

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISCELLANEOUS APPLICATION NO. 864 OF 2016**

*(Arising from Misc Application No. 71 of 2016)*

*(Arising from Misc Cause No. 20 of 2016)*

**BENARD DAVIS WAMBI WANDERA :::::::::::::::::::: APPLICANT**

**VERSUS**

**1.ATTORNEY GENERAL OF UGANDA**

**2. INSPECTOR GENERAL OF GOVERNMENT ::::::::::: RESPONDENTS**

**3. SYLVIA NABIRYE**

**BEFORE: THE HON. JUSTICE STEPHEN MUSOTA**

**RULING**

This is an application for a declaration that the respondents are in contempt of orders of this court in **Miscellaneous Application No. 72 of 2016 Bernard Davis Wambi Wandera Vs Attorney General**, and should be made to pay exemplary damages of 100,000,000, and a penalty of 50,000,000/= to be paid in court by the respondents. In the alternative the respondents be committed to civil prison and be ordered to pay costs of this application and immediately release the applicant from prison.

The application is brought by way of Notice of Motion under Section 33 of the Judicature Act, Section 98 of the CPA and O.41 r.2(3) O.52 r. 1, 2 and 3 of the CPR.

The grounds of the application are briefly set out in the application and in the affidavit of the applicant dated 18<sup>th</sup> October 2016 and sworn before the OC prisons and Justice of the Peace at Luzira. In summary they are that this court directed parties in **Miscellaneous Application No. 71 of 2016 Bernard Davis WambiWanderavs Attorney General** to maintain the status quo and stay criminal proceedings against the applicant. That on the 25<sup>th</sup> August 2016 the respondents officials applied for a warrant of arrest of the applicant in total violation of the court order. That on 25<sup>th</sup> August 2016 the respondent's officials arrested the applicant's sureties and ordered them to produce the applicant. When the applicant appeared before the Magistrate he was detained and later convicted and sentenced by the court in total violation of the court order. That the actions above are illegal and in contempt of court order. That it is fair and just that this application be allowed.

The respondents opposed the application in two affidavits in reply. The 1<sup>st</sup> sworn by a one F. MariamWangadya the Deputy Inspector general of government dated 28<sup>th</sup> October 2016. The 2<sup>nd</sup> is sworn by Bafirawala Elisha Principal State Attorney in the Attorney General's Chambers.

At the hearing of this application Mr. Mujulizi Jamil appeared for the applicant and Nansamba Pauline for the 2<sup>nd</sup> and 3<sup>rd</sup> respondent and Adong Imelda for the 1<sup>st</sup> respondent.

Briefly the background to this application is that the applicant was charged and prosecuted with the offence of embezzlement and abuse of office on 24<sup>th</sup> August 2012 in criminal case No. 114 of 2012 in the chief magistrates court anti-corruption court and later the offence of embezzlement and diversion of public resources together with a one Opiding Francis Criminal Case No. 034 of 2014. The applicant then felt aggrieved because he was being tried on investigations that were illegal in view of the constitutional case of Hon. Sam Kutesa & Ors vs Attorney General Constitutional Petition No. 46 of 2011. So the applicant filed HCMA 71 of 2016 and 72 of 2016 for interim and temporary injunction to stay the proceedings pending disposal of the application in this court challenging the legality of his trial. This court granted him the injunctions and the

orders were served on the attorney general. Despite the court order, on the 25<sup>th</sup> August 2016 the respondents officials applied for a warrant of arrest of the applicant. On 25<sup>th</sup> August 2016 the respondent's officials arrested the applicant's sureties and ordered them to produce the applicant. When the applicant appeared before the Magistrate he was detained and later convicted and sentenced by the trial court. The applicant is aggrieved and feels that the actions above are illegal and in contempt of court order. That is why he has brought this application.

I have considered the application, the affidavits and submissions of both counsel for the applicant and the respondents.

Counsel for the applicant made several observations of law which I agree with in regard to contempt of court. But all these cases that counsel referred to are civil cases where private individuals or government agencies and bodies are found to be in contempt of court. When this court granted the applicant the orders of injunction it did not amount to an acquittal. What this court intended was for the applicant to have some time and the opportunity to pursue his right to challenge a criminal trial's legality. In this case the applicant got that time and due to unavoidable circumstances his application could not be completed in the short time that court anticipated.

This application cannot succeed because as stated by the respondents the decision to prosecute was made by a court of law and that court took cognizance of the court order. The learned trial magistrate also relied on the judgment of a Judge in that very court to make his decision on whether or not to continue with the prosecution. The respondents also made it clear that by the time the interim order was extracted and served, the court had already made judgment against the applicant and so the order could not be enforced. The applicant even participated in the sentencing process and gave mitigating factors.

Secondly, there are elaborate procedures on how to challenge a conviction and sentence. If this court allows this application it will have effectively reviewed the conviction and sentence of the applicant yet this is a civil court. In my view the best option available to the applicant is to

appeal against the decision of the Magistrate which option they have already preferred by filing a memorandum of appeal.

I however do not agree with the respondents that the Inspector General of Government has corporate status to sue and be sued. Therefore they have not been properly sued.

For the reasons in this ruling I am inclined to dismiss this application. However in the interest of justice each party shall bare their own costs of the application.

I so order

**Stephen Musota**

**J U D G E**

**23.12.2016**