

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLAENOUS APPLICATION NO. 09 OF 2020

(Arising from Miscellaneous Application No. 063 of 2019)

(Arising from C.A No. 026 of 2016 and C.S No. 087 of 2009)

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1. KIHANGA JOHN
2. KANYONYI PAULO
3. MUKASA DEO
4. MUYUMBA SAM
10 5. KIIZA AMOOTI
6. KATEREGA NAMWANDU

.....APPLICANTS

VERSUS

1. NALWEYISO GERTRUDE
2. MIKKA GEORGE
15 3. OMUSANGE BADRU
4. SSENINDE ROBERT

.....RESPONDENTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Ruling

20 The applicants brought this application by way of Notice of Motion under **Section 98** of the Civil Procedure Act, **Section 33** of the Judicature Act, **Order 51 Rules 1** and **3** of the Civil Procedure Rules against the respondents. The applicants seek to be heard for the following orders;

- 25 1. A declaration that the respondents are in contempt of court orders granted by the High Court of Uganda Holden in Mpigi vide HCT – 04 – CA – NO. – 026 of 2016.
2. That the respondents be committed to civil prison for contempt of court orders of the High Court of Uganda Holden at Mpigi vide HCT – 04 – CA – No. 026 of 2016.
- 30 3. That the respondents be condemned to pay punitive damages of UGX 100,000,000/= (One hundred million shillings only) each for disobeying court orders.

4. That the respondents be condemned to pay damages of UGX 15,000,000/= (fifteen million shillings only) each for property destroyed from the applicants respective bibanja.

5. Costs of the application be provided for.

5 The application was supported by affidavits sworn by Ms. Nakagwa Christine, Mrs. Kihanga Florence and Mr. Paulo Kanyoni and the grounds briefly are as follows;

10 1. That the applicants herein emerged victorious in the appeal before His Lordship, Justice Wilson Masalu Musene, vide HCT – 04 – CA – No. 026 of 2016 in the High Court of Uganda Holden at Mpigi.

2. That in the said matter the 1st respondent was pronounced the judgment debtor therein.

15 3. That the 1st respondent is the registered proprietor of the suit land, the 2nd respondent is holding out as the agent of the 1st respondent while the 3rd and 4th respondents are engaged in directly assisting the two to deal with the land contrary to this court's pronounced judgment orders.

4. That the above respondents are in total contempt of court orders passed in vide HCT – 04 – CA – No. 026 of 2016 and have deliberately decided to disobey court orders despite several verbal and or written warnings.

20 5. That it is in the interest of justice that the respondents be committed to civil prison and as well be condemned to pay punitive damages until such a time that the court orders are obeyed.

6. That it is just and equitable that the application be allowed.

25 The application was opposed by the affidavits in reply sworn by the 1st and 3rd respondents. The 2nd and 4th respondents did not file any affidavits in reply to the application.

Background:

30 It was the applicants' case that judgment was entered in their favour where they were decreed lawful occupants of the suit land. That the respondents in total violation of the court order descended on the suit land and attempted to evict them.

The 1st respondent on the other hand averred that she is the registered proprietor of the land comprised in private Mailo Block 112 of Plots 50 and 51 at Kyeyitabya, Mpigi District. That the applicants were adjudged lawful/bonafide

occupants of the above land measuring approximately 3.503 acres with homesteads, food and cash crops, trees and kraals occupying the entire land except about 0.003 acres where the 1st respondents grave yard is located.

That the applicants in a bid to resist the exercise of survey and curving off the land decreed to the 1st respondent, decided to bring this application with an intention of occupying her land while she is in prison. That the 1st respondent by order of court is legally occupying the suit land therefore cannot be held in contempt of court.

The 1st respondent denied the fact that the 2nd respondent is her agent and that he does not assist her but he is also a trespasser on the 1st respondent's land and a suit was filed against him for trespass pending before the Chief Magistrate of Mpigi vide Civil Suit No. 001 of 2022.

Representation:

Mr. Mugezi Ahmed represented the applicants while Mr. Mugisha Godfrey appeared for the 1st respondent, Mr. Kabwana Derrick appeared for the 3rd respondent, the 2nd and 4th respondents were unrepresented. Written submissions were filed by the applicants, 1st and 3rd respondents.

Issues for determination:

1. Whether there are existing valid court orders?
2. Whether the respondents are in contempt of the said court orders?
3. What remedies are available to the parties?

Resolution of the application:

Issues 1 and 2:

1. Whether there are existing valid court orders?

2. Whether the respondents are in contempt of the said court orders?

Counsel for the applicants cited **Section 98** of the Civil Procedure Act on inherent powers of court to make decisions that are pertinent to meet the ends of justice and the case of **Stanbic Bank (U) Ltd & Another versus The Commissioner General – URA**, M.A No. 42 of 2010, on the definition of contempt of court as;

“Contempt of court can be classified as either criminal contempt, consisting of words or acts which impede with the administration of

justice or which create substantial risk that the course of justice will be seriously impeded or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to judgment orders or other process of court and involving in private injury.”

5 Counsel submitted that it was illegal for the respondents to evict the applicants from the suit land and cutting down their trees and crops while aware of the judgment that allowed them to utilize the suit land and this amounted to disobedience of court orders.

10 Counsel quoted the cases of **Stanbic Bank (U) Ltd & Jacobsen Power Plant Ltd vs. Uganda Revenue Authority (Supra)** and **Hon. Sitenda Sebalu v. Secretary General of the East African Community Ref. No.8/2012**, on the conditions necessary in order to prove contempt of court as follows;

- a. Existence of a lawful order;
- b. The potential contemnor’s knowledge of the order;
- 15 c. The potential contemnor’s failure to comply i.e disobedience of the order.

It was submitted for the applicants that there was a court order issued by this court vide HCT – 04 – CA – No. 026 of 2016 which ought to have been obeyed whether the respondents were agreeable to it or not.

20 Counsel relied on the case of **Chuck v. Cremer, 1 Corp Jemp 342** which was cited with approval by the Court of Appeal in the case of **Housing Finance Bank Limited & Another v. Edward Musiisi, CACA No. 158 of 2010**, where it was held *inter alia* that;

25 *“...a party who knows of an order, regardless of whether, in the view of that party, the order is null and void, regular or irregular, cannot be permitted to disobey it, by reason of what the party regards the order to be. That it would be dangerous to hold that the suitors or their solicitors could themselves judge whether the order was null and valid, whether it was regular or irregular. That the course of a party knowing of an order which is null and or irregular and who might be affected by it is plain. He*
30 *should apply to court that it might be discharged. As long as it exists, it must be obeyed. It is not for that party to choose whether or not to comply with such an order. The order must be complied with in its totality, in all circumstances by the party concerned subject to that party’s*

right to challenge the order in issue in such a lawful way as the law permits...”

Further, that the order in this case is not in dispute and the same has never been set aside and the respondents are aware of the said order much as they were not in agreement with the order they had no right to disobey it. That the respondents were therefore in contempt of the court order by continuing to cut, destroy, and loot the applicants’ crops against the court orders of this honourable court.

The 1st and 3rd respondents did not dispute the existence of the lawful order but contended that the applicants have resisted allowing the 1st respondent to curve off the 3^{1/2} acres decreed to her in the order, hence making the applicants to be in contempt and not the 1st respondent.

It was submitted for the 3rd respondent that the applicants claimed that the entire suit land measured 3.5 acres and thus the order was made in error and thus sought to have it reviewed. Counsel added that the court order unless set aside or varied it must be obeyed. And the applicants until the order is varied cannot stop the 1st respondent from utilizing the 3.5 acres.

The 3rd respondent added that he is not interested in the suit land and he was not aware of the order and no evidence was adduced by the applicants to prove that he was aware of the order since he was even not party to the proceedings between the applicants and the 1st respondent. He is therefore not guilty of contempt of court.

I have carefully considered the submissions, the law and authorities as cited here under. It is not in contest that there is an order that was issued by this court however; this order was granted in a suit between the applicants and the 1st respondent.

In that regard, it was incumbent upon the applicants to prove that the other respondents were aware of the court order to which they were not party to and went ahead to disobey the same.

I find that no evidence was adduced by the applicants to prove that save for the 1st respondent the other respondents were also aware of the court order since they were not party to the original suit.

The applicants maintained that the 1st respondent had disobeyed a court order, while the 3rd respondent contended that the 1st respondent is occupying land that

was decreed to her measuring 3.5 acres and unless the court order is varied she will continue to occupy the same.

I concur with the above submission, the court order vide HCT – 04 – CA – No. 026 of 2016 upon which the 1st respondent bases her utilization of the 3.5 acres states as follows;

“The respondent as a registered proprietor is not to evict the appellants. However, she is allowed to use and utilize part of the land, 3.5 acres and the rest to be utilized by the appellants.”

This court also in its decision ordered for both the applicants and the 1st respondent to utilize the suit land. The 1st respondent is therefore not illegally occupying the 3.5 acres. The applicants on the other hand should co-operate with the 1st respondent and curve out what they are supposed to be occupying, alternatively await the outcome of their application to have the order varied if at all.

I am therefore, unable to find the respondents in contempt of any court orders since the said court order is not in dispute and the applicants failed to prove the disobedience of the same by the respondents as the order has never been varied or discharged.

I accordingly resolve these issues in favour of the respondents.

Issue 3: what remedies are available to the parties?

The applicants prayed that the respondents be committed to Civil Prison for contempt of court vide HCT – 04 – CA – No. 026 of 2016 and or compensation of UGX 100,000,000/= as punitive damages and pay UGX 15,000,000/= for the properties destroyed and costs.

Counsel for the 1st respondent submitted on the other hand that the applicants are the ones that were in contempt of the court order even before this application was filed and are thus not entitled to any remedies as they did not seek justice with clean hands.

Having found that the respondents are not in contempt of any court orders the applicants are hereby not entitled to remedies sought.

This issue is also resolved in the negative.

This application is accordingly found with no merit and hereby dismissed with costs. I so order.

Right of appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

13/04/2022