

value without notice, permanent injunction against the Respondents, exemplary damages and costs of the suit.

5. The Deputy Registrar of this court issued an interim injunction on the 10th August 2023 against the 3rd and 4th Respondents which was allegedly defied by the Respondents despite being effectively served with the same.
6. The grounds of this application are envisaged in the affidavit in support of **TUMUHEKI MOSES**, the lawful attorney of the Applicant which has been relied upon in the determination of this application and briefly states that-
 - a. The Applicant filed the main suit herein HCCS No.047 of 2023 against among others the 2nd, 3rd and 4th Respondents to protect his interest in the suit property for which is the registered owner;
 - b. The Applicant also filed Miscellaneous Application No.421 of 2023 for a temporary injunction against the District Land Board and the Commissioner Land Registration restraining them from interfering with the status quo of registration of the Applicant as the registered proprietor until determination of the main suit;
 - c. On 10th August 2023 this court granted orders of interim relief to the effect that the Applicant shall continue being the registered proprietor of the suit land, that 4th Respondent shall not recall, cancel or transfer ownership in the suit land, that the Applicant shall not mortgage, sell, alienate or transfer the suit property until determination of the main suit and that the person collecting rent shall continue until the determination of the main application for temporary injunction;
 - d. The said order was effectively served upon the Respondents jointly or severally;
 - e. Both the application for temporary injunction and the main suit are still pending before this court for disposal;
 - f. On 19th August 2023, the 1st Respondent with influence of the 2nd Respondent summoned the Applicant for a hearing on recalling and cancellation of his certificate of title where he made a formal response

- notifying them of the existence of both a court order and a civil suit for determination of rights of ownership in respect of the suit property;
- g. The Respondents jointly or severally proceeded to unlawfully cancel the Applicant's certificate of title and changed the same into the names of the 2nd Respondent amidst an existing order and before determination of the main suit;
 - h. The Respondents, jointly or severally defied the orders of court by altering the status quo of the suit property.
7. The application was opposed by the affidavit in reply sworn by **HILARY NDUNGUTSE**, the lawful attorney of the 2nd Respondent which has been relied upon in the determination of this application and briefly states that-
- a. The 2nd Respondent acquired the suit land in the year 2004, as commercial property from a one Geoffrey Kyabihende Taban, while in a dilapidated state, renovated it and as well got registered on the its title;
 - b. The 2nd Respondent immediately took possession, renovated and has over the time rented it to numerous tenants, the latest being MBN Clinical and Laboratory Services;
 - c. Unknown to the 2nd Respondent, Bamukhwana Construction Limited and Mbale District Land Board with others unscrupulously procured a renewal of a lease over the suit property, hastily executed fraudulent transfer to the Applicant, and now seeking court's intervention to cleanse their mischief;
 - d. The subsequent sale and transfer to the Applicant was marred by grave illegalities as the Applicant did not do due diligence as to who owns and possesses the suit property, as her tenant was in quiet enjoyment of the suit property at time of the transaction until the filing of Civil Suit No.047 Of 2023 when the Applicant started threats to take over management of it;
 - e. The impugned transfer to the Applicant is intended to defeat the interest of the 2nd Respondent in the suit property;
 - f. The said interim order was a restraining order for only three days, from the date of issue which had lapsed and had not renewed;

- g. The Applicant cleverly extracted the said court order and postured it as an open ended interim order while not;
- h. Unlike the 2nd Respondent who was proceeding before the office of the Commissioner Land Registration, the Applicant did not participate in those proceedings although properly served through different means but opted to sneak in an order to hold the Respondents in contempt.

8. **Legal representation**

- 9. Counsel Nappa Geoffrey represented the Applicant, Counsel Emmanuel Wamimbi represented the 2nd Respondent while the 1st 3rd and 4th Respondents were not represented.

10. **Determination of court**

11. **Submissions**

- 12. At the hearing of this Application Counsel the Applicant and the 2nd Respondent were given schedules to file their respective written submissions which they complied to.

13. **Submissions by counsel for the Applicant**

- 14. Counsel submitted that it is civil contempt to refuse or neglect to do an act required by a judgment or order of the court within the time specified in that judgment or to disobey a judgment or order requiring a person to abstain from doing a specific act and the course of a party knowing an order which is null or irregular who is affected should apply to the court that it be discharged as long as it exists, it must be obeyed.

- 15. That being the case, the only way in which a litigant can obtain relief from obeying a court order before its discharge is by applying for and obtaining a stay. He referred to **Hadkinson Vs Hadkinson [1952] ALL ER.**

- 16. Counsel added that to prove contempt of court, there are elements that court considers, that is to say, the contemnor's knowledge of the order, the contemnor's ability to comply and contemnor's failure to comply and once the court has found a person or an entity in contempt, the remedies like imprisonment, award of punitive and exemplary damages, fines and costs are

the available remedies. He referred to **Megha Industries (U) Ltd Vs. Comfoam Uganda Ltd Misc. Cause NO.21/2014** to support his submission.

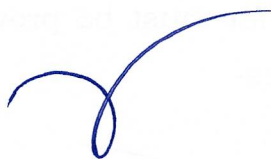
17. He further submitted that the Respondents had knowledge of the existence of the court order vide Misc. Application No.237 of 2023 since it was effectively served on them on the 4th /10/2023 and the 2nd Respondent together with her counsel were present as the court granted the order and counsel for the Applicant wrote to the 1st and 4th respondents informing them of the existence of the court order maintaining the status quo which had already been served upon them.

18. Counsel prayed for the remedies of committal of the 4th Respondent to civil prison, declaration that the actions of the 4th Respondent were unconstitutional, illegal and unlawful in as far as they were done flagrantly.

Submissions by counsel for the Respondent

19. Counsel pointed that it is trite law that for contempt of court to occur, the Applicant must prove the existence of a lawful court order, contemnors knowledge of the court order and contemnor's failure or refusal to comply with the order or disobedience of the order and that on 10th August, 2023, there were no orders made according to the record of proceedings but the Applicant only secured an interim administrative which strictly lapses after 3 days from the date of issue and therefore the time within which the Applicant was to be protected by the said order had already lapsed.

20. He added that the 2nd Respondent had earlier filed and petitioned for an investigation into the suit land with the Commissioner Land Registration and other pertinent agencies for legal relief where summons were issued to the Applicant for a public hearing which was scheduled on 11th October, 2023 and notice of intention to effect changes in the Register was duly served to the Applicant through his registered postal address to wit; P.O. Box 1286 Mbale, in newspaper of wide circulation to wit; Daily Monitor Newspaper dated 20th September, 2023 on page 37 and also to Applicant's known lawyers Nappa & Co. Advocates.



21. Counsel submitted that the said public hearing was conducted in the presence of the lawyer for the 2nd Respondent and the Applicant and other Respondents never showed up for the hearing and no explanation was given to that effect which prompted the hearing to proceed exparte and that It is upon that background that the Commissioner Land Registration cancelled and expunged from the Register Book, the certificate of title which was issued to the Applicant which resulted into this application and therefore the Applicant dashed to court to defeat the Commissioner Land Registration from executing his statutory mandate.

22. Counsel added that the same Applicant in his own volition has in the past abused his very order by demanding for rent and therefore cannot turn around and claim to enforce an order which himself has abused. He finalized requested court to dismiss the application with costs.

23. **Analysis of court**

24. ***Whether the Respondents are in contempt of the court order?***

25. **The Black's Law Dictionary 7th Edition P. 313** defines contempt of court as-

“a disregard of or disobedience to, the rules or orders of a legislative or Judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair respect due to such a body”.

26. Contempt of court was well described in the case of **Megha Industries Ltd V. Conform Uganda Ltd HCMC No.21 of 2014** where the judge held that-

“contempt of court exists where there is a lawful court order and the potential contemnor must have been aware of the court order and failed to comply with the order”.

27. The same principle was further elaborated in the case of **Hon. Sitenda Sebalu V. Secretary General of the East African Community Ref. No. 8 of 2012** which gave the conditions that must be proved by the Applicant in contempt of court and these includes-

(a) existence of a lawful court order.

(b) the potential contemnor's knowledge of the order.

(c) the potential contemnor's ability to comply.

(d) the potential contemnor's failure to comply with/ disobedience of the order.

28. I will analyze the above grounds as below-

29. **Existence of a lawful court order**

30. In the instant case, the Applicant averred under paragraph 7 of his affidavit in support that on 10th of August, 2023 court granted an interim order which allowed him to continue being the registered proprietor on the certificate of title for LRV Mbaba Folio 24 Land at Sebei Cell, Mbale Municipality Sebei Avenue Plot 31 and that the 4th Respondent shall not recall, cancel or transfer ownership of the same among others.

31. I have also looked at the court record and noted that indeed a court order was issued by court on 10th of August, 2023 as per annexure D to the affidavit in support.

32. From the above, it is vivid that there was or there is a lawful court order in existence.

33. **The potential contemnor's knowledge of the order**

34. The 2nd Respondent under paragraph 13 of his affidavit in reply averred that the order was made in the presence of the Respondent and that the restraining order was only for 3 days from the date of issue which lapsed and was not renewed. The Respondent attached annexure J to the affidavit in reply to prove that allegation. I have however looked at the aforementioned annexure and noted that they are proceedings of court. Although not certified, the same does not show that the alleged order was issued for only 3 days.

35. Further, annexure E2 to the affidavit in support indicates that on 19th of September, 2023, counsel for the Applicant notified the 4th Respondent about the existence of the court order but there is no proof that the same was served on the 4th Respondent.

36. It should however be noted that Misc. Application No.0237 of 2023 from which the interim order arise was between the Applicant and the 3rd and 4th Respondents and it was heard ex-parte.
37. The Application having been heard ex-parte, without proof of service of the order on the 3rd and 4th Respondents, it cannot be proved that the same was known to them. Annexure E2 to the affidavit in support which the Applicant tendered as proof of service of the order on the 4th Respondent, has no proof of receipt of the same.
38. The 1st and 2nd Respondents were not parties to Misc. Application No. 0237 of 2023 and for that reason, they were under no obligation to have knowledge of the existing court order. However, since the 2nd Respondent has admitted knowledge of the same, this court will take it to be the position.
39. It is therefore found by this court that it is only the 2nd Respondent who had knowledge of the existence of the interim court order.
40. **The potential contemnor's ability to comply**
41. The 2nd Respondent having had knowledge of the existing lawful court order, had the ability to comply with the same.
42. **The potential contemnor's failure to comply with/ disobedience of the order.**
43. As already discussed in the body of this ruling, there was or there is a lawful order that was issued by court on the 10th of August, 2023 stopping alienation and transfer of LRV Mba Folio 24 Land at Sebei Cell, Mbale Municipality Sebei Avenue Plot 31, the 4th Respondent however even in the presence of such an order, went ahead and alienated the same when it cancelled or inactivated the Applicant's certificate of title on 8th of November, 2023. However, having found that the 4th Respondent had no knowledge of the existence of the alleged court order, it cannot be faulted for contempt.
44. Its trite law that any party who knows of the existence of an order of court whether in his or her view is null or irregular is bound to obey it until the same is stayed or set aside by a competent court. **(See L. C. Chuck and Cremier [1896] E R 885).**

45. In the present case, the Applicant having failed to prove that the alleged court order was served on the 4th Respondent, the 4th Respondent cannot be found guilty in contempt of a court order.
46. The 2nd Respondent although she had knowledge of the existing court order, it is not proved by the Applicant that she participated in the alteration of the land register for her to be found guilty in contempt of a court order.
47. The Applicant also failed to prove that the 1st and 3rd Respondents had knowledge of the court order for them to be held liable in contempt.
48. **What are the Remedies available?**
49. The Applicant having failed to prove knowledge of the existence of the court order by the 1st, 3rd and 4th Respondents and participation of the 2nd Respondent in the commission of the offence, the Applicant is not entitled to any of the remedies sought.
50. This Application is accordingly dismissed.
51. Costs are awarded to the 2nd Respondent who participated in this Application.

I so order


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LUBEGA FAROUQ
JUDGE
3rd/05/2024