

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(EXECUTION AND BAILIFFS DIVISION)**

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**MISCELLANEOUS APPLICATION NO. 213 OF 2017**

**(ARISING OUT OF HCT EMA NO. 1897 OF 2016)**

**(ARISING OUT OF COURT APPEAL CIVIL APP. NO. 29 OF 2016)**

**(ARISING FROM LAND DIVISION CIVIL APPL. NO 18 OF 2012)**

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**(ARISING FROM MAKINDYE CIVIL SUIT 32 OF 2008)**

**BARBRA NAMBI ..... APPLICANT/ JUDGMENT CREDITOR**

**VERSUS**

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**RAYMOND LWANGA ..... RESPONDENT/ JUDGMENT DEBTOR**

**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

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**RULING**

This application was made under Articles 128 (2), (3), 50 (2), 28 (12), 23 (1) (a) of the Constitution, S.33 Judicature Act, S.64 (c) and (e) and 98 of the C.P.A and 0.52 rr 1 and 3 C.P.R.

It is seeking for the following orders that:-

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- i) The Respondent / Judgment Debtor be arrested and committed to Civil Prison for contempt of court.
- ii) The structures illegally erected by the Respondent on the Applicant's land comprised in Folio 41, Plot 2344, Busaabala be demolished.
- 30 iii) The Respondent be fined Shs. 50,000,000/- as a sanction for his contemptuous conduct.

iv) Costs of the application be provided for.

The grounds for the application are that:-

- 5 1) The Applicant filed a suit against the Respondent for trespass in 2008, in the Chief Magistrate's Court at Makindye, - where judgment was entered against Applicant.
- 2) An appeal C.A 18/2012 was filed at the High Court and the Respondent was held to be a trespasser.
- 10 3) The Respondent appealed to the Court of Appeal which confirmed the judgment of the High Court.
- 4) A warrant for vacant possession was issued against the Respondent and the same has since been
- 15 effected and the Respondent thrown out of the land.
- 5) In breach and contempt of the court order, the Respondent has again trespassed on the land where he was and adjudged a trespasser.
- 20 6) Upon the trespass, the Respondent applied for stay of execution and the application was dismissed for the Respondent's illegal conduct.

The application is supported by the affidavits of the Applicant and one Immaculate Sewanyana.

25 There is no affidavit in reply.

The affidavit of service dated 22.02.17 indicates that the Respondent declined service and required the deponent to serve his Advocates, Serwadda & Co. Advocates.

30 Counsel for the Respondent indicated on the notice that the date for hearing was not available as he would be away in Masaka for Civil Sit No. 25/2016.

When the application was called for hearing on 23.02.17, Counsel for the Applicant was present, while the Respondent and his Counsel were absent.

5 Counsel for the Applicant referred to the affidavit of service, adding that Counsel for the Respondent had called intimating that he would be in Masaka.

There being no affidavit in reply and court being convinced that Counsel for the Respondent had been served, decided to proceed exparte.

10 Counsel for the Applicant then went through the provisions of the law under which the application is made, the orders sought and the supporting affidavit.

He emphasized that the Respondent was declared a trespasser by the High Court and directed to vacate the land. His appeal to the Court of Appeal came to naught as the judgment of the High Court  
15 was upheld and the Respondent was evicted from the land.

However, that, in total disobedience of the court orders, the Applicant moved back to the land, and erected illegal structures. But his application to appeal to the Supreme Court was dismissed.

20 It was the submission of Counsel for the Applicant that, by consistently disobeying court orders and returning to the land, the Respondent is in contempt of court orders and should be found to be so.

To support his submissions, Counsel for the Applicant relied upon **Osborne's Concise Law Dictionary** for the definition of Contempt of Court, the case of **Mutambo Wepukhulu vs. Wasswa Balunywa and 2 Others Miscellenous Application 276/2012** by Justice Eldad Mwangusya and the  
25 case of **Stanbic Bank (U) Ltd and Jacobson Uganda Power Plant Co. Ltd vs. The Commissioner General Uganda Revenue Authority Miscellenous Application 0042/2010** from **Civil Suit 0479/2010**.

30 Both cases emphasize that ***"a party who knows of a court order cannot be permitted to disobey it."***

It was then prayed that the application be allowed with costs t the Applicant.

**Issues:**

1) **Whether the Respondent is in contempt of court.**

2) **What remedies are available to the Applicant**

5 **Contempt of Court:-**

*“Contempt of court consists of conduct which interferes with the administration of justice or impedes or perverts the course of justice..... Civil contempt consists of a failure to comply with a judgment or order of a court or breach of an undertaking of court.” – Osborne’s Concise Law*

10 **Dictionary, P. 102 A Thomson Company.**

Before any action can be found to amount to contempt of court, the following principles have to be established:-

15 - Existence of a lawful order.

- Potential contemnor’s knowledge of the order.

- Potential contemnor’s failure to comply, that is, disobedience of the order.

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In the present case, it is not disputed that a suit was filed by the Applicant against the Respondent in 2008, where judgment was entered against the Applicant.

25 On appealing to the High Court, the Respondent was held to be a trespasser. The Respondent’s appeal to the Court of Appeal failed as the Court of Appeal confirmed the judgment of the High Court.

A warrant for vacant possession was issued, and the Respondent was evicted from the Applicant’s land.

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However, in total disregard of the said orders of court and despite that the application to appeal to the Supreme Court was dismissed, the Respondent reentered the Applicant’s land and erected illegal structures thereon.

It is clear from the chronology of events that there is in existence a lawful court order. The Respondent certainly knows about the order as he has attempted to appeal against it and his efforts have proved futile. Yet, despite that, he has refused to comply with the lawful order and instead gone  
5 back to the land where he has been evicted from.

The Respondent's knowledge of the lawful order and his disobedience of the same is confirmed by his failure to make a reply to the Applicant's affidavits in support of the application; which means that he knows he could not dispute the Applicant's claims.

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As already indicated in this ruling, decided cases have established that ***“A party who knows of an order, regardless of whether, in view of that party, the order is null or valid, regular or irregular cannot be permitted to disobey it by reason of what that party regards the order to be. It is not for that party to choose whether or not to comply with such order. The order must be complied with in  
15 totality, in all circumstances by the party concerned subject to the party's right to challenge the order in issue..... It is the responsibility of and duty of the party concerned, in case that party for some genuine reason finds compliance with the court order not possible, to appropriately move court issuing the order and bring to the attention of the court the reasons for non compliance.”*** - See **Housing Finance Bank Ltd & Another vs. Edward Musisi Miscellenous Application  
20 158/2010 CA** – which was relied upon in the case of **Mutambo Wepukhulu vs. Wasswa Balumywa & 2 Others (Supra)**.

For all those reasons and there being no reasons advanced for his failure to comply with the order, this court finds that the Respondent is in contempt of court. There is no justifiable excuse for the  
25 Respondent to have continuously disobeyed the order of court, even after he was evicted from the land and when all his appeals had come to naught.

***“Disregard of an order of the court is a matter of sufficient gravity, whatever the order may be.”*** – See **Hadkinson vs. Hadkinson** cited in the case of **Stanbic Bank (U) Ltd and Another vs.  
30 Commissioner General Uganda Revenue Authority (Supra)**.

**Remedies available to the Applicant:**

The Applicant prayed court to arrest the Respondent and commit him to civil prison for contempt of court.

- Demolition of the illegal structures erected by the Respondent on Folio 41, Plot 2344, Busaabala.

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- To fine the Respondent the sum of Shs. 50,000,000/- for his contemptuous conduct.

- Costs of the application to be paid by the Respondent.

10 Decided cases indicate that examples of punishments for civil contempt are derived from the Common Law decisions, where the punishments are provided for in the Contempt of Court Act (1981).

15 It has also been established that Uganda has no equivalent of the Contempt of Court Act; however, courts have made it clear that ***“disobedience of civil orders is known and ought not to be allowed by courts.”*** – See **Stanbic bank (U) Ltd and Another vs. Commission General Uganda Revenue Authority (Supra)**.

20 And that ***“A court of law never acts in vain and, as such, issues touching on contempt of court take precedence over any other case of invocation of the jurisdiction of the court.”*** – **Housing Finance Bank Ltd and Another vs. Edward Musisi (Supra)**.

25 The High Court is also ***“enjoined to exercise its jurisdiction in conformity with the Common Law and Doctrines of Equity... whereby it is obliged to exercise its discretion in conformity with the principles of justice, equity and good conscience respectively.”*** – See S.14 (2) (b) (1) and 14 (2) (c) of the Judicature Act.

30 ***“Civil contempt is punishable by way of committal or by way of sequestration ... Civil contempt may also be punishable by a fine, or an injunction against the contemnor.”*** – See **Stanbic Bank (U) Ltd and Another vs. Commissioner General Uganda Revenue Authority (Supra)** and **Halsbury’s Laws of England Vol. 9 (1) paragraphs 492.**

It is apparent therefore that there are several punishments that can be given for contempt of court orders.

5 According to the case of **Re Contempt of Dougherty 429, Michigan 81, 97 and (1987)**,  
“*imprisonment for civil contempt is properly ordered where the Defendant has refused to do an affirmative act by the provisions of an order, which either in form or substance was mandatory in character.*”

10 Further that “*if the contempt consists in refusal of a party to do something which he is ordered to do for the benefit and advantage of the opposite party.... The Contemnor stands to be committed until he complies with the order. The order in such a case is not a punishment but is coercive to compel the Contemnor to act in accordance with the order of court.*”

15 This court has already found in the present case that, the Respondent refused to obey the orders of court to leave the Applicant’s land. The orders were mandatory in character and would have been for the benefit of the Applicant. When the Respondent was evicted from the land and vacant possession handed over to the Applicant, in total defiance of the court orders, the Respondent re-occupied the land and erected illegal structures thereon.

20 While I find that committal of the Respondent would be appropriate to compel him to act in accordance with the court order, it will be deferred and the Respondent given two days to vacate the Applicant’s land. Failure of which he will be arrested and committed to Civil Prison.

**Exemplary Damages:**

25 It would be appropriate in the circumstances of this case for the Respondent to pay exemplary damages to the Applicant.

30 Exemplary damages are by their nature intended to punish the Defendant (Respondent) in this case. –  
See the case of **A vs. B [1974] INZLR 673 and 677 and Loomis vs. Rohan (1974) 46 DLR (3d) 423** cited in the paper of Hon. Justice Katureebe in respect of damages dated 18.06.2000.

Other cases referred to include **Ntabgoba vs. Editor in Chief of the New Vision and Another [2004] 2EA 344**, **Bhadelia Habib Ltd vs. Commissioner General of Uganda Revenue Authority [1997 – 2001] UCL 2001** and **Ahmad Ibrahim Bholm vs. Care General Ltd SCCA 12/2012**.

5 The sum of Shs. 6,000,000/- with interest at the rate of 6% from the date of this ruling until payment in full is allowed. The Applicant has been greatly inconvenienced by the actions of the Respondent.

**Demolition of illegal Structures:**

10 The demolition of the illegal structures erected by the Respondent on the Applicant’s land in total disregard of the court’s order to leave the land is also allowed.

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**Fine for Contempt of Court:**

The Applicant prayed court to fine the Respondent Shs. 50,000,000/- as a sanction for his contemptuous conduct.

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This court recognizes that the rationale behind a fine for contempt is to send out a firm message that *“court orders have to be obeyed and to indicate to contemnors that there are consequences for disobedience of court orders.”*

25 However, the sum of Shs. 50,000,000/- prayed for by the Applicant is excessive. This court finds that Shs. 2,000,000/- will suffice to meet the ends of justice. The money to be credited to the account of court.

**Permanent Injunction:**

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A permanent injunction is also issued against the Respondent to prevent him from further trespassing on the Applicant’s land.



Application is allowed in those terms with costs to the Applicant and the following orders are made:-

1) It is declared that the Respondent was in contempt of court orders by re-occupying the Applicant's land after he was evicted and by erecting illegal structures thereon.

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2) The Respondent is directed to leave the Applicant's land within two days of this ruling, failure of which he will be arrested and committed to Civil Prison.

3) The illegal structures erected on the Applicant's land by the Respondent to be demolished.

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4) The Respondent to pay Shs. 6,000,000/- to the Applicant as exemplary damages with interest at the rate of 6% from the date of this ruling until payment in full.

5) The Respondent to pay Shs. 2,000,000/- for contempt of court.

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6) A permanent injunction is issued against the Respondent to keep away from the Applicant's land.

7) Costs of the Application are granted to the Applicant.

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**Flavia Senoga Anglin**

**JUDGE**

**01.03.17**