

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 599 OF 2022

(ARISING OUT OF CIVIL SUIT NO. 272 OF 2020)

1.KIBUUKA ROSETTE

(also known as Keziya Nandibadde)

2.NSUBUGA JESCA

(also known as Namyalo Jesca)

3.SEMAKULA SARAH BAYIGA NSUBUGA

(also known as Sarah Balira)

(*Suing through their lawful*

*Attorney BIRUNGI ANGELLA*) -----APPLICANTS

V

1.SAM KIJJAMBU

2.ROBINAH MIREMBE

3.KASUJJA HASSAN -----RESPONDENTS

**BEFORE:** Hon. Lady Justice Olive Kazaarwe Mukwaya.

**RULING**

This application is brought seeking that the Respondents be committed to Civil Prison for contempt of Court Orders and for the accompanying remedies of a fine, damages and costs.

**GROUND OF THE APPLICATION**

The parties in Civil Suit No. 22 of 2020 entered into a consent which was endorsed by the Court on the 15<sup>th</sup> February 2022. Paragraphs 2(a)-(j) thereunder, spelt out how the land comprised in Kyadondo Block 188, Plot 43 and 45 at Mbuya was to be shared among the Applicants, the Respondents and others.

5 Before the terms of the Consent Judgment would be implemented, the Respondents broke down and completely destroyed the 3<sup>rd</sup> Applicant's wall fence. And it is for this reason that the Applicants seek that the Respondents be committed to civil prison, fined for their acts and omissions and ordered to pay damages.

In the affidavit in support sworn by Ms. Birungi Angella, the Applicants' lawful Attorney,  
10 the complaint and prayers are reiterated.

### RESPONDENTS' REPLY

In two affidavits in reply, the 2<sup>nd</sup> & 3<sup>rd</sup> Respondent's deny the assertions of the Applicants and dismissed them as lacking in merit. The 1<sup>st</sup> Applicant made no reply to the application.

The 2<sup>nd</sup> Respondent challenged Ms. Birungi Angella's powers of attorney contending that  
15 they were fraudulently obtained. She went on to emphasise that though she was not a party to Civil Suit No. 272 of 2020, she blessed the outcome, agreed with the subdivisions and was in the process of implementing the order by executing mutation forms and transfer forms as well. The 2<sup>nd</sup> Respondent did not deny clearing the land but maintained that she did so to fulfil the requirements of the Consent that the Applicants and the 1<sup>st</sup>  
20 Respondent had entered into.

The 3<sup>rd</sup> Respondent, on his part, averred that he was not a party to the Consent Judgment, and was not bound by it and that he did not bring down the perimeter wall as alleged.

### APPLICANTS' REJOINDER

25 The Applicants' maintained that the Respondents have no defence to the contempt and sought that they be held duly accountable.

In paragraph 6, the Applicant averred that the 3<sup>rd</sup> Respondent posed as a son to the 2<sup>nd</sup> Respondent and demolished the wall, claiming that the consent judgment gave his mother authority to do so. Further, in paragraph 8, the Applicant contended that it was not only  
30 the wall that was destroyed, but matooke(bananas) and maize too. Under paragraph 9 of the rejoinder, the Applicant highlighted other items of contempt to wit, a survey without the involvement of the Applicants contrary to paragraphs 3 & 4 of the consent judgment,

- 5 availing a copy of the survey report to the 1<sup>st</sup> Respondent and failing to provide copies for the Applicants and purporting to subdivide the land which has an existing caveat.

Counsel filed submissions which I have perused.

## **ISSUE**

### **Whether the Respondents were in contempt of the Consent Judgment in Civil Suit No, 272 of 2020?**

I find it important to reproduce the sections of the Consent Judgment out of which the Application for contempt remedies arises. It was executed between the Applicants, through their lawful attorney, Ms, Birungi Angella and Mr. Sam Kijambu, the 1<sup>st</sup> Applicant, in part as follows;

- 15 2. The parties herein agree that the above described land be shared by the parties and other proprietors (co-tenants) or their successors-in-title in the arrangement hereunder;
- a) **KIBUUKA ROSETTE** (alias **KEZIYA NANDIBADDE**) the 1<sup>st</sup> Plaintiff herein shares 58.3 Acres on **Plot 45 Block 188 Kyadondo** land at Mbuya. See a sketch map of the proposed subdivision annexed hereto and marked "A".
  - 20 b) **NSUBUGA JESCA** (alias **NAMYALO JESCA**), the 2<sup>nd</sup> Plaintiff herein shares 58.3 decimals as described and demarcated in the Sketch map of the proposed subdivisions marked "A". This covers 0.33 acres on **Plot 43 Block 188 Kyadondo** and 0.25 acres on **Plot 45 Block 188 Kyadondo** all land at Mbuya.
  - 25 c) **SEMAKULA SARAH NSUBUGA** (alias **SARAH BALIRA**) the 3<sup>rd</sup> Plaintiff herein shares 58.3 decimals on **Plot 43 Block 188 Kyadondo** land at Mbuya which she has been in possession and fenced off. **See sketch map of the proposed subdivision marked "A"**.
  - d) **SAM KIJJAMBU** the 1<sup>st</sup> Defendant herein shares 58.3 decimals on **Plot 45 Block 188 Kyadondo** land at Mbuya which he has been in possession of, constructed thereof and fenced off. **See sketch map of the proposed subdivision marked "A"**.
  - 30 e) **ROBINAH MIREMBE** shares 58.3 acres on **Plot 43 Block 188 Kyadondo** land at Mbuya constituting land she has already sold to third parties. **See sketch map of the proposed subdivision marked "A"**.
  - f) The late Eridadi Luyima's share shall be shared by **SUZAN NASSUUNA** (daughter to late **Eridadi Luyima**) which is demarcated as 58.3 decimals on **Plot 45 Block 188 Kyadondo** land at Mbuya. **See sketch map of the proposed subdivision annexed "A"**.
  - 35

- 5 g) The residue by balance on **Plot 43** and **Plot 45 Block 188 Kyadondo** land at Mbuya constituting the family home and existing grave yard shall remain in all the names of the co-tenants as described under para.1 above and as reflected in the respective certificate of title to the suit land.
- h) The residue by balance on **Plot 43 & Plot 45 Kyadondo Block 188** land at Mbuya shall not be dealt in by any co-tenant except under express authority or written consent by other co-tenants or  
10 their successors-in-title.
- i) The residue by balance in occupation of illegal squatters shall be dealt with in accordance with the law by all existing co-tenants or their successors-in-title.
- j) **ELEKESE BWETENDE AND J. RUTH NALUYIMA** died and left no child thus their shares in the suit land are herein divided among the existing co-tenants who are their siblings.

15 The gist of this section reads as a “sharing of land” agreement. It is this part of the Consent Judgment that the Applicants claim the Respondents have violated by breaking down the perimeter wall belonging to the 3<sup>rd</sup> Applicant, Semakula Sarah Nsubuga alias Sarah Balira, referred to under Paragraph 2(c).

20 **Black's Law Dictionary** defines contempt of court as; *‘any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity’*. See **Ex parte Hobbrook, 133 Me. 276, 177 A. 418, 420.** *‘It is committed by a person who does any act in wilful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being*  
25 *under the court's authority as a party to a proceeding therein, will fully disobey its lawful orders or fails to comply with an undertaking which he has given. Snow v. Hawkes, 183 N.C. 365, 111 S.E. 621, 622, 23 A.L.R. 183.*

30 It goes on to state that, *‘Contempts are also classed as civil or criminal. The former are those quasi contempts which consists in the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court, while criminal contempts are acts done in disrespect of the court or its process or which obstruct the administration of justice or tend to bring the court into disrespect. A civil contempt is not an offence against the dignity of the court, but against*  
35 *the party in whose behalf the mandate of the court was issued, and a fine is imposed for his indemnity. But criminal contempts are offences or injuries offered to the court, and a*

5 *fine or imprisonment is imposed upon the contemnor for the purpose of punishment. Staley v. South Jersey Realty Co., 90 A. 1042, 1043, 83 N.J.Eq. 300, L.R.A.1917B,113, Ann.Cas.1916E, 955; Fenton v. Walling, C.C.A.Cal., 139 F.2d 608, 609'*

10 In the case of **Erasmus Masiko v John Imaniraguha & 2 others Misc. Application No. 1481 of 2016**, the learned Judge outlined the four essential ingredients to be demonstrated for one to be held in contempt of court;

- a. *the existence of a lawful court order;*
- b. *the potential contemnor's knowledge of the order;*
- 15 c. *the potential contemnor's ability to comply; and*
- d. *the potential contemnor's failure to comply.*

According to **Black's Law Dictionary, 2<sup>nd</sup> Edition**, An Order in practice is defined as '*every direction of a court or judge made or entered in writing*'.

Before me, is a complaint of a civil contempt against the Applicants. There are  
 20 photographs of freshly cleared land and the destruction of a brick fence/perimeter wall attached to the affidavit in support of this motion. See; annexures RJS 10(a), RJS 10(b) and RJS 10(c). It appears they were taken after the fact of damage. Damage the Applicants hold the Respondents responsible for and which the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, vehemently deny.

25 I have endeavoured to take a keen look at the Consent Judgment to identify the precise court order that the Respondents violated/dishonoured. My understanding of the Consent judgment is that the parties agreed to share the land in dispute. Their portions are specified and proposed sketch maps are annexed. The 3 Applicants and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are named in the distribution at paragraphs (a), (b), (c), (d), and (e). This is  
 30 the Consent that the court entered/endorsed as the judgment of the court. I could find no undertaking by any of the parties, beyond the sharing of the land, as stipulated in the Consent Judgment. There was no direction by the court on clearing of the land or breaking of perimeter walls or prohibition of the same.

5 To succeed in a claim for contempt, the Applicant must prove that there is an existing  
 court order, not an implied court order or a speculative court order. It must exist, and its  
 presence should not be in dispute. In my view, if the court finds itself in a situation where  
 it is poring through a judgment to extract the order which forms the subject of the  
 Applicants' contempt proceedings, the Applicants have failed to in their duty to prove the  
 10 existence of the court order.

Before I take leave of this matter, I must state that in my view, Consent Judgments by  
 their nature, ought not to be the subject of contempt of court proceedings, as a first  
 remedy to an aggrieved party. This is because they are not birthed out of a contentious  
 process of adjudication, but out of the intention of the parties to reconcile and bring an  
 15 end to their dispute, in an amicable way. And the parties are bound by their consent, as  
 they would be to a duly executed contract, since it is a creature of their own making and  
 it behoves them to abide by it. It is my view that the harmony created by the Consent  
 Judgment ought not be lost by a party bringing contempt proceedings, which by their  
 nature are highly volatile and acrimonious. If recourse must be had to contempt  
 20 proceedings in consent judgments, it should be as a very last resort, when all efforts to  
 address the grievance have failed.

**In conclusion, for reasons stated, this Application is dismissed with costs to the  
 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.**

25

.....

**Olive Kazaarwe Mukwaya**

**JUDGE**

**14<sup>th</sup> March 2023**

30 **Delivered by email to Counsel for the parties.**