

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS APPLICATION NO. 43 OF 2013
ARISING FROM MISCELLANEOUS APPLICATION NO 425 of 2010
ARISING OUT OF CIVIL SUIT NO. 61 OF 2010

MONICA MIREMBE MUKOOZA.....APPLICANTS

VERSUS

KAINZA MARGARET.....RESPONDENTS

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This application was by chamber summons brought under Order 41 rules 2(3) and Order 50 rules 1, 4 & 6 of the Civil Procedure Rules for orders that:-

- a) The defendant/respondent Kainza Margret and her agents/workers be arrested and detained in civil prison for a period not exceeding six months.
- b) Costs of this application be provided for.

The application is supported by the affidavit of **Monica Mirembe Mukooza** the applicant, and a supplementary affidavit of **ASP Baluku Alfred**. It is based on the grounds that:-

1. The defendant/respondent Kainza Margret breached and violated an order of a temporary injunction which was issued by the High Court restraining the defendant/respondent, her servants and agents and workers from carrying out any further construction on the suit land at Nsambya, Gogonya zone.
2. In contempt of court orders, the defendant/respondent gave false information to the police that the court order which was issued by Justice Rubby Opio Aweri was forged by court.
3. In the interests of justice, drastic measures be made to protect court orders.

The application was opposed by the respondent through her affidavit in reply, to which the applicant filed an affidavit in rejoinder.

The applicant avers in her affidavits that a temporary injunction was issued in her favour by a court presided over by Justice Rubby Aweri Opio restraining the respondent and her agents servants and workers from carrying out any further construction on the suit land pending the hearing of the main suit. The respondent complied with the injunction for some time but started constructing a permanent building and a brick fence around the suit land during the christmas festive season of 2012. She also continued to deposit building materials on the suit land in contravention of the court order. The applicant contacted the Police Land Protection Unit who attempted to enforce the court order but the applicant informed the police that the order was forged. She directed her workers to ignore it and continue with the construction. The respondent has continued depositing building materials on the site in violation of the court order.

Learned Counsel Edward Bamwite submitted for the applicant that Order 41 rule 2(3) of the Civil Procedure Rules empowers court to grant the orders prayed for. He also submitted that the respondent by her conduct is not repentable and is contemptuous and disrespectful of court orders, which is why she should be detained in prison and her building materials should be attached.

The respondent did not attend court, but through her affidavit in reply, she denied contempting the court order. She averred that there are several orders allegedly issued by Justice Aweri Opio all of which are forged and which were eventually cancelled by the Judge. She attached annexures **A1**, **A2** and **A3** to her affidavit in reply to support her position. She also averred that there is no construction going on at the suit premises, and that she has kept the school run by her on the suit land within the required standards which does not amount to construction.

Learned Counsel Gabriel Byamugisha submitted for the respondent that the respondent is not aware of the injunction, that in her letter to the police she expressed concern that the applicant is attempting to enforce an order that was cancelled, and that they cant recall that the order was reinstated. He contended that the respondent is a law abiding citizen, and that if the respondent is building on the land it will appreciate the subject matter as was held in **Sentongo & Another V Shell (U) Ltd HCCS 31/1993**.

I have looked at the application and all affidavits on this matter. I have also analysed the submissions of Counsel and the law applicable to the situation.

Order 41 rule 2(3) of the Civil Procedure Rules provides that in cases of disobedience or of breach of any terms, the court granting an injunction may order the property of the person guilty of the disobedience or breach to be attached, and may also order the person to be detained in a civil prison not exceeding six months unless in the meantime the court directs his or her release.

The law is that an injunction must be obeyed while it lasts. In **Madhvani V Madhvani [1989] 1 KALR 100 (Civil Suit 774/88, Jinja)**, it was observed by Bahigaine J, as she then was, that a court is always concerned that the order it issues is respected. Generally, in case of default, the court acts to enforce obedience of its orders. However, whether the contemner will be punished

or compelled to purge his/her contempt will depend upon the precise circumstances which are in question.

In this case, the respondent's denial of constructing on the suit land was rebutted by the applicant in her affidavit in rejoinder. The rejoinder reiterates the applicant's averments in the supporting affidavit that the respondent is constructing on the suit land. This is corroborated by the affidavit of ASP Baluku Alfred the OC Kabalagala police station that when he went to enforce the court order of temporary injunction, he found construction of a building and wall fence going on at the suit premises. This is further corroborated by annexures **E** to the applicant's supporting affidavit which are photographs of building materials and a structure under construction. The respondent's averments of keeping the school within the standards required by KCCA do not sufficiently explain the existence of the structure under construction as revealed in the applicant's affidavits, including annexure **E** to her supporting affidavit, as well as the supplementary affidavit of ASP Baluku. The respondent's Counsel submitted that all the respondent is doing is renovations as required by KCCA.

I do not find merit in the respondent's averments. The temporary injunction restrains the defendant/respondent, her servants, agents and workers *"from carrying out any further construction on the suit land at Nsambya Gogonya Zone II while maintaining the status quo"*. The evidence of construction adduced by the applicant is, in my opinion, sufficient to indicate that the respondent is violating the order of temporary injunction issued by this court.

The respondent avers in paragraph 4 of her affidavit in reply that the court orders of 19/9/2011 and 25/8/2011, annexed as **A1** and **A2** respectively, are forged. Annexure **D** to the applicant's supporting affidavit shows that the respondent communicated to the Police that the court orders relied on by the police were cancelled by the Judge and that the one purported to have been obtained subsequently is believed to be forged.

I have looked at the orders in question. Annexures **A2** and **A3** to the respondent's affidavit in reply shows that the order dated 26/8/2011 was cancelled by the Registrar on 19/9/2011. Annexure **A1** to the respondent's affidavit in reply, also **B** to the applicant's supporting affidavit, is the order relied on by the applicant to make this application. It is dated 19/9/2011, apparently the substitute of the cancelled order. It is the order that was served on the respondent by the Land Protection Police Unit in the course of enforcing the injunction as revealed in annexure **C** to the applicant's supporting affidavit. The fact that the respondent attached the same order of 19/9/2011 as annexure **A1** to her affidavit in reply, alleging that it is a forgery, infers that she is aware of the order. This would render baseless the submissions of her Counsel that she was not aware of the temporary injunction.

In addition, the court record reveals that the court order was issued on the basis of a ruling made by Justice Aweri Opio on 18/8/2011. The ruling and the original sealed copy of the order are both on the court record. The record of proceedings reveals that the ruling followed an

application for temporary injunction which was heard *inter partes*. It was contested by the respondent through her Counsel who filed written submissions as requested by court. So the respondent cannot fake ignorance about the court order of 19/9/2011 which forms the basis of this application.

The respondent's Counsel cited **Sentongo & Another V Shell (U) Ltd HCCS 31/1993** to support his submissions that the respondent's constructing on the suit land was appreciating the value of the land. With respect, I find this to be most unfortunate and irrelevant to the instant situation. First, there should be no excuse for anyone to disobey a court order while it lasts. Secondly, in applying the said principle, the court in **Sentongo's** case was deliberating on a different matter of whether or not to grant a temporary injunction, and, in the course of doing so, decided that there was no irreparable injury to complain about. In **Ugantico Supermarket V Registrar of Titles HCCS 256/1993** it was held that it was not correct to say that construction of a building on the suit property appreciates its value as it depends on the circumstances of a case. I find the case cited by the respondent's Counsel not applicable in the instant situation.

It is my finding therefore, on basis of the evidence before me, that the respondent was well aware of the court order. She exploited the cancellation of the order earlier extracted to falsely maintain that all the court orders are forged, and used it as a basis to continue violating an authentic court order. She continued the disobedience even after police intervention. I find this conduct to be contemptuous and a flagrant disrespect to the court order.

It was stated in **Halsbury's Laws of England, 3rd Edition Volume 21, paragraph 924, page 436**, and held in **Madhvani V Madhvani, supra**, that courts have always taken a lenient view in favour of the liberty of the individual and would only commit the contemner if he/she had a very contemptuous and flagrant disrespect to the court. If there is a reasonable alternative method available of ensuring that a court order is obeyed which does not involve committing the contemner to prison, that alternative should be preferred where the contemner has not been very contemptuous and flagrantly disrespectful. This underlines the concept that the liberty of the citizen is sacrosanct. In **Samee Khan V Bindu Khan SLP (C) No. 11992 of 1998** the supreme court of India found it not necessary to put the defendant in prison as he had apologised and removed the obstruction. Similarly, in **Madhvani V Madhvani, supra**, the Judge made no order of committal and accepted the expression of regret made by the respondent.

In the instant case however, there is evidence that the respondent by conduct is violating the court order with impunity, is falsely asserting that the court order is forged, and is not in the least apologetic. This court does not condone her conduct. It is necessary that people respect court orders while they last.

In my opinion, on basis of the evidence availed to this court, and in the circumstances, I would grant the applicant's prayer to detain the respondent in civil prison for two weeks for disobeying a court order, and that she bears the costs of this application. She should stop the violation of the

court order forthwith until the main suit is heard and determined or until further orders from this court. It is so ordered.

Dated at Kampala this 12th day of February 2013.

Percy Night Tuhaise.

JUDGE.