

Section 33 of the Judicature Act Cap.13, Section 98 of the Civil Procedure Act Cap.71, Order 52 Rules 1 and 2 of the Civil Procedure Rules S.I.71-1 for orders that;

- a) The respondent be cited for contempt of court order vide MA No.315 of 2022.
- b) The 1st – 5th respondents be committed to civil prison for contempt of court and abuse of court process.
- c) Each of the respondents be fined the sum of Ugshs. 80,000,000 for contempt of court and the same be paid to the applicant for their contemptuous acts over the applicant's land.
- d) An order for demolition issues against the offensive structures built on the suit land without an approved plan and in contempt of court order.
- e) Costs of the application be provided for.

Background:

2. The applicant on the 29th day of June 2022 was granted a temporary injunction order in miscellaneous App No.315 of 2022



pending the determination of the main suit vide civil suit No.182 of 2022 with the orders that the 1st, 2nd respondents in the instant application and Mr.Kugonza Charles (who is not party to this application) or anybody deriving interest from them be restrained from selling,building,road construction, brick laying, fencing or doing any construction or placing there any materials, putting any foreign items or conducting any works of any nature or activities on the suit land that will change or alienate the status quo of the suit land comprised in Busiro Block 403 Plots 334-359 situate at Buzi

The 1st and 2nd respondents were served with the said order on the 14th/12/2022 however the 1st respondent has continued to sell bibanja portions over the suit plots to the 3rd respondent in contravention of the existing court order, hence this application.

Applicant's evidence;

3. As can be discerned from the pleadings of the parties, the Application is supported by an affidavit deponed by **Mr.Bemanyisa Adonijah** the applicant which sets out the grounds for the application briefly as follows;



- a) That the applicant filed an application for temporary injunction vide Misc. Application No.315 of 2022 against the 1st,2nd respondents in the instant application and Mr.Kugoza Charles(who is not party to the instant application) where a temporary injunction order was granted on the 29th of June 2022 pending the final determination of civil suit No.182 of 2022.
- b) That in contravention of the said order, the respondents have proceeded to build unplanned and unapproved legal structures on the suit land alienating the status quo of the parties.
- c) That the 1st respondent has continued to sell the claimed bibanja portions over the suit land with the help of the LC1 chairperson of the area where the suit land is situated.
- d) That the actions of the respondents jointly and severally are an attack on independence of the judiciary.
- e) That it is just and equitable that this application is allowed by citing respondents for contempt with costs.

1st respondent's evidence;



4. The application is responded to by an affidavit in reply deposed by **Mr.Mujuni Richard** the 1st Respondent which briefly states as follows;

- a) That the applicant filed civil suit No.182 of 2022 against the 1st respondent and two other persons.
- b) That at the time the said suit was filed the 1st respondent had sold his kibanja interest to different persons who are currently in occupation.
- c) That the entire plot 262 which was later subdivided into plots 322 and subsequently plots 334-359 which are claimed by the applicant is entirely occupied by several occupants who are not part of these proceedings.
- d) That from the day this honorable court granted the temporary injunction order, I have not sold any plot or kibanja as alleged by the applicant.
- e) That I have never built structures on the applicant's land and in contempt of the order of a temporary injunction as claimed by the applicant.



- f) That I verily believe that whatever I have stated herein is true and to the best of my knowledge.

3rd respondent's evidence;

1. The application is responded to by an affidavit in reply deponed by **Mr. Esau Nsubuga** the 3rd Respondent which briefly states as follows;

- a) That I was never a party to the court proceedings in HCMA No. 315 of 2022 for a temporary injunction.
- b) that I am not a party to the main suit, HCCS No.182 of 2022 from which HCMA No.315 of 2022 and this application arises.
- c) That I was never heard before the Court issued an Order of temporary injunction in HCMA No. 315 of 2022.
- d) That the Honorable Court did not visit locus to ascertain the status quo that was prevailing at the suit land before Court issued an Order of a temporary injunction.
- e) That if Court had visited locus before granting the Order of temporary injunction, it would have discovered that I was



in occupation of my Kibanja dully demarcated and developed with a two bedroomed house.

- f) That the Applicant also sued me and others in HC-CS No.0364 of 2023 based on the same facts seeking the same remedies as those thought for in HC-CS No. 182 of 2022.
- g) That I have not done any construction works on my Kibanja as alleged by the Applicant.
- h) The Applicant using goons attempted to evict me by demolishing my two roomed-house on my Kibanja in the night of 12th October 2023.
- i) That I thereafter reported the matter to police vide SD.0412510412023 which is still investigating a case of malicious damage to property and unlawful eviction.
- j) That I have not in any way disobeyed or acted in contempt of the Order of temporary injunction granted by Court in HC-MA No.315 of 2022
- k) That I verily believe that whatever I have stated herein is true and to the best of my knowledge.



Representation;

2. The Applicant was represented by ***Mrs.Nakamya Mary Goretti*** of M/S Bemanyisa & Co. Advocates whereas the 1st and 3rd Respondents were represented by ***Mrs.Lina Nandyose*** of M/S **Kintu Nteza & co. Advocates**. The Applicant, the 1st and 3rd respondents filed affidavits and submissions which I have considered in the determination of this application. The other respondents never filed their affidavits and submissions however the applicant never adduced conclusive proof of service of the application onto them.

Issues for determination;

- i) Whether the respondents are in contempt of court orders issued in Miscellaneous Application No. 315 of 2022?**
- ii) What remedies are available to the parties?**

Resolution and determination of the issues;

Issue 1. **Whether the respondents are in contempt of court order issued in Miscellaneous Application No. 315 of 2022?**

3. Black's law Dictionary 7th edition defined Contempt of court to mean; "Conduct that defies the Authority or dignity of court."

Further Halsbury's laws of England Volume 9, Where contempt of court is classified into civil contempt and criminal contempt, criminal contempt which is committed by words or acts that impede the administration of justice.

4. Whereas civil contempt which arises when there is disobedience to judgment orders or other court process and involves private jury.

Further civil contempt has been defined to mean any form of conduct which abuses and makes a mockery of the judicial Process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in

the administration of justice, is contempt of court.**(See; Uganda Super League v Attorney General Constitutional Application No.73 of 2013 Before Hon Justice Geoffrey Kiryabwire)**

5. The rationale behind the law on contempt of court is about presenting and safeguarding the rule of law, a party who walks through the justice door with a court order in his hands must be assured that the court order will be obeyed by those to whom it is directed, this is because the public has an interest and a vital stake in the effective and orderly administration of justice.
6. In a matter of contempt of court, an applicant needs to prove the following elements and then the respondent will bear the evidential burden in relation to willfulness, if the respondent fails to advance evidence that establishes a reasonable doubt as to whether non-compliance was willful and malifide, then contempt would be established beyond reasonable doubt. For contempt of court to exist the following elements should be proved; **Existence of a**

lawful order, potential contemnor's knowledge of the order and potential contemnor's failure to comply, that means disobedience of the order. (See; Jack Erasmus Nsangiranabo Vs Col. kaka Bagyenda & Attorney General, supra)

7. I will proceed to qualify the above elements to establish contempt of court in the instant application,

i) Existence of a lawful order;

8. The applicant states under paragraph 2 of his affidavit in support of the application that he filed an application for a temporary injunction vide Misc. Application No.315 of 2022 which application was granted on the 29th of June 2022 by court pending the determination of the main suit.

9. However this is a fact that is disputed by the 1st respondent in his affidavit in reply and submissions where he states that the said temporary injunction order is not lawful and non-existence since the ruling where it arises has never been found and that he has

never received any notice of how the said ruling has ever be delivered from court nor has the 1st respondent ever been notified by court that the ruling in Misc. Application No.315 of 2022 where the said temporary Injunction order arises is to be delivered on a certain date.

10. The 1st respondent further states that the last time both parties the applicant together with the 1st respondent followed up on the file, they were informed by the registrar that the physical file of the temporary injunction application has since gone missing, this is a fact that is acknowledged by the applicant in the letter annexed onto his application where he clearly states that it is true that file went missing.

11. Further the 1st and 3rd respondents state that the ruling where the said order arises has never been uploaded on Eccmiss by the registrar, this leaves doubts whether the said ruling where the said order arises really exists and whether Misc.App.No.315 of 2022

where the temporary injunction order arises has ever been disposed off or determined by the registrar

12. The existence of an order depends on a ruling or decision of court, for there to be an order extracted a ruling or decision of court should be in existence, the wording of the temporary injunction order adduced in court indicates how Misc. Application No.315 of 2022 was determined, however the said ruling is not adduced anywhere by the applicant.

13. Therefore, there is need to first find the file and ascertain whether the said application was fully determined and that a ruling was issued by the registrar. In the circumstances, I find that there is no lawful order in existence.

ii) Potential contemnor's knowledge of the order;

14. The general principle is that a person cannot be held in contempt without knowledge of the court order, a party who knows of an order regardless of whether it is irregular or regular cannot be permitted to disobey the said order. It is not for that party to

choose whether or not to comply with such an order, the order must be complied with in totality.

15. Learned counsel for the applicant states in her submissions that the order was extracted by the applicant and served onto the respondents, she further refers to annexures 'D' & "E" as proof of service as attached on the affidavit in support of the application.
16. On perusing annexures "D" & "E", I came to the finding that one is an affidavit of service of the applicant's/plaintiff's submissions in civil suit No.182 of 2022 to the 1st respondent and the other is an affidavit of service of the notice to produce documents to the respondents respectively not the proof of service of the said temporary injunction order as alleged by the applicant.
17. The applicant further submits that the 1st & 2nd respondents were aware of the order since they attended the hearing of Misc.Appn No.315 of 2022 where the temporary injunction order was granted but the applicant does not prove or adduce evidence anywhere to show that the same respondents were present when the said temporary injunction order was issued by court, mere attendance of the hearing of the application is not enough to prove knowledge of the order.

18. The applicant further submits that the 4th and 5th respondents were served with the application for contempt of court through their phones as per the affidavit of service adduced, the law on contempt of court as stated in the supreme court decision of **Ssempebwa & Ors Vs Attorney General, Civil Application No.05 of 2019**, requires that the alleged contemnor was served with the order the applicant claims the contemnor to be in contempt of not serving the application of contempt of court Order as alleged by the applicant in this instant application, I find that counsel for the applicant misdirected herself on the law on contempt of court.
19. The applicant avers that for the 3rd respondent who was not party to Misc. Application No. 315 of 2022 where the temporary injunction order arose and the main suit, Civil Suit No.182 of 2022 was served through the LC.1 chairperson of his area but the applicant does not adduce proof of evidence to support the same averment, further I find the same averment to be in contravention of the law on service of court documents, which states that service shall be personal with the exception of exceptional circumstances as brought to the notice of court. Therefore, I find that the potential contemnors did not have knowledge of the said order.

iii) Potential contemnor's failure to comply, that is disobedience of the order.

20. I will draw reference to the affidavit in support of the application deposed by the applicant under paragraphs 3,4 & 5 where the applicant states that the respondents have continued to develop and dispose off the suit land fully aware that there is an existing temporary injunction order by court and specifically the applicant refers to the 1st respondent's actions of selling and disposing off the bibanja interests over the suit land despite the existence of the court order.

21. The 1st respondent in his affidavit in reply specifically paragraphs 4,5 & 6 where he refers to his written statement of defense in Civil Suit No. 182 of 2022, the said pleadings speak to the fact that by the time court issued the said temporary injunction order against the 1st respondent which the applicant alleges the 1st respondent to be in contempt of, the 1st respondent

had already disposed off his kibanja interest to different persons who are in possession of the suit land and the same persons are not party to this application.

22. Further drawing reference to the affidavit in reply deponed by the 3rd respondent under paragraphs 2,3,4 & 5 where he states that he was not party to Misc. Application No.315 of 2022 where the said temporary injunction order is said to have been issued and he is also not party to the main suit, Civil Suit No.182 of 2022, he clearly states that the temporary injunction order came in after he had already developed his land with a two-bedroom house, this is a fact not disputed by the applicant. This means that the 3rd respondent was never heard before the grant of the temporary injunction yet he was in possession of part of the suit land at the time when the said order was issued.

23. All these findings take me to a conclusion that the actions the applicant is alleging to amount to contempt of a court order

against the respondents already took place before the said temporary injunction order was issued by court.

24. The averments speak to the fact that the purported temporary injunction order was acting retrospectively and a party cannot be in contempt of such an order. **(See; Jack Erasmus Nsangiranabo Vs Col.Kaka Bagyenda and Attorney General,Misc.App No.671 of 2019 before hon,Justice Musa Ssekaana)**

25. Therefore, there cannot be disobedience or no-compliance of such an order, this element is not proved by the applicant as well.

26. As I take leave of this issue, I will draw reference to the decision in **Onen David & Ors Vs Otto Ocan & Ors HCMA No.0131 of 2019** before Justice Stephen Mubiru where he held that; ***the contempt power is a discretionary one. If courts were to find contempt too easily, a court's outrage might be treated as simply raising a storm in a teacup that might ultimately cheapen the role and authority of the very judicial power it seeks to protect. Contempt of court cannot be reduced to a***

mere means of enforcing judgements as applicants by their prior application seem to believe. Courts have consistently discouraged its routine use to obtain compliance with the court orders. The power should therefore be used cautiously and with great restraint, it is an enforcement power of last, rather than first resort.

27. In the final result, I don't find it relevant to proceed and determine the second issue and it is to the finding of this honorable court that the contempt of court claimed by the applicant in the instant application does not exist and is not sustained.

28. Accordingly, this honorable courts finds the application to lack merit and it stands dismissed with Costs of the application awarded to the 1st and 3rd respondents.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

29th /11/2023