

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1529 OF 2022

(Arising from Civil Suit No.231 of 2011)

- 1. TEBANDEKE EDWARD**
- 2. WALUGEMBE SAM**
- 3. NAKABIRI HARRIET**
- 4. NANTALE BETTY**
- 5. NASSIWA NORAH===== APPLICANTS**
(Suing as Administrators of the estate of the late Katerega David)

VERSUS

- 1. JOHNSON MUGERWA**
- 2. WAMALA KAYA ===== RESPONDENTS**

BEFORE: HON. LADY JUSTICE FLAVIA NASSUNA MATOVU

RULING

1. INTRODUCTION

This application arose as a result of alleged contempt of court order issued in HCCS. No. 231 of 2011. It was brought under the provisions of Article 26 of the Constitution of the Republic of Uganda, S. 33 of the Judicature Act, S. 98 of the Civil Procedure Act, and O. 52 rules 1,2 and 3 of the Civil Procedure Rules. It was brought by notice of motion which was supported by an affidavit sworn by the 1st applicant. The grounds of the application were laid in the notice of motion

and affidavit in support. The applicants were seeking for several orders which included;

- a. That the respondents be held in contempt of Court orders issued by Court on the 21st of May, 2021 and be committed to Civil Prison for a period of six months.
 - b. That the respondents be punished for contempt of a court order by payment of a court fine of Ugx. 300,000,000/- (Uganda Shillings Three Hundred Million Only) each to the court.
 - c. That the respondents pay a sum of Ugx. 600,000,000/- (Uganda Shillings Six Hundred Million Only) to the Applicants as exemplary/punitive damages.
 - d. The respondents pay the costs for this Application.
2. The 1st respondent filed an affidavit in reply by which he called upon court to dismiss this application with costs. The 2nd Respondent did not file any affidavit in reply.

3. BACKGROUND.

- a) The applicants are administrators to the estate of late David Kateregga who executed a school management agreement with the respondents for a period of 15 (fifteen) years. The period of 15 years lapsed in 2008, but the respondents in breach of the said agreement, remained in management of the school.

- b) The applicants therefore filed HCCS. No. 231 of 2011 in the Land Division, against the Board of Directors of Brethren College Kiryagonja, Johnson Mugerwa, Eria Kaaya and Kolosasi Wamala for recovery of the school.
- c) On the 21st of May, 2021 the case was decided in favour of the applicants and it was decreed that the school belonged to the applicants.
- d) The court gave parties up to 31st December, 2021 to renegotiate new terms, failure of which the respondents/defendants would be evicted without notice.
- e) Parties failed to renegotiate and the respondents were consequently evicted as ordered by court.
- f) However, it was alleged that the respondents in total disregard of the eviction and in violation of the court order, re-entered the school premises and attempted to evict the applicants.
- g) The applicants therefore filed the instant application seeking for the afore mentioned remedies.

The respondents did not deny the above-mentioned facts but maintained that they were not in contempt of any court order.

Specifically in his affidavit in reply, the 1st respondent stated that;

- h) He is the owner of the land where the school is located which he bought from the Administrators of the Estate of the late Katesigwa on the 30th day of March, 2012 and prior to buying the said land, it had buildings constructed by himself.
- i) That while determining HCCS. No. 231 of 2011, the court did not decide the issue of ownership of the said land but only determined management of the school.

- j) That the issue of ownership of the land is yet to be determined by court in Civil Suit No. 2646 of 2016 which is still pending before this honourable court.
- k) That he went back to the school not to engage in its management but to collect his personal belongings; two cars, four cows, textbooks and other personal belongings, and he did not enter any office.
- l) That he went back to the school as the landlord and was not violent against anybody, neither did he break anything.
- m) That he was instead attacked by the 1st applicant and his men who were later on arrested and charged in court.
- n) That the 1st applicant is in possession of the school and no one has ever attempted to evict him.

4. ISSUES

- a) Whether the respondents were in contempt of court.
- b) What remedies are available?

5. LAW APPLICABLE

- a) The Constitution of the Republic of Uganda 1995.
- b) The Judicature Act Cap 13
- c) The Civil Procedure Act Cap 71
- d) The Civil Procedure Rules
- e) Common law and decided cases.

6. LEGAL REPRESENTATION:

The applicants were represented by Ms. Kiiza & Co. Advocates while the respondents were represented by Ms. Luzige, Lubega, Kavuma & Co, Advocates.

7. EVIDENCE OF THE APPLICANTS.

The applicants filed an affidavit which sworn by Tebandeke Edward, the 1st applicant. The contents of the said affidavit are on the court record and I need not reproduce them here. He also attached several documents to the said affidavit which included;

- a) copy of the school management agreement between the late Katerega David and the Respondents as Annexure “B”
- b) copy of the judgment in HCCS No. 231 of 2011 as Annexure “C”.
- c) copy of the Decree in HCCS. No. 231 of 2011 as Annexure “D”.
- d) copy of the order of eviction as Annexure “E”.
- e) copy of the return of eviction as Annexure “F”.
- f) copy of a certification of the school’s EMIS number as Annexure “CoR”.
- g) copy of the 1st Respondent’s letter indicating his intention to re-enter the school as Annexure “G”.
- h) Photos of the posters put up by the Respondents on the school premises upon re-entry as Annexures “I”, “I2” and “I3”.
- i) copy of video footage captured by Bukedde Television and BBS Television was attached as Annexure H.

8. EVIDENCE OF THE RESPONDENTS.

The 1st respondent filed an affidavit in reply whose contents are also reflected on court record and I need not reproduce them here. He also attached several documents which included:

- a) copy of the land sale agreement between the Administrators of the estate of the late Yokaana Katesigwa and the 1st respondent as Annexure “A1”.
- b) copy of the agreement for land transfer and receipt of the land title of the suit land between the Administrators of the estate of the late Yokaana Katesigwa and the 1st Respondent as Annexure “A3”
- c) A confirmation of receipt of the final payment for the land as “A4”.
- d) copy of the ruling by Justice Bashaija K. Andrew on the matter of ownership of the suit property in Civil Suit 231 of 2011 as Annexure “B”.
- e) A copy of the plaint in Civil Suit No. 877 of 2015 as Annexure “C1”.
- f) Copies of the logbooks of the 1st Respondent’s two cars Annexures “D1” and “D2”.
- g) Photos of the 1st Respondent injured and hospitalized as Annexure “E1”
- h) Police Form 3 (medical examination) to indicate the injuries he suffered.
- i) copy of a charge sheet of 4 individuals being charged for occasioning grievous bodily harm on the 1st Respondent as Annexure “H”.

The respondents also filed a supplementary affidavit sworn by one Senoga John. This was filed outside timelines that had been set by court and without leave of court. For that reason I have not considered it.

9. SUBMISSIONS BY COUNSEL FOR APPLICANTS.

Counsel for the applicants filed written submissions which I have carefully studied and I need not reproduce them here.

Briefly he submitted that the respondents acted in contempt of lawful court order of eviction that was issued by court , when after being evicted , they went back to the school premises and attempted to evict the applicants. That the respondents were aware of the existence of the said court order but chose to disobey the same by alleging that the applicants had not followed proper procedures and that the entire process was marred with corruption. He cited several authorities in support of his case which I have also carefully studied.

He specifically cited **Housing Finance Bank Ltd**¹ wherein it was stated that;

“A party who knows of an order, regardless of whether in the 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. It is not for that party to choose whether or not to comply with such an order...”

10. SUBMISSIONS BY COUNSEL FOR RESPONDENTS.

Counsel for the respondents filed submissions in reply which I have also carefully studied and need not reproduce them here.

¹ *Housing Finance Bank Ltd* & Anor v. Edward Musisi, Court of Appeal Miscellaneous Application No. 158 of 2010

Briefly he submitted that applications for contempt of court orders can only be brought in instances where the orders were issued in regard to interlocutory applications such as temporary injunctions and applications for interim orders. That a party cannot be found in contempt of court orders once a judgment has been issued in a matter. He still maintained that the respondents were not in contempt.

11. **DECISION OF COURT.**

Issue 1

Whether the respondents were in contempt of court?

- a) With all due respect I failed to appreciate the basis for respondents' counsel submission that contempt of court cannot arise where a judgment has been delivered. In my view all court orders whether interlocutory or final should be respected by all.
- b) Contempt of court connotes conduct that defies the authority of dignity of court². In the case of **Nsangiranabo**³ it was held that for 'contempt of court to be established, it must be shown that there exists a lawful order, that the contemnor has knowledge of the said order, and that he/she has failed to comply with the same (disobeyed the order).

² *Uganda Super League v. Attorney General, Constitutional Application No. 73 of 2013.*

³ *Nsangiranabo v. Col. Kaka Bagyenda and Anor (Civil Miscellaneous Application 671 of 2019) Arising out of Miscellaneous Cause No. 203 of 2019.*

c) In the case before me, it is clear that there was an order issued by Justice Eudes Keitirima in Civil Suit No. 231 of 2011. In the said order the judge ordered thus;

“In the interests of justice, and considering that the students of the school would gravely be affected by an instant order for eviction, I will give an opportunity to the parties to re-negotiate new terms and if they fail to reach any agreement by 31st December, 2021, the Defendants are to be evicted from the said school premises without any further notice.”

The respondents did not seek court to stay execution of the said court order.

d) It is also clear that the respondents had knowledge of the said court order because they participated in all the proceedings that led to this order.

e) Consequently, when the two parties failed to renegotiate the court issued an order eviction on 9th February 2022. The respondents were evicted from the premises and a return filed at court on 17th February 2022.

f) However later on, the 1st respondent issued a notice (Annexure G to the application) by which he expressed intention to return to the school. In the said document he stated interalia that the eviction order was not professionally implemented, court erroneously evicted people who owned 60% of the school, it was a great error for court to hand over his investment to such amateur directors, they being

grabbers who were supported by court and selected policemen particularly the DPC of Kasangati.

- g) Following that notice the respondents came back to the school premises and attempted to evict the applicants. The attempted eviction flopped simply because authorities intervened.
- h) The respondents did not deny having come back to the premises but claimed that they came back to the premises to pick their personal belongings and also in their capacity as landlords.
- i) I must however not that I found it exceedingly difficult to believe this explanation of theirs in light of the notice they issued (Annexure G) to the application. 2ndly the 1st respondent himself stated in his affidavit in reply that the court is yet to decide the issue of ownership of the said land. This simply means that he has not yet been declared rightful owner and therefore could not purport to come as landlord.
- j) The said annexure G shows that the respondents defied the dignity and authority of court. If at all the respondents felt that the eviction was not professionally implemented, they ought to have gone back to court and applied to set aside the entire process. Their conduct of taking the law into their hands, attempting to evict the applicants and making all sorts of baseless allegations against court was contemptuous in nature.
- k) In **Wildlife Lodges**⁴, it was emphasized that a party who knows of an order whether null or valid, irregular or not

⁴ Wildlife lodges vs. Country Council of Narok & Another 2005 EA 344

cannot be permitted to disobey it and that it would be most dangerous to hold that parties, or their advocates, could themselves be judge whether an order was null or valid, whether regular or irregular.

l) Similarly in the instant case, the respondents had no right whatsoever to decide whether or not the order issued by court was null or valid, regular or irregular. They ought to have addressed their grievances through proper legal channels.

m)I therefore find that the respondents were in contempt of court and resolve the 1st issue in the affirmative.

Issue 2

What remedies are available?

Having found as above I must note that the conduct of the respondents cannot be ignored by court. Court orders should not issued in vain but must be respected by all in order to promote the rule of law. Parties who are not satisfied with decisions of court should always address their grievances through proper legal channels but not to take the law into their own hands. In **Re Supply of Ready Mixed Concrete**⁵ it was observed that the party in whose favor 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 court if the disobedience is more than casual or accidental or unintentional.

It is clear that in the instant case, the disobedience by the respondents was not casual, accidental or unintentional. It was

⁵ (N02) (1995)1 ALLER 135

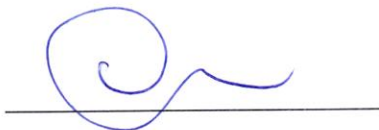
both deliberate and willful and indeed calls for a penalty. The applicants prayed for a fine of Ug.shs. 300,000,000/=, but in my view a penalty of Ug. Shs. 50,000,000/= will suffice.

The applicants also claimed for punitive damages of 600,000,000/=. However, in my view punitive damages should not be awarded in an application of this nature and for that reason the same shall not be awarded.

This application is therefore hereby allowed in the following terms;

- a) The respondents shall jointly pay a fine of Ug. shs. 50 million within one month from today in default of which they shall be committed to civil jail for a period of six months.
- b) The respondents shall also the costs of this application to the applicants.

Dated at Kampala this 15th day of August 2023.



FLAVIA NASSUNA MATOVU

JUDGE.