

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

**CIVIL APPEAL NO. 36 OF 2021**  
**(Arising from the Chief Magistrate’s Court of Makindye at**  
**Makindye, M.A No. 106 of 2021 (Arising from Civil Suit No. 95**  
**of 2014)**

**NAMIREMBE RUTH OLIJO ::::::::::::::::::::::::::::::::::: APPELLANT**

***VERSUS***

**1. KASUJJA MARIAM**  
**2. MUTESI SARAH**  
**3. NANEMBA JOWERIA (Administrators of the**  
**Estate of the late Magala Moses) ::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE HON. JUSTICE NAMANYA BERNARD**

**JUDGMENT**

***Introduction:***

1. This is an appeal against the decision of the *learned Chief Magistrate, Her Worship Katushabe Prossy*, delivered on the 14<sup>th</sup> July 2021, in which she found that the appellant had disobeyed the terms of the temporary injunction issued by the same Court, and accordingly issued the following orders against the appellant: (a) payment of general damages of UGX 10,000,000;

- (b) payment of a fine of UGX 10,000,000 to the Court; and (c) interest on (a) and (b) at Court rate.
2. The background of this appeal is that the respondents filed a suit against the appellant in the Chief Magistrate's Court of Makindye at Makindye seeking the following reliefs: a declaration that the respondents are lawful owners of the suit Kibanja (hereinafter "the suit land"); a declaration that the alleged sale between the respondents and the administrators of the late Eli Nathan is legal; a temporary injunction against the appellant; and costs of the suit.
  3. Hearing of the suit is on-going but was halted on account of this appeal.
  4. On the 26<sup>th</sup> November 2014, the learned Chief Magistrate issued an Order in the following terms:  

*"A Temporary injunction doth issue against the respondent, her agents, servants, workmen and anyone deriving any interest from her restraining them from any constructing or further development in any manner whatsoever with the suit land situate at Kavule LC1 Kibuye II Parish, Makindye Division, and Kampala District pending the disposal of the main Civil Suit [...]."*
  5. The respondents filed *Misc. Application No. 106 of 2021* alleging that the appellant had disobeyed the temporary injunction

issued by the Court. On the 14<sup>th</sup> July 2021, the Court decided the application in favour of the respondents.

6. The appellant being dissatisfied with the decision of the Chief Magistrate, appealed to this Court on the following four grounds:
  1. That the learned Trial Chief Magistrate erred in law and fact when she held that the appellant had disobeyed the terms of the Temporary Injunction order issued by the Court.
  2. That the learned Trial Chief Magistrate erred in law and fact when she ordered the respondent to pay general damages of UGX 10,000,000 and a fine of UGX 10,000,000 to Court.
  3. That the learned Trial Chief Magistrate erred in law and fact when she failed to properly evaluate the evidence on the Court record and she came to a wrong decision which occasioned a miscarriage of justice.
  4. That the learned Trial Chief Magistrate erred in law and fact when she failed to properly apply the Principles governing contempt proceedings and she reached a wrong decision which occasioned a miscarriage of justice.
  
7. The appellant prays that the appeal be allowed with the following orders: the appellants' appeal be allowed with costs in the High Court and the Court below; and that the Ruling and orders of the lower Court be set aside.

8. The appellant was represented by *M/s. Kajeke, Maguru & Co Advocates* while the respondents were represented by *M/s. Nsibambi & Nsibambi Advocates*.
9. Both parties filed written submissions which I have considered.

***Consideration and determination of the grounds of appeal:***

10. The role of the first appellate Court is to re-appraise the evidence and subject it to fresh scrutiny, and draw its own decision on issues of fact as well as of law (see the case of ***Mariam Nanteza & Others v. Nasani Rwamunono & Another, Court of Appeal Civil Appeal No. 28 of 2013***). I shall keep the above principle in mind while resolving the grounds of the appeal.
11. For purposes of coherency, I will consider all the four grounds of the appeal together.
12. It is the law that any conduct that defies the authority or dignity of the Court, is defined as contempt of court. The public must be assured that Court orders will be obeyed by concerned parties. The rationale of contempt of court proceedings is the preservation, and safeguard of the rule of law. The Court has a duty to protect, and promote public confidence in the administration of justice. The power to punish for contempt of court is a special jurisdiction which is inherent in all

courts. (see the case of ***Kizito v Nsubuga and 6 Others (Civil Application 25 of 2021, 26 of 2021) [2022] UGSC 19***).

13. For contempt of court to be established, there must be the following essential elements (see the case of ***Kizito*** (supra):

1. Existence of a lawful order.
2. Knowledge of the order.
3. Ability to comply.
4. Disobedience of the order.

14. I have carefully perused the pleadings and evidence adduced in *Misc. Application No. 106 of 2021* in which the learned Chief Magistrate found the appellant to be in contempt of court. In particular, I have reviewed the *record of proceedings (page 23)*, in which the appellant states as follows:

*“[...] I have new tenants currently on the suit land there is someone selling cars and also parks them there. The current tenant started about 2019 [...] The person parking them there is my tenant [...].”*

15. It is the finding of this Court, that there is overwhelming evidence, that the appellant, ***in total disregard of the Temporary Injunction Order***, issued by the Chief Magistrate on the 26<sup>th</sup> November 2014, rented out the suit land to a tenant to operate the business of parking and selling cars.

16. The appellant's conduct satisfies all the four essential elements for contempt of court. I am satisfied, that the learned Chief Magistrate properly evaluated the evidence, correctly applied the law, and rightly came to the conclusion, that the appellant is in contempt of Court. ***The conduct exhibited by the appellant cannot go unpunished.*** I find no reason, to interfere with the orders of the learned Chief Magistrate in *Misc. Application No. 106 of 2021.*

**Conclusion:**

17. In the result, I **ORDER** as follows:

(a) This appeal is **DISMISSED**.

(b) The costs of this appeal are awarded to the respondents.

**I SO ORDER.**

**NAMANYA BERNARD**

**Ag. JUDGE**

**9<sup>th</sup> September 2022**