing a sequestrator and attaching the salaries and properties of the 1st respondent for the sequestrator's management; and for a fine of **Ug. x 500,000,000/= (Uganda Shillings five hundred millions only)** as a sanction for the respondents' contemptuous conduct.

In the exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring
30 whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt.

Every party submitting to court's jurisdiction is expected to obey the orders of the court in its spirit and substance and with due dignity for the institution. (Supreme Court of India in the case of **Mahinderjit Singh Bitta v Union of India & Others 1 A NO. 10 of 2010**).


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As declared in the case of **Indian Airports Employees Union v Ranjan Catterjee & Another** [AIR 1999 SC 880: 1999(2) SCC:537, to amount to "civil contempt" disobedience must be willful. If such disobedience is based on the interpretation of court's order, notification and other relevant documents, it does not amount to willful disobedience.

5 In the case before me, it is not in dispute that this court issued orders directing the 2nd respondent to grant the extension of the full term leases in the properties comprised in **LRV 4211 Folio 14 plot 96A-100, Kitante Road (Yusuf Lule Road) LRV Folio 15 plot 5 Park Lane & LRV 2825 Folio 1 plot 34E-38E Jinja road** and that the same be done with immediate effect, pursuant to the memorandum of understanding.

10 In addition, this court in a bid to aid the parties achieve the orders of this court, gave guidelines to help in the process of implementing the Kampala Flyover Project in existence with the applicant's rights.

Court noted that since the acreage of the land required for the government projects was never specified in the Memorandum of understanding, the obligation to determine the acreage
15 required for the project was placed on the implementing agencies as per *clause 7* of the memorandum of understanding which places the burden to determine the space for the necessary space required on the implementing agencies, to wit **UNRA & UMEME**.

Court then directed that a survey be conducted within a period of two weeks for purposes of identifying the part of the suit land to be acquired for the project and ordered that the plaintiff
20 shall get an immediate extension of the lease to a full term in respect of property comprised in **FRV 992 Folio 17 (formerly LRV 4211 Folio 15 plot 5 Parklane Kampala)**, the property that is not affected by the project, and that a lease agreement be entered between the 1st defendant and the plaintiff (applicant); and a certificate of title covering the residue for **LRV 4211 Folio 14 Plot 96A-100A, Kitante road**, which area to be determined under the survey.

25 What is of note however is that under **paragraph (j)** this court categorically stated that;

j) For the avoidance of doubt, the renewal and extension of the leases to the plaintiff for the affected plots shall be contingent upon the implementing agencies determining the necessary space required for the project.

From the above, it is evident that the respondents could not have issued either the extension
30 of the lease in respect of the suit properties as well as the certificates of title before the implementing agencies of the respective Government projects had first and foremost conducted the survey and identified the affected land and availing the same for creation of certificates of title for the residue plots which the applicant claims.

The initial step as noted in paragraph 6 of the affidavit in reply was thus to conduct a survey
35 and there is no indication that this had been done. In the view of court, each party to the MOU and under the originating summons had a specific role to accomplish.



There is no evidence that this survey was ever carried out to determine the area/space to be granted to the applicant as ordered by court or that the implementing agencies (UMEME Ltd and UNRA), had brought to the attention of this court and the rest of the parties as to why they had failed to fulfill their respective roles.

- 5 UMEME Ltd which had a key role to play was not made party to the **Originating Summons No. 05 of 2020**, under which the orders were made. But UNRA was a party, not only to the MOU but to the summons. Quite surprisingly, it was not made party to this present application.

- 10 There is no clear indication that any of the respondents had deliberately refused to obey the orders of this court since the due performance of their own part was contingent upon UNRA's fulfillment of its own obligations and mandate under the MOU and the ensuing orders of this court.

- 15 The responsibility however falls on the shoulders of that party concerned, in case for some genuine reason it 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.

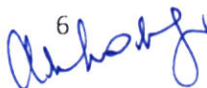
This equally applies to the respondents who had a credible excuse why they had not obeyed the court order. The respondents ought not to have waited until this application was filed to draw court's attention to their own frustration occasioned by UNRA.

- 20 The respondents with all due respect, had an obligation and owed the applicant a duty of care to ensure fulfillment of the obligations as spelt out under the MOU. As the lease owners of the property in issue and parties to the orders, and with all the legal and institutional machinery and with all resources at their disposal (which placed them above the applicant's own means and ability), a court would not be doing justice to allow them to simply fold their hands and watch with disinterest as acts of violation are committed by another agency, right
25 under their close watch.

For that same reasons, it would not only be misleading but also erroneous to suggest as the respondents did, that the wrongs committed would attract remedies for breach of contract rather than contempt of court when there are clear overriding orders that were made intended to ensure prompt execution of the MOU, to which they had also been party.

- 30 This court is vested with powers under **section 33 of the Judicature Act, Cap. 13**, to make the necessary orders as it thinks fit in respect of any matter, legal or equitable so that as far as possible all matters in controversy between the parties may be completely and finally determined, so that all multiplicities of legal proceedings concerning those matters are avoided.

- 35 The above section particularly applies where an illegality or irregularity that concerns a disobedience of court order has been duly brought to court's attention, which would override

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all manner of pleadings, including any admissions which may have been made. (**Makula International Ltd vs H.E Cardinal Nsubuga & Anor CA No. 4 of 1981**).

In light of the above, an order of this court is made directing the respondents to liaise with the implementing agencies to conduct the survey of the suit property in execution of the orders of court made vide: **OS No. 0005 of 2020** and present a report to court on the execution of its orders, within 45 days after the delivery of this ruling.

The period of disobedience of this court order will start counting after 45 days.

Parties to meet their own costs.

I so order.



Alexandra Nkonge Rugadya

27th July, 2022.

✓
Devised by email
Alexandra N
27/7/2022